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Reader Aids
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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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Presidential Documents

Title 3—

The President

Presidential Determination No. 88–25 of September 29, 1988

Determination Under Section 2(b)(2) of the Export-Import Bank Act of 1945, as Amended—People's Republic of China

Memorandum for the Secretary of State

Pursuant to Section 2(b)(2) of the Export-Import Bank Act of 1945, as amended, I determine that it is in the national interest for the Export-Import Bank of the United States to extend credit in the amount of approximately $80,000,000 to the People's Republic of China in connection with the purchase of equipment and services for the manufacture of color television picture tube glass.

You are authorized and directed to report this determination to the Congress and publish it in the **Federal Register**.

Ronald Reagan

THE WHITE HOUSE,
Washington, September 29, 1988.

[FR Doc. 88–23777
Filed 10–11–88; 3:08 pm]
Billing code 3195–01–M

Rules and Regulations

Federal Register
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MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Practices and Procedures

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: In order to expedite mail service, the Merit Systems Protection Board is amending its rules of practices and procedures by changing the address of the Denver Regional Office as listed in 5 CFR Part 1201, Appendix II.

EFFECTIVE DATE: October 1, 1988.

FOR FURTHER INFORMATION CONTACT: Mark Kelleher, Deputy Executive Director for Regional Operations, (202) 653–7980.

SUPPLEMENTARY INFORMATION:

List of Subjects in 5 CFR Part 1201

Administrative practice and procedures, Civil rights, Government employees.

PART 1201—(AMENDED)

Accordingly, the Board amends Part 1201 as follows:

1. Authority for Title 5 CFR Part 1201 continues to read:

Authority: 5 U.S.C. 1205 and 7701(j).

2. Appendix II to Part 1201 is amended by revising item number 5 in the second paragraph to read as follows:

Appendix II to Part 1201—Appropriate Regional Office for Filing Appeals

* * * * *

5. Denver Regional Office, 730 Simms Street, Suite 301, P.O. Box 25025, Denver, Colorado 80225–0025 (Arizona, Colorado, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, South Dakota, Utah, Wyoming).

* * * * *

Date: October 7, 1988.
Robert E. Taylor,
Clerk of the Board.
[FR Doc. 88–23661 Filed 10–12–88; 8:45 am]
BILLING CODE 7400–01–M

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1478

Tree Assistance Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: These regulations set forth terms and conditions for the conduct of the Tree Assistance Program ("TAP") authorized by Title II of the Disaster Assistance Act of 1988 (Pub. L. 100–387). Under the TAP, the Commodity Credit Corporation will reimburse eligible persons for the cost of replanting seedlings planted in 1987 or 1988 for commercial purposes which were lost due to drought or related condition in 1988. TAP payments will cover 65 percent of the cost of replanting that portion of the seedling loss which, after adjustment for normal mortality, exceeds 35 percent. These regulations set forth standards for determining losses and payments, applicable payment limitations and other program provisions.

EFFECTIVE DATE: October 13, 1988.

FOR FURTHER INFORMATION CONTACT: James R. McMullen, Director, Conservation and Environmental Protection Division, ASCS, P.O. Box 2415, Washington, DC 20013.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "not major". The provisions of this notice will not result in: (1) An annual effect on the economy of $100 million or more, (2) a major increase in cost of prices for consumers, individual industries, Federal, State, or local governments, or geographic regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, the environment, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant adverse impact on the quality of the human environment.

Therefore, neither an environmental assessment nor an environmental impact statement is needed. Copies of the environmental evaluation are available upon written request.

The titles and numbers of the Federal Assistance Program to which this rule applies are: Title: Tree Assistance Program; Number 10.073, as found in the catalog of Federal Domestic Assistance.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Subtitle B of Title II of the Disaster Assistance Act of 1988 (Pub. L. 100–387) ("the 1988 Act") provides that, subject to certain limitations, the Secretary of Agriculture shall provide assistance to eligible tree farmers that planted tree seedlings in 1987 or 1988 for commercial purposes but lost such seedlings as a result of the drought or related condition in 1988, as determined by the Secretary. Qualifying replanting costs will be reimbursed, within limits established by the 1988 Act, by the Commodity Credit Corporation ("CCC"). For eligible tree farmers, reimbursement may, subject to payment limitations, be made for 65 percent of the approved reimbursable costs for replanting seedlings planted in 1987 or 1988 that were lost in 1988 due to the 1988 drought for that portion of that loss that exceeds 35 percent of the eligible seedlings after adjusting for normal mortality.

In accordance with the provisions of the 1988 Act, the regulations define the term "eligible owner" to mean a person who produces annual crops from trees for commercial purposes or that grows trees for harvest for commercial

purposes, and owns 1,000 acres or less of such trees. Loss determinations will be made for CCC by the State and county Agricultural Stabilization and Conservation Service (ASC) committees (State and county committees). The regulations limit the per seedling and per acre TAP reimbursements which the county committees may approve. If necessary, higher reimbursements may be approved by State committees, or by the Deputy Administrator, State and County Operations, ASCS. As required by section 223 of the 1988 Act, the regulations limit the total TAP payments a person may receive to $25,000. Such "person" determinations will be made in accordance with the provisions of 7 CFR Part 795. No person may be reimbursed for the cost of replanting seedlings for which reimbursement is received under other federal programs. Also, in accordance with section 231 of the Act, the regulations provide that a person, as defined in 7 CFR Part 795, will not be eligible for payments if the qualifying gross revenues of that person exceeds $2,000,000 annually. "Qualifying gross revenues" means for this purpose: (1) If a majority of a person's annual income is received from farming, ranching, and forestry operations, the gross revenue from the person's farming, ranching, and forestry operations; and (2) if less than a majority of the annual income is received from farming, ranching, and forestry operations, the person's gross revenue from all sources.

The 1988 Act provides that, at the discretion of the Secretary, assistance may be made in the form of sufficient tree seedlings to reestablish the stand. However, since such assistance is not cost-effective, needed, or practical, it will not be made available.

Section 234 of the Act provides that regulations which implement TAP may be issued without regard to the requirement for notice and public participation in rulemaking prescribed in section 553 of title 5, United States Code, or in any directive of the Secretary. Accordingly, in order that this program may be implemented as soon as practicable, the regulations set forth in this final rule are issued without further rulemaking.

List of Subjects in 7 CFR Part 1478

Administrative practices and procedures, Natural Resources, Trees.

Final Rule

Accordingly, Subchapter B, Chapter XIV of Title 7 of the Code of Federal Regulations is amended by adding Part 1478 which reads as follows:

PART 1478—TREE ASSISTANCE PROGRAM

Sec.

Authority: Secs. 4 and 5 of the Commodity Credit Corporation Charter Act, as amended, 62 Stat. 1070, as amended, 1072 (15 U.S.C. 714b and 714c) Secs. 221 *et seq.* of the Disaster Assistance Act of 1988, 102 Stat. 943 (7 U.S.C. 1421 *note*).

§ 1478.1 General statements.

The regulations in this part set forth the terms and conditions of the Tree Assistance Program (TAP) authorized by Title II of the Disaster Assistance Act of 1988. Within specified limits, the Commodity Credit Corporation (CCC) is authorized to reimburse eligible producers for the cost of replanting tree seedlings which were planted in 1987 or 1988 which were lost in 1988 due to drought or related conditions that year. Such assistance may not exceed 65 percent of the reseeding costs actually incurred by the producer with respect to such losses which, after adjustments for normal mortality, exceed 35 percent, as determined by CCC.

§ 1478.2 Administration.

(a) This part shall be administered by CCC under the general direction and supervision of the Executive Vice President, CCC. The program shall be carried out in the field by State and County Agricultural Stabilization and Conservation (ASC) committees (State and county committees).

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations in this part, as amended or supplemented.

(c) The State committee shall take any action required by this part which has not been taken by the county committee. The State committee shall also: (1) Correct, or require a county committee to correct, any action taken by such county committee which is not in accordance with this part; or (2) require a county committee to withhold taking any action which is not in accordance with this part.

(d) No delegation herein to a State or county committee shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

§ 1475.3 Definitions.

(a) In determining the meaning of the provisions of this part, unless the context indicates otherwise, words importing the singular include and apply to several persons and things, words importing the plural include the singular, words importing the masculine gender include the feminine, and words used in the present tense include the future as well as the present.

(b) The following terms contained in this part shall have the following meanings:

"*Annual gross revenue*" means with respect to a person, as defined in Part 795 of this title, who: (1) Receives more than 50 percent of such person's gross income from farming, ranching, and forestry operations, the total gross income received for such operations; and (2) receives 50 percent or less of such person's gross income from farming, ranching, and forestry operations, the total gross income from all sources.

"*Approving official*" means a representative of CCC who is authorized by the Executive Vice President, CCC, to approve an application for assistance made in accordance with this part.

"*ASCS*" means the Agricultural Stabilization and Conservation Service.

"*CCC*" means the Commodity Credit Corporation.

"*County*" means a county or similar geographic area as determined by CCC.

"*DASCO*" means the Deputy Administrator or Acting Deputy Administrator, State and County Operations, ASCS, U.S. Department of Agriculture.

"*Eligible owner*" means an individual, partnership, corporation, association, estate, trust, or other business enterprise or legal entity and includes: any Indian tribe under the Indian Self-Determination and Education Assistance Act; any Indian organization or entity chartered under the Indian Reorganization Act; any tribal organization under the Indian Self-Determination and Assistance Act; and, any economic enterprise under the Indian Financing Act of 1974 which

meets the requirements of this part. Federal, State and local governments and agencies and political subdivisions thereof are specifically excluded. In determining whether an individual or other entity is an eligible owner, such person, as determined under Part 795 of this title, must own 1,000 acres or less of trees which: produce annual crops for commercial purposes; or are grown for harvest for commercial purposes. Such person, as determined under Part 795 of this title, must also have annual gross revenue of $2.0 million or less, as determined under this part.

"*Eligible trees*" means trees which are determined by CCC to have been planted for: the production of wood products, fruits, nuts, syrup, or similar products; or, harvest as Christmas trees. Such trees must be planted in the ground and shall not include: trees planted in containers, or in other devices which are not placed in the ground; ornamental trees; bushes, shrubs, vines and similar plants; and windbreaks, shelterbelts and wildlife enhancement plantings.

"*Eligible tree seedling*" means a seedling planted in 1987 or 1988.

"*Executive Vice President*" means the Executive Vice President, CCC, or a designee of the Executive Vice President.

"*Harvest*" means the removal of the tree from the ground by the cutting and removal of the whole tree at its base in a manner which separates the tree from its root system.

"*Individual stand*" means eligible trees which are tended to by an eligible owner as a single operation whether or not such trees are planted in the same field or similar area, as determined by CCC. Differing species of trees in the same field or similar area may be considered to be separate individual stands if CCC determines that the species have significantly differing levels of drought susceptibility.

"*Local county office*" means with respect to individual stands of eligible trees which are grown on a farm: (1) Which has been assigned an ASCS farm serial number, the county ASCS office which services such farm; or (2) which has not been assigned an ASCS farm serial number, the county ASCS office which services the county in which such stand is located.

"*Normal mortality*" means the average extent of seedling death which normally would have occurred during the period between the planting of the seedling and the seedling's death on the individual stand with respect to which assistance is requested under this part without regard to the 1988 drought or related condition as determined by the County ASC committee.

"*Operator*" means a person who is in general control of the tree farming operations as determined by CCC.

"*Seedling*" means an eligible tree which was planted in the ground for commercial purposes and is of a size which CCC determines is:

(1) Normally planted in the ground and;

(2) Does not exceed the size which is normal for consideration as a seedling for the particular species of an eligible tree.

"*State*" means any State of the United States, the Commonwealth of Puerto Rico, the Virgin Islands, or Guam.

"*State committee*", "*State office*", "*county committee*", or "*county office*", means the respective ASC committee or ASCS office.

(c) In the regulations in this part and in all instructions, terms, and documents in connection therewith, all other words and phrases specifically relating to ASCS operations shall, unless the context of the subject matter otherwise requires, have the meanings assigned to them in the regulations governing reconstitution of farms, allotments, and bases in 7 C.F.R. Part 719.

§ 1478.4 Program availability.

A request by an eligible owner for assistance under this part must be made on or before March 31, 1989. Eligible owners shall not receive assistance under this part with respect to losses of seedlings which were:

(a) Planted under the Conservation Reserve Program; or

(b) The subject of any cost-share assistance or other assistance under any other Federal program.

§ 1478.5 Qualifying loss.

(a) An eligible owner shall receive assistance under this part only if such owner has sustained a qualifying loss of eligible tree seedlings as determined by CCC. A qualifying loss shall only be determined with respect to such seedlings which were planted in 1987 or 1988 and were lost or otherwise destroyed in 1988 as a result of the 1988 drought or related condition. Qualifying loss determinations shall be made on individual stand basis.

(b) A qualifying loss shall be the loss of eligible tree seedlings, after taking into account the normal mortality of such seedlings, which exceeds 35 percent. Qualifying losses shall not include losses which could have been prevented through readily available horticultural measures.

§ 1478.6 Eligible costs.

(a) CCC shall reimburse an eligible owner for the costs of replanting seedlings, not in excess of the number of seedlings constituting the qualifying loss, to the extent that CCC determined that such costs are reasonable and are for replacement seedlings which do not exceed the size of the lost seedlings. Such costs shall include only the cost of the seedlings, site preparation, chemicals and nutrients if needed to ensure successful plant survival, and labor used to physically plant such seedlings as based on standard labor rates as determined by the county committee. Eligible costs specifically exclude items such as fencing, irrigation, irrigation equipment, measures to protect seedlings from wildlife, and general land and tree stand improvements. Eligible costs shall not include those incurred prior to filing an application for participation in the program, unless specifically otherwise approved by DASCO.

(b) Eligible costs shall not include costs incurred for replanting species of trees differing significantly from the types of the seedlings constituting the qualifying loss except as determined by CCC. If such substitution is approved, eligible costs shall be the lesser of: (1) The actual eligible costs incurred; or (2) the estimated eligible costs which otherwise would have been incurred.

(c) Eligible costs shall only include costs which have been incurred for which the eligible owner has presented adequate documentation of costs including evidence such costs were incurred. Eligible costs specifically exclude costs which have been incurred but not paid for by the eligible owner.

(d) The amount of assistance which shall be paid by CCC, subject to the availability of funds, shall not exceed 65 percent of the eligible costs determined by CCC.

(e) Notwithstanding the provisions of paragraph (b) of this section, an application for payment shall not be approved by:

(1) The county committee without the written approval of the State committee if such payment would exceed:

(i) For timber and wood seedlings, $.25 per seedling;

(ii) For Christmas tree seedlings, $.50 per seedling;

(iii) For other seedlings, $5.00 per seedling; or

(iv) An amount, determined on a per acre individual stand basis, taking into account the amount of the eligible tree seedling loss, which is greater than:

(A) For land planted to timber and wood seedlings, 75 percent of the average county farmland value;

(B) For Christmas tree seedlings, 100 percent of the average county farmland value; and

(C) For all other seedlings, 250 percent of the average county farmland value.

(2) The State committee may not, without the written approval of DASCO, approve an application for payment, if such payment would exceed 150 percent of the amounts specified in paragraph (e)(1) of this section.

§ 1478.7 Payment.

(a) Applications for payment shall be filed by the eligible owner with the local ASCS office and shall set forth the number of seedlings which constitute the qualifying seedling loss and the amount of the acreage of the individual stands with respect to which the loss was suffered.

(b)(1) The county committee or designee shall review each application. The county committee and, if designated by the county committee, the county executive director, is authorized, subject to the provisions of this part, to approve or disapprove all applications, provided the applicant is not a county committee member or an ASCS employee.

(2) The State committee, or a designee, is authorized to approve or disapprove applications of the county committee members and all ASCS employees except an application which may be submitted by the State Executive Director.

(3) DASCO, or a designee, shall approve or disapprove applications of State committee members and the State Executive Director.

(4) All applications forwarded to a higher authority for consideration shall be accompanied by committee recommendations. No application shall be approved unless the owner meets all eligibility requirements. Information furnished by the applicant and any other information, including knowledge of the county and State committee members concerning the owner's normal operations, shall be taken into consideration in making recommendations and approvals. If information furnished by the owner is incomplete or ambiguous and sufficient information is not otherwise available with respect to the owner's farming operations in order to make a determination as to the owner's eligibility, the owner's application shall not be approved until sufficient additional information is provided by the owner.

(5) An applicant shall be notified in writing of the action taken with respect to an application by the approving official.

§ 1478.8 Obligations of an eligible owner.

(a) Eligible owners must submit a request for assistance on a form approved by CCC and must also submit all documentation requested by the approving official which is necessary to make all determinations specified in this part.

(b) Eligible owners must: (1) Comply with all terms and conditions of this part; (2) execute all required documents; and (3) comply with all applicable noxious weed laws.

(c) In the event of a determination by CCC that a person was erroneously determined to be eligible or has become ineligible for all or part of a payment made under this part for any reason, including a failure to comply with the terms and conditions of this part, such person shall refund any payment paid under this part together with interest. Such interest shall be charged at the rate determined for late payment charges under 7 CFR Part 1403 and computed from the date of disbursement by CCC of the payment to the date of the refund.

§ 1478.9 Payment limitation.

No person, as determined under Part 795 of this title, shall receive more than $25,000 of payments under this part.

§ 1478.10 Liens and Claims of Creditors; Set-offs.

Any payment on portion thereof due any person under this part shall be allowed without regard to questions of title under State law, and without regard to any claim or lien in favor of any person except agencies of the U.S. Government. The regulations governing set-offs and withholdings found at Part 13 of this title shall be applicable to this part.

§ 1478.11 Appeals.

Any person who is dissatisfied with a determination made with respect to this part may make a request for reconsideration or appeal of such determination in accordance with the appeal regulations set forth at Part 780 of this chapter.

§ 1478.12 Misrepresentation and scheme or device.

A person who is determined by the State committee or the county committee to have:

(a) Adopted any scheme or other device which tends to defeat the purpose of this program;

(b) Made any fraudulent representation; or

(c) Misrepresented any fact affecting a program determination shall be ineligible to receive assistance under this program.

§ 1478.13 Estates, trusts, and minors.

(a) Program documents executed by persons legally authorized to represent estates or trusts will be accepted only if such person furnishes evidence of the authority to execute such documents.

(b) A minor who is an eligible owner shall be eligible for assistance under this subpart only if such person meets one of the following requirements: (1) The right of majority has been conferred on the minor by court proceedings or by statute; (2) a guardian has been appointed to manage the minor's property and the applicable program documents are executed by the guardian; or (3) a bond is furnished under which the surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

§ 1478.14 Death, incompetency, or disappearance.

In the case of death, incompetency or disappearance, of any owner who is eligible to receive assistance in accordance with this part, such person or persons specified in Part 707 of this title may receive such assistance.

§ 1478.15 Other regulations.

The following regulations shall also apply to this part unless otherwise specified in those regulations:

(a) Part 12, Highly Erodible Land and Wetland Conservation;

(b) Part 790, Incomplete Performance Based Upon Action or Advice of an Authorized Representative of the Secretary;

(c) Part 791, Authority to Make Payments When There Has Been a Failure to Comply with the Program;

(d) Part 796, Denial of Program Eligibility for Controlled Substance Violations;

(e) Part 1403, Interest on Delinquent Debt; and

(f) All other parts of the Code of Federal Regulations which are applicable to 7 CFR Part 1478.

§ 1478.16 Paperwork Reduction Act assigned numbers.

The information collection requirements of this part shall be submitted to the Office of Management and Budget (OMB) for purposes of the Paperwork Reduction Act and it is anticipated that an OMB Number will be assigned.

Signed at Washington, DC on October 6, 1988.

Milt Hertz,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 88-23784 Filed 10-11-88; 4:45 pm]

BILLING CODE 3410-05-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

Policy and Procedure for Enforcement Actions; Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement: revision.

SUMMARY: The NRC is publishing revisions to its Enforcement Policy (1) to provide for greater discretion in determining whether to issue a civil penalty for certain licensee-identified and-corrected violations; (2) to provide for higher civil penalties for NRC-identified violations, licensee's failures to take action in response to prior notice of concerns at any of its facilities, and multiple examples of significant violations; (3) to clarify the assessment factors for corrective action, past performance, and duration; (4) to modify the severity level examples involving violations of 10 CFR 50.59 and medical misadministrations; (5) to revise the Transportation and Safeguards supplements; and (6) to make minor deletions and language changes. The Enforcement Policy statement is intended to inform licensees, vendors, and the public of the bases for taking various enforcement actions. The policy is codified as Appendix C to 10 CFR Part 2.

DATES: This revised statement of policy is effective October 13, 1988 while comments on the changes are being received. Submit comments on or before December 12, 1988.

ADDRESSES: Send comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. ATTN: Docketing and Service Branch.

Hand deliver comments to: One White Flint North, 11555 Rockville Pike, Rockville, MD between 7:45 a.m. to 4:15 p.m.

Comments may also be delivered to the NRC Public Document Room, 2120 L Street, NW. between 7:45 a.m. and 4:15 p.m.

Copies of comments may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (301–492–0741).

SUPPLEMENTARY INFORMATION:

Background

The Commission's Enforcement Policy was first issued on September 4, 1980. Since that time, the Enforcement Policy has been revised on a number of occasions, most recently on March 23, 1988 (53 FR 9429). Based on additional experience, the Commission has determined that it is appropriate to make additional changes in its Policy and Procedure for Enforcement Actions. The primary changes being made involve providing greater incentives for licensees to identify and correct violations by decreasing civil penalties for certain of those violations and increasing civil penalties where the licensee fails to identify, prevent, or correct violations, and revising the Transportation and Safeguards supplements of the Enforcement Policy. The Enforcement Policy is codified in 10 CFR Part 2, Appendix C of the Commission's regulations to provide widespread dissemination of this policy. However, the Enforcement Policy is a policy statement and not a regulation. The Commission may accordingly deviate from the Enforcement Policy as is appropriate under the circumstances of a particular case. A similar statement is being added to the Enforcement Policy to avoid any implications that codification of the Policy in the Code of Federal Regulations indicates that the Commission intends that the Enforcement Policy is a binding regulation.

Revisions to the Enforcement Policy

Revisions to the policy now being made are described in the following paragraphs. Only the sections to which changes were made are discussed here. The numbering of the sections tracks the section numbers in the policy.

V.A. Notice of Violation

This section has been changed to provide the staff with the flexibility not to issue a Notice of Violation for inspection findings which involve isolated violations at a Severity Level V. Such violations are by definition of minor regulatory concern. Documentation of the violation in an inspection report or official field notes is sufficient provided corrective action is underway before the inspection ends. "Official field notes" are an alternative to inspection reports used in the materials program for smaller licensees. Given the minor concern with such violations, a formal reply from a licensee is not needed nor is expenditure of agency resources to prepare a Notice of Violation normally warranted. A Notice of Violation may be issued if the violation was willful, if past corrective actions have not been sufficient, or if the circumstances warrant increasing the severity of Level V violations to a higher severity level.

V.B. Civil Penalty

1. Exercise of Discretion (Section V.G)

The current policy in Section V.B. provides that civil penalties are imposed, absent mitigating circumstances, for Severity Level I and II violations but are considered for Severity Level III violations. Section VIII, Responsibilities, provides that the staff has the discretion as to whether or not it should propose a civil penalty after considering the principles in the Enforcement Policy, the technical significance of the violations, and the surrounding circumstances. Thus, the policy as written provides the staff with discretion as to whether or not to propose a civil penalty for a violation at a Severity Level III. However, the NRC practice has been that civil penalties are issued for Severity Level III violations absent mitigating circumstances. The staff may, under appropriate circumstances, classify a violation at a Severity Level IV even if the supplements provide a similar example at a Severity Level III based on the significance and circumstances of the violation because the examples in the supplements are by the policy, examples and not controlling. However, once the determination is made that a violation should be categorized at a Severity Level III, the violation is of significant regulatory concern, and a civil penalty is proposed absent mitigating circumstances unless the staff seeks Commission approval not to issue a penalty.

There are three Severity Level III situations where it may not be appropriate to issue civil penalties in the interest of encouraging licensee identification, reporting, and correction of violations and minimizing the potential to provide disincentives for licensees to identify and correct violations. Accordingly, the policy has been changed in Sections V.B. and V.G. to provide three additional examples for exercising discretion in not proposing civil penalties. This should increase incentives for a licensee to scrutinize its operations at its own initiative.

The first example involves licensee identified and corrected violations where the violation was (1) not reasonably preventable by licensee action in response to a previous regulatory concern or prior notice of a problem within two years of the inspection or since the last two inspections, (2) not willful, and (3) not representative of a breakdown in management controls. This change is intended to avoid penalizing a licensee whose current performance is consistent

with the objectives of the policy, i.e., identifying, reporting, and correcting violations. Under this provision the staff may exercise discretion and not propose a civil penalty for a Severity Level III violation even if the violation existed for an extended duration. This provision would not be used for Severity Level III violations involving release of radioactive material or overexposures in excess of regulatory limits because of the significance of such failures.

The second example involves past violations that are not likely to be identified during routine surveillance or QA activities of a licensee. Many licensees have or are embarking on major voluntary efforts to review past activities. From a safety perspective clearly there are benefits for both a licensee and the public to have past problems such as those involving engineering, design, or installation identified, reported and corrected before a system with deficiencies is called upon to operate. In these cases discretion could be exercised regardless of prior notice, past performance, or duration to avoid disincentives for a licensee who is aggressively pursuing a formal program to identify and correct past problems. If a licensee's program identifies Severity Level III violations, the staff would not intend to subsequently exercise further discretion for similar violations later identified unless the licensee's program is being accelerated to provide assurance that similar significant issues do not exist.

The third example involves additional occurrences of a violation for which enforcement action has been taken. This change is to encourage a licensee, as part of corrective actions, to locate additional violations with the same root cause without the concern that it may be penalized if it identifies additional violations, reports, and corrects them. In applying this example, the staff will consider the reasonableness of the licensee's action, the timeliness of the action, and whether the later violations change the safety significance or character of the initial regulatory concern.

These examples are, as indicated, examples of where discretion may be exercised. Whether or not to exercise the discretion is dependent on the circumstances of the particular case.

In addition to the three additional examples of discretion being provided, the Deputy Executive Director for Regional Operations' authority to not issue a civil penalty, as stated in Section VII of the Policy, based on the merits of the case is restated in this section. This discretion is expected to be used only where application of the guidance in the policy is unwarranted and requires advance notice to the Commission.

2. Mitigating and Escalating Factors

a. Identification and Reporting. This factor is being retitled and changed to permit a penalty to be increased if NRC identifies a violation. This is designed to provide an additional incentive for licensees to identify violations. Given the number of licensees' employees and the limited number of NRC inspectors, Severity Level I, II, or III violations should be identified first by licensees and, therefore, NRC should not be identifying significant violations. Thus, it is appropriate to increase a penalty if NRC identifies the violation. This factor has also been changed to delete the reference to the length of time the violation occurred because that is considered under the duration factor. The issue under this factor is whether a licensee should have reasonably identified the violation earlier.

b. Corrective Action. This factor is being changed to delete the term "unusually." In the past, the policy has been applied to require corrective action to not only be prompt and extensive but to be unusually so before a full 50% mitigation is allowed for corrective action. In some cases there is nothing unusual about the corrective action even though it is clear that prompt and extensive corrective action was taken. This clarification is intended to provide the discretion for 50% mitigation when quality action is taken. Whether or not to grant 50% mitigation will be based primarily on the three factors stated in the policy: Timeliness, initiative, and comprehensiveness. The weight to be given to each of these three elements is dependent on the circumstances of the particular case.

c. Past Performance. In the past the time period for assessing prior performance for a Severity Level III or greater violation has not been specified. The policy has been changed to state that the past two years or the period within the last two inspections, whichever is the longer period, should be the normal interval for considering past performance. This time period should allow sufficient time to determine a performance trend for applying this factor. This time period may be longer (two past inspections rather than one past inspection) than the time period for considering civil penalties for repetitive Severity Level IV violations because some material licensees are inspected at a frequency greater than one year and a longer time period, i.e., two past inspections, is needed to establish a performance trend for those licensees.

In addition, this factor has been changed to provide more flexibility in considering past performance in the assessment process. Currently, past performance focuses on prior performance in the area of concern though overall performance can be considered. The effect of deleting the reference to general area of concern is to permit greater consideration of overall performance. With the change both overall performance and performance in the area of concern may be considered.

d. Prior Notice. This factor has been changed to permit a penalty to be increased up to 100% of the base penalty rather than 50%. This change is being made to provide incentives to respond to notices of safety concerns. If a licensee is put on notice of a problem by its own actions, its responsible employees, industry, or NRC and fails to take action to prevent a Severity Level III violation, then a penalty should be substantially increased.

Another important change to this factor is to consider notice arising out of activities of a licensee at other facilities it controls whether or not under different licenses. This change comes out of the lessons learned from the Tennessee Valley Authority problems but is equally applicable to other reactors and material licensees who hold more than one license or have more than one facility or location. If a licensee is aware of a significant issue at one of its facilities that needs corrective action, NRC expects that the licensee will consider the application of corrective action at all other licensed operations it controls. The failure to act in such a responsible manner will now be the basis for increasing a penalty to provide additional incentives for the licensee to identify and correct its problems. A licensee should not be dependent on the NRC to identify a violation once the licensee has had reasonable notice of a potential problem. This does not mean every similar violation at another facility of the licensee will be cause for escalation. But escalation may occur if it was reasonable to expect the licensee to consider the need for corrective action at its other facilities.

e. Multiple Examples. This factor has been changed to permit a penalty to be increased up to 100% of the base penalty rather than 50%. This change is being made to be able to better reflect the added significance of multiple violations.

f. Duration. The policy has been clarified by making duration a specific factor to consider in the assessment

process and to assign a percentage to be applied to the base amount. This was done to provide greater assurance of uniform application of the duration factor. Section 234 of the Atomic Energy Act of 1954, as amended, provides that continuing violations may receive separate daily assessments. Whether to do so is a function of the circumstances of each case. It is clearly appropriate to have daily assessments where there is willful conduct, i.e., a licensee permitted a violation to continue. In other cases an increased assessment may be warranted based on significance. It is appropriate, for those cases for which a penalty is not assessed on a daily basis, to be able to increase a penalty up to 100% to address the significance of the violation.

It is recognized that a number of factors consider duration. Prior notice does so from the view that the licensee may have had time to avoid a violation from occurring. But that is different from the duration of a violation. When a penalty is not mitigated for licensee identification because of the age of the violation, NRC is focusing attention on the fact that a licensee performing as expected should have identified the violation earlier and not that the violation is more significant because of the length of time the violation existed. Under the duration factor the issue is whether the violation is more significant because of its duration.

V.D. Escalation of Enforcement Sanctions

This section has been changed to delete the reference to progression based on a single license. This is an area where judgment and discretion are required. The policy is changed to maximize the flexibility in this area. As described earlier, the prior notice section of the policy is also being changed to specifically consider the issue of the failure to take corrective action for similar violations at other facilities controlled by a licensee.

V.E. Enforcement Actions Involving Individuals

This section is being clarified to indicate that enforcement action may be taken against an individual's license or against a corporate license that may impact an individual where the person's conduct places into question NRC's reasonable assurance that licensed activities will be properly conducted. Actionable conduct includes matters that raise integrity, competence, fitness for duty, or other issues that may not necessarily be a violation of Commission requirements. Also added in this section is a provision to indicate that action would not be taken for a willful violation in an emergency provided the standards of 10 CFR 50.54(x) are met.

V.G. Discretion

In addition to the changes already described, this section is being changed to clarify that where discretion is exercised to not issue a Notice of Violation, the violation will be described in an inspection report or official field notes. This will assist the agency in tracking repetitive concerns for purposes of past performance.

VIII. Responsibilities

The change in this section clarifies that judgment is exercised in issuing Notices of Violations as well as civil penalties. For example, while most violations result in at least a Notice of Violation, discretion may be exercised in developing the particular citation to use including the number of examples of the violation to be included in the citation and the legal requirement violated. In addition, discretion may be exercised in determining whether there is sufficient evidence to issue a citation. Similarly, discretion may be exercised in determining the appropriate severity level after considering the guidance in the supplements which are examples and not controlling. For example, it may be appropriate to categorize an overexposure violation resulting from a "hot particle" at a lower severity level than described for the level of exposure because of the significance of the particular exposure.

The last sentence of footnote 5 has been deleted because it is not needed in the policy. Should there be additional delegation to Regional Offices, the policy can be changed at that time.

Supplement I—Reactor Operations

Example C.6. involving violations of 10 CFR 50.59 has been changed to clearly indicate that a licensee who violates that requirement and operates in an unanalyzed condition may be subject to a Severity Level III citation even if, after the fact, it turns out that an unreviewed safety question or a conflict with a technical specification does not exist. This is designed to capture the circumstances where a reasonable engineer would need to perform an evaluation before concluding that an unreviewed safety question or a conflict with a technical specification did not exist but did not do the evaluation.

A change also has been made to this supplement as well as Supplements III, Safeguards, IV, Health Physics, V, Transportation, and VI, Fuel Cycle and Material Programs to provide an express example of a Severity Level III problem for multiple or recurring violations that collectively reflect a potentially significant lack of attention or carelessness toward licensed responsibilities. Although the practice of grouping a number of violations individually which may be of minor concern but collectively are of a significant regulatory concern is permitted under the existing Enforcement Policy, express examples illustrating this practice may be helpful.

Supplement III—Safeguards

This supplement has been extensively rewritten to provide more flexibility to address the significance of safeguards violations. In addition, similar examples of different severity levels for types of violations have been added. The most significant change is to address the area of access control violations which is one of the most frequent issues, resulting in escalated enforcement action in the safeguards area. The significance of an access control problem is a function of the ease of exploitation. The policy has been changed to consider the predictability, identifiability, and ease of passage of the vulnerability demonstrated by the violation in determining the severity level of an access control violation. Predictability refers to a vulnerability that lasts for a long period of time (and is known to exist) or if it recurs with some predictable regularity or schedule, allowing the potential intruder to know when to attempt the penetration. Identifiability refers to the ease with which an observer can (1) see the opening, and (2) know that it leads somewhere advantageous to a saboteur. Ease of passage refers to the structure of the opening, whether the potential intruder can maneuver himself/herself along the interior of the pathway to gain access to the area, and includes the environment of the opening, i.e., whether there is continuous flushing or some other environmental factor that makes the pathway inhospitable to humans.

Supplement V—Transportation

This supplement has been changed to make the radiation levels and contamination levels more consistent with the health physics examples in Supplement IV. In addition, flexibility has been added to address violations associated with shipping papers, labeling, and packaging. Examples have been added for Severity Level IV violations to indicate that failure to register as an authorized user of NRC-Certified Transport packages or to assure that packages meet applicable

requirements are more than a minor regulatory concern.

Supplement VI—Fuel Cycle and Materials Program

This supplement has been changed to provide that multiple errors that result in diagnostic misadministrations or a recurrent violation that results in a diagnostic misadministration may be categorized at a Severity Level III. This change is being made to emphasize the need to comply with requirements in order to avoid unnecessary and unsuspected exposures to the public.

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552, the NRC is adopting the following statement of policy as Appendix C to 10 CFR Part 2.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for Part 2 is revised to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552. Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 186, 234, 68 Stat. 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 and Table 1A of Appendix C also issued under Sections 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Appendix A also issued under sec. 6, Pub. L. 91–580, 84 Stat. 1473 (42 U.S.C. 2135). Appendix B also issued under sec. 10, Pub. L. 99–240, 99 Stat. 1842 (42 U.S.C. 2021b *et seq.*).

2. Appendix C to Part 2 is revised to read as follows:

Appendix C—General Statement of Policy and Procedure for NRC Enforcement Actions

The following statement of general policy and procedure explains the enforcement policy and procedures of the U.S. Nuclear Regulatory Commission and its staff in initiating enforcement actions, and of presiding officers, the Atomic Safety and Licensing Appeal Boards, and the Commission in reviewing these actions. This statement is applicable to enforcement in matters involving the public health and safety, the common defense and security, and the environment.[1] This statement of general policy and procedure is published in the Code of Federal Regulations to provide widespread dissemination of the Commissions Enforcement Policy. However, this is a policy statement and not a regulation. The Commission may deviate from this statement of policy and procedure as is appropriate under the circumstances of a particular case.

I. Introduction and Purpose

The purpose of the NRC enforcement program is to promote and protect the radiological health and safety of the public, including employees' health and safety, the common defense and security, and the environment by:

- Ensuring compliance with NRC regulations and license conditions;
- Obtaining prompt correction of violations and adverse quality conditions which may affect safety;
- Deterring future violations and occurrences of conditons adverse to quality; and
- Encouraging improvement of licensee and vendor [1a] performance, and by example, that of industry, including the prompt identification and reporting of potential safety problems.

Consistent with the purpose of this program, prompt and vigorous enforcement action will be taken when dealing with licensees or vendors who do not achieve the necessary meticulous attention to detail and the high standard of compliance which the NRC expects. Each enforcement action is dependent on the circumstances of the case and requires the exercise of discretion after consideration of these policies and procedures. In no case, however, will licensees who cannot achieve and maintain adequate levels of protection be permitted to conduct licensed activities.

II. Statutory Authority and Procedural Framework

A. Statutory Authority

The NRC's enforcement jurisdiction is drawn from the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act (ERA) of 1974, as amended.

Section 161 of the Atomic Energy Act authorizes NRC to conduct inspections and investigations and to issue orders as may be necessary or desirable to promote the common defense and security or to protect health or to minimize danger to life or property. Section 186 authorizes NRC to revoke licenses under certain circumstances (e.g., for material false statements, in response to conditions that would have warranted refusal of a license on an original application, for a licensee's failure to build or operate a facility in accordance with the terms of the permit or license, and for violation of an NRC regulation). Section 234 authorizes NRC to impose civil penalties not to exceed $100,000 per violation per day for the violation of certain specified licensing provisions of the Act, rules, orders, and license terms implementing these provisions, and for violations for which licenses can be revoked. In addition to the enumerated provisions in section 234, sections 84 and 147 authorize the imposition of civil penalties for violations of regulations implementing those provisions. Section 232 authorizes NRC to seek injunctive or other equitable relief for violation of regulatory requirements.

Section 206 of the Energy Reorganization Act authorizes NRC to impose civil penalties for knowing and conscious failures to provide certain safety information to the NRC.

Chapter 18 of the Atomic Energy Act provides for varying levels of criminal penalties (i.e., monetary fines and imprisonment) for willful violations of the Act and regulations or orders issued under sections 65, 161(b), 161(i), or 161(o) of the Act. Section 223 provides that criminal penalties may be imposed on certain individuals employed by firms constructing or supplying basic components of any utilization facility if the individual knowingly and willfully violates NRC requirements such that a basic component could be significantly impaired. Section 235 provides that

[1] Antitrust enforcement matters will be dealt with on a case-by-case basis.

[1a] The term "vendor" means a supplier of products or services to be used in an NRC-licensed facility or activity.

criminal penalties may be imposed on persons who interfere with inspectors. Section 236 provides that criminal penalties may be imposed on persons who attempt to or cause sabotage at a nuclear facility or to nuclear fuel. Alleged or suspected criminal violations of the Atomic Energy Act are referred to the Department of Justice for appropriate action.

B. Procedural Framework

Subpart B of 10 CFR Part 2 of NRC's regulations sets forth the procedures the NRC uses in exercising its enforcement authority. 10 CFR 2.201 sets forth the procedures for issuing notices of violation.

The procedure to be used in assessing civil penalties is set forth in 10 CFR 2.205. This regulation provides that the appropriate NRC Office Director initiates the civil penalty process by issuing a notice of violation and proposed imposition of a civil penalty. The licensee is provided an opportunity to contest in writing the proposed imposition of a civil penalty. After evaluation of the licensee's response, the Director may mitigate, remit, or impose the civil penalty. An opportunity is provided for a hearing if a civil penalty is imposed.

The procedure for issuing an order to show cause why a license should not be modified, suspended, or revoked or why such other action should not be taken is set forth in 10 CFR 2.202. The mechanism for modifying a license by order is set forth in 10 CFR 2.204. These sections of Part 2 provide an opportunity for a hearing to the affected licensee. However, the NRC is authorized to make orders immediately effective if the public health, safety or interest so requires or, in the case of an order to show cause, if the alleged violation is willful.

III. Severity of Violations

Regulatory requirements [2] have varying degrees of safety, safeguards, or environmental significance. Therefore, the relative importance of each violation must be identified as the first step in the enforcement process.

Consequently, violations are categorized in terms of five levels of severity to show their relative importance within each of the following eight activity areas:

I. Reactor Operations;
II. Facility Construction;
III. Safeguards;
IV. Health Physics;
V. Transportation;
VI. Fuel Cycle and Materials Operations;
VII. Miscellaneous Matters; and
VIII. Emergency Preparedness.

Licensed activities not directly covered by one of the above listed areas, e.g., export license activities, will be placed in the activity area most suitable in light of the particular violation involved. Within each activity area, Severity Level I has been assigned to violations that are the most significant and Severity Level V violations are the least significant. Severity Level I and II violations are of very significant regulatory concern. In general, violations that are included in these severity categories involve actual or high potential impact on the public. Severity Level III violations are cause for significant concern. Severity Level IV violations are less serious but are of more than minor concern; i.e., if left uncorrected, they could lead to a more serious concern. Severity Level V violations are of minor safety or environmental concern.

Comparisons of significnce between activity areas are inappropriate. For example, the immediacy of any hazard to the public associated with Severity Level I violations in Reactor Operations is not directly comparable to that associated with Severity Level I violations in Reactor Construction. While examples are provided in Supplements I through VIII for determining the appropriate severity level for violations in each of the eight acitivity areas, the examples are neither exhaustive nor controlling.

These examples do not create new requirements. Each is designed to illustrate the significance which the NRC places on a particular type of violation of NRC requirements. Each of the examples in the supplements is predicated on a violation of a regulatory requirement.

In each case, the severity of a violation will be characterized at the level best suited to the significance of the particular violation. In some cases, violations may be evaluated in the aggregate and a single severity level assigned for a group of violations.

The severity level of a violation may be increased if the circumstances surrounding the matter involve careless disregard of requirements, deception, or other indication of willfulness. The term "willfullness" as used here embraces a spectrum of violations ranging from deliberate intent to violate or falsify to and including careless disregard for requirements. Willfulness does not include acts which do not rise to the level of careless disregard, e.g., inadvertent clerical errors in a document submitted to the NRC. In determining the specific severity level of a violation involving willfulness, consideration will be given to such factors as the position of the person involved in the violation (e.g., first-line supervisor or senior manager), the significance of any underlying violation, the intent of the violator (i.e., negligence not amounting to careless disregard, careless disregard, or deliberateness), and the economic advantage, if any, gained as a result of the violation. The relative weight given to each of these factors in arriving at the appropriate severity level will be dependent on the circumstances of the violation.

The NRC expects licensees to provide full, complete, timely, and accurate information and reports. Accordingly, unless otherwise categorized in the Supplements, the severity level of a violation involving the failure to make a required report to the NRC will be based upon the significance of and the circumstances surrounding the matter that should have been reported. A licensee will not normally be cited for a failure to report a condition or event unless the licensee was actually aware of the condition or event which it failed to report. However, the severity level of an untimely report, in contrast to no report, may be reduced depending on the circumstances surrounding the matter.

IV. Enforcement Conferences

Whenever the NRC has learned of the existence of a potential violation for which a civil penalty or other escalated enforcement action may be warranted, or recurring nonconformance on the part of a vendor, the NRC will normally hold an enforcement conference with the licensee or vendor prior to taking enforcement action. The NRC may also elect to hold an enforcement conference for other violations, e.g., Severity Level IV violation which, if repeated, could lead to escalated enforcement action. The purpose of the enforcement conference is to (1) discuss the violations or nonconformance, their significance and causes, and the licensee's or vendor's corrective actions, (2) determine whether there are any aggravating or mitigating circumstances, and (3) obtain other information which will help determine the appropriate enforcement action.

In addition, during the enforcement conference, the licensee or vendor will be given an opportunity to explain to the NRC what corrective actions (if any)

[2] The term "requirement" as used in this policy means a legally binding requirement such as a statute, regulation, license condition, technical specification, or order.

were taken or will be taken following discovery of the potential violation or nonconformance. Licensees or vendors will be told when a meeting is an enforcement conference. Enforcement conferences will not normally be open to the public.

When needed to protect the public health and safety or common defense and security, escalated enforcement action, such as the issuance of an immediately effective order modifying, suspending, or revoking a license, will be taken prior to the enforcement conference. In such cases, an enforcement conference may be held after the escalated enforcement action is taken.

V. Enforcement Actions

This section describes the enforcement sanctions available to NRC and specifies the conditions under which each may be used. The basic sanctions are notices of violaton, civil penalties, and orders of various types. Additionally, related administrative mechanisms such as bulletins and confirmatory action letters, notices of nonconformance and notices of deviation are used to supplement the enforcement program. In selecting the enforcement sanctions to be applied, NRC will consider enforcement actions taken by other Federal or State regulatory bodies having concurrent jurisdiction, such as in transportation matters. Usually whenever a violation of NRC requirements is identified, enforcement action is taken. The nature and extent of the enforcement action is intended to reflect the seriousness of the violation involved. For the vast majority of violations, action by an NRC regional office is appropriate in the form of a Notice of Violation requiring a formal response from the recipient describing its corrective actions. In situations involving nonconformance on the part of vendor, a Notice of Nonconformance will be issued. The relatively small number of cases involving elevated enforcement action receives substantial attention by the public, and may have significant impact on the licensee's operation. These elevated enforcement actions include civil penalties; orders modifying, suspending or revoking licenses; or orders to cease and desist from designated activities.

A. Notice of Violation

A notice of violation is a written notice setting forth one or more violations of a legally binding requirement. The notice normally requires the recipient to provide a written statement describing (1) corrective steps which have been taken and the results achieved; (2) corrective steps which will be taken to prevent recurrence; and (3) the date when full compliance will be achieved. NRC may require responses to notices of violation to be under oath. Normally, responses under oath will be required only in connection with civil penalties and orders.

NRC uses the notice of violation as the standard method for formalizing the existence of a violation. A notice of violation is normally the only enforcement action taken, except in cases where the criteria for civil penalties and orders, as set forth in Sections V.B and V.C, respectively, are met. In such cases, the notice of violation will be issued in conjunction with the elevated actions.

However, violation findings warranting the exercise of discretion under Section V.G.1 will generally not result in a Notice of Violation. In addition, for isolated Severity Level V violations, a notice of violation normally will not be issued regardless of who identifies the violation provided that the licensee has initiated appropriate corrective action before the inspection ends. In these situations, a formal response from the licensee is not required and the inspection report or official field notes serves to document the violations and the corrective actions. However, a notice of violation will normally be issued for willful violations, if past corrective actions for similar violations have not been sufficient to prevent recurrence, or if the circumstances warrant increasing the severity of Level V violations to a higher severity level.

Licensees are not ordinarily cited for violations resulting from matters not within their control, such as equipment failures that were not avoidable by reasonable licensee quality assurance measures or management controls. Generally, however, licensees are held responsible for the acts of their employees. Accordingly, this policy should not be construed to excuse personnel errors.

B. Civil Penalty

A civil penalty is a monetary penalty that may be imposed for violation of (a) certain specified licensing provisions of the Atomic Energy Act or supplementary NRC rules or orders, (b) any requirement for which a license may be revoked, or (c) reporting requirements under Section 206 of the Energy Reorganization Act. Civil penalties are designed to emphasize the need for lasting remedial action and to deter future violations.

Civil penalties are proposed absent mitigating circumstances for Severity Level I and II violations, are considered for Severity Level III violations, and may be imposed for Severity Level IV violations that are similar [3] to previous violations for which the licensee did not take effective corrective action.

In applying this guidance for Severity Level III violations, NRC may, notwithstanding the mitigating and escalating factors in this section, refrain from proposing a civil penalty for violations that warrant the exercise of discretion under Section V.G. As to Severity Level IV violations, NRC normally considers civil penalties only for similar Severity Level IV violations that occur after the date of the last inspection or within two years, whichever period is greater.

Civil penalties will normally be assessed for knowing and conscious violations of the reporting requirements of Section 206 of the Energy Reorganization Act, and for any willful violation of any Commission requirement including those at any severity level.

NRC imposes differnt levels of penalties for different severity level violations and different classes of licensees. Tables 1A and 1B show the basic civil penalties for various reactor, fuel cycle, and materials programs. The structure of these tables generally takes into account the gravity of the violation as a primary consideration and the ability to pay as a secondary consideration. Generally, operations involving greater nuclear material inventories and greater potential consequences to the public and licensee employees receive higher civil penalties. Regarding the secondary factor of ability of various classes of licensees to pay the civil penalties, it is not the NRC's intention that the economic impact of a civil penalty be such that it puts a licensee out of business (orders, rather than civil penalties, are used when the intent is to terminate licensed activities) or adversely affects a licensee's ability to safely conduct licensed activities. The deterrent effect of civil penalties is best served when the amount of such penalties take into account a licensee's "ability to pay." In determining the amounts of civil penalties for licensees for whom the tables do not reflect the ability to pay, NRC will consider as necessary an

[3] The word "similar," as used in this policy, refers to those violations which could have been reasonably expected to have been prevented by the licensee's corrective action for the previous violation.

increase or decrease on a case-by-case basis.

NRC attaches great importance to comprehensive licensee programs for detection, correction, and reporting of problems that may constitute, or lead to, violation of regulatory requirements. This is emphasized by giving credit for effective licensee audit programs when licensees find, correct, and report problems expeditiously and effectively. To encourage licensee self-identification and correction of violations and to avoid potential concealment of problems of safety significance, application of the adjustment factors set forth below may result in no civil penalty being assessed for violations which are identified, reported (if required), and effectively corrected by the licensee.

On the other hand, ineffective licensee programs for problem identification or correction are unacceptable. In cases involving willfulness, flagrant NRC-identified violations, repeated poor performance in an area of concern, or serious breakdown in management controls, NRC intends to apply its full enforcement authority where such action is warranted, including issuing appropriate orders and assessing civil penalties for continuing violations on a per day basis, up to the statutory limit of $100,000 per violation, per day. In this regard, while management involvement, direct or indirect, in a violation may lead to an increase in the civil penalty, the lack of such involvement may not be used to mitigate a civil penalty.

Allowance of mitigation could encourage lack of management involvement in licensed activities and a decrease in protection of the public health and safety.

NRC reviews each proposed civil penalty case on its own merits and adjusts the base civil penalty values upward or downward appropriately. Tables 1A and 1B identify the base civil penalty values for different severity levels, activity areas, and classes of licensees. After considering all relevant circumstances, adjustments to these values may be made for the factors described below:

1. Identification and Reporting

Reduction of up to 50% of the base civil penalty shown in Table 1 may be given when a licensee identifies the violation and promptly reports the violation to the NRC. In weighing this factor, consideration will be given to, among other things, the opportunity available to discover the violation, the ease of discovery and the promptness and completeness of any required report. No consideration will be given to a reduction in penalty if the licensee does not take immediate action to correct the problem upon discovery. On the other hand, the base penalty may be increased by as much as 50% if the NRC identifies the violation provided the licensee should have reasonably discovered the violation before the NRC identified it.

2. Corrective Action To Prevent Recurrence

Recognizing that corrective action is always required to meet regulatory requirements, the promptness and extent to which the licensee takes corrective action, including actions to prevent recurrence, may result in up to a 50% increase or decrease in the base civil penalty shown in Table 1. For example, very extensive corrective action may result in reducing the proposed civil penalty as much as 50% of the base value shown in Table 1. On the other hand, the civil penalty may be increased as much as 50% of the base value if initiation of corrective action is not prompt or if the corrective action is only minimally acceptable. In weighing this factor, consideration will be given to, among other things, the timeliness of the corrective action, degree of licensee initiative, and comprehensiveness of the corrective action—such as whether the action is focused narrowly to the specific violation or broadly to the general area of concern.

3. Past Performance

Reduction by as much as 100% of the base civil penalty shown in Table 1 may be given for prior good performance. On the other hand, the base civil penalty may be increased as much as 100% for prior poor performance.

In weighing this factor, consideration will be given to, among other things, the effectiveness of previous corrective action for similar problems, overall performance such as Systematic Assessment of Licensee Performance (SALP) evaluations for power reactors, and prior performance including Severity Level IV and V violations in the area of concern. For example, failure to implement previous corrective action for prior similar problems may result in an increase in the civil penalty. For purpose of assessing past performance, violations within the past two years of the inspection at issue or the period within the last two inspections whichever is longer will be considered.

4. Prior Notice of Similar Events

The base civil penalty may be increased as much as 100% for cases where the licensee had prior knowledge of a potential problem as a result of a licensee review, a specific NRC or industry notifications or other reasonable indication of a potential problem, and had failed to take effective preventive steps. Prior notice may include findings of NRC, the licensee, or industry made at other facilities of the licensee where it is reasonable to expect the licensee to take action to prevent similar problems at the facility subject to the enforcement action at issue.

5. Multiple Occurrences

The base civil penalty may be increased as much as 100% where multiple examples of a particular violation are identified during the inspection period.

6. Duration

The duration of a violation may also be considered in assessing a civil penalty. A greater civil penalty may be imposed if a violation continues for more than a day. For example:

(1) If a licensee is aware of the existence of a condition which results in an ongoing violation and fails to initiate corrective action, each day the condition existed may be considered as a separate violation and, as such, subject to a separate additional civil penalty.

(2) If a licensee (a) is unaware of a condition resulting in a continuing violation, but clearly should have been aware of the condition or (b) had an opportunity to correct the condition but failed to do so, a separate violation and attendant civil penalty may be considered for each day that the licensee clearly should have been aware of the condition or had an opportunity to correct the condition, but failed to do so.

(3) Alternatively, whether or not a licensee is aware or clearly should have been aware of a violation that continues for more than one day, the base civil penalty may be increased as much as 100% to reflect the added significance resulting from the duration of the violation.

The above factors are additive. However, in no instance will a civil penalty for any one violation exceed $100,000 per day.

The Tables and the mitigating factors determine the civil penalties which may be assessed for each violation. However, to focus on the fundamental underlying causes of a problem for which enforcement action appears to be warranted, the cumulative total for all violations which contributed to or were unavoidable consequences of that problem may be based on the amount shown in the table for a problem of that Severity Level, as adjusted. If an evaluation of such multiple violations shows that more than one fundamental

problem is involved, each of which, if viewed independently, could lead to civil penalty action by itself, then separate civil penalties may be assessed for each such fundamental problem. In addition, the failure to make a required report of an event requiring such reporting is considered a separate problem and will normally be assessed a separate civil penalty, if the licensee is aware of the matter that should have been reported.

TABLE 1A.—BASE CIVIL PENALTIES

	Plant operations, construction, health physics and EP	Transportation		
		Safeguards	Greater than type A quantity [1]	Type A quantity or less [2]
a. Power reactors	$100,000	$100,000	$100,000	$5,000
b. Test reactors	10,000	10,000	10,000	2,000
c. Research reactors and critical facilities	5,000	5,000	5,000	1,000
d. Fuel fabricators and industrial processors [3]	25,000	[4] 100,000	25,000	5,000
e. Mills and uranium conversion facilities	10,000	.....	5,000	2,000
f. Industries users of material [5]	10,000	.....	5,000	2,000
g. Waste disposal licensees	10,000	.....	5,000	2,000
h. Academic or medical institutions [6]	5,000	.....	2,500	1,000
i. Independent spent fuel and monitored retrievable storage installations	25,000	100,000	25,000	5,000
j. Other material licensees	1,000	.....	2,500	1,000

[1] Includes irradiated fuel, high level waste, unirradiated fissile material, and any other quantities requiring Type B packaging.
[2] Includes low specific activity waste (LSA), low level waste, Type A packages, and excepted quantities and articles.
[3] Large firms engaged in manufacturing or distribution of byproduct, source, or special nuclear material.
[4] This amount refers to Category 1 licensees (as defined in 10 CFR 73.2). Licensed fuel fabricators not authorized to possess Category 1 material have a base penalty amount of $50,000.
[5] Includes industrial radiographers, nuclear pharmacies, and other industrial users.
[6] This applies to nonprofit institutions not otherwise categorized under sections "a" through "g" in this table.

TABLE 1B.—BASE CIVIL PENALTIES

Severity Level	Base Civil Penalty Amount (Percent of amount listed in Table 1A)
I	100
II	80
III	50
IV	15
V	5

C. Orders

An order is a written NRC directive to modify, suspend, or revoke a license; to cease and desist from a given practice or activity; or to take such other action as may be proper (*see* 10 CFR 2.202 and 2.204). Orders may be issued as follows. Orders may also be issued in lieu of, or in addition to, civil penalties, as appropriate.

(1) License Modification Orders are issued when some change in licensee equipment, procedures, or management controls is necessary.

(2) Suspension Orders may be used:

(a) To remove a threat to the public health and safety, common defense and security, or the environment;

(b) To stop facility construction when (i) further work could preclude or significantly hinder the identification or correction of an improperly constructed safety-related system or component, or (ii) the licensee's quality assurance program implementation is not adequate to provide confidence that construction activities are being properly carried out;

(c) When the licensee has not responded adequately to other enforcement action;

(d) When the licensee interferes with the conduct of an inspection or investigation; or

(e) For any reason not mentioned above for which license revocation is legally authorized.

Suspensions may apply to all or part of the licensed activity. Ordinarily, a licensed activity is not suspended (nor is a suspension prolonged) for failure to comply with requirements where such failure is not willful and adequate corrective action has been taken.

(3) Revocation Orders may be used:

(a) When a licensee is unable or unwilling to comply with NRC requirements,

(b) When a licensee refuses to correct a violation,

(c) When a licensee does not respond to a notice of violation where a response was required,

(d) When a licensee refuses to pay a fee required by 10 CFR Part 170, or

(e) For any other reason for which revocation is authorized under section 186 of the Atomic Energy Act (e.g., any condition which would warrant refusal of a licensee on an original application).

(4) Cease and Desist Orders are typically used to stop an unauthorized activity that has continued after notification by NRC that such activity is unauthorized.

Orders are made effective immediately, without prior opportunity for hearing, whenever it is determined that the public health, interest, or safety so requires, or when the order is responding to a violation involving willfulness. Otherwise, a prior opportunity for a hearing on the order is afforded. For cases in which the NRC believes a basis could reasonably exist for not taking the action as proposed, the licensee will ordinarily be afforded an opportunity to show cause why the order should not be issued in the proposed manner.

D. Escalation of Enforcement Sanctions

NRC considers violations of Severity Level I, II, or III to be serious. If serious violations occur, NRC will, where necessary, issue orders in conjunction with civil penalties to achieve immediate corrective actions and to deter further recurrence of serious violations. NRC carefully considers the circumstances of each case in selecting and applying the sanction(s) appropriate to the case in accordance with the criteria described in Sections V.B and V.C.

Examples of enforcement actions that could be taken for similar Severity Level I, II, or III violations are set forth in Table 2. The actual progression to be used in a particular case will depend on the circumstances. However, enforcement sanctions will normally escalate for recurring similar violations.

TABLE 2.—EXAMPLES OF PROGRESSION OF ESCALATED ENFORCEMENT ACTIONS FOR SIMILAR VIOLATIONS IN THE SAME ACTIVITY AREA UNDER THE SAME LICENSE

Severity of violation	Number of similar violations from the date of the last inspection or within the previous two years (whichever period is greater)		
	1st	2nd	3rd
I	a+b	a+b+c	d
II	a	a+b	a+b+c
III		a	a+b

a. Civil penalty.
b. Suspension of affected operations until the Office Director is satisfied that there is reasonable assurance that the licensee can operate in compliance with the applicable requirements; or modification of the license, as appropriate.
c. Show cause for modification or revocation of the license, as appropriate.
d. Further action, as appropriate.

E. Enforcement Actions Involving Individuals

Enforcement actions involving individuals, including licensed operators, are significant personnel actions, which will be closely controlled and judiciously applied. An enforcement action will normally be taken only when there is little doubt that the individual fully understood, or should have understood, his or her responsibility; knew, or should have known, the required actions; and knowingly, or with careless disregard (i.e., with more than mere negligence) failed to take required actions which have actual or potential safety significance. Most transgressions of individuals at the level of Severity Level III, IV, or V violations will be handled by citing only the facility licensee.

More serious violations, including those involving the integrity of an individual (e.g., lying to the NRC) concerning matters within the scope of the individual's responsibilities, will be considered for enforcement action against the individual. Action against the individual, however, will not be taken if the improper action by the individual was caused by management failures. The following examples of situations illustrate this concept:

- Inadvertent individual mistakes resulting from inadequate training or guidance provided by the facility licensee.
- Inadvertently missing an insignificant procedural requirement when the action is routine, fairly uncomplicated, and there is no unusual circumstance indicating that the procedures should be referred to and followed step-by-step.
- Compliance with an express direction of management, such as the Shift Supervisor or Plant Manager, resulted in a violation unless the individual did not express his or her concern or objection to the direction.
- Individual error directly resulting from following the technical advice of an expert unless the advice was clearly unreasonable and the licensed individual should have recognized it as such.
- Violations resulting from inadequate procedures unless the individual used a faulty procedure knowing it was faulty and had not attempted to get the procedure corrected.

Examples of situations which could result in enforcement actions against individuals include, but are not limited to, violations which involve:

- Recognizing a violation of procedural requirements and willfully not taking corrective action.
- Willfully performing unauthorizing bypassing of required reactor safety systems.
- Willfully defeating alarms which have safety significance.
- Unauthorized abandoning of reactor controls.
- Inattention to duty such as sleeping, being intoxicated while on duty, or otherwise not meeting requirements for fitness for duty.
- Willfully taking actions that violate Technical Specification Limiting Conditions for Operation (enforcement action for a willful violation will not be taken if the operator meets the standards of 10 CFR 50.54(x), i.e., unless the operator acted unreasonably considering all the relevant circumstances surrounding the emergency.)
- Falsifying records required for NRC regulations or by the facility licensee.
- Willfully failing to take "immediate actions" of emergency procedures.
- Willfully withholding safety significant information rather than making such information known to appropriate supervisory or technical personnel.

Any proposed enforcement action against individuals must be done with the concurrence of the Deputy Executive Director for Regional Operations. The opportunity for an Enforcement Conference with the individual will usually be provided.

Examples of sanctions that may be appropriate against NRC-licensed operators are:

- issuance of a letter of reprimand to be placed in the operator's license file,
- issuance of a Notice of Violation, and
- Suspension for a specified period, modification, or revocation of the license.

The sanctions are listed in escalating order of significance.[4] The particular sanction to be used should be determined on a case-by-case basis.

In addition, NRC may take enforcement action where the conduct of the individual places in question the NRC's reasonable assurance that licensed activities will be properly conducted. The NRC may take enforcement action for reasons that would warrant refusal to issue a license on an original application. Accordingly, enforcement action may be taken regarding matters that raise issues of integrity, competence, fitness for duty, or other matters that may not necessarily be a violation of specific Commission requirements.

In the case of an unlicensed individual, an Order modifying the facility license to require the removal of the individual from all nuclear-related activities for a specified period of time or indefinitely may be appropriate.

F. Reopening Closed Enforcement Actions

If significant new information is received or obtained by NRC which indicates that an enforcement sanction was incorrectly applied, consideration may be given, dependent on the circumstances, to reopening a closed enforcement action to increase or decrease the severity of a sanction or to correct the record. Reopening decisions will be made on a case-by-case basis, are expected to occur rarely, and require the specific approval of the Deputy Executive Director for Regional Operations.

G. Exercise of Discretion

Because the NRC wants to encourage and support licensee initiative for self-identification and correction of problems, NRC may exercise discretion as follows:

[4] Except for individuals subject to civil penalties under section 206 of the Energy Reorganization Act of 1974, as amended, NRC will not normally impose a civil penalty against an individual. However, section 234 of the Atomic Energy Act (AEA) gives the Commission authority to impose civil penalties for violations on "any person." "Person" is broadly defined in section 11s of the AEA to include individuals, a variety of organizations, and any representatives or agents. This gives the Commission authority to impose civil penalties on employees of licensees or on separate entities when a violation of a requirement directly imposed on them is committed.

1. NRC may refrain from issuing a notice of violation for a violation described in an inspection report or official field notes that meets all of the following criteria:

a. It was identified by the licensee;

b. It is normally classified at a Severity Level IV or V;

c. It was reported, if required;

d. It was or will be corrected, including measures to prevent recurrence, within a reasonable time; and

e. It was not a willful violation or a violation that could reasonably be expected to have been prevented by the licensee's corrective action for a previous violation.

2. The NRC may refrain from issuing a notice of violation or a proposed civil penalty for violations described in an inspection report or official field notes that meet all of the following criteria:

a. (i) The NRC has taken significant enforcement action based upon a major safety event contributing to an extended shutdown of an operating reactor or a material licensee (or a work stoppage at a construction site), or the licensee is forced into an extended shutdown or work stoppage related to generally poor performance over a long period; (ii) the licensee has developed and is aggressively implementing during the shutdown a comprehensive program for problem identification and correction; and (iii) NRC concurrence is needed by the licensee prior to restart;

b. Non-willful violations are identified by the licensee as the result of its comprehensive program, or as a result of an employee allegation to the licensee. If NRC identifies the violation, the NRC should determine whether enforcement action is necessary to achieve remedial action;

c. The violations are based upon activities of the licensee prior to the events leading to the shutdown; and

d. The violations would normally not be categorized as higher than Severity Level III violations under the NRC's Enforcement Policy.

3. The NRC may refrain from proposing a civil penalty for a Severity Level III violation not involving an overexposure or release of radioactive material that meets all of the following criteria.

a. It was identified by the licensee and reported;

b. Comprehensive corrective action has been taken or is well underway within a reasonable time following identification;

c. It was not a violation that either (i) was reasonably preventable by the licensee's action in response to a previous regulatory concern identified within the past two years of the inspection or since the last two inspections whichever is longer or (ii) reasonably should have been corrected prior to the violation because the licensee had prior notice of the problem involved; and

d. It was not a willful violation or indicative of a breakdown in management controls.

4. The NRC may refrain from proposing a civil penalty for a Severity Level III violation involving a past problem, such as in engineering, design, or installation, that meets the following criteria:

a. It was identified by a licensee as a result of a licensee's voluntary formal effort such as a Safety System Functional Inspection, Design Reconstitution Program, or other program that has a defined scope and timetable which is being aggressively implemented and reported;

b. Comprehensive corrective action has been taken or is well underway within a reasonable time following identification; and

c. It was not likely to be identified by routine licensee efforts such as normal surveillance or QA activities.

5. If the NRC issues an enforcement action for a violation at a Severity Level III violation and as part of the corrective action for that violation, the licensee identifies other examples of the violation with the same root cause, the NRC may refrain from issuing an additional enforcement action. In determining whether to exercise this discretion, the NRC will consider whether the licensee acted reasonably and in a timely manner appropriate to the safety significance of the initial violation, the comprehensiveness of the corrective action, whether the matter was reported, and whether the additional violation(s) substantially change the safety significance or character of the regulatory concern arising out of the initial violation.

Notwithstanding paragraphs 2, 3, 4, and 5 above, a civil penalty may be proposed when judgment warrants it on the basis of the circumstances of the individual case. For example, civil penalties may be warranted where multiple Severity Level III violations are discovered or where the violation is willful. In addition, as provided in Section VIII, Responsibilities, the Deputy Executive Director for Regional Operations may refrain from issuing a civil penalty or a notice of violation for a Severity Level III violation based on the merits of the case after considering the guidance in this statement of policy and such factors as the age of the violation, the safety significance of the violation, the overall performance of the licensee, and circumstances, if any, that have changed since the violation provided prior notice has been given the Commission. This discretion is expected to be exercised only where application of the normal guidance in the Policy is unwarranted.

H. Related Administrative Actions

In addition to the formal enforcement mechanisms of notices of violation, civil penalties, and orders, NRC also uses administrative mechanisms, such as bulletins, information notices, generic letters, notices of deviation, notices of nonconformance, and confirmatory action letters to supplement its enforcement program. NRC expects licensees and vendors to adhere to any obligations and commitments resulting from these processes and will not hesitate to issue appropriate orders to licensees to make sure that such commitments are met.

(1) Bulletins, Information Notices, and Generic Letters are written notifications to groups of licensees identifying specific problems and recommending specific actions.

(2) Notices of Deviation are written notices describing a licensee's failure to satisfy a commitment where the commitment involved has not been made a legally binding requirement. A notice of deviation requests a licensee to provide a written explanation or statement describing corrective steps taken (or planned), the results achieved, and the date when corrective action will be completed.

(3) Confirmatory Action Letters are letters confirming a licensee's or a vendor's agreement to take certain actions to remove significant concerns about health and safety, safeguards, or the environment.

(4) Notices of Nonconformance are written notices describing non-licensees' failure to meet commitments which have not been made legally binding requirements by NRC. An example is a commitment made in a procurement contract with a licensee as required by 10 CFR Part 50, Appendix B. Notices of Nonconformances request non-licensees to provide written explanations or statements describing corrective steps (taken or planned), the results achieved, the dates when corrective actions will be completed, and measures taken to preclude recurrence.

I. Referrals to Department of Justice

Alleged or suspected criminal violations of the Atomic Energy Act (and of other relevant Federal laws) are referred to the Department of Justice for

investigation. Referral to the Department of Justice does not preclude the NRC from taking other enforcement action under this General Statement of Policy. However, such actions will be coordinated with the Department of Justice to the extent practicable.

VI. Inaccurate and Incomplete Information

A violation of the regulations on submitting complete and accurate information whether or not considered a material false statement, can result in the full range of enforcement sanctions. The labeling of a communication failure as a material false statement will be made on a case-by-case basis and will be reserved for egregious violations. Violations involving inaccurate or incomplete information or the failure to provide significant information identified by a licensee normally will be categorized based on the guidance herein, in Section III "Severity of Violations," and in Supplement VII.

The Commission recognizes that oral information may in some situations be inherently less reliable than written submittals because of the absence of an opportunity for reflection and management review. However, the Commission must be able to rely on oral communications from licensee officials concerning significant information. A licensee official for purposes of application of the Enforcement Policy means a first line supervisor or above as well as a licensed individual, radiation safety officer, or a person listed on a license as an authorized user of licensed material. Therefore, in determining whether to take enforcement action for an oral statement, consideration may be given to such factors as (1) the degree of knowledge that the communicator should have had, regarding the matter, in view of his or her position, training, and experience, (2) the opportunity and time available prior to the communication to assure the accuracy or completeness of the information, (3) the degree of intent or negligence, if any, involved, (4) the formality of the communication, (5) the reasonableness of NRC reliance on the information, (6) the importance of the information which was wrong or not provided, and (7) the reasonableness of the explanation for not providing complete and accurate information.

Absent at least careless disregard, an incomplete or inaccurate unsworn oral statement normally will not be subject to enforcement action unless it involves significant information provided by a licensee official. However, enforcement action may be taken for an unintentionally incomplete or inaccurate oral statement provided to the NRC by a licensee official or others on behalf of a licensee, if a record was made of the oral information and provided to the licensee thereby permitting an opportunity to correct the oral information, such as if a transcript of the communication or meeting summary containing the error was made available to the licensee and was not subsequently corrected in a timely manner.

When a licensee has corrected inaccurate or incomplete information, the decision to issue a citation for the initial inaccurate or incomplete information normally will be dependent on the circumstances, including the ease of detection of the error, the timeliness of the correction, whether the NRC or the licensee identified the problem with the communication, and whether the NRC relied on the information prior to the correction. Generally, if the matter was promptly identified and corrected by the licensee prior to reliance by the NRC, or before the NRC raised a question about the information, no enforcement action will be taken for the initial inaccurate or incomplete information. On the other hand, if the misinformation is identified after the NRC relies on it, or after some question is raised regarding the accuracy of the information, then some enforcement action normally will be taken even if it is in fact corrected. However, if the initial submittal was accurate when made but later turns out to be erroneous because of newly discovered information or advance in technology, a citation normally would not be appropriate if, when the new information became available, the initial submittal was corrected.

The failure to correct inaccurate or incomplete information which the licensee does not identify as significant normally will not constitute a separate violation. However, the circumstances surrounding the failure to correct may be considered relevant to the determination of enforcement action for the initial inaccurate or incomplete statement. For example, an unintentionally inaccurate or incomplete submission may be treated as a more severe matter if the licensee later determines that the initial submittal was in error and does not correct it or if there were clear opportunities to identify the error. If information not corrected was recognized by a licensee as significant, a separate citation may be made for the failure to provide significant information. In any event, in serious cases where the licensee's actions in not correcting or providing information raise questions about its commitment to safety or its fundamental trustworthiness, the Commission may exercise its authority to issue orders modifying, suspending, or revoking the license. The Commission recognizes that enforcement determinations must be made on a case-by-case basis, taking into consideration the issues described above.

VII. Public Disclosure of Enforcement Actions

In accordance with 10 CFR 2.790, all enforcement actions and licensees' responses are publicly available for inspection. In addition, press releases are generally issued for civil penalties and orders. In the case of orders and civil penalties related to violations at Severity Level I, II, or III, press releases are issued at the time of the order or the proposed imposition of the civil penalty. Press releases are not normally issued for Notices of Violation.

VIII. Responsibilities

The Deputy Executive Director for Regional Operations (DEDRO), as the principal enforcement officer of the NRC, has been delegated the authority to issue notices of violations, civil penalties, and orders.[5] Regional Administrators may also issue notices of violation for Severity Level IV and V violations and may sign notices of violation for Severity Level III violations with no proposed civil penalty and proposed civil penalty actions with the concurrence of the DEDRO. In recognition that the regulation of nuclear activities in many cases does not lend itself to a mechanistic treatment, the DEDRO or the Regional Administrator must exercise judgment and discretion in determining the severity levels of the violations and the appropriate enforcement sanctions, including the decision to issue a Notice of Violation, or to propose or impose a civil penalty and the amount of such penalty, after considering the general principles of this statement of policy and the technical significance of the violations and the surrounding circumstances.

[5] The Director, Office of Enforcement, acts for the Deputy Executive Director for Regional Operations in the latter's absence or as directed. The Directors of the Offices of Nuclear Reactor Regulation, Nuclear Material Safety and Safeguards, and Special Projects have also been delegated authority to issue orders, but it is expected that normal use of this authority by NRR, NMSS, and OSP will be confined to actions necessary in the interest of public health and safety. The Director, Office of Administration and Resources Management, has been delegated the authority to issue orders where licensees violate Commission regulations by nonpayment of license fees.

The Commission will be provided written notification of all enforcement actions involving civil penalties or orders. The Commission will be consulted prior to taking action in the following situations (unless the urgency of the situation dictates immediate action):

(1) An action affecting a licensee's operation that requires balancing the public health and safety or common defense and security implications of not operating with the potential radiological or other hazards associated with continued operation;

(2) Proposals to impose civil penalties in amounts greater than 3 times the Severity Level I values shown in Table 1A;

(3) Any proposed enforcement action that involves a Severity Level I violation;

(4) Any enforcement action that involves a finding of a material false statement;

(5) Refraining from taking enforcement action for matters meeting the criteria of Section V.G.2.

(6) Any action the Office Director believes warrants Commission involvement; or

(7) Any proposed enforcement action on which the Commission asks to be consulted.

IX. Vendor Enforcement

The Commission's enforcement policy is also applicable to non-licensees (vendors). Vendors of products or services provided for use in nuclear activities are subject to certain requirements designed to ensure that the products or services supplied that could affect safety are of high quality. Through procurement contracts with reactor licensees, vendors are required to have quality assurance programs that meet applicable requirements including 10 CFR Part 50, Appendix B, and 10 CFR Part 71, Subpart H. Vendors of reactor and materials licensees and Part 71 licensees are subject to the requirements of 10 CFR Part 21 regarding reporting of defects in basic components.

The NRC conducts inspections of reactor licensees to determine whether they are ensuring that vendors are meeting their contractual obligations with regard to quality of products or services that could have an adverse effect on safety. As part of the effort of ensuring that licensees fulfill their obligations in this regard, the NRC inspects reactor vendors to determine if they are meeting their obligations. These inspections include examination of the quality asurance programs and their implementation by the vendors through examination of product quality.

The NRC may also inspect vendors, including suppliers of Part 71 and materials licensees, to determine whether they are complying with Part 21. When inspections determine that violations of NRC requirements have occurred, or that vendors have failed to fulfill contractual commitments that could adversely affect the quality of a safety significant product or service, enforcement action will be taken. Notices of Violation and civil penalties will be used, as appropriate, for licensee failures to ensure that their vendors have programs that meet applicable requirements including Part 21. Notices of Violation will be issued for vendors which violate Part 21. Civil penalties will only be imposed against individual directors or responsible officers of a vendor organization who knowingly and consciously fail to provide the notice required by 10 CFR 21.21(b)(1). Notices of Nonconformance will be used for vendors which fail to meet commitments related to NRC activities.

Supplement I—Severity Categories

Reactor Operations

A. Severity I—Violations involving for example:

1. A Safety Limit, as defined in 10 CFR 50.36 and the Technical Specifications, being exceeded;

2. A system [6] designed to prevent or mitigate a serious safety event not being able to perform its intended safety function [7] when actually called upon to work;

3. An accidential criticality; or

4. Release of radioactivity offsite greater than ten (10) times the Technical Specifications limit.[8]

B. Severity II—Violations involving for example:

1. A system designed to prevent or mitigate serious safety events not being able to perform its intended safety function; or

2. Release of radioactivity offsite greater than five (5) times the Technical Specifications limit.

C. Severity III—Violations involving for example:

1. A significant violation of a Technical Specification Limiting Condition for Operation where the appropriate Action Statement was not satisfied within the time allotted by the Action Statement, such as:

a. In a pressurized water reactor, in the applicable modes, having one high-pressure safety injection pump inoperable for a period in excess of that allowed by the action statement; or

b. In a boiling water reactor, one primary containment isolation valve inoperable for a period in excess of that allowed by the action statement.

2. A system designed to prevent or mitigate a serious safety event not being able to perform its intended function under certain conditions (e.g., safety system not operable unless offsite power is available; materials or components not environmentally qualified);

3. Dereliction of duty on the part of personnel involved in licensed activities;

4. Changes in reactor parameters which cause unanticipated reductions in margins of safety;

5. Release of radioactivity offsite greater than the Technical Specifications limit;

6. A significant failure to meet the requirements of 10 CFR 50.59, including a failure such that a required license amendment was not sought;

7. Licensee failure to conduct adequate oversight of vendors resulting in the use of products or services which are of defective or indeterminate quality and which have safety significance; or

8. Breakdown in the control of licensed activities involving a number of violations that are related or, if isolated, that are recurring violations that collectively represent a potentially significant lack of attention or carelessness toward licensed responsibilities.

D Severity IV—Violations involving for example:

1. A less significant violation of a Technical Specification Limiting Condition for Operation where the appropriate Action Statement was not satisifed within the time allotted by the Action Statement, such as:

a. In a pressurized water reactor, a 5% deficiency in the required volume of the condensate storage tank; or

b. In a boiling water reactor, one subsystem of the two independent MSIV leakage control subsystems inoperable.

2. Failure to meet the requirements of 10 CFR 50.59 that does not result in a Severity Level I, II, or III violation;

3. Failure to meet regulatory requirements that have more than minor safety or environmental significance; or

4. Failure to make a required Licensee Event Report.

E. Severity Level V—Violations that have minor safety or environmental significance.

Supplement II—Severity Categories

Part 50 Facility Construction

A. Severity I—Violations involving a structure or system that is completed [9] in such a manner that it would not have satisfied its intended safety related purpose.

B. Severity II—Violations involving for example:

1. A breakdown in the Quality Assurance (QA) program as exemplified by deficiencies in construction QA related to more than one

[6] "System" as used in these supplements, includes administrative and managerial control systems, as well as physical systems.

[7] "Intended safety function" means the total safety function, and is not directed toward a loss of redundancy. For example, considering a BWR's high pressure ECCS capability, the violation must result in complete invalidation of both HPCI and ADS subsystems. A loss of one subsystem does not defeat the intended safety function as long as the other subsystem is operable.

[8] The Technical Specification limit as used in this Supplement (Items A.4, B.2 and C.5) does not apply to the instantaneous release limit.

[9] "Completed" means completion of construction including review and acceptance by the construction QA organization.

work activity (e.g., structural, piping, electrical, foundations). Such deficiencies normally involve the licensee's failure to conduct adequate audits or to take prompt corrective action on the basis of such audits and normally involve multiple examples of deficient construction or construction of unknown quality due to inadequate program implementation; or

2. A structure or system that is completed in such a manner that it could have an adverse effect on the safety of operations.

C. Severity III—Violations involving for example:

1. A deficiency in a licensee quality assurance program for construction related to a single work activity (e.g., structural, piping, electrical or foundations). Such significant deficiency normally involves the licensee's failure to conduct adequate audits or to take prompt corrective action on the basis of such audits, and normally involves multiple examples of deficient construction or construction of unknown quality due to inadequate program implementation;

2. Failure to confirm the design safety requirements of a structure or system as a result of inadequate preoperational test program implementation; or

3. Failure to make a required 10 CFR 50.55(e) report.

D. Severity IV—Violations involving failure to meet regulatory requirements including one or more Quality Assurance Criterion not amounting to Severity Level I, II, or III violations that have more than minor safety or environmental significance.

E. Severity V—Violations that have minor safety or environmental significance.

Supplement III—Severity Categories

Safeguards

A. Severity I—Violations involving for example:

1. An act of radiological sabotage or actual theft, loss, or diversion of a formula quantity of special nuclear material [10] in which the security system did not function as required; or

2. Actual undetected entry of an unauthorized individual [11] into a vital area [12] from outside the protected area who represents a threat.

B. Severity II—Violations involving for example:

1. Actual theft, loss or diversion of special nuclear material of moderate strategic significance [13] in which the security system did not function as required;

2. Failure or inability to control access such that an unauthorized individual could easily gain undetected access [14] into a vital area from outside the protected area; or

3. Failure to have a security system designed or used to prevent the theft, loss, or diversion of SNM of moderate strategic significance or greater amounts or acts of radiological sabotage.

C. Severity III—Violations involving for example:

1. Failure to conduct an adequate search at the access control point that results in the introduction to the protected area of items that may be useful in radiological sabotage or theft of SNM;

2. Failure or inability to control access such that an unauthorized individual could easily gain undetected access into a vital area from inside the protected area or to the protected area from outside the protected area;

3. Significant failure of the safeguards systems designed or used to prevent or detect the theft, loss, or diversion of SNM or radiological sabotage;

4. Failure to properly secure or protect classified or other sensitive safeguards information which would significantly assist an individual in an act of radiological sabotage or theft of special nuclear material;

5. Significant failure to take compensatory measures for a known security situation that would easily allow unauthorized and undetected access to a protected or vital area;

6. Significant failure to respond to a suspected event in either a timely manner or with an adequate response force; or

7. Breakdown in the security system involving a number of violations that are related or, if isolated, that are recurring violations that collectively reflect a potentially significant lack of attention or carelessness toward licensed responsibilities.

D. Severity IV—Violations involving for example:

1. Failure of a safeguards system designed or used to prevent or detect the theft, loss, or diversion of SNM or radiological sabotage;

2. Failure to respond to a suspected event in either a timely manner or with an adequate response force;

3. Failure to implement 10 CFR Parts 25 and 95 and information addressed under Section 142 of the Act, and the NRC approved security plan relevant to those parts;

4. Failure to make, maintain, or provide log entries in accordance with 10 CFR 73.71 (c) and (d);

5. Failure to conduct a proper search at the access control point;

6. Failure to properly secure or protect classified or other sensitive safeguards information which would not significantly assist an individual in an act of radiological sabotage or theft of special nuclear material;

7. Failure to control access such that an opportunity exists that could allow unauthorized and undetected access into the protected area or from the protected area into a vital area but which was not easily exploitable;

8. Inadequate compensatory measures for a known security situation that could allow unauthorized and undetected access;

9. Failure to properly test a security system; or

10. Other violations that have more than minor safeguards significance.

E. Severity V—Violations that have minor safeguards significance such as:

1. Isolated failure to log a security event in accordance with 10 CFR 73–71(c); or

2. Other violations that have minor safeguards significance.

Supplement IV—Severity Categories

Health Physics 10 CFR Part 20 [15]

A. Severity I—Violations involving for example:

1. Single exposure of a worker in excess of 25 rems of radiation to the whole body, 150 rems to the skin of the whole body, or 375 rems to the feet, ankles, hands, or forearms;

2. Annual whole body exposure of a member of the public in excess of 2.5 rems of radiation;

3. Release of radioactive material to an unrestricted area in excess of ten times the limits of 10 CFR 20.106;

4. Disposal of licensed material in quantities or concentrations in excess of ten times the limits of 10 CFR 20.303; or

5. Exposure of a worker in restricted areas of ten times the limits of 10 CFR 20.103.

B. Severity II—Violations involving for example:

1. Single exposure of a worker in excess of 5 rems of radiations to the whole body, 30 rems to the skin of the whole body, or 75 rems to the feet, ankles, hands or forearms;

2. Annual whole body exposure of a member of the public in excess of 0.5 rems of radiation;

3. Release of radioactive material to an unrestricted area in excess of five times the limits of 10 CFR 20.106;

4. Failure to make an immediate notification as required by 10 CFR 20.403(a)(1) and 10 CFR 20.403(a)(2);

5. Disposal of licensed material in quantities or concentrations in excess of five times the limits of 10 CFR 20.303; or

6. Exposure of a worker in restricted areas in excess of five times the limits of 10 CFR 20.103.

C. Severity III—Violations involving for example:

1. Single exposure of a worker in excess of 3 rems of radiation to the whole body, 7.5 rems to the skin of the whole body, or 18.75 rems to the feet, ankles, hands or forearms;

2. A radiation level in an unrestricted area such that an individual could receive greater than 100 millirem in a one hour period or 500 millirem in any seven consecutive days;

3. Failure to make a 24-hour notification as required by 10 CFR 20.403(b) or an immediate notification required by 10 CFR 20.402(a);

4. Substantial potential for an exposure or release in excess of 10 CFR 20 whether or not such exposure or release occurs (e.g., entry into high radiation areas, such as under reactor vessels or in the vicinity of exposed radiographic sources, without having performed an adequate survey, operation of a radiation facility with a nonfunctioning interlock system);

5. Release of radioactive material to an unrestricted area in excess of the limits of 10 CFR 20.106;

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[10] See 10 CFR 73.2.

[11] An unauthorized individual is someone who was not authorized for entrance into the area in question, or not authorized to enter in the manner entered.

[12] The phrase "vital area" includes vital areas, material access areas, and controlled access areas.

[13] See 10 CFR 73.2.

[14] In determining whether access can be easily gained, factors such as predictability, identifiability, and ease of passage should be considered.

[15] Personnel overexposures and associated violations, incurred during a lifesaving effort, will be treated on a case-by-case basis.

6. Improper disposal for licensed material not covered in Severity Levels I or II;

7. Exposure of a worker in restricted areas in excess of the limits of 10 CFR 20.103;

8. Release for unrestricted use of contaminated or radioactive material or equipment which poses a realistic potential for significant exposure to members of the public, or which reflects a programmatic (rather than isolated) weakness in the radiation control program;

9. Cumulative worker exposure above regulatory limits when such cumulative exposure reflects a programmatic, rather than an isolated weakness in radiation protection;

10. Conduct of licensee activities by a technically unqualified person;

11. Significant failure to control licensed material; or

12. Breakdown in the radiation safety program involving a number of violations that are related or, if isolated, that are recurring that collectively represent a potentially significant lack of attention or carelessness toward licensed responsibilities.

D. Severity IV—Violations involving for example:

1. Exposures in excess of the limits of 10 CFR 20.101 not constituting Severity Level I, II, or III violations;

2. A radiation level in an unrestricted area such that an individual could receive greater than 2 millirem in a one-hour period or 100 millirem in any seven consecutive days;

3. Failure to make a 30-day notification required by 10 CFR 20.405;

4. Failure to make a followup written report as required by 10 CFR 20.402(b), 20.408, and 20.409; or

5. Any other matter that has more than minor safety or environmental significance.

E. Severity V—Violations that have minor safety or environmental significance.

Supplement V—Severity Categories

Transportation[16]

A. Severity I—Violations of NRC transportation requirements involving for example:

1. Annual whole body radiation exposure of a member of the public in excess of 2.5 rems of radiation;

2. Surface contamination in excess of 50 times the NRC limit; or

3. External radiation levels in excess of 10 times the NRC limit.

B. Severity II—Violations of NRC transportation requirements involving for example:

1. Annual whole body exposure of a member of the public in excess of 0.5 rems of radiation;

2. Surface contamination in excess of 10, but not more than 50 times the NRC limit;

3. External radiation levels in excess of five, but not more than 10 times the NRC limit; or

4. Failure to make required initial notifications associated with Severity Level I or II violations.

C. Severity III—Violations of NRC transportation requirements involving for example:

1. Surface contamination in excess of five but not more than 10 times the NRC limit;

2. External radiation in excess of one but not more than five times the NRC limit;

3. Any noncompliance with labeling, placarding, shipping paper, packaging, loading, or other requirements that could reasonably result in the following:

a. Significant failure to identify the type, quantity, or form of material;

b. Failure of the carrier or recipient to exercise adequate controls; or

c. Substantial potential for personnel exposure or contamination, or improper transfer of material;

4. Failure to make required initial notification associated with Severity Level III violations; or

5. Breakdown in the licensee's program for the transportation of licensed material involving a number of violations that are related or, if isolated, that are recurring violations that collectively reflect a potentially significant lack of attention or carelessness toward licensed responsibilities.

D. Severity IV—Violations of NRC transportation requirements involving for example:

1. Breach of package integrity without external radiation levels exceeding the NRC limit or without contamination levels exceeding five times the NRC limits;

2. Surface contamination in excess of but not more than five times the NRC limit;

3. Failure to register as an authorized user of an NRC-Certified Transport packages;

4. Noncompliance with shipping papers, marking, labeling, placarding packaging or loading not amounting to a Severity Level I, II, or III violation;

5. Failure to demonstrate that packages for special form radioactive material meets applicable regulatory requirements;

6. Failure to demonstrate that packages meet DOT Specifications for 7A Type A packages; or

7. Other violations that have more than minor safety or environmental significance.

E. Severity V—Violations that have minor safety or environmental significance.

Supplement VI—Severity Categories

Fuel Cycle and Materials Operations

A. Severity I—Violations involving for example:

1. Radiation levels, contamination levels, or releases that exceed 10 times the limits specified in the license;

2. A system designed to prevent or mitigate a serious safety event not being operable when actually required to perform its design function; or

3. A nuclear criticality accident.

B. Severity II—Violations involving for example:

1. Radiation levels, contamination levels, or releases that exceed five times the limits specified in the license; or

2. A system designed to prevent or mitigate a serious safety event being inoperable.

C. Severity III—Violations involving for example:

1. Failure to control access to licensed materials for radiation purposes as specified by NRC requirements;

2. Possession or use of unauthorized equipment or materials in the conduct of licensee activities which degrades safety;

3. Use of radioactive material on humans where such use is not authorized;

4. Conduct of licensed activities by a technically unqualified person;

5. Radiation levels, contamination levels, or releases that exceed the limits specified in the license;

6. Medical therapeutic misadministration or the failure to report such misadministration;

7. Multiple errors of the same or similar root cause that results in diagnostic misadministrations over the inspection period, or a recurrent violation from the previous inspection period that results in a diagnostic misadministration; or

8. Breakdown in the control of licensed activities involving a number of violations that are related or, if isolated, that are recurring violations that collectively represent a potentially significant lack of attention or carelessness toward licensed responsibilities.

D. Severity IV—Violations involving for example:

1. Failure to maintain patients hospitalized who have cobalt-60, cesium-137, or iridium-192 implants or to conduct required leakage or contamination tests, or to use properly calibrated equipment;

2. Other violations that have more than minor safety or environmental significance; or

3. Medical diagnostic misadministration or a failure to report such a misadministration.

E. Severity V—Violations that have minor safety or environmental significance.

Supplement VII—Severity Categories

Miscellaneous Matters

A. Severity I—Violations involving for example:

1. Inaccurate or incomplete information[17] that is provided to the NRC (a) deliberately with the knowledge of a license official that the information is incomplete or inaccurate, or (b) if the information, had it been complete and accurate at the time provided, likely would have resulted in regulatory action such as an immediate order required by the public health and safety.

2. Incomplete or inaccurate information that the NRC requires be kept by a licensee which is (a) incomplete or inaccurate because of falsification by or with the knowledge of a licensee official, or (b) if the information, had it been complete and accurate when reviewed by the NRC, likely would have resulted in regulatory action such as an immediate order required by public health and safety considerations;

3. Information that the licensee has identified as having significant implications

[16] Some transporation requirements are applied to more than one licensee involved in the same activity such as a shipper and a carrier. When a violation of such a requirement occurs, enforcement action will be directed against the responsible licensee which, under the circumstances of the case, may be one or more of the licensees involved.

[17] In applying the examples in this supplement regarding inaccurate or incomplete information and records, reference also should be made to the guidance in Section VI.

for public health and safety or the common defense and security ("significant information identified by a licensee") and is deliberately withheld from the Commission;

4. Action by senior corporate management in violation of 10 CFR 50.7 or similar regulations against an employee; or

5. A knowing and intentional failure to provide the notice required by Part 21.

B. Severity II—Violations involving for example:

1. Inaccurate or incomplete information which is provided to the NRC (a) by a licensee official because of careless disregard for the completeness or accuracy of the information, or (b) if the information, had it been complete and accurate at the time provided, likely would have resulted in regulatory action such as a show cause order or a different regulatory position;

2. Incomplete or inaccurate information which the NRC requires be kept by a licensee which is (a) incomplete or inaccurate because of careless disregard for the accuracy of the information on the part of a licensee official, or (b) if the information, had it been complete and accurate when reviewed by the NRC, likely would have resulted in regulatory action such as a show cause order or a different regulatory position;

3. "Significant information identified by a licensee" and not provided to the Commission because of careless disregard on the part of a licensee official;

4. Action by plant management above first-line supervision in violation of 10 CFR 50.7 or similar regulations against an employee; or

5. A failure to provide the notice required by Part 21.

C. Severity III—Violations involving for example:

1. Incomplete or inaccurate information which is provided to the NRC (a) because of inadequate actions on the part of licensee officials but not amounting to a Severity Level I or II violation, or (b) if the information, had it been complete and accurate at the time provided, likely would have resulted in a reconsideration of a regulatory position or substantial further inquiry such as an additional inspection or a formal request for information;

2. Incomplete or inaccurate information which the NRC requires be kept by a licensee which is (a) incomplete or inaccurate because of inadequate actions on the part of licensee officials but not amounting to a Severity Level I or II violation, or (b) if the information, had it been complete and accurate when reviewed by the NRC, likely would have resulted in a reconsideration of a regulatory position or substantial further inquiry such as an additional inspection or a formal request for information;

3. Failure to provide "significant information identified by a licensee" to the Commission and not amounting to a Severity Level I or II violation;

4. Action by first-line supervision in violation of 10 CFR 50.7 or similar regulations against an employee; or

5. Inadequate review or failure to review such that, if an appropriate review had been made as required, a Part 21 report would have been made.

D. Severity IV—Violations involving for example:

1. Incomplete or inaccurate information of more than minor significance which is provided to the NRC but not amounting to a Severity Level I, II, or III violation;

2. Information which the NRC requires be kept by a licensee and which is incomplete or inaccurate and of more than minor significance but not amounting to a Severity Level I, II, or III violation; or

3. Inadequate review or failure to review under Part 21 or other procedural violations associated with Part 21 with more than minor safety significance.

E. Severity V—Violations of minor procedural requirements of Part 21.

1. Incomplete or inaccurate information which is provided to the Commission and the incompleteness or inaccuracy is of minor significance;

2. Information which the NRC requires be kept by a licensee which is incomplete or inaccurate and the incompleteness or inaccuracy is of minor significance; or

3. Minor procedural requirements of Part 21.

Supplement VIII—Severity Categories

Emergency Preparedness

A. Severity I—Violations involving for example:

In a general emergency, licensee failure to promptly (1) correctly classify the event, (2) make required notifications to responsible Federal, State, and local agencies, or (3) respond to the event (e.g., assess actual or potential offsite consequences, activate emergency response facilities, and augment shift staff).

B. Severity II—Violations involving for example:

1. In a site area emergency, licensee failure to promptly (1) correctly classify the event, (2) make required notifications to repsonsible Federal, State, and local agencies, or (3) respond to the event (e.g., assess actual or potential offsite consequences, activate emergency response facilities, and augment shift staff); or

2. Licensee failure to meet or implement more than one emergency planning standard involving assessment or notification.

C. Severity III—Violations involving for example:

1. In an alert, licensee failure to promptly (1) correctly classify the event, (2) make required notifications to responsible Federal, State, and local agencies, or (3) respond to the event (e.g., assess actual or potential offsite consequences, activate emergency response facilities, and augment shift staff); or

2. Licensee failure to meet or implement one emergency planning standard involving assessment or notification.

D. Severity IV—Violations involving for example:

Licensee failure to meet or implement any emergency planning standard or requirement not directly related to assessment and notification.

E. Severity V—Violations that have minor safety or environmental significance.

Dated at Rockville, MD, this 6th day of October 1988.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 88-23630 Filed 10-12-88; 8:45 am]

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FARM CREDIT ADMINISTRATION

12 CFR Part 615

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA) adopts final regulations amending 12 CFR Part 615, Subparts H, I, J, K, L, M, and N relating to the capitalization of Farm Credit System (System) banks and associations. The regulations set forth the statutory requirements for capitalization bylaws, requirements for the issuance and retirement of equities in order to qualify as permanent capital, requirements designed to ensure implementation of cooperative principles, disclosure requirements for the issuance of equities, requirements for the retirement of equities, and, for banks for cooperatives (BCs), a minimum requirement for additions to unallocated surplus. The amendments are made necessary by changes in the capitalization provisions of the Farm Credit Act of 1971 (1971 Act), 12 U.S.C. 2001 et seq., made by the Agricultural Credit Act of 1987 (1987 Act), Pub. L. 100-233. These regulations supersede Capital Directive #1 and the FCA hereby rescinds that directive on the effective date of this regulation. The effect of the amendments is to give System institutions greater flexibility in determining their capital structures, to provide minimum guidelines for the issuance and retirement of equities that must be met to assure consistency with law and cooperative principles, and to require appropriate disclosure in connection with the issuance of equities. For BCs, the regulations have the effect of requiring a minimum annual addition to unallocated surplus until the unallocated surplus reaches 50 percent of the minimum permanent capital requirement of 7 percent of risk-adjusted assets.

DATES: This regulation shall become effective upon the expiration of 30 days from publication during which either or both houses of Congress is in session. Notice of effective date will be published.

FOR FURTHER INFORMATION CONTACT:
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or

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SUPPLEMENTARY INFORMATION: On September 2, 1988, the FCA published for comment (53 FR 34109) proposed regulations amending 12 CFR Part 615, Subparts I, J, K, L, M, and N relating to the capitalization of System banks and associations. The regulations set forth the statutory requirements for capitalization bylaws, requirements for the issuance and retirement of equities in order to qualify as permanent capital, requirements designed to ensure implementation of cooperative principles, disclosure requirements for the issuance of equities, requirements for the retirement of equities, and, for banks for cooperatives (BC) a requirement for minimum annual additions to unallocated surplus. The amendments were proposed in response to changes in the capitalization provisions of the Farm Credit Act of 1971 (1971 Act), 12 U.S.C. 2001 et seq., made by the Agricultural Credit Act of 1987 (1987 Act), Pub. L. 100–233, and are referred to as capital adequacy related regulations because of their relationship to the capital adequacy regulations adopted by the FCA on September 28, 1988 and published on October 6, 1988 (53 FR 36229). The capital adequacy regulation requires System institutions, by 1993, to maintain permanent capital at no less than 7 percent of risk-adjusted assets. The capital adequacy regulation was first published as a proposed regulation on May 12, 1988 (53 FR 16948) after considering comments received in response to an advance notice of proposed rulemaking (53 FR 4642, February 17, 1988). The proposed capital adequacy regulation was the subject of a public hearing on June 9, 1988, and a resolicitation of comments on August 10, 1988 (53 FR 30071). The comment period on the proposed capital adequacy related regulations closed on September 16, 1988.

Twenty-six comment letters were received representing the views of 9 Farm Credit Banks (FCB), 6 banks for cooperative (BC), 10 production credit associations (PCA), 10 Federal land bank associations (FLBA) and 1 Federal intermediate credit bank (FICB) as well as the Central Bank for Cooperatives (CBC), the Farm Credit Corporation of America (FCCA), the Federal Farm Credit Banks Funding Corporation (Funding Corporation), the Shareholder Advisory Council for the FLBA and PCA of Omaha, and the St. Paul District Federation for the FLBAs and PCAs in the St. Paul District.

The respondents' comments and the FCA's response are summarized below.

A. General

The FCA was requested by one respondent to extend the comment period and by another to publish as a proposed rule whatever regulation the FCA determines is appropriate after considering the comments. The respondent argued that the brevity of the comment period, in light of the complexity of the issues and the significance of the implications of the regulations, made an opportunity for additional comment advisable. The FCA did not accept these recommendations because the FCA believes that institutions that are attempting to implement the new capitalization provisions and the restructuring provisions of the 1987 Act need greater certainty about the FCA's regulatory stance than either of the respondents' proposals would provide. Therefore, the FCA adopts the proposed regulation as a final regulation with the modifications discussed below, effective after the expiration of 30 days from publication during which either or both houses of Congress is in session.

Legal Authority

A number of the respondents challenged the FCA's authority to regulate in the various areas addressed by the regulation on the theory that the 1987 Act left such matters to System institutions and their shareholders in the capitalization bylaws. Some respondents argued that such regulations amounted to bylaw approvals and pointed out that Congress has expressly prohibited such approval of bylaws, either directly or indirectly, in section 5.17(b) of the 1971 Act, as amended. Since these arguments were used to support a number of specific objections to the regulation, the FCA believes it important as a preliminary matter to respond to these arguments generally.

The FCA recognizes that it is without authority to approve an institution's bylaws, directly or indirectly, and has no interest in doing so. However, many respondents appear to believe that institutions have unfettered discretion in any matter that is addressed in their bylaws so long as the bylaws do not contravene the statute. The FCA disagrees. Notwithstanding section 5.17(b) of the 1971 Act, the FCA continues to have, after the 1987 Act, general rulemaking authority, and the 1971 Act, as amended, specifically refers to FCA regulation in areas that must necessarily be reflected in the bylaws. The FCA does not believe that Congress intended to foreclose the FCA from regulating in any area in which it has a legitimate regulatory interest, and certainly not in areas in which the statute specifically refers to FCA regulation, merely because such matters are of necessity reflected in the institution's bylaws. If the argument made by respondents in this regard is carried to its logical extension, institutions would be able to avoid regulation altogether by including all matters subject to regulation in their bylaws. If Congress had intended to neutralize the regulatory authority of the FCA, it would not have included the many specific references to FCA regulations in new provisions of the statute relating to the issuance and retirement of equities. For example, sections 1.6, 2.3,. 2.13, and 3.25, provide that the institutions shall:

> * * * provide, through bylaws and subject to Farm Credit Administration regulations, for the capitalization and the manner in which [the institution's] stock shall be issued, held, transferred, and retired and [its] earnings distributed.

12 U.S.C. 2014, 2074, 2094 and 2145. Sections 3.3, 3.4, 3.11, and 3.25 of the 1971 Act, which set forth capitalization provisions for BCs, also make specific reference to FCA regulations. In addition, all of the corporate powers of System institutions are granted subject to the regulation of the FCA, and the FCA is granted general rulemaking authority for regulations that are necessary and appropriate to carry out the purposes of the 1971 Act.

The FCA is aware that its regulations must be consistent with the 1971 Act and is further aware that, to the extent there is any inconsistency between section 4.3A and other provisions of the 1971 Act, section 4.3A controls. However, the FCA does not believe its proposed regulations are inconsistent with the statute or that the absence of a reference to FCA regulations in section 4.3A and the reference to FCA regulation in sections 1.4, 2.3, 2.13, 3.11, and 3.25 is such an inconsistency. Significant changes were made in the capitalization provisions of Titles I and II of the 1971 Act by the 1987 Act, but the FCA's authority to regulate the institutions' capitalization and the issuance and retirement of stock and distribution of earnings continues to be

referenced. In light of the attention given to these provisions, Congress cannot be deemed to have inadvertently failed to conform inconsistent language or to have deliberately created an inconsistency in the 1987 Act. In addition, a similar reference is made to FCA regulation in this area in section 410 of the 1987 Act, which requires the rights and privileges of shareholders, including voting power, redemption rights, preferences on liquidation, and the right to dividends to be determined by the plan of merger and consistent with section 4.3A of the 1971 Act and regulations issued by the FCA. Moreover, the Agricultural Credit Technical Corrections Act, Pub. L. 100-399 (Technical Corrections Act), which was enacted on August 17, 1988, amended section 3.25 of the 1971 Act to add a reference to FCA regulation of capitalization and the issuance and retirement of equities and the distribution of earnings in the National Bank for Cooperatives.

While the FCA agrees that it is inappropriate to prescribe the content of bylaws, the FCA believes that there is ample authority to regulate the matters addressed by the proposed regulation. The proposed regulation may have been interpreted as an attempt to prescribe bylaws because the regulatory requirements for implementing cooperative principles in the issuance and retirement of equities and distribution of earnings and the requirements for qualification as permanent capital, all legitimate subjects of regulation, were cast in the context of the adoption of new capitalization bylaws. The FCA has removed references to the bylaws in the sections of the final regulation dealing with the issuance and retirement of equities. The regulatory requirements concerning these matters are, however, substantially the same as the proposed regulation, except as they have been modified in response to more substantive comments. The FCA does not believe that this contravenes the prohibition on direct or indirect approval of bylaws. The FCA has been careful to confine its regulations to matters in which it believes there is a legitimate and important regulatory interest and to leave institutions maximum flexibility in implementing such requirements in their bylaws.

Capital Directive

In the preamble to the proposed regulation, the FCA announced its intention to rescind Capital Directive #1 (Directive) when both the capital adequacy regulations and the capital adequacy related regulations have become effective. A number of respondents urged the FCA to rescind the Directive effective October 6, 1988, in order to allow institutions necessary flexibility in adopting new capitalization bylaws. On September 14, 1988, the FCA issued a bookletter addressing certain required approvals under the Directive that the FCA believed might be needed if the Directive were in effect when institutions adopt new capitalization bylaws. The FCA believes the letter will adequately address the concerns of these respondents and declines to rescind the Directive until capital adequacy regulations and capital adequacy related regulations take effect. These regulations supersede the Directive and the FCA hereby rescinds it on the effective date of this regulation.

Reassignment of Association

Three respondents stated that the FCA has the responsibility to require the orderly disposition of capital to give effect to the purposes of section 433 of the 1987 Act (which relates to the reassignment of associations to adjoining districts) and urged the FCA to require in these regulations that the bank of current affiliation may not, for any reason, withhold the transfer of association capital to the adjoining bank. Without commenting on the merits of the respondents' arguments, the FCA has concluded that, given the limited time within which section 433 transfers can be initiated and the statutorily mandated involvement of the Farm Credit System Assistance Board, decisions regarding transfers of capital between districts are best left to a case-by-case evaluation of the effects of such transfers on the parties involved. Consequently, the final rule does not address this issue.

B. Subpart I—Issuance of Equities

Section 615.5220—Capitalization Bylaws

In the proposed regulation, the statutory requirements for the new capitalization bylaws were set forth in this section in a manner that clarified how the FCA will interpret these requirements for the purpose of determining whether bylaws adopted by institutions meet the statutory requirements. In addition to the general objection to regulations addressing bylaws noted above, there were a number of specific comments on this section.

A number of respondents objected to the requirement to set forth the number of shares of each class of stock to be issued (except stock issued as a condition of obtaining a loan) because they believed it would be impractical to secure shareholder approval every time the institution needed to increase its capital. Some noted the lack of specific mention of such a requirement in the statute and asserted that such a requirement is unnecessary in view of the right to vote on any issuance that would create a preference. One respondent suggested that shareholders are adequately protected by the required vote on preferred stock. Several recommended that the number of shares to be issued be left to the discretion of the board of directors. Another respondent recommended that if the requirement were retained in the final regulation, the number of shares of stock resulting from the conversion of voting stock to nonvoting stock should be permitted to be authorized in unlimited quantities.

While there is no specific statutory reference to the number of shares of stock to be issued, the FCA believes that such a requirement is implicit in the requirement that the bylaws must enable the institution to meet its minimum permanent capital requirements and the requirement for shareholder approval of bylaws. In addition, the FCA believes that such a requirement is necessary to give substance to the voice Congress gave shareholders by requiring shareholder approval of such bylaws.

The FCA recognized that it would be impractical to set forth in the bylaws the number of shares of the class of stock to be issued to borrowers to satisfy the minimum stock purchase require and excepted this class of stock from the requirement of the proposed regulation. Also the FCA agrees that nonvoting stock resulting from a conversion of voting stock after the loan is paid off should be authorized in unlimited amounts because of the institution's inability to estimate the number of shares of such stock that would need to be authorized. The requirement of the proposed regulation was intended to apply primarily to stock issued to non-borrowers and to preferred stock. Such a requirement is important to protect shareholders from preferences and from dilution of ownership by other issuances. While dilution of ownership is not as serious a problem when the additional stock issued is nonvoting, it continues to be an issue, even for nonvoting common, when all shareholders are allowed to vote on the issuance of preferred stock. In addition, neither the 1971 Act nor the final regulation requires that stock be retired at book value not to exceed par, and institutions could conceivably opt for a

capital structure that would allow stock to be retired at book value. In that event, it would be even more important to have shareholders vote to authorize the issuance of additional stock, as the book value of the stock could affect its trading value.

Institutions that are concerned about the need to hold shareholder meetings too often can request shareholders to authorize more stock than they presently intend to issue. Shareholder meetings are held annually in any event. It should be noted that most corporations are required to obtain shareholder authorization to issue stock, and some, such as national banks, are also required to obtain regulatory approval. As noted above, the final regulation retains the requirement that the number of shares authorized to be issued be specified in the bylaws, but excepts from this requirement voting stock and participation certificates issued in connection with a loan and nonvoting stock that results from the conversion of voting stock into non-voting stock after the loan is repaid.

A number of respondents also objected to the requirement to state in specific terms in the bylaws the institution's stock purchase requirement. Rather, these respondents understand the statute to require merely a statement that there is such a requirement, to be determined by the institution's board, which shall be at least the statutory minimum. Some respondents believe that the requirement of the proposed regulation is impractical, since the level of stock needed may change as economic and business circumstances change and that boards of directors should have more flexibility in determining the stock purchase requirement. One respondent argued that Congress did not intend to burden shareholders by requiring a shareholder vote on the stock purchase requirement each time it changes and noted that the borrower is protected by disclosure of the requirement and the option of borrowing elsewhere if the requirement is unacceptable.

The FCA reads the statute to require shareholder approval of the stock purchase requirement. The FCA was not persuaded by the argument that shareholders should not be burdened with voting on changes in stock purchase requirements and that they are adequately protected by disclosure of the stock purchase requirement. This would not permit a shareholder any vote on the requirement except a "yes" vote, since the price of "no" vote is not to become a borrower. Prior to the 1987 Act, shareholders had no opportunity at all to vote on the bylaws. Now shareholders are specifically authorized to vote only on the capitalization portion of the bylaws. The FCA assumes that Congress gave shareholders the right to vote on the capitalization bylaws because of the significance of these provisions to borrowers. There can be few issues related to the capitalization bylaws which are as significant to a borrower as the stock purchase requirement, and it seems clear from its inclusion among the bylaw requirements enumerated in the statute that Congress intended shareholders to have a voice in establishing it. Furthermore, in the Technical Corrections Act, Congress amended section 4.3A(c)(1)(H), which states that the bylaws "do not need to provide for maximum and minimum standards of borrower stock ownership based on a percentage of the loan of the borrower," by adding the phrase "except as otherwise provided in this section." The stated purpose of this amendment was to correct the inconsistency between this provision and section 4.3A(c)(1)(E)(i), which requires that the bylaws state the stock purchase requirement. (See 134 Cong. Rec. S 10804, August 3, 1988.) This action by Congress would appear to evidence an intent for shareholders to have a voice in establishing the stock purchase requirement.

The FCA does not believe that changes in the stock purchase requirement are likely to be so frequent as to make obtaining shareholder approval burdensome. If the capital planning function is properly conducted, it should be possible to estimate with a reasonable degree of accuracy the required capital level for at least the one-year period between shareholder meetings. Nevertheless, if shareholders wish to authorize the board of directors to establish the requirement within a certain range, the final regulation would permit it. The requirement has been modified in the final regulation to allow the requirement to be expressed as a range within which the institution's board may change the requirement from time to time as circumstances warrant.

Some respondents, especially BCs, objected to specifying a maximum in the bylaws. The FCA believes that the statute contemplates shareholders having some voice in establishing stock purchase requirements and that shareholders should not be given a choice between unfettered board discretion and no bylaws at all. However, the FCA has concluded that the statutory requirement needs to be interpreted in the context of the long established business practices for capitalizing the BCs, so as not to disrupt existing and longstanding relationships of the BCs with their borrowers. BCs typically require a minimum initial capital requirement with additional equity investments over a period of years until a target level of equity investment is reached. In the BC context, the FCA interprets the statutory requirement to be to allow shareholders to approve a target range for equity investment in the bank and to authorize the bank's board to implement the target levels in the capitalization plan. Section 615.5220 of the final regulation has been expanded to add a new paragraph (e) setting forth the requirement for BCs, which also takes into account the fact that some portion of the BC's business is not conducted on a patronage basis. Paragraphs (e), (f), (g), and (h) of the proposed regulation have been redesignated as (f), (g), (h), and (i), respectively, in the final rule.

One respondent noted that paragraph (d) of § 615.5220 could be read to require a borrower whose loan is repaid, but whose stock cannot be retired because the institution does not meet its capital standards, to purchase additional stock to obtain a new loan. Such a result was not intended and the phrase "from the institution" has been deleted in paragraph (d) in the final regulation, to avoid the implication that causes the respondent's concern. However, paragraph (b) § 615.5240 in the final regulation, which was designated as paragraph (c) in the proposed regulation, requires borrowers to purchase their qualifying stock from the institution rather than from other shareholders when minimum permanent capital standards are not met (See discussion of this issue later in this document.)

As several respondents pointed out, the Technical Corrections Act has clarified an issue under section 4.3A(c)(1)(G) regarding whether the 1987 Act required conversion of some portion of participation certificates and nonvoting stock into voting stock. Conforming changes have been made in § 615.5220(f) in the final regulation to clarify that only voting stock is required to be so converted by inserting the word "voting" before "stock protected under section 4.9A of the 1971 Act" and inserting the words "new voting" before "stock issued under a capitalization bylaws adopted pursuant to section 4.3A."

One respondent expressed concern that many borrowers and System leaders may be unaware that the conversion of protected stock into stock issued under the new bylaws is mandatory and that the stock exchanged

for new voting stock loses its protection in the exchange. Indeed, the respondent's concern proved to be well founded, as another respondent asserted that such stock does not lose its protection in the exchange, arguing that section 4.3A(g) of the 1971 Act makes it clear that if anything in section 4.3A conflicts with the protected stock provisions of section 4.9A, section 4.9A controls. The respondent argued that the Congressional intent of section 4.3A(c)(1)(G) was that no shareholder eligible to vote previously under a statutory right should somehow be disenfranchised through adoption of bylaws by shareholders.

The FCA confirms that the exchange is mandatory and not at the option of the holder, but notes that the amount required to be exchanged must be approved by shareholders. The FCA disagrees with the respondent who argues that such stock retains its protected status in the exchange by virtue of section 4.3A(g) of the 1971 Act. Section 4.3A(g) provides:

> To the extent that any provision of this section is inconsistent with any other provision of this 1971 Act (other than section 4.9A), the provision of this section shall control.

The respondent reads more into this section than is there. The effect of this section is not to make section 4.9A paramount, as the respondent asserts. Rather, the effect is merely to require a construction that gives effect to both sections. Since the stock to be issued under the new bylaws is clearly not protected, the only way to give effect to section 4.3A is to read section 4.3A(c)(1)(G) to mean that at least some portion of protected stock is exchanged for new at-risk stock. The FCA understands the interplay of sections 4.3A and 4.9A in the following manner: Congress conferred a benefit on existing shareholders by protecting outstanding stock, but required them to exchange a portion of that stock (the amount to be determined by the institutions and their shareholders in the capitalization bylaws) for stock that is not protected. The FCA does not regard the exchange as depriving the shareholder of rights granted by Congress. Rather, the FCA believes that Congress gave shareholders a benefit of indeterminate size (because of the mandatory conversion feature of section 4.3A) and allowed shareholders, by a majority vote, to determine the size of the benefit. Inasmuch as these provisions were simultaneously adopted, the FCA does not believe that the respondent's concern that the dissenting shareholders may have a cause of action against the institution is warranted or that any constitutional questions are raised. The FCA does not agree that the provision was merely intended to ensure that no one is disenfranchised. If that were the case it would not have been necessary to make the provision mandatory. Rather, the FCA believes the provision was to ensure that the persons who are entitled to vote have at least a minimal stake in the operation of the institution through the ownership of at-risk stock.

Also, the FCA understands the statute to mean that as a result of this exchange, the borrower loses any right he or she previously had to the retirement of the stock upon repayment of the loan, since stock issued under the new capitalization bylaws must be retirable solely at the discretion of the board. This does not mean that the stock cannot be retired upon repayment of the loan if the institution meets its minimum permanent capital requirements. It does mean that the stock the shareholder receives in exchange is permanent capital subject to the statutory prohibition against the retirement of stock or the distribution of earnings in cash if the institution does not meet its minimum capital requirements (including interim standards, but not including forbearance criteria). Institutions should assure that appropriate disclosures of this effect is made to shareholders at the time the capitalization bylaws are proposed for adoption.

One respondent urged that certain terms of the issuance of equities (i.e. dividend rate) be left to the discretion of the board of directors, based on the advice of investment bankers to allow institutions to successfully sell preferred stock to investors. Since pricing terms must be set at the time an issue is marketed, the requirement for shareholder approval of such terms was thought to restrict the ability to market preferred stock. The FCA believes that the requirement need not have that effect if shareholders are asked to approve such terms within a specified range. The pricing potential of a particular issue can usually be described within a relatively narrow range. The dividend rate goes to the heart of the reason shareholders are asked to approve such issuances and the FCA does not believe that shareholders should be asked to give directors unfettered discretion.

Many respondents requested the FCA to confirm their interpretation that the term "minimum permanent capital adequacy standards established by the FCA under Subpart H," as used in paragraph (f) or the proposed regulation (redesignated as paragraph (g) in the final regulation), as well as in §§ 615.5240(c), 615.5270(b) and 615.5330 includes the forbearance criteria as well as the interim standards. Some respondents asserted that many System institutions cannot operate as competitive, viable institutions if they are unable to retire stock until they meet the final capital requirements that must be met by the end of the five-year phase-in period.

The final regulation clarifies that the phrase "minimum permanent capital adequacy standards established by the FCA under Subpart H" includes interim standards in each of the sections in which it appears except § 615.5330, where it refers to the 7 percent standard required by 1993. As stated in the resolicitation of comments on the capital adequacy regulation and in the preamble to the final capital adequacy regulations, forbearance criteria are *not* interim standards. Meeting the forbearance criteria merely protects the institution from enforcement action for failure to meet its interim permanent capital standards. If the FCA were to consider forbearance criteria as minimum permanent capital standards, it would not be possible for the FCA to extend forbearance beyond 1993. While the FCA cannot confirm the interpretation many institutions wish to give to the term "minimum capital standards" to include forbearance criteria, the FCA notes that the statute allows the payment of patronage in equities that qualify as permanent capital at the issuing institution provided the portion paid in cash is limited to that amount necessary to qualify the refund under Federal tax law as a deductible patronage refund

On FCB asserted that stock issued to PACs in connection with the mandatory merger of the FLB and the FICB is not protected and not permanent capital and objected to the requirement of paragraph (f) of § 615.4230 in the proposed regulation (redesignated as paragraph (g) in the final regulation) that states that all stock except protected stock must be retirable at the discretion of the institution's board. The FCA knows of no reason why stock issued to PCAs in connection with the mandatory merger would not qualify as permanent capital. However, the provisions of § 615.5220 are prospective only and reflect the FCA's judgment that after October 5, 1988, only stock that may be retired at the discretion of the board may be issued. (See further discussion later in this document.)

One respondent suggested that the FCA clarify that the reguirements of

§ 615.5220(g) of the proposed regulation (redesignated as paragraph (h) in the final regulation) apply only to the bylaws of Farm Credit Banks. The FCA confirms that this is the correct interpretation and has reworded the section in the final regulation to make clear that the manner of allocation and equalization of the capitalization requirements of the FCB need only be addressed in the bylaws of the FCB.

Section 615.5230—Implementation of Cooperative Principles

The proposed regulation required institutions to reflect cooperative principles of one-person-one-vote and equitable treatment of patrons of the cooperative in their bylaws and stated minimum regulatory requirements designed to assure that System banks and associations continue to operate cooperatively. Some respondents challenged the FCA's legal authority to regulate in many of these areas.

Voting Rights

Provisions setting minimum standards for cooperative voting rights that must be accorded shareholders were alleged to be without statutory basis and in conflict with sections 1.4, 1.6, 2.1, 2.3, 2.11, and 2.13 of the 1971 Act, which, the respondents asserted, specifically provide for the institutions to consider alternatives other than those specified in the regulation. Specific objections were raised to weighting the votes of association/shareholders in proportion to the number of members of the association. One respondent cited the repeal of the specific provisions for electing the district boards (which were identical to those of the proposed regulation for bank shareholders) and asserted that Congress, where it has intended to establish the number of votes which an association/shareholder would have, has specifically stated the statutory requirement, such as in sections 7.0 and 7.6 of the 1971 Act. This respondent concluded, from the failure of Congress to specifically provide for weighted voting in the sections relating to the election of directors, that Congress intended institutions to have unfettered discretion in determining how this should be done.

One respondent argued that weighted proportional vote may deprive small associations of any voice in the affairs of its bank if the district is dominated by a large districtwide association and would be contrary to the 1985 amendments to section 5.17(a)(2), 12 U.S.C. 2252(a)(2). Another respondent urged that more flexibility be allowed in the weighting of association votes, perhaps on the basis of the number of voting shares outstanding or some combination of the number of shares and the number of shareholders, as the 1987 Act permitted banks for cooperatives in the vote for consolidation. The effect of such a combination would be to give some associations additional weight based on the size of their loan portfolios and would give associations serving larger borrowers more weight than an association serving smaller borrowers.

The FCA finds no specific provision in the sections of the 1971 Act referred to by respondents for alternatives other than those required by the proposed regulation. Sections 1.4, 2.1 and 2.11 merely refer to the institution's power to establish the number, term and qualifications of such directors and the manner in which directors are to be elected in their bylaws. The FCA does not read the reference to the manner in which they are elected to refer to voting rights of shareholders, but to refer to election procedures. The FCA regards voting rights as a term and condition and a defining characteristic of the equity, which is determined at issuance and is more properly a matter that comes within sections 1.6, 2.3, and 2.13 of the 1971 Act, all of which indicate that the capitalization of the institution and the issuance and retirement of equities are subject to FCA regulation. The FCA interprets the repeal of the provisions relating to the district board to be more related to the need to conform the statute to the restructuring of the System than to a desire to allow institutions complete flexibility to accord shareholders voting rights that do not reflect cooperative principles. The effect of the deletion of the specific capitalization provisions and specific provisions governing voting rights of association shareholders is to give the FCA broader discretion in regulating the issuance and retirement of equities.

The FCA relies on its general rulemaking authority to discharge what it regards as its regulatory obligation to ensure that institutions are operated as cooperatives and that the owners of System institutions are accorded their full voting rights and are fairly treated. In keeping with the strong message sent by Congress in the 1987 Act that local control and management are to be encouraged, the proposed regulation required that the one-person-one-vote principle be applied at the bank level on a "look-through" basis by weighting the vote of each association shareholder in proportion to the number of its voting shareholders. This weighting is consistent with the weighting prescribed by Congress in the 1971 Act prior to its amendment in 1987 and has been System practice in the election of district boards for many years. The FCA continues to believe that weighting votes in proportion to the number of shareholders is the fairest method and gives the fullest expression to cooperative principles and the emphasis on local control and management that is evident in the 1987 Act. The fact that the proposed regulation is consistent with deleted district board election provisions and new merger provisions mandating weighted voting is evidence that the FCA's interpretation of the appropriate implementation of cooperative voting principles is consistent with the judgment of the Congress on this issue.

That weighting the votes in this manner will give large associations more influence than small ones in unavoidable and not altogether undesirable, since large associations represent more borrowers. To allow each association one vote in the affairs of the bank regardless of the number of borrowers it represents would allow smaller associations to wield disproportionate influence over the affairs of the bank and would not accurately and fairly reflect local control of System institutions by their ultimate owners, the borrowers. The FCA believes that allowing each association to have only one vote would be more unfair. This does not mean that small associations should or will be the subject of unfair discrimination. Directors owe fiduciary duties to all shareholders and can be held accountable for the faithful performance of those duties by those shareholders. To respond to the concern that smaller associations would be disadvantaged, the final regulation requires the bank to allow cumulative voting unless each association agrees otherwise, which will allow small associations a greater opportunity to place a director on the board. The final regulation retains the requirement for weighted voting in proportion to the number of shareholders.

The FCA regards equity weighted voting in the FCB (except in the issuance of preferred stock) as inconsistent with the 1971 Act, as amended. Although Congress required the BCs to use a combination of one-person-one-vote and equity weighted voting for BCs, for banks other than BCs, Congress required the votes of association shareholders to be weighted in proportion to the number of association shareholders in votes on mergers between banks within a district (section 7.0), on mergers of similar banks (section 7.12) and on transfers of

lending authority (section 7.6). The only places in the statute referring to a required vote in which such weighting is not expressly required are those sections that apply to both banks and associations, where language appropriate to voting on association matters is used. The FCA believes it necessary and appropriate to interpret such language in the bank context consistently with other references to voting rights of associations in the statute. To interpret the language literally would lead to absurd results. For example, the language of section 7.9(b)(4), if read literally, would mean that a merger of banks approved by weighted proportional voting could be undone by a one-association-one-vote ballot upon reconsideration.

One respondent requested clarification of the voting scheme for the initial vote on the capitalization bylaws of the bank, citing statutory language of section 4.3A(c) of the 1971 Act, as amended, which requires approval by a majority of the shareholders of each institution present and voting. The respondent suggested that in such a vote each association should have one vote. The language of 4.3A relating to shareholder approval of the adoption of capitalization bylaws is identical to that of section 7.9(b)(4) and references votes by associations as well as banks. As noted above, the FCA believes that this language in the bank context should be interpreted consistently with the many other express voting provisions in the 1971 Act to require a vote weighted in proportion to the number of shareholders, to avoid absurd results Adopting the interpretation suggested by the respondent would operate unfairly in districts in which all but one or two associations have merged into a districtwide association, allowing a single stand-alone association to wield an influence disproportionate to the number of persons served by the association. The FCA does not believe that such an interpretation would give effect to the Congressional purpose of promoting local control of System institutions. The FCA believes that since the capitalization bylaws affect the economic interests of the shareholders in a most direct manner, fundamental fairness requires that the votes of the associations be weighted in accordance with the number of shareholders served by the association.

Several respondents objected to the requirement that each voting shareholder be allowed to vote in the election of each director. Some viewed this requirement as in conflict with the flexibility provided by the 1971 Act, as amended, and without statutory authority. A number of institutions argued that the regional election of directors is important in associations covering large geographic areas, since it may be difficult for borrowers in one region to be fully informed and make intelligent judgments about candidates residing in far distant areas. Regional voting is well established in associations, some of which to continue to elect directors on a regional basis. These respondents believe regional voting is in accordance with the 1971 Act, amended, and expected by the associations and their shareholders. In one district regional voting is thought to be an important component of merger plans. Several respondents suggested that an exception be made for districtwide associations.

The requirement that each shareholder be allowed to vote in the election of each director was designed to assure that full voting rights are accorded to each shareholder. While the FCA views broad geographical representation on the board of directors as a desirable goal, just as representation of various types of agriculture is a desirable goal, these goals should not be achieved at the cost of disenfranchising shareholders by depriving them of the opportunity to vote for all director positions. Directors owe fiduciary duties to all of the shareholders and shareholders who are not able to elect them are handicapped in holding them accountable. Also, a shareholder who can only vote for one director out of several and is not allowed to vote on the others may be disadvantaged in influencing the managment of the institution if he or she resides in a region that has more borrowers than other regions. That is to say, the votes of shareholders that reside in a region with many borrowers have less weight than those of shareholders that reside in regions that have fewer borrowers.

While geographic representation is a desirable goal, the FCA believes the goals may be achieved by designating director positions geographically, that is, requiring that a particular position be filled by a person from a particular geographic region, but allowing all shareholders to vote in the election of each director. Such a method, when coupled with cumulative voting, which would allow each voter to cumulate his or her votes and distribute them among the candidates for director as the voter sees fit, would accord each shareholder full voting strength and allow for geographic representation as well. Accordingly, the final rule continues to require that each association shareholder be accorded the right to vote for each director, but also requires cumulative voting in the election of directors unless the capitalization bylaws provide otherwise. However, in view of the fact that regional voting was allowed in districtwide associations resulting from the merger of many associations into one, the final rule grandfathers until January 1, 1993, existing regional voting arrangements to allow for a smooth transition.

Equitable Treatment

Some respondents objected to the requirement that the issuance of preferred stock be authorized by a majority of the *shares* of each class of stock affected by the preference, voting as a class, rather than by a majority of shareholders as in conflict with the Flexibility provided by the 1971 Act. Because the issuance of stock that is preferred as to dividends or upon liquidation has a direct impact on the value of the common shareholder's investment in the institution, and the impact is magnified by the number of shares of stock owned, the FCA continues to believe that shareholders should be entitled to vote on a per share basis on these issues and that the approval of all affected classes should be obtained. The FCA notes that System institutions have historically been required to authorize preferred stock in this manner. The 1971 Act subjects the issuance of equities to FCA regulation and the FCA believes that such a requirement is necessary and appropriate to ensure fair treatment of borrower/shareholders.

Several respondents asked that this requirement be modified to allow existing preferred stock to continue its preferred status or be exchanged for a new class with the same or substantially the same preferred status without the requirement of a shareholder vote. Since an existing class of preferred stock would presumably have been authorized in the same manner as required by the regulation or have been issued in exchange for financial assistance from the supervising bank, the final regulation permits existing preferred stock to continue its preferred status or be exchanged for a class of stock with substantially the same preference without a shareholder vote provided the stock was originally authorized by the shareholders or issued to the supervising bank in return for financial assistance.

Several respondents objected to the requirement that dividends be paid on a per share basis without preference among common shareholders. One objection appeared to be based on the

belief that the FCB could not pay patronage to FLBAs that are not direct lenders and that there would be no way to distribute earnings based upon the FLBA's contribution to the district's earnings. Other respondents noted that State corporation statutes often allow different dividend rates on common stock if the preferences are stated in the bylaws. One respondent requested clarification of whether the phrase "without preference" applied to the dollar divided per share or to the rate of return on the par value of each share and urged that the latter interpretation be adopted, to provide institutions the flexibility to issue different classes of stock at different par values.

The FCA continues to believe that the requirement that dividends be paid on a per share basis without preference between common shareholders is appropriate and the requirement is reflected in the final regulation. The final regulation would permit different rates of dividends on different classes of stock if preferences are stated in the bylaws. However, a class of stock that has a dividend preference is a preferred class of stock and must be authorized by all classes of stock affected by the preference in the manner required by the regulation. The FCA intends "without preference" to refer to the rate of return and the priority of payment rather than the dollar amount per share and has clarified the regulation accordingly.

The FCA knows of no reason FCBs should not be able to distribute earnings to FLBAs that are not direct lenders on the basis of their contributions to earnings. The new title I of the 1971 Act, under which FCBs operate, leaves the manner of earnings distribution to the institution's bylaws and FCA regulation. The provisions of the 1971 Act requiring stock purchased from an FLBA as a condition of obtaining a loan to be retired upon repayment of the loan, as well as the provisions requiring an FLBA to purchase an amount of stock in the FLB equal to the amount of stock purchased by the borrower in the FLBA, have been repealed. Therefore, for equities issued after October 5, 1988, the concept of "pass-through" equities is no longer relevant. Also the requirement for the patronage refund of the long term real estate lender to be paid to borrowers, rather than to FLBAs, has been repealed. Thus, it would appear that FCBs and FLBAs that are not direct lenders have more flexibility in structuring their relationship than they have had in the past, including the potential for distributing earnings on some type of patronage basis. Furthermore, the compensation agreements between the FCB and the FLBAs that are not direct lenders would appear to provide additional flexibility for the distribution of earnings on the basis of the institution's contribution to them. Therefore, the final regulation continues to require that dividends be paid on a per share basis without preference among all common shareholders and participation certificate holders.

One respondent expressed a concern that the requirement that earnings pools be so structured as to ensure that each patron of the institution receives its fair share of earnings and bear its fair share of expenses may be so rigidly expressed as to require an institution to differentiate between the cost of servicing a $100,000 loan and a $20,000 loan. The respondent suggested that this requirement be qualified by adding the phrase "to the extent feasible and practical as determined by the board." Another respondent stated that any requirement beyond a requirement that such pools be established on a rational and equitable basis is unnecessary in light of general cooperative principles and in light of provisions of the Internal Revenue Code dealing with patronage refunds. This respondent thought the additional language intended to ensure that each patron receives a fair share of earnings and bears a fair share of expenses would merely create uncertainty as to what actually is being required in determining equitable patronage refunds.

While the FCA believes it important to give more guidance than the requirement for a "rational and equitable" basis would give, the additional language is intended to be understood as a general principle upon which earnings pools should be structured. The institution's board must obviously take into account practicality and feasibility in implementing the principle, as must the FCA in enforcing it. The FCA believes that the addition of the suggested language is not necessary.

A clarification of the term "proportionate basis" was requested by one respondent. The term "proportionate basis as determined by the board" in § 615.5230(b)(3) was intended to give the board broad discretion in determining the basis for the distribution but to require that there be some basis for the distribution that is equitable and nondiscriminatory in nature. In the final regulation, the words "equitable and nondiscriminatory basis" have been substituted for "proportionate basis."

One respondent suggested that paragraph (b)(4) of § 615.5230 of the proposed regulation be modified to acknowledge that classes of stock resulting from a conversion of allocated surplus may be accorded the same priority as other classes of stock. The FCA believes the regulation as presently worded already permits this result, inasmuch as the language of paragraph (b)(4) merely excepts classes of stock resulting from a conversion of allocated surplus from the requirement to be accorded the same priority. However, institutions should consider whether according such classes of stock the same priority is equitable to other shareholders.

The respondent also requested that the regulation provide the priorities necessary for restoration of an impairment of protected stock. Although the institution's bylaws must obviously provide for protected stock, Subpart I of the regulation does not address protected stock.

Section 615.5240—Permanent Capital

A few respondents challenged the FCA's interpretation of the 1987 Act to require that all stock issued after October 5, 1988, have the characteristics of permanent capital. One respondent opined that the 1971 Act clearly allows automatic retirement and revolvement plans if such plans allow the board of directors to discontinue them at its discretion, so long as borrowers are advised of this limitation and the fact that stock may not be retired if the institution fails to satisfy the minimum permanent capital adequacy standard.

The FCA reaffirms its position that no stock may be issued by Farm Credit institutions after October 5, 1988, that is not both at-risk and retirable at the discretion of the board of directors provided minimum capital adequacy standards are met. These are the essential characteristics of permanent capital. These requirements necessarily preclude the issuance of stock that is retirable upon repayment of the loan or subject to an automatic retirement plan that operates to retire stock automatically as the loan is paid down without a conscious decision to retire stock after an evaluation by the board of the capital position of the institution. In addition, respondents who argue that it was not the intent of Congress to prohibit the issuance of stock that is retirable upon the repayment of the loan have overlooked a clear statement to the contrary in the legislative history. The Conference Report, in describing the provisions of S. 1665 that were

incorporated in the 1987 Act relating to the capitalization bylaws, stated:

> The Senate amendment will prohibit after the adoption of the new bylaws, the issuance by FCS institutions of stock that can be retired by the holder when he repays his loan, or otherwise at the option or request of the holder. (Sec. 4.3A(c)(1)(A)).

H.R. Rep. No. 490, 100th Cong., 1st Sess. 247 (1988). The Senate provision was adopted in preference to a provision in H.R. 3030 that stated that the bylaws need not provide for retirement of stock on repayment of the loan, which would have had the effect respondents contend the 1987 Act has. Equities issued subject to automatic retirement plans that operate without a conscious evaluation by the board of the institution's capital position prior to each decision to retire equities are impermissible because such stock is essentially retirable at the option of the holder, who has only to pay down the loan to retire the equities. Such plans would make it impossible to ascertain whether the statutory prohibition against retiring equities were violated until after the equities had been retired, making enforcement of the statutory prohibition difficult at best.

The final regulation would not preclude periodic stock retirements as loans are paid down, provided the decision is consciously made after an evaluation of the institution's capital position and a determination that interim minimum permanent capital standards would continue to be met. In allowing such retirements, due consideration must also be given to achieving reasonable progress toward the 7 percent minimum permanent capital standard, and, of course, such decisions must be nondiscriminatory as between equityholders. Retirements made under these circumstances would not be regarded as made pursuant to an automatic retirement or revolvement plans. However, institutions must take care not to create unrealistic expectations on the part of borrowers about the likelihood that such retirements will occur and should begin the task of re-educating borrowers concerning the change in the focus of capitalization wrought by the 1987 Act from capitalizing the loan to capitalizing the institution.

It is equally clear that equities issued under the new capitalization bylaws must be at risk. Stock and participation certificates in System institutions are and always have been equity investments. The very nature of equity is that the holder bears the risks of ownership, including the loss of the investment. Outstanding equity investments in System institutions were afforded protection from loss by the 1987 Act, but that protection is not available for equities issued after October 5, 1988. If institutions were to issue stock that is not at risk, such investments would not be equity, but debt. Therefore, the FCA reaffirms its position that the 1987 Act has the effect of prohibiting institutions from issuing equities other than those that are retirable at the option of the board (and not upon repayment of the loan or otherwise at the option of the holder) and are retirable at no more than book value.

One respondent noted that §§ 615.5240(a)(1)(ii) and 615.5240 (a)(2)(ii) do not preclude the board of directors from further limiting the retirement value of at-risk stock to book value not to exceed par value and suggested that to retire stock at more than par value may have certain securities law implications. The FCA confirms the respondent's interpretation of the regulation. If an institution wishes to provide in its bylaws that stock is retirable at book value not to exceed par, the final regulation would not preclude it. Since the 1987 Act is silent on this issue and the FCA did not regard retirement at book value not to exceed par as a critical cooperative principle, the FCA believed institutions should have the flexibility to determine this issue for themselves.

The respondent also requested clarification as to the applicability, if any, of §§ 615.5240(a)(1)(iv) and (a)(2)(iii) to patronage refunds, in view of the distinction made in the regulation between dividends and patronage refunds. Section 615.5240(a)(1)(iv), which states that dividends must be payable only at the discretion of the board and must be noncumulative, has no application to patronage refunds. Similarly, § 615.5240(a)(2)(iii), which allows dividends to be cumulative on preferred stock, has no application to patronage refunds. The FCA does not understand why the clarification is necessary because it does not understand how a patronage refund could be cumulative.

A number of respondents objected to requirement to subordinate the obligation to pay cumulative unpaid dividends to the rights of the holders of common stock and participation certificates to have their stock or participation certificates retired at book value not to exceed par upon liquidation and asserted that such a provision is without statutory basis. Some objected to the requirement that such dividends be capable of indefinite deferment as well.

The purpose of this provision was to ensure that any preferred stock that is issued does not take on the character of debt. While holders of preferred stock with cumulative dividends have a right to the payment of cumulated but unpaid dividends prior to the distribution of any other earnings, the FCA believed that such preferred stock would begin to resemble debt if the accumulated but unpaid dividends were required to be satisfied upon liquidation prior to the rights of common shareholders to have their stock retired at book value not to exceed par upon liquidation. After considering the comments relating to the potential impact of the restriction on the ability to market preferred stock, the FCA concluded that the provision would be unnecessarily restrictive. The preferred stock itself is at risk, which is sufficient to qualify the stock as permanent capital. Common shareholders are adequately protected by their ability to vote on the issuance of preferred stock. For these reasons, the restrictions on cumulative dividends on preferred stock have been eliminated in the final regulation.

Many respondents, especially associations, objected strenuously to paragraph (b) of this section, which would require the capitalization bylaws to allow the Farm Credit Bank to require the holders of its common stock and participation certificates to subscribe for such additional capital as may be needed by the Farm Credit Bank to meet its capital requirements or its obligations under joint and several liability. These respondents asserted that the FCA is without statutory authority to adopt such a regulation since the 1987 Act repealed the specific capitalization provisions that gave the FCB authority to make such calls on the associations.

The Funding Corporation, on the other hand, strongly supported the regulation. They argued that the regulation is appropriate because the banks and associations are an integrated credit delivery system that depends on the combined strength of the institutions to obtain funding at favorable rates on the basis of combined financial statements. The Funding Corporation further asserted that the capital call provision would remove the incentive for districts to artificially shift capital betwen the banks and associations for the purpose of minimizing the Districts' exposure on Systemwide obligations under the joint and several liability provisions of section 4.4 of the 1971 Act. The Funding Corporation and other respondents also objected to the inclusion of owners of participation certificates (institutions

other than System institutions that discount with the FCB, or OFIs) within the ambit of this paragraph, inasmuch as they have no voting rights with respect to either the bylaws or the operations of the FCB. Also, the respondents asserted, OFIs are free to seek funds from whatever sources offer the best terms at the moment and are under no obligation to provide long-term support to the FCBs. Since the financial statements of OFIs are not combined with those of System institutions in the financial statements issued to System investors, the Funding Corporation thought that the case to be made for the proposed regulation would be strengthened by excluding OFIs from the applicability of this paragraph.

Under the proposed regulation, capital calls by the banks on the associations would require the prior approval of the FCA and would be required to take into account the financial condition of their shareholders. Several respondents objected to the requirement for prior approval by the FCA, arguing that this requirement is inconsistent with the rationale under which Congress removed FCA's approval authority with respect to loss sharing agreements and that the FCA should not have veto power over the banks' authority to make such calls. One respondent noted that under the FCA's capital adequacy regulation, as originally proposed on May 12, 1988, an FCB would have been unable to meet its capital requirements through such capital calls, since the proposed regulation would have required the FCB to deduct the association's investment in the bank from its capital to eliminate the double counting of capital.

Despite the assertion that a negative inference concerning the banks' authority to make capital calls on associations arises from the deletion of the specific capitalization provisions of the 1971 Act, the FCA continues to believe that a reasonable argument can be made to support the regulation. The FCA continues to have, after the 1987 Act, general rulemaking authority and specific authority to regulate the transfer of funds between institutions. The 1987 Act did not change the funding mechanism or the funding relationship between the bank and the associations. While Congress clearly intended to promote the autonomy of the associations in adopting the 1987 Act, it is equally clear that the associations remain dependent upon the bank for funding and cannot long survive the demise of the banks. Thus, in that sense, the System remains an integrate credit delivery system as the Funding Corporation contends. It is also clear that the beneficiaries of the preferred access to funding and the benefits of more favorable rates that result from joint and several liability on consolidated Systemwide bonds are the associations and their borrows. If banks are unable to have access to capital in the associations, investors may demand higher returns for what they perceive to be greater risk, which will ultimately be passed on to the associations and their borrowers in the form of higher interest rates.

After considering the comments in the light of the 1987 Act and its legislative history, the FCA has concluded that while a reasonable argument can be made that there is statutory authority for such a regulation, the need for such a regulation may be offset by the fact that the likelihood of a capital call on associates to honor obligations under joint and several liability is more remote than it was prior to the 1987 Act. After 1993, joint and several liability is triggered only after the funds of the Farm Credit System Insurance Corporation (FCSIC) are exhausted. When it is triggered, calls are made on banks in proportion to their available collateral, which suggests that Congress contemplated that the maturing bonds would be refunded by new debt backed by the available collateral, as such calls have historically been handled. Only after all available collateral is exhausted would the call be made on banks in proportion to their assets and only at that point is the bank likely to need assistance from the associations to honor joint and several obligations. This is not likely to occur unless all banks in the System were simultaneously weakened to the point of non-viability. Thus, in light of the reduced likelihood of invoking joint and several liability after FCSIC is operational and fully funded, and in view of the fact that the 1971 Act appears to contemplate that such obligations would be honored by refunding the obligation using available collateral, the FCA has concluded that such a regulation is not required at this time. Therefore, the capital call provision is deleted in the final regulation.

Nevertheless, associations have an ongoing obligation to ensure that the bank is adequately capitalized and the bank has an obligation to take into account all of its risk, including joint and several liability, in setting its total capital requirements. The lack of the ability of the bank to make specific capital calls may undercut the ability of the System banks to sell bonds on the basis of the combined financial statements of the banks and associations and may mean that System banks will pay a higher price for their funding. Therefore, the FCA encourages FCBs and their associations to enter into contractual agreements or develop some mechanism in the bank bylaws that will obligate associations to support joint and several liability. The FCA encourages FCBs to take into account the absence of such agreements in determining their total capital requirements and in making decisions to downstream capital to the associations. Also, the FCA will consider the presence or absence of such agreements or other arrangements for supporting joint and several liability in evaluating the adequacy of total capital in each FCB and FICB.

A number of respondents objected to paragraph (c) of this section (redesignated as paragraph (b) in the final regulation), which provides that until an institution meets its minimum permanent capital standard, all equities required to be purchased as a condition for obtaining a loan must be purchased from the institution. Some asserted that it violates section 4.3A(c)(1)(J) of the 1971 Act, which requires stock to be transferable, by limiting the uses of transferred stock. Others were concerned that it would make marketing efforts more difficult and result in a loss of borrowers. One respondent stated its' interpretation of the proposed regulation as not prohibiting the borrowers from utilizing stock they already own which cannot be retired because of the statutory prohibition to support new loans or increased borrowings against lines of credit.

The FCA does not agree that the requirements of paragraph (c) are inconsistent with the requirements of section 4.3A(c)(1)(J) of the 1971 Act requiring stock to be transferable. A requirement that qualifying shares of stock be purchased from the institution when the institution does not meet its capital standards does not restrict transfer rights. The FCA believes that such a requirement is necessary to avoid circumvention of the statutory prohibition against reducing permanent capital by retiring stock or redistributing earnings when an institution does not meet its capital standards. To allow the transfer under such circumstances would defeat the purpose of the statutory prohibition because the institution would be in the same capital position if new borrowers were to purchase qualifying shares from existing borrowers as if it had retired stock. To allow such transfers would make it very difficult for institutions to make progress

toward their capital goals. The regulation is not intended to require existing borrowers to purchase additional stock to support new loans if their stock cannot be retired because of the statutory prohibition. However, all stock supporting new loans made after October 5, 1988, must be at-risk stock, and if a borrower wishes to use eligible borrower stock to support such a loan, rather than having his or her stock retired, such stock must be converted to at-risk stock. Eligible borrower stock is, of course, not subject to the statutory prohibition and can be retired even when minimum permanent capital standards are not met.

Section 615.5250—Disclosure Requirements

Several respondents requested clarification of the disclosure requirements when stock is sold to existing borrowers for investment purposes rather than to satisfy the stock purchase requirement. The FCA provides the following clarification: When stock is sold to an existing borrower as an investment in addition to the stock required to be purchased as a condition of obtaining a loan, the disclosure requirements of paragraph (d)(1) (designated as paragraph (c)(1) in the proposed regulation) apply.

The regulation contemplates that sales of stock other than those made to borrowers in connection with obtaining a loan would be required to be authorized by the shareholders and sold pursuant to a disclosure statement. If there is a desire to sell additional stock as an investment to existing borrowers from time to time upon request, shareholders could authorize a number of shares to be issued from time to time in the discretion of the board pursuant to a disclosure statement that could be easily updated by incorporating by reference the most recent annual and quarterly reports. For the purpose of selling additional stock to shareholders, there is no need to provide an additional copy of any materials that have previously been sent to the shareholders, provided such materials are recent enough to meet the requirements of paragraph (d)(1), unless the prospective purchasers request an additional copy. However, the disclosure statement describing the terms and conditions under which the equity is issued, including an express disclosure that the equity is retirable only at the discretion of the board of directors and is an investment that is at risk and not a compensating balance, must be given to the purchaser at the time of each purchase. The final regulation has been expanded to clarify that the institution need not provide annual reports, quarterly reports and capitalization bylaws to existing borrowers at the time of purchase of stock for investment if such materials have already been sent to shareholders, unless the borrower requests.

Paragraph (a)(4) of § 615.5250 has been expanded in the final regulation to clarify that disclosing terms and conditions of the equity involves disclosure of the statutory prohibition on the retirement of stock and distribution of earnings in cash if the institution does not meet its minimum permanent capital standards (including interim standards), as well as disclosure of whether the institution meets its standard at the time of purchase and whether the institution knows of any reason it will not meet its standard on the next earnings distribution date.

One respondent pointed out two technical errors in this section in the regulatory references and in the designation of paragraphs. The technical errors have been corrected in the final regulation. The last paragraph in this section has been redesignated as paragraph (d). The reference in § 615.5250(c)(2) to paragraph (b)(1) of the section has been changed to paragraph (c)(1).

C. Subpart J—Retirement of Equities

Section 615.5260—Retirement of Eligible Borrower of Stock

Several respondents challenged the FCA's statutory authority to regulate the retirement of protected stock, inasmuch as eligible borrower stock does not qualify as permanent capital and the 1971 Act requires that it be retired at par. These comments appear to be based on the assumption that the FCA's only authority to regulate in the capital area is section 4.3A of the 1971 Act. They overlook the specific reference to FCA regulations in sections 1.4, 2.3, 2.13 and 3.25 of the 1971 Act, which grant institutions authority to provide for capitalization and for the issuance and retirement of equities and distribution of earnings in their bylaws. They also fail to take into account the FCA's general rulemaking authority and the fact that all corporate authorities are granted subject to FCA regulation. Furthermore, the 1987 Act did nothing to change the FCA's responsibilities as the regulator of System institutions to exercise all its authorities to promote the safe and sound operation of the System and to carry out the purposes of the 1971 Act.

The FCA regards the early retirement of eligible borrower stock as a safety and soundness issue even though the borrower is protected from loss. The fact that the borrower is protected from loss does not mean that the stock ceases to function for creditors as a cushion from loss and as an earnings base. The FCA's concern with capital levels is not limited to assuring that the minimum standard is met. The FCA must necessarily concern itself with the level of an institution's total capital in light of the particular circumstances of each institution. The minimum capital standard is established as a minimum level for a well managed institution during more or less normal business cycles. The minimum permanent capital standard is not intended to define an adequate level of capital for all institutions. Furthermore, the minimum standard will not be fully phased-in until 1993. During the phase-in period, much of the total capital of an institution is comprised of eligible borrower stock. To ignore the levels of total capital would, especially during the phase-in period, constitute an abdication of the FCA's responsibility to promote the safe and sound operation of the System institutions. In addition, without such oversight, it would be possible for institutions that wish to leave the System to circumvent the requirement of the 1987 Act to pay over to FCSIC all of its capital in excess of 6 percent of its assets when it leaves the System.

One respondent recommended that if the requirement is adopted, the definition of "retirement in the ordinary course of business" be expanded to include servicing actions such as restructurings, reamortizations, formal extensions or voluntary exchanges of protected stock for at-risk stock. The final regulation adds to the definition of "ordinary course of business" any retirement that occurs pursuant to § 615.5290—Retirement in event of restructuring, which was added by the borrower rights regulations adopted by the FCA on September 6, 1988, and published on September 14, 1988 (53 FR 16937), and any retirement that is necessary to accomplish an exchange of eligible borrower stock for a like amount of at-risk stock.

The respondent also suggested that the FCA should consider whether § 615.5260(a)(3)(iii), which allows participation certificates and allocated surplus issued under a revolving plan to be retired at a discount when they are retired early, should also apply to stock issued subject to a revolving plan. The FCA has considered the comment, but does not believe it appropriate to change the regulation. The regulation incorporates a statutory definition that defines "par value" for stock as "par value" and does not make any

exceptions for stock issued subject to a revolvement plan. The FCA recognizes that the term "allocated equities," which is used in the statutory definition, is sometimes used to include stock that has been allocated as a distribution of earnings, but believes that it is not used in that sense here. If it had been used in that sense, it would have also included participation certificates, which are specifically referenced. To give the statute the reading suggested by the respondent would limit the protection to borrowers provided under the statute. The FCA does not believe the legislative history provides clear support for such an interpretation.

As noted by several respondents, the Technical Corrections Act removed the statutory basis for the second sentence in § 615.5260 (b) and (c), which provides that retirement of eligible borrower stock should be coordinated with the Farm Credit System Financial Assistance Board (FAB) and the Farm Credit System Assistance Corporation (FAC), if the institution's stock is impaired. Accordingly, this sentence has been deleted in the final regulation.

One respondent urged that § 615.5220(f) of the proposed regulation (redesignated as paragraph (g) in the final regulation) be revised to apply only to the retirement of permanent capital because stock issued to PCAs in the mandatory merger of the FLB and the FICB in the respondent's district is neither protected stock nor considered permanent capital under the proposed captial adequacy regulations published on May 12, 1988. The FCA knows of no reason that such stock would not be considered permanent capital and believes that respondent may be referring to the exclusion of the PCA's investment from the bank's permanent capital that would have been required under the May 12, 1988 proposed capital adequacy regulations to eliminate double counting of capital. Such an exclusion would have been made to eliminate double counting and did not mean that the stock would not have the characteristics of permanent capital. Nevertheless, the respondent raises a point that should be addressed. It is possible that there may be classes of stock presently outstanding that are not permanent capital and are not protected stock, and the bylaws will need to make provision for them, as well as for protected stock. As noted earlier, § 615.5220(f) only relates to the bylaws that must be approved by shareholders and applies to stock issued after October 5, 1988, and no change is needed in § 615.5220(f). However, as a result of the point raised in connection with § 615.5220(f), the FCA concluded that § 615.5270(a) should be revised in the final regulation to delete the words "retirable only in the discretion of the board and not on a date certain or upon the happening of an event such as repayment of a loan or pursuant to an automatic retirement or revolvement plan." With respect to stock issued after October 5, 1988, such language is duplicative of § 615.5220(f). Subpart J, unlike Subpart I, is not limted to equities issued after October 5, 1988, and is thus amended to accommodate the existence of any presently outstanding stock that may be neither permanent capital or protected stock.

One respondent requested clarification of the coordination of § 615.5270 (b) with § 615.5280. Section 615.5270(b) states that equities may not be retired unless after the retirement the institution would continue to meet the minimum permanent capital standards (including interim standards) established by the FCA under Subpart H. Section 615.5280 allows stock and participation certificates to be retired and the proceeds applied to the borrower's loan in the event of default. The respondent requested confirmation of its interpretation that retirement under § 615.5280 is required even if an institution does not meet its minimum capital adequacy standard.

The clarification sought by the respondent is provided by section 4.3A(f) of the 1971 Act, which states that section 4.3A does not affect the statutory lien of System institutions on the borrower's stock or the privilege of applying such stock to the borrower's indebtedness in event of default or restructuring. This clarification has been made explicit in the final regulation by adding an exception to § 615.5270(b) referencing §§ 615.5280 (*Retirement in event of default*) and 615.5290 (*Retirement in event of restructuring*). The FCA notes however, that § 615.5280 is permissive and does not require retirements in event of default. The FCA also amends § 615.5215 of the capital adequancy regulation adopted on September 28, 1988, which sets forth the statutory prohibition, to clarify that retirements pursuant to §§ 615.5280 and 615.5290 are not subject to the prohibition.

One respondent noted that no provision is made in the proposed regulation for the FCB to retire stock in the event of default. The final regulatlion has been expanded by adding a new paragraph (d) in § 615.5280 that authorizes the FCB to retire, at book value not to exceed par, any of its equities on which the FCB has a lien to secure a borrower's indebtedness when the borrower's loan is in default. Subsequent paragraphs in § 615.5280 have been redesignated accordingly.

Another respondent pointed out that § 615.5280 does not address retirements that are required by section 4.14B (a) and (b) of the 1971 Act when a loan is restructured and principal is forgivern and written off and made a number of comments suggesting that the various provisions of section 4.14B be referenced in § 615.5280. Retirements of stock in connection with restructuring under section 4.14A area addressed in the borrower rights regulations adopted by the FCA on September 6, 1988 (53 FR 35427), September 14, 1988) and hence there is no need to reference them in § 615.5280.

The respondent requested clarification of the term "fair market value" in § 615.5280(c), which allows BCs to apply stock, except eligible borrower stock, to the borrower's indebtedness at "fair market value." In proposing this section, the FCA inadvertently omitted the words "not to exceed par" after fair market value. Fair market value is a term used in the 1971 Act prior to amendment and in the prior regulation and in that context meant its par value discounted to take into account its early retirement. In the final regulation, this language has been clarified to state that stock other than eligible borrower stock that has been issued subject to a revolving plan may be applied to the borrower's indebtedness at its present value on the date of retirement.

The respondent noted that the notification requirements of § 615.5280(e) are no longer a statutory requirement and recommended that they be deleted from the regulation. The FCA is aware that such notice is no longer required by statute, but believes that the giving of such notice is an issue of fundamental fairness to shareholders and that such a regulation is within the FCA's statutory authority to regulate disclosure to shareholders. However, a new paragraph (h) of the section has been added to provide that the notice may be satisfied by the notices required by §§ 614.4516, 614.4518, 614.4519 of the FCA's borrower rights regulations in appropriate circumstances.

The respondent also stated § 615.5280(e) should reference the requirement of section 4.14B(c) that the borrower be allowed to keep at least one share of voting stock when the loan is restructured and a portion of the principal is forgiven and written off. The FCA did not accept this

recommendation. The requirement of § 615.5280(e)(2) of the proposed regulation (redesignated as paragraph (f)(2) in the final regulation) that the borrower be unformed that all or part of his or her stock investment may be retired in total or partial liquidation of the loan merely requires the institution to state its intention with respect to the retirement. Since not every borrower who defaults will be eligible for restructuring, the institution is not required to leave every borrower who defaults with one share of voting stock. Retirement in event of restructuring is dealt with in § 615.5290 and the requirement referred to by the respondent is referenced therein.

In the proposed capital adequacy related regulation published on September 2, 1988, the FCA referred to the FCA's proposed borrower rights regulations (53 FR 16937) which proposed to add paragraphs (e) and (f) to existing § 615.5255. The FCA stated that if the September 2, 1988 proposal were adopted as a final regulation, the paragraphs added by the borrower rights regulations would be redesignated as paragraphs (f) and (g), respectively. The FCA's borrower rights regulations have now been adopted as final regulations (53 FR 35427), but these paragraphs have been incorporated as a revision of § 615.5290 and it is unnecessary to redesignate them. All existing sections of Subpart J are deleted or amended by this final regulation.

D. Subpart K—Surplus and Reserves

A number of respondents asserted that the requirements for a BC to add to unallocated surplus 10 percent of net earnings after taxes until such time as the unallocated surplus equals half of the minimum permanent capital requirements established under Subpart H is without statutory basis and an intrusion into the management of privately owned institutions. One respondent referred to a line of tax cases establishing precedent for board discretion in deciding appropriations of earnings, which rely upon the fact that cooperatives are private institutions governed by a duly elected board with authority from shareholders to make earnings appropriations decisions. The respondent also asserted that the requirements to withhold a certain percentage from earnings' distributions could cause a BC to be noncompetitive because patronage would be reduced, which could hamper efforts to attract new business. The respondent also noted that the practice in BCs has been to determine the percentage amount of earnings to appropriate to allocated surplus before taxes, with the amount that is actually added to the unallocated surplus being net of taxes. Another respondent viewed the requirement as an attempt to define the form the BC permanent capital must take.

The argument that the FCA is without statutory authority to adopt such a regulation is without merit. In addition to its general rulemaking authority, there is specific authority for the FCA to enact regulations that

> * * * provide for the application of net savings to the restoration or maintenance of an allocated surplus account, reasonable additions to unallocated surplus, or to unallocated reserve after payment of operating expenses and provide for allocations to patrons not qualified under the Internal Revenue Code, or payment of such percentum of patronage refunds in cash, as the board may determine.

Section 3.11(a) of the 1971 Act, 12 U.S.C. 2132(a). This statutory provision has been in effect since 1971 and must have been taken into account by any tax cases handed down since 1971. While it is not possible to comment on the relevance of the tax cases referred to by the respondent, since no specific cases were cited, it is safe to say that cases supporting board discretion in determining board discretion in allocating earnings in a tax context may have little relevance to the authority of the FCA to regulate in this area.

Nor does the FCA believe that it can reasonably be argued that the specific provisions of section 3.11(a) are inconsistent with the provisions of section 4.3A, even though there is no specific reference to FCA regulations in section 4.3A. In adopting a new Title I of the 1971 Act to govern the operations of the FCBs, and a new Title II to govern the operation of the associations, Congress affirmed the authority of the FCA to regulate the issuance and retirement of equities and the distribution of earnings in all other institutions. The Technical Corrections Act amended section 3.25 of the 1971 Act to add language identical to the language in new Titles I and II that affirms the authority of the FCA to regulate in this area with respect to the National Bank for Cooperatives. It is unlikely that the Congress intended FCA to have such authority with respect to all banks and associations except the BCs that voted not to join the National Bank for Cooperatives.

At the present time the FCA considers the level of capital funds of the BCs not allocated to the borrowers relatively small in relation to the size and scope of operations of the BCs. The FCA believes that, in the interest of safety and soundness, the institution should have a level of capital that is not allocated to borrowers to allow the institution more flexibility in times of adverse economic conditions. Under adverse economic conditions the bank may be required to add substantial amounts to its reserve for losses. If such additions impair borrowers' equities, borrowers may be unwilling to purchase additional equities just as a commercial bank with impaired stock may find selling additional stock nearly impossible. FCA believes that a buffer between allocated equities and the reserve for loan losses in the form of unallocated surplus is both necessary and desirable to ensure the long term safety and soundness of the BCs.

FCA does not agree that the requirement to add 10 percent to surplus until the surplus reaches 50 percent of the minimum permanent capital requirement is so burdensome as to discourage new loan volume and believes that it will provide more flexibility to the institution in managing its operations. As noted in the preamble of the proposed regulation, the requirement is less stringent than the standards adopted by the FCCA as a Systemwide standard in 1985. Nor does the FCA agree that expressing the requirement in terms of after-tax dollars is unworkable. The regulation would require that taxes be estimated prior to the determination of the amount to be added to unallocated surplus.

The FCA emphasizes that the final regulation does not require an institution to achieve any particular level of unallocated surplus in any given year and no adverse consequences flow from failure to achieve a level equal to 50 percent of the minimum capital requirements. It merely requires that when there are earnings, a small portion of them be added to unallocated surplus until the unallocated surplus reaches a certain level, when the requirement is no longer applicable. The requirement is based on the safety and soundness concerns discussed above.

The final regulation therefore retains the requirement of § 615.5330 as originally proposed, but modifies the requirement to clarify that the minimum capital standard referred to is the 7 percent minimum permanent capital standard.

As proposed, Subparts L, M, and N are removed and reserved.

List of Subjects in 12 CFR Part 615

Accounting, Agriculture, Banks, Banking, Government securities, Investments, Rural areas.

For the reasons stated in the preamble, Part 615 of Chapter VI of Title

12 of the Code of Federal Regulations is amended as follows:

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

1. The authority citation for Part 615 is revised to read as follows:

Authority: Secs. 3.11, 3.25, 4.3, 4.9, 4.14B, 5.9, 5.17, 6.20, 6.26; 12 U.S.C. 2132, 2146, 2154, 2160, 2202b, 2243, 2252, 2278b, 2278b–6; sec. 301(a) of Pub. L. 100–233.

§ 615.5215 [Amended]

2. Subpart H, § 615.5215, is amended by adding the phrase, "except retirements pursuant to §§ 615.5280 and 615.5290" after the words "allocated equities" in the first sentence.

3. Subpart I is revised to read as follows:

Subpart I—Issuance of Equities

Sec.

Subpart I—Issuance of Equities

§ 615.5220 Capitalization bylaws.

The board of directors of each System bank and association shall, pursuant to section 4.3A of the Farm Credit Act of 1971 (Act), adopt capitalization bylaws, subject to the approval of its voting shareholders that set forth:

(a) Classes of equities and the manner in which they shall be issued, transferred, converted and retired;

(b) For each class of equities, a description of the class(es) of persons to whom such stock may be issued, voting rights, dividend rights and preferences, and priority upon liquidation, including rights, if any, to share in the distribution of the residual estate;

(c) The number of shares and par value of equities authorized to be issued for each class of equities, except that equities that are required to be purchased as a condition of obtaining a loan and nonvoting stock into which voting stock is converted after repayment of the loan may be authorized to be issued in unlimited amounts;

(d) For Farm Credit Banks and associations, the percentage or dollar amount of equity investment (which may be expressed as a range within which the board of directors may from time to time determine the requirement) that will be required to be purchased as a condition for obtaining a loan, which amount may be more than, but shall be not less than, 2 percent of the loan amount or $1,000, whichever is less;

(e) For banks for cooperatives, the percentage or dollar amount of equity or guaranty fund investment (which may be expressed as a range within which the board may from time to time determine the requirement) that serves as a target level of investment in the bank for patronage-sourced business, which amount may be more than, but shall not be less than, 2 percent of the loan amount or $1,000, whichever is less;

(f) The amount of voting stock protected under section 4.9A of the Act that existing borrowers will be required to exchange for new voting stock issued under capitalization bylaws adopted pursuant to section 4.3A of the Act;

(g) The manner in which equities will be retired, including a provision stating that equities other than those protected under section 4.9A of the Act are retirable at the sole discretion of the board, provided minimum permanent capital adequacy standards (including interim standards) established in Subpart H of this part are met;

(h) The manner in which earnings will be allocated and distributed, including the basis on which patronage refunds will paid, which shall be in accord with cooperative principles; and

(i) For Farm Credit banks, the manner in which the capitalization requirements of the Farm Credit Bank shall be allocated and equalized from time to time among its owners.

§ 615.5230 Implementation of cooperative principles.

(a) Voting shareholders of Farm Credit banks and associations shall be accorded full voting rights in accordance with cooperative principles.

(1) Voting shareholders of associations and banks for cooperatives shall:

(i) Have only one vote, regardless of the number of shares owned or the number of loans outstanding, except a otherwise required by statute or regulation and except as modified by paragraph (b) of this section;

(ii) Be accorded the right to vote in the election of each director and, unless otherwise provided in the capitalization bylaws, be allowed to cumulate such votes and distribute them among the candidates in the shareholder's discretion.

(2) Each voting shareholder of a Farm Credit Bank shall:

(i) Have one vote that is assigned a weight proportional to the number of the association's voting shareholders in a manner that does not discriminate against agricultural credit associations that have resulted from the merger or consolidation of Federal land bank associations and production credit associations; and

(ii) Have the right to vote in the election of each director and, unless otherwise agreed to by each association shareholder, be allowed to cumulate such votes and distribute them among the candidates in the shareholder's discretion.

(3) Notwithstanding the provisions of paragraph (a)(1)(ii) of this section, any association that presently elects directors on a regional basis may continue to do so until January 1, 1993.

(b) Each equityholder of each institution shall be equitably treated in the operation of the institution.

(1) Each issuance of preferred stock (other than preferred stock to be issued to the Farm Credit System Financial Assistance Corporation and preferred stock outstanding on October 5, 1988, and stock into which such outstanding stock is converted that has substantially similar preferences) shall be approved by a majority of the shares of each class of equities affected by the preference, voting as a class, whether or not such classes are otherwise authorized to vote;

(2) Any dividends paid to the holders of common stock and participation certificates shall be on a per share basis and without preference as to rate or priority of payment between classes of common stock, between classes of participation certificates, between classes of common stock and classes of participation certificates, or between holders of the same class of stock or participation certificates, except that any class of common stock or participation certificates that result from the conversion of allocated surplus may be subordinated to other classes of common stock and participation certificates in the payment of dividends.

(3) Any patronage refunds that are paid shall be paid in accordance with cooperative principles, on an equitable and non-discriminatory basis determined by the board of directors in accordance with the capitalization bylaws, provided that any earning pools that may be established for the payment of patronage shall be established on a rational and equitable basis that will ensure that each patron of the institution receives its fair share of the earnings of the institution and bears its fair share of the expenses of the institution.

(4) All classes of common stock and participation certificates (except those resulting from a conversion of allocated surplus) must be accorded the same priority with respect to implement and restoration of impairment and have the

same rights and priority upon liquidation.

§ 615.5240 Permanent capital requirements.

The capitalization bylaws shall enable the institution to meet the minimum permanent capital adequacy standards (including interim standards) established under Subpart H of this Part and the total capital requirements established by the board of directors of the institution.

(a) In order to qualify as permanent capital, equities issued under the bylaws must meet the following requirements:

(1) For common stock and participation certificates—

(i) Retirement must be solely at the discretion of the board of directors and not upon a date certain or upon the happening of any event, such as repayment of the loan, and not pursuant to any automatic retirement or revolvement plan;

(ii) Retirement must be at not more than book value;

(iii) Disclosure must have been made pursuant to § 615.5250 of the nature of the investment and the terms and conditions under which it is issued, and the rights, if any, to share in any patronage distributions that may be made.

(iv) Dividends must be payable only at the discretion of the board and must be noncumulative.

(2) For preferred stock issued to persons other than the Farm Credit System Financial Assistance Corporation—

(i) Retirement must be solely at the discretion of the board of directors and not upon a date certain or upon the happening of any event, such as repayment of the loan, and not pursuant to any automatic retirement or revolvement plan;

(ii) Retirement must be at not more than book value;

(iii) Dividends must be payable only in the discretion of the board, and may be cumulative; and

(iv) Disclosure must have been made pursuant to § 615.5250 of the nature of the investment and the terms and conditions under which it is issued.

(b) Until a bank or association meets the minimum permanent capital standards (including interim standards) established by the FCA under Subpart H of this part, all equities required to be purchased as a condition for obtaining a loan shall be purchased from the institution.

§ 615.5250 Disclosure requirements.

(a) Equities purchased as a condition for obtaining a loan. Prior to loan closing, the institution shall provide the prospective borrower with the following:

(1) The institution's most recent annual report filed under 12 CFR Part 620;

(2) The institution's most recent quarterly report filed under 12 CFR Part 620, if more recent than the annual report;

(3) A copy of the institution's capitalization bylaws; and

(4) A written description of the terms and conditions under which the equity is issued. In addition to specific terms and conditions, the description shall disclose:

(i) That the equity is an at-risk investment and not a compensating balance;

(ii) That the equity is retirable only at the discretion of the board of directors and only if minimum permanent capital standards (including interim standards) established under Subpart H of this part are met;

(iii) Whether the institution presently meets its minimum permanent capital standards, including interim standards; and

(iv) Whether the institution knows of any reason the institution may not meet its permanent capital standard on the next earnings distribution date.

(b) Notwithstanding the provisions of paragraph (a) of this section, no materials previously provided to a purchaser need be provided again unless the purchaser requests, except the disclosure required by paragraph (a)(4) of this section.

(c) Prior to any mandatory exchange of eligible borrower stock, as defined in § 615.5260(a)(1), for stock issued under capitalization bylaws required under § 615.5220, equityholders shall be provided with the disclosures required by paragraphs (a)(3) and (a)(4) of this section.

(d) Other equities. (1) No stock or participation certificates other than those required to be purchased as a condition of obtaining a loan may be offered for sale except pursuant to a disclosure statement containing all of the information required by 12 CFR Part 620 in the annual report to shareholders as of a date within 135 days of the proposed sale, which disclosure statement must have been reviewed and cleared by the Farm Credit Administration. The most recent annual report to shareholders and the most recent quarterly report filed with the Farm Credit Administration may be incorporated by reference into the disclosure statement in satisfaction of this requirement. In addition, the disclosure statement shall include items in (3) and (4) of paragraph (a) of this section and a discussion of the intended use of the sale proceeds. No materials previously provided to the purchaser need be provided again unless the purchaser requests it, except the disclosure required by paragraph (a)(4) of this section and a discussion of the use of sale proceeds.

(2) At least 45 days prior to the proposed sale of such equities, the institution shall submit the disclosure statement required by paragraph (b)(1) of this section to the Farm Credit Administration for review and clearance.

(3) Within 30 days of the receipt of such disclosure statement and any clarifying information the Farm Credit Administration may request, the Farm Credit Administration shall inform the institution whether the Farm Credit Administration will consider the issuance permanent capital for the purpose of meeting the minimum permanent capital standards established under Subpart H (including interim standards) and shall inform the institution of any required changes or additions to the disclosure materials.

(4) No officer, director, employee, or agent of a System institution shall make any disclosure, through the disclosure statement or otherwise, in connection with the sale of equities that is inaccurate or misleading, or omit to make any statement needed to make other disclosures made by such person not misleading.

(5) The Farm Credit Administration may waive any or all of the disclosure requirements of paragraph (b) of this section when a single investor acquires $100,000 or more of a single class of equity if the sophistication of the purchaser warrants, provided that any certificate that may be issued evidencing such an equity states on its face in boldface type:

The denomination of this equity may not be reduced to less than $100,000 without the prior written approval of the Farm Credit Administration.

(e) The requirements of this section shall not apply to the sale of Farm Credit System institution equities to other Farm Credit System institutions or other financing institutions having a discount or lending relationship with the selling Farm Credit System Institution.

3. Subpart J is revised to read as follows:

Subpart J—Retirement of Equities

Sec.

Subpart J—Retirement of Equities

§ 615.5260 Retirement of eligible borrower stock.

(a) *Definitions.* For the purposes of this subpart the following definitions shall apply:

(1) "Eligible borrowers stock" means:

(i) Stock, participation certificates or allocated equities outstanding on January 6, 1988, or purchased as a condition of obtaining a loan prior to the earlier of the date of shareholder approval of capitalization bylaws under section 4.3A of the Act or October 6, 1988; and

(ii) Any stock, participation certificates or allocated equities for which such eligible borrower stock is exchanged in connection with a merger, consolidation, or other reorganization or a transfer of territory. "Eligible borrower stock" does not include equities for which eligible borrower stock is required to be exchanged pursuant to the bylaws adopted under section 4.3A or equities for which eligible borrower stock is voluntarily exchanged except in connection with a merger, consolidation or other reorganization or a transfer of territory.

(2) "Retirement in the ordinary course of business" means:

(i) Retirement upon repayment of a loan or under a retirement or revolvement plan in effect prior to January 6, 1988, and for eligible borrower stock issued after that date, at the time the loan was made;

(ii) Retirement pursuant to §§ 615.5280 and 615.5290; or

(iii) Retirement necessary to accomplish an exchange of eligible borrower stock for a like amount of at-risk stock.

(3) "Par value" means:

(i) In the case of stock, par value;

(ii) In the case of participation certificates and other equities (except equities unable to be retired in connection with a liquidation occurring after January 1, 1983, and before January 1, 1988), face or equivalent value; or

(iii) In the case of participation certificates and allocated surplus subject to retirement under a revolving cycle and retired out or order pursuant to §§ 615.5280 and 615.5290 or otherwise under the Act, par or face value discounted at a rate determined by the institution to reflect the present value of the equity as of the date of such retirement.

(b) When an institution retires eligible borrower stock in the ordinary course of business, such equities shall be retired at par, even if book value is less than par.

(c) When a Farm Credit Bank retires stock for the sole purpose of enabling an association to retire eligible borrower stock that was issued in connection with a long term real estate loan, such stock shall be retired at par even if its book value is less than par.

(d) No eligible borrower stock shall be retired other than in the ordinary course of business without the prior approval of the Farm Credit Administration.

§ 615.5270 Retirement of other equities.

(a) Equities other than eligible borrower stock shall be retired at not more than their book value.

(b) No equities shall be retired, except pursuant to §§ 615.5280 and 615.5290, unless after the retirement the institution would continue to meet the minimum permanent capital standards (including interim standards) established under Subpart H of this Part.

§ 615.5280 Retirement in event of default.

(a) When the debt of a holder of eligible borrower stock issued by a production credit association, Federal land bank association or agricultural credit association is in default, such institution may, but shall not be required to, retire at par eligible borrower stock owned by such borrower on which the institution has a lien, in total or partial liquidation of the debt.

(b) When the debt of a holder of stock, participation certificates or other equities issued by a production credit association, Federal land bank association, or agricultural credit association is in default, such institution may, but shall not be required to, retire at book value not to exceed par all or part of such equities, other than eligible borrower stock as defined in § 615.5260(a)(1), owned by such borrower on which the institution has a lien, in total or partial liquidation of the debt.

(c) When the debt of a holder of equities or guaranty fund certificates issued by a bank for cooperatives is in default, the bank for cooperatives may, but shall not be required to, retire all or part of such equities or guaranty fund investments owned by the borrower on which the bank for cooperatives has a lien, in total or partial liquidation of the debt. If such investments qualify as eligible borrower stock, it shall be retired at par, as defined in § 615.5260(a)(3). All other investments shall be retired at a rate determined by the institution to reflect its present value on the date of retirement.

(d) When the debt of a holder of the equities of a Farm Credit Bank is in default, the Farm Credit Bank may, but shall not be required to, retire all or part of such equities owned by the borrower on which the Farm Credit Bank has a lien, in total or partial liquidation of the debt. If such equities qualify as eligible borrower stock or are retired solely to permit a Federal land bank association to retire eligible borrower stock under § 615.5280(a), they shall be retired at par. All other equities shall be retired at book value not to exceed par.

(e) Any retirements made under this section by a Federal land bank association that is not a direct lender shall be made only upon the specific approval of or in accordance with approval procedures issued by the district Farm Credit Bank.

(f) Prior to making any retirement pursuant to this section, except retirements pursuant to paragraphs (c) and (d) of this section, the institution shall provide the borrower with written notice of the following matters:

(1) A statement that the institution has declared the borrower's loan to be in default;

(2) A statement that the institution will retire all or part of the equities of the borrower in total or partial liquidation of his or her loan;

(3) A description of the effect of the retirement on the relationship of the borrower to the institution;

(4) A statement of the amount of the outstanding debt that will be owed to the institution after the retirement of the borrower's equities; and

(5) The date on which the institution will retire the equities of the borrower.

(g) The notice required by this section shall be provided in person at least 10 days prior to the retirement of any equities of a holder, or by mailing a copy of the notice by first class mail to the last known address of the equity holder at least 13 days prior to the retirement of such person's equities.

(h) The requirements of this section may be satisfied by notices given pursuant to §§ 614.4516, 614.4518, and 614.4519 of Title 12 of the Code of Federal Regulations that contain the information required by this section.

4. Subpart K is revised to read as follows:

Subpart K—Surplus and Reserves

Sec.

615.5330 Banks for cooperatives.

Subpart K—Surplus and Reserves

§ 615.5330 Banks for cooperatives.

Each bank for cooperatives shall add to the unallocated surplus account annually an amount not less than 10 percent of net earnings after taxes until such time as the unallocated surplus

equals half of the minimum permanent capital requirement established under § 615.5205(a) of Subpart H of this part.

§§ 615.5350–615.5440 (Subparts L–N) [Removed and Reserved]

5. Subparts L, M, and N are removed and reserved.

Subpart L [Reserved]

Subpart M [Reserved]

Subpart N [Reserved]

* * * * *

Date: October 7, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88–23613 Filed 10–12–88; 8:45 am]

BILLING CODE 6705–01–M

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12 CFR Part 624

Regulatory Accounting Practices

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board (Board), adopts final regulations amending 12 CFR Part 624 relating to the use of regulatory accounting practices (RAP) by Farm Credit institutions. These final regulations implement amendments to the Farm Credit Act of 1971 (Act) (12 U.S.C. 2001, et seq), made by the Agricultural Credit Act of 1987 (1987 Act) (Pub. L. 100–233). The regulations authorize Farm Credit institutions to use RAP for certain interest rate evaluations and extend the use of RAP until 1992.

DATE: This regulation shall become effective upon the expiration of 30 days from publication during which either or both houses of Congress is in session. Notice of effective date will be published.

FOR FURTHER INFORMATION CONTACT:

Thomas L. Dalton, Office of Analysis and Supervision, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4475, TDD (703) 883–4444.

or

Gary L. Norton, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: Section 5.19(b) of the 1971 Act as amended by the Farm Credit Act Amendments of 1986 (Pub. L. 99–509), required the FCA to issue regulations under which Farm Credit institutions would be authorized to use regulatory accounting practices (RAP). FCA promulgated regulations in 1986 (12 CFR 264.100, et seq.) which implemented the RAP authorities by authorizing institutions to use RAP for two purposes. An institution could use RAP to defer certain interest costs and portions of the provision for loan losses for the purpose of evaluating its costs of doing buiness in order to adjust the rates charged to its borrowers as necessary to meet competitive interest rates. In addition, an institution could use RAP to maintain the value of its stock and participation certificates at par and thus enable it to retire stock at par value (based on a RAP determination) even though the stock was worth less than par value based on generally accepted accounting principles (GAAP).

On April 5, 1988, the FCA Board adopted proposed amendments to the RAP regulations which reflected the amendments to the Act made by the 1987 Act. The proposed amendments extended the period during which institutions could use RAP to December 31, 1992; deleted the authority for institutions to use RAP to determine the value of stock for retirement purposes; and clarified the authority of institutions to use RAP for interest rate evaluations (53 FR 16968).

The FCA received comments on the proposed regulations from the Farm Credit Corporation of America (FCCA), the Farm Credit System Assistance Board (Assistance Board), two Farm Credit Districts, and a production credit association (PCA).

The FCCA and individual bank commenters stated that the regulations should continue to authorize institutions to use RAP to retire stock at par when the book value of the stock is less than per detemined in accordance with GAAP. For the reasons stated below and in the supplementary information to the proposed regulation published on May 12, 1988 (53 FR 16968), the FCA Board reaffirms its determination that RAP can no longer be used to determine the vaule of stock for retirement purposes. This comment raises questions regarding stock retirement for three different types of stock: "eligible borrower stock" as defined in section 4.9A of the Act; stock which is "permanent capital" as defined in section 4.3A of the Act; and Farm Credit Bank (FCB) stock issued and retired in connection with the issuance and retirement of "eligible borrower stock" by a Federal land bank association (FLBA). The issues relating to these three categories of stock will be discussed sequentially.

The first question involves the use of RAP for purposes of retiring "eligible borrower stock." The FCA Board reconfirms its position that when an institution retires "eligible borrower stock" as defined in section 4.9A of the Act, it must be retired at par in accordance with that section. Under section 4.9A of the Act, institutions are required to retire "eligible borrower stock" at par value regardless of the book value of such stock. Eligible borrower stock is defined to include all stock, participation certificates, and allocated equities owned by borrowers and other financing institutions (OFIs) on the date of enactment of the 1987 Act (January 6, 1988), or issued within the earlier of 9 months after such date of enactment or the implementation of a new capitalization plan by the institution involved. Eligible borrower stock also includes certain stock previously retired at less than par value or held by an institution in liquidation. The requirements of section 4.9A must be exercised by institutions without regard to the book value of the stock or any FCA approval or regulatory authority. If an institution in liquidation does not have the resources to retire such stock at par value then, in accordance with section 4.9A of the Act, the Farm Credit System Financial Assistance Corporation (Financial Assistance Corporation) or the Farm Credit System Insurance Corporation are required to provide the receiver with sufficient funds to effect that retirement.

Thus, institutions have an independent statutory authority to retire eligible borrower stock at par regardless of its book value determined in accordance with GAAP and do not need RAP for that purpose. However, in order to further clarify that power, on October 4, 1988, the FCA Board adopted capital adequacy related regulations which, among other things, provide for the retirement of equities by Farm Credit institutions (See separate **Federal Register** document published elsewhere in this issue.) Section 615.5260 provides that when an institution retires eligible borrower stock in the ordinary course of business, such equities shall be retired at par, even if their book value is less than par.

The next issue relates to the retirement of permanent capital. Section 4.3A as added by the 1987 Act, requires System institutions to begin issuing new types of equities that will be included within its "permanent capital" and which are not categorized as "eligible borrower stock." Permanent capital must be issued as an "at risk" investment. To achieve this result,

section 4.3A requires that such equities be issued and retired in accordance with the bylaws of the institution subject to statutory and regulatory requirements, including the requirement that permanent capital may only be retired at the discretion of the board of directors of the institution. In addition, section 4.3A(g) provides that to the extent any of the new capitalization provisions are inconsistent with other provisions of the Act, the new provisions shall control.

The commenters assert that there is no inconsistency between the requirement for permanent capital to be an "at risk" investment and the authority for such capital to be retired at par in accordance with RAP when its book value is less than par determined in accordance with GAAP. The FCA Board reasserts its position that there is no authority for institutions to retire "permanent capital" at any value greater than its book value and thus there is no authority to use RAP for such purposes. Section 4.3A of the Act excludes from the definition of "permanent capital" any equities that are not "at risk." This section also requires each institution to provide for the conversion of some portion of each stockholders "eligible borrower stock" into "permanent capital" to ensure that each borrower has at least some minimum stake in the institution. One of the risks implicit in this requirement is the risk that the investment may decline in value and become impaired. If it can be retired at more than book value, it is not truly at risk.

It is also noted that the position advanced by these commenters could have the effect of significantly altering the statutory responsibilities of the Assistance Board and the Financial Assistance Corporation. Section 6.4, as added by the 1987 Act, authorizes each System institution to request assistance from the Farm Credit System Assistance Board (Assistance Board) when the book value of its stock falls below 100 percent of par value, on a GAAP basis, and requires each System institution to seek assistance from the Assistance Board when the book value falls below 75 percent of par value, on a GAAP basis. While the Assistance Board may provide assistance to an institution to enable it to continue operations, the Assistance Board can deny a request for assistance. In that event, the Assistance Board is obligated to direct the Financial Assistance Corporation to provide the receiver of the institution with sufficient funds to retire eligible borrower stock at par value in accordance with section 4.9A of the Act. If an institution were able to retire permanent capital at par value when its book value was less than par, that activity could greatly increase the amount of funds that would have to be provided under section 4.9A.

The FCA Board carefully considered all of the relevant statutory provisions and their legislative histories in the development of this regulation. Some of the commenters did reference statements in the legislative history to S. 1665 that, when read in isolation, could suggest that all stock of an institution should be retirable at par determined in accordance with RAP (S. Rep. No. 100–230, 100th Cong., 1st Sess., 28). However, the bill included express statutory requirements relating to mandatory retirement at par of "eligible borrower stock" and a separate provision requiring that permanent capital be held "at risk." The latter provision would be rendered meaningless if borrowers were able to have such capital retired at a value greater than its value determined in accordance with GAAP. It is also noted that the retirement of impaired permanent capital at par would, in most instances, violate section 4.3A(d) of the Act which prohibits any institution from reducing its permanent capital through the retirement of stock unless it meets the minimum capital adequacy standards. An institution with permanent capital that is worth less than its par value determined in accordance with GAAP will, in most instances, not meet the capital adequacy requirements.

The third question relates to the retirement of FCB stock which was purchased by an FLBA in connection with the purchase of "eligible borrower stock" of the FLBA by a borrower. Several commenters expressed concern that unless the FCB was able to retire such stock at par, the FLBA would not have the financial resources to retire the corresponding "eligible borrower stock" at par. The FCA Board agrees and has addressed this issue through the adoption of § 615.5260(c) as part of the capital adequacy related regulations. Section 615.5260(c) provides that when a FCB retires stock for the sole purpose of enabling an association to retire eligible borrower stock that was issued in connection with long term real estate loans, such stock must be retired at par even if its book value is less than par. A complete discussion of this matter is contained in the capital adequacy related regulation adopted by the FCA Board on October 4, 1988.

A Farm Credit Bank commented that the effective date for the termination of the use of RAP for stock retirement should be postponed until associations have adopted new capitalization plans pursuant to section 4.3A of the Act. The FCA Board believes that this comment has been addressed by coordinating the effective date of these regulations with the effective date of the capital adequacy related regulations so that both sets of regulations will be effective on the same date.

A PCA commented that the FCA should not attempt to dictate interest rates to associations. This comment was apparently based on a misreading of proposed § 624.104 which merely restates the statutory authority under which institutions can use RAP to evaluate the interest rates charged on loans. Consistent with the Act, the regulation provides that RAP cannot be used to charge a rate of interest below the competitive interest rates charged by other lending institutions.

The Assistance Board commented that the deletion of authority to use RAP as a basis for the retirement of stock should be coupled with a provision discussing the Assistance Board's authorities as provided by the 1987 Act. The FCA Board believes the authorities of the Assistance Board are clearly enumerated in Title VI of the Act and that no further additions to these regulations are necessary.

List of Subjects in 12 CFR Part 624

Accounting, Agriculture, Banks, Banking, Credit, Rural areas.

As stated in the preamble, Part 624, Chapter VI, Title 12 of the Code of Federal Regulations is revised to read as follows:

PART 624—REGULATORY ACCOUNTING PRACTICES

Sec.

Authority: Secs. 1.1, 1.5, 2.2, 2.12, 3.1, 4.8, 5.17, 5.19; 12 U.S.C. 2001, 2013, 2073, 2093, 2122, 2159, 2252, 2254.

§ 624.100 General.

(a) The regulations contained in this part implement the provisions of the Act relating to the authorities, terms, conditions, and restrictions pursuant to which a Farm Credit System institution may use regulatory accounting practices to defer and capitalize a portion of its interest costs, provisions for loan losses, and premiums paid to retire debt instruments, and to amortize such amounts.

(b) Notwithstanding the provisions of this part, if an institution requests that the Farm Credit System Assistance Board (Assistance Board) certify the institution to issue preferred stock in accordance with Title VI of the Act, the Assistance Board may further restrict the continued use of regulatory accounting practices by the institution as provided in section 6.6 of the Act.

(c) The authority to defer and capitalize costs is effective until December 31, 1992. Amounts capitalized through December 31, 1992 may be amortized over the full amortization period of 20 years, but in no instance beyond December 31, 2012.

§ 624.101 Definitions.

For the purpose of this part, the following definitions apply:

(a) "Generally accepted accounting principles (GAAP)" means that body of conventions, rules and procedures necessary to define accepted accounting practice at a particular time, as promulgated by the Financial Accounting Standards Board and other authoritative sources recognized as setting standards for the accounting profession in the United States. Generally accepted accounting principles shall include not only broad guidelines of general application but also detailed practices and procedures that constitute standards against which financial presentations are evaluated.

(b) "Institution" means any bank or association chartered under the Act.

(c) "Loans outstanding" means gross loans outstanding net of any participations sold at the end of each reporting period. The term "loan" includes loans, participations purchased, contracts of sale, notes receivable, and other similar obligations and lease financings. The term "loan" includes loans originated through direct negotiations between the reporting institution and a borrowing entity and loans or interest in loans purchased from another lender that are recorded as assets of a reporting institution.

(d) "Regulatory accounting practices (RAP)" means those accounting methods and practices directed by statutory and regulatory requirements provided for in the Act and in this part and that are not in accordance with GAAP.

§ 624.102 Deferral of interest costs on Debt.

(a) A bank may capitalize any premium paid to repurchase the bank's obligations on consolidated Systemwide notes and bonds issued on or before January 1, 1985, and may contract with a third party, including a service corporation chartered by the Farm Credit Administration, in order to perform a defeasance of these same obligations. The premium paid shall be the excess of the cost to repurchase or redeem an obligation over the recorded net book value for such obligation.

(b) A bank may capitalize a portion of its interest expenses which have been paid or will be paid during the period July 1, 1986, through December 31, 1992, on Systemwide and consolidated notes and bonds issued on or before January 1, 1985. The amount of a bank's interest expense on an obligation that may be capitalized shall be limited to the excess of the bank's cost on the obligation over the market price for the obligation on October 21, 1986.

(c) An institution that defers any expenses associated with actions taken in accordance with this section shall amortize such expenses over a period not to exceed 20 years using straight-line amortization. The unamortized portion of debt-related costs that are deferred or are eligible to be deferred shall not be considered as capital of the institution.

§ 624.103 Deferral of the provisions for loan losses.

An institution is authorized during the period July 1, 1986, through December 31, 1992, to capitalize the amount of its provision for loan losses made on an annual basis in excess of 1/2 of 1 percent of loans outstanding. An institution that defers a portion of its provision for loan losses in accordance with this section shall amortize such amount over a period to not exceed 20 years, using straight-line amortization. Institutions using RAP to defer their provisions for loan losses shall maintain an allowance for loan losses determined in accordance with GAAP.

§ 624.104 Interest rate evaluation.

An institution may take into consideration the use of RAP, among other factors, for purposes of evaluating the interest rates charged on loans. Such other factors include the institution's cost of funds, overhead, expected losses, margin to provide for adequate capital, return to stockholders, and any other relevant factors. In no event shall such an institution charge a rate of interest which is less than the competitive interest rates charged by other lending institutions in the same area, for a loan with similar terms, to a borrower of equivalent creditworthiness and access to alternative credit.

§ 624.105 Financial reporting and disclosure.

Each institution that uses RAP in accordance with the provisions of this part shall prepare and issue its financial statements to stockholders in accordance with Part 620 of this chapter. In addition, each such institution shall disclose clearly in the management commentary to its financial statements the purpose and use of the regulatory accounting practices adopted by the institution and shall reconcile the differences between the application of GAAP and RAP.

Date: October 7, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88-23614 Filed 10-12-88; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-CE-29-AD; Amdt. 39-6041]

Airworthiness Directives; Cessna Model T303 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Cessna Model T303 airplanes, which requires inspection of the nose gear actuator attach fitting for cracks, and if found, removal of certain size cracks and rework by removing sharp edges. Reports have been received of in-service failures of this fitting. The actions specified in this AD will preclude failure of the nose gear actuator attach fitting which would lead to collapse of the nose landing gear and loss of control during take-off or landing.

DATES: *Effective Date*: November 5, 1988.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Cessna Service Bulletin (S/B) MEB88-4, dated August 5, 1988, applicable to this AD may be obtained from the Cessna Aircraft Company, Customer Services, P.O. Box 7704, Wichita, Kansas 67277; telephone number 316-946-7550. This information may also be examined at the Rules Docket, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Douglas W. Haig, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, ACE-120W, Room 100, 1801 Airport Road, Wichita, Kansas 67209, telephone number 316-946-4409.

SUPPLEMENTARY INFORMATION: The FAA has received reports of two accidents and one incident involving Cessna Model T303 airplanes caused by failure of the nose gear actuator attach fitting. In addition, reports have been received of ten other fittings having developed cracks while in-service. Time-In-Service (TIS) for these fittings varied from 929 hours to 3,486 hours and the average airframe time for the Model T303 fleet is 1,355 hours TIS. As a result, the manufacturer has issued S/B MEB88–4, dated August 5, 1988, specifying inspection and rework of these fittings with eventual replacement with fittings made of a stronger material.

Since the FAA has determined that the unsafe condition described herein is likely to exist or develop in other airplanes of the same type design, an AD is being issued requiring inspection and rework of the nose gear actuator attach fitting on Cessna Model T303 airplanes. Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

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

The FAA has determined that this regulation is an emergency regulation that is not major under Section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption **"ADDRESSES"** at the location identified.

List of Subjects in 14 CFR Part 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:

Cessna: Applies to Model T303 (all serial numbers) airplanes, certificated in any category.

Compliance: Required as indicated, unless already accomplished.

To prevent failure to the nose gear actuator attach fitting, accomplish the following:

(a) Within the next 50 hours time-in-service (TIS) on airplanes which have accumulated 500 hours total TIS or more on the effective date of this AD, or prior to the accumulation of 550 hours total TIS on airplanes that have less than 500 hours TIS on the effective date of this AD, and thereafter at intervals not to exceed 50 hours TIS, inspect the nose gear actuator attach fitting in accordance with Cessna Service Bulletin (S/B MEB88–4, dated August 5, 1988.

(1) If the fitting does not have any cracks, at the initial inspection specified above, prior to further flight rework the fitting in accordance with the above S/B.

(2) If either of the upper legs are found cracked in any inspection specified above, prior to further flight replace the cracked fitting with a serviceable fitting that has been reworked in accordance with the above S/B or with a new configuration fitting described in paragraph (b) of this AD.

(3) If either of the lower legs are found cracked in any inspection specified above, prior to further flight, remove the cracks in accordance with the criteria in the above S/B and continue the inspections specified above. If the cracks exceed the criteria of the above S/B, prior to further flight replace the cracked fitting with a serviceable fitting that has been reworked in accordance with the above S/B or with a new configuration fitting described in paragraph (b) of this AD.

(b) Prior to May 1, 1989, replace the Part Number (P/N) 2543004–1 nose gear actuator attach fitting with a P/N 2543004–3 fitting, unless this action has been accomplished per paragraph (a) of this AD.

Note: P/N 2543004–3 fittings have a forging number of 2543004–4F and will be available after January 1, 1989.

(c) The inspections specified in paragraph (a) of this AD are not required if the modification specified in paragraph (b) of this AD has been accomplished.

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

(e) An equivalent means of compliance with this AD may be used if approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone 316–946–4400.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to the Cessna Aircraft Company, Customer Services, P.O. Box 7704, Wichita, Kansas 67277; telephone number 316–946–7550; or may examine the documents referred to herein 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 5, 1988.

Issued in Kansas City, Missouri, on September 22, 1988.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88–23555 Filed 10–12–88; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 88–AWP–9]

Revision to Fairfield, CA, Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises the Fairfield, California Control Zone. This revision will provide controlled airspace for Instrument Flight Rules (IFR) departures from the Travis AFB Aero Club Airport and will also provide additional controlled airspace for slow climbing large jet departures from Travis AFB.

EFFECTIVE DATE: 0901 u.t.c., April 6, 1989.

FOR FURTHER INFORMATION CONTACT: Daniel K. Martin, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (213) 297–0166.

SUPPLEMENTARY INFORMATION:

History

On July 5, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the Fairfield, California Control Zone (53 FR 25174).

Interested parties were invited to participate in this rulemaking

proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Section 171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations revised the Fairfield, California Control Zone. This revision will provide controlled airspace for IFR departures from the Travis AFB Aero Club Airport. It also will provide additional controlled airspace for slow climbing large jet departures from Travis AFB.

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. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule 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:

Fairfield, CA [Revised]

Within a 5-mile radius of Travis AFB, Fairfield, CA, (lat. 38°15'45"N., long. 121°55'35"W.); within 2 miles each side of the Travis VOR (lat. 38°20'40"N., long. 121°48'35"W.) 047° radial extending from the 5-mile radius zone to 10 miles NE of Travis AFB; within 2 miles each side of the Travis VOR 227° radial extending from the 5-mile radius zone to 10 miles SW of Travis AFB; and within 2 miles each side of the 237° bearing from the Travis Aero Club Airport (lat. 38°16'10"N., long 121°58'27"W.) extending from the Travis Aero Club Airport to 5 miles SW of the airport.

Issued in Los Angeles, CA, on September 29, 1988.

Jacqueline L. Smith,

Manager, Air Traffic Division.

[FR Doc. 88–23552 Filed 10–12–88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88–ASW–12]

Revision of Transition Area; Anahuac, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will revise the transition area located at Anahuac, TX. A review of the types of aircraft now using the Chambers County Airport revealed a change in the category and size of aircraft using the airport, thus making this amendment necessary. The intended effect of this amendment is to continue to provide adequate controlled airspace for aircraft executing the standard instrument approach procedure (SIAP) serving the Chambers County Airport. A positive side effect of this amendment is that it will also provide adequate controlled airspace for aircraft executing a new SIAP to the R.W.J. Airpark. The status of both airports will remain instrument flight rules (IFR).

EFFECTIVE DATE: 0901 u.t.c., July 9, 1989.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone (817) 624–5561.

SUPPLEMENTARY INFORMATION:

History

On June 10, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by revising the transition area located at Anahuac, TX (53 FR 26277).

Interested persons to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D, dated January 1, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations will revise the transition area located at Anahuac, TX. A review of the types of aircraft now using the Chambers County Airport revealed a change in the category and size of aircraft using the airport, thus making this amendment necessary. The intended effect of this amendment is to continue to provide adequate controlled airspace for aircraft executing the SIAP serving the Chambers County Airport. A positive side effect of this amendment is that it will also provide adequate controlled airspace for aircraft executing a new SIAP to the R.W.J. Airpark. The status of both airports will remain IFR.

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. It, therefore: (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule 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, Transition area.

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.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Anahauc, TX [Revised]

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Chambers County Airport (latitude 29°46'12"N., longitude 94°39'51"W.), and within 3 miles each side of the 137° bearing from the Anahuac NDB (latitude 29°46'23"N., longitude 94°39'47"W.), extending from the 7-mile radius area to 8.5 miles southeast of the Anahuac NDB.

Issued in Fort Worth, TX, on September 27, 1988.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 88-23553 Filed 10-12-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88-AWP-10]

Revision to Flagstaff Pulliam Airport, Arizona Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises the Flagstaff Pulliam Airport, Arizona Transition Area. This revision will increase the 1,200 feet above ground level (AGL) transition area and provide additional controlled airspace for aircraft in the FRISY intersection holding pattern.

EFFECTIVE DATE: 0901 u.t.c., November 17, 1988.

FOR FURTHER INFORMATION CONTACT: Daniel K. Martin, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (213) 297-0166.

SUPPLEMENTARY INFORMATION:

History

On July 5, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the Flagstaff Pulliam Airport Transition Area (53 FR 25175).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Section 181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations will increase the 1,200 feet above ground level (AGL) transition area, and provide additional controlled airspace for aircraft in the FRISY intersection holding pattern.

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. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule 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, Transition areas.

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.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Flagstaff Pulliam Airport, AZ [Revised]

That airspace extending upward from 700 feet above the surface within an 11.5-mile radius of Pulliam Airport (lat. 35°08'18"N., long. 111°40'14"W.); and that airspace extending upward from 1,200 feet above the surface within 9.5 miles each side of the Flagstaff VOR 127° and 307°radials, extending from 8 miles northwest to 19 miles southeast of the VOR, excluding that portion within R-2302; and within that airspace bounded by a line beginning at lat. 35°13'32"N., long. 111°04'28"W.; to lat. 35°17'17"N., long. 111°02'32"W., to lat. 35°22'00"N., long. 111°16'40"W.; to lat. 35°19'58"N., long. 111°24'00"N., long. 111°26'13"W.; to lat. 35°17'43"N., long. 111°36'07"W.; thence clockwise via the 11.5-mile radius circle of Pulliam Airport; to lat. 35°16'25"N., long. 111°33'02"W.; to lat. 35°19'58"N., long. 111°24'07"W.; to the point of beginning.

Issued in Los Angeles, CA, on September 29, 1988.

Jacqueline L. Smith,

Manager, Air Traffic Division.

[FR Doc. 88-23554 Filed 10-12-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88-ASO-1]

Alteration of VOR Federal Airway V-441; Florida

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the description of Federal Airway V-441 by extending that airway from Ocala, FL, to Savannah, GA. The extension of V-441 allows en route flight operations to bypass the congested airspace in the vicinity of Jacksonville, FL. This action improves the flow of traffic in that area, reduces controller workload, and aids flight planning.

EFFECTIVE DATE: 0901 u.t.c., December 15, 1988.

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:

History

On June 23, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the description of VOR Federal Airway V-441 located in the vicinity of Ocala, FL (53 FR 23644). The extension allows en route operations to bypass the congested airspace in the vicinity of Jacksonville, FL. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.123 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations extends

VOR Federal Airway V-441 from Ocala, FL, to Savannah, GA, via a west dogleg. This extension permits traffic to bypass the congested airspace in the vicinity of Jacksonville, FL, including the Cecil Field Naval Air Station Complex and restricted areas. The extension provides controlled airspace in an area where radar vectors are normally provided. This actions reduces controller workload, aids flight planning, and reduces en route delays.

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. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule 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, VOR Federal airways.

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; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-441 [Amended]

By removing the words "to Ocala." and substituting the words "Ocala; Gainesville, FL; INT Gainesville 017° and Brunswick, GA, 223° radials; Brunswick; INT Brunswick 052° and Savannah, GA, 180° radials; to Savannah."

Issued in Washington, DC, on October 3, 1988.

Shelomo Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-23551 Filed 10-12-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Center for Veterinary Medicine

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority in the Center for Veterinary Medicine (CVM) concerning approval of new animal drug applications and their supplements by updating the list of officials who are delegated certain authorities relating to these activities.

EFFECTIVE DATE: October 13, 1988.

FOR FURTHER INFORMATION CONTACT: Melissa M. Moncavage, Office of Management and Operations (HFA-340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4976.

SUPPLEMENTARY INFORMATION: FDA is amending the delegations of authority under § 5.83 *Approval of new animal drug applications and their supplements* (21 CFR 5.83). FDA is revising the titles of delegates listed under 21 CFR 5.83(b)(1) because of management changes in the Office of New Animal Drug Evaluation. The amendment deletes from the list the Deputy Director, Office of New Animal Drug Evaluation and adds to the list the Deputy Director for Human Food Safety and Consultative Services and the Deputy Director for Therapeutic and Production Drug Review.

On April 22, 1988, the Division of Drug Manufacturing and Residue Chemistry, Office of New Animal Drug Evaluation, CVM was retitled the Division of Chemistry. FDA is revising 21 CFR 5.83(c)(1) by changing the title of the Director, Division of Drug Manufacturing and Residue Chemistry to the Director, Division of Chemistry.

Further redelegation of the authority delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR Part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552; 7 U.S.C. 2217; 15 U.S.C. 638, 1451 *et seq.*; 3701 *et seq.*; 21 U.S.C. 41 *et seq.*, 61-63, 141 *et seq.*, 301-392, 467f(b), 679(b), 801 *et seq.*, 823(f), 1031 *et seq.*, 35 U.S.C. 156; 42 U.S.C. 219, 241, 242(a), 242a, 242l, 242o, 243, 262, 263, 263b through 263m, 264, 265, 300u *et seq.*, 1395y and 1396y note, 3246b(b)(3), 4831(a), 10007, and 10008; Federal Caustic Poison Act (44 Stat. 1406); Federal Advisory Committee Act (Pub. L. 92-463); E.O. 11490, 11921, 12591.

2. Section 5.83 is amended by revising paragraphs (b)(1) and (c)(1) to read as follows:

§ 5.83 Approval of new animal drug applications and their supplements.

* * * * *

(b) * * *

(1) The Director, the Deputy Director for Human Food Safety and Consultative Services, and the Deputy Director for Therapeutic and Production Drug Review, Office of New Animal Drug Evaluation, CVM.

* * * * *

(c) * * *

(1) The Director, Division of Chemistry, Office of New Animal Drug Evaluation, CVM.

* * * * *

Dated: October 5, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-23571 Filed 10-12-88; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Parts 510 and 520

Animal Drugs, Feeds, and Related Products; Change of Sponsor

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for two NADA's from

Boehringer Ingelheim Animal Health, Inc., to Wendt Laboratories, Inc.

EFFECTIVE DATE: October 13, 1988.

FOR FURTHER INFORMATION CONTACT: John R. Markus, Center for Veterinary Medicine (HFV–142), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2871.

SUPPLEMENTARY INFORMATION: Wendt Laboratories, Inc., 100 Nancy Dr., Belle Plaine, MN 56011, has informed FDA that it is now the sponsor of NADA 108–487 (diethylcarbamazine citrate tablets) and NADA 108–863 (diethylcarbamazine citrate chewable tablets) formerly held by Boehringer Ingelheim Animal Health, Inc., of St. Joseph, MO. Boehringer Ingelheim Animal Health, Inc., has also informed FDA of the change of sponsor. The agency is amending 21 CFR 510.600(c)(1) and (2), 520.622a(a)(1), and 520.622c(b)(1) to reflect the change in sponsor.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Parts 510 and 520 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

Authority: Secs. 512, 701(a) (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

2. Section 510.600 is amended in paragraph (c)(1) by alphabetically adding an entry for "Wendt Laboratories, Inc.", and in paragraph (c)(2) by numerically adding an entry to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
Wendt Laboratories, Inc., 100 Nancy Dr., Belle Plaine, MN 56011	015579
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
015579	Wendt Laboratories, Inc., 100 Nancy Dr., Belle Plaine, MN 56011.
* * * * *	

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

3. The authority citation for 21 CFR Part 520 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

§ 520.622a [Amended]

4. Section 520.622a *Diethylcarbamazine citrate tablets* is amended in paragraph (a)(1) by removing "000010" and adding in numerical sequence "015579".

§ 520.622c [Amended]

5. Section 520.622c *Diethylcarbamazine citrate chewable tablets* is amended in paragraph (b)(1) by removing "000010" and adding in its place "015579".

Dated: October 4, 1988.

Robert C. Livingston,

Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 88–23658 Filed 10–12–88; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Parts 510 and 522

Animal Drugs, Feeds, and Related Products; Carfentanil Citrate Injection

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Wildlife Laboratories, Inc., providing for the safe and effective use of Wildnil (carfentanil citrate) Injection for immobilizing free ranging or confined members of the family Cervidae (deer, elk, and moose).

EFFECTIVE DATE: October 13, 1988.

FOR FURTHER INFORMATION CONTACT: Marcia K. Larkins, Center for Veterinary Medicine (HFV–112), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3430.

SUPPLEMENTARY INFORMATION: Wildlife Laboratories, Inc., 1401 Duff Drive, Suite 600, Fort Collins, CO 80524, has filed NADA 139–633 which provides for the use of Wildnil (carfentanil citrate) Injection for immobilizing free ranging or confined members of the family Cervidae (deer, elk, moose). The NADA is approved and the regulations are amended by adding § 522.311 to reflect the approval. The basis for approval is discussed in the freedom of information summary. In addition, Wildlife Laboratories, Inc., has not been previously included in 21 CFR 510.600(c). That section is amended to include the firm.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Parts 510 and 522 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

Authority: Secs. 512, 701(a) (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

2. Section 510.600 is amended in paragraph (c)(1) by alphabetically adding an entry for "Wildlife Laboratories, Inc.", and in paragraph (c)(2) by numerically adding an entry for "053923" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
Wildlife Laboratories, Inc., 1401 Duff Dr., Suite 600, Fort Collins, CO 80524	053923

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
053923	Wildlife Laboratories, Inc., 1401 Duff Dr., Suite 600, Fort Collins, CO 80524.
* * * * *	

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

3. The authority citation for 21 CFR Part 522 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

4. New § 522.311 is added to read as follows:

§ 522.311 Carfentanil citrate injection.

(a) *Specifications.* Each milliliter of sterile aqueous solution contains 3 milligrams of carfentanil citrate.

(b) *Sponsor.* See No. 053923 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount.* 5 to 20 micrograms per kilogram (.005 to .020 milligram per kilogram) of body weight.

(2) *Indications for use.* For immobilizing free ranging and confined members of the family Cervidae (deer, elk, and moose).

(3) *Limitations.* Inject into large muscle of neck, shoulder, back, or hindquarter. Avoid intrathoracic, intra-abdominal, or subcutaneous injection. To reverse effect, use 7 milligrams of diprenorphine for each milligram of carfentanil citrate, given intravenously or one-half intravenously and one-half intramuscularly or subcutaneously. Do not use in domestic animals intended for food. Do not use 30 days before or during hunting season. Do not use in animals that display clinical signs of severe cardiovascular or respiratory disease. Available data are inadequate to recommend use in pregnant animals. Avoid use during breeding season. Federal law restricts this drug to use by or on the order of a licensed veterinarian. The licensed veterinarian shall be a veterinarian engaged in zoo and exotic animal practice, wildlife management programs, or research.

Dated: October 5, 1988.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 88-23572 Filed 10-12-88; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Parts 510 and 522

Animal Drugs, Feeds, and Related Products; Change of Sponsor

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor of a new animal drug application (NADA) from Hoffmann-La Roche to Vetem, S.p.A.

EFFECTIVE DATE: October 13, 1988.

FOR FURTHER INFORMATION CONTACT: John R. Markus, Center for Veterinary Medicine (HFV-142), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2871.

SUPPLEMENTARY INFORMATION: Vetem, S.p.A., Viate E. Bezzi 24, 20146 Milano, Italy, has informed FDA that it is now the sponsor of NADA 130-092 (Alfaprostol Injection) formerly held by Hoffmann-La Roche, Inc. Hoffmann-La Roche has confirmed the sponsor change. The regulations are amended by adding the new firm to 21 CFR 510.600(c)(1) and (2) and revising 21 CFR 522.46(b) to include the new sponsor.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Parts 510 and 522 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

Authority: Secs. 512, 701(a) (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

2. Section 510.600 is amended in paragraph (c)(1) by alphabetically adding an entry for "Vetem, S.p.A.", and in paragraph (c)(2) by numerically adding an entry for "055882" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
Vetem, S.p.A., Viale E. Bezzi 24, 20146 Milano, Italy.	055882
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
055882	Vetem, S.p.A., Viale E. Bezzi 24, 20146 Milano, Italy

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

3. The authority citation for 21 CFR Part 522 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

§ 522.46 [Amended]

4. Section 522.46 *Alfaprostol* is amended in paragraph (b) by removing "000004" and adding in its place "055882".

Dated: October 4, 1988.

Robert C. Livingston,

Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 88-23657 Filed 10-12-88; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Fenbendazole Suspension

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Hoechst-Roussel Agri-Vet Co., providing for additional uses of 10-percent fenbendazole suspension at 10 milligrams per kilogram (mg/kg) dosage against infections of certain stages of nematode larvae (*Ostertagia ostertagi*) and tapeworms (*Moniezia benedeni*) and at 5 mg/kg dosage against infections of 4th-stage larvae of stomach and intestinal nematodes in cattle.

EFFECTIVE DATE: October 13, 1988.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4913.

SUPPLEMENTARY INFORMATION: Hoechst-Roussel Agri-Vet Co., Route 202–206 North, Somerville, NJ 08876, is the sponsor of NADA 128–620 which provides for use of a 10-percent fenbendazole suspension for removal and control of certain lung and gastrointestinal parasites in cattle.

The firm has submitted a supplemental NADA demonstrating safety and effectiveness of the drug against the cattle tapeworm *Moniezia benedeni* and inhibited 4th-stage larvae of the stomach worm *Ostertagia ostertagi* when the drug is administered at 10 milligrams per kilogram of body weight.

The supplemental NADA also provides for addition of 4th-stage larvae of stomach and intestinal nematodes to the labeling when the drug is administered at 5 mg/kg of body weight.

The supplemental NADA is approved and 21 CFR 520.905a is amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

Although the original NADA contains information that supports designating the stages of development (i.e., adults and/or 4th-stage larvae) of the various gastrointestinal nematodes against which the drug is effective when administered at 5 mg/kg, no stages currently appear in 21 CFR 520.905a. Therefore, 21 CFR 520.905a is further amended in paragraph (d) by adding the stages of development.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 520 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

2. Section 520.905a is amended by redesignating existing paragraphs (d)(2)(ii) and (d)(2)(iii) as paragraph (d)(2)(i)(A) and (d)(2)(i)(B), by revising redesignated paragraph (d)(2)(i)(A), and by adding new paragraph (d)(2)(ii) to read as follows:

§ 520.905a Fenbendazole suspension.

* * * * *

(d) * * *

(2) * * *

(i) * * *

(A) *Indications for use.* For the removal and control of lungworm (*Dictyocaulus viviparus*); stomach worm (adults)—brown stomach worm (*Ostertagia ostertagi*); stomach worms (adults and 4th-stage larvae)—barberpole worm (*Haemonchus contortus* and *H. placei*) and small stomach worm (*Trichostongylus axei*); intestinal worms (adults and 4th-stage larvae)—hookworm (*Bunostonmum phlebotomum*), threadnecked intestinal worm (*Nematodirus helvetianus*), small intestinal worm (*Cooperia punctata* and *C. oncophora*), bankrupt worm (*Trichostrongylus colubriformis*), and nodular worm (*Oesophagostomum radiatum*).

* * * * *

(ii) *Amount.* Administer orally 10 milligrams per kilogram of body weight.

(A) For the removal and control of stomach worm (4th-stage inhibited larvae/type II ostertagiasis), *Ostertagia ostertagi*, and tapeworm, *Moniezia benedeni*.

(B) *Limitations.* Retreatment may be needed after 4 to 6 weeks. Cattle must not be slaughtered within 8 days following last treatment. Do not use in dairy cattle of breeding age. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

* * * * *

Dated: October 5, 1988.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 88–23573 Filed 10–12–88; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Part 540

Penicillin Antibiotic Drugs for Animal Use; Sterile Amoxicillin Trihydrate for Suspension

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of two supplemental new animal drug applications (NADA's) filed by Beecham Laboratories. The supplemental NADA's provide for the following changes concerning use of the firm's amoxicillin trihydrate for suspension product: (1) Removal of the restriction against use in lactating cattle for treating respiratory tract infections, and (2) addition of an indication for treating acute necrotic pododermatitis (foot rot) in cattle.

EFFECTIVE DATE: October 13, 1988.

FOR FURTHER INFORMATION CONTACT: Charles E. Haines, Center for Veterinary Medicine (HFV–133), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3410.

SUPPLEMENTARY INFORMATION: Beecham Laboratories, Division of Beecham, Inc., Bristol, TN 37620, filed two supplements to NADA 55–089, approved on September 10, 1982 (47 FR 39813),

covered use of a 10-gram amoxicillin trihydrate for suspension product. The reconstituted product is injected intramuscularly or subcutaneously into cattle at 3 to 5 milligrams per pound of body weight. As approved in 1982, use of the product in treating respiratory tract infections was currently limited to nonlactating cattle. One supplemental NADA eliminates this restriction by extending use of the product to cattle in general. The other supplement provides an additional claim for the product's use in cattle for treating acute necrotic pododermatitis (foot rot). The supplemental NADA's are approved and 21 CFR 540.203(c) is amended to reflect the approvals. The basis for approval is discussed in the freedom of information summaries.

Beecham's original NADA 55–089 covered use of a 10-gram amoxicillin activity product in nonlactating cattle for treating respiratory tract infections (shipping fever and pneumonia). Subsequently, the firm filed a supplemental NADA providing for a change in the product's container size that increases the amoxicillin activity content from 10 grams (100 milliliters) to 25 grams (250 milliliters). By letter dated February 14, 1983, the agency approved the supplemental NADA but inadvertently failed to codify the change. Therefore, 21 CFR 540.203 is also amended in paragraph (c)(2)(i) by removing the 10-gram vial and replacing it with the currently marketed 25-gram vial.

In addition, 21 CFR 540.203(c)(2)(iii) *Related tolerances* cites § 556.510, which pertains to tolerances for penicillin residues in edible tissues of food animals. The proper citation is § 556.38 which pertains to amoxicillin. Accordingly, § 540.203 is further amended to cite § 556.38.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of these applications may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding for each supplement may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 540

Animal drugs, Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Veterinary Medicine, Part 540 is amended as follows:

PART 540—PENICILLIN ANTIBIOTIC DRUGS FOR ANIMAL USE

1. The authority citation for 21 CFR Part 540 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Section 540.203 is amended by revising paragraphs (c)(2)(i) and (c)(2)(iii), the heading of paragraph (c)(2)(iv), paragraph (c)(2)(iv)(*b*), and in paragraph (c)(2)(iv)(*c*) by revising the sixth sentence to read as follows:

§ 540.203 Sterile amoxicillin trihydrate for suspension.

* * * * *

(c) * * *

(2)(i) *Specifications.* Each vial contains 25 grams of amoxicillin activity as the trihydrate. The vial is reconstituted with sterile water for injection, USP to a concentration of 250 milligrams per milliliter.

* * * * *

(iii) *Related tolerances.* See § 556.38 of this chapter.

(iv) *Conditions of use in cattle*— * * *

(*b*) *Indications for use.* Treatment of diseases due to amoxicillin-susceptible organisms as follows: Respiratory tract infections (shipping fever, pneumonia) due to *Pasteurella multocida, P. hemolytica, Hemophilus* spp., *Staphylococci* spp., and *Strepococci* spp. and acute necrotic pododermatitis (foot rot) due to *Fusobacterium necrophorum.*

(*c*) * * * Milk from treated cows must not be used for human consumption during treatment or for 96 hours (8 milkings) after last treatment. * * *

Dated: October 5, 1988.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 88–23655 Filed 10–12–88; 8:45 am]

BILLING CODE 4160–01–M

Food and Drug Administration

21 CFR Parts 556 and 558

Animal Drugs, Feeds, and Related Products; Monensin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of supplemental new animal drug applications (NADA's) filed by Elanco Products Co. The supplemental applications provide for use of monensin in feed for bobwhite quail. The regulations are also amended to establish safe concentrations for monensin residues in edible quail tissues.

EFFECTIVE DATE: October 13, 1988.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4913.

SUPPLEMENTARY INFORMATION: Elanco Products Co., a Division of Eli Lilly and Co., Lilly Corporate Center, Indianapolis, IN 46285, filed supplements to NADA's 38–878 and 130–736 to provide for the use of a Type A medicated article containing 45 grams of monensin (as monensin sodium) per pound in making Type C medicated feed for bobwhite quail. The feed is used for the prevention of coccidiosis in growing bobwhite quail caused by *Eimeria dispersa* and *E. Lettyae.* The applications are approved and 21 CFR 556.420(b) is amended to establish the safe concentrations for monensin residues in edible quail tissues. In addition, 21 CFR 558.4(d) and 21 CFR 558.355(b)(6) and (f)(5) are amended to reflect approval of the applications. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of these applications may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m., to 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a signficiant impact on the human environment, and that an environmental impact statement is not

required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 556

Animal drugs, Foods, Feeds.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Parts 556 and 558 are amended as follows:

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

1. The authority citation for 21 CFR Part 556 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Section 556.420 is amended by revising paragraph (b) to read as follows:

§ 556.420 Monensin.

* * * * *

(b) *Chickens, turkeys, and quail.* A tolerance for marker residues of monensin in chickens, turkeys, and quail is not needed. The safe concentrations for total residues of monensin in chickens, turkeys, and quail are 1.5 parts per million in muscle, 3.0 parts per million in skin with adhering fat, and 4.5 parts per million in liver. "Tolerance" in this paragraph refers to the concentration of a marker residue in the target tissue selected to monitor for total residues of the drug in the target animals. "Safe concentrations" refers to the concentration of total residues considered safe in edible tissues.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

3. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

4. Section 558.4 is amended in paragraph (d) in the table entitled "Category I" in the entry for "Monensin" under the heading "Assay limits percent[1] type B/C[2]" by revising "Chickens:" to read "Chickens, turkeys, and quail:".

5. Section 558.355 is amended by adding new paragraphs (b)(6) and (f)(5) to read as follows:

§ 558.355 Monensin.

* * * * *

(b) * * *

(6) *To 000986:* 45 grams per pound, as monensin sodium, paragraph (f)(5) of this section.

* * * * *

(f) * * *

(5) *Bobwhite quail*—(i) *Amount per ton.* Monensin, 73 grams.

(ii) *Indications for use.* For the prevention of coccidiosis in growing bobwhite quail caused by *Eimeria dispersa* and *E. Lettyae.*

(iii) *Limitations.* Feed continuously as the sole ration; do not allow horses, other equines, mature turkeys, or guinea fowl access to feed containing monensin.

Dated: October 5, 1988.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 88–23656 Filed 10–12–88; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Part 573

[Docket No. 84F–0326]

Food Additives Permitted in Feed and Drinking Water of Animals; 1,3-Butylene Glycol

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 1,3-butylene glycol (1,3-butanediol) as an energy source in swine feed. The agency is taking this action in response to a petition filed by American Cyanamid Co.

DATES: Effective October 13, 1988; written objections and requests for a hearing by November 14, 1988.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Woodrow M. Knight, Center for Veterinary Medicine (HFV–226), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5362.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of October 9, 1984 (49 FR 39614), FDA announced that a petition (FAP 2196) had been filed by American Cyanamid Co., Wayne, NJ 07470, proposing that the food additive regulations be amended to provide for the safe use of 1,3-butylene glycol as an energy source for sows. Upon evaluation of the submitted data, the agency has concluded that 1,3-butylene glycol is an acceptable energy source for all classes of swine. 1,3-Butylene glycol is approved as a secondary direct food additive for human consumption (21 CFR 173.220).

FDA has evaluated the data in the petition and other relevant material. The agency concludes that 1,3-butylene glycol is safe for the proposed use, and that the food additive regulations should be amended as set forth below.

In accordance with § 571.1(h) (21 CFR 571.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Veterinary Medicine by appointment with the information contact person listed above. As provided in 21 CFR 571.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in a statement of exemption prepared under previous 21 CFR 25.1(f)(1)(iv) and (g), may be seen in the Dockets Management Branch (address above). FDA's regulations implementing the National Environmental Policy Act, 21 CFR Part 25, have been replaced by a rule published in the **Federal Register** of April 26, 1985 (50 FR 16636, effective July 25, 1985). Under the new rule, an action of this type would require an abbreviated environmental assessment under 21 CFR 25.31a(b)(5).

Any person who will be adversely affected by this regulation may at any time on or before November 14, 1988, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that

objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 573

Animal feeds, Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 573 is amended as follows:

PART 573—FOOD ADDITIVES PERMITTED IN FEED AND DRINKING WATER OF ANIMALS

1. The authority citation for 21 CFR Part 573 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 573.225 is added to Subpart B to read as follows:

§ 573.225 1,3-Butylene glycol.

The food additive 1,3-butylene glycol (1,3-butanediol) may be safely used in accordance with the following prescribed conditions:

(a) It complies with the specifications in § 173.220(a) of this chapter.

(b) It is intended for use in swine feed as a source of energy.

(c) It is to be thoroughly mixed into feed at levels not to exceed 9 percent of the dry matter of the total ration.

(d) 1,3-Butylene glycol should be mixed in feed with equipment adapted for the addition of liquids, and the feed should be mixed not less than 5 minutes after its addition.

Dated: October 5, 1988.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 88–23662 Filed 10–12–88; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Extension of Temporary Placement of 3,4-Methylenedioxy-N-ethylamphetamine, N-Hydroxy-3,4-methylenedioxyamphetamine and 4-Methylaminorex Into Schedule I

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Final rule.

SUMMARY: This final rule is issued by the Administrator of the Drug Enforcement Administration (DEA) to extend the temporary scheduling of 3,4-methylenedioxy-N-ethylamphetamine, N-hydroxy-3,4-methylenedioxyamphetamine and 4-methylaminorex in Schedule I of the Controlled Substances Act (CSA) (21 U.S.C. 801 et seq.). The temporary scheduling of these three substances is due to expire on October 15, 1988. This notice will extend the temporary scheduling of these three substances for six months or until rulemaking proceedings pursuant to 21 U.S.C. 811(a) are completed, whichever occurs first.

EFFECTIVE DATE: October 13, 1988.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, 1405 I Street NW., Washington, DC 20537, Telephone: (202) 633–1366.

SUPPLEMENTARY INFORMATION: On October 15, 1987, the Administrator of the DEA issued a final rule in the **Federal Register** (52 FR 38225) amending § 1308.11(g) of Title 21 of the Code of Federal Regulations to temporarily place three substances into Schedule I of the CSA pursuant to the emergency scheduling provisions of 21 U.S.C. 811(h). The three substances are:

(1) 3,4-methylenedioxy-N-ethylamphetamine
(2) N-hydroxy-3,4-methylenedioxyamphetamine
(3) 4-methylaminorex.

The final rule which became effective on October 15, 1987 was based on findings by the Administrator that the emergency scheduling of the above-referenced substances was necessary to avoid an imminent hazard to the public safety. Section 201(h)(2) of the CSA (21 U.S.C. 811(h)(2)) requires that the emergency scheduling of a substance expires at the end of one year from the effective date of the order. However, during the pendency of proceedings under 21 U.S.C. 811(a)(1) with respect to the substance, temporary scheduling of that substance may be extended for up to six months. Proceedings for the scheduling of a substance under 21 U.S.C. 811(a) may be initiated by the Attorney General (delegated to the Administrator of DEA pursuant to 28 CFR 0.100) on his own motion, at the request of the Secretary of the Department of Health and Human Services, or on the petition of any interested party. Such proceedings regarding the three substances have been initiated by the Administrator.

Therefore, the temporary scheduling of 3,4-methylenedioxy-N-ethyl-amphetamine, N-hydroxy-3,4-methylenedioxyamphetamine and 4-methylaminorex, which is due to expire on October 15, 1988, may be extended until April 15, 1989, or until proceedings initiated in accordance with 21 U.S.C. 811(a) are completed, whichever occurs first.

Pursuant to 21 U.S.C. 811(h)(2) the Administrator hereby orders that the temporary scheduling of 3,4-methylenedioxy-N-ethylamphetamine, N-hydroxy-3,4-methylenedioxyamphetamine and 4-methylaminorex be extended until April 15, 1989 or until the conclusion of scheduling proceedings initiated in accordance with 21 U.S.C. 811(a), whichever occurs first.

Pursuant to Title 5, United States Code, section 605(b), the Administrator certifies that the extended scheduling of 3,4-methylenedioxy-N-ethylamphetamine, N-hydroxy-3,4-methylenedioxyamphetamine and 4-methylaminorex into Schedule I of the CSA will have no impact upon small businesses or other entities whose interests must be considered under the Regulatory Flexibility Act (Pub. L. 96–354). The substances 3,4-methylenedioxy-N-ethyl-amphetamine, N-hydroxy-3,4-methylenedioxyamphetamine and 4-methylaminorex have no legitimate use or manufacturer in the United States.

It has been determined that the extension of the temporary placement of 3-4-methylenedioxy-N-ethylamphetamine, N-hydroxy-3,4-methylenedioxyamphetamine and 4-methylaminorex in Schedule I of the CSA under the emergency scheduling provision is a statutory exception to the requirements of Executive Order 12291 (46 FR 13193).

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Date: October 6, 1988.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 88-23612 Filed 10-12-88; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF THE TREASURY

31 CFR Part 103

Amendment to the Bank Secrecy Act Regulations Regarding Administrative Rulings

AGENCY: Departmental Offices, Treasury.

ACTION: Final rule.

SUMMARY: Treasury is revising the appendix to 31 CFR Part 103 to list its Bank Secrecy Act administrative rulings issued pursuant to 31 CFR 103.75. The text of the present Appendix is deleted and the Appendix is redesignated as "Administrative Rulings" in lieu of the present "Interpretations and Exemptions." Any interpretations in the appendix not specifically revoked in this document still are valid unless otherwise altered or revoked by Treasury. Exemptions for specific financial institutions from particular requirements of Part 103 will be issued solely to the specific financial institution requesting the exemption and no longer will be published in the appendix. Copies of administrative rulings may be obtained by contacting the Office of Financial Enforcement, Office of the Assistant Secretary (Enforcement).

DATES: Rulings 88-1, 88-2, and 88-3 were effective as of June 22, 1988. Rulings 88-4 and 88-5 were effective as of August 2, 1988.

ADDRESS: Office of Financial Enforcement, Office of the Assistant Secretary (Enforcement), Department of the Treasury, Room 4320, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Amelia Gomez, Deputy Director, Office of Financial Enforcement, Office of the Assistant Secretary (Enforcement), Department of the Treasury, Room 4320, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, (202) 566-8022.

SUPPLEMENTARY INFORMATION:

The Bank Secrecy Act, Pub. L. 91-508 (codified at 12 U.S.C. 1829b, 12 U.S.C. 1951 et seq., and 31 U.S.C. 5311-5324), authorizes the Secretary of the Treasury to require financial institutions to keep records and file reports that the Secretary determines have a high degree of usefulness in criminal, tax, or regulatory matters. Title 31, Code of Federal Regulations, Part 103, contains the regulations implementing the Bank Secrecy Act.

On September 22, 1987, Treasury issued final regulations implementing an administrative ruling system for interpretations of the Bank Secrecy Act regulations. 52 FR 35545. Administrative rulings issued by the Assistant Secretary (Enforcement), or his designee which Treasury has determined have precedential value (i.e., the questions are of widespread interest and applicability and are likely to recur again), are to be published in the appendix to Part 103. 31 CFR 103.75. Administrative rulings are issued and effective when signed. Publication in the **Federal Register** is merely a method of publicizing their existence.

Many of the interpretations in the current Appendix to 31 CFR Part 103 do not reflect present Treasury policy or are no longer necessary because of more recent regulatory revisions. To accommodate the administrative rulings, Treasury is deleting the present text of the appendix. Any interpretations presently contained in the Appendix which are not revoked below are still valid and may be relied upon by financial institutions, even though they no longer will appear in the Appendix, until such time as they are publicly altered or revoked by Treasury.

Those interpretations which give exemptions to specific financial institutions from certain Part 103 requirements will not be reissued as administrative rulings. Exemptions from any of the requirements of Part 103 granted by Treasury that apply solely to specific financial institutions are not appropriate for administrative rulings and, though still valid as to the specific financial institution unless revoked, will not be the subject of administrative rulings published in the **Federal Register.** This is because these exemptions have no precedential value for other financial institutions.

Five rulings are being published in the newly redesignated Appendix. The first ruling (88-1, June 22, 1988) deals with the reporting of suspicious transactions by financial institutions. The second administrative ruling (88-2, June 22, 1988) deals with the duty of the financial institution to file Currency or Monetary Instruments Reports on behalf of their customers. The third administrative ruling (88-3, June 22, 1988) deals with the reporting of "cash back" transactions. The fourth administrative ruling (88-4, August 2, 1988) deals with the listing on a bank's exemption list of multiple establishments using the same exempted account. The fifth administrative ruling (88-5, August 2, 1988) deals with the filing of CTR's when a financial institution uses armored car operations which act on behalf of the financial institution.

Copies of rulings may be obtained by contacting the Office of Financial Enforcement at the address listed above. Please make all requests for rulings in writing, specifying the relevant number or subject of the ruling.

Listed below are references to the interpretations and exemptions in the current Appendix that are: (1) Revoked outright or by reason of incorporation into the regulations; (2) revoked because of the issuance of an administrative ruling; (3) not going to be issued as administrative rulings because they apply to only one financial institution; or (4) still valid until subsequently altered or revoked by Treasury.

Section 103-11 Exemption from.

#1. This exemption is valid until subsequently altered or revoked by Treasury.

Section 103.23 Interpretations.

#1. The correct amount is now $10,000. In all other aspects, this interpretation is valid until subsequently altered or revoked by Treasury.

 # 2. This interpretation is the subject of Administrative Ruling 88-2, June 22, 1988.

 # 3. This interpretation is valid until subsequently altered or revoked by Treasury.

 # 4. This interpretation is valid until subsequently altered or revoked by Treasury.

 # 5. This interpretation is valid until subsequently altered or revoked by Treasury.

Section 103.23 Exemptions.

 # 1. This specific exemption will not be issued as an administrative ruling because it is an exemption applicable solely to a specific financial institution. The exemption remains valid for the specific institution to which it was granted.

 # 2. This specific exemption will not be issued as an administrative ruling because it is an exemption applicable solely to a specific financial institution. The exemption remains valid for the specific institution to which it was granted.

 # 3. This exemption is valid until subsequently altered or revoked by Treasury.

 # 4. This exemption has been incorporated into § 103.23(c)(8).

Section 103.24 Interpretations.

 # 1. This interpretation is valid until subsequently altered or revoked by Treasury.

Section 103.33(a) Interpretation.

 # 1. This interpretation is revoked because § 103.33(a) is clear on its face.

Section 103.34(a) Interpretations.

 # 1. This interpretation is revoked because § 103.34(a)(4) is clear on its face.

 # 2. This interpretation is revoked because it is specifically incorporated into § 103.34(a).

 # 3. This interpretation is revoked because it is specifically incorporated into § 103.34(a).

 # 4. This interpretation is valid until subsequently altered or revoked by Treasury.

 # 5. This interpretation is revoked because the definition of "transaction account" in § 103.11(n) covers these accounts.

 # 6. This interpretation is valid until subsequently altered or revoked by Treasury.

 # 7. This interpretation is valid until subsequently altered or revoked by Treasury.

 # 8. There was no interpretation at *# 8.*

 # 9. This interpretation is revoked because the definition of "bank" in the definition of "financial institution" in § 103.11(g) specifically exempts credit card systems.

 # 10. This interpretation is valid until subsequently altered or revoked by Treasury.

 # 11. This interpretation is valid until subsequently altered or revoked by Treasury.

 # 12. This interpretation is revoked by Treasury as of December 12, 1988. Interpretations are revocable at the sole discretion of the Secretary. *See* 31 CFR 103.45. Any exemptions from the verification of identity requirements for the Amish should be requested from the Director, Office of Financial Enforcement, at the address listed above.

 # 13. This interpretation is valid until subsequently altered or revoked by Treasury.

Section 103.34(a) Exemptions from.

 # 1. This exemption is revoked because § 103.34(a)(3)(viii) specifically incorporates this exemption.

 # 2. This exemption is revoked because § 103.34(a)(3)(ix) specifically incorporates this exemption.

Section 103.34(b) Interpretations.

 # 1. This interpretation is valid until subsequently altered or revoked by Treasury.

#2. This interpretation is valid until subsequently altered or revoked by Treasury.

#3. This interpretation is valid until subsequently altered or revoked by Treasury.

#4. This interpretation is valid until subsequently altered or revoked by Treasury.

Section 103.36 [now § 103.38] Interpretation.

#1. This interpretation is revoked because it has been superseded. A five year retention requirement is mandated for all Bank Secrecy Act records in § 103.38(d).

Section 103.37 [now § 103.39] Interpretation.

#1. This interpretation is valid until subsequently altered or revoked by Treasury.

Section 103.42 Interpretation.

#1. This interpretation is valid until subsequently altered or revoked by Treasury.

Section 103.45 Exemptions.

#1. This exemption will not be reissued as an administrative ruling, because it is an exemption applicable only to one specific financial institution. The exemption remains valid for the specific financial institution to which it was granted.

#2. This exemption will not be reissued as an administrative ruling, because it is an exemption applicable only to one specific financial institution. The exemption remains valid for the specific financial institution to which it was granted.

#3. This exemption will not be reissued as an administrative ruling, because it is an exemption applicable only to one specific financial institution. The exemption remains valid for the specific financial institution to which it was granted.

#4. This exemption is valid until subsequently altered or revoked by Treasury.

#5. This exemption is revoked because § 103.34(a)(3)(viii) specifically incorporates this interpretation.

#6. This exemption is valid until subsequently altered or revoked by Treasury.

#7. This exemption is revoked because § 103.34(a)(3)(ix) specifically incorporates this exemption.

Applicability of Notice and Effective Date Requirements

This amendment merely revises the appendix to delete the present interpretations of and exemptions from the Bank Secrecy Act regulations and inserts in its place the text of issued administrative rulings interpreting the Bank Secrecy Act regulations. The regulations in Part 103 are not amended in any way. Therefore, for good cause found, pursuant to 5 U.S.C. 553(b) and (d), notice and public procedure thereon are unnecessary.

Executive Order 12291

As this final rule promulgates a regulation dealing solely with issues of agency management and organization, compliance with with Executive Order 12291 and a regulatory impact analysis are not required.

Regulatory Flexibility Act

As no Notice of Proposed Rulemaking is required by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), or by any other statute, this document is not subject to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 603 and 604.

Drafting Information

The principal author of this document is the Office of the Assistant General Counsel (Enforcement). However, personnel from other offices participated in its development.

List of Subjects in 31 CFR Part 103

Authority delegations (Government agencies), Banks and banking, Currency, Foreign banking, Investigations, Law enforcement, Reporting and recordkeeping requirements, Taxes.

Amendment

For the reasons set forth below in the preamble, 31 CFR Part 103 is amended as set forth below:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for Part 103 continues to read as follows:

Authority: Pub. L. 91–508, Title I, 84 Stat. 1114 (12 U.S.C. 1829b and 1951–1959); and the Currency and Foreign Transactions Reporting Act, Pub. L. 91–508, Title II, 84 Stat. 1118, as amended (31 U.S.C. 5311–5324).

2. The appendix is revised to read as follows:

Appendix—Administrative Rulings

88–1 (June 22, 1988)

Issue

What action should a financial institution take when it believes that it is being misused by persons who are intentionally structuring transactions to evade the reporting requirement or engaging in transactions that may involve illegal activity such as drug trafficking, tax evasion or money laundering?

Facts

A teller at X State Bank notices that the same person comes into the bank each day and purchases, with cash, between $9,000 and $9,900 in cashier's checks. Even when aggregated, these purchases never exceed $10,000 during any one business day. The teller also notices that this person tries to go to different tellers for each transaction and is very reluctant to provide information about his frequent transactions or other information such as name, address, etc. Likewise, the payees on these cashier's checks all have common names such as "John Smith" or "Mary Jones." The teller informs the bank's compliance officer that she believes that this person is structuring his transactions in order to evade the reporting requirements under the Bank Secrecy Act. X State Bank wants to know what actions it should take in this situation or in any other situation where a transaction or a person conducting a transaction appears suspicious.

Law and Analysis

As it appears that the person may be intentionally structuring the transactions to evade the Bank Secrecy Act reporting requirements, X State Bank should immediately telephone the local office of the Internal Revenue Service ("IRS") and speak to a Special Agent in the IRS Criminal Investigation Division, or should call 1–800–BSA–CTRS, where his call will be referred to a Special Agent.

Any information provided to the IRS should be given within the confines of § 1103(c) of the Right to Financial Privacy Act. 12 U.S.C. 3401–3422. Section 1103(c) of that Act permits a financial instituiton to notify a government authority of information relevant to a possible violation of any statute or regulation. Such information may consist of the names of any individuals or corporate entities involved in the suspicious transactions; account numbers; home and business addresses; social security numbers; type of account; interest paid on account; location of the branch or office where the suspicious transaction occurred; a specification of the offense that the financial institution believes has been committed; and a description of the activities giving rise to the bank's suspicion. S. Rep. 99–433, 99th Cong., 2d Sess., pp. 15–16.

Additionally, the bank may be required, by the Federal regulatory agency which supervises it, to submit a criminal referral form. Thus, the bank should check with its regulatory agency to determine whether a referral form should be submitted.

Lastly, under the facts as described above, X State Bank is not required to file a Currency Transaction Report ("CTR") because the currency transaction (i.e. purchase of cashier's checks) did not exceed $10,000 during one business day. If the bank had found that on a particular day the person had in fact used a total of more than $10,000 in currency to purchase cashier's checks, but had each individual cashier's check made out in amounts of less than $10,000, the bank is obligated to file a CTR, and should follow the other steps described above.

Holding

If X State Bank notices that a person may be misusing it by intentionally structuring transactions to evade the BSA reporting requirements or engaging in transactions that may involve other illegal activity, the bank should telephone the local office of the Internal Revenue Service, Criminal Investigation Division, and report that information to a Special Agent, or should call 1–800–BSA–CTRS. In addition, the Federal regulatory agency which supervises X State Bank may require the bank to submit a criminal referral form. All disclosures to the Government should be made in accordance with the provisions of the Right to Financial Privacy Act.

88–2 (June 22, 1988)

Issue

When, if ever, should a bank file a CMIR on behalf of its customer, when the customer is importing or exporting more than $10,000 in currency or monetary instruments?

Facts

A customer walks into B National Bank ("B") with $15,000 in cash for deposit into her account. As is required, the bank teller begins to fill out a Currency Transaction Report ("CTR", IRS Form 4789) in order to report a transaction in currency of more than $10,000. While the teller is filling out the CTR, the customer mentions to the teller that she has just received the money in a letter from a relative in France. Should the teller also file a CMIR, either on the customer's behalf or on the bank's behalf?

Law and Analysis

B National Bank should not file a CMIR when a customer deposits currency in excess of $10,000 into her account, even if the bank has knowledge that the customer received the currency from a place outside the United States. 31 CFR 103.23 requires that a CMIR be filed by anyone who transports, mails, ships or receives, or attempts, causes or attempts to cause the transportation, mailing, shipping or receiving of currency or monetary instruments in excess of $10,000, from or to a place outside the United States. The term "monetary instruments" includes currency and instruments such as negotiable instruments endorsed without restriction. *See* 31 CFR 103.11(k).

The obligation to file the CMIR is solely on the person who transports, mails, ships or receives, or causes or attempts to transport, mail, ship or receive. No other person is under any obligation to file a CMIR. Thus, if a customer walks into the bank and declares that he or she has received or transported currency in an aggregate amount exceeding $10,000 from a place outside the United States and wishes to deposit the currency into his or her account, the bank is under no obligation to file a CMIR on the customer's behalf. Likewise, because the bank itself did not receive the money from a customer outside the United States, it has no obligation to file a CMIR on its own behalf. The same holds true if a customer declares his intent to transport currency or monetary instruments in excess of $10,000 to a place outside the United States.

However, the bank is strongly encouraged to inform the customer of the CMIR reporting requirement. If the bank has knowledge that the customer is aware of the CMIR reporting requirement, but is nevertheless disregarding the requirement or if information about the transaction is otherwise suspicious, the bank should contact the local office of the U.S. Customs Service or 1–800–BE ALERT. The United States Customs Service has been delegated authority by the Assistant Secretary (Enforcement) to investigate criminal violations of 31 CFR 103.23. *See* 31 CFR 103.36(c)(1).

Any information provided to Customs should be given within the confines of section 1103(c) of the Right to Financial Privacy Act, 12 U.S.C. 3401–3422. Section 1103(c) permits a financial institution to notify a Government authority of information relevant to a possible violation of any statute or regulation. Such information may consist of the name (including those of corporate entities) of any individual involved in the suspicious transaction; account numbers; home and business addresses; social security numbers; type of account; interest paid on account; location of branch where the suspicious transaction occurred; a specification of the offense that the financial institution believes has been committed; and a description of the activities giving rise to the bank's suspicions. *See* S. Rep. 99–433, 99th Cong., 2nd Sess., pp. 15–16. Therefore, under the facts above, the teller need only file a CTR for the deposit of the customer's $15,000 in currency.

A previous interpretation of § 103.23(b) by Treasury held that if a bank received currency or monetary instruments over the counter from a person who may have transported them into the United States, and knows that such items have been transported into the country, it must file a report on Form 4790 if a complete and truthful report has not been filed by the customer. *See* 31 CFR 103 appendix, § 103.23, interpretation 2, at 364 (1987). This ruling hereby supersedes that interpretation.

Holding

A bank should not file a CMIR when a customer deposits currency or monetary instruments in excess of $10,000 into her account even if the bank has knowledge that the currency or monetary instruments were received or transported from a place outside the United States. 31 CFR 103.23. The same is true if the bank has knowledge that the customer intends to transport the currency or monetary instruments to a place outside the United States. However, the bank is required to file a CTR if it receives in excess of $10,000 in cash from its customer, and is strongly encouraged to inform the customer of the CMIR requirements. In addition, if the bank has knowledge that the customer is aware of

the CMIR reporting requirement and is nevertheless planning to disregard it or if the transaction is otherwise suspicious, the bank should notify the local office of the United States Customs Service (or 1–800–*Be Alert*) of the suspicious transaction. Such notice should be made within the confines of the Right to Financial Privacy Act, 12 U.S.C. 3403(c).

88–3 (June 22, 1988)

Issue

Whether a bank may exempt "cash-back" transactions of a customer whose primary business is of a type that may be exempted either unilaterally by the bank or pursuant to additional authority granted by the IRS.

Facts

The ABC Grocery ("ABC"), a retail grocery store, has an account at the X State Bank for its daily deposits of currency. Because ABC regularly and frequently deposits amounts ranging from $20,000 to $30,000, the bank has properly granted ABC an exemption for daily deposits up to a limit of $30,000.

Recently, ABC began providing its customers with a check-cashing service as an adjunct to its primary business of selling groceries. ABC's primary business still consists of the sale of groceries. However, the unexpectedly heavy demand for ABC's check-cashing service has required ABC to maintain a substantially greater quantity of cash in the store than was necessary for the grocery business in the past. To facilitate the operations of its check-cashing service, ABC is presenting the bank with large numbers of checks in "cash-back" transactions, rather than depositing the checks into its account and withdrawing cash from that account. X State Bank has just been presented with a "cash-back" transaction wherein an employee of ABC is exchanging $15,000 worth of checks for cash. How should the bank treat this transaction?

Law and Analysis

A "cash back" transaction is one where one or more checks or other monetary instruments are presented in exchange for cash or a portion of the checks or monetary instruments are deposited while the remainder is exchanged for cash. "Cash back" transactions can never be exempted from the Bank Secrecy Act reporting requirements. Thus, the bank must file a Currency Transaction Report on IRS Form 4789 reporting this $15,000 "cash back" transaction, even though the customer's account has been granted an exemption for daily deposits of up to $30,000. This is because § 103.22(b)(i) permits a bank to exempt only "*(d)eposits or withdrawals of currency* from an existing account by an established depositor who is a United States resident and operates a retail type of business in the United States" (emphasis added). As "cash-back" transactions do not constitute either a "deposit or withdrawal of currency" within the meaning of the regulations, the bank must report on a CTR any "cash-back" transaction that results in the transfer of more than $10,000 in currency to a customer during a single banking day, regardless of whether the customer has properly been granted an exemption for its deposits or withdrawals.

Moreover, because "cash back" transactions are never exemptible, the bank may not unilaterally exempt "cash-back" transactions by ABC, or seek additional authority from the IRS to grant a special exemption for ABC's "cash-back" transactions. Instead, the bank must report ABC's "cash back" transaction on a CTR, listing it as a $15,000 "check cashed" transaction.

Holding

A bank may never grant a unilateral exemption, or obtain additional authority from the IRS to grant a special exemption to the "cash-back" transactions of a customer. A "cash back" transaction is one where one or more checks or other monetary instruments are presented in exchange for cash or a portion of the checks or monetary instruments are deposited while the remainder is exchanged for cash. If a bank handles a "cash-back" transaction that results in the transfer of more than $10,000 to a customer during a single banking day, it must report that transaction on IRS Form 4789, the Currency Transaction Report, as a "check cashed" transaction, regardless of whether the customer has been properly granted an exemption for daily deposits or withdrawals.

88–4 (August 2, 1988)

Issue

If a bank has exempted a single account of a customer into which multiple establishments of that customer make deposits, must the bank list all of the establishments on its exemption list or may the bank list only the § 103.22(f) information of the customer's headquarters or its principal business establishment on its exemption list?

Facts

A fast food company operates a chain of fast-food restaurants in several states. In New York, the company has established a single deposit account at Bank A, into which all of the company's establishments in that area make deposits. In Connecticut, the company has established ten bank accounts at Bank B; each of the company's ten establishments in Connecticut have been assigned a separate account into which it makes deposits. Banks A and B have properly exempted the company's accounts, but now seek guidance on the manner in which they should add these accounts to their exemption lists. All of the company's establishments use the same taxpayer identification number ("TIN").

Law and Analysis

Under the regulations, the bank must keep "in a centralized list," § 103.22(f) information for "each depositor that has engaged in currency transactions which have not been reported because of (an) exemption * * *" However, where all of the company's establishments deposit into one exempt account as at Bank A, above, the bank need only maintain § 103.22(f) information on its list for the customer's corporate headquarters or the principal establishment that obtained the exemption. The bank may, but is not required to, list identifying information for all of the customers' establishments depositing into the one account. If the bank chooses to list only the information for the customer's headquarters or principal establishment, it should briefly note that on the exemption list and should ensure that the individual addresses for each establishment are readily available upon request. Where each of the company's establishments deposit into separate exempt accounts as at Bank B, the bank must maintain separate § 103.22(f) information on the exemption list for each establishment.

Under § 103.22(b)(2) (i), (ii), and (iv) and § 103.22(e) of the regulation, a bank can only grant an exemption for "an existing account (of) an established depositor who is a United States resident." Under these provisions, therefore, the bank can only grant an exemption for an existing individual account, not for an individual customer or group of accounts. Thus, if a customer has a separate account for each of its business establishments, the bank must consider each account for a separate exemption. If the bank grants exemptions for more than one account, it should prepare a separate exemption statement and establish a separate dollar limit for each account.

Once an exemption has been granted for an account, § 103.22(f) requires the bank to maintain a centralized exemption list that includes the name, address, business, types of transactions exempted, the dollar limit of the exemption, taxpayer identification number, and account number of the customers whose accounts have been exempted.

Holding

Under 31 CFR 103.22, when a bank has exempted a single account of a customer into which more than one of the customer's establishments make deposits, the bank may include the name, address, business, type of transactions exempted, the dollar limit of the exemption, taxpayer identification number, and account number ("§ 103.22(f) information") of either the customer's headquarters or the principal business establishment, or it may separately list § 103.22(f) information for each of the establishments using that account. If the bank chooses to list only the information for the customer's headquarters or principal establishment, it should briefly note that fact on the exemption list, and it should ensure that the individual addresses of those establishments not on the list are readily available upon request. If a bank has granted separate exemptions to several accounts, each of which is used by a single establishment of the same customer, the bank must include on its exemption list § 103.22(f) information for each of those establishments. Previous Treasury correspondence or interpretations contrary to this policy are hereby rescinded.

88–5 (August 2, 1988)

Issue

Does a financial institution have a duty to file a CTR on currency transactions where

the financial institution never physically receives the cash because it uses an armored car service to collect, transport and process its customer's cash receipts?

Facts

X State Bank (the "Bank") and Acme Armored Car Service ("Acme") have entered into a contract which provides for Acme to collect, transport and process revenues received from Bank customers:

Each day, Acme picks up cash, checks, and deposit tickets from Little Z, a non-exempt customer of the Bank. Recently, receipts of cash from Little Z have exceeded $10,000. Acme delivers the checks and deposit tickets to the Bank where they are processed and Little Z's account is credited. All cash collected, however, is taken by Acme to its central office where it is counted and processed. The cash is then delivered by Acme to the Federal Reserve Bank for deposit into the Bank's account. Must the Bank file a CTR to report a receipt of cash in excess of $10,000 by Acme from Little Z?

Law and Anaylsis

Yes. Since Acme is receiving cash in excess of $10,000 on behalf of the Bank, the Bank must file a CTR in order to report these transactions.

Section 103.22(a)(1) requires "(e)ach financial institution * * * [to] file a report of each deposit, withdrawal, exchange of currency or other payment or transfer, by, through or to such financial institution which involves a transaction in currency of more than $10,000." Section 103.11 (a) and (g) defines "Bank" and "Financial Institution" to include agents of those banks and financial institutions.

Under the facts presented, Acme is acting as an agent of the Bank. This is because Acme and the Bank have a contractual relationship whereby the Bank has authorized Acme to pick up, transport and process Little Z's receipts on behalf of the Bank. The Federal Reserve Bank's acceptance of deposits from Acme into the Bank's account at the Fed, is additional evidence of the agency relationship between the Bank and Acme.

Therefore, when Acme receives currency in excess of $10,000 from Little Z, the Bank must report that transaction on Form 4789. Likewise, if Acme receives currency from Little Z in multiple transactions, § 103.22(a)(1) requires the Bank to aggregate these transactions and file a single CTR for the total amount of currency received by Acme, if the Bank has knowledge of these multiple transactions. Knowledge by the Bank's agent, i.e., Acme, that the currency was received in multiple transactions, is attributable to the Bank. The Bank must assure that Acme, as its agent, obtains all the information and identification necessary to complete the CTR.

Holding

Financial institutions must file a CTR for the currency received by an armored car service from the financial institution's customer when the armored car service physically receives the cash from the customer, transports it and processes the receipts, even though the currency may never physically be received by the financial institution. This is because the armored car service is acting as an agent of the financial institution.

Dated: September 6, 1988.

Salvatore R. Martoche,

Assistant Secretary (Enforcement).

[FR Doc. 88-22883 Filed 10-12-88; 8:45 am]

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GENERAL SERVICES ADMINISTRATION

41 CFR Parts 201-1, 201-30, and 201-32

[FIRMR Amdt. 14]

Electronic Office Equipment Accessibility for Handicapped Employees

AGENCY: Information Resources Management Service, GSA.

ACTION: Final rule.

SUMMARY: This regulation implements Pub. L. 99-506, the "Rehabilitation Act Amendments of 1986." The statute directed the Secretary of the Department of Education, through the Department's National Institute on Disability and Rehabilitation Research, and the Administrator of General Services in consultation with the electronics industry to develop and establish guidelines for electronic equipment accessibility designed to ensure that handicapped individuals may use electronic office equipment with or without special peripherals. Initial guidelines were developed in 1987 to implement this Act. Federal Information Resources Management Regulation (FIRMR) Bulletin 56, Electronic Office Equipment Accessibility for Employees with Disabilities, implements these initial guidelines.

This regulation provides mandatory FIRMR coverage regarding office equipment accessibility. It requires that determinations of need and requirements analyses be conducted for all automatic data processing equipment requirements to specifically determine the electronic equipment accessibility requirements of handicapped employees. For any procurement limited solely to providing electronic office equipment accessibility for handicapped employees, an individual deviation from any FIRMR provisions that impede or obstruct the provision of technology for handicapped employees may be authorized within the agency under certain conditions. The objective of this regulatory guideline is to enable handicapped users to access and use electronic office equipment.

EFFECTIVE DATE: This rule is effective November 14, 1988 but may be observed earlier.

FOR FURTHER INFORMATION CONTACT: Margaret Truntich or Mary Anderson, Regulations Branch (KMPR), Office of Information Resources Management Policy, telephone (202) 566-0194 or FTS, 566-0194.

SUPPLEMENTARY INFORMATION: (1) The purpose of this amendment is to ensure that Federal handicapped employees are provided with the electronic equipment capability to access and use electronic office equipment.

(2) A notice of proposed rulemaking regarding this action was published in the **Federal Register** on July 14, 1988 (53 FR 26610). All comments received have been considered.

(3) Changes made in 41 CFR Chapter 201 are explained in the following paragraphs.

(a) In Part 201-1, § 201-1.102 is amended by adding a provision to cite the statutory authority for electronic office equipment accessibility, and § 201-1.403 is amended by adding a provision that allows FIRMR deviation authorization by agencies for electronic office equipment accessibility. For a procurement limited solely to providing electronic office equipment accessibility for handicapped employees, if the FIRMR impedes or obstructs the provision of technology for handicapped employees, then this regulation provides that an agency designated senior official (DSO) (as designated in accordance with Pub. L. 96-511), or the DSO's authorized representative may authorize a deviation from FIRMR provisions that are not specifically prescribed by executive order or statute, and do not change the level of procurement authority delegated from GSA to the agency. The objective of this deviation authority is to expedite the procurement of resources acquired specifically for handicapped users to access and use electronic office equipment.

(b) In Part 201-30, a new § 201-30.007-2 is added to provide that determinations of need and requirements analyses shall be made to specifically identify the needs of handicapped employees. It also establishes policies of equal access for handicapped employees.

(c) In Part 201-32, § 201-32.202 is revised to provide that procurements of ADPE shall include requirements that ensure electronic equipment accessibility for handicapped Federal employees. It also indicates that procedures for expediting procurements limited solely to providing electronic

office equipment accessibility for handicapped employees may be available to the agency by deviating from FIRMR provisions that impede or obstruct the provision of technology for handicapped employees.

(4) The General Services Administration has determined that this is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. GSA actions are based on adequate information concerning the need for, and the consequences of the rule. The rule is written to ensure maximum benefits to Federal agencies. This Governmentwide management regulation will have little or no net cost effect on society. It is therefore certified this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

List of Subjects in 41 CFR Parts 201–1, 201–30, and 201–32

Computer technology, Government procurement, Government property management, Telecommunications, Information resources activities, Government records management, Competition, Hearing and appeal procedures.

PART 201–1—FEDERAL INFORMATION RESOURCES MANAGEMENT REGULATIONS SYSTEM

1. The authority citation for Part 201–1 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c) and Sec. 101(f), 100 Stat. 1783–345, 40 U.S.C. 751(f).

2. Section 201–1.102(c)(6) is added to read as follows:

§ 201–1.102 Authority.

* * * * *

(c) * * *

(6) Pub. L. 99–506 (29 U.S.C. 794d), the Rehabilitation Act Amendments of 1986 regarding electronic office equipment accessibility.

3. Section 201–1.403(d) is added to read as follows:

§ 201–1.403 Procedures.

* * * * *

(d) For a procurement limited solely to providing electronic office equipment accessibility for handicapped employees, an individual deviation from the FIRMR may be authorized by the agency designated senior official (DSO) (as designated in accordance with Pub. L. 96–511), or the DSO's authorized representative. This deviation authority for handicapped accessibility is further limited to those FIRMR provisions that: Are not specifically prescribed by executive order or statute, do not change the level of procurement authority delegated from GSA to the agency, and do not impede or obstruct the provision of technology for handicapped employees. Such a deviation may be made by the DSO or the DSO's authorized representative immediately upon documenting the procurement file relative to the obstructing provision.

PART 201–30—MANAGEMENT OF ADP RESOURCES

4. The table of contents of Part 201–30 is amended by adding a new § 201–30.007–2 to read as follows:

201–30.007–2 Requirements for handicapped employees.

5. The authority citation for Part 201–30 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c) and section 101(f), 100 Stat. 1783–345, 40 U.S.C. 751(f).

6. Section 201–30.007–2 is added to Part 201–30 to read as follows:

§ 201–30.007–2 Requirements for handicapped employees.

(a) *Scope.* This section establishes policies and procedures for determining the needs of handicapped employees and analyzing requirements for electronic office equipment accessibility in the Federal procurement of automatic data processing equipment (ADPE).

(b) *General.* Pub. L. 99–506 directs that handicapped individuals be provided with electronic equipment accessibility to public information resources through the Federal procurement of electronic office equipment. ADPE, because it overlaps with electronic office equipment, provides that capability.

(c) *Policy.* (1) Federal agencies shall provide handicapped employees and non-handicapped employees equivalent access to electronic office equipment to the extent such needs are determined by the agency in accordance with § 201–30.007 and the required accessibility can be provided by industry. In providing equivalent access to electronic office equipment, agencies shall consider:

(i) Access to and use of the same data bases and application programs by handicapped and non-handicapped employees;

(ii) Utilization of enhancement capabilities for manipulating data (i.e., special peripherals) to attain equivalent end-results by handicapped and non-handicapped employees; and

(iii) Access to and use of equivalent communications capabilities by handicapped and non-handicapped employees.

(2) Federal agencies shall consider electronic office equipment accessibility for handicapped employees in conducting determinations of need and requirements analyses for automatic data processing equipment.

(d) *Procedures.* Determinations of need and requirements analyses shall be conducted following the procedures set forth in § 201–30.007 and in consultation with the handicapped employee(s). FIRMR Bulletin 56, Electronic Equipment Accessibility for Employees with Disabilities, provides guidelines for use in developing specifications, in conjunction with requirements determinations, to ensure electronic equipment accessibility for handicapped employees.

PART 201–32—CONTRACTING FOR ADP RESOURCES

7. The table of contents of Part 201–32 is amended by adding a new § 201–32.202 to read as follows:

201–32.202 Contracting for electronic equipment accessibility.

8. The authority citation for Part 201–32 continues to read as follows:

Authority. Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c) and Sec. 101(f), 100 Stat. 1783–345, 40 U.S.C. 751(f).

9. Section 201–32.202 is added to read as follows:

§ 201–32.202 Contracting for electronic equipment accessibility.

(a) *Scope.* This section establishes policies and procedures for procuring ADPE that provides electronic office equipment accessibility for handicapped employees.

(b) *Policy.* ADPE procurements shall provide electronic office equipment accessibility for handicapped employees to the extent such needs are determined by the agency in accordance with § 201–30.007 and the required accessibility can be provided by industry.

(c) *Procedures.* (1) Agencies shall use either small purchase procedures, GSA nonmandatory ADP schedules, or formal solicitations to acquire electronic office equipment accessibility. In making this decision, agencies shall consider the size and complexity of the procurement.

(2) For any procurement limited solely to providing electronic office equipment accessibility for handicapped employees, an individual deviation from any FIRMR provisions that impede or obstruct the provision of technology for handicapped employees may be authorized within the agency under certain conditions. The deviation

conditions and procedures for expediting such procurements are found in § 201–1.403. Any such impeding conditions shall be quickly documented and handled within the agency to obtain the deviation if appropriate.

Dated: September 30, 1988.

Richard G. Austin,

Acting Administrator of General Services.

[FR Doc. 88–23529 Filed 10–12–88; 8:45 am]

BILLING CODE 6820–25–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1185

[Ex Parte No. 474]

Exemption for Certain Interlocking Directorates, Correction

AGENCY: Interstate Commerce Commission.

ACTION: Final rules: Correction.

SUMMARY: The Commission adopts final rules at 49 CFR Part 1185 exempting individuals from the prior approval requirements of 49 U.S.C. 11322(a) when they seek to assume positions as officers or directors of one rail carrier while holding the position of officer or director of another rail carrier, except where both carriers are Class I railroads. The Commission's final rule was published in the **Federal Register** on October 5, 1988 at 53 FR 39096. This notice corrects sections 1185.1 (a) and (b).

EFFECTIVE DATE: October 13, 1988.

FOR FURTHER INFORMATION CONTACT: Kathleen Gass: (202) 275–6796. (TDD for hearing impaired: (202) 275–1721).

SUPPLEMENTARY INFORMATION: .

List of Subjects in 49 CFR Part 1185

Administrative practice and procedure, Antitrust, Railroads.

PART 1185—[CORRECTED]

1. The authority citation for 49 CFR Part 1185 continues to read as follows:

Authority: 49 U.S.C. 10321, 11322, and 10505; 5 U.S.C. 553 and 559.

§ 1185.1 [Corrected]

2. New paragraphs (a) and (b) of § 1185.1 are correctly added to read as follows:

§ 1185.1 Scope of exemption.

(a) Subject to the exception in paragraph (c) of this section, "interlocking directorates," as defined in paragraph (b) of this section, are exempt from the prior approval requirements of 49 U.S.C. 11322(a).

(b) An "interlocking directorate" exists whenever an individual holds the position of officer (as defined in § 1185.3) or director of one carrier and assumes the position of officer or director of another carrier.

* * * * *

Kathleen M. King,

Acting Secretary.

[FR Doc. 88–23640 Filed 10–12–88; 8:45 am]

BILLING CODE 7035–01–M

Proposed Rules

Federal Register
Vol. 53, No. 198
Thursday, October 13, 1988

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[TB-88-104]

Tobacco; Fees and Charges for Permissive Inspection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish separate fees and charges for the permissive inspection and certification of tobacco for export. In addition, the basis for charging these fees would be changed from an hourly rate to a per pound rate. The proposed changes would generate revenues that would meet the costs of operating the export permissive inspection program. This proposal does not affect the permissive inspection fee for tobacco for domestic use or the mandatory inspection fee for tobacco at auction warehouses.

DATE: Comments are due on or before November 14, 1988.

ADDRESSES: Send comments to Director, Tobacco Division, Agricultural Marketing Service (AMS), United States Department of Agriculture (USDA), Room 502 Annex Building, P.O. Box 96456, Washington, DC 20090-6456. Comments will be available for public inspection at this location during regular business hours.

FOR FURTHER INFORMATION CONTACT: Ernest Price, Director, Tobacco Division, Agricultural Marketing Service, United States Department of Agriculture, Room 502 Annex Building, P.O. Box 96456, Washington, DC 20090-6456, telephone—(202) 447-7235.

SUPPLEMENTARY INFORMATION: This proposed rule would establish separate fees and charges on a per pound basis for permissive inspection and grading services for export tobacco. Presently, the same hourly fees apply to both the permissive inspection of tobacco for domestic use and for permissive inspection and certification for export. The Tobacco Inspection Act authorizes permissive inspections which are made available to interested parties on a fee basis sufficient to recover the costs incurred by the Department for the inspection and certification of tobacco, the establishment of standards, and other services, including administrative and supervisory costs. The Department has determined that the present fees and charges for permissive inspections do not cover the Department's costs for export inspection and certification. The major factors causing the need for the separate rate are increases in salaries and administrative costs. Different personnel are utilized for the inspection and certification of tobacco for export than for permissive inspection for domestic use because tobacco processed for export in large lots is different in form than tobacco in small lots on a warehouse floor or in a redrying plant. For permissive inspection for domestic use, for the most part, seasonal employees are utilized and the program costs are their salary for the actual time they care conducting permissive inspections, administrative and supervisory costs, and travel and per diem. However, tobacco exportation, unlike domestic sales, is not highly seasonal, and personnel assigned to the inspection and certification of tobacco for export must be available year-round. The higher costs of personnel with the particular expertise needed for the inspection and certification of tobacco for export should be attributed to the program for inspection and certification that incurs such costs. In addition, the amount of tobacco which will be exported in any given year is more easily estimated than the amount of time which will be necessary for inspection and certification of tobacco for export. Thus, a per-pound fee would be a more appropriate method of recovering the costs of the inspection and certification of tobacco for export.

The present fee is $26.60 per hour, plus travel expenses and per diem. Revenues (for export tobacco) for the 12 month period beginning June 1, 1987, were about $43,000, with costs of about $57,400. In FY 1989, it is estimated that approximately $70,000 in revenues would be generated and that program costs would be approximately $69,900.

In order to cover the Department's present costs of providing export permissive tobacco inspection and certification, the fee should be $.0025 per pound. In addition, miscellaneous conforming changes are made to various provisions in section 29.123.

The proposed rule has been reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "nonmajor rule" because it does not meet any of the criteria established for major rules under the Executive Order.

Additionally, in conformance with the provisions of Pub. L. 96-354, the Regulatory Flexibility Act, full consideration has been given to the potential economic impact upon small business. A number of firms which would be affected by this proposed rule do not fall within the confines of "small business," as defined in the Regulatory Flexibility Act. The Administrator, Agricultural Marketing Service, has determined that this action would not have a significant economic impact on a substantial number of small entities. This proposed rule would not substantially affect the normal movement of the commodity in the marketplace. Compliance with the proposed revision would not impose sustantial direct economic costs, recordkeeping, or personnel workload changes on small entities,and it would not alter the market share or competitive positions of small entities relative to large entities. Furthermore, the Department is required by law to fix and collect fees and charges to cover the Department's cost in operating the tobacco inspection program.

All persons who desire to submit written data, views, or arguments for consideration in connection with this proposal may file them with the Director, Tobacco Division, Agricultural Marketing Service, United States Department of Agriculture, Room 502 Annex Building, P.O. Box 96456, Washington, D.C. 20090-6456, not later than November 14, 1988.

List of Subjects in 7 CFR Part 29

Administrative practices and procedures, Tobacco.

Accordingly, the Department proposes to amend the regulations under the Tobacco Inspection Act contained in 7 CFR Part 29 as follows:

PART 29—TOBACCO INSPECTION

Subpart B—Regulations

1. An authority citation for Subpart B is added, to read as follows:

Authority: 7 U.S.C. 511m and 511r.

2. In § 29.123, the introductory text to the section is revised to read as follows:

§ 29.123 Fees and charges.

Fees and charges for tobacco inspection and certification service shall be collected by the Director to cover insofar as practicable, all costs of the services including establishment of standards, administrative, and supervisory costs as follows:

* * * * *

3. In § 29.123, the heading for paragraph (b) is revised to read as follows:

* * * * *

(b) *Domestic permissive inspection and certification.* * * *

* * * * *

4. In § 29.123, paragraph (c) is redesignated as paragraph (d).

5. A new paragraph (c) is added to § 29.123, to read as follows:

* * * * *

(c) *Export permissive inspection and certification.* The inspection and certification fee for export tobacco is $.0025 per pound.

* * * * *

Dated: October 7, 1988.

J. Patrick Boyle,

Administrator.

[FR Doc. 88-23672 Filed 10-12-88; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL ELECTION COMMISSION

11 CFR Part 106

[Notice 1988-13]

Methods of Allocation Between Federal and Non-Federal Accounts; Payments; Reporting

AGENCY: Federal Election Commission.

ACTION: Change of Public Hearing Date.

SUMMARY: On September 29, 1988, the Commission published proposed rules and announced a public hearing on the allocation of expenses between federal and non-federal accounts. See 53 FR 38012.

The date for the public hearing on the proposed rules has been changed to December 15, 1988 at 10:00 a.m.

DATES: The hearing will be held on December 15, 1988. Comments must be received on or before November 30, 1988, and persons wishing to testify at the hearing should so indicate in their written comments.

ADDRESSES: The hearing will be held at the Federal Election Commission, Ninth Floor Hearing Room, 999 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463, (202) 376-5690 or (800) 424-9530.

Dated: October 6, 1988.

Thomas J. Josefiak,

Chairman, Federal Election Commission.

[FR Doc. 88-23670 Filed 10-12-88; 8:45 am]

BILLING CODE 6715-01-M

11 CFR Parts 109 and 114

[Notice 1988-12]

Corporate and Labor Organization Expenditures

AGENCY: Federal Election Commission.

ACTION: Announcement of Public Hearing and Extension of Comment Period.

SUMMARY: On January 7, 1988, the Commission published an Advance Notice of Proposed Rulemaking (53 FR 416) to determine what changes, if any, should be made to its regulations at Parts 109 and 114, following the decision in *Federal Election Commission* v. *Massachusetts Citizens for Life*, 107 S.Ct. 616 (1986) ("MCFL"). The Commission will hold a public hearing on the issues outlined in the Notice.

DATES: The hearing will be held on November 16, 1988. Persons or organizations wishing to testify should submit a written request by November 2, 1988. All witnesses who have not previously submitted comments must do so on or before November 2, 1988.

ADDRESSES: The hearing will be held at the Federal Election Commission, Ninth Floor Hearing Room, 999 E Street NW., Washington, DC. Comments and written requests to appear should be submitted to Susan E. Propper, Assistant General Counsel, 999 E Street NW., Washington, DC 20463.

FOR FURTHER INFORMATION CONTACT: Susan E. Propper, Assistant General Counsel, 999 E Street NW., Washington, DC 20463, (202) 376-5690 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: A petition for rulemaking was filed with the Commission by the National Right to Work Committee, following the Supreme Court's decision in *Federal Election Commission* v. *Massachusetts Citizens for Life*, 107 S.Ct. 616 (1986). The petition asked that the Commission adopt an "express advocacy" standard for 2 U.S.C. 441b in its regulations at 11 CFR 114.3 and 114.4, for determining whether an expenditure has been made under the Act.

On January 7, 1988, the Commission published an Advance Notice of Proposed Rulemaking seeking further comment on the petition and on the other issues raised by *MCFL*. These other issues include how to determine: when an organization is an "MCFL-type" entity, what its reporting and disclosure requirements should be, and when it becomes a political committee. See 53 FR 416 for more information.

The Commission received over 17,000 comments in response to the Notice. A representative sample of the comments is available for inspection and copying at the Federal Election Commission, Public Records Room, 999 E Street NW., Washington, DC.

The Commission has now determined to hold a public hearing on all of the issues raised in the Advance Notice. The issues are complex and difficult, and many new questions arise as a result of *MCFL* that are expressed in the Advance Notice. Also, the Commission received few comments regarding the *MCFL* issues not discussed in the NRWC petition, and would be interested in obtaining more of a perspective on those issues. Further, the Commission wishes to allow for more public involvement in this rulemaking even before draft regulations are proposed. The Commission encourages comments and testimony on all of the issues addressed in the Advance Notice at the public hearing.

Dated: October 6, 1988.

Thomas J. Josefiak,

Chairman, Federal Election Commission.

[FR Doc. 88-23669 Filed 10-12-88; 8:45 am]

BILLING CODE 6715-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-CE-31-AD]

Airworthiness Directives; Beech Model 200 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 Model 200 Airplanes, which would reduce the structural safe life of the outer wing panels from 20,000 hours time-in-service (TIS) to 10,000 TIS until modified with an improved spar assembly. The original spars in these airplanes have a sharp radius at the lower barrel nut hole which is a potential fatigue origination point. Replacing the original spars with the improved spars will permit safe operation up to 20,000 hours of TIS.

DATE: Comments must be received on or before December 1, 1988.

ADDRESSES: Beech Service Bulletin No. 2240, dated February 1988; Beech Letter No. 52-83-0030, dated January 20, 1983, and Beech Letter No. 52-85-0049, dated April 17, 1985, applicable to this AD may be obtained from Beech Aircraft Corporation, Commercial Services, 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. 88-CE-31-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: Don Campbell, Aerospace Engineer, Airframe Branch, ACE-120W, Wichita Aircraft Certification Office (ACO), 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 the light of 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: Airworthiness Rules Docket No. 88-CE-31-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

The Beech Model 200 wing cyclic test was completed in February, 1976 after accomplishing the required four lifetimes of testing. Subsequently, during residual strength testing of the same test article to loads exceeding limit loads, a fatigue crack was found in the lower, main spar attachment counterbore. Later tests proved that the crack was caused by inadequate corner radius in the bottom of the counterbore. The boring took was modified to make a more liberal edge radius at the bottom of the counterbore, which solved the problem. This improvement became effective at Serial BB-149 for the right wing, and at Serial BB-162 for the left wing. The original wing structural safe life for airplanes with serial numbers below BB-162 must be reduced from what was published at the time of certification. An average reduced safe life of 10,000 hours TIS has been calculated due to the above defect.

In January, 1983, Beech mailed a letter to the owner/operator of each affected airplane, offering to replace each applicable spar at no cost to the owner/operator. Approximately 1/3 of the airplanes were modified before Beech repeated the offer by letter in April, 1985. Approximately another 1/3 of the airplanes were modified before Beech issued Service Bulletin No. 2240 in February, 1988, which repeats the offer, and announces an expiration date of February, 1990. At the present time, approximately 50 airplanes have not complied.

Beech's plan to replace these spars under warranty appeared feasible to the FAA when it was established in 1983. It has now become apparent that mandatory action is needed to assure that none of the affected airplanes exceed their reduced life before spar replacement is accomplished. Therefore an AD is proposed to mandate this spar replacement.

Since the condition described is likely to exist or develop in other Beech Model 200 airplanes of the same design, the AD would reduce the structural safe life of the outer wing panels from 20,000 hours TIS to 10,000 hours TIS until modified in accordance with Beech Service Bulletin No. 2240, dated February, 1988.

The FAA has determined there are approximately 50 airplanes affected by the proposed AD. The cost of replacing the outboard wing main spars per the proposed AD is estimated to be $20,000 per airplane. Until February, 1990, the cost will be born by the manufacturer, not to include removal and reinstallation of any non-Beech applicances or modifications which may prevent access to the main spar. These incidental costs are not considered to be significant. The total cost, if not accomplished by February 1990, is estimated to be $1,000,000 to the private sector.

The regulations proposed herein would not have substantial direct effects on the states, or 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 provision 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 has been prepared for this action and 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 34—[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 Model 200 (Serial Numbers BB–2 through BB–161) airplanes certificated in any category.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished per Beech Service Bulletin No. 2240, dated February, 1988, or Beech Letter No. 52–83–0030, dated January 20, 1983, or Beech Letter No. 52–85–0049, dated April 17, 1985.

To prevent possible failure of the wing main outboard spar, accomplish the following:

(a) Within the next 200 hours time-in-service (TIS) after the effective date of this AD, or upon accumulating 10,000 hours TIS, whichever occurs later, replace both wing main outboard spars in accordance with Beech Service Bulletin No. 2240, dated February, 1988. Only the left wing main spar need be replaced for Serial Nos. BB–149 through BB–161.

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

(c) An equivalent means of compliance with this AD may be used if approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209; Telephone (316) 946–4400.

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

Issued in Kansas City Missouri, on September 30, 1988.

Earsa L. Tankesley,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88–23559 Filed 10–12–88; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 88–NM–129–AD]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Model 737 series airplanes, which would require inspection of pressure relief panels in the cockpit door for the presence of sealant. The AD would require removal of the sealant if it is present. This proposal is prompted by the discovery that panels have been erroneously sealed closed in production. The panels are designed to open in the event of a decompression to prevent a buildup of differential pressure between the cockpit and other areas. This condition, if not corrected, could cause an unacceptably high pressure differential to build up and result in structural damage to the airplane.

DATE: Comments must be received no later than November 30, 1988.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 88–NM–129–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commerical Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Gardlin, Airframe Branch, ANM–120S; telephone (206) 431–1932. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

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 number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. 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 FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rule Docket No. 88–NM–129–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

It has been discovered that pressure relief panels on the cockpit door of certain Boeing Model 737 series airplanes may have been erroneously sealed closed in production. The pressure relief panels are designed to open in the event the airplane experiences a decompression, to allow pressure on both sides of the cockpit door to equalize. In particular, a failure of a cockpit window will cause the relatively small cockpit volume to lose pressure very rapidly. Since the cockpit is separated from the remainder of the pressurized shell by interior structure, a large pressure differential would exist between the cockpit and the areas outside it if the pressure relief panels did not operate properly. This pressure differential could result in failure of the floor or other structure. Relief panels which have been sealed closed may inhibit proper pressure equalization in the event of a decompression originating in the cockpit.

The FAA has reviewed and approved Boeing Alert Service Bulletin 737–52A1105, dated August 16, 1988, which describes the procedure for inspection and removal of adhesive sealant.

Since this condition is likely to exist on other airplaines of this same type design, an AD is proposed which would require inspection for and, if necessary, removal of sealant on cockpit door pressure relief panels on certain Model 737 series airplanes, in accordance with

the service bulletin previously mentioned.

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

It is estimated that 650 airplanes of U.S. registry would be affected by this AD, that it would take approximately 1 manhour per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $26,000.

The regulations proposed herein would not 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.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model 737 airplanes are operated by small entitles. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

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 Federal Aviation Regulations (14 CFR 39.13) 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 airworthiness directive:

Boeing: Applies to Model 737 series airplanes, line number 001 through 1587, certificated in any category. Compliance required within 90 days after the effective date of this AD, unless previously accomplished.

To ensure proper functioning of blowout panels in the cockpit door, accomplish the following:

A. Inspect for improper use of adhesive and remove adhesive, if necessary, in accordance with Boeing Alert Service Bulletin 737–52A1105, dated August 16, 1988.

B. Within 10 days after completion of the inspection required by paragraph A., above, submit a report of findings, positive or negative, to the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124.

These documents may be examined at the FAA, Northwest Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on September 28, 1988.

Darrell M. Pederson,

Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 88–23557 Filed 10–12–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 88–ASW–30]

Proposed Removal and Revision of Transition Areas; Jonesboro and Paragould, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to remove the transition area located at Paragould, AR, and revise the transition area located at Jonesboro, AR. The development of a VOR RWY 4 standard instrument approach procedure (SIAP) to the Paragould Municipal Airport, utilizing the Jonesboro Very High Frequency Omnidirectional Radio Range/Tactical Air Navigation (VORTAC), has made a revision of the existing Paragould, AR, Transition Area necessary. Additionally, a review of the types of aircraft now using the Jonesboro Municipal Airport revealed a change in the category and size of aircraft using the airport, thus making a revision of the existing Jonesboro, AR, Transition Area necessary. However, the proximity of the two transition areas and the need to expand both have intertwined these two transition areas to the extent that it is no longer possible to separate one transition area from the other. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing all SIAP's now serving both the Jonesboro and Paragould Municipal Airports and to simplify the legal description of this controlled airspace. The status of both the Jonesboro and Paragould Municipal Airports will remain instrument flight rules (IFR).

DATE: Comments must be received on or before November 15, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 88–ASW–30, Department of Transportation, Federal Aviation Administration, Forth Worth, TX 76193–0530.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530; telephone: (817) 624–5561.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitted 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, 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. 88–ASW–30." 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 Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, 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 Manager, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530. 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. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of the Federal Aviation Regulations (14 CFR Part 71) by removing the transition area located at Paragould, AR, and revising the transition area located at Jonesboro, AR. The development of a new VOR RWY 4 SIAP to the Paragould Municipal Airport, utilizing the Jonesboro VORTAC, has necessitated the need to expand the existing Paragould, AR, Transition Area. In addition, a review of the types of aircraft now using the Jonesboro Municipal Airport revealed a change in the category and size of aircraft using the airport, thus necessitating the need to expand the existing Jonesboro, AR, Transition Area. However, the proximity of the two transition areas and the need to increase both have intertwined the two transition areas to the extent that it is no longer possible to separate the two areas. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing all SIAP's now serving the Jonesboro and Paragould Municipal Airports and to simplify the legal description of the controlled airspace. The status of the Jonesboro and Paragould Municipal Airports will remain IFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 1, 1988.

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. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant 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, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA 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.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Paragould, AR [Removed]

3. Section 71.181 is amended as follows:

Jonesboro, AR [Revised]

That airspace extending upward from 700 feet above the surface within a 12-mile radius of the Jonesboro Municipal Airport (latitude 35°49' 50" N., longitude 90°38'55" W.) and within 3.5 miles each side of the 048° radial of the Jonesboro VORTAC (latitude 35°52'29" N., longitude 90°35'18" W.), extending from the 12-mile radius area to 11.5 miles northeast of the Jonesboro VORAC and within a 6.5-mile radius of the Paragould Municipal Airport (latitude 36°03'36" N., longitude 90°30'34" W.), and within 2.5 miles each side of the 247° bearing of the Walcott NDB (latitude 36°01'48" N., longitude 90°35'49" W.), extending from the 6.5-mile radius area to 11 miles southwest of the Walcott NDB.

Issued in Forth Worth, TX, on September 27, 1988.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 88–23558 Filed 10–12–88; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 768, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 785, 786, 790, and 799

[Docket No. 80903–8203]

Technical Data, Software, and Their Direct Product

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Proposed rule.

SUMMARY: This proposed rule is a complete revision of Part 779 and the controls for technical data, software, and their foreign-produced direct product. This proposed rule would amend Part 779 by integrating technical data into the Commodity Control List and renaming it the Control List.

DATE: Comments must be received by November 28, 1988.

ADDRESS: Written comments (six copies) should be sent to: Larry E. Christensen, Office of the Chief Counsel for Export Administration, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Larry E. Christensen, Office of the Chief Counsel for Export Administration, Bureau of Export Administration, Telephone: (202) 377–5305.

SUPPLEMENTARY INFORMATION

Background

In January of 1988, Commerce began an extensive review of Part 779 (redesignated from Part 379 at 53 FR 38851, September 27, 1988) and the controls on technical data, software and their direct product. As a part of this review, Commerce invited papers from the public on a wide variety of topics. In response to this invitation, approximately twenty papers were

presented at a forum on February 11, 1988.

The review continued with extensive work within Commerce by a Technical Data Working Group and Steering Committee. The groups were served by business representatives from the President's Export Council Subcommittee on Export Administration and the Militarily Critical Technologies List Implementation Technical Advisory Committee.

In June of 1988, Commerce finished a working draft of changes related to operation technical data, sales technical data, and mass-market software. Commerce then sought informal industry comments and comments from certain of the technical advisory committees. After receiving those comments, Commerce decided to publish this complete proposed revision of Part 779 and began work on policy decisions and drafting.

Objectives

The first objective in the revision is to clarify the existing rule. This is to enhance the enforceability of the rules and to make them easier for exporters to use. Exporters have long believed that Part 779 is confusing and difficult to use.

To that end, Commerce retained a top expert in plain English writing. Because of his recommendations, we have drafted this proposed rule with extensive use of pronouns, concrete examples, and better layout. In addition, we have written decision trees to help you use the rule easily and without missing important provisions. We have also taken care to explain the relationship between different provisions of Part 779.

The second objective in this revision is to adhere to COCOM agreements and the requirements of the Export Administration Act. For example, this revision incorporates technical data licensing requirements into the Commodity Control List in the same manner used by COCOM. In this proposed rule, we refer to the Commodity Control List as the Control List.

The third objective is to simplify the rule and policies where possible. We recognize that some of the policies of the rule are inherently complex and can not be simplified without placing unnecessary burdens on exporters that do not contribute to the national security and other policy objectives of the Department. We have reduced those burdens that we feel do not contribute to national security, nuclear non-proliferation, and foreign policy objectives.

The fourth objective is to provide guidance. Where policies are necessarily complex, we have included concrete examples of how you should apply those provisions. When you comment on this regulation, we urge you to raise specific facts that present questions you believe are not answered clearly by this regulation. We will make an effort to publish the answer in the regulations, a supplement, or a future publication. Commerce has determined to publish future major rulings and classification decisions related to technical data, software and other topics.

The overriding objective is to increase the clarity of the rule to enhance ease of use and enforcement.

Introduction and Decision Trees

Section 779.1 is a summary introduction. It is written to give the new user of Part 779 an overview of the rule, a short description of license types, and a discussion about the decision trees.

Definitions

The definitions in § 779.2 contain no policy changes with one exception. For decades, the technical data rules have treated disclosure to a foreign national as a deemed export to his home country unless the foreign national is a permanent resident alien. The proposed rule provides that the disclosure to foreign nationals in certain additional immigration categories will not be presumed to be an export of technical data.

The proposed regulation retains the existing definition of software, except that software is no longer defined to be technical data. Thus, the proposed regulation treats software on its own merits as software.

The definition of "foreign-produced direct product" of technical data and software of U.S.-origin does not reflect a policy change. The examples in the proposed regulation are taken from advice Commerce has given to individual exporters concerning the current definition.

Prohibitions

In the revision, all the prohibitions are put in § 779.3.

Some exporters and governments of certain allies have questioned reexport controls. This regulation maintains reexport controls. Without such controls, the effectiveness of the U.S. effort to deny technology to the East Bloc is reduced to the level of the least restrictive control regime, and there are non-COCOM western nations with no control system whatsoever. We maintain reexport controls while attempting to negotiate with Free World countries and urge them to establish their own export control regimes. In addition, we maintain reexport controls because without them, U.S. firms could do indirectly what they may not do directly. This violates a long accepted principle of common law.

Commerce has narrowed the foreign-produced direct product control to apply only to multilaterally controlled items with a letter "A" in the Export Control Number. This simplification makes the direct product controls easier to understand and greatly simplifies the written assurances required under General License GTDR. We believe this will enhance the enforceability of the foreign-produced direct product controls. It will also permit exporters to clearly explain the nature of the control to their consignees.

The exemptions to the prohibitions are the same as those in the old rule. The revision provides that the reason for these controls is national security unless otherwise indicated in the rule or on the Control List. While this has not been stated in the past, it is not a change in policy.

General License GTDA

General License GTDA is not a part of this revision. This general license would be in § 779.4 of the proposed regulation.

General License GTDU

Section 779.5 contains General License GTDU for Unrestricted Technical Data and Software. This would replace the current GTDR without written assurance. The current General License GTDR has proved confusing to some exporters for several reasons. One reason is that the current General License GTDR contains export authority that requires a written assurance and other export authority that does not require a written assurance. The first purpose of General License GTDU is to separate those authorizations. In the proposed revision, General License GTDU never requires a written assurance and General License GTDR always requires a written assurance. This aspect of GTDU represents no policy change. We believe it makes Part 779 clearer and thereby enhances enforceability and ease of use.

General License GTDU has two overall categories of technical data and software. With one exception, the first category may be exported under GTDU to any Country Group except S and Z. This category includes:

- Operation technical data.
- Sales technical data.
- Certain software updates.
- Mas-market software.

Operation Technical Data

The definition of "operation technical data" has been changed or clarified in five ways to relieve burdens on exporters. The theory that underlies this authority is that once a COCOM government authorizes the export of an item, that permission to export includes the right to export related maintenance, repair, and operation information.

The first clarification is that operation technical data may be conveyed orally. This will facilitate training. The outer limits of the authority must be observed, and firms should take great care to ensure their instructors and technicians do not exceed the scope of the general license when training or giving product support and service.

The second and third changes are the elimination of the "single shipment" and "one year" requirements. The old rule requires that operation technical data be exported in one shipment within one year of the export of the related product. These requirements made product support and service difficult to provide on a timely basis and brought no gain in the national security objective.

The fourth change in the definition is to eliminate the requirement that only the seller of the related product can export the operation technical data. We see no reason that unrelated firms should not enjoy the operation technical data export authority so long as the unrelated firm confirms the licensing of the related product. During informal industry consultations, some exporters complained that verification of the proper licensing will be difficult. We believe that such verification will not be difficult for multinational firms dealing with customers served by affiliates. Moreover, this is a necessary burden because this license does not permit the repair or maintenance of diverted goods.

The fifth change is that operation technical data may be exported under this authority when the related product has been licensed for export, by a COCOM government. This will permit U.S. firms to compete for service business when the related product has been licensed by a COCOM government.

These changes would make the operation technical data authority consistent with the multilateral approach of COCOM. COCOM does not embargo technical data that is the "minimum necessary" to install, operate, maintain, check, and repair those products authorized for export. During informal industry consultations, industry urged Commerce not to use the term "minimum necessary" for fear that it would lead firms to the incorrect conclusion that Commerce intends either a change in the current standard or a unilateral standard more restrictive than COCOM. Commerce has long used the term "necessary" in the definition of operation technical data to mean the same thing as the COCOM term: The "minimum necessary."

During informal industry consultations, Commerce received several negative comments on earlier draft language concerning the treatment of technical data that is necessary to explain both how to use capital equipment and how to make products with that capital equipment. The proposed rule contains different language and examples that we hope will clarify the issue.

Sales Technical Data

The definition of sales technical data contains two substantive changes and a clarification of the term "detailed" as used in both the old rule and the proposed rule. The first change is to eliminate the current provision that sales technical data destined for controlled countries may not relate to "A" items. Commerce believes that adequate national security protection remains, because the proposed regulation retains the remaining elements and policies of the current definition of "sales technical data." The data must be "customarily" provided by you to your other customers, and the data may not be sufficiently "detailed" as to permit your customer to reduce the sales technical data to production. Exporters share a common objective with Commerce at this stage of a transaction to prevent the disclosure of "detailed" technical data.

The other substantive change in this definition is to accommodate the needs of the pharmaceutical industry and other exporters that provide information required by civil health and safety agencies of governments. The best example of this is information provided by pharmaceutical manufacturers to the U.S. Food and Drug Administration and similar agencies in other countries. Like information that supports a bid package, technical data provided to a civilian health and safety agency in another country must be of the type customarily provided to similar agencies in the United States and must not be "detailed."

Industry members suggested the creation of similar authority for the export of technical data for government agencies that test the compatibility of communications equipment with the national communications system of the country of export. We decline to do so. Such exports may involve technology that presents national security concerns, and we have found no formulation of a rule that presents adequate protection.

Certain Software Updates

This definition includes authority to export two types of software updates. The first type is bug fixes to achieve the functional capabilities of the original software package as authorized for shipment. The second type of updates represents new authority and authorizes software updates that add one or more of the following:

- Specific menus.
- Warnings.
- Logos.
- Screen savers.
- Specific printer commands.
- Foreign languages.
- User interfaces.

Mass-Market Software

GTDU authority would permit the export of certain mass-market software. The purpose of the authority is to closely reflect the COCOM exemption to software controls. It is also to recognize that such software can not be controlled effectively because of its wide availability, ease of copying, and because the current control in this area is, for the most part, unilateral.

This rule change is consistent with the spirit of the main COCOM software control and its exemption for certain standard commercial software. However, the current COCOM approach in this area might cause different treatment for software widely available for competing lines of personal computers. For that reason, this authority is slightly broader than the COCOM exemption to control, and Commerce will recommend that the United States proposed a change in COCOM consistent with this proposed rule change. The proposed rule change represents new export authority.

Non-strategic Technical Data and Software

The second overall category of software and technical data that may be exported under GTDU is that technical data and software that does not require validated license or GTDR on the Control List. This reflects no change in policy from the provisions of the current General License GTDR. Rather, it is a change that merely reflects those same policies on the Control List. The major purposes in doing this are to make the regulations easier to use, more enforceable, and consistent with the requirement of the Export Administration Act that the licensing requirements for commodities and

technical data be placed on the Control List.

This category of authority under General License GTDU is derived from the Control List. Your first step is to properly classify your technical data or software on the Control List. Keep in mind that technical data is sometimes common to more than one commodity. Where technical data is controlled by more than one Export Control Number entry, the more restrictive entry applies regardless of the intended end use for your technical data.

General License GTDR: Technical Data and Software Under Restriction

Section 779.6 of the proposed rule changes General License GTDR to narrow the requirement for written assurances. The rule is substantially rewritten in order to give greater clarity and guidance. For example, we have provided sample language for written assurances and detailed guidance regarding the duties of the exporter in connection with those assurances.

With the clarification of the duties of the exporter under General License GTDR, Commerce intends to place renewed emphasis upon requiring exporters to produce written assurances on demand. Such demand may be made at any time and for any reason in order to ensure compliance with the regulations. The written assurance plays an essential role in the export control system because it puts the consignee on actual notice of his obligations and documents his consent to honor those obligations. For these reasons, we believe the changes in this section will substantially enhance enforceability and effectiveness of the technical data and software controls.

Permissive Reexports and Written Reexport Authorization

Section 779.7 contains no policy changes from the current rule.

How To Apply for Validated Export Licenses and Written Reexport Authorization

Section 779.8 contains no policy changes from the old rule.

Software

Section 779.9 is written to give guidance to the software exporter on how to use the rule. Software is incorporated into the Control List under this revision, and § 779.9(c) gives a complete list of Export Control Numbers that contain or will contain software. This is consistent with the COCOM approach. Exporters have asked Commerce to take this approach in order to avoid confusion with the control regimes of other COCOM nations. The proposed regulation would place the current Supplement 3 software in ECN 1566; however, we will maintain the current control levels and licensing policy.

Commingled Technical Data and Software

The current rule provides that U.S.-origin know-how remains subject to U.S. technical data controls (reexport and direct product controls):

- No matter how substantially it has been enhanced abroad and commingled with foreign technical data,
- No matter how long ago it was exported, and
- No matter how *de minimis* the U.S. technical data is in the commingled foreign know-how or software.

The fundamental objective of § 779.10 is to shape a rule that extends U.S. controls only to technical data and software that has a substantial connection with the United States and thereby to enhance enforcement of controls that reflect vital U.S. interests. In so doing the United States will give appropriate deference to the sovereignty of other nations and the interests of firms that may be subject to conflicting requirements. The basic approach of the revised rule is to determine when U.S. technical data and software have lost their U.S. character and should therefore no longer be subject to U.S. reexport controls.

Certain allies of the United States have taken the position that the United States may not impose reexport controls of any kind. We do not accept that proposition; however, we do believe that it is appropriate to narrow the scope of the existing rules.

One commenter at the February technical data forum suggested that Commerce control commingled technical data only so long as it draws a royalty to a United States person. We believe this approach is too narrow because some know-how and software is sold or licensed for a one-time fee. Another commenter suggested that Commerce control commingled technical data only so long as the technical data exported from the United States remained "key" in the commingled technical data. We believe this approach, taken by itself, does not give Commerce sufficient control in the early stages of technology enhancement abroad. We have combined these two suggestions and added procedural requirements in order to shape a narrower rule that is enforceable and effective.

The "Twelve Year" and "Royalty" Presumption that Know-How Retains Its U.S. Character

Under the proposed rule, the decision of whether technical data or software retains its U.S. character is a classification decision controlled by two presumptions. If the technical data was exported less than twelve years ago *or* if it draws a royalty to a U.S. person, it is presumed (rebuttably) to remain U.S. technical data or software even though enhanced abroad. During this timeframe an importer may ask Commerce for a classification that his commingled technical data or software is no longer to be treated as U.S. in origin because the foreign data has significantly advanced the state of the art. However, during this timeframe, a consignee who has not obtained a favorable classification may not defend an enforcement action on the grounds that the foreign data has significantly advanced the state of the art. (The twelve year standard was taken from ECN 1460. In the future, Commerce may select a shorter or a longer period of time for a given Control List entry).

The consignee may reexport commingled software or technical data without U.S. authorization if:

- The technical data or software was exported more than twelve years ago.
- *And* it no longjer draws a royalty to a U.S. person.
- *And* the foreign software or technical data has significantly advanced the state of the art when compared to the technical data or software exported from the United States.

This is so unless the USG puts the importer on notice by a change in the Export Control Number entry or by actual notice that his commingled technical data retains its U.S. character.

The Standard of Review: "Significant Advance in the State of the Art"

The standard was suggested recently by one person who addressed this topic at the Forum. It is a subjective standard. However:

- It is better than any other available standard.
- It is a standard of the type lawyers and engineers are accustomed to in the intellectual property area.
- It is a standard sufficiently precise for Commerce (not the consignee) to apply during twelve years or so long as a royalty is due a U.S. person.

The new standard should also allow Commerce to give due regard to the length of time the U.S.-origin data has been out of the U.S. Given the same

level of foreign advancement, it is more likely that data out of the U.S. for ten years has lost its U.S. character than data that has been out of the U.S. for only five years.

In addition to comments on the above provision, Commerce invites comments on the creation of a permissive reexport based upon a validated license for technical data issued by a COCOM country.

Commercial Agreements With Certain Countries

Section 779.11 would be the current rule implementing section 5(j) of the Export Administration Act and would contain no policy changes from the current rule.

Other Applicable Provisions

Section 779.12 contains no policy changes from the old rule.

Retention of Validated Licenses

Section 779.13 would conform the policy on technical data with that for other export licenses by allowing retention of an expired or used license by the applicant, instead of return of the license to the Office of Export Licensing.

Integration of Technical Data and Software Into the Control List

As noted above, the proposed revision of the regulations includes the integration of technical data and software into the Control List. The proposed rule also addresses two topics important to the interpretation of both the current rule and the proposed rule.

"Required" for the Development, Production, or Use of Defined Commodities.

Several technical data entries in the Control List will control technical data "required" for the development, production, or use of commodities specified in the same entry. This method of defining controlled technical data is often referred to as the general technology approach, because that is the term used by COCOM for technical data defined by reference to related commodities.

When the term "required" is used to define technical data it refers to technical data that is needed to achieve or exceed the performance thresholds specified for control of the listed commodities. Such "required" technical data is distinguished from other technical data that may also be used in producing or operating listed commodities, but that is not peculiarly responsible for those characteristics which reach or exceed the specified performance parameters of concern.

For example, assume commodity "X" must have a validated license if it operates at or above 400 megahertz and may be exported G–DEST if it operates below 400 megahertz. Assume further that its entry controls technical data "required" for the development, production, or use of specified commodities. If production technologies "A", "B", and "C" only allow production of commodities that operate at no more than 399 megahertz, then technologies "A", "B", and "C" are not "required" to produce the controlled commodity "X" and are not classified under this Control Number. If when technologies "A", "B", "C", "D", and "E" are used together, a manufacturer can product commodity "X" that does operate at or above 400 megahertz. In this example, technologies "D" and "E" are "required" to make the specified commodity and are themselves controlled under this Export Control Number. Keep in mind that, like commodities, the control List includes in its entries all technical data in the economy except items under the proper jurisdiction of another agency.

Technical Data Common to More Than One Commodity

Sometimes technical data is common to the design, production, or use of various commodities. When technical data is "required" technical data within one Export Control Number, it must have an export license, if indicated on that entry, even though it is being exported for the design , production, or use of an uncontrolled commodity described in another entry. This is consistent with the longstanding rule of interpretation that when two or more control provisions of equal specificity apply to the facts of a transaction, the more restrictive control prevails.

For example, assume the general technology approach is used on the Control List for technical data in each relevant entry. Also assume that commodity "X" must have a validated license if it operates at or above 400 megahertz. Assume commodity "Y" must have a validated license if it operates at a processing data rate of 43 or faster. If technologies "D" and 'E" are "required" to produce commodity "X" (operating above 400 megahertz) and technologies "B" and "C" are required to produce commodity "Y" (operating above 43 PDR), then a validated license is necessary for the export of technologies "B", "C", "D", and "E" regardless of the product the consignee intends to produce. This is true even if the consignee intends to produce a G–DEST commodity. This is true even if the consignee intends to produce commodity "X" operating at 200 megahertz.

The general technology approach to the definition of controlled technical data is used in many, but not all, ECNs. Other entries contain technical data specifically called out. Still other entries contain both technical data defined by reference to controlled commodities and technical data specifically called out. This is consistent with current policy.

Sample Export Control Numbers

The proposed rule contains sample Export Control Number entries to illustrate the incorporation of technical data and software into the Control List. Commerce will continue the work of integrating technical data and software into the remaining entries and will complete this task before publication of the rule in final form. There are no significant policy changes reflected in the sample ECNs.

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a), of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. This proposed rule includes a collection of information requirement under 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 numbers 0694–0005, 0694–0007, 0694–0010, 0694–0023, 0694–0047, and 0694–0048. The public reporting burden for BXA Form 622 is estimated to average forty-five minutes per response, and BXA Form 699 is estimated to average twenty-five minutes per response. The public reporting burden for the written assurance for General License GTDR is estimated to average thirty minutes per response, and the public reporting burden for the technical data letter of explanation is estimated to average two hours per response. The public reporting burden for BXA Form 685P and classification requests are estimated to average fifteen minutes and thirty minutes per response respectively. Send comments regarding the 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.

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. 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. Because this rule is being issued in proposed form, this rule is in keeping with section 13(b) of the Export Administration Act. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

However, because of the importance of the issues raised by these regulations, this rule is issued in proposed form and comments will be considered in the development of final regulations. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close November 28, 1988. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the person submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, Room 4086, Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 377-2593.

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

List of Subjects in 15 CFR Parts 768, 770-779, 785, 786, 790 and 799

Computer technology, Exports, Reporting and recordkeeping requirements, Science and technology.

Accordingly, the Export Administration Regulations (15 CFR Parts 768-799) are proposed to be amended as follows:

PARTS 768—799—[AMENDED]

1. The authority citations for Parts 768, 770, 774, 775, 776 and 778 continue 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, by Pub. L. 99-64 of July 12, 1985; by Pub. L. 100-418 of August 23, 1988; and E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

2. The authority citation for Parts 771, 772, 773, 779, 785, 786, 790 and 799 continue 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, by Pub. L. 99-64 of July 12, 1985, and Pub. L. 100-418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223 of December 28, 1977 (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.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

3. The authority citation for Part 777 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, by Pub. L. 99-64 of July 12, 1985, and by Pub. L. 100-418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); sec. 103, Pub. L. 94-163 of December 22, 985 (42 US.C. 6212) as amended by Pub. L. 99-58 of July 2, 1985; sec. 101, Pub. L. 93-153 of November 16, 1973 (30 U.S.C. 185); sec. 28, Pub. L. 95-372 of September 18, 1978 (43 U.S.C. 1354); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976) as amended; sec. 201 and 201(11)(e), Pub. L. 94-258 of April 5, 1976 (10 U.S.C. 7420 and 7430(e)); Presidential Findings of June 14, 1985 (50 FR 25189, June 18, 1985); and sec. 125, Pub. L. 99-64 of July 12, 1985 (46 U.S.C. 466(c)).

4. The words "Commodity Control List" or "CCL" are changed to read "Control List" or "CL" everywhere they appear in Parts 768, 770-779, 785, 786, and 799.

5. The words "Export Control Commodity Number", "Export Control Commodity Numbers", "ECCN" or "ECCNs" are changed to read "Export Control Number", "Export Control Numbers", 'ECCN" or "ECCNs" everywhere they appear in Parts 768, 770-777, 779, 785, 786, 790 and 799.

6. In Part 779 § 779.9 is redesignated as 779.11; §§ 779.1, 779.2, 779.3, 779.4 section heading, 779.5, 779.6, 779.7, 779.8 and 779.10 are revised; §§ 79.9, 779.12, and 779.13 are added.

Supplement No. 1 is redesignated as Supplement No. 4 and a new Supplement No. 1 is added, Supplement No. 2 remains unchanged, Supplement No. 3 is revised, and newly designated Supplement No. 4 is amended by revising the heading and by adding text to the end of the Supplement.

For the convenience of the reader, the table of contents for Part 779 is revised as follows:

PART 779—TECHNICAL DATA, SOFTWARE, AND THEIR DIRECT PRODUCT

Sec.

Sec.

Technical Data, Software, and Their Direct Product

§ 779.1 Introduction and decision trees.

If you want to export or reexport technical data or software, you must (with rare exceptions) have a general or validated license. You must also have authorization to reexport certain foreign-produced direct product of U.S.-origin technical data and software. This Part 779 and the Control List tell you which license you need and what is involved in getting one.

(a) *What is the purpose of these controls?* These controls are to prevent exports that would jeopardize the national security, foreign policy, and nuclear non-proliferation policies of the United States.

(b) *Finding the right license: the four decision trees*—(1) *Types of licenses.* There are two types of licenses:

(i) *General licenses.* You do not need to apply for a general license. If you meet the qualifications of this regulation for a particular general license, you may use that license. There are three general licenses for technical data and software: *GTDA, GTDU,* and *GTDR.* GTDR requires paperwork from your importer.

(ii) *Validated licenses.* You must apply for these licenses and receive them from the Office of Export Licensing. There are two categories of validated licenses: Individual Validated Licenses and Special Licenses.

(2) *License selection.* Part 779 and the Control List will guide you to the license you need. In Supplement No. 1, there are four decision trees that guide you to the relevant portions of this regulation and take you step by step through the process of finding the correct license:

(i) Exporting Technical Data and Software from the United States.

(ii) Reexporting Technical Data and Software.

(iii) Reexporting Foreign-Produced Direct Product.

(iv) Reexporting U.S. Technical Data and Sofeware Commingled with Foreign Technical Data or Software.

§ 779.2 Definitions.

This section gives you the detailed definitions for the following terms: technical data, software, exporting technical data or software, reexporting U.S. technical data or software, foreign-produced direct product, commingled technical data and software.

(a) *What is "technical data"?*—(1) *Definition.* "Technical data" is information of any kind (other than software) for development, production, or use of any product.

(i) "Development" means a stage prior to serial production such as:

(A) Design and design research, concepts, analyses, data configuration, and integration.

(B) The process of transforming design data into a product.

(C) Layouts.

(D) Assembly or testing of prototypes.

(E) Pilot production schemes.

(ii) "Production" means a stage of serial production such as:

(A) Product engineering.

(B) Manufacture.

(C) Integration.

(D) Assembly (including mounting).

(E) Inspection.

(F) Testing.

(G) Quality assurance.

(iii) "Use" means:

(A) Installation (including on-site installation).

(B) Operation.

(C) Maintenance.

(D) Repair.

(E) Overhaul and refurbishing.

(2) *Means of transmission and forms of technical data.* Technical data may take any of the following forms or means of transmission:

(i) Tangible forms—such as writing, drawing, or recording on media or devices such as disk, tape, or read-only memory.

(ii) Intangible forms—such as oral instructions, oral training, working knowledge, application of skills, consulting services, other services, electronic transmissions, satellite transmissions, or telephonic transmissions.

(b) *What is "software"?* Software is a collection of one or more "programs" or "microprograms" in any medium of expression.

(1) "Program" means a sequence of instructions to carry out a process in, or convertible into, a form that an electronic computer can execute.

(2) "Microprogram" means a sequence of elementary instructions, maintained in a special storage, the execution of which is initiated by introduction of its reference instruction into an instruction register.

(c) *What is "exporting technical data or software"?*—(1) *Definition.* You export technical data or software when you:

(i) Actually ship, carry, or transmit it out of the United States.

(ii) *Or* release it in a foreign country.

(iii) *Or* release it in the United States with knowledge or intent that it will be shipped from the United States to a foreign country without a general or validated license. You are presumed to have such knowledge or intent when you release it to a foreign national who is *not* in any of the following three categories:

(A) A person who has been admitted for permanent residence in the United States under the Immigration and Naturalization Act (8 U.S.C. 1101)

(B) *Or* a person who is an intending citizen of the United States within the meaning of the Immigration and Naturalization Act (8 U.S.C. 1324b(a)(3)) (This includes foreign nationals in the United States under the amnesty program and those under political asylum.)

(C) *Or* a person who meets all the following conditions:

(*1*) Is an employee of the releasing party.

(*2*) *And* resides in the United States at the time of disclosure.

(*3*) *And* is a national of Country Groups T and V (excluding the People's Republic of China and Afghanistan).

(*4*) *And* has initiated actions under the Immigration and Naturalization Act intended to result in permanent resident alien status for him.

(*5*) *And* has provided his employer written assurances that he will not *export or reexport* the technical data and its foreign-produced direct product controlled by an entry on the Control List identified by code letter "A" to Country Groups Q, S, W, Y, or Z; Afghanistan; or the People's Republic of China (See § 779.6(d)(2)).

(D) You may apply to Commerce for a waiver of the rule that release of technical data to certain foreign nationals in the United States is an export to that person's home country.

(2) *What does it mean to "release" technical data or software?*

You release technical data when you do any of the following:

(i) You let a person visually inspect technical data, equipment and facilities.

(ii) You orally convey technical data.

(iii) You apply abroad personal knowledge or technical experience.

(iv) You train people.

You release software when you disclose its source code.

(d) *What is "reexporting U.S.-origin technical data or software"? Definition.* You reexport U.S. technical data or software when you do the following:

(i) Actually ship, carry, or transmit it from one foreign country to another *or*

(2) Release it in a foreign country.

(e) *What is the "foreign-produced direct project of U.S. technical data or software"?* The "foreign-produced direct product" of either technical data or software of U.S.-origin is an item (commodity, technical data, or software) made in a foreign country and derived immediately from technical data or software of U.S.-origin. (*See* Supplement No. 4 for examples of foreign-produced direct products of U.S. technical data and software).

(f) *What is "commingled technical data and software," and when is it controlled as "technical data and software of U.S.-origin"?* "Commingled technical data or software" is technical data or software developed abroad *and* based upon, derived from, or incorporating technical data or software of U.S.-origin. *See* § 779.10 for the rules that determine when commingled technical data or software remains of U.S.-origin and is controlled.

(g) *What is technical data and software of "U.S.-origin"?* With one exception, all technical data and software in the United States is of U.S.-origin. Technical data and software that is developed abroad and that is not of U.S.-origin retains its foreign-origin if it is imported into the United States and is unchanged in the United States, but it is subject to U.S. control on its export. Commingled technical data and software abroad are of U.S.-origin unless the commingled foreign technical data or software represents a significant advance in the state of the art when compared to the technical data or software exported from the United States. *See* § 779.10 for the rules that determine when commingled technical data and software are of U.S.-origin. U.S.-origin technical data and software is subject to U.S. control on its export and reexport, and the reexport of its direct product may be subject to the controls of this Part.

§ 779.3 Prohibited exports and reexports of technical data, software, and their direct product.

(a) *Prohibitions.* Unless a general license in these regulations grants such authority, unless you receive a validated license or other authorization from the Office of Export Licensing, or unless exempt by § 779.3(b):

(1) You may not export any technical data or software from the United States.[1]

(2) You may not reexport any technical data or software of U.S.-origin from one foreign country to another.

(3) You may not reexport the foreign-produced direct product of U.S.-origin technical data or software to Country Group Q, S, W, Y, or Z; the People's Republic of China; or Afghanistan if *both* the following conditions apply:[2]

(i) The export or reexport of the technical data or software required a written assurance from the consignee,[3] a validated license, *or* a written reexport authorization.

(ii) *And* the foreign-produced direct product is controlled by an entry on the Control List identified by the code letter "A."

Note that this prohibition does not apply to a foreign-produced direct product that is physically incorporated abroad in a foreign-made product. However, foreign-produced direct products remain subject to this prohibition and are not incorporated if they are merely cable connected to another product made abroad.

(4) You may not export from the United States or reexport any U.S. technical data or software under a general license (permissive reexport authorization) or validated license (written reexport authorization) if you have knowledge or reason to know that it is about to be reexported or diverted from the authorized country of ultimate destination without authorization. (*See* Part 787 for certain other duties surrounding transfers of commodities, technical data, and software.)

(b) *Exceptions.*—(1) *Use or consumption in Canada.* The above prohibitions do not apply to exports and reexports to Canada for use or consumption in Canada unless specified on the Control List for certain technical data controlled for nuclear non-proliferation reasons. Note that certain technical data subject to nuclear non-proliferation controls does require a license for export or reexport to Canada.

(2) *U.S. Armed Forces.* The above prohibitions do not apply to exports or reexports for official use or consumption by the U.S. Armed Forces when:

(i) Shipped by or consigned to any branch of the U.S. Armed Forces under a U.S. Government Bill of Lading or a U.S. Government space charter, *or*

(ii) Shipped by means of a U.S. Government-owned or chartered carrier.

(3) *Controls by other agencies.* The above prohibitions do not apply to exports or reexports of technical data or software properly under the jurisdiction of another U.S. Government agency (*see* § 770.10).

(c) *Reasons for control.* The controls under this § 779.3 are imposed for national security reasons unless otherwise indicated in these regulations or on the Control List.

§ 779.4 General License GTDA: technical data and software available to all destinations.

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§ 779.5 General license GTDU: unrestricted technical data and software.

General License GTDU is established by authorizing the export of certain technical data and software that may not be exported under General License GTDA. General License GTDU is subject to the provisions, restrictions, exclusions, and exceptions set forth below and at § 771.2(c). Generally, you may export technical data or software under this general license if you meet *both* of these requirements: You are exporting operation technical data and software, sales technical data or software, defined software updates, or mass-market software to a country that is not proscribed by this provision (see § 779.5 (a) and (b)(1)), *or* you are exporting the kind of technical data or software described on the Control List to a country permitted on the Control List (see § 779.5(b)(2) and the Control List).

(a) *Restrictions for country groups S and Z, South Africa and Namibia, and other countries restricted by the control list entry.* You may not export any technical data or software under this General License GTDU to Country Groups S or Z, and you may not export mass-market software to the police, military or the apartheid-enforcing entities of the Republic of South Africa and Namibia. Certain technical data and software are designated on the Control

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[1] The prohibition of (a)(1) applies to both U.S.-origin and foreign-origin technical data and software. The prohibitions of (a)(2) and (a)(3) only apply to U.S.-origin technical data and software.

[2] The Office of Export Licensing may provide special restrictions (in validated licenses or written reexport authorizations) that further prohibit reexporting foreign-produced direct product.

[3] If technical data is unlawfully exported from the United States, its foreign-produced direct product is subject to this control if that direct product is on the Control List in an entry followed by the letter "A".

List for export under § 779.5(b)(2), and a particular entry on the Control List may further restrict the countries to which those exports may be made under GTDU.

(b) *What kinds of technical data and software are eligible?* (1) *Technical data and software that may be exported under General License GTDU without regard to the control list.* This paragraph defines four kinds of technical data and software—which might otherwise require either a validated license or a written assurance under General License GTDR—that may be exported under GTDU to eligible destinations:

(i) Operation technical data and software.

(ii) Sales technical data and software.

(iii) Software updates.

(iv) Mass-market software.

All of these terms are defined in § 779.5(c) below.

These four kinds of technical data and software may be exported under General License GTDU even though the technical data or software in general is classified under an Export Control Number that calls for a validated license to the country of destination.

(2) *Other technical data and software designated on the control list that may be exported under General License GTDU.* In addition to the above four types of technical data and software, you may export certain technical data and software to certain destinations when described as eligible for GTDU on the Control List under the heading "Technical Data and Software."

(3) *Relationship between GTDU categories.* It is important to remember that technical data that does not qualify for General License GTDU under one category may qualify under another category. For example:

(i) Technical data that you intend to export in a bid package does not qualify as "sales technical data" if you do not ordinarily include that in other similar bid packages. However, that same technical data might be designated on the Control List as technical data that may be exported under GDTU. In that case, the GDTU authority under § 779.5(b)(2) is not lost merely because the bid package includes technical data that does not qualify for "sales technical data" export authority under § 779.5(b)(1).

(ii) Software that does not qualify as "mass-market" software may nonetheless be exported under GDTU if it qualifies as a "software update" or if it is designated on the Control List as software that may be exported under General License GDTU authority at § 779.5(b)(2) or if it qualifies for General License GTDA.

(c) *Definitions of terms for GDTU*—(1) *Operational technical data or software* tells people how to install, assemble, repair, maintain, or operate a product—either software or a commodity. Manuals, for example, may tell people how to use a computer, so manuals often qualify as operation technical data. Other examples include (but are not limited to) instruction sheets, blueprints, software, training, or your personal knowledge or experience applied to a situation abroad. Operation technical data may be in any form—written, oral, or electronic. The test for identifying operation technical data is not based on the form, but the content. You may export operation technical data and software under GTDU if it meets *ALL* of the following five requirements in paragrahs (c)(1)(i) through (iv) of this section:

(i) *Directly related.* It is directly related to any of these products.

(A) A product of U.S. origin that *was* lawfully exported or reexported, or that has been licensed for export or reexport

(B) Or parts, components, or commodities of U.S.-origin and lawfully incorporated in a foreign-made product as described in § 376.12 (The operation technical data or software must relate only to the U.S. content, not to the foreign products.)

(C) Or a foreign-made product that is produced using technical data of U.S.-origin, excluding those foreign-made products whose export or reexport has violated any of the requirements of § 779.3(a)(3)

(D) Or a product of foreign origin exported from a COCOM country in compliance with the law of that country *and*

(ii) *Necessary.* The technical data or software is *necessary* to do the following with the product as it was authorized for export or reexport: assemble it, install it, maintain it, repair it, or operate it. If the authorized end use of exported equipment is to make another product, you may provide data that is necessary to put an individual machine into operational order and to teach the customer how to run the machine to its full capacity. This information must be directly related to the use of the machine to achieve fully each of its intended functions. Such technical data includes, among other things, the testing, manipulation, and repair of the machine, but does not include design technical data (in software or otherwise) to make specific products or to integrate the machine with others in a manufacturing process. Such information goes beyond the operation of the machine. *And*

(iii) *Normal and usual.* The technical data and software is normally and usually supplied with the sale of the related product. *And*

(iv) *Performance characteristics authorized.* You are not supplying technical data that increases the performance characteristics of the product beyond those originally authorized for shipment. For example, operation technical data and software does not include software updates, instructions for hardware modifications, enhanced operating techniques, or any other data that improves or changes the basic characteristics—*e.g.*, accuracy, capability, performance, or productivity—of the product as originally authorized for shipment.

(2) *Sales technical data and software* is what customarily provide to solicit or support a prospective or actual quotation, bid, or offer to sell, a prospective or actual quotation, bid, or offer to sell, lease, or otherwise supply any commodity (including a plant), software, or other technical data. Sales technical data also includes technical data you must provide to civilian health and safety agencies of foreign governments to meet health and safety requirements of that country—if such submissions are a precondition to marketing or selling a product under the jurisdiction of that agency and if that product is not controlled for national security reasons under these regulations.[4] Specifically, sales technical data must meet both of the following two conditions:

(i) The commodity, plant, software, or technical data is not controlled by the U.S. Department of State (see Supplement No. 2 to Part 770) or by the Nuclear Regulatory Commission (*see* Supplement No. 3 to Part 770) or by the Department of Energy (see 10 CFR Part 810). *And*

(ii) The export will not disclose the detailed design, production, manufacturing technical data, or means of reconstruction, of either the quoted item or its product. Similarly, when you make a quotation, bid, or offer for technical data or services, you must not

[4] For example, pharmaceutical manufactuers exporting or reexporting (or seeking to export or reexport) pharmaceutical products must supply data to foreign government agencies responsible for pre-marketing approvals and other regulatory functions similar to those of the United States Food and Drug Administration. Such manufacturers also must supply follow-up data, often continuing over a period of years, on subsequent field experience, side effects, and the like. Provided such data meets the two conditions set forth in the subparagraphs of this definition, it is sales technical data. [Editorial note: This footnote number may change in the Final Rule for the sake of continuity.]

disclose the detailed technical process involved. The term "detailed" means the technical data of software is not sufficiently specific to permit your customer or consignee to reduce the technical data or software to production.

(3) *Software updates* are bug fixes and modifications defined in this section. You may export software updates under GTDU provided you are exporting the updates to the same consignee to which you were authorized to ship the original software (or his lawful consignee) *and* updates meet the requirements of either paragraph (c)(3)(i) or (ii) of this section.

(i) *Software bug fixes.* Software bug fixes are software updates that are intended for and are limited to correcting errors ("fixes" to "bugs" that have been identified) or updating the software to achieve the functional capabilities of the original software package as authorized for shipment.

(ii) *Software modifications.* You may modify (or add) any of the following elements of the authorized software:

(A) Specific menus
(B) Warnings
(C) Logos
(D) Screen savers
(E) Specific printer commands
(F) Foreign languages
(G) User interfaces

(4) *Mass-market software* is software that members of the general public may purchase, lease, license, or otherwise legally acquire from a retail source. You may export mass-market software if it meets *ALL* of the following five requirements:

(i) The software is not specially designed or modified for use by a specific individual or party. *And*

(ii) The software is designed for installation by the user. *And*

(iii) The software is not specially designed for use only on "digital computers" or "related equipment" that have performance parameters that exceed any of the performance limits in paragraph (b) of Advisory Note 9 to ECCN 1565A. *And*

(iv) The software is designed and produced for civil applications. *And*

(v) The software is not designed or modified for any "digital computer" series designed and produced within a country in Country Groups Q, S, W, Y, or Z,; Afghanistan, or the People's Republic of China.

§ 779.6 General License GTDR Technical Data And Software Under Restriction.

(a) *Scope.* A General License designated GTDR is hereby established authorizing you to export to Country Groups T and V, excluding Afghanistan and the People's Republic of China, certain technical data not exportable under the provisions of General Licenses GTDA or GTDU—subject to the provisions, restrictions, exclusions, and exceptions *and* the written assurance requirements set forth below. This General License GTDR is also subject to the prohibitions in § 771.2(c).

(b) *Eligible countries.* You may export technical data under this general license to any destination in Country Groups T and V, except Afghanistan and the People's Republic of China, subject to the following restrictions:

(1) *Special South Africa and Namibia prohibitions*—(1) *Military and police.* You may not export any technical data or software under this general license if you know or have reason to know that the technical data, software, or any product of the technical data or software are:

(A) For delivery, directly or indirectly, to—or for use by or for—military or police entities of South Africa or Namibia

(B) *Or* for use in servicing equipment owned, controlled, or used by or for such entities

As used in this paragraph, the term "any products of the technical data or software" includes the direct product of the technical data or software and any subsequent products of the direct product.

(ii) *Apartheid-enforcing entities.* You may not export any technical data for use in servicing or manufacturing computers or any software under GTDE when you know or have reason to know that the technical data or software will be made available to, or for use by, or is intended to be used for, apartheid-enforcing entities identified in Supplement No. 1 to Part 785.

(iii) *Technical data and software related to comodities listed in Supplement No. 2 to Part 779.* You may not export any technical data or software related to any commodity listed in Supplement No. 2 to Part 779 to any consignee in the Republic of South Africa or Namibia.

(2) [Reserved]

(c) *Eligible technical data and software.* The paragraphs titled *"Technical Data and Software"* in entries on the Control List will indicate the technical data and software that are eligible for export under this general license.

(d) *Written assurance requirements.* You must have a written assurance from your consignee as a precondition to using General License GTDR. Essentially, the written assurance says your consignee will not export or reexport certain items to certain countries. This part first describes your duties and then describes these three requirements to obtain written assurances: The general requirement, the requirement involving exports to South Africa and Namibia, and the requirement involving truck production data for the Kama River and ZIL truck plants.

(1) *What are your duties as an exporter or reexporter.* If you use General License GRDR, you must always have a written assurance from your consignee. These are your five responsibilities as an exporter or a reexporter:

(i) *You must obtain the assurance from the consignee.* The assurance must be by the consignee. It must be authorized by a person who has the authority to bind the consignee to the duties described in the assurance.

(ii) *You must have the assurance in writing.* The assurance must be in writing on a permanent medium. An oral assurance does not satisfy the requirements of this rule. The writing may be in any form—such as telex, facsimile, electronic mail, letter, letter agreement, license agreement, contract, or any other form of paper or electronic medium. If the writting is not electronic, the person making the assurance must sign it. Electronically transmitted assurances need not be signed but must contain the name of the person making the assurance for the consignee.

(iii) *You must have the assurance in your possession before you make the export.* The assurance must be in your possession in the country of export before you export or otherwise release the technical data or software. A written assurance may apply to multiple exports.

(iv) *You must keep the assurance in your records.* You must keep the assurance in your records for at least two years. You must keep it in its original form for at least one year after the date of the last export. After that year, you may keep it on microfiche or some other similar physical or electronic medium.

(v) *The assurance must include all the duties required of your consignee.* The assurance must include all the duties required of your consignee as required by this § 779.6(d). For example:

(A) *Non-disclosure agreements.* As noted in more detail above, the written assurance may be in any form of document, including a "Non-disclosure Agreement" or an "Exclusive Use License." However, an agreement that provides no more than a promise of the consignee not to disclose the technical data or software to another party is an insufficient commitment under this part. Such an agreement fails to obtain the consignee's commitment to refrain from

reexporting the direct product of the technical data or software to certain destinations. In the rare event your importer has agreed not to produce any commodity, technical data, or software with the exported technical data, an agreement not to reexport the direct product of U.S. technical data or software is not required in the written assurance because it is meaningless and unnecessary to achieve the objectives of this part.

(B) *Survival clauses.* In a contract for a defined term of years, you and your consignee must include a provision that the obligations required by this part survive the term of the contract and do expire. Failure to include such a clause may mislead an importer to believe that his obligations end with the term of the contract.

(C) *Country Group Descriptions.* For importers unfamiliar with the Country Group definitions, you should obtain a written assurance that lists the names of the countries in the relevant Country Groups in lieu of or in addition to the description of County Groups by the letter symbols only.

(2) *The general requirement for written assurances.* You must not export or reexport technical data or software under General License GTDR until your consignee has assured you—in writing—that, unless authorized by the Export Administration Regulations or the Office of Export Licensing, he will not reexport any of the following to County Groups Q, S, W, Y, or Z; the People's Republic of China; or Afghanistan:

(i) The technical data or software he is going to receive under General License GTDR,

(ii) *And* the direct product of such technical data or software if the dirct products are commodities, technical data, or software controlled by COCOM and described on the Control List with a letter "A" following the Export Control Number.

A Sample Assurance for the General Requirement. A sample clause that meets the requirements of this Section 779.6(d)(2) is at Supplement No. 3.

(3) *The requirement involving Exports to the Republic of South Africa and Namibia.* The requirement is in addition to the general requirement—see § 779.6(d)(2)—for written assurances. If you export or reexport technical data or software under General License GTDR to South Africa or Namibia, you must fulfill another requirement: You must have a written assurance from your consignee that he will not sell or otherwise make available the technical data, software, or their direct product to—or for use by or for—military or police entities of the Republic of South Africa or Namibia (*see* Supplement No. 2 Part 785). In addition, your consignee must give you a written assurance that will not sell or otherwise make available:

(i) Software

(ii) *Or* the technical data intended to service or manufacture computers

(iii) *Or* the direct product of such software or technical data

to—or for use by—an apartheid-enforcing entity of the Government of the Republic of South Africa or Namibia as identified in Supplement 1 to Part 785. You must be sure your consignee has a current copy of Supplements No. 1 and 2 to Part 785. There are two sample paragraphs for exports of technical data and software to South Africa and Namibia at Supplement No. 3.

(4) *The requirement involving truck production data for the Kama River (Kam AZ) and ZIL truck plants.* You must not export or reexport technical data listed under Export Control Number 6398G to any destination under General License GTDR until you have written assurances from your consignee that he will not export any of the following to the Kama River (Kam AZ) or ZIL truck plants in the U.S.S.R.:

(i) The technical data he is to receive under General License GTDR

(ii) *Or* commodities listed at Export Control Number 6398G that are the direct product of such technical data.

There is a sample clause to satisfy this written assurance requirement at Supplement No. 3.

§ 779.7 Permissive Reexports and Written Reexport Authorization.

The Department of Commerce provides the following authorizations for reexports of technical data and software:

(a) *Permissive reexports and technical data and software exportable under General License GTDA, GTDU, or GTDR.* You may reexport both technical data and software of U.S. origin without written reexport authorization from the Office of Export Licensing, provided that at the time of the reexport:

(1) You could export the technical data or software directly from the United States to the new destination under General License GTDA, GTDU, or GTDR.

(2) *And* you have met all of the requirements and conditions for use of General License GTDA, GTDU, or GTDR, respectively.

(3) *And* (if you rely upon permissive reexport under General License GTDR) you have the same written assurance required for direct exports from the United States.

(b) *Permissive reexports of software to the People's Republic of China.* You may reexport software from a COCOM country, Switzerland, Austria, and Finland to the People's Republic of China if the software meets the requirements set forth in an *Advisory Note for the People's Republic of China* in the Control List and if the reexport has been licensed by the country of export.

(c) *Reexports from COCOM countries.* Separate specific reexport authorization by the Office of Export Licensing is not required for reexports of technical data, software, and their direct product made in accordance with § 774.2 (i) and (j).

(d) *Other permissive reexports.* You may reexport software or technical data that meets all the requirements of § 774.2 (b), (g), or (h).

(e) *Specific written reexport authorization.* You must get specific written reexport authorization from the Office of Export Licensing if no permissive reexport authorization is available. *See* § 779.8 for information on how to apply to the Office of Export Licensing for specific reexport authorization.

(f) *Reexports of commodities that are the foreign-produced direct products of U.S. technical data or software.* If no permissive reexport authorization is available, you must get written authority to reexport to Country Groups Q, S, W, Y, or Z; Afghanistan; or the People's Republic of China commodities and software that are identified by an "A" entry on the Control List and are the foreign-produced direct product of technical data or software of U.S.-origin. See § 779.8 for guidance on how to apply.

§ 779.8 How to apply for Validated Export Licenses and Written Reexport Authorization.

(a) *General.* Unless you may export or reexport your technical data or software without a license to Canada or under a general license (or as a permissive reexport) to other destinations, you must get a validated license or written reexport authorization. The Office of Export Licensing issues validated export licenses or written reexport authorizations after receipt of an appropriate export application or reexport request. An application for a technical data or software license consists of—

(1) An application, either

(i) Form BXA-622P, Application for Export License

(ii) *Or* Form BXA-699P, Request to Dispose of Commodities or Technical Data Previously Exported (or a letter

request when Form BXA–699P is not readily available)

(2) *And* a letter of explanation, as described below in § 779.7(c)

(3) *And* a written assurance when required by § 779.7(d).

(b) *Application form.*—(1) *Export.* You must complete Form BXA–622P as provided in § 722.4, except that you should leave Items 9(a) and 11 blank. In Item 9(b), "Description of Commodity or Technical Data," enter a general statement specifying the technical data (*e.g.*, blueprints, manuals, etc.). In addition, enter the words "Technical Data" in Item 4, "Special Purpose."

(2) *Reexport.*

(i) *Form BXA–699P.* You must complete Form BXA–699P as provided in Supplement No. 1 to Part 774, except that you should leave Item 8(a) blank for technical data. In Item 8(b), "Description of Commodity or Technical Data," enter a general statement that describes the nature of the technical data or software (*e.g.*, "Technical data related to integrated circuit design and manufacture").

(ii) *Letter request.* When Form BXA–699P is not readily available, you may submit your reexport request by letter. You must clearly mark the top of the first page of your letter request with the words "Technical data reexport request" or "Software reexport request."

(3) *Foreign-produced direct product.*

(i) *Form BXA–699P.* You must complete Form BXA–699P as provided in Supplement No. 1 to Part 774. In Item 7, check "other" and indicate "Export of Direct Product."

(ii) *Letter request.* When Form BXA–699P is not readily available, you may submit your reexport request by letter. You must clearly mark the top of the first page of your letter request with the words "Direct Product Reexport Request."

(c) *Letter of explanation.* You must supplement your technical data application with two copies of a comprehensive letter of explanation. The technical data letter of explanation must set forth all the facts required to present to the Office of Export Licensing a complete disclosure of the transaction including, if applicable, the following:

(1) The identities of all parties to the transaction

(2) The exact project location where the technical data will be used

(3) The type of technical data you wish to export

(4) The form in which you will export the technical data

(5) The uses for which the data will be employed

(6) An explanation of the process, product, size, and output capacity of the plant or equipment, if applicable

(7) Other information that delineates, defines, and limits the data to be transmitted (the "technical scope")

(8) (If known) the availability abroad of comparable foreign technical data The above letter of explanation is not required with an application for the export or reexport of software or the direct product of U.S.-origin technical data or software.

(d) *Written assurance.* If required by the Control List under the Export Control Number for the technical data or software, you must attach a written assurance to your application when you apply for a license to export technical data or software to a destination in Country Groups T and V, excluding the People's Republic of China and Afghanistan. The written assurance must be from your foreign consignee and must state that unless prior authorization is obtained from the Office of Export Licensing, your consignee will not:

(1) Knowingly reexport the technical data or software to any destination

(2) *Or* export the direct product of the technical data or software, directly or indirectly, to any destination in Country Groups Q, S, W, Y, or Z; the People's Republic of China; or Afghanistan.

If you are not able to obtain the required written assurance from your importer, you must attach an explanation to your license application setting forth the reasons why you were unable to obtain the written assurance.

(e) *Special provisions for technical data relating to maritime nuclear propulsion plants and related commodities.*—(1) These special provisions apply to technical data relating to maritime (civil) nuclear propulsion plants, their land prototypes, and special facilities for their construction, support, or maintenance, including any machinery, device, component, or equipment specifically developed or designed for use in such plants or facilities. To export technical data relating to any of those commodities, you must include *ALL* the following in you license application:

(i) A description of the foreign project for which the technical data will be furnished

(ii) *And* a description of the scope of the proposed services you, your consultants, and your subcontractors will provide, including all the design data that will be disclosed

(iii) *And* the names, addresses, and titles of all personnel representing you, your company, your consultants, and your subcontractors who will discuss or disclose the technical data or who will be involved in designing or developing the technical data

(iv) *And* the beginning and ending dates of the period during which you, your consultants, and your subcontractors will discuss or disclose the technical data

(v) *And* a proposed time schedule of the reports that you will submit to the Office of Export Licensing, detailing the technical data discussed or disclosed during the period of the license

(vi) *And* the following certification:

"I (We) certify that if this application is approved, I (we) and any consultants, subcontractors, or other persons employed or retained by us in connection with the project thereby licensed will not discuss with or disclose to others, directly or indirectly, any technical data relating to U.S. naval nuclear propulsion plants. I (We) further certify that I (we) will furnish to the Office of Export Licensing all reports and information that the Office of Export Licensing may require concerning specific transmittals or disclosures of technical data pursuant to any license granted as a result of this application."

(viii) *And* a statement of the steps that you will take to assure that your personnel, your consultants, and your subcontractors will not discuss or disclose to others technical data relating to U.S. naval nuclear propulsion plants

(viii) *And* a written statement of assurance from the foreign importer that unless prior authorization is obtained from the Office of Export Licensing, the importer will not knowingly export directly or indirectly to Country Group Q, S, W, Y, or Z; the People's Republic of China; or Afghanistan the technical data or the direct product of the technical data. (If you are not able to obtain this statement from the foreign importer, you must attach an explanation to your license application setting forth the reasons why you cannot obtain such an assurance.)

(f) *Validity period and extension.*—(1) *Initial validity.* The Office of Export Licensing will generally issue validated licenses covering exports and written authorizations covering reexports of technical data and software for a validity period of two years.

(2) *Extended validity.* Upon request, the Office of Export Licensing may grant a validity period exceeding two years when the facts of the transaction warrant it and when the Office of Export Licensing determines that such action would be consistent with the objectives of the applicable U.S. export control program. You must provide justification for a validity period exceeding two years (*See* § 772.9(f)(2)).

(3) *Extensions.* A request to extend the validity period of a technical data or software export license or reexport authorization must be made on Form BXA–685P in accordance with the procedures set forth in § 772.12(a). For the item entitled "Amend License to Read as Follows," state whether the export license or reexport authorization has been previously extended and the dates and duration of such extensions. The Office of Export Licensing will make the final decision on what extension, if any, should be authorized in each case.

§ 779.9 Software.

(a) *Distinguishing technical data, software, and commodities.* Software is defined in § 779.2(b). Note the difference between technical data, software, and commodities. For example:

(1) Information to make or design software is technical data.

(2) Information to design products that is held in a computer storage device is technical data even if it may be retrieved or manipulated by software.

(3) Technical data that is loaded into software remains technical data and does not become software merely because you may retrieve it and manipulate with software.

(4) A hard disk is a commodity even if it stores software and technical data. Each of the three (the commodity, technical data, and software) require an appropriate general or validated license.

(b) *Future updates and improvements in performance parameters.* Software producers often plan upgrades to their products that improve the performance parameters. If you apply for a license to authorize exports during a period for which you anticipate such upgrades, you may wish to describe the anticipated improvements in the software in detail on the face of your license application. If the Office of Export Licensing grants the license, you may then export the software, including its upgrades, under the license so long as the software does not exceed the parameters fully disclosed to Commerce on your license application. Commerce will make the final decision on what extension, if any, should be authorized in each case.

(c) *How to use the control list for software controls.* Software is listed in various entries on the Control List. Licensing requirements are described separately in each entry for commodities, technical data, and software. Software is listed under ECN 1566A and the following Export Control Numbers on the Control List: 1001A, 1075A, 1080A, 1081A, 1086A, 1091A, 1203A, 1206A, 1305A, 1312A, 1354A, 1355A, 1357A, 1358A, 1361A, 1362A, 1363A, 1365A, 1370A, 1391A, 1425A, 1460A, 1485A, 1501A, 1502A, 1510A, 1516A, 1520A, 1527A, 1529A, 1532A, 1533A, 1567A, and 6565G.

§ 799.10 Commingled technical data and software.

Commerce imposes reexport restrictions on technical data and software of U.S.-origin and their direct product. This section defines when technical data or software exported from the United States becomes so commingled with foreign technical data and software that Commerce no longer considers it to be of U.S.-origin and therefore no longer subject to these regulations. It is also the purpose of this section to establish an enforceable scope of technical data and software controls.

(a) *Commingled technical data and software.* "Commingled technical data or software" is technical data or software developed in a foreign country that is based upon, *or* is derived from, *or* incorporates technical data or software of U.S.-origin. Technical data of software designed, developed, modified, or changed in the United States are of U.S.-origin.

(b) *Twelve year and royalty presumption.* Commingled technical data and commingled software are of U.S.-origin unless the foreign technical data or software represents a significant advance in the state of the art when compared to the technical data or software exported from the United States. Commerce presumes commingled technical data or software to be of U.S.-origin if:

(1) The U.S. content was exported from the United States less than twelve years earlier (or for such other period of years specified in the Control List entry).

(2) *Or* the U.S. content continues to draw a royalty to a United States person.

(3) *Or* it is the subject of a notification to you from Commerce that your commingled technical data or software remains United States technical data or software.

The longest of either of the above periods applies. For example, if your technical data was exported fourteen years ago and continues to earn a royalty for a subsidiary of a U.S. corporation, Commerce presumes that it is commingled technical data that retains its U.S. character and is subject to the prohibitions described in § 779.3.

(c) *Classification and the "significant advance in the state of the art" standard.* You may overcome the presumption that your commingled technical data or software is of U.S.-origin if each of the following happens:

(1) You apply to the Office of Technology and Policy Analysis for a classification that your technical data or software is no longer technical data or software of U.S. origin; *and*

(2) You describe to Commerce all the information available to you on each of the following:

(i) Changes made abroad,

(ii) The cost of those changes,

(iii) The performance characteristics of those changes,

(iv) The performance characteristics and price of the technical data or software exported from the United States and commingled abroad,

(v) The last date of export from the United States of any technical data or software commingled in the technical data or software that is the subject of your request, and

(vi) Other facts you believe to be relevant; and

(3) Commerce concludes that the foreign technical data or software represents a significant advance in the state of the art when compared to the performance and function of the technical data or software as exported from the United States.

During the period that commingled technical data or commingled software is presumed to be of U.S.-origin, the only method to overcome this presumption is by applying to the Office of Technology and Policy Analysis for a commodity classification as described above.

(d) *After the period of the presumption.* After the period that Commerce presumes commingled technical data or commingled software to be of U.S.-origin:

(1) Such commingled technical data or software remains of U.S.-origin unless the foreign technical data or software represents a significant advance in the state of the art when compared to the performance and function of the technical data or software as exported from the United States.

(2) A person who has not obtained a classificaiton from Commerce may defend an enforcement action on the grounds that the technical data or software represents a significant advance in the state of the art when compared to the performance and function of the technical data or software exported from the United States.

(e) *United States person.* (1) For purposes of this part, a "United States person" is defined, as in section 16(2) of the Export Administration Act, to mean any U.S. resident or national (other than an individual resident outside the United States and employed by other than a U.S. person), any domestic

concern (including any permanent domestic establishment of any foreign concern), and any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern that is controlled in fact by such domestic concern.

(2) For purposes of this part, a foreign subsidiary or affiliate is controlled in fact by a domestic conern if the domestic concern has the authority or ability to establish, directly or indirectly, the general policies of the foreign subsidiary or affiliate or to control, directly or indirectly, its day-to-day operations. Commerce presumes that a foreign subsidiary or affiliate is controlled in fact by a U.S. domestic concern, subject to rebuttal by competent evidence, when the domestic concern:

(i) Owns or controls more than 50% of the outstanding voting stock of the corporation;

(ii) Has the authority or the ability to name or control the votes of a majority of the members of the board of directors of the corporation;

(iii) Has control over or power to name the management of the corporation; or

(iv) Has powers over unincorporated entities similar to those listed in (e)(2)(i),(ii), or (iii) of this Section.

(f) *Commingled publicly available technical data and software.* Commingled technical data or software is no longer subject to controls under these regulations when and if the technical data or software exported from the United States becomes "publicly available" or otherwise qualifies for export or reexport under General License GTDA. Commingled technical data or software may become "publicly available" or otherwise qualify for export or reexport under General License GTDA. *See.* § 779.4.

§ 779.11 Commercial Agreements with Certain Countries.

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§ 779.12 Other Applicable Provisions.

All of the other provisions of the Export Administration Regulations apply equally to exports of technical data and software and to applications for licenses and licenses issued under this part so long as such other provisions are not inconsistent with the provisions of Part 779.

§ 779.13 Retention of Validated Licenses.

The validated technical data license or the reexport authorization need not be returned to the Office of Export Licensing but must be retained and made available for inspection in accordance with the record keeping provisions of § 787.13.

Supplement No. 1—Decision Trees for Technical Data, Software and Their Direct Product

Decision Tree No. 1—Exporting Technical Data And Software From The United States

CAUTION: This decision tree is not a substitute for the provisions in the regulations, which you are fully responsible for reading and complying with. In the event of a conflict or ambiguity, the provisions of this regulation and the Control List prevail (not the decision tree).

Do you have technical data or software within the meaning of § 779.2 (a) & (b)?
If no: See the regulations for the export of commodities.
If yes: Do you wish to remove the TD or software from the US or release it to a foreign national? See def. of "export" at § 779.2(c).
If no: See § 787.4 for prohibited sales with reason to know a violation is about to occur.
If yes: Is the export for consumption or use in Canada?
If yes: See the exemptions to the prohibitions at § 779.3(b).
If no: Under § 779.4, is the TD or software either:
Publicly available
Basic research
For a foreign patent filing or educational material?
If yes: See GTDA at § 779.4.
If no: Under § 779.5(c) is your TD or software either:
Operation TD or SW
Sales TD or SW
Software updates
Mass-market software
If yes: See GTDU at § 779.5.
If no: Locate your TD on the Control List. See § 799.1 on how to use the Control List. Remember, if your TD is described two or more places on the Control List, the most restrictive provision applies.
Go to next question.
Is GTDU authorized under your ECN?
If yes: See GTDU at § 799.5.
If no: Is GDTR authorized under your ECN for your TD to your destination?
If no: You must obtain a validated license or not export.
If yes: Is your export or reexport to South Africa or Namibia?
If yes: See § 779.6(b)(1) for the GTDR limits and § 779.6(d)(3) for written assurance requirements.
If no: Is your TD classified under ECN 6398G?
If yes: See § 779.6(d)(4) for the written assurance requirements & GTDR.
If no: Do you have in hand the written assurance required by § 779.6(d)(2)?
If yes: See GTDR at § 779.6.
If no: You must obtain a validated license or not export.

Decision Tree No. 2—Reexporting Technical Data and Software

CAUTION: This decision tree is not a substitute for the provisions in the regulations, which you are fully responsible for reading and complying with. In the event of a conflict or ambiguity, the provisions of this regulation and the Control List prevail (not the decision tree).

Do you have technical data or software within the meaning of § 779.2 (a) & (b)?
If no:
See the decision trees for foreign-produced direct products and the regulations on reexporting commodities.
If yes:
Do you wish to remove the TD or software from your country or release it to a foreign national of another country. See § 779.2(d).
If no:
See § 787.4 for prohibited sales with reason to know a violation is about to occur.
If yes:
Is the reexport for consumption or use in Canada?
If yes:
See the exemptions to the prohibitions at § 779.3(b).
If no:
Under § 779.4, is the TD or software either: Publicly available, Basic research, For a foreign patent filing or educational material?
If yes:
See GTDA at §§ 779.4 and 779.8(a).
If no:
Under § 779.5(c) is your TD or software either: Operation TD or SW, Sales TD or SW, Software updates, Mass-market software.
If yes:
See GTDU at §§ 779.5 (a) & (b)(1) and 779.8(a).
If no:
Locate your TD on the Control List. See § 779.1 on how to use the Control List. Remember, if your TD is described two or more places on the Control List, the most restrictive provision applies.
Go to next question:
Is GTDU authorized under your ECN?
If yes:
See GTDU at §§ 779.5 (a) & (b)(2) and 779.8(a).

If no:

Is GDTR authorized under your ECN for the TD or SW to your destination?

If no:

You must obtain written reexport authorization or not reexport.

If yes:

Is your reexport to South Africa or Namibia?

If yes:

See § 779.6(b)(1) for the GTDR limits, §§ 779.8(d)(3) and 779.8(a).

If no:

Is your TD classified under ECN 6398G?

If yes:

See § 779.6(d)(4) for the written assurance requirements & § 779.8(a).

If no:

Do you have in hand the written assurance required by § 779.6(d)(2)?

If yes:

See GTDR at §§ 779.6 & 779.8(a).

If no:

Is any other permissive reexport available under § 779.8 (b) (c) & (d)?

If yes:

See § 779.8 (b) (c) & (d).

If no:

You must obtain a written reexport authorization by filing an application with the US Dept. of Commerce (§ 379.7), or you may not reexport.

Decision Tree No. 3—Reexporting Foreign-Produced Direct Product

Caution: This decision tree is not a substitute for the provisions in the requlations, which you are fully responsible for reading and complying with. In the event of a conflict or ambiguity, the provisions of this regulation and the Control List prevail (not the decision tree).

Do you have technical data, software or commodities that are the direct product of tech data or software of US origin? See § 779.2(e) for the definition of foreign-produced direct product and the commingled TD and SW decision tree.

If no:

No prohibition applies to what you make abroad unless US tangible parts, components or commodities that exceed the limits of § 776.12.

If yes:

Was the direct product made with software or technical data that required a written assurance for export or reexport?

If no:

No prohibition applies to what you make abroad unless it contains US tangible parts, components or commodities that exceed the limits of § 776.12.

If Yes:

Is the direct product on the Control List and identified by the code letter "A" in the Export Control Number?

If no:

No prohibition applies to what you make abroad unless it contains US parts, components or commodities that exceed the limits of § 776.12.

If Yes:

Do you intend to reeexport (directly or indirectly) the direct porduct of Country Groups T&V (except Afghanistan and the PRC)?

If Yes:

No prohibition applies unless you make a transfer (in your country or by reeexport) with reason to know there is about to be a diversion of Country Groups Q,S,W,Y, or Z; Afghanistan; or the PRC.

Do you intend to reexport (directly or indirectly) the direct product to Country Gruops Q,S,W,Y, or Z or Afghanistan or the PRC?

If no:

Transfers in your country are not prohibited unless you have knowledge or reason to know a diversion is about to occur. See § 787.4.

If yes:

Is a permissive reexport for the TD or SW authorized under § 779.8?

If yes:

See § 779.8(a),(b),(c) & (d)

If no:

Is a permissive reexport available for the commodity direct product?

If yes:

See § 779.8(f) & the regulations for commodity reexports.

If no:

You must apply to the Department of Commerce for written reexport authorization and may not make the reexport unless you receive that authorization.

Decision Tree No. 4—Reexporting U.S. Technical Data and Software Commingled With Foreign Technical Data or Software

CAUTION: This decision tree is not a substitute for the provisions in the regulations, which you are fully responsible for reading and complying with. In the event of a conflict or ambiguity, the provisions of this regulation and the Control List prevail (not the decision tree).

Is your technical data or software from the US and unchanged abroad.

If yes:

See the decision trees for reexports of TD, SW & foreign-produced direct products.

If no:

Is your foreign technical data or software commingled with technical data or software exported from the US as described in § 779.2(f)?

If no:

No prohibitions apply. Under the US Export Administration Regulations.

If yes:

As to the US content of your technical data or software:

Was it exported from the US less than 12 years ago, or

Does it still earn a royalty for a US person per § 779.10(b)?

If no:

US reexports controls apply unless the foreign technical data of software represents a significant advance in the state of the art when compared to the performance and function of the technical data or software exported from the US. See § 779.10(d).

If yes:

Do you wish to overcome the presumption that your commingled technical data or software remains of US origin?

If no:

See the decision trees for reexport of TD, SW & dirct products. US reexport controls apply. See § 779.10(b).

If yes:

Apply to the US Department of Commerce for a classification that your commingled technical data or software is *not* of US origin. See § 779.10(c).

Go to next question.

Have you received a written classification from Commerce concluding that your commingled technical data is *not* now of US origin?

If no:

See the decision trees for technical data, software & direct product. US reexport controls apply. See § 779.10(b).

If yes:

No prohibitions apply under the US Export Administration Regulations.

Supplement No. 3—Written Assurance Samples

A Sample Assurance for the General Requirement

The following is a sample clause that meets the requirements of § 779.6(d)(2):

1. [Name of consignee] will not reexport—directly or indirectly—any of the following to Country Groups Q, S, W, Y, or Z; the People's Republic of China; or Afghanistan:

- The technical data or software that [Name of consignee] is about to receive under General License GTDR.
- Or the direct product of such technical data or software if the direct products are commodities, software or technical data described on the Control List with a letter "A" following its Export Control Number.

2. The comments in Paragraph 1 apply unless:

• The Export Administration Regulations of the U.S. Department of Commerce explicitly permit the reexport.

• Or the Office of Export Licensing of the U.S. Department of Commerce first grants authorization in writing.

3. The obligations of [name of consignee] in this assurance survive the term of this contract."

Note: Country Groups Q, S, W, Y, and Z consist of the following countries: Albania, Bulgaria, Cambodia, Cuba, Czechoslovakia, Estonia, German Democratic Republic (including East Berlin), Hungary, Laos, Latvia, Libya, Lithuania, Mongolian People's Republic, North Korea, Poland, Romania, the Union of Soviet Socialist Republics, and Vietnam.

A Sample Assurance for the Requirements Involving South Africa and Namibia

The following are two sample paragraphs for *ALL* exports of technical data and software to South Africa and Namibia that meet the written assurance requirement of § 776.6(d)(3):

1. [Name of consignee] will receive the described technical data and software under this agreement. [Name of consignee] will not sell or otherwise make available such technical data, software, or their direct product to—or for use by or for—military or police entities of the Republic of South Africa or Namibia as identified in Supplement No. 2 to Part 785 of the Export Administration Regulations.

2. The obligations of [name of consignee] in this assurance survive the term of this contract.

Add the following to the first paragraph of the above sample for exports of software or technical data intended to service computers or manufacture them:

In addition, [name of consignee] will receive software or technical data intended to manufacture or service computers. [Name of consignee] will not sell or otherwise make available such technical data, software, or their direct product to—or for use by or for—the apartheid-enforcing entities identified in Supplement No. 1 to Part 785 of the Export Administration Regulations.

The Written Assurance Requirement for Truck Production Data for the Kama River (Kam AZ) and ZIL Truck Plants

The following is a sample clause that satisfies the written assurance requirement of § 779.6(d)(4):

1. [Name of consignee] will receive the above described technical data listed at Export Control Number 6398G. [Name of consignee] will not reexport such technical data or its direct product to the Kama River (Kam AZ) or ZIL truck plants in the U.S.S.R.

2. The obligations of [name of consignee] in this assurance survive the term of this contract.

Supplement No. 4—Technical Data, Software and Foreign-Produced Direct Product Interpretations

* * * * *

3. Interpretations—Foreign-produced direct products

(1) U.S. technical data to design and produce semiconductor manufacturing equipment is exported and then used abroad to design and produce semiconductor manufacturing equipment. The semiconductor manufacturing equipment is the direct product of U.S. technical data. Semiconductors produced by that equipment are not the foreign-produced direct product of U.S. technical data.

(2) Computer assisted testing software for the testing of multilaterally controlled commodities is exported from the United States. It is then used abroad to test those commodities. The tests are the direct product of U.S. software, and the tested commodities are not the direct product of U.S. software.

(3) U.S. technical data—not including software—to develop CAD/CAM software is exported. That foreign-produced software is then used abroad to produce a CAD/CAM software package then used in a foreign country to produce technical drawings to manufacture integrated circuits. The CAD/CAM is the direct product of U.S. technical data, but neither the drawings nor any integrated circuits produced using the drawings are the direct product of U.S. technical data.

(4) A CAD software package is exported from the U.S. and then used abroad to generate designs for robots. The designs are the direct product of U.S. software. Neither the robots nor the products made with the robots are the direct product of U.S. software or technical data.

(5) A controlled set of development software tools is exported and used abroad for creating designs of integrated circuits. The designs are then used in the fabrication of integrated circuits. The designs are the direct product of U.S. software, and the integrated circuits are not.

(6) Copies of U.S. software made abroad are U.S. origin software and are *not* the direct product of U.S. software.

(7) A controlled software compiler (in a high-level language and in a programing environment) is exported from the U.S. and is then used to compile source code for creating machine executable code. The machine executable code is then used for a specific end use application. The *compiled* code is the direct product of the U.S. compiler and the output of the application software is not the direct product of the U.S. compiler.

(8) Technical data is exported from the United States on a floppy disk and then used abroad to develop different technical data. The resulting technical data is not the foreign-produced direct product of U.S. technical data or software. Rather, it is commingled technical data. See §§ 779.2(f) and 779.10.

(9) A blueprint for a computer, exported from the United States, is changed abroad in a way that does not significantly enhance the performance parameters of the planned computer. The importer then uses this changed blueprint abroad to make a computer. The computer is the direct product of U.S. technical data.

(10) Know-how fully disclosed in every respect in the public patent records is exported from the United States under General License GTDA. It is then used to make a product abroad. That product is a direct product but does not fall within the prohibition against reexporting direct product to the Soviet Bloc or China. That prohibition does not extend to the direct product of publicly available technical data.

(11) Technical data, exported from the United States, is then used to design a component with a value of $15,000. The foreign made component is the direct product of U.S. technical data. It is then "incorporated" into a foreign made machine with a value of $30,000. The foreign made machine is not the direct product of United States technical data, and the component is no longer controlled by the United States because it has been "incorporated" into the machine. When the same component is not incorporated into a $30,000 machine but is used with the machine and is merely cable connected, the component remains the direct product of U.S. technical data and remains subject to the prohibition against reexport to certain countries.

(12) Technical data is exported from the United States and is then used to design and construct a complete plant or a major component of a plant to produce computers. The computers produced by that plant are the direct product of U.S. technical data.

(13) If the technical data or software first exported under General License GTDR becomes publicly available within the meaning of General License GTDA, then its foreign produced direct product is no longer subject to the prohibition on the reexport of foreign-produced direct product of U.S. technical data or software. The foreign produced direct product of technical data or software eligible for export under General License GTDA is not subject to this prohibition.

(14) Technical data is exported from the United States for the production of linear low density polyethylene resins. These resins are converted into profile sheets and pipe. The direct product of the technical data is the linear low density polyethylene resin. The profile sheet and pipe produced from the resin are not direct products of the U.S. technical data.

(15) Technical data is exported from the U.S. for the production of grain oriented steel. The steel is then used to produce transformers used in aircraft. The grain oriented steel is the direct product of the technical data exported from the United States. The transformers produced from the steel are not the direct products of the U.S. technical data.

(16) Technical data is exported from the United States for the production of rubber formulations used in the production of automobile tires. The U.S. technical data is limited to the production of the rubber formulation. The direct product of the technical data is the rubber formulation. The automobile tires produced from the rubber formulation are not direct products of the U.S. technical.

(17) Technical data was previously exported from the United States under a written assurance that prohibits the reexport of certain foreign-produced direct products. If exported today, the written assurance required to export the same technical data under GTDR does not prohibit the reexport of those certain foreign-produced direct products. The prohibition on the reexport of those foreign-produced direct products ended when the written assurance requirement was narrowed. If a written assurance and validated license is no longer required for export of technical data or software, its foreign-produced direct product is no longer controlled.

4. Interpretations—Operating Technical Data and Software

(1) Operation technical data and software does include "operating system" software as that term is defined in ECN 1566(b)(4). However, operating system software, when exported solely under the authority of General License GTDU as operating technical data or software, may only be used with the related computer.

7. Section 799.1 is amended by adding paragraph (f)(5) to read as follows:

§ 799.1 The Control List and How To Use It.

* * * * *

(f) * * *

(5) *Technical Data.* Technical data is described on the Control List.

(i) *"Required" for the development, production, or use of defined commodities.* (A) Several technical data entries in the Control List will control technical data "required" for the development, production, or use of commodities specified in the same entry.

(B) When the term "required" is used to define technical data it refers to technical data that is needed to achieve or exceed the performance thresholds specified for control of the listed commodities. Such "required" technical data is distinguished from other technical data that may also be used in producing or operating listed commodities but that is not peculiarly responsible for those characteristics that reach or exceed the specified performance parameters of concern.

(C) For example, assume commodity "X" must have a validated license if it operates at or above 400 megahertz and may be exported G-DEST if it operates below 400 megahertz. Assume further that its entry controls technical data "required" for the development, production, or use of specified commodities. If production technologies "A", "B", and "C" allow production of commodities that operate at no more than 399 megahertz, then technologies "A", "B", and "C" are not "required" to produce the controlled commodity "X" and are not classified under this Control Number. If technologies "A", "B", "C", "D", and "E" are used together, a manufacturer can produce commodity "X" that does operate at or above 400 megahertz. In this example, technologies "D" and "E" are "required" to make the specified commodity and are themselves controlled under this Export Control Number. Keep in mind that like commodities, the Control List includes in its entries all technical data in the economy except items subject to the proper jurisdiction of another agency.

(ii) *Technical data common to more than one commodity.* (A) Sometimes technical data is common to the design, production, or use of various commodities. When technical data is "required" technical data within one Export Control Number, it must have an export license, if compelled by that entry, even though it is being exported for the design, production, or use of an uncontrolled commodity described in another entry. This is consistent with the longstanding rule of interpretation that when two or more control provisions of equal specificity apply to the facts of a transaction, the more restrictive control prevails.

(B) For example, assume the general technology approach is used on the Control List for technical data in each relevant entry. Also assume that commodity "X" must have a validated license if it operates at or above 400 megahertz. Assume commodity "Y" must have a validated license if it operates at a processing data rate of 43 or faster. If technologies "D" and "E" are "required" to produce commodity "X" (operating above 400 megahertz) and technologies "B" and "C" are required to produce commodity "Y" (operating above 43 PDR), then a validated license is necessary for the export of technologies "B", "C", "D", and "E" regardless of the product the consignee intends to produce. This is true even if the consignee intends to produce a G-DEST commodity. This is true even if the consignee intends to produce commodity "X" operating at 200 megahertz.

(iii) *Technical data defined by reference to commodities.* The general technology approach to the definition of controlled technical data is used in many, but not all, ECNs. Other entries contain technical data specifically called out. Still other entries contain both technical data defined by reference to controlled commodities and technical data specifically called out. This is consistent with current policy.

8. The following are samples of the types of amendments to be made to Supplement No. 1 to § 799.1 due to the incorporation of technical data provisions in the actual Control List (CL) itself. These samples only affect certain entries that appear on the CL. However, it is anticipated that every entry on the Control List will be affected when the final rule is published.

A. In Supplement No. 1 to § 799.1 (the Control List), Group 0 (Metal-Working Machinery), entry 1001A is added before 2018A and 1091A is amended by revising the *Unit* paragraph that appears under the heading "Controls for ECN 1091A", by adding a *Technical Data and Software* paragraph after the *GFW Eligibility* paragraph, by adding a new list "Technical Data Controlled by 1091A", by revising the heading "List of Commodities Controlled by ECN 1091A" to read "List of Equipment and Software

Controlled by 1091A", and by removing Note 2 under the "List of Equipment and Software Controlled by 1091A", as follows:

1001A Technical data for metal-working manufacturing processes and specially designed "software."

Controls for ECN 1001A

Unit: Report software and technical data in "$ value."

Validated license required: Country Groups QSTVWYZ.

GLV $ value limit: $0.

Technical data and software: General License GTDR available for COCOM participating countries only.

Processing code: CM.

Reason for control: National security.

Special licenses available: Project license, see Part 773.

Definitions of terms used in this entry 1001A.

"Diffusion bonding" is a solid-state molecular joining of at least two separate metals into a single piece with a joint strength equivalent to that of the weakest material.

"Direct-acting hydraulic pressing" is a deformation process that uses a fluid-filled bladder in direct contact with the workpiece.

"High pressure extrusion" is a process yielding a single-pass reduction ration of 4 to 1 or greater in a cross sectional area of the resulting part.

"Hot die forging" is a deformation process where die temperatures are at the same nominal temperature as the workpiece and exceed 850°K (577°C, 1,070°F).

Hot isostatic densification" is a process of pressurizing a casting at temperatures exceeding 375 K° (102°C, 215.6°F) in a closed cavity through various media (gas, liquid, solid particles, etc.) to create equal force in all directions to reduce or eliminate internal voids in the casting.

"Isostatic pressing" is a process that uses a pressurizing medium (gas, liquid, solid particles, etc.) in a closed cavity to create equal force in all directions upon a metal powder-filled container for consolidating the powder into a part.

"Metal powder compaction" is a process capable of yielding parts having a density of 98% or more of the theoretical maximum density.

"Superplastic forming" is a deformation process using heat for metals that are normally characterized by low values of elongation (less than 20%) at the breaking point as determined at room temperature by conventional tensile strength testing, in order to achieve elongations during processing that are at least two times those values.

"Vacuum hot pressing" is a process that uses a press with heated dies to consolidate metal powder under reduced atmospheric pressure into a part.

List of Technical Data Controlled by 1001A

(a) Technical data required for the design of tools, dies, and fixtures specially designed for any of the following processes:

(1) "Hot die forging";
OR
(2) "Superplastic forming";
OR
(3) "Diffusion bonding";
OR
(4) "Metal powder compaction" using:
(i) "Vacuum hot pressing"; or
(ii) "High-pressure extrusion"; or
(iii) "Isostatic pressing;
OR
(5) "Direct-acting hydraulic pressing";

(b) Technical data consisting of process parameters as listed below used to control:

(1) "Hot die forging";
(i) Temperature, or
(ii) Strain rate;
OR
(2) "Superplastic forming" of aluminum alloys, titanium alloys and superalloys:
(i) Surface preparation, or
(ii) Strain rate, or
(iii) Temperature, or
(iv) Pressure;
OR
(3) "Diffusion bonding" of superalloys and titanium alloys:
(i) Surface preparation, or
(ii) Temperature, or
(iii) Pressure;
OR
(4) "Metal powder compaction" using:
(i) "Vacuum hot pressing":
(A) Temperature, or
(B) Pressure, or
(C) Cycle time; OR
(ii) "High-pressure extrusion":
(A) Temperature, or
(B) Pressure, or
(C) Cycle time; OR
(iii) "Isostatic pressing":
(A) Temperature, or
(B) Pressure, or
(C) Cycle time;
OR
(5) "Direct-acting hydraulic pressing" of aluminum alloys and titanium alloys:
(i) Pressure, or
(ii) Cycle time;
OR
(6) "Hot isostatic densification" of titanium alloys, aluminum alloys and superalloys:
(i) Temperature, or
(ii) Pressure, or
(iii) Cycle time.

Software controlled by Entry 1001A

Software required for the design of tools, dies, and fixtures specifically designed for any of the following processes:

(a) "Hot die forging";
OR
(b) "Superplastic forming";
OR
(c) "Diffusion bonding";
OR
(d) "Metal powder compaction" using:
(1) "Vacuum hot pressing"; or
(2) "High-pressure extrusion"; or
(3) "Isostatic pressing;
OR
(e) "Direct-acting hydraulic pressing";

* * * * *

1091A Numerical control units, numerically controlled machine-tools, dimensional inspection machines, direct numerical control systems, specially designed sub-assemblies, and "specially designed software". (See § 776.11 for special information to include on validated license applications and reexport requests.)

Controls For ECN 1091A

Unit: Report machines and software in "number", technical data and parts and accessories in "$ value."

* * * * *

Technical data and software: General License GTDR available for technical data to Country Groups T and V, excluding the People's Republic of China and Afghanistan; no software controlled by 1091A may be exported under General License GTDR or GTDU.

* * * * *

Technical Data Controlled by 1091A

(a) Technical data required for the development, production, or use of software or commodities controlled by 1091A. Such technical data is controlled even when the technical data will not be used for the development, production, or use of software or commodities controlled by 1091A.

(b) Technical data for the design and production (except assembly and testing) of two-axis numerical control units with and "embedded" computer.

List of Equipment and Software Controlled by 1091A * * *

B. In Supplement No. 1 to § 799.1 (the Control List), Group 1 (Chemical and Petroleum Equipment), 1142A is amended by revising the *Unit* paragraph that appears under the heading "Controls for ECN 1142A", by adding a paragraph *"Technical Data and Software"* after the *GLV $ Value Limit* paragraph, and by adding a new list "Technical Data Controlled by 1142A"

after the *Special License Available* paragraph.

1142A Tubing.

Controls for ECN 1142A

Unit: Report tubing in "feet"; technical data in "$ value."

* * * * *

Technical Data and Software: General License GTDR available for technical data to Country Groups T and V, excluding the People's Republic of China and Afghanistan. This entry contains no software.

* * * * *

Technical Date Controlled by 1142A

Technical date required for the development, production, or use of tubing controlled by this ECN 1142A. Such technical data is controlled even when the technical data will not be used for the development, production, or use of tubing controlled by this ECN 1142A.

List of Tubing controlled by 1142A * * *

C. In Supplement No. 1 to § 799.1 (the Control List), Group 3 (General Industrial Equipment), 1355 is amended by revising the *Unit* paragraph that appears under the heading "Controls for ECN 1355A", by adding a paragraph a "Technical Data and Software" paragraph after the *GFW Eligibility* paragraph, and by adding two new lists "Technical Data Controlled by 1355A" and "Software Controlled by 1355A" after the *Special Licenses Available* paragraph, and by adding a new entry 1399A. after 6398G, as follows:

1355A Equipment for the manufacture or testing of electronic components and materials; and specially designed components, accessories, and "specially designed software therefore.

Controls for ECN 1355A

Unit: Report photographic plates in "sq. ft." when applicable; software, equipment, and machinery in "number"; technical data and parts and accessories in "$ value."

* * * * *

Technical Data and Software: General License GTDR available for technical data to Country Groups T and V, excluding the People's Republic of China and Afghanistan; no software controlled by 1355A may be exported under General License GTDR.

* * * * *

Technical Date Controlled by 1355A

Technical date required for the development, production, or use of software or commodities controlled by 1355A. Such technical data is controlled even when the technical data will not be used for the development, production, or use of software or commodities controlled by 1355A.

Software Controlled by 1355A

(a) Software that performs any of the functions in sub-paragraph (b)(2)(iii) of the "LIST OF EQUIPMENT CONTROLLED BY 1355A"

(b) Software that can used for:

(1) Transient analysis, or

(2) Logic analysis or logic checking, or

(3) Automatic routing or cell placement, or

(4) The generation of test vectors, or

(5) Process simulation.

List of Tubing controlled by 1355A * * *

* * * * *

1399A "Software and technical data for "automatically controlled industrial systems" as follows, to produce assemblies or discrete parts.

Controls For ECN 1399A

Unit: Report software and technical data in "$ value."

Validated license required: Country Groups QSTVWYZ.

Technical data and software: General License GTDR available for COCOM participating countries only.

Processing code: EE.

Reason for control: National security.

Special licenses available: Project license, see Part 773.

Technical Note: For the purposes of 1399A:

(a) An "automatically controlled industrial system" is a combination of:

(1) One or more "flexible manufacturing units"; and

(2) A supervisory "digital computer" for coordination of the independent sequences of computers instructions to, from, and within the "flexible manufacturing units";

(b) A "flexible manufacturing unit" is an entity that comprises a combination of a "digital computer" including its own "main storage" and its own "related equipment", and at least one of the following:

(1) A maching tool or a dimensional inspection machine covered by ECN 1091A or 1370A;

(2) A "robot" covered by ECN 1391A;

(3) A digitally controlled spin-forming or flow-forming machine covered by ECN 1075A;

(4) Digitally controlled equipment covered by ECNs 1080A, 1081A, 1086A or 1088A;

(5) Digitally controlled electric arc device covered by ECN 1206A;

(6) Digitally controlled equipment covered by ECN 1354A or by paragraph (b) of ECN 1355A;

(7) Digitally controlled equipment covered by ECN 1357A;

(8) Digitally controlled electronic equipment covered by ECN 1529A; or

(9) A digitally controlled measuring system covered by ECN 1532A.

Note: For the definitions of other terms in quotation marks, see ECN 1391A or 1565A or Supplement No. 3 to Part 779.

Note: Paragraph (a) below does not control "software" (in "machine executable form" only) for industrial sectors other than nuclear, aerospace, shipbuilding, heavy vehicles, machine building, microelectronics and electronics. This Note does not release from export control design technology specified in paragraph (b) below.

Technical Data Controlled by 1399A

Technical data for the design of "automatically controlled industrial systems" that will be used with the "software" controlled by paragraph (a) below, regardless of whether the conditions of paragraph (a)(1) are met.

Software Controlled by 1399A

(a) "Software" with all of the following characteristics: (1) Specially designed for "automatically controlled industrial systems" that include at least eight pieces of the equipment enumerated in Technical Note (b) (1) to (9) above.

Notes: 1. The "digital computers" of the "automatically controlled industrial system" do not share a common "main storage" but exchange information by transmitting messages through a "local area network".

2. This paragraph (a)(1) does not release from export control "software" in source code.

AND

(2) Intergrating, in a hierarchial manner, while having access to data that may be stored outside the supervisory "digital computer", the manufacturing processes with:

(i) Design functions, or

(ii) Planning and scheduling functions;

AND

(3) (i) Automatically generating and verifying the manufacturing data and instructions, including selection of equipment and sequences of manufacturing operations, for the manufacturing process from design and manufacturing data; or

(ii) Automatically reconfiguring the "automatically controlled industrial system" through reselecting equipment and sequences of manufacturing operations by "real-time processing" of data pertaining to anticipated but unscheduled events.

Note: This paragraph (a)(3)(ii) does not control "software" that only provides rescheduling of functionally identical equipment within "flexible manufacturing units" using presorted "part" programs and a presorted strategy for distribution of the "part" programs.

D. In Supplement No. 1 to § 799.1 (the Control List), Group 5 (Electronics and Precision Instruments), 1564A is amended by revising the *Unit* and *Reason for Control* paragraphs that appear under the heading "Controls for

ECN 1564", by adding a *Technical Data and Software* paragraph after the *GLV $ Value Limit* paragraph, by adding a new list "Technical Data Controlled by 1564A" and by revising the heading "List of Equipment Controlled by ECCN 1564A" to read "Commodities Controlled by 1564A"; 6565G is amended by revising the heading and the *Validated License Required* and *Reason for Control* paragraphs that appear under the heading "Controls for ECN 6565G" and by adding a *Technical Data and Software* paragraph after the *GLV $ Value Limit* paragraph; a new entry 1566A is added after 6565G; 1572A is amended by revising the Note that appears under the heading of the entry, by revising the *Unit* paragraph that appears after the heading "Controls for ECN 1572A", by adding a *Technical Data and Software* paragraph after the *GLV $ Value Limit* paragraph, and by adding a new list "Technical Data Controlled by 1572A" as follows:

1564A "Assemblies" of electronic components, "modules", printed circuit boards with mounted components, "substrates" and integrated circuits, including packages therefor.

Controls For ECN 1564A

Unit: Report equipment in "number"; technical data in "$ value."

* * * * *

Technical data and software: General License GTDR not available for technical data under foreign policy controls for nuclear weapons delivery purposes (§ 776.18(c)). For other technical data, GTDR available for Country Groups T and V, excluding the People's Republic of China and Afghanistan. This entry contains no software.

* * * * *

Reason for control: National security; foreign policy. Foreign policy controls apply to A–D converters described in paragraph (d)(2)(D)(m)(1) below and technical data therefor for nuclear weapons delivery purposes and having any of the following characteristics: Rated for continuous operation at temperatures from below 45 °C to above 55 °C; designed to meet military specifications for ruggedized equipment, or modified for military use; or designed for radiation resistence.

* * * * *

Technical Data Controlled by 1564A

(a) Technical data required for the development, production, or use of commodities controlled by 1564A. Such technical data is controlled even when the technical data will not be used for the development, production, or use of commodities controlled by 1564A.

(b) Technical data required for the manufacture of think film passive networks.

(c) Wafer or chip design or processing information inherent in the manufacture of any controlled class of "assembly", "module", integrated circuit or "circuit element", even when such technical data will not be used to manufacture a controlled device and irrespective of any release of devices in any of these classes. This control also applices to technical data embodied both in the equipment controlled in entry 1355A and in its use.

Commodities Controlled by 1564A * * *

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6565G Personal Computers excepted from control under ECN 1565A because they meet the specfications of paragraph (h)(2)(iii) of 1565A, and software not included in any other entry on the Control List.

Controls For ECN 6565G

* * * * *

Validated license required: For commodities and software, Country Groups S and Z, and as required by special South Africa policy below. For Technical data, Country Groups QSWYZ and Afghanistan, and as required by special South Africa policy below.

* * * * *

Technical data and software: General License GTDU available for technical data to Country Groups T and V, except South Africa, Namibia and Afghanistan; for software to all destinations except Country Groups S and Z, South Africa and Namibia. General License GTDR available for South Africa and Namibia, except as provided below.

* * * * *

Reason for control: For commodities and software, foreign policy; for technical data, national security.

* * * * *

1566A "Software" and technical data therefor.

Controls For ECN 1566A

Unit: Report software in "number" and technical data in "$ value."

Validated license required: Country Groups QSTVWYZ.

GLV $ value limit: $0.

Technical data and software: General License GTDR available for Country Groups T and V, excluding the People's Republic of China and Afghanistan.

Processing code: CS for mainframe systems; MT for microprocessor based systems.

Reason for control: National security.

Special licenses available: Project license, see part 773.

Technical Notes:

1. *"Software" is defined as follows:*

"Software"—A collection of one or more "programs" or 'microprograms" fixed in any tangible medium of expression.

"Program"—A sequence of instructions to carry out a process in, or convertible into, a form executable by an electronic computer.

"Microprogram"—A sequence of elementary instructions, maintained in a special storage, the execution of which is initiated by the introduction of its reference instructions:

2. *"Software"* is categorized as follows (there is a close relationship and possible overlap among these categories):

"Development system"—"Software" to develop or produce "software". This includes "software" to manage those activities. Examples of a "development system" are programming support environments, software development environments, and programmer productivity aids.

"Programming system"—"Software" to convert a convenient expression of one or more processes ("source code" or "source language") into equipment executable form ("object code" or "object language").

"Diagnostic system"—"Software" to isolate or direct "software" or equipment malfunctions.

"Maintenance system"—"Software" to:

(a) Modify "sofware" or its associated documentation in order to correct faults, or for other updating purposes; or

(b) "Maintain" equipment;

"Operating system"—"Software" to control:

(a) The operation of a "digital computer" or of "related equipment"; or

(b) The loading or execution of "programs".

"Application software"—"Software" not falling within any of the definitions of the other categories of "software".

3. "Specifically designed software" is defined as:

The minimum "operating systems", "diagnostic systems", "maintenance systems" and "application software" necessary to be executed on a particular equipment to perform the function for which it was designed. To make other incompatible equipment perform the same function requires:

(a) Modification of this "software"; or

(b) Addition of "programs".

(For a complete list of definitions of terms used in this Supplement, see Advisory Note 12 below; see also ECN 1565 for additional definitions relating to electronic computers.)

Technical Data Controlled by 1566A

Technical data required for the development, production, or use of "software". Such technical data is controlled even when the technical data will not be used for the development, production, or use of "software" controlled by 1566A.

List of Software Controlled by 11566A

(a) "Software" of whatever category, as follows:

(1) "Software" designed or modified for any computer that is part of a computer series designed and produced within Country Groups, Q, W, Y, or Z, the People's Republic of China, or Afghanistan: except "application software" designed for and limited to:

(i) Accounting, general ledger, inventory control, payroll, accounts receivable, personnel records, wages calculation or invoice control; or

(ii) Data and text manipulation such as sort/merge, text editing, data entry or word processing; or

(iii) Data retrieval from established data files for purposes of report generation or inquiry for the functions described in (a)(1) (i) or (ii) above; or

(iv) The non "real time processing" of pollution sensor data at fixed sites or in civil vehicles for civil environmental monitoring purposes;

(2) "Software" designed or modified for the design, development or production of items controlled by ECCNs on the Commodity Control List identified by the code letter "A", by the International Traffic in Arms Regulations, by 10 CFR Part 110 or by 10 CFR Part 810;

(3) "Software" designed or modified for:

(i) Controlled "hybrid computers";

(ii) One or more of the functions described in ECN 1565A(h)(1)(i) (A) to (J) and (M) or for "digital computers" or "related Equipment" designed or modified for such functions, *except* the minimum "specially designed software" in machine executable form for "digital computers" and "related equipment" therefor that are freed from controls only by ECN 1565(h)(2) (i) or (ii), and only when supplied with the equipment or systems;

(4) "Software" for computer-aided design, manufacture, inspection, or test of items controlled by any entry on the Commodity Control List identified by the code letter "A", by the International Traffic in Arms Regulations, by 10 CFR Part 110 or by 10 CFR Part 810;

(5) "Software" designed or modified to provide certifiable multi-level security or certifiable user isolation applicable to government classified material or to applications requiring an equivalent level of security, or "software" to certify such "software" [1];

(b) Categorized "software", as follows:

(1) "Development systems":

(i) "High-level language" "development systems" designed for or containing "programs" or "databases" special to the development or production of:

(A) "Specially designed software" controlled by ECCNs on the Commodity Control List identified by the code letter "A", by the International Traffic in Arms Regulations, by 10 CFR Part 110 or by 10 CFR Part 810;

(B) "Software" controlled by paragraph (a)(2) or (a)(3) of this Supplement, including any subset designed or modified for use as part of such a "development system";

(ii) "High-level language" "development systems" designed for, or containing the "software" tools and "databases" for, the development or production of "software", or any sunset designed or modified for use as part of a "development system" such as or equivalent to:

(A) Ada Programming Support Environment (APSE);

(B) Any subset of APSE, as follows:

(*1*) Kernel APSE;

(*2*) Minimal APSE:

(*3*) Ada compilers specially designed as an integrated subset of APSE; or

(*4*) Any other subset of APSE;

(C) Any superset of APSE; or

(D) Any derivative of APSE;

(2) "Programming systems" as follows;

(i) "Cross-hosted" compilers and "cross-hosted" assemblers;

Note: For "cross-hosted" compilers or "cross-hosted" assemblers that have to be used in conjunction with microprocessor or microcomputer development instruments or systems described in ECN 1529A, see that ECN.

(ii) Compilers or interpreters designed or modified for use as part of a "development system" controlled by paragraph (b)(1) above;

(iii) Disassemblers, decompilers or other "software" that convert "programs" in object or assembly language into a higher level language, except simple debugging "application software", such as mapping, tracing, checkpoint/restart, breakpoint, dumping and the display of the storage contents or their assembly language equivalent;

(3) "Diagnostic systems" or "maintenance systems" designed or modified for use as part of a "development system" controlled by paragraph (b)(i) above;

(4) "Operating systems":

(i) "Operating systems" designed or modified for "digital computers" or "related equipment" exceeding any of the following limits:

(A) Central processing unit—"main storage" combinations:

(*1*) "Total processing data rate"—48 million bit per second;

(*2*) "Total connected capacity" of "main storage"—25.2 million bit;

(*3*) "Virtual storage" capability—512 M Byte;

(B) Input-output control unit-drum, disk or cartridge-type streamer tape drive combinations:

(*1*) "Total transfer rate"—15 million bit per second;

(*2*) "Total access rate"—320 access per second;

(*3*) Total connected "net capacity"—7,000 million bit;

(*4*) "Maximum bit transfer rate" of any drum or disk drive—10.3 million bit per second;

(C) Input/output control unit-bubble memory combinations: Total connected "net capacity"—2.1 million bit;

(D) Input/output control unit—magnetic tape drive combinations:

(*1*) "Total transfer rate"—5.2 million bit per second;

(*2*) Number of magnetic tape drives—twelve;

(*3*) "Maximum bit transfer rate" of any magnetic tape drive—2.6 million bit per second;

(*4*) "Maximum bit packing density"—63 bit per mm. (1,600 bit per inch) per track;

(*5*) Maximum tape read/write speed—508 cm. (200 inch) per second;

Note: This paragraph (b)(4)(i) does not control "operating systems" designed or modified for "digital computers" or "related equipment": (a) Not exceeding the above limits even when the "operating systems" can also be used on "digital computers" or "related equipment" exceeding the above limits; or (b) Belonging to a series containing models exceeding the above limits, if the "operating systems" are used on "digital computers" or "related equipment" of the series that do not exceed the above limits.

(ii) "Operating systems" providing online transaction data processing that permit integrated teleprocessing and "on-line updating" of "databases";

(5) "Application software" as follows:

(i) "Software" for cryptologic or cryptanalytic applications;

(ii) Artificial intelligence "software", including "software" normally classified as expert systems, that enables a "digital computer" to perform functions normally associated with human perception and reasoning or learning;

(iii) "Database management systems" designed to handle "distributed databases" for

[1] Department of Defense certifiable under section (b)(3) of "Department of Defense Trusted Computer System Evaluation Criteria", published in DOD Computer Security Center, Fort Meade, MD 20755.

(A) Fault tolerance by using techniques such as maintenance of duplicated "databases"; or

(B) Integrating data at a single site from independent remote "databases";

(iv) "Software" designed to adapt "software" resident on one "digital computer" for use on another "digital computer", except "software" to adapt between two legally exported machines.

(c) "Specially designed software" for equipment, as follows:

(1) Navigation and direction finding equipment controlled under ECN 1501A(b);

(2) Radar equipment controlled under ECN 1501A(c);

(3) Equipment controlled under ECN 1502A;

(4) Equipment controlled under ECN 1510A;

(5) Equipment controlled under ECN 1516A;

(6) Equipment controlled under ECN 1519A;

(7) Equipment controlled under ECN 1520A;

(8) Equipment controlled under ECN 1567A;

(9) Equipment controlled under ECN 1529A;

(10) Equipment controlled under ECN 1533A;

(d) "Specially designed software" for the following:

(1) Technical data described in Supplement No. 4 to Part 779 for metal-working manufacturing processes;

(2) Spin-forming and flow-forming machines controlled under ECN 1075A;

(3) Equipment, tooling and fixtures controlled under ECN 1080A for the manufacturing or measuring of gas turbine blades or vanes;

(4) Equipment, tools, dies, molds and fixtures controlled under ECN 1081A for the manufacture or inspection of aircraft, airframe structures, or aircraft fasteners;

(5) Equipment, tools, dies, molds, fixtures and gauges controlled under ECN 1086A for the manufacture or inspection of aircraft and aircraft-derived gas turbine engines;

(6) Electric vacuum furnaces controlled under ECN 1203A;

(7) Electric arc devices controlled under ECN 1206A;

(8) Metal rolling mills controlled under ECN 1305A;

(9) Isostatic presses controlled under ECN 1312A;

(10) Equipment controlled under ECN 1354A for the manufacture or testing of printed circuit boards;

(11) Equipment controlled under ECN 1357A for the production of fibers controlled by ECN 1763A, or their composites;

(12) Equipment controlled under ECN 1358A for the manufacture or testing of devices and assemblies controlled under ECN 1588A and ECN 1572A;

(13) Test facilities and equipment controlled under ECN 1361A for the design or development of aircraft or gas turbine aero-engines;

(14) Water tunnel equipment controlled under ECN 1363A, including software that contains databases generated by the use of equipment controlled under that ECN;

(15) Equipment controlled under ECN 1365A specially designed for in-service monitoring of acoustic emissions in airborne vehicles or underwater vehicles;

(16) Machine tools controlled under ECN 1370A for generating optical quality surfaces;

(17) Computer-controlled pumping and flooding systems that will permit the docking of listing vessels when used with floating docks controlled under ECN 1425A;

(18) Design and production of aircraft and helicopter airframes and propulsion systems controlled under ECN 1460A;

(19) Integration software for integrated flight instrument systems, automatic pilots, inertial or other equipment using accelerometers or gyros controlled under ECN 1485A;

(20) Marine or terrestrial acoustic or ultrasonic systems or equipment controlled under ECN 1510A; and

(21) Precision linear and angular measuring systems controlled under ECN 1532A.

Advisory Note 1: Reserved.

Advisory Note 2: Reserved.

Advisory Note 3: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY, the People's Republic of China (PRC) and Afghanistan of "software" initially exported to those destinations before January 1, 1984, provided that:

(a) The "software" is identical to and in the same language form (source or object) as initially exported, allowing minor updates for the correction of errors that do not modify the initially exported functions;

(b) The accompanying documentation does not exceed the level of the initial export;

(c) The "software" is exported to the same controlled destination as the initial export.

Advisory Note 4: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY, the People's Republic of China (PRC) and Afghanistan of "application software" controlled by paragraph (a)(1) above, but not otherwise listed in this Supplement or ECNs on the Control List identified by the code letter "A", provided that:

(a) The "application software" is designed for and limited to the following:

(1) The approved end-use of legally exported equipment or systems in conjunction with any computer that is part of a computer series produced within a controlled area and based on a design originating in a COCOM country; or

(2) The monitoring and control of industrial processes limited to the production of items not described by ECCNs on the Control List identified by the code letter "A", by the International Traffic in Arms Regulations, by 10 CFR Part 110 or by 10 CFR Part 810; and

(b) No restricted technical data is provided.

Advisory Note 5: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY, the People's Republic of China (PRC) and Afghanistan of "software" not exceeding 5,000 statements in "source language", excluding data, provided that:

(a) The "software" is neither designed nor modified for use as a module of a larger "software" module or system that in total exceeds this limit;

(b) The "software" is not controlled by paragraph (b)(5) above; and

(c) The Office of Export Licensing is reasonably satisfied that:

(1) The "software" will be used primarily for the specific non-strategic application for which the export would be approved;

(2) The type and characteristics of such "software" are reasonable for this application; and

(3) The "software" will not be used for the design, development or production of items controlled by ECNs on the Control List identified by the code letter "A", by the International Traffic in Arms Regulations, by 10 CFR Part 110 or by 10 CFR Part 810.

Advisory Note 6: Reserved.

Advisory Note 7: Reserved.

Advisory Note 8: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY, the People's Republic of China (PRC) and Afghanistan of normal commercial "software" for civil Air Traffic Control (ATC) systems approved for export, provided that:

(a) The "software" is commonly used by civil Air Traffic Control authorities outside controlled areas, but not precluding the personalization of certain parameters for civil Air Traffic Control authorities wherever located;

(b) The "software" is not designed or modified for any "digital computer" that is part of a "digital computer" series designed and produced within a controlled area;

(c) The "software" is the minimum necessary to accomplish the normal civil Air Traffic Control functions outside controlled areas;

(d) The "software" will not contain or be capable of accomplishing any of the following functions:

(1) Electronic Counter Counter Measures (ECCM);

(2) Weapon display, allocation or operation;

(3) Intercept guiding capability; or

(4) Interfacing with altitude determining radars, except secondary search radars;

(e) The "software" is further limited by the amount of "source code", which is to be the minimum necessary for the use *(i.e.,*

installation, operation and maintenance) of the "software";

(f) In addition to the above limitation, the only other system "software" allowed is the minimum "programming system" for the maintenance of the "software";

(g) A signed statement of the end-user or importing agency containing a full description of the "software" and its characteristics vis-a-vis the sub-paragraph above, its intended application and workload and a complete identification of all end-users and their activities is provided;

(h) The "software" will not be used to provide or process data associated with military control centers or military radars or otherwise be associated with such radars or centers; and

(i) The type and characteristics of the "software" are reasonable for the specific civil Air Traffic Control applications.

Advisory Note 9: Licenses are likely to be approved for export to satisfactory end-users in Country Group QWY, the People's Republic of China (PRC) and Afghanistan of "operating systems" controlled only by paragraph (b)(4)(ii) above when supplied with "digital computer" and "related equipment" exported under the provisions of ECN 1565, Advisory Notes 9 and 12, provided that these "operating systems" are:

(a) For use with a "digital computer" exported under the provisions of ECN 1565;

(b) In machine executable version;

(c) Limited to the minimum "standard commercially available" "software"; and

(d) Not designed or modified for "database management systems" controlled by paragraph (b)(5)(iii) above.

Advisory Note 10: Licenses are likely to be approved for export to satisfactory end-users in Country Group QWY, the People's Republic of China (PRC) and Afghanistan of "software" controlled by paragraph (a)(3)(ii) above the "digital computers" and "related equipment" exported under the provisions of ECN 1529, Advisory Note 5, or ECN 1565, Advisory Notes 5 and 9, provided that:

(a) The "software" is limited to:

(1) The minimum necessary for the approved application;

(2) Machine executable form; and

(3) "Specially designed software" for:

(i) Equipment likely to be approved for export solely under ECN 1529, Advisory Note 3;

(ii) Equipment likely to be approved for export under ECN 1565, Advisory Note 5, for one or more of the functions described in ECN 1565(h)(1)(i) (A), (B), or (D);

(iii) Equipment likely to be approved for export under ECN 1565, Advisory Note 9, for one or more of the functions described in ECN 1565(h)(1)(i) (A), (B), or (C);

(b) The "specially designed software" for "signal processing" and "image enhancement" does not provide for more than one of the following:

(1) Timer compression; or

(2) Transformations between domains (*e.g.* Fast Fourier Transform or Walsh Transform).

Advisory Note 11: Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY, the People's Republic of China (PRC) and Afghanistan of "software" controlled by paragraph (a)(3)(ii) above for "digital computers" and "related equipment" exported under the provisions of ECN 1565, Advisory Note 12, provided that the "software" is limited to

(a) "Software" for one or more of the functions described in ECN 1565(h)(1)(i) (A), (B) or (C);

(b) The minimum necessary for the approved applications; and

(c) Machine executable form.

Advisory Note 12: Definitions of Terms Used in 1566A:

"Analog computer"—Equipment that can, in the form of one or more continuous variables:

(a) Accept data;

(b) Process data; and

(c) Provide output of data.

"Application software"—"Software" not falling within any of the definitions of the other categories of "software."

"Cross-hosted"—For "programming systems," those that produce "programs" for a model of electronic computer different from that used to run the "programming system," *i.e.*, they have code generators for equipment different from the host computer.

"Database"—A collection of data, defined for one or more particular applications, physically located and maintained in one or more electronic computers or "related equipment."

"Database management system"—"Applications software" to manage and maintain a "database" in one or more prescribed logical structures for use by other "application software" independent of the specific methods used to store or retrieve the "database."

"Development system"—"Software" to develop or produce "software." This includes "software" to manage those activities. Examples of a "development system" are programming support environments, software development environments, and programming productivity aids.

"Diagnostic system"—"Software" to isolate or detect "software" or equipment malfunctions.

"Digital computer"—Equipment that can, in the form of one or more discrete variables:

(a) Accept data;

(b) Store data or instructions in fixed or alterable (writable) storage devices;

(c) Process data by means of stored sequence of instructions that is modifiable; and

(d) Provide output of data.

Note: Modifications of a stored sequence of instructions include replacement of fixed storage devices, but not a physical change in wiring or interconnections.

"Distributed database"—A "database" physically located and maintained in part or as a whole in two or more interconnected electronic computers or "related equipment," such that inquiries from one location can involve "database" access in other interconnected electronic computers or "related equipment."

"Firmware"—see "microprogram."

"High-level language"—A programming language that does not reflect the structure of any one given electronic computer or that of any one given class of electronic computers.

"Hybrid computer"—Equipment that can:

(a) Access data;

(b) Process data, in both analog and digital representations; and

(c) Provide output of data.

"Maintenance system"—"Software" to:

(a) Modify "software" or its associated documentation in order to correct faults, or for other updating purposes; or

(b) Maintain equipment.

"Microprogram"—A sequence of elementary instructions, maintained in a special storage, the execution of which is initiated by the introduction of its reference instruction into an instruction register.

"Object code" or "object language"—See programming system."

"On-line updating"—Processing in which the contents of a "database" can be amended within a period of time useful to interact with an external request.

"Operating system"—"Software" to control:

(a) The operation of a "digital computer" or of "related equipment"; or

(b) The loading or execution of "programs."

"Program"—A sequence of instructions to carry out a process in, or convertible into, a form executable by an electronic computer.

"Programming system"—"Software" to convert a convenient expression of one or more processes ("source code" or "source language") into equipment executable form ("object code" or "object language").

"Related equipment"—Equipment 'embedded' in, 'incorporated' in, or 'associated' with electronic computers, as follows:

(a) Equipment for interconnecting "analog computers" with "digital computers";

(b) Equipment for interconnecting "digital computers";

(c) Equipment interfacing electronic computers to "local area networks" or to "wide area networks";

(d) Communication control units;

(e) Other input/output (I/O) control units;

(f) Recording or reproducing equipment referred to ECN 1565 by ECN 1572;

(g) Displays; or

(h) Other peripheral equipment.

Note: "Related equipment" containing an "embedded" or "incorporated" electronic computer, but lacking "user accessible programmability", does not thereby fall within the definition of an electronic computer.

"Self-hosted"—For "programming systems", those producing "programs" for the same model of electronic computer as that used to run the "programming system", *i.e.*, they only have code generators for the host computer.

"Software"—A collection of one or more "programs" or "microprograms" fixed in any tangible medium of expression.

"Source code" or "source language"—See "programming system".

"Specially designed software"—The minimum "operating systems", "diagnostic systems", "maintenance systems" and "application software" necessary to be executed on a particular equipment to perform the function for which it was designed. To make other incompatible

equipment perform the same function requires:

(a) Modification of this "software" or

(b) Addition of "programs".

"Standard commercially available"—For "software" that is:

(a) Commonly supplied to general purchasers or users of equipment outside controlled areas, but not precluding the personalization of certain parameters for individual customers wherever located;

(b) Designed and produced for civil applications;

(c) Not designed or modified for any "digital computer" that is part of a "digital computer" series designed and produced within a controlled area; and

(d) Supplied in a commonly distributed form.

Technical Note: In the case of "software" for mainframe "digital computers" that may have a "virtual storage capability" exceeding the limit of paragraph (b)(4)(i)(A)(3) and that may be considered for export under the conditions of ECN 1565, Advisory Notes 9 and 12, the limitation of the "virtual storage capability" of 512 MByte does not apply.

Advisory Note for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of "software" controlled for export in this 1566A as follows:

(a) "Software" controlled only by paragraph (a)(1) (of the "LIST OF SOFTWARE CONTROLLED BY 1566A) for computers designed and produced within the People's Republic of China;

(b) "Software" controlled by paragraph (a)(3)(ii) for equipment that is covered by an Advisory Note to ECN 1565A in the Control List;

(c) "Software" not specially designed for computer-aided design, manufacture, inspection or testing of products controlled for export on the Control List;

(d) "Cross-hosted" compilers or "cross-hosted" assemblers controlled by paragraph (b)(2)(ii);

(e) "Software" controlled by paragraphs (b)(2)(ii) or (b)(3) for microprocessor or microcomputer development systems that are covered by an Advisory Note on the Control List;

(f) "Operating systems" controlled by paragraph (b)(4) for computers that are covered by an Advisory Note to ECN 1565A on the Control List.

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1572A Regarding or reproducing equipment, and specially designed components therefor.

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Note: For "specially designed software", see entry 1566A.

Controls for ECN 1572A

Unit: Report equipment in "number"; technical data and parts and accessories in "$ value."

* * * * *

Technical data and software: General License GTDR available for Country Groups T and V, excluding the People's Republic of China and Afghanistan. This entry contains no software.

* * * * *

Technical Data Controlled by 1572A

(a) Technical data required for the development, production, or use of commodities controlled by this ECN 1572A. Such technical data is controlled even when the technical data will not be used for the development, production, or use of commodities controlled by this entry 1572A.

(b) Technical data required for the development, production, or use of commodities described by Exceptions 2 through 4 of 1572A.

List of Types of Recording and/or Reproducing Equipment, "Recording Media" and Specially Designed Components and Accessories Therefore Controlled by 1572A * * *

E. In Supplement No. 1 to § 799.1 (the Control List), Group 6 (Metals, Minerals and their Manufactures), 6699G is amended by revising the *Validated License Required* paragraph that appears under the heading "Controls for ECN 6699G", by adding a *Technical Data and Software* paragraph after the *GLV $ Value Limit* paragraph, and by adding a new list "Technical Data Controlled by 6699G" after the *Special South Africa Controls* paragraph, as follows:

6699G Other metals, minerals, and their manufactures, n.e.s.

Controls for ECN 6699G

* * * * *

Validated license required: For commodities, Country Groups S and Z; for technical data, Country Groups QSWYZ and Afghanistan.

* * * * *

Technical data and software: General License GTDU available for Country Groups T and V, except Afghanistan. This entry contains no software.

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Technical Data Controlled by 6699G

Technical data required for the development, production, or use of commodities controlled by this ECN 6699G, but not for the development, production, or use of any other commodity controlled by an entry on the Control List identified by the code letter, A, B, C, D, E, or F.

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Dated: October 5, 1988.

Michael E. Zacharia,

Assistant Secretary for Export Administration.

[FR Doc. 88-23373 Filed 10-12-88; 8:45 am]

BILLING CODE 3510-DT-M

POSTAL SERVICE

39 CFR Part 111

Endorsement of Single-Piece Rate Third-Class Mail

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This rule would require that all pieces of third-class matter mailed at the single-piece third-class rate be endorsed "Third-Class', so that postal employees can better identify it in checking postage and providing the appropriate service.

DATE: Comments must be received on or before November 14, 1988.

ADDRESS: Address all comments to the Director, Office of Classification and Rates Administration, U.S. Postal Service, 475 L'Enfant Plaza West, SW., Washington, DC 20260-5360. Copies of all written comments will be available for inspection between 9 a.m. and 4 p.m., Monday through Friday, in Room 8430, at the above address.

FOR FURTHER INFORMATION CONTACT: Leo F. Raymond, (202) 268-5199.

SUPPLEMENTARY INFORMATION: Existing postal regulations require that sealed mail-pieces sent at the third-class single-piece rates of postage be endorsed "Third-Class." The distinction between sealed and unsealed third-class matter no longer has any relevance to the Postal Service. Mailpieces paid at both First- and third-class single-piece rates may be prepared sealed or unsealed, although the Postal Service strongly urges all mailers to seal their mail.

Moreover, personnel assigned to mailstream sampling are hampered in determining whether unsealed, unendorsed pieces, weighing less than four ounces and having postage affixed are First- or third-class (since the postage is the same).

In order to better identify, and thereby properly rate and process First- and third-class single-piece rate mailpieces, the Postal Service proposes to eliminate the distinction between sealed and unsealed third-class mail by revising section 662.1 of the Domestic Mail Manual, as follows, to require the endorsement of all third-class single-piece rate mail.

Given the relatively small volumes involved, and the simplicity of providing the necessary endorsement, it is anticipated that this new requirement will not represent a significant hardship for users of the third-class single-piece rates.

Although exempt from the notice and comment provisions of the

Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comments on the following proposed amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 399 CFR Part 111.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

PART 662—MARKING

2. In Part 662, revise 662.1 to read as follows:

662.1 Single-piece rate.

662.11 General

Each piece mailed at the single-piece third-class rates of postage described in 611.1 must be legibly marked with the words "Third Class".

662.12 Location

The marking must appear on the address side of each piece, preferably below the postage and above the name of the addressee. It may be included as part of a permit imprint, or it may be printed adjacent to the meter stamp by a postage meter. The marking will not be considered adequate if it is included as part of a decorative design or advertisement.

662.13 Unmarked Pieces

Pieces lacking the endorsement required by 662.11 or not properly marked as required by 662.12 will be treated as First-Class Mail and charged postage at the applicable First-Class rate.

PART 141—STAMPED ENVELOPES, POSTAL CARDS, AEROGRAMMES

3. In Part 141, revise 141.254c to read as follows:

145.254 Postal instructions.

* * * *

c. Third-class Mail. On single-piece rate third-class mail, whether sealed or not (see also 621.4), the following must appear: Third Class.

An appropriate amendment to 39 CFR 111.3 will be published if the proposal is adopted.

Fred Eggleston,

Assistant General Counsel, Legislative Division

[FR Doc. 88–23615 Filed 10–12–88; 8:45 am]

BILLING CODE 7710-12-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–6938]

Proposed Flood Elevation Determinations; Alabama et al.

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.

PART 67—[AMENDED]

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)
ALABAMA	
Dale County (unincorporated areas)	
Cowpen Creek:	
At mouth	*167
About 2,100 feet upstream of Headless Horseman Road	*204
Claybank Creek:	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of Flooding and Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Just upsteam of U.S. Highway 84	*141
About 1,200 feet upstream of the confluence of Cowpen Creek	*167
Choctawhatchee River:	
Just upstream of U.S. Highway 84	*141
About 1,700 feet upstream of confluence of Hurricane Creek	*174
Little Choctawhatchee River:	
At mouth	*146
About 3.2 miles upstream of County Highway 49	*209
Maps available for inspection at the County Courthouse, Ozark, Alabama.	
Send comments to The Honorable Byron T. Mallory, Chairman, County Board Commission, Dale County, County Courthouse, P.O. Box 2462, Ozark, Alabama 36360.	
Level Plains (Twon), Dale County	
Claybank Creek: Within the community	*165
Cowpen Creek:	
Just downstream of Gerald Road	*169
About 1.1 miles upstream of Gerald Road	*186
Maps available for inspection at the Town Hall, Level Plains, Alabama.	
Send comments to The Honorable Ray Waters, Mayor, Town of Level Plains, Town Hall, R#1, Level Plains, Alabama 36322.	
Lisman (city), Choctaw County	
Bogue Chitto River:	
About 600 feet downstream of State Highway 10	*138
About 800 feet upsteam of Burlington Northern railroad	*147
Maps available for inspection at the City Hall, Lisman, Alabama.	
Send comments to The Honorable Anthony Butler, Mayor, City of Lisman, City Hall, P.O. Box 157, Lisman, Alabama 36912.	
Moody (town), St. Clair County	
Little Cahaba River:	
About 0.9 mile upstream of Interstate 20	*648
About 0.9 mile upstream of County Road 10	*682
Maps available for inspection at the City Hall, Leeds, Alabama.	
Send comments to The Honorable James Sollie, Mayor, Town of Moody, City Hall, R#5, Box 348, Leeds, Alabama 35094.	
Pell City (city), St. Clair County	
Coosa River:	
About 0.6 mile downstream of confluence of Blue Spring Branch	*476
At confluence of Fishing Creek	*477
Blue Spring Branch:	
At mouth	*476
About 1,900 feet upstream of 19th Street	*506
Dunlap Spring Branch:	
At mouth	*499
About 0.7 mile upstream of Wolf Creek Road	*517
Dye Creek:	
About 0.4 mile downstream of Farm Road	*496
About 0.7 mile upstream of Norfolk Southern Railway	*538
Fishing Creek: Within community	*477
West Branch Fishing Creek:	
Just upstream of Pleasant Valley Road	*523
Just downstream of Corner Road	*541
Wolf Creek:	
About 1,600 feet downstream of confluence of Dunlap Spring Branch	*493
About 400 feet upstream of confluence of Dunlap Spring Branch	*499
Maps available for inspection at the City Hall, 1905 1st Avenue, North, Pell City, Alabama.	
Send comments to The Honorable Harvey Watson, Mayor, City of Pell City, City Hall, 1905 1st Avenue, North, Pell City, Alabama 35125.	
CALIFORNIA	
Wasco (city), Kern County	
Shallow Flooding:	
Southeast of the intersection of Highway 46 and Atchison, Topeka and Santa Fe Railway	*333
Maps are available for inspection at City Hall, Office of the Planning Director, Wasco, California 93280.	
Send comments to The Honorable Otis Johnson, Mayor, City of Wasco, P.O. Box 159, Wasco, California 93280.	
COLORADO	
Oak Creek (town), Routt County	
Oak Creek:	
Approximately 1,090 feet downstream of Bell Avenue	*7,398
Approximately 40 feet upstream of Bell Avenue	*7,404
At Lincoln Avenue	*7,415
Approximately 2,190 feet upstream of Lincoln Avenue	*7,431
Maps are available for review at the Office of the Town Clerk, Town of Oak Creek, 131 East Main Street, Oak Creek, Colorado.	
Send comments to The Honorable Dale McNutt, Mayor, Town of Oak Creek, P.O. Box 128, Oak Creek, Colorado 80467.	
Routt County (unincorporated areas)	
Yampa River:	
Approximately 4,240 feet downstream of the Denver and Rio Grande Western Railroad	*6,573
At the confluence with Slate Creek	*6,623
Just upstream of Stock Drive	6,676
Approximately 1,890 feet upstream of Stock Drive	6,686
Approximately 3,600 feet downstream of Tree Haus Road	6,738
Approximately 40 feet downstream of Routt County Road 14F	6,777
At Routt County Road 22	6,806
Approximately 1,115 feet downstream of Colorado State Highway 131	*6,836
Approximately 7,460 feet upstream of Colorado State Highway 131	*6,861
Elk River:	
Approximately 370 feet downstream of Routt County Road 58	*7,162
Just downstream of Routt County Road 62	*7,220
Approximately 500 feet downstream of Colorado State Highway 129	*7,271
Maps are available for review at the Office of County Engineer, Routt County, 136 6th Street, Steamboat Springs, Colorado 80477	
Send comments to The Honorable Dennis Fisher, Chairman, Routt County Board of Supervisors, P.O. Box 773598, Steamboat Springs, Colorado 80477	
Georgia	
Dade County (Unincorporated Areas)	
Lookout Creek:	
Just downstream of the confluence of Tributary No. 1	*696
Just downstream of State Route 143	*713
Tributary No. 1:	
At mouth	*696
About 0.4 mile downstream of Norfolk Southern Railway	*699
Pope Creek:	
About 300 feet downstream of Pope Creek Road	*670
At state boundary	*915
Nickajack Lake: Within community	*635
Maps available for inspection at the Dade County Property and Record's Office, County Courthouse, Trenton, Georgia.	
Send comments to the Honorable Larry Moore, Commissioner, Dade County, P.O. Box 613, Trenton, Georgia 30752.	
Eatonton (city), Putnam County	
Rooty Creek:	
Just upstream of Concord Avenue	*429
About 2,000 feet upstream of Sumter Street	*478
Maps available for inspection at the City Clerk's Office, City Hall, Eatonton, Georgia.	
Send comments to The Honorable James P. Marshall, Mayor, city of Eatonton, City Hall, P.O. Box 191, Eatonton, Georgia 31024.	
Forsyth County (unincorporated areas)	
Big Creek:	
Just upstream of McGinnis Ferry road	*999
At confluence of Sawmill Branch	*1,063
Kelley Mill Branch:	
At confluence with Big Creek	*1,063
About 2,600 feet downstream of Hickory Knoll Road	*1,099
Cheatam Creek:	
At mouth	*1,026
Just downstream of Kelley Mill Road	*1,051
Bentley Creek:	
At mouth	*1,023
Just downstream of Bentley Road	*1,035
James Creek:	
At mouth	*918
Just downstream of James Road	*918
Just upstream of James Road	*930
Just downstream of Old Atlanta Road	*1,038
Just upstream of Old Atlanta Road	*1,048
Just downstream of Brannon Road	*1,142
Daves Creek:	
At mouth	*948
Just downstream of Trammel Road	*1,031
Just upstream of Trammel Road	*1,036
Just downstream of Daves Creek Road	*1,037
Just upstream of Daves Creek Road	*1,044
About 1 mile upstream of Daves Creek Road	*1,073
Dick Creek:	
About 1,500 feet above mouth	*913
Just downstream of Mathis Airport Road	*1,048
Camp Creek Tributary:	
Just upstream of McGinnis Ferry Road	*1,008
Just downstream of James Road	*1,061
Maps available for inspection at the County Administrator's Office, County Courthouse, Cumming, Georgia.	
Send comments to The Honorable Charles Welch, Chairman, County Board of Commissioners, Forsyth County, County Courthouse, Cumming, Georgia 30130.	
Oconee County (unincorporated areas)	
McNutt Creek:	
At mouth	*558
Just downstream of State Route 732 (near confluence of Barber Creek)	*571
Just upstream of State Route 732 (near confluence of Barber Creek)	*576
About 800 feet downstream of Mars Hill Road	*722
Barber Creek:	
At mouth	*562
About 1.2 miles upstream of Old Hodges Mill Road	*681
Porters Creek:	
At mouth	*526
Just downstream of McRee Gin Road	*636
Just upstream of McRee Gin Road	*642
About 0.8 mile upstream of McRee Gin Road	*668
Lampkin Branch:	
About 1,250 feet above mouth	*642
Just downstream of Mars Hill Road	*718

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of Flooding and Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Calls Creek:	
At mouth	*550
About 1.4 miles upstream of State Route 53	*684
Parker Branch:	
At mouth	*639
Just downstream of Autry Road	*733
West Fork Parker Branch:	
At mouth	*713
Just downstream of Autry Road	*728
Oconee River:	
About 5.6 miles downstream of confluence of Wildcat Creek	*459
Just downstream of Barnett Shoals Dam	*483
Just upstream of Barnett Shoals Dam	*517
At confluence of North Oconee River	*541
Middle Oconee River:	
At confluence of North Oconee River	*541
At confluence of McNutt Creek	*558
Shoal Creek:	
At mouth	*480
Just downstream of Barnett Shoals Road	*539

Maps available for inspection at the Oconee County Code Enforcement Department, County Courthouse, Watkinsville, Georgia.

Send comments to The Honorable Choyce Johnson, Chairman, County Board of Commissioners, Oconee County, County Courthouse, P.O Box 145, Watkinsville, Georgia 30677.

Sylvester (city), Worth County

Town Creek:	
Just upstream of Town Creek Drive	*342
Just downstream of Franklin Street	*360
Just upstream of Franklin Street	*365
About 600 feet upstream of Wallace Street	*374
Town Creek Tributary No. 1:	
At mouth	*346
At Franklin Street	*372
Town Creek Tributary No. 2:	
At mouth	*354
About 1,400 feet upstream of Franklin Street	*369
Town Creek Tributary No. 3:	
At mouth	*359
At North Street	*383

Maps available for inspection at the City Clerk's Office, City Hall, Sylvester, Georgia.

Send comments to The Honorable Oren H. Harden, Mayor, City of Sylvester, P.O. Box 368, Sylvester, Georgia 31791.

Upson County (unincorporated areas)

Drake Branch:	
At mouth	*652
About 1,000 feet downstream of North Bethel Street	*654
Norris Creek:	
At mouth	*682
Just upstream of Atwater Road	*723
Potato Creek:	
Just upstream of State Route 36	*527
About 3,500 feet downstream of State Route 74	*550
About 600 feet upstream of State Route 74	*619
About 300 feet upstream of Delray Road	*671
Potato Creek Tributary:	
At mouth	*644
Just downstream of Moore Crossing Road	*659
Just upstream of Moore Crossing Road	*665
Just upstream of Jeff Davis Road	*713
Tenmile Creek:	
At mouth	*637
Just downstream of Jeff Davis Road	*670
About 350 feet upstream of Jeff Davis Road	*676
Just upstream of Willingham Road	*737
Town Branch:	
At mouth	*568
Just downstream of Davis Lake Road	*621
Just upstream of Davis Lake Road	*626
Just downstream of State Route 36	*659
Bell Creek:	
Just upstream of the confluence of Town Branch	*568
Just downstream of Old Talbotton Road	*591
Just upstream of Old Talbotton Road	*596

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of Flooding and Location	#Depth in feet above ground. *Elevation in feet (NGVD)
About 1,300 feet downstream of U.S. Route 19	*627
Raines Branch:	
About 4,100 feet upstream of mouth	*392
Just downstream of U.S. Route 80	*410
Just upstream of U.S. Route 80	*415
About 3,300 feet upstream of U.S. Route 80	*433

Maps available for inspection at the County Clerk's Office, County Courthouse, Thomaston, Georgia.

Send comments to The Honorable J. Irvin Hendricks, Chairman, Board of Commissioners, Upson County, P.O. Box 889, Thomaston, Georgia 30286.

IDAHO

Elmore County (unincorporated areas)

Little Canyon Creek:	
Approximately 450 feet above confluence with Snake River	*2488
Approximately 2,860 feet downstream of Boise Street	*2533
Approximately 1,200 feet upstream of Highway 30	*2562
Approximately 3,400 feet downstream of County Road located between sections 18 and 19	*2572
At upstream side of County Road located between sections 18 and 19 in Township 5S Range 10E	*2589
Rattlesnake Creek:	
Just upstream of 18th South Street	*3115
Approximately 1,300 feet upstream of 12th South Street	*3125
Approximately 3,500 feet upstream of 6th South Street	*3144
Approximately 1,100 feet downstream of Interstate Highway 84	*3171
Approximately 2,900 feet upstream of Interstate Highway 84	*3217
South Fork Boise River:	
Just upstream of Pine Bridge	*4209
Approximately 1,050 feet downstream of confluence of Dare Gulch	*4264
Approximately 100 feet downstream of confluence of Green Creek	*4342
Approximately 3,900 feet downstream of confluence of Fairview Creek	*4420
Approximately 100 feet upstream of Featherville Bridge	*4487
Summerwind Drainage:	
Approximately 1,130 feet downstream of Summerwind Drive	*3232
Approximately 20 feet downstream of Summerwind Drive	*3237
Approximately 20 feet downstream of Beaman Road	*3240
Just upstream of Beaman Road	*3241

Maps are available for review at the Elmore County Planning and Zoning Department, 190 South Fourth East Street, Mountain Home, Idaho.

Send comments to the Honorable Bud Riddle, Chairman, Elmore County Board of Commissioners, Box 614, Mountain Home, Idaho.

KANSAS

Bazine (city), Ness County

Walnut Creek:	
About 3,000 feet downstream of Burgess Avenue	*2126
At confluence of Bazine Dry Creek	*2132
Bazine Dry Creek:	
At mouth	*2132
About 1,600 feet downstream of Austin Street	*2133

Maps available for inspection at the City Hall, Bazine, Kansas.

Send comments to The Honorable Ruben Bruntz, Mayor, City of Bazine, City Hall, P.O. Box 43, Bazine, Kansas 67516.

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of Flooding and Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Ness City (city), Ness County	
North Fork Walnut Creek:	
About 400 feet downstream of confluence of Tributary No. 1	*2230
Just upstream of confluence of Tributary No. 1	*2231
Tributary No. 1:	
At mouth	*2231
About 2500 feet upstream of confluence of Nevada Street Tributary	*2233
Nevada Street Tributary:	
At mouth	*2231
About 900 feet upstream of Pennsylvania Avenu	*2247

Maps available for inspection at the City Hall, 109 South Iowa, Ness City, Kansas.

Send comments to The Honorable Paula McCreight, Mayor, City of Ness City, City Hall, 109 South Iowa, Ness City, Kansas 67560.

MAINE

Bristol (town), Lincoln County

Muscongus Bay:	
At Back Shore Road extended	*13
Approximately 2,000 feet north of Pumpkin Cove	*43
Eastern Branch Johns River: Entire shoreline	*10
Pemaquid River: Entire shoreline	*10
Johns Bay:	
Approximately .6 mile west along shoreline from Pemaquid Harbor Road extended	*13
Approximately .6 mile north of Pemaquid Point along shoreline	*25

Maps available for inspection at the Town Assessor's Office, Bristol, Maine.

Send comments to The Honorable John Fitzpatrick, Chairman of the Town of Bristol Board of Selectmen, Lincoln County, P.O. Box 147, Bristol, Maine 04539.

Eliot (town), York County

Spinney Creek:	
At confluence with Piscataqua River	*9
340 feet upstream of State Road	*30
Piscataqua River: Entire length within community	*9

Maps available for inspection at the Town Hall, Eliot, Maine.

Send comments to The Honorable John C. Rothwell, Chairman of the Town of Eliot Board of Selectmen, York County, 40 River Road, Eliot, Maine 03903.

MARYLAND

Brookeville (town), Montgomery County

Reddy Branch:	
Approximately 550 feet downstream of downstream corporate limits	*351
At confluence of Tributary No. 209 (Spring Branch)	*362
Tributary No. 209 (Spring Branch):	
At confluence with Reddy Branch	*382
At upstream corporate limits	*388

Maps available for inspection at 205 Market Street, Brookeville, Maryland.

Send comments to The Honorable Richard S. Allan, Chairman of the Town of Brookeville Board of Supervisors, Montgomery County, 205 Market Street, Brookeville, Maryland 20833.

MASSACHUSETTS

Wenham (town), Essex County

Miles River:	
At downstream corporate limits	*32
Just upstream of Dodge Row	*44

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of Flooding and Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Town Clerk's Vault, Town Hall, 138 Main Street, Wenham, Massachusetts.	
Send comments to The Honorable William Shailor, Chairman of the Town of Wenham Board of Selectmen, Essex County, Town Hall, 138 Main Street, Wenham, Massachusetts 10984.	
Worthington (town), Hampshire County	
Middle Branch Westfield River:	
At downstream corporate limits	*775
Approximately 200 feet downstream of second crossing of Parish Road	*1,566
Bronson Brook:	
At downstream corporate limits	*1,014
Approximately 20 feet upstream of second crossing of Dingle Road	*1,365
Maps available for inspection at Town Clerk's Vault, Town Hall, Huntington Road, Worthington, Massachusetts.	
Send comments to The Honorable Albert G. Nuent, Jr., Chairman of the Town of Worthington Board of Selectmen, Hampshire County, Town Hall, Huntington Road, Worthington, Massachusetts 01098.	
MICHIGAN	
Allegan (city), Allegan County	
Kalamazoo River:	
About 2.0 miles downstream of abandoned railroad	*617
Just downstream of Allegan city dam	*627
Just upstream of Allegan city dam	*633
About 1.6 miles upstream of State Highway 89	*636
Maps available for inspection at the City Hall, 112 Locust Street, Allegan, Michigan. Send comments to The Honorable John Hotchkiss, Mayor, City of Allegan, City Hall, 112 Locust Street, Allegan, Michigan 49010.	
Au Gres (city), Arenac County	
Au Gres River:	
About 3600 feet downstream of confluence of Sager Creek	*584
About 4200 feet upstream of U.S. Highway 23	*587
Sager Creek:	
At mouth	*584
About 1300 feet upstream of Court Street	*586
Saginaw Bay: Within community	*584
Maps available for inspection at the City Hall, 124 West Huron, Au Gres, Michigan. Send comments to The Honorable Dennis Nixon, Mayor, City of Au Gres, City Hall, P.O. Box 121, 124 West Huron, Au Gres, Michigan 48703.	
Au Gres (township), Arenac County	
Au Gres River:	
About 4600 feet downstream of confluence of Chief Creek Drain	*587
About 1200 feet upstream of confluence of Burnt Drain	*593
Sager Creek:	
About 1800 feet downstream of Santiago Road	*586
About 500 feet downstream of Santiago Road	*586
Saginaw Bay: Along shoreline	*584
Maps available for inspection at the Supervisor's Home, 2300 Manor Road, Au Gres, Michigan.	
Send comments to The Honorable Gerald E. Dewald, Supervisor, Township of Au Gres, 2300 Manor Road, Au Gres, Michigan 48703.	
Bangor (city), Van Buren County	
South Branch Black River:	
About 0.90 mile downstream of Hamilton Road	*630
About 0.80 mile upstream of Center Street	*640
Maple Creek:	
At mouth	*631
Just downstream of 34th Avenue	*650

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of Flooding and Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Boyer Drain:	
At mouth	*645
About 0.55 mile upstream of Center Street	*653
Maps available for inspection at the City Hall, 257 West Monroe, Bangor, Michigan.	
Send comments to The Honorable David Rigozzi, Mayor, City of Bangor, City Hall, 257 West Monroe, Bangor, Michigan 49013.	
MINNESOTA	
Sebeka (city), Wadena County	
Redeye River:	
About 1.4 miles downstream of Jefferson Avenue	*1372
About 1425 feet upstream of Minnesota Street	*1380
Maps available for inspection at the City Hall, 207 Jefferson Avenue, South Sebeka, Minnesota.	
Send comments to The Honorable Ray Lillquist, Mayor, City of Sebeka, City Hall, 207 Jefferson Avenue, South, Sebeka, Minnesota 56477.	
MISSISSIPPI	
Iuka (city), Tishomingo County	
Tributary A:	
At mouth	*534
About 1050 feet upstream of Graham Road	*538
Indian Creek:	
Just downstream of corporate limits	*514
Just downstream of Lee Highway	*550
Maps available for inspection at the City Clerk's Office, City Hall, 118 South Pearl, Iuka, Mississippi.	
Send comments to The Honorable John H. Biggs, Mayor, City of Iuka, City Hall, 118 South Pearl, Iuka, Mississippi 38852.	
Oktibbeha County (unincorporated areas)	
Talking Warrior Creek:	
About 1400 feet downstream of State Highway 25	*254
About 1600 feet upstream of State Highway 25	*257
Tobacco Juice Creek	
About 0.83 mile Downstream of South Gate Dirve	*259
About 2600 feet uptream of State Highway 25	*281
Hollis Creek:	
About 2900 feet upstram of Poor-house Road	*295
About 2.2 miles upstream Road	*315
Sand Creek:	
About 3000 feet downstream of County Road	*221
About 2500 feet upstream of County Road	*313
Sand Greek Tributary I: At Patrick Road	*263
Maps available for inspection at the Chancery Clerk's Office, County Clerk's Office, Starkville, Mississippi.	
Send comments to The Honorable Cecil Hamilton, President, Board of Supervisors, Oktibbeha County, County Courthouse, Starkville, Mississippi 39759.	
NEW HAMPSHIRE	
New Fields (town), Rockingham	
Great Bay: Entire shoreline of Squamscott River within Newfields	*8
Piscassic River	
At Ice Pond dams	*92
Approximately 1,000 feet upstream of upstream corporate limits	*108
Maps available for inspection at Town Hall, Newfields, New Hampshire.	
Send comments to The Honorable Gerald Watson, Chairman of the Town of Newfields, Rockingham County, P.O. Box 321 Halls Mills Road, Halls Mills, Newfields, New Hampshire 03856.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of Flooding and Location	#Depth in feet above ground. *Elevation in feet (NGVD)
NEW YORK	
Middlesex (town), Yates County	
Canadaigus Lake: Entire shoreline within community	*692
Maps available for inspection at Town Hall, Middlessix, New York.	
Send comments to the Honorable Robert Mutter, Supervisor of the Town of Middlesex, Yates County, Town Hall, Middlesex, New York 14507.	
St. Johnsville (village), Montgomery County	
Mohawk River:	
Approximately 680 feet downstream of downstream corporate limits	*313
At upstream corporate limits	*314
Maps available for inspection at the Village Hall, 16 Washington Street, St. Johnsville, New York.	
Send comments to The Honorable Josephine Josephine Terricola, Mayor of the Village of St. Johnsville, Montgomery County, 16 Washington Street, St. Johnsville, New York 13452.	
North Carolina	
Duplin County (unincorporated areas)	
Little Rockfish Creek:	
Just upstream of State Road 11	*28
Just downstream of State Road 41	*42
Rockfish Creek:	
Just upstream of SR 1152	*30
at confluence of Rockfish Creek Tributary	*35
Rockfish Creek Tributary: Within Community	*35
Doctors Creek:	
About 1.9 miles upstream of mouth	*42
Just downstream of SR 1157	*51
Maps available for inspection at the County Courthouse, Kenansville, North Carolina.	
Send comments to The Honorable Ralph Cottle, County Manager, Duplin County, P.O. Box 585, Kenansville, North Carolina 28349.	
Eastern Band of Cherokee Indians, Swain, Jackson, Graham, Cherokee and Haywood Counties	
Raven Fork:	
About 1.6 miles upstream of mouth	*2088
About 2100 feet downstream of upstream crossing of Big Cove Road	*2554
About 2000 feet downstream of upstream crossing of Big Cove Road	*2562
About 1600 feet upstream of upstream crossing of Big Cove Road	*2638
Soco Creek:	
At mouth	*1914
Just downstream of downstream crossing of U.S. Route 19	*1984
Just upstream of downstream crossing of U.S. Route 19	*1989
Just downstream of upstream crossing of U.S. Route 19	*2319
Oconaluftee River:	
About 2.0 miles downstream of Birdtown Bridge	*1640
About 0.9 mile upstream from Acquoni Road	*2005
Maps available for inspection at the Tribal Council Chambers, Cherokee, North Carolina.	
Send comments to The Honorable Robert Blankenship, Tribal Council Chairman, Eastern Band of Cherokee Indians, P.O. Box 455, Cherokee, North Carolina 28719.	
Jackson County (unincorporated areas)	
Tuckasegee River:	
About 1.6 miles downstream from State Road 116	*2008
Just upstream from the confluence of Caney Fork	*2123
Cullowhee Creek:	
At mouth	*2070

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of Flooding and Location	#Depth in feet above ground. *Elevation in feet (NGVD)
About 1050 feet upstream from confluence of Long Branch	*2096
Long Branch:	
at mouth	*2093
Just downstream from SR 1367	2196
Just upstream from SR 1376	*2206
About 900 feet upstream from SR 1367	*2235
Oconaluftee River:	
About 2860 feet downstream of U.S. Route 441	*1906
About 2070 feet downstream of U.S. Route 441	*1908
Soco Creek:	
About 1000 feet downstream of Old U.S. Route 441	*1926
About 1100 feet upstream of U.S. Route 441–19 connector	*1976
Scott Creek:	
Just downstream of SR 1381	*1984
Just upstream of Lee Bumgardner Road	*2104

Maps available for inspection at the County Administration Building, 8 Ridgeway Street, Sylva, North Carolina.

Send comments to The Honorable Wayne Hooper, County Manager, Jackson County, County Administration Building, 8 Ridgeway Street, Sylva, North Carolina 28779.

OHIO

Apple Creek (village), Wayne County

Apple Creek:	
Just downstream of U.S. Route 250	*1000
Just upstream of U.S. Route 250	*1001
About 300 feet downstream of Apple Creek Road	*1006
At confluence of Little Apple Creek 2	*1019
Little Apple Creek 2: Within community	*1019

Map available for inspection at the Village Hall, Apple creek, Ohio.

Send comments to The Honorable Raymond Carter, Mayor, Village of Apple Creek, P.O. Box 208, Apple Creek, Ohio 44606.

Burbank (village), Wayne County

Killbuck Ceek:	
About 1800 feet downstream of West Salem Road	*931
About 1850 feet upstream of Burbank Road	*945

Maps available for inspection at the Village Hall, 32 South Front Street, Burbank, Ohio.

Send comments to The Honorable Gary Gallion Mayor, Village of Burbank, P.O. Box 3, Burbank Ohio 44214.

Creston (village), Wayne County

Killbuck Creek:	
Just upstream of West Salem Road	*973
About 1400 downstream of Britton Road	*974

Maps available for inspection at the Village Hall, Creston Ohio.

Send comments to The Honorable Russ McDermott, Mayor, Village of Creston, Village Hal Creston, Ohio 44217-9998.

Scioto County (unincorporated areas)

Ohio River:	
At western county boundary	*529
About 0.7 mile upstream of eastern county boundary	*543
Scioto River:	
At mouth	*535
At northern county boundary	*549
Rarden Creek: Within community	*615

Maps available for inspection at the Planning Department, County Courthouse, 602 Seventh Street, Portsmouth, Ohio.

Send comments to The Honorable William Ogg, Chairman, Board of County Commissioners, Scioto County, County Courthouse, 602 Seventh Street, Portsmouth, Ohio 45662.

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of Flooding and Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Wayne County (unincorporated areas)	
Chippewa Creek:	
About 2100 feet downstream of State Route 57	*957
About 1700 feet upstream of confluence of Tommy Run	*958
Cedar Run:	
At mouth	*874
About 2300 feet upstream of Cedar Valley Road	*985
Little Apple Creek 1:	
About 2600 feet downstream of Milltown Road	*990
Just downstream of Schellin Road	*1098
Just upstream of Schellin Road	*1105
About 3700 feet upstream of Schellin Road	*1115
Little Killbuck Creek:	
At mouth	*863
Just upstream of Overton Road	*872
Just upstream of Towhship Road 36	*1058
Clear Cek:	
At mouth	*862
Just downstream of Mechanicsburg Road	*981
Just downstream of Smithville Western Road	*1036
Rathburn Run:	
At mouth	*897
Just upstream of Township Road 35	*902
About 3000 feet upstreat of Townshp Road 35	*929
Killbuck Creek:	
Just upstream of Valley Road	*847
Just downstream of upstream crossing of Sterling Road	*1002
Apple Creek:	
At mouth	*856
Just downstream of Pittsburgh Avenue	*880
Just upstream of Pittsburhg Avenue	*887
At confluence of Little Apple Creek	*1019
Little Apple Creek 2:	
At confluence with Apple Creek	*1019
About 850 feet downstream of Hackett Road	*1036

Maps available for inspection at the Planning Department, County Administration Building, Wooster, Ohio.

Send comments to The Honorable Ted Acker, President, County Commission, Wayne County, County Administration Building, 428 West Liberty Street, Wooster, Ohio 44691.

OKLAHOMA

Pocola (town), LeFlore County

Cedar Creek:	
At confluence with Poteau River	*421
At upstream corporate limits	*445
Cedar Creek Tributary One:	
At confluence with Cedar Creek	*421
At Pryor Avenue	*430
Cedar Creek Tributary Two:	
At confluence with Cedar Creek	*421
At Gray Street	*459
Cedar Creek Tributary Three:	
At confluence with Cedar Creek	*426
At upstream corporate limits	*460
Wells Creek:	
At confluence with Poteau River	*422
At upstream corporate limits	*485
Wells Cedar Creek Tributary One:	
At confluence with Wells Creek	*472
At upstream corporate limits	*569
Poteau River Tributary One:	
At confluence with Poteau River	*422
Approximately .5 mile upstream of Kennedy Street	*460
Poteau River:	
Downstream corporate limits	*421
At upstream corporate limit	*422

Maps available for inspection at the City Hall Highway 112 South, Pocola, Oklahoma.

Send comments to The Honorable John Ferris, Mayor of the Town of Pocola, LeFlore County, P.O. Box 397, Pocola, Oklahoma 74902.

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of Flooding and Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Stringtown (town), Atoka County	
North Boggy Creek Tributary:	
Approximately 1.6 miles above confluence with North Boggy Creek	*568
Approximately 450 feet upstream of Mt. Blanc Avenue	*625

Maps available for inspection at 105 Pecan Avenue, Stringtown, Oklahoma.

Send comments to The Honorable Larry Rose, Mayor of the Town of Stringtown, Atoka County, P.O. Box 98, Stringtown, Oklahoma 74569.

OREGON

Crook County (unincorporated areas)

Crooked River:	
Approximately 1,600 feet downstream of the confluence with Ochoco Creek	*2829
Approximately 1,000 feet downstream of Ochoco Highway 41	*2848
Approximately 325 feet upstream of Ochoco Highway 41	*2850
Approximately 1,300 feet upstream of the confluence with the Juniper Canyon Constructed Channel	*2862
Ochoco Creek:	
At the confluence with Crooked River	*2831
Approximately 350 feet downstream of Harwood Street	*2852
At Combsflat Road	*2884
Approximately 90 feet downstream of the confluence with Johnson Creek	*2923
Approximately 50 feet upstream of Wayland Road	*3001

Maps available for review at the Crook County Courthouse, 300 East Third, Prineville, Oregon.

Send comments to The Honorable Dick Hoppes, Chairman, Crook County Board of Commissioners, Crook County Courthouse, 300 East Third, Prineville, Oregon 97754.

Madras (city), Jefferson County

Willow Creek:	
Approximately 510 feet downstream of Canyon Road	*2232
Approximately 280 feet upstream of the confluence with Willow Creek Side Channel	*2237
Approximately 110 feet upstream of C Street	*2249
Approximately 1,550 feet upstream of the divergence from Willow Creek Side Channel	*2262
Willow Creek Side Channel:	
Approximately 440 feet upstream of the convergence with Willow Creek	*2237
At 8th Street	*2247
At the divergence from Willow Creek	*2255

Maps are available for review at City Hall, 416 Sixth Street, Madras, Oregon.

Send comments to The Honorable Richard L. Allen, Mayor City of Madras, City Hall, 416 Sixth Street, Madras, Oregon 97741.

Wheeler County (unincorporated areas)

Bridge Creek:	
Approximately 1,400 feet downstream of the downstream crossing of U.S. Highway 26	*2581
Approximately 1,550 feet downstream of the upstream crossing of U.S. Highway 26	*2650
At western corporate limits of the City of Mitchell	*2710
Keyes Creek:	
Approximately 500 feet upstream of Prairie Road	*2861
Approximately 1,500 feet upstream of Prairie Road	*2895

Maps are available for review at the Wheeler County Courthouse, Fourth and Adams Streets, Fossil, Oregon.

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of Flooding and Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Send comments to Judge Albert Lee Hoover, Wheeler County Courthouse, Fourth and Adams Streets, Fossil, Oregon 97830.	
PENNSYLVANIA	
Albion (borough), Erie County	
East Branch Conneaut Creek:	
At downstream corporate limits	*642
At upstream corporate limits	*855
South Branch Conneaut Creek:	
At confluence with East Branch Conneaut Creek	*847
At upstream corporate limits	*960
Maps available for inspection at the Albion Borough Office, 15 Franklin Street, Albion, Pennsylvania.	
Send comments to The Honorable Paul First, President of the Albion Borough Council, Erie County, 62, Market Street, Albion, Pennsylvania 16401.	
Amwell (township), Washington County	
Tenmile Creek:	
Confluence of Little Tenmile Creek	*898
Upstream corporate limits	*958
Little Tenmile Creek:	
Approximately 1,200 feet downstream from L.R. 62194	*981
Approximately 2.8 miles upstream of upstream crossing of L.R. 62194	*1,015
Montgomery Run:	
Confluence with Tenmile Creek	*931
Approximately 1,500 feet upstream of Interstate Route 79	*992
Confluence with Little Tenmile Creek	*963
Approximately 7 mile upstream of T-726	*1,122
Maps available for inspection at the Amwell Township Building, Amwell, Pennsylvania.	
Send comments to The Honorable John H. Redd, Chairman of the Township of Amwell Board of Supervisors, Washington County, R.D. #8, Box 2, Washington, Pennsylvania 15301.	
Apolacon (township), Susquehanna County	
Apalachin Creek:	
Approximately 380 feet downstream of the downstream corporate limits	*1,056
Approximately .96 mile upstream of the upstream corporate limits	*1,116
Cork Hill Creek:	
At confluence with Apalachin Creek	*1,100
Approximately 0.2 mile upstream of L.R. 57084	*1,149
Maps available for inspection at the Municipal Building, Apolacon, Pennsylvania.	
Send comments to The Honorable Don Kannenberg, Chairman of the Township of Apolacon Board of Supervisors, Susquehanna County, R.D. 1, Little Meadows, Pennsylvania 18830.	
Beccaria (township), Clearfield County	
Clearfield Creek:	
Approximately 1,500 feet downstream of Irvona corporate limits	*1,368
Approximately 500 feet upstream of State Route 3008	*1,389
Muddy Run:	
Approximately 1,400 feet downstream of railroad	*1,366
Approximately 500 feet upstream of T-536	*1,381
Maps available for inspection at the Municipal Building, Utahville, Pennsylvania.	
Send comments to The Honorable William Oshall, Chairman of the Township of Beccaria Board of Supervisors, Clearfield County, R.D. #*, Box 51 Fallentimber, Pennsylvania 16639.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of Flooding and Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Benner (township), Centre County	
Spring Creek:	
At downstream corporate limits	*757
Approximately 1,300 feet upstream of Fish Hatchery Road	*832
Maps available for inspection at the Township Building, R.D. 4, Box 128-B, Bellefonte, Pennsylvania 16823.	
Send comments to The Honorable R. Gordon Cain, Chairman of the Township of Benner Board of Supervisors, Centre County, R.D. 1, Box 389, Bellefonte, Pennsylvania 16823.	
Boggs (township), Centre County	
Bald Eagle Creek:	
Approximately 360 feet downstream of Interstate Route 80 (west)	*676
At upstream corporate limits	*725
Wallace Run:	
Approximately 500 feet downstream of CONRAIL	*723
Upstream side of T-398 (Mayes Road)	*848
Approximately 600 feet upstream of L.R. 14009	*901
Little Marsh Creek:	
Downstream side of L.R. 14009	*1,101
Approximately 1,500 feet upstream of T-445	*1,129
Maps available for inspection at the Boggs Township Municipal Building, Route 144, Runville, Pennsylvania.	
Send comments to The Honorable William Griffith, Chairman of the Township of Boggs Board of Supervisors, Centre County, R.D. 3, Bellefonte, Pennsylvania 16823.	
Briar Creek (township), Columbia County	
East Branch Briar Creek:	
Approximately 540 feet downstream of the downstream corporate limits	*510
Approximately 180 feet upstream of the confluence of Glen Brook	*544
Glen Brook:	
At confluence with East Branch Briar Creek	*543
Approximately 240 feet upstream of T-746	*665
Maps available for inspection at Kepner & Kepner, Third and Pine Street, Berwick Pennsylvania.	
Send comments to The Honorable Robert L. Phillips, Supervisor of the Township of Briar Creek, Columbia County, 200 W. Second Street, Berwick, Pennsylvania 18603.	
Burnside (borough), Clearfield County	
West Branch Susquehanna River:	
150 feet downstream of the downstream corporate limits	*1,313
At upstream corporate limits	*1,333
Maps available for inspection at the Borough Secretary's Office, Burnside, Pennsylvania.	
Send comments to The Honorable Alice Gregg, President of the Borough of Burnside Council, Clearfield County, General Delivery, Burnside, Pennsylvania 15721.	
Carbon (township), Huntingdon County	
Shoup Run:	
Approximately 0.4 mile downstream of confluence of Sugarcamp Run	*956
Approximately 0.4 mile upstream of confluence of Sugarcamp Run	*1,028
At downstream corporate limits of Borough of Coalmont	*1,069
At upstream corporate limits of Borough of Coalmont	*1,076
Sugarcamp Run:	
At confluence with Shoup Run	*890
Approximately 550 feet upstream of State Route 913	*1,041

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of Flooding and Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at Penny Brode's residence, R.D. #1, Box 222-C, Saxton, Pennsylvania.	
Send comments to The Honorable James Brennan, Chairman of the Township of Carbon Board of Supervisors, Huntingdon County, Dudley, Pennsylvania 16634.	
Center (township), Butler County	
Connoquenessing Creek:	
At most downstream corporate limits	*614
At upstream corporate limits	*633
Maps available for inspection at the Municipal Building, 419 Sunset Drive, Butler, Pennsylvania.	
Send comments to The Honorable L. Gary Faust, Chairman of the Township of Center Board of Supervisors, Butler County, 419 Sunset Drive, Butler, Pennsylvania 16001.	
Choconut (township), Susquehanna County	
Choconut Creek:	
At downstream corporate limits	*1,044
At upstream side of State Route 289	*1,120
Approximately 530 feet upstream from State Route 267	*1,271
Maps available for inspection at the Choconut Municipal Building, Choconut, Pennsylvania.	
Send comments to The Honorable Herbert Traver, Chairman of the Township of Choconut, Susquehanna County R.D. 1, Friendsville, Pennsylvania 18818.	
Coalport (borough), Clearfield County	
Clearfield Creek:	
At downstream corporate limits	*1,382
At upstream corporate limits	*1,387
Maps available for inspection at the Borough Building, Hill & Main Streets, Coalport, Pennsylvania.	
Send comments to The Honorable Paul W. Winslow, Secretary of the Borough of Coalport, Clearfield County, P.O. Box 16, Coalport, Pennsylvania 16627.	
College (township), Centre County	
Spring Creek:	
At downstream corporate limits	*928
Approximately 100 feet upstream of upstream corporate limits	*1,054
Maps available for inspection at the College Township Municipal Building, 1481 East College Avenue, State College, Pennsylvania.	
Send comments to The Honorable Fred Smith, Chairman of the Township of College Council, Centre County, 1225 Edward Street, State College, Pennsylvania 16801.	
Cranesvill (borough), Erie County	
Temple Creek:	
At downstream corporate limits	*869
At upstream corporate limits	*891
Crane Creek:	
At downstream corporate limits	*878
At upstream corporate limits	*1,013
Maps available for inspection at the Cranesville Borough Office, Cranesville, Pennsylvania, Monday, Tuesday, and Thursday.	
Send comments to The Honorable Ed Jones, President of the Cranesville Borough Council, Erie County, 10133 Thrasher Road, Cranesville, Pennsylvania 16410.	
Curtin (township), Centre County	
Beech Creek:	
Approximately 1,900 feet downstream of T-489	*844
Approximately 1,900 feet upstream of T-489	*862

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of Flooding and Location	#Depth in feet above ground. ^Elevation in feet (NGVD)
Marsh Creek:	
At corporate limits	*719
At L.R. 14012	*756
Maps available for inspection at The Township Secretary's residence, Box 221, R.D. 1, Howard, Pennsylvania.	
Send comments to The Honorable Kenneth Weaver, Chairman of the Township of Curtin Board of Supervisors, Centre County, R.D. 1, Box 231A, Howard, Pennsylvania 16841.	
Curwensville (borough), Clearfield County	
Anderson Creek:	
At 1st crossing of CSX Transportation	*1,137
At upstream corporate limits	*1,171
Maps available for inspection at the Borough Building, 900 Susquehanna Avenue, Curwensville, Pennsylvania.	
Send comments to The Honorable William Bennett, Mayor of the Borough of Curwensville, Clearfield County, 900 Susquehanna Avenue, Curwensville, Pennsylvania 16833.	
Dean (township), Cambria County	
Clearfield Creek:	
Approximately 300 feet downstream of L.R. 11088	*1,503
Approximately 1,000 feet upstream of L.R. 11088	*1,507
Laurel Run:	
Approximately 360 feet downstream of T-719	*1,567
Approximately 300 feet upstream of State Route 53	*1,590
Maps available for inspection at the Dean Township Building, Dean, Pennsylvania.	
Send comments to The Honorable William H. Naylor, Chairman of the Township of Dean Board of Supervisors, Cambria County, Box 2, Dysart, Pennsylvania 16636.	
East Providence (township), Bedford County	
Raystown Branch Juniata River:	
Approximately .7 mile upstream of downstream corporate limits	*956
At upstream corporate limits	*960
Brush Creek:	
Approximately 6.1 miles upstream of confluence with Shaffer Creek	*1,132
At upstream corporate limits	*1,146
Maps available for inspection at the Breezewood Fire Hall, Breezewood, Pennsylvania.	
Send comments to The Honorable Dale Mearkle, Chairman of the Township of East Providence Board of Supervisors, Bedford County, R.D. #1, Breezewood, Pennsylvania 15533.	
East St. Clair (township), Bedford County	
Dunning Creek:	
At downstream corporate limits	*1,079
Approximately 250 feet upstream of the upstream corporate limits	*1,137
Adams Run:	
At confluence with Dunning Creek	*1,094
Approximately 800 feet upstream of State Route 56	*1,099
Bobs Creek:	
At confluence with Dunning Creek	*1,103
Approximately 0.7 mile upstream of L.R. 05060	*1,126
Maps available for inspection at the Township Building, in c/o Herbert Graham, Permit Officer, New Paris, Pennsylvania.	
Send comments to The Honorable Simon H. Mock, Chairman of the Township of East St. Clair Board of Supervisors, Bedford County, R.D. #1, Schellsburg, Pennsylvania 15559.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of Flooding and Location	#Depth in feet above ground. ^Elevation in feet (NGVD)
Elder (township), Cambria County	
Chest Creek:	
Downstream corporate limits	*1,732
Upstream corporate limits	*1,734
Brubaker Run:	
Approximately 1,800 feet downstream of L.R. 11089 crossing	*1,680
Approximately 150 feet above upstream corporate limits	*1,706
Maps available for inspection at the Township Building, Elder, Pennsylvania, in c/o Ms. Robin Quist.	
Send comments to The Honorable Carl Quist, Chairman of the Township of Elder Board of Supervisors, Cambria County, R.D. 1, Box 121, Hastings, Pennsylvania 16646.	
Elk Creek (township), Erie County	
Temple Creek:	
At downstream corporate limits	*891
Approximately 1.6 miles upstream of corporate limits	*957
Maps available for inspection at the Tonwship Municipal Building, 10405 High Street, Wellington, Pennsylvania.	
Send comments to The Honorable Laurin E. Hill, Chairman of the Township of Elk Creek Board of Supervisors, Erie County, 9980 Miller Road, Cranesville, Pennsylvania 16410.	
Ferguson (township), Centre County	
Slab Cabin Run:	
Approximately 20 feet downstream of State Routes 26 and 45	*1,147
Upstream side of Sycamore Street	*1,194
Approximately 40 feet upstream of upstream State Routes 26 and 45	*1,293
Maps available for inspection at the Township Municipal Building, 3147 Research Drive, State College, Pennsylvania.	
Send comments to The Honorable Mark Kunkle, Manager of the Township of Ferguson, Centre County, 3147 Research Drive, State College, Pennsylvania 16804.	
Fishing Creek (township), Columbia County	
Fishing Creek:	
Approximately 500 feet downstream of downstream corporate limits	*607
Upstream side of L.R. 19067	*662
At upstream corporate limits	*723
Huntington Creek:	
At confluence with fishing Creek	*625
Approximately 560 feet upsteam of Mill Dam	*697
Maps available for inspection at the Township Building, Route 47, Stillwater, Pennsylvania.	
Send comments to The Honorable William W. Beishline, Chairman of the Township of Fishing Creek Board of Supervisors, Columbia County, R.D. #1, Box 262, Stillwater, Pennsylvania 17878.	
Forward (township), Butler County	
Connoquenessing Creek:	
At downstream corporate limits	*921
At upstream corporate limits	*969
Breakneck Creek:	
At downstream corporate limits	*946
At upstream corporate limits	*959
Maps available for inspection at the Township Municipal Building, R.D. #2, Box 242 A, Ash Stop Road, Evans City, Pennsylvania.	
Send comments to The Honorable James L. Barkley, Chairman of the Township of Forward, Butler County, R.D. #4, Box 169, Evans City, Pennsylvania 16033.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of Flooding and Location	#Depth in feet above ground. ^Elevation in feet (NGVD)
Grampian (borough), Clearfield County	
Kratzer Run Creek:	
At downstream corporate limits	*1,528
At upstream corporate limits	*1,536
Maps available for inspection at the Borough Secretary's residence, P.O. Box 57, Grampian, Pennsylvania.	
Send comments to The Honorable John Shaffer, President of the Borough of Grampian Council, Clearfield County, Grampian, Pennsylvania 16838.	
Harris (township), Centre County	
Spring Creek:	
At downstream corporate limits	*1,054
Approximately 1,820 feet upstream of confluence of Galbraith Gap Run	*1,156
Galbraith Gap Run:	
At confluence with Spring Creek	*1,145
Approximately 1,850 feet upstream of U.S. Route 322	*1,192
Maps available for inspection at the Harris Township Municipal Building, 224 E. Main Street, Boalsburg, Pennsylvania.	
Send comments to The Honorable Donald Johnson, Chairman of the Township of Harris Board of Supervisors, Centre County, P.O. Box 120, Boalsburg, Pennsylvania 16827.	
Harrison (township), Bedford County	
Raystown Branch Juniata River:	
Upstream of the downstream corporate limits	*1,113
Upstream crossing of U.S. Route 70/76	*1,129
Upstream of State Highway 96	*1,145
Upstream of T-418	*1,165
Approximately 0.37 mile upstream of T-418	*1,170
Buffalo Run:	
At the confluence with Raystown Branch Juniata River	*1,131
Approximately 0.2 mile downstream of Church Street (L.R. 05019)	*1,304
Upstream of Church Street (L.R. 05019)	*1,320
Maps available for inspection at the Community Building, Manns Choice, Pennsylvania.	
Send comments to The Honorable H. William Garland, Chairman of the Township of Harrison Board of Supervisors, Bedford County, R.D. #1, Buffalo Mills, Pennsylvania 15534.	
Hopewell (borough), Bedford County	
Raystown Branch Juniata River:	
Approximately 800 feet downstream of State Route 915	*872
Approximately 325 feet upstream of confluence of Sandy Run	*881
Maps available for inspection at the residence of Jeanne Hall, Broad Street, Hopewell, Pennsylvania.	
Send comments to The Honorable LeJay Reed, Council President of the Borough of Hopewell, Bedford County, Hopewell, Pennsylvania 16650.	
Huston (township), Centre County	
Bald Eagle Creek:	
Approximately 0.5 mile downstream of Township Route 568	*834
Approximately 2,400 feet upstream of Township Route 568	*847
Laurel Run:	
At confluence with Bald Eagle Creek	*840
Approximately 575 feet upstream of U.S. Route 220	*861
Maps available for inspection at the residence of Carol E. Alexander, along Route 220 in Julian, across from Post Office.	

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 Neal Proctor, Chairman of the Township of Huston Board of Supervisors, Centre County, General Delivery, Julian, Pennsylvania 16844.	
Jackson (township), Butler County	
Conoquenessing Creek:	
At downstream corporate limits	*899
At upstream corporate limits	*921
Little Connoquenessing Creek:	
At confluence with Connoquenessing Creek	*912
At upstream corporate limits	*931
Breakneck Creek:	
At confluence with Connoquenessing Creek	*914
Approximately .1 mile upstream of corporate limits	*918
Scholars Run:	
At confluence with Connoquenessing Creek	*906
At upstream corporate limits	*942
Maps available for inspection at the Township Secretary's Office, Box 69, Zelienople, Pennsylvania.	
Send comments to The Honorable William Tomlinson, Chairman of the Township of Jackson Board of Supervisors, Butler County, R.D. #2, Zelienople, Pennsylvania 16063.	
Liberty (township), Centre County	
Beech Creek:	
Approximately 50 feet downstream side of State Route 150	*605
Approximately 1.7 miles upstream side of State Route 364	*691
Marsh Creek:	
Approximately 40 feet downstream side of State Route 150	*605
At upstream corporate limits	*719
Maps available for inspection at the Township Building, P.O. Box 192, Route 50, Blanchard, Pennsylvania.	
Send comments to The Honorable Margaret Thomas, Chairman of the Township of Liberty Board of Supervisors, Centre County, P.O. Box 192, Blanchard, Pennsylvania 16826.	
Little Meadows (borough), Susquehanna County	
Apalachin Creek:	
Downstream corporate limits	*1,012
Upstream corporate limits	*1,069
Maps available for inspection at the Community Hall, Little Meadows, Pennsylvania.	
Send comments to The Honorable William Gow, President of the Borough Council, of Little Meadows, Susquehanna County, R.D. 1, Box 32, Little Meadows, Pennsylvania 18830.	
Londonderry (township), Bedford County	
Wills Creek:	
At downstream corporate limits	*731
Approximately 75 feet upstream of upstream corporate limits	*1,136
Little Wills Creek:	
At confluence with Wills Creek	*933
Approximately 200 feet upstream of the upstream corporate limits	*1,216
Maps available for inspection at the Township Building, Route 96, Hyndman, Pennsylvania.	
Send comments to The Honorable John K. Kennell, Chairman of the Township of Londonderry Board of Supervisors, Bedford County, R.D. #1, Hyndman, Pennsylvania 15545.	
Mahaffey (borough), Clearfield County	
Chest Creek:	
At confluence with West Branch Susquehanna River	*1,271
At downstream corporate limits	*1,274

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of Flooding and Location	#Depth in feet above ground. *Elevation in feet (NGVD)
West Branch Susquehanna River:	
Approximately 300 feet downstream of CONRAIL	*1,266
Approximately 1,500 feet upstream of confluence with Chest Creek	*1,272
Maps available for inspection at the Mahaffey Ambulance Building, Mahaffey, Pennsylvania.	
Send comments to The Honorable John M. Bakaysa, President of the Borough of Mahaffey Council, Clearfield County, Mahaffey, Pennsylvania 15757.	
Marianna (borough), Washington County	
Tenmile Creek:	
Upstream side of Jefferson Avenue	*877
Approximately .04 mile upstream of Shielder Road	*896
Maps available for inspection at the Borough Building, Marianna, Pennsylvania.	
Send comments to The Honorable David A. Knizer, President of the Borough of Marianna Council, Washington County, P.O. Box 416, Marianna, Pennsylvania 15345.	
Millheim (borough), Centre County	
Elk Creek:	
At L.R. 873	*1,076
Approxmately .3 mile upstream of Park Street	*1,140
Maps available for inspection at the Municipal Building, Oak Grove Road, Morrisdale, Pennsylvania.	
Send comments to The Honorable Wayne Smith, President of the Borough of Millheim Council, Centre County, North Street, Millheim, Pennsylvania 16854.	
Morris (township), Clearfield County	
Moshannon Creek:	
CONRAIL bridge	*1,411
Upstream corporate limits	*1,421
Maps available for inspection at 214 East Main Street, Millheim, Pennsylvania.	
Send comments to The Honorable Willard Verbeck, Supervisor of the Township of Morris, Clearfield County, P.O. Box 256, Morrisdale, Pennsylvania 16858.	
New Milford (borough), Susquehanna County	
Salt Lick Creek:	
Approximately 600 feet downstream from downstream corporate limits	*1,060
Upstream corporate limits	*1,168
Maps available for inspection at the Borough Building, New Milford, Pennsylvania.	
Send comments to The Honorable Richard Airey, New Milford Borough Council Member, Susquehanna County, 33 Johnston Street, New Milford, Pennsylvania 18334.	
North Franklin (township), Washington County	
Chartiers Creek:	
At downstream corporate limits	*1,030
At upstream corporate limits	*1,047
Maps available for inspection at the Township Building, 620 Franklin Farms Road, Washington, Pennsylvania.	
Send comments to The Honorable Frank Blumer, Chairman of the Township of North Franklin Board of Supervisors, Washington County, 620 Franklin Farms Road, Washington, Pennsylvania 15301.	
Penn (township), Clearfield County	
Kratzer Run:	
Approximately 0.5 mile downstream of T.R. 472	*1,454
Approximately 0.9 mile upstream of T.R. 472	*1,526

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of Flooding and Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 300 feet upstream of U.S. Route 219	*1,554
Maps available for inspection at the Township Secretary's residence, R.D. #1, Box 492, Grampian, Pennsylvania.	
Send comments to The Honorable Nancy Wrigleswortth, Secretary for the Township of Penn, Clearfield County, R.D. 1, Box 492, Grampian, Pennsylvania 16858.	
Snow Shoe (township), Centre County	
North Fork Beech Creek:	
Approximately .5 mile downstream of L.R. 14003	*1,382
Approximately 1,000 feet upstream of confluence of Cherry Run	*1,403
Piney Run	
At confluence with North Fork Beech Creek	*1,382
Approximately 2,075 feet upstream of No. Ten Road	*1,428
Little Sandy Run:	
At confluence with North Fork Beech Creek	*1,392
Approximately 975 feet upstream of L.R. 14003	*1,396
Maps Available for inspection at Box 65, Clarence, Pennsylvania.	
Send comments to The Honorable Joseph Cingle, Chairman of the Township of Snow Shoe Board of Supervisors, Centre County, Clarence, Pennsylvania 16829.	
South Franklin (township), Washington County	
Chartiers Creek:	
At downstream corporate limits	*1,047
At State Route 18	*1,129
Tenmile Creek:	
Approximately 230 feet downstream of downstream corporate limits	*1,025
Approximately 1.6 miles upstream of Cracraft Road bridge	*1,154
Maps Available for inspection at the Township Office, 100 Jolly School Road, Washington, Pennsylvania.	
Send comments to The Honorable John Poland, Chairman of the Township of South Franklin Board of Supervisors, Washington County, 97 Lagonda Road, Washington, Pennsylvania 15301.	
Sugarloaf (township), Columbia County	
Fishing Creek:	
Approximately 0.2 mile downstream of T-714	*928
Approximately 900 feet upstream of T-714	*940
East Branch Fishing Creek:	
Approximately 1 mile downstream of T-720	*1,010
At upstream County boundary	*1,088
West Branch Fishing Creek:	
Approximately 700 feet downstream of most downstream crossing of State Route 116	*1,006
Approximately 800 feet upstream of second upstream crossing of State Route 16	*1,064
Approximately 0.4 mile downstream of 3rd upstream crossing of State Route 16	*1,110
At upstream corporate limits	*1,179
Maps Available for inspection at the Township Office, R.D. 2, Box 122, Benton, Pennsylvania.	
Send comments to The Honorable Jesse E. Fritz, Chairman of the Township of Sugarloaf Board of Supervisors, Columbia County, R.D. #3, Benton, Pennsylvania 17839.	
Union (township), Centre County	
Bald Eagle Creek:	
At corporate limits	*725
Approximately 1.6 miles upstream of most upstream Borough of Unionville—Township of Union corporate limits	*799
Maps Available for inspection at the Township Secretary's residence, R.D. 1, Box 393, Julian, 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 Ernest A. Ammerman, Chairman of the Township of Union Board of Supervisors, Centre County, P.O. Box 223, Julian, Pennsylvania 16844.	
Walker (township), Centre County	
Little Fishing Creek:	
At corporate limits	*842
Approximately 400 feet upstream of L.R. 14027	*1,114
Roaring Run:	
At confluence with Little Fishing Creek	*851
Approximately 1,040 feet upstream of State Route 64	*890
Maps Available for inspection at the Walker Township Building, R.D. 2, Box 247 V, Bellefonte, Pennsylvania.	
Send comments to The Honorable Barry Kerstetter, Chairman of the Township of Walker Board of Supervisors, Centre County, R.D. 2, Bellefonte, Pennsylvania 16823.	
West Brunswick (township), Schuylkill County	
Little Schuylkill River:	
Approximately .8 mile downstream of State Route 61	*430
At upstream corporate limits	*489
Pine Creek:	
At CONRAIL crossing	*453
At upstream corporate limits	*523
Schuylkill River:	
At downstream corporate limits	*393
Approximately 3.2 miles upstream of State Route 61	*437
Maps Available for inspection at the West Brunswick Township Municipal Building, 1363 R.D. 1, Orwigsburg, Pennsylvania 17961	
Send comments to The Honorable Sam Boyer, Chairman of the Township of West Brunswick, Schuylkill County, Municipal Building, Box 1363, R.D. 1, Orwigsburg, Pennsylvania 17961	
West Providence (township), Bedford County	
Raystown Branch Juniata River:	
Approximately 400 feet downstream of Ritchey Bridge	*928
Approximately 9.3 miles upstream of L.R. 05089	*1,001
Maps available for inspection at the West Providence Township Office, East 5th Avenue, Everett, Pennsylvania 15537.	
Send comments to The Honorable Donald E. Wilt, Chairman of the Township of West Providence Board of Supervisors, Bedford County, R.D. #A4, Box 100, Everett, Pennsylvania 15537	
West St. Clair (township), Bedford County	
Dunning Creek:	
Approximately 900 feet downstream of downstream corporate limits	*1,136
Upstream side of Covered Bridge	*1,144
Approximately 250 feet upstream of T-569	*1,155
Upstream side of T-506	*1,167
Upstream side of T-565	*1,175
Barefoot Run:	
Approximately 225 feet upstream of confluence with Dunning Creek	*1,142
Approximately 450 feet upstream of State Route 56	*1,159
Approximately 110 feet upstream of State Route 96	*1,214
Upstream side of Hench Street	*1,222
Approximately 65 feet upstream of Main Street	*1,234
Approximately 0.36 mile upstream of Main Street	*1,254
Maps available for inspection at the Township Building, Route 56, West of Pleasantville, Alum Bank, 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 Lehman, Chairman of the Township of West St. Clair, Bedford County, R.D. #1, Box 6, New Paris, Pennsylvania 15554.	
SOUTH DAKOTA	
Watertown (city), Codington County	
Roby Creek:	
Approximately 425 feet upstream of 3rd Avenue North	*1735
Approximately 95 feet downstream of 7th Avenue North	*1739
Approximately 760 feet upstream of 9th Avenue North	*1744
Big Sioux River:	
Approximately 75 feet upstream of 20th Avenue	*1712
Approximately 150 feet upstream of Kemp Avenue	*1717
Approximately 1500 feet upstream of 10th Avenue North	*1719
Maps available for review at the Office of the Building Inspector, 23 Second Street N.E., Watertown, South Dakota.	
Send comments to The Honorable Herb B. Jenson, Major, City of Watertown, P.O. Box 910, 23 Second Street N.E., Watertown, South Dakota 57201.	
VERMONT	
Plymouth (town), Windsor County	
Black River:	
At downstream corporate limits	*1,065
Approximately 425 feet upstream of Plack Pond Dam	*1,334
Maps available for inspection at the Town Hall, Plymouth, Vermont.	
Send comments to The Honorable John Sailer, Chairman of the Town of Plymouth Board of Selectmen, Windsor County, P.O. Box 39, Plymouth, Vermont 05056.	
Winhall (town), Bennington County	
Winhall River:	
At downstream corporate limits	*1,250
Approximately 100 feet upstream of Dirt Road	*1,358
Maps available for inspection at Town Clerk's Office and Zoning Administrator's Office, Winhall, Vermont.	
Send comments to The Honorable Alexander D. Reed, Chairman of the Town of Winhall Board of Selectmen, Bennington County, Box 40A, Bondville, Vermont 05340.	
VIRGINIA	
Floyd County (unincorporated areas)	
Little River (Lower Reach):	
Approximately 1.0 mile downstream of State Road 787	*1,899
Approximately 1,250 feet upstream of Old Mill Dam	*2,102
Little River (Middle Reach):	
Approximately 1,025 feet downstream of State Road 706	*2,109
Approximately 2,300 feet upstream of State Road 706	*2,113
Little River (Upper Reach):	
Approximately 0.67 mile downstream of U.S. Route 221	*2,240
Approximately 0.64 mile upstream of U.S. Route 221	*2,250
Dodd Creek (Lower Reach):	
Approximately 200 feet upstream of confluence with West Fork Little River	*2,174
Approximately 1,700 feet upstream of State Highway 8	*2,195
Dodd Creek (Upper Reach):	
Approximately 600 feet downstream of U.S. Route 221	*2,246
At State Road 720	*2,261

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of Flooding and Location	#Depth in feet above ground. *Elevation in feet (NGVD)
West Fork Little River:	
Approximately 0.7 mile downstream of State Highway 8	*2,167
Approximately 0.8 mile upstream of State Highway 8	*2,184
Pine Creek:	
Approximately 1,440 feet downstream of U.S Route 221	*2,258
Approximately 800 feet upstream of State Road 860	*2,332
Meadow Run:	
Approximately 1,450 feet downstream of State Road 642	*2,468
Approximately 1,050 feet upstream of U.S. Route 221	*2,520
Maps available for inspection at the County Administrator's Office, Courthouse Complex, Floyd, Virginia.	
Send comments to The Honorable Ronald E. Arno, Floyd County Administrator, P.O. Box 218, Floyd, Virginia 24091.	
Grayson County (unincorporated areas)	
New River:	
Approximately 2.0 miles upstream of town of Fries corporate limits	*2,209
At confluence of John Creek	*2,274
Upstream side of U.S. Routes 21 and 221	*2,342
Downstream side of State Route 601	*2,420
Approximately 1.0 mile upstream of State Route 93	*2,461
Wilson Creek:	
At confluence with New River	*2,461
At upstream side of State Route 721	*2,520
Approximately 100 feet upstream of U.S. Route 58 and State Route 16	*2,585
Approximately 100 feet upstream of U.S. Route 58	*2,660
Approximately 1.0 mile upstream of U.S. Route 58	*2,730
Approximately 0.5 mile downstream of State Route 743	*2,879
Approximately 1,600 feet upstream of State Route 743	*2,952
Elk Creek:	
Approximately 300 feet upstream of confluence of Shop Branch	*2,529
Approximately 100 feet upstream of State Route 665	*2,548
Chestnut Creek:	
Approximately 200 feet downstream of County boundary	*2,365
Approximately 100 feet upstream of upstream bridge	*2,386
Maps available for inspection at the County Administrator's Office, Independence, Virginia.	
Send comments to The Honorable Donald G. Young, County Administrator of the County of Grayson, P.O. Box 217, Independence, Virginia 24348.	
New Castle (town), Craig County	
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.	
Send comments to The Honorable Thomas Zimmerman, Mayor of the Town of New Castle, Craig County, New Castle, Virginia 24127.	
Northumberland County (unincorporated areas)	
Potamic River:	
Shoreline at Wrights Cove	*6
Shoreline at Bamboo Island	*9
Chesapeak Bay:	
Shoreline at confluence of Great Wicomico River and Blackwells Creek	*6

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of Flooding and Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Shoreline at southwest side of Taskmakers Creek	*7
Shoreline at southwest side of the mouth of Indian Creek	*10
Maps available for inspection at the Building and Zoning Department, County Courthouse, Heathsville, Virginia.	
Send comments to The Honorable John E. Burton, Northumberland County Administrator, County Courthouse, Heathsville, Virginia 22473.	
WISCONSIN	
Sussex (village), Waukesha County	
Pewaukee River:	
About 500 feet downstream of Sussex Dam	*890
About 1500 feet upstream of Sussex Dam	*894
Sussex Creek:	
About 1400 feet downstream of Clover Drive	*886
Just downstream of Old Mill Lane	*923
Just upstream of Old Mill Lane	*931
Just downstream of Chicago and North Western Railroad	*939
East Branch Sussex Creek:	
At mouth	*897
About 100 feet downstream of Chicago and Northwestern Railroad	*907
Just upstream of Chicago and Northwestern Railroad	*912
Just downstream of Waukesha County Trail	*915
South Branch Sussex Creek:	
At mouth	*938
Just downstream of Main Street	*939
Willow Springs Creek:	
About 1300 feet downstream of Good Hope Road	*913
About 700 feet upstream of Soo Line Railroad	*940
Maps available for inspection at the Village Hall, N63W23626 Silver Spring Drive, Sussex, Wisconsin. Send comments to The Honorable John Tews, Village President, Village of Sussex, Village Hall, N63W23626 Silver Spring Drive, Sussex, Wisconsin 53087.	
WYOMING	
Mountain View (town), Uinta County	
Smiths Fork River:	
Approximately 1,030 feet downstream of Riverbend Drive	*6764
Approximately 835 feet downstream of State Highway 414	*6793
Approximately 1,320 feet upstream of State Highway 414	*6813
Approximately 300 feet northwest of the intersection of Riverbend Drive and Smiths Fork River	*2
Maps are available for inspection at the Town Hall, Town of Mountain View, 405 Highway 414, Mountain View, Wyoming.	
Send comments to The Honorable Steven W. Stucki, Mayor, Town of Mountain View, Box 249, 405 Highway 414, Mountain View, Wyoming, 82939.	

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 (NGVD)	
				Existing	Modified
Alabama	City of Daleville, Dale County	Claybank Creek	About 1.5 miles downstream of Tar Hill Road	None	*155
			About 1200 feet upstream from confluence of Cowpen Creek.	None	*167
		Choctawatchee River	About 1.8 miles downstream of the confluence of Dilly Branch Creek.	None	*156
			About 1050 feet upstream of confluence of Dilly Branch Creek.	None	*161
Maps available for inspection at the City Hall, Daleville, Alabama.					
Send comments to The Honorable Gene Hudges, Mayor, City of Daleville, City Hall, P.O. Box 188, Daleville, Alabama 36322.					
California	City of Palo Alto, Santa Clara County.	Matadero Creek	Chestnut Avenue between Birch Street and Ash Street	#1	*30
		San Francisco Bay	At Palo Alto Municipal Airport	*7	*8
Maps are available for review at City Hall, Public Works Department, 250 Hamilton Avenue, Palo Alto, California.					
Send comments to The Honorable Jack Sutorius, Mayor, City Hall, 250 Hamilton Avenue, Palo Alto, California 94301.					
Florida	City of Jacksonville Duval County.	Little Cedar Creek	At mouth	None	*6
			Just downsteam of South Access Road	None	*20
		Cedar Swamp Creek	At Mouth	*5	*9
			Just downstream of Beach Boulevard	None	*32
		Big Davis Creek	At Mouth	None	*6
			About 1.2 miles upstream of U.S. Route 1	None	*19
		Dunn Creek	At mouth	*7	*6
			Just upstream of Bernard Road	None	*22
		Dunn Creek Tributary 1	At mouth	None	*6
			Just upstream of Starrat Road	None	*19
		Dunn Creek Tributary 2	At mouth	None	*13
			About 0.3 mile upstream of Webb Road	None	*23
		Ginhouse Creek	At mouth	None	*6
			Just upstream of Lawson Road	None	*36
		Cedar River	At mouth	*6	*6
			Just upstream of Pickettville Road	None	*22
		Trout River	At mouth	*7D	*6
			Just downstream of Norfolk Southern Railway	None	*19
		Thomas Creek	Just upstream of confluence of Seaton Creek	*11	*5
			Just downstream of Acree Road	None	*21
		Ribalt River	Just upstream of Lem Turner Road	*7	*6
			Just upstream of Pickettville Road	*9	*9
		Ortega River	At mouth	*6	*6
			At confluence of Airport Tributary	*49	*49
		Cedar Creek	Just upstream of Main Street	None	*6

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/Town/County	Source of Flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			Just upstream of Interstate 295	None	*10
		Durbin Creek	At mouth	*6	*4
			About 5.9 miles upstream of mouth	*6	*11
		Goodbys Creek	At mouth	*6	*5
			Just upstream of Praver Drive	*18	*18
		Goodbys Creek Tributary 1	At mouth	*6	*5
			Just downstream of Sunbeam Road	*23	*23
		Goodbys Creek Tributary 2	At mouth	*6	*5
			Just upstream of Craven Road	*18	*18
		Goodbys Creek Tributary 3	At mouth	*6	*5
			Just upstream of Old Kings Road	*15	*15
		Jones Creek	At mouth	*6	*6
			About 1650 feet upstream of Byrnes Road	None	*39
		Jones Creek Tributary	At mouth	None	*19
			Just upstream of Brookview Drive	None	*38
		Greenfield Creek	About 3.2 miles downstream of Atlantic Boulevard	*7	*7
			About 0.5 mile upstream of Atlantic Boulevard	None	*14
		Julington Creek	At mouth	*6	*4
			Just downstream of Phillips Highway	*14	*16
		McCoys Creek	At mouth	*6	*6
			Just upstream of Commonwealth Avenue	*21	*21
		North Branch McCoys Creek	At mouth	*17	*17
			Just upstream of Live Oak Avenue	*19	*19
		Southwest Branch McCoys Creek	At mouth	*12	*12
			Just upstream of McDuff Avenue	*18	*18
		Mt. Pleasant Creek	Just downstream of Mt. Pleasant Road	*6	*7
			About 1.0 mile upstream of confluence of Tiger Pond Creek.	None	*19
		Oldfield Creek	At mouth	*6	*4
			Just upstream of Old St. Augustine Road	None	*29
		Oldfield Creek Tributary	At mouth	*11	*11
			About 0.3 mile upstream of Greenland Road	None	*21
		Open Creek	Just downstream of San Pablo Road	None	*5
			Just downstream of Beach Boulevard	None	*25
		Open Creek Tributary 1	At mouth	None	*7
			About 0.78 mile above mouth	None	*11
		Open Creek Tribuary 2	At mouth	None	*11
			About 0.69 mil above mouth	None	*22
		Pablo Creek	About 1.4 miles downstream of Box Branch	*4	*5
			At confluence with Sawmill Slough	*22	*19
		Sawmill Slough	At confluence of Mill Dam Branch	*22	*19
			Just downstream of Central Parkway	*38	*35
		Sawmill Slough Divergence Channel.	At confluence with Sawmill Slough	*24	*22
			At divergence from Sawmill Slough	*30	*29
		Pottsburg Creek	Just downstream of Atlantic Boulevard	*6	*5
			Just downstream of Baymeadows Road	None	*18
		Sherman Creek	Just upstream of Wonderwood Road	None	*7
			About 0.8 mil upstream of C Street	None	*8
		Sherman Creek Canal	At mouth	None	*7
			About 1.5 miles upstream of State Road AIA	None	*9
		Sixmile Creek	At mouth	*9	*9
			About 0.5 mile upstream of Lazy J Drive	*61	*61
		North Fork Sixmile Creek	At mouth	*21	*21
			Just upstream of Fish Road West	*67	*67
		Strawberry Creek	At mouth	*6	*5
			Just upstream of Merrill Road	None	*38
		Sweetwater Creek	At mouth	None	*8
			Just upstream of Plumwood Drive	None	*24
		Tiger Pond Creek	At mouth	None	*7
			About 1.15 miles above mouth	None	*19
		Tiger Hole Swamp	At mouth	None	*14
			About 0.75 mile above mouth	None	*20
		Box Branch	At mouth	None	*5
			About 1.88 miles above mouth	None	*11
		Caney Branch	At mouth	None	*6
			About 1.4 miles upstream of New Berlin Road	None	*20
		Cormorant Branch	At mouth	*6	*4
			Just upstream of Loretto Road	*15	*15
		Mill Dam Branch	At mouth	None	*19
			About 1.12 miles upstream of Beach Boulevard	None	*43
		Mill Dam Canal	At mouth	None	*29
			About 700 feet upstream of J. Turner Butler Boulevard	None	*34
		Redbay Branch	At mouth	*7	*5
			About 0.68 mile upstream of Lone Star Road	*22	*23
		Rushing Branch	At mouth	None	*6
			About 1.07 miles upstream of Caney Branch	None	*8

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/Town/County	Source of Flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
		Second Puncheon Branch	At mouth	None	*19
			Just downstream of Anders Boulevard	None	*46
		Willis Branch	At mouth	*6	*6
			Just downstream of Normandy Boulevard	*20	*20
		Nassau River	Along south bank just west of CSX railroad crossing	*12	*5
			East of intersection of Croaker Road and Shellcracker Road.	*14	*14
		Atlantic Ocean/Intracoastal Waterway.	About 1,000 feet east of intersection of Blue Water Drive and Eunice Road.	*5	*5
			About 800 feet east of intersection of Seminole Beach Road and 20th Street.	*15	*21
		St. Johns River	At Confluence of Goodbys Creek	*6	*5
			About 30 feet south of corner of Ranger Street and Bluff Road.	*6	*9
		McGirts Creek	At confluence of Airport Tributary	*49	*49
			Just downstream of Old Plank Road	*71	*71
		Hogpen/Bayou Sandalwood Canal	Just upstream of San Pablo Road	None	*8
			About 450 feet upstream of Old Atlantic Boulevard	*None	*32

Maps available for inspection at the City Hall, 220 East Bay Street, Room 100, Jacksonville, Florida.

Send comments to The Honorable Thomas Hazouri, Mayor, City of Jacksonville, City Hall, 220 East Bay Street, Jacksonville, Florida 32202-3495.

Georgia	City of Cumming, Forsyth County	Kelley Mill Branch	About 2,600 feet downstream of Hickory Knoll Road	*None	*1099
			Just downstream of Hickory Knoll Road	*None	*1115
			Just upstream of Hickory Knoll Road	*None	*1121
			About 1,750 feet upstream of Hickory Knoll Road	*None	*1128

Maps available for inspection at the City Administrator's Office, City Hall, 301 Old Beauford Road, Cumming, Georgia.

Send comments to The Honorable H. Ford Gravitt, Mayor, City of Cumming, City Hall, 301 Old Beauford Road, Cumming, Georgia 30130.

Georgia	City of Thomaston, Upson County.	Drake Branch	At mouth	*None	*652
			Just upstream of North Bethel Street	*None	*670
		Town Branch	About 3,200 feet upstream of Davis Lake Road	*None	*634
			Just upstream of State Route 36	*None	*660
		Bell Creek	About 1,600 feet downstream of U.S. Route 19	*None	*624
			Just upstream of U.S. Route 19	*None	*642
		Potato Creek	About 3,800 feet upstream of Hannahs Mill Road	*None	*648
			About 1,400 feet upstream of U.S. Route 19	*None	*652
		Smokey Hollow Lake	Entire shoreline	*None	*685
		City Reservoir	Entire shoreline	*None	*726

Maps available for inspection at the City Manager's Office, City Hall, Thomaston, Georgia.

Send comments to The Honorable Charles E. Kersey, Mayor, City of Thomaston, P.O. Box 672, Thomaston, Georgia 30286.

Georgia	City of Trenton, Dade County	Town Creek	At mouth	*702	*702
			About 900 feet upstream of Pace Drive	None	*745
		Lookout Creek	About 0.5 mile upstream of confluence of Tributary No. 1.	*698	*698
			Just downstream of State Route 143	*713	*713
		Tributary No. 1	About 0.4 mile downstream of Norfolk Southern Railway.	None	*699
			About 900 feet upstream of Barton Avenue	None	*753

Maps available for inspection at the City Clerk's Office, City Hall, Trenton, Georgia. Send comments to The Honorable Gallagly, Mayor, City of Trenton, P.O. Box 518, Trenton, Georgia 30752.

Kentucky	Unincorporated Areas of Butler County.	Green River	At confluence of Mud River	None	*403
			About 0.2 mile upstream of Lock No. 5	None	*437

Maps available for inspection at the County Fiscal Courtroom, County Courthouse, Morgantown, Kentucky. Send comments to The Honorable David Martin, County Judge/Executive, Butler County, County Courthouse, Morgantown, Kentucky 42261.

Michigan	Township of Ashland, Newaygo County.	Muskegon River	At downstream corporate	None	*622
			At upstream corporate limit	None	*629

Maps available for inspection at the Township Hall, 2019 West 120th Street, Grant, Michigan. Send comments to The Honorable Ray Kemmerling, Supervisor, Township of Ashland, Township Hall, 2019 West 120th Street, Grant, Michigan 49327.

Missouri	City of Florissant, St. Louis County.	Paddock Creek	About 1,500 feet downstream of Lindberg Boulevard	*506	*504
			Just downstream of Parker Road	*527	*526
		Daniel Boone Creek	At mouth	*510	*508
			Just downstream of Loveland Drive	*520	*520
			Just upstream of Loveland Drive	*525	*525
			Just downstream of Shackelford Road	*539	*541
		Fountain Creek	At mouth	*513	*511
			Just downstream of Dunn Road	*542	*545
		Anthony Creek	At mouth	*525	*526

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/Town/County	Source of Flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			About 500 feet upstream of St. Edwards Lane	*544	*546
		Coldwater Creek	About 0.5 mile downstream of Lindberg Boulevard	None	*491
			About 0.7 mile upstream of Charbonier Road	*516	*514
		Lawnview Creek	At mouth	None	*502
			About 1,450 feet upstream of Patterson Road Bridge	None	*511

Maps available for inspection at the City Hall, 955 Rue St. Francois, Florissant, Missouri. Send comments to The Honorable James J. Eagan, Mayor, City of Florissant, City Hall, 955 Rue St. Francois, Missouri 63031.

New York	Greenport, Town Columbia County.	Claverack Creek	At downstream corporate limits	None	*122
			Approximately .5 mile upstream of Webb Road	None	*137
		Hudson River	Approximately 1.8 miles downstream of most upstream corporate limits.	None	*12
			At most upstream corporate limits	None	*12

Maps available for inspection at the Town Hall, Hudson, New York.

Send comments to The Honorable Francis E. Keeler, Supervisor of the Town of Greenport, Columbia County, Town Hall Drive, Hudson, New York 12534.

New York	Hudson, City Columbia County	Hudson River	Entire length within community	None	*12

Maps available for inspection at the City Hall, 520 Warren Street, Hudson, New York.

Send comments to The Honorable Michael Yusko, Jr., Mayor of the City of Hudson, Columbia County, City Hall, 520 Warren Street, Hudson, New York 12534.

Ohio	City of Wooster, Wayne County	Little Apple Creek 1	About 0.8 mile downstream of Milltown Road	None	*974
			About 2000 feet downstream of Milltown Road	None	*998
		Apple Creek	At mouth	*857	*856
			Just downstream of Pittsburgh Avenue	None	*880
			Just upstream of Pittsburgh Avenue	*881	*887
			About 600 feet downstream of State Route 83	None	*888
		Killbuck Creek	About 3500 feet downstream of Old Columbus Road	None	*854
			Just downstream of Old Mansfield Road	*862	*862
		Snyders Ditch	At mouth	*858	*861
			About 300 feet upstream of Branstetter Road	*871	*872
		Christmas Run	At mouth	*857	*857
			About 700 feet upstream of Saybolt Avenue	*890	*892
		Clear Creek	About 1100 feet upstream of Township Road 192	None	*870
			About 1500 feet downstream of Township Road 4	None	*882

Maps available for inspection at the City Hall, 538 North Market Street, Wooster, Ohio.

Send comments to The Honorable Clyde Brenneman, Mayor, City of Wooster, City Hall, 538 North Market Street, Wooster, Ohio 44691.

Texas	Angleton, City Brazoria County	Oyster Creek	State Route 35 at west corporate limits	#1	*30

Maps available for inspection at the City Hall, 121 South Velasco, Angleton, Texas.

Send comments to The Honorable B. J. Peck, Mayor of the City of Angleton, Brazoria County, P.O. Box 726, Angleton, Texas 77515.

Texas	Bailey's Prairie, Village Brazoria Country.	Oyster Creek	At downstream corporate limits	*30	*28
			North side of State Route 35	*32	*30
			At upstream corporate limits	*33	*31

Maps available for inspection at the Village Hall, State Highway 35 and 521, Angleton, Texas.

Send comments to The Honorable Jo Mapel, Mayor of the Village of Bailey's Prairie, Brazoria County, Rt. 4, Box 229, Angleton, Texas 77515.

Texas	Bartonville, Town Denton County	Loving Brandh	At corporate limits	None	*615
			Approximately 1,070 feet upstream of Landfall Circle Road.	None	*654

Maps available for inspection at the Town Hall, 134 B Jeter Road, Argyle, Texas 76226.

Send comments to The Honorable Jack Patterson, Mayor of the Town of Bartonville, Denton County, 134 B Jetter Road, Argyl, Texas 76226.

Texas	Bonney, Village Brazoria Country	Oyster Creek	FM 655 at west corporate limits	*45	*43
			Approximately 0.5 mile south along corporate limits from FM 655 at west corporate limits.	*44	*42

Maps available for inspection at the Village Hall, Rosharon, Texas.

Send comments to The Honorable Mary M. Coleman, Mayor of the Village of Bonney, Brazoria County, 19007 Mottesherd Road, Rosharon, Texas 77583.

Texas	Brazoria, City Brazoria County	Brazos River	Intersection of Bernard Street and Magnolia Street	None	*26
			Intersection of Pearl Street and Cedar Street	None	*25
			Approximately 1,300 feet east of intersection of Mulberry Lane and I Avenue (at extreme southeast corporate limits).	*24	#1

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/Town/County	Source of Flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at 114 E. Texas Street, Brazoria, Texas.					
Send comments to The Honorable Kenneth Timmermann, Mayor of the City of Brazoria, Brazoria County, P.O. Drawer E, Brazoria, Texas 77422-1305.					
Texas	Freeport, City Brazoria County	Brazos River	Upstream side of State Route 36 (Second Street)	None	*8
			Upstream corporate limits	None	*11
		San Bernard River	Approximately 1.4 miles northwest of Jones Creek and approximately 1.8 miles south of State Route 36.	*7	*8
Maps available for inspection at 128 East Fourth, Freeport, Texas.					
Send comments to The Honorable Mark X. Vandaveer, Mayor of the City of Freeport, Brazoria County, 128 East Fourth, Freeport, Texas 77541.					
Texas	Holiday Lakes, Town Brazoria County.	Oyster Creek	At upstream side corporate limits	*37	*35
			At downstream corporate limits	*36	*35
			Intersection of Trail Drive and Penguin Avenue	#1	*35
Maps available for inspection at the City Hall, Holiday Lakes, Texas, Monday through Friday 8:00 am-11:00 am and Tuesday 4:00 pm-8:00 pm.					
Send comments to The Honorable Claude Hunter, Mayor of the Town of Holiday Lakes, Brazoria County, 157 Creekside, Angleton, Texas 77515.					
Texas	Lake Jackson, City Brazoria County.	Brazos River	At downstream side of corporate limits	None	*10
			Approximately 1 mile southeast of intersection of County Routes 304 and 400.	*14	*15
			At crossing of County Route 400 through corporate limits.	*17	#2
		Oyster Creek	*At downstream corporate limits	*15	*14
			At upstream side of Willow Drive	18	*16
			At upstream side of corporate limits	*24	*19
		Gulf of Mexico	At State Route 288 Bridge over Dow Barge Canal	#1	*12
Maps available for inspection at 25 Oak Drive Lake Jackson Texas.					
Send comments to The Honorable A. A. McLean, Mayor of Lake the City of Jackson, Brazoria County, 25 Oak Drive, Lake Jackson, Texas 77566.					
Texas	Oyster Creek, Village Brazoria County.	Oyster Creek	FM 523 bridge	**14	*10
			Approximately 3,000 feet downstream of FM 523	**14	*11

*National Geodetic Vertical Datum.
**Mean Sea Level.

Maps available for inspection at Route 3, 3210 F.M. 523, Oyster Creek, Texas.					
Send comments to The Honorable Clifford Lewis Guidry, Mayor of the Village of Oyster Creek, Brazoria County, Route 3, 3210 F.M. 523, Oyster Creek, Texas 77541.					
Texas	Sweeny, City, Brazoria County	San Bernard River	Sweeny Sanitary Landfill southeast of FM 1459 (eastern portion of Sweeny).	None	*23
Maps available for inspection at the City Hall, 1111 W. 3rd Street, Sweeny, Texas.					
Send comments to the Honorable Harry Beverly, Mayor of the City of Sweeny, Brazoria County, 610 Avenue A, Sweeny, Texas 77480.					
Texas	West Columbia, City, Brazoria County.	Bell Creek	From downstream corporate limits to Sinclair Street	*25	*26
		Brazos River	Approximately 100 feet southeast of the intersection of Greenfield Drive and Marion Lane.	*31	*28
Maps available for inspection at 300 E. Clay Street, West Columbia, Texas.					
Send comments to the Honorable Vicki S. Knight, Mayor of the City of West Columbia, Brazoria County, P.O. Drawer 487, West Columbia, Texas.					
Virginia	Appalachia, Town, Wise County	Powell County	Approximately 840 feet downstream of confluence of Pigeon Creek.	*1,610	*1,609
			Approximately 420 feet upstream of N&W Railroad	*1,656	*1,657
		Callahan Creek	At confluence with Powell River	*1,642	*1,644
			Approximately 1.10 miles upstream of Callahan Avenue.	*1,6457	*1,674
		Looney Creek	Approximately .50 mile downstream of North Main Street.	*1,645	*1,646
			Approximately 1.06 miles upstream of North Inman Street.	*1,675	*1,674
Maps available for inspection at the Town Hall, Appalachia, Virginia.					
Send comments to the Honorable Bobby L. Dorton, Appalachia Town Manager, Wise County, P.O. Drawer 112, Appalachia, Virginia 24216.					
Virginia	Wise County Unincorporated Areas.	Callahan Creek	Approximately 1.02 miles upstream of confluence with Powell River.	*1,661	*1,660

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/Town/County	Source of Flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 1.1 miles upstream of confluence with Powell River.	*1,664	*1,667
			Downstream side of State Route 78	*1,734	*1,733
		Looney Creek	Approximately 0.18 mile upstream of confluence with Pigeon Creek.	*1,623	*1,624
			Approximately 0.9 mile upstream of Southern Switchyard Road.	*1,629	*1,630
		Powell River	Approximately 0.9 mile downstream of Cadet School Bridge.	*1,459	*1,460
			Approximately 1.4 miles upstream of Cadet School Bridge.	*1,465	*1,466
			Approximately 4.05 miles upstream of Cadet School Bridge.	None	*1,497
			Approximately 0.75 mile upstream of Southern Railway	None	*1,611
		South Fork Powell River	Approximately 0.9 mile upstream of downstream crossing of State Route 613.	*1,494	*1,495
			Approximately 0.26 mile downstream of downstream crossing of Southern Railway.	*1,506	*1,507

Maps available for inspection at the County Administrator's Office, County Courthouse, Wise, Virginia.

Send comments to the Honorable William P. Varson, Wise County Administrator, P.O. Box 570, Wise, Virginia 24293.

WASHINGTON

Chelan County (unincorporated areas)		
Wenatchee River:		
Approximately 20,430 feet downstream of the Burlington Northern Railroad	None	*1,700
Approximately 9,550 feet downstream of the Burlington Northern Railroad	None	*1,734
Approximately 730 feet upstream of the Burlington Northern Railroad	*1,765	*1,765
Nason Creek:		
Approximately 500 feet downstream of Logging Road	None	*1,958
Just upstream of Old U.S. Highway 2	None	*2,139
Just upstream of the Burlington Northern Railroad	None	*2,230
Dry Gulch:		
Approximately 850 feet upstream from High Line Canal	#1	None
At the intersection of South Miller Street and Circle Street	#1	#1
Approximately 800 feet upstream from Circle Street	#1	None
Approximately 1,700 feet upstream from Circle Street	#2	None
Maps are available for review at the Chelan County Planning Department, 411 Washington Street, Wenatchee, Washington. Send comments to the Honorable Thomas A. Green, Chairman, Chelan County Board of Commissioners, Chelan County Courthouse, Wenatchee, Washington 98801.		

Harold T. Duryee,

Administrator, Federal Insurance Administration.

Issued: October 6, 1988.

[FR Doc. 88-23561 Filed 10-12-88; 8:45 am]

BILLING CODE 6718-03-M

Notices

Federal Register
Vol. 53, No. 198
Thursday, October 13, 1988

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

Commodity Credit Corporation

1988 Crop Soybeans; Price Support Levels

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of determinations with respect to 1988 crop of soybeans.

SUMMARY: The purpose of this notice is to set forth the final announcement that the level of price support for the 1988 crop of soybeans if $4.77 per bushel; marketing loans shall not be available with respect to such crop; and that decisions regarding cost reduction options shall be made at a later date. This announcement is made pursuant to section 201(i) of the Agricultural Act of 1949, as amended (the "1949 Act"). In accordance with section 1009 of the Food Security Act of 1985, as amended, any determinations with respect to implementation of cost reduction options will be made at a later date.

EFFECTIVE DATE: September 27, 1988.

FOR FURTHER INFORMATION CONTACT: Orville I. Overboe, Agricultural Economist, Commodity Analysis Division, ASCS–USDA, P.O. Box 2415, Washington, DC 20013, Telephone (202) 447–4417. A final regulatory impact analysis has been prepared and is available from the above named individual.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under Department of Agriculture procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been designated as "major". It has been determined that these program provisions will result in an annual effect on the economy of $100 million or more.

The title and number of the federal assistance program to which this notice applies are: Title—Commodity Loans and Purchases; Number—10.051 as found in the Catalog of Federal Domestic Assistance.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is needed.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Section 1017 of the Food Security Act of 1985 provides that the Secretary of Agriculture shall determine the rate of loans, payments and purchases under a program established under the 1949 Act for any of the 1986 through 1990 crops without regard to the requirements for notice and public participation. Accordingly, public comments were not requested with respect to the level of loans and purchases under the price support program for the 1988 crop of soybeans.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Commodity Credit Corporation is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

Section 201(i)(1)(A) of the 1949 Act provides that the price of soybeans for each of the 1986 through 1990 marketing years shall be supported through loans and purchases. Section 201(i)(1)(B) provides that the support price for the 1986 and 1987 crops of soybeans shall be $5.02 per bushel. Section 201(i)(1)(C) provides that the support price for each of the 1988 through 1990 crops shall be established at a level equal to 75 percent of the simple average price received by producers for soybeans in the preceding 5 marketing years excluding the years with highest and lowest prices, except that the level of support may not be reduced by more than 5 percent in any year and in no event below $4.50 per bushel. Calculating 75 percent of the simple average market price received by producers for soybeans for the 5 marketing years preceding the 1988 marketing year, excluding the years with the highest and lowest prices, resulting in a price of $4.31 per bushel. Since this price is more than 5 percent below the level of price support established for the preceding crop of soybeans (i.e. $5.02 per bushel), prior to any adjustments, the level of support for the 1988 crop of soybeans using this formula is $4.77.

If the Secretary of Agriculture determines in accordance with section 201(i)(2) that the price support level for soybeans determined for a marketing year would discourage the exportation of soybeans and cause excessive stocks of soybeans in the United States, the Secretary may reduce the price support level for soybeans by the amount the Secretary determines necessary to maintain domestic and export markets for soybeans, except that the price support level cannot be reduced by more than 5 percent in any year nor below $4.50 per bushel. Any reduction made in accordance with section 201(i)(2) in the price support level for soybeans shall not be considered in determining the price support level for soybeans for subsequent years.

Section 201(i)(5) of the 1949 Act provides that the Secretary shall make a preliminary announcement of the level of price support for a crop of soybeans not earlier than 30 days prior to September 1, the beginning of the soybean marketing year, based upon the latest information and statistics then available. The Secretary must make a final announcement of such level as soon as full information and statistics are available. The final level of price support must be announced no later than October 1 of the marketing year to which the announcement is applicable and cannot be less than the level set forth in the preliminary announcement. The level announced in the preliminary announcement was $4.77 per bushel.

Section 201(i)(3) of the 1949 Act provides that, if the Secretary determines that such action will assist in maintaining the competitive relationship of soybeans in domestic and export markets after taking into consideration the cost of producing soybeans, supply and demand conditions, and world prices for soybeans, the Secretary may permit a producer to repay a loan for a crop at a level that is the lesser of: (1) The announced loan level for such crop or (2) the prevailing world market price for soybeans, as determined by the Secretary. If the Secretary permits a

producer to repay a loan as describd above, the Secretary shall prescribe by regulation (1) a formula to define the prevailing world market price for soybeans and (2) a mechanism by which the Secretary shall announce periodically the prevailing world market price for soybeans.

Section 1009(a) of the Food Security Act of 1985 provides that, whenever the Secretary determines that an action authorized by section 1009(c), (d) or (e) will reduce the total of the direct and indirect costs to the Federal Government of a commodity program administered by the Secretary without adversely affecting income to small and medium sized producers participating in such program, the Secretary shall take such action with repect to that commodity program. These actions include: (1) The commercial purchases of commodities by the Secretary; (2) the settlement of nonrecourse loans at an amount less than the total of the principal loan amount and accumulated interest, but not less than the principal amount, if such action will result in: (A) Receipt of a portion rather than none of the accumulated interest, (B) avoidance of default of the loan, and (C) elimination of storage, handling and carrying charges on the forfeited loan collateral; and (3) the reopening of a production control or loan program established for a crop at any time prior to harvest of such crop for the purpose of accepting bids from producers for the conversion of acreage planted to a program crop to diverted acreage in return for in-kind payments if the Secretary has determined that: (1) Changes in domestic or world supply or demand conditions have subtantially changed after announcement of the program for that crop and (2) without action to further adjust production, the Federal Government and producers will be faced with a burdensome and costly surplus. Such payments are not subject to the maximum payment limitation provision of section 1001 of the Food Security Act of 1985 but are limited to $20,000 per year per producer for any one commodity.

A press release was issued on August 12, 1988, which made the preliminary announcement that the price support level for the 1988 crop of soybeans was $4.77 per bushel. Since the final level of price support cannot be less than the level of price support forth in the preliminary announcement, this notice provides that the final level of price support for the 1988 crop of soybeans is $4.77 per bushel.

Determinations

A. Price Support Level

The price support level for the 1988 crop of soybeans shall be $4.77 per bushel.

B. Marketing Loan

A marketing loan will not be implemented with respect to the 1988 crop of soybeans.

C. Cost Reduction Options

The decision to implement any cost reduction option will be made at a later date.

Section 201(i) of the Agricultural Act of 1949, as amended, 63 Stat. 1052, as amended (7 U.S.C. 1446(i)).

Signed at Washington, DC, on October 3, 1988.

Richard E. Lyng,

Secretary.

[FR Doc. 88-23671 Filed 10-12-88; 8:45 am]

BILLING CODE 3410-05-M

Forest Service

Draft Supplement to the Final Environmental Impact Statement for the Cherokee National Forest Land and Resource Management Plan

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a supplement to an environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service will prepare a Draft and Final Supplement to the Final Environmental Impact Statement (FEIS) for the Cherokee National Forest Land and Resource Management Plan (LRMP) filed in April 1986. The supplement is for a proposed action to consider changing the Forest-wide goal of regenerating standards by using different timber harvest methods and reducing the annual allowable sale quantity for the remainder of the first decade of the LRMP and may result in an amendment to the LRMP.

The Agency invites written comments and suggestions that are within the scope of the proposed action and analysis for the supplement. In addition, the agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interest and affected people are aware of how they may participate and contribute to the final decision.

DATE: Comments related to the scope of the analysis should be received by November 7, 1988, to ensure timely consideration.

ADDRESS: Submit written comments and suggestions related to the scope of analysis to Donald L. Rollens, Forest Supervisor, Cherokee National Forest, P.O. Box 2010, Cleveland, Tennessee 37320.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and supplement to Michael Murphy, Forest Planner, Cherokee National Forest, Cleveland, Tennessee 37320, phone 615-476-9700.

SUPPLEMENTARY INFORMATION: The Cherokee National Forest Land and Resource Management Plan (LRMP) was approved April 1, 1986. There were three administrative appeals of the decision to select Alternative 7 as the LRMP to be implemented. On August 4, 1988, the Regional Forester entered into a Settlement Agreement with the appellants and intervenors of two of these appeals. As a result of the Settlement Agreement, the Cherokee National Forest will prepare a draft supplement to the final environmental impact statement (FEIS) on a proposed action to consider: (1) Changing the timber regeneration goal to clearcut (70%), seedtree (5%), shelterwood (15%), group selection (9%), and single tree selection (1%) and (2) lowering the annual allowable sale quantity to approximately 6.4 mmcf (34.5 mmbf) during the remainder of the first decade of the LRMP.

The Cherokee LRMP, as amended, will remain in effect and continue to be implemented during the preparation of the supplement to the EIS.

No formal scoping meetings are planned at this time. Key contacts will be individually notified of the scope of the analysis. Any comments received within this scope will be considered. General notice to the public concerning the scope of analysis will be handled by a newsletter and/or news releases.

The range of alternatives to be considered includes a modification of the 1986 selected alternative, as proposed above, and the alternatives already analyzed in detail in the April 1986 FEIS.

The draft supplement to the FEIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by March 1989. At that time, EPA will publish a notice of availability of the draft supplement in the Federal Register.

The comment period on the draft supplement to the FEIS will be 90 days from the date the EPA's notice of availability appears in the **Federal Register**. It is very important that those interested in the management of the

Cherokee National Forest participate at this time. To be most helpful, comments on the draft supplement should be as specific as possible and may address the adequacy of the supplement or the merits of the alternatives discussed (See the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft environmental impact statements must structure their participation in the environmental reviews of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions, *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

After the comment period ends on the draft supplement, the comments will be analyzed and considered by the Forest Service in preparing the final supplement. The final supplement is scheduled to be completed by August 1989. In the final supplement, the Forest Service is required to respond to the comments received (40 CFR 1503.4) The responsible official will consider the comments, responses, environmental consequences discussed in the final supplement, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal.

The responsible official is John E. Alcock, Regional Forester, Southern Region, 1720 Peachtree Road, NW., Atlanta, Georgia 30367.

Dated: October 5, 1988.

John E. Alcock,

Regional Forester.

[FR Doc. 88-23646 Filed 10-12-88; 8:45 am]

BILLING CODE 3410-11-M

National Agricultural Statistics Service

Livestock Report Date Changes

Notice is hereby given that the National Agricultural Statistics Service (NASS) will continue to publish major livestock reports on the earliest possible weekday rather than on Fridays only, as proposed in the June 3, 1988, Federal Register.

Plans for releasing *Cattle, Cattle on Feed, Hogs and Pigs, Sheep and Goats,* and *Livestock Slaughter* on Fridays only were rejected due to objections by data users. Questions regarding this action should be directed to William L. Pratt, Chief, Livestock, Dairy and Poultry Branch, Estimates Division; Room 5906-S, NASS/USDA; Washington, DC 20250 or (202) 447-6146.

Dated: October 6, 1988.

Charles E. Caudill,

Administrator.

[FR Doc. 88-23591 Filed 10-12-88; 8:45 am]

BILLING CODE 3410-20-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Marine Mammals; Issuance of Permits to Gulf World, Inc. (P160D)

On May 4, 1988, notice was published in the Federal Register (53 FR 15664) that an application had been filed by Gulf World, Inc., 15412 West Alternate Highway 98, Panama City Beach, Florida 32407 for a permit to take six (6) Atlantic bottlenose dolphins (*Tursiops truncatus*) for public display.

Notice is hereby given that on October 3, 1988 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.

The Permit is available for review by interested persons in the following offices:

Office of Protected Resources for Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Room 805, Washington, DC; and Director, Southeast Region, National Marine Fisheries Service, 9450 Kroger Boulevard, St. Petersburg, Florida 33702.

Date: October 3, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 88-23545 Filed 10-12-88; 8:45 am]

BILLING CODE 3510-22-M

COMMISSION ON MERCHANT MARINE AND DEFENSE

Notice of Meeting

SUMMARY: The Commission on Merchant Marine and Defense was established by Pub. L. 98-525 (as amended), and the Commission was constituted in December 1986. The Commission's mandate is to study and report on problems relating to transportation of cargo and personnel for national defense purposes in time of war or national emergency, the capability of the Merchant Marine to meet the need for such transportation, and the adequacy of the shipbuilding mobilization base to support naval and merchant ship construction. In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the Commission announces the following meeting:

Date and Time: Monday, October 17, 1988; Beginning 10:00 a.m.

Place: Room 262, United States Court of International Trade, One Federal Plaza, New York, New York 10007.

Type of Meeting: Open.

Contact Person: Allan W. Cameron, Executive Director, Commission on Merchant Marine and Defense, Suite 520, 4401 Ford Avenue, Alexandria, Virginia 22302-0268, Telephone (202) 756-0411.

Purpose of Meeting: Commissioner Shannon J. Wall will receive and consider statements of individuals and groups in New York and neighboring states about the problems and propsects of the nation's maritime industries, particularly the merchant marine and shipbuilding industries. In particular, Mr. Wall desires reactions to the Commission's first two reports and its recommendations, views about the contributions of the maritime industries to the national security, and suggestions for actions that would help to address current and projected shortages of merchant marine and shipyard capability to meet defense requirements. Individuals or organizations desiring to present oral testimony must notify the Executive Director in writing or by telephone by October 11, 1988, and are requested to provide two copies of their written statements to the Commission and to have copies available for the press. Witnesses will be allowed a maximum of 15 minutes to summarize their written testimony, may be included on panels, and may be asked to respond to questions. Questions about the nature and content of testimony, scheduling, and related matters should be directed

to Captain Wayne I. Humphreys, UNS, the Commission's Chief of Staff.

SUPPLEMENTARY INFORMATION: Other interested persons are invited to submit written statements about the merchant marine and the shipping required to implement United States defense policy. Written statements should be delivered to the Commissioners at the public hearing or received at the Commission's office by the close of business on October 17, 1988. All written submissions will be made available for inspection by interested parties, and may be published as part of the Commission's proceedings. Submissions should be addressed to the Executive Director at the Commission's office in Alexandria, Virginia.

Allan W. Cameron,

Executive Director, Commission on Merchant Marine and Defense.

[FR Doc. 88-23590 Filed 10-12-88; 8:45 am]

BILLING CODE 3820-01-M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 88-C0006]

Doing Business as Now Products; Provisional Acceptance of Settlement Agreement

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional acceptance of a Settlement Agreement under the Flammable Fabrics Act.

SUMMARY: Under requirements of 16 CFR Part 1605.13, the Commission must publish in the **Federal Register** consent agreements which it provisionally accepts under the Flammable Fabrics Act. Published below is a provisionally-accepted Settlement Agreement with PMC, Inc., doing business as Now Products.

DATE: Any interested person may ask the Commission not to accept this agreement by filing a written request with the Office of the Secretary by October 28, 1988.

ADDRESS: Persons wishing to comment on this Settlement Agreement should send written comments to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Earl A. Gershenow, Directorate for Compliance and Administrative Litigation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492-6626.

Dated: October 6, 1988.

Sheldon D. Butts,

Deputy Secretary.

Consent Order Agreement

PMC, Inc. d/b/a Now Products ("Respondent") enters into this Consent Order Agreement ("Agreement") with the staff of the Consumer Product Safety Commission ("staff") pursuant to the procedure for Consent Order Agreements set forth in § 1605.13 of the Commission's Procedures for Investigations, Inspections and Inquiries under the Flammable Fabrics Act (FFA), 16 CFR 1605.

This Agreement is for the sole purpose of resolving, without litigation, allegations of the staff that Respondent sold futon mattresses that are subject to the Flammable Fabrics Act, as amended, 15 U.S.C. 1191 *et seq.* ("the FFA"), and the Standard for the Flammability of Mattresses and Mattress Pads (FF4-72, amended), 16 CFR 1632 ("the Mattress Standard") that failed to comply with the Mattress Standard and the FFA.

Agreements of the Parties

1. Respondent PMC, Inc. is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 12243 Branford Street, Sun Valley, California 91353. Respondent PMC, Inc. does business as Now Products at 1142 S. Cicero Avenue, Chicago, Illinois.

2. The Consumer Product Safety Commission has jurisdiction of the subject matter of this proceeding and of the Respondents under the Consumer Produce Safety Act (15 U.S.C. 2051 *et seq.*) ("the CPSA"), Flammable Fabrics Act (15 U.S.C. 1191 *et seq.*), and the Federal Trade Commission Act (15 U.S.C. 41 *et seq.*) ("the FTCA").

3. Respondent is now and has been engaged in one or more of the following: the manufacture for sale, the sale, or the offering for sale, in commerce, or the importation, delivery for introduction, transportation in commerce, or the sale or delivery after sale or shipment in commerce, of a product, fabric or related material which is subject to the requirements of the FFA and the Mattress Standard.

4. This Agreement is for settlement purposes only and does not constitute an admission by Respondent that it has violated the law.

5. This Agreement becomes effective only upon its final acceptance by the Commission and service of the incorporated Order upon Respondent.

6. Respondent waives: (a) Its right to a hearing, (b) findings of fact and conclusions of law, and (c) administrative and judicial review of the facts and proceeding.

7. The requirements of this Order are in addition to, and not to the exclusion of, other remedies such as criminal penalties which may be pursued under section 7 of the FFA, 15 U.S.C. 1196 for future violations.

8. Violation of the provisions of the Order subjects Respondent to possible civil penalties for each such violation under the FFA and FTCA.

9. The Commission may disclose the terms of this Consent Order Agreement.

10. This Agreement and the Complaint accompanying the Agreement may be used in interpreting the Order.

11. No agreement, understanding, representation or interpretation not contained in this Agreement may be used to vary or contradict the terms of this Agreement.

Order

I

It is hereby ordered that Respondent, its successors and assigns, agents, representatives, and employees of the Respondent, directly or through any corporation, subsidiary, division, or other business entity, or through any agency, device or instrumentality, do forthwith cease and desist form selling or offering for sale, in commerce, or manufacturing for sale, in commerce, or importing into the United States or introducing, delivering for introduction, transporting or causing to be transported, in commerce, or selling or delivering after sale or shipment in commerce, any product, fabric or related material which fails to conform to the applicable provisions of the Standard for the Flammability of Mattresses and Mattress Pads (FF 4-72, amended), 16 CFR Part 1632.

II

It is further ordered that Respondent conduct prototype testing for each futon mattress design, prior to production, in accordance with applicable provisions of the Standard for the Flammability of Mattresses and Mattress Pads (FF 4-72, amended), 16 CFR Part 1632.

III

It is further ordered that Respondent prepare and maintain written records of the prototype testing specified in paragraph II of this Order for each futon mattress design, including photographs of the tested futon mattresses, in accordance with applicable provisions of the Standard for the Flammability of Mattresses and Mattress Pads (FF 4-72, amended), 16 CFR Part 1632.

IV

It is further ordered that Respondent prepare and maintain written records of the manufacturing specification of each futon mattress prototype in accordance with applicable provisions of the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72, amended), 16 CFR Part 1632.

V

It is further ordered that Respondent conduct prototype testing or, if appropriate, obtain supplier certification to support any substitution of materials after prototype testing, in accordance with all applicable provisions of the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72, amended), 16 CFR Part 1632.

VI

It is further ordered that Respondent prepare and maintain a written record of the manufacturing specifications of any new ticking or tape edge material substituted for those used in the original prototype testing, in accordance with applicable provisions of the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72, amended), 16 CFR Part 1632.

VII

It is further ordered that Respondent prepare and maintain all other records required by the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72, amended), 16 CFR Part 1632, including:

(a) Records to support any determination that a particular material other than ticking or tape edge material did not influence ignition resistance;

(b) Ticking classification test results or a certification from the ticking supplier;

(c) Tape edge substitution test results;

(d) Photographs of any futon mattress tested for purposes of making a tape edge substitution; and

(e) Records describing the disposition of all failing or rejected prototype futon mattresses.

VIII

It is further ordered that Respondent shall properly label its futons with all pertinent information required by the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72, amended), 16 CFR Part 1632.31(b).

IX

It is further ordered that Respondent shall forthwith distribute a copy of this Order to each of its appropriate operating divisions.

X

It is further ordered that Respondent shall within sixty (60) days after service upon it of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

XI

It is further ordered that for a period of five (5) days from the date this Order becomes final within the meaning of the Federal Trade Commission Act, Respondent notify the Commission at least thirty (30) days prior to any proposed change in business structure (such as incorporation, dissolution, assignment, sale or declaration of bankruptcy of Respondent or the Now Products division) which may affect its compliance obligations arising out of this Order.

Signed and consented to this 8th day of July 1988:

Philip E. Kamins, *for Respondent PMC, Inc.*

Eric L. Stone,

Trial Attorney, Division of Administrative Litigation.

Alan H. Schoem,

Director, Division of Administrative Litigation.

David Schmeltzer,

Associate Executive Director for Compliance and Administrative Litigation.

By direction of the Commission, this Consent Order Agreement is provisionally accepted pursuant to 16 CFR 1605.13, and shall be placed on the public record, and the Commission shall announce provisional acceptance of the Consent Order Agreement in the Commission's Public Calendar and in the **Federal Register.**

So ordered by the Commission, this 30th day of September 1988.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Complaint

The staff of the Consumer Product Safety Commission believes that PMC, Inc., 12243 Branford Street, Sun Valley, California 91353 d/b/a Now Products 1142 S. Cicero Ave., Chicago, Illinois (hereinafter "Respondent") is subject to the provisions of the Flammable Fabrics Act, as amended, (15 U.S.C. 1191 *et seq.*; hereinafter, the "FFA"); the Federal Trade Commission Act, as amended, (15 U.S.C. 41 *et seq.*; hereinafter, the "FTCA"); and the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72, amended), 16 CFR Part 1632 (hereinafter, the "Mattress Standard"). The staff further believes that Respondent has violated the aforementioned Acts and the Mattress Standard.

It appears to the Commission from the information available to its staff that it is in the public interest to issue this Complaint. Therefore, by virtue of the authority vested in the Commission by section 30(b) of the Consumer Product Safety Act, as amended, (15 U.S.C. 2079(b); hereinafter, the "CPSA") the Commission pursuant to sections 3 and 5 of the FFA, 15 U.S.C. 1192 and 1194, and section 5 of the FTCA, 15 U.S.C. 45, and in accordance with the Commission's Rules of Practice for Adjudicative Proceedings, 16 CFR Part 1025, hereby issues this Complaint and states the staff's charges as follows:

1. Respondent PMC, Inc. is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 12243 Branford Street, Sun Valley, California 91353. Respondent PMC is doing business as Now Products, 1142 S. Cicero Ave., Chicago, Illinois 60644.

2. Respondent is now and has been engaged in the manufacturing for sale, sale, and offering for sale, in commerce, and has introduced, delivered for introduction, transported and caused to be transported in commerce, and has sold or delivered after sale or shipment in commerce, as the term "commerce" is defined in section 2(b) of the FFA, 15 U.S.C. 1191(b), futon mattresses.

3. Each futon mattress identified in paragraph 3 of the complaint is comprised of "ticking" that is made with 100 percent cotton, and a "batting" that is made with 100 percent cotton; and is intended or promoted for sleeping upon.

5. Each futon mattress identified in paragraph 3 of the complaint is, therefore:

(a) A "mattress" within the meaning of § 1632.1(a) of the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72, amended), 16 C.F.R. 1632.1(a); and

(b) An "interior furnishing" and a "product" as these terms are defined in sections 2(e) and (h) of the Flammable Fabrics Act, as amended, 15 U.S.C. 1191(e) and (h).

6. Respondent is subject to, but has failed to comply with, the Mattress Standard despite numerous attempts by the Commission staff to encourage compliance, in that:

a. Respondent has failed to do the prototype testing required by § 1632.3 of the Mattress Standard, 16 CFR 1632.3.

(b) Respondent has failed to properly label the mattresses as required by

§ 1632.31(b) of the Mattress Standard, 16 CFR 1632.31(b).

(c) Respondent has failed to maintain the manufacturing and test specifications and test records required by § 1632.31(c) of the Mattress Standard, 16 CFR 1632.31(c).

7. The acts by Respondent set forth in paragraph 6 of the complaint are unlawful and constitute an unfair method of competition and an unfair and deceptive practice in commerce under the FTCA, in violation of section 3(a) of the FFA, 15 U.S.C. 1192(a), for which a cease and desist order may be issued against Respondent pursuant to section 5(b) of the FFA, 15 U.S.C. 1194(b), and section 5 of the FTCA, 15 U.S.C. 45.

Wherefore, the premises considered, the Commission hereby issues this Complaint on the __ day of _____, 1987.

By direction of the Commission.

David Schmeltzer,

Associate Executive Director, Directorate for Compliance and Administrative Litigation.

[FR Doc. 88-23604 Filed 10-12-88; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Community College of the Air Force; Meeting

The Community College of the Air Force (CCAF) Board of Visitors will hold a meeting on November 14, 1988 at 8:00 a.m., in the CCAF Conference Room, Room 121, Building 836, Maxwell Air Force Base, Montgomery, Alabama.

Purpose of the meeting is to review and advise on changes to academic policies relative to operation of the college. Other agenda items include the State of the College, Alternative for Satisfaction of General Education Requirements, Meetings at Technical Training Centers, and Changes to the CCAF Organizational Structure. The meeting is open to the public.

For further information contact Major David E. Muhleman, (205) 293-7937, Community College of the Air Force, Maxwell Air Force Base, Montgomery, Alabama 36112-6655.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88-23648 Filed 10-12-88; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board Meeting

October 5, 1988.

The USAF Scientific Advisory Board Ad Hoc Committee on Progress on High Power Microwave Applications will meet on 31 Oct-2 Nov 88 from 8:00 AM to 5:00 PM at the Pentagon, Washington, DC 20330-5430. This meeting was originally scheduled for September 22-23, 1988 and was postponed.

The purpose of this meeting is to examine the appropriateness, extent, and character of the Air Force's involvement in research and development programs into potential applications of high power microwaves. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88-23650 Filed 10-12-88; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board Meeting

October 5, 1988.

The USAF Scientific Advisory Board Aeronautical Systems Division Advisory Group will meet on 2-3 Nov 88 from 8:00 AM to 5:00 PM at the Wright-Patterson Air Force Base, Ohio 45433-6503.

The purpose of this meeting is to receive classified briefings and hold classified discussions on selected Air Force programs. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88-23651 Filed 10-12-88; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Notice of Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 1-3 November 1988.

Time/Place of Meeting: 0830-1700 hours, 1 November 1988, Yuma Proving Ground, Arizona. 0830-1700 hours, 2 November 1988, Salt Lake City, Utah. 0830-1700 hours, 3 November 1988, St. Louis, Missouri.

Agenda: The Army Science Board Ad Hoc Subgroup for Tactical Explosive Systems (TEXS) will conduct its second meeting over a three-day period at three different sites. Proprietary information briefings will be conducted by various producers of explosives, and an overview of the entire program by the Yuma Proving Ground facility. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88-23566 Filed 10-12-88; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 1-4 November 1988.

Time of Meetings: 0800-1700 hours, each day.

Place: TITAN, San Diego, California.

Agenda: The Army Science Board Ad Hoc Subgroup for Tactical Applications of Directed Energy Weapons (DEW) will meet for the purpose of consolidating draft reports and recommendations into the final report. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C. Appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. Contact the Army Science Board Administrative Officer, Sally

Warner, for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88–23565 Filed 10–12–88 8:45 am.]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Privacy Act of 1974; Proposed Amendment to Existing Systems of Records

AGENCY: Department of Energy (DOE).

ACTION: Notification of intent to amend an existing. system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, 5 U.S.C. 552a, DOE is publishing notice of the addition of a new routine use and the expansion of the categories of records for an existing system of records, DOE–19 Accounts Receivable Financial System. This new routine use involves the disclosure of information for the purpose of collecting delinquent debts owned to the United States. Information from the Accounts Receivable Financial System will be disclosed for debt collection purposes in accordance with applicable provisions of the Federal Claims Collection Act of 1966 (31 U.S.C. 3701–3719), as amended by the Debt Collection Act of 1982 (Pub. L. 97–365, 96 Stat. 1754), and the related Federal Claims Collection Standards (4 CFR Parts 101–105) and applicable provisions of the Deficit Reduction Act of 1984 (Pub. L. 98–369, 98 Stat. 1153). The system of records is also being revised to specify the categories of records maintained consistent with the new routine use and to update other information related to the system.

Altered system reports have been submitted to the Speaker of the House, the President of the Senate, and the Director of the Office of Management and Budget (OMB), as required by 5 U.S.C. 552a(o) (Privacy Act) and paragraph 4(b) of Appendix I of OMB Circular A–130.

The OMB requires that an altered system report be distributed not later than 60 days prior to the implementation of an altered system. The OMB has been requested to waive this requirement.

DATES: Any interested party may submit written comments about the proposed revisions. Comments must be received on or before November 14, 1988. Unless comments are received that would dictate otherwise, it is the intent of the DOE to operate the system as proposed starting November 14, 1988.

ADDRESS: Comments should be directed to the following address: U.S. Department of Energy, John H. Carter, Chief, Freedom of Information and Privacy Acts, MA–232.1, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

U.S. Department of Energy, John H. Carter, Chief, Freedom of Information and Privacy Acts, MA–232.1, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–5955.

or

U.S. Department of Energy, Abel Lopez, Office of General Counsel, GC–43, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–8618.

SUPPLEMENTARY INFORMATION: DOE proposes to establish a new routine use for its system of records, DOE–19 "Accounts Receivable. Financial System." In accordance with the Debt Collection Act of 1982 and the Deficit Reduction Act of 1984, the new routine use will permit the disclosure of information maintained in the system of records to other Federal agencies, consumer reporting agencies, and collection agencies to assist the Department in the collection of debts owed to the Federal Government. The disclosure of information to other Federal agencies is for the purpose of collecting delinquent debts through salary offset and other administrative offsets, including referral of delinquent debts to the Internal Revenue Service for collection by offset against tax refunds under the Federal Tax Refund Offset Program. The DOE also proposes to make other changes to DOE–19 that will facilitate the collection of outstanding debts. These changes include: (1) Maintenance of additional records in the system; (2) establishment of the taxpayer identification number as a method to retrieve documents maintained in the system; and (3) deletion of the date of birth as proof of identification required for notification purposes. In addition, the DOE proposes that the generic term "microform" be substituted for "microfilm" and "microfiche" in the "Storage" category. Finally, the Department proposes to delete the routine use that provides access to documents maintained in the system to the Office of Personnel Management, since such access will be encompassed in the routine use proposed in this notice, and to update the system manager and address information for Headquarters.

The text of the system notice is set forth below.

Issued in Washington, DC, on October 5, 1988.

Harry L. Peebles,

Director of Administration.

DOE–19

SYSTEM NAME:

Accounts Receivable Financial System.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The locations listed in Appendix A of the Department of Energy; Privacy Act of 1974; Annual Publication of System Notices (47 FR 14333, April 2, 1982).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons owing money to DOE.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, telephone number, taxpayer identification number, and other applicable debtor identifying information; invoice number; basis, amount, and status of the claim; and history of the claim including collection actions taken.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; 31 U.S.C. 3512; 5 U.S.C. 5701–09; Federal Property Management Regulations 101–107; Treasury Financial Manual; Executive Order 12009.

PURPOSE(S):

To record and manage the Department's accounts receivable.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Other Federal Agencies, Consumer Reporting Agencies, and Collection Agencies—To aid in the collection of outstanding debts owed to the Federal Government.

Additional routine uses as listed in Appendix B of the Department of Energy; Privacy Act of 1974; Annual Publication of System Notices (47 FR 14333, April 2, 1982).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, magnetic tape and disc, and microform.

RETRIEVABILITY:

By name, taxpayer identification number, or invoice number.

SAFEGUARDS:

Access to records is by authorized personnel only.

RETENTION AND DISPOSAL:

Records are retained until payment is received and account is audited. Records retention and disposal authorities are contained in DOE 1324.2, "Records Disposition." Records within the DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: Controller, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

Field Offices: The managers and directors of the field locations 2 through 21 in Appendix A [47 FR 14333, April 2, 1982) are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Chief, Freedom of Information and Privacy Acts, Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate address identified in Appendix A [47 FR 14333, April 2, 1982) in accordance with DOE's Privacy Act regulations (10 CFR Part 1008).

b. Required identifying information: Complete name, the geographic location(s) and organization(s) where requester believes such records may be located, and time period.

RECORD ACCESS PROCEDURES:

Same as NOTIFICATION PROCEDURES above.

CONTESTING RECORD PROCEDURES:

Same as NOTIFICATION PROCEDURES above.

RECORD SOURCE CATEGORIES:

The individual who is the subject of the record; contracting officer, where applicable; and accounting records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 88-23603 Filed 10-12-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP88-893-000, et al.]

Panhandle Eastern Pipe Line Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Panhandle Eastern Pipe Line Company

[Docket No. CP88-893-000]

October 5, 1988.

Take notice that on September 30, 1988, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP88-893-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authority to provide interruptible transportation service for American Cyanamid Company (Cyanamid), an end-user of natural gas under Panhandle's blanket transportation certificate issued November 20, 1987, in Docket No. CP86-585-000, all as more fully set forth in the application which is to file with the Commission and open to public inspection.

Panhandle proposes to receive the gas from various existing points on its system in Texas, Oklahoma, Kansas, Colorado, Wyoming, and Illinois. Panhandle then proposes to deliver equivalent volumes, less fuel use and unaccounted for line loss gas, to Gas Service Company, in Marion County, Missouri. No new facilities are proposed to execute this service.

Panhandle proposes to transport up to 7,000 Dt of natural gas per day or approximately 1,460,000 Dt of gas annually. Panhandle states that transportation service commenced, under the 120-day automatic authorization of § 284.223(a) of the Commission's Regulations on August 1, 1988, pursuant to a transportation agreement dated May 18, 1988. Panhandle notified the Commission of the commencement of the transportation service in Docket No. ST88-5238 on August 15, 1988.

Comment date: November 21, 1988, in accordance with Standard Paragraph G at the end of this notice.

2. United Gas Pipe Line Company

[Docket No. CP88-879-000]

October 5, 1988.

Take notice that on September 29, 1988, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP88-879-000 a request pursuant to § 157.205 of the Commissions Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide interruptible transportation service on behalf of Texaco Gas Marketing, a marketer of natural gas, Under United's blanket certificate issued in Docket No. CP88-6-000, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states the pursuant to an interruptible gas transportation agreement executed August 22, 1988, it proposes to transport a maximum daily quantity of 51,500 MMBtu of natural gas from a single point of receipt located in Mobile County, Alabama to eight points of delivery located in various counties within the States of Alabama, Florida and Mississippi. United further states that the service commenced September 1, 1988, as reported in Docket No. ST88-5743, pursuant to § 284.223(a) of the Commission's Regulations.

Comment date: November 21, 1988, in accordance with Standard Paragraph G at the end of this notice.

3. Panhandle Eastern Pipe Line Company

[Docket No. CP88-894-000]

October 5, 1988.

Take notice that on September 30, 1988, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP88-894-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for ANR Gathering Company (ANR Gathering), a marketer, under the blanket certificate issued in Docket No. CP86-585-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application that is on file with the Commission and open to public inspection.

Panhandle states that pursuant to a transportation agreement dated July 26, 1988, it proposes to transport up to 100,000 dekatherms (dt) per day equivalent of natural gas on an interruptible basis for ANR Gathering from points of receipt listed in Exhibit "A" of the agreement to delivery points also listed in Exhibit "A", which transportation service may involve interconnections between Panhandle and various transporters. Panhandle states that it would receive the gas at various existing points on its system in Texas, Oklahoma, Kansas, Colorado, Wyoming, and Illinois, and that it would transport and redeliver the gas, less fuel

used and unaccounted for line loss, to Natural Gas Pipeline Company of America in Clark County, Kansas.

Panhandle advises that service under § 284.223(a) commenced on August 1, 1988, as reported in Docket No. ST88–5382. Panhandle further advises that it would transport 100,000 dt on an average day and 36,500,000 dt annually.

Comment date: November 21, 1988, in accordance with Standard Paragraph G at the end of this notice.

4. Southern Natural Gas Company

[Docket No. CP88–835–000]

October 6, 1988.

Take notice that on September 26, 1988, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP88–835–000 a request pursuant to § 157.205 and 284.223(b) of the Commission's Regulations under the Natural Gas Act for authorization to provide two interruptible transportation services for End Users Supply System (End Users), a marketer, under its blanket certificate issued in Docket No. CP88–316–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request with the Commission and open to public inspection.

Southern states that it would transport natural gas from numerous points of receipt located in offshore Louisiana, Louisiana and Mississippi to a point of delivery located in Aiken County, South Carolina for the proposed transportation for End Users to serve Cypress Minerals Company (Cypress Minerals), and from numerous points of receipt located in offshore Louisiana, Louisiana and Mississippi to a point of delivery located in Aiken County, South Carolina for the proposed transportation for End Users to serve Dixie Clay Company (Dixie Clay).

Southern further states that the maximum daily, average and annual quantities that it would transport for ultimate delivery to Cypress Minerals would be 2,000 MMBtu equivalent, 1,400 MMBtu equivalent and 511,000 MMBtu equivalent, respectively, and a maximum daily quantity of 1,500 MMBtu equivalent, an average daily quantity of 1,050 MMBtu equivalent and an annual quantity of 383,250 MMBtu equivalent would be transported for ultimate delivery to Dixie Clay.

Southern indicates that in Docket Nos. ST88–5027 and ST88–5028, it reported to the Commission that the Cypress Minerals service and Dixie Clay service began on July 16, 1988 under the 120-day automatic authorization provisions of § 284.233(a).

Comment date: November 21, 1988, in accordance with Standard Paragraph G at the end of this notice.

5. El Paso Natural Gas Company

[Docket No. CP88–885–000]

October 6, 1988.

Take notice that on September 30, 1988, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas, 79978, filed a request for authorization at Docket No. CP88–885–000, pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act, to install and operate a sales meter station, to be located in Cibola County, New Mexico, in order to permit the delivery of natural gas to Gas Company of New Mexico, a Division of Public Service Company of New Mexico (GCNM) for resale to the Women's Correctional Facility located in Cibola County, New Mexico, all as more fully set forth in the request on file with the Commission and open to public inspection.

El Paso states that by order issued July 14, 1950 at Docket No. G–1177 (9 FPC 170 (1950)) the Commission granted El Paso certificate authorization for, *inter alia*, the construction and operation of certain facilities in Cibola County, New Mexico, and the sale and delivery of natural gas to Sacramento Corporation, predecessor-in-interest to Southern Union Gas Company (SUG) who in turn was predecessor-in-interest to GCNM for resale and distribution. Additional authorizations have since been requested by El Paso and granted by the Commission as necessary.

El Paso states further that El Paso and GCNM are parties to the currently effective Service Agreement dated February 1, 1970 (Service Agreement), which was accepted for filing effective as of April 23, 1970, by Commission letter order dated April 22, 1970. Said Service Agreement provides, *inter alia*, for the sale and delivery by El Paso and the purchase and receipt by GCNM of natural gas for distribution and resale to consumers situated in various communities and areas in the State of New Mexico.

El Paso states it has received a written request from GCNM for natural gas service at a location on El Paso's existing 30-inch Permian-San Juan Line and 30-inch Permian-San Juan Loop Line in Cibola County, New Mexico. El Paso is advised by GCNM that the requested quantities of natural gas would be utilized to serve the natural gas requirements of the new correctional facility located near Grants, New Mexico. Initial deliveries of natural gas to GCNM for resale at such location are requested to begin in the fourth quarter of 1988.

El Paso proposes to install a sales tap consisting of one (1) 2-inch tap and valve assembly and one (1) American 80 B positive meter, with appurtenances, to be referred to as the "Women's Correctional Facility Sales Meter Station," on El Paso's existing 30-inch Permian-San Juan Line and 30-inch San Juan Loop Line in Cibola County, New Mexico. El Paso states that the estimated cost of such facility is $8,638, and the volumes of natural gas to be sold to GCNM at the proposed tap for resale would be delivered at a pressure of not greater than 150 psig. El Paso has been advised that GCNM will install 0.28 miles of 2-inch pipeline and one (1) 2-inch regulator station, with appurtenances, for ultimate distribution of the requested quantities of natural gas to the Women's Correctional Facility.

El Paso states that the additional quantities of natural gas to be delivered would be sold by El Paso to GCNM for resale in order to accommodate projected Priority 1 requirements, the anticipated Priority 1 load growth, which has precipitated GCNM's request for natural gas service described herein, would not alter GCNM's entitlements under el Paso's Permanent Allocation Plan. In addition, El Paso asserts that the sale of natural gas proposed herein is permitted by and consistent with the high-priority load growth provisions set forth in § 11.5(b), *Growth Provision*, of the General Terms and Conditions contained in El Paso's FERC Gas Tariff, First Revised Volume No. 1.

Comment date: November 21, 1988, in accordance with Standard Paragraph G at the end of this notice.

6. Columbia Gas Transmission Corporation

[Docket No. CP88–836–000]

October 6, 1988.

Take notice that on September 26, 1988, columbia Gas Transmission Corporation (Columbia Gas) 1700 MacCorkle Avenue, S.E. Charleston, West Virginia 25314, filed in Docket No. CP88–836–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon sales and deliveries of natural gas to an existing customer, The Consumers Natural Gas Company (Consumers), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Two of Columbia Gas' existing customers, Suburban Fuel Gas, Inc. (Suburban) and Consumers have agreed to merge and reorganize their

distribution operations. Under such merger plan Suburban was merged with and into Consumers and the surviving Consumers name was changed to Suburban Fuel Gas, Inc. As a result of the merger, Consumers requested that Columbia Gas abandon its existing deliveries of 1,540 Dt of gas per day under Columbia Gas' Rate Schedule SGS. The surviving Suburban will be served by Columbia Gas within the existing contract demand of the predecessor Suburban.[1] Upon receipt of the proposed abandonment authorization, Columbia Gas will terminate the presently effective service agreements with the predecessor Suburban and Consumers and combine the present delivery points to both companies into a new service agreement to be entered into with surviving Suburban and Columbia Gas.

Comment date: October 27, 1988, in accordance with Standard Paragraph F at the end of this notice.

7. Northwest Pipeline Corporation

[Docket No. CP88-825-000]

October 6, 1988.

Take notice that on September 21, 1988, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP88-825-000 an application pursuant to section 7(c) of the Natural Gas Act for authorization to construct and operate a meter station near Spokane, Washington, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest states that it and Inland Empire Paper Company (Inland Paper) entered into an agreement (Transportation Agreement) for the interruptible transportation of up to 1,500 million Btu's equivalent of natural gas per day from various receipt points on Northwest's system to either Northwest's existing Spokane Mead Meter Station delivery point to The Washington Water Power Company (Water Power) or to a new delivery point in Spokane County, Washington, which would permit direct deliveries to Inland Paper. It is stated that on August 1, 1988, Northwest initiated service to the existing Water Power delivery point under the Transportation Agreement pursuant to § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST88-5638-000 on September 9, 1988. It is further stated that September 19, 1988, in Docket No. CP88-822-000, Northwest submitted a request to continue service to the Water Power delivery point under the Transportation Agreement for a term expiring August 1, 1988.

It is said that Northwest has received a letter from an affiliate of Inland Paper, Inland Gas Transmission Company (Inland Gas) which requested Northwest to apply for authorization to construct and operate a tap and meter at an interconnection with a three-mile pipeline to be constructed by Inland Gas. It is claimed that as a result of that request, Northwest and Inland Gas entered into an agreement pursuant to which Northwest would promptly seek approval to construct the desired meter station and Inland Gas would reimburse Northwest for filing fees and the actual cost of construction of the new meter station, compensate Northwest for the time value of the Federal taxes assessed on Inland Gas' contribution-in-aid of construction, and reimburse Northwest for certain potential litigation expenses that may arise from this proposal.

Northwest requests authorization to construct and operate the meter station in Spokane County, Washington at a point of interconnection between Northwest's 30-inch transmission line and Inland Gas' proposed pipeline. It is stated that the meter station would consist of a 2-inch tap, meter and appurtenant facilities designed to deliver 1,500 million Btu equivalent per day to the Inland Gas pipeline. Northwest states that the estimated cost of the meter station, including filing fees, is $77,250 and that Inland Gas would reimburse Northwest for approximately $52,950 of this amount. It is further stated that approximately $11,400 would be paid by Inland Gas to Northwest to reflect the income tax assessment.

Northwest states that the meter station would be put into service pursuant to the flexible delivery point authorization under Northwest's blanket transportation certificate.

Comment date: October 27, 1988, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for

[1] Columbia Gas filed an application in Docket No. CP88-154-000, which is presently being processed, to increase the contract demand sales volume of gas to predecessor Suburban by 500 Dt per day and convert the current service under Rate Schedule SGS to Rate Schedule CDS service

authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 88-23592 Filed 10-12-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-1-48-000]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

October 6, 1988.

Take notice that ANR Pipeline Company ("ANR"), on September 30, 1988, tendered for filing as part of its F.E.R.C. Gas Tariff, Original Volume No. 1, the following tariff sheet to be effective November 1, 1988.

Eighteenth Revised Sheet No. 18

ANR states that the purpose of the instant filing is to implement ANR's quarterly PGA rate adjustment pursuant to section 15 of the General Terms and Conditions of ANR's Tariff.

Eighteenth Revised Sheet No. 18 reflects a 7.97¢ per dekatherm ("dth") decrease in the gas cost component of the commodity rate of ANR's CD-1/MC-1 Rate Schedules, an increase of $0.036 in the monthly D-1 demand rate and an increase of .90¢ in the D-2 demand rate applicable to the CD-1/MC-1 Rate Schedules. The instant filing further reflects a decrease in ANR's one-part rate applicable to Rate Schedule SGS-1 of 5.60¢ per dth.

ANR states that copies of the filing were served upon all 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 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, 1988. 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. 88-23576 Filed 10-12-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-2-21-000]

Columbia Gas Transmission Corp.; Notice of Proposed Changes in FERC Gas Tariff

October 6, 1988.

Take notice that Columbia Gas Transmission Corporation (Columbia) on September 30, 1988, tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1, to be effective November 1, 1988:

One hundred and thirty-first Revised Sheet No. 16
Nineteenth Revised Sheet No. 16A2
Ninth Revised Sheet No. 16C
Original Sheet No. 16C1
Original Sheet No. 16C2
Thirty-sixth Revised Sheet No. 64A

Columbia states that, compared with the rates contained in its September 23, 1988 PGA filing, the sales rates set forth on One hundred and thirty-first Revised Sheet No. 16 reflect an overall increase of 25.33¢ per Dth in the Commodity rate, and decreases of $.467 per Dth in the Demand-1 rate and 1.09¢ per Dth in the Demand-2 rate. In addition, the transportation rates set forth on Eighteenth Revised Sheet No. 16A2 reflect an increase in the Fuel Charge component of .68¢ per Dth.

Columbia states the purpose of these tariff sheets is to reflect the following:

(1) A Current Purchased Gas Cost Adjustment Applicable to Sales Rate Schedules;

(2) The continuation of certain surcharges which were accepted by the Commission on February 26, 1988 to be effective during the 12-month period of March 1, 1988 through February 28, 1989;

(3) A Transportation Fuel Charge Adjustment;

(4) The as-billed flowthrough of certain Order No. 473 costs and associated carrying charges being billed to Columbia by Panhandle Eastern Pipe Line Company (Panhandle); and

(5) A proposal for interim treatment of certain transportation reservation charges incurred by Columbia in connection with its conversion from firm sales to firm transportation services on Transcontinental Gas Pipe Line Corporation (Transco).

Columbia proposes to flow through to its sales customers Order No. 473 costs, and associated carrying charges, being billed by Panhandle on an as billed basis over the 12-month period commencing November 1, 1988.

In addition, Columbia requests a waiver of its tariff and the Commission's Regulations in order to recover through its PGA certain reservation costs incurred from Transco in connection with Columbia's conversion of certain sales entitlements with Transco to firm transportation.

Copies of the filing were served upon the Company's 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, Union Center Plaza Building, 85 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 14, 1988. 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 Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-23577 Filed 10-12-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2221, Missouri]

The Empire District Electric Co.; Intent To File an Application for a New License

October 7, 1988.

Take notice that on August 29, 1988, The Empire District Electric Company, the existing licensee for Ozark Beach Project No. 2221, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2221 was issued effective September 1, 1970, and expires August 31, 1993.

The project is located on the White River in Taney County, Missouri. The principal works of the Ozark Beach Project include an Ambursen-type concrete dam; a reservoir of 2, 200 acres; a powerhouse with an installed capacity of 16,000 kW; a connection to a 161 kV transmission line; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information as described in the

rule is now available from the licensee at 602 Joplin Street, Japlin MO 64801, Attn: Mr. William C. Howell, telephone (417) 623–4700.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by August 30, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 88–23578 Filed 10–12–88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89–1–46–000]

Kentucky West Virginia Gas Co.; Proposed Change in FERC Gas Tariff

October 6, 1988.

Take notice that Kentucky West Virginia Gas Company ("Kentucky West") on September 30, 1988, tendered for filing with the Federal Energy Regulatory Commission ("Commission") its quarterly FERC Gas Tariff, Second Revised Volume No. 1, to become effective November 1, 1988.

Kentucky West states that, effective November 1, 1988, pursuant to its obligations under various gas purchase contracts, it has specified a total price of $2.1048 per dth, inclusive of all taxes and any other production-related cost add-ons that it would pay under these contracts.

In addition, Kentucky West states that pursuant to the Commission's order of July 11, 1988, in Docket Nos. RP86–165–002, *et al.*, the costs discussed in that order are included in the current deferral sub-account balance reflected on Schedule G–2 of its filing. Kentucky West requests a 10 year amortization period to recover the foregoing costs and that carrying charges be permitted during such period. Kentucky West further reserves its right to file for recovery of any amounts to which it becomes entitled as the result of retroactive well qualifications permitted by the Commission and similarly requests that it be permitted to amortize such amounts over a 10 year period.

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 §§ 385.211 and 385.214 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 14, 1988. 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 becomne 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. 88–23579 Filed 10–12–88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2292, Wisconsin]

Nekoosa Papers Inc.; Intent To File an Application for a New License

October 7, 1988.

Take notice that on July 19, 1988, Nekoosa Papers Inc., the existing licensee for the Nekoosa Hydroelectric Project No. 2292, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99–495. The original license for Project No. 2292 was issued effective August 1, 1943, and expires July 31, 1993.

The project is located on the Wisconsin River in Wood County, Wisconsin. The principal works of the Nekoosa Project include a timber-cribbed, rock-filled dam; a reservoir of 400 acres; a powerhouse with an installed capacity of 3,800 kW; a 14.4-kV transmission line; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87–7–000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at 100 Wisconsin River Drive, Port Edwards, WI 54469, *Attn:* Jerome J. Luebke, telephone (715) 887–5672, or Franklin E. Robinson, telephone (715) 887–5590.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by July 30, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 88–23580 Filed 10–12–88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88–17–017]

Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

October 6, 1988.

Take notice that on September 26, 1988, Southern Natural Gas Company (Southern) tendered for filing to its FERC Gas Tariff, Sixth Revised Volume No. 1, a Substitute Second Revised Sheet No. 45R.14 to be effective November 1, 1988. Southern states that on August 26, 1988, it filed certain revised tariff sheets to be effective November 1, 1988, in compliance with the Federal Energy Regulatory Commission's (Commission) Orders in Docket No. RP88–17 dated May 27, 1988, and July 27, 1988. Subsequent to such filing, it came to Southern's attention that there is a misconception as to the coordination of certain language in sections 12.2(b) and (c) of the General Terms and Conditions for Rate Schedules FT and IT, and Southern has filed Substitute Second Revised Sheet No. 45R.14 in lieu of Second Revised Sheet No. 45R.14 to clarify any possible misconception. Southern has requested that the substitute sheet be made effective November 1, 1988.

Southern states that copies of the filing were mailed to all of Southern's jurisdictional purchasers, shippers, and interested state commissions, as well as the parties listed on the Commission's official service list compiled in this proceeding.

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 the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be

filed on or before October 14, 1988. 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. 88-23582 Filed 10-12-88; 8:45]

BILLING CODE 6717-01-M

[Docket No. EL89-1-000]

San Diego Gas and Electric Co. v. Southern California Edison Co., SCEcorp, and James S. Pignatelli; Notice of Filing

October 6, 1988.

Take notice that on October 3, 1988, San Diego Gas and Electric Company (San Diego) filed a complaint against Southern California Edison Company (Southern California), SCEcorp and James S. Pignatelli (respondents) pursuant to section 306 of the Federal Power Act, 16 U.S.C. 825e (1982), and Rule 206 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206 (1988). San Diego alleges that Southern California has, through its agents SCEcorp and Pignatelli, acquired common stock of San Diego without prior authorization of the Commisson, in violation of section 203 of the Federal Power Act. 16 U.S.C. 824b (1982). San Diego requests the Commission to order the respondents to divest themselves of their San Diego stock, or, in the alternative, to refrain from asserting rights as shareholders of San Diego other than the right to receive dividends, unless and until such authorization has been issued.

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, NW., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedue, 18 CFR 385.211, 385.214 (1988). All such motions or protests should be filed on or before November 7, 1988. 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. San Diego states that it has served the complaint on the respondents. Answers to the complaint shall be filed on or before November 7, 1988.

Lois D. Cashell,

Secretary.

[FR Doc. 88-23581 Filed 10-12-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP87-4-004]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 6, 1988.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on September 29, 1988 tendered for filing as part of its FERC Gas Tariff, fifth Revised Volume No. 1, six copies of the following tariff sheets:

Second Revised Sheet No. 1
Eighth Revised Sheet No. 50
Original Sheet Nos. 359A through 359I
Second Revised Sheet No. 404
Second Revised Sheet No. 439
Second Revised Sheet No. 443
Second Revised Sheet No. 474
Original Sheet No. 489A
Second Revised Sheet No. 600
Original Sheet Nos. 693A through 693E

Texas Eastern states that by order issued July 27, 1988, in Docket Nos. CP87-4-000, CP87-4-001, and CP87-4-002, the Commission issued Texas Eastern a Certificate of Public Convenience and Necessity authorizing Texas Eastern to construct and operate certain pipeline loops and compressor facilities and *inter alia,* to provide a firm transportation service consisting of receipt, transportation, and delivery of gas for Brooklyn Union Gas Company, Elizabethtown Gas Company, Long Island Lighting Company, New Jersey Natural Gas Company and Public Service Electric and Gas Company, collectively referred to as the "PennEast" customers.

Texas Eastern states Penn East Gas Services Company (PennEast) a general partnership organized by CNG and Texas Eastern Gateway, Inc., an affiliate of Texas Eastern, filed an application on October 2, 1986 pursuant to section 7(c) of the Natural Gas Act requesting authorization to render firm sales and firm transportation services to the above PennEast customers and to construct and operate facilities. However, by its July 27, 1988 order the Commission denied certificates to PennEast and instead granted a certificate to CNG authorizing CNG to provide a sales service (Ordering Paragraph (E)) and a certificate to Texas Eastern authorizing Texas Eastern to provide a firm transportation service (Ordering Paragraph (F)) and construct and operate facilities. Ordering Paragraph (J) of the Commission's July 27, 1988 order conditions the certificate issued to Texas Eastern, *inter alia,* upon Texas Eastern's compliance with the general terms and conditions set forth in Part 154 of the Commission's Regulations.

Texas Eastern states that in compliance with Part 154 of the Commission's Regulations, the above listed tariff sheets are being filed to set forth the terms and conditions of said firm transportation service to be provided under Rate Schedule FTS-4. Sheet Nos. 359A through 359I and 693A through 693E set forth Rate Schedule FTS-4 and the Form of Service Agreement. Sheet No. 50 is being filed to set forth the initial rates approved by the Commission in its July 27, 1988 order. The remaining tariff sheets reflect conforming changes required throughout Texas Eastern's Fifth Revised Volume No. 1 as a result of the addition of Rate Schedule FTS-4. Material required by § 154.62(b) of the Commission's Regulations is included in Attachment A of the filing.

The proposed effective date of the above listed tariff sheets is November 1, 1988.

Copies of this filing were served on Texas Eastern's 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 Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 13, 1988. 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. 88-23583 Filed 10-12-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-1-17-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 6, 1988.

Take notice that Texas Eastern Transmission Corporation (Texas

Eastern) on September 30, 1988 tendered for filing as a part of its FERC Gas Tariff, six copies each of the following tariff sheets:

Substitute Eighth Revised Sheet No. 50
Seventh Revised Sheet No. 50A
Seventh Revised Sheet No. 50B
Seventh Revised Sheet No. 50C
Seventh Revised Sheet No. 50D

Texas Eastern states that the above tariff sheets are being issued pursuant to section 23, Purchased Gas Cost Adjustment, contained in the General Terms and Conditions of Texas Eastern's FERC Gas Tariff. The filing constitutes Texas Eastern's regular quarterly filing to be effective November 1, 1988 pursuant to the Commission's regulations governing PGA filings as promulgated by its Order No. 483. In compliance with § 154.308(b)(2) of the Commission's Regulations, a report containing detailed computations which clearly show the derivation of the current adjustment to be applied to Texas Eastern's effective rates was included as well as a 9-track computer tape format as prescribed by FERC Form No. 542–PGA (Revised) for formal filing with the Commission.

Texas Eastern states that the changes proposed in this filing consist of a decrease in the Demand-1 component of Texas Eastern's sales rates of $0.042/dth and increases in the Demand-2 and commodity components of $0.0034/dth and $0.1358/dth, respectively, all based upon Texas Eastern's best projection of cost of purchased gas as required by § 154.305(c) of the Commission's Regulations.

The proposed effective date of the above tariff sheets is November 1, 1988.

Texas Eastern has respectfully requested waiver of any Regulations that the Commission may deem necessary to accept the above tariff sheets to be effective on November 1, 1988.

Copies of the filing were served on Texas Eastern's 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 Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 17, 1988. 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. 88–23584 Filed 10–12–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ89–1–29–000]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

October 6, 1988.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on September 30, 1988 the following tariff sheets to its FERC Gas Tariff Second Revised Volume No. 1. Such sheets are proposed to be effective November 1, 1988.

Fifty-Fourth Revised Sheet No. 12
Fifty-First Revised Sheet No. 15
Tenth Revised Sheet No. 15–A

Transco states the proposed tariff sheets reflect an overall rate increase as compared to the currently effective rates of 11.3¢ per dt in the commodity charge under the CD, G, OG, PS, E, PS ACQ and S–2 Rate Schedules.

Transco states that the increase of 11.3¢ per dt is comprised of (i) a 10.3¢ per dt increase related to the current gas cost portion of commodity rates, (ii) a 6.1¢ per dt decrease in the Surcharge Adjustment and (iii) a 7.1¢ per dt increase in the Special Transition Gas Cost Surcharge. The instant PGA filing reflects a projected average cost of gas of 244.79¢/dt for the quarterly period November 1, 1988 through January 31, 1989.

Transco further states that it has filed the necessary schedules in order to comply with § 154.305 and FERC Form 542. Transco has also filed a 9-track magnetic tape as required by FERC Form 542.

Transco states that copies of the instant filing are being mailed to its jurisdictional customers and interested state commissions. In accordance with the provisions of § 154.16 of the Commission's Regulations, copies of this filing are available for public inspection during regular business hours, in a convenient form and place at Transco's main office at 2800 Post Oak Boulevard in Houston, Texas.

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, 1988. 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. 88–23585 Filed 10–12–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ89–1–43–000]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

October 6, 1988.

Take notice that Williams Natural Gas Company (WNG) on September 30, 1988, tendered for filing the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Eighth Revised Sheet No. 6
Seventh 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, 1988, to reflect a $.0738 per Mcf increase in the Cumulative Adjustment.

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 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, 1988. 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. 88-23586 Filed 10-12-88; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

[No. 89-1]

Continuation of Solicitation for Special Research Grants; Basic Energy Sciences et al.

AGENCY: Department of Energy.

ACTION: Notice of continuation of availability of research grants.

SUMMARY: The Office of Energy Research of the Department of Energy hereby announces its continuing interest in receiving applications for Special Research Grants support work in the following program areas: Basic Energy Sciences, Biological and Environmental Research, High Energy and Nuclear Physics, and Fusion Energy. The Catalog of Federal Domestic Assistance number is 81.049. Information about submission of applications, eligibility, limitations, evaluation and selection processes, and other policies and procedures are specified, for grants, in 10 CFR Part 605 which was published in the **Federal Register** on April 15, 1985 (50 FR 14856).

DATES: Applications may be submitted at any time. Generally, those applications received prior to April 1, 1989 will be considered for FY 1989 funding; those received on or after April 1, 1989, will generally be considered for future fiscal year funding.

ADDRESSES: Applicants may obtain forms and additional information from Director, Acquisition and Assistance Management Division, Office of Energy Research, ER-64, U.S. Department of Energy, Washington, DC 20545, (301) 353-5544. Completed applications must be sent to this same address.

SUPPLEMENTARY INFORMATION: As mentioned above, the solicitation for Special Research Grants was published in the **Federal Register** on April 15, 1985. That solicitation specified the policies and procedures which govern the application, evaluation, and selection processes for research grants. It is anticipated that approximately 229 million dollars will be available in FY 1989. DOE is under no obligation to pay for any costs associated with the preparation or submission of applications. DOE reserves the right to fund, in whole or in part, any, all or none of the applications submitted in response to this notice.

Issued in Washington, DC, on October 3, 1988.

D.D Mayhew,

Acting Deputy Director for Management, Office of Energy Research.

[FR Doc. 88-23674 Filed 10-12-88; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3461-9]

National Drinking Water Advisory Council; Request for Nomination of Members

The Environmental Protection Agency (EPA) invites all interested persons to nominate qualified individuals to serve as members of the National Drinking Water Advisory Council. This Advisory Council was established to provide practical and independent advice, consultation and recommendations to the Agency on the activities, functions and policies related to the implementation of the Safe Drinking Water Act as amended. The Council consists of fifteen members including a Chairperson. Five members represent the general public; five members represent appropriate state and local agencies concerned with water hygiene and public water supply; and five members represent private organizations or groups demonstrating an active interest in the field of water hygiene and public water supply. Each member holds office for a term of three years and is eligible for reappointment. On December 15 of each year, five members complete their appointment. This notice solicits names to fill these five vacancies.

Any interested person or organization may nominate qualified persons for membership. Nominees should be identified by name, occupation, position, address, and telephone number. Nominations should include a current resume providing the nominee's background, experience, and qualifications.

This request for nominations does not imply any commitment by the Agency as to the procedure to be followed in making selections.

Persons selected for membership will receive compensation for travel and a nominal daily compensation while attending meetings.

Nominations should be submitted to Charlene E. Shaw, Designated Federal Official, National Drinking Water Advisory Council, U.S. Environmental Protection Agency, Office of Drinking Water (WH-550A), 401 M. Street, SW., Washington, DC 20460, no later than October 28, 1988. The Agency will not formally acknowledge or respond to nominations.

Dated: September 28, 1988.

Rebecca W. Hanmer,

Acting Assistant Administrator for Water.

[FR Doc. 88-23628 Filed 10-12-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3462]

Hollingsworth Property Site: Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has agreed to settle claims for response costs at the Hollingsworth Property Site, Fayetteville, North Carolina with Thomas J. Reuter and Kelly Reuter. EPA will consider public comments on the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Carolyn McCall, Compliance Clerk, Investigation and Cost Recovery Unit, Site Investigation and Support Branch, Waste Management Division, U.S. EPA, Region IV, 345 Courtland St., NE., Atlanta, GA 30365, 404-347-5059.

Written comments may be submitted to the person above on or before November 14, 1988.

Dated: September 29, 1988.

Greer C. Tidwell,

Regional Administrator.

[FR Doc. 88-23627 Filed 10-12-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL 3462-2]

Vass Truck Site: Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of Proposed Settlement.

SUMMARY: Under Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has agreed to settle claims for response costs at Vass Truck Wreck Site, Vass, North Carolina, with Winn-Dixie Stores, Inc. EPA will consider public comments on the

proposed settlement for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Carol McCall, Compliance Clerk, Investigation and Cost Recovery Unit, Site Investigation and Support Branch, Waste Management Division, U.S. EPA, Region IV, 345 Courtland St., NE., Atlanta, GA 30365, 404–347–5059.

Written comments may be submitted to the person above on or before November 14, 1988.

Dated: September 29, 1988.

Greer C. Tidwell,

Regional Administrator.

[FR Doc. 88–23626 Filed 10–12–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–816–DR]

Major Disaster and Related Determinations; Texas

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Texas (FEMA–816–DR), dated October 5, 1988, and related determinations.

DATED: October 5, 1988.

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 5, 1988, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Public Law 93–288), as follows:

I have determined that the damage in certain areas of the State of Texas, due to damages from Hurricane Gilbert and resulting tornadoes during the period of September 15–17, 1988, is of sufficient severity and magnitude to warrant a major disaster declaration under Public Law 92–288. I, therefore, declare that such a major disaster exists in the State of Texas.

In order to provide Federal assistance, you are hereby authorized to allocate, from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the affected areas. You are also authorized to provide Public Assistance in the affected areas, if required and necessary, and an acceptable State commitment for these purposes is provided. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under PL 93–288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated areas.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Robert D. Broussard of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Texas to have been affected adversely by this declared major disaster:

The Counties of Bexar, Cameron, and Hidalgo for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Julius W. Becton, Jr.,

Director, Federal Emergency Management Agency.

[FR Doc. 88–23560 Filed 10–12–88; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL HOME LOAN BANK BOARD

[No. 88–1071]

Change of Control; Information Collection Request

Date: September 29, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The public is advised that the Federal Home Loan Bank ("Board") has submitted for extensions, without revision, an information collection request, "Change of Control Notices" to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

This information is required in connection with a Change of Control Notice for use by the Bank Board to evaluate the merits of an application in light of applicable statutory and regulatory criteria. The Board estimates that it will require 175 hours per response to complete this collection of information.

DATES: Comments on the information collection request are welcome and should be received on or before October 28, 1988.

ADDRESS: Comments regarding the paperwork-burden aspects of the request should be directed to Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board.

Request for copies of the proposed information collection requests and supporting documentation are obtainable at the Board address given below:

Director, Information Services Division, Office of Secretariat, Federal Home Loan Bank Board, 801 17th Street, NW, Washington, DC 20552, Phone: 202–653–2751

FOR FURTHER INFORMATION CONTACT: Robyn H. Dennis, Office of Regulatory Activities, 202–331–4572, Federal Home Loan Bank Board, 801 17th Street, NW., Washington, DC 20552.

By The Federal Home Loan Bank Board.

John F. Chizzoni,

Assistant Secretary.

[FR Doc. 88–23621 Filed 10–12–88; 8:45 am]

BILLING CODE 6720–01–M

[No. 88–1042]

Thrift Financial Report; Revised Information Collection Request

Dated: Sept. 28, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The public is advised that the Federal Home Loan Bank Board ("Board") has submitted a revised information collection request, "Thrift Financial Report" to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

This information is essential to determine the financial condition and results of operations of insured savings and loan institutions for the protection of depositors through maintenance of a sound FSLIC insurance coverage program. The information provided will also be used for monitoring purposes in determining trends, asset/liability gaps and compliance with statutes, rules and regulations. The Board estimates that it

will require 39 hours per response to complete this collection of information.

DATE: Comments on the information collection request are welcome and should be received on or before October 28, 1988.

ADDRESS: Comments regarding the paperwork-burden aspects of the request should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board.

Requests for copies of the proposed information collection requests and supporting documentation are obtainable at the Board address given below:

Director, Information Services Section, Office of Secretariat, Federal Home Loan Bank Board, 801 17th Street, NW., Washington, DC 20552, Phone: 202–653–2751.

FOR FURTHER INFORMATION CONTACT: Richard C. Pickering, Deputy Director, Office of Policy and Economic Research, 202–377–6770 Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88–23622 Filed 10–12–88; 8:45 am]

BILLING CODE 6720–01–M

[No. AC–472; FHLBB No. 2628]

Bayside Federal Savings and Loan Association, Bayside, NY; Final Action Approval of Conversion Application

Dated: October 5, 1988.

Notice is hereby given that on September 26, 1988, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Bayside Federal Savings and Loan Association, Bayside, New York, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of New York, One World Trade Center, Floor 103, New York, New York 10048.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[No. AC–740]

First Federal Savings and Loan Association of Washington Court House, Washington Court House, OH; Final Action Approval of Conversion and Holding Company Applications

Dated: September 28, 1988.

Notice is hereby given that on September 22, 1988, the General Counsel, and the Executive Director of the Office of Regulatory Activities (or their respective designeees), acting pursuant to delegated authority, approved the application of First Federal Savings and Loan Association of Washington Court House, Washington Court House, Ohio (the "Association") for permission to convert to the stock form of organization pursuant to a voluntary supervisory conversion, and the application of Camco Financial Corporation, Cambridge, Ohio to acquire control of the Association.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88–23624 Filed 10–12–88; 8:45 am]

BILLING CODE 6720–01–M

[No. AC–741]

Security Savings Association Indianapolis, IN; Final Action Approval of Conversion Application

Dated: October 5, 1988.

Notice is hereby given that on September 22, 1988, the Office of General Counsel ("OGC") and the Office of Regulatory Activities ("ORA"), or their respective designees, acting pursuant to delegated authority, approved the application of Security Savings Association Indianapolis, Indiana ("Security"), for permission to convert to the stock form of organization pursuant to a voluntary supervisory conversion and the acquisition of Security by Great Lakes Bancorp, A Federal Savings Bank, Ann Arbor, Michigan, and the Office of District Banks, with the concurrence of ORA and OGC, approved the application for Security to merge into Great Lakes Bancorp Indiana, A Federal Savings Bank, Indianapolis, Indiana.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88–23625 Filed 10–12–88; 8:45 am]

BILLING CODE 6720–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Revocations; Techno 2000 International Corp. et al.

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR 510.

License Number: 3059.
Name: Techno 2000 International Corp.
Address: 8430 N.W. 66th St., Miami, FL 33166.
Date Revoked: September 3, 1988.
Reason: Failed to maintain a valid surety bond.

License Number: 2948.
Name: Belcap International Corp. dba Allied Ocean Freight Co.
Address: 1885 New Highway, Farmingdale, NY 11735.
Date Revoked: September 10, 1988.
Reason: Failed to maintain a valid surety bond.

License Number: 1781.
Name: Allied Overseas Shippers, Inc.
Address: 1525 Chase Ave., P.O. Box 987, Elk Grove Village, IL 60007.
Date Revoked: September 21, 1988.
Reason: Failed to maintain a valid surety bond.

License Number: 1775.
Name: Richard L. Sharp.
Address: 533 Public Ledger Bldg. 6th & Chestnut Streets, Philadelphia, PA 19106.
Date Revoked: September 24, 1988.
Reason: Failed to maintain a valid surety bond.

License Number: 3030.
Name: Surface Sea Forwarders, Inc.
Address: 2100 Alaskan Way, Seattle, WA 98121.
Date Revoked: September 28, 1988.
Reason: Failed to maintain a valid surety bond.

License Number: 2818.
Name: Freight Services Forwarding, Inc.
Address: 19 West 34th Street, New York, NY 10001.
Date Revoked: September 30, 1988.

Reason: Voluntarily requested revocation.

Robert G. Drew,

Director Bureau of Domestic Regulation.

[FR Doc. 88-23631 Filed 10-12-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Berger Bancorp, 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 no later than November 3, 1988.

A. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Berger Bancorp, Inc.*, Berger, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of farmers and Merchants Bank of Berger, Berger, Missouri.

B. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Hub Financial Corporation*, Lubbock, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of City Bank, Lubbock, Texas.

Board of Governors of the Federal Reserve System, October 6, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-23546 Filed 10-12-88; 8:45 am]

BILLING CODE 6210-01-M

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 28, 1988.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Robert M. Hearin*, Jackson, Mississippi; to acquire up to 24.99 percent of the voting shares of First Capital Corporation, Jackson, Mississippi, and thereby indirectly acquire Trustmark National Bank, Jackson, Mississippi.

2. *Williard M. Johnson*, Houston, Texas; to acquire an additional 4.8 percent of the voting shares of Jamestown Union Bancshares, Inc., Jamestown, Tennessee, and thereby indirectly acquire Union Bank, Jamestown, Tennessee.

B. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Davis Venture Partners, L.P.*, Tulsa, Oklahoma; to acquire up to 24 percent of the voting shares of Provident Bancorp of Texas, Inc., Dallas, Texas, and thereby indirectly acquire The Security State Bank of Commerce, Commerce, Texas; Provident Bank-Denton, Denton, Texas; Provident Bank-Dallas, Dallas, Texas; DeSoto State Bank, DeSoto, Texas; and First State Bank, Wylie, Texas.

Board of Governors of the Federal Reserve System, October 6, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-23547 Filed 10-11-88; 8:45 am]

BILLING CODE 6210-01-M

Society Corp.; Application to Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has 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.

The 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.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 3, 1988.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Society Corporation*, Cleveland, Ohio; to engage *de novo* through its wholly-owned proposed subsidiary, Society National Trust Company, in organization, Naples, Florida, in fiduciary, agency, and custodial functions and activities, including, without limitation, serving as trustee under trusts (whether revocable or irrevocable, testamentary or *inter vivos*), serving as executor, administrator, or personal

representative of probate estates, serving as guardian of estates of minors or incompetents; providing investment advisory and investment management services consisting of providing portfolio review, analysis, advice, and recommendations and serving as agent for investment of assets, and custodial services consisting of the safekeeping of assets, collection and allocation of income for specific accounts, following maturities, calls, exchanges, tenders and other transactions involving a specific security, security handling with respect to gifts, distributions, and other transfers, handling of proxies with respect to securities held in nominee form, remittance of funds, and execution of security transactions, as well as all other functions and activities permitted pursuant to applicable law and related to and required by its exercise of full fiduciary powers under its charter as a national trust company pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governos of the Federal Reserve System, October 6, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-23548 Filed 10-11-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Statement of Organization, Functions, and Delegations of Authority

Notice is hereby given that I have delegated to the Chair and Members of the Departmental Grant Appeals Board my authority to make final determinations with respect to the imposition of civil monetary penalties, exclusions, and suspensions on review of, or by declining to review, initial decisions of Administrative Law Judges relating to section 1867 of the Social Security Act (42 U.S.C. 1395dd).

This delegation became effective upon date of signature.

Dated: September 30, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 88-23588 Filed 10-12-88; 8:45 am]

BILLING CODE 4150-04-M

Office of the Secretary

Statement of Organization, Functions, and Delegations of Authority

Notice is hereby given that I have delegated to any and all Administrative Law Judges in, assigned to, or detailed to, the Departmental Grant Appeals Board the authority to conduct hearings and render decisions with respect to the imposition of civil monetary penalties, exclusions, and suspensions under section 1867 of the Social Security Act (42 U.S.C. 1359dd).

This delegation includes, but is not limited to, the authority to administer oaths and affirmations, to subpoena witnesses and documents, to examine witnesses, to exclude or receive and give appropriate weight to matierials and testimony offered as evidence, to make findings to fact the conclusions of law, and to determine whether civil monetary penalties, exclusions, and suspensions should be imposed. The determinations by the Administrative Law Judge is final unless reviewed by a member or members of the Departmental Grant Appeals Board.

This delegation became effective upon date of signature.

Dated: September 30, 1988.

Otis R. Bowen.

Secretary.

[FR Doc. 88-23589 Filed 10-12-88 8:45 am]

BILLING CODE 4150-M

Food and Drug Administration

[Docket No. 88N-0351]

Drug Export; Ornade Spansule

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that SmithKline Consumer Products has filed an application requesting approval for the export of the human drug Ornade Spansule to Canada.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should be also directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Rudolf Apodaca, Division of Drug Labeling Compliance (HFD-310), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8063.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the Federal Register within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that SmithKline Consumer Products, One Franklin Plaza, P.O. Box 8082, Philadelphia, PA 19101, has filed an application requesting approval for the export of the human drug Ornade Spansule, to Canada. This product is to be used as an oral nasal decongestant. The application was received and filed in the Center for Drug Evaluation and Research on September 27, 1988, which shall be considered the filing date for purposes of the act.

Interested person may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by (October 24, 1988), and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: October 5, 1988.

Daniel L. Michels,

Director, Office of Compliance Center for Drug Evaluation and Research.

[FR Doc. 88-23663 Filed 10-12-88; 8:45 am]

BILLING CODE 4160-01-M

Consumer Participation; Notice of Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: MINNEAPOLIS DISTRICT OFFICE, chaired by John Feldman, District Director. The topic to be discussed is the new drug approval process.

DATE: Friday, October 21, 1988, 10 a.m. to 12 m.

ADDRESS: Bemidji City Hall, Fourth and Minnesota, Bemidji, MN 56601.

FOR FURTHER INFORMATION CONTACT: Donald W. Aird, Jr., Consumer Affairs Officer, Food and Drug Administration, 240 Hennepin Ave., Minneapolis, MN 55401, 612–334–4100.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: October 5, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–23574 Filed 10–12–88; 8:45 am]

BILLING CODE 4160–01–M

Consumer Participation; Notice of Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: NASHVILLE and CINCINNATI DISTRICT OFFICES, chairing jointly. The topic to be discussed is health fraud.

DATE: Thursday, October 27, 1988, 9 a.m. to 4 p.m.

ADDRESS: Campbell House, Inc., Lexington, KY 40504.

FOR FURTHER INFORMATION CONTACT:

Sandra S. Baxter, Consumer Affairs Officer, Food and Drug Administration, 297 Plus Park Blvd., Nashville, TN 37217, 615–736–2088,

or

Theresa Hoog, Consumer Affairs Officer, Food and Drug Administration, 1141 Central Parkway, Cincinnati, OH 45202, 513–648–3501.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: October 5, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–23575 Filed 10–12–88; 8:45 am]

BILLING CODE 4160–01–M

Health Professional Organizations Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice of meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing a forthcoming meeting of health professional organizations to be chaired by Frank E. Young, Commissioner of Food and Drugs. The agency will include a discussion on acquired immunodeficiency syndrome (AIDS), which includes the mail import policy, condoms, and surgical gloves, and discussions on Action Plan Phase III, Reynolds Tobacco Product (Premier), the new drug approval process, health claims on foods, and proposed tampon labeling regulations.

DATE: Monday, October 17, 1988, 2:30 p.m. to 4:30 p.m.

ADDRESS: Conference Rm. 503A, Hubert H. Humphrey Bldg., 200 Independence Ave., SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Robert Veiga, Office of Health Affairs (HFY–40), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5470.

Dated: October 6, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–23659 Filed 10–12–88; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

Privacy Act of 1974; System of Records

AGENCY: Health Care Financing Administration (HCFA), Department of Health and Human Services (HHS).

ACTION: Notice of New System of Records.

SUMMARY: In accordance with the requirement of the Privacy Act of 1974, we are proposing to establish a new system of records, "Evaluation of the OBRA 87 Medicare Payment for Therapeutic Shoes for Individuals with Severe Diabetic Foot Disease Demonstration," HHS/HCFA/ORD No. 09–70–0043. We have provided background information about the proposed system in the "Supplementary Information" section below. Although the Privacy Act requires only that the "routine use" portion of the system be published for comment, HCFA invites comment on all portions of this notice.

DATES: HCFA filed a new system report with the Speaker of the House, the President of the Senate, and the Administrator, Office of Information and Regulatory Affairs, Executive Office of Management and Budget (EOMB), on October 7, 1988, pursuant to paragraph 4(b) of Appendix I to EOMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985 (50 FR 52730). In accordance with paragraph 4(b)(4) of this same Circular, we are requesting a waiver from EOMB of the 60-day advance notice requirement. Therefore, in the absence of a denial of the waiver by EOMB, the new system of records including routine uses will become effective November 7, 1988, unless the comments received should lead HCFA to decide otherwise.

ADDRESS: The public should address comments to Richard A. DeMeo, Privacy Act Officer, Office of Management and Budget, Health Care Financing Administration, Room G–M–1, East Low Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207. Comments received will be available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: Sherrie Fried, Division of Health Systems and Special Studies, Office of Research and Demonstrations, Room 2306 Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207, telephone (301) 966–6619.

SUPPLEMENTARY INFORMATION: HCFA proposes to initiate a new system of records collecting data under the authority of section 4072 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203. The purpose of this system of records is to provide data necessary to evaluate the OBRA 1987 Therapeutic Shoes Demonstration. Section 4072 of the Omnibus Budget Reconciliation Act of 1987 requires that the Secretary of the Department of Health and Human Services establish a demonstration project to test the cost-effectiveness of furnishing therapeutic shoes to Medicare beneficiaries with severe diabetic foot disease. The project is to be conducted

for an initial period of 24 months, and by October 1, 1990 the Secretary is to report to Congress on the results of the project. If existing data show that furnishing therapeutic shoes under the Medicare program is cost-effective, the demonstration will terminate, and therapeutic shoes will become a covered service under Medicare effective November 1, 1990. If findings are inconclusive, the project will continue for an additional 24 months, and by April 1, 1993 the Secretary will submit a final report to Congress on the results of the project. Coverage under Medicare becomes effective on the first day of the first month after the final report is submitted unless the report shows that the shoes are not cost-effective.

The system of records will include data collected from the Health Insurance Master Files, the Medicare Part A Hospital Billing Records (MEDPAR File), the Medicare Automated Data Retrieval System (MADRS) File, claims data from Medicare Part B carriers in demonstration States, and demonstration data on the cost of furnishing therapeutic shoes.

In order to fulfill the objective and complete tasks in this project, the contractor must have individually-identified records. Since we are proposing to establish this system of records in accordance with the requirements and principles of the Privacy Act, we do not anticipate that it will have an unfavorable effect on the privacy or other personal rights of individuals.

The Privacy Act permits us to disclose information without the consent of the individual for "routine uses"—that is, disclosure for purposes that are compatible with the purpose for which we collected the information. The proposed routine uses in the new system meet the compatibility criteria since the information is collected for administering the Medicare program for which we are responsible. We anticipate that disclosures under the routine uses will not result in any unwarranted adverse effects on personal privacy.

Dated: October 6, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

09-70-0043

SYSTEM NAME:

Evaluation of the OBRA 87 Medicare Payment for Therapeutic Shoes for Individuals with Severe Diabetic Foot Disease Demonstration.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Mathematica Policy Research, Inc., P.O. Box 2393, Princeton, New Jersey 08543-2393.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

A sample of Medicare beneficiaries with severe diabetic foot disease who are at high risk of lower extremity amputations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name; health insurance claim number; address; cost and utilization of health services; diagnosis; previous use of therapeutic shoes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 4072 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203.

PURPOSE(S):

To provide data necessary to evaluate the impact of the OBRA 1987 Therapeutic Shoes Demonstration.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Disclosure may be made:

1. To other contractors for the purpose of collating, analyzing, aggregating, or otherwise refining or processing records in this system or for developing, modifying, and/or manipulating ADP software. Data would also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance for an ADP or telecommunications system containing or supporting records in the system.

2. To a congressional office, from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

3. To the Department of Justice, to a court or other tribunal, or to another party before such tribunal, when:

a. HHS, or any component thereof; or

b. Any HHS employee in his or her official capacity; or

c. Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

d. The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components,

is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

4. To an individual or organization for research, demonstration, evaluation, or epidemiological project related to the prevention of disease or disability, the restoration or maintenance of health, or the efficacy or efficiency of HCFA programs if HCFA:

a. Determines that the proposed use does not violate legal limitations under which the record was provided, collected, or obtained, including such limitations as may be imposed or provided under the Privacy Act;

b. Determines that the purpose for which the proposed use is to be made:

(1) Cannot be reasonably accomplished unless the record is provided in a form that identifies individuals;

(2) Is of sufficient importance to warrant the effect on or risk to the privacy of the individual by such limited additional exposure that unauthorized disclosure of the record might bring; and

(3) There is a reasonable probability that the objective of the use will be accomplished;

c. Requires the recipient of the information to:

(1) Establish appropriate administrative, technical, and physical safeguards to prevent unauthorized use or disclose of the record;

(2) Remove or destroy the information that allows the individuals to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project, unless the recipient receives written authorization from HCFA that is justified based on research objectives for retaining such information; and

(3) Make no further use of the record except:

(a) For use in emergency circumstances affecting the health or safety of any individual following written authorization of HCFA;

(b) For disclosure to a person, identified in advance by HCFA, for the purpose of conducting an audit of the research project, provided information which would identify research subjects is destroyed by the person authorized to conduct the audit at the earliest opportunity, consistent with the purpose of the audit; or

(c) When further approved by HCFA.

d. Secures a written, legally binding statement by the recipient of the information attesting that the recipient understands the provisions of paragraph 4(c) and all terms and conditions of the Privacy Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and magnetic tape.

RETRIEVABILITY:

Information will be retrieved by beneficiary's name and health insurance claim number.

SAFEGUARDS:

Employees who maintain records in this system are instructed to grant access only to authorized users. Data stored in computers are accessed through the use of passwords/keywords/numbers known only to the authorized personnel. These passwords/keywords are changed as needed.

Contractors who maintain records in this system are instructed to make no further disclosures of the records except as authorized by the system manager in accordance with the Privacy Act. Privacy Act requirements are specifically included in contracts related to this system. The project officer and contract officer oversee compliance with these requirements. The particular safeguards implemented are developed in accordance with the DHHS *ADP Systems Manual*, Part 6, ADP Systems Security (e.g., use of passwords), and the National Bureau of Standards Federal Information Processing Standards.

RETENTION AND DISPOSAL:

Hardcopy data collection forms and magnetic tapes with identifiers will be retained in secure storage areas. The disposal technique of degaussing will be used to strip magnetic tape of all identifying names and numbers in June 1993. Hardcopy records will be destroyed at this time.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Research and Demonstrations, Health Care Financing Administration, 2230 Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the System Manager at the address indicated above, specify name, address, and health insurance number.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requestors should reasonably specify the record contents being sought. (These procedures are in accordance with HHS Regulations (45 CFR 5b.5(a)(2).)

CONTESTING RECORD PROCEDURES:

Contact the System Manager named above and reasonably idenify the record and specify the information to be contested. State the reason for contesting it (e.g., why it is inaccurate, irrelevant, incomplete, or not current). (These procedures are in accordance with HHS Regulations (45 CFR 5b.7).)

RECORD SOURCE CATEGORIES:

Information contained in these records is obtained from HCFA's existing system of records, prescription forms from demonstration providers, and information directly from participants.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 88-23605 Filed 10-12-88; 8:45 am]

BILLING CODE 4120-03-M

Health Resources and Services Administration

Correction of Advisory Council Meeting Address; October

In Federal Register Document 88-22341 appearing on page 38084 in the issue for Thursday, September 29, 1988, the October 26 meeting of the "National Advisory on the National Health Service Corps" will be held at the Sheraton Waterfront Hotel, 206 Coosa Street, Montgomery, Alabama 36014. All other information is correct as appears.

Dated: October 6, 1988.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 88-23570 Filed 10-12-88; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Offer of an Opportunity to Apply for a License for Scientific and Commercial Development of CD4-Pseudomonas Exotoxin (CD4-PE) as an Anti-Viral Agent Useful in the Treatment of Acquired Immunodeficiency Syndrome (AIDS)

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (DHHS) seeks a licensee who can effectively pursue the preclinical and clinical development of DC4-PE for the treatment of AIDS. Scientists from the National Cancer Institute (NCI) and the National Institute of Allergy and Infectious Diseases (NIAID) have established that this compound is effective in inhibiting *in vitro* growth of HIV, the etiologic agent of AIDS. The Government will grant the selected company an exclusive, royalty-bearing license under U.S. Patent Application Serial No. 223,270 "Cytotoxic Agent Against Specific Virus Infection."

ADDRESS: Responses should be send to: Dr. William Gartland, Assistant Director for Preclinical Sciences, AIDSP, NIAID, 6003 Executive Boulevard, Room 247P, Rockville, Maryland, 29852, (301) 496-0545, who may be addressed for further information including a copy of the patent application.

DATE: In view of the important priority of developing new drugs for the treatment of AIDS, interested parties should submit responses within 30 days of the date of this notice.

Late responses will not be considered. Timely respondees may be provided another opportunity to provide additional information, to present an oral statement and to answer questions, if the Government determines that it is necessary. A potential company's failure to submit a timely response will be considered in the Government's assessment of any objection raised by that company to the grant of an exclusive patent license to the party selected to collaborate with the Public Health Service (PHS).

SUPPLEMENTARY INFORMATION: The Government is seeking "orphan drug" status for CD4-PE. The government seeks a company which, in accordance with the requirements of the rgulations governing the licensing of Government-owned inventions (37 CFR 404.8), presents the most meritorious plan for the development of CD4-PE to a marketable status to meet the needs of the public and with the best terms for the Government. Specifically, respondees are sought who will be able to:

(1) Synthesize bulk pharmaceutical product necessary for both the preclinical toxicology and treatment of 500-1,000 patients with HIV infection in Phases I, II, and III developmental studies. It is important to stress that the successful applicant will be expected to perform the preclinical toxicology testing without guaranteed assistance from the Government.

(2) Perform formulation for intravenous use, vialing, quality control testing and distribution of drug for Phases I and II and, if appropriate, Phase III clinical trials, both in the NIH intramural program and in the extramural AIDS Clinical Trials Group (ACTG) established by the NIAID. These clinical trials may be performed under the sponsorship of an Investigational New Drug (IND) to be held by the NCI or NIAID or, if appropriate, by the successful applicant. Prior to being released for commercial distribution, the drug would have to be granted a product license by the Food and Drug Administration (FDA).

(3) The company will be expected to perform clinical stuides. In addition, the NIAID may conduct studies of CD4–PE in the ACTG. The company will be expected to provide drug free of charge to the National Institutes of Health (NIH) for studies conducted in the ACTG and in the NIH intramural program.

(4) Provide data management support for both the intramural and extramural studies of CD4–PE necessary for the submission of a NDA to the FDA.

(5) Share the cost of the intramural and extramural clinical monitoring studies (pharmacokinetics, patient immune profiles and viral outgrowth studies) necessary for the demonstration of clinical efficacy of CD4–PE for the treatment of AIDS.

(6) The United States Government will recieve reasonable royalties once the drug is marketed for general use.

Responses will be reviewed by senior Government scientists. Criteria for choosing the industrial licensee will, in addition to those criteria set forth by 37 CFR and 404.7 (a) (1) (ii)-(iv), include:

(1) Prior manufacturing capabilities for recombinant proteins. A proven ability to produce recombinant proteins in *E. coli* or yeast. In addition, experience in the production of CD4 or bacterial toxins is desirable.

(2) Experience in preclinical and clinical drug development with special emphasis on the development of biologics.

(3) Ability to produce, package, market, and distribute biological pharmaceutical products in the United States and to provide the product at a reasonable price.

(4) Demonstrated expertise in monitoring drug levels using state of the art methods for assay of biological materials.

(5) Experience in the evaluaiton, monitoring, and interpretation of data from investigational biologic and virologic assays under an IND.

(6) Experience in the evaluation, monitoring and interpretation of data from Phase I and II clinical studies under and INDA.

(7) A willingness to cooperate with the Public Health Service in the collection, evaluation, publication and maintenance of data from clinical trials and tests of investigational biologic assays.

(8) Willingness to cost share in AIDS drug development as outlined above (i.e., bulk drug synthesis, data managment, etc.)

(9) Agree to be bound by the DHHS rules involving human/animal subjects.

(10) Submission of a development plan which includes appropriate milestones and deadlines for preclinical and clinical development.

Dated: October 6, 1988.

William F. Raub,

Acting Director, National Institutes of Health.

[FR Doc. 88–23629 Filed 10–12–88; 8:45 am]

BILLING CODE 4140–01–M

Social Security Administration

Disability Benefit Programs Revisions to the Mental Disorders Listings; Public Meeting

AGENCY: Social Security Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: On August 9, 1988, the Secretary of Health and Human Services (the Secretary) published a final rule in the **Federal Register** (53 FR 29878) extending the effective date of the listings of impairments (the listings) in the adult mental disorders section (12.00) of Part A of the Listing of Impairments in Appendix 1 of Subpart P of 20 CFR Part 404 through August 27, 1990, an additional 2 years beyond the previous expiration date. The extension provides additional time to evaluate the results of two major projects relating to the mental disorder listings, to consider the results from our own quality review program and operational experience with the listings, and to solicit and evaluate public comments.

This notice announces the schedule and proposed agenda of a public meeting to be held in Baltimore, Maryland at which public officials, representatives of professional and public interest organizations, and concerned citizens may speak and submit written comments on the need to revise and, if so, the nature of the revisions to these listings.

DATES: November 9, 1988, 8:00 a.m. to 4:30 p.m., and, it necessary, November 10, 1988, 8:00 a.m. to 4:30 p.m.

ADDRESS: Social Security Administration, Altmeyer Auditorium, 6401 Security Boulevard, Baltimore, MD 21235. (Enter, and obtain a visitor parking permit if needed, at the Security Boulevard main entrance.)

FOR FURTHER INFORMATION CONTACT: Richard Bresnick, Meeting Coordinator, Social Security Administration, Room 3–G–7 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235; (301) 965–9108.

SUPPLEMENTARY INFORMATION: The final rule published in the **Federal Register** on August 28, 1985 (50 FR 35038) contains the listings used to evaluate mental impairments in adults (and children where the disease process is similar to adults) for determining eligibility for disability under Titles II and XVI of the Social Security Act. This final rule included a 3-year sunset provision which provided that the listings would expire on August 27, 1988, unless the Secretary extended or revised and promulgated regulations again. The reason given for the sunset provision was as follows: "The dynamic nature of the diagnosis, evaluation and treatment of the mental disease process requires that the rules in this area be periodically revised and updated."

On August 9, 1988, the Secretary extended the effective date provision through August 27, 1990. The extension is needed to provide us time to evaluate the results of two major projects related to the listings (see 53 FR 29878 for more details on these) and to consider the results from our own quality review program and operational experience with the listings.

In addition to these activities, we would like to obtain comments from the public before initiating the rulemaking process. Therefore, a public meeting will be held by the Social Security Administration (SSA) to elicit comments., Public officials, representatives of professional and public interest organizations, and concerned citizens may present their comments on the need to revise the listings and, if so, the specific nature of the revisions. We wil not provide an evaluation of the comments either at the meeting or subsequent to the meeting.

Comments received at the public meeting will be considered along with information from our other activities to determine the need for revisions to the listings, and the nature of the revisions, if they are necessary.

The meeting will be conducted as an informal forum open to the public to the extent that space is available. A transcript of the meeting will be

available to the public on an at-cost basis. Transcripts may be ordered from the Meeting Coordinator. The transcript and all written submissions will become part of the record of these proceedings.

The public comment portion of the meeting will begin after an opening statement by the SSA Chief Medical Officer. As many speakers as possible will be scheduled in the time allotted. In order to assure that everyone wishing to speak is given the opportunity, the SSA Chief Medical Officer will limit the time allotted to each speaker to a maximum of 10 minutes. Because of the time limitation for each speaker, individuals are requested to present comments in their order of importance. A written copy of each individual's comments should be prepared and presented to us, preferably in advance of the meeting. To ensure our full understanding and consideration of all of each speaker's concerns, we encourage individuals to include in their written comments a detailed and elaborative discussion of the subjects presented orally, as well as further written comments on other issues not presented orally. Persons unable to attend the meeting also may submit written comments. Written comments will receive the same consideration as oral comments and will be included in our evaluation.

We will accept requests to speak from public officials, representatives of professional and public interest organizations, and concerned citizens. However, the comments presented must concern only the need to revise the listings and the specific nature of any recommended revisions.

To request to speak, please write or telephone the Meeting Coordinator and provide the following: (1) Name; (2) business or residence address; (3) telephone number (including area code) during normal working hours; (4) capacity in which presentation will be made; i.e., public official, representative of an organization, or citizen; and (5) time of day desired. To guarantee an opportunity to speak, requests must be received by October 27, 1988. Late requests to speak will be honored if time permits.

(Catalog of Federal Domestic Assistance Programs Nos. 13.802, Social Security-Disability Insurance; and 13.807, Supplemental Security Income)

Dated: October 7, 1988.

David A. Rust,

Associate Commissioner for Disability.

[FR Doc. 88-23587 Filed 10-12-88; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO-150-09-4830-11]

National Public Lands Advisory Council; Call for Nominations

AGENCY: Bureau of Land Management, Interior.

ACTION: Call for Nominations for National Public Lands Advisory Council.

SUMMARY: The purpose of this notice is to call for nominations for seven memberships on the Bureau of Land Management's National Public Lands Advisory Council.

The Council consists of 21 members. Under the staggered-term arrangement instituted by the Secretary of the Interior in 1981, the terms of seven members on the Council will expire on December 31, 1988. Current Council members may be reappointed or new members may be appointed. Terms of appointment will be for 3 years, beginning January 1, 1989, and expiring December 31, 1991.

Nominees for membership should be well qualified through education, training and experience to give informed and objective advice concerning land use and resource planning for the public lands.

DATE: Nominations should be received by the Bureau of Land Management by November 15, 1988.

ADDRESS: Persons wishing to nominate individuals to serve on the Council should send biographical data that includes name, address, profession, and other relevant information about the candidates' qualifications to: Director (150), Bureau of Land Management, MS-5558, Department of the Interior, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The function of the Council is to advise the Secretary of the Interior, through the Director, Bureau of Land Management, on policies and programs of a national scope related to the resources and uses of public lands under the jurisdiction of the Bureau of Land Management.

The Council is expected to meet three times a year. Additional meetings may be called by the Director in connection with special needs for advice. Members will serve without salary, but will be reimbursed for travel and per diem expense rates prevailing for Government employees.

FOR FURTHER INFORMATION CONTACT: Karen Slater, Bureau of Land Management (150), MS-5558, Department of the Interior, Washington, DC 20240, Telephone: (202) 343-5101;

Robert F. Burford,

Director.

October 7, 1988.

[FR Doc. 88-23678 Filed 10-12-88; 8:45 am]

BILLING CODE 4310-84-M

[AZ-010-09-4410; 1784-010]

Meetings: Arizona Strip District Advisory Council

AGENCY: Bureau of Land Management, Arizona Strip District Interior.

ACTION: Notice of meeting and field tour.

SUMMARY: A meeting and field tour of the Arizona Strip District Advisory Council will occur November 1-2, 1988. The tour will leave the district office at 8 a.m. on Tuesday, returning to St. George by 5 p.m. Purpose of the trip is to review mining exploration and development rehab on the Kanab Plateau and a watershed improvement project in the Mt. Trumbull area. Council will meet at the Holiday Inn, 850 South Bluff Street in St. George at 8 a.m. Wednesday to discuss the district resource management plan.

FOR FURTHER INFORMATION CONTACT: G. William Lamb, District Manager, Arizona Strip District, 390 North 3050 East, St. George, Utah 84770 (Phone 801/673-3545).

SUPPLEMENTARY INFORMATION: The tour and meeting are open to the public, but the public must provide their own transportation and food on tour. Interested persons may make oral statements at 8:30 a.m. Wednesday or file written statements for the Council's consideration.

Dated: October 3, 1988.

G. William Lamb,

Arizona Strip District Manager.

[FR Doc. 88-23569 Filed 10-12-88; 8:45 am]

BILLING CODE 4310-32-M

[UT-080-09-4830-12]

Utah Vernal District; Advisory Council Business Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Vernal District Advisory Council business meeting.

SUMMARY: Notice is hereby given that the Vernal District Advisory Council will hold a business meeting on Monday, November 14, 1988, commencing at 6:30 p.m. The meeting will be held in the Vernal District Office

Conference Room at 170 South 500 East, Vernal, Utah.

Meeting agenda will include the following items:

1. The Archer Phosphate Exploration Permits,
2. The Diamond Mountain Resource Management Planning Effort,
3. The Brown's Park Prescribed Burns,
4. Follow-up issues from the Book Cliffs summer tour, and
5. Items at large from the Advisory Council.

The meeting is open to the general public and a brief period will be allotted for the public to address the council should they desire to do so. Those who desire to comment must contact the District Manager, David E. Little, no later than Wednesday, November 9th. In the event that several folks should want to comment, it may be necessary to place a time limit on each presentation.

Persons with questions or desiring more information about this notice should contact: David E. Little, District Manager, Vernal District Office—BLM, 170 South 500 East. Vernal, UT 84078, (801) 789–1362.

A written copy of the proceedings of the business meeting will be maintained at the District Office and will be available for public review.

Dated: October 4, 1988.

David E. Little,

District Manager.

[FR Doc. 88–23568 Filed 10–12–88; 8:45 am]

BILLING CODE 4310-DQ-M

Fish and Wildlife Service

Receipt of Applications for Endangered Species Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–731624

Applicant: Alberto Lleras, Bogota, Colombia

The applicant requests a permit to import and re-export one sport-hunted trophy of a bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd of F.W.M. Bowker, Jr. Thornkloof, Grahamstown, Republic of South Africa for the enhancement of survival of the species.

PRT–731763

Applicant: Bernardo Camacho, Bogota, Colombia

The applicant requests a permit to import and reexport the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), to be culled from the captive herd maintained by F.W.M. Bowker, Jr. Grahamstown, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT–730798

Applicant: Nay Aug Park Zoo, Scranton, PA

The applicant requests a permit to reexport one female Asian elephant (*Elephas maximus*) born in Thailand, to Michael Hackenberger, Bowmanville Zoo, Bowmanville, Canada for the purpose of enhancement of propagation and survival of the species.

PRT–731901

Applicant: Zoo Atlanta, Atlanta, GA

The applicant requests a permit to import two captive-born male drills (*Papio leucophaeus*) from Zoologischer Garten Hannover, Hannover, West Germany for the purposes of propagation of the species and exhibition. These animals are to be grouped with an unrelated female.

PRT–732076

Applicant: David Y. Butler, Raymondville, TX

The applicant requests a permit to import the personal sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), culled from the captive-herd maintained by Mr. F.W.M. Bowker, Jr., Grahamstown, Republic of South Africa, for the purpose of enhancement of survival of the species.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 403, 1375 K Street NW., Washington, DC 20005, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 27329, Washington, DC 20038–7329.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate applicant and PRT number when submitting comments.

Dated: October 4, 1988.

R.K. Robinson,

Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 88–23544 Filed 10–11–88; 8:45 am]

BILLING CODE 4310-AN-M

Receipt of Application for Marine Mammal Permit

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*, the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*) and the regulations governing marine mammals and endangered species (50 CFR Parts 17 and 18).

Applicant

File No. PRT–731847

Name: New York Zoological Society, Central Park Zoo, 830 Fifth Avenue, New York, New York 10021

Type of Permit: Public Display

Name and Number of Animals: Polar bear (*Ursus maritimus*) one

Summary of Activity to be Authorized: The applicant proposes to import this animal for the purposes of exhibition and breeding

Source of Marine Mammals for Display: Ruhr Zoo, Gelsenkirchen, West Germany

Period of Activity: Six months

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be submitted to the Director, U.S. Fish and Wildlife Service (OMA), P.O. Box 27329, Washington, DC 20038–7329, within 30 days of the publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents submitted in connections with the above application are available for review during normal business hours (7:45 am to 4:15 pm) in Room 400, 1375 "K" Street, NW., Washington, DC.

Dated: October 3, 1988.

R.K. Robinson,

Chief, Branch of Permits, Office of Mancgement Authority.

[FR Doc. 88–23543 Filed 10–11–88; 8:45 am]

BILLING CODE 4310-55-M

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 303–TA–19 and 20 (Final)]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Singapore and Thailand

AGENCY: United States International Trade Commission:

ACTION: Institution of final countervailing duty investigations.

SUMMARY: The Commission hereby gives notice of the institution of final countervailing duty investigation Nos. 303–TA–19 and 20 (Final) under section 303 of the Tariff Act of 1930 (19 U.S.C. 1303) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Singapore and Thailand of antifriction bearings (other than tapered roller bearings) and parts thereof, provided for in items 681.10, 681.39, and 692.32 of the Tariff Schedules of the United States (TSUS),[1] that have been found by the Department of Commerce, in preliminary determinations, to be subsidized by the Governments of Singapore and Thailand.

Pursuant to a request from petitioner under section 705(a)(1) of the Act (19 U.S.C. 1671d(a)(1)), Commerce is expected to extend the date for its final determinations in these investigations to coincide with the date of its final determinations in ongoing antidumping investigations on antifriction bearings (other than tapered roller bearings) and parts thereof from Singapore and Thailand. Accordingly, the Commission will not establish a schedule for the conduct of these countervailing duty investigations until Commerce makes preliminary investigations (currently scheduled for October 27, 1988).

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: September 6, 1988.

FOR FURTHER INFORMATION CONTACT: Diane J. Mazur (202–252–1184), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1809. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–252–1000.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 303 of the act (19 U.S.C. 1303) are being provided to manufacturers, producers, or exporters in Singapore and Thailand of antifriction bearings (other than tapered roller bearings) and parts thereof. These investigations were requested in a petition filed on March 31, 1988 by the Torrington Co., Torrington, Connecticut. In response to that petition the Commission conducted preliminary countervailing duty investigations and, on the basis of information developed during the course of those investigations, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (53 FR 18909, May 25, 1988).

Participation in These Investigations

Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under the authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: September 30, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88–23676 Filed 10–13–88; 8:45 am]

BILLING CODE 7020–02–M

[1] Nondutiable antifriction bearings (other than tapered roller bearings) and parts thereof from Singapore and Thailand subject to investigation include ball or roller bearing type flange, take-up, cartridge, and hanger units, and parts of the foregoing, provided for in TSUS items 681.1010 and 681.1030 (classified in Harmonized Tariff Schedule (HTS) subheadings 8483.20.40, 8483.30.40, 8483.90.20, and 8483.90.30)); machinery parts containing any of the foregoing bearings, not containing electrical features and not specially provided for, provided for in TSUS item 681.3900 (classified in HTS subheading 8485.90.00); and parts of motor vehicles containing any of the foregoing bearings and not specially provided for, provided for in TSUS item 692.3295 (classified in HTS subheading 8708.99.50).

[Investigation No. 337–TA–279]

Certain Plastic Light Duty Screw Anchors; Commission Determination Not To Review an Initial Determination Terminating the Investigation as to Two Respondents on the Basis of a Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) granting a joint motion of complainant and respondents Hwally Products Corp. Ltd. and Linkwell Industry Co., Ltd. to terminate the investigation as to Hwally and Linkwell on the basis of a settlement agreement.

ADDRESS: Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone 202–252–1000.

FOR FURTHER INFORMATION CONTACT: Mitchell Dale, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–252–1087. Hearing impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–2810.

SUPPLEMENTARY INFORMATION: On January 6, 1988, the Commission instituted the instant investigation on the basis of a complaint filed by Mechanical Plastics Corp. alleging a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the unauthorized importation and sale of

certain plastic light duty screw anchors by reason of the following alleged unfair acts: (1) Infringement of claim 1 of U.S. Letters Patent 3,651,734; (2) infringement of U.S. Registered Trademark No. 928,123; (3) infringement of U.S. Registered Trademark No. 1,248,999; (4) false designation of origin; and (5) palming off. 52 Fed. Reg. 2298 (Jan. 27, 1988). An investigation was instituted naming as respondents Hwally Products Corp., Ltd., Linkwell Industry Co., Ltd., Saul Rubinstein, and Taiwan Hawk Industiral, Ltd. On May 25, 1988, Hsin Chang Industrial Hardware Corp. was added as a respondent to the investigation.

On August 15, 1988, complainant Mechanical Plastics Corp., and respondents Hwally and Linkwell filed a joint motion to terminate the investigation as to Hwally and Linkwell on the basis of a settlement agreement. The Commission investigative attorney filed a response supporting the motion to terminate the investigation.

On September 7, 1988, the presiding administrative law judge issued an ID granting the motion to terminate the investigation as to Hwally and Linkwell on the basis of the settlement agreement. No petitions for review or government agency comments were received with respect to the ID.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and the Commission interim rule 210.53 (53 FR 33070, Aug. 29, 1988).

By order of the Commission.

Issued: October 3, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88-23677 Filed 10-12-88; 8:45 am]

BILLING CODE 7020-02-M

Report to the President on Investigation No. TA-203-18, Western Red Cedar Shakes and Shingles

October 6, 1988.

In accordance with section 203(i)(2) of the Trade Act of 1974 (19 U.S.C. 2253(i)(2)), the United States International Trade Commission herein reports the results of an investigation concerning western red cedar shakes and shingles.

Summary of Advice of the Commission

Acting Chairman Brunsdale, Commissioner Liebeler, and Commissioner Cass advise the President that import relief has had some favorable impact on the economic condition of the domestic western red cedar shake and shingle industry. However, the underlying competitive position of the domestic industry has not improved over the period of import relief. The primary beneficiaries of the relief have been the producers of red cedar logs used in the production of shakes and shingles. While the domestic industry would suffer some injury from the elimination of the tariff as opposed to its reduction to 20 percent, consumers of housing and those U.S industries whose exports were subject to retaliation from Canada would benefit. There is no reason to believe that the continuation of import relief would result in adjustments that will enhance the competitiveness of the domestic industry.

Commissioner Eckes advises the President that termination of the import relief program presently in effect with respect to shakes and shingles of western red cedar would have an adverse effect on the industry producing shakes and shingles of western red cedar.

Commissioner Lodwick advises the President that the termination of relief would have the following economic effects on the U.S. western red cedar shake and shingle industry: 1) a decrease in U.S. western red cedar shake and shingle production, productive capacity, and capacity utilization; 2) a loss of market share, employment, and a decline in total wages paid; and 3) a drop in sales, net income, and prices received. U.S. western red cedar shake and shingle producers have made or planned to make the following efforts to adjust to import competition: 1) built new mills and relocated production facilities, 2) upgraded production equipment, 3) planned to build shake and shingle treatment plants to increase product value, and 4) helped fund research efforts to develop treated shake and shingle products from other types of wood in an effort to cope with the declining supply of red cedar.

Commissioner Rohr advises the President to continue his program of import relief to the domestic western red cedar shake and shingle industry. The U.S. industry has made reasonable progress toward adjusting to import competition since the import relief was granted 28 months ago. The probable effect of terminating relief at this time would be very detrimental to the domestic industry. The program of gradual reduction in the tariff as set forth by the President will allow the industry to make a smoother adjustment to import competition. He also suggests that the U.S. Trade Representative request the Commission to annually review the progress the industry is making under the reduced tariff.

Background

The Commission instituted this investigation effective July 1, 1988, following receipt of a request from the United States Trade Representative, that the Commission institute an investigation in order that it might advise the President of its judgment as to the probable economic effect on the domestic western red cedar shake and shingle industry of the termination of the import relief provided to the industry by Presidential Proclamation 5498. Public notice of the investigation and hearing was given by posting copies of the notice at the office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 20, 1988 (53 FR 27410). A public hearing was held in connection with this investigation on August 16, 1988, in Washington, DC. All interested persons were afforded an opportunity to be present, to present evidence, and to be heard.

The Commission transmitted its report on this investigation to the President on October 7, 1988. The views of the Commission are contained in USITC Publication 2131 (October 1988), entitled "Western Red Cedar Shakes and Shingles: Report to the President on Investigation No. TA-203-18, Under Section 203 of the Trade Act of 1974."

By order of the Commission.

Issued: October 7, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88-23675 Filed 10-13-88; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-7 (Sub-No. 114X)]

CMC Real Estate Corp.—Abandonment Exemption—Modification of Exemption

The Commission is reopening and modifying the notice of exemption served December 2, 1987 and published in the **Federal Register** on the same date (52 FR 45877) which permitted CMC Real Estate Corporation to abandon a 1.54-mile line of railroad (the Deering Line) between engineering stations 00+00 and 81+56. The modified exemption narrows the scope of the abandonment to that segment of line between engineering station 23+11 and engineering station 81+56 and deletes

from the abandonment the line owned by Soo Line Railroad Company between engineering station 00+00 and engineering station 23+11. Use of this exemption will continue to be conditioned on appropriate labor protection, as earlier imposed.

The modified exemption will become effective on November 12, 1988. Petitions for stay must be filed October 24, 1988, and petitions for reconsideration must be filed by November 2, 1988.

Send pleadings referring to Docket No. AB-7 (Sub-No. 114X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
(2) Petitioner's representative: John Broadley, Jenner & Block, 21 DuPont Circle, Washington, DC 20036.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357/4359 (DC Metropolitan area), (assistance for the hearing impaired is available through TDD services (202) 275-1721 or by pickup from Dynamic Concepts, Inc. in Room 2229 at Commission headquarters).

Decided: October 5, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips.

Kathleen M. King,

Acting Secretary.

[FR Doc. 88-23638 Filed 10-12-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Under Safe Drinking Water Act; Bethany, IN

In accordance with Departmental policy, notice is hereby given that on September 16, 1988, a proposed Consent Decree in *United States v. Town of Bethany, Indiana*, Civil Action No. IP-87-188-C, was lodged with the United States District Court for the Southern District of Indiana. The proposed Consent Decree requires that defendant, the owner and operator of the community water supply system in Bethany, Indiana, cease operation of its wells and underground storage tank, and obtain water by connecting to either Hill Water Company, a not-for-profit corporation, or to the nearby Town of Brooklyn water system.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Environmental Enforcement Section, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States v. Town of Bethany, Indiana*, D.J. reference 90-5-1-1-2778.

The proposed Consent Decree may be examined at the office of the United States Attorney, Southern District of Indiana, 274 Federal building and U.S. Courthouse, 46 East Ohio Street, Indianapolis, Indiana 46204, at the Region V office of the United States Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, 9th Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.00 payable to the Treasurer of the United States.

Richard J. Leon,

Deputy Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-23644 Filed 10-12-88; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Development of Reliability-Based Wood Design Specification; National Forest Products Association

Notice is hereby given that, on August 29, 1988, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the National Forest Products Association filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing the addition of the following parties to its research joint venture regarding "Development of Reliability-Based Wood Design Specification":

Alpine Engineered Products, Inc.
Boise Cascade Corporation
Fabricated Wood Components, Inc.
Mitek Wood Products, Inc.
Standard Structures Inc.
Truswal Systems Corporation
Weyerhaeuser Building Systems, Inc.
Willamette Industries, Inc.

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.

Accordingly, the parties to the joint venture are now Alpine Engineered Products, Inc., American Institute of Timber Construction, American Plywood Association, Boise Cascade Corporation, California Lumber Inspection Service, California Redwood Association, Canadian Wood Council, Fabricated Wood Components, Inc., Mitek Wood Products, Inc., MSR Lumber Producers Council, National Forest Products Association, Northeastern Lumber Manufacturers Association, Pacific Lumber Inspection Bureau, Southeastern Lumber Manufacturers Association, Southern Forest Products Association, Southern Pine Inspection Bureau, Standard Structures Inc., Timber Products Inspection, Inc., Trus Joist Corporation, Truss Plate Institute, Truswal Systems Corporation, West Coast Lumber Inspection Bureau, Western Wood Products Association, Weyerhaeuser Building Systems, Inc., and Willamette Industries, Inc.

On July 7, 1988, the Association 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 August 4, 1988 (53 FR 29396).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 88-23645 Filed 10-12-88; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 87-79]

James E. Pate, D.D.S.; Revocation of Registration

On November 13, 1987, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to James E. Pate, D.D.S., 700 Estes Road, Nashville, Tennessee 37215, proposing to revoke DEA Certificate of Registration BPO322228, and deny any pending applications for renewal of that registration as a practitioner under 21 U.S.C. 823(f). The statutory predicate for the Order to Show Cause was Dr. Pate's felony conviction in the United States District Court for the Middle District of Tennessee of one count each of conspiracy and attempted possession with intent to distrubute cocaine in violation of 21 U.S.C. 846.

Dr. Pate requested a hearing on the issue raised in the Order to Show Cause

and the matter was placed on the docket of Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, a hearing was scheduled for May 10 and 11, 1988, in Nashville Tennessee. By letter dated May 4, 1988, Dr. Pate's counsel withdrew the request for a hearing. On May 6, 1988, Judge Bittner issued an order terminating all proceedings. The Administrator has considered this record in its entirety and enters this final order based upon the record as it appears. 21 CFR 1301.54(e) and 1316.67.

The Administrator finds that DEA in Nashville received information from DEA's Atlanta Detail concerning one Gustavo Uribe, an individual who would be arriving at the Nashville Airport on December 12, 1986. Two DEA Special Agents and a Nashville Metro Detective went to the Nashville Airport where they observed Gustavo Uribe deplane and engage in a conversation with Dr. Pate. After retrieving his baggage, Gustavo Uribe proceeded to enter Dr. Pate's vehicle. The DEA Special Agents and the Nashville Metro Detective approached the vehicle and questioned Dr. Pate and Gustavo Uribe. the Nashville Metro Detective discovered and removed a black leather folder from Dr. Pate's pocket. The folder contained approximately .36 grams of cocaine and a cocaine kit. With Gustavo Uribe's permission, his baggage was searched and a plastic bag containing approximately 494 grams of cocaine was found. Dr. Pate and Gustavo Uribe were both arrested. Dr. Pate's vehicle was impounded and a cursory inventory search was conducted. A briefcase containing twelve thousand dollars and approximately 26.2 grams of marijuana was removed from Dr. Pate's vehicle. On August 6, 1987, Dr. Pate was convicted on one count each of conspiracy and attempted possession with intent to distribute cocaine in violation of 21 U.S.C. 846. He was sentenced to five years incarceration on each count.

The Administrator has consistently held that a felony conviction relating to controlled substances, even though unrelated to a registrant's professional practice, can warrant loss or denial of registration. See, for example, *Aaron Moss, D.D.S.*, Docket No. 80–2, 45 FR 72850 (1980) (smuggling cocaine into the United States); *Coleman Preston McCown, D.D.S.*, Docket No. 82–28, 49 FR 45818 (1984) (illegal distribution of cocaine); and, *Tilman J. Bentley, D.O.*, Docket No. 82–22, 49 FR 35049 (1984) (conspiracy to manufacture methaqualone). Based on Dr. Pate's felony conviction relating to controlled substances, the Administrator finds that a lawful basis exists for the revocation of Dr. Pate's registration, and for the denial of any pending applications for renewal. Dr. Pate is now incarcerated and no evidence showing why his registration should not be revoked has been submitted in this proceeding.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration DPO322228, previously issued to James Pate, D.O., and it hereby is, revoked. It is further ordered that any pending applications for renewal be, and they hereby are, denied. This order is effective November 14, 1988.

Dated: October 6, 1988.

John C. Lawn,

Administrator.

[FR Doc. 88–23602 Filed 10–12–88; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Business Research Advisory Board and Committees;

The regular Fall meetings of the Board and Committees of the Business Research Advisory Council will be held on October 25 and 26, 1988. The Business Research Advisory Council advises the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of technical officers from American business and industry.

The schedule and agenda for the meetings are as follows:

Tuesday, October 25, 1988

10 a.m.—Committee on Economic Growth, Room 2437, General Accounting Office Building, 441 G Street, N.W., Washington, D.C.

Discussion of assumptions for next round of projections and report on other office projects.

10 a.m.—Committee on Wages and Industrial Relations, Room 2734, General Accounting Office Building, 441 G Street, N.W., Washington, D.C.

Proposal for changes in the Area Wage Program and the collective bargaining statistics, and developments in cost level data from the Employment Cost Index.

2 p.m.—Committee on Employment and Unemployment Statistics, Room 5060, General Accounting Office Building, 441 G Street, N.W., Washington, D.C.

Plans for the Business Establishment List Program and the CPS Redesign, a division of occupational mobility and tenure data and the FY 1989 budget status.

Wednesday, October 26, 1988

9:30 a.m.—Committee on Price Indexes, Room S–4215 A and B, Frances Perkins Building, 200 Constitution Avenue, N.W., Washington, D.C.

Update on monthly pricing for the International Price Program and reports on the Consumer Price Index and Consumer Expenditures programs.

1:30 p.m.—BRAC Board, Room S–4215 A and B, Frances Perkins Building, 200 Constitution Avenue, N.W., Washington, D.C.

1. Chairperson's opening remarks
2. Commissioner's remarks—Janet L. Norwood
3. Committee Reports
   a. Economic Growth
   b. Wages and Industrial Relations
   c. Employment and Unemployment Statistics
   d. Price Indexes
4. Other business
5. Chairperson's closing remarks

The meetings are open to the public. It is suggested that persons planning to attend these meetings as observers contact Janice D. Murphey, Liaison, Business Research Advisory Council on Area Code (202) 523–1347.

Signed at Washington, DC, the 5th day of October 1988.

Janet L. Norwood,

Commissioner of Labor Statistics.

[FR Doc. 88–23538 Filed 10–12–88; 8:45 am]

BILLING CODE 4510–24–M

Employment and Training Administration

[TA–W–20,910]

Amistad Fuel Co., Rockwood, TX; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated in response to a worker petition received on September 6, 1988 and filed on behalf of workers at Amistad Fuel Company, Rockwood, Texas.

The date of the subject petition is August 23, 1987. However, according to Departmental Regulations, the date of the petition may not be more than 30 days before the date of receipt of the petition. The postmark date of August 23, 1988 may be applied to be in compliance with this regulation.

The investigation revealed that all workers were separated from the

subject firm by May 31, 1987, which is more than one year prior to the postmark data applied to the petition. Section 223 of the Trade Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investingation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 28th day of September 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88-23534 Filed 10-12-88; 8:45 am]

BILLING CODE 4510-30-M

From Here to Maternity et al.; 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 September 26, 1988–September 30, 1988.

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–20,844; From Here to Maternity, Philadelphia, PA

TA–W–20,849; Paradyne Products, Paterson, NJ

TA–W–20,853; Stranahan Foil, South Hackensack, NJ

TA–W–20,852; Rose Dress, Inc., Garfield, NJ

TA–W–20,841; Allied Signal, Inc., Edison, NJ

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA–W–20,906; Suttle Apparatus Corp., Lawrenceville, IL

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–20,848; NCR Comten, St. Paul, MN

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–20,868; Fabric Master, Carlstadt, NJ

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–20,876; Precision Materials Corp., Mine Hill, NJ

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–20,837; The West Co., Millville, NJ

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

Affirmative Determinations

TA–W–20,834; Robert Bruce, Inc., Philadelphia, PA

A certification was issued covering all workers separated on or after July 13, 1987.

TA–W–20,836; Texas Apparel Co., Eagle Pass, TX

A certification was issued covering all workers of the Alice Avenue Plant separated on or after July 12, 1987.

TA–W–20,845; General Motors Corp., Pontiac Motor Division Plant #14, Pontiac, MI

A certification was issued covering all workers separated on or after June 29, 1987.

TA–W–20,806; Bates Shoe Co; Webster, MA

A certification was issued covering all workers separated on or after July 8, 1987.

TA–W–20,855; Bethlehem Steel Corp., Beaumont Yard, Beaumont, TX

A certification was issued covering all workers separated on or after January 1, 1988.

I hereby certify that the aforementioned determinations were issued during the period September 26, 1988–September 30, 1988. 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 4, 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88-33539 Filed 10-12-88; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-21,111]

Klaus & Son Machine Co., Hill City, KS; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 26, 1988 in response to a worker petition received on September 26, 1988, which was filed on behalf of workers at Klaus & Son Machine Company, Hill City, Kansas.

The petitioning group of workers are subject to an ongoing investigation for which a determination has not yet been issued (TA–W–21,011). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 30th day of September 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88-23535 Filed 10-12-88; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-20,816]

Lone Star Industries Utah Division Salt Lake City, UT, Negative Determination Regarding Application for Reconsideration

By an application dated September 15, 1988, the Cement Lime, Gypsum and Allied Workers of the International Brotherhood of Boilermakers requested administrative reconsideration on the subject petition for trade adjustment assistance. The denial notice was signed on September 6, 1988 and published in the **Federal Register** on September 23, 1988 (53 FR 37066).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or the law justified reconsideration of the decision.

Workers at Salt Lake City produced cement primarily for the local construction industry. In January, 1988 cement production at the subject firm ceased.

The union claims that imported cement adversely affected worker separations at the Utah Division of Lone Star Industries in Salt Lake City. The union submitted bills of lading showing cement shipments from Salt Lake City to California which is allegedly being supplied with imported cement.

Investigation findings show that sales and production of cement at the Salt Lake City plant increased in 1987 compared to 1986. The findings also show that in 1987 Lone Star entered into a joint venture to operate a new facility in Laramie, Wyoming which came on line in 1988. Management's decision to transfer the production of cement to another domestic facility would not form a basis for certifying workers at the Salt Lake City plant to apply for adjustment assistance.

Company officials indicated two factors which contributed to the decision to close the subject plant. First, the State of Utah changed the specification for the alkalide content for cement used in structures built in the State. This resulted in increased costs because Lone Star had to obtain its raw material from a different rock quarry much farther away than the old quarry. Second, a large defense contractor built a huge cement plant in the area in anticipation of a large missile contract which never materialized. The new cement capacity was then diverted to the local construction market leaving all cement producers scrambling for business at a very competitive level.

The bills of lading submitted by the union show cement being shipped to only one customer in California in 1986 and 1987. The investigation findings, however, show that this customer increased its purchases of cement from Lone Star in 1987 compared to 1986. Accordingly, no basis is found which would support a certification of eligibility to apply for adjustment assistance benefits for workers of the Salt Lake City plant.

Lastly, trade and industry sources reveal that the high transportation costs of cement and clinker made it economically impractical to transport these products long distances by land carrier. According to these sources, the market area primarily served by the Salt Lake City plant would be served by domestically produced cement and clinker rather than imported products because of the prohibitive transportation costs.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this September 29, 1988.

Stephen A. Wander,

[FR Doc. 23540 Filed 10–12–88; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-20,799 and TA-W-20,801]

National Plastics Corp. and Victory Glass, Inc., Jeannette, PA; Negative Determination Regarding Application for Reconsideration

By an application postmarked September 14, 1988 the Aluminum, Brick and Glass Workers International Union requested administrative reconsideration of the Department's negative determinations on the subject petitions for trade adjustment assistance. The denial notice was signed on September 2, 1988 and published in the Federal Register on September 23, 1988 (53 FR 37066).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) if it appears on the basis of facts not previously considered that the determination complained of erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

Workers at National Plastics in Jeannette decorated and finished raw glassware purchased from outside sources. Workers at Victory Glass, also in Jeannette and a subsidiary of National Plastics, are engaged solely in the distribution of glassware produced by National Plastics.

The union claims that the increased price of raw materials adversely affected employment at Jeannette. The union did not request reconsideration for workers at the Lightcraft Corporation in Youngwood, Pennsylvania, another subsidiary of National Plastics.

Investigation findings show that production and employment declines at National Plastics occurred as a result of National Plastics' loss of its major supplier of raw materials. Another company not only acquired National Plastics' major supplier of raw materials but acquired National Plastics' domestic competitor as well. As a consequence, the price of raw materials was increased to the subject firm. The findings show that in the absence of obtaining a replacement supplier, National Plastics is discontinuing production at Jeannette. A raw material price increase would not form a basis for certification. Only increased imports of articles like or directly competitive with the articles produced by the workers' firm and contributing importantly to production and/or sales declines and worker separations would form a basis for certification.

The findings show that workers at Victory Glass in Jeannette sold and distributed glassware produced by National Plastics and, as such, did not produce an article. This issue was addressed in the Department's notice of negative determinations.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 30th day of September 1988.

Barbara Ann Farmer,

Director, Office of Program Management, UIS.

[FR Doc. 88–23541 Filed 10–2–88; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-20,851]

Robyn Enterprises, Inc., Philadelphia, PA; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on August 4, 1988 in response to a worker petition received on August 1, 1988 which was filed by the International Ladies' Garment Workers Union on behalf of workers at Robyn Enterprises, Incorporated.

All workers were separated from the subject firm more than one year prior to the date of the petition. Section 223 of the Act specifies that no certification

may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently futher investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 30th day of September 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88-23536 Filed 10-2-88; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-21, 043]

The Wiser Oil Co., Leeco, KY; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 19, 1988 in response to a petition which was filed on behalf of workers at The Wiser Oil Company, Leeco, Kentucky.

The retroactive provisions of section 1421 (a)(1)(B) of the Omnibus Trade and Competitiveness Act of 1988 do not apply to workers who engaged in the production of crude oil or refined petroleum products if such workers were eligible to be certified for benefits under the Trade Act prior to the implementation of the retroactive provisions.

A negative determination applicable to the petitioning group of workers was issued on March 14, 1988 (TA-W-20,481). No new information is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 30th day of September 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88-23537 Filed 10-12-88; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-88-184-C]

Burke Mountain Trucking Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Burke Mountain Trucking Company, Inc., P.O. Box 976, North Tazewell, Virginia 24630 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Moccasin No. 2 Mine (I.D. No. 46-04989) located in McDowell 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 cabs or canopies be installed on the mine's electric face equipment.

2. Petitioner states that application of the standard would result in a diminution of safety to the miners affected bacause of the following reasons:

(a) The Moccasin No. 2. coal seam is very irregular, varying in height from 35 to 50 inches and the floor is very undulating;

(b) The canopies on the mine's electric face equipment could come in contact with the roof and cause roof bolts to dislodge and the canopies to break; and

(c) Due to the low clearance between the canopies and the roof, energized equipment power cables could not always be hung to avoid contact with the canopies to prevent scraping or severing of these cables.

3. For these reasons, petitioner requests a modification of 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 14, 1988. Copies of the petition are available for inspection at that address.

Date: October 4, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-23532 Filed 10-12-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-187-C]

Pyro Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Pyro Mining Company, P.O. Box 267, Sturgis, Kentucky 42459 has filed a petition to modify the application of 30 CFR 75.1700 (oil and gas wells) to its Pyro No 9 Slope, William Station Mine (I.D. No. 15-13881) located in Union County, Kentucky. 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 barriers be established and maintained around oil and gas wells penetrating coal beds.

2. As an alternate method, petitioner proposes to mine through a non-producing oil well with longwall mining equipment. The following procedures would be followed:

(a) Prior to mining through the plugged oil well an approval of the specific mining procedures would be requested of the MSHA District Manager, and appropriate officials would be allowed to observe the process and all mining would be under the direct supervision of a certified official;

(b) When using a longwall shearer, spads would be installed on ten-foot centers for fifty feet prior to intersecting the well to ensure that the well is not intersected without knowledge of the location;

(c) Tests for methane would be made with a hand-held methane detector every ten minutes from the time that the mining is within thirty feet of the well until the well is intersected;

(d) When the wellbore is intersected, all equipment would be deenergized and the working place thoroughly examined and determined safe before mining is resumed; and

(e) All procedures for mining through plugged oil wells with a longwall miner as specified in State File No. 15810.1, Permit No. W-66-88 of the Department of Mines and Minerals approval letter dated August 15, 1988 would be followed.

3. 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 14, 1988. Copies of the petition are available for inspection at that address.

Dated: October 4, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-23533 Filed 15-12-88; 8:45 am]

BILLING CODE 4510-43-M

MERIT SYSTEMS PROTECTION BOARD

Call for Riders for Hatch Act Publications

AGENCY: Office of the Special Counsel, Merit Systems Protection Board.

ACTION: Notice of call for riders for the Office of the Special Counsel's Hatch Act Publications.

SUMMARY: The purpose of this notice is to inform Federal departments and agencies that the Office of the Special Counsel's publications will be available on riders to the Government Printing Office. Departments and agencies may order these publication by riding the Office of the Special Counsel's printing requisitions as follows: Political Activity and the Federal Employee, 12 Pages–9–20001, SN 062–000–0022–8, Political Activity and the State and Local Employee, 12 pages–9–20002, SN 062–000–0023–6.

Note:—A separate SF–1 is required to "Ride" each separate title.

DATE: Agency requisitions must be received by GPO on or before November 7, 1988.

ADDRESS: Interested departments and agencies should send requisitions through their Washington, DC, headquarters office authorzied to procure printing, to the Government Printing Office , Requsition Section, Room C–836, Washington, DC 20401. Agencies may estimate cost by using the current Government Printing Office price list of printing services.

FOR FURTHER INFORMATION CALL: Sarah V. Jones, Management Divsion, Office of the Special Counsel, MSPB 1120 Vermont Avenue, NW. Suite 1100, Washington, DC 20005. Telephone (202) 653–8945.

SUPPLEMENTARY INFORMATION: The Office of the Special Counsel (OSC) is the federal agency charged with responsibility for enforcing the provisions of the Hatch Act. By statute the office is authorized to investigate allegations of prohibited political activity. OSC Hatch Act enforcement efforts have focused heavily upon educating those covered by the law to encourage voluntary compliance. Federal, state and local government employees, Members of Congress and their staffs, the press, members of the general public and other s have been provided information on the Hatch Act through written and oral advisory opinions, speeches, and publications with Hatch Act guidance prepared and distributed by OSC. These Hatch Act publications are now being made available in bulk thorugh the GPO rider system. The publications may also be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Telephone (202) 783–3238. If there is an urgent need for either of these publications, before November 7, agencies may request a limited number of copies from the Office of the Special Counsel.

Date: October 7, 1988.

Erin McDonnell,

Deputy Special Counsel.

[FR Doc. 88–23673 Filed 10–12–88; 8:45 am]

BILLING CODE 7400–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 88–87]

NASA Advisory Council (NAC), Space Systems and Technology Advisory Committee (SSTAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee and the Aerospace Research and Technology Subcommittee.

DATE AND TIME: November 1, 1988, 8:30 a.m. to 5:30 p.m.; November 2, 1988, 8 a.m. to 5:15 p.m.; and November 3, 1988, 8:30 a.m. to 3 p.m.

ADDRESS: National Aeronautics and Space Administration, Lewis Research Center, Administration Building, 21000 Brookpark Road, Cleveland, OH 44135.

FOR FURTHER INFORMATION CONTACT: Mrs. Joanne Sullivan, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453–2775.

SUPPLEMENTARY INFORMATION: The NAC Space Systems and Technology Advisory Committee (SSTAC) was established to provide overall guidance to the Office of Aeronautics asnd Space Technology (OAST) on space systems and technology programs. The Aerospace Research and Technology Informal Subcommittee (ARTS) was formed to provide technical support for the SSTAC and to conduct ad hoc interdisciplinary studies and assessments. The Committee, chaired by Mr. Norman R. Augustine, is comprised of 20 members. The Subcommittee is comprised of 26 members. The meeting will be open to the public up to the seating capacity of the room (approximately 150 persons including the Subcommittee members and other participants).

Type of Meeting

Open.

Agenda

November 1, 1988

8:30 a.m.—Welcome by Committee Chairman.
8:45 a.m.—Overview of Lewis Research Center's Activities.
9:45 a.m.—Space Overview.
10:45 a.m.—Parallel Discipline Sessions.
1:15 p.m.—Resume Parallel Discipline Sessions.
5:30 p.m.—Adjourn.

November 2, 1988

8 a.m.—Resume Parallel Discipline Sessions.
1:30 p.m.—Tour of NASA/Lewis Space Facilities.
3:30 p.m.—ARTS/SSTAC Reports by Discipline.
4:45 p.m.—OAST Responses to Ad Hoc Review Team Recommendations.
5:15 p.m.—Adjourn.

November 3, 1988

8:30 a.m.—Opening Remarks by Committee Chairman.
8:35 a.m.—Agency Strategic Overview/ Remarks.
9:15 a.m.—Exploration Mission Studies.
10:15 a.m.—Ad Hoc Review Team Final Reports.
11 a.m.—Pathfinder Deliverables.
1 p.m.—Pathfinder Discussion.
1:30 p.m.—Ad Hoc Review Team Interim Reports.
2 p.m.—Summary Session and Closing Remarks.
3 p.m.—Adjourn.

Philip D. Waller,

Director, General Management Division.

October 5, 1988.

[FR Doc. 88–23616 Filed 10–12–88; 8:45 am]

BILLING CODE 7510–01–M

[Notice 88–88]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub.

L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee and the Aerospace Research and Technology Subcommittee.

DATE AND TIME: November 15, 1988, 8:30 a.m. to 5:30 p.m.; November 16, 1988, 8 a.m. to 5:30 p.m.; and November 17, 1988, 8 a.m. to 12:15 p.m.

ADDRESS: National Aeronautics and Space Administration, Langley Research Center, Building 1222, Hampton, VA 23665.

FURTHER INFORMATION CONTACT: Mr. Joanne Sullivan, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453–2775.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee (AAC) was established to provide overall guidance to the Office of Aeronautics and Space Technology (OAST) on aeronautics research and technology activities. The Aerospace Research and Technology Informal Subcommittee was formed to provide technical support for the AAC and to conduct ad hoc interdisciplinary studies and assessments. The Committee, chaired by Mr. Robert B. Ormsby, is comprised of 23 members. The Subcommittee is comprised of 47 members. The meeting will be open to the public up to the seating capacity of the room (approximately 150 persons including the Subcommittee members and other participants).

Type of Meeting

Open.

Agenda

November 15, 1988

8:30 a.m.—Opening Remarks.
9 a.m.—Welcome/Center Overview by Center Director.
9:45 a.m.—Aeronautics Overview.
10:30 a.m.—Parallel Discipline Program Reviews on Aerodynamics, Materials & Structures, Propulsion, and Controls & Guidance/Human Factors.
1 p.m.—Facility Tour.
2 p.m.—Continuation of Discipline Program Reviews.
5:30 p.m.—Adjourn.

November 16, 1988

8 a.m.—Continuation of Discipline Program Reviews.
9:45 a.m.—Parallel Vehicle Program Reviews on Rotorcraft, General Aviation/Subsonic and Supersonic Transport, High Performance, Hypersonics.
1 p.m.—Facility Tour.
2 p.m.—Vehicle Program Reviews Continued.
4 p.m.—Plenary Session.
5:30 p.m.—Adjourn.

November 17, 1988

8 a.m.—Opening Remarks.
8:20 a.m.—Update of Aeronautics Budget and Planning Issues.
8:45 a.m.—Progress Reports by Ad Hoc Teams.
10:15 a.m.—NASA Responses to Ad Hoc Team Recommendations.
11 a.m.—Discussion of Issues and Recommendations.
11:30 a.m.—Summary Session.
12:15 p.m.—Adjourn.

Philip D. Waller,

Director, General Management Division.

October 5, 1988.

[FR Doc. 88–23617 Filed 10–12–88; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–293]

Boston Edison Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of exemptions from certain requirements of 10 CFR Part 50, Appendix R, to the Boston Edison Company (BECo/licensee) for the Pilgrim Nuclear Power Station located at the licensee's site in Plymouth County, Massachusetts.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from certain requirements of Appendix R of 10 CFR Part 50. The exemption is needed from Section III.G.2.a to the extent that it requires separation of cables and equipment and associated non-safety circuits of redundant trains by a fire barrier having a three hour rating.

The Need for the Proposed Action

The exemption is needed because of plant specific circumstances described in the licensee's Fire Protection Engineering Evaluations (FPEE) provided in its submittal regarding three hour fire barriers. The FPEEs have demonstrated that equivalent protection is provided by the existing fire barriers for the fire hazards they are exposed to in all but two areas. These two areas have fire detection and suppression in addition to the existing fire barriers which provide adequate protection for the existing fire hazard. Use of the existing fire barriers and fire detection and suppression in the two areas are the most practical means for meeting the intent of Appendix R and literal compliance would not significantly enhance fire protection capability.

Environmental Impacts of the Proposed Action

The proposed exemption, based on the existing physical plant design and fire protection features, will provide a degree of fire protection that is equivalent to that required by Appendix R for the affected areas of the plant such that there is no increase in the risk of fires at this facility. Consequently, the probability of fires has not been increased and the post-fire radiological releases will not be greater than previously determined, nor do the proposed exemptions otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential non-radiological impacts, the proposed exemption involves features located entirely within the restricted area as defined in 10 CFR Part 20. They do not affect non-radiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

Since the Commission has concluded there are no measurable environmental impacts associated with the proposed exemption, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the exemption would be to require rigid compliance with the applicable portions of Section III.G.2.a of the Appendix R requirements. Such action would not enhance the protection of the environment and would result as unjustified costs for the licensee.

Alternative Use of Resources

This action does not involve the use of (copy eligible) previously in the Final Environmental Statements re (copy eligible) Pilgrim Nuclear Power Station.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult with agencies or persons.

Finding of No Significant Impact

The Commision has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the foregoing environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the licensee's letter dated August 6, 1988. The letter is available for public inspection at the Commission's Public Document Room, Gelman Building, Lower Level, 2120 L Street, NW., Washington, DC and at the Plymouth Public Library, 11 North Street, Plymouth, Massachusetts.

Dated at Rockville, Maryland this 6th day of October 1988.

For the Nuclear Regulatory Commission

Richard H. Wessman,

Director, Project Directorate I–3, Division of Reactor Projects I/II.

[FR Doc. 88–23633 Filed 10–12–88; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Nuclear Waste; Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold a meeting on November 2–4, 1988, Room P–114, 7920 Norfolk Avenue, Bethesda, MD. The meeting will start at 1:00 p.m. on Wednesday, November 2 and continue until close of business at 5:30 p.m. It will resume at 8:30 a.m. on Thursday and Friday, November 3 and 4 and continue until the close of business at 5:30 p.m. each day. The entire meeting will be open to public attendance and the following topics will be discussed:

Wednesday, November 2, 1988—1:00 p.m.

State of Nevada's comments on the Department of Energy's Consultation Draft Site Characterization Plan.

Thursday, November 3, 1988—8:30 a.m.

Department of Energy's Performance Assessment Program for the Yucca Mountain, Nevada Site.

Friday, November 4, 1988—8:30 a.m.

NRC's Regulatory Strategy and Schedules for the High-Level Waste Repository Program for FY 1989 and beyond.

NRC Comments on DOE's Dry Cask Storage Study.

Procedure for the conduct of and participation in ACNW meetings were published in the **Federal Register** on June 6, 1988 (53 FR 20699). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. The Office of the ACRS is providing Staff support for the ACNW. Persons desiring to make oral statements should notify the Executive Director of the Office of the ACRS as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the Executive Director of the Office of the ACRS, Mr. Raymond F. Fraley (telephone 301/492–4516), prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

Dated: October 7, 1988.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 88–23637 Filed 10–12–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–293]

Boston Edison Co., Pilgrim Nuclear Power Station; of Issuance of Final Director's Decision

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a final decision concerning a request filed pursuant to 10 CFR 2.206 by the Honorable William B. Golden which requested that the Pilgrim Nuclear Power Station remain shut down or have its license suspended because of: (1) Deficiencies in the licensee management, (2) inadequacies in the emergency radiological plan, and (3) inherent deficiencies in the containment structure.

The Director of the Office of Nuclear Reactor Regulation issued an Interim Director's Decision on the Petition dated August 21, 1987. The Interim Decision conlcuded that the Petition with the exception of the licensee management issue, should be denied. The reasons for the Decision were explained in the "Interim Director's Decision Under 10 CFR 2.206," DD–87–14, which is available for public inspection in the Commission's Public Document Room, Gelman Building, Lower-Level, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room at the Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

The Director of the Office of Nuclear Reactor Regulation has determined that the remaining issue, deficiencies in the licensee management, should be denied. The reasons for this decision are explained in the "Final Director's Decision Under 10 CFR 2.206, "DD–88–16, which is available for public inspection in the Commission's Public Document Room, in the Gelman Building, Lower-Level, 2120 L St., NW., Washington, DC 20555 and at the Local Public Document Room at the Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

A copy of the Decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c). As provided in this regulation, the Decision will constitute the final action of the Commission twenty-five (25) days after issuance, unless the Commission, on its own motion, institutes review of the Decision within that time period.

Dated at Rockville, Maryland, this 6th day of October 1988.

For The Nuclear Regulatory Commission.

Richard H. Wessman,

Director, Project Directorate I–3, Division of Reactor Projects I/II.

[FR Doc. 88–23636 Filed 10–12–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–413 and 50–414]

Duke Power Co. et al., Catawba Nuclear Station, Units 1 and 2 Withdrawal of Application for Amendments to Facility Operating Licenses

The United States Nuclear Regulatory Commission (the Commission) has granted the request of the Duke Power Company, et al., (the licensee) to withdraw its May 6, 1988, application of the Catawba Nuclear Station, Units 1 and 2, located in York County, South Carolina. The proposed amendments would have changed the Technical Specifications by adding penetration M–375 to Table 3.6–1, adding valve NM–438B to Tables 3.6–2a and 3.6–2b, and deleting information which is no longer applicable. The Commission issued a Notice of Consideration of Issuance of the Amendments in the **Federal Register** on June 15, 1988 (53 FR 22400). By letter dated August 24, 1988, the licensee

withdrew its application for the proposed amendments because new valves and penetrations are no longer required.

For further details with respect to this action, see: (1) The application for amendments dated May 6, 1988, (2) the licensee's letter dated August 24, 1988, withdrawing the application for amendments, and (3) our letter dated October 6, 1988. All of the above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC., and at the York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Dated at Rockville, Maryland, this 6th day of October 1988.

For the Nuclear Regulatory Commission.

Kahtan N. Jabbour,

Project Manager, Project Directorate II-3, Division of Reactor Projects—I/II.

[FR Doc. 88-23634 Filed 10-12-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-483]

Union Electric Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-30, issued to Union Electric Company (the licensee), for operation of the Callaway Plant located in Callaway County, Missouri.

The proposed amendment would affect the steam generator low-low level trip circuitry by adding an Environmental Allowance Modifier (EAM) and a Trip Time Delay (TTD). The EAM will distinguish between a normal and an adverse containment environment and will adjust the steam generator low- low level setpoint accordingly. The TTD will delay the trip signals during low power operations (less than or equal to 20% of rated thermal power).

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By November 14, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene must set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the basis for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street, NW, Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri) 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John H. Hannon: petitioner's name and telephone number; date Petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Chanoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washignton, DC 20037, attorney for the license.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions, and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer, or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this section, see the application for amendment dated August 30, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251 and the John M. Olin Library, Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Dated at Rockville, Maryland, this 6th day of October 1988.

John N. Hannon,

Director, Project Dirctorate III-3, Division of Reactor Projects-III, IV, V and Special Projects.

[FR Doc. 88-23635 Filed 10-12-88; 8:45am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-26164; File No. SR-NASD-88-44]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to NASD Assessments and Fees

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 27, 1988, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed changes to section B of Part IV of Schedule D to the Association's By-Laws increase the minimum annual fee paid by the issuers of securities included in the NASDAQ system from $250.00 to $500.00 and increase the maximum annual fee from $4,000 to $6,000.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule changes to Section B of Part IV of Schedule D to the Association's By-Laws increase the minimum annual fee paid by the issuers of securities included in the NASDAQ system from $250.00 to $500.00, and increase the maximum annual fee from $4,000 to $6,000. The new fees will be imposed on June 1, 1989. The $250 minimum fee has not been changed since it was established in 1974. The maximum fee was set at $4,000 in 1986.

The proposed rule change is consistent with the provisions of section 15A(b)(5) of the Securities Exchange Act of 1934, which require that the rules of the Association provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system the Association operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association does not anticipate that the proposed rule change will impose any burden on competition 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

Comments were neither solicited nor received with respect to the proposed rule change contained in this filing.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by November 3, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Jonathan G. Katz,

Secretary.

October 6, 1988.

[FR Doc. 88-23664 Filed 10-12-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-26163; File No. SR-NASD-88-45]

Self-Regulatory Organizations; Notice and Order Granting Accelerated Approval To Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Section IV, Part V, Schedule D to the NASD By-Laws

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 29, 1988 the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The National Association of Securities Dealers, Inc. ("NASD") is herewith filing a proposed rule change to amend Section IV of "Criteria for Inclusion in Quotation Lists," under Part V, Schedule D to the NASD By-Laws to provide that daily dollar trading volume be used to determine the inclusion of the quotations of a security in the additional National Association of Securities

Dealers Automated Quotations ("NASDAQ") system securities list ("Additional List") distributed to the media.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in section (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 NASD was informed recently that the Wall Street Journal (the "Journal") intends to change its presentation of stock table information. In pertinent part, the Journal is proposing to publish once a week a list of all NASDAQ securities in the National List with quotations for securities in the Additional List and provide bid, ask, and volume information for all securities on the new list. In addition, the Journal is proposing a $1.00 minimum price for inclusion in the new list of published quotations for NASDAQ securities. Currently, inclusion in the Additional List is based on exponential dollar volume of a NASDAQ security. The NASD, in order to simplify the volume calculations, plans to change its criteria for inclusion in the Additional List to daily dollar trading volume in place of weighted exponential dollar volume.

Because the Journal intends to implement the changes discussed above by Monday, October 3, 1988, the NASD is filing the above-referenced proposed rule change and requesting accelerated approval. The proposed rule change provides for the division of the Additional List into two parts (top and bottom). The Top Additional List will include NASDAQ securities with a minimum current bid price of $1.00 or higher. The NASD is proposing to include the remaining NASDAQ issues in the Bottom Additional List.

The NASD believes the amendments are consistent with the provisions of section 15A(b)(6) of the Securities Exchange Act of 1934 ("Act") as the amendments to Schedule D to the By-Laws are designed "to remove impediments to and perfect the mechanism of a free and open market and a national market system * * *"

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association believes that the proposed rule change does not impose any burden on competition that 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

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Association requested that the Commission find good cause pursuant to section 19(b)(2) for approving the proposed rule change prior to the 30th day after its publication in the **Federal Register.** As indicated above, the Journal intends to implement its changes to the presentation of stock table information by Monday, October 3, 1988. Among the changes proposed by the Journal is the expansion of its coverage of NASDAQ securities to include quotations for securities on the Additional List based on the dollar volume of trades, with a $1.00 minimum price for inclusion in the list. The criteria for inclusion in the Additional List is currently based on the weighted exponential dollar volume of a security and includes no minimum price.

Because the Journal intends to implement the changes discussed above on Monday, October 3, 1988, the NASD has filed the above-referenced rule change and requested that the proposed rule change be granted accelerated approval.[1]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A and the rules and regulations thereunder. The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in that the change in the Additional List quotations will provide for expansion of coverage of these NASDAQ securities in time to meet the Wall Street Journal's plans for publication. Therefore, the Commission believes that the benefits of approval outweigh any potential adverse effects to commentators or other market participants.

[1] The NASD will continue its current practice of providing to the news media information regarding all securities on both the top and bottom parts of the Additional List.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number SR-NASD-88-45 and should be submitted by November 3, 1988.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: October 6, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-23668 Filed 10-12-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-26161; File No. SR-NYSE-88-26]

Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange, Inc. Relating to an Amendment to the Exchange's Proxy Rules for Member Organizations as Set Forth in NYSE Rule 450, "Restriction on Giving of Proxies"

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 72s(b)(1), notice is hereby given that on September 27, 1988, 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, II 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 proposed amendment to the Exchange's proxy rules for member organizations, as set forth in Rule 450, "Restriction on Giving of Proxies," is detailed in Exhibit A.[1] The proposed rule change would amend the Exchange's current proxy rules by allowing a member firm acting as investment manager of an ERISA Plan, under specified circumstances, to vote proxies in accordance with its ERISA Plan fiduciary responsibilities.

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 and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The 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

(1) Purpose

NYSE Rule 450, "Restriction on Giving of Proxies," states that no member organization shall give a proxy to vote stock registered in its name, or in a nominee name, unless the member organization is the beneficial owner of such stock. Under NYSE Rule 452, however, a member would be permitted to vote if proxy material is sent to beneficial owners of securities in the advisor's custody, the proposal is inconsequential, and the beneficial owners did not respond.

The Department of Labor ("Department"), in an interpretive letter dated February 23, 1988, has stated that the fiduciary act of managing plan assets which are shares of corporate stock includes the voting of proxies applicable to those shares. The Department's position is that decisions as to how proxies should be voted with regard to the issues presented are fiduciary acts of plan asset management.

The Department concludes that if a plan permits a named fiduciary to appoint a member organization as an investment manager to manage, acquire and dispose of plan assets, and the named fiduciary has not expressly reserved the voting rights to itself there would be an *ERISA violation* if, during the duration of such delegation, either the trustee or the named fiduciary makes the decision how to vote any proxy.

It would appear that, should a member organization follow Exchange rules in these types of situations, it may very well be in violation of federal law. The proposed rule change, therefore, would serve to clarify the appropriate procedure to be followed by Exchange member firms where a conflict of duty could arise as a result of the Exchange's current rule. Under the proposed rule change, an NYSE member organization may vote a proxy in accordance with its ERISA Plan fiduciary responsibilities if two conditions are satisfied: (i) A named fiduciary designates such member organization as the investment manager of stock held as assets of an ERISA Plan that expressly grants discretion to the investment manager to manage, acquire, or dispose of any plan asset, and (ii) the named fiduciary has not expressly reserved the proxy voting right.

(2) Statutory Basis

The proposed rule change is consistent with section 6(b)(5) of the Securities Exchange Act of 1934 as amended ("the Act"). This section, among other things, requires Exchange rules to be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by this title matters not related to the purposes of this title or the administration of the Exchange. Furthermore, the proposed rule amendment is consistent with section 11(A)(a)(1)(c)(ii) of the Act in that it will tend to assure fair competition among exchange markets and between exchange markets and markets other than exchange markets.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments concerning its 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 with such longer period: (1) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of U.S.C. 522, will be available for inspection and copying in the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC. Copies of such filing with 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 October 26, 1988.

[1] Exhibit A is available for inspection in the Public Reference Branch at Commission headquarters in Washington, DC.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

October 5, 1988.

[FR Doc. 88-23598 Filed 10-12-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26157; File No. SR-PSE-88-05]

Self-Regulatory Organizations; Proposed Rule Change by The Pacific Stock Exchange Inc. Relating to Provisions Providing PSE Disciplinary Hearing Panels, Complainants and Respondents With the Power to Compel the Appearance of Witnesses and the Production of Documentary Materials at PSE Disciplinary Hearings

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 26, 1988, the Pacific Stock Exchange Incorporated ("PSE" or the "Exchange") filed with the Securities and Exchange Commissin 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 Pacific Stock Exchange Incorporated ("PSE" or the "Exchange"), pursuant to Rule 19(b)–4 of the Securities Exchange Act (the "Act") of 1934, hereby proposes to amend Rule XX, section 4 to compel members or persons associated with a member to testify or provide documentary materials at Exchange disciplinary proceedings upon the request of the Hearing Panel, Respondent or Complainant and discipline those members who fail to honor the request. (Brackets indicate language to be deleted, italics indicates new language.)

RULE XX

Disciplinary Procedings

Hearing

Sec. 4. Upon Respondent's filing an answer, the Respondent may request a hearing. An appropriate Committee of the Exchange ("the Hearing Committee") shall appoint one or more members to hear the matter ("the Panel"). Parties shall be given at least 15 days notice of the time and place of the hearing and a statement of the matters to be considered therein.

At the hearing, both the Complainant and the Respondent shall be entitled to be heard in person and to present any relevant matter. Any witnesses, testimony or evidence offered by the Complainant or the Respondent shall be subject to cross-examination by the other party. The Panel shall determine all questions concerning the admissibility of evidence and shall otherwise regulate the conduct of the hearing. Formal rules of evidence shall not apply. The charges shall be presented by one or more representatives of the Exchange, who along with Respondent and any other party, may present evidence and produce witnesses who shall testify under oath and are subject to being questioned by the Panel and other parties. *The Panel, upon its own motion or the motion of the Complainant or Respondent, may request the production of documentary materials and witnesses. No member or person associated with a member shall refuse to furnish relevant testimony, documentary materials or other information requested by the Panel during the course of the hearing.* The Respondent and intervening parties are entitled to be represented by counsel who may participate fully in the hearing. A transcipt of the hearing shall be made and shall become part of the record.

Any person not otherwise a party may intervene as a party to the hearing upon demonstrating to the satisfaction of the Panel that he has an interest in the subject of the hearing and that the disposition of the matter, may, as a practical matter, impair or impede his ability to protect that interest. Also, the Panel may in its discretion permit a person to intervene as a party to the hearing when the person's claim or defense and the main action have questions of law or fact in comon. Any person wishing to intervene as a party to a hearing shall file with the Panel a notice requesting the right to intervene, stating the grounds therefor, and setting forth the claim or defense for which intervention is sought. The Panel, in exercising its discretion concerning intervention, shall take into consideration whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

Except in writing, with copies to the other parties, neither the Complainant, the Respondent, nor any interested party may discuss with the Panel any matter concerning the facts or allegations in the complaint unless the other parties to the action are given sufficient notice and an opportunity to be heard.

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 proposed amendment provides all Pacific Stock Exchange Incorporated ("PSE") disciplinary Hearing Panels, Complainants and Respondents with the power to compel the appearance of witnesses and the production of documentary materials at PSE disciplinary hearings.

The amendment also makes the refusal by a member or person associated with a member to furnish relevant testimony, documentary materials or other information requested by the Panel a violation of PSE Rules.

The purpose of the amendment is to assure that members and persons associated with members cooperate in PSE disciplinary hearings with respect to possible violations within the disciplinary jurisdiction of the PSE. In addition, it provides the Hearing Panel with a greater ability to act as the fact finder in adjudicating disciplinary cases.

The PSE believes that the proposed rule change is specifically in keeping with section 6(b)(7) of the Act in that it is designed to provide a fair disciplinary process for members of the PSE.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes a burden on competition.

(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 data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. 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 3, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 5, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-23600 Filed 10-12-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-26160; File No. SR-PSE-88-18]

Self-Regulatory Organizations; Notice of Filing and Accelerated Approval of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to the Extension of the Near-Term Options Expiration Pilot Program

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 August 25, 1988 the Pacific Stock Exchange, Inc. 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 Pacific Stock Exchange, Inc. ("PSE" or "Exchange") proposes to extend and expand the stock options pilot program, which provides for January cycle options to have four expiration months listed at all times, including two near-term expiration months, to December 31, 1988. The PSE wishes to expand the program to include February and March cycle options. The Exchange also requests permanent approval of the pilot program prior to its expiration in December. [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 and discussed any comments it received on the proposed rule change.[2] 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 Exchange proposes to continue the stock options pilot program until December 31, 1988, and requests permanent approval of the program prior to that date.

In June 1985, in conjunction with the other options exchanges, the PSE implemented a stock option pilot program for certain January cycle stock options.[3] Under the terms of the pilot, the traditional January trading cycle was altered to ensure that: (i) One-month and two-month options were made available for trading at all times and (ii) four expiration months were outstanding at all times. Since that time, the pilot program has been extended twice and expanded to all January cycle stock options.[4]

The purpose of the pilot program is to determine whether a near-term expiration cycle, featuring four expiration months, would improve investors' interest in such stock options. After monitoring the program since its inception, the Exchange has found that the pilot has satisfied investors' preferences for trading such near-term options.

The Exchange, therefore, proposes to continue the pilot program until December 31, 1988, and requests that the program be permanently approved prior to that date.

The PSE believes the proposed rule change in consistent with the requirements of the Securities Exchange Act of 1934 ("1934 Act") and the rules and regulations thereunder applicable to the Exchange by continuing a pilot program tailored to meet investors' preferences for stock options with near-term expiration cycles.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PSE does not believe that the proposed rule change imposes a burden on competititon.

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.

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[1] On September 29, 1988, the PSE amended the filing to request expansion of the pilot program to include February and March cycle options. *See* letter from Craig R. Carberry, Director, Options Compliance, to Thomas Gira, Staff Attorney (Sept. 29, 1988).

[2] On September 12, 1988, the PSE amended the filing to clarify the statutory basis for the proposed rule changes *See* letter from Craig R. Carberry, Director, Options Compliance, to Thomas Gira, Staff Attorney (Sept. 12, 1988).

[3] *See* Securities Exchange Act Release No. 22099 (May 31, 1985), 50 FR 23862, approving SR-PSE-85-9 to allow for implementation of the pilot program using monthly instead of quarterly expiration cycles.

[4] *See* Securities Exchange Act Release No. 23772 (Nov. 13, 1986), 51 FR 41886, approving SR-PSE-86-17 to expand the pilot program to include all January cycle stock options and extend the program for six additional months and Securities Exchange Act Release No. 24193 (Mar. 9, 1987), 52 FR 8123, approving SR-PSE-87-2 to extend the pilot program for four additional months. On September 22, 1988, the PSE amended the filing to request that the pilot be extended retroactively to July 9, 1987 and that the retroactive extension be applied to February and March expiration cycles. *See* letter from Craig R. Carberry, Director, Options Compliance, to Thomas Gira, Staff Attorney (Sept. 22, 1988).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The PSE has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act, so that the pilot program can continue without interruption.

The Commission finds that extension of the pilot until December 31, 1988 and expansion to include February and March expiration cycles from the date of this Order forward are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a securities exchange, and in particular, the requirements of section 6 and the rules and regulations thereunder. The Commission also believe that the extension and expansion of the pilot will benefit public customers by continuing a pilot program tailored to meet investors' preferences for stock options with near-term expiration cycles.

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 so that the pilot program can continue without interruption. In addition, the Commission previously has solicited comment on this and other near-term expiration pilot programs submitted by other options exchanges and has received only one negative comment, in July 1986, on the operation of these pilot programs.[5] Notwithstanding the one adverse comment, which was made in July of 1986 and has not been raised since, the current pilot program has operated effectively and generally has been well received. Finally, the Commission's approval is limited until December 31, 1988 or until the Commission acts on the PSE's request for approval of the pilot program.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. 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 October 26, 1988.

It is therefore ordered, pursuant to section 19(b)(2) of the Act [6], That the proposed rule change (SR–PSE–88–18) is approved to allow the PSE, prospective from the date of this Order, to continue the pilot program until December 31, 1988 and to include February and March expiration cycles in the pilot program.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Dated: October 5, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–23599 Filed 10–12–88; 8:45am]

BILLING CODE 8010–01–M

[5] See letter from Harrison Roth, Drexel Burnham Lambert, Inc. ("Drexel"), to Brandon Becker, Assistant Director of Market Regulation (July 14, 1986) (responding to SR–AMEX–86–21 and SR–PHLX–86–22). Drexel made the following criticisms of the program: Investor confusion has resulted from the failure of newspapers to publish quotes for the longest-term expiration month; six month options have been eliminated for ⅓ of the time while the pilot has been in operation; the public has not had sufficient time to adapt to and comment on the operation of the program; and additional extensions of the pilot program are unnecessary because the pilot program has already been in operation for one year. Three of these concerns are now moot because newspapers now publish quotes for all four expiration months, the Exchanges have requested permanent approval of the pilot program by December 31, 1988, and the Commission has solicited comment on the pilot program on numerous occasions since July 1986. With regard to the elimination of six month options for ⅓ of the time, the Exchanges believe that investor preference for two short-term months outweighs the need for a six month option. For a more thorough discussion of the issues raised by Drexel, *see* 51 FR 27297 (July 30, 1986).

[6] 15 U.S.C. 78s(b) (1982).

[7] 17 CFR 200.30–3(a)(12) (1986).

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

October 6, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Sovran Financial Corp.
Common Stock, $5.00 Par Value (File No. 7–3916)
Wellman, Inc.
Common Stock, $.001 Par Value (File No. 7–3917)
American Government Income Portfolio Inc.
Common Stock, $.001 Par Value (File No. 7–3921)
Franklin Universal Trust
Shares of Beneficial Interest, $.01 Par Value (File No. 7–3922)
TCBY Enterprises, Inc.
Common Stock, $.01 Par Value (File No. 7–3923)
Zweig Total Return Fund Inc.
Common Stock, $.001 Par Value (File No. 7–3924)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 27, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–23595 Filed 10–12–88; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

October 6, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exhange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Federal Home Loan Mortgage Corporation
Participating Preferred Stock, $10 Par Value (File No. 7–3934)
Astrotech International Corp.

Common Stock, $0.01 Par Value (File No. 7–3935)
Loctite Corporation
Common Stock, $0.01 Par Value (File No. 7–3936)
SCEcorp
Common Stock, $4 ⅙ Par Value (File No. 7–3937)
Sunshine Mining Company
Common Stock, $0.50 Par Value (File No. 7–3938)
Zero Corporation
Common Stock, $1 Par Value (File No. 7–3939).

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 27, 1988, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–23594 Filed 10–2–88; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–16584; (811–3492)]

Fayless Investors, Inc.; Application for Deregistration

October 5, 1988.

AGENCY: Securities and Exchange Commission ("SEC")

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Payless Investors, Inc.

Relevant 1940 Act Section: Section 8(f) and Rule 8f–1 thereunder.

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Date: The application was filed on May 23, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on October 31, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicant, 1400 Broadway, New York, NY 10018.

FOR FURTHER INFORMATION CONTACT: Paul J. Heaney, Financial Analyst (202) 272–3420 or Brion R. Thompson, Branch Chief (202) 272–3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant, under its prior name Leslie Fay Inc., filed Form S–1 pursuant to the Securities Act of 1933 to register 200,000 shares of its common stock, $1.00 par value per share, which registration statement became effective on Septembe 11, 1962, the date upon which the initial public offering of Applicant's common stock commenced. On June 18, 1982, Applicant filed Form N–8A to register under the 1940 Act as a closed-end, non-diversified management investment company. On September 27, 1982, Applicant also filed Form N–2 pursuant to Section 8(b) of the 1940 Act.

2. At a special meeting of Applicant's shareholders held on December 17, 1987, Applicant's shareholders approved the Agreement and Plan of Reorganization ("Plan") whereby, on December 30, 1987, Applicant transferred substantially all of its assets to the Merrill Lynch Municipal Bond Fund, Inc. ("Merrill Lynch Fund") (File No. 811–2688) in exchange for shares of the High Yield Portfolio of the Merrill Lynch Fund having an aggregate net asset value equal to the value of the transferred assets of Applicant. In accordance with an Exchange Agent Agreement dated December 31, 1987, Applicant has transferred subsequently all of its assets to American Stock Transfer Company, as Exchange Agent for the benefit of Applicant's shareholders. The transferred assets had an aggregate fair market value of approximately $14,087,019, and an aggregate of 1,459,581 shares of the High Yield Portfolio of the Merrill Lynch Fund were received in exchange thereof. No brokerage commissions were paid in connection with the transactions. $15,000 of the expenses incurred in connection with the transfer of Applicant's assets and subsequent liquidation were borne by the Merrill Lynch Fund and the balance of approximately $93,759 was borne by Applicant.

3. Applicant is contingently liable for certain obligations of The Leslie Fay Companies, Inc., the successor to the garment manufacturing and sales business conducted by Applicant prior to its becoming an investment company, under leases expiring between 1988 and 1993 with minimum lease payments aggregating approximately $1,458,000. The Estate of Fred P. Pomerantz, the principal shareholder of Applicant, has agreed to indemnify Applicant with respect to such obligations. Applicant has no other liabilities and is not a party to any litigation or administrative proceedings. Applicant has not retained any assets except for approximately $12,000 to be used in payment of certain legal expenses.

4. Applicant is not now engaged, and does not propose to engage, in any business activities other than those necessary for the winding-up of its affairs. As soon as practicable, Applicant intends to file a Certificate of Dissolution with the New York Secretary of State.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–23601 Filed 10–12–88; 8:45 am]

BILLING CODE 8010–01–M

[File No. 22–18828]

Application and Opportunity for Hearing; Delta Air Lines, Inc.

October 6, 1988.

Notice is hereby given that Delta Air Lines, Inc. (the "Company") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeship of Citizens and Southern Trust Company (Georgia), National Association (the "Bank") under seven indentures between the Company and the Bank, three dated as of June 1, 1988 (the "June Indentures"), and four dated as of

October 15, 1987 (the "October Indentures"), each of which have been submitted for qualification under the Act, and one indenture between the Development Authority of Clayton County (the "Development Authority") and the Bank, dated as of January 1, 1988 (the "Development Authority Indenture"), which was not qualified under the Act (collectively, the "Indentures"), is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as trustee under any one of the Indentures.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in the section), it shall within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign.

Subsection (1) of that section provides, with certain exceptions stated therein, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture of the same obligor.

The Company alleges:

(1) Pursuant to the June Indentures, the Company will issue $144,000,000 aggregate principal amount of its Equipment Trust Certificates (the "June Certificates"), Series A–C (the "June Series") respectively, Series A–C will be issued, each under a June Indenture, in the principal amount of $48,000,000 per series. The June Certificates will be registered under the Securities Act of 1933 (the "1933 Act") and the June Indentures have been submitted for qualification under the Act.

(2) Pursuant to the October Indentures, the Company will issue $109,471,000 aggregate principal amount of its Equipment Trust Certificates (the "October Certificates"), Series D–G (the "October Series") Series D has been issued under an October Indenture, in the principal amount of $27,340,000. Series E has been issued under an October Indenture in the principal amount of $27,463,000. Series F has been issued under an October Indenture in the principal amount of $27,348,000. Series G has been issued under an October Indenture in the principal amount of $27,320,000. The October Certificates were registered under the 1933 Act and the October Indentures were qualified under the Act. (Collectively, The June Certificates and the October Certificates are referred to herein the "Certificates" and the June Series and the October Series are referred to herein as the "Series.")

(3) Pursuant to the Development Authority Indenture, $44,900,000 aggregate principal amount of Development Authority Special Facilities Adjustable Tender Revenue Refunding Bonds Series 1988 (the "Bonds") have been issued. The Bonds were not registered under the 1933 Act and the Development Authority Indenture was not qualified under the Act. The Bonds are payable from loan payments made pursuant to a Loan Agreement between the Company and the Development Authority. Such Loan Agreement and the Promissory note of the Company issued thereunder have been assigned by the Development Authority to the Bank, as trustee, to secure payment of the Bonds. The obligations of the Company under such loan agreement and such promissory note are unsecured. An irrevocable letter of credit has been issued by Swiss Bank Corporation, Atlanta Agency for an amount not exceeding approximately $50.5 million (the "Letter of Credit"), pursuant to which only the Bank or its successor or designated agent may make draws.

(4) There is no default under any of the Indentures.

(5) Each Series of Certificates and the Bonds are and will be secured under separate June Indentures, October Indentures, and the Development Authority Indenture, respectively, and by separate security interests in separate and distinct property.

(6) The Company's obligations under the June Indentures, October Indentures, and the Development Authority Indenture are general, unsecured obligations of the Company.

(7) Such differences as exist among the Indentures referred to herein and the respective obligations of the Company as obligor are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as Trustee under any of the Indentures.

The Company has waived notice of hearing, hearing and any and all rights to specify procedures under the Rules of Practice of the Commission in connection with this matter. For a more detailed statement of the matters of fact and law asserted, all persons are referred to the application which is on file in the Offices of the Commission's Public Reference Section, File Number 22–18828, 450 Fifth Street, NW., Washington, DC 20549.

Notice is further given that any interested persons may, not later than October 30, 1988, request in writing that a hearing be held on such matter stating the nature of his interest, the reasons for such request and the issues of law or fact raised by such application which he desires to controvert, or he may request that he be notified if the Commission orders a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–23596 Filed 10–12–88; 8:45 am]

BILLING CODE 8010–01–M

[File No. 22–18551]

Application and Opportunity for Hearing; Texaco, Inc.

October 6, 1988.

Notice is hereby given that Texaco Inc. (the "Company") has filed an application pursuant to clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding by the Securities and Exchange Commission ("Commission") that the trusteeship of The Chase Manhattan Bank (National Association) ("Chase") under a indentures dated as of April 1, 1976 ("1976 Indenture") between the Company and Citibank, N.A., for which Chase is successor trustee, relating to the Company's 8½% Debentures due 2006, June 27, 1983 ("1983 Indenture") between Texaco Capital Inc. ("Texaco Capital" or "Issuer"), the Company, as guarantor, and Chase, relating to Guaranteed Debt Securities in Series to be issued thereunder by the Texaco Capital from time to time, as supplemented by a Supplemental Indenture dated as of July 10, 1984, and August 24, 1984 ("1984 Indenture") between Texaco Capital, the Company, as guarantor, and Chase which were heretofore qualified under the Act, relating to Guaranteed Debt Securities in Series to be issued thereunder by the Issuer from time to time and under an indenture dated as of April 30, 1988 ("New Indenture") between the Company and Chase which has not been qualified under the Act, relating to Debt Securities in Series to be issued thereunder by the Company from time to time, is not so likely to involve a

material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Chase from acting as Trustee under the 1976 Indenture, the 1983 Indenture, the 1984 Indenture and the New Indenture.

The 1976 Indenture, the 1983 Idenure and the 1984 Indenture are herein collectively referred to as the "Indentures".

Section 310(b) of the Act, the provisions of which are among the provisions of the Indentures, provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in such section), it shall, within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of that section provides, with certain exceptions stated therein, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is a trustee under another indenture under which any other securities, or certificates of interest, or participation in any other securities of the same obligor are outstanding. This application, filed pursuant to clause (ii) of section 310(b)(1) of the Act, seeks to exclude the Indentures from the operation of section 310(b)(1) of the Act with respect to the New Indenture.

The Company alleges that:

(1) As of June 15, 1988 the Company had outstanding $217,016,000 aggregate principal amount of 8½% Debentures due April 1, 2006, (the "Debentures"), issued under the 1976 Indenture. The 8½% Debentures were registered under the Securities Act of 1933, as amended (the "1933 Act") (File No. 2–55643) and the Indenture was qualified under the Act.

(2) As of June 15, 1988, Texaco Capital had outstanding $133,513,000 aggregate principal amount of Extendible Notes due June 1, 1999, $485,000,000 aggregate principal amount of 13⅝% Notes due 1994 and $500,000,000 aggregate principal amount of 13% Notes due 1991 (collectively the "Notes") issued under the 1983 Indenture. The Notes were registered under the 1933 Act (File No. 2–79920) and the 1983 Indenture was qualified under the Act.

(3) As of June 15, 1988, Texaco Capital had outstanding $300,000,000 aggregate principal amount of Extendible Notes due March 1, 2000 and $108,477,000 aggregate principal amount Extendible Notes due January 15, 2000 (collectively, the "Extendible Notes") issued under the 1984 Indenture. The "Extendible Notes were registered under the 1933 Act (File No. 2–92933) and the 1984 Indenture was qualified under the Act.

(4) The Company proposes to issue $250,000,000 aggregate principal amount of Debentures (the "New Debentures") under the New Indenture to an existing securityholder in exchange for other securities of the Company currently held by such securityholder. All of the New Debentures to be issued pursuant to the New Indenture will be distributed by that existing securityholder in transactions not involving public offerings. The issuance of the New Debentures is therefore exempt from the registration requirements of the Securities Act of 1933 and the New Indenture is exempt from the qualification provisions of the Act.

(5) The Indentures and the New Indenture and the debt securities issued and outstanding thereunder are wholly unsecured, and rank *pari passu inter se.*

(6) The Company's obligations as guarantor under the 1983 Indenture to make payments on the Notes and on the Extendible Notes issued thereunder are wholly unsecured and rank *pari passu inter se.*

(7) The likelihood of a conflicting interest resulting from different or conflicting substantive provisions of the Indentures is also minimal. The Indentures are nearly identical, with the exception of provisions relating to principal amount, interest rate, dates of issue, maturity and interest payment dates, premiums, redemption prices, procedures and sinking fund provisions, and similar items which commonly change with separate financings. Such differences as exist among the Indentures are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Chase from acting as Trustee under any of the Indentures or the New Indentures.

(8) Chase has been informed by the Company of this Application. Chase has advised the Company that it concurs in this Application and that it finds the Application satisfactory under the circumstances, inasmuch as it does not consider that favorable action on the Application would interfere with its ability to perform its duties as set forth in the Indentures;

(9) Neither the Company nor the Issuer are in default under the Indentures, the Debentures, the Notes or the Extendible Notes.

(10) The Company is not in default under the New Indenture or the New Debentures.

(11) Such differences as exist between the Indentures and New Indenture are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Chase from acting as trustee thereunder.

The Company has waived notice of hearing, hearing and any and all rights to specify procedures under the Rules of Practice of the Commission in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application which is on file in the Offices of the Commission's Public Reference Section, File Number 22–18551, 450 Fifth Street, NW., Washington, DC 20549.

Notice is Further Given any interested person may, not later than October 31, 1988, at 5:30 p.m., Eastern Standard Time, in writing submit to the Commission, his views or any additional facts bearing upon this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, and should state briefly the nature of the interest of the person submitting such information or requesting a hearing, the reasons for such request, and the issues of fact and law raised by the application which he desires to controvert.

By the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–23597 Filed 10–12–88; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–16589; 812–6746]

Kidder, Peabody & Co. Inc., Kidder, Peabody Group Inc. and Webster Management Corp.

October 6, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Filing of Reports Pursuant to Order of Temporary Exemption from the Provisions of section 9(a) of the Investment Company Act of 1940 ("1940 Act").

Applicants: Kidder, Peabody & Co. Incorporated ("Kidder"), Kidder, Peabody Group Inc., and Webster Management Corporation ("Webster") (collectively "Applicants").

Relevant 1940 Act Sections: Exemption requested from provisions of section 9(a) of the 1940 Act.

SUMMARY: Applicants filed an application pursuant to section 9(c) of the 1940 Act on June 4, 1987 ("Application") for both a temporary

and permanent order exempting them from the provisions of section 9(a) of the 1940 Act, operative as a result of entry of an injunction against Kidder described therein. The filing of the Application was noticed and an order was issued in Investment Company Act Release No. IC-15765 on June 4, 1987, granting the requested temporary exemption from Section 9(a) ("Temporary Order"). That order was based upon, *inter alia*, applicants' undertaking to submit a report by independent consultants reviewing the policies and procedures used by Kidder and Webster to prevent violations of the federal securities laws in connection with their investment company business and recommending necessary and appropriate changes to ensure ongoing compliance (the "Investment Company Report"), and to submit a report detailing the steps Kidder and Webster have taken and will take to implement such recommendations (the "Implementation Report") before final action would be taken on their request for permanent relief. Applicants have filed these reports, and the Commission is providing an opportunity for public review of them and for interested persons to comment on the Application for a permanent section 9(c) order based on the information contained in the reports.

FILING DATES: The Application was filed on June 4, 1987. The initial Investment Company Report and Kidder's Implementation Report were filed on January 29, 1988. The supplemental Investment Company Report and Applicants' supplemental Implementation Report were filed on June 3, 1988.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549. Applicants, 20 Exchange Place, New York, NY 10005.

FOR FURTHER INFORMATION CONTACT: Regina Hamilton, Staff Attorney, (202) 272-2856, or Karen L. Skidmore, Branch Chief, (202) 272-3023 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The complete Application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300). Copies of the supplemental Investment Company Report and supplemental Implementation Report, as well as the initial reports, are available for public inspection in the Commission's Public Reference Branch at its Headquarters Office in Washington, DC and its Regional Office in New York. For further information, refer to the Temporary Order (Investment Company Act Release No. IC-15765, June 4, 1987).

Notice of Filing of Reports

1. Notice is hereby given that Applicants, pursuant to the terms of the Temporary Order, filed the initial Investment Company Report and inital Implementation Report on January 29, 1988. On June 3, 1988, Applicants filed: (a) A supplemental Investment Company Report reviewing the policies and procedures used by Kidder and Webster to prevent violations of the federal securities laws in connection with their investment company business and recommending necessary and appropriate changes to ensure ongoing compliance; and (b) a supplemental Implementation Report setting forth the details of Kidder's and Webster's implementation of the supplemental Investment Company Report's recommendations.[1]

2. Interested persons wishing to comment on the Application based on information contained in the filed reports may do so. Such comments should be filed with the Secretary of the SEC by 5:30 p.m., on October 31, 1988.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-23666 Filed 10-12-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16588; 812-6789]

Istituto Mobiliare Italiano and IMI Commercial Paper, Inc.; Application

October 6, 1988

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Amendment of Order of Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: Istituto Mobiliare Italiano ("IMI") and IMI Commercial Paper, Inc. ("Issuer").

Relevant 1940 Act Sections: Exemption requested pursuant to section 6(c) from all provisions of the 1940 Act.

Summary of Application: Applicants seek an order amending an SEC Order dated April 5, 1983 (Investment Company Act Release No. IC-13141) ("1983 Order"). The requested amended order will permit the issuance and sale in the United States of commerical paper notes ("Commercial Paper Notes") by the Issuer, and, at some time in the future, other debt securities ("Other Debt Securities") by Applicants.

Filing Dates: The application was filed on July 13, 1987, and amended on September 29, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on October 28, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o Robert A. Walder, Seward & Kissel, Wall Street Plaza, New York, New York 10005.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Regina Hamilton (202) 272-3024, or Branch Chief Karen L. Skidmore (202) 272-3023 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. IMI was established under Italian law in 1931 by Royal Decree Law No. 1398 as an Ente di Diritto Pubblico (Public Law Institute), a public statutory corporation established to contribute to the strengthening of the Italian economy by carrying out credit and financial transactions, principally through the extension of medium-term and long-term credit to public and private sector entities. IMI also provides export credit financing to support the export of goods and products manufactured in Italy. As of March 31, 1988, IMI had total assets of approximately 23 billion dollars, approximately 82% of which consisted of loans made by IMI. IMI is currently the largest Italian institution extending medium-term and long-term credit, and

[1] Kidder has also filed a separate consultant's report concerning its broker-dealer operations and its response pursuant to the Commission's order in Securities Exchange Act Release No. 24543 (June 4, 1987). Kidder has requested confidential treatment of those documents.

one of the largest financial service institutions in Europe.

2. The Italian government, directly or through government-controlled statutory entities or public sector entities, owns and controls approximately 85% of IMI's equity capital. IMI's equity capital may not be transferred without the consent of its board of directors. In addition to its equity captial, IMI's principal source of funds is the issuance and sale of bonds in Italy. IMI's bonds are listed on the Italian Stock Exchanges and are included among the securities against which Italy's central bank, Banca d'Italia, may make advances. IMI's bonds may also be accepted by government agencies as bonded deposits. As of March 31, 1988, IMI had approximately $10 billion principal amount of bonds outstanding, an amount approximately equal to 43% of its total liabilities and stockholders' equity. IMI does not, as a general rule, extend financing by making equity investments, and has made equity investments only in a limited number of cases. Securities holdings of IMI representing investments of its excess cash constituted approximately 5.4% of IMI's total assets as of March 31, 1988.

3. The composition of IMI's twenty-member board of directors is established by Italian law. Nine members are appointed by the Italian government and act as its representatives; eleven are elected by the holders of IMI's equity capital. IMI's accounting, administrative and financial operations are supervised by a Board of Auditors, a majority of whom are representatives of the Italian government appointed by the Italian Ministry of the Treasury. The banking operations and books and records of IMI are subject to general supervision by Banca d'Italia. IMI's general activities and business are subject to the supervision of, and are conducted in a manner designed to be consistent with, the guidelines of a number of Italian government entities, including the Interministerial Committee on Credit and Savings, the Ministry of the Treasury and Banca d'Italia. IMI's participation as guarantor in the issuance and sale of debt securities in the United States will be approved by the Ufficio Italiano dei Cambi (Italian Exchange Office), an authority entrusted with control of foreign exchange transations.

4. The Issuer, a Delaware corporation, is a wholly-owned finance subsidiary of IMI. The Issuer has not, and will not publicly offer its common stock or any other equity security.

5. IMI Bank (International) ("IMI Bank") is a corporation formed under the laws of the Cayman Islands as a wholly-owned subsidiary of IMI. IMI Bank functions essentially as a captive funding vehicle for IMI and subsidiaries and affiliates of IMI ("IMI group"). All liabilities of IMI Bank benefit from direct guarantees issued by IMI. IMI Bank's activities on the international and domestic markets include borrowing through loans, deposit taking, the establishment of banking lines, the issuance of bonds, notes, commerical paper, certificates of deposit and other related debt instruments and swap activity. Lending activities are generally confined to the IMI group.

6. IMI Capital Markets USA Corporation ("IMI Capital Markets"), a Delaware corporation, is wholly-owned by IMI International S.A. (formerly IMI International Holding S.A.) ("International"), a Luxembourg corporation and 99.99%-owned subsidiary of IMI. IMI Capital Markets is primarily engaged in financing activities. As of December 31, 1987, promissory notes evidencing loans made by IMI Capital Markets amounted to approximately 78% of IMI Capital Markets' total assets of $34,752,690. In addition to retained earnings, IMI Capital Markets' principal source of funds is bank borrowings.

7. The 1983 Order exempted the Issuer from all provisions of the 1940 Act, permitting it to issue and sell commercial paper notes in the United States and use the net proceeds of the sale to make advances to Industrial Multinational Investments Limited and The Euram Corporation, two wholly-owned subsidiaries of International. Under that order, payment of the amounts owed by the Issuer in respect of the notes is supported by an irrevocable letter of credit issued by Bankers Trust Company.

8. Applicants seek to amend the 1983 Order to permit the issuance and sale in the United States of Commercial Paper Notes by the Issuer and Other Debt Securities by Applicants, supported by a guarantee by IMI rather than the bank letter of credit. Applicants will use the net proceeds of the sale of Commercial Paper Notes to make advances ("Advances") pursuant to an Advance Agreement ("Advance Agreement"), to IMI Bank and IMI Capital Markets (together, the "Designated Subsidiaries"), to provide funds for making loans and extending credit in the ordinary course of their businesses. In the case of Other Debt Securities issued by the Issuer, net proceeds from the sale of such securities will be used to make advances or loans pursuant to agreements substantially similar to the Advance Agreements to the Designated Subsidiaries, IMI or companies controlled by IMI within the meaning of Rule 3a-5 of the 1940 Act. In the case of Other Debt Securities issued by IMI, the net proceeds will be used by IMI directly. Advanced proceeds will be used to make loans and extend credit in the ordinary course of the recipients' businesses. IMI will have received from Ufficio Italiano dei Cambi any necessary authorizations or approvals for issuing its guarantees or Other Debt Securities prior to their issuance.

9. The Issuer, in order to obtain the funds to make the Advances, will issue and sell its Commercial paper Notes, which will be short-term negotiable promissory notes of the type exempt from the registration requirements of the Securities Act of 1933 (the "1933 Act") by virtue of paragraph 3(a)(3) thereof. The Commercial Paper Notes will be sold through one or more major dealers only to the types of sophisticated institutional investors that ordinarily participate in the commercial paper market. They will be issued in minimum denominations of $100,000, have maturities not exceeding 270 days, and neither be payable on demand prior to maturity nor be eligible for any extension, renewal, or automatic "rollover" at the option of either the holders or the Issuer. The Issuer undertakes not to market any Commercial Paper Notes prior to receiving an opinion of counsel that the proposed offering of Commercial Paper Notes is so exempt. The Issuer does not request Commission review or approval of counsel's opinion regarding the availability of an exemption for the Commercial Paper Notes under paragraph 3(a)(3) of the 1933 Act.

10. Substantially all of the Issuer's assets will consist of its right to receive repayment from the Designated Subsidiaries of the Advances made by the Issuer. The remaining portion of the Issuer's assets will consist of funds held to pay administrative costs which the Issuer will incur in connection with its issuance of the Commercial Paper Notes and its making of the Advances.

11. Applicants undertake that prior to issuance of either the Commercial Paper Notes or the Other Debt Securities, Counsel to the Issuer or IMI (as appropriate) will certify to the Issuer or IMI that the Commercial Paper Notes or the Other Debt Securities will have received one of the three highest investment grade ratings from at least one nationally recognized statistical rating organization, but no such rating shall be required to be obtained for placements of Applicants' Other Debt Securities, if, in the opinion of U.S.

counsel to Applicants, such counsel having taken into account the doctrine of "integration" referred to in Rule 502 of Regulation D under the 1933 Act and various "no-action" letters made public by the Commission, an exemption is available for the issue pursuant to subsection 4(2) of the 1933 Act or Regulation D thereunder.

12. The Issuer undertakes that each dealer in the Commercial Paper Notes will furnish to each purchaser thereof, at or prior to the time of purchase, a memorandum describing the businesses of IMI and the Issuer and providing the most recent annual financial information for IMI. IMI's financial information will include its most recent fiscal year-end balance sheet and statement of income for the entire fiscal year, updated as necessary, accompanied by a brief description of the material differences in the accounting principles applied by IMI's independent public accountants and generally accepted accounting principles as used in the U.S. Such documents will be updated promptly to reflect material changes in the financial status of the Issuer or IMI and will be at least as comprehensive as memoranda customarily used in offering commercial paper in the U.S. Applicants undertake that any offering of Other Debt Securities will be effected on the basis of disclosure documents at least as comprehensive in their descriptions of Applicants, their businesses and their financial statements as the commercial paper dealer memoranda. However, in the case of an offering made pursuant to a registration statement under the 1933 Act, the offering will be made on the basis of disclosure documents appropriate for such registration.

13. The Issuer will select a major commercial bank located in the City of New York to act as issuing and paying agent for the Commercial Paper Notes. In the case of Other Debt Securities, the Issuer or IMI will select an issuing and paying agent located in the City of New York or such other place in the United States as may be appropriate for such offering. IMI will, in connection with the issuance of the Commercial Paper Notes and Other Debt Securities and their payment, appoint an agent to accept service of process in any suit, action or proceeding brought against IMI in any state or federal court with respect to its debt securities, its obligations under the guarantees of the debt securities of the Issuer, or arising in connection with such offerings. IMI will expressly submit to the jurisdiction of any state or federal court located in the City of New York with respect to any such suit, action or proceeding (or, in the case of an offering of Other Debt Securities using an issuing and paying agent located in a place other than the City of New York, any state or federal court located in such other place). Such appointment of an agent for service of process and such consent of jurisdiction shall be irrevocable until all amounts due and to become due with respect to the Commercial Paper Notes and Other Debt Securities have been paid.

14. Payment of the face or principal amount of, and any intent or premium on, the Commercial Paper Notes or Other Debt Securities will be unconditionally guaranteed IMI. The guarantee will permit the holder of the Commercial Paper Notes or Other Debt Securities to proceed directly against IMI in the event of a default by the Issuer under the Commercial Paper Notes or the Issuer's Other Debt Securities without first having to proceed against the Issuer. IMI, to the extent permitted by applicable law, will waive any rights of sovereign immunity in connection with its guarantee of payment of the Commercial Paper Notes or Other Debt Securities to which it might be entitled in the absence of such waiver. IMI is not currently entitled to any rights of sovereign immunity.

15. Payment of the Issuer's obligations in respect of the Commercial Paper Notes and Other Debt Securities will be direct liabilities of the Issuer and will rank *pari passu* among themselves and equally with all other unsecured, unsubordinated indebtedness of the Issuer. IMI's payment obligations in respect of the guarantees will be direct liabilities of IMI and will rank *pari passu* among themselves and equally with all other unsecured, unsubordinated indebtedness of IMI.

16. The Issuer will advance all of the net proceeds from sales of the Commercial Paper Notes to one or both of the Designated Subsidiaries. The Issuer will advance at least 85% of the net cash proceeds from the sale of other Debt Securities to the Designated Subsidiaries, IMI or companies controlled by IMI within the meaning of Rule 3a–5 of the 1940 Act. IMI may retain the proceeds of the sale of any Other Debt Securities it issues for making loans and extending credit in the ordinary course of its business. Each Advance pursuant to the sale of Commercial Paper Notes and each advance or loan arising from the sale of Other Debt Securities will be made as soon as practicable after the issuance of the related debt securities (but in any event, within six months after such issuance). Each Advance and each advance or loan will mature and each recipient will repay the Issuer or IMI on the terms described in the application. The aggregate amount of Commercial Paper Notes issued to obtain funds to make Advances to the Designated Subsidiaries will not exceed the designated commitment specified in the Advance Agreement.

17. Applicants will not issue or sell any Other Debt Securities in the United States unless they have received an opinion of United States counsel or a "no-action" letter issued by the Staff of the Commission to the effect that the proposed offering is in compliance with, or entitled to an exemption from, the registration requirements of the 1933 Act.

Applicants' Legal Conclusions

1. Applicants may fall within the definition of an investment company in section 3(a) of the 1940 Act because the guarantees to be issued by IMI will constitute securities under the 1940 Act and IMI's assets consist largely of loans, which may be deemed be securities. Moreover, the Issuer's rights in respect of the Advances, which would constitute virtually all of the Issuer's assets, could be deemed to be investment securities.

2. Neither rule 6c–9 nor Rule 3a–5 is available to the Issuer or IMI because of the unique character of IMI. rule 6c–9 exempting the offer or sale of debt securities in the United States by foreign banks and their finance subsidiaries is inapplicable because IMI is not encompassed by the rule's definition of "foreign bank." Rule 3a–5 exempting subsidiaries organized to finance operations of foreign companies also is inapplicable because the Issuer cannot qualify as a "finance subsidiary." Notwithstanding Applicants' inability to use these rules, Applicants believe that the public purpose IMI serves, the ownership, control and supervision of IMI by the Italian government, the limitations imposed on the proposed transactions and IMI's status as a major financial institution provide an appropriate basis on which the Commission may grant exemptive relief to IMI and the issuer under section 6(c) of the Act.

3. The rationale for exemption under section 6(c) of the 1940 Act extends to the Issuer as well because the Issuer will be operated under IMI's control and exists solely to finance the operations of IMI and its subsidiaries, and the unconditional guarantee by IMI of the Issuer's debt securities means that the obligations of the Issuer are effectively obligations of IMI.

4. Applicants contend that the requested exemption is necessary or

appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

Applicants' Condition

Applicants consent to any order granting the required relief being expressly conditioned upon their compliance with the undertakings and representations set forth herein and in the application, and, in particular, the representation that IMI is not entitled to exercise any rights of sovereign immunity. For the Commission, by the Division of Investment Management, under delegated authority.

Johnathan G. Katz,

Secretary.

[FR Doc. 88-23667 Filed 10-12-88 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 35-24724]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

October 6, 1988.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should sudmit their views in writing by October 31, 1988 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall indentify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Allegheny Power Service Corporation et al. (70-7546)

Allegheny Power Service Corporation, 320 Park Avenue, New York, New York 10022 ("APSC"), and The Potomac Edison Company, Downsville Pike, Hagerstown, Maryland 21740 ("PE"), subsidiaries of Allegheny Power Company, Inc., a registered holding company, and Allegheny Generating Company, 320 Park Avenue, New York, New York 10022 ("AGC"), a subsidiary of PE, have filed a declaration pursuant to sections 6(a) (2) and 7 of the Act.

The Boards of Directors of APSC, a Maryland Corporation, PE, a Maryland and a Virginia Corporation, and AGC, a Virginia Corporation, have proposed amendments ("Liability Amendments") to their respective Charters which would limit certain liabilities of directors and officers of each company to each such company or its stockholders. The Liability Amendments would be consistent with recent changes in the Annotated Code of Maryland and the Virginia Code which permit Maryland and Virginia corporations to include in certificates of incorporation provisions eliminating the personal liability for money damages of a director or officer to the corporation or its stockholders for breaches of fiduciary duty to the corporation or stockholders unless such breach involves active and deliberate dishonesty or improper personal benefit.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-23665 Filed 10-12-88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2320]

Declaration of Disaster Loan Area; California

As a result of the President's major disaster declaration on September 29, 1988, I find that the Counties of Nevada, Shasta, Solano, and Yuba, in the State of California, constitute a disaster loan area due to damages from wildfires which occurred September 11-24, 1988. Eligible persons, firms, and organizations may file applications for physical damage until the close of business on November 28, 1988 and for econmic injury until the close of business on June 29, 1989, at the address listed below:

Disaster Area 4 Office, Small Business Administration, P.O. Box 13795, Sacramento, CA 95853-4795, or other locally announced locations.

The interest rates are:

	(in percent)
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	9.000

The number assigned to this disaster is 232005 for physical damage and for economic injury the number is 666400.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008).

Date: October 8, 1988.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 88-23562 Filed 10-12-88; 8:45 am]

BILLING CODE 8025-01-M

F/N Capital L.P.; 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 (1988)) by F/N Capital, L.P., One Norstar Plaza, Albany, New York 12207, 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:	
F/NSV Corporation, One Norstar Plaza, Albany, New York 12207	0
Limited partners:	
Norstar Venture Capital Corp. (NVCC), One Norstar Plaza, Albany, New York 12207	35

	Percentage of ownership
The Age and Supplemental Retirement Allowance Plan for Employees of Niagara Mohawk Power Corporation (NiMo), 300 Erie Boulevard West, Syracuse, New York 13202	35
New York State Teachers' Retirement Fund, 10 Corporate Woods Drive (Teachers), Albany, New York 12211–2395	15
Norstar Venture Partners I (NVPI), One Norstar Plaza, Albany, New York 12207–2796	15

F/NSV Corp., a New York corporation, is a wholly-owned subsidiary of Norstar Venture Capital Corp. Norstar Venture Capital Corp. is a limited partner of another SBIC, NYSTRS/NV Capital, L.P. (License No. 02/02–0493). Norstar Bancorp Inc. owns all of the outstanding stock of Norstar Venture Capital Corp. Norstar Bancorp also owns all of the outstanding stock of anothr SBIC, Norstar Capital, Inc., Albany, New York (License No. 02/02–0482).

F/N Capital, L.P. will be managed by Norstar Venture Capital Corporation. The officers and directors of NVCC are:

Name	Relationship to NVCC	Percentage of ownership
Richard A. Higginbothem, 90 Fox Run, East Greenwich, RI 02818	Chairman and Director	0
Raymond A. Lancaster, 9 Conventry Road, Glenmont, NY 12207	President and Director	0.14
John B. Robinson, Jr., 208 Graffunder Drive, Menands, NY 12204	Treasurer, Secretary and Director	0
Harry Post Meislahn, 16 Axbridge Lane, Delmar, NY 12054	Counsel	0
Barbara S. Murphy, RD2 Box 376, Chatham Center NY 12184	Vice President	.09

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 Albany, New York.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies)

Dated: October 5, 1988.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 88–23564 Filed 10–12–88; 8:45 am]

BILLING CODE 8025–01–M

[Application No. 09/09–5380]

Calsafe Capital Corporation; Application for a Small Business Investment Company License

An application for a license to operate as a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended, section 301(d) (15 U.S.C. 661, *et seq.* (1988) (the Act) has been filed by Calsafe Capital Corp. (the Applicant), 240 South Atlantic Blvd., Alhambra, California 91801, with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1988).

The officers, directors and stockholders of the Applicant are as follows:

Name	Title	Percent
Bob C.T. Chang, 2741 Lombardy Road, San Marino, California 91108	Chairman of the Board Director	40
Ming-Min Su, 2468 Lyric Avenue, Los Angeles, California 90027	President and Director	10
Mei Yun Tsai, 1545 Rubing Drive, San Marino, California 91108	Secretary and Treasurer	10
Sulong Wang, 8864 East Camino Road, San Gabriel, California 91775	Director	40

The Applicant, a Calfornia Corporation, will begin operations with $1,000,000 paid-in capital and paid-in surplus. The Applicant will conduct its activities primarily in the State of California but will consider investments in businesses in other areas of the United States.

As an SBIC under section 301(d) of the Act, the Applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Small Business Investment Act of 1958, as amended, from time to time, and will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owner and management, and the probability of successful operations of the company under their management including adequate profitability and financial soundness, in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed Application. Any such communication for Investment, Small Businesss Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of this Notice shall be published in a newspaper of general circulation in the Alhambra, California area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 5, 1988.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 88-23563 Filed 10-12-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Montgomery County and the Towns of Blacksburg and Christiansburg, VA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Montgomery County and the Towns of Blacksburg and Christiansburg, Virginia.

FOR FURTHER INFORMATION CONTACT: Robert B. Welton, District Engineer, Federal Highway Administration, P.O. Box 10045, Richmond, Virginia 23240-0045, Telephone (804) 771-2682.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Virginia Department of Transportation (VDOT), will prepare an environmental impact statement (EIS) on a proposal to construct a four-lane divided facility to serve as a link between I-81 (east terminus) and Route 460 in the vicinity of Blacksburg, Virginia (west terminus).

Alternatives under consideration include: (1) Taking no action (no build); (2) traffic system management; and (3) various build alternatives.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies and to private organizations and citizens who have previously expressed an interest in this proposal. No formal scoping meeting is planned at this time. The Draft EIS will be available for public and agency review and comment. Following publication of the Draft EIS, a public hearing will be held. Public notice will be given of the time and place of the hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning the proposed action and the EIS should be directed to the FHWA at the address provided above.

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of Executive Order 12372 regarding State and local review of Federal and Federally assisted programs and projects apply to this program.

Issued on: October 3, 1988.

Robert B. Welton,

District Engineer, Richmond, Virginia.

[FR Doc. 88-23567 Filed 10-12-88; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: October 7, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0140.

Form Number: 2210 and 2210F.

Type of Review: Revision.

Title: Underpayment of Estimated Tax by Individuals and Fiduciaries; Underpayment of Estimated Tax by Farmers and Fishermen.

Description: Internal Revenue Code section 6654 imposes a penalty for failure to pay estimated tax. This form is used by taxpayers to determine whether they are subject to the penalty and to compute the penalty if it applies. The service uses this information to determine whether the taxpayer is subject to the penalty, and to verify the penalty amount.

Respondents: Individuals or households, Farms, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 900,000.

Estimated Burden Hours Per Response/ Recordkeeping:

	2210	2210F (minutes)
Recordkeeping	1 hour 19 minutes.	33
Learning about the law or the form.	31 minutes	5
Preparing the form	1 hour 16 minutes.	18
Copying, assembling, and sending the form to IRS.	20 minutes	11

Frequency of Response: Annually.

Estimated Total Recordkeeping/ Reporting Burden: 2,965,500 hours.

Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 88-23647 Filed 10-12-88; 8:45 am]

BILLING CODE 4810-25-M

Customs Service

Application for Recordation of Trade Name; Duart Industries, Ltd.

ACTION: Notice of application for recordation of trade name.

SUMMARY: Application has been filed pursuant to § 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name *"Duart Industries, Ltd"*, used by Duart Industries, Ltd., a corporation organized under the laws of the State of California, located at 984 Folsom Street, San Francisco, California 94107.

The application states that the trade name is used in connection with wholesale and retail hair conditioners and shampoos. The products are manufactured in California.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the **Federal Register.**

DATE: Comments must be received on or before December 12, 1988.

ADDRESS: Written comments should be addressed to U.S. Customs Service, Attention: Value, Special Programs and

Admissibility Branch, (Room 2104), 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Velma Taylor, Value, Special Programs and Admissibility Branch, 1301 Constitutional Avenue, NW., Washington, DC 20229 (202–566–5765).

Dated: October 6, 1988.

Marvin M. Amernick,

Chief, Value, Special Programs and Admissibility Branch.

[FR Doc. 88–23550 Filed 10–12–88; 8:45 am]

BILLING CODE 4820–02–M

UNITED STATES INFORMATION AGENCY

United States Advisory Commission on Public Diplomacy

A meeting of the U.S. Advisory Commission on Public Diplomacy will be held October 19, 1988 in Room 600, 301 4th Street, SW., Washington, DC from 11:00 a.m. to 12 Noon.

The Commission will meet with Mr. Henry Hockeimer, Associate Director, Bureau of Management, to discuss Worldnet subcarrier technology and other communications technology issues.

Please call Gloria Kalamets, (202) 485–2468, if you are interested in attending the meeting since space is limited and entrance to the building is controlled.

Dated: October 7, 1988.

Ledra L. Dildy,

Staff Assistant, Federal Register Liaison.

[FR Doc. 88–23680 Filed 10–12–88; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 198
Thursday, October 13, 1988

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).

COMMODITY CREDIT CORPORATION

TIME AND DATE: 2:30, p.m. October 14, 1988.

PLACE: Room 104–A Administration Building, U.S. Department of Agriculture, Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda to be announced.

CONTACT PERSON FOR MORE INFORMATION: James V. Hansen, Secretary, Commodity Credit Corporation, Room 3603 South Building, U.S. Department of Agriculture, Post Office Box 2415, Washington, DC 20013; telephone (202) 475–5490.

Date: October 11, 1988.

James V. Hansen,

Secretary, Commodity Credit Corporation.

[FR Doc. 88–23716 Filed 10–11–88; 12:22 pm]

BILLING CODE 3410–05–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 5:13 p.m. on Thursday, October 6, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to: (1) Assistance agreements pursuant to section 13(c) of the Federal Deposit Insurance Act; (2) the probable failure of an insured bank; and (3) a request for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Dated: October 7, 1988.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 88–23679 Filed 10–11–88; 9:05 am]

BILLING CODE 6714–01–M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, October 18, 1988, 1:30 p.m.

PLACE: 999 E Street, NW., Washington, DC

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Thursday, October 20, 1988, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Eligibility Report for Candidates to Receive Presidential Primary Matching Funds.
Draft AO 1988–43: Michael Scott on behalf of the American Society of Anesthesiologists, Inc.
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202–376–3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 88–23752 Filed 10–11–88; 3:02 pm]

BILLING CODE 6715–01–M

NATIONAL MEDIATION BOARD

TIME AND DATE: 2:00 p.m., Wednesday, November 9, 1988.

PLACE: Board Hearing Room 8th Floor, 1425 K. Street, NW. Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of the Board actions taken by notation voting during the month of October, 1988.
2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Director's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Charles R. Barnes, Executive Director, Tel: (202) 523–5920.

Date of notice: October 11, 1988.

William A. Gill, Jr.,

Assistant Executive Director National Mediation Board.

[FR Doc. 88–23465 Filed 10–11–88; 3:02 pm]

BILLING CODE 7550–10–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of October 10, 17, 24, and 31, 1988.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of October 10

Friday, October 14

10:00 a.m.
Briefing on Proposed Rule for Maintenance of Nuclear Power Plants (Public Meeting).
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed).
2:00 p.m.
Discussion/Possible Vote on Pilgrim Restart (Public Meeting).

Week of October 17—Tentative

Wednesday, October 19

2:00 p.m.
Briefing on Different Cask Designs for Shipping and and Storing Nuclear Materials (Public Meeting).

Thursday, Obtober 20

2:00 p.m.
Briefing on Safety Goal Implementation Plan (Public Meeting).
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed).

Week of October 24—Tentative

Tuesday, October 25

11:00 a.m.
Periodic Briefing by TMI–2 Advisory Panel (Public Meeting).

Wednesday, October 26

10:00 a.m.
Briefing on Interrelationship of Standardization, Severe Accidents, Safety Goals, and Advanced Reactors (Public Meeting).

Thursday, October 27

11:00 a.m.
Periodic Briefing by Advisory Committee on Nuclear Waste (Public Meeting).

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed).

Week of October 31—Tentative

There are no meetings scheduled for the week of October 31.

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has 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.

William M. Hill, Jr.,
Office of the Secretary.
October 6, 1988.

[FR Doc. 88–23769 Filed 10–11–88; 2:53 pm]
BILLING CODE 7590–01–M

federal register

Thursday
October 13, 1988

Part II

Department of Transportation

Urban Mass Transportation Administration

UMTA Fiscal Year 1989 Formula Grant Apportionments; Notice

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

UMTA Fiscal Year 1989 Formula Grant Apportionments

AGENCY: Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Notice.

SUMMARY: The Department of Transportation (DOT) and Related Agencies Appropriations Act, 1988, signed into law by President Reagan on September 30, 1988, provides Fiscal Year 1989 appropriations for the formula grant program under Sections 9 and 18 and for the section 16(b)(2) elderly and handicapped program of the Urban Mass Transportation Act of 1964, as amended (the UMT Act). This Notice includes the distribution of these funds. Limitations on the use of operating assistance are also included in this Notice, as well as other pertinent information.

FOR FURTHER INFORMATION CONTACT: Edward R. Fleischman, Chief, Resource Management Division, Department of Transportation, Urban Mass Transportation Administration, Office of Grants Management, 400 Seventh Street, SW., Room 9305, Washington, DC 20590, (202) 366–2053.

SUPPLEMENTARY INFORMATION: Federal assistance to urban mass transportation systems is authorized under the UMT Act. Funds for Fiscal Year 1989 were appropriated by the DOT and Related Agencies Appropriations Act, 1989, Pub. L. 100–457.

Formula Program Appropriations

This Notice provides the Fiscal Year 1989 apportionments of sections 9 and 18 funds for urbanized and nonurbanized areas, based on the most recent U.S. Census data. Section 9 apportionments for urbanized areas over 200,000 in population are also based on operating and financial data submitted as part of the section 15 Reporting System.

A total of $1,600,000,000 has been appropriated for Fiscal Year 1989 for the sections 9 and 18 programs. In addition, $5,000,000 is available for the Rural Transportation Assistance Program (RTAP). The Appropriations Act directs that, before apportionment of formula funds, $18,000,000 shall be made available to the Section 18 program. Of the remaining amount, 97.07 percent is being made available to the section 9 program and 2.93 percent is being made available to the section 18 program. An additional $70,000,000 has been made available under Section 9B.

Additional Funding

In prior years additional funds that were available for reapportionment were included in the section 9 and section 18 apportionments, and the section 16(b)(2) allocation. These funds include deobligated funds and funds that were never obligated and thus were carried over from prior years. This year, since the apportionment is being issued early in the Fiscal Year before final figures are available from Fiscal Year 1988, such funds are not included in the Fiscal Year 1989 apportionment.

Section 9B Formula Program—Distribution of Mass Transit Account (Trust Fund)

The Surface Transportation and Uniform Relocation Assistance Act of 1987 (the STURA Act) established the section 9B Program. The Act states that beginning in Fiscal Year 1988, in any year in which the obligation limitation for the Discretionary Grants Program exceeds $1 billion, the funds in excess of that amount are to be allocated half on a discretionary basis and half under a new section 9B formula program—essentially a capital-only section 9 program. The obligation limitation for Fiscal Year 1989 is $1,140,000,000. Thus, $70,000,000 have been allocated for Section 9B. These section 9B funds cannot be used for operating assistance, but are otherwise treated as section 9 funds. In grant applications, amounts applied for under each Section should be clearly shown.

Construction Management Oversight Set Aside

The UMT Act allows the Secretary of Transportation to use not more than one-half of one percent of the funds made available for Fiscal Year 1989 under sections 3, 9, 9B, 18, the National Capital Transportation Act of 1969 ("Stark-Harris"), and section 103(e)(4) of Title 23, United States Code, ("Interstate Transfer") to contract with any person to oversee the construction of any major project under such programs. Therefore, one-half of one percent of the funds appropriated for Fiscal Year 1989 under Section 9 (including section 9B), or $8,017,982, has been reserved for this purpose. The remaining amount of Fiscal Year 1989 funds is apportioned in this Notice. Funds appropriated under section 18 have not been reserved for construction management oversight since adequate funds are available from prior year reservations.

Total Section 9 Fiscal Year 1989 Apportionments

This Notice provides tables which reflect both the amounts apportioned under the section 9 program (General Fund) and the section 9B program (Trust Fund). The amounts appropriated under section 9 ($1,533,596,400) and Section 9B ($70,000,000) have been added together and total $1,603,596,400. The construction management oversight reservation of $8,017,982 has been subtracted from this total. The total amount being apportioned for section 9 (including section 9B) is $1,595,578,418.

Section 9 Fiscal Year 1988 Apportionment Adjustments

Adjustments have been made to the apportionment for certain urbanized areas because of corrections to data that were used to compute the Fiscal Year 1988 formula grant apportionments published in the **Federal Register** of February 2, 1988 (53 Fr 2948). Differences between corrected apportionments and previously published apportionments have been resolved and necessary adjustments have been made by adding to or subtracting as appropriate, from the apportionments for Fiscal Year 1989. The dollar amounts published in this Notice contain these adjustments, and the affected urbanized areas have been so advised.

Section 15 Data Used for Section 9 Apportionments

Data submitted for the section 15 Annual Report for 1986 has been used to calculate the section 9 apportionments for urbanized areas over 200,000 in population. Due to delays in submission of reports, the data submitted for the section 15 Annual Report for 1987 was not available to be used for the apportionments.

Section 9 Fiscal Year 1989 Apportionments to the Governors

For all urbanized areas under 200,000 in population within each State, one figure is provided for the Governor's apportionment. In accordance with section 9 of the UMT Act, these apportionments are not made to individual urbanized areas but are made to the Governors for use within all urbanized areas between 50,000 and 200,000 in population, as needed. UMTA has administered the section 9 program in this fashion from its inception, and it parallels UMTA's procedures under the section 5 program. For technical assistance purposes, and in compliance with the STURA Act, this Notice also contains the amount attributable to each

urbanized area above 50,000 in population within the State.

Section 9 Operating Assistance Limitations

In addition to the Fiscal Year 1989 apportionments, included in this Notice is a listing of the Fiscal Year 1989 limitations on the amount of section 9 funds that may be used for operating assistance.

The STURA Act made a number of changes in the section 9 operating assistance limitations. Among other changes which were cited in the Act and made previously in the limitations, the Act added section 9(k)(2)(B). This section states that on each October 1 after October 1, 1987, the operating assistance limitation for all urbanized areas under 200,000 in population shall be increased to reflect the increase in the Consumer Price Index (CPI) for all urban consumers during the most recent calendar year. The *CPI Detailed Report*, December 1987, published by the Department of Labor, indicates the calendar year 1987 CPI increase for all urban consumers is 4.4 percent.

The 4.4 percent increase was applied, per the statute, against the base operating assistance limitation calculated under section 9(k)(2)(A). This base was the Fiscal Year 1987 authorized operating assistance limitation of $124,019,004 for urbanized areas under 200,000 in population. The resulting increase in the operating assistance limitation, $5,456,836, sets the overall national Fiscal Year 1989 authorized operating assistance limitation at $918,098,067.

However, the Fiscal Year 1989 Appropriations Act reduces the nationwide availability for operating assistance to a maximum of $804,691,892 (for funds under the Fiscal Year 1989 Appropriations Act).

Accordingly, the operating assistance limitations published in this notice take into account both the UMT Act and the Fiscal Year 1989 Appropriations Act. That is to say the higher operating assistance limitation of the UMT Act, $918,098,067, has been reduced to the $804,691,892 required by the Fiscal Year 1989 Appropriations Act by taking a pro rata reduction across all categories of grantees.

No operating assistance limitations are shown in four urbanized areas and twenty-four States as all their General Fund apportionments may be used for operating assistance. The calculated limitations are greater than the apportionments to these areas and states for Fiscal Year 1989, so there is, in effect, no limitation on Fiscal Year 1989 year funds.

Section 18 Program

The Fiscal Year 1989 section 18 apportionment totals $66,403,600. This Notice provides a table with the apportionment which contains only funds which were appropriated for Fiscal Year 1989. $323,194 in Fiscal Year 1988 section 18 funds which had been set aside for construction management oversight have not been used and are remaining in reserve for possible use in Fiscal Year 1989. No additional Fiscal Year 1989 section 18 funds are being set aside for this purpose.

The Fiscal Year 1989 Rural Transit Assistance Program (RTAP) allocations to the States are also included in this Notice. Of the $5,000,000 appropriated for the RTAP program in Fiscal Year 1989, $4,250,000 is being allocated to the States to undertake research, training, technical assistance, and other support services to meet the needs of transit operators in nonurbanized areas. These funds are to be used in conjunction with the States' administration of the section 18 formula assistance program. The remainder of the RTAP funds are made available by UMTA in direct contracts to carry out the RTAP National Program.

Section 16(b)(2) Elderly and Handicapped Program

A total of $35,000,000 is allocated to the States for Fiscal Year 1989 under the section 16(b)(2) program. This Notice provides a table which reflects these allocations. This capital assistance program provides funds to private nonprofit organizations to provide transportation for elderly and handicapped persons.

Period of Availability of Funds

The funds apportioned to urbanized areas under section 9 in this Notice will remain available to be obligated by UMTA to recipients for three (3) fiscal years following Fiscal Year 1989. Any of these apportioned funds unobligated at the close of business on September 30, 1992, will revert to UMTA for reapportionment under section 9. Funds apportioned to nonurbanized areas under section 18, including RTAP funds, will remain available for two (2) years following Fiscal Year 1989. Any such funds remaining unobligated at the close of business on September 30, 1991, will revert to UMTA for reapportionment among the States.

Funds allocated to States under section 16(b)(2) in this Notice must be obligated by September 30, 1989. Any such funds remaining unobligated as of this date will revert to UMTA for reallocation among the States.

Approval of Grants

The Urban Mass Transportation Administration has established a quarterly and bimonthly cycle for processing formula grants. Section 9, Interstate Transfer and Federal-Aid Urban Systems grants are processed on a quarterly basis and sections 8, 16(b)(2), and 18 grants will be processed on a bimonthly basis.

Applicants should submit completed applications to the appropriate UMTA regional offices by the first day of each review cycle. If the application is complete, UMTA will approve and release the grant by the end of the cycle. The only factor which would delay UMTA's approval of the project would be a failure by the Department of Labor (DOL) to issue a 13(c) certification where such certification is a prerequisite to grant approval.

For an application to be considered complete, all appropriate ancillary activities such as inclusion of the project in a Transportation Improvement Program (TIP), intergovernmental reviews, environmental reviews, all applicable civil rights and 504 program requirements, and submission of all requisite documentation must be completed. The application must be in approval form with all required documentation and submissions on hand, except for the 13(c) certification which is issued by DOL.

The application submission and approval dates for Fiscal Year 1989 for section 9, Interstate and FAUS projects are for completed applications submitted to UMTA no later than the first business day of the Fiscal Year quarter; UMTA will award grants by the last business day of the Fiscal Year quarter. For the Fiscal Year 1989 first quarter, the application submission date is extended until 10 days after the publication date of this Notice.

For sections 8, 16(b)(2), and 18 projects, completed applications submitted to UMTA no later than the first business day of the bimonthly periods beginning November, January, March, May and July; UMTA will award grants by the last business day of the bimonthly period.

Drug-Free Workplace Requirement

On September 22, 1988, the President signed into law the Treasury-Postal Service, and General Government Appropriations Bill (Pub. L. 100–440). Section 628 of this law, which has governmentwide application, requires U.S. Government departments, agencies and instrumentalities, as well as certain recipients of federal funds appropriated

for Fiscal Year 1989, to adopt a written policy designed to ensure that all of the workplaces of each such entity are free from illegal drug use, possession or distribution. The provision applies to UMTA grantees seeking Fiscal Year 1989 funds from UMTA.

The effective date of the Treasury-Postal Service Appropriations Act is October 1, 1988. However, legislation deferring the effective date of section 628 to January 16, 1989, has been signed into law by the President (Pub. L. 100-463). The Office of Management and Budget (OMB) plans to circulate guidelines to assist agencies in implementing section 628 by its effective date.

Application Procedures

Applications for section 9 funds should be submitted to the appropriate UMTA Regional Office in conformance with UMTA Circular 9030.1A, published September 18, 1987. Applications for section 18 funds should be submitted to the appropriate UMTA Regional Office in conformance with UMTA Circular 9040.1B, published July 1, 1988. Applications for section 16(b)(2) funds should be submitted to the appropriate UMTA Regional Office in conformance with Circular 9070.1B, published July 1, 1988.

Issued on: October 6, 1988.

Alfred A. DelliBovi,

Administrator.

BILLING CODE 4910-57-M

FISCAL YEAR 1989 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO URBANIZED AREAS OVER 1,000,000 IN POPULATION

URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
Atlanta, Georgia	$19,572,359	$897,215	$20,469,574
Baltimore, Maryland	17,356,825	797,182	18,154,007
Boston, Massachusetts	44,888,709	2,050,465	46,939,174
Buffalo, New York	7,701,490	354,220	8,055,710
Chicago, Illinois-Northwestern Indiana	121,651,608	5,564,422	127,216,030
Cincinnati, Ohio-Kentucky	7,749,290	356,725	8,106,015
Cleveland, Ohio	15,902,231	730,456	16,632,687
Dallas-Fort Worth, Texas	15,706,632	722,955	16,429,587
Denver, Colorado	12,196,418	561,140	12,757,558
Detroit, Michigan	23,810,593	1,095,932	24,906,525
Fort Lauderdale-Hollywood, Florida	6,371,411	293,283	6,664,694
Houston, Texas	19,256,407	860,930	20,117,337
Kansas City, Missouri-Kansas	5,496,951	252,945	5,749,896
Los Angeles-Long Beach, California	92,009,211	4,234,021	96,243,232
Miami, Florida	16,440,735	754,906	17,195,641
Milwaukee, Wisconsin	11,069,213	509,588	11,578,801
Minneapolis-St. Paul, Minnesota	13,147,903	605,030	13,752,933
New Orleans, Louisiana	9,790,920	466,487	10,257,407
New York, N.Y.-Northeastern New Jersey	380,287,052	17,499,249	397,786,301
Philadelphia, Pennsylvania-New Jersey	68,496,901	3,133,019	71,629,920
Phoenix, Arizona	6,595,366	303,531	6,898,897
Pittsburgh, Pennsylvania	20,528,874	942,609	21,471,483
Portland, Oregon-Washington	10,166,743	467,906	10,634,649
St. Louis, Missouri-Illinois	12,528,961	576,620	13,105,581
San Diego, California	16,461,960	755,856	17,217,816
San Francisco-Oakland, California	64,960,319	2,974,151	67,934,470
San Jose, California	13,490,240	618,798	14,109,038
San Juan, Puerto Rico	9,436,724	433,899	9,870,623
Seattle-Everett, Washington	23,737,079	1,070,001	24,807,080
Washington, D.C.-Maryland-Virginia	46,380,957	2,122,256	48,503,213
TOTAL	$1,133,190,082	$52,005,797	$1,185,195,879

FISCAL YEAR 1989 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO URBANIZED AREAS 200,000 TO 1,000,000 IN POPULATION

URBANIZED AREA	GENERAL FUNDS	TRUST FUNDS	TOTAL APPORTIONMENT
Akron, Ohio	$3,062,215	$140,890	$3,203,105
Albany-Schenectady-Troy, New York	4,189,932	192,876	4,382,808
Albuquerque, New Mexico	2,493,196	114,705	2,607,901
Allentown-Bethlehem-Easton, Pa.-N.J.	2,075,086	95,469	2,170,555
Ann Arbor, Michigan	1,838,126	84,579	1,922,705
Augusta, Georgia-South Carolina	991,689	45,625	1,037,314
Austin, Texas	3,639,454	167,441	3,806,895
Bakersfield, California	1,532,465	70,521	1,602,986
Baton Rouge, Louisiana	1,848,994	85,123	1,934,117
Birmingham, Alabama	3,023,711	139,159	3,162,870
Bridgeport, Connecticut	3,440,837	157,555	3,598,392
Canton, Ohio	1,210,236	55,680	1,265,916
Charleston, South Carolina	1,585,070	72,974	1,658,044
Charlotte, North Carolina	2,221,919	102,276	2,324,195
Chattanooga, Tennessee-Georgia	1,481,872	68,160	1,550,032
Colorado Springs, Colorado	802,536	36,922	839,458
Columbia, South Carolina	1,524,803	70,152	1,594,955
Columbus, Georgia-Alabama	1,080,467	49,709	1,130,176
Columbus, Ohio	7,005,106	322,524	7,327,630
Corpus Christi, Texas	1,261,763	58,055	1,319,818
Davenport-Rock Island-Moline, Iowa-Illinois	1,876,662	86,359	1,963,021
Dayton, Ohio	7,681,892	351,255	8,033,147
Des Moines, Iowa	1,662,622	76,524	1,739,146
El Paso, Texas	3,634,572	167,414	3,801,986
Fayetteville, North Carolina	770,120	35,431	805,551
Flint, Michigan	1,852,851	85,262	1,938,113
Fort Wayne, Indiana	1,346,544	61,942	1,408,486
Fresno, California	2,629,679	121,031	2,750,710
Grand Rapids, Michigan	2,221,745	102,243	2,323,988
Greenville, South Carolina	1,222,139	56,237	1,278,376
Harrisburg, Pennsylvania	1,573,134	72,398	1,645,532
Hartford, Connecticut	4,553,778	209,649	4,763,427
Honolulu, Hawaii	11,988,365	552,562	12,540,927
Indianapolis, Indiana	4,728,516	217,661	4,946,177
Jackson, Mississippi	1,179,913	54,294	1,234,207
Jacksonville, Florida	3,466,440	159,481	3,625,921
Knoxville, Tennessee	1,345,332	61,908	1,407,240
Lansing, Michigan	1,677,416	77,190	1,754,606
Las Vegas, Nevada	2,467,570	90,523	2,558,093
Lawrence-Haverhill, Mass.-New Hampshire	1,933,041	88,480	2,021,521
Little Rock-North Little Rock, Arkansas	1,580,724	72,756	1,653,480
Lorain-Elyria, Ohio	594,101	27,333	621,434
Louisville, Kentucky-Indiana	6,128,204	282,127	6,410,331
Madison, Wisconsin	2,667,093	122,662	2,789,755
Melbourne-Cocoa, Florida	960,613	44,205	1,004,818

FISCAL YEAR 1989 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO URBANIZED AREAS 200,000 TO 1,000,000 IN POPULATION

URBANIZED AREA	GENERAL FUNDS	TRUST FUNDS	TOTAL APPORTIONMENT
Memphis, Tennessee-Arkansas-Mississippi	5,420,855	249,570	5,670,425
Mobile, Alabama	1,336,423	61,485	1,397,908
Nashville-Davidson, Tennessee	2,911,316	134,023	3,045,339
New Haven, Connecticut	3,797,746	174,031	3,971,777
Newport News-Hampton, Virginia	1,763,355	81,176	1,844,531
Norfolk-Portsmouth, Virginia	5,204,553	239,472	5,444,025
Ogden, Utah	1,430,854	65,856	1,496,710
Oklahoma City, Oklahoma	2,706,520	124,533	2,831,053
Omaha, Nebraska-Iowa	3,665,454	168,693	3,834,147
Orlando, Florida	3,392,042	156,127	3,548,169
Oxnard-Ventura-Thousand Oaks, California	1,700,087	78,217	1,778,304
Pensacola, Florida	973,494	44,797	1,018,291
Peoria, Illinois	1,407,022	64,736	1,471,758
Providence-Pawtucket-Warwick, R.I.-Mass	9,595,790	439,667	10,035,457
Raleigh, North Carolina	1,162,195	53,469	1,215,664
Richmond, Virginia	3,853,364	177,422	4,030,786
Rochester, New York	4,644,587	213,761	4,858,348
Rockford, Illinois	1,348,908	48,268	1,397,176
Sacramento, California	5,797,515	266,900	6,064,415
St. Petersburg, Florida	5,173,578	238,126	5,411,704
Salt Lake City, Utah	5,564,773	256,126	5,820,899
San Antonio, Texas	9,366,525	431,135	9,797,660
San Bernardino-Riverside, California	4,297,330	197,720	4,495,050
Sarasota-Bradenton, Florida	1,487,199	68,428	1,555,627
Scranton-Wilkes-Barre, Pennsylvania	2,200,471	101,238	2,301,709
Shreveport, Louisiana	1,554,445	71,539	1,625,984
South Bend, Indiana-Michigan	1,545,274	71,108	1,616,382
Spokane, Washington	2,666,704	122,749	2,789,453
Springfield-Chicopee-Holyoke, Mass.-Conn	3,289,519	151,405	3,440,924
Syracuse, New York	3,341,304	153,759	3,495,063
Tacoma, Washington	3,794,308	174,346	3,968,654
Tampa, Florida	4,180,354	192,462	4,372,816
Toledo, Ohio-Michigan	3,671,615	168,992	3,840,607
Trenton, New Jersey-Pennsylvania	2,404,864	110,393	2,515,257
Tucson, Arizona	4,309,500	198,336	4,507,836
Tulsa, Oklahoma	2,262,481	104,091	2,366,572
West Palm Beach, Florida	2,510,299	115,517	2,625,816
Wichita, Kansas	1,750,953	80,580	1,831,533
Wilmington, Delaware-New Jersey-Maryland	2,311,009	106,357	2,417,366
Worcester, Massachusetts	1,789,494	82,345	1,871,839
Youngstown-Warren, Ohio	1,642,754	75,579	1,718,333
TOTAL	$251,279,376	$11,521,856	$262,801,232

FISCAL YEAR 1989 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
ALABAMA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$3,698,618	$169,708	$3,868,326
Anniston	321,123	14,735	335,858
Auburn-Opelika	199,642	9,160	208,802
Decatur	233,862	10,731	244,593
Dothan	204,962	9,405	214,367
Florence	314,082	14,411	328,493
Gadsden	295,974	13,580	309,554
Huntsville	660,448	30,304	690,752
Montgomery	985,308	45,210	1,030,518
Tuscaloosa	483,217	22,172	505,389
ALASKA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$749,974	$34,412	$784,386
Anchorage	749,974	34,412	784,386
ARIZONA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$323,000	$14,821	$337,821
Yuma, Ariz.-Calif	323,000	14,821	337,821
ARKANSAS:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,089,860	$50,007	$1,139,867
Fayetteville-Springdale	259,259	11,896	271,155
Fort Smith, Ark.-Okla	387,657	17,787	405,444
Pine Bluff	355,461	16,310	371,771
Texarkana, Tex.-Ark	87,483	4,014	91,497
CALIFORNIA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$11,410,185	$523,548	$11,933,733
Antioch-Pittsburg	621,170	28,502	649,672
Chico	287,668	13,199	300,867
Fairfield	391,708	17,973	409,681
Hemet	299,623	13,748	313,371
Lancaster	250,812	11,508	262,320

FISCAL YEAR 1989 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
CALIFORNIA--Continued:			
Merced	$346,351	$15,892	$362,243
Modesto	1,176,842	53,998	1,230,840
Napa	410,043	18,814	428,857
Palm Springs	278,443	12,776	291,219
Redding	230,030	10,555	240,585
Salinas	760,902	34,913	795,815
Santa Barbara	1,081,803	49,638	1,131,441
Santa Cruz	615,838	28,257	644,095
Santa Maria	348,278	15,981	364,259
Santa Rosa	860,133	39,467	899,600
Seaside-Monterey	798,240	36,627	834,867
Simi Valley	535,973	24,593	560,566
Stockton	1,405,727	64,501	1,470,228
Visalia	348,553	15,993	364,546
Yuba City	360,619	16,547	377,166
Yuma, Ariz.-Calif	1,429	66	1,495
COLORADO:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$2,445,177	$112,195	$2,557,372
Boulder	606,124	27,812	633,936
Fort Collins	450,334	20,663	470,997
Grand Junction	292,537	13,423	305,960
Greeley	430,522	19,754	450,276
Pueblo	665,660	30,543	696,203
CONNECTICUT:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$10,708,274	$489,012	$11,197,286
Bristol	426,301	19,560	445,861
* Danbury, Conn.-N.Y	1,750,837	79,754	1,830,591
Meriden	347,101	15,927	363,028
New Britain	857,605	39,351	896,956
New London-Norwich	703,341	32,272	735,613
* Norwalk	1,949,961	88,890	2,038,851
* Stamford	2,409,597	109,980	2,519,577
* Waterbury	2,263,531	103,278	2,366,809

*An appropriate amount for commuter rail UZA's above 200,000 has been included.

DELAWARE:

FISCAL YEAR 1989 UNTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
FLORIDA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$5,111,874	$234,555	$5,346,429
Daytona Beach	844,555	38,752	883,307
Fort Myers	670,793	30,779	701,572
Fort Pierce	316,389	14,517	330,906
Fort Walton Beach	396,444	18,191	414,635
Gainesville	563,913	25,875	589,788
Lakeland	544,369	24,978	569,347
Naples	226,393	10,388	236,781
Ocala	225,660	10,354	236,014
Panama City	362,498	16,633	379,131
Tallahassee	606,657	27,836	634,493
Winter Haven	354,203	16,252	370,455
GEORGIA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$2,847,153	$130,639	$2,977,792
Albany	410,712	18,845	429,557
Athens	303,460	13,924	317,384
Macon	731,058	33,544	764,602
Rome	231,362	10,616	241,978
Savannah	884,046	40,564	924,610
Warner Robins	286,515	13,146	299,661
HAWAII:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$729,717	$33,483	$763,200
Kailua-Kaneohe	729,717	33,483	763,200
IDAHO:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,058,948	$48,588	$1,107,536
Boise City	764,661	35,085	799,746
Pocatello	294,287	13,503	307,790

FISCAL YEAR 1989 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
ILLINOIS:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$7,024,132	$322,298	$7,346,430
Alton	462,490	21,221	483,711
Aurora	927,949	42,578	970,527
Beloit, Wis.-Ill	33,129	1,520	34,649
Bloomington-Normal	604,001	27,714	631,715
Champaign-Urbana	868,816	39,865	908,681
Danville	302,863	13,897	316,760
Decatur	621,894	28,535	650,429
Dubuque, Iowa-Ill	12,636	580	13,216
Elgin	693,044	31,800	724,844
Joliet	997,847	45,786	1,043,633
Kankakee	409,351	18,783	428,134
Round Lake Beach	322,765	14,810	337,575
Springfield	767,347	35,209	802,556
INDIANA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$4,326,583	$198,522	$4,525,105
Anderson	393,445	18,053	411,498
Bloomington	444,038	20,374	464,412
Elkhart-Goshen	446,197	20,473	466,670
Evansville, Ind.-Ky	1,002,320	45,991	1,048,311
Kokomo	406,950	18,673	425,623
Lafayette-West Lafayette	635,850	29,175	665,025
Muncie	571,722	26,233	597,955
Terre Haute	426,061	19,550	445,611
IOWA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$2,413,290	$110,732	$2,524,022
Cedar Rapids	754,640	34,626	789,266
Dubuque, Iowa-Ill	405,186	18,592	423,778
Iowa City	320,744	14,717	335,461
Sioux City, Iowa-Nebr.-S. Dak	401,071	18,403	419,474
Waterloo	531,649	24,394	556,043

FISCAL YEAR 1989 UNTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
KANSAS:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,037,397	$47,599	$1,084,996
Lawrence	341,548	15,671	357,219
St. Joseph, Mo.-Kans	5,652	259	5,911
Topeka	690,197	31,669	721,866
KENTUCKY:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$2,194,739	$100,703	$2,295,442
Clarksville, Tenn.-Ky	121,744	5,586	127,330
Evansville, Ind.-Ky	131,274	6,023	137,297
Huntington-Ashland, W.Va.-Ky.-Ohio	309,742	14,212	323,954
Lexington-Fayette	1,197,670	54,954	1,252,624
Owensboro	434,309	19,928	454,237
LOUISIANA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$2,563,495	$117,624	$2,681,119
Alexandria	455,415	20,896	476,311
Houma	296,197	13,591	309,788
Lafayette	676,517	31,042	707,559
Lake Charles	584,826	26,834	611,660
Monroe	550,540	25,261	575,801
MAINE:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,106,625	$50,776	$1,157,401
Bangor	234,954	10,781	245,735
Lewiston-Auburn	278,407	12,774	291,181
Portland	540,187	24,786	564,973
Portsmouth-Dover-Rochester,N.H.-Me.	53,077	2,435	55,512
MARYLAND:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$971,445	$44,575	$1,016,020
Annapolis	351,759	16,141	367,900
Cumberland, Md.-W. Va	281,781	12,929	294,710
Hagerstown, Md.-Pa	337,905	15,505	353,410

FISCAL YEAR 1989 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
MASSACHUSETTS:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$4,841,473	$222,146	$5,063,619
Brockton	1,149,579	52,747	1,202,326
Fall River, Mass.-R.I.	914,534	41,963	956,497
Fitchburg-Leominster	337,769	15,498	353,267
Lowell, Mass.-N.H.	982,448	45,079	1,027,527
New Bedford	989,961	45,423	1,035,384
Pittsfield	258,321	11,853	270,174
Taunton	208,861	9,583	218,444
MICHIGAN:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$4,308,208	$197,680	$4,505,888
Battle Creek	387,735	17,791	405,526
Bay City	444,986	20,418	465,404
Benton Harbor	326,334	14,974	341,308
Jackson	462,358	21,215	483,573
Kalamazoo	840,432	38,562	878,994
Muskegon-Muskegon Heights	554,122	25,426	579,548
Port Huron	334,689	15,357	350,046
Saginaw	957,552	43,937	1,001,489
MINNESOTA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,463,498	$67,151	1,530,649
Duluth-Superior, Minn.-Wis.	436,548	20,031	456,579
Fargo-Moorhead, N. Dak.-Minn.	206,896	9,493	216,389
Grand Forks, N. Dak.-Minn.	49,089	2,252	51,341
La Crosse, Wis.-Minn.	20,987	963	21,950
Rochester	399,166	18,315	417,481
St. Cloud	350,812	16,097	366,909
MISSISSIPPI:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,388,085	$63,691	$1,451,776
Biloxi-Gulfport	841,333	38,604	879,937
Hattiesburg	256,465	11,767	268,232
Pascagoula-Moss Point	290,287	13,320	303,607

FISCAL YEAR 1989 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
MISSOURI:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,710,805	$78,500	$1,789,305
Columbia	311,304	14,284	325,588
Joplin	244,258	11,208	255,466
St. Joseph, Mo.-Kans	401,538	18,424	419,962
Springfield	753,705	34,584	788,289
MONTANA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,237,972	$56,804	$1,294,776
Billings	489,756	22,472	512,228
Great Falls	426,936	19,590	446,526
Missoula	321,280	14,742	336,022
NEBRASKA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,165,165	$53,463	$1,218,628
Lincoln	1,107,087	50,798	1,157,885
Sioux City, Iowa-Nebr.-S. Dak	58,078	2,665	60,743
NEVADA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$937,165	$43,001	$980,166
Reno	937,165	43,001	980,166
NEW HAMPSHIRE:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,401,174	$64,293	$1,465,467
Lowell, Mass.-N.H	3,417	157	3,574
Manchester	620,362	28,465	648,827
Nashua	424,602	19,483	444,085
Portsmouth-Dover-Rochester, N.H.-Me.	352,793	16,188	368,981

FISCAL YEAR 1989 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
NEW JERSEY:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,098,524	$50,405	$1,148,929
Atlantic City	769,709	35,318	805,027
Vineland-Millville	328,815	15,087	343,902
NEW MEXICO:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$531,232	$24,375	$555,607
Las Cruces	283,368	13,002	296,370
Santa Fe	247,864	11,373	259,237
NEW YORK:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$3,502,383	$160,704	$3,663,087
Binghamton	980,068	44,970	1,025,038
Danbury, Conn.-N.Y.	11,200	514	11,714
Elmira	427,303	19,606	446,909
Glens Falls	252,788	11,599	264,387
Newburgh	313,487	14,384	327,871
Poughkeepsie	690,099	31,665	721,764
Utica-Rome	827,438	37,966	865,404
NORTH CAROLINA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$6,002,317	$275,412	$6,277,729
Asheville	453,525	20,810	474,335
Burlington	322,464	14,796	337,260
Concord	321,613	14,757	336,370
Durham	887,751	40,734	928,485
Gastonia	495,104	22,717	517,821
Goldsboro	251,080	11,521	262,601
Greensboro	995,371	45,672	1,041,043
Hickory	267,746	12,285	280,031
High Point	471,947	21,655	493,602
Jacksonville	315,426	14,473	329,899
Wilmington	383,641	17,603	401,244
Winston-Salem	836,649	38,389	875,038

FISCAL YEAR 1989 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
NORTH DAKOTA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,052,362	$48,287	$1,100,649
Bismarck-Mandan	335,373	15,388	350,761
Fargo-Moorhead, N. Dak.-Minn	407,197	18,684	425,881
Grand Forks, N. Dak.-Minn	309,792	14,215	324,007
OHIO:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$3,408,712	$156,406	$3,565,118
Hamilton	617,588	28,338	645,926
Huntington-Ashland, W.Va.-Ky.-Ohio	179,022	8,214	187,236
Lima	392,810	18,024	410,834
Mansfield	388,928	17,846	406,774
Middletown	438,947	20,140	459,087
Newark	264,203	12,123	276,326
Parkersburg, W.Va.-Ohio	43,631	2,002	45,633
Sharon, Pa.-Ohio	26,197	1,202	27,399
Springfield	610,673	28,020	638,693
Steubenville-Weirton,Ohio-W.Va.-Pa.	240,786	11,048	251,834
Wheeling, W. Va.-Ohio	205,927	9,449	215,376
OKLAHOMA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$742,316	$34,062	$776,378
Enid	238,264	10,934	249,198
Fort Smith, Ark.-Okla	9,022	414	9,436
Lawton	495,030	22,714	517,744
OREGON:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$2,372,155	$108,845	$2,481,000
Eugene	1,219,771	55,968	1,275,739
Longview, Wash.-Oreg	6,246	287	6,533
Medford	298,289	13,687	311,976
Salem	847,849	38,903	886,752

FISCAL YEAR 1989 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
PENNSYLVANIA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$6,792,456	$311,667	$7,104,123
Altoona	524,206	24,053	548,259
Erie	1,338,815	61,431	1,400,246
Hagerstown, Md.-Pa.	4,341	199	4,540
Johnstown	551,325	25,297	576,622
Lancaster	936,066	42,951	979,017
Monessen	324,222	14,877	339,099
Reading	1,249,255	57,321	1,306,576
Sharon, Pa.-Ohio	287,620	13,197	300,817
State College	391,669	17,971	409,640
Steubenville-Weirton,Ohio-W.Va.-Pa.	1,199	55	1,254
Williamsport	361,596	16,592	378,188
York	822,142	37,723	859,865
PUERTO RICO:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$4,745,848	$217,759	$1,963,607
Aquadilla	379,712	17,423	397,135
Arecibo	434,910	19,955	454,865
Caguas	1,018,568	46,736	1,065,304
Mayaguez	713,297	32,729	746,026
Ponce	1,676,431	76,922	1,753,353
Vega Baja-Manati	522,930	23,994	546,924
RHODE ISLAND:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$377,629	$17,327	$394,956
Fall River, Mass.-R.I.	82,271	3,775	86,046
Newport	295,358	13,552	308,910
SOUTH CAROLINA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,186,466	$54,441	$1,240,907
Anderson	243,843	11,189	255,032
Florence	256,876	11,787	268,663
Rock Hill	229,892	10,548	240,440
Spartanburg	455,855	20,917	476,772

FISCAL YEAR 1989 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
SOUTH DAKOTA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$753,668	$34,580	$788,248
Rapid City	273,892	12,566	286,458
Sioux City, Iowa-Nebr.-S.Dak	7,885	362	8,247
Sioux Falls	471,891	21,652	493,543
TENNESSEE:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,291,101	$59,242	$1,350,343
Bristol, Tenn.-Bristol, Va	125,230	5,746	130,976
Clarksville, Tenn.-Ky	237,103	10,879	247,982
Jackson	228,989	10,507	239,496
Johnson City	352,937	16,195	369,132
Kingsport, Tenn.-Va	346,842	15,915	362,757
TEXAS:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$11,875,913	$544,909	$12,420,822
Abilene	441,583	20,262	461,845
Amarillo	785,176	36,027	821,203
Beaumont	595,987	27,346	623,333
Brownsville	613,765	28,162	641,927
Bryan-College Station	422,105	19,368	441,473
Galveston	343,372	15,755	359,127
Harlingen-San Benito	330,008	15,142	345,150
Killeen	503,203	23,089	526,292
Laredo	806,734	37,015	843,749
Longview	316,498	14,521	331,019
Lubbock	923,749	42,385	966,134
McAllen-Pharr-Edinburg	959,975	44,041	1,004,016
Midland	388,472	17,825	406,297
Odessa	586,511	26,912	613,423
Port Arthur	529,330	24,288	553,618
San Angelo	397,326	18,231	415,557
Sherman-Denison	245,656	11,272	256,928
Temple	226,738	10,404	237,142
Texarkana, Tex.-Ark	216,839	9,950	226,789
Texas City-La Marque	436,932	20,048	456,980
Tyler	399,198	18,317	417,515
Victoria	311,799	14,307	326,106

FISCAL YEAR 1989 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
TEXAS--Continued:			
Waco	$597,607	$27,421	$625,028
Wichita Falls	497,350	22,821	520,171
UTAH:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$962,509	$44,164	$1,006,673
Provo-Orem	962,509	44,164	1,006,673
VERMONT:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$375,289	$17,220	$392,509
Burlington	375,289	17,220	392,509
VIRGINIA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$2,689,960	$123,429	$2,813,389
Bristol, Tenn.-Bristol, Va	97,473	4,473	101,946
Charlottesville	399,364	18,324	417,688
Danville	281,394	12,912	294,306
Kingsport, Tenn.-Va	18,843	865	19,708
Lynchburg	393,792	18,070	411,862
Petersburg-Colonial Heights	540,251	24,789	565,040
Roanoke	958,843	43,996	1,002,839
WASHINGTON:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$2,267,024	$104,020	$2,371,044
Bellingham	275,067	12,621	287,688
Bremerton	337,769	15,498	353,267
Longview, Wash.-Oreg	269,295	12,356	281,651
Olympia	340,111	15,606	355,717
Richland-Kennewick	554,817	25,457	580,274
Yakima	489,965	22,482	512,447
WEST VIRGINIA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$2,477,158	$113,664	$2,590,822
Charleston	902,108	41,393	943,501

FISCAL YEAR 1989 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
WEST VIRGINIA--Continued:			
Cumberland, Md.-W. Va.	$13,403	$615	$14,018
Huntington-Ashland, W.Va.-Ky.-Ohio	583,941	26,794	610,735
Parkersburg, W. Va.-Ohio	384,164	17,627	401,791
Steubenville-Weirton,Ohio-W.Va.-Pa	152,337	6,990	159,327
Wheeling, W. Va.-Ohio	441,205	20,245	461,450
WISCONSIN:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$5,632,565	$258,447	$5,891,012
Appleton	942,239	43,234	985,473
Beloit, Wis.-Ill	245,603	11,269	256,872
Duluth-Superior, Minn.-Wis	110,430	5,067	115,497
Eau Claire	366,853	16,833	383,686
Green Bay	712,455	32,691	745,146
Janesville	297,613	13,656	311,269
Kenosha	681,014	31,248	712,262
La Crosse, Wis.-Minn	395,087	18,128	413,215
Oshkosh	353,894	16,238	370,132
Racine	867,039	39,783	906,822
Sheboygan	369,435	16,951	386,386
Wausau	290,903	13,348	304,251
WYOMING:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$707,342	$32,456	$739,798
Casper	376,866	17,292	394,158
Cheyenne	330,476	15,164	345,640
TOTAL	$141,108,960	$6,472,347	$147,581,307
OVER 1,000,000 IN POPULATION	$1,133,190,082	$52,005,797	$1,185,195,879
200,000-1,000,000 IN POPULATION	251,279,376	11,521,856	262,801,232
50,000-200,000 IN POPULATION	141,108,960	6,472,347	147,581,307
NATIONAL TOTALS	$1,525,578,418	$70,000,000	$1,595,578,418

FISCAL YEAR 1989 UMTA SECTION 9 OPERATING ASSISTANCE LIMITATIONS

LIMITATION FOR URBANIZED AREAS

OVER 1,000,000 IN POPULATION

URBANIZED AREA	LIMITATION
Atlanta, Georgia	$6,236,729
Baltimore, Maryland	9,982,391
Boston, Massachusetts	18,741,886
Buffalo, New York	6,151,793
Chicago, Illinois-Northwestern Indiana	51,906,951
Cincinnati, Ohio-Kentucky	5,407,203
Cleveland, Ohio	9,893,389
Dallas-Fort Worth, Texas	8,871,845
Denver, Colorado	6,056,742
Detroit, Michigan	21,963,910
Fort Lauderdale-Hollywood, Florida	3,890,295
Houston, Texas	9,322,444
Kansas City, Missouri-Kansas	4,581,643
Los Angeles-Long Beach, California	58,581,877
Miami, Florida	8,604,937
Milwaukee, Wisconsin	5,606,527
Minneapolis-St. Paul, Minnesota	7,475,457
New Orleans, Louisiana	6,781,314
New York, N.Y.-Northeastern New Jersey	135,671,526
Philadelphia, Pennsylvania-New Jersey	32,659,744
Phoenix, Arizona	4,830,011
Pittsburgh, Pennsylvania	9,748,890
Portland, Oregon-Washington	4,517,172
St. Louis, Missouri-Illinois	9,841,738
San Diego, California	7,496,727
San Francisco-Oakland, California	19,960,915
San Jose, California	6,781,792
San Juan, Puerto Rico	7,708,026
Seattle-Everett, Washington	6,334,095
Washington, D.C.-Maryland-Virginia	17,328,004

LIMITATION FOR URBANIZED AREAS

200,000 TO 1,000,000 IN POPULATION

URBANIZED AREA	LIMITATION
Akron, Ohio	2,359,482
Albany-Schenectady-Troy, New York	2,288,440
Albuquerque, New Mexico	1,582,218
Allentown-Bethlehem-Easton, Pa.-N.J.	N.A.
Ann Arbor, Michigan	1,003,244
Augusta, Georgia-South Carolina	799,188
Austin, Texas	1,505,015
Bakersfield, California	981,321
Baton Rouge, Louisiana	1,311,342
Birmingham, Alabama	2,408,839
Bridgeport, Connecticut	2,091,316
Canton, Ohio	1,155,461
Charleston, South Carolina	1,095,495
Charlotte, North Carolina	1,320,640
Chattanooga, Tennessee-Georgia	995,580
Colorado Springs, Colorado	N.A.
Columbia, South Carolina	1,126,985
Columbus, Georgia-Alabama	837,969
Columbus, Ohio	4,452,255
Corpus Christi, Texas	879,404
Davenport-Rock Island-Moline, Iowa-Illinois	1,144,241
Dayton, Ohio	2,962,627
Des Moines, Iowa	1,114,427
El Paso, Texas	1,822,751
Fayetteville, North Carolina	753,689
Flint, Michigan	1,550,214
Fort Wayne, Indiana	1,105,383
Fresno, California	1,487,555
Grand Rapids, Michigan	1,572,286
Greenville, South Carolina	759,964

FISCAL YEAR 1989 UMTA SECTION 9 OPERATING ASSISTANCE LIMITATIONS

LIMITATION FOR URBANIZED AREAS 200,000 TO 1,000,000 IN POPULATION--(CONTINUED)

URBANIZED AREA	LIMITATION	URBANIZED AREA	LIMITATION
Harrisburg, Pennsylvania	$1,147,743	Providence-Pawtucket-Warwick, R.I.-Mass.	$4,822,707
Hartford, Connecticut	2,329,162	Raleigh, North Carolina	741,938
Honolulu, Hawaii	2,884,615	Richmond, Virginia	1,965,176
Indianapolis, Indiana	3,875,856	Rochester, New York	3,150,226
Jackson, Mississippi	916,242	Rockford, Illinois	987,230
Jacksonville, Florida	2,053,599	Sacramento, California	3,562,994
Knoxville, Tennessee	913,380	St. Petersburg, Florida	3,388,621
Lansing, Michigan	1,179,061	Salt Lake City, Utah	2,491,586
Las Vegas, Nevada	1,399,622	San Antonio, Texas	4,688,265
Lawrence-Haverhill, Mass.-New Hampshire	866,420	San Bernardino-Riverside, California	2,576,296
Little Rock-North Little Rock, Arkansas	1,050,939	Sarasota-Bradenton, Florida	1,286,183
Lorain-Elyria, Ohio	N.A.	Scranton-Wilkes-Barre, Pennsylvania	1,767,556
Louisville, Kentucky-Indiana	3,958,437	Shreveport, Louisiana	1,071,231
Madison, Wisconsin	1,011,171	South Bend, Indiana-Michigan	1,170,222
Melbourne-Cocoa, Florida	714,236	Spokane, Washington	1,135,535
Memphis, Tennessee-Arkansas-Mississippi	3,668,636	Springfield-Chicopee-Holyoke, Mass.-Conn.	2,063,067
Mobile, Alabama	1,022,317	Syracuse, New York	1,934,146
Nashville-Davidson, Tennessee	1,700,926	Tacoma, Washington	1,580,958
New Haven, Connecticut	1,886,804	Tampa, Florida	1,958,417
Newport News-Hampton, Virginia	1,156,239	Toledo, Ohio-Michigan	2,284,122
Norfolk-Portsmouth, Virginia	3,142,094	Trenton, New Jersey-Pennsylvania	2,016,704
Ogden, Utah	710,274	Tucson, Arizona	1,689,693
Oklahoma City, Oklahoma	2,354,162	Tulsa, Oklahoma	1,599,827
Omaha, Nebraska-Iowa	2,414,352	West Palm Beach, Florida	1,683,840
Orlando, Florida	1,776,533	Wichita, Kansas	1,384,038
Oxnard-Ventura-Thousand Oaks, California	1,377,770	Wilmington, Delaware-New Jersey-Maryland	2,046,981
Pensacola, Florida	769,964	Worcester, Massachusetts	1,181,560
Peoria, Illinois	1,072,797	Youngstown-Warren, Ohio	N.A.

FISCAL YEAR 1989 UMTA SECTION 9 OPERATING ASSISTANCE LIMITATIONS

STATE LIMITATION FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE	LIMITATION	STATE	LIMITATION
ALABAMA	N.A.	NEBRASKA	$1,155,141
ALASKA	$746,004	NEVADA	817,160
ARIZONA	296,007	NEW HAMPSHIRE	1,362,001
ARKANSAS	N.A.	NEW JERSEY	N.A.
CALIFORNIA	10,119,918	NEW MEXICO	495,385
COLORADO	2,425,652	NEW YORK	N.A.
CONNECTICUT	7,140,181	NORTH CAROLINA	N.A.
FLORIDA	4,669,572	NORTH DAKOTA	1,006,452
GEORGIA	N.A.	OHIO	N.A.
HAWAII	680,574	OKLAHOMA	N.A.
IDAHO	968,620	OREGON	2,092,016
ILLINOIS	N.A.	PENNSYLVANIA	N.A.
INDIANA	N.A.	PUERTO RICO	4,380,699
IOWA	N.A.	RHODE ISLAND	354,625
KANSAS	N.A.	SOUTH CAROLINA	1,150,385
KENTUCKY	2,192,585	SOUTH DAKOTA	N.A.
LOUISIANA	N.A.	TENNESSEE	1,288,292
MAINE	N.A.	TEXAS	11,723,906
MARYLAND	898,213	UTAH	789,928
MASSACHUSETTS	N.A.	VERMONT	349,525
MICHIGAN	N.A.	VIRGINIA	N.A.
MINNESOTA	N.A.	WASHINGTON	2,090,879
MISSISSIPPI	1,320,997	WEST VIRGINIA	N.A.
MISSOURI	N.A.	WISCONSIN	N.A.
MONTANA	N.A.	WYOMING	659,617

NOTE: N.A. denotes that no limitation is shown for these areas, since their full General Fund apportionment for Fiscal Year 1989 is less than the calculated limitation.

FISCAL YEAR 1989

UMTA SECTION 18 FORMULA APPORTIONMENTS AND

RURAL TRANSIT ASSISTANCE PROGRAM (RTAP) ALLOCATIONS

TO THE STATES FOR NONURBANIZED AREAS

STATE	SECTION 18 APPORTIONMENT	RTAP ALLOCATION	STATE	SECTION 18 APPORTIONMENT	RTAP ALLOCATION
ALABAMA	$1,586,960	$89,672	NEBRASKA	697,641	67,440
ALASKA	172,684	54,317	NEVADA	153,097	53,827
AMERICAN SAMOA	24,081	10,602	NEW HAMPSHIRE	467,897	61,697
ARIZONA	599,934	64,998	NEW JERSEY	800,198	70,004
ARKANSAS	1,284,738	82,117	NEW MEXICO	579,761	64,493
CALIFORNIA	2,872,493	121,808	NEW YORK	2,807,713	120,189
COLORADO	650,837	66,270	NORTH CAROLINA	2,892,744	122,315
CONNECTICUT	591,081	64,776	NORTH DAKOTA	354,812	58,870
DELAWARE	169,085	54,227	NORTHERN MARIANAS	12,511	10,313
FLORIDA	1,728,178	93,202	OHIO	3,175,837	129,392
GEORGIA	2,132,318	103,305	OKLAHOMA	1,311,090	82,775
GUAM	79,018	11,975	OREGON	1,017,657	75,440
HAWAII	206,171	55,154	PENNSYLVANIA	3,501,084	137,522
IDAHO	563,441	64,085	PUERTO RICO	1,101,264	77,530
ILLINOIS	2,335,704	108,389	RHODE ISLAND	116,571	52,914
INDIANA	2,154,091	103,849	SOUTH CAROLINA	1,440,612	86,013
IOWA	1,477,748	86,942	SOUTH DAKOTA	411,617	60,290
KANSAS	1,125,208	78,129	TENNESSEE	1,867,455	96,684
KENTUCKY	1,810,393	95,257	TEXAS	3,803,195	145,074
LOUISIANA	1,494,365	87,357	UTAH	306,736	57,668
MAINE	652,768	66,318	VERMONT	324,283	58,107
MARYLAND	801,974	70,048	VIRGIN ISLANDS	72,092	11,800
MASSACHUSETTS	963,573	74,088	VIRGINIA	1,716,638	92,914
MICHIGAN	2,594,934	114,870	WASHINGTON	1,126,379	78,158
MINNESOTA	1,507,631	87,689	WEST VIRGINIA	1,152,900	78,821
MISSISSIPPI	1,440,420	86,009	WISCONSIN	1,766,408	94,158
MISSOURI	1,712,326	92,806	WYOMING	262,333	56,558
MONTANA	431,011	60,775			
TOTAL				$66,403,600	$4,250,000

FISCAL YEAR 1989 UMTA SECTION 16(b)(2) ALLOCATIONS

AMOUNTS ALLOCATED TO STATES

STATE	ALLOCATION	STATE	ALLOCATION
ALABAMA	$625,486	MONTANA	213,743
ALASKA	139,088	NEBRASKA	339,729
AMERICAN SAMOA	50,934	NEVADA	196,687
ARIZONA	460,129	NEW HAMPSHIRE	233,344
ARKANSAS	476,384	NEW JERSEY	1,061,239
CALIFORNIA	2,776,666	NEW MEXICO	253,238
COLORADO	392,333	NEW YORK	2,487,874
CONNECTICUT	511,404	NORTH CAROLINA	804,834
DELEWARE	189,442	NORTH DAKOTA	207,511
DISTRICT OF COLUMBIA	208,133	NORTHERN MARIANAS	50,489
FLORIDA	1,919,404	OHIO	1,405,446
GEORGIA	715,001	OKLAHOMA	532,373
GUAM	127,950	OREGON	445,429
HAWAII	208,212	PENNSYLVANIA	1,766,337
IDAHO	224,469	PUERTO RICO	430,592
ILLINOIS	1,499,944	RHODE ISLAND	262,252
INDIANA	748,389	SOUTH CAROLINA	453,226
IOWA	529,818	SOUTH DAKOTA	219,355
KANSAS	444,518	TENNESSEE	712,438
KENTUCKY	593,765	TEXAS	1,632,486
LOUISIANA	582,661	UTAH	241,866
MAINE	275,233	VERMONT	187,160
MARYLAND	564,502	VIRGIN ISLANDS	129,420
MASSACHUSETTS	910,481	VIRGINIA	679,759
MICHIGAN	1,134,750	WASHINGTON	585,971
MINNESOTA	625,969	WEST VIRGINIA	386,701
MISSISSIPPI	452,507	WISCONSIN	712,225
MISSOURI	816,975	WYOMING	163,729
TOTAL			$35,000,000

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Thursday
October 13, 1988

Part III

Department of Agriculture

Cooperative State Research Service

Competitive Research Grants Program for Fiscal Year 1989; Solicitation of Applications for the Competitive Research Grants Program; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Competitive Research Grants Program for Fiscal Year 1989; Solicitation of Applications for the Competitive Research Grants Program

Applications are invited for competitive grant awards under the Competitive Research Grants Program administered by the Office of Grants and Program Systems, Cooperative State Research Service, for fiscal year 1989.

The authority for this program is contained in section 2(b) of the Act of August 4, 1965, as amended (7 U.S.C. 450i(b)). Under this program, *subject to the availability of funds*, the Secretary may award competitive research grants for periods not to exceed five years for support of research projects to further the programs of the Department of Agriculture. Proposals may be submitted by any State agricultural experiment station, college, university, other research institution or organization, Federal agency, private organization, corporation, or individual. Proposals from scientists at non-United States organizations will not be considered for support.

Applicable Regulations

Regulations applicable to this program include the following: (a) The regulations governing the Competitive Research Grants Program, 7 CFR Part 3200 (49 FR 5570, February 13, 1984, as amended by 50 FR 5499, February 8, 1985), which set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals and the awarding of grants, and regulations relating to the post-award administration of grant projects; and (b) the USDA Uniform Federal Assistance Regulations, 7 CFR Part 3015, as amended.

Specific Research Areas To Be Supported in Fiscal Year 1989

Standard project grants and a small number of continuation grants will be awarded to support basic research in selected areas of the biological sciences related to agriculture and human nutrition.

The Competitive Research Grants Program covers the following categories: Plant Science, Human Nutrition, Animal Science, Biotechnology, Pest Science, Depletion of Stratospheric Ozone as related to crop productivity.

The research categories of plant and animal science and human nutrition have been considered by a number of scientific groups to possess exceptional opportunity for fundamental scientific discovery and for contributing, in the long run, to applied research and development vitally needed on high-priority food and nutrition problems.

The major initiative in biotechnology research that began in fiscal year 1985 will continue for fiscal year 1989. It is designed to provide opportunities to address research problems in all categories of agricultural science including plants, animals, trees, insect pests, and microorganisms associated with these biota. It is anticipated that this research will advance broadly the Nation's competitive advantage in the food, feed, fiber and natural resource processes. Consideration will be given to research proposals that address fundamental questions in the areas noted below and that are consistent with the long-range agricultural needs of the Nation. Biotechnology proposals should be submitted to the research program area listed below that is most appropriate.

It is anticipated that funds will be made available in fiscal year 1989 to support a new research initiative on the investigation of effects of changes in stratospheric ozone and associated changes in UV–B radiation on crop plants and trees. The U.S. is joining an international effort to address the growing concern that the reduced levels of stratospheric ozone in recent years may indicate a long-term trend. The objective is to determine effects of these changes on fundamental life processes associated with the productivity of plants of agricultural importance, thereby providng baseline information that will be needed for the assessment of the environmental changes anticipated. The new initiative represents the Cooperative State Research Service's part in this joint effort.

While basic guidelines are provided to assist members of the scientific community in assessing their interest in the program areas and to delineate certain important areas where new information is vitally needed, the guidelines are not meant to provide boundaries within which proposals should be submitted or to detract from the creativity of potential applicants. USDA encourages the submission of innovative projects in the so-called "high-risk" category as well as those that may have a more certain payoff potential. In all instances, innovative research will be given high priority.

Agriculturally important organism(s) should be used to accomplish the research objectives. The use of other organisms as experimental model systems must be justified relative to the goals of the appropriate research program area and to the long-term objectives of USDA.

Workshops or symposia that bring together scientists to identify research needs, update information, or advance an area of research are recognized as integral parts of research efforts. Support for a limited number of such meetings covering subject matter encompassed by this Competitive Research Grants solicitation will be considered for partial or, if modest, full support. Proposals for workshops and symposia should be submitted to the appropriate program area listed below. An applicant considering submission of a workshop of symposia proposal is strongly advised to contact the responsible Associate Program Manager at the appropriate telephone number given below before preparing their proposal.

Individual Postdoctoral Research Awards

USDA encourages individuals to apply for a Competitive Research Grant who: (1) Have earned the doctoral degree in a biological science or related areas after January 1, 1986, or will have earned the degree no later than June 7, 1989; (2) are United States citizens; (3) have obtained a commitment from a State agricultural experiment station, college, university, other research institution or oganization, Federal agency, private organization, or corporation for the conduct of research; (4) have made prior arrangements for research with a scientific advisor at the institution where the research will be conducted; and (5) have interests in research that fall within the program areas described in this solicitation. We encourage recently graduated scientists specifically to develop independent research programs of their own, not to merely supplement ongoing research of a senior investigator. While such individuals are encouraged to submit proposals for competitive grants, it must be noted that no preference is given to such individuals in determining the grant awards. All individuals and eligible entities, whether or not they meet the above criteria, are welcome to submit proposals, and their proposals will be evaluated objectively under the applicable award criteria. Interested potential applicants should contact the responsible Associate Program Manager at the appropriate telephone number given below for further information.

The following specific research areas (program areas) and guidelines are

provided as a base from which proposals may be developed:

1.0 Plant Biological Stress Including Molecular Plant Pathology, Entomology and Nematology. Plants are exposed to many stresses that may adversely affect their productivity and usefulness to man. This program area will support research on stresses on plants arising from their interactions with other plants or other biological agents such as weeds, insects, nematodes, fungi, bacteria, viruses, and mycoplasma-like organisms. The ultimate goal of the research supported in this area is to reduce losses in plant productivity from damage caused by biologically-generated stresses. This program area will emphasize studies that enhance our understanding of: (a) How stressful interactions are established between plants and other biological agents; (b) how plants react to stresses generated by interactions with biological agents; and (c) how damage from such interactions may be reduced or eliminated. The interactions may be studied at any level (i.e., population, organismal, cellular, and molecular) and by various approaches including genetics, molecular biology, and biochemistry.

Within this context, one of the goals of this program area is to understand the molecular basis for the organism's response to these stresses and to identify which of the genetic systems involved in these responses can be manipulated by techniques in biotechnology. Research on plants, plant-associated insects or microorganisms should emphasize: (a) Identification, isolation, transfer, regulation, and expression of genes involved in biological stresses; (b) physiological/biochemical-genetic analyses of identified genes or gene products involved in biological stress; and (c) fundamental or molecular mechanisms underlying stress responses, injury, tolerance, and avoidance at the molecular, cellular, and organismal levels.

Proposals may include studies on plants separated from stress-causing organisms or on stress-causing organisms separated from their target plants. However, proposals should indicate how the anticipated information will be relevant to an understanding of the causes, consequences, and avoidance of biologically generated stresses on plants. The research supported in this program area will focus on the identification of new approaches that will be both effective and compatible with social and environmental concerns.

To expedite processing and review of the large number of proposals submitted in the broad subject area of Plant Biological Stress, proposals will be evaluated under two subprogram areas:

1.1 *Plant Pathology/Weed Science* and

1.2 *Entomology/Nematology*, each of which will have a separate deadline date for submission of proposals.

Within the guidelines described above, the Plant Pathology/Weed Science subprogram area will consider all proposals for research addressing plant pathogens or weeds affecting plant stress. The Entomology/Nematology subprogram area will consider all proposals for research addressing arthropods or nematodes stressing the plant.

2.0 Plant Genetic Mechanisms and Plant Molecular Biology. The goal of this program area is to encourage new approaches for the development of genetically superior varieties of agricultural crops. One of the major limiting factors for the application of biotechnology to agriculture is the lack of basic information about genes. Studies addressing the basic cellular, molecular, and genetic processes which contribute new information required for the development of novel approaches to crop improvement will be given high priority. This program area will emphasize the following but will not exclude other new or unusual approaches to crop improvement: (a) Identification, isolation, and characterization of genes and gene products; (b) relationships between gene structure and function; (c) regulatory mechanisms of gene expression; (d) interactions between nuclear and organellar genes, and between extrachromosomal and chromosomal genes; (e) mechanisms of gene recombination and transportation; (f) molecular basis of chromosomal replication; (g) cell and tissue culture studies designed to increase our knowledge of the basic molecular, biochemical, and cellular processes involved in regenerating whole plants from single cells; (h) development of cellular and molecular methods for identifying plant characteristics or genes which are important targets for genetic manipulation; (i) development of molecular and cellular methods for crop improvement that involve gene transfer or genetic engineering technology; (j) development of new methods for producing, selecting, and transferring agronomically important qualitative and quantitative traits; and (k) basic genetic studies on the alteration and utilization of unadapted and wild germplasm.

3.0 Biological Nitrogen Fixation and Metabolism. The most common limiting nutrient for plant growth is nitrogen. The objectives of this program are to support research which will elucidate basic mechanisms of the many processes affecting the nitrogen status of crop plants, including biological nitrogen fixation, uptake, transport and metabolism of nitrogenous compounds. Innovative answers to problems in these areas are sought from disciplines of biochemistry, molecular biology and biotechnology, cellular and developmental biology, microbiology, genetics, physiology and ecology. These areas include but are not necessarily limited to, the following types of research: (a) Studies on the properties, mechanisms, contributions to nitrogen-fixation in both free-living and symbiotic nitrogen-fixing organisms; (b) molecular and developmental studies on mechanisms and regulation of infection and nodulation of roots by symbiotic nitrogen-fixing organisms; (c) factors controlling symbiont specificity; (d) competitive interactions of nitrogen-fixing organisms with other soil organisms; (e) structural, mechanisms and regulatory studies of enzymes involved in nitrogen metabolism, including nitrogen fixation and its utilization; (f) studies on nitrification and denitrification; (g) studies on factors influencing uptake and mechanisms of uptake of nitrogenous compounds; and (h) metabolic studies on processes affecting the nitrogen status of the plant.

4.0 Photosynthesis. Photosynthetic efficiency is an important factor in crop productivity. Basic research that provides information on limiting processes of photosynthesis and associated carbon metabolism will lead to a greater understanding of those factors that affect the ability of the plant to produce a usable product.

Research is needed in the following major subareas: (a) Genetic and cellular manipulation to improve photosynthetic efficiency in plants including studies of the chloroplast and nuclear genomes, analyses of regulatory steps controlling both nuclear and extranuclear photosynthetic gene expression and their interactions; (b) aspects of photosynthetic energy conversion, including such areas as early events in photon capture by photosynthetic systems and the mechanisms of charge separation, the structure and function of photosynthetic membranes and membrane constituents, and the associated chemical and physical reactions; (c) photosynthetic carbon assimilation including mechanisms of CO_2 fixation, biochemistry and

molecular biology of photosynthetic and related biosynthetic pathways, photorespiration, and aspects of cellular metabolism regulating these reactions; (d) control of photosynthate partitioning, translocation, and utilization; (e) development and senescence of the photosynthetic apparatus; and (f) photosynthetic process in leaves, whole plants, and canopies including, but not limited to; involvement of the stomatal apparatus.

Other research designed to generate new information leading to a basic understanding of photosynthesis and its accompanying processes also may be considered a part of this program.

5.0 *Molecular and Cellular Mechanisms of Plant Growth and Development.* Suboptimal growth and development are limiting factors in plant productivity. A basic understanding of developmental processes in agriculturally important plants is largely lacking, but new experimental approaches are being developed through advances in molecular and cellular biology. The goal of this program area is to fill in the gap in our knowledge concerning the fundamental mechanisms that underlie plant growth and development. This research area will place emphasis on, but not be limited to, studies of: (a) Mechanisms controlling plant growth and development including flowering, fertilization, embryogenesis, germination, differentiation, organogenesis, and senescence; (b) developmental regulation of gene expression; (c) photomorphogenesis; (d) cell biology including membrane biology; and (e) biochemistry of cellular metabolism membrane biology; and (e) biochemistry of cellular metabolism related to plant growth and development. This program area encourages the use of emerging experimental techniques for the investigation of these developmental processes.

6.0 *Genetic and Molecular Mechanisms Controlling Plant Responses to Physical and Environmental Stresses.* Physical stresses prevent the expression of the full genetic potential of an organism's productivity and set limits on where and when it thrives. A major goal of this program area is to understand the molecular and cellular bases for the organism's responses to these stresses and to identify which of the genetic systems involved in these responses can be manipulated. Research on plants should emphasize: (a) Identification, isolation, transfer, and expression of genes that are regulated by, or involved in, stresses; (b) physiological-genetic and biochemical-genetic analyses of identified genes or genomic segments that are likely to affect performance under stress; (c) molecular mechanisms underlying coordination of organismal responses to stress; (d) fundamental mechanisms of stress responses, injury, tolerance, and avoidance at the molecular, cellular, and organismal levels; and (e) laboratory and field investigations on the physiology of the organism that contributes to an understanding of the causes, consequences, and avoidance of stresses, rather than simply describing the effects of stress.

7.0 *Human Nutrition.* Proposals are invited in the area of human requirements for nutrients. Support will not be provided for clinical research, demonstration or action projects, nor for surveys of the nutritional status of population groups.

Research in this program area is intended to contribute to the improvement of human nutritional status by increasing our understanding of requirements for nutrients. The objective is to support basic, creative research that will help to fill gaps in our knowledge about nutrient requirements, bioavailability, the interrelationships of nutrients, and the nutritional value of foods that are consumed in the U.S. and of the nutrient condition of healthy individuals as all of these relate to human nutrient requirements. Studies of the biochemical and molecular bases for nutrient requirements are encouraged answering questions as to why a particular nutrient is required and what its function is in the cell. Also, studies of the molecular biology of factors interacting with nutrients, such as receptors, carrier proteins and binding proteins are encouraged.

The use of animals as model systems should be justified.

Proposals dealing with processing techniques in food technology should be clearly oriented toward determination of human nutrient requirements. Proposals that concern utilization or production of a food commodity should emphasize the relationship to specific human nutrient requirements. It is especially important that proposals emphasize innovative, fundamental research.

8.0 *Animal Science (Animal Reproductive Research).* Suboptimal reproductive performance in domestic farm animals is the major factor limiting more efficient production of animal food products. This failure to achieve maximum reproductive efficiency is due to problems related to puberty, ovulation, corpus luteum formation and function, insemination, fertilization, prenatal death, and poor survival of offspring.

The economic loss to the producer and increased costs of animal food products to the consumer due to inefficient reproductive performance makes the requirement for new knowledge in this area a high priority. Although the exact needs may vary from species to species and region to region, there are areas where additional fundamental research is crucial.

This program area will support innovative research in the following categories: (a) Mechanisms affecting embryo survival, endocrinological control of embryo development, mechanisms of embryomaternal interactions, and embryo implantation; (b) gamete physiology, primarily gametogenesis including maturation processes, follicle growth, ovulation, corpus luteum formation and function, and superovulation; fundamental processes of fertilization, mechanisms regulating gamete survival *in vitro*, and basic questions regarding gamete transport; and (c) parturition, postpartum interval to conception, and neonatal survival.

Emphasis should be given to innovative approaches that may contribute to a thorough understanding of the reproductive processes in animals primarily raised for food and fiber production or that otherwise contribute to the agricultural enterprise of the country.

The use of experimental model systems should be justified relative to the objectives of this research.

Proposals on the development of methods for *in vitro* manipulation and preservation of animal gametes and embryos will be considered, but overall objectives of such studies should be related to the development of fundamental knowledge.

9.0 *Animal Molecular Biology and Brucellosis.* One of the major limiting factors for the application of biotechnology to agriculture is the lack of basic information about genes. The primary objective of this program area is to increase our understanding of the structure, organization, function, regulation, and expression of genes in animals and in their associated infectious agents and microorganisms.

This program area will emphasize the following categories of research: (a) Identification, isolation, characterization, and expression of genes and gene products; (b) relationships between gene structure and function; (c) regulatory mechanisms of gene expression; (d) interactions

between nuclear and organellar genes, and between extrachromosomal and chromosomal genes; (e) mechanisms of gene recombination and transposition; (f) molecular basis of chromosomal replication; and (g) mechanisms of interaction of animals with beneficial or deleterious microorganisms or infectious agents. Proposals involving free-living insects that are *not* vectors of animal disease will *not* be considered.

This program area also will support research at the molecular, cellular, and genetic levels that will (a) define the mechanisms by which *Brucella abortus* induces disease in cattle and persists as an infectious agent and (b) define the basis of the bovine immune response with *B. abortus* that results in protective immunity. Proposals also are encouraged which, through molecular biological techniques, identify and produce: (a) Antigens to differentiate among non-infected, vaccinated, and the *B. abortus* infected cattle and (b) immunogens that stimulate long-lived protective immunity in cattle.

The program encourages additional basic research directed toward understanding the genetic and molecular mechanisms controlling animal responses to physical and biological stresses. Topics include the organism's interaction with these stresses and identification of the genetic systems involved in the interaction that can be manipulated through molecular genetic techniques. Research may emphasize: (a) identification, isolation, transfer, and expression of genes or gene systems that are regulated by, or involved in, stress; (b) biochemical genetic analysis of genome segments that are likely to affect performance under stress; (c) molecular mechanisms underlying coordination of organismal responses to stress; and (d) fundamental mechanisms of stress responses at the molecular level.

10.0 *Molecular and Cellular Mechanisms of Animal Growth and Development.* Suboptimal growth and development are limiting factors in animal productivity. Yet, a basic understanding of the development processes in agriculturally important animals is largely lacking. New experimental approaches are being developed through advances in molecular and cellular biology. The goal of this program area is a basic understanding of the developmental processes in agriculturally important animals as well as an increased fundamental knowledge that will provide a basis for biotechnological manipulation of animal growth and development. This research area will emphasize, but not be limited to, studies of (a) Cellular and molecular mechanisms controlling growth and developmental processes, including reproduction, differentiation, and aging; (b) molecular and cellular biological studies of metabolic processes related to growth and development; and (c) identification of molecular, cellular, and organismal targets for genome manipulation.

This program area also encourages basic research in *Genetic, Molecular, and Cellular Mechanisms Controlling Animal Responses to Physical and Biological Stresses* that impinge upon growth and development. Research should address the molecular basis for the organism's interaction with these stresses and the identification of genetic systems causing these responses which can be manipulated. Research may emphasize: (a) Identification, isolation, transfer, and expression of genes that are regulated by, or involved in, stresses; (b) physiological-genetic and biochemical-genetic analyses of identified genes or genomic segments that are likely to affect performance under stress; (c) molecular and cellular mechanisms underlying coordination of organismal responses to stress; (d) fundamental mechanisms of stress responses, injury, tolerance, and avoidance at the cellular and molecular levels; and (e) cellular physiology of the organism that contributes to an understanding of the causes, consequences, and avoidance of stress, rather than simply describing the physiological effects of stress. Proposals addressing research on infectious agents should be sent to the Animal Molecular Biology panel.

11.0 *Insect Pest Science.* Uncontrolled insect pests are a major factor in reducing crop and forest productivity. Before successful strategies for managing insect pests can be developed, a strong basic insect biology research effort is needed. This program area will support research on behavioral physiology; chemical ecology; endocrinology; population dynamics; genetics; behavioral ecology; insect pathogens, parasites and predators; and epidemiology of beetle-borne pathogens. Proposals bringing a blend of approaches to a specific problem are encouraged. Only studies on the boll weevil/boll worm, pine bark beetle, and gypsy moth will be supported.

12.0 *Alcohol Fuels Research.* Proposals will be considered for research relating to the physiological, microbiological, biochemical, and genetic processes controlling the biological conversion of agriculturally important biomass material to alcohol fuels and industrial hydrocarbons. The scope of this program area includes studies on factors that limit efficiency of biological production of alcohol fuels and the means for overcoming these limitations.

13.0 *Depletion of Stratospheric Ozone as related to Crop Productivity.* As part of a Government-wide effort to address the issue of depletion of stratospheric ozone, this program area is designed to investigate the effect of increased ultraviolet radiation resulting from ozone depletion on crop productivity. The objectives of the program area are to document the fundamental biological changes that take place in plants in response to increased ultraviolet radiation and to elucidate underlying mechanisms for the observed changes. Proposals are solicited on fundamental research addressing the biological processes of crop plants (including trees) that are directly affected by changes in ultraviolet radiation. Examples include the genetics of UV–B resistance in plants and the effects of UV–B on: (a) DNA structure and function, (b) structure and function of cellular and sub-cellular membrane systems, (c) photosynthesis, (d) photomorphogenesis, (e) perception and response mechanisms for environmental signals, and (f) light-controlled interactions of plants with microbes, weeds, and insects.

The submission deadline for this category is listed below. To provide adequate scientific evaluation of proposals that are expected to be diverse, proposals submitted under this category will be reviewed by the peer review panel whose collective expertise is most appropriate to the scientific content of each proposal. Upon receipt of a proposal, the staff of the Competitive Research Grants office will assign it to one of nine plant science peer review panels for scientific review.

Soybean Research

Proposals dealing with fundamental research on soybeans should emphasize research objectives that fit the scientific disciplines of the appropriate program areas noted above.

Soybean proposals will be reviewed and evaluated by the peer panel whose collective expertise is most appropriate to the scientific content of the proposal. Submission deadlines for these program areas (and their corresponding peer review panels) are listed below.

How To Obtain Application Materials

Please note that potential applicants who were on the Competitive Research Grants mailing list for fiscal year 1988, or who recently requested placement on the list for fiscal year 1989, will automatically receive copies of this solicitation, the Grant Application Kit, and the regulations governing the Competitive Research Grants Program, 7 CFR Part 3200 (49 FR 5570, February 13, 1984, as amended). All others may request copies from: Proposal Services Unit, Grants Administrative Management, Office of Grants and Program Systems, Cooperative State Research Service, U.S. Department of Agriculture, Room 303, Aerospace Building, 901 D Street, SW., Washington, DC 20251–2200; telephone: (202) 475–5049.

What to Submit

It is requested that applicants submit an original and 14 copies of each proposal. This number of copies is necessary to permit thorough, objective peer evaluation of all proposals received before funding decisions are made.

Each copy of each proposal must include a Form CSRS–661, "Grant Application," which is included in the Grant Application Kit. Proposers should note that one copy of this form, preferably the original, must contain pen-and-ink signatures of the principal investigator(s) and the authorized organizational representative. Each project description is expected to be complete in itself. It should be noted that *reviewers are not required to read beyond 15 pages of the project description* to evaluate the proposal. Proposals beyond this limit may not be reviewed or may be returned to the applicant. Appendices should be limited to materials that are pertinent to the proposal and should not be used as a way of circumventing the page limit. The vitae of key project personnel should be limited to three (3) pages, including a list of publications for the last five (5) years.

All copies of a proposal must be mailed in one package. Due to the volume of proposals received, proposals submitted in several packages are very difficult to identify. Also, please have each copy of each proposal *securely stapled* in the upper left-hand corner. DO NOT BIND. Information should be typed on one side of the page only. Every effort should be made to ensure that the *proposal contains all pertinent information when initially submitted.* Prior to mailing, compare your proposal with the instructions contained in the regulations governing the Competitive Research Grants Program, 7 CFR Part 3200.

Please be advised that, due to the limited budget, the same investigator is not likely to receive more than one award from the Competitive Research Grants Program within the same fiscal year. Therefore, to minimize the time spent for preparation and review of proposals, submission of more than one proposal from the same principal investigator in the same fiscal year is strongly discouraged.

Where and When to Submit Grant Application

Proposals submitted to the research program areas in this notice (e.g., 2.0 Plant Genetic Mechanisms and Plant Molecular Biology) will be assigned by the staff of the Competitive Research Grants office to the most appropriate peer review panel. If necessary, further information may be obtained from the responsible Associate Program Manager at the appropriate telephone numbers given below. Each research grant application must be submitted to: Competitive Research Grants Program, c/o Grants Administrative Management, Office of Grants and Program Systems, Cooperative State Research Service, U.S. Department of Agriculture, Room 303, 901 D Street, SW., Washington, DC 20251–2200. To be considered for funding during fiscal year 1989, proposals *must be postmarked* by the following dates and received in time to permit adequate peer panel review:

Postmark Dates	Peer Review Panels/Program Areas	Contacts
Dec. 5, 1988	1.1 Plant Pathology/Weed Science	475–4871
Dec. 5, 1988	2.0 Plant Genetic Mechanisms and Plant Molecular Biology	475–5042
Dec. 5, 1988	10.0 Molecular and Cellular Mechanisms of Animal Growth and Development	475–3399
Dec. 12, 1988	4.0 Photosynthesis	475–5030
Dec. 12, 1988	7.0 Human Nutrition	475–5034
Dec. 19, 1988	1.2 Entomology/Nematology	475–5114
Dec. 19, 1988	13.0 Ozone Depletion	475–5042
Jan. 23, 1989	5.0 Molecular and Cellular Mechanisms of Plant Growth and Development	475–5042
Feb. 13, 1989	11.0 Insect Pest Science	475–5114
Feb. 13, 1989	6.0 Genetic and Molecular, Mechanism Controlling Plant Responses to Physical and Environmental Stresses	475–4871
Feb. 27, 1989	8.0 Animal Science (Animal Reproductive Research)	475–5034
Feb. 27, 1989	9.0 Animal Molecular Biology and Brucellosis	475–3399
Feb. 27, 1989	12.0 Alcohol Fuels Research	475–5042
Mar. 6, 1989	3.0 Biological Nitrogen Fixation and Metabolism	475–5030

Special Instructions

The Competitive Research Grants Program should be indicated in Block 7 and the applicable program area should be indicated in Block 8 of Form CSRS–661 provided in the Grant Application Kit. *Select one program area only.* The *number* assigned to the applicable program area also must be cited in Block 8 of Form CSRS–661. A final determination of the program area will be made by the program staff and/or appropriate peer panel

Supplementary Information

The Competitive Research Grants Program is listed in the Catalog of Federal Domestic Assistance under No. 10.206. For reasons set forth in the Final rule-related Notice to 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials. In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the collection of information requirements contained in this notice have been approved under OMB Document No. 0524–0022.

The award of any grants under the Competitive Research Grants Program during fiscal year 1989 is subject to the availability of funds.

One copy of each proposal that is *not* selected for funding will be retained for a period of one year. The remaining copies will be destroyed.

Done at Washington, DC, this 6th day of October 1988.

William D. Carlson,

Associate Administrator, Office of Grants and Program Systems, Cooperative State Research Service.

[FR Doc. 88-23593 Filed 10-12-88; 8:45 am]

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H.R. 1467/Pub. L. 100–478

To authorize appropriations to carry out the Endangered Species Act of 1973 during fiscal years 1988, 1989, 1990, 1991, and 1992, and for other purposes. (Oct. 7, 1988; 102 Stat. 2306; 18 pages) Price: $1.00

H.R. 4457/Pub. L. 100–479

To create a national park at Natchez, Mississippi. (Oct. 7, 1988; 102 Stat. 2324; 4 pages) Price: $1.00

S. 1934/Pub. L. 100–480

Judiciary Office Building Development Act. (Oct. 7, 1988; 102 Stat. 2328; 8 pages) Price: $1.00

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