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Tuesday
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Tuesday
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WHO: The Office of the Federal Register.

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4. An introduction to the finding aids of the FR/CFR system.

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

WASHINGTON, DC

WHEN: October 19; at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.

RESERVATIONS: 202–523–5240.

NEW YORK, NY

WHEN: October 24; at 1:00 p.m.
WHERE: Room 305A, 26 Federal Plaza, New York, NY.
RESERVATIONS: Call Arlene Shapiro or Stephen Colon at the New York Federal Information Center. 212–264–4810.

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Presidential Documents

Title 3—

The President

Proclamation 6046 of October 13, 1989

National Disability Employment Awareness Month, 1989

By the President of the United States of America

A Proclamation

Our Nation's laws and traditions are rooted in a profound respect for the dignity and worth of every human person. It is this deep regard for the individual that has established the United States as a land of liberty and opportunity for all. Like generations of Americans before us, we have an obligation to ensure that the United States remains faithful to this promise for every individual—including those with disabilities.

Ensuring that business and employment opportunities remain open for all members of our society is not only a moral imperative; it is also vital to our Nation's economic growth. As the global economy continues to expand, U.S. goods and services will face ever greater competition in both foreign and domestic markets. Americans with disabilities can help to meet that challenge—but only if they have opportunities to bring their energy, creativity, and talent to the Nation's work force.

Many advances have been made in fostering the full participation by disabled persons in American society. Our Nation's educational system and training and rehabilitation programs have enabled millions of people with disabilities to become skilled, productive workers. The ongoing removal of architectural and other barriers in housing, transportation, and the workplace is permitting more and more disabled people to join the labor force as well as the mainstream of American life. Advances in technology are also enabling persons with disabilities to utilize their strengths and talents to the fullest. And many employers—recognizing all that these individuals have to offer—are enthusiastically hiring workers with disabilities.

Unfortunately, despite these advances—as well as the major gains we have made in lowering the Nation's unemployment rate—it has been estimated that only one-third of all disabled Americans of working age are currently employed. Yet millions of Americans with disabilities are both willing and able to take their rightful places in America's work force. As a Nation that takes justifiable pride in the unparalleled opportunities we have provided for all our citizens, we must continue working to enhance employment opportunities for persons with disabilities.

The Congress, by Joint Resolution approved August 11, 1945, as amended (36 U.S.C. 155), has called for the designation of the month of October of each year as "National Disability Employment Awareness Month." This special month is a time for all Americans to join together in recognizing the unlimited potential of persons with disabilities and in renewing our determination to provide increased employment opportunities for them.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the month of October 1989 as National Disability Employment Awareness Month. I call upon all public officials, employers, and private citizens of this country to continue to help guarantee equal employment opportunities and the full rights and privileges of citizenship for disabled Americans.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of October, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.

George Bush

[FR Doc. 89-24610
Filed 10-13-89, 2:25 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 6047 of October 13, 1989

White Cane Safety Day, 1989

By the President of the United States of America

A Proclamation

The white cane is a device that all should recognize, for it is the staff that gives blind individuals greater freedom of movement as they pursue their daily activities. The white cane helps visually impaired persons avoid physical hazards and barriers, thereby enabling its users to travel more safely in the public environment. It is also a tangible reminder to all Americans that those who are blind possess the ability and the desire to lead independent lives.

Each year, White Cane Safety Day provides us with an occasion to renew our determination to eliminate barriers that continue to hinder the full participation of blind Americans in our society, especially those barriers created by discrimination or lack of understanding. It is a day to acknowledge the accomplishments of people who are blind and to reaffirm our support for efforts that will enhance their mobility.

In acknowledgment of the white cane and all it symbolizes, the Congress, by joint resolution approved October 6, 1964, has authorized the President to designate October 15 of each year as "White Cane Safety Day."

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim October 15, 1989, as White Cane Safety Day. I urge all Americans to show respect for those who carry the white cane and to honor, through appropriate ceremonies and activities, their many achievements.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of October, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.

George Bush

[FR Doc. 89-24611
Filed 10-13-89; 2:26 pm]
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Rules and Regulations

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

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This document revises the delegation of authority from the Secretary to reflect the assessment of responsibility for the Disaster Assistance for Rural Business Enterprises Guaranteed Loan Program under the Disaster Assistance Act of 1989, to the Under Secretary for Small Community and Rural Development and the Administrator of Farmers Home Administration.

EFFECTIVE DATE: October 17, 1989.

FOR FURTHER INFORMATION CONTACT: Louis G. Bennett, Assistant Administrator, Community and Business Programs, Farmers Home Administration, USDA, 14th and Independence Ave., SW., Washington, DC 20250, telephone (202) 447-7287.

SUPPLEMENTARY INFORMATION: Departmental responsibility for guarantees of loans to rural business entities to further rural development and to save or create jobs in rural areas has been located in the Farmers Home Administration (FmHA) and its Business and Industrial (B&I) Loan Division. section 401 of the Disaster Assistance Act of 1989 (Pub.L. No. 101-82) provides the Secretary new authority to guarantee such loans for disaster assistance purposes. Authority to administer this new loan guarantee authority is being delegated to the Under Secretary for Small Community and Rural Development, and further redelegated to the Administrator of Farmers Home Administration.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rule making and opportunity for comments are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Finally, this action is not a rule as defined by the Regulatory Flexibility Act and thus is exempt from the provisions of that Act.

List of subjects in 7 CFR Part 2

Authority delegations (Government agencies).

Accordingly, part 2, title 7, Code of Federal Regulations is amended as follows:

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

1. The authority citation for part 2 continues to read as follows:

Authority: 5 U.S.C. 301 and Section 4(a) of Reorganization Plan No. 2 of 1953.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and Assistant Secretaries

2. Section 2.23 is amended by adding a new paragraph (a)(20) to read as follows:

§ 2.23 Delegations of authority to the Under Secretary for Small Community and Rural Development.

* * * * *

(a) * * *

(20) Administer the Disaster Assistance for Rural Business Enterprises Guaranteed Loan Program under section 401 of the Disaster Assistance Act of 1989 (Pub.L. No. 101-82).

* * * * *

Subpart I—Delegations of Authority by the Under Secretary for Small Community and Rural Development

3. Section 2.70 is amended by adding new paragraph (a)(36) to read as follows:

§ 2.70 Administrator, Farmers Home Administration.

(a) *Delegations.* * * *

(36) Administer the Disaster Assistance for Rural Business Enterprises Guaranteed Loan Program under section 401 of the Disaster Assistance Act of 1989 (Pub.L. No. 101-82).

* * * * *

Dated: October 11, 1989.

Clayton Yeutter

Secretary of Agriculture.

Dated: October 11, 1989.

Roland R. Vautour,

Under Secretary for Small Community and Rural Development.

[FR Doc. 89-24535 Filed 10-16-89; 8:45 am]
BILLING CODE 3410-07-M

Food and Nutrition Service

7 CFR Part 250

Donation of Food for Use in the United States, Its Territories, Possessions and Areas Under Its Jurisdiction

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the Food Distribution Program Regulations (7 CFR part 250) by: (1) Improving the manner in which agricultural commodities acquired by the Department of Agriculture are distributed to recipient agencies; (2) establishing mandatory criteria to be used by distributing agencies in determining distribution charges; and (3) establishing minimum performance standards to be followed by distributing agencies responsible for intrastate distribution of donated commodities. The changes will improve the manner in which commodities are distributed to recipient agencies as required under the provisions of the "Commodity Distribution Reform Act and WIC Amendments of 1987."

EFFECTIVE DATE: This final rule is effective November 16, 1989.

FOR FURTHER INFORMATION: Susan E. Proden, Chief, Program Administration Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park

Center Drive, Alexandria, Virginia 22302 or telephone area code (703) 756–3660.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under Executive Order 12291 and has been classified as not major. We anticipate that this rule will not have an annual impact on the economy of more than $100 million. No major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions is anticipated. This action is not expected to have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This action has been reviewed with regard to requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The Administrator of the Food and Nutrition Service (FNS), has certified that this action will not have a significant economic impact on a substantial number of small entities.

This program is listed in the catalog of Federal Domestic Assistance under 10.550 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, and the final rule-related noticed at 48 FR 29114, June 24, 1983).

Paperwork Reduction Act Notice

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), the additional recordkeeping and reporting requirements contained in the rule at § 250.14(a) are subject to review and approval by the Office of Management and Budget (OMB). The public reporting burden for the collections of information are estimated to average 360 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Act Project, Washington, DC 20503.

With the exception of § 250.14(a) described above, the current reporting and recordkeeping requirements found in part 250 are approved by OMB under control number 0584–0007.

Background

On January 8, 1988, President Reagan signed Public Law 100–237, "The Commodity Distribution Reform Act and WIC Amendments of 1987." The purpose of the law is to improve the manner in which agricultural commodities are distributed to recipient agencies, to improve the quality of the commodities that are distributed and to increase the degree to which the distribution responds to the needs of recipient agencies while still carrying out the Department's responsibilities to support agricultural prices and remove surpluses from the market. On October 20, 1988, the Department proposed rules to implement the following sections of Public Law 100–237:

Section	Topic
Section 3(b)(1)(B)	Monitoring of distributing agencies.
Section 3(d)(1)–(4)	Warehousing and distribution requirements for distributing agencies.
Section 3(e)(1)(A)	Distribution charges for commodities.
Section 3(e)(1)(B)	Performance standards for distributing agencies.

The proposed rules contained several of the most complex provisions required by the law. For a more comprehensive description of those provisions, readers should refer to the preamble of the proposed rule (53 FR 41172). Comments were solicited to assist the Department in developing regulations which will provide for a more efficient, effective and uniform operation of the Food Distribution Program. Specifically the Department proposed changes to the current Food Distribution Program Regulations (7 CFR part 250) concerning the use of commodity warehousing and delivery systems, mandatory criteria for establishing distribution charges that some States charge recipient agencies, and minimum performance standards for distributing agencies.

Analysis of Comments

A total of 115 comment letters were received from various entities including the American School Food Service Association, National Frozen Food Association, International Food Service Directors Association, National Association of State Agencies for Food Distribution, and the International Association of Refrigerated Warehouses. Other commenters included commercial distributors, local school food authorities, distributing agencies, State educational agencies, processors and private consultants.

The Department would like to take this opportunity to extend its gratitude to each of the commenters who spent time reviewing the proposal, analyzing the content and making recommendations for improvements. In the remainder of this preamble, the Department will explain where commenters' recommendations could or could not be incorporated into this final regulation. The Department would also like to remind readers that both the proposed and final rules were generated as a result of legislation in which Congress imposed very specific requirements upon the Department and program administrators. In many instances where commenters made recommendations for revisions, the Department had no discretion to alter the requirements. It is true that the intent of the legislation is to improve the manner in which commodities are distributed while being responsive to the needs of the recipient agencies, however, it was quite specific in placing the burden on distributing agencies using State warehousing and distribution systems to show that these systems were more cost effective and efficient than commercial facilities. The Department, therefore, was restricted as to the number of approaches that could be taken to improve the warehousing and distribution services to recipient agencies.

Commenter reaction to each of the regulatory requirements is explained in detail below. Readers should refer to the preamble of the October 20, 1988 proposed rule (53 FR 41172) for a more comprehensive description of the history of the program and of the legislative requirements of Public Law 100–237 that this rule is intended to implement.

System For Warehousing and Distributing Donated Foods

Under § 250.14(a)(1) of the proposed rule, distributing agencies were required to use the most cost effective and efficient system for providing warehousing and distribution services to recipient agencies. Commercial facilities were defined as commercial enterprises that provide for warehousing and delivery.

Fourteen commenters requested that the definition of commercial facilities be clarified to allow for separate warehousing and delivery contracts. The commenters claimed that the regulations as they were proposed required a single contract to cover both the warehousing and delivery of donated food.

It was not the intent of the Department to define commercial facilities in such a way that it limits

such facilities only to those that can provide both warehousing and delivery services. Based on the commenters recommendations, § 250.14(a)(1) of this final rule is amended to clarify the definition of commercial facilities so that separate warehousing and delivery agreements/contracts can be negotiated.

Evaluation of Current Systems

Section 250.14(a)(2) of the proposed regulations required distributing agencies to evaluate their current warehousing and distribution systems. Initial evaluations were to be completed by June 30, 1989 and updates submitted each June 30 thereafter. Each of the requirements for the evaluation and the commenters' reactions are described below.

Six commenters supported the requirement that all distributing agencies evaluate their existing systems. Three commenters suggested that the Temporary Emergency Food Assistance Program be exempt from the requirement. Reflecting the same sentiments, two commenters requested an exemption for the Nutrition Program for the Elderly and three commenters requested an exemption for the Commodity Supplemental Food Program. Three distributing agencies recommended that States currently using commercial warehousing and distribution systems or States currently in the process of converting to commercial systems should not be required to do a costly evaluation. Two commenters stated that the regulations were geared only to the National School Lunch Program.

Under the provisions of Public Law 100–237, the distributing agencies for all programs must evaluate their system for warehousing and distributing donated food. No exceptions to this requirement were provided by the law. Therefore, the requirement remains in this final rule as proposed.

Section 250.14(a)(2)(i) of the proposed rule required that the following information be included in the description of the principal warehousing/delivery techniques used by the distributing agency:

(A) The frequency of delivery available;

(B) The timeframes for making deliveries;

(C) The type of delivery service offered;

(D) The system for recipient agencies to order specific amounts of food from available inventory;

(E) The system for handling recipient agencies complaints; and

(F) The system for recipient agencies to offer input regarding other services they may find desirable.

Eleven commenters stated that the evaluation should not include the description of the system for handling recipient agency complaints or the system for recipient agencies to offer input regarding services they may find desirable. Of those who commented on these particular provisions, two commenters also questioned how they could determine a cost figure for these two services.

Public Law 100–237 requires that the distribution of donated foods be responsive to the needs of the recipient agencies. If recipient agencies have complaints about the warehousing and distribution services they are receiving, there must be a formalized procedure for registering complaints. Also, there should be a mechanism in place for recipient agencies to offer suggestions for improvements in the way donated food is distributed. In response to other provisions of the legislation, both of these avenues for collecting information are addressed under the performance standards in § 240.24 (e) and (f) of this regulation. This provision only requires a description of the existing system; cost information is dealt with in § 240.14 (a)(3)(ii) and (a)(4). Nevertheless, the Department has deleted subparagraphs (E) and (F) from this section of the final rule in order to avoid confusion.

Section 250.14(a)(2)(ii) of the proposed rule required distributing agencies to identify all costs incurred in administering the Food Distribution Program. These costs were to include transportation, storage and handling of donated foods (if the current distributing agency system does not include delivery to recipient agencies, identification of costs incurred by recipient agencies to pick up commodities at a warehouse and deliver the food to a centralized storage facility or the individual preparation sites), salaries of persons directly connected with the administration of the program and other program related expenses including fringe benefits, travel expenses, rent, utilities, accounting/auditing services, computer services, and the costs of providing program services to recipient agencies such as the costs for administering and monitoring the State's processing program, technical assistance workshops, etc.

Nineteen commenters stated that they would have a problem identifying costs incurred by recipient agencies for picking up commodities. They also believed that the result of identifying such costs could be that recipient agencies would have to pay for services that were previously provided by another agency (maintenance department, general services department, transportation department, etc.). These commenters further stated that if there is no direct cost for these services against the food service program, they should not be considered a cost in the evaluation of existing systems.

The Department does not have the flexibility to make the suggested changes to the regulation. The legislation is quite specific in requiring distributing agencies to use the most cost effective and efficient system for providing warehousing and distribution services to recipient agencies. In order to determine the most cost effective and efficient system, the distributing agencies must compare commercial and distributing agency-operated systems. Such a comparison will not be valid unless all costs incurred in administering the Food Distribution Program are identified. Section 250.14(a)(2)(ii) of the final rule has been revised to clarify that the cost information is to be an estimate for the upcoming school year. A parallel change has been made to the cost comparison provision (§ 240.14(a)(4)) to ensure that the data will be for the same time period.

Section 250.14(a)(2)(ii) of the proposed rule required all distributing agencies to complete initial system evaluations by June 30, 1989, and updates each June 30 thereafter.

Eighteen commenters stated that the deadline for submitting the initial evaluations to the regional offices was unreasonable. They further stated that guidelines were needed to assist distributing agencies in conducting meaningful evaluations prior to implementation of the requirement. Four distributing agencies requested that USDA make State Administrative Expenses (SAE) funds available to fund the additional workload associated with implementing the new regulation requirements. They further commented that the workload associated with the rules is unrealistic and disconcerting.

Based on the comments received in response to the proposed rule, § 240.14(a)(2) is amended in this final rule to provide a one year delay to the due date by requiring initial evaluations to be submitted to the FNSRO by June 30, 1990. Additionally, the Department would like to point out that technical assistance materials and reallocated State Administrative Expense funds are available to assist distributing agencies in evaluating their current warehousing and distribution system.

Twenty-four commenters believed that the annual review of existing systems is unnecessary. Of these commenters, 18 recommended that distributing agencies should only be required to evaluate their warehousing and delivery systems once every three years. Two commenters recommended that evaluations be conducted once every five years and two commenters believed that evaluations should only be required when the State modifies an existing system. The remainder of the commenters felt that complete evaluations were unnecessary altogether.

Fourteen commenters believed updates should only be required if a change occurs in the level of service provided or the price of the service increases.

The legislation does provide the Department some discretion with respect to the frequency of these evaluations. In an effort to reduce the burden on the distributing agencies associated with the annual evaluation of their current warehousing and distribution system, the Department has decided to change the proposed frequency and to exempt commercial systems from routine reevaluations. The Department believes that the competitive bid process used to obtain commercial warehousing and distribution will serve as an adequate basis for reevaluating commercial systems and that to require reevaluations through the process set forth in this rule would be unnecessarily duplicative. The final rule requires distributing agencies that do not use commercial facilities to reevaluate their current system once every three years by March 31. For purposes of consistency, as described later in this preamble, cost comparison data will also be required on the same cycle.

In order to permit FNS to continuously monitor changes in all distributing agencies' activities. § 250.14(a)(7) of the final regulation provides that at least 90 days before reducing the level of service provided or increasing distribution charges beyond normal inflation, the distributing agency must request approval from the FNSRO for the proposed change and submit justification. This request will provide FNS the opportunity to review those distribution systems making changes, especially commercial systems that will not automatically fall under the three year reevaluation process set forth in § 250.14(a)(2). Upon reviewing a request for a change, should FNS determine that a complete reevaluation of a commercial or noncommercial system is in order, § 250.14(a)(6)(ii) of this rule specifies that FNS may require a complete reevaluation of the system being used.

Comparison of Existing System with Commercial Systems

Section 250.14(a)(3) of the proposed rule required all distributing agencies which do not use commercial facilities to compare the cost of warehousing and distributing commodities under their current system with the cost of comparable services under a commercial system. The cost comparison was to be made between the cost of providing a minimum level of service under the current system with the cost of obtaining an equivalent level of service from commercial facilities. This minimum level of service was to consist of the transportation, storage and handling of donated food from the time of delivery by the Department to a distributing agency until delivery to a recipient agency's centralized storage facility or individual preparation sites with monthly deliveries of donated food to all recipient agencies. A distributing agency could base its cost comparison on a level of service in excess of the minimum and/or services not currently provided. However, in all cases, the proposal required that the comparison be made on the costs of providing a comparable level of service under the existing system versus a commercial system.

One commenter requested that the Department provide a clearer definition of "minimum level of service." In response to that recommendation, the terminology has been revised in the final rule to refer to a "basic level of service" which consists of storing and warehousing donated food and making monthly deliveries to all recipient agencies.

Seven commenters stated that obtaining cost comparison data from commercial facilities involves a bid process that can be very cumbersome at the distributing agency level. Commenters claim that going through the whole bid process to obtain cost information from commercial enterprises when a distributing agency may or may not award the bid has serious implications. According to the commenters, it is unethical, inappropriate, and unconscionable, if not illegal, for a distributing agency which has no intention of awarding a contract to solicit cost information from commercial enterprises.

The Department is not suggesting that distributing agencies should issue formal requests for contracts that will not be awarded. In order to meet the requirements of the law, distributing agencies must only obtain information on the cost of commercial warehousing and distribution of commodities in that State. Price information must cover a basic level of service which consists of storing and warehousing donated food and making monthly deliveries to all recipient agencies. The Department is in the process of developing guidance to assist distributing agencies in collecting cost information and in making appropriate cost comparisons. The guidance will be distributed as soon as it is developed.

Five commenters questioned why distributing agencies should obtain cost information for using commercial facilities in those States that have laws prohibiting the use of commercial facilities for the delivery of donated food. The Department believes that Public Law 100–237 supersedes any State laws that prohibit commercial facilities from warehousing or delivering donated food.

Seventeen commenters believed that requiring monthly deliveries to all recipient agencies will result in increased costs that they would be unwilling to pay. Eight commenters stated that they were happy with the service they were receiving under the current system and claimed that no commercial firm could give the level of service that the distributing agency gives. Nine commenters recommended that the Department permit distributing agencies and recipient agencies to mutually agree on delivery schedules other than once a month. They claimed that fewer deliveries help keep costs to a minimum.

These commenters are misconstruing this provision. This provision does not itself require monthly deliveries to all recipient agencies. Instead, it uses monthly deliveries as a basic level of service for purposes of comparison between commercial and distributing agency-operated systems. Section 250.13(a)(2), added by an interim rule on June 16, 1988 (53 FR 22469), is the provision which requires distributing agencies to make monthly deliveries. However, the Department never intended this requirement to preclude a distributing agency and recipient agency from agreeing to less frequent distributions, such as school food authorities which do not need monthly deliveries when classes are not in session. In order to be consistent with this interpretation of the requirement, the description of the basic level of service in § 250.14(a)(4)(i) is revised to specifically state this modification. The Department will make the corresponding clarification to the monthly delivery

requirement in § 250.13(a)(2) when finalizing that provision.

Section 250.14(a)(3) of the proposed rule required that all data regarding the cost of the current warehousing and distribution system and the cost for comparable commercial facilities be submitted to FNS for review by June 30, 1989 and each June 30 thereafter.

Thirteen commenters were opposed to the requirement that cost comparison data be submitted each year. Nine commenters stated that cost comparison data should only be needed once every three years. One commenter stated that the data should only be required once every two years. Three commenters requested clarification on what dates to base the cost comparison data. These commenters claim that the data could be based on a calendar, State or fiscal year basis. Another commenter claimed that the annual cost comparison is not necessary if there is satisfaction with the distributing agency's current system. Several commenters claimed it is better to have multi-year contracts to ensure better pricing, service and inventory controls.

Based on the comments to the proposed rule and in order to coordinate with the date for submission of the evaluation, § 250.14(a)(4)(iv) is revised to specify that the initial cost comparison data must be submitted by June 30, 1990 and that updated data must be submitted by March 31 every third year.

In addition as discussed above, § 250.14(a)(7) has been added to require distributing agencies to provide FNS at least 90 days notice before reducing the level of service provided or increasing the distribution charges beyond normal inflation. The distributing agency must request approval from the FNSRO for the proposed change and submit justification for the change. In the case of a noncommercial system, this justification must include updated cost comparison data.

The final rule is also revised to clarify that all cost data are to be submitted on a school year basis.

Approval to Use Other Systems

Section 250.14(a)(4) of the proposed rule required distributing agencies not opting to implement a commercial warehousing and distribution system to apply to the FNSRO for approval to use other facilities proving that other facilities are more cost effective and efficient. Each request was to be considered on a case by case basis. The FNSRO would inform the distributing agency whether it could continue to use the alternative system. Approval to use the alternative system would be granted for no more than one year. After one year, the distributing agency must implement a commercial system or apply to the FNSRO for approval to continue to use the alternative system.

Fourteen commenters stated that the regulations should focus more on the needs of recipient agencies and less on the commercialization of the storage and delivery of donated food. Nineteen commenters claimed that recipient agency satisfaction should count as evidence that the current system is acceptable. These commenters claimed that acceptability of the current system by the State food distribution advisory council and the State school food service association should be considered in determining whether to grant approval to use other systems.

Eight commenters claimed that commercial systems (although generally the most cost effective) may not be the best for all distributing agencies. All of these commenters were concerned that they may be forced into doing business with a distributor they find unacceptable. Nine commenters requested that distributing agencies be permitted to modify their current systems to make them more cost effective and efficient rather than forcing them to convert to a commercial system.

Three commenters recommended that distributing agencies should be allowed to maintain their current system if they can provide evidence that there is no competition for a commercial system. Also, two commenters claimed that the largest school districts in a State will dictate the level of service to be provided to all recipient agencies. These commenters would like to see an end to the whole idea of using commercial facilities. One commenter claimed that commercial systems do not lend themselves to slow-moving commodities. The commenter claimed that distributors will be unwilling to handle commodities for which requests for the item are infrequent and/or in small amounts.

The Department is aware that this rule may impose hardships upon some distributing agencies and is sympathetic to those agencies. However, the legislation is very clear on this requirement and allows the Department very little latitude to offer any relief. Under section 3(d)(3) of Public Law 100–237, distributing agencies that do not implement a commercial warehousing and distribution system must apply to the Secretary for approval to use other facilities and must provide justification that other facilities are more cost effective and efficient. Therefore, § 250.14(a)(5) of this final rule remains as proposed with the following modifications.

In recognition of commenter concerns and in order to be consistent with the date for submission of the system evaluation and cost comparison, § 250.14(a)(5) has been revised to require the initial requests to be made by June 30, 1990 and subsequent requests (where appropriate) to be made every three years by March 31. In addition, at least 90 days before reducing the level of service provided or increasing in the distribution charges beyond normal inflation, the distribution agency must request approval from the FNSRO for the proposed change and request continued approval to use an alternative system. As discussed above, the request must include justification, and if a noncommercial system, updated cost comparison data.

System Implementation

Section 250.14(a)(5) of the proposed rule required distributing agencies to implement the most cost effective and efficient system by July 1, 1990.

Twelve commenters stated that the deadline for implementation of the new requirements was unreasonable. The Department concurs with the commenters and changed the requirement in § 250.14(a)(6) to a new implementation date of July 1, 1991. The additional year should give distributing agencies sufficient time to evaluate their current system for warehousing and distributing donated food, compare that system with the cost of comparable commercial alternatives and make the decision to request a waiver or convert to a commercial system.

Section 250.14(a)(5) of the proposed rule also stated that if at any time FNS determines that the warehousing and distribution system in place is not cost effective based on distribution charge information or other information, the distributing agency will be required to reevaluate its system within 90 days of notification by the FNSRO.

Two commenters stated that requiring the reevaluation of a warehousing and distribution system at the whim of a regional office is impractical. At the present it is the intent of the Department to require distributing agencies to reevaluate warehousing and distribution systems only when the systems are no longer the most cost effective and efficient based on distribution charge information they submit. However, the Department believes it is necessary to retain general authority to require distributing agencies to reevaluate their systems should the Department otherwise have grounds for questioning

a system's cost effectiveness or efficiency. For these reasons, that portion of the final rule remains as proposed.

The final rule has been revised to clarify that in any instance in which an interim evaluation, cost comparison and/or request for approval to use an alternative system is required pursuant to § 250.14(a)(6)(ii), the next required submission for noncommercial systems will be the third March 31 following the date of the interim submission.

Section 250.14(a)(6) of the final rule has been revised to specify the timeframe for conversions to commercial systems after the initial evaluation cycle. Any time a distributing agency's evaluation and cost comparison data indicates that a commercial system is more cost effective and efficient, the distribution agency must convert to the commercial system within six months of the submission of the data to the FNSRO, unless otherwise approved by the FNSRO. Further, any time a request to use an alternative system is denied, the distributing agency must convert to a commercial system within six months of the date of the denial, unless otherwise approved by the FNSRO.

As described previously in the preamble, a paragraph (a)(7) has been added to § 250.14 to require all distributing agencies to request approval from the FNSRO 90 days prior to any reduction in service or increase in distribution charges beyond normal inflation. This request will provide FNS the opportunity to review the systems, especially the commercial systems about which FNS will not be receiving routine updates every three years. This review will provide FNS the opportunity to determine if a complete reevaluation of the system is necessary.

Summary of Warehousing and Distribution Requirements.

Evaluations—All distributing agencies must submit an initial evaluation of their warehousing and distribution systems by June 30, 1990. Distributing agencies that do not use commercial facilities must submit updates by March 31, 1993 and every third March 31 thereafter. To provide FNS the opportunity to determine the need for an interim evaluation, all distributing agencies must request approval from the FNSRO at least 90 days prior to increasing distribution charges or reducing service levels. Interim evaluations must be conducted within 90 days of a request by the FNSRO. In cases where noncommercial facilities are used and in which an interim evaluation has been made, the next update must be submitted no later than the third March 31 following submission of the interim evaluation. All evaluations must meet the requirements in § 250.14(a)(3).

Comparisons with Commercial Systems—Distributing agencies not using commercial systems must make an initial comparison between their current system and a commercial system using a comparable level of service by June 30, 1990 and must update this cost comparison data every third March 31. In cases in which an interim cost comparison has been made, the next update must be submitted no later than the third March 31 following submission of the interim cost comparison. If after conducting a cost comparison a distributing agency chooses to continue to use a non-commercial system, a request for approval must be submitted with the evaluation and cost comparison. If an agency is not able to locate a commercial distributor, documentation of this must be submitted in accordance with the deadlines above. In addition, when requesting approval of reductions in service levels or increases in distribution charges beyond normal inflation, distributing agencies using noncommercial systems must include updated cost comparison data with their justification. All cost comparisons must meet the requirements in § 250.14(a)(4).

System Implementation—The most cost effective and efficient system of warehousing and distribution must be implemented by July 1, 1991. In addition, any time a distributing agency's subsequent evaluation and cost comparison data indicates that a commercial system is more cost effective and efficient, the distribution agency must convert to the commercial system within six months of the submission of the data to the FNSRO, unless otherwise approved by the FNSRO. Further, anytime a request to use an alternative system is denied, the distributing agency must convert to a commercial system within six months of the date of the denial, unless otherwise approved by the FNSRO.

Distribution Charges

Section 250.15(a)(1) of the proposed rule required distributing agencies that assess recipient agencies for distribution charges to submit to the FNSRO for approval a description of their system with supporting allowable cost data used in calculating the rate to be used for the upcoming school year. This description and data was to be submitted by May 1 of each year.

Before making any changes to the distribution charges during the school year, the distributing agency must submit to the FNSRO for approval a description of the change together with supporting data used to calculate the change.

One commenter claimed that if distributing agencies obtain competitive bids for distribution services and base the distribution charges on those bids it is not necessary to submit distribution charge information to USDA for approval. Six commenters were opposed to the requirement that distributing agencies should have to justify distribution charges to the FNSRO on a yearly basis. Of these commenters, two believed the information should only be submitted if costs escalate or recipient agency dissatisfaction develops. Another commenter stated the information on distribution charges should only be required once every three years. One commenter pointed out that if recipient agencies pay for transportation fees directly to a company based on a competitive bid, it would be inappropriate for FNS to approve those fees.

The Department recognizes that if a distributing agency has a contract in place for the distribution of commodities and passes on to the recipient agencies the full cost of the contract in the form of distribution charges, it may be difficult for the distributing agency to alter the distribution charge structure. Further, the Department does not intend that its review of proposed distribution charges would force the contract to be terminated. In reviewing the distribution charge information, the Department will take into consideration existing contracts and, where necessary, require changes to be made when the contracts are next renegotiated. The Department believes that this process, together with the cost effective and efficient requirements of § 250.14, will ensure that distribution charges are kept to appropriate levels. The Department also wishes to point out that to the extent that a recipient agency itself contracts for transportation and pays the company directly, the distribution charge provisions do not apply. Section 250.15(a) applies only to fees for distribution charged by the distributing agency. However, distributing agencies may not use such a system to avoid review of distribution charges since § 250.14(a) requires the distributing agency to take into account the costs incurred by recipient agencies in picking up commodities when evaluating its warehousing and distribution system.

In response to the commenters who questioned the requirement for annual submissions and in order to coordinate with the dates for submissions of system evaluations and cost comparisons, the

Department amended § 250.15(a)(1)(i) of the final rule to require distributing agencies to submit the initial description of their system for assessing distribution charges with supporting allowable cost data used in calculating the rate to be used for the upcoming school year to the FNSRO for approval by June 30, 1990. Updates to this information will be required once every three years by March 31. In addition, § 250.15(a)(1)(ii) has been revised to require distributing agencies to request approval from the FNSRO at least 90 days before increasing distribution charges beyond normal inflation.

Section 250.15(a)(1) of the proposed rule stated that distribution charges may not be based solely on a percentage of the value of the commodities distributed.

Two commenters agreed that distributing agencies should be prohibited from assessing distribution charges based on the value of the commodities. However, six commenters disagreed with the provision stating that distributing agencies should be permitted to assess distribution charges based on a percentage of the value of the donated food as long as total charges do not exceed incurred costs. These commenters claim that assessing distribution charges in this manner ensures that each school food authority pays their fair share. One commenter remarked that the basis a distributing agency uses to assess distribution charges should remain the prerogative of each individual agency as long as the method is applied equally and fairly to all recipient agencies. Two commenters stated the wording in the proposed rule was unclear in that distribution charges could not be based solely on a percentage of the value of the commodities distributed. The commenters wanted to see the word "solely" removed because they felt the proposed revision would permit distributing agencies to base distribution charges on a percentage of the value of the donated food as well as other costs which must be passed on to recipient agencies.

The Department continues to believe that distribution charges should be distributed among recipient agencies based on the volume of food received by each recipient, as measured on a unit or weight basis. The value of the food bears little relationship to the costs of handling it. Section 250.15(a)(1)(vi) of the final rule, however, has been amended by removing the word "solely" from the text to eliminate any confusion on the part of distributing agencies.

Section 250.15(a)(1)(v) of the proposed rule required FNS to review the distribution charge information and inform the distributing agency of the appropriateness of its distribution charges. If it was determined that a distributing agency's proposed distribution charges were excessive or incorporated inappropriate costs, the distributing agency would be required to adjust the distribution charges to an appropriate level or submit further justification sufficient to satisfy the FNSRO that the proposed distribution charges were essential to cover allowable costs and services.

One commenter stated that if distribution charges are found to be excessive and were established by a bid obtained under State procurement activity, no random adjustments or changes would be legal.

As discussed above, the Department does not intend to force distributing agencies to void their warehousing and distribution contracts. Instead, the Department will review the circumstances to determine if a distributing agency's distribution charges are found to be substantially higher than what other distributing agencies charge for a comparable level of service. If the charges appear to be excessive, the distributing agency with the higher charges will be required to justify or further explain how the level of distribution charges was determined. If necessary the distributing agency may be required to make changes when renegotiating the contracts. Only in an extrme situation would a distributing agency be required to absorb the excess costs. Section 250.15(a)(1)(v) of the final rule remains as proposed.

Corrective Action Plans

Section 250.19(d) of the proposed rule required that corrective action plans be submitted whenever a distributing agency is found by the FNSRO to be substantially out of compliance with a performance standard or any other provision of the regulations. The corrective action plan should identify the actions and the timeframes needed to correct the deficiencies found by the FNSRO. The plan should be written, signed by the proper official in the State, and submitted to the FNSRO within 60 days following receipt of the report of deficiencies. Extensions beyond the 60 days may be made, for cause, with written justification to and approved by the FNSRO.

One commenter supported the requirement that distributing agencies must submit a corrective action plan within 60 days of the FNSRO report. One commenter stated that FNS should state how monitoring will be carried out, how often and on what schedule.

The Department is using this requirement to assure that deficiencies that may be identified are also corrected. Deficiencies in program operations may be discovered during routine management evaluations, during audits or other review procedures. With the advent of legislation requiring minimum performance standards that agencies must meet, the Department believes that it is appropriate to ensure that distributing agencies correct any deficiencies in their operations as expeditiously as possible. The requirement remains as proposed and is redesignated as § 259.19(c) of this final rule.

Distributing Agency Performance Standards

Section 250.24 of the proposed rule established minimum performance standards which must be followed by distributing agencies responsible for intrastate distribution of donated commodities and products. The seven standards address the level of service that should be provided to recipient agencies. The minimum standards include the following:

The first, *Program Management and Evaluation*, required distributing agencies to conduct reviews in accordance with § 250.19 of this part. Distributing agencies were also to assess the adequacy of their service to recipient agencies. No comments were received regarding this requirement and the requirement as proposed has been retained in Section 250.24(a) of this final rule.

The second performance standard, *Information Dissemination*, required distributing agencies to provide recipient agencies with information needed for informed participation on the program. Distributing agencies were to provide program information relative to:

(1) Current program regulations;

(2) Summaries of commodity specifications;

(3) Results of any test evaluations and surveys;

(4) Advisory council membership recommendations;

(5) Recipes; and

(6) Written procedures for ordering commodities, handling commodities which are stale, spoiled, out-of-condition or not in compliance with specifications, submitting complaints and other written policy which affects program operations.

Five commenters were opposed to this performance standard and one commenter supported it. The commenter in favor of the standard supported it but said that in order to satisfy the

requirement it was necessary for the FNSROs to furnish information in a timely manner. Those commenters who opposed the standard stated that compliance with the requirement was contingent upon receiving timely information from USDA, especially regarding information about stale, spoiled or out of condition donated food. One commenter recommended that FNS establish a standard for itself to respond in writing to distributing agencies within 30 days of receiving a complaint. The Department is aware that it must promptly furnish information regarding commodities which are found to be stale, spoiled, out of condition or not in compliance with specifications including procedures for replacement. Information is passed on to recipient agencies as soon as it is received so distributing agencies can take actions to alleviate the problem(s). The standard simply requires distributing agencies to establish procedures so when information is received from the Department, they can act immediately to correct the situation. The requirement in § 250.24(b) of this final rule remains as proposed.

The third performance standard, *Fiscal Responsibility*, required distributing agencies to maintain a financial management system which ensures fiscal integrity and accountability for all funds and includes a recordkeeping system which conforms to generally accepted accounting practices and Office of Management and Budget circulars. No comments were received regarding this section. However, the Department has noted that OMB circulars are not generally applicable to non-Federal grant funding. Therefore, reference to these circulars has been deleted in the final rule.

The fourth standard, *Ordering and Allocation*, required distributing agencies to ensure that donated food is provided on an equitable basis and, to the extent practicable, in the types and forms most usuable by recipient agencies. Distributing agencies were to be responsible for:

(1) Obtaining and utilizing semi-annual commodity acceptability information;

(2) Providing recipient agencies with information regarding commodity availability;

(3) Providing recipient agencies with information regarding commodity assistance levels;

(4) Ordering and allocating donated food based on participation data for those programs which serve meals;

(5) Ensuring the availability of commodities, to the extent possible, in quantities requested and at times specified by the recipient agencies;

(6) Permitting recipient agencies to refuse all or a portion of a commodity prior to delivery to the distributing agency if time permits;

(7) Permitting recipient agencies to change orders for Group B and unlimited bonus commodities prior to submission of an order to the Department;

(8) Providing recipient agencies with ordering options and commodity values;

(9) Offering schools participating in the National School Lunch Program the per meal value of donated food; and

(10) Consider the preparation and storage capabilities of recipient agencies when ordering donated food, including capabilities of such agencies to handle commodity product forms, quality, packaging and quantities.

Seven commenters were opposed to various provisions contained in this standard. One commenter recommended changing the word "allocating" to "offering." Five commenters stated that to enable distributing agencies to be responsive to recipient agency needs, the Department should establish practices and procedures to ensure that distributing agencies receive the commodities in the types and forms that will allow them to be responsive to recipient agency needs. One commenter recommended that language be added to require the vendor or the Department to reimburse the distributing agency or the recipient agency for storage and distribution costs associated with out-of-condition foods. Another commenter stated that the rules seemed to apply only to school food authorities. If all types of recipient agencies are to be included, the Department should establish entitlement rates for all programs.

The Department has made many improvements to commodity distribution programs over the past few years. Many of the changes to the ordering and allocation system have been made based on feedback from the distributing agencies. The Department is attempting to order donated food items as requested by the recipient agencies. It is also attempting to purchase food items in amounts requested and deliver the food in a timely manner so it can be utilized during the school year. This performance standard is designed to ensure distributing agencies provide food on an equitable basis and to give recipient agencies the greatest flexibility possible in ordering/requesting donated food. Concerning the comment requesting reimbursement of distribution and storage costs for out-of-condition foods, it is the Department's position that once a distributing agency accepts a commodity, the distributing agency is responsible for any storage and distribution costs for that commodity. In those instances where a distributing agency later attempts to revoke acceptance, the Department will consider claims for reimbursement of distribution and storage costs in accordance with principles of commercial law. For these reasons the Department continues to support this performance standard requirement as proposed.

The fifth standard, *Warehousing and Distribution*, required distributing agencies to use a warehousing and distribution system that is efficient, cost effective and responsive to the needs of recipient agencies. In addition, it required distributing agencies to encourage recipient agencies capable of receiving direct shipments to order donated food directly into their warehouses. It required distributing agencies to solicit information regarding the individual delivery needs of recipient agencies and maintain distribution schedules which are equitable and reliable, recognizing hours of operation, holidays and vacations and other special needs of recipient agencies. This standard also required the distributing agencies to make donated food available at least monthly; however, the distributing agency would not be held responsible for delays in deliveries of donated food when the delays were due to late deliveries of donated food to the distributing agency by the Department.

Many of the comments received regarding this performance standard paralleled the comments received on § 250.14(a) of the proposed regulations regarding warehousing and distribution systems. Eight commenters were opposed to the standard as proposed and two commenters were in favor of the requirement. Those commenters who opposed the requirement stated that donated food does not have to be delivered monthly. These commenters stated that requiring monthly deliveries will add unnecessary costs. They stated that deliveries should be mutually agreed upon by the distributing agencies and the recipient agencies. One commenter supported the provision to impose minimum performance standards on the distributing agencies, placing emphasis on the basic services to be provided to recipient agencies. Another commenter supported the basic requirements of this performance standard but was opposed to the requirement for monthly deliveries. This commenter further stated that schools do not need deliveries during the

summer. The commenter wanted the provision changes to require monthly deliveries during the school year only.

As discussed in connection with § 250.14(a), the Department did not intend to preclude a distributing agency and recipient agency from agreeing to less frequent distributions, such as school food authorities which do not need monthly deliveries when classes are not in session. Section 250.24(e) has been amended to clarify this point.

The Sixth performance standard, *Disposition of Damaged or Out-of-Condition Commodities*, required distributing agencies to establish a system for handling recipient agency complaints and to notify the Department of any commodity losses and to arrange for replacement of lost commodities.

One commenter supported the inclusion of this requirement in the regulation and four commenters opposed the requirement. Those who opposed the requirement did so stating that distributing agencies cannot arrange for commodity replacement without the Department's commitment to the system. These commenters wanted the rule changed to make the distributing agencies' responsibility to be contingent upon action by the Department to replace lost commodities. One commenter recommended that language be added to impose responsibilities and timeframes upon the Department for arranging for the replacement of donated food.

The Department is committed to arranging for replacing commodities that are delivered damaged or out-of-condition as provided for in § 250.13(g) of the interim rule published June 16, 1988 (53 FR 22469); however, there are circumstances where immediate replacement cannot be made. The Department will arrange for replacement commodities as soon as possible and continues to rely on distributing agencies to notify them of problems experienced in the replacement of commodities found to be damaged and/or out-of-condition. In § 250.24(f), the performance standard remains as proposed.

The seventh performance standard, *Processing*, required distributing agencies to administer an acceptable processing program. It also required distributing agencies to inform recipient agencies annually of the processing options available to them for facilitating their participation in local, State or National processing contracts. Distributing agencies were also to test end products prior to entering into processing contracts and to monitor the acceptability of processed end products.

Fifteen commenters opposed the provisions contained in this performance standard and six were in favor of the requirements. Those who supported the requirement stated that it was a good idea to inform all recipient agencies of the processing options available to them. These commenters further recommended creating a requirement that distributing agencies must negotiate Statewide contracts when at least 20 percent of the recipient agencies request a particular processed end product.

Those commenters which opposed the provisions contained in this performance standard objected to the requirement that distributing agencies be required to test processed end products. These commenters stated that the testing of end products should be the responsibility of the purchasing recipient agency. These commenters further stated that the State has neither the facilities nor the qualified staff required to test products. They stated that the ultimate test of a product is the students' acceptability of the product.

Although section 3(d)(5) of Public Law 100–237 specifically requires the testing of end products, the Department never intended for the distributing agency itself to have to test each and every end product approved under a processing contract. It was implied that recipient agencies could test the products and inform the distributing agency whether or not the products are acceptable. In § 250.24(g) the Department amended the requirement in this final rule to clarify that distributing agencies may delegate the testing of end products to the purchasing recipient agencies.

The Department has also made minor technical changes and reordered certain language in the final rule for purposes of clarification.

List of Subjects in 7 CFR Part 250

Aged, Agricultural commodities, Business and industry, Food assistance programs, Food donation, Food processing, Grant programs, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

Accordingly, 7 CFR part 250 is amended to read as follows:

PART 250—DONATIONS OF FOOD FOR USE IN THE UNITED STATES, ITS TERRITORIES AND POSSESSIONS AND AREAS UNDER ITS JURISDICTION

1. The authority citation for part 250 is revised to read as follows:

Authority: Sec. 32, Pub. L. 74–320, 49 Stat. 744 (7 U.S.C. 612c); Pub. L. 75–165, 50 Stat. 323 (15 U.S.C. 713c); secs. 6, 9, Pub. L. 79–396, 60 Stat. 231, 233 (42 U.S.C. 1755, 1758); sec. 416, Pub. L. 81–439, 63 Stat. 1058 (7 U.S.C. 1431); sec. 402, Pub. L. 81–665, 68 Stat. 843 (22 U.S.C. 1922); sec. 210, Pub. L. 84–540, 70 Stat. 202 (7 U.S.C. 1859); sec. 9, Pub. L. 85–931, 72 Stat. 1792 (7 U.S.C. 1431b); Pub. L. 86–756, 74 Stat. 899 (7 U.S.C. 1431 note); sec. 709, Pub. L. 89–321, 79 Stat. 1212 (7 U.S.C. 1446a–1); sec. 3, Pub. L. 90–302, 82 Stat. 117 (42 U.S.C. 1761); secs. 409, 410, Pub. L. 93–288, 88 Stat. 157 (42 U.S.C. 5179, 5180); sec. 2, Pub. L. 93–326, 88 Stat. 286 (42 U.S.C. 1762a); sec. 16 Pub. L. 94–105, 89 Stat. 522 (42 U.S.C. 1766); sec. 1304(a), Pub. L. 95–113, 91 Stat. 980 (7 U.S.C. 612c note); sec. 311, Pub. L. 95–478, 92 Stat. 1533 (42 U.S.C. 3030a); sec. 10, Pub. L. 95–627, 92 Stat. 3623 (42 U.S.C. 1760); sec. 1114(a), Pub. L. 97–98, 95 Stat. 1269 (7 U.S.C. 1431e); Title 11, Pub. L. 98–8, 97 Stat. 35 (7 U.S.C. 612c note); (5 U.S.C. 301); Pub. L. 100–237, 101 Stat. 1733 (7 U.S.C. 612 note).

2. In § 250.14, the section title is revised, paragraphs (a), (b), (c), (d), and (e) are redesignated (b), (c), (d), (e) and (f), respectively, and a new paragraph (a) is added to read as follows:

§ 250.14 Warehousing, distribution and storage of donated foods.

(a) *Standards for Warehousing and Distribution Systems*—(1) *Use of cost efficient and effective facilities.* Distributing agencies shall use the most cost effective and efficient system for providing warehousing and distribution services to recipient agencies. For the purpose of this part, commercial facilities are defined as enterprises that provide commercial warehousing services or commercial delivery services, or those commercial enterprises that provide both warehousing and delivery services.

(2) *Timeframes for evaluation.* All distributing agencies shall evaluate their current warehousing and distribution systems. Initial evaluations shall be submitted to the FNSRO by June 30, 1990. Subsequent evaluations of noncommercial systems shall, at a minimum, be submitted to FNS every three years by March 31.

(3) *Evaluation of current systems.* The evaluation of the system in place shall, at a minimum, include the following information:

(i) A description of the principal warehousing/delivery techniques used by the distributing agency. The description should include:

(A) The frequency of delivery available;

(B) The timeframes for making deliveries;

(C) The type of delivery service offered (to the loading dock or placement in the storeroom); and

(D) The system for recipient agencies to order specific amounts of food from available inventory; and

(ii) An estimate of all costs that will be incurred in administering the Food Distribution Program for the upcoming school year. These costs include transportation, storage and handling of donated foods (if the current distributing agency system does not include delivery to recipient agencies, identification of costs incurred by recipient agencies to pick up commodities at a warehouse and to deliver the food to a centralized storage facility or the individual preparation sites), salaries of persons directly connected with the administration of the program and other program related expenses. These expenses shall include fringe benefits, travel expenses, rent, utilities, accounting/auditing services to recipient agencies such as the costs for administering and monitoring the State's processing program, and technical assistance workshops.

(4) *Comparison of existing system with commercial systems.* All distributing agencies which do not use commercial facilities for a basic level of warehousing and distribution services shall compare the cost of warehousing and distributing commodities under their current system with the cost of comparable services under a commercial system for the upcoming school year.

(i) The cost comparison shall be made between the cost of providing a basic level of service under its current system and the cost of obtaining an equivalent level of service from commercial facilities. This basic level of service shall consist of the transportation, storage and handling of donated food from the time of delivery by the Department to a distributing agency until delivery to a recipient agency's centralized storage facility or individual preparation sites and shall include monthly deliveries of donated food to all recipient agencies except those that have agreed to less frequent deliveries.

(ii) A distributing agency may base its cost comparison on a level of service in excess of the basic level and/or on services not currently provided. In all cases, the comparison must be made on the costs of providing a comparable level of service under the existing system (as identified in § 250.14(a)(2)) versus a commercial system.

(iii) If a distributing agency is unable to locate any commercial facilities expressing interest in providing the basic level of warehousing and distribution services, the distributing agency shall indicate this in its cost comparison submission, together with documentation of its efforts to obtain cost estimates from commercial facilities.

(iv) All initial data regarding the cost of the current warehousing and distribution system and the cost for comparable commercial facilities shall be submitted to the FNSRO by June 30, 1990. Subsequent cost comparisons shall, at a minimum, be submitted to FNS once every three years by March 31.

(5) *Approval to use other systems.* Distributing agencies that do not implement a commercial warehousing and distribution system shall apply to the FNSRO for approval to use other facilities and must demonstrate that other facilities are more cost effective and efficient. All requests for a waiver shall be accompanied with a full evaluation of the existing system complete with cost comparison data. Each request will be considered on a case by case basis. Initial requests for approval of alternative systems shall be submitted to the FNSRO by June 30, 1990. Subsequent requests shall, at a minimum, be submitted to the FNSRO once every three years by March 31.

(6) *System implementation.* (i) Distributing agencies shall implement the most cost effective and efficient system for warehousing and distribution services to recipient agencies by July 1, 1991. Unless otherwise approved by the FNSRO, subsequent to July 1, 1991, a distributing agency shall convert to a commercial system within six months of:

(A) The date of submission of evaluation and cost comparison data indicating that a commercial system is more cost effective and efficient (if no request for approval of an alternate system is made); or

(B) The date of the denial of a request to use an alternative system.

(ii) If at any time FNS determines that the warehousing and distribution system in place is not cost effective or efficient, the distributing agency will be required to reevaluate its system (including a cost comparison and request for continued approval to use an alternative system) in accordance with this subsection within 90 days of notification by the FNSRO.

(7) *Revisions in system.* All distributing agencies (using either commercial or noncommercial systems) shall request approval from the FNSRO at least 90 days in advance of any planned reduction in the level of service provided or any increase in distribution charges beyond normal inflation. If FNS determines the proposed changes are inappropriate, FNS may require the distributing agency to submit additional justification, deny the request, or request a reevaluation of the system in accordance with paragraph (a)(6)(ii) of this section.

* * * * *

3. In § 250.15, paragraph (a)(1) is revised to read as follows and paragraph (a)(2) is amended by removing the first part of the first sentence which reads "For the period May 1, 1983 through September 30, 1988" and by capitalizing the next word "Whenever."

§ 250.15 Financial management.

(a) *Distribution charges.* (1) Recipient agencies may be required to pay part or all of the direct costs for intrastate storage and distribution of donated food through distribution charges assessed by the distributing or subdistributing agency, except as provided in paragraph (a)(2) of this section.

(i) Distributing and subdistributing agencies assessing distribution charges shall submit a description of their system with all data used in calculating the rate to be used for the upcoming school year to the FNSRO for approval. The initial description and data shall be submitted by June 30, 1990. Updates to this information shall, at a minimum, be submitted to the FNSRO for approval every three years by March 31.

(ii) At least 90 days before increasing distribution charges beyond normal inflation, the distributing/subdistributing agency shall submit to the FNSRO a description of the change together with all data used to calculate the change. FNS will take action on the proposed increase in accordance with paragraph (a)(1)(v) of this section.

(iii) Allowable costs include but are not limited to those program costs referenced in paragraph (f)(2) of this section, i.e. transportation, storage and handling of donated foods, salaries of persons directly connected with the administration of the program and other program related expenses. Examples of other program related expenses are administrative costs such as fringe benefits, travel expenses, rent, utilities, accounting/auditing services, computer services, and the costs of providing program services to recipient agencies such as the cost for administering and monitoring the State's processing program, and technical assistance workshops.

(iv) Distribution charges shall not be assessed for costs which would be unallowable under the Cost Principles in the Department's Uniform Federal Assistance Regulations, 7 CFR part 3015, subpart T. In no case may distribution charges be assessed for costs which are paid for by State Administrative

Expense (SAE) funds, State or local appropriated funds or any other funds available to the distributing or subdistributing agency to administer the program. Distribution charges shall not be based on a percentage of the value of the commodities distributed.

(v) FNS shall review the information and inform the distributing agency of the appropriateness of its distribution charges. If it is determined that a distributing agency's proposed distribution charges are excessive or incorporate inappropriate costs, the distributing/subdistributing agency will be required to adjust the distribution charges to reflect an appropriate level or submit further justification sufficient to satisfy the FNSRO that the proposed distribution charges are essential to cover allowable costs and services. This further justification shall include information from recipient agencies regarding their satisfaction with services provided.

(vi) Distribution charges, including any excess distribution charges which may accrue (as defined in paragraph (f)(4) of this section) shall be used in accordance with provisions of paragraph (f) of this section.

* * * * *

4. In § 250.19, paragraph (c) is redesignated as paragraph (d) and a new paragraph (c) is added to read as follows:

§ 250.19 Reviews.

* * * * *

(c) *Corrective action plans.* Corrective action plans shall be submitted whenever a distributing agency is found by the FNSRO to be substantially out of compliance with a performance standard or any other provision of this part. The corrective action plan shall identify the corrective actions and the timeframes needed to correct the deficiencies found by the FNSRO. The plan shall be written, signed by the proper official in the State, and submitted to the FNSRO within 60 days after the distributing agency receives notification from the FNSRO of a deficiency. Extensions beyond 60 days may be made, for cause, with written justification to and approved by the FNSRO.

* * * * *

5. A new § 250.24 is added to subpart B to read as follows:

§ 250.24 Distributing agency performance standards.

This section establishes basic performance standards which must be followed by distributing agencies responsible for intrastate distribution of donated commodities and products. The seven standards address the level of service that shall be provided to recipient agencies. The basic standards include the following:

(a) *Program management and evaluation.* Distributing agencies shall conduct reviews in accordance with § 250.19. Distributing agencies shall also assess the adequacy of the service provided to recipient agencies.

(b) *Information dissemination.* Distributing agencies shall provide recipient agencies with all information needed for informed participation in the program. Distributing agencies shall provide program information relative to:

(1) Current program regulations,

(2) Summaries of commodity specifications upon request (§ 250.13(j)) and commodity fact sheets,

(3) Results of any test evaluations and surveys,

(4) Advisory council membership recommendations,

(5) Recipes, and

(6) Written procedures for ordering commodities, handling commodities which are stale, spoiled, out-of-condition or not in compliance with specifications (including procedures for replacement by the Department under § 250.13(g)), submitting complaints and other written policy which affects program operations.

(c) *Fiscal responsibility.* Distributing agencies shall maintain a financial management system which ensures fiscal integrity and accountability for all funds and includes a recordkeeping system which conforms to generally accepted accounting practices. Distributing agencies shall submit information relative to distribution charges to FNS in accordance with § 250.15(a).

(d) *Ordering and allocation.* Distributing agencies shall ensure that donated food is provided on an equitable basis and, to the extent practicable, in the types and forms most usable by recipient agencies. Distributing agencies shall be responsible for:

(1) Obtaining and utilizing semi-annual commodity acceptability information in accordance with § 250.13(k);

(2) Providing recipient agencies with information regarding commodity availability;

(3) Providing recipient agencies with information regarding commodity assistance levels;

(4) Ordering and allocating donated food based on participation data for those programs which serve meals;

(5) Ensuring the availability of commodities, to the extent possible, in quantities requested and at times specified by recipient agencies;

(6) Permitting recipient agencies to refuse all or a portion of a commodity prior to delivery to the distributing agency if time permits;

(7) Permitting recipient agencies to change orders for Group B (grain, dairy, peanut and oil products) and unlimited bonus commodities prior to submission of an order to the Department;

(8) Providing recipient agencies with ordering options and commodity values (§ 250.13(a)(5));

(9) Offering schools participating in the National School Lunch Program the per meal value of donated food in accordance with § 250.48(c); and

(10) Consider the preparation and storage capabilities of recipient agencies when ordering donated food, including capabilities of such agencies to handle commodity product forms, quantity, packaging and quantities.

(e) *Warehousing and distribution.* Distributing agencies shall use a warehousing and distribution system that is efficient, cost effective and responsive to needs of recipient agencies in accordance with § 250.14(a). In addition, distributing agencies shall:

(1) Work with recipient agencies capable of receiving direct shipments to order donated food directly into their warehouses;

(2) Solicit information and recommendations regarding the individual delivery needs of recipient agencies;

(3) Maintain distribution schedules which are equitable and reliable, recognize hours of operation, holidays and vacations and other special needs of recipient agencies;

(4) And make donated food available at least monthly to all recipient agencies except those that have agreed to less frequent deliveries (§ 250.13(a)(6)); however, the distributing agency shall not be held liable for delays in deliveries of donated food when such delays are due to late deliveries of donated food to the distributing agency by the Department.

(f) *Disposition of damaged or out-of-condition commodities.* Distributing agencies shall establish a system for handling recipient agency complaints, notifying the Department of any commodity losses in accordance with § 250.13(f) and arranging for the replacement of lost commodities in accordance with § 250.13(g).

(g) *Processing.* Distributing agencies shall administer an acceptable processing program in accordance with § 250.30. In addition, distributing agencies shall inform recipient agencies

annually of processing options available to them in facilitating participation in State or National processing contracts. Prior to entering into a processing contract, distributing agencies shall test end products. The end product testing may be delegated to the purchasing recipient agency provided that test results are reviewed by the distributing agency. Distributing agencies shall monitor the acceptability of processed end products as required in § 250.30(b)(1).

Dated: October 10, 1989.

G. Scott Dunn,

Acting Administrator.

[FR Doc. 89-24455 Filed 10-16-89; 8:45 am]

BILLING CODE 3410-30-M

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 89-182]

Mediterranean Fruit Fly; Additions to the Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the Mediterranean fruit fly regulations by adding an additional portion of Los Angeles County and a portion of San Bernardino County in California to the list of quarantined areas. This action is necessary on an emergency basis to prevent the spread of the Mediterranean fruit fly into noninfested areas of the United States.

DATES: Interim rule effective October 11, 1989. Consideration will be given only to comments received on or before December 18, 1989.

ADDRESSES: To help ensure that your comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 89-182. Comments received may be inspected at USDA, Room 1141, South Building, 14th and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Milton C. Holmes, Senior Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, Room 642, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8247.

SUPPLEMENTARY INFORMATION:

Background

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables, especially citrus fruits. The Mediterranean fruit fly (Medfly) can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

A document effective August 23, 1989, and published in the **Federal Register** on August 29, 1989 [54 FR 35629-35635, Docket Number 89-146], established the Mediterranean fruit fly regulations and quarantined an area in Los Angeles County, California (7 CFR 301.78 *et seq.*; referred to below as the regulations). In an interim rule effective September 14, 1989, and published in the **Federal Register** on September 20, 1989 [54 FR 38643-38645, Docket Number 89-169], we amended the Mediterranean fruit fly regulations by adding a portion of Santa Clara County, California, to the list of quarantined areas. These areas remain infested with the Mediterranean fruit fly.

The regulations impose restrictions on the interstate movement of regulated articles from quarantined areas in order to prevent the spread of the Mediterranean fruit fly to noninfested areas.

Recent trapping surveys by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service, a unit within the U.S. Department of Agriculture, reveal that additional infestations of Medfly have been discovered in Los Angeles and San Bernardino Counties in California.

Specifically, inspectors collected more than 69 adult Mediterranean fruit flies in Los Angeles County, near Valinda, Baldwin Park, and Whittier, California, during the period of September 19, 1989, to October 3, 1989. During this period, inspectors also found 33 Mediterranean fruit fly larvae infesting fruit in the same area. In addition, one mated female Medfly was found near Alta Loma in San Bernardino County.

The regulations in § 301.78-3 provide that the Administrator of the Animal and Plant Health Inspection Service shall list as a quarantined area each State, or each portion of a State, in which the Mediterranean fruit fly has been found by an inspector, in which the Administrator has reason to believe the Mediterranean fruit fly is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which the Mediterranean fruit fly has been found.

In accordance with these criteria, we are designating as quarantined areas the following areas in Los Angeles and San Bernardino Counties, California:

Los Angeles County

That portion of the county in the Valinda, Baldwin Park, and Whittier areas bounded by a line drawn as follows: Beginning at the intersection of Santa Anita Avenue and Duarte Road; then east along this road to its intersection with Mayflower Avenue; then north along this avenue to its intersection with Interstate Highway 210; then east along this highway to its intersection with Grand Avenue; then south along this avenue to its intersection with Valley Boulevard; then south along this boulevard to its intersection with Brea Canyon Road; then south along this road to its intersection with State Highway 60; then west along this highway to its intersection with Nogales Street; then south along this street to Colima Road; then west along this road to its intersection with Fullerton Road; then south along this road to the northern city limits of La Habra Heights; then northwest along the city limits to its intersection with Hacienda Boulevard; then south along this boulevard to its intersection with the Los Angeles/Orange County line; then west and south along this county line to its intersection with La Habra Boulevard; then west along this boulevard to its intersection with Leffingwell Road; then southwest along this road to its intersection with Imperial Highway; then west along this highway to its intersection with Interstate Highway 5; then north along this highway to its intersection with Garfield Avenue; then north along this avenue to its intersection with Whittier Boulevard; then east along this boulevard to its intersection with Wilcox Avenue; then north along this avenue to Pomona Boulevard; then east along this boulevard to its intersection with Potrero Grande Drive; then east along this drive to its intersection with San Gabriel Boulevard; then north along this boulevard to its intersection with Garvey Avenue; then east along this avenue to its intersection with Santa Anita Avenue; then north along this avenue to the point of the beginning.

San Bernardino County

That portion of the county bounded by a line beginning at the intersection of the Los Angeles and San Bernardino County line with the Los Angeles National Forest boundary; then east along the Los Angeles National Forest boundary to its intersection with the San Bernardino National Forest boundary; then east and south along this boundary to its intersection with Rochester Avenue; then south along this avenue to its intersection with 8th Street; then west along this street to its intersection with Miliken Avenue; then south along this avenue to its intersection with Interstate Highway 10; then west along this highway to its intersection with Holt Boulevard; then west along this boulevard to its intersection with Central Avenue; then

north along this avenue to its intersection with Foothill Boulevard; then west along this boulevard to its intersection with the San Bernardino County line; then north along this county line to the point of beginning.

There does not appear to be any reason to designate other additional quarantined areas in California other than the areas specified above. California has adopted and is enforcing regulations imposing restrictions on the intrastate movement of the regulated articles that are equivalent to those imposed on the interstate movement of regulated articles under this subpart.

Emergency Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that an emergency situation exists, which warrants publication of this interim rule without prior opportunity for public comment. Because the Mediterranean fruit fly could be spread to noninfested areas of the United States, it is necessary to act immediately to prevent its spread.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments received within 60 days of publication of this interim rule in the **Federal Register.** After the comment period closes, we will publish another document in the **Federal Register,** including a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This regulation affects the interstate movement of regulated articles from portions of Los Angeles and San Bernardino Counties, California. Approximately 345 entities will be affected by this rule. All would be considered small entities. They include fruit/produce vendors, nurseries, grape vineyards, citrus groves, community gardens and flea markets. Specifically, in Los Angeles County the following entities would be affected by this rule: 110 growers of avocados, 50 nurseries, 30 fruit stands, 1 swap meet, and 6 growers of persimmons. In San Bernardino County the following entities would be affected: 60 nurseries, 3 growers of tomatoes, peppers, and apples, 2 olive processors, 2 hobbyist wineries, and 80 growers with a total of 600 acres of citrus and grapes. These entities comprise less than 1 percent of the total of similar enterprises operating in the State of California. Most of the sales for these entities are local intrastate and would not be affected by this regulation. Further, the conditions in the Mediterranean fruit fly regulations and treatments in the Plant Protection and Quarantine Treatment Manual, incorporated by reference in the regulations, allow interstate movement of most articles without significant added costs.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The regulations in this subpart contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials (See 7 CFR part 3015, subpart V).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation, Mediterranean fruit fly, Incorporation by reference.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for 7 CFR part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

3. In § 301.78–3(c), the designation of the quarantined area is amended by adding the following immediately before the description for Santa Clara County:

§ 301.78–3 Quarantined areas.

* * * * *

(c) * * *

California

Los Angeles County

* * * * *

That portion of the county in the Valinda, Baldwin Park, and Whittier areas bounded by a line drawn as follows: Beginning at the intersection of Santa Anita Avenue and Duarte Road; then east along this road to its intersection with Mayflower Avenue; then north along this avenue to its intersection with Interstate Highway 210; then east along this highway to its intersection with Grand Avenue; then south along this avenue to its intersection with Valley Boulevard; then south along this boulevard to its intersection with Brea Canyon Road; then south along this road to its intersection with State Highway 60; then west along this highway to its intersection with Nogales Street; then south along this street to Colima Road; then west along this road to its intersection with Fullerton Road; then south along this road to the northern city limits of La Habra Heights; then northwest along the city limits to its intersection with Hacienda Boulevard; then south along this boulevard to its intersection with Los Angeles/Orange County line; then west and south along this county line to its intersection with La Habra Boulevard; then west along this boulevard to its intersection with Leffingwell Road; then southwest along this road to its intersection with Imperial Highway; then west along this highway to its intersection with Interstate Highway 5; then north along this highway to its intersection with Garfield Avenue; then north along this avenue to its intersection with Whittier Boulevard; then east along this boulevard to its intersection with Wilcox Avenue; then north along this avenue to Pomona Boulevard; then east along this boulevard to its intersection with Potrero Grande Drive; then east along this drive to its intersection with San Gabriel Boulevard; then north along this boulevard to its intersection with Garvey Avenue; then east along this avenue to its intersection with Santa Anita Avenue; then north along this avenue to the point of the beginning.

San Bernardino County

That portion of the county bounded by a line beginning at the intersection of the Los Angeles and San Bernardino County line with the Los Angeles National Forest boundary; then east along the Los Angeles National

Forest boundary to its intersection with the San Bernardino National Forest boundary; then east and south along this boundary to its intersection with Rochester Avenue; then south along this avenue to its intersection with 8th Street; then west along this street to its intersection with Miliken Avenue; then south along this avenue to its intersection with Interstate Highway 10; then west along this highway to its intersection with Holt Boulevard; then west along this boulevard to its intersection with Central Avenue; then north along this avenue to its intersection with Foothill Boulevard; then west along this boulevard to its intersection with the San Bernardino County line; then north along this county line to the point of beginning.

* * * * *

Done in Washington, DC, this 11th day of October 1989.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-24448 Filed 10-16-89; 8:45 am]

BILLING CODE 3410-34-M

Farmers Home Administration

7 CFR Part 1980

Disaster Assistance for Rural Business Enterprises

AGENCY: Farmers Home Administration, USDA.

ACTION: Interim rule.

SUMMARY: The Farmers Home Administration (FmHA) is amending its regulations to provide procedures for guaranteeing loans to rural businesses impacted by drought, freeze, storm, excessive moisture, or related conditions in 1988 or 1989. This action is needed to implement section 401 of the Disaster Assistance Act of 1989. The intended effect of this action is to provide loan guarantees to businesses in rural areas which suffered losses or distress as a result of drought, freeze, storm, excessive moisture, or related conditions in 1988 or 1989.

EFFECTIVE DATE: October 17, 1989. Written comments must be received on or before December 18, 1989.

ADDRESSES: Submit written comments in duplicate to the Office of the Chief, Directives and Forms Management Branch, Farmers Home Administration, USDA, room 6348 South Agriculture Building, Washington, DC 20250. All written comments will be available for public inspection during regular working hours at the above address. The collection of information requirements contained in Reduction Act of 1980. Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Farmers Home Administration, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Beverly I. Craver, Loan Specialist, Business and Industry Division, Farmers Home Administration, USDA, Washington, DC 20250, Telephone (202) 475-3805.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291 and has been determined to be non-major. This action will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Environmental Impact Statement

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

Intergovernmental Review

This program is listed in the Catalog of Federal Domestic Assistance under number 10.422, and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR part 3105, subpart V; 48 FR 29112, June 24, 1983; 49 FR 2267, May 31, 1984; 50 FR 14088, April 10, 1985).

Discussion of Interim Rule

It is the policy of this Department that rules relating to public property, loans, grants, benefits or contracts shall be published for comment notwithstanding the exemption of 5 U.S.C. 553 with respect to such rules. However, FmHA is making this action effective immediately upon publication in the **Federal Register** without securing prior public comment. The purpose of this rule is to provide assistance to businesses which have been distressed by natural disasters that have occurred in 1988 or 1989.

Especially as a result of drought across most of the country, an emergency situation exists. This interim rule is a response to an existing situation and, while this Department is reluctant to short circuit prior public comment, it is certain that failure to implement a mandated program at once will result in significant economic harm to the public.

FmHA believes it is essential that this assistance be made available as soon as possible before it is too late for the businesses to recover. The typical drought-impacted business in rural communities was only beginning to recover from the serious agricultural and other physical and economic problems of the preceding decade. Forbearing creditors, aware that any business depends on its customers' economic health, can forbear just so long. Rural businesses and their creditors must plan for the immediate economic future. Without immediate implementation of programs of financial assistance, there is no reason to assume the creditors of rural businesses devastated by the blow to the agricultural and other rural business sectors will—or can—continue to forbear.

The legislative history of Disaster Assistance Act of 1989 (the Act) further indicates that many farm related businesses, such as certain small feed-lot operations, were deemed ineligible for assistance under either the disaster loan provisions administered by the Department of Agriculture or those administered by other Federal agencies. Therefore, in keeping with the intent of the committee, the proposed regulation shall make every effort to assist farm related businesses, "that are ineligible for other Federal disaster loan programs, ineligible for disaster loans when these businesses have suffered drought related losses."

The legislative history of the Act indicates that Congress felt that quick response is needed to implement this disaster program in order to alleviate the effects of the disasters affecting rural businesses. The Congress has stressed the importance of getting the regulations written and the payments made as quickly as possible.

Public comments will be accepted for 60 days and later revisions will be made to this interim rule if justified on the basis of comments received. This procedure will make assistance available now. The usual course of a proposed rule, comment period, comment analysis, and a final rule incorporating changes would inevitably

mean a 60 to 90 day delay in getting assistance where it is most needed. Those seeking to comment and make suggestions for improvement should be advised that final action will occur as promptly as possible after the 60 day comment period.

Discussion of the Rule

FmHA is implementing section 401 of the Disaster Assistance Act of 1989 by adding an appendix for this new program at the end of its Business and Industry loan program. The loan guarantees authorized and implemented by this action will be called Disaster Assistance for Rural Business Enterprises. These loans will be available to generally the same type of entities as Business and Industry loans for generally the same type of loan purposes as Business and Industry loans, through generally the same type of lenders. The major differences between Disaster Assistance for Rural Business Enterprises and Business and Industry loans are as follows:

(1) Disaster Assistance for Rural Business Enterprises loans must assist in alleviating financial distress caused to rural business entities by drought, freeze, storm, excessive moisture, or related conditions in 1988 or 1989 or assist such entities which refinance or restructure debt as the result of losses incurred because of such natural disasters

(2) Disaster Assistance for Rural Business Enterprises loans for refinancing may allow an existing lender to bring that part of its existing unguaranteed debt that has been adversely affected by a disaster under the new guarantee. In no case will the guarantee exceed 90 percent of loan principal and interest or $2.5 million whichever is less.

(3) The maximum amount of Disaster Assistance for Rural Business Enterprises loans to any one borrower is $10,000,000.

(4) The maximum loss payment on loans to any one borrower under Disaster Assistance for Rural Business Enterprises loan program is limited to $2,500,000 or 90 percent of principal and interest, whichever is less.

(5) The requirement for borrower's equity contribution to the business may be somewhat smaller for a Disaster Assistance for Rural Business Enterprises (DARBE) guaranteed loan than for a Business and Industry loan, although that equity must be positive and must be such that when considered with other credit factors, repayment of the loan and continued success of the business operation are reasonably assured.

(6) DARBE loan proceeds may be used for hotels, motels, tourist and recreation facilities, and agricultural production (production agriculture) entities.

(7) Subsequent DARBE guaranteed loans will not be made due to the maximum loss coverage of $2,500,000.

(8) Webster's Ninth New Collegiate dictionary defines production as "the making of goods available for use" and agriculture as "the science or art of cultivating the soil, producing crops, and raising livestock and in varying degrees the preparation of these products for man's use and their disposal." It follows then, that agriculture production means cultivating the soil, producing crops and raising livestock to make goods, and production agriculture means the making of goods through cultivating the soil, producing crops and raising livestock. FmHA has concluded that there is no substantial difference in meaning between the terms agriculture production as used in its regulations for B&I guaranteed loans and production agriculture. Additionally, this definition appears to fulfill Congress's concern as expressed in the legislative history of the Act that certain businesses have been precluded guarantee assistance in other programs. Accordingly, FmHA has adopted this definition coupled with the provise that entities involved in agricultural production are eligible for DARBE assistance so long as these entities are not eligible for other assistance under farmer program loans. FmHA feels the exclusion from DARBE assistance of projects eligible under farmer program loans is reasonable because assistance will still be rendered but under a program which has a larger financial assistance resources than DARBE. In addition, DARBE should not duplicate existing FmHA programs.

Generally, except where the Disaster Assistance Act mandates otherwise, FmHA has sought to minimize differences between these loans and business and Industry loans so that field staff, lenders, and other already familiar with B&I guaranteed loans will be able to handle these loans without any significant training or research. This will expedite the provision of needed assistance.

List of Subjects in 7 CFR Part 1980

Loan Programs—Business and industry—Rural development assistance, Rural areas.

Accordingly, title 7, chapter XVIII, of the Code of Federal Regulations is amended as follows:

PART 1980—GENERAL

1. The authority citation for part 1980 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; Pub. L. 100–387; Pub. L. 101–82; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—General

2. Section 1980.6(a) is revised to read as follows:

§ 1980.6 Definitions and abbreviations.

(a) *General definitions.* The following general definitions are applicable to the terms used in this part. Additional definitions may be found in the subparts relating to the particular type of loan involved.

Assignment Guarantee Agreement (Form FmHA 449–36, 1980–70 or 1980–73). The signed agreement among FmHA, the lender, and the holder, setting forth the terms and conditions of an assignment of a guaranteed portion of a loan or any part thereof.

Borrower. (B&I loans only). All parties liable for the loan/line of credit or any part thereof. For Farmer Program loans, see § 1980.106(b)(4) of Subpart B of this part for the definition of borrower.

Conditional Commitment for Guarantee (Form FmHA 449–14). FmHA's advice to the lender that the material it has submitted is approved subject to the conditions and requirements set forth in "Conditional Commitment for Guarantee."

Conditional Commitment for Contract of Guarantee (Line of Credit) (Form FmHA 1980.15). FmHA's advice to the lender that the material it has submitted is approved subject to the completion of all conditions and requirements set forth in "Conditional Commitment for Contract of Guarantee."

Contract of Guarantee (Line of Credit) (Form FmHA 1980–27). The signed commitment issued by FmHA setting forth (specifically or by reference) the terms and conditions of the gauaranteed line of credit.

Disaster Assistance for Rural Business Enterprises. Guaranteed loans authorized for section 401 of the Disaster Assistance Act of 1989 (Pub. L. 101–82), providing for the guarantee of loans to assist in alleviating distress caused to rural business entities, directly or indirectly, by drought, freeze, storm, excessive moisture, or related conditions occurring in 1988 or 1989, and providing for the guarantee of loans to such rural business entities that refinance or restructure debt as a result of losses incurred, directly or indirectly, because of such natural disasters. See subpart E of this part and its

appendices, especially Appendix K, containing additional regulations for these loans.

Drought and Disaster Guaranteed Loans. Guaranteed loans authorized by section 331 of the Disaster Assistance Act of 188 (Pub. L. 100–387), providing for the guarantee of loans to assist in alleviating distress caused to rural business entities, directly or indirectly, by drought, hail, excessive moisture, or related conditions occurring in 1988, and providing for the guarantee of loans to such rural business entities that refinance or restructure debt as a result of losses incurred, directly or indirectly, because of such natural disasters. See Subpart E of this part and its appendices, especially appendix I, containing additional regulations for these loans.

Finance Office. The office which maintains the FmHA financial records. It is located at 1520 Market Street, St. Louis, Missouri 63103 (Phone Commercial 314–549–4400 or FTS 262–4400).

FmHA. The United States of America, acting through the Farmers Home Administration, an agency of the United States Department of Agriculture. References to the National Office, Finance Office, State Office, County Office, State Director, District Director, County Supervisor, or other FmHA offices or official should be read as prefaced by "FmHA."

Guaranteed line of credit. Loan advances made and serviced by a lender subject to a maximum amount agreed to by the lender and FmHA which is specified in a Form FmHA 1980–27, "Contact of Guarantee (Line of Credit)," and for which FmHA has entered into a Form FmHA 1980–38, "Lender's Agreement (Line of Credit)."

Guaranteed loan. A loan made and serviced by a lender for which FmHA has entered into a Form FmHA 449–35 (or 1980–68 or 1980–71), "Lender's Agreement," and for which FmHA has issued a Form FmHA 449–34 (or 1980–69 or 1980–72), "Loan Note Guarantee."

Hazard insurance. Includes fire, windstorm, lightning, hail, explosion, riot, civil commotion, aircraft, vehicles, smoke, builder's risk, public liability, property damage, flood or mudslide, workers compensation, or any similar insurance that is available and needed to protect the security, or that is required by law.

Holder. The person or organization other than the lender who holds all or a part of the guaranteed portion of the loan with no servicing responsibilities. Holders are prohibited from obtaining any part(s) of the guaranteed portion of the loan with proceeds from any obligation the interest on which is excludable from income under section 103 of the Internal Revenue Code of 1954, as amended (IRC). When the lender assigns a part(s) of the guaranteed loan to an assignee, the assignee becomes a holder when Form FmHA 449–36 (or 1980–70 or 1980–73), "Assignment Guarantee Agreement," is used.

Insured loans. A loan directly made and serviced by FmHA as lender with funds from the Rural Development Insurance Fund, Rural Housing Insurance Fund, or Agricultural Credit Insurance Fund.

Joint financing. Occurs when two or more lenders (or any combination of such lenders) makes separate loans to supply the funds required by one applicant. For example, such joint financing may consist of FmHA financial assistance with the Economic Development Administration (EDA), Department of Housing and Urban Development (HUD), Small Business Administration (SBA), other Federal and State agencies, and private and quasi-public financial institutions.

Lender. The person or organization making and servicing the loan or advancing and servicing the line of credit which is guaranteed under the provisions of the appropriate subpart. The lender is also the party requesting a guarantee.

Lender's Agreement (Form FmHA 449–35 (or 1980–68 or 1980–71) or Form FmHA 1980–38). The signed agreement between FmHA and the lender setting forth the lender's loan responsibilities when the Loan Note Guarantee or Contract of Guarantee is issued. Form FmHA 1980–38 is used for selected farmer program loans only.

Line of credit agreement. An evidence of debt in those instances in which a lender extends a line of credit to a borrower.

Loan Note Guarantee (Form FmHA 449–34 (or 1980–69 or 1980–72)). The signed commitment issued by FmHA setting forth the terms and conditions of the guarantee.

Market value. The amount for which property would sell for its highest and best use at voluntary sale.

Note: An evidence of debt. In those instances where FmHA makes an insured loan or guarantees a bond issue, "note" shall also be construed to include "Bond" or other evidence of indebtedness where appropriate.

Principals of borrowers. Includes owners, officers, directors, entities and others directly involved in the operation and management of a business.

Transfer and assumption. The conveyance by a debtor to an assuming party of the assets, collateral, and liabilities of the loan in return for the assuming party's binding promise to pay the debt outstanding. In relation to transfer and assumption cases, where appropriate, "liquidation" and "loan" shall be construed to mean "transfer and assumption," "promissory note" shall be construed to mean "assumption agreement," and "borrower" shall be construed to mean "assuming party" or "transferee."

* * * * *

3. Section 1980.6(b) is amended by adding after the paragraph that begins with the abbreviation, "B&I," the following new paragraph to read as follows:

§ 1980.6 Definitions and abbreviations.

* * * * *

(b) * * *

DARBE—Disaster Assistance for Rural Business Enterprises guaranteed loans.

* * * * *

4. Section 1980.20 is amended by revising paragraph (a) to read as follows:

§ 1980.20 Loan guarantee limits.

(a) Lenders and applicants will propose the percentage of guarantee. Lenders and applicants will be advised in writing on Form FMHA 449–14 by FmHA of any percentage of guarantee less than proposed by the lender and applicant, and the reasons therefore. (See § 1980.80 of this subpart regarding appeals.) The maximum percentage of guarantee (as opposed to the maximum loss covered by the guarantee) on a Business and Industrial loan is defined in § 1980.420 of subpart E of this part. The maximum percentage of guarantee for all other loans covered by this section will be 90 percent. Also, except in regards to D&D and DARBE guaranteed loans (see subpart E of this part), the maximum loss covered by the Loan Note Guarantee, Form FmHA 1980–72 or Form FmHA 1980–27, "Contract of Guarantee (Line of Credit)," can never exceed the lesser of:

* * * * *

5. Section 1980.40 is revised to read as follows:

§ 1980.40 Environmental requirements.

The need for an Environmental Impact Statement (EIS) will be determined by the FmHA approval official. The determination will be based upon FmHA's completion of the appropriate environmental review and Form FmHA 1940–20, "Request for Environmental Information," when required as set forth in subpart G of part 1940 of this chapter

and other agency comments or other information available. If an EIS is necessary, applicants and lenders will be required to provide essential data for use in its preparation. FmHA State Directors will coordinate preparation and processing of any required EIS. If joint financing for the proposal is involved, the lead agency will be responsible for preparation of the EIS. In all cases, FmHA is responsible for assuring that the requirements of section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA), and subpart G of part 1940 of this chpater are met.

6. Section 1980.83(b) is amended by adding to the end of the list of forms the following to read as follows:

§ 1980.83 FmHA forms.

* * * * *

FmHA

Form No.	Title of form	Purpose and code*
1980–71	Lender's agreement—drought and disaster guaranteed loan.	Used to establish contract between FmHA and lender on a DARBE guaranteed loan. (2)
1980–72	Loan note guarantee—drought and disaster guaranteed loan.	Used to express terms of the guarantee of a DARBE guaranteed loan. (1)
1980–73	Assignment guarantee—agreement—disaster assistance for rural business enterprises guaranteed loan.	Used to express terms of the guarantee and the nature and limits of contractual conditions when a holder buys a guaranteed loan. (1)

*Code: (1) FmHA use only, (2) FmHA and lender use, (3) Lender use only.

Subpart E—Business and Industrial Loan Program

7. Section 1980.401 is amended by revising paragraph (c) to read as follows:

§ 1980.401 Introduction.

* * * * *

(c) This subpart and its appendices (especially appendix I and appendix K) also contain regulations for Drought and Disaster (D&D) and Disaster Assistance for Rural Business Enterprises (DARBE) guaranteed loans authorized by section 331 of the Disaster Assistance Act of 1988 (Pub. L. 100–387) and section 401 of the Disaster Assistance Act of 1989 (Pub. L. 101–82). D&D loans must be to alleviate distress caused to rural business entities, directly or indirectly, by drought, hail, excessive moisture, or related conditions occurring in 1988, or to provide for the guarantee of loans to such rural business entities that refinance or restructure debt as a result of losses incurred, directly or indirectly, because of such natural disasters and are limited to a guarantee of principal only. DARBE loans must be to alleviate distress caused to rural business entities, directly or indirectly, by drought, freeze, storm, excessive moisture, or related conditions occurring in 1988 or 1989, or to provide for the guarantee of loans to such rural business entities that refinance or restructure debt as a result of losses incurred, directly or indirectly, because of such natural disasters and within certain parameters guarantee both principal and interest.

* * * * *

8. Section 1980.402 is amended by adding a new definition after the paragraph beginning with the words "Development cost," to read as follows:

§ 1980.402 Definitions.

* * * * *

Disaster Assistance for Rural Business Enterprises. Guaranteed loans authorized by section 401 of the Disaster Assistance Act of 1989 (Pub. L. 101–82), providing for the guarantee of loans to assist in alleviating distress caused to rural business entities, directly or indirectly, by drought, freeze, storm, excessive moisture, or related conditions occurring in 1988 or 1989, and providing for the guarantee of loans to such rural business entities that refinance or restructure debt as a result of losses incurred, directly or indirectly, because of such natural disasters. See this subpart and its appendices, especially appendix K, containing additional regulations for these loans.

* * * * *

9. Section 1980.495 is amended by revising the introductory text and by adding a new paragraph (k) to read as follows:

§ 1980.495 FmHA forms and guides.

The following FmHA forms and guides, as applicable, are used in connection with processing B&I, D&D, and DARBE loan guarantees; they are incorporated in this subpart and made a part hereof:

* * * * *

(k) "Regulations for Loan Guarantees for Disaster Assistance for Rural Business Enterprises" and Forms FmHA 1980–71, "Lender's Agreement—Disaster Assistance for Rural Business Enterprises Guaranteed Loans," 1980–72 "Loan Note Guarantee—Disaster Assistance for Rural Business Enterprises Guaranteed Loans," and 1980–73 "Assignment Guarantee Agreement—Disaster Assistance for Rural Business Enterprises Guaranteed Loans" are referred to as "Appendix K."

§ 1980.497 [Amended]

10. Section 1980.497(a) is amended in the first sentence by changing the phrase "B&I and D&D" to read "B&I, D&D, and DARBE."

11. In appendix C of subpart E, paragraph (14) is revised to read as follows:

Appendix C—Guidelines for Loan Guarantees for Alcohol Fuel Production Facilities

* * * * *

(14) Alcohol Fuel Production Facilities are eligible for assistance under the Drought and Disaster (D&D) Guaranteed Loan and Disaster Assistance for Rural Business Enterprises (DARBE) programs described in this subpart, and especially in appendix I and appendix K. Any such loan must meet the requirements for D&D and DARBE loans.

12. Appendix K of subpart E of part 1980 is added to read as follows:

Appendix K—Regulations for Loan Guarantees for Disaster Assistance

For Rural Business Enterprises

A. In general

Disaster Assistance for Rural Business Enterprises (DARBE) guaranteed loans are authorized by Section 401 of the Disaster Assistance Act of 1989, which provides for guarantees of up to 90 percent of the unpaid principal and interest amount of qualifying loans, or $2,500,000 whichever is less, to any one borrower. DARBE guaranteed loans may be either to assist in alleviating financial distress caused to rural business entities, directly or indirectly, by drought, freeze, storm, excessive moisture, or related conditions occurring in 1988 or 1989, or to assist such entities that refinance or restructure debt as a result of losses incurred, directly or indirectly, because of such natural disasters. Where used in this appendix, the term "natural disaster(s)" refers only to drought, freeze, storm, excessive moisture, and related conditions occurring in 1988 or 1989. All provisions of subparts A and E of part 1980 of this chapter apply to DARBE loans, except as provided in this appendix. All forms used in connection with a DARBE loan will be those used in connection with a Business and Industrial (B&I) guaranteed loan, except for the following three forms that are incorporated in this appendix K of this subpart E, made a part hereof, and appear in the Federal Register following the body of this appendix as exhibits A, B, and C in the following order:

(1) Form FmHA 1980–71, "Lender's Agreement—Disaster Assistance for Rural

Business Enterprise Guaranteed Loans," will be used instead of Form FmHA 449–35, "Lender's Agreement."

(2) Form FmHA 1980–72, "Loan Note Guarantee—Disaster Assistance for Rural Business Enterprise Guaranteed Loans," will be used instead of Form FmHA 449–34, "Loan Note Guarantee."

(3) Form FmHA 1980–73, "Assignment Guarantee Agreement—Disaster Assistance for Rural Business Enterprise Guaranteed Loans," will be used instead of Form FmHA 449–36, "Assignment Guarantee Agreement."

B. Loan purposes

Loan proceeds may be used for purposes described in § 1980.411(a), except in lieu of the debt refinancing requirements in § 1980.411(a)(11), the following refinancing requirements apply to DARBE loans. Loan proceeds to be used for refinancing must be used solely for refinancing or restructuring of debts as a result of losses incurred, directly or indirectly, as a result of drought, freeze, storm, excessive moisture, or related conditions occurring in 1988 or 1989, and such refinancing or restructuring of debt(s) must be essential for the borrower to meet its financial obligations in a timely fashion. DARBE loan proceeds may be used for hotels, motels, tourist, or recreation facilities which meet the eligibility requirements of DARBE guaranteed loans in addition to the eligible loan purposes as stated in FmHA Instruction 1980–E. In addition, DARBE loan proceeds may be used for business enterprises engaged in agricultural production (production agriculture) which means the cultivation, production (growing), and harvesting, either directly or through integrated operations, of agricultural products (crops, animals, birds, and marine life, either for fibers or food for human consumption), and disposal or marketing thereof, the raising, housing, feeding (including commercial custom feedlots), breeding, hatching, control and/or management of farm and domestic animals. Other eligible uses of loan proceeds under agricultural production include:

(1) Commercial nurseries primarily engaged in the production of ornamental plants and trees and other nursery products such as bulbs, florists' greens, flowers, shrubbery, flower and vegetable seeds, sod, and the growing of vegetables from seed to the transplant stage.

(2) Forestry which includes establishments primarily engaged in the operation of timber tracts, tree farms, forest nurseries, and related activities such as reforestation.

(3) Loans for livestock and poultry processing as identified under eligible purposes.

(4) The growing of mushrooms or hydroponics.

In addition, those business enterprises which qualify for assistance as agricultural production must be ineligible entities for FmHA farmer program loans because the entity exceeds the definition of a family-size farm as defined by FmHA Instruction 1941–A, § 1941.4(d).

C. Ineligible loan purposes

FmHA Instruction 1980–E, § 1980.412 are ineligible purposes for DARBE guaranteed loans except for hotels, motels, tourist, recreation facilities and agricultural production (production agriculture) as defined in § 1980.412(e), DARBE guaranteed loans may not be used for:

(1) Business expansion, acquisition of real estate, machinery, equipment, inventory, other goods or services, or for any other purpose unless related directly to the financial distress or loss that is the basis for the DARBE guaranteed loan.

(2) Alleviating financial distress of entities engaged in agricultural production that are eligible for other FmHA-type farm loan programs.

D. Transactions which will not be guaranteed

In addition to transactions listed in FmHA Instruction 1980–E, § 1980.413, except for § 1980.413(a)(3), FmHA will not make DARBE guaranteed loans if the completed application is not received by FmHA on or before September 30, 1991, nor will FmHA make subsequent DARBE guarantee loans.

E. Borrower equity requirements

See FmHA Instruction 1980–E, § 1980.441. In lieu of the borrower equity requirements in § 1980.441, paragraphs (a) and (b), the following applies to DARBE loans. Tangible balance sheet equity must be positive when the Loan Note Guarantee is issued. Equity must be such that, when considered with other credit factors, repayment of the loan and the continued success of the business operation are reasonably assured. Requirements of § 1980.441(c) apply to DARBE guaranteed loans.

F. Filing and processing preapplications and applications

See FmHA Instruction 1980–E, § 1980.451. All requirements of § 1980.451 remain in effect. In addition to the information required as part of a preapplication under § 1980.451(f), and unless previously submitted as a part of an application under § 1980.451(i) evidence is required which demonstrates to FmHA's satisfaction:

(1) The causal relationship between a 1988 or 1989 natural disaster and the financial distress or loss upon which the preapplication or application is based; and,

(2) That the amount of the loan requested is not greater than the amount necessary for curing the problems caused by the natural disaster. Financial distress or loss shall be determined on the basis of a comparison of financial data for comparable periods of time and need not necessarily be based on data at the year's end. Evidence submitted may include, but is not limited to, the following:

(a) Evidence of financial loss or distress (including loss or distress caused by business interruption) resulting from physical damage caused by natural disaster, or

(b) Evidence that the financial loss and/or distress of the business is the direct or indirect result of loss of sales, business interruption, loss of markets, shortage of raw materials, or decline in patronage or customers caused by a nautral disaster. It must be shown that business operations were damaged as a result of such natural disaster.

(3) Evidence of compliance with Sodbuster and Swampbuster requirements as referenced in paragraph K below.

G. Loan guarantee limit

The provisions of FmHA Instruction 1980–E, § 1980.420 shall not apply. While the total principal amount of DARBE guaranteed loans to any one borrower cannot exceed $10,000,000, the maximum loss covered by the Form FmHA 449–34, "Loan Note Guarantee," can never exceed the percentage of guarantee multiplied by the unpaid principal and interest amount of the loan as evidenced by the note(s) or by assumption agreement(s), or $2,500,000, whichever is the lesser amount.

H. Percentage of guarantee

The provisions of FmHA Instruction 1980–E, § 1980.420 will apply to DARBE guaranteed loans.

I. Lender's existing unguaranteed exposure

The provisions of § 1980.452 ADMINISTRATIVE C. 1(d) do not apply.

J. No direct or insured loans

FmHA Instruction 1980–E, §§ 1980.423(b), 1980.488(b), 1980.481, 1980.411(b), and other provisions of this subpart dealing with insured or direct loans do not apply to DARBE loans. All DARBE loans are FmHA guaranteed loans. FmHA has no authority to make DARBE loans directly to borrowers.

K. Sodbuster and Swampbuster requirements

The provisions of FmHA Instruction 1940–G, exhibit M, will apply to loans made to rural business enterprises engaged in agricultural production.

Exhibit A to Appendix K

Lender's Agreement—Disaster Assistance for Rural Business Enterprise (DARBE) Guaranteed Loans:

Type of loans:_____
Applicable 7 CFR Part 1980 Subpart_____
FmHA Loan Ident. No._____

_____

(Lender) of

_____

Has made a loan(s) to

_____

(Borrower)

_____

In the principal
As evidenced by _____ Note(s)
(Include Bond as appropriate) described as follows: _____

_____

_____

_____

_____

The United States of America, acting through Farmers Home Administration (FmHA) has entered into a "Loan Note Guarantee—DARBE" (Form FmHA 1980–72) or has issued a "Conditional Commitment for Guarantee" (Form FmHA 449–14) to enter into a Loan Note Guarantee with the Lender applicable to such loan to participate in a percentage of any loss on the loan not to exceed _____% of the amount of the principal advance and any interest (including any loan subsidy) thereon. The terms of the Loan Note Guarantee are controlling. In order to facilitate the marketability of the

guaranteed portion of the loan and as a condition for obtaining a guarantee of the loan(s), the Lender enters into this agreement.

The Parties Agree:

I. The maximum loss covered under the Loan Guarantee—DARBE will not exceed _____ percent of the principal and accrued interest including any loan subsidy on the above indebtedness. The maximum loss payment under the Disaster Assistance for Rural Business Enterprise Guaranteed Loan program is limited to $2,500,000 or 90% of principal and interest, whichever is less.

II. Full Faith and Credit. The Loan Note Guarantee—DARBE constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the Lender has actual knowledge at the time it became such Lender or which Lender participates in or condones. Any note which provides for the payment of interest on interest shall not be guaranteed. Any Loan Note Guarantee—DARBE or Assignment Guarantee Agreement—DARBE attached to or relating to a note which provides for payment of interest on interest is void.

The Loan Note Guarantee—DARBE will be unenforceable by the Lender to the extent any loss is occasioned by violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA acquires knowledge of the foregoing. Any losses will be unenforceable by the Lender to the extent that loan funds are used for purposes other than those specifically approved by FmHA in its Conditional Commitment for Guarantee. Negligent servicing is defined as the failure to perform those services which a reasonably prudent Lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent Lender would act up to the time of loan maturity or until a final loss is paid.

Public reporting burden for this collection of information is estimated to average 1½ hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0575–0029), Washington, D.C. 20503.

III. Lender's Sale or Assignment of Guarantee Loan—DARBE. A. The Lender may retain all of the guaranteed loan. The Lender is not permitted to sell or participate in any amount of the guaranteed, or unguaranteed portion(s) of the loan(s) to the applicant or Borrower or members of their immediate families, their officers, directors, stockholders, other owners, or any parent, subsidiary or affiliate. If the Lender desires to market all or part of the guaranteed portion of the loan at or subsequent to loan closing, such loan must not be in default as set forth in the terms of the notes. The Lender may proceed under the following options:

1. *Assignment.* Assign all or part of the guaranteed portion of the loan to one or more Holders by using Form FmHA 1980–73, "Assignment Guarantee Agreement—DARBE." Holders(s), upon written notice to Lender and FmHA, may reassign the unpaid guaranteed portion of the loan sold thereunder. Upon such notification the assignee shall succeed to all rights and obligations of the Holder(s) thereunder. If this option is selected, the Lender may not at a later date cause to be issued any additional notes.

2. *Multi-Note System.* When this option is selected by the Lender, upon disposition the Holder will receive one of the Borrower's executed notes and Form FmHA 1980–72, "Loan Note Guarantee—DARBE," attached to the Borrower's note. However, all rights under the security instruments (including personal and/or corporate guarantees) will remain with the Lender and in all cases inure to its and the Government's benefit notwithstanding any contrary provisions of state law.

a. *At Loan Closing*: Provide for no more than 10 notes, unless the Borrower and FmHA agree otherwise, for the guaranteed portion and one note for the unguaranteed portion. When this option is selected, FmHA will provide the Lender with a Form FmHA 1980–72, for each of the notes.

b. *After Loan Closing:*

(1) Upon written approval by FmHA, the Lender may cause to be issued a series of new notes, not to exceed the total provided in 2.a. above, as replacement for previously issued guaranteed note(s) provided:

(a) The Borrower agrees and executes the new notes.

(b) The interest rate does not exceed the interest rate in effect when the loan was closed.

(c) The maturity of the loan is not changed.

(d) FmHA will not bear any expenses that may be incurred in reference to such reissue of notes.

(e) There is adequate collateral securing the note(s).

(f) No intervening liens have arisen or have been perfected and the secured lien priority remains the same.

(2) FmHA will issue the appropriate Loan Note Guarantees—DARBE to be attached to each of the notes then extant in exchange for the original Loan Note Guarantee—DARBE which will be cancelled by FmHA.

3. *Participations.*

a. The Lender may obtain participation in its loan under its normal operating procedures. Participation means a sale of an interest in the loan wherein the Lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation.

b. The Lender is required to hold in its own portfolio or retain a minimum of 10% of Farmer Program loans and 5% for Business and Industry Program loans of the total guaranteed loan(s) amount. The amount required to be retained must be of the unguaranteed portion of the loan and cannot be participated to another. The Lender may sell the remaining amount of the unguaranteed portion of the loan, except for Farmer Program loans, only through participation. However, the lender will always retain the responsibility for loan servicing and liquidation.

B. When a guaranteed portion of a loan is sold by the Lender to a Holder(s), the Holder(s) shall thereupon succeed to all rights of Lender under the Loan Note Guarantee—DARBE to the extent of the portion of the loan purchased. Lender will remain bound to all the obligations under the Loan Note Guarantee—DARBE, and this agreement, and the FmHA program regulations found in the applicable subpart of Title 7 CFR Part 1980, and to future FmHA program regulations not inconsistent with the express provisions hereof.

C. The Holder(s) upon written notice to the Lender may resell the unpaid guaranteed portion of the loan sold under provision III A.

IV. The Lender agrees loans funds will be used for the purposes authorized in the applicable subpart of Title 7 CFR Part 1980 and in accordance with the terms of Form FmHA 449–14.

V. The Lender certifies that none of its officers or directors, stockholders or other owners (except stockholders in a Farm Credit Bank or other Farm Credit System Institution with direct lending authority that have normal stockshare requirements for participation) has a substantial financial interest in the Borrower. The Lender certifies that neither the Borrower nor its officers or directors, stockholders or other owners has a substantial financial interest in the Lender. If the Borrower is a member of the board of directors or an officer of a Farm Credit Bank or other Farm Credit System Institution with direct lending authority, the Lender certifies that an FCS institution on the next highest level will independently process the loan request and will act as the Lender's agent in servicing the account.

VI. The Lender certifies that it has no knowledge of any material adverse change, financial or otherwise, in the Borrower, Borrower's business, or any parent, subsidiaries, or affiliates since it requested a Loan Note Guarantee—DARBE.

VII. Lender certifies that a loan agreement and/or loan instruments concurred in by FmHA has been or will be signed with the Borrower.

VIII. Lender certifies that it has paid the required guarantee fee.

IX. Servicing. A. The Lender will service the entire loan and will remain mortgagee and/or secured party of record, notwithstanding the fact that another may hold a portion of the loan. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. Lender may charge Holder a servicing fee. The unguaranteed portion of a loan will not be paid first nor given any preference or priority over the guaranteed portion of the loan.

B. Disposition of the guaranteed portion of a loan may be made prior to full disbursement, completion of construction and acquisitions only with the prior written

approval of FmHA. Subsequent to full disbursement, completion of construction, and acquisition, the guaranteed portion of the loan may be disposed of as provided herein.

It is the Lender's responsibility to see that all construction is properly planned before any work proceeds; that any required permits, licenses or authorizations are obtained from the appropriate regulatory agencies; that the Borrower has obtained contracts through acceptable procurement procedures; that periodic inspections during construction are made and that FmHA's concurrence on the overall development schedule is obtained.

C. *Lender's servicing responsibilities include, but are not limited to:*

1. Obtaining compliance with the covenants and provisions in the note, loan agreement, security instruments, and any supplemental agreements and notifying in writing FmHA and the Borrower of any violations. None of the aforesaid instruments will be altered without FmHA's prior written concurrence. The Lender must service the loan in a reasonable and prudent manner.

2. Receiving all payments on principal and interest (including any loan subsidy) on the loan as they fall due and promptly remitting and accounting to any Holder(s) of their pro rata share thereof determined according to their respective interests in the loan, less only Lender's servicing fee. The loan may be reamortized, renewed, rescheduled or (for Farm Ownership, Soil and Water, and Operating loans only) written down only with agreement of the Lender and Holder(s) of the guaranteed portion of the loan and only with FmHA's written concurrence.

3. Inspecting the collateral as often as necessary to properly service the loan.

4. *Assuring that adequate insurance is maintained.* This includes hazard insurance obtained and maintained with a loss payable clause in favor of the Lender as the mortgagee or secured party.

5. *Assuring that:* taxes, assessment or ground rents against or affecting collateral are paid; the loan and collateral are protected in foreclosure, bankruptcy, receivership, insolvency, condemnation, or other ligitation, insurance loss payments, condemnation awards, or similar proceeds are applied on debts in accordance with lien priorities on which the guarantee was based, or to rebuilding or otherwise acquiring needed replacement collateral with the written approval of FmHA; proceeds from the sale or other disposition of collateral are applied in accordance with the lien priorities on which the guarantee is based, except that proceeds from the disposition of collateral, such as machinery, equipment, furniture or fixtures, may be used to acquire property of similar nature in value up to $_____ without written concurrence of FmHA; the Borrower complies with all laws and ordinances applicable to the loan, the collateral and/or operating of the farm, business or industry.

6. Assuring that if personal or corporate guarantees are part of the collateral, current financial statements from such loan guarantors will be obtained and copies provided to FmHA at such time and frequency as required by the loan agreement or Conditional Commitment for Guarantee. In the case of guarantees secured by collateral, assuring the security is properly maintained.

7. Obtaining the lien coverage and lien priorities specified by the Lender and agreed to by FmHA, properly recording or filing lien or notice instruments to obtain or maintain such lien priorities during the existence of the guarantee by FmHA.

8. Assuring that the Borrower obtains marketable title to the collateral.

9. Assuring that the Borrower (any party liable) is not released from liability for all or any part of the loan, except in accordance with FmHA regulations.

10. Providing FmHA Finance Office with loan status reports semiannually as of June 30 and December 31 on Form FmHA 1980–41, "Guaranteed Loan Status Report." For Farm Ownership, Soil and Water, and Operating loans. Form FmHA 1980–41 will only be submitted annually as of December 31.

11. Obtaining from the Borrower periodic financial statements under the following schedule:

Lender is responsible for analyzing the financial statements, taking any servicing actions and providing copies of statements and record of actions to the FmHA office immediately responsible for the loan.

12. Monitoring the use of loan funds to assure they will not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 CFR Part 1940, Subpart G, Exhibit M.

D. If a Farm Ownership, Soil and Water or Operating loan is involved the Lender shall participate in any farm credit mediation program of a state in accordance with the rules of that system and 7 CFR Part 1980, Subpart B § 1980.126.

X. Default. A. The Lender will notify FmHA when a Borrower is thirty (30) days (90 days for guaranteed rural housing loan) past due on a payment or if the Borrower has not met its responsibilities of providing the required financial statements to the Lender or is otherwise in default. The Lender will notify FmHA of the status of a Borrower's default on Form FmHA 1980–44. "Guaranteed Loan Borrower Default Status." A meeting will be arranged by the Lender with the Borrower and FmHA to resolve the problem. Actions taken by the Lender with written concurrence of FmHA will include but are not limited to the following or any combination thereof:

1. Deferment of principal payments (subject to rights of any Holder(s)).

2. An additional temporary loan by the Lender to bring the account current.

3. Reamortization of or rescheduling the payments on the loan (subject to rights of any Holder(s)).

4. Transfer and assumption of the loan in accordance with the applicable subpart of Title 7 CFR Part 1980.

5. Reorganization.

6. Liquidation.

7. Subsequent loan guarantees.

8. Changes in interest rates with FmHA's Lender's, and the Holder(s) approval provided, such interest rate is adjusted proportionally between the guaranteed and unguaranteed portion of the loan and the type of rate remains the same.

9. Principal and interest write down in accordance with 7 CFR Part 1980, Subpart B, § 1980.125.

B. The Lender will negotiate in good faith in an attempt to resolve any problem to permit the Borrower to cure a default, where reasonable. In the case of Farm Ownership, Soil and Water, or Operating loans, the Lender agrees that if liquidation of the account becomes imminent, the Lender will consider the Borrower for an Interest Rate Buydown under Exhibit C of Subpart B of 7 CFR, Part 1980, and request a determination of the Borrower's eligibility by FmHA. The Lender may not initiate foreclosure action on the loan until 60 days after a determination has been made with respect to the eligibility of the Borrower to participate in the Interest Rate Buydown Program.

C. The Lender has the option to repurchase the unpaid guaranteed portion of the loan from the Holder(s) within 30 days of written demand by the Holder(s) when: (a) the Borrower is in default not less than 60 days in payment of principal or interest due on the loan or (b) the Lender has failed to remit to the Holder(s) its pro rata share of any payment made by the Borrower or any loan subsidy within 30 days of its receipt thereof. The repurchase by the Lender will be for an amount equal to the unpaid guaranteed portion of the principal and accrued interest less the Lender's servicing fee. The loan note guarantee will not cover the note interest to the Holder on the guarantee loan(s) accruing after 90 days from the date of the demand letter to the Lender requesting the repurchase. Holder(s) will concurrently send a copy of demand to FmHA. The Lender will accept an assignment without recourse from the Holder(s) upon repurchase. The Lender is encouraged to repurchase the loan to facilitate the accounting for funds, resolve the problem, and to permit the borrower to cure the default, where reasonable. The Lender will notify the Holder(s) and FmHA of its decision.

D. If Lender does not repurchase as provided by paragraph C, FmHA will purchase from Holder(s) the unpaid principal balance of the guaranteed portion herein together with accrued interest (including any loan subsidy) to date of repurchase, within 30 days after written demand to FmHA from the Holder(s). The loan note guarantee will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of original demand letter of the Holder(s) to the Lender requesting the repurchase. Such demand will include a copy of the written demand made upon the Lender. Under the Disaster Assistance for Rural Business Enterprise Guaranteed Loan program, the maximum cumulative payment to the holder(s) of the guaranteed portion of the loan is limited to $2,500,000 or 90% of principal and interest, whichever is less.

The Holder(s) or its duly authorized agent will also include evidence of its right to require payment from FmHA. Such evidence will consist of either the originals of the Loan Note Guarantee—DARBE and note properly endorsed to FmHA or the original of the Assignment Guarantee Agreement properly assigned to FmHA without recourse including

all rights, title, and interest in the loan. FmHA will be subrogated to all rights of Holder(s). The Holder(s) will include in its demand the amount due including unpaid principal, unpaid interest (including any loan subsidy) to date of demand and interest subsequently accruing from date of demand to proposed payment date. Unless otherwise agreed to by FmHA, such proposed payment will not be later than 30 days from the date of the demand.

The FmHA office serving the Borrower will promptly notify the Lender of the Holder'(s) demand for payment. The Lender will promptly provide the FmHA office servicing the Borrower with the information necessary for FmHA's determination of the appropriate amount due the Holder(s). Any discrepancy between the amount claimed by the Holder(s) and the information submitted by the Lender must be resolved before payment will be approved. FmHA will notify both parties who must resolve the conflict before payment by FmHA will be approved. Such a conflict will suspend the running of the 30 day payment requirement. Upon receipt of the appropriate information, the FmHA office servicing the Borrower will review the demand and submit it to the State Director for verification. After reviewing the demand, the State Director will transmit the request to the FmHA Finance Office for issuance of the appropriate check. Upon issuance, the Finance Office will notify the office serving the Borrower and State Director and remit the check(s) to the Holder(s).

E. Lender consents to the purchase by FmHA and agrees to furnish on request by FmHA a current statement certified by an appropriate authorized officer of the Lender of the unpaid principal and interest then owed by the Borrower on the loan and the amount due the Holder(s). Lender agrees that any purchase by FmHA does not change, alter or modify any of the Lender's obligations to FmHA arising from said loan or guarantee, nor does such purchase waive any of the FmHA's rights against Lender, and FmHA will have the right to set-off against Lender all rights inuring to FmHA from the Holder against FmHA's obligation to Lender under the Loan Note Guarantee—DARBE. To the extent FmHA holds a portion of a loan, loan subsidy will not be paid the Lender.

F. Servicing fees assessed by the Lender to a Holder are collectible only from payment installments received by the Lender from the Borrower. When FmHA repurchases from a Holder, FmHA will pay the Holder only the amounts due the Holder. FmHA will not reimburse the Lender for servicing fees assessed to a Holder and not collected from payments received from the Borrower. No servicing fee shall be charged FmHA and no such fee is collectible from FmHA.

G. Lender may also repurchase the guaranteed portion of the loan consistent with paragraph 10 of the Loan Note Guarantee—DARBE.

XI. Liquidation. If the Lender concludes that liquidation of a guaranteed loan account is necessary because of one or more defaults or third party actions that the Borrower cannot or will not cure or eliminate within a reasonable period of time, a meeting will be arranged by the Lender with FmHA. When FmHA concurs with the Lender's conclusion or at any time concludes independently that liquidation is necessary, it will notify the Lender and the matter will be handled as follows:

The Lender will liquidate the loan unless FmHA, at its option, decides to carry out liquidation.

When the decision to liquidate is made, the Lender may proceed to purchase from Holder(s) the guaranteed portion of the loan. The Holder(s) will be paid according to the provisions in the Loan Note Guarantee—DARBE or the Assignment Guarantee Agreement—DARBE.

When the decision to liquidate is made, the Lender may proceed to purchase from Holder(s) the guaranteed portion of the loan. The Holder(s) will be paid according to the provisions in the Loan Note Guarantee—DARBE or the Assignment Guarantee Agreement—DARBE.

If the Lender does not purchase the guaranteed portion of the loan, FmHA will be notified immediately in writing. FmHA will then purchase the guaranteed portion of the loan from the Holder(s). If FmHA holds any of the guaranteed portion, FmHA will be paid first its pro rata share of the proceeds from liquidation of the collateral.

A. Lender's proposed method of liquidation. Within 30 days after the decision to liquidate, the Lender will advise FmHA in writing of its proposed detailed method of liquidation called a liquidation plan and will provide FmHA with:

1. Such proof as FmHA requires to establish the Lender's ownership of the guaranteed loan promissory note(s) and related security instruments.

2. Information lists concerning the Borrower's assets including real and personal property, fixtures, claims, contracts, inventory (including perishables), accounts receivable, personal and corporate guarantees, and other existing and contingent assets, advice as to whether or not each item is serving as collateral for the guaranteed loan.

3. A proposed method of making the maximum collection possible on the indebtedness.

4. If the outstanding principal B&I loan balance including accrued interest is less than $200,000, the Lender will obtain an estimate of the market and potential liquidated value of the collateral. On B&I loan balances in excess of $200,000, and all other loans regardless of the outstanding principal balance, the Lender will obtain an independent appraisal report on all collateral securing the loan, which will reflect the current market value and potential liquidation value. The appraisal report is for the purpose of permitting the Lender and FmHA to determine the appropriate liquidation actions. Any independent appraiser's fee will be shared equally by FmHA and the Lender.

B. FmHA's response to Lender's liquidation plan. FmHA will inform the Lender in writing whether it concurs in the Lender's liquidation plan within 30 days after receipt of such notification from the Lender. If FmHA needs additional time to respond to the liquidation plan, it will advise the Lender of a definite time for such response. Should FmHA and the Lender not agree on the Lender's liquidation plan, negotiations will take place between FmHA and the Lender to resolve the disagreement. The Lender will ordinarily conduct the liquidation; however, should FmHA opt to conduct the liquidation, FmHA will proceed as follows:

1. The Lender will transfer to FmHA all rights and interest necessary to allow FmHA to liquidate the loan. In this event, the Lender will not be paid for any loss until after the collateral is liquidated and the final loss is determined by FmHA.

2. FmHA will attempt to obtain the maximum amount of proceeds from liquidation.

3. Options available to FmHA include any one or combination of the usual commercial methods of liquidation.

C. *Acceleration.* The Lender or FmHA, if it liquidates, will proceed as expeditiously as possible when acceleration of the indebtedness is necessary including giving any notices and taking any other legal actions required by the security instruments. A copy of the acceleration notice or other acceleration document will be sent to FmHA or the Lender, as the case may be.

D. *Liquidation: Accounting and Reports.* When the Lender conducts the liquidation, it will account for funds during the period of liquidation and will provide FmHA with periodic reports on the progress of liquidation, disposition of collateral, resulting costs and additional procedures necessary for successful completion of liquidation. The Lender will transmit to FmHA any payments received from the Borrower and/or pro rata share of liquidation or other proceeds, etc. when FmHA is the holder of a portion of the guaranteed loan using Form FmHA 1980–43, "Lender's Guaranteed Loan Payment to FmHA." When FmHA liquidates, the Lender will be provided with similar reports on request.

E. *Determination of Loss and Payment.* In all liquidation cases, final settlement will be made with the Lender after the collateral is liquified. FmHA will have the right to recover losses paid under the guarantee from any party liable.

1. Form FmHA 449–30, "Loan Note Guarantee Report of Loss," will be used for calculations of all estimated and final loss determinations. Estimated loss payments may be approved by FmHA after the Lender has submitted a liquidation plan approved by FmHA. Payments will be made in accordance with applicable FmHA regulations.

2. When the Lender is conducting the liquidation, and owns any of the guaranteed portion of the loan, it may request a tentative loss estimate by submitting to FmHA an estimate of loss that will occur in connection with liquidation of the loan. FmHA will agree to pay an estimated loss settlement to the Lender provided the Lender applies such amount due to the outstanding principal balance owed on the guaranteed debt. Such estimate will be prepared and submitted by the Lender on Form FmHA 449–30, using the basic formula as provided on the report except that the appraisal value will be used in lieu of the amount received from the sale

of collateral. For Farm Ownership, Soil and Water, and Operating loans only, if it appears the liquidation period will exceed 90 days, the Lender will file an estimated loss claim. Once this claim is approved by FmHA, the Lender will discontinue interest accrual on the defaulted loan and the loss claim will be promptly processed in accordance with the applicable FmHA regulations.

After the Report of Loss estimate has been approved by FmHA, and within 30 days thereafter, FmHA will send the original Report of Loss estimate to FmHA Finance Office for issuance of a Treasury check in payment of the estimated amount due the Lender.

After liquidation has been completed, a final loss report will be submitted on Form FmHA 449–30 by the Lender to FmHA.

3. After the Lender has completed liquidation, FmHA upon receipt of the final accounting and report of loss, may audit and will determine the actual loss. If FmHA has any questions regarding the amounts set forth in the final Report of Loss, it will investigate the matter. The Lender will make its records available to and otherwise assist FmHA in making the investigation. If FmHA finds any discrepancies, it will contact the Lender and arrange for the necessary corrections to be made as soon as possible. When FmHA finds the Final Report of Loss to be proper in all respects, it will be tentatively approved in the space provided on the form for that purpose.

4. When the Lender has conducted liquidation and after the final Report of Loss has been tentatively approved.

a. If the loss is greater than the estimated loss payment, FmHA will send the original to the final Report of Loss to the Finance Office for issuance of a Treasury check in payment of the additional amount owed by FmHA to the Lender.

b. If the loss is less than the estimated loss, the Lender will reimburse FmHA for the overpayment plus interest at the note rate from date of payment.

5. If FmHA has conducted liquidation, it will provide an accounting and Report of Loss to the Lender and will pay the Lender in accordance with the Loan Note Guarantee—DARBE.

6. In those instances where the Lender has made authorized protective advances, it may claim recovery for the guaranteed portion of any loss of monies advanced as protective advances and interest resulting from such protective advances as provided above, and such payment will be made by FmHA when the final Report of Loss is approved.

F. Maximum amount of interest loss payment. Notwithstanding any other provisions of this agreement, the amount payable by FmHA to the Lender cannot exceed the limits set forth in the Loan Note Guarantee—DARBE. If FmHA conducts the liquidation, loss occasioned by accruing interest (including any loan sibsidy) will be covered by the guarantee only to the date FmHA accepts this responsibility. Loss occasioned by accruing interest (including subsidy) will be covered to the extent of the guarantee to the date of final settlement when the liquidation is conducted by the Lender provided it proceeds expeditiously with the liquidation plan approved by FmHA, except for Farm Ownership, Soil and Water, and Operating loans only, when the Lender files an estimated loss claim. For Farm Ownership, Soil and Water and Operating loans, only, when the Lender files an estimated loss claim, the Lender will discontinue interest accrual on the defaulted loan when the estimated loss claim is approved by FmHA. The balance of accrued interest (including any loan subsidy) payable to the Lender, if any, will be calculated on the final Report of Loss form.

G. *Application of FmHA loss payment.* The estimated loss payment shall be applied as of the date of such payment. The total amount of the loss payment remitted by FmHA will be applied by the Lender on the guaranteed portion of the loan debt. However, such application does not release the Borrower from liability. At time of final loss settlement the Lender will notify the Borrower that the loss payment has been so applied. In all cases a final Form FmHA 449–30 prepared and submitted by the Lender must be processed by FmHA in order to close out the files at the FmHA Finance Office.

H. *Income from collateral.* Any net rental or other income that has been received by the Lender from the collateral will be applied on the guaranteed loan debt.

I. *Liquidation costs.* Certain reasonable liquidation costs will be allowed during the liquidation process. The liquidation costs will be submitted as a part of the liquidation plan. Such costs will be deducted from gross proceeds from the disposition of collateral unless the costs have been previously determined by the Lender (with FmHA written concurrence) to be protective advances. If changed circumstances after submission of the liquidation plan require a revision of liquidation costs, the Lender will procure FmHA's written concurrence prior to proceeding with the proposed changes. No in-house expenses of the Lender will be allowed. In-house expenses include, but are not limited to, employees' salaries, staff lawyers, travel and overhead.

J. *Foreclosure.* The parties owning the guaranteed portion and unguaranteed portions of the loan will join the institute foreclosure action or, in lieu of foreclosure, to take a deed of conveyance to such parties. When the conveyance is received and liquidated, net proceeds will be applied to the guaranteed loan debt.

K. *Payment.* Such loss will be paid by FmHA within 60 days after the review of the accounting of the collateral.

XII. Protective Advances. Protective advances must constitute an indebtedness of the Borrower to the Lender and be secured by the security instrument(s). FmHA written authorization is required on all protective advances in excess of $500. Protective advances include, but are not limited to advances made for taxes annual assessments, ground rent hazard of flood insurance premiums affecting the collateral, and other expenses necessary to preserve or protect the security. Attorney fees are not a protective advance.

XIII. Additional Loans or Advances. The Lender will not make additional expenditures or new loans without first obtaining the written approval of FmHA even though such expenditures or loans will not be guaranteed.

XIV. Future Recovery. After a loan has been liquidated and a final loss has been paid to FmHA, any future funds which may be recovered by the Lender, will be pro-rated between FmHA and the Lender. FmHA will be paid such amount recovered in proportion to the percentage it guaranteed for the loan and the Lender will retain such amounts in proportion to the percentage of the unguaranteed portion of the loan.

XV. Transfer and Assumption Cases. Refer to the applicable subpart of title 7 of CFR part 1980.

If a loss should occur upon consummation of a complete transfer and assumption for less than the full amount of the debt and the transferor-debtor (including personal guarantees) is released from personal liability, the Lender, if it holds the guaranteed portion, may file an estimated Report of Loss on Form FmHA 449–30, "Loan Note Guarantee Report of Loss," to recover its pro rata share of the actual loss at that time. In completing Form FmHA 449–30, the amount of the debt assumed will be entered on line 24 as Net Collateral (Recovery). Approved protective advances and accrued interest thereon made during the arrangement of a transfer and assumption, if not assumed by the Transfer, will be entered on Form FmHA 449–30, lines 13 and 14.

XVI. Bankruptcy. A. The Lender is responsible for protecting the guaranteed loan debt and all collateral securing the loan in bankruptcy proceedings. When the loan is involved in a reorganization bankruptcy proceeding under chapters 11, 12 or 13 of the Bankruptcy Code, payment of loss claims may be made as provided in this paragraph XVI. For a chapter 7 bankruptcy or liquidation plan in a chapter 11 bankruptcy, only paragraphs XVI B3 and B6 are applicable.

B. *Loss Payments.*

1. *Estimated Loss Payments.*

a. If a borrower has filed for protection under a reorganization bankruptcy, the Lender will request a tentative estimated loss payment of accrued interest and principal written off. This request can only be made after the bankruptcy plan is confirmed by the court. Only one estimated loss payment is allowed during the reorganization bankruptcy. All subsequent claims during reorganization will be considered revisions to the initial estimated loss. A revised estimated loss payment may be processed by FmHA, at its option, in accordance with any court approved changes in the reorganization plan. At the time the performance under the confirmed reorganization plan has been completed, the Lender is responsible for providing FmHA with the documentation necessary to review and adjust the estimated loss claim to (a) reflect the actual principal and interest reduction on any part of the guaranteed debt determined to be unsecured and (b) to reimburse the Lender for any court ordered interest rate reduction during the term of the reorganization plan.

b. The Lender will use Form FmHA 449–30, "Loan Note Guarantee Report of Loss," to request an estimated loss payment and to review estimated loss payments during the course of the reorganization plan. The

estimated loss claim as well as any revisions to this claim will be accompanied by applicable legal documentation to support the claim.

c. Upon completion of the reorganization plan, the Lender will complete Form FmHA 1980–44, "Guaranteed Loan Borrower Default Status," and forward this form to the Finance Office.

2. *Interest Loss Payments.*

a. Interest loss payments sustained during the period of the reorganization plan will be processed in accordance with paragraph XVI B1.

b. Interest loss payments sustained after the reorganization plan is completed will be processed annually when the Lender sustains a loss as a result of a permanent interest rate reduction which extends beyond the period of the reorganization plan.

c. Form FmHA 449–30 will be completed to compensate the Lender for the difference in interest rates specified on the Loan Note Guarantee—DARBE or Interest Rate Buydown Agreement and the rate of interest specified by the bankruptcy court.

3. *Final Loss Payments.*

a. Final Loss Payments will be processed when the loan is liquidated.

b. If the loan is paid in full without an additional loss, the Finance Office will close out the estimated loss account at the time notification of payment in full is received.

4. *Payment Application.* The Lender must apply estimated loss payments first to the unsecured principal of the guaranteed portion of the debt and then to the unsecured interest of the guaranteed portion of the debt. In the event the bankruptcy court attempts to direct the payments to be applied in a different manner, the Lender will immediately notify the FmHA servicing office.

5. *Overpayments.* Upon completion of the reorganization plan, the Lender will provide FmHA with the documentation necessary to determine whether the estimated loss paid equals the actual loss sustained. If the actual loss sustained, as a result of the reorganization, is greater than the estimated loss payment, the Lender will submit a revised estimated loss in order to obtain payment of the additional amount owed by FmHA to the Lender. If the actual loss payment is less than the estimated loss, the Lender will reimburse FmHA for the overpayment plus interest at the note rate from the date of the payment of the estimated loss.

6. *Protective Advances.* If approved protective advances were made prior to the borrower having filed bankruptcy, as a result of prior liquidation action, these protective advances and accrued interest will be entered on Form FmHA 449–30.

XVII. Debt Write-down. For Farm Ownership, Soil and Water, and Operating loans only, refer to title 7 of CFR part 1980, subpart B, § 1980.125. The maximum amount of loss payment associated with a loan/line of credit agreement which has been written down will not exceed the percent of the guarantee multiplied by the difference between the outstanding principal and interest balance of the loan/line of credit before the write-down and the outstanding balance of the loan/line of credit after the write-down. The Lender will use Form FmHA 449–30, "Loan Note Guarantee Report of Loss," to request an estimated loss payment to receive its pro-rata share of any loss sustained.

XVIII. Other Requirements. This agreement is subject to all the requirements of the applicable subpart of title 7 CFR part 1980, and any future amendments of these regulations not inconsistent with this agreement. Interested parties may agree to abide by future FmHA regulations not inconsistent with this agreement.

XIX. Execution of Agreements. If this agreement is executed prior to the execution of the Loan Note Guarantee—DARBE, this agreement does not impose any obligation upon FmHA with respect to the execution of such contract. FmHA in no way warrants that such a contract has been or will be executed.

XX. Notices. All nouces and actions will be initiated through FmHA for _____ (State) with mailing address at the date of this instrument _____

Dated this _____ day of _____, 19 ___.

LENDER:

ATTEST: *(SEAL)* _____
By _____
Title _____
United States of America
Farmers Home Administration
By _____
Title _____

Exhibit B to Appendix K

USDA-FmHA
Form FmHA 1980–72
(9–89)
Type of Loan: _____
Applicable 7 C.F.R. Part 1980
Subpart _____

Loan Note Guarantee—Disaster Assistance for Rural Business Enterprise (DARBE) Guaranteed Loans

Borrower _____
Lender _____
Lender's Address _____
State _____
County _____
Date of Note _____
FmHA Loan Identification No. _____
Lender's IRS ID Tax No. _____
Principal Amount of Loan _____
$ _____

The guaranteed portion of the loan is $_____ which is _____ (_____%) percent of loan principal. The principal amount of loan is evidenced by _____ note(s) (includes bonds as appropriate) described below. The guaranteed portion of each note is indicated below. This instrument is attached to note _____ in the face amount of $_____ and is number _____ of _____.

Lender's identifying number	Face amount	Percent of total face amount	Amount guaranteed
	$		$
Total	$	100%	$

In consideration of the making of the subject loan by the above named Lender, the United States of America, acting through the Farmers Home Administration of the United States Department of Agriculture (herein called "FmHA"), pursuant to the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et. seq.), the Emergency Livestock Credit Act of 1974 (7 U.S.C. note preceding 1961, P.L. 93–357 as amended), the Emergency Agricultural Credit Adjustment Act of 1978 (7 U.S.C. note preceding 1921, P.L. 95–334), Title V of the Housing Act of 1949 (42 U.S.C. 1471 et. seq.), or Disaster Assistance Act of 1989 does hereby agree that in accordance with and subject to the conditions and requirements herein, it will pay to:

A. Any Holder 100 percent of any loss sustained by such Holder on the guaranteed portion and on interest due (including any loan subsidy) on such portion.

B. The Lender the lesser of 1. or 2. below:

1. Any loss sustained by such Lender on the guaranteed portion including:

a. Principal and interest indebtedness as evidenced by said note(s) or by assumption agreement(s), and

b. Any loan subsidy due and owing, and

c. Principal and interest indebtedness on secured protective advances for protection and preservation of collateral made with FmHA's authorization, including but not limited to, advances for taxes, annual assessments, any ground rents, and hazard or flood insurance premiums affecting the collateral, or the maximum loss payment under the Disaster Assistance for Rural Business Enterprise Loan program is limited to $2,500,000 or 90% of principal and interest, whichever is less.

2. The guaranteed principal advanced to or assumed by the Borrower under said note(s) or assumption agreement(s) and any interest due (including any loan subsidy) thereon. The maximum loss payment under the Disaster Assistance for Rural Business Enterprise Loan program is limited to $2,500,000 or 90% of principal and interest, whichever is less.

If FmHA conducts the liquidation of the loan, loss occasioned to a Lender by accruing interest (including any loan subsidy) after the date FmHA accepts responsibility for liquidation will not be covered by this Loan Note Guarantee—DARBE. If Lender conducts the liquidation of the loan, accruing interest (including any loan subsidy) shall be covered by this Loan Note Guarantee—DARBE to date of final settlement when the Lender conducts the liquidation expeditiously in accordance with the liquidation plan approved by FmHA.

Definition of Holder. The Holder is the person or organization other than the Lender who holds all or part of the guaranteed portion of the loan with no servicing responsibilities. Holders are prohibited from obtaining any part(s) of the guaranteed portion of the loan with proceeds from any obligation, the interest on which is excludable from income, under Section 103 of the Internal Revenue Code of 1954, as amended (IRC). When the Lender assigns a part(s) of the guaranteed loan to an assignee, the assignee becomes a Holder only when

Form FmHA 1980-73, "Assignment Guarantee Agreement—DARBE," is used.

Definition of Lender. The Lender is the person or organization making and servicing the loan which is guaranteed under the provisions of the applicable Subpart 7 CFR of Part 1980. The Lender is also the party requesting a loan guarantee.

1. Loan Servicing. Lender will be responsible for servicing the entire loan, and Lender will remain mortgagee and/or secured party of record notwithstanding the fact that another party may hold a portion of the loan. When multiple notes are used to evidence a loan, Lender will structure repayments as provided in the loan agreement. In the case of Farm Ownership, Soil and Water, or Operating Loans, the Lender agrees that if liquidation of the account becomes imminent, the Lender will consider the Borrower for an Interest Rate Buydown under Exhibit C of Subpart B of 7 CFR, Part 1980, and request a determination of the Borrower's eligibility by FmHA. The Lender may not initiate foreclosure action on the loan until 60 days after a determination has been made with respect to the eligibility of the Borrower to participate in the Interest Rate Buydown Program.

2. Priorities. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. The unguaranteed portion of the loan will not be paid first nor given any preference or priority over the guaranteed portion.

3. Full Faith and Credit. The Loan Note Guarantee—DARBE constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which Lender or any Holder has acutal knowledge at the time it became such Lender or Holder or which Lender or any Holder participates in or condones. If the note to which this is attached or relates provides for payment of interest on interest, then this Loan Note Guarantee—DARBE is void. In addition, the Loan Note Guarantee—DARBE will be unenforceable by Lender to the extent any loss is occasioned by the violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA acquires knowledge of the foregoing. Any losses occasioned will be unenforceable to the extent that loan funds are used for purposes other than those specifically approved by FmHA in its Conditional Commitment for Guarantee. Negligent servicing is defined as the failure to perform those services which a reasonably prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent lender would act up to the time of loan maturity or until a final loss is paid.

4. Rights and Liabilities. The guarantee and right to require purchase will be directly enforceable by Holder notwithstanding any fraud or misrepresentation by Lender or any unenforceability of this Loan Note Guarantee—DARBE by Lender. Nothing contained herein will constitute any waiver by FmHA of any rights it possesses against the Lender. Lender will be liable for and will promptly pay to FmHA any payment made by FmHA to Holder which if such Lender had held the guaranteed portion of the loan, FmHA would not be required to make.

5. Payments. Lender will receive all payments of principal, or interest, and any loan subsidy on account of the entire loan and will promptly remit to Holder(s) its pro rata share thereof determined according to its respective interest in the loan, less only Lender's servicing fee. For loans covered by 7 CFR part 1980, Subpart H, the Holder may designate the payee when an Individual Certificate is issued.

6. Protective Advances. Protective advances made by Lender pursuant to the regulations will be guaranteed against a percentage of loss to the same extent as provided in this Loan Note Guarantee—DARBE notwithstanding the guaranteed portion of the loan that is held by another.

7. Repurchase by Lender. The Lender has the option to repurchase the unpaid guaranteed portion of the loan from the Holder(s) within 30 days of written demand by the Holder(s) when: (a) the borrower is in default not less than 60 days on principal or interest due on the loan or (b) the Lender has failed to remit to the Holder(s) its pro rata share of any payment made by the borrower or any loan subsidy within 30 days of its receipt thereof. The repurchase by the Lender will be for an amount equal to the unpaid guaranteed portion of principal and accrued interest (including any loan subsidy) less the Lender's servicing fee. The Loan Note Guarantee—DARBE will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of the demand letter to the Lender requesting the repurchase. Holder(s) will concurrently send a copy of demand to FmHA. The Lender will accept an assignment without recourse from the Holder(s) upon repurchase. The Lender is encouraged to repurchase the loan to facilitate the accounting for funds, resolve the problem, and to permit the borrower to cure the default, where reasonable. The Lender will notify the Holder(s) and FmHA of its decision.

8. FmHA Purchase. If Lender does not repurchase as provided by paragraph 7 hereof, FmHA will purchase from Holder the unpaid principal balance of the guaranteed portion together with accrued interest (including any loan subsidy) to date of repurchase less Lender's servicing fee, within thirty (30) days after written demand to FmHA from Holder. The Loan Note Guarantee—DARBE will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of the original demand letter of the Holder to the Lender requesting the repurchase. Such demand will include a copy of the written demand made upon the Lender. The Holder(s) or its duly authorized agent will also include evidence of its right to require payment from FmHA. Such evidence will consist of either the original of the Loan Note Guarantee—DARBE properly endorsed to FmHA or the original of the Assignment Guarantee Agreement—DARBE properly assigned to FmHA without recourse including all rights, title, and interest in the loan. FmHA will be subrogated to all rights of Holder(s). The Holder(s) will include in its demand the amount due including unpaid principal, unpaid interest (including any loan subsidy) to date of demand and interest (including any loan subsidy) subsequently accruing from date of demand to proposed payment date. Unless otherwise agreed to by FmHA, such proposed payment will not be later than 30 days from the date of demand.

The FmHA will promptly notify the Lender of its receipt of the Holder(s)'s demand for payment. The Lender will promptly provide the FmHA with the information necessary for FmHA determination of the appropriate amount due the Holder(s). Any discrepancy between the amount claimed by the Holder(s) and the information submitted by the Lender must be resolved before payment will be approved. FmHA will notify both parties who must resolve the conflict before payment by FmHA will be approved. Such conflict will suspend the running of the 30 day payment requirement. Upon receipt of the appropriate information, FmHA will review the demand and submit it to the State Director for verification. After reviewing the demand the State Director will transmit the request to the FmHA Finance Office for issuance of the appropriate check. Upon issuance, the Finance Office will notify the office servicing the borrower and State Director and remit the check(s) to the Holder(s).

9. Lender's obligations.

Lender consents to the purchase by FmHA and agrees to furnish on request by FmHA a current statement certified by an appropriate authorized officer of the Lender of the unpaid principal and interest then owed by Borrowers on the loan and the amount including any loan subsidy then owed to any Holder(s). Lender agrees that any purchase by FmHA does not change, alter or modify any of the Lender's obligations to FmHA arising from said loan or guarantee nor does it waive any of FmHA's rights against Lender, and that FmHA will have the right to set-off against Lender all rights inuring to FmHA as the Holder of this instrument against FmHA's obligation to Lender under the Loan Note Guarantee-DARBE.

10. Repurchase by Lender for Servicing.

If, in the opinion of the Lender, repurchase of the guaranteed portion of the loan is necessary to adequately service the loan, the Holder will sell the portion of the loan to the Lender for an amount equal to the unpaid principal and interest (including any loan subsidy) on such portion less Lender's servicing fee. The Loan Note Guarantee—DARBE will not cover the note interest to the Holder on the guaranteed loans accruing after 90 days from the date of the demand letter of the Lender or FmHA to the Holder(s) requesting the Holder(s) to tender their guaranteed portion(s).

a. The Lender will not repurchase from the Holder(s) for arbitrage purposes or other purposes to further its own financial gain.

b. Any repurchase will only be made after the Lender obtains FmHA written approval.

c. If the Lender does not repurchase the portion from the Holder(s) FmHA at its

option may purchase such guaranteed portions for servicing purposes.

11. Custody of Unguaranteed Portion.

The Lender may retain, or sell the unguaranteed portion of the loan only through participation. Participation, as used in this instrument, means the sale of an interest in the loan wherein the Lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation.

12. When Guarantee Terminates.

This Loan Note Guarantee—DARBE will terminate automatically (a) upon full payment of the guaranteed loan; or (b) upon full payment of any loss obligation hereunder; or (c) upon written notice from the Lender to FmHA that the guarantee will terminate 30 days after the date of notice, provided the Lender holds all of the guaranteed portion and the Loan Note Guarantee(s) are returned to be cancelled by FmHA.

13. Settlement.

The amount due under this instrument will be determined and paid as provided in the applicable Subpart of Part 1980 of Title 7 CFR in effect on the date of this instrument.

14. Loan Subsidy.

*In addition to the interest rate of the note attached hereto, FmHA will pay a loan subsidy of _____ percent per year. Payments will be made annually.

15. Notices.

All notice and actions will be initiated through the FmHA _____ for _____ (State) with mailing address at the date of this instrument:

_____

_____

United States of America
Farmers Home Administration
By: _____

_____

(Date)
Title: _____
Assumption Agreement by _____
Dated _____, 19 ____
Assumption Agreement by _____
Dated _____, 19 ____

* If not applicable delete paragraph prior to execution of this instrument.

Exhibit C to Appendix K

Assignment Guarantee Agreement Disaster Assistance for Rural Business (DARBE) Guaranteed Loan

Type of Loan: _____
FmHA Loan Identification Number _____
Applicable 7 CFR Part 1980 Subpart _____

_____ of _____

(Lender) has made a loan to _____ in the principal amount of $ _____ as evidenced by a note(s) dated _____. The United States of America, acting through Farmers Home Administration (FmHA) entered into a Loan Note Guarantee—Disaster Assistance for Rural Business Enterprise Guaranteed Loans (Form FmHA 1980–72) with the Lender applicable to such loan to guarantee the loan not to exceed _____ % of the amount of the principal advanced and any interest (including any loan subsidy) due thereon as provided therein. Under the Disaster Assistance and Rural Business Enterprise Guaranteed Loan program, the maximum cumulative payment to the holder(s) of the guaranteed portion of the loan is limited to $2,500,000 or 90% of principal and interest, whichever is less.

_____ of _____

(Holder) desires to purchase from Lender _____ % of the guaranteed portion of such loan. Copies of Borrower's note(s) and the Loan Note Guarantee—Disaster Assistance for Rural Business Enterprises are attached hereto as a part hereof.

Now, Therefore, the Parties Agree:

1. The principal amount of the loan now outstanding is $ _____. Lender hereby assigns to Holder _____ % of the guaranteed portion of the loan representing $ _____ of such loan now outstanding in accordance with all of the terms and conditions hereinafter set forth. The Lender and FmHA certify to the Holder that the Lender has paid and FmHA has received the Guarantee Fee in exchange for the issuance of the Loan Note Guarantee—Disaster Assistance for Rural Business Enterprises.

2. Loan Servicing. The Lender will be responsible for servicing the entire loan and will remain mortgagee and/or secured party of record. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan.

The Lender will receive all payments on account of principal of, or interest (including any loan subsidy) on, the entire loan and shall promptly remit to the Holder its pro rata share thereof determined according to their respective interests in the loan, less only Lender's servicing fee. For loans covered by 7 CFR Part 1980, Subpart H, the Holder may designate the payee when an Individual Certificate is issued.

3. Servicing Fee. Holder agrees that Lender will retain a servicing fee of _____ percent per annum of the unpaid balance of the guaranteed portion of the loan assigned hereunder.

4. Purchase by Holder. The guaranteed portion purchased by the Holder will always be a portion of the loan which is guaranteed. The Holder will hereby succeed to all rights of the Lender under the Loan Note Guarantee—Disaster Assistance for Rural Business Enterprises to the extent of the assigned portion of the loan. The Lender, however, will remain bound by all the obligations under the Loan Note Guarantee—Disaster Assistance for Rural Business Enterprises and the program regulations found in the applicable Subpart of 7 CFR 1980 now in effect and future FmHA program regulations not inconsistent with the provisions hereof.

5. Full Faith and Credit. The Loan Note Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the Holder has actual knowledge at the time of this assignment, or which it participates in or condones. A note which provides for the payment of interest on interest shall not be guaranteed. Any Assignment Guarantee Agreement Disaster Assistance for Rural Business Enterprises attached to or relating to a note which provides for payment of interest on interest is void.

6. Rights and Liabilities. The guarantee and right to require purchase will be directly enforceable by Holder notwithstanding any fraud or misrepresentations by Lender or any unenforceability of the Loan Note Guarantee—Disaster Assistance for Rural Business Enterprises by Lender. Nothing contained herein shall constitute any waiver by FmHA of any rights it possesses against the Lender, and the Lender agrees that Lender will be liable and will promptly reimburse FmHA for any payment made by FmHA to Holder which, if such Lender had held the guaranteed portion of the loan, FmHA would not be required to make. The Holder(s) upon written notice to the Lender may resell the unpaid balance of the guaranteed portion of the loan assigned hereunder. An endorsement may be added to the Form FmHA 1980–73 to effectuate the transfer.

Public reporting burden for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0575–0029), Washington, D.C. 20503.

7. Repurchase by the Lender (Defaults). The Lender has the option to repurchase the unpaid guaranteed portion of the loan from the Holder(s) within 30 days of written demand by the Holder(s) when (a) the borrower is in default not less than 60 days on principal or interest due on the loan or (b) the Lender has failed to remit to the Holder(s) its pro rata share of any payment made by the borrower or any loan subsidy within 30 days of its receipt thereof. The repurchase by the Lender will be for an amount equal to the unpaid guaranteed portion of principal and accrued interest (including any loan subsidy), less the Lender's servicing fee. The loan note guarantee will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of the demand letter to the lender requesting the repurchase. Holder(s) will concurrently send a copy of demand to FmHA. The Lender will accept an assignment without recourse from the Holder(s) upon repurchase. The Lender is encouraged to repurchase the loan to facilitate the accounting for funds, resolve the problem, and to permit the borrower to cure the default, where reasonable. The Lender will notify the Holder(s) and FmHA of its decision.

8. Purchase by FmHA. If Lender does not repurchase as provided by paragraph 7, FmHA will purchase from Holder the unpaid principal balance of the guaranteed portion together with accrued interest (including any loan subsidy) to date of repurchase, less Lender's servicing fee, within 30 days after

written demand to FmHA from the Holder. The Loan Note Guarantee—Disaster Assistance for Rural Business Enterprises will not cover the note interest to the Holder on the guaranteed loans accruing after 90 days from the date of the original demand letter of the holder to the lender requesting the repurchase. Such demand will include a copy of the written demand made upon the Lender. The Holder(s) or its duly authorized agent will also include evidence of its right to require payment from FmHA. Such evidence will consist of either the original of the Loan Note Guarantee—Disaster Assistance for Rural Business Enterprises properly endorsed to FmHA or the original of the Assignment Guarantee Agreement Disaster Assistance for Rural Business Enterprises properly assigned to FmHA without recourse including all rights, title, and interest in the loan. FmHA will be subrogated to all rights of Holder(s). The Holder will include in its demand the amount due including unpaid principal, unpaid interest (including any loan subsidy) to date of demand and interest (including any loan subsidy) subsequently accruing from date of demand to proposed payment date. Unless otherwise agreed to by FmHA, such proposed payment will not be later than 30 days from the date of demand.

The FmHA will promptly notify the Lender of its receipt of the Holder(s)'s demand for payment. The Lender will promptly provide the FmHA with the information necessary for FmHA's determination of the appropriate amount due the Holder(s). Any discrepancy between the amount claimed by the Holder(s) and the information submitted by the Lender must be resolved before payment will be approved. FmHA will notify both parties who must resolve the conflict before payment will be approved. Such a conflict will suspend the running of the 30 day payment requirement. Upon receipt of the appropriate information, FmHA will review the demand and submit it to the State Director for verification. After reviewing the demand the State Director will transmit the request to the FmHA Finance Office for issuance of the appropriate check. Upon issuance, the Finance Office will notify the office servicing the borrower and the State Director and remit the check(s) to the Holder(s).

9. Lender's Obligations. Lender consents to the purchase by FmHA and agrees to furnish on request by FmHA a current statement certified by an appropriate authorized officer of the Lender of the unpaid principal and interest then owed by Borrowers on the loan and the amount then owed to any Holder(s). Lender agrees that any purchase by FmHA does not change, alter or modify any of the Lender's obligations to FmHA arising from said loan or guarantee nor does it waive any of FmHA's right against Lender, and that FmHA shall have the right to set-off against Lender all rights inuring to FmHA as the Holder of this instrument against FmHA's obligation to Lender under the Loan Note Guarantee—Disaster Assistance for Rural Business Enterprises.

10. Repurchase by Lender for Servicing. If, in the opinion of the Lender, repurchase of the assigned portion of the loan is necessary to adequately service the loan, the Holder will sell the assigned portion of the loan to the Lender for an amount equal to the unpaid principal and interest (including any loan subsidy) on such portion less Lender's servicing fee. The loan note guarantee will not cover the note interest to the Holder on the guaranteed loans accruing after 90 days from the date of the demand letter of the lender or FmHA to the Holder(s) requesting the Holder(s) to tender their guaranteed portion(s).

a. The Lender will not repurchase from the Holder(s) for arbitrage purpose or other purposes to further its own financial gain.

b. Any repurchase will only be made after the Lender obtains FmHA written approval.

c. If the Lender does not repurchase the portion from the Holder(s), FmHA at its option may purchase such guaranteed portions for servicing purposes.

11. Foreclosure. The parties owning the guaranteed portions and unguaranteed portion of the loan will join to institute foreclosure action, or in lieu of foreclosure, take a deed of conveyance to such parties.

12. Reassignment. Holder upon written notice to Lender and FmHA may reassign the unpaid guaranteed portion of the loan sold hereunder. Upon such notification, the assignee will succeed to all rights and obligations of the Holder hereunder.

13. Notices. All notices and actions will be initiated through the FmHA _____ for _____ (state) with mailing address at the date of this assignment: _____

Dated this _____ day of _____, 19____.

_____ Attest: *(SEAL)*

Lender:
Address:
By _____
Title _____

Holder:
Address:

_____ Attest: *(SEAL)*

By _____
Title _____

United States of America
Farmers Home Administration
Address: _____

By _____
Title _____

Dated: October 10, 1989.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 89–24537 Filed 10–16–89; 8:45 am]

BILLING CODE 3410–07–M

7 CFR Part 2003

Authority To Administer Disaster Assistance for Rural Business Enterprises; Guaranteed Loans

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations to designate the Assistant Administrator-Community and Business Programs as the official within the organization of Farmers Home Administration responsible for administration of Disaster Assistance for Rural Business Enterprises (DARBE) Guaranteed Loans made available in section 401 of the Disaster Assistance Act of 1989 (Pub. L. 101–82) and to further designate the Business and Industry Division as the division responsible for overseeing the making and servicing of DARBE guaranteed loans. Authority to administer these loan guarantees has been delegated by the Secretary of Agriculture to the Under Secretary for Small Community and Rural Development and redelegated to the Administrator of Farmers Home Administration.

EFFECTIVE DATE: October 17, 1989.

FOR FURTHER INFORMATION CONTACT: Beverly I. Craver, Loan Specialist, Farmers Home Administration, USDA, Room 6321–S, 14th and Independence Ave., SW., Washington, DC 20250, telephone (202) 475–3805.

SUPPLEMENTARY INFORMATION: Farmers Home Administration responsibility for administration of guarantees of loans to rural business entities to further rural development and to save and create jobs in rural areas has been located in the Assistant Administrator-Community and Business Programs. The Administrator, FmHA, having been delegated responsibility for the guarantee of loans to rural business entities for disaster relief (Disaster Assistance for Rural Business Enterprises Guaranteed Loans), locates that authority in the Assistant Administrator-Community and Business Programs and, within his functional area, in the Business and Industry Division.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comments is not required, and this rule may be made effective less than 30 days after publication in the Federal Register. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Finally, this action is not a rule as defined by the Regulatory Flexibility Act and thus is exempt from the provisions of that Act.

Environmental Impact Statement

This document has been reviewed according to 7 CFR part 1940, subpart G, "Environmental Program." It is the

determination of FmHA that this action does not constitute a major federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Intergovernmental Review

The Business and Industry program/activity is listed in the Catalog of Federal Domestic Assistance under number 10.422. The Business and Industry program is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, 48 FR 29112, June 24, 1983).

List of Subjects in 7 CFR Part 2003

Organization and functions (government agencies).

Accordingly, part 2003, title 7, Code of Federal Regulations, is amended as follows:

PART 2003—ORGANIZATION

1. The authority citation for part 2003 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; Public Law 100–82, 7 CFR 2.83 and 2.70.

Subpart A—Functional Organization of the Farmers Home Administration

2. Exhibit A to subpart A of part 2003 is amended by revising paragraph 1 under item "07 02 03 0003 Business and Industry Division" to read as follows:

Exhibit A—Department of Agriculture, Farmers Home Administration

* * * * *

07 02 03 0003 Business and Industry Division

* * * * *

1. Implements current and long range plans, policies and procedures necessary for the efficient and orderly management of a nationwide program of business and industry loans and grants, including a program of guaranteed loans to assist rural business entities adversely impacted by certain natural disasters.

* * * * *

Dated: October 3, 1989.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 89–24538 Filed 10–16–89; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89–CE–11–AD; Amdt. 39–6357]

Airworthiness Directives; Beech 90, 200 and 300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Beech 90, 200 and 300 Series airplanes, which requires a determination if Scotch foam was installed in either aileron at manufacture and, if present, removal of the Scotch foam. This action is necessary to preclude possible aileron flutter due to the foam absorbing water which, in turn, could create an unstable aileron balance condition.

EFFECTIVE DATE: November 17, 1989.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD.

ADDRESSES: Beech Service Bulletin No. 2256, dated November 1988, applicable to this AD may be obtained from the Beech Aircraft Corporation, Commercial Services, Department 52, P.O. Box 85, Wichita, Kansas 67201–0085. This information may also be examined at the Rules Docket, FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Don Campbell, Aerospace Engineer, Airframe Branch, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Wichita, Kansas 67209; Telephone (316) 946–4409.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD requiring inspection for, and removal of Scotch foam from the ailerons on certain Beech 90, 200 and 300 Series airplanes was published in the **Federal Register** on July 26, 1989 (54 FR 31049). The proposal resulted from the determination that Scotch foam, which was used in the manufacture of ailerons on certain Beech 90, 200, and 300 Series airplanes, could absorb moisture to an extent that aileron balance would be driven out of acceptable limits. As a result, Beech issued Service Bulletin No. 2256 in November 1988, which calls for removal of Scotch foam from certain serial numbers of the affected models. The Service Bulletin also advises that any ailerons purchased from Beech for these models between January 1, 1985, and March 11, 1988, may have Scotch foam installed.

By letter dated March 14, 1989, to the FAA, Beech supplied analytical data which shows the effects of aileron static balance on flutter speed. The data shows that if an aileron is balanced to its aft limit, then a small amount of weight aft of the hinge line can cause an unsafe condition. The Scotch foam, which is located aft of the hinge line, can provide this weight change by absorbing water. The flutter analysis data indicate 2.0 ounces of water distributed aft of the hinge line could deplete the available flutter margin. This is not free water, but water trapped in the Scotch foam. Although no instances of aileron flutter on affected airplanes have been reported, the potential for such a condition has been predicted analytically. Therefore, an AD was proposed to require removal of Scotch foam from ailerons wherever found.

Interested persons have been afforded an opportunity to comment on the proposal. No comments or objections were received on the proposal or the FAA determination of the related cost to the public. Accordingly, the proposal is adopted without change, except for minor editorial corrections.

The FAA has determined that this regulation only involves 183 airplanes at an approximate one-time cost of $360 or a total one-time fleet cost of $65,580. The cost is so small that compliance with the AD will not have a significant financial impact on any small entities owning affected airplanes.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Therefore, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location

provided under the caption "ADDRESSES".

List of Subjects in 14 CFR 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of part 39 of the FAR as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new AD:

Beech: Applies to 90, 200 and 300 Series airplanes (all serial numbers) certificated in any category.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent possible aileron flutter, accomplish the following:

(a) For Models C90A (S/N LJ–1132) through LJ–1167), B200 (S/N BB–1246 through BB–1285 except BB–1272), 300 (S/N FA–91 through FA–140 except FA–120 and FA–128), A200CT (S/N BP–59 through BP–63), and B200C (S/N BP–64 through BP–66 and BV–1 through BV–8), inspect each aileron using the tap procedure in Beech Service Bulletin No. 2256, dated November 1988. If this inspection shows the presence of foam, prior to further flight remove the foam in accordance with the procedures in the above Service Bulletin.

(b) For all other affected airplanes, check the airplane records to determine if any aileron has been replaced for any reason subsequent to January 1, 1985. If so, inspect the aileron using the tap procedure in Beech Service Bulletin No. 2256. If this inspection shows the presence of foam, prior to further flight remove the foam in accordance with the procedures in the above Service Bulletin.

Note 1: If the applicability of paragraph (b) is uncertain, perform a "tap test" on each area between the rivet rows along the aft 8.0 inches of the aileron skins. Use care in tapping to reduce the possibility of chipping the paint.

(1) A tinny, hollow sound indicates an acceptable area.

(2) A solid, heavy sound indicates that Scotch foam is present and must be removed.

(c) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(d) An alternate method of compliance or adjustment of the compliance time, which provides an equivalent level of safety, may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209; Telephone (316) 946–4400.

Note 2: The request should be forwarded through an FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

All persons affected by this directive may obtain copies of the document referred to herein upon request to the Beech Aircraft Corporation, Commercial Service, Department 52, Wichita, KS 67201–0085; or may examine these documents at the FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on November 17, 1989.

Issued in Kansas City, Missouri, on October 4, 1989.

J. Robert Ball,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–24407 Filed 10–16–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 89–AEA–07]

Alteration of Control Zone; Elmira, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action reduces that amount of controlled airspace required to contain instrument approaches to the Elmira/Corning Regional Airport (formerly known as the Chemung County Airport), Elmira, New York. In addition, the control zone description is being updated to reflect the current airport name. This action reduces the amount of controlled airspace for the Elmira, NY Control Zone.

EFFECTIVE DATE: 0901 u.t.c. January 11, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Airspace Specialist, System Management Branch, AEA–530, Federal Aviation Administration, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 917–0857.

SUPPLEMENTARY INFORMATION:

History

On July 7, 1989, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the control zone established at the Elmira/Corning Regional Airport, Elmira, New York (54 FR 31696). The proposed action would eliminate that amount of airspace which was required to accommodate Standard Instrument Approach Procedures (SIAP's) to a runway which has been closed at the airport and is no longer available for use.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received. Section 71.171 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6E, January 3, 1989.

The Rule

This amendment to part 71 of the Federal Aviation Regulations amends the Elmira, New York, Control Zone by reducing the amount of airspace to that which is needed to contain SIAP's currently in use at the Elmira/Corning Regional Airport. In addition, the airport name is being updated.

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

List of Subjects In 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Elmira, NY [Amended]

Change "Chemung County Airport" to read "Elmira/Corning Regional Airport";

Delete section which reads as follows: "within 2 miles each side of the centerline of Runway 19 extended southerly from the 5-mile radius zone for 2 miles".

Issued in Jamaica, New York, on September 27, 1989.

John D. Canoles,

Manager, Air Traffic Division.

[FR Doc. 89-24409 Filed 10-16-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 89-AEA-10]

Alteration of Control Zone; Morristown, NJ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the description of the Morristown, NJ, Control Zone. This action is necessary due to the cancellation of Standard Instrument Approach Procedures (SIAP's) to the Morristown Municipal Airport, Morristown, NJ, and to adjust the amount of controlled airspace required to contain arriving and departing flights from the surface to 1,000 feet above ground level.

EFFECTIVE DATE: 0901 u.t.c. January 11, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Airspace Specialist, System Management Branch, AEA-530, Federal Aviation Administration, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 917-0857.

SUPPLEMENTARY INFORMATION:

History

On July 18, 1989, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the control zone at the Morristown Municipal Airport, Morristown, NJ (54 FR 31699). The proposed action would adjust the Morristown, NJ, Control Zone to reflect that amount of controlled airspace necessary to contain arriving and departing flights at the airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received. Section 71.171 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6E, January 3, 1989.

The Rule

This amendment to part 71 of the Federal Aviation Regulations amends the Morristown, NJ, Control Zone to reflect the amount of controlled airspace required to contain arriving and departing flights at the Morristown Municipal Airport, Morristown, NJ from the surface to 1,000 feet above ground level.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Morristown, NJ [Revised]

That airspace within a 5-mile radius of the center, lat. 40°47'57" N., long. 74°24'55" W., of Morristown Municipal Airport, Morristown, NJ. This control zone is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be published continuously in the Airport/Facility Directory.

Issued in Jamaica, New York, on September 27, 1989.

John D. Canoles,

Manager, Air Traffic Division.

[FR Doc. 89-24410 Filed 10-16-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 71 and 73

[Airspace Docket No. 89-ASW-17]

Revision of Restricted Areas R-5601A, B, C, D, and E; Fort Sill, Oklahoma; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the boundaries of R-5601A and R-5601B, Fort Sill, OK. In the airspace descriptions, Interstate Highway 44 was incorrectly listed as Interstate Highway 40. This action corrects that error.

EFFECTIVE DATE: 0901 u.t.c., November 16, 1989.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Military Operations Branch (ATO-140), Operations Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-7686.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 89-22047, published on September 19, 1989, revised Restricted Areas R-5601A, B, C, D, and E in the vicinity of Fort Sill, OK. In the airspace descriptions, Interstate Highway 44 was incorrectly listed as Interstate Highway 40. This action corrects that error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, **Federal Register** Document 89-22047, as published in the **Federal Register** on September 19, 1989, (54 FR 38511) is corrected by removing the words "Interstate Highway 40" and substituting the words "Interstate Highway 44" in the descriptions of R-5601A and R-5601B Fort Sill, OK.

Issued in Washington, DC, on October 11, 1989.

Richard Huff,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-24411 Filed 10-16-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 772

[Docket No. 90762-9162]

Procedures for Duplicate License Requests

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration (BXA) maintains a procedure for requesting duplicate export licenses (BXA-622P) if an export license is lost or destroyed. BXA is amending the duplicate license procedures in § 772.10 of the Export Administration Regulations to reflect that exporters need not submit information regarding quantity and value of commodities shipped under the original license when requesting a duplicate license. This procedure provides specific guidance and establishes a procedure on how to submit a duplicate license request.

EFFECTIVE DATE: This rule is effective December 18, 1989.

FOR FURTHER INFORMATION CONTACT: Chuck Guernieri, Exporter Assistance Staff, Office of Export Licensing, U.S. Department of Commerce, Washington, DC 20230 (Telephone: (202) 377-4811).

Rulemaking Requirements

This rule is consistent with Executive Orders 12291 and 12661.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act ((APA) 5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule also is exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Comments should be submitted to Patricia Muldonian, Office of Technology and Policy Analysis, Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by Section 553 of the Administrative Procedure Act (5 U.S.C. § 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule contains a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694-0031. Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Administration, Bureau of Export Administration, Room 3889, Department of Commerce, Washington, DC 20230, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: Paperwork Reduction Project—0694-0031.

List of Subjects in 15 CFR Part 772

Administrative practice and procedure, Exports.

Accordingly, the Export Administration Regulations (15 CFR parts 730-799) are amended as follows:

PART 772—[AMENDED]

1. The authority citation for 15 CFR part 772 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503, (50 U.S.C. App. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981 and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 13, 1985) and Pub. L. 100-418 of August 23, 1988; Pub. L. 95-223, (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); E.O. 12571, October 27, 1986 (51 39505, October 29, 1986).

2. Section 772.10 is revised to read as follows:

§ 772.10 Duplicate license.

(a) If a license is lost or destroyed, the licensee may obtain a duplicate of the license by submitting a letter to the Office of Export Licensing at the address listed in § 772.4(i) certifying:

(1) That the original license assigned Export License Number ____ issued to (name and address of licensee) has been lost or destroyed;

(2) The circumstances under which it was lost or destroyed;

(3) If the original license is found, the licensee will return either the original or duplicate license to the Office of Export Licensing.

(b) If shipment was made against the original license, those shipments must be counted against what may be shipped under the duplicate license.

(c) Any person to whom a duplicate license has been issued shall retain the duplicate license and maintain complete records in accordance with §§ 786.2(d) and 787.13, including any duplicate licenses (whether used or unused, valid or expired) and all supporting documents and shipping records. The Office of Export Licensing may require submission of such records upon notification.

(Approved by the Office of Management and Budget under control number 0694-0031)

Dated: October 11, 1989.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 89-24365 Filed 10-16-89; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF STATE

22 CFR Parts 120, 122, 123, 126

[Public Notice 1137]

RIN 1400-AA23

International Traffic in Arms Regulations (ITAR)

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This final rule makes certain administrative changes that enhance and clarify the regulations implementing section 38 of the Arms Export Control Act (the Act), which govern the export of defense articles and services. The final rule also makes some technical corrections to the regulatory amendments that were promulgated on April 4, 1988 (53 FR 11494).

EFFECTIVE DATE: October 17, 1989.

FOR FURTHER INFORMATION CONTACT: Clyde G. Bryant, Chief, Compliance Analysis Division, Office of Munitions Control, Department of State (202-875-6650).

SUPPLEMENTARY INFORMATION: This final rule makes some administrative changes to the International Traffic in

Arms Regulations (ITAR), 22 CFR parts 120–130, which implement section 38 of the Arms Export Control Act (the Act), 22 U.S.C. 2778 and govern the export of defense articles and defense services. It also makes certain technical corrections to the regulatory amendments that were promulgated on April 4, 1988 (53 FR 11494).

One important change is the extension of the validity of new export licenses from two to three years. This change does not affect existing licenses, but should eliminate unnecessary delays in the future by allowing exporters to renew licenses less frequently. This measure would also reduce the caseload of the Office of Munitions Control (OMC) in a manner that is fully consistent with U.S. security and foreign policy interests. As a result of this change, additional OMC resources can be devoted to increasing the level of scrutiny of certain license applications. The availability of additional resources should also result in more efficient review of many license applications.

Another change makes it clear that the Director of OMC has designated the Director of the Diplomatic Security Service, or his designee, as authorized to inspect and to copy records maintained by persons registered with OMC. Because of the increasing role being played by the Director of the Diplomatic Security Service in conducting pre-license and post-shipment verification checks, it is important that registrants be aware that designated personnel have the authority to inspect and to copy records concerning the manufacture, acquisition and disposition of defense articles and the provision of defense services.

A third change clarifies that the prohibition against permitting foreign persons to apply for export licenses and most other approvals does not extend to approvals to resell or transfer defense articles. Under § 123.9, the approval of OMC is required before such articles can be resold or retransferred to any country other than the country of end-use stated on the export license. A related change makes it clear that only U.S. persons may sign applications for export licenses and other approvals (excluding the retransfer approval discussed above). This requirement extends to the statements regarding eligibility that must accompany each application, approval and notification.

The remaining amendments are also technical or administrative in nature.

These amendments deal with a foreign affairs function of the United States and are thus excluded from the major rule procedures of Executive Order 12291 (46 FR 13193) and the procedures of 5 U.S.C. 553 and 554. The basic regulations that are amended by this final rule were the subject of public comment because of the desirability of obtaining public views. Because of the desire to increase the term of new export licenses from two to three years as soon as possible, and because the other changes are administrative or technical in nature, these amendments are being published as a final rule.

List of Subjects in 22 CFR Parts 120, 122, 123 and 126

Arms and munitions, Exports.

Accordingly, for the reasons set forth in the preamble, title 22, chapter I, subchapter M, (consisting of parts 120 through 130) of the Code of Federal Regulations, is amended as set forth below:

PART 120—PURPOSE, BACKGROUND AND DEFINITIONS

1. The authority citation for part 120 continues to read as follows:

Authority: Sec. 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658.

2. In § 120.1, revise paragraph (b) to read as follows:

§ 120.1 General.

* * * * *

(b) *Eligibility.* Licenses or other approvals (other than approvals obtained pursuant to § 123.9 of this subchapter) may be granted only to U.S. persons (as defined in § 120.23) and foreign governmental entities in the United States. Foreign persons (as defined in § 120.11) other than governments are not eligible. U.S. persons who have been convicted of violating the U.S. criminal statutes enumerated in § 120.24, or who have been debarred pursuant to part 127 of this subchapter, are also generally ineligible (*see* § 127.6(c) of this subchapter). Applications for licenses or requests for other approvals will generally be considered only if the applicant has registered with the Office of Munitions Control pursuant to part 122 of this subchapter. All applications and requests for approval must be signed by a responsible official who is a U.S. person and who has been empowered by the registrant to sign such documents.

3. In § 120.24, paragraph (e) is revised to read as follows:

§ 120.24 U.S. criminal statutes.

* * * * *

(e) Section 206 of the International Emergency Economic Powers Act (relating to foreign assets controls; 50 U.S.C. 1705);

* * * * *

PART 122—REGISTRATION OF MANUFACTURERS AND EXPORTERS

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

Authority: Sec. 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658.

5. In § 122.2, paragraph (a) is revised to read as follows:

§ 122.2 Submission of registration statement.

(a) *General.* The Department of State Form DSP–9 (Registration Statement) and the transmittal letter required by paragraph (b) of this subsection must be submitted by an intended registrant with a payment by check or money order payable to the Department of State of one of the fees prescribed in § 122.3(a) of this subchapter. The Registration Statement and transmittal letter must be signed by a senior officer who has been empowered by the intended registrant to sign such documents. The intended registrant shall also submit documentation that demonstrates that it is incorporated or otherwise authorized to do business in the United States. The Office of Munitions Control will return to sender any Registration Statement that is incomplete, or that is not accompanied by the required letter or payment of the proper registration fee.

* * * * *

6. In § 122.4, the last sentence of paragraph (b) is revised to read as follows:

§ 122.4 Notification of changes in information furnished by registrants.

* * * * *

(b) * * * Such notice provides the Office of Munitions Control with the information necessary to determine whether the authority of section 38(g)(6) of the Arms Export Control Act regarding licenses or other approvals for certain sales or transfers (as opposed to exports) of articles or data should be invoked (*see* § 126.1(f) of this subchapter).

7. In § 122.5, paragraph (b) is revised to read:

§ 122.5 Maintenance of records by registrants.

* * * * *

(b) Records maintained under this section shall be available at all times for inspection and copying by the Director, Office of Munitions Control or a person designated by the Director (the Director

of the Diplomatic Security Service or a person designated by the Director of the Diplomatic Security Service or another designee), or the Commissioner of the U.S. Customs Service or a person designated by the Commissioner.

PART 123—LICENSES FOR THE EXPORT OF DEFENSE ARTICLES

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

Authority: Sec. 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11938, 42 FR 4311; 22 U.S.C. 2658.

9. In § 123.23, revise paragraph (a) to read:

§ 123.23 Renewal and disposition of licenses.

(a) A license is valid for a period of three years. The license expires if the defense articles described in the license are not shipped within the three-year period.

* * * * *

PART 126—GENERAL POLICIES AND PROVISIONS

10. The authority citation for part 126 continues to read as follows:

Authority: Sec. 38, Sec. 42, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778, 2780); E.O. 11958, 42 FR 4311, E.O. 11322, 32 FR 119; 22 U.S.C. 2658; Sec. 317, Comprehensive Anti-Apartheid Act of 1986 (22 U.S.C. 5067); E.O. 12571, 51 FR 39505.

11. In § 126.13, the introductory text of paragraph (a) and paragraph (a)(4) are revised to read as follows:

§ 126.13 Required information.

(a) Pending revisions to the application forms, all applications for licenses (DSP–5, DSP–61, DSP–73, and DSP–85), all requests for approval of agreements and amendments thereto under part 124, all requests for other written authorizations, and all 30-day prior notifications of sales of significant military equipment under § 126.8(c) must include a letter signed by a responsible official empowered by the applicant and addressed to the Director, Office of Munitions Control, stating whether:

* * * * *

(4) The natural person signing the application or other request for approval, or notification (including the statement required by this subsection) is a citizen of the United States, has been lawfully admitted to the United States for permanent residence (and maintains such a residence) under the Immigration and Nationality Act (8 U.S.C. 1101(a), § 101(a) 20, 60 Stat. 163), or is an official of a foreign governmental entity in the United States.

* * * * *

Dated: October 3, 1989.

Reginald Bartholomew,

Under Secretary for Security Assistance, Science and Technology.

[FR Doc. 89–24367 Filed 10–16–89; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S–012A]

RIN 1218–AA53

Control of Hazardous Energy Sources (Lockout/Tagout)

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule; approval of information collection requirements.

SUMMARY: This notice announces that the information collection requirements in OSHA's final rule on Control of Hazardous Energy Sources, 29 CFR 1910.147, which was published on September 1, 1989 (54 FR 36644), have been approved by the Office of Management and Budget through September 30, 1992, and have been assigned OMB Control Number 1218–0150. These requirements become effectve October 31, 1989.

DATES: Paragraphs (c)(4), (c)(9), and (f)(2) of 29 CFR 1910.147 shall become effective October 31, 1989. The information collection requirements are approved through September 30, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Occupational Safety and Health Administration, Room N3649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

SUPPLEMENTARY INFORMATION: On September 1, 1989 (54 FR 36644), OSHA issued its final rule on Control of Hazardous Energy Sources (Lockout/Tagout), 29 CFR 1910.147, which is to become effective October 31, 1989. When the final rule was published, the Agency noted that the information collection requirements contained in the final rule were to be submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act. Paragraphs (c)(4), (c)(9), and (f)(2) of the final rule, which contain information collection requirements, were not to become effective until they had been approved by OMB. (The final rule erroneously referred to paragraph (c)(7) as having paperwork requirements. The correct citation should have referred to paragraph (c)(9)).

The above requirements have now been approved by OMB through September 30, 1992, and have been assigned OMB Control Number 1218–0150. Accordingly, these requirements will become effective at the same time as the other provisions of the final rule—October 31, 1989.

Public reporting burden for the collections of information contained in the final rule is estimated to average 4.18 hours per response, including the time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Information Management, Department of Labor, Room N–1301, 200 Constitution Avenue NW., Washington, DC 20210; and to the Office of Management and Budget, Paperwork Reduction Project (1218–0150), Washington, DC 20503.

This document was prepared under the direction of Gerard F. Scannell, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Accordingly, pursuant to sections 4, 6(b), 8(c) and 8(g) of the Occupational Safety and Health Act (29 U.S.C. 653, 655, 657), Secretary of Labor's Order No. 9–83 (48 FR 35736), and 29 CFR part 1911, 29 CFR part 1910 is amended as set forth below.

Signed at Washington, DC, this 12th day of October, 1989.

Gerard F. Scannell,

Assistant Secretary of Labor.

29 CFR part 1910 is amended as follows:

PART 1910—[AMENDED]

1. The authority citation for subpart J of part 1910 continues to read as follows:

Authority: Secs. 4, 6, and 8, Occupational Safety and Health Act of 1970, 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable.

Sections 1910.141, 1910.142, and 1910.147 also issued under 29 CFR Part 1911.

§ 1910.147 [Amended]

2. A parenthetical is added at the end of the regulatory text in § 1910.147,

between paragraph (f)(4) and the introductory note to the nonmandatory appendix, to read as follows: "(The information collection requirements contained in this section are approved by the Office of Management and Budget (OMB) and listed under OMB control number 1218–0150.)"

[FR Doc. 89–24467 Filed 10–16–89; 8:45 am]
BILLING CODE 4510–26–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–89–49]

Special Local Regulations for Marine Events; Trump Castle World Championships; Atlantic Ocean, Off Atlantic City, NJ

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are adopted for the Trump Castle World Championships to be held off the southern New Jersey coast between Margate City at Great Egg Harbor Inlet and Brigantine Shoal on October 17, 19, and 21, 1989. These special local regulations are necessary to control vessel traffic in the immediate vicinity of this event. The effect will be to restrict general navigation in the regulated area for the safety of spectators and participants.

EFFECTIVE DATES: The regulations are effective for the following periods:

8:00 a.m. to 3:30 p.m., October 17, 1989.
6:30 a.m. to 3:30 p.m., October 19, 1989.
6:30 a.m. to 3:30 p.m., October 21, 1989.

FOR FURTHER INFORMATION CONTACT: QM1 Kevin R. Connors, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, (804) 398–6204.

SUPPLEMENTARY INFORMATION: The Coast Guard published a notice of proposed rulemaking concerning these regulations in the **Federal Register** on August 8, 1989 (54 FR 32453). Interested persons were requested to submit comments. No comments were received in response to the notice of proposed rulemaking.

Drafting Information

The drafters of this notice are Mr. Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Fifth Coast Guard District, and Captain Michael K. Cain, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Proposed Regulations

The New York Offshore Powerboat Racing Association will sponsor this year's Trump Castle World Championships. The race will consist of between 100 to 150 powerboats, from 24 to 50 feet in length, racing approximately 150 nautical miles over a 30 nautical mile course. This year's event will be a three-day event instead of the one-day event held last year. Race headquarters will be located in Trump Castle, Atlantic City, New Jersey. Coast Guard patrol vessels will be positioned at Great Egg and Absecon Inlets to direct vessels to temporary spectator anchorages and to instruct transiting vessels on how to proceed safely around the race course.

The sponsor will provide committee boats to lead the race vessels in a procession to and from the race course. The sponsor also will provide more than 70 vessels to assist the Coast Guard and local government agencies in patrolling this event.

The race course has been altered slightly from the one used in 1988. It still remains a flattened, elongated triangle, but the course has been moved 200 yards farther seaward at the end nearest Great Egg Harbon Inlet. The change was made in order to relocate the Great Egg Harbor Inlet Spectator Anchorage Area between the shoreline at Ventnor City and the inshore leg of the race course.

Generally, the race course is the same as last year, extending along the New Jersey coastline from Great Egg Harbor Inlet to Brigantine Shoal Inner Buoy 4BS (LL 40), thence three nautical miles east, thence southwestward to Great Egg Harbor Inlet. The regulated area includes the waters of the Atlantic Ocean from the shoreline at Great Egg Harbor Inlet to the tank at Brigantine, New Jersey, and extends approximately 1000 yards beyond the outer leg of the race course, except where the course exceeds the three-mile territorial sea limit. The portion of the race course that exceeds the three-mile limit is not regulated by the Coast Guard. Nevertheless, vessel operators are advised to remain clear of the advisory area designated in § 2.(a)(2) of this rule. To provide for the safety of participants, spectators, and vessels transiting the area, the Coast Guard will restrict vessel movement in the regulated area and has established two temporary spectator anchorages (at Great Egg Harbor Inlet and Absecon Inlet) for what is expected to be a large spectator fleet.

In order to publicize these regulations, the Coast Guard will publish details in the Local Notice to Mariners and the **Federal Register**, and members of the Coast Guard Auxiliary will be present in the vicinity of the race site to inform vessel operators of these regulations and other applicable laws.

Economic Assessment and Certification

These regulations are not considered either major under Executive Order 12291 on Federal Regulation or significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this regulation is expected to be so minimal that a full regulatory evaluation is unnecessary. Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

Federalism Assessment

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

Environmental Impact

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

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulations

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

PART 100—[AMENDED]

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

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

2. A temporary § 100.35–0549 is added to read as follows:

§ 100.35–0549 Atlantic Ocean, New Jersey Seacoast, off Atlantic City, New Jersey.

(a) *Definitions*—(1) *Regulated area.* The waters of the Atlantic Ocean bounded by the shoreline and a line drawn across the outermost points of land on either side of Absecon Inlet, and by a line drawn from the shoreline at

Longport, New Jersey, at latitude 39°18.20' North, longitude 74°32.30' West; thence to latitude 39°17.80' N, longitude 74°31.65' W; thence northeastward to latitude 39°21.25' N, longitude 74°20.50' W; thence along the three-mile territorial sea limit to latitude 39°24.30' North, longitude 74°13.80' West; and thence to the shoreline at latitude 39°24.8' North, longitude 74°21.5' West.

(2) *Advisory area.* The waters of the Atlantic Ocean enclosed by lines connecting the following points:

Latitude	*Longitude*
39°21.25' N	74°20.50' W
39°23.30' N	74°13.80' W
39°24.15' N	74°13.60' W
39°24.35' N	74°16.65' W

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

(4) *Spectator Anchorage Areas*—(i) *Absecon Inlet Spectator Area.* The waters off the New Jersey seacoast bounded by a line connecting the following points:

Latitude	*Longitude*
39°22'24.0" N	74°24'00.0" W
39°22'00.0" N	74°23'43.0" W
39°22'25.0" N	74°22'54.0" W
39°22'48.0" N	74°23'12.0" W

(ii) *Great Egg Inlet Spectator Area.* The waters off the New Jersey seacoast bounded by a line connecting the following points:

Latitude	*Longitude*
39°18'48.0" N	74°31'18.0" W
39°18'42.0" N	74°31'12.0" W
39°21'00.0" N	74°26'24.0" W
39°21'06.0" N	74°26'30.0" W

(b) *Special Local Regulations.* (1) Except for participants in the Trump Castle World Championships and vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area without the permission of the Patrol Commander.

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

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

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

(3) Spectator vessels may anchor in the spectator anchorage areas specified in paragraphs (a)(4)(i) and (a)(4)(ii) of these regulations.

(4) The Coast Guard Patrol Commander may allow vessels to transit the regulated area whenever a race heat is not being run.

(5) Vessel operators are advised to remain clear of the advisory area during the effective periods of these regulations.

(c) *Effective periods:* The regulations are effective for the following periods:
8:00 a.m. to 3:30 p.m., October 17, 1989.
6:30 a.m. to 3:30 p.m., October 19, 1989.
6:30 a.m. to 3:30 p.m., October 21, 1989.

Dated: October 6, 1989.

P.A. Welling,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 89-24479 Filed 10-16-89; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900-AD82

Dependents' Education; Eligibility of Stepchildren

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: The stepchildren of a veteran whose children are eligible for dependents' educational assistance are also eligible for that assistance on the same basis as those children. Occasionally, while such a stepchild is receiving assistance, the veteran will separate from or divorce his or her spouse. The child in question then ceases to be eligible for dependents' educational assistance, because he or she is no longer the veteran's stepchild. These amended regulations state how the Department of Veterans Affairs (VA) will determine when to discontinue the child's assistance.

EFFECTIVE DATE: September 26, 1989.

FOR FURTHER INFORMATION CONTACT: William G. Susling, Jr. (225), Acting Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2092.

SUPPLEMENTARY INFORMATION: On pages 10377 and 10378 of the **Federal Register** of March 31, 1989, there was published notice of intent to amend part 21 in order to state when a child's educational assistance should be discontinued when that child ceases to be the stepchild of a veteran. Interested people were given 30 days to submit comments, suggestions or objections. VA received one letter from a university official containing a suggestion.

The letter writer noted that the proposed § 21.3041(d)(9) mentions the effect on a stepchild's eligibility of a veteran's separation from a spouse so that the child is no longer a member of the veteran's household. He suggested that this sentence refer only to the veteran's legal separation.

After careful consideration, VA has decided not to adopt this suggestion. When a veteran is estranged and residing apart from the parent of a child, so that the child is no longer a member of the veteran's household, the child is no longer eligible for dependent's educational assistance. This is true regardless of whether the separation qualifies as a legal separation in the State where the veteran is residing. Consequently, there is no need to include the language suggested by the commenter.

However, in reviewing the proposed regulation, VA noted that § 21.3041(d)(9) could be taken to imply that only the natural child of a veteran's spouse could qualify as that veteran's stepchild. Hence, the final regulation has been slightly modified to clarify that it also applies to a child who qualifies as the stepchild of a veteran through the veteran's marriage to the child's adoptive parent.

The Department of Veterans Affairs has determined that these amended regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs has certified that these amended regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the regulations affect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

(The Catalog of Federal Domestic Assistance numbers for the programs affected by these regulations are 64.111 and 64.117)

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: September 26, 1989.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR part 21, Vocational Rehabilitation and Education, is amended as follows:

PART 21—[AMENDED]

1. In § 21.3041, paragraph (d) introductory text is revised and paragraph (d)(9) is added to read as follows:

§ 21.3041 Periods of eligibility; child.

* * * * *

(d) *Modified ending date.* When one of the following occurs between ages 18 and 26, the ending date will be the eligible person's 26th birthday or 8 years from the date of happening specified in paragraphs (d) (1) to (7) of this section and 10 years in paragraph (d)(8); whichever is later. When paragraph (d)(9) is applicable, the ending date will be as stated in paragraph (d)(9). Where the ending date is subject to modification under more than one of paragraph (d) (3), (4), (5), (6) or (7) of this section, the more favorable date will apply. In no case will the modified ending date extend beyond the eligible person's 31st birthday.

(Authority: 38 U.S.C. 1712).

* * * * *

(9) The child may lose eligibility through ceasing to be the veteran's stepchild either because the veteran and the child's natural or adoptive parent divorce or because the veteran and the child's natural or adoptive parent separate and the child is no longer a member of the veteran's household. If this occurs, the ending date of the child's period of eligibility will be determined as follows:

(i) If the child ceases to be the veteran's stepchild while the child is not in training, the ending date of the child's eligibility shall be the date on which the child ceases to be the veteran's stepchild.

(ii) If the child ceases to be the veteran's stepchild while the child is in training in a school organized on a term, semester or quarter basis, the ending date of the child's eligibility will be the last date of the term, semester or quarter during which the child ceases to be the veteran's stepchild.

(iii) If the child ceases to be the veteran's stepchild while the child is in training in a school not organized on a term, semester or quarter basis, the ending date of the child's period of eligilibity will be the end of the course or 12 weeks from the date on which the child ceases to be the veteran's stepchild, whichever is earlier. See § 21.4135(z).

(Authority: 38 U.S.C. 101(4)(A), 1701).

2. In § 21.4135, paragraph (z) is added to read as follows:

§ 21.4135 Discontinuance dates.

* * * * *

(z) *Eligible child ceases to be a stepchild.* When an eligible child loses eligibility because he or she ceases to be the stepchild of the veteran, VA will discontinue the dependent's educational assistance allowance on the last day of the child's eligibiltiy as determiend by § 21.3041(d)(9).

(Authority: 38 U.S.C. 1701).

[FR Doc. 89-24491 Filed 10-16-89; 8:45 am]

BILLING CODE 8320-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Federal Insurance Administration

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are determined for the communities listed below.

The base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base (100-year) flood elevations for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated in the table below.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR part 67. An opportunity for the community or individuals to appeal proposed determinations to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for floodplain management in flood-prone areas in accordance with 44 CFR part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been prepared. It does not involve any collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. No appeal was made during the ninety-day period and the proposed base flood elevations have not been changed.

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
ALABAMA	
Marengo County (unincorporated areas) (FEMA Docket No. 6946)	
Chickasaw Bogue:	
At mouth	*81
About 1.1 miles upstream of State Highway 28	*90
Black Warrior River: Within county	*95
Tombigbee River:	
About 2000 feet downstream of confluence of Chickasaw Bogue	*81
At confluence of Black Warrior River	*95
Maps available for inspection at the County Courthouse, Linden, Alabama.	
CALIFORNIA	
Kern County (unincorporated areas) (FEMA Docket No. 6932)	
Caliente Creek:	
At confluence with Indian Creek	*2652
At confluence with Sand Canyon Creek	*2765
Just downstream of unnamed road connecting Rolling Oaks and Indian Spring Roads	*3089
Just downstream of Rolling Oaks Road	*3165
Approximately 1,300 feet upstream of Rolling Oaks Road	*3196
Indian Creek:	
Approximately 50 feet upstream of Caliente Creek Road	*2667
Just downstream of first intersection with Indian Creek Road	*2744
At intersection of Hog Canyon and Indian Creek Roads	*2770
Caliente Creek Tributary:	
At confluence with Caliente Creek	*2830
Approximately 1,400 feet downstream of County Road 5995	*2915
Approximately 140 feet upstream of County Road 5995	*2960
Weaver Creek:	
At confluence with Caliente Creek	*2859
Approximately 200 feet downstream of County Road 5995 Bridge	*3013
Horne Toad Hills Alluvial Fan:	
At intersection of Douglas Avenue and Koch Street	#1
Approximately 3,500 feet north of intersection of Koch Street and Arroyo Avenue	#2
At the intersection of Arroyo Avenue and Rosewood Boulevard	#3
Little Dixie Wash:	
Just upstream of Southern Pacific Railroad	*2513
Approximately 50 feet downstream of West Bowman Road	*2538
Approximately 4,300 feet upstream of West Bowman Road	*2566
Maps are available for review at the Kern County Planning Department, 1415 Truxton Avenue, Bakersfield, California.	
Newman (city), Stanislaus County (FEMA Docket No. 6956)	
Orestimba Creek:	
At intersection of San Joaquin Street, Inyo Avenue, and N Street	*86
At intersection of N and Tulare Streets	#2
At intersection of Fresno and P Streets	#1
Maps are available for review at the Public Works Department, Engineering Division, 1162 O Street, Newman, California.	
Patterson (city), Stanislaus County (FEMA Docket No. 6956)	
Salado Creek:	
Just upstream of Second Street (State Highway 33)	*97
Along Mary Jane Avenue	*98
At Ward Avenue	*102
At the upstream corporate limits	*108
Along Walnut Avenue, east of Hartley Street	#1
Maps are available for review at the Department of Public Works, 33 Del Puerto Avenue, Patterson, California.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
COLORADO	
Rio Blanco County (unincorporated areas), (FEMA Docket No. 6956)	
White River:	
Approximately 11,100 feet downstream of the confluence with Coal Mine Draw	*5181
Approximately 430 feet downstream of the White Avenue	*5202
Approximately 2,700 feet downstream of the confluence with Douglas Creek	*5218
Approximately 10,180 feet upstream of the confluence with Douglas Creek	*5234
Approximately 23,400 feet upstream of the confluence with Douglas Creek	*5250
Approximately 3,200 feet downstream of State Highway 13	*6116
Approximately 5,610 feet upstream of State Highway 13	*6143
Approximately 1,120 feet upstream of Unimproved Road	*6166
Approximately 6,550 feet upstream of Unimproved Road	*6184
Approximately 12,450 feet upstream of Unimproved Road	*6203
Coal Mine Draw:	
Approximately 570 feet upstream of confluence with White River	*5194
Approximately 4,070 feet downstream of Oil Road	*5243
Approximately 60 feet upstream of Oil Road	*5306
Approximately 1,725 feet upstream of Oil Road	*5336
Approximately 660 feet downstream of Unnamed Road located 3,230 feet upstream of Oil Road	*5337
Approximately 1,580 feet upstream of Unnamed Road located 3,230 feet upstream of Oil Road	*5379
College Canyon Draw:	
Approximately 40 feet upstream of Town of Rangely corporate limits	*5271
Approximately 730 feet downstream of Town of Rangely corporate limits	*5300
Approximately 1,090 feet downstream of Oil Road which is located 1,680 feet upstream of Town of Rangely corporate limits	*5350
Approximately 1,200 feet upstream of Oil Road which is located 1,680 feet upstream of Town of Rangely corporate limits	*5438
Maps are available for review at the Department of County Development, County Courthouse, 6th and Main Streets, Meeker, Colorado 81641.	
CONNECTICUT	
Chester (town), Middlesex County (FEMA Docket No. 6956)	
Pattaconk Brook:	
Approximately 200 feet downstream of North Main Street	*12
At crest of dam located approximately 300 feet upstream of State Route 148 (West Main Street)	*241
Great Brook:	
Approximately 100 feet downstream of North Main Street	*15
Approximately 0.6 mile upstream of Deep Hollow Road	*137
South Branch Great Brook:	
Approximately 15 feet downstream of Deep Hollow Road	*97
Downstream side of dam	*101
Maps available for inspection at the Town Clerk's Vault, Town Hall, Chester, Connecticut.	
Southington (town), Hartford County (FEMA Docket No. 6946)	
Quinnipiac River:	
At downstream corporate limits	*120
Approximately 450 feet downstream of the upstream corporate limits	*169
Spring Lake Brook:	
At confluence with Quinnipiac River	*156
Downstream side of Flanders Road	*243

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
East Branch Judd Brook:	
At confluence with Judd Brook and Humiston Brook	*143
Approximately 650 feet downstream of Frost Street	*186
Maps available for inspection at the Town Planning Department, Town Hall, Southington, Connecticut.	
Warren (town), Litchfield County (FEMA Docket No. 6956)	
Lake Waramaug Brook:	
At confluence with Lake Waramaug	*697
Approximately 0.4 mile upstream of second upstream crossing of State Route 45	*1,186
Shepaug River:	
At downstream corporate limits	*733
At Shepaug Reservoir dam	*777
Tributary A:	
At confluence with Lake Waramaug Brook	*803
Approximately 0.3 mile upstream of Curtiss Road	*952
Tributary B:	
At confluence with Lake Waramaug Brook	*853
Approximately 0.5 mile upstream of State Route 45	*1,056
Tributary C:	
At confluence with Lake Waramaug Brook	*870
Approximately 0.2 mile upstream of Rabbit Hill Road	*1,003
Tributary D:	
At confluence with Tributary C	*870
Approximately 60 feet upstream of second upstream crossing of Angevine Road	*1,111
Tributary AA:	
At confluence with Lake Waramaug	*697
Approximately 0.3 mile upstream of North Shore Road	*751
Tributary BB:	
At confluence with Lake Waramaug	*697
Approximately 0.6 mile upstream of North Shore Road	*842
Tributary CC:	
At State Route 45	*700
Approximately 0.5 mile upstream of State Route 45	*903
Lake Waramaug:	
Entire shoreline within community	*697
Maps available for inspection at the Town Clerk's Office, Town Hall, Warren, Connecticut.	
GEORGIA	
Baldwin County (unincorporated areas) (FEMA Docket No. 6956)	
Fishing Creek:	
About 900 feet upstream of Norfolk Southern Railway	*275
Just upstream of confluence of Moore Creek	*341
Camp Creek:	
Just upstream of Vinson Highway	*246
Just downstream of Pancras Road	*315
Oconee River:	
About 2.2 miles downstream of confluence of Fishing Creek	*267
About 0.9 mile upstream of CSX Railroad	*284
Tobler Creek:	
About 1100 feet upstream of Norfolk Southern Railway	*280
Just downstream of North Jefferson Street	*286
Tobler Creek Tributary 1:	
At mouth	*280
Just downstream of Barrows Ferry Road	*280
Tributary R:	
About 1300 feet upstream of Norfolk Southern Railway	*304
About 2000 feet upstream of Norfolk Southern Railway	*310
Maps available for inspection at the Board of Commissioner's Office, County Courthouse, 201 West Hancock Street, Milledgeville, Georgia.	
Dalton (city), Whitfield County (FEMA Docket No. 6956)	
Mill Creek:	
About 0.48 mile downstream of Underwood Street	*687

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Just upstream of Willowdale Road	*724
Drowning Bear Creek:	
About 0.79 mile downstream of South Hamilton Street	*688
About 2200 feet upstream of South Hamilton Street	*713
Tar Creek:	
About 1000 feet upstream of mouth	*688
Just downstream of CSX railroad	*696
Crown Creek:	
At mouth	*709
Just downstream of Judson Street	*711
City Park Branch:	
At mouth	*695
About 750 feet above Legion Drive	*697
Just upstream of Mitchell Street	*707
About 1250 feet above Mitchell Street	*716
Colony Creek:	
At mouth	*688
About 1500 feet upstream of Underwood Street	*690
McLellan Creek:	
At mouth	*720
Just upstream of U.S. Route 41	*721
Slaughter Pen Creek:	
At mouth	*689
About 1600 feet upstream of Beechland Place	*692
Tar Creek Tributary:	
About 0.50 mile downstream of Riverbend Drive	*696
About 950 feet downstream of Riverbend Drive	*705
Maps available for inspection at the City Hall, Dalton, Georgia.	

Monroe (city), Walton County (FEMA Docket No. 6960)

Jacks Creek Tributary No. 1:	
About 650 feet upstream of Monroe Dam	*779
Just downstream of East Marable Street	*796
Jacks Creek Tributary No. 2:	
About 2400 feet upstream of mouth	*789
Just downstream of East Spring Street	*841
Jacks Creek Tributary No. 3:	
At mouth	*789
Just downstream of East Spring Street	*820
Grubby Creek:	
About 1200 feet downstream of Poplar Street	*791
Just downstream of Poplar Street	*800
Just upstream of Poplar Street	*805
About 800 feet upstream of Poplar Street	*805
Mountain Creek:	
About 0.9 mile upstream of Liberty Hill Church Road	*744
Just downstream of State Route 138	*772
Mountain Creek Tributary No. 1:	
At mouth	*755
Just downstream of Breedlove Drive	*759
Just upstream of Breedlove Drive	*764
About 0.5 mile upstream of West Spring Street	*820
Mountain Creek Tributary No. 2:	
Just upstream of Vine Street	*756
Just downstream of Barrett Street	*852
Maps available for inspection at the City Hall, Monroe, Georgia.	

Walton County (unincorporated areas) (FEMA Docket No. 6960)

Alcovy River:	
About 1.1 miles upstream of confluence of Beaverdam Creek	*735
About 0.8 mile upstream of State Route 81	*767
Shoal Creek:	
At mouth	*698
Just upstream of Tom Odom Road	*824
Little Haynes Creek:	
About 1.1 miles downstream of Center Hill Church Road	*712
About 350 feet downstream of Center Hill Church Road	*730
Just upstream of Center Hill Church Road	*743
Just upstream of Green Street	*790
Big Flat Creek:	
About 2500 feet upstream of Marce Camp Road	*860
Just downstream of Old Zion Cemetery Road	*879
Jacks Creek Tributary 1:	
Just upstream of Monroe Dam	*777
About 600 feet upstream of Monroe Dam	*778
Mountain Creek:	
Just downstream of State Route 138	*773
Just upstream of U.S. Route 78	*788
About 300 feet upstream of U.S. Route 78	*794
About 1800 feet upstream of U.S. Route 78	*796
Mountain Creek Tributary No. 2:	
Just upstream of Criswell Road	*748
Just downstream of Vine Street	*748
Just upstream of Vine Street	*756
About 2200 feet upstream of Vine Street	*762
Maps available for inspection at the County Code Office, County Courthouse Annex 2, 100 North Broad Street, Monroe, Georgia.	

Whitfield County (unincorporated areas) (FEMA Docket No. 6956)

Coahulla Creek:	
At mouth	*677
Just downstream of Dawnville Road	*688
Mill Creek:	
At mouth	*683
Just downstream of CSX railroad	*727
Just upstream of CSX railroad	*738
Just downstream of Sam Lowe Road	*741
Little Creek:	
About 0.81 mile upstream of Ridge Road	*669
Just downstream of Hill Road	*699
Just upstream of Hill Road	*704
About 1400 feet upstream of Hill Road	*708
Drowning Bear Creek:	
Just upstream of River Bend Road	*678
Just downstream of State Route 3	*722
Little Swamp Creek:	
About 250 feet upstream of mouth	*669
Just downstream of State Route 3 connector	*702
McLellan Creek:	
Just upstream of U.S. Route 41	*721
Just upstream of Tibbs Road	*748
Tar Creek:	
At mouth	*688
Just downstream of CSX railroad	*696
Tar Creek Tributary:	
At mouth	*690
About 0.46 mile upstream of mouth	*699
East Chickamauga Creek:	
About 1200 feet downstream of Cottonwood Road	*805
About 0.42 mile upstream of Cottonwood Road	*809
Slaughter Pen Creek:	
At mouth	*689
About 1600 feet upstream of Underwood Street	*690
Maps available for inspection at the Building Inspector's Office, County Courthouse, 1419 Ross Drive, Dalton, Georgia.	

IOWA

Tama (city), Tama County (FEMA Docket No. 6956)

Mud Creek:	
About 0.5 mile upstream of mouth	*814
Just downstream of 9th Street	*836
Deer Creek:	
At mouth	*818
Just downstream of 13th Street	*824
Iowa River:	
About 1.3 miles downstream of U.S. Highway 63	*814
About 0.5 mile upstream of U.S. Highway 63	*818
Maps available for inspection at the City Hall, 305 Siegel Street, Tama, Iowa.	

KANSAS

Cimarron (city), Gray County (FEMA Docket No. 6960)

Arkansas River:	
About 3500 feet downstream of Main Street	*2608
About 1600 feet upstream of Main Street	*2615
Maps available for inspection at the City Hall, 119 South Main Street, Cimarron, Kansas.	

LOUISIANA

Allen Parish (unincorporated areas) (FEMA Docket No. 6956)

Calcasieu River:	
At downstream Parish boundary	*31
At upstream Parish boundary	*118
Calcasieu River Tributary 1:	
At confluence with Calcasieu River	*110
At upstream side of Union Pacific Railroad	*118
Calcasieu River Tributary 2:	
At confluence with Calcasieu River Tributary 1	*110
Approximately 1,400 feet upstream of State Route 1153	*119
Beaver Creek:	
At downstream side of State Route 10	*109
At upstream Parish limits	*119
Maps available for inspection at the Police Jury Office, 7th Street, Oberlin, Louisiana.	

MICHIGAN

Lapeer (township), Lapeer County (FEMA Docket No. 6960)

South Branch Flint River:	
About 1.2 miles downstream of Peppermill Road (west of Meyers Road)	*823
Just downstream of Peppermill Road (near dam)	*829
Just upstream of Peppermill Dam	*839
About 0.7 mile upstream of Higley Road	*848
Hunters Creek:	
About 0.6 mile downstream of Turrill Road	*831
Just downstream of Turrill Road	*832
About 0.4 mile upstream of Interstate 69	*839
Mirror Lake Drain:	
Within community	*839
Maps available for inspection at the Township Hall, 1500 Morris, Lapeer, Michigan.	

Mayfield (township), Lapeer County (FEMA Docket No. 6960)

South Branch Flint River:	
Just upstream of Millville Road	*801
About 1.2 miles upstream of confluence of Rood Lake Drain	*812
Plum Creek Drain:	
At mouth	*802
Just downstream of Farnsworth Road	*810
Rood Lake Drain:	
At mouth	*810
About 0.6 mile upstream of Haines Road	*817
Maps available for inspection at the Township Hall, 1900 North Saginaw, Lapeer, Michigan.	

MISSISSIPPI

Bruce (city), Calhoun County (FEMA Docket No. 6956)

Skuna River Canal:	
About 2400 feet downstream of State Highway 9	*260
About 4500 feet upstream of State Highway 9	*263
Maps available for inspection at the Mayor's Office, City Hall, Bruce, Mississippi.	

Calhoun City (city), Calhoun County, (FEMA Docket No. 6956)

Yalobusha River Canal:	
About 2800 feet downstream of State Highway 9	*251
About 2200 feet upstream of State Highway 9	*254
Hurricane Creek:	
About 1800 feet upstream of mouth	*253
About 2900 feet downstream of State Highway 9	*267
Huffman Creek:	
At mouth	*265
About 1400 feet upstream of mouth	*267
Maps available for inspection at the Mayor's Office, City Hall, Calhoun City, Mississippi.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Calhoun County (unincorporated areas) (FEMA Docket No. 6956)	
Skuna River Canal:	
About 3500 feet downstream of State Highway 9	*259
About 0.9 mile upstream of State Highway 9	*263
Yalobusha River Canal:	
About 0.9 mile downstream of State Highway 9	*250
About 0.9 mile upstream of confluence of Hurricane Creek	*255
Miles Creek:	
About 2500 feet downstream of State Highway 8	*259
About 3500 feet upstream of State Highway 8	*272
Hurricane Creek:	
At mouth	*253
Just downstream of State Highway 9	*271
Huffman Creek:	
At mouth	*265
About 1.2 miles upstream of mouth	*274
Maps available for inspection at the Chancery Clerk's Office, County Courthouse, Pittsboro, Mississippi.	
Derma (town), Calhoun County (FEMA Docket No. 6956)	
Miles Creek:	
About 2500 feet downstream of State Highway 8	*259
About 2800 feet upstream of State Highway 8	*271
Maps available for inspection at the Town Clerk's Office, Town Hall, Main Street, Derma, Mississippi.	
Jones County (unincorporated areas) (FEMA Docket No. 6960)	
Tallahoma Creek:	
At mouth	*202
About 5.0 miles upstream of U.S. Highway 84 along hydraulic base line	*243
Tallahala Creek:	
About 1.8 miles upstream of State Highway 29	*201
About 1.4 miles upstream of U.S. Highway 11	*241
Rocky Creek:	
About 1.4 miles upstream of mouth	*187
At confluence of Rocky Creek Tributary No. 2	*207
Little Rocky Creek:	
At mouth	*189
About 0.9 mile upstream of Interstate 59	*226
Basie Branch:	
At mouth	*196
About 1.1 miles upstream of mouth	*211
Rocky Creek Tributary No. 2:	
Within community	*207
Maps available for inspection at the Board of Supervisor's Office, County Courthouse, Laurel, Mississippi.	
MISSOURI	
Osage County (unincorporated areas) (FEMA Docket No. 6956)	
Missouri River:	
At downstream county boundary	*529
About 4.0 miles upstream of confluence of Osage River	*548
Osage River:	
At mouth	*543
Just downstream of U.S. Highway 50	*545
Maps available for inspection at the County Courthouse, Linn, Missouri.	
NEBRASKA	
Dannebrog (village), Howard County (FEMA Docket No. 6956)	
Oak Creek:	
About 1100 feet downstream of Union Pacific Railroad	*1848
About 1 mile upstream of Pioneer Avenue	*1866
Maps available for inspection at the Village Hall, Dannebrog, Nebraska.	
Gothenburg (city), Dawson County (FEMA Docket No. 6956)	
North Channel:	
About 1.8 miles downstream of State Highway 47	*2548
Just downstream of Interstate 80	*2565
Platte River:	
About 1.6 miles downstream of State Highway 47	*2550
About 2.3 miles upstream of State Highway 47	*2572
Maps available for inspection at the City Hall, 409 9th Street, Gothenburg, Nebraska.	
NEW JERSEY	
Frankford (township), Sussex County (FEMA Docket No. 6956)	
Paulins Kill:	
At downstream corporate limits	*488
At approximately 1,150 feet upstream of U.S Route 206 at upstream corporate limits	*503
Dry Brook:	
At confluence with Paulins Kill	*492
At approximately 50 feet upstream of U.S. Route 206 at upstream corporate limits	*509
Culvers Creek:	
At downstream corporate limits	*645
At U.S. Route 206	*847
Maps available for inspection at the Frankford Municipal Building, U.S. Route 206, Augusta, New Jersey.	
Hampton (township), Sussex County (FEMA Docket No. 6956)	
Paulins Kill:	
At downstream corporate limits	*458
At upstream corporate limits	*562
Maps available for inspection at the Hampton Municipal Building, Route 266, Baloville, New Jersey.	
NEW YORK	
Catskill (town), Green County (FEMA Docket No. 6956)	
Catskill Creek:	
At downstream corporate limits	*22
At upstream corporate limits	*176
Kaaterskill Creek:	
At confluence with Catskill Creek	*26
At most upstream corporate limits	*678
Maps available for inspection at the Town Hall, 439 Main Street, Catskill, New York.	
OKLAHOMA	
Seminole County (unincorporated areas) (FEMA Docket No. 6960)	
Wewoka Creek:	
Approximately 800 feet downstream of confluence of Tributary A	*778
Approximately 200 feet upstream of Strother Avenue	877
Coon Creek:	
At confluence with Wewoka Creek	*801
Approximately 1,600 feet upstream of Missouri-Kansas-Texas Railroad crossing	*817
Tributary A:	
At confluence with Wewoka Creek	*781
Approximately 200 feet upstream of US Route 270	*841
Carter Creek:	
At confluence with Wewoka Creek	*848
Approximately 100 feet upstream of Harvey Road	*898
Magnolia Creek:	
At downstream side of Goodhope Road	*892
Approximately 1.1 miles upstream of Goodhope Road	*923
Tributary No. 3 of Carter Creek:	
At confluence with Carter Creek	*892
At downstream Seminole City corporate limits	*939
Tributary No. 3 of Magnolia Creek:	
At downstream side of Goodhope Road	*907
Approximately 1.2 miles upstream of Goodhope Road	*967
Tributary No. 1 of Tributary No. 3 of Magnolia Creek:	
At Seminole City corporate limits	*906
Approximately 1.1 miles upstream of confluence with Tributary No. 3	*923
Sandy Creek:	
Approximately .5 mile upstream of confluence with Wewoka Creek	*791
Upstream side of Missouri-Kansas-Texas Railroad	*795
Tributary No. 1 of Carter Creek:	
Approximately .5 mile upstream of confluence with Carter Creek	*860
Approximately 920 feet upstream of Strother Avenue	*864
Maps available for inspection at the Commissioner's Office, Seminole County Courthouse, Wewoka, Oklahoma.	
PENNSYLVANIA	
Clifton (township), Lackawanna County (FEMA Docket No. 6956)	
Lehigh River:	
At downstream corporate limits	*1,571
Approximately 600 feet upstream of T-303	*1,618
Approximately .7 mile downstream of the dam at West End Pond	*1,855
At the dam at West End Pond	*1,874
Meadow Brook:	
At the confluence with Tamarack Creek	*1,786
At the dam at L.R. 2013	*1,798
Maps available for inspection at the Clifton Township Building, Clifton, Pennsylvania.	
Elmhurst (township), Lackawanna County (FEMA Docket No. 6956)	
Roaring Brook:	
Approximately 520 feet downstream of confluence of Unnamed Tributary to Roaring Brook	*1,361
Approximately 270 feet upstream of State Route 435	*1,375
Unnamed Tributary to Roaring Brook:	
At confluence with Roaring Brook	*1,367
At CONRAIL Railroad	*1,377
Maps available for inspection at the Township Building/Sewer Authority Building, Elmhurst, Pennsylvania.	
Factoryville (borough), Wyoming County (FEMA Docket No. 6956)	
South Branch Tunkhannock Creek:	
At downstream corporate limits	*815
Approximately 150 feet upstream of upstream corporate limits	*843
Maps available for inspection at the Borough Building, College Avenue, Factoryville, Pennsylvania.	
Girardville (borough), Schuylkill County (FEMA Docket No. 6956)	
Mahanoy Creek:	
At downstream corporate limits	*941
At confluence of Shenandoah Creek	*962
Shenandoah Creek:	
At confluence with Mahanoy Creek	*962
Approximately 100 feet upstream of corporate limits	*967
Maps available for inspection at the Municipal Building, 4th and B Streets, Girardville, Pennsylvania.	
Huston (township), Clearfield County (FEMA Docket No. 6941)	
Bennett Branch:	
Approximately .9 mile downstream of confluence with Moose Run	*1,227
Approximately 400 feet upstream of confluence with Mountain Run	*1,263
Wilson Run:	
At confluence with Bennett Branch	*1,23[illegible]

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 400 feet upstream of State Route 153	*1,291
Maps available for inspection at the home of Gail Ann Kalgren, Township Secretary, R.D. I, Box 4181, Penfield, Pennsylvania.	
Patton (borough), Cambria County (FEMA Docket Nos. 6946 and 6951)	
Little Chest Creek:	
At confluence with Chest Creek	*1,738
At the confluence of Unnamed Tributary to Little Chest Creek	*1,795
Unnamed Tributary to Little Chest Creek:	
At confluence with Little Chest Creek	*1,795
Approximately 42 feet upstream of upstream corporate limits	*1,799
Chest Creek:	
At downstream corporate limits	*1,723
At upstream corporate limits	*1,742
Maps available for inspection at the Borough Building, 4th and Magee Streets, Patton, Pennsylvania.	
Upper Mahantongo (township), Schuylkill County (FEMA Docket No. 6956)	
Mahantongo Creek:	
Confluence with Pine Creek	*526
Approximately .44 mile upstream of State Route 4014	*571
Pine Creek:	
Approximately 210 feet downstream of confluence of Mahantongo Creek	*525
Approximately .5 mile upstream of Township route 379	*532
Maps available for inspection at the Upper Mahantongo Township Building, c/o Mr. Dale Troutman, Main Street, Klingerstown, Pennsylvania.	
Washington (township), Schuylkill County (FEMA Docket No. 6956)	
Lower Little Swatara Creek:	
At the downstream corporate limits	*535
Approximately .4 mile upstream of South Lake Road	*683
Upper Little Swatara Creek:	
Approximately .7 mile downstream of State Route 3002	*560
At upstream corporate limits	*620
Maps available for inspection at the Secretary's Office, c/o Walter Stump, R.D. 3, Box 288, Route 443, Pine Grove, Pennsylvania.	
Weissport (borough), Carbon County (FEMA Docket No. 6956)	
Lehigh River:	
At downstream corporate limits	*457
At upstream corporate limits	*472
Maps available for inspection at the Borough Building, Weissport, Pennsylvania.	
West Cameron (township), Northumberland County (FEMA Docket No. 6956)	
Mahanoy Creek:	
Approximately 2.3 miles upstream of corporate limits	*543
Approximately 3.8 miles upstream of corporate limits	*556
Maps available for inspection at the Township Building, Gottshall Lane, West Cameron, Pennsylvania.	
West Penn (township), Schuylkill County (FEMA Docket No. 6956)	
Little Schuylkill River:	
Approximately 620 feet downstream of CONRAIL	*635
Approximately 1.6 miles upstream of upstream crossing of State Route 443	*742
Lizard Creek:	
At corporate limits	*577
At upstream side of T-912	*707
Lizard Creek Tributary:	
At confluence with Lizard Creek	*633
Approximately 770 feet upstream of T-970	*762
Mahoning Creek:	
At corporate limits	*594
Approximately .6 mile upstream of T-932	*682
Maps available for inspection at the Municipal Building, R.D. 1, New Ringgold, Pennsylvania.	
Zerbe (township), Northumberland County (FEMA Docket No. 6956)	
Zerbe Run:	
Approximately 500 feet downstream of 11th Street	*733
Approximately 660 feet upstream of 1st Street	*783
Maps available for inspection at the Zerbe Township Building, 800 Mahanoy Street, Trevorton, Pennsylvania.	
TENNESSEE	
Carter County (unincorporated areas) (FEMA Docket No. 6956)	
Watauga River:	
Just upstream of U.S. Route 321	*1414
Just downstream of Wilbur Dam	*1588
Doe River:	
About 1.9 miles above mouth	*1560
Just downstream of Hampton Road	*1774
Just upstream of Hampton Road	*1779
About 0.3 mile upstream of U.S. Route 19E	*1815
About 0.5 mile downstream of confluence of Shoemaker Branch	*2540
Just downstream of County Road located about 850 feet upstream of State Route 143	*2569
Just upstream of County Road	*2574
Just downstream of County Road located about 950 feet upstream of confluence of Shell Creek	*2581
Just upstream of County Road	*2586
About 700 feet upstream of confluence of Hampton Creek	*2601
Doe River Overland Flow:	
At confluence with Doe River	*2568
At divergence with Doe River	*2587
Laurel Fork Creek:	
At mouth	*1759
Just upstream of U.S. Route 19E	*1765
About 0.39 mile upstream of U.S. Route 321 (upstream crossing)	*1885
Little Doe River:	
At mouth	*1800
Just downstream of Elliott Road	*1919
Shell Creek:	
At mouth	*2577
About 0.62 mile upstream of U.S. Route 19E	*2618
Buffalo Creek:	
At mouth	*1460
Just upstream of U.S. Route 321	*1468
Just downstream of Milligan Highway	*1486
Maps available for inspection at the County Courthouse, Elk and Main Streets, Elizabethton, Tennessee.	
Elizabethton (city), Carter County (FEMA Docket No. 6956)	
Doe River:	
At mouth	*1509
About 1.57 miles upstream of U.S. Route 19E	*1580
Watauga River:	
At confluence of Buffalo Creek	*1460
About 1760 feet upstream of confluence of Davis Branch	*1526
Gap Creek:	
At mouth	*1461
Just downstream of East Tennessee and Western North Carolina Railroad	*1475
Just upstream of West G Street	*1480
About 1.6 miles above mouth	*1558
Buffalo Creek:	
At mouth	*1460
Just upstream of U.S. Route 321	*1468
Just downstream of Milligan Highway	*1484
Maps available for inspection at the City Hall, Elizabethton, Tennessee.	
TEXAS	
Austin County (unincorporated areas) (FEMA Docket No. 6951)	
Allens Creek:	
Approximately 1,740 feet downstream of Mixville Road	*145
At the City of Sealy downstream corporate limits	*161
Allens Creek Tributary:	
At confluence with Allens Creek	*149
Approximately 0.50 mile upstream of FM Route 1458	*154
Bullinger Creek:	
At the Town of San Felipe upstream corporate limits	*147
Approximately 2.01 miles upstream of State Route 36	*199
Brazos River:	
At downstream County boundary	*106
At FM Route 1458 extended	*127
Approximately 79 feet downstream of State Route 159	*162
At upstream County boundary	*165
Maps available for inspection at the County Courthouse, 1 East Main Street, Bellville, Texas.	
Ballinger (city), Runnels County (FEMA Docket No. 6960)	
Colorado River:	
Approximately 1,400 feet downstream of confluence of Elm Creek	*1,628
Approximately 700 feet upstream of Atchinson, Topeka, and Santa Fe Railway	*1,630
Elm Creek:	
At confluence with Colorado River	*1,628
At upstream corporate limits	*1,637
Maps available for inspection at the City Hall, 7th and Railroad Avenue, Ballinger, Texas.	
Colorado County (unincorporated areas) (FEMA Docket No. 6951)	
Colorado River:	
Approximately 2.2 miles downstream of Interstate Route 10	*191
Approximately 7.8 miles upstream of abandoned Railroad Bridge	*222
Maps available for inspection at 400 Spring Street, Columbus, Texas.	
Columbus (city), Colorado County (FEMA Docket No. 6951)	
Colorado River:	
At intersection of Interstate Route 10 and State Route 71	*193
Approximately .6 mile upstream of State Route 71	*202
Maps available for inspection at 605 Spring Street, Columbus, Texas.	
Gregg County (unincorporated areas) (FEMA Docket No. 6951)	
Hawkins Creek:	
Approximately 900 feet upstream of County Route 2275	*321
Approximately 0.88 mile upstream of Bacel Road	*344
Elm Branch:	
Upstream side of Amy Street	*364
Approximately 0.50 mile upstream of Amy Street	*392
Grace Creek:	
At downstream corporate limits	*373
Approximately 50 feet upstream of County Route 1844	*418
McCann Creek:	
At downstream corporate limits	*357
Approximately 1.0 mile upstream of corporate limits	*402
Ray Creek:	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
At downstream corporate limits	*342
Upstream side of County Route 1844	*420
Oak Branch Creek:	
Approximately 0.54 mile downstream of County Route 2751	*335
Approximately 650 feet upstream of Sunnybrook Road	*406
Murray Creek:	
Approximately 0.80 mile downstream of U.S. Route 259 southbound	*341
Approximately 70 feet upstream of Sunnybrook Road	*421
Oakland Creek:	
At downstream corporate limits	*380
Approximately 0.63 mile upstream of corporate limits	*407
Eastman Lake Creek:	
Approximately 400 feet downstream of Hollybrook Drive	*388
Approximately 0.78 mile upstream of Hollybrook Drive	*415
Maps available for inspection at the Engineer's Office, 101 Mathvin Street, 1st Floor, County Courthouse, Longview, Texas.	
San Felipe (town), Austin County (FEMA Docket No. 6951)	
Bullinger Creek:	
Approximately 1.46 miles downstream of Remmert Road	*129
At upstream corporate limits	*147
Maps available for inspection at the City Offices, 1483 F.M. 1458 N., San Felipe, Texas.	
Sealy (city), Austin County (FEMA Docket No. 6951)	
Allens Creek:	
Approximately 200 feet downstream of the downstream corporate limits	*161
Approximately 1,480 feet upstream of U.S. Route 90	*180
Maps available for inspection at the City Hall, 415 Main Street, Sealy, Texas.	
Whitney (city), Hill County (FEMA Docket No. 6956)	
Stream WC-1:	
At downstream corporate limits	*570
Approximately 50 feet upstream of Laveca Street	*588
Stream WC-1A:	
At confluence with Stream WC-1	*581
Approximately 600 feet upstream of upstream corporate limits	*589
Maps available for inspection at the City Hall, 105 Jefferson, Whitney, Texas.	
VIRGINIA	
Craig County (unincorporated areas) (FEMA Docket No. 6956)	
Craig Creek:	
Approximately 3.3 miles downstream of State Route 606	*1,161
Approximately 0.6 mile upstream of State Route 614	*1,191
Approximately 1.6 miles downstream of confluence of Johns Creek	*1,246
At confluence of Meadow Creek	*1,275
Approximately 450 feet upstream of second crossing of State Route 311	*1,327
Approximately 200 feet downstream of third crossing of State Route 311	*1,366
Approximately 0.9 mile upstream of fifth crossing of upstream State Route 311	*1,393
Johns Creek:	
At confluence with Craig Creek	*1,260
Approximately 0.9 mile upstream of State Route 615	*1,301
Meadow Creek:	
At confluence with Craig Creek	*1,275
Upstream side of State Route 311	*1,314
Approximately 0.4 mile upstream of State Route 311	*1,376
Maps available for inspection at the County Administrator's Office, New Castle, Virginia.	
Haymarket (town), Prince William County (FEMA Docket No. 6956)	
North Fork Broad Run:	
Approximately .3 mile upstream of State Route 703	*334
Upstream corporate limits	*341
Maps available for inspection at the Town Hall, 15025 Washington Street, Haymarket, Virginia.	
New Castle (town), Craig County (FEMA Docket No. 6938)	
Johns Creek:	
At downstream corporate limits	*1,273
At upstream corporate limits	*1,278
Maps available for inspection at Janet Harden's residence, Caldwell Street, New Castle, Virginia.	
WASHINGTON	
Sedro Woolley (city), Skagit County (FEMA Docket No. 6965)	
Skagit River:	
Just east of Collins Road	*43
Approximately 3,700 feet west (downstream) of State Highway 9	*44
Approximately 1,200 feet west (downstream) of State Highway 9	*45
Maps are available for review at the Planning Department, 720 Murdock Street, Sedro Woolley, Washington.	
WEST VIRGINIA	
Camden-On-Gauley (town), Webster County (FEMA Docket No. 6946)	
Gauley River:	
At downstream corporate limits	*2,027
At upstream corporate limits	*2,029
Maps available for inspection at the Mayor's Office, Main Street, Camden-On-Gauley, West Virginia.	
Webster County (unincorporated areas) (FEMA Docket No. 6946)	
Elk River:	
Approximately 2,575 feet downstream of the confluence of Ezra Run	*1,037
Approximately 2.90 miles upstream of the confluence of Ezra Run	*1,100
Approximately 4.20 miles downstream of the confluence of Big Run	*1,175
Approximately 0.65 mile downstream of the confluence of Big Run	*1,250
Approximately 860 feet upstream of the confluence of Lynch Run	*1,325
Approximately 1.6 mile upstream of the confluence of Kingfisher Creek	*1,400
Approximately 0.67 mile upstream of the confluence of Back Fork Elk River	*1,475
Approximately 1,490 feet upstream of the confluence of Dyers Run	*1,550
Approximately 0.75 mile downstream of the confluence of Mill Run	*1,625
Approximately 0.91 mile downstream of the confluence of Steps Run	*1,700
Approximately 1.04 miles upstream of the confluence of Baltimore Run	*1,775
Approximately 590 feet downstream of the confluence of Bergoo Creek	*1,879
Left Fork Elk River:	
At confluence with Elk River	*1,454
At divergence from Elk River	*1,465
Right Fork Holly River:	
Approximately 1,870 feet downstream of the confluence of Highbank Run	*1,060
Approximately 0.86 mile upstream of the confluence of Weese Run	*1,125
Approximately 0.65 mile downstream of the confluence of Deep Run	*1,200
Approximately 1,430 feet downstream of the confluence of Grassy Creek	*1,275
Approximately 920 feet downstream of the confluence of Wrack Timber Run	*1,350
Approximately 1,120 feet downstream of the confluence of Mudlick Run	*1,425
Approximately 0.69 mile downstream of the confluence of Desert Fork	*1,500
Approximately 780 feet upstream of the confluence of Desert Fork	*1,580
Approximately 300 feet downstream of the confluence of Upper Mudlick Run	*1,660
Approximately 1,150 feet upstream of the second crossing of County Route 18	*1,740
Approximately 1,100 feet downstream of the confluence of Laurel Fork	*1,820
Approximately 220 feet upstream of the confluence of Laurel Fork	*1,847
Left Fork Holly River:	
Approximately .71 mile downstream of the confluence of Hodam Creek	*1,451
Approximately 1.35 miles upstream of the confluence of Laurel Fork	*1,550
Approximately 2.20 miles upstream of the confluence of Laurel Fork	*1,596
Gauley River (Lower):	
Approximately 225 feet downstream of County boundary	*2,025
Approximately .62 mile upstream of the confluence of Mill Fork	*2,037
Gauley River (Upper):	
Approximately 50 feet downstream of CSX Transportation Railroad Bridge	*2,191
Approximately .73 mile downstream of the confluence of Price Run	*2,250
Approximately 400 feet downstream of the confluence of Laurel Creek	*2,298
Back Fork Elk River:	
At Webster Springs corporate limits	*1,478
Approximately .41 mile upstream of the confluence of Bear Run	*1,550
Approximately .72 mile upstream of the confluence of Dry Bed Run	*1,620
Approximately 1,810 feet upstream of the confluence of Laurel Run	*1,700
Approximately 600 feet upstream of the confluence of Aaron Run	*1,780
Approximately .51 mile downstream of the confluence of Steps Gap Run	*1,850
At the confluence of Sugar Creek	*1,925
Approximately 750 feet upstream of the confluence of Middle Run	*1,967
Birch River:	
Approximately .70 mile downstream of the confluence of Ming Run	*1,489
Approximately 330 feet downstream of the confluence of Braggs Run	*1,565
Approximately 760 feet downstream of the confluence of Silk Run	*1,640
Approximately 1,070 feet downstream of the confluence of Chuffy Run	*1,715
Approximately 400 feet downstream of the confluence of Baughman Run	*1,790
At the confluence of Johnson Branch	*1,882
Laurel Creek:	
Approximately .55 mile downstream of the confluence of Carpenter Fork	*1,508
Approximately 1,100 feet upstream of the confluence of Amos Run	*1,575
Approximately 680 feet downstream of the confluence of Lost Run	*1,680
Approximately 1.0 mile upstream of the confluence of Lost Run	*1,780
Approximately 0.4 mile downstream of the confluence of McAvoy Run	*1,880
Approximately 0.46 mile upstream of the confluence of Given Run	*1,980
At the confluence of Dry Branch	*2,080
Approximately 0.39 mile downstream of Little Glade Run	*2,160
Approximately 1,200 feet upstream of the confluence of Little Glade Run	*2,212
Hodam Creek:	
At confluence with Left Fork Holly River	*1,469
Approximately 1,370 feet upstream of the confluence of Bear Run	*1,550
Approximately 0.61 mile upstream of the confluence of Big Lick Fork	*1,656
Leatherwood Creek:	
At confluence with Elk River	*1,816

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 0.71 mile upstream of the most downstream crossing of County Route 26-4	*1,891
Big Ditch Run:	
Approximately 1.06 miles downstream of John Gaff Road	*2,219
Approximately 0.55 mile upstream of John Gaff Road	*2,230
Williams River:	
At confluence with Gauley River	*2,191
Approximately 0.43 mile upstream of the confluence of Spice Run	*2,258
Grassy Creek:	
At the confluence with Right Fork Holly River	*1,289
Approximately 540 feet downstream of the confluence of Weedy Run	*1,380
Approximately 0.71 mile upstream of the confluence of Weedy Run	*1,480
Approximately 1.05 miles downstream of the confluence of Leatherwood Run	*1,580
Approximately 780 feet downstream of the confluence of Leatherwood Run	*1,762
Strouds Creek:	
At downstream County Boundary	*2,039
Approximately 0.66 mile upstream of the confluence of Sugarcamp Run	*2,117
Sugar Creek:	
At the confluence with Back Fork Elk Creek River	*1,925
Approximately 790 feet upstream of the confluence of Little Sugar Creek	*2,047
Price Glade Run:	
At the confluence with the Gauley River	*2,192
Approximately 1.64 miles upstream of the confluence with the Gauley River	*2,245
Maps available for inspection at the County Coordinator's Office, 112 Bell Street, Webster Springs, West Virginia.	
Webster Springs (city), Webster County (FEMA Docket No. 6946)	
Left Fork Elk River:	
At confluence with Elk River	*1,453
At divergence from Elk River	*1,465
Back Fork Elk River:	
At confluence with Elk River	*1,457
Approximately 840 feet upstream of upstream corporate limits	*1,483
Elk River:	
At downstream corporate limits	*1,455
Approximately 0.8 mile upstream of State Route 20	*1,482
Maps available for inspection at the Municipal Building, 146 McGraw Avenue, Webster Springs, West Virginia.	
WISCONSIN	
Endeavor (village), Marquette County (FEMA Docket No. 6956)	
Fox River at Buffalo Lake:	
At northern corporate limits	*773
At eastern corporate limits	*774
Maps available for inspection at the Village Hall, Lakeview Avenue, Endeavor, Wisconsin.	
Menomonie (city), Dunn County (FEMA Docket No. 6956)	
Red Cedar River:	
At confluence of Gilbert Creek	*787
Just downstream of Broadway Street Dam	*792
Gilbert Creek:	
At mouth	*787
About 3,800 feet upstream of Hofland Road	*803
Galloway Creek:	
At mouth	*787
About 1,100 feet upstream of 9th Street East	*877
Lake Menomin:	
Entire shoreline	*814
Maps available for inspection at the City Hall, 800 Wilson Street, Menomonie, Wisconsin.	
Plum City (village), Pierce County (FEMA Docket No. 6951)	
Plum Creek:	
Just downstream of confluence of Rush Coulee	*799
About 700 feet downstream of East Street	*811
Rush Coulee:	
At mouth	*799
About 2,100 feet upstream of Main Street	*827
Maps available for inspection at the Village Hall, 501 Main Street, Plum City, Wisconsin.	

Issued: October 6, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 89-24470 Filed 10-16-89; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-594; RM-6394, RM-6726]

Radio Broadcasting Services; Othello and Wilson Creek, WA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 248C2 for Channel 249A at Othello, Washington, and modifies the construction permit for Station KZLN-FM at Othello to specify operation on the higher powered channel, as that community's first wide coverage area FM station, at the request of P-N-P Broadcasting, Inc. See 54 FR 3823, January 26, 1989. In addition, this document allots Channel 277A to Wilson Creek, Washington, as that community's first local FM service, at the request of Jon Bruce Thoen. The allotments can be made in accordance with § 73.207 of the Commission's Rules at the communities reference coordinates, which are 46-49-36 and 119-10-00 (Othello) and 47-25-24 and 119-07-18 (Wilson Creek). Canadian concurrence has been obtained for the allotments. With this action, this proceeding is terminated.

DATES: Effective November 27, 1989. The window period for filing applications for Channel 277A at Wilson Creek, Washington, will open on November 28, 1989, and close on December 28, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88-594, adopted September 19, 1989, and released October 11, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under Washington, by removing Channel 249A and adding Channel 248C2 at Othello; and adding Wilson Creek, Channel 277A.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-24415 Filed 10-16-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF VETERANS AFFAIRS

48 CFR Part 815

RIN 2900-AE18

Acquisition Regulation; Contracting by Negotiation

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending the VA Acquisition Regulation (VAAR) to assure that all Department-issued procurement-related regulations are essential to implement Governmentwide policies and procedures within the Department. In addition, the regulations are being amended to specify the VA control point for all unsolicited

proposals received at VA Central Office; to delegate authority to Head of Contracting Activity to permit correction of mistakes in proposals before award consistent with FAR 15.607; and, authorization is given to contracting officers to use option clauses in acquisitions with medical schools, clinics, and any other group or individual providing scarce medical specialist and sharing services at VA facilities. Other technical amendments are made and duplicative coverage already provided for in the Federal Acquisition Regulation (FAR) is eliminated.

EFFECTIVE DATE: October 10, 1989.

FOR FURTHER INFORMATION CONTACT: Mildred C. Shields, Acquisition Policy Staff (93), Office of Acquisition and Materiel Management, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC (202) 233-4339.

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Federal Procurement Policy (OFPP) of the Office of Management and Budget has directed each executive agency to review their respective acquisition regulations to ensure that they are the minimum necessary to appropriately implement and supplement the FAR. This mandate is specifically aimed at reducing repetitive coverage in the agency acquisition regulation text.

VA is amending its regulations to delete duplicative coverage. In addition, authorization is being given to contracting officers to use option clauses in acquisitions with medical schools, clinics, and any other group or individual producing scarce medical specialist and sharing services at VA facilities, and to specify the VA control point for all unsolicited proposals received at VA Central Office.

II. Executive Order 12291

Pursuant to the memorandum from the Director, Office of Management and Budget, to the Administrator, Office of Information and Regulatory Affairs, dated December 13, 1984, this rule is exempt from sections 3 and 4 of Executive Order 12291.

III. Regulatory Flexibility Act (RFA)

These changes are internal VA management policies and therefore public participation in the rulemaking process is unnecessary (38 CFR 1.12 and 5 U.S.C. 553(d)(3)). Since a notice of proposed rulemaking is unnecessary and will not be published, these amendments do not come within the term "rule" as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2), and are therefore not subject to the requirements of the act. Nevertheless, these amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612.

IV. Paperwork Reduction Act

These amendments do not impose any additional reporting or recordkeeping requirements on the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Part 815

Government procurement.

Approved: October 10, 1989.

Edward J. Derwinski,

Secretary.

48 CFR chapter 8 Department of Veterans Affairs is amended as set forth below:

PART 815—[AMENDED]

1. The authority citation for parts 815 and 817 continue to read as follows:

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

815.506 [Amended]

2. In 815.506(a) remove the words "Chief, Supply Service", and insert in their place, the words "Chief, Acquisition and Materiel Management Service".

3. Subpart 815.6, consisting of 815.607, is added to read as follows:

Subpart 815.6—Source Selection

815.607 Disclosure of mistakes before award.

The Head of the Contracting Activity (as defined in 801.1) is delegated authority to permit correction of mistakes in proposals before award consistent with FAR 15.607.

815.804-2 [Removed]

4. Section 815.804-2 is removed.

815.805-5 [Removed]

5. Section 815.805-5 is removed

Subpart 815.9 [Removed]

6. Subpart 815.9, consisting of § 815.901, is removed.

7. In 815.7001 paragraph (d)(2) is removed, and paragraphs (d)(3), (d)(4), (d)(5), (d)(6), (d)(7), (d)(8), (e), and (f) are redesignated as paragraphs (d)(2), (d)(3), (d)(4), (d)(5), (d)(6), (d)(7), (f), and (g), respectively.

8. In 815.7001, paragraphs (c), (c)(5), (d) introductory text, and (d)(1) are revised, and new paragraph (e) is added to read as follows:

815.7001 Personal or professional services.

* * * * *

(c) Contracting officers may include one or two 1-year prepriced options for extensions of proposed contracts for scarce medical specialist and specialized medical resources. When a prepriced option has not been used, the authority to approve the award of a new contract with the current contractor for extension of a scarce medical specialist or specialized medical resource is delegated to the Medical District Director under the circumstances specified in paragraph (d) of this section. Except as provided in paragraphs (d) and (e) of this section, proposed contracts will be submitted for approval to the Associate Deputy Chief Medical Director (10B/EMS), VA Central Office at least 60 days prior to effective date of the proposed contract.

* * * * *

(5) Contracting officers must send a copy of each signed contract, negotiated under the authority of either 38 U.S.C. 4117 or 38 U.S.C. 5053, to the Director, Emergency Management and Resource Sharing Service (10B/EMS), within ten days of execution. This requirement also applies to any contract modification issued to exercise options to extend contract periods.

(d) Proposals to negotiate a new contract with the current contractor under the authority of 38 U.S.C. 5053 or 38 U.S.C. 4117 may be approved by the appropriate Medical District Director when such proposals meet the following conditions:

(1) For specialized medical resources agreements, (i) no new resources are being added to the contract, (ii) and no individual cost item that is being acquired from the contractors will increase the cost more than 5 percent over the cost for that same item on the previous contract. (Resources may be deleted from the contract without Central Office approval, but only if such deletions do not effectively result in an increase in the cost of an individual item or of the total contract in excess of 5 percent over the cost of the contract).

* * * * *

(e) Contracting officers may exercise an option to extend a contract when the contract includes an option to extend. This may be done without further review.

* * * * *

[FR Doc. 89-24492 Filed 10-16-89; 8:45 am]

BILLING CODE 8320-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1135 and 1145

[Ex Parte No. 394; Sub-No. 3]

RIN 3120-AB47

Cost Ratios for Recyclables—Compliance Procedures

[Ex Parte No. 290; Sub-No. 2]

Railroad Cost Recovery Procedures

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Commission adopts rules providing for an annual Commission determination of the cap level on railroad freight rates for nonferrous recyclable commodities and identification of rates and territorial rate groups that exceed the cap. The rules also set forth principles and procedures governing review of maximum reasonableness of increases in recyclable commodity rates. The purpose of the rules is to assure continued compliance by the Nation's railroads with the cap on freight rates for recyclable commodities established in the Staggers Rail Act of 1980. The rules are intended to clarify the rights and obligations of affected parties while minimizing compliance and enforcement burdens.

EFFECTIVE DATE: November 16, 1989.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245, (TDD for hearing impaired: (202) 275-1721).

SUPPLEMENTARY INFORMATION: Proposed rules were published at 52 FR 13482, April 23, 1987, and an environmental assessment was published at 53 FR 16296, May 6, 1988

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275-1721.)

This action will not significantly affect the quality of the human environment or conservation of energy resources.

List of Subjects

49 CFR Part 1135

Administrative practice and procedure, Railroads, Reporting and recordkeeping requirements.

49 CFR Part 1145

Railroads, Reporting and recordkeeping requirements.

Decided: October 6, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

For the reasons set forth in the preamble and explained fully in the decision, title 49, chapter X, parts 1135 and 1145 of the Code of Federal Regulations are amended as set forth below:

1. A new part 1145 is added to read as follows:

PART 1145—RAILROAD RATES ON RECYCLABLE COMMODITIES

Sec.

1145.1 Definitions.
1145.2 Purpose.
1145.3 Annual proceedings: submission of evidence.
1145.4 Annual proceedings: Commission decision.
1145.5 Regulation of rate increases.
1145.6 Propsective effect.
1145.7 Application of railroad cost recovery procedures.

Authority: 49 U.S.C. 10321, 10731, and 1070a; 5 U.S.C. 553.

§ 1145.1 Definitions.

(a) For the purpose of this part, "*recyclable commodities*" means recyclable material as defined at 49 U.S.C. 10731(a)(1), other than recyclable or recycled iron or steel. Commodities are to be specified at the five digit Standard Transportation Commodity Code (STCC) level, unless exceptions are requested and justified as provided in § 1145.3(a).

(b) "*Costs determined pursuant to 49 U.S.C. 10705a(m)*" means "unadjusted costs" calculated pursuant to the procedures developed in Ex Parte No. 389, *Procedures for Requesting Rail Variable Cost and Revenue Determinations for Joint Rates Subject to Surcharge and Cancellation*, as amended, with two exceptions. For the purpose of this part, parties are to use actual shipment weight as shown in the waybill file (rather than tariff minimum weight), and route miles as calculated in the Princeton Railroad Network model and entered in the waybill file (rather than short line miles increased for circuity).

(c) "*Statutory cap level*" means the railroad revenue-to-variable-cost ratio level referred to in 49 U.S.C. 10731(e).

(d) "*Above-cap rate*" means an individual rate that produces a revenue/variable cost ratio above the statutory cap level.

(e) "*Above-cap rate group*" means a rate group specified in § 1145.3(b) that produces an average revenue/variable cost ratio above the statutory cap level. The term may relate either to a railroad industry rate group or to an individual carrier rate group for which a determination is made under § 1145.4(a).

(f) "*Rate (or rate group) determined to be above the cap level*" means a rate (or rate group) that had or would have an above-cap status as of the effective date of an increase in the rate, under the latest effective determination made by the Commission concerning the status of the rate on that date, whether made in an annual proceeding under § 1145.4 or in another proceeding.

(g) "*Below-cap rate (or rate group)*" means a rate (or rate group) that produces a revenue/variable cost ratio equal to or below the statutory cap level.

§ 1145.2 Purpose.

These rules establish procedures by which the Interstate Commerce Commission will ensure continued compliance by the Nation's railroads with the statutory cap level on freight rates for recyclable commodities established in 49 U.S.C. 10731(e). The Commission will:

(a) Determine annually the statutory cap level to apply for the ensuring calendar year;

(b) Determine annually the regional and national average revenue/variable cost ratios produced by rates on recyclable commodities and identify the recyclable commodities having territorial average ratios above the statutory cap level;

(c) Determine annually, in respnse to shipper requests, the revenue/variable cost ratios produced by rates on individual movements of recyclable commodities and identify the movements having ratios above the statutory cap level; and

(d) Regulate rate increases on recyclable commodities, including increases under 49 U.S.C. 10707a (a) through (d), to prohibit increases in rates with ratios above the statutory cap level and to prevent increases in other rates from raising the ratios on those rates above the cap level.

§ 1145.3 Annual proceedings: submission of evidence.

(a) *Initial railroad submission.* By September 15 of each year, railroads shall file, jointly or separately, certified average revenue/variable cost ratios as described in paragraph (b) of this section for all single-line, joint, and combination rates applicable to each

recyclable commodity. Such ratios will be computed on the basis of the railroads' revenues for each commodity and the railroads' costs for that particular transportation determined pursuant to 49 U.S.C. 10705a(m). The Commission's most recently published one percent waybill study will be an acceptable source for computing the average revenue/variable cost ratios determined under this paragraph subject to correction for overstatement of revenues due to 49 U.S.C. 10713 contracts at the option of participating railroads. The recyclable commodity ratios shall be for the applicable five digit STCC code groups. Parties may petition for reconsideration of the STCC level described in § 1145.1(a) by identifying, with adequate justification, specific exceptions that may be appropriate.

(b) *Regional and national average revenue/variable cost ratios required.* The computations described in paragraph (a) of this section will be made so that for each commodity there will be computed a separate average revenue/variable cost ratio for three regional rate groups and one national rate group as follows:

(1) Intra-East;

(2) Intra-West;

(3) Between East and West; and

(4) Nationally.

The Commission decision under § 1145.4 for each commodity will be based upon the revenue/variable cost ratios computed for the three regional rate groups wherever the car samples used in computing the regional ratios comprise ten or more cars. Wherever the car sample used in computing a regional ratio comprises nine or fewer cars, the national revenue/variable cost ratio for that commodity will be used for that regional rate group instead of the regional ratio.

(c) *Initial railroad submission available to shippers.* By September 15 of each year, the railroads shall make available to shippers, at a convenient time and a place provided by the railroads, the certified average revenue/variable cost ratios described in paragrpah (b) of this section, including the underlying workpapers. The certified average revenue/variable cost ratios submitted by the railroads and the underlying workpapers shall also be made available to shippers during business hours in the Interstate Commerce Commission Building, Public Dockets Room. The underlying workpapers shall be presented to shippers at a level of aggregation sufficient to assure that specific shipper contract or shipment information is not disclosed.

(d) *Shippers to present to appropriate railroads disagreement with certified average revenue/variable cost ratios.* If a shipper disagrees with the certified average revenue/variable cost ratios submitted by the railroads pursuant to paragraph (a) of this section, it shall present its disagreement to the railroads in writing within 7 days of the railroads' filing, or by September 22 of each year, whichever is earliest.

(e) *Railroads and shippers to negotiate changes in submitted certified average revenue/variable cost ratios and submit revised ratios.* Upon receipt of a shipper's written disagreement with any certified average revenue/variable cost ratio submitted by the railroads pursuant to paragraph (a) of this section, the railroads shall negotiate in good faith with the shipper to resolve the disagreement. The railroads and shippers shall submit to the Commission by October 15 any agreed adjustments to the railroads' initial submissions pursuant to paragraph (a) of this section. To the extent that disagreement remains, the railroads and shippers shall, by October 15, submit evidence and argument supporting their respective positions.

(f) *Alternate railroad filing in lieu of filing under paragraph (a).* Any individual railroad or railroad system may satisfy the requirements of paragraph (a) of this section with respect to some or all recyclable commodities by submitting by September 15 the revenue/variable cost ratios produced by single-line or combination rates for movements of the commodities over its line only. A submission under this paragraph shall be made available to shippers pursuant to paragraph (c) of this section and the provisions of paragraphs (d) and (e) of this section shall also apply.

(g) *Individual rates.* A shipper may establish in any annual proceeding that the rate it actually pays for an individual movement of a recyclable commodity exceeds the statutory cap level. Submission of evidence on individual rate issues will be governed by the following schedule:

(1) By September 15 of each year, shippers shall file their statements, if any, on individual rates with the Commission and serve them on the railroads. These shall be sworn statements supported by cost evidence, which may be either adjusted or unadjusted, and evidence of actual revenues paid to railroads for shipments made.

(2) The railroads may respond to the shippers' individual rate statements on or before October 15 by filing sworn statements supported by cost evidence, which may be either adjusted or unadjusted, and evidence of revenues actually collected for shipments transported.

§ 1145.4 Annual proceedings: Commission decision.

(a) *Date and content of decision.* In a decision to be issued annually by December 15, the Commission will state the statutory cap level required by 49 U.S.C. 10731(e), to apply for the ensuing calendar year. The Commission will also state the regional and national average revenue/variable cost ratio levels produced by the rates for each recyclable commodity and determine which, if any, regional and national rate groups produce ratios exceeding the simultaneously announced statutory cap level. These rate group determinations will be made not only in relation to rates for the railroad industry overall but also in relation to the rates of any railroad that has made an acceptable alternative submission under § 1145.3(f). In addition, based on the evidence submitted regarding individual rates, the Commission will state the revenue/variable cost ratios produced by those rates and determine which, if any, of those rates produce ratios exceeding the statutory cap level.

(b) *Contingencies.* (1) If for any reason the Commission experiences delay in issuing the annual decision, the prior annual decision shall remain in effect until the issuance of a new decision. At such time as the new annual decision is issued, its statutory cap level determination shall apply retroactively so as to cover all recyclable commodity movements transported during the calendar year.

(2) If the Commission is unable to make a requested individual rate determination by the date of the annual decision, it will provide in the decision either:

(i) That the determination will be made in a subsequent decision in the same annual proceeding; or

(ii) That the issue will be transferred to a separate proceeding for disposition.

(c) *Limited scope.* No rate reductions or damages will be ordered and no rate increases will be approved in the annual proceedings conducted under this part, which are solely for determination of the statutory cap level, revenue/variable cost ratio levels, and above-cap rates and rate groups.

§ 1145.5 Regulation of rate increases.

(a) *Focus.* The ongoing regulation of maximum reasonableness of rates on

recyclable commodities is directed to rate increases, not to rate levels apart from increases.

(b) *Jurisdiction.* The Commission has regulatory jurisdiction over all rate increases on recyclable commodities. No showing of railroad market dominance is required.

(c) *Standard of maximum reasonableness.* The reasonable maximum rate level on a recyclable commodity produces a revenue/variable cost ratio equal to the statutory cap level determined in annual proceedings under this part. A rate increase violates this standard to the extent that it raises a below-cap rate above the cap level, or if it applies to a rate that is already above the cap level.

(d) *Review of increases.* Investigation and complaint proceedings with respect to maximum reasonableness of rate increases on recyclable commodities are conducted under the same procedures as apply to challenges to rates on other commodities, with the exception of the special requirements and procedures identified in paragraph (f) of this section for certain increases.

(e) *Increases subject to special procedures.* The following rate increases are subject to the special requirements and procedures of paragraph (f) of this section:

(1) Increases in rates belonging to rate groups determined to be above the cap level.

(2) Increases in rates determined to be individually above the cap level.

(f) *Special requirements and procedures.* Notwithstanding the provisions of 49 U.S.C. 10707a (a) through (d), every increase covered by paragraph (e) of this section is subject to the following requirements and procedures:

(1) *Notice and challenges.* The increase must be filed on statutory notice and is subject to protest, suspension, investigation, and to challenge by complaint.

(2) *Prejustification.* The tariff filing containing the increase must be accompanied by a sworn statement, supported by unadjusted or adjusted cost evidence, to demonstrate the facts specified in paragraphs (f)(3) and (4) of this section.

(3) *Relationship of existing rate to cap level.* The prejustification must establish one of the following:

(i) The rate group or individual rate that was determined to be above the cap level has fallen to or below the cap level;

(ii) The cap level has risen above the level of the rate; or

(iii) The rate, although belonging to an above-cap group, is not individually above the cap.

(4) *Effect of increase.* The prejustification must also establish the following:

(i) The increase will not raise the rate above the cap level; and

(ii) If the rate is a below-cap rate belonging to an above-cap group, the increase will not raise the group's average ratio farther above the cap level, because either:

(A) The increase is a cost recovery increase that does not raise the revenue/variable cost ratio produced by the rate; or

(B) The increase is offset by decreases in other rates in the same rate group.

(g) *Increases not subject to special procedures.* A rate increase is not subject to the special requirements and procedures of paragraph (f) of this section if all rates to which the increase applies belong to groups determined to be at or below the cap level and none of the rates has been determined to be above the cap level individually. Such an increase is subject to the reasonableness standard set forth in paragraph (c) of this section, but may be challenged and reviewed only by procedures consistent with the provisions of 49 U.S.C. 10707a (a) through (d) and part 1135 of this chapter.

(h) *Remedies.* Rate reductions and damage awards are available, to the extent justified, in all rate investigation and complaint proceedings regarding recyclable commodities. They will be ordered only to remedy unlawful rate increases and will not be premised on rate levels apart from increases.

§ 1145.6 Prospective effect.

The rules established in this part are prospective only. Claims relating to periods prior to adoption of these rules are not affected by the rules.

§ 1145.7 Application of railroad cost recovery procedures.

Nothing in these rules is to be construed so as to preclude the application to recyclable commodities of any valid changes by the Commission in rules and procedures adopted in Ex Parte No. 290 (Sub-No. 2), *Railroad Cost Recovery Procedures,* that apply to all commodities.

PART 1135—RAILROAD COST RECOVERY PROCEDURES

2. The authority citation for part 1135 is revised to read as follows:

Authority: 49 U.S.C. 10321, 10707a, and 10731; 5 U.S.C. 553.

§ 1135.1 [Amended]

3. Section 1135.1 is amended by adding paragraph (h) to read as follows:

§ 1135.1 Quarterly adjustment of rates.

* * * * *

(h) A Commission order pursuant to paragraph (a) of this section that provides a quarterly adjustment of rates that is a positive number may not be applied to any rates that, in any annual order setting the ratio of revenue to variable costs pursuant to 49 U.S.C. 10731(e), the Commission finds exceed the established ratio on a regional aggregate or an individual basis, unless the railroads demonstrate that those rates have fallen to or below the established ratio.

[FR Doc. 89-24436 Filed 10-16-89; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 54, No. 199
Tuesday, October 17, 1989

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

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Size Standard for Export Trading Companies and Export Management Companies

AGENCY: Small Business Administration.

ACTION: Withdrawal of proposed rule.

SUMMARY: The Small Business Administration (SBA) is withdrawing its 1988 proposed rule, which if promulgated in final, would have established a size standard of $10 million for Export Trading and Management Companies. Since the proposed size standard will not become effective, the applicable size standard for such companies will remain at 100 employees as part of Wholesale Trade.

FOR FURTHER INFORMATION CONTACT: Harvey Bronstein, Economist, Size Standards Staff, (202) 653–6373.

SUPPLEMENTARY INFORMATION: On June 7, 1988, SBA published in the **Federal Register** (53 FR 20857) a proposal to establish a size standard of $10 million for Export Trading Companies (ETCs) and Export Management Companies (EMCs) (hereinafter referred to as ETCs). The proposal was made to identify those ETCs which could be eligible for SBA assistance. It enumerated the forms of SBA assistance available to small business exporters and described the nature of the ETCs' activity. The assistance includes: export revolving lines of credit, regular business loans, business development assistance, legal consultation and export training. The proposal also described the nature of export trading and the sizes of firms engaged in this activity.

SBA considered a size standard for ETCs, apart from the wholesale trade industry, in 1984 when there were several size standards applicable to wholesale trade. Today, a single size standard applies to all wholesale trade industries. The wholesale industries had had a three-part size standard of $9.5, $14.5 or $22 million depending on the item being sold. For an ETC that sold more than one product, it was subject to different wholesale size standards and thus determining its size status was confusing. Also, ETCs provide services to manufacturers generally not provided by other types of wholesalers. The influence of these activities on industry structure needed to be assessed for size standard purposes. For these reasons SBA sought to create a unique size standard for this industry. SBA, in an unrelated action, established a single size standard of 500 employees for the wholesale trade industry (revised to 100 employees in 1986), regardless of the item being sold.

SBA believes that the revised wholesale size standard of 100 employees has proven to be appropriate for the purposes of assisting ETCs and that creation of a special size standard is unnecessary. An ETC's primary industry classification will generally be within the wholesale trade industries because most of its revenues will be derived from exporting manufactured products. In some cases an ETC's primary industry classification will be within a service industry when its primary source of revenue is derived from export consulting and related services. Establishing an ETC size standard would require segmenting a portion of the wholesale trade industry division. This action would reverse the Agency's previous effort to establish a common size standard for all wholesale trade firms. Unless there is demonstrated a compelling reason to segment an industry, SBA's policy is to apply a single size standard to a four-digit Standard Industrial Classification industry. The current wholesale trade size standard appears to be more appropriate for ETCs than the 1984 receipt-based size standard or the proposed standard. Accordingly, SBA is withdrawing the proposed rule.

Dated: October 3, 1989.

Susan Engeleiter,

Administrator, U.S. Small Business Administrator.

[FR Doc. 89–24481 Filed 10–16–89; 8:45 am]
BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89–CE–26–AD]

Airworthiness Directives; Beech 55, 56TC, 58, and 95 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to certain Beech 55, 56TC, 58, and 95 series airplanes, which would require inspections of the wing front spar carry.through web structure. There have been numerous reports of cracking of this structure. The proposed action is necessary to detect and repair cracks that could propagate to lengths that would compromise the integrity of the wing attachment to the fuselage and lead to possible loss of the airplane.

DATE: Comments must be received on or before December 1, 1989.

ADDRESSES: Beech Service Bulletin No. 2269, dated August 1989, applicable to this AD, may be obtained from the Beech Aircraft Corporation, Commercial Service Department 52, P.O. Box 85, Wichita, Kansas 67201–0085. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the Federal Aviation Administration, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 89–CE–26–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Engler, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209, Telephone (316) 946–4409.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications

should identify the regulatory docket or notice number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 89-CE-26-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA is currently aware of 87 reports of cracks of various sizes in the wing front spar carry-through web structure on certain Beech 55, 56TC, 58, and 95 series airplanes. The cause of the cracking has been determined to be fatigue in the corners of the fuselage frames, around and between the huckbolts, and in areas where stringers are attached. The carry-through web cracks have been on both the left and right side of the front spar carry-through and may be accelerated by rough field operations. Although the reported cracks have not progressed to a point where actual safety of flight has been affected, failure to detect and repair these cracks could result in propagation to lengths that would compromise the integrity of the wing attachment to the fuselage. As a result, Beech issued Service Bulletin No. 2269, dated August 1989, that specifies the inspection and repairs necessary to maintain the integrity of the carry-through structure. Since the condition described is likely to exist or develop in other airplanes of the same design, an AD is being proposed which would require compliance with Beech Service Bulletin Number 2269, dated August 1989, on certain Beech 55, 56TC, 58, and 95 series airplanes. This action does not include Models 58TC and 58P airplanes which have different carry-through web assemblies because there have been no reports of cracks in these models. The FAA has determined there are approximately 4,000 airplanes affected by the proposed AD. The cost of the inspection as proposed in the AD is estimated to be $160 per airplane. The total cost is estimated to be $640,000. The cost of this inspection will not have a significant economic impact on any small entities operating these airplanes.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of part 39 of the FAR as follows:

PART 39—[AMENDED]

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

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

§39.13 [Amended]

2. By adding the following new AD:

BEECH: Applies to the following airplanes certificated in any category:

Models	Serial Numbers
95, B95, B95A, D95A, E95	TD-1 through TD-721.
95-55, 95-A55, 95-B55, 95-B55A	TC-1 through TC-2456, except TC-350.
95-C55, 95-C55A, D55, D55A, E55, E55A	TC-350 and TE-1 through TE-1201.
95-B55B (T42A)	TF-1 through TF-70.
56TC, A56TC	TG-1 through TG-94.
58, 58A	TH-1 through TH-1475.

Compliance: Required as indicated in the body of the AD, unless already accomplished.

To prevent cracks in the wing front spar carry-through web structure from propagating to lengths that could compromise the integrity of the wing attachment to the fuselage, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, or upon the accumulation of 1500 hours total TIS, whichever occurs later, and thereafter at the intervals specified below, inspect the wing front spar carry-through web structure in accordance with the instructions in Beech Service Bulletin (SB) No. 2269, dated August 1989.

(1) If no cracks are found, repeat the inspection at 500 hour TIS intervals thereafter.

(2) For cracks in the bend radius:

(i) If the crack length is less than 0.5 inch, prior to further flight stop drill the crack in accordance with the instructions in Beech SB No. 2269 and reinspect for crack progression every 100 hours TIS thereafter. Only one stop drilled crack for the left side and one stop drilled crack for the right side of the web structure are permissible.

(ii) If the crack length is greater than 0.5 inch but less than 2.0 inches, prior to further flight stop drill the crack in accordance with the instructions in Beech SB No. 2269 and within the next 25 hours TIS, repair the web structure with the applicable Beech part number (P/N) 58-4008 kit as specified in the above SB. After installation of the applicable Beech P/N 58-4008 kit, dye-penetrant inspect this area for cracks within the next 1,500 hours TIS from the time of installation of the applicable kit, and reinspect for cracks at 500 hours TIS intervals thereafter. If cracks are detected in these subsequent inspections, prior to further flight, contact the Wichita Aircraft Certification Office at the address below for disposition.

(iii) If the crack length is greater than 2.0 inches, prior to further flight repair the web structure with the applicable Beech P/N 58-4008 kit as specified in the above SB. After installation of the applicable Beech P/N 58-4008 kit, dye-penetrant inspect this area for cracks within the next 1,500 hours TIS from the time of installation of the applicable kit, and reinspect for cracks at 500 hours TIS intervals thereafter. If cracks are detected in these subsequent inspections, prior to further flight, contact the Wichita Aircraft Certification Office at the address below for disposition.

(3) For cracks in the web face, in the area of the huckbolt fasteners:

(i) If the crack length is less than 0.5 inch, reinspect for crack progression every 100 hours TIS thereafter. Only one crack for the left side and one crack for the right side are permissible.

Note 1: Do not stop drill these cracks due to the possibility of damaging the structure behind the web face.

(ii) If any crack length is greater than 0.5 inch, or a crack is connecting two fastener holes, within the next 25 hours TIS, repair the web face with the applicable Beech P/N 58–4008 kit as specified in the above SB. After installation of the applicable Beech P/N 58–4008 kit, dye-penetrant inspect this area for cracks within the next 1,500 hours TIS from the time of installation of the applicable kit, and reinspect for cracks at 500 hours TIS intervals thereafter. If cracks are detected in these subsequent inspections. prior to further flight, contact the Wichita Aircraft Certification Office at the address below for disposition.

(iii) If any crack passes through two fastener holes and extends beyond the holes, prior to further flight repair the web face with the applicable Beech P/N 58–4008 kit as specified in the above SB. After installation of the applicable Beech P/N 58–4008 kit, dye-penetrant inspect this area for cracks within the next 1,500 hours TIS from the time of installation of the applicable kit, and reinspect for cracks at 500 hours TIS intervals thereafter. If cracks are detected in these subsequent inspections, prior to further flight, contact the Wichita Aircraft Certification Office at the address below for disposition.

(4) If cracks are found in both the forward and aft web on the same side of the airplane, regardless of the crack lengths, prior to further flight repair the web structure with the applicable Beech P/N 58–4008 kit as specified in the above SB. After installation of the applicable Beech P/N 58–4008 kit, dye-penetrant inspect this area for cracks within the next 1,500 hours TIS from the time of installation of the applicable kit, and reinspect for cracks at 500 hours TIS intervals thereafter. If cracks are detected in these subsequent inspections, prior to further flight, contact the Wichita Aircraft Certification Office at the address below for disposition.

Note 2: If a fuselage skin crack is discovered around the opening for the lower forward carry-through fitting, an external doubler may be required.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(c) An alternate method of compliance or adjustment of the initial or repetitive compliance times, which provides an equivalent level of safety, may be approved by the Manager, Wichita Aircraft Certification Office, FAA, Room 100, 1801 Airport Road. Wichita. Kansas 67209; Telephone (316) 946–4400.

Note 3: The request should be forwarded through an FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

All persons affected by this directive may obtain copies of the document referred to herein upon request to the Beech Aircraft Corporation, Commercial Service, Department 52, P.O. Box 85, Wichita, Kansas 67201–0085; or may examine this document at the FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on October 2, 1989.

Earsa L. Tankesley,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–24405 Filed 10–16–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 89–CE–27–AD]

Airworthiness Directives; Cessna Models 310, 320, 340, 401, 402, 411, 414 and 421 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD) that would require inspection and replacement. as necessary, of the main landing gear inner barrel bearings on certain Cessna Models 310, 320, 340, 401, 402, 411, 414 and 421 airplanes. The FAA has received reports of failures of these bearings. The proposed actions will preclude jamming of the oleo strut, and possible subsequent damage to the landing gear system and airframe.

DATE: Comments must be received on or before November 16, 1989.

ADDRESSES: Cessna Service Bulletin MEB88–7, dated December 2, 1988, applicable to this AD, may be obtained from the Cessna Aircraft Company, P.O. Box 7704, Wichita, Kansas 67277. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the Federal Aviation Administration, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 89–CE–27–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Lawrence S. Abbott, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209; Telephone (316) 946–4409.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 89–CE–27–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received reports of eight failures of the main landing gear strut barrel inner bearing on Cessna 300 and 400 series airplanes. Failure of this bearing can result in the shock strut jamming, possibly in the extended position. This can cause the gear retraction system to fail or the gear to collapse after landing, with damage to the airplane, and possible injury to the occupants. Cessna redesigned the bearing, and incorporated it into production in 1980 model airplanes. Cessna has also issued Service Bulletin MEB88–7, dated December 2, 1988, that defines repetitive inspections of the pre-1980 model year production bearing and instructions to replace any bearings found to be cracked. Since the condition described is likely to exist or develop in other Cessna Models 310, 320, 340, 401, 402, 411, 414 and 421 airplanes of the same design, this proposed AD would require a visual and magnetic particle inspection of these bearings, and replacement if found cracked.

The FAA has determined there are approximately 8,367 airplanes affected by the proposed AD. The cost of the initial and each recurring inspection is estimated to be $880 per airplane for a total cost of $7,362,960. The cost of compliance is so small that the expense of compliance will not have a significant impact on any small entities operating these airplanes. The regulations proposed herein would not have substantial direct effects on the States,

on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

PART 39—[Amended]

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

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

§ 39.13 [Amended]

2. By adding the following new AD:

Cessna: Applies to the following models and serial numbered airplanes certificated in any category:

Model	Serial numbers
310	310L0001 thru 310R1690.
320	320E0001 thru 320F0045.
340	340–0001 thru 340A0801.
401	401–0001 thru 401B0221.
402	402–0001 thru 402C0125.
411	411–0001 thru 411A0300.
414	414–0001 thru 414A0340.
421	421–0001 thru 421C0715.

Compliance: Required as indicated in the body of the AD, unless already accomplished.

To assure structural integrity of the main gear barrel inner bearing and prevent jamming of the inner and outer barrels of the main landing gears, accomplish the following:

(a) Upon the accumulation of 1,300 hours total time-in-service (TIS), or within the next 300 hours TIS after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 1,000 hours TIS, inspect the left and right main gear strut barrel inner bearings, Part Numbers 5041108–1 and 5041108–2, in accordance with the following procedures:

(1) Using the appropriate Aircraft Service Manual or Maintenance Manual, refer to the Landing Gear section and use it as a guide to remove the lower barrel and axle assemblies from the upper barrel assemblies.

(2) Remove all oil and grease from the external lock rings, inner ring bearings, and extended stop spacers.

(3) Visually inspect the external lock rings, inner bearings, and extended stop spacers for cracks.

(4) If any cracks are found in the external lock rings or the extended stop spacers, prior to further flight replace the cracked part with a serviceable part.

(5) If any cracks are found in the inner bearings, prior to further flight replace the cracked part with a Part Number (P/N) 5141109–1 bearing.

(6) If no cracks are found, magnetic particle inspect the inner bearings using the procedures specified in Part B, "Magnetic Particle Nondestructive Inspection Procedures" of Cessna Service Bulletin MEB88–7, dated December 2, 1988. If any cracks are found, prior to further flight replace the cracked part with a P/N 5141109–1 bearing.

(b) The 1,000 hour repetitive inspections specified in paragraph (a) of this AD are no longer required when the P/N 5141109–1 bearing is installed in each gear.

(c) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(d) An alternate method of compliance or adjustment of the initial or repetitive compliance times which provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209.

Note: The request should be forwarded through an FAA Maintenance Inspector, who may add comments and send it to the Manager, Wichita Aircraft Certification Office.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to the Cessna Aircraft Company, P.O. Box 7704, Wichita, Kansas 67277; or may examine these documents at the FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on October 2, 1989.

Earsa L. Tankesley,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–24406 Filed 10–16–89; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 314

[Docket No. 89N–0118]

Proposed Technical Revision in the Regulations Governing Drug Master File Submissions

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing minor revisions to the rules governing the submission to FDA of drug master files (DMF's) DMF's are reference files submitted to FDA is support of investigational and marketing applications for human drugs. There are five types of DMF's. This proposed rule would revise the titles to reflect more accurately the purpose of each type of DMF.

DATE: Comment by December 18, 1989.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Adele S. Seifried, Center for Drug Evaluation and Research (HFD–362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8046.

SUPPLEMENTARY INFORMATION: DMR's are reference files submitted to FDA that contain information that may be used in the review of investigational and marketing applications for human drugs. DMF's are submitted to the agency to permit the submitter to incorporate the information in DMF's when submitting an application of the allow another party to reference this material without disclosing to that party the contents of the file. The submission of a DMF is not required; and DMF is submitted solely at the discretion of the holder. In the **Federal Register** of February 22, 1985 (50 FR 7452 at 7493), FDA adopted new regulations governing the submission and content of DMF's. The agency is now proposing minor changes to these requirements.

The current regulation describes several types of information that may be submitted in a DMF. DMF's are divided into five types according to their contents. Type I DMF's as described in 21 CFR 314.420(a)(1), cover the facilities and operating procedures used to

manufacture drug products and drug substances. This proposed rule would revise 21 CFR 314.420(a)(1) to make clear that the use of Type I DMF's is more applicable for foreign rather than domestic manufacturing establishments. In most instances, Type I DMF's for domestic facilities are not sufficiently beneficial to the agency to warrant submission. Because of a generally greater inspectional history for domestic firms, FDA is familiar with the location and layout of such facilities. In contrast, Type I DMF's are sometimes useful for foreign establishments. An FDA on-site inspection of a foreign drug manufacturing facility presents unique problems of planning, scheduling, and travel not presented by an inspection of a domestic manufacturing facility. To help FDA plan efficient inspections of foreign manufacturing facilities, some foreign manufacturers have submitted information about their facilities in DMF's. DMF's provide a convenient means to convey such information. It should be emphasized that foreign facilities making products for the American market are subject to the same current good manufacturing practice requirements as domestic facilities.

The proposed rule also would revise the title of Type V DMF's from "Preclinical or clinical data" to "FDA-accepted reference information." The agency has found that the Type V DMF is sometimes used to submit information that is either inappropriate or should be submitted with other documentation. For example, FDA has received clinical data in Type V DMF's that properly should be a part of investigational and marketing applications. therefore, the proposed change in intended to discourage the submission of Type V DMF's for miscellaneous information, duplicate information, or information that should be included in one of the other types of DMF's. If a person wishes to submit information in a DMF that is not appropriate for submission in one of the other four types of DMF's that person must first submit a letter of intent to the Drug Master File Staff, Food and Drug Administration, 12420 Parklawn Dr., Rm. 2–14, Rockville, MD 20852. FDA will then contact the person to discuss the appropriateness of the proposed submission. This proposed rule also would make minor changes in the regulation to describe more accurately the other three types of DMF's.

These revisions are consistent with the guidance provided in the "Guideline for Drug Master Files," which may be consulted for help in preparing and submitting DMF's. Elsewhere is this issue of the Federal Register, the agency is publishing a notice of availability of this guideline under Docket No. 79D–0124. Written requests for a copy of the guideline should be sent to the Legislative, Professional, and Consumer Affairs Branch (HFD–365), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857 (send a self-addressed adhesive label to assist the branch in processing your requests).

Interested persons may, on or before December 18, 1989, submit written comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Environmental Impact

The agency has determined pursuant to 21 CFR 25.24(a)(9) that this proposed technical revision is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Economic Impact

In accordance with Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96–354), the agency has carefully analyzed the economic consequences of this proposed rule. This proposed rule would be merely a technical revision of an existing rule which would have minor but beneficial economic consequences, and the agency has determined that it is, therefore, not a major rule as defined in Executive Order 12291. Further, the Commissioner certifies that this clarification will not have a significant impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act.

Paperwork Reduction Act

The minor technical changes under this proposed rule would relate to information collection requirements already submitted to the Office of Management and Budget (OMB) under section 3507 of the Paperwork Reduction Act of 1980 and previously approved under OMB control number 0910–0001.

List of Subjects in 21 CFR Part 314

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act, it is proposed that 21 CFR part 314 be amended as follows:

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG OR AN ANTIBIOTIC DRUG

1. The authority citation for 21 CFR part 314 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 371, 376).

2. Section 314.420 is amended by revising paragraphs (a)(1), (2), (3), (4), and (5) to read as follows:

§ 314.420 Drug master files.

(a) * * *

(1) Manufacturing site, facilities, operating procedures, and personnel (because an FDA on-site inspection of a foreign drug manufacturing facility presents unique problems of planning and travel not presented by an inspection of a domestic manufacturing facility, this information is only recommended for foreign manufacturing establishments);

(2) Drug substance, drug substance intermediate, and materials used in their preparation, or drug product;

(3) Packaging materials;

(4) Excipient, colorant, flavor, essence, or materials used in their preparation;

(5) FDA-accepted reference information. (A person wishing to submit information and supporting data in a drug master file (DMF) that is not covered by Types I through IV DMF's must first submit a letter of intent to the Drug Master File Staff, Food and Drug Administration, 12420 Parklawn Dr., Rm. 2–14, Rockville, MD 20852. FDA will then contact the person to discuss the proposed submission.)

* * * * *

Dated: August 9, 1989.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–24430 Filed 10–16–89; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD5-89-097]

Drawbridge Operation Regulations; Elizabeth River, Eastern Branch, Norfolk, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of Senator Stanley C. Walker of Virginia, the Coast Guard is considering changing the regulations that govern the operation of the Berkley drawbridge across the Eastern Branch of the Elizabeth River, mile 0.4, in Norfolk, Virginia, by restricting bridge openings during the morning and evening rush hours. The proposed changes to these regulations are, to the extent practical and feasible, intended to provide for regularly scheduled drawbridge openings to help reduce motor vehicle traffic delays and congestion on the roads and highways linked by this drawbridge.

DATE: Comments must be received on or before December 1, 1989.

ADDRESSES: Comments should be mailed to Commander (ob), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004. The comments and other materials referenced in this notice will be available for inspection and copying at the above address, room 507, between 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Comments may be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (804) 398-6222.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written comments, or data. Persons submitting comments or data should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended changes to the proposal. The Commander, Fifth Coast Guard District, will evaluate all communications received and determine a final course of action on this proposal. The proposed regulation may be changed based on comments and data received.

Drafting Information

The drafters of this notice are Linda L. Gilliam, project officer and Captain M. K. Cain, project attorney.

Discussion of Proposed Regulations

Senator Stanley C. Walker of Virginia has requested that openings of the Berkley drawbridge across the Eastern Branch of the Elizabeth River at mile 0.4 in Norfolk, Virginia, be eliminated during peak highway traffic hours to help reduce traffic congestion, but remain open on signal during the rest of the time. Currently, the draw opens on signal at all times, and there is a "gentlemen's agreement" with the Coast Guard from the commercial maritime industry to avoid requesting bridge openings during morning and evening rush hours; however, this agreement has not been completely successful as there are a number of waterway users unaware of it who request draw openings during peak rush hours. The proposed change would close the Berkley Bridge to commercial, recreational, tour boats and public vessels Monday through Friday, except Federal holidays, from 5:30 a.m. to 9:00 a.m., and from 3:30 p.m. to 6:30 p.m. A provision that allows the draw to open on signal at all times for vessels in distress is being made a part of this proposal.

Draw openings during the peak traffic hours have been causing lengthy highway traffic backups with resultant delays often lasting as long as 1½ hours. Since the Berkley Bridge and the Downtown Tunnel are part of the same highway corridor, they are both affected by the traffic backups which occur on the Norfolk side beginning midway on the Berkley Bridge extending back towards downtown Norfolk and onto I-264, and on the Portsmouth side beginning at the mouth of the Downtown Tunnel and extending back towards I-264 and into downtown Portsmouth. According to the Virginia Department of Transportation, these backups do not automatically return to a normal traffic flow when the draw is closed. It generally takes a period of time lasting longer than the rush hours for traffic to recover and return to a nomal flow. The problem often worsens as a result of vehicles overheating and experiencing mechanical problems that frequently occur during traffic stoppages. A problem also exists for emergency vehicles (fire, police, rescue, etc.) that need to go through the Downtown Tunnel, and the Virginia Department of Transportation has a problem reaching broken down cars in the tunnel with their wreckers and emergency vehicles when traffic congestion occurs due to a bridge lift. An extra burden also is placed on the ventilation system in the tunnel due to excessive exhaust fumes coming from idling cars.

The Berkley Bridge and tunnels, a part of I-264, are an important link between the cities of Portsmouth and Norfolk. It is one of the primary routes for motorists that work at the Norfolk Naval Shipyard, and other industries and businesses in Portsmouth and Norfolk. The bridge is heavily traveled throughout the day, with the heaviest traffic volumes occurring during the morning and evening rush hours. The Hampton Roads Maritime Association has been notified that this proposal is being considered, and they will be given the opportunity along with other navigational interests to comment as to whether this proposed restriction is practical and feasible from their viewpoint. The Coast Guard believes these proposed restrictions will not unduly restrict vessel passage through the bridge, as vessel operators and the marine industry can plan transits around the proposed schedule. Many commercial waterway users already do this as a result of the "gentlemen's agreement".

Federalism Assessment

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

Economic Assessment and Certification

These proposed regulations are not considered major under Executive Order 12291 on Federal Regulation nor significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of the proposed regulation on commercial navigation or on any industries that depend on waterborne transportation should be minimal. Because the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with

section 2.B.2.g. of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); 33 CFR 117.43

2. Section 117.1007(d) is added to read as follows:

§ 117.1007 Elizabeth River-Eastern Branch.

* * * * *

(d) The draw of the Berkley Bridge, mile 0.4 in Norfolk, shall open on signal, except that:

(1) From 5:30 a.m. to 9:00 a.m. and from 3:30 p.m. to 6:30 p.m., Monday through Friday, except Federal holidays, the draw will remain closed to all vessel traffic.

(2) The draw shall open on signal at all times for vessels in distress.

Dated: October 5, 1989.

P. A. Welling,

Rear Admiral, U. S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 89–24480 Filed 10–16–89; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Federal Insurance Administration

44 CFR Part 67

[Docket No. FEMA–6969]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations and proposed base flood elevation modifications listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a).

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not prohibit development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E. O. 12127.

The proposed base (100-year) flood elevations for selected locations are:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
GEORGIA	
Meriwether County (Unincorporated Areas)	
Pigeon Creek:	
Just upstream of Mitchell Cove Road	*722
Just downstream of Pigeon Creek Road	*764
Just upstream of Pigeon Creek Road	*769
About 0.8 mile upstream of confluence of Cooler Branch	*932
Maps available for inspection at the County Building Department and Zoning Administrator's Office, Greenville, Georgia.	
Send comments to The Honorable Carl Garner, Chairman, County Commissioners, Meriwether County, P.O. Box 438, Greenville, Georgia 36222.	
Peach County (Unincorporated Areas)	
Bay Creek:	
About 1.1 miles downstream of Holland Road	*320
About 2.7 miles upstream of Sanitary Creek Road	*372
Mossy Creek:	
Just upstream of State Route 96	*327
About 400 feet downstream of confluence of Mule Creek	*343
Echeconnee Creek:	
Just upstream of Houston Road	*287
Just downstream of Interstate 75	*295
Maps available for inspection at the County Zoning Office, County Courthouse, Ft. Valley, Georgia.	
Send comments to The Honorable Glenwood Hill, Chairman, Board of Commissioners, Peach County, P.O. Box 468, Ft. Valley, Georgia 31030.	
IOWA	
Denver (City), Bremer County	
Quarter Section Run:	
About 3,800 feet downstream of Fayette Street	*937
About 2,300 feet upstream of Denver Dam	*946
Map available for inspection at the City Hall, 107 North State Street, Denver, Iowa.	
Send comments to The Honorable Gene Leonhart, Mayor, City of Denver, City Hall, 107 North State Street, Denver, Iowa 50622.	
Sumner (City), Bremer County	
Little Wapsipinicon River:	
About 3,000 feet downstream of Division Street	*1,051

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
About 4,000 feet upstream of Walnut Street	*1,060
Maps available for inspection at the City Hall, 105 East 1st Street, Sumner, Iowa.	
Send comments to The Honorable Claude Waskow, Mayor, City of Sumner, City Hall, 105 East 1st Street, Sumner, Iowa 50674.	
KANSAS	
Medicine Lodge (City), Barber County	
Medicine Lodge River:	
About 2.0 miles downstream of U.S. Highway 160	*1,446
About 1.1 miles upstream of U.S. Highway 160	*1,462
Elm Creek:	
At mouth	*1,452
Just downstream of Atchison, Topeka and Santa Fe Railway	*1,459
Just upstream of Atchison, Topeka and Santa Fe Railway	*1,464
About 0.5 mile upstream of Curry Lane	*1,494
Ditch Creek:	
At mouth	*1,455
Just downstream of Barber County State Lake Dam	*1,495
Just upstream of Barber County State Lake Dam	*1,518
About 0.3 mile upstream of Iliff Street	*1,527
Maps available for inspection at the City Hall, 114 West 1st, Medicine Lodge, Kansas.	
Send comments to The Honorable Kenneth Swiggart, Mayor, City of Medicine Lodge, City Hall, 114 West 1st, Medicine Lodge, Kansas 67104.	
KENTUCKY	
Pulaski County (Unincorporated Areas)	
Pitman Creek:	
500 feet downstream of confluence of Caney Fork	*876
Just downstream of State Route 635	*948
Caney Fork:	
At mouth	*876
Just upstream of dam	*886
Just downstream of State Route 39	*894
Pointer Creek:	
About 1.9 miles above mouth	*766
About 1.4 miles upstream of confluence of Pitman Branch	*913
Maps available for inspection at the Disaster and Emergency Services Department, County Courthouse, Somerset, Kentucky.	
Send comments to The Honorable Darrell Beshears, Judge-Executive, Pulaski County, P.O. Box 712, Somerset, Kentucky 42501.	
MAINE	
Alfred (Town), York County	
Littlefield River:	
Approximately 150 feet upstream of Estes Lake Dam	*216
Approximately 350 feet upstream of U.S. Route 202 and State Route 4	*235
Shaker Pond: Entire shoreline within community	*235
Maps available for inspection at the Town Hall, Alfred, Maine.	
Send comments to The Honorable Dorothy M. Hill, Chairman of the Town of Alfred Board of Selectmen, York County, P.O. Box 85, Alfred, Maine 04002.	
Cushing (Town), Knox County	
St. Georges River:	
Shoreline at Maple Juice Cove	*10
Shoreline at south western tip of Gay Island	*20
Atlantic Ocean:	
Shoreline of Meduncook River at Hornbarn Cove	*10
Shoreline of Meduncook River at Davis Point Road	*17
Maps available for inspection at the Clerk's Office, Cushing, Maine.	
Send comments to The Honorable Alton Grover, Chairman of the Town of Cushing Board of Selectmen, Knox County, HCR Box 131, Cushing, Maine 05463.	
Friendship (Town), Knox County	
Meduncook River:	
From 500 feet south of State Route 97 to Northeast Point	*10
Friendship Harbor	*14
Atlantic Ocean:	
Shoreline of Muscungus Bay at:	
Northeast Point	*10
Little Franklin Ledge	*12
Delano Cave	*14
Jameson Point	*27
Crane Island	*17
Goose River: Boot Neck	*10
Maps available for inspection at the Town Office, Friendship, Maine.	
Send comments to The Honorable Richard Lash, First Selectman of the Town of Friendship, Knox County, Town Office, Friendship, Maine 04547.	
South Bristol (Town), Lincoln County	
Atlantic Ocean	
Damariscotta River:	
Shoreline at northern corporate limits	*11
Shoreline at Jones Point	*10
Southeast shoreline of Foster Point	*17
Eastern Branch Johns River: Entire shoreline	*10
North Branch Johns River: Entire shoreline	*10
Heron Island:	
Northeastern shoreline	*10
Southeastern shoreline at Central Avenue extended	*18
Thrumpcap Island:	
Northern shoreline	*10
Eastern shoreline	*14
Crow Island: Southeastern shoreline	*18
Rutherford Island:	
Southwestern shoreline	*10
Shoreline at East Side Road extended southward	*18
Johns River:	
Peabow Island and High Island shorelines	*10
Shoreline northeast of McFarlands Cove Road	*20
Johns Bay:	
North Shoreline of Witch Island	*10
West shorelines of Birch and Hay Islands	*10
East shorelines of Birch and Hay Islands	*18
Shoreline at McFarlands Cove Road extended	*30
Poorhouse Cove: Entire shoreline	*10
McFarlands Cove:	
South and west shorelines	*10
Northwest shoreline	*12
Seal Cove: Entire shoreline	*10
Jones Cove:	
Northern, northwestern, and eastern shorelines	*12
Shoreline along east side of Jones Point	*16
Christmas Cove:	
Eastern and northwestern shorelines	*10
Shoreline shoutheast of southern end of Prescott Road	*26
The Gut: Entire shoreline	*10
Maps available for inspection at the Town Hall, South Bristol, Maine.	
Send comments to The Honorable Larry Kelsey, Chairman of the Town of South Bristol Board of Selectmen, Lincoln Country, HC 64, Boc 050, Walpole, Maine 04573.	
Woolwich (Town), Sagadahoc County	
Kennebec River:	
At U.S. Route 1	*9
At Chops Point	*9
At upstream corporate limits	*12
Atlantic Ocean	
Montsweag Bay: At Murphys Corner Road (extended)	*11
Brookings Bay: Approximately 2,400 feet southeast of intersection of Murphys Corner Road and Hockomock Road	*11
Hockomock Bay: At Phipps Point	*11
Pleasant Cove: At U.S. Route 1	*9
Maps available for inspection at the Town Office, Woolwich, Maine.	
Send comments to The Honorable Robert Buck, Chairman of the town of Woolwich Board of Selectment, Segadahoc County, R.R. 1, Box 1660, Woolwich, Maine 04579.	
MISSISSIPPI	
Jefferson County (unincorporated areas)	
Mississippi River:	
About 13.5 miles downstream of northern county boundary	*83
About 1.5 miles upstream of northern county boundary	*87
Maps available for inspection at the Chancery Clerk's Office, County Courthouse, Fayette, Mississippi.	
Send comments to The Honorable James Jackson, President, Board of Supervisors, Jefferson County, P.O. Box 145, Fayette, Mississippi 39069.	
Scooba (Town), Kemper County	
Little Scooba Creek:	
About 0.5 mile downstream of State Highway 16	*186
About 0.7 mile upstream of county road	*199
Maps available for inspection at the Town Clerk's Office, Town Hall, 1037 Kemper Street, Scooba, Mississippi.	
Send comments to The Honorable Lloyd Hutcherson, Mayor, Town of Scooba, Town Hall, 1037 Kempter Street, P.O. Box 68, Scooba, Mississippi 39358.	
Tunica County (unincorporated areas)	
Mississippi River:	
At southern county boundary	*198
About 2.3 miles upstream of northern county boundary	*215
Jerry's Bayou:	
About 2000 feet downstream of Prichard Road	*189
About 0.8 mile upstream of Prichard Road	*192
Whiteoak Bayou Tributary:	
At mouth	*189
About 0.8 mile upstream of State Highway 4	*194
Whitecak Bayou:	
About 400 feet downstream of confluence of Whiteoak Bayou Tributary	*189
About 400 feet upstream of confluence of Whiteoak Bayou Tributary	*189
Maps available for inspection at the Channcery Clerk's Office, County Courthouse, Tunica, Mississippi.	
Send comments to The Honorable Paul Battle, Jr., President, County Board of Supervisors, Tunica County, P.O. Box 53, Tunica, Mississippi 38676.	
Wilkinson County (unincorpoated areas)	
Mississippi River:	
At downstream county boundary	*61
About 19 miles upstream of upstream county boundary	*71
Maps available for inspection at the Board of Supervisor's Office, County Courthouse, Woodville, Mississippi.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Send comments to The Honorable William B. Netterville, President, Board of Supervisors, Wilkinson County, P.O. Box 516, Woodville, Mississippi 39669.	
MISSOURI	
Brookfield (city), Linn County	
Elk Creek:	
Just upstream of U.S. Highway 36	*742
About 1750 feet upstream of West Pratt Street	*765
West Yellow Creek:	
About 1100 feet downstream of County Road	*727
At confluence of Long Branch Creek	*735
Long Branch Creek:	
At mouth	*735
About 1.6 miles upstream of mouth	*737
Maps available for inspection at the City Hall, 116 Westbrooks, Brookfield, Missouri.	
Send comments to The Honorable Jack Forbes, Mayor, City of Brookfield, City Hall, Box 328, 116 Westbrooks, Brookfield, Missouri 64628.	
NEBRASKA	
Juniata (village), Adams County	
Main Ditch:	
Just upstream of South Street	*1,957
About 450 feet upstream of Eighth Street	*1,967
East Tributary:	
At confluence with Main Ditch	*1,957
Just upstream of Brass Avenue	*1,963
Maps available for inspection at the Village Hall, Juniata Avenue, Juniata, Nebraska.	
Send comments to The Honorable Bernice Wyman, Chairperson, Village of Juniata, P.O. Box 26, Juniata, Nebraska 68955.	
Scotts Bluff County (unincorporated areas)	
North Platte River:	
About 3.0 miles downstream of Broadway Avenue	*3,855
About 1.14 miles downstream of State Highway 29	*3,934
Tub Springs Drain:	
At mouth	*3,908
Just downstream of Burlington Northern railroad	*3,912
Just upstream of U.S. Highway 26	*3,919
Just downstream of Drop Structure	*3,937
Just upstream of Drop Structure	*3,944
About 0.54 mile upstream of confluence of Sunflower Drain	*3,956
Sunflower Drain:	
At mouth	*3,947
About 1,800 feet upstream of County Road	*3,950
Maps available for inspection at the County Building and Zoning Department, 101 Avenue I, Scottsbluff, Nebraska.	
Send comments to The Honorable Raymond Russel, Chairman, County Board of Commissioners, Scotts Bluff County, County Administration Building, 1925 Tenth Street, Gering, Nebraska 69341.	
NEW MEXICO	
Estancia (town), Torrance County	
Unnamed Arroyo:	
Approximately 700 feet downstream of downstream corporate limts	*6,107
At upstream corporate limits	*6,132
Maps available for inspection at the Town Hall, 1001 Highland, Estancia, New Mexico.	
Send comments to The Honorable Jerry Chavez, Mayor of the Town of Estancia, Torrance County, P.O. Box 166, Estancia, New Mexico 87016.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
PENNSYLVANIA	
Clinton (township), Wyoming County	
South Branch Tunkhannock Creek:	
At downstream corporate limits	*715
At upstream corporate limits	*815
Maps available for inspection at the Township Building, Factoryville, Pennsylvania.	
Send comments to The Honorable Donald R. Clark, Chairman of the Township of Clinton Board of Supervisors, Wyoming County, R.D. 1, Factoryville, Pennsylvania 18419.	
Coal (township), Northumberland County	
Coal Run:	
At downstream corporate limits	*748
Approximately .6 mile upstream of the State Route 61 Exit Ramp	*903
Quaker Run:	
At confluence with Shamokin Creek	*833
Approximately 625 feet upstream of downstream crossing of Main Street	*875
Shamokin Creek:	
At downstream corporate limits	*618
At upstream corporate limits	*711
Maps available for inspection at the Township Building, 805 West Lynn Street, Shamokin, Pennsylvania.	
Send comments to The Honorable Vincent A. Purcell, President of the Township of Coal Board of Supervisors, Northumberland County, 805 West Lynn Street, Shamokin, Pennsylvania 17872.	
Falls (township), Wyoming County	
Susquehanna River:	
At downstream corporate limits	*574
At upstream corporate limits	*594
Maps available for inspection at the Township Building, Falls, Pennsylvania.	
Send comments to The Honorable Eugene Dziak, Chairman of the Township of Falls Board of Supervisors, Wyoming County, R.D. 1, Falls, Pennsylvania 18615.	
Greenfield (township), Lackawanna County	
Dundaff Creek:	
Approximately 1,400 feet upstream of L.R. 615	*1,141
Approximately 315 upstream of confluence of Unnamed Tributary to Dundaff Creek	*1,251
Unnamed Tributary to Dundaff Creek:	
At confluence with Dundaff Creek	*1,249
Approximately .8 mile upstream of T-578 (Decker Road)	*1,321
Unnamed Tributary to South Branch Tunkhannock Creek:	
Approximately 75 feet downstream of T-510 (Stillmeadow Road)	*1,102
Approximately 100 feet upstream of T-560 (Watt Road)	*1,170
Maps available for inspection at the Township Building, R.D. 1, Carbondale, Pennsylvania.	
Send comments to The Honorable Joseph J. Slebodink, Chairman of the Township of Greenfield Board of Supervisors, Lackawanna County, R.D. 1, Carbondale, Pennsylvania 10407.	
Longswamp (township), Berks County	
Toad Creek:	
At the downstream corporate limits	*399
At the upstream corporate limits; Borough of Topton's eastern boundary	*454
Little Lehigh Creek:	
At the downstream corporate limits	*402
Approximately 1.1 miles upstream of L.R. 06119 (Main Street)	*521
Swabia Creek:	
At the downstream corporate limits	*475

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 470 feet upstream of L.R. 06119 (Main Street)	*521
Tributary A to Swabia Creek:	
At the confluence with Swabia Creek	*483
Approximately 435 feet upstream of L.R. 06012 (Mountain Road)	*515
Tributary B to Swabia Creek:	
At the confluence with Swabia Creek	*495
Approximately 90 feet upstream of L.R. 06012 (Mountain Road)	*508
Maps available for inspection at the Township Building, Mertztown, Pennsylvania.	
Send comments to The Honorable Nevin M. Behm, Chairman of the Township of Longswamp Board of Supervisors, Berks County, R.D. #1, Box 367-B, Mertztown, Pennsylvania 19539.	
Mehoopany (township), Wyoming County	
Susquehanna River:	
At downstream corporate limits	*626
At upstream corporate limits	*648
Maps available for inspection at the Township Building, Mehoopany, Pennsylvania.	
Send comments to The Honorable Robert B. Adams, Chairman of the Township of Mehoopany Board of Supervisors, Wyoming County, R.D. 1, Box 132, Mehoopany, Pennsylvania 18629.	
Monroe (township), Wyoming County	
Bowman Creek:	
Approximately 0.76 mile downstream of downstream corporate limits	*723
At upstream corporate limits	*938
Maps available for inspection at the Township Building, Noxen, Pennsylvania.	
Send comments to The Honorable James Sickler, Chairman of the Township of Monroe Board of Supervisors, Wyoming County, R.D. 1, Noxen, Pennsylvania 18636.	
Nesquehoning (borough), Carbon County	
Nesquehoning Creek:	
At State Route 93	*683
Approximately 720 feet upstream of confluence of Dennison Run	*981
Maps available for inspection at the Borough Building, 127 W. Catawissa Street, Nesquehoning, Pennsylvania.	
Send comments to The Honorable Michael Krazelk, Mayor of the Borough of Nesquehoning, Carbon County, 127 West Catawissa Street, Nesquehoning, Pennsylvania 18240.	
Newton (township), Lackawanna County	
Susquehanna River:	
At downstream corporate limits	*572
Approximately 100 feet upstream of the upstream corporate limits	*575
Falls Creek:	
Approximately .5 mile downstream of LR 35017	*1,061
Approximately 1,360 feet upstream of LR 35017	*1,080
Maps available for inspection at the Township Building, Clarks Summit, Pennsylvania.	
Send comments to The Honorable William Heen, Chairman of the Township of Newton Board of Supervisors, Lackawanna County, R.D. #3, Clarks Summit, Pennsylvania 18411	
Washington (township), Wyoming County	
Susquehanna River:	
At downstream corporate limits	*615
At upstream corporate limits	*638
Maps available for inspection at the Township Building, Washington, Pennsylvania.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Send comments to The Honorable Wayne Allen, Chairman of the Township of Washington Board of Supervisors, Wyoming County, R.D. 3, Tunkhannock, Pennsylvania 18657.	
Wilmot (township), Bradford County	
Susquehanna River:	
Downstream corporate limit	*663
Upstream corporate limit	*675
Maps available for inspection at the Township Building, Wilmot, Pennsylvania.	
Send comments to The Honorable Earl Messersmith, Chairman of the Township of Wilmot Board of Supervisors, Bradford County, R.D., New Albany, Pennsylvania 18833.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Windham (township), Bradford County	
Wappasening Creek:	
At downstream corporate limits	*843
Approximately 240 feet upstream of L.R. 699	*933
Maps available for inspection at the Township Building, Rome, Pennsylvania.	
Send comments to The Honorable John Doane, Chairman of the Township of Windham Board of Supervisors, Bradford County, R.D. 2, Rome, Pennsylvania 18837.	
Wyalusing (township), Bradford County	
Susquehanna River:	
At downstream corporate limits	*699

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 5.7 miles upstream of the confluence of Wyalusing Creek	*690
Maps available for inspection at the Township Building, Wyalusing, Pennsylvania.	
Send comments to The Honorable Marvin Meteer, Chairman of the Township of Wyalusing Board of Supervisors, Bradford County, R.D. 2, Wyalusing, Pennsylvania 18853.	

The proposed modified base (100-year) flood elevations for selected locations are:

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground * Elevation in feet	
				Existing	Modified
Arizona	Town of Prescott Valley	North Navajo Drive Wash	Approximately 150 feet downstream of Ranger Road.	None	*4,916
	Yavapai County		Just upstream of Manley Drive	None	*4,945
			At Spouse Drive	None	*4,995
			Approximately 55 feet upstream of Tonto Way	None	*5,045
			Just downstream of Long Look Drive	None	*5,072
	Maps are available for review at Town Hall, 8501 East Yavapai Street, Prescott Valley Arizona.				
	Send comments to the Honorable Edward Smith, Mayor, town of Prescott Valley, P.O. Box 25456, Prescott Valley, Arizona 86312.				
Hawaii	Hawaii County	Waikoloa	Approximately 3,400 feet downstream of Opelo road.	None	2,545*
			Approximately 1,100 feet downstream of Opelo Road.	None	2,595*
			Approximately 100 feet downstream of Opelo Road	None	2,617*
			Just upstream of Opelo Road	None	2,626*
			Just downstream of Lindsey Road	None	2,664*
			Just upstream of Lindsey Road	None	2,666*
			Just downstream of confluence with Waikoloa Stream Tributary.	None	2,700*
			Approximately 1,500 feet upstream of confluence with Waikoloa Stream Tributary.	None	2,805*
			Just upstream of confluence with Waikoloa Stream	None	2,670*
			Approximately 1,000 feet downstream of Kamamalu Street.	None	2,702*
			Approximately 50 feet downstream of Kamamalu Street.	None	2,717*
			Just upstream of Kamamalu Street	None	2,724*
			Approximately 600 feet upstream of Kamamalu Street.	None	2,725*
			Approximately 1,000 feet upstream of Kamamalu Street.	None	2,741*
			Approximately 1,650 feet upstream of Kamamalu Street.	None	2,748*
			Just upstream of confluence with Waikoloa Stream	None	2,702*
			Approximately 800 feet upstream of confluence with Waikoloa Stream.	None	2,725*
			Approximately 900 feet upstream of confluence with Waikoloa Stream.	None	2,728*
			Approximately 1,500 feet upstream of confluence with Waikoloa Stream.	None	2,751*
			Approximately 3,500 feet upstream of confluence with Waikoloa Stream.	None	2,873*
	Maps are available for inspection at Hawaii County Services, 1st Federal Plaza, 75-5737 Kuakini Highway, Kailua-Kona, Hawaii.				
	Send comments to Mayor Bernard K. Akana, Hawaii County Office Building, 25 Aupuni Street, Hilo, Hawaii 96720.				
Missouri	City of Warrensburg Johnson County.	Bear Creek Tributary	About 3,800 feet upstream of mouth	None	*732

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground * Elevation in feet	
				Existing	Modified
			About 1,900 feet upstream of confluence of Small Tributary.	None	*762
		Small Tributary	At mouth just upstream of Christopher Street	None	*748
				None	*777

Maps available for inspection at the Municipal Building, 102 South Holden, Warrensburg, Missouri.

Send commetns to The Honorable Robert Ulrich, Mayor, City of Warrensburg, Municipal Building, 102 South Holden, Warrensburg, Missouri 64093.

Missouri	City of Warsaw Benton County.	Osage River	Within community	None	*667
		Town Branch	Just upstream of Town Levee	None	*667
			About 750 feet upstream of Polk Street	None	*693

Maps available for inspection at the Community Building, Warsaw, Missouri.

Send comments to The Honorable Mahlon White, Mayor, City of Warsaw, Community Building, P.O. Box 68, Warsaw, Missouri 65355.

Nevada	Nye County Unincorporated Areas.	Amargosa	Approximately 640 feet downstream of U.S. Highway 95, first road crossing downstream of the confluence of Dry Canyon Creek.	None	*3,178
			At U.S. Highway 95 first crossing downstream of Dry Canyon Creek confluence.	None	*3,189
			Just downstream of Main Street	None	*3,269
			Approximately 40 feet downstream of U.S. Highway 95 near Second Street (extended).	None	*3,296
			Approximately 2,625 feet upstream of U.S. Highway 95 which runs through Second Street.	None	*3,321
		West Pahrump Valley Wash	At the interestion of Acacia Avenue and Leslie Street.	None	#1
		Unnamed Western Wassh	At the intersection of Bell Avenue and Barney Street.	None	#1
			At the intersection of Corbin Street and an unnamed road located 2,680 feet south of Charleston Park Avenue.	None	#1
		Wheeler Wash	At the mouth of Wheeler Wash Canyon approximately 3 miles up-fan from State Highway 160.	None	#5
			At the intersection of Homestead Road and State Highway 160.	None	*#1
			At the intersection of Gamebird Road and Pahrump Valley Boulevard.	None	#1

Maps are available for review at the Nye County Depairtment of Planning, 377 North Jackson, Tonopah, Nevada.

Send comments to the Honorable Robert Revert, Cairman, Nye County Board of Commissioners, P.O. Box 1767, Tonopah, Nevada 89049.

New York	Jeffersonville, Village Sullivan County.	East Branch Callicoon Creek	Approximately 400 feet downstream of corporate limits.	None	*1,045
			At upstream corporate limits	None	*1,087
		Laundry Brook	At confluence with East Branch Callicoon Creek	None	*1,054
			Approximately 1,065 feet upstream of Maple Avenue.	None	*1,099

Maps available for inspection at the Village Clerk's office, Village Hall, Jeffersonville, New York.

Send comments to the Honorable Russell E. Duttweiler, Mayor for the Village of Jeffersonville, Sullivan County, P.O. Box 155X, Jeffersonville, New York 12748.

Pennsylvania	Pine Creek, Township Jefferson County.	Sandy Lick Creek	At Pittsburgh and Shawmut Railroad	None	*1,222
			Approximately 300 feet upstream of CONRAIL	None	*1,241
		Mill Creek	At the confluence with Sandy Lick Creek	None	*1,233
			Approximately .8 mile upstream of confluence with Sandy Lick Creek.	None	*1,246
		Fivemile Run	At the confluence with Sandy Lick Creek	None	*1,222
			Upstream corporate limits	None	*1,231

Maps available for inspection at the Township Building, Route 332, Brookville, Pennsylvania.

Send comments to The Honorable L. Reid Henry, Chairman of the Township of Pine Creek Board of Supervisors, Jefferson County, R.D. #1, Brookville, Pennsylvania 15825.

Issued: October 6, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 89-24469 Filed 10-16-89; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-449, RM-6802]

Radio Broadcasting Services; Kings Beach, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Kidd Communications, Inc. permittee, Channel 299A, Kings Beach, CA, seeking the substitution of FM Channel 299C3 for Channel 299A at Kings Beach and modification of its permit accordingly. Coordinates for this proposal are 39-18-50 and 119-53-00.

DATES: Comments must be filed on or before December 4, 1989, and reply comments on or before December 19, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Peter Tannenwald, Esq., Arent, Fox, Kintner, Plotkin & Kahn, 1050 Connecticut Ave., NW., Wash., DC 20036-5339.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-449, adopted September 19, 1989, and released October 11, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-24417 Filed 10-16-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-447, RM-6848]

Radio Broadcasting Services; Coushatta, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by James G. Bethard, proposing the substitution of Channel 235C3 for Channel 222A at Coushatta, Louisiana, and the modification of his construction permit to specify operation on Channel 235C3 in lieu of Channel 222A. The proposal could provide Coushatta with its first wide coverage area FM service. A site restriction of 7.6 kilometers (4.7 miles) south of the city is required. The coordinates are 31-56-49 and 93-20-13.

DATES: Comments must be filed on or before December 4, 1989, and reply comments on or before Deember 19, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: James G. Bethard, P.O. Drawer C, Coushatta, Louisiana 71019 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-447, adopted September 20, 1989, and released October 11, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-24419 Filed 10-16-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-445, RM-6820]

Radio Broadcasting Services; Athens, TN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by James C. Sliger proposing the substitution of Channel 269C3 for Channel 269A at Athens, Tennessee, and the modification of the license for Station WJSQ(FM) at Athens to specify operation on the higher class co-channel. A site restriction of 18.2 kilometers (11.3 miles) east of the Athens is requested for Channel 269C3. The coordinates are 35-28-31 and 84-23-59.

DATES: Comments must be filed on or before December 4, 1989, and reply comments on or before December 19, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554 In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: James K. Edmundson, Esquire, Heron, Burchette, Ruckert & Rothwell, 1025 Thomas Jefferson Street NW., Suite 700, Post

Office Box 96670, Washington, DC 20090 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–445, adopted September 20, 1989, and released October 11, 1989. The full text of the Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–24416 Filed 10–16–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 89–446, RM–6834]

Radio Broadcasting Services; Trenton, TN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by The Wireless Group, Inc., licensee of Station WLOT(FM), Channel 249A, Trenton, Tennessee, proposing the substitution of Channel 248C3 for Channel 249A at Trenton, and the modificaiton of Station WLOT(FM)'s license to specify operation on the higher powered channel, as that community's first wide coverage area FM service. A site restriction of 10.9 kilometers (6.8 miles) north of Trenton is required. The coordinates are 36–04–30 and 88–56–00.

DATES: Comments must be filed on or before December 4, 1989, and reply comments on or before December 19, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Carlton Veirs, President, The Wireless Group, Inc., P.O. Box 198, 42 South Washington Avenue, Brownsvile, Tennessee 38012 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–446, adopted September 20, 1989, and released October 11, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–24418 Filed 10–16–89; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB23

Endangered and Threatened Wildlife and Plants; Proposed Revision of Special Regulations for the Grizzly Bear

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to revise the special regulations for the threatened grizzly bear to enlarge the types of persons permitted to take nuisance bears. The proposal would allow specially authorized persons to take dangerous or incorrigible nuisance bears that would normally be removed by State or Federal authorities to minimize continued conflict and to prevent human injury. Removal would be accomplished through a State-administered hunt restricted to a specific area encompassing the Idaho, Montana, and Wyoming portions of the Yellowstone ecosystem outside Yellowstone and Grand Teton National Parks. The proposal allows greater flexibility in the management of grizzly bears without increasing the number of bears normally removed from this area. The Service seeks data and comments from the public.

DATES: Comments from all interested parties must be received by December 18, 1989. Public hearing requests must be received by December 1, 1989.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Grizzly Bear Recovery Coordinator, U.S. Fish and Wildlife Service, NS 312, University of Montana, Missoula, Montana 59812. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. Christopher Servheen, Grizzly Bear Recovery Coordinator (see **ADDRESSES** above, 406/329–3223 or FTS 585–3223).

SUPPLEMENTARY INFORMATION:

Background

The grizzly bear (*Ursus arctos*) originally occurred throughout western North America from Alaska to Mexico. Its populations in the conterminous United States are now restricted to northeastern and northwestern Washington, northern and eastern

Idaho, western Montana, and northwestern Wyoming. Fewer than 1,000 individuals are thought to remain in these areas, with the majority in the Northern Continental Divide ecosystem in northwest Montana and the Yellowstone ecosystem in northwestern Wyoming and adjacent portions of Montana and Idaho. In the Federal Register of July 28, 1975 (40 FR 31734), the Service determined threatened status for the grizzly in the conterminous United States, pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*). Special regulations were issued in conjunction with that determination and were incorporated into 50 CFR Part 17.40(b). These rules provided general protection for the species but allowed taking under certain conditions to defend human life, to remove nuisance animals, and to carry out research. In addition, a limited sport hunting season was authorized in a specified portion of northwestern Montana.

The present proposal would modify the portion of the special rule addressing removal of nuisance bears to include specially authorized persons among those authorized to remove dangerous or incorrigible nuisance bears in the Yellowstone area. Removal would be accomplished by means of a supervised hunt administered by State game agencies. Hunting for grizzly bears has not been permitted in the Yellowstone ecosystem since 1974 (Montana portion) and 1975 (Wyoming portion). The State of Wyoming also limited the baiting of black bears for hunting in portions of grizzly bear range outside Yellowstone National Park in 1982 because of concern about the number of accidental grizzly kills by black bear hunters.

The rationale for the proposed change is as follows: Under the existing special rule, a grizzly posing a serious threat to human safety can be legally taken by a person in self-defense or in defense of others. A dangerous bear can also be controlled by government officials. However, only State, Federal or Tribal officials are presently allowed to take a grizzly bear that is potentially dangerous or that causes significant property loss. Upon closer examination, the Service now recognizes that while it is absolutely necessary and advisable for authorized wildlife officials to make the crucial management decision on whether to relocate or remove a depredating or potentially dangerous grizzly, it is not necessary for the conservation of the grizzly to restrict the act of removal to Federal, State, or Tribal authorities only.

Therefore, new regulatory language is suggested to allow nuisance bears that would normally be removed by State or Federal officials to be taken by specially authorized persons under the supervision of State game management authorities in portions of the Yellowstone area outside Yellowstone and Grand Teton National Parks. Control of nuisance bears within National Parks would remain the responsibility of the National Park Service. The change would not result in any additional bears being taken in the Yellowstone ecosystem.

Data on human-caused grizzly bear mortality in the Yellowstone ecosystem from 1980 to 1987 show that a total of 22 nuisance grizzly bears have been removed from the ecosystem over the last 8 years, or an average of 2.8 per year. Of this total, 12 were removed from outside Yellowstone and Grand Teton National Parks. Therefore, the average number of nuisance bears removed from the area subject to this proposed rule change was 1.5 bears per year from 1980–1987. Since no change to the criteria used to evaluate nuisance bears will result from this proposed rule change, the average number of dangerous and/or repeat offender nuisance bears taken over the last 8 years (1.5 bears/year) is an indicator of the number of bears expected to be taken in the future by specially authorized persons under this proposed rule change.

The criteria used to judge whether a bear is a nuisance or not and how and where taking of such animals can take place are specified in the Interagency Grizzly Bear Guidelines (Interagency Grizzly Bear Committee. 1986. Interagency Grizzly Bear Guidelines. 100 pp. Published by U.S. Forest Service and available from the Regional Forester, U.S. Forest Service, Federal Building, Missoula, Montana 59802). The Guidelines were made available for public comment, with portions published in the Federal Register on May 28, 1985 (50 FR 21696). In addition, 19 public meetings were held in Idaho, Montana, Washington, and Wyoming to explain and discuss the Guidelines.The final Guidelines were adopted on November 25, 1985 (51 FR 42863) by the Interagency Grizzly Bear Committee as the management document directing the management of the grizzly bear in the conterminous United States.

Under these Guidelines, decisions relating to the determination of nuisance bear status and the method used to control nuisance bears outside National Parks are made jointly by the Fish and Wildlife Service, the appropriate Federal land management agency (e.g., Forest Service, Bureau of Land Management) and the appropriate State game agency (e.g., Montana, Wyoming, Idaho, Washington).

With regard to the determination of nuisance bear status, a grizzly bear may be determined to be a nuisance if any or all of the following conditions apply:

Condition A: The bear causes significant depredation to lawfully present livestock or uses unnatural food materials (human and livestock foods, garbage, home gardens, livestock carrion, and game meat in possession of man) which has been reasonably secured from the bear resulting in conditioning of the bear or significant loss of property.

Condition B: The bear has displayed aggressive (not defensive) behavior toward humans which constitutes a *demonstrable* immediate or potential threat to human safety and/or a minor human injury resulted from a human/bear encounter.

Condition C: The bear has had an encounter with people resulting in a *substantial* human injury or loss of human life.

If a grizzly is determined to be a nuisance bear using the criteria above, capture is usually attempted, and a decision is made within 24 hours on whether to relocate or remove (i.e., kill or transport to a zoo or research) the bear. The decision on the appropriate control action to be taken is made after evaluating several factors, such as the nature of the bear offense (Condition A, B, and/or C), the number and type of offenses the bear has previously committed, and the age and sex of the nuisance bear. A detailed explanation of the nuisance bear criteria and the process for determining the appropriate control action to be taken may be found in the Guidelines.

The supervised hunt would be conducted in accordance with Federal and State law and regulations. The selection of hunters would be at the discretion of the State game management authority. It is anticipated that hunters will be selected through a State-run lottery system, wherein persons interested in participating would submit their names and a list of potential hunters would be created through a random drawing, with the first name drawn at the top of the list. When a bear-human conflict arises that (a) is diagnosed in accordance with the Guidelines as a dangerous or incorrigible nuisance bear situation for which removal is the appropriate remedy, and (b) the circumstances are such that a supervised person is an

appropriate means of removal, the first person on the list will be contacted. If that person can arrive within 12–24 hours, he/she will be the person specially authorized to remove the dangerous or incorrigible bear. If not, the next person on the list will be offered the opportunity. The authorized person would be supervised and accompanied by State game management authorities.

Edible baits would not be permitted, as usage may attract nonnuisance bears, positively reinforce an association between humans and food rewards, and thereby create new nuisance bears. Nonedible baits or attractants would be permitted at the discretion of the State game management authority. Nonedible baits or attractants could attract bears to a well-chosen site where the hunter and accompanying State game official could clearly view each bear to determine whether it was the problem nuisance bear, without creating a human-food association. This would decrease the possibility that the wrong bear would be taken and improve the likelihood of a clean kill. Muzzle loaders and archery hunting would not be permitted, as these are less effective removal methods with greater safety risks for the hunter. After 5 years, a formal evaluation will be conducted to assess the number of bears taken, evaluate the impact of the rule change on grizzly recovery in the Yellowstone ecosystem, and to determine if refinements are necessary.

Questions may arise as to how the take of nuisance bears by specially authorized persons in the Yellowstone area differs from the Montana grizzly hunt authorized under 50 CFR 17.40(b)(1)(i)(e). The major differences are as follows:

—*Different wildlife management objectives.* The Montana hunt is essentially a limited sport hunt used to relieve population pressures and, in some instances, remove nuisance bears in the Northern Continental Divide ecosystem bear population. By tending to remove unwary bears more so than wary bears, the Montana hunt also acts as a general preventative to reduce potential bear/human conflicts in the area. In Yellowstone, the hunt would be an animal damage control hunt with the sole purpose of remedying or precluding significant human/bear conflicts by removing known incorrigible or dangerous nuisance bears.

—*Different, disjunct grizzly populations are affected:* The Montana hunt is restricted to the Northern Continental Divide population of grizzly bears in northwest Montana. This grizzly population is entirely separate from the bear population in the Yellowstone ecosystem that would be affected by the proposed rule change.

—*Different regulatory systems are used, with different degrees of impact on affected bear populations:* The Montana hunt is regulated by a quota system that limits the number of bears that can be taken by humans in the ecosystem each year. If the known number of female grizzly bears killed or removed reaches 6, or if the known total number of all grizzlies removed or killed reaches 21 (including an allowance of 7 bears to represent annual unknown human-induced mortality), then the Montana hunt is terminated. Hence, the net effect would be that no more than 6 female grizzlies or 14 grizzlies overall can be removed by authorized hunters each year in the Northern Continental Divide ecosystem. In the Yellowstone area, hunting would be restricted to nuisance bears that would have been removed anyway by authorized government officials. The net effect of the proposed action would be that no additional bears would be taken.

—*Different levels of State supervision during the hunt:* Authorized hunters are not required to be accompanied by State game officials in the Montana hunt. In the Yellowstone area, specially authorized private persons will be accompanied by State game officials to ensure that only the specific offending bear is taken.

Environmental Analysis

A draft environmental assessment was prepared to provide a preliminary assessment of the impacts of the proposed rule, and is available at the office of the Grizzly Bear Recovery Coordinator (see **ADDRESSES** above). Copies may also be obtained by contacting: Chief, Division of Endangered Species and Environmental Contaminants (Mail Stop 60153), U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225, 303/236–7398 or (FTS) 776–7398. Final environmental impact analysis, including Section 7 consultation, will take place after the public comment period, but before the final rule is approved. Comments received will be used to develop the final rule and provide input for environmental impact analysis.

Author

The primary author of this proposed rule is Dr. Christopher Servheen, Grizzly Bear Recovery Coordinator, U.S. Fish and Wildlife Service (see **ADDRESSES** above).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1543; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.40 is proposed to be amended by revising paragraph (b)(1)(i)(C) as follows:

§ 17.40 Special rules—mammals.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(C) *Removal of nuisance bears.* (1) A grizzly bear constituting a demonstrable but nonimmediate threat to human safety or committing significant depredations to lawfully present livestock, crops, or beehives may be taken, but only if:

(*i*) It has not been reasonably possible to eliminate such threat or depredation by live-capturing and releasing unharmed in a remote area the grizzly bear involved; and

(*ii*) The taking is done in a humane manner by authorized Federal, State, or Tribal authorities, and in accordance with current interagency guidelines covering the taking of such nuisance bears, except as authorized under (b)(1)(i)(C)(*2*); and

(*iii*) The taking is reported within 5 days of occurrence to the appropriate Assistant Regional Director, Division of Law Enforcement, U.S. Fish and Wildlife Service, as indicated in paragraph (b)(1)(i)(B) of this section, and to appropriate State and Tribal authorities.

(*2*) *The Yellowstone Area.* (*i*) If it is not contrary to the laws of Idaho, Montana, or Wyoming, a specially authorized person may take grizzly bears fitting the definition of nuisance bears as defined in the Interagency Grizzly Bear Guidelines and fitting the criteria for bears to be removed from the area under said Guidelines. The determination of nuisance status for any grizzly bear to be taken in this area will be a joint decision made by authorized

representatives of the State game management agency, the U.S. Fish and Wildlife Service, and the land management agency involved as specified in the Interagency Grizzly Bear Guidelines.

(*ii*) Such taking shall be allowed in the area bounded by Interstate Highway 90 at its intersection with Interstate Highway 15 west of Butte, Montana, thence eastward along Interstate Highway 90 to Highway 310 at Laurel, Montana, thence south on Highway 310 to Highway 72 to Highway 120 to Cody, Wyoming, thence south on Highway 120 to Highway 20, thence west along the northern border of the Wind River Indian Reservation, south along the western border of the reservation, thence east along the southern border of the reservation to Highway 789, thence southeast on Highway 789 to Highway 28 to Highway 191, thence northwest on Highway 191 to Highway 189/191 to Hoback Junction, Wyoming, thence west on Highway 26 to Idaho Falls, Idaho, thence north on Interstate Highway 15 to the point of beginning, except that this area shall not include Yellowstone National Park or Grand Teton National Park.

(*iii*) Provided, that authorized persons will be supervised and accompanied by personnel of the State game management agency, the use of edible baits will not be permitted, the use of nonedible baits or attractants would be permitted at the discretion of the State game management authority, and muzzle loaders and archery hunting will not be permitted. No bears shall be taken by specially authorized persons in the Yellowstone area under this regulation that would not otherwise be taken as nuisance bears by authorized State or Federal authorities under the Interagency Grizzly Bear Guidelines.

(*iv*) Provided further, that any legal taking of a grizzly bear in the above-described area shall be reported within 48 hours of occurrence to the appropriate State authorities, and within 5 days of occurrence to the appropriate Assistant Regional Director, Division of Law Enforcement, U.S. Fish and Wildlife Service, as indicated in paragraph (b)(1)(i)(B) of this section. A formal evaluation will be conducted after 5 years.

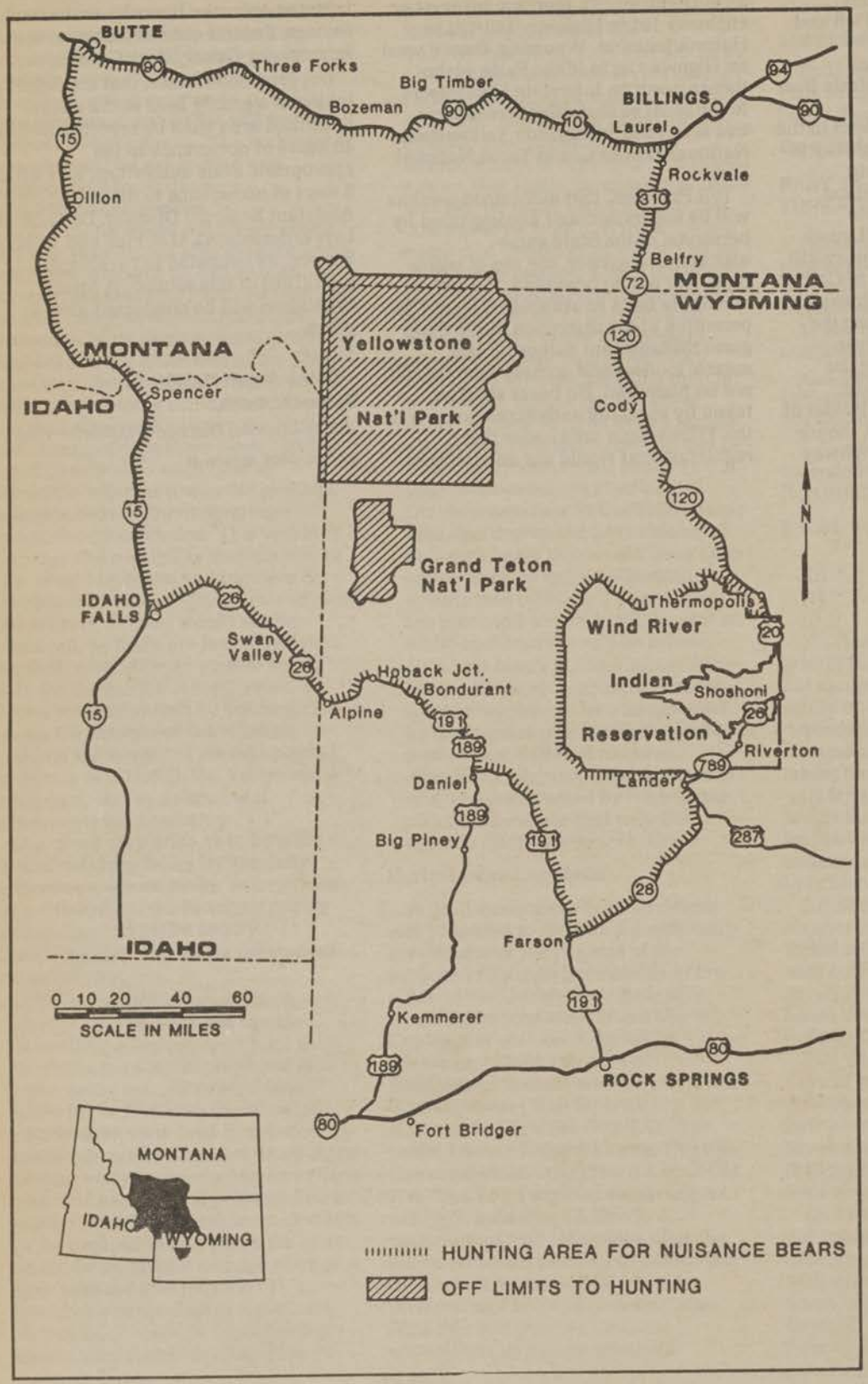
* * * * *

Dated: August 31, 1989.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

BILLING CODE 4310-55-M



Grizzly Bear

Nuisance bear removal - Yellowstone area

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Finding on Petition to List the Spotted Frog

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding and initiation of status review.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day petition finding for a petition to amend the List of Endangered and Threatened Wildlife and Plants. The petitioner presented substantial information that listing the spotted frog (*Rana pretiosa*) may be warranted.

DATES: The finding announced in this notice was made on September 7, 1989. Comments and information for the Service's use in issuing its 12-month finding will be accepted until February 3, 1990.

ADDRESSES: Questions or comments concerning this finding should be sent to: Chief, Endangered Species and Environmental Contaminants, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225. The petition, finding, and supporting data are available for public inspection, by appointment, during normal business hours at the Service's Denver Regional Office, 134 Union Boulevard, Lakewood, Colorado.

FOR FURTHER INFORMATION CONTACT: Dr. James Miller (see **ADDRESSES** above) (303/236–7398 or FTS 776–7398).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended in 1982 (16 U.S.C. 1531 *et seq.*), requires that the U.S. Fish and Wildlife Service (Service) make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of receipt of the petition, and the finding is to be published promptly in the Federal Register. If the finding is positive, the Service is also required to promptly commence a review of the status of the involved species. A status review is initiated herewith, and the Service seeks information until February 3, 1990.

The Service has received and made a 90-day finding on the following petition:

A petition dated May 1, 1989, was received from the Board of Directors of the Utah Nature Study Society on May 4, 1989. The petition requested the Service to add the spotted frog (*Rana pretiosa*) to the List of Threatened and Endangered Species.

The petitioners stated that the spotted frog has been on the decline for 30 years and consists of numerous relict populations throughout the northwest.

It was further indicated that the spotted frog's range in northwest North America extends to the islands of Alaska, throughout British Columbia, Washington, Oregon, Idaho, western Montana, western Wyoming, and scattered locations in Nevada, and Utah. They state that the spotted frog's present range in the lower 48 states is greatly reduced from its historic range. The petitioners also claim that in some locations the bullfrog (*Rana catesbeiana*), because of its predatory nature, has eliminated the spotted frog from western Oregon, northeastern Oregon, western Idaho, the intermountain region of Montana, and the Wasatch populations in Utah. They also indicate that the three desert populations (Tule Valley, Snake Valley, and Deep Creek) are surviving; however, the Snake Valley population is threatened by an expanding population of the leopard frog (*Rana pipiens*).

The petitioners further stated that the spotted frog is a highly aquatic species which utilizes cold permanent water and the cold water portions of warm water springs. They concluded that spotted frog breeding requirements include the peripheral portion of permanent water sources in which the temperature fluctuations are maximum for the particular water source. Water sources include slow flowing streams, backwaters of major rivers, springs, and wetlands. The petitioners also indicated that the species is not protected by Federal and State laws and regulations. And finally, they state that the spotted frog is threatened due to the introduction of exotic species into wetlands, springs, and riparian habitats, and that water development projects have also impacted the species.

A preliminary review by the Service indicates that the spotted frog is doing well in western Montana and Wyoming. The species appears to be on the decline in Idaho, Nevada, Oregon, Utah and Washington. No preliminary determination could be made as to whether the spotted frog populations in southeast Alaska are increasing, stable, or declining.

After a review of the petition, accompanying documentation, and references cited therein and additional information obtained, the Service found the petition presented substantial information that the requested action may be warranted. Within one year from the date the petition was received, a finding as to whether the petitioned action is warranted is required by section 4(b)(3)(B) of the Act.

Author

This notice was prepared by Dr. James L. Miller (see **ADDRESSES** above).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: October 3, 1989.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 89–24374 Filed 10–16–89; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 54, No. 199
Tuesday, October 17, 1989

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

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

Submission of Information Collection to the Office of Management and Budget; Amendment

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice; Amendment.

SUMMARY: On October 3, 1989, Farmers Home Administration published a Notice of Submission of Information Collection to the Office of Management and Budget (54 FR 40725). This action amends the notice as reflected below.

ADDRESSES: Interested persons are invited to submit comments regarding this submission. Comments should refer to the proposal by name and should be sent to: Lisa Grove, USDA Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Beverly I. Craver, FmHA Business and Industry Division, USDA Room 6327, South USDA Building, 14th and Independence Avenue, SW., Washington, DC 20250, 202–475–3805.

SUPPLEMENTARY INFORMATION: The notice published on October 3, 1989, (54 FR 40725) is amended as follows:

1. In the third unnumbered paragraph under the heading "Supporting Statement," the two references to "36" months are revised to "24" months.

2. In the eleventh unnumbered paragraph the number "50" is revised to "10."

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3407.

Dated: October 11, 1989.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 89–24536 Filed 10–16–89; 8:45 am]

BILLING CODE 3410–07–M

Federal Grain Inspection Service

Advisory Committee Meeting

Pursuant to the provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92–463), notice is hereby given of the following committee meeting:

Name: Federal Grain Inspection Service Advisory Committee.

Date: November 2, 1989.

Place: Capitol Holiday Inn, 550 C Street, SW., Washington, D.C. 20024.

Time: 8:30 a.m.

Purpose: To provide advice to the Administrator of the Federal Grain Inspection Service with respect to the implementation of the U.S. Grain Standards Act.

The agenda includes (1) discussion of OTA study; (2) aflatoxin issues; (3) report by subcommittee on dockage, foreign material, and broken grains; (4) procedures of Board of Appeals and Review; (5) international monitoring activities; (6) financial status; (7) safety; and (8) other matters.

The meeting will be open to the public. Public participation will be limited to written statements unless otherwise requested by the Committee Chairman. Persons, other than members, who wish to address the Committee or submit written statements before or after the meeting should contact W. Kirk Miller, Administrator, FGIS, U.S. Department of Agriculture, P.O. Box 96454, Washington, DC 20090–6454, telephone (202) 382–0219.

Dated: October 12, 1989.

W. Kirk Miller,

Administrator.

[FR Doc. 89–24458 Filed 10–16–89; 8:45 am]

BILLING CODE 3410–EN–M

Soil Conservation Service

Lugert Altus Watershed, Oklahoma; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Lugert Altus Watershed, Jackson and Greer Counties, Oklahoma.

FOR FURTHER INFORMATION CONTACT: C. Budd Fountain, State Conservationist, Soil Conservation Service, Agricultural Center Building, Farm Road and Brumley Street, Stillwater, Oklahoma 74074, telephone (405) 624–4360.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, C. Budd Fountain, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project

The project concerns a plan for water conservation. The planned works of improvement include 199 tailwater recovery systems, 49 grade stabilization structures, and 98,610 linear feet of concrete lined ditches.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting C. Budd Fountain.

No administrative action on implementation of the proposal will be taken until 30 days after the date of the publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: October 10, 1989.

Donald R. Vandersypen,

Assistant State Conservationist (WR)

[FR Doc. 89–24461 Filed 10–16–89; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census, Commerce.

Title: Survey of Housing Starts, Sales, and Completions (Supplemental Questionnaires).

Form Number: SOC 900X, SOC 900AX.

Type of Request: New.

Burden: 166 hours.

Number of Respondents: 1,000.

Average Time Per Response: 5 minutes.

Needs and Uses: This information is needed to determine the number and type of new residential buildings being built and/or sold. The data are used by government agencies to evaluate economic policy and by businesses for production scheduling. The data are collected from home builders, real estate agents, and new house owners. This supplement is to test changes to existing questions.

Affected Public: Individuals or households, Businesses or other for-profit organizations.

Frequency: 2 survey months only.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Don Arbuckle, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: October 11, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89–24371 Filed 10–16–89; 8:45 am]

BILLING CODE 3510–07–M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census, Commerce.

Title: 1990 Content Reinterview Questionnaire and Advance Letter.

Form Number: D–1010, D–1010L.

Type of Request: New.

Burden: 4,906 hours.

Number of Respondents: 12,800.

Avg Hours Per Response: 23 minutes.

Needs and Uses: The Content Reinterview Survey is designed to measure response error associated with selected population and housing items for the 1990 Decennial Census of Population and Housing. The data quality information obtained assists users of census data in interpreting census results and in deciding whether to use data for a given purpose.

Affected Public: Individuals or households.

Frequency: One time only.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Don Arbuckle, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: October 11, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89–24372 Filed 10–16–89; 8:45 am]

BILLING CODE 3510–07–M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Export Administration.

Title: Distribution License Procedure.

Form Number: Export Administration Regulations, § 773.3; OMB No. 0694–0015.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 40,297 respondents; 42,905 reporting/recordkeeping hours. Average hours per respondent for new applications is 40 hours. Average hours per respondent for renewals is 20 hours.

Needs and Uses: "Export regulation, licenses, authorization, distributions, special". The Distribution License procedure is a "bulk type" licensing procedure developed in response to and advice received from the export community. It is designed to facilitate the export of commodities under the large scale international marketing programs.

Affected Public: Business or other for-profit institutions; small business or organizations.

Frequency: On occasion, Quarterly.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Don Arbuckle, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Construction Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208 New Executive Office Building, Washington, DC 20503.

Dated: October 11, 1989.

Edward Michals,

Department Clearance Officer, Office of Management and Organization.

[FR Doc. 89–24460 Filed 10–16–89; 8:45 am]

BILLING CODE 3510–CW–M

Bureau of Export Administration

Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee will be held November 7, 1989, 9:30 a.m., Herbert C. Hoover Building, Room 1617–F, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to computer peripherals, components and related test equipment or technology.

Agenda

General Session

1. Opening Remarks by the Chairman & Commerce Representative.

2. Introduction of Members and Visitors.
3. Discussion of 10MB Bulgarian Hard File.
4. Discussion of Local Area Networks.
5. Discussion of Streamlining Tape Drives.
6. OFA Progress Report on 50 MByte Hard Drives.
7. Feedback Report on Segment A Items.
8. Report on Upcoming Segment B Items.
9. Discussion of 1565 Simplification & Positive Rewrite.
10. Presentation of Papers or Comments by the Public.

Executive Session

11. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control programs and stategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, in order to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that you forward your public presentation materials two weeks prior to the meeting to the below listed address:

Ms. Ruth D. Fitts, U.S. Department of Commerce/BXA, Office of Technology & Policy Analysis, 14th & Constitution Avenue, NW., Room 4069A, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call Ruth D. Fitts, 202–377–4959.

Dated: October 12, 1989.

Betty A. Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology and Policy Analysis.

[FR Doc. 89–24486 Filed 10–16–89; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

[A–401–601]

Brass Sheet and Strip From Sweden; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by the petitioner and the respondent, the Department of Commerce has conducted an administrative review of the antidumping duty order on brass sheet and strip from Sweden. The review covers one manufacturer and/or exporter of this merchandise to the United States and the period August 22, 1986 through February 29, 1988. The review indicates the existence of dumping margins during the period.

As a result of the review, the Department has preliminarily determined to assess antidumping duties equal to the calculated differences between United States price and foreign market value. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: October 17, 1989.

FOR FURTHER INFORMATION CONTACT: Barbara Victor or Laurie A. Lucksinger, Office of Antidumping Duty Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–5222/5253.

SUPPLEMENTARY INFORMATION:

Background

On March 6, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 6998) the antidumping duty order on brass sheet and strip from Sweden. The petitioner and the respondent requested in accordance with 19 CFR 353.53(a) that we conduct an administrative review. We published the notice of initiation on Arpil 27, 1988 (53 FR 15083). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule ("HTS"), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by the review are shipments of brass sheet and strip from Sweden. During the review period, such merchandise was classifiable under items 612.3960, 612.3982, and 612.3986 of the Tariff Schedules of the United States Annotated ("TSUSA"). This merchandise is currently classifiable under HTS items 7409.21.00 and 7409.29.00. The HTS and TSUSA item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers Metallverken AB, a manufacturer/exporter of Swedish brass sheet and strip to the United States, and the period August 22, 1986 through February 29, 1988.

United States Price

In calculating United States price the Department used purchase price or exporter's sales price ("ESP"), both as defined in section 772 of the Tariff Act, as appropriate. Purchase price and exporter's sales price were based on the delivered, duty paid, packed price to unrelated purchasers in the United States. Where applicable, we made deductions for foreign inland freight and insurance, ocean freight, marine insurance, U.S. brokerage and handling charges, U.S. inland freight and insurance, and U.S. Customs duty. In ESP transactions we deducted U.S. commissions, credit expenses, indirect selling expenses incurred by the exporter for U.S. sales, other U.S. selling expenses, warranties, and the value added through further manufacture prior to sale in the United States. No other adjustments were claimed or allowed.

In certain instances, we could not make proper comparisons because we lacked complete information on the metal content of some U.S. sales. Therefore, we used the best information otherwise available for those sales. The best information otherwise available is the rate in the antidumping duty order.

Foreign Market Value

In calculating foreign market value, the Department used home market price, as defined in section 773 of the Tariff Act, since there were sufficient sales of such or similar merchandise in the home market.

Home market price was based on the c.i.f. packed price to unrelated purchasers. We made adjustments, where applicable, for inland freight and insurance, differences in quantities and differences in packing, credit costs, and physical characteristics of the merchandise. Since there were no commissions paid in the home market, for purchase price comparisons we deducted indirect selling expenses from FMV to offset U.S. commissions which were added to FMV. For comparison to ESP sales, we limited the amount of indirect selling expenses incurred on home market sales by the sum of the indirect selling expenses and commissions incurred on sales to the United States.

We denied Metallverken's claim for a circumstance of sale adjustment to account for differences in metal costs because we believe that the calculation of weighted-average home market prices on a monthly basis eliminates the need to adjust for metal price fluctuations. No other adjustments were claimed or allowed.

Preliminary Results of Review

As a result of our review, we preliminarily determine that a margin of 6.03 percent exists for Metallverken AB for the period August 22, 1986 through February 29, 1988.

Interested parties may request disclosure within 5 days after the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first workday thereafter. Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed no later than 37 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margin shall be required for all shipments of Swedish brass sheet and strip by Metallverken AB.

For any future entries of this merchandise from a new exporter, whose first shipments occurred after February 29, 1988 and who is unrelated to any reviewed firm, a cash deposit of 6.03 percent shall be required.

These cash deposit requirements are effective for all shipments of Swedish brass sheet and strip entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and section 353.22 of our antidumping regulations published in the **Federal Register** on March 28, 1989 (54 FR 12742) (to be codified at 19 CFR 353.22).

Dated: October 11, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-24493 Filed 10-17-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-029]

Partial Termination of Antidumping Duty Administrative Review: Fishnetting of Man-Made Fibers From Japan

AGENCY: Import Administration, International Trade Administration Commerce.

ACTION: Notice.

SUMMARY: On July 25, 1989, the Department of Commerce initiated an administrative review of the antidumping finding on fishnetting of man-made fibers from Japan. The Department is now terminating that review with respect to one company, Amikan Fishing Net Mfg. Co. (Amikan).

EFFECTIVE DATE: October 17, 1989.

FOR FURTHER INFORMATION CONTACT: Ross Cotjanle, Kay Halpern, or Carole Showers, Office of Countervailing Investigations, International Trade Administration, U.S. Department of Commerce, Washington, DC; telephone: (202) 377-3534, 377-0192, or 377-3217.

SUPPLEMENTARY INFORMATION: On July 25, 1989, the Department of Commerce published a notice of initiation of administrative review of the antidumping finding on fishnetting of man-made fibers from Japan (54 FR 30915). That notice stated that we would conduct reviews for the following companies for the period June 1, 1988 through May 31, 1989: Mitsui & Co., Ltd. (Mitsui), Hakodate Seimo Sengu Co., Ltd. (Hakodate), Benny Toyama Corp. (Benny Toyama), and Amikan.

Jovanovich Supply Co., which was the only company to request a review for Amikan, subsequently withdrew its request for a review on August 8, 1989. As a result, the Department is terminating the review with respect to Amikan. We are proceeding with the review on fishnetting of man-made fibers from Japan with respect to Mitsui, Hakodate, and Benny Toyama.

This notice is in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1)) and § 353.22(a)(5) of the Commerce Department's regulations published in the **Federal Register** on March 28, 1989 (54 FR 12742) (to be codified at 19 CFR 353.22(a)(5)).

Dated: September 28, 1989.

Francis J. Sailer,

Deputy Assistant Secretary for Investigations.

[FR Doc. 89-24494 Filed 10-16-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-351-804]

Initiation of Antidumping Duty Investigation: Industrial Nitrocellulose From Brazil

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce (the "Department"), we are initiating an antidumping duty investigation to determine whether imports of industrial nitrocellulose from Brazil are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of industrial nitrocellulose from Brazil materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before November 3, 1989. If that determination is affirmative, we will make a preliminary determination on or before February 26, 1990.

EFFECTIVE DATE: October 17, 1989.

FOR FURTHER INFORMATION CONTACT: Louis Apple or Michael Ready, Office of Antidumping Investigations, Import Administrations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377–1769 or (202) 377–2613, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On September 19, 1989, we received a petition filed in proper form by Hercules Incorporated. In compliance with the filing requirements of § 353.12 of the Department's revised regulations (54 FR 12742, March 28, 1989) (to be codified at 19 CFR 353.12), petitioner alleges that imports of industrial nitrocellulose from Brazil are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, the U.S. industry.

Petitioner has stated that it has standing to file the petition because it is an interested party, as defined under section 771(9)(C) of the Act, and because it has filed the petition on behalf of the U.S. industry producing the product that is subject to this investigation. If any interested party, as described under paragraphs (C), (D), (E), (F), or (G) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, please file written notification with the officials cited in the "FOR FURTHER INFORMATION CONTACT" section of this notice.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in § 353.14 of the Department's revised regulations.

United States Price and Foreign Market Value

Petitioner's estimate of United States Price (USP) for industrial nitrocellulose is based on data derived from U.S. Department of Commerce import statistics for industrial nitrocellulose imports from Brazil. Petitioner deducted movement charges from the unit price and added a 17 percent value added tax applicable to products sold in Brazil.

Petitioner's estimate of Foreign Market Value (FMV) for industrial nitrocellulose is based on foreign manufacturer's price quotes to Brazilian customers, including the 17 percent VAT, as determined by petitioner's market research. Petitioner deducted movement charges from the FMV and made a circumstance of sale adjustment for differences in credit.

Comparison of the FMV and USP calculated by petitioner results in an alleged dumping margin of 83 percent.

Initiation of Investigation

Under section 732(c) of the Act, the Department must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether the petition contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on industrial nitrocellulose from Brazil and found that the petition meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of industrial nitrocellulose from Brazil are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by February 26, 1990.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after this date will be classified solely according to the appropriate HTS subheadings. The HTS subheadings are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive.

Industrial nitrocellulose is a dry, white, amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent which is produced from the reaction of cellulose with nitric acid. Industrial nitrocellulose is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. Industrial nitrocellulose is currently provided for under HTS subheading 3912.20.00. Prior to January 1, 1989, industrial nitrocellulose was classified under item 445.25 of the *Tariff Schedules of the United States Annotated* (TSUSA). The scope of this investigation does not include explosive grade nitrocellulose, which has a nitrogen content of greater than 12.2 percent.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in the Department's files, provided the ITC confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by November 3, 1989, whether there is a reasonable indication that imports of industrial nitrocellulose from Brazil materially injur, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated; otherwise, the investigation will proceed according to the statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act.

Dated: October 10, 1989.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89–24498 Filed 10–16–89; 8:45 am]

BILLING CODE 3510–DS–M

[A–570–802]

Initiation of Antidumping Duty Investigation: Industrial Nitrocellulose From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce (the "Department"), we are initiating an antidumping duty investigation to determine whether imports of industrial nitrocellulose from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of industrial nitrocellulose from the PRC materially injure, or threaten material injury to, a

U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before November 3, 1989. If that determination is affirmative, we will make a preliminary determination on or before February 26, 1990.

EFFECTIVE DATE: October 17, 1989.

FOR FURTHER INFORMATION CONTACT: Louis Apple or Michael Ready, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377–1769 or (202) 377–2613, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On September 19, 1989, we received a petition filed in proper form by Hercules Incorporated. In compliance with the filing requirements of § 353.12 of the Department's revised regulations (54 FR 12742, March 28, 1989) (to be codified at 19 CFR 353.12), petitioner alleges that import of industrial nitrocellulose from the PRC are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, the U.S. industry.

Petitioner has stated that it has standing to file the petition because it is an interested party, as defined under section 771(9)(C) of the Act, and because it has filed the petition on behalf of the U.S. industry producing the product that is subject to this investigation. If any interested party, as described under paragraphs (C), (D), (E), (F), or (G) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, please file written notification with the officials cited in the "FOR FURTHER INFORMATION CONTACT" section of this notice.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in section 353.14 of the Department's revised regulations.

United States Price and Foreign Market Value

Petitioner's estimate of United States Price (USP) for industrial nitrocellulose is based on data derived from U.S. Department of Commerce import statistics for industrial nitrocellulose imports from the PRC. Petitioner deducted movement charges from the unit price.

Petitioner alleges that the PRC is a nonmarket economy country within the meaning of section 773(c) of the Act. Accordingly, petitioner based foreign market value on constructed value calculated from factors of production valued in a market economy country (i.e., Thailand) at a comparable level of economic activity to the PRC. In its calculation, petitioner added amounts for factory overhead, general expenses and packing based on petitioner's costs. Petitioner also added the statutory minimum eight percent of the sum of its own general expenses and manufacturing cost for profit.

Comparison of the FMV and USP calculated by petitioner results in an alleged dumping margin of 78 percent.

Initiation of Investigation

Under section 732(c) of the Act, the Department must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether the petition contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on industrial nitrocellulose from the PRC and found that the petition meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of industrial nitrocellulose from the PRC are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by February 26, 1990.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after this date will be classified solely according to the appropriate HTS subheadings. The HTS subheadings are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive.

Industrial nitrocellulose is a dry, white, amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent which is produced from the reaction of cellulose with nitric acid. Industrial nitrocellulose is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. Industrial nitrocellulose is currently provided for under HTS subheading 3912.20.00. Prior to January 1, 1989, industrial nitrocellulose was classifiable under item 445.25 of the *Tariff Schedules of the United States Annotated* (TSUSA). The scope of this investigation does not include explosive grade nitrocellulose, which has a nitrogen content of greater than 12.2 percent.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in the Department's files, provided the ITC confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by November 3, 1989, whether there is a reasonable indication that imports of industrial nitrocellulose from the PRC materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated; otherwise, the investigation will proceed according to the statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act.

Dated: October 10, 1989.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89–24499 Filed 10–16–89; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–812]

Initiative of Antidumping Duty Investigation: Industrial Nitrocellulose From Japan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce (the "Department"), we are initiating an antidumping duty investigation to determine whether imports of industrial nitrocellulose from Japan are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of industrial nitrocellulose from Japan materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before November 3, 1989. If that determination is affirmative, we will make a preliminary determination on or before February 26, 1990.

EFFECTIVE DATE: October 17, 1989.

FOR FURTHER INFORMATION CONTACT: Louis Apple or Michael Ready, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377–1769 or (202) 377–2613, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On September 19, 1989, we received a petition filed in proper form by Hercules Incorporated. In compliance with the filing requirements of section 353.12 of the Department's revised regulations (54 FR 12742, March 28, 1989) (to be codified at 19 CFR 353.12), petitioner alleges that imports of industrial nitrocellulose from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, the U.S. industry.

Petitioner has stated that it has standing to file the petition because it is an interested party, as defined under section 771(9)(C) of the Act, and because it has filed the petition on behalf of the U.S. industry producing the product that is subject to this investigation. If any interested party, as described under paragraphs (C), (D), (E), (F), or (G) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, please file written notification with the officials cited in the **"FOR FURTHER INFORMATION CONTACT"** section of this notice.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in § 353.14 of the Department's revised regulations.

United States Price and Foreign Market Value

Petitioner's estimate of United States Price (USP) for industrial nitrocellulose is based on data derived from U.S. Department of Commerce import statistics for industrial nitrocellulose imports from Japan. Petitioner deducted movement charges from the unit price.

Petitioner's estimate of Foreign Market Value (FMV) for industrial nitrocellulose is based on foreign manufacturer's price quotes to Japanese customers, as determined by petitioner's market research. Petitioner deducted movement charges from the FMV and made circumstance of sale adjustments for differences in credit and packing.

Comparison of the FMV and USP calculated by petitioner results in an alleged dumping margin of 66 percent.

Initiation of Investigation

Under section 732(c) of the Act, the Department must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether the petition contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on industrial nitrocellulose from Japan and found that the petition meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of industrial nitrocellulose from Japan are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by February 26, 1990.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after this date will be classified solely according to the appropriate HTS subheadings. The HTS subheadings are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive.

Industrial nitrocellulose is a dry, white, amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent which is produced from the reaction of cellulose with nitric acid. Industrial nitrocellulose is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. Industrial nitrocellulose is currently provided for under HTS subheading 3912.20.00. Prior to January 1, 1989, industrial nitrocellulose was classifiable under item 445.25 of the *Tariff Schedules of the United States Annotated* (TSUSA). The scope of this investigation does not include explosive grade nitrocellulose, which has a nitrogen content of greater than 12.2 percent.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in the Department's files, provided the ITC confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by November 3, 1989, whether there is a reasonable indication that imports of industrial nitrocellulose from Japan materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated; otherwise, the investigation will proceed according to the statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act.

Dated: October 10, 1989.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89–24500 Filed 10–16–89; 8:45 am]

BILLING CODE 3510–DS–M

[A-580-605]

Initiation of Antidumping Duty Investigation: Industrial Nitrocellulose From the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce (the "Department"), we are initiating an antidumping duty investigation to determine whether imports of industrial nitrocellulose from the Republic of Korea (Korea) are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of industrial nitrocellulose from Korea materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before November 3, 1989. If that determination is affirmative, we will make a preliminary determination on or before February 26, 1990.

EFFECTIVE DATE: October 17, 1989.

FOR FURTHER INFORMATION CONTACT: Louis Apple or Michael Ready, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-1769 or (202) 377-2613, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On September 19, 1989, we received a petition filed in proper form by Hercules Incorporated. In compliance with the filing requirements of section 353.12 of the Department's revised regulations (54 FR 12742, March 28, 1989) (to be codified at 19 CFR 353.12), petitioner alleges that imports of industrial nitrocellulose from Korea are being, or are likely to be, sold in the United States at less thar fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, the U.S. industry.

Petitioner has stated that it has standing to file the petition because it is an interested party, as defined under section 771(9)(C) of the Act, and because it has filed the petition on behalf of the U.S. inudstry producing the product that is subject to this investigation. If any interested party, as described under paragraphs (C), (D), (E), (F), or (G) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, please file written notification with the officials cited in the "FOR FURTHER INFORMATION CONTACT" section of this notice.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in § 353.14 of the Department's revised regulations.

United States Price and Foreign Market Value

Petitioner's estimate of United States Price (USP) for industrial nitrocellulose is based on data derived from U.S. Department of Commerce import statistics for industrial nitrocellulose imports from Korea. Petitioner deducted movement charges from the unit price.

Petitioner's Foreign Market Value (FMV) for industrial nitrocellulose is based on foreign manufacturers' price quotes to Korean customers, as determined by petitioner's market research. Petitioner deducted movement charges from the FMV and made circumstance of sale adjustments for differences in credit. Comparison of the FMV and USP calculated by petitioner results in an alleged dumping margin of 66 percent.

Initiation of Investigation

Under section 732(c) of the Act, the Department must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether the petition contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on industrial nitrocellulose from Korea and found that the petition meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of industrial nitrocellulose from Korea are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by February 26, 1990.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after this date will be classified solely according to the appropriate HTS subheadings. The HTS subheadings are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive.

Industrial nitrocellulose is a dry, white, amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent which is produced from the reaction of cellulose with nitric acid. Industrial nitrocellulose is used as a film former in coatings, lacquers, furniture finishes, and printing inks. Industrial nitrocellulose is currently provided for under HTS subheading 3912.20.00. Prior to January 1, 1989, industrial nitrocellulose was classifiable under item 445.25 of the *Tariff* Schedules of the United States Annotated (TSUSA). The scope of this investigation does not include explosive grade nitrocellulose, which has a nitrogen content of greater than 12.2 percent.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in the Department's files, provided the ITC confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by November 3, 1989, whether there is a reasonable indication that imports of industrial nitrocellulose from Korea materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated; otherwise, the investigation will proceed according to the statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act.

Dated: October 10, 1989.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89-24501 Filed 10-16-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-412-803]

Initiation of Antidumping Duty Investigation; Industrial Nitrocellulose From the United Kingdom

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce (the "Department"), we are initiating an antidumping duty investigation to determine whether imports of industrial nitrocellulose from the United Kingdom are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of industrial nitrocellulose from the United Kingdom materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before November 3, 1989. If that determination is affirmative, we will make a preliminary determination on or before February 26, 1990.

EFFECTIVE DATE: October 17, 1989.

FOR FURTHER INFORMATION CONTACT: David Goldberger or Bradford Ward, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-4136 or (202) 377-5288, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On September 19, 1989, we received a petition filed in proper form by Hercules Incorporated. In compliance with the filing requirements of section 353.12 of the Department's revised regulations (54 FR 12472, March 28, 1989) (to be codified at 19 CFR 353.12), petitioner alleges that imports of industrial nitrocellulose from the United Kingdom are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, the U.S. industry.

Petitioner has stated that it has standing to file the petition because it is an interested party, as defined under section 771(9)(C) of the Act, and because it has filed the petition on behalf of the U.S. industry producing the product that is subject to this investigation. If any interested party, as described under paragraph (C), (D), (E), (F), or (G) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, please file written notification with the officials cited in the **"FOR FURTHER INFORMATION CONTACT"** section of this notice.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in § 353.14 of the Department's revised regulations.

United States Price and Foreign Market Value

Petitioner's estimate of United States Price (USP) for industrial nitrocellulose is based on data derived from U.S. Department of Commerce import statistics for industrial nitrocellulose imports from the United Kingdom. Petitioner deducted movement charges from the unit price.

Petitioner's estimate of Foreign Market Value (FMV) for industrial nitrocellulose is based on a foreign manufacturer's price quotes to home market customers, as determined by petitioner's market research. Petitioner deducted movement charges from the FMV and made circumstance of sale adjustments for differences in credit and packing.

Comparison of the FMV and USP calculated by petitioner results in an alleged dumping margin of 40 percent.

Initiation of Investigation

Under section 732(c) of the Act, the Department must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of an antidumpting duty investigation, and whether the petition contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on industrial nitrocellulose from the United Kingdom and found that the petition meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of industrial nitrocellulose from the United Kingdom are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by February 26, 1990.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after this date will be classified solely according to the appropriate HTS subheadings. The HTS subheadings are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive.

Industrial nitrocellulose is a dry, white, amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent which is produced from the reaction of cellulose with nitric acid. Industrial nitrocellulose is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. Industrial nitrocellulose is currently provided for under HTS subheading 3912.20.00. Prior to January 1, 1989, industrial nitrocellulose was classifiable under item 445.25 of the *Tariff Schedules of the United States Annotated* (TSUSA). The scope of this investigation does not include explosive grade nitrocellulose, which has a nitrogen content of greater than 12.2 percent.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in the Department's files, provided the ITC confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Assistant Secretary for Import Adminstration.

Preliminary Determination by ITC

The ITC will determine by November 3, 1989, whether there is a reasonable indication that imports of industrial nitrocellulose from the United Kingdom

materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated; otherwise, the investigation will proceed according to the statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act.

Dated: October 10, 1989.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89-24496 Filed 10-16-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-428-803]

Initiation of Antidumping Duty Investigation; Industrial Nitrocellulose From the Federal Republic of Germany

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce (the "Department"), we are initiating an antidumping duty investigation to determine whether imports of industrial nitrocellulose from the Federal Republic of Germany (FRG) are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of industrial nitrocellulose from the FRG materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before November 3, 1989. If that determination is affirmative, we will make a preliminary determination on or before February 26, 1990.

EFFECTIVE DATE: October 17, 1989.

FOR FURTHER INFORMATION CONTACT: David Goldberger or Bradford Ward, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-4136 or (202) 377-5288, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On September 19, 1989, we received a petition filed in proper form by Hercules Incorporated. In compliance with the filing requirements of section 353.12 of the Department's revised regulations (54 FR 12742, March 28, 1989) (to be codified at 19 CFR 353.12), petititioner alleges that imports of industrial nitrocellulose from the FRG are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, the U.S. industry.

Petitioner has stated that it has standing to file the petition because it is an interested party, as defined under section 771(9)(C) of the Act, and because it has filed the petition on behalf of the U.S. industry producing the product that is subject to this investigation. If any interested party, as described under paragraphs (C), (D), (E), (F), or (G) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, please file written notification with the officials cited in the "FOR FURTHER INFORMATION CONTACT" section of this notice.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit it request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in § 353.14 of the Department's revised regulations.

United States Price and Foreign Market Value

Petitioner's estimate of United States Price (USP) for industrial nitrocellulose is based on data derived from U.S. Department of Commerce import statistics for industrial nitrocellulose imports from the FRG, and adjusted to account for price differentials between plasticised and non-plasticised nitrocellulose. Petitioner deducted movement charges from the unit price.

Petitioner's estimate of Foreign Market Value (FMV) for industrial nitrocellulose is based on a foreign manufacturer's price quotes to home market customers, as determined by petitioner's market research. Petitioner deducted movement charges from the FMV and made circumstances of sale adjustments for differences in credit and packing, as well as a difference in merchandise adjustment to account for differences in dry nitrocellulose content.

Comparison of the FMV and USP calculated by petitioner results in an alleged dumping margin of 37 percent.

Initiation of Investigation

Under section 732(c) of the Act, the Department must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of an antidumpiung duty investigation, and whether the petition contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on industrial nitrocellulose from the FRG and found that the petition meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of industrial nitrocellulose from the FRG are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by February 26, 1990.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after this date will be classified solely according to the appropriate HTS subheadings. The HTS subheadings are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive.

Industrial nitrocellulose is a dry, white, amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent which is produced from the reaction of cellulose with nitric acid. Industrial nitrocellulose is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. Industrial nitrocellulose is currently provided for under HTS subheading 3912.20.00. Prior to January 1, 1989, industrial nitrocellulose was classifiable under item 445.25 of the *Tariff Schedules of the United States Annotated* (TSUSA). The scope of this investigation does not include explosive grade nitrocellulose, which has a nitrogen content of greater than 12.2 percent.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in the Department's files, provided the ITC

confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by November 3, 1989, whether there is a reasonable indication that imports of industrial nitrocellulose from the FRG materially injure, or threaten material injury to, a U.S industry. If its determination is negative, the investigation will be terminated; otherwise, the investigation will proceed according to the statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act.

Dated: October 10, 1989.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89-24495 Filed 10-16-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-479-801]

Initiation of Antidumping Duty Investigation; Industrial Nitrocellulose From Yugoslavia

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce (the "Department"), we are initiating an antidumping duty investigation to determine whether imports of industrial nitrocellulose from Yugoslavia are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of industrial nitrocellulose from Yugoslavia materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before November 3, 1989. If that determination is affirmative, we will make a preliminary determination on or before February 26, 1990.

EFFECTIVE DATE: October 17, 1989.

FOR FURTHER INFORMATION CONTACT: David Goldberger or Bradford Ward, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-4136 or (202) 377-5288, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On September 19, 1989, we received a petition filed in proper form by Hercules Incorporated. In compliance with the filing requirements of § 353.12 of the Department's revised regulations (54 FR 12742, March 28, 1989) (to be codified at 19 CFR 353.12), petitioner alleges that imports of industrial nitrocellulose from Yugoslavia are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, the U.S. industry.

Petitioner has stated that it has standing to file the petition because it is an interested party, as defined under section 771(9)(C) of the Act, and because it has filed the petition on behalf of the U.S. industry producing the product that is subject to this investigation. If any interested party, as described under paragraph (C), (D), (E), (F), or (G) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, please file written notification with the officials cited in the **"FOR FURTHER INFORMATION CONTACT"** section of this notice.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in § 353.14 of the Department's revised regulations.

United States Price and Foreign Market Value

Petitioner's estimate of United States Price (USP) for industrial nitrocellulose is based on data derived from U.S. Department of Commerce import statistics for industrial nitrocellulose imports from Yugoslavia. Petitioner deducted movement charges from the unit price.

Petitioner states that it was unable to obtain pricing information on sales of industrial nitrocellulose in Yugoslavia. Consequently, petitioner's estimate of Foreign Market Value (FMV) is based on constructed value using petitioner's costs in the U.S. adjusted to reflect production costs in Yugoslavia. In its calculation, petitioner used amounts for factory overhead, general expenses and packing based on its own costs. Petitioner also added the statutory minimum 8 percent of the sum of general expenses and manufacturing cost for profit.

Comparison of the FMV and USP calculated by petitioner results in an alleged dumping margin of 65 percent.

Initiation of Investigation

Under section 732(c) of the Act, the Department must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether the petition contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on industrial nitrocellulose from Yugoslavia and found that the petition meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of industrial nitrocellulose from Yugoslavia are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by February 26, 1990.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after this date will be classified solely according to the appropriate HTS subheadings. The HTS subheadings are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive.

Industrial nitrocellulose is a dry, white, amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent which is produced from the reaction of cellulose with nitric acid. Industrial nitrocellulose is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. Industrial nitrocellulose is currently provided for under HTS subheading 3912.20.00. Prior to January 1, 1989, industrial nitrocellulose was classifiable under item 445.25 of the *Tariff Schedules of the United States Annotated* (TSUSA). The scope of this investigation does not include explosive grade nitrocellulose, which has a nitrogen content of greater than 12.2 percent.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in the Department's files, provided the ITC confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by November 3, 1989, whether there is a reasonable indication that imports of industrial nitrocellulose from Yugoslavia materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated; otherwise, the investigation will proceed according to the statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act.

Dated: October 10, 1989.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89-24497 Filed 10-16-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-809]

Final Determination of Sales at Less Than Fair Value: Certain Small Business Telephone Systems and Subassemblies Thereof From Japan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that certain small business telephone systems and subassemblies thereof (SBTS) from Japan are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to continue to suspend liquidation of all entries of SBTS from Japan as described in the "Continuation of Suspension of Liquidation" section of this notice. The ITC will determine, within 45 days of the publication of this notice, whether these imports materially injure, or threaten material injury to, the U.S. industry.

EFFECTIVE DATE: October 17, 1989.

FOR FURTHER INFORMATION CONTACT: Louis Apple or Michael Ready, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-1769 or (202) 377-2613, respectively.

SUPPLEMENTARY INFORMATION:

Final Determination

We determine that SBTS from Japan are being, or are likely to be, sold in the United States at less than fair value, as provided for in section 735 of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). The estimated weighted-average dumping margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

There have been no developments in this investigation since our affirmative preliminary determination on July 26, 1989 (54 FR 31978, August 3, 1989).

Period of Investigation

The period of investigation is July 1, 1988, through December 31, 1988.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after this date is now classified solely according to the appropriate HTS item numbers. The HTS item numbers are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive.

The products covered by this investigation are certain small business telephone systems and subassemblies thereof, currently classifiable under HTS item numbers 8517.30.2000, 8517.30.2500, 8517.30.3000, 8517.10.0020, 8517.10.0040, 8517.10.0050, 8517.10.0070, 8517.10.0080, 8517.90.1000, 8517.90.1500, 8517.90.3000, 8518.30.1000, 8504.40.0004, 8504.40.0008, 8504.40.0010, 8517.81.0010, 8517.81.0020, 8517.90.4000, and 8504.40.0015. Prior to January 1, 1989, such merchandise was classifiable under items 684.5710, 684.5720, 684.5730, 684.5805, 684.5810, 684.5815, 684.5825, 684.5830, 682.6051, and 682.6053 of the Tariff Schedules of the United States Annotated (TSUSA).

Certain small business telephone systems and subassemblies thereof are telephone systems, whether complete or incomplete, assembled or unassembled, with intercom or internal calling capability and total non-blocking port capacities of between 2 and 256 ports, and discrete subassemblies designed for use in such systems. A subassembly is "designed" for use in a small business telephone system if it functions to its full capability only when operated as part of a small business telephone system. These subassemblies are defined as follows:

(1) Telephone sets and consoles, consisting of proprietary, corded telephone sets or consoles. A console has the ability to perform certain functions including: answer all lines in the system; monitor the status of other phone sets; and transfer calls. The term "telephone sets and consoles" is defined to include any combination of two or more of the following items, when imported or shipped in the same container, with or without additional apparatus: housing; hand set; cord (line or hand set); power supply; telephone set circuit cards; console circuit cards.

(2) Control and switching equipment, whether denominated as a key service unit, control unit, or cabinet/switch. "Control and switching equipment" is defined to include the units described in the preceding sentence which consist of one or more circuit cards or modules (including backplane circuit cards) and one or more of the following items, when imported or shipped in the same container as the circuit cards or modules, with or without additional apparatus: connectors to accept circuit cards or modules or building wiring.

(3) Circuit cards and modules, including power supplies. These may be incorporated into control and switching equipment or telephone sets and consoles, or they may be imported or shipped separately. A power supply converts or divides input power of not more than 2,400 watts into output power of not more than 1,800 watts supplying DC power of approximately 5 volts, 24 volts, and 48 volts, as well as 90 volt AC ringing capability.

The following merchandise has been excluded from this investigation: (1) Nonproprietary industry-standard ("tip/ring") telephone sets and other subassemblies that are not specifically designed for use in a covered system, even though a system may be adapted to use such nonproprietary equipment to provide some system functions; (2) telephone answering machines or facsimile machines integrated with telephone sets; and (3) adjunct software

used on external data processing equipment.

We note that a number of ambiguities existed in the scope language previously published in the Notice of Initiation with regard to the definition of subassemblies. In our preliminary determination, therefore, we clarified the language describing the subassemblies under investigation.

The Department continues to receive numerous inquiries regarding the inclusion of dual use subassemblies within the scope of this investigation. As noted in the preliminary determination notice, 54 FR 31978 (1989), the Department defines dual use subassemblies as those subassemblies that function to their full capability when operated as part of a large business telephone system as well as a small system. Because dual use subassemblies by definition are not subassemblies "designed" for use in small business telephone systems, dual use subassemblies are excluded from the scope of the investigation.

Fair Value Comparisons

To determine whether sales of SBTS from Japan to the United States were made at less than fair value, we compared the United States price to the foreign market value. For our preliminary determination, we used the best information available, as required by section 776(c) of the Act, because the respondents withdrew their questionnaire responses from the administrative record of the investigation. As best information available, we took the highest margin contained in the petition for each such or similar category, and averaged these figures on a company-specific basis to determine the margins in this investigation. These categories are based on our "scope" definition and consist of (a) Control and switching equipment, (b) circuit cards and modules, (c) telephone sets and consoles, and (d) complete small business telephone systems. We are using the same methodology for calculating a margin for the final determination.

United States Price

United States price was based on the U.S. price information provided in the petition.

Foreign Market Value

Foreign market value was based on home market prices provided in the petition.

Interested Party Comments

Comment 1

Petitioner argues that, rather than use the company-specific margins contained in the petition as best information available for each company, the Department should apply the highest margin calculated in the petition to both of the non-cooperating respondents. Therefore, petitioner argues, the margin calculated for Matsushita, 178.9%, should also be applied to Toshiba Corp. and "all other" imports from Japan. In support of its argument, petitioner cites the Department's final determination in its antidumping investigation of antifriction bearings (other than tapered roller bearings) and parts thereof from the Federal Republic of Germany (54 FR 18992).

DOC Position

We disagree. It is the Department's practice to use company-specific data, where available, for each company whenever a petition is used as a source for best information available (*see, e.g., Final Determination of Sales at Less Than Fair Value: Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, from Japan* (54 FR 15485, April 18, 1989)). In the case cited by the petitioner, company-specific data was not available.

Comment 2

Nakayo Telecommunications and Nakayo USA, Inc., a manufacturer and importer, respectively, request that products included under the scope of the investigation, but re-imported following repair in Japan be excluded from duties upon re-entry into the United States.

DOC Position

Re-imports of merchandise otherwise subject to this investigation are governed by U.S. Customs regulations concerning the re-importation of articles exported for repair.

Comment 3

Panor Corporation, a U.S. importer, disputes the large disparity between the margins calculated for purposes of the preliminary determination in this investigation, and the margins calculated in the preliminary determination of the companion investigation involving imports of the same class or kind of merchandise from Korea. Panor suggests it would be more logical and less discriminatory to impose a flat duty of 50 percent against imports of the subject merchandise from all sources.

DOC Position

There is no reason why the margins calculated in the two investigations necessarily should be similar, because each case involves different merchandise, different firms, and different pricing in the relevant markets. The margins in the companion investigation of SBTS from Korea were calculated on the basis of information submitted by the investigated firms concerning the prices those firms obtain on sales of the subject merchandise in the United States as compared to the prices they obtain on sales of such or similar merchandise in their home market. By contrast, the margins calculated for purposes of this investigation were based upon the best information otherwise available, as the respondent firms in Japan chose to withdraw their submissions and discontinue their involvement in the investigation.

Comment 4

Mitel Corporation, an importer of the subject merchandise, argues that the above definition of "dual use subassemblies" be modified by including two clarifying paragraphs proposed by Mitel:

1. Dual use subassemblies should be defined as those which function to their full or greater capability when operated as part of a large business system as well as a small system.

2. Dual use subassemblies by definition are not subassemblies "designed" exclusively for use in small business telephone systems.

Alternatively, Mitel proposes that the Deparmtent specifically exclude by name two Mitel telephone sets which Mitel claims fall under the definition of dual use subassemblies.

Petitioner argues that the proposed modifications are "confusing, and add nothing to the Department's definition of dual-use subassemblies."

DOC Response

We agree with petitioner that the modifications proposed by Mitel are apt to detract from, not add to the clarity of the definition of dual use subassemblies. With respect to Mitel's alternative suggestion that we exclude by name two of Mitel's telephone sets, the Department is not in a position to decide this issue at this time. In many proceedings, the Department can only investigate a limited number of respondents. Insofar as the products at issue are of a highly technical nature and were not manufactured by a respondent, the Department did not investigate whether the particular

models imported by Mitel qualify as dual use subassemblies. Therefore, should an order be issued in this case, Mitel may want to consider seeking a scope letter ruling, as described in 19 U.S.C. 1516a(a)(1)(B)(vi).

Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation, under section 733(d) of the Act, of all entries of SBTS from Japan, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after August 3, 1989, the date of publication of the preliminary determination in the Federal Register. The U.S. Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the subject merchandise from Japan exceeds the United States price, as shown below. This suspension of liquidation will remain in effect until further notice.

The averages of the highest margin for each such or similar category based on information provided in the petition are as follows:

Manufacturer/producer/exporter	Margin percentage
Toshiba Corp	136.77
Matsushita Electric Industrial Co. Ltd., Matsushita Communication Industrial Co., Ltd., Kyushu Matsushita Electric Co., Ltd.	178.93
All Others	157.85

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. In addition, pursuant to section 735(c)(1) of the Act, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

The ITC will determine within 45 days from the date of this final determination whether material injury exists, or if threat of material injury exists. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that the material injury does exist, the Department will issue an antidumping duty order directing Customs officials ot assess antidumping duties on SBTS from Japan entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673(d)).

Dated: October 10, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-24502 Filed 10-16-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-806]

Final Determination of Sales at Less Than Fair Value: Certain Small Business Telephone Systems and Subassemblies Thereof From Taiwan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that certain small business telephone systems and subassemblies thereof (SBTS) from Taiwan are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to continue to suspend liquidation of all entries of SBTS from Taiwan, except those of Sun Moon Star as described in the "Continuation of Suspension of Liquidation" section of this notice. The ITC will determine within 45 days of the publication of this notice whether these imports materially injure, or threaten material injury to, the U.S. industry.

EFFECTIVE DATE: October 17, 1989.

FOR FURTHER INFORMATION: Contact Louis Apple or Kathy Boyce, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-1769 or (202) 377-4198, respectively.

SUPPLEMENTARY INFORMATION:

Final Determination

We determine that SBTS from Taiwan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). The estimated weighted-average dumping margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

On July 26, 1989, the Department issued an affirmative preliminary determination (54 FR 31987). Since that time the following events have occurred:

Verification of the questionnaire response of Sun Moon Star (SMS) was conducted in Taiwan during August 7-18, 1989.

Interested parties submitted comments for the record in their case briefs dated September 11, 1989 and in their rebuttal briefs dated September 15, 1989. A public hearing was held on September 20, 1989.

Period of Investigation

The period of investigation (POI) is July 1, 1988, through December 31, 1988

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after this date is now classified solely according to the appropriate HTS item number(s). The HTS item numbers are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive.

The products covered by this investigation are certain small business telephone systems and subassemblies thereof, currently classifiable under Harmonized Tariff Schedule item numbers 8517.30.2000, 8517.30.2500, 8517.30.3000, 8517.10.0020, 8517.10.0040, 8517.10.0050, 8517.10.0070, 8517.10.0080, 8517.90.1000, 8517.90.1500, 8517.90.3000, 8518.30.1000, 8504.40.0004, 8504.40.0008, 8504.40.0010, 8517.81.0010, 8517.81.0020, 8517.90.4000, and 8504.40.0015. Prior to January 1, 1989, such merchandise was classifiable under items 684.5710, 684.5720, 684.5730, 684.5805, 684.5810, 684.5815, 684.5825, 684.5830, 682.6051, and 682.6053 of the Tariff Schedules of the United States Annotated (TSUSA).

Certain small business telephone systems and subassemblies thereof are telephone systems, whether complete or

incomplete, assembled or unassembled, with intercom or internal calling capability and total non-blocking port capacities of between 2 and 256 ports, and discrete subassemblies designed for use in such systems. A subassembly is "designed" for use in a small business telephone system if it functions to its full capability only when operated as part of a small business telephone system. These subassemblies are defined as follows:

(1) Telephone sets and consoles, consisting of proprietary, corded telephone sets or consoles. A console has the ability to perform certain functions including: Answer all lines in the system; monitor the status of other phone sets; and transfer calls. The term "telephone sets and consoles" is defined to include any combination of two or more of the following items, when imported or shipped in the same container, with or without additional apparatus: housing; hand set; cord (line or hand set); power supply; telephone set circuit cards; console circuit cards.

(2) Control and switching equipment, whether denominated as a key service unit, control unit, or cabinet/switch. "Control and switching equipment" is defined to include the units described in the preceding sentence which consist of one or more circuit cards or modules (including backplane circuit cards) and one or more of the following items, when imported or shipped in the same container as the circuit cards or modules, with or without additional apparatus: connectors to accept circuit cards or modules or building wiring.

(3) Circuit cards and modules, including power supplies. These may be incorporated into control and switching equipment or telephone sets and consoles, or they may be imported or shipped separately. A power supply converts or divides input power of not more than 2400 watts into output power of not more than 1800 watts supplying DC power of approximately 5 volts, 24 volts, and 48 volts, as well as 90 volt AC ringing capability.

The following merchandise has been excluded from this investigation: (1) Nonproprietary industry-standard ("tip/ring") telephone sets and other subassemblies that are not specifically designed for use in a covered system, even though a system may be adapted to use such nonproprietary equipment to provide some system functions; (2) telephone answering machines or facsimile machines integrated with telephone sets; and (3) adjunct software used on external data processing equipment.

We note that a number of ambiguities existed in the scope language previously published in the Notice of Initiation with regard to the definition of subassemblies. In our preliminary determination, therefore, we clarified the language describing the subassemblies under investigation.

The Department continues to receive numerous inquiries regarding the inclusion of dual use subassemblies within the scope of this investigation. As noted in the preliminary determination notice, the Department defines dual use subassemblies as those subassemblies that function to their full capability when operated as part of a large business telephone system as well as a small business telephone system. Because dual use subassemblies by definition are not subassemblies "designed" for use in small business telephone systems, dual use subassemblies are excluded from the scope of the investigation.

Such or Similar Comparisons

For all respondent companies, pursuant to section 771(16)(C), we established four categories of "such or similar" merchandise consisting of: (a) Control and switching equipment; (b) circuit cards and modules; (c) telephone sets and consoles; and (d) complete small business telephone systems.

Product comparisons were made using criteria which are ranked in order of importance. For control and switching equipment we used the following criteria: (1) Port capacity based on minimum operational configuration; (2) type of central microprocessor; and (3) read-only memory (ROM) size. For circuit cards and modules we considered: (1) Functions; and (2) physical appearance. For telephone sets and consoles we considered: (1) Number of buttons (regardless of function) excluding dialpad; and (2) number of individual visual indicators. For complete telephone systems, we made comparisons on the basis of the similarity of subassemblies, using the criteria described in the preceding sentences.

Where there was no identical product in the home or third country market with which to compare a product imported into the United States, the most similar product was compared on the basis of the characteristics described above. We made adjustments for differences in the physical characteristics of the merchandise in accordance with section 773(a)(4)(C) of the Act. Consistent with our normal practice, when adjustments for differences in the merchandise proved to be substantial, we used constructed value.

In order to determine whether there were sufficient sales of SBTS in the home market to serve as the basis for calculating foreign market value (FMV), we compared the volume of home market sales within each such or similar category to the volume of third country sales within each respective such or similar category, in accordance with section 773(a)(1) of the Act.

For Sun Moon Star (SMS), we determined that there were sufficient home market sales to unrelated customers for three such or similar categories. SMS had no sales of complete small business telephone systems in the United States during the POI.

Fair Value Comparisons

To determine whether sales of SBTS from Taiwan to the United States were made at less than fair value, we compared the United States price to the FMV, as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

Since Taiwan Nitsuko declined to provide information essential to our investigation, we used the best information available as required by section 776(c) of the Act. As best information available, we took the highest margin contained in the petition for products manufactured by Nitsuko Japan for each such or similar category and averaged these figures to determine the margin for Taiwan Nitsuko in this investigation.

Taiwan Nitsuko declined to respond to the Department's MNC questionnaire. Because the MNC provision, section 773(d) of the Act, calls for the Department to calculate FMV with reference to merchandise produced in facilities outside the country of exportation, we attempted to compare the FMV in the petition for merchandise produced and sold in Japan with actual United States prices reported by Taiwan Nitsuko for products produced in Taiwan and sold in the United States, or Taiwan Nitsuko's U.S. sales prices as provided in the petition. Since we did not have data on sales of merchandise produced by Taiwan Nitsuko in Taiwan and sold in the United States that was comparable to the merchandise listed in the petition as being produced and sold in Japan and there were no U.S. sales prices for Taiwan Nitsuko reported in the petition, we used the margins calculated in the petition based on a comparison of the FMV of merchandise produced and sold in Japan and the United States price of merchandise produced in Japan and sold in the United States. Petitioner supplied information indicating that Taiwan Nitsuko and Nitsuko Japan produce the

same products for sale in the United States and that these products are sold in the U.S. market at the same prices to the same single customer.

For SMS, we compared the United States price to the FMV as described below.

United States Price

Because virtually all sales by SMS were made directly to unrelated parties prior to importation into the United States, we based the United States price for these sales on purchase price, in accordance with section 772(b) of the Act. We calculated purchase price based on packed, f.o.b. Taiwan port prices. Gross unit price was based on the contract price plus an exchange rate adjustment. We made a further upward adjustment to gross unit price to account for early payment on future sales. We made deductions were appropriate for inland freight and brokerage and handling. We added uncollected duties pursuant to section 772(d)(1)(B) of the Act and § 353.41(d)(ii) of the Department's regulations published in the Federal Register on March 28, 1989 (54 FR 12742) (to be codified at 19 CFR 353.41).

For Taiwan Nitsuko we used information contained in the petition for United States price as described above.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated FMV for SMS based on home market sales prices or constructed value, as appropriate. We calculated FMV based on the packed, delivered or ex-works prices to unrelated customers in the home market. We made deductions, where appropriate, for inland freight, discounts, and rebates. We deducted the home market packing costs from the FMV and added all U.S. packing costs. We made circumstance of sale adjustments, where appropriate, for differences in credit terms, advertising, and warranties. We made adjustments for indirect selling expenses and inventory carrying costs in the home market to offset commissions paid in the United States in accordance with § 353.56(b) of the Department's regulations.

Where appropriate, we made further adjustments to the home market price to account for differences in the physical characteristics of the merchandise in accordance with section 353.57 of the Department's regulations.

In our preliminary determination, we stated that where the adjustment for differences in the physical characteristics of the merchandise being compared exceeded 20 percent, we would not use home market sales as the basis of FMV. Instead, FMV would be based on constructed value.

As a result of verification in this case, adjustments were made to increase the costs reported by SMS. The effect of these corrections was to raise the difference in the physical characteristics of one product above the 20 percent threshold stated in our preliminary determination to 23 percent.

For purposes of this final determination, we have decided that despite the size of the adjustment, the home market merchandise may still be reasonably compared to the U.S. merchandise within the meaning of section 771(16)(C)(iii) of the Act. The product in question, included in the such or similar category of control and switching equipment, is an SCPU. The SCPU is sold individually in the United States, while it is sold in combination with an internal circuit card in the home market. Except for this, the home market SCPU is identical to the SCPU sold in the United States. Moreover, the internal circuit card is significantly less important component by value than the SCPU in the home market transaction. For these reasons, we find the home market and U.S. merchandise to be similar within the meaning of 771(16)(C)(iii).

As noted above, for Taiwan Nitsuko, we used information contained in the petition for FMV.

Constructed Value

We calculated the constructed value in accordance with section 773(e) of the Act. For SMS, the following adjustments were made to its submitted costs. Material cost was adjusted: (1) To eliminate the effect of "free samples" by using the average cost at which the product was transferred from Work-In-Process to Finished Goods Inventory; (2) to reflect the difference between the purchase order price and the actual price paid for materials; (3) to include import duties (see DOC position to comment 13).

The cost of direct labor and factory overhead for each part was determined by calculating the average per unit fabrication cost at which the part was transferred from Work-In-Process to Finished Good Inventory. Additionally, direct labor and factory overhead were increased to reflect the effect of the respondant's reclassification of labor insurance from general expenses to the cost of manufacturing. Finally, factory overhead was also adjusted to include product-specific research and development costs (R&D) for three of the five R&D departments. While these departments performed product-specific R&D, the expenses had been classified as general expense.

Selling expenses included an absolute amount of indirect and direct selling expenses on a per product basis and an amount for interest expenses incurred by SMS. Since SMS is a sales company and because it could not be consolidated with Emptel (the related manufacturer), all of SMS's interest expenses were treated as indirect selling expenses. Interest income of SMS was used to offset its interest expenses, since the income was earned from short-term investments related to the current operations of the company. When imputed inventory and credit expenses were included in selling expenses, the interest expense reflected on SMS's books was reduced for a portion of the expenses related to these activities in order to avoid double counting.

For general and administrative expenses incurred by related entities other than Emptel, the following adjustments were made: (1) General expenses of the holding company of Vidar-SMS were allocated over the cost of goods sold of Vidar-SMS (parent of Emptel) and the holding company; (2) general management expenses incurred by SMS for the management of Vidar-SMS and SMS were allocated over the cost of goods sold of the same two companies; (3) general R&D incurred by Vidar-SMS was allocated over the cost of goods sold of Vidar-SMS. For general and administrative expenses incurred by Emptel, the following adjustments were made: (1) R&D was adjusted to exclude those expenses incurred for cellular mobile telephones (CMTs) and all product-specific R&D; (2) royalties paid for the production and sale of CMTs were excluded; (3) loss on physical inventory was reclassified from non-operating expenses to general expenses. Financial expenses were computed using the financial data from Vidar-SMS and the holding company. Interest revenue earned from short-term investments related to the current operations of the company was offset against interest expense. Since the profit on the sales of SBTS in the home market was not provided by the respondent, "best information available" was used. The "best information available" was the profit earned on Emptel's and SMS's financial statement, after eliminating intercompany sales.

Currency Conversion

We used the official exchange rates in effect on the dates of sale, in accordance with section 773(a)(1) of the Act. All currency conversions were made at the rates certified by the Federal Reserve

Bank of New York in accordance with section 353.60 of the Department's regulations.

Verification

Except where noted, we verified all information used in making our final determination in accordance with section 776(b) of the Act. We used standard verification procedures including examination of relevant accounting records and original source documents of the respondent. Our verification results are outlined in the public version of the verification report which is on file in the Central Records Unit (Room B-099) of the Main Commerce Building.

Interested Party Comments

Sun Moon Star

Comment 1

Petitioner asserts the Department should rely on best information available rather than the information submitted by SMS because of significant deficiencies in SMS's response. SMS disagrees and does not believe best information available should be used.

DOC Position

We disagree with petitioner. Verification of SMS did uncover several minor deficiencies. However, these deficiencies were not of a magnitude that warranted rejection of the response and they were subsequently corrected.

Comment 2

Petitioner asserts that if the Department does not use the best information availalbe for all subassemblies of SMS, the Department should compare the U.S. sales of DKTS Plus with home market sales of DKTS Non Plus products for the following two reasons. First, petitioner alleges that the DKTS Plus products sold in the home market were sold after the period of investigation and, therefore, the Department should reject SMS's date of sale for home market sales of these products. Petitioner argues that the facts indicate that there was no binding commitment from the dealers to purchase a specified quantity of goods in November 1988 because the dealers did not specify a delivery date until after the period of investigation and the obligation to take delivery appears conditional both on the dealers finding purchasers and the Taiwan authorities approving the products for sale in the home market. Second, petitioner argues that the Department should disregard these home market sales because they were sales of trial units and, therefore, were not sales in the ordinary course of trade.

SMS disagrees, arguing it would be inappropriate to compare DKTS Plus with DKTS Non Plus products. They contend that the merchandise was sold during the period of investigation because price and quantity were established within the period. They further assert that the two sales were in the ordinary course of trade, following normal sales procedures, and in fact were not sales of trial units.

DOC Position

We agree with SMS on both issues. First, when resolving date of sale issues, the Department is guided primarily by the date on which the essential terms of the sale—price and quantity—are established to the extent that the parties have nothing left to negotiate. In this case, the Department verified that price and quantity of the two DKTS Plus home market transactions were set in November 1988, the date of the purchase orders.

Contrary to petitioner's assertions, the facts indicate that both parties treated the November 1988 pruchase orders as binding agreements. Therefore, the date of sale for these transactions is within the period of investigation. Second, the DKTS Plus sales were within the ordinary course of trade. The sales were pursuant to an established dealer price list and discount schedule. The fact that approval by the Taiwan authorities was not given until after the period of investigation (because it took longer than expected to approve the system) is incidental to, and not dispositive of, this issue.

Comment 3

Petitioner claims that SMS failed to report significant exporter sales price (ESP) sales in the period of investigation. SMS disagrees, claiming that these transactions were actually transfers of goods from the home market manufacturer to its United States subsidiary and that they did not constitute sales.

DOC Position

We agree with SMS. We verified that SMS reported all of its ESP sales during the period of investigation and that these intracompany transfers were not sales.

Comment 4

Petitioner argues that the Department should reject SMS's proposed adjustments for rebates and monthly discounts. SMS claims that these adjustments were properly reported and verified as correct.

DOC Position

We agree with SMS and accept the adjustments SMS for rebates earned but not yet paid. We verified hat it is SMS's longstanding policy to grant cumulative discounts. We also verified that the amounts were correctly reported.

Comment 5

Petitioner argues that the Department should reject SMS's proposed adjustments for commissions and uncollected duties. SMS alleges that the adjustments for commissions and uncollected duties were correctly reported and verified.

DOC Position

We agree with SMS. These adjustments were verified to be correctly reported.

Comment 6

Petitioner claims that if the Department accepts SMS's proposed adjustments for uncollected duties, only 50% of the amount of the duties should be applied to U.S. price based on the terms of a confidential clause in the SMS-Bell South contract. SMS disagrees and claims that the adjustment for uncollected duties was reported and fully verified.

DOC Position

The Department has adjusted United States price for the full amount of duties which were not collected by reason of the exportation of the merchandise. We have done so because, regardless of the terms of the confidential contract clause at issue, inputs for the home market comparison merchandise are subject to the full amount of duties. Given this fact, it is appropriate to adjust for duties in their entirety per section 772 (d)(1)(B) of the Act.

Comment 7

SMS asserts that it was correct in not reporting a U.S. transaction arising from a purchase order dated December 18, 1988. SMS contends that the correct date of sale for this transaction is February 3, 1989, the "order date" stated on the February 9, 1989 invoice.

DOC Position

The Department agrees with SMS that the merchandise was not sold until the purchase order was issued in February 1989, because it was at this time that both price and quantity were set. Therefore, this sale was outside the period of investigation.

Comment 8

SMS argues that an advance downpayment from BellSouth was correctly reflected as a discount from invoice prices to BellSouth.

DOC Position

We agree. The downpayment was correctly reported as a deduction from the invoice price because the downpayment was applied to reduce the prices of DKTS products purchased in the future.

Comment 9

SMS claims that the Department should use the list-price allocation method SMS proposed for the comparisons of home market sales of MCPUs priced and sold with modems and SCPUs priced and sold with conference cards with MCPUs, modems, conference cards, and SCPUs sold separately in the United States.

DOC Position

We are not persuaded that the list-price methodology proposed by SMS yields an acceptable measure of FMV. In the instances SMS has cited, there is a single observed price for two components being sold together in the home market. Under its methodology, SMS would have the Department "create" two prices from that one observed price based on relative prices from their price list. We believe the better method is to start with the observed price and perform adjustments for differences in the physical characteristics of the home market and U.S. merchandise, where appropriate, using the variable manufacturing costs of the components, in accordance with section 773(a)(4)(C) of the Act and § 353.57 of our regulations.

Comment 10

SMS claims that the Department failed to make an adjustment to constructed value for home-market credit expenses.

DOC Position

We agree. Home-market credit expenses have been deducted from constructed value in the final determination.

Comment 11

Petitioner argues that the Department should not rely on respondent's constructed value data because respondent failed to identify all affiliated parties and thereby disguised related party transactions. The respondent states that it did in fact report the existence of other related companies, but acknowledges that it erred in identifying only certain companies as members of "Sun Moon Star Group." The respondent maintains that it had no intent of misleading the Department, because the other related parties were referred to in various parts of the SMS response and because the complete corporate structure was clarified at verification.

DOC Position

Prior to verification, the Department requested in the original questionnaire and in deficiency letters that the respondent provide details of its corporate organization. During the cost verification, the Department obtained information which reflected facts concerning related companies that were different than those disclosed in the SMS response. SMS and Vidar-SMS are related parties. Because of this relationship, certain adjustments were made to constructed value: (1) Net interest expenses incurred by SMS were considered to be indirect selling expenses, not manufacturing-related interest as presented in the response and were allocated over SMS's Cost of Goods Sold; (2) the offset related to the credit expenses and inventory carrying costs were computed on SMS's financial expenses since this company incurred the expense of credit and inventory carrying costs; and (3) the general management expenses of SMS incurred to manage the Vidar-SMS Group and SMS were allocated over the cost of goods sold of the Vidar-SMS Group and SMS to determine a fair value for these services to Emptel.

Comment 12

Petitioner contends that the Department correctly rejected the SMS internal profit and loss statement as an inaccurate protrayal of profit on home market sales because the statement failed to include the profits earned by Emptel, the manufacturer of the products under investigation. Petitioner further states that the Department must include the profit earned by both companies, Emptel and SMS, to determine the total profits earned by the SMS Group on the manufacture and sale of SBTS. The respondent claims that it reported its only "regularly kept" statement of profits and losses for the products under investigation. The respondent argues that it would be inappropriate to use the profit stated in the financial statement of Emptel as a measure of profit in the home market because Emptel's profit is earned on export sales as well as on transfers to SMS. The respondent further argues that Emptel's profit has no relationship to the home market sales to unrelated customers.

DOC Position

We agree with the petitioner. The amount of profit Emptel earns on the transfer of the product to SMS is crucial to the calculation of total profit on the sales in the home market. It is the actual costs incurred by the manufacturer of the product which determines profit on sales to unrelated buyers in Taiwan. Thus, the difference between the cost incurred by Emptel, the manufacturer, and the sales price of SMS in the home market to the first unrelated customer for the general class or kind of merchandise is the profit required for the constructed value. As related parties, the total profitability of home market sales can be determined only by reference to the profits earned by each. Because the submitted profit did not reflect profits earned by Emptel, the Department used the profit earned on Emptel's and SMS's financial statements after eliminating intercompany sales as BIA.

Comment 13

Respondent contends that the Department should not add import duties to the cost of manufacture because it would increase constructed value by an amount far greater than the amount of duties actually paid. This is due to the multiplier effect of the rates for general and administrative expenses and profit because they are expressed as percentages of cost of manufacture and cost of production, respectively. Respondent argues that the Department should continue to follow the methodology used in the preliminary determination and should add the duties separately after profit.

DOC Position

In our preliminary determination we added import duties after general expenses and profit were accounted for in the constructed value as BIA because respondent's treatment of these import duties was not clear. We were not able to resolve this issue during verification. In particular, respondent's general and administrative expenses were calculated as a percentage of cost of goods sold inclusive of import duties, based on its financial statements. As a result, it would be inappropriate to apply this percentage to a cost of manufacture exclusive of import duties for purposes of calculating constructed value. Therefore, as BIA, import duties have been included in cost of manufacture for purposes of the final determination.

Comment 14

Petitioner argues that since the respondent failed to provide the 1988 financial statements for the holding company that owns Vidar-SMS the Department should reject the respondent's information and use the best information available. The respondent contends that the holding company had not been audited by its independent auditors and, thus, the 1988 financil statements were not available. The respondent maintains that the holding company had no employees and its general expenses were negligible.

DOC Position

The Department used the 1987 financial statement of the holding company as "best information available" for the general expenses for that entity, because there were no audited 1988 financial statements.

Comment 15

The respondent argues that royalty expenses included in general and administrative expenses in its response should be deducted from general and administrative expenses because they were specifically incurred for a product unrelated to those products under investigation.

DOC Position

The Department agrees with respondent and has deducted royalty expenses from general and administrative expenses that were incurred for the production of merchandise not under investigation.

Comment 16

Petitioner maintains that the respondent failed to provide documentation to support its claim that the "Inventory Loss" and "Loss on Physical Inventory" accounts were not related to the products under investigation. Furthermore, petitioner argues that the "Purchase Price Difference" account, which is the difference between the purchase order price and actual price paid for all materials, was also improperly excluded from the submission. The respondent maintains that these expenses were submitted in detail in the response. However, the three expenses were not included in the company's constructed value calculation because they were classified as non-operating expenses by the company's auditors. The respondent further argues that the "Provision For Inventory Loss" expense is merely a loss reserve and not an actual cost of production.

DOC Position

The Department agrees with the respondent in part. The "Loss on Physical Inventory" expense is an actual cost of production, although not a product-specific one. Therefore, it was included as a general expense and not as part of the cost of manufacturing. Since the "Provision for Inventory Loss" expense is a reserve against future losses, this amount was appropriately excluded by the respondent. The "Purchase Price Difference" expense was added to the material costs since this difference represented the actual price paid.

Comment 17

Petitioner argues that the respondent failed to include research and development costs (R&D) incurred by the parent Vidar-SMS in the constructed value calculations. The respondent contends that all other R&D incurred by Vidar-SMS, other than Emptel's R&D, was incurred by API and Vidar, the other subsidiaries consolidated with Emptel and Vidar-SMS. Furthermore, the R&D incurred by API and Vidar was for different products than those under investigation.

DOC Position

The Department included a portion of the R&D expenses incurred by Vidar-SMS as general R&D in the general and administrative section of the constructed value calculation. Those R&D expenses determined to be product-specific were reclassified from general expenses to cost of manufacturing.

Comment 18

Petitioner argues that the Department did not err by finding that fabrication costs are evenly distributed throughout the manufacturing process, and thus manufacturing costs should be computed using equivalent units. The respondent maintains that the structure of Emptel's assembly line dictates that virtually all manual labor expenses are incurred in the first eleven stages of the twenty-eight stage production process, and thus conversion costs are incurred most heavily in the very first stages of production. Therefore, the respondent claims that the process cost accounting system, by not computing equivalent units and instead using physical units to divide production costs, accurately reflects the cost of manufacturing the products under investigation. The respondent also maintains that it did not want to create controversies by using a new cost methodology solely for the submission.

DOC Position

The Department agrees with the petitioner. During the plant tour at verification and through our discussions with Emptel's officials, we noted that fabrication costs were not incurred only at the beginning of the production process as the respondent's process cost system assumes. This was apparent for factory overhead expenses, e.g., depreciation, rent, and indirect labor, which were a substantial portion of the overhead. The respondent uses a process cost accounting system that does not compute equivalent units in order to compute average costs per unit. Therefore, the production costs for a period of time are divided by less or more output than the amount actually produced by these costs. The Department, therefore, computed the equivalent units for the period of investigation for each part in work-in-process and used these equivalent units as the denominator in calculating average cost per unit.

Comment 19

Petitioner argues that the Department should not rely on the respondent's cost of production information because it substantially understated the material costs for units produced during the period of investigation by including free sample units without the fully loaded cost of these units being included in the process cost calculations. The respondent maintains that its cost system is reliable, and argues that if the Department makes substantial adjustments to the reported costs, the resulting figures will bear little resemblance to the respondent's knowledge of the products' cost structure.

DOC Position

We agree with the petitioner. The Department adjusted the per unit costs to exclude the effect of the "free samples." The Department used the average Finished Goods cost of the products which was based on the respondent's process cost accounting system used in the production process.

Comment 20

The respondent argues that the Department should allocate general expenses of Emptel over its cost of manufacturing rather than the cost of goods sold, although this was not the methodology that the respondent used in its questionnaire response. Also, the respondent argues that general expenses should not be solely attributed to production because Emptel is also an exporter and investor. Petitioner

contends that the respondent's methodology for allocating general expenses is improper and that the Department should follow its normal methodology for allocating general and administrative expenses to the products.

DOC Position

We agree with petitioner. We allocated general expenses over the respondent's cost of goods sold since the nature of these expenses relate to current operations. General expenses are not allocated over the cost of manufacturing since all the products may not have been sold in the current period of time, nor may ever be sold. Certain expenses related to the selling operations of SMS for accounting and general manager staff functions classified as general expenses in the response to the Section D questionnaire were reclassified by the Department as indirect selling expenses.

Comment 21

The respondent argues that selling expenses should be divided by the cost of manufacture instead of sales value because it would be improper to use a ratio based on a denominator of sales value and then apply it to the smaller factor, i.e., cost of manufacturing.

DOC Position

Where selling expenses are allocated, it is the Department's practice to allocate those expenses on the basis of sales. Use of the respondent's proposed allocation methodology could lead to anomalous results. For example, selling expenses could be allocated to merchandise which was produced during the period even though there were no sales of that merchandise.

Moreover, SMS misunderstands the application of this amount to the constructed value. The allocation of selling expenses described above yields an absolute amount to be applied to sales of SBTS. This amount, in turn, is allocated among units sold to arrive at an absolute, per unit selling expense. Finally, this absolute amount is divided by the cost of manufacture so that the selling expense can be expressed as a percentage of that cost. This is not the same as applying a sales-based ratio to a smaller denominator as the comment implies.

Comment 22

Petitioner claims that the Department should reject the respondent's submission and use BIA because the respondent did not provide the Department with sufficient information to verify its response, which was replete with deficiencies and inaccuracies. The respondent argues that all costs of production were submitted as they are recorded on the company's books. Moreover, the respondent contends that most of the issues presented by petitioner were disagreements with methodologies used rather than material deficiencies and omissions.

Finally, the respondent maintains that BIA has been used only in cases of very serious deficiencies or lack of cooperation from respondents. They argue that there is nothing on the record that indicates that the respondent failed to provide requested information or made unresponsive, insufficient or untimely submissions.

DOC Position

The Department agrees with the respondent in part. Although there were areas in which information was not provided or was deemed insufficient, e.g., import duties and profit, the Department was able, with adjustments, to rely on the information submitted in the response for most costs.

Taiwan Nitsuko

Comment 23

Taiwan Nitsuko asserts that petitioner's MNC allegation was based on subassembly prices that were constructed from dealers' price lists for systems and, therefore, are not relevant to the true prices of Nitsuko Corporation's subassemblies. Taiwan Nitsuko requests that the Department rescind its MNC investigation and rely on the information submitted by Taiwan Nitsuko. Petitioner argues that it submitted actual prices of control units sold in Japan and that it did not extrapolate subassembly prices from system prices. Petitioner further argues that the information submitted was specific to Nitsuko.

DOC Position

We agree with the petitioner. The petitioner established to our satisfaction the criteria necessary for the initiation of a MNC investigation. Accordingly, we do not agree to rescind the MNC investigation with regard to Taiwan Nitsuko.

Comment 24

Taiwan Nitsuko asserts that the Department's decision to initiate the MNC investigation was improper because the information upon which the decision was made was not initially accompanied by the proper certification required by the Department's regulations. Petitioner asserts it was sufficient that its legal counsel certified the submission at a later date.

DOC Position

The Department agrees with the petitioner. The Department's certification requirement is relatively new (see section 353.31(i) of the Department's regulations). Department officials' failure to discover that the petitioner's allegation was not accompanied by the requisite certification was an oversight. Once respondent's counsel pointed out that the certification was missing, petitioner's counsel immediately provided the requisite certification. The fact that the petitioner's allegation was not initially accompanied by the requisite certification does not invalidate the allegation. The certification of the relevant submission subsequently provided by petitioner's legal counsel satisfied the Department's regulations.

Comment 25

Several importers have requested that we exclude certain imported products from the scope of the investigation.

DOC Position

In many proceedings, the Department can only investigate a limited number of respondents. Insofar as the products at issue are of a highly technical nature and were not manufactured by an investigated company, the Department did not investigate whether the particular models imported by the above interested parties should be excluded. For the most part, we did not have enough information, submitted in a timely fashion, to address these concerns. Therefore, should an order be issued in this case, the above importers may want to consider seeking a scope letter ruling, as described in 19 U.S.C. 1516a(a)(1)(B)(vi).

Comment 26

Several interested parties have requested that the best information available rate of Taiwan Nitsuko not be used in calculating the "All Others" rate as it was stated in the preliminary determination. These interested parties state that Taiwan manufacturers and American importers are being unfairly treated because the best information available rate is based on Taiwan Nitsuko which is a multinational company not a Taiwan company, and because Taiwan Nitsuko's rate is premised upon Japanese market information not reflective of the Taiwan market. These interested parties request that the Department disregard Taiwan Nitsuko's rate in calculating the "All Others" rate because they believe SMS, the only responding company from

Taiwan, more fairly reflects the experience in Taiwan. Petitioner argues that Taiwan Nitsuko is a Taiwan company and is the largest exporter to the U.S. of the products under investigation; therefore, Taiwan Nitsuko's best information available rate is the appropriate rate to use in calculating the "All Others" rate.

DOC Position

In the preliminary determination, the Department followed its standard practice of excluding zero and *de minimis* margins from the "All Others" rate. As a result, the "All Others" rate was based solely on Taiwan Nitsuko's BIA rate. For purposes of this final determination, however, the Department has determined that the application of the BIA rate for Taiwan Nitsuko to the "All Others" rate is inappropriate. The Department does not believe that the BIA rate calculated for Taiwan Nitsuko is representative of other unnamed Taiwan manufacturers because, as previously explained, the Department applied section 773(d) of the Act (the MNC provision) to calculate Taiwan Nitsuko's BIA rate. This resulted in comparisons being based only on merchandise produced and sold in Japan to that produced in Japan and sold in the United States.

Instead, the Department has determined that it is more appropriate to apply the margin of SMS, the only responding company from Taiwan, as the "All Others" rate. For SMS, we calculated a dumping margin of 0.00%, which will be applied to the "All Others" rate for cash deposit purposes. We note, however, that the Department has determined that SBTS from Taiwan are being, or are likely to be, sold in the United States at less than fair value. The only company excluded from this determination is SMS. Therefore, all companies subject to the "All Others" rate are covered by the Department's affirmative determination, but will be subject to a cash deposit of 0.00%.

Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation, under section 733(d) of the Act, of all entries of SBTS from Taiwan, except those of Sun Moon Star, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the subject merchandise from Taiwan exceeds the United States price as shown below. This suspension of liquidation will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
Taiwan Nitsuko Co., Ltd	129.73
Sun Moon Star Inc	0
All Others	0

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. In addition, pursuant to section 735(c)(1) of the Act, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist with respect to any of the products under investigation, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled as to those products. However, if the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on SBTS from Taiwan, except those of Sun Moon Star, entered, or withdrawn from warehouse, for consumption, on or after the effective date of the suspension of liquidation, equal to the amount by which the foreign market value exceeds the U.S. price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d).

Dated: October 10, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-24503 Filed 10-16-89; 8:45 am]

BILLING CODE 3510-DS-M

[P346A]

National Oceanic and Atmospheric Administration

Marine Mammals; Application for Permit; the Moscow Zoo

Notice is hereby given that the Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

1. *Applicant:* Mr. Vladimir Spitsin, Director, The Moscow Zoo, 123242 Moscow, USSR, B. Bruzinskaya 1.

2. *Type of Permit:* Public Display.

3. *Name and Number of Marine Mammals:* California sea lions (*Zalophus californianus*) 4.

4. *Type of Take:* permanent maintenance.

5. *Duration of Activity:* 2 years.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East West Hwy., Room 7234, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Hwy., Suite 7324, Silver Spring, Maryland 20910;

Director, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, Massachusetts 01930; and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, Florida 33702.

Dated: October 6, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89-24379 Filed 10-16-89; 8:45 am]

BILLING CODE 3510-22-M

[P27C]

Marine Mammals; Permit Modification: Walt Disney World Co.

Notice is hereby given that pursuant to the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), Public Display Permit No. 594 issued to the Walt Disney World Company on May 22, 1987 (52 FR 20134), is modified as follows:

Section B.6 is changed to read:

6. The authority to acquire the marine mammals authorized herein shall extend from the date of issuance through December 31, 1991. The terms and conditions of the Permit (sections B and C) shall remain in effect as long as one of the marine mammals taken hereunder is maintained in captivity under the authority and responsibility of the Permit Holder.

This modification is effective upon publication in the **Federal Register**.

Documents submitted in connection with the above application are available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Highway, Room 7330, Silver Spring, Maryland 20910;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702; and

Dated: October 6, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89-24381 Filed 10-16-89; 8:45 am]

BILLING CODE 3510-22-M

[P20J]

Marine Mammals: Issuance of Permit; Dr. Kenneth S. Norris, et al.

On August 9, 1989, notice was published in the **Federal Register** (54 FR 32680) that an application had been filed by Kenneth S. Norris, Randall S. Wells, Jan S. Ostman, Carl Schilt and William T. Doyle for a scientific research permit to take Hawaiian spinner dolphins (*Stenella longirostris*) during studies to define the size and dimensions of an opening in the net that will allow intact dolphin subgroups to swim out.

Notice is hereby given that on October 6, 1989, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

Issuance of this Permit is based on a finding that the proposed taking is consistent with the purposes and policy of the Marine Mammal Protection Act. The Service has determined that this research satisfies the issuance criteria for scientific research permits. The taking is required to further a bona fide scientific purpose and does not involve unnecessary duplication of research. No lethal taking is authorized.

The Permit is available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Highway, Room 7324, Silver Spring, Maryland 20910; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: October 6, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89-24380 Filed 10-16-89; 8:45 am]

BILLING CODE 3510-22-M

CIVIL RIGHTS COMMISSION

Kentucky Advisory Committee to the United States Commission on Civil Rights; Agenda Public Meeting

Notice is hereby given, pursuant to the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Kentucky Advisory Committee to the Commission will convene at 2:00 p.m. and adjourn at 5:00 p.m., on Thursday, October 19, 1989, at the Radisson Plaza Hotel, Broadway & Vine, Lexington, Kentucky. The purpose of the meeting will be to review Advisory Committee projects, discuss current civil rights issues in the State and plan future activities. This previously scheduled meeting was cancelled recently but is now rescheduled at its original time and place. The original notice of this meeting was published at 54 FR 40903 (October 4, 1989).

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Porter G. Peeples, Sr., or Melvin L. Jenkins, Director of the Central Regional Divsion (816) 426-5253, (TDD 816/426-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

Dated at Washington, DC, October 11, 1989.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 89-24368 Filed 10-16-89; 8:45 am]

BILLING CODE 6335-01-M

COMMISSION ON RAILROAD RETIREMENT REFORM

Retirement Benefits; Revision Recommendation

ACTION: Request for written comment.

SUMMARY: The Commission on Railroad Retirement Reform ("the Commission") requests the submission of written comments from interested persons or organizations with respect to its mandate of making specific recommendations for revisions in, or alternatives to, the current system to assure the provisions of retirement benefits to former, present, and future railroad employees on an actuarially sound basis. These comments, prepared in conformity with the guidelines set out below, should be submitted to the Commission by December 31, 1989.

Background Information: The Commission was established by Public Law 100-203, enacted December 22, 1987, and amended by section 7108 of Public Law 100-647, enacted November 10, 1988. The Commission was directed to conduct a comprehensive study of the issues pertaining to the long-term financing of the Railroad Retirement system, and the system's short-term and long-term solvency.

The Commission shall transmit a report to the President and Congress not later than October 1, 1990. The report shall contain a detailed statement of the findings and conclusions of the Commission, together with its legislative recommendations.

Written Submissions: Interested persons are invited to provide comments in writing to the Commission. Written

comments should conform with the Commission's mandate, i.e. the assurance of retirement benefits to former, present, and future railroad employees on an actuarially sound basis. Discussion of revisions in, or alternatives to the current system should be cast in that context.

Comments should be sent to the Commission on Railroad Retirement Reform, Suite 808, 1111 18th Street, NW., Washington, DC 20036, by December 31, 1989.

The following guidelines should be followed for written comments that will be considered by the Commission:

—All written comments and any accompanying exhibits must be typed in double-space and may not exceed a total of ten (10) letter-sized pages.
—Two copies of all written comments should be provided.
—Comments must contain the name and capacity of the person submitting the comments, as well as any clients or persons, or any organization for whom the comments are submitted.
—a supplemental sheet must accompany each submission listing the name, full address and telephone number of the person making the submission as well as a summary of the written comments that may not exceed one (1) typewritten, letter-sized page.

FOR ADDITIONAL INFORMATION CONTACT: Maureen Kiser, 202–254–3223, Commission on Railroad Retirement Reform, Suite 808, 1111 18th Street, NW., Washington, DC 20036.

SUPPLEMENTARY INFORMATION: See Federal Register, Volume 54 FR, No. 40, Thursday, March 2, 1989, Page 8856.

Kenneth J. Zoll,

Executive Director.

[FR Doc. 89–24432 Filed 10–16–89; 8:45 am]

BILLING CODE 6820–63–M

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade Proposed Option Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity option contracts.

SUMMARY: The Chicago Board of Trade ("CBT" or "Exchange") has applied for designation as a contract market in: (1) Options on oats futures, and (2) options on Tokyo Stock Price Index ("TOPIX") futures. For the proposed TOPIX futures option contract, the CBT's application also contains a petition for an exemption from the volume requirement for the underlying futures contract specified in the Commission's rules. The Director of the Division of Economic Analysis ("Division") of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before November 16, 1989.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the CBT oats option or to the CBT TOPIX option.

FOR FURTHER INFORMATION CONTACT: For the proposed oats option contract, please contact Fred Linse of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, at (202) 254–7303. For the proposed TOPIX option contract, please contact Stephen Sherrod at the same address, (202) 254–7227.

SUPPLEMENTARY INFORMATION: In addition to requesting comment on the terms and conditions of the proposed option contracts, the Division also is requesting comment on the merits of a petition filed by the CBT pursuant to § 33.11 of the Commission's rules. For the proposed TOPIX options, the petition requests exemptive relief from the trading volume tests set forth in the Commission's rules. In that regard, § 33.4(a)(5)(iii) of the Commission's rules requires, as a condition of designation for proposed options on futures contracts, that the exchange demonstrate that:

* * * the volume of trading in all contract months for futures delivery of the commodity for which the option designation is sought has averaged at least 3,000 contracts per week on such board of trade for the 12 months preceding the date of application for option contract market designation, or alternatively, that such futures contract market, based on its trading history, substantially meets this total volume requirement in less than the 12 months preceding the date of application * * *.

The Division notes that the CBT TOPIX futures contract which will underlie the proposed option contract has not been listed for trading.[1] Therefore, the futures trading volume requirement for the proposed option contract has not been met.

As discussed in more detail in previous **Federal Register** notices (see, for example, 52 FR 41755, October 30, 1987), the Commission has stated that it believes that, at the minimum, a petition for exemption from the trading volume tests may be granted only if the underlying cash market for the commodity exhibits a high level of liquidity. Cash market liquidity would be evidenced by extensive and frequent trading activity, a large number of participants in the market, and tight bid/ask spreads. Further, the terms of the futures contract should ensure the opportunity for arbitrage and close alignment between the cash and futures markets. In combination, the liquidity of the underlying cash market and the opportunities for arbitrage are major factors in determining the extent to which a less liquid futures contract could be disrupted by the exercise of options and the alternatives available to those exercising the options. In addition, to enable position holders to evaluate accurately the value of their option positions in the absence of active trading in the underlying futures contract, the Commission stated its belief that there should exist an accurate and widely available price series which would be representative of values of the commodity underlying the future.[2]

In requesting comment on the CBT's proposed option on TOPIX futures, the Division is seeking specific comment on whether it should grant the CBT's request for an exemption from the requirements of § 33.4(a)(5)(iii) for the proposed contract. Commenters are requested to consider the issues noted above. Also, commenters are requested to address whether, if the petition were granted, additional surveillance activities and expiration reviews, particularly at the outset of trading, should be implemented by the CBT for the proposed contract.

[1] The CBT was designated as a futures contract market in the Japanese Stock index on November 22, 1988. In September 1989, the CBT changed the name of this contract to the Tokyo Stock Price Index (TOPIX) futures contract.

[2] The Division notes that in those cases where the underlying futures contract fails to develop a sufficient level of trading volume, the option on the futures contract would become subject to the delisting criteria set forth in § 5.4 of the Commission's rules. Specifically, if the volume in the underlying futures contract market falls below an average weekly volume of 1,000 contracts for all months listed for the six-month period following designation of the option contract, no new option contract months may be listed until the volume in the underlying futures contract rises above an average of 2,000 contracts per week for all trading months listed for a priod of three consecutive months.

Copies of the terms and conditions of the proposed contracts will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6134.

Other materials submitted by the CBT in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or argument on the terms and condition of the proposed option contracts, or with respect to other materials submitted by the CBT in support of the applications, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC, on October 12, 1989.

Steven Manaster,

Director, Division of Economic Analysis.

[FR Doc. 89–24452 Filed 10–16–89; 8:45 am]

BILLING CODE 6351–01–M

New York Mercantile Exchange Proposed Option Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity options contract

SUMMARY: The New York Mercantile Exchange ("NYMEX" or "Exchange") has applied for designation as a contract market in options on platinum futures. The Director of the Division of Economic Analysis ("Division") of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before November 16, 1989.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the NYMEX platinum option.

FOR FURTHER INFORMATION CONTACT: Richard Shilts, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, (202) 254–7303.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions of the proposed contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the NYMEX in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed option contract, or with respect to other materials submitted by the NYMEX in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC, on October 12, 1989.

Steven Manaster,

Director, Division of Economic Analysis.

[FR Doc. 89–24483 Filed 10–16–89; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Navy

Intent To Prepare an Environmental Impact Statement for Proposed Development at Naval Base Pearl Habor, Oahu, Hawaii

Pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508), the Department of the Navy announces its intent to prepare an Environmental Impact Statement (EIS) for the construction of various improvements at Naval Base Pearl Harbor. The improvements are required to support various activities, including the homeporting of a battleship and two cruisers to support the recommendations of the Secretary of Defense Commission on Base Realignment and Closure.

Three major components are included as part of the proposed action, and they are:

(1) A causeway connecting Ford Islands to the rest of the Naval Base;

(2) Various operational and community support facilities on Ford Island, and on Naval Station and Naval Shipyard Pearl Harbor; and

(3) Housing for about 600 to 1,200 Navy families on Ford Island.

Each major component is functionally independent of the others and could be implemented as a separate action.

Causeway

The proposed causeway would be constructed to improve access to Ford Island and, hence, make possible further development of the island to serve existing and future missions at the Naval Base. Development of the mainside Pearl Harbor complex has reached the saturation point, while Ford Island contains 300 acres of open space (out of a total of about 450 acres) which is not being used to its fullest possible potential by the Navy. Given improved access, approximately 2,800 feet of ship berthing space and other facilities could be put to more effective use. The slow and inefficient vehicular ferry and passenger boat transportation system presently in operation severely constrains the potential use of Ford Island's vacant land and underused facilities.

The preferred alternative for providing access is a floating bridge,

which would consist of a concrete pile causeway with a channel to allow passage of large vessels, as well as a 100 foot long, 33 foot height span to provide vertical clearance for small boat navigation. The Ford Island terminus of the proposed causeway would be to the north of the existing housing area, intersecting Saratoga Boulevard, and the mainside terminus would be near Halawa Landing, between the U.S.S. Bowfin Memorial and the Navy marina.

Alternatives to the floating bridge type of causeway include no action, expanded water-based system, fixed pile causeway without a moveable span, and sunken tube tunnel. Alternative termini on Ford Island for the floating bridge, causeway, and tunnel alternatives include a terminus passing north of the Public Works Center, intersecting the realigned Saratoga Boulevard west of its present junction with Princeton Place; and, a terminus passing through the housing area on the east end of the island, intersecting Lexington Boulevard west of the Arizona Mermorial. Alternative termini on mainside include the Richardson Recreation Center and McGrew Point.

Operational and Community Support Facilities

The following projects will be required to support the homeporting of a battleship and two cruisers in response to recommendations of the Base Realignment and Closure Commission, and Congressional mandate. Proposed facilities include upgrading and extension of Berth F–5 (Foxtrot Pier) on Ford Island to accommodate the battleship, including maintenance dredging, utilities improvements and shore support facilities; upgrading the fender system at Wharf Bravo Berths B20 and B21, and upgrading shore power outlets and electrical distribution at Bravo Wharves B23 and B24 at the Naval Station to accommodate the two cruisers; new fender systems along Bravo Basins B15 and B18, and upgrading shore power outlets and electrical distribution at Bravo Wharf B25 and Mike Dock M3 to support the two cruisers; a 4,800 square foot pre-engineered building at Naval Shipyard Pearl Harbor to store parts for the homeported battleship; a 7,200 square foot addition to the Applied Instruction Building (Building 1377) at the Naval Station to provide additional training and administrative space required for Mobile Technical Unit One (MOTU–1); three new buildings at the Naval Station to house transient enlisted personnel, legal hold and restricted enlisted personnel, administrative and shop space for the Transient Personnel Unit (TPU), and enlisted personnel assigned to the station; a 5,500 square foot addition to the club on Ford Island (Building 38) to house a snack bar, game room, dining and lounge spaces, enlarged kitchen and bar areas, restrooms, and storage; and Fleet Shoreside Support Center on Ford Island consisting of an amusement center, laundromat, outdoor basketball/volleyball courts, playing fields and racquetball courts.

Alternatives to these proposed Operational and Community Support Facilities include postponing the action and using other locations for specific projects. For the proposed Applied Instruction Building Addition, two specific alternatives have been considered: A different design and training of ship personnel on the west coast. An additional alternative to the proposed TPU Unit/BEQ is the use of civilian accommodations. In accordance with provisions of the Base Realignment and Closure Act of 1988 (10 U.S.C. 2687), the no action alternative will not be considered in this EIS for these proposed facilities.

Family Housing

A number of alternatives are being considered to fulfill the requirement to house approximately 1,200 Navy families. With improved access to Ford Island, development of the underutilized acreage on the island becomes possible. About 100 acres in the old runway area would be available for family housing. The runway is currently used as a general aviation practice landing airfield. These general aviation practice exercises will be displaced. Alternatives include no action (build no new housing and have families finding housing elsewhere, either in existing military housing or in the private sector); construct 1,200 housing units on Ford Island, which most likely would consist of a mixture of low and mid-rise buildings; construct about 600 to 700 units on Ford Island and accommodate the remaining units in existing military housing areas, new military housing at other locations, or in the private sector.

Potential environmental impacts resulting from the proposed action include short-term impacts during construction (noise, dust, temporary changes in water quality), increases in traffic, socio-economic effects and visual impacts.

The consulting firm of Belt Collins & Associates has been retained to prepare the Draft and Final Environmental Impact Statements.

The Navy will initiate a scoping process for the purpose of determining the scope of issues to be addressed and for identifying the significant issues related to this proposed action. A public scoping meeting will be held on November 2, 1989, beginning at 7:00 pm, at Aliamanu Intermediate School cafeteria, 3271 Salt Lake Boulevard, Honolulu, Hawaii. This meeting will be advertised in the Honolulu Advertiser, the Honolulu Star Bulletin, and the State of Hawaii OEQC (Office of Environmental Quality) Bulletin.

A short formal presentation will precede the request for public comments. Navy representatives will be available at this meeting to receive comments from the public regarding issues of concern. It is important that federal, state and county agencies, and interested individuals and groups take this opportunity to identify environmental concerns that should be addressed during the preparation of the EIS. In the interest of available time, each speaker will be asked to limit their oral comments to five (5) minutes.

Agencies and the general public are also invited and encouraged to provide written comment in addition to, or in lieu of, oral comments at the public meeting. To be most helpful, scoping comments shold clearly describe specific issues or topics which the commentor believes the EIS should address. Written statements and/or questions regarding the scoping process should be mailed no later than November 17, 1989, to Mr. Gordon Ishikawa (Code 09P2), Pacific Division, Naval Facilities Engineering Command, Pearl Harbor, Hawaii 96860–7300; telephone (808) 471–7130.

Dated: October 12, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89–24428 Filed 10–16–89; 8:45 am]

BILLING CODE 3810–AE–M

Navy Resale System Advisory Committee; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is given that the Navy Resale System Advisory Committee will meet November 4, 1989, at the Norfok Airport Hilton Hotel, 1500 N. Military Highway, Norfolk, Virginia. Sessions of the meeting will commence at 7:45 a.m. and 8:30 a.m. The 8:30 a.m. to 5:00 p.m. session will be closed to the public. The purpose of the meeting is to elicit the advice of the committee concerning commercial or financial information which is privileged or confidential; or information which, if disclosed prematurely, would be likely to significantly frustrate implementation of a proposed agency action. These matters, which will be discussed during the 8:30 a.m. to 5:00 p.m. session, are

privileged or condidential and required to be closed to the public in the national interest. The Secretary of the Navy has therefore determined in writing that the public interest requires the 8:30 a.m. to 5:00 p.m. session of the meeting to be closed to the public because it will be concerned with matters listed in section 552b (c)(4) and (9)(B) of title 5, United States Code.

For further information concerning this meeting, contact:

Commander W. T. Kaloupek, SC, USN, Naval Supply Systems Command, NAVSUP 09B, Room 606, Crystal Mall, Building No. 3, Arlington, VA 22202, Telephone Number: (202) 695–5447.

Dated: October 12 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89–24427 Filed 10–16–89; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CI89–494–000, et al.]

Harbert Energy Corp., et al.; Applications for Blanket Certificates with Pregranted Abandonment [1]

October 10 1989.

Take notice that each Applicant listed herein has filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for a blanket certificate with pregranted abandonment authorization for an unlimited term, all as more fully set forth in the applications which are on file with the Commission and open for public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before October 27, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

Docket No.	Date filed	Applicant
CI89–494–000	7–31–89	Harbert Energy Corporation, Suite 1800, 1200 Smith, Houston, Texas 77002–4395.
CI89–501–000	8–10–89	Enserch Gas Company, 301 South Harwood, Suite 504–N, Dallas, Texas 75201.

[FR Doc. 89–24383 Filed 10–16–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP90–1–000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

October 10, 1989.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on October 3, 1989, tendered for filing proposed changes in its FERC Gas Tariff, Original Volume No. 2 as set forth in the revised tariff sheets:

First Revised Sheet No. 260
First Revised Sheet No. 262
First Revised Sheet No. 263
First Revised Sheet No. 272

Algonquin states that it is making the instant filing to remove Fuel Reimbursement Provision from Rate Schedule X–33.

The aforementioned Original Volume No. 2 tariff sheets are proposed to be effective November 16, 1989.

Algonquin notes that copies of this filing were served upon the affected parties and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with § 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89–24385 Filed 10–16–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP89–256–000]

CNG Transmission Corp.; Request for Waiver

October 10, 1989.

Take notice that on September 29, 1989, CNG Transmission Corporation (CNG) filed a motion for waiver of § 154.305(e) of the Commission's Regulations and section 12.2 of the General Terms and Conditions of CNG's tariff to permit CNG to recover specific conversion costs resulting from its election to convert from sales service to firm transportation service on Texas Eastern Transmission Corporation (Texas Eastern).

CNG states that this request is made pursuant to the Commission orders issued September 29, 1988, and April 21, 1989, in Docket No. RP85–177, *et al.*, approving a contested offer of settlement and granting certificates of public convenience and necessity to Texas Eastern. CNG states that Texas Eastern filed compliance tariff sheets on May 22, 1989, proposed to be effective July 1, 1989, setting forth the rates, terms and conditions under which it will operate pursaunt to the newly issued certificates. CNG states that Texas Eastern's new Rate Schedule CD–1 gives customers flexibility by providing for standby sales service, as well as the option to convert sales service to firm transportation service.

CNG states that on September 14, 1989, it notified Texas Eastern of its election to convert 75,000 Dt per day of contract demand from Rate Schedule CD–1 (Zone C) to firm transportation service under Rate Schedule FT–1 (Zone C) to become effective November 1, 1989. CNG states that one factor complicating this decision is that costs which are currently accounted for as purchased gas costs may not be eligible for PGA treatment after conversion to transportation. CNG states that the Commission, on August 31, 1989, in Docket No. TA89–1–22–000. rejected certain blanket tariff language that CNG had proposed to deal with this problem, without prejudice to CNG seeking waiver to include specific conversion

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

costs it has incurred, consistent with previous Commission actions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure [18 CFR 385.2114, 385.211 (1988)]. All such motions or protests should be filed on or before October 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24400 Filed 10-16-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-1-84-000]

Caprock Pipeline Co.; Proposed Changes in FERC Gas Tariff

October 10, 1989.

Take notice that on October 3, 1989 Caprock Pipeline Company, (Caprock Pipeline) filed proposed changes in its FERC Gas Tariff. The purpose of these changes is to establish the ACA surcharge in its rates for fiscal year 1990.

A copy of this filing has been served upon all of Caprock Pipeline's customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24392 Filed 10-16-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA89-1-24-002 and TF89-3-24-001]

Equitrans, Inc.; Proposed Changes in FERC Gas Tariff

October 10, 1989.

Take notice that Equitrans, Inc., (Equitrans) on September 29, 1989 tendered for filing with the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1.

Effective September 1, 1989:

First Revised Ninth Revised Sheet No. 10
First Revised Eighth Revised Sheet No. 14

Effective September 2, 1989:

First Revised Tenth Revised Sheet No. 10

First Revised Ninth Revised Sheet No. 14

Equitrans stated that the foregoing tariff sheets are being filed in compliance with the Commission's Letter Order issued on August 31, 1989 in Docket No. TA89-1-24-000. The Order directed Equitrans to refile its § 154.305(h) and § 154.305(b)(a) of the Commission's Regulations for computation of the monthly interest rate factors and carrying charges. Also Equitrans' Interim PGA rates from Docket No. TF89-3-24-000 have been revised to comply with the conditions of the Order.

Equitrans states that a copy of its filing has been served upon its purchasers, interested state commissions, and upon each party on the service list of Docket No. CP86-676-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 27, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any persons wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24393 Filed 10-16-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. OR89-3-000]

Farmland Industries, Inc. v. Gulf Central et al.; Complaint

October 10, 1989.

On September 14, 1989, Farmland Industries, Inc. (Farmland) filed a complaint against Gulf Central Pipeline Company (Gulf Central), Gulf General Storage and Terminal Company, Gulf Central Storage and Terminal Company of Nebraska, and their parent company, Koch Industries, Inc. (Koch), alleging that Gulf Central, its affiliated terminal companies, and its parent have violated various sections of the Interstate Commerce Act (ICA). Specifically, Farmland asserts that Gulf Central, its affiliated terminal companies and Koch have violated sections 1(5), 1(6), 2, 3(1), 6(1), 6(7) and 15(11) of the ICA. These sections generally prescribe the establishment of just and resonable rates, mandate transportation service provided under published tariffs, and prohibit undue preferences and rebates.

Farmland argues that the named defendants are violating these sections by charging for line-haul services, the use of tanks and terminal facilities, and for other accessorial services rates that are unjust and unreasonable. Farmland also asserts that Gulf Central and the terminal companies are failing to establish, observe and enforce just and reasonable regulations and practices affecting rates and tariffs, including those for the allocation of capacity and the provision of accessorial services. Farmland further asserts that Gulf Central and the terminal companies are failing to file, print, and keep open to public inspection schedules showing, and plainly stating, all terminal charges, storage charges, and all other charges required and all privileges or facilities granted or allowed and all rules and regulations which in any way affect any part of the stated rates or the value of service rendered. Additionally, Farmland asserts that Gulf Central and the terminal companies are: (1) Engaging in the transportation of property without the rates and charges upon whcih the same are transported being filed and published; (2) charging less for the transportation of property and services, in connection therewith when provided to Koch or Koch's affiliates than that specified in the tariff filed and in effect at the time; (3) refunding a portion of the charges specified in the tariffs to Koch in the form of dividends, the advancement of receivables, the failure to collect charges in a timely manner, the payment of unreasonable amounts for corporate overhead or other services,

or through other devices; and (4) extending to Koch and to other shippers privileges and/or facilities in the transportation of property other than that specified in Gulf Central's tariffs.

Beyond these allegations, Farmland also alleges that Gulf Central knowingly and improperly is disclosing information concerning the nature of property tendered to Gulf Central for interstate transportation to persons or corporations other than the tendering shipper or consignee. Farmland contends that Koch knowingly is receiving from Gulf Central information concerning property tendered or delivered to Gulf Central for interstate transportation that could be detrimental to the shipper or consignee. Farmland also contends that Gulf Central and the terminal companies are improperly charging and collecting rates in excess of their cost of service, which they assert directly or indirectly allows terminal companies to receive from nonaffiliated shippers a greater amount than they receive in compensation for service rendered to Koch in the transportation of property of a like kind under substantially similar circumstances and conditions. Finally, Farmland contends that Gulf Central and the terminal companies improperly give undue preference to Koch in the transporation of anhydrous ammonia, and subject Farmland and other shippers to undue prejudice or disadvantage.

Farmland requests that the Commission: (1) Order Gulf Central and the terminal companies to place into effect maximum rates for services which do not exceed just and reasonable rates; (2) prescribe reasonable rates for the future to be applied by GCPL and the terminal companies; and (3) declare it to be discriminatory for Gulf Central and the terminal companies to earn from the revenues charged for common carrier services more than a fair return on assets dedicated to common carrier services. Farmland also requests that the Commission declare it to be unduly preferential to Koch and unduly prejudicial to competing shippers such as Farmland for Gulf Central and the terminal companies to earn from the revenues charged for common carrier services more than a fair return on assets dedicated to common carrier services. Farmland contends that the Commission should order Gulf Central and the terminal companies to stop providing to Koch any information concerning property tendered or delivered to Gulf Central without first obtaining the consent of the tendering shippers; Farmland requests that the Commission order Gulf Central and the terminal companies to pay the difference between the just and reasonable charges and the rate paid by Farmland for transportation services via Gulf Central and the terminal companies, plus interest, during the period beginning two years prior to the filing of this complaint; that the Commission order Gulf Central to publish and file with the Commission rates and related regulations regarding common carrier operations; that the Commission prescribe reasonable rates and charges and rules regarding all transportation services provided by Gulf Central; and that the Commission order Gulf Central and Koch to pay damages, plus interest, for injury caused by the disclosure of information concerning property tendered to Gulf Central for interstate transportation. Farmland also requests that the Commission order payment of its attorneys' fees and immediately establish a task force to oversee the operation of Gulf Central and the terminal companies in the allocation of capacity and the use of assets to insure that there is no discrimination or retaliation against Farmland, its shipments or its customers. Farmland states that a copy of this complaint has been served on the respondents.

Pursuant to section 13(1) of the ICA, Gulf Central, its terminal companies, and Koch should respond, in writing, within 30 days of the issuance date of this notice.

Any person desiring to be heard on the said complaint should file a motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions should be filed on or before November 9, 1989. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24384 Filed 10-16-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-246-000]

KN Energy, Inc.; Filing

October 10, 1989.

Take notice that on September 29, 1989, K N Energy, Inc. (K N) filed First Revised Sheet No. 43 to its FERC Gas Tariff, Original Volume No. 1-B, to be effective August 1, 1989.

K N states that this filing adjusts the D2 volume nomination for Public Service Company of Colorado.

K N states that copies of this filing have been served on all its jurisidictional customers and public service commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such motions or protest should be filed on or before October 16, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24396 Filed 10-16-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-1-46-000]

Kentucky West Virginia Gas Co.; Proposed Change in FERC Gas Tariff

October 10, 1989.

Take notice that Kentucky West Virginia Gas Company (Kentucky West) on October 3, 1989, tendered for filing with the Federal Energy Regulatory Commission (Commission) a quarterly PGA filing, which includes Sixteenth Revised Sheet No. 41 to its FERC Gas Tariff, Second Revised Volume No. 1, to become effective November 1, 1989. The revised tariff sheet reflects a current increase of $.5298 in the average cost of purchased gas resulting in a Weighted Average Cost of Gas of $2.0526.

Kentucky West states that, effective November 1, 1989, pursuant to its obligations under various gas purchase contracts, it has specified a total price of $2.0584 per dth, inclusive of all taxes and any other production-related cost add-ons that it would pay under these contracts.

Kentucky West states that, by its filing, or any request or statement made therein, it does not waive any rights to collect amounts, nor the right to collect carrying charges applicable thereto, to which it is entitled pursuant to the mandate of the United States Court of Appeals for the Fifth Circuit issued on

March 6, 1986, in *Kentucky West Virginia Gas Co.* v. *FERC*, 780 F.2d 1231 (5th Cir. 1986), or to which it becomes entitled pursuant to any other judicial and/or administrative decisions.

Kentucky West states that a copy of its filing has been served upon each of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure and 385.214. All such motions or protests should be filed on or before October 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24397 Filed 10-16-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-1-46-000]

Kentucky West Virginia Gas Co.; Proposed Change in FERC Gas Tariff

October 10, 1989.

Take notice that Kentucky West Virginia Gas Company (Kentucky West) on October 5, 1989, tendered for filing with the Federal Energy Regulatory Commission (Commission) Second Revised Sheet No. 45 to its FERC Gas Tariff, Second Revised Volume No. 1, to become effective October 1, 1989.

Kentucky West states the revised tariff sheet amends its Annual Charge Adjustment (ACA) charge to place in effect the new ACA funding unit of $.0017 per MCF which represents decrease of $.0001 per MCF.

Kentucky West states that a copy of its filing has been served upon each of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24389 Filed 10-16-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-200-003]

Pacific Gas Transmission Co.; Filing

October 10, 1989.

Take notice that on October 4, 1989, Pacific Gas Transmission Company (PGT) filed Substitute First Revised Sheet No. 46 to its FERC Gas Tariff, Original Volume No. 1-A, to be effective August 1, 1988, in compliance with the Commission's order of September 19, 1989.

PGT states that this tariff sheet deletes the provision that accords the highest priority for interruptible transportation service to any shipper who contracted prior to October 9, 1985 for interruptible transportation service.

PGT states that a copy of this filing is being served on all parties of record in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such protests should be filed on or before October 18, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24386 Filed 10-16-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP87-132-001]

Tennessee Gas Pipeline Co.; Offer of Settlement and Shortened Response Time

October 10, 1989.

Take notice that on October 4, 1989, an Offer of Settlement was filed by Ocean State Power (Ocean State) and the Concerned Citizens of Burrillville and Uxbridge pursuant to Rule 602 of the Commission's Rules of Practice and Procedure. The proposed settlement seeks a modification of the mitigation agreement which the Commission required that Ocean State and Tennessee Gas Pipeline Company execute as a condition to Tennessee's certificate in the above-captioned docket. The proposed modification would clarify Ocean State's ability to engage in low noise level, limited second shift construction activities as well as modify certain terms of the Property Value Stabilization Program which is attached as Exhibit G to the mitigation agreement.

Because it is necessary to resolve the issues addressed by the offer of settlement in as timely a manner as possible, notice is hereby given that comments on the offer of settlement are due 10 days after the date of filing, or on October 16, 1989. Replies to comments are due no later than 15 days after the date of filing, or on October 19, 1989.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24378 Filed 10-16-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GT89-29-000]

Transwestern Pipeline Co., Filing

October 10, 1989.

Take notice that on September 29, 1989, Transwestern Pipeline Company (Transwestern) filed 4th Revised Sheet No. 34H and 3rd Revised Sheet No. 30I to its FERC Gas Tariff, Second Revised Volume No. 1, to be effective October 30, 1989.

Transwestern states that these tariff sheets reflect revisions to § 16.4, the *Communication of Pricing and Capacity Information* section of its Rate Schedules FTS-1 and ITS-1, to reflect a change in the computer services firm retained to provide an electronic bulletin board on its behalf. Transwestern states that it contracted with US GASNET as provider of its electronic bulletin board service. Transwestern states that it deleted from the same provision the specific fee information regarding the electronic bulletin board because such fees are subject to change and such changes cannot be immediately reflected in the tariff. Rather, Transwestern lists on the proposed tariff sheets telephone numbers that potential shippers can call to obtain current pricing information.

Transwestern states that a copy of this filing have been mailed to all holders of its Second Revised Volume No. 1 Tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure [18 CFR 385.214, 385.211 (1988)]. All such motions or protests should be filed on or before October 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24390 Filed 10-16-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-4-000]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

October 10, 1989.

Take notice that Transwestern Pipeline Company ("Transwestern") on October 4, 1989, tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to be effective November 1, 1989;

71st Revised Sheet No. 5
6th Revised Sheet No. 38
2nd Revised Sheet No. 39
2nd Revised Sheet No. 40
6th Revised Sheet No. 133
6th Revised Sheet No. 134
6th Revised Sheet No. 135
6th Revised Sheet No. 136

Transwestern proposes tariff changes to its IS-1 Rate Schedule herein in the following respects:

First, Transwestern proposes that the maximum IS rate for the IS Rate Schedule equal Transwestern's WACOG in effect on September 30, 1989 pursuant to the September 26, 1989 Commission order accepting Transwestern's August 14, 1989 IS compliance filing, plus transportation costs equal to the FTS-1 rate at 100% load factor (delivered to Needles, California), plus the maximum Production and Gathering charge, fuel and all applicable surcharges.

Second, Transwestern requests that the minimum gas cost included in the minimum rate for IS sales be eliminated. In this regard, Transwestern also proposes to charge SG and RW customers the lowest IS rate set forth in any initial or amended reports filed with the Commission with respect to the commencement of IS service, provided that the gas cost for its SG and RW customers shall not exceed $1.30 per dth.

Third, Transwestern proposes that Transwestern be permitted to determine the priority of interruption due to insufficient gas supplies of IS-1 service based upon the economic value of each IS-1 Service Agreement where the maximum IS-1 rate is not charged. Transwestern proposes that the economic value be determined solely by reference to the IS volume, gas cost of the IS rate and price term.

Transwestern also requests three revisions to the IS-1 Service Agreement. First, Transwestern requests that IS sales rates below the maximum rate be acknowledged through a written notice by Transwestern to the buyer. Thus, the buyer is not required to execute and return to Transwestern a contract amendment.

Second, Transwestern proposes that Article 2, "*Term*" of said Service Agreement—Form L be revised to state, "This Agreement shall become effective upon Buyer's execution of this Agreement and shall continue for a term of _____."

Third, Transwestern seeks approval to modify Article 4, "*Pressure*" of the IS Service Agreement—Form L to provide that Transwestern shall have no obligation to provide compression and/or to alter its system operations to effectuate deliveries.

Any person desiring to be heard or to make any protest with reference to said tariff filing should on or before October 17, 1989 file with the Federal Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the Protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24387 Filed 10-16-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-160-004]

Trunkline Gas Co.; Filing

October 10, 1989.

Take notice that on October 3, 1989, Trunkline Gas Company (Trunkline) filed Second Substitute Sixty-Ninth Revised Sheet No. 3-A and alternate Second Substitute Sixty-Ninth Revised Sheet No. 3-A to its FERC Gas Tariff, Original Volume No. 1, to be effective November 1, 1989.

Trunkline states that these tariff sheets reflect the currently effective PGA surcharge adjustment and requests that they be substituted in lieu of the two tariff sheets filed on September 29, 1989.

Trunkline requests waiver of any provisions of the Commission's Regulations which may be necessary to accept these tariff sheets.

Trunkline states that copies of this filing are being mailed to its jurisdictional customers, interested state regulatory agencies and all parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such protests should be filed on or before October 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24398 Filed 10-16-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-1-85-000]

West Texas Gathering Co.; Proposed Changes in FERC Gas Tariff

October 10, 1989.

Take notice that on October 3, 1989 West Texas Gathering, (West Texas Gathering) filed proposed changes in its

FERC Gas Tariff. The purpose of these changes is to establish the ACA surcharge in its rates for fiscal year 1990.

A copy of this filing has been served upon all of West Texas Gathering's customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24391 Filed 10-16-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-1-52-000]

Western Gas Interstate Co.; Proposed Changes in FERC Gas Tariff

October 10, 1989.

Take notice that Western Gas Interstate Company (Western"), on September 29, 1989, tendered for filing proposed changes to its FERC Gas Tariff, First Revised Volume No. 1. The proposed effective date for the tariff sheet is November 1, 1989.

Western states that, among other things, its filing proposes changes to its rates in accordance with the terms of the Purchased Gas Adjustment Clause and its Annual Charge Adjustment Clause of its FERC Gas Tariff, which permits recovery of changes in the cost of gas and of unrecovered purchased gas costs.

Western further states that the proposed changes provide for: (1) A decrease in cost under Western's Rate Schedule G-N of 0.27 cents per Mcf; and (2) an increase in cost under Western's Rate Schedule G-S of 26.98 cents per Mcf.

Finally, Western states that copies of the filing were served upon Western's transmission system customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene with the Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants party to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24395 Filed 10-16-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ90-1-43-000, TM90-2-43-000]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

October 10, 1989.

Take notice that Williams Natural Gas Company (WNG) on September 29, 1989 tendered for filing the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Fifteenth Revised Sheet No. 6
Fourteenth Revised Sheet No. 7

A magnetic tape is also being filed in compliance with FERC Form No. 542-PGA.

WNG states that pursuant to the Purchased Gas Adjustment in Article 21 of its FERC Gas Tariff, it proposes to increase its rates effective November 1, 1989, to reflect a $.1541 per Dth increase in the Cumulative Adjustment, a $.0007 per Dth increase in transportation fuel rates and a $.0025 per Dth increase in gathering fuel rates.

WNG states that pursuant to Article 29 of its FERC Gas Tariff, the above referenced tariff sheets reflect a revised TOP Volumetric Surcharge for the period November 1, 1989 through January 31, 1990 of $.0323.

WNG states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24394 Filed 10-16-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-257-000]

Williston Basin Interstate Pipeline Co.; Proposed Changes in FERC Gas Tariffs

October 10, 1989.

Take notice that on September 29, 1989, Williston Basin Interstate Pipeline Company (Williston Basin) tendered for filing revised tariff sheets to First Revised Volume No. 1, Original Volume No. 1-A, Original Volume No. 1-B and Original Volume No. 2 of its FERC Gas Tariff. Williston Basin states that these tariff sheets reflect the restatement of rates to incorporate a second conversion of firm sales service to firm transportation service by Williston Basin's sales customers in light of abandonment authority issued in Docket No. CP89-302-000. Williston Basin has requested a November 1, 1989 effective date for the revised tariff sheets.

Copies of this filing were served on the Company's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24399 Filed 10-16-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-2-000]

Williston Basin Interstate Pipeline Co.; Proposed Changes In FERC Gas Tariffs

October 10, 1989.

Take notice that on October 3, 1989, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, tendered for filing certain revised tariff sheets to its FERC Gas Tariffs, First Revised Volume No. 1, Original Volume No. 1-A and Original Volume No. 2.

Williston Basin states that the proposed revisions to the tariff sheets reflect establishment of separate storage charges for service rendered under Rate Schedule S-2 of Williston Basin's FERC Gas Tariff, Original Volume No. 1-A.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 17, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24388 Filed 10-16-89; 8:45 am]

BILLING CODE 6717-01-M

Idaho Operations Office

Intent To Negotiate a Grant With the University of Alaska Fairbanks (Annex VII)

AGENCY: Department of Energy, Idaho Operations Office.

ACTION: Notice of intent to negotiate a grant with the University of Alaska Fairbanks (Annex VII).

SUMMARY: "Characterization of Oil and Gas Reservoir Heterogeneity." The U.S. Department of Energy (DOE), Bartlesville Project Office through DOE, Idaho Operations Office, intends to negotiate on a noncompetitive basis a cost share grant for approximately $1.2 million with the University of Alaska Fairbanks. The DOE share is approximately $0.6 million. This action is prompted by the consummation of Annex VII to the Memorandum of Understanding for fossil energy resource characterization, research, technology development, and technology transfer between the United States Department of Energy and the State of Alaska, which defines the research proposal, the participants, and specifies cost sharing. The objective of this research project is to comprehensively characterize Alaskan petroleum reservoirs in terms of their reserves, physical and chemical properties, geologic configurations in relation to lithofacies and structure, and development potential. This is to be accomplished through an intensive cooperative effort to identify and structure existing information, both published and unpublished, for use by developers, decision makers, and researchers, and to conduct analytical characterization studies of selected reservoirs to support a comprehensive final document and workshops. The authority and justification for determination of noncompetitive financial assistance (DNCFA) is DOE Financial Assistance Rules 10 CFR part 600.7(b)(2)(i) criteria (B), (C), and (D). The activities proposed in Annex VII to the agreement between the U.S. Department of Energy and the State of Alaska are in support of a public purpose and are as directed by the agreement. DOE support of the activity would enhance the public benefits to be derived, and DOE knows of no other entity which is conducting or planning to conduct such an activity.

The applicant is a unit of Government and the activity to be supported is related to performance of a Governmental function within the subject jurisdiction, thereby precluding DOE provision of support to another entity. The applicant has exclusive domestic capability to perform the activity successfully and has extensive data relative to the proposed activities that will be identified and structured and made available to developers, decisionmakers, and researchers.

Contact: U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, Idaho 83402. Trudy A. Thorne, Contract Specialist (208) 526-9519.

Dated: October 5, 1989.

J. Roger Gonzales,

Director, Contracts Management Division.

[FR Doc. 89-24504 Filed 10-16-89; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[FE Docket No. 89-41-NG]

Northridge Petroleum Marketing U.S., Inc.; Order Extending Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of order extending blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued an order granting Northridge Petroleum Marketing U.S., Inc. (Northridge), an extension of its existing blanket import authorization which expires December 4, 1989. The order authorizes Northridge to import up to 200 Bcf of Canadian natural gas over a two-year period beginning December 5, 1989, through December 4, 1991.

A copy of the order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open betwen the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, October 10, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89-24505 Filed 10-16-89; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 88-52-NG]

Southeastern Michigan Gas Co.; Application To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application for long-term authorization to import Canadian natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on August 31, 1989, of an amendment to an application to import natural gas from Canada filed by Southeastern Michigan Gas Company (Southeastern) on August 26, 1988, but by its subsequent request held in abeyance until the Canadian export arrangements were renegotiated. Southeastern requests authorization to import from Canada up to 15,000 Mcf of

natural gas per day on a firm basis, and additional, excess gas on an interruptible basis, for a 15-year term beginning when gas is first delivered to Southeastern.

The application is filed pursuant to section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.d.t., November 16, 1989.

ADDRESS: Office of Fuels Programs, Fossil Energy, Room 3F–056, FE–50, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Frank Duchaine, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8233;

Diane J. Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION:

Southeastern, a local distribution company subject to regulation by the Michigan Public Service Commission, seeks authorization to import gas that it will buy from Western Gas Marketing, Ltd. (WGM), a wholly-owned subsidiary of TransCanada PipeLines, Ltd. (TransCanada). The applicant had requested that DOE hold its original August 1988 filing (53 FR 39760, October 12, 1988) in abeyance pending governmental approval. WGM had been unable to secure the requisite producer support for the sale of the gas. Southeastern indicates in its amended application that the pricing and other terms of the import arrangement, as modified, have received the necessary producer support, and requests that DOE reactivate the application and consider it as amended.

TransCanada would deliver the gas to a point at the international border near Emerson, Manitoba, where TransCanada's facilities connect with those of Great Lakes Gas Transmission Company (Great Lakes) and Midwestern Gas Transmission Company. Great Lakes has filed a related application with the Federal Energy Regulatory Commission (FERC Docket No. CP88–541–000) for authority to transport the gas to Southeastern via an existing interconnection between Southeastern and ANR Pipeline Company (ANR). As part of its FERC application, Great Lakes requests authority to construct certain necessary facilities, including a 2.9-mile loop of 36-inch diameter pipe. Southeastern indicates ANR may also be involved in transporting some of the gas to an existing interconnection of their two systems.

The proposed gas purchase contract renegotiated by Southeastern and WGM provides for the sale and purchase of a daily contract quantity of 15,000 Mcf, up to a term total of 82,125 MMcf, with deliveries to commence after regulatory approval and to continue for a term ending 15 years after gas first flows. Southeastern also may buy gas in excess of the daily contract quantity on an interruptible, best-efforts basis, subject to available transportation. The annual contract quantity (sum of the daily contract quantity) is subject to a 50 percent minimum purchase requirement ("annual triggering volume") in the first three contract years and 70 percent thereafter. If Southeastern does not take the annual triggering volume in any year, the contract provides for a gas inventory charge of 10 cents per Mcf of the shortfall. The contract also permits WGM to reduce the daily contract volume to reflect a shortfall.

Southeastern would purchase gas under the proposed contract in accordance with a two-part, demand-commodity rate structure. The demand charge would be determined monthly based on the firm transportation charges of TransCanada and the NOVA Corporation of Alberta (NOVA). The method for calculating the NOVA component of the demand charge rate is subject to limited renegotiation.

The commodity component, as modified, is based on a formula indexed to the price paid by Southeastern under current long-term contracts for the purchase and sale of gas on a firm basis from alternative suppliers delivered through the pipeline systems of ANR or Panhandle Eastern Pipeline Company. The commodity charge is subject to annual renegotiation at the request of either party, and in the absence of agreement, arbitration. In an October 10, 1989, letter Southeastern indicated that under the pricing formula the delivered charge for September 1989 would be $1.63 per MMBtu. This price is the total of a $0.2575 demand charge and a $1.3725 commodity charge. The price for excess gas is the effective commodity charge under the gas purchase contract, plus the interruptible transportation charges of TransCanada.

Gas supplies committed to the import arrangement under the proposed contract would come from the pool of supplies dedicated by Canadian producers to TransCanada. WGM and TransCanada must use reasonable efforts to add gas reserves necessary to maintain a ten-year reserve-production ratio and, according to the application, may not enter into gas contracts in any year in which that ratio is less than ten, or which would reduce the ratio to less than ten.

The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their response on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) requires the DOE to give appropriate consideration to the environmental effects of its proposed actions. The FERC has performed an environmental review of the impacts of constructing and operating the proposed facilities related to this project. The DOE will independently review the results of the FERC environmental evaluation of this project in the course of making its own environmental determination. No final decision will be issued in this proceeding until the DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are

specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address. They must be filed no later than 4:30 p.m., e.d.t., November 16, 1989.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeing intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial questions of fact, law, or policy at issue, shown that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice to all parties will be provided. If no party requests additional procedures, a conditional or final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR section 590.316.

A copy of Southeastern's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on October 12, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89–24506 Filed 10–16–89; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Proposed Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the proposed procedures for disbursement of $1,362, 565.77 (plus accrued interest) which was remitted by five firms and one individual: Tootle Petroleum, Inc., Carbonit Houston, Inc., Meridian Oil on behalf of Southland Royalty Co., Sante Fe Energy Co., Samedan Oil Corp., and Joe E. Smith. The DOE has tentatively determined that funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges.

DATE AND ADDRESS: Comments must be filed in duplicate on or before November 16, 1989 and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should conspicuously display a reference to the applicable Case Number(s): KEF–0140 (Tootle); Number(s): KEF–0141 (Carbonit); Number(s): KEF–0143 (Meridian); Number(s): KEF–0144 (Santa Fe); Number(s): KEF–0145 (Samedan); and/or Number(s): KEF–0146 (Joe E. Smith)..

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252–2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and order sets forth the procedures by which remittances made by Tootle Petroleum, Inc., Carbonit Houston, Inc., Meridian Oil on behalf of Southland Royalty Co., Santa Fe Energy Co., Samedan Oil Corp., and Joe E. Smith will be distributed. The monies remitted by Tootle Petroleum, Inc., Carbonit Houston, Inc., and Joe E. Smith were in settlement of possible pricing violations with respect to the sale of domestic crude oil. The monies remitted by Meridian Oil, Santa Fe Energy Co., and Samedan Oil Co. represent revenues that exceeded recoupable allowed expenses for projects qualifying under the Tertiary Incentive Program, 10 CFR 212.78.

The DOE has tentatively decided that the distribution of the monies received from Tootle, Carbonit, Meridian, Santa Fe, Samedan, and Joe E. Smith will be governed by the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986). That policy states that all crude oil overcharge funds shall be divided among the states, the Federal government, and injured purchasers of refined products. Under the plan we are proposing, refunds to the states would be distributed in proportion to each state's consumption of petroleum products during the period of price controls. Refunds to eligible purchasers would be based on the number of gallons of petroleum products which they purchased and the extent to which they can demonstrate injury.

Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received will be available for public inspection between the hours of 1:00 p.m. and 5:00 p.m., Monday through Friday, except Federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue SW., Washington, DC 20585.

Dated: October 10, 1989.

George B. Breznay,

Director, Office of hearings and Appeals.

DEPARTMENT OF ENERGY

Washington, DC 20585

Proposed Decision and Order; Implementation of Special Refund Procedures

Names of Firms:
Tootle Petroleum, Inc.
Carbonit Houston, Inc.
Meridian Oil
Santa Fe Energy Company
Samedan Oil Corp.
Joe E. Smith

Dates of Filing:
August 23, 1989
August 24, 1989
August 31, 1989
August 31, 1989
August 31, 1989
August 31, 1989

Case Numbers:
KEF–0140
KEF–0141
KEF–0143
KEF–0144
KEF–0145
KEF–0146

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) of the DOE may request that the Office of Hearings and Appeals (OHA) formulate and implement special

procedures to make refunds in order to remedy the effects of alleged violations of the DOE regulations. 10 CFR 205.281. These procedures are used to refund monies to those injured by actual or alleged violations of the DOE price regulations.

The ERA has filed petitions for the Implementation of Special Refund Procedures for consent order funds which the DOE has obtained from Tootle Petroleum, Inc. (TPI), Carbonit Houston, Inc. (Carbonit), Meridian Oil (Meridian), Santa Fe Energy Company (Santa Fe), Samedan Oil Corp. (Samedan), and Joe E. Smith (Smith). These five firms and Smith remitted a total of $1,362,565.77 to the DOE,[1] which deposited the funds in interest-bearing escrow accounts maintained at the Department of the Treasury. The funds paid by TPI, Carbonit and Smith were in settlement of crude oil enforcement proceedings brought under 10 C.F.R. Part 205, Subpart O. The funds received from Meridian, Santa Fe, and Samedan represent revenues that exceeded recoupable allowed expenses for projects qualifying under the Tertiary Incentive Program, 10 CFR 212.78.[2] An additional $46,635.34 has accrued in interest on these six escrow funds as of August 31, 1989.[3] This Proposed Decision and Order sets forth the OHA's plan to distribute these funds.

The procedural regulations of the DOE establish general guidelines by which the Office of Hearings and Appeals may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR part 205, Subpart V. The Subpart V process may be used in situations where the DOE cannot readily identify the persons who may have been injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive.[4] After reviewing the record in the present case, we have concluded that a subpart V proceeding is an appropriate mechanism for distributing the six remittances. Therefore, we propose to grant the ERA's petitions and assume jurisdiction over distribution of the funds.

[1] TPI, a crude oil reseller, remitted $7,615 (Consent Order Number 6A0X00339). Carbonit, a crude oil reseller, remitted $30,000 (Consent Order Number 650X00253). Smith, a crude oil producer, remitted $22,500 (Consent Order Number 610C00359W). Meridian remitted $693,547 on behalf of Southland Royalty Company (Escrow Account Number T00T00002W). Santa Fe remitted $531,699.77 (Escrow Account Number T00T00002W). Samedan remitted $77,204 (Escrow Account Number T00T00003W).

[2] Although these funds did not result from alleged violations of the regulations, they represent restitution for crude oil sales made at higher prices than would otherwise have been permissible if the projects had not qualified under Section 212.78. Since the effect of those higher prices was spread throughout the country, *see* n.5, *infra*, it is appropriate to combine these funds with crude oil overcharge funds.

[3] As of August 31, 1989, accrued interest on each of the escrow accounts is as follows: Tootle, $76.81; Carbonit, $245.34; Meridian, $19,711.07; Santa Fe, $14,456.29; Samedan, $1,947.13; Smith, $10,198.10.

[4] For a more detailed discussion of Subpart V and the authority of the Office of Hearings and Appeals to fashion procedures to distribute refunds obtained as part of settlement agreements, *see Office of Enforcement*, 9 DOE ¶ 82,552 (1982); *Office of Enforcement*, 9 DOE ¶ 82,508 (1981).

I. Background

On July 28, 1986, the DOE issued a Modified statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986) ("the MSRP"). The MSRP, issued as a result of a court approved Settlement Agreement in *In re: The Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378 (D. Kan.), provides that crude oil overcharge funds will be divided among the states, the federal government, and injured purchasers of refined petroleum products. Under the MSRP, up to 20 percent of these crude oil overcharge funds will be reserved initially to satisfy valid claims by injured purchasers of petroleum products. Eighty percent of these funds, and any monies remaining after all valid claims are paid, are to be disbursed equally to the states and federal government for indirect restitution.

The OHA has been applying the MSRP to all subpart V proceedings involving alleged crude oil violations. *See* Order Implementing the MSRP, 51 FR 29689 (August 20, 1986). That Order provided a period of 30 days for the filing of any objections to the application of the MSRP, and solicited comments concerning the appropriate procedures to follow in processing refund applications in crude oil refund proceedings.

On April 6, 1987, the OHA issued a Notice analyzing the numerous comments which it received in response to the August 1986 Order. 52 FR 11737 (April 10, 1987). The Notice set forth generalized procedures and provided guidance to assist claimants who wish to file refund applications for crude oil monies under the Subpart V regulations. All applicants for refunds would be required to document their purchase volumes of petroleum products during the period of price controls and to prove that they were injured by the alleged overcharges. The Notice indicated that end-users of petroleum products whose businesses are unrelated to the petroleum industry will be presumed to have absorbed the crude oil overcharges and need not submit any further proof of injury to receive a refund. Finally, we stated that refunds would be calculated on the basis of a per gallon refund amount derived by dividing crude oil violation amounts by the total consumption of petroleum products in the United States during the period of price controls. The numerator would include the crude oil overcharge monies that were in the DOE's escrow account at the time of the settlement and a portion of the escrow funds in the M.D.L. 378 escrow at the time of the settlement.

The DOE has applied these procedures in numerous cases since the April 1987 Notice, *see, e.g., Shell Oil Co.*, 17 DOE ¶ 85,204 (1988) (*Shell Oil*); *Ernest A. Allerkamp*, 17 DOE ¶ 85,079 (1988) (*Allerkamp*), and the procedures have been approved by the United States District Court for the District of Kansas. Various States had filed a Motion with that court claiming that the OHA violated the Settlement Agreement by employing presumptions of injury for end-users and by improperly calculating the refund amount to be used in those proceedings. In denying the Motion, the court concluded that the Settlement Agreement "does not bar [the] OHA from permitting claimants to employ reasonable presumptions in affirmatively demonstrating injury entitling them to a refund." *In Re: The Department of Energy Stripper Well Exemption Litigation*, 671 F. Supp. 1318, 1323 (D. Kan. 1987), *aff'd*, 857 F.2d 1481 (Temp. Emer. Ct. App. 1988). The court also held that the OHA could calculate refunds based on a portion of the M.D.L. 378 overcharges. *Id.*, 6511 F. Supp. at 1323–24.

II. The Proposed Refund Procedures

A. Refund Claims

We now propose to apply the procedures discussed in the April 1987 Notice to the crude oil Subpart V proceedings that are the subject of the present determination. As noted above, $1,362,565.77 plus interest in crude oil funds is covered by this Proposed Decision. We have decided to reserve initially the full 20 percent of these funds, or $272,513.15 (plus interest), for direct refunds to claimants, in order to ensure that sufficient funds will be available for refunds to injured parties. The amount of the reserve may be adjusted downward later if circumstances warrant.

The process which the OHA will use to evaluate claims for crude oil refund monies will be modeled after the

process the OHA has used in Subpart V proceedings to evaluate claims based upon alleged overcharges involving refined products. *See* Mountain Fuel Supply Co., 14 DOE ¶ 85,475 (1986).

Applicants will be required to document their purchase volumes and to prove that they were injured as a result of the alleged violations. Applicants who were end-users or ultimate consumers of petroleum products, whose businesses are unrelated to the petroleum industry and who were not subject to the DOE price regulations, are presumed to have absorbed rather than passed on alleged crude oil overcharges. In order to receive a refund, end-users need not submit any further evidence of injury beyond volumes of product purchased in the distribution scheme in which the overcharges occurred. *A. Tarricone Inc.*, 15 DOE ¶ 85,495 at 88,893–96 (1987). Reseller and retailer claimants must submit detailed evidence of injury, and may not rely on the presumptions of injury utilized in refund cases involving refined petroleum products. *Id.* They may, however, use econometric evidence of the type employed in the OHA Report to the District Court in the Stripper Well Litigation, 6 Fed. Energy Guidelines ¶ 90,507 (June 19, 1985). *See* Petroleum Overcharge Distribution and Restitution Act § 3003(b)(2), 15 U.S.C. 4502(b)(2). Applicants who executed and submitted a valid waiver pursuant to one of the escrows established in the Settlement Agreement have waived their rights to apply for crude oil refunds under Subpart V. *See Mid-America Dairymen Inc.* v. *Herrington*, 878 F.2d 1448 (Temp. Emer. Ct. App. 1989); *accord, Boise Cascade Corp.*, 18 DOE ¶ 85,970 (1989).

Refunds to eligible claimants who purchased refined petroleum products will be calculated on the basis of a volumetric refund amount derived by dividing the crude oil refund amounts involved in this determination ($1,362,565.77) by the total consumption of petroleum products in the United States during the period of price controls (2,020,997,335,000 gallons). *Mountain Fuel*, 14 DOE at 88,868. This approach reflects the fact that crude oil overcharges were spread equally throughout the country by the Entitlements Program, 10 CFR 211.67.[5] This yields a volumetric refund amount of $0.000000674204 per gallon.

As we stated in previous decisions, a crude oil refund applicant will be required to submit only one application for crude oil overcharge funds. *Allerkamp*, 17 DOE at 88,176. Any party that has previously submitted a refund application in the crude oil refund proceedings need not file another application. A deadline of June 30, 1988 was established for all first stage crude oil refund proceedings implemented pursuant to the MSRP up to and including *Shell Oil. See A. Tarricone Inc.*, 16 DOE ¶ 85,681 (1987). A deadline of October 31, 1989 was established for all second stage crude oil proceedings beginning with *World Oil Co.*, 17 DOE ¶ 85,568, *corrected*, 17 DOE ¶ 85,669 (1988), and ending with *Texaco Inc.*, 19 DOR ¶ 85,200, *corrected*, 19 DOE ¶ 85,236 (1989). Any applicant that files a refund application after the October 31, 1989 deadline may not be eligible to receive a refund based on the volumetric amounts approved prior to that date. The volumetric refund amount in the third stage of disbursements will be increased as additional crude oil violation amounts are received in the future. Applicants may be required to submit additional information to document their refund claims for these future amounts. Notice of any additional amounts available in the future will be published in the **Federal Register**.

B. Payments to the States and Federal Government

Under the terms of the MSRP, we propose that the remaining 80 percent of the alleged crude oil violation amounts subject to this Proposed Decision, or $1,090,052.62 (plus interest), be disbursed in equal shares to the states and federal government for indirect restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Settlement Agreement. These funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Settlement Agreement.

Before taking the actions we have proposed in this Decision, we intend to publicize our proposal and solicit comments on it. Comments regarding the tentative distribution process set forth in this Proposed Decision and Order should be filed with the OHA within 30 days of its publication in the **Federal Register**.

It is therefore ordered that:

The refund amounts remitted to the Department of Energy by Tootle Petroleum, Inc., Carbonit Houston, Inc., Meridian Oil, Santa Fe Energy Co., Samedan Oil Corp., and Joe E. Smith pursuant to Consent Orders 6A0X00339, 650X00253, T00T00001W, T00T00002W, T00T00003W, and 610C00359W shall be distributed in accordance with the foregoing Decision.

[FR Doc. 89–24507 Filed 10–16–89; 8:45 am]
BILLING CODE 6450–01–M

[5] The DOE established the Entitlements Program to equalize access to the benefits of crude oil price controls among all domestic refiners and their downstream customers. To accomplish this goal, refiners were required to make transfer payments among themselves through the purchase and sale of "entitlements." This balancing mechanism had the effect of evenly disbursing overcharges resulting from crude oil miscertifications throughout the domestic refining industry. *See* Amber Refining Inc., 13 DOE ¶ 85,217 at 88,564 (1985).

FEDERAL COMMUNICATIONS COMMISSION

Executive Resources and Performance Review Board; Appointment of Members

As required by the Civil Service Reform Act of 1978 (Public Law 95–454), Chairman Alfred C. Sikes appointed the following executives to the Executive Resources and Performance Review Board:

Andrew S. Fishel,
Thomas P. Stanley,
Richard C. Firestone,
Robert L. Pettit.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 89–24420 Filed 10–16–89; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–842–DR]

Puerto Rico; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Puerto Rico (FEMA–842–DR), dated September 21, 1989, and related determinations.

DATED: October 6, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: The notice of a major disaster for the Commonwealth of Puerto Rico, dated September 21, 1989, is hereby amended to include the following areas

among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 21:

The municipio of Penuelas for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89-24471 Filed 10-16-89; 8:45 am]

BILLING CODE 6718-02-M

North Carolina; Amendment to Notice of a Major Disaster Declaration

[FEMA-844-DR]

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Carolina (FEMA-844-DR), dated September 25, 1989, and related determinations.

DATED: October 5, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of North Carolina, dated September 25, 1989, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 25, 1989:

The counties of Davie, Davidson, Forsyth, Guilford, Stokes, and Yadkin for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89-24472 Filed 10-16-89; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-843-DR]

South Carolina; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of South Carolina (FEMA-843-DR), dated September 22, 1989, and related determinations.

DATED: October 6, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: Notice is hereby given that, in a letter dated October 6, 1989, the President amended his declaration of a major disaster for the State of South Carolina, dated September 22, 1989, as follows:

I have determined that the damage from Hurricane Hugo in certain areas of the State of South Carolina, which resulted in my declaration of a major disaster on September 22, 1989, is of sufficient severity and magnitude that special conditions are warranted regarding the limitation of Federal funds provided under PL 93-288 for Public Assistance.

Therefore, I amend my declaration to authorize Federal funds for Public Assistance at 75 percent of total eligible costs up to $10 per capita. Eligible costs for Public Assistance exceeding $10 per capita will be funded at 100 percent.

Please notify the Governor of South Carolina and the Federal Coordinating of this amendment to my major disaster declaration.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89-24473 Filed 10-16-89; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-841-DR]

Territory of the Virgin Islands; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Territory of the Virgin Islands (FEMA-841-DR), dated September 20, 1989, and related determinations.

DATED: October 9, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3614.

NOTICE: The notice of a major disaster for the Territory of the Virgin Islands, dated September 20, 1989, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 20:

Water Island, and other inhabited islands under the jurisdiction of the Territorial Government for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89-24474 Filed 10-16-89; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Port of Oakland Terminal Agreement et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-004008-009

Title: Port of Oakland Terminal Agreement.

Parties:

Port of Oakland (Port)

Marine Terminals Corporation (MTC)

Synopsis: The Agreement modifies the basic agreement, a management arrangement for certain marine terminal facilities in the Port's Seventh Street Terminal Area, to delete a portion of the assigned premises. The portion deleted shall be restored to the premises assigned to MTC if Agreement No. 224-200287 terminates during the effectiveness of Agreement No. 224-004008-009.

Agreement No.: 224-200296

Title: Port of Oakland Terminal Agreement.

Parties:

Port of Oakland (Port)

EAC Trans Pacific Service Ltd. (EAC)

Synopsis: The Agreement provides EAC with a nonexclusive right to certain assigned premises at the Port's Charles P. Howard Terminal for the berthing, loading and discharging of its vessels and related operations. EAC agrees to make the Port of Oakland its regularly scheduled Northern California port of call and shall pay the Port 90% of dockage and wharfage tariff charges subject to certain conditions. The Agreement terminates September 30, 1994.

Agreement No.: 224–200295

Title: Virginia Port Authority Terminal Agreement.

Parties:

Virginia Port Authority (VPA)

Sea-Land Service, Inc. (Sea-Land)

Synopsis: The Agreement provides that VPA will construct and improve terminal facilities located at Portsmouth, Virginia. The Agreement permits Sea-Land the use of the terminal facilities for conducting container terminal operations and related activities and grants Sea-Land an option to use certain other adjoining property for similar purposes. The Agreement's term expires October 31, 2005.

By order of the Federal Maritime Commission.

Dated: October 12, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89–24462 Filed 10–16–89; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Hometown Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 3, 1989.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Hometown Bancshares, Inc.,* Middlebourne, West Virginia; to merge with Universal Banc Corp., Paden City, West Virginia, and thereby indirectly acquire The Bank of Paden City, Paden City, West Virginia.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Crestar Financial Corporation,* Richmond, Virginia; to merge with The Northern Virginia Banking Corporation, Sterling, Virginia, and thereby indirectly acquire The National Bank of Northern Virginia, Sterling, Virginia.

2. *Maryland Publick Banks, Inc.,* Annapolis, Maryland; to become a bank holding company by acquiring 100 percent of the voting shares of The Annapolis National Bank, in organization, Annapolis, Maryland, a *de novo* bank.

C. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Bank of Montreal,* Quebec, Canada; Bankmont Financial Corp., New York, New York; and Harris Bankcorp, Inc., Chicago, Illinois; to acquire 100 percent of the voting shares of Frankfort Bancshares, Inc., Frankfort, Illinois, and thereby indirectly acquire Frankfort State Bank, Frankfort, Illinois.

D. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *NBC Bancorporation, Inc.,* Newport, Minnesota; to merge with Central Bancorporation, Inc., Newport, Minnesota, and thereby indirectly acquire Blue Earth State Bank, Blue Earth, Minnesota.

E. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Texas Security Bancshares Corporation,* Dover, Delaware; to become a bank holding company by acquiring 100 percent of the voting shares of Central Bank and Trust, Fort Worth, Texas, and North Fort Worth Bank, Fort Worth, Texas.

Board of Governors of the Federal Reserve System, October 11, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–24449 Filed 10–16–89; 8:45 am]

BILLING CODE 6210–01–M

Industrial Equity (Pacific) Ltd. and Debra I. Lamb; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 31, 1989.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Industrial Equity (Pacific) Limited,* Central Hong Kong; Brierley Investments Limited, New Zealand; The Shanghai Electric Construction Company Limited, United Kingdom; Zorzan Investments Limited, Hong Kong; Stuart Corporation, Inc., Rorotonga, Cook Islands; Caisley Finance Limited, Rorotonga, Cook Islands; Mezerik Securities Limited, Rorotonga, Cook Islands; Stuart Investments Limited, Rorotonga, Cook Islands; Boulevard Limited, Rorotonga, Cook Islands; Ronald A. Brierley, New Zealand; Bruce A. Hancox, New Zealand; Alfred D. Boyer, United States; Robert G. Sutherland, New Zealand; Paul D. Collins, New Zealand; Paul R. Forrester, United Kingdom; Reginald F. Heath, United Kingdom; and Rodney F. Price, Australia, to acquire an additional 10.09 percent of the voting shares of Whitney Holding Corporation, New Orleans, Louisiana, for a total of 19.9 percent, and thereby indirectly acquire Whitney National Bank, New Orleans, Louisiana.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Debra I. Lamb,* Scottsdale, Arizona; to acquire an additional 2.06 percent, for a total of 26.45 percent of the voting shares of Ada Banc Shares, Inc., Ada, Minnesota, and thereby indirectly acquire the Ada National Bank, Ada, Minnesota.

Board of Governors of the Federal Reserve System, October 11, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-24450 Filed 10-16-89; 8:45 am]

BILLING CODE 6210-01-M

McCreary Bancshares, Inc., et al.; Applications To Engage De Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 3, 1989.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *McCreary Bancshares, Inc.,* Whitley City, Kentucky; to engage *de novo* through its subsidiary, McCreary County Community Development Corporation, and thereby engage in lending and community development activities pursuant to § 225.25 (b)(1) and (b)(6) of the Board's Regulation Y. These activities will be conducted in McCreary County, Kentucky.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *First National Corporation of Picayune,* Picayune, Mississippi; to engage *de novo* through its subsidiary, Community Finance, Inc., Picayune, Mississippi, in making, acquiring, or servicing loans or other extensions of credit (including issuing letters of credit and accepting drafts) for the Company's account or for the account of others, such as would be made, for example, by the following types of companies: (i) Consumer finance, (ii) credit card, (iii) mortgage, (iv) commercial finance, and (v) factoring pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted throughout the States of Mississippi, Louisiana and Alabama.

Board of Governors of the Federal Reserve System, October 11, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-24451 Filed 10-16-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR-16]

Availability of Draft Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR); Public Health Service (PHS); Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces the expected availability of the third set of 30 draft toxicological documents profiling 48 hazardous substances, prepared by ATSDR for review and comment.

The Superfund Amendments and Reauthorization Act (SARA) (Pub. L. 99-499) amends the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) (42 U.S.C. 9601 *et seq.*) by establishing certain requirements for the ATSDR and the Environmental Protection Agency (EPA) with regard to hazardous substances which are most commonly found at facilities on the CERCLA National Priorities List (NPL). Among these statutory requirements is a mandate for the Administrator of ATSDR to prepare toxicological profiles for each substance included on the priority lists of hazardous substances. These lists identified the 200 hazardous substances which both Agencies determined pose the most significant potential threat to human health. The first list was published in the **Federal Register** on April 17, 1987 (52 FR 12866). The second list was published on October 20, 1988 (53 FR 41280).

Although we are confident that the key studies for each of the substances were considered during the profile development process, this **Federal Register** notice solicits any studies, including unpublished data and ongoing studies, which may aid in the revision of the draft profiles.

Availability

The following draft toxicological profiles are expected to be publicly available on or about October 17, 1989.

Document	Hazardous substance	CAS No.
1.	Acrolein	107-02-8
2.	Acrylonitrile	107-13-1
3.	Ammonia	7664-41-7
4.	Asbestos	1332-21-4
5.	Bromoform	75-25-2
	Chlorodibromomethane	124-48-1
6.	Chlorobenzene	108-90-7
7.	Chloromethane	74-87-3
8.	Copper	7440-50-8
9.	Creosote	8001-58-9
10.	Di-n-butylphthalate	84-74-2
11.	1,2-Diphenylhydrazine	122-66-7
12.	1,1-Dichloroethane	75-34-3
13.	cis-1,2-Dichlorethene	156-59-2
	trans-1,2-Dichloroethene	156-60-5
	1,2-Dichlorethene	540-59-0
14.	Endrin/Endrin Aldehyde	72-20-8
		7421-93-4
15.	Ethylbenzene	100-41-4
16.	Ethylene Oxide	75-21-8
17.	Hexachlorobenzene	118-74-1
18.	Naphthalene	91-20-3
	2-Methylnaphthalene	91-57-6
19.	Nitrobenzene	91-20-3
20.	Polycyclic Aromatic Hydrocarbons (PAHs).	
	Acenaphthene	83-32-9
	Acenaphthylene	208-96-8
	Anthracene	120-12-7
	Benzo(a)anthracene	56-55-3
	Benzo(a)pyrene	50-32-8
	Benzo(b)fluoranthene	205-99-2
	Benzo(g,h,i)perylene	191-24-2
	Benzo(k)fluoranthene	207-08-9
	Chrysene	218-01-9

Document	Hazardous substance	CAS No.
	Dibenzo(a,h)anthracene	53-70-3
	Fluoranthene	206-44-0
	Fluorene	86-73-7
	Indeno(1,2,3-cd)pyrene	193-39-5
	Phenanthrene	85-01-8
	Pyrene	129-00-0
21.	Plutonium	7440-07-5
22.	Radium	7440-14-4
23.	Radon	10043-92-2
24.	Silver	7440-22-4
25.	Thorium	7440-29-1
26.	Toxaphene	8001-35-2
27.	1,1,1-Trichloroethane	71-55-6
28.	2,4,6-Trichlorophenol	88-06-2
29.	Uranium	7440-61-1
30.	Total xylenes	1330-20-7

The public comment period for each document will end on February 16, 1990. The close of the comment period will also be indicated on the front of each document. In order to assure consideration by ATSDR, comments must be received by the Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E-29, 1600 Clifton Rd., Atlanta, GA 30333 on or before the close of the public comment period. Comments received after the close of the public comment period will be considered at the discretion of ATSDR based upon what ATSDR deems to be in the best interest of the general public.

Requests for draft toxicological profiles must be in writing and should be sent to Mr. Edward J. Skowronski, Program Manager, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E-29, 1600 Clifton Rd., Atlanta, GA 30333.

Specify the profiled hazardous substances you wish to receive. ATSDR reserves the right to provide only one copy of each profile requested free of charge. In the case of extended distribution delays, requestors will be notified.

Written comments and other data submitted in response to this notice and the draft toxicological profiles should bear the docket control number ATSDR-16. Send one copy of all comments and five copies of all supporting documents to Mr. Skowronski at the above address by the end of the comment period. All written comments and draft profiles will be available for public inspection at the ATSDR, Building 37, Executive Park Drive, Atlanta, Georgia 30329, from 8 a.m. until 4:30 p.m., Monday through Friday, except for legal holidays. Because all public comments regarding ATSDR toxicological profiles are available for public inspection, no confidential business information should be submitted in response to this notice.

SUPPLEMENTARY INFORMATION:

Background

CERCLA, as amended by SARA, requires ATSDR to prepare (1) lists of hazardous substances in order of priority, (2) toxicological profiles of those substances, and (3) a research program to fill data gaps associated with the substances.

In compliance with section 104(i)(2)(A) of CERCLA, ATSDR and EPA published on April 17, 1987 (52 FR 12866), the first priority list of 100 hazardous substances. On October 20, 1988, the second priority list of 100 hazardous substances was published in the **Federal Register** (53 FR 41280). Both priority lists were further broken down into groups of 25 chemicals. Section 104(i)(3) of CERCLA as amended, spells out the content of these profiles.

Each profile is required to include an examination, summary and interpretation of available toxicological information and epidemiologic evaluations. The profiles must also include a determination of whether adequate information on the health effects of each substance is available or in the process of development. When adequate information is not available, ATSDR, in cooperation with the National Toxicology Program (NTP), is required to assure the initiation of a program of research designed to determine these health effects.

The final toxicological profiles are provided by ATSDR to the States and made available through the National Technical Information Service to the public.

This notice announces the projected availability of the third set of 30 documents profiling 48 hazardous substances. The documents have undergone extensive internal review and have been subjected to scientific and technical peer review by outside experts. We encourage public participation and comment on the further development of these profiles.

Dated: Oct. 11, 1989.

Walter R. Dowdle,

Acting Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 89-24421 Filed 10-16-89; 8:45 am]

BILLING CODE 4160-70-M

Food and Drug Administration

[Docket No. 79D-0124]

New Drug Applications; Final Guideline for Drug Master Files; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the final guideline for drug master files (DMF's). This guideline is intended to assist DMF holders with the format and content of DMF's.

ADDRESSES: Submit written requests for copies of the final guideline for drug master files to the Legislative, Professional, and Consumer Affairs Branch (HFD-365), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send a self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guideline to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. A copy of the guideline and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Adele S. Seifried, Center for Drug Evaluation and Research (HFD-362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8046.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a final guideline for the format and content of DMF's. A DMF is a submission to FDA that may be used to provide detailed information about facilities, processes, or articles used in the manufacturing, processing, packaging, and storing of human drugs. The submission of a DMF is not required by law or FDA regulation. A DMF is submitted solely at the discretion of the holder. The information contained in the DMF may be used to support an investigational new drug application (IND), a new drug application (NDA), an abbreviated new drug application (ANDA), another DMF, an export application, or amendments and supplements to any of these. Elsewhere in this issue of the **Federal Register** the agency is also proposing technical revisions to rules that govern the submission to FDA of drug master files.

In October 1987, FDA published the "Draft Guideline for Drug Master Files" (Docket No. 79D-0124). The agency received 15 comments on the draft guideline, including a number of suggestions for minor changes in wording. No comments asked for

substantive changes in the guideline. A committee in FDA's Center for Drug Evaluation and Research held a series of meetings to review the comments received. This final guideline responds to the comments.

On the agency's own initiative, the guideline has been revised to add a statement that discourages applicants from establishing DMF's for the sole purpose of referencing material contained in one of the applicant's own IND's, NDA's, or ANDA's. In such situations, the applicant should instead reference its own IND, NDA, or ANDA.

This notice and the revised guideline are issued under 21 CFR 10.90(b), which provides for the use of guidelines to establish procedures or standards of general applicability that are not legal requirements but are acceptable to the agency. A person who follows a guideline is assured that his or her conduct will be acceptable to the agency. A person may also choose to use alternate procedures even though they are not provided for in the guideline. A person who chooses to do so may discuss the matter further with the agency to prevent expenditure of money and effort on an alternate procedure that the agency may later determine to be unacceptable.

Interested persons may submit written comments on the guideline to the Dockets Management Branch (address above). Additional comments will be considered in determining whether further amendments to, or revisions of, the guideline are warranted. Two copies of any comments should be submitted, except that individuals may submit one copy.

Dated: August 9, 1989.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-24431 Filed 10-16-89; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

Request for Nominations for Voting Members on National Vaccine Advisory Committee

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (DHHS) is requesting nominations to fill four vacancies on the National Vaccine Advisory Committee. The Committee advises the National Vaccine Program and was established by title XXI, subtitle I, section 2105 of the Public Health Service Act, enacted by Public Law 99-660, The National Vaccine Injury Compensation Act of 1986 (42 U.S.C. 300AA-1 *et seq.*).

DATES: Nominations are to be submitted by November 1, 1989.

ADDRESSES: All nominations for membership should be sent to Dr. Alan R. Hinman (address below).

FOR FURTHER INFORMATION CONTACT: Alan R. Hinman, M.D., Coordinator, National Vaccine Program, Office of the Assistant Secretary for Health, Room 13A-53, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-0715.

SUPPLEMENTARY INFORMATION: The National Vaccine Program is requesting nominations of voting members for four vacancies on the National Vaccine Advisory Committee. Nominated individuals should have expertise in vaccine research or the manufacture of vaccines, or should be physicians, or members of parent organizations concerned with immunization, or representatives of State or local health agencies, or public health organizations. Members will be invited to serve four year terms.

The National Vaccine Advisory Committee (1) studies and recommends ways to encourage the availability of an adequate supply of safe and effective vaccination products in the United States, (2) recommends research priorities and other measures the Director of the Program should take to enhance the safety and efficacy of vaccines, (3) advises the Director of the Program in the implementation of sections 2102, 2103, and 2104 of the Public Health Service Act, and (4) identifies annually for the Director of the Program the most important areas of government and nongovernment cooperation that should be considered in implementaing these sections.

In keeping with normal departmental policy, nominees generally should not currently be serving on another DHHS advisory committee, although exceptions will be considered.

DHHS has a special interest in ensuring that women, minority groups, and the physically handicapped are adequately represented on advisory committees. Final selection will be determined by the expertise of the candidates and in a manner to ensure appropriate balance of membership.

Nomination Procedures: Any interested person may nominate one or more qualified persons for membership on the National Vaccine Advisory Committee. The nominee should be aware of the nomination, willing to serve as a member of the committee and appear to have no conflict of interest that would preclude committee membership. A curriculum vitae of the nominee should be submitted with the nomination.

Dated: October 3, 1989.

James O. Mason,

Assistant Secretary for Health.

[FR Doc. 89-24429 Filed 10-16-89; 8:45 am]

BILLING CODE 4160-17-M

National Toxicology Program; Availability of the Fifth Annual Report on Carcinogens

The HHS' National Toxicology Program (NTP) today announces the availability of the Fifth Annual Report on Carcinogens.

The Annual Report on Carcinogens, prepared by the National Toxicology Program (NTP), U.S. Public Health Service, is issued by the Secretary of the Department of Health and Human Services (DHHS) pursuant to an amendment to the Public Health Service Act (section 262, Pub. L. 95-622) which requires the Secretary to publish an annual report that contains "a list of all substances (i) which either are known to be carcinogens or which may reasonably be anticipated to be carcinogens and (ii) to which a significant number of persons residing in the United States are exposed * * *" The law also states that the reports should provide available information on the nature of exposures, the estimated number of persons exposed, and the extent to which the implementation of Federal regulations decreases the risk to public health from exposure to these chemicals.

For the purposes of the Report, "known" carcinogens are defined as those substances for which the evidence from human studies indicates that there is a causal relationship between exposure to the substance and human cancer. Substances "which may reasonably be anticipated to be carginogens" are defined as those for which there is limited evidence of carcinogenicity in humans or sufficient evidence of carcinogenicity in experimental animals.

Substances in the above categories, for which potential exposure of persons residing in the United States has been demonstrated, are included in the Report. In the Fifth Annual Report, attempts are made to list substances that are currently being used, or for which there is some evidence for continuing exposures in the workplace or in the general environments of persons residing in the United States. Included as an appendix is a list of

chemicals now banned or no longer produced in the United States, and/or for which there is no evidence for continuing exposure of persons residing in the United States. These chemicals have formerly appeared in Annual Reports, and information about them is provided in these earlier editions for all who are interested. The Fifth Annual Report does not contain all known carcinogens or substances reasonably anticipated to be carcinogens. Additional substances with identified carcinogenic properties as defined above will be included in subsequent Annual Reports.

The Fifth Annual Report lists 162 chemicals or substances, or mixtures. Included are the entries from the Fourth Annual Report and 21 additional substances or groups of substances. The new entries were chosen from those designated by the agenices participating in the preparation of the Report, from those tested within the National Toxicology Program and the National Cancer Institute Carcinogenesis Bioassay Program, or from those evaluated by the International Agency for Research on Cancer (IARC), a component of the World Health Organization (WHO), located in Lyon, France.

Copies of the Fifth Annual Report on Carcinogens Summary will be available in December. The Summary does not contain specific information on regulations promulgated by regulatory health agencies. In most other respects, the information is the same as that in the full report. Copies will be sent to those on the mailing list, or single copies may be obtained without charge by writing the Public Information Office, National Toxicology Program (MD B2–04), PO Box 12233, Research Triangle Park, NC 27709.

Copies of the complete Report are available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. There is a $61.95 charge for the document plus a $3.00 per order shipping and handling charge. Ask for Report No. PB 89–231914 when ordering.

Comments on the Fifth Annual Report on Carcinogens are welcome. Corrections, suggestions, or any additional information should be addressed to Annual Reports on Carcinogens, Public Information Office, National Toxicology Program (MD B2–04), PO Box 12233, Research Triangle Park, NC 27709.

Dated: October 11, 1989.

David P. Rall,

Director.

[FR Doc. 89–24404 Filed 10–16–89; 8:45 am]

BILLING CODE 4140–01–M

National Toxicology Program; National Toxicology Program (NTP) Board of Scientific Counselors Meeting; Review of Draft NTP Technical Reports

Pursuant to Public Law 92–463, notice is hereby given of the next meeting of the NTP Board of Scientific Counselors Technical Reports Review Subcommittee and associated *ad hoc* Panel of Experts (*Peer Review Panel*) on November 20 and 21, 1989, in the Conference Center, Building 101, South Campus, National Institute of Environmental Health Sciences, 111 Alexander Drive, Research Triangle Park, North Carolina. The meeting will begin at 9 a.m. both days and is open to the public. The primary agenda topic is the peer review of draft Technical Reports of long-term toxicology and carcinogenesis studies and short-term toxicity studies from the National Toxicology Program.

Tentatively scheduled to be peer reviewed on November 20 and 21 are draft Technical Reports of long-term studies on nine chemicals, listed alphabetically, along with supporting information including proposed levels of evidence of carcinogenic activity in Table 1. All studies were done using Fischer 344 rats and B6C3F$_1$ mice. The order of review is given in the far right column of the table.

Also scheduled to be peer reviewed are draft Technical Reports of toxicity studies on three chemicals, listed alphabetically, along with supporting information in Table 2. Order of presentation is given in the far right column of the table.

Persons wanting to make a formal presentation regarding a particular Technical Report must notify the Executive Secretary by telephone or by mail no later than November 13, 1989, and provide a written copy in advance of the meeting so copies can be made and distributed to all Panel members and staff and made available at the meeting for attendees. Oral presentation should supplement and not just repeat the written statement. Presentations should be about five minutes, and must be limited to no more than ten minutes.

Those interested in having more information about any of the studies listed in this announcement, or wanting to provide input, should contact the particular NTP staff scientist as early as possible by telephone or by mail to: NIEHS, P.O. Box 12233, Research Triangle Park (RTP), North Carolina 27709. The staff scientists would welcome receiving toxicology and carcinogenesis data from completed, ongoing or planned studies by others as well as current production data, human exposure information, and use and use patterns.

The Executive Secretary, Dr. Larry G. Hart, NTP, P.O. Box 12233, RTP, North Carolina 27709, telephone (919–541–3971), FTS (629–3971), will furnish final agendas, a roster of subcommittee and panel members, and other program information prior to the meeting, and summary minutes subsequent to the meeting.

Attachment.

Dated: October 4, 1989.

David P. Rall,

Director, National Toxicology Program.

TABLE 1.—SUMMARY DATA AND PROPOSED LEVELS OF EVIDENCE FOR NTP TECHNICAL REPORTS PROJECTED FOR PEER REVIEW AT THE BOARD OF SCIENTIFIC COUNSELORS' PEER REVIEW PANEL MEETING ON NOVEMBER 20–21, 1989

Chemical CAS No.	Staff scientist/ technical report No.	Primary uses	Route/exposure levels	Study laboratory	Order of review
DL-Amphetamine sulfate 60–13–9.	Dr. J. Dunnick, 919–541–4811, TR–387.	Treatment of narcolepsy and weight problems; for behavior disorders in children.....	Oral in feed (NIH–07 diet (powdered): 0, 20, 100 PPM.	Microbiological Associates.	6
Proposed levels of evidence of carcinogenicity—organ/tissue (neoplasm): MR: no evidence FR: no evidence MM: no evidence FM: no evidence					
2 Chloroacetophenone (CN) 532–27–4.	Dr. R. Melnick, 919–541–4142, TR–379.	Riot control gas; pharmaceutical intermediate	Inhalation: R: 0, 1, 2, M: 0, 2, 4 MG/M3.	Battelle Northwest Laboratory.	3
Proposed levels of evidence of carcinogenicity—organ/tissue (neoplasm): MR: no evidence FR: equivocal evidence mammary gland: fibroadenoma MM: no evidence FM: no evidence					
0-Chlorobenzalmalono-nitrile (CS) 2698–41–1.	Dr. K. Abdo, 919–541–7819, TR–377.	Riot control agent.....	Inhalation: R: 0, .075, .25, .75, M: 0, .75, 1.5 MG/M3.	Battelle Northwest Laboratory.	4
Proposed levels of evidence of carcinogenicity—organ/tissue (neoplasm): MR: no evidence FR: no evidence MM: no evidence FM: no evidence					
Epinephrine hydrochloride 55–31–2.	Dr. D. Dietz, 919–541–2272, TR–380.	Adrenergic; vasoconstrictor; cardiac stimulant; bronchodilator	Inhalation: R: 0, 1.5, 5.0, M: 0, 1.5, 3.0 MG/M3.	Battelle Northwest Laboratory.	5
Proposed levels of evidence of carcinogenicity—organ/tissue (neoplasm): MR: no evidence FR: no evidence MM: no evidence FM: no evidence					
Ethylene thiourea (ETU) 96–45–7.	Dr. R. Chhabra, 919–541–3386, TR–388.	Intermediate for antioxidants, insecticides, fungicides, dyes, pharmaceuticals. Accelerator for neoprene, epichlorohydrin, and polyethylene rubbers.	Oral in Feed: R: 0, 25, 83, 250, M: 0, 100, 333, 1,000 PPM.	Battelle Columbus Laboratory.	8

TABLE 1.—SUMMARY DATA AND PROPOSED LEVELS OF EVIDENCE FOR NTP TECHNICAL REPORTS PROJECTED FOR PEER REVIEW AT THE BOARD OF SCIENTIFIC COUNSELORS' PEER REVIEW PANEL MEETING ON NOVEMBER 20–21, 1989—Continued

Chemical CAS No.	Staff scientist/ technical report No.	Primary uses	Route/exposure levels	Study laboratory	Order of review
Proposed levels of evidence of carcinogenicity—organ/tissue (neoplasm): MR: clear evidence—thyroid gland: follicular cell neoplasms FR: clear evidence—thyroid gland: follicular cell neoplasms MM: clear evidence—thyroid gland: follicular cell neoplasms—liver: hepatocellular neoplasms FM: clear evidence—thyroid gland: follicular cell neoplasms—liver: hepatocellular neoplasms—pituitary gland: adenoma					
Furfural 98–01–1	Dr. R. Irwin, 919–541–3340, TR–382.	Intermediate in plastics preparation; solvent; wetting agent; flavoring agent; preparation of furfural alcohol.	Oral, Gavage (CORN OIL): R: 0, 30, 60, M: 0, 50, 100, 175 MG/KG.	Southern Research Institute.	2
Proposed levels of evidence of carcinogenicity—organ/tissue (neoplasm): MR: some evidence—liver: cholangiocarcinoma FR: no evidence MM: clear evidence—liver: hepatocellular neoplasms FM: some evidence—liver: adenoma					
Methyl bromide 74–83–9	Dr. R. Yang, 919–541–2947, TR–385.	Fumigant; extractant; wool degreasing. In ionization chambers: fire-extinguishing agent, insecticide, rodenticide.	Inhalation mice only: 0, 10, 33, 100 PPM.	Brookhaven National Lab (DOE).	9
Proposed levels of evidence of carcinogenicity—organ/tissue (neoplasm): MM: not yet reviewed FM: not yet reviewed					
Tetranitromethane 509–14–8.	Dr. J. Bucher, 919–541–4532, TR–386.	Rocket propellants; additive to diesel fuel; explosive; reagent	Inhalation: R: 0, 2, 5, M: 0, 0.5, 2 PPM.	Midwest Research Institute (Inhalation).	1

TABLE 1.—SUMMARY DATA AND PROPOSED LEVELS OF EVIDENCE FOR NTP TECHNICAL REPORTS PROJECTED FOR PEER REVIEW AT THE BOARD OF SCIENTIFIC COUNSELORS' PEER REVIEW PANEL MEETING ON NOVEMBER 20–21, 1989—Continued

Chemical CAS No.	Staff scientist/ technical report No.	Primary uses	Route/exposure levels	Study laboratory	Order of review
Proposed levels of evidence of carcinogenicity—organ/tissue (neoplasm): MR: clear evidence—lung: alveolar/bronchiolar neoplasms FR: clear evidence—lung: alveolar/bronchiolar neoplasms MM: clear evidence—lung: alveolar/bronchiolar neoplasms FM: clear evidence—lung: alveolar/bronchiolar neoplasms					
Vinyl toluene 25013–15–4	Dr. G. Boorman, 919–541–3440, TR–375.	Preparing polyester resins, modified alkyl resins, and drying oils. In orthopedic cast material.	Inhalation: R: 0, 100, 300, M: 0, 10, 25 PPM.	Midwest Research Institute (Inhalation).	7
Proposed levels of evidence of carcinogenicity—organ /tissue (neoplasm): MR: no evidence FR: no evidence MM: no evidence FM: no evidence					

NOTE: The results indicated are to be considered tentative until reviewed, discussed, and agreed to at the Board of Scientific Counselors' Peer Review Panel public meeting on November 20–21, 1989. Levels of evidence summary for long-term studies (34 individual experiments): clear evidence, 9; some evidence, 2; equivocal evidence, 0; no evidence, 21; inadequate study, 0; not yet reviewed, 2. MR=male rats; FR=female rats; MM=male mice; FM=female mice

TABLE 2.—SUMMARY DATA FOR NTP TECHNICAL REPORTS OF TOXICITY STUDIES PROJECTED FOR PEER REVIEW AT THE BOARD OF SCIENTIFIC COUNSELORS' PEER REVIEW PANEL MEETING ON NOVEMBER 20–21, 1989

Chemical CAS No.	Staff scientist/ technical report No.	Primary uses	Route/exposure levels	Study laboratory	Order of review
D & C Yellow No. 11 8003–22–3.	Dr. W. Eastin, 919–541–7941, TOX–08.	Color additive used in cosmetics and externally applied to drugs. Contaminant of D&C Yellow 10, a compound which FDA is currently considering for approval for contact lenses.	Oral in feed (feed): R&M: 0, 500, 1,700, 5,000, 17,000, 50,000 PPM.	EG&G Mason Research Institute.	12
Pentachlorobenzene 608–93–5.	Dr. H. Matthews, 919–541–3252, TOX–06.	Pesticide.....	Oral in feed (feed): R&M: 0, 33, 100, 330, 1,000, 2,000 PPM.	EG&G Mason Research Institute.	10
1,2,4,5-Tetrachlorobenzene 95–94–3.	Dr. H. Matthews, 919–541–3252, TOX–07.	Intermediate for herbicides and defoliants; insecticide; impregnant for moisture resistance; electrical insulation; temporary protection in packing.	Oral in feed (corn oil/NIH–07 diet): R&M: 0, 30, 100, 300, 1,000, 2,000 PPM.	Microbiological Associates.	11

R=rats; M=mice

[FR Doc. 89-24403 Filed 10-16-89; 8:45 am]
BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-060-00-4410-10]

Availability of Proposed Planning Criteria and Pre-Planning Analysis for the South Coast Resource Management Plan; California Desert District; Palm Springs-South Coast Resource Area, California

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to 43 CFR 1610.4-2, notice is hereby given of the availability of proposed planning criteria and pre-planning analysis for the South Coast Resource Management Plan (RMP).

SUPPLEMENTARY INFORMATION: The planning area is the portion of the Palm Springs-South Coast Resource Area which is not within the California Desert Conservation Area.

It includes portions of San Diego, Riverside, Los Angeles, San Bernardino and Orange Counties. The RMP will guide future land use of approximately 145,000 acres of public land. In addition it will address the Bureau's mineral leasing and permitting responsibilities on additional lands of Federal mineral ownership. The planning effort, which will include both a draft and final environmental impact statement on the alternatives considered, is scheduled for completion in the fall of 1991. Copies of the initial planning criteria and pre-planning analysis are available upon request at the following locations: California Desert District, 1695 Spruce Street, Riverside, California 92507 (714) 351-6394; and Palm Springs-South Coast Resource Area, 400 So. Farrell Drive, Suite B-205, Palm Springs, California 92262 (619) 323-4421.

DATE: Comments should be sent to the Palm Springs-South Coast Resource Area not later than November 20, 1989.

FOR FURTHER INFORMATION CONTACT: Russell L. Kaldenberg, Area Manager, or Duane Winters, RMP Project Coordinator, Palm Springs-South Coast Resource Area, (619) 323-4421.

Dated: October 10, 1989.

Gerald E. Hillier,

District Manager.

[FR Doc. 89-24423 Filed 10-16-89; 8:45 am]
BILLING CODE 4310-40-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before October 7, 1989. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by November 1, 1989.

Beth Boland, Acting,

Chief of Registration, National Register.

ARKANSAS

Hempstead County

Jacques, Dr. Thomas S., House NW of McCaskill, McCaskill vicinity, 89001940

Poinsett County

Poinsett County Courthouse, Bounded by Market, East, Court, and Main Sts., Harrisburg, 89001876

White County

Wood, Jack, House, Judson, Ave., Judsonia, 89001939

HAWAII

Honolulu County

Sacred Heart Church, 1701 Wilder Ave., Honolulu, 89001875

LOUISIANA

Calcasieu Parish

Calcasieu Parish Courthouse, Ryan St. at Kirby St., Lake Charles, 89001938

MINNESOTA

Hennepin County

Minneapolis Warehouse Historic District, Roughly bounded by River St., 1st Ave. N., 6th St. N., 2nd Ave. N., 5th St. N., 5th Ave. N., 3rd St. N., & 10th Ave. N., Minneapolis, 89001937

VERMONT

Bennington County

Arlington Village Historic District, Roughly Main St., School St., E. Arlington Rd., and Battenkill Dr., Arlington, 89001936

VIRGINIA

Albemarle County

Cedars, The, US 250 W of US 64, Greenwood, 89001909

Clifton, VA 729 at Rivanna River, Shadwell vicinity, 89001922

Cove Presbyterian Church, US 29, N of VA 699, Covesville, 89001935

Seven Oaks Farm and Black's Tavern, US 250, W of US 64, Greenwood vicinity, 89001906

Woodlands, VA 676, Charlottesville (Independent City) vicinity, 89001931

Amherst County

Fort Riverview (44AH91 and 44AH195), Address Restricted, Madison Heights vicinity, 89001921

Clarke County

Bethel Memorial Church, Co. Rt. 622, White Post vicinity, 89001927

Farnley, VA 658 at VA 622, White Post vicinity, 89001914

Essex County

Wheatland, VA 638 between US 17 and the Rappahanock, River, Loretto, 89001918

Franklin County

Brooks—Brown House, VA 646, N of VA 890, Dickinson vicinity, 89001930

Farm, The, US 220, Rocky Mount, 89001910

Gloucester County

Shelly Archeological District, Address Restricted, Hayes vicinity, 89001932

Goochland County

Bolling Island, Stokes Station Road, Goohland vicinity, 89001926

Montgomery County

Croner House (Montgomery County NPS), Off VA 787, 0.25 mi. E of VA 693 Childress vicinity, 89001893

Earhart, George, House (Montgomery County MPS), VA 712, 0.5 mi. N of VA 723, New Ellett, 89001886

Edgemont Church (Montgomery County MPS), VA 666, 1 mi. E of VA 645, Christianburg vicinity, 89001902

Evans House No. 2 (Montgomery County MPS), VA 685, 0.5 mi W of VA 657, Prices Fork vicinity, 89001890

Grayson, John House (Montgomery County MPS), 0.5 mi. NE of VA 613 bridge over Little River, Graysontown vicinity, 89001896

Graysontown Methodist Church (Montgomery County MPS), VA 613, Graysontown, 89001889

Hall, Thomas, House (Montgomery County MPS), VA 667, 0.5 mi. SE of VA 600, Childress vicinity, 89001898

Harrison—Hancock Hardware Company Building (Montgomery County MPS), 24 E. Main st., Christianburg, 89001877

Hornbarger Store (Montgomery County MPS), VA 659, 0.1 mi. E of VA 719, Vicker, 89001888

Howard—Bell—Feather House (Montgomery County MPS), VA 669 at Elliot Creek, Riner vicinity, 89001887

Keister House (Montgomery County MPS), 607 Giles Rd. Blacksburg, 89001880

Kinzer, Michael, House (Montgomery County MPS), VA 655 1 mi. E. of VA 624, Blacksburg vicinity, 89001901

Lawrence, Frank, House (Montgomery County MPS), VA 612, 0.5 mi. E of VA 614, Bashan vicinity, 89001897

Linkous—Kipps House (Montgomery County MPS), VA 657, Merrimac, 89001885

Montgomery White Sulphur Springs Cottage (Montgomery County MPS), Depot and New Sts., Christiansburg, 89001884

Murdock, Elijah, Farm (Montgomery County MPS), Off VA 643, 1 mi. N of US 460, Yellow Sulphur vicinity, 89001882

Phillips—Ronald House (Montgomery County MPS), Draper Rd. at Washington St., Blacksburg, 89001904
Phlegar Building (Montgomery County MPS), 2 S. Franklin St., Christiansburg, 89001892
Preston House (Montgomery County MPS), US 460/11, 0.5 mi. SW of VA 641, Christiansburg vicinity, 89001895
Rife House (Montgomery County MPS), VA 633 at US 460/11, Shawsville vicinity, 89001900
Surface House (Montgomery County MPS), High St., E of Depot St., Christiansburg, 89001883
Thomas—Conner House (Montgomery County MPS), 104 Draper Rd., Blacksburg, 89001881
Trinity United Methodist Church (Montgomery County MPS), VA 723, 0.1 mi. S of VA 603, Ellett, 89001894
Virginian Railway Underpass (Montgomery County MPS), Jct. of Norfolk Southern Railroad tracks and VA 723, S of New Ellett, New Ellett, 89001903
Wall, Adam, House (Montgomery County MPS), VA 657, 0.5 mi. S of VA 685, Prices Fork vicinity, 89001891
Walnut Grove Farm (Montgomery County MPS), VA 609, 0.2 mi. SE of US 460/11, Shawsville vicinity, 89001899
Walnut Spring (Montgomery County MPS), VA 654, 0.5 mi. E of jct. with VA 654, Kanodes Mill vicinity, 89001878
Whitehorn (Montgomery County MPS), VA 685, 1 mi. W of jct. with US 460, Blacksburg vicinity, 89001879

Northumberland County

Holley Graded School, US 360, N of VA 614, Lottsburg, 89001934

Pittsylvania County

Leesville Dan Archeological Site (44PY30), Address Restricted, Altavista vicinity, 89001916

Prince George County

Hatch Archeological Site (44PG51), Address Restricted, Hopewell vicinity, 89001923

Prince William County

Louisiana Brigade Winter Camp (Civil War Properties in Prince William County), Address Restricted, Manassas Park vicinity, 89001912

Pulaski County

Belle-Hampton, VA 627, 0.3 mi. N of VA 617, Dublin vicinity, 89001911

Smyth County

Henderson Building, Southwestern State Hospital, E. Main St., Marion, 89001919
Marion Male Academy, 343 College St., Marion vicinity, 89001915

Stafford County

Hartwood Presbyterian Church, Jct. VA 705 and 612, Hartwood, 89001929

Sussex County

Carpenter, Miles B., House, US 460, Waverly, 89001920

Wise County

Christ Episcopal Church, 100 Clinton Ave., Big Stone Gap, 89001905

Bedford Independent City

Bellevue, VA 643, 1 mi. E of Goode, Goode vicinity, 89001917

Charlottesville Independent City

Vowles, John, House, 1111–1113 W. Main St., Charlottesville, (Independent City), 89001928

Colonial Heights Independent City

Conjurer's Field Arhceological Site (44CF20), Address Restricted, Colonial Heights (Independent City) vicinity, 89001924

Lexington Independent City

Col Alto, Nelson and Spottswood Dr., Lexington (independent City), 89001925

Richmond Independent City

Almshouse, The (Boundary Increase), 210 Hospital St., Richmond (Independent City), 89001913
Virginia House, 4301 Sulgrave Rd., Richmond (Independent City), 89001933

[FR Doc. 89–24487 Filed 10–16–89; 8:45 am]
BILLING CODE 4310–70–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree; Board of Trustees of the University of Alabama

In accordance with departmental policy, 28 CFR 50.7, notice is hereby given that on August 21, 1989, a proposed Consent Decree in *United States* v. *Board of Trustees of the University of Alabama* (the "University"), was lodged with the United States District Court for the Northern District of Alabama. The Complaint in this case sought injunctive relief and civil penalties pursuant to section 112(c) of the Clean Air Act, 42 U.S.C. 7412(c). The Complaint was filed on September 19, 1988, against the Board of Trustees, the owner and operator of the site in question.

The site involved in the case is the University of Alabama campus located in Tuscaloosa, Alabama. The proposed Consent Decree provides that the University shall comply with all the provisions contained in the National Emission Standard for Hazardous Air Pollutants (NESHAP) for asbestos as set forth at subpart M of 40 CFR Part 61. The Consent Decree also provides that the University shall pay to the United States a civil penalty of $10,000 within ten (10) days of the date of entry of the Consent Decree.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. The Department of Justice will consider any comments in determining whether or not to consent to the proposed settlement and may withdraw its consent to the proposed settlement if such comments disclose facts or considerations which indicate that the proposed Consent Decree is inappropriate, improper or inadequate. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Board of Trustees of the University of Alabama*, DOJ Ref. No. 90–5–2–1–1186.

The proposed Consent Decree may be examined at the Office of the United States Attorney for the Northern District of Alabama, 200 Federal Building, 1800 5th Ave, Birmingham, Alabama 35203 and the Office of the Regional Counsel, Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365. Copies of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Room 1521, Department of Justice, 9th Street and Pennsylvania Avenue, NW., Washington, DC 20530.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–24438 Filed 10–16–89; 8:45 am]
BILLING CODE 4410–10–M

Lodging of Consent Decree; J. Pizzuto Co.

In accordance with Departmental policy at 28 CFR 50.7, notice is hereby given that on October 2, 1989, a proposed consent decree in *United States* v. *J. Pizzuto Company, Inc.* Civil Action No. 88–6097, was lodged with the United States District Court for the Western District of Arkansas. The complaint filed by the United States alleged violations by the defendants of the Clean Air Act and the Natural Emission Standard for Hazardous Air Pollutants (NESHAP) for asbestos. The complaint sought injunctive relief and civil penalties for past violations. The proposed Consent Decree requires J. Pizzuto Compnay, Inc. and Reynolds Metals Company, Inc. to comply with the Clean Air Act and the asbestos NESHAP in the future and imposes a $30,000 civil penalty against Pizzuto and a $75,000 civil penalty against Reynolds for past violations of the Act and the Standard.

For the period of thirty (30) days from the date of this publication, the Department of Justice will receive comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources

Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *J. Pizzuto Company, Inc.*, Department of Justice reference number 90–5–2–1–1273.

The proposed consent decree may be examined at the Office of the United States Attorney, P.O. Box 1524, Fort Smith, Arkansas 72902 and at the Region VI Office of the Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–24439 Filed 10–16–89; 8:45 am]

BILLING CODE 4410–10–M

Lodging of Consent Decree; City of San Antonio

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a complaint was filed on October 4, 1989, in *United States* v. *City of San Antonio*, Civil Action NO. SA89CA1359, in the United States District Court for the Western District of Texas, San Antonio Division, and, simultaneously, a proposed consent decree between the United States and the City of San Antonio ("City") was lodged with the court. This consent decree settles the claims alleged in the complaint pursuant to the Clean Water Act, 33 U.S.C. 1251 *et seq.*, for injunctive relief and civil penalties for violations of the Clean Water Act, the Environmental Protection Agency's ("EPA") pretreatment regulations at 40 CFR part 403, and the City's National Pollutant Discharge Elimination System ("NPDES") permits issued by EPA for the City's three publicly-owned treatment works ("POTW"): The Dos Rios Plant, the Leon Creek Plant and the Salado Creek Plant.

Under the terms of the proposed consent decree, the City has agreed to develop and implement an enforcement response program for industrial users ("IU") of the City's POTWs, to take timely and effective enforcement action against IUs, to develop and enforce technically-based local limits, to include an enforceable compliance schedule in each discharge permit for a categorical IU, and to expand the monitoring and reporting requirements of part III of the City's NPDES permits relative to IUs. In addition, the City has agreed to pay a civil penalty of $225,000.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. All comments should refer to *United States* v. *City of San Antonio*, D.J. Ref. 90–5–1–1–3283.

The proposed consent decree may be examined at the following offices of the United States Attorney and the Environmental Protection Agency ("EPA"):

EPA Region VI

Contact: Barbara Luke, Office of Regional Counsel, U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202, (214) 655–2129.

United States Attorney's Office

Raymond A. Nowak, Assistant United States Attorney, 727 E. Durango, 6th Floor, San Antonio, Texas 78206, (512) 229–4254.

Copies of the proposed consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1515, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy of the decree, please enclose a check for copying costs in the amount of $3.50 payable to Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–24444 Filed 10–16–89; 8:45 am]

BILLING CODE 4410–01–M

UNITED STATES DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984; Bell Communications Research, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Bell Communications Research, Inc. ("Bellcore") on September 6, 1989 filed written notifications, on behalf of Bellcore and Conductus, Inc., (hereinafter known as "Conductus") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties of the joint venture and (2) the nature and objectives of the joint venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the joint venture, and its general areas of planned activities, are given below.

Bellcore is a Delaware corporation with its principal place of business at 290 W. Mt. Pleasant Avenue, Livingston, New Jersey 07039.

Conductus is a Delaware corporation with its principal place of business at 969 W. Maude Avenue, Sunnyvale, California 94086.

Bellcore and Conductus entered into a written agreement effective July 1, 1989 to collaborate on research to better understand the application for exchange and exchange access services to technology and equipments utilizing high temperature superconductive materials.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89–24440 Filed 10–16–89; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Pursuant to the National Cooperative Research Act of 1984; Bell Communications Research, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Bell Communications Research, Inc. ("Bellcore") on September 6, 1989 filed written notifications, on behalf of Bellcore and Northern Telecom Inc., (hereinafter known as "NTI") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties of the joint venture and (2) the nature and objectives of the joint venture. The notifications were filed for the purpose of involing the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the joint venture, and its general areas of planned activities, are given below.

Bellcore is a Delaware corporation with its principal place of business at 290 W. Mt. Pleasant Avenue, Livingston, New Jersey 07039.

NTI is a Delaware corporation having a place of business at 5550 Triangle Parkway, Norcross, Georgia 30092.

Bellcore and NTI entered into a written agreement effective July 27, 1989

to collaborate on research in the field of high definition television (HDTV) moving image coding and decoding, multiplexing and networking, and transmission and display for the purpose of understanding the application of new and advanced algorithms, technology, and equipment in improved exchange and exchange access services, and demonstrating the feasibility of research concepts of such technology and equipment by means of experimental prototypes and experimental systems.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89-24441 Filed 10-16-89; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF JUSTICE ANTITRUST DIVISION

Pursuant to the National Cooperative Research Act of 1984—Bell Communications Research, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Bell Communications Research, Inc. ("Bellcore") on September 6, 1989 filed written notifications, on behalf of Bellcore and American Telephone and Telegraph Company, (hereinafter known as "AT&T") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties of the joint venture and (2) the nature and objectives of the joint venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the joint venture, and its general areas of planned activities, are given below.

Bellcore is a Delaware corporation with its principal place of business at 290 W. Mt. Pleasant Avenue, Livingston, New Jersey, 07039.

AT&T is a New York corporation having a place of business at One Oak Way, Berkeley Heights, New Jersey 07922.

Bellcore and AT&T entered into an agreement effective July 1, 1989 to collaborate on research to better understand the applications for exchange and exchange access services of technology and equipment useful for audio and video teleconferencing.

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 89-24445 Filed 10-16-89; 8:45 am]

BILLING CODE 4410-01-M

Pursuant to the National Cooperative Research Act of 1984—Bell Communications Research, Inc.

Notice is hereby given that, pursuant to Section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Bell Communications Research, Inc. ("Bellcore") on September 6, 1989 filed written notifications, on behalf of Bellcore and American Telephone and Telegraph Company, (hereinafter known as "AT&T") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties of the joint venture and (2) the nature and objectives of the joint venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the joint venture, and its general areas of planned activities, are given below.

Bellcore is a Delaware corporation with its principal place of business at 290 W. Mt. Pleasant Avenue, Livingston, New Jersey 07039.

AT&T is a New York corporation having a place of business at One Oak Way, Berkeley Heights, New Jersey 07922.

Bellcore and AT&T entered into a written agreement effective July 15, 1989 to collaborate on research to better understand the feasibility for exchange and exchange access services of transmitting high speed digital information over a subscriber loop.

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 89-24446 Filed 10-16-89; 8:45 am]

BILLING CODE 4410-01-M

Pursuant to the National Cooperative Research Act of 1984—Corporation for Open Systems International

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Corporation for Open Systems International ("COS") on August 30, 1989 filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in the membership of COS. The additional written notification was filed for the purpose of extending the protections of Section 4 of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On May 14, 1986, COS filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 11, 1986, 51 FR 21260. On August 6, 1986, September 30, 1986, January 2, 1987, March 24, 1987, June 12, 1987, July 23, 1987, July 31, 1987, October 5, 1987, October 23, 1987, November 16, 1987, January 12, 1988, February 9, 1988, May 2, 1988, October 20, 1988, and March 15, 1989, COS filed additional written notifications. The Department published notices in the **Federal Register** in response to these additional notifications on September 4, 1986 (51 FR 31735), October 28, 1986 (51 FR 39434), February 13, 1987 (52 FR 4671), April 24, 1987 (52 FR 13769), July 21, 1987 (52 FR 27473), October 7, 1987 (52 FR 37539), November 9, 1987 (52 FR 43138), December 4, 1987 (52 FR 46129), December 15, 1987 (52 FR 47642), December 18, 1987 (52 FR 48164), February 19, 1988 (53 FR 5060), March 8, 1988 (53 FR 7411), June 30, 1988 (53 FR 24811), November 25, 1988 (53 FR 47773), and April 20, 1989 (54 FR 16013), respectively.

On June 1, 1989, Novell, Inc. and Swedish Telecom became members of COS.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89-24447 Filed 10-16-89; 8:45 a.m.]

BILLING CODE 4410-01-M

Pursuant to the National Cooperative Research Act of 1984 Petroleum Environmental Research Forum

Notice is hereby given that, on September 6, 1989, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the participants in the Petroleum Environmental Research Form ("PERF") Project No. 88-07, titled "Basic Principles And Control of Refinery Emulsion Formation," filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to Project No. 88-07 and (2) the nature and objectives of the research program to be performed in accordance with said project. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties participating in Project No. 88-07, together with the nature and objectives

of the research program, are given below.

The current parties to Project No. 88-07 identified by this notice are: Amoco Oil Company, ARCO Products Company; BP Research; Chevron Research Company; Conoco, Inc.; Marathon Oil Company; Mobil Research and Development Corporation; Murphy Oil U.S.A., Inc.; Texaco, Inc.; and Union Oil Company of California; with work to be carried out by North Carolina State University. The objectives of this project are to determine the basic causes of the formation of emulsions and sludges in petroleum refineries by: (1) Identification of probable sources of emulsion/sludge formation; (ii) characterization of interfacial film of selected emulsions; (iii) development of analytical techniques to characterize refinery waste streams; (iv) carrying out model emulsion studies based on knowledge gained from (i), (ii) and (iii); and (v) development of recommendations for further studies directed to minimization of refinery wastes by prevention and/or destabilization of emulsions at their initial stage of formation. Participation in this project will remain open until issuance of the final Project Report, which is presently anticipated approximately twelve (12) months after the date of publication of this Notice, and the parties intend to file additional written notification disclosing all changes in membership in this project. Information regarding participation in this project may be obtained from Mr. W.J. Tracy, Mobil Research and Development Corporation, Paulsboro Research Laboratory, Billingsport Road, Paulsboro, New Jersey 08066.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89-24442 Filed 10-16-89; 8:45 am]

BILLING CODE 4410-01-M

U.S. DEPARTMENT OF JUSTICE

Pursuant to the National Cooperative Research Act of 1984; Remaining Life Methodology for Disc Rim Cracking

Notice is hereby given that, on September 7, 1989, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. § 4301 *et seq.* ("the Act"), Southwest Research Institute ("SwRI") filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing a change of planned activities to its cooperative research project entitled "Remaining Life Methodology for Disc Rim Cracking". The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under the specified circumstances. Specifically, the SwRI advised that the following planned activities are added to the original scope of work of the cooperative research project: (1) Sizing and verifying type I and type II cracks; (2) developing a ray tracing computer program to optimize the path of the ultrasonic beam during type II crack measurements; (3) patent prosecution for the SwRI-designed inspection system; (4) fabrication of a two-arm inspection system.

Membership in the cooperative research project is now closed. No changes have been made in the membership in the group research project nor in the planned research activities other than those listed herein.

On May 14, 1986, SwRI filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 11, 1986, 51 FR 21261.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89-24443 Filed 10-16-89; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of September 1989.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-23,207; Okonite Corp., Passaic, NJ

TA-W-23,232; Kearfott Guidance & Navigation Corp., Wayne, NJ

TA-W-23,199; Beatreme Foods, Inc., Beloit, WI

TA-W-23,108; General Electric Co., Microelectronics Center, Somerville, NJ

TA-W-23,203; Crane Plumbing, Inc., Alliance, OH

TA-W-23,212; Avtex Fibers, Inc., Front Royal, VA

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-23,331; Truimph-Lor, Inc., Broussard, LA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-23,246; Tippett & Gee, Inc., Abilene, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-23,241; Rheem Manufacturing Co., Chicago, IL

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-23,225; General Motors Corp., CPC Framingham, Framingham, MA

Increased imports did not contribute importantly to workers' separations at the firm.

TA-W-23,226 & TA-W-23,247; General Motors Corp., BOC Lansing, Lansing, MI

Increased imports did not contribute importantly to workers' separations at the firm.

TA-W-23,228; Goodall Rubber Co., Braintree, MA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974

TA–W–23,338; BMW of North America, Inc., Parts Distribution Center, Dallas, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–23,370; Continental Airlines, Inflight Dept., Houston, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–23,198; Baker Hughes Vetco Service, Casper, WY

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–23,227; Geoscience Petroleum Services Corp., Denver, CO

The investigation revealed that criterion (1) has not been met. Employment did not decline during the relevant period as required for certification.

TA–W–23,224; Gidney & Associates, Denver, CO

The investigation revealed that criterion (1) has not been met. Employment did not decline during the relevant period as required for certification.

TA–W–23,201; Cherco Compressors, Inc., Longview, TX

The investigation revealed that criterion (1) has not been met. Employment did not decline during the relevant period as required for certification.

Affirmative Determination

TA–W–23,291; General Electric Co., Motor Business Dept., Decatur, IN

A certification was issued covering all workers separated on or after August 9, 1988.

TA–W–23,176; Eaton Corp., Control Div., Fremont, OH

A certification was issued covering all workers separated on or after June 29, 1988, and before September 15, 1989.

TA–W–23,221; Derrick Well Service, Monahans, TX

A certification was issued covering all workers separated on or after July 19, 1988.

TA–W–23,243; Smith Drilling Co., Lawrenceville, IL

A certification was issued covering all workers separated on or after July 21, 1988.

TA–W–23,183; Momentum Manufacturing Corp., Herkemer, NY

A certification was issued covering all workers separated on or after July 22, 1988.

TA–W–23,239; Marathon Oil Co., Northeastern Production Region, Robinson, IL

A certification was issued covering all workers separated on or after January 1, 1989.

TA–W–23,254; Earnest Power Tong Service, Earnest Power Tong & Pipe, Odessa, TX

A certification was issued covering all workers separated on or after July 26, 1988.

TA–W–23,245; The Timken Co., Canton, OH, Canton Ohio Steel Mill

A certification was issued covering all workers separated on or after January 1, 1989.

TA–W–23,209; S & J Operating Co., Wichita Falls, TX

A certification was issued covering all workers separated on or after July 12, 1988.

TA–W–23,211; Wrangler, Tishomingo, MS

A certification was issued covering all workers separated on or after July 14, 1988, and before November 26, 1988.

TA–W–23,220; Devlieg-Sundstrand Machine Tool Group Div., Royal Oak, MI

A certification was issued covering all workers separated on or after July 22, 1988.

TA–W–23,141; El Paso Natural Gas Co., Midkoff Plant, Midland, TX

A certification was issued covering all workers separated on or after June 30, 1988.

TA–W–23,141A; El Paso Natural Gas Co., Midland Div. Headquarters, Midland, TX

A certification was issued covering all workers separated on or after June 30, 1988.

TA–W–23,141B; El Paso Natural Gas Co., Midland Div. & Other Locations in Texas

A certification was issued covering all workers separated on or after June 30, 1988.

TA–W–23,141C; El Paso Natural Gas Co., Midland Div. at Various Locations in New Mexico

A certification was issued covering all workers separated on or after June 30, 1988.

I hereby certify that the aforementioned determinations were issued during the month of September 1989. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, DC. 20213, during normal business hours or will be mailed to persons who write to the above address.

Dated: October 10, 1989.

Glenn M. Zech,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 89–24463 Filed 10–16–89; 8:45 am]

BILLING CODE 4510–30–M

Mine Safety and Health Administration

[Docket No. M–89–149–C]

BethEnergy Mines, Inc.; Petition for Modification of Application of Mandatory Safety Standard

BethEnergy Mines, Inc., P.O. Box 143, Eighty-Four, Pennsylvania 15330 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Mine No. 132 (I.D. No. 46–04789) located in Boone County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the return airway be examined in its entirety on a weekly basis.

2. Due to deteriorating roof conditions and extreme hooving of the mine floor, the return airway from the 3 Right Longwall Section cannot be safely traveled.

3. As an alternate method, petitioner proposes to conduct the examination as follows:

(a) All the provisions of 30 CFR 75.222(g) (2) and (3) would be complied with in their entirety during the period covered by the modification;

(b) Nine additional CSE Model AU–911 self-contained self-rescuers would be stored at the tailgate;

(c) The longwall tailgate would be examined to that point that is impassable from both ends on each preshift examination;

(d) While the longwall is operating, only those personnel necessary to preshift examine the impassable section of the longwall tailgate would be permitted in the area. The results of the preshift examination would be recorded in the fireboss book; and

(e) A "Conspec" low-level carbon-monoxide monitoring system would be used, as an additional precautionary measure, to monitor the longwall belt air which is a neutral air split not used for face ventilation.

4. Petitioner states that the proposed alternate method will provide the same

degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 16, 1989. Copies of the petition are available for inspection at that address.

Dated: October 10, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-24464 Filed 10-16-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-150-C]

Cyprus Emerald Resources Corp.; Petition for Modification of Application of Mandatory Safety Standard

Cyprus Emerald Resources Corporation, Route 218 South, Box 871, Waynesburg, Pennsylvania 15370 has filed a petition to modify the application of 30 CFR 75.900 (low- and medium-voltage circuits serving three-phase alternating current equipment; circuit breakers) to its Emerald No. 1 Mine (I.D. No. 36-05466) located in Greene County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that low- and medium-voltage power circuits serving three-phase alternating current equipment are required to be protected by suitable circuit breakers of adequate interrupting capacity which are properly tested and maintained. Such breakers are required to be equipped with devices to provide protection against undervoltage, grounded phase, short circuit, and overcurrent.

2. The mine is currently utilizing undervoltage release breakers to meet the requirements for undervoltage protection after each power outage. It is necessary for an employee to travel to each belt drive and reset the low votage breakers before the belts can start and production can resume.

3. As an alternate method, petitioner proposes to use contactors in lieu of circuit breakers to obtain undervoltage protection with specific equipment and procedures as outlined in the petition.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 16, 1989. Copies of the petition are available for inspection at that address.

Dated: October 10, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-24465 Filed 10-16-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-142-C]

Greenwich Collieries—Petition for Modification of Application of Mandatory Safety Standard

Greenwich Collieries, P.O. Box 367, Ebensburg, Pennsylvania 15931 has filed a petition to modify the application of 30 CFR 75.1711-1 (sealing of shaft openings) to its No. 1 Mine (I.D. No. 36-02405) located in Indiana County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that shaft openings which are required to be sealed under 30 CFR 75.1711 be effectively capped or filled. Filling must be for the entire depth of the shaft, and for the first 50 feet from the bottom of the coalbed, the fill must consist of incombustible material.

2. As an alternate method, petitioner proposes to maintain water at the bottom of the Main "A" shaft at the permanently abandoned No. 1 Mine and utilize metal grating and expanded metal at the top of the shaft to allow shaft air and outside air to mix.

3. In support of this request petitioner states that—

(a) The raised cap design utilizes solid metal sheets, metal grating and expanded metal to secure the shaft and prevent access;

(b) A six-foot high chain link fence completely encloses the shaft to further prevent access;

(c) A permanent water seal exists in the Main "A" shaft which isolates the mine environment from the shaft environment;

(d) The pumps utilized are of the deep well type requiring only the discharge pipe to be in contact with the Main "A" shaft environment;

(e) An MSHA approved methane monitor has been installed within the Main "A" shaft 50 feet below the edge of the coping to continuously monitor the shaft air environment for methane; and

(f) Pump power is automatically deactivated when the methane monitor detects a methane level of one percent or greater.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 16, 1989. Copies of the petition are available for inspection at that address.

Dated: October 4, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-24466 Filed 10-16-89; 8:45 am]

BILLING CODE 4510-43-M

Pension of Welfare Benefits Administration

[Prohibited Transaction Exemption 89-88 et al.; Exemption Application No. D-7573 et al.]

Grant of Individual Exemptions; Goldman, Sachs and Co., et al.

AGENCY: Pension of Welfare Benefits Administration, Labor

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested

persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 7, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Goldman, Sachs & Co. (Goldman Sachs)—Exemption

Located in New York, New York
[Prohibited Transaction Exemption 89-88; Exemption Application No. D-7573].

I. Transactions

A. Effective January 1, 1987, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan (plan) when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continuted holding of certificates acquired by a plan pursuant to subsection I.A.(1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assests of that Excluded Plan.[1]

B. Effective January 1, 1987, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to:

(1) The direct of indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested in acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.[2] For purpose of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1)(i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B.(1) or (2).

C. Effective January 1, 1987, the restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust, provided:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) The pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust.[3]

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in section III.S.

D. Effective January 1, 1987, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975(a) and (b) of the Code by reason of sections 4975(c)(1)(A) through (D) of the Code, shall not apply to any transactions to which those restrictions

[1] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3-21(c).

[2] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[2]#For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separated account) shall be considered to own the same proportionate undivided interest in each asset of the commmingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14)(F), (G), (H), or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

II. General Conditions

A. The relief provided under part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Corporation (S&P's), Moody's Investors Service, Inc. (Moody's), or Duff & Phelps Inc. (D & P);

(4) The trustee is not an affiliate of any member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith; and

(6) The plan investing in such certificates is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, or any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under part I, if the provision of subsection II.A(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A(6) above.

III. Definitions

For purposes of this exemption:

A. *"Certificate"* means:

(1) A certificate—

(a) That represents a beneficial ownership interest in the assets of a trust; and

(b) That entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) A certificate denominated as a debt instrument—

(a) That represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) within the meaning of section 860D(a) of the Internal Revenue Code of 1986; and

(b) That is issued by and is an obligation of a trust; with respect to which Goldman Sachs or any of its affiliates is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this exemption, references to "certificates representing an interest in a trust" include certificates denominated as debt which are issued by a trust.

B. *"Trust"* means an investment pool, the corpus of which is held in trust and consists solely of:

(1) Either

(a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association);

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T);

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property, (including obligations secured by leasehold interests on commercial real property);

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U);

(e) "Guaranteed governmental mortgage pool certificates," as defined in 29 CFR 2510.3–101(i)(2);

(f) Fractional undivided interests in any of the obligations described in clauses (a)–(e) of this section B.(1);

(2) Property which had secured any of the obligations described in section B.(1);

(3) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to be made to certificateholders; and

(4) Rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements with respect to any obligations described in section B.(1). Notwithstanding the foregoing, the term "trust" does not include any investment pool unless: (i) The investment pool consists only of assets of the type which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by S&P's, Moody's or D & P for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. *"Underwriter"* means:

(1) Goldman Sachs;

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with Goldman Sachs; or

(3) Any member of an underwriting syndicate or selling group of which Goldman Sachs or a person described in (2) is a manager or co-manager with respect to the certificates.

D. "*Sponsor*" means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. "*Master Servicer*" means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through sub-servicers, the assets of the trust.

F. "*Subservicer*" means an entity which, under the supervision of and on behalf of the master servicer, services loans contained in the trust, but is not a party to the pooling and servicing agreement.

G. "*Servicer*" means any entity which services loans contained in the trust, including the master servicer and any subservicer.

H. "*Trustee*" means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. "*Insurer*" means the insurer or guarantor of, or provider of other credit support for, a trust.

Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. "*Obligor*" means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, "obligor" shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. "*Excluded Plan*" means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

L. "*Restricted Group*" with respect to a class of certificates means:

(1) Each underwriter;

(2) Each insurer;

(3) The sponsor;

(4) The trustee;

(5) Each servicer;

(6) Any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) Any affiliate of a person described in (1)–(6) above.

M. *"Affiliate"* of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. *"Control"* means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be *"independent"* of another person only if:

(1) Such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. *"Sale"* includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. *"Forward delivery commitment"* means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificate from, the other party).

R. *"Reasonable compensation"* has the same meaning as that term is defined in 29 CFR 2550.408c–2.

S. *"Qualified Administrative Fee"* means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) The amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. *"Qualified Equipment Note Secured By A Lease" means an equipment note:*

(a) Which is secured by equipment which is leased;

(b) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(c) With respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as the trust would have if the equipment note were secured only by the equipment and not the lease.

U. *"Qualified Motor Vehicle Lease"* means a lease of a motor vehicle where:

(a) The trust holds a security interest in the lease;

(b) The trust holds a security interest in the leased motor vehicle; and

(c) The trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as the trust would receive under a motor vehicle installment loan contract.

V. *"Pooling and Servicing Agreement"* means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, "Pooling and Servicing Agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

The exemption is subject to the express conditions that the facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to the exemption.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on December 29, 1988 at 53 FR 52861.

EFFECTIVE DATE: This exemption is effective for transactions occurring on or after January 1, 1987.

Written Comments: The Department received eleven comments with regard to the proposed exemption. These are discussed below.

Applicant Comments

A. Summary of Facts and Representatives

The applicant has commented on or clarified certain aspects of the proposed exemption. In this regard, item 4 of the preamble to the proposed exemption states that certificateholders are entitled to receive monthly or quarterly installments of principal and/or interest, or lease payments due on receivables. The applicant has requested that the Department clarify that the exemption is available for the receipt of semi-annual payments by certificateholders.

The applicant represents that when payments are made on this basis, funds are not permitted to be commingled with the assets of the servicer for any period longer than would be permitted for a monthly-pay security. A segregated account is established in the name of the trustee (on behalf of certificateholders) to hold funds received between distribution dates. The account is under the sole control of the trustee, who invests the account's assets in short-term securities that meet rating criteria consistent with the rating of the certificates. In some cases, the servicer may be permitted to make a single deposit in the account once a month. When the servicer makes such monthly deposits, the funds received by the servicer may be commingled with the servicer's assets during the month prior to deposit. In no event will the period of time between receipt of funds by the servicer and deposit of these funds in a segregated account exceed one month. Furthermore, in those cases where distributions are made semi-annually, the servicer will furnish a report on the operation of the trust to the trustee on a monthly basis. At or about the time the report is delivered to the trustee, it will be made available to certificateholders and delivered to or made available to the rating agency that has rated the certificates. After considering the applicant's comments with regard to semi-annual payments to certificateholders, the Department has concluded that the exemption is available for semi-annual (rather than monthly or quarterly) payments made to certificateholders, provided that the conditions set forth in the exemption are met.

With respect to item 5, the applicant notes that in some transactions fast pay/slow pay certificates may involve certificates which have the same maturities but different payment schedules.[4]

Item 9 of the preamble to the proposed exemption states that the trustee's fee is paid by the servicer. The applicant notes that in some transactions the servicer, sponsor, or the trust may pay the trustee for services rendered on behalf of the trust. The method of compensating the trustee will be specified in the pooling and servicing agreement and disclosed in the prospectus or private placement memorandum relating to the offering of the certificates.

Item 11 of the preamble to the proposed exemption states that in some cases, the sponsor will obtain the receivables from various originators pursuant to existing contracts with such originators under which the sponsor continually buys receivables. In other cases, the sponsor will purchase the receivables at fair market value from the originator or a finance company pursuant to a purchase and sale agreement related to the specific offering of certificates. The applicant has commented that in some cases the sponsor will purchase the receivables from other sources in the secondary market.

The second paragraph of item 11 of the preamble to the proposed exemption states, that as compensation for the receivable transferred to the trust, the sponsor receives certificates representing the entire beneficial interest in the trust which it sells for cash to investors or securities underwriters. The applicant has clarified that in some transactions the sponsor may retain a portion of the certificates for its own account. In addition, the applicant notes that in some transactions the originator may sell receivables to a trust for cash. At the time of the sale, the trustee would sell certificates to the public or to underwriters and use the cash proceeds of the sale of the certificates to pay the originator for the receivables sold to the trust.

The second paragraph of item 13 states that the "credit support fee" paid to the servicer is paid out of the payments received on the receivables in excess of the pass-through payments made to certificateholders. The applicant notes that in some transactions the "credit support fee" is paid in a lump sum at the time the trust is established.

[4] Goldman Sachs also has clarified that, if a trust issues subordinate certificates, holders of such subordinate certificates may not share in the amount distributed on a pro rata basis. The Department notes that the exemption does not provide relief for plan investment in such subordinated certificates.

With respect to item 16, the applicant notes that, for some public offerings, Goldman Sachs may sell certificates on an agency basis in a best efforts underwriting. In these cases, Goldman Sachs would receive an agency commission. The applicant further notes that in some private placements Goldman Sachs may buy certificates as principal, in which case its fee would consist of the difference between what it receives for the certificates that it sells and what it pays the sponsor for these certificates.

Item 17 of the preamble to the proposed exemption states that the pooling and servicing agreement generally provides that the servicer may purchase a receivable included in the trust when the balance payable on the receivable is reduced to a specified percentage (usually 10 percent) of the initial balance. The applicant has clarified that the servicer may purchase the receivables then included in the trust when the aggregate unpaid balance on the receivables is reduced to a specified percentage (usually 5 to 10 percent) of the initial aggregate unpaid balance. The applicant states further that the second paragraph of item 17 should read as follows: "The purchase price will be at least equal to the unpaid principal balance on the receivable plus accrued interest, less any unreimbursed advances of principal made by the servicer."

With respect to item 18 of the preamble to the proposed exemption, the applicant states that cash flow subordination is a further example of credit support.

Item 19 of the preamble to the proposed exemption states that where the master servicer or its affiliate provides credit support to the trust, the master servicer, in its capacity as servicer, will first advance funds if it determines that such advances are recoverable out of late payments by the obligors or amounts otherwise distributable to holders of subordinated certificates. Otherwise, the master servicer, as the provider of credit support, will be called upon to provide funds to cover such payments to the full extent of its obligations as insurer. The applicant notes that the arrangement described in item 19 is the typical arrangement. However, the applicant further notes that in some transactions the master servicer may not be obligated to advance funds, but instead would be called upon to provide funds to cover defaulted payments to the full extent of

its obligations as insurer.[5] Moreover, the applicant notes that a master servicer typically can recover advances either from the provider of credit support or from the future payment stream.

The applicant has requested the Department to clarify that the conditions set forth in paragraph (d) of item 19 apply only where the master servicer and the insurer are affiliated or are the same entity. The applicant further requests clarification that, in the case of a trust that issues subordinated certificates which may be held by the servicer or its affiliates, the conditions reflected in this paragraph would not apply insofar as the definition of insurer contained in section III.I. of the proposed exemption states that a person is not an insurer solely because it holds subordinated certificates. The Department concurs with this comment.

B. Proposed Exemption

Subsection I.A. of the proposed exemption states that "Section I.A. dos not provide an exemption from the restrictions of secion 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate by any person who has discretionary authority or renders investment advice with respect to the assets of an "Excluded Plan." The applicant expressed concern that this provision might be read to mean than an independent fiduciary with respect to an Excluded Plan could not purchase or hold certificates on behalf of a plan that is completely unrelated to the Excluded Plan. The applicant requests that the Department clarify that the exception applies only if the assets of the Excluded Plan with respect to which such person is a fiduciary are involved in the transaction. In response to the comment, the Department has revised section I.A. to clarify that the exception applies where a person having discretionary authority or rendering investment advice to an Excluded Plan is acquiring or holding a certificate on behalf of that Excluded Plan. Moreover, the Department has revised Section I.A. to clarify that this exception applies to persons rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) of the Act and Department regulation 2510.3–21(c).

The applicant has also requested certain modifications to the exemption as proposed. Paragraph I.B.(1)(ii) of the proposed exemption requires, with regard to section 406(b) relief for sales of certificates, that "soley in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates is acquired by persons independent of members of the "Restricted Group." The applicant notes that the sponsor may retain 100 percent of the subordinated class of certificates. The applicant has requested that the Department clarify that paragraph I.B.(1)(ii) requires only that this condition be satisfied with respect to classes of certificates to which the exemption applies. In this regard, the Department notes that the preamble to the proposed exemption, in describing this provision, provided that section 406(b) relief would be limited to situations where at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group. Upon consideration of this comment, the Department has determined to make two modifications to paragraph I.B.(1)(ii) of the exemption. Accordingly, under the final exemption, although the 50% test would not apply to classes of certificates in which plans do not invest, at least 50% of the aggregate interest in the trust (including all classes of certificates issued by the trust) must be acquired by persons independent of the Restricted Group.

Footnote 13 of the proposed exemption provides that "in the case of a private placement memorandum, such memorandum must contain the same information that would be disclosed in a prospectus if the offering of the certificates was made in a registered public offering under the Securities Act of 1933." The applicant maintains that footnote 13 is inconsistent with the policy of the federal securities laws respecting private placements. For example, in an offering that is made only to "accredited investors," there is no specific information that must be furnished to investors. Similarly, for the majority of private offerings, there is no specific information required. At all times, however, investors have the protection of the federal securities laws as well as any applicable "Blue Sky" and common law antifraud provisions. The applicant states that the essential requirements of these laws are that all material information regarding the offering be furnished or otherwise made available to investors and that the offering materials do not contain any material misstatements or omissions of material facts. In light of the applicant's comment, the Department has determined to revise the footnote in the exemption to provide that in the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. Similarly, the Department has determined to modify subsection I.C.(2) to provide that the pooling and servicing agreement is provided to investing plans or described in all material respects in the prospectus or private placement memorandum. In this regard, the Department notes that the private placement memorandum must contain sufficient information to permit plan fiduciaries to make an informed investment decision.[6]

Subsection II.A.(3) of the proposed exemption conditions exemptive relief upon the certificates acquired by the plan having received a rating that is in one of the three highest generic rating categories from either Standard & Poor's Corporation (S&P's), or Moody's Investors Service, Inc. (Moody's) in the case of all certificates covered by the exemption, or Duff & Phelps Inc. (D&P), if the certificates represent an interest in a trust containing obligations secured by multi-family residential or commercial real property. As stated in footnote 7 of the preamble to the proposed exemption, it was the Department's understanding at the time of publication of the proposed exemption that asset-backed securities underwritten by Goldman Sachs which are backed by assets other than multi-family residential mortgages or commercial mortgages have been rated by either S&P's or Moody's or both. Goldman Sachs has now requested that subsection II.A.(3) and section III.B. of the proposed exemption be modified to include D&P as an acceptable rating agency for all types of certificates covered by the exemption. In this regard, Goldman Sachs represents that D&P has become increasingly active in rating all types of asset-backed securities, including certificates of the types described in the proposed exemption. Goldman Sachs believes that D&P is qualified to rate these types of certificates and expects to use D&P to rate these types of certificates in the future. Based on Goldman Sachs' representations, and additional information contained in a comment on the proposed exemption submitted by D&P, the Department has determined to revise the exemption to include D&P as

[5] The applicant has clarified that where the master servicer provides credit support to the trust, it covers defaulted payments rather than delinquent payments as stated in item 19 of the preamble to the proposed exemption.

[6] For purposes of clarity, the Department has substituted the term "private placement memorandum" in the final exemption for "private offering memorandum" as used in the proposed exemption.

an acceptable rating agency for rating all types of certificates covered by the exemption. In this regard, D&P represents that its rating process with respect to all types of certificates included in the proposed exemption is similar to and consistent with that described in the preamble to the proposed exemption.[7]

The applicant has also requested modification of section II.B. of the proposed exemption. This section generally provides that neither any underwriter, sponsor, trustee, servicer, insurer or any obligor (assuming it is not a fiduciary with respect to the plan assets used to acquire certificates) will be subject to penalties under section 502(i) of ERISA or sections 4975 (a) and (b) of the Code if the steps specified in this section are taken to ensure that an investing plan is an accredited investor, even if the plan is determined not to be an accredited investor. The applicant suggests that this section should be revised to indicate that all the relief provided under Part I will be available if it is later determined that the plan was not an accredited investor. The Department has considered this comment and has determined to amend section II.B. of the proposed exemption by deleting "shall be subject to the civil penalties which may be assessed under section 502(i) of the Act, or the taxes imposed by sections 4975 (a) and (b) of the Code," and by substituting "shall be denied the relief provided under Part I" in lieu thereof.

The applicant has requested clarification of the definition of "trust" in section III.B. First, the applicant notes that pooling and servicing agreements typically provide for the temporary investment of undistributed cash held in the trust pending distribution to certificateholders or application to the payment of trust expenses. The applicant therefore has requested that subsection III.B.(3) of the proposed exemption be amended to refer to "undistributed cash, or temporary investments made therewith maturing no later than the next distribution date; and". After considering this suggested change, the Department has determined to modify the exemption in the manner requested.

The applicant also requests clarification that the definition of the "trust" in section III.B. of the proposed exemption would include trusts containing interest-bearing or discount obligations secured by shares issued by a cooperative housing association. After considering this comment, the Department has determined to revise paragraph III.B.(1)(a) of the exemption such that the category of trusts containing "secured consumer receivables that bear interest or are purchased at a discount" includes "obligations secured by shares issued by a cooperative housing association." For purposes of clarification, the Department has also determined to amend subsection III.B.(4) of the proposed exemption to include "rights of the trustee under the pooling and servicing agreement."

Finally, the proposed exemption only would apply to certificates representing a beneficial ownership interest in the assets of a trust that entitle the holder to pass-through payment of principal, interest and/or other payments made with respect to the assets of such trust. In commenting on the proposed exemption, the applicant requested that the Department expand the exemption to cover certificates denominated as debt instruments and issued by a common law or statutory trust which is a REMIC.[8] In this regard, the applicant has provided the Department with further information regarding such certificates, as set forth below:

(1) The applicant states that the decision to structure a transaction as a sale (in the case of pass-through certificates) or as a secured financing (in the case of certificates denominated as debt) is made by a REMIC issuer on the basis of the accounting and other regulatory consequences to the issuer. In the absence of a specific regulatory framework (*e.g.*, limiting debt or equity investments to a specified percentage of an investment portfolio), investors in mortgage-backed securities do not distinguish between identically rated REMIC pass-through securities or debt instruments because (a) the tax treatment of REMIC pass-through securities and REMIC debt instruments is exactly the same, and (b) rated REMIC debt instruments are collateralized in accordance with rating agency guidelines and prescribed procedures so as to assure the same uninterrupted payment stream as a similarly rated pass-through security.[9]

(2) A mortgage pass-through certificate represents a beneficial ownership interest in a pool of mortgages held by the trustee of a common law or statutory trust. As explained in the preamble to the proposed exemption, the trustee contracts on behalf of certificateholders with a servicer, who undertakes to service the mortgages in accordance with the terms of the pooling and servicing agreement. A REMIC debt instrument, by contrast, represents the promise of an issuer to pay principal in a specified amount and interest thereon at a specified rate, secured by the pledge of a pool of mortgages (or pass-through certificates representing interests in such a pool, as described below) which is serviced by a servicer in accordance with the terms of the pooling and servicing agreement entered into with the issuer, a common law or statutory trust which is the owner of the mortgages. The issuer's promise to pay the debt holders is documented in an indenture entered into by the issuer and an indenture trustee who acts on behalf of the debt holders;

(3) In some cases, the issuer will issue pass-through certificates in addition to debt instruments.[10] Under those

[7] D&P has notified the Department that it has recently changed its rating scale for all long-term fixed income securities, including certificates included in the exemption, from the numerical scale described in the preamble to the proposed exemption to alphabetical designations which are consistent with the designations utilized by S&P's. As does S&P, D&P will use "+" and "−" to designate further refinements within a given rating category. Thus, for example, the highest rating of "D&P-1" has been replaced with an "AAA" rating, "D&P-2" has been replaced with an "AA+" rating, and "D&P-7" has been replaced with an "A−" rating. D&P represents that it changed to alphabetical designations to facilitate the ease of use of its ratings by investors, and that no other aspect of D&P's rating procedure will change as a result of the new rating scale.

[8] Department of Labor regulation section 29 CFR 2510.3-101 clarifies the definition of "plan assets" for the purposes of Title I of ERISA. In general, the regulation provides that, in the case of a plan's investment in an equity interest of an entity that is neither a publicly-offered security nor a security issued by an investment company registered under the Investment Company Act of 1940, its assets include both the equity interest and an undivided interest in each of the underlying assets of the entity, unless the entity is an operating company or equity participation in the entity by benefit plan investors is not significant.

Regulation section 29 CFR 2510.3-101(b)(1) defines "equity interest" to mean any interest in an entity other than an instrument that is treated as indebtedness under applicable local law and which has no substantial equity features. The applicant is concerned that, in certain circumstances, REMIC interests in the form of debt instruments might be recharacterized as equity interests under this regulation.

[9] In this regard, S&P's notes that the issuer's credit worthiness, if applicable, is taken into account in determining the rating of REMIC securities. Thus, in the case of REMIC transactions structured as a sale, the financial condition of the seller will have no impact on the REMIC security. REMIC securities structured as debt, however, are impacted by the financial condition of the issuer. In a bankruptcy, payments would be interrupted causing timing delays to investors. Additionally, a bankruptcy judge would have the power to substitute collateral. Because of these concerns, S&P's indicates that it will only rate REMIC debt instruments in its highest rating categories (AAA, AA) when the issuer is a special purpose entity. Such special purpose entities are created solely for the purpose of issuing highly rated debt.

[10] In this situation, the pass-through certificates would be subordinate to the debt instruments and,

Continued

circumstances, investors in the REMIC debt instruments would have a security interest in the pass-through certificates. In othere cases, the investors in REMIC debt instruments would have a security in "whole" mortgages which have not been previously securitized as pass-through certificates;

(4) In the case of REMIC debt instruments, the indenture trustee will either be the assignee of the issuer's interest in the pooling and servicing agreement or, if the debt instruments are secured by pass-through certificates representing beneficial interests in the issuer (and therefore beneficial interests in the underlying pooling and servicing agreement), the indenture trustee will obtain a security interest in the pass-through certificates, including rights represented thereby in the pooling and servicing agreement. As a result, in the case of REMIC instruments denominated as debt, the indenture trustee is responsible in the first instance for the enforcement of the servicing agreement.

In consideration of the comments provided regarding REMIC debt instruments, the Department believes that it is appropriate to revise the exemption to include such instruments, provided that they are issued by a statutory or common law trust and that the other representations contained in the preamble to the proposed exemption apply to these instruments (*e.g.*, that for tax reasons the trust must be maintained as an essentially passive entity). As a result, the Department has made certain conforming changes to the final exemption, as explained below:

(1) The definition of "Certificate" contained in subsection III.A. has been expanded to include a certificate demoninated as a debt instrument that represents an interest in a REMIC and is issued by, and is an obligation of, a trust;

(2) The definition of "Trustee" contained in subsection III.H. has been expanded to include the trustee of the indenture trust, in the case of certificates which are denominated as debt instruments;

(3) The Department has added subsection III.V. which defines "Pooling and Servicing Agreement". This subsection states that "Pooling and Servicing Agreement" means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust, and, in the case of certificates which are denominated as debt instruments, also includes the indenture entered into between the trustee of the trust issuing such certificates and the indenture trustee.

Miscellaneous

1. Six comments were received requesting that the Department issue a class exemption that could be utilized by other investment banking firms, banks and bank affiliates which underwrite asset-backed securities. The comments requesting that the Department issue a class exemption included suggested modifications to the proposed exemption which these commentators believe should be made if the Department determines to issue a class exemption. In this regard, the Department notes that consideration of a class exemption is beyond the scope of this proceeding for individual exemptive relief. Finally, the Deaprtment wishes to take the opportunity to state that the commentators may wish to consider applications for individual relief under section 408(a) of ERISA.

2. In addition, other commenters requested that the Department amend PTE 83–1 (48 FR 895, January 7, 1983), Class Exemption for Certain Transactions Involving Mortgage Pool Investment Trusts, to incorporate certain changes which conform to any class or individual exemption the Department issues with respect to asset-backed securities. With respect to these comments, the Department notes that amendment of PTE 83–1 is beyond the scope of this proceeding.

3. Part II of the preamble to the proposed exemption states that to be an "accredited investor" under Rule 501(a)(1) of Regulation D under the Securities Act of 1933, a plan would need to have at least $5 million in assets, or the decision to invest in certificates would have to be made on behalf of the plan by a bank, insurance company or an investment adviser registered under the Investment Advisers Act of 1940. It has come to the Deaprtment's attention that Rule 501(a)(1) has recently been amended to include as an accredited investor a plan on behalf of which the investment decision is made by a savings and loan association. In the Department's view, such a plan would meet the requirement of subsection II.A.(6) of the exemption. Moreover, the Department contemplates that the condition contained in subsection II.A.(6) of the exemption would be met if the investing plan is an accredited investor within the meaning of Rule 501(a)(1) as amended from time to time.

4. One commentator suggested that the term "Underwriter" as defined in subsection III.C.(3) of the proposed exemption be modified to include members of the selling group which places certificates with investors, including plans, even though the members of the selling group are not members of the underwriting syndicate. After considering this comment, and discussing the modification with the applicant, the Department has determined to modify the definition of underwriter in subsection III.C.(3) of the exemption to include any member of a selling group of which Goldman Sachs or a person described in subsection III.C.(2) of the exemption is a manager or co-manager.

5. Two commentators requested clarification of the condition contained in subsection II.A.(2) of the proposed exemption that "the rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust". These commentators noted that, in a common form of subordinated certificate transaction, two classes of certificates ("A" and "B") are created and payments are shared pro rata among all certificates except that cash flow shortfalls resulting from defaults and delinquencies on the obligations in the pool are first borne by the subordinated "B" class. Thereafter, recoveries with respect to such defaulted payments would be available (to the extent that the other assets in the pool are producing sufficient cash flow to make distributions to the A class) to make distributions to the B class to the extent of the prior losses borne by such class. These commentators stated that they assume that the B class would be considered "subordinated" within the meaning of the proposed exemption and, thus, ineligible for exemptive relief. The commentators, however, requested that the Department clarify that the "A" class would not be considered subordinated merely because recoveries with respect to defaulted and delinquent obligations could result in the "B" class receiving "catch-up" payments. The Department concurs with the view expressed by the commentators.

In addition, these commentators state that it is unclear how the "no subordination" requirement would apply in the case of a REMIC trust in which the class A certificates described in the previous example could be further subdivided into several classes (*e.g.*, A–1 through A–4) with payment being made in sequence in the classes. Defaults on the underlying obligations in the pool would first be absorbed by the B class. However, in the event of massive defaults (*i.e.*, far in excess of rating agency projections) it is possible

consequently, this exemption would not apply to plan investment in such pass-through certificates.

for the A–2 through A–4 classes to be subordinated to the prior A classes unless the governing documents provide otherwise. The commentators state that class A–2 through A–4 certificates in such a structure should not be treated differently from the class A–1 certificates. They further argue that the Department should consider permitting senior certificates of this type to qualify for relief, notwithstanding possible subordination to other classes of senior certificates, if another class of certificates is subordinated to all classes of senior certificates and the certificates in question have achieved a high rating (*e.g.*, one of the two highest rating categories). The Department does not believe that it has a sufficient basis upon which to provide exemptive relief for any subordinated certificates at this time. Furthermore, the Department notes that the applicant has not requested such relief. Accordingly, the Department is not modifying the condition contained in subsection II.A.(2) of the proposed exemption as requested.

6. Three commentators requested that the Department make clear that "strip" and "fast-pay/slow-pay" certificates (described in item 5 of the preamble to the proposed exemption) would not be deemed to be subordinated merely because they are of classes having rights to disproportionate principal or interest payments or because they are of classes having different stated maturities. The Department notes that, as stated in Item 5 of the preamble to the proposed exemption, the applicants have represented that in neither case will the rights of a plan purchasing certificates be subordinated to the rights of another certificateholder in the event of default on any of the underlying obligations. The Department believes that the exemption would apply to any class of "strip" and "fast-pay/slow-pay" certificates to which that representation applies.

7. The Department received comments from D&P, Fitch Investors Services, Inc. (Fitch), and McCarthy, Crisanti & Maffei, Inc. (McCarthy), each requesting that it be included as an acceptable rating agency for rating all types of certificates covered by the exemption. As noted above, the applicant requested in its comment filed with the Department that the proposed exemption be modified to include D&P as an acceptable rating agency for rating all types of certificates covered by the exemption, and the Department has determined to modify the final exemption accordingly. However, since the applicant has not requested that the Department revise the proposed exemption to include Fitch and McCarthy as acceptable rating agencies, the Department has decided that it would not be appropriate to further modify the exemption in this manner. The Department wishes to emphasize, however, that no implication should be drawn regarding these rating agencies, and that the Department would be willing to consider these other rating agencies for rating certificates with regard to other asset-backed securities individual exemption requests.

8. Three commentators noted that the proposed exemption does not make clear whether the certificates covered by the proposed exemption must have received the requisite rating solely at the time of purchase by the plan, or whether such rating must be maintained while the plan holds the certificates. The commentators state that the exemption should specify that the rating requirement only applies at the time the certificates are purchased by the plan. The Department agrees with this comment and, accordingly, has modified subsection II.A.(3) of the exemption to clarify that the rating condition need only be met at the time the certificates are acquired by the plan. In this regard, the Department notes that ERISA section 404(a)(1)(B) would require that a fiduciary act prudently in determining whether a plan should continue to hold certificates, as well as with respect to the initial decision to purchase the certificates.

9. One commentator requested that the Department clarify that trusts containing assets of a type which have not been specifically considered by the Department would be covered by the exemption provided that such assets satisfy the condition set forth in section III.B. of the exemption. The Department agrees that the exemption would be available with respect to such trusts provided that the condition contained in section III.B and the other conditions of the exemption are met.

10. One commentator stated that it is not clear whether the conditions imposed by paragraphs I.B.(1)(i) through (iv) (with respect to section 406(b) relief for sales or transfers in the initial issuance of certificates) would apply also to subsections I.B.(2) (with respect to section 406(b) relief for acquisitions or dispositions in the secondary market) and I.B.(3) (with respect to section 406(b) relief for the continued holding of certificates by a plan pursuant to subsections I.B.(1) or (2)). In response to the comment, the Department has clarified subsection I.B.(2) of the exemption to make clear that the relief contained therein is available provided that the conditions set forth in paragraphs I.B.(1)(i), (iii) and (iv) are met.

11. Two commentators questioned why retroactive exemptive relief was proposed for Salomon and First Boston as of November 1, 1985, whereas the effective date for Goldman Sachs' proposed exemption is January 1, 1987. In this regard, the Department notes that Salomon and First Boston, in their respective applications, requested an effective date of November 1, 1985, and that Goldman Sachs, Inc. requested an effective date of January 1, 1987.

After consideration of the entire record, the Department has determined to grant the exemption, as modified herein.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Department, telephone (202) 523–8194. This is not a toll-free number.

Salomon Brothers, Inc. (Salomon)—Exemption

Located in New York, New York [Prohibited Transaction Exemption 89–89; Exemption Application No. D–6446]

I. Transactions

A. Effective November 1, 1985, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan (plan) when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A. (1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders

investment advice with respect to the assets of that Excluded Plan.[11]

B. Effective November 1, 1985, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.[12] For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1)(i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B. (1) or (2).

C. Effective November 1, 1985, the restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust; provided:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) The pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust.[13]

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in section III.S.

D. Effective November 1, 1985, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975 (a) and (b) of the Code by reason of sections 4975(c)(1)(A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

II. General Conditions

A. The relief provided under part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Corporation (S&P's), Moody's Investors Service, Inc. (Moody's), or Duff & Phelps Inc. (D & P);

(4) The trustee is not an affiliate of any member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith; and

(6) The plan investing in such certificates is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, or any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a

[11] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3–21(c).

[12] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[13] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

III. Definitions

For purposes of this exemption:

A. "*Certificate*" means:

(1) A certificate—

(a) That represents a beneficial ownership interest in the assets of a trust; and

(b) That entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) A certificate denominated as a debt instrument—

(a) That represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) within the meaning of section 860D(a) of the Internal Revenue Code of 1986; and

(b) That is issued by and is an obligation of a trust; with respect to which Salomon or any of its affiliates is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this exemption, references to "certificates representing an interest in a trust" include certificates denominated as debt which are issued by a trust.

B. "*Trust*" means an investment pool, the corpus of which is held in trust and consists solely of:

(1) Either

(a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association);

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T);

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property, (including obligations secured by leasehold interests on commercial real property);

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U);

(e) "Guaranteed governmental mortgage pool certificates," as defined in 29 CFR 2510.3-101(i)(2);

(f) Fractional undivided interests in any of the obligations described clauses (a)–(e) of this section B.(1);

(2) Property which had secured any of the obligations described in section B.(1);

(3) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are made to certificateholders; and

(4) Rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements with respect to any obligations described in section B.(1).

Notwithstanding the foregoing, the term "trust" does not include any investment pool unless: (i) The investment pool consists only of assets of the type which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by S&P's, Moody's, or D & P for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. "*Underwriter*" means:

(1) Salomon;

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with Salomon; or

(3) Any member of an underwriting syndicate or selling group of which Salomon or a person described in (2) is a manager or co-manager with respect to the certificates.

D. "*Sponsor*" means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. "*Master Servicer*" means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. "*Subservicer*" means an entity which, under the supervision of and on behalf of the master servicer, services loans contained in the trust, but is not a party to the pooling and servicing agreement.

G. "*Servicer*" means any entity which services loans contained in the trust, including the master servicer and any subservicer.

H. "*Trustee*" means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. "*Insurer*" means the insurer or guarantor of, or provider of other credit support for, a trust.

Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. "*Obligor*" means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, "obligor" shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. "*Excluded Plan*" means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

L. "*Restricted Group*" with respect to a class of certificates means:

(1) Each underwriter;

(2) Each insurer;

(3) The sponsor;

(4) The trustee;

(5) Each servicer;

(6) Any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) Any affiliate of a person described in (1)–(6) above.

M. "*Affiliate*" of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a

spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. *"Control"* means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be *"independent"* of another person only if:

(1) Such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. *"Sale"* includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. *"Forward delivery commitment"* means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificate from, the other party).

R. "*Reasonable compensation*" has the same meaning as that term is defined in 29 CFR 2550.403c-2.

S. "*Qualified Administrative Fee*" means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) The amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. "*Qualified Equipment Note Secured By A Lease*" means an equipment note:

(a) Which is secured by equipment which is leased;

(b) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(c) With respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as the trust would have if the equipment note were secured only by the equipment and not the lease.

U. "*Qualified Motor Vehicle Lease*" means a lease of a motor vehicle where:

(a) The trust holds a security interest in the lease;

(b) The trust holds a security interest in the leased motor vehicle; and

(c) The trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as the trust would receive under a motor vehicle installment loan contract.

V. "*Pooling and Servicing Agreement*" means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, "Pooling and Servicing Agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

The exemption is subject to the express conditions that the facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

For a more complete statement of the facts and representations supporting the Department's decison to grant this exemption, refer to the notice of proposed exemption published on December 29, 1988 at 53 FR 52870.

Effective Date: This exemption is effective for transactions occurring on or after November 1, 1985.

Written Comments: The Department received eleven comments with regard to the proposed exemption. These are discussed below.

Applicant Comments

A. Summary of Facts and Representations

The applicant has commented on or clarified certain aspects of the proposed exemption. In this regard, the applicant notes that item 4 of the preamble to the proposed exemption states that, prior to the closing date, the sponsor acquires legal title to all assets selected for the trust. The applicant indicates that in many transactions, the sponsor acquires legal title to assets selected for the trust on the closing date and concurrently conveys to the trust legal title to the assets.

In addition, item 4 states that certificateholders are entitled to receive monthly or quarterly installments of principal and/or interest, or lease payments due on the receivables. The applicant has requested that the Department clarify that the exemption is available for the receipt of semi-annual payments by certificateholders. In this regard, the applicant represents that when payments are made on this basis, funds are not permitted to be commingled with the servicer's assets for longer than would be permitted for a monthly-pay security. A segregated account is established in the name of the trustee (on behalf of certificateholders) to hold funds received between distribution dates. The account is under the sole control of the trustee, who invests the account's assets in short-term securities which have received a rating comparable to the rating assigned to the certificates. In some cases, the servicer may be permitted to make a single deposit into the account once a month. When the servicer makes such monthly deposits, payments received from obligors by the servicer may be commingled with the servicer's assets during the month prior to deposit. In no event will the period of time between receipt of funds by the servicer and deposit of these funds in a segregated account exceed one month. Furthermore, in those cases where distributions are made semi-annually, the servicer will furnish a report on the operation of the trust to the trustee on a monthly basis. At or about the time this report is delivered to the trustee, it will be made available to certificateholders and delivered to or made available to each rating agency that has rated the certificates. After considering the applicant's comments with regard to semi-annual payments to certificateholders, the Department has concluded that the exemption is available for semi-annual (rather than monthly or quarterly) payments made to certificateholders, provided that the conditions set forth in the exemption are met.

With respect to item 5, the applicant notes that in some transactions fast pay/slow pay certificates may involve certificates which have the same maturities but different payment schedules.[14]

[14] Salomon also has clarified that, if a trust issues subordinate certificates, holders of such

Continued

Item 9 of the preamble to the proposed exemption states that the trustee's fee is paid by the servicer. The applicant notes that in some transactions, the trustee's fee is not paid by the servicer but rather is paid by the seller or sponsor or out of trust assets. For example, the trustee's fees may be paid out of investment earnings on undistributed cash or from specified amounts on deposit in the trust, as is the case with the servicer's compensation. The method of compensating the trustee will be specified in the pooling and servicing agreement and disclosed in the prospectus or private placement memorandum relating to the offering of the certificates.

The second paragraph of item 11 of the preamble to the proposed exemption states, that as compensation for the receivable transferred to the trust, the sponsor receives certificates representing the entire beneficial interest in the trust which it sells for cash to investors or securities underwriters. The applicant has clarified that in some transactions the sponsor may retain a portion of the certificates for its own account. In addition, the applicant notes that in some transactions the originator may sell receivables to a trust for cash. At the time of the sale, the trustee would sell certificates to the public or to underwriters and use the cash proceeds of the sale to pay the originator for the receivables sold to the trust.

The second paragraph of item 13 states that the "credit support fee" paid to the servicer is paid out of the payments received on the receivables in excess of the pass-through payments made to certificateholders. The applicant notes that in some transactions the "credit support fee" is paid in a lump sum at the time the trust is established.

With respect to item 16, the applicant notes that, for some public offerings, Salomon may sell certificates on an agency basis in a best efforts underwriting. In these cases, Salomon would receive an agency commission. The applicant further notes that in some private placements Salomon may buy certificates as principal, in which case its fee would consist of the difference between what it receives for the certificates that it sells and what it pays the sponsor for these certificates.

Item 17 of the preamble to the proposed exemption states that the pooling and servicing agreement generally provides that the servicer may purchase a receivable included in the trust when the balance payable on the receivable is reduced to a specified percentage (usually 10 percent) of the initial balance. The applicant has clarified that the servicer may purchase the receivables then included in the trust when the *aggregate* unpaid balance on the receivables is reduced to a specified percentage (usually 10 percent) of the initial balance.

Item 19 of the preamble to the proposed exemption states that where the master servicer or its affiliate provides credit support to the trust, the master servicer, in its capacity as servicer, will first advance funds if it determines that such advances are recoverable out of late payments by the obligors or amounts otherwise distributable to holders of subordinated certificates. Otherwise, the master servicer, as the provider of credit support, will be called upon to provide funds to cover such payments to the full extent of its obligations as insurer. The applicant notes that the arrangement described in item 19 is the typical arrangement. However, the applicant further notes that in some transactions the master servicer may not be obligated to advance funds, but instead would be called upon to provide funds to cover defaulted payments to the full extent of its obligations as insurer.[15] Moreover, the applicant notes that a master servicer typically can recover advances either from the provider of credit support or from future payments on affected assets.

The applicant has requested the Department clarify that the conditions set forth in paragraph (d) of item 19 apply only where the master servicer and the insurer are affiliated or are the same entity. The applicant further requests clarification that, in the case of a trust that issues subordinated certificates which may be held by the servicer or its affiliates, the representations reflected in this paragraph would not apply insofar as the definition of insurer contained in section III.I. of the proposed exemption states that a person is not an insurer solely because it holds subordinated certificates. The Department concurs with this comment.

With regard to item 23 of the preamble to the proposed exemption, the applicant notes that a rating agency may not automatically receive reports regarding the operation of the trust at or about the time distributions are made to certificateholders, unless the rating agency requests that all reports be delivered to it. These reports will be available to any rating agency that rated the certificates upon its request, and will be delivered to the rating agency as frequently as requested by the rating agency.

B. Proposed Exemption

Section I.A. of the proposed exemption states that "section I.A. does not provide an exemption from the restrictions of section 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate by any person who has discretionary authority or renders investment advice with respect to the assets of an "Excluded Plan." The applicant requests clarification that this exception applies only to a person who becomes a fiduciary to an Excluded Plan by reason of rendering investment advice. In response to the comment, the Department has revised section I.A. to clarify that this exception applies to persons who render investment advice to Excluded Plans within the meaning of section 3(21)(A)(ii) of the Act and Department regulation 2510.3–21(c). The applicant also expressed concern that this provision might be read to suggest that an independent fiduciary with respect to an Excluded Plan could not purchase or hold certificates on behalf of a plan that is completely unrelated to the Excluded Plan. The applicant requests that the Department clarify that the exception applies only if the assets of the Excluded Plan with respect to which such person is a fiduciary are involved in the transaction. The Department has adopted this comment and revised section I.A. to clarify that the exception applies where a person having discretionary authority or rendering investment advice to an Excluded Plan is acquiring or holding a certificate on behalf of that Excluded Plan.

The applicant has also requested certain modifications to the exemption as proposed. Paragraph I.B.(1)(ii) of the proposed exemption requires, with regard to section 406(b) relief for sales of certificates, that "solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates is acquired by persons independent of members of the "Restricted Group." The applicant notes that frequently the sponsor retains 100 percent of the subordinated class of certificates, and that, therefore, the

subordinate certificates may not share in the amount distributed on a pro rata basis. The Department notes that the exemption does not provide relief for plan investment in such subordinated certificates.

[15] The applicant has clarified that where the master servicer provides credit support to the trust, it covers *defaulted* payments rather than delinquent payments as stated in item 19 of the preamble to the proposed exemption.

proposed exemption would effectively eliminate section 406(b) relief for transactions in which subordinated certificates are issued. The applicant requests that the Department amend paragraph I.B.(1)(ii) to require that "at least 50 percent of the certificates being offered (other than certificates of a class of subordinated certificates) is acquired by persons independent of the members of the Restricted Group." In this regard, the Department notes that the preamble to the proposed exemption, in describing this provision, provided that section 406(b) relief would be limited to situations where at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group. Upon consideration of this comment, the Department has determined to make two modifications to paragraph I.B.(1)(ii) of the exemption. Accordingly, under the final exemption, although the 50% test would not apply to classes of certificates in which plans do not invest, at least 50% of the aggregate interest in the trust (including all classes of certificates issued by the trust) must be acquired by persons independent of the Restricted Group.

Subsection I.C.(2) of the proposed exemption requires, with respect to exemptive relief for servicing and operation of the trust, that "the pooling and servicing agreement is provided to, or fully described in, the prospectus or private offering memorandum provided to investing plans before they purchase certificates issued by the trust." The applicant notes that the federal securities laws require a prospectus to contain all information material to an investor's decision to acquire a security. Consequently, the issuer may omit from its disclosure document a description of provisions that are immaterial or irrelevant to purchasers of the offered certificates. The applicant indicates that, because the pooling and servicing agreement is available to investors before they invest in certificates, investors are better served by receiving a disclosure document that is more easily understood while still describing the pooling and servicing agreement in all material respects. Therefore, the applicant requests clarification that "fully described" as used in the proposed exemption is intended only to require that the pooling and servicing agreement is described in all material respects. On the basis of this comment, the Department has modified subsection I.C.(2) to incorporate the applicant's suggested change. In this regard, the Department notes that the description of the pooling and servicing agreement contained in the prospectus or private placement memorandum must contain sufficient information to permit plan fiduciaries to make an informed investment decision.[16]

Footnote 13 of the proposed exemption provides that "in the case of a private placement memorandum, such memorandum must contain the same information that would be disclosed in a prospectus if the offering of the certificates was made in a registered public offering under the Securities Act of 1933." The applicant notes that a private placement memorandum would never be identical to a prospectus used in an offering registered under the Securities Act of 1933. In particular, while a prospectus and a private placement memorandum would each contain all information material to an investor's decision to acquire certificates, a private placement memorandum would not contain, for example, statements regarding filing of a registration statement. Moreover, a private placement memorandum may describe restrictions on transfer of certificates because they are not registered under the Securities Act of 1933; a prospectus would not contain such information. The applicant represents that, under the federal securities laws, the level of prescribed disclosure in a private placement varies depending, in part, on the type of issuer, the nature of proposed offerees, and the characteristics of the security being offered. The applicant further indicates that compliance with applicable antifraud provisions of federal securities law would require that all material information regarding the offering (including the securities being offered and the nature and operation of the issuer) be disclosed to investors prior to their purchase of any of the securities being offered. In light of the applicant's comments, the Department has determined to revise the footnote in the final exemption to provide that, in the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933.

Subsection II.A.(3) of the proposed exemption conditions exemptive relief upon the certificates acquired by the plan having received a rating that is in one of the three highest generic rating categories from either Standard & Poors Corporation (S&P's), or Moody's Investors Service, Inc. (Moody's) in the case of all certificates covered by the exemption, or Duff & Phelps Inc. (D&P), if the certificates represent an interst in a trust containing obligations secured by multi-family residential or commercial real property. As stated in footnote 7 of the preamble to the proposed exemption, it was the Department's understanding at the time of publication of the proposed exemption that asset-backed securities underwritten by Salomon which are backed by assets other than multi-family residential mortgages or commercial mortgages have been rated by either S&P's or Moody's or both. Salomon has now requested that subsection II.A.(3) and section III.B. of the proposed exemption be modified to include D&P as an acceptable rating agency for all types of certificates covered by the exemption. Salomon represents that D&P has become increasingly active in rating all types of asset-backed securities, including certificates of the types described in the proposed exemption. Salomon believes that D&P is qualified to rate these types of certificates and expects to use D&P to rate these types of certificates in the future. Based on Salomon's representations, and additional information submitted by D&P, the Department has determined to revise the exemption to include D&P as an acceptable rating agency for rating all types of certificates covered by the exemption. In this regard, D&P represents that its rating process with respect to all types of certificates included in the proposed exemption is similar to and consistent with that described in the preamble to the proposed exemption.[17]

The applicant has also requested modification of section II.B. of the proposed exemption. This section generally provides that neither any underwriter, sponsor, trustee, servicer, insurer or any obligor (assuming it is not

[16] For purposes of clarity, the Department has substituted the term "private placement memorandum" in the final exemption for "private offering memorandum" as used in the proposed exemption.

[17] D&P has notified the Department that it has recently changed its rating scale for all long-term fixed income securities, including certificates included in the exemption, from the numerical scale described in the preamble to the proposed exemption to alphabetical designations which are consistent with the designations utilized by S&P's. As does S&P, D&P will use "+" and "−" to designate further refinements within a given rating category. Thus, for example, the highest rating of "D&P-1" has been replaced with an "AAA" rating, "D&P-2" has been replaced with an "AA+" rating, and "D&P-7" has been replaced with an "A−" rating. D&P represents that it changed to alphabetical designations to facilitate the ease of use of its ratings by investors, and that no other aspect of D&P's rating procedure will change as a result of the new rating scale.

a fiduciary with respect to the plan assets used to acquire certificates) will be subject to penalties under section 502(i) of ERISA or sections 4975(a) and (b) of the Code if the steps specified in this section are taken to ensure that an investing plan is an accredited investor, even if it is later determined that the plan is not an accredited investor. The applicant has expressed concern that if a plan is not an accredited investor, notwithstanding that the specified steps have been taken, the relief provided by part I of the exemption would not be available. The Department has considered this comment and has determined to amend section II.B. of the proposed exemption by deleting "shall be subject to the civil penalties which may be assessed under section 502(i) of the Act, or the taxes imposed by sections 4975(a) and (b) of the Code," and by substituting "shall be denied the relief provided under Part I" in lieu thereof.

The application has requested clarification of the definition of "trust" in section III.B. in three respects. First, the applicant notes that pooling and servicing agreements typically provide for the temporary investment of undistributed cash held in the trust in "permitted investments" pending distribution to certificateholders or application to the payment of trust expenses. "Permitted investments" are subject to careful scrutiny by the rating agencies and consist of investments such as governmental obligations. The applicant, therefore, has requested that subsection III.B.(3) of the proposed exemption be amended to read as follows: "Undistributed cash, or temporary investments made therewith maturing no later than the next distribution date; and". The second change requested by the applicant with respect to section III.B. of the exemption concerns subsection III.B.(4). The application notes that the trustee has a variety of rights under the pooling and servicing agreement that it may exercise for the benefit of certificateholders which are assets of the trust. Accordingly, the applicant has requested that the Department amend subsection III.B.(4) of the proposed exemption to include "rights of the trustee under the pooling and servicing agreement." After considering these two suggested changes, the Department has determined to modify the exemption in the manner requested.

Third, the applicant requests clarification that the definition of the term "trust" in section III.B. of the proposed exemption would include trusts containing interest-bearing or discount obligations secured by shares issued by a cooperative housing association. After considering this comment, the Department has determined to revise paragraph III.B.(1)(a) of the exemption such that the category of trusts containing "secured consumer receivables that bear interest or are purchased at a discount" includes "obligations secured by shares issued by a cooperative housing association."

Finally, the proposed exemption only would apply to certificates representing a beneficial ownership interest in the assets of a trust that entitle the holder to pass-through payments of principal, interest and/or other payments made with respect to the assets of such trust. In commenting on the proposed exemption, the applicant requested that the Department expand the exemption to cover certificates denominated as debt instruments and issued by a common law or statutory trust which is a REMIC.[18] In this regard, the applicant has provided the Department with further information regarding such certificates, as set forth below:

(1) The applicant states that the decision to structure a transaction as a sale (in the case of pass-through certificates) or as a secured financing (in the case of certificates denominated as debt) is made by a REMIC issuer on the basis of the accounting and other regulatory consequences to the issuer. In the absence of a specific regulatory framework (*e.g.*, limiting debt or equity investments to a specified percentage of an investment portfolio), investors in mortgage-backed securities do not distinguish between identically rated REMIC pass-through securities or debt instruments because (a) the tax treatment of REMIC pass-through securities and REMIC debt instruments is exactly the same, and (b) rated REMIC debt instruments are collateralized in accordance with rating agency guidelines and prescribed procedures so as to assure the same uninterrupted payment stream as a similarly rated pass-through security.[19]

(2) A mortgage pass-through certificate represents a beneficial ownership interest in a pool of mortgages held by the trustee of a common law or statutory trust. As explained in the preamble to the proposed exemption, the trustee contracts on behalf of certificateholders with a servicer, who undertakes to service the mortgages in accordance with the terms of the pooling and servicing agreement. A REMIC debt instrument, by contrast, represents the promise of an issuer to pay principal in a specified amount and interest thereon at a specified rate, secured by the pledge of a pool of mortgages (or pass-through certificates representing interests in such a pool, as described below) which is serviced by a servicer in accordance with the terms of the pooling and servicing agreement entered into with the issuer, a common law or statutory trust which is the owner of the mortgages. The issuer's promise to pay the debt holders is documented in an indenture entered into by the issuer and an indenture trustee who acts on behalf of the debt holders;

(3) In some cases, the issuer will issue pass-through certificates in addition to debt instruments.[20] Under those circumstances, investors in the REMIC debt instruments would have a security interest in the pass-through certificates. In other cases, the investors in REMIC debt instruments would have a security interest in "whole" mortgages which have not been previously securitized as pass-through certificates;

(4) In the case of REMIC debt instruments, the indenture trustee will either be the assignee of the issuer's interest in the pooling and servicing agreement or, if the debt instruments are

[18] Department of Labor regulation section 29 CFR 2510.3–101 clarifies the definition of "plan assets" for the purposes of Title I of ERISA. In general, the regulation provides that, in the case of a plan's investment in an equity interest of an entity that is neither a publicly-offered security nor a security issued by an investment company registered under the Investment Company Act of 1940, its assets include both the equity interest and an undivided interest in each of the underlying assets of the entity, unless the entity is an operating company or equity participation in the entity by benefit plan investors is not significant.

Regulation section 29 CFR 2510.3–101(b)(1) defines "equity interest" to mean any interest in an entity other than an instrument that is treated as indebtedness under applicable local law and which has no substantial equity features. The applicant is concerned that, in certain circumstances, REMIC interests in the form of debt instruments might be recharacterized as equity interests under this regulation.

[19] In this regard, S&P's notes that the issuer's credit worthiness, if applicable, is taken into account in determining the rating of REMIC securities. Thus, in the case of REMIC transactions structured as a sale, the financial condition of the seller will have no impact on the REMIC security. REMIC securities structured as debt, however, are impacted by the financial condition of the issuer. In a bankruptcy, payments would be interrupted causing timing delays to investors. Additionally, a bankruptcy judge would have the power to substitute collateral. Because of these concerns, S&P's indicates that it will only rate REMIC debt instruments in its highest rating categories (AAA, AA) when the issuer is a special purpose entity. Such special purpose entities are created solely for the purpose of issuing highly rated debt.

[20] In this situation, the pass-through certificates would be subordinate to the debt instruments and, consequently, this exemption would not apply to plan investment in such pass-through certificates.

secured by pass-through certificates representing beneficial interests in the issuer (and therefore beneficial interests in the underlying pooling and servicing agreement), the indenture trustee will obtain a security interest in the pass-through certificates, including rights represented thereby in the pooling and servicing agreement. As a result, in the case of REMIC instruments denominated as debt, the indenture trustee is responsible in the first instance for the enforcement of the servicing agreement.

In consideration of the comments provided regarding REMIC debt instruments, the Department believes that it is appropriate to revise the exemption to include such instruments, provided that they are issued by a statutory or common law trust and that the other representations contained in the preamble to the proposed exemption apply to these instruments (*e.g.*, that for tax reasons the trust must be maintained as an essentially passive entity). As a result, the Department has made certain conforming changes to the final exemption, as explained below:

(1) The definition of "Certificate" contained in subsection III.A. has been expanded to include a certificate denominated as a debt instrument that represents an interest in a REMIC and is issued by, and is an obligation of, a trust;

(2) The definition of "Trustee" contained in subsection III.H. has been expanded to include the trustee of the indenture trust, in the case of certificates which are denominated as debt instruments;

(3) The Department has added subsection III.V. which defines "Pooling and Servicing Agreement." This subsection states that "Pooling and Servicing Agreement" means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust, and, in the case of certificates which are denominated as debt instruments, also includes the indenture entered into between the trustee of the trust issuing such certificates and the indenture trustee.

Miscellaneous

1. Six comments were received requesting that the Department issue a class exemption that could be utilized by other investment banking firms, banks and bank affiliates which underwrite asset-backed securities. The comments requesting that the Department issue a class exemption included suggested modifications to the proposed exemption which these commentators believe should be made if the Department determines to issue a class exemption. In this regard, the Department notes that consideration of a class exemption is beyond the scope of this proceeding for individual exemptive relief. Finally, the Department wishes to take the opportunity to state that the commentators may wish to consider applications for individual relief under section 408(a) of ERISA.

2. In addition, other commentators requested that the Department amend PTE 83–1 (48 FR 895, January 7, 1983), Class Exemption for Certain Transactions Involving Mortgage Pool Investment Trusts, to incorporate certain changes which conform to any class or individual exemption the Department issues with respect to asset-backed securities. With respect to these comments, the Department notes that amendment of PTE 83–1 is beyond the scope of this proceeding.

3. Part II of the preamble to the proposed exemption states that to be an "accredited investor" under Rule 501(a)(1) of Regulation D under the Securities Act of 1933, a plan would need to have at least $5 million in assets, or the decision to invest in certificates would have to be made on behalf of the plan by a bank, insurance company or an investment adviser registered under the Investment Advisers Act of 1940. It has come to the Department's attention that Rule 501(a)(1) has recently been amended to include as an accredited investor a plan on behalf of which the investment decision is made by a savings and loan association. In the Department's view, such a plan would meet the requirement of subsection II.A.(6) of the exemption. Moreover, the Department contemplates that the condition contained in subsection II.A.(6) of the exemption would be met if the investing plan is an accredited investor within the meaning of Rule 501(a)(1) as amended from time to time.

4. One commentator suggested that the term "Underwriter" as defined in subsection III.C.(3) of the proposed exemption be modified to include members of the selling group which places certificates with investors, including plans, even though the members of the selling group are not members of the underwriting syndicate. After considering this comment, and discussing the modification with the applicant, the Department has determined to modify the definition of underwriter in subsection III.C.(3) of the exemption to include any member of a selling group of which Salomon or a person described in subsection III.C.(2) of the exemption is a manager or co-manager.

5. Two commentators requested clarification of the condition contained in subsection II.A.(2) of the proposed exemption that "the rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust". These commentators noted that, in a common form of subordinated certificate transaction, two classes of certificates ("A" and "B") are created and payments are shared pro rata among all certificates except that cash flow shortfalls resulting from defaults and delinquencies on the obligations in the pool are first borne by the subordinated "B" class. Thereafter, recoveries with respect to such defaulted payments would be available (to the extent that the other assets in the pool are producing sufficient cash flow to make distributions to the A class) to make distributions to the B class to the extent of the prior losses borne by such class. These commentators stated that they assume that the B class would be considered "subordinated" within the meaning of the proposed exemption and, thus, ineligible for exemptive relief. The commentators, however, requested that the Department clarify that the "A" class would not be considered subordinated merely because recoveries with respect to defaulted and delinquent obligations could result in the "B" class receiving "catch-up" payments. The Department concurs with the view expressed by the commentators.

In addition, these commentators state that it is unclear how the "no subordination" requirement would apply in the case of a REMIC trust in which the class A certificates described in the previous example could be further subdivided into several classes (*e.g.*, A–1 through A–4) with payment being made in sequence in the classes. Defaults on the underlying obligations in the pool would first be absorbed by the B class. However, in the event of massive defaults (*i.e.*, far in excess of rating agency projections) it is possible for the A–2 through A–4 classes to be subordinated to the prior A classes unless the governing documents provide otherwise. The commentators state that class A–2 through A–4 certificates in such a structure should not be treated differently from the class A–1 certificates. They further argue that the Department should consider permitting senior certificates of this type to qualify for relief, notwithstanding possible subordination to other classes of senior certificates, if another class of certificates is subordinated to all classes of senior certificates and the certificates in question have achieved a high rating

(*e.g.*, one of the two highest rating categories). The Department does not believe that it has a sufficient basis upon which to provide exemptive relief for any subordinated certificates at this time. Furthermore, the Department notes that the applicant has not requested such relief. Accordingly, the Department is not modifying the condition contained in subsection II.A.(2) of the proposed exemption as requested.

6. Three commentators requested that the Department make clear that "strip" and "fast-pay/slow-pay" certificates (described in item 5 of the preamble to the proposed exemption) would not be deemed to be subordinated merely because they are of classes having rights to disproportionate principal or interest payments or because they are of classes having different stated maturities. The Department notes that, as stated in Item 5 of the preamble to the proposed exemption, the applicants have represented that in neither case will the rights of a plan purchasing certificates be subordinated to the rights of another certificateholder in the event of default on any of the underlying obligations. The Department believes that the exemption would apply to any class of "strip" and "fast-pay/slow-pay" certificates to which that representation applies.

7. The Department received comments from D&P, Fitch Investors Services, Inc. (Fitch), and McCarthy, Crisanti & Maffei, Inc. (McCarthy), each requesting that it be included as an acceptable rating agency for rating all types of certificates covered by the exemption. As noted above, the applicant requested in its comment filed with the Department that the proposed exemption be modified to include D&P as an acceptable rating agency for rating all types of certificates covered by the exemption, and the Department has determined to modify the final exemption accordingly. However, since the applicant has not requested that the Department revise the proposed exemption to include Fitch and McCarthy as acceptable rating agencies, the Department has decided that it would not be appropriate to further modify the exemption in this manner. The Department wishes to emphasize, however, that no implication should be drawn regarding these rating agencies, and that the Department would be willing to consider these other rating agencies for rating certificates with regard to other asset-backed securities individual exemption requests.

8. Three commentators noted that the proposed exemption does not make clear whether the certificates covered by the proposed exemption must have received the requisite rating solely at the time of purchase by the plan, or whether such rating must be maintained while the plan holds the certificates. The commentators state that the exemption should specify that the rating requirement only applies at the time the certificates are purchased by the plan. The Department agrees with this comment and, accordingly, has modified subsection II.A.(3) of the exemption to clarify that the rating condition need only be met at the time the certificates are acquired by the plan. In this regard, the Department notes that ERISA section 404(a)(1)(B) would require that a fiduciary act prudently in determining whether a plan should continue to hold certificates, as well as with respect to the initial decision to purchase the certificates.

9. One commentator requested that the Department clarify that trusts containing assets of a type which have not been specifically considered by the Department would be covered by the exemption provided that such assets satisfy the condition set forth in section III.B. of the exemption. The Department agrees that the exemption would be available with respect to such trusts provided that the condition contained in section III.B. and the other conditions of the exemption are met.

10. One commentator stated that it is not clear whether the conditions imposed by paragraphs I.B.(1)(i) through (iv) (with respect to section 406(b) relief for sales or transfers in the initial issuance of certificates) would apply also to subsections I.B.(2) (with respect to section 406(b) relief for acquisitions or dispositions in the secondary market) and I.B.(3) (with respect to section 406(b) relief for the continued holding of certificates by a plan pursuant to subsections I.B.(1) or (2)). In response to the comment, the Department has clarified subsection I.B.(2) of the exemption to make clear that the relief contained therein is available provided that the conditions set forth in paragraphs I.B.(1)(i), (iii) and (iv) are met.

11. Two commentators questioned why retroactive exemptive relief was proposed for Salomon and First Boston as of November 1, 1985, whereas the effective date for Goldman Sachs' proposed exemption is January 1, 1987. In this regard, the Department notes that Salomon and First Boston, in their respective applications, requested an effective date of November 1, 1985, and that Goldman Sachs, Inc. requested an effective date of January 1, 1987.

After consideration of the entire record, the Department has determined to grant the exemption, as modified herein.

FOR FURTHER INFORMATION CONTACT: Kay Madsen of the Department, telephone (202) 523–8194. This is not a toll-free number.

First Boston Corporation (First Boston)—Exemption

Located in New York, New York
[Prohibited Transaction Exemption 89–90; Exemption Application No. D–6555]

I. Transactions

A. Effective November 1, 1985, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan (plan) when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A. (1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[21]

B. Effective November 1, 1985, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates

[21] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3–21(c).

between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.[22] For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1) (i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B. (1) or (2).

C. Effective November 1, 1987, the restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust; provided:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) The pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust.[23]

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in section III.S.

D. Effective November 1, 1985, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975(a) and (b) of the Code by reason of sections 4975(c)(1) (A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2) (F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

II. General Conditions

A. The relief provided under part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Corporation (S&P's), Moody's Investors Service, Inc. (Moody's), or Duff & Phelps Inc. (D&P);

(4) the trustee is not an affiliate of any member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith; and

(6) The plan investing in such certificates is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, or any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a convenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

[22] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[23] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

III. Definitions

For purposes of this exemption:

A. *"Certificate"* means:

(1) A certificate

(a) That represents a beneficial ownership interest in the assets of a trust; and

(b) That entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) A certificate denominated as a debt instrument—

(a) That represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) within the meaning of section 860D(a) of the Internal Revenue Code of 1986; and

(b) That is issued by and is an obligation of a trust; with respect to which First Boston or any of its affiliates is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this exemption, references to "certificates representing an interest in a trust" include certificates denominated as debt which are issued by a trust.

B. *"Trust"* means an investment pool, the corpus of which is held in trust and consists solely of:

(1) Either

(a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association);

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T);

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property, (including obligations secured by leasehold interests on commercial real property);

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U);

(e) "Guaranteed governmental mortgage pool certificates," as defined in 29 CFR 2510.3–101(i)(2);

(f) Fractional undivided interests in any of the obligations described in clauses (a)–(e) of this section B.(1);

(2) Property which had secured any of the obligations described in subsection B.(1);

(3) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to made to certificateholders; and

(4) Rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements with respect to any obligations described in subsection B.(1).

Notwithstanding the foregoing, the term "trust" does not include any investment pool unless: (i) the investment pool consists only of assets of the type which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by S&P's, Moody's, or D & P for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. *"Underwriter"* means:

(1) First Boston;

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with First Boston; or

(3) Any member of an underwriting syndicate or selling group of which First Boston or a person described in (2) is a manager or co-manager with respect to the certificates.

D. *"Sponsor"* means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. *"Master Servicer"* means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through sub-servicers, the assets of the trust.

F. *"Subservicer"* means an entity which, under the supervision of and on behalf of the master servicer, services loans contained in the trust, but is not a party to the pooling and servicing agreement.

G. *"Servicer"* means any entity which services loans contained in the trust, including the master servicer and any subservicer.

H. *"Trustee"* means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. *"Insurer"* means the insurer or guarantor of, or provider of other credit support for, a trust.

Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. *"Obligor"* means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, "obligor" shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. *"Excluded Plan"* means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

L. *"Restricted Group"* with respect to a class of certificates means:

(1) Each underwriter;

(2) Each insurer;

(3) The sponsor;

(4) The trustee;

(5) Each servicer;

(6) Any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) Any affiliate of a person described in (1)–(6) above.

M. *"Affiliate"* of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. *"Control"* means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be *"independent"* of another person only if:

(1) Such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or

renders investment advice with respect to any assets of such person.

P. *"Sale"* includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. *"Forward delivery commitment"* means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificate from, the other party).

R. *"Reasonable compensation"* has the same meaning as that term is defined in 29 CFR 2550.408c–2.

S. *"Qualified Administrative Fee"* means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect to the obligations;

(2) The servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) The amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. *"Qualified Equipment Note Secured By A Lease"* means an equipment note:

(a) Which is secured by equipment which is leased;

(b) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(c) With respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as the trust would have if the equipment note were secured only by the equipment and not the lease.

U. *"Qualified Motor Vehicle Lease"* means a lease of a motor vehicle where:

(a) The trust holds a security interest in the lease;

(b) The trust holds a security interest in the leased motor vehicle; and

(c) The trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as the trust would receive under a motor vehicle installment loan contract.

V. *"Pooling and Servicing Agreement"* means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, "Pooling and Servicing Agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

The exemption is subject to the express conditions that the facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on December 29, 1988 at 53 FR 52851.

Effective Date: This exemption is effective for transactions occurring on or after November 1, 1985.

Written Comments: The Department received eleven comments with regard to the proposed exemption. These are discussed below.

Applicant Comments

A. Summary of Facts and Representations

The applicant has commented on or clarified certain aspects of the proposed exemption. In this regard, item 1 of the preamble to the proposed exemption states that the First Boston is a wholly-owned subsidiary of First Boston, Inc., a publicly traded New York Stock Exchange company. The applicant notes that in December 1988, First Boston, Inc., merged with Financiere Credit Suisse—First Boston, which merged company is now called CS First Boston, Inc., a privately held company.

The applicant further notes that item 4 of the preamble to the proposed exemption states that, prior to the closing date, the sponsor acquires legal title to all assets selected for the trust. The applicant indicates that in many transactions, the sponsor acquires legal title to assets selected for the trust on the closing date and concurrently conveys to the trust legal title to the assets.

In addition, item 4 states that certificateholders are entitled to receive monthly or quarterly installments of principal and/or interest, or lease payments due on the receivables.

The applicant has requested that the Department clarify that the exemption is available for the receipt of semi-annual payments by certificateholders. In this regard, the applicant represents that when payments are made on this basis, funds are not permitted to be commingled with the servicer's assets for longer than would be permitted for a monthly-pay security. A segregated account is established in the name of the trustee (on behalf of certificateholders) to hold funds received between distribution dates. The account is under the sole control of the trustee, who invests the account's assets in short-term securities which have received a rating comparable to the rating assigned to the certificates. In some cases, the servicer may be permitted to make a single deposit into the account once a month. When the servicer makes such monthly deposits, payments received from obligors by the servicer may be commingled with the servicer's assets during the month prior to deposit. In no event will the period of time between receipt of funds by the servicer and deposit of these funds in a segregated account exceed one month. Furthermore, in those cases where distributions are made semi-annually, the servicer will furnish a report on the operation of the trust to the trustee on a monthly basis. At or about the time this report is delivered to the trustee, it will be made available to certificateholders and delivered to or made available to each rating agency that has rated certificates. After considering the applicant's comments with regard to semi-annual payments to certificateholders, the Department has concluded that the exemption is available for semi-annual (rather than monthly or quarterly) payments made to certificateholders, provided that the conditions set forth in the exemption are met.

With respect to item 5, the applicant notes that in some transactions fast pay/slow pay certificates may involve certificates which have the same maturities but different payment schedules.[24]

[24] First Boston also has clarified that if a trust issues subordinate certificates, holders of such subordinate certificates may not share in the amount distributed on a pro rata basis. The Department notes that the exemption does not provide relief for plan investment in such subordinated certificates.

Item 9 of the preamble to the proposed exemption states that the trustee's fee is paid by the sponsor or servicer. The applicant notes that in some transactions, the trustee's fee is not paid by the sponsor or servicer, but rather is paid out of trust assets. The method of compensating the trustee will be specified in the pooling and servicing agreement and disclosed in the prospectus or private placement memorandum relating to the offering of the certificates.

The second paragraph of item 11 of the preamble to the proposed exemption states, that as compensation for the receivable transferred to the trust, the sponsor receives certificates representing the entire beneficial interest in the trust which it sells for cash to investors or securities underwriters. The applicant has clarified that in some transactions the sponsor may retain a portion of the certificates for its own account. In addition, the applicant notes that in some transactions the originator may sell receivables to a trust for cash. At the time of the sale, the trustee would sell certificates to the public or to underwriters and use the cash proceeds of the sale to pay the originator for the receivable sold to the trust.

The second paragraph of item 13 states that the "credit support fee" paid to the servicer is paid out of interest income received on the receivables in excess of the pass-through rate. The applicant notes that in some transactions the "credit support fee" is paid in a lump sum at the time the trust is established.

With respect to item 16, the applicant notes that, for some public offerings, First Boston may sell certificates on an agency basis in a best efforts underwriting. In these cases, First Boston would receive an agency commission. The applicant further notes that in some private placements First Boston may buy certificates as principal, in which case its fee would consist of the difference between what it receives for the certificates that it sells and what it pays the sponsor for these certificates.

Item 17 of the preamble to the proposed exemption states that the pooling and servicing agreement generally provides that the servicer may purchase a receivable included in the trust when the balance payable on the receivable is reduced to a specified percentage (usually between 5 and 10 percent) of the initial balance. The applicant has clarified that the servicer may purchase the receivables then included in the trust when the aggregate unpaid balance on the receivables is reduced to a specified percentage (usually between 5 and 10 percent) of the initial aggregate unpaid principal balance.

Item 19 of the preamble to the proposed exemption states that where the master servicer or its affiliate provides credit support to the trust, the master servicer, in its capacity as servicer, will first advance funds if it determines that such advances are recoverable out of late payments by the obligors or amounts otherwise distributable to holders of subordinated certificates. Otherwise, the master servicer, as the provider of credit support, will be called upon to provide funds to cover such payments to the full extent of its obligations as insurer. The applicant notes that the arrangement described in item 19 is the typical arrangement. However, the applicant further notes that in some transactions the master servicer may not be obligated to advance funds, but instead would be called upon to provide funds to cover defaulted payments to the full extent of its obligations as insurer.[25] Morever, the applicant notes that a master servicer typically can recover advances either from the provider of credit support or from future payments on affected assets.

The applicant has requested the Department clarify that the conditions set forth in paragraph (d) of item 19 apply only where the master servicer and the insurer are affiliated or are the same entity. The applicant further requests clarification that, in the case of a trust that issues subordinated certificates which may be held by the servicer or its affiliates, the representations reflected in this paragraph would not apply insofar as the definition of insurer contained in section III.I. of the proposed exemption states that a person is not an insurer solely because it holds subordinated certificates. The Department concurs with this comment.

Part II of the preamble to the proposed exemption states that to be an "accredited investor" under rule 501(a)(1) of Regulation D under the Securities Act of 1933, a plan would need to have at least $5 million in assets, or the decision to invest in certificates would have to be made on behalf of the plan by a bank, insurance company or an investment adviser registered under the Investment Advisers Act of 1940. The applicant has commented that Rule 501(a)(1) has recently been amended to include as an accredited investor a plan on behalf of which the investment decision is made by a savings and loan association. In the Department's view, such a plan would meet the requirement of subsection II.A.(6) of the exemption. Moreover, the Department contemplates that the condition contained in subsection II.A.(6) of the exemption would be met if the investing plan is an accredited investor within the meaning of Rule 501(a)(1) as amended from time to time.

B. Proposed Exemption

Section I.A. of the proposed exemption states that "Section I.A. does not provide an exemption from the restrictions of section 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate by any person who has discretionary authority or renders investment advice with respect to the assets of an "Excluded Plan." The applicant requests that the Department clarify that the exception applies only when such fiduciary is purchasing or advising the purchase of a certificate for the Excluded Plan. The Department has adopted this comment and revised Section I.A. to clarify that the exception applies where a person having discretionary authority or rendering investment advice to an Excluded Plan is acquiring or holding a certificate on behalf of that Excluded Plan. Moreover, the Department has revised section I.A. to clarify that this exemption applies to persons rendering investment advice to an Excluded Plan within the meaning of Department regulation 2510.3-21(c), that is, rendering investment advice which would make them fiduciaries.

The applicant has also requested certain modifications to the exemption as proposed. Subparagraph I.B.(1)(ii) of the proposed exemption requires, with regard to section 406(b) relief for sales of certificates, that "solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates is acquired by persons independent of members of the "Restricted Group." The applicant notes that the sponsor may retain 100 percent of the subordinated class of certificates. The applicant has requested that the Department clarify that paragraph I.B.(1)(ii) requires only that this condition be satisfied with respect to classes of certificates to which the exemption applies. In this regard, the Department notes that the preamble to the proposed exemption, in describing this provision, provided that section 406(b) relief would be limited to situations where at least 50 percent of the aggregate interest in the trust is

[25] The applicant has clarified that where the master servicer provides credit support to the trust, it covers defaulted payments rather than delinquent payments as stated in item 19 of the proposed exemption.

acquired by persons independent of the Restricted Group. Upon consideration of this comment, the Department has determined to make two modifications to paragraph I.B.(1)(ii) of the exemption. Accordingly, under the final exemption, although the 50% test would not apply to classes of certificates in which plans do not invest, at least 50% of the aggregate interest in the trust (including all classes of certificates issued by the trust) must be acquired by persons independent of the Restricted Group.

Footnote 13 of the proposed exemption provides that "in the case of a private placement memorandum, such memorandum must contain the same information that would be disclosed in a prospectus if the offering of the certificates was made in a registered public offering under the Securities Act of 1933." The applicant maintains that footnote 13 is inconsistent with the policy of the federal securities laws regarding private placements. For example, in an offering that is made only to "accredited investors," there is no specific information that must be furnished to investors. Similarly, for the majority of private offerings, there is no specific information required. Rather, for all offerings, investors have the protection of the federal securities laws as well as any applicable "Blue Sky" and common law antifraud provisions. The applicant states that the essential requirements of these laws are that all material information regarding the offering be furnished or otherwise made available to each investor and that the offering materials be free of misleading statements and omissions. In light of the applicant's comments, the Department has determined to revise the footnote in the exemption to provide that in the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. Similarly, the Department has determined to modify subsection I.C.(2) to provide that the pooling and servicing agreement is provided to investing plans or described in all material respect in the prospectus or private placement memorandum. In this regard, the Department notes that the private placement memorandum must contain sufficient information to permit plan fiduciaries to make an informed investment decision.[26]

Subsection II.A.(3) of the proposed exemption conditions exemptive relief upon the certificates acquired by the plan having received a rating that is in one of the three highest generic rating categories from either Standard & Poors Corporation (S&P's), or Moody's Investors Service, Inc. (Moody's) in the case of all certificates covered by the exemption, or Duff & Phelps Inc. (D&P), if the certificates represent an interest in a trust containing obligations secured by multi-family residential or commercial real property. As stated in footnote 7 of the preamble to the proposed exemption, it was the Department's understanding at the time of publication of the proposed exemption that asset-backed securities underwritten by First Boston which are backed by assets other than multi-family residential mortgages or commercial mortgages have been rated by either S&P's or Moody's or both. First Boston has now requested that subsection II.A.(3) and section III.B. of the proposed exemption be modified to include D&P as an acceptable rating agency for rating all types of certificates covered by the exemption. First Boston represents that D&P has become increasingly active in rating all types of asset-backed securities, including certificates of the types described in the proposed exemption. First Boston believes that D&P is qualified to rate these types of certificates and expects to use D&P to rate these types of certificates in the future. Based on First Boston's representations, and additional information submitted by D&P, the Department has determined to revise the exemption to include D&P as an acceptable rating agency for rating all types of certificates covered by the exemption. In this regard, D&P represents that its rating process with respect to all types of certificates included in the proposed exemption is similar to and consistent with that described in the preamble to the proposed exemption.[27]

The applicant has also requested modification of section II.B. of the proposed exemption. This section generally provides that neither any underwriter, sponsor, trustee, servicer, insurer or any obligor (assuming it is not a fiduciary with respect to the plan assets used to acquire certificates) will be subject to penalties under section 502(i) of ERISA or sections 4975 (a) and (b) of the Code if the steps specified in this section are taken to ensure that an investing plan is an accredited investor, even if it is later determined that the plan is not an accredited investor. The applicant has expressed concern that if a plan is not an accredited investor, notwithstanding that the specified steps have been taken, the relief provided by Part I of the exemption would not be available. The Department has considered this comment and has determined to amend section II.B. of the proposed exemption be deleting "shall be subject to the civil penalties which may be assessed under section 501(i) of the Act, or the taxes imposed by sections 4975 (a) and (b) of the Code," and by substituting "shall be denied the relief provided under Part I" in lieu thereof.

The applicant has requested clarification of the definition of "trust" in section III.B. First, the applicant notes that pooling and servicing agreements commonly provide for the temporary investment of undistributed cash received from the servicer and held in the trust, together with the reinvestment income therein, pending distribution to certificateholders or application to the payment of trust expenses. The applicant, therefore, has requested that subsection III.B.(3) of the proposed exemption be amended to read as follows: "undistributed cash, or temporary investments made therewith maturing no later than the next distribution date; and". After considering this suggested change, the Department has determined to modify the exemption in the manner requested.

The applicant also requests clarification that the definition of "trust" in section III.B. of the proposed exemption would include trusts containing interest-bearing or discount obligations secured by shares issued by a cooperative housing association. After considering this comment, the Department has determined to revise paragraph III.B.(1)(a) of the exemption such that the category of trusts containing "secured consumer receivables that bear interest or are

[26] For purposes of clarity, the Department has substituted the term "private placement memorandum" in the final exemption for "private offering memorandum" as used in the proposed exemption.

[27] D&P has notified the Department that it has recently changed its rating scale for all long-term fixed income securities, including certificates included in the exemption, from the numerical scale described in the preamble to the proposed exemption to alphabetical designations which are consistent with the designations utilized by S&P's. As does S&P, D&P will use "+" and "−" to designate further refinements within a given rating category. Thus, for example, the highest rating of "D&P-1" has been replaced with an "AAA" rating, "D&P-2" has been replaced with an "AA+" rating, and "D&P-7" has been replaced with an "A−" rating. D&P represents that it changed to alphabetical designations to facilitate the ease of use of its ratings by investors, and that no other aspect of D&P's rating procedure will change as a result of the new rating scale.

purchased at a discount" includes "obligations secured by shares issued by a cooperative housing association." For purposes of clarification, the Department has also determined to amend subsection III.B.(4) of the proposed exemption to include "rights of the trustee under the pooling and servicing agreement."

Finally, the proposed exemption only would apply to certificates representing a beneficial ownership interest in the assets of a trust that entitle the holder to pass-through payments of principal, interest and/or other payments made with respect to the assets of such trust. In commenting on the proposed exemption, the applicant requested that the Department expand the exemption to cover certificates denominated as debt instruments and issued by a common law or statutory trust which is a REMIC.[28] In this regard, the applicant has provided the Department with further information regarding such certificates, as set forth below:

(1) The applicant states that the decision to structure a transaction as a sale (in the case of pass-through certificates) or as a secured financing (in the case of certificates denominated as debt) is made by a REMIC issuer on the basis of the accounting and other regulatory consequences to the issuer. In the absence of a specific regulatory framework (*e.g.*, limiting debt or equity investments to a specified percentage of an investment portfolio), investors in mortgage-backed securities do not distinguish between identically rated REMIC pass-through securities or debt instruments because (a) the tax treatment of REMIC pass-through securities and REMIC debt instruments is exactly the same, and (b) rated REMIC debt instruments are collateralized in accordance with rating agency guidelines and prescribed procedures so as to assure the same uninterrupted payment stream as a similarly rated pass-through security; [29]

(2) A mortgage pass-through certificate represents a beneficial ownership interest in a pool of mortgages held by the trustee of a common law or statutory trust. As explained in the preamble to the proposed exemption, the trustee contracts on behalf of certificate holders with a servicer, who undertakes to service the mortgages in accordance with the terms of the pooling and servicing agreement. A REMIC debt instrument, by contrast, represents the promise of an issuer to pay principal in a specified amount and interest thereon at a specified rate, secured by the pledge of a pool of mortgages (or pass-through certificates representing interests in such a pool, as described below) which is serviced by a servicer in accordance with the terms of the pooling and servicing agreement entered into with the issuer, a common law or statutory trust which is the owner of the mortgages. The issuer's promise to pay the debt holders is documented in an indenture entered into by the issuer and an indenture trustee who acts on behalf of the debt holders;

(3) In some cases, the issuer will issue pass-through certificates in addition to debt instruments.[30] Under those circumstances, investors in the REMIC debt instruments would have a security interest in the pass-through certificates. In other cases, the investors in REMIC debt instruments would have a security interest in "whole" mortgages which have not been previously securitized as pass-through certificates;

(4) In the case of REMIC debt instruments, the indenture trustee will either be the assignee of the issuer's interest in the pooling and servicing agreement or, if the debt instruments are secured by pass-through certificates representing beneficial interests in the issuer (and therefore beneficial interests in the underlying pooling and servicing agreement), the indenture trustee will obtain a security interest in the pass-through certificates, including rights represented thereby in the pooling and servicing agreement. As a result, in the case of REMIC instruments denominated as debt, the indenture trustee is responsible in the first instance for the enforcement of the servicing agreement.

In consideration of the comments provided regarding REMIC debt instruments, the Department believes that it is appropriate to revise the exemption to include such instruments, provided that they are issued by a statutory or common law trust and that the other representations contained in the preamble to the proposed exemption apply to these instruments (*e.g.*, that for tax reasons the trust must be maintained as an essentially passive entity). As a result, the Department has made certain conforming changes to the final exemption, as explained below:

(1) The definition of "Certificate" contained in subsection III.A. has been expanded to include a certificate denominated as a debt instrument that represents an interest in a REMIC and is issued by, and is an obligation of, a trust;

(2) The definition of "Trustee" contained in subsection III.H. has been expanded to include the trustee of the indenture trust, in the case of certificates which are denominated as debt instruments;

(3) The Department has added subsection III.V. which defines "Pooling and Servicing Agreement". This subsection states that "Pooling and Servicing Agreement" means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust, and, in the case of certificates which are denominated as debt instruments, also includes the indenture entered into between the trustee of the trust issuing such certificates and the indenture trustee.

Miscellaneous

1. Six comments were received requesting that the Department issue a class exemption that could be utilized by other investment banking firms, banks and bank affiliates which underwrite asset-backed securities. The comments requesting that the Department issue a class exemption included suggested modifications to the proposed exemption which these commentators believe should be made if the Department determines to issue a class exemption. In this regard, the Department notes that consideration of

[28] Department of Labor regulation section 29 CFR 2510.3–101 clarifies the definition of "plan assets" for the purposes of Title I of ERISA. In general, the regulation provides that, in the case of a plan's investment in an equity interest of an entity that is neither a publicly-offered security nor a security issued by an investment company registered under the Investment Company act of 1940, its assets include both the equity interest and an undivided interest in each of the underlying assets of the entity, unless the entity is an operating company or equity participation in the entity by benefit plan investors is not significant.

Regulation section 29 CFR 2510.3–101(b)(1) defines "equity interest" to mean any interest in an entity other than an instrument that is treated as indebtedness under applicable local law and which has no substantial equity features. The applicant is concerned that, in certain circumstances, REMIC interests in the form of debt instruments might be recharacterized as equity interests under this regulation.

[29] In this regard, S&P's notes that the issuer's credit worthiness, if applicable, is taken into account in determining the rating of REMIC securities. Thus, in the case of REMIC transactions structured as a sale, the financial condition of the seller will have no impact on the REMIC security. REMIC securities structured as debt, however, are impacted by the financial condition of the issuer. In a bankruptcy, payments would be interrupted causing timing delays to investors. Additionally, a bankruptcy judge would have the power to substitute collateral. Because of these concerns, S&P's indicates that it will only rate REMIC debt instruments in its highest rating categories (AAA, AA) when the issuer is a special purpose entity. Such special purpose entities are created solely for the purpose of issuing highly rated debt.

[30] In this situation, the pass-through certificates would be subordinate to the debt instruments and, consequently, this exemption would not apply to plan investment in such pass-through certificates.

a class exemption is beyond the scope of this proceeding for individual exemptive relief. Finally, the Department wishes to take the opportunity to state that the commentators may wish to consider applications for individual relief under section 408(a) of ERISA.

2. In addition, other commentators requested that the Department amend PTE 83–1 (48 FR 895, January 7, 1983), Class Exemption for Certain Transactions Involving Mortgage Pool Investment Trusts, to provide certain changes which conform to any class or individual exemption the Department issues with respect to asset-backed securities. With respect to these comments, the Department notes that amendment of PTE 83–1 is beyond the scope of this proceeding.

3. One commentator suggested that the term "Underwriter" as defined in subsection III.C.(3) of the proposed exemption be modified to include members of the selling group which places certificates with investors, including plans, even though the members of the selling group are not members of the underwriting syndicate. After considering this comment, and discussing the modification with the applicant, the Department has determined to modify the definition of underwriter in subsection III.C.(3) of the exemption to include any member of a selling group of which First Boston or a person described in subsection III.C.(2) of the exemption is a manager or co-manager.

4. Two commentators requested clarification of the condition contained in subsection II.A.(2) of the proposed exemption that "the rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust". These commentators noted that, in a common form of subordinated certificate transaction, two classes of certificates ("A" and "B") are created and payments are shared pro rata among all certificates except that cash flow shortfalls resulting from defaults and delinquencies on the obligations in the pool are first borne by the subordinated "B" class. Thereafter, recoveries with respect to such defaulted payments would be available (to the extent that the other assets in the pool are producing sufficient cash flow to make distributions to the A class) to make distributions to the B class to the extent of the prior losses borne by such class. These commentators stated that they assume that the B class would be considered "subordinated" within the meaning of the proposed exemption and, thus, ineligible for exemptive relief. The commentators, however, requested that the Department clarify that the "A" class would not be considered subordinated merely because recoveries with respect to defaulted and delinquent obligations could result in the "B" class receiving "catch-up" payments. The Department concurs with the view expressed by the commentators.

In addition, these commentators state that it is unclear how the "no subordination" requirement would apply in the case of a REMIC trust in which the class A certificates described in the previous example could be further subdivided into several classes (*e.g.*, A–1 through A–4) with payment being made in sequence in the classes. Defaults on the underlying obligations in the pool would first be absorbed by the B class. However, in the event of massive defaults (*i.e.*, far in excess of rating agency projections) it is possible for the A–2 through A–4 classes to be subordinated to the prior A classes unless the governing documents provide otherwise. The commentators state that class A–2 through A–4 certificates in such a structure should not be treated differently from the class A–1 certificates. They further argue that the Department should consider permitting senior certificates of this type to qualify for relief, notwithstanding possible subordination to other classes of senior certificates, if another class of certificates is subordinated to all classes of senior certificates and the certificates in question have achieved a high rating (*e.g.*, one of the two highest rating categories). The Department does not believe that it has a sufficient basis upon which to provide exemptive relief for any subordinated certificates at this time. Furthermore, the Department notes that the applicant has not requested such relief. Accordingly, the Department is not modifying the condition contained in subsection II.A.(2) of the proposed exemption as requested.

5. Three commentators requested that the Department make clear that "strip" and "fast-pay/slow-pay" certificates (described in item 5 of the preamble to the proposed exemption) would not be deemed to be subordinated merely because they are of classes having rights to disproportionate principal or interest payments or because they are of classes having different stated maturities. The Department notes that, as stated in Item 5 of the preamble to the proposed exemption, the applicants have represented that in neither case will the rights of a plan purchasing certificates be subordinated to the rights of another certificateholder in the event of default on any of the underlying obligations. The Department believes that the exemption would apply to any class of "strip" and "fast-pay/slow-pay" certificates to which that representation applies.

6. The Department received comments from D&P, Fitch Investors Services, Inc. (Fitch), and McCarthy, Crisanti & Maffei, Inc. (McCarthy), each requesting that it be included as an acceptable rating agency for rating all types of certificates covered by the exemption. As noted above, the applicant requested in its comment filed with the Department that the proposed exemption be modified to include D&P as an acceptable rating agency for rating all types of certificates covered by the exemption, and the Department has determined to modify the final exemption accordingly. However, since the applicant has not requested that the Department revise the proposed exemption to include Fitch and McCarthy as acceptable rating agencies, the Department has decided that it would not be appropriate to further modify the exemption in this manner. The Department wishes to emphasize, however, that no implication should be drawn regarding these rating agencies, and that the Department would be willing to consider these other rating agencies for rating certificates with regard to other asset-backed securities individual exemption requests.

7. Three commentators noted that the proposed exemption does not make clear whether the certificates covered by the proposed exemption must have received the requisite rating solely at the time of purchase by the plan, or whether such rating must be maintained while the plan holds the certificates. The commentators state that the exemption should specify that the rating requirement only applies at the time the certificates are purchased by the plan. The Department agrees with this comment and, accordingly, has modified subsection II.A.(3) of the exemption to clarify that the rating condition need only be met at the time the certificates are acquired by the plan. In this regard, the Department notes that ERISA section 404(a)(1)(B) would require that a fiduciary act prudently in determining whether a plan should continue to hold certificates, as well as with respect to the initial decision to purchase the certificates.

8. One commentator requested that the Department clarify that trusts containing assets of a type which have not been specifically considered by the Department would be covered by the exemption provided that such assets

satisfy the condition set forth in section III.B. of the exemption. The Department agrees that the exemption would be available with respect to such trusts provided that the condition contained in section III.B. and the other conditions of the exemption are met.

9. One commentator stated that it is not clear whether the conditions imposed by paragraphs I.B.(1)(i) through (iv) (with respect to section 406(b) relief for sales or transfers in the initial issuance of certificates) would apply also to subsections I.B.(2) (with respect to section 406(b) relief for acquisitions or dispositions in the secondary market) and I.B.(3) (with respect to section 406(b) relief for the continued holding of certificates by a plan pursuant to paragraphs I.B.(1) or (2)). In response to the comment, the Department has clarified subsection I.B.(2) of the exemption to make clear that the relief contained therein is available provided that the conditions set forth in paragraphs I.B.(1)(i), (iii) and (iv) are met.

10. Two commentators questioned why retroactive exemptive relief was proposed for Salomon and First Boston as of November 1, 1985, whereas the effective date for Goldman Sachs' proposed exemption was January 1, 1987. In this regard, the Department notes that First Boston and Salomon, in their respective applications, requested an effective date of November 1, 1985, and that Goldman Sachs, Inc., requested an effective date of January 1, 1987.

After consideration of the entire record, the Department has determined to grant the exemption, as modified herein.

FOR FURTHER INFORMATION CONTACT: Kay Madsen of the Department, telephone (202) 523–8194. This is not a toll-free number.

Exemption

Located in Pensacola, Florida
[Prohibited Transaction Exemption 89–91; Exemption Application No. D–8003]

The restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to (1) the loan (the Loan) of $60,000 by the Plan to Clark, Partington, Hart & Hart, P.A. (the Employer), a party in interest with respect to the Plan; and (2) the joint and several guarantees (the Guarantees) of the Loan by eight principals of the Employer, each a party in interest with respect to the Plan, provided that the terms and conditions of the Loan and the Guarantees are not less favorable to the Plan than those obtainable in an arm's-length transaction with unrelated parties.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on August 23, 1989, at 54 FR 35098.

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver of the Department, telephone (202 523–8881. (This is not a toll-free number.)

Exemption

Located in Danville, California
[Prohibited Transaction Exemption 80–92; Exemption Application No. D–8035]

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed cash purchase by the IRA from Franklyn W. Meyer, a disqualified person with respect to the IRA, of 1,075 shares of the Windsor Fund, provided that the terms and conditions of the transaction are at least as favorable to the IRA as those obtainable in an arm's-length transaction between unrelated parties.[31]

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on August 30, 1989 at 54 FR 35948.

FOR FURTHER INFORMATION CONTACT: Mrs. B. S. Scott of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) the availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 11th day of October, 1989.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 89–24355 Filed 10–16–89; 8:45 am]

BILLING CODE 4510–29–M

[31] Pursuant to the provisions contained in 29 CFR 2510.3–2(d), the IRA is not subject to Title I of the Act. However, the IRA is subject to Title II of the Act pursuant to section 4975 of the Code

Pension and Welfare Benefits Administration

Advisory Council on Employee Welfare and Pension Benefits Plans; Work Group Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Work Group on Pension Portability of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 12:30 p.m., Tuesday, November 7, 1989, in suite C–5322, seminar room #6, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This eight member work group was formed by the Advisory Council to study issues relating to Pension Portability for employee welfare plans covered by ERISA.

The purpose of the Pension PortabilityWork Group is to discuss the current status of portability of pension benefits in light of recent legislation lowering minimum vesting requirements, and hear testimony on methods to preserve accrued benefits through private and public fiscal intermediaries as an alternative to lump sum distributions to plan participants.

The agenda for the meeting will include the following:

I. Opening Remarks of Work Group Chairperson.

II. Review and Discussion of 1988 Report of the ERISA Advisory Council to the Secretary of Labor on Portability and Preservation of Pensions.

III. Discussion of Portability Issues and Formulation of Work Group Priorities.

(a) Impact of Lowered Vesting Requirements.

(b) Public and Private Clearinghouse for Pre-retirement Pension Distributions.

(c) Indexing and Other Portability Enhancements to Deferred Vested Pension Benefits.

IV. Statements From The General Public.

V. Adjournment.

The Work Group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals, or representatives or organizations, wishing to address the Work Group should submit written requests on or before November 2, 1989 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N-5677, 200 Constitution Avenue, NW., Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before November 2, 1989.

Signed at Washington, DC, this 12th day of October, 1989.

Ann Combs,

Deputy Assistant Secretary for Policy, Pension and Welfare Benefits Administration.

[FR Doc. 89-24459 Filed 10-16-89; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[89-72]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting change.

Federal Register citation of previous announcement: 54 FR 39235, Notice Number 89-66, September 25, 1989.

Previously announced times and dates of meeting: October 18, 1989, 8:30 a.m. to 5:15 p.m.; October 19, 1989, 8 a.m. to 5 p.m.; and October 20, 1989, 8 a.m. to 2:30 p.m.

Changes in the meeting: Dates and Times changed to October 18, 1989, 8:30 a.m. to 5:15 p.m.; and October 19, 1989, 8 a.m. to 5 p.m.

Contact person for more information: Ms. Catherine Smith, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2367.

Dated: October 10, 1989.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 89-24414 Filed 10-16-89; 8:45 am]

BILLING CODE 7510-01M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel Meeting

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506, telephone 202-786-0322.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or (3) information the disclosure of which would significantly frustrate implementation of proposed agency action, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

1. *Date:* November 2, 1989
Time: 8:30 a.m. to 5:00 p.m.
Room: 315
Program: This meeting will review applications for Regrant Conferences, submitted to the Division of Research Programs, for projects beginning after April 1, 1990.

2. *Date:* November 2-3, 1989
Time: 9:00 a.m. to 5:30 p.m.
Room: 430
Program: This meeting will review applications submitted to Humanities Projects in Libraries and Archives Programs, submitted to the Division of General Programs, for projects beginning after April 1, 1990.

3. *Date:* November 2-3, 1989
Time: 8:30 a.m. to 5:30 p.m.
Room: 415
Program: This meeting will review applications submitted for Humanities in Media, submitted to the Division of General Programs, for projects beginning after April 1, 1990.

4. *Date:* November 8-9, 1989
Time: 8:30 a.m. to 5:30 p.m.
Room: 415
Program: This meeting will review applications submitted for Humanities Projects in Media, submitted to the Division of Research Programs, for projects beginning after April 1, 1990.

5. *Date:* November 9, 1989
Time: 9:00 a.m. to 5:30 p.m.
Room: 315
Program: This meeting will review proposals in Higher Education in the Humanities Program, submitted to the Division of Education Programs, for projects beginning after April 1, 1990.

6. *Date:* November 13, 1989
Time: 9:00 a.m. to 5:30 p.m.
Room: 315
Program: This meeting will review proposals in Higher Education in the Humanities, submitted to the Division of Education Programs, for projects beginning after April 1, 1990.

7. *Date:* November 15, 1989
Time: 9:00 a.m. to 5:30 p.m.
Room: 315

Program: This meeting will review proposals in Higher Education in the Humanities Program, submitted to the Division of Education Programs, for projects beginning after April 1, 1990.

8. *Date:* November 17, 1989
Time: 9:00 a.m. to 5:30 p.m.
Room: 315
Program: This meeting will review proposals in Higher Education in the Humanities Program, submitted to the Division of General Programs, for projects beginning after April 1, 1990.

9. *Date:* November 20, 1989
Time: 9:00 a.m. to 5:30 p.m.
Room: 315
Program: This meeting will review proposals in Higher Education in the Humanities Program, submitted to the Division of Education Programs, for projects beginning after April 1, 1990.

10. *Date:* November 21, 1989
Time: 9:00 a.m. to 5:30 p.m.
Room: 315
Program: This meeting will review proposals in Higher Education in the Humanities Program, submitted to the Division of Education Programs, for projects beginning after April 1, 1990.

11. *Date:* November 21, 1989
Time: 9:00 a.m. to 5:30 p.m.
Room: 315
Program: This meeting will review proposals in Higher Education in the Humanities Program, submitted to the Division of Research Programs, for projects beginning after April 1, 1990.

12. *Date:* November 21, 1989
Time: 9:00 a.m. to 5:30 p.m.
Room: 315
Program: This meeting will review proposals in Higher Education in the Humanities Program, submitted to the Division of Education Programs, for projects beginning after April 1, 1990.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 89-24468 Filed 10-16-89; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

Northern States Power Co.; Designation of Presiding Officer

[Docket No. 30-05004-MLA; ASLBP No. 90-599-01-ML]

Purusuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, a single member of the Atomic Safety and Licensing Board Panel is hereby designated to rule on petitions for leave to intervene and/or requests for hearing and, if necessary, to serve as the presiding officer to conduct the hearing in the event that an informal adjudicatory hearing is ordered in the following Materials Licensing proceeding.

Northern States Power Company

Pathfinder Atomic Plant, Byproduct Material License No. 22-08799-02

The Presiding Office is being designated pursuant to 10 CFR 2.1207 of the Commission's Regulations, "Informal Hearing Procedures for Materials Licensing Adjudications," published in the **Federal Register**, 54 FR 8269 (1989). This action is in response to requests for an adjudicatory hearing submitted by Citizens for Responsible Government, the South Dakota Resources Coalition, the Technical Information Project, and Catherine Hunt. The requestors desire a hearing on the application of Northern States Power Company for an amendment to Byproduct Material License No. 22-08799-02 which would authorize the Licensee to perform final decommissioning of the fuel handling building and the reactor building in accordance with the Licensee's decomissioning plan. The License amendment request was submitted to the Commission by letter dated July 18, 1989. (See 54 FR 35267, August 24, 1989)

The presiding officer in this proceeding is Administrative Law Judge Morton B. Margulies.

Following consultation with the Panel Chairman, pursusnt to the provisions of 10 CFR 2.722, the Presiding Officer has appointed Administrative Judge Jerry R. Kline to assist the Presiding Officer in taking evidence and in preparing a suitable record for review.

All correspondence, documents and other materials shall be filed with Judge Margulies and Judge Kline in accordance with 10 CFR 2.701. Their addresses are:

Administration Law Judge Morton B. Margulies, Presiding Officer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555;

Administrative Judge Jerry R. Kline, Special Assistant, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Bethesda, Maryland, this 11th day of October 1989.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 89-24454 Filed 10-16-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 030-05980-OM-2, 030-05981-OM-2, 030-05982-OM-2, 030-08335-OM-2, 030-08444-OM-2; ASLBP No. 90-598-01-OM-2]

Safety Light Corp. et al.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established to preside over the following proceeding.

Safety Light Corporation, Et Al.

Byproduct Material License Nos. 37-00030-02, 37-00030-08 37-00030-07E 37-00030-09G 37-00030-10G

(Order Modifying Licenses)

E.A. 89-29

This Board is being designated pursuant to Licensee's request for a hearing regarding an order issued by the Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support, dated August 21, 1989, entitled "Order Modifying Licenses (Effective Immediately)" in the matter of Safety Light Corporation; United States Radium Corporation; USR Industries, Inc.; USR Lighting, Inc.; USR Chemical, Inc.; USR Metals, Inc.; USR Natural Resources, Inc.; Lime Ridge Industries, Inc.; Metreal, Inc.; and all other successor corporations to either USR Industries or U.S. Radium Corporation. (54 FR 36078, August 31, 1989)

The Board is comprised of the following administrative judges:

Helen F. Hoyt, Chair, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555;

Oscar H. Paris, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555;

Frederick J. Shon Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Bethesda, Maryland, this 11th day of October 1989.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 89-24453 Filed 10-16-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-361 and 50-362]

Southern California Edison Co., et al.; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 77 to Facility Operating License No. NPF-10 and Amendment No. 65 to Facility Operating License No. NPF-15, issued to Southern California Edison Company, San Diego Gas and Electric Company, The City of Riverside, California and the City of Anaheim, California (the licensees), which revised the Technical Specifications for operation of the San Onofre Nuclear Generating Station, Units 2 and 3, located in San Diego County, California.

The amendments were effective as of the date of issuance.

These amendments revise Technical Specification 3/4.6.1.7, "Containment Ventilation System," to limit the purposes for which the 8-inch containment purge supply and exhaust isolation valves may be opened during power operation, to provide flexibility in sealing the penetrations, and to clarify the surveillance requirements on the 42-inch lines. The amendments are in response to an application for amendments designated as PCN-221.

The application for amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR chapter I, which is set forth in the license amendments.

Notice of Consideration of Issuance of Amendments and Opportunity for Hearing in connection with this action was published in the **Federal Register** on May 4, 1989 (54 FR 19271). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined that an environmental impact statement will not be prepared and that issuance of the amendment will have no significant adverse effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendments dated May 25, 1988, as revised April 4, 1989, (2) Amendment No. 77 to License No. NPF-10 and Amendment No. 65 to License No. NPF-15, (3) the Commission's related Safety Evaluation and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and the General Library, University of California, P.O. Box 19557, Irvine, California 92713. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 4th day of October, 1989.

For the Nuclear Regulatory Commission

Lawrence E. Kokajko,

Project Manager, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-24456 Filed 10-16-89; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Demonstration Project: Department of Agriculture

AGENCY: Office of Personnel Management.

ACTION: Notice of amendment of the proposed U.S. Department of Agriculture demonstration project plan.

SUMMARY: This action provides for changes in the preliminary project plan published August 23, 1989, to expand the list of experimental and comparison sites under the project.

DATE: Comments must be received on or before November 17, 1989.

ADDRESS: Send comments to Donna Beecher, Assistant Director for Systems Innovation and Simplification, U.S. Office of Personnel Management, Room 7433, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Mary Ellen Recchia, (202) 447-8580, at U.S. Department of Agriculture; Paul R. Thompson, (202) 632-6164, at Office of Personnel Management.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1989, OPM published a preliminary plan to demonstrate an alternative personnel management system at the U.S. Department of Agriculture under chapter 47 of title 5, U.S. Code. The project tests four major innovations in current personnel policy and practice:

(1) Delegation of authority for the day-to-day recruitment and hiring process to the agency for internal redelegation, as appropriate;

(2) A streamlined candidate assessment and selection process, based on greater delegation of direct hire authority and replacement of numerical ratings with broad quality groupings;

(3) Recruitment incentives, including bonuses and relocation expenses, to attract candidates to hard-to-fill positions; and

(4) Establishment of a 2-3 year provisional appointment, to provide greater opportunity to evaluate employee performance before granting career status.

The demonstration will cover up to 5000 newly hired employees, at any given time, at over 130 locations within the Forest Service and the Agricultural Research Service. Covered employees will represent all occupational groups and grade levels (excluding SES) at the project sites, including both General Schedule (GS) and Federal Wage System (FWS) employees.

The preliminary project notice did not identify any experimental or comparison sites in Region 5 of the Forest Service or the Pacific Southwest Forest and Range Experiment Station. These sites were originally selected at random for inclusion in the project. They were not, however, listed in the original notice because of concerns within USDA about ongoing litigation in this area. These concerns have now been largely resolved, permitting inclusion of the selected sites within Region 5 and the Experiment Station in the project. With the additional sites, project participation will still not exceed the statutory limit of 5000 employees at any given time.

As stated in the August 23, 1989, notice, a public hearing will be conducted by OPM at the Department of Agriculture in Washington, DC on October 18, 1989. At that time interested persons or organizations may present their written or oral comments on the proposed demonstration project. Anyone wishing more information may telephone the person listed under "**FOR FURTHER INFORMATION CONTACT.**"

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Project Plan Modification

The preliminary project plan which appeared in the **Federal Register** on August 23, 1989 (54 FR 35134) is hereby modified by adding several experimental and comparison sites from the Forest Service.

In Appendix B, "Experimental and Comparison Sites Forest Service" (54 FR 35145), add to the list of experimental sites the following:

Region 5

Angeles NF
Inyo NF
Klamath NF (includes Six Rivers and Modoc NF)
Los Padres NF
Plumas NF (includes Lassen and Mendocino NF)
Region 5 Regional Office
Shasta-Trinity NF
Sierra NF (includes Sequoia and Stanislaus NF)
Tahoe NF/Basin

Research Unit

Pacific Southwest Forest and Range Experiment Station

To the list of *comparison* sites (54 FR 35145), add the following:

Region 5

Cleveland NF
Eldorado NF
San Bernardino NF

[FR Doc. 89-24513 Filed 10-16-89; 8:45 am]
BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-27282; File No. SR-BSE-89-06]

Self-Regulatory Organizations; Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to Amendments to Chapters XXXI of the BSE Rules Relating to ITS Rules on the Determination of the "Previous Day's Consolidated Closing Price"

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on September 19, 1989, the Pacific Stock Exchange Incorporated ("PSE" or the "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Boston Stock Exchange Incorporated ("BSE" or "Exchange"), proposes to amend Chapter XXXI, Paragraph 2501 (Intermarket Trading System) to adjust its Intermarket Trading System ("ITS") rules to conform to recent changes in the ITS system as adopted by the participating ITS members. These changes relate to the determination of the "previous day's consolidated closing price".[1]

The term "previous day's consolidated closing price" as used in Exchange rules means the last price at which a transaction in a security was reported by the consolidated last sale reporting system on the last previous day on which transactions in the security were reported by such system. The proposed rule change would provide that in the event that unusual market conditions render prices, on a broad scale, inappropriate as the basis for the Pre-Opening Application the Exchange may specify that the "previous day's consolidated closing price" for all Network A or Network B Eligible Securities shall be the last price at which a transaction in the stock was reported by the New York Stock Exchange, Inc. ("NYSE") or the American Stock Exchange, Inc. (AMEX").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

The purpose of this rule amendment is to promote cooperation and facilitation of transactions among the ITS participants. The Intermarket Trading Systems (ITS) was adopted for the purpose of enabling the participating market centers to act jointly in planning, developing, operating and regulating the System and its application so as to further the objectives of Congress as set forth in section 11A(a) of the Act.

Representatives from earlier participating market centers meet periodically during each year for the purpose of reviewing current ITS rules and, of course, areas where further interpretation and/or rules becomes necessary. This amendment was the result of such meetings where representatives unanimously voted to adopt such an amendment to the ITS Plan and incorporate the same within each market center's regulatory framework. It is expected that each participating market center will file a separate 19b-4 covering "Previous day's consolidated closing price."

This amendment to the BSE rules will bring BSE ITS rules in concert with the ITS plan changes approved by all participants. Further, these new procedures will help to expedite the proper determination and dissemination of the previous day's consolidated closing prices especially during and/or following unusual market conditions.

The statutory basis for this rule change is section 6(b)(5) of the Securities Exchange Act of 1934 in that it is designed to facilitate transactions in securities and perfect the mechanism of a national market system. Further, as noted herein concerning the Intermarket Trading System this amendment furthers the objectives of Congress as set forth in Section 11A(a) of the Act.

(B) Self-Regulatory Organization's Statement on Burden on Competition

No burden on competition is perceived by the adoption of this rule amendment.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of the publication of this notice in the **Federal Register** or within such longer period: (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written date, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the

[1] The appendix to this notice contains the specific rule change.

submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other that those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspections and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 7, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 20, 1989.

Jonathan G. Katz,

Secretary.

Appendix

Proposed ITS Rule Amendments (italics indicate language to be added; brakets indicate language to be deleted)

Chapter XXXI

Intermarket Trading System

Paragraph 2501 (insert under the margin heading Pre-Opening Application—Openings on the Exchange).

(8) (i) *The term "Previous Day's Consolidated Closing Price" as used in Exchange rules shall mean the last price at which a transaction in a security was reported by the consolidated last sale reporting system on the last previous day on which transactions in the security were reported by such system; provided, however that in the event that unusual market conditions render prices inappropriate, as the basis for the Pre-Opening Application, the Exchange may specify that the "previous day's consolidated closing price" for all Network A or Network B eligible Securities shall be the last price at which a transaction in the stock was reported by the New York Stock Exchange, Inc. ("NYSE") or the American Stock Exchange, Inc. ("AMEX"), respectively pursuant to the ITS plan.*

[FR Doc. 89-24484 Filed 10-16-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27283; File No. SR-CSE-89-03]

Self-Regulatory Organizations; Proposed Change by the Cincinnati Stock Exchange relating to the Intermarket Trading System Pre-Opening Application.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on September 15, 1989, the Cincinnati Stock Exchange (the "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Cincinnati Stock Exchange proposes to amend Rule 14.1 in order to conform its rules to recent changes in the ITS Plan agreed upon by all the ITS participants. This change modifies the definition of "previous day's consolidated closing price" in order to more effectively utilize ITS's pre-opening procedures during unusual market conditions.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

Under normal conditions, the "previous day's consolidated closing price" means the last price at which a transaction in a security was reported by the consolidated last sale reporting system on the last previous day on which transactions in the security were reported by such system. However, if unusual market conditions render prices inappropriate as the basis for ITS's pre-opening application, then the Chairman of the ITS Operating Committee, under the proposed amendment, would have the authority to designate the last price at which a trade occurred on NYSE or the AMEX as the previous day's consolidated last sale for purposes of the ITS pre-opening process.

The proposed Rule change is consistent with section 6(b)(5) of the Securities Exchange Act of 1934 (the "Act") in that it is designed to facilitate transactions in securities and perfect the mechanism of a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will not impose any burden on competition which is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such Proposed Rule Change, or

(B) Institute proceedings to determine whether the Proposed Rule Change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written date, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the Proposed Rule Change that are filed with the Commission, and all written communications relating to the Proposed Rule Change between the Commission and any person, other than those that may be withheld from the public in

[1] The appendix to this notice contains the specific rule change.

accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 7, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 20, 1989.

Jonathan G. Katz,

Secretary.

APPENDIX

Additions are italicized; deletions are bracketed.

Rule 14.1. Definitions

(a) – (h) * * * .

(i) The term "Previous Day's Closing Price" shall mean the last price at which a transaction in the stock was reported by the CTS Plan Processor; *provided, however, that in the event that unusual market conditions render prices, on a broad scale, inappropriate as the basis for the Pre-Opening Application, the Chairman of the ITS Operating Committee (or, if he is unavailable, or represents the NYSE or the AMEX, the most senior member of ITS Operating Committee, other than the NYSE or the AMEX member, available), upon the request of the NYSE (with respect to Network A Eligible Securities) or the AMEX (with respect to Network B Eligible Securities) may designate that the "previous day's consolidated closing price" for all Network A or Network B Eligible Securities shall be the last price at which a transaction in the stock was reported by the NYSE or the AMEX, respectively.*

[FR Doc. 89-24485 Filed 10-16-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27355; Filed No. SR-NYSE-89-29]

Self-Regulatory Organizations; Notice of Filing and Order Granting Temporary Accelerated Approval of Proposed Rule Change by New York Stock Exchange, Inc. Relating to Compliance Official Qualification ("Series 14") Examination

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 26, 1989, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposal concerns the application of the Series 14 Examination [1] requirements to Specialists and "upstairs trading" organizations.[2] Specifically, Specialists and "upstairs trading" organizations will be exempt from the Series 14 Examination requirements. Instead, compliance persons at such organizations will be required to take a separate examination to be developed by the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below and is set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this change is to create an exemption to the Series 14 examination requirements for Specialists and "upstairs trading" organizations.

Due to the unique nature of the business conducted by Specialists and "upstairs trading" organizations and the specialized nature of the compliance duties and responsibilities, the Exchange has determined to develop a separate examination for compliance persons at such organizations. The job analysis, examination specifications and questions developed by the Exchange for the Series 14 Examination would not appropriately measure the competence of compliance officials at such organizations. Therefore, such compliance persons will not be required to take and pass the Series 14 examination. A new examination will be developed to be used to satisfy the examination requirements of Exchange Rule 342.13 for members and member organizations exclusively conducting a Specialist or "upstairs trading" business.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposal imposes any burden on competition.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submission should refer to File No. SR-NYSE-89-29 and should be submitted by November 7, 1989.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission has closely reviewed the proposed exemption for the NYSE's Compliance Official Qualification (Series 14) Examination for Specialists and "upstairs trading" organizations and has concluded that it is consistent with

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[1] The Compliance Official Qualification (Series 14) Examination is a qualification examination intended to ensure that the individuals designated as having overall day-to-day compliance responsibilities for their respective firms or who directly supervise ten or more persons engaged in compliance activity have the knowledge, skills and abilities necessary to carry out their job responsibilities. *See* File No. SR-NYSE-87-10, approved by the Commission in Securities Exchange Act Release No. 25763, May 27, 1988, 53 FR 20925; NYSE Rule 342.13(b).

[2] An "upstairs trading" organization is defined as a member organization that trades for its own account from off the floor of the Exchange, but does no business with the public.

the requirements of the Act and the rules and regulations thereunder pertaining to national securities exchanges. In particular, the Commission believes that the proposed rule change is consistent with section 6(c)(3)(B)[3] which provides that a national securities exchange may prescribe standards for training, experience, and competence for its members or persons associated with its members. The Commission agrees with the NYSE's view that the compliance duties and responsibilities of Specialists and "upstairs trading" organizations are unique to their business as compared to the business of those individuals who are required to take and pass the Series 14 examination.[4] Therefore, the Commission believes that Specialists and "upstairs trading" organizations should be exempted from the Series 14 examination requirement, and that the Exchange should develop a new examination which will address their unique compliance requirements in order to satisfy Exchange Rule 342.13. Accordingly, the Commission is approving this exemption for a two year period, during which time the Exchange can develop the alternative compliance examination for Specialists and "upstairs trading" firms.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof since the Series 14 examination is scheduled to be administered in fall 1989, and those individuals qualifying for exemption must be afforded advance notice of this rule change.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved for a two year period.[5]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Dated: October 11, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-24375 Filed 10-16-89; 8:45 am]

BILLING CODE 8010-01-M

[3] 15 U.S.C. 78f(C)(3)(B) (1982).

[4] *See* note 1, *supra*.

[5] 15 U.S.C. 78s(b)(2) (1982).

[6] 17 CFR 200.30-3(a)(12) (1988).

[Release No. 34-27345; File No. SR-NYSE-89-08]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Facilitation Orders

On June 2, 1989, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend Exchange Rules 750 and 753 to expand and clarify the use of facilitation orders.

The proposed rule change was noticed in Securities Exchange Act Release No. 26977 (June 27, 1989), 54 FR 28536 (July 6, 1989). No comments were received on the proposed rule change.

The NYSE is proposing to amend its rules concerning options facilitation orders.[3] Under existing NYSE rules a facilitation order can only be used to cross transactions between an order of a public customer and an order for the proprietary account of the customer's member organization. The proposed rule change would permit facilitation orders to be used to cross a public customer's order with orders from other member or member organizations, rather than just the proprietary account of the public customers' member organization. According to the NYSE, by expanding the types of facilitation orders, the proposal would enable public customers to receive executions on orders which may not have been executable otherwise. In addition the proposal would delete the words "at the same price" from facilitation Rule 753 to avoid any concern that the phrase could be read to permit market participants a second opportunity to make a quotation which could block the customer side of the order by changing the established market.

The Commission has carefully reviewed the proposed rule change and has concluded that the changes are appropriate and consistent with the requirements of the Act and the rules and regulation thereunder applicable to a national securities exchange and in particular the requirements of section 6(b)(5) of the Act. First, we note that the deletion of the phrase "at the same price" in the rule will eliminate any ambiguity that market participants, after they have already been given an opportunity to accept the bid or offer made on behalf of the public customer's facilitated order, can break up the facilitated order by changing the established market prior to execution of the facilitation order. Secondly, by expanding facilitation orders to include crosses of public customer orders with orders for the proprietary account of any member organization in addition to the customer's member organization, more public customers may receive executions on their orders. In addition, under the NYSE's facilitation rules this change would require any member organization that accepts a bid or offer for a public customer's facilitated order to satisfy all contingencies associated with that order. This would avoid the concern that options market makers can accept a facilitation order without satisfying all contingencies, and potentially leave the public customer's member firm over-bought or sold when attempting to satisfy contingencies involving the stock side of an options transaction they had expected to facilitate.[4]

Based on the above, the Commission believes the proposed rule changes are consistent with section 6(b)(5) of the Act by, among other things, facilitating transactions in securities, promoting just and, equitable principles of trade and protecting investors and the public interest.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[5] that the proposed rule change is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Dated: October 6, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-24376 Filed 10-16-89; 8:45 am]

BILLING CODE 8010-01-M

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1988).

[3] Under current NYSE Rule 750 a facilitation order is defined as an order for the proprietary account of a member organization that is only executed in whole or in part in cross transactions with an order for a public customer of the member organization. Under the current facilitation order rules, market participants can compete with the member organization's order by accepting the bid or offer made on behalf of the public customer, but cannot compete with the public customer's side of the order by changing the established market. In addition, NYSE Rule 753 requires the member organization using a facilitation order to ensure that any contingencies on the public customer order are satisfied.

[4] *See* Securities Exchange Act Release No. 22273 (July 29, 1985), 50 FR 31449 and Securities Exchange Act Release No. 22691 (December 5, 1985) 50 FR 50881 in which the Commission approved rule changes of the American Stock Exchange and Chicago Board Options Exchange that permitted orders other than firm propriety orders to be used in a facilitation order cross.

[5] 15 U.S.C. 78s(b)(2) (1982).

[6] 17 CFR 200.30-3(a)(2) (1988).

SMALL BUSINESS ADMINISTRATION

Region IX Advisory Council; Public Meeting

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of Fresno, will hold a public meeting at 9:00 a.m. on Thursday, November 9, 1989, at the Fresno District Office, 2719 N. Air Fresno Drive, Suite 107, Fresno, California, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Peter J. Bergin, District Director, U.S. Small Business Administration, 2719 N. Air Fresno Drive, Suite 107, Fresno, California 93727, phone (209) 487–5791.

Dated: October 4, 1989.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 89–24475 Filed 10–16–89; 8:45 am]

BILLING CODE 8025–01–M

Region IV Advisory Council; Public Meeting

The U.S. Small Business Administration Region IV Advisory Council, located in the geographical area of Nashville, will hold a public meeting at 8:30 a.m. on Wednesday, November 1, 1989, at the Highland Manor Motel, Townsend, Tennessee, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Robert M. Hartman, District Director, U.S. Small Business Administration, Parkway Towers, Suite 1012, 404 James Robertson Parkway, Nashville, Tennessee 37219, phone (615) 736–5850.

Dated: October 6, 1989.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 89–24476 Filed 10–16–89; 8:45 am]

BILLING CODE 8025–01–M

Region III Advisory Council; Public Meeting

The U.S. Small Business Administration Region III Advisory Council, located in the geographical area of Philadelphia, will hold a public meeting at 5:30 p.m., Thursday, November 2, 1989, and 8:30 a.m. Friday, November 3, 1989, at the Sheraton Harrisburg East, 800 East Park Drive, Harrisburg, Pennsylvania, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call William T. Gennetti, District Director, U.S. Small Business Administration, Allendale Square, Suite 201 475 Allendale Road, King of Prussia, Pennsylvania 19406, phone (215) 962–3800.

Dated: October 4, 1989.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 89–24477 Filed 10–16–89; 8:45 am]

BILLING CODE 8025–01–M

Region VIII Advisory Council; Public Meeting

The U.S. Small Business Administration Region VIII Advisory Council, located in the geographical area of Sioux Falls, will hold a public meeting on Friday, October 20, 1989, from 9:00 a.m. to 3:00 p.m. at the Metropolitan Federal Bank, 133 South Main Avenue, Sioux Falls, South Dakota, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Chester B. Leedom, District Director, U.S. Small Business Administration, Security Building, 101 South Main Avenue, Suite 101, Sioux Falls, South Dakota 57102, phone (605) 330–4231.

Dated: October 5, 1989.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 89–24478 Filed 10–16–89; 8:45 am]

BILLING CODE 8025–01–M

[Application No. 02/02–0535]

Argentum Capital Partners, LP; Filing of an Application for a License to operate as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1989)) by Argentum Capital Partners, LP, 405 Lexington Avenue, New York, New York 10174, for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958, as amended, (15 U.S.C. *et seq.*), and the Rules and Regulations promulgated thereunder.

The formation and licensing of a limited partnership SBIC is subject to the provisions of § 107.4 of the Regulations.

The initial investors and their percent of ownership of the Applicant are as follows:

	Percentage of ownership
General Partner:	
Baran—Raynor & Co., 405 Lexington Avenue, New York, New York 10174	33.3
Limited Partners:	
15 Limited Partners each owning less than 10 percent	66.7

Argentum Capital Partners, LP, will be managed by Baran—Raynor & Co. The officers and directors of Baran—Raynor & Co. are:

Name	Relationship to manager	Percentage of ownership in applicant
Daniel Raynor, 405 Lexington Avenue, New York, New York 10174.	Chairman	50
Walter H. Barandiaran, 405 Lexington Avenue, New York, New York 10174.	President	50
Thomas J. Sands, 405 Lexington Avenue, New York, New York 10174.	Vice President	0

The applicant will begin operations with a capitalization of $3,000,000 and will be a source of equity capital and long term funds for qualified small business concerns.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of this notice will be published in a newspaper of general circulation in New York, New York.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies)

Dated: October 12, 1989.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 89-24482 Filed 10-16-89; 8:45 am]

BILLING CODE 8025-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Advisory Committee for Trade Policy and Negotiations; Meeting and Determination of Closing of Meeting

The meeting of the Advisory Committee for Trade Policy and Negotiations to be held October 25, 1989 from 1:30 p.m. to 4:30 p.m., in Washington, DC, will include the development, review and discussion of current issues which influence the trade policy of the United States. Pursuant to section 2155(f)(2) of title 19 of the United States Code, I have determined that this meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions.

Additional information can be obtained by contacting Yvonne Beeler, Office of Private Sector Liaison, Office of the United States Trade Representative, Executive Office of the President, Washington, DC 20506.

Julius L. Katz,

Acting United States Trade Representative.

[FR Doc. 89-24424 Filed 10-16-89; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Transportation; Applications for Renewal or Modification of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for renewal or modification of exemptions or application to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transporation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Except as otherwise noted, renewal application are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATE: Comments must be received on or before November 1, 1989.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Program Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW. Washington, DC.

Application No.	Applicant	Renewal of exemption
2582-X	Advance Research Chemicals, Inc., Catoosa, OK	2582
2582-X	Ozark-Mahoning Co., Tulsa, OK	2582
3004-X	U.S. Department of Defense, Falls Church, VA	3004
3004-X	Airco Industrial Gases, Murray Hill, NJ	3004
3004-X	Linde Puerto Rico, Inc., Gurabo, PR	3004
3004-X	Linde Gases of The West San Ramon, CA	3004
3004-X	Linde Gases of The Mid-Atlantic, Moorestown, NJ	3004
3004-X	Union Carbide Industrial Gases, Inc., Danbury, CT	3004
3004-X	Linde Gases of New England, Inc., West Hartford, CT	3004
3004-X	Linde Gases of The Southeast, Inc., Wilmington, NC	3004
3004-X	Linde Gases of Florida, Inc., Tampa, FL	3004
3004-X	Linde Gases of The Great Lakes, Inc., Cleveland, OH	3004
3004-X	Linde Gases of the South, Inc., Houston, TX	3004
3004-X	Linde Gases of The Midwest, Inc., Hillside, IL	3004
3004-X	Linde Gases of Southern California, Inc., Santa Ana, CA	3004
4453-X	Roundup Powder Co., Inc., Miles City, MT	4453
4453-X	Ladshaw Explosives, Inc., New Braunfels, TX	4453
4612-X	EM Science, Cincinnati, OH	4612
4850-X	The Ensign-Bickford Co., Simsbury, CT	4850
4850-X	GOEX, Inc., Cleburne, TX	4850
4850-X	Austin Powder Co., Cleveland, OH	4850
4850-X	Owen Oil Tools, Inc., Fort Worth, TX	4850
5749-X	E.I. du Pont de Nemours & Co., Inc., Wilmington, DE	5749
6122-X	Pennwalt Corp., Buffalo, NY	6122
6484-X	Angus Chemical Co., Northbrook, IL	6484
6501-X	GOEX, Inc., Cleburne, TX	6501
6530-X	Airco Industrial Gases, Murray Hill, NJ	6530
6531-X	TAVCO, Inc., Chatsworth, CA	6531
6563-X	Monongahela Power Co., Fairmont, WV	6563
6658-X	The Ensign-Bickford Co., Simsbury, CT	6658
6691-X	GenEx, Ltd., Des Moines, IA	6691
6765-X	U.S. Department of the Interior (Bureau of Mines) Amarillo, TX	6765
6765-X	Air Products and Chemicals, Inc., Allentown, PA (See Footnote 1)	6765
6801-X	Phillips Petroleum Co., Bartesville, OK	6801
7052-X	Ocean Technology, Inc., Burbank, CA	7052
7052-X	Honeywell Power Sources Center, Horsham, PA	7052
7052-X	Electrochem Industries Division, Clarence, NY	7052
7052-X	General Dynamics Corp., Fort Worth, TX	7052
7052-X	McDonnell Douglas Corp., St. Louis, MO	7052
7052-X	3M Transportation, St. Paul, MN	7052
7052-X	Hughes Electronics Products Corp., Livonia, MI	7052
7052-X	U.S. Department of Defense, Falls Church, VA	7052
7052-X	Mercury Instruments, Inc., Cincinnati, OH	7052
7052-X	Magnavox Government & Industrial Electronics Co., Fort Wayne, IN	7052
7052-X	Flow Research Corp., Houston, TX	7052
7052-X	Maxell Corporation of America, Fair Lawn, NJ	7052
7052-X	Exploration Logging, Inc., Houston, TX	7052
7052-X	SAFT America, Inc., Cockeysville, MD	7052
7052-X	Schlumberger Well Services, Rosharon, TX	7052
7052-X	Halliburton Services, Duncan, OK	7052
7052-X	Halliburton Logging Services, Inc., Fort Worth, TX	7052
7052-X	SAB NIFE A/S Denmark, Sweden	7052
7052-X	TOTCO, Houston, TX	7052
7052-X	Boeing Aerospace & Electronics, Seattle, WA	7052
7052-X	Telonics, Inc., Mesa, AZ	7052
7052-X	GE Aerospace, Philadelphia, PA	7052
7052-X	Allen-Bradley Co., Inc., Milwaukee, WI	7052
7052-X	Battery Engineering, Inc., Hyde Park, MA	7052
7073-X	Ethyl Corp., Baton Rouge, LA	7073
7607-X	Dames & Moore, Golden, CO	7607

Application No.	Applicant	Renewal of exemption
7654-X	J.T. Baker, Inc., Phillipsburg, NJ	7654
7654-X	Tennessee Eastman Co., Kingsport, TN	7654
7654-X	Texas Eastman Co., Longview, TX	7654
7737-X	Parker Hannifin Corp., Eastlake, OH	7737
7770-X	Arbel-Fauvet-Rail, Paris, France	7770
7887-X	Aero Technology Co., (Aerotech, Inc.), Las Vegas, NV	7887
7887-X	Flight Systems, Inc., Burns Flat, OK	7887
7887-X	Centuri Engineering Co., Penrose, CO	7887
7887-X	Estes Industries, Inc., Penrose, CO	7887
7887-X	Model Rectifier Corp., Edison, NJ	7887
7887-X	Flight Systems, Inc., Raytown, MO	7887
7891-X	Reliance Electric Co., Cleveland, OH	7891
7891-X	Sigma-Aldrich Corp., Saint Louis, MO	7891
7943-X	Hasa Chemicals Inc., Santa Clarita, CA	7943
7943-X	Grow Group, Inc., Montebello, CA	7943
7946-X	Imaging and Sensing Technology Corp., Horsehead, NY	7946
7985-X	Process Engineering, Inc., Plaistow, NH	7985
7991-X	Union Pacific RR Co. and Missouri Pacific RR Co., Omaha, NE	7991
8156-X	GenEx, Ltd., Des Monies, IA	8156
8156-X	Linde Gases of the South, Inc., Houston, TX	8156
8156-X	Linde Gases of Midwest, Inc., Hillside, IL	8156
8156-X	Linde Gases of The Great Lakes, Inc., Cleveland, OH	8156
8156-X	Linde Gases of The West, San Ramon, CA	8156
8156-X	Linde Gases of The Mid-Atlantic, Moorestown, NJ	8156
8156-X	Linde Gases of Florida, Inc., Tampa, FL	8156
8156-X	Linde Gases of New England, Inc., West Hartford, CT	8156
8156-X	Union Carbide Industrial Gases, Inc., Danbury, CT	8156
8156-X	Linde Gases of the Southeast, Inc., Wilmington, NC	8156
8156-X	Linde Gases of Southern California, Inc., Santa Ana, CA	8156
8162-X	Structural Composites Industries, Pomona, CA	8162
8194-X	Pennwalt Corp., Buffalo, NY	8194
8214-X	Volkswagen of America, Inc., Troy, MI	8214
8273-X	TRW Vehicle Safety Systems Inc., Washington, MI	8273
8348-X	Frell, Inc., Corpus Christi, TX	8348
8354-X	Compagnie Des Containers Reservoirs, Paris, France	8354
8390-X	Texas Instruments, Inc., Dallas, TX	8390
8390-X	General Chemical Corp., Parsippany, NJ	8390
8390-X	KTI Chemicals, Inc., Danbury, CT	8390
8390-X	Olin Hunt Specialty Products, Inc., West Paterson, NJ	8390
8390-X	Hi Pure Chemicals, Inc., Nazareth, PA	8390
8390-X	Image Technology Corp., Chandler, AZ	8390
8390-X	Ashland Chemical Co., Columbus, OH	8390
8445-X	SEI Environmental, Inc., Wheeling, IL	8445
8478-X	West-Mark, Ceres, CA	8478
8518-X	Pacific Construction & Maintenance, Inc., Ventura, CA	8518
8556-X	Air Products and Chemicals, Inc., Allentown, PA	8556
8723-X	Roundup Powder Co., Inc., Miles City, MT	8723
8811-X	Hercules Inc., Wilmington, DE	8811
8960-X	Sunshine Aero Industries, Inc., Crestview, FL	8960
8967-X	Hercules, Inc., Wilmington, DE	8967
9052-X	Chemical Handling Equipment Co., Inc., Toledo, OH (See Footnote 2)	9052
9066-X	Volkswagen of America, Inc., Troy, MI	9066
9136-X	Sonoco Plastic Drum, Inc., Lockport, IL	9136
9146-X	Blefa-Felser GmbH, Postfach, West Germany	9146
9256-X	U.S. Department of Energy, Washington, DC	9256
9414-X	GenEx, Ltd., Des Moines, IA	9414
9414-X	Linde Gases of the South, Inc., Houston, TX	9414
9414-X	Linde Gases of The Midwest, Inc., Hillside, IL	9414
9414-X	Linde Gases of the Great Lakes, Inc., Cleveland, OH	9414
9414-X	Linde Gases of the West, San Ramon, CA	9414
9414-X	Linde Gases of The Mid-Atlantic, Moorestown, NJ	9414
9414-X	Linde Gases of New England, Inc., West Hartford, CT	9414
9414-X	Linde Gases of Florida, Inc., Tampa, FL	9414
9414-X	Union Carbide Industrial Gases, Inc., Danbury, CT	9414
9414-X	Linde Gases of Southern California, Inc., Santa Ana, CA	9414
9440-X	Hoover Group, Inc., Beatrice, NE	9440
9501-X	Hughes Aircraft Co., Los Angeles, CA	9501
9527-X	Carolina Aircraft Corp., Ft. Lauderdale, FL	9527
9533-X	B.A.G. Corp., Dallas, TX (See Footnote 3)	9533
9555-X	E.I. du Pont de Nemours & Co., Inc., Wilmington, DE	9555
9694-X	All Pure Chemical Co., Inc., Tracy, CA	9694
9723-X	Aqua-Tech, Inc., Port Washington, WI (See Footnote 4)	9723
9736-X	Aqua-Tech, Inc., Port Washington, WI	9736
9802-X	McNeely Charter Service, Inc., Earle, AR	9802
9803-X	Transcon Transport, Inc., Smithville, TN	9803
9844-X	Theodor Fries Gesellschaft MBH & Co., Sulz, Austria	9844
9846-X	FlexCon and Systems, Inc., Lafayette, LA	9846
9880-X	G.E. Reuter-Stokes, Twinsburg, OH	9880
9881-X	G.E. Reuter-Stokes, Twinsburg, OH	9881
9920-X	Tri-Wall Co., Louisville, KY (See Footnote 5)	9920
9923-X	Chemical Handling Equipment Co., Inc., Toledo, OH (See Footnote 6)	9923
9929-X	Morton Thiokol, Inc.—Elkton Division, Elkton, MD (See Footnote 7)	9929
10187-X	Hexcel Corp., Dublin CA (See Footnote 8)	10187
10223-X	TPI International Airways, Inc., Miami, FL	10223
10254-X	University of Texas M.D. Anderson Cancer Center, Houston, TX	10254

[1] To authorize reinspection and testing of the portable tank once every 5 years in accordance with 49 CFR 173.32(e) at a pressure of 1.25 times the sum of the design pressure, the static head and 14.7.

[2] To authorize marking by etching or stamping of the certification into the polyethylene of the portable tank.

[3] To authorize an increase in capacity of the super sack from 2260 pounds to capacity not to extend 3000 pounds.

[4] To authorize reduction of the polyethylene liner from 65 mil to 10 mil.

[5] To authorize rail as an additional mode of transportation.

[6] To authorize a minimum wall thickness of 0.200 inch.

[7] To authorize shipment of an additional Star 63 rocket motor, Class B explosives.

[8] To authorize rail as an additional mode of transportation.

Application No.	Applicant	Parties to exemption
6418-P	Agrinorth West Co., Prescott, WA	6418
6974-P	Williams International, Walled Lake, MI	6974
7052-P	Ansul Fire Protection, Marinette, WI	7052
7052-P	Baker Hughes Drilling Systems, Inc. (BHDS), Houston, TX	7052
7052-P	Computalog Wireline Services, Inc., Houston, TX	7052
7774-P	Wedge Wireline, Inc., Arlington, TX	7774
8009-P	American Energy Services, Knoxville, TN	8009
8426-P	Pacific Industrial Service Corp., Long Beach, CA	8426
8445-P	Price Trucking Corp., Buffalo, NY	8445
8445-P	FIW, Inc., Pecatonica, IL	8445
8824-P	Computalog Wireline Services, Inc., Houston, TX	8824
8839-P	Hampton Roads Sanitation District, Virginia Beach, VA	8839
8843-P	Computalog Wireline Services, Inc., Houston, TX	8843
8988-P	Computalog Wireline Services, Inc., Houston, TX	8988
8995-P	Polyfoam Products, Inc., Spring, TX	8995
9549-P	Mecano-Tech, Inc., Houston, TX	9549
9549-P	Computalog Wireline Services, Inc., Houston, TX	9549
9607-P	MidLab, Inc., Sweetwater, TN	9607
9607-P	Diversified International, Boca Raton, FL	9607

Application No.	Applicant	Parties to exemption
9785-P	SafBank Line Limited, Iselin, NJ	9785
9929-P	Hughes Aircraft Co., Los Angeles, CA [1]	9929
9953-P	The ServiceMaster Co., L.P., Downers Grove, IL	9953
9991-P	Aqua-Tech, Inc., Port Washington, WI	9991
10001-P	Linde Gases of the West, Inc., San Ramon, CA	10001
10001-P	Linde Gases of the Great Lakes, Inc., Cleveland, OH	10001
10001-P	Linde Gases of the Southeast, Inc., Wilmington, NC	10001
10001-P	Linde Gases of the Mid-Atlantic, Moorestown, NJ	10001
10001-P	Linde Gases of the midwest, Hillside, IL	10001
10022-P	Linde Gases of the West, San Ramon, CA	10022
10022-P	Linde Gases of the Southeast, Inc., Wilmington, NC	10022
10022-P	Linde Gases of the Midwest, Hillside, IL	10022
10260-P	Image Technology, Chandler, AZ	10260
10260-P	Hi Pure Chemicals, Inc., Nazareth, PA	10260
10261-P	Image Technology, Chandler, AZ	10261
10261-P	Hi Pure Chemicals, Inc., Nazareth, PA	10261

[1] To amend paragraph 8(f)(1) to authorize shipments for Los Angeles, CA to Xichang, Chica vi Federal Express or Northwest Airlines.

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with part 107 of the Hazardous Materials Transportation Act (49) U.S.C. 1806; 49 CFR 1.53(e)).

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 89-24401 Filed 10-16-89; 8:45 am]

BILLING CODE 4910-60-M

Office of Hazardous Materials Transportation; Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before November 16, 1989.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

NEW EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10255-N	Sexton Cap Co., Inc., Cambridge, MA.	49 CFR 173.304, 175.3, 178.33a.	To authorize manufacture, marking, and sale of a non-Dot specification drawn and ironed container similar to the DOT specificaiton 2Q cylinder for shipment of non-flammable and flammable liquified compressed gases authorized for shipment in a DOT specification 2Q cylinder. (Modes 1, 2, 3, 4.)
10257-N	Libbey-Owensford Co., Toledo, OH.	49 CFR 173.245b(a)(8)	To authorize shipment of dimethyltin dichloride, a corrosive solid, in specially designed, rust proof non-DOT specification portable tanks having a gross weight of 8,860 pounds. (Mode 1.)
10258-N	Ethyl Corp., Baton Rouge, LA.	49 CFR 173.252(a)(4)(ii)	To authorize shipment of bromine, classed as a corrosive material, in DOT specification MC 312 cargo tanks constructed of nickel clad steel of ⅜ inch total thickness. (Mode 1.)
10259-N	Phillips Petroleum Co., Bartlesville, OK.	49 CFR 173.141	To authorize shipment of mercaptans, classed as flammable liquids, in DOT specification 57 portable tanks constructed of 316 stainless steel with a service pressure of 40 psig. (Modes 1, 2, 3.)
10260-N	Olin Hunt Speciality Products, Inc., West Paterson, NJ.	49 CFR 173.266	To authorize shipment of a 30% hydrogen peroxide solution, classed as an oxidizer, in a 101 liter non-DOT container consisting of an inner polyethylene bottle with an outer housing of 304 stainless steel. (Modes 1, 2, 3.)
10261-N	Olin Hunt Speciality Proudcts, Inc., West Paterson, NJ.	49 CFR 173.272(g)	To authorize shipment of sulfuric acid solution with a sulfuric acid concentraiton of no more than 98%, classed as corrosive material, in a 100 liter non-DOT specification container consisting of an inner polyethylene bottle with a FRP outer housing. (Modes 1, 2, 3.)
10262-N	Tay Textiles Limited, Dundee, Scotland.	49 CFR 173.245b	To authorize shipment of chloroacetic acid solid and sodium hydroxide, solid, classed as corrosive materials, in non-DOT specification flexible bulk-bags. (Modes 1, 2, 3.)

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 89-24402 Filed 10-16-89; 8:45 am]

BILLING CODE 4910-60-M

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirements Under Office of Management Budget Review

AGENCY: Notice of reporting requirements submitted for OMB review.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that an Agency has made such a submission. USIA is requesting clearance of information collection activities associated with its "University Affiliation Program," under OMB control

number 3116–0179. No forms are involved in this activity; however, the responent must prepare on plain bond paper a two-page summary document and a narrative statement not to exceed 15 pages. The only notice to the public of this program is through an announcement in the Federal Register. Respondents will be required to respond only one time.

DATE: November 16, 1989.

Copies: Copies of the Request for Clearance (SF–83), supporting statement, transmittal letter and other documents submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments on the items listed should be submitted to the Officer of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USIA, and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Ms. Debbie Knox, Agency Clearance Officer, United States Information Agency, M/ASP, 301 Fourth Street, SW., Washington, DC 20547, telephone (202) 485–7503; OMB review: Mr. Donald Arbuckle, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, telephone (202) 395–7340.

SUPPLEMENTARY INFORMATION: Public reporting burden for this collection of information is estimated to average 15 hours per response. This includes preparation on plain bond-paper of a two-page summary document and a narrative statement not to exceed 15 pages, plus the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the USIA Agency Clearance Officer and the OMB Desk Officer for USIA at the addresses given above.

Title: "USIA's University Affiliation Program".

Form Number: None

Abstract: Under the University Affiliation Program, USIA offers grant-in-aid to support the development or enhancement of institutional partnerships between U.S. and non-U.S. institutions of higher education. The program promotes mutual understanding, strengthens research and teaching abilities and improves or expands the academic offerings of the institutions involved.

Proposed Frequency of Responses:

No. of Respondents	106
Recordkeeping Hours	24
Total Annual Burden	2,070

Dated: October 6, 1989.

Ledra Dildy,

Federal Register Liaison.

[FR Doc. 89–24362 Filed 10–16–89; 8:45 am]

BILLING CODE 8230–01–M

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "The Consul Smith Collection. Masterpieces of Italian Drawing from the Royal Library, Windsor Castle: Raphael to Canaletto," (see list [1]) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Kimbell Art Museum in Fort Worth, Texas, beginning on or about November 11, 1989 to on or about January 21, 1990, is in the national interest.

Public notice of this determination is ordered to be published in the Federal Register.

Dated: September 29, 1989.

Alberto J. Mora,

General Counsel

[FR Doc. 89–24363 Field 10–16–89; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Lorie J. Nierenberg of the Office of the General Counsel of USIA. The telephone number is 202/485–8827, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

Sunshine Act Meetings

Federal Register
Vol. 54, No. 199
Tuesday, October 17, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 9:45 a.m., Monday, October 23, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 13, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–24620 Filed 10–13–89; 3:31 pm]

BILLING CODE 6210–01–M

INTERNATIONAL TRADE COMMISSION

[USITC SE–89–34]

TIME AND DATE: Tuesday, October 17, 1989 at 9:00 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints: Certain Pressure Transmitters (D/N 1522)
5. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252–1000.

Dated: October 5, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89–24621 Filed 10–13–89; 3:50 pm]

BILLING CODE 7020–02–M

NATIONAL LABOR RELATIONS BOARD

Notice of Meeting

TIME AND DATE: 2:00 p.m., Monday, October 16, 1989.

PLACE: Board Conference Room, Sixth Floor, 1717 Pennsylvania Avenue, NW., Washington, DC 20570.

STATUS: Closed to public observation pursuant to 5 U.S.C. Section 552b(c)(2) (internal personnel rules and practices (c)(6) (personal information where disclosure would constitute a clearly unwarranted invasion of personal privacy) and (c)(10) (deliberations concern * * * the Board's participation in a civil action * * * or disposition by the Board of particular * * * unfair labor practice proceedings * * * or any court proceedings, collateral or ancillary thereto.)

MATTERS CONSIDERED: Personnel matters.

CONTACT PERSON FOR MORE INFORMATION: Joseph E. Moore, Acting Executive Secretary, National Labor Relations Board, Washington, DC 20570, Telephone: (202) 254–9430.

Dated, Washington, DC, October 12, 1989.

By direction of the Board.

Joseph E. Moore,

Acting Executive Secretary, National Labor Relations Board.

[FR Doc. 89–24605 Filed 10–13–89; 2:05 pm]

BILLING CODE 7445–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m. Tuesday, October 24, 1989.

PLACE: Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Railroad/Highway Accident Report: Consolidated Rail Corporation Train Collision with Island Transportation Truck, Roosevelt Avenue near Lafayette Street, Carteret, New Jersey, December 6, 1988.
2. Recommendations to Engine Retarder Manufacturers: Heavy Truck Engine Retarder.
3. Recommendation to FAA: Amend 14 CFR 135.63(c) (load manifest) to include single-engine aircraft.
4. Withdrawal of Notation 5153; Recommendation to FAA—Amend 14 CFR 135.63(c) (load manifest) to include single engine aircraft.
5. Board Policy: Calendaring of Notation Items

News Media Contact (202) 392–6600

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Bea Hardesty,

Federal Register Liaison Officer.

October 13, 1989.

[FR Doc. 89–24617 Filed 10–13–89; 3:16 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of October 16, 23, 30, and November 6, 1989.

PLACE: Commissioners' Conference Room, 1555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of October 16

Thursday, October 19

10:00 a.m.
Briefing on Status of Comanche Peak (Public Meeting)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Decision on the Massachusetts Attorney General's Petition for Rule Waiver Certified by ALAB–920 (Concerning Financial Qualification Review of Public Service Company of New Hampshire) (Tentative)

Week of October 23—Tentative

Wednesday, October 25

10:00 a.m.
Briefing on Emerging Technical Issues (Public Meeting)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of October 30—Tentative

Tuesday, October 31

8:30 a.m.
Collegial Discussion of Items of Commission Interest (Public Meeting)

Wednesday, November 1

10:00 a.m.
Briefing by General Electric on the Advanced BWR Standard Plant Review (Public Meeting)

11:00 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

1:00 p.m.
Briefing by Combustion Engineering on ALWR System 80+ (Public Meeting)

2:30 p.m.

Briefing by Westinghouse on Advanced LWR SP 90 (Public Meeting)

Week of November 6—Tentative

Thursday, November 9

3:30 p.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note. Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (301) 492–0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

Dated: October 12, 1989.

William M. Hill, Jr,

Office of the Secretary.

[FR Doc. 89–24608 Filed 10–13–89; 2:18 pm]

BILLING CODE 7590–01–M

PAROLE COMMISSION

DATE AND TIME: Tuesday, October 24, 1989, 9:00 a.m. to 12:00 p.m.

PLACE: 5550 Friendship Blvd., Chevy Chase, Maryland 20815.

STATUS: Closed pursuant to a vote to be taken at the beginning of the meeting.

MATTERS TO BE CONSIDERED: Appeals to the Commission of approximately 11 cases decided by the National Commissioners pursuant to a reference under 28 CFR 2.7. These are all cases originally heard by examiner panels wherein inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSON FOR MORE INFORMATION: Jeffrey Kostbar, Case Analyst, National Appeals Board, United States Parole Commission, (301) 492–5968.

Dated: October 13, 1989

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 89–24603 Filed 10–13–89; 2:05 pm]

BILLING CODE 4410–1–M

PAROLE COMMISSION

DATE AND TIME: Wednesday October 24, 1989 1:00 p.m., eastern standard time.

PLACE: 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

STATUS: Open—Meeting.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the open Parole Commission meeting:

1. Approval of minutes of previous Commission meeting.
2. Reports from the Chairman, Vice Chairman, Commissioners, Legal, Case Operations, and Administrative Sections.
3. Report on meeting with Regional Probation Administrators.
4. Presentation by United States Probation Officers with regard to Experimental Drug Program.
5. Consideration of proposed modification of 28 CFR 2.14(a)(l)(ii)
6. Adoption of final rule amending 28 CFR 2.40.
7. Consideration of proposed discussion with the United States Marshal's Service concerning moving and housing of United States Parole Commission prisoners.
8. Consideration of proposal to modify United States Parole Commission "Community Treatment Center" (CTC) terminology with Bureau of Prisons "Community Correctional Center" (CCC) terminology.
9. Consideration of proposal to equate cocaine addiction with opiate addiction for purposes of computing salient factor scores.
10. Discussion of goals to be accomplished prior to the end of 1990. (Discussion Only).
11. Discussion of Black Powder/Muzzle-Loading Weapons.
12. Adoption of Final Rule regarding the timing of interim hearings for Youth Corrections Act prisoners. 28 CFR 2.65(c)(2).
13. Consideration of approval of research report on Community Control Project.

AGENCY CONTACT: Linda Wines Marble, Director, Case Operations and Program Development, United States Parole Commission (301) 492–5952.

Dated: October 13, 1989.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 89–29604 Filed 10–13–89; 2:05 pm]

BILLING CODE 4410–01–M

POSTAL SERVICE BOARD OF GOVERNORS

Notice of Vote to Close Meeting

By telephone vote, a majority of the members contacted and voting, the Board of Governors voted to add to the agenda of its meeting closed to public observation on November 6, 1989, in Washington, DC., consideration of a capital investment for Remote Video Encoding—Pilot Testing and Computerized Imaging. (See 54 FR 41564, October 10, 1989.)

The meeting is expected to be attended by the following persons: Governors Alvarado, del Junco, Griesemer, Hall, Mackie, Nevin, Pace, Ryan, and Setrakian; Postmaster General Frank; Deputy Postmaster General Coughlin; Secretary for the Board Harris; and General Counsel Cox.

The Board determined that, pursuant to section 552b(c)(9)(B) of title 5, United States Code, and section 7.3(i) of title 39, Code of Federal Regulations, the discussion of this matter is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)], because it is likely to disclose information, the premature disclosure of which would likely significantly frustrate implementation of a proposed procurement action. The Board further determined that the public interest does not require that the Board's discussion of the matter be open to the public.

In accordance with section 552b(f)(1) of title 5, United States Code, and section 7.6(a) of Title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting may properly be closed to public observation, pursuant to section 552b(c)(9)(B) of title 5, United States Code, and section 7.3(i) of title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary for the Board, David F. Harris, at (202) 268–4800.

David F. Harris,

Secretary.

[FR Doc. 89–24573 Filed 10–13–89; 2:18 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of October 16, 1989.

A closed meeting will be held on Monday, October 16, 1989, at 2:30 p.m.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8) (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Grundfest, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Monday, October 16, 1989, at 2:30 p.m., will be:

Settlement of administrative proceedings of an enforcement nature.

Institution of injunctive actions.

Settlement of injunctive actions.

Institution of administrative proceedings of an enforcement nature.
Litigation matter.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Anthony Ain at (202) 272–2400.

Dated: October 11, 1989.
Jonathan G. Katz,
Secretary.
[FR Doc. 89–24566 Filed 10–13–89; 12:57 pm]
BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 54, No. 199
Tuesday, October 17, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM-010-3110-10-9202/GP9-0116]

Realty Action; Exchange, Federal Surface and Subsurface in Dona Ana County, NM, for Private Minerals Within El Malpais National Monument Area in Cibola County, NM

Correction

In notice document 89-17491 beginning in the third column of page 31389 in the issue of Friday, July 28, 1989, make the following corrections:

1. On page 31390, in the second column, under **ADDRESS:**, the first sentence should read "For a period of 45 days after publication of this notice, interested parties may submit comments to the District Office at the above address."

2. On the same page, in the third column, in the file line, the document number should read "89-17491".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-CE-22-AD; Amdt. 39-6325]

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Models EMB-110P1 and EMB-110P2 Airplanes

Correction

In rule document 89-22541 beginning on page 39162 in the issue of Monday, September 25, 1989, make the following correction:

On page 39163, in the third column, in paragraph (b), the third line should read "110 airplanes, S/N 110146, 110153".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[FI-27-89]

RIN 1545-AN52

Real Estate Mortgage Investment Conduits; Reporting Requirements and Other Administrative Matters

Correction

In proposed rule document 89-20917 beginning on page 37125 in the issue of Thursday, September 7, 1989, make the following corrections:

1. On page 37125, in the second column, under **SUMMARY**, in the third line from the bottom of the page, "1721" should read "1272".

2. On the same page, in the third column, in the seventh paragraph from the bottom of the page, in the second line, "1-6049-7(c)(6)" should read "1.6049-7(c)(6)".

3. On the same page, in the same column, in the fifth paragraph from the bottom of the page, in the first and second lines, "1.649-7(f)(3)(iii)" should read "1.6049-7(f)(3)(iii)".

4. On the same page, in the same column, in the last paragraph, in the last line, "1990" should read "1989".

5. On page 37126, in the first column, under "**ADDRESS**", in the fourth line, "20024" should read "20224".

6. On the same page, in the same column, in the fifth paragraph from the bottom of the page, in the sixth line, insert a "period" after "Service".

7. On the same page, in the same column, in the fourth paragraph from the bottom of the page, in the third line, "§§ 1.60D-1(d)" should read "§§ 1.860D-1(d)".

8. On the same page, in the 2nd column, under "**Background**", in the 1st paragraph, in the 14th line, "§§ 1.860-1T" should read "§§ 1.860D-1T".

9. On page 37127, in the first column, in "Par.2" in amendatory instruction 1, in the last line, "1271(a)(6)" should read "1272(a)(6)".

10. On the same page, in the same column, under "Par.2" in amendatory instruction 5, in the last line, "(b)(2((ix)(C)" should read "(b)(2)(ix)(C)".

11. On the same page, in the second column, under "Par.3", after amendatory instruction 1, the next paragraph of amendatory instruction should be designated "2.".

BILLING CODE 1505-01-D

federal register

Tuesday
October 17, 1989

Part II

Department of Transportation

Coast Guard

33 CFR Part 155
46 CFR Part 12 et al.

Tankerman Requirements and Qualifications for Persons-in-Charge of Dangerous Liquid and Liquefied Gas Transfer Operations; Supplemental Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 155

46 CFR Parts 12, 13, 15, 30, 31, 35, 78, 90, 97, 98, 105, 151, 153, and 154

[CGD 79-116 and 79-116a]

RIN 2115-AA03

Tankerman Requirements and Qualifications for Persons-in-Charge of Dangerous Liquid and Liquefied Gas Transfer Operations

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to issue regulations governing the qualifications of personnel in charge of and assisting in the handling, transfer, and transportation of oil and hazardous liquid cargoes in bulk aboard vessels. Human error and lack of awareness of the hazards involved on the part of personnel engaged in these operations have resulted in a number of well publicized marine casualties. Having better qualified personnel participating in these operations should lead to a reduction in tank vessel casualties.

DATE: Comments must be received on or before January 16, 1990.

ADDRESSES: Comments should be submitted to: The Executive Secretary, Marine Safety Council (G-LRA-2/3600) [CGD 79-116] U.S. Coast Guard, Washington, DC 20593-0001. Between 8:00 a.m. and 3:00 p.m., Monday through Friday except holidays, comments may be delivered to and will be available for inspection or copying at the Marine Safety Council (G-LRA-2/3600), Room 3600, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001, phone (202) 267-1477.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher J. Heizer, Project Manager, Office of Marine Safety, Security and Environmental Protection (G-MVP), phone (202) 267-0224.

SUPPLEMENTARY INFORMATION: Two notices of proposed rulemaking (NPRMs) were published in the **Federal Register** on December 18, 1980: CGD 79-116 (45 FR 83290) covering proposed rules for tankerman requirements and CGD 79-116a (45 FR 83268) covering proposed rules for the qualifications of persons-in-charge of oil transfer operations. In conjunction with the NPRMs the Coast Guard held public hearings in St. Louis, Missouri; New Orleans, Louisiana; Long Beach, California; and Washington, DC.

Due to the similarity of these two rulemakings the Coast Guard has decided to combine the two dockets into CGD 79-116 and hereby withdraws CGD 79-116a.

Interested persons are invited to participate in this rulemaking by submitting written data, views or arguments. Written comments should include the name and address of the person making comment, identify this notice [CGD 79-116], the specific section of the proposal to which the comment applies, the reasons for the comment, and suggested modifications to the proposed rules. Persons desiring an acknowledgment that their comment has been received should enclose a stamped, self-addressed postcard or envelope. All comments received before expiration of the comment period will be considered before final action is confirmed.

Drafting Information

The principal drafters of this supplemental notice are: Mr. Christopher J. Heizer, Office of Marine Safety, Security and Environmental Protection, and CDR Gerald A. Gallion, Office of Chief Counsel.

Background

The Port and Tanker Safety Act of 1978 (PTSA) (46 U.S.C. 3703) specifically requires the Secretary of Transportation to prescribe personnel and manning standards for tank vessels of the United States. The Coast Guard interprets personnel and manning standards to include training, license qualifications, health and physical fitness criteria, periodic retraining, recognition of experience and completed training, and performance testing in the determination of licenses and certificates for the certification of crew members in the handling of oil and hazardous materials. Section 7317 of title 46 of the U.S. Code also authorizes the Secretary to prescribe procedures, standards, and qualifications for the issuance of certificates or endorsements as tankerman.

Improvement of crew standards was the subject of the International Conference on Training and Certification of Seafarers held in 1978 under the auspices of the Intergovernmental Maritime Consultative Organization, now known as the International Maritime Organization (IMO). At this conference, 72 nations agreed on the text of the world's first international convention establishing basic requirements concerning training, certification and watchkeeping for masters, officers, and crews of seagoing merchant ships. The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW) will be applicable to vessels of the United States once the Convention is ratified by the U.S. Senate. Since the Convention has been accepted internationally, it already applies to U.S. flag vessels on foreign voyages to party states.

The Coast Guard in the December 18, 1980, **Federal Register** (45 FR 83268, 83290) published notices of proposed rulemaking which proposed redefining and establishing more stringent qualifying criteria for individuals engaged in transporting and transferring various categories of oil and hazardous materials and proposed revising the qualifications of the person-in-charge of an oil transfer operation. Four public hearings were held and 140 written comments were received in response to the proposed rules and are discussed in this document. Comments were received from private individuals, maritime attorneys, commercial enterprises, maritime unions, industry associations, state maritime agencies, Federal agencies, and state and Federal maritime schools.

Many commenters complained that industry input was not sought during the development of the NPRMs. Many commenters want the Coast Guard to allow the Towing Safety Advisory Committee (TSAC) to review the proposed regulations while other commenters want the Coast Guard to publish another notice of proposed rulemaking before publishing a final rule. The Coast Guard agrees with both of these recommendations. The Coast Guard has worked closely with TSAC in revising these proposed regulations and considered TSAC Recommendation #53, which contains TSAC's specific recommendations. The minutes from the TSAC meetings at which the proposed tankerman regulations were discussed and TSAC's Recommendation #53 have been placed in the official docket, where they are available to the public for review.

As a result of working with TSAC in developing this supplemental notice of proposed rulemaking (SNPRM) the Coast Guard has revised the tankerman regulations by separating the tankship and tank barge tankerman requirements so special consideration could be given to the operational conditions and practices of each industry. The proposed tankerman regulations in the SNPRM try to ensure the requirements for a tankerman endorsement correspond to the operational level of authority granted by the endorsement.

These proposed regulations have been renumbered to maintain consistency with other sections in the Code of Federal Regulations. Therefore, after each specific comment is a "new" cite that reflects the affected section in this supplemental notice of proposed rulemaking and an "old" cite corresponding to the previous proposal (45 FR 83268, 83290), e.g. New 46 CFR 13.103, Old 46 CFR 13.01–3.

The Coast Guard has revised the proposed regulations to require only the master, chief mate, and other personnel designated as person-in-charge of liquid cargo transfer operations to be fully qualified tankermen. Personnel assisting with the transfer of bulk liquid hazardous materials do not need the same extensive training required by the person-in-charge, who is responsible for supervising the transfer. The requirements for engineers and personnel assisting in transfer operations have been revised to more closely reflect their level of responsibility.

To reflect the levels of experience and training necessary for the different levels of responsibility, the proposed regulations use several new merchant mariner's document (MMD) endorsements. A person who has satisfied the requirements to be a person-in-charge of bulk liquid cargo transfer operations would be issued an MMD endorsement as "Tankerman-PIC" or "Tankerman-PIC (Barge)." The abbreviation PIC stands for "Person-In-Charge" and indicates the person can be in charge of bulk liquid cargo transfer operations. "Tankerman-PIC" authorizes service on tank vessels, while "Tankerman-PIC (Barge)" authorizes service on tank barges only.

The proposed "Tankerman-Assistant" endorsement would not authorize a person to be a person-in-charge of bulk liquid cargo transfer operations. On tankships a person who will be assigned duties and responsibilities related to bulk liquid cargo or cargo equipment during a transfer operation, that will not be directly supervised by the person-in-charge of the transfer, must have a "Tankerman-Assistant" or "Tankerman-PIC" endorsement for the classification of cargo being transferred.

Individuals serving as chief, first assistant, or cargo engineer on a tankship must have a "Tankerman-Engineer" endorsement. When the Certificate of Inspection for a tankship requires a licensed engineer but not a chief or a first assistant engineer, at least one of the required engineers must have a "Tankerman-Engineer" endorsement. This proposed endorsement does not allow an individual to serve as a person-in-charge of bulk liquid cargo transfer operations.

All tankermen endorsements will be placed on an individual's MMD, even if the individual also has a license.

The Coast Guard has reduced the number of cargo classifications from the three proposed in the NPRM, Flammable/Combustible Liquids, Dangerous Liquids, and Liquefied Gases, to two, Dangerous Liquids and Liquefied Gases. The new Dangerous Liquids classification will cover all products previously covered under the Flammable/Combustible Liquids and Dangerous Liquids classifications of the NPRM.

To reduce the number of cargo tables to which the public must refer and the Coast Guard must update, the tables listing the specific cargoes that fall under the Dangerous Liquid and Liquefied Gas classifications have been eliminated from the rulemaking. Dangerous Liquids are liquids identified by the Coast Guard in 46 CFR 153.40 as dangerous when transported in bulk that are not Liquefied Gases. Part 13 uses the same definition for Liquefied Gas as used in 46 CFR Part 154. Cargoes listed in 46 CFR Part 153 Table 2 are not regulated when carried on non-oceangoing barges.

The proposed grandfathering provisions for personnel currently authorized to transfer bulk liquid cargoes have been revised. Personnel currently authorized to supervise the transfer of Liquefied Gases will be grandfathered just like personnel currently authorized to supervise the transfer of Dangerous Liquids. Personnel willing to accept a restricted tankerman endorsement, that reflects their actual transfer experience, will only have to present evidence of having met the firefighting training requirement and the service requirements. Applicants who want a standard Dangerous Liquid or a Liquefied Gas endorsement will also have to meet the liquid cargo training course requirement, since these endorsements will normally authorize an individual to transfer a wider variety of cargoes than they have in the past.

Comments are invited on how the Coast Guard should document who is authorized to transfer bulk liquid cargoes during the five year transition period for grandfathered personnel.

The Coast Guard has proposed that the firefighting training be required for all tankerman endorsements because of the importance of this knowledge when serving on tank vessels. Due to the limited firefighting capability of tank barges, it is proposed that grandfathered applicants for a "Tankerman-PIC (Barge)" endorsement not be required to attend a firefighting training course if they can document they attended some form of flammability hazard awareness and tank barge firefighting lecture, seminar, or training program. This flammability hazard awareness and tank barge firefighting training should have included some hands-on practice in extinguishing fires.

In the NPRM both the firefighting training course and the liquid cargo training course had to be completed within two years of the date of application. This has been changed in this SNPRM. The firefighting training course must now be completed within five years of the date of application. This increase in time frame coincides with the revised 46 CFR part 10 licensing requirements for firefighting training. The liquid cargo training course must still be completed within two years of the date of application because the training involves many complex operations and teaches the skills that are crucial to a tankerman safely and efficiently conducting bulk liquid cargo transfer operations.

The Coast Guard proposes that grandfathered personnel may meet the firefighting training requirement by having attended a firefighting training course at some time; recency is not required. If the course was not Coast Guard approved, the Coast Guard must be able to verify that the course substantially meets the firefighting training guidelines established by the Coast Guard and used as the basis for reviewing firefighting courses for Coast Guard approval.

In the NPRM published in December 1980, the proposed course outlines were included as a part of the regulations in 46 CFR 13.05 (Old). In response to comments, these outlines for the liquid cargo and tank barge firefighting training courses have been modified and are included at the end of the preamble to this SNPRM. Comments are invited on these course outlines. The course outlines adopted when the final rule is published will be the basis for evaluating the courses needing Coast Guard approval. The Coast Guard recognizes that there is no "best" way to teach a course and that flexibility in designing courses is essential. This flexibility will also permit revisions to courses as needed to reflect changing technology and lessons learned through casualty analysis.

Since the NPRM was published, the Coast Guard has decided not to specify the number of hours for a particular course. Each course submitted for Coast Guard approval will be examined to determine whether it will be of sufficient

duration to adequately cover the material in the course. As a result, there are no course lengths specified.

The Coast Guard is in the process of developing proposed regulations for vapor recovery systems, docket CGD 88–102. Some training on vapor control is included in the proposed liquid cargo training course outlines, but the training requirements for vapor control systems have not been finalized. The Coast Guard will coordinate development of the vapor control regulations and the development of these tankerman regulations.

The Coast Guard published an SNPRM on Hazardous Materials Pollution Prevention [CGD 86–034] in the **Federal Register** of June 9, 1989 (54 FR 24718). It proposed to apply the oil pollution regulations to vessels and facilities which transfer bulk liquid "hazardous materials," including oil and all 46 CFR subchapter O and MARPOL 73/78 Annex II Noxious Liquid Substances (NLS) materials. Personnel handling these materials, not previously required to have a tankerman endorsement, would now be required to have one. The proposed tankerman regulations in this SNPRM address these personnel.

Discussion of Comments

In general, the comments received are not supportive of the originally proposed action. Many commenters question the basis and need for the proposed regulations applying to the inland barge industry and feel the cost of the regulations is not justified. However, many commenters support the need for better trained, more conscientious tankermen, admitting many spills and other relatively minor incidents aboard barges result from ignorance or inattention.

Specific Comment Areas

1. *Current regulations:* Thirteen commenters are against revising the current regulations because they believe the current regulations are adequate. The Coast Guard disagrees. The Statement of Policy in the PTSA declares "that existing standards for the design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of all such vessels which use any port or place subject to the jurisdiction of the United States or which operate in the navigable waters of the United States must be more stringent and comprehensive for the mitigation of the hazards to life, property, and the marine environment; * * *." The regulations concerning the training and qualifications required for a tankerman endorsement have not been revised since the PTSA was passed and do not have a clear standard that can be uniformly applied. Seven commenters support the need for the proposed regulations.

2. *Enforcement of current regulations:* Fourteen commenters believe increased enforcement of the current regulations would be sufficient and are opposed to revising the regulations. The Coast Guard disagrees. The increased hazards associated with the volume and types of hazardous cargoes being shipped today clearly support the Congressional finding that the personnel qualification and manning standards must be more comprehensive and stringent. In addition, the lack of clear-cut qualification standards makes it difficult to enforce the current regulations effectively.

3. *Effectiveness of training requirements:* Nine commenters believe the additional training requirements called for in the NPRM would not have a major impact on pollution and casualties. They feel the personnel involved in the casualties cited in the NPRM had plenty of experience but had a careless attitude, and that carelessness and inattention cannot be regulated out of existence.

The Coast Guard disagrees in part. While the Coast Guard cannot regulate away carelessness and inattention, proper training can heighten a tankerman's awareness of tasks and information essential to the safe performance of his or her duties. Many times a careless attitude evolves from a lack of understanding of the hazards involved or lack of familiarity with the items a tankerman should be monitoring during a transfer operation. The requirements proposed in the SNPRM are designed to ensure the personnel having duties and responsibilities related to bulk liquid cargo transfer and tank cleaning operations are fully aware of all aspects of these operations, especially the safety considerations.

4. *Imposing international standards on domestic industries:* Seventeen commenters are against imposing standards derived from the STCW on the domestic inland tank barge industry. The Coast Guard agrees. Although the Coast Guard agrees with and supports the STCW standards, the tankerman standards in the Convention were primarily designed for seagoing tankships. In this proposal, the Coast Guard has focused attention on the standardization and improvement of the tankerman qualifications and manning requirements that are appropriate to the barge industry. This SNPRM proposes additional training requirements; however, they have been modified from the NPRM and tailored to the particular circumstances that will be encountered.

5. *Exceeding the STCW requirements:* One commenter believes the proposed regulations in the NPRM exceed the STCW requirements. The Coast Guard agrees that some of the proposed regulations in the NPRM were excessive because the levels of training and experience were not related to the level of authority exercised by various crew members. The Coast Guard has revised the proposed regulations to ensure the level of experience and training reflects the level of authority authorized by the particular tankerman endorsement. The Coast Guard believes this has eliminated most of the instances where the requirements exceed the STCW.

6. *Separating tankship and tank barge requirements:* Ten commenters from the inland tank barge industry believe the Coast Guard did not consider the special requirements of their industry and inappropriately merged tank barges with tankships. The Coast Guard agrees that not enough consideration was given to the operating practices and conditions in the tank barge industry. The qualifications and training requirements for tankship and tank barge tankermen have been placed in separate sections, recognizing the differences in the methods of operation and equipment utilized.

(New part 13, subparts B & C; Old 13.01–11 and 13.01–12)

7. *Removing authority of licensed officers to act as tankermen:* Eight commenters are against removing the regulatory authority for licensed officers to serve as tankermen and want any additional knowledge requirement to be verified by an expanded license examination. The Coast Guard partially agrees. The Coast Guard believes licensed officers without specialized tank vessel training and experience can safely act as the person-in-charge of vessel fueling and the transfer of the limited quantities of grade D and E bulk liquid cargo carried on passenger, freight, and miscellaneous vessels. This limited authority is supported by four commenters.

Loading and discharging a tank vessel, however, calls for specialized training and experience. The Coast Guard believes even licensed officers need the specialized training and experience. This has been recognized by the tanker companies' reluctance to make an officer, with no experience on tankers, the person-in-charge of a cargo transfer operation. Normally officers

without tanker experience go through a period where the chief mate provides the needed on-the-job-training (OJT) and evaluates their ability before they can assume the responsibilities of a person-in-charge. In the proposed rule only officers on tank vessels or transferring the more dangerous bulk liquid cargoes will be required to obtain the specialized training and experience.

(New 31.15, 35.35, 70.05–30, 90.10–42, 98.30–17, 151.45–3, 153.957, 154.1831, and 33 CFR 155.710; Old 31.15, 35.35, 70.05–30, 90.10–42, 98.30–17, 151.45–3, 153.957, and 33 CFR 155.710)

8. *Required training* vs *examination:* Three commenters want all applicants to have the option of qualifying for a tankerman's endorsement by taking a Coast Guard examination or completing a Coast Guard approved course. The Coast Guard disagrees. Overall, the Coast Guard believes required attendance of an approved training course with curriculum and instructors that have been reviewed and determined to meet a minimum standard is the best way to ensure a required minimum level of training.

An additional commenter wants the Coast Guard to continue testing tankerman applicants to ensure quality control. The Coast Guard disagrees. Requiring applicants to take a Coast Guard examination is not the only method that can be used to ensure only qualified applicants obtain a tankerman endorsement. A properly monitored approved course can also effectively filter out applicants who are not qualified. The Coast Guard plans to make the monitoring of approved courses a high priority to ensure the maintenance of Coast Guard standards.

There are many problems with relying solely upon OJT. Reliance upon OJT is not effective in that it tends to perpetuate the standards of the person currently doing the job. If the person has high standards, they are passed on. Many times the standards passed on are not as high as they should be, even though the person believes they are passing on the highest standard. Not all tankermen have the same level of knowledge, competence, ability to communicate, desire to communicate, or the varied background needed for a well rounded tankerman instructor. Emergency procedures can not normally be practiced. The duties of the person-in-charge of the transfer operation may restrict the time available to train assisting personnel. However, because loading and discharging a tank barge is a relatively simple operation, the Coast Guard proposes to allow applicants for a "Tankerman-PIC (Barge)-DL" endorsement the option of obtaining all of their training on the job and demonstrating their qualifications by taking a Coast Guard examination.

9. *Simulation training:* Six commenters want simulator training to be mandatory. The Coast Guard does not agree. Simulator training is a valuable way to gain an understanding of the proper procedures for transferring bulk liquid cargoes, but it is not the only way to conduct training. The Coast Guard has revised the proposed regulations to give credit toward the required transfer experience for transfers obtained through courses that provide simulated transfers.

10. *Oral examinations:* Two commenters indicate the Coast Guard should not allow oral examinations for tankerman endorsements because tankermen must be able to read and write to fill out required forms. The Coast Guard partially agrees. While a tankerman must be able to review forms and information related to the cargo and the transfer operation, the Coast Guard does not believe it is justified in disqualifying an experienced individual who may have a reading deficiency. In the proposed regulations no tankerman applicant is forced to take a Coast Guard examination. Applicants will always have the option to take a Coast Guard approved course, where reading difficulties can be handled individually. Therefore, no provisions for an oral examination have been made.

(New 46 CFR 13.309; Old 46 CFR 13.01–16)

11. *Unilateral action on foreign flag vessels:* Seven commenters are critical of the potential impact unilateral action by the Coast Guard in regards to foreign vessels would have on international cooperation if the proposed regulations were brought into force prior to ratification of the STCW. STCW came into force on April 28, 1984 for the initial ratifying states. As other countries ratify the convention, their vessels will be subject to the Convention. Since STCW has been accepted internationally, the Coast Guard believes this proposal will not produce the unilateral negative impact envisioned.

12. *Equal enforcement on foreign vessels:* Six commenters want the Coast Guard to ensure foreign flag vessels meet the same standards U.S. vessels are required to meet. Five commenters want the Coast Guard to evaluate the content of the training and licensing programs foreign countries have established to ensure they meet the STCW requirements. The Coast Guard plans to require that personnel on vessels of countries signatory to STCW meet the requirements of STCW when in U.S. waters and that personnel on vessels of countries not signatory to STCW have equivalent qualifications.

13. *Foreign certificates:* Three commenters state that foreign countries do not issue "certificates." The term "certificate" is defined in Article II of the STCW as a valid document by whatever name it may be known, issued by or under the authority of the administration or recognized by the administration authorizing the holder to serve as stated in this document or as authorized by national regulations. The proposed regulations have been modified, however, to refer to licenses or other documentation authorizing service on the vessel.

14. *COW training:* One commenter wants the liquid cargo training course to be considered as meeting the crude oil washing (COW) training option discussed in 33 CFR 157.152(c)(2). The Coast Guard partially agrees. If the liquid cargo training course covers the material outlined in Appendix II of IMO Resolution A.446(XI), students will be considered as meeting 157.152(c)(2). Although COW/Inert Gas (IG) equipment and operations need to be covered in the liquid cargo training course, the extensive coverage needed to meet 157.152(c)(2) is not required. It is the vessel operator's responsibility to ensure personnel hired for vessels equipped with COW systems have the required experience or training.

15. *Definitions:* Two commenters want "Cargo engineer" added since there is such a position on liquefied natural gas (LNG) tankships. Several commenters want "work shift" more clearly defined. The Coast Guard agrees and has revised the list of definitions.

(New 13.103; Old 13.01–3)

16. *Shore based personnel:* Two commenters are concerned that the proposed regulations in the original notice did not address shore based personnel. Tankermen hired by barge companies or terminal personnel who come onto barges and transfer cargoes must meet the proposed regulations. Personnel in charge of the transfer facility only, and not the tank barge, during transfer operations do not need to meet the proposed regulations.

17. *Tankerman endorsements:* One commenter suggests the Coast Guard use the term "endorsement" rather than "certificate" to describe the endorsement on an MMD. The Coast Guard agrees.

One commenter is concerned that applicants for a proposed tankerman endorsement would be required to possess MMDs before they could apply

for a proposed tankerman endorsement. An MMD is not a prerequisite for a tankerman endorsement. Applicants who have not previously been issued an MMD will receive one with the tankerman endorsement if they meet all the requirements.
(New 13.107; Old 13.01–5)

18. *Tankerman endorsements: authorized cargoes:* Fifteen commenters argue that the skills required to transfer Flammable/Combustible Liquids (FC) and Dangerous Liquids (DL) are so similar they should be combined or say that their operations will require their personnel to obtain both FC and DL endorsements. The Coast Guard agrees the two cargo classifications are very similar. Transferring bulk liquid cargoes in these classifications requires similar skills; however particular hazards are associated with each different product. When discussing particular hazards, people normally think about DL cargoes, but with the recent concern over benzene many of the FC cargoes are beginning to be treated with similar caution. For this reason and the fact that the liquid cargo training courses are designed to give tankerman applicants a broad working knowledge of tank vessel operations and cargo characteristics and hazards, the Coast Guard has decided to combine FC and DL cargoes into a single DL cargo classification.

Three commenters want the Liquefied Gas classification broken into several smaller subdivisions because of the variety of characteristics the different products in the classification have. The Coast Guard disagrees. Even though the products in this classification may have a wide range of special characteristics, the intent of the required training is to give people a broad understanding of the vessels, operations, equipment, and special cargo characteristics associated with this cargo classification. The vessel operator or agent is responsible for designating the persons-in-charge and ensuring that the designated person-in-charge has the training and experience needed to safely conduct the transfer of a cargo having particular hazards.
New 33 CFR 155.700; Old 13.01–6)

19. *Tankerman certificated under prior regulations:* The NPRM proposed to allow personnel who held a tankerman certificate or were authorized to transfer bulk liquid cargoes to continue to serve under their previous authority for five years. During this five year period they would have to apply for one of the new tankerman endorsements. They would have to show service on tankships or tank barges prior to the effective date and within three years of application, and have attended a firefighting course. Personnel in charge of transferring liquefied gas cargo were not going to be grandfathered.

Eighteen commenters want tankermen for liquefied gas tank vessels to be grandfathered like the other tankermen. They make the point that the personnel currently responsible for transferring liquefied gas cargoes are specially trained for these cargoes and that grandfathering liquefied gas personnel will not impact transfer safety. The Coast Guard agrees and has modified the proposed regulations.

Two commenters want foreign flag officers and tankermen to be grandfathered just like U.S. tankermen. In principle, if they possess the same level of qualifications and experience as U.S. officers and tankermen, the Coast Guard will consider grandfathering them. Foreign flag personnel from countries that have ratified STCW may be handled according to the STCW transition guidelines in Article VII, which depend on when these countries ratified the Convention. The Coast Guard is not sure it will establish a grandfathering provision for foreign flag personnel from countries not signatory to STCW. If it does, the provision will probably require these people to present letters of service documenting the service that qualifies them for the grandfathering provision. The Coast Guard would like comments on the possible grandfathering of foreign flag personnel and suggestions on how this might be done.

There is disagreement over the length of the grandfathering period. Three commenters want the period shortened, one commenter wants the period shortened unless applicants take a bulk liquid cargo training course, three commenters like the five year period proposed in the NPRM, and one commenter wants a longer period. The Coast Guard believes a five year grandfathering period is appropriate.

One commenter is against requiring grandfathered personnel to take liquid cargo and firefighting training courses. The Coast Guard partially agrees. Grandfathered personnel will be required to complete a firefighting training course prior to applying for a new tankerman endorsement because the training plays an important role in fire safety and responding to emergencies. However, grandfathered applicants applying for restricted endorsements for the products they are currently authorized to transfer would not be required to attend the liquid cargo training. Grandfathered applicants who receive the proposed DL and/or LG endorsements would normally be authorized to handle a much broader range of cargoes than they have experience in handling. For this reason the Coast Guard has proposed that grandfathered applicants must attend a liquid cargo training course to qualify for an unrestricted endorsement. Applicants presenting course completion certificates for liquid cargo training courses completed up to ten years prior to the effective date of the final rule would be considered to have satisfied the liquid cargo training requirement if the Coast Guard determines that the course covered a substantial portion of the material required for the DL or LG course.

Three commenters want to know what kind of documentation will be needed to qualify for grandfathering. The Coast Guard agrees that this needs to be clarified and has revised the proposed regulations to explain the requirements. Basically, an applicant would be required to present a letter of service or, in some cases, certificate(s) of discharge.
(New 13.111; Old 13.01–7)

20. *Restricted tankerman endorsements:* Although TSAC is against allowing a restricted tankerman endorsement, ten commenters want restricted tankerman endorsements to recognize the special situations where a tankerman handles only a few different cargoes or product families. The Coast Guard agrees and has made allowance in the proposed regulations for Officers in Charge, Marine Inspection (OCMIs), with regional examination centers to reduce or modify the requirements needed to qualify for a "Tankerman-PIC" or a "Tankerman-PIC (Barge)" endorsement limited to specific cargoes, cargo facility, employer, and/or vessel.
(New 13.107; Old 13.01–5)

21. *Renewal of tankermen endorsements:* Four commenters think a five year renewal period is unnecessary and excessively costly. Five additional commenters recommend a ten year renewal period. TSAC supports a five year renewal period. Two commenters also state they do not believe the Coast Guard has the personnel resources to process the renewals. As proposed, all tankermen endorsements would be placed on MMDs which are not required to be renewed.

(New 13.119; Old 13.01–9)

22. *Vision requirements:* One commenter feels that the requirement for 20/200 uncorrected vision in each eye is too severe and should be dropped. The Coast Guard disagrees. The U.S. visual acuity requirements for all marine personnel are already among the most liberal in the world. The requirements

for tankerman have always been the same as Qualified Members of the Engine Department (QMED) and licensed engineers. The duties of a tankerman and a QMED are equivalent as far as the need for visual acuity is concerned. The Coast Guard sees no compelling reason for a more liberal standard for tankerman. The standards were just relaxed two years ago when 46 CFR part 10 was revised.

(New 13.301; Old 13.01–12)

23. *Service requirements:* Nineteen commenters want to reduce the total number of on board transfers required for a tankerman endorsement. One group is concerned about the time needed to obtain 10 transfers, while another group wants credit for simulated transfers. The Coast Guard partially agrees. The Coast Guard believes that at least 10 transfers, five loading and five discharging, are required for a person to become fully familiar with the transfer procedures. These required transfers must include at least one commencement and one completion of both a loading operation and a discharge operation. On the other hand, the Coast Guard believes that simulated transfers can be a very valuable way to gain transfer experience, although some actual transfers are still needed to round out an applicant's experience. For these reasons the Coast Guard has revised the proposed regulations to allow simulated transfers to be substituted for a substantial portion of the ten required transfers.

Four commenters want a transfer credit for each four-hour watch even if the watches were stood during one continuous transfer operation. The Coast Guard partially agrees. The Coast Guard is concerned that applicants could use consecutive four-hour work shifts to significantly reduce the number of transfers they have participated in or have observed.

If an applicant participates in the commencement and the completion of a transfer, they will get credit for the commencement and the completion, but they will still receive credit for only one transfer. For example, an applicant's first transfer experience is standing two, four-hour work shifts during one loading transfer operation, including participation in the commencement and the completion operations. The applicant would get credit for participating in a loading commencement transfer and a loading completion transfer but would only receive credit for one loading transfer. This means the applicant would have to complete the normal five discharge transfers and four more loading transfer operations, but, since the applicant has already met the loading commencement and completion requirements, none of these additional four loading transfers would have to be a commencement or a completion.

Two commenters want a transfer credit for each chemical or product that a product carrier is transferring during a work shift. The Coast Guard partially agrees. If a vessel is loading and discharging products during a work shift, the demands of the two different operations should warrant credit for one loading and one discharging transfer. If a vessel is loading or discharging multiple products the Coast Guard believes the operation should be considered a single loading transfer or discharge transfer and should not receive multiple transfer credit. When loading or discharging, the operation is basically the same whether one tank is involved or several.

One commenter thinks there should be a minimum service requirement as well as a transfer requirement. This is also supported by TSAC. The Coast Guard agrees, and a service requirement has been proposed for all "Tankerman-PIC" and "Tankerman-PIC (Barge)" endorsements. A tankerman needs to have some background experience in tank vessel operations. Applicants working at a very busy terminal may obtain all the required transfer experience in a very short period of time, but may not develop a good understanding of tank vessel operations. In some cases, the regulations provide for a reduction in the service requirement if the applicant has attended a liquid cargo training course.

Two commenters feel engineers will not be able to get the required transfers. The Coast Guard agrees, since engineers do not normally participate in bulk liquid cargo transfers. The Coast Guard has proposed a "Tankerman-Engineer" endorsement that would not require transfer experience.

One commenter is concerned a master may have difficulty obtaining the transfer experience required for a "Tankerman-PIC" endorsement because of the normal duties and responsibilities that must be performed while the vessel is in port. The Coast Guard agrees that it may be difficult for the master to get transfer experience. If, however, a master attends a liquid cargo training course approved by the Coast Guard for equivalent transfers, the equivalent transfers earned by completing the course can be used to reduce the number of shipboard transfers required. At a minimum, an applicant must participate in or observe at least two actual transfers. The transfer experience is an important part of gaining the skills needed to be a person-in-charge of liquid cargo transfer operations.

One commenter is concerned that a dangerous situation may develop if too many people try crowding into a cargo control room to obtain their transfer requirements. The Coast Guard agrees, but it is the responsibility of the person-in-charge to make sure that observing personnel do not become a hazard.

(New 13.203, 13.303, 13.403, and 13.503; Old 13.01–13)

24. *Documentation of service:* Three commenters want the service documentation requirements for the proposed tankerman endorsements clarified. The Coast Guard agrees and has revised the proposed regulations.

One commenter wants the Coast Guard to generate a standard form, preferably in a sign-off format. The Coast Guard disagrees. As long as the service information required for the endorsement is provided, there is no mandatory format for the service documentation.

One commenter wants only a master to be authorized to verify an applicant's service. The Coast Guard partially agrees. It is the master's responsibility to appoint the persons-in-charge on the vessel, so it should be the master's responsibility to document a tankerman applicant's service. There are, however, many tank vessels that are not required to have a master. There will also be situations where the master may be busy or unavailable. The proposed regulations have been revised to allow several methods of documenting service.

One commenter wants a transfer facility operator to be authorized to document an applicant's service. The Coast Guard partially agrees. The proposed regulations have been revised to allow this option for service involving tank barges, since many facilities directly control the loading and discharging of the tank barges.

Two commenters want the required documentation of service dropped because they are concerned the applicants cannot compel employers to generate service letters, and employers are not required to keep the service records so applicants can get a service letter at some later date. The Coast Guard disagrees. Companies who use tankermen have a vested interest in documenting the service of their employees since they need to ensure a supply of tankermen for their operations. Applicants should collect their service letters as service is accumulated.

One commenter wants the Coast Guard to allow an applicant to submit a single letter to document their service because tankermen normally get their service from a wide variety of employers and because it would be difficult for applicants to keep track of many service letters. The Coast Guard partially agrees. The proposed regulations would allow applicants who work for a tankering service that transfers liquid cargo for a wide variety of companies to present a letter of service from the tankering company, since the tankering company has direct knowledge of all the applicant's experience. Applicants who obtain their service from a wide variety of employers because they have worked for a lot of different companies will still have to keep track of the service letters issued by each company, since none would be able to attest to service acquired outside of their employ.

(New 13.205, 13.305, 13.405, and 13.505; Old 13.01–14)

25. *Course approvals:* Eleven commenters are concerned the Coast Guard is going to require company personnel to attend formal schools, separate from employer training programs. Formal schools are not the only organizations that can apply for Coast Guard approval of a training course. The Coast Guard will review any training program submitted for approval. The Coast Guard recognizes that there are many well-run training programs being offered by companies for their employees and expects to review and approve many company training programs that already come close to satisfying the required training discussed in the proposed regulations.

(New 13.121; Old 13.05–2)

26. *Shipboard firefighting training courses:* Four commenters want first aid deleted from the required firefighting training courses contained in the NPRM because it would take too much time to adequately cover the material. The Coast Guard agrees. First aid is not in currently approved basic and advanced shipboard firefighting courses.

One commenter wants the firefighting course to discuss and demonstrate the large dry chemical extinguishers used as the primary firefighting system on LNG tankers. The Coast Guard agrees that the use of these extinguishers should be discussed, but does not feel there is a need to include this equipment in field exercises since they are currently only used on LNG vessels.

One commenter wants recognition for shipboard firefighting training. If a company has a regular shipboard firefighting training program, it may submit it for Coast Guard review and approval.

The firefighting training requirements can be broken into two parts, classroom training and field training. It is possible for a school to offer only one of the two parts of the training. An applicant satisfying the firefighting training requirement by attending two different schools, each teaching a different portion of the required training, must take the two portions within a specified time limit. Three commenters want the Coast Guard to increase this time limit because winter weather can close fire fields and academic scheduling problems can prevent an applicant from meeting the NPRM time limit. The Coast Guard agrees and has developed firefighting training course guidelines without a time limit. However, both portions of the firefighting training requirement must have been completed within five years of the date of application.

Three commenters are concerned that the firefighting training course will cover the use of the canister type oxygen breathing apparatus (OBA), since they are ignition sources and are a potential hazard on tank vessels. The approved basic and advanced firefighting training courses are not specifically designed for tank vessels. This hazard is recognized and should be covered in any approved course. The Coast Guard will consider placing increased emphasis on this subject in approving and monitoring existing firefighting courses.

(Old 13.05–6)

27. *Tank barge firefighting training course:* Fourteen commenters want the tank barge firefighting training course eliminated; and six commenters want local company training accepted. Twenty-seven commenters want the tank barge firefighting training course requirement reduced in length and modified to reflect the special operating conditions of tank barges. Several commenters feel existing fire companies at waterfront facilities could be relied upon to respond if a fire occurred. The Coast Guard agrees that the tank barge firefighting training course should reflect the industry's special requirements, and the tank barge firefighting training course requirements have been modified accordingly.

Four commenters want the tank barge firefighting training course requirements eliminated for tankermen who will not be handling liquid cargoes that are flammable or combustible. This is a factor that will be considered by the OCMI when evaluating an application for a restricted tankerman endorsement.

(Old 13.05–7)

28. *Liquid cargo training courses:* Four commenters only want courses to cover Federal regulations, not state or local regulations that may be changed without wide notification and should be learned on the job. The Coast Guard agrees and has modified the proposed course requirements.

One commenter wants the tankship training course to cover international regulations. The Coast Guard agrees and has modified the proposed course requirements.

One commenter indicates that the course outlines in the NPRM only mentioned tank cleaning once, and that was addressing crude oil washing which is not used on all tank vessels. The commenter believes this area should be expanded. The Coast Guard agrees and has modified the proposed course requirements.

Nine commenters want non-barge topics eliminated from the tank barge liquid cargo course as being inappropriate. The Coast Guard agrees and has modified the proposed course requirements for this course.

Two commenters indicate that not all products listed in the NPRM proposed Table 13.01–6(a) are discussed in the Chemical Data Guide or the CHRIS Manual. This is true, but the liquid cargo training courses are not designed to cover all the specific products listed. The manufacturers normally provide product safety cards that indicate the cargo-specific hazards and precautions.

(Old 13.05–11 and 13.05–12)

29. *Manning requirements on tank vessels:* One commenter supports and eleven commenters oppose requiring all personnel assisting in the liquid cargo transfer operation to be fully qualified tankermen. The Goast Guard agrees that not all personnel involved in a transfer need the same level of training the person-in-charge must have. The proposed regulations have been modified to require personnel assisting with the transfer who will not be under the direct supervision of the person-in-charge to hold an MMD endorsed as "Tankerman-Assistant." This proposed endorsement indicates the person has had a required amount of service on a tankship or has taken the required training that will allow the person to safely carry out cargo related duties without the direct supervision of the person-in-charge. The Coast Guard is interested in suggestions on how we should define "direct supervision."

One commenter opposes requiring engineers to be fully qualified tankermen. Two commenters only want "Cargo engineers" to be tankermen. One

commenter proposes allowing all engineers to be tankermen. The NPRM requirement for engineers to be fully qualified tankermen went beyond the STCW requirements. The STCW only requires the chief and first assistant engineer to have experience on tankships and the special training they need to perform their engineering duties on tankships. The Coast Guard agrees that engineers do not need to be fully qualified tankermen because they are not normally directly involved in cargo transfer operations, unless they have been designated as a person-in-charge of a bulk liquid cargo transfer. Engineers who wish to take the liquid cargo training course and obtain the service and transfer requirements may qualify for a "Tankerman-PIC" endorsement. A proposed requirement for cargo engineers to have at least a "Tankerman-Engineer" endorsement has been added.

Three commenters oppose specifying the number of tankermen on the Certificate of Inspection. The Coast Guard disagrees since 46 U.S.C. 8703 requires the number of certificated tankermen be placed on the Certificate of Inspection. The Certificate of Inspection specifies the minimum safe manning levels required on U.S. vessels and is the appropriate place to specify the minimum number of "Tankerman-PIC," "Tankerman-Engineer," and "Tankerman-Assistant" required for safe operation of the vessel.

Five commenters express concern about how a master will be able to verify a person's previous experience on "similar" cargo systems. One additional commenter wants the proposed regulations to be modified to let the master use his or her own judgment in this evaluation. The Coast Guard agrees, and the proposed regulations have been modified to require the master to verify to his or her satisfaction that the person-in-charge has sufficient training and/or experience with the cargo containment system, the vapor control system, the cargo system, and the control and monitoring systems on the tankship to safely conduct a transfer operation.

(New 31.15–1; Old 31.15–1)

30. *Riding tankerman for tank barges:* Fifty-two commenters oppose the requirement for a tankerman to be on a towing vessel while towing a barge subject to these regulations. Most feel having a tankerman on the towboat will not alleviate a spill caused by improper navigation. Many other factors may prevent quick and efficient transfer of liquid cargo from a leaking tank barge even if a tankerman was available. There is no guarantee that there will be an empty barge available, and even if there is, many tank barges have no pumps or hoses. The Coast Guard agrees. The Coast Guard believes the operator or individual in charge of the watch on the towboat has the responsibility for the proper monitoring of any tank barges in the tow, ensuring that the crew of the towboat understands the hazards associated with the cargoes in the tank barges, and reporting cargo spills to the Coast Guard.

(New 46 CFR 31.15–5 and 151.45–3; Old 46 CFR 13.01–3, 31.15–5 and 151.45–3)

31. *Foreign personnel's need to understand English:* One commenter considers the proposed requirement to understand, in English, all instructions relative to cargo and vessel operations to be reasonable if there is uniform and reasonable interpretation by enforcement officials. Two commenters feel the requirement is much more than necessary to ensure a safe transfer. The Coast Guard has modified the proposed regulations to reflect only instructions relative to cargo transfer operations.

One commenter thinks the ability to speak English is just as important as the ability to understand English in ensuring a safe transfer operation. The Coast Guard agrees and has modified the proposed regulations to require that personnel be able to understand and speak, in English, instructions relative to cargo transfer operations.

One commenter wants the Coast Guard to require an interpreter during a transfer operation. The Coast Guard partially agrees. The proposed regulations have been modified to permit the use of an interpreter to meet the English requirement, but an interpreter is not required.

(New 33 CFR 155.710; Old 33 CFR 155.710)

32. *Tank cleaning and gas freeing operations:* Seven commenters want a marine chemist to be able to supervise tank cleaning and gas freeing operations, while three other commenters also want a "competent person" to be able to supervise these operations. The Coast Guard agrees and has revised the proposed regulations accordingly. A marine chemist must go through an extensive training program before receiving a marine chemist's certificate issued by the National Fire Protection Association. For this reason the Coast Guard does not propose to have them get a Coast Guard endorsement. The regulations covering the selection of a "competent person" do not have any specific training requirements. For this reason it is proposed that a "competent person" must hold a Coast Guard endorsement, so the Coast Guard can take effective action to withhold service authority if competence comes into question. A "competent person" not meeting the requirements for "Tankerman-PIC (Barge)" may obtain a restricted "Tankerman-PIC (Barge)" endorsement restricted to the tank cleaning operations by a specified company. When the Coast Guard districts were surveyed about allowing "competent persons" to supervise these operations, the districts indicated that the safety record of "competent persons" was about the same as marine chemists.

(New 33 CFR 155.710; Old 33 CFR 155.710)

Training Course Requirements

An organization seeking Coast Guard approval of a course required for a tankerman endorsement will have to apply in accordance with 46 CFR 10.302 and meet the general requirements of 46 CFR 10.303. In addition the Coast Guard proposes that, except for the firefighting course, each instructor must hold an MMD with a tankerman endorsement appropriate for the course, or establish equivalent qualifications to the satisfaction of the Coast Guard. The firefighting course must include actual practice in extinguishing fires, all other courses may include field training or simulation in meeting the course requirements. Satisfactory completion of an approved course will be evidenced by a certificate issued by the organization and signed by the head of the training organization or a designated representative.

Courses including simulated cargo transfer operations will be evaluated to determine the amount of credit that will be allowed towards meeting the proposed service requirements, and the certificates will reflect the credit granted. The Coast Guard maintains a listing of organizations conducting approved training courses. This information is available upon request by writing to Commandant (G–MVP) U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001 or calling (202) 267–0224.

Comments are specifically invited on the proposed subject matters to be covered; the appropriate minimum amount of instruction; and the inclusion of hands-on practice or drills, or the use of simulated transfers that should be required.

Tankship Dangerous Liquid Cargo Training Course

(a) The curriculum will be evaluated for adequate coverage of the required

subjects. Training methods may include classroom instruction, demonstrations, simulated or actual operations.

(b) The course shall include as a minimum the following:

(1) General characteristics, compatibility, reaction, firefighting procedures and safety precautions for the bulk liquid cargoes defined as Dangerous Liquids in 46 CFR part 13.

(2) General arrangement of cargo tanks, vapor control, and venting.

(3) Cargo piping systems and valves, including remote control, excess flow and pressure-vacuum valves.

(4) Operation of cargo pumps.

(5) Operations connected with the loading and discharging of cargo including:

(i) Lining up the cargo and vapor control systems.

(ii) Pre-transfer inspections.

(iii) Pre-transfer conference and completion of the Declaration of Inspection.

(iv) Hooking up cargo hose and loading arms.

(v) Starting liquid flow.

(vi) Calculation of loading rates.

(vii) Discussion of the loading operation itself.

(viii) Ballasting and deballasting operations.

(ix) Topping off the cargo tanks.

(x) Discussion of the discharging operation itself.

(xi) Stripping the cargo tanks.

(xii) Monitoring transfer operations.

(xiii) Tank gauging (open & closed).

(xiv) Disconnecting cargo hoses or loading arms.

(6) Stability and stress considerations when loading, discharging, and ballasting or deballasting a tankship.

(7) Loadline, draft, and trim considerations.

(8) Rules and regulations (tankship and tank barge, both international and Federal) pertaining to operational procedures and pollution prevention.

(9) Pollution prevention and control.

(10) Emergency procedures for the following:

(i) Fire.

(ii) Collision.

(iii) Equipment failure.

(iv) Groundings.

(v) Leaks and spills.

(vi) Emergency shutdown.

(11) Safety precautions relative to:

(i) Testing tank atmospheres for oxygen and hydrocarbon vapor.

(ii) Entering cargo tanks and pump room.

(iii) Dangers of skin contact.

(iv) Inhalation of vapors.

(v) Protective clothing and equipment.

(vi) Hot work procedures.

(vii) Electrical and static electricity hazards and precautions.

(12) Oil and chemical tankship and tank barge terminology.

(13) Principles and procedures of Crude Oil Washing (COW) and Inert Gas Systems (IGS), including:

(i) Purpose.

(ii) Equipment and design.

(iii) Operations.

(iv) Safety precautions.

(v) Maintenance of plant and equipment.

(14) Tank cleaning operations, procedures, and precautions.

(15) Principles and procedures of vapor control systems, including:

(i) Purpose.

(ii) Coast Guard regulations.

(iii) System principles.

(iv) Hazards.

(v) Active system components.

(vi) Passive system components.

(vii) Operating procedures.

(viii) Emergency procedures.

(16) Cargo hazard information systems.

Tankship Liquefied Gas Cargo Training Course

(a) The curriculum will be evaluated for adequate coverage of the required subjects. Training methods may include classroom instruction, demonstrations, simulated or actual operations.

(b) The course shall include as a minimum the following:

(1) General characteristics, compatibility, reaction, firefighting procedures and safety precautions for the bulk liquefied gas cargoes and their vapors defined as Liquefied Gases in 46 CFR part 13.

(2) Physical phenomena of liquefied gas, including:

(i) Basic concept.

(ii) Compression and expansion.

(iii) Mechanism of heat transfer.

(3) Potential hazards of liquefied gas, including:

(i) Chemical and physical properties.

(ii) Combustion characteristics.

(iii) Hot work procedures.

(iv) Results of gas release to the atmosphere.

(v) Health hazards (skin contact, inhalation and ingestion).

(vi) Protective clothing and equipment.

(vii) Tank entry procedures and precautions.

(viii) Control of flammability range with inert gas.

(ix) Thermal stress in vessel structure and piping.

(4) Cargo systems, including:

(i) Principles of containment systems.

(ii) Tank construction, materials, coatings and insulation.

(iii) General arrangement of cargo tanks.

(iv) Venting and vapor control systems.

(5) Cargo handling systems, including:

(i) Piping systems, valves, pumps and expansion systems.

(ii) Operating characteristics.

(6) Instrumentation systems, including:

(i) Cargo level indicators.

(ii) Gas detecting systems.

(iii) Hull and cargo temperature monitoring systems.

(iv) Automatic shut down systems.

(7) Auxiliary systems, including:

(i) Ventilation, inerting.

(ii) Valves, including:

(A) Quick closing.

(B) Remote control.

(C) Pneumatic.

(D) Excess flow.

(E) Safety relief.

(F) Pressure vacuum.

(iii) Cofferdam and ballast tank heating systems.

(8) Operations connected with the loading and discharging of cargo including:

(i) Lining up the cargo and vapor control systems.

(ii)–(iii) Pre-transfer inspections and completion of the Declaration of Inspection.

(iv) Hooking up cargo hose and loading arms.

(v) Starting liquid flow.

(vi) Calculation of loading rates.

(vii) Discussion of the loading operation itself.

(viii) Ballasting and deballasting operations.

(ix) Topping off the cargo tanks.

(x) Discussion of the discharging operation itself.

(xi) Stripping the cargo tanks.

(xii) Monitoring transfer operations.

(xiii) Tank gauging.

(xiv) Disconnecting cargo hoses or loading arms.

(9) Operating procedures and sequence for the following:

(i) Inerting cargo tanks and void spaces.

(ii) Tank cool down and tank warm up.

(iii) Gas freeing.

(iv) Loaded or ballasted voyages.

(v) Testing tank atmospheres for oxygen and cargo vapor.

(10) Stability and stress considerations connected with the loading and discharging of cargo.

(11) Loadline, draft, and trim considerations.

(12) Boil-off disposal, including:

(i) System design.

(ii) Safety features.

(13) Emergency procedures for the following:

(i) Leaks and spills.
(ii) Fires.
(iii) Collisions.
(iv) Groundings.
(v) Structural failures.
(vi) Emergency cargo discharge.
(vii) Emergency shut down of cargo operations.
(viii) Emergency cargo valve closing systems.
(14) Rules and regulations (tankship and tank barge, both international and Federal) pertaining to operational procedures and pollution prevention.
(15) Pollution prevention, including:
(i) Procedures to be followed to prevent air and water pollution.
(ii) Measures to be taken in the event of spillage.
(iii) Danger from vapor cloud drift.
(16) Tankship and tank barge terminology.
(17) Principles and procedures of the inert gas system, including:
(i) Purpose.
(ii) Equipment and design.
(iii) Operations.
(iv) Safety precautions.
(v) Maintenance of plant and equipment.
(18) Principles and procedures of vapor control systems, including:
(i) Purpose.
(ii) Coast Guard regulations.
(iii) System principles.
(iv) Hazards.
(v) Active system components.
(vi) Passive system components.
(vii) Operating procedures.
(viii) Emergency procedures.
(19) Cargo Hazard information systems.

Dangerous Liquid Tankship Familiarization Training Course

(a) The curriculum will be evaluated for adequate coverage of the required subjects. Training methods may include classroom instruction, demonstrations, simulated or actual operations.
(b) The course shall include as a minimum the following:
(1) General characteristics, compatibility, reaction, firefighting procedures and safety precautions for bulk liquid cargoes defined as Dangerous Liquids in 46 CFR part 13.
(2) Oil and chemical tankship terminology.
(3) General arrangement of cargo tanks, vapor control, and venting.
(4) Cargo piping systems and valves.
(5) General operation of cargo pumps.
(6) General discussion of operations connected with the loading and discharging of cargo including:
(i) Pre-transfer inspections/conference and Declaration of Inspection.
(ii) Lining up the cargo and vapor control systems and start of liquid flow.
(iii) Connecting/disconnecting cargo hose/loading arms.
(iv) Loading operations.
(v) Ballasting and deballasting operations.
(vi) Discharging operations.
(vii) Tank gauging (open & closed).
(7) Coast Guard tankship rules and regulations pertaining to operational procedures and pollution prevention.
(8) Pollution prevention and control.
(9) Emergency procedures.
(10) Safety precautions relative to:
(i) Entering cargo tanks and pump room.
(ii) Dangers of skin contact.
(iii) Inhalation of vapors.
(iv) Protective clothing and equipment.
(v) Hot work procedures.
(vi) Electrical and static electricity hazards and precautions.
(11) General principles and procedures of Crude Oil Washing (COW) and Inert Gas Systems (IGS).
(12) Tank cleaning operations, procedures, and precautions.
(13) Principles and procedures of vapor control systems.
(14) Cargo hazard information systems.

Liquefied Gas Tankship Familiarization Training Course

(a) The curriculum will be evaluated for adequate coverage of the required subjects. Training methods may include classroom instruction, demonstrations, simulated or actual operations.
(b) The course shall include as a minimum the following:
(1) General characteristics, compatibility, reaction, firefighting procedures and safety precautions for cargoes defined in 46 CFR part 13 as Liquefied Gases.
(2) Liquefied gas tankship terminology.
(3) Physical phenomena/properties of liquefied gas.
(4) Safety precautions and potential hazards of liquefied gas, including:
(i) Combustion characteristics.
(ii) Hot work procedures.
(iii) Results of gas release to the atmosphere.
(iv) Health hazards (skin contact, inhalation and ingestion).
(v) Protective clothing and equipment.
(vi) Tank entry procedures and precautions.
(vii) Thermal stresses.
(viii) Electrical and static electricity hazards and precautions.
(5) Cargo containment systems.
(6) General arrangement and construction of cargo tanks.
(7) Cargo piping and valves.
(8) Instrumentation systems, including:
(i) Cargo level indicators.
(ii) Gas detecting systems.
(iii) Hull and cargo temperature monitoring systems.
(iv) Automatic shut down systems.
(9) Cofferdam and ballast tank heating systems.
(10) General discussion of operations connected with the loading and discharging of cargo including:
(i) Pre-transfer inspections/conference and Declaration of Inspection.
(ii) Lining up the cargo and vapor control systems and start liquid flow.
(iii) Connecting/disconnecting cargo hose/loading arms.
(iv) Loading operations.
(v) Ballasting and deballasting operations.
(vi) Discharging operations.
(11) Boil-off disposal.
(12) Emergency procedures.
(13) Coast Guard tankship rules and regulations pertaining to operational procedures and pollution prevention.
(14) Pollution prevention.
(15) Principles and procedures of inert gas systems.
(16) Tank cleaning operations and procedures.
(17) Principles and procedures of vapor control systems.
(18) Cargo hazard information systems.

Tank Barge Firefighting Training Course

(a) The curriculum will be evaluated for adequate coverage of the required subjects. Training methods must include actual practice in extinguishing the listed fires and may include classroom instruction, demonstrations, simulated or actual operations.
(b) The course shall include as a minimum the following:
(1) Fire safety.
(i) Basic elements of fire.
(A) Fire triangle.
(B) Fire classifications.
(ii) Ignition sources applicable to barge operations.
(iii) Basic flammability/combustibility definitions.
(A) Ignition point.
(B) Burning temperature.
(C) Lower flammable limit.
(D) Upper flammable limit.
(E) Flammable range.
(F) Inerting.
(G) Static electricity.
(H) Flash point.
(I) Autoignition.
(iv) Main causes of fires.
(A) Oil leakage.
(B) Smoking.
(C) Spontaneous ignition.
(D) Hot work.
(E) Reactivity.

(F) Overheating pumps.
(v) Spread of fire.
(A) By radiation.
(B) By convection.
(C) By conduction.
(vi) Fire prevention.
(A) General.
(B) Fire hazards of DL and LG general cargo classifications as defined in 46 CFR part 13.
(C) Means for gas freeing tanks.
(vii) Firefighting equipment.
(A) Required equipment.
(B) Characteristics of available extinguishing agents.
(C) Limitations of portable and semiportable extinguishers.
(2) Emergency procedures.
(i) Initial procedures.
(A) Evacuation.
(B) Stopping leakage of product.
(ii) Basic firefighting techniques.
(A) Sounding alarm.
(B) Locating and isolating fires.
(C) Sizing up situation.
(D) Locating information on cargo.
(E) Extinguishing with portable units.
(F) Setting reflash watch.
(G) Using additional personnel.
(iii) Extinguisher use on:
(A) Flammable/combustible liquids.
(B) Manifold flange fire.
(C) Drip pan fire.
(D) Pump fire.
(iv) Fire drills for typical fires.
(c) Field exercise training shall include the use of portable extinguishers on the following fires:
(i) Electrical fire.
(ii) Manifold flange fire.
(iii) Drip pan fire.
(iv) Pump fire.

Tank Barge Dangerous Liquid Cargo Training Course

(a) The curriculum will be evaluated for adequate coverage of the required subjects. Training methods may include classroom instruction, demonstrations, simulated or actual operations.
(b) The course shall include as a minimum the following:
(1) General characteristics, compatibility, reaction, firefighting procedures and safety precautions for the bulk liquid cargoes defined as Dangerous Liquids in 46 CFR part 13.
(2) General arrangement of cargo tanks, vapor control, and venting.
(3) Cargo piping systems and valves, including remote control, excess flow and pressure-vacuum valves.
(4) Operation of cargo pumps.
(5) Operations connected with the loading and discharging of cargo including:
(i) Lining up the cargo and vapor control systems.
(ii) Pre-transfer inspections.
(iii) Pre-transfer conference and completion of the Declaration of Inspection.
(iv) Hooking up cargo hose and loading arms.
(v) Starting liquid flow.
(vi) Calculation of loading rates.
(vii) Discussion of the loading operation itself.
(viii) Ballasting and deballasting operations.
(ix) Topping off the cargo tanks.
(x) Discussion of the discharging operation itself.
(xi) Stripping the cargo tanks.
(xii) Monitoring transfer operations.
(xiii) Tank gauging (open & closed).
(xiv) Disconnecting cargo hoses or loading arms.
(6) Practical stress considerations when loading, discharging, and ballasting or deballasting a tank barge.
(7) Stability letter requirements.
(8) Loadline, draft, and trim considerations.
(9) Rules and regulations (tank barge, international and Federal) pertaining to operational procedures and pollution prevention.
(10) Pollution prevention and control.
(11) Emergency procedures for the following:
(i) Fire.
(ii) Collision.
(iii) Groundings.
(iv) Equipment failure.
(v) Leaks and spills.
(vi) Emergency shutdown.
(12) Safety precautions relative to:
(i) Testing tank atmospheres for oxygen and hydrocarbon vapors.
(ii) Entering cargo tanks, cofferdams and voids.
(iii) Dangers of skin contact.
(iv) Inhalation of vapors.
(v) Protective clothing and equipment.
(vi) Hot work procedures.
(vii) Electrical and static electricity hazards and precautions.
(13) Oil and chemical tank barge terminology.
(14) Tank cleaning operations, procedures, and precautions.
(15) Cargo hazard information systems.

Tank Barge Liquefied Gas Cargo Training Course

(a) The curriculum will be evaluated for adequate coverage of the required subjects. Training methods may include classroom instruction, demonstrations, simulated or actual operations.
(b) The course shall include as a minimum the following:
(1) General characteristics and safety precautions of those liquefied gases and their vapor defined as Liquefied Gas in 46 CFR part 13.
(2) Physical phenomena of liquefied gas, including:
(i) Basic concept.
(ii) Compression and expansion.
(iii) Mechanism of heat transfer.
(3) Potential hazards of liquefied gas, including:
(i) Chemical and physical properties.
(ii) Combustion characteristics.
(iii) Hot work procedures.
(iv) Results of gas release to the atmosphere.
(v) Health hazards (skin contact, inhalation and ingestion).
(vi) Protective clothing and equipment.
(vii) Tank entry procedures and precautions.
(viii) Control of flammability range with inert gas.
(ix) Thermal stress in vessel structure and piping.
(4) Cargo systems, including:
(i) Principles of containment systems.
(ii) Tank construction, materials, coatings and insulation.
(iii) General arrangement of cargo tanks.
(iv) Venting and vapor control systems.
(5) Cargo handling systems, including:
(i) Piping systems, valves, pumps and expansion systems.
(ii) Operating characteristics.
(6) Instrumentation systems, including:
(i) Cargo level indicators.
(ii) Gas detecting systems.
(iii) Hull and cargo temperature monitoring systems.
(iv) Automatic shut down systems.
(7) Auxiliary systems, including:
(i) Ventilation, inerting.
(ii) Valves, including:
(A) Quick closing.
(B) Remote control.
(C) Pneumatic.
(D) Excess flow.
(E) Safety relief.
(F) Pressure-vacuum.
(iii) Cofferdam and ballast tank heating systems.
(8) Operations connected with the loading and discharging of cargo including:
(i) Lining up the cargo and vapor control systems.
(ii) Pre-transfer inspections.
(iii) Pre-transfer conference and completion of the Declaration of Inspection.
(iv) Hooking up cargo hose and loading arms.
(v) Starting liquid flow.
(vi) Calculation of loading rates.
(vii) Discussion of the loading operation.

(viii) Ballasting and deballasting operations.
(ix) Topping off the cargo tanks.
(x) Discussion of the discharging operation.
(xi) Stripping the cargo tanks.
(xii) Monitoring transfer operations.
(xiii) Disconnecting cargo hoses or loading arms.
(9) Practical stress considerations when loading, discharging, and ballasting or deballasting a tank barge.
(10) Stability letter requirements.
(11) Loadline, draft, and trim considerations.
(12) Boil-off disposal, including:
(i) System design.
(ii) Safety features.
(13) Operating procedures and sequence for the following:
(i) Inerting cargo tanks and void spaces.
(ii) Tank cool down and tank warm up.
(iii) Gas freeing.
(iv) Loaded or ballasted voyages.
(v) Testing tank atmospheres for oxygen and cargo vapor.
(14) Emergency procedures for the following:
(i) Leaks and spills.
(ii) Fires.
(iii) Collisions.
(iv) Groundings.
(v) Structural failures.
(vi) Emergency cargo discharge.
(vii) Entering cargo tanks.
(viii) Emergency shut down of cargo operations.
(ix) Emergency cargo valve closing systems.
(15) Rules and regulations (tank barge, international and Federal) pertaining to operational procedures and pollution prevention.
(16) Pollution prevention, including:
(i) Procedures to be followed to prevent air and water pollution.
(ii) Measures to be taken in the event of spillage.
(iii) Danger from vapor cloud drift.
(17) Tank barge terminology.
(18) Principles and procedures of vapor control systems, including:
(i) Purpose;
(ii) Coast Guard regulations.
(iii) System principles.
(iv) Hazards.
(v) Active system components.
(vi) Passive system components.
(vii) Operating procedures.
(viii) Emergency procedures.
(19) Cargo hazard information systems.

Regulatory Evaluation

The Coast Guard has evaluated this proposal under Executive Order 12291 and the Department of Transportation's regulatory policies and procedures (44 FR 11034; February 26, 1979) and has determined that it is neither a major nor a significant rulemaking. The proposed regulations serve to implement the intent of the Port and Tanker Safety Act of 1978.

A draft regulatory analysis accompanied publication of the previous NPRM concerning Tankerman in the December 18, 1980, **Federal Register** (45 FR 83290). The impact section of the draft regulatory analysis reviewed costs and benefits which may result from the proposed regulations.

A draft Environmental Impact Statement was developed and placed into the docket for the NPRM and remains essentially unchanged. The proposed tankerman regulations will reduce the number of incidents and volume of bulk liquid cargoes released by tankships and tank barges in United States waters. The Coast Guard estimates that the number of pollution incidents resulting from tankerman personnel errors could be reduced between 10% and 30%. The volume of pollution resulting from tankerman personnel error could be reduced between 10% and 30%. How fast this reduction occurs rslates to the number of individuals obtaining training and when this training is received.

The overall effect of these regulations will be to reduce the amount of oil entering the navigable waters of the United States. The Coast Guard believes that there are no adverse environmental effects resulting from the proposed actions. So far as the Coast Guard can determine, these regulations do not involve any tradeoffs between short-term environmental gains at the expense of long-term losses or vice versa, nor are any future options foreclosed. No significant irreversible and irretrievable commitments of resources are involved in this proposed action.

It was determined that almost all of the costs resulting from the regulations would be in the area of training tankermen, a discounted cost of 38.3 million 1980 dollars for the first ten years. Several changes to the proposed rulemaking and recent regulatory changes have reduced this projected impact. A revised regulatory evaluation has been prepared and is included in the docket file.

One of the two new major training requirements proposed for tankermen in the NPRM was the firefighting training requirement. Firefighting training became a Coast Guard license qualification requirement for licensed personnel in December 1988. For 92% of the licensed personnel effected by the proposed tankerman regulations, the cost of firefighting training is a cost of being licensed, not a cost of becoming a qualified tankerman. The proposed firefighting training will mainly increase the costs for unlicensed personnel applying for the proposed tankerman endorsements.

The Maritime Administration (MARAD) has reduced its role in the operation of firefighting training courses. In 1980 MARAD operated the majority of the firefighting training courses attended by merchant marine personnel. In the last nine years private industry has begun providing a major portion of the firefighting training. MARAD now operates only one of the 17 Coast Guard approved firefighting courses, and this has reduced MARAD's costs.

The NPRM proposed that all personnel having anything to do with bulk liquid cargo or cargo equipment on tank vessels have the experience and training needed to be a person-in-charge (PIC) of a bulk liquid cargo transfer. This required an excessive amount of training and experience for those individuals in the crew supervised by the PIC or not involved in cargo transfer operations. The Coast Guard is now proposing tankerman endorsements whose experience and training requirements are directly related to the cargo responsibilities the endorsement would authorize. This will ensure applicants have the experience and training necessary to safely carry out the responsibilities of their endorsement while avoiding the excessive experience and training requirements included in the NPRM.

The SNPRM has reduced the number of people who need a tankerman endorsement and the overall amount of training required, without sacrificing safety. The Coast Guard has also dropped the NPRM's mandatory course lengths and expects this will slightly shorten the training courses. In addition, unlike the NPRM, the SNPRM does not call for tankermen to attend firefighting or bulk liquid cargo refresher training. The Coast Guard also intends to evaluate and approve company in-house training courses. These changes considerably reduced the projected training costs.

As a result of these and other changes the total cost over the first ten years has been reduced from 38.3 million 1980 dollars in the draft regulatory analysis (estimated 52 million 1988 dollars at 4% inflation) to 15.7 million 1988 dollars for the SNPRM. Therefore, this proposal is not considered to have a significant economic impact on the private or public sectors.

Quantifiable benefits resulting from the proposed regulations will accrue from reductions in vessel casualties, reductions in personnel injuries/deaths, and reductions in pollution incidents and the associated clean up costs. Non-quantifiable benefits resulting from the proposed regulations will be improved tankerman qualifications that will be standardized nationwide and improved safety and firefighting procedures.

The draft regulatory analysis prepared for the NPRM estimated that there would be an overall reduction of 10 to 30% in tank vessel casualties, injuries and deaths, and pollution incidents.

It is the Coast Guard's view that catastrophic marine casualties resulting from tankerman errors will be more likely to result in monetary losses similar to the total loss of the SS SANSINENA, National Transportation Safety Board (NTSB) report of November 25, 1977, than the $300,000 loss resulting from the M/V VENUS casualty, NTSB report of August 16, 1974. The Coast Guard believes the proposed regulations will prevent at least one catastrophic casualty in the first ten years that the regulations are in effect, a $25.5 million savings.

The reductions in injuries and deaths brought about by the proposed regulations could be larger than the estimated overall reduction of 10 to 30%. A larger reduction in this area is possible because catastrophic casualties cause a disproportionate share of the injuries and deaths. By preventing even one of these casualties a significant reduction could be realized, on the order of 10 to 60%. Without considering the impact of a catastrophic incident, there would be an estimated six to seventeen lives saved and seven to twenty injuries prevented over the first ten years that the proposed regulations are in force. The associated hospital costs saved would be relatively insignificant.

The amount of money saved through reduced pollution incidents can only be estimated. The NPRM draft regulatory analysis estimated a savings of between $1,052,450 and $3,224,047 in 1980 dollars over the first ten years that the regulations are in effect. Over the last five years the Coast Guard Pollution Fund has averaged an annual clean up expenditure of $4,793,747. This expenditure is only for pollution cases where the Federal government has assumed control of the clean up. This cost does not reflect Coast Guard salary costs or the Coast Guard expense for monitoring third party clean up operations. The cost to the Coast Guard is only a small portion of the cost of cleaning up pollution, since the vast majority of pollution cases are cleaned up by third parties.

There has never been formalized systematic training for tankermen as a group. The qualification requirements for tankermen have been vague and not fully documented. This has resulted in a variety of qualification standards being enforced by Coast Guard regional examination centers around the country. By establishing a clear set of tankerman qualification standards and a systematic training requirement the overall quality and effectiveness of tankermen will be increased. This will increase preparedness for emergencies and the use of proper safety procedures, and result in an increase in the overall safety of liquid cargo transfer operations.

Several alternatives to the proposed regulations, discussed in the NPRM, were considered and the alternative selected is considered the least burdensome and most effective. This alternative meets the various legislative requirements for more stringent and comprehensive standards regarding tankerman imposed by the Port and Tanker Safety Act of 1978 with a minimal disruption in the operation of the United States Merchant Marine.

In accordance with 5 U.S.C. 605(b), the Coast Guard certifies that these proposed rules will not have a significant economic impact on a substantial number of small entities. The cost for training qualified tankerman is related to the number of tankermen used, which is in turn related to size of the operation a business conducts.

Paperwork Reduction Act

This proposed rulemaking contains information collection requirements in 46 CFR sections 13.113 , 13.115, 13.117, 13.121, 13.201, 13.301, 13.401, and 13.501. With the exception of the requirement to submit a course completion certificate from a firefighting, a tankship familiarization, and/or a liquid cargo training course, the proposed rule contains no new information collection requirements when applying for a tankerman endorsement.

The information collection requirements are being submitted to the Office of Management and Budget for review under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The control numbers listed in 46 CFR 13.105 are control numbers assigned by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (Pub. L. 96–511) for similar reporting and record keeping requirements. These numbers will be revised as needed in the final rule when the information collection requirements have been approved by OMB.

The new collection requirements will only affect applicants for tankerman endorsements in that they must provide a certificate as evidence of training. The certificate will be supplied by the training facility which provides the course(s). The time required to comply with this requirement is inconsequential.

Federalism Implications

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

Regulatory Information Number

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects

33 CFR Part 155

Environmental protection, Oil pollution, Vessels, Water pollution control.

46 CFR Part 12

Seamen.

46 CFR Part 13

Seamen, Tank vessels, Barges.

46 CFR Part 15

Seamen, Vessels.

46 CFR Part 30

Administrative practice and procedure, Foreign relations, Hazardous materials transportation, Penalties, Tank vessels, Barges.

46 CFR Part 31

Marine safety, Tank vessels, Barges, Law enforcement, Flammable materials.

46 CFR Part 35

Marine safety, Navigation (water), Reporting requirements, Tank vessels, Barges, Seamen.

46 CFR Part 78

Passenger vessels, Marine safety, Foreign trade, Treaties.

46 CFR Part 90

Cargo vessels, Marine safety, Administrative practice and procedure, Authority delegation.

46 CFR Part 97

Cargo vessels, Marine safety, Reporting requirements.

46 CFR Part 98

Cargo vessels, Hazardous materials transportation, Marine safety.

46 CFR Part 105

Cargo vessels, Fishing vessels, Hazardous materials transportation, Marine safety, Petroleum.

46 CFR Part 151

Hazardous materials transportation, Marine safety, Flammable material, Tank vessels, Barges.

46 CFR Part 153

Hazardous materials transportation, Marine safety, Tank vessels, Barges.

46 CFR Part 154

Hazardous materials transportation, Marine safety, Tank vessels.

In consideration of the foregoing the Coast Guard proposes to amend part 155 to title 33, Code of Federal Regulations and parts 12, 13, 15, 30, 31, 35, 78, 90, 97, 98, 105, 151, 153, and 154 to title 46, Code of Federal Regulations as set forth below:

TITLE 33—NAVIGATION AND NAVIGABLE WATERS

SUBCHAPTER O—POLLUTION

PART 155—OIL POLLUTION PREVENTION REGULATIONS FOR VESSELS

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

Authority: 33 U.S.C. 1321(j)(1)(C), 1902(c) and 1903(b); E.O. 11735; 49 CFR 1.46(m), unless otherwise noted.

2–3. Section 155.700 is revised to read as follows:

§ 155.700 Designation of person-in-charge.

The operator or agent of each vessel that has a capacity for 250 or more barrels of oil or any material that is determined to be hazardous, except liquefied gases, under 46 CFR 153.40 (a), (b), (c), or (e), shall designate the person-in-charge of each transfer operation. Prior to conducting tank cleaning operations on vessels with residues of these products, the operator or agent of each vessel shall designate the person-in-charge of the tank cleaning operation.

4. Section 155.710 is revised to read as follows:

§ 155.710 Qualifications of person-in-charge.

(a) On a tankship documented under the laws of the United States, the vessel operator, or his or her agent, shall verify to his or her satisfaction that an individual designated as a person-in-charge:

(1) Of a bulk liquid cargo transfer operation:

(i) Has sufficient training and experience with the cargo to be transferred; the cargo containment system; the cargo system; the control and monitoring systems; and, if installed, the crude oil washing, inert gas, and vapor control systems on the tankship to safely conduct a transfer operation;

(ii) Except on tankships not certificated for voyages beyond the Boundary Line, holds a license issued under 46 CFR part 10 authorizing service as a licensed officer aboard that tankship; and

(iii) Holds a "Tankerman-PIC" endorsement issued under 46 CFR part 13 which authorizes the holder to supervise the handling and transfer of the particular cargo involved.

(2) Of a cargo tank cleaning operation meets paragraph (a)(1) of this section, except:

(i) A Coast Guard license is not required; and

(ii) If the tankship is at a tank cleaning facility or shipyard, the individual may hold a marine chemist's certificate issued by the National Fire Protection Association, in lieu of a "Tankerman-PIC" endorsement.

(b) On a tank barge required to be inspected under 46 U.S.C. 3703, the vessel operator, or his or her agent, shall verify to his or her satisfaction that an individual designated as a person-in-charge:

(1) Of a bulk liquid cargo transfer operation:

(i) Has sufficient training and experience with the cargo to be transferred; the cargo containment system; the cargo system; the control and monitoring systems; and, if installed, the crude oil washing, inert gas, and vapor control systems on the tank barge to safely conduct a transfer operation; and

(ii) Holds a "Tankerman-PIC" or "Tankerman-PIC (Barge)" endorsement issued under 46 CFR part 13 which authorizes the holder to supervise the handling and transfer of the particular cargo involved.

(2) Of a cargo tank cleaning operation meets paragraph (b)(1) of this section, except if the tank barge is at a tank cleaning facility or shipyard, he or she may hold a marine chemist's certificate issued by the National Fire Protection Association, in lieu of a "Tankerman-PIC" or "Tankerman-PIC (Barge)" endorsement.

(c) On a foreign tankship, the vessel operator, or his or her agent, shall verify to his or her satisfaction that an individual designated as a person-in-charge of a bulk liquid cargo transfer or cargo tank cleaning operation:

(1) Has sufficient training and experience with the cargo to be transferred; the cargo containment system; the cargo system; the control and monitoring systems; and, if installed, the crude oil washing, inert gas, and vapor control systems on the tankship to safely conduct a transfer operation;

(2) Holds a license or other documentation, issued by the vessel's flag state or its authorized agent, authorizing service as master, mate, engineer, or operator on that vessel;

(3) Holds a document acceptable to the Coast Guard attesting to the holder's qualifications to act as a person-in-charge of an oil, chemical or liquefied gas transfer or cargo tank cleaning operation, as appropriate to the cargo; and

(4) Is capable of clearly understanding and speaking, in English, all instructions needed to commence, conduct, and terminate cargo transfer operations. An interpreter may be used to meet this requirement if the interpreter is immediately available to the person-in-charge at all times during the cargo transfer operation.

(d) On a foreign tank barge, the vessel operator, or his or her agent, shall verify to his or her satisfaction that an individual designated as a person-in-charge of a bulk liquid cargo transfer or cargo tank cleaning operation:

(1) Has sufficient training and experience with the cargo to be transferred; the cargo containment system; the cargo system; the control and monitoring systems; and, if installed, the crude oil washing, inert gas, and vapor control systems on the tank barge to safely conduct a transfer operation;

(2) Holds a document acceptable to the Coast Guard issued by the vessel's flag state or its authorized agent attesting to the holder's qualifications to act as a person-in-charge of an oil, chemical or liquefied gas transfer or cargo tank cleaning operation, as appropriate to the cargo; and

(3) Is capable of clearly understanding and speaking, in English, all instructions

needed to commence, conduct, and terminate cargo transfer operations. An interpreter may be used to meet this requirement if the interpreter is immediately available to the person-in-charge at all times during the cargo transfer operation.

(e) The vessel operator or agent of each vessel to which this section applies shall verify to his or her satisfaction that an individual designated as a person-in-charge of a fuel oil transfer operation:

(1) On a vessel required by 46 CFR chapter I to have a licensed officer on board, holds a valid license issued under 46 CFR part 10 as a master, mate, pilot, engineer, or operator authorizing service as a licensed officer or operator aboard that vessel.

(2) On an uninspected vessel of 100 or more gross tons, must have been instructed in his or her duties and the Federal Water Pollution laws and regulations that apply to the vessel by the individual in charge of the vessel.

(f) On non-tank vessels, the vessel operator, or his or her agent, shall verify to his or her satisfaction that an individual designated as a person-in-charge:

(1) Of a bulk liquid cargo transfer operation:

(i) For cargo of grades D or E, holds a valid license issued under 46 CFR part 10 as a master, mate, pilot, engineer, or operator authorizing service as a licensed officer or operator aboard that vessel. A "Tankerman-PIC" endorsement is not required; or

(ii) For cargo of grades C and above, cargoes regulated under 46 CFR part 153, or liquefied gases, holds a "Tankerman-PIC" endorsement for the classification of cargo carried.

(2) Of a cargo tank cleaning operation, meets paragraph (f)(1) of this section, but if vessel is at a tank cleaning facility or shipyard, he or she may hold a marine chemist's certificate issued by the National Fire Protection Association, in lieu of the requirements of paragraph (f)(1) of this section.

TITLE 46—SHIPPING

SUBCHAPTER B—MERCHANT MARINE OFFICERS AND SEAMEN

PART 12—CERTIFICATION OF SEAMEN

5. The authority citation for part 12 continues to read as follows:

Authority: 46 U.S.C. 7301, 7701, 8105, 10104; 49 CFR 1.46.

§ 12.01-5 [Amended]

6.–7.Paragraph (d) of § 12.01–5 is removed.

§§ 12.20–1 through 12.20–5 (Subpart 12.20) [Removed]

8. Subpart 12.20, consisting of § 12.20–1 through § 12.20–5, is removed.

9. Part 13 is added to read as follows:

PART 13—CERTIFICATION OF TANKERMEN

Subpart A—General

Sec.

13.101 Purpose.
13.103 Definitions.
13.105 Paperwork approval.
13.107 Tankerman endorsements.
13.109 Tankerman endorsements: authorized cargoes.
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Authority: 46 U.S.C. 3703, 7317, 8105, 8703, 9102; 49 CFR 1.46.

Subpart A—General

§ 13.101 Purpose.

This part describes the various tankerman endorsements that are issued by the Coast Guard and prescribes the requirements for obtaining a "Tankerman-Assistant," "Tankerman-PIC," "Tankerman-PIC (Barge)," or "Tankerman-Engineer" endorsement on a merchant mariner's document.

§ 13.103 Definitions.

As used in this part:

"Bulk liquid cargo" means a liquid or liquefied gas listed in 46 CFR 153.40 carried as liquid cargo or cargo residue in integral or fixed tanks.

"Cargo engineer" means an individual on a liquefied gas tankship whose primary responsibility is maintaining the cargo system and equipment.

"Competent person" means a person designated a "competent person" in accordance with 29 CFR 1915.7.

"Dangerous Liquid" or "DL" means a liquid listed in 46 CFR 153.40 that is not a liquefied gas as defined in this part. Bulk liquid cargoes in 46 CFR Part 153 Table 2 are not considered Dangerous Liquid cargoes when carried by non-oceangoing barges.

"Equivalent transfers" means transfer experience gained in a liquid cargo training course that uses simulation training that can be used to meet a portion of the tankerman transfer service required by § 13.203 or § 13.303.

"Liquefied Gas" or "LG" means a cargo having a vapor pressure of 172 kPa (25 psia) or more at 37.8 °C (100 °F).

"MMD" is an abbreviation for merchant mariner's document.

"Participation" when used with regard to gaining the tankerman transfer service required by § 13.203 or § 13.303, means a person has participated in the transfer operation or has closely observed how the transfer operation is conducted and supervised.

"PIC" is an abbreviation for person-in-charge.

"Tank barge" means a non-self-propelled tank vessel.

"Tank vessel" means a vessel especially constructed or converted to carry liquid bulk cargo in tanks.

"Tankerman-Assistant" means a person holding a valid "Tankerman-Assistant" endorsement to their Coast Guard issued MMD.

"Tankerman-Engineer" means a person holding a valid "Tankerman-Engineer" endorsement to their Coast Guard issued MMD.

"Tankerman-PIC" means a person holding a valid "Tankerman-PIC" endorsement to their Coast Guard issued MMD.

"Tankerman-PIC (Barge)" means a person holding a valid "Tankerman-PIC (Barge)" endorsement to their Coast Guard issued MMD.

"Tankship" means any tank vessel propelled by power or sail.

"Work shift" means a period of at least four hours during which an individual participates in a liquid cargo transfer operation.

§ 13.105 Paperwork approval.

(a) This section lists the control numbers assigned by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (Pub. L. 96–511) for the reporting and record keeping requirements in this part.

(b) The following control numbers have been assigned to the sections indicated:

(1) OMB 2115–0514—46 CFR 13.113, 13.115, 13.117, 13.201, 13.203, 13.205, 13.301, 13.303, 13.305, 13.401, 13.403, 13.405, 13.501, 13.503, 13.505

(2) OMB 2115–0111—46 CFR 13.113, 13.121, 13.207, 13.209, 13.307, 13.309, 13.407, 13.409, 13.507, 13.509.

§ 13.107 Tankerman endorsements.

(a) If an applicant meets the requirements of Subpart B of this Part, the applicant's MMD is endorsed as "Tankerman-PIC" with the appropriate cargo classification(s). A person with this endorsement and meeting the other requirements of 33 CFR 710 may be the person-in-charge of liquid cargo transfer operations on tankships or tank barges.

(b) If an applicant meets the requirements of subpart C of this part, the applicant's MMD is endorsed as "Tankerman-PIC (Barge)" with the appropriate cargo classification(s). A person with this endorsement may be a person-in-charge of liquid cargo transfer operations only on tank barges.

(c) If an applicant meets the requirements of subpart D of this part, the applicant's MMD is endorsed as "Tankerman-Assistant" with the appropriate cargo classification(s). A "Tankerman-Assistant" is not authorized to be in charge of liquid cargo transfer operations. A "Tankerman-Assistant" may, however, perform cargo and cargo equipment duties assigned by the person-in-charge of liquid cargo transfer operations without being under the PIC's direct supervision.

(d) If an applicant meets the requirements of subpart E of this part, the applicant's MMD is endorsed as "Tankerman-Engineer." A "Tankerman-Engineer" is not authorized to be in charge of liquid cargo transfer operations on tank vessels. An individual with this endorsement may serve as a chief engineer, first assistant engineer or cargo engineer on board a tankship when bulk liquid cargo or cargo residue is carried, if the person holds the appropriate Coast Guard license issued under 46 CFR part 10 required for the position.

(e) A tankerman wishing to qualify for a tankerman endorsement that he does not currently hold must make application at a regional examination center (REC) listed in 46 CFR 10.105. If the applicant satisfies all requirements for the new endorsement, a new MMD will be issued including the desired tankerman endorsement.

§ 13.109 Tankerman endorsements: authorized cargoes.

(a) Each tankerman endorsement described in § 13.107 will expressly limit the holder's service under that endorsement to transfers involving one or both of the following cargo classifications:

(1) Dangerous Liquids (DL).

(2) Liquefied Gas (LG).

(b) No tankerman endorsement is required to handle or transfer the bulk liquid cargoes listed in 46 CFR Part 153 Table 2 when those cargoes are carried on non-oceangoing barges.

(c) A tankerman qualified in one cargo classification wishing to qualify for an additional cargo classification must make application at a regional examination center (REC) listed in 46 CFR 10.105. If the applicant satisfies all requirements for the cargo classification desired, a new MMD will be issued with the appropriate endorsement.

§ 13.111 Restricted endorsements.

Applicants for tankerman endorsements may apply for endorsements that are restricted to specific cargoes or groups of cargoes, specific vessels, specific transfer facilities, specific employers, etc. The Officer in Charge Marine Inspection (OCMI) will evaluate these applications, and may reduce the applicable requirements for the endorsement, making allowance for special circumstances and the limitations that will be placed in the endorsement. The specific requirements for a restricted endorsement for a "competent person" are contained in § 13.311.

§ 13.113 Tankerman certificated under prior regulations.

(a) A person who holds a "Tankerman" endorsement issued prior to [*Insert Effective Date*] or holds a Coast Guard license issued under 46 CFR part 10 and as a PIC transferred bulk liquid cargoes before [*Insert Effective Date*] may continue to serve as a PIC under the "Tankerman" endorsement or previous transfer authority authorized by the individual's license until [*Insert the date five years after the Effective Date*].

(b) Personnel qualifying under paragraph (a) of this section may act as "Tankerman-Assistant," "Tankerman-PIC," or "Tankerman-PIC (Barge)," as appropriate, during the five year transition period that ends [*Insert the date five years after the Effective Date*] as follows:

(1) Personnel with an existing tankerman endorsement may act as a "Tankerman-Assistant" or "Tankerman-PIC (Barge)" for the cargoes on the endorsement. If a person with an existing tankerman endorsement applies for some non-tankerman endorsement that requires the issuance of a new MMD the existing endorsement will be retained.

(2) A licensed individual qualifying under paragraph (a) of this section and not having an MMD with a new tankerman endorsement may act as a "Tankerman-Assistant" or "Tankerman-PIC" if they can produce a service letter documenting their qualifying service as required in paragraph (c) of this section.

(3) Personnel who have been the person-in-charge for the transfer of Subchapter O bulk liquid cargoes which did not require a tankerman document because the cargoes were non-flammable and/or non-combustible liquids may act as a "Tankerman-PIC (Barge)" if they can produce a service letter documenting their qualifying service as required in paragraph (d) of this section.

(4) Competent persons shall obtain a new tankerman endorsement prior to [*Insert the date six months after the Effective Date*].

(5) Individuals who cannot obtain a service letter to document their qualifying service may submit relevant documentation to an REC for evaluation. If the OCMI determines that the individual does qualify under paragraph (a) of this section, the OCMI will issue a letter of acknowledgment as a substitute for a letter of service.

(c) A person who holds a "Tankerman" endorsement issued prior to [*Insert Effective Date*] or holds a Coast Guard license issued under 46

CFR part 10 and as a PIC transferred bulk liquid cargoes before [*Insert Effective Date*] may, at any time prior to [*Insert the date five years after the Effective Date*], apply for a "Tankerman-PIC" endorsement under this Subpart.

(1) To qualify for a "Tankerman-PIC" endorsement, the applicant must meet the following training and service requirements:

(i) Present a certificate of completion from a Coast Guard approved shipboard firefighting training course. Completion of a marine firefighting training course prior to [*Insert Effective Date*] may be accepted as meeting the shipboard firefighting training course requirement if the Coast Guard finds that the course is in substantial compliance with the basic shipboard firefighting training requirements of International Maritime Organization (IMO) Resolution A.437 (XI) "Training of Crews in Fire Fighting";

(ii) Present a certificate of completion from a Coast Guard approved liquid cargo training course, appropriate to the desired endorsement. Completion of a course up to ten years prior to [*Insert Effective Date*] may be accepted as meeting this liquid cargo training course requirement if the Coast Guard finds that the course is in substantial compliance with the course guidelines established by the Coast Guard as the basis for approval of a Tankship Dangerous Liquid Cargo Training Course or a Tankship Liquefied Gas Cargo Training Course as appropriate for the cargo classification applied for; and

(iii) Present evidence of service as follows:

(A) Present a letter of service on company letterhead documenting:

(*1*) That the applicant acted as the person-in-charge of bulk liquid cargo transfer operations on tankships prior to [*Insert Effective Date*] and has done so within three years of the date of application;

(*2*) The applicant's tankship service;

(*3*) The applicant's transfer experience; and

(*4*) The cargo classification, DL and/or LG, and grades handled.

(B) Applicants who wish to present evidence of service in the form of discharges from tankships rather than a letter of service from a company must:

(*1*) Present discharges totaling at least 30 days of service as master or chief mate prior to [*Insert Effective Date*]. Time documented by discharges from a tankship as second or third mate will be counted on a two for one basis; and

(*2*) Present at least one discharge from a tankship where the discharge date is within three years of the date of application.

(*2*) To qualify for a DL cargo endorsement an applicant must have been a person-in-charge of a DL cargo transfer, or have the equivalent of at least 30 days service as a master or chief mate on tankships certificated to carry DL cargoes.

(3) To qualify for an LG cargo endorsement an applicant must have been a person-in-charge of an LG cargo transfer, or have the equivalent of at least 30 days service as a master or chief mate on tankships certificated to carry LG cargoes.

(4) Applicants seeking a "Tankerman-PIC" endorsement restricted, based on the individual's cargo handling experience, to the cargo grades that they have handled must meet all the requirements of paragraphs (c)(1) through (c)(3) of this section except the liquid cargo training course requirements.

(d) A person who holds a "Tankerman" endorsement issued prior to [*Insert Effective Date*] or holds a Coast Guard license issued under 46 CFR Part 10 and as a PIC transferred bulk liquid cargoes before [*Insert Effective Date*] may, at any time prior to [*Insert the date five years after the Effective Date*], apply for a "Tankerman-PIC (Barge)" endorsement under this Subpart.

(1) To qualify for a "Tankerman-PIC (Barge)" endorsement, the applicant must meet the following training and service requirements:

(i) Present evidence of firefighting training in the form of:

(A) A certificate of completion from a Coast Guard approved shipboard firefighting training course. Completion of a marine firefighting training course prior to [*Insert Effective Date*] may be accepted as meeting the shipboard firefighting training course requirement if the Coast Guard finds that the course is in substantial compliance with the basic shipboard firefighting training requirements of IMO Resolution A.437 (XI) "Training of Crews in Fire Fighting";

(B) A certificate of completion from a Coast Guard approved tank barge firefighting training course. Completion of a marine firefighting training course prior to [*Insert Effective Date*] may be accepted as meeting the tank barge firefighting training course requirement if the Coast Guard finds that the course is in substantial compliance with the requirements of the tank barge firefighting training course guidelines established by the Goast Guard; or

(C) A letter on company letterhead certifying that the applicant has received flammability hazard awareness and firefighting training in the form of a training program, lecture, or seminar which also included hands-on firefighting training;

(ii) Present a certificate of completion from a Coast Guard approved liquid cargo training course, appropriate to the desired endorsement. Completion of a course up to ten years prior to [*Insert Effective Date*]) may be accepted as meeting this liquid cargo training course requirement if the Coast Guard finds that the course is in substantial compliance with the course guidelines established by the Coast Guard as the basis for approval of a Tankship or Tank Barge Dangerous Liquid Cargo Training course or a Tankship or Tank Barge Liquefied Gas Cargo Training course as appropriate for the cargo classification applied for; and

(iii) Present a letter of service on company letterhead documenting:

(A) That the applicant acted as the person-in-charge of bulk liquid cargo transfer operations on tank vessels prior to [*Insert Effective Date*] and has done so within three years of the date of application;

(B) The applicant's tank vessel service;

(C) The applicant's transfer experience; and

(D) The cargo classification, DL and/or LG, and grades handled.

(2) To qualify for a DL cargo endorsement an applicant must have been a person-in-charge of a DL cargo transfer, or have the equivalent of at least 30 days service as a master or chief mate on tank vessels certificated to carry DL cargoes. Time documented by discharges from a tankship as second or third mate will be counted on a two for one basis.

(3) To qualify for an LG cargo endorsement an applicant must have been a person-in-charge of an LG cargo transfer, or have the equivalent of at least 30 days service as a master or chief mate on tank vessels certificated to carry LG cargoes. Time documented by discharges from a tankship as second or third mate will be counted on a two for one basis.

(4) Applicants seeking a "Tankerman-PIC (Barge)" endorsement restricted, based on the individual's cargo handling experience, to the cargo grades that they have handled must meet all the requirements of paragraphs (d)(1) through (3) of this section except the liquid cargo training course requirements.

§ 13.115 Licensed engineers with service on tankships prior to [Insert Effective Date].

(a) A person who has service as chief, first assistant, or cargo engineer on tankships before [*Insert Effective Date*] may, at any time prior to [*Insert the date five years after the Effective Date*], apply for a "Tankerman-Engineer" endorsement under this Subpart if the applicant:

(1) Presents a letter of service on company letterhead documenting:

(i) That the applicant served as a chief, first assistant, or cargo engineer on a tankship prior to [*Insert Effective Date*];

(ii) The cargo classifications, DL and/or LG, and cargo grades carried by the vessels; and

(iii) That the applicant has served as an engineer on a tankship within three years of the date of application. The applicant may use a certificate of discharge to meet this requirement; or

(2) Presents discharges from tankships:

(i) Totaling 30 days of service as chief, first assistant, or cargo engineer prior to [*Insert Effective Date*]; and

(ii) At least one discharge for service as an engineer on tankships where the discharge date is within three years of the date of application.

(b) To qualify for a DL cargo endorsement, the applicant must document at least 30 days service as a chief or first assistant engineer on tank vessels certificated to carry DL cargoes.

(c) To qualify for an LG cargo endorsement, the applicant must document at least 30 days service as a chief, first assistant, or cargo engineer on tank vessels certificated to carry LG cargoes.

§ 13.117 Personnel with service on tankships prior to [Insert Effective Date].

(a) A person who has deck service on tankships before [*Insert Effective Date*] may, at any time prior to [*Insert the date five years after the Effective Date*], apply for a "Tankerman-Assistant" endorsement under this subpart if the applicant discharges from tankships totaling at least 30 days of deck service prior to [*Insert Effective Date*] with at least one discharge for deck service on a tankship where the discharge date is within three years of the date of application.

(b) To qualify for a DL endorsement, the applicant must document at least 30 days deck service on tankships certificated to carry DL cargoes.

(c) To qualify for an LG endorsement, the applicant must document at least 30 days deck service on tankships certificated to carry LG cargoes.

§ 13.119 Expiration date.

A tankerman endorsement on a merchant mariner's document does not expire.

§ 13.121 Tankerman training courses.

(a) This section prescribes the requirements, in addition to those contained in 46 CFR 10.302 and 10.303, applicable to organizations offering courses required for a tankerman endorsement or courses that are a substitute for the service required for such an endorsement.

(b) Upon satisfactory completion of an approved course of instruction, students shall receive a certificate, signed by the head of the organization or a designated representative, in a form approved by the Commandant, indicating the title of the course, its duration, and any credit allowed towards meeting the transfer service requirements of this part.

(c) Liquid cargo training and tankship familiarization training courses that use simulation or other equivalent training techniques which allow students to be trained in, and practice, tank vessel loading and discharge transfer operations will be evaluated to determine whether this training may be substituted for any of the transfers required for a "Tankerman-PIC" or "Tankerman-PIC (Barge)" endorsement. The Coast Guard course approval letter will state the number and type of equivalent transfers to be granted to an applicant upon successful completion of a particular training course.

§ 13.123 Recency of service.

Except for applicants under § 13.113, an applicant for any tankerman endorsement must have at least 25% of the required qualifying service and at least two of the qualifying transfers, if the endorsement requires transfer experience, required by the applicable sections of this Part within the three years immediately preceding the date of application.

§ 13.125 Physical requirements.

(a) All applicants for an original tankerman endorsement must pass an examination given by a licensed physician or a licensed physician assistant and present to the OCMI a completed Coast Guard physical examination form, or the equivalent, executed by the physician. This form must provide information on the applicant's acuity of vision, color sense, and general physical condition. This examination must have been completed prior to submission of the application and not more than 12 months prior to issuance of the endorsement.

(b) The applicant must have correctable vision to at least 20/50 in each eye and uncorrected vision of at least 20/200 in each eye, and the ability to distinguish the colors of red, green, blue, and yellow.

(c) Where an applicant does not possess the vision, hearing, or general physical condition necessary, the OCMI, after consultation with the examining physician or physician's assistant, may recommend a waiver to the Commandant if extenuating circumstances warrant special consideration. Applicants may submit to the OCMI, additional correspondence, records and reports in support of this request. In this regard, recommendations from agencies of the Federal Government operating government vessels, as well as owners and operators of private vessels, made in behalf of their employees, will be given full consideration. Waivers are not normally granted to an applicant whose corrected vision in the better eye is not at least 20/50.

Subpart B—Requirements for "Tankerman-PIC" Endorsements

§ 13.201 Original application for "Tankerman-PIC" endorsements.

To qualify for a "Tankerman-PIC" endorsement, an applicant must:

(a) Be at least 18 years of age;

(b) Apply in writing on a Coast Guard form;

(c) Present evidence of a physical examination as required by § 13.125;

(d) Present evidence of service on tankships in accordance with § 13.203;

(e) Meet the shipboard firefighting training course requirements in § 13.207;

(f) Meet the liquid cargo training course requirements in § 13.209; and

(g) Be capable of clearly understanding and speaking, in English, all instructions needed to commence, conduct, and terminate cargo transfer operations.

§ 13.203 Eligibility requirements: service.

Each applicant for a "Tankerman-PIC" DL or LG endorsement must:

(a) Present evidence of the following service:

(1) At least 30 days of licensed deck service on tankships certificated to carry DL or LG cargoes as appropriate for the endorsement applied for;

(2) At least 60 days of unlicensed deck service on tankships certificated to carry DL or LG cargoes as appropriate for the endorsement applied for; or

(3) A mixture of licensed and unlicensed deck service, which is the equivalent of at least 30 days of licensed

deck service, wherein the unlicensed service may count as licensed service on a two for one basis; and

(b) Present evidence of participation, under the supervision of a "Tankerman-PIC," in at least ten bulk liquid cargo transfer operations of the cargo classification desired on tankships, including:

(1) At least five loading transfer operations and five discharge transfer operations;

(2) At least one loading transfer operation commencement and one loading transfer operation completion; and

(3) At least one discharge transfer operation commencement and one discharge transfer operation completion.

(c) If the applicant already has a "Tankerman-PIC" DL or LG endorsement and is applying for the other cargo classification endorsement, that individual must:

(1) Provide only half the evidence of service required in paragraph (a) of this section; and

(2) Meet the requirements of paragraph (b) of this section except that the applicant need only provide evidence of three loading and three discharge transfer operations.

§ 13.205 Documentation of service for "Tankerman-PIC" endorsements.

(a) Service must be documented by a letter from the owner, operator, or master of the vessel on which the service was obtained. The letter must specify:

(1) The grades of cargo (DL, LG, or specific products for a restricted endorsement) handled while the applicant accumulated the service;

(2) The number and types of transfer operations that the applicant has participated in, and the number of such operations which involved the commencement or completion of the transfer.

(3) That the applicant has demonstrated to the satisfaction of the signer that they are fully capable of supervising liquid cargo transfer operations including:

(i) Pre-transfer inspections;

(ii) Pre-transfer conference and execution of the Declaration of Inspection;

(iii) Connection of cargo hoses or loading arms;

(iv) Line up of the cargo system for loading and discharging;

(v) Start of liquid flow during loading;

(vi) Cargo pump startup and increase to full pressure for a discharge operation;

(vii) Calculation of loading rates;

(viii) Monitoring cargo transfer operations;

(ix) Topping off the cargo tanks during loading;

(x) Stripping out the cargo tanks;

(xi) Ballasting and deballasting, if appropriate; and

(xii) Disconnecting the cargo hoses or loading arms upon completion of the transfer.

(b) For the purpose of evaluating the transfer service requirements of § 13.203(b) of this subpart:

(1) A transfer must involve the loading or discharge of at least one of the vessel's tanks to or from a shore facility or another vessel. An internal transfer of cargo from one tank to another is not a transfer for purposes of meeting the transfer service requirements for a "Tankerman-PIC" endorsement.

(2) A 4-hour work shift must be worked to obtain credit for a transfer operation. If, during the course of a single transfer operation, a person stands more than one 4-hour work shift, they will only receive credit for one transfer operation.

(3) If, during the course of a single transfer operation, a person stands more than one 4-hour work shift and participates in the commencement and the completion of the operation, they will receive credit for one commencement and one completion.

(4) If different products are being loaded or discharged at the same time, a person will only receive credit for one transfer operation.

(5) If different products are being loaded and discharged at the same time, a person will receive credit for one loading transfer operation and one discharging transfer operation.

(6) Credit for a partial 4-hour work shift is received only if the shift includes either the hooking up and commencement of transfer or the completion of transfer and disconnecting.

(7) Credit for a loading transfer operation commencement is received only if the person participates in the pre-transfer inspection, the pre-transfer meeting and execution of the Declaration of Inspection, the connection of hoses or loading arms, the line up of the cargo system for the transfer, the start of liquid flow, and the calculation of the loading rate(s).

(8) Credit for a discharge transfer operation commencement is received only if the person participates in the pre-transfer inspection, the pre-transfer meeting and execution of the Declaration of Inspection, the connection of hoses or loading arms, the line up of cargo system for the transfer, the cargo pump start up and increase to the normal discharge pressure, and the calculation of the discharge rate(s).

(9) Credit for a transfer operation completion is received only if the person participates in the topping off operation in the loading port, or the stripping of cargo tanks and commencement of ballasting, if required by the vessel's transfer procedures, in the discharge port.

(c) Applicants may present certificates of completion from a Coast Guard approved tankship liquid cargo training or tankship familiarization course that indicate that the training was equivalent to a specified number and type of transfers. These equivalent transfers will be counted for purposes of meeting the tankerman transfer service requirements of this section. An applicant may not use equivalent transfers to meet the entire transfer service requirements. At least one loading transfer and one discharging transfer must have been obtained on-board a tankship.

(d) Letters attesting to only part of the applicant's total service requirements under § 13.203 of this subpart must state the grades of cargo handled, how many of the different types of transfers the applicant participated in, and the number of such operations which involved the commencement or completion of the transfer. If the applicant demonstrated any of the skills required in paragraph (a)(3) of this section, this must be documented in the letter.

§ 13.207 Eligibility requirements; firefighting training.

To be eligible for a "Tankerman-PIC" endorsement, each applicant must:

(a) Present a certificate of completion from a Coast Guard approved basic, or basic and advanced shipboard firefighting training course, completed within five years of the date of application for the "Tankerman-PIC" endorsement, unless a certificate of completion for one of these courses has been previously submitted for a license or tankerman endorsement; or

(b) Present a certificate of completion from a marine firefighting training course during the five years preceding [*Insert Effective Date*] that the Coast Guard finds in substantial compliance with the firefighting training course guidelines established by the Coast Guard as the basis for approval of a shipboard firefighting course under § 13.302 of this subchapter.

§ 13.209 Eligibility requirements; cargo training.

(a) To be eligible for an original "Tankerman-PIC–DL" endorsement, each applicant must:

(1) Present a certificate of course completion from a Coast Guard approved training course for tankships for DL cargoes within two years of the date of application; or

(2) Present a certificate of completion from a DL cargo training course during the five years preceding [*Insert Effective Date*] that the Coast Guard finds in substantial compliance with the tankship DL cargo training course guidelines established by the Coast Guard as the basis for approval of a DL cargo course under § 10.302 of this subchapter.

(b) To be eligible for an original "Tankerman-PIC–LG" endorsement, each applicant must:

(1) Present a certificate of course completion from a Coast Guard approved training course for tankships for LG cargoes as defined by this Part within two years of the date of application; or

(2) Present a certificate of completion from an LG cargo training course during the five years preceding [*Insert Effective Date*] that the Coast Guard finds in substantial compliance with the tankship LG cargo training course guidelines established by the Coast Guard as the basis for approval of an LG cargo course under § 10.302 of this subchapter.

Subpart C—Requirements for "Tankerman-PIC (Barge)" Endorsements

§ 13.301 Original application for "Tankerman-PIC (Barge)" endorsements.

To qualify for a "Tankerman-PIC (Barge)" endorsement, an applicant must:

(a) Be at least 18 years of age;

(b) Apply in writing on a Coast Guard form;

(c) Present evidence of a physical examination as required by § 13.125;

(d) Present evidence of service on tank barges in accordance with § 13.303;

(e) Meet the shipboard firefighting training course requirements in § 13.307;

(f) Meet the liquid cargo training course requirements in § 13.309 of this Subpart or successfully pass a Coast Guard examination on the knowledge and skills needed to be a "Tankerman-PIC (Barge)"; and

(g) Be capable of clearly understanding and speaking, in English, all instructions needed to commence, conduct, and terminate cargo transfer operations.

§ 13.303 Eligibility requirements; service.

An applicant for a "Tankerman-PIC (Barge)" DL or LG endorsement must:

(a) Present evidence of the following service:

(1) At least six months service on tankships or tank barges certificated to carry DL or LG cargoes as appropriate for the endorsement applied for; or

(2) At least 60 days service on tankships or tank barges certificated to carry DL or LG cargoes as appropriate for the endorsement applied for and present a certificate of completion from a cargo training course as appropriate for the endorsement applied for as prescribed in § 13.309; and

(b) Present evidence of participation, under the supervision of a "Tankerman-PIC" or "Tankerman-PIC (Barge)", in at least ten bulk liquid cargo transfer operations of the cargo classification desired on tankships or tank barges, including:

(1) At least five loading transfer operations and five discharge transfer operations;

(2) At least one loading transfer operation commencement and one loading transfer operation completion; and

(3) At least one discharge transfer operation commencement and one discharge transfer operation completion.

(c) If the applicant already has a "Tankerman-PIC (Barge)" DL or LG endorsement and is applying for the other cargo classification endorsement, that individual must:

(1) Provide only half the evidence of service required in paragraph (a) of this section; and

(2) Meet the requirements of paragraph (b) of this section except that the applicant need only provide evidence of three loading and three discharge transfer operations.

§ 13.305 Documentation of service for "Tankerman-PIC (Barge)" endorsements.

(a) Service must be documented by a letter from a terminal owner or operator; a tank barge owner or operator; a tankering services employer; or the owner, operator, or master of a tankship on which the service was obtained. The letter must specify:

(1) The grades of cargo (DL, LG, or specific products for a restricted endorsement) handled while the applicant accumulated the service;

(2) The number and types of transfer operations that the applicant has participated in, and the number of such operations which involved the commencement or completion of the transfer.

(3) That the applicant has demonstrated to the satisfaction of the signer that they are fully capable of supervising liquid cargo transfer operations including:

(i) Pre-transfer inspections;

(ii) Pre-transfer conference and execution of the Declaration of Inspection;

(iii) Connection of cargo hoses or loading arms;

(iv) Line up of the cargo system for loading and discharging;

(v) Start of liquid flow during loading;

(vi) Cargo pump start up and increase to full pressure for a discharge operation;

(vii) Calculation of loading rates;

(viii) Monitoring cargo transfer operations;

(ix) Topping off the cargo tanks during loading;

(x) Stripping out the cargo tanks;

(xi) Ballasting and deballasting, if appropriate; and

(xii) Disconnecting the cargo hoses or loading arms upon completion of the transfer.

(b) For the purpose of evaluating the transfer service requirements of § 13.303(b) of this subpart:

(1) A transfer must involve the loading or discharge of at least one of the vessel's tanks to or from a shore facility or another vessel. An internal transfer of cargo from one tank to another is not a transfer for purposes of meeting the transfer service requirements for a "Tankerman-PIC (Barge)" endorsement.

(2) A 4-hour work shift must be worked to obtain credit for a transfer operation. If, during the course of a single transfer operation, a person stands more than one 4-hour work shift, they will only receive credit for one transfer operation.

(3) If, during the course of a single transfer operation, a person stands more than one 4-hour work shift and participates in the commencement and the completion of the operation, they will receive credit for one commencement and one completion.

(4) If different products are being loaded or discharged at the same time, a person will only receive credit for one transfer operation.

(5) If different products are being loaded and discharged at the same time, a person will receive credit for one loading transfer operation and one discharging transfer operation.

(6) Credit for a partial 4-hour work shift is received only if the shift includes either the hooking up and commencement of transfer or the completion of transfer and disconnecting.

(7) Credit for a loading transfer operation commencement is received

only if the person participates in the pre-transfer inspection, the pre-transfer meeting and execution of the Declaration of Inspection, the connection of hoses or loading arms, the line up of the cargo system for the transfer, the start of liquid flow, and the calculation of the loading rate(s).

(8) Credit for a discharge transfer operation commencement is received only if the person participates in the pre-transfer inspection, the pre-transfer meeting and execution of the Declaration of Inspection, the connection of hoses or loading arms, the line up of cargo system for the transfer, the cargo pump start up and increase to the normal discharge pressure, and the calculation of the discharge rate(s).

(9) Credit for a transfer operation is received only if the person participates in the topping off operation in the loading port, or the stripping of cargo tanks and commencement of ballasting, if required by the vessel's transfer procedures, in the discharge port.

(c) Applicants may present certificates of completion from a Coast Guard approved tankship or tank barge liquid cargo training course, or a tankship familiarization training course that indicate that the training was equivalent to a specified number and type of transfers. These equivalent transfers will be counted for purposes of meeting the tankerman transfer service requirements of this section. An applicant may not use equivalent transfers to meet the entire transfer service requirements. At least one loading transfer and one discharging transfer must have been obtained on-board a tankship or tank barge.

(d) Letters attesting to only part of the applicant's total service requirements under § 13.303 must state the grades of cargo handled, how many of the different types of transfers the applicant participated in, and the number of such operations which involved the commencement or completion of the transfer. If the applicant demonstrated any of the skills required in paragraph (a)(3) of this section, this must be documented in the letter.

§ 13.307 Eligibility requirements: firefighting training.

To be eligible for a "Tankerman-PIC (Barge)" endorsement, each applicant must:

(a) Present a certificate of completion from a Coast Guard approved basic, or basic and advanced shipboard firefighting training course, completed within five years of the date of application for the "Tankerman-PIC (Barge)" endorsement, unless a certificate of completion for one of these courses has been submitted for a previous license or tankerman endorsement;

(b) Present a certificate of completion from a Coast Guard approved tank barge firefighting training course, completed within five years of the date of application for the "Tankerman-PIC (Barge)" endorsement, unless a certificate of completion for this course has been submitted for a previous tankerman endorsement; or

(c) Present a certificate of completion from a marine firefighting training course or tank barge firefighting training course during the five years preceding [*Insert Effective Date*] that the Coast Guard finds in substantial compliance with the firefighting training course or tank barge firefighting training course guidelines established by the Coast Guard as the basis for approval of a tank barge firefighting course under § 10.302 of this subchapter.

§ 13.309 Eligibility requirements: cargo training or examination.

(a) To be eligible for an original "Tankerman-PIC (Barge)–DL" endorsement, each applicant must:

(1) Present a certificate of course completion from a Coast Guard approved training course for tankships or tank barges for DL cargoes as defined in this part within two years of the date of application; or

(2) Present a certificate of completion from a DL cargo training course during the five years preceding [*Insert Effective Date*] that the Coast Guard finds in substantial compliance with the tankship or tank barge DL cargo training course guidelines established by the Coast Guard as the basis for approval of a DL cargo course under § 10.302 of this subchapter; or

(3) Pass a Coast Guard examination for "Tankerman-PIC (Barge)."

(b) To be eligible for an original "Tankerman-PIC (Barge)–LG" endorsement, each applicant must:

(1) Present a certificate of course completion from a Coast Guard approved training course for tankships or tank barges for LG cargoes as defined by this part within two years of the date of application; or

(2) Present a certificate of completion from an LG cargo training course during the five years preceding [*Insert Effective Date*] that the Coast Guard finds in substantial compliance with the tankship or tank barge LG cargo training course guidelines established by the Coast Guard as the basis for approval of an LG cargo course number § 10.302 of this subchapter.

§ 13.311 "Competent person" requirements for restricted "Tankerman-PIC (Barge)" endorsements.

(a) For a person designated as a "competent person" by the operator of a tank cleaning facility to qualify for a restricted "Tankerman-PIC (Barge)" endorsement, the applicant must:

(1) Meet the age and physical requirements in § 13.301; and

(2) Present evidence in the form of a letter from the operator of the facility on company letterhead stating that the person is a "competent person" for the facility and has the knowledge necessary to supervise tank cleaning and gas freeing operations.

(b) The restricted "Tankerman-PIC (Barge)" endorsement on a competent person's MMD is only valid while the individual is employed by the operator of the facility that provided the letter of service required in paragraph (a) of this section and this and any other appropriate restrictions will be included in the endorsement.

Subpart D—Requirements for "Tankerman-Assistant" Endorsements

§ 13.401 Original application for "Tankerman-Assistant" endorsements.

To qualify for a "Tankerman-Assistant" endorsement, an applicant must:

(a) Be at least 18 years of age;

(b) Apply in writing on a Coast Guard form;

(c) Present evidence of a physical examination as required by § 13.125;

(d) Meet the shipboard firefighting training course requirements in § 13.407;

(e) Document experience or training as follows:

(1) Present evidence of service on tankships in accordance with § 13.403; or

(2) Meet the training course requirements in § 13.409; and

(f) Be capable of clearly understanding and speaking, in English, all instructions needed to commence, conduct, and terminate cargo transfer operations.

§ 13.403 Eligibility requirements; service.

(a) An applicant for a "Tankerman-Assistant" endorsement must:

(1) Present evidence of at at least 90 days deck service on tankships certificated to carry DL or LG cargoes as appropriate for the endorsement applied for; or

(2) Present a certificate of completion from a cargo training course as appropriate for the endorsement applied for as prescribed in § 13.409.

(b) Applicants who already have a "Tankerman-Assistant" DL or LG

endorsement and are applying for the other cargo classification endorsement must provide only half the evidence of service required in paragraph (a)(1) of this section.

§ 13.405 Documentation of service for the "Tankerman-Assistant" endorsements.

(a) When using letters of service to document service:

(1) The letter must be from the owner, operator, or master of the vessel on which the service was obtained.

(2) The letter must specify:

(i) The grades of cargo, DL or LG, carried while the applicant accumulated the service;

(ii) The number of days of service the applicant had on deck on the tankship; and

(iii) That the applicant has demonstrated an understanding of cargo transfer operations and a sense of responsibility that, in the opinion of the signer, will allow the applicant to safely carry out cargo and cargo equipment duties and responsibilities assigned by the person-in-charge of the transfer operation without direct supervision from the person-in-charge.

(3) Letters attesting to only part of the applicant's total service requirements under § 13.403 must state the grades of cargo handled, the days of service, and whether or not the applicant has demonstrated an understanding of cargo transfer operations and a sense of responsibility that, in the opinion of the signer, the applicant is fully capable of safely carrying out cargo and cargo equipment duties and responsibilities without direct supervision from the person-in-charge of the transfer operation.

(b) When using discharges to document service:

(1) The applicant must present discharges from tankships totaling 90 days service on tankships certificated to carry DL or LG cargoes.

(2) The applicant must also present a letter from the owner, operator, or master of one of the vessels issuing a discharge to the applicant stating that the applicant has demonstrated an understanding of cargo transfer operations and a sense of responsibility that, in the opinion of the signer, will allow the applicant to safely carry out cargo and cargo equipment duties and responsibilities assigned by the person-in-charge of the transfer operation without direct supervision from the person-in-charge.

(3) If discharges are used to document service, the cargo endorsement will be based on the cargoes the vessels are certificated to carry.

§ 13.407 Eligibility requirements: firefighting training.

To be eligible for a "Tankerman-Assistant" endorsement, each applicant must:

(a) Present a certificate of completion from a Coast Guard approved basic, or basic and advanced firefighting training course, completed within five years of the date of application for the "Tankerman-Assistant" endorsement, unless a certificate of completion for one of these courses has been submitted for a previous license or tankerman endorsement; or

(b) Present a certificate of completion from a marine firefighting training course during the five years preceding [*Insert Effective Date*] that the Coast Guard finds in substantial compliance with the shipboard firefighting training course guidelines established by the Coast Guard as the basis for approval of a shipboard firefighting training course under § 10.302 of this subchapter.

§ 13.409 Eligibility requirements; cargo training.

(a) Each applicant for a "Tankerman-Assistant-DL" endorsement that has not presented the required service must:

(1) Present a certificate of course completion from a Coast Guard approved tankship DL cargo training course, or DL tankship familiarization training course, for DL cargoes as defined in this part, within two years of the date of application; or

(2) Present a certificate of completion from a liquid cargo training course during the five years preceding [*Insert Effective Date*] that the Coast Guard finds in substantial compliance with the tankship DL cargo training course or DL tankship familiarization training course guidelines established by the Coast Guard as the basis for approval of a DL cargo course under § 10.302 of this Subchapter.

(b) Each applicant for a "Tankerman-Assistant-LG" endorsement that has not presented the required service must:

(1) Present a certificate of course completion from a Coast Guard approved tankship LG cargo training course, or LG tankship familiarization training course, for LG cargoes as defined in this part, within two years of the date of application; or

(2) Present a certificate of completion from an LG cargo training course during the five years preceding [*Insert Effective Date*] that the Coast Guard finds in substantial compliance with the tankship LG cargo training course or LG tankship familiarization training course guidelines established by the Coast Guard as the basis for approval of an LG cargo course under § 10.302 of this Subchapter.

Subpart E—Requirements for "Tankerman-Engineer" Endorsements

§ 13.501 Original application for "Tankerman-Engineer" endorsements.

To qualify for a "Tankerman-Engineer" endorsement, an applicant must:

(a) Be at least 18 years of age;

(b) Apply in writing on a Coast Guard form;

(c) Present evidence of a physical examination as required by § 13.125;

(d) Present evidence of service on tankships in accordance with § 13.503;

(e) Meet the shipboard firefighting training course requirements in § 13.507;

(f) Meet the liquid cargo training course requirements in § 13.509; and

(g) Be capable of clearing understanding and speaking, in English, all instructions needed to commence, conduct, and terminate cargo transfer operations.

§ 13.503 Eligibility requirements; service.

(a) An applicant for a "Tankerman-Engineer-DL" endorsement must:

(1) Present evidence of at least 90 days of service as a licensed engineering officer on tankships certificated to carry DL cargoes;

(2) Present evidence of at least 30 days of service as a licensed engineering officer on tankships certificated to carry DL cargoes and present a certificate of completion from a cargo training course as appropriate for the endorsement applied for as prescribed in § 13.509(a); or

(3) Present evidence of at least 60 days of service as an unlicensed cargo engineer on tankships certificated to carry DL cargoes and present a certificate of completion from a cargo training course as appropriate for the endorsement applied for as prescribed in § 13.509(a).

(b) An applicant for a "Tankerman-Engineer-LG" endorsement must:

(1) Present evidence of at least 30 days service as a licensed engineering officer on tankships certificated to carry LG cargoes and present a certificate of completion from a cargo training course as appropriate for the endorsement applied for as prescribed in § 13.509(b); or

(2) Present evidence of at least 60 days of service as an unlicensed cargo engineer on tankships certificated to carry LG cargoes and present a certificate of completion from a cargo training course as appropriate for the

endorsement applied for as prescribed in § 13.509(b).

(c) Applicants who already have a "Tankerman-Engineer" DL or LG endorsement and are applying for the other cargo classification endorsement must provide only half the evidence of service required in paragraphs (a) or (b) of this section, as appropriate for the cargo classification applied for.

§ 13.505 Documentation of service for "Tankerman-Engineer" endorsements.

(a) When using letters of service to document service:

(1) The letter must be from the owner, operator, chief engineer, or master of the vessel on which the service was obtained.

(2) The letter must specify:

(i) The grades of cargo, DL or LG, carried while the applicant accumulated the service; and

(ii) The number of days of service the applicant has as a licensed engineering officer or unlicensed cargo engineer on the tankship; and

(3) Letters attesting to only part of the applicant's total service requirements under §13.503 of this subpart must state the grades of cargo handled and the days of service.

(b) When using discharges from tankships to document service:

(1) For a DL cargo classification endorsement, an applicant must:

(i) Present discharges totaling at least 90 days service as a licensed engineering officer on tankships certificated to carry DL cargoes; or

(ii) If the applicant presents a certificate of completion for a Coast Guard approved DL cargo course:

(A) Present discharges totaling at least 30 days of service as a licensed engineering officer on tankships certificated to carry DL cargoes; or

(B) Present discharges totaling at least 60 days of service as an unlicensed cargo engineer on tankships certificated to carry DL cargoes.

(2) For an LG cargo classification endorsement, an applicant must:

(i) Present discharges totaling at least 30 days of service as a licensed engineering officer on tankships certificated to carry LG cargoes; or

(ii) Present discharges totaling at least 60 days service as an unlicensed cargo engineer on tankships certificated to carry LG cargoes.

(c) If an applicant has a mixture of licensed and unlicensed service, the unlicensed service may count as licensed service on a two for one basis;

§ 13.507 Eligibility requirements: firefighting training.

To be eligible for a "Tankerman-Engineer" endorsement, each applicant must:

(a) Present a certificate of completion from a Coast Guard approved basic, or basic and advanced shipboard firefighting training course, completed within five years of the date of application for the "Tankerman-Engineer" endorsement, unless a certificate of completion for one of these courses has previously been submitted for a license or tankerman endorsement; or

(b) Present certificate of completion from a marine firefighting training course during the five years preceding [*Insert Effective Date*] that the Coast Guard finds in substantial compliance with the firefighting training course guidelines established by the Coast Guard as the basis for approval of a shipboard firefighting training course under § 10.302 of this subchapter.

§ 13.509 Eligibility requirements: cargo training.

(a) To take advantage of a reduction in required service, as provided in § 13.503, an applicant for an original "Tankerman-Engineer-DL" endorsement may:

(1) Present a certificate of course completion from a Coast Guard approved training course for the DL cargoes for tankships within two years of the date of application; or

(2) Present a certificate of completion from a DL cargo training course during the five years preceding [*Insert Effective Date*] that the Coast Guard finds in substantial compliance with the tankship DL cargo training course guidelines established by the Coast Guard as the basis for approval of a DL cargo training course under § 10.302 of this subchapter.

(b) To be eligible for an original "Tankerman-Engineer-LG" endorsement, each applicant must:

(1) Present a certificate of course completion from a Coast Guard approved training course for the LG cargoes as for tankships within two years of the date of application; or

(2) Present a certificate of completion from an LG cargo training course during the five years preceding [*Insert Effective Date*] that the Coast Guard finds in substantial compliance with the tankship LG cargo training course guidelines established by the Coast Guard as the basis for approval of an LG cargo training course under § 10.302 of this subchapter.

PART 15—MANNING REQUIREMENTS

10. The authority citation for part 15 continues to read as follows:

Authority: 46 U.S.C. 2103, 3703, 8105; 49 CFR 1.45, 1.46.

11.–12. Section 15.301 is amended by revising paragraph (c) and adding a new paragraph (d) to read as follows:

§ 15.301 Definition of terms in this part.

* * * * *

(c) The following categories of ratings are established in part 12 of this chapter. When used in this part, the following terms mean an individual holding a valid merchant mariner's document to serve in that capacity issued under part 12 of this chapter.

(1) Able seaman;

(2) Ordinary seaman;

(3) Qualified member of the engine department;

(4) Lifeboatman;

(5) Wiper;

(6) Steward's department (F.H.).

(d) The following categories of ratings are established in part 13 of this chapter. When used in this part, the following terms mean an individual holding a valid merchant mariner's document to serve in that capacity issued under part 13 of this chapter.

(1) Tankerman-PIC;

(2) Tankerman-PIC (Barge);

(3) Tankerman-Assistant;

(4) Tankerman-Engineer.

13. Section 15.860 is added to subpart G to read as follows:

§ 15.860 Tankermen.

(a) The Officer in Charge, Marine Inspection, shall enter in the certificate of inspection issued to any manned tank vessel subject to the regulations in this chapter, the number of the crew required to have endorsements as "Tankerman-PIC," "Tankerman-PIC (Barge)," "Tankerman-Assistant," and "Tankerman-Engineer," as follows:

(1) For tankships certified for voyages beyond the Boundary Line:

(i) For tankships of more than 5,000 gross tons:

(A) The number of "Tankerman-PICs" required shall not be less than two.

(B) The number of "Tankerman-Assistants" required shall not be less than three.

(C) The number of "Tankerman-Engineers" required shall not be less than two.

(ii) For tankships of 5,000 gross tons or less:

(A) The number of "Tankerman-PICs" required shall not be less than two.

(B) The number of "Tankerman-Engineers" required shall not be less than two, unless only one engineer is required, then only one "Tankerman-Engineer" is required.

(2) For tankships not certificated for voyages beyond the Boundary Line, if the total crew complement is:

(i) One or two individuals, only one "Tankerman-PIC" is required.

(ii) In excess of two individuals, only two "Tankerman-PICs" are required.

(3) For tank barges certificated for voyages beyond the Boundary Line, if the total crew complement is:

(i) One or two individuals, only one "Tankerman-PIC" or "Tankerman-PIC (Barge)" are required.

(ii) In excess of two individuals, only two "Tankerman-PIC" or "Tankerman-PIC (Barge)" are required.

(b) The following personnel aboard tankships certificated for voyages beyond the Boundary Line shall possess the following tankerman endorsements for the classification of cargo carried:

(1) The master and chief mate shall have "Tankerman-PIC" endorsements.

(2) The chief, first assistant, and cargo engineer shall have "Tankerman-Engineer" endorsements or "Tankerman-PIC" endorsements.

(3) A licensed individual acting as the person-in-charge of bulk liquid cargo transfer operations shall have a "Tankerman-PIC" endorsement.

(4) Licensed or unlicensed personnel assigned duties and responsibilities related to the cargo or cargo equipment during a bulk liquid cargo transfer operation and who are not directly supervised by the person-in-charge shall have a "Tankerman-Assistant" endorsement.

(c) The tankermen endorsements required by the provisions of this section shall be for the cargo classification of the bulk liquid cargo or cargo residue being carried.

(d) Tank barges subject to the provisions of this chapter need not be manned unless in the judgment of the Officer in Charge, Marine Inspection, manning is necessary for the protection of life, property, the environment or the safe operation of the barge.

SUBCHAPTER D—TANK VESSELS

PART 30—GENERAL PROVISIONS

14. The authority citation for part 30 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 U.S.C. App. 1804; 49 CFR 1.45, 1.46; § 30.01–2 also issued under the authority of 44 U.S.C. 3507.

15. Section 30.10–71 is revised to read as follows:

§ 30.10–71 Tankerman—TB/ALL.

(a) *"Tankerman-Assistant"* means an individual holding a valid "Tankerman-Assistant" endorsement issued under part 13 of this chapter.

(b) *"Tankerman-Engineer"* means an individual holding a valid "Tankerman-Engineer" endorsement issued under part 13 of this chapter.

(c) *"Tankerman-PIC"* means an individual holding a valid "Tankerman-PIC" endorsement issued under part 13 of this chapter.

(d) *"Tankerman-PIC (Barge)"* means an individual holding a valid "Tankerman-PIC (Barge)" endorsement issued under part 13 of this chapter.

PART 31—INSPECTION AND CERTIFICATION

16. The authority citation for part 31 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3703, 5115, 8105, 9101; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46.

17. Section 31.15–1 is revised to read as follows:

§ 31.15–1 Licensed officers and crews—TB/ALL.

The Officer in Charge, Marine Inspection, who inspects the vessel, shall enter in the certificate of inspection for each tank vessel the complement of officers and crew as required by law and regulations in this subchapter, and which in the judgment of the Officer in Charge, Marine Inspection, will be necessary for her safe operation. The complement may be changed from time to time by endorsement on such certificate by an Officer in Charge, Marine Inspection, by reason of change of conditions or employment.

PART 35—OPERATIONS

18. The authority citation for part 35 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3703, 6101, 9101; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; E.O. 12234, 45 CFR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

19.–20. Section 35.05–15 is amended by revising the section heading and paragraph (b)(1) to read as follows:

§ 35.05–15 Tank vessel security—TB/ALL.

* * * * *

(b) * * *

(1) The owner, managing operator, master, or person in charge of a vessel towing a tank barge that is not required to be manned shall be responsible for monitoring the security and integrity of the tank barge, and ensuring that the proper safety precautions are followed. These responsibilities include, but are not limited to:

(i) Ensuring that any tank barge added to the tow has all tank openings properly secured; has its freeing ports, if any, unobstructed; meets any loadline or freeboard requirements; and has no leakage into the water, voids, or cofferdams.

(ii) Ensuring that all tank barges are properly secured in the tow.

(iii) Ensuring that periodic checks are made of every tank barge in the tow for leakage into the water, voids, or cofferdams.

(iv) Obtaining information on the cargo content of all tank barges added to or contained in the tow, any hazards associated with the cargo(es), and what action should be taken if a leak is discovered.

(v) Ensuring that the crew of the vessel is informed of the cargo content of all tank barges in the tow, any hazards associated with the cargo(es), and what action should be taken if a leak is discovered.

(vi) Reporting any cargo leaks from a tank barge in the tow into the water to the Coast Guard as required in 33 CFR 151.15.

(vii) Ensuring that the crew of the vessel and other personnel in the vicinity of the tank barges in the tow follow the normal safety precautions for tank vessels, and that no activity takes place in the vicinity of the barge which would create a hazard.

* * * * *

21. Section 35.35–1 is revised to read as follows:

§ 35.35–1 Men on duty—TB/ALL.

(a) On a tankship documented under the laws of the United States:

(1) The owner, managing operator, master, or person in charge of the vessel shall ensure that a sufficient number of "Tankerman-PICs" and "Tankerman-Assistants" endorsed for the classification of cargo carried are on duty to safely perform a bulk liquid cargo transfer or cargo tank cleaning operation.

(2) The owner, managing operator, master, or person in charge of the vessel shall ensure that a bulk liquid cargo transfer or cargo tank cleaning operation is supervised by an individual designated as a person-in-charge of the cargo transfer or cargo tank cleaning operation under subpart C of 33 CFR part 155.

(b) On an inspected United States tank barge:

(1) The owner, managing operator, master, or person in charge of the vessel shall ensure that a bulk liquid cargo transfer or cargo tank cleaning operation does not take place unless under the supervision of a qualified individual who has been designated as the person-in-charge of the cargo transfer or cargo tank cleaning operation under subpart C of 33 CFR part 155.

(2) The person-in-charge of the operation shall ensure that:

(i) A sufficient number of individuals are on duty to safely perform a bulk liquid cargo transfer or cargo tank cleaning operation; and

(ii) The approved portable extinguishers required by Table 34.50–10(a) of this Chapter are on board and readily available prior to the transfer of cargo or operation of barge machinery or boilers.

(c) On a foreign tankship:

(1) The owner, managing operator, master, or person in charge of the vessel shall ensure that a sufficient number of personnel qualified for the classification of cargo carried are on duty to safely perform the bulk liquid cargo transfer or cargo tank cleaning operation.

(2) The owner, managing operator, master, or person in charge of the vessel shall ensure that a cargo transfer or cargo tank cleaning operation is supervised by an individual designated as a person-in-charge of the cargo transfer or cargo tank cleaning operation under subpart C of 33 CFR part 155.

(d) On a foreign tank barge:

(1) The owner, managing operator, master, or person in charge of the vessel shall ensure that a bulk liquid cargo transfer or cargo tank cleaning operation does not take place unless under the supervision of a qualified individual who has been designated as the person-in-charge of the cargo transfer or cargo tank cleaning operation under subpart C of 33 CFR part 155.

(2) The person-in-charge of the operation shall ensure that a sufficient number of individuals are on duty to safely perform a bulk liquid cargo transfer or cargo tank cleaning operation.

(e) The person-in-charge of the bulk liquid cargo transfer on the tank vessel is responsible for the safe loading and discharging of the bulk liquid cargo.

(f) The person-in-charge of a bulk liquid cargo transfer operation on a United States tank vessel, of lightering to or from a foreign tank vessel, shall ensure that the person-in-charge on the foreign tank vessel, or his or her interpreter, has sufficient command of the English language to allow a safe transfer operation.

22. Section 35.35–10 is revised to read as follows:

§ 35.35–10 Closing of scuppers and sea valves—TB/ALL.

The designated person-in-charge of the cargo transfer operation shall see that all scuppers are properly plugged during transfer operations except on tank vessels using water for deck cooling. Sea valves shall be closed and lashed or sealed to indicate that they should not be opened during cargo transfer operations. Under no circumstances shall such valves be secured by locks.

23. Section 35.35–15 is amended by revising paragraph (b) to read as follows:

§ 35.35–5 Connecting for cargo transfer—TB/ALL.

* * * * *

(b) When cargo connections are supported by ship's tackle, the designated person-in-charge of the cargo transfer operation shall determine the weights involved in order to insure that sufficient tackles are used.

* * * * *

24. The introductory text of § 35.35–20 is revised to read as follows:

§ 35.35–20 Inspection prior to transfer of cargo—TB/ALL.

Prior to the transfer of cargo, the designated person-in-charge of the cargo transfer operation shall inspect the vessel to ensure that the following conditions exist:

* * * * *

25. Section 35.35–25 is revised to read as follows:

§ 35.35–25 Approval to start transfer of cargo—TB/ALL.

When the designated person-in-charge of the cargo transfer operation has ensured that the requirements of §§ 35.35–20 and 35.35–30 have been met, he or she may give approval to start cargo transfer operations.

26. Section 35.35–30 is amended by revising the first sentence of paragraph (a), and the introductory text of the "Declaration Of Inspection Prior To Bulk Cargo Transfer" of paragraph (b) to read as follows:

§ 35.35–30 "Declaration of Inspection" for tankships—T/ALL.

(a) After an inspection under § 35.35–20 but before cargo transfer, the designated person-in-charge of the operation shall prepare, in duplicate, a Declaration of Inspection.* * *

(b) * * *

Declaration of Inspection Prior to Bulk Cargo Transfer

Date _____

Vessel _____

Port of _____

I, _____, the designated person-in-charge of the bulk liquid cargo transfer about to be undertaken, do certify that I have personally inspected this vessel with reference to the following requirements set forth in 46 CFR 35.35–20, and that opposite each of the applicable items listed below I have indicated whether the regulations have been complied with.

* * * * *

27. Section 35.35–35 is revised to read as follows:

§ 35.35–35 Duties of the designated person-in-charge of the transfer during transfer operations—TB/ALL.

The designated person-in-charge of the cargo transfer operation shall control the operations as follows:

(a) Supervise the operations of cargo system valves.

(b) Start transfer of cargo slowly.

(c) Observe cargo connections for leakage.

(d) Observe operating pressure on cargo system.

(e) Observe rate of loading for the purpose of avoiding overflow of tanks.

28. Section 35.35–42 is revised to read as follows:

§ 35.35–42 Restrictions on vessel coming alongside a tank vessel while loading Grade A, B, or C cargo—TB/ALL.

(a) No vessel shall come alongside or remain alongside a tank vessel in way of its cargo tanks while it is loading Grade A, B, or C cargo without having the permission of the designated person-in-charge of the cargo transfer operation on the vessel which is loading.

(b) No vessel shall come alongside or remain alongside a tank vessel in way of its cargo tanks while it is loading Grade A, B, or C cargo unless the conditions then prevailing are mutually acceptable to the designated persons-in-charge of cargo handling on both vessels.

29. Section 35.35–55 is amended by revising paragraph (a) to read as follows:

§ 35.35–55 Transfer of other cargo or stores on tank vessels—TB/ALL.

(a) Package goods, freight, and ships' stores shall not be loaded or discharged during the loading of Grade A, B, or C cargoes except by permission of the designated person-in-charge of the cargo transfer operation. Explosives as cargo shall not be loaded or carried on any tank vessel containing Grade A, B, or C cargo.

* * * * *

SUBCHAPTER H—PASSENGER VESSELS

PART 78—OPERATIONS

30. The authority citation for part 78 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 6101, 8105; 49 U.S.C. App. 1804, E.O. 11735, 38 FR 21243; 3 CFR, 1971–1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

31.–32. Subpart 78.95 is added to read as follows:

Subpart 78.95—Persons-In-Charge of Bulk Liquid Cargo Transfers

§ 78.95–1 General.

The person-in-charge of a bulk liquid cargo transfer operation must be designated in accordance with subpart C of 33 CFR part 155.

SUBCHAPTER I—CARGO AND MISCELLANEOUS VESSELS

PART 90—GENERAL PROVISIONS

33. The authority citation for part 90 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

34.–35. Section 90.10–42 is added to read as follows:

§ 90.10–42 Tankerman-PIC.

"Tankerman-PIC" means an individual holding a valid "Tankerman-PIC" endorsement issued under part 13 of this chapter.

PART 97—OPERATIONS

36. The authority citation for part 97 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 6101; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

37.–38. Subpart 97.95 is added to read as follows:

Subpart 97.95—Persons-in-Charge of Bulk Liquid Cargo Transfers

§ 97.95–1 General.

The person-in-charge of a bulk liquid cargo transfer operation must be designated in accordance with subpart C of 33 CFR part 155.

PART 98—SPECIAL CONSTRUCTION, ARRANGEMENT, AND OTHER PROVISIONS FOR CERTAIN DANGEROUS CARGOES IN BULK

39. The authority citation for part 98 continues to read as follows:

Authority: 33 U.S.C. 1903; 46 U.S.C. 3306, 3703; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

40. Section 98.30–17 is revised to read as follows:

§ 98.30–17 Qualifications of person-in-charge.

(a) The vessel operator or his or her agent shall designate the person-in-charge of a transfer of bulk liquid cargoes to or from a portable tank.

(b) An individual designated as person-in-charge of the transfer of bulk liquid cargoes to or from portable tanks shall:

(1) On tank barges, hold a "Tankerman-PIC" or "Tankerman-PIC (Barge)" endorsement authorizing transfer of the classification of cargo involved.

(2) On self-propelled tank vessels, hold:

(i) A license authorizing service as a master, mate, pilot, operator or engineer aboard that vessel; and

(ii) A "Tankerman-PIC" endorsement authorizing transfer of the classification of cargo involved.

(3) On vessels other than tank vessels required by this chapter to have a licensed officer on board, hold:

(i) A license authorizing service as a master, mate, pilot, operator or engineer aboard that vessel; and

(ii) If the bulk liquid cargo is grade C or above or regulated under 46 CFR part 153, a "Tankerman-PIC-DL" endorsement.

PART 105—COMMERCIAL FISHING VESSELS DISPENSING PETROLEUM PRODUCTS

41. The authority citation for part 105 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3703; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46.

42.–43. Section 105.45–1 is revised to read as follows:

§ 105.45–1 Loading or dispensing petroleum products.

A commercial fishing vessel must have a valid letter of compliance (see subpart 105.15) on board and must be in compliance with the requirements therein while dispensing petroleum products.

44. Subparts 105.50 and 105.60 are removed.

SUBCHAPTER O—CERTAIN BULK DANGEROUS CARGOES

45. The heading for part 151 is revised to read as follows:

PART 151—BARGES CARRYING BULK LIQUID HAZARDOUS MATERIAL CARGOES

46. The authority citation for part 151 continues to read as follows:

Authority: 33 U.S.C. 1903; 46 U.S.C. 3703; 49 CFR 1.46.

47. Section 151.03–53 is revised to read as follows:

§ 151.03–53 Tankerman.

(a) *"Tankerman-PIC"* means a person holding a valid "Tankerman-PIC" endorsement issued under part 13 of this chapter.

(b) *"Tankerman-PIC (Barge)"* means a person holding a valid "Tankerman-PIC (Barge)" endorsement issued under part 13 of this chapter.

48. Paragraph (f)91)k of § 151.45–2 is revised to read as follows:

§ 151.45–2 Special operating requirements.

* * * * *

(f) * * *

(1) The master, licensed operator, or individual in command of a vessel towing tank barge that is not required to be manned shall be responsible for monitoring the security and integrity of the tank barge, and ensuring that the proper safety precautions are followed. These responsibilities include, but are not limited to:

(i) Ensuring that any tank barge added to the tow has all tank openings properly secured; has its freeing ports, if any, unobstructed; meets any loadline or freeboard requirements; and has no leakage into the water, voids, or cofferdams.

(ii) Ensuring that all tank barges are properly secured in the tow.

(iii) Ensuring that periodic checks are made of every tank barge in the tow for leakage into the water, voids, or cofferdams.

(iv) Obtaining information on the cargo content of all tank barges added to or contained in the tow, any hazards associated with the cargo(es), and what action should be taken if a leak is discovered.

(v) Ensuring that the crew of the vessel is informed of the cargo content of all tank barges in the tow, any hazards associated with the cargo(es), and what action should be taken if a leak is discovered.

(vi) Reporting any cargo leaks from a tank barge in the tow into the water to the Coast Guard as required in 33 CFR 151.15.

(vii) Ensuring that the crew of the vessel and other personnel in the vicinity of the tank barges in the tow

follow the normal safety precautions for tank vessels, and that no activity takes place in the vicinity of the barge which would create a hazard.

* * * * *

49. Section 151.45–4 is amended by revising paragraph (a) to read as follows:

§ 151.45–4 Cargo handling.

(a) On an inspected United States tank barge:

(1) The vessel operator, or his or her agent, shall ensure that:

(i) A bulk liquid cargo transfer or cargo tank cleaning operation does not take place unless under the supervision of a qualified individual who has been designated as the person-in-charge of the cargo transfer or cargo tank cleaning operation under subpart C of 33 CFR part 155;

(ii) When cargoes regulated under this Part are to be transferred, the designated person-in-charge of the transfer has received special training in the particular hazards associated with the cargo(es) and any special handling procedures; and

(iii) The Officer in Charge, Marine Inspection, in whose zone the transfer will take place, is provided with satisfactory, documentary evidence that the designated person-in-charge has received this training and is capable of performing competently the necessary operation which relates to the specific cargo.

(2) The person-in-charge of the operation shall ensure that a sufficient number of individuals are on duty to safely perform a bulk liquid cargo transfer or cargo tank cleaning operation.

* * * * *

PART 153—SHIPS CARRYING BULK LIQUID, LIQUEFIED GAS, OR COMPRESSED GAS HAZARDOUS MATERIALS

50. The authority citation for part 153 is revised to read as follows:

Authority: 46 U.S.C. 3703, 9101; 49 U.S.C. App. 1804; 33 U.S.C. 1903; 49 CFR 1.46.

51.–52. Section 153.957 is revised to read as follows:

§ 153.957 Person-in-charge of cargo transfer or cargo tank cleaning operations.

The vessel operator, or his or her agent, shall ensure that:

(a) A sufficient number of "Tankerman-PICs" and "Tankerman-Assistants" endorsed for the classification of cargo carried are on duty to safely perform a bulk liquid cargo transfer or cargo tank cleaning operation;

(b) A bulk liquid cargo transfer or cargo tank cleaning operation is supervised by an individual designated as a person-in-charge of the cargo transfer or cargo tank cleaning operation under subpart C of 33 CFR part 155;

(c) When cargoes regulated under this part are to be transferred, the designated person-in-charge of the transfer has received special training in the particular hazards associated with the cargo(es) and any special handling procedures;

(d) The Officer in Charge, Marine Inspection, in whose zone the transfer will take place, is provided with satisfactory, documentary evidence that the designated person-in-charge has received this training and is capable of performing competently the necessary operation which relates to the specific cargo; and

(e) On foreign vessels, the designated person-in-charge understands his or her responsibilities as described in this subchapter.

PART 154—SAFETY STANDARDS FOR SELF-PROPELLED VESSELS CARRYING BULK LIQUEFIED GASES

53. The authority citation for part 154 is revised to read as follows:

Authority: 46 U.S.C. 3703, 9101; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

54.–55. Section 154.1831 is revised to read as follows:

§ 154.1831 Person-in-charge of cargo transfer or cargo tank cleaning operations.

The vessel operator, or his or her agent, shall ensure that:

(a) A sufficient number of "Tankerman-PICs" and "Tankerman-Assistants" endorsed for the classification of cargo carried are on duty to safely perform a bulk liquid cargo transfer or cargo tank cleaning operation.

(b) A bulk liquid cargo transfer or cargo tank cleaning operation is supervised by an individual designated as a person-in-charge of the cargo transfer or cargo tank cleaning operation in accordance with subpart C of 33 CFR part 155;

(c) When cargoes regulated under this part are to be transferred, the designated person-in-charge of the transfer has received special training in the particular hazards associated with the cargo(es) and any special handling procedures;

(d) Provide the Officer in Charge, Marine Inspection, in whose zone the transfer will take place, with satisfactory, documentary evidence that the individual has received this training and is capable of performing competently the necessary operation which relates to the specific cargo; and

(e) On foreign vessels, the designated person-in-charge understands his or her responsibilities as described in this subchapter.

Dated: September 28, 1989.

J. D. Sipes,

Rear Admiral, U.S. Coast Guard Chief, Office of Marine Safety, Security and Environmental Protection.

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Part III

State Justice Institute

Grant Guideline; Notice

STATE JUSTICE INSTITUTE

Grant Guideline

AGENCY: State Justice Institute.

ACTION: Final guideline.

SUMMARY: This Guideline sets forth the administrative, programmatic, and financial requirements attendant to Fiscal Year 1990 State Justice Institute grants, cooperative agreements, and contracts.

EFFECTIVE DATE: October 17, 1989.

FOR FURTHER INFORMATION CONTACT: David I. Tevelin, Executive Director, or Richard Van Duizend, Deputy Director, at 120 S. Fairfax St., Alexandria, Va. 22314, or at (703) 684–6100.

SUPPLEMENTARY INFORMATION: Pursuant to the State Justice Institute Act of 1984, 42 U.S.C. 10701, et seq., as amended, the Institute is authorized to award grants, cooperative agreements, and contracts to State and local courts, nonprofit organizations, and others for the purpose of improving the administration of justice in the State courts of the United States.

Approximately $10 million is expected to be available for award in FY 1990. Congress is also considering a supplementary FY 1989 appropriation of up to $4.02 million to support projects that would help State courts address the many serious challenges posed by a rapidly increasing number of drug-related cases.

Changes in the Final Guideline

On August 21, 1989, the Institute published its proposed FY 1990 Grant Guideline in the **Federal Register** for public comment.
54 FR 34642. The final Guideline differs from the proposed Guideline in the following respects:

Special Interest Categories

In response to a comment, the *Career Development in the Courts* Special Interest category (section II.B.2.a.) has been revised to delete the reference to projects that would "assess and enhance university-based programs preparing individuals for careers in court management." The Special Interest category entitled *Improving the Decisionmaking Process in the Apellate Courts* (section II.B.2.g.) has also been revised to include a reference to a project examining the impact of case referrals from State courts of last resort on the dockets of intermediate appellate courts in those States.

Financial Requirements

A new clause has been added to Section XI.H.1. of the Guideline notifying grantees that no costs may be recovered to liquidate obligations which are incurred after the approved grant period. Section XI.H.2.c. has been revised to require the prior written approval of the Institute when the compensation to be paid consultants exceeds $300 a day, rather than the previous $200 a day. Section XII.E. has been amended to require that a request to change or extend the grant period, or a request to extend the deadline for the final financial or progress report, be submitted 30 days in advance.

Finally, the Board wishes to emphasize to applicants and grantees the Guideline requirement that records be maintained to clearly document the source, amount, and timing of all matching contributions. See section XI.D.2.

No other changes (except typographical corrections) have been made in the Final Guideline.

FY 1990 Funding Schedule

The FY 1990 concept paper deadline is November 30, 1989. Papers must be postmarked by that date. The Board of Directors will meet on March 9–11, 1990 to invite formal applications based on the most promising concept papers. Applications will be due in mid-May, and awards approved by the Board in mid-July.

This will be the only round of funding in FY 1990. The FY 1991 funding cycle is expected to begin with submission of concept papers in late November, 1990 and to follow the same general schedule. The Institute will consider proposals submitted after the established deadlines only if the Board determines that "time factors or other critical considerations" justify waiving the deadlines or the concept paper requirement. See section VI.

Recommendations to Grantwriters

Over the past three years, Institute staff have reviewed approximately 800 concept papers and 300 applications. On the basis of those reviews, inquiries from applicants, and the views of the Board, the Institute offers the following recommendations to help potential applicants present workable, understandable proposals that can meet the funding criteria set forth in this Guideline. Suggestions regarding the preparation of application budgets have been added to the recommendations for concept papers and applications made in last year's Guideline.

The Institute suggests that applicants make certain that they address the following questions and issues when preparing a concept paper or application:

1. *What is the subject or problem you wish to address?*

Describe the subject or problem and how it affects the courts and the public. Discuss how your approach will improve the situation or advance the state of the art or knowledge, and explain why it is the most appropriate approach to take. When statistics or research findings are cited to support a statement or position, the source of the citation should be referenced in a footnote.

2. *What do you want to do?*

Explain the goal(s) of the project in simple, straightforward terms. To the greatest extent possible, an applicant should avoid a specialized vocabulary that is not readily understood by the general public. Technical jargon does not enhance a paper.

3. *How will you do it?*

Describe the methodology carefully so that what you propose to do and how you would do it is clear. All proposed tasks should be set forth so that a reviewer can see a logical progression of tasks and relate those tasks directly to the accomplishment of the project's goal(s). When in doubt about whether to provide a more detailed explanation or to assume a particular level of knowledge or expertise on the part of the reviewers, err on the side of caution and provide the additional information. A description of project tasks will also help identify necessary budget items. All staff positions and project costs should relate directly to the tasks described. The Institute encourages concept paper applicants to attach letters of cooperation and support from the courts and related agencies that will be involved in or directly affected by the proposed project.

4. *How will you know it works?*

Every project design must include an evaluation component to determine whether the proposed training, procedure, service, or technology accomplished the objectives it was designed to meet. Concept papers and applications should describe the criteria that will be used to evaluate the project's effectiveness and identify program elements which will require further modification. The description in the application should include how the evaluation will be conducted, when it will occur during the project period, who will conduct it, and what specific measures will be used. In most instances, the evaluation should be conducted by persons not connected with the implementation of the procedure, training, service, or technique, or the administration of the project.

5. *How will others find out about it?*

Every project design must include a plan to disseminate the results of the training, research, or demonstration beyond the jurisdictions and individuals directly affected by the project. The plan should identify the specific methods which will be used to inform the field about the project, such as the publication of law review or journal articles, presentations at appropriate conferences, or the distribution of key materials. A statement that a report or research findings "will be made available to" the field is not sufficient. The specific means of distribution or dissemination should be identified. Reproduction and dissemination costs are allowable budget items.

6. *What are the specific costs involved?*

The budget in both concept papers and applications should be clearly presented. Major budget categories such as personnel, benefits, travel, supplies, equipment, and indirect costs should be clearly identified.

7. *What, if any, match is being offered?*

Courts and other units of State and local government (not including publicly supported institutions of higher education) are required by the State Justice Institute Act, as amended, to contribute a match (cash, non-cash, or both) of not less than 50 percent of the grant funds requested from the Institute. All other applicants are also encouraged to provide a matching contribution to assist in meeting the costs of a project. The match requirement works as follows: If the total cost of a project is anticipated to be $150,000, a State or local court or executive branch agency may request up to $100,000 from the Institute to implement the project. The remaining $50,000 (50% of the $100,000 requested from SJI) must be provided as match.

Cash match includes funds directly contributed to the project by the applicant, or by other public or private sources. Non-cash match refers to in-kind contributions by the applicant, or other public private sources. When match is offered, the nature of the match (cash or in-kind) should be explained and, at the application stage, the tasks and line items for which costs will be covered wholly or in part by match should be specified.

8. *Which of the two budget forms should be used?*

Section VII.A.3. of the SJI Grant Guideline encourages use of the spreadsheet format of Form C1 if the funding request exceeds $100,000. Form C1 also works well for projects with discrete tasks, no matter what the dollar value of the project. Form C, the tabular format, may be preferred for projects lacking a number of discrete tasks, or for projects requiring less than $100,000 of Institute funding. Generally, it is acceptable to use the form that best lends itself to representing most accurately the budget estimates for the project.

9. *How much detail should be included in the budget narrative?*

The budget narrative of an application should provide the basis for computing all project-related costs, as indicated in section VII.D. of the SJI Grant Guideline. To avoid common shortcomings of application budget narratives, the following information should be included:

- Personnel estimates that accurately provide the amount of time to be spent by personnel involved with the project and the total associated costs, including current salaries for the designated personnel (e.g., Project Director, 50% for one year, annual salary of $30,000=$15,000). If salary costs are computed using an hourly or daily rate, the annual salary and number of hours or days in a work-year should be shown.
- Estimates for supplies and expenses supported by a complete description of the supplies to be used, nature and extent of printing to be done, anticipated telephone charges, and other common expenditures, with the basis for computing the estimates included (e.g., 100 reports × 75 pages each × .05/page=$375.00).

Supply and expense estimates offered simply as "based on experience" are not sufficient.

In order to expedite Institute review of the budget, applicants should make a final comparison of the amounts listed in the budget narrative with those listed on the budget form. In the rush to complete all parts of the application on time, there may be many last-minute changes; unfortunately, when there are discrepancies between the budget narrative and the budget form or the amount listed on the application cover sheet, it is not possible for the Institute to verify the amount of the request. A final check of the numbers on the form against those in the narrative will preclude such confusion.

10. *What travel regulations apply to the budget estimates?*

Transportation costs and per diem rates must comply with the policies of the applicant organization, and a copy of the applicant's travel policy should be submitted as an appendix to the application. If the applicant does not have a travel policy established in writing, then travel rates must be consistent with those established by the Institute or the Federal Government (a copy of the Institute's travel policy is available upon request). The budget narrative should state which regulations are in force for the project and should include the number of persons traveling, the number of trips to be taken, and the length of stay. The estimated costs of travel, lodging, and other subsistence should be listed separately. When combined, the subtotals for these categories should equal the estimate listed on the budget form.

11. *May grant funds be used to purchase equipment?*

Grant funds may be used to purchase or lease only that equipment which is essential to accomplishing the objectives of the project. The budget narrative must list such equipment and explain why the equipment is necessary. Written prior approval of the Institute is required when the amount of automatic data processing equipment to be purchased or leased exceeds $10,000, or the software to be purchased exceeds $3,000.

12. *To what extent may indirect costs be included in the budget estimates?*

It is the policy of the Institute that all costs should be budgeted directly; however, if an applicant has an indirect cost rate that has been approved by a Federal agency within the last two years, an indirect cost recovery estimate may be included in the budget. A copy of the approved rate agreement should be submitted as an appendix to the application. If an applicant does not have an approved rate agreement, an indirect cost rate proposal should be prepared in accordance with Section XI.H.3 of the Grant Guideline, based on the applicant's audited financial statements for the prior fiscal year (applicants lacking an audit must budget all project costs directly). If an indirect cost rate proposal is to be submitted, the budget should reflect estimates based on that proposal. Obviously, this requires that the proposal be completed for the applicant's use at the time of application so that the appropriate estimates may be included; however, grantees have until three months after the project start date to submit the indirect cost proposal to the Institute for approval.

13. *Does the budget truly reflect all costs required to complete the project?*

After preparing the program narrative portion of the application, applicants may find it helpful to list all the major tasks or activities required by the proposed project, including the preparation of products, and note the individual expenses, including personnel

time, related to each. This will help to ensure that, for all tasks described in the application (e.g., development of a videotape, research site visits, distribution of a final report), the related costs appear in the budget and are explained correctly in the budget narrative.

State Justice Institute Grant Guideline

The following Grant Guideline is accordingly adopted by the State Justice Institute for Fiscal Year 1990:

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Summary

This Guideline sets forth the programmatic, financial, and administrative requirements of grants, cooperative agreements, and contracts awarded by the State Justice Institute. The Institute, a private, nonprofit corporation established by an Act of Congress, is authorized to award grants, cooperative agreements and contracts to State and local courts and their agencies; national nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branch of State governments; and national nonprofit organizations for the education and training of judges and support personnel of the judicial branch of State governments.

The Institute may also award funds to other nonprofit organizations with expertise in judicial administration; institutions of higher education; individuals, partnerships, firms, or corporations; and private agencies with expertise in judicial administration if the objectives of the funded program can be better served by such an entity. Funds may also be awarded to Federal, State or local agencies and institutions other than courts for services that cannot be provided for adequately through nongovernmental arrangements.

Approximately $10 million is available for grants, contracts, and cooperative agreements from FY 1990 appropriations. The Institute may also provide financial assistance in the form of interagency agreements with other grantors. The Institute will consider applications for funding support that address any of the areas specified in its enabling legislation; however, the Board of Directors of the Institute has designated certain program categories as being of special interest.

The Institute has established one round of competition for FY 1990 funds, with a concept paper submission deadline of November 30, 1989. This Guideline applies to concept papers and formal applications submitted for FY 1990 funding.

The awards made by the State Justice Institute are governed by the requirements of this Guideline and the authority conferred by Public Law 98–620, title II, 42 U.S.C. 10701, *et seq.* as amended.

I. Background

The State Justice Institute ("Institute") was established by Public Law 98–620 to improve the administration of justice in the State courts in the United States. Incorporated in the State of Virginia as a private, nonprofit corporation, the Institute is charged, by statute, with the responsibility to:

A. Direct a national program of financial assistance designed to assure that each citizen of the United States is provided ready access to a fair and effective system of justice;

B. Foster coordination and cooperation with the Federal judiciary;

C. Promote recognition of the importance of the separation of powers doctrine to an independent judiciary; and

D. Encourage education for judges and support personnel of State court systems through national and State organizations, including universities.

To accomplish these broad objectives, the Institute is authorized to provide funds to State courts, national organizations which support and are supported by State courts, national judicial education organizations, and other organizations that can assist in improving the quality of justice in the State courts.

The Institute is supervised by an eleven-member Board of Directors appointed by the President, by and with the consent of the Senate. The Board is statutorily composed of six judges, a State court administrator and four members of the public, no more than two of whom can be of the same political party.

The Institute's program budget for Fiscal Year 1990 is approximately $10 million. Through the award of grants, contracts and cooperative agreements, the Institute is authorized to perform the following activities:

1. Support research, demonstrations, special projects, technical assistance, and training to improve the administration of justice in the State courts;

2. Provide for the preparation, publication, and dissemination of information regarding State judicial systems;

3. Participate in joint projects with Federal agencies and other private grantors;

4. Evaluate or provide for the evaluation of programs and projects funded by the Institute to determine their impact upon the quality of criminal, civil, and juvenile justice and the extent to which they have contributed to improving the quality of justice in the State courts;

5. Encourage and assist in furthering judicial education;

6. Encourage, assist, and serve in a consulting capacity to State and local justice system agencies in the development, maintenance, and coordination of criminal, civil, and juvenile justice programs and services; and

7. Be responsible for the certification of national programs that are intended to aid and improve State judicial systems.

II. Scope of the Program

During FY 1990, the Institute will consider applications for funding support that address any of the areas specified in its enabling legislation. The Board, however, has designated certain program categories as being of "special interest." See section II.B.

A. Authorized Prooram Areas

The State Justice Institute Act authorizes the Institute to fund projects addressing one or more of the following program areas:

1. Assistance to State and local court systems in establishing appropriate procedures for the selection and removal of judges and other court personnel and in determining appropriate levels of compensation;

2. Education and training programs for judges and other court personnel for the performance of their general duties and for specialized functions, and national and regional conferences and seminars for the dissemination of information on new developments and innovative techniques;

3. Research on alternative means for using judicial and nonjudicial personnel

in court decisionmaking activities, implementation of demonstration programs to test such innovative approaches, and evaluations of their effectiveness;

4. Studies of the appropriateness and efficacy of court organizations and financing structures in particular States, and support to States to implement plans for improved court organization and financing;

5. Support for State court planning and budgeting staffs and the provision of technical assistance in resource allocation and service forecasting techniques;

6. Studies of the adequacy of court management systems in State and local courts, and implementation and evaluation of innovative responses to records management, data processing, court personnel management, reporting and transcription of court proceedings, and juror utilization and management;

7. Collection and compilation of statistical data and other information on the work of the courts and on the work of other agencies which relate to and affect the work of courts;

8. Studies of the causes of trial and appellate court delay in resolving cases, and establishing and evaluating experimental programs for reducing case processing time;

9. Development and testing of methods for measuring the performance of judges and courts and experiments in the use of such measures to improve the functioning of judges and the courts;

10. Studies of court rules and procedures, discovery devices, and evidentiary standards to identify problems with the operation of such rules, procedures, devices, and standards; and the development of alternative approaches to better reconcile the requirements of due process with the need for swift and certain justice, and testing of the utility of those alternative approaches;

11. Studies of the outcomes of cases in selected areas to identify instances in which the substance of justice meted out by the courts diverges from public expectations of fairness, consistency, or equity; and the development, testing and evaluation of alternative approaches to resolving cases in such problem areas;

12. Support for programs to increase court responsiveness to the needs of citizens through citizen education, improvement of court treatment of witnesses, victims, and jurors, and development of procedures for obtaining and using measures of public satisfaction with court processes to improve court performance;

13. Testing and evaluating experimental approaches to provide increased citizen access to justice, including processes which reduce the cost of litigating common grievances and alternative techniques and mechanisms for resolving disputes between citizens; and

14. Other programs, consistent with the purposes of the Act, as may be deemed appropriate by the Institute, including projects dealing with the relationship between Federal and State court systems in areas where there is concurrent State-Federal jurisdiction and where Federal courts, directly or indirectly, review State court proceedings.

Funds will not be made available for the ordinary, routine operation of court systems in any of these areas.

B. Special Interest Program Categories

1. General Description.

The Institute is interested in funding both innovative programs and programs of proven merit that can be replicated in other jurisdictions. Although applications in any of the statutory program areas are eligible for funding in FY 1990, the Institute is especially interested in funding those projects that:

a. Formulate new procedures and techniques, or creatively enhance existing arrangements to improve the courts;

b. Address aspects of the State judicial systems that are in special need of serious attention;

c. Have national significance in terms of their impact or replicability in that they develop products, services and techniques that may be used in other States;

d. Create and disseminate products that effectively transfer the information and ideas developed to relevant audiences in State and local judicial systems or provide technical assistance to facilitate the adaptation of effective programs and procedures in other State and local jurisdictions.

A project will be identified as a "Special Interest" project if it meets the four criteria set forth above and (1) it falls within the scope of the "special interest" program areas designated below or (2) information coming to the attention of the Institute from the State courts, their affiliated organizations, the research literature, or other sources demonstrates that the project responds to another special need or interest of the State courts.

Concept papers and applications which address a "Special Interest" category will be accorded a preference in the rating process. (See the selection criteria listed in sections VI.B., "Concept Paper Submission Requirements for New Projects," and VIII.B., "Application Review Procedures.")

2. Specific Categories.

The Board has designated the areas set forth below as "Special Interest" program categories. The order of listing does not imply any ordering of priorities among the categories.

a. *Career Development in the Courts.* This category includes the development and testing of innovative methods to enhance judicial and court personnel careers, other than direct increases in salary, and innovative methods to attract and select persons in the judiciary and other court occupations. These methods could include approaches that emphasize the intrinsic rewards of the profession, such as job enrichment and participative management strategies, judicial and nonjudicial personnel exchange programs, innovative programs or techniques for reducing judicial stress or "burnout," sabbatical programs, or mentoring programs. This category also includes efforts to prepare lawyers for judicial careers, to encourage qualified persons to seek and accept positions as judges and court professionals, and to evaluate the impact of equal employment opportunity policies on court personnel, administration and the public perception of the courts.

b. *Education and Training for Judges and Other Key Court Personnel.* The Board of Directors anticipates allocating approximately $3,350,000 for judicial education projects in FY 1990. Of this amount, it is expected that up to $2,600,000 will provide support to projects which the Institute has not funded previously, and up to $750,000 will provide renewal funding for judicial education programs of proven merit under section IX of the Guideline. The exact amount to be awarded in each subcategory listed below will depend on the number and quality of the applications submitted in both this Special Interest category and other areas of the Guideline. The Board anticipates allocating the $2,600,000 available for new awards in Fiscal Year 1990 as follows:

i. State Initiatives	$750,000
ii. National/Regional Training Programs	750,000
iii. Technical Assistance	600,000
iv. Conferences	500,000
Total	2,600,000

i. *State initiatives.* This category includes support for training projects

developed or endorsed by a State's courts for the benefit of judges and other court personnel in that State. Funding of these initiatives does not include support for training programs conducted by national providers of judicial education unless such a program is designed specifically for a particular State and has the express support of the State Chief Justice, State Court Administrator, or State Judicial Educator. The types of programs to be supported within this category should be defined by individual State need but may include:

—The development of State-determined standards for judicial education;
—The preparation of State plans for judicial education, including model plans for careerlong education for the judiciary (e.g., new judge training and orientation followed by continuing education and career development);
—Seed money for the creation of an ongoing State-based entity for planning, developing and administering judicial education programs;
—The development of a pre-bench orientation program and other training for new judges;
—The development of benchbooks and other educational materials; and
—Seed money for innovative continuing education and career development programs, including training which brings teams of judges, court managers and other court personnel together to address topics of mutual interest and concern.

ii. *National and regional training programs.* This category includes support for national or regional training programs developed by any provider, e.g., national organizations, State courts, universities, or public interest groups. Within this category, priority will be given to training projects which address issues of major concern to the State judiciary and other court personnel. Programs to be supported may include:

—Training programs or seminars on topics of interest and concern that transcend State lines;
—Multi-State or regional training programs sponsored by national organizations, State courts or universities; and
—Specialized training programs for State trial and appellate court judges, State and local court managers, or other court personnel.

iii. *Technical assistance.* Unlike the preceding categories which support direct training, "Technical Assistance" refers to services necessary for the development of effective educational projects for judges and other court personnel. Projects in this category should focus on the needs of the States, and applicants should demonstrate clearly their ability to work effectively with State judicial educators.

Within this category, priority will be given to the support of projects focused on State-to-State, State-to-national, and national-to-State transfer of ideas and information. Support and assistance to be provided by such projects may include:

—Development of educational curricula and support materials;
—Training faculty in adult education theory and practice;
—Consultation on planning, developing and administering State judicial education programs;
—Coordination and exchange of information among judicial education providers;
—Collection and dissemination of information about exemplary adult and continuing judicial education programs;
—Development of improved methods of evaluating court education programs; and
—On-site assistance in any of the areas listed above.

iv. *Conferences.* This category includes support for regional or national conferences on topics of major concern to the State judiciary and court personnel.

Court education programs should assure that faculty understand and apply adult education techniques and teaching methods; provide opportunities for structured interaction among participants; develop tangible products and materials for use by the faculty, participants and other judicial educators; employ a process for the recruitment of qualified and effective faculty; and develop sound methods for evaluating the impact of the training.

c. *Alternative Dispute Resolution (ADR).* This category covers the evaluation of new and existing dispute resolution procedures and programs that have a substantial likelihood of resolving complex civil litigation, and cases involving families and children (e.g., divorce, child support, visitation, and custody, juvenile delinquency, children in need of supervision, and child abuse and neglect) more fairly, more expeditiously and less expensively than the traditional court process, with particular emphasis on the impact of those procedures and programs on the quality of justice provided, litigant and court costs, court workload, and case processing.

This category also includes evaluation of the impact of "settlement weeks" in civil cases and the examination of the judicial role in settling cases, including the effectiveness of various settlement techniques that judges may use, the most appropriate point(s) in the litigation process to convene a settlement conference, and the ethical questions that may confront a judge seeking to settle a case.

The Board is especially interested in empirical research projects that would examine the impact of "private judging services" on the State courts, including studies of:

—The volume and nature of cases, e.g., contract, tort, insurance, being adjudicated by private judging organizations;
—The types of substantive legal issues, e.g., grounds for liability, that are being adjudicated, the types of procedures used to adjudicate cases and the frequency with which those procedures used;
—The "due process" protections afforded by private judging organizations, including evidentiary rules;
—The types of parties in such cases, including the demographic and economic characteristics of both plaintiffs and defendants;
—The factors that motivate litigants to take their cases to private judges;
—The disposition of the cases, including the speed of disposition, the satisfaction of the parties, and the frequency with which judgments are being brought to the State courts for enforcement or appeal;
—The effect that private judging organizations have had on the caseload of State courts in the immediate jurisdiction; and
—The numbers of judges retained by such organizations, their legal backgrounds, their compensation, and the factors that motivated their decision to seek and accept employment with such organizations.

To help interested applicants secure the cooperation of the organizations to be studied, the Institute plans to send letters expressing its interest in such research projects to leading private judging organizations in the near future. The letters will solicit their cooperation and explain the confidentiality and human subject protection provisions of the SJI Act and Grant Guideline.

d. *The Future and the Courts.* This category includes research on the changing demands and circumstances that will face the courts in the 21st century, and the long-range planning and implementation of modifications that may be needed in court

organization, financing, procedures, services, personnel, and facilities to respond to those demands and circumstances. A proposed project could focus on such issues as:

—The possible changes in court structure, court administration, or legal authority that might help the State courts more effectively administer justice;
—How developments in biology, chemistry, disease and disease control, engineering, genetics, computer design and other sciences are likely to affect the cases adjudicated by the State courts: and
—The impact that demographic changes in the American population over the next generation will have on the State courts.

e. *Improving Communication and Coordination Among Courts.* This category includes the development, implementation and evaluation of innovative procedural, administrative, technological, and organizational methods to improve communication and coordination among State courts and between State and Federal courts hearing related cases. Among the circumstances in which such improved communication and coordination are particularly needed, are:

—Instances in which multiple cases are pending involving members of a single family (e.g., divorce, domestic violence, child support, and child custody proceedings);
—Post conviction challenges in capital cases;
—Mass tort litigation; and
—Instances in which a litigant in a State civil, criminal, or domestic relations case is subject to a Federal bankruptcy proceeding.

f. *Application of Technology.* This category includes the testing of innovative applications of technology to improve the operation of court management systems and judicial practices at both the trial and appellate court levels.

The Board seeks to support local experiments with promising but untested applications of technology in the courts that include a structured evaluation of the impact of the technology in terms of costs, benefits, and staff workload. In this context, untested refers to applications of technology that are not used widely by the courts or that include a unique element to enhance their usefulness to the courts. (See paragraph XI.H.2.b. regarding the limits on the use of grant funds to purchase equipment and software.)

In previous funding cycles, grants have been awarded to support development and evaluation of: An interactive computerized information system to assist pro se litigants; the effects, costs, and benefits of videotape as a technique for making the record of trial court proceedings; an automated microfilm system and an optical disk system for maintaining and retrieving probate court records; an electronic mail system and computer-based bulletin board to facilitate information transfer among criminal justice agencies in adjoining local jurisdictions; an automated State-wide records management system; the effects of telephone conferencing in interstate child support cases; the integration of bar-coding technology with an existing automated case management system; and the use of FAX technology by courts. Current grants are also supporting the development of court automation performance standards and the development of a court technology bulletin and court technology assistance services.

g. *Improving the Decisionmaking Process in the Appellate Courts.* The Board specifically invites proposals for establishing intermediate appellate court panels responsible for handling specific subject matter cases. The Board would like to support a carefully designed and evaluated "subject matter panel" experiment to test whether such panels result in more uniformity and stability in the law; preserve judicial authority and avoid undue delegation to non-judicial staff; and expedite the decisionmaking process.

The Board contemplates that the subject matter panels would consist of three to five judges who are assigned specific types of cases, e.g., torts, family matters, property cases. Criminal cases could be assigned to one panel or allocated among all of them. The panels need not be permanent but could shift through gradual rotation. For a more thorough discussion of subject matter panels, see Meador, "An Appellate Court Dilemma and a Solution Through Subject Matter Organization," 16 *Journal of Law Reform* 471 (1983).

In addition, the Board is interested in supporting projects which assess the impact of structural innovations and procedures designed to expedite the decisionmaking process in the appellate courts, including procedures to control appellate court dockets through the referral of cases by the court-of-last-resort to the intermediate appellate court, innovative procedures for the submission of cases through oral argument without traditional briefing, and the application of differential case management techniques to the appellate process.

h. *Reduction of Litigation Expense and Delay.* This category includes the implementation and evaluation of innovative programs and procedures designed to reduce substantially the expense and delay in civil, criminal, domestic relations, juvenile or other types of litigation at the trial or appellate level (or both); the examination of effective methods of limiting the expense and delay arising from the use of discovery procedures; and the development, implementation and evaluation of legal and administrative procedures to expedite the jury selection and empanelment process, reduce the expense of operating the jury system, and limit the cost and inconvenience of jury service.

i. *The Use of Juries.* This category includes the evaluation of legal and administrative procedures relating to jurors that are designed to enhance the fairness and expeditiousness of the litigation process, such as improved methods for orienting and instructing jurors, the clarification of jury instructions, permitting jurors to take notes or ask questions, the use of jury panels of different sizes, the acceptance of non-unanimous verdicts, the use of "blue ribbon" panels, or the elimination of juries in specified classes of cases.

j. *Enforcement of Court Orders.* This category includes the development, implementation and evaluation of the effectiveness and costs of innovative methods of enforcing compliance with court orders. These methods may apply to orders issued in a range of cases, such as orders imposing fines, restitution, community service, or conditions of probation in a criminal or juvenile delinquency proceeding; orders requiring payment of child support or setting the terms for visitation and custody in divorce and paternity cases; dispositional orders in child abuse and neglect, civil commitment, guardianship, and institutional reform litigation; and protection orders in domestic violence proceedings.

k. *Substance Abuse.* This category includes the planning and presentation of conferences, seminars, or other forums for judges, probation officers, caseworkers and other court personnel to examine court-related issues concerning drug and alcohol abuse, and to discuss the appropriate role of the courts in addressing the problem of substance abuse; the development and testing of profiles, guides, risk assessment instruments and other tools to assist judges in making release, dispositional and treatment decisions in cases involving substance-abusing persons; the development and

evaluation of innovative case management techniques for handling the increasing volume of substance abuse-related cases fairly and expeditiously; and the evaluation of the effectiveness of innovative drug and alcohol treatment programs that are administered directly by the courts or through contracts negotiated between the service providers and the courts.

l. *Responding to the Court-Related Needs of Victims of Crime and Witnesses.* This category includes the implementation and evaluation of innovative court-based programs and procedures for providing fair treatment to victims of crime and witnesses. Court-based programs are those that are administered directly by the courts or through contracts negotiated between service providers and the courts. Programs and services operating in prosecutors' offices are ordinarily not considered favorably for funding.

Eligible projects may involve civil, criminal, domestic relations, and other types of cases, including but not limited to demonstrations and evaluations of programs and procedures to assure the fair, effective and efficient handling of domestic violence cases, such as: The appropriate use of court-ordered domestic violence mediation programs; evaluations of innovative court-ordered treatment programs for offenders and their families; and implementation and evaluation of innovative procedures governing the issuance and enforcement of protective orders.

m. *Responding to the Court-Related Needs of Elderly and Disabled Persons.* This category includes research and demonstration projects on issues related to access to the courts by elderly persons and physically or mentally disabled persons, and the fair and effective handling of cases affecting those persons. The issues that may be addressed include but are not limited to:

—The fair and effective consideration of cases concerning the provision of medical, mental health, social and support services to elderly or disabled persons;
—The fair and effective consideration of cases concerning the imposition of plenary or limited surrogate decisionmakers; and
—The improvement of access to courthouses and court proceedings for litigants, jurors, witnesses, and victims of crime who have mobility or communication impairments.

n. *Public Education about the Courts.* This category includes projects designed to improve the public's understanding of the courts, such as the development of videotapes and other informational materials to be shown to citizens' groups or in schools; the development of survey instruments by which the courts could determine areas of public dissatisfaction or misunderstanding; and other innovative approaches to enhancing the public's understanding of the purpose of the courts, the operations of the judicial system, and the system's responsiveness to its citizens.

o. *The Relationship Between State and Federal Courts.* This category includes research to develop creative ideas and procedures that could improve the administration of justice in the State courts and at the same time reduce the work burdens of the Federal courts. Such research projects might address innovative State court procedures for:

—Reducing the burdens attendant to Federal habeas corpus cases involving State convictions;
—Handling civil, criminal, domestic relations or other types of cases in which a party also is subject to a Federal bankruptcy proceeding;
—Processing complex multistate litigation in the State courts;
—Facilitating the adjudication of Federal law questions by State courts with appropriate opportunities for review; and
—Otherwise allocating judicial burdens between and among Federal and State courts.

Other possible areas of research include studies examining the impact of the enforcement of selected Federal statutes on the State courts, and the factors that motivate litigants to select the Federal or State courts in cases in which there is concurrent jurisdiction.

C. Programs Addressing A Critical Need of a Single State or Local Jurisdiction

1. The Board will consider supporting a limited number of projects submitted by State or local courts that address the needs of only the applicant State or local jurisdiction.

Concept papers and applications requesting funds for projects under this section must meet the requirements of sections VI ("Concept Paper Submission Requirements for New Projects") and VII ("Application Requirements"), respectively, and must demonstrate that:

a. The proposed project is essential to meeting a critical need of the jurisdiction; and

b. The need cannot be met solely with State and local resources within the foreseeable future.

2. The Board has established two categories of such projects:

a. *Critical Needs of the Largest Urban Courts.* This category is limited to projects submitted by State or local court systems regarding the implementation and evaluation of programs and procedures to address the critical needs of a trial court serving a city or county with a population of at least 1,000,000 persons. Such projects might include but are not limited to the development and testing of improved methods to assist those courts in selecting, retaining and removing judges, or projects to relieve acute problems in the court's ability to handle civil, criminal, domestic relations, juvenile and other types of cases in a fair and timely manner. The Board will consider awarding grants of up to $500,000 each to support projects in this category. The Board has set aside up to $1,000,000 of available grant funds to support such projects.

b. *Projects Addressing the Critical Needs of Other State and Local Jurisdictions.* This category includes projects addressing a critical need of a State or local jurisdiction that is not a major urban court, as defined in the preceding paragraph. A project within this category may address any of the topics included in the Special Interest Categories or statutory Program Areas. The Board has set aside up to $500,000 of available grant funds to support such projects.

3. All awards under this category are subject to the matching requirements set forth in section X.B.

III. Definitions

The following definitions apply for the purposes of this guideline:

A. *Institute.* The State Justice Institute.

B. *State Supreme Court.* The highest appellate court in a State, unless, for the purposes of the Institute program, a constitutionally or legislatively established judicial council acts in place of that court. In States having more than one court with final appellate authority, *State Supreme Court* shall mean that court which also has administrative responsibility for the State's judicial system. *State Supreme Court* also includes the office of the court or council, if any, it designates to perform the functions described in this guideline.

C. *Designated Agency or Council.* The office or judicial body which is authorized under State law or by delegation from the State Supreme Court to approve applications for funds and to receive, administer, and be accountable for those funds.

D. *Grantor Agency.* The State Justice Institute.

E. *Grantee.* The organization, entity, or individual to which an award of Institute funds is made. For a grant

based on an application from a State or local court, *grantee* refers to the State Supreme Court.

F. *Subgrantee.* A State or local court which receives Institute funds through the State Supreme Court.

G. *Match.* The portion of project costs not borne by the Institute. *Match* includes both cash and in-kind contributions.

H. *Renewal Funding.* A grant to support an existing project for an additional period of time. Renewal funding may take the form of a continuation grant or an on-going support grant.

I. *Continuation Grant.* A grant of no more than 24 months to permit completion of activities initiated under an existing Institute grant or enhancement of the programs or services produced or established during the prior grant period.

J. *On-going Support Grant.* A grant of up to 36 months to support a project that is national in scope and that provides the State courts with services, programs or products for which there is a continuing important need.

K. *Human Subjects.* Individuals who are participants in an experimental procedure or who are asked to provide information about themselves, their attitudes, feelings, opinions and/or experiences through an interview, questionnaire, or other data collection technique(s).

IV. Eligibility for Award

In awarding funds to accomplish these objectives and purposes, the Institute has been directed by Congress to give priority to State and local courts and their agencies (42 U.S.C. 10705(b)(1)(A)); national nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branches of State governments (42 U.S.C. 10705 (b)(1)(B)); and national nonprofit organizations for the education and training of judges and support personnel of the judicial branch of State governments (42 U.S.C. 10705(b)(1)(C)).

An applicant will be considered a "priority" education and training applicant under section 10705(b)(1)(C) if: (1) The principal purpose or activity of the applicant is to provide education and training to State and local judges and court personnel; and (2) the applicant demonstrates a record of substantial experience in the field of judicial education and training.

The Institute also is authorized to make awards to other nonprofit organizations with expertise in judicial administration, institutions of higher education, individuals, partnerships, firms, corporations, and private agencies with expertise in judicial administration, provided that the objectives of the relevant program area(s) can be served better. In making this judgment, the Institute will consider the likely replicability of the projects' methodology and results in other jurisdictions. For-profit organizations are also eligible for grants and cooperative agreements; however, they must waive their fees.

Finally, the Institute is authorized to make awards to Federal, State or local agencies and institutions other than courts for services that cannot be adequately provided through nongovernmental arrangements.

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court or its designated agency or council. The latter shall receive all Institute funds awarded to such courts and be responsible for assuring proper administration of Institute funds, in accordance with section XI.B.2 of this guideline. A list of persons to contact in each State regarding approval of applications from State and local courts and administration of Institute grants to those courts is contained in the Appendix.

V. Types of Projects and Amounts of Awards

A. Types of Projects

Except as expressly provided in section II.B.2.b. and II.C. above, the Institute has placed no limitation on the overall number of awards or the number of awards in each special interest category. The general types of projects are:

1. Education and training;
2. Research and evaluation;
3. Demonstration; and
4. Technical assistance.

B. Size of Awards

1. Except as specified in paragraphs V.B.2. and 3., concept papers and applications for new projects and applications for continuation grants may request funding in amounts up to $300,000, although awards in excess of $200,000 are likely to be rare and to be made, if at all, only for highly promising proposals that will have a significant impact nationally.

2. A project addressing the needs of the largest urban courts under section II.C.2.a. may receive support of up to $500,000.

3. Applications for on-going support grants may request funding in amounts up to $600,000. At the discretion of the Board, the funds to support on-going support grants may be awarded either entirely from the Institute's appropriations for the Fiscal Year of the award or from the Institute's appropriations for successive Fiscal Years beginning with the Fiscal Year of the award. When funds to support the full amount of an on-going support grant are not awarded from the appropriations for the Fiscal Year of award, funds to support the second and any subsequent years of the grant will be made available upon the satisfactory performance of the project as reflected in the quarterly Progress Reports required to be filed and routine grant monitoring, and subject to the availability of appropriations for that Fiscal Year.

C. Length of Grant Periods

1. Grant periods for all new and continuation projects ordinarily will not exceed 24 months.

2. Grant periods for on-going support grants ordinarily will not exceed 36 months.

VI. Concept Paper Submission Requirements for New Products

Concept papers are an extremely important part of the application process because they enable the Institute to learn the program areas of primary interest to the courts and to explore innovative ideas, without imposing heavy burdens on prospective applicants. The use of concept papers also permits the Institute to better project the nature and amount of grant awards. Because of their importance, the Institute requires all parties requesting financial assistance from the Institute (except those seeking renewal funding pursuant to section IX.) to submit concept papers prior to submitting a formal grant application. This requirement and the submission deadlines for concept papers and applications may be waived by the Board if it determines that time factors or other critical considerations justify the waiver.

A. Format and Content

Concept papers must include a cover sheet and a narrative.

1. The cover sheet must contain:

a. A title describing the proposed project;

b. The name and address of the court, organization or individual submitting the paper; and

c. The name, title, address (if different from that in b.), and telephone number of a contact person who can provide further information about the paper.

2. The narrative must be no more than 10 doublespaced pages on 8½ by 11 inch

paper. Margins should not be less than 1 inch. The narrative should contain:

a. *Program Areas to be Covered.* A statement which lists the program areas set forth in the State Justice Institute Act, and, if appropriate, the Institute's Special Interest program categories that are addressed by the proposed project. Applicants should explain the proposed project's relationship to a Program Area or Special Interest Category only if it is not obvious.

b. An explanation of the need for the project. If the project is to be conducted in a specific location(s), applicants should discuss the particular needs of the project site(s) to be addressed by the project and why those needs are not being met through the use of existing materials, programs, procedures, services or other resources.

If the project is not site specific, applicants should discuss the problems that the proposed project will address, and explain why existing materials, programs, procedures, services or other resources do not adequately resolve those problems.

c. A summary description of the approach to be taken;

d. A summary description of how the project will be evaluated, including the evaluation criteria;

e. A description of the products that will result, the degree to which they will be applicable to courts across the nation, and the manner in which the products and results of the project will be disseminated;

f. An explanation of the expected benefits to be derived from the project;

g. The identity of the key staff (if known) and a summary description of their qualifications;

h. A preliminary budget estimate including the anticipated costs for personnel, fringe benefits, travel, equipment, supplies, contracts, indirect costs, and other anticipated major expenditure categories;

i. The amount, nature (cash or non-cash), and source of match to be provided (see section X.B.); and

j. A statement of whether financial assistance for the project has been or will be sought from other sources.

3. The Institute encourages concept paper applicants to attach letters of cooperation and support from the courts and related agencies that will be involved in or directly affected by the proposed project.

4. The Institute will not accept concept papers exceeding 10 pages. The page limit does not include letters of cooperation or endorsements. Additional material should not be attached unless it is essential to impart a clear understanding of the project.

5. Applicants submitting more than one concept paper may include material that would be identical in each concept paper in a cover letter, and incorporate that material by reference in each paper. The incorporated material will be counted against the 10-page limit for each paper. A copy of the cover letter should be attached to each copy of each concept paper.

B. Selection Criteria

1. All concept papers will be evaluated by the staff on the basis of the following criteria:

a. The demonstration of need for the project;

b. The soundness and innovativeness of the approach described;

c. The benefits to be derived from the project; and

d. The reasonableness of the proposed budget.

2. "Special Interest" category concept papers submitted pursuant to section II.B. will also be rated on the proposed project's relationship to one of the "Special Interest" categories set forth in that section, and the degree to which the findings, procedures, training, technology, or other results of the project can be transferred to other jurisdictions.

3. "Single jurisdiction" concept papers submitted pursuant to section II.C. will be rated on the proposed project's relation to one of the "Special Interest" categories set forth in section II.B., and on the special requirements listed in section II.C.1.

4. In determining which concept papers will be selected for development into full applications, the Institute will also consider the availability of financial assistance from other sources for the project; the amount and nature (cash or in-kind) of the submitter's anticipated match; whether the submitter is a "priority applicant" under the Institute's enabling legislation (see 42 U.S.C. 10705(b)(1) and section IV above); and the extent to which the proposed project would also benefit the Federal courts or help the State courts enforce Federal constitutional and legislative requirements.

C. Review Process

Concept papers will be reviewed competitively by the Board of Directors. Institute staff will prepare a narrative summary and a rating sheet assigning points for each relevant selection criterion for those concept papers which fall within the scope of the Institute's funding program and merit serious consideration by the Board. Staff will also prepare a list of those papers that, in the judgment of the Executive Director, propose projects that lie outside the scope of the Institute's funding program or are not likely to merit serious consideration by the Board. The narrative summaries, rating sheets, and list of non-reviewed papers will be presented to the Board for their review. Committees of the Board will review concept paper summaries within assigned program areas and prepare recommendations for the full Board. The full Board of Directors will then decide which concept paper applicants should be invited to submit formal applications for funding. The decision to invite an application is solely that of the Board of Directors.

D. Submission Requirements

An original and three copies of all concept papers submitted for consideration in Fiscal Year 1990 must be sent by first class or overnight mail, or by courier no later than November 30, 1989. A postmark or courier receipt will constitute evidence of the submission date. All envelopes containing concept papers should be marked CONCEPT PAPER and should be sent to State Justice Institute, 120 S. Fairfax Street, Alexandria, Virginia 22314.

Receipt of each concept paper will be acknowledged in writing. Extensions of the deadline for submission of concept papers will not be granted.

The Board expects to meet on March 9–11, 1990, to review the concept papers and invite applications. The Institute will send written notice to all persons submitting concept papers of the Board's decisions regarding their papers and of the key issues and questions that arose during the review process. A decision by the Board not to invite an application may not be appealed, but does not prohibit resubmission of the concept paper or a revision thereof in a subsequent round of funding. The Institute will also notify the designated State contact listed in the Appendix when the Board invites applications that are based on concept papers which are submitted by courts within their State or which specify a participating site within their State.

VII. Application Requirements for New Projects

Except as specified in Section VI, a formal application for a new project is to be submitted only upon invitation of the Board following review of a concept paper. An application for Institute funding support must include an application form, budget forms (with appropriate documentation), a project abstract and program narrative, and

certain certifications and assurances. These documents are described below.

A. Forms

1. *Application Form* (FORM A)—The application form requests basic information regarding the proposed project, the applicant, and the amount of funding support requested. It also requires the signature of an individual authorized to certify on behalf of the applicant that the information contained in the application is true and complete, that submission of the application has been authorized by the applicant, and that if funding for the proposed project is approved, the applicant will comply with the requirements and conditions of the award, including the assurances set forth in Form D.

2. *Certificate of State Approval* (FORM B)—An application from a State or local court must include a copy of FORM B signed by the State's Chief Judge or Chief Justice, the director of the designated agency, or the head of the designated council. The signature denotes that the proposed project has been approved by the State's highest court or the agency or council it has designated. It denotes further that if funding for the project is approved by the Institute, the court or designated agency or council will receive, administer, and be accountable for the awarded funds.

3. *Budget Forms* (FORM C or Cl)—Applicants may submit the proposed project budget either in the tabular format of FORM C or in the spreadsheet format of FORM Cl. Applicants requesting more than $100,000 are encouraged to use the spreadsheet format. If the proposed project period is for more than 12 months, a separate form should be submitted for the portion of the project extending beyond month 12.

In addition to FORM C or Cl, applicants must provide a detailed budget narrative providing an explanation of the basis for the estimates in each budget category. (See Section VII.D.)

If funds from other sources are required to conduct the project, either as match or to support other aspects of the project, the source, current status of the request, and anticipated decision date must be provided.

4. *Assurances* (FORM D)—This form lists the statutory, regulatory, and policy requirements and conditions with which recipients of Institute funds must comply.

B. Project Abstract

The abstract should highlight the purposes, goals, methods and anticipated benefits of the proposed project. It should not exceed one single-spaced page on 8½ by 11 inch paper.

C. Program Narrative

The program narrative should not exceed 25 double-spaced pages on 8½ by 11 inch paper. Margins should not be less than 1 inch. The page limit does not include appendices containing resumes and letters of cooperation or endorsement. Additional background material may be attached only if it is essential to obtaining a clear understanding of the proposed project. Numerous and lengthy appendices are strongly discouraged.

The program narrative should address the following topics:

1. *Project Objectives.* A clear, concise statement of what the proposed project is intended to accomplish. In stating the objectives of the project, applicants should focus on the overall programmatic objective (e.g., to enhance understanding and skills regarding a specific subject, or to determine how a certain procedure affects the court and litigants) rather than on operational objectives (e.g., provide training for 32 judges and court managers, or review data from 300 cases).

2. *Program Areas to be Covered.* A statement which lists the program areas set forth in the State Justice Institute Act, and, if appropriate, the Institute's Special Interest program categories that are addressed by the proposed projects. A discussion should be included only if the relationship between the proposed project and the program areas and special interest categories is not obvious.

3. *Need for the Project.* If the project is to be conducted in a specific location(s), a discussion of the particular needs of the project site(s) to be addressed by the project and why those needs are not being met through the use of existing materials, programs, procedures, services or other resources.

If the project is not site specific, a discussion of the problems that the proposed project will address, and why existing materials, programs, procedures, services or other resources do not adequately resolve those problems. The discussion should include specific references to the relevant literature and to the experience in the field.

4. *Tasks, Methods and Evaluation*

a. *Tasks and Methods.* A delineation of the tasks to be performed in achieving the project objectives and the methods to be used for accomplishing each task. For example:

For research and evaluation projects, the data sources, data collection strategies, variables to be examined, and analytic procedures to be used for conducting the research or evaluation and ensuring the validity and general applicability of the results. For projects involving human subjects, the discussion of methods should address the procedures for obtaining respondents' informed consent, ensuring the respondents' privacy and freedom from risk or harm, and the protection of others who are not the subjects of research but would be affected by the research. If the potential exists for risk or harm to the human subjects, a discussion should be included of the value of the proposed research and the methods to be used to minimize or eliminate such risk.

For education and training projects, the adult education techniques to be used in designing and presenting the training, including the teaching methods to be used and the opportunities for structured interaction among the participants; how faculty will be recruited, selected, and trained; the proposed number and length of the conferences, courses, seminars or workshops to be conducted; the materials to be provided and how they will be developed; and the cost to participants.

For demonstration projects, the demonstration sites and the reasons they were selected, or if the sites have not been chosen, how they will be identified and their cooperation obtained; how the program or procedures will be implemented and monitored.

For technical assistance projects, the types of assistance that will be provided; the particular program area(s) for which assistance will be provided; how requests will be obtained and the type of assistance determined; how suitable providers will be selected and briefed; how reports will be reviewed; and the cost to recipients.

b. *Evaluation.* Every project design must include an evaluation plan to determine whether the project met its objectives. The evaluation should be designed to provide an objective and independent assessment of the effectiveness or usefulness of the training or services provided; the impact of the procedures, technology or services tested; or the validity and applicability of the research conducted. The plan should present the qualifications of the evaluator(s); describe the criteria that will be used to evaluate the project's effectiveness; explain how the evaluation will be conducted, including the specific data collection and analysis techniques to be

used; discuss why this approach is appropriate; and present a schedule for completion of the evaluation within the proposed project period.

The evaluation plan should be appropriate to the type of project proposed. For example, an appropriate evaluation approach for many research projects is the review of the research methodology, data collection instruments, preliminary analyses, and products as they are drafted by an advisory panel comprised of independent researchers and practitioners representing the perspectives affected by the proposed project.

An appropriate evaluation approach for many education or training projects is to obtain the reaction of training participants to the quality and effectiveness of faculty presentations, the format of sessions, the value or usefulness of the material presented and other relevant factors. Another appropriate approach when an education project involves the development of curricular materials is the use of an advisory panel of relevant experts coupled with a test of the curriculum to obtain the reactions of participants and faculty as indicated above.

The evaluation plan for a demonstration project should encompass an assessment of program effectiveness (e.g., how well did it work?); user satisfaction, if appropriate; the cost effectiveness of the program; a process analysis of the program (e.g., was the program implemented as designed? did it provide the services intended to the targeted population?); the impact of the program (e.g., what effect did the program have on the court? what benefits resulted from the program?); and the replicability of the program or components of the program.

For technical assistance projects, applicants should explain how the quality, timeliness, and impact of the assistance provided will be determined.

5. *Project Management.* A detailed management plan including the starting and completion date for each task; the time commitments to the project of key staff and their responsibilities regarding each project task; and the procedures that will be used to ensure that all tasks are performed on time, within budget, and at the highest level of quality. The management plan must also provide for the submission of Quarterly Progress and Financial Reports within 30 days of the close of each calendar quarter (i.e., no later than January 30, April 30, July 30, and October 30).

6. *Products.* A description of the products to be developed by the project (e.g., monographs, training curricula and materials, videotapes, articles, or handbooks), including when they will be submitted to the Institute. The application must explain how and to whom the products will be disseminated; identify development, production, and dissemination costs covered by the project budget; and present the basis on which products and services developed or provided under the grant will be offered to the courts community and the public at large. Ordinarily, the products of a research, evaluation, or demonstration project should include an article summarizing the project findings that is publishable in a journal serving the courts community nationally, an executive summary that will be disseminated to the project's primary audience, or both. The products developed by education and training projects should be designed for use outside the classroom so that they may be used again by original participants and others in the course of their duties. Fourteen copies of all project products must be submitted to the Institute.

7. *Applicant Status.* An applicant that is not a State or local court and has not received a grant from the Institute within the past two years should include a statement indicating whether it is requesting "priority status" recognition as either a national non-profit organization controlled by, operating in conjunction with, and serving the judicial branches of State governments; or a national non-profit organization for the education and training of State court judges and support personnel. See section IV. A request for recognition as a priority recipient pursuant to 42 U.S.C. 10705 (b)(1)(B) or (1)(C) must set forth the basis for designation as a priority recipient in its application. If the applicant is neither an organization qualifying as a priority recipient nor a State court, this section must demonstrate how it will serve the objectives of the relevant program area(s) in terms of replicability and other appropriate factors. Non-judicial units of Federal, State, or local government must demonstrate that the proposed services are not available from non-governmental sources.

8. *Staff Capability.* A summary of the training and experience of the key staff members and consultants that qualify them for conducting and managing the proposed project. Resumes of identified staff should be attached to the application. If one or more key staff members and consultants are not known at the time of the application, a description of the criteria that will be used to select persons for these positions should be included.

9. *Organizational Capacity.* Applicants that have not received a grant from the Institute within the past two years should include a statement describing the capacity of the applicant to administer grant funds including the financial systems used to monitor project expenditures (and income, if any), and a summary of the applicant's past experience in administering grants, as well as any resources or capabilities that the applicant has that will particularly assist in the successful completion of the project.

If the applicant is a non-profit organization (other than a university), it must also provide documentation of its 501(c) tax exempt status as determined by the Internal Revenue Service and a copy of a current certified audit report. For purposes of this requirement, "current" means no earlier than two years prior to the current calendar year. If a current audit report is not available, the Institute will require the organization to complete a financial capability questionnaire which must be certified by a Certified Public Accountant. Other applicants may be required to provide a current audit report, a financial capability questionnaire, or both, if specifically requested to do so by the Institute.

Unless requested otherwise, an applicant that has received a grant from the Institute within the past two years should describe only the changes in its organizational capacity, tax status, or financial capability that may affect its capacity to administer a grant.

10. *Letters of Support for the Project.* If the cooperation of courts, organizations, agencies, or individuals other than the applicant is required to conduct the project, written assurances of cooperation and availability should be attached as an appendix to the application.

D. Budget Narrative.

The budget narrative should provide the basis for the computation of all project-related costs. Additional background or schedules may be attached only if they are essential to obtaining a clear understanding of the proposed budget. Numerous and lengthy appendices are strongly discouraged.

The budget narrative should address the items listed below. The costs attributable to the project evaluation should be clearly identified.

1. *Justification of Personnel Compensation.* The applicant should set forth the percentages of time to be devoted by the individuals who will serve as the staff of the proposed

project, the annual salary of each of those persons, and the number of work days per year used for calculating the percentages of time or daily rate of those individuals. The applicant should explain any deviations from current rates or established written organization policies.

2. *Fringe Benefit Computation.* The applicant should provide a description of the fringe benefits provided to employees. If percentages are used, the authority for such use should be presented as well as a description of the elements included in the determination of the percentage rate.

3. *Consultant/Contractual Services.* The applicant should describe each type of service to be provided. The basis for compensation rates and the method for selection should also be included. Rates for consultant services must be set in accordance with Section XI.H.2.c.

4. *Travel.* Transportation costs and per diem rates must comply with the policies of the applicant organization. If the applicant does not have an established travel policy, then travel rates shall be consistent with those established by the Institute or the Federal Government. (A copy of the Institute's travel policy is available upon request.) The budget narrative should include an explanation of the rate used, including the components of the per diem rate and the basis for the estimated transportation expenses. The purpose for travel should also be included in the narrative.

5. *Equipment.* Grant funds may be used to purchase or lease only that equipment which is essential to accomplishing the objectives of the project. The applicant should describe the equipment to be purchased or leased and explain why the acquisition of that equipment is essential to accomplish the project's goals and objectives. The narrative should clearly identify which equipment is to be leased and which is to be purchased. The method of procurement should also be described. Purchases for automatic data processing equipment must comply with section XI.H.2.b.

6. *Supplies.* The applicant should provide a general description of the supplies necessary to accomplish the goals and objectives of the grant. In addition, the applicant should provide the details supporting the total requested for this expenditure category.

7. *Construction.* Construction expenses are prohibited except for the limited purposes set forth in section X.G.2. Any allowable construction or renovation expense should be described in detail in the budget narrative.

8. *Telephone.* Applicants should include anticipated telephone charges, distinguishing between monthly charges and long distance charges in the budget narrative. Also, applicants should provide the basis used in developing the monthly and long distance estimates.

9. *Postage.* Anticipated postage costs for project-related mailings should be described in the budget narrative. The cost of special mailings, such as for a survey or for announcing a workshop, should be distinguished from routine operational mailing costs. The bases for all postage estimates should be included in the justification material.

10. *Printing/Photocopying.* Anticipated costs for printing or photocopying should be included in the budget narrative. Applicants should provide the details underlying these estimates in support of the request.

11. *Indirect Costs.* Applicants should describe the indirect cost rates applicable to the grant in detail. These rates must be established in accordance with section XI.H.4. If the applicant has an indirect cost rate or allocation plan approved by any Federal granting agency, a copy of the approved rate agreement should be attached to the application.

12. *Match.* The applicant should describe the source of any matching contribution and the nature of the match provided. Any additional contributions to the project should be described in this section of the budget narrative as well. If in-kind match is to be provided, the applicant should describe how the amount and value of the time, services, or materials actually contributed will be documented.

E. Submission Requirements

1. An application package containing the application, an original signature on FORM A (and on FORM B, if the application is from a State or local court), and four photocopies of the application package must be sent by first class or overnight mail, or by courier no later than May 11, 1990. A postmark or courier receipt will constitute evidence of the submission date. Please mark APPLICATION on all application package envelopes and send to: State Justice Institute, 120 S. Fairfax Street, Alexandria, Virginia 22314.

Receipt of each proposal will be acknowledged in writing. Extensions of the deadline for receipt of applications will not be granted.

2. Applicants invited to submit more than one application may include material that would be identical in each application in a cover letter, and incorporate that material by reference in each application. The incorporated material will be counted against the 25-page limit for the program narrative. A copy of the cover letter should be attached to each copy of each application.

VIII. Application Review Procedures

A. Preliminary Inquiries

The Institute staff will answer inquiries concerning application procedures. The staff contact will be named in the Institute's letter inviting submission of a formal application.

B. Selection Criteria

1. All applications will be rated on the basis of the criteria set forth below. The Institute will accord the greatest weight to the following criteria:

a. The soundness of the methodology;

b. The appropriateness of the proposed evaluation design;

c. The qualifications of the project's staff;

d. The applicant's management plan and organizational capabilities;

e. The reasonableness of the proposed budget;

f. The demonstration of need for the project;

g. The products and benefits resulting from the project; and

h. The demonstration of cooperation and support of other agencies that may be affected by the project.

2. "Special Interest" applications submitted pursuant to section II.B. will also be rated on the proposed project's relationship to one of the "Special Interest" categories set forth in that section, and the degree to which the findings, procedures, training, technology, or other results of the project can be transferred to other jurisdictions.

3. "Single jurisdiction" applications submitted pursuant to section II.C. will also be rated on the proposed project's relation to one of the "Special Interest" categories set forth in section II.B. and on the special requirements listed in section II.C.1.

4. In determining which applicants to fund, the Institute will also consider the applicant's standing in relation to the statutory priorities discussed in section IV; the availability of financial assistance from other sources for the project; the amount and nature (cash or in-kind) of the applicant's match; and the extent to which the proposed project would also benefit the Federal courts or help the State courts enforce Federal constitutional and legislative requirements.

C. Review and Approval Process

Applications will be reviewed competitively by the Board of Directors. The Institute staff will prepare a narrative summary of each application, and a rating sheet assigning points for each relevant selection criterion. When necessary, applications may also be reviewed by outside experts. Committees of the Board will review applications within assigned program categories and prepare recommendations to the full Board. The full Board of Directors will then decide which applications to approve for a grant. The decision to award a grant is solely that of the Board of Directors.

Awards approved by the Board will be signed by the Chairman of the Board on behalf of the Institute.

D. Return Policy

Unless a specific request is made, unsuccessful applications will not be returned. Applicants are advised that Institute records are subject to the provisions of the Federal Freedom of Information Act, 5 U.S.C. 552.

E. Notification of Board Decision

The Institute will send written notice to applicants concerning all Board decisions to approve or deny their respective applications and the key issues and questions that arose during the review process. A decision by the Board to deny an application may not be appealed, but does not prohibit resubmission of a concept paper based on that application in a subsequent round of funding. The Institute will also notify the designated State contact listed in Appendix A when grants are approved by the Board to support projects that will be conducted by or involve courts in their State.

F. Response to Notification of Approval

Applicants have 30 days from the date of the letter notifying them that the Board has approved their application to respond to any revisions requested by the Board. If the requested revision's (or a reasonable schedule for submitting such revisions) has not been submitted to the Institute within 30 days after notification, the approval will be automatically rescinded and the application presented to the Board for reconsideration.

IX. Renewal Funding Procedures and Requirements

The Institute recognizes two types of renewal funding—"continuation grants" and "on-going support grants." Pursuant to the procedures and requirements set forth below, the Board may, in its discretion and subject to the availability of funds, consider requests for renewal funding at times other than those set for new projects in Sections VI. and VIII.

A. Continuation Grants

1. *Purpose and Scope.* Continuation grants are intended to support projects with a limited duration that involve the same type of activities as the previous project. They are intended to enhance the specific program or service produced or established during the prior grant period. They may be used, for example, when a project is divided into two or more sequential phases, for secondary analysis of data obtained in an Institute-supported research project, or for more extensive testing of an innovative technology, procedure, or program developed with SJI grant support.

In order for a project to be considered for continuation funding, the grantee must have completed the project tasks and met all grant requirements and conditions in a timely manner, absent extenuating circumstances or prior Institute approval of changes to the project design. Continuation grants are not intended to provide support for a project for which the grantee has underestimated the amount of time or funds needed to accomplish the project tasks.

2. *Application Procedures—Letters of Intent.* In lieu of a concept paper, a grantee seeking a continuation grant must inform the Institute, by letter, of its intent to submit an application for such funding as soon as the need for renewal funding becomes apparent but no less than 120 days before the end of the current grant period.

a. A letter of intent must be no more than 3 single-spaced pages on 8½ by 11 inch paper and must contain a concise but thorough explanation of the need for continuation; an estimate of the funds to be requested and a brief description of anticipated changes in scope, focus or audience of the project.

b. Letters of intent will not be reviewed competitively. Institute staff will review the proposed activities for the next project period and, within 30 days of receiving a letter of intent, inform the grantee of specific issues to be addressed in the continuation application and the date by which the application for a continuation grant must be submitted.

3. *Application Format.* An application for a continuation grant must include an application form, budget forms (with appropriate documentation), a project abstract conforming to the format set forth in section VII.B., a program narrative, a budget narrative, and certain certifications and assurances.

The program narrative should conform to the length and format requirements set forth in section VII.C. However, rather than the topics listed in section VII.C., the program narrative of an application for a continuation grant should address:

a. *Need for Continuation.* Explain why continuation of the project is necessary to achieve the goals of the project, and how the continuation will benefit the participating courts or the courts community generally. That is, to what extent will the goals and objectives of the project be unfulfilled if the project is not continued, and conversely, how will the findings or results of the project be enhanced by continuing the project?

b. *Report of Current Project Activities.* Discuss the status of all activities conducted during the previous project period, identify any activities that were not completed, and explain why.

c. *Evaluation Findings.* Describe the key findings or recommendations resulting from the evaluation of the project, if they are available, and explain how they will be addressed during the proposed continuation. If the findings are not yet available, provide the date by which they will be submitted to the Institute.

d. *Tasks and Methods.* Describe fully any changes in the tasks to be performed, the methods to be used, the products of the project, the assigned staff, or the grantee's organizational capacity;

e. *Task Schedule.* Present a detailed task schedule and time line for the next project period.

f. *Other Sources of Support.* Indicate why other sources of support are inadequate, inappropriate or unavailable.

g. *Budget and Budget Narrative.* Provide a complete budget and budget narrative conforming to the requirements set forth in paragraph VII.D. Changes in the funding level requested should be discussed in terms of corresponding increases or decreases in the scope of activities or services to be rendered.

4. *References to Previously Submitted Material.* An application for a continuation grant should not repeat information contained in a previously approved application or other previously submitted materials, but should provide specific references to such materials where appropriate.

5. *Submission Requirements, Review and Approval Process, and Notification of Decision.* The submission requirements set forth in section VII.E., other than the deadline for mailing, apply to applications for a continuation

grant. Such applications will be rated on the selection criteria set forth in section VIII.B. The key findings and recommendations resulting from an evaluation of the project and the proposed response to those findings and recommendations will also be considered. The review and approval process, return policy, and notification procedures are the same as those for new projects set forth in sections VIII.C.–VIII.E.

B. On-going Support Grants

1. *Purpose and Scope.* On-going support grants are intended to support a project that is national in scope and that provides the State courts with services, programs or products for which there is a continuing important need. On-going support grants are subject to the limits on size and duration set forth in V.B.2. and V.C.2. A project is eligible for consideration for an on-going support grant if:

a. The project is supported by and has been evaluated under a grant from the Institute;

b. The project is national in scope and provides a significant benefit to the State courts;

c. There is a continuing important need for the services, programs or products provided by the project as indicated by the level of use and support by members of the court community;

d. The project is accomplishing its objectives in an effective and efficient manner; and

e. It is likely that the service or program provided by the project would be curtailed or significantly reduced without Institute support.

Each project supported by an on-going support grant must include an evaluation component assessing its effectiveness and operation throughout the grant period. A comprehensive evaluation report must be completed not less than 90 days before the end of the grant period. In addition, a detailed annual task schedule must be submitted for Institute approval within 30 days after the end of each project year.

2. *Application Procedures—Letters of Intent.* The Board will consider awarding an on-going support grant for a period of up to 36 months. The total amount of the grant will be fixed at the time of the initial award. Funds ordinarily will be made available in annual increments as specified in section V.B.3.

In lieu of a concept paper, a grantee seeking an ongoing support grant must inform the Institute, by letter, of its intent to submit an application for such funding as soon as the need for renewal funding becomes apparent but no less than 120 days before the end of the current grant period. The letter of intent should be in the same format as that prescribed for continuation grants in section IX.A.2.a.

3. *Application Procedures and Format.* An application for an on-going support grant must include an application form, budget forms (with appropriate documentation), a project abstract conforming to the format set forth in section VII.B., a program narrative, a budget narrative, and certain certifications and assurances.

The program narrative should conform to the length and format requirements set forth in section VII.C. However, rather than the topics listed in section VII.C., the program narrative of applications for on-going support grants should address:

a. *Description of Need for and Benefits of the Project.* Provide a detailed discussion of the benefits provided by the project to the State courts around the country, including the degree to which State courts, State court judges, or State court managers and personnel are using the services or programs provided by the project;

b. *Demonstration of Court Support.* Demonstrate support for the continuation of the project from the courts community;

c. *Report on Current Project Activities.* Discuss the extent to which the project has met its goals and objectives, identify any activities that have not been completed, and explain why;

d. *Evaluation Findings.* Attach a copy of the final evaluation report regarding the effectiveness and operation of the project, specify the key findings or recommendations resulting from the evaluation, and explain how they will be addressed during the proposed renewal period;

e. *Tasks and Methods.* Describe fully any changes in the tasks to be performed, the methods to be used, the products of the project, the assigned staff, or the grantee's organizational capacity.

f. *Task Schedule.* Present a general schedule for the full proposed project period and a detailed task schedule for the first year of the proposed new project period;

g. *Other Sources of Support.* Indicate why other sources of support are inadequate, inappropriate or unavailable; and

h. *Budget and Budget Narrative.* Provide a complete budget and budget narrative conforming to the requirements set forth in paragraph VII.D. Changes in the funding level requested should be discussed in terms of corresponding increases or decreases in the scope of activities or services to be rendered.

4. *References to Previouslv Submitted Material.* An application for an on-going support grant should not repeat information contained in a previously approved application or other previously submitted materials, but should provide specific references to such materials where appropriate.

5. *Submission Requirements, Review and Approval Process, and Notification of Decision.* The submission requirements set forth in section VII.E., other than the deadline for mailing, apply to applications for an on-going support grant. Such applications will be rated on the selection criteria set forth in section VIII.B. The key findings and recommendations resulting from an evaluation of the project and the proposed response to those findings and recommendations will also be considered. The review and approval process, return policy, and notification procedures are the same as those for new projects set forth in sections VIII.C.–VIII.E.

X. Compliance Requirements

The State Justice Institute Act (Pub. L. 98–620) contains limitations and conditions on grants, contracts and cooperative agreements of which applicants and recipients should be aware. In addition to eligibility requirements which must be met to be considered for an award from the Institute, all applicants should be aware of and all recipients will be responsible for ensuring compliance with the following:

A. State and Local Court Systems.

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council. The latter shall receive, administer, and be accountable for all funds awarded to such courts. 42 U.S.C. 10705(b)(4). The Appendix to this guideline lists the agencies, councils and contact persons designated to administer Institute awards to the State and local courts.

B. Matchinq Requirements

1. All awards to courts or other units of State or local government (not including publicly supported institutions of higher education) require a match from private or public sources of not less than 50 percent of the total amount of the Institute's award. For example, if the total cost of a project is anticipated to be $150,000, a State court or executive

branch agency may request up to $100,000 from the Institute to implement the project. The remaining $50,000 (50% of the $100,000 requested from SJI) must be provided as a match. A cash match, non-cash match, or both may be provided, but the Institute will give preference to those applicants who provide a cash match to the Institute's award.

The requirement to provide match may be waived in exceptionally rare circumstances upon approval of the Chief Justice of the highest court in the State and a majority of the Board of Directors. 42 U.S.C. 10705(d) (as amended).

2. Other eligible recipients of Institute funds are not required to provide a match, but are encouraged to contribute to meeting the costs of the project. In instances where a cash match is proposed, the grantee is responsible for ensuring that the total amount proposed is actually contributed. If a proposed cash match contribution is not fully met, the Institute may reduce the award amount accordingly, in order to maintain the ratio originally provided for in the award agreement (see section VIII.B. above and XI.D).

C. Conflict of Interest

Personnel and other officials connected with Institutefunded programs shall adhere to the following requirements:

1. No official or employee of a recipient court or organization shall participate personally through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in any proceeding, application, request for a ruling or other determination, contract, grant, cooperative agreement, claim, controversy, or other particular matter in which Institute funds are used, where to his/her knowledge he/she or his/her immediate family, partners, organization other than a public agency in which he/she is serving as officer, director, trustee, partner, or employee or any person or organization with whom he/she is negotiating or has any arrangement concerning prospective employment, has a financial interest.

2. In the use of Institute project funds, an official or employee of a recipient court or organization shall avoid any action which might result in or create the appearance of:

a. Using an official position for private gain; or

b. Affecting adversely the confidence of the public in the integrity of the Institute program.

3. Requests for proposals or invitations for bids issued by a recipient of Institute funds or a subgrantee or subcontractor will provide notice to prospective bidders that the contractors who develop or draft specifications, requirements, statements of work and/or requests for proposals for a proposed procurement will be excluded from bidding on or submitting a proposal to compete for the award of such procurement.

D. Lobbying

Funds awarded to recipients by the Institute shall not be used, indirectly or directly, to influence Executive orders or similar promulgations by Federal, State or local agencies, or to influence the passage or defeat of any legislation by Federal, State or local legislative bodies. 42 U.S.C. 10706(a).

E. Political Activities

No recipient shall contribute or make available Institute funds, program personnel or equipment to any political party or association, or the campaign of any candidate for public or party office. Recipients are also prohibited from using funds in advocating or opposing any ballot measure, initiative, or referendum. Finally, officers and employees of recipients shall not intentionally identify the Institute or recipients with any partisan or nonpartisan political activity associated with a political party or association, or the campaign of any candidate for public or party office. 42 U.S.C. 10706(a).

F. Advocacy

No funds made available by the Institute may be used to support or conduct training programs for the purpose of advocating particular nonjudicial public policies or encouraging nonjudicial political activities. 42 U.S.C. 10706(b).

G. Supplantation and Construction

To ensure that funds are used to supplement and improve the operation of State courts, rather than to support basic court services, funds shall not be used for the following purposes:

1. To supplant State or local funds supporting a program or activity;

2. To construct court facilities or structures, except to remodel existing facilities or to demonstrate new architectural or technological techniques, or to provide temporary facilities for new personnel or for personnel involved in a demonstration or experimental program; or

3. Solely to purchase equipment.

H. Confidentiality of Information

Except as provided by Federal law other than the State Justice Institute Act, no recipient of financial assistance from SJI may use or reveal any research or statistical information furnished under the Act by any person and identifiable to any specific private person for any purpose other than the purpose for which the information was obtained. Such information and copies thereof shall be immune from legal process, and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceedings.

I. Reporting Requirements

Recipients of Institute funds shall submit Quarterly Progress and Financial Reports within 30 days of the close of each calendar quarter (that is, no later than January 30, April 30, July 30, and October 30). Two copies of each report must be sent. The Quarterly Progress Reports shall include a narrative description of project activities during the calendar quarter, the relationship between those activities and the task schedule and objectives set forth in the approved application or an approved adjustment thereto, any significant problem areas that have developed and how they will be resolved, and the activities scheduled during the next reporting period.

The quarterly financial status report shall be submitted in accordance with section XI.G.2. of this guideline.

J. Audit

Each recipient must provide for an annual fiscal audit. (See section XI.J. of this guideline for the requirements of such audits.)

Accounting principles employed in recording transactions and preparing financial statements must be based upon generally accepted accounting principles (GAAP).

K. Suspension of Funding.

After providing a recipient reasonable notice and opportunity to submit written documentation demonstrating why fund termination or suspension should not occur, the Institute may terminate or suspend funding of a project that fails to comply substantially with the Act, Institute guidelines, or the terms and conditions of the award. 42 U.S.C. 10708(1).

L. Title to Property

At the conclusion of the project, title to all expendable and nonexpendable personal property purchased with Institute funds shall vest in the recipient court, organization, or individual that

purchased the property if certification is made to the Institute that the property will continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act, as approved by the Institute. If such certification is not made or the Institute disapproves such certification, title to all such property with an aggregate or individual value of $1,000 or more shall vest in the Institute, which will direct the disposition of the property.

M. Disclaimer

Recipients of Institute funds shall prominently display the following disclaimer on all project-related products developed with Institute funds:

This [document, film, videotape, etc.] was developed under a [grant, cooperative agreement, contract] from the State Justice Institute. Points of view expressed herein are those of the [author(s), filmmaker(s), etc.] and do not necessarily represent the official position or policies of the State Justice Institute.

N. Copyrights

Except as otherwise provided in the terms and conditions of an Institute award, a recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of an Institute-supported project, but the Institute shall reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the materials for purposes consistent with the State Justice Institute Act.

O. Invention and Patents

If any patentable items, patent rights, processes, or inventions are produced in the course of Institute-sponsored work, such fact shall be promptly and fully reported to the Institute. Unless there is a prior agreement between the grantee and the Institute on disposition of such items, the Institute shall determine whether protection of the invention or discovery shall be sought. The Institute will also determine how the rights in the invention or discovery, including rights under any patent issued thereon, shall be allocated and administered in order to protect the public interest consistent with "Government Patent Policy" (President's Memorandum for Heads of Executive Departments and Agencies, August 23, 1971, and statement of Government Patent Policy as printed in 36 FR 16889).

P. Charges for Grant-Related Products

When Institute funds fully cover the cost of developing, producing, and disseminating a product, e.g., a document or software, the product should be distributed to the field without charge. When Institute funds only partially cover the development, production, and dissemination costs, the grantee may recover its costs for reproducing and disseminating the material to those requesting it.

Q. Approval of Key Staff.

If the qualifications of an employee or consultant assigned to a key project staff position are not described in the application or if there is a change of a person assigned to such a position, a recipient shall submit a description of the qualifications of the newly assigned person to the Institute. Prior written approval of the qualifications of the new person assigned to a key staff position must be received from the Institute before the salary or consulting fee of that person and associated costs may be paid or reimbursed from grant funds.

XI. Financial Requirements

A. Accounting Systems and Financial Records.

All grantees, subgrantees, contractors and other organizations directly or indirectly receiving Institute funds are required to establish and maintain accounting systems and financial records to accurately account for funds they receive. These records shall include total program costs, including Institute funds, State and local matching shares, and any other fund sources included in the approved project budget.

1. *Purpose.* The purpose of this section is to establish accounting system requirements and to offer guidance on procedures which will assist all grantees/subgrantees in:

a. Complying with the statutory requirements for the awarding, disbursement, and accounting of funds;

b. Complying with regulatory requirements of the Institute for the financial management and disposition of funds;

c. Generating financial data which can be used in the planning, management and control of programs; and

d. Facilitating an effective audit of funded programs and projects.

2. *References.* Except where inconsistent with specific provisions of this guideline, the following regulations, directives and reports are applicable to Institute grants and cooperative agreements. These materials supplement the requirements of this section for accounting systems and financial recordkeeping and provide additional guidance on how these requirements may be satisfied.

a. *Office of Management and Budget (OMB) Circular A–21,* Cost Principles for Educational Institutions.

b. *Office of Management and Budget (OMB) Circular A–87,* Cost Principles for State and Local Governments.

c. *Office of Management and Budget (OMB) Circular A–88 (revised),* Indirect Cost Rates, Audit and Audit Followup at Educational Institutions.

d. *Office of Management and Budget (OMB) Circular A–102,* Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

e. *Office of Management and Budget (OMB) Circular A–110,* Grants and Agreements with Institutions of Higher Education, Hospitals and other Non-Profit Organizations.

f. *Office of Management and Budget (OMB) Circular A–128,* Audits of State and Local Governments.

g. *Office of Management and Budget (OMB) Circular A–122,* Cost Principles for Non-profit Organizations.

B. Supervision and Monitoring Responsibilities.

1. *Grantee Responsibilities.* All grantees receiving direct awards from the Institute are responsible for the management and fiscal control of all funds. Responsibilities include the accounting for receipts and expenditures, the maintaining of adequate financial records and the refunding of expenditures disallowed by audits.

2. *Responsibilities of State Supreme Court.* Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council.

The State Supreme Court shall receive all Institute funds awarded to such courts and shall be responsible for assuring proper administration of Institute funds. The State Supreme Court is responsible for all aspects of the project, including proper accounting and financial recordkeeping by the subgrantee. The responsibilities include:

a. *Reviewing Financial Operations.* The State Supreme Court should be familiar with, and periodically monitor, its subgrantees' financial operations, records system and procedures. Particular attention should be directed to the maintenance of current financial data.

b. *Recording Financial Activities.* The subgrantee's grant award or contract

obligation, as well as cash advances and other financial activities, should be recorded in the financial records of the State Supreme Court in summary form. Subgrantee expenditures should be recorded on the books of the State Supreme Court or evidenced by report forms duly filed by the subgrantee. Non-Institute contributions applied to projects by subgrantees should likewise be recorded, as should any project income resulting from program operations.

c. *Budgeting and Budget Review.* The State Supreme Court should ensure that each subgrantee prepares an adequate budget as the basis for its award commitment. The detail of each project budget should be maintained on file by the State Supreme Court.

d. *Accounting for Non-Institute Contributions.* The State Supreme Court will ensure, in those instances where subgrantees are required to furnish non-Institute matching funds, that the requirements and limitations of this guideline are applied to such funds.

e. *Audit Requirement.* The State Supreme Court is required to ensure that subgrantees have met the necessary audit requirements as set forth by the Institute (see sections X.J. and XI.J).

f. *Reporting Irregularities.* The State Supreme Court and its subgrantees are responsible for promptly reporting to the Institute the nature and circumstances surrounding any financial irregularities discovered.

C. Accounting System

The grantee is responsible for establishing and maintaining an adequate system of accounting and internal controls for itself and for ensuring that an adequate system exists for each of its subgrantees and contractors. An acceptable and adequate accounting system is considered to be one which:

1. Properly accounts for receipt of funds under each grant awarded and the expenditure of funds for each grant by category of expenditure (including matching contributions and project income);

2. Assures that expended funds are applied to the appropriate budget category included within the approved grant;

3. Presents and classifies historical costs of the grant as required for budgetary and evaluation purposes;

4. Provides cost and property controls to assure optimal use of grant funds;

5. Is integrated with a system of internal controls adequate to safeguard the funds and assets covered, check the accuracy and reliability of the accounting data, promote operational efficiency, and assure conformance with any general or special conditions of the grant;

6. Meets the prescribed requirements for periodic financial reporting of operations; and

7. Provides financial data for planning, control, measurement, and evaluation of direct and indirect costs.

D. Total Cost Budgeting and Accounting

Accounting for all funds awarded by the Institute shall be structured and executed on a "total project cost" basis. That is, total project costs, including Institute funds, State and local matching shares, and any other fund sources included in the approved project budget shall be the foundation for fiscal administration and accounting. Grant applications and financial reports require budget and cost estimates on the basis of total costs.

1. *Timing of Matchine Contributions.* Matching contributions need not be applied at the exact time of the obligation of Institute funds. However, the full matching share must be obligated by the end of the period for which the Institute funds have been made available for obligation under an approved project. In instances where a proposed cash match contribution is not fully met, the Institute may reduce the award amount accordingly, in order to maintain the ratio originally provided for in the award agreement.

2. *Records for Match.* All grantees must maintain records which clearly show the source, amount, and timing of all matching contributions. In addition, if a project has included, within its approved budget, contributions which exceed the required matching portion, the grantee must maintain records of those contributions in the same manner as it does the Institute funds and required matching shares. For all grants made to State and local courts, the State Supreme Court has primary responsibility for grantee/subgrantee compliance with the requirements of this section. (See XI.B.2.)

E. Maintenance and Retention of Records

All financial records, supporting documents, statistical records and all other records pertinent to grants, subgrants, cooperative agreements or contracts under grants shall be retained by each organization participating in a project for at least three years for purposes of examination and audit. State Supreme Courts may impose record retention and maintenance requirements in addition to those prescribed in this chapter.

1. *Coverage.* The retention requirement extends to books of original entry, source documents supporting accounting transactions, the general ledger, subsidiary ledgers, personnel and payroll records, cancelled checks, and related documents and records. Source documents include copies of all grant and subgrant awards, applications, and required grantee/subgrantee financial and narrative reports. Personnel and payroll records shall include the time and attendance reports for all individuals reimbursed under a grant, subgrant or contract, whether they are employed full-time or part-time. Time and effort reports will be required for consultants.

2. *Retention Period.* The three-year retention period starts from the date of the submission of the final expenditure report or, for grants which are renewed annually, from the date of submission of the annual expenditure report.

3. *Maintenance.* Grantees and subgrantees are expected to see that records of different fiscal years are separately identified and maintained so that requested information can be readily located. Grantees and subgrantees are also obligated to protect records adequately against fire or other damage. When records are stored away from the grantee's/subgrantee's principal office, a written index of the location of stored records should be on hand, and ready access should be assured.

F. Project-Related Income.

Records of the receipt and disposition of project-related income must be maintained by the grantee in the same manner as required for the project funds that gave rise to the income. The policies governing the disposition of the various types of project-related income are listed below.

1. *Interest.* A State and any agency or instrumentality of a State including State institutions of higher education and State hospitals, shall not be held accountable for interest earned on advances of project funds. When funds are awarded to subgrantees through a State, the subgrantees are not held accountable for interest earned on advances of project funds. Local units of government that are direct grantees and nonprofit organizations must refund any interest earned. Grantees shall so order their affairs to ensure minimum balances in their respective grant cash accounts.

2. *Royalties.* The grantee/subgrantee may retain all royalties received from copyrights or other works developed under projects or from patents and

inventions, unless the terms and conditions of the project provide otherwise.

3. *Registration and tuition fees.* Registration and tuition fees shall be used to pay project-related costs not covered by the grant, or to reduce the amount of grant funds needed to support the project. Registration and tuition fees may be used for other purposes only with the prior written approval of the Institute.

4. *Other.* Other project income shall be treated in accordance with disposition instructions set forth in the project's terms and conditions.

G. *Payments and Financial Reporting Requirements*

1. *Payment of Grant Funds.* The procedures and regulations set forth below are applicable to all Institute grant funds and grantees.

a. *Request for Advance or Reimbursement of Funds.* Grantees will receive funds on a "Check-Issued" basis. Upon receipt, review, and approval of a Request for Advance or Reimbursement by the Institute, a check will be issued directly to the grantee or its designated fiscal agent. A request must be limited to the grantee's immediate cash needs. The Request for Advance or Reimbursement, along with the instructions for its preparation, will be included in the official Institute award package.

b. *Termination of Advance Funding.* When a grantee organization receiving cash advances from the Institute:

i. Demonstrates an unwillingness or inability to attain program or project goals, or to establish procedures that will minimize the time elapsing between cash advances and disbursements, or cannot adhere to guideline requirements or special conditions;

ii. Engages in the improper award and administration of subgrants or contracts; or

iii. Is unable to submit reliable and/or timely reports,

The Institute may terminate advance financing and require the grantee organization to finance its operations with its own working capital. Payments to the grantee shall then be made by the use of the Institute check method to reimburse the grantee for actual cash disbursements. In the event the grantee continues to be deficient, the Institute reserves the right to suspend payments until the deficiencies are corrected.

c. *Principle of Minimum Cash on Hand.* Recipient organizations should request funds based upon immediate disbursement requirements. Grantees should time their requests to ensure that cash on hand is the minimum needed for disbursements to be made immediately or within a few days. Idle funds in the hands of subgrantees will impair the goals of good cash management.

2. *Financial Reporting.* In order to obtain financial information concerning the use of funds, the Institute requires that grantees/subgrantees of these funds submit timely reports for review.

Two copies of the Financial Status Report are required from all grantees for each active quarter on a calendar-quarter basis. This report is due within 30 days after the close of the calendar quarter. It is designed to provide financial information relating to Institute funds, State and local matching shares, and any other fund sources included in the approved project budget. The report contains information on obligations as well as outlays. A copy of the Financial Status Report, along with instructions for its preparation, will be included in the official Institute Award package. In circumstances where an organization requests substantial payments for a project prior to the completion of a given quarter, the Institute may request a brief summary of the amount requested, by object class, in support of the Request for Advance or Reimbursement.

3. *Consequences of Non-Compliance With Submission Requirements.* Failure of the grantee organization to submit required financial and program reports may result in a suspension of grant payments.

H. Allowability of Costs

1. *General.* Except as may be otherwise provided in the conditions of a particular grant, cost allowability shall be determined in accordance with the principles set forth in *OMB Circulars A–87,* Cost Principles for State and Local Governments; *A–21,* Cost Principles Applicable to Grants and Contracts with Educational Institutions; and *A–122,* Cost Principles for Non-Profit Organizations. No costs may be recovered to liquidate obligations which are incurred after the approved grant period.

2. *Costs Requiring Prior Approval.*

a. *Preagreement Costs.* The written prior approval of the Institute is required for costs which are considered necessary to the project but occur prior to the starting date of the grant period.

b. *Equipment.* Grant funds may be used to purchase or lease only that equipment which is essential to accomplishing the goals and objectives of the project. The written prior approval of the Institute is required when the amount of automated data processing (ADP) equipment to be purchased or leased exceeds $10,000 or the software to be purchased exceeds $3,000.

c. *Consultants.* The written prior approval of the Institute is required when the rate of compensation to be paid a consultant exceeds $300 a day.

3. *Travel Costs.* Transportation and per diem rates must comply with the policies of the applicant organization. If the applicant does not have an established written travel policy, then travel rates shall be consistent with those established by the Institute or the Federal Government. Institute funds shall not be used to cover the transportation or per diem costs of a member of a national organization to attend an annual or other regular meeting of that organization.

4. *Indirect Costs.* These are costs of an organization that are not readily assignable to a particular project, but are necessary to the operation of the organization and the performance of the project. The cost of operating and maintaining facilities, depreciation, and administrative salaries are examples of the types of costs that are usually treated as indirect costs. It is the policy of the Institute that all costs should be budgeted directly; however, if a recipient has an indirect cost rate approved by a Federal agency as set forth below, the Institute will accept that rate.

a. *Approved Plan Available.* (1) The Institute will accept an indirect cost rate or allocation plan approved for a grantee during the preceding two years by any Federal granting agency on the basis of allocation methods substantially in accord with those set forth in the applicable cost circulars. A copy of the approved rate agreement must be submitted to the Institute.

(2) Where flat rates are accepted in lieu of actual indirect costs, grantees may not also charge expenses normally included in overhead pools, e.g., accounting services, legal services, building occupancy and maintenance, etc., as direct costs.

(3) Organizations with an approved indirect cost rate, utilizing total direct costs as the base, usually exclude contracts under grants from any overhead recovery. The negotiation agreement will stipulate that contracts are excluded from the base for overhead recovery.

b. *Establishment of Indirect Cost Rates.* In order to be reimbursed for indirect costs, a grantee or organization must first establish an appropriate indirect cost rate. To do this, the grantee must prepare an indirect cost rate proposal and submit it to the Institute. The proposal must be submitted in a timely manner (within three months after the start of the grant period) to

assure recovery of the full amount of allowable indirect costs, and it must be developed in accordance with principles and procedures appropriate to the type of grantee institution involved.

c. *No Approved Plan.* If an indirect cost proposal for recovery of actual indirect costs is not submitted to the Institute within three months after the start of the grant period, indirect costs will be irrevocably disallowed for all months prior to the month that the indirect cost proposal is received. This policy is effective for all grant awards.

I. Procurement and Property Management Standards

1. *Procurement Standards.* For State and local governments, the Institute is adopting the standards set forth in Attachment O of *OMB Circular A–102.* Institutions of higher education, hospitals, and other non-profit organizations will be governed by the standards set forth in Attachment O of *OMB Circular A–110.*

2. *Property Management Standards.* The property management standards as prescribed in Attachment N of *OMB Circulars A–102* and *A–110* shall be applicable to all grantees and subgrantees of Institute funds except as provided in subsection b. below.

a. *Acquisition.* All grantees/subgrantees are required to be prudent in the acquisition and management of property with grant funds. If suitable property required for the successful execution of projects is already available within the grantee or subgrantee organization, expenditures of grant funds for the acquisition of new property will be considered unnecessary.

b. *Title to Property.* At the conclusion of the project, title to all expendable and nonexpendable personal property purchased with Institute funds shall vest in the court, organization, or individual that purchased the property if certification is made to the Institute that the property will continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act, as approved by the Institute. If such certification is not received, or the Institute disapproves such certification, title to all such property with an aggregate or individual value of $1,000 or more shall vest in the Institute, which will direct the disposition of the property.

J. Audit Requirements

1. *Audit Objectives.* Grants and other agreements are awarded subject to conditions of fiscal, program and general administration to which the recipient expressly agrees. Accordingly, the audit objective is to review the grantee's or subgrantee's administration of grant funds and required non-Institute contributions for the purpose of determining whether the recipient has:

a. Established an accounting system integrated with adequate internal fiscal and management controls to provide full accountability for revenues, expenditures, assets, and liabilities;

b. Prepared financial statements which are presented fairly, in accordance with generally accepted accounting principles;

c. Prepared Institute financial reports (including Financial Status Reports, Cash Reports, and Requests for Advances and Reimbursements) which contain accurate and reliable financial data, and are presented in accordance with prescribed procedures; and

d. Expended Institute funds in accordance with the terms of applicable agreements and those provisions of Federal law or Institute regulations that could have a material effect on the financial statements or on the awards tested.

2. *Implementation.* Each grantee (including a State or local court receiving a subgrant from the State Supreme Court) shall provide for an annual fiscal audit. The audit may be of the entire grantee organization (e.g., a university) or of the specific project funded by the Institute. The audit shall be conducted by an independent Certified Public Accountant, or a State or local agency authorized to audit government agencies. The audit shall be conducted in compliance with generally accepted auditing standards established by the American Institute of Certified Public Accountants. A written report shall be prepared upon completion of the audit. Grantees are responsible for submitting copies of the reports to the Institute within thirty days after the acceptance of the report by the grantee, for each year that there is financial activity involving Institute funds.

Grantees who receive funds from a Federal agency and who satisfy audit requirements of the cognizant Federal agency, should submit a copy of the audit report prepared for that Federal agency to the Institute in order to satisfy the provisions of this section. Cognizant Federal agencies do not send reports to the Institute. Therefore, each grantee must send this report directly to the Institute.

Audit reports from nonprofit organizations which do not receive Federal funds, and which decide to perform an audit of the entire organization, shall include a supplemental schedule depicting a project-by-project summary of Institute grant activity for the audit period. At a minimum, this summary should include the grant award number, project title, award amount, payments received, expenditures made and balances remaining. The auditors should also conduct adequate tests to ensure that the audit objectives listed in sections XI.J.1.c. and d. above have been satisfied.

3. *Resolution and Clearance of Audit Reports.* Timely action on recommendations by responsible management officials is an integral part of the effectiveness of an audit. Each grant recipient shall have policies and procedures for acting on audit recommendations by designating officials responsible for: follow-up, maintaining a record of the actions taken on recommendations and time schedules, responding to and acting on audit recommendations, and submitting periodic reports to the Institute on recommendations and actions taken.

4. *Consequences of Non-Resolution of Audit Issues.* It is the general policy of the State Justice Institute not to make new grant awards to an applicant having an unresolved audit report involving Institute awards. Failure of the grantee organization to resolve audit questions may also result in the suspension of payments for active Institute grants to that organization.

K. Close-Out of Grants

1. *Definition.* Close-out is a process by which the Institute determines that all applicable administrative and financial actions and all required work of the grant have been completed by both the grantee and the Institute.

2. *Grantee Close-Out Requirements.* Within 90 days after the end date of the grant or any approved extension thereof (revised end date), the following documents must be submitted by the grantee to the Institute.

a. *Financial Status Report.* The final report of expenditures must have no unliquidated obligations and must indicate the exact balance of unobligated funds. Any unobligated/unexpended funds will be deobligated from the award by the Institute. Grantees on a check-issued basis, who have drawn down funds in excess of their obligations/expenditures, must return any unused funds as soon as it is determined that the funds are not required. In no case should any unused funds remain with the grantee beyond the submission date of the final financial status report.

b. *Final Progress Report.* This report should describe the project activities

during the final calendar quarter of the project and the closeout period, including to whom project products have been disseminated; specify whether all the objectives set forth in the approved application or an approved adjustment thereto have been met, and, if any of the objectives have not been met; explain the reasons therefor.

XII. Grant Adjustments

All requests for program or budget adjustments requiring Institute approval must be submitted in a timely manner by the project director. All requests for changes from the approved application will be carefully reviewed for both consistency with this guideline and the enhancement of grant goals and objectives.

A. Grant Adjustments Requiring Prior Written Approval

There are several types of grant adjustments which require the prior written approval of the Institute. Examples of these adjustments include:

1. Budget revisions among direct cost categories which exceed or are expected to exceed 5 percent of the approved budget.
2. A change in the scope of work to be performed or the objectives of the project (see section XII.D.).
3. A change in the project site.
4. A change in the project period, such as an extension of the grant period and/or extension of the final financial or progress report deadline (see section XII.E.).
5. Satisfaction of special conditions, if required.
6. A change in or temporary absence of the project director (see sections XII.F. and G.).
7. The assignment of an employee or consultant to a key staff position whose qualifications were not described in the application, or a change of a person assigned to a key project staff position (see section X.Q.).
8. A successor in interest or name change agreements.
9. A transfer or contracting out of grant-supported activities (see section XII.H.).
10. *A transfer of the grant to another recipient.*
11. Preagreement costs, the purchase of automated data processing equipment and software, and consultant rates, as specified in section XI.H.2.

B. Request for Grant Adjustments

All grantees and subgrantees must promptly notify the SJI program managers, in writing, of events or proposed changes which may require an adjustment from the approved application. In requesting an adjustment, the grantee must set forth the reasons and basis for the proposed adjustment and any other information the SJI program managers determine would help the Institute's review.

C. Notification of Approval/Disapproval

If the request is approved, the grantee will be sent a Grant Adjustment signed by the Executive Director or his/her designee. If the request is denied, the grantee will be sent a written explanation of the reasons for the denial.

D. Changes in the Scope of the Grant

A grantee/sub-grantee may make minor changes in methodology, approach, or other aspects of the grant to expedite achievement of the grant's objectives with subsequent notification of the SJI program manager. Major changes in scope, duration, training methodology, or other significant areas must be approved in advance by the Institute.

E. Date Changes

A request to change or extend the grant period must be made 30 days in advance of the end date of the grant. A request to change or extend the deadline for the final financial report or final progress report must be made 30 days in advance of the report deadline (see section XI.K.2.).

F. Temporary Absence of the Project Director

Whenever absence of the project director is expected to exceed a continuous period of one month, the plans for the conduct of the project director's duties during such absence must be approved in advance by the Institute. This information must be provided in a letter signed by an authorized representative of the grantee/subgrantee at least 30 days before the departure of the project director, or as soon as it is known that the project director will be absent. The grant may be terminated if arrangements are not approved in advance by the Institute.

G. Withdrawal of/Change in Project Director.

If the project director relinquishes or expects to relinquish active direction of the project, the Institute must be notified immediately. In such cases, if the grantee/subgrantee wishes to terminate the project, the Institute will forward procedural instructions upon notification of such intent. If the grantee wishes to continue the project under the direction of another individual, a statement of the candidate's qualifications should be sent to the Institute for review and approval. The grant may be terminated if the qualifications of the proposed individual are not approved in advance by the Institute.

H. Transferring or Contracting Out of Grant-Supported Activities

A principal activity of the grant-supported project shall not be transferred or contracted out to another organization without specific prior approval by the Institute. All such arrangements should be formalized in a contract or other written agreement between the parties involved. Copies of the proposed contract or agreement must be submitted for prior approval at the earliest possible time. The contract or agreement must state, at a minimum, the activities to be performed, the time schedule, the policies and procedures to be followed, the dollar limitation of the agreement, and the cost principles to be followed in determining what costs, both direct and indirect, are to be allowed. The contract or other written agreement must not affect the grantee's overall responsibility for the direction of the project and accountability to the Institute.

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David I. Tevelin,

Executive Director.

Appendix—List of State Contacts Regarding Administration of Institute Grants to State and Local Courts

Mr. Allen L. Tapley, Administrative Director, Administrative Office of the Courts, 817 South Court Street, Montgomery, Alabama 36130 (205) 834–7990
Mr. Arthur H. Snowden II, Administrative Director, Alaska Court System, 303 K

Street, Anchorage, Alaska 99501 (907) 264–0547

Mr. William L. McDonald, Administrative Director, Supreme Court of Arizona, 1314 North 3rd Street, Suite 200, Phoenix, Arizona 85004 (602) 255–4359

Mr. James D. Gingerich, Executive Secretary, Arkansas Judicial Department, Justice Building, Little Rock, Arkansas 72201 (501) 371–2295

Mr. William E. Davis, Administrative Director, State Building, 350 McAllister Street, Room 3154, San Francisco, California 94102 (415) 557–1581

Mr. James D. Thomas, State Court Administrator, Colorado Judicial Department, 1301 Pennsylvania Street, Suite 300, Denver, Colorado 80203–2416 (303) 861–1111, ext. 585

Mr. Bruce Borre, Director, Research and Planning, Office of the Chief Court Administrator, Drawer N, Station A, Hartford, Connecticut 06106 (203) 722–5836

Mr. Lowell Groundland, Director, Administrative Office of the Courts, Carvel State Office Building, 820 N. French Street, Wilmington, Delaware 19801 (302) 571–2480

Mr. James Lynch, Deputy Executive Officer, Courts of the District of Columbia, 500 Indiana Avenue, NW., Washington, DC 20001 (202) 879–1700

Mr. Kenneth Palmer, State Courts Administrator, Florida State Courts System, Supreme Court Building, Tallahassee, Florida 32399–1900 (904) 488–8621

Mr. Robert L. Doss, Jr., Administrative Director of the Courts, The Judicial Council of Georgia, 244 Washington Street, S.W., Suite 500, Atlanta, Georgia 30334 (404) 656–5171

Mr. Perry C. Taitano, Administrative Director, Superior Court of Guam, Judiciary Building, 110 West O'Brien Drive, Agana, Guam 96910, 011 (671) 472–8961 through 8968

Ms. Janice Wolfe, Administrative Director of Courts, The Judiciary, Post Office Box 2560, Honolulu, Hawaii 96804 (808) 548–4605

Mr. Carl F. Bianchi, Administrative Director of the Courts, Supreme Court Building, 451 West State Street, Boise, Idaho 83720 (208) 334–2246

Mr. Samuel D. Conti, Administrative Director of the Courts, Supreme Court Building, Springfield, Illinois 62701–1791 (217) 782–7770

Mr. Bruce A. Kotzan, Executive Director, Supreme Court of Indiana, State House, Room 323, Indianapolis, Indiana 46204 (317) 232–2542

Mr. William J. O'Brien, State Court Administrator, Supreme Court of Iowa, State House, Des Moines, Iowa 50319 (515) 281–5241

Mr. Howard P. Schwartz, Judicial Administrator, Kansas Judicial Center, 301 West 10th Street, Topeka, Kansas 66612, (913) 296–4873

Ms. Laura Stammel, Comptroller, Administrative Office of the Courts, 403 Wapping Street, Frankfort, Kentucky 40601, (502) 564–2350

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Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 1020

Federal Performance Standard for Diagnostic X-Ray Systems and Their Major Components; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1020

[Docket No. 82N-0274]

Federal Performance Standard for Diagnostic X-Ray Systems and Their Major Components

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing technical amendments to the Federal performance standard for diagnostic X-ray systems and their major components (the performance standard). Experience gained by FDA in administering the performance standard has shown the need for proposing these changes.

DATES: Comments by January 16, 1990. FDA is proposing that any final rule based on this proposal be effective 30 days after the date of its publication in the **Federal Register**, except that FDA is proposing that the amendment to § 1020.31(c) *Linearity* (21 CFR 1020.31(c)) be effective 1 year after the date of publication in the **Federal Register**.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Samuel Fleisher, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Public Health Service Act, as amended by the Radiation Control for Health and Safety Act of 1968 (Pub. L. 90-602, 42 U.S.C. 263b *et seq.*), FDA is proposing to amend the performance standard for diagnostic X-ray systems and their major components, §§ 1020.30, 1020.31, and 1020.32 (21 CFR 1020.30, 1020.31, and 1020.32). In the **Federal Register** of August 15, 1972 (37 FR 16461), the performance standard was published as a final rule, which became effective on August 1, 1974. Since that time, there have been several amendments to the performance standard. These amendments take into account new technology, clarify misinterpreted provisions, and encourage the improvement of uncertified systems manufactured before the performance standard became effective. (See, e.g., those published October 7, 1974 (39 FR 36008); February 25, 1977 (42 FR 10983); September 2, 1977 (42 FR 44230); November 8, 1977 (42 FR 58167); May 22, 1979 (44 FR 29653); August 24, 1979 (44 FR 49667); November 30, 1979 (44 FR 68822); and April 25, 1980 (45 FR 27927).) A cost-benefit analysis of several significant elements of the performance standard led to amendments of the provisions governing assembly/reassembly of diagnostic X-ray equipment (August 24, 1979; 44 FR 49667).

Thus, in the 14 years since the promulgation of the standard, FDA has gained experience in administering it and believes that more amendments may now be appropriate. Further, Executive Order 12291 encourages Federal agencies to assess existing regulations for possible significant impacts on the private sector, and the Regulatory Flexibility Act (Pub. L. 96-354) requires all agencies to review existing regulations that can have an impact on small manufacturers. In addition, FDA has always believed that, for regulatory controls to be appropriate, FDA must devise them so that they are coordinated with educational programs, voluntary standards, professional practices, and controls imposed at the State and local levels. For all of these reasons, FDA has believed that it was appropriate to look at the performance standard with a fresh perspective.

On March 8, 1982, FDA's Center for Devices and Radiological Health (CDRH) established an ad hoc working group to analyze and review the performance standard. This X-Ray Standard Review Group (XSRG) was charged with assessing the costs and public health benefits of the performance standard and with developing recommendations on both regulatory and nonregulatory radiation control programs for consideration by FDA. Accordingly, on November 16, 1982 (47 FR 51710), FDA published in the **Federal Register** a notice of intent to review the X-ray performance standard and invited comments, data, and information that might be useful in the review. FDA received 38 comments on the notice. In addition to the comments, over 200 individuals and groups requested materials and reports that might be generated in the review. In November 1982, the members of the XSRG attended a meeting of the Radiological Society of North America and personally solicited comments and information from 6 professional societies and representatives of 33 manufacturers; their comments proved useful in guiding the XSRG's efforts.

The first phase of the XSRG's retrospective review resulted in a report entitled, "An Overview of the Costs and Benefits of the Diagnostic X-Ray Equipment Performance Standard (21 CFR 1020.30-32)," which was circulated for extramural review and comment on January 24, 1984 (Ref. 3). FDA received 10 comments on that report, and it was made available as a final report in September 1984.

The second phase of the XSRG's two-phase review resulted in a report issued in July 1985 entitled, "Retrospective Review of the Performance Standard for Diagnostic X-Ray Systems and their Major Components (21 CFR 1020.30-32)." (Ref. 4) The data contained in the first report's overview of the costs and benefits were used extensively in that second report. The XSRG took into account those relatively hard data, considerations advanced in public comments, and CDRH's experience in the administration and enforcement of the performance standard. In the **Federal Register** of November 12, 1985 (50 FR 46646), FDA announced the availability of the July 1985 report. FDA received 25 comments, 22 from outside FDA and 3 from inside FDA. These comments were analyzed by the XSRG and CDRH and incorporated into draft proposed amendments to the performance standard. On May 8, 1987, FDA distributed these draft proposed amendments to the general public for comment. FDA received nine letters of comment from individual manufacturers, manufacturer organizations, and State and local health agencies. Subsequently, the draft proposed amendments were discussed publicly at the June 22 through 23, 1987, meeting of the Technical Electronic Product Radiation Safety Standards Committee (TEPRSSC), a statutory advisory committee (42 U.S.C. 263f(f)) that FDA is required to consult before it may prescribe any electronic product performance standard under the Radiation Control for Health and Safety Act of 1968 (Pub. L. 90-602, 42 U.S.C. 263b *et seq.*) (Ref. 1). TEPRSSC generally concurred with publication of the draft proposed amendments for public comment (Ref. 2).

In response to the comments and to the recommendations of TEPRSSC, FDA has prepared these proposed amendments to the performance standard. FDA believes that the amendments proposed herein would clarify and simplify the performance standard, would reduce significantly the regulatory burden on affected manufacturers without compromising

the public health, and generally would improve the effectiveness of FDA's regulation of diagnostic X-ray equipment. However, comments and supporting data concerning the proposed amendments would be particularly helpful to the agency during its preparation of any final rule based on this proposal. Accordingly, FDA is proposing the following amendments to the performance standard.

II. Proposed Amendments to the Standard for Diagnostic X-Ray Systems and Their Major Components

A. Applicability (§ 1020.30(a))

FDA proposes to revise the standards to add computed tomography (CT) gantry to the list of specified components and to indicate that the date of manufacture of the CT gentry is considered to be the date of manufacture of the CT system.

In a letter dated August 21, 1985, to manufacturers of computed tomography X-ray systems, CDRH stated that the CT amendment published in the August 31, 1984, **Federal Register** were applicable to entire CT systems and not to the individual components comprising the system. Although the major components specified in § 1020.30(a) (21 CFR 1020.30)), such as beam-limiting devices, tube housing assemblies, etc., must still be individually certified and compatible with the CT gantry, the gantry itself must also be certified and must display both certification and identification labels. The letter further stated that FDA was defining the date of manufacture of the gantry as the date of manufacture of the CT system. TEPRSSC unanimously agreed with the proposed change (Ref. 2).

B. Definitions (§ 1020.30(b))

FDA proposes to revise some definitions in § 1020.30(b) and also to incorporate new definitions into the regulation. The definitions will be alphabetically arranged rather than sequentially numbered.

From time to time, formal advisory opinions or letters in response to individual queries from manufacturers have been necessary to clarify various definitions of terms used in the standard or to define new terms. These revised and new terms are now being incorporated into the proposed amendments.

Elimination of the sequential numbering of the definitions in favor of an alphabetical sequence will facilitate any future modifications and make it easier for the reader to locate definitions. TEPRSSC unanimously agreed with the proposed changes (Ref. 2).

C. Certification of Components (§ 1020.30(c))

FDA proposes to simplify § 1020.30(c) by removing excess verbiage, redundancies, and unnecessarily complex statements. In addition, the portion of § 1020.30(f)(1) on limits of responsibility of the manufacturer is relevant to the requirements of § 1020.30(c) and would be incorporated here for clarity; existing requirements of both sections would be retained in the proposed amendment. Also, FDA proposes to rename § 1020.30(c) "Manufacturer's responsibility." TEPRSSC agreed with the proposed changes (Ref. 2).

D. Certification by Assembler (§ 1020.30(d))

FDA proposes to simplify and rename § 1020.30(d) "Assemblers' responsibility." The portion regarding reporting noncompatibility would be deleted, and reloaded or replacement tube housing assemblies and accessory components would be exempted from assembler reporting requirements. The portion of § 1020.30(f) on assemblers' responsibilities would be relocated here for clarity.

This paragraph deals primarily with the information that the assembler is required to provide in the Report of Assembly. The regulation contains detailed instruction for completing the Report of Assembly which are duplicated in the report itself. The Report of Assembly was recently revised to delete unnecessary information and to make the report more efficient. This caused the reports to be technically out of compliance with the regulation in that some information required by the current standard was deleted from the report. Assemblers, manufacturers, and the States were involved in making the changes by an informal notice and comment procedure. By referring to the Reports of Assembly in the standard rather than listing the requirements, FDA could change the report format as necessary without amending the standard. The requirement of completing a prescribed Report of Assembly is still retained in the proposed amendment.

The paragraph on reporting noncompatibility is now unnecessary since certified component compatibility is covered by (1) § 1020.30(g) Information to be provided to assemblers, which requires manufacturers to provide specification of components compatible with those to be installed when compliance of the system with the standard depends on their compatibility; and by (2) the retained provisions of § 1020.30(d), which require the assembler to affirm that he has followed the manufacturers' instructions for assembly and has assembled only those components required by §§ 1020.31 through 1020.33. Therefore, FDA proposes to remove this reporting requirement.

The problem of noncompatibility of components lies primarily with the combining of certified and uncertified components. The Report of Assembly does not provide instructions for this kind of assembly because the regulations do not require a Report of Assembly for uncertified components. Additionally, only certified components in a mixed assembly are subject to the performance standard, and then only if their compliance does not depend on an uncertified component in the system.

Finally, the available supply of uncertified components is dwindling, which will eventually obviate the need for this paragraph. FDA's main concern is that fully certified systems be initially installed in a compliant manner. Because there is already an active and comprehensive surveillance program to ensure this, deletion of the noncompatibility paragraph will not represent any increased exposure to the patient or have any adverse effect on current industry or FDA practices.

The requirement for reporting of reloaded and replacement tube housing assemblies and accessory components would be eliminated under the proposal because assembly of these components will have little or no effect on the radiation safety of the system, and FDA is not currently using these reports for followup. Only Reports of Assembly of major components are entered into the database.

TEPRSSC supported the proposal to exempt reloaded and replacement tube housing assemblies and certified accessory components from the reporting requirements because traceability is managed through serial numbers maintained by the manufacturer (Ref. 2).

FDA notes that the Report of Assembly was never intended as a traceability document but as an affirmation by the assembler that the components were assembled correctly. It is FDA's opinion that the report is necessary for whole systems being put together and for major components or groups of major components installed rather than for tube housing reloads, the major portion of which occurs on CT systems.

E. Identification of X-ray Components (§ 1020.30(e))

FDA proposes to add a sentence to § 1020.30(e) requiring the use of the word "model" or "type" on the identification label of certified components to identify the model designation.

This amendment incorporates information in FDA Compliance Policy Guide (CPG) 7133.03, dated October 1, 1980, which requires the word "model" or "type" to appear as part of the manufacturer's required identification of certified X-ray components. CPG 7133.03 is included in FDA's CPG Manual. (See 21 CFR 20.26 and 20.107.) In the past, manufacturers have used a variety of words to identify the model, such as: catalog number, part number, style, etc. In some cases, these model designations were not unique to the component, and some labels have had two designations, for example, a catalog number and a style number. This has led to confusion on the part of the assembler in reporting the certified components and on the part of FDA investigators trying to identify the components. By restricting the wording allowed for model designation, FDA proposes to assure that there will be uniformity throughout the industry, which should alleviate the confusion. TEPRSSC unanimously agreed with the proposed change (Ref. 2).

F. Limits of Responsibility (§ 1020.30(f))

FDA proposes to remove and reserve § 1020.30(f). Section 1020.30(f)(1) would be incorporated into a proposed revision to § 1020.30(c) Certification of components and § 1020.30(f)(2) would be combined with the proposed revision to § 1020.30(d) Certification by assembler. TEPRSSC unanimously agreed with these proposed changes (Ref. 2).

G. Information to be Provided to Assemblers (§ 1020.30(g))

FDA proposes that part of § 1020.30(h) Information to be provided for users also be incorporated into § 1020.30(g). Currently, § 1020.30(h) concerns electrical requirements. Because the assembler usually works in conjunction with the users in determining what the electrical requirements of the system are and what the facility can provide, this information may also remain in the user information section of the manuals provided by industry. The information would not necessarily have to be included in the assembler's manual as long as the assembler receives both the assembler and user manuals and the instructions say that the assembler's manual consists of both documents.

Although the user has the responsibility for making arrangements for adequate electrical power lines, this is usually done in consultation with the assembler. Thus, the required electrical power information would also be placed in the information provided to assemblers to ensure a compliant installation. TEPRSSC was in agreement with the change (Ref. 2).

H. Beam Quality (§ 1020.30(m) (1) and (2))

FDA proposes to modify Table I in § 1020.30(m)(1) so that the transition point at 50 kilovolts peak (kVp) allows for the lesser half-value layer up to and including 50 kVp.

The 50 and 70 kVp values in Table I of § 1020.30(m)(1) are points at which the inherent filtration in the beam is usually increased. Historically, this derives from the recommendation of the National Council on Radiation Protection and Measurements (NCRP) on minimum filtration. Normally, one would tend to state kVp ratings by decades, such as "up to 50 kVp," rather than using less common numbers such as 38 or 49 kVp. The 70 kVp value takes this into account since 1.5 millimeters (mm) aluminum equivalent half-value layer will meet the standard up to (and including) 70 kVp. This is not true for the transition at 50 kVp, where a system would have to be rated only up to 49 kVp or would have to have additional filtration added. Manufacturers have presented convincing arguments that it is impractical to design a system that provides technique selection only up to 49 kVp, because the convention for kVp ratings is usually in decade steps, and the common guages/indicators are in decade ranges. This argument is particularly crucial for mammography systems. Because of the way Table I is constructed, manufacturers of 50 kVp mammography systems must provide the additional filtration required by the standard. The manufacturers have shown this to be unacceptable because mammographic examinations are usually performed at less than 50 kVp (the primary reason for the 50 kVp selection being design simplicity) where the lesser amount of filtration is needed. Thus, the manufacturer has to "lock out" the 50 kVp selection to meet the requirements of the standard. Because the value of the kVp chosen in Table I is somewhat arbitrary, the change would not be significant and would alleviate the design problems for the manufacturer. TEPRSSC agreed with the amendment (Ref. 2).

In § 1020.30(m)(2), FDA proposes to add the word "selectable" between the words "maximum" and "quantity." Manufacturers have sometimes interpreted the requirement as currently worded to call for the maximum quantity of charge that is used for a particular exposure technique, and not necessarily to call for the maximum charge attainable, by design, at that exposure technique. The intent of the standard, which this proposed change would make clear, is for the system to be charged as fully as possible at the selected technique when performing the compliance test. (See HHS Publication FDA 84-8221, dated November, 1983, p. 55.) TEPRSSC unanimously agreed with the proposed change (Ref. 2).

I. Aluminum Equivalent of Material Between Patient and Image Receptor (§ 1020.30(n))

FDA proposes to add tabletops with articulated joints and cantilevered tabletops along with the maximum allowable aluminum equivalence for these to Table II in § 1020.30(n). A definition of cantilevered tabletop would also be added to § 1020.30(b).

The amendment to § 1020.30(n) would create the following limits:

Stationary tabletop without articulated joints.	1.0 mm.
Tabletop with radiolucent panel having one articulated joint.	1.5 mm.
Tabletop with radiolucent panel having two or more articulated joints.	2.0 mm.
Cantilevered tabletop	2.0 mm.

Because stretchers with a radiographic and/or fluoroscopic capability are really a type of X-ray table, they are not separately defined in proposed § 1020.30(b) and are not referred to as such in Table II of § 1020.30(n). Instead, the definition for "X-ray table," which would be added, is inclusive enough to cover any table with a radiographic/fluoroscopic capability such as these emergency room and surgical stretchers.

This proposal also contains a relaxation of aluminum equivalence limits for certain X-ray tables. Manufacturers of tables have for some time related problems concerning the allowable limits in § 1020.30(n) for their products. In particular, for tables with cantilevered tops and for mobile stretchers, manufacturers have argued that they cannot meet the aluminum equivalent limits and provide the structural integrity necessary for patient safety. A Health Industry Manufacturers Association report entitled "Application of 21 CFR 1020.30(n) Performance Standards for Diagnostic X-Ray System Tabletops to Mobile Stretchers," submitted to FDA on December 10, 1986 (Ref. 5), contained a proposal to raise

the aluminum equivalent limits for stretchers. It provides a comprehensive discussion of stretcher design and use and a rationale for raising the limits. The report states that the 1974 standard was based on existing technology and products and, therefore, requirements for stretchers were not considered. Because of this, stretchers were categorized as stationary tabletops and need to be redefined with consideration for relaxing the aluminum equivalent limits.

Precedents for relaxing the aluminum equivalent limits for cantilevered tabletops and special surgical tables have already been established through variances granted to several manufacturers. TEPRSSC concurs with these changes (Ref. 2).

J. Assembly and Reassembly of Diagnostic X-ray System (§ 1020.30(p))

FDA proposes to remove and reserve § 1020.30(p). After publication of the final rule establishing the X-ray standard, manufacturers posed several questions on how the standard would apply to the sale and installation of both new and used X-ray components. Questions such as the following were not addressed in the standard:

(1) How would the standard apply to components physically produced before the effective date of the standard but assembled into a system after the effective date of the standard?

(2) How should the assembly of uncertified components into a system containing certified components be controlled?

(3) How should the reassembly, rebuilding, or refurbishing of used X-ray components or systems be controlled?

(4) How should the standard be applied to preserve the radiation safety performance provided by certified components and systems?

(5) How should the standard be applied to encourage the improvement of existing X-ray systems through the addition of certified components?

To rectify this situation (as well as to respond to congressional concern over the regulation of used X-ray equipment), § 1000.16 Assembly and reassembly of diagnostic x-ray system was promulgated and made effective on the same date as the standard. In 1979, this regulation was amended and recodified as § 1020.30(p).

Originally, § 1000.16 provided for two phases of regulation. The first phase requirements were almost exactly the same as the current requirements, i.e., certified and uncertified components could not be arbitrarily combined into or to form an X-ray system. Once a certified component was installed in a system, all subsequent components added to the system had to be certified. This phase was to last 5 years.

The second phase imposed the much stricter requirement that only certified components could be assembled or reassembled into a diagnostic X-ray system. Thus, any replacement component or addition to a system had to be certified, and any reassembled system had to contain only certified components. The gradual "upgrading" of the first phase would have changed to a forced "upgrading" of existing systems. An analysis of the potential effects of the second phase (T. B. Shope and H. Rudolph, "A Second Look at the Costs and Benefits Associated with the Diagnostic X-Ray Equipment Performance Standard and the Policy on Assembly and Reassembly," draft No. 3, unpublished, November 1978) (Ref. 6) resulted in the following conclusions:

(1) The provisions of § 1000.16 that would be effective after August 1, 1979, would affect only a small fraction of the uncertified X-ray systems currently in use.

(2) The total impact of this regulation, in terms of increased cost for the X-ray equipment or interruption of health care delivery, could be significant.

(3) For those uncertified systems that would be affected, by virtue of their sale and relocation, § 1000.16 was not likely to be a cost-effective approach to improve the radiation safety performance of X-ray systems.

FDA proposed to revoke the post-1979 requirements on April 17, 1979 (44 FR 22755). On August 24, 1979 (44 FR 49667), FDA published a final rule on the assembly and reassembly of diagnostic X-ray systems.

In the past, the principal reason for attempting to control older equipment was the belief that there is an economic incentive for avoiding positive beam limitation (PBL) collimators and that avoidance would be possible but for § 1020.30(p). However, with the change in the applicability of the requirement for PBL (PBL is not now required unless several major components are certified (42 FR 58167; November 8, 1977) and would no longer be required under the proposed amendments), the economic incentive for avoidance should be less. Therefore, this reason for regulating used equipment is no longer valid.

Additional points to note are:

(1) Tracing uncertified systems and components has proven to be practically impossible. Thus, in essence, this section of the standard is unenforceable.

(2) The standard has been in effect for nearly 14 years. Less and less uncertified equipment is available in the used equipment market. Data from a survey of used equipment dealers ("A Study of the Need for Controlling the Sale of Antiquated X-Ray Equipment," unpublished report submitted to Congress pursuant to section 357 of the Radiation Control for Health and Safety Act, House Document 90–390, January 1, 1970) (Ref. 7), indicated that over 50 percent of used systems sold were less than or equal to 10 years old (almost 90 percent less than 15 years). Thus, much of the problem which § 1020.30(p) was intended to address has already been eliminated due to obsolescence and, with the passage of a few more years, will essentially disappear completely.

(3) The 1978 cost/benefit analysis (Ref. 6), referred to earlier, noted that voluntary action programs aimed at maintaining a high level of performance for uncertified systems were more cost-effective than was forced replacement of uncertified components with certified components. This is still true today.

From the above, it is evident that § 1020.30(p) is becoming less and less applicable as the number of older systems dwindles, and they eventually become obsolete. There are also voluntary programs which address the performance of X-ray systems, i.e., general quality assurance activities using the recommendations contained in 21 CFR 1000.55; and activities involving the Nationwide Evaluation of X-ray Trends (NEXT) surveys conducted by State and local agencies with FDA assistance. These result in performance evaluation of X-ray systems.

CDRH also has regulatory authority under the Medical Device Amendments to the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*) to apply the current good manufacturing practices requirements of 21 CFR Part 820. On December 29, 1987, FDA issued a CPG that addresses refurbishers of medical devices, including X-ray systems (Chapter 24—Devices, Guide 7124.28, Reconditioner/ Rebuilders of Medical Devices). (See 21 CFR 20.26 and 20.107.) Its aim is to assure that refurbished equipment still meets original manufacturer specifications or, if it does not, that it is relabeled as to the new specifications that they do meet. These approaches are much more effective than § 1020.30(p) in promoting an appropriate level of radiation safety for used X-ray systems and components. They address not only uncertified, but certified systems and components also.

The TEPRSSC consensus recommendation was to delete § 1020.30(p) (Ref. 2).

K. Linearity (§ 1020.31(c))

In this proposed rule, FDA is proposing to change the linearity requirement in § 1020.31(c) to include X-ray equipment that provides a selector only for the product of tube current and time, milliamperes seconds (mAs), in place of independent selection of tube current, milliamperes (mA), and time (seconds). The amendment would allow for testing linearity between adjacent mAs stations.

The current requirement excludes systems that provide mAs selection only, but it is just as important for mAs-only systems to meet the linearity requirement. Because mAs-only systems provide just the one technique factor selector for exposure output, it is important that the selector be capable of controlling the exposure in a linear manner. Thus, the proposed amendment would specifically include mAs-only systems.

Typical technique charts provided to clinicians by the manufacturer give the recommended mAs settings for specific examinations, and X-ray technologists are accustomed to thinking in terms of mAs settings for a particular exposure rather than mA and time separately. Thus, it may be more meaningful to require the system to be mAs linear.

FDA has received comments from State personnel and the user community to the effect that the linearity requirement is not stringent enough and that it should apply over the entire range of mA stations rather than just between adjacent ones. Because the present requirement permits a 22 percent difference between adjacent stations, there could be significant deviations from linearity over the full range of tube current settings usually provided. Although FDA is not now proposing this change, the agency solicits comments on this subject.

FDA also proposes not to require linearity between microfocus (nominal focal spot size less than or equal to 0.45 mm) and larger focal spot sizes, because technologists normally do not switch between the two for a particular examination.

L. Field Limitation and Alignment for Mobile and Stationary General Purpose X-ray Systems (§ 1020.31(d))

FDA proposes to add the word "portable" to the title in § 1020.31(d) and the applicability portion of the section and to revise the wording for the required minimum field size. Mobile X-ray systems and portable X-ray systems are treated the same throughout the regulations and are usually referred to collectively as "mobile" systems. Sometimes, however, "portable" and "mobile" are distinguished. There seems to be no consistency in referring to these systems. Even though all current performance requirements that apply to one also apply to the other, the two types of systems are distinctly different from each other and could have different requirements in the future. For example, a portable fluoroscope might be allowed a shorter source-to-skin distance than would a mobile system. Therefore, in the proposed amendments, the two systems are defined separately in § 1020.30(b) and treated separately throughout §§ 1020.31 and 1020.32.

Manufacturers have interpreted the minimum field size requirement as meaning that, as long as the minimum field size is no greater than an area of 5 by 5 centimeters (cm), the requirement is met. This would allow, for example, a field of 1 by 25 cm. This is not the intent of the standard. The intent is that no dimension of the minimum field size shall exceed 5 cm; therefore, the wording would be revised accordingly. Similar revisions would occur again in §§ 1020.31(e)(2), 1020.31(g)(3), 1020.32(b)(1) and (2) for the same reason.

FDA also proposes to reduce the minimum required illumination from 160 lux (15 foot candles) to 100 lux (9.3 foot candles).

The intent of the illumination requirement is to provide a means for visual indication of the X-ray field in a radiographic room under typical ambient conditions. This allows proper patient positioning and X-ray field sizing to the region of interest.

There have been several recalls associated with the illumination requirement, affecting every major foreign manufacturer of general purpose radiographic collimators. Bulbs burned out so fast that some assemblers purposely set lamp voltages too low, resulting in noncompliant light localizers. These recalls, in almost all cases, involved both a labeling/information and hardware fix (which is inherently expensive) on several thousand collimators.

The 160 lux illumination limit was primarily based on technical feasibility. The ambient light levels to be expected and the radiological task to be performed were not factored into the requirement. Observation of the visually indicated X-ray field is basically an edge/contrast detection process, and the interaction of the collimator light field brightness with ambient light levels is a very important consideration. In preparation for an enforcement action in 1982, FDA obtained data on ambient light conditions in 369 X-ray rooms across the United States. The X-ray technologist in each facility was asked to adjust the room light to the brightness used to perform the radiological task, i.e., "normal" conditions. The median value for normal room light conditions was measured at approximately 65 lux. This number should be compared with the Illuminating Engineering Society recommendation of about 105 lux for X-ray rooms.

Individual manufacturers and the National Electronic Manufacturer's Association have suggested amendments to the 160 lux illumination requirement in response to the Federal Register notice announcing the retrospective review of the diagnostic X-ray standard (47 FR 51710; November 16, 1982). Their primary suggestion was to lower the minimum illumination requirement to 100 lux. They claimed that a 100 lux requirement would extend bulb life 1000 percent without compromising the radiological task. The lower illumination requirement suggestion is consistent with the International Electrotechnical Commission (IEC), which specifies 100 lux as essential and 160 lux as desirable.

The XSRG (Ref. 4) concluded that:

(1) Although there is only fragmentary anecdotal evidence, the 160 lux requirement may well have resulted in higher than desirable bulb replacement rates;

(2) As long as the current edge sharpness requirement is maintained, there are no real data that indicate that lower illumination would in any way compromise the radiological task. The somewhat unexpectedly low ambient light levels that have been observed (approximately 65 lux) combined with the light level recommended by the IEC reinforces the adequacy of specifying 100 lux as the minimum illumination for light localizers; and

(3) The 100 lux requirement would make the U.S. standard compatible with the IEC.

The TEPRSSC consensus was in agreement with FDA's proposal to change the requirement to 100 lux (Ref. 2). However, FDA continues to solicit data regarding the adequacy of a limit of 100 lux at 1 meter for those systems where a larger source-image receptor distance (SID) is possible (e.g., 72 inches using a wall-mounted cassette holder).

M. Field Limitation and Alignment on Stationary General Purpose X-ray Equipment (§ 1020.31(e))

FDA proposes to remove the requirement for PBL. Instead, the agency proposes that PBL be optional for any radiographic system. The PBL performance requirements (currently,

§ 1020.31(e)(2) through (6)) would be moved from the section on field limitation and alignment on stationary general purpose X-ray equipment to a new § 1020.31(g). Consequently, all current sections beyond § 1020.31(f) would be redesignated as shown in the proposed revision of the standard. Note that all other requirements for field limitation and alignment on general purpose X-ray equipment would be retained.

The institution of PBL as a regulatory requirement has had a profound effect on the radiologic community. The cost impact is estimated by the XSRG to be more than half the cost impact of the entire performance standard (Ref. 4). The costs come from purchasing new equipment that has PBL instead of a less expensive manual collimator and of maintaining PBL systems over the life of the equipment. The cost impact is greatest in the low volume facilities that do not have a large patient load. For high-volume facilities, the purchase and maintenance costs of PBL may be an even trade for more efficient patient handling and positioning. They probably would purchase PBL even without any Federal requirement.

There is evidence that the originally anticipated dose saving to be accomplished by PBL could have been accomplished without PBL. Significant gains in achieving more optimum beam-area-to-film-area ratios may have resulted more from the introduction of continuously variable rectangular collimation than from PBL. Except in a few instances, the institution of continuously variable rectangular collimation leads to X-ray beam areas which generally approximate the film area used (which is what one hopes to achieve with PBL). Also, the dose reduction benefits for PBL seem to be minimal, according to recent data from NEXT (Ref. 2).

Anecdotal evidence is also accumulating (principally from formal and informal comments on the retrospective review) that, when PBL components fail, they are not always repaired, especially in smaller facilities. Such facilities then make do with what in essence is an expensive manual collimator, and any possible benefits of PBL are eliminated.

Comments on the documents that the XSRG circulated for review to industry, States, physicists, and individuals showed mixed reactions to the proposal to eliminate the PBL requirement. The XSRG collected information and impressions using the Delphi method to survey the benefits of the PBL requirement, and PBL was rated highly in that evaluation process (Ref. 4). A user survey about PBL done in 1978 showed mixed satisfaction and dissatisfaction with PBL (Ref. 8). Mechanical and reliability problems were noted for some of the manufacturers' systems. Although those problems may have disappeared, continuing maintenance costs associated with PBL raise the question of whether the benefits are commensurate with the costs.

In arriving at its recommendation to delete the requirement for PBL, the XSRG considered several alternatives such as (1) retaining PBL, (2) requiring PBL to operate only when the beam area was greater than the image receptor, (3) requiring evidence of collimation, (4) relaxing the requirements with different tolerances. The XSRG recommended that FDA consider educational and other programs to reinforce the message that collimation is important for radiation control.

The TEPRSSC membership was divided in its opinion of the PBL amendment (Ref. 2). Members' arguments against the amendment to make PBL optional were:

(1) The PBL requirement is necessary in order to have the feature available. The device will disappear if it is optional.

(2) Certain public health issues cannot be left to the marketplace.

(3) Many people who take X-rays are not fully trained radiologic technologists (RT's) or radiologists. They need PBL for proper collimation.

(4) Hospitals that make their purchasing decisions based primarily on cost would not purchase PBL systems.

(5) The costs presented by attending manufacturers did not compare with the cost analysis done by the Center.

(6) The suggestion of putting the effort on the States to require positive indication of collimation is not viable.

Members' arguments for making PBL optional were:

(1) The Center has shown that PBL is not cost-effective.

(2) The public health reason for PBL to reduce the dose, and the only case in which there was dose reduction was in chest images in nonhospital settings. Dose from chest exams is not a significant fraction of the total dose to the population; therefore, the value of PBL is small.

(3) The disappearance of PBL, if it were made optional, would mean that society does not want it.

(4) There is a demand on the part of users for non-PBL systems in certain applications, and they should be given the choice.

(5) Where facilities have invested a great deal of money to install PBL, it is often found to be in override or in the manual mode, in which case it is of no benefit.

(6) Because a significant percentage of the radiographs being taken today are done on mobile systems, the focus of training ought to be shifted to manual collimation with a deemphasis on PBL systems.

The deletion of the requirement for PBL would constitute a significant change in the standard. Therefore, FDA specifically solicits comments on this issue. FDA also asks for comments on whether other collimation systems, such as the World Health Organization's Basic Radiological System (which uses color coded fixed apertures) should be allowed.

N. Field Limitation and Alignment for Spot-Film Devices (§ 1020.31(g))

In § 1020.31, FDA proposes to redesignate paragraph (g) as paragraph (h) and to revise it, including changing the word "film" to "image receptor". The term "image receptor," as defined, includes film. "Image receptor" is used throughout the X-ray performance standard and again in this section even though the word "film" is also used. The proposed amendment provides for consistency of terms by using "image receptor" throughout.

FDA also proposes to change the limits on edge misalignment of the X-ray field and image receptor to a size comparison of X-ray field and image receptor. As currently expressed, the requirement creates a difficult test procedure. Further, this requirement is not compatible with other radiographic field limitation and alignment requirements contained in the standard. The difficulty in testing arises from the need to reconstruct the entire X-ray field at the spot-film plane and to compare it to the edges of the selected portion of the spot film. Because a direct test of the spot-film requirement is so difficult to perform in the field, indirect tests are made by FDA when determining compliance at users' facilities.

There are only two arguments against this change, both of which FDA considers to be of minor concern. First, the comparison of edges requirement imposes a requirement on the orientation of the X-ray field with respect to the selected portion of the film. However, large rotations of the X-ray field with respect to the selected portion of the film are very improbable and, in addition, would be unacceptable to the radiologist because of unexposed portions of the film. On the other hand, small rotations which would be tolerated by the radiologist would not

have a significant impact on radiation exposure to the patient.

The second argument is that if both the size of the X-ray field and the centers misalignment happen to be at the tolerances permitted by the proposed amendment, then the maximum permitted unnecessary exposure to the patient would be larger than now exists. This, however, assumes worst-case conditions for both the X-ray field size as well as for the centers misalignment, and the likelihood of this is small. Thus, the present and proposed requirements would be essentially identical with respect to the control of unnecessary exposure to the patient.

FDA also proposes to redesignate § 1020.31(g)(3) as § 1020.31(h)(4) and to revise it to incorporate information in FDA CPG 7133.17, dated October 1, 1980, for fixed-SID fluoroscopic systems that do not provide stepless adjustment of the X-ray field. (See 21 CFR 20.26 and 20.107.

The current requirement for the minimum X-ray field size for nonstepless beam limitation during spot-filming is different from the minimum X-ray field size during fluoroscopy, yet the same beam limiting device may be used in both applications. This complicates the beam limitation design because different diaphragms may be needed to meet the minimum requirement for each mode of operation. In a memorandum to all diagnostic X-ray equipment manufacturers and assemblers dated October 22, 1980 (Ref. 9), FDA stated that the 5 by 5 centimeter (cm) minimum field size requirement for spot-film devices would not be enforced for nonstepless beam limiting devices, but that such devices would be required to provide a minimum X-ray field size of 125 square centimeters or less. This makes the requirement consistent with the fluoroscopic field limitation requirements in § 1020.32(b)(2)(iv). FDA proposes to incorporate this requirement into the standard.

TEPRSSC was in agreement with the changes to § 1020.31(g) (Ref. 2).

O. Standby Radiation From Capacitor Energy Storage Equipment (§ 1020.31(k))

FDA proposes to redesignate § 1020.31(k) as § 1020.31(l); to revise the paragraph heading to read, "Radiation from capacitor energy storage equipment"; to revise the text of this paragraph to change the exposure limit format for standby radiation; and to incorporate the exposure limit for discharge radiation.

The standby radiation from capacitor energy storage systems is not always emitted at a constant amplitude but may occasionally have large short duration spikes which can be measured by radiation instruments having very short response times. If one were using such an instrument to measure for only a short time and happened to encounter one of these spikes, the measurement would be highly biased, making the overall exposure rate appear much higher than it really is. An instrument with a longer response time would tend to average the exposure rate, giving a more reasonable assessment of the overall rate.

Currently, § 1020.31(k) specifies the acceptable range for instrument response times for measurement of standby radiation. Unfortunately, response time is an unwieldy concept that is often confusing and, as specified in § 1020.31(k), does not cover all radiation instruments that might be used in quality assurance programs. In fact, the instrument now being used by FDA for compliance testing technically does not meet the response time requirement.

The proposed amendment changes the requirement from exposure rate to exposure expressed over a reasonable time interval that allows for "smoothing" of the exposure profile and, at the same time, obviates the need for specifying the instrument response time.

The current standby radiation requirement was written using the worst-case assumptions that the unit was continually on standby (i.e., charged up) and that the user was in close proximity to the unit. The two milliroentgen (mR)-per-hour-at-5-cm limit ensures that the 40-hour week occupational exposure limit of 100 mR is not exceeded. In many capacitor discharge X-ray systems, however, radiation may also be emitted under the following situations:

(1) The kilovoltage is initially set too high for the radiological procedure and is lowered by discharging through the X-ray tube;

(2) The radiological procedure is completed and the unit is manually discharged ("discharge pushbutton") through the X-ray tube before or after deactivating the input power; or

(3) The radiological procedure is completed and the unit automatically discharges through the X-ray tube upon deactivating the input power. These circumstances do not involve the exposure switch or timer and, therefore, fall within the description of standby radiation in § 1020.30(k).

However, the worst-case assumptions of the standby requirements are not appropriate for the discharge situations described above. First, one cannot make the assumption that the unit is continually being discharged; secondly, the user will not be in close proximity to the radiation source during discharge, certainly not at 5 cm. An exposure rate limit of 2 mR per hour at 5 cm is unduly restrictive for these situations. Recognizing this, FDA issued a multiple address letter (BRH:DOC:MA 355) (Ref. 10) to all manufacturers and established a different exposure limit for when the system was being discharged via a discharge button or by deactivation of power.

The proposed amendment would revise the paragraph heading, eliminating the word "standby." Standby radiation (although not defined in § 1020.30(b)) was intended, for purposes of § 1020.31(k), to be only that radiation that was emitted from the source while the system was in a charged state awaiting an exposure activation. The radiation produced via the discharge button does not fit within that intent. Neither does it fit within the definition of leakage radiation, even though the proposed exposure limits are identical. Thus § 1020.30(k) is inapplicable as well.

Therefore, the "discharge" radiation limits that would be codified in the proposed amendment to § 1020.31(k), are chosen in order to be consistent with the leakage requirements in existing § 1020.30(k), which originally derived from the recommendations of the NCRP (Ref. 11). The word "standby" would be eliminated from the title since both standby and discharge radiation are addressed in this section.

TEPRSSC was in agreement with the proposed changes to § 1020.31(k) (Ref. 2).

P. Image Intensified Fluoroscopy (Further Limitation of the Field (§ 1020.32(b)(2)(iv))

FDA proposes to revise the first two sentences of § 1020.32(b)(2)(iv) to add the phrase, "the capability of," preceding the phrase, "a visible area."

The current wording of the requirement has been interpreted by some manufacturers to mean that, if the collimator can be adjusted so that the system does not produce a visible area of greater than 300 square cm, it does not need stepless adjustment collimation. The intent of the performance standard, however, is that systems designed with the capability to produce a visible area of greater than 300 square cm by ordinary opening of the collimator, regardless of whether or not the collimator happens to be opened that large, shall provide stepless adjustment collimation. TEPRSSC agreed with the proposed change (Ref. 2).

Q. Entrance Exposure Rate Limits (§ 1020.32(d))

FDA proposes to insert a new paragraph to be codified as § 1020.32(d)(3) for fluoroscopic systems having both an automatic and a manual mode.

Section 1020.32(d) specifies the entrance exposure rate (EER) limits for systems which have only an automatic mode or a manual mode, but it does not specify the EER limits for systems capable of both manual and automatic operation. A number of manufacturers make such combination systems, and FDA has received many questions regarding allowable EER limits for such systems. In response, FDA issued a multiple address letter (BRH:DOC:MA 1189, dated March 26, 1974) to all manufacturers which set forth the policy that FDA follows in enforcing § 1020.32(d) for combination systems (Ref. 12). The policy introduced a new EER limit which is not found in existing § 1020.32(d), namely an allowance of 10 roentgens per minute (R/min) for the manual mode if that mode does not have a high level control. The proposed amendment adds the provisions of the policy to the standard and distinguishes combination systems from automatic-only and manual-only systems.

FDA proposes (1) to make clear that the requirements of § 1020.32(d)(4)(iii) apply to all C-arm systems; (2) to specify the measurement geometry more clearly for variable (source-image receptor distance) SID systems; and (3) to incorporate the requirements of the FDA multiple-address letter (MA:OC:DRP 387, dated March 24, 1986) for measurement of EER of C-arm fluoroscopes (Ref. 13) into a new paragraph.

When this section was originally written, the only C-arm systems available were mobile with a fixed SID. In recent years, manufacturers have produced a variety of C-arm systems that are much more sophisticated than the simple mobile fixed-SID types. These include large stationary systems with variable SID, tables, and radiographic as well as fluoroscopic capability.

Although § 1020.32(d)(4)(iii) does not specifically exclude the larger systems, manufacturers have interpreted it to apply only to mobile systems with fixed SID's. For the larger stationary C-arm systems, some manufacturers have taken the position that § 1020.32(d)(4)(iii) does not apply but rather that § 1020.32(d)(4)(i) or (ii) does apply because those manufacturers' systems were equipped with a table. Other manufacturers, admitting that their large stationary systems were C-arm fluoroscopes, have interpreted § 1020.32(d)(4)(iii) to mean that they could measure the EER at the maximum SID. This means that the EER limits could be exceeded at the 30 cm measurement point when the system is adjusted to shorter SID's. This, of course, was not the intent of § 1020.32(d)(4)(iii).

FDA also proposes to add a new paragraph to provide the measurement geometry for lateral fluoroscopes. The present performance standard does not state the measurement geometry for the EER of lateral fluoroscopes. These systems are usually configured such that the X-ray beam is directed across the table and the source is neither below nor above. Thus, § 1020.32(d)(4) (i) and (ii) do not apply. FDA issued a multiple-address letter (BRH:DOC:MA 335, dated August 29, 1977) describing the measurement geometry for lateral fluoroscopes (Ref. 14). The proposed amendment adds the requirements stated in the letter to § 1020.32(d). TEPRSSC agreed with the proposed amendment (Ref. 2).

R. Change in Units Throughout the Standard

In accordance with current agency policy, under this proposal, all units for quantities in §§ 1020.30, 1020.31, and 1020.32 would be changed to units of the International System of Units (SI units). This would result, for example, in the use of coulomb/kilogram as the unit of exposure in place of the unit roentgen, as previously used, and in changing values expressed in centimeters to values expressed in millimeters or meters. No changes in requirements result from the changes to SI Units.

III. Paperwork Reduction Act of 1980

Section 1020.30(g) *Information to be provided to assemblers* contains relief from information collection requirements in that certain replacement assemblies and components are exempted from reporting and recordkeeping requirements. There are no other changes in information collection requirements. All information collection and recordkeeping requirements for this performance standard have been approved by the Office of Management and Budget (OMB) under control number 0910-0213 "Reporting and Recordkeeping for Electronic Products under Public Law 90-602—Specific Product Requirements" and are in conformance with section 3504(h) of the Paperwork Reduction Act of 1980 as interpreted by OMB in 5 CFR part 1320. (See 49 FR 13666; March 31, 1983.) Other organizations and individuals desiring to submit comments on the collection of information requirements should direct them to FDA's Dockets Management Branch (address above) and to the Office of Information and Regulatory Affairs, OMB, Rm. 3208, New Executive Office Bldg., Washington, DC 20503, ATTN: Desk Officer for FDA.

IV. References

The following information has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. Agenda and Background Information, 21st Meeting, Technical Electronic Product Radiation Safety Standards Committee, June 22 and 23, 1987, Center for Devices and Radiological Health.

2. Center for Devices and Radiological Health, 21st Meeting of the Technical Electronic Product Radiation Safety Standards Committee, transcript.

3. "An Overview of the Costs and Benefits of the Diagnostic X-Ray Equipment Performance Standard (21 CFR 1020.30-32)," NTIS, PB85-115947, August, 1984.

4. "Retrospective Review of the Performance Standard for Diagnostic X-Ray Systems and Other Major Components (21 CFR 1020.30-32)," July, 1985.

5. Health Industry Manufacturers Association Report, "Application of 21 CFR 1020.30(n) Performance Standards for Diagnostic X-Ray System Tabletops to Mobile Stretchers," submitted to FDA, December 10, 1986.

6. T.B. Shope and H. Rudolph, "A Second Look at the Costs and Benefits Associated with the Diagnostic X-Ray Equipment Performance Standard and the Policy on Assembly and Reassembly," draft No. 3, unpublished, November 1978.

7. "A Study of the Need for Controlling the Sale of Antiquated X-Ray Equipment," unpublished report submitted to Congress pursuant to section 357 of the Radiation Control for Health and Safety Act, House Document 90-390, January 1, 1970.

8. U.S. Department of Health and Human Services, "Positive Beam Limitation Effectiveness Evaluation," HHS Publication (FDA) 80-8108.

9. Multiple address letter (MAH: BRH: DOC XPB 354, dated October 22, 1980), "Minimum X-Ray Field Size for Spot Film Operation of Fluoroscopic Systems with Fixed SID."

10. Multiple address letter (BRH: DOC: MA 355, dated September 18, 1980), "Standby Radiation from Capacitor Energy Storage Equipment," (21 CFR 1020.31(k)).

11. National Council on Radiation Protection Report, No. 33, "Medical X-Ray and Gamma-Ray Protection for Energies up to 10 MeV—Equipment Design and Use," February 1, 1968.

12. Multiple address letter (BRH: DOC: MA 1189, dated March 26, 1974), "Entrance Exposure Rate Determination for Fluoroscopic Systems."

13. FDA multiple-address letter (MA: OC: DRP 387, dated March 24, 1986), "Measurement of EER of C-Arm Fluoroscopic X-Ray Systems."

14. FDA multiple-address letter (BRH: DOC: MA 335, dated August 29, 1977), "Measurement of Entrance Exposure Rate for Lateral Type Fluoroscopes—21 CFR 1020.32(d)."

V. Economic Impact

This proposed rule is the result of an extensive retrospective review, including a cost-benefit analysis of regulatory impact, meeting the requirements of Executive Order 12291, as defined in the Regulatory Flexibility Act (Pub. L. 96–354). The agency concludes that the proposed rule is not a major rule as defined in Executive Order 12291. Further, the agency certifies that the proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act. Copies of the documents supporting this determination ("An Overview of the Costs and Benefits of the Diagnostic X-Ray Equipment Performance Standard (21 CFR 1020.30–32)" and "Retrospective Review of the Performance Standard for Diagnostic X-Ray Systems and Their Major Components") are on file in the Dockets Management Branch and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

VI. Comments

Interested persons may, on or before January 16, 1990, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 1020

Diagnostic X-ray systems, Electronic products, Medical devices, Radiation protection, Reporting and recordkeeping requirements, Television, X-rays.

Therefore, under the Public Health Service Act as amended by the Radiation Control for Health and Safety Act of 1968 and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 1020 be amended as follows:

PART 1020—PERFORMANCE STANDARDS FOR IONIZING RADIATION EMITTING PRODUCTS

1. The authority citation for 21 CFR Part 1020 continues to read as follows:

Authority: Secs. 501, 502, 515–520, 701, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 360e–360j, 371, 381); secs. 354–360F of the Public Health Service Act (42 U.S.C. 263b–263n).

2. Sections 1020.30, 1020.31, and 1020.32 are revised to read as follows:

§ 1020.30 Diagnostic X-ray systems and their major components.

(a) *Applicability.* (1) The provisions of this section are applicable to:

(i) The following components of diagnostic X-ray systems:

(A) Tube housing assemblies, X-ray controls, X-ray high-voltage generators, X-ray tables, cradles, film changers, vertical cassette holders mounted in a fixed location and cassette holders with front panels, and beam-limiting devices manufactured after August 1, 1974.

(B) Fluoroscopic imaging assemblies manufactured after August 1, 1974, and before April 26, 1977.

(C) Spot-film devices and image intensifiers manufactured after April 26, 1977.

(D) Cephalometric devices manufactured after February 25, 1978.

(E) Image receptor support devices for mammographic X-ray systems manufactured after September 5, 1978.

(ii) Diagnostic X-ray systems, except computed tomography X-ray systems, incorporating one or more of such components; however, such X-ray systems shall be required to comply only with those provisions of this section and §§ 1020.31 and 1020.32 which relate to the components certified in accordance with paragraph (c) of this section and installed into the systems.

(iii) Computed tomography (CT) X-ray systems manufactured before November 29, 1984.

(iv) CT gantries manufactured after September 3, 1985.

(2) The following provisions of this section and § 1020.33 are applicable to computed tomography X-ray systems manufactured or remanufactured after November 29, 1984:

(i) Section 1020.30(a);

(ii) Section 1020.30(b) "Technique factors";

(iii) Section 1020.30(b) "Computed tomography (CT)," "Scan," "Scan time," "Tomogram," and "Dose";

(iv) Section 1020.30(h)(3) (vi) through (viii);

(v) Section 1020.30(n);

(vi) Section 1020.33 (a) and (b);

(vii) Section 1020.33(c)(1) as it affects § 1020.33(c)(2); and

(viii) Section 1020.33(c)(2).

(3) The provisions of this section and § 1020.33 in its entirety, including those provisions in paragraph (a)(2) of this section, are applicable to computed tomography X-ray systems manufactured or remanufactured after September 3, 1985. The date of manufacture of the CT system is the date of manufacture of the CT gantry.

(b) *Definitions.* As used in this section and §§ 1020.31, 1020.32, and 1020.33, the following definitions apply:

Accessible surface means the external surface of the enclosure or housing provided by the manufacturer.

Accessory component means:

(1) A component used with diagnostic X-ray systems, such as a cradle or film changer, that is not necessary for the compliance of the system with applicable provisions of this subchapter but which requires an initial determination of compatibility with the system; or

(2) A component necessary for compliance of the system with applicable provisions of this subchapter but which may be interchanged with similar compatible components without affecting the system's compliance, such as one of a set of interchangeable beam-limiting devices; or

(3) A component compatible with all X-ray systems with which it may be used and that does not require compatibility or installation instructions, such as a tabletop cassette holder.

Aluminum equivalent means the thickness of aluminum (type 1100 alloy)[1] affording the same attenuation, under specified conditions as the material in question.

Articulated joint means a joint between two separate sections of a tabletop which joint provides the capacity for one of the sections to pivot on the line segment joining the sections.

Assembler means any person engaged in the business of assembling, replacing, or installing one or more components into a diagnostic X-ray system or subsystem. The term includes the owner of an X-ray system or his or her employee or agent who assembles components into an X-ray system that is subsequently used to provide professional or commercial services.

Attenuation block means a block or stack of type 1100 aluminum alloy or

[1] The nominal chemical composition of type 1100 aluminum alloy is 99.00 percent minimum aluminum, 0.12 percent copper, as given in "Aluminum Standards and Data" (1969). Copies may be obtained from: The Aluminum Association, New York, NY.

aluminum alloy having equivalent attenuation with dimensions 200 millimeters by 200 millimeters by 38 millimeters.

Automatic exposure control means a device which automatically controls one or more technique factors in order to obtain at a preselected location(s) a required quantity of radiation.

Beam axis means a line from the source through the centers of the X-ray fields.

Beam-limiting device means a device which provides a means to restrict the dimensions of the X-ray field.

Cantilevered tabletop means a tabletop designed such that the unsupported portion can be extended at least 1 meter beyond the support.

Cassette holder means a device, other than a spot-film device, that supports and/or fixes the position of an X-ray film cassette during an X-ray exposure.

Cephalometric device means a device intended for the radiographic visualization and measurement of the dimensions of the human head.

Coefficient of variation means the ratio of the standard deviation to the mean value of a population of observations. It is estimated using the following equation:

$$C = \frac{s}{\bar{X}} = \frac{1}{\bar{X}}\left[\sum_{i=1}^{n}\frac{(X_i - \bar{X})^2}{n-1}\right]^{1/2}$$

where

s=Estimated standard deviation of the population.
$\bar{X}$=Mean value of observations in sample.
Xi=ith observation sampled.
n=Number of observations sampled.

Computed tomography (CT) means the production of a tomogram by the acquisition and computer processing of X-ray transmission data.

Control panel means that part of the X-ray control upon which are mounted the switches, knobs, pushbuttons, and other hardware necessary for manually setting the technique factors.

Cooling curve means the graphical relationship between heat units stored and cooling time.

Cradle means:

(1) A removable device which supports and may restrain a patient above an X-ray table; or

(2) A device;

(i) Whose patient support structure is interposed between the patient and the image receptor during normal use;

(ii) Which is equipped with means for patient restraint; and

(iii) Which is capable of rotation about its long (longitudinal) axis.

CT gantry means tube housing assemblies, beam-limiting devices, detectors, and the supporting structures, frames, and covers which hold and/or enclose these components.

Diagnostic source assembly means the tube housing assembly with a beam-limiting device attached.

Diagnostic X-ray system means an X-ray system designed for irradiation of any part of the human body for the purpose of diagnosis or visualization.

Dose means the absorbed dose as defined by the International Commission on Radiation Units and Measurements. The absorbed dose, D, is the quotient of de by dm, where de is the mean energy imparted by ionizing radiation to matter of mass dm.

Equipment means X-ray equipment.

Exposure means the quotient of dQ by dm where dQ is the absolute value of the total charge of the ions of one sign produced in air when all the electrons (negatrons and positrons) liberated by photons in a volume element of air having mass dm are completely stopped in air.

Field emission equipment means equipment which uses an X-ray tube in which electron emission from the cathode is due solely to the action of an electric field.

Fluoroscopic imaging assembly means a subsystem in which X-ray photons produce a fluoroscopic image. It includes the image receptor(s) such as the image intensifier and spot-film device, electrical interlocks, if any, and structural material providing linkage between the image receptor and diagnostic source assembly.

General purpose radiographic X-ray system means any radiographic X-ray system which, by design, is not limited to radiographic examination of specific anatomical regions.

Half-value layer (HVL) means the thickness of specified material which attenuates the beam of radiation to an extent such that the exposure rate is reduced to one-half of its original value. In this definition the contribution of all scattered radiation, other than any which might be present initially in the beam concerned, is deemed to be excluded.

Image intensifier means a device, installed in its housing, which instantaneously converts an X-ray pattern into a corresponding light image of higher energy density.

Image receptor means any device, such as a fluorescent screen, radiographic film, solid-state detector, or gaseous detector, which transforms incident X-ray photons either into a visible image or into another form which can be made into a visible image by further transformations. In those cases where means are provided to preselect portions of the image receptor, the term "image receptor" shall mean the preselected portion of the device.

Image receptor support means, for mammographic systems, that part of the system designed to support the image receptor in a horizontal plane during a mammographic examination.

Leakage radiation means radiation emanating from the diagnostic source assembly except for: the useful beam; and radiation produced when the exposure switch or timer is not activated.

Leakage technique factors means the technique factors associated with the diagnostic source assembly which are used in measuring leakage radiation. They are defined as follows: for diagnostic source assemblies intended for capacitor energy storage equipment, the maximum-rated peak tube potential and the maximum-rated number of exposures in an hour for operation at the maximum-rated peak tube potential with the quantity of charge per exposure being 10 millicoulombs or the minimum obtainable from the unit, whichever is larger; for diagnostic source assemblies intended for field emission equipment rated for pulsed operation, the maximum-rated peak tube potential and the maximum-rated number of X-ray pulses in an hour for operation at the maximum-rated peak tube potential; and for all other diagnostic source assemblies, the maximum-rated peak tube potential and the maximum-rated continuous tube current for the maximum-rated peak tube potential.

Light field means that area of the intersection of the light beam from the beam-limiting device and one of the set of planes parallel to and including the plane of the image receptor, whose perimeter is the locus of points at which the illuminance is one-fourth of the maximum in the intersection.

Line-voltage regulation means the difference between the no-load and the load line potentials expressed as a percent of the load line potential; that is

Percent line-voltage regulation

$$\frac{100\,(Vn - Vi)}{Vi}$$

where

Vn=No-load line potential and
Vi=Load line potential.

Maximum line current means the root mean square current in the supply line

of an X-ray machine operating at its maximum rating.

Moveable tabletop means a tabletop which, when assembled for use, is capable of movement with respect to its supporting structure within the plane of the tabletop.

Peak tube potential means the maximum value of the potential difference across the X-ray tube during an exposure.

Primary protective barrier means the material, excluding filters, placed in the useful beam to reduce the radiation exposure for protection purposes.

Quick change X-ray tube means an X-ray tube designed for use in its associated tube housing such that:

(1) The tube cannot be inserted in its housing in a manner that would result in noncompliance of the system with the requirements of paragraphs (k) and (m) of this section; and

(2) The focal spot position will not cause noncompliance with the provisions of this section or § 1020.31 or § 1020.32; and

(3) The shielding within the tube housing cannot be displaced; and

(4) Any removal and subsequent replacement of a beam-limiting device during reloading of the tube in the tube housing will not result in noncompliance of the X-ray system with the applicable field limitation and alignment requirements of § § 1020.31 and 1020.32.

Radiation therapy simulation system means a radiographic or fluoroscopic X-ray system intended for localizing the volume to be exposed during radiation therapy and confirming the position and size of the therapeutic irradiation field.

Rated line voltage means the range of potentials, in volts, of the supply line specified by the manufacturer at which the X-ray machine is designed to operate.

Rated output current means the maximum allowable load current of the X-ray high-voltage generator.

Rated output voltage means the allowable peak potential, in volts, at the output terminals of the X-ray high-voltage generator.

Rating means the operating limits specified by the manufacturer.

Recording means producing a permanent form of an image resulting from X-ray photons (e.g., film, video tape).

Scan means the complete process of collecting X-ray transmission data for the production of a tomogram. Data may be collected simultaneously during a single scan for the production of one or more tomograms.

Scan time means the period of time between the beginning and end of X-ray transmission data accumulation tor a single scan.

Source means the focal spot of the X-ray tube.

Source-image receptor distance (SID) means the distance from the source to the center of the input surface of the image receptor.

Spot-film device means a device intended to transport and/or position a radiographic image receptor between the X-ray source and fluoroscopic image receptor. It includes a device intended to hold a cassette over the input end of an image intensifier for the purpose of making a radiograph.

Stationary tabletop means a tabletop which, when assembled for use, is incapable of movement with respect to its supporting structure within the plane of the tabletop.

Technique factors means the following conditions of operation: for capacitor energy storage equipment, peak tube potential in kilovolts (kV) and quantity of charge in milliamperes seconds (mAs); for field emission equipment rated for pulsed operation, peak tube potential in kV and number of X-ray pulses; for CT equipment designed for pulsed operation, peak tube potential in kV, scan time in seconds, and either tube current in milliamperes (mA), X-ray pulse width in seconds, and the number of X-ray pulses per scan, or the product of tube current, X-ray pulse width, and the number of X-ray pulses in mAs; for CT equipment not designed for pulsed operation, peak tube potential in kV, and either tube current in mA and scan time in seconds, or the product of tube current and exposure time in mAs and the scan time when the scan time and exposure time are equivalent; and for all other equipment, peak tube potential in kV, and either tube current in mA and exposure time in seconds, or the product of tube current and exposure time in mAs.

Tomogram means the depiction of the X-ray attenuation properties of a section through a body.

Tube means an X-ray tube, unless otherwise specified.

Tube housing assembly means the tube housing with tube installed. It includes high-voltage and/or filament transformers and other appropriate elements when they are contained within the tube housing.

Tube rating chart means the set of curves which specify the rated limits of operation of the tube in terms of the technique factors.

Useful beam means the radiation which passes through the tube housing port and the aperture of the beam-limiting device when the exposure switch or timer is activated.

Variable-aperture beam-limiting device means a beam-limiting device which has capacity for stepless adjustment of the X-ray field size at a given SID.

Visible area means the portion of the input surface of the image receptor over which incident X-ray photons are producing a visible image.

X-ray control means a device which controls input power to the X-ray high-voltage generator and/or the X-ray tube. It includes equipment such as timers, phototimers, automatic brightness stabilizers, and similar devices, which control the technique factors of an X-ray exposure.

X-ray equipment means an X-ray system, subsystem, or component thereof. Types of X-ray equipment are as follows: "mobile X-ray equipment" means X-ray equipment mounted on a permanent base with wheels and/or casters for moving while completely assembled; "portable X-ray equipment" means X-ray equipment designed to be hand-carried; and "stationary X-ray equipment" means X-ray equipment which is installed in a fixed location.

X-ray field means that area of the intersection of the useful beam and any one of the set of planes parallel to and including the plane of the image receptor, whose perimeter is the locus of points at which the exposure rate is one-fourth of the maximum in the intersection.

X-ray high-voltage generator means a device which transforms electrical energy from the potential supplied by the X-ray control to the tube operating potential. The device may also include means for transforming alternating current to direct current, filament transformers for the X-ray tube(s), high-voltage switches, electrical protective devices, and other appropriate elements.

X-ray system means an assemblage of components for the controlled production of X-rays. It includes minimally an X-ray high-voltage generator, an X-ray control, a tube housing assembly, a beam-limiting device, and the necessary supporting structures. Additional components which function with the system are considered integral parts of the system.

X-ray subsystem means any combination of two or more components of an X-ray system for which there are requirements specified in this section and §§ 1020.31 and 1020.32.

X-ray table means a patient support device with its patient support structure (tabletop) interposed between the patient and the image receptor during radiography and/or fluoroscopy. This includes, but is not limited to, any

stretcher equipped with a radiolucent panel and any table equipped with a cassette tray (or bucky), cassette tunnel, image intensifier, or spot-film device beneath the tabletop.

X-ray tube means any electron tube which is designed for the conversion of electrical energy into X-ray energy.

(c) *Manufacturer's responsibility.* Manufacturers of products subject to §§ 1020.30 through 1020.33 shall certify that each of their products meet all applicable requirements when installed into a diagnostic X-ray system according to instructions. This certification shall be made under the format specified in § 1010.2 of this chapter. Manufacturers may certify a combination of two or more components if they obtain prior authorization in writing from the Director of the Office of Compliance and Surveillance of the Center for Devices and Radiological Health. Manufacturers shall not be held responsible for noncompliance of their products if that noncompliance is due solely to the improper installation or assembly of that product by another person; however, manufacturers are responsible for providing assembly instructions adequate to assure compliance of their components with the applicable provisions of §§ 1020.30 through 1020.33.

(d) *Assemblers' responsibility.* An assembler who installs one or more components certified as required by paragraph (c) of this section shall install certified components that are of the type required by §§ 1020.31, 1020.32, or 1020.33 and shall assemble, install, adjust, and test the certified components according to the instructions of their respective manufacturers. Assemblers shall not be liable for noncompliance of a certified component if the assembly of that component was according to the component manufacturer's instruction.

(1) *Reports of assembly.* All assemblers who install certified components shall file a report of assembly, except as specified in paragraph (d)(2) of this section. The report will be construed as the assembler's certification and identification under §§ 1010.2 and 1010.3 of this chapter. The assembler shall affirm in the report that the manufacturer's instructions were followed in the assembly or that the certified components as assembled into the system meet all applicable requirements of §§ 1020.30 through 1020.33. All assembler reports must be on a form prescribed by and available from the Director, Center for Devices and Radiological Health, 5600 Fishers Lane, Rockville, MD 20857. Completed reports must be submitted to the Director, the purchaser, and, where applicable, to the State agency responsible for radiation protection within 15 days following completion of the assembly.

(2) *Exceptions to reporting requirements.* Reports of assembly need not be submitted for:

(i) Reloaded or replacement tube housing assemblies which are reinstalled or newly assembled into an existing X-ray system; or

(ii) Certified accessory components which have been identified as such to the Center for Devices and Radiological Health in the report required under § 1002.10 of this chapter.

(e) *Identification of X-ray components.* In addition to the identification requirements specified in § 1010.3 of this chapter, manufacturers of components subject to this section and §§ 1020.31, 1020.32, and 1020.33, except high-voltage generators contained within tube housings and beam-limiting devices which are integral parts of tube housings, shall permanently inscribe or affix thereon the model number and serial number of the product, so as to be legible and accessible to view. The word "model" or "type" shall appear as part of the manufacturer's required identification of certified X-ray components. Where the certification of a system or subsystem, consisting of two or more components, has been authorized pursuant to paragraph (c) of this section, a single inscription, tag, or label bearing such information may be used to identify the product.

(1) *Tube housing assemblies.* In a similar manner, manufacturers of tube housing assemblies shall also inscribe or affix thereon the name of the manufacturer, model number, and serial number of the X-ray tube which the tube housing assembly incorporates.

(2) *Replacement of tubes.* Except as specified in paragraph (e)(3) of this section, the replacement of an X-ray tube in a previously manufactured tube-housing assembly certified pursuant to paragraph (c) of this section constitutes manufacture of a new tube housing assembly, and the manufacturer is subject to the provisions of paragraph (e)(1) of this section. The manufacturer shall remove, cover, or deface any previously affixed inscriptions, tags, or labels, that are no longer applicable.

(3) *Quick-change X-ray tubes.* The requirements of paragraph (e)(2) of this section shall not apply to tube-housing assemblies designed and designated by original manufacturer to contain quick change X-ray tubes. The manufacturer of such X-ray tubes shall include with each replacement tube a label with the tube manufacturer's name, the model, and serial number of the X-ray tube. The manufacturer of the tube shall instruct the assembler who installs the new tube to attach the label to the tube-housing assembly and to remove the cover or deface the previously affixed inscriptions, tags, or labels that are described by the tube manufacturer as no longer applicable.

(f) [Reserved]

(g) *Information to be provided to assemblers.* Manufacturers of components listed in paragraph (a)(1) of this section shall provide to assemblers subject to paragraph (d) of this section and, upon request, to others at a cost not to exceed the cost of publication and distribution, instructions for assembly, installation, adjustment, and testing of such components adequate to assure that the products will comply with applicable provisions of this section and §§ 1020.31, 1020.32, and 1020.33, when assembled, installed, adjusted, and tested as directed. Such instructions shall include specifications of other components compatible with that to be installed when compliance of the system or subsystem depends on their compatibility. Such specifications may describe pertinent physical characteristics of the components and/or may list by manufacturer model number the components which are compatible. For X-ray controls and generators, manufacturers shall provide:

(1) A statement of the rated line voltage and the range line-voltage regulation for operation at maximum line current;

(2) A statement of the maximum line current of the X-ray system based on the maximum input voltage and current characteristics of the tube housing assembly compatible with rated output voltage and rated output current characteristics of the X-ray control and associated hlgh-voltage generator. If the rated input voltage and current characteristics of the tube housing assembly are not known by the manufacturer of the X-ray control and associated high-voltage generator, he shall provide necessary information to allow the assembler to determine the maximum line current for the particular tube housing assembly(s);

(3) A statement of the technique factors that constitute the maximum line current condition described in paragraph (g)(2) of this section.

(h) *Information to be provided for users.* Manufacturers of X-ray equipment shall provide for purchasers and, upon request, to others at a cost not to exceed the cost of publication and distribution, manuals or instruction

sheets which shall include the following technical and safety information:

(1) *All X-ray equipment.* For X-ray equipment to which this section and §§ 1020.31, 1020.32, and 1020.33 are applicable, there shall be provided:

(i) Adequate instructions concerning any radiological safety procedures and precautions which may be necessary because of unique features of the equipment; and

(ii) A schedule of the maintenance necessary to keep the equipment in compliance with this section and §§ 1020.31, 1020.32, and 1020.33.

(2) *Tube housing assemblies.* For each tube housing assembly, there shall be provided:

(i) Statements of the leakage technique factors for all combinations of tube housing assemblies and beam-limiting devices for which the tube housing assembly manufacturer states compatibility, the minimum filtration permanently in the useful beam expressed as millimeters of aluminum equivalent, and the peak tube potential at which the aluminum equivalent was obtained;

(ii) Cooling curves for the anode and tube housing; and

(iii) Tube rating charts. If the tube is designed to operate from different types of X-ray high-voltage generators (such as single-phase self-rectified, single-phase half-wave rectified, single-phase full-wave rectified, 3-phase 6-pulse, 3-phase 12-pulse, constant potential, capacitor energy storage) or under modes of operation such as alternate focal spot sizes or speeds of anode rotation which affect its rating, specific identification of the difference in ratings shall be noted.

(3) *X-ray controls and generators.* For the X-ray control and associated X-ray high voltage generator, there shall be provided:

(i) A statement of the rated line voltage and the range of line-voltage regulation for operation at maximum line current;

(ii) A statement of the maximum line current of the X-ray system based on the maximum input voltage and current characteristics of the tube housing assembly compatible with rated output voltage and rated output current characteristics of the X-ray control and associated high-voltage generator. If the rated input voltage and current characteristlcs of the tube housing assembly are not known by the manufacturer of the X-ray control and associated high-voltage generator, the manufacturer shall provide necessary information to allow the purchaser to determine the maximum line current for his particular tube housing assembly(s);

(iii) A statement of the technique factors that constitute the maximum line current condition described in paragraph (h)(3)(ii) of this section;

(iv) In the case of battery-powered generators, a specification of the minimum state of charge necessary for proper operation.

(v) Generator rating and duty cycle;

(vi) A statement of the maximum deviation from the preindication given by labeled technique factor control settings or indicators during any radiographic or CT exposure where the equipment is connected to a power supply as described in accordance with this paragraph. In the case of fixed technique factors, the maximum deviation from the nominal fixed value of each factor shall be stated;

(vii) A statement of the maximum deviation from the continuous indication of X-ray tube potential and current during any fluoroscopic exposure when the equipment is connected to a power supply as described in accordance with this paragraph; and

(viii) A statement describing the measurement criteria for all technique factors used in paragraphs (h)(3) (iii), (vi), and (vii) of this section; for example, the beginning and end points of exposure time measured with respect to a certain percentage of the voltage waveform.

(4) *Beam-limiting device.* For each variable-aperature beam-limiting device, there shall be provided;

(i) Leakage technique factors for all combinations of tube housing assemblies and beam-limiting devices for which the beam-limiting device manufacturer states compatibility; and

(ii) A statement including the minimum aluminum equivalent of that part of the device through which the useful beam passes and including the X-ray tube potential at which the aluminum equivalent was obtained. When two or more filters are provided as part of the device, the statement shall include the aluminum equivalent of each filter.

(i) [Reserved]

(j) *Warning label.* The control panel containing the main power switch shall bear the warning statement, legible and accessible to view: "WARNING: This X-ray unit may be dangerous to patient and operator unless safe exposure factors and operating instructions are observed."

(k) *Leakage radiation from the diagnostic source assembly.* The leakage radiation from the diagnostic source assembly measured at a distance of 1 meter in any direction from the source shall not exceed 2.58×10^{-5} kilogram (C/kg) (100 milliroentgens) in 1 hour when the X-ray tube is operated at the leakage technique factors. If the maximum rated peak tube potential of the tube housing assembly is greater than the maximum rated peak tube potential for the diagnostic source assembly, positive means shall be provided to limit the maximum X-ray tube potential to that of the diagnostic source assembly. Compliance shall be determined by measurements averaged over an area of 0.01 square meter with no linear dimension greater than 200 millimeters.

(l) *Radiation from components other than the diagnostic source assembly.* The radiation emitted by a component other than the diagnostic source assembly shall not exceed 5.16×10^{-7} C/kg (2 milliroentgens) in 1 hour at 50 millimeters from any accessible surface of the component when it is operated in an assembled X-ray system under any conditions for which it was designed. Compliance shall be determined by measurements averaged over an area of 0.01 square meter with no linear dimension greater than 200 millimeters.

(m) *Beam quality*—(1) *Half-value layer.* The half-value layer (HVL) of the useful beam for a given X-ray tube potential shall not be less than the appropriate value shown in Table I under "Specified dental systems," for any dental X-ray system designed for use with intraoral image receptors and manufactured after December 1, 1980; and under "Other X-ray systems," for all other X-ray systems subject to this section. If it is necessary to determine such half-value layer at an X-ray tube potential which is not listed in Table I, linear interpolation or extrapolation may be made. Positive means [2] shall be provided to insure that at least the minimum filtration needed to achieve the above beam quality requirements is in the useful beam during each exposure.

TABLE I

X ray tube voltage (kilovolt peak)		Minimum HVL (millimeters of aluminum)	
Designed operating range	Measured operating potential	Specified dental systems	Other x ray systems
Below 51	30	1.5	0.3
	40	1.5	0.4
	50	1.5	0.5
51 to 70	51	1.5	1.2

[2] In the case of a system which is to be operated with more than one thickness of filtration, this requirement can be met by a filter interlock with the kilovoltage selector which will prevent X-ray emission if the minimum required filtration is not in place.

TABLE I—Continued

X ray tube voltage (kilovolt peak)		Minimum HVL (millimeters of aluminum)	
Designed operating range	Measured operating potential	Specified dental systems	Other x ray systems
	60	1.5	1.3
	70	1.5	1.5
Above 70	71	2.1	2.1
	80	2.3	2.3
	90	2.5	2.5
	100	2.7	2.7
	110	3.0	3.0
	120	3.2	3.2
	130	3.5	3.5
	140	3.8	3.8
	150	4.1	4.1

(2) *Measuring compliance.* For capacitor energy storage equipment, compliance shall be determined with the maximum selectable quantity of charge per exposure.

(n) *Aluminum equivalent of material between patient and image receptor.* Except when used in a CT X-ray system, the aluminum equivalent of each of the items listed in Table II, which are used between the patient and image receptor, may not exceed the indicated limits. Compliance shall be determined by X-ray measurements made at a potential of 100 kilovolts peak and with an X-ray beam that has a half-value layer of 2.7 millimeters of aluminum. This requirement applies to front panel(s) of cassette holders and film changers provided by the manufacturer for patient support or for prevention of foreign object intrusions. It does not apply to screens and their associated mechanical support panels or grids.

TABLE II

Item	Aluminum equivalent (millimeters)
Front panel(s) of cassette holder (total of all)	1.0
Front panel(s) of film changer (total of all)	1.0
Cradle	2.0
Tabletop, stationary, without articulated joint(s)	1.0
Tabletop, movable, without articulated joint(s) (including stationary subtop)	1.5
Tabletop, with radiolucent panel having one articulated joint	1.5
Tabletop, with radiolucent panel having two or more articulated joints	2.0
Tabletop, cantilevered	2.0
Tabletop, radiation therapy simulator	5.0

(o) *Battery charge indicator.* On battery-powered generators, visual means shall be provided on the control panel to indicate whether the battery is in a state of charge adequate for proper operation.

(p) [Reserved]

(q) *Modification of certified diagnostic X-ray components and systems.* (1) Diagnostic X-ray components and systems certified in accordance with § 1010.2 of this chapter shall not be modified such that the component or system fails to comply with any applicable provision of this chapter unless a variance in accordance with § 1010.4 of this chapter or an exemption under sections 358(a)(5) or 360B(b) of the Public Health Service Act has been granted.

(2) The owner of a diagnostic X-ray system who uses the system in a professional or commercial capacity may modify the system, provided the modification does not result in the failure of the system or component to comply with the applicable requirements of this section or of § 1020.31, § 1020.32, or § 1020.33. The owner who causes such modification need not submit the reports required by Subpart B of Part 1002 of this chapter, provided the owner records the date and the details of the modification, and provided the modification of the X-ray system does not result in a failure to comply with § 1020.31, § 1020.32, or § 1020.33.

§ 1020.31 Radiographic equipment.

The provisions of this section apply to equipment for the recording of images, except equipment involving use of an image intensifier or computed tomography X-ray systems manufactured on or after November 29, 1984.

(a) *Control and indication of technique factors*—(1) *Visual indication.* The technique factors to be used during an exposure shall be indicated before the exposure begins, except when automatic exposure controls are used, in which case the technique factors which are set prior to the exposure shall be indicated. On equipment having fixed technique factors, this requirement may be met by permanent markings. Indication of technique factors shall be visible from the operator's position except in the case of spot films made by the fluoroscopist.

(2) *Timers.* Means shall be provided to terminate the exposure at a preset time interval, preset product of current and time, a preset number of pulses, or a preset radiation exposure to the image receptor.

(i) Except during serial radiography, the operator shall be able to terminate the exposure at any time during an exposure of greater than one-half second. Termination of exposure shall cause automatic resetting of the timer to its initial setting or to zero. It shall not be possible to make an exposure when the timer is set to a zero or off position if either position is provided.

(ii) During serial radiography, the operator shall be able to terminate the X-ray exposure(s) at any time, but means may be provided to permit completion of any single exposure of the series in process.

(3) *Automatic exposure controls.* When an automatic exposure control is provided:

(i) Indication shall be made on the control panel when this mode of operation is selected;

(ii) When the X-ray tube potential is equal to or greater than 51 kilovolts peak (kVp), the minimum exposure time for field emission equipment rated for pulsed operation shall be equal to or less than a time interval equivalent to two pulses and the minimum exposure time for all other equipment shall be equal to or less than 1/60 second or a time interval required to delivery 5 milliamperes seconds (mAs), whichever is greater;

(iii) Either the product of peak X-ray tube potential, current, and exposure time shall be limited to not more than 60 kilowatt seconds (kWs) per exposure or the product of X-ray tube current and exposure time shall be limited to not more than 600 mAs per exposure except when the X-ray tube potential is less than 51 kVp in which case the product of X-ray tube current and exposure time shall be limited to not more than 2,000 mAs per exposure; and

(iv) A visible signal shall indicate when an exposure has been terminated at the limits described in paragraph (a)(3)(iii) of this section, and manual resetting shall be required before further automatically timed exposures can be made.

(4) *Accuracy.* Deviation of technique factors from indicated values shall not exceed the limits given in the information provided in accordance with § 1020.30(h)(3);

(b) *Reproducibility.* The following requirements shall apply when the equipment is operated on an adequate power supply as specified by the manufacturer in accordance with the requirements of § 1020.30(h)(3);

(1) *Coefficient of variation.* For any specific combination of selected technique factors, the estimated coefficient of variation of radiation exposures shall be no greater than 0.05.

(2) *Measuring compliance.* Determination of compliance shall be based on 10 consecutive measurements

taken with a time period of 1 hour. Equipment manufactured after September 5, 1978, shall be subject to the additional requirement that all variable controls for technique factors shall be adjusted to alternate settings and reset to the test setting after each measurement. The percent line-voltage regulation shall be determined for each measurement. All values for percent line-voltage regulation shall be within ±1 of the mean value for all measurements. For equipment having automatic exposure controls, compliance shall be determined with a sufficient thickness of attenuating material in the useful beam such that the technique factors can be adjusted to provide individual exposures of a minimum of 12 pulses on field emission equipment rated for pulse operations or no less than one-tenth second per exposure on all other equipment.

(c) *Linearity.* The following requirements apply when the equipment is operated on a power supply as specified by the manufacturer in accordance with the requirements of § 1020.30(h)(3) for any fixed X-ray tube potential within the range of 40 percent to 100 percent of the maximum rated.

(1) *Equipment having independent selection of X-ray tube current (mA).* The average ratios of exposure to the indicated milliampere-seconds product (C/kg/mAs)) obtained at any two consecutive tube current setting shall not differ by more than 0.10 times their sum. This is:

$X_1 - X_2 \leq 0.10(X_1 + X_2)$; where X_1 and X_2 are the average C/kg/mAs (or mR/mAs) values obtained at each of two consecutive tube current settings or at two settings differing by no more than a factor of 2 where the tube current selection is continuous.

(2) *Equipment having selection of X-ray tube current-exposure time product (mAs).* The average ratios of exposure to the indicated milliampere-seconds product (C/kg/mAs (or mR/mAs)) obtained at any two consecutive mAs selector settings shall not differ by more than 0.10 times their sum. This is:

$X_1 - X_2$ $0.10(X_1 + X_2)$; where X_1 and X_2 are the average C/kg/mAs (or mR/mAs) values obtained at each of two consecutive mAs selector settings or at two settings differing by no more than a factor of 2 where the mAs selector provides continuous selection.

(3) *Measuring compliance.* Determination of compliance will be based on 10 exposures, made within 1 hour, at each of the two settings. These two settings may include any two focal spot sizes, provided that neither focal spot size is equal to or less than 0.45 millimeter. For purposes of this requirement, focal spot size is the nominal focal spot size specified by the X-ray tube manufacturer. The percent line-voltage regulation shall be determined for each measurement. All values for percent line-voltage regulation at any one combination of technique factors shall be within ±1 of the mean value for all measurements at these technique factors.

(d) *Field limitation and alignment for mobile, portable, and stationary general purpose X-ray systems.* Except when spot-film devices or special attachments for mammography are in service, mobile, portable, and stationary general purpose radiographic X-ray systems shall meet the following requirements.

(1) *Variable X-ray field limitation.* A means for stepless adjustment of the size of the X-ray field shall be provided. Each dimension of the minimum field size at an SID of 1 meter shall be equal to or less than 50 millimeters.

(2) *Visual definition.* (i) Means for visually defining the perimeter of the X-ray field shall be provided. The total misalignment of the edges of the visually defined field with the respective edges of the X-ray field along either the length or width of the visually defined field shall not exceed 2 percent of the distance from the source to the center of the visually defined field when the surface upon which it appears is perpendicular to the axis of the X-ray beam.

(ii) When a light localizer is used to define the X-ray field, it shall provide an average illumination of not less than 100 lux (9.3 foot candles) at 1 meter or at the maximum source-image receptor distance (SID), whichever is less. The average illumination shall be based upon measurements made in the approximate center of each quadrant of the light field. Radiation therapy simulation systems are exempt from this requirement.

(iii) The edge of the light field at 1 meter or at the maximum SID, whichever is less, shall have a contrast ratio, corrected for ambient lighting, of not less than 4 in the case of beam-limiting devices designed for use on stationary equipment, and a contrast ratio of not less than 3 in the case of beam-limiting devices designed for use on mobile and portable equipment. The contrast ratio is defined as I_1/I_2 where I_1 is the illumination 3 millimeters from the edge of the light field toward the center of the field; and I_2 is the illumination 3 millimeters from the edge of the light field away from the center of the field. Compliance shall be determined with a measuring aperture of 1 millimeter.

(e) *Field indication and alignment on stationary general purpose X-ray equipment.* Except when spot-film devices or special attachments for mammography are in service, stationary general purpose X-ray systems shall meet the following requirements in addition to those prescribed in paragraph (d) of this section.

(1) Means shall be provided to indicate when the axis of the X-ray beam is perpendicular to the plane of the image receptor, to align the center of the X-ray field with respect to the center of the image receptor to within 2 percent of the SID, and to indicate the SID to within 2 percent;

(2) The beam-limiting device shall numerically indicate the field size in the plane of the image receptor to which it is adjusted;

(3) Indication of field size dimensions and SID's shall be specified in meters, or centimeters, and/or inches and shall be such that aperture adjustments result in X-ray field dimensions in the plane of the image receptor which correspond to those indicated by the beam-limiting device to within 2 percent of the SID when the beam axis is indicated to be perpendicular to the plane of the image receptor; and

(4) Compliance measurements will be made at discrete SID's and image receptor dimensions in common clinical use (such as SID's of 1.0, 1.5, and 2.0 meters and/or 36, 40, 48, and 72 inches and nominal image receptor dimensions of 130, 180, 240, 300, 350, 400, and 430 millimeters and/or 5, 7, 8, 9, 10, 11, 12, 14, and 17 inches) or at any other specific dimensions at which the beam-limiting device or its associated diagnostic X-ray system is uniquely designed to operate.

(f) *Field limitation on radiographic X-ray equipment other than general purpose radiographic systems—(1) Equipment for use with intraoral image receptors.* Radiographic equipment designed for use with an intraoral image receptor shall be provided with means to limit the X-ray beam such that:

(i) If the minimum source-to-skin distance (SSD) is 180 millimeters or more, the X-ray field at the minimum SSD shall be containable in a circle having a diameter of no more than 70 millimeters; and

(ii) If the minimum SSD is less than 180 millimeters, the X-ray field at the minimum SSD shall be containable in a circle having a diameter of no more than 60 millimeters.

(2) *X-ray systems designed for one image receptor size.* Radiographic equipment designed for only one image receptor size at a fixed SID shall be provided with means to limit the field at the plane of the image receptor to

dimensions no greater than those of the image receptor, and to align the center of the X-ray field with the center of the image receptor to within 2 percent of the SID or shall be provided with means to both size and align the X-ray field such that the X-ray field at the plane of the image receptor does not extend beyond any edge of the image receptor.

(3) *Systems designed for or provided with special attachments for mammography.* Radiographic systems designed only for mammography and general purpose radiographic systems, when special attachments for mammography are in service, shall be provided with means to limit the useful beam such that the X-ray field at the plane of the image receptor does not extend beyond any edge of the image receptor at any designated SID except the edge of the image receptor designed to be adjacent to the chest wall where the X-ray field may not extend beyond this edge by more than 2 percent of the SID. This requirement can be met with a system which performs as prescribed in paragraphs (f)(4)(i), (ii), and (iii) of this section. When the beam-limiting device and image receptor support device are designed to be used to immobilize the breast during a mammographic procedure and the SID may vary, the SID indication specified in paragraphs (f)(4)(ii) and (iii) of this section shall be the maximum SID for which the beam-limiting device or aperture is designed. In addition, each image receptor support intended for installation on a system designed only for mammography shall have clear and permanent markings to indicate the maximum image receptor size for which it is designed.

(4) *Other X-ray systems.* Radiographic systems not specifically covered in paragraphs (d), (e), (f) (2) and (3), and (h) of this section and systems covered in paragraph (f)(1) of this section, which are also designed for use with extraoral image receptors and when used with an extraoral image receptor, shall be provided with means to limit the X-ray field in the plane of the image receptor so that such field does not exceed each dimension of the image receptor by more than 2 percent of the SID, when the axis of the X-ray beam is perpendicular to the plane of the image receptor. In addition, means shall be provided to align the center of the X-ray field with the center of the image receptor to within 2 percent of the SID, or means shall be provided to both size and align the X-ray field such that the X-ray field at the plane of the image receptor does not extend beyond any edge of the image receptor. These requirements may be met with:

(i) A system which performs in accordance with paragraphs (d) and (e) of this section; or when alignment means are also provided, may be met with either;

(ii) An assortment of removable, fixed-aperture, beam-limiting devices sufficient to meet the requirement for each combination of image receptor size and SID for which the unit is designed. Each such device shall have clear and permanent markings to indicate the image receptor size and SID for which it is designed; or

(iii) A beam-limiting device having multiple fixed apertures sufficient to meet the requirement for each combination of image receptor size and SID for which the unit is designed. Permanent, clearly legible markings shall indicate the image receptor size and SID for which each aperture is designed and shall indicate which aperture is in position for use.

(g) *Positive beam limitation (PBL).* The requirements of this paragraph shall apply to radiographic systems which contain a PBL system.

(1) *Field size.* When a PBL system is provided, it shall prevent X-ray production when:

(i) Either the length or width of the X-ray field in the plane of the image receptor differs from the corresponding image receptor dimension by more than 3 percent of the SID; or

(ii) The sum of the length and width differences as stated in paragraph (g)(1)(i) of this section without regard to sign exceeds 4 percent of the SID.

(2) *Conditions for PBL.* When provided, the PBL system shall function as described in paragraph (g)(1) of this section whenever all the following conditions are met:

(i) The image receptor is inserted into a permanently mounted cassette holder;

(ii) The image receptor length and width are less than 0.5 meter;

(iii) The X-ray beam axis is within ±3 degrees of vertical and the SID is 0.9 meter to 1.3 meter inclusive; or the X-ray beam axis is withn ±3 degrees of horizontal and the SID is 0.9 meter to 2.05 meters inclusive;

(iv) The X-ray beam axis is perpendicular to the plane of the image receptor to within ±3 degrees; and

(v) Neither tomographic nor stereoscopic radiography is being performed.

(3) *Measuring compliance.* Compliance with the requirements of paragraph (g)(1) of this section shall be determined when the equipment indicates that the beam axis is perpendicular to the plane of the image receptor and the provisions of paragraph (g)(2) of this section are met. Compliance shall be determined no sooner than 5 seconds after insertion of the image receptor.

(4) *Operator initiated undersizing.* The PBL system shall be capable of operation such that, at the discretion of the operator, the size of the field may be made smaller than the size of the image receptor through stepless adjustment of the field size. Each dimension of the minimum field size at an SID of 1 meter shall be equal to or less than 50 millimeters. Return to PBL function as described in paragraph (g)(1) of this section shall occur automatically upon any change of image receptor size or SID.

(5) *Override of PBL.* A capability may be provided for overriding PBL in case of system failure and for servicing the system. This override may be for all SID's and image receptor sizes. A key shall be required for any override capability that is accessible to the operator. It shall not be possible to remove the key while the PBL is overridden. Each such key switch or key shall be clearly and durably labeled as follows:

For X-Ray Field Limitation System Failure

The override capability is considered accessible to the operator if it is referenced in the operator's manual or in other material intended for the operator or if its location is such that the operator would consider it part of the operational controls.

(h) *Field limitation and alignment for spot-film devices.* The following requirements shall apply to spot-film devices, except when the spot-film device is provided for use with a radiation therapy simulation system:

(1) Means shall be provided between the source and the patient for adjustment of the X-ray field size in the plane of the image receptor to the size of that portion of the image receptor which has been selected on the spot-film selector. Such adjustment shall be accomplished automatically when the X-ray field size in the plane of the image receptor is greater than the selected portion of the image receptor. If the X-ray field size is less than the size of the selected portion of the image receptor, the field size shall not open automatically to the size of the selected portion of the image receptor unless the operator has selected that mode of operation.

(2) Neither the length nor the width of the X-ray field in the plane of the image receptor shall differ from the corresponding dimensions of the

selected portion of the image receptor by more than 3 percent of the SID when adjusted for full coverage of the selected portion of the image receptor. The sum, without regard to sign, of the length and width differences shall not exceed 4 percent of the SID. On spot-film devices manufactured after February 25, 1978, if the angle between the plane of the image receptor and beam axis is variable, means shall be provided to indicate when the axis of the X-ray beam is perpendicular to the plane of the image receptor, and compliance shall be determined with the beam axis indicated to be perpendicular to the plane of the image receptor.

(3) The center of the X-ray field in the plane of the image receptor shall be aligned with the center of the selected portion of the image receptor to within 2 percent of the SID.

(4) Means shall be provided to reduce the X-ray field size in the plane of the image receptor to a size smaller than the selected portion of the image receptor such that:

(i) For spot-film devices used on fixed-SID fluoroscopic systems which are not required to, and do not provide stepless adjustment of the X-ray field, the minimum field size, at the greatest SID, does not exceed 0.0125 square meter; or

(ii) For spot-film devices used on fluoroscopic systems that have a variable SID and/or stepless adjustment of the field size, each dimension of the minimum field size, at the greatest SID, does not exceed 50 millimeters.

(5) A capability may be provided for overriding the automatic X-ray field size adjustment in case of system failure. If it is so provided, a signal visible at the fluoroscopist's position shall indicate whenever the automatic X-ray field size adjustment override is engaged. Each such system failure override switch shall be clearly labeled as follows:

For X-Ray Field Limitation System Failure

(i) *Source-skin distance.* (1) X-ray systems designed for use with an intraoral image receptor shall be provided with means to limit source-to-skin distance to not less than:

(i) One hundred eighty millimeters if operable above 50 kVp, or

(ii) One hundred millimeters if not operable above 50 kVp.

(2) Mobile or portable X-ray systems other than dental shall be provided with means to limit source-to-skin distance to not less than 300 millimeters.

(j) *Beam-on indicators.* The X-ray control shall provide visual indication whenever X-rays are produced. In addition, a signal audible to the operator shall indicate that the exposure has terminated.

(k) *Multiple tubes.* Where two or more radiographic tubes are controlled by one exposure switch, the tube or tubes which have been selected shall be clearly indicated before initiation of the exposure. This indication shall be both on the X-ray control and at or near the tube housing assembly which has been selected.

(l) *Radiation from capacitor energy storage equipment.* Radiation emitted from the X-ray tube shall not exceed:

(1) 7.7×10^{-9} C/kg (0.03 milliroentgens) in 1 minute at 50 millimeters from any accessible surface of the diagnostic source assembly, with the beam-limiting device fully open, the system fully charged, and the exposure switch, timer, or any discharge mechanism not activated. Compliance shall be determined by measurements averaged over an area of 0.01 square meter or less, with no linear dimension greater than 200 millimeters; and

(2) 2.58×10^{-5} C/kg (100 milliroentgens) in 1 hour at 1 meter from the X-ray source, with the beam-limiting device fully open, when the system is discharged through the X-ray tube either manually or automatically by use of a discharge switch or deactivation of the input power. Compliance shall be determined by measurements of the maximum exposure per discharge multiplied by the total number of discharges in 1 hour (duty cycle). The measurements shall be averaged over an area of 0.01 square meter or less, with no linear dimension greater than 200 millimeters.

(m) *Transmission limit for image receptor supporting devices used for mammography.* For X-ray systems manufactured after September 5, 1978, which are designed only for mammography, the transmission of the primary beam through any image receptor support provided with the system shall be limited such that the exposure 50 millimeters from any accessible surface beyond the plane of the image receptor supporting device does not exceed 2.58×10^{-8} C/kg (0.1 milliroentgen) for each activation of the tube. Exposure shall be measured with the system operated at the minimum SID for which it is designed. Compliance shall be determined at the maximum rated peak tube potential for the system and at the maximum rated product of the tube current and exposure time (mAs) for that peak tube potential. Compliance shall be determined by measurements averaged over an area of 0.01 square meter with no linear dimension greater than 200 millimeters.

§ 1020.32 Fluoroscopic equipment.

The provisions of this section apply to equipment for fluoroscopy and for the recording of images through an image intensifier except computed tomography X-ray systems manufactured on or after November 29, 1984.

(a) *Primary protective barrier*—(1) *Limitation of useful beam.* The fluoroscopic imaging assembly shall be provided with a primary protective barrier which intercepts the entire cross section of the useful beam at any SID. The X-ray tube used for fluoroscopy shall not produce X-rays unless the barrier is in position to intercept the entire useful beam. The exposure rate due to transmission through the barrier with the attenuation block in the useful beam combined with radiation from the image intensifier, if provided, shall not exceed 0.00334 percent of the entrance exposure rate, at a distance of 100 millimeters from any accessible surface of the fluoroscopic imaging assembly beyond the plane of the image receptor. Radiation therapy simulation systems shall be exempt from this requirement provided the systems are intended only for remote control operation and the manufacturer sets forth instructions for assemblers with respect to control location as part of the information required in § 1020.30(g). Additionally, the manufacturer shall provide to users, pursuant to 1020.30(h)(1)(i), precautions concerning the importance of remote control operation.

(2) *Measuring compliance.* The entrance exposure rate shall be measured in accordance with paragraph (d) of this section. The exposure rate due to transmission through the primary barrier combined with radiation from the image intensifier shall be determined by measurements averaged over an area of 0.01 square meter with no linear dimension greater than 200 millimeters. If the source is below the tabletop, the measurement shall be made with the input surface of the fluoroscopic imaging assembly positioned 300 millimeters above the table top. If the source is above the tabletop and the SID is variable, the measurement shall be made with the end of the beam-limiting device or spacer as close to the tabletop as it can be placed, provided that it shall not be closer than 300 millimeters. Movable grids and compression devices shall be removed from the useful beam during the measurement. For all measurements, the attenuation block shall be positioned in the useful beam 100 millimeters from the point of measurement of entrance exposure rate and between this point and the input

surface of the fluoroscopic imaging assembly.

(b) *Field limitation*—(1) *Nonimage-intensified fluoroscopy.* (i) The X-ray field produced by nonimage-intensified fluoroscopic equipment shall not extend beyond the entire visible area of the image receptor. Means shall be provided for stepless adjustment of the field size. Each dimension of the minimum field size, at the greatest SID, shall be equal to or less than 50 millimeters.

(ii) For equipment manufactured after February 25, 1978, when the angle between the image receptor and the beam axis of the X-ray beam is variable, means shall be provided to indicate when the axis of the X-ray beam is perpendicular to the plane of the image receptor. Compliance with paragraph (b)(1)(i) of this section shall be determined with the beam axis indicated to be perpendicular to the plane of the image receptor.

(2) *Image-intensified fluoroscopy.* (i) For image-intensified fluoroscopic equipment other than radiation therapy simulation systems, neither the length nor the width of the X-ray field in the plane of the image receptor shall exceed that of the visible area of the image receptor by more than 3 percent of the SID. The sum of the excess length and the excess width shall be no greater than 4 percent of the SID.

(ii) For rectangular X-ray fields used with circular image receptors, the error in alignment shall be determined along the length and width dimensions of the X-ray field which pass through the center of the visible area of the image receptor.

(iii) For equipment manufactured after February 25, 1978, when the angle between the image receptor and beam axis is variable, means shall be provided to indicate when the axis of the X-ray beam is perpendicular to the plane of the image receptor. Compliance with paragraph (b)(2)(i) of this section shall be determined with the beam axis indicated to be perpendicular to the plane of the image receptor.

(iv) Means shall be provided to permit further limitation of the field. Beam-limiting devices manufactured after May 22, 1979, and incorporated in equipment with a variable SID and/or the capability of a visible area of greater than 0.03 square meter shall be provided with means for stepless adjustment of the X-ray field. Equipment with a fixed SID and the capability of a visible area of no greater than 0.03 square meter shall be provided with either stepless adjustment of the X-ray field or with a means to further limit the X-ray field size at the plane of the image receptor to 0.0125 square meter or less. Stepless adjustment shall, at the greatest SID, provide continuous field sizes from the maximum obtainable to a field size with each dimension 50 millimeters or less.

(3) If the fluoroscopic X-ray field size is adjusted automatically as the SID or image receptor size is changed, a capability may be provided for overriding the automatic adjustment in case of system failure. If it is so provided, a signal visible at the fluoroscopist's position shall indicate whenever the automatic field adjustment is overridden. Each such system failure override switch shall be clearly labeled as follows:

For X-Ray Field Limitation System Failure

(c) *Activation of tube.* X-ray production in the fluoroscopic mode shall be controlled by a device which requires continuous pressure by the operator for the entire time of any exposure. When recording serial fluoroscopic images, the operator shall be able to terminate the X-ray exposure(s) at any time, but means may be provided to permit completion of any single exposure of the series in process.

(d) *Entrance exposure rate limits*—(1) *Equipment with automatic exposure rate control (AERC).* Except for fluoroscopic radiation therapy simulation systems, fluoroscopic equipment which is provided with AERC shall not be operable at any combination of tube potential and current which will result in an exposure rate in excess of 2.58×10^{-3} coulombs per kilogram (C/kg) (10 roentgens per minute) (10 R/min) at the point where the center of the useful beam enters the patient, except:

(i) During recording of fluoroscopic images, or

(ii) When an optional high level control is provided. When so provided, the equipment, shall not be operable at any combination of tube potential and current which will result in an exposure rate in excess of 1.29×10^{-3} C/kg per minute (5 R/min) at the point where the center of the useful beam enters the patient, unless the high level control is activated. Special means of activation of high level controls shall only be operable when continuous manual activation is provided by the operator. A continuous signal audible to the fluoroscopist shall indicate that the high level control is being employed.

(2) *Equipment without AERC (manual mode).* Except for fluoroscopic radiation therapy simulation systems, fluoroscopic equipment which is not provided with AERC shall not be operable at any combination of tube potential and current which will result in an exposure rate in excess of 1.29×10^{-3} C/kg per minute (5 R/min) at the point where the center of the useful beam enters the patient, except:

(i) During recording of fluoroscopic images, or

(ii) When an optional high level control is activated. Special means of activation of high level controls shall be required. The high level control shall only be operable when continuous manual activation is provided by the operator. A continuous signal audible to the fluoroscopist shall indicate that the high level control is being employed.

(3) *Equipment with both an AERC mode and a manual mode.* Except for fluoroscopic radiation therapy simulation systems, fluoroscopic equipment which is provided with both an AERC mode and a manual mode shall not be operable at any combination of tube potential and current which will result in an exposure rate in excess of 2.58×10^{-3} C/kg per minute (10 R/min) in either mode at the point where the center of the useful beam enters the patient except:

(i) During recording of fluoroscopic images, or

(ii) When the mode or modes have an optional high level control, in which case that mode or modes shall not be operable at any combination of tube potential and current which will result in an exposure rate in excess of 1.29 X 10^{-3} C/kg per minute (5 R/min) at the point where the center of the useful beam enters the patient, unless the high level control is activated. Special means of activation of high level controls shall only be operable when continuous manual activation is provided by the operator. A continuous signal, audible to the fluoroscopist, shall indicate that the high level control is being employed.

(4) *Measuring compliance.* Compliance with paragraph (d) of this section shall be determined as follows:

(i) If the source is below the X-ray table, the exposure rate shall be measured at 10 millimeters above the tabletop or cradle.

(ii) If the source is above the X-ray table, the exposure rate shall be measured at 300 millimeters above the tabletop with the end of the beam-limiting device or spacer positioned as closely as possible to the point of measurement.

(iii) In a C-arm type of fluoroscope, the exposure rate shall be measured at 300 millimeters from the input surface of the fluoroscopic imaging assembly, with the source positioned at any available SID, provided that the end of the beam-limiting device or spacer is no closer than 300 millimeters from the input

surface of the fluoroscopic imaging assembly.

(iv) In a lateral type of fluoroscope, the exposure rate shall be measured at a point 150 millimeters from the centerline of the X-ray table and in the direction of the X-ray source with the end of the beam-limiting device or spacer positioned as closely as possible to the point of measurement. If the tabletop is movable, it shall be positioned as closely as possible to the lateral X-ray source, with the end of the beam-limiting device or spacer no closer than 150 millimeters to the centerline of the X-ray table.

(e) *Indication of potential and current.* During fluoroscopy and cinefluorography, X-ray tube potential and current shall be continuously indicated. Deviation of X-ray tube potential and current from the indicated values shall not exceed the maximum deviation as stated by the manufacturer in accordance with § 1020.30(h)(3).

(f) *Source-skin distance.* Means shall be provided to limit the source-skin distance to not less than 380 millimeters on stationary fluoroscopes and to not less than 300 millimeters on mobile or portable fluoroscopes. In addition, for image-intensified fluoroscopes intended for specific surgical application that would be prohibited at the source-skin distances specified in this paragraph, provisions may be made for operation at shorter source-skin distances but in no case less than 200 millimeters. When provided, the manufacturer must set forth precautions with respect to the optional means of spacing, in addition to other information as required in § 1020.30(h).

(g) *Fluoroscopic timer.* Means shall be provided to preset the cumulative on-time of the fluoroscopic tube. The maximum cumulative time of the timing device shall not exceed 5 minutes without resetting. A signal audible to the fluoroscopist shall indicate the completion of any preset cumulative on-time. Such signal shall continue to sound while X-rays are produced until the timing device is reset. As an alternative to the requirements of this paragraph, radiation therapy simulation systems may be provided with a means to indicate the total cumulative exposure time during which X-rays were produced, and which is capable of being reset between X-ray examinations.

(h) *Mobile or portable fluoroscopes.* In addition to the foregoing requirements of this section, mobile or portable fluoroscopes shall provide intensified imaging.

Dated: August 30, 1989.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

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Tuesday
October 17, 1989

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Proposed Establishment of the Tampa Terminal Control Area and Revocation of the Tampa International Airport Airport Radar Service Area; FL; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89-AWA-12]

RIN 2120-AD07

Proposed Establishment of the Tampa Terminal Control Area and Revocation of the Tampa International Airport Airport Radar Service Area; FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a Terminal Control Area (TCA) at the Tampa International Airport, FL. The TCA would consist of airspace from the surface up to 10,000 feet mean sea level (MSL) within a 5-nautical-mile arc based on the Tampa International Airport airport surveillance radar (ASR) site located on the airport. The TCA extends outward to 30 nautical miles with altitude restrictions from 8,000 to 10,000 feet MSL. Establishment of this TCA would impose certain operating rules and pilot/equipment requirements, including requirements for an operable two-way radio, a 4096 transponder with automatic altitude-reporting equipment, an operable very high frequency omnidirectional radio range (VOR) or tactical air navigational aid (TACAN) receiver, and restrictions on student pilot operations. This action is intended to increase the capability of the air traffic control (ATC) system to separate all aircraft in the terminal airspace around the Tampa International Airport. The objective of this proposal is to substantially increase safety while accommodating the legitimate concerns of airspace users. Tampa International Airport is currently served by an Airport Radar Service Area (ARSA) which would be rescinded concurrent with the establishment of this TCA.

DATE: Comments must be received on or before December 15, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket [AGC-10], Airspace Docket No. 89-AWA-12, 800 Independence Avenue, SW., Washington, DC 20591.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

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

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch [ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-AWA-12." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

Related Rulemaking Actions

On May 21, 1970, the FAA published FAR Amendment 91-78 (35 FR 7782) which enabled the establishment of TCA's. On February 3, 1987, the FAA published a final rule which established requirements pertaining to the use, installation, inspection, and testing of Air Traffic Control Radar Beacon System (ATCRBS) and Mode S transponders in U.S.-registered civil aircraft (53 FR 3380). The rule adopted continues to require a transponder for operation in each TCA.

The FAA published a final rule on June 21, 1988, which requires Mode C equipment when operating within 30 nautical miles of any designated TCA-primary airport from the surface up to 10,000 feet MSL, except for operations by certain aircraft types specifically excluded (53 FR 23356).

On October 14, 1988, the FAA published a final rule which revised the classification and pilot/equipment requirements for conducting operations in a TCA (53 FR 40318). Specifically, the rule: (a) Establishes a single-class TCA; (b) requires the pilot-in-command of a civil aircraft operating within a TCA to hold at least a private pilot certificate, except for a student pilot who has received certain documented training; and (c) eliminates the helicopter exception from the minimum navigational equipment requirement.

Background

The TCA program was developed to reduce the midair collision potential in the congested airspace surrounding airports with high density air traffic by providing an area in which all aircraft will be subject to certain operating rules and equipment requirements.

The density of traffic and the type of operations being conducted in the airspace surrounding major terminals increase the probability of midair collisions. In 1970, an extensive study found that the majority of midair collisions occurred between a general aviation (GA) aircraft and an air carrier, military or another GA aircraft. The basic causal factor common to these conflicts was the mix of uncontrolled aircraft operating under visual flight rules (VFR) and controlled aircraft operating under instrument flight rules (IFR). TCA's provide a method to accommodate the increasing number of IFR and VFR operations. The regulatory requirements of TCA airspace afford the greatest protection for the greatest number of people by providing ATC

with an increased capability to provide aircraft separation service, thereby minimizing the mix of controlled and uncontrolled aircraft.

To date, the FAA has established a total of 24 TCA's. The FAA is proposing to take action to modify or implement the application of these proven control techniques to more airports to provide greater protection of air traffic in the airspace regions most commonly used by passenger-carrying aircraft.

On August 22, 1987, the Secretary of Transportation announced nine locations for which the FAA would issue Notices proposing the establishment of TCA's. The nine candidates cited qualify for TCA status by meeting the criteria published in FAA Handbook 7400.2C, "Procedures for Handling Airspace Matters." The criteria for establishing a TCA are based on factors which include the number of aircraft and people using that airspace, the traffic density, and the type or nature of operations being conducted. Accordingly, guidelines have been established to identify TCA locations based on two elements—the number of enplaned passengers and the number of aircraft operations.

Pre-NPRM Public Input

Airspace Meetings

Three pre-NPRM airspace meetings were held: Tampa, August 23; St. Petersburg, August 24; Sarasota, August 25, 1988. The meetings were held to allow local aviation interests and airspace users an opportunity to present input on the design of the proposed Tampa TCA. The final recommendations for the proposed TCA were coordinated with members of the Ad Hoc Committee formed by the Florida Department of Transportation.

At the pre-NPRM meetings the following recommendations were submitted:

A representative of the 56th Tactical Training Wing at MacDill Air Force Base (AFB) recommendad that the floor of the TCA be established at 1,200 feet MSL in the area between the Skyway Bridge and MacDill AFB, and the inner core of the TCA be extended to include the entire airport traffic area (ATA) at MacDill AFB.

Several commenters submitted the following recommendations:

1. The Tampa TCA should be designed with approach and departure corridors that consider the operational performance of the aircraft being separated. and with a VFR corridor, east/west, across the city of Tampa. The FAA should establish a north/south corridor over the Lakeland area which will provide VFR pilots the ability to travel through central Florida without penetrating the TCA boundaries. Also, the FAA should install a VORTAC at Tampa Airport and limit the innermost circle of the TCA to no more than 5 nautical miles. A 5-mile circle would be consistent with the existing Tampa ARSA and would eliminate the need to provide special procedures, or a TCA cutout for the Peter O'Knight Airport operations.

2. The Tampa and Orlando TCA's should be effective on the same date and the charts should be available at least 60 days prior to the effective date. Also, the FAA should consider a violations grace period of 6 months before enforcement action begins.

The Central Florida Airspace Planning and Utilization Committee offered the following recommendations:

The Inner Core of the TCA should be from the surface up to and including 8,000 feet MSL. A ceiling of 8,000 feet MSL was recommended because of known performances and factors. This altitude is low enough to allow encoder-equipped aircraft to operate VFR over-the-top of the TCA without the need for exceptional performance capability, and without the use of supplemental oxygen.

The boundary of the inner core should be a 5-nautical-mile radius, excluding Davis Island, and the northern segment of Hillsborough Bay, and should be elongated to the south to include MacDill AFB.

The First Step-ring of the TCA should have a floor altitude of 1,200 feet MSL; however, in the vicinity of the Peter O'Knight Airport the altitude should be 1,400 feet MSL. This altitude would provide aircraft access to the St. Petersburg-Clearwater International Airport and the Peter O'Knight Airport.

The boundary should be a 10-nautical-mile radius from the center of the Tampa International Airport, elongated to include lower Tampa Bay. This would exclude Vandenberg Airport and Albert Whitted Airport.

The Outer Boundary of the TCA should have an altitude floor of 4,000 feet MSL on the east and west sides and a 3,000-foot MSL floor for the northern approach area.

The boundaries should include the airspace west of Tampa to the Gulf Coast, north to Florida State Highway 52 to St. Leo, northeast from St. Leo to Zephyrhills, then east from Zephyrhills to the Alafia River, then southeast along the railroad, to Interstate I–75 to State Road 64 Interchange, then south along State Road 64 then back to the beginning.

Other recommendations to be considered are as follows:

1. The Sarasota ARSA should be incorporated in the Tampa TCA. Air carrier/air taxi activity enplaned passengers increased to 816,343 by October 1988. The traffic flow at Sarasota, which mixes with the traffic from Tampa and MacDill, supports the inclusion of the Sarasota ARSA into the Tampa TCA.

2. User groups requested that geographical landmarks should be used to define the TCA boundaries. In addition, members of the Tampa Tower staff have flown along the proposed boundaries and stated that visual landmarks can be utilized for determining the boundaries. The user groups recommended a TCA chart be published for Tampa using actual photographs of the geographical landmarks similar to the prototype chart for the New York TCA developed by the Eastern Region.

The written comments on the proposed TCA are as follows:

A Sunshine Flying Club member, who is a certified flight instructor and a member of the Albert Whitted Airport Advisory Committee, stated that he was in support of the Tampa TCA proposal that was submitted by the Central Florida Airspace Planning and Utilization Committee. He also believes TCA's should automatically consist of the airspace within a 30-nautical-mile radius, up to 10,000 feet MSL. The Central Florida Airspace Planning and Utilization Committee's proposal, however, recommended a TCA area of less than 30 nautical miles.

The International Aerobatic Club spokesperson requested that provisions be made, within the plans for the Tampa TCA, for an area for the performance of aerobatics. Sites that should be considered are in the areas of Brooksville, FL, Airport, Zephyrhills Airport, Wimauma Airport, and east of Tampa Palms over land owned by the Southwest Water Management District. The International Aerobatic Club also requested assistance from the air traffic control tower (ATCT) at Tampa to locate a suitable site for aerobatics in the Tampa area, not necessarily within the TCA. The FAA has offered three sites for consideration.

The Experimental Aircraft Association (EAA), Chapter 175, Brandon, FL, expressed concern over Vandenberg Airport being included in the Tampa TCA. Pilots felt strongly that consideration should be given to the need for arrival and departure aircraft to maneuver in that area without having to contact Tampa International Airport Control Tower. Although Vandenberg is within the 10-nautical-mile ring, the

proposed TCA is designed to keep this airport out of the surface area. Vandenberg is now within the 1,200 to 10,000 feet MSL area, and access is possible without clearance from ATC. The 56th Tactical Training Wing, based at McDill AFB, generally concurred with the proposed TCA at Tampa. They believe the establishment of a TCA at Tampa will undoubtedly reduce the midair collision potential and greatly improve flight safety in the Tampa area.

An airport restaurant owner at Lakeland Municipal Airport opposes the TCA at Tampa because pilots have told him they will not have the equipment to enter the TCA; therefore, the TCA will effectively put him out of business. The FAA has determined that departure and arrival traffic will experience no problems because Lakeland is not within the TCA; however, the Lakeland Airport is in the Mode C Veil which requires aircraft to be equipped with Mode C equipment when operating within 30 nautical miles of any designated TCA primary airport from the surface up to 10,000 feet MSL. The authority to permit an aircraft to operate without a Mode C transponder is assigned to the facility air traffic manager in areas of no radar coverage.

The city of Lakeland, FL, stated that the TCA rule would place a "squeeze" on many of Lakeland's home and visitor aircraft owners. In addition to the financial burden, there are real questions as to whether or not the rule would improve safety.

The Lakeland Air Center wrote that the proposed TCA's at Tampa and Orlando, FL, seriously threaten the economic health of Polk County, the city of Lakeland, and Lakeland Municipal Airport and its business. If implemented, the TCA could cost the city of Lakeland over $12 million annually, and Lakeland Air Center several hundred thousand dollars annually.

The Sun'N Fun EAA Fly-In, Inc., stated that the proposed TCA design, and the operating rules as stated in NPRM 87–7, would result in a negative financial impact on the tourist industry in the State of Florida and on the Sun'N Fun Fly-In. The FAA stated to the Sun'N Fun officials that each aircraft without Mode C equipment will be considered for entry within the Mode C Veil during the annual Sun'N Fun Fly-In. The Sun'N Fun EAA Fly-In, Inc., recommended that pilots continue to provide input on the TCA, and they further recommend letters to the FAA in Washington, DC, asking that the Mode C rule be rewritten to encompass the TCA only as depicted on sectional charts.

The Sun'N Fun Fly-In, Inc., also commented that the use of the Mode C in the veil area, below the outer layers of the TCA, will place unnecessary hardship on aircraft owners who fly out of secondary airports. The FAA recognizes that the establishment of a TCA and the effect of the Mode C rule are related; however, the TCA design and the Mode C Veil are separate matters. Aircraft which are not equipped with Mode C may be accommodated within the veil in accordance with national policies and local procedures.

The Aviation Task Force and Board of Directors of Greater Brandon, FL, submitted a resolution recommending support of the proposal forwarded by the Vandenberg Fixed Base Operator and the general aviation pilots to establish the Tampa TCA. The FAA is of the opinion that it has incorporated the Aviation Task Force and Board of Directors' recommendations.

Vandenberg Airport, Inc., wrote that Vandenberg is vital to the future development along the I–75 corridor. With present expansion plans, increased hangar space will probably double within the next 10 years. The economic importance of Vandenberg Airport to East Hillsborough County Area is immeasurable for long-range corporate and community development.

The President of Niles Aviation stated that TCA's, ARSA's and TRSA's are a complete waste of valuable airspace. The FAA should develop climb and descent corridors, and forbid VFR traffic to enter these corridors. The present system distracts pilots and needlessly complicates controller workload with flights that do not require tracking. The FAA has determined that while corridors do provide a degree of safety to aircraft arriving and departing terminal areas, they do not provide adaquate and/or sufficient airspace required to effectively vector, sequence, and meter the vast number of aircraft served in major terminal areas today. The use of corridors would result in a drop in the capacity for most terminal areas because of the different performance characteristics of aircraft.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a TCA at Tampa International Airport, FL. In 1987, the total number of annual enplaned passengers at Tampa International Airport was 5,002,812 which exceeds the 3.5 million necessary for consideration as a TCA candidate. The total number of airport operations was 522,787 of which 177,999 were air carrier. Consequently, the FAA has determined that establishment of a TCA at Tampa International Airport would be in the interest of flight safety and would result in a greater degree of protection for the greatest number of people during flight in that terminal area. Tampa International Airport is currently served by an ARSA which would be rescinded concurrent with the establishment of this TCA. The proposed location is depicted on the attached chart.

Section 91.90 of part 91 of the Federal Aviation Regulations (14 CFR part 91) defines TCA's and prescribes operating rules for aircraft in airspace designated as a TCA. The TCA rule provides, in part, that prior to entering the TCA, any pilot arriving at any airport within the TCA or flying through a TCA must: (1) Obtain appropriate authorization from ATC; (2) comply with applicable procedures established by ATC for pilot training operations at an airport within the TCA; (3) hold at least a private pilot certificate; (4) meet the requirements of § 61.95 of the Federal Aviation Regulations if the aircraft is operated by a student pilot. Any aircraft arriving at any airport within the TCA or flying through the TCA must: have an operable VOR or TACAN receiver; have an operable two-way radio capable of communications with ATC on appropriate frequencies for that TCA; and be equipped with the applicable operating transponder and automatic altitude reporting equipment specified in paragraph (a) of § 91.24 of the Federal Aviation Regulations, except as provided in paragraph (d) of that section. Unless otherwise authorized by ATC, all large, turbine-engine aircraft operating to or from a primary airport must be operated above the designated floors of the TCA. The pilot of any aircraft departing from an airport located within the TCA is required to receive a clearance from ATC prior to takeoff.

All aircraft operating within a TCA are required to comply with all ATC clearances and instructions, and any FAA arrival or departure traffic pattern for the airport of intended operation. However, the TCA rule permits ATC to authorize deviations from any of the operating requirements of the rule when safety considerations justify the deviation or more efficient utilization of the airspace can be attained. Ultralight vehicle operations and parachute jumps in a TCA may only be conducted under the terms of an ATC authorization.

Definitions, operating requirements, and specific airspace designations applicable to TCA's may be found in §§ 71.12, 71.401, and 71.403 of part 71 of the Federal Aviation Regulations (14 CFR Part 71); and §§ 91.1 and 91.90 of

part 91 of the Federal Aviation Regulations (14 CFR part 91).

The standard configuration of the TCA consists of three concentric circles centered on the primary airport extending to 10, 20, and 30 nautical miles respectively. The vertical limits of the TCA are 12,500 feet above MSL, with the floor established at the surface in the inner area and at levels appropriate to containment of operations in the outer areas. Variations of these criteria may be authorized contingent upon terrain, adjacent regulatory airspace, and factors unique to the terminal area. The airspace configuration contained herein is the result of an extensive staff study conducted by the local FAA authority after obtaining public input from informal airspace meetings and coordinating with the FAA regional office. The FAA has determined that the following proposed TCA airspace configuration is consistent with TCA objectives and allows consideration of terminal area flight operations and terrain:

1. That airspace extending upward from the surface up to and including 10,000 feet MSL beginning from the St. Petersburg, FL, 090° radial, 9 nautical miles, then the 5-nautical-mile arc of the Tampa, FL, airport surveillance radar (ASR) antenna located at lat. 27°59'15" N., long. 82°32'40" W., clockwise to the St. Petersburg, FL, 076° radial 13 nautical miles, then southwest along the west side of Interstate Highway I–275 to the St. Petersburg, FL. 090° radial, 9 nautical miles. This airspace is required to contain aircraft departing from and arriving at the primary airport.

2. That airspace extending upward from 1,200 feet above ground level up to and including 10,000 feet MSL from the shoreline at Anna Maria Island, FL. (St. Petersburg, FL, 184° radial, 24 nautical miles) then north along the shoreline to the St. Petersburg 192° radial, 14 nautical miles, then northeast to the north of the Skyway Bridge, then north along the shoreline to the St. Petersburg 145° radial, 5 nautical miles, then a 10-nautical-mile arc of the Tampa ASR antenna, clockwise to Highway 301, then southwest along the west side of Interstate Highway I–75 to the Sarasota, FL, 10-nautical-mile arc, then southeast along the 10-nautical-mile arc to the St. Petersburg 150° radial, 29 nautical miles, then west along the 30-nautical-mile arc of the Tampa ASR antenna to the shoreline of Anna Maria Island, FL.

3. That airspace extending upward from 3,000 feet MSL up to and including 10,000 feet MSL from Hudson, FL, east along Highway 52 to San Antonio, FL, then southeast to Zephyrhills, FL, then south on the west side of Highway 39, then west along Highway 60 to the St. Petersburg 087° radial, 27 nautical miles, then southwest along the west side of the railroad to Parrish, FL, then southwest to Highway 301, and a 10-nautical-mile arc of Sarasota, FL, to the St. Petersburg 157° radial, 22 nautical miles, then northeast along the west side of Interstate Highway I–75 to Highway 60, then the 10-nautical-mile arc of the Tampa ASR antenna, then counterclockwise to the St. Petersburg 145° radial, 5 nautical miles, then south to follow the shoreline to the north and of the Skyway Bridge, then southwest to the St. Petersburg 192° radial, 14 nautical miles, then north along the shoreline to Hudson, FL.

4. That airspace extending upward from 8,000 feet MSL up to and including 10,000 feet MSL from Anna Maria Island, FL, then northwest along the 30-nautical-mile arc of the Tampa, FL, ASR antenna, northwest to the St. Petersburg 322° radial, 27 nautical miles, then clockwise along the 30-nautical-mile arc of the Tampa ASR antenna to Dade City, FL, then south on the west side of Highway 301 to Zephyrhills, FL, then northwest to San Antonio, then west along Highway 52 to Hudson, FL, then south along the shoreline to Anna Maria Island, FL.

5. That airspace extending upward from 8,000 feet MSL up to and including 10,000 feet MSL from Sarasota, FL, 10-nautical-mile arc, then northwest along the Sarasota 10-nautical-mile arc to the St. Petersburg, FL, 152° radial, 24 nautical miles, then northeast to Parrish, FL, then along the west side of the railroad northeast to Highway 60, then east along Highway 60 to Highway 39, then south on the west side of Highway 39, to the St. Petersburg 126° radial, 33 nautical miles, then southwest on the 30-nautical-mile arc of the Tampa ASR antenna to the Sarasota 10-nautical-mile arc.

This configuration would provide an area to contain aircraft during climb and descent profiles while transitioning between the terminal and en route structure.

The preceding general summary of the proposed TCA airspace configuration identifies that airspace which is necessary to contain large turbojet aircraft operations at Tampa International Airport. Air Traffic Control would provide control and separation of all flights within the proposed airspace boundaries. Furthermore, ATC authorization is requisite to aircraft operations within that airspace. Establishment of this TCA would greatly enhance the safety of flight within the congested airspace overlying the Tampa metropolitan area by facilitating the separation of controlled and uncontrolled flight operations. Section 71.403 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

Regulatory Evaluation Summary

The FAA is required to assess the benefits and costs of each proposed rulemaking action to assure that the public is not burdened with rules having costs which outweigh their benefits. This section contains an analysis which quantifies, to the maximum possible extent, the costs and benefits of establishing a TCA at Tampa, FL. This regulatory evaluation summary should be read in conjunction with the NPRM since it provides additional background information.

This proposal is intended to lower the likelihood of midair collisions by increasing the capability of the ATC system to separate all aircraft in terminal airspace around Tampa International Airport. This action was prompted by data indicating that a high percentage of near midair collisions reported to the FAA in terminal areas involve VFR aircraft that are not required to be under the control of ATC. Thus, the overall objective of this proposal is to substantially increase safety while accommodating the legitimate concerns of airspace users.

Cost-Benefit Analysis

a. Costs

The FAA estimates the total cost expected to accrue from implementation of the proposed rule to be $311,000 (discounted, 15 years) in 1987 dollars. Approximately $107,000 (discounted) or 34 percent of the total estimated costs would be incurred by the FAA primarily for additional equipment. The remaining costs would be incurred by small GA aircraft operators who would be required under this proposal to equip their aircraft with Mode C transponders sooner than they would have for the ARSA under the previous FAA rule: "Transponder With Automatic Altitude Reporting Capability Requirement (Mode C)" (53 FR 23356, June 21, 1988). This rule will be implemented in two phases. Phase I, which began on July 1, 1989, requires a transponder with Mode C at and above 10,000 feet MSL and in the vicinity (30 nautical miles) of TCA-primary airports. There are currently 24 TCA's.

Phase II will implement a transponder with Mode C requirement in the airspace in the vicinity (10 nautical miles) of ARSA-primary airports. Phase

II becomes effective on December 30, 1990, and will affect over 135 ARSA's. Also in Phase II, a transponder with Mode C will be required at other designated airports for which either a TCA or ARSA has not been adopted. Consequently, most aircraft without Mode C transponders would need ATC authorization to fly within 30 nautical miles of a TCA-primary airport, within 10 nautical miles of an ARSA-primary airport, or within the controlled airspace of other designated airports that would also require Mode C transponders.

Thus, this evaluation, as well as the Mode C rule, assumes that all aircraft without Mode C would acquire such equipment rather than circumnavigate the subject airport. The only aircraft without this equipment would be nonelectrical and antique types. Costs to these types of aircraft operators have already been accounted for by the Mode C rule. As a result, aircraft operators impacted by this proposal would only incur the opportunity cost of capital by requiring them to acquire, install, and maintain Mode C transponders one year earlier than they would be required to do so in accordance with Phase II of the Mode C rule.

b. Benefits

This proposed rule is expected to generate potential benefits primarily in the form of enhanced safety to the aviation community and the flying public. Such safety, for instance, would take the form of reduced casualty losses (namely, aviation fatalities and property damage) resulting from a lowered likelihood of midair collisions due to increased air traffic control in airspace to be established by the TCA. In addition, potential benefits are expected to accrue in the form of improved operational efficiency on the part of FAA air traffic controllers.

Ordinarily, the potential benefits of this proposal would be the reduction in the probability of midair collisions resulting from converting the existing ARSA to a TCA. However, due to the recent Mode C rule (and to some extent, the rule for Traffic Alert and Collision Avoidance (TCAS), 54 FR 940, January 10, 1989), the number of potential midair collisions avoided by this proposal is expected to be significantly lower. Nevertheless, this proposal is still expected to accrue benefits in terms of enhanced safety, though on a much smaller scale.

This point can be illustrated with the use of statistical models based on actual and projected critical near midair collision (NMAC) incidents in lieu of actual midair collisions. (A critical NMAC is an event involving two aircraft coming within 100 feet of each other; the fact that they do not collide is not due to an action on the part of either pilot but, rather, is due purely to chance.) Since midair collisions involving part 135 aircraft and especially part 121 aircraft are rare, the use of critical NMAC's will serve to illustrate, to some degree, the potential improvements in aviation safety from implementing this proposal.

Simple regression analyses were prepared for this evaluation which focused on critical NMAC's, aircraft operations in the 23 existing TCA's, and a random sample of 23 of the existing 79 ARSA's (as of 1986 and 1987). The results of these analyses indicated that TCA's have approximately 68 percent fewer critical NMAC's annually, on average, than ARSA's. While there is no demonstrated relationship between NMAC's and actual midair collisions, the lower NMAC rate does indicate a more efficient separation of aircraft in congested airspace.

As the result of these findings, if the existing Tampa ARSA were to remain unchanged (and the recent Mode C and TCAS rules were not in effect), the Tampa Terminal Area would be expected to experience approximately 1.6 critical NMAC's annually (or 23 critical NMAC's over the next 15 years). If, however, the ARSA were to become a TCA, this figure would reduce to approximately 0.5 critical NMAC's annually (or 7 critical NMAC's over the next 15 years). Thus, over the next 15 years, this proposal could result in the reduction of approximately 16 critical NMAC's. However, it is important to note that many, if not most, of these potential critical NMAC's would never materialize as predicted primarily because of the Mode C rule as it is applied to the Tampa ARSA and, to some extent, the TCAS rule.

According to Phase II of the Mode C rule, all aircraft operating within 10 nautical miles (except for flights below the outer 5-mile "shelf") of an ARSA-primary airport must be equipped with a Mode C transponder. Phase I of the Mode C rule requires, as of July 1989, aircraft operating within 30 nautical miles of a TCA to be equipped with a Mode C transponder. These requirements are expected to significantly reduce the risk of midair collisions in ARSA's and TCA's. For this reason, the primary safety benefit of this proposal to create a TCA in 1990 at Tampa is that the safety enhancements of the Mode C and TCAS requirements will occur earlier than they otherwise would be expected without this proposal. A second safety benefit would be in terms of the lowered likelihood of midair collisions as a result of expanding the lateral boundaries of ATC by 20 nautical miles through replacing the Tampa ARSA with a TCA.

Thus, the safety benefits of the establishment of a new TCA, while positive, would be less than would otherwise accrue in the absence of the Mode C and TCAS rules. Since this proposal essentially extends the effects of the Mode C rule, virtually all of its potential safety benefits are assumed to be part of that rule. Such benefits cannot be estimated separately and, therefore, are considered to be inextricably linked primarily to the Mode C rule. Over a 15-year period, the Mode C rule is expected to generate total potential safety benefits of $344 million (discounted, in 1987 dollars). (The Mode C rule benefits estimate of $310 million for 10 years has been adjusted to a 15-year period for the purpose of comparability with the TCAS rule and other FAA rulemaking actions). It is important to note that part of these safety benefits would be attributed to the TCAS rule. Thus, the potential safety benefits of this proposal, and the Mode C and TCAS rules, are considered to be inextricably linked.

Another potential benefit of the proposed rule would be improved operational efficiency on the part of FAA air traffic controllers. Under the proposed rule, Mode C transponder requirements would ease controller workload as a result of aircraft being controlled due to a reduction in radio communications. It would also make potential traffic conflicts more readily apparent to the controller. As the result of improved operational efficiency, the impact of controller workload, increased by separation requirements in the proposed TCA, would be somewhat offset due to the controller's ability to adjust the volume of VFR traffic in any given portion of the TCA.

Improved operational efficiency should generate other types of benefits in the form of significant reductions in the number of VFR aircraft requests denied and in the number of VFR aircraft delayed during busy periods. As the result of converting the existing Tampa ARSA to a TCA, improved operational efficiency would accrue due to the availability of additional air traffic equipment. If the Tampa ARSA were to remain intact, such additional equipment would not be required. Therefore, the potential benefits of improved operational efficiency, which is not considered to be quantifiable in monetary terms in this evaluation, would be attributed to this proposal rather than either the Mode C rule or TCAS rule.

c. Comparison of Benefits and Costs

The total cost that would accrue from implementation of the proposed rule is estimated to be $311,000 (discounted, in 1987 dollars). Approximately 66 percent of this total cost estimate would fall on those GA aircraft operators without Mode C transponders in ths form of opportunity costs requiring them to acquire such avionics equipment, including maintenance, one year sooner than they otherwise would under the status quo. The typical individual GA aircraft operator impacted would incur an estimated one-time cost ranging from $86 to $191 (discounted) under the proposed rule. (As a result of the opportunity cost concept, the derivation of these cost estimates is too complex to discuss briefly. Therefore, the reader should refer to the detailed regulatory evaluation, which is contained in the docket, for a full explanation of the method by which these costs estimates were made.)

The potential benefits of the proposed rule would be the lowered likelihood of midair collisions from the conversion of the existing ARSA to a TCA. The number of midair collisions avoided and their respective monetary values cannot be estimated for this proposal independent of the Mode C and TCAS rules, but the FAA believes this risk would be substantially reduced. An FAA analysis prepared for this evaluation, however, has shown that critical near midair collisions occur approximately two-thirds less frequently in a TCA than within an ARSA. The FAA believes that even after the aviation community complies with the Mode C and TCAS rules, locations converting from ARSA's to TCA's would continue to experience reduced critical NMAC's. In addition, the proposed rule would generate improved operational efficiency benefits on the part of FAA air traffic controllers, though they are not considered to be quantifiable in monetary terms.

Clearly, in view of the cost of compliance relative to the significant reduction in the likelihood of midair collisions as well as improved operational efficiency in the Tampa Terminal Area, the FAA firmly believes the proposed rule is cost-beneficial.

The Regulatory Evaluation that has been placed in the docket contains additional detailed information ralated to the costs and benefits that are expected to accrue from the implementation of this NPRM.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules which may have "a significant economic impact on a substantial number of small entities."

The small entities which could be potentially affected by the implementation of this proposed rule are unscheduled operators of aircraft for hire owning nine or fewer aircraft.

Virtually all of the aircraft operators impacted by this proposed rule would be those who acquire Mode C transponder capability. The FAA believes that all unscheduled aircraft operators (namely, air taxi operators) potentially impacted by this proposed rule already have Mode C transponders due to the fact that such operators fly regularly in or near airports where radar approach control service has been established. Even if some of these operators were to acquire, install, and maintain Mode C transponders, the cost would not have a significant economic impact on a substantial number of them. The annual FAA threshold for significant economic impact is $3,700 (1987 dollars) for a small entity. According to FAA Order 2100.14A (Regulatory Flexibility Criteria and Guidance), the definition of a small entity, in terms of an air taxi operator, is one with nine aircraft owned, but not necessarily operated.

If we were to assume that a particular aircraft operator had nine aircraft without transponders, then the annual one-time cost per impacted aircraft would be approximately $210 (undiscounted, for the purpose of comparability with the figure of $3,700). The total annual one-time cost per small entity would amount to an estimated $1,890. Thus, the annual worst case cost for a small entity would fall far below the FAA's annual threshold of $3,700. Therefore, the FAA believes this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

International Trade Impact Assessment

The proposed rule would neither have an effect on the sale of foreign aviation products or services in the United States, nor would it have an effect on the sale of U.S. products or services in foreign countries. This is because the proposed rule would only potentially impact small GA aircraft operators without Mode C, and not aircraft manufacturers. The average cost of acquiring Mode C capability is estimated to range from $900 (to upgrade from a Mode A transponder) to $2,000 (to acquire a Mode C transponder without having a Mode A transponder). The cost of acquiring Mode C capability is not considered to be high enough to discourage potential buyers of small GA airplanes.

Federalism Implications

This proposed regulation would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, preparation of a Federalism assessment is not warranted.

Conclusion

For the reasons discussed under "Regulatory Evaluation," the FAA has determined that this proposed regulation (1) is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). It is certified that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 14 CFR Part 71

Aviation safety, Terminal control areas and Airport radar service areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE AND REPORTING POINTS

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.403 [Amended]

2. § 71.403 is amended as follows:

Tampa, FL [New]

Primary Airport
Tampa International Airport (lat. 27°58'31" N., long. 82°32'00" W.)
Tampa International Airport (LOC/DME) Antenna (lat. 27°54'29" N., long. 82°30'56" W.)

(ASR) (lat. 27°59'15" N., long. 82°32'40" W.)

Boundaries

Area A. That airspace extending upward from the surface to and including 10,000 feet MSL bounded by an area beginning at lat. 27°54'29" N., long. 82°30'56" W., then clockwise along the 5-mile arc of the Tampa ASR to lat. 27°57'43" N., long. 82°27'18" W., to the point of beginning.

Area B. That airspace extending upward from 1,200 feet MSL to and including 10,000 feet MSL beginning at the Anna Maria Island, FL, shoreline and the Tampa ASR 30-mile arc, north along the shoreline to lat. 27°40'42" N., long. 82°44'21" W.; to lat. 27°42'25" N., long. 82°40'36" W. (the end of the Skyway Bridge), north along the shoreline to the 10-mile arc of the Tampa ASR clockwise to Interstate 75, south along Interstate 75 to the 10-mile arc of the Sarasota, FL, VOR then clockwise along the Sarasota 10-mile arc to the 30-mile arc of the Tampa ASR clockwise along the Tampa ASR 30-mile arc to the point of beginning.

Area C. That airspace extending upward from 3,000 feet MSL up to and including 10,000 feet MSL bounded by a line beginning at the intersection of Highway 19 and Highway 52, east along Highway 52 to San Antonio, FL, southeast to Zephyrhills, FL, south on Highway 39 to Highway 60, west on Highway 60 to lat. 27°56'15" N., long. 82°11'00" W., south to and along the railroad to Parrish, FL, then southwest to the intersection of Highway 301 and the 10-mile arc of Sarasota, FL, then counterclockwise along the Sarasota 10-mile DME to Interstate 75, north along Interstate 75 to the 10-mile arc of the Tampa ASR then counterclockwise along the Tampa ASR 10-mile DME to the shoreline then along the shoreline to lat. 27°42'25" N., long. 82°40'42" W.; to lat. 27°40'42" N., long. 82°44'21" W.; then north along the shoreline to the point of beginning.

Area D. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL beginning at the Anna Maria Island, FL, shoreline and the 30-mile arc of the Tampa ASR, clockwise along the Tampa 30-mile DME to long. 83°00'00" W., then north along long. 83°00'00" W. to the 30-mile arc of the Tampa ASR, then clockwise along the Tampa ASR 30-mile DME arc to Dade City, FL, then south on Highway 30 to Zephyrhills, FL, then northwest to San Antonio, FL, then west along Highway 52 to Hudson, FL, then south along the shoreline to lat. 27°40'42" N., long. 82°44'21" W., south along the shoreline to the point of beginning; and that airspace beginning at Highway 301 and the Sarasota, FL, 10-mile arc, then northeast to Parrish, FL, then northeast along the railroad to lat. 27°56'15" N., long. 82°11'00" W., then east along Highway 60 to the intersection of Highway 60 and Highway 39, then south along Highway 39 to the 30-mile arc of the Tampa ASR, clockwise along the Tampa ASR 30-mile DME arc to Sarasota, FL, 10-mile arc, then counterclockwise along the Sarasota 10-mile DME arc to the point of beginning.

§ 71.501 [Amended]

3. § 71.501 is amended as follows:

Tampa International Airport, FL [Removed]

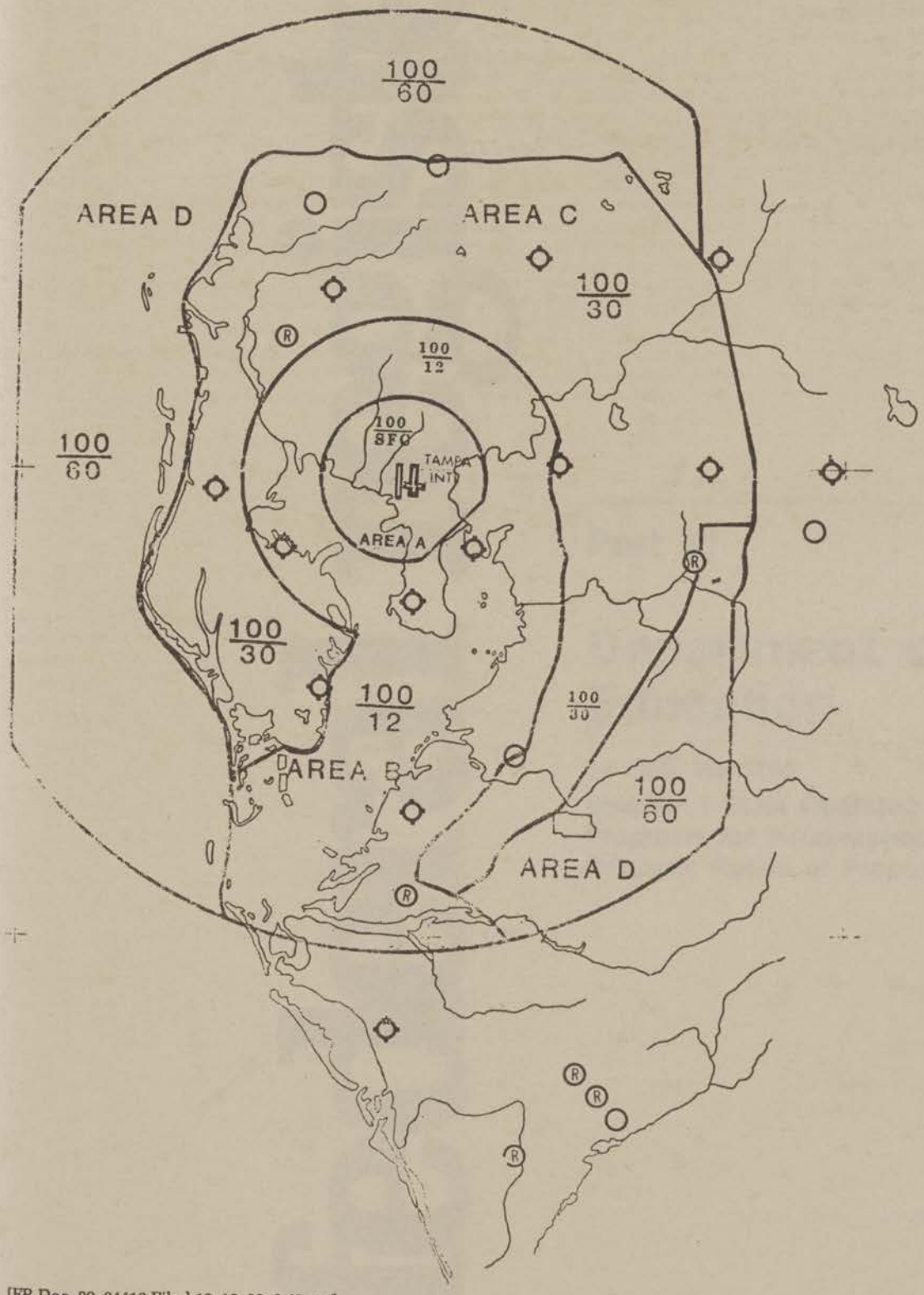
Issued in Washington, DC, on October 11, 1989.

Harold W. Becker,

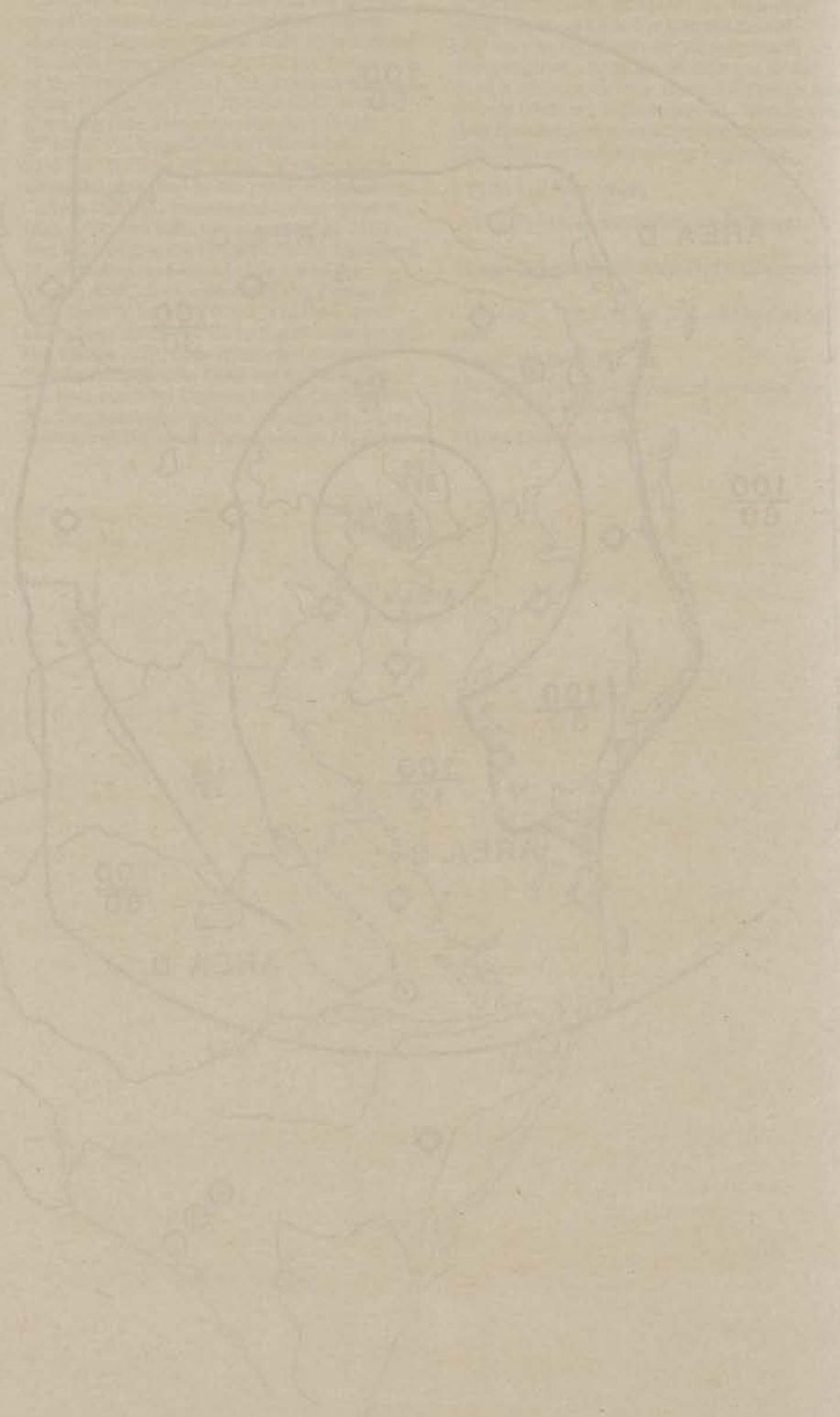
Manager, Airspace-Rules and Aeronautical Information Division.

BILLING CODE 4910-13-M

TAMPA TCA PROPOSAL



[FR Doc. 89-24412 Filed 10-16-89; 8:45 am]
BILLING CODE 4910-13-C



federal register

Tuesday,
October 17, 1989

Part VI

Department of Education

34 CFR Part 302

Chapter 1 State Operated or Supported Programs for Handicapped Children Program; Notice of Proposed Rulemaking

DEPARTMENT OF EDUCATION

34 CFR Part 302

RIN 1820-AA83

Chapter 1 State Operated or Supported Programs for Handicapped Children Program

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary issues proposed regulations for the Chapter 1 State Operated or Supported Programs for Handicapped Children program (Chapter 1 Handicapped program) authorized under Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965 (School Improvement Amendments of 1988). This program provides financial assistance to State operated and supported programs and projects to supplement special education and early intervention services for handicapped infants, toddlers, and children.

DATE: All comment must be received on or before December 18, 1989.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Lucille Sleger, Program Administration Branch, Division of Assistance to States, Office of Special Education Programs, Department of Education, 400 Maryland Avenue SW., Switzer Building, Room 3615 MES 2720, Washington, DC 20202; telephone: (202) 732-1104.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Mr. William Tyrrell, Division of Assistance to States, Office of Special Education Programs, Department of Education, 400 Maryland Avenue SW., Switzer Building, Room 3625, MES 2720, Washington, DC 20202; telephone: (202) 732-1025.

SUPPLEMENTARY INFORMATION: The School Improvement Amendments of 1988 supersedes the provisions of Chapter 1 of the Education Consolidation and Improvement Act of 1981 (ECIA). These proposed regulations set out the proposed requirements for implementing this revised program. Except where specifically noted, the regulatory changes identified in the following discussion effectuate changes in the statutory requirements for this program.

1. Application of the Education Department General Administrative Regulations

In order to provide additional guidance and to ensure that Chapter 1 funds are spent only for authorized program purposes, the Secretary proposes in § 302.4 to make certain provisions of the Education Department General Administrative Regulations (EDGAR) applicable to programs under this part, and to modify the application of certain other provisions of EDGAR that are now made applicable by the current program regulations. These proposed changes would result in rules applying EDGAR to this program that are consistent with recent regulations for the other Chapter 1 programs.

In determining which provisions of EDGAR should apply, the Secretary carefully balanced the need for basic program accountability with the important principle of minimum Federal interference in State and local affairs. In particular, the proposed regulations allow States to use their own procedures to ensure accountability with respect to matters governed by two Office of Management and Budget (OMB) circulars: A-102 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), currently codified for programs of the Department of Education in 34 CFR part 80; and A-87 (Principles for Determining Costs Applicable to Grants and Contracts with State and Local Governments) as amended on January 28, 1981. Only if a State chooses not to apply its own procedures would the provisions in these circulars apply to the Chapter 1 Handicapped program.

If a State wishes to use its own procedures instead of those in the two OMB circulars as implemented in EDGAR, its procedures would have to meet the three general criteria in § 302.2(a)(4). A State's procedures would not have to be submitted to the Secretary for approval, but would have to be available for Federal inspection. If a State does not implement its own written requirements by the effective date of the final regulations, but wishes to develop them, the requirements in Part 80 would apply until the State's written requirements are adopted. In the event a State's requirements are determined to be insufficient, the enforcement provisions in part E of the General Education Provisions Act (GEPA) would apply, including the due process provisions in that part.

Many local educational agencies and State agencies participating in the Chapter 1 Handicapped program also receive assistance for their programs for handicapped children under Part B and H of the Education of the Handicapped Act (EHA), and are required to comply with A-102 and A-87 with regard to the EHA funds. The Secretary is interested in whether commenters believe the approach outlined above, which would afford States significant discretion over these matters with regard to the Chapter 1 Handicapped program, is helfpul, or whether, in the instance of the Chapter 1 Handicapped program, it would be better to require compliance with part 80 and A-87 since many recipients of the Chapter 1 Handicapped program funds also receive EHA funds.

In addition, these proposed regulations would modify the applicability of provisions in part 76 (State-Administered Programs); continue the applicability of part 77 (Definitions that Apply to Department Regulations); and make applicable part 78 (Education Appeal Board), part 81 (General Education Provisions Act—Enforcement), and part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)). The Secretary believes that these regulations are the minimum necessary for ensuring basic accountability without imposing undue paperwork and additonal administrtive burdens on State and local educational agencies.

Several of the applicable provisions in part 76 contain cross-references to 34 CFR part 74, which was superseded by part 80 on October 1, 1988 with respect to State and local governments. The outdated cross-references in part 76 to part 74 (now part 80) are not intended to make any provisions of part 80 applicable to programs under this part that a State has not, on its own, decided to apply.

The regulations in part 85 were adopted by the Department in two separate rulemaking actions. First, under Executive Order 12549, 27 executive agencies joined together to promulgate common regulations authorizing debarment and suspension of individuals and organziations from nonprocurement programs of the U.S. Government. The Department implemented this Executive Order in subparts A through E of part 85 (regular debarment and suspension) (53 FR 19161 (May 26, 1988)). Second, under the Drug-Free Workplace Act of 1988, the 27 agencies were joined by seven other agencies to issue debarment and suspension regulations implementing the new Act. The Department implements the Drug-Free Workplace Act of 1988 in

subpart F of part 85 (drug-free debarment and suspension) (54 FR 4946 (January 31, 1989)).

The regular debarment and suspension regulations provide that statutory entitlements and mandatory awards (but not subtier awards thereunder which are not themselves mandatory) are not covered by the debarment and suspension regulations (34 CFR 85.110(a)(2)(i)). The Secretary has concluded that this exception from coverage precludes the Secretary from denying funding under this or any other State-administered program based on a regular debarment or suspension. The exception also would prevent the Department from denying assistance to a subgrantee under this program or any other program in which subgrantees are entitled to funds if they meet certain requirements.

While the Department could not cut off funds to a State or mandatory subgrantee, the Secretary has determined that all lower tier covered transactions, such as the employment of an administrator (a covered transaction under 34 CFR 85.110(a)(1)(ii)(A)), would be subject to the debarment and suspension regulations. Such a debarment would not prohibit the receipt of funds by the State or mandatory subgrantee. However, the debarment would prohibit the subject individual from acting as a principal (as defined by 34 CFR 85.105(p)) for the State or subgrantee or from participating in any other covered transaction under nonprocurement programs of the Federal Government.

As a result, if the Department discovered any activity by an administrator paid from program funds that would constitute grounds for debarment, the debarring official for the Department would take action to debar the individual. Further, if a State continued to do business with the individual, the Department would consider issuing a Program Determination Letter to the State to recover the program funds.

Given these conclusions, the Secretary has determined that the Department must collect primary tier certifications from grantees under this and other State-administered programs. Under 34 CFR 85.510(a), however, a State need only certify as to its principals. The OMB-approved forms used by the Department at this time for primary tier transactions do not yet indicate that they apply only to principals. The Department will submit to OMB for approval a new form that would apply only to principals of a State.

Similarly, as to mandatory subgrantees, States must collect the lower tier certifications from both mandatory and discretionary lower tier participants. As with the primary tier certifications submittted by States under this program, the Department will submit a new lower tier certification form to OMB for approval that would apply only to principals of mandatory subgrantees.

However, pending approval of the new forms, the Department will use the current forms with the understanding that they apply only to principals of States under State-administered programs and to principals of mandatory subgrantees under State-administered programs.

The drug-free debarment and suspension regulations require all grantees receiving a grant from any Federal agency to certify that they will maintain a drug-free workplace. The regulations do not apply to subgrantees. The Department has authority to deny funds under entitlement programs to grantees that fail to meet these requirements. Regarding the State certifications required under these regulations, the Department will continue to use currently approved forms. Because the regulations do not apply to subgrantees, there is no need for States to take any other action to fully implement the requirements.

2. Definitions of Handicapped Children and Handicapped Infants and Toddlers

These proposed regulations use a definition of handicapped infants and toddlers based upon the definition in part H of the EHA. Infants and toddlers who are at risk of being handicapped (who are included in the Part H definition) are not included in this definition because, under the Chapter 1 statute, they are not eligible to be counted or served. The Secretary does not believe that this definition constitutes a substantive change from the meaning of the Chapter 1 statutory definition. The purpose of using this definition is to avoid unnecessary labeling of handicapped infants and toddlers with specific handicapping conditions.

3. The State Application for a Grant

As required by the statute, the proposed regulations require a State educational agency to submit an application to the Secretary to receive funds under this program. The existing regulations do not require State educational agencies to submit an application to the Secretary.

The proposed regulations provide assurances that must be included in each State educational agency's application for funds under this part. The statutory assurance include a requirement that State educational agencies monitor the compliance of programs and projects receiving Chapter 1 Handicapped program funds with the requirements of Parts B and H of the EHA. In addition to assurances specifically required by the statute, the application also requires an assurance that programs under this part be under the general supervision of persons responsible for educational programs for handicapped infants, toddlers, and children in the State educational agency, that the educational program meet the standards of the State educational agency, and that the State educational agency ensure the accuracy of child count information.

4. The Child Count Requirements

Under the provisions of the School Improvement Amendments of 1988, all of the grant funds under this part go directly to State educational agencies based on a child count and, through them, are distributed to State agencies and local educational agencies. The proposed regulations establish December 1 as the child count date for these programs and February 1, as the date for submitting these data to the Secretary. The February 1 reporting date is not statutory. These dates differ from the dates used in the existing Chapter 1 Handicapped program regulations, but they correspond to the dates used under Part B of the EHA.

In accordance with statutory changes, the age range of children who may be counted and served under this program is extended to include children through age twenty-one. Formerly, the statutory age range for services was from birth through age twenty.

Handicapped infants and toddlers, as that term is defined in these proposed rules, may be counted. However, infants and toddlers who merely are at risk of becoming developmentally delayed if not provided early intervention services cannot be included in the child count, since the statute requires the existence of a handicapping condition in order to include a child in the count.

The statute permits the counting of handicapped infants, toddlers, and children enrolled in programs or schools operated or supported by a State agency responsible for providing free public education or early intervention services. The transfer provision, however, is more restrictive with regard to handicapped infants and toddlers than the State operated or supported school portion of the count. In accordance with section

1221(d)(1) of the statute, § 302.22(a)(2) permits counting a handicapped infant, toddler, or child who transfers to a local educational agency from a State operated or supported program if (1) that infant, toddler, or child was receiving a free appropriate public education according to the provisions in Part B of the EHA and (2) continues to receive a free appropriate public education.

These proposed regulations retain the requirement in the current regulations that a transfer student must have been enrolled in a State operated or supported program for at least one school year in order to be counted for the purpose of generating grant funds. Without this stipulation, children who are enrolled in programs under this part for a short period would be eligible to be counted and to generate funding under the transfer provision until they reached age twenty-two. This would result in inequities among recipients of funds under this part.

These proposed regulations also reflect a statutory change that permits children counted for the Chapter 1 Programs for Neglected and Deliquent Children program to be counted for this part if they are eligible to be served under both programs.

5. Application for a Subgrant

Unlike the previous procedures used for the Chapter 1 Handicapped program which mandated that the State educational agency could only serve as "fiscal agent" for grants to other applicant State agencies, State agencies and local educational agencies must apply directly to the State educational agency for a subgrant under this program. The proposed regulations describe the contents of an application for a subgrant. The State educational agency must also meet the application procedures and requirements of proposed §§ 302.30 and 302.31 to use Chapter 1 Handicapped program funds. If a local educational agency serves fewer than five children, the State educational agency may accept a letter of request instead of an application.

6. Distribution of Subgrant Funds

These proposed regulations describe how the State educational agency distributes the State's total grant among eligible State and local educational agencies for programs and projects under this part. The proposed regulations at § 302.42 govern how funds can be distributed to local educational agencies that serve children who transferred from a State operated or supported program. Proposed § 302.43 establishes rules for distributing funds based on counts of children who have since moved from the program that counted them. The proposed regulations at § 302.44 also describe how State educational agencies can redistribute excess funds.

7. Fiscal Requirements

Subpart F of these proposed regulations describes how the funds provided under this part may be used. Proposed § 302.51(a) includes a nonexclusive list of activities for which Chapter 1 Handicapped program funds can be used that is contained in the statute at section 1223(a). Proposed § 302.51 (b) and (c) restate longstanding policy positions of the Department under this program that (1) parents cannot be charged for special education and related services, including room and board and nonmedical care provided to children who are served under this program and who have been placed in residential care for educational reasons, and (2) that funds available to State agencies and local educational agencies under this program cannot be used for the payment of tuition and fees. Although construction costs were allowable expenses under this program in the past, under section 1223(b) of the statute use of Chapter 1 Handicapped program funds for construction costs is specifically prohibited. This prohibition is reflected in the proposed regulations in the incorporation by reference of 34 CFR 76.533 in proposed § 302.4(a).

Proposed §§ 302.52 and 302.53 contain the maintenance of effort and waiver of maintenance of effort rules derived from section 1018(a) of the statute. Section 1224(c)(4) of the statute requires that State educational agencies applying for Chapter 1 Handicapped program funds assure the Secretary that they meet the maintenance of effort requirements. These proposed regulations are modified only slightly from the rules adopted by the Chapter 1 Program in Local Educational Agencies program.

Proposed § 302.54 contains the supplement, not supplant, requirement. This provision and proposed §§ 302.55 (the prohibition against using Chapter 1 funds as general aid), 302.56(a) (funds for State administration), and 302.57 (prohibition against considering payments under this part in determining State aid) are closely modeled on regulatory provisions adopted by the other Chapter 1 programs on the same statutory provisions that are the basis for these proposed regulations. Proposed § 302.56(b) governs a State educational agency's use of project funds when it is functioning in the role of a State agency directly responsible for the education of handicapped infants, toddlers, and children. The Secretary invites comment on whether additional guidance should be provided on the supplement, not supplant, requirement, particularly on what services can or cannot be paid for with Chapter 1 funds.

8. Post Award Conditions

Information about how agencies must demonstrate that children benefit from programs and projects funded under this program, the relationships between this part and Parts B and H of the EHA, the responsibility of public agencies for contracted services, the requirements for State complaint procedures, and other State administrative matters are in subpart G of these proposed regulations. These proposed regulations also include rules for the inclusion of uncounted children in the programs and projects funded under this part at proposed § 302.60. Formerly, children who were on the membership roll of a State agency receiving assistance under this program or who had transferred to local educational agencies could be served whenever space was available in an agency's program or project if they were otherwise eligible to be counted but had not been in the program on the count date. In accordance with the statutory changes in the Chapter 1 Handicapped program, these proposed regulations do not require that priority for service be given to children who actually were counted. Instead, all handicapped children for whom the State is directly responsible for providing special education or early intervention services and who are enrolled in State operated or supported programs (including schools or programs providing special education and related services for handicapped children under contract or other arrangement with the State agency) or who transferred from such a program and receive special education or early intervention services from local educational agencies are eligible to be served. Other handicapped children may participate in the programs and activities funded under this part if all children described above have been fully served. However, children from birth through age two who may be at risk of having substantial developmental delays if they are not provided early intervention services, but who are not handicapped infants and toddlers as that term is defined in these proposed regulations, may not be served.

Proposed § 302.88 contains special rules to govern the relationship of services under this part for handicapped infants and toddlers and the requirements of Parts B and H of the EHA during the phase-in period under Part H and after a State has fully

adopted Part H of the EHA. With regard to early intervention services, the Secretary believes that allowing States to charge parents of children enrolled in a Chapter 1 Handicapped program fees for early intervention services would be a departure from the Department's longstanding interpretation of the Chapter 1 statute that services required under the Chapter 1 Handicapped program must be at no cost to parents. Therefore, proposed § 302.63(d) would prohibit programs receiving assistance under this part from charging parents for any early intervention services provided to them or their handicapped infant or toddler. Section 1222(a) of the statute, however, vests in the Secretary the policy discretion to determine the extent to which the provision of Part H of the EHA, should apply to the Chapter 1 Handicapped program. The Secretary believes that the Department's prior interpretation should be reflected in its policy under the School Improvement Amendments of 1988 with regard to fees for early intervention services provided to infants and toddlers who participate in the Chapter 1 Handicapped program because similar services under this program have traditionally been provided at no cost to parents. The Secretary invites public comment on whether States should be permitted to charge parents of handicapped infants and toddlers for required services.

9. State Complaint Procedures

In the Conference Report accompanying the statute, Congress suggested that the Secretary "issue amended regulations making 34 CFR 76.780–76.782 applicable to Chapter 1." *See* H.R. Rept. 567, 100th Cong., 2d Sess. 341 (1988). Prior to the publication of these proposed regulations, the Department published proposed changes to the EDGAR. *See* 53 FR 31580–31606 (August 18, 1988). One of those proposed changes was the removal of the State complaint procedures in 34 CFR 76.780–76.782 of EDGAR and the transfer of those procedures, with some modification, to the regulations implementing Part B of the EHA, which had shown the greatest need for the complaint procedures. In response to comments on those proposed EDGAR revisions, the Secretary is reconsidering whether to remove the complaint procedures from EDGAR. Since no final action has yet been taken on the changes proposed to EDGAR, and in light of the Secretary's determination that the EDGAR procedures need some minor adjustments to accommodate distinctive features in various educational programs, the Secretary has included State complaint procedures from EDGAR, with appropriate modifications, in these proposed regulations.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

To the extent that these proposed regulations would affect States and State agencies, the regulations would not have an impact on small entities. States and State agencies are not defined as "small entities" in the Regulatory Flexibility Act.

The small entities that would be affected by these proposed regulations are small local educational agencies receiving Federal funds under this program. However, the regulations would not have a significant economic impact on the small local educational agencies affected because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1980

Sections 302.11, 302.21, 302.22, 302.30, 302.31, 302.32, 302.61, 302.64, and 302.66 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: James D. Houser.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to thse proposed regulations will be available for public inspection, during and after the comment period, in Room 3615, Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

List of Subjects in 34 CFR Part 302

Education, Education of handicapped, Elementary and Secondary education, Grant programs education.

Dated: July 20, 1989.

Lauro F. Cavazos,

Secretary of Education.

(Catalog of Federal Domestic Assistance No. 84.009; Chapter 1 State Operated or Supported Programs for Handicapped Children Program)

The Secretary proposes to amend title 34 of the Code of Federal Regulations by revising part 302 to read as follows:

PART 302—CHAPTER 1 STATE OPERATED OR SUPPORTED PROGRAMS FOR HANDICAPPED CHILDREN PROGRAM

Subpart A—General

Sec.

302.1 What is the Chapter 1 State Operated or Supported Programs for Handicapped Children program?
302.2 Who is eligible for an award?
302.3 What kinds of activities may be assisted?
302.4 What regulations apply?
302.5 What definitions apply to this program?
302.6–302.9 [Reserved]

Subpart B—How does a State Apply for a Grant?

302.10 How does a State apply for a grant?
302.11 What must be included in an application for a grant?
302.12–302.19 [Reserved]

Subpart C—How Does the Secretary Make a Grant to a State?

302.20 How does the Secretary determine the amount of a grant to a State?
302.21 What are the dates for counting and reporting the number of enrolled children?
302.22 Which children are to be counted?
302.23 Which handicapped infants, toddlers, and children may not be counted?
302.24 Which agency may count a child receiving services form more than one agency?
302.25–302.29 [Reserved]

Sec.

Subpart D—How Does an Applicant Apply for a Subgrant?

302.30 What are the requirements for a State agency or local educational agency to receive a subgrant?
302.31 What are the contents of an application for a subgrant?
302.32 What are the simplified application procedures for certain local educational agencies?
302.33–302.39 [Reserved]

Subpart E—How Does a State Make a Subgrant to an Applicant?

302.41 How does the State educational agency determine the amount of a subgrant to a State agency?
302.42 How does the State educational agency determine the amount of a subgrant to a local educational agency?
302.43 How are funds attributable to children who leave the local educational agency distributed?
302.44 How does the State educational agency redistribute excess funds under this part?
302.45–302.49 [Reserved]

Subpart F—What Fiscal Requirements Must Be Met By a State and Its Subgrantees?

302.50 How may funds be used under this program?
302.51 What are allowable costs under this program?
302.52 What maintenance of effort requirements apply to the programs and projects under this part?
302.53 Under what circumstances may a State educational agency waive the maintenance of effort requirement?
302.54 What is the supplement, not supplant, requirement that applies to programs and projects under this part?
302.55 What is the prohibition against using Chapter 1 funds to provide general aid?
302.56 What funds are available to a State educational agency to carry out its responsibilities under the Chapter 1 Handicapped program?
302.57 What is the prohibition against considering payments under this part in determining State aid?
302.58–302.59 [Reserved]

Subpart G—What Other Post-Award Conditions Must Be Met by a State and Its Subgrantees?

302.60 May uncounted children be served in programs and projects under this part?
302.61 What evaluation and assessment requirements apply for a State and its subgrantees?
302.62 What special requirements apply under this part?
302.63 How does a State educational agency administer this program in a manner consistent with Part H of the EHA?
302.64 What complaint procedures shall a State adopt?
302.65 What minimum complaint procedures shall a State adopt?
302.66 How may an organization or individual file a complaint?

Sec.

302.67 What requirements apply to State rulemaking and other State educational agency responsibilities?
302.68–302.69 [Reserved]

Authority: 20 U.S.C. 2791 *et seq.*, unless otherwise noted.

Subpart A—General

§ 302.1 What is the Chapter 1 State Operated or Supported Programs for Handicapped Children program?

Under the Chapter 1 State Operated or Supported Programs for Handicapped Children program (Chapter 1 Handicapped program), the Secretary provides financial assistance to State educational agencies and, through them, to State agencies and local educational agencies to provide services designed to supplement special education or early intervention services for children—

(a)(1) To whom the State is directly responsible for providing special education or early intervention services (including schools or programs providing special education and related services for handicapped children under contract or other arrangements); and

(2) Who are participating in a State operated or State supported school or program for handicapped children (including schools and programs operated under contract or other arrangement with a State agency); or

(b) Who previously participated in a State operated or State supported program and are receiving special education or early intervention services from local educational agencies; and

(c) Other handicapped children, if the handicapped children aged birth through twenty-one described in paragraphs (a) and (b) of this section have been fully served.

(Authority: 20 U.S.C. 2792(a), 2795)

§ 302.2 Who is eligible for an award?

(a) Each State educational agency that meets the requirements of this part is eligible to receive a grant for each fiscal year to support programs and projects under this part.

(b) The following public agencies are eligible to receive subgrants from the State educational agency:

(1) State agencies that operate or support schools and programs for handicapped children.

(2) Local educational agencies that provide services to handicapped children who formerly were enrolled in schools or programs operated or supported by a State agency.

(Authority: 20 U.S.C. 2791(a)(1), 2794)

§ 302.3 What kinds of activities may be assisted?

The Secretary makes payments to a State to carry out activities, programs, and projects, including the acquisition of equipment, that are designed to supplement the special education or early intervention needs of handicapped children participating in programs and projects funded under this part.

(Authority: 20 U.S.C. 2792(a))

§ 302.4 What regulations apply?

The following regulations apply to this part:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 76 (State-Administrated Programs) as follows:

(i) Subpart A (General), except for §76.3 (ED general grant regulations apply to these programs).

(ii) Sections 76.125 through 76.137 (Consolidated Grant Applications for Insular Areas).

(iii) Section 76.401 (Disapproval of an application—opportunity for a hearing).

(iv) Subpart F (What Conditions Must Be Met by the State and its Subgrantees?), except for the following sections:

(A) Sections 76.580–76.581 (Coordination).

(B) Sections 76.650 through 76.662 (Participation of Students Enrolled in Private Schools).

(C) Section 76.684 (Day care services).

(D) Section 76.690 (Energy conservation awareness).

(v) Subpart G (What Are the Administrative Responsibilities of the State and Its Subgrantees?), except for the following sections:

(A) Sections 76.770 through 76.772 (State Administrative Responsibilities).

(B) Section 76.780 (A State shall adopt complaint procedures).

(C) Section 76.781 (Minimum complaint procedures).

(D) Section 76.782 (An organization or individual may file a complaint).

(vi) Subpart H (What Procedures Does the Secretary Use to Get Compliance?).

(2) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(3) 34 CFR part 78 (Education Appeal Board).

(4) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), unless a State formally adopts its own written fiscal and administrative requirements for expending and accounting for all funds received by State educational agencies, other State agencies, and local educational agencies under this part.

These requirements must be available for Federal inspection and must—

(i) Be sufficiently specific to ensure that funds received under this part are used in compliance with all applicable statutory and regulatory provisions;

(ii) Ensure that funds received under this part are only spent for reasonable and necessary costs of operating programs under this part; and

(iii) Ensure that funds received under this part are not used for general expenses required to carry out other responsibilities of State or local governments.

(5) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(6) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for a Drug-Free Work Place (Grants)).

(b) The regulations in this part 302.

(c) The regulations in 34 CFR part 300 (Part B of the Education of the Handicapped Act (EHA), Assistance to States for Education of Handicapped Children), with respect to the rights and procedural safeguards under part B of EHA.

(d) The regulations in 34 CFR part 303 (Part H of the EHA, Early Intervention Programs for Infants and Toddlers with Handicaps), with respect to the rights and procedural safeguards under Part H of the EHA that apply to public agencies receiving funds under this part.

(Authority: 20 U.S.C. 1412(1)–(6), 1413(a), 2791 *et seq.*, 2831(a))

§ 302.5 What definitions apply to this program?

(a) *Definitions in the Elementary and Secondary Education Act of 1965.* The following terms used in this part are defined in section 1471 of the Elementary and Secondary Education Act of 1965:

Equipment
Free public education
Local educational agency
Parent
State educational agency

(Authority: 20 U.S.C. 2891)

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget
Contract
EDGAR
Facilities
Fiscal Year
GEPA
Grant
Grantee
Private
Project
Public
Secretary
State
Subgrant
Subgrantee

(Authority: 20 U.S.C. 2791 *et seq.*)

(c) *Definitions in 34 CFR part 300.* The following definitions in 34 CFR part 300 apply to this part:

Free appropriate public education (34 CFR 300.4)
Individualized education program (34 CFR 300.340)
Public agency (34 CFR 300.11)
Related services (34 CFR 300.13)
Special education (34 CFR 300.14)

(Authority: 20 U.S.C. 1401)

(d) *Definitions in Part H of the EHA.* The following definition in section 672(2) of part H of the EHA applies to this part, except for section 672(2)(B):

Early intervention services

(Authority: 20 U.S.C. 1472(2))

(e) *Other definitions.* The following defintions also apply to this part:

"Act" means Chapter 1 of title I of the Elementary and Secondary Education Act of 1965, as amended.

(Authority: 20 U.S.C. 2701)

"EHA" means Education of the Handicapped Act, as amended.

(Authority: 20 U.S.C. 1401 *et seq.*)

"Handicapped children" means children who by reason of their handicap require special education and related services and who are mentally retarded, hard of hearing, deaf, speech or language impaired, visually impaired, seriously emotionally disturbed, orthopedically impaired, deaf-blind, multihandicapped, other health impaired, or have specific learning disabilities, as those terms are defined in 35 CFR 300.5(b).

(Authority: 20 U.S.C. 2791(a)(2))

"Handicapped infants and toddlers" means individuals from birth through age two, who need early intervention services because they—

(1) Are experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in one or more of the following areas: cognitive development, physical development, language and speech development, psychosocial development, or self-help skills; or

(2) Have a diagnosed physical or mental condition that has a high probability of resulting in developmental delay.

(Authority: 20 U.S.C. 1472(1))

"State agency" means an institution or agency of the State that has direct responsibility established under State statute, State regulation, signed agreement between respective agency officials, or other documents, for providing free public education or early intervention services to handicapped infants, toddlers, or children in schools or programs operated or supported by the State agency. The term does not include an agency whose responsibility for handicapped infants, toddlers, or children is limited solely to the distribution of State financial assistance to other agencies that State law makes directly responsible for providing free public education or early intervention services.

(Authority: 20 U.S.C. 2791(c)(1))

"State operated program" means a school or program for handicapped infants, toddlers, or children that is administered directly by a State agency.

(Authority: 20 U.S.C. 2791(c)(1))

"State supported program" means a school or program for handicapped infants, toddlers, or children that is operated under contract or other arrangement with a State agency.

(Authority: 20 U.S.C. 2791(c)(1))

§§ 302.6–302.9 [Reserved]

Subpart B—How Does a State Apply for a Grant?

§ 302.10 How does a State apply for a grant?

In order to receive funds under this part, the State educational agency shall submit an application to the Secretary that meets the requirements in § 302.11.

(Authority: 20 U.S.C. 2791(b))

§ 302.11 What must be included in an application for a grant?

A State educational agency shall include the following assurances in its application:

(a) Each educational program for handicapped infants, toddlers, or children receiving funds under this part, including each program administered by any other public agency—

(1) Is under the general supervision of the persons responsible for educational programs for handicapped infants, toddlers, or children in the State educational agency; and

(2) Meets the education standards of the State educational agency.

(b) All child count information reported under § 302.22 is accurate and submitted in the manner required by the Secretary.

(c) All handicapped children in a State, other than handicapped infants and toddlers, who are participating in programs and projects funded under this part receive a free appropriate public education, and these children and their

parents are provided all the rights and procedural safeguards under Part B of the EHA and this part.

(d) All handicapped infants and toddlers in the State participating in programs and projects funded under this part receive early intervention services, and these infants and toddlers and their families are provided the rights and procedural safeguards under Part H of the EHA.

(e) Programs and projects receiving assistance under this part are administered in a manner consistent with this part, subpart 2 of part F of chapter 1 of title I of the Elementary and Secondary Education Act of 1965, as amended, Part B of the EHA, and, as determined by the Secretary to be appropriate, Part H of the EHA, including the monitoring by the State educational agency of compliance under those programs listed in paragraphs (d) and (e) of this section.

(f) Programs and projects funded under this part are coordinated with services under the EHA.

(g) For fiscal year 1991, and each subsequent fiscal year, the State educational agency will administer the program authorized by this part through the State office responsible for administering Part B of the EHA.

(h) The State educational agency will report annually to the Secretary—

(1) The number of children served under this part for each disability and age category as described in section 618(b)(1) of the EHA;

(2) The number of children served under this part in each of the educational placements described in section 618(b)(2) of the EHA reported separately for each type of program listed in paragraph (h)(3) of this section;

(3) The number of children served under this part in State operated or supported programs and local educational agency programs for children previously served in those State programs; and

(4) The uses and allocations of funds under this part.

(i) The State educational agency will report to the Secretary such other information as the Secretary may reasonably request.

(Authority: 20 U.S.C. 1412(6), 1476(b), 2791(b), 2792(a), 2836(a))

§§ 302.12-302.19 [Reserved]

Subpart C—How Does the Secretary Make a Grant to a State?

§ 302.20 How does the Secretary determine the amount of a grant to a State?

The Secretary awards grants to participating States in the amounts calculated in accordance with the formula described in section 1221 (c), (d), and (e) of the Act.

(Authority: 20 U.S.C. 2791 (c)–(e))

§ 302.21 What are the dates for counting and reporting the number of enrolled children?

(a) Each State agency and local educational agency shall count the handicapped infants, toddlers, and children described in § 302.22 enrolled on December 1 of each year and shall report that count to the State educational agency.

(b) The State educational agency shall submit a report to the Secretary by the following February 1 that provides the information required by paragraph (a) of this section.

(Authority: 20 U.S.C. 1411(a)(3), 2791(c))

§ 302.22 Which children are to be counted?

(a) The following children are to be counted for purposes of computing a grant under this part:

(1) Handicapped infants, toddlers, and children from birth through twenty-one years of age enrolled in programs or schools for handicapped infants, toddlers, and children operated or supported by a State agency which is directly responsible for providing free public education for handicapped children or early intervention services for handicapped infants and toddlers (including schools or programs providing special education and related services or early intervention services under contract or other arrangements with such agencies); and

(2) A handicapped infant, toddler, or child to whom the State was directly responsible for providing special education or early intervention services and who was enrolled in a State operated or supported program, including schools or programs providing special education and related services under contract or other arrangement with a State agency, and is now enrolled in a program operated or supported by a local educational agency if that child—

(i) Was enrolled in a State operated or supported program for at least one school year, as that period is defined under State law for schools serving nonhandicapped as well as handicapped infants, toddlers, and children and has left that program in order to participate in such a program operated or supported by a local educational agency;

(ii) Was receiving and continues to receive a free appropriate public education; and

(iii) The State educational agency transfers to the local educational agency in whose program the child participates an amount equal to the sums received by the State educational agency under this part that are attributable to the child, to be used for the purposes set forth in § 302.51.

(b) Children in State operated or supported programs for neglected or delinquent children or in adult correctional institutions who are also eligible for programs under this part—

(1) May be counted for the purposes of generating funds under both this part and the Chapter 1 program for neglected and delinquent children if they are served under each of these programs.

(2) May be served under each of those programs.

(Authority: 20 U.S.C. 2791, 2795, 2812)

§ 302.23 Which handicapped infants, toddlers, and children may not be counted?

For purposes of computing an allocation under this part, handicapped infants, toddlers, and children may not be counted who—

(a) Are counted under Part B of the EHA;

(b) Are counted under the provisions of the Chapter 1 Migrant Education Program (34 CFR part 201);

(c) Are not receiving a free appropriate public education or early intervention services;

(d) Are individuals from birth through age two who are not handicapped infants and toddlers, even if they may be at risk of having substantial developmental delays if early intervention services are not provided to them; or

(e) Are handicapped children age three through five if a State is not eligible for a grant under section 619 of the EHA (*see* 34 CFR part 301).

(Authority: 20 U.S.C. 1411(a)(1)(A), 2791)

§ 302.24 Which agency may count a child receiving services from more than one agency?

If more than one public agency is directly responsible for providing a free public education to a child, the public agency that is primarily responsible for the child's education, as determined by the State educational agency, is the only public agency that may count that child under this part.

(Authority: 20 U.S.C. 2791)

§§ 302.25-302.29 [Reserved]

Subpart D—How Does an Applicant Apply for a Subgrant?

§ 302.30 What are the requirements for a State agency or local educational agency to receive a subgrant?

(a) *General.* A State agency, including a State educational agency, or a local

educational agency within a participating State may receive a subgrant under this part for any fiscal year if—

(1) It has on file with the State educational agency an application that contains the assurances and information required under § 302.31; and

(2) The application has been approved by the State educational agency.

(b) *Frequency of submission.* A State agency or a local educational agency shall file an application for a subgrant under this part with the State educational agency for a project period of not more than three fiscal years, including the first fiscal year for which a subgrant is made under that application.

(c) *Amendments to the application: updating of information in the application.* Prior to the receipt of project funds for any fiscal year, an eligible subgrantee shall update its project application by submitting to the State educational agency—

(1) Data showing that the agency has maintained fiscal effort in accordance with the requirements of § 302.52 if those data are not otherwise available to the State educational agency;

(2) A budget for the expenditure of funds under this part for that fiscal year;

(3) Any changes in policies or procedures that have occurred since th e submission of the most recent application; and

(4) Any other programmatic or fiscal information that the State educational agency may require to perform its duties under this part.

(Authority: 20 U.S.C. 2794(a)–(b))

§ 302.31 What are the contents of an application for a subgrant?

An application for a subgrant under this part must include—

(a) Assurances that—

(1) All handicapped children age three through twenty-one who are participating in programs and projects funded under this part receive a free appropriate public education, and that they and their parents are provided all the rights and procedural safeguards under Part B of the EHA and this part; and

(2) All handicapped infants and toddlers who are participating in programs and projects under this part receive early intervention services, and that they and their parents are provided all the rights and procedural safeguards under Part H of the EHA and this part;

(3) Services, programs, and projects conducted under this subpart are of sufficient size, scope, and quality to give reasonable promise toward meeting the special educational and early intervention needs of children to be served;

(4) Funds made available under the subpart will be used to supplement, not supplant, State and local funds in accordance with § 302.54;

(5) The agency will maintain its fiscal effort in accordance with § 302.52;

(6) The agency will conduct such evaluations and assessments as may be necessary to demonstrate that the programs and projects are beneficial to the children served;

(7) The parents of children to be served with funds under this subpart are provided an opportunity to participate in the development of the project application; and

(8) The agency will comply with all reporting requirements in a timely manner.

(b) Program information that—

(1) Indicates the number of children to be served;

(2) Shows the projected number of children to be served for each handicapping condition and age category as described in 34 CFR 300.5, 300.751, and 302.23;

(3) Describes the purpose or purposes of the project and the method or methods of evaluating the effectiveness of the services, projects, or programs to be provided under this part;

(4) Specifies the types of services to be provided with the funds furnished under this part;

(5) Describes the opportunities that parents will have to participate in the development of the project application; and

(c) Contains any other information the State educational agency may request.

(Authority: 20 U.S.C. 2794(b)–(c))

§ 302.32 What are the simplified application procedures for ceratin local educational agencies?

The State educational agency may accept, instead of a project application, a letter of request for payment from a local educational agency that serves children who have transferred from a State operated or supported program, if the local educational agency—

(a) Intends to serve with its payment fewer than five children who have transferred from a State operated or supported program; and

(b) Includes in its letter of request an assurance that the funds received under this part will be used to supplement the provision of the special education and related services provided to participating children.

(Authority: 20 U.S.C. 2794(d))

§§ 302.33–302.39 [Reserved]

Subpart E—How Does a State Make a Subgrant to an Applicant?

§ 302.41 How does the State educational agency determine the amount of a subgrant to a State agency?

(a) For each fiscal year, the state educational agency shall distribute the funds allocated under a grant to the State under this part to each eligible State agency on the basis of the December 1 child count.

(b) The State educational agency shall distribute to each eligible State agency an equal amount for each child counted.

(Authority: 20 U.S.C. 2791(c)–(d))

§ 302.42 How does the State educational agency determine the amount of a subgrant to a local educational agency?

A local educational agency receives the total amount of funds generated by each child who has transferred from a State operated or supported program if—

(a) The child was counted the previous December 1 according to the requirements in § 302.22(a)(2);

(b) The child was receiving on the previous December 1, and continues to receive, a free appropriate public education; and

(c) The local educational Agency meets the requirements in §§ 302.30 and 302.31.

(Authority: 20 U.S.C. 2791(d))

§ 302.43 How are funds attributable to children who leave the local educational agency distributed?

(a) A local educational agency shall notify the State educational agency when any handicapped infant, toddler, and child counted under this part leaves that agency's program or project.

(b) If the State educational agency has distributed funds generated by any of those infants, toddlers, or children to the local educational agency, the State educational agency shall require the local educational agency either to—

(1) Retain funds generated by those children under this part to serve other handicapped infants, toddlers, or children in the project or program supported under this part; or

(2) Return all or a portion of those funds to the State educational agency.

(c) The State educational agency may not transfer funds to a local educational agency if all infants, toddlers, and children counted under this part cease to be enrolled in that local educational agency.

(Authority: 20 U.S.C. 2791, 2831)

§ 302.44 How does the State educational agency redistribute excess funds under this part?

(a) *Reporting dates for estimated expenditures and redistribution.* (1) In any fiscal year, the State educational agency may set a date by which each State agency and local educational agency that receives an allocation under this part must report to the State the amount of funds that it estimates it will expend in carrying out the project described in its application.

(2) The State educational agency shall determine whether any of the amounts available to subgrantees as provided in §§ 302.41 and 302.42 will not be expended during the period of availability (excess funds).

(b) *Redistribution of excess funds.* The State educational agency shall make available any excess funds for allocation to other subgrantees, in the manner provided in §§ 302.41(a) and (b) and 302.42, if the State educational agency determines that a subgrantee will be able to use additional funds to carry out the programs or projects described in an approved application.

(Authority: 20 U.S.C. 2831)

§§ 302.45–302.49 [Reserved]

Subpart F—What Fiscal Requirements Must Be Met by a State and Its Subgrantees?

§ 302.50 How may funds be used under this program?

Funds under this program must be used to supplement the provision of special educational and related services for handicapped infants, toddlers, and children or early intervention services for handicapped infants and toddlers.

(Authority: 20 U.S.C. 2792(b))

§ 302.51 What are allowable costs under this program?

(a) Funds provided under this part may be used for programs and projects including, but not limited to—

(1) Services provided in early intervention, preschool, elementary, secondary, and transition programs;

(2) Acquisition of equipment and instructional materials, and telecommunications, sensory, and other technological aids and devices;

(3) Employment of special personnel;

(4) Training and employment of educational aides;

(5) Training in the use and provision of assistive devices and other specialized equipment;

(6) Training of teachers and other personnel;

(7) Training of parents of handicapped infants, toddlers, and children;

(8) Training of nonhandicapped children to facilitate their participation with handicapped infants, toddlers, and children in joint activities;

(9) Training of employees and independent living personnel involved in assisting the transition of handicapped children from school to work and independent living;

(10) Outreach activities to involve handicapped infants, toddlers, and children and their families more fully in a wide range of educational and recreational activities in their communities;

(11) Planning for, evaluation of, and dissemination of information about the programs and projects funded under this part.

(b) Parents of children served under this part may not be charged for special education or related services provided for those children, including the cost of room and board and nonmedical care that are provided in an institutional residential care facility in which the child is placed for educational purposes.

(c) Funds under this part may not be used for the payment of tuition and fees.

(Authority: 20 U.S.C. 2791(b), 2792(b), 2793)

§ 302.52 What maintenance of effort requirements apply to the programs and projects under this part?

(a)(1) *Basic standard.* A State educational agency, another State agency, or a local educational agency is eligible to receive its allocation of funds under this part for any fiscal year if the State educational agency finds that either the combined State and local fiscal effort per child or the aggregate expenditures of State and local funds with respect to the provision of required services to handicapped infants, toddlers, and children for the preceding fiscal year were maintained at a level not less than 90 percent of the combined fiscal effort per child or the aggregate expenditures of that agency and the State for the second preceding fiscal year.

(2) *Meaning of "preceding fiscal year."* For purposes of determining maintenance of effort, the "preceding fiscal year" is the Federal fiscal year or the twelve-month fiscal period most commonly used in a State for official reporting purposes prior to the beginning of the Federal fiscal year in which funds are available.

Example: For funds first made available on July 1, 1989, if a State is using the Federal fiscal year, the "preceding fiscal year" is Federal fiscal year 1988 (which began on October 1, 1987) and the "second preceding fiscal year" is Federal fiscal year 1987 (which began on October 1, 1986). If a State is using a fiscal year that begins on July 1, 1989, the "preceding fiscal year" is the 12 month period ending on June 30, 1988 and the "second preceding fiscal year" is the period ending on June 30, 1987.

(b) *Failure to maintain effort.* (1) If a State educational agency, another State agency, or a local educational agency fails to maintain effort and a waiver under § 302.53 is not granted, the State educational agency shall reduce that subgrantee's allocation of funds under this part in any fiscal year in the exact proportion to which the subgrantee fails to meet 90 percent of both the combined fiscal effort per student and aggregate expenditures (using the measure most favorable to the subgrantee) for the second preceding fiscal year.

(2) In determining maintenance of effort for the fiscal year immediately following the fiscal year in which the subgrantee failed to maintain effort, the State educational agency shall consider the subgrantee's fiscal effort for the second preceding fiscal year to be no less than 90 percent of the combined fiscal effort per student or aggregate expenditures (using the measure most favorable to the subgrantee) for the third preceding fiscal year.

Example: In Federal fiscal year 1990, a subgrantee fails to maintain effort because its fiscal effort in the preceding fiscal year (1988) is less than 90 percent of its fiscal effort in the second preceding fiscal year (1987). In assessing whether the subgrantee maintained effort during the next fiscal year (1991), the State educational agency may consider the subgrantee's expenditures for the second preceding fiscal year (1988) (the year that caused the subgrantee's failure to maintain effort) to be no less than 90 percent of the subgrantee's expenditures in the prior fiscal year (1987).

(Authority: 20 U.S.C. 2728(a) (1)–(2), 2794)

§ 302.53 Under what circumstances may a State educational agency waive the maintenance of effort requirement?

(a)(1) A State educational agency may waive, for one fiscal year only, the maintenance of effort requirement in § 302.52 if the State educational agency determines that a waiver would be equitable due to exceptional or uncontrollable circumstances. These circumstances include but are not limited to—

(i) A natural disaster; or

(ii) A precipitous and unforeseen decline in the financial resources of the subgrantee.

(2) A State educational agency may not consider tax initiatives or referenda to be exceptional or uncontrollable circumstances.

(b)(1) If the State educational agency grants a waiver under paragraph (a) of this section, the State educational

agency may not reduce the amount of the funds the subgrantee is otherwise entitled to receive under this part.

(2) In determining maintenance of effort for the fiscal year immediately following the fiscal year for which the waiver was granted, the State educational agency shall consider the subgrantee's fiscal effort for the second preceding fiscal year to be no less than 90 percent of the combined fiscal effort per student or aggregate (using the measure most favorable to the subgrantee) for the third preceding fiscal year.

Example: In Federal fiscal year 1990, a subgrantee secures a waiver because its fiscal effort in the preceding year (1988) is less than 90 percent of its fiscal effort in the second preceding fiscal year (1987) due to exceptional or uncontrollable circumstances. In assessing whether the subgrantee maintained effort during the next fiscal year (1991), the State educational agency may consider the subgrantee's expenditures for the second preceding fiscal year (1988) (the year for which the subgrantee needed a waiver) to be no less than 90 percent of the subgrantee's expenditures in the prior fiscal year (1987).

(Authority: 20 U.S.C. 2728(a)(3))

§ 302.54 What is the supplement, not supplant, requirement that applies to programs and projects under this part?

A State educational agency, another State agency, or a local educational agency may use funds received under this part only to supplement and, to the extent practical, increase the level of non-Federal funds that would, in the absence of such Federal funds, be made available for the provision of services to handicapped children participating in programs and projects assisted under this part and in no case may funds under this part be used to supplant those non-Federal funds.

(Authority: 20 U.S.C. 2728(b), 2794)

§ 302.55 What is the prohibition against using Chapter 1 funds to provide general aid?

A State educational agency, another State agency, or a local educational agency participating under this part may use Chapter 1 funds provided under this part only for programs and projects that are designed and implemented to meet the special education and early intervention needs of handicapped infants, toddlers, and children who are eligible to be served in accordance with the provisions of this part.

(Authority: 20 U.S.C. 2792)

§ 302.56 What funds are available to a State educational agency to carry out its responsibilities under the Chapter 1 Handicapped program?

(a) *Funds for State administration.* (1) Except as provided in paragraph (a)(2) of this section, a State educational agency shall use funds received under section 1404(a) of the Act for the proper and efficient performance of its State administrative duties under the Chapter 1 Handicapped program.

(2) The State educational agency may not use more than 15 percent of the funds referred to in paragraph (a)(1) of this section for indirect costs.

(b) *Funds for programs and projects.* A State educational agency that meets the requirements of §§ 302.2 and 302.31, and receives a subgrant under §§ 302.41 and 302.42, may use those funds only in accordance with the fiscal requirements of subpart F of this part.

(Authority: 20 U.S.C. 2793, 2794, 2824)

§ 302.57 What is the prohibition against considering payments under this part in determining State aid?

A State may not take into consideration payments under this part in determining—

(a) The eligibility of a State agency or local educational agency for State aid; or

(b) The amount of State aid to be paid to a State agency or local educational agency for free public education.

(Authority: 20 U.S.C. 2654)

§ 302.58–302.59 [Reserved]

Subpart G—What Other Post-Award Conditions Must Be Met by a State and Its Subgrantees?

§ 302.60 May uncounted children be served in programs and projects under this part?

Handicapped children who are not eligible to be counted, as described in § 302.23(a), are eligible for services under this part if all handicapped infants, toddlers, and children described in § 302.22 have been fully served.

(Authority: 20 U.S.C. 2795(2))

§ 302.61 What evaluation and assessment requirements apply for a State and its subgrantees?

A State educational agency, another State agency, or local educational agency that receives funds under this part shall collect and maintain evaluations and assessments needed to demonstrate the extent to which children benefited from the services provided by those programs and projects.

(Authority: 20 U.S.C. 2792(c))

§ 302.62 What special requirements apply under this part?

A State educational agency, another State agency, or a local educational agency that provides services through contracts or other arrangements is responsible for ensuring that the requirements of this part, 34 CFR part 300, and 34 CFR part 303 are met in providing these services.

(Authority: 20 U.S.C. 2791(c))

§ 302.63 How does a State educational agency administer this program in a manner consistent with Part H of the EHA?

(a) If a State does not participate in Part H of the EHA, the State shall insure that each handicapped infant or toddler receiving services under this part receives a free appropriate public education and all procedural protections required by Part B of the EHA and 34 CFR part 300.

(b) If a State participates in Part H of the EHA, during years one through four of its participation, the State can elect to provide handicapped infants or toddlers receiving services under this part with either a free appropriate public education and the procedural protections required by Part B of the EHA and 34 CFR Part 300 or early intervention services and the procedural protections required under Part H and 34 CFR part 303.

(c) If a State participates in Part H of the EHA, after the beginning of the fifth year of participation, a State shall ensure that all handicapped infants and toddlers receive early intervention services and the procedural protections required under Part H of the EHA and 34 CFR part 303.

(d) Early intervention services required under this part must be provided at no cost to parents.

(Authority: 20 U.S.C. 2792(a), 2831(a))

§ 302.64 What complaint procedures shall a State adopt?

A State shall adopt written procedures for—

(a) Receiving and resolving any complaint that the State or a subgrantee is violating a Federal statute or regulations that apply to this program;

(b) Reviewing an appeal from a decision of a subgrantee with respect to a complaint; and

(c) Conducting an independent on-site investigation of a complaint if the State determines that an on-site investigation is necessary.

(Authority: 20 U.S.C. 2831(a))

§ 302.65 What minimum complaint procedures shall a State adopt?

A State shall include the following in its complaint procedures:

(a) A time limit of 60 calendar days after the State receives a complaint—

(1) If necessary, to carry out an independent on-site investigation; and

(2) To resolve the complaint.

(b) An extension of the time limit under paragraph (a) of this section only if exceptional circumstances exist with respect to a particular complaint.

(c) The right to request the Secretary to review the final decision of the State.

(Authority: 20 U.S.C. 2831(a))

§ 302.66 How may an organization or individual file a complaint?

An organization or individual may file a written signed complaint with a State. The complaint must include—

(a) A statement that the State or a subgrantee has violated a requirement of a Federal statute or regulations that apply to a program; and

(b) The facts on which the statement is based.

(Authority: 20 U.S.C. 2831(a))

§ 302.67 What requirements apply to State rulemaking and other State educational agency responsibilities?

(a)(1) Except as provided in paragraph (b) of this section, Chapter 1 does not preempt, prohibit, or encourage State rules, regulations, or policies issued pursuant to State law.

(2) If a State issues rules, regulations, or policies, they may not be inconsistent with the provisions of the following:

(i) The Chapter 1 statute.

(ii) The regulations in this part.

(iii) Other applicable Federal statutes and regulations.

(b) A State may not issue rules, regulations, or policies that limit State agencies' or local educational agencies' decisions affecting funds received under this part regarding—

(1) Grade levels to be served;

(2) Basic skill areas to be addressed;

(3) Instructional settings, materials, or teaching techniques to be used;

(4) Instructional staff to be employed, so long as the staff meets State certification and licensing requirements for education personnel; or

(5) Other essential support services.

(c) Nothing in paragraph (b) of this section limits a State educational agency's—

(1) Authority to review and approve a State agency's or local educational agency's application; or

(2) Responsibility to ensure that a State agency or local educational agency uses funds under this part in accordance with all applicable requirements.

(d) The State shall identify any State rule, regulation, or policy relating to the administration and operation of Chapter 1 Handicapped programs funded under this part, including those based on State interpetation of any Federal law, regulation, or guideline, as a State-imposed requirement.

(e)(1)(i) Except as provided in paragraph (e)(1) (ii) and (iii) of this section, if a State issues major rules or regulations relating to the administration or operation of programs funded under this part, the State shall convene a State committee of practitioners to review before publishing any major proposed or final rule or regulation.

(ii) In an emergency situation in which a major rule or regulation must be issued within a very limited time to assist State agencies and local educational agencies with the operation of programs under this part, the State—

(A) May issue the regulation without consulting the committee of practitioners; but

(B) Shall immediately thereafter convene the State committee of practitioners to review the emergency rule or regulation prior to issuance in final form.

(iii) The State shall ensure that the committee of practitioners reviews non-major rules or regulations before publication.

(2) If a State does not issue rules or regulations relating to the administration or operation of programs funded under this part but issues policies that the State educational agency, other State agencies, and local educational agencies are required to follow, the State must comply with the requirements in this section for issuing rules and regulations.

(3)(i) The committee of practitioners must include—

(A) Administrators;

(B) Teachers;

(C) Parents;

(C) Members of local boards of education; and

(E) Representatives of private school children.

(ii) A majority of the committee must be representatives of State agencies and local educational agencies.

(iii) Members of the committee must be knowledgeable about the Chapter 1 Handicapped program.

(4) State educational agencies are encouraged to request from appropriate organizations recommendations for membership on the committee.

(Authority: 20 U.S.C. 2792, 2851)

§§ 302.68–302.69 [Reserved]

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federal register

Tuesday
October 17, 1989

Part VII

Department of Transportation

Federal Aviation Administration

14 CFR Part 29

Airworthiness Standards: Turboshaft Engine Rotor Burst Protection; Proposed Rule

DEPARTMENT OF TRANSPORTATION

14 CFR Part 29

[Docket No. 26037; Notice No. 89-29]

RIN 2120-AB91

Airworthiness Standards: Turboshaft Engine Rotor Burst Protection

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Federal Aviation Regulations to minimize the failure hazards of high speed powerplant rotor systems used in turboshaft engines in newly designed transport category rotorcraft. Engine rotor failures have occurred resulting in the release of high energy rotor fragments or other engine component fragments. These fragments have impacted and damaged critical rotorcraft structures, systems, controls, and adjacent engines, as well as caused serious or fatal injuries to passengers and crewmembers. This proposal, if adopted, is intended to eliminate these hazards.

DATE: Comments must be received on or before April 16, 1990.

ADDRESS: Comments on the notice should be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Docket No. 26037, 800 Independence Avenue, SW., Washington, DC 20591, or delivered in triplicate to: Room 915G, 800 Independence Avenue, SW., Washington, DC 20591. Comments must be marked Docket No. 26037.

Comments may be inspected in room 915G between the hours of 8:30 a.m. and 5 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mike Mathias, FAA, Regulations Group (ASW-111), Rotorcraft Directorate, Aircraft Certification Service, Forth Worth, Texas 76193-0111, telephone number (817) 624-5123.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates. Commenters should identify the regulatory docket or notice number and submit comments in triplicate to the Rules Docket address specified above. All comments received on or before the closing date for comments will be considered by the Administrator before taking action on the proposed rulemaking. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. Commenters wishing to have the FAA acknowledge receipt of their comments submitted in response to this notice must include a preaddressed, stamped postcard on which the following statement is made: "Comments on Docket No. 26037." The postcard will be date/time stamped and mailed to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of Public Affairs, Attention: Public Inquiry Center, APA-430, 800 Independence Ave., SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM.

Persons interested in being placed on the mailing list for future NPRM's should request a copy of Advisory Circular (AC) No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

Turboshaft engines are specialized turbine engines that provide power by use of an output shaft; these engines are used in rotorcraft and employ both compressor and turbine rotors which operate at high stress levels induced by high rotational speeds and high gas flow loads. Turbine section rotors are further subjected to high temperature by hot gases from the engine combustion process which, in turn, produces a more severe stress condition and an erosive environment. Engine designers have been able to solve these problems in an acceptable manner throughout the normal operating range of the engine. However, rotor burst failures continue to occur, often due to external events or other factors such as lubrication failures, exposure to transient overtemperature conditions, bearing failures, turbine load absorbing mechanism failures, and structural failures.

A typical burst failure involves mechanical rupture of the rotor which results in a high velocity, high energy radial dispersal of rotor fragments or adjacent engine components. Impact from these fragments can inflict damage to critical rotorcraft structure, systems, controls, main and tail rotors, rotor drive system elements, and other engines; in addition these fragments can injure occupants.

The need for increasing the level of safety is further supported by the adverse accident history that continues for rotor burst failures. Specific airworthiness directives are currently required to correct rotor burst problems uncovered by the adverse accident history. It should be noted that parts 23 and 25 already require engine rotor burst protection for airplanes which are by geometry more protected from engine rotor burst than rotorcraft. This proposal would explicitly state and increase the minimum level of safety for engine rotor burst protection and require that all necessary engine rotor burst design precautions be incorporated during certification.

History

The FAA held its Rotorcraft Regulatory Review Conference in New Orleans, Louisiana, December 10-14, 1979, and invited all interested persons to submit proposed regulatory changes for consideration pursuant to Notice 79-1 (44 FR 3250, January 15, 1979). One of the proposals discussed at the conference dealt with design precautions to minimize hazards from an engine rotor failure. The proposal was subsequently deferred because of insufficient service history.

Service experience indicates that hazardous rotor bursts continue to occur in most of the standard engine types used in rotorcraft, and that the occurrence rate now justifies proposing a regulatory change. A recent review indicates a history of 59 reported, uncontained rotor bursts since 1980. Many of these rotor bursts occurred in engines used in nontransport or in military aircraft. However, the data are relevant to part 29 because the engines involved are similar or identical to those used in civil transport rotorcraft and are operated in either a similar or less severe manner. For example, rotorcraft engines, in many instances, have turboprop or turbojet engine counterparts which exhibit rotor burst failure modes similar to those in part 29 rotorcraft even while operating under less severe conditions than rotorcraft.

This proposal is also prompted by an accident history which has resulted in the FAA issuing several airworthiness directives (AD) for certain types of

engines used in U.S. type-certificated helicopters throughout the world. These AD's contain requirements such as (1) emergency engine shutdown and landing to prevent catastrophic accidents due to uncontained rotor bursts which could occur following certain abnormal engine instrument fluctuations or (2) addition of protective plates to shield against a rotor burst. If adopted, this proposal would obviate much of the need for further AD action in other products.

National Transportation Safety Board (NTSB) Recommendation

This proposal also addresses NTSB Safety Recommendation A–84–60, dated June 14, 1984, which recommends that the engine compartment design of all U.S. type certificated multiengined helicopters be reviewed with regard to the probability that an uncontained engine failure will result in catastrophic damage to the drive train, electrical, fuel and hydraulic system components and recommends rulemaking to effect the appropriate changes.

Reference Material

Existing design standards, state-of-the-art design technology, and current FAA technical data bases were carefully examined with respect to this proposal. A summary of that review follows.

High energy rotor fragment containment, other design standards, and methodologies for minimizing rotor burst hazards have been the subjects of numerous safety studies. These studies have recommended use of design techniques which will minimize rotor burst hazards; these techniques range from the use of containment shielding to the use of critical component shielding and/or dispersal. A document of particular interest is FAA Order 8110.11, "Design Considerations for Minimizing Damage Caused By Uncontained Aircraft Turbine Engine Rotor Failures," dated November 19, 1975, to be reissued as an advisory circular (AC) in the AC 20 series. Order 8110.11 is important to this proposal because it considers the minimum design standards in terms of the worst-case rotor fragment size and energy level. These design considerations include one-third of the disk mass being released at the critical rotor burst speed. Such an energized fragment has been considered in previous analyses and tests used by certification applicants to evaluate rotor burst hazards. Order 8110.11 discusses in detail the critical speeds and associated fragment energy levels that should be considered.

To substantiate the technical feasibility of this new proposal, relative to the current state-of-the-art, a survey of current literature was conducted. Considerable government and industry research is available on rotor burst containment and in related fields such as lightweight armor. Key research documents reviewed in support of this proposal and contained in the docket are as follows:

(1) AIR4003, "Report on Aircraft Engine Containment," Society of Automotive Engineers, Inc., Seventh Draft, February 1, 1987, 400 Commonwealth Drive, Warrendale, PA 15096.

(2) National Aeronautics and Space Administration (NASA) Report No. CP–2017, "An Assessment of Technology for Turbojet Engine Rotor Failures," dated August 1977 (available from the National Technical Information Service, Springfield, Virginia 22161), which contains a research anthology.

(3) "Analysis Methods for Kevlar Shield Response to Rotor Fragments," dated August 1977, by J. H. Gerstle, Boeing Commercial Airplane Company, Seattle, WA.

(4) "Ceramic Composite Protection for Turbine Disc Bursts," circa 1977, by P. B. Gardner, Industrial Ceramics Division, Norton Company, New Bond Street, Worcester, MA 01606.

(5) Report No. NAPTC–PE–98, "Rotor Burst Protection Program: Experiment to Provide Guidelines for the Design of Turbine Burst Fragment Containment Rings," dated March 1977, Naval Air Propulsion Test Center, Trenton, New Jersey.

(6) National Aeronautics and Space Administration (NASA) Report TMX–73633, "Concepts for the Development of Light-Weight Composite Structures for Rotor Burst Containment," dated 1977.

Numerous other papers on rotor burst protection have been presented at various technical symposiums. Further, most engine manufacturers have conducted extensive research (for both civil and military applications) in containment methodology. A survey of the literature shows that protection from turboshaft engine rotor burst is well within the current state of the art for small to medium size engines common to rotorcraft; therefore, adoption of this proposal would impose no undue technological burden on the industry.

Related Rulemaking Activity

This proposal parallels rules that currently exist in parts 23 and 25 for airplanes. The rule in part 23, adopted in Amendment 23–30, for normal category airplanes was effective on March 26, 1984 (49 FR 7340, February 28, 1984). Since very few of these aircraft have been certificated since Amendment 23–30, no significant service history is available to determine its effect. The rule in part 25, adopted in Amendment 25–23, for transport category airplanes has been in effect since April 1970 (35 FR 5673, April 8, 1970), and a significant beneficial service history has been established; i.e., since adoption of Amendment 25–23, few accidents of transport airplanes have resulted from uncontained rotor bursts.

General Discussion of Proposals

The fact that parts 23 and 25 contain rotor burst hazard protection and part 29 does not is a regulatory and safety dichotomy because fixed-wing aircraft are by geometry less vulnerable to rotor burst hazards than rotorcraft. Fixed-wing aircraft are already protected from the rotor burst hazard, although it is less critical for them than such protection is for rotorcraft. There is, therefore, a significant safety incentive for adoption of this proposal.

The degree of damage from a rotor burst in a fixed-wing aircraft is typically far less catastrophic than that resulting from a similar rotor burst in a conventional rotorcraft. This is because rotorcraft are very compact and have nearly all of their critical components colocated. A fixed-wing aircraft is less compact, and its critical components are dispersed making it less vulnerable to high energy fragments than a similarly sized rotorcraft. Use of fixed-wing aircraft service history to aid in quantifying proposed benefits for rotorcraft is conservative in the safety and economic senses. Safety and economic benefits from rotor burst protection for a given rotorcraft design could be as much as 10 times that for a similar fixed-wing aircraft design. Fixed development costs for either design would be essentially the same. This is true even when using the fixed-wing aircraft rotor burst data conservatively.

Airplane designers typically use existing design features for rotor burst protection not available in rotorcraft including the following: Relatively wide engine separation; dispersed redundant structure; widely separated and/or redundant primary controls; hydraulic, pneumatic, and electrical systems; and powerplant operating regimes characterized by long term stable operation at lower power settings which greatly limit rotor burst initiation and damage.

Conversely, designers of conventional rotorcraft, with rare exception, must locate the engines side-by-side within the fuselage contours. The rotorcraft

designer must also locate the following directly within the immediate rotor fragmentation zone: primary controls; critical single load path structure; critical rotor drive system components; fuel cells; critical hydraulic, pneumatic, and electrical system components; personnel compartments; and the main lifting rotor.

The inherent rotorcraft side-by-side powerplant arrangement has resulted in at least seven instances in which a rotor burst has caused the failure of the remaining adjacent engine. In one instance a rotor burst penetrated an adjacent fuel tank and caused a severe fire. In other instances the rotor burst severed closely located, critical flight control system components.

A realistic consideration of the rotor burst service history, design constraints, and optimum state-of-the-art design requirements for rotor burst containment suggests a design solution that embodies either airframe or integral engine containment shielding. A requirement for shielding would, of course, cause an increase in design, manufacturing, weight penalty, and testing costs. However, any recurring costs, such as those due to increased weight and manufacturing, would eventually be absorbed (at least partially) by natural improvements in material and design technology which occur in the aircraft industry.

An alternate solution would be to revise part 33 to require integration of the containment shield into appropriate sections of the engine case. Certainly an engine case which met this objective would provide an acceptable level of safety and, thus, meet the requirements of this proposal. However, the FAA is proposing to place the requirement in part 29 to address possible future certification questions that concern the installation eligibility of a previously type-certificated engine, which does not have rotor burst protection, in a subsequently type-certificated rotorcraft airframe (i.e., rotor burst protection would be provided by airframe design, not special engine design). Also, placing the requirement in part 29 would encourage development of future configurations which may not use a containment ring, but may use more sophisticated technology beyond the current state-of-the-art. For these reasons, the alternate proposal to mandate the containment shield in part 33 is not being considered at this time.

Specific Discussion of Proposals

Section 29.901

The FAA is proposing that the minimum level of safety be increased by requiring consideration of failure of engine rotor discs unless such failure is shown to be extremely remote. Since this proposed new requirement would be inconsistent with existing paragraph (c)(2), it would be removed and existing paragraphs (c) and (c)(1) would be combined as shown in the proposal.

Section 29.903

For turbine engine installations, the FAA is proposing to revise paragraph (f) to state explicitly that design precautions must be taken to minimize the hazard to the rotorcraft in the event of an engine rotor failure.

Regulatory Evaluation Summary

Benefits—Cost Evaluation

This economic impact evaluation compares the benefits and costs of the proposed regulation on a per-rotorcraft basis with the rotorcraft varying in size from 8 to 20 seats; as such, it reduces dependence on forecasts of the size and the number of new transport rotorcraft produced.

For purposes of this evaluation, it is assumed that a Category A or B transport rotorcraft with two engines will be certificated under this proposed rule. Also, it is assumed that the rotor of each engine will be enclosed by a ring of material that is sufficient to contain fragments from a rotor burst, and that the costs of these rings will not vary significantly because of the relatively small variation in size among transport rotorcraft engines. The benefits derived from the containment ring will, however, increase as the size of the rotorcraft increases.

Costs of Compliance

The proposed requirement could be satisfied by shielding each engine with a containment ring (e.g., one previously approved containment device consists of a 6-pound laminated ring made from boron-carbide with fiberglass backing); this conclusion is based on an assessment of typical rotorcraft designs using standard state-of-the-art materials and manufacturing technology, and an assessment of the previously cited certification experience of a major manufacturer. The one-time cost to a manufacturer of transport rotorcraft for developing these composite material rings is estimated to be $330 per rotorcraft produced, and the estimated manufacturing cost per containment ring is $480. Since a twin-engine transport rotorcraft would require two containment rings, the increase in cost of manufacturing rotorcraft certificated under these proposed requirements would be twice $480 plus $330 or $1,290. Rotorcraft operators would experience an increase in the operating cost of transport rotorcraft certificated under this proposed rule as a result of the additional weight of the two containment rings. The estimated annual cost per pound of additional weight is $37.13; therefore, the 12-pound weight of the two containment rings is estimated to increase the operating cost for a twin-engine transport rotorcraft by $445.56 annually. The present value of the increase in the total cost of purchasing and operating twin-engine transport rotorcraft, over 15 years, certificated under this proposed rule would be $4,254. For a more detailed explanation of the estimation of these costs, see the regulatory evaluation included in the docket.

Benefit Estimation

The value of the rotorcraft destroyed or damaged is one of the determinants of the benefits of this proposed regulation with regard to eliminating property losses due to uncontained rotor burst. The expected annual benefit per seat in preventing rotorcraft property loss by containing a possible turbine burst is estimated to be $47.90. The value assigned to casualties is also one of the determinants of the benefits of this proposed regulation with regard to eliminating casualties due to uncontained rotor burst in rotorcraft. In this evaluation, the statistical value of a human life is set at $1 million; the cost of a serious rotorcraft injury is estimated to be $390,900; and the cost of a minor rotorcraft injury is estimated to be $25,100. Based on these assumptions, the expected casualty prevention benefits per year are estimated to be $571.75 per seat.

The present value of the benefits of this proposal would vary with the size of the rotorcraft—the larger the rotorcraft, the greater the benefits. Using FAA critical values for human life, injuries, and rotorcraft replacement and repair, the estimated benefits are $619.65 per seat per year, and the estimated present value of these benefits over 15 years is $4,285 per seat. Since the estimated present value of the benefits from the proposed rule exceeds the estimated present value of the costs of this proposal, the FAA, therefore, has determined that this proposed regulation would be cost beneficial.

Trade Impact Statement

The costs which may be imposed by this proposal will not result in a competitive trade disadvantage for U.S. manufacturers in the U.S. market. Foreign manufacturers would have to

comply with the proposed regulation as a condition for exporting their rotorcraft to the United States. Foreign manufacturers are expected to comply with these proposed regulations since the United States is their largest market. In foreign markets, neither U.S. manufacturers nor foreign manufacturers can be required to comply with these proposed standards. Therefore, U.S. manufacturers will not be at a competitive disadvantage in foreign markets.

Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980 requires Federal agencies to specifically review rules which may have a "significant economic impact on a substantial number of small entities." The FAA small entity standards define a small rotorcraft manufacturer as an independently owned and managed firm having fewer then 75 employees. There are currently only three manufacturers in the United States that produce rotorcraft certificated under part 29, and all three have more than 75 employees. Therefore, under the FAA size standard criteria, there are no small manufacturers that will be affected by this proposed change to part 29. Small rotorcraft operators are not necessarily affected by this proposed rule since they will not be required to purchase rotorcraft certificated under this proposed regulation. Thus, the FAA has determined that this proposed regulation will not have a significant economic impact on a substantial number of small entities.

Federalism Implication

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

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation is not major under Executive Order 12291. In addition, the FAA certifies that this proposal, if adopted, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal is considered nonsignificant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). An initial regulatory evaluation of the proposal, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects in 14 CFR Part 29

Air transportation, Aircraft, Aviation safety, Safety, Rotorcraft.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 29 of the Federal Aviation Regulations (14 CFR part 29) as follows:

PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT

1. The authority citation for part 29 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, and 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. Section 29.901 is amended by revising paragraph (c) to read as follows:

§ 29.901 Installation.

* * * * *

(c) For each powerplant and auxiliary power unit installation, it must be established that no single failure or malfunction or probable combination of failures will jeopardize the safe operation of the rotorcraft except that the failure of structural elements need not be considered if the probability of any such failure is extremely remote.

* * * * *

3. Section 29.903 is amended by revising paragraph (f) to read as follows:

§ 29.903 Engines.

* * * * *

(f) *Turbine engine installation.* For turbine engine installations—

(1) Design precautions must be taken to minimize the hazards to the rotorcraft in the event of an engine rotor failure; and

(2) The powerplant systems associated with engine control devices, systems, and instrumentation must be designed to give reasonable assurance that those engine operating limitations that adversely affect engine rotor structural integrity will not be exceeded in service.

Issued in Washington, DC, on October 10, 1989.

Thomas E. McSweeny,

Acting Director, Aircraft Certification Service.

[FR Doc. 89-24413 Filed 10-16-89; 8:45 am]

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federal register

Tuesday
October 17, 1989

Part VIII

Department of Health and Human Services

Public Health Service

45 CFR Part 60

National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners; Final Regulations

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

45 CFR Part 60

[RIN 0905-AC 51]

National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners

AGENCY: Public Health Service, HHS.

ACTION: Final regulations.

SUMMARY: This rule sets forth criteria and procedures for information to be collected in and released from a National Practitioner Data Bank, in accordance with the requirements of title IV, part B, of the Health Care Quality Improvement Act of 1986. These regulations govern the reporting and release of information concerning: (1) Payments made for the benefit of physicians, dentists, and other health care practitioners as a result of medical malpractice actions and claims; and (2) certain adverse actions taken regarding the licenses and clinical privileges of physicians and dentists.

EFFECTIVE DATE: These regulations will be effective on the date on which the National Practitioner Data Bank is operational. The Secretary will publish this date in an announcement in the **Federal Register.**

A separate announcement will be published in the **Federal Register** when the Department obtains Office of Management and Budget approval for § 60.6(b) which contains information collection requirements.

FOR FURTHER INFORMATION CONTACT: Daniel D. Cowell, M.S., Director, Division of Quality Assurance and Liability Management, Bureau of Health Professions, Health Resources and Services Administration, Room 8-15, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number: 301 443-2300.

SUPPLEMENTARY INFORMATION: On March 21, 1988, the Secretary published a Notice of Proposed Rulemaking (NPRM) to implement the Health Care Quality Improvement Act of 1986 (the Act), title IV of Public Law 99-660, through the establishment of a National Practitioner Data Bank (the Data Bank). The Department received more than 140 comments which were postmarked on or before May 20, the end of the comment period, from health professionals' organizations, hospitals, health maintenance organizations, State licensing boards, other units of State government, insurers, health care consultants, attorneys, physicians, and others.

The Secretary would like to thank the respondents for the quality and the thoroughness of their comments. As a result of the comments, many modifications have been made to the NPRM. The comments and the Department's response to the comments are discussed below. For clarity, the comments and responses are arranged according to the section numbers and titles of the NPRM to which they pertain. We note that a new § 60.6 has been added to the final regulations, which results in renumbering the sections following new § 60.6.

As the Secretary indicated in the March 21, 1988 NPRM, the Act does not require the application of these provisions to Federal health care entities, physicians, dentists, and other health care providers. However, the intent of the law appears clear that coverage be as broad as possible, and hence that Federal providers be included to the extent feasible. Accordingly, the Secretary has signed Memoranda of Understanding with the Department of Defense and the Drug Enforcement Administration of the Department of Justice, and is pursuing the execution of such a memorandum with the Department of Veterans Affairs. Also, the Secretary is developing a policy and procedure regarding the manner in which health care providers in the Department of Health and Human Services will participate in the Data Bank.

Subpart A—General Provisions

Section 60.1 The National Practitioner Data Bank

The Department has revised the title of "The National Data Bank," to "The National Practitioner Data Bank" to more precisely represent the purpose of the Data Bank. Accordingly, references to the Data Bank have been so revised throughout these regulations.

Section 60.3 Definitions

Several respondents indicated that the reference to "failing to renew State licensure" in the definition of "adversely affecting" was incorrect, since "adversely affecting" is used in the body of the regulations only in connection with professional review actions concerning clinical privileges and membership in a professional society.

The Department agrees with the comments and has deleted the phrase "failing to renew State licensure" from this definition.

A large number of respondents indicated that the definition of "adversely affecting" was overbroad in its incorporation of actions by specialty boards. "Adversely affecting," as proposed, referenced specialty boards for consistency with the proposed definition of "health care entity," which included specialty boards. These respondents similarly felt that including "specialty board" within "health care entity" was an overexpansion of the Act.

In response, the Department has deleted the references to "specialty board" both from the term "adversely affecting" and from "health care entity." A more detailed explanation of the comments and the basis for these revisions is contained in the discussion below of the term "health care entity."

A board of dental examiners stated that the definition of "dentist" was inaccurate. The board indicated that D.M.D. means "doctor of dental medicine," not "doctor of medical dentistry," as proposed. It was also indicated that some dentists, generally foreign graduates, may hold a degree other than doctor of dental surgery or doctor of dental medicine which qualifies them to hold licenses and practice in a State.

In response, the Department has deleted the abbreviations for degrees and retained the statutory references for the credentials of a dentist. For consistency, the Department has made the same revisions in the definition of "physician." The definition of "dentist" was also expanded to include dentists with degrees equivalent to doctor of dental surgery or doctor of dental medicine who otherwise meet the statutory criteria.

Numerous attorneys, associations, and medical boards found the definition of "health care entity" to be unclear and questioned whether various organizations, such as Individual Practice Associations and Preferred Provider Organizations, would fall within the term.

In clarification, the Department's intent is that an entity apply the criteria of paragraph (b) of the definition of "health care entity" to itself in order to make a factual determination of whether the definition would encompass it. Specifically, these criteria are that an entity: (1) Provides health care services; and (2) engages in professional review activity through a formal peer review process for the purpose of furthering quality health care. The Department prefers to define this term broadly, rather than to attempt to focus on the myriad of health care organizations, practice arrangements, and professional societies, so as to ensure that the

regulations include all the entities within the scope of the statute. In keeping with this intent, the Department has revised the description of "group medical practice" in the definition of "health care entity" to delete the specific criteria of shared facilities, personnel, medical records, and responsibilities, and incomes set by contract. The modification generalizes the definition to indicate that a health care entity includes any group or prepaid medical practice which meets the criteria of paragraph (b).

As previously mentioned, the Department has further revised "health care entity" to delete the reference to "specialty board" based on numerous comments that the proposal was overly broad. In addition, respondents pointed out that membership in a specialty board is voluntary, and that curtailment of this membership does not necessarily reflect lack of competence. The comments generally indicated that equating "specialty board" with "professional society" within the definition of "health care entity" was not within the intent of the Act.

Several respondents questioned the definition of licensed "health care practitioner" as it refers to "an individual who is licensed or otherwise authorized by a State to provide health care services." The Department used "otherwise authorized" to include disciplines for which States grant authority to provide health care services by mechanisms other than licensure, such as registration and certification. All health care practitioners authorized by a State to provide health care services by whatever formal mechanism the State employs are included within this definition. The Act similarly uses "otherwise authorized" to define "licensed health care practitioner."

Some respondents requested the Department to include a list of health care practitioners subject to these regulations. To include such a list in the regulations would be unfeasible since regulatory amendments would then be necessary each time the list would require revisions. However, the Department does intend to make available to members of the public, upon request, a list by State of those practitioners who are the subject of these regulations.

Numerous respondents found the definition of "medical malpractice action or claim" to be in need of clarification. Several comments questioned whether this term was limited to claims or actions filed in court or included administrative claims. Other respondents questioned the meaning of "other adjudicative body" as used in this term in reference to where a medical malpractice action or claim may be filed.

In response to these comments, the Department has adopted some of the suggested revisions to clarify the definition as follows:

"Medical malpractice action or claim" means a written complaint or claim demanding payment based on a physician's, dentist's, or other health care practitioner's provision of or failure to provide health care services, and includes the filing of a cause of action based on the law of tort, brought in any State or Federal court or other adjudicative body.

This definition, as did that in the NPRM, includes the filing of medical malpractice claims on an administrative level, as well as judicial claims and actions. The revised definition more closely tracks the language of the Act.

"Other adjudicative body," as used in this definition, is intended to specify medical malpractice actions which are brought before arbitration boards and other dispute resolution mechanisms prior to or instead of a formal court action.

Two associations opposed the definition of "professional review action." One stated that including within the term "a formal decision not to take an action or to make a recommendation" was inappropriate, since this phrase is relevant to the immunity provisions of part A of the Act but not the reporting provisions of part B. The other association found that the definition implied that a decision to not take an action should be reported.

The Department agrees with these comments. Since these regulations implement only the reporting provisions of part B of the Act and not the immunity provisions of part A, the Secretary has revised the definition of "professional review action" to delete the above-referenced phrase. However, the Secretary points out that "a formal decision not to take an action or to make a recommendation" which would result in the voluntary surrender of clinical privileges would be reported under § 60.9(a) (i) and (ii). The Department has similarly deleted the reference to "professional review activities related to a professional review action" as being unnecessary in the implementation of the reporting requirements of part B.

Numerous respondents requested clarification of the meaning of "professional competence or conduct" as used in the definition of "professional review action." They inquired whether revocation or suspension of privileges related to nonclinical factors would be reportable, such as failure to attend staff meetings or to complete medical records or billing forms. Another respondent questioned whether it would include criminal activities committed by the professional outside the employment setting.

In response, the Department has revised the form of the definition of "professional review action" to stress that it encompasses only professional competence or conduct which affects or could affect adversely the health or welfare of a patient. Hence, "professional review action" does not include an action taken against a physician, dentist, or other health care practitioner based on a technical or administrative failing unrelated to the health or welfare of patients. With respect to criminal activities, it would obviously be necessary to analyze the criminal action to make a determination whether the health or welfare of a patient was or could be adversely affected by the situation. In short, the Department believes that "professional review action" is best defined in generic terms which allows each health care entity to make its own factual determinations.

Several respondents found the definition of "professional review activity" to be unclear. They felt, for example, that a health care entity could have many reasons unrelated to professional competence for making an initial determination not to grant clinical privileges. For example, it may have a sufficient number of anesthesiologists currently on its staff and not need the services of another. Another comment stated that many hospitals routinely grant initial privileges on a probationary basis.

The Department clarifies that, as used in the Act as well as in the NPRM, the definition of "professional review activity" is not descriptive of the reasons for modification or curtailment of clinical privileges or membership but relates only to various types of actions that may or may not lead to modification or curtailment of clinical privileges and membership. This definition's significance is in how it relates to the definition of "professional review action." It is only "professional review actions," not "professional review activities," which are reportable under Part B of the Act. The definition of "professional review action" encompasses only professional review activities which are related to the professional competence or conduct of a physician, dentist, or other health care practitioner and which could adversely affect the health or welfare of a patient.

In fact, paragraph (d)(5) specifically excludes from the definition of "professional review action" matters that do not relate to the competence or professional conduct of a physician, dentist, or other health care practitioner. Thus, it is clear that although the definition of "professional review activities" does not by its own terms exclude such actions as refusing privileges to an anesthesiologist because a health care entity already has enough such practitioners, such actions would not be reportable under § 60.9.

Subpart B—Reporting of Information

Section 60.4 How Information Must Be Reported.

To improve the clarity of the structure of these regulations, the Secretary has moved the portion of proposed § 60.4 that related to errors and omissions in reports to a new § 60.6.

Section 60.5 When Information Must Be Reported

There were approximately 40 comments on this section. Most of them addressed the timing of reports. Some respondents found the time periods outlined in the NPRM too stringent; others, particularly insurers, proposed alternate report submission schemes or the submission of reports in batches; still others asked for clarification of the events which trigger the time periods.

With the few exceptions noted below, the Department has decided to retain the language of the NPRM in the final rule. In this decision, the Department was guided both by the language of the Act which specifies that reports shall be made "not less often than monthly," and by the importance of maintaining current information for the protection of the public.

Several respondents questioned why § 60.5(c), as proposed, required health care entities to report adverse actions within 20 days, whereas other reports were required within a 30-day timeframe. The rationale for the 20-day period is that the reporting of adverse actions is a two-step process, with the health care entity making a report to the Board of Medical Examiners, and the Board then submitting this report to the Data Bank, both of which actions are to be accomplished within a single 30-day timeframe.

Several respondents opposed § 60.5(c) on the basis that the 10-day timeframe for reports by Boards of Medical Examiners to the Data Bank placed an undue burden on Boards whose resources are limited.

The Department is sympathetic to the difficulties of meeting a 10-day deadline and, in response, has revised § 60.5(c) to shorten the time for health care entities to file reports with Boards of Medical Examiners from 20 to 15 days and increase the time for Boards to file their reports from 10 to 15 days. Nevertheless, we stress that this particular type of reporting simply requires Boards of Medical Examiners to pass through information which they have received from the health care entity in the form that they received it and does not require the preparation of a new document or Board action on the contents of the report.

With respect to inquiries concerning the triggering event of the applicable time period for reporting, the Department views the events as follows:

(1) For malpractice payments (§ 60.7)—the date of the check in payment of the medical malpractice action or claim.

(2) For licensure and adverse actions (§ 60.8 and § 60.9)—the date of formal approval of the adverse action by the Board's or entity's authorized official.

The Department will be issuing guidelines to explain these points further, as well as other regulatory provisions in need of greater discussion, and provide examples.

The Secretary emphasizes that individuals and entities will not be held responsible for reporting any information under these regulations or the Act until the Data Bank has been established and the Secretary has announced the date of the beginning of its operation in the **Federal Register**. The reporting requirements are not retroactive from November 14, 1987, the statutory date on which the Data Bank was to have been in operation.

Section 60.6 Reporting Errors, Omissions, and Revisions (New)

As stated earlier, the Department reorganized these regulations, moving the provision concerning errors and omissions from § 60.4. One medical association had commented on the lack of any reference to time in reporting an omission or error. Several respondents expressed concern about the accuracy of the information in the Data Bank.

The Secretary is sensitive to the importance of accuracy of the information in the Data Bank, for the protection of the users of the information, the subjects of the reports, and the public. In response to the comments on the proposed § 60.4, the Department has added "as soon as possible" to indicate the urgency of correcting reports on file.

The Secretary has added the requirement that individuals and entities who file reports must update them when they learn of revisions, such as the reinstatement of a license or the reversal or modification of a professional review action. The procedures for reporting revisions will be the same as those which applied to the reporting of the original event.

To increase the accuracy of the information in the Data Bank, all reports which are filed will be held for 30 days after receipt prior to release to any parties other than to the subjects of the reports. This period will provide opportunity for disputes, corrections, or revisions to be filed prior to release of the information. In addition, the Data Bank will maintain a record of all inquiries made to it and any information provided as a result of an inquiry. It will then issue corrections or supplementary reports to all who have received erroneous or incomplete information.

Section 60.7 (Proposed § 60.6) Reporting Medical Malpractice Payments

More than 50 respondents commented on proposed § 60.6 (§ 60.7 below). The majority of comments expressed concern over the burden of reporting all payments, regardless of size. About one-fourth of the respondents suggested setting a floor for the size of medical malpractice payments below which reporting would not be required. For example, several respondents recommended that payments below $30,000 not be reported.

The Department cannot accept these comments due to the statutory requirement that medical malpractice payments of any size be reported. However, as stated in the NPRM, the Secretary will be filing a report with Congress on whether information on small payments should continue to be collected. These comments will be considered when making this report.

Numerous comments were made regarding the interpretation of malpractice payments. Respondents pointed out that nuisance or frivolous claims are frequently settled by small payments which do not reflect on the professional competence or conduct of the physician, dentist, or other health care practitioner in issue.

The Secretary agrees with these comments and therefore has revised § 60.7 to include a new paragraph (d) entitled "Interpretation of information." This paragraph reiterates section 427(d) of the Act, which states that a payment in settlement of a medical malpractice action or claim shall not be construed as creating a presumption that medical malpractice has occurred.

Several associations requested that the "acts or omissions" which must be reported under § 60.7 be described as "alleged" acts or omissions. These respondents stated that if a payment were made in a settlement, then "alleged" should be used as a modifier because the acts or omissions may never have occurred. They also felt that to add "alleged" would be consistent with the statutory provision of section 427(d) of the Act, that a payment in settlement of a medical malpractice claim shall not be construed as creating a presumption that medical malpractice has occurred.

The Department has not accepted these comments. The Secretary believes that § 60.7, as proposed, is closer to the statutory intent and language. For example, section 421(b)(4) of the Act requires a report on a payment on a medical malpractice claim or action to contain "a description of the acts or omissions and injuries or illnesses upon which the action or claim was based." The Department has, however, revised § 60.7(a) so that it reflects the language of the Act. Further, as mentioned above, the Department has included a new paragraph (d) in § 60.7 to set forth the interpretation of medical malpractice payments contained in section 427(d).

Several respondents suggested that information in the Data Bank be "purged" after a periodic interval of, perhaps, 5 years.

The Department has not accepted these comments because the deletion of reports from the Data Bank would be inconsistent with the statutory purpose of protecting the public. However, the Secretary wishes to make every effort to maintain the accuracy of the information and thus, as discussed earlier, has added new § 60.6 to require the filing of updated information. The Department acknowledges that data retained over very long periods of time can lose practical utility. For that reason, the Department will assess the desirability of indefinite retention of information in the Data Bank.

An association of insurers requested clarification of § 60.7(a) to emphasize that reportable payments are those for medical malpractice claims or actions and for the benefit of a physician, dentist, or other health care practitioner. This respondent was concerned that a suit could include multiple defendants and multiple allegations, such as libel or slander.

The Department has accepted this comment and has revised § 60.7(a) accordingly.

Numerous health care entities inquired whether the waiver of an outstanding bill to settle a medical malpractice claim or action would be required to be reported under § 60.7.

Both the Act and these regulations require the reporting of payments in response to medical malpractice claims or actions. The Department interprets "payment" as meaning an exchange of money; therefore, the waiver of a debt as described above would not be a reportable event. The Department has revised § 60.7(a) to clarify this point.

Several insurers and professional organizations opposed the requirements of § 60.7(b)(1), subitems (iii), (vii) and (viii) to report the home address, the license number, and the Drug Enforcement Administration registration number of the subject of the report. They indicated that this information is neither routinely collected nor readily known.

In response, the Department has modified § 60.7(b)(1)(viii) to allow for the reporting of the Drug Enforcement Administration registration number, if known. Since an individual's home address could be a useful identifier, it has been retained but has been modified to be required only if it is known. The reporting data of § 60.8 and § 60.9 for licensure and adverse actions have been similarly revised. The Department has retained the requirement of the license number, since it is an important provider identifier.

The Department is requiring the reporting of additional information to distinguish more precisely among individual physicians, dentists, and other health care practitioners on whom information is reported to the Data Bank. The additional personal identifiers to be reported are: Date of birth; name of each professional school attended and year of graduation; the field of licensure and the name of the State or Territory in which the license is held. The reporting requirements in § 60.8 and § 60.9 for licensure and adverse actions have been similarly revised.

As previously mentioned, the Secretary is sensitive to the importance of accuracy of the information in the Data Bank. The combination of identifiers required to be reported to the Bank will help prevent errors in distinguishing among more than one practitioner with the same name.

To correct the references to the Privacy Act in the proposed rule at §§ 60.6(b)(1)(v), 60.7(b)(5), and 60.8(a)(3)(v), the Secretary has removed from those sections the phrase, "* * * and released in accordance with applicable provisions of the Privacy Act (5 U.S.C. 552a) * * *" and has inserted in its place the phrase, "in accordance with section 7 of the Privacy Act of 1974."

Numerous respondents expressed concern over § 60.7(b)(3)(viii), which stated that the Secretary would require other information from time to time, as announced in the **Federal Register**. They opposed this provision as omitting the rulemaking requirements of the Administrative Procedure Act.

The Secretary never intended these additional data requirements to be imposed without public notice and comment. This section, and the parallel provisions of § 60.8 and § 60.9, have been revised to clarify that any such additional requirements would be proposed in the **Federal Register** for public comment.

Many insurers sought clarification on how payments should be reported when they are made on a periodic basis or on behalf of more than one individual.

In response, the Department interprets § 60.7 as requiring reporting only at the time of the first payment of periodic payment terms. The accompanying report would indicate the expectation of periodic payments. In the case of a payment on behalf of multiple individuals, the insurer would report the total payment, list the details concerning each health care provider, and indicate that the payment was made on behalf of all the listed providers. The Department will be issuing guidelines with illustrative examples to advise individuals and entities in the filing of all required reports.

Several respondents expressed a need for a uniform system of classification of medical malpractice claims to assist in reporting.

The Department recognizes this need and has added new § 60.7(b)(3)(vii). This requirement is similar to proposed § 60.7(b)(8) which requires the reporting of the classification of licensure actions in accordance with a reporting code to be adopted by the Secretary. The Department is consulting with liability insurers and others to develop a system to classify acts or omissions upon which a medical malpractice claim or action is based. A classification for each category of reportable actions, such as malpractice claims and licensure actions, will be developed with an opportunity for public comment in accordance with the review procedures of the Paperwork Reduction Act of 1980.

The Secretary notes that the procedures for the imposition of sanctions for failure to report malpractice payments, as referenced in § 60.7(c) were proposed in the **Federal Register** on March 21, 1988. Final regulations for the latter will be published separately in the **Federal Register** by the Office of the Inspector

General (OIG), Department of Health and Human Services, shortly after the publication of these Title IV regulations. The OIG regulations will be codified at 42 CFR part 1003.

Section 60.8 (Proposed § 60.7) Reporting Licensure Actions Taken by Boards of Medical Examiners

The majority of comments on proposed § 60.7 (§ 60.8 below) criticized this section for requiring licensure actions which are unrelated to professional conduct or competence to be reported. As proposed, § 60.8(a) (1) and (3) required a Board of Medical Examiners to report actions which revoke or suspend a physician's or dentist's license or under which such license is surrendered. Only § 60.8(a)(2), which requires the reporting of an action to censure, reprimand or place on probation a physician or dentist, conditioned the clause with "reasons relating to the physician's or dentist's professional competence or professional conduct." Insurers, associations, and boards pointed out that a license may be surrendered simply due to retirement or relocation. Also, licensure actions may be taken for reasons related to licensees' fees, or advertising, which do not relate to professional competence or conduct.

The Department has accepted these comments. Since the purpose of the Data Bank is to improve the quality of medical care by restricting the ability of certain physicians and dentists to continue to change practice locations without the disclosure or discovery of their previous incompetent performance or misconduct, the Secretary intends to collect only data relating to professional competence or conduct. The regulations have been revised accordingly.

Several associations found § 60.8(b)(11) to be unclear. This section requires a report to contain a classification of the action per State reporting code.

In response, the Department has revised this section to delete the reference to "State," and to note that the code will be one adopted by the Secretary. The Department intends to develop a code or codes for reporting licensure actions to the Data Bank and to distribute this code to reporting agencies and entities. To the extent feasible, the reporting scheme which is most commonly used by Boards will be incorporated.

The Department notes that § 60.8(b) (3) and (8) have been revised, as explained in the preamble discussion of § 60.7, entitled "Reporting medical malpractice payments."

Section 60.9 (Proposed § 60.8) Reporting Adverse Actions on Clinical Privileges

The Department received nearly 50 comments on proposed § 60.8 (§ 60.9 below). The vast majority addressed § 60.9(c), concerning sanctions for noncompliance with reporting requirements. The comments generally requested clarification of some provisions but also contained many helpful suggestions. As noted in preceding discussion pertaining to § 60.7(c), final regulations regarding sanctions for failure to comply with these reporting requirements will be published shortly and codified at 42 CFR part 1003.

Numerous respondents expressed dismay over their interpretation of § 60.9 as requiring the reporting of voluntary decisions to limit clinical privileges, such as a family practitioner's decision to stop accepting obstetrical or minor surgical cases, when these decisions are not motivated by investigations or threats of investigation of clinical competence or professional conduct.

The Department shares the view of these respondents that the Data Bank should contain only information which reflects adversely on a practitioner's professional competence or conduct. However, § 60.9, as proposed, achieves this purpose. A "professional review action," as referenced in § 60.9(a)(1)(i), requires, by definition, both a formal peer review process and a relationship to professional competence or conduct. The same is true of § 60.9(a)(1)(iii) for professional review actions by professional societies. Thus, a physician's or dentist's voluntary reduction in clinical privileges for reasons of personal preference is not a reportable event.

Another respondent objected to § 60.9(a)(1)(ii) as lacking clarity. This section requires the reporting of the "surrender of clinical privileges" by a physician or a dentist in situations where the physician or dentist is under investigation for possible incompetence or improper professional conduct, or where the physician or dentist surrenders clinical privileges in return for not conducting such investigation. The respondent was concerned that the reporting of the surrender of clinical privileges would not include a partial surrender of such privileges.

The Department has accepted this comment and revised § 60.9(a)(1)(ii) accordingly, to clarify that the restriction of clinical privileges in those situations would be reported.

A dental association commented on § 60.9(a)(1)(iii) concerning professional review actions by professional societies. The association suggested the deletion of "which adversely affects the membership of a physician or dentist" as being redundant with "professional review action."

The Department has accepted this comment and revised this provision accordingly.

A medical board supported § 60.9 but suggested that the regulations should require the reporting of a loss of clinical privileges of any length, not just of 30 days or more. This respondent suggested that suspensions of 29 days might become a common mechanism for avoiding the reporting requirement.

The Secretary appreciates this concern. However, the provision has been retained as proposed, since the 30-day time period is explicit in the Act.

An association felt that "appropriate" as modifying "Board of Medical Examiners" in § 60.9(a)(1) was unclear.

In response, the Department has revised this provision to require a health care entity to report to the "Board of Medical Examiners *in the State in which the health care entity is located*" (emphasis added).

Most of the comments on § 60.9 addressed paragraph (c), which describes the Department's procedures for imposing sanctions for noncompliance with reporting requirements of this section. With regard to requests for hearings, several respondents asked what constituted "substantive and relevant" issues, and how the Department would determine whether the statement of factual issues submitted was "frivolous or inconsequential." Some respondents questioned whether it was appropriate for the Department to deny hearing requests, given the substantial nature of the sanction. Finally, many comments opposed the provision of this subsection which requires that hearings be held in the Washington, DC, area. These respondents stated that the requirement will limit the opportunity for adequate representation during proceedings and recommended that there be regional hearings instead.

In response, the Department emphasizes that the intent of the proposal is to assure that the hearing process is administered as efficiently and cost-effectively as possible for the health care entities and the Department, and concludes that it is consistent with both due process and legislative requirements.

A determination of what constitutes a factual issue in dispute is directly tied to the reporting requirements in § 60.9. An example of a factual issue in dispute

would be a case where a health care entity alleges facts which, if true, would undercut the Department's determination that the health care entity has not met the requirements of the reporting provision. Such a case would involve a material, factual issue in dispute that would be appropriate for resolution through a hearing.

The proposed procedure for determining whether a hearing must be conducted is essentially an administrative "summary judgment" proceeding. It is a well-settled principle that an agency has the authority to deny a hearing when it appears from the request that no substantial issue of fact is in dispute. *Weinberger* v. *Hynson, Westcott & Dunning*, 412 U.S. 609 (1973); *United States* v. *Storer Broadcasting Co.*, 352 U.S. 192, 202–205 (1956); *Pineapple Growers Association of Hawaii* v. *F.D.A.*, 673 F.2d 1083 (9th Cir. 1982).

Section 411(b) of the Act, which requires the Secretary to provide an opportunity for a hearing, does not constitute a bar to such summary judgment. When it is apparent from a request that there are no substantive issues in dispute, no purpose could be served by holding a public hearing. In upholding a similar summary judgment provision promulgated by the Food and Drug Administration, the U.S. Court of Appeals for the Eighth Circuit articulated the rationale for the provision as follows:

> * * * The hearing is solely for the purpose of receiving evidence "relevant and material to the issues raised by such objections." Certainly, then the objections, in order to be effective and necessitate the hearing requested, must be legally adequate so that, if true, the order complained of could not prevail. The objections must raise "issues." The issues must be material to the question involved; that is, the legality of the order attacked. They may not be frivolous or inconsequential. Where the objections stated and the issues raised thereby are, even if true, legally insufficient, their effect is a nullity and no objections have been stated. Congress did not intend the governmental agencies created by it to perform useless or unfruitful tasks. If it is perfectly clear that the petitioner's appeal for a hearing contains nothing material and the objections stated do not abrogate the legality of the order attacked, no hearing is required by law. *Dyestuffs and Chemicals, Inc.*, v. *Flemming*, 271 F.2d 281 (8th Cir. 1959), *cert. denied* 362 U.S. 911 (1960).

With regard to the recommendation for regional hearings, the Secretary continues to believe that the location of hearings for most cases must be limited to the Washington, DC, metropolitan area due to constraints in departmental resources.

Several respondents noted that § 60.9(c)(1) as proposed, concerning sanctions for health care entitles, omitted the statutory language of "substantially" as used to modify "failed to report information in accordance with § 60.9."

The Department acknowledges this oversight and has revised this provision accordingly.

Another respondent pointed out that § 60.9(c)(1) as proposed also omittted the statutory requirement that the Secretary must give a health care entity an opportunity to correct noncompliance before imposing a sanction.

The Secretary accepts this comment and has revised the provision accordingly.

Subpart C—Disclosure of Information by the National Practitioner Data Bank

Section 60.10 (Proposed § 60.9) Information Which Hospitals Must Request From the National Practitioner Data Bank

Several respondents opposed the requirement that hospitals "obtain information, suggesting that it be replaced by "request." They asserted that hospitals could only be held responsible for making requests from the Data Bank and should not be held responsible if they fail to receive it due to a deficiency on the part of the Data Bank.

The Secretary accepts these comments and has revised § 60.10 accordingly.

Another respondent opposed as burdensome the requirement that a hospital request information from the Data Bank every 2 years for its medical staff and those who have clinical privileges.

The Department is unable to accept this comment since this requirement is mandated by the Act.

A dental association pointed out that dentists had not been included in the requirement of § 60.10(a)(2) that a hospital query the Data Bank every 2 years concerning its staff.

The Department has corrected this oversight by revising § 60.10(a)(2) accordingly.

Several associations requested that § 60.10 be revised to include "authorized agents" of hospitals as entities who may query the Data Bank. These respondents pointed out that many hospitals rely on centralized medical staff application and reappointment programs operated by local medical societies.

The Secretary has accepted these comments and has revised § 60.10(a) accordingly. However, it should be noted that § 60.11(a) already specifically provides that "authorized agents" of persons or entities may request and obtain information from the Data Bank. The Secretary has nevertheless made the requested changes for additional clarity.

Section 60.11 (Proposed § 60.10) Requesting Information From the National Practitioner Data Bank

The Department received over 80 comments on this section.

Several respondents suggested that the regulations provide for timely responses by the Data Bank to requests for information.

The Secretary emphasizes that all efforts will be made by the Department and the contractor who will be operating the Data Bank to insure that requests for information are fulfilled on a timely basis. However, at this time it is not feasible to incorporate a response time in these regulations because the Data Bank has not been established. It is the intent of the Secretary to establish a timeframe for the Data Bank to respond to requests after it is in operation. This information will be available to the public at that time.

Several insurers and an educational institution requested access to information in the Data Bank.

The Secretary cannot expand access to the Data Bank beyond what the Act authorizes. It should be noted that individuals are permitted to obtain information about themselves and may share this information with a potential employer or insurer. In addition, information requested in a form that does not identify any health care entity or health care practitioner will be available to anyone making such a request.

Numerous respondents questioned what information would be given in response to authorized requests concerning physicians, dentists, or other health care practitioners.

Persons and entities who make such requests will be given the substantive content of all reports on the subject individual which are contained in the Data Bank.

The majority of the respondents expressed concern over verification of the identity of individuals and entities who request information from the Data Bank. Some suggested procedures involving identification codes for verification of requestors.

The Secretary shares these concerns about maintaining the confidentiality of the information in the Data Bank and will take measures necessary to insure the proper release of this information. Since the Data Bank has not been

established at this time, it is impossible to detail the precise procedures which will be used for the verification of the identity of requestors. At the time of operation of the Data Bank, the Department intends to provide this information to the public in the form of guidelines.

The Department notes that it will be maintaining a list of all requests for information on each individual in the Data Bank. Upon request, the subject individual may receive a copy of the list of requestors.

Several comments stated that § 60.11(a)(3), as proposed, was confusing and that Boards of Medical Examiners and State licensing boards should be separated from health care entities.

The Department has accepted these comments and revised § 60.11(a) accordingly.

The majority of comments received on this section expressed great concern over § 60.11(a)(5), which provides for access by attorneys to information in the Data Bank. Many respondents requested its deletion. Others requested that it be narrowed as much as possible. Some comments indicated that attorney access is contrary to the intent and purpose of the Act—that of promoting effective professional peer review and furthering quality health care. Most respondents felt that attorney access threatened the confidentiality of the Data Bank records.

In response, the Secretary stresses that § 60.11(a)(5) implements section 427(b)(1) of the Act as narrowly as possible. Access by attorneys cannot be eliminated without an amendment to the Act. The Department points out that attorney access to the Data Bank is extremely limited. To clarify, a plaintiff's attorney (or a person representing himself or herself in a medical malpractice action) may request information from the Data Bank on a health care provider if, and only if, he or she meets these tests:

(1) The attorney or individual has filed a medical malpractice action or claim in a State or Federal court or other adjudicative body against a hospital and requests information regarding a specific physician, dentist or other health care practitioner also named in the action or claim; *and*

(2) The attorney or individual produces evidence that the hospital failed to request information from the Data Bank on the physician, dentist or other health care practitioner, as required by these regulations.

The information so obtained may be used solely with respect to the action or claim against the hospital. In short, the applicability of § 60.11(a)(5) is limited to judicial cases filed against a hospital where the hospital failed to make a request from the Data Bank, as required under § 60.10. In this instance, the hospital is then presumed, under section 425(b) of the Act, to have knowledge of the information contained in the Data Bank. Thus, if the attorney who filed the action against the hospital could not obtain the information at issue from the Data Bank, the parties and the court would not know what information must be imputed to the defendant hospital and could not effectively litigate the case.

Several comments questioned the purpose of providing access in § 60.11(a)(5) to an individual "acting on his own behalf" and suggested clarification of the provision.

In response, the Department intended simply to allow access to *pro se* litigants, as well as attorneys, for purposes of § 60.11(a)(5). This section has been revised for greater clarity.

One respondent requested access for the defendant's attorney, as well as the plaintiff's, in § 60.11(a)(5).

In response, no revision is necessary for this purpose because the defendant physician, dentist, or other health care practitioner can always obtain information about himself, or the hospital can obtain the information which it should have requested under § 60.10.

Numerous respondents requested clarification of what "evidence" of a hospital's failure to request information would be required to obtain information from the Data Bank. Many comments suggested that a court order to this effect would be appropriate.

The Secretary agrees that evidence of an objective, factual nature should be required to obtain access under § 60.11(a)(5). Due to the variety of possible forums for these medical malpractice actions—State courts, Federal courts, county courts, etc., and their accompanying varying procedural rules—the Department prefers to retain the general requirement of "evidence" in this provision. This would permit an attorney to present a court order, a deposition, a response to an interrogatory, an admission, or other evidence of the failure of a hospital to request information. The Department will be providing guidance of this nature in guidelines for the Data Bank.

A few respondents indicated concern about possible breaches of confidentiality under § 60.11(a)(7), the release of information for research purposes. Others requested clarification. This regulation explicitly states that information released for research purposes will be released only in a form which will not allow the identification of an individual health care entity, physician, dentist or health care practitioner.

The Department has deleted the word "patient" from this provision. Its inclusion may have given the mistaken impression that the Bank would collect information that would allow the identification of patients. This is not the case. The Department wishes to emphasize that no information that would allow patient identification will be contained in the Data Bank.

The Department wants to take this opportunity to notify the public that it plans to request additional information regarding reported adverse actions to support important medical liability and malpractice research. In the Department's publication, "Report of the Task Force on Medical Liability and Malpractice," August 1987, the Task Force found a significant need for additional data (part IV: Research Issues). The type of information that the Department plans to request will be specified through the rulemaking process with an opportunity for public comment.

It should be noted that giving researchers access to Data Bank information does not imply that the Data Bank will act as a research service, but its data, without identifiers, will be available to researchers who request it. As in other requests for data information, appropriate user fees will be charged according to § 60.12

Section 60.12 (Proposed § 60.11) Fees Applicable to Requests for Information

The Department received 15 comments on § 60.12. Most of these stressed the importance of keeping fees at a "reasonable" level or requested that funds be waived or reduced for various classes of users. Several respondents noted the limited financial resources of State Boards. One association suggested that fees for statutorily required requests, such as those by hospitals under § 60.10, be at a lower scale than "optional" requests.

In response, the Department recognizes these concerns, Although § 60.12 has not been revised, the Secretary wishes to assure the public that, as the regulation states, fees will be based on the costs of processing requests and providing information. It should be noted, however, that the President's Budget for Fiscal Year 1990 proposes appropriation language that would require fees for the disclosure of information from the Data Bank to be calculated so that the full costs of

operating the Data Bank can be recovered.

The Department will endeavor to keep costs associated with operating the Data Bank, and the consequent costs of querying it, as low as possible.

Section 60.13 (Proposed § 60.12) Confidentiality of National Practitioner Data Bank Information

Several respondents requested clarification of the confidentiality provisions in § 60.13. One State board suggested a revision to clarify the point that information from the Data Bank may only be used for the purpose for which it was provided, whether the information was received directly from the Data Bank or received indirectly from the requesting party. A group of insurers suggested that this section be revised to forbid the requesting party from disclosing the information received from the Data Bank.

In response, the Department has revised § 60.13 to emphasize that the confidentiality restrictions apply to parties who receive information from the Data Bank indirectly, as well as directly. However, it has not accepted the suggestion to forbid further disclosure of information from a requesting party because this is contrary to the intent of the Act. An individual or entity who receives information from the Data Bank is permitted to disclose it further in the course of carrying out the activity for which it was sought. For example, a hospital may request information from the Data Bank on a physician who is applying for a staff position and may share this information with the officials who make the employment review and decision on this physician's application. Nevertheless, the confidentiality limitations of the Act apply both to the initial hospital staff who receive the information and to the specific department staff who subsequently review it. They may each only use and disclose the information with respect to the employment decision.

Section 60.14 (Proposed § 60.13) How to Dispute the Accuracy of the National Practitioner Data Bank Information

Numerous respondents opposed the procedures for disputing the accuracy of information in the Data Bank. Some found them to be vague. Several comments suggested withholding information from parties who make requests pending resolution of a dispute.

In response, the Secretary has made some revisions to clarify the procedures for disputing information. Section 60.14 now explicitly states that the Secretary will routinely mail copies of reports to the subject individual. In order to determine the accuracy of Data Bank information in an expeditious manner, § 60.14(b) now provides a 60-day time period within which to challenge a report.

The Department has not accepted the suggestion that information in dispute be withheld from requestors pending the resolution of the dispute. The Secretary believes that labeling the report as "disputed" provides sufficient notice that the report is in question. The Secretary further believes that the potential threat to the public of withholding valuable information which may well be accurate is not outweighed by a possible detriment to the subject physician, dentist, or other health care practitioner.

Several respondents were disturbed by the statement that, in resolving a dispute, the Secretary would review "related information which is available, including, but not limited to, that available from malpractice insurers, test examination results, State administrative procedures and judicial decisions, and the Health Care Financing Administration." These respondents felt that the Secretary's review should be limited to the statements on file by the reporting and disputing parties, since they would have no further opportunity to challenge this information.

The Secretary has accepted these comments and revised § 60.14 accordingly.

Numerous comments indicated that the Secretary should not continue to label reports as "disputed" if the Secretary determines that the information is accurate. The comments stated that in such a case this label would be misleading.

The Secretary has accepted this comment and has revised § 60.14(c)(2)(i) to indicate that when the information is determined to be accurate, it will simply contain a statement by the subject individual describing the basis for challenge and an explanation of the Secretary's decision.

The Secretary wishes to point out that section 5 of the Medicare and Medicaid Patient and Program Protection Act of 1987 (Pub. L. 100-93), enacted August 18, 1987, requires that States have in effect a system of reporting information to the Secretary with respect to formal proceedings concluded against health care practitioners or entities by authorities responsible for the licensing of health care practitioners or entities. This Act requires the Secretary to provide for the maximum appropriate coordination in implementing section 5 and the Health Care Quality Improvement Act. Proposed regulations implementing section 5 are being developed. When issued, those regulations will complement these final regulations.

The Department will be republishing in the **Federal Register** for public comment the notice of a new system of records for the Data Bank, with proposed routine uses. Although a Privacy Act systems of records notice had been published on September 14, 1987 (52 FR 34721), legislative amendments necessitate the republication of this notice.

Regulatory Flexibility Act and Executive Order 12291

The Secretary certifies that these regulations do not have a significant economic impact on a substantial number of small entities, and therefore do not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980.

Regulatory Flexibility Act

Consistent with the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 5 U.S.C. 604(a)), the Department prepares and publishes an initial regulatory flexibility analysis for proposed regulations unless the Secretary certifies that the regulation would not have a significant economic impact on a substantial number of small business entities. The analysis is intended to explain what effect the regulatory action by the agency would have on small businesses and other small entities and to develop lower cost or burden alternatives. As indicated above, these final regulations would not have a significant economic impact. While some of the penalties and fees the Department could impose as a result of these regulations might have an impact on small entities, the Department does not anticipate that a substantial number of these small entities would be significantly affected by this rulemaking. Therefore, the Secretary certifies that these final regulations would not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

Executive Order 12291 requires the Department to prepare and publish an initial regulatory impact analysis for any proposed major rule. A major rule is defined as any regulation that is likely to: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; or (3) result in significant

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

The Department has determined that these regulations do not meet the criteria for a major rule as defined by section 1(b) of Executive Order 12291. This final regulation establishes procedures for the reporting and releasing of information from the Data Bank. As such, the regulations would have little direct effect on the economy or on Federal or State expenditures. Consequently, the Department has concluded that an initial regulatory impact analysis is not required.

Paperwork Reduction Act of 1980

Section 60.4 of this regulation requires that information to be reported under §§ 60.7, 60.8 and 60.9 shall be provided in the form and manner prescribed by the Secretary. Section 60.11(b) provides that requests for information from the Data Bank, including those required under § 60.10, shall be made in the form and manner prescribed by the Secretary. The actual forms to be used for reporting information to or requesting information from the Data Bank will be submitted to the Office of Management and Budget for review and public comment in accordance with the Paperwork Reduction Act of 1980 as soon as they are available.

Sections 60.6(a), 60.7, 60.8, 60.9, 60.10, and 60.14 contain information collection requirements which have been approved by the Office of Management and Budget (OMB) under section 3504(h) of the Paperwork Reduction Act of 1980 and assigned control number 0915–0126.

Section 60.6(b) contains information collection requirements which are subject to OMB review. We have submitted an information request to OMB for approval under section 3504(h) of the Paperwork Reduction Act of 1980. These requirements will not be effective until the Department obtains OMB approval, at which time a notice will be published in the **Federal Register** to notify the public of such action.

List of Subjects in 45 CFR Part 60

Health professions, Malpractice, Insurance companies.

Accordingly, the Department of Health and Human Services adds a new part 60 to title 45 of the Code of Federal Regulations, as set forth below.

Dated: September 7, 1989.

James O. Mason,

Assistant Secretary for Health.

Approved October 11, 1989.

Louis W. Sullivan,

Secretary.

PART 60—NATIONAL PRACTITIONER DATA BANK FOR ADVERSE INFORMATION ON PHYSICIANS AND OTHER HEALTH CARE PRACTITIONERS

Subpart A—General Provisions

Sec.

60.1 The National Practitioner Data Bank.
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Subpart C—Disclosure of Information by the National Practitioner Data Bank

60.10 Information which hospitals must request from the National Practitioner Data Bank.
60.11 Requesting information from the National Practitioner Data Bank.
60.12 Fees applicable to requests for information.
60.13 Confidentiality of National Practitioner Data Bank information.
60.14 How to dispute the accuracy of National Practitioner Data Bank information.

Authority: Secs. 401–432 of the Health Care Quality Improvement Act of 1986, Pub. L. 99–660, 100 Stat. 3784–3794, as amended by section 402 of Pub. L. 100–177, 101 Stat. 1007–1008 (42 U.S.C. 11101–11152).

Subpart A—General Provisions

§ 60.1 The National Practitioner Data Bank.

The Health Care Quality Improvement Act of 1986 (the Act), title IV of Pub. L. 99–660, as amended, authorizes the Secretary to establish (either directly or by contract) a National Practitioner Data Bank to collect and release certain information relating to the professional competence and conduct of physicians, dentists and other health care practitioners. These regulations set forth the reporting and disclosure requirements for the National Practitioner Data Bank.

§ 60.2 Applicability of these regulations.

These regulations establish reporting requirements applicable to hospitals; health care entities; Boards of Medical Examiners; professional societies of physicians, dentists or other health care practitioners which take adverse licensure or professional review actions; and individuals and entities (including insurance companies) making payments as a result of medical malpractice actions or claims. They also establish procedures to enable individuals or entities to obtain information from the National Practitioner Data Bank or to dispute the accuracy of National Practitioner Data Bank information.

§ 60.3 Definitions.

Act means the Health Care Quality Improvement Act of 1986, title IV of Pub. L. 99–660, as amended.

Adversely affecting means reducing, restricting, suspending, revoking, or denying clinical privileges or membership in a health care entity.

Board of Medical Examiners, or "Board," means a body or subdivision of such body which is designated by a State for the purpose of licensing, monitoring and disciplining physicians or dentists. This term includes a Board of Osteopathic Examiners or its subdivision, a Board of Dentistry or its subdivision, or an equivalent body as determined by the State. Where the Secretary, pursuant to section 423(c)(2) of the Act, has designated an alternate entity to carry out the reporting activities of § 60.9 due to a Board's failure to comply with § 60.8, the term "Board of Medical Examiners" or "Board" refers to this alternate entity.

Clinical privileges means the authorization by a health care entity to a physician, dentist or other health care practitioner for the provision of health care services, including privileges and membership on the medical staff.

Dentist means a doctor of dental surgery, doctor of dental medicine, or the equivalent who is legally authorized to practice dentistry by a State (or who, without authority, holds himself or herself out to be so authorized).

Formal peer review process means the conduct of professional review activities through formally adopted written procedures which provide for adequate notice and an opportunity for a hearing.

Health care entity means:

(a) A hospital;

(b) An entity that provides health care services, and engages in professional review activity through a formal peer review process for the purpose of furthering quality health care, or a committee of that entity; or

(c) A professional society or a committee or agent thereof, including

those at the national, State, or local level, of physicians, dentists, or other health care practitioners that engages in professional review activity through a formal peer review process, for the purpose of furthering quality health care.

For purposes of paragraph (b) of this definition, an entity includes: a health maintenance organization which is licensed by a State or determined to be qualified as such by the Department of Health and Human Services; and any group or prepaid medical or dental practice which meets the criteria of paragraph (b).

Health care practitioners means an individual other than a physician or dentist, who is licensed or otherwise authorized by a State to provide health care services.

Hospital means an entity described in paragraphs (1) and (7) of section 1861(e) of the Social Security Act.

Medical malpractice action or claim means a written complaint or claim demanding payment based on a physician's, dentists or other health care practitioner's provision of or failure to provide health care services, and includes the filing of a cause of action based on the law of tort, brought in any State or Federal Court or other adjudicative body.

Physician means a doctor of medicine or osteopathy legally authorized to practice medicine or surgery by a State (or who, without authority, holds himself or herself out to be so authorized).

Professional review action means an action or recommendation of a health care entity:

(a) Taken in the course of professional review activity;

(b) Based on the professional competence or professional conduct of an individual physician, dentist or other health care practitioner which affects or could affect adversely the health or welfare of a patient or patients; and

(c) Which adversely affects or may adversely affect the clinical privileges or membership in a professional society of the physician, dentist or other health care practitioner.

(d) This term excludes actions which are primarily based on:

(1) The physician's, dentist's or other health care practitioner's association, or lack of association, with a professional society or association;

(2) The physician's, dentist's or other health care practitioner's fees or the physician's, dentist's or other health care practitioner's advertising or engaging in other competitive acts intended to solicit or retain business;

(3) The physician's, dentist's or other health care practitioner's participation in prepaid group health plans, salaried employment, or any other manner of delivering health services whether on a fee-for-service or other basis;

(4) A physician's, dentist's or other health care practitioner's association with, supervision of, delegation of authority to, support for, training of, or participation in a private group practice with, a member or members of a particular class of health care practitioner or professional; or

(5) Any other matter that does not relate to the competence or professional conduct of a physician, dentist or other health care practitioner.

Professional review activity means an activity of a health care entity with respect to an individual physician, dentist or other health care practitioner:

(a) To determine whether the physician, dentist or other health care practitioner may have clinical privileges with respect to, or membership in, the entity;

(b) To determine the scope or conditions of such privileges or membership; or

(c) To change or modify such privileges or membership.

Secretary means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated.

State means the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

Subpart B—Reporting of Information

§ 60.4 How information must be reported.

Information must be reported to the Data Bank or to a Board of Medical Examiners as required under §§ 60.7, 60.8, and 60.9 in such form and manner as the Secretary may prescribe.

§ 60.5 When information must be reported.

Information required under §§ 60.7, 60.8, and 60.9 must be submitted to the Data Bank within 30 days following the action to be reported, beginning with actions occurring on or after the effective date of these regulations or the date of the establishment of the Data Bank, whichever is later, as follows:

(a) *Malpractice Payments (§ 60.7).* Persons or entities must submit information to the Data Bank within 30 days from the date that a payment, as described in § 60.7, is made. If required under § 60.7, this information must be submitted simultaneously to the appropriate State licensing board.

(b) *Licensure Actions (§ 60.8).* The Board must submit information within 30 days from the date the licensure action was taken.

(c) *Adverse Actions (§ 60.9).* A health care entity must report an adverse action to the Board within 15 days from the date the adverse action was taken. The Board must submit the information received from a health care entity within 15 days from the date on which it received this information. If required under § 60.9, this information must be submitted by the Board simultaneously to the appropriate State licensing board in the State in which the health care entity is located, if the Board is not such licensing Board.

§ 60.6 Reporting errors, omissions, and revisions.

(a) Persons and entities are responsible for the accuracy of information which they report to the Data Bank. If errors or omissions are found after information has been reported, the person or entity which reported it must send an addition or correction to the Data Bank or, in the case of reports made under § 60.9, to the Board of Medical Examiners, as soon as possible.

(b) An individual or entity which reports information on licensure or clinical privileges under §§ 60.8 or 60.9 must also report any revision of the action originally reported. Revisions include reversal of a professional review action or reinstatement of a license. Revisions are subject to the same time constraints and procedures of §§ 60.5, 60.8, and 60.9, as applicable to the original action which was reported.

(Section 60.6(a) approved by the Office of Management and Budget under control number 0915–0126)

§ 60.7 Reporting medical malpractice payments.

(a) *Who must report.* Each person or entity, including an insurance company, which makes a payment under an insurance policy, self-insurance, or otherwise, for the benefit of a physician, dentist or other health care practitioner in settlement of or in satisfaction in whole or in part of a claim or a judgment against such physician, dentist, or other health care practitioner for medical malpractice, must report information as set forth in paragraph (b) to the Data Bank and to the appropriate State licensing board(s) in the State in which the act or omission upon which the medical malpractice claim was based. For purposes of this section, the waiver of an outstanding debt is not construed

as a "payment" and is not required to be reported.

(b) *What information must be reported.* Persons or entities described in paragraph (a) must report the following information:

(1) With respect to the physician, dentist or other health care practitioner for whose benefit the payment is made—

(i) Name,

(ii) Work address,

(iii) Home address, if known,

(iv) Social Security number, if known, and if obtained in accordance with section 7 of the Privacy Act of 1974,

(v) Date of birth,

(vi) Name of each professional school attended and year of graduation,

(vii) For each professional license: the license number, the field of licensure, and the name of the State or Territory in which the license is held,

(viii) Drug Enforcement Administration registration number, if known,

(ix) Name of each hospital with which he or she is affiliated, if known;

(2) With respect to the reporting person or entity—

(i) Name and address of the person or entity making the payment,

(ii) Name, title, and telephone number of the responsible official submitting the report on behalf of the entity, and

(iii) Relationship of the reporting person or entity to the physician, dentist, or other health care practitioner for whose benefit the payment is made;

(3) With respect to the judgment or settlement resulting in the payment—

(i) Where an action or claim has been filed with an adjudicative body, identification of the adjudicative body and the case number,

(ii) Date or dates on which the act(s) or omission(s) which gave rise to the action or claim occurred,

(iii) Date of judgment or settlement,

(iv) Amount paid, date of payment, and whether payment is for a judgment or a settlement,

(v) Description and amount of judgment or settlement and any conditions attached thereto, including terms of payment,

(vi) A description of the acts or omissions and injuries or illnesses upon which the action or claim was based,

(vii) Classification of the acts or omissions in accordance with a reporting code adopted by the Secretary, and

(viii) Other information as required by the Secretary from time to time after publication in the **Federal Register** and after an opportunity for public comment.

(c) *Sanctions.* Any person or entity that fails to report information on a payment required to be reported under this section is subject to a civil money penalty of up to $10,000 for each such payment involved. This penalty will be imposed pursuant to procedures at 42 CFR part 1003.

(d) *Interpretation of information.* A payment in settlement of a medical malpractice action or claim shall not be construed as creating a presumption that medical malpractice has occurred.

(Approved by the Office of Management and Budget under control number 0915–0126)

§ 60.8 Reporting licensure actions taken by Boards of Medical Examiners.

(a) *What actions must be reported.* Each Board of Medical Examiners must report to the Data Bank any action based on reasons relating to a physician's or dentist's professional competence or professional conduct–

(1) Which revokes or suspends (or otherwise restricts) a physician's or dentist's license,

(2) Which censures, reprimands, or places on probation a physician or dentist, or

(3) Under which a physician's or dentist's license is surrendered.

(b) *Information that must be reported.* The Board must report the following information for each action:

(1) The physician's or dentist's name,

(2) The physician's or dentist's work address,

(3) The physician's or dentist's home address, if known,

(4) The physician's or dentist's Social Security number, if known, and if obtained in accordance with section 7 of the Privacy Act of 1974,

(5) The physician's or dentist's date of birth,

(6) Name of each professional school attended by the physician or dentist and year of graduation,

(7) For each professional license, the physician's or dentist's license number, the field of licensure and the name of the State or Territory in which the license is held,

(8) The physician's or dentist's Drug Enforcement Administration registration number, if known,

(9) A description of the acts or omissions or other reasons for the action taken,

(10) A description of the Board action, the date the action was taken, and its effective date,

(11) Classification of the action in accordance with a reporting code adopted by the Secretary, and

(12) Other information as required by the Secretary from time to time after publication in the **Federal Register** and after an opportunity for public comment.

(c) *Sanctions.* If, after notice of noncompliance and providing opportunity to correct noncompliance, the Secretary determines that a Board has failed to submit a report as required by this section, the Secretary will designate another qualified entity for the reporting of information under § 60.9.

(Approved by the Office of Management and Budget under control number 0915–0126)

§ 60.9 Reporting adverse actions on clinical privileges.

(a) *Reporting to the Board of Medical Examiners.*—(1) *Actions that must be reported and to whom the report must be made.* Each health care entity must report to the Board of Medical Examiners in the State in which the health care entity is located the following actions:

(i) Any professional review action that adversely affects the clinical privileges of a physician or dentist for a period longer than 30 days;

(ii) Acceptance of the surrender of clinical privileges or any restriction of such privileges by a physician or dentist—

(A) While the physician or dentist is under investigation by the health care entity relating to possible incompetence or improper professional conduct, or

(B) In return for not conducting such an investigation or proceeding; or

(iii) In the case of a health care entity which is a professional society, when it takes a professional review action.

(2) *Voluntary reporting on other health care practitioners.* A health care entity may report to the Board of Medical Examiners information as described in paragraph (a)(3) of this section concerning actions described in paragraph (a)(1) in this section with respect to other health care practitioners.

(3) *What information must be reported.* The health care entity must report the following information concerning actions described in paragraph (a)(1) of this section with respect to the physician or dentist:

(i) Name,

(ii) Work address,

(iii) Home address, if known,

(iv) Social Security number, if known, and if obtained in accordance with section 7 of the Privacy Act of 1974,

(v) Date of birth,

(vi) Name of each professional school attended and year of graduation,

(vii) For each professional license: the license number, the field of licensure, and the name of the State or Territory in which the license is held,

(viii) Drug Enforcement Administration registration number, if known,

(ix) A description of the acts or omissions or other reasons for privilege loss, or, if known, for surrender,

(x) Action taken, date the action was taken, and effective date of the action, and

(xi) Other information as required by the Secretary from time to time after publication in the **Federal Register** and after an opportunity for public comment.

(b) *Reporting by the Board of Medical Examiners to the National Practitioner Data Bank.* Each Board must report, in accordance with §§ 60.4 and 60.5, the information reported to it by a health care entity and any known instances of a health car entity's failure to report information as required under paragraph (a)(1) of this section. In addition, each Board must simultaneously report this information to the appropriate State licensing board in the State in which the health care entity is located, if the Board is not such licensing board.

(c) *Sanctions*—(1) *Health care entities.* If the Secretary has reason to believe that a health care entity has substantially failed to report information in accordance with § 60.9, the Secretary will conduct an investigation. If the investigation shows that the health care entity has not complied with § 60.9, the Secretary will provide the entity with a written notice describing the noncompliance, giving the health care entity an opportunity to correct the noncompliance, and stating that the entity may request, within 30 days after receipt of such notice, a hearing with respect to the noncompliance. The request for a hearing must contain a statement of the material factual issues in dispute to demonstrate that there is cause for a hearing. These issues must be both substantive and relevant. The hearing will be held in the Washington, DC, metropolitan area. The Secretary will deny a hearing if:

(i) The request for a hearing is untimely,

(ii) The health care entity does not provide a statement of material factual issues in dispute, or

(iii) The statement of factual issues in dispute is frivolous or inconsequential.

In the event that the Secretary denies a hearing, the Secretary will send a written denial to the health care entity setting forth the reasons for denial. If a hearing is denied, or if as a result of the hearing the entity is found to be in noncompliance, the Secretary will publish the name of the health care entity in the **Federal Register**. In such case, the immunity protections provided under section 411(a) of the Act will not apply to the health care entity for professional review activities that occur during the 3-year period beginning 30 days after the date of publication of the entity's name in the **Federal Register**.

(2) *Board of Medical Examiners.* If, after notice of noncompliance and providing opportunity to correct noncompliance, the Secretary determines that a Board has failed to report information in accordance with paragraph (b) of this section, the Secretary will designate another qualified entity for the reporting of this information.

(Approved by the Office of Management and Budget under control number 0915–0126)

Subpart C—Disclosure of Information by the National Practitioner Data Bank

§ 60.10 Information which hospitals must request from the National Practitioner Data Bank.

(a) *When information must be requested.* Each hospital, either directly or through an authorized agent, must request information from the Data Bank concerning a physician, dentist or other health care practitioner as follows:

(1) At the time a physician, dentist or other health care practitioner applies for a position on its medical staff (courtesy or otherwise), or for clinical privileges at the hospital; and

(2) Every 2 years concerning any physician, dentist, or other health care practitioner who is on its medical staff (courtesy or otherwise), or has clinical privileges at the hospital.

(b) *Failure to request information.* Any hospital which does not request the information as required in paragraph (a) of this section is presumed to have knowledge of any information reported to the Data Bank concerning this physician, dentist or other health care practitioner.

(c) *Reliance on the obtained information.* Each hospital may rely upon the information provided by the Data Bank to the hospital. A hospital shall not be held liable for this reliance unless the hospital has knowledge that the information provided was false.

(Approved by the Office of Management and Budget under control number 0915–0126)

§ 60.11 Requesting information from the National Practitioner Data Bank.

(a) *Who may request information and what information may be available.* Information in the Data Bank will be available, upon request, to the persons or entities, or their authorized agents, as described below:

(1) A hospital that requests information concerning a physician, dentist or other health care practitioner who is on its medical staff (courtesy or otherwise) or has clinical privileges at the hospital,

(2) A physician, dentist, or other health care practitioner who requests information concerning himself or herself,

(3) Boards of Medical Examiners or other State licensing boards,

(4) Health care entities which have entered or may be entering employment or affiliation relationships with a physician, dentist or other health care practitioner has applied for clinical privileges or appointment to the medical staff,

(5) An attorney, or individual representing himself or herself, who has filed a medical malpractice action or claim in a State or Federal court or other adjudicative body against a hospital, and who requests information regarding a specific physician, dentist, or other health care practitioner who is also named in the action or claim. Provided, that this information will be disclosed only upon the submission of evidence that the hospital failed to request information from the Data Bank as required by § 60.10(a), and may be used solely with respect to ligitation resulting from the action or claim against the hospital.

(6) A health care entity with respect to professional review activity, and

(7) A person or entity who requests information in a form which does not permit the identification of any particular health care entity, physician, dentist, or other health care practitioner.

(b) *Procedures for obtaining National Practitioner Data Bank information.* Persons and entities may obtain information from the Data Bank by submitting a request in such form and manner as the Secretary may prescribe. These requests are subject to fees as described in § 60.12

§ 60.12 Fees applicable to requests for information

(a) *Policy on Fees.* The fees described in this section apply to all requests for information from the Data Bank, other than those of individuals for information concerning themselves. These fees are authorized by section 427(b)(4) of the Health Care Quality Improvement Act of 1986 (42 U.S.C. 11137). They reflect the costs of processing requests for disclosure and of providing such information. The actual fees will be announced by the Secretary in periodic notices in the **Federal Register.**

(b) *Criteria for determining the fee.* The amount of each fee will be

determined based on the following criteria:

(1) Use of electronic data processing equipment to obtain information—the actual cost for the service, including computer search time, runs, printouts, and time of computer programmers and operators, or other employees.

(2) Photocopying or other forms of reproduction, such as magnetic tapes—actual cost of the operator's time, plus the cost of the machine time and the materials used,

(3) Postage—actual cost, and

(4) Sending information by special methods requested by the applicant, such as express mail or electronic transfer—the actual cost of the special service.

(c) *Assessing and collecting fees.* (1) A request for information from the Data Bank will be regarded as also an agreement to pay the associated fee.

(2) Normally, a bill will be sent along with or following the delivery of the requested information. However, in order to avoid sending numerous small bills to frequent requesters, the charges may be aggregated for certain periods. For example, such a requester may receive a bill monthly or quarterly.

(3) In the event that a requester has failed to pay previous bills, the requester will be required to pay the fee before a request for information is processed.

(4) Fees must be paid by check or money order made payable to "U.S. Department of Health and Human Services" or to the unit stated in the billing and must be sent to the billing unit. Payment must be received within 30 days of the billing date or the applicant will be charged interest and a late fee on the amount overdue.

§ 60.13 Confidentiality of National Practitioner Data Bank information.

(a) *Limitations on disclosure.* Information reported to the Data Bank is considered confidential and shall not be disclosed outside the Department of Health and Human Services, except as specified in § 60.10, § 60.11 and § 60.14. Persons and entities which receive information from the Data Bank either directly or from another party must use it solely with respect to the purpose for which it was provided. Nothing in this paragraph shall prevent the disclosure of information by a party which is authorized under applicable State law to make such disclosure.

(b) *Penalty for violations.* Any person who violates paragraph (a) shall be subject to a civil money penalty of up to $10,000 for each violation. This penalty will be imposed pursuant to procedures at 42 CFR part 1003.

§ 60.14 How to dispute the accuracy of National Practitioner Data Bank information.

(1) *Who may dispute National Practitioner Data Bank information.* Any physician, dentist or other health care practitioner may dispute the accuracy of information in the Data Bank concerning himself or herself. The Secretary will routinely mail a copy of any report filed in the Data Bank to the subject individual.

(b) *Procedures for filing a dispute.* A physician, dentist or other health care practitioner has 60 days from the date on which the Secretary mails the report in question to him or her in which to dispute the accuracy of the report. The procedures for disputing a report are:

(1) Informing the Secretary and the reporting entity, in writing, of the disagreement, and the basis for it.

(2) Requesting simultaneously that the disputed information be entered into a "disputed" status and be reported to inquirers as being in a "disputed" status, and

(3) Attempting to enter into discussion with the reporting entity to resolve the dispute.

(c) *Procedures for revising disputed information.* (1) If the reporting entity revises the information originally submitted to the Data Bank, the Secretary will notify all entities to whom reports have been sent that the original information has been revised.

(2) If the reporting entity does not revise the reported information, the Secretary will, upon request, review the written information submitted by both parties (the physician, dentist or other health care practitioner), and the reporting entity. After review, the Secretary will either—

(i) If the Secretary concludes that the information is accurate, include a brief statement by the physician, dentist or other health care practitioner describing the disagreement concerning the information, and an explanation of the basis for the decision that it is accurate, or

(ii) If the Secretary concludes that the information was incorrect, send corrected information to previous inquirers.

(Approved by the Office of Management and Budget under control number 0915–0126)

[FR Doc. 89–24425 Filed 10–16–89; 8:45 am]

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federal register

Tuesday
October 17, 1989

Part IX

The President

Proclamation 6048—World Food Day, 1989 and 1990

Federal Register
Vol. 54, No. 199
Tuesday, October 17, 1989

Presidential Documents

Title 3—

The President

Proclamation 6048 of October 16, 1989

World Food Day, 1989 and 1990

By the President of the United States of America

A Proclamation

Each day, millions of people around the world face the frightening specter of hunger and malnutrition. These problems are devastating to developing countries, where they cause immeasurable human suffering—especially among children. As an expression of our Nation's continued commitment to ending world hunger, the United States joins 150 other countries in observing World Food Day.

The American people, through a number of government-sponsored and private food relief programs, have responded generously to the needs of those affected by famine and natural disasters. During the year that ended in June, the United States sent over five million metric tons of wheat, rice, and coarse grains to countries in need—more than all other contributing nations combined. The United States is also helping to alleviate hunger and malnutrition in poor countries by encouraging economic growth and private sector development.

Fortunately, the need for global food donations abated during the past year as drought ended in many countries. In most of Africa, the agricultural situation improved. Yet widespread starvation continues in Sudan and Mozambique, mainly due to violent civil conflict and the dislocation of millions of people.

Efforts to alleviate hunger and encourage agricultural reforms in developing countries must continue. While food production has improved around the world, the financial capacity to grow, import, and distribute agricultural products has deteriorated in many nations. Indeed, in several countries where production has reached only marginal rates, the potential for disaster remains.

The developed nations of the world must determine how best to help developing countries increase their food production and generate sufficient revenues to buy, store, and distribute essential agricultural imports. It is our hope that World Food Day will inspire fresh proposals for easing world hunger and promote greater understanding between those nations in need and those with food to share.

This year, as we observe World Food Day, we call special attention to the global environment. If we are to improve and sustain the world's agricultural productivity, we must protect its soil, air, and water. Through careful planning and stewardship of our natural resources, we can reduce threats to the environment and increase our food security.

We Americans have been blessed with not only an abundance of natural resources, but the freedom that is the foundation of economic growth and prosperity. We recognize the adverse consequences of centralized control of agriculture and excessive government intervention in the marketplace. We know that, in the fight against world hunger, freedom is the key to long-term progress and lasting productivity. That is why, in addition to providing direct food aid to less developed countries, the United States is encouraging the development of agricultural policies that harness the power of private enterprise and reward individual initiative. The United States is also encouraging

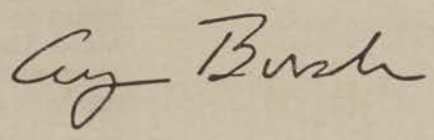
the development and implementation of free and fair trade practices that will allow all farmers greater access to international markets.

As we observe World Food Day, let us renew our determination to seek effective answers to the problem of world hunger. Let us also gratefully acknowledge the generous efforts of the many public employees, health care professionals, volunteers, and concerned citizens who devote their time and energy to assisting those who suffer from hunger and hunger-related diseases.

In recognition of the desire and commitment of Americans to end world hunger, the Congress, by Senate Joint Resolution 138, has designated October 16, 1989, and October 16, 1990, as "World Food Day" and has authorized the President to issue a proclamation in observance of these days.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim October 16, 1989, and October 16, 1990, as World Food Day, and I call upon the people of the United States to observe these days with appropriate ceremonies and activities, including worship services, fasting, educational programs, and studies designed to find ways in which our Nation can further contribute to the elimination of hunger in the world.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of October, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.



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Filed 10-16-89; 12:24 pm]
Billing code 3195-01-M

Editorial note: For the President's remarks of Oct. 16 on signing Proclamation 6048, see the *Weekly Compilation of Presidential Documents* (vol. 25, no. 42).

federal register

Tuesday
October 17, 1989

Part X

Office of Management and Budget

Final OMB Sequester Report to the President and Congress for Fiscal Year 1990; Report Transmittal

OFFICE OF MANAGEMENT AND BUDGET

Final OMB Sequester Report to the President and Congress for Fiscal Year 1990

AGENCY: Office of Management and Budget.

ACTION: Report Transmittal.

SUMMARY: This notice transmits the *Final OMB Sequester Report to the President and Congress for Fiscal Year 1990* in accordance with the provisions of the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99–177) as amended by the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (Public Law 100–119).

Dated: October 16, 1989.

Richard G. Darman,

Director.

BILLING CODE 3110-01-M

FINAL OMB SEQUESTER REPORT TO THE PRESIDENT AND CONGRESS FOR FISCAL YEAR 1990

NOTICE

There should be no release of this document until 12:00 noon (E.D.T.), Monday, October 16, 1989.

If the Congress passes reconciliation legislation, consistent with the Bipartisan Budget Agreement, prior to midnight on October 16, an alternative Report will be presented to the President.

October 16, 1989

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DIRECTOR

The following is the text of a letter transmitting the *Final OMB Sequester Report to the President and Congress for Fiscal Year 1990.*

October 16, 1989

The President
The White House
Washington, DC 20500

Dear Mr. President:

Enclosed please find the *Final OMB Sequester Report to the President and Congress for Fiscal Year 1990.* It has been prepared in accordance with the requirements of the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99–177) as amended by the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (Public Law 100–119).

As required by law, the budget estimates contained in this report are based on economic and technical assumptions published by the Office of Management and Budget in the July 18th *Mid-Session Review*, and on laws enacted and final regulations promulgated as of October 10, 1989.

The report finds that, under current law, sequestration is necessary in order to meet the Gramm-Rudman-Hollings deficit reduction target. Accordingly, a final Presidential sequestration order that requires the immediate reduction of funds has been prepared for issuance today.

This report provides calculations of the amounts and percentages by which various budgetary resources are to be reduced. The report includes projected budget baseline levels, economic assumptions, a discussion of the sequestration calculations, and comparisons with the estimates provided by the Director of the Congressional Budget Office in his report of October 10th. Appendix A lists sequestration reductions by agency and budget account. Appendix B provides program, project, and activity detail for atomic energy defense, the only defense programs for which 1990 appropriations have been enacted.

I regret that the Congress has failed to pass any reconciliation legislation. Had the Congress passed such legislation by today's date, in a manner consistent with the Bipartisan Budget Agreement, sequestration could have been avoided. Now we must hope that the Congress will be capable of developing an alternative to sequester—a responsible deficit-reduction program that could serve as a basis for rescinding the sequester order. If the Congress fails to develop a responsible alternative, the sequester order will, of course, remain in force—and associated deficit reduction of $16.1 billion in outlays will be achieved in this across-the-board manner.

Respectfully yours,

Richard G. Darman
Director

Enclosure

IDENTICAL LETTERS SENT TO HONORABLE DAN QUAYLE, HONORABLE THOMAS S. FOLEY

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GENERAL NOTES

1. All years referred to are fiscal years unless otherwise noted.
2. Details in the tables and text may not add to totals because of rounding.
3. Unless otherwise noted, the source of all data in this report is the Office of Management and Budget.
4. Unless otherwise noted, "the Act" refers to the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99–177) as amended by the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (Public Law 100–119).

I. THE BASELINE DEFICIT

The Balanced Budget and Emergency Deficit Control Act of 1985, as amended, (commonly known as Gramm-Rudman-Hollings, or G-R-H) sets deficit targets through 1993. The Act requires automatic reductions in selected programs (a sequester) to achieve these targets if they cannot be reached through the legislative process. The table below shows the deficit targets specified in the Act. Except in 1993, the Act allows for a $10 billion margin-of-error.

Deficit Targets

(In billions of dollars)

Fiscal Year	Target Deficit	Sequester Trigger
1990	100.0	110.0
1991	64.0	74.0
1992	28.0	38.0
1993	zero	zero

Under the Act, the Director of the Office of Management and Budget (OMB) is obliged to determine each year whether or not sequestration is necessary and, if so, the magnitude of the sequester. The Congressional Budget Office (CBO) is obliged to prepare independently its own sequestration reports. The CBO reports are transmitted to the Director of OMB and to Congress, and provide a basis for comparison against which Congress and others may assess the OMB reports. The OMB reports to the President and the Congress provide the basis for sequestration orders to be issued by the President.

OMB issued an estimate of the G-R-H baseline deficit in the *Mid-Session Review of the Budget*, which was published on July 18, 1989. Under the Act, subsequent G-R-H reports must use the same economic and technical assumptions as in the *Mid-Session Review*. Both the initial OMB and CBO sequestration reports were based on laws enacted and regulations promulgated as final as of August 15th (the snapshot date). The revised reports, however, do not share a common snapshot date. Rather the G-R-H law requires that the revised reports be based on laws enacted and final regulations promulgated by the latest possible date before the reports are issued. The CBO revised report was issued six days ago, on October 10th. As a result, the estimates in the OMB revised report reflect the promulgation in final of a medicaid regulation that occurred after the CBO snapshot date and, thus, is not included in CBO's revised estimates.

As required by the Act, this report:

— estimates the 1990 G-R-H baseline deficit, using the economic and technical assumptions OMB used in the *Mid-Session Review*;

— calculates the sequester amounts required; and

— presents and explains significant differences between the estimates in this report and the estimates in the CBO report.

This report shows the G-R-H baseline deficit to be $116.1 billion, $16.1 billion above the $100 billion deficit target specified in the Act for 1990 and $6.1 billion above the level that would trigger a sequester. Since the publication of the August initial sequester report, laws enacted and regulations promulgated in final have reduced the deficit by a net amount of less than $50 million. The changes since August, which basically offset each other, include enactment of the Energy and Water Development Appropriations Act, the enactment of supplemental appropriations to aid the victims of hurricane Hugo, the promulgation in final of several Health and Human Services regulations, and the establishment of the 1990 pay raises for Federal military and civilian employees.

Because the estimates in this report indicate that, under current law, a sequester is required for 1990, the President is to issue a final order to implement the sequester. As a result of the initial sequester order issued on August 25th, agencies have been restricted since the fiscal year began on October 1st from obligating a portion of their 1990 funds; this restriction has been consistent with a sequester of $16.2 billion, the estimate contained in the August initial sequester report. With the issuance of the final order, funds will be sequestered in amounts necessary to reduce estimated 1990 outlays by $16.1 billion, the amount of the outlay reduction estimated in this report. The final order is to be issued and take effect today.

As shown in Table 1, OMB's current 1990 G-R-H baseline estimate for receipts is $1,074.8 billion. Baseline outlays are estimated to total $1,190.9 billion.

Table 1.—G-R-H Baseline Totals for 1990

(In billions of dollars)

	Laws and regulations in effect as of—			
	January 1, 1989	July 10, 1989	August 15, 1989	October 10, 1989
Receipts	1,074.3	1,074.3	1,074.8	1,074.8
Outlays	1,201.5	1,202.4	1,191.0	1,190.9
Deficit	127.1	128.1	116.2	116.1

The estimates assume that current law for revenues and spending authority (including most entitlements) will continue unchanged, and that expiring provisions of law providing revenues and spending authority will terminate as scheduled, except as provided in the G-R-H Act.[1] For discretionary spending accounts for which no 1990 appropriations bills have been enacted, baseline estimates are based on the 1989 appropriations adjusted for inflation and pay costs. The baseline estimates also include the receipts and outlays of the off-budget social security trust funds, although social security benefits themselves are exempt from sequestration.

OMB's estimate of the baseline deficit is further affected by a technical spendout requirement specified in the G-R-H Act. The Act requires that in developing the G-R-H baseline the Director of OMB shall assume that the aggregate spendout rate (the ratio of new outlays to new budgetary resources) from sequesterable discretionary resources for defense programs not differ by more than one-half percentage point from the comparable rate contained in the sequester report submitted for the previous fiscal year. The Act applies the same requirement to nondefense programs. The estimates for nondefense programs meet this requirement. To meet the requirement for defense programs, however, a $4.0 billion downward adjustment of the estimated outlays from new budgetary resources is needed in order to bring the aggregate spendout rate within one-half a percentage point of the benchmark rate.

Estimates of the G-R-H baseline using current economic and technical assumptions but assuming laws and regulations in effect on January 1, 1989, produce a fiscal year 1990 deficit of $127.1 billion. Table 2 shows the impact on this estimated deficit of legislation enacted and final regulations promulgated since January. In total, these policy changes have decreased the baseline deficit by $11.0 billion.

[1] The G-R-H Act allows for continuation of expiring programs in the following cases: excise taxes dedicated to a trust fund (but not spending authority in that trust fund); Commodity Credit Corporation price support programs; contract authority for transportation trust funds; and authority to provide insurance through the Federal Housing Administration fund.

The largest reduction in the 1990 baseline deficit since January is the result of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Public Law 101–73), which reduced the deficit by $12.8 billion. Promulgation of several final regulations, including the medicare direct graduate medical education regulation, have brought the deficit down by another $0.7 billion.[2] Other changes—primarily the enactment of various appropriations measures and the Disaster Assistance Act—have, on net, increased the deficit by $2.5 billion.

Table 2.—G-R-H Baseline Deficits for 1990—Based on Laws In Effect In January, July, August, and October

(In billions of dollars)

January Baseline Deficit	127.1
Changes in law between January 1st and July 10th:	
Supplemental Appropriations Act, 1989 (Public Law 101–45)	0.9
Other (net, including debt service)	0.1
Subtotal, changes in law between January 1st–July 10th	0.9
July (Mid-Session Review) Baseline Deficit	128.1
Changes in law between July 10th and August 15th:	
Financial Institutions Reform, Recovery, and Enforcement Act, 1989 (Public Law 101–73)	–12.8
Disaster Assistance Act, 1989 (Public Law 101–82)	0.9
Other (net, including debt service)	–*
Subtotal, changes in law between July 10th–August 15th	–11.9
August Baseline Deficit	116.2
Changes in law between August 15th and October 10th:	
Legislation enacted:	
FEMA supplemental in Continuing Appropriations for 1990 (Public Law 101–100)	0.4
Energy and Water Development Appropriations Act, 1990 (Public Law 101–101)	0.8
Performance Management and Recognition System Reauthorization (Public Law 101–103)	–0.2
Extension of Certain Veterans Affairs Programs (Public Law 101–110)	–*
Health and Human Services final regulations	–0.6
Other changes:	
Establishment of the 1990 Federal pay raise	–0.6
Offsets to Federal pay raise	0.2
Other (net, including debt service)	*
Subtotal, changes in law between August 15th–October 10th	–*
October Baseline Deficit	116.1
MEMORANDUM	
Net Deficit Reduction Achieved January 1st–October 10th	–11.0

*$50 million or less.

[2] Implementation of a final regulation for the veterans housing loan guarantee program was blocked by the District Court after the OMB initial sequester report was issued in August. Under the G-R-H Act, OMB is not permitted to reflect the impact of the court decision on the baseline. Therefore, the estimated net savings of $43 million associated with this regulation remains in the baseline.

II. ECONOMIC ASSUMPTIONS

The principal economic assumptions underlying the G-R-H baseline estimates for 1990 are shown in Table 3. The Act also requires the OMB Director to estimate the rate of real GNP growth for the last two quarters of fiscal year 1989 and for each quarter of fiscal year 1990. These estimates are shown in Table 4. As required by law, all these economic assumptions are the same as those used by OMB for its *Mid-Session Review of the Budget* and the August initial sequester report.

Table 3.—Economic Assumptions

(Fiscal year 1990)

Gross National Product:	
Current dollars (in billions of dollars)	5,482.0
Percent change, year over year	6.7
Constant dollars (in billions of 1982 dollars)	4,179.7
Percent change, year over year	2.4
GNP Implicit Price Deflator (percent change, year over year) [1]	4.2
CPI-W (percent change, year over year)	4.4
Civilian Unemployment Rate (percent, fiscal year average)	5.4
Interest Rates (fiscal year average):	
91-day Treasury bills	7.1
10-year Treasury notes	7.8

[1] As required under the Act, the discretionary program inflation adjustment and pay raise costs are estimated using the increase in the GNP deflator (3.6 percent) from the economic assumptions presented in January. All other estimates in this report, however, use the economic assumptions presented in the *Mid-Session Review of the Budget* and shown in this table.

Table 4.—Real Economic Growth Rates by Quarter

(In percent, annual rates)

FY 1989			FY 1990			
Actual		Estimate	Estimates			
Jan.–Mar. 1989 [1]	Apr.–June 1989 [2]	July–Sept. 1989	Oct.–Dec. 1989	Jan.–Mar. 1990	Apr.–June 1990	July–Sept. 1990
4.4	2.2	2.2	2.1	2.2	2.5	2.4

[1] As reported by the Department of Commerce (June 22, 1989) and published in the *Mid-Session Review of the Budget*. Subsequently, the Department of Commerce revised the actual for January–March 1989 to 3.7 percent. Pursuant to the Act, OMB may not update the Mid-Session figure for purposes of estimating the G-R-H baseline.

[2] On September 21, 1989, the Department of Commerce reported an actual real growth rate for April–June 1989 of 2.5 percent.

III. COMPOSITION OF G-R-H BASELINE OUTLAYS AND RESOURCES SUBJECT TO SEQUESTER

For defense and nondefense programs combined, an estimated $765.8 billion in outlays, or 64 percent of total outlays, are associated with budgetary resources exempt from sequestration. The burden of sequestration falls on programs that comprise the remaining 36 percent of budget outlays. Of these outlays, defense programs account for 44 percent, special rule nondefense programs account for 29 percent, and other nondefense programs account for 26 percent.

Table 5 provides further detail on the G-R-H baseline outlay estimates for 1990. An estimated $188.0 billion of 1990 outlays for defense programs, or 65 percent of total defense outlays, are associated with budgetary resources subject to an across-the-board percentage reduction.

An estimated $237.1 billion of outlays for nondefense programs, or 26 percent of total nondefense outlays for 1990, are associated with sequesterable budgetary resources. About $124.6 billion of these outlays, or 14 percent of total nondefense outlays, are for programs with automatic spending increases and for certain special rule programs, the largest of which is medicare. The Act limits the extent of spending reductions for these programs. Of the total estimated 1990 nondefense outlays of $899.8 billion, an estimated $112.5 billion—about 12 percent of nondefense outlays—are associated with budgetary resources subject to an across-the-board percentage reduction.[3] An estimated $662.7 billion of nondefense outlays, or 74 percent of total nondefense outlays for 1990, are exempt from sequestration.

A sequester does not reduce outlays directly; rather, it permanently cancels budget authority and other authority to obligate and expend funds (except that special rules apply to amounts sequestered in special and trust funds). For defense programs, sequesterable budgetary resources consist of new budget authority provided for 1990 and unobligated balances of budget authority provided in previous years. For nondefense programs, the sequesterable budgetary resources are new budget authority; new direct loan obligations, commitments, or limitations; new guaranteed loan commitments or limitations; obligation limitations; and spending authority as defined in Section 401(c)(2) of the Congressional Budget Act of 1974. This definition of spending authority includes various mandatory and permanent appropriations, as well as Federal payments financed by offsetting collections that are credited to budget accounts.

The Act exempts a number of programs and activities of the Federal Government from the sequestration process. As shown in Table 5, the largest are social security benefits, net interest, certain low-income programs, most Federal retirement and disability benefits, regular State unemployment insurance benefits, and veterans compensation and pensions. Also exempt from sequestration are prior legal obligations of the Government in certain specified budget accounts. Outlays from all obligated balances and outlays from unobligated balances for nondefense programs are generally not subject to sequestration.

Federal administrative expenses for most otherwise exempt programs and activities, however, are sequesterable, including programs that are self-supporting. Although budgetary resources available for Federal pay are subject to sequestration, the Act provides that rates of pay for civilian employees (and rates of basic pay, basic subsistence allowances, and basic quarter allowances for members of the uniformed services), or any scheduled pay increases, may not be reduced pursuant to a sequestration order.

Certain programs and activities, while not exempt, are subject to special rules that have the effect of limiting the amount of the spending reduction. For example, the sequestration reduction for medicare, veterans medical care, and certain health programs (but not for the administrative expenses

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[3] The estimated $112.5 billion nondefense total subject to across-the-board reduction shown in Table 5 excludes $6.3 billion of 1991 outlays for Commodity Credit Corporation (CCC) that are also subject to a 1990 sequester.

of these programs) is limited to 2 percent annually. In addition, the total amount of the automatic spending increases in three programs specified in the Act is sequesterable, but the program bases are exempt. Although the Federal share of extended unemployment benefits is sequesterable, if States act to increase their share by the amount of the reduction in the Federal share, total budget outlays, which include both the Federal and State shares, will not be changed by the sequestration.

For credit programs, the measures governing sequesterable budgetary resources are direct loan obligations and guaranteed loan commitments. In the event of a sequester, the Act requires that credit limitations enacted in annual appropriations acts be reduced, and that *de facto* limitations be imposed on both types of new credit activity where there is no enacted limitation.

Table 5.—Composition of G-R-H Baseline Outlay Estimates for 1990

(Dollar amounts in billions)

	Estimate	Percent of Total
Defense programs: [1]		
Subject to across-the-board reduction	188.0	15.8
Exempt from sequestration [2]	103.1	8.7
Subtotal, defense programs	291.1	24.4
Nondefense programs:		
Subject to sequestration:		
Certain programs with automatic spending increases [3]	1.3	0.1
Certain special rule programs [4]	123.4	10.4
Subject to across-the-board reductions [5]	112.5	9.4
Subtotal, subject to sequestration	237.1	19.9
Exempt from sequestration:		
Social security	247.0	20.7
Net interest	178.3	15.0
Low-income programs [6]	83.4	7.0
Federal retirement, disability, and workers compensation	66.4	5.6
State unemployment benefits	15.1	1.3
Veterans compensation and pensions	14.2	1.2
Earned income tax credit	4.0	0.3
Offsetting receipts and collections	−63.9	−5.4
Other [7]	118.1	9 9
Subtotal, exempt from sequestration	662 7	55.6
Subtotal, nondefense programs	899.8	75 6
Total	1,190 9	100 0

[1] Function 050, excluding Federal Emergency Management Agency (FEMA) programs.
[2] Largely outlays from obligated balances.
[3] National Wool Act, special milk, and vocational rehabilitation programs.
[4] Guaranteed student loans, foster care and adoption assistance, medicare, veterans medical care, and other health programs.
[5] Excludes $6.3 billion in estimated 1991 outlays for CCC that are subject to a 1990 sequester
[6] Family support payments, child nutrition, medicaid, food stamps, SSI, and WIC
[7] Outlays from prior-year appropriations, certain prior legal obligations, and other exempt programs

IV. SEQUESTRATION CALCULATIONS

This report indicates that, under current law, an outlay reduction of $16.1 billion, the difference between the current baseline deficit and the target of $100 billion, is required. The reductions are determined using the following steps, as shown in Table 6.

First, one-half of the required deficit reduction, $8.1 billion, is assigned to defense programs (budget accounts in the national defense function, 050, excluding the Federal Emergency Management Agency) and the other half to nondefense programs.

Second, the savings from eliminating automatic spending increases in three specific programs, which are listed in Table 7, are applied to the required reduction in outlays for nondefense programs. The amount of savings from eliminating these adjustments in 1990 is estimated at $48 million.

Third, the amount of outlay savings to be obtained from programs subject to other special sequestration rules, also listed in Table 7, is then calculated. The estimated savings from these special rule programs, $1.8 billion for 1990, are applied toward the required spending reductions in nondefense programs.

Table 6.—Sequestration Calculations for 1990

(Dollar amounts in billions)

	Estimate
Required deficit reduction	16.1
Defense programs: [1]	
Total required outlay reductions	8.1
Estimated outlays associated with across-the-board sequesterable budgetary resources	188.0
Uniform reduction percentage	4.3%
Nondefense programs:	
Total required outlay reductions	8.1
Estimated savings from automatic spending increases	*
Estimated savings from the application of special rules	1.8
Amount remaining to be obtained from uniform percentage reductions of budgetary resources	6.2
Estimated outlays associated with across-the-board sequesterable budgetary resources [2]	118.8
Uniform reduction percentage	5.3%

* $50 million or less.

[1] Function 050, excluding FEMA programs.

[2] Includes $6.3 billion in estimated 1991 outlays for the CCC and $3.4 billion in outlays from offsetting collections that are subject to a 1990 sequester.

The reductions in defense programs and remaining reductions in nondefense programs are applied to budgetary resources on a uniform percentage basis, computed separately for each category. The uniform reduction percentages are computed from outlay estimates. The remaining outlay savings to be achieved separately in defense and nondefense spending are divided by the estimated outlays associated with sequesterable budgetary resources in each category. The two resulting uniform reduction percentages for defense and nondefense are then applied separately to all of the remaining sequesterable budgetary resources (budget authority, credit authority, and other spending authority) in each category.

Under current baseline estimates, the uniform percentage reduction is 5.3 percent for nondefense programs. For defense programs, the uniform percentage reduction is 4.3 percent. The Act specifies

special calculations to achieve the uniform percentage reduction for child support enforcement (CSE). The Federal matching rate on most CSE expenditures would be reduced from 66.0 percent to 61.6 percent, and the rate for computer-related expenditures and genetic testing would be reduced from 90.0 percent to 84.0 percent. Nondefense savings from the across-the-board reductions also include $0.3 billion in 1991 outlay savings from the Commodity Credit Corporation (CCC). Under the Act, CCC outlay reductions in 1991 resulting from contract adjustments made in 1990 following a sequester are to be credited to the overall outlay reduction required in 1990.

Table 7.—Programs Subject to Special Sequestration Rules

(Outlay amounts in millions of dollars)

	Required Outlay Reductions	Scheduled Increase (percent)
Programs with Automatic Spending Increases Subject to Sequestration:		
National Wool Act [1]	—	—
Special milk program [2]	1	5.7
Vocational rehabilitation [3]	46	4.2
Total	48	
Other Programs Subject to Special Sequestration Rules:		
Guaranteed student loans	34	
Foster care and adoption assistance	4	
Health programs with sequester limited to 2 percent:		
Medicare	1,527	
Veterans medical care and other health programs	201	
Total	1,765	

[1] Payment increases are based on changes in the wool parity price. No automatic increase is projected for 1990.

[2] Benefits are indexed to the Producer Price Index for Fresh Processed Milk.

[3] The automatic spending increase for this program, as specified in the program's authorizing legislation, results in a 4.2 percent increase in funding for the State grant portion of the program.

Table 8.—G-R-H Pre- and Post-Sequester Baseline Estimates for 1990 by Function

(In billions of dollars)

Function	Baseline		Post-Sequester		Sequester Estimate	
	Budget Authority	Outlays	Budget Authority	Outlays	Budget Authority	Outlays
National defense [1]	308.4	291.4	295.1	283.3	13.3	8.1
International affairs	18.5	16.3	17.5	15.8	1.0	0.5
General science, space, and technology	13.4	13.7	12.7	13.3	0.7	0.4
Energy	6.1	4.1	5.8	3.8	0.3	0.2
Natural resources and environment	16.1	16.9	15.0	16.2	1.0	0.6
Agriculture [2]	22.7	18.8	22.2	18.2	0.5	0.6
Commerce and housing credit	18.7	12.9	18.6	12.7	0.2	0.3
Transportation	29.7	29.1	28.2	28.5	1.6	0.5
Community and regional development	8.0	7.3	7.6	7.2	0.3	0.1
Education, training, employment, and social services	37.9	38.2	36.1	37.5	1.8	0.7
Health	57.9	56.6	57.0	56.2	0.9	0.4
Medicare	121.8	99.1	120.2	97.4	1.5	1.7
Income security	184.0	146.3	183.2	145.9	0.8	0.4
Social security	313.7	249.2	313.7	249.1	0.0	0.1
Veterans benefits and services	30.6	29.2	30.2	28.9	0.4	0.3
Administration of justice	10.1	10.1	9.6	9.6	0.6	0.5
General government	10.1	10.2	9.5	9.7	0.5	0.5
Net Interest [3]	178.3	178.3	177.5	177.5	0.8	0.8
Undistributed offsetting receipts	−36.6	−36.6	−36.6	−36.6	0.0	0.0
Total	1,349.5	1,190.9	1,323.3	1,174.3	26.2	16.6

[1] Defense estimates include the impact of the aggregate spendout rate adjustment required by the Act.
[2] Estimates exclude $6 3 billion of 1991 CCC budget authority and outlays that are subject to a sequester of $0.3 billion in 1990.
[3] Estimates reflect the $0 8 billion debt service reduction that results from the sequester.

Table 9.—G-R-H Pre- and Post-Sequester Baseline Estimates for 1990 by Agency

(In billions of dollars)

Agency	Baseline		Post-Sequester		Sequester Estimate	
	Budget Authority	Outlays	Budget Authority	Outlays	Budget Authority	Outlays
Legislative Branch	2.2	2.2	2.1	2.1	0.1	0.1
The Judiciary	1.6	1.6	1.5	1.6	0.1	0.1
Executive Office of the President	0.1	0.1	0.1	0.1	*	*
Funds Appropriated to the President	11.6	11.3	10.9	11.0	0.7	0.3
Agriculture [1]	59.1	51.8	58.2	50.9	0.9	0.9
Commerce	2.9	2.9	2.8	2.8	0.2	0.1
Defense—Military [2]	298.2	281.8	285.3	274.0	12.9	7.8
Defense—Civil	38.3	24.8	38.1	24.6	0.2	0.1
Education	23.1	22.7	22.0	22.4	1.1	0.3
Energy	14.3	12.6	13.5	12.1	0.7	0.5
Health and Human Services, except Social Security	216.3	193.1	213.5	190.6	2.8	2.5
Health and Human Services, Social Security	308.4	243.9	308.4	243.8	0.0	0.1
Housing and Urban Development	15.6	21.6	14.9	21.5	0.7	0.1
Interior	5.6	5.5	5.2	5.2	0.4	0.3
Justice	6.7	6.5	6.3	6.3	0.4	0.3
Labor	33.1	24.5	32.8	24.3	0.3	0.2
State	4.1	3.7	4.0	3.6	0.2	0.1
Transportation	28.7	28.1	27.2	27.6	1.5	0.5
Treasury [3]	250.6	250.0	249.4	248.8	1.2	1.2
Veterans Affairs	30.4	29.1	30.1	28.8	0.4	0.3
Environmental Protection Agency	5.3	5.4	5.0	5.3	0.3	0.1
General Services Administration	0.1	0.2	0.1	0.2	*	*
National Aeronautics and Space Administration	11.2	11.5	10.6	11.2	0.6	0.4
Office of Personnel Management	54.8	34.2	54.6	34.2	0.2	*
Small Business Administration	0.5	0.2	0.5	0.1	*	*
Other independent agencies	24.8	19.6	24.3	19.2	0.5	0.4
Undistributed offsetting receipts	−98.0	−98.0	−98.0	−98.0	0.0	0.0
Total	1,349.5	1,190.9	1,323.3	1,174.3	26.2	16.6

* $50 million or less.

[1] Estimates exclude $6.3 billion of 1991 CCC budget authority and outlays that are subject to a sequester of $0.3 billion in 1990

[2] Defense estimates include the impact of the aggregate spendout rate adjustment required by the Act.

[3] Estimates reflect the $0.8 billion debt service reduction that results from the sequester.

V. COMPARISONS WITH CONGRESSIONAL BUDGET OFFICE ESTIMATES

CBO issued its final sequester report on October 10th. As shown in Table 10, CBO estimates that the baseline deficit for 1990 is $141.3 billion, $25.2 billion above the OMB estimate of $116.1 billion. Under CBO assumptions, a sequester of $41.3 billion is estimated, while OMB estimates that a sequester of $16.1 billion is required. This section provides the comparisons between OMB and CBO estimates that are required by the G-R-H Act.

Table 10.—Differences Between OMB and CBO G-R-H Baselines

(In billions of dollars)

	Outlays	Receipts	Deficit
OMB baseline	1,190.9	1,074.8	116.1
Differences:			
Economic assumptions:			
Level of GNP and incomes	—	-9.4	9.4
Interest rates	1.8	0.3	1.5
Discretionary program inflation:			
Defense	1.0	—	1.0
Nondefense	0.5	—	0.5
Cost-of-living adjustments	0.7	—	0.7
Debt service	0.8	—	0.8
Subtotal, economic	4.7	-9.1	13.8
Technical:			
Federal Savings and Loan Insurance Corporation	11.5	—	11.5
Defense:			
Transfers	0.9	—	0.9
Other	3.6	—	3.6
Absorption of 1989 nondefense pay raise	1.0	—	1.0
Farm price supports	-2.5	—	-2.5
Medicaid	-0.9	—	-0.9
Federal Housing Administration	-0.8	—	-0.8
Net interest	-0.8	—	-0.8
Other (including debt service)	0.9	5.8	-4.8
Subtotal, technical	12.9	5.8	7.1
G-R-H spend-out requirements:			
Defense spend-out adjustment	4.0	—	4.0
Debt service	0.2	—	0.2
Subtotal, G-R-H spend-out requirements	4.2	—	4.2
Snapshot date:			
Medicaid regulation	*	—	*
Subtotal, snapshot date	*	—	*
Total differences	21.8	-3.3	25.2
CBO baseline	1,212.7	1,071.4	141.3

*$50 million or less.

Different economic assumptions account for $13.8 billion of the difference between OMB and CBO baseline deficit estimates. CBO forecasts slower real growth and higher interest and inflation rates than OMB. As a result, CBO estimates lower incomes and thus lower receipts ($9.4 billion), higher interest costs, and higher inflation adjustments for outlays. Technical estimating differences account for an additional $7.1 billion difference in the baseline deficit estimates, as discussed below. In addition, the adjustment for the aggregate defense spendout rate (discussed in the section on G-R-H baseline totals), which is required by law to be included in OMB baseline estimates, does not affect the CBO baseline. If OMB were not required to make this adjustment, the difference between OMB and CBO would narrow by $4.2 billion. OMB estimates also include the impact of a medicaid regulation that became law after the CBO snapshot date, reducing OMB's estimates by $19 million relative to CBO's.

Technical differences include $5.8 billion higher baseline receipts under CBO assumptions, due to higher assumed levels of capital gains realizations that more than offset other technical differences, and $12.9 billion higher baseline outlays, of which $11.5 billion is attributable to outlays for savings and loans institutions pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act.

For national defense, CBO estimates $4.5 billion more in outlays than OMB primarily because CBO assumes a faster spendout of new budgetary resources and the transfer of budget authority to faster-spending accounts. The CBO estimate of nondefense pay is $1.0 billion higher than the OMB estimate because OMB assumes that the January 1989 pay raise for Federal civilian employees was fully funded in the 1989 appropriations bills, while CBO does not. This difference, and the differences between OMB and CBO estimates shown in Table 10 for defense transfers ($0.9 billion) and discretionary program inflation ($1.4 billion), will disappear once the remaining full-year appropriations measures are enacted.

CBO estimates farm price support costs for 1990 to be $2.5 billion lower than OMB. This difference is due in part because of an assumption of no growth in Commodity Credit Corporation contingency funds, and in part because the CBO estimate takes into account a July crop report that was not available to be incorporated into the OMB estimates when they were originally prepared for the July 18th *Mid-Session Review*.

CBO's estimate of medicaid outlays is $0.9 billion lower than OMB's, primarily due to differences in estimating methodologies and assumptions about the number of eligible beneficiaries, utilization of medical services, and price factors. The CBO estimate of Federal Housing Administration outlays is $0.8 billion lower than the OMB estimate, due to differences in assumptions about program activity, such as the payment of mortgage-insurance claims. For net interest, there is an estimating difference between OMB and CBO regarding the maturity mix and seasonal distribution of Treasury borrowing. As a result, CBO's estimate of net interest is $0.8 billion below the OMB estimate.

The Act requires three comparisons of differences between OMB and CBO estimates. Table 11 shows, by type of sequesterable resource for defense and nondefense programs, the amount of budgetary resources that would be sequestered using the OMB estimate of the required outlay reductions and CBO's estimating methodology. Table 12 identifies differences between OMB and CBO estimates of the aggregate amount of resources to be subject to sequester by type of resource for defense and nondefense programs. Table 13 identifies differences for accounts where OMB and CBO estimates of sequesterable resources differ by $5 million or more. Explanations of these differences are presented in the footnotes, which appear at the end of the table.

Table 11.—Budgetary Resource Reductions Using CBO Assumptions

(In billions of dollars)

	Sequester Amount
Defense programs: [1]	
Budget authority	13.0
Unobligated balances	1.7
Nondefense programs:	
Budget authority	8.0
Budget authority—special rules	0.2
401C authority	1.8
401C authority—use of offsetting collections	0.1
401C authority—special rules	1.9
Other 401C authority (including obligation limitations)	0.6
Obligation limitation	1.3
Direct loan limitation	1.1
Direct loan floor	0.1
Loan guarantee limitation	13.8
Guaranteed loan floor	—
MEMORANDUM: Aggregate Outlay Reductions Required—$16.1 billion	

Source: Congressional Budget Office.

[1] Function 050, excluding FEMA programs.

Table 12.—Differences Between OMB and CBO Sequesterable Resources by Resource Type

(In millions of dollars)

DEFENSE:	
Budget authority subject to across-the-board reductions:	
CBO estimate	310,414
Difference:	
Operation and maintenance	−874
Military personnel	−745
Research, development, test, and evaluation	−101
Other	−41
Total, difference	−1,762
OMB estimate	308,652
Unobligated balances—defense:	
CBO estimate	39,586
Difference:	
Atomic energy defense activities	−387
OMB estimate	39,199
NONDEFENSE:	
Budget authority subject to across-the-board reductions:	
CBO estimate	167,723
Difference:	
Uranium supply and enrichment activities	−1,431
Conservation reserve program	−401
Payments to States for AFDC work programs	258
National forest system	−192
Departmental administration, Department of Energy	−150
Subsidized housing programs (housing assistance)	−149
Salaries and expenses (research and general education aids)	−139
Reimbursement to the rural electrification and telephone revolving fund	−117
Disaster relief	−114
Veterans medical care	−108
Transfer of certain national forest fund receipts	−104
Other	−1,125
Total, difference	−3,772
OMB estimate	163,951
Budget authority—automatic spending increases:	
CBO and OMB estimate	61
Budget authority—special rules:	
CBO estimate	290
Difference	−4
OMB estimate	286
401(c) authority:	
CBO estimate	35,698
Difference:	
Interim assistance to States for legislation	870
FMS interest buydown	−270
Federal-aid highways	−252
Farm credit assistance fund	135
Unemployment trust fund (unemployment compensation)	129
Supplemental annuity pension fund	115
Other	356
Total, difference	1,082
OMB estimate	36,781

Table 12.—Differences Between OMB and CBO Sequesterable Resources by Resource Type—Continued

(In millions of dollars)

401(c) authority—offsetting collections:	
CBO estimate	2,060
Difference:	
Uranium supply and enrichment activities	1,326
Departmental administration, Department of Energy	150
Other	−16
Total, difference	1,459
OMB estimate	3,520
401(c) authority—special rules: [1]	
CBO estimate	1,776
Difference:	
Federal supplementary medical insurance trust fund	−229
Other	−20
Total, difference	−249
OMB estimate	1,527
Obligation limitation:	
CBO estimate	28,438
Difference:	
Interim assistance to States for legislation	−895
Payments to States for AFDC work programs	−465
Federal hospital insurance trust fund	299
Federal old-age and survivors insurance trust fund	−280
Unemployment trust fund (unemployment compensation)	−123
Federal-aid highways	−103
Other	−6
Total, difference	−1,573
OMB estimate	26,865
Direct loan limitation:	
CBO estimate	21,227
Difference:	
Commodity Credit Corporation fund	−251
Disaster loan fund	−73
Other	−52
Total, difference	−376
OMB estimate	20,850
Direct loan floor:	
CBO and OMB estimate	2,053
Guaranteed loan limitation:	
CBO estimate	276,781
Difference:	
Guarantees of mortgage-backed securities	−5,942
Federal Housing Administration fund	−768
Agricultural credit insurance fund	−596
Rural development insurance fund	−210
Export-Import Bank	−82
Other	−37
Total, difference	−7,634
OMB estimate	269,147

[1] CBO calls this resource group "Obligation limitation—special rules."

Table 13.—Detailed List of Sequesterable Resources for Which OMB and CBO Estimates Differ by More than $5 Million

(In thousands of dollars)

Account Title	Resource	OMB Base	CBO Base	Difference	Explanation
Legislative Branch					
Senate					
Salaries, officers and employees (01–05–0110–801–A)	Budget Authority	357,999	370,165	12,166	1
House of Representatives					
Salaries and expenses (01–10–0400–801–A)	Budget Authority	525,719	541,701	15,982	1
Government Printing Office					
Government Printing Office revolving fund (01–30–4505–808–A)	401(C) Authority—Off. Coll	0	38,383	38,383	4
	Obligation limitation	38,383	0	–38,383	4
General Accounting Office					
Salaries and expenses (01–35–0107–801–A)	Budget Authority	361,059	371,184	10,125	1
The Judiciary					
Courts of Appeals, District Courts and other Svcs					
Salaries and expenses (02–25–0920–752–A)	Budget Authority	1,124,791	1,152,811	28,020	1
Funds Appropriated to the President					
International Security Assistance					
Economic support fund (04–09–1037–152–A)	Budget Authority	3,396,526	3,401,874	5,348	1,12
Foreign military sales credit (04–09–1082–152–A)	Budget Authority	4,426,569	4,460,751	34,182	1
Multilateral Assistance					
Contribution to the International Development Association (04–12–0073–151–A)	Budget Authority	1,030,820	1,038,780	7,960	1
Agency for International Development					
Operating expenses, Agency for International Development (04–14–1000–151–A)	Budget Authority	434,057	444,530	10,473	1,2
Functional development assistance program (04–14–1021–151–A)	Budget Authority	1,256,845	1,266,249	9,404	1
Military Sales Programs					
FMS interest buydown (04–37–8882–152–A)	401(C) Authority	0	270,000	270,000	3
Special Assistance for Central America					
Central American reconciliation assistance (04–55–1038–152–A)	Budget Authority	37,648	54,492	16,844	2
Department of Agriculture					
Agricultural Research Service					
Agricultural Research Service (05–18–1400–352–A)	Budget Authority	585,209	598,228	13,019	1
Foreign Assistance Programs					
Expenses, PL 480, foreign assistance programs, Agriculture (05–57–2274–151–A)	Budget Authority	984,193	996,049	11,856	1
	Obligation limitation	1,535,248	1,547,104	11,856	1
	Direct Loan Limitation	819,372	825,700	6,328	1
Agricultural Stabilization & Conservation Service					
Conservation reserve program (05–60–3319–302–A)	Budget Authority	1,202,000	1,603,158	401,158	5
Commodity Credit Corporation					
Commodity Credit Corporation Fund (05–66–4336–351–A)	401(C) Authority	6,455,574	6,538,000	82,426	5
	401(C) Authority	6,306,876	6,274,000	–32,876	5
	Direct Loan Limitation	10,000,000	10,251,000	251,000	5
	Guaranteed Loan Limitation	5,698,000	5,742,000	44,000	1
Rural Electrification Administration					
Reimbursement to the Rural elec. & tel. revolv. fund for int. (05–72–3101–271–A)	Budget Authority	238,800	356,004	117,204	4
Rural electrification and telephone revolving fund (05–72–4230–271–A)	Direct Loan Limitation	3,485,193	3,492,796	7,603	1
Farmers Home Administration					
Salaries and expenses (05–75–2001–452–A)	Budget Authority	432,349	443,810	11,461	1
Agricultural Credit Insurance Fund (05–75–4140–351–A)	Direct Loan Limitation	1,625,070	1,637,619	12,549	1
	Guaranteed Loan Limitation	2,875,418	3,471,414	595,996	1
Rural Housing Insurance Fund (Appr.) (05–75–4141–371–A)	Budget Authority	224,359	0	–224,359	2
	401(C) Authority—Off. Coll	23,828	17,000	–6,828	5
	Direct Loan Limitation	1,911,410	1,926,170	14,760	1
Rural Development Insurance Fund (Appr.) (05–75–4155–452–A)	Guaranteed Loan Limitation	99,145	308,711	209,566	1,2
Rural development loan fund (05–75–4233–452–A)	Budget Authority	12,970	0	–12,970	7
Soil Conservation Service					
Conservation operations (05–78–1000–302–A)	Budget Authority	483,721	498,342	14,621	1
Animal and Plant Health Inspection Service					
Salaries and expenses (05–79–1600–352–A)	Budget Authority	344,010	351,584	7,574	1

Table 13.—Detailed List of Sequesterable Resources for Which OMB and CBO Estimates Differ by More than $5 Million—Continued

(In thousands of dollars)

Account Title	Resource	OMB Base	CBO Base	Difference	Explanation
Agricultural Marketing Service					
Funds for strengthening markets, income, and supply (section 3 (05–81–5209–605–A)	401(C) Authority	538,946	522,746	–16,200	5
Food Safety and Inspection Service					
Salaries and expenses (05–83–3700–554–A)	Budget Authority	421,533	433,289	11,756	1
Forest Service					
National forest system (05–96–1106–302–A)	Budget Authority	1,335,811	1,528,031	192,220	1,5
Transfer of certain national forest fund receipts (05–96–5220–302–A)	Budget Authority	0	104,062	104,062	8
Reforestation trust fund (05–96–8046–302–A)	401(C) Authority	30,000	0	–30,000	4
	Obligation limitation	0	30,000	30,000	4
Forest Service permanent appropriations (05–96–9921–806–A)	401(C) Authority	382,916	307,430	–75,486	5
Forest Service permanent appropriations (05–96–9922–302–A)	Budget Authority	0	21,129	21,129	2
Department of Commerce					
Bureau of the Census					
Periodic censuses and programs (06–07–0450–376–A)	Budget Authority	580,775	592,711	11,936	1
Department of Defense—Military					
Military Personnel					
Military personnel, Marine Corps (07–05–1105–051–A)	Budget Authority	5,715,085	5,771,660	56,575	1,2
Reserve personnel, Marine Corps (07–05–1108–051–A)	Budget Authority	316,540	310,379	–6,161	1
Reserve personnel, Navy (07–05–1405–051–A)	Budget Authority	1,596,123	1,563,538	–32,585	1
Military personnel, Navy (07–05–1453–051–A)	Budget Authority	19,003,439	19,262,472	259,033	1,2
Military personnel, Army (07–05–2010–051–A)	Budget Authority	24,517,882	24,787,845	269,963	1,2
National Guard personnel, Army (07–05–2060–051–A)	Budget Authority	3,308,429	3,238,829	–69,600	1
Reserve personnel, Army (07–05–2070–051–A)	Budget Authority	2,220,108	2,174,299	–45,809	1
Military personnel, Air Force (07–05–3500–051–A)	Budget Authority	20,100,130	20,449,248	349,118	1,2
Reserve personnel, Air Force (07–05–3700–051–A)	Budget Authority	657,553	644,829	–12,724	1
National Guard personnel, Air Force (07–05–3850–051–A)	Budget Authority	1,031,188	1,008,226	–22,962	1
Operation and Maintenance					
Operation and maintenance, Defense agencies (07–10–0100–051–A)	Budget Authority	7,911,928	8,014,468	102,540	1,2
Operation and maintenance, Marine Corps (07–10–1106–051–A)	Budget Authority	1,883,771	1,897,109	13,338	1,2
Operation and maintenance, Navy (07–10–1804–051–A)	Budget Authority	25,832,372	26,262,788	430,416	1,2
Operation and maintenance, Navy Reserve (07–10–1806–051–A)	Budget Authority	1,013,872	1,021,346	7,474	1
Operation and maintenance, Army (07–10–2020–051–A)	Budget Authority	23,153,258	23,265,084	111,826	1
Operation and maintenance, Army National Guard (07–10–2065–051–A)	Budget Authority	1,869,131	1,875,873	6,742	1
Operation and maintenance, Air Force (07–10–3400–051–A)	Budget Authority	22,687,585	22,872,145	184,560	1,2
Operation and maintenance, Air National Guard (07–10–3840–051–A)	Budget Authority	2,045,955	2,053,255	7,300	1
Procurement					
Procurement, Defense agencies (07–15–0300–051–A)	Budget Authority	1,253,767	1,233,541	–20,226	1,2
National Guard and Reserve Equipment (07–15–0350–051–A)	Budget Authority	1,179,798	1,188,908	9,110	1
Procurement, Marine Corps (07–15–1109–051–A)	Budget Authority	1,343,526	1,348,681	5,155	1,2
Aircraft procurement, Navy (07–15–1506–051–A)	Budget Authority	9,738,094	9,723,508	–14,586	1,2
Weapons procurement, Navy (07–15–1507–051–A)	Budget Authority	6,364,117	6,358,973	–5,144	1,2
Shipbuilding and conversion, Navy (07–15–1611–051–A)	Budget Authority	9,922,238	9,951,878	29,640	1,2
Other procurement, Navy (07–15–1810–051–A)	Budget Authority	5,020,224	4,828,908	–191,316	1,2
Aircraft procurement, Army (07–15–2031–051–A)	Budget Authority	2,986,568	2,998,147	11,579	1,2
Missile procurement, Army (07–15–2032–051–A)	Budget Authority	2,695,680	2,706,056	10,376	1,2
Procurement of weapons and tracked combat vehicles, Army (07–15–2033–051–A)	Budget Authority	2,932,246	2,944,449	12,203	1,2
Procurement of ammunition, Army (07–15–2034–051–A)	Budget Authority	2,085,670	2,093,424	7,754	1,2
Other procurement, Army (07–15–2035–051–A)	Budget Authority	4,846,357	4,864,989	18,632	1,2
Aircraft procurement, Air Force (07–15–3010–051–A)	Budget Authority	16,181,769	16,306,743	124,974	1
Missile procurement, Air Force (07–15–3020–051–A)	Budget Authority	7,476,482	7,433,693	–42,789	1,2
Other procurement, Air Force (07–15–3080–051–A)	Budget Authority	8,483,824	8,512,255	28,431	1,2
Research, Development, Test, and Evaluation					
Research, development, test, and evaluation, Defense agencies (07–20–0400–051–A)	Budget Authority	8,508,262	8,540,712	32,450	1,2
Research, development, test, and evaluation, Navy (07–20–1319–051–A)	Budget Authority	9,685,026	9,730,714	45,688	1,2
Research, development, test, and evaluation, Army (07–20–2040–051–A)	Budget Authority	5,324,680	5,343,007	18,327	1,2

Table 13.—Detailed List of Sequesterable Resources for Which OMB and CBO Estimates Differ by More than $5 Million—Continued

(In thousands of dollars)

Account Title	Resource	OMB Base	CBO Base	Difference	Explanation
Military Construction					
Military construction, Defense agencies (07–25–0500–051–A)	Budget Authority	703,996	689,024	–14,972	1,2
Military construction, Navy (07–25–1205–051–A)	Budget Authority	1,633,963	1,645,993	12,030	1
Military construction, Army (07–25–2050–051–A)	Budget Authority	1,186,678	1,194,170	7,492	1
Military construction, Air Force (07–25–3300–051–A)	Budget Authority	1,259,699	1,279,867	20,168	1,2
Family Housing					
Family housing, Army (07–30–0702–051–A)	Budget Authority	1,582,557	1,594,168	11,611	1
Family housing, Navy and Marine Corps (07–30–0703–051–A)	Budget Authority	827,806	834,199	6,393	1
Department of Defense—Civil					
Corps of Engineers—Civil					
Rivers and harbors contributed funds (08–10–8862–301–A)	401(C) Authority	215,550	169,465	–46,085	13
Department of Education					
Office of Elementary and Secondary Education					
Impact aid (18–10–0102–501–A)	Budget Authority	759,489	765,352	5,863	1
Compensatory education for the disadvantaged (18–10–0900–501–A)	Budget Authority	4,743,986	4,780,620	36,634	1
School improvement programs (18–10–1000–501–A)	Budget Authority	1,260,910	1,270,651	9,741	1
Office of Special Education & Rehabilitative Svcs.					
Education for the handicapped (18–20–0300–501–A)	Budget Authority	2,037,229	2,052,961	15,732	1
Special institutions for the handicapped (18–20–0604–501–C)	Budget Authority	21,053	0	–21,053	1,3
Special institutions for the handicapped (Gallaudet) (18–20–0604–502–C)	Budget Authority	47,321	68,902	21,581	1,3
Office of Vocational and Adult Education					
Vocational and adult education (18–30–0400–501–A)	Budget Authority	1,112,110	1,120,699	8,589	1
Office of Postsecondary Education					
Student financial assistance (18–40–0200–502–A)	Budget Authority	6,023,636	6,070,150	46,514	1
Departmental Management					
Salaries and expenses (Elementary, secondary and vocational ed.) (18–80–0800–501–A)	Budget Authority	20,689	0	–20,689	1,3
Salaries and expenses (Higher education) (18–80–0800–502–A)	Budget Authority	89,997	0	–89,997	1,3
Salaries and expenses (Research and general education aids) (18–80–0800–503–A)	Budget Authority	127,152	266,427	139,275	1,3
Salaries and expenses (Social services) (18–80–0800–506–A)	Budget Authority	22,383	0	–22,383	1,3
Department of Energy					
Atomic Energy Defense Activities					
Atomic energy defense activities (19–10–0220–053–A)	Unobligated Balances—Defense	85,000	471,675	386,675	10
Energy Programs					
Energy conservation (Energy conservation) (19–20–0215–272–A)	Budget Authority	326,721	389,433	62,712	4
Uranium supply and enrichment activities (19–20–0226–271–A)	Budget Authority	0	1,431,000	1,431,000	4
	401(C) Authority—Off. Coll.	1,325,900	0	–1,325,900	4
Isotope production and distribution fund (19–20–4180–271–A)	401(C) Authority—Off. Coll.	16,452	0	–16,452	13
Departmental Administration					
Departmental administration (Energy information, policy, & reg.) (19–60–0228–276–A)	Budget Authority	205,056	355,056	150,000	1,4
	401(C) Authority—Off. Coll.	150,000	0	–150,000	1,4
Department of Health and Human Services					
Food and Drug Administration					
Program expenses (09–10–0600–554–A)	Budget Authority	533,071	546,275	13,204	1
Health Resources and Services					
Health resources and services (health care services) (09–15–0350–551–A)	Budget Authority	978,575	987,543	8,968	1
Health resources and services (education and training) (09–15–0350–553–A)	Budget Authority	184,730	207,436	22,706	2
Indian Health					
Tribal Health Administration (09–17–0390–551–A)	Budget Authority	149,994	79,741	–70,253	1,4
Centers for Disease Control					
Disease control (Health care services) (09–20–0943–551–A)	Budget Authority	892,168	903,481	11,313	1
National Institutes of Health					
National Cancer Institute (Health research) (09–25–0849–552–A)	Budget Authority	1,596,191	1,608,958	12,767	1
National Institute of General Medical Sciences (Health research) (09–25–0851–552–A)	Budget Authority	630,153	635,173	5,020	1

Table 13.—Detailed List of Sequesterable Resources for Which OMB and CBO Estimates Differ by More than $5 Million—Continued

(In thousands of dollars)

Account Title	Resource	OMB Base	CBO Base	Difference	Explanation
National Heart, Lung and Blood Institute (Health research) (09–25–0872–552–A)	Budget Authority	1,039,894	1,049,299	9,405	1
National Institute of Allergy & Infectious Diseases (Research) (09–25–0885–552–A)	Budget Authority	754,055	760,335	6,280	1
Alcohol,Drug Abuse, & Mental Health Administration					
Alcohol, drug abuse, and mental health (Health care services) (09–30–1361–551–A)	Budget Authority	1,150,798	1,161,371	10,573	1
Alcohol, drug abuse, and mental health (Health research) (09–30–1361–552–A)	Budget Authority	713,040	719,959	6,919	1
Health Care Financing Administration					
Federal supplementary medical insurance trust fund (09–38–8004–571–A)	Obligation limitation	1,253,303	1,167,748	–85,555	1
FSMI 2% split (G-R-H) (09–38–8004–571–S)	401(C) Authority—Spec. Rules	372,000	601,000	229,000	11
Federal hospital insurance trust fund (09–38–8005–571–A)	401(C) Authority	201,038	206,142	5,104	1
	Obligation limitation	1,294,637	995,663	–298,974	4
FHI 2% split (G-R-H) (09–38–8005–571–S)	401(C) Authority—Spec. Rules	1,140,000	1,133,000	–7,000	5
Federal supplementary medical insurance trust fund, catastro. (09–38–8184–571–S)	401(C) Authority—Spec. Rules	12,000	40,000	28,000	5
Social Security Administration					
Supplemental security income program (09–60–0406–609–A)	Budget Authority	821,257	845,738	24,481	5
Family Support Administration					
Family support payment to States (CSE) (09–70–1501–609–B)	Budget Authority	1,309,000	1,279,000	–30,000	5
Low income home energy assistance (09–70–1502–609–A)	Budget Authority	1,432,995	1,444,061	11,066	1
Interim assistance to States for legalization (09–70–1508–506–A)	401(C) Authority	870,000	0	–870,000	4,5
	Obligation limitation	0	895,000	895,000	4,5
Payments to states for AFDC work programs (09–70–1509–609–A)	Budget Authority	257,721	0	–257,721	4,5
	Obligation limitation	0	465,000	465,000	4,5
Human Development Services					
Human development services (09–80–1636–506–A)	Budget Authority	2,667,229	2,688,760	21,531	1
Health and Human Services Social Security					
Social Security					
Federal old-age and survivors insurance trust fund (16–05–8006–651–A)	Obligation limitation	1,358,206	1,638,298	280,092	1,7
Federal disability insurance trust fund (16–05–8007–651–A)	Obligation limitation	506,221	546,163	39,942	1,7
Department of Housing and Urban Development					
Housing Programs					
Subsidized housing programs (Housing assistance) (25–02–0164–604–A)	Budget Authority	7,342,406	7,490,960	148,554	1,3,12
Federal Housing Administration fund (25–02–4070–371–A)	Guaranteed Loan Limitation	99,456,000	100,224,000	768,000	5
Public and Indian Housing Programs					
Payments for operation of low income housing projects (25–03–0163–604–A)	Budget Authority	1,766,906	1,780,550	13,644	1
Government National Mortgage Association					
Guarantees of mortgage-backed securities (25–04–4238–371–A)	Guaranteed Loan Limitation	144,000,000	149,942,000	5,942,000	5,8
Community Planning and Development					
Community development grants (25–06–0162–451–A)	Budget Authority	2,745,400	2,766,600	21,200	1
Rehabilitation loan fund (25–06–4036–451–A)	Direct Loan Limitation	85,212	70,000	–15,212	12
Nehemiah housing opportunity program (25–06–8888–451–A)	Budget Authority	0	20,880	20,880	3
Management and Administration					
Salaries & expenses, incl. transfer of funds (Community dev.) (25–35–0143–451–A)	Budget Authority	174,166	179,341	5,175	1
Department of the Interior					
Bureau of Land Management					
Construction and access (10–04–1110–302–A)	Budget Authority	5,631	11,738	6,107	2
Miscellaneous permanent appropriations (10–04–9921–806–A)	401(C) Authority	122,954	81,291	–41,663	5
Minerals Management Service					
Payments to states from receipts under Mineral Leasing Act (10–06–5003–806–A)	401(C) Authority	464,195	372,996	–91,199	5
Geological Survey					
Surveys, investigations and research (10–12–0804–306–A)	Budget Authority	468,056	480,893	12,837	1
Fish and Wildlife Service					
Resource management (10–18–1611–303–A)	Budget Authority	371,703	383,296	11,593	1

Table 13.—Detailed List of Sequesterable Resources for Which OMB and CBO Estimates Differ by More than $5 Million—Continued

(In thousands of dollars)

Account Title	Resource	OMB Base	CBO Base	Difference	Explanation
Construction (10–18–1612–303–A)	Budget Authority	33,007	49,760	16,753	1
National wildlife refuge fund (10–18–5091–806–A)	401(C) Authority	6,040	0	–6,040	4
	Obligation limitation	0	6,040	6,040	4
Sport fish restoration (10–18–8151–303–A)	401(C) Authority	192,891	162,606	–30,285	5
National Park Service					
Operation of the national park system (10–24–1036–303–A)	Budget Authority	769,916	793,288	23,372	1
Construction (10–24–1039–303–A)	Budget Authority	164,909	206,738	41,829	1
Land acquisition (10–24–5035–303–A)	Budget Authority	45,262	65,474	20,212	1
Bureau of Indian Affairs					
Operation of Indian programs (Conservation and land management) (10–76–2100–302–A)	Budget Authority	152,689	162,984	10,295	1
Operation of Indian programs (Area and regional development) (10–76–2100–452–A)	Budget Authority	597,631	608,415	10,784	1
Revolving fund for loans (10–76–4409–452–A)	401(C) Authority—Off. Coll.	11,070	0	–11,070	5
Miscellaneous permanent appropriations (Area and regional dev.) (10–76–9925–452–A)	401(C) Authority	50,359	55,797	5,438	5
Office of Territorial Affairs					
Administration of territories (10–82–0412–808–A)	Budget Authority	62,272	54,983	–7,289	8
Department of Justice					
Legal Activities					
Salaries and expenses, General legal activities (11–05–0128–752–A)	Budget Authority	256,201	262,213	6,012	1
Salaries and expenses, United States Attorneys (11–05–0322–752–A)	Budget Authority	478,351	490,819	12,468	1
Salaries and expenses, United States Marshals Service (11–05–0324–752–A)	Budget Authority	213,187	218,677	5,490	1
Assets forfeiture fund (11–05–5042–752–A)	401(C) Authority	237,729	262,044	24,315	8
Federal Bureau of Investigation					
Salaries and expenses (11–10–0200–751–A)	Budget Authority	1,495,782	1,534,141	38,359	1
Drug Enforcement Administration					
Salaries and expenses (11–12–1100–751–A)	Budget Authority	555,143	567,488	12,345	1
Immigration and Naturalization Service					
Salaries and expenses (11–15–1217–751–A)	Budget Authority	854,257	875,617	21,360	1
Federal Prison System					
Salaries and expenses (11–20–1060–753–A)	Budget Authority	989,190	1,011,708	22,518	1
Department of Labor					
Employment and Training Administration					
Training and employment services (12–05–0174–504–A)	Budget Authority	3,872,575	3,903,761	31,186	1
Federal unemployment benefits and allowances (12–05–0326–603–A)	Budget Authority	204,000	166,000	–38,000	5
Unemployment trust fund (Training and employment) (12–05–8042–504–A)	Obligation limitation	1,082,794	1,092,587	9,793	1
Unemployment trust fund (Unemployment compensation) (12–05–8042–603–A)	401(C) Authority	129,100	0	–129,100	5
	Obligation limitation	1,735,981	1,859,156	123,175	1
Employment Standards Administration					
Salaries and expenses (12–15–0105–505–A)	Budget Authority	220,299	225,932	5,633	1
Occupational Safety and Health Administration					
Salaries and expenses (12–18–0400–554–A)	Budget Authority	257,197	262,203	5,006	1
Department of State					
Administration of Foreign Affairs					
Salaries and expenses (14–05–0113–153–A)	Budget Authority	1,856,768	1,897,322	40,554	1
Department of Transportation					
Federal Highway Administration					
Federal-aid highways (21–05–8083–401–A)	401(C) Authority	13,850,959	14,103,000	252,041	5
	Obligation limitation	12,432,000	12,535,000	103,000	1
Urban Mass Transportation Administration					
Formula grants (21–20–1129–401–A)	Budget Authority	1,662,780	1,675,620	12,840	1
Discretionary grants (21–20–8191–401–A)	Obligation limitation	1,181,000	1,190,160	9,160	1
Federal Aviation Administration					
Operations (21–25–1301–402–A)	Budget Authority	3,053,089	3,137,836	84,747	1
Trust fund share of FAA Operations (21–25–8104–402–A)	Budget Authority	490,649	503,509	12,860	1
Grants-in-aid for airports (Airport and airway trust fund) (21–25–8106–402–A)	Obligation limitation	1,450,400	1,461,600	11,200	1

Table 13.—Detailed List of Sequestrable Resources for Which OMB and CBO Estimates Differ by More than $5 Million—Continued

(In thousands of dollars)

Account Title	Resource	OMB Base	CBO Base	Difference	Explanation
Facilities and equipment (Airport and airway trust fund) (21–25–8107–402–A)	Budget Authority	1,434,090	1,446,550	12,460	1
Coast Guard					
Operating expenses (21–30–0201–403–A)	Budget Authority	2,029,694	2,067,030	37,336	1
Retired pay (Coast Guard) (21–30–0241–403–A)	Budget Authority	45,050	37,463	–7,587	1
Department of the Treasury					
Financial Management Service					
Payments to the Farm Credit System Financial Asst. Corp. (15–10–1850–351–A)	Budget Authority	70,793	0	–70,793	5,6
Bureau of Alcohol, Tobacco and Firearms					
Salaries and expenses (15–13–1000–751–A)	Budget Authority	250,499	257,086	6,587	1
United States Customs Service					
Salaries and expenses (15–15–0602–751–A)	Budget Authority	1,074,599	1,103,055	28,456	1
Customs forfeiture fund (15–15–5693–803–A)	401(C) Authority	35,000	20,000	–15,000	5
Internal Revenue Service					
Processing tax returns and executive direction (15–45–0912–803–A)	Budget Authority	1,807,710	1,837,199	29,489	1
Examinations and appeals (15–45–0913–803–A)	Budget Authority	2,009,730	2,079,620	69,890	1
Investigation, collection, and taxpayer service (15–45–0914–803–A)	Budget Authority	1,491,687	1,530,298	38,611	1
United States Secret Service					
Salaries and expenses (15–55–1408–751–A)	Budget Authority	371,462	380,390	8,928	1
Department of Veterans Affairs					
Veterans Benefits Administration					
Readjustment benefits (29–10–0137–702–A)	Budget Authority	241,926	212,119	–29,807	5
Burial benefits and miscellaneous assistance (29–10–0155–701–A)	Budget Authority	143,612	138,120	–5,492	5
Veterans Health Services and Research Administration					
Medical care (29–20–0160–703–A)	Budget Authority	843,164	950,692	107,508	1,4
Medical and prosthetic research (29–20–0161–703–A)	Budget Authority	219,096	224,279	5,183	1
Departmental Administration					
Office of the Inspector General (29–30–0170–705–A)	Budget Authority	0	21,851	21,851	1,3
Environmental Protection Agency					
Environmental Protection Agency					
Construction grants (20–00–0103–304–A)	Budget Authority	2,020,000	2,035,800	15,800	1
Abatement, control, and compliance (20–00–0108–304–A)	Budget Authority	745,847	751,289	5,442	1
Salaries and expenses (20–00–0200–304–A)	Budget Authority	847,016	868,342	21,326	1
Hazardous substance superfund (20–00–8145–304–A)	Budget Authority	1,461,391	1,475,762	14,371	1
National Aeronautics and Space Administration					
National Aeronautics and Space Administration					
Research and program management (Space flight) (26–00–0103–253–A)	Budget Authority	958,460	982,651	24,191	1
Research & program management (Space science, applications, etc) (26–00–0103–254–A)	Budget Authority	624,299	640,574	16,275	1
Research and program management (Air transportation) (26–00–0103–402–A)	Budget Authority	344,165	351,760	7,595	1
Space Flight, Control, and Data Comm. (space flight) (26–00–0105–253–A)	Budget Authority	3,640,400	3,668,512	28,112	1
Research and development (Space flight) (26–00–0108–253–A)	Budget Authority	1,630,664	1,643,256	12,592	1
Research and development (Space science, applications, etc) (26–00–0108–254–A)	Budget Authority	2,263,556	2,281,036	17,480	1
Small Business Administration					
Small Business Administration					
Salaries and expenses (28–00–0100–376–A)	Budget Authority	337,829	242,562	–95,267	2
Disaster loan fund (28–00–4153–453–A)	Direct Loan Limitation	250,000	323,000	73,000	5
Business loan and investment fund (28–00–4154–376–A)	Budget Authority	84,952	0	–84,952	9
	Direct Loan Limitation	84,952	94,000	9,048	2
	Guaranteed Loan Limitation	3,925,000	3,910,000	–15,000	1
Surety bond guarantees revolving fund (28–00–4156–376–A)	Guaranteed Loan Limitation	1,295,000	1,301,000	6,000	1
Other Independent Agencies					
District of Columbia					
Federal payment to the District of Columbia (30–45–1700–806–A)	Budget Authority	445,998	452,887	6,889	1

Table 13.—Detailed List of Sequesterable Resources for Which OMB and CBO Estimates Differ by More than $5 Million—Continued

(In thousands of dollars)

Account Title	Resource	OMB Base	CBO Base	Difference	Explanation
Export-Import Bank of the United States					
Export-Import Bank of the United States (30–48–4027–155–A)	Direct Loan Limitation	720,020	725,580	5,560	1
	Guaranteed Loan Limitation	10,567,200	10,648,800	81,600	1
Farm Credit Systems Financial Assistance Corporation					
Farm credit assistance Fund (30–54–4133–351–A)	401(C) Authority	635,000	500,000	–135,000	5
Financial assistance corporation trust fund (30–54–8202–351–A)	401(C) Authority	80,705	0	–80,705	5,6
Federal Emergency Management Agency					
Disaster relief (30–67–0104–453–A)	Budget Authority	1,251,488	1,365,552	114,064	1
National Science Foundation					
Research and related activities (31–45–0100–251–A)	Budget Authority	1,679,104	1,692,189	13,085	1
Pennsylvania Avenue Development Corporation					
Land acquisition and development fund (32–08–4084–451–A)	401(C) Authority—Off. Coll	3,000	10,000	7,000	5
Postal Service					
Payment to the Postal Service fund for nonfunded liabilities (32–10–1004–372–A)	Budget Authority	36,942	0	–36,942	3
Railroad Retirement Board					
Supplemental Annuity Pension Fund (32–20–8012–601–A)	401(C) Authority	114,908	0	–114,908	6
Smithsonian Institution					
Salaries and expenses (32–50–0100–503–A)	Budget Authority	219,565	225,275	5,710	1
United States Information Agency					
Salaries and expenses (33–22–0201–154–A)	Budget Authority	644,127	658,382	14,255	1

[1] Different adjustment factors for increased personnel costs and nonpay inflation.
[2] Different assumptions about enacted 1989 levels, including transfers.
[3] Different account structure.
[4] Different resource type classification.
[5] Different assumptions about resource levels under current law for mandatory programs.
[6] OMB classifies as sequesterable; CBO as exempt.
[7] OMB classifies as exempt, CBO as sequesterable.
[8] OMB error.
[9] CBO error.
[10] Technical estimating diferences for unobligated balances transferred from other accounts.
[11] Different assumptions regarding behavioral response of physicians to payment reductions.
[12] Different estimating techniques.
[13] Different assumptions about enacted 1990 levels, including transfers.

APPENDIX A: SEQUESTERABLE BASELINE AND REDUCTIONS BY AGENCY AND BUDGET ACCOUNT

(Fiscal year 1990; in thousands of dollars)

Percentages Used:
Nondefense, 5.3 percent
Defense, 4.3 percent

G-R-H Sequester Amounts

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Legislative Branch		
Senate		
Salaries, officers and employees (01–05–0110–801–A):		
Budget Authority	357,999	18,974
Outlays	342,605	18,158
House of Representatives		
Mileage of Members (01–10–0208–801–A):		
Budget Authority	218	12
Outlays	109	6
Salaries and expenses (01–10–0400–801–A):		
Budget Authority	525,719	27,863
Outlays	495,227	26,247
Congressional use of foreign currency, House of Representative (01–10–0488–801–A):		
401(C) Authority	3,360	178
Outlays	3,360	178
Joint Items		
Capitol Guide Service (01–12–0170–801–A):		
Budget Authority	1,269	67
Outlays	1,142	61
Joint Committee on Printing (01–12–0180–801–A):		
Budget Authority	1,190	63
Outlays	1,090	58
Joint Economic Committee (01–12–0181–801–A):		
Budget Authority	3,466	184
Outlays	3,293	175
Joint Committee on Inaugural Ceremonies of 1989 (01–12–0186–801–A):		
Budget Authority	811	43
Outlays	811	43
Office of the Attending Physician (01–12–0425–801–A):		
Budget Authority	1,469	78
Outlays	1,469	78
Joint Committee on Taxation (01–12–0460–801–A):		
Budget Authority	4,520	240
Outlays	4,068	216
Capitol Police Board (01–12–0474–801–A):		
Budget Authority	55,356	2,934
Outlays	53,695	2,846
General expenses, Capitol police (01–12–0476–801–A):		
Budget Authority	1,955	104
Outlays	1,703	90
Statements of appropriations (01–12–0499–801–A):		
Budget Authority	21	1
Official mail costs (01–12–0825–801–A):		
Budget Authority	55,867	2,961
Outlays	55,867	2,961
Congressional Budget Office		
Salaries and expenses (01–14–0100–801–A):		
Budget Authority	19,089	1,012
Outlays	17,180	911
Architect of the Capitol		
Office of the Architect of the Capitol: Salaries (01–15–0100–801–A):		
Budget Authority	6,799	360
Outlays	6,460	342
Contingent expenses (01–15–0102–801–A):		
Budget Authority	104	6
Outlays	104	6
Capitol buildings (01–15–0105–801–A):		
Budget Authority	16,073	852
Outlays	12,070	640
Capitol grounds (01–15–0108–801–A):		
Budget Authority	3,921	208
Outlays	3,442	182
Senate office buildings (01–15–0123–801–A):		
Budget Authority	25,042	1,327
Outlays	20,759	1,100
House office buildings (01–15–0127–801–A):		
Budget Authority	30,044	1,592
Outlays	24,396	1,293
Capitol Power Plant (01–15–0133–801–A):		
Budget Authority	25,694	1,362
401(C) Authority—		
Off. Coll.	253	13
Outlays	18,367	973
Structural and mechanical care, Library buildings and grounds (01–15–0155–801–A):		
Budget Authority	7,797	413
Outlays	6,635	352
Library of Congress		
Salaries and expenses (01–25–0101–503–A):		
Budget Authority	153,941	8,159
401(C) Authority—		
Off. Coll.	5,060	268
Outlays	132,369	7,016
Copyright Office: Salaries and expenses (01–25–0102–376–A):		
Budget Authority	12,136	643
401(C) Authority—		
Off. Coll.	8,144	432
Outlays	19,551	1,036
Congressional Research Service: Salaries and expenses (01–25–0127–801–A):		
Budget Authority	46,491	2,464
Outlays	42,028	2,227
Books for the blind and physically handicapped: Salaries & exp (01–25–0141–503–A):		
Budget Authority	37,810	2,004
Outlays	15,502	822
National Film Preservation Board: Salaries & expenses (01–25–0143–503–A):		
Budget Authority	259	14
Outlays	259	14
Furniture and furnishings (01–25–0146–503–A):		
Budget Authority	3,503	186
Outlays	1,860	99
Gift and trust fund accounts (01–25–9971–503–A):		
Obligation limitation	328	17
Government Printing Office		
Office of Superintendent of Documents: Salaries and expenses (01–30–0201–808–A):		
Budget Authority	14,249	755
Outlays	9,261	491
Congressional printing and binding (01–30–0203–801–A):		
Budget Authority	74,592	3,953
Outlays	66,387	3,519
Government Printing Office revolving fund (01–30–4505–808–A):		
Obligation limitation	38,383	2,034
General Accounting Office		
Salaries and expenses (01–35–0107–801–A):		
Budget Authority	361,059	19,136
Outlays	327,834	17,375
United States Tax Court		
Salaries and expenses (01–40–0100–752–A):		
Budget Authority	30,482	1,616
Outlays	27,006	1,431
Tax Court independent counsel, U.S. Tax Court (01–40–5023–752–A):		
401(C) Authority	10	1
Outlays	10	1
Legislative Branch Boards and Commissions		
Commission on Security & Cooperation in Europe: Salaries & exp (01–45–0110–801–A):		
Budget Authority	771	41
Outlays	698	37
Botanic Garden: Salaries and expenses (01–45–0200–801–A):		
Budget Authority	2,622	139
Outlays	2,386	126
Copyright Royalty Tribunal: Salaries and expenses (01–45–0310–376–A):		
Budget Authority	127	7
Outlays	113	6
Biomedical Ethics: Salaries and expenses (01–45–0400–801–A):		
Budget Authority	250	13
Outlays	180	10
International conferences and contingencies. House, Senate exp (01–45–0500–801–A):		
401(C) Authority	340	18
Outlays	340	18
Commission on Railroad Retirement Reform (01–45–0850–801–A):		
Budget Authority	1,024	54
Outlays	311	16
National Commission on Children (01–45–1050–801–A):		
Budget Authority	820	43
Outlays	718	38
U.S. Bipartisan Commission on Comprehensive Health Care (01–45–1100–801–A):		
Budget Authority	1,073	57
Outlays	902	48
Office of Technology Assessment		
Salaries and expenses (01–50–0700–801–A):		
Budget Authority	18,637	988
Outlays	13,438	712
John C. Stennis Center for Public Service Training and Development		
Payment to John C. Stennis Center (01–60–1200–801–A):		
Budget Authority	7,770	412
Outlays	7,770	412
Total, Legislative Branch:		
Budget Authority	1,912,039	101,340
401(C) Authority	3,710	197
401(C) Authority—		
Off. Coll.	13,457	713
Obligation limitation	38,711	2,051
Outlays	1,742,775	92,370
The Judiciary		
Supreme Court of the United States		
Salaries and expenses (02–05–0100–752–A):		
Budget Authority	16,539	877
Outlays	11,759	623
Care of the building and grounds (02–05–0103–752–A):		
Budget Authority	2,212	117
Outlays	2,107	112

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
United States Court of Appeals for Federal Circuit		
Salaries and expenses (02-07-0510-752-A):		
Budget Authority	8,621	457
Outlays	8,022	425
United States Court of International Trade		
Salaries and expenses (02-15-0400-752-A):		
Budget Authority	8,307	440
Outlays	8,075	428
Courts of Appeals, District Courts and other Svcs		
Salaries and expenses (02-25-0920-752-A):		
Budget Authority	1,124,791	59,614
Outlays	1,109,401	58,798
Defender services (02-25-0923-752-A):		
Budget Authority	114,195	6,052
Outlays	43,280	2,294
Fees of jurors and commissioners (02-25-0925-752-A):		
Budget Authority	50,194	2,660
Outlays	42,517	2,253
Court security (02-25-0930-752-A):		
Budget Authority	42,917	2,275
Outlays	21,415	1,135
Registry administration (02-25-5101-752-A):		
401(C) Authority	21,000	1,113
Outlays	21,000	1,113
Administrative Office of the United States Courts		
Salaries and expenses (02-26-0927-752-A):		
Budget Authority	34,935	1,852
Outlays	31,861	1,689
Federal Judicial Center		
Salaries and expenses (02-30-0928-752-A):		
Budget Authority	11,628	616
Outlays	9,512	504
Judiciary Retirement Funds		
Payment to Judicial Officers' Retirement Fund (02-35-0941-752-A):		
Budget Authority	1,000	53
Outlays	1,000	53
Judicial Officers' Retirement Fund (02-35-8122-602-A):		
401(C) Authority	4,167	221
Outlays	4,167	221
Total, The Judiciary:		
Budget Authority	1,415,339	75,013
401(C) Authority	25,167	1,334
Outlays	1,314,116	69,648
Executive Office of the President		
The White House Office		
Salaries and expenses (03-10-0110-802-A):		
Budget Authority	29,047	1,539
Outlays	26,004	1,378
Executive Residence at the White House		
Operating expenses (03-20-0210-802-A):		
Budget Authority	5,925	314
401(C) Authority—		
Off. Coll.	1,471	78
Outlays	7,223	383

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Official Residence of the Vice President		
Operating expenses (03-21-0211-802-A):		
Budget Authority	267	14
Outlays	114	6
Special Assistance to the President		
Salaries and expenses (03-22-1454-802-A):		
Budget Authority	2,284	121
Outlays	1,923	102
Council of Economic Advisers		
Salaries and expenses (03-28-1900-802-A):		
Budget Authority	2,898	154
Outlays	2,633	140
Council/Office on Environmental Quality		
Council on Environmental Quality & Off. of Environmental Quali (03-31-1453-802-A):		
Budget Authority	884	47
Outlays	796	42
Office of Policy Development		
Salaries and expenses (03-35-2200-802-A):		
Budget Authority	3,119	165
Outlays	2,872	152
National Security Council		
Salaries and expenses (03-38-2000-802-A):		
Budget Authority	5,299	281
Outlays	4,208	223
National Space Council		
Salaries and expenses (03-39-0020-802-A):		
Budget Authority	188	10
Outlays	131	7
National Critical Materials Council		
Salaries and expenses (03-41-0111-802-A):		
Budget Authority	233	12
Outlays	209	11
Office of Administration		
Salaries and expenses (03-42-0038-802-A):		
Budget Authority	17,488	927
Outlays	13,825	733
Office of Management and Budget		
Office of Federal Procurement Policy: Salaries and expenses (03-45-0201-802-A):		
Budget Authority	2,447	130
Outlays	1,895	100
Salaries and Expenses (03-45-0300-802-A):		
Budget Authority	41,208	2,184
Outlays	37,837	2,005
Office of National Drug Control Policy		
Salaries and Expenses (03-47-1457-802-A):		
Budget Authority	3,628	192
Outlays	2,721	144
Office of Scienca and Technology Policy		
Salaries and expenses (03-49-2600-802-A):		
Budget Authority	1,648	87
Outlays	988	52

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Office of the United States Trade Representative		
Salaries and expenses (03-50-0400-802-A):		
Budget Authority	15,868	841
Outlays	13,805	732
Total, Executive Office of the President:		
Budget Authority	132,431	7,018
401(C) Authority—		
Off. Coll.	1,471	78
Outlays	117,184	6,210
Funds Appropriated to the President		
Unanticipated Needs		
Unanticipated needs (04-06-0037-802-A):		
Budget Authority	1,036	55
Outlays	995	53
Investment in Management Improvement		
Investment in Management Improvement (04-07-0061-802-B):		
Budget Authority	1,036	55
Outlays	777	41
International Security Assistance		
Peacekeeping operations (04-09-1032-152-A):		
Budget Authority	32,830	1,740
Outlays	22,653	1,201
Economic support fund (04-09-1037-152-A):		
Budget Authority	3,396,526	180,016
Outlays	1,863,174	98,748
Military assistance (04-09-1080-152-A):		
Budget Authority	485,480	25,730
Outlays	84,720	4,490
International military education and training (04-09-1081-152-A):		
Budget Authority	49,106	2,603
Outlays	24,553	1,301
Foreign military sales credit (04-09-1082-152-A):		
Budget Authority	4,426,569	234,608
Direct Loan		
Limitation	424,760	22,512
Outlays	1,853,063	98,212
Multilateral Assistance		
Contribution to the International Development Association (04-12-0073-151-A):		
Budget Authority	1,030,820	54,633
Contribution to the Asian Development Bank (04-12-0076-151-A):		
Budget Authority	157,878	8,368
Contribution to the International Bank for Reconstruction & De (04-12-0077-151-A):		
Budget Authority	51,801	2,745
Outlays	5,180	275
Contribution to the International Finance Corporation (04-12-0078-151-A):		
Budget Authority	5,068	269
Outlays	5,068	269
Contribution to the African Development Fund (04-12-0079-151-A):		
Budget Authority	108,780	5,765
Contribution to the African Development Bank (04-12-0082-151-A):		
Budget Authority	7,609	403
Outlays	7,609	403
International organizations and programs (04-12-1005-151-A):		
Budget Authority	234,255	12,416
Outlays	175,692	9,312

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Agency for International Development		
Operating expenses, Agency for International Development (04–14–1000–151–A):		
Budget Authority	434,057	23,005
Outlays	325,330	17,242
Operating expenses of the AID Office of Inspector General (04–14–1007–151–A):		
Budget Authority	29,579	1,568
Outlays	22,173	1,175
American schools and hospitals abroad (04–14–1013–151–A):		
Budget Authority	36,260	1,922
Outlays	11,603	615
Development fund for Africa (04–14–1014–151–A):		
Budget Authority	569,800	30,199
Outlays	84,900	4,500
Functional development assistance program (04–14–1021–151–A):		
Budget Authority	1,256,845	66,613
Outlays	121,732	6,452
International disaster assistance (04–14–1035–151–A):		
Budget Authority	29,008	1,537
Outlays	7,252	384
Housing and other credit guaranty programs (04–14–4340–151–A):		
401(C) Authority—		
Off. Coll.	7,035	373
Guaranteed Loan Limitation	129,500	6,864
Outlays	7,035	373
Private sector revolving fund (04–14–4341–151–A):		
Budget Authority	8,806	467
Direct Loan Limitation	12,432	659
Guaranteed Loan Limitation	51,800	2,745
Trade and Development Program		
Trade and development program (04–16–1001–151–A):		
Budget Authority	25,906	1,373
Outlays	5,357	284
Peace Corps		
Peace Corps (04–18–0100–151–A):		
Budget Authority	160,013	8,481
Outlays	130,571	6,920
Overseas Private Investment Corporation		
Overseas Private Investment Corporation (04–20–4030–151–A):		
401(C) Authority—		
Off. Coll.	12,504	663
Direct Loan Limitation	23,828	1,263
Guaranteed Loan Limitation	181,300	9,609
Outlays	14,416	764
Inter-American Foundation		
Inter-American Foundation (04–22–4031–151–A):		
Budget Authority	17,201	912
401(C) Authority—		
Off. Coll.	13,277	704
Outlays	18,496	980

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
African Development Foundation		
African Development Foundation (04–24–0700–151–A):		
Budget Authority	8,296	440
Outlays	4,479	237
Military Sales Programs		
Special defense acquisition fund (04–37–4116–155–A):		
Obligation limitation	245,392	13,006
Foreign military sales trust fund (04–37–8242–155–A):		
401(C) Authority—		
Off. Coll.	263,000	13,939
Outlays	263,000	13,939
Special Assistance for Central America		
Central American reconciliation assistance (04–55–1038–152–A):		
Budget Authority	37,648	1,995
Outlays	37,648	1,995
Total, Funds Appropriated to the President:		
Budget Authority	12,602,213	667,918
401(C) Authority—		
Off. Coll.	295,816	15,679
Obligation limitation	245,392	13,006
Direct Loan Limitation	461,020	24,434
Guaranteed Loan Limitation	362,600	19,218
Outlays	5,097,476	270,165
Department of Agriculture		
Office of the Secretary		
Office of the Secretary (05–03–0115–352–A):		
Budget Authority	6,190	328
Outlays	5,841	310
Gifts and bequests (05–03–8203–352–A):		
401(C) Authority	50	3
Outlays	50	3
Departmental Administration		
Rental payments and building operations (05–05–0117–352–A):		
Budget Authority	73,324	3,886
Outlays	63,635	3,373
Advisory committees (05–05–0118–352–A):		
Budget Authority	1,550	82
Outlays	1,086	58
Departmental administration (05–05–0120–352–A):		
Budget Authority	26,960	1,429
Outlays	22,404	1,187
Hazardous Waste Management (05–05–0500–304–A):		
Budget Authority	5,180	275
Outlays	5,095	270
Working capital fund (05–05–4609–352–A):		
Budget Authority	4,877	258
Outlays	3,576	190
Office of Governmental and Public Affairs		
Office of Governmental and Public Affairs (05–06–0130–352–A):		
Budget Authority	9,209	488
Outlays	7,094	376

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Office of the Inspector General		
Office of the Inspector General (05–08–0900–352–A):		
Budget Authority	52,514	2,783
Outlays	47,054	2,494
Office of the General Counsel		
Office of the General Counsel (05–10–2300–352–A):		
Budget Authority	21,672	1,149
Outlays	19,734	1,046
Agricultural Research Service		
Agricultural Research Service (05–18–1400–352–A):		
Budget Authority	585,209	31,016
401(C) Authority—		
Off. Coll.	3,200	170
Outlays	471,121	24,969
Buildings and facilities (05–18–1401–352–A):		
Budget Authority	16,598	880
Outlays	2,490	132
Cooperative State Research Service		
Cooperative State Research Service (05–24–1500–352–A):		
Budget Authority	350,271	18,564
401(C) Authority	2,850	151
Outlays	201,264	10,667
Extension Service		
Extension Service (05–27–0502–352–A):		
Budget Authority	374,422	19,844
401(C) Authority—		
Off. Coll.	380	20
Outlays	282,309	14,962
National Agricultural Library		
National Agricultural Library (05–30–0300–352–A):		
Budget Authority	14,818	785
Outlays	11,046	585
National Agricultural Statistics Service		
Salaries and expenses (05–33–1801–352–A):		
Budget Authority	66,056	3,501
401(C) Authority—		
Off. Coll.	1,200	64
Outlays	58,645	3,108
Economic Research Service		
Salaries and expenses (05–36–1701–352–A):		
Budget Authority	51,307	2,719
Outlays	41,498	2,199
World Agricultural Outlook Board		
World agricultural outlook board (05–50–2100–352–A):		
Budget Authority	1,893	100
Outlays	1,509	80
Foreign Agricultural Service		
Foreign Agricultural Service (05–51–2900–352–A):		
Budget Authority	99,024	5,248
Outlays	59,352	3,146
Office of International Cooperation & Development		
Scientific activities overseas (05–53–1404–352–A):		
Budget Authority	1,036	55
Outlays	636	34

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Salaries and expenses (05–53–3200–352–A):		
Budget Authority	5,524	293
Outlays	5,524	293
Foreign Assistance Programs		
Expenses, PL 480, foreign assistance programs, Agriculture (05–57–2274–151–A):		
Budget Authority	984,193	52,162
Obligation limitation	1,535,248	81,368
Direct Loan Limitation	819,372	43,427
Outlays	984,193	52,162
Agricultural Stabilization & Conservation Service		
Salaries and expenses (05–60–3300–351–A):		
Budget Authority	395	21
401(C) Authority—Off. Coll.	23,591	1,250
Outlays	23,986	1,271
Dairy indemnity program (05–60–3314–351–A):		
Budget Authority	5	0
Outlays	5	0
Agricultural conservation program (05–60–3315–302–A):		
Budget Authority	183,305	9,715
Outlays	84,137	4,459
Emergency conservation program (05–60–3316–453–A):		
Budget Authority	5,180	275
Outlays	2,331	124
Colorado river basin salinity control program (05–60–3318–304–A):		
Budget Authority	5,648	299
Outlays	1,864	99
Conservation reserve program (05–60–3319–302–A):		
Budget Authority	1,202,000	63,706
Outlays	918,674	48,690
Water Bank program (05–60–3320–302–A):		
Budget Authority	9,324	494
Outlays	1,212	64
Forestry incentives program (05–60–3336–302–A):		
Budget Authority	12,894	683
Outlays	3,739	198
Federal Crop Insurance Corporation		
Administrative and operating expenses (05–63–2707–351–A):		
Budget Authority	209,401	11,096
Outlays	113,019	5,990
Commodity Credit Corporation		
Temporary Emergency Food Assistance Program (05–66–3635–351–A):		
Budget Authority	171,800	9,105
Outlays	159,523	8,455
Commodity Credit Corporation Fund (05–66–4336–351–A):		
401(C) Authority	12,762,450	676,410
Direct Loan Limitation	10,000,000	530,000
Guaranteed Loan Limitation	5,698,000	301,994
Outlays	12,762,450	676,410
Rural Electrification Administration		
Salaries and expenses (05–72–3100–271–A):		
Budget Authority	32,534	1,724
Outlays	29,445	1,561

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Reimbursement to the Rural elec. & tel. revolv. fund for int. (05–72–3101–271–A):		
Budget Authority	238,800	12,656
Outlays	238,800	12,656
Purchase of Rural Telephone Bank capital stock (05–72–3102–452–A):		
Budget Authority	29,744	1,576
Outlays	29,744	1,576
Rural communication development fund (05–72–4142–452–A):		
Budget Authority	1,499	79
Outlays	1,467	78
Rural electrification and telephone revolving fund (05–72–4230–271–A):		
Budget Authority	563	30
Direct Loan Limitation	3,485,193	184,715
Direct Loan Floor	1,869,739	99,096
Outlays	240,215	12,731
Rural telephone bank (05–72–4231–452–A):		
Direct Loan Limitation	218,119	11,560
Direct Loan Floor	183,419	9,721
Outlays	–20,485	–1,086
Farmers Home Administration		
Salaries and expenses (05–75–2001–452–A):		
Budget Authority	432,349	22,914
Outlays	394,453	20,906
Rural housing for domestic farm labor (05–75–2004–604–A):		
Budget Authority	9,855	522
Outlays	99	5
Mutual and self-help housing (05–75–2006–604–A):		
Budget Authority	8,288	439
Outlays	663	35
Very low income housing repair grants (05–75–2064–604–A):		
Budget Authority	12,950	686
Outlays	12,303	652
Rural development grant program (05–75–2065–452–A):		
Budget Authority	6,734	357
Outlays	6,397	339
Rural water and waste disposal grants (05–75–2066–452–A):		
Budget Authority	121,103	6,418
Outlays	4,844	257
Rural community fire protection grants (05–75–2067–452–A):		
Budget Authority	3,202	170
Outlays	1,441	76
Rural housing preservation grants (05–75–2070–604–A):		
Budget Authority	19,829	1,051
Outlays	1,190	63
Compensation for construction defects (05–75–2071–371–A):		
Budget Authority	518	27
Outlays	518	27
Agricultural Credit Insurance Fund (05–75–4140–351–A):		
Budget Authority	3,108	165
401(C) Authority—Off. Coll.	112,901	5,984
Direct Loan Limitation	1,625,070	86,129
Guaranteed Loan Limitation	2,875,418	152,397
Outlays	1,129,009	59,837

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Rural Housing Insurance Fund (Appr.) (05–75–4141–371–A):		
Budget Authority	224,359	11,891
401(C) Authority—Off. Coll.	23,828	1,263
Obligation limitation	285,211	15,116
Direct Loan Limitation	1,911,410	101,305
Outlays	1,173,342	62,187
Rural Development Insurance Fund (Appr.) (05–75–4155–452–A):		
401(C) Authority—Off. Coll.	362	19
Direct Loan Limitation	444,009	23,532
Guaranteed Loan Limitation	99,145	5,255
Outlays	26,054	1,381
Self-help housing land development fund (05–75–4222–371–A):		
Direct Loan Limitation	518	27
Rural development loan fund (05–75–4233–452–A):		
Budget Authority	12,970	687
Direct Loan Limitation	14,504	769
Outlays	1,450	77
Soil Conservation Service		
Conservation operations (05–78–1000–302–A):		
Budget Authority	483,721	25,637
401(C) Authority—Off. Coll.	9,053	480
Outlays	454,170	24,071
Resource conservation and development (05–78–1010–302–A):		
Budget Authority	26,095	1,383
401(C) Authority—Off. Coll.	4,600	244
Outlays	24,720	1,310
Watershed planning (05–78–1068–301–B):		
Budget Authority	8,995	477
401(C) Authority—Off. Coll.	213	11
Outlays	7,950	421
River basin surveys and investigations (05–78–1068–301–C):		
Budget Authority	12,530	664
401(C) Authority—Off. Coll.	166	9
Outlays	11,945	633
Watershed and flood prevention operations (05–78–1068–301–D):		
Budget Authority	179,027	9,488
401(C) Authority—Off. Coll.	11,849	628
Outlays	115,403	6,116
Great plains conservation program (05–78–2268–302–A):		
Budget Authority	21,247	1,126
401(C) Authority—Off. Coll.	41	2
Outlays	9,111	483
Miscellaneous contributed funds (Water resources) (05–78–8210–301–A):		
401(C) Authority	460	24
Outlays	302	16
Miscellaneous contributed funds (Conservation and land mgmt.) (05–78–8210–302–A):		
401(C) Authority	100	5
Outlays	90	5

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Animal and Plant Health Inspection Service		
Salaries and expenses (05-79-1600-352-A):		
Budget Authority	344,010	18,233
401(C) Authority—		
Off. Coll.	17,771	942
Outlays	314,712	16,680
Buildings and facilities (05-79-1601-352-A):		
Budget Authority	2,638	140
Outlays	728	39
Federal Grain Inspection Service		
Salaries and expenses (05-80-2400-352-A):		
Budget Authority	8,437	447
Outlays	7,467	396
Inspection and weighing services (05-80-4050-352-A):		
401(C) Authority—		
Off. Coll.	36,856	1,953
Outlays	36,856	1,953
Agricultural Marketing Service		
Marketing services (05-81-2500-352-A):		
Budget Authority	34,690	1,839
401(C) Authority—		
Off. Coll.	37,278	1,976
Outlays	54,865	2,908
Payments to States and possessions (05-81-2501-352-A):		
Budget Authority	976	52
Outlays	156	8
Perishable Agricultural Commodities Act fund (05-81-5070-352-A):		
401(C) Authority	5,500	292
Outlays	4,131	219
Funds for strengthening markets, income, and supply (section 3 (05-81-5209-605-A):		
401(C) Authority	538,946	28,564
Outlays	116,691	6,185
Milk market orders assessment fund (05-81-8412-351-A):		
401(C) Authority—		
Off. Coll.	38,709	2,052
Outlays	38,709	2,052
Miscellaneous trust funds (05-81-9972-352-A):		
401(C) Authority	85,979	4,557
Outlays	55,673	2,951
Office of Transportation		
Office of Transportation (05-82-2800-352-A):		
Budget Authority	2,477	131
Outlays	2,058	109
Food Safety and Inspection Service		
Salaries and expenses (05-83-3700-554-A):		
Budget Authority	421,533	22,341
401(C) Authority—		
Off. Coll.	47,800	2,533
Outlays	436,487	23,134
Exp. & refunds, insp. & grading (05-83-8137-352-A):		
401(C) Authority	1,150	61
Outlays	986	52
Food and Nutrition Service		
Special milk program ASI (G-R-H) (05-84-3502-605-I):		
Budget Authority—		
ASI	392	392
Outlays	1,125	1,125

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Food donations program (05-84-3503-605-A):		
Budget Authority	246,316	13,055
Outlays	212,480	11,261
Food stamp program (05-84-3505-605-A):		
Budget Authority	54,089	2,867
Outlays	20,955	1,111
Food program administration (05-84-3508-605-A):		
Budget Authority	92,791	4,918
Outlays	85,353	4,524
Supplemental feeding programs (05-84-3510-605-A):		
Budget Authority	3,000	159
Outlays	3,000	159
Child nutrition programs (05-84-3539-605-A):		
Budget Authority	4,135	219
Outlays	4,135	219
Human Nutrition Information Service		
Salaries and Expenses (05-86-3501-352-A):		
Budget Authority	9,159	485
Outlays	5,719	303
Packers and Stockyards Administration		
Packers and Stockyards Administration (05-90-2600-352-A):		
Budget Authority	9,946	527
Outlays	9,271	491
Agricultural Cooperative Service		
Salaries and expenses (05-92-3000-352-A):		
Budget Authority	4,838	256
Outlays	3,106	165
Forest Service		
Construction (05-96-1103-302-A):		
Budget Authority	234,099	12,407
401(C) Authority—		
Off. Coll.	2,835	150
Outlays	96,474	5,113
Forest research (05-96-1104-302-A):		
Budget Authority	143,384	7,599
401(C) Authority—		
Off. Coll.	1,262	67
Outlays	109,769	5,818
State and private forestry (05-96-1105-302-A):		
Budget Authority	89,879	4,764
401(C) Authority—		
Off. Coll.	4,358	231
Outlays	40,312	2,137
National forest system (05-96-1106-302-A):		
Budget Authority	1,335,811	70,798
Outlays	1,068,649	56,638
Land acquisition (05-96-5004-303-A):		
Budget Authority	66,532	3,526
Outlays	26,612	1,410
Range betterment fund (05-96-5207-302-A):		
Budget Authority	4,094	217
Outlays	2,988	158
Acquisition of lands for nat'l forests (05-96-5208-302-A):		
Budget Authority	1,001	53
Outlays	565	30
Acq. of lands to complete land exchanges (05-96-5216-302-A):		
Budget Authority	347	18
Outlays	288	15
Operations and maintenance of quarters (05-96-5219-302-A):		
401(C) Authority	5,852	310
Outlays	1,878	100

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Cooperative work trust fund (05-96-8028-302-A):		
401(C) Authority	315,117	16,701
Outlays	129,173	6,846
Highway Construction: Mount St. Helens National Monument (05-96-8029-401-A):		
Budget Authority	5,557	295
Outlays	3,134	166
Gifts, donations, bequests for forest and rangeland research (05-96-8034-302-A):		
Budget Authority	30	2
Outlays	30	2
Reforestation trust fund (05-96-8046-302-A):		
401(C) Authority	30,000	1,590
Outlays	30,000	1,590
Other appropriations (05-96-9911-302-A):		
Budget Authority	37,388	1,982
Outlays	27,318	1,448
Forest Service permanent appropriations (05-96-9921-806-A):		
401(C) Authority	382,916	20,295
Outlays	362,320	19,203
Forest Service permanent appropriations (05-96-9922-302-A):		
401(C) Authority	140,747	7,460
Outlays	49,002	2,597
Total, Department of Agriculture:		
Budget Authority	9,598,956	508,738
Budget Authority—		
ASI	392	392
401(C) Authority	14,272,117	756,423
401(C) Authority—		
Off. Coll.	378,253	20,048
Obligation limitation	1,820,459	96,484
Direct Loan Limitation	18,518,195	981,464
Direct Loan Floor	2,053,158	108,817
Guaranteed Loan Limitation	8,672,563	459,646
Outlays	23,623,911	1,253,132
Department of Commerce		
General Administration		
Salaries and expenses (06-05-0120-376-A):		
Budget Authority	41,987	2,225
Outlays	40,223	2,132
Grants and loans administration (06-05-0125-452-A):		
Budget Authority	25,716	1,363
Outlays	22,568	1,196
Economic development assistance programs (06-05-2050-452-A):		
Budget Authority	188,581	9,995
Guaranteed Loan Limitation	194,250	10,295
Outlays	18,858	999
Bureau of the Census		
Salaries and expenses (06-07-0401-376-A):		
Budget Authority	99,833	5,291
401(C) Authority—		
Off. Coll.	8,000	424
Outlays	96,852	5,133
Periodic censuses and programs (06-07-0450-376-A):		
Budget Authority	580,775	30,781
Outlays	445,454	23,609

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Economic and Statistical Analysis		
Salaries and expenses (06–08–1500–376–A):		
Budget Authority	34,202	1,813
401(C) Authority—		
Off. Coll.	395	21
Outlays	30,834	1,634
International Trade Administration		
Operations and administration (06–25–1250–376–A):		
Budget Authority	174,068	9,226
401(C) Authority—		
Off. Coll.	15,960	846
Outlays	138,565	7,344
Export Administration		
Operations and administration (06–30–0300–376–A):		
Budget Authority	41,704	2,210
Outlays	29,401	1,558
Minority Business Development Agency		
Minority business development (06–40–0201–376–A):		
Budget Authority	41,180	2,183
Outlays	12,909	684
United States Travel and Tourism Administration		
Salaries and expenses (06–44–0700–376–A):		
Budget Authority	14,322	759
401(C) Authority—		
Off. Coll.	1,450	77
Outlays	12,191	646
National Oceanic and Atmospheric Administration		
Operations, research, and facilities (06–48–1450–306–A):		
Budget Authority	1,334,243	70,715
401(C) Authority—		
Off. Coll.	11,434	606
Outlays	926,135	49,085
Coastal energy impact fund (06–48–4315–452–A):		
401(C) Authority—		
Off. Coll.	5,200	276
Outlays	5,200	276
Federal ship financing fund, fishing vessels (06–48–4417–376–A):		
401(C) Authority—		
Off. Coll.	7,300	387
Guaranteed Loan		
Limitation	480,000	25,440
Outlays	7,300	387
Fishermen's contingency fund (06–48–5120–376–A):		
Budget Authority	744	39
Outlays	708	38
Foreign fishing observer fund (06–48–5122–376–A):		
Budget Authority	1,991	106
Outlays	1,914	101
Fisheries Promotional Fund (06–48–5124–376–A):		
Budget Authority	3,108	165
Outlays	1,712	91
Promote and develop fishery products and research (06–48–5139–376–A):		
401(C) Authority	3,350	178
Outlays	1,843	98
Aviation weather services program (06–48–8105–306–A):		
Budget Authority	29,751	1,577
Outlays	29,751	1,577

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Patent and Trademark Office		
Salaries and expenses (06–51–1006–376–A):		
Budget Authority	113,222	6,001
401(C) Authority—		
Off. Coll.	180,032	9,542
Outlays	161,290	8,548
Technology Administration		
Information products and services (06–53–8546–376–A):		
401(C) Authority	50,000	2,650
Outlays	35,114	1,861
National Institute of Standards and Technology		
Scientific and technical research and services (06–55–0500–376–A):		
Budget Authority	163,596	8,671
Outlays	127,605	6,763
Working capital fund (06–55–4650–376–A):		
Budget Authority	1,563	83
Outlays	782	41
National Telecommunications and Information Admin.		
Salaries and expenses (06–60–0550–376–A):		
Budget Authority	14,164	751
Outlays	11,331	601
Public telecommunications facilities, planning and constructio (06–60–0551–503–A):		
Budget Authority	20,724	1,098
Outlays	2,404	127
Total, Department of Commerce:		
Budget Authority	2,925,474	155,052
401(C) Authority	53,350	2,828
401(C) Authority—		
Off. Coll.	229,771	12,179
Guaranteed Loan		
Limitation	674,250	35,735
Outlays	2,160,944	114,529
Department of Defense—Military		
Military Personnel		
Military personnel, Marine Corps (07–05–1105–051–A):		
Budget Authority	5,715,085	245,749
Outlays	5,489,910	236,066
Reserve personnel, Marine Corps (07–05–1108–051–A):		
Budget Authority	316,540	13,611
Outlays	291,217	12,522
Reserve personnel, Navy (07–05–1405–051–A):		
Budget Authority	1,596,123	68,633
Outlays	1,473,221	63,348
Military personnel, Navy (07–05–1453–051–A):		
Budget Authority	19,003,439	817,148
Outlays	18,235,700	784,135
Military personnel, Army (07–05–2010–051–A):		
Budget Authority	24,517,882	1,054,269
Outlays	23,240,500	999,342
National Guard personnel, Army (07–05–2060–051–A):		
Budget Authority	3,308,429	142,262
Outlays	2,994,790	128,776
Reserve personnel, Army (07–05–2070–051–A):		
Budget Authority	2,220,108	95,465
Outlays	2,031,620	87,360

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Military personnel, Air Force (07–05–3500–051–A):		
Budget Authority	20,100,130	864,306
Outlays	19,304,164	830,079
Reserve personnel, Air Force (07–05–3700–051–A):		
Budget Authority	657,553	28,275
Outlays	614,154	26,409
National Guard personnel, Air Force (07–05–3850–051–A):		
Budget Authority	1,031,188	44,341
Outlays	977,257	42,022
Operation and Maintenance		
Operation and maintenance, Defense agencies (07–10–0100–051–A):		
Budget Authority	7,911,928	340,213
Outlays	6,535,252	281,016
Court of Military Appeals, Defense (07–10–0104–051–A):		
Budget Authority	3,638	156
Outlays	3,129	135
Drug Interdiction Defense (07–10–0105–051–A):		
Budget Authority	217,560	9,355
Outlays	97,902	4,210
Goodwill Games (07–10–0106–051–A):		
Budget Authority	5,180	223
Outlays	2,296	99
Foreign currency fluctuations, Defense (07–10–0801–051–A):		
Unobligated		
Balances–Defense	414,152	17,809
Humanitarian Assistance (07–10–0819–051–A):		
Budget Authority	10,360	445
Outlays	7,594	327
Operation and maintenance, Marine Corps (07–10 1106–051–A):		
Budget Authority	1,883,771	81,002
Outlays	1,314,872	56,539
Operation and maintenance, Marine Corps Reserve (07–10–1107–051–A):		
Budget Authority	80,334	3,454
Outlays	55,752	2,397
National Board for the Promotion of Rifle Practice, Army (07–10–1705–051–A):		
Budget Authority	4,460	192
Outlays	3,010	129
Operation and maintenance, Navy (07–10–1804–051–A):		
Budget Authority	25,832,372	1,110,792
Outlays	18,495,979	795,327
Operation and maintenance, Navy Reserve (07–10–1806–051–A):		
Budget Authority	1,013,872	43,596
Outlays	665,100	28,599
Operation and maintenance, Army (07–10–2020–051–A):		
Budget Authority	23,153,258	995,590
Outlays	18,175,307	781,538
Operation and maintenance, Army National Guard (07–10–2065–051–A):		
Budget Authority	1,869,131	80,373
Outlays	1,397,175	60,079
Operation and maintenance, Army Reserve (07–10–2080–051–A):		
Budget Authority	825,122	35,480
Outlays	594,087	25,546
Operation and maintenance, Air Force (07–10–3400–051–A):		
Budget Authority	22,687,585	975,566
Outlays	17,401,378	748,259

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Operation and maintenance, Air Force Reserve (07-10-3740-051-A):		
Budget Authority	1,073,096	46,143
Outlays	859,550	36,961
Operation and maintenance, Air National Guard (07-10-3840-051-A):		
Budget Authority	2,045,955	87,976
Outlays	1,673,592	71,964
Procurement		
Procurement, Defense agencies (07-15-0300-051-A):		
Budget Authority	1,253,767	53,912
Unobligated Balances-Defense	349,815	15,042
Outlays	392,878	16,894
National Guard and Reserve Equipment (07-15-0350-051-A):		
Budget Authority	1,179,798	50,731
Unobligated Balances-Defense	442,388	19,023
Outlays	168,707	7,254
Defense Production Act purchases (07-15-0360-051-A):		
Budget Authority	34,706	1,492
Unobligated Balances-Defense	45,850	1,972
Chemical agents and munitions destruction, Defense (07-15-0390-051-A):		
Budget Authority	185,962	7,996
Unobligated Balances-Defense	31,788	1,367
Outlays	77,302	3,324
Procurement, Marine Corps (07-15-1109-051-A):		
Budget Authority	1,343,526	57,772
Unobligated Balances-Defense	266,802	11,472
Outlays	317,235	13,641
Aircraft procurement, Navy (07-15-1506-051-A):		
Budget Authority	9,738,094	418,738
Unobligated Balances-Defense	1,865,544	80,218
Outlays	1,479,464	63,617
Weapons procurement, Navy (07-15-1507-051-A):		
Budget Authority	6,364,117	273,657
Unobligated Balances-Defense	2,295,631	98,712
Outlays	909,273	39,099
Shipbuilding and conversion, Navy (07-15-1611-051-A):		
Budget Authority	9,922,238	426,656
Unobligated Balances-Defense	9,802,211	421,495
Outlays	1,130,211	48,599
Other procurement, Navy (07-15-1810-051-A):		
Budget Authority	5,020,224	215,870
Unobligated Balances-Defense	1,804,590	77,597
Outlays	853,102	36,683
Aircraft procurement, Army (07-15-2031-051-A):		
Budget Authority	2,986,568	128,422
Unobligated Balances-Defense	555,538	23,888
Outlays	655,290	28,177
Missile procurement, Army (07-15-2032-051-A):		
Budget Authority	2,695,680	115,914
Unobligated Balances-Defense	779,755	33,529
Outlays	278,034	11,955

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Procurement of weapons and tracked combat vehicles, Army (07-15-2033-051-A):		
Budget Authority	2,932,246	126,087
Unobligated Balances-Defense	1,303,644	56,057
Outlays	211,794	9,107
Procurement of ammunition, Army (07-15-2034-051-A):		
Budget Authority	2,085,670	89,684
Unobligated Balances-Defense	168,801	7,258
Outlays	721,430	31,021
Other procurement, Army (07-15-2035-051-A):		
Budget Authority	4,846,357	208,393
Unobligated Balances-Defense	1,602,125	68,891
Outlays	548,121	23,569
Aircraft procurement, Air Force (07-15-3010-051-A):		
Budget Authority	16,181,769	695,816
Unobligated Balances-Defense	6,053,661	260,307
Outlays	1,778,835	76,490
Missile procurement, Air Force (07-15-3020-051-A):		
Budget Authority	7,476,482	321,489
Unobligated Balances-Defense	2,758,717	118,625
Outlays	2,350,001	101,050
Other procurement, Air Force (07-15-3080-051-A):		
Budget Authority	8,483,824	364,804
Unobligated Balances-Defense	2,139,693	92,007
Outlays	5,832,310	250,789
Research, Development, Test, and Evaluation		
Research, development, test, and evaluation, Defense agencies (07-20-0400-051-A):		
Budget Authority	8,508,262	365,855
Unobligated Balances-Defense	629,063	27,050
Outlays	4,666,431	200,657
Developmental test and evaluation, Defense (07-20-0450-051-A):		
Budget Authority	155,296	6,678
Unobligated Balances-Defense	34,398	1,479
Outlays	40,785	1,754
Operational test and evaluation, Defense (07-20-0460-051-A):		
Budget Authority	73,798	3,173
Unobligated Balances-Defense	20,694	890
Outlays	11,339	488
Research, development, test, and evaluation, Navy (07-20-1319-051-A):		
Budget Authority	9,685,026	416,456
Unobligated Balances-Defense	482,879	20,764
Outlays	5,643,187	242,657
Research, development, test, and evaluation, Army (07-20-2040-051-A):		
Budget Authority	5,324,680	228,961
Unobligated Balances-Defense	395,274	16,997
Outlays	3,083,056	132,571
Research, development, test, and evaluation, Air Force (07-20-3600-051-A):		
Budget Authority	15,320,436	658,779
Unobligated Balances-Defense	1,708,045	73,446
Outlays	9,067,666	389,910

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Military Construction		
Military construction, Defense agencies (07-25-0500-051-A):		
Budget Authority	703,996	30,272
Unobligated Balances-Defense	356,803	15,343
Outlays	194,126	8,347
Foreign currency fluctuations, construction (07-25-0803-051-A):		
Unobligated Balances-Defense	195,814	8,420
North Atlantic Treaty Organization infrastructure (07-25-0804-051-A):		
Budget Authority	509,712	21,918
Unobligated Balances-Defense	133,905	5,758
Military construction, Navy (07-25-1205-051-A):		
Budget Authority	1,633,963	70,260
Unobligated Balances-Defense	374,393	16,099
Outlays	477,988	20,553
Military construction, Naval Reserve (07-25-1235-051-A):		
Budget Authority	63,092	2,713
Unobligated Balances-Defense	10,927	470
Outlays	11,103	477
Military construction, Army (07-25-2050-051-A):		
Budget Authority	1,186,678	51,027
Unobligated Balances-Defense	437,348	18,806
Outlays	519,688	22,347
Military construction, Army National Guard (07-25-2085-051-A):		
Budget Authority	237,408	10,209
Unobligated Balances-Defense	44,743	1,924
Outlays	31,037	1,335
Military construction, Army Reserve (07-25-2086-051-A):		
Budget Authority	89,071	3,830
Unobligated Balances-Defense	21,950	944
Outlays	15,021	646
Military construction, Air Force (07-25-3300-051-A):		
Budget Authority	1,259,699	54,167
Unobligated Balances-Defense	649,510	27,929
Outlays	305,474	13,135
Military construction, Air Force Reserve (07-25-3730-051-A):		
Budget Authority	73,142	3,145
Unobligated Balances-Defense	23,702	1,019
Outlays	10,169	437
Military construction, Air National Guard (07-25-3830-051-A):		
Budget Authority	164,214	7,061
Unobligated Balances-Defense	53,309	2,292
Outlays	17,402	748
Family Housing		
Family housing, Army (07-30-0702-051-A):		
Budget Authority	1,582,557	68,050
Unobligated Balances-Defense	120,034	5,161
Outlays	1,045,804	44,970

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Family housing, Navy and Marine Corps (07–30–0703–051–A):		
Budget Authority	827,806	35,596
Unobligated Balances–Defense	173,606	7,465
Outlays	360,663	15,508
Family housing, Air Force (07–30–0704–051–A):		
Budget Authority	954,037	41,024
Unobligated Balances–Defense	105,938	4,555
Outlays	567,253	24,392
Family housing, Defense agencies (07–30–0706–051–A):		
Budget Authority	21,445	922
Unobligated Balances–Defense	176	8
Outlays	13,568	583
Revolving and Management Funds		
National Defense Stockpile transaction fund (07–40–4555–051–A):		
Budget Authority	34,706	1,492
Unobligated Balances–Defense	460,973	19,822
Navy stock fund (07–40–4911–051–A):		
Budget Authority	191,349	8,228
Outlays	63,145	2,715
Air Force stock fund (07–40–4921–051–A):		
Budget Authority	193,628	8,326
Outlays	63,897	2,748
Defense stock fund (07–40–4961–051–A):		
Budget Authority	25,900	1,114
Outlays	8,547	368
Army stock fund (07–40–4991–051–A):		
Budget Authority	302,408	13,004
Outlays	99,795	4,291
Allowances		
GRH aggregate spendout rate requirement (07–45–9920–051–A):		
Outlays	–4,045,000	–173,935
Total, Department of Defense—Military:		
Budget Authority	298,937,436	12,854,308
Unobligated Balances–Defense	39,114,189	1,681,910
Outlays	181,910,639	7,822,155
Department of Defense—Civil		
Cemeterial Expenses, Army		
Salaries and expenses (08–05–1805–705–A):		
Budget Authority	13,688	725
Outlays	10,206	541
Corps of Engineers—Civil		
Flood control, Mississippi River and tributaries (08–10–3112–301–A):		
Budget Authority	336,000	17,808
401(C) Authority—Off. Coll.	195	10
Outlays	245,475	13,010
General investigations (08–10–3121–301–A):		
Budget Authority	131,066	6,948
Outlays	89,138	4,724
Construction, general (08–10–3122–301–A):		
Budget Authority	980,200	51,951
401(C) Authority—Off. Coll.	250	13
Outlays	392,330	20,793
Operation and maintenance, general (08–10–3123–301–A):		
Budget Authority	1,193,504	63,256
401(C) Authority—Off. Coll.	3,500	186
Outlays	970,238	51,423
Operation and maintenance, general (08–10–3123–303–A):		
Budget Authority	20,000	1,060
Outlays	20,000	1,060
General expenses (08–10–3124–301–A):		
Budget Authority	128,800	6,826
Outlays	103,040	5,461
Regulatory Program (08–10–3126–301–A):		
Budget Authority	69,427	3,680
Outlays	65,955	3,496
Revolving fund (08–10–4902–301–A):		
Budget Authority	10,000	530
Outlays	8,000	424
Inland waterways trust fund (08–10–8861–301–A):		
Budget Authority	119,000	6,307
Outlays	119,000	6,307
Rivers and harbors contributed funds (08–10–8862–301–A):		
401(C) Authority	215,550	11,424
Outlays	100,651	5,334
Harbor maintenance trust fund (08–10–8863–301–A):		
Budget Authority	164,000	8,692
Outlays	164,000	8,692
Permanent appropriations (Water resources) (08–10–9921–301–A):		
401(C) Authority	7,000	371
Outlays	48	3
Permanent appropriations (08–10–9921–806–A):		
401(C) Authority	5,000	265
Soldiers' and Airmen's Home		
Operation and maintenance (08–20–8931–705–A):		
Budget Authority	38,730	2,053
401(C) Authority—Off. Coll.	144	8
Outlays	33,874	1,795
Capital outlay (08–20–8932–705–A):		
Budget Authority	15,354	814
Outlays	5,374	285
Forest & Wildlife Conservation, Mil. Reservations		
Wildlife conservation (08–30–5095–303–A):		
401(C) Authority	2,100	111
Outlays	1,400	74
Total, Department of Defense—Civil:		
Budget Authority	3,219,789	170,650
401(C) Authority	229,650	12,171
401(C) Authority—Off. Coll.	4,089	217
Outlays	2,328,729	123,422
Department of Education		
Office of Elementary and Secondary Education		
Indian education (18–10–0101–501–A):		
Budget Authority	74,138	3,929
Outlays	10,739	569
Impact aid (18–10–0102–501–A):		
Budget Authority	759,489	40,253
Outlays	604,356	32,031
Compensatory education for the disadvantaged (18–10–0900–501–A):		
Budget Authority	4,743,986	251,431
Outlays	569,278	30,172
School improvement programs (18–10–1000–501–A):		
Budget Authority	1,260,910	66,828
Outlays	151,310	8,019
Off. of Bilingual Ed. & Minority Languages Affairs		
Bilingual, immigrant, and refugee education (18–15–1300–501–A):		
Budget Authority	204,500	10,838
Outlays	24,540	1,301
Office of Special Education & Rehabilitative Svcs.		
Education for the handicapped (18–20–0300–501–A):		
Budget Authority	2,037,229	107,973
Outlays	251,471	13,328
Vocational rehabilitation (18–20–0301–506–A):		
Budget Authority	225,403	11,946
Outlays	173,560	9,199
Vocational rehab split for G-R-H: ASI (G-R-H) (18–20–0301–506–I):		
Budget Authority—ASI	60,400	60,400
Outlays	46,500	46,500
Special institutions for the handicapped (18–20–0604–501–C):		
Budget Authority	21,053	1,116
Outlays	19,790	1,049
Special institutions for the handicapped (APHB) (18–20–0604–501–D):		
Budget Authority	5,527	293
Outlays	5,527	293
Special institutions for the handicapped (NTID) (18–20–0604–502–B):		
Budget Authority	34,526	1,830
Outlays	34,526	1,830
Special institutions for the handicapped (Gallaudet) (18–20–0604–502–C):		
Budget Authority	47,321	2,508
Outlays	44,543	2,361
Office of Vocational and Adult Education		
Vocational and adult education (18–30–0400–501–A):		
Budget Authority	1,112,110	58,942
401(C) Authority	7,148	379
Outlays	134,311	7,118
Office of Postsecondary Education		
Student financial assistance (18–40–0200–502–A):		
Budget Authority	6,023,636	319,253
Outlays	1,448,201	76,755
Higher education (18–40–0201–502–A):		
Budget Authority	586,096	31,063
Outlays	86,922	4,607
Guaranteed student loans (18–40–0230–502–A):		
Budget Authority—Spec. Rules	42,170	42,170
Outlays	33,736	33,736
College housing and academic facilities loans (18–40–0242–502–A):		
Budget Authority	35,843	1,900
Direct Loan Limitation	30,707	1,627

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Howard University (18-40-0603-502-A):		
Budget Authority	185,416	9,827
Outlays	176,981	9,380
College housing loans (18-40-4250-502-A):		
401(C) Authority—		
Off. Coll.	650	34
Outlays	650	34
Office of Educational Research and Improvement		
Libraries (18-50-0104-503-A):		
Budget Authority	142,139	7,533
Outlays	50,149	2,658
Education research and statistics (18-50-1100-503-A):		
Budget Authority	81,015	4,294
Outlays	34,836	1,846
Departmental Management		
Office for Civil Rights (18-80-0700-751-A):		
Budget Authority	43,301	2,295
Outlays	35,919	1,904
Salaries and expenses (Elementary, secondary and vocational ed.) (18-80-0800-501-A):		
Budget Authority	20,689	1,097
Outlays	17,173	910
Salaries and expenses (Higher education) (18-80-0800-502-A):		
Budget Authority	89,997	4,770
Outlays	74,697	3,959
Salaries and expenses (Research and general education aids) (18-80-0800-503-A):		
Budget Authority	127,152	6,739
Outlays	105,537	5,593
Salaries and expenses (Social services) (18-80-0800-506-A):		
Budget Authority	22,383	1,186
Outlays	18,578	985
Office of the Inspector General (18-80-1400-751-A):		
Budget Authority	19,359	1,026
Outlays	16,010	849
Total, Department of Education:		
Budget Authority	17,903,218	948,870
Budget Authority—		
ASI	60,400	60,400
Budget Authority—		
Spec. Rules	42,170	42,170
401(C) Authority	7,148	379
401(C) Authority—		
Off. Coll.	650	34
Direct Loan Limitation	30,707	1,627
Outlays	4,169,840	296,986
Department of Energy		
Atomic Energy Defense Activities		
Atomic energy defense activities (19-10-0220-053-A):		
Budget Authority	9,656,034	415,209
Unobligated Balances-Defense	85,000	3,655
Outlays	6,039,441	259,696
Energy Programs		
Geothermal resources development fund (19-20-0206-271-A):		
Budget Authority	75	4
Outlays	75	4
Federal Energy Regulatory Commission (19-20-0212-276-A):		
Budget Authority	116,550	6,177
Outlays	109,207	5,788
Fossil energy research and development (19-20-0213-271-A):		
Budget Authority	394,472	20,907
Outlays	157,789	8,363
Energy conservation (Energy conservation) (19-20-0215-272-A):		
Budget Authority	326,721	17,316
Outlays	3,678	195
Energy information administration (19-20-0216-276-A):		
Budget Authority	65,227	3,457
Outlays	42,398	2,247
Economic regulation (19-20-0217-276-A):		
Budget Authority	22,206	1,177
Outlays	13,990	741
Strategic petroleum reserve (19-20-0218-274-A):		
Budget Authority	179,700	9,524
Outlays	98,834	5,236
Naval petroleum and shale reserves (19-20-0219-271-A):		
Budget Authority	191,757	10,163
Outlays	102,015	5,407
General science and research activities (19-20-0222-251-A):		
Budget Authority	1,114,431	59,065
Outlays	758,928	40,223
Energy supply, R&D activities (19-20-0224-271-A):		
Budget Authority	2,215,466	117,420
Outlays	1,107,733	58,710
Uranium supply and enrichment activities (19-20-0226-271-A):		
401(C) Authority—		
Off. Coll.	1,325,900	70,273
Outlays	1,325,900	70,273
SPR petroleum (19-20-0233-274-A):		
Budget Authority	159,157	8,435
401(C) Authority	91,555	4,852
Outlays	203,826	10,803
Emergency preparedness (19-20-0234-274-A):		
Budget Authority	6,394	339
Outlays	5,115	271
Clean Coal Technology (19-20-0235-271-A):		
401(C) Authority	710,000	37,630
Outlays	25,650	1,359
Isotope production and distribution fund (19-20-4180-271-A):		
Budget Authority	16,243	861
401(C) Authority—		
Off. Coll.	16,452	872
Outlays	16,452	872
Payments to states under Federal Power Act (19-20-5105-806-A):		
401(C) Authority	2,446	130
Nuclear waste disposal fund (19-20-5227-271-A):		
Budget Authority	346,000	18,338
Outlays	173,000	9,169
Power Marketing Administration		
Operation and maintenance, Southeastern Power Administration (19-50-0302-271-A):		
Budget Authority	932	49
Outlays	848	45
Operation and maintenance, Southwestern Power Administration (19-50-0303-271-A):		
Budget Authority	8,196	434
Outlays	4,713	250
Operation and maintenance, Alaska Power Administration (19-50-0304-271-A):		
Budget Authority	763	40
Outlays	368	19
Bonneville Power Administration fund (19-50-4045-271-A):		
401(C) Authority—		
Off. Coll.	45,800	2,427
Outlays	45,800	2,427
Colorado river basins power marketing fund, WAPA (19-50-4452-271-A):		
401(C) Authority—		
Off. Coll.	7,668	406
Outlays	7,668	406
Construction, rehabilitation, operation and maintenance, WAPA (19-50-5068-271-A):		
Budget Authority	41,376	2,193
Outlays	14,234	754
Departmental Administration		
Departmental administration (Energy information, policy, & reg.) (19-60-0228-276-A):		
Budget Authority	205,056	10,868
401(C) Authority—		
Off. Coll.	150,000	7,950
Outlays	273,033	14,471
Office of the Inspector General (19-60-0236-276-A):		
Budget Authority	22,959	1,217
Outlays	22,959	1,217
Total, Department of Energy:		
Budget Authority	15,089,715	703,193
401(C) Authority	804,001	42,612
401(C) Authority—		
Off. Coll.	1,545,820	81,928
Unobligated Balances-Defense	85,000	3,655
Outlays	10,553,652	498,948
Department of Health and Human Services		
Food and Drug Administration		
Program expenses (09-10-0600-554-A):		
Budget Authority	533,071	28,253
Outlays	426,226	22,590
Buildings and facilities (09-10-0603-554-A):		
Budget Authority	24,812	1,315
Outlays	2,977	158
Revolving fund for certification and other services (09-10-4309-554-A):		
401(C) Authority—		
Off. Coll.	3,216	170
Outlays	3,216	170
Health Resources and Services		
Health resources and services (health care services) (09-15-0350-551-A):		
Budget Authority	978,575	51,864
401(C) Authority—		
Off. Coll.	365	19
Direct Loan Limitation	494	26
Outlays	589,849	31,262
Health resources and services 2% split (G-R-H) (09-15-0350-551-G):		
Budget Authority—		
Spec. Rules	9,966	9,966
Outlays	6,009	6,009

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Health resources and services (education and training) (09–15–0350–553–A):		
Budget Authority	184,730	9,791
Outlays	111,374	5,903
Indian Health		
Tribal Health Administration (09–17–0390–551–A):		
Budget Authority	149,994	7,950
Outlays	125,923	6,674
Tribal and Federal Health Services 2% split (G-R-H) (09–17–0390–551–G):		
Budget Authority—		
Spec. Rules	18,176	18,176
Outlays	14,819	14,819
Indian health facilities 2% split (G-R-H) (09–17–0391–551–G):		
Budget Authority—		
Spec. Rules	1,233	1,233
Outlays	210	210
Centers for Disease Control		
Disease control (Health care services) (09–20–0943–551–A):		
Budget Authority	892,168	47,285
Outlays	508,535	26,952
Disease control (Health research) (09–20–0943–552–A):		
Budget Authority	123,346	6,537
Outlays	70,307	3,726
National Institutes of Health		
National Library of Medicine (Health research) (09–25–0807–552–A):		
Budget Authority	26,237	1,391
Outlays	16,253	861
National Library of Medicine (Education and training) (09–25–0807–553–A):		
Budget Authority	50,257	2,664
Outlays	31,132	1,650
John E. Fogarty International Center (09–25–0819–552–A):		
Budget Authority	16,391	869
Outlays	7,533	399
Buildings and facilities (09–25–0838–552–A):		
Budget Authority	39,878	2,114
Outlays	7,976	423
National Institute on Aging (Health research) (09–25–0843–552–A):		
Budget Authority	221,925	11,762
Outlays	67,627	3,584
National Institute on Aging (Education and training) (09–25–0843–553–A):		
Budget Authority	8,817	467
Outlays	2,671	142
Nat. Inst. Child Health and Human Development (Health research) (09–25–0844–552–A):		
Budget Authority	423,708	22,457
Outlays	130,306	6,906
Nat. Inst. Child Health and Human Development (Ed. & training) (09–25–0844–553–A):		
Budget Authority	17,197	911
Outlays	1,719	91
Office of the Director (Health research) (09–25–0846–552–A):		
Budget Authority	67,877	3,597
Outlays	41,360	2,192
Office of the Director (Education and training) (09–25–0846–553–A):		
Budget Authority	7,050	374
Outlays	4,295	228

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Research resources (Health research) (09–25–0848–552–A):		
Budget Authority	368,820	19,547
Outlays	204,685	10,848
Research resources (Education and training) (09–25–0848–553–A):		
Budget Authority	2,362	125
Outlays	141	7
National Cancer Institute (Health research) (09–25–0849–552–A):		
Budget Authority	1,596,191	84,598
Outlays	652,511	34,583
National Cancer Institute (Education and training) (09–25–0849–553–A):		
Budget Authority	34,419	1,824
Outlays	1,199	64
National Institute of General Medical Sciences (Health research) (09–25–0851–552–A):		
Budget Authority	630,153	33,398
Outlays	252,061	13,359
National Institute of General Medical Sciences (Ed. & training) (09–25–0851–553–A):		
Budget Authority	76,717	4,066
Outlays	30,686	1,626
National Institute of Environmental Health Sciences (Research) (09–25–0862–552–A):		
Budget Authority	221,892	11,760
Outlays	110,877	5,876
National Institute of Environmental Health Sciences (Ed.&train.) (09–25–0862–553–A):		
Budget Authority	9,713	515
Outlays	4,856	257
National Heart, Lung and Blood Institute (Health research) (09–25–0872–552–A):		
Budget Authority	1,039,894	55,114
Outlays	397,118	21,047
National Heart, Lung and Blood Institute (Education & training) (09–25–0872–553–A):		
Budget Authority	43,621	2,312
Outlays	1,740	92
National Institute of Dental Research (Health research) (09–25–0873–552–A):		
Budget Authority	129,587	6,868
Outlays	66,052	3,501
National Institute of Dental Research (Education and training) (09–25–0873–553–A):		
Budget Authority	5,922	314
Outlays	2,959	157
National Insti. of Diabetes, and Digestive and Kidney Diseases (09–25–0884–552–A):		
Budget Authority	557,742	29,560
Outlays	201,807	10,696
National Insti. of Diabetes, and Digestive and Kidney Diseases (09–25–0884–553–A):		
Budget Authority	22,099	1,171
Outlays	6,695	355
National Institute of Allergy & Infectious Diseases (Research) (09–25–0885–552–A):		
Budget Authority	754,055	39,965
Outlays	217,765	11,542
National Institute of Allergy & Infectious Diseases (Ed.&train.) (09–25–0885–553–A):		
Budget Authority	15,106	801
Outlays	2,264	120
National Institute of Neurological Disorders and Stroke (09–25–0886–552–A):		
Budget Authority	484,570	25,682
Outlays	185,440	9,828
National Institute of Neurological Disorders and Stroke (09–25–0886–553–A):		
Budget Authority	12,802	678
Outlays	3,660	194

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
National Eye Institute (Health research) (09–25–0887–552–A):		
Budget Authority	233,517	12,376
Outlays	78,437	4,157
National Eye Institute (Education and training) (09–25–0887–553–A):		
Budget Authority	6,234	330
Outlays	598	32
National Ins. of Arthritis and Musculoskeletal and Skin Diseas (09–25–0888–552–A):		
Budget Authority	159,727	8,466
Outlays	58,285	3,089
National Ins. of Arthritis and Musculoskeletal and Skin Diseas (09–25–0888–553–A):		
Budget Authority	6,007	318
Outlays	2,132	113
National Center for Nursing Research (09–25–0889–552–A):		
Budget Authority	26,233	1,390
Outlays	8,390	445
National Center for Nursing Research (09–25–0889–553–A):		
Budget Authority	3,954	210
Outlays	1,265	67
NID and Other Communication Disorders (09–25–0890–552–A):		
Budget Authority	87,200	4,622
Outlays	33,357	1,768
NID and Other Communication Disorders (09–25–0890–553–A):		
Budget Authority	2,500	132
Outlays	733	39
Alcohol, Drug Abuse, & Mental Health Administration		
Federal subsidy for St. Elizabeths Hospital (09–30–1300–551–A):		
Budget Authority	24,566	1,302
Outlays	24,566	1,302
Alcohol, drug abuse, and mental health (Health care services) (09–30–1361–551–A):		
Budget Authority	1,150,798	60,992
Outlays	739,963	39,218
Alcohol, drug abuse, and mental health (Health research) (09–30–1361–552–A):		
Budget Authority	713,040	37,791
Outlays	626,738	33,217
Alcohol, drug abuse, and mental health (Education and training) (09–30–1361–553–A):		
Budget Authority	46,469	2,463
Outlays	36,711	1,946
Office of Assistant Secretary for Health		
Public health service management (Health care services) (09–37–1101–551–A):		
Budget Authority	45,230	2,397
Outlays	30,274	1,605
Public health service management (Health research) (09–37–1101–552–A):		
Budget Authority	26,579	1,409
Outlays	20,282	1,075
Health Care Financing Administration		
Program management (Health care services) (09–38–0511–551–A):		
Budget Authority	86,641	4,592
Outlays	76,638	4,062
Program management (Health research) (09–38–0511–552–A):		
Budget Authority	10,236	542
Outlays	921	49

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Health maintenance organization loan and loan guarantee fund (09-38-4420-551-A):		
Obligation limitation	5,000	265
Outlays	-5,000	-265
Federal supplementary medical insurance trust fund (09-38-8004-571-A):		
401(C) Authority	53,440	2,832
Obligation limitation	1,253,303	66,425
Outlays	1,131,333	59,961
FSMI 2% split (G-R-H) (09-38-8004-571-S):		
401(C) Authority—		
Spec. Rules	372,000	372,000
Outlays	372,000	372,000
Federal hospital insurance trust fund (09-38-8005-571-A):		
401(C) Authority	201,038	10,655
Obligation limitation	1,294,637	68,616
Outlays	1,075,991	57,028
FHI 2% split (G-R-H) (09-38-8005-571-S):		
401(C) Authority—		
Spec. Rules	1,140,000	1,140,000
Outlays	1,140,000	1,140,000
Federal Catastrophic drug insurance trust fund (09-38-8183-571-S):		
401(C) Authority—		
Spec. Rules	2,560	2,560
Outlays	2,560	2,560
Federal supplementary medical insurance trust fund, catastro. (09-38-8184-571-A):		
Obligation limitation	129,208	6,848
Outlays	156,647	8,302
Federal supplementary medical insurance trust fund, catastro. (09-38-8184-571-S):		
401(C) Authority—		
Spec. Rules	12,000	12,000
Outlays	12,000	12,000

Social Security Administration

Supplemental security income program (09-60-0406-609-A):		
Budget Authority	821,257	43,527
Outlays	821,257	43,527
Special benefits for disabled coal miners (09-60-0409-601-A):		
Budget Authority	6,943	368
Outlays	6,943	368

Family Support Administration

Program administration (09-70-1500-609-A):		
Budget Authority	84,634	4,486
401(C) Authority—		
Off. Coll.	450	24
Outlays	63,942	3,389
Family support payment to States (CSE) (09-70-1501-609-B):		
Budget Authority	1,309,000	69,377
Outlays	1,309,000	69,377
Low income home energy assistance (09-70-1502-609-A):		
Budget Authority	1,432,995	75,949
Outlays	1,304,025	69,113
Refugee and Entrant Assistance (09-70-1503-609-A):		
Budget Authority	396,121	20,994
Outlays	257,479	13,646
Community services block grant (09-70-1504-506-A):		
Budget Authority	394,300	20,898
Outlays	272,067	14,420
Work incentives (09-70-1505-504-A):		
Budget Authority	94,732	5,021
Outlays	89,048	4,720

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Interim assistance to States for legalization (09-70-1508-506-A):		
401(C) Authority	870,000	46,110
Outlays	217,500	11,528
Payments to states for AFDC work programs (09-70-1509-609-A):		
Budget Authority	257,721	13,659
Outlays	257,721	13,659

Human Development Services

Social services block grant (09-80-1634-506-A):		
Budget Authority	2,700,000	143,100
Outlays	2,565,000	135,945
Human development services (09-80-1636-506-A):		
Budget Authority	2,667,229	141,363
Outlays	1,463,699	77,587
Payments to State for foster care and adoption assistance (09-80-1645-506-A):		
Budget Authority—		
Spec. Rules	5,132	5,132
Outlays	3,683	3,683

Departmental Management

General Departmental administration (09-90-0120-609-A):		
Budget Authority	70,202	3,721
Outlays	49,141	2,604
Policy research (09-90-0122-609-A):		
Budget Authority	8,138	431
Outlays	3,255	173
Office of the Inspector General (09-90-0128-609-A):		
Budget Authority	51,247	2,716
Outlays	38,435	2,037
Office for Civil Rights (09-90-0135-751-A):		
Budget Authority	16,680	884
Outlays	15,179	804
Office of Consumer Affairs (09-90-0137-506-A):		
Budget Authority	1,778	94
Outlays	1,422	75
Total, Department of Health and Human Services:		
Budget Authority	22,713,606	1,203,819
Budget Authority—		
Spec. Rules	34,507	34,507
401(C) Authority	1,124,478	59,597
401(C) Authority—		
Off. Coll.	4,031	213
401(C) Authority—		
Spec. Rules	1,526,560	1,526,560
Obligation limitation	2,682,148	142,154
Direct Loan		
Limitation	494	26
Outlays	18,876,650	2,469,526

Health and Human Services Social Security

Social Security

Federal old-age and survivors insurance trust fund (16-05-8006-651-A):		
Obligation limitation	1,358,206	71,985
Outlays	1,221,711	64,751
Federal disability insurance trust fund (16-05-8007-651-A):		
Obligation limitation	506,221	26,830
Outlays	415,664	22,030
Total, Health and Human Services Social Security:		
Obligation limitation	1,864,427	98,815
Outlays	1,637,375	86,781

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount

Department of Housing and Urban Development

Housing Programs

Housing counseling assistance (25-02-0156-506-A):		
Budget Authority	3,626	192
Subsidized housing programs (Community development) (25-02-0164-451-A):		
Budget Authority	5,180	275
Subsidized housing programs (Housing assistance) (25-02-0164-604-A):		
Budget Authority	7,342,406	389,148
Outlays	88,109	4,670
Congregate services program (25-02-0178-604-A):		
Budget Authority	5,594	296
Transitional and supportive housing demonstration program (25-02-0188-604-A):		
Budget Authority	82,880	4,393
Rental housing assistance fund (25-02-4041-604-A):		
401(C) Authority—		
Off. Coll.	50,000	2,650
Outlays	50,000	2,650
Nonprofit sponsor assistance (25-02-4042-604-A):		
Direct Loan		
Limitation	995	53
Federal Housing Administration fund (25-02-4070-371-A):		
Obligation limitation	396,582	21,019
Direct Loan		
Limitation	107,071	5,675
Guaranteed Loan		
Limitation	99,456,000	5,271,168
Outlays	396,582	21,019
Housing for the elderly or handicapped fund (25-02-4115-371-A):		
Direct Loan		
Limitation	497,280	26,356
Interstate land sales (25-02-5270-376-A):		
401(C) Authority	600	32
Outlays	600	32
Manufactured home inspection and monitoring (25-02-5271-376-A):		
401(C) Authority	7,320	388
Outlays	6,337	336

Public and Indian Housing Programs

Payments for operation of low income housing projects (25-03-0163-604-A):		
Budget Authority	1,766,906	93,646
Outlays	812,777	43,077

Government National Mortgage Association

Guarantees of mortgage-backed securities (25-04-4238-371-A):		
401(C) Authority—		
Off. Coll.	5,588	296
Guaranteed Loan		
Limitation	144,000,000	7,632,000
Outlays	5,588	296

Community Planning and Development

Community development grants (25-06-0162-451-A):		
Budget Authority	2,745,400	145,506
Guaranteed Loan		
Limitation	149,000	7,897
Outlays	109,816	5,820

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Urban homesteading (25–06–0171–451–A):		
Budget Authority	13,675	725
Outlays	13,675	725
Emergency shelter grants program (25–06–0181–604–A):		
Budget Authority	48,174	2,553
Outlays	9,635	511
Rental rehabilitation grants (25–06–0182–451–A):		
Budget Authority	155,400	8,236
Rehabilitation loan fund (25–06–4036–451–A):		
401(C) Authority—		
Off. Coll.	12,700	673
Direct Loan		
Limitation	85,212	4,516
Outlays	12,700	673
Policy Development and Research		
Research and technology (25–28–0108–451–A):		
Budget Authority	17,819	944
Outlays	5,340	283
Fair Housing and Equal Opportunity		
Fair housing activities (25–29–0144–751–A):		
Budget Authority	10,360	549
Outlays	1,865	99
Management and Administration		
Salaries & expenses, incl. transfer of funds (Community dev.) (25–35–0143–451–A):		
Budget Authority	174,166	9,231
Outlays	133,936	7,099
Salaries & expenses, incl. transfer of funds (Public assist.) (25–35–0143–604–A):		
Budget Authority	157,757	8,361
Outlays	121,353	6,432
Salaries & expenses, incl. transfer of funds (Federal law acts.) (25–35–0143–751–A):		
Budget Authority	15,455	819
Outlays	11,888	630
Total, Department of Housing and Urban Development:		
Budget Authority	12,544,798	664,874
401(C) Authority	7,920	420
401(C) Authority—		
Off. Coll.	68,288	3,619
Obligation limitation	396,582	21,019
Direct Loan		
Limitation	690,558	36,600
Guaranteed Loan		
Limitation	243,605,000	12,911,065
Outlays	1,780,201	94,352
Department of the Interior		
Bureau of Land Management		
Management of lands and resources (10–04–1109–302–A):		
Budget Authority	525,652	27,860
Outlays	418,784	22,196
Construction and access (10–04–1110–302–A):		
Budget Authority	5,631	298
Outlays	1,406	75
Payments in lieu of taxes (10–04–1114–806–A):		
Budget Authority	108,780	5,765
Outlays	108,618	5,757
Oregon and California grant lands (10–04–1116–302–A):		
Budget Authority	62,348	3,304
Outlays	46,136	2,445
Special acquisition of lands and minerals (10–04–1117–302–A):		
401(C) Authority	1,300	69
Service charges, deposits, and forfeitures (10–04–5017–302–A):		
Budget Authority	6,227	330
Outlays	5,474	290
Land acquisition (10–04–5033–302–A):		
Budget Authority	12,734	675
Outlays	6,315	335
Operation and maintenance of quarters (10–04–5048–302–A):		
401(C) Authority	250	13
Outlays	209	11
Range improvements (10–04–5132–302–A):		
Budget Authority	8,393	445
Outlays	5,305	281
Miscellaneous permanent appropriations (10–04–9921–302–A):		
401(C) Authority	7,000	371
Outlays	5,948	315
Miscellaneous permanent appropriations (10–04–9921–806–A):		
401(C) Authority	122,954	6,517
Outlays	122,954	6,517
Miscellaneous trust funds (10–04–9971–302–A):		
Budget Authority	100	5
401(C) Authority	600	32
Outlays	356	19
Minerals Management Service		
Leasing and royalty management (10–06–1917–302–A):		
Budget Authority	177,324	9,398
Outlays	115,130	6,102
Payments to states from receipts under Mineral Leasing Act (10–06–5003–806–A):		
401(C) Authority	464,195	24,602
Outlays	464,195	24,602
Office of Surface Mining Reclamation & Enforcement		
Regulation and technology (10–08–1801–302–A):		
Budget Authority	106,450	5,642
Outlays	61,993	3,286
Abandoned mine reclamation fund (10–08–5015–302–A):		
Budget Authority	200,189	10,610
Outlays	55,397	2,936
Bureau of Reclamation		
Loan program (10–10–0667–301–A):		
Budget Authority	34,122	1,808
Direct Loan		
Limitation	31,922	1,692
Outlays	20,985	1,112
Construction program (10–10–0684–301–A):		
Budget Authority	662,120	35,092
401(C) Authority—		
Off. Coll.	4,000	212
Outlays	560,181	29,690
Lower Colorado River basin development fund (10–10–4079–301–A):		
401(C) Authority—		
Off. Coll.	95,456	5,059
Outlays	95,456	5,059
Upper Colorado River basin fund (10–10–4081–301–A):		
401(C) Authority—		
Off. Coll.	32,375	1,716
Outlays	32,375	1,716
Working capital fund (10–10–4524–301–A):		
Budget Authority	8,500	450
Outlays	6,800	360
Emergency fund (10–10–5043–301–A):		
Budget Authority	1,000	53
Outlays	605	32
General investigations (10–10–5060–301–A):		
Budget Authority	11,530	611
401(C) Authority—		
Off. Coll.	75	4
Outlays	7,500	398
Operation and maintenance (10–10–5064–301–A):		
Budget Authority	212,287	11,251
401(C) Authority—		
Off. Coll.	10,136	537
Outlays	175,083	9,279
General administrative expenses (10–10–5065–301–A):		
Budget Authority	47,983	2,543
Outlays	43,185	2,289
Colorado River Dam Fund, Boulder Canyon Project (10–10–5656–301–A):		
401(C) Authority	48,650	2,578
Outlays	27,877	1,477
Reclamation trust funds (10–10–8070–301–A):		
401(C) Authority	54,100	2,867
Outlays	43,280	2,294
Miscellaneous permanent appropriations (10–10–9922–806–A):		
401(C) Authority	282	15
Outlays	226	12
Geological Survey		
Surveys, investigations and research (10–12–0804–306–A):		
Budget Authority	468,056	24,807
401(C) Authority	250	13
401(C) Authority—		
Off. Coll.	75,405	3,996
Outlays	520,058	27,563
Operation and maintenance of quarters (10–12–5055–306–A):		
401(C) Authority	75	4
Outlays	40	2
Bureau of Mines		
Mines and minerals (10–14–0959–306–A):		
Budget Authority	165,452	8,769
Outlays	105,902	5,613
Helium fund (10–14–4053–306–A):		
401(C) Authority—		
Off. Coll.	3,453	183
Outlays	3,453	183
Fish and Wildlife Service		
Resource management (10–18–1611–303–A):		
Budget Authority	371,703	19,700
401(C) Authority—		
Off. Coll.	5,776	306
Outlays	301,738	15,992
Construction (10–18–1612–303–A):		
Budget Authority	33,007	1,749
Outlays	6,601	350
Land acquisition (10–18–5020–303–A):		
Budget Authority	77,472	4,106
Outlays	34,790	1,844
Operations and maintenance of quarters (10–18–5050–303–A):		
401(C) Authority	1,736	92
Outlays	478	25

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
National wildlife refuge fund (10–18–5091–806–A):		
Budget Authority	6,884	365
401(C) Authority	6,040	320
Outlays	8,811	467
Migratory bird conservation account (10–18–5137–303–A):		
401(C) Authority	30,600	1,622
Outlays	21,420	1,135
Sport fish restoration (10–18–8151–303–A):		
401(C) Authority	192,891	10,223
Outlays	57,867	3,067
Contributed funds (10–18–8216–303–A):		
401(C) Authority	4,165	221
Outlays	1,832	97
Miscellaneous permanent appropriations (10–18–9923–303–A):		
401(C) Authority	129,200	6,848
Outlays	38,760	2,054
National Park Service		
Operation of the national park system (10–24–1036–303–A):		
Budget Authority	769,916	40,806
401(C) Authority—		
Off. Coll.	2,800	148
Outlays	575,737	30,514
John F. Kennedy Center for the Performing Arts (10–24–1038–303–A):		
Budget Authority	5,379	285
Outlays	4,035	214
Construction (10–24–1039–303–A):		
Budget Authority	164,909	8,740
401(C) Authority—		
Off. Coll.	11,000	583
Outlays	35,673	1,891
National recreation and preservation (10–24–1042–303–A):		
Budget Authority	15,182	805
Outlays	11,386	603
Illinois & Michigan Canal National Heritage Corridor Commissio (10–24–1043–303–A):		
Budget Authority	259	14
Outlays	129	7
Land acquisition (10–24–5035–303–A):		
Budget Authority	45,262	2,399
401(C) Authority	30,000	1,590
Outlays	30,543	1,619
Operations and maintenance of quarters (10–24–5049–303–A):		
401(C) Authority	8,632	457
Outlays	6,411	340
Historic preservation fund (10–24–5140–303–A):		
Budget Authority	31,598	1,675
Outlays	16,279	863
Miscellaneous permanent appropriations (10–24–9924–303–A):		
401(C) Authority	953	50
Outlays	136	7
Bureau of Indian Affairs		
Operation of Indian programs (Conservation and land management) (10–76–2100–302–A):		
Budget Authority	152,689	8,093
Outlays	116,035	6,150
Operation of Indian programs (Area and regional development) (10–76–2100–452–A):		
Budget Authority	597,631	31,674
401(C) Authority—		
Off. Coll.	4,000	212
Outlays	511,986	27,135
Operation of Indian programs (Elementary, secondary, & vo. ed.) (10–76–2100–501–A):		
Budget Authority	278,723	14,772
Outlays	236,914	12,556
Construction (10–76–2301–452–A):		
Budget Authority	98,308	5,210
Outlays	22,589	1,197
Revolving fund for loans (10–76–4409–452–A):		
401(C) Authority—		
Off. Coll.	11,070	587
Direct Loan		
Limitation	13,000	689
Outlays	24,070	1,276
Indian loan guaranty and insurance fund (10–76–4410–452–A):		
Budget Authority	3,491	185
Guaranteed Loan		
Limitation	45,000	2,385
Outlays	1,955	104
Operations and maintenance of quarters (10–76–5051–452–A):		
401(C) Authority	7,000	371
Outlays	5,000	265
Cooperative fund (Papago) (10–76–8366–452–A):		
401(C) Authority	1,232	65
Miscellaneous permanent appropriations (Area and regional dev.) (10–76–9925–452–A):		
401(C) Authority	50,359	2,669
Outlays	32,104	1,702
Miscellaneous permanent appropriations (10–76–9925–808–A):		
401(C) Authority	2,000	106
Outlays	1,275	68
Office of Territorial Affairs		
Administration of territories (10–82–0412–808–A):		
Budget Authority	62,272	3,300
Outlays	31,816	1,686
Trust Territory of the Pacific Islands (10–82–0414–808–A):		
Budget Authority	29,458	1,561
Outlays	26,218	1,390
Compact of free association (10–82–0415–808–A):		
Budget Authority	28,345	1,502
Outlays	28,345	1,502
Office of the Secretary		
Salaries and Expenses (10–84–0102–306–A):		
Budget Authority	50,980	2,702
Outlays	43,333	2,297
Construction management (10–84–0103–306–A):		
Budget Authority	1,869	99
Outlays	1,684	89
Oil spill emergency fund (10–84–0119–306–A):		
Budget Authority	7,563	401
Outlays	3,782	200
Office of the Solicitor		
Office of the Solicitor (10–86–0107–306–A):		
Budget Authority	25,664	1,360
Outlays	23,097	1,224
Office of Inspector General		
Office of Inspector General (10–88–0104–306–A):		
Budget Authority	19,493	1,033
Outlays	17,544	930
Total, Department of the Interior:		
Budget Authority	5,702,935	302,252
401(C) Authority	1,164,464	61,715
401(C) Authority—		
Off. Coll.	255,546	13,543
Direct Loan		
Limitation	44,922	2,381
Guaranteed Loan		
Limitation	45,000	2,385
Outlays	5,341,599	283,106
Department of Justice		
General Administration		
Salaries and expenses (11–03–0129–751–A):		
Budget Authority	89,254	4,730
Outlays	79,968	4,238
Office of the Inspector General (11–03–0328–751–A):		
Budget Authority	9,411	499
Outlays	8,432	447
Emergency drug funding (11–03–0331–751–A):		
Budget Authority	73,556	3,898
Outlays	21,016	1,114
United States Parole Commission		
Salaries and expenses (11–04–1061–751–A):		
Budget Authority	11,321	600
Outlays	9,733	516
Legal Activities		
Salaries and expenses, Foreign Claims Settlement Commission (11–05–0100–153–A):		
Budget Authority	490	26
Outlays	355	19
Salaries and expenses, General legal activities (11–05–0128–752–A):		
Budget Authority	256,201	13,579
Outlays	222,894	11,813
Fees and expenses of witnesses (11–05–0311–752–A):		
Budget Authority	54,082	2,866
Outlays	37,911	2,009
Salaries and expenses, Antitrust Division (11–05–0319–752–A):		
Budget Authority	46,834	2,482
Outlays	38,306	2,030
Salaries and expenses, United States Attorneys (11–05–0322–752–A):		
Budget Authority	478,351	25,353
Outlays	420,949	22,310
Salaries and expenses, United States Marshals Service (11–05–0324–752–A):		
Budget Authority	213,187	11,299
401(C) Authority—		
Off. Coll.	4,108	218
Outlays	196,263	10,402
Independent counsel (11–05–0327–752–A):		
401(C) Authority	6,000	318
Outlays	6,000	318
Salaries and expenses, Community Relations Service (11–05–0500–752–A):		
Budget Authority	28,891	1,531
Outlays	24,554	1,301
Support of United States prisoners (11–05–1020–752–A):		
Budget Authority	114,076	6,046
Outlays	68,446	3,628
Assets forfeiture fund (11–05–5042–752–A):		
Budget Authority	75,389	3,996
401(C) Authority	237,729	12,600
Outlays	125,247	6,638
United States trustees system fund (11–05–5073–752–A):		
Budget Authority	49,250	2,610
Outlays	44,300	2,348

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Federal Bureau of Investigation		
Salaries and expenses (11–10–0200–751–A):		
Budget Authority	1,495,782	79,276
401(C) Authority—		
Off. Coll.	24,354	1,291
Outlays	1,220,980	64,712
Drug Enforcement Administration		
Salaries and expenses (11–12–1100–751–A):		
Budget Authority	555,143	29,423
401(C) Authority—		
Off. Coll.	1,500	80
Outlays	417,857	22,146
Immigration and Naturalization Service		
Salaries and expenses (11–15–1217–751–A):		
Budget Authority	854,257	45,276
401(C) Authority—		
Off. Coll.	3,817	202
Outlays	686,938	36,408
Immigration legalization (11–15–5086–751–A):		
401(C) Authority	54,792	2,904
Outlays	54,792	2,904
Immigration user fee (11–15–5087–751–A):		
401(C) Authority	105,000	5,565
Outlays	104,900	5,560
Immigration examinations fee (11–15–5088–751–A):		
401(C) Authority	54,000	2,862
Outlays	54,000	2,862
Federal Prison System		
Buildings and facilities (11–20–1003–753–A):		
Budget Authority	312,755	16,576
Outlays	28,663	1,519
National Institute of Corrections (11–20–1004–754–A):		
Budget Authority	9,946	527
Outlays	3,973	211
Salaries and expenses (11–20–1060–753–A):		
Budget Authority	989,190	52,427
401(C) Authority—		
Off. Coll.	12,746	676
Outlays	930,544	49,319
Federal Prison Industries, Incorporated (11–20–4500–753–A):		
Budget Authority	20,720	1,098
Obligation limitation	2,857	151
Outlays	23,577	1,250
Office of Justice Programs		
Justice assistance (11–21–0401–754–A):		
Budget Authority	334,924	17,751
Outlays	123,172	6,528
Crime Victims Fund (11–21–5041–754–A):		
401(C) Authority	125,000	6,625
Outlays	62,500	3,312
Total, Department of Justice:		
Budget Authority	6,073,010	321,869
401(C) Authority	582,521	30,874
401(C) Authority—		
Off. Coll.	46,525	2,467
Obligation limitation	2,857	151
Outlays	5,016,270	265,862
Department of Labor		
Employment and Training Administration		
Program administration (12–05–0172–504–A):		
Budget Authority	73,575	3,899
Outlays	58,144	3,082

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Training and employment services (12–05–0174–504–A):		
Budget Authority	3,872,575	205,246
Outlays	149,102	7,902
Community service employment for older Americans (12–05–0175–504–A):		
Budget Authority	356,202	18,879
Outlays	65,339	3,463
State unemployment insurance and employment services (12–05–0179–504–A):		
Budget Authority	23,371	1,239
Outlays	5,575	295
Federal unemployment benefits and allowances (12–05–0326–504–A):		
Budget Authority	80,000	4,240
Outlays	24,000	1,272
Federal unemployment benefits and allowances (12–05–0326–603–A):		
Budget Authority	204,000	10,812
Outlays	204,000	10,812
Unemployment trust fund (Training and employment) (12–05–8042–504–A):		
Obligation limitation	1,082,794	57,388
Outlays	453,321	24,026
Unemployment trust fund (Unemployment compensation) (12–05–8042–603–A):		
401(C) Authority	129,100	6,842
Obligation limitation	1,735,981	92,007
Outlays	1,865,099	98,850
Labor-Management Services		
Salaries and expenses (12–10–0104–505–A):		
Budget Authority	74,999	3,975
Outlays	63,875	3,385
Pension Benefit Guaranty Corporation		
Pension Benefit Guaranty Corporation fund (12–12–4204–601–A):		
Obligation limitation	72,468	3,841
Outlays	72,468	3,841
Employment Standards Administration		
Salaries and expenses (12–15–0105–505–A):		
Budget Authority	220,299	11,676
401(C) Authority—		
Off. Coll.	1,500	80
Outlays	190,434	10,093
Black lung disability trust fund (12–15–8144–601–A):		
Budget Authority	58,581	3,105
Outlays	58,581	3,105
Special workers' compensation expenses (12–15–9971–601–A):		
Obligation limitation	539	29
Outlays	539	29
Occupational Safety and Health Administration		
Salaries and expenses (12–18–0400–554–A):		
Budget Authority	257,197	13,631
Outlays	229,542	12,166
Mine Safety and Health Administration		
Salaries and expenses (12–19–1200–554–A):		
Budget Authority	169,095	8,962
Outlays	153,295	8,125

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Bureau of Labor Statistics		
Salaries and expenses (12–20–0200–505–A):		
Budget Authority	195,319	10,352
401(C) Authority—		
Off. Coll.	1,100	58
Outlays	167,175	8,860
Departmental Management		
Inspector General salaries and expenses (12–25–0106–505–A):		
Budget Authority	41,074	2,177
Outlays	35,875	1,901
Salaries and expenses (12–25–0165–505–A):		
Budget Authority	123,076	6,523
Outlays	101,593	5,384
Total, Department of Labor:		
Budget Authority	5,749,363	304,716
401(C) Authority	129,100	6,842
401(C) Authority—		
Off. Coll.	2,600	138
Obligation limitation	2,891,782	153,265
Outlays	3,897,957	206,591
Department of State		
Administration of Foreign Affairs		
Salaries and expenses (14–05–0113–153–A):		
Budget Authority	1,856,768	98,409
Outlays	1,466,277	77,713
Protection of foreign missions and officials (14–05–0520–153–A):		
Budget Authority	9,428	500
Outlays	3,809	202
Emergencies in the diplomatic and consular service (14–05–0522–153–A):		
Budget Authority	4,662	247
Direct Loan Limitation	626	33
Outlays	2,727	145
Payment to the American Institute in Taiwan (14–05–0523–153–A):		
Budget Authority	11,282	598
Outlays	8,337	442
Acquisition and maintenance of buildings abroad (14–05–0535–153–A):		
Budget Authority	248,796	13,186
Outlays	45,673	2,421
Representation allowances (14–05–0545–153–A):		
Budget Authority	4,755	252
Outlays	4,151	220
International Organizations and Conferences		
Contributions for international peacekeeping activities (14–10–1124–153–A):		
Budget Authority	30,044	1,592
Outlays	30,044	1,592
International conferences and contingencies (14–10–1125–153–A):		
Budget Authority	6,216	329
Outlays	4,227	224
Contributions to international organizations (14–10–1126–153–A):		
Budget Authority	503,434	26,682
401(C) Authority—		
Off. Coll.	40	2
Outlays	478,302	25,350

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
International Commissions		
Salaries and expenses, IBWC (14–15–1069–301–A):		
Budget Authority	10,668	565
Outlays	9,636	511
Construction, IBWC (14–15–1078–301–A):		
Budget Authority	3,282	174
Outlays	1,643	87
American sections, international commissions (14–15–1082–301–A):		
Budget Authority	4,480	237
Outlays	3,515	186
International fisheries commissions (14–15–1087–302–A):		
Budget Authority	10,928	579
Outlays	10,928	579
Other		
United States emergency refugee and migration assistance fund (14–25–0040–151–A):		
Budget Authority	51,800	2,745
Outlays	25,900	1,373
Anti-terrorism assistance (14–25–0114–152–A):		
Budget Authority	10,194	540
Outlays	8,156	432
Soviet-East European research and training (14–25–0118–153–A):		
Budget Authority	4,766	253
Outlays	4,766	253
Payment to the Asia Foundation (14–25–0525–154–A):		
Budget Authority	14,193	752
Outlays	14,193	752
International narcotics control (14–25–1022–151–A):		
Budget Authority	104,659	5,547
Outlays	31,382	1,663
Migration and refugee assistance (14–25–1143–151–A):		
Budget Authority	478,584	25,365
Outlays	335,007	17,755
U.S. bilateral science and technology agreements (14–25–1151–153–A):		
Budget Authority	2,072	110
Outlays	2,072	110
Fisherman's guaranty fund (14–25–5121–376–A):		
Budget Authority	1,787	95
Outlays	1,787	95
International Center, Washington, D.C. (14–25–5151–153–A):		
401(C) Authority	1,284	68
Outlays	1,223	65
Total, Department of State:		
Budget Authority	3,372,798	178,757
401(C) Authority	1,284	68
401(C) Authority—Off. Coll.	40	2
Direct Loan Limitation	626	33
Outlays	2,493,755	132,170
Department of Transportation		
Federal Highway Administration		
Access highways to public recreation areas on certain lakes (21–05–0503–401–A):		
Budget Authority	1,337	71
Outlays	267	14
Motor carrier safety (21–05–0552–401–A):		
Budget Authority	28,054	1,487
Outlays	24,407	1,294

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Railroad-highway crossings demonstration projects (21–05–0557–401–A):		
Budget Authority	2,611	138
Outlays	522	28
Trust fund share of other highway programs (21–05–8009–401–A):		
Budget Authority	5,221	277
Outlays	1,044	55
Baltimore-Washington Parkway (21–05–8014–401–A):		
Budget Authority	13,287	704
Outlays	2,657	141
Highway safety research and development (21–05–8017–401–A):		
Budget Authority	6,299	334
Outlays	1,260	67
Highway-related safety grants (21–05–8019–401–A):		
401(C) Authority	10,000	530
Obligation limitation	9,744	516
Outlays	1,717	91
Motor carrier safety grants (21–05–8048–401–A):		
401(C) Authority	60,000	3,180
Obligation limitation	62,160	3,294
Outlays	23,960	1,270
Federal-aid highways (21–05–8083–401–A):		
401(C) Authority	13,850,959	734,101
Obligation limitation	12,432,000	658,896
Outlays	2,263,118	119,945
Right-of-way revolving fund (trust revolving fund) (21–05–8402–401–A):		
Direct Loan Limitation	47,850	2,536
Outlays	47,850	2,536
Miscellaneous appropriations (21–05–9911–401–A):		
Budget Authority	56,592	2,999
Outlays	11,319	600
Miscellaneous trust funds—Highway (21–05–9972–401–A):		
Budget Authority	65,395	3,466
Outlays	13,079	693
National Highway Traffic Safety Administration		
Operations and research (21–10–0650–401–A):		
Budget Authority	70,451	3,734
Outlays	43,885	2,326
Trust fund share of operations and research (21–10–8016–401–A):		
Budget Authority	31,904	1,691
Outlays	19,188	1,017
State and community highway safety grants (21–10–8020–401–A):		
401(C) Authority	126,000	6,678
Obligation limitation	130,536	6,918
Outlays	53,520	2,837
Federal Railroad Administration		
Northeast corridor improvement program (21–16–0123–401–A):		
Budget Authority	20,306	1,076
Outlays	4,061	215
Office of the Administrator (21–16–0700–401–A):		
Budget Authority	21,753	1,153
Outlays	20,665	1,095
Railroad safety (21–16–0702–401–A):		
Budget Authority	28,924	1,533
Outlays	23,124	1,226
Grants to National Railroad Passenger Corporation (21–16–0704–401–A):		
Budget Authority	605,024	32,066
Outlays	544,522	28,860

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Freightline rehabilitation (21–16–0713–401–A):		
Budget Authority	6,216	329
Outlays	3,730	198
Railroad safety research and development (21–16–0745–401–A):		
Budget Authority	9,624	510
Outlays	5,772	306
Commuter rail service (21–16–0747–401–A):		
Budget Authority	4,662	247
Outlays	513	27
Urban Mass Transportation Administration		
Urban mass transportation fund, administrative expenses (21–20–1120–401–A):		
Budget Authority	33,142	1,757
Outlays	29,828	1,581
Research, training and human resources (21–20–1121–401–A):		
Budget Authority	10,360	549
Outlays	2,072	110
Interstate transfer grants (21–20–1127–401–A):		
Budget Authority	207,200	10,982
Outlays	4,144	220
Washington metro (21–20–1128–401–A):		
Budget Authority	174,048	9,225
Outlays	41,046	2,175
Formula grants (21–20–1129–401–A):		
Budget Authority	1,662,780	88,127
Outlays	544,502	28,859
Discretionary grants (21–20–8191–401–A):		
401(C) Authority	1,300,000	68,900
Obligation limitation	1,181,000	62,593
Outlays	59,050	3,130
Federal Aviation Administration		
Operations (21–25–1301–402–A):		
Budget Authority	3,053,089	161,814
401(C) Authority—Off. Coll.	14,650	776
Outlays	2,641,542	140,002
Headquarters administration (21–25–1302–402–A):		
Budget Authority	38,284	2,029
Outlays	33,690	1,786
Aircraft purchase loan guarantee program (21–25–1399–402–A):		
Budget Authority	150	8
Outlays	150	8
Trust fund share of FAA Operations (21–25–8104–402–A):		
Budget Authority	490,649	26,004
Outlays	490,649	26,004
Grants-in-aid for airports (Airport and airway trust fund) (21–25–8106–402–A):		
Budget Authority	104	6
401(C) Authority	1,700,000	90,100
Obligation limitation	1,450,400	76,871
Outlays	217,216	11,512
Facilities and equipment (Airport and airway trust fund) (21–25–8107–402–A):		
Budget Authority	1,434,090	76,007
401(C) Authority—Off. Coll.	45,327	2,402
Outlays	181,176	9,602
Research, engineering & development (Airport & airway trust fn (21–25–8108–402–A):		
Budget Authority	165,584	8,776
401(C) Authority—Off. Coll.	500	26
Outlays	101,889	5,400

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Coast Guard		
Operating expenses (21–30–0201–403–A):		
Budget Authority	2,029,694	107,574
401(C) Authority—		
Off. Coll.	5,181	275
Outlays	1,702,005	90,206
Acquisition, construction, and improvements (21–30–0240–403–A):		
Budget Authority	398,958	21,145
Outlays	43,795	2,321
Retired pay (Coast Guard) (21–30–0241–403–A):		
Budget Authority	45,050	2,388
Outlays	45,050	2,388
Reserve training (21–30–0242–403–A):		
Budget Authority	69,140	3,664
Outlays	60,554	3,209
Research, development, test, and evaluation (21–30–0243–403–A):		
Budget Authority	19,477	1,032
Outlays	6,646	352
Alteration of bridges (21–30–0244–403–A):		
Budget Authority	14,000	742
Outlays	1,700	90
Coast Guard shore facilities (21–30–0246–403–A):		
Budget Authority	51,862	2,749
Outlays	5,701	302
Offshore oil pollution compensation fund (21–30–5167–304–A):		
Obligation limitation	62,160	3,294
Pollution fund (21–30–5168–304–A):		
401(C) Authority	5,700	302
Outlays	1,760	93
Deepwater port liability fund (21–30–5170–304–A):		
Obligation limitation	51,800	2,745
Boat safety (21–30–8149–403–A):		
Budget Authority	62,160	3,294
Obligation limitation	31,080	1,647
Outlays	42,393	2,247
Maritime Administration		
Ready reserve force (21–35–1710–403–A):		
Budget Authority	114,740	6,081
Outlays	97,527	5,169
Operations and training (21–35–1750–403–A):		
Budget Authority	68,804	3,647
Outlays	58,465	3,099
Federal ship financing fund (21–35–4301–403–A):		
Obligation limitation	3,730	198
Outlays	3,544	188
Saint Lawrence Seaway Development Corporation		
Saint Lawrence Seaway Development Corporation (21–40–4089–403–A):		
401(C) Authority—		
Off. Coll.	1,000	53
Outlays	1,000	53
Operations and maintenance (21–40–8003–403–A):		
Budget Authority	11,536	611
Outlays	11,536	611
Office of the Inspector General		
Salaries and expenses (21–45–0130–407–A):		
Budget Authority	30,155	1,598
Outlays	26,043	1,380

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Research and Special Programs Administration		
Research and special programs (21–50–0104–407–A):		
Budget Authority	15,370	815
Outlays	10,141	537
Pipeline safety (21–50–5172–407–A):		
Budget Authority	9,845	511
Outlays	9,162	486
Office of the Secretary		
Salaries and expenses (21–55–0102–407–A):		
Budget Authority	56,687	3,004
Outlays	50,337	2,668
Transportation planning, research, and development (21–55–0142–407–A):		
Budget Authority	5,813	308
Outlays	2,307	122
Payments to air carriers, DOT (21–55–0150–402–A):		
Budget Authority	32,738	1,735
Outlays	26,190	1,388
Working capital fund (21–55–4520–407–A):		
Budget Authority	3,315	176
Outlays	3,315	176
Total, Department of Transportation:		
Budget Authority	11,286,284	598,173
401(C) Authority	17,052,659	903,791
401(C) Authority—		
Off. Coll.	66,658	3,532
Obligation limitation	15,414,610	816,972
Direct Loan Limitation	47,850	2,536
Outlays	9,666,305	512,315
Department of the Treasury		
Departmental Offices		
Salaries and expenses (15–05–0101–803–A):		
Budget Authority	84,857	4,497
401(C) Authority—		
Off. Coll.	5,123	272
Outlays	78,525	4,162
Federal Law Enforcement Training Center		
Salaries and expenses (15–08–0104–751–A):		
Budget Authority	36,003	1,908
Outlays	32,486	1,722
Acquisitions, construction, improvements, & related expenses (15–08–0105–751–A):		
Budget Authority	20,720	1,098
Outlays	8,702	461
Financial Management Service		
Salaries and expenses (15–10–1801–803–A):		
Budget Authority	287,595	15,243
Outlays	244,414	12,954
Payments to the Farm Credit System Financial Asst. Corp. (15–10–1850–351–A):		
Budget Authority	70,793	3,752
Outlays	70,793	3,752
Saint Lawrence Seaway toll rebate program (15–10–8865–808–A):		
Budget Authority	11,085	588
Outlays	10,964	581
Bureau of Alcohol, Tobacco and Firearms		
Salaries and expenses (15–13–1000–751–A):		
Budget Authority	250,499	13,276
Outlays	226,187	11,988

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
United States Customs Service		
Salaries and expenses (15–15–0602–751–A):		
Budget Authority	1,074,599	56,954
401(C) Authority	116,584	6,179
Outlays	1,012,056	53,639
Operation and maintenance, air interdiction program (15–15–0604–751–A):		
Budget Authority	154,635	8,196
Outlays	85,049	4,508
Customs forfeiture fund (15–15–5693–803–A):		
Budget Authority	10,360	549
401(C) Authority	35,000	1,855
Outlays	45,360	2,404
Customs services at small airports (15–15–5694–808–A):		
Budget Authority	1,652	88
Outlays	1,652	88
Refunds, transfers and expenses, unclaimed and seized goods (15–15–8789–803–A):		
401(C) Authority	17,403	922
Outlays	17,403	922
Bureau of Engraving and Printing		
Bureau of Engraving and Printing fund (15–20–4502–803–A):		
401(C) Authority—		
Off. Coll.	333,809	17,692
Outlays	333,809	17,692
United States Mint		
Salaries and expenses (15–25–1616–803–A):		
Budget Authority	48,858	2,589
401(C) Authority—		
Off. Coll.	109,957	5,828
Outlays	141,666	7,508
Bureau of the Public Debt		
Administering the public debt (15–35–0560–803–A):		
Budget Authority	226,944	12,028
Outlays	183,533	9,727
Internal Revenue Service		
Salaries and expenses (15–45–0911–803–A):		
Budget Authority	90,431	4,793
Outlays	67,630	3,584
Processing tax returns and executive direction (15–45–0912–803–A):		
Budget Authority	1,807,710	95,809
Outlays	1,482,322	78,563
Examinations and appeals (15–45–0913–803–A):		
Budget Authority	2,009,730	106,516
Outlays	1,828,854	96,929
Investigation, collection, and taxpayer service (15–45–0914–803–A):		
Budget Authority	1,491,687	79,059
Outlays	1,342,518	71,153
Federal tax lien revolving fund (15–45–4413–803–A):		
401(C) Authority—		
Off. Coll.	8,451	448
Outlays	8,451	448
United States Secret Service		
Contribution for annuity benefits (15–55–1407–751–A):		
401(C) Authority	18,000	954
Outlays	18,000	954
Salaries and expenses (15–55–1408–751–A):		
Budget Authority	371,462	19,687
Outlays	315,743	16,734

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Total, Department of the Treasury:		
Budget Authority	8,049,620	426,630
401(C) Authority	186,087	9,910
401(C) Authority—		
Off. Coll.	457,340	24,240
Outlays	7,556,117	400,473

Department of Veterans Affairs

Veterans Benefits Administration

Readjustment benefits (29-10-0137-702-A):		
Budget Authority	241,926	12,822
Outlays	227,833	12,075
Burial benefits and miscellaneous assistance (29-10-0155-701-A):		
Budget Authority	143,612	7,611
Outlays	138,226	7,326
Direct loan revolving fund (29-10-4024-704-A):		
Direct Loan		
Limitation	1,000	53

Veterans Health Services and Research Administration

Grants to the Republic of the Philippines (29-20-0144-703-A):		
Budget Authority	518	27
Medical administration and miscellaneous operating expenses (29-20-0152-703-A):		
Budget Authority	49,788	2,639
Outlays	31,274	1,658
Medical care (29-20-0160-703-A):		
Budget Authority	843,184	44,689
Outlays	714,683	37,878
Medical care (29-20-0160-703-G):		
Budget Authority—		
Spec. Rules	209,402	209,402
401(C) Authority—		
Spec. Rules	406	406
Outlays	180,194	180,194
Medical and prosthetic research (29-20-0161-703-A):		
Budget Authority	219,096	11,612
Outlays	165,462	8,769
Medical center research organizations (29-20-4026-703-A):		
401(C) Authority—		
Off. Coll.	4,500	238
Outlays	4,500	238

Departmental Administration

Construction, major projects (29-30-0110-703-A):		
Budget Authority	370,918	19,659
Outlays	6,649	352
Construction, minor projects (29-30-0111-703-A):		
Budget Authority	100,784	5,342
Outlays	42,008	2,226
General operating expenses (29-30-0151-705-A):		
Budget Authority	827,826	43,875
Outlays	761,599	40,365
Grants for construction of state extended care facilities (29-30-0181-703-A):		
Budget Authority	43,512	2,306
Grants for the construction of State veterans cemeteries (29-30-0183-705-A):		
Budget Authority	9,324	494
Outlays	942	50

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Parking garage revolving fund (29-30-4538-703-A):		
Budget Authority	26,936	1,428
Total, Department of Veterans Affairs:		
Budget Authority	2,877,424	152,504
Budget Authority—		
Spec. Rules	209,402	209,402
401(C) Authority—		
Off. Coll.	4,500	238
401(C) Authority—		
Spec. Rules	406	406
Direct Loan		
Limitation	1,000	53
Outlays	2,273,372	291,131

Environmental Protection Agency

Environmental Protection Agency

Construction grants (20-00-0103-304-A):		
Budget Authority	2,020,000	107,060
Outlays	34,000	1,802
Research and development (Energy supply) (20-00-0107-271-A):		
Budget Authority	52,061	2,759
Outlays	18,221	966
Research and development (Pollution control and abatement) (20-00-0107-304-A):		
Budget Authority	157,729	8,360
Outlays	59,937	3,177
Abatement, control, and compliance (20-00-0108-304-A):		
Budget Authority	745,847	39,530
Outlays	332,493	17,622
Buildings and facilities (20-00-0110-304-A):		
Budget Authority	8,288	439
Outlays	1,445	77
Salaries and expenses (20-00-0200-304-A):		
Budget Authority	847,016	44,892
401(C) Authority—		
Off. Coll.	3,808	202
Outlays	731,989	38,795
Payment to the hazardous substance superfund (20-00-0250-304-A):		
Budget Authority	155,400	8,236
Registration and expedited processing revolving fund (20-00-4310-304-A):		
401(C) Authority—		
Off. Coll.	14,000	742
Outlays	14,000	742
Revolving fund for certification and other services (20-00-4311-304-A):		
401(C) Authority—		
Off. Coll.	1,200	64
Outlays	1,200	64
Hazardous substance superfund (20-00-8145-304-A):		
Budget Authority	1,461,391	77,454
401(C) Authority—		
Off. Coll.	13,200	700
Obligation limitation	197,471	10,466
Outlays	362,555	19,215
Leaking underground storage tank trust fund (20-00-8153-304-A):		
Budget Authority	51,819	2,746
Obligation limitation	5,199	276
Outlays	7,757	411
Total, Environmental Protection Agency:		
Budget Authority	5,499,551	291,476
401(C) Authority—		
Off. Coll.	32,208	1,708
Obligation limitation	202,670	10,742
Outlays	1,563,597	82,871

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount

General Services Administration

Real Property Activities

Federal buildings fund (23-05-4542-804-A):		
401(C) Authority—		
Off. Coll.	4,900	260
Outlays	4,900	260

Personal Property Activities

Federal supply service (23-10-0116-804-A):		
Budget Authority	48,982	2,596
Outlays	31,690	1,680
Expenses of transportation audit contracts (23-10-5250-804-A):		
401(C) Authority	15,500	822
Outlays	15,214	806

Information Resources Management Service

Operating expenses, information resources management service (23-15-0900-804-A):		
Budget Authority	33,114	1,755
Outlays	21,623	1,146

Federal Property Resources Activities

Operating expenses, federal property resources service (General) (23-25-0533-804-A):		
Budget Authority	11,220	595
Outlays	7,226	383
Real property relocation (23-25-0535-804-A):		
Budget Authority	4,144	220
Outlays	2,172	115
Expenses, disposal of surplus real and related personal proper (23-25-5254-804-A):		
401(C) Authority	3,800	201
Outlays	2,865	152

General Activities

Allowances and office staff for former Presidents (23-30-0105-802-A):		
Budget Authority	1,071	57
Outlays	937	50
Expenses, presidential transition (23-30-0107-802-A):		
Budget Authority	4,921	261
Outlays	4,921	261
Office of Inspector General (23-30-0108-804-A):		
Budget Authority	25,997	1,378
Outlays	22,106	1,172
General management and administration, salaries and expenses (23-30-0110-804-A):		
Budget Authority	125,520	6,653
Outlays	85,819	4,548
Consumer information center fund (23-30-4549-376-A):		
Budget Authority	1,406	75
401(C) Authority—		
Off. Coll.	536	28
Outlays	73	4
Total, General Services Administration:		
Budget Authority	256,375	13,590
401(C) Authority	19,300	1,023
401(C) Authority—		
Off. Coll.	5,436	288
Outlays	199,546	10,577

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
National Aeronautics and Space Administration		
National Aeronautics and Space Administration		
Research and program management (Space flight) (26–00–0103–253–A):		
Budget Authority	958,460	50,798
401(C) Authority—		
Off. Coll.	5,000	265
Outlays	827,359	43,850
Research & program management (Space science, applications, etc) (26–00–0103–254–A):		
Budget Authority	624,299	33,088
Outlays	533,151	28,257
Research & program management (Supporting space activities) (26–00–0103–255–A):		
Budget Authority	74,035	3,924
Outlays	63,152	3,347
Research and program management (Air transportation) (26–00–0103–402–A):		
Budget Authority	344,165	18,241
Outlays	293,917	15,578
Space Flight, Control, and Data Comm. (26–00–0105–250–A):		
401(C) Authority—		
Off. Coll.	8,368	444
Outlays	8,368	444
Space Flight, Control, and Data Comm. (space flight) (26–00–0105–253–A):		
Budget Authority	3,640,400	192,941
Outlays	2,566,482	136,024
Space Flight, Control, and Data Comm. (supporting act.) (26–00–0105–255–A):		
Budget Authority	815,962	43,246
401(C) Authority	47,935	2,541
Outlays	430,828	22,834
Construction of facilities (Space flight) (26–00–0107–253–A):		
Budget Authority	76,042	4,030
Outlays	4,943	262
Construction of facilities (Space science, applications, etc) (26–00–0107–254–A):		
Budget Authority	11,810	626
Outlays	768	41
Construction of facilities (Supporting space activities) (26–00–0107–255–A):		
Budget Authority	142,761	7,566
Outlays	9,279	492
Construction of facilities (Air transportation) (26–00–0107–402–A):		
Budget Authority	54,390	2,883
Outlays	3,535	187
Research and development (Space flight) (26–00–0108–253–A):		
Budget Authority	1,630,664	86,425
401(C) Authority—		
Off. Coll.	5,781	306
Outlays	788,499	41,790
Research and development (Space science, applications, etc) (26–00–0108–254–A):		
Budget Authority	2,263,556	119,968
Outlays	1,152,150	61,064
Research and development (Supporting space activities) (26–00–0108–255–A):		
Budget Authority	19,477	1,032
Outlays	12,522	664
Research and development (Air transportation) (26–00–0108–402–A):		
Budget Authority	450,556	23,879
Outlays	230,189	12,200

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Science, Space and Technology Education Trust Fund (26–00–8978–503–A):		
401(C) Authority	1,000	53
Outlays	1,000	53
Total, National Aeronautics and Space Administration:		
Budget Authority	11,106,577	588,647
401(C) Authority	48,935	2,594
401(C) Authority—		
Off. Coll.	19,149	1,015
Outlays	6,926,142	367,087
Office of Personnel Management		
Office of Personnel Management		
Salaries and expenses (27–00–0100–805–A):		
Budget Authority	112,254	5,949
Outlays	106,623	5,651
Government payment for annuitants, employees health benefits (27–00–0206–551–A):		
Budget Authority	3,780,169	200,349
Government payment for annuitants, employ. life insur. benefit (27–00–0500–602–A):		
Budget Authority	2,700	143
Outlays	2,100	111
Revolving fund (27–00–4571–805–A):		
401(C) Authority—		
Off. Coll.	1,167	62
Outlays	1,167	62
Civil service retirement and disability fund (27–00–8135–602–A):		
Obligation limitation	69,463	3,682
Outlays	69,463	3,682
Employees life insurance fund (27–00–8424–602–A):		
Obligation limitation	772	41
Outlays	772	41
Employees health benefits fund (27–00–8440–551–A):		
Obligation limitation	10,650	564
Outlays	10,650	564
Retired employees health benefits fund (27–00–8445–551–A):		
Obligation limitation	130	7
Outlays	130	7
Total, Office of Personnel Management:		
Budget Authority	3,895,123	206,441
401(C) Authority—		
Off. Coll.	1,167	62
Obligation limitation	81,015	4,294
Outlays	190,905	10,118
Small Business Administration		
Small Business Administration		
Salaries and expenses (28–00–0100–376–A):		
Budget Authority	337,829	17,905
Outlays	304,046	16,114
Disaster loan fund (28–00–4153–453–A):		
Direct Loan		
Limitation	250,000	13,250
Business loan and investment fund (28–00–4154–376–A):		
Budget Authority	84,952	4,502
Direct Loan		
Limitation	84,952	4,502
Guaranteed Loan		
Limitation	3,925,000	208,025
Outlays	33,980	1,801

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Surety bond guarantees revolving fund (28–00–4156–376–A):		
Guaranteed Loan		
Limitation	1,295,000	68,635
Total, Small Business Administration:		
Budget Authority	422,781	22,407
Direct Loan		
Limitation	334,952	17,752
Guaranteed Loan		
Limitation	5,220,000	276,660
Outlays	338,026	17,915
Other Independent Agencies		
ACTION		
Operating expenses (30–01–0103–506–A):		
Budget Authority	176,944	9,378
Outlays	107,228	5,683
Administrative Conference of the United States		
Salaries and expenses (30–02–1700–751–A):		
Budget Authority	1,938	103
Outlays	1,550	82
Advisory Committee on Federal Pay		
Salaries and expenses (30–05–1800–805–A):		
Budget Authority	212	11
Outlays	204	11
Advisory Council on Historic Preservation		
Salaries and expenses (30–10–2300–303–A):		
Budget Authority	1,848	98
Outlays	1,663	88
American Battle Monuments Commission		
Salaries and expenses (30–12–0100–705–A):		
Budget Authority	15,681	831
Outlays	13,316	706
Architectural & Transportation Barriers Compliance Board		
Salaries and expenses (30–14–3200–751–A):		
Budget Authority	1,963	104
Outlays	1,510	80
Arms Control and Disarmament Agency		
Arms control and disarmament activities (30–17–0100–153–A):		
Budget Authority	32,220	1,708
Outlays	27,376	1,451
Barry Goldwater Scholarship Foundation		
Barry Goldwater Scholarship and Excellence in Educ. Foundation (30–18–8281–502–A):		
401(C) Authority	3,840	204
Outlays	1,307	69
Board for International Broadcasting		
Grants and expenses (30–19–1145–154–A):		
Budget Authority	202,048	10,709
Outlays	200,027	10,601
Israel Relay Station (30–19–1146–154–A):		
Budget Authority	34,188	1,812
Outlays	34,188	1,812

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Commission of Fine Arts		
Salaries and expenses (30-32-2600-451-A):		
Budget Authority	493	26
Outlays	451	24
National capital arts and cultural affairs (30-32-2602-503-A):		
Budget Authority	5,180	275
Outlays	5,180	275
Commission on Civil Rights		
Salaries and expenses (30-35-1900-751-A):		
Budget Authority	5,893	312
Outlays	5,008	265
Committee for Purchase from the Blind & others		
Salaries and expenses (30-37-2000-505-A):		
Budget Authority	895	47
Outlays	805	43
Commodity Futures Trading Commission		
Commodity Futures Trading Commission (30-38-1400-376-A):		
Budget Authority	36,098	1,913
Outlays	30,750	1,630
Consumer Product Safety Commission		
Product safety (30-41-0100-554-A):		
Budget Authority	35,861	1,901
401(C) Authority—Off. Coll.	10	1
Outlays	30,474	1,615
Corporation for Public Broadcasting		
Public broadcasting fund (30-42-0151-503-A):		
401(C) Authority	232,648	12,330
Outlays	232,648	12,330
Court of Veterans Appeals		
Salaries and expenses (30-43-0300-705-A):		
Budget Authority	3,241	172
Outlays	2,754	146
Defense Nuclear Facilities Safety Board		
Salaries and expenses (30-44-3900-053-A):		
Budget Authority	7,000	301
Outlays	7,000	301
District of Columbia		
Federal payment to the District of Columbia (30-45-1700-806-A):		
Budget Authority	445,998	23,638
Outlays	445,998	23,638
Federal payment to the District of Columbia (30-45-1700-806-B):		
Budget Authority	33,193	1,759
Outlays	33,193	1,759
Federal payment to the District of Columbia (30-45-1700-806-C):		
Budget Authority	53,945	2,859
Outlays	53,945	2,859
Federal payment to the District of Columbia (30-45-1700-806-D):		
Budget Authority	20,720	1,098
Outlays	20,720	1,098
Federal payment to the District of Columbia (30-45-1700-806-E):		
Budget Authority	3,419	181
Outlays	3,419	181

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Equal Employment Opportunity Commission		
Salaries and expenses (30-46-0100-751-A):		
Budget Authority	187,829	9,955
Outlays	165,783	8,786
Export-Import Bank of the United States		
Export-Import Bank of the United States (30-48-4027-155-A):		
Budget Authority	113,960	6,040
Obligation limitation	21,202	1,124
Direct Loan Limitation	720,020	38,161
Guaranteed Loan Limitation	10,567,200	560,062
Outlays	57,604	3,053
Farm Credit Administration		
Revolving fund for administrative expenses (30-52-4131-351-A):		
Obligation limitation	36,377	1,928
Outlays	36,377	1,928
Farm Credit Systems Financial Assistance Corporation		
Farm credit assistance Fund (30-54-4133-351-A):		
401(C) Authority	635,000	33,655
Outlays	593,090	31,434
Financial assistance corporation trust fund (30-54-8202-351-A):		
401(C) Authority	80,705	4,277
Federal Communications Commission		
Salaries and expenses (30-60-0100-376-A):		
Budget Authority	103,598	5,491
Outlays	97,381	5,161
Federal Election Commission		
Salaries and expenses (30-65-1600-808-A):		
Budget Authority	16,093	853
Outlays	14,484	768
Federal Emergency Management Agency		
Salaries and expenses (Defense-related activities) (30-67-0100-054-A):		
Budget Authority	71,417	3,785
Outlays	64,276	3,407
Salaries and expenses (Disaster relief and insurance) (30-67-0100-453-A):		
Budget Authority	71,301	3,779
Outlays	64,171	3,401
Emergency planning and assistance (Defense-related activities) (30-67-0101-054-A):		
Budget Authority	265,479	14,070
Outlays	146,013	7,739
Emergency planning and assistance (Community development) (30-67-0101-453-A):		
Budget Authority	27,126	1,438
Outlays	14,919	791
Emergency food and shelter (30-67-0103-605-A):		
Budget Authority	130,788	6,932
Outlays	130,788	6,932
Disaster relief (30-67-0104-453-A):		
Budget Authority	1,251,488	66,329
Outlays	41,440	2,196
National insurance development fund (30-67-4235-451-A):		
401(C) Authority	220	12
Outlays	220	12

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Federal Labor Relations Authority		
Salaries and expenses (30-70-0100-805-A):		
Budget Authority	18,226	966
Outlays	15,190	805
Federal Maritime Commission		
Salaries and expenses (30-72-0100-403-A):		
Budget Authority	14,124	749
Outlays	12,758	676
Federal Mediation and Conciliation Service		
Salaries and expenses (30-76-0100-505-A):		
Budget Authority	26,931	1,427
Outlays	24,472	1,297
Federal Mine Safety and Health Review Commission		
Salaries and expenses (30-79-2800-554-A):		
Budget Authority	4,205	223
Outlays	3,901	207
Federal Trade Commission		
Salaries and expenses (30-84-0100-376-A):		
Budget Authority	68,869	3,650
Outlays	67,491	3,577
Harry S Truman Scholarship Foundation		
Harry S Truman memorial scholarship trust fund (31-01-8296-502-A):		
Obligation limitation	3,061	162
Outlays	3,053	162
American Revolution Bicentennial Administration		
American Revolution Bicentennial Administration (31-02-1900-806-A):		
Budget Authority	4,937	262
Outlays	4,937	262
Christopher Columbus Quincentennary Jubilee Commission		
Salaries and expenses (31-03-0800-376-A):		
Budget Authority	220	12
Outlays	220	12
Gifts and donations (31-03-8095-376-A):		
401(C) Authority	29	2
Outlays	29	2
Commission on the Bicentennial of the U.S. Constitution		
Salaries and expenses (31-04-0054-808-A):		
Budget Authority	7,204	382
Outlays	5,713	303
Franklin Delano Roosevelt Memorial Commission		
Salaries and expenses (31-05-0700-808-A):		
Budget Authority	29	2
Outlays	29	2
Institute of American Indian and Alaska Native Culture and Arts Development		
Salaries and expenses (31-06-2900-502-A):		
Budget Authority	3,205	170
Outlays	3,205	170

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Intelligence Community Staff		
Intelligence community staff (31-07-0400-054-A):		
Budget Authority	24,554	1,056
Outlays	15,953	686
Advisory Commission on Intergovernmental Relations		
Salaries and expenses (31-08-0100-808-A):		
Budget Authority	1,078	57
Outlays	769	41
Appalachian Regional Commission		
Appalachian regional development programs (31-09-0200-452-A):		
Budget Authority	150,000	7,950
Outlays	12,016	637
Delaware River Basin Commission		
Salaries and expenses (31-10-0100-301-A):		
Budget Authority	214	11
Outlays	200	11
Contribution to Delaware River Basin Commission (31-10-0102-301-A):		
Budget Authority	345	18
Outlays	345	18
Interstate Commission on the Potomac River Basin		
Contribution to Interstate Commission on the Potomac River Bas (31-11-0446-304-A):		
Budget Authority	300	16
Outlays	300	16
Susquehanna River Basin Commission		
Salaries and expenses (31-12-0500-301-A):		
Budget Authority	200	11
Outlays	188	10
Contribution to Susquehanna River Basin Commission (31-12-0501-301-A):		
Budget Authority	276	15
Outlays	276	15
International Trade Commission		
Salaries and expenses (31-17-0100-153-A):		
Budget Authority	37,371	1,981
Outlays	33,380	1,769
Interstate Commerce Commission		
Salaries and expenses (31-19-0100-401-A):		
Budget Authority	44,833	2,376
Outlays	40,349	2,138
James Madison Memorial Fellowship Foundation		
James Madison Memorial Fellowship Trust Fund (31-20-8282-502-A):		
Obligation limitation	500	26
Outlays	500	26
Japan-United States Friendship Commission		
Japan-United States friendship trust fund (31-21-8025-154-A):		
Budget Authority	1,473	78
Outlays	1,348	71

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Legal Services Corporation		
Payment to the Legal Services Corporation (31-22-0501-752-A):		
Budget Authority	319,663	16,942
Outlays	278,426	14,757
Marine Mammal Commission		
Salaries and expenses (31-23-2200-302-A):		
Budget Authority	996	53
Outlays	816	43
Merit Systems Protection Board		
Salaries and expenses (31-24-0100-805-A):		
Budget Authority	21,226	1,125
Outlays	19,137	1,014
Office of the Special Counsel (31-24-0101-805-A):		
Budget Authority	5,180	275
Outlays	4,267	226
National Archives and Records Administration		
Operating expenses (31-26-0300-804-A):		
Budget Authority	126,583	6,709
Outlays	98,481	5,219
National archives trust fund (31-26-8436-804-A):		
401(C) Authority—		
Off. Coll.	10,555	559
National Capital Planning Commission		
Salaries and expenses (31-28-2500-451-A):		
Budget Authority	3,079	163
Outlays	2,832	150
National Commission on Libraries & Info. Science		
Salaries and expenses (31-30-2700-503-A):		
Budget Authority	770	41
Outlays	616	33
White House conference on library and information services (31-30-2701-503-A):		
Budget Authority	1,815	96
Outlays	598	32
National Commission on Migrant Education		
Nat'l Commission on Migrant Education: Salaries and Expenses (31-31-0600-501-A):		
Budget Authority	2,046	108
Outlays	163	9
National Council on Disability		
Salaries and expenses (31-32-3500-506-A):		
Budget Authority	1,204	64
Outlays	922	49
National Endowment for the Arts		
National Endowment for the Arts: Grants and administration (31-35-0100-503-A):		
Budget Authority	174,450	9,246
Outlays	58,397	3,095
National Endowment for the Humanities		
National Endowment for the Humanities: Grants and administrati (31-36-0200-503-A):		
Budget Authority	158,560	8,404
Outlays	69,737	3,696

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Institute of Museum Services		
Institute of Museum Services (31-37-0300-503-A):		
Budget Authority	23,074	1,223
Outlays	5,969	316
National Labor Relations Board		
Salaries and expenses (31-39-0100-505-A):		
Budget Authority	142,465	7,551
Outlays	133,935	7,099
National Mediation Board		
Salaries and expenses (31-40-2400-505-A):		
Budget Authority	6,729	357
Outlays	5,161	274
National Science Foundation		
Research and related activities (31-45-0100-251-A):		
Budget Authority	1,679,104	88,993
Outlays	836,065	44,311
Science and engineering education activities (31-45-0106-251-A):		
Budget Authority	177,156	9,389
Outlays	26,647	1,412
U.S. Antarctic program (31-45-0200-251-A):		
Budget Authority	135,716	7,193
Outlays	67,095	3,556
National Transportation Safety Board		
Salaries and expenses (31-47-0310-407-A):		
Budget Authority	26,361	1,397
Outlays	24,610	1,304
Neighborhood Reinvestment Corporation		
Payment to the Neighborhood Reinvestment Corporation (31-49-1300-451-A):		
Budget Authority	20,196	1,070
Outlays	20,196	1,070
Nuclear Regulatory Commission		
Salaries and expenses (31-50-0200-276-A):		
Budget Authority	442,100	23,431
Outlays	331,575	17,573
Office of the Inspector General (31-50-0300-276-A):		
Budget Authority	2,900	154
Outlays	2,500	132
Occupational Safety and Health Review Commission		
Salaries and expenses (32-02-2100-554-A):		
Budget Authority	6,099	323
Outlays	5,596	297
Pennsylvania Avenue Development Corporation		
Salaries and expenses (32-08-0100-451-A):		
Budget Authority	2,425	129
Outlays	1,964	104
Public development (32-08-0102-451-A):		
Budget Authority	3,289	174
Outlays	2,467	131
Land acquisition and development fund (32-08-4084-451-A):		
401(C) Authority—		
Off. Coll.	3,000	159
Outlays	3,000	159

G-R-H Sequester Amounts—Continued

(In thousands of dollars)

Account Title	Sequester Base	Sequester Amount
Postal Service		
Payment to the Postal Service fund (32-10-1001-372-A):		
Budget Authority	452,128	23,963
Outlays	452,128	23,963
Payment to the Postal Service fund for nonfunded liabilities (32-10-1004-372-A):		
Budget Authority	36,942	1,958
Postal Service (32-10-4020-372-A):		
Obligation limitation	1,097,124	58,148
Outlays	1,075,182	56,985
Railroad Retirement Board		
Railroad social security equivalent benefit account (32-20-8010-601-A):		
Obligation limitation	28,383	1,504
Outlays	28,383	1,504
Rail Industry Pension Fund (32-20-8011-601-A):		
Obligation limitation	33,937	1,799
Outlays	33,937	1,799
Supplemental Annuity Pension Fund (32-20-8012-601-A):		
401(C) Authority	114,908	6,090
Obligation limitation	2,275	121
Outlays	58,527	3,102
Securities and Exchange Commission		
Salaries and expenses (32-35-0100-376-A):		
Budget Authority	148,161	7,853
Outlays	129,533	6,865
Selective Service System		
Salaries and expenses (32-40-0400-054-A):		
Budget Authority	27,316	1,175
Outlays	22,412	964
Smithsonian Institution		
Salaries and expenses (32-50-0100-503-A):		
Budget Authority	219,565	11,637
Outlays	194,736	10,321
Construction and improvements, National Zoological Park (32-50-0129-503-A):		
Budget Authority	5,496	291
Outlays	2,473	131
Repair and restoration of buildings (32-50-0132-503-A):		
Budget Authority	21,481	1,138
Outlays	8,592	455
Construction (32-50-0133-503-A):		
Budget Authority	8,967	475
Outlays	3,587	190
Salaries and expenses, National Gallery of Art (32-50-0200-503-A):		
Budget Authority	39,474	2,092
Outlays	34,685	1,838
Repair, restoration and renovation of buildings (32-50-0201-503-A):		
Budget Authority	776	41
Outlays	452	24
Salaries and expenses, Woodrow Wilson International Center (32-50-0400-503-A):		
Budget Authority	4,401	233
Outlays	2,725	144
Payment to the endowment challenge fund (32-50-0401-503-A):		
Budget Authority	311	16
Outlays	155	8
Endowment challenge fund (32-50-8188-503-A):		
401(C) Authority	270	14
Outlays	270	14
Canal Zone biological area fund (32-50-8190-503-A):		
401(C) Authority	150	8
Outlays	150	8
Other Temporary Commissions		
State Justice Institute (33-02-0052-752-A):		
Budget Authority	11,379	603
Outlays	3,607	191
Commission on Agricultural Workers: Salaries and expenses (33-02-0057-352-A):		
Budget Authority	519	28
Outlays	467	25
Nat'l Comm. on Responsibilities for Financing P.S. Education (33-02-0400-502-A):		
Budget Authority	818	43
Outlays	772	41
Nuclear Waste Technical Review Board: Salaries and Expenses (33-02-0500-271-A):		
Budget Authority	2,000	106
Outlays	2,000	106
Office of the Nuclear Waste Negotiator: S & E (33-02-0700-271-A):		
Budget Authority	2,000	106
Outlays	2,000	106
Navajo and Hopi Indian Relocation Commission (33-02-1100-808-A):		
Budget Authority	28,318	1,501
Outlays	17,838	945
Interagency Council on the Homeless (33-02-1300-604-A):		
Budget Authority	1,143	61
Outlays	594	31
Comm. for the Study of Int. Mig. and Coop. Econ. Dev: S and E (33-02-1400-153-A):		
Budget Authority	1,338	71
Outlays	869	46
National Commission to Prevent Infant Mortality (33-02-1500-808-A):		
Budget Authority	675	36
Outlays	544	29
Intl Cultural and Trade Center Commission: Salaries and expens (33-02-1800-804-A):		
Budget Authority	864	46
Outlays	648	34
National Economic Commission, Salaries and Expenses (33-02-2100-802-A):		
Budget Authority	728	39
Outlays	728	39
Tennessee Valley Authority		
TVA fund (Energy supply) (33-16-4110-271-A):		
401(C) Authority—Off. Coll.	73,500	3,896
Outlays	73,500	3,896
TVA fund (Area and regional development) (33-16-4110-452-A):		
Budget Authority	121,000	6,413
Obligation limitation	1,500	80
Outlays	29,767	1,578
United States Holocaust Memorial Council		
Holocaust Memorial Council (33-19-3300-808-A):		
Budget Authority	2,330	123
Outlays	1,843	98
United States Information Agency		
Salaries and expenses (33-22-0201-154-A):		
Budget Authority	644,127	34,139
Outlays	523,079	27,723
East West Center (33-22-0202-154-A):		
Budget Authority	20,720	1,098
Outlays	20,720	1,098
Radio construction (33-22-0204-154-A):		
Budget Authority	67,340	3,569
Outlays	37,859	2,007
Radio broadcasting to Cuba (33-22-0208-154-A):		
Budget Authority	11,613	615
Outlays	9,058	480
Educational and cultural exchange program (33-22-0209-154-A):		
Budget Authority	155,441	8,238
Outlays	79,275	4,202
National Endowment for Democracy (33-22-0210-154-A):		
Budget Authority	16,369	868
Outlays	7,693	408
United States Institute of Peace		
United States Institute of Peace (33-24-1300-153-A):		
Budget Authority	7,174	380
Outlays	7,174	380
United States Sentencing Commission		
Salaries and expenses (33-31-0938-752-A):		
Budget Authority	5,383	285
Outlays	4,977	264
Total, Other Independent Agencies:		
Budget Authority	9,316,134	493,170
401(C) Authority	1,067,770	56,592
401(C) Authority—Off. Coll.	87,065	4,615
Obligation limitation	1,224,359	64,892
Direct Loan Limitation	720,020	38,161
Guaranteed Loan Limitation	10,567,200	560,062
Outlays	7,807,993	413,371
Total Government:		
Budget Authority	472,602,989	21,961,425
Budget Authority—ASI	60,792	60,792
Budget Authority—Spec. Rules	286,079	286,079
401(C) Authority	36,780,561	1,949,370
401(C) Authority—Off. Coll.	3,519,880	186,556
401(C) Authority—Spec. Rules	1,526,966	1,526,966
Obligation limitation	26,865,012	1,423,845
Direct Loan Limitation	20,850,344	1,105,067
Direct Loan Floor	2,053,158	108,817
Guaranteed Loan Limitation	269,146,613	14,264,771
Unobligated Balances-Defense	39,199,189	1,685,565
Outlays	308,585,076	16,191,811

APPENDIX B: PROGRAM, PROJECT, AND ACTIVITY DETAIL FOR ATOMIC ENERGY DEFENSE ACTIVITIES

(Fiscal year 1990; in thousands of dollars)

PROGRAM, PROJECT, ACTIVITY DETAIL FOR ATOMIC ENERGY DEFENSE ACTIVITIES

(In thousands of dollars)

	Sequesterable Base		Sequester Amount	
	Budgetary Resources	Outlays	Budgetary Resources	Outlays
WEAPONS ACTIVITIES:				
1. Research and development—core:				
Operating expenses	802,770	497,717	34,519	21,402
Capital equipment	93,875	58,202	4,037	2,503
Construction:				
90–D–101 General plant projects	20,730	12,853	891	553
90–D–102 Nuclear weapons research, development, and testing facilities revitalization, Phase III	1,000	620	43	27
88–D–105 Special nuclear materials R&D laboratory replacement	44,000	27,280	1,892	1,173
88–D–106 Nuclear weapons research, development, and testing facilities revitalization, Phase II	75,400	46,748	3,242	2,010
2. Nuclear directed energy weapons:				
Operating expenses	97,000	60,140	4,171	2,586
Capital equipment	6,000	3,720	258	160
Construction:				
88–D–106 Nuclear weapons research, development, and testing facilities revitalization, Phase II	19,000	11,780	817	507
3. Inertial fusion:				
Operating expenses	165,200	102,424	7,104	4,404
Capital equipment	8,740	5,419	376	233
4. Environment, safety and health:				
Construction:				
90–D–103 ES&H improvements	10,700	6,634	460	285
88–D–102 Sanitary wastewater systems consolidation	3,100	1,922	133	83
86–D–103 Decontamination and waste treatment facility	5,200	3,224	224	139
5. Safeguards and security:				
Construction:				
88–D–104 Safeguards and security upgrade, Phase II	1,000	620	43	27
87–D–104 Safeguards and security enhancements II	7,000	4,340	301	187
6. Testing—core:				
Operating expense	421,700	261,454	18,133	11,243
Capital equipment	40,420	25,060	1,738	1,078
Construction:				
90–D–101 General plant projects	7,400	4,588	318	197
7. Nuclear directed energy weapons:				
Operating expenses	90,000	55,800	3,870	2,399
Capital equipment	8,000	4,960	344	213
8. Safeguards and security:				
Construction:				
85–D–105 Combined device assembly facility	9,460	5,865	407	252
9. Production and surveillance:				
Operating expenses	2,100,000	1,302,000	90,300	55,986
Capital equipment	125,600	77,872	5,401	3,348
Construction:				
90–D–122 Production capabilities for the nuclear depth/strike bomb (ND/SB)	8,000	4,960	344	213
90–D–123 Follow on to lance warhead production facilities	—	—	—	—
87–D–122 Short-range attack missile II (SRAM II) warhead production facility	41,200	25,544	1,772	1,098
88–D–122 Facilities capability assurance program (FCAP)	83,099	51,521	3,573	2,215
90–D–121 General plant projects	30,850	19,127	1,327	822
90–D–124 High explosives (HE) synthesis facility	1,800	1,116	77	48
89–D–122 Production waste storage facility	9,200	5,704	396	245
89–D–125 Plutonium recovery modification project	45,000	27,900	1,935	1,200
88–D–125 High explosive machining facility	36,000	22,320	1,548	960
86–D–130 Tritium loading facility replacement	24,025	14,896	1,033	641
90–D–125 Steam plant ash disposal facility	1,500	930	64	40
90–D–126 ES&H enhancements	26,700	16,554	1,148	712

PROGRAM, PROJECT, ACTIVITY DETAIL FOR ATOMIC ENERGY DEFENSE ACTIVITIES—Continued

(In thousands of dollars)

	Sequesterable Base		Sequester Amount	
	Budgetary Resources	Outlays	Budgetary Resources	Outlays
89–D–126 Environmental, safety, and health upgrade, Phase II	3,500	2,170	150	93
88–D–124 Fire protection upgrading	5,400	3,348	232	144
88–D–123 Security enhancement	5,500	3,410	236	147
10. Program direction:				
Weapons program	88,853	55,089	3,821	2,369
Community assistance	9,050	5,611	389	241
Capital equipment	1,735	1,076	75	46
MATERIALS PRODUCTION:				
11. Reactor operations:				
Operating expenses	578,049	358,390	24,856	15,411
Construction:				
90–D–142 Coal storage facility environmental upgrade	920	570	40	25
90–D–150 Reactor safety assurance	12,700	7,874	546	339
89–D–141 M-Area waste disposal	7,800	4,836	335	208
89–D–142 Reactor effluent cooling water thermal mitigation	40,000	24,800	1,720	1,066
89–D–148 Improved reactor confinement system	7,100	4,402	305	189
86–D–152 Reactor electrical distribution system	3,164	1,962	136	84
12. Processing of nuclear materials:				
Operating expenses	589,609	365,558	25,353	15,719
Construction:				
86–D–148 Special isotope separation project	40,000	24,800	1,720	1,066
90–D–141 Idaho chemical processing plant fire protection	3,500	2,170	150	93
90–D–143 Plutonium finishing plant fire safety and loss limitation	800	496	34	21
13. Supporting services:				
Operating expenses	282,868	175,378	12,163	7,541
Construction:				
90–D–146 General plant projects	36,802	22,817	1,582	981
90–D–151 Engineering Center	7,000	4,340	301	187
86–D–149 Productivity retention program, Phase I, II, III, IV, and V	81,780	50,704	3,517	2,180
85–D–139 Fuel processing restoration	75,000	46,500	3,225	1,999
90–D–149 Plantwide fire protection, Phase I	4,900	3,038	211	131
87–D–159 Environmental, health, and safety improvements Phases I, II, III, and IV	55,111	34,169	2,370	1,469
89–D–140 Additional separations safeguards	10,300	6,386	443	275
88–D–153 Additional reactor safeguards	6,400	3,968	275	171
86–D–156 Plantwide safeguards systems	6,181	3,832	266	165
14. Enriched material	168,900	104,718	7,263	4,503
15. Capital equipment	104,425	64,744	4,490	2,784
16. Program direction	35,265	21,864	1,516	940
DEFENSE WASTE AND ENVIROMENTAL RESTORATION:				
17. Environmental restoration:				
Operating expenses	572,000	354,640	24,596	15,250
18. Waste operations and projects:				
Operating expenses	699,696	433,812	30,087	18,654
Construction:				
90–D–170 General plant projects	29,036	18,002	1,249	774
89–D–171 INEL road renovation	7,400	4,588	318	197
89–D–174 Replacement high level waste evaporator	9,360	5,803	402	250
88–D–173 Hanford waste vitrification plant (HWVP)	29,100	18,042	1,251	776
87–D–173 242–A Evaporator crystallizer upgrade	700	434	30	19
87–D–181 Diversion box and pump pit containment buildings	2,790	1,730	120	74

PROGRAM, PROJECT, ACTIVITY DETAIL FOR ATOMIC ENERGY DEFENSE ACTIVITIES—Continued

(In thousands of dollars)

	Sequesterable Base		Sequester Amount	
	Budgetary Resources	Outlays	Budgetary Resources	Outlays
90–D–171 Laboratory ventilation and electrical system upgrade	1,100	682	47	29
90–D–172 Aging waste transfer line	1,300	806	56	35
90–D–173 B-plant canyon crane replacement	1,500	930	64	40
90–D–174 Decontamination laundry facility	2,800	1,736	120	75
90–D–175 Landlord program safety compliance—I	4,200	2,604	181	112
90–D–176 Transuranic (TRU) waste facility	3,100	1,922	133	83
90–D–177 RWMC Transuranic (TRU) waste treatment and storage facility	5,000	3,100	215	133
90–D–178 TSA retrieval containment building	6,000	3,720	258	160
89–D–172 Hanford environmental compliance	27,600	17,112	1,187	736
89–D–173 Tank farm ventilation upgrade	15,400	9,548	662	411
89–D–175 Hazardous waste/mixed waste disposal facility	6,440	3,993	277	172
83–D–148 Non-radioactive hazardous waste management	14,140	8,767	608	377
19. Waste research and development	115,225	71,440	4,955	3,072
20. Hazardous waste and compliance technology	40,163	24,901	1,727	1,071
21. Transportation management	11,841	7,341	509	316
22. Capital equipment	50,126	31,078	2,155	1,336
23. Program direction	2,950	1,829	127	79
NEW PRODUCTION REACTORS:				
24. New production reactor support:				
Operating expenses	203,500	126,170	8,750	5,425
Construction:				
88–D–154 New production reactor capacity (design only)	100,000	62,000	4,300	2,666
NAVAL REACTORS DEVELOPMENT:				
25. Plant development	87,000	53,940	3,741	2,319
26. Reactor development	245,300	152,086	10,548	6,540
27. Reactor operation and evaluation	217,000	134,540	9,331	5,785
28. Capital equipment	54,000	33,480	2,322	1,440
29. Construction:				
90–D–101 General plant projects	8,500	5,270	365	227
90–D–102 Expended core facility dry cell project	3,600	2,232	155	96
90–D–103 Advanced test reactor off-gas treatment system	200	124	9	5
90–D–104 Facility renovations, Knolls Atomic Power Laboratory (KAPL)	3,900	2,418	168	104
89–D–102 Heat transfer test facility	6,500	4,030	280	173
89–D–103 Advanced test reactor modifications Test Reactor Area	3,100	1,922	133	83
89–D–104 Power system upgrade, Naval Reactors Facility	6,400	3,968	275	171
88–D–102 Expended core facility receiving station, Naval Reactors Facility	3,000	1,860	129	80
30. Program direction	13,500	8,370	580	360
OTHER NATIONAL SECURITY PROGRAMS:				
31. Verification and control technology:				
Operating expenses	159,146	98,671	6,843	4,243
Capital equipment	9,732	6,034	418	259
Construction:				
90–D–186 Center for national security and arms control	1,000	620	43	27
32. Nuclear safeguards and security:				
Operating expenses	82,241	50,989	3,536	2,193
Capital equipment	4,967	3,080	214	132
33. Security investigations—OE	41,200	25,544	1,772	1,098
SEQUESTERABLE UNOBLIGATED BALANCES	85,000	52,700	3,655	2,266

[FR Doc. 89–24666 Filed 10–16–89; 12:01 pm]
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federal register

Tuesday
October 17, 1989

Part XI

The President

Emergency Deficit Control Measures for Fiscal Year 1990
Final Order of October 16, 1989

digitized

Federal Register
Vol. 54, No. 199
Tuesday, October 17, 1989

Presidential Documents

Title 3—

The President

FINAL
ORDER

Emergency Deficit Control Measures
for Fiscal Year 1990

By the authority vested in me as President by the statutes of the United States of America, including section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99-177), as amended by the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (Public Law 100-119) (hereafter referred to as "the Act"), I hereby order that the following actions be taken immediately to implement the sequestrations and reductions determined by the Director of the Office of Management and Budget as set forth in his report dated October 16, 1989, under section 251 of the Act:

(1) Each automatic spending increase that would, but for the provisions of the Act, take effect during fiscal year 1990 is permanently sequestered or reduced as provided in section 252.

(2) The following are sequestered as provided in section 252: new budget authority; unobligated

balances; new loan guarantee commitments or limitations; new direct loan obligations, commitments, or limitations; spending authority as defined in section 401(c)(2) of the Congressional Budget Act of 1974, as amended; and obligation limitations.

(3) For accounts making payments otherwise required by substantive law, the head of each department or agency is directed to modify the calculation of each such payment to the extent necessary to reduce the estimate of total required payments for the fiscal year by the amount specified by the Director of the Office of Management and Budget in his report of October 16, 1989.

(4) For accounts making commitments for guaranteed loans or obligations for direct loans as authorized by substantive law, the head of each department or agency is directed to reduce the level of such commitments or obligations to the extent necessary to conform to the limitations established by the Act and specified by the Director of the Office of Management and Budget in his report of October 16, 1989.

All reductions and sequestrations shall be made in strict accordance with the specifications of the October 16th report of the Director of the Office of Management and Budget and the requirements of section 252(b).

This order shall be effective immediately and supersedes the initial order issued on August 25, 1989.

This order shall be published in the Federal Register.

THE WHITE HOUSE,

October 16, 1989.

[FR Doc. 89-24769
Filed 10-16-89; 7:18 pm]
Billing code 3195-01-C

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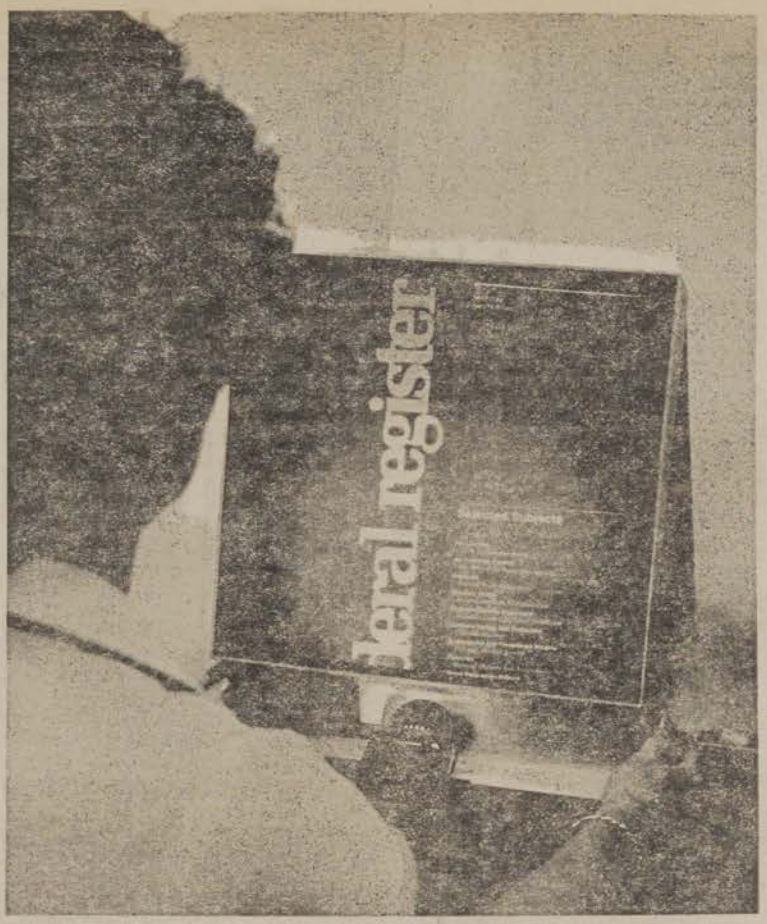
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