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Wednesday
August 20, 1986

Briefings on How to Use the Federal Register—
For information on briefings in Washington, DC, see announcement on the inside cover of this issue.

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How To Cite This Publication: Use the volume number and the page number. Example: 51 FR 12345.

THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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

WASHINGTON, DC

WHEN: September 25; at 9 am.

WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.

RESERVATIONS: Doris Tucker 202–523–3419

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Separate Parts In This Issue

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

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.

Rules and Regulations

Federal Register
Vol. 51, No. 161
Wednesday, August 20, 1986

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 86-075]

Tuberculosis in Cattle; State Designations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: This document affirms the interim rule which amended the regulations governing the interstate movement of cattle because of tuberculosis by raising the designation of Iowa from a modified accredited area to an accredited-free State. This rule is necessary because it has been determined that Iowa meets the criteria for designation as an accredited-free State

The regulations do not impose restrictions on the interstate movement of cattle not known to be affected with or exposed to tuberculosis from either accredited-free States or modified accredited areas. However, the designation for any given jurisdiction can affect the marketability of cattle from that jurisdiction, since some prospective cattle buyers prefer to buy cattle from accredited-free States.

EFFECTIVE DATE: August 20, 1986.

FOR FURTHER INFORMATION CONTACT: Dr. Ralph L. Hosker, Cattle Diseases Staff, VS, APHIS, USDA, Room 818, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8715.

SUPPLEMENTARY INFORMATION:

Background

A document published in the **Federal Register** on May 8, 1986 (51 FR 17001-17002), amended the tuberculosis regulations in 9 CFR Part 77 by raising the designation of Iowa from a modified accredited area to an accredited-free State. The amendment was made effective on May 8, 1986. Comments were solicited for 60 days after publication of the amendment. No comments were received. The factual situation which was set forth in the document of May 8, 1986, still provides a basis for the amendment.

Executive Order and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a major rule. Based on information compiled by the Department, it has been determined that this rule will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not have any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

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

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of the State of Iowa will not cause a significant effect on marketing patterns and will not have a significant economic impact on those persons affected by this document.

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

Executive Order 12372

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

List of Subjects in 9 CFR Part 77

Animal diseases, Cattle, Transportation, Tuberculosis.

PART 77—TUBERCULOSIS IN CATTLE

Accordingly, the interim rule amending 9 CFR Part 77 which was published at 51 FR 17001-17002 on May 8, 1986, is adopted as a final rule.

Authority: 21 U.S.C. 111, 114, 114a, 115-117, 120, 121, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done at Washington, DC, this 15th day of August 1986.

J.K. Atwell,
Deputy Administrator, Veterinary Services.

[FR Doc. 86-18726 Filed 8-19-86; 8:45 am]
BILLING CODE 3410-34-M

9 CFR Part 78

[Docket No. 86-079]

Brucellosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: This document affirms the interim rule which amended the regulations governing the interstate movement of cattle because of brucellosis by changing the classification of the States of New Jersey and West Virginia from Class A to Class Free. This rule is necessary because it has been determined that these States meet the standards for Class Free status. The rule relieves certain restrictions on the interstate movement of cattle from the States of New Jersey and West Virginia.

EFFECTIVE DATE: August 20, 1986.

FOR FURTHER INFORMATION CONTACT: Dr. H.E. Metcalf, Program Planning Staff, VS, APHIS, USDA, Room 841, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8713.

SUPPLEMENTARY INFORMATION:

Background

A document published in the **Federal Register** on May 16, 1986 (51 FR 17922-17923), amended the brucellosis regulations in 9 CFR Part 78 by changing the classification of the States of New Jersey and West Virginia from Class A to Class Free. The amendment, which was made effective May 16, 1986, relieves certain restrictions on the interstate movement of cattle from New Jersey and West Virginia.

Comments were solicited for 60 days after publication of the amendment. No comments were received. The factual situation which was set forth in the document of May 16, 1986, still provides a basis for the amendment.

Executive Order and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a major rule. Based on information compiled by the Department, it has been determined that this rule will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not have any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

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

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of the States of New Jersey and West Virginia reduces certain requirements on the interstate movement of these cattle. Cattle from Certified Brucellosis-Free Herds moving interstate are not affected by the change in status. It has been determined that the changes in brucellosis status made by this document will not affect marketing patterns and will not have a significant impact on those persons affected by this document.

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

Executive Order 12372

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

List of Subjects in 9 CFR Part 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

PART 78—BRUCELLOSIS

Accordingly, the interim rule amending 9 CFR Part 78 which was published at 51 FR 17922–17923 on May 16, 1986, is adopted as a final rule without change.

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done at Washington, DC, this 15th day of August 1986.

J.K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 86–18725 Filed 8–19–86; 8:45 am]

BILLING CODE 3410–34–M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 337

Unsafe and Unsound Banking Practices; Correction

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Final rule; correction.

SUMMARY: The Federal Deposit Insurance Corporation is correcting errors in the authority citation of its final rule on unsafe and unsound banking practices that was published in the June 27, 1986 issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Pamela E.F. LeCren, Senior Attorney, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429, at (202) 898–3743.

Accordingly, the authority citation to 12 CFR Part 337 on page 23406 of the June 27, 1986 issue is corrected as follows:

PART 337—[CORRECTED]

1. In the second column, the fourth line is corrected to read: "879), effective September 21, 1950, as".

2. In the second column, the ninth line is corrected to read: "L. No. 95–369; 92 Stat. 618), effective".

3. In the third column, the twenty-first line is corrected to read: "1514, effective December 26, 1981; sec. 11(f),".

Dated: August 14, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86–18719 Filed 8–19–86; 8:45 am]

BILLING CODE 6714–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 86–AWA–16]

Alteration of VOR Federal Airways—Southeastern United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action removes the alternate airway designations for three Federal airways in the southeastern United States and renumbers those segments with the designators of existing overlapping airways. This action is in concert with the national program to simplify airway designations by eliminating alternate Federal airways.

EFFECTIVE DATE: 0901 UTC, October 23, 1986.

FOR FURTHER INFORMATION CONTACT: William Davis, Airspace and Air Traffic Rules Branch (ATO–230), 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 May 23, 1986, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to remove the alternate airway designations for VOR Federal Airways V–51W, V–54N and V–115E. 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 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations removes the alternate airway designations for VOR Federal Airways V–51W, V–54N and V115E. The V–51W segment between Corce, GA, and Hinch Mountain, SC, is renamed V–311 by extending V–311 from Corce to Hinch Mountain. The V–54N segment between Texarkana and Little Rock, AR, is revoked because it is identical to the

overlapping segment of V–573. The V–54N segment between Muscle Shoals, AL, and Chattanooga, TN, is revoked. The V–115E segment between Trust, AL, over Chattanooga is redesignated as V–209 by extending V–209 from Vulcan, AL, to Chattanooga via the track of V–115E.

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

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as amended (50 FR 47046 and 51 FR 190) is further amended, as follows:

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.

2. Section 71.123 is amended as follows:

V–51—[Amended]

By removing the words "Hinch Mountain, TN, including a west alternate from the INT Anderson, SC, 274° and Athens 340° radials to Hinch Mountain via INT Anderson 274° and Hinch Mountain 160° radials;" and by substituting the words "Hinch Mountain, TN;"

V–311—[Amended]

By removing the words "From INT Toccoa, GA, 222° and Electric City, SC, 274° radials; Electric City," and by substituting the words "From Hinch Mountain, TN; INT Hinch Mountain 160° and Electric City, SC, 274° radials; Electric City;"

V–54—[Amended]

By removing the words "Little Rock, including a N alternate via INT Texarkana 037° and Hot Springs, AR, 225° radials and Hot Springs;" and by substituting the words "Little Rock;" and also by removing the words "Rocket, AL, including a N alternate via INT Muscle Shoals 067° and Rocket 282° radials; Chattanooga, TN, including a N alternate;" and by substituting the words "Rocket, AL; Chattanooga, TN;"

V–115—[Amended]

By removing the words "Chattanooga, TN, including an E alternate via INT Vulcan 097° and Gadsden, AL, 233° radials, Gadsden and INT Gadsden 042° and Chattanooga 214° radials;" and by substituting the words "Chattanooga, TN;"

V–209—[Amended]

By removing the words "Vulcan, AL" and by substituting the words "Vulcan, AL, INT Vulcan 097° and Gadsden, AL, 233° radials, Gadsden; and INT Gadsden 042° and Chattanooga, TN, 214° radials; Chattanooga"

Issued in Washington, DC, on August 13, 1986.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86–18698 Filed 8–19–86; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 25062; Amdt. No. 1327]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SAIPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–430), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPS, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS–230), Air Transportation Divison, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 426–8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The

provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

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. For the same reason, the FAA certifies that this amendment 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 97

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC, on August 8, 1986.

John S. Kern,

Director of Flight Standards.

Adoption of the Amendment

PART 97—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2)).

By amending: Section 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . *Effective October 23, 1986*

Pontiac, IL—Pontiac Muni, VOR-A, Orig.

. . . *Effective September 25, 1986*

Manila, AR—Manila Muni, NDB RWY 36R, Amdt. 4 CANCELLED
Denver, CO—Stapleton Intl, ILS/DME RWY 17L, Amdt. 4
Erie, CO—Tri-County, VOR/DME-A, Amdt. 2
Boise, ID—Boise Air Terminal (Gowen Field), ILS RWY 10R, Amdt. 8
Pocatello, ID—Pocatello Muni—LOC/DME BC RWY 3, Amdt. 3 CANCELLED
Evansville, IN—Evansville Dress Regional, VOR RWY 4, Amdt. 5
Kokomo, IN—Kokomo Muni, ILS RWY 23, Amdt. 3
Kokomo, IN—Kokomo Muni, RNAV RWY 5, Amdt. 2
Kokomo, IN—Kokomo Muni, VOR RWY 23, Amdt. 16
Kokomo, IN—Kokomo Muni, VOR RWY 32, Amdt. 16
Lafayette, IN—Halsmer, VOR/DME-B, Amdt. 8
Terre Haute, IN—Hulman Regional, ILS RWY 5, Amdt. 21
Terre Haute, IN—Hulman Regional, VOR/DME RWY 5, Amdt. 15
Terre Haute, IN—Hulman Regional, NDB RWY 5, Amdt. 17
Terre Haute, IN—Hulman Regional, VOR RWY 23, Amdt. 18
Terre Haute, IN—Hulman Regional, RNAV RWY 31, Amdt. 6
Lake Charles, LA—McFillen Air Park, VOR-C, Orig., CANCELLED
East Tawas, MI—Iosco County, VOR-A, Amdt. 5
Rogers City, MI—Presque Isle County, NDB RWY 27, Amdt. 2
Traverse City, MI—Cherry Capital, NDB RWY 28, Amdt. 7
Traverse City, MI—Cherry Capital, VOR or TACAN-A, Amdt. 17
Traverse City, MI—Cherry Capital, ILS RWY 28, Amdt. 9
Austin, MN—Austin Muni, VOR RWY 18, Amdt. 13
Austin, MN—Austin Muni, VOR RWY 36, Amdt. 13
Cape Girardeau, MO—Cape Girardeau Muni, LOC/DME BC RWY 28, Amdt. 4
Cape Girardeau, MO—Cape Girardeau Muni, NDB RWY 10, Amdt. 7
Cape Girardeau, MO—Cape Girardeau Muni, ILS RWY 10, Amdt. 8
Joplin, MO—Joplin Muni, ILS RWY 13, Amdt. 21
Mohall, ND—Mohall Muni, NDB RWY 31, Amdt. 1
Carlsbad, NM—Cavern City Air Terminal, ILS RWY 3, Amdt. 3
Bellefontaine, OH—Bellefontaine Muni, NDB RWY 22, Amdt. 4
Bellefontaine, OH—Bellefontaine Muni, RNAV RWY 22, Amdt. 3
Cleveland, OH—Cleveland-Hopkins Intl, NDB RWY 23L, Amdt. 2
Cleveland, OH—Cleveland-Hopkins Intl, NDB RWY 23R, Amdt. 2
Cleveland, OH—Cleveland-Hopkins Intl, ILS RWY 23L, Amdt. 11
Columbus, OH—Rickenbacker, VOR RWY 23L, Amdt. 1
Gallipolis, OH—Gallia-Meigs Regional, NDB-A, Orig.
Gallipolis, OH—Gallia-Meigs Regional, NDB RWY 23, Amdt. 4, CANCELLED
Watonga, OK—Watonga, VOR/DME-A, Amdt. 1
La Grande, OR—La Grande Muni, NDB-A, Amdt. 1
Portland, OR—Portland-Hillsboro, NDB-B, Amdt. 1
Portland, OR—Portland-Hillsboro, ILS RWY 12, Amdt. 5
Madison, SD—Madison Muni, NDB RWY 15, Amdt. 6
Madison, SD—Madison Muni, VOR/DME RWY 33, Amdt. 2
Yankton, SD—Chan Gurney Muni, ILS RWY 31, Amdt. 2
Yankton, SD—Chan Gurney Muni, VOR RWY 31, Amdt. 1
Yankton, SD—Chan Gurney Muni, VOR RWY 13, Amdt. 1
Houston, TX—West Houston-Lakeside, MLS STOL RWY 15, Orig., CANCELLED
Jacksonville, TX—Cherokee County, VOR/DME RWY 13, Orig.
San Marcos, TX—San Marcos Muni, ILS RWY 12, Amdt. 1
Amery, WI—Amery Muni, NDB RWY 18, Amdt. 2
Ashland, WI—John F. Kennedy Memorial, NDB RWY 2, Amdt. 8
Ashland, WI—John F. Kennedy Memorial, VOR RWY 2, Amdt. 4
Ashland, WI—John F. Kennedy Memorial, VOR RWY 31, Amdt. 5
Fond Du Lac, WI—Fond Du Lac County, NDB RWY 9, Amdt. 5
Platteville, WI—Grant County, NDB RWY 25, Amdt. 3

Waukesha, WI—Waukesha County, NDB RWY 18R, Amdt. 1, CANCELLED
Worland, WY—Worland Municipal Airport, VOR RWY 16, Amdt. 4

. . . Effective August 28, 1986

Santa Maria, CA—Santa Maria Public, ILS RWY 12, Amdt. 7
Spencer, IA—Spencer Muni, VOR RWY 12, Orig.
Spencer, IA—Spencer Muni, VOR RWY 30, Orig.
Spencer, IA—Spencer Muni, VOR RWY 12, Amdt. 6, CANCELLED
Spencer, IA—Spencer Muni, VOR RWY 30, Amdt. 6, CANCELLED
Spencer, IA—Spencer Muni, VOR/DME RWY 30, Orig.
Tulsa, OK—Tulsa Intl, ILS RWY 17L, Amdt. 8
Killeen, TX—Killeen Muni, LOC RWY 1, Amdt. 2, CANCELLED
Killeen, TX—Killeen Muni, ILS RWY 1, Orig.

. . . Effective July 31, 1986

Faribault, MN—Faribault Muni, RNAV RWY 12, Amdt. 2

. . . Effective July 29, 1986

Arcata-Eureka, CA—Arcata, VOR/DME RWY 1, Amdt. 6
Arcata-Eureka, CA—Arcata, NDB-A, Amdt. 7

. . . Effective July 28, 1986

Arcata-Eureka, CA—Arcata, ILS RWY 32, Amdt. 26
Arcata-Eureka, CA—Arcata, VOR RWY 14, Amdt. 7.

[FR Doc. 86-18700 Filed 8-19-86; 8:45 am]
BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket 9178]

Bass Brothers Enterprises, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, a Fort Worth, Tex. producer of carbon black to obtain prior FTC approval for the acquisition of securities or assets of any company over a certain size in the U.S. carbon black industry.

DATE: Complaint issued May 8, 1984. Decision issued August 6, 1986 [1].

FOR FURTHER INFORMATION CONTACT: FTC/L-502, Edward F. Glynn, Jr., Washingon, DC 20580. (202) 634-6608.

SUPPLEMENTARY INFORMATION: On Friday, May 23, 1986, there was published in the **Federal Register**, 51 FR 18897, a proposed consent agreement with analysis In the Matter of Bass Brothers Enterprises, Inc., et al., for the purposes of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Acquiring Corporate Stock of Assets: § 13.5 Acquiring corporate stock or assets; Section 13.5-20 Federal Trade Commission Act.

List of Subjects in 16 CFR Part 13

Carbon black, Trade practices.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 86-18749 Filed 8-19-86; 8:45 am]
BILLING CODE 6750-01-M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

16 CFR Part 13

[Docket C-3195]

Blue Lustre Home Care Products, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, an Indianapolis, Ind., manufacturer and marketer of chemical products and equipment for home and car care, to cease making unsubstantiated efficacy claims for "Rinsenvac 5", carpet cleaning fluid sold to retailers in connection with the sale of rental do-it-yourself carpet cleaning machines.

DATES: Complaint and Order issued August 1, 1986.[1]

FOR FURTHER INFORMATION CONTACT: Toby M. Levin, FTC/B-407, Washington, DC 20580. (202) 376-8648.

SUPPLEMENTARY INFORMATION: On Tuesday, March 18, 1986, there was published in the **Federal Register**, 51 FR 9215, a proposed consent agreement with analysis In the Matter of Blue Lustre Home Care Products, Inc., a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleadingly: Section 13.10 Advertising falsely or misleadingly; § 13.170 Qualities or properties of product or service; § 13.205 Scientific or other relevant facts. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533-20 Disclosures; § 13.533-45 Maintain records.

List of Subjects in 16 CFR Part 13

Carpet cleaning fluid, Trade practices.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 86-18750 Filed 8-19-86; 8:45 am]
BILLING CODE 6750-01-M

[1] Copies of the Complaint and Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th and Pennsylvania Avenue NW., Washington, DC 20580.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 892

[Docket No. R-86-1056; FR-1692]

Public Housing Agency Section 8 Fraud Recoveries

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule prescribes procedures for public housing agencies

(PHAs) to follow under a provision of the Housing and Community Development Amendments of 1981 that requires HUD to permit PHAs to retain a portion of amounts they recover on judgments for wrongful payment of Section 8 Program funds as a result of fraud and abuse. The proposed rule on this subject was published in the **Federal Register** on February 23, 1983 (48 FR 7590).

EFFECTIVE DATE: Upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, but not before further notice of the effective date is published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: For Section 8 Existing Housing Certificates, Moderate Rehabilitation, and Housing Vouchers: Madeline Hastings, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, (202) 755–6887. For PHA/Private Owner and State Agency Section 8 New Construction and Substantial Rehabilitation Projects: James Tahash at the same address, (202) 426–3944. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

Statutory Background

Section 326(d)(1) of the Housing and Community Development Amendments of 1981 ("1981 Amendments"), contained in Title III, Subtitle A of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35), states the following:

> (d)(1) The Secretary of Housing and Urban Development shall permit public housing agencies to retain, out of judgments obtained by them in recovering amounts wrongfully paid as a result of fraud and abuse in the housing assistance program under section 8 of the United States Housing Act of 1937, an amount equal to the greater of (A) the legal expenses incurred in obtaining such judgments, or (B) 50 per centum of the amount actually collected on the judgments.

This provision is self-implementing, and public housing agencies (PHAs), including Indian Housing Authorities, have been entitled to retain portions of judgments recovered on or after October 1, 1981, in accordance with the Act. This rule prescribes the procedures for PHAs to follow for litigation pending on the effective date of the rule or initiated after that date.

Section 326(d)(2) of the 1981 Amendments requires HUD to include in its annual report to Congress a summary of cases of fraud and abuse brought to its attention by PHAs for prosecution or civil action, as well as a description of the handling of these cases by HUD and the PHAs and the resolution of the cases in the court system.

Response to Public Comments

Sixteen public comments were received concerning the proposed rule. Commenters included PHAs and the National Association of Housing and Redevelopment Officials.

1. Scope of Rule

The proposed rule invited comment on whether the rule should be broadened to permit PHAs to retain a portion of funds fraudulently obtained that are recovered by means short of litigation. Commenters unanimously favored such an expansion of the rule.

The Department, however, has decided to retain the provision of the proposed rule to permit retention only of amounts recovered by means of litigation. The 1981 Amendments directed HUD to permit retention in the case of recoveries as a result of "judgments", an obvious reference to the culmination of the litigation process. The Department has given the term "judgment" a broad definition that includes a settlement of litigation, whether or not embodied in a court order. The Department believes that it is wise to implement the statutory provision for recovery of Section 8 funds before deciding whether PHAs need the additional incentive of being permitted to retain a portion of recoveries obtained by means other than litigation. Consequently, this rule does not provide for PHAs to retain a portion of collections on claims achieved by means short of litigation. In addition, we note that the administrative fee paid to PHAs acting as contract administrators is intended to cover such activities as collecting amounts improperly paid to owners and obtaining reimbursement from tenants for PHA payments to owners for vacancy loss and damage claims. Litigation may be viewed as an extraordinary and costly action which is less likely to be undertaken without the additional incentive that the statute provides.

A second way of expanding the scope of the rule was urged by one PHA: permit private owners of section 8 FHA-insured project and owners of Section 8 projects financed with direct Federal loans (under section 202 of the Housing Act of 1959) to retain recovery proceeds in the same manner as the rule permits retention by PHAs. The 1981 Amendments address only recoveries by *PHAs.* Again, HUD has decided to limit this rule to the scope of the statutory directive.

2. Definition of Fraud and Abuse

A change in the definition of fraud and abuse was urged by three commenters. They suggested it include such actions as a tenant's failure to reimburse the PHA for tenant damage or vacancy loss claims paid to owners. We have determined that such a change is not warranted.

The common understanding of the statutory terms is adopted in the rule—actions constituting false statement, omission or concealment of a substantive fact, made with intent to deceive or mislead. Participant failure to reimburse the PHA for vacancy loss, tenant damages or other loss claims paid to owners is not a deception, but a refusal or failure to pay an amount owed. Therefore, we have concluded that it is not intended to be covered by this statute.

3. Litigation reporting and approvals

Commenters expressed objectives to the requirement in proposed § 892.201 that certain procedures specified in the HUD Litigation Handbook be followed. More specifically, commenters stated that the requirements (in paragraphs (a), (b) and (c)) that a PHA obtain HUD approval before initiating litigation, settling litigation, or hiring private litigation counsel, and (in paragraph (a)) that PHAs report quarterly on the status of litigation, are unnecessary and burdensome.

It was suggested that the financial incentive to PHAs of retaining a portion of litigation proceeds is sufficient to assure that frivolous claims are not pursued and that excessive legal fees and expenses will not be incurred. The Department agrees. Therefore, the final rule deletes the requirements of § 892.201 (a) and (b) of the proposed rule that a PHA seek HUD approval of initiation and settlement of all litigations of this type, and the requirement of § 892.201(c) of the proposed rule that legal fees and expenses be approved in advance. However, the final rule does require a PHA to keep records of legal fees and expenses incurred in fraud and

abuse litigation, in order to permit HUD to fulfill its duty to assure (through audits) that amounts retained which are based on legal fees and expenses are reasonable. In cases where HUD is to be involved in the PHA's suit to recover funds, § 892.201 of the final rule will still require HUD approval before initiation of litigation.

Commenters also stated that the quarterly reporting requirement in the Litigation Handbook (referenced in proposed § 892.201(a)) is excessive and unnecessary for purposes of HUD's required annual report to Congress on this type of litigation. One other reporting requirement contained in the proposed rule was the provision of § 892.201(d) that a PHA must furnish to HUD a copy of the judgment in fraud and abuse litigation.

On reconsideration of this issue, we have concluded that section 326(d)(2) of the 1981 Amendments requires HUD to report to Congress only those cases referred to HUD for prosecution or civil action. Section 6(m) of the United States Housing Act of 1937 prohibits the Secretary of HUD from imposing "unnecessarily duplicative or burdensome reporting requirements" on PHAs. HUD has decided that to minimize impediments to PHAs willing to undertake litigation to recover for fraud and abuse and to comply most fully with section 6(m), the final rule will require PHAs to report only to the extent necessary for HUD to prepare the report to Congress required by section 326(d)(2), and to keep records that will permit HUD to assure that the amount retained by the PHA is consistent with the provisions of section 326(d)(1).

Under the new § 892.204, where all reporting and recordkeeping aspects of the rule are consolidated, when a PHA refers a fraud and abuse case to HUD, it need only report to HUD whatever action it takes after HUD's return of the matter to the PHA, e.g., PHA initiation of litigation. In all other instances, the final rule requires neither reporting of PHA fraud and abuse litigation, nor approval of PHA settlements in these cases. The HUD Litigation Handbook provision in section 3–3, asking PHAs to seek approval before initiating or settling a case, did not contemplate, and does not apply to, claims for recovery of section 8 funds obtained through fraud and abuse. The Litigation Handbook was adopted in 1981 before enactment of the 1981 Amendments authorizing a PHA to pursue fraud and abuse claims and giving it an expectation of resulting remuneration. We conclude that the prospect of retention of a percentage of the recovery will provide a PHA with sufficient incentive to conduct the litigation efficiently. Therefore HUD approval would be an unnecessary administrative burden to PHAs, and might needlessly delay or discourage suits to recover section 8 funds.

Findings and Certifications

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332, for the section 8 programs covered by this rule that are not categorically exempt from environmental reviews. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more, (2) cause a major increase in the cost or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions, or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this does not have a significant economic impact on a substantial number of small entities because the number of recoveries by PHAs on judgments for fraud and abuse is expected to be small and so the number of small PHAs affected will be small. In any event, the effect on small entities is expected to be positive rather than negative.

This rule was listed under the Office of Housing as sequence number 887 in the HUD Semiannual Agenda of Regulations published on April 21, 1986 (51 FR 14036, 14064), under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Domestic Assistance Number is 14.156, Lower Income Housing Assistance Program.

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 (44 U.S.C. 3601–3520) and have been assigned Control Number 2577–0053.

List of Subjects in 24 CFR Part 892

Low and moderate income housing.

Accordingly, the Department amends Title 24 CFR to add a new Part 892 to read as follows:

PART 892—PUBLIC HOUSING AGENCY

Section 8 Fraud Recoveries

Subpart A—General Provisions

Sec.

Subpart B—Recovery of Section 8 Funds

Authority: Secs. 326(d) (1) and (2), Housing and Community Development Amendments of 1981 (42 U.S.C. 1437f note); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart A—General Provisions

§ 892.101 Purpose.

The purpose of this Part is to encourage public housing agencies to investigate and pursue instances of fraud and abuse in the operation of the section 8 housing assistance payments programs, by permitting them to retain part of any Section 8 funds obtained by fraud and abuse that they recover as a result of litigation they pursue.

§ 892.102 Applicability.

This Part applies to a public housing agency acting as a contract administrator under an annual contributions contract with HUD in any section 8 housing assistance payments program.

§ 892.103 Definitions.

Fraud and abuse. A single act or pattern of actions (a) that constitutes false statement, omission, or concealment of a substantive fact, made with intent to deceive or mislead, and (b) that results in payment of section 8 program funds in violation of section 8 program requirements.

Judgment. Provision for recovery of Section 8 program funds obtained through fraud and abuse, by order of a court in litigation or by a settlement of a claim in litigation, whether or not stated in a court order.

Litigation. A lawsuit brought by a PHA to recover Section 8 program funds obtained as a result of fraud and abuse.

PHA (Public Housing Agency). Any State, county, municipality, or other governmental entity or public body, including any Indian Housing Authority, acting as a section 8 contract administrator under an annual contributions contract with HUD.

Subpart B—Recovery of Section 8 Funds

§ 892.201 Conduct of litigation.

The PHA must obtain HUD approval before initiating litigation in which the PHA is requesting HUD assistance or participation.

§ 892.202 PHA retention of litigation proceeds.

(a) The PHA may retain, from amounts recovered on a judgment, the greater of:

(1) Fifty percent of the amount that it actually collects on the judgment, or

(2) Reasonable and necessary legal fees and expenses that it incurs in obtaining the judgement.

(b) If HUD incurs costs on behalf of the PHA in obtaining the judgment, they must be deducted from the amount to be retained by the PHA.

§ 892.203 Application of amounts recovered.

(a) The PHA may use the amount of the recovery it is authorized to retain for any purpose within the PHA's authority.

(b) The balance of the recovery proceeds must be applied as directed by HUD.

§ 892.204 Recordkeeping and reporting.

(a) To permit HUD to perform an accurate audit of amounts retained under this Part, a PHA must maintain record of: (1) Amounts recovered on any judgment, (2) the nature of the judgment, and (3) the amount of the legal fees and expenses incurred in obtaining the judgment and recovery.

(b) After a PHA refers a case of fraud and abuse to HUD for prosecution or civil action, it must report all subsequent judgment or settlement of litigation it obtains in pursuit of the claim.

(Approved by the Office of Management and Budget under Control Number 2577-0053)

Dated: August 12, 1986.

Silvio J. DeBartolomeis,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 86-18716 Filed 8-19-86; 8:45 am]

BILLING CODE 4210-27-M

POSTAL SERVICE

39 CFR Part 320

Restrictions on Private Carriage of Letters; Suspension of the Private Express Statutes; International Remailing

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule suspends the operation of the Private Express Statutes, 18 U.S.C. 1693–1699, 39 U.S.C. 601–606, with respect to international remailing so as to permit the private, uninterrupted carriage of letters from the United States to a foreign country for ultimate delivery outside of the United States.

EFFECTIVE DATE: September 19, 1986.

FOR FURTHER INFORMATION CONTACT: Charles D. Hawley (202) 268–2971.

SUPPLEMENTARY INFORMATION: On June 17, 1986, the Postal Service proposed to suspend the Private Express Statutes to permit "international remailing." The adoption of this rule completes a public rulemaking process that began with the publication of a Notice of Proposed Rulemaking in October 1985. "International remailing" consists of the carriage by private firms of shipments of letters, addressed to persons outside the United States, entirely outside of the United States Mails to foreign countries where the letters are deposited into the mails of foreign postal administrations.

The proposal published in the **Federal Register** of October 10, 1985, 50 FR 41462, would have amended the regulation establishing the administrative suspension of the Statutes for extremely urgent letters, 39 CFR 320.6, so as to make clear that this suspension, which had not been intended to authorize remailing, did not in fact do so. Most of the comments submitted in response to the notice opposed the proposal, and instead supported the practice of remailing. Subsequently, on March 4, 1986, the Chairman of the Board of Governors of the Postal Service announced that the Postal Service would commence a new rulemaking proceeding to establish the lawfulness of remailing.

On March 21, 1986, the Postal Service published a **Federal Register** notice which withdrew the October 10, 1985 proposed rule, and solicited information on the nature and extent of remailing and on the benefits derived by the public from this practice. 51 FR 9852. In addition, the Postal Service, following the close of the period established for response to the March 21 solicitation, held a public meeting on May 22, 1986. (Notice of this meeting was published on May 12, 1986, 51 FR 17366). The information garnered in the successive steps described above forms the factual record upon which the Postal Service based the proposal, in the **Federal Register** on June 17, 1986, to permit remailing.

Nine additional comments were submitted in response to the June 17 notice. Eight of the comments expressed support for the proposal. Five expressed general support for the suspension and did not suggest any specific changes; three suggested that the suspension be modified in various ways. After careful consideration of all the comments, including those submitted in previous, related proceedings, the Postal Service, also bringing to the process its knowledge of and experience with the international mails, has concluded that the proposed suspension should be adopted without substantial modification. The statement of the purpose of this rule and the basis for it, which was published in the June 17 notice, and also the March 21 notice, are incorporated herein and form integral parts of this notice.

Applicability of Private Express Statutes to International Remailing

Two of the comments submitted in response to the June 17 notice, although generally supporting the proposal, raised the threshold questions of whether the Private Express Statutes have any applicability to the international carriage of letters and whether the Postal Service has the authority to adopt a suspension to regulate the international private carriage of letters. These questions had been raised in the earlier comments and were carefully considered at that time. The Postal Service reiterates its statement on these questions which was published in the June 17 notice.

On the matter of the authority to regulate international remailing, one comment contended that this power should be vested in the Executive Branch, in particular the Department of Justice, and not the Postal Service. The comment also suggests that rather than adopting a regulation, the proposed suspension should be recast as a statement of general policy. In adopting the suspension, however, the Postal Service is acting pursuant to authority specifically and exclusively delegated to it by Congress in the Private Express Statutes themselves. 39 U.S.C. 601(b). The Postal Service is also empowered under 39 U.S.C. 401(2) to adopt, amend, and repeal regulations in order to further the objectives of title 39. *Associated*

Third Class Mail Users v. *United States Postal Service*, 600 F.2d 824, 826 n.5 (D.C. Cir. 1979). This title, of course, includes the statute noted above which authorizes the suspensions. Finally, the Postal Service is itself an independent establishment in the Executive Branch, 39 U.S.C. 201, and as such it is generally not responsible to other Executive Branch agencies in promulgating postal regulations. Nonetheless, the Postal Service has solicited the views of various agencies and has received and considered comments on these proposals from several agencies.

Nonapplicability of Suspension for Extremely Urgent Letters to Remailing

Several comments noted that in adopting a new suspension for remailing the Postal Service is implicitly concluding that the suspension for extremely urgent letters, 39 CFR 320.6, ought not be interpreted as itself permitting remailing. While two comments agreed with this rationale, a third requested that this interpretation be expressly repudiated. The Postal Service, by adopting this suspension for international remailing, has expressly and forthrightly determined that the practice will be permitted, and has stated the conditions under which it will be permitted. The Postal Service has also concluded that remailing need not be sanctioned under the color of a suspension which was intended for another purpose.

Prohibition on Ultimate Delivery Within the United States

One comment objected to the provision which requires that letters carried pursuant to the suspension not be ultimately delivered within the United States. The comment contends that this provision should not be adopted because remailing back into the United States is negligible, and because this limitation is said to prevent Americans from availing themselves of lower postage rates that are offered to non-Americans. These objections are not persuasive, as explained in the June 17 notice.

The new suspension is not intended to allow the practice of mailing, in a foreign country, matter which is subsequently shipped by the postal administration of that country through the United States, as open or closed transit mail, under circumstances which cause the United States to incur expenses for which it is not reimbursed. This caveat does not prohibit the private carriage of letters for remailing if that carriage is within the terms of the new suspension, but neither does the suspension limit the remedies available to the Postal Service with respect to transit mail.

Inspections and Audits

With regard to subsection (c) of the suspension, one comment suggested that this provision should be modified to include inspection and audit guidelines, and also to include a requirement that the Postal Inspection Service provide the shipper with advance notice of an inspection or audit, absent reasonable cause to suspect activity not in conformity with the regulation. Another comment advanced the view that subsection (c) should not be adopted because it exceeds the authority of the Postal Service. The Postal Service has concluded that the suggested inclusion of special inspection and audit guidelines in this regulation is unnecessary because these are well established functions of the Inspection Service. The authority of the Postal Service to investigate postal offenses and civil matters relating to the Postal Service is specifically provided by statute, 39 U.S.C. 404(a)(7). We note, moreover, that a similar provision has been included previously in a suspension of the Statutes. See 39 CFR 320.6(e), and compare 39 CFR 320.3(d). The Postal Service has, however, determined that wording in subsection (c) should be modified to read:

> The failure of a shipper or carrier to cooperate with an inspection or audit authorized and conducted by the Postal Inspection Service. . . .

This minor modification makes it clear that it is the Postal Inspection Service which authorizes and conducts the inspections and audits.

The Factual Record as Supporting the Suspension

The comment opposed to adoption of the suspension asserted that the record is inadequate to support the adoption of the regulation, and that it is not manifest from the record that the public interest requires the establishment of the suspension. The Postal Service had sought, in its notice of March 21, 1986, and subsequently, to obtain precise and detailed information regarding the level of services provided by remailers, and the benefits which the customers of the latter derive. It may well be, however, that, because of the diverse character of the remail industry and the relatively recent development of remailing, the comprehensive information we had hoped to receive to supplement the essentially anecdotal information, which was furnished to us, is not available. Nonetheless, the Postal Service has compiled a record which appears to demonstrate the existence of a public benefit and to support the suspension.

The factual record includes the comments received in response to the October 10 and June 17 notices. Information was also obtained in response to the Federal Register notice of March 21, which reprinted and addressed generally a letter, dated March 14, 1986, sent to commenters who responded to the October 10 notice, soliciting further information for the record. The transcript of the public meeting held May 22, 1986 is also part of the record.

The comments came primarily from American commercial enterprises, including financial institutions and publishers, that use the services of international remailers in conducting their business abroad. The comments were almost universally consistent in their observations regarding the level of service provided by remailers. Specifically, the comments asserted that remailing was faster than U.S. airmail and that this time savings is often critical to the ability of American businesses to compete in foreign markets. Moreover, the comments asserted that remailing services were provided for a lesser cost than U.S. airmail, thereby also enhancing the ability of American firms to compete abroad. Although the Postal Service did not receive across-the-board data on the level of service provided by remailers, many commenters did provide information, testimonial in nature, indicating that their use of remail services has resulted in time and cost savings. Numerous commenters noted that this time and cost differential was critical in order for letter matter being sent abroad to retain its commercial value. Several commenters also stated that, without faster and cheaper services provided by remailers, it would not be feasible for their businesses to compete in the international markets. The Postal Service found it significant that the comments received in response to the October 10 notice, which proposed language to make clear that remailing is not authorized under the suspension for extremely urgent letters, were overwhelming in their support of remailing. The Department of Commerce informed us that international remailing is of benefit to American businesses in foreign markets, a position also reflected in comments from the Department of Justice and the Office of Management and Budget.

Content of the Suspension

The new suspension, which is codified as § 320.8 of title 39, Code of Federal

Regulations, suspends, in § 320.8(a) the operation of the Statutes:

to permit the uninterrupted carriage of letters from a point within the United States to a foreign country for deposit in its domestic or international mails for delivery to an ultimate destination outside of the United States.

The proposal also makes explicit in proposed § 320.8(b) that the suspension does not authorize the remailing of letters for delivery within the United States:

This suspension shall not permit the shipment or carriage of a letter or letters out of the mails to any foreign country for subsequent delivery to an address within the United States.

A third provision, in § 320.8(c), generally authorizes the Postal Service, after notice and hearing, to revoke the suspension for a period of one year, as to a particular shipper or carrier operating in violation of the suspension. This provision also provides that a shipper or carrier's failure to cooperate with an inspection or audit authorized and conducted by the Postal Inspection Service would, for the purpose of proceedings under this subsection, create a presumption of a violation. This has the effect of shifting the burden of demonstrating compliance to the shipper or carrier, who would have access to relevant information which its failure to cooperate has denied to the Postal Service.

In view of the considerations discussed above, 39 CFR Part 320 is amended as follows:

List of Subjects in 39 CFR Part 320

Postal Service, Computer technology, Advertising.

PART 320—SUSPENSION OF THE PRIVATE EXPRESS STATUTES

1. The authority citation for Part 320 is revised to read as set forth below, and the authority citations following all the sections in Part 320 are removed.

Authority: 39 U.S.C. 401, 404, 601–606; 18 U.S.C. 1693–1699.

2. A new § 320.8 is added to read as follows:

§ 320.8 Suspension for international remailing.

(a) The operation of 39 U.S.C. 601(a)(1) through (6) and § 310.2(b)(1) through (6) of this chapter is suspended on all post routes to permit the uninterrupted carriage of letters from a point within the United States to a foreign country for deposit in its domestic or international mails for delivery to an ultimate destination outside the United States.

Example (*1*) The letters to overseas customers of commercial firm A in Chicago are carried by Carrier B to New York where they are delivered to Carrier C for carriage to Europe. Carrier C holds the letters in its distribution center overnight, then sorts them by country of destination and merges them with letters of other firms to those countries before starting the carriage to Europe in the morning. The carriage of firm A's letters is not interrupted. The suspension for international remailing applies to the carriage by Carrier B and by Carrier C.

Example (*2*) The bills addressed to foreign customers of the Chicago branch office of commercial firm D are carried by Carrier E to New York where they are delivered to the accounting department of firm D's home office. The accounting department uses the information in the bills to prepare its reports of accounts receivable. The bills are then returned to Carrier E which carries them directly to Europe where they are entered into the mails of a foreign country. The carriage of the bills from Chicago to Europe is interrupted in New York by the delivery to firm D's home office. The suspension for international remailing does not apply to the carriage from Chicago to New York. It does apply to the subsequent carriage from New York to Europe.

(b) This suspension shall not permit the shipment or carriage of a letter or letters out of the mails to any foreign country for subsequent delivery to an address within the United States.

Example (*1*) A number of promotional letters originated by firm F in Los Angeles are carried by Carrier G to Europe for deposit in the mails of a foreign country. Some of the letters are addressed to persons in Europe, some to persons in the United States. The suspension for international remailing does not apply to the letters addressed to persons in the United States.

(c) Violation by a shipper or carrier of the terms of this suspension is grounds for administrative revocation of the suspension as to such shipper or carrier for a period of one year in a proceeding instituted by the General Counsel in accordance with Part 959 of this chapter. The failure of a shipper or carrier to cooperate with an inspection or audit authorized and conducted by the Postal Inspection Service for the purpose of determining compliance with the terms of this suspension shall be deemed to create a presumption of a violation for the purpose of this paragraph (c) and shall shift to the shipper or carrier the burden of establishing the fact of compliance. Revocation of this suspension as to a shipper or carrier shall in no way limit other actions as to such shipper or carrier to enforce the Private Express Statutes by administrative proceedings for collection of postage (see § 310.5) or by civil or criminal proceedings.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 86–18752 Filed 8–19–86; 8:45 am]

BILLING CODE 7710–12–M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–38

[FPMR Temp. Reg. G–48]

Federal Motor Vehicle Expenditure Control

AGENCY: Federal Supply Service, GSA.

ACTION: Temporary regulation.

SUMMARY: this regulation establishes policy, procedures, and reporting requirements concerning the implementation of Title XV, Subtitle C—Federal Motor Vehicle Expenditure Control, Pub. L. 99–272, Consolidated Omnibus Budget Reconciliation Act of 1985. This regulation also defines and describes the cost elements to be used by agencies in determining the most cost-effective option for meeting their motor vehicle mission responsibilities.

DATES:

Effective date: July 1, 1986.

Expiration date: June 30, 1988.

Comments due on or before: September 30, 1986.

ADDRESS: Comments should be addressed to: General Services Administration (FBF), Washington, DC 20406.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Frisbee, Fleet Management Division, 703–557–1273.

SUPPLEMENTARY INFORMATION: This regulation has been developed in conjunction with an interagency working group comprised of motor vehicle fleet managers. Agency views were solicited and are reflected in this temporary regulation. Additional comments may be submitted in accordance with paragraph 13 of the regulation.

During their review of this regulation, the General Accounting Office (GAO) requested that the General Services Administration (GSA) issue more specific guidance on cost elements. These minor changes will be developed by GAO to promote consistency and uniformity of data and will be issued by GSA within the next 60 days.

The General Services Administration has determined that this is not a major rule for the purposes of Executive Order

12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR 101–38

Government property management, Motor vehicles.

Authority: 40 U.S.C. 902(b); 40 U.S.C. 910(b).

In 41 CFR Chapter 101, the following temporary regulation is added to the appendix at the end of Subchapter G to read as follows:

Federal Property Management Regulations, Temporary Regulation G–48

August 6, 1986.

To: Heads of Federal agencies

Subject: Federal motor vehicle expenditure control

1. *Purpose.* This regulation establishes policy, procedures, and reporting requirements concerning the implementation of Title XV, Subtitle C—Federal Motor Vehicle Expenditure Control, Pub. L. 99–272, Consolidated Omnibus Budget Reconciliation Act of 1985.

2. *Effective date.* This regulation is effective July 1, 1986.

3. *Expiration date.* This regulation expires June 30, 1988, unless sooner superseded or canceled.

4. *Applicability.* This regulation applies to all executive agencies (as defined in section 105 of title 5 United States Code) which operate at least 300 motor vehicles. This regulation does not apply to the United States Postal Service, the Postal Rate Commission, or the Tennessee Valley Authority.

5. Background.

a. The cost to acquire, operate, maintain, and dispose of Federal motor vehicles has been the subject of several recent Government studies. Two of these, the Report to the Senate Committee on Appropriations, entitled Management of the Federal Motor Vehicle Fleet, March 1982, and the President's Private Sector Survey on Cost Control, January 12, 1984, noted: (1) The lack of a centralized motor vehicle fleet manager and a full-cost disclosure management information system, and (2) the need for an improved reconditioning program for the disposal of Government-owned vehicles. Both of these studies contained a number of recommendations to improve fleet management in these and other areas.

b. Pub. L. 99–272, April 7, 1986, requires, among other things, the President, the Director of the Office of Management and Budget, the Administrator of General Services, the Comptroller General of the United States, and the heads of Federal executive agencies to take certain actions to improve the management and efficiency of the Federal fleet and to reduce its cost of operation.

6. *Definitions.* Attachment A contains a list of definitions used in this regulation. Attachment B contains a list of describing items to be included in determining motor vehicle costs.

7. *Policy.*

a. To comply with provisions of Pub. L. 99–272, agencies shall reduce the cost and improve the efficiency of fleet operations by using the most cost-effective arrangement to acquire, operate, maintain, and dispose of motor vehicles. The options include: (1) Use of the existing fleet management system, (2) use of a qualified private fleet management firm or other private contractor, (3) increased reliance on the General Services Administration (GSA) Interagency Fleet Management System (IFMS), or (4) use of any other means less costly to the Government.

b. In determining which method of vehicle support should be used, the agency shall consider the overall cost to the Government.

c. To meet the reduction goals mandated by Pub. L. 99–272 and to be established by the President, agencies shall give first piority to reducing the cost of administrative motor vehicles used at headquarters and regional offices rather than reducing the cost of operational vehicles used by line agency personnel working in field operations or activities.

8. *Agency responsibilities.*

a. Each executive agency shall designate one office, officer, or employee to oversee the motor vehicle operations of the agency and to serve as the point of contact for information and questions concerning the agency's fleet operations, related activities, and related reporting requirements.

b. Each executive agency shall develop a system or systems to identify, collect, and analyze data with respect to all costs (including obligations, outlays, and accruals) incurred by the agency in the acquisition, operation, maintenance, and disposal of motor vehicles. This system(s) shall include data for Government-owned motor vehicles, leased vehicles, and privately owned vehicles used for official purposes as defined in attachment A. The system(s) shall address: (1) All elements of cost defined in attachment B and (2) funds used for the purpose of motor vehicles, related facilities, and equipment in accordance with principles underlying each of the accounting methods defined in attachment A.

c. Beginning with its fiscal year 1988 budget submission, each agency shall report annually the motor vehicle related cost data required by this subpar. for past, current, and budget years. Each agency shall include vehicle acquisition, leasing operation, maintenance, and disposal costs, including obligations and outlays for fiscal year 1986 and estimates for fiscal years 1987 and 1988. In terms of obligations and outlays, elements to be addressed include: (1) Those defined in attachment B, omitting depreciation; (2) funds for the purchase of motor vehicles, related facilities and equipment; and (3) the cost of privately owned vehicles as defined in attachment A. Beginning with the fiscal year 1989 budget submission, an agency shall take into account the results of the study required under subpar. 8d. In preparing the statement, the executive agency shall use uniform data collection and submission procedures provided by GSA in this regulation and shall adhere to timing and submission requirements to be issued by OMB.

d. Each executive agency shall conduct a comprehensive and detailed study to compare the agency's current motor vehicle operations with: (1) Use of the IFMS, (2) contracting with a qualified private fleet management firm or other private contractor, and (3) use of any other means less costly to the Government. In performing a study, an agency shall consider all agency-owned and leased motor vehicles as defined in attachment A, with the exception of the vehicles provided from the IFMS or agency vehicles subject to an interagency study as set forth in subpar. 9b. Studies conducted pursuant to this subpar. shall compare the full costs (accural based, of the cost elements specified in attachment B), benefits, and feasibility of relying on the alternatives described above in (1), (2), and (3) if available, to meet the agency's fleet requirements. Agencies should consider the provisions of OMB Circular A–76, Performance of Commercial Activities, when performing the studies required by this subpar.

e. Each executive agency shall comply with the reduction goals described in subpar. 10a and shall consider vehicles obtained from all sources, including the IFMS and use of privately owned vehicles, when carrying out its responsibilities under subpar. 10a and instructions to be issued by OMB.

9. *GSA responsibilities.*

a. GSA, in consultation with OMB and the General Accounting Office, is required to issue regulations governing the establishment and operation of systems to identify, collect, and analyze cost data. GSA, in consultation with OMB, is also required to provide standards and definitions to assist executive agencies in achieving the reduction goals established by the President while complying with the policy in subpar. 7c of this regulation. This regulation fulfills those requirements by providing definitions and cost elements to assist agencies in the collection of the data.

b. GSA will continue to review and identify interagency opportunities for the consolidation of motor vehicles, related equipment, and facilities. GSA will also consolidate those functions relating to the administration and management of such vehicles, equipment, and facilities to reduce the size and cost of the Government's motor vehicle fleet in accordance with the provisions of section 211 of the Federal Property and Administrative Services Act. Where multiple agencies request to consolidate through GSA establishment of a new IFMS location, or where a single agency requests consolidation with an existing GSA Fleet Management Center and the action is mutually agreeable, the study process

required by section 211 will apply. In those cases, GSA and the requesting agencies will perform section 211 studies of the involved vehicles, which will satisfy the requirements of subpar. 8d.

c. GSA will establish a vehicle reconditioning program to increase the net proceeds from the sale of Government motor vehicles.

d. GSA will take the necessary actions to reduce storage and disposal costs and storage time to ensure a better return on Government motor vehicle assets.

e. GSA will include those vehicles it obtains on assignment from the IFMS when carrying out its responsibilities in complying with the reduction goals described in subpar. 10a of this regulation and instructions to be issued by OMB.

10. *OMB responsibilities.*

a. OMB will instruct each executive agency on the actions necessary to meet the one-time reduction goal of $150,000,000 by fiscal year 1988 for the acquisition, leasing, operation, maintenance, and disposal of Government motor vehicles. The basis for determining whether an agency has met the reduction goal will be the amount requested by the President in his fiscal year 1986 Budget.

b. OMB will monitor compliance by agencies in accordance with the goals established by the President. OMB also will include a statement specifying the reductions achieved as part of the report submitted by the President to Congress in accordance with subpar. 11b of this regulation.

11. *Reports*

a. *Agency cost, benefits, and feasibility studies.* Agencies shall submit a report outlining the study methodology to be used, milestones, planned completion dates, and progress to date in compliance with subpar. 8d of this regulation. This report is due to the Administrator by October 6, 1986.

b. *Presidential report to the Congress on agency statements.* Beginning with the fiscal year 1988 Budget or in a separate written report, the President will include a summary and analysis of the statements submitted by executive agencies in compliance with subpar. 8c. Each summary and analysis will include a review for the past fiscal year, the fiscal year in which the budget is being submitted, and the fiscal year for which the budget is being submitted. These reviews will indicate cost savings that have been achieved and estimates of what will be achieved and what could be achieved in the acquisition, leasing, operation, maintenance, and disposal of motor vehicles by agencies through the use of the alternatives described in subpar. 8d of the regulation. However, the summary and analysis for the 1988 Budget are not required to include a review of cost savings for fiscal year 1986.

c. *GSA report on interagency consolidations.* By April 6, 1987, GSA will submit a report to the Congress on its findings and recommendations covering the results of its interagency consolidation review undertaken in compliance with the provisions of subpar. 9b of this regulation.

12. *Exemptions.* When requested, the Administrator may grant exemptions from the provisions of this regulation for special purpose vehicles. The Administrator may also grant certain minor procedural exceptions from the provisions of this regulation, should circumstances warrant. Requests shall be submitted to the Administrator of General Services in writing by the head of the agency for review and final determination.

13. *Agency comments and assistance.* Commenters or inquiries concerning the impact of this regulation should be submitted to the General Services Administration, Federal Supply Service (FFY), Washington, DC 20406, not later than September 30, 1986, for consideration and possible incorporation into a permanent regulation. Requests for specific information and guidance should be submitted to the General Services Administration, Federal Supply Service (FBF), Washington, DC 20406.

T.C. Golden,

Administrator of General Services.

Attachment A—Definitions

For the purposes of this regulations, the following definitions shall apply.

1. "Director" means the Director of the Office of Management and Budget.

2. "Administrator" means the Administrator of General Services.

3. "Comptroller General" means the Comptroller General of the United States.

4. "Motor vehicle" means any vehicle self-propelled or drawn by mechnical power, except that such term does not include any vehicle designed or used for military field training, combat, or tactical purposes, or any other special purpose vehicle exempted from the requirements of this regulation by the Administrator.

5. "Headquarters and regional headquarters of executive agencies" means offices which establish policy, oversee field operations, and perform administrative functions ancillary to the legislatively-mandated mission of the agency or program. Such offices include the national headquarters office and subsidiary offices responsible for field operations over a wide geographic area.

6. "Line agency personnel working in agency field operations or activities" means personnel who perform the ultimate mission of the agency or program as defined in legislation, and who require motor vehicles to perform that mission. Such employees usually work in field offices or locations that report to a regional office responsible for statewide or multistate geographic areas.

7. "Cost of privately owned vehicles (POV) while on official business" means the mileage cost reimbursed by the Government to the owner or operator of such a vehicle except for the following conditions: (1) When a POV is used in a permanent change of station move, (2) when a POV is used in lieu of a common carrier, and (3) when a POV is used to commute between an employee's residence and a common carrier terminal or facility.

8. "Special purpose vehicles and equipment" means vehicles and equipment which are used or designed for specialized functions. Vehicles and equipment exempted by this definition include, but are not limited to: Trailers, semi-trailers, other types of trailing equipment, trucks with permanently mounted equipment (such as aerial ladders) Construction and other types of equipment set forth in Federal Supply Class (FSC) 38, Material Handling Equipment set forth in FSC 39, and Fire Fighting Equipment set forth in FSC 42.

9. "Accrual basis of accounting" is the method of accounting whereby revenues and expenses are identified with a specific period of time when earned or incurred, without regard to the date of receipt or payment of cash; distinguished from cash basis. SOURCE: Title 2, *GAO Policy and Procedure Manual for Guidance of Federal Agencies.*

10. "Obligation basis of accounting" is the method of accounting which recognizes the amounts of orders placed, contracts awarded, services received, and similar transactions during a given period that will require payments during the same or a future period. Such amounts will include outlays for which obligations had not been previously recorded and will reflect adjustments for differences between obligations previously recorded and actual outlays to liquidate those obligations. SOURCE: OMB Circular A-34, Instructions on Budget Execution.

11. "Outlay basis of accounting"is the method of accounting which recognizes the amount of checks issued, interest accrued on the public debt, or other payments made (including advances to others), net of refunds and reimbursements. Outlays are net of amounts that are adjustments to obligational authority. (The terms "expenditure" and "net disbursement" are frequently used interchangeably with the term "outlay.") SOURCE: OMB Circular A-34, Instructions on Budget Execution.

COST ELEMENTS IN TERMS OF OBLIGATIONS, OUTLAYS, OR ACCRUALS [1]

Category	Element [2]	Definition
Operating costs		Cost directly associated with Government-owned and leased motor vehicle operations, and which are generally a function of miles operated. Can be related directly to a specific vehicle.
	Direct labor	The payroll cost including benefits of Government or contractor personnel performing vehicvle maintenance, repair, and servicing, including service calls, road tests, and inspections. Includes only time that can be related directly to a specific vehicle.
	Parts and supplies	The cost of parts and supplies, including tires, used or installed by Government or contract employees which can be related directly to a specific vehicle.
	Commercial maintenance	The cost of all jobs including labor, parts, and supplies, provided by a commercial firm. Can be related directly to a specific vehicle.

COST ELEMENTS IN TERMS OF OBLIGATIONS, OUTLAYS, OR ACCRUALS [1]—Continued

Category	Element [2]	Definition
	Accident damage	The net cost of repairing accident damage including towing and storage costs, less any recoveries or reimbursements from other Government agencies or private parties, such as insurance carriers.
	Fuel and oil	The cost of all fuel and oil provided by commercial service stations or other Federal agencies, or dispensed from bulk fuel tanks. Only actual issues from bulk fuel tanks are included; fuel purchased in bulk but not yet dispensed is not included. Fuel and oil issued to another Federal agency shall not be included, provided reimbursement to the dispensing activity is received.
	Reconditioning	The cost of reconditioning decommissioned vehicles in preparation for sale including cosmetic and mechanical repairs and services. Can be related directly to a specific vehicle.
	Leasing expense	The cost to acquire vehicles by commercial lease contracts for periods of 60 calendar days or more. Can be related directly to a specific vehicle.
	Renting expense	The cost to acquire vehicles through commercial rental contracts/agreements for periods of less than 60 calendar days.
	Tools, materials, and supplies	The cost of expendable items such as cleaning materials and small parts not identified with specific vehicles. Can be related directly to a specific facility.
Fixed and overhead costs		Fixed cost are those costs associated with owning or holding a motor vehicle or vehicle fleet which are not a function of miles operated. May be related to a specific vehicle or to a facility. Overhead costs are those of administrative and managerial personnel and all administrative services to support motor vehicle fleet operations.
	Vehicle depreciation [3]	The difference between purchase price and salvage value amortized over the number of months in a vehicle's estimated life.
	Long-term leasing expense	The cost to acquire vehicles by commercial lease contracts for periods in excess of 12 months. Can be related directly to a specific vehicle.
	Payments to GSA-IFMS [4]	Total payments to GSA for vehicles assigned from the Interagency Fleet Management System.
	Indirect labor	The payroll costs, including benefits of Government personnel performing vehicle maintenance, repair, and servicing. Includes only time that cannot be related directly to a specific vehicle.
	Facilities	The cost of rent paid to commercial or Government entities for property used for motor pools, maintenance facilities, dispatch centers, parking, and vehicle storage; the cost of all utilities associated with such facilities and with agency-owned facilities; the estimated amortized cost or commercial rental equivalent of such facilities and utilities where the agency is the owner and does not assess costs to itself as a tenant; and the amortized cost of any capital improvements to facilities and land, such as guardhouses, fences, lighting, underground fuel tanks, paving and striping, etc. Can be related directly to a specific facility.
	Shop equipment depreciation [3]	The purchase price amortized over the number of months of estimated life of such equipment; as vehicle lifts, engine analyzers, exhaust removal units, etc.
	Motor Pool Administration	Payroll costs, including benefits of motor pool managers, clerks, typists, secretaries, and dispatchers. Can be related directly to a specific facility.
	Regional district zone, and headquarters administration [4].	Payroll costs, including benefits, of employees in offices above the motor vehicle pool level involved in motor vehicle policy setting, vehicle procurement, financial and accounting services, etc. Where such employees have other functions not related to motor vehicle operations, a reasonable proportion of such costs shall be reported.
	Office supplies	The cost of administrative supplies and materials used at all organizational levels in support of vehicle operations, or a proportion of such cost where other programs are supported by the same organizational elements.
	Travel	The costs of travel including per diem, lodgings, and transportation expense incurred in the administration of the motor vehicle program by all organizational elements, or a proportion of such costs where other programs are also involved.
	ADP and communications	The cost of telephone, telegraph, mail, and similar services incurred in support of motor vehicle operations; also the cost to acquire, maintain, and operate automated systems in support of motor vehicle operations.
	Printing	The cost to print, bind, and distribute forms and publications in support of motor vehicle operations.
	Miscellaneous	The cost of all other fixed program expenses chargeable to motor vehicle operations including but not limited to the acquisition of license tags, key chains, credit cards, etc.

[1] These elements and any other elements applicable to motor vehicle ownership or leasing must be collected and recorded as per the standards governing the type of accounting being used; obligation, outlay, or accrual. Generally, costs must be maintained on all elements using the three accounting methods as prescribed by the law and as noted above.
[2] These elements should be included in the development of any system or report developed by an agency to fulfill its responsibilities under subpars. 8b, 8c, and 8d.
[3] This element should only be included by an agency to fulfill its responsibilities under subpars. 8b and 8d.
[4] This element should be included by an agency to fulfill its responsibilities under subpars. 8b and 8c.

[FR Doc. 86-18733 Filed 8-19-86; 8:45 am]
BILLING CODE 6820-24-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6623

[W-80320]

Wyoming; Withdrawal of Public Lands for Devil's Gate and Split Rock Bicentennial Sites

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order will withdraw 343.23 acres of public lands from surface entry and mining for 20 years to protect the cultural and historic sites. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: August 20, 1986.

FOR FURTHER INFORMATION CONTACT: Tamara Gertsch, BLM, Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003, 307-772-2072.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from settlement, sale, location and entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2), but not from leasing under the mineral leasing laws, to protect the Bureau of Land Management's historical sites.

Sixth Principal Meridian

T. 29 N., R. 87 W.,
Sec. 35, NE¼SE¼, NE¼NE¼NW¼SE¼, S½N½NW¼SE¼, S½NW¼SE¼, N½S½SE¼.
T. 29 N., R. 89 W.,
Sec. 30, lot 2, NE¼NW¼, N½SE¼NW¼.
T. 29 N., R. 90 W.,
Sec. 25, E½SW¼NE¼, SE¼NE¼, E½NW¼SE¼, NE¼SE¼, N½N½SE¼SE¼.

The areas described aggregate 343.23 acres in Fremont and Natrona Counties.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary

determines that the withdrawal should be extended.

J. Steven Griles,

Assistant Secretary of the Interior.

August 12, 1986.

[FR Doc. 86-18706 Filed 8-19-86; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 50239-5115]

50 CFR Part 285

Atlantic Tuna Fisheries Closure

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: NOAA issues this notice closing the fishery for giant Atlantic bluefin tuna conducted by vessels permitted in the Harpoon Boat category. Closure of this fishery is necessary because the annual catch quota will be attained by the effective date. The intent of this action is to insure that the overall U.S. quota for Atlantic bluefin tuna in the Western Atlantic Ocean will not be exceeded.

EFFECTIVE DATE: 0001 hours Eastern Daylight Time EDT) August 18, 1986, through December 31, 1986.

FOR FURTHER INFORMATION CONTACT: William C. Jerome, Jr., 617-281-3600, extension 262; or David S. Crestin, 617-281-3600, extension 253.

SUPPLEMENTARY INFORMATION: Regulations promulgated under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971-971h) regulating the take of Atlantic bluefin tuna by persons and vessels subject to U.S. jurisdiction were published in the **Federal Register** on October 25, 1985 (50 FR 43396).

Section 285.22(b) of the regulations provides for an annual quota of 60 short tons (st) of giant Atlantic bluefin tuna to be taken by vessels permitted in the Harpoon Boat category in the Regulatory Area. This quota was subsequently increased to 75 st effective July 31, 1986 (51 FR 28240, August 6, 1986). The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), is authorized under § 285.20(b)(1) to monitor the catch and landing statistics and, on the basis of these statistics, to project a date when the total catch of Atlantic bluefin tuna will equal any quota under § 285.22. The Assistant Administrator, further, is authorized under § 285.20(b)(1) to prohibit the fishing for, or retention of, Atlantic bluefin tuna by the type of vessels subject to the quotas. The Assistant Administrator has determined, based on the reported catch of giant Atlantic bluefin tuna of 70 st, and the recent catch rate, that the annual quota of giant Atlantic bluefin tuna allocated to vessels permitted in the Harpoon Boat category will be attained by the effective date. Fishing for, and retention of any Atlantic bluefin tuna by these vessels must cease at 0001 EDT on August 18, 1986.

Notice of this action has been mailed to all Atlantic bluefin tuna dealers and vessel owners holding a valid vessel permit for this fishery.

Other Matters

This action is taken under the authority of 50 CFR 285.20, and is taken in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 285

Fisheries, Penalties, Reporting and recordkeeping requirements, Treaties.

Authority: 16 U.S.C. 971 *et seq.*

Dated: August 15, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 86-18813 Filed 8-15-86; 4:36 pm]

BILLING CODE 3510-21-M

50 CFR Part 651

[Docket No. 60599-6141]

Northeast Multispecies Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Interim rule.

SUMMARY: NOAA issues this interim rule to implement the Fishery Management Plan for the Northeast Multispecies Fishery (FMP). The Secretary of Commerce (Secretary) partially disapproved the FMP on the basis that the measures for conservation of redfish are inconsistent with its objectives and with National Standard 1. The remaining measures are approved for a specified period of time. The intended effect of the approved measures is to maintain the abundance and viability of the stocks to support both commercial and recreational fisheries.

EFFECTIVE DATE: This rule is effective from September 19, 1986, to September 30, 1987, except for the following sections. This rule is being issued prior to approval by the Office of Management and Budget (OMB) of the information collection requirements in §§ 651.4(n) and 651.21(b)(3)(iii). When OMB approval is received, a notice will be published in the **Federal Register** making these sections effective.

ADDRESS: Copies of the Final Environmental Impact Statement, the Regulatory Impact Review, and the Regulatory Flexibility Analysis prepared for the FMP are available from Douglas Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park 5, Broadway, Saugus, MA 01906.

FOR FURTHER INFORMATION CONTACT: Peter D. Colosi, Jr. (Multispecies Plan Coordinator), 617-281-3600, ext. 252.

SUPPLEMENTARY INFORMATION: The New England Fishery Management Council (Council), in consultation with the Mid-Atlantic Fishery Management Council prepared the original FMP under the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* (Magnuson Act). The Council prepared a draft environmental impact statement for this FMP; a notice of availability was published on October 24, 1985 (50 FR 43261). The proposed rule was published on December 3, 1985, at 50 FR 49582 and invited public comment.

Comments received from the public and from State and Federal agencies led the Secretary to conclude that some measures and aspects of the FMP were inconsistent with achievement of the objectives of the FMP, and inconsistent with the national standards of the Magnuson Act and other applicable law. Therefore, the Secretary disapproved the FMP on January 23, 1986. The Secretary returned the FMP to the Council with an explanation of his decision.

The Council resubmitted the FMP in April, with its original measures unchanged, an additional option to control fishing mortality, and updated figures, tables, and text in support of its management program. Two minority reports accompanied the resubmitted FMP. One report claims that the Council has failed to resolve a long-standing conflict between commercial gillnetters and recreational fishermen. Both groups require that fishing activity occur in areas of high concentrations of groundfish. Existence of gill nets in a given area at a given time precludes recreational fishing due to potential gear loss. It is suggested that assigning certain areas on a seasonal basis to recreational fishing would solve the problem. Another report recommends (1) disapproval of the seasonal area exemption for a 5½-inch mesh that

would allow a directed fishery for redfish, (2) reduction of the effective period for the exempted fisheries program from 12 months to 6 months annually to protect redfish nursery areas and prevent excessive discards of cod and haddock, and (3) immediate implementation of a 6-inch mesh instead of 5½-inch mesh on Georges Bank and the Gulf of Maine.

The Secretary commenced the 60-day review period provided by the Magnuson Act. A notice of availability was published on May 23, 1986 (51 FR 18913); the proposed rule was published on June 9, 1986 (51 FR 20850). Based on the review of the FMP resubmission, the Secretary partially disapproved the FMP. The redfish area and quota measures were disapproved as they are inconsistent with the stock rebuilding objectives in the FMP for redfish and National Standard 1 of the Magnuson Act. The remaining measures of the FMP were conditionally approved and will be implemented only until September 30, 1987.

Implementation of the remaining measures of the FMP reflects the Secretary's conclusion that the FMP may be an improvement over the existing groundfish plan, but that it is not appropriate for the long-term conservation and management of the multispecies finfish complex. Implementation of the FMP for an indefinite period would, in the opinion of the Secretary, lead to a level of overfishing that is inconsistent with National Standard 1 of the Magnuson Act.

The implementation of the FMP only until September 30, 1987, gives the Council time to address the Secretary's serious concern that the FMP allows an unacceptable level of juvenile mortality which threatens to deprive the resource of the spawning potential represented by the relatively strong 1985 year classes of cod and haddock. Action to protect these juveniles is critical since recent data show that the stocks have deteriorated further since the FMP was drafted. The economic condition of the industry has mirrored this situation.

Additionally, concerns raised by the U.S. Coast Guard and NMFS personnel charged with enforcing the regulations implementing this FMP must be addressed. A reasonable capability to enforce the minimum mesh size is essential if juvenile mortality is to be reduced. Recent scientific evidence indicates that the haddock spawning areas I and II (Figures 2 and 3) may no longer be spatially or temporally consistent with concentrations of spawning haddock. The FMP must be revised to ensure protection of spawning fish.

If suitable amendments to the FMP are not proposed in time to be implemented by October 1, 1987, the Secretary will exercise his authority to conserve and manage the fishery resources of the United States in the absence of timely Council action.

Comments and Responses

Written comments were submitted by the National Wildlife Federation, Interstate Partyboat Association, Saltwater Sportsman Magazine, Party Boat Owners Alliance, Inc., The Yankee Fleet, Walsh's Deep Sea Fishing, Greenpeace, four sportfishermen, one individual, the Department of the Interior, the U.S. Coast Guard, and the Council.

Comment: Twelve commenters stated that the FMP failed to address the gear conflict and other problems associated with the increased use of gill nets. All urged control of gillnetting to reduce conflicts with recreational fisheries and reduce ghost fishing.

Response: The Council has established a Gear Conflict Committee of three Council members and has hired a professional mediator to work with the recreational fisheries and gillnetters' groups in an attempt to allow the industry to resolve a wide range of problems. Regulatory measures may be forthcoming based on agreements reached in this forum. All the comments received have been passed on to the committee for their consideration.

Comment: One individual expressed strong support for the resubmitted FMP. The commenter feels that the Department of Commerce attempted to substitute its management philosophy for that of the Council, states that NMFS is responsible for continued pressure on the stocks because of the original FMP rejection, and questions the finding that the FMP does not prevent overfishing on the grounds that overfishing is not defined in the Magnuson Act and is, therefore, a subjective determination.

Response: The disapproval of the FMP was not a result of differing management philosophies held by the Council and the Secretary. In fact, the management philosophy of the Council reflected in the objectives of the FMP has not been questioned. Upon review of the FMP, the Secretary determined that the stated measures were not those necessary and appropriate to conserve and manage the resource in accordance with the FMP's objectives. The definition of conservation and management contemplates that measures would aid in the restoring, rebuilding, or maintenance of the stocks. The FMP, in large part, is a continuation of the Interim Fishery Management Plan for Atlantic Groundfish, under which the stocks have continued to decline. While overfishing is undefined in the Magnuson Act, it is not difficult to conclude that a management plan which perpetuates stock declines or maintenance at very low levels of abundance does not prevent overfishing, considering the findings and objectives of the Magnuson Act.

Comment: The Department of the Interior (DOI) commented that the FMP's environmental impact statement on page 2.77, paragraph 5 states, ". . . exploratory drilling for oil and gas is believed to have caused only minimal habitat degradation, or biological impact." It also asserts that risks to the coastal environment will increase if oil and gas production occurred. The Minerals Management Service of DOI funded an extensive study to evaluate the potential impacts of drilling and drilling materials discharge on the marine environment (Georges Bank Benthic Infauna Monitoring Program, Battelle and Woods Hole Oceanographic Institute, 1985) over a 3-year period. Their findings indicated that no demonstrable impact on the environment resulted. In addition, it has always been the contention of numerous analysts that impacts of petroleum hydrocarbons would decrease commensurate to the amount of local production. Therefore, no overall increase in potential risk as a result of petroleum hydrocarbon transportation is anticipated.

Response: The comment is noted.

Comment: The Coast Guard commented that the FMP is intended to regulate only groundfish. The definition of longline gear, however, could be construed to be pelagic gear, used for swordfish and tuna. The definitions should be revised to indicate that the regulations only apply to gear used to catch demersal fish.

Response: The definition of longline gear has not been changed since the regulations contain no restrictions that would impact *pelagic* longline gear.

Comment: The Coast Guard commented that the definition of a midwater trawl should be clarified to emphasize that the trawl should not come in contact with the bottom *at any time.*

Response: This change has been made.

Comment: The Coast Guard commented that the regulations do not contain a definition of a diamond mesh and square mesh.

Response: A definition for legal purposes is not necessary since any claim for use of square mesh must be backed up with a written authorization from the Regional Director.

Comment: The Coast Guard commented that annual permitting will create some logistical problems and suggested that application procedures be set up on a rotating system similar to the one many States use to register automobiles.

Response: NMFS is currently working on a system which would result in annual permitting of all regulated fisheries. The present target date is January 1987. This comment will be considered as part of that exercise.

Comment: The Coast Guard commented that there is no reason for the permit to be displayed in the pilot house as long as it is on board and can be produced on request.

Response: This change has been made.

Comment: The Coast Guard commented that a fee for permits should be charged to cover administrative costs.

Response: Such a fee is presently under consideration.

Comment: The Coast Guard commented that vessel owners as well as operators should be responsible for the maintenance of vessel markings.

Response: The word "owner" has been added to § 651.6(c).

Comment: The Coast Guard commented that since charter boats are treated as commercial vessels for most purposes their marking requirements should be permanent.

Response: Charter boats are frequently used for purposes other than fishing. The non-permanent markings recognize this fact.

Comment: The Coast Guard commented that § 651.4(a)(2) requires permit holders to comply with the more restrictive of State or Federal regulations. Therefore, the rebuttable statement contained in § 651.7(d) should be removed.

Response: In the final regulations, § 651.4(a) has been revised to provide that all vessels fishing in the FCZ must have a permit and that vessel owners agree as a condition of the permit that their entire catch will be subject to all Federal regulations. The reference to more restrictive State regulations has been removed. Accordingly, the rebuttable presumption that undersized fish were taken or imported in violation of these regulations has been retained; see § 651.7(d). This provision will facilitate enforcement.

Comment: The Coast Guard commented that management areas are described with a combination of loran lines and geographic coordinates. The Coast Guard objects to the use of loran lines to describe regulatory areas. Loran is subject to transmitter and receiver errors that make it inappropriate for use in regulations. All areas should be designated using geographic coordinates. The regulations refer to loran lines as rhumb lines. This is incorrect; loran lines are hyperbolic and are not rhumb lines.

Response: Geographic coordinates (latitude and longitude) provided by the Coast Guard have been substituted as descriptive of regulated areas.

Comment: The Coast Guard commented that the regulations do not require net mesh to be measured wet after use.

Response: This was deliberate. The twine used to construct existing groundfish nets does not shrink. Mesh must meet size restrictions, wet or dry.

Comment: The Coast Guard objected to the unrestricted use of netting as chafing gear as adding to the difficulty of enforcing the minimum mesh size regulations. The Coast Guard suggested substitute language that would allow netting material to be used as chafing gear only if it is of similar material as the mesh in the cod end and twice the authorized mesh size, does not cover more than the bottom half of the net, and is not attached to the aft end of the cod end.

Response: The regulation reflects current fishing practices. The comment will be referred to the Council's Technical Monitoring Group (TMG).

Comment: The Coast Guard commented that the whiting fishery authorized in § 651.22 limits incidental catch to 10 percent of the whiting landed during the reporting period; then indicates this will be monitored by sea samplings. These statements conflict.

Response: The landings and at-sea sampling are for different purposes. Landing inspections are for enforcement purposes. The at-sea monitoring will be conducted for management purposes to ascertain whether haulbacks contain unacceptable amounts of bycatch. If excessive discarding is a problem, then this fishery could be closed through emergency rule.

Comment: The Council comments that § 651.4, *Vessel permits*, does not reflect its intent that permits should be issued on an annual basis. The provision for an annual permit is the intent of the Council.

Response: Comment noted; the annual permitting target date is January 1987.

Comment—The Council comments that the language at § 651.20(e)(2), is not related to gear limitations within the regulated mesh areas, but rather is related to the Southern New England (SNE) closed spawning area described in § 651.21(b). The language at § 651.20(e)(2), slightly modified as noted below, replaces the language at § 651.21(b)(3)(ii). The latter is correctly placed under § 651.22, the description of the exempted fishery program. The FMP specifies a zero bycatch for authorized fishing in the SNE closed area, and a one percent bycatch for midwater trawling under the exempted fishing program in the regulated mesh area. The Council did not intend that the exception for the use of mid-water trawl gear in the SNE closed area should be limited to herring, mackerel, or squid, so long as the zero bycatch (of regulated species) provision is adhered to on a trip-by-trip basis.

Response; The appropriate adjustments have been made to reflect the intent of the Council.

Comment: Contrary to the language presented, the Council states that it did not intend that a particular mesh size be specified by the Regional Director for midwater gear operated in the SNE closed area, but did intend that the Regional Director specify bycatch reporting requirements for the operation of dredge gear in the same area. Sections 651.21(b)(3)(ii)(A) and (i)(B) should be changed accordingly.

Response: The appropriate adjustments have been made with respect to § 651.21(b)(3)(i)(A). There is no record in the FMP to support the inclusion of bycatch reporting by dredge gear operators.

Comment: Contrary to the language at § 651.21(b)(2)(ii), the Council asserts that their intent is that they (the Council) will determine the appropriate time in May to reopen the SNE closed area, and that their decision will be implemented by the Regional Director. The decision will be made in consideration of input from the TMG, which will, in turn, be based upon a retrospective analysis.

Response: An analysis will be conducted to see if the appropriate level of spawning of yellowtail and winter flounder has been attained, thus guiding the decision to open or remain closed. A decision to open or close an area is an aspect of implementation of an FMP, which the Magnuson Act has conferred upon the Secretary.

Comment: The Council points out that in § 651.22(e)(1), the tabular description of the exempted fishery for shrimp leaves out the Council's decision that the period may be increased to December through May, according to the management decision of the Atlantic States Marine Fisheries Commission.

Response: The regulations at § 651.22(e)(2) reflect that changes will be made considering the Council's recommendations and ASMFC's management decisions.

Comment: The Council comments that as stated in the third paragraph of the *Classification* section, the view that the purpose of the FMP is to promote investment and innovation in the fishery is inaccurate and misleading. The Council did refer to the FMP having the effect of promoting innovation and investment, but only in the context of gear development, such as the development and marketing of square-mesh cod ends, or other gear innovations that will increase the efficiency of fishing operations under the constraints of the management measures. The Council does not wish to appear to be encouraging investment in additional vessel capacity.

Response: The comment is noted.

Changes From the Proposed Rule

A few changes have been made in this rule in addition to those explained in the responses to the comments above, as follows:

In § 651.2, the definition of "vessel of the United States" was revised to reflect changes in the documentation laws.

In § 651.3, references to more restrictive State laws have been removed.

In § 651.4, paragraph (m) now provides that failure to report changes in application information will void the permit.

In § 651.7, a prohibition covering the gear-marking requirements of § 651.25 has been added.

In § 651.20, paragraph (d), pertaining to a specific time and area for fishing for redfish, has been removed. Paragraph (f) has been added to aid enforcement of the minimum mesh size regulations. It provides that only nets with cod ends with legal-sized mesh may be carried on deck while a vessel is in a large-mesh area.

In § 651.22, a sentence has been added to paragraph (e)(1) to clarify the prohibitions against landing more than a specified percentage of regulated species. Paragraphs (c)(1) and (h) have been revised to clarify the procedures for denial or revocation of certification for the exempted fisheries program.

The entire § 651.24, *Additional measures,* has been removed, because these regulations are effective for a limited period.

Also, minor editing has been done to clarify the language and the latitude and longitude specifications.

Classification

The Regional Director determined that the FMP as approved is necessary for the conservation and management of Northeast multispecies finfish and that it is consistent with the Magnuson Act and other applicable law.

The NOAA Administrator determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291, but that it will have a significant impact on a substantial number of small entities under the Regulatory Flexibility Act. A copy of the Regulatory Flexibility Analysis is available from the Council at the address above.

The Council prepared a regulatory impact review (RIR) which concluded that this rule will produce long-term benefits associated with the achievement of the FMP objectives within the fourth year of implementation. NMFS believes that benefits accrue with attainment of the objectives, but this is unlikely in the 10-year planning horizons of the FMP, unless the Council undertakes immediate improvements in its management measures. Some measures are inconsistent with meeting FMP objectives. The Secretary partially approved the FMP and set a time limit for implementation of the approved measures. He expects that the TMG will address the deficiencies of the FMP as one of its initial tasks.

In accordance with the National Environmental Policy Act, the Council prepared a Final Environmental Impact Statement (FEIS) for the FMP and filed it with the Environmental Protection Agency; a notice of availability was published at 51 FR 24442, July 3, 1986. The FEIS is available from the Council at the address above.

This rule contains a collection of information requirement under the exempted fisheries program subject to the Paperwork Reduction Act which has been submitted for approval to the Office of Management and Budget (OMB). The permit requirement found at § 651.4(a) has been approved by OMB under OMB control number 0648–0097.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Maryland, Delaware, and North Carolina. This determination was submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act. The State agencies agreed with this determination.

List of Subjects in 50 CFR Part 651

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 15, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR Part 651 is revised, to be effective from September 15, 1986, until September 30, 1987, to read as follows:

PART 651—NORTHEAST MULTISPECIES FISHERY

Subpart A—General Provisions

Sec.

Subpart B—Management Measures

Authority: 16 U.S.C. 1801 *et seq.*

Subpart A—General Provisions

§ 651.1 Purpose and scope.

This part implements the Fishery Management Plan for the Northeast Multispecies Fishery prepared and adopted by the New England Fishery Management Council in consultation with the Mid-Atlantic Fishery Management Council. These regulations govern the conservation and management of multispecies finfish.

§ 651.2 Definitions.

In addition to the definitions in the Magnuson Act, and unless the context requires otherwise, the terms used in this part have the following meanings:

Areas of custody means any vessels, buildings, vehicles, piers or dock facilities where finfish may be found.

Assistant Administrator means the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce, Washington, DC 20235, or a designee.

Authorized officer means

(a) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(b) Any special agent of the National Marine Fisheries Service;

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary and the Commandant of the U.S. Coast Guard to enforce the provisions of the Magnuson Act; or

(d) Any U.S. Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Bottom-tending gill net means any gill net, anchored or otherwise, that is fished on or near the bottom in the lower third of the water column.

Butterfish means *(Peprilus triacanthus.*

Catch, take or harvest includes, but is not limited to, any activity which results in killing any fish, or bringing any live fish aboard a vessel.

Cod end means the terminal portion of an otter trawl, pair trawl, beam trawl, Scottish seine, or midwater trawl in which the catch is retained.

Exempted fisheries means those species found in the exempted fisheries program (§ 651.22).

Fishery conservation zone (FCZ) means that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line on which each point is 200 nautical miles from the baseline from which the territorial sea is measured.

Fishing means any activity, other than scientific research conducted by a scientific research vessel, which involves

(a) The catching, taking or harvesting of fish;

(b) The attempted catching, taking or harvesting of fish;

(c) Any other activity which can reasonably be expected to result in the catching, taking or harvesting of fish; or

(d) Any operations at sea in support of, or in preparation for, any activity described in paragraph (a), (b), or (c) of this definition.

Fishing vessel means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for

(a) Fishing; or

(b) Aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing; including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

Herring means Atlantic herring, *Clupea harengus harengus*, or blueback herring, *Alosa aestivalis*.

Land means to begin offloading fish, to offload fish or to transfer fish to another vessel.

Longline gear means fishing gear which is set horizontally, either anchored, floating, or attached to a vessel, which consists of a main or ground line with three or more gangions and hooks.

Mackerel means Atlantic mackerel, *Scomber scombrus*.

Magnuson Act means the Magnuson Fishery Conservation and Management Act, as amended (16 U.S.C. 1801 *et seq.*).

Mid-Atlantic area means that area west and south of a line commencing at 41°18'16.2" N. latitude, 71°54'28.5" W. longitude and proceeding 142°37'27.25" True to the point of intersection with the outer boundary of the FCZ.

Midwater trawl gear means pelagic trawl gear, no portion of which is operated in contact with the bottom at any time.

Multispecies finfish means the following finfish in the Northeast portion of the Atlantic Ocean FCZ:

Gadus morhua	Atlantic cod
Glyptocephalus cynoglossus.	witch flounder
Hippoglossoides platessoides.	American plaice
Limanda ferruginea	yellowtail flounder
Melanogrammus aeglefinus.	haddock
Pollachius virens	pollock
Pseudopleuronectes americanus.	winter flounder
Scophthalmus aquosus	windowpane flounder
Sebastes fasciatus	redfish
Urophycis tenius	white hake

New England area means that area east and north of a line commencing at 41°18'16.2" N. latitude, 71°54'28.5" W. longitude and proceeding 142°37'27.25" True to the point of intersection with the outer boundary of the FCZ.

Official number means the documentation number issued by the U.S. Coast Guard or the registration number issued by a State or the U.S. Coast Guard for undocumented vessels.

Operator with respect to any vessel, means the master or other individual aboard and in charge of that vessel.

Owner, with respect to any vessel, means

(a) Any person who owns that vessel in whole or in part;

(b) Any charterer of the vessel, whether bareboat, time, or voyage;

(c) Any person who acts in the capacity of a charterer, including, but not limited to, parties to a management agreement, operating agreement, or other similar arrangement that bestows control over the destination, function, or operation of the vessel; or

(d) Any agent designated as such by any person described in paragraph (a), (b), or (c) of this definition.

Person means any individual (whether or not a citizen of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

Recreational fishing means fishing for finfish for personal use or pleasure and not for barter, trade, or sale.

Recreational fishing vessel means any vessel from which no fishing other than recreational fishing is conducted.

Regional Director means the Regional Director, Northeast Region, NMFS, 14 Elm Street, Federal Building, Gloucester, MA 01930, 617–281–3600, or a designee.

Retain aboard means to fail to return fish to the sea after a reasonable opportunity to sort the catch.

Secretary means the Secretary of Commerce, or a designee.

Squids means *Loligo pealei* or *Illex illecebrosus.*

U.S.-harvested fish means fish caught, taken, or harvested by vessels of the United States within any fishery regulated by a fishery management plan or preliminary fishery management plan implemented under the Magnuson Act.

Vessel of the United States means:

(a) Any vessel documented under chapter 121 of title 46, United States Code;

(b) Any vessel numbered under chapter 123 of title 46, United States Code, and measuring less than 5 net tons;

(c) Any vessel numbered under chapter 123 of title 46, United States Code, and used exclusively for pleasure; and

(d) Any vessel not equipped with propulsion machinery of any kind and used exclusively for pleasure.

Whiting means *Merluccius bilinearis.*

§ 651.3 Relationship to other laws.

(a) Fishing for squids, mackerel, and butterfish, which is affected by these rules, also is governed by other domestic rules under 50 CFR Part 655.

(b) Fishing vessel operators will exercised due care in the conduct of fishing activities near submarine cables. Damage to submarine cables resulting from intentional acts or from the failure to exercise due care in the conduct of fishing operations subjects the fishing

vessel operator to the criminal penalties prescribed by the Submarine Cable Act (47 U.S.C. 21) which implements the International Convention for the Protection of Submarine Cables. Fishing vessel operators also should be aware that the Submarine Cable Act prohibits fishing operations at a distance of less than one nautical mile from a vessel engaged in laying or repairing a submarine cable; or at a distance of less than one quarter nautical mile from a buoy or buoys intended to mark the position of a cable when being laid or when out of order or broken.

§ 651.4 Vessel permits.

(a) *General. (1)* Any vessel of the United States commercially fishing for multispecies, finfish, and any vessel carrying recreational fishing parties for hire, except vessels fishing exclusively within State waters, must have a permit required by this part aboard the vessel.

(2) Vessel owners or operators who apply for a fishing vessel permit under this section must agree as a condition of the permit that the vessel's fishing, catch, and pertinent gear will be subject to all the requirements of this part without regard to whether such fishing occurs in the FCZ or landward of the FCZ and without regard to where such fish or gear are possessed, taken, or landed.

(b) *Application.* (1) An application for a fishing vessel to participate in the multispecies finfish fishery must be submitted and signed by the vessel owner on an appropriate form which may be obtained from the Regional Director. The application should be submitted to the Regional Director at least 2 months prior to the date on which the applicant desires to have the permit made effective to ensure that he will receive the permit on time.

(2) Applicants must provide all of the following information:

(i) The name, mailing address, and telephone number of the applicant and the vessel's master;

(ii) The name of the vessel;

(iii) The vessel's official number;

(iv) The home port and gross tonnage of the vessel;

(v) The engine horsepower of the vessel;

(vi) The approximate fish-hold capacity of the vessel in pounds;

(vii) The type of fishing gear used by the vessel; and

(viii) The size of the crew, which may be stated in terms of a range.

(c) *Issuance.* (1) Upon receipt of a completed application, the Regional Director will issue a permit within 45 days.

(2) Upon receipt of an incomplete or improperly executed application, the Regional Director will notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 21 days following the date of notification, the application will be discarded.

(d) *Surrender. (1)* A permit issued for a vessel may be surrendered by the owner thereof by certified mail addressed to the Regional Director.

(2) The Regional Director will reissue a permit which has been surrendered within 45 days from the date the reissuance was requested.

(e) *Expiration.* A permit expires when the owner or the name of the vessel changes.

(f) *Duration.* A permit is valid until it is voluntarily returned or expires or is revoked, suspended, or modified under 15 CFR Part 904.

(g) *Alteration.* Any permit which has been altered, erased, or mutilated is invalid.

(h) *Replacement.* Replacement permits may be issued. An application for a replacement permit will not be considered a new application.

(i) *Transfer.* Permits issued under this part are not transferable or assignable. A permit is valid only for the vessel for which it is issued.

(j) *Display.* Any permit issued under this part must be carried aboard the fishing vessel at all times. The permit must be displayed for inspection at the request of an authorized officer.

(k) *Suspension and revocation.* Subpart D of 15 CFR Part 904 governs the imposition of sanctions against a permit issued under this part.

(l) *Fees.* No fee is required for any permit under this part.

(m) *Change in application information.* Any change in the information specified in paragraph (b) of this section must be reported to the Regional Director within 15 days of the change. Failure to report a change in information within 15 days of the change voids the permit.

(n) *Exempted fisheries program.* Any permit holder may initially request entry into the exempted fisheries program under § 651.22 by telephoning 617–281–4454. The permit holder must give his/her name, vessel name, vessel permit number, the specific exemption requested, the starting date and estimated duration of participation in the program, and the area of operation. The permit holder must have the letter of certification, which will be issued within one week, aboard at all times while engaged in an exempted fishery.

§ 651.5 Recordkeeping and reporting requirements. [Reserved]

§ 651.6 Vessel identification.

(a) *Official number.* Each fishing vessel subject to this part over 25 feet in length must display its official number on the port and starboard sides of the deckhouse or hull and on an appropriate weather deck so as to be visible from above.

(b) *Numerals.* Except as provided in paragraph (d) of this section, the official number must be permanently affixed to each vessel subject to this part in contrasting block Arabic numerals at least 18 inches in height for vessels over 65 feet in length, and at least 10 inches in height for vessels over 25 feet in length. The length of a vessel, for purposes of this section, will be that length set forth in U.S. Coast Guard or State records.

(c) *Duties of owner and operator.* The owner and operator of each vessel subject to this part will

(1) Keep the vessel's name and official number clearly legible and in good repair; and

(2) Ensure that no part of the vessel, its rigging, its fishing gear, or any other object obstructs the view of the official number from an enforcement vessel or aircraft.

(d) *Nonpermanent markings.* Vessels carrying recreational fishing parties for hire must use markings that meet the above requirements, except for the requirement that they be affixed permanently to the vessel. The nonpermanent markings must be displayed in conformity with the above requirements when the vessel is fishing for multispecies finfish.

§ 651.7 Prohibitions.

(a) It is unlawful for any person owning or operating a vessel issued a permit under § 651.4 to do any of the following:

(1) Land or possess any multispecies finfish which fails to meet the minimum fish sizes specified in § 651.23; and

(2) Fail to affix and maintain permanent markings as required by § 651.6.

(b) It is unlawful for any person to do any of the following:

(1) Use any vessel of the United States (except recreational fishing vessels) for taking, catching, harvesting, or landing any multispecies finfish taken from the FCZ unless the vessel has a valid permit issued under this part and the permit is aboard the vessel;

(2) Fish within the areas described in § 651.20(a) with nets smaller than the minimum size specified in § 651.20(b)

unless the vessel is certified in an exempted fisheries program established under § 651.22;

(3) Fish within the areas described in § 651.20(a) outside of the exempted fisheries area specified in § 651.22(a) while the vessel is certified to participate in the exempted fisheries program under § 651.22.

(4) Fish in either area specified in § 651.21 during a period in which that area is closed, unless allowed by that section;

(5) Fail to comply with the gear-marking requirements of § 651.25.

(6) Dump a net or the contents of the net after being signaled by an authorized officer that the vessel is to be boarded.

(7) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, land, or export any multispecies finfish taken, retained, or imported in violation of the Magnuson Act, this part, or any other regulation under the Magnuson Act;

(8) Import cod, haddock, or yellowtail flounder which are smaller than the minimum sizes specified in § 651.23;

(9) Make any false statement in connection with an application under § 651.4.

(10) Make any false statement, oral or written, to an authorized officer, concerning the taking, catching, harvest, landing, purchase, scale, possession, or transfer of any multispecies finfish.

(11) Refuse to permit an authorized officer to board a fishing vessel or to enter an area of custody, subject to such person's control, for purposes of conducting any search or inspection in connection with the enforcement of the Magnuson Act, this part, or any other regulation or permit under the Magnuson Act.

(12) Forcibly assault, resist, oppose, impede, intimidate, threaten, or interfere with any authorized officer in the conduct of any search or inspection described in paragraph (b)(11) of this section;

(13) Resist a lawful arrest for any act prohibited by this part;

(14) Interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, with the knowledge that such other person has committed any act prohibited by this part;

(15) Interfere with, obstruct, delay, or prevent by any means the lawful investigation or search in the process of enforcing this part;

(16) Fail to comply immediately with enforcement and boarding procedures specified in § 651.8;

(17) Transfer to another vessel directly or indirectly, or attempt to so transfer, any U.S.-harvested multispecies finfish not otherwise specifically authorized; or

(18) Violate any provisions of the exempted fisheries program specified in § 651.22.

(c) It is unlawful to violate any other provision of this part, the Magnuson Act, or any regulations or permit issued under the Magnuson Act.

(d) *Presumption.* The possession for sale of multispecies finfish which do not meet the minimum sizes specified in § 651.23(a)(1) will be *prima facie* evidence that such multispecies finfish were taken or imported in violation of these regulations. Evidence that such fish (other than cod, haddock, and yellowtail flounder) were harvested by a vessel not holding a permit under this part *and* fishing exclusively within State or foreign waters will be sufficient to rebut the presumtion. This presumption does not apply to fish being sorted on deck.

§ 651.8 Facilitation of enforcement.

(a) *General.* The operator of, or any other person aboard any fishing vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record (where applicable), and catch for purposes of enforcing the Magnuson Act and this part.

(b) *Communications.* (1) Upon being approached by a U.S. Coast Guard vessel or aircraft or other vessel or aircraft with an authorized officer aboard, the operator of a fishing vessel must be alert for communications conveying enforcement instructions.

(2) If the size of the vessel and the wind, sea, and visibility conditions allow, loudhailer is the preferred method for communicating between vessels. If use of a loudhailer is not practicable, and for communications with an aircraft, VHF-FM or high frequency radiotelephone will be employed. Hand signals, placards, or voice may be employed by an authorized officer and message blocks may be dropped from an aircraft.

(3) If other communications are not practicable, visual signals may be transmitted by flashing light directed at the vessel signaled. Coast Guard units will normally use the flashing light signal "L" as the signal to stop.

(4) Failure of a vessel's operator to stop his vessel when directed to do so by an authorized officer using loudhailer, radiotelephone, flashing light signal, or other means constitutes *prima facie* evidence of the offense of refusal to allow an authorized officer to board.

(5) The operator of a vessel who does not understand a signal from an enforcement unit and who is unable to obtain clarification by loudhailer or radiotelephone must consider the signal to be a command to stop the vessel instantly.

(c) *Boarding.* The operator of a vessel directed to stop must

(1) Guard Channel 16, VHF-FM, if so equpped;

(2) Stop immediately and lay to or maneuver in such a way as to allow the authorized officer and his party to come aboard;

(3) Except for those vessels with a freeboard of four feet or less, provide a safe ladder, if needed, for the authorized officer and his party to come aboard;

(4) When necessary to facilitate the boarding or when requested by an authorized officer, provide a manrope or safety line, and illumination for the ladder; and,

(5) Take such other actions as necessary to facilitate boarding and to ensure the safety of the authorized officer and the boarding party.

(d) *Signals.* The following additional signals, extracted from the International Code of Signals, may be sent by flashing light by an enforcement unit when conditions do not allow communications by loudhailer or radiotelephone. Knowledge of these signals by vessel operators is not required. However, knowledge of these signals and appropriate action by a vessel operator may preclude the necessity of sending the signal "L" and the necessity for the vessel to stop instantly.

(1) "AA" repeated (.- .-) [1] is the call to an unknown station. The operator of the signaled vessel should respond by identifying the vessel by radiotelphone or by illuminating the vessel's identification.

(2) "RY-CY" (.-. -.-- -.-. -.--) means "You should proceed at slow speed, a boat is coming to you." The signal is normally employed when conditions allow an enforcement boarding without the necessity of the vessel being boarded coming to a complete stop, or, in some cases, without retrieval of fishing gear which may be in the water.

(3) "SQ3" (. . . --.-. . .--) means "You should stop or heave to; I am going to board you."

(4) "L" (.-. .) means "You should stop your vessel instantly."

[1] Period (.) means a short flash of light; dash (-) means a long flash of light.

§ 651.9 Penalties.

Any person or fishing vessel found to be in violation of this part will be subject to the civil and criminal penalty provisions and forfeiture provisions prescribed in the Magnuson Act, 15 CFR Part 904 (Civil Procedures), and other applicable law.

Subpart B—Management Measures

§ 651.20 Large-mesh area and gear limitations.

(a) The mesh sizes stated in paragraphs (b) and (c) of this section will apply to all vessels fishing within the areas defined by accepted boundary limits and by stright lines (rhumb lines) connecting the following points in the order stated:

(1) Gulf of Maine large-mesh area (Figure 1):

(i) Bounded on the north and west by the seaward limit of the territorial sea;

(ii) Bounded on the east by the U.S.-Canada maritime boundary (the outer limit of the FCZ);

(iii) Bounded on the south by a line originating at the intersection of 42°20′ N. latitude with the territorial sea and east to 42°20′ N. latitude, 67°18.4′ W. longitude (the U.S.-Canada maritime boundary).

(2) Georges Bank large-mesh area (Figure 1):

Point	Latitude	Longitude
A	40°33.5′ N.	69°40.0′ W.;
B	41°35.0′ N.	69°40.0′ W.;
C	West to the territorial sea;	
D	Northward along the territorial sea to 42°20.0′ N.,	
E	42°20.0′ N.	67°18.4′ W.,
	(the U.S.-Canada maritime boundary);	
F	41°18.0′ N.	66°25.4′ W.;
	(the U.S.-Canada maritime boundary);	
G	40°55.0′ N.	66°38.0′ W.;
A	40°33.5′ N.	69°40.0′ W.

(b) *Trawl nets.* (1) *Diamond mesh.* Except as provided for in § 651.20(d) and § 651.22, the minimum mesh size for any trawl net or scottish seine used by a vessel fishing in the mesh area described in paragraph (a) of this section is 5½ inches in the cod end in the Gulf of Maine large-mesh area; and 5½ inches in the cod end in the Georges Bank large-mesh area.

(2) *Square mesh.* Vessels may use square mesh which the Regional Director has certified under § 651.22 to be equivalent in terms of haddock escapement to the mesh sizes specified in paragraph (b)(1) of this section.

(c) *Gill nets.* (1) Except as provided for in § 651.22, the minimum mesh size for any gill net used by a vessel fishing in the mesh area described in paragraph (a) of this section will be the same as that specified under paragraph (b) of this section.

(2) In other portions of the New England area not subject to minimum mesh size restrictions under paragraph (b) of this section, the mesh in bottom-tending gill nets must be the same during the months of November through February as that in effect for the Georges Bank large-mesh area.

(d) *Midwater gear.* In the portion of the large mesh areas where exempted fishing is prohibited under § 651.22, fishing for herring, mackerel, and squids may take place throughout the fishing year with cod end mesh sizes less than the regulated size, provided that:

(1) Midwater trawl gear is used exclusively;

(2) The vessel deploying midwater gear is certified under the exempted fisheries program in § 651.22(c); and

(3) The bycatch of multispecies finfish does not exceed one percent by weight of all other fish landed by the vessel over the reporting period.

(e) *Mesh measurements.* (1) Mesh sizes are measured by a wedge-shaped gauge having a taper of two centimeters in eight centimeters and a thickness of 2.3 millimeters, inserted into the meshes under a pressure or pull of five kilograms. The mesh size will be the average of the measurements of any series of 20 consecutive meshes. The mesh in the cod end will be measured at least 10 meshes from the lacings, beginning at the aft end and running parallel to the long axis.

(2) No fishing vessel may use any means or device, including, but not limited to, chafing gear, liners, or double nets, if it would obstruct the meshes of the cod end or otherwise diminish the size of the meshes of the cod end. However, canvas, netting, or other material may be attached to the underside of the cod end to reduce wear and prevent damage so long as no more than 50 percent of the meshes are obstructed. Net strengtheners may be attached to the cod end of trawl nets, providing such net strengtheners consist of mesh material similar to the material of the cod end and have a mesh size of at least twice the authorized minimum mesh size.

(f) Except as provided in paragraph (d) of this section, no vessel issued a permit under § 651.4 may have on deck any net with a cod-end mesh less than the minimum size specified in paragraphs (b) and (c) of this section while in the areas described in paragraph (a) of this section.

§ 651.21 Closed areas.

(a) *Georges Bank.* No person may fish within the following areas during the months of February through May.

(1) An area known as Closed Area I (Figure 2) bounded by four straight lines (rhumb lines) connecting the following points in the order stated:

Point	Latitude	Longitude
a	40°53′ N.	68°53′ W.;
b	41°35′ N.	68°30′ W.;
c	41°50′ N.	68°45′ W.;
d	41°50′ N.	69°40′ W.; and
a	40°53′ N.	68°53′ W.

(2) An area known as Closed Area II (Figure 2) bounded by three straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
e	41°15′ N.	67°00′ W.,
f	41°15′ N.	66°22.4′ W.,
	(the U.S.-Canada Martime Boundary);	
g	41°51.9′ N.	67°00′ W.,
	(the U.S.-Canada Martime Boundary);	
e	41°15′ N.	67°00′ W.

(3) *Exceptions.* Paragraphs (a)(1) and (2) of this section do not apply

(i) To longline vessels that fish with hooks having a gape of not less than 1.18 inches (30 mm), Closed Area 1, only;

(ii) To pot gear designed and used to take lobsters; or

(iii) To dredges designed and used to take scallops.

(4) The Regional Director may open either or both Closed Areas I and II prior to the scheduled opening in May by notice in the **Federal Register**, if he determines that concentrations of spawning fish are no longer in the area(s).

(b) *Southern New England/Mid-Atlantic Region.* (1) Except as provided in paragraph (b)(3) of this section, during a closure, no person may fish within the area bounded by straight lines (rhumb lines) connecting the following points in the order stated (Figure 3):

Point	Latitude	Longitude
A	40°33.5′ N.	69°40′ W.;
N	40°26.5′ N.	70°40′ W.;
O	40°40.5′ N.	70°40′ W.;
P	40°30′ N.	72°00′ W.;
Q	40°17.8′ N.	72°00′ W.;
R	40°15.5′ N.	72°20′ W.;
S	40°39.0′ N.	72°20′ W.;
T	40°42.0′ N.	72°00′ W.;
U	40°48.2′ N.	72°00′ W.;
V	41°00′ N.	70°49.5′ W.;
W	41°00′ N.	70°30′ W.;
X	40°50′ N.	70°30′ W.;
Y	40°50′ N.	69°40′ W.; and
A	40°33.5′ N.	69°40′ W.;

(2) The area defined in paragraph (b)(1) of this section will be regulated as follows:

(i) The portion of the area east of 71°30' W. longitude will close on March 1, 1987, and the portion west of 71°30' W. longitude will close on April 1, 1987.

(ii) The entire area will be reopened by the Regional Director by notice in the Federal Register on or after May 1, 1987, when he determines that the closure has achieved the appropriate spawning level for yellowtail flounder and winter flounder.

(3) *Exceptions.* (i) Paragraph (b)(1) of this section does not apply

(A) To pot gear designed and used to take lobsters; and

(B) To dredge gear designed and used to take scallops, ocean quahogs, or surf clams.

(ii) In the closed area described for the Southern New England/Mid-Atlantic Region in § 651.21, in which fishing for herring, mackerel, and squids with midwater trawl gear may be permitted by the Regional Director, a vessel conducting such fishing may not retain aboard or land any multispecies finfish.

(iii) Any person intending to use midwater trawl nets in the area described in this paragraph (b) must notify the Regional Director in writing 30 days prior to the date on which the nets will be used. The Regional Director will issue a letter certifying the use of such nets. Fishing in these areas with midwater trawl nets may not commence without a letter of certification carried aboard the vessel.

§ 651.22 Exempted fishery programs.

(a) *General.* The Regional Director will establish and implement an exempted fishery program to allow fishing vessels to engage in small mesh fisheries for species which require the use of mesh smaller than the size specified in § 651.20(b). Exempted fishing may be conducted shoreward of the area bounded by the straight lines (rhumb lines) connecting the following points in the order stated (Figure 1):

Point	Latitude	Longitude
C	41°35' N., and the territorial sea;.	
B	41°35' N.	69°40' W.;
H	42°49.5' N.	69°40' W.;
I	43°12.0' N.	68°00' W.;
J	43°41' N.	68°00' W.;
K	43°58' N.	67°22' W.
	(The U.S.-Canada maritime boundary); and	
L	Northward along the irregular U.S.-Canada maritime boundary to the territorial sea.	

(b) *Entry.* (1) Any person owning or operating a vessel issued a valid Federal multispecies finfish permit may apply to fish under the exempted fisheries program by following the procedures set forth in § 651.4(n).

(2) The period of participation must be for at least 7 days, but not longer than 30 days. There is no limit on the number of times a vessel can apply to participate in the exempted fisheries program.

(c) *Certification.* (1) The Regional Director will certify in writing the entry of the applicant into the exempted fisheries program. Entry may be denied to an applicant based on the applicant's violation of the Magnuson Act, if the applicant has received a notice of violation and assessment concerning the violation.

(2) Entry of the applicant into the exempted fisheries program cannot occur until the applicant receives written certification from the Regional Director.

(d) *Commencement of fishing.* Fishing under the exempted fisheries program may begin after the applicant has received the certification from the Regional Director provided that this letter is retained aboard.

(e) *Limitations.* (1) During the period of participation in the exempted fisheries program, the vessel may not be employed to fish in the large mesh areas outside the area specified in paragraph (a) of this section. A vessel may not land multispecies finfish in excess of the percentages specified in paragraph (e)(2) of this section.

(2) Participation in the exempted fisheries program is subject to seasonal limitations, exempted species, and maximum multispecies finifish percentage restrictions as follows:

Period	Target species	Comment
Jun.-Nov.	all species except multispecies finfish.	Multispecies finfish may not exceed 10 percent of the total landings of all species during the reporting period.
Dec.-Jan.	whiting	Multispecies finfish may not exceed 10 percent of the amount of whiting landed over the reporting period; the fishery will be monitored by at-sea sampling.
Jan.-Apr.[1]	shrimp	Multispecies finfish may not exceed 10 percent of the amount of shrimp landed during the reporting period.
Dec.-May	herring, mackerel	Multispecies finfish may not exceed 10 percent of the amount of herring plus mackerel landed over the reporting period.

[1] Or as determined by the Regional Director, based on the recommendation of the Council and the management decision of the Atlantic States Marine Fisheries Commission. The Secretary will publish any such changes by notice in the FEDERAL REGISTER.

(3) Adjustments in the seasons, species or percentages of the exempted fisheries will be accomplished by regulatory amendment.

(f) *Recordkeeping and reporting.* The reporting period for the exempted fisheries will be 30 calendar days. Within one week from the expiration of the reporting period or withdrawal from the program under paragraph (h) of this section, or receipt of a notice of revocation under paragraph (i) of this section, the participant must mail or deliver to the Regional Director a NOAA Form 88–153 "Fishing Vessel Record", or business records that provide equivalent information, listing in pounds, all fish landed during participation in the exempted fishery program on a trip-by-trip basis. Buyer certification may be satisfied by the buyer's signature on the trip record. The responsible fishing vessel owner or operator may maintain accurate trip-by-trip landings data on a form provided by the Regional Director.

(g) *Expiration or withdrawal.* Participation in the program expires at the end of the participation period under § 651.4(n), or when the owner's or vessel's name changes, or when a participant who has been duly operating in the program for at least 7 days notifies the Regional Director of his/her intent to withdraw from the program. Such withdrawal will be effective when the participant receives notice of the withdrawal from the Regional Director.

(h) *Revocation.* The Regional Director may end the participation of any applicant in the exempted fisheries program upon issuance of a notice of violation and assessment for violating any provisions of the program or the Magnuson Act. Notification will be in writing and will take effect upon receipt by the participant.

§ 651.23 Minimum fish size.

(a) The minimum sizes (total length) for certain regulated finfish are

(1) *Commercial fishing vessels.*

Cod, haddock and pollock	17 inches
Witch flounder (gray sole)	14 inches
Yellowtail flounder	12 inches
American plaice (dab)	
Winter flounder (blackback)	11 inches

(2) *Recreational fishing vessels, vessels carrying recreational fishing parties, and individuals.*

Cod and haddock	15 inches

(b) The minimum lengths allowed by paragraph (a) of this section are measured on a straight line from the tip of the snout to the end of the tail.

§ 651.24 Experimental fishing.

The Secretary may authorize experimental fishing, which is not otherwise authorized by these regulations, for the acquisition of information.

§ 651.25 Gear marking requirements.

(a) Bottom-tending fixed gear (gill nets and longlines) fishing for multispecies finfish must have the name of the owner or vessel, or the official number of that vessel, permanently affixed to any buoys, gill nets, or longlines.

(b) Bottom-tending gill net or longline gear must be marked so that the westernmost end (meaning the half compass circle from magnetic south through west to an including north) of the gear displays a standard 12-inch tetrahedral corner rader reflector and a pennant positioned on a staff at least 6 feet above the buoy. The easternmost end (meaning the half compass circle from magnetic north through east to and including south) of the gear must display only the standard 12-inch tetrahedral radar reflector positioned in the same way.

(c) The maximum length of continuous gill nets must not exceed 6,600 feet between the end buoys.

(d) In the Gulf of Maine large-mesh area specified in § 651.20, sets of gill net gear which are of an irregular pattern or which deviate more than 30° from the original course of the set will be marked at the extremity of the deviation with an additional marker which must display two or more visible streamers and may either be attached to or independent of the gear.

BILLING CODE 3510-22-M

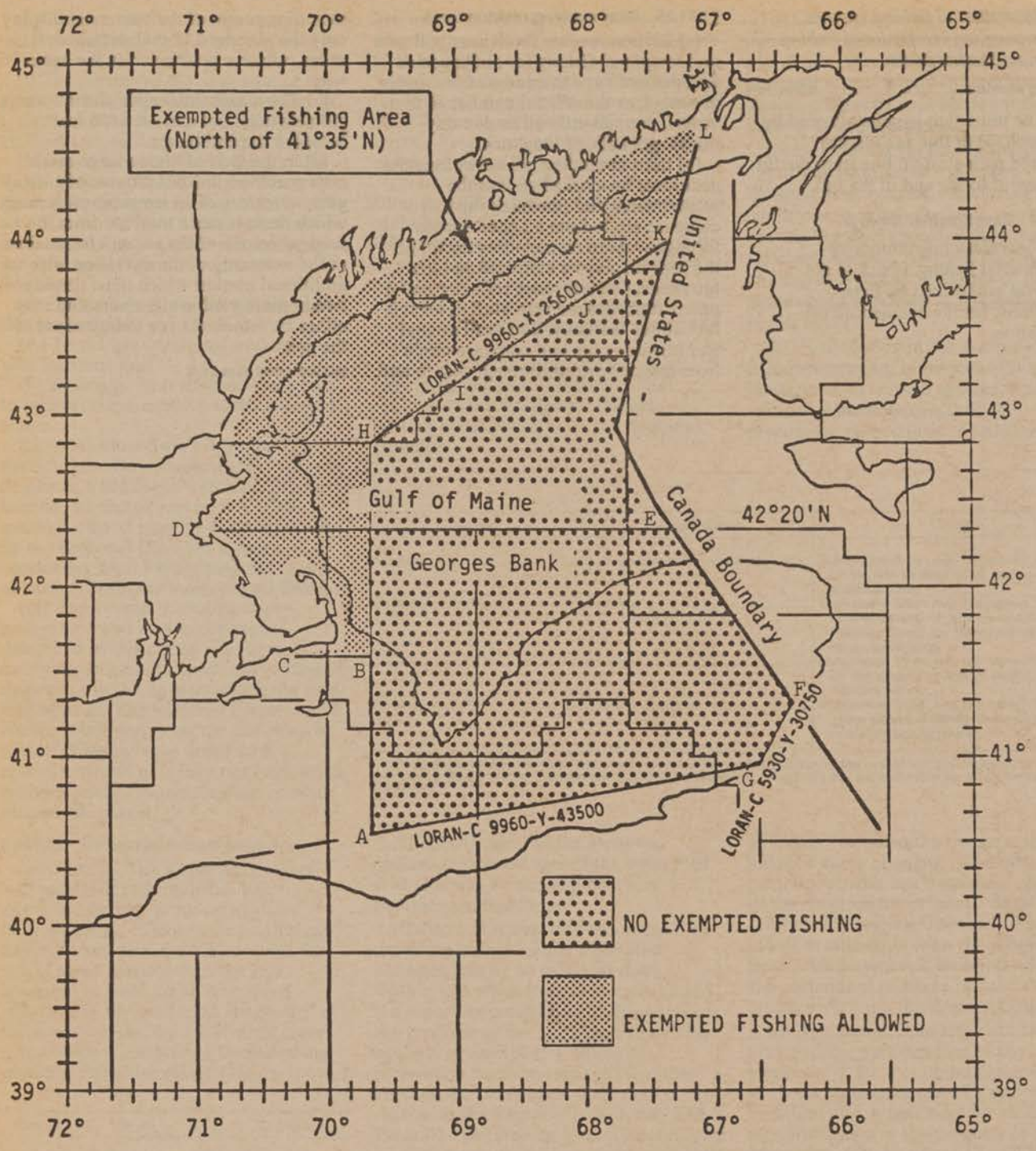

Figure 1. Gulf of Maine (north of 42°20' N. latitude) and Georges Bank (south of 42°20' N. latitude) large mesh areas. Exempted fishing area designated by small stipple. Coordinates listed in §651.20(a).

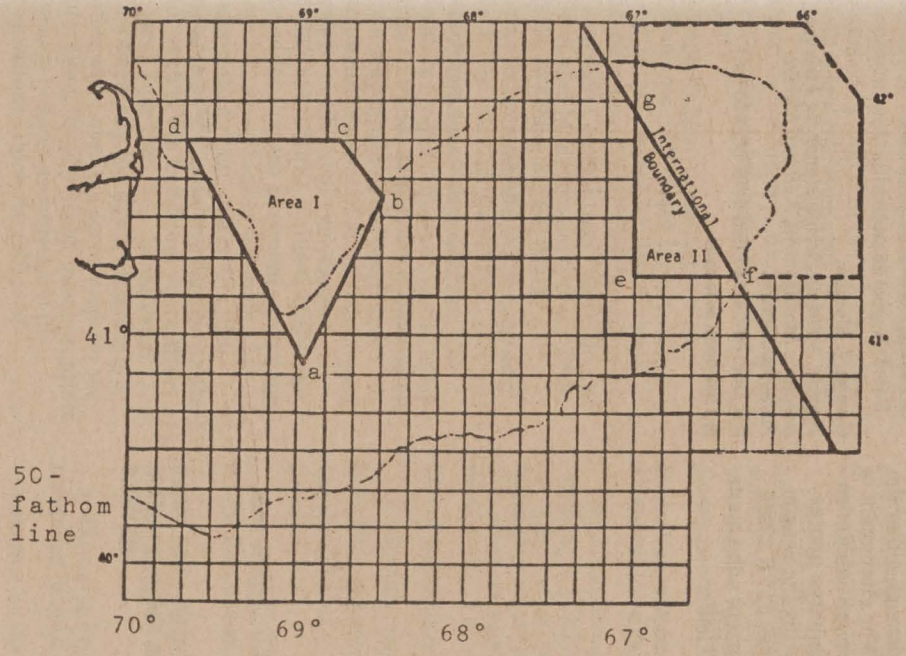

Figure 2. Georges Bank spawning closure Areas I and II. Coordinates listed in §651.21(a).

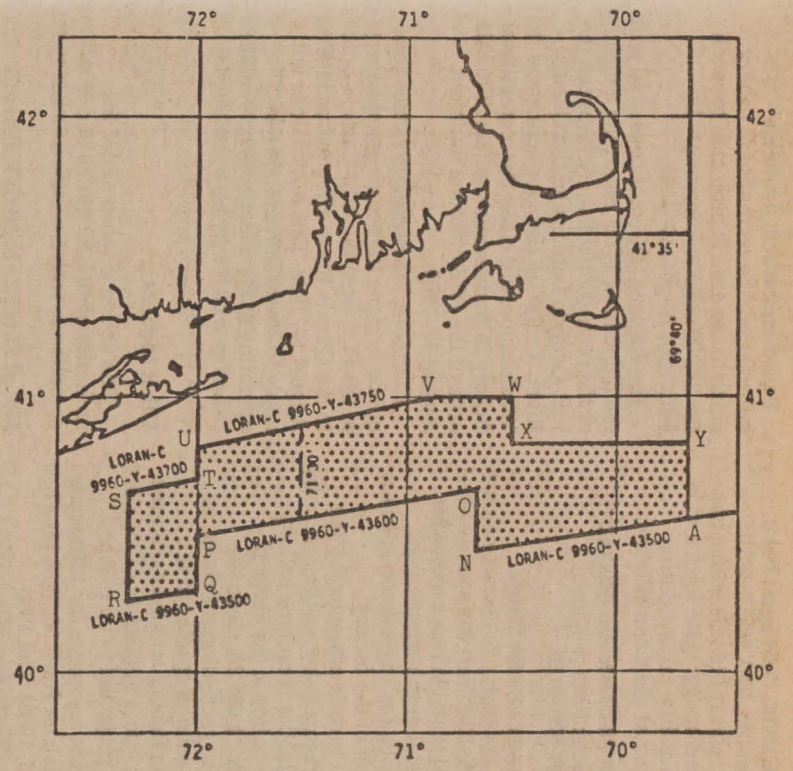

Figure 3. Southern New England/Middle Atlantic region closure. Coordinates listed in §651.21(b).

[FR Doc. 86-18815 Filed 8-19-86; 8:45 am]
BILLING CODE 3510-22-C

50 CFR Part 661

[Docket No. 60477-6077]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Secretary of Commerce (Secretary) announces the closure of the recreational salmon fishery in the fishery conservation zone (FCZ) from the U.S.-Canada border to the Queets River, Washington, at midnight, August 17, 1986, to ensure that the coho salmon quota is not exceeded. The Director, Northwest Region, NMFS (Regional Director), has determined in consultation with the Pacific Fishery Management Council and the Washington Department of Fisheries (WDF) that the recreational fishery quota of 22,600 coho salmon for the subarea will be reached by midnight, August 17, 1986. This closure is necessary to conform to the preseason announcement of 1986 management measures. This action is intended to ensure conservation of coho salmon.

EFFECTIVE DATE: Closure of the FCZ from the U.S.-Canada border to the Queets River, Washington, to recreational salmon fishing is effective at 2400 hours local time, August 17, 1986. Comments on this closure will be received until September 2, 1986.

ADDRESSES: Comments may be mailed to the Northwest Regional Office, NMFS, BIN C15700, 7600 Sand Point Way, NE., Seattle, WA 98115-0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the same address.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten (Regional Director), 206-526-6150.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at 50 CFR Part 661 specify at § 661.21(a)(1) that: "When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by publishing a notice in the **Federal Register** under § 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached."

Management measures for 1986 were made effective on April 30, 1986 (51 FR 16520, May 5, 1986). The 1986 recreational fishery for all salmon species in the FCZ from the U.S.-Canada border to the Queets River was established as June 29 through either the earliest of September 25 or attainment of a quota of either 28,000 coho salmon or 2,300 chinook salmon. Subarea quotas were modified twice during the season (51 FR 26900, July 23, 1986; 51 FR 29234, August 15, 1986). The current coho quota for the subarea is 22,600 fish.

Based on the best available information, the recreational fishery catch in the area is projected to reach the 22,600 coho salmon quota by midnight, August 17, 1986.

The Regional Director consulted with the Director of WDF regarding a closure of the recreational fishery between the U.S.-Canada border and the Queets River. The WDF Director confirmed that Washington will close the recreational fishery in State waters adjacent to this area of the FCZ effective midnight, August 17, 1986.

Therefore, the Secretary issues this notice to close the recreational fishery in the FCZ from the U.S.-Canada border to the Queets River effective midnight, August 17, 1986. This notice does not apply to treaty Indian fisheries operating in the same area or to other fisheries which may be operating in other areas.

Other Matters

This action is taken under the authority of 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

Authority: 16 U.S.C. 1801 et seq.

Dated: August 15, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 86-18814 Filed 8-15-86; 4:36 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 51, No. 161
Wednesday, August 20, 1986

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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 540

Performance Management and Recognition System; Minimum Performance Award Funding

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is proposing the minimum percentage for calculating funds to pay performance awards to Performance Management and Recognition System (PMRS) employees for Fiscal Year 1987. Establishing a new minimum percentage each year is required by title II of the Civil Service Retirement Spouse Equity Act of 1984, which established the PMRS.

DATE: Comments will be considered if received no later than September 19, 1986.

ADDRESS: Send or deliver written comments to: Barbara L. Fiss, Acting Assistant Director for Performance Management; Personnel Systems and Oversight Group; Room 7520; Office of Personnel Management; 1900 E. Street NW.; Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Jack Pokoyk, (202) 632–7620.

SUPPLEMENTARY INFORMATION: The funding for performance awards to be paid to PMRS employees is determined as a percentage of the estimated aggregate amount of PMRS employees' pay for each fiscal year. Section 5406(c)(2)(A)(i)(II) of title 5, U.S. Code, provides that the minimum percentage used by an agency to determine the aggregate amount of performance awards paid during any fiscal year shall, for each of the four fiscal years after Fiscal Year 1985 ". . . be adjusted incrementally (by equal increments or otherwise) over the percentage for the preceding fiscal year by the appropriate agency head in accordance with regulations which the Office of Personnel Management shall prescribe;".

The regulations implementing the PMRS, issued on August 30, 1985 (50 FR 169), provide that the minimum percentage will be adjusted each year in accordance with OPM instructions. This proposed rule provides instructions on calculating the aggregate amount of performance awards to be paid for Fiscal Year 1987.

OPM is proposing that the minimum percentage for calculating the aggregate amount of PMRS performance awards to be paid by each agency during Fiscal Year 1987 will be .95 percent of the estimated aggregate amount of PMRS employees' pay for Fiscal Year 1987.

Procedures agencies must follow to calculate the aggregate amount of performance awards to be paid for each fiscal year are described at 5 CFR 540.109(b).

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulations will only affect Government employees and agencies.

Reduction of Comment Period for Proposed Rulemanking

I find that, because agencies are required to compute Fiscal Year 1987 awards funds at the beginning of the fiscal year, good cause exists for setting the comment period on this proposed rulemaking at 30 days.

List of Subjects in 5 CFR Part 540

Government employees, Wages.

U.S. Office of Personnel Management.

Constance Horner,
Director.

Accordingly, OPM proposes to amend 5 CFR Part 540 as follows:

PART 540—PERFORMANCE MANAGEMENT AND RECOGNITION SYSTEM

1. The authority citation for Part 540 continues to read as follows:

Authority: 5 U.S.C. Chapters 43 and 54.

2. Section 540.109(b)(1)(i) is revised to read as follows:

§ 540.109 Performance awards.

* * * * *

(b) * * *

(1) * * *

(i) Each agency is required to pay a minimum of .95 percent of the estimated aggregate amount of PMRS employees' basic pay for Fiscal Year 1987 for performance awards;

* * * * *

[FR Doc. 86–18770 Filed 8–19–86; 8:45 am]

BILLING CODE 6325–01–M

5 CFR Part 890

Federal Employees Health Benefits Program

AGENCY: Office of Personnel Management.

ACTION: Proposed regulations.

SUMMARY: The Office of Personnel Management (OPM) is proposing to revise its Federal Employees Health Benefits (FEHB) regulations to set forth the conditions under which OPM may, at its discretion, waive the participation requirement for individuals seeking health benefits coverage as annuitants. These proposed regulations would implement section 103 of the Federal Employees Benefits Improvement Act of 1986 (Pub. L. 99–251).

DATE: Comments must be received on or before October 20, 1986.

ADDRESSES: Written comment may be sent to Reginald M. Jones, Jr., Assistant Director for Pay and Benefits Policy, Retirement and Insurance Group, Office of Personnel Management, P.O. Box 57, Washington, DC 20044, or delivered to OPM, Room 4351, 1900 E Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Margaret Sears, (202) 632–0003.

SUPPLEMENTARY INFORMATION: Under the FEHB law, to have FEHB coverage after retirement, a retiring employee must have been covered under the FEHB Program for the 5 years immediately before retirement (or, if less than 5 years, for all periods of service during which he or she was eligible for coverage).

Pub. L. 99–251 gave OPM the authority to waive the 5-year participation

requirement when, in its sole discretion, it determines that it would be against equity and good conscience not to allow an individual to be enrolled in FEHB as an annuitant. Because the law specifies that a person's failure to satisfy the 5-year requirement must be "due to exceptional circumstances," we anticipate that such waivers would be granted infrequently and only in the rarest and most unusual circumstances.

Under the proposed regulations, an individual who requests a waiver would need to demonstrate that (1) he or she had intended to have FEHB coverage as a retiree; (2) the circumstances that prevented him or her from meeting the participation requirement were essentially outside his or her control; and (3) he or she had exercised due diligence in protecting the right to continue FEHB coverage into retirement.

In making its determination, OPM would consider such factors as (1) Whether the individual had a compelling reason to believe he or she was covered as a family member of another person enrolled in FEHB during the period of time in question; (2) evidence that the employing office refused to allow the employee to enroll; (3) evidence that the employee was misinformed by a person who reasonably could be expected to have the correct information; (4) the extent to which the individual could have controlled the events that led to the loss of the right continued FEHB coverage; and (5) whether the individual had acted to gain FEHB coverage at the earliest opportunity after learning of the loss of benefits or possible loss of future rights.

Employees are expected to exercise due diligence concerning their rights and obligations under the FEHB Program. Due diligence includes reading and acting on information provided to them and requesting information if none is given to them automatically. A waiver of the participation requirement would be appropriate only where an individual is unable due to circumstances essentially beyond his or her control to take the action necessary to preserve his or her future right to FEHB coverage as a retiree.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they affect only retired Federal employees and survivors of Federal employees and annuitants.

List of Subjects in 5 CFR Part 890

Administrative practice and procedures, Government and employees, Health insurance, Retirement.

U.S. Office of Personnel Management
Constance Horner,
Director.

Accordingly, OPM proposes to amend 5 CFR Part 890 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for Part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; Sec. 890.102 also issued under 5 U.S.C. 1104 and sec. 3(5) of Pub. L. 95-454, 92 Stat. 1112; Sec. 890.301 also issued under 5 U.S.C. 8905(b); Sec. 890.302 also issued under 5 U.S.C. 8901(5) and 5 U.S.C. 8901(9); Sec. 890.701 also issued under 5 U.S.C. 8902(m)(2); Subpart H also issued under Title I of Pub. L. 98-615, 98 Stat. 3195, and Title II of Pub. L. 99-251.

2. Section 890.108 is added to read as follows:

§ 890.108 Waiver of requirement for continued coverage during retirement.

(a) OPM may waive the eligibility requirements under 5 U.S.C. 8905(b) for health benefits coverage as an annuitant in the case of an individual who fails to satisfy such requirements if OPM, in its sole discretion, determines that, due to exceptional circumstances, it would be against equity and good conscience not to allow such individual to be enrolled as an annuitant in a health benefits plan under this part.

(b) OPM may grant a waiver as described in paragraph (a) of this section to an annuitant in rare and unusual circumstances if the annuitant shows by a preponderance of the evidence that—

(1) There is evidence demonstrating that the individual intended to be covered as an annuitant;

(2) The circumstance(s) that prevented the completion of the requirements of 5 U.S.C. 8905(b) was (were) essentially outside the individual's control; and

(3) The individual exercised due diligence in protecting the right to coverage as an annuitant.

(c) OPM will not grant a waiver soley because—

(1) An individual's retirement is based on disability or an involuntary separation; or

(2) An individual was misadvised (or not advised) by his or her employing office regarding the requirements for continuation of health benefits coverage into retirement.

[FR Doc. 86-18769 Filed 8-19-86; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

United States Standards for Grades of Pineapple Juice

Correction

In FR Doc. 86-17918, beginning on page 28719, in the issue of Monday, August 11, 1986, make the following corrections:

§ 52.1764 [Corrected]

1. On page 28720, third column, § 52.1764(c), second line, "container" should read "containers".

§ 52.1766 [Corrected]

2. On the same page, third column, § 52.1766(b)(1), "measurements" should read "measurement".

3. On the same page, third column, § 52.1766(c), second line, "if" should read "is".

§ 52.1768 [Corrected]

4. On page 28721, first column, second table under "Table I", under "Grade A", under the category "Unsweetened", third line, "12.0" should be removed, and under "Grade B", under the category "Unsweetened", third line, "10.5" should be removed.

5. On the same page, first column, first table under "Table II", under "Grade A", fourth line, "60" should read "40".

6. On the same page, first column, second table under "Table II", under "Grade A", under the category "Unsweetened", third line, "12.8" is removed, and under "Grade B", under the category "Unsweetened", third line, "12.8" is removed.

BILLING CODE 1505-01-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

[Docket No. PRM-73-3]

KMC, Inc., et al.; Withdrawal of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Withdrawal of petition for rulemaking (PRM-73-3) that was filed by KMC, Inc., et al.

SUMMARY: The Nuclear Regulatory Commission (NRC) is withdrawing, at the petitioner's request, a petition for rulemaking (PRM-73-3) that was filed by KMC, Inc., et al. The petitioner, in his

June 9, 1978 petition requested that the NRC amend 10 CFR Part 73 to include a statement that meeting the specific requirements normally would satisfy the performance requirements for physical protection at nuclear power plants.

ADDRESSES: A copy of the petitioner's letter requesting the withdrawal of the petition is available for public inspection or copying for a fee in the NRC's Public Document Room, 1717 H Street NW., Washington, DC. Single copies of the petitioner's letter requesting the withdrawal of the petition may be obtained free of charge by writing to the Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: John Philips, Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301–492–7086 or Toll Free: 800–368–5642.

SUPPLEMENTARY INFORMATION: In a **Federal Register** notice published on July 10, 1978 (43 FR 29635), the NRC announced the receipt of and requested comments on a petition for rulemaking (PRM–73–3) filed by KMC, Inc. et al. The comment period expired on September 8, 1978. (Subsequently, four letters of comment were received on the petition.) The petition, which was dated June 9, 1978, requested that the NRC amend § 73.55 to include a statement that, if a nuclear power reactor licensee meets the *specific* requirements for physical protection against an insider threat, as provided for in the NRC's regulations, a licensee will also meet the *general* performance requirements for physical protection as provided in § 73.55.

By letter dated June 26, 1986, the petitioner stated his intention to withdraw the petition. This withdrawal is based on the fact that many studies have been made of the benefits and disadvantages of alternative proposals, additional studies have been made of the insider threat, and a major NRC task force studied the safeguards/safety interfaces. According to the petitioner: "As a result of the past eight years of studies and dialogue there no longer appears to be any major disagreements on the need for further alternative measures." Also important to the petitioner's decision to withdraw the petition is the fact that the NRC recently decided to adopt "two elements from the Insider Rule Package for rule change"—"Searches of Individuals at Power Reactor Facilities" (10 CFR Part 73) that will revise the search requirements for individuals entering the protected area of nuclear power plants, and "Miscellaneous Amendments Concerning Physical Protection of Nuclear Power Plants" (10 CFR Part 73) that will require access control to vital areas, the protection of certain physical security equipment, revise requirements for key and lock controls, and revise the authority to suspend safeguards measures during emergencies. The Commission has also decided "to issue the remaining element on Access Authorization as a policy statement in cooperation with NUMARC." (This was previously issued as a proposed rule entitled "Personnel Access Authorization as a policy statement in cooperation with NUMARC." (This was previously issued as a proposed rule entitled "Personnel Access Authorization Program" and would have amended 10 CFR Parts 50 and 73). Because of the foregoing, the petitioner concluded that "all actions we could have expected have been taken."

Dated at Bethesda, Maryland, this 13th day of August 1986.

For the Nuclear Regulatory Commission.

Jack W. Roe,

Acting Executive Director for Operations.

[FR Doc. 86–18775 Filed 8–19–86; 8:45 am]

BILLING CODE 7590–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 337

Unsafe and Unsound Banking Practices

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Proposed rule.

SUMMARY: The FDIC is seeking comment on whether or not to amend the requirements in its regulations which: (1) Prohibit an insured nonmember bank that has a subsidiary or affiliate that engages in securities activities that are prohibited to the bank by the Glass-Steagall Act from sharing a common name or logo with such subsidiary or affiliate, and (2) require that an insured nonmember bank must have separate offices which share no common entrance with such subsidiary or affiliate.

DATE: Comments must be received by October 20, 1986.

ADDRESS: Send comments to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand delivered to and reviewed in Room 6108 Monday through Friday between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Pamela E.F. LeCren, Senior Attorney, Legal Division, (202–898–3743), 550 17th Street, NW., Washington, DC 29429.

SUPPLEMENTARY INFORMATION: In November 1984 the Board of Directors of the FDIC added § 337.4 to Part 337 of its regulations titled "Unsafe and Unsound Banking Practices" (12 CFR 337) (49 FR 46709). Section 337.4, which governs certain securities activities or subsidiaries of insured nonmember banks as well as affiliate relationships between insured nonmember banks and certain types of securities companies, was adopted as a result of a rulemaking procedure initiated in 1982 after the Board of Directors issued a policy statement concerning the applicability of the Glass-Steagall Act (12 U.S.C. 24 (seventh), 78, 377, and 378) to affiliates and subsidiaries of insured nonmember banks. (47 FR 38984). The policy statement concluded that the Glass-Steagall Act does not prohibit insured nonmember banks from being affiliated with securities companies or from establishing or acquiring a securities subsidiary. Inasmuch as it was also the Board of Directors' conclusion that certain indirect securities activities could pose safety and soundness and other concerns if unregulated, the FDIC sought comment on the need to adopt regulations governing such activities.

The FDIC issued an Advance Notice of Proposed Rulemaking in 1982 (47 FR 42141), a proposed regulation in 1983 (48 FR 22155) and a revised proposed regulation in 1984 (49 FR 18497). The final regulation became effective on December 28, 1984.

In general the regulation was designed to protect bank safety and soundness, to ensure the legal separateness of a bank from its securities subsidiary or affiliate, and to prevent possible confusion on the part of the public which could give rise to claims against the deposit insurance fund and/or claims against the FDIC as receiver of a closed bank. (*See* the earlier Federal Register notices accompanying the final and proposed versions of the regulation for a more detailed discussion.) The FDIC sought to achieve these ends by, among other things: (1) Prohibiting the use by an insured nonmember bank of a common name or logo with its securities affiliate if that affiliate engages in securities activities prohibited to the bank by the Glass-Steagall Act, and (2) requiring that an insured nonmember bank be physically separate and distinct in its operations from the operations of such a

securities subsidiary or affiliate such separation requiring separate offices (clearly identified as belonging to the subsidiary or affiliate) that share no common entrance with the bank except for a common outer lobby or common corridor.[1] (Insured nonmember banks that had become affiliated with a securities company prior to December 28, 1984 or which prior to that date established or acquired a securities subsidiary, were given until December 28, 1985 to comply with these provisions of the regulation.)

In December 1985 the FDIC received two petitions requesting that the FDIC reconsider the prohibition on the use of a common name or logo by a bank and its affiliate. The petitions were filed by Merrill Lynch Bank & Trust, Princeton, New Jersey and Prudential Bank & Trust, Atlanta, Georgia. Both petitioners became affiliated with a securities company prior to December 28, 1984. Prudential Bank & Trust was acquired by a company which also is affiliated with a securities firm and Merrill Lynch Bank & Trust, whose parent also owns a securities company, was formed as a newly incorporated bank. A third petition requesting that the FDIC reconsider the separate office and entrance requirement for a bank's subsidiary was filed by Washington Mutual Savings Bank, Seattle, Washington. Washington Mutual Savings Bank acquired a securities subsidiary prior to December 28, 1984. The FDIC subsequently received several letters in support of the petitions from other insured nonmember banks. In order to afford the FDIC sufficient opportunity to study the petitions, the Board of Directors extended the December 28, 1985 compliance deadline with respect to preexisting relationships until June 20, 1986. All three of the petitioners urged the FDIC to eliminate the provisions under discussion and to insert in lieu thereof a number of affirmative disclosure requirements which would highlight the separate identity of the bank from its subsidiary or affiliate and stress that any investments placed with or through the subsidiary or affiliate are not insured by the FDIC.[2]

At its June 16, 1986 Board of Directors meeting the FDIC's Board of Directors voted to grant the petitioners' request for reconsideration and to solicit comment on whether or not to retain, or modify in some manner, the prohibition on the use of a common name and logo and the separate office and entrance requirement. The Board of Directors also voted to extend the June 30, 1986 compliance deadline to yearend (December 31, 1986) for institutions with affiliate and/or subsidiary relationships that predated the effective date of the regulation.

The Board of Directors feels that it is appropriate to solicit comment on the common name and separate office restrictions not only in view of the issues raised by the petitions but in view of the passage of nearly two years since the FDIC last sought comment on, and considered the propriety of, the common name and logo prohibition and the separate office and entrance requirement. To assist the FDIC in assessing whether or not the restrictions should be modified or perhaps eliminated, the FDIC is seeking comments generally addressing the efficacy of retaining the common name prohibition and the separate facility requirement. In addition, the FDIC is seeking responses to the following specific questions:

Common Name or Logo

1. What circumstances, if any, have occurred in the past two years that should be brought to the FDICs attention which demonstrate one way or the other that public confusion may or may not arise as the result of the use of a common name or logo?

2. If the FDIC were to eliminate the common name or logo prohibition, should other limitations or requirements be instituted in its place? What measures would be appropriate to ensure against the possible public confusion the FDIC seeks to avoid? Would it be appropriate or advisable to strengthen other restrictions in the regulation applicable to bona fide subsidiaries and affiliates? For example, should the regulation affirmatively prohibit a bank and its affiliate that share a common name or logo from cross selling each other's products?

3. What has been the experience over the past two years of banks, their subsidiaries, and/or affiliates which are now subject to the prohibition? Has the restriction in fact hampered competition with other financial services providers?

4. If the prohibition is retained, should the FDIC define what constitutes a common name or logo? If so, what should that definition be?

5. Should the FDIC adopt an affirmative disclosure requirement in lieu of the common name prohibition? Will such requirement adequately protect against public confusion and a piercing of the corporate veil? If a disclosure requirement is adopted, what should be required to be disclosed? What form should disclosure take? Would adopting such an approach involve the FDIC in monitoring advertisements, customer contacts etc., to ensure that marketing efforts are not misleading?

Separate Office and Entrance

1. What events, if any, have occurred over the past two years that should be brought to the FDIC's attention which argue for or against the proposition that separate offices with separate entrances are necessary or advisable in order to prevent public confusion and protect against a piercing of the corporate veil?

2. If the FDIC were to modify (but not eliminate) the separate facility requirement as contained in the regulation, how should that be accomplished? If the physical separation requirement is liberalized, would it be appropriate or advisable to strengthen other restrictions in the regulation applicable to bona fide subsidiaries and affiliates? Would the potential risk of public confusion be sufficiently contained if the regulation permitted, for example, the use of "office space" within bank branches or on the affiliate's premises so long as the office space is clearly distinguishable? Is the separate office requirement alone sufficient to address the FDIC's concerns?

3. Is it arguable that the importance of maintaining a strict physical separation between a bank and its securities subsidiary or affiliate in order to prevent public confusion may vary depending upon the overall facts and circumstances, *e.g.*, if a bank and its securities subsidiary do not share a common name or logo less stringent physical measures may adequately differentiate the bank from its subsidiary whereas greater physical

[1] The separate office and entrance requirement and the common name prohibition are found in the definition of the term "bona fide subsidiary" as set forth in the regulation. (Section 337.4(a)(2)). The remainder of the definition sets forth the following criteria for a bona fide subsidiary: (1) Adequate capital, (2) separate accounting and other corporate records, (3) separate corporate formalities, (4) separate employees compensated by the subsidiary (except for back office employees who have no customer contact), (5) no common officers with the bank, (6) a board the majority of which is composed of persons who are neither directors nor officers of the bank, and (7) the conduct of business pursuant to independent policies and procedures designed to inform customers and prospective customers of the subsidiary that the subsidiary is a separate organization from the bank and that investment recommended, offered or sold by the subsidiary are not bank deposits, are not insured by the FDIC, and are not guaranteed by the bank or otherwise bank obligations. (Section 337.4(c)). For the most part, the same criteria must be met in the case of an affiliate.

[2] The petitions are available for inspection and copying in the FDIC's Office of the Executive Secretary.

separation may be advisable if a common name is used?

4. What specific alternatives should the FDIC consider in lieu of the separate office and entrance requirement?

5. If the FDIC were to eliminate the physical separation requirement and institute in lieu thereof a specific affirmative disclosure requirement, what should the FDIC require to be disclosed? What form should disclosure take?

6. What has been the experience of banks over the past two years which have acquired or established securities subsidiaries that conform to the existing requirements for a bona fide subsidiary? Was the separate office and entrance requirement burdensome? Have institutions which may have otherwise acquired or established a securities subsidiary not done so because of the separate office and entrance requirement?

Comments addressing these specific questions and any other aspects of the general subject matter of common names and logos and separate offices and entrances as well as on other provisions of the regulation that are germane to the issue of legal separateness and public confusion are invited. Included in the topic of general subject matter is the issue of whether or not the FDIC should leave these provisions intact and address any cases of hardship, etc. on a case-by-case basis. (Section 337.10 permits the Board of Directors to waive all or any portion of Party 337 for good cause).

List of Subjects in 12 CFR Part 337

Banks, Banking, Federal Deposit Insurance Corporation, Securities, State nonmenber banks.

By Order of the Board of Directors.

Dated: August 13, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-18722 Filed 8-19-86; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-NM-160-AD]

Airworthiness Directives; Aerospatiale Model ATR-42 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD), applicable to Aerospatiale Model ATR-42 series airplanes, which would require replacement of the engine oil cooler thermostatic valve and modification of the engine oil cooler flap trailing edge. This action is prompted by reports of numerous incidents of thermostatic valve failures in the engine oil cooling system. These failures have resulted in oil overheating which, on several occasions, has required engine shutdown during flight. An interim corrective action for this problem, implemented by incorporation of ATR Service Bulletin 42-79-0001, Revision 1, dated June 13, 1986, has degraded the engine anti-icing capability of the airplane.

DATE: Comments must be received no later than September 10, 1986.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-160-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-2909. 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 (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-160-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion: The Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority of France, has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition which may exist on Aerospatiale Model ATR-42 airplanes. Numerous incidents of thermostatic valve failures in the engine oil cooling system have been reported. These failures have resulted in oil overheating which, on several occasions, has required engine shutdown during flight. To prevent this from occurring, Aerospatiale issued Service Bulletin ATR 42-79-0001, which describes a temporary modification to the engine oil cooling system. The DGAC has required compliance with that service bulletin.

A recent survey of U.S. operators revealed that all U.S.-registered ATR-42 airplanes had incorporated the modification and applied the procedures described in Aerospatiale Service Bulletin ATR 42-79-0001.

Since the engine icing protection is provided by extracting heat from the engine oil, the engine icing protection system could be affected by the installation described in the Aerospatiale service bulletin. The engine icing system modified in accordance with ATR Service Bulletin 42-79-0001, Revision 1, dated June 13, 1986, provides adequate icing protection down to an atmospheric temperature of International Standard Atmosphere (ISA) -15°C. However, during flights into winter icing conditions, it can be anticipated that atmospheric temperatures will be colder than ISA - 15°C., and improved engine icing protection will be required to provide the necessary anti-icing capability.

The DGAC has informed FAA that an improved thermostatic valve, Part Number 48114-1029, will be available by September 15, 1986. It is predicted that October 15, 1986, will be the approximate date when atmospheric

temperatures will begin to be lower than ISA -15°C. Therefore, this date has been judged to be appropriate for requiring the installation of the improved oil cooling system, which will be made available through Aerospatiale at the above address. Installation of the improved valve will require deletion of the oil cooler trailing edge angle from the previous installation. Modification instructions will be provided by Aerospatiale with the improved valve.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require replacement of thermostatic valve, P/N 11-374B, in the engine oil cooler system with an approved valve, P/N 48114-1029.

It is estimated that 5 airplanes of U.S. registry would be affected by this AD, that it would take approximately 5 manhours 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 this AD to U.S. operators is estimated to be $1,000.

For the reasons discussed above, 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 on a substantial number of small entities because of the minimal cost of compliance per airplane ($200). A final evaluation has been prepared for this regulation and placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

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 as follows:

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.

2. By adding the following new airworthiness directive:

Aerospatiale:

Applies to Model ATR-42 airplanes, certificated in any category. To ensure acceptable engine anti-icing capability, accomplish the following, unless previously accomplished:

A. Replace the engine oil cooler thermostatic valve, P/N 11-374B, with an improved valve, P/N 48114-1029, before October 15, 1986; and modify the oil cooler trailing edge angle, as required, in accordance with the installation procedures provided with the improved thermostatic valve.

B. 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, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this proposed directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse Cedex 03, France. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 12, 1986.

Joseph W. Harrell,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-18699 Filed 8-19-86; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 9189]

Detroit Auto Dealers Association, Inc., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, 50 motor vehicle associations, dealerships and dealers in the Detroit, Mich. area from conspiring to not advertise in the classified sections of newspapers or to advertise vehicle prices at all.

DATE: Comments must be received on or before October 20, 1986.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Robert Jones, FTC/G-402, Washington, DC 20580. (202) 254-7001.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Automobile dealers, Trade practices.

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an enforcement proceeding after an investigation of certain acts and practices of respondents identified in Attachments A, B and C, and those respondents having agreed to enter into an agreement containing an order to cease and desist from engaging in the acts and practices identified in Count II of the complaint,

It is hereby agreed by and between respondents identified in Attachments A, B and C, and counsel for the Commission that:

1. Respondent dealers identified in Attachment A are all corporations with their principal places of business located at the addresses shown in Attachment A.

2. Individual respondents identified in Attachment B are officers of various dealers, as shown in Attachment B, and as such they formulate, direct and control the acts and practices of the dealers for which they are officers.

3. The respondent association identified in Attachment C is an incorporated trade association for motor vehicle dealers with its principal places

of business located at the address shown in Attachment C.

4. The respondents listed in Attachments A, B and C have been served with a copy of the complaint issued by the Federal Trade Commission alleging that they and others have violated section 5 of the Federal Trade Commission Act, and have filed answers to the complaint denying these allegations.

5. The respondents listed in Attachments A, B and C admit all the jurisdictional facts relating to Count II set forth in the Commission's complaint in this proceeding.

6. The respondents listed in Attachments A, B and C waive the following with respect to Count II of the complaint:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

7. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the respondents listed in Attachments A, B and C, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of Count II of the complaint issued by the Commission in this proceeding.

8. This agreement is for settlement purposes only and relates solely to Count II of the Commission's complaint in this proceeding; this agreement does not constitute an admission by the respondents listed in Attachments A, B and C that the law has been violated as alleged in Count II of the complaint issued by the Commission.

9. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may without further notice to the respondents listed in Attachments A, B and C, (1) issue its decision containing the following Order to cease and desist in disposition of Count II of the complaint issued by the Commission in this proceeding, and (2) make information public in respect thereto. When so entered, the Order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to Order to respondents' addresses as stated in this agreement shall constitute service. The respondents listed in Attachments A, B and C waive any right they might have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or in the agreement may be used to vary or to contradict the terms of the Order.

10. The respondents listed in Attachments A, B and C have read the complaint and the Order contemplated hereby. These respondents understand that once the Order has been issued, they may be required to file one or more compliance reports showing they have fully complied with the Order. These respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

11. Commission counsel may not introduce or make reference in any way to the allegations in Count II of the complaint during the remainder of this proceeding; provided, that this paragraph in no way limits Commission counsel from introducing or using factual evidence otherwise admissible on the Count I allegations.

12. By its final acceptance of this agreement, the Commission waives its right to commence a proceeding or action against the respondents listed in Attachments A, B and C seeking consumer redress or other relief under section 5 or section 19 of the Federal Trade Commission Act with respect to the acts or practices alleged in Count II of the complaint; provided, that this paragraph in no way limits the Commission in seeking relief for a violation of the Order entered pursuant to this agreement or for any other actions of the respondents listed in Attachments A, B and C taken after final acceptance of the agreement.

Order

For purposes of this Order, the following definitions shall apply:

1. "Person" means any natural person, corporation, partnership, association, joint venture, trust or any other organization or entity, but not governmental entities.

2. "Dealer" means any person who receives on consignment, or purchases, motor vehicles for sale or lease to the public, and any director, officer, employee, representative or agent of any such person.

3. "Other Dealer" means any dealer not named in this Order.

4. "Dealer association" means any trade, civic, service, or social association whose membership is comprised primarily of dealers.

5. "Detroit area" means the Detroit, Michigan metropolitan area, comprising Macomb County, Wayne County and Oakland County in the State of Michigan.

6. "Respondent" means any corporation listed in Attachment A, any individual listed in Attachment B, or any association listed in Attachment C, and the officers, directors, representatives, agents, divisions, subsidiaries, and successors and assigns of any listed corporation or association.

I

It is ordered, that each respondent shall cease and desist from, directly or indirectly, or through any corporate or other device, entering into or continuing or carrying out any agreement, contract, combination or conspiracy with any respondent or any other dealer or dealer association in the Detroit area which has the purpose or effect of:

A. Restricting, regulating or limiting the advertising of any motor vehicle in the classified section of any newspaper or the advertising or publishing by any person of any price, term, or condition of sale of any motor vehicle, except to the extent that the restriction, regulation or limitation of such advertising is necessary for the purpose of engaging in lawful joint advertising; or

B. Maintaining, adopting or adhering to any policy, act or practice that restricts, regulates or limits the advertising by any person of any motor vehicle in the classified section of any newspaper or the advertising or publishing by any person of any price, term, or condition of sale of any motor vehicle, except to the extent that the restriction, regulation or limitation of such advertising is necessary for the purpose of engaging in lawful joint advertising.

II

It is further ordered, that each respondent shall cease and desist from, directly or indirectly, or through any corporate or other device, performing

any of the following acts or practices, or encouraging any person to perform any of the following acts or practices, or entering into or continuing or carrying out any agreement, contract, combination or conspiracy with any other person in the Detroit area to do or perform any of the following acts or practices:

A. Requesting, recommending, coercing, influencing, encouraging or persuading, or attempting to request, recommend, coerce, influence, encourage or persuade, any other respondent or any other dealer in the Detroit area to maintain, adopt or adhere to any policy, act or practice that restricts, regulates or limits the advertising by any person of any motor vehicle in the classified section of any newspaper or the advertising or publishing by any person of any price, term, or condition of sale of any motor vehicle, except to the extent that the restriction, regulation or limitation of such advertising is necessary for the purpose of engaging in lawful joint advertising; or

B. Requesting, recommending, coercing, influencing, encouraging or persuading, or attempting to request, recommend, coerce, influence, encourage or persuade, any other respondent or any other dealer in the Detroit area to change his advertised or published prices.

III

It is further ordered, that nothing contained in Parts I or II above shall be construed to prohibit: (a) Any respondent association from formulating, adopting, disseminating to its members, and enforcing lawful guidelines governing the conduct of its members with respect to advertisements that such respondent association reasonably believes would be false or deceptive within the meaning of section 5 of the Federal Trade Commission Act; (b) any other respondent from participating in such activities as identified in Subpart (a) of an association of which such respondent is a member; or (c) any respondent from informing or advising anyone regarding what the respondent reasonably believes to be the requirements of any other existing or proposed federal, state, or local law, regulation, or order, or publishing such interpretations thereof.

IV

It is further ordered, that the respondent association listed in Attachment C shall cease and desist from failing to maintain for five (5) years following the taking of any action against a person alleged to have violated any advertising guidelines as described in Part III of this Order, in a separate file segregated by the name of any person against whom such action was taken, any document that embodies, discusses, mentions, refers, or relates to the action taken and any allegation relating to it.

V

It is further ordered, that the respondent association listed in Attachment C shall:

A. Within sixty (60) days of the date this Order becomes final, amend its by-laws to incorporate by reference this Order, and provide each member with a copy of this Order and the amended by-laws;

B. For three (3) years from the date this Order becomes final, provide each new member with a copy of this Order and the amended by-laws within thirty (30) days of the new member's admission to the association.

VI

It is further ordered, that, for a period of three (3) years from the date this Order becomes final, the respondent association listed in Attachment C shall notify the Commission at least sixty (60) days prior to the adoption of any advertising guidelines as described in Part III of this Order.

VII

It is further ordered, that each respondent shall, within sixty (60) days after this Order becomes final, and then annually thereafter for a period of three (3) years, file with the Commission a report, in writing, signed by the respondent, setting forth in detail the manner and form in which it has complied with this Order.

VIII

It is further ordered, that each corporate respondent shall notify the Commission at least thirty (30) days prior to any proposed change in that corporate respondent, such as dissolution, assignment or sale, resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in that corporate respondent that may affect compliance obligations arising out of this Order. In the case of each natural person respondent named herein, for a period of three (3) years from the date this Order becomes final, said respondent shall promptly notify the Commission of the discontinuance of his present business or employment and of any new affiliation or employment with any dealer or dealer association. Such notice shall include the respondent's new business address and a statement of the nature of the business or employment in which said respondent is newly engaged, as well as a description of the respondent's duties and responsibilities in connection with the business or employment.

Attachment A

Jack Cauley Chevrolet, Inc., 7020 Orchard Lake Rd., West Bloomfield, Michigan 48033
Dexter Chevrolet Co., 20811 W. Eight Mile Rd., Detroit, Michigan 48219
Dick Genthe Chevrolet, Inc., 15600 Eureka Rd., Southgate, Michigan 48195
Jefferson Chevrolet Co., 2130 E. Jefferson Ave., Detroit, Michigan 48207
Lou LaRiche Chevrolet-Subaru, Inc., 40875 Plymouth Rd., Plymouth, Michigan 48170
Walt Lazar Chevrolet, Inc., 12000 Telegraph Rd., Taylor, Michigan 48180
Mark Chevrolet, Inc., 33200 Michigan Ave., Wayne, Michigan 48184
George Matick Chevrolet, Inc., 14001 Telegraph Rd., Redford, Michigan 48239
Matthews-Hargreaves Chevrolet Co., 1616 South Main St., Royal Oak, Michigan 48067
Merollis Chevrolet Sales & Service, Inc., 21800 Gratiot Ave., East Detroit, Michigan 48021
Ed Rinke Chevrolet-GMC Co., 26125 Van Dyke, Center Line, Michigan 48015
Mike Savoie Chevrolet, Inc., 1900 West Maple Rd., Troy, Michigan 48084
Les Stanford Chevrolet, Inc., 21711 Michigan Ave., Dearborn, Michigan 48123
Tennyson Chevrolet, Inc., 32570 Plymouth Rd., Livonia, Michigan 48150
Buff Whelan Chevrolet, Inc., 40445 Van Dyke, Sterling Heights, Michigan 48077
Wink Chevrolet Co., d/b/a Bill Wink Chevrolet/GMC, 10700 Ford Rd., Dearborn, Michigan 48126

Attachment B

John H. Cauley, Jack Cauley Chevrolet, Inc., 7020 Orchard Lake Rd., West Bloomfield, Michigan 48033
Joseph B. Slatkin, Dexter Chevrolet Co., 20811 W. Eight Mile Rd., Detroit, Michigan 48219
Richard E. Genthe, Dick Genthe Chevrolet, Inc., 15600 Eureka Rd., Southgate, Michigan 48195
Louis H. LaRiche, Lou LaRiche Chevrolet-Subaru, Inc., 40875 Plymouth Rd., Plymouth, Michigan 48170
Walter N. Lazar, Walt Lazar Chevrolet, Inc., 12000 Telegraph Rd., Taylor, Michigan 48180
Harry C. Demorest, Mark Chevrolet, Inc., 33200 Michigan Ave., Wayne, Michigan 48184
Norman A. Merollis, Merollis Chevrolet Sales & Service, Inc., 21800 Gratiot Ave., East Detroit, Michigan 48021
Harry Tennyson, Tennyson Chevrolet, Inc., 32570 Plymouth Rd., Livonia, Michigan 48150
William J. Wink, Jr., Wink Chevrolet Co., d/b/a Bill Wink Chevrolet/GMC, 10700 Ford Rd., Dearborn, Michigan 48126
Greater Detroit Chevrolet Dealers Association, Inc., 100 Renaissance Center, Suite 3100, Detroit, Michigan 48243

Analysis of Proposed Count II Consent Order To Aid Public Comment

The Federal Trade Commission has accepted agreements and proposed consent orders from 50 respondents charged under Count II of the Commission's complaint.

The proposed consent orders have been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreements and the comments received and will decide whether it should withdraw from the agreements or make final the proposed orders.

Description of the Complaint

On December 20, 1984, the Commission issued a two count complaint against 19 Detroit area automobile dealer associations; 105 Detroit area automobile dealerships; and 115 individuals (all of whom are or have been dealership owners, employees, or association employees) charging them under Count I with conspiring to restrict dealership operating hours. Count II of the complaint, which the present consent orders propose to settle, also charged certain of the Chevrolet, Cadillac, and Chrysler-Plymouth automobile dealership association respondents, automobile dealership respondents, and individual respondents (most of whom were owners of the respondent automobile dealerships) with conspiring to restrict (1) the advertising of motor vehicles in the classified section of newspapers and (2) the advertising or publishing of motor vehicle prices, in violation of section 5 of the Federal Trade Commission Act.

The complaint further alleged that the purpose and effects of the respondents' conduct challenged under Count II has been to restrict competition among dealers in the sale or lease of motor vehicles in the Detroit area. According to the FTC staff, these advertising restrictions also injure consumers by reducing consumers' access to important information about automobile prices in the Detroit area, thereby increasing dealers' ability to maintain higher prices.

The Proposed Consent Orders

Three identical consent agreements have been executed by 50 Count II respondent associations, dealerships, and individuals, grouped by automobile makes, *i.e.*, Chevrolet, Chrysler-Plymouth and Cadillac. The proposed consent orders against these 50 respondents are designed to remedy the Count II violations charged in the Commission's complaint, and to prevent the Count II respondents from engaging in similar allegedly illegal acts and practices in the future. The proposed orders are intended to ensure that the Count II respondents cease all conduct prohibiting or discouraging the truthful advertising of motor vehicles in the classified sections of newspapers or the advertising or publishing of the prices, terms, or conditions of sale of any motor vehicle.

Part I provides that each respondent must cease and desist from, directly or indirectly, entering into or continuing any agreement, contract, combination, or conspiracy with any respondent, or with any other dealer or dealer association in the Detroit area, which has the purpose or effect of (A) restricting the advertising of any motor vehicle in the classified section of any newspaper or the advertising or publishing by any person of any price, term, or condition of sale of any motor vehicle or (B) maintaining, adopting or adhering to any policy, act or practice that restricts the advertising of any motor vehicle in the classified section of any newspaper or the advertising or publishing by any person of any price, term, or condition of sale of any motor vehicle. The prohibitions in Part I (A) and (B) do not prevent respondents from imposing any restriction, regulation or limitation of such advertising that is necessary for lawful joint advertising. Part I will effectively remedy the complaint's Count II allegations that these respondents have conspired to restrict price advertising of motor vehicles and the advertising of motor vehicles in the classified sections of newspapers.

Part II goes beyond the prohibitions of Part I against actual agreements to restrain price advertising or advertising in the classified sections of newspapers. It reaches unilateral actions and attempts by prohibiting each respondent from (directly or indirectly) attempting to (A) request, recommend, coerce, influence, encourage or persuade any other respondent or other dealer in the Detroit area to maintain, adopt or adhere to any policy, act or practice that restricts or regulates the advertising by any person of any motor vehicle in the classified section of any newspaper, or the advertising or publishing by any person of any price, term, or condition of sale of any motor vehicle or (B) request, recommend, coerce, influence, encourage or persuade any other respondent or any other dealer in the Detroit area to change its advertised or published prices. The prohibitions in Part II(A) parallel those in Part I by applying to any "term or condition of sale" and by not preventing any restriction, regulation or limitation of advertising that is necessary for lawful joint advertising.

Part III(a) provides that Parts I and II do not prevent any respondent association from formulating and enforcing lawful guidelines against its members with respect to advertisements that such association "reasonably believes" are false or deceptive under section 5 of the Federal Trade Commission Act. Part III(b) permits any dealership-member of an association to participate in the association activities described in Part III(a). Part III(c) permits any respondent to inform or advise anyone or publish interpretations of what it reasonably believes to be the requirements of any existing or proposed federal, state, or local law (excluding section 5 of the Federal Trade Commission Act, which is addressed in Part III(a)), regulation, or order. However, in order that the Commission not delegate law enforcement authority to private parties, this provision does not require that the respondent receiving the advice must abide by it.

Part IV requires that each association respondent maintain documentation concerning any action taken against any person alleged to have violated any association advertising guidelines described in Part III. This documentation must be maintained for 5 years following the taking of any such action.

Part V requires that, within 60 days of the Order becoming final, each respondent association amend its by-laws to incorporate by reference the Order, and provide each association member with a copy of the Order and amended by-laws. In addition, for 3 years from the Order becoming final, each new member of the association must be provided with such documentation within 30 days of its admission to the association.

Part VI provides that, for 3 years, each respondent association must notify the Commission at least 60 days prior to the adoption of any advertising guidelines described in Part III.

The purpose of this analysis is to facilitate public comment on the proposed orders, and it is not intended to constitute an official interpretation of

the agreements and proposed orders or modify in any way their terms.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 86-18747 Filed 8-19-86; 8:45 am]

BILLING CODE 6750-01-M

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16 CFR Part 13

[Docket No. 9201]

Electronic Systems International, Inc., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a Norcross, Ga. manufacturer and marketer of "SavIt" duty cyclers to cease making unsubstantiated representations as to the efficiency of its products or services. Additionally, respondents would be required to request all dealers of its products to refrain from making the challenged claims and to recall all promotional material that does not conform to the proposed order.

DATE: Comments must be received on or before October 20, 1986.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave. NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Michael Dershowitz, FTC/B-407, Washington, DC 20580. (202) 376-8720.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Duty cyclers, Energy savings, Trade practices.

Before Federal Trade Commission

[Docket No. 9201]

Settlement Agreement Containing Order

The agreement herein, by and between Electronic Systems International, Inc., a corporation, and Gene B. Patterson, individually and as an officer of said corporation, ("respondents") and their attorney and counsel for the Federal Trade Commission, is entered in accordance with the Commission's Rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Respondent Electronic Systems International, Inc. is a Georgia corporation with its principal office and place of business at 2797 Peterson Place, in Norcross, Georgia 30071.

Respondent Gene B. Patterson is an officer of the corporate respondent. He actively participated in the advertising practices which are the subject of the complaint issued by the Federal Trade Commission, and his principal office or place of business is the same as that of the corporation.

2. Respondents have been served with a copy of the complaint issued by the Federal Trade Commission charging them with violations of section 5 of the Federal Trade Commission Act.

3. Respondents admit all the jurisdictional facts set forth in the Commission's complaint in this proceeding.

4. Respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

5. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the respondents, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in the said copy of the complaint issued by the Commission.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may without further notice to respondents, (1) Issue its decision containing the following order in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to respondents' address as stated in this agreement shall constitute service. Respondents waive any right they might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or to contradict the terms of the order.

8. Respondents have read the complaint and the order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definitions

For purposes of this order, the following definitions shall apply:

"Energy-related claim" means any general or specific, oral or written representation that, directly or by implication, describes or refers to energy savings, energy cost savings, efficiency or conservation, "payback," or "payback" potential.

A "competent and reliable test" means any scientific, engineering, laboratory, or other analytical report, study or survey prepared by one or more persons with skill and expert knowledge in the field to which the material pertains and based on testing, evaluation and analytical procedures that ensure accurate, reliable and statistically meaningful results.

"Small commercial" heating and cooling systems are similar to residential, central forced air type systems.

A "Duty-cycler" (sometimes referred to as a "cyclic controller") means any electronic device which:

(a) Functions to interrupt a thermostatically-controlled cycle of any single, residential or small commercial, forced air central heating or air conditioning unit; or which

(b) May be incorporated in any other product, such as a setback thermostat, to function in the manner described in (a) above.

Respondents market their duty-cycler under the brand name "SavIt" (TM), among others.

A "Duty-cycler" is not:

(a) A residential setback thermostat; or

(b) An energy load management or control device used in large commercial or industrial settings to turn off a series of electrical heating, cooling, or ventilating equipment for predetermined periods of time during operating hours to reduce consumption and demand (i.e., the rate at which electric energy is delivered to the series of equipment).

Part I

It is ordered that respondents Electronic Systems International, Inc., a corporation, its successors and assigns, and its officers, and Gene B. Patterson, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, offering for sale, sale, or distribution of any duty-cycler or any other product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, in any manner that:

(1) Consumers will save 20%, or close to 20%, on their annual small commercial or home heating and cooling bills as a result of using a duty-cycler, as defined herein.

(2) More than a few consumers may be able to save enough money on their small commercial or home heating and cooling bills by using respondents' duty-cycler, as defined herein, to recoup a retail cost of approximately $400 within 18 months, or close to 18 months.

(3) More than a few consumers may be able to save enough money on their small commercial or home heating and cooling bills by using any duty-cycler, as defined herein, costing approximately $400 to recoup such cost within 18 months, or close to 18 months.

(4) Consumers can obtain a federal tax credit or reduce their federal income tax liability, by purchasing a duty-cycler, as defined herein, unless such is the case.

B. Making any energy-related claim for any duty-cycler, or any other product or service, unless at the time that the claim is made, respondents possess and rely upon a competent and reliable test or other objective material which substantiates the claim.

C. Misrepresenting, directly or by implication, in any manner, the purpose, content, or conclusion of any test, study, or survey upon which respondents rely as substantiation for any energy-related claim, or making any representation which is inconsistent with the results or conclusions of any such test, study or survey.

Part II

It is further ordered that respondents Electronic Systems International, Inc., a corporation, its successors and assigns, and its officers, and Gene B. Patterson, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, offering for sale, sale, or distribution of any duty-cycler or any other product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall, for at least three years from the date of the last dissemination of energy-related claims, maintain and upon request make available to Federal Trade Commission staff for inspection and copying, copies of:

1. All materials relied upon to substantiate any energy-related claim; and

2. All test reports, studies, surveys or demonstrations in their possession that contradict, qualify, or call into question any energy-related claim.

Part III

It is further ordered that respondents shall:

A. Within thirty (30) days after the date of service of this order, send the following material via first class mail to every person or firm that is a current distributor or dealer of respondents' duty-cycler equipment:

1. A copy of this order, and

2. A copy of the cover letter attached to this order as Attachment A, incorporated herein by reference.

B. Distribute a copy of this order to each of respondents' operating divisions, and to each of its officers, agents, representatives or employees engaged in the preparation or placement of advertisements or other sales materials.

C. Supply to the Federal Trade Commission upon request the names and addresses of those parties to whom respondents distributed the material required by Paragraphs A and B of Part III of this order.

Part IV

It Is Further Ordered that respondents shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporate respondent such as dissolution, assignment or sale, resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this order.

Part V

It Is Further Ordered that each individual respondent named herein shall for a period of 3 years from the date of service of this order, promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment whose activities include the manufacture, advertising, promotion, offering for sale, sale, or distribution of energy control devices and of his affiliation with any new business or employment in which his own duties and responsibilities involve the manufacture, advertising, promotion, offering for sale, sale, or distribution of energy control devices, with each such notice to include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged, as well as a description of respondent's duties and responsibilities in connection with the business or employment.

Part VI

It Is Further Ordered that respondents shall, within sixty (60) days after this order becomes final, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order.

Attachment A

Electronic Systems International, Inc.
Letterhead

Re: Settlement with Federal Trade Commission

Dear Electronic Systems International, Inc. Dealer: As a result of a Federal Trade Commission investigation of advertising claims for our duty-cycler product, we have entered into the enclosed Settlement Agreement and Order. The Agreement is for settlement purposes only and does not constitute an admission that we violated the law. At issue in the investigation were a number of energy cost savings, payback and federal energy tax credit claims.

We have agreed to stop making certain claims in the future and to refrain from using all promotional material that may contain such claims. In order to ensure that such claims will no longer be made, we request that you refrain from making them, either orally or in writing, and from distributing any literature in your possession which does not conform to the enclosed agreement. Please return to us any promotional literature or film concerning the duty-cycler and we will replace it with updated literature and an edited film as appropriate.

Thank you for your assistance in this matter.

Sincerely,

President, Electronic Systems International, Inc.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Electronic Systems International, Inc., a corporation, and Gene B. Patterson, individually and as an officer of the corporation.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint charges the corporation and Gene B. Patterson (hereinafter "respondents") made false, misleading and unsubstantiated energy savings claims in advertisements for their duty-cycler energy control device sold under the brand name "SavIt." According to the complaint, advertisements for the "SavIt" represented that use of the device would save consumers at least 20% and possibly as much as 40% on their annual small commercial or home heating and cooling bills and that such savings had been proven by competent and reliable tests. The complaint also alleged the advertisements represented that consumers would save enough on their energy bills in less than eighteen months of using the "SavIt" to recover the purchase price, and also represented that the device qualified for a federal energy tax credit. The Commission charged that these claims are false and misleading. The Commission also charged that these claims are unsubstantiated because the tests undertaken by respondents were not designed to yield competent, reliable and statistically valid results.

The consent order contains various provisions designed to remedy the violations charged.

The order defines an "energy-related claim" as one that refers to energy savings, energy cost savings, efficiency or conservation or payback potential; a "competent and reliable test" as a scientific or analytical report or study prepared by experts using procedures that would yield valid results; "small commercial" as systems similar to residential, central forced air types; and a "duty-cycler" as an electronic device, other than a setback thermostat or industrial energy load management device, that either alone or when incorporated into another product, interrupts a thermostat-controlled cycle of a single residential or small commercial forced air central heating or air conditioning unit.

Part I of the order prohibits respondents from representing that consumers will save 20%, or close to 20% on their annual heating and cooling bills by using a duty-cycler. The order also prohibits them from representing that more than a few consumers may be able to recover in eighteen months the approximately $400 purchase price of respondents' duty-cycler, or any other duty-cycler, from lower energy bills due to use of such device. Respondents are also prohibited from representing that consumers are eligible for a federal income tax credit, unless that is true.

The order further requires respondents to substantiate any energy-related claim for any product or service with a competent and reliable test or other objective material and prohibits them from misrepresenting the purpose, content or conclusion of such substantiation.

Part II of the order requires respondents to maintain records of all substantiation related to the requirements of the order for three (3) years after the dissemination of any advertisements.

Part III requires respondents to distribute a copy of the order to each operating division and employee involved in preparation or placement of advertising or sales material and to distributors or dealers of respondents' energy control devices. In addition, the order requires respondents to send a letter to all current distributors or dealers recalling all promotional material that does not conform to the consent agreement.

Part IV requires respondents to notify the Commission at least thirty (30) days before any change in the corporation that might affect compliance with the order.

Part V requires Gene B. Patterson, for a period of three (3) years, to notify the Commission of the discontinuance of his present employment and of his affiliation with a new business or employment whose activities, or his own duties, include the manufacture, advertising, promotion, sale or distribution of energy control devices.

Part VI requires respondents to file a compliance report sixty (60) days after the order is served.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 86-18748 Filed 8-19-86; 8:45 am]

BILLING CODE 6750-01-M

16 CFR Part 703

Rule on Informal Dispute Settlement Procedures

AGENCY: Federal Trade Commission.

ACTION: Notice of formation of advisory committee and notice of first meeting.

SUMMARY: The Federal Trade Commission has decided to form a committee under the Federal Advisory Committee Act, 5 U.S.C. App. I 1–15, to develop proposed revisions to the Commission's Rule on Informal Dispute Settlement Procedures, 16 CFR Part 703. The advisory committee will be made up of persons representing the major interests affected by the rule. The committee members will attempt, through negotiations, to arrive at a consensus on recommended revisions to the rule. The committee's title will be the "Rule 703 Advisory Committee." This notive announces the formation of the committee and the time and place of the first committee meeting.

DATE: The first meeting of the Rule 703 Advisory Committee will be held on September 23, 1986 beginning at 10:00 a.m. The meeting will be open to the public.

ADDRESS: The first meeting will be at the National Institute for Dispute Resolution, 1901 L Street NW., Suite 600, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT:
Chairperson:

John A.S. McGlennon, ERM-McGlennon Associates Inc., 283 Franklin Street, Boston, MA 02110 (617) 357–4443

Gail Bingham, The Conservation Foundation, 1255 23rd Street NW., Washington, DC 20037 (202) 293–4800

FTC Staff:

David W. Koch, Division of Marketing Practices Federal Trade Commission, Washington, DC 20580 (202) 523–3911

SUPPLEMENTARY INFORMATION: On February 12, 1986, the Commission published a notice (51 FR 5025) announcing its intention to form an advisory committee to develop proposed revisions to the Rule on Informal Dispute Settlement Procedures ("Rule 703"), 16 CFR Part 703. The notice stated that the committee would develop its recommendations through regulatory negotiation. The Commission invited public comment on the suitability of Rule 703 for such a negotiation process. The Commission also sought comment on the interests identified in the notice as being affected by the rule, on the membership of the proposed committee, on the issues that the committee should consider, and on the procedures that the committee should follow.

Comments Concerning Use of Regulatory Negotiation

The Commission received twenty-two comments in response to the February 12 notice. The comments, which have been placed on the public record, almost uniformly support the Commission's plan to seek improvements in Rule 703 through regulatory negotiation. Only one commenter opposes the use of such a process. That commenter states that any effort to revise Rule 703 is inappropriate at this time because the rule has not yet been proven unworkable in its current form. The commenter further states that, even if revision of Rule 703 is to be undertaken, the rule is not well-suited for regulatory negotiation, because consumer groups and consumer protection agencies cannot adequately represent the interests of individual consumers, who are ultimately the ones whose interests are at stake. The commenter believes that a traditional notice-and-comment rulemaking would better allow for expression of the interests of individual consumers.

The Commission disagrees with the view that discussing revision of Rule 703 would be premature. The agency has withnessed growing discontent with Rule 703 by nearly all of those affected by it: Warrantors, dispute settlement service providers, consumers, and state and local consumer protection agencies. Such dissatisfaction has already resulted in actions by states and private companies that may lead to reduction in the availability of informal dispute settlement mechanisms ("IDSMs"). This phenomenon conflicts with the Commission's mandate in Section 110 of the Magnuson-Moss Warranty Act, 15 U.S.C. 2310, to encourage the growth of informal dispute settlement.

The Commission also disagrees with the view that regulatory negotiation is inappropriate for Rule 703 because consumer groups cannot adequately represent the interests of individual consumers. The Commission notes that a wide variety of consumer interest representatives, including state, county, and private organizations, will participate on the committee. The Commission believes that these organizations encompass enough different perspectives and comulative experience to assure familiarity with the views and concerns of individual consumers. Moreover, subsequent rulemaking procedures will provide ample opportunity for individual consumers and others to comment on any consensus the advisory committee might reach.

Based on its review of the comments received, the Commission continues to believe that the establishment of an advisory committee to conduct regulatory negotiations with respect to Rule 703 is necessary and in the public interest. As noted above, the remaining commenters support this view. Most commend the Commission's decision to seek improvement in this area and to proceed by regulatory negotiation.

Requests for Committee Membership

A number of commenters asked to be appointed to the advisory committee in response to the February 12 notice. In that notice, the Commission stated that it would evaluate additional requests for membership in light of the following: (1) Whether the interest, organization or person requesting membership would be substantially affected by Rule 703; (2) if so, whether that interest, organization or person would be adequately represented by someone already in the group; and (3) if that interest is not adequately represented, whether a representative of that interest, organization or person should be added to the group. Of course, the Commission must also consider the practical limits on the number of parties that can effectively engage in a single negotiation process.

The Commission has identified from the comments three groups whose interests would not be adequately represented by the parties on the preliminary list appearing in the February 12 notice. Those groups are: (1) Organizations that directly assist consumers in presenting claims to auto industry IDSMs; (2) state legislatures; and (3) the recreational vehicle industry. The Commission has decided to add representatives of these three groups to the committee. The Commission has also identified from the comments two parties who have had substantial experience in directly studying or working with IDSMs. The Commission has decided to add these two parties to the committee as well.

For effective negotiations to take place, the number of advisory committee members must necessarily be limited. In an effort to keep the group to a manageable size, the chairpersons consulted with the parties requesting membership and some of those on the preliminary list to determine whether any would be willing to withdraw from the committee or to consolidate their interests. Several of the parties contacted agreed to withdraw or to be represented by another member of the committee. The Commission greatly appreciates the cooperation of these parties in preventing the group from growing too large for effective discussions.

The Commission regrets that not all qualified applicants can be appointed to the advisory committee. The Commission would like to remind all commenters and other interested persons that non-members may attend committee meetings and may submit information to the committee in the manner set forth in the Commission's regulations implementing the Federal Advisory Committee Act. Moreover, all interested persons will have a full opportunity to comment on the notice of proposed rulemaking that the Commission plans to issue at the close of the negotiations.

Suggested Issues for Committee Consideration

Several commenters recommend specific issues for the advisory committee to consider in addition to those listed in the February 12 notice. For example, one commenter urges that the committee consider how to improve record-keeping, audit, and information reporting requirements in order to facilitate monitoring of IDSM performance. Other commenters submitted reports and data concerning Rule 703 issues for the committee to review. In addition, four commenters raise an important point going to the

overall structure of the committee's deliberations. Those four strongly urge that standards for resolving auto warranty disputes be discussed separately from standards for resolving disputes involving other consumer products. They believe that separate treatment for automobiles is necesssary to reflect the significance of the forty recent state enactments affecting informal settlement of auto warranty disputes.

The Commission makes no judgment concerning the issues that should be considered by the advisory committee or the overall format for the committee's deliberations. The list of issues appearing in the February 12 notice was intended to give interested persons an idea of the types of questions that the advisory committee would consider, and was intended to be illustrative only. The Commission believes that the agenda for the advisory committee's discussions should be left to the committee itself. Accordingly, the Commission will forward the commenters' suggestions and submissions, to the chairpersons for distribution to the committee members.

Rule 703 Advisory Committee Roster

The advisory committee's specific objection will be to agree on the terms of a notice of proposed rulemaking (NPRM) that embodies proposals for a revised Rule 703. If the negotiations are successful, the committee will prepare a report describing the factual basis on which the committee relied in developing its proposals. The Commission agrees, absent extraordinary circumstances and subject to statutory requirements, to incorporate the committee's consensus recommendations in an NPRM initiating a proceeding to amend Rule 703.

The following organizations, listed by essential interests, are members of the Rule 703 Advisory Committee:

Sponsoring agency:

Federal Trade Commission

Dispute resolution service providers:

American Automobile Association
Council of Better Business Bureaus, Inc.
Major Appliance Consumer Action Panel

New home warranty programs:

Home Owners Warranty Coporation

Domestic automobile manufacturers:

American Motors Corporation
Chrysler Corporation
Ford Motor Company
General Motors Corporation

Automobile importers:

Automobile Importers of America, Inc.
Nissan Motor Corporation

Automobile dealers:

American International Automobile Dealers Association
National Automobile Dealers Association

Other major consumer product warrantors:

National Association of Home Builders
Recreation Vehicle Industry Association

Consumer affairs agencies and state attorneys general:

Attorney General of Connecticut
Attorney General of Maryland
Attorney General of Massachusetts
Attorney General of New Mexico
Montgomery County, Maryland, Office of Consumer Affairs
National Association of Consumer Agency Administrators
National Conference of State Legislatures
Union County, New Jersey, Office of Consumer Affairs

Consumer groups:

Center for Auto Safety
Consumers Union
Motor Voters
National Consumer Law Center

Communications to the committee members concerning advisory committee matters may be addressed in care of the chairpersons at their respective addresses, or in care of: Rule 703 Advisory Committee, Room 216, Federal Trade Commission, Washington, DC 20580.

First Committee Meeting

The first meeting of the Rule 703 Advisory Committee is scheduled to begin at 10:00 a.m. on Tuesday, September 23, 1986 at the offices of the National Institute for Dispute Resolution, 1901 L Street NW., Suite 600, Washington, DC. The meeting will be open to the public. As announced in the February 12 notice, the first meeting is expected to be organizational in nature, focusing on dates, locations, procedures, and agenda items for future meetings. The chairpersons will also answer any remaining questions of the participants about the regulatory negotiation process. The first negotiating session is expected to take place approximately one month after the organizational meeting. Its date, time and location will be announced in the **Federal Register**.

List of Subjects in 16 CFR Part 703

Informal dispute settlement.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 86-18751 Filed 8-19-86; 8:45 am]

BILLING CODE 6750-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 123

[OW-6-FRC-3066-9]

Water Pollution Control; Arkansas Application To Administer the National Pollutant Discharge Elimination System (NPDES) Program

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; notice of application, public comment period, public hearing.

SUMMARY: The State of Arkansas has submitted an application to the Environmental Protection Agency to administer and enforce the National Pollutant Discharge Elimination System (NPDES) program for regulating discharges of pollutants into waters within the State. According to the State's proposal, the NPDES program would be administered by the Water Division in the Arkansas Department of Pollution Control and Ecology (ADPC&E) under the direction of Phyllis Garnett, Ph.D.

The application received from Arkansas is complete and is now available for inspection and copying. Public comments are requested and a public hearing will be held.

DATES: Comments must be received on or before October 6, 1986. A public hearing has been scheduled for September 23, 1986, at 7:00 to 10:00 pm.

ADDRESS: Comments should be addressed to: Jayne Watson, Chief, Permits Issuance Section (6W-PS) Renaissance Tower, 1201 Elm Street, Dallas, Texas 75270, Attention: Ellen Caldwell.

FOR FURTHER INFORMATION CONTACT: Ellen Caldwell, (214) 767-2231, at the above address.

SUPPLEMENTARY INFORMATION: Section 402 of the Federal Clean Water Act (CWA) created the NPDES program under which the Administrator of the United States Environmental Protection Agency (EPA) may issue permits for the discharge of pollutants into waters of the United States under conditions required by that Act. Section 402(b) provides for states to assume the NPDES

program responsibilities upon approval by EPA.

Arkansas' program submission for NPDES program approval contains a letter from the Governor requesting NPDES program approval, a program description, an Independent Counsel's statement, copies of State statutes and regulations providing authority to carry out the program, and a Memorandum of Agreement (MOA) to be executed by the Regional Administrator, Region VI, EPA and the Director. The Regional Administrator is required to approve each such submitted program within 90 days of submittal unless it does not meet the requirements of section 402(b) of the Act and EPA regulations promulgated thereunder, which include, among other things, authority to impose civil and criminal penalties for permit violations, and authority to insure that the public is given notice and opportunity for hearing on each proposed NPDES permit issuance.

At the close of the public comment period (including the public hearing) and within the ninety (90) day review period, the EPA Regional Administrator will decide to approve or disapprove Arkansas' NPDES program.

The decision to approve or disapprove Arkansas' NPDES program will be based on the requirements of section 402 of the CWA and 40 CFR Part 123. If Arkansas' NPDES program is approved, the Administrator will so notify the State. Notice will be published in the **Federal Register** and, as of the date of program approval, EPA will suspend issuance of NPDES permits in Arkansas. The State's program will implement federal law and operate in lieu of the EPA administered program. However, EPA will retain the right, among other things, to object NPDES permits proposed to be issued by an approved State and to take enforcement actions for violations. If the Regional Administrator disapproves Arkansas' NPDES program, the Administrator will notify the State of the reasons for disapproval and of any revisions or modifications to the State program which are necessary to obtain approval.

The Arkansas submittal may be reviewed by the public from 9:00 am to 4:00 pm, Monday through Friday, excluding holidays at the Department of Pollution Control and Ecology, 8001 National Drive, Little Rock, Arkansas 72209, or at the EPA office in Dallas at the address appearing earlier in this notice. Copies of the submittal may also be obtained (at a cost of 20 cents/page) by appearing in person at either of those offices, or by writing to EPA or Arkansas at the addresses listed.

A public hearing to consider the State of Arkansas' request to administer the NPDES permit program has been scheduled for September 23, 1986, at 7:00 to 10:00 pm at the ADPC&E Commission Room, 8001 National Drive, Little Rock, Arkansas.

The Hearing Panel will include representatives of EPA, Region VI and ADPC&E.

The following are policies and procedures which shall be observed at the public hearing:

(1) The Presiding Officer shall conduct the hearing in a manner that permits open and full discussion of any issues involved:

(2) Any person may submit written statements or documents for the record:

(3) The Presiding Officer may, in his or her discretion, exclude oral testimony if such testimony is overly repetitious of previous testimony, or is not relevant to the decision to approve or require revision of the submitted State program:

(4) The Presiding Officer may limit oral testimony to five (5) minutes total per person:

(5) Members of the Hearing Panel may ask questions of witnesses and respond to questions and statements of witnesses:

(6) The transcript taken at the hearing, together with copies of all submitted statements and documents, shall become a part of the record submitted to the Administrator, and

(7) The hearing record shall be left open until October 6, 1986, as described below, to permit any person to submit any additional written statements or to present views or evidence tending to rebut testimony presented at the public hearing.

Immediately following the public comment period, the Regional Administrator shall forward a copy of the complete hearing record to the Administrator.

Hearing statements may be oral or written. Written copies of oral statements are urged for accuracy of the record and for the use of the hearing panel and other interested persons. Statements should summarize any extensive written materials.

All comments or objections received by EPA, Region VI, by October 6, 1986, or presented at the public hearing, will be considered by EPA before taking final action on the Arkansas Request for State Program Approval.

Please bring the foregoing to the attention of persons whom you know will be interested in this matter. All written comments and questions on the hearing, or the NPDES program, should be addressed to Jayne Watson, Chief, Permits Issuance Section (6W-PS), Renaissance Tower, 1201 Elm Street, Dallas, Texas, 75270, Attention: Ellen Caldwell.

Review Under Regulatory Flexibility Act and Executive Order 12291

Under the Regulatory Flexibility Act, EPA is required to prepare a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. The proposed approval of the Arkansas NPDES program does not alter the regulatory control over any industrial category. No new substantive requirements are established by this action. Therefore, since this notice does not have a significant impact on a substantial number of small entities, a Regulatory Flexibility Analysis is not needed.

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

Dated: August 12, 1986.

Frances E. Phillips,

Acting Regional Administrator, Environmental Protection Agency, Region VI.

[FR Doc. 86-18650 Filed 8-19-86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[OPP-300142; FRL-3067-1]

Naphthalene Sulfonic Acid-Formaldehyde Condensates, Sodium Salts; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a mixture of mono-, di- and trimethylnaphthalene sulfonic acids-formaldehyde condensates, sodium salts, be exempted from the requirement of a tolerance when used as a dispersing-wetting agent in flowable pesticidal formulations employed in dip vat operations for large animals, such as cattle. This proposed regulation was requested by Petrochemicals/DeSoto, Inc.

DATE: Written comments, identified by the document control number [OPP-300142], must be received on or before September 19, 1986.

ADDRESS:

By mail, submit comments to: Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection

Agency, 401 M Street SW., Washington, DC 20460.
In person, deliver comments to: Registration Support and Emergency Response Branch, Registration Division (TS–767C), Environmental Protection Agency, Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: N. Bhushan Mandava, Registration Support and Emergency Response Branch, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.
Office location and telephone number: Registration Support and Emergency Response Branch, Rm. 724A, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, Telephone: (703) 557–7700.

SUPPLEMENTARY INFORMATION: At the request of Petrochemicals/DeSoto, Inc., the Administrator proposes to amend 40 CFR 180.1001(e) by establishing an exemption from the requirement of a tolerance for mono-, di-, and trimethylnaphthalene sulfonic acids-formaldehyde condensates, sodium salts, when used as a dispersing-wetting agent in flowable pesticidal formulations employed in dip vat operations for large animals, such as cattle.

Inert ingredients are all ingredients which are not active ingredients as defined in 40 CFR 162.3(c), and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting and spreading agents; and propellants in aerosol dispensers and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

Preambles to proposed rulemaking documents of this nature include the common or chemical name of the substance under consideration, the name and address of the firm making the request for the exemption, and toxicological and other scientific bases used in arriving at a conclusion of safety in support of the exemption.

Name of inert ingredient. Mono-, di-, and trimethylnaphthalene sulfonic acids-formaldehyde condensates, sodium salts.

Name and address of requestor. Petrochemicals/DeSoto, Inc., P.O. Box 2199, Fort Worth, TX 76113.

Bases for approval. The subject chemicals are the sodium salts of mono-, di- and trimethylnaphthalene sulfonic acids-formaldehyde condensates. The precursors of these chemicals and some of the methylnaphthalene sulfonic acid-formaldehyde condensates have prior clearances as listed below.

1. Naphthalene and methylnaphthalene sulfonic acids-formaldehyde condensate salts are cleared under 40 CFR 180.1001(d) for applications to growing crops only.

2. Naphthalene sulfonic acid and sodium salts are cleared under 40 CFR 180.1001(e) for applications to animals.

3. Sodium mono- and dimethylnaphthalene sulfonates, M.W. 245–260, are cleared under 40 CFR 180.1001 (c), (d), and (e) for applications to growing crops and to crops after harvest, and to animals.

4. Sodium mono-, di- and tributylnaphthalene sulfonates are cleared under under 40 CFR 180.1001 (c) and (e) for applications to growing crops and to crops after harvest, and to animals.

5. Methylnaphthalene sulfonic acid-formaldehyde condensate, sodium salt is cleared under 21 CFR 176.170 for paper products in contact with aqueous and fatty foods, and under 21 CFR 176.180 for paper products in contact with dry foods.

The subject chemicals constitute only 1.2 percent of the total pesticidal formulations and do not exceed 0.006 percent in the final formulations for dip vat operations.

EPA has initiated new review procedures for tolerance exemptions for inert ingredients. Under these procedures the Agency conducts a review of the data base supporting any prior clearances, the data available in the scientific literature, and any other relevant data. Mono-, di-, and trimethylnaphthalene sulfonic acids-formaldehyde condensates, sodium salts was subjected to a data review, including review of structure-activity relationships concerning human safety, a calculation of maximum residues resulting from the intended use, and a review of the data base supporting the prior clearances. Based on this review, the Agency has determined that no additional test data will be required to support this regulation at the prescribed use level.

Based on the above information and review of its use, it has been found that when used in accordance with good agricultural practices this ingredient is useful and does not pose a hazard to humans or the environment. In conclusion, the Agency has determined that the proposed amendment to 40 CFR Part 180 will protect the public health. It is therefore proposed that the regulation be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains this inert ingredient, may request within 30 days after publication of this notice in the Federal Register that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating both the subject and the petition and document control number, "[OPP–300142]." All written comments filed in response to this notice of proposed rulemaking will be available for public inspection in the Registration Support and Emergency Response Branch at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: August 7, 1986.

James W. Akerman,

Acting Director, Registration Division, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.001(e) is amended by adding and alphabetically inserting the inert ingredient as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(e) * * *

Inert ingredients	Limits	Uses
* *	*	* *
Mono-, di- and trimethylnaphthalene sulfonic acids-formaldehyde condensates, sodium salts.	Not to exceed 0.006% in final formulation.	Dispersing-wetting agent in dip vat operations for large animals, such as cattle.
* *	*	* *

[FR Doc. 86-18755 Filed 8-19-86; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Findings on Petitions and Initiation of Status Reviews

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition findings and status review.

SUMMARY: The Service announces 90-day findings in respect to two petitions and 12-month findings in respect to four petitions to amend the Lists of Endangered and Threatened Wildlife and Plants. Status reviews are initiated for the white-cheeked pintail from Puerto Rico, and five snails and one fingernail clam from New Mexico that are subjects of two petitions.

DATES: The findings announced in this notice were made between January 6, 1986, and March 21, 1986. Comments and information may be submitted until further notice.

ADDRESSES: Information, comments, or questions should be submitted to the Assistant Director—Fish and Wildlife Enhancement (OES), U.S. Fish and Wildlife Service, Washington, DC 20240. The petitions, findings, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the Service's Office of Endangered Species, Suite 500, 1000 North Glebe Road, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. Marvin E. Moriarty, Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235-2771 or FTS 235-2771).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended in 1982 (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If the finding is positive, the Service is also required to promptly commence a review of the status of the involved species.

Section 4(b)(3)(B) of the Act, as amended, requires that, for any petition to revise the Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information, a finding be made within 12 months of the date of receipt of the petition on whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted but precluded from immediate proposal by other pending proposals. Section 4(b)(3)(C) requires that petitions for which the action requested is found to be warranted but precluded should be treated as though resubmitted on the date of such finding, i.e. requiring a subsequent finding to be made within 12 months. Such 12-month findings are to be published promptly in the **Federal Register**.

Recently, the Service received and made 90-day findings on the following petitions:

The Service was petitioned by the New Mexico Department of Game and Fish to list eleven species of New Mexico molluscs. This petition was dated November 20, 1985, and was received by the Service on November 22, 1985. The petition contained information indicating that each of the 10 aquatic snail and one clam taxa is severely limited in distribution and faces extinction threats recognized by the State on a spectrum from very highly vulnerable to moderately vulnerable. Five of the taxa are already under notice of review by the Service (49 FR 21664-21675, May 22, 1984); they are: the Socorro spring snail (*Fontelicella neomexicana*), the Chupadera spring snail (*Fontelicella* sp.), the Roswell spring snail (*Fontelicella* sp.), the Alamosa spring snail (*Tryonia* sp.), and the Pecos assiminea snail (*Assiminea* sp.). The other six species included in this petition for listing as threatened or endangered are: the Gila spring snail (*Fontelicella* sp.), the New Mexico hot spring snail (*Fontelicella* sp.), the Pecos spring snail (*Fontelicella* sp.), the Koster's spring snail (*Tryonia* sp.), the New Mexico ramshorn snail (*Pecosorbis kansasensis*), and the Sangre de Cristo pea-clam (*Pisidium* sp.). After reviewing this petition the Service finds that the petition does present substantial information indicating that the requested action may be warranted. This notice initiates a status review for the six species mentioned above that were not included in the Service's May 22, 1984, Notice of Review.

Staff at the Service's Caribbean Islands National Wildlife Refuge has submitted a petition to add the Puerto Rican population of the white-cheeked pintail, *Anas bahamensis*, to the List of Endangered and Threatened Wildlife. The petition contains documentation that the species has undergone a serious decline islandwide since the 1950's, from a former condition of being one of the most abundant waterfowl there. Habitat losses and illegal taking are suggested as causes for the decline. Available evidence indicates that the status of this duck is generally comparable to the three other waterfowl species now under petition from the Puerto Rican Department of Natural Resources for Federal listing. After reviewing this petition the Service finds that the petition does present substantial information that the requested action may be warranted. This notice initiates a status review for the white-cheeked pintail.

Recently, the Service made one-year findings for the following four petitions.

In a petition dated December 27, 1984, and received January 3, 1985, the Service was requested by the Department of Natural Resources of the Commonwealth of Puerto Rico to list as threatened the following four species: Puerto Rican crested toad (*Peltophryne* [=*Bufo*] *lemur*), Caribbean coot (*Fulica*

caribea), ruddy duck (*Oxyura jamaicensis*), and West Indian whistling duck (*Dendrocygna arborea*). An administrative finding that the action requested may be warranted was announced in a **Federal Register** notice published on July 5, 1985 (50 FR 13054).

The Puerto Rican crested toad is endemic to the Puerto Rican Shelf and is the only member of its family native to that area. It has been found at six localities in Puerto Rico and one on Virgin Gorda, British Virgin Islands. Generally these localities were at low elevations (below 600 feet) in areas of exposed limestone and porous, well-drained soil offering an abundance of fissures and cavities. The species has always been considered rare, and before its rediscovery in 1966 was believed by some to be extinct. One sizeable breeding aggregation was found in 1984, in Guanica Commonwealth Forest. Additional information on size and distribution of populations has been very difficult to obtain. The available data suggest that most populations are near human development, but very hard to assess prior to development impacts, and that breeding is irregular and concentrated; these factors make them susceptible to eradication. The species has been listed as endangered by the Commonwealth of Puerto Rico; but studies of its distribution and biology are continuing, and the degree of threat remains uncertain. However, the best scientific information available indicates that the Puerto Rican crested toad should be listed as threatened.

Prior to 1963, the Caribbean coot was reported to be abundant in Puerto Rico. By 1973, however, it had declined seriously enough to be included on a list of rare and endangered animals of the island. The Commonwealth closed hunting on this and the similar American coot (*Fulica americana*) in Puerto Rico in 1984. Major threats now appear to be illegal hunting and the destruction and modification of habitat. The Caribbean coot appears to prefer freshwater lakes, but may also be found in coastal lagoons. In southwest Puerto Rico, where the species used to be most abundant, agricultural development and drainage of Cartegena Lagoon between 1970 and 1980 have contributed significantly to its decline. The Department of Natural Resources estimates that about 200 birds remain in the Puerto Rican population, and lists it as threatened in its endangered species regulations of 1985.

The West Indian whistling duck has become increasingly rare in Puerto Rico during the last 80 years, after being reported as common throughout the island in the late 19th century. It is now considered the rarest waterfowl species on the island, with a population estimated between 150 and 250 individuals. Hunting was closed on it in Puerto Rico in 1976; it was included under Commonwealth Wildlife Law No. 70, adopted in 1978; and the Commonwealth's endangered species regulations of 1985 list it as threatened. However, its preference for densely vegetated wetlands and its crepuscular habits make accurate population appraisals very difficult. Major threats appear to be habitat loss or modification, and illegal hunting and egg taking.

The West Indian ruddy duck has undergone a dramatic reduction in Puerto Rico after being reported as very common there prior to 1970. It was mentioned as "on the verge of being endangered" in the 1973 compilation of rare and endangered species of the island, and hunting was closed on it in 1975. The Commonwealth's endangered species regulations of 1985 list this species as threatened. Major threats are loss and modification of habitat and illegal hunting. The species prefers freshwater ponds, lakes, and reservoirs, but was present on only 5 out of 20 such sites in a Department of Natural Resources census in 1979. By 1979, Cartegena Lagoon, once considered to be the main breeding site for the species, but since largely drained and eutrophied, supported no West Indian ruddy ducks. In 1982 and 1983 censuses the Puerto Rican population of this species was estimated at fewer than 500 birds.

In the case of each of the three waterfowl species, two important questions are not yet fully answered. First is the question of whether each one is a limited, definable population in Puerto Rico or whether significant mixing with stocks of other islands is occurring, and second, if such mixing were occurring, whether the entire species or subspecies is threatened throughout a significant portion of its range. The Service will seek answers to these questions. Based on a review of all available data the Service finds that the action requested by this petition is warranted with respect to all four species. Immediate proposed rules to implement the requested actions are precluded by pending proposals to add other species to the Lists of Endangered and Threatened Wildlife and Plants. Expeditious progress in listing precludes an immediate proposed rule.

In a petition dated February 8, 1985, and received February 12, 1985, the Service was requested by Mr. Patrick Hartigan, of Travis Audubon Society to list the following six cave invertebrate species: *Microcreagris texana, Leptoneta reddelli, Texella reddelli, Rhadine persephone, Texamaurops reddelli,* and *Cylindropsis* sp. (Tooth Cave blind rove beetle). An administrative finding that the action requested may be warranted was announced in a **Federal Register** notice published on July 18, 1985 (50 FR 29238).

The Service has completed a status review of the information available on the biology, and distribution of, and threats to, these six species. The caves in which these species occur are located on the outskirts of the city of Austin, Texas, and are in an area planned for residential and commercial development. Such development could have major adverse impacts on the caves, through direct modification such as collapse, filling, or sealing; and through indirect modification such as changes in drainage and moisture, pollution with pesticides and other chemicals, destructive use by humans and pets, and introduction of non-native organisms such as sowbugs and household arachnid and insect pests. Based on a review of available data the Service finds the actions requested by this petition to be warranted in respect to all six species. Immediate proposed rules to implement the requested actions are precluded by other pending proposals to revise the Lists of Endangered and Threatened Wildlife and Plants.

In a petition dated February 28, 1985, and received March 19, 1985, the Service was requested by Ms. Laura B. Aherns of Lionel, Sawyer and Collins, Attorneys for the City of Sparks and the City of Reno, to delist the population of Lahontan cutthroat trout in the main stem Truckee River and Pyramid Lake. An administrative finding that the action requested may be warranted and a review of status were announced in a **Federal Register** notice published on August 30, 1985 (50 FR 35272).

The Service has completed a status review of all the information available regarding the biology, distribution, and habitat of, and threats to, this species. This review revealed that objectives of the Service's recovery plan to establish a number of self-sustaining populations have not been met. Threats identified in the recovery plan, including poor water quality, inadequate water during spawning periods, and the presence of introduced predators and competitors, have not yet been dealt with adequately. The sport fishery in Pyramid Lake, although extensive, is supported almost exclusively by hatchery production from

the U.S. Fish and Wildlife Service and Pyramid Lake Indian Tribe hatcheries. Although enhancement of the fishery through hatchery production is not being questioned, this enhancement has so far done little for recovery. The action requested by this petition is considered not warranted at this time on the basis of the best scientific information available.

In a petition from Ms. Joel L. Beardsley, Mariposa, RR 2 Box 441, Summerland Key, Florida 33042, dated April 11, 1985, and received by the Service on April 27, 1985, the Service was requested to determine endangered status for the Florida Keys marsh rabbit (*Sylvilagus palustris hefneri*). On June 14, 1985, the Service made a 90-day finding that the petition did present substantial information indicating that the requested action may be warranted. In the **Federal Register** of August 30, 1985 (50 FR 35272–35273), the Service published a notice announcing this finding and also a review of the status of the marsh rabbit.

This mammal, which was named and described in 1984, is known to occur only in a few locations in the lower (or western) Florida Keys. The petition contains documentation suggesting that the marsh rabbit's restricted habitat is jeopardized by development, and that it has become very scarce in recent years. Based on this review the Service finds that a determination of endangered status for the Florida Keys marsh rabbit is warranted, but precluded by other listing activity. Additional data will be gathered, and expeditious progress is being made to list other species that are considered to be of higher priority.

Section 4(b)(3)(b)(iii) of the Act states that petitioned actions may be found to be warranted but precluded by other listing actions when it is also found that the Service is making expeditious progress in revising the lists. Expeditious progress in listing endangered and threatened species is being made, and is reported annually in the **Federal Register**. The most recent progress report was published on January 9, 1986 (51 FR 996).

The Service would appreciate any additional data, comments, and suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning the species involved in the petitions listed above.

Author

This notice was prepared by Dr. James D. Williams, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235–1975 or FTS 235–1975).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*; Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: August 8, 1986.

P. Daniel Smith,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86–18739 Filed 8–19–86; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 20

Migratory Bird Hunting: Strategy for Eliminating Lead Toxicity as a Major Mortality Factor in Waterfowl

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Record of Decision.

SUMMARY: This notice makes available to the public the Record of decision (ROD) on use of lead shot for hunting migratory birds in the United States. The ROD was prepared in accordance with Council on Environmental Quality regulations, 40 CFR 1505.2. The ROD results from recommendations of the Fish and Wildlife Service (FWS) to the Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior, for implementing a strategy to eliminate lead poisoning, resulting from the use of lead shot in waterfowl hunting, as a significant mortality factor among waterfowl and certain other migratory birds. This action results from responsibilities the Secretary of the Interior has delegated to the Director, FWS, to protect and enhance migratory bird populations under the Migratory Bird Treaty Act, as amended (16 U.S.C. 703 *et seq.*; 40 Stat. 755) and the Endangered Species Act of 1973, as amended (16 U.S.C. 1531; 87 Stat. 884). The recommendations of the FWS were based on: the information contained in the Final Supplemental Environmental Impact Statement (SEIS) on the use of lead shot for hunting migratory birds in the United States, which was filed with the Environmental Protection Agency (EPA) on July 8, 1986, and announced by the EPA in the **Federal Register** on July 11, 1986; other available scientific and technical data; and public comments received during the National Environmental Policy Act—review process. The ROD selects Alternative VII_3 of the Final SEIS as the best alternative for eliminating lead poisoning as a significant mortality factor among waterfowl and some other migratory birds. The regulatory guidelines implementing Alternative VII_3 have been published separately as a proposed addition to 50 CFR Part 20 (Subpart M), and appeared in the **Federal Register** on June 27, 1986 (51 FR 23444).

DATE: This Record of Decision is effective on August 20, 1986.

FOR FURTHER INFORMATION CONTACT: Dr. Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Matomic Building, Room 536, Washington, DC 20240, (202/254–3207).

SUPPLEMENTARY INFORMATION: The ROD follows: In compliance with 40 CFR 1505.2, and based on the analyses in the Final SEIS on the use of lead shot for hunting migratory birds in the United States, the decision has been made to select the alternative of a phased lead shot ban for hunting waterfowl and coot to be fully implemented nationwide by the 1991–92 season (Alternative VII_3). The selected alternative, that initially includes designation of nontoxic shot zones on the basis of both bald eagle and waterfowl criteria in the 1986–87 season, is based upon waterfowl criteria only for the 1987–88 season and beyond. The waterfowl criteria that will be applied nationwide to all State land and water areas begins with counties having a 20+ harvest of waterfowl per square mile, and decreases by 5 per square mile per year until the nationwide conversion hunting year of 1991–92 is reached. This strategy contains a provision for deferring conversion until 1991–92 if a State chooses to monitor and the monitored area does not meet minimum criteria for conversion.

The alternatives presented in the Draft SEIS included: (1) Prohibit the use of lead shot for waterfowl and coot hunting in zones where known or potential lead poisoning problems exist using separate criteria for waterfowl and bald eagles; (2) Same as (1) except that bald eagle criteria were suggested by the National Wildlife Federation; (3) Same as (1) except that bald eagle criteria would be based on an ecological zone concept; (4) No action—no open seasons on migratory birds; (5) Prohibit the use of lead shot for all migratory bird hunting on a Flyway basis over a 4-year period (environmentally preferred alternative); and (6) Make nontoxic shot use voluntary by the States. In response to public comment, the Final SEIS

considered three other alternatives that combined features of the original six alternatives and focused specifically on waterfowl and coot and included: one that would phase in a nationwide ban on a Flyway basis (Alternative VII_1); one that would effect a total nationwide ban for the 1986–87 season (Alternative VII_2); and one, the preferred alternative, that would phase in a ban over a 5-year period beginning in 1987–88 (Alternative VII_3). More detailed information on each alternative can be found in the Final SEIS.

Public involvement has been widespread and intense throughout the course of development of this proposal. The Draft SEIS was circulated among interested private citizens, national and local conservation organizations, State wildlife professionals, hunting clubs, Congressional members and staff, and others for review and comment. Responses were received from in excess of 625 respondents. Appendix M of the Final SEIS lists and summarizes comments on the Draft SEIS.

The decision to approve implementation of Alternative VII_3 is based on a careful review of public comments on the SEIS, and consideration of the best balance of benefits overall as demonstrated by impacts analyses (biological, social and economic). This alternative also has substantial support from the professional wildlife management community, State wildlife departments, private citizens, and other groups. Alternative VII_3 has major long- and short-term benefits for waterfowl and bald eagles; decrease and then discontinuation of use of lead shot in waterfowl hunting is expected to dramatically reduce the exposure of bald eagles and waterfowl to this source of mortality. The net result of this reduction of exposure to spent lead shot is expected to be larger and healthier populations of bald eagles, waterfowl and, perhaps, other hunted and unhunted wetlands species, and a resultant improvement in hunter and nonhunter satisfaction regarding opportunity to enjoy the migratory bird resource both in the U.S. and in other countries. This alternative also will result in a reduction in lead deposited in wetlands, lead uptake by wetland vegetation, and total lead available to all wildlife. Alternative VII_3, unlike some other alternatives, results in priority coverage of the total bald eagle and waterfowl indices, and is most sensitive to the impacts that a timely nationwide conversion would have on the economy, public agency programs, the hunting public, and on the resource itself. Alternative VII_3, the preferred alternative, provides the long-term benefits of Alternative V with the accelerated protection given bald eagles by Alternative I. The Fish and Wildlife Service section 7 biological opinion, required under the Endangered Species Act, further supports this action and finds that implementation of Alternative VII_3 is not likely to jeopardize the continued existence of the bald eagle.

The proposed rule to implement the preferred alternative of the Final SEIS was published in the **Federal Register** on June 27, 1986 (51 FR 23444); the final rule will be published in mid-August, 1986. The proposed rule implementing the first phase of the preferred alternative, the 1986–87 waterfowl and coot season zones, was published in the **Federal Register** on January 6, 1986 (51 FR 409); the final rule will be published in mid-August, 1986. For succeeding waterfowl seasons, 1987–1991, proposed rules on zones will be published in the **Federal Register** the preceding year (ca. September).

Having satisfied the requirements set out in 40 CFR 1506.10 (a) and (b)(2), implementation of this decision will begin immediately upon publication of this Record of Decision in the **Federal Register**. The EPA Notice of Availability for the Final SEIS on the use of lead shot for hunting migratory birds in the United States was published in the **Federal Register** on July 11, 1986 (51 FR 25249).

Dated: August 11, 1986.

Frank Dunkle,

Director, U.S. Fish and Wildlife Service, Department of the Interior.

[FR Doc. 86–18536 Filed 8–19–86; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 60231–6147]

Regulations Governing the Taking and Importing of Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of proposed rulemaking; notice of receipt of permit application, notice of formal hearing.

SUMMARY: On July 21, 1986, the NMFS received an application from the Federal of Japan Salmon Fisheries Cooperative Associations (the Federation) for a general permit under the Marine Mammal Protection Act (MMPA) to take Dall's porpoise (*Phocoenoides dalli*) and other marine mammals incidental to commercial fishing operations. This notice announces the formal hearing to consider certain scientific aspects of the permit request, the procedures to govern the formal hearing, and the proposed regulation to accompany a permit if granted.

DATES: NOAA/NMFS has scheduled a formal hearing to consider the issuance of an incidental take permit and the population status of Dall's porpoise. It will begin at 9:30 a.m. local time on Monday, October 20, 1986 in Seattle, Washington.

Other dates pertaining to the hearing are found in the **SUPPLEMENTARY INFORMATION SECTION.**

Comments on the proposed regulation and draft environmental impact statement (DEIS) must be postmarked on or before October 20, 1986.

ADDRESS: Assistant Administrator for Fisheries, NMFS, Washington, DC 20235. A DEIS, an Economic Impact Analysis and research reports are also available upon request.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Species and Habitat Conservation, NMFS, Washington, DC 20235, Telephone: 202–673–5351.

SUPPLEMENTARY INFORMATION:

Background

Marine mammals, primarily Dall's porpoise, are taken in the course of commercial salmon gill net operations by Japanese fishing vessels within and outside the U.S. Fishery Conservation Zone (FCZ) in the North Pacific and Bering Sea. The general permit issued to the Federation in 1981 under the MMPA and extended in 1982 by amendments to the North Pacific Fisheries Act, will expire in June 1987. Without either a new general permit or a Congressional extension of the permit, the Japanese mothership salmon fishery inside the U.S. FCZ must cease at that time. A cooperative U.S.-Japanese research program which was begun in 1978 to assess the status of the Dall's porpoise, the extent of incidental take, and methods to minimize such taking would also cease. A report on research conducted through 1985 is available (see **ADDRESS**).

Receipt of Permit Application

On July 21, 1986, the Federation of Japan Salmon Fisheries Cooperative Associaitons, San Kaido Building, 9–13 Akasaka 1-chome, Minato-ku, Tokyo, Japan, submitted an application for an incidental take permit, Category 5:

"Other Gear," salmon drift gill net (see 50 CFR 216.24(d)(5)). The permit application requests a five (5) year term (June 10, 1987-June 9, 1992) and estimates that the maximum number of marine mammals expected to be incidentally taken on a yearly basis by the fishery inside the U.S. FCZ is as follows: Dall's porpoise, 5,500; northern fur seals (*Callorhinus ursinus*), 450; northern sea lions (*Eumetopias jubatus*), 25.

Copies of the application are available for review in the following offices:

Office of Protected Species and Habitat Conservation, NMFS: 1825 Connecticut Avenue, NW., Suite 805, Washington, DC;

Regional Director, Northwest Region, NMFS, 7600 Sand Point Way, NE., Seattle, Washington 98115; and

Regional Director, Alaska Region, NMFS, P.O. Box 1668, Juneau, Alaska 99802.

Interested persons may submit written views on this application on or before sixty (60) days after date of this notice to the Office of Protected Species and Habitat Conservation, NMFS, Washington, DC 20235.

Proposed Regulation

The NOAA proposes to continue the present codified language as found in 50 CFR 216.24(d)(5)(vii) and printed as found below.

"(vii) The number of Dall's porpoise (*Phocoenoides dalli*) killed or seriously injured by Japanese vessels shall be limited to 5,500 animals per year. Any permit issued under this regulation shall indicate the measures by which the permit holder shall comply with the reporting requirements of paragraph (d)(5)(v) of this section. Any incidental take permit issued under this regulation shall allow retention of marine mammals for scientific research purposes and not require a separate permit under paragraph (d)(5)(iv)."

MMPA Requirements

With limited exceptions, the MMPA imposed as moratorium on taking of marine mammals within waters under the jurisdiction of the United States. One of these exceptions provides for a permit to take marine mammals incidental to commerical fishing operations.

Under the MMPA, before a permit authorizing a take can be issued, the NMFS . . . must be assured that the taking . . . is in accordance with sound principles of resource protection and conservation as provided in the purposes and policies of this chapter . . . (16 U.S.C. 1371(a)(3)(A))." The guiding principles of resource protection and conservation are set forth in 16 U.S.C. 1361(2) and (6). Section 1361(2) states that:

". . . such species and population stocks should not be permitted to diminish beyond the point at which they cease to be a significant functioning element in the ecosystem of which they are a part, and, consistent with this major objective, they should not be permitted to diminish below they optimum sustainable population . . ."

Section 1361(6) states, in part:

". . . it is the sense of the Congress that (marine mammals) should be protected and encouraged to develop to the greatest extent feasible commensurate with sound policies of resource management and that the primary objective of their management should be maintain the health and stability of the marine ecosystem. Whenever consistent with this primary objective, it should be the goal to obtain an optimum sustainable population keeping in mind the carrying capacity of the habitat."

Once those principles are met, the MMPA has a two goal test that must be met to determine the number and kind of marine mammals which can be taken incidental to commercial fishing operations. The first test, the "disadvantage" test (Section 1373(a)) requires the Secretary of Commerce to ensure that requested taking will not be to the disadvantage of the affected species and population stocks. Under this test, the Secretary, in conjunction with the promulgation of regulations, must publish statements on population levels and the expected impact of the proposed regulations on the optimum sustainable population of the affected marine mammal species. For this proposed rule, the required statements may be found below.

If it is determined that a species or stock will not be disadvantaged by allowing an incidental take, the next test, the "immediate goal" test, is whether a lower quota is technologically feasible. This is in furtherance of the MMPA objective that:

". . . it shall be the immediate goal that the incidental kill or incidental serious injury of marine mammals permitted in the course of commercial fishery operations be reduced to insignificant levels approaching zero mortality and serious injury rate . . ." (16 U.S.C. 1371(a)(2))

Notice of Formal Hearing; Formal Hearing Procedures. In accordance with section 103(d) of the MMPA, these regulations must be made on the record after opportunity for a public hearing. The formal hearing will begin at 9:30 a.m. local time on Monday, October 20, 1986, in Seattle, Washington. It will last for two to three days. The exact location of the hearing will be announced shortly in the **Federal Register**. The Honorable Hugh Dolan, Administrative Law Judge (ALJ), Department of Commerce, has been appointed as the presiding officer for the hearing. The hearing will be conducted in accordance with the procedural rules published at 50 CFR 216.70–90.

The Assistant Administrator for Fisheries, NOAA, and the Federation of Japan Salmon Fisheries Cooperative Associations are made automatic parties to the hearing. For other interested parties, notices of intent to participate as an active party in the formal hearing must be submitted to the Assistant Administrator for Fisheries no later than August 28, 1986.

Any direct testimony for the hearing must be prepared in affidavit form in advance and submitted to all parties no later than September 16, 1986. (see 50 CFR 216.76)

The hearing docket number assigned to this case is MMPAH–1986–01. All notices, copies of written evidence, and other documents to be filed or submitted should be sent to the following address and bear this designated docket number: Presiding Officer MMPAH–1986–01, c/o Assistant Administrator for Fisheries, NMFS, NOAA, DOC, Washington, DC 20235.

Records and documents pertaining to the proposal will be maintained in the offices of the NMPS, and may be reviewed during normal working hours, 8 a.m. to 4:30 p.m. in the Universal Building, 1825 Connecticut Avenue, NW., Room 805, Washington, DC.

Issues to be Considered at the Formal Hearing

The hearing will be limited to the following issues:

(a) estimates of existing population levels of Dall's porpoise and other affected marine mammal stocks; and (b) the expected impact of the proposed regulations and permit conditions on the optimum sustainable population (OSP) of Dall's porpoise and other marine mammals. These issues necessarily involve consideration of whether the scientific evidence is sufficient to make any of the required MMPA findings, future scientific research needs, and the means available to the applicant to further reduce the mortality of Dall's porpoise. Evidence relating to other issues may be submitted at the hearing subject to the rulings of the presiding officer on the relevance and materiality of such issues.

The permit applicant contends that the stock of Dall's porpoise is at OSP and will be at OSP after the proposed five year incidental taking regime. In the formal hearing, the applicant must present evidence to support this contention.

Prehearing Conference

A prehearing conference will be held on September 29, 1986, at 10:00 a.m. in Washington, DC. Only parties may participate in the prehearing conference. The conference will consider the issues of fact to be presented in the hearing, the witnesses who will testify and the object of their testimony, any alternatives to the hearing rules that may be required; the need for oral argument, if any; the briefing schedule; the timing of the ALJ's Recommended Decision, and the NOAA Administrator's Final Decision.

Required Statements

At the time proposed regulations are published, section 103(d) of the MMPA requires the concurrent publication of (a) a statement of the estimated existing levels of the species and population stocks of marine mammals concerned; (b) a statement of the expected impact of the proposed regulations on the optimum sustainable population (OSP) of such species or population stock; (c) a statement describing the evidence before the agency on which the proposed regulations are based; and (d) any studies made by or for the agency or Marine Mammal Commission which relate to the establishment of such regulations. These required statements are as follows:

(a) Estimated existing population levels:

Species and stock	Present population	
	Mean size	Range
Dall's propoise (*dalli*-type):		
Bering Sea:		
Extended [1]	303,000	214,547–391,601
Limited [2]	209,000	148,000–270,000
Western Central North Pacific:		
Extended [3]	920,000	621,696–1,219,000
Limited [4]	719,000	483,600–955,000
Eastern North Pacific	461,000	311,327–610,191
Gulf of Alaska	444,000	296,369–592,612

[1] Includes all open waters from northern ice edge south to Aleutian Islands.
[2] Excludes shallow shelf water and restricted in north to year round ice-free waters.
[3] Includes all Dall's porpoise range west of 172° W. and north to Aleutian Islands.
[4] Excludes area of *truei*-type/*dalli*-type mixture in west; east to 172° W.

	Present population [1]
Northern fur seal:	
Pribilof Islands	871,000
Commander Islands	210,000
Robben Island	75,000
Kuril Island	47,000
San Miguel Island	4,000
Total	1,207,000

[1] 1983 population estimates.

A detailed discussion on estimated population sizes and status for Dall's porpoise can be found in the DEIS. Additional information can be found in Bouchet *et al.* (1986).

(b) Expected impact on OSP. Optimum sustainable population (OSP) of the species and stocks involved is defined as a population which falls in a range from the population level which is the largest supportable within the ecosystem, to the population that results in maximum net productivity. (See 50 CFR 216.3.) Maximum net productivity is the greatest net annual increment in the population due to reproduction and growth less losses due to natural mortality. Maximum net productivity is interpreted as being the lower limit of the range of optimum sustainable population and is expressed as a percentage of a stock's pre-exploitation size that still remains. For Dall's porpoise, if that percentage is 60 percent or higher, NOAA considers the stock to be at or above its minimal OSP level; and therefore not depleted (see 46 FR page 27067, May 15, 1981).

Species and stock	Estimated current OSP status	Estimated OSP status in 1992
Dall's porpoise:		
Bering Sea	[1] 0.882	Within.
Western Central Pacific	[1] 0.825	Not known.
Eastern Pacific	Within	Within.
Gulf of Alaska	Within	Do.

[1] These point estimates are the ratio of the current stock size to the stock's equilibrium unharvested population level.

The Pribilof Island population of northern fur seals is likely below its optimum sustainable population level. If this is the case, an incidental take of this species cannot be authorized. As only one northern sea lion has been reported taken since the general permit was issued in 1981, there is no need to consider a waiver for this species.

(c) and (d) *Evidence* and *Studies.*

These two statements are satisfied by the following list.

Bouchet, G.C, R.C. Ferrero, and B.J. Turnock. 1986. Estimation of the abundance of Dall's porpoise (*Phocoenoides dalli*) by shipboard sighting surveys. INPFC Document 3009, 50 pp.

Jones, L.L., G.C. Bouchet, D.W. Rice, and A.A. Wolman. 1984. Progress report on studies of the incidental take of marine mammals particularly Dall's porpoise by the Japanese Salmon Fisheries, 1978–1983.

Jones, L.L., J. Breiwick, G.C. Bouchet and B.J. Turnock. 1986. Report on the incidental take, biology, and status of Dall's porpoise. NMFS. Seattle, Washington.

National Oceanic and Atmospheric Administration. 1984. Final Action Plan-Dall's Porpoise Program. Washington, D.C.

_____. 1985. Final Action Plan-Dall's Porpoise Program, Washington, DC.

_____. 1986. Final Action Plan-Dall's Porpoise Program, Washington, DC.

Twiss, John R., Jr. 1986. Letter dated May 12, 1986 to Mr. William G. Gordon concerning contents of the DEIS and public hearing.

U.S. Department of Commerce. 1985. Final Environmental Impact Statement on the Interim Convention on Conservation of North Pacific Fur Seals. 196 pp.

Draft Environmental Impact Statement (DEIS)

The Environmental Protection Agency will announce shortly the availability of a DEIS describing the Japanese high seas salmon fishery and the incidental take of Dall's porpoise in this fishery. The DEIS will be available on request (See ADDRESS) at that time.

Ex Parte Communications

Section 4 of the Government in the Sunshine Act (Pub. L. 94–409), dealing with ex parte communications, is applicable to the hearing. The following persons are those employees of the Department who may reasonably be expected to be involved in the decision process of the proceeding, and are, therefore, hereby identified to all interested persons outside the agency in order that the provisions of Section 4 can be complied with:

Name and Title

Malcolm C. Baldrige, Secretary of Commerce
Douglas A. Riggs, General Counsel, DOC
Michael A. Levitt, Assistant General Counsel for Legislation and Regulation
Margaret Moran, Special Assistant to the General Counsel, DOC
Donald M. Malone, Attorney Advisor, DOC
Hugh Dolan, Administrative Law Judge, Department of Commerce
Anthony J. Calio, Administrator, NOAA
J. Curtis Mack, II, Deputy Administrator, NOAA
Hugh Schratwieser, Special Assistant to the Administrator, NOAA
William G. Gordon, Assistant Administrator for Fisheries, NMFS
James E. Douglas, Jr., Acting Deputy Assistant Administrator for Fisheries, NMFS

Carmen J. Blondin, Deputy Assistant Administrator for Fisheries Resource Management, NMFS
Robert B. Brumsted, Acting Director, Office of Protected Species and Habitat Conservation, NMFS
Charles Karnella, Acting Chief, Protected Species Division, Office of Protected Species and Habitat Conservation, NMFS
Hugh Dolan, Administrative Law Judge, Department of Commerce
Joseph W. Angelovic, Deputy Assistant Administrator for Science and Technology, NMFS
William Aron, Director, Northwest and Alaska Fisheries Center, NMFS
Daniel W. McGovern, General Counsel, NOAA
James W. Brennan, Deputy General Counsel, NOAA
Jay S. Johnson, Assistant General Counsel-Fisheries
James Busuttil, Staff Attorney

Ex parte communications relevant to any substantive or procedural issues relating to the formal hearing between the above named persons and any interested person outside the Department of Commerce are prohibited from the date of this notice until the date the Final Decision resulting from the hearing is published in the Federal Register. Section 4 provides mechanisms for enforcing this prohibition, including (1) the requirement that an employee making or receiving prohibited communications disclose them and all responses to them for the public record of the proceeding; and (2) authorization of dismissal or other adverse action against the claim of the party to the proceeding who makes or causes prohibited communication. "Ex parte communication" means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports on the proceedings.

Classification

The NMFS has determined that this action is a major Federal action under the National Environmental Policy Act of 1969 due to the overall public interest associated with the Japanese salmon fishery and its interaction with Dall's porpoise and other marine organisms. A Draft Environmental Impact Statement (DEIS) has been prepared and will be distributed for public review and comment.

This proposed rule is an administrative action being developed on the record under the Administrative Procedure Act (5 U.S.C. 556 and 557) and, as such, is exempt from Executive Order 12291.

This rule mentions collection of information requirements subject to the Paperwork Reduction Act. The collection of information for general permits, certificates of inclusion and reporting takes has been approved by the Office of Management and Budget under Control Nos. 0648–0083 and –0099.

A determination as to whether or not the proposed action will have a significant effect on a substantial number of small entities will be made in conjunction with publication of the final action in this proceeding.

The Assistant Administrator has determined that the proposed action does not directly affect the coastal zone of a State with an approved coastal zone management act program.

List of Subjects in 50 CFR Part 216

Administrative practice and procedure, Imports, Marine mammals, Penalties, Reporting and recordkeeping requirements, Transportation.

Dated: August 15, 1986.

William G. Gordon,

Assistant Administrator for Fisheries National Marine Fisheries Service.

[FR Doc. 86–18764 Filed 8–19–86; 8:45 am]
BILLING CODE 3510-22

Notices

Federal Register
Vol. 51, No. 161
Wednesday, August 20, 1986

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

Cooperative Agreement; Texas Agricultural Experiment Station

AGENCY: Office of International Cooperation and Development, USDA.

ACTION: Notice of Intent to Enter Into a Cooperative Agreement.

ACTIVITY: The Office of International Cooperation and Development (OICD) intends to enter into a Cooperative Agreement with the Texas Agricultural Experiment Station for cooperation in the research project for market introduction of low-cost nutritious foods in developing countries.

AUTHORITY: Section 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3291), and the Food Security Act of 1985 (Pub. L. 99–198).

OICD announces the availability of funds for fiscal year 1987 (FY1987) to enter into a follow-on cooperative agreement with the Texas Agricultural Experiment Station of the Texas A&M University System to provide additional funding support and extend the duration of the support until September 30, 1987. The agreement will enable the Station to continue activities to assist developing countries in the development and marketing of low-cost nutritional foods which the Station, in cooperation with OICD, started on October 1, 1977. Assistance for these activities will be provided only to the Texas Agricultural Experiment Station.

Based on the above, this is not a formal request for application. An estimated $40,000 will be available in FY 1987 to support this work. It is anticipated that the agreement will be funded over a 12-month budget period.

Information may be obtained from: Nancy J. Croft, Contracting Officer, Management Services Branch, Office of International Cooperation and Development, U.S. Department of Agriculture, (58–319R–7–002).

Dated: 15 August, 1986.

Allen Wilder,

Contracting Officer.

[FR Doc. 86–18765 Filed 8–19–86; 8:45 am]

BILLING CODE 3410–DP–M

Forest Service

Inyo National Forest; Mono Basin National Forest Scenic Area Advisory Board; Meeting

The Mono Basin National Forest Scenic Area Advisory Board will meet at 9:00 a.m. on September 11, 1986, at the Lee Vining Presbyterian Church in Lee Vining, California. The agenda of the meeting will include:

1. Private Land Guidelines;
2. Comprehensive Management Plan;
3. General Update by the District Ranger.

The meeting will be open to the public. Persons who wish to attend and make oral presentations, should notify Dennis W. Martin, Forest Supervisor, Inyo National Forest; 873 North Main Street; Bishop, California 93514; telephone (619) 873–5841. Written statements may be filed with the Board before or after the meeting.

The Board has established the following rule for public participation: After the Board has completed discussion of each topic, the public will be allowed time for questions or comment.

Dated: August 14, 1986.

Dennis W. Martin,

Forest Supervisor and Chairman.

[FR Doc. 86–18799 Filed 8–19–86; 8:45 am]

BILLING CODE 3410–11–M

Packers and Stockyards Administration

Posted Stockyards

Pursuant to the authority delegated under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), it was ascertained that the livestock markets named below were stockyards within the definition of that term contained in section 302 of the Act, as amended (7 U.S.C. 202), and notice was given to the owners and to the public by posting notices at the stockyards as required by said section 302, on respective dates specified below.

	Facility No., name, and location of stockyard	Date of posting
CA–177	Turlock Livestock Auction Yard, Turlock, California.	Oct. 9, 1984.
IL–171	Heart of Ill. Arena, Peoria, Illinois.	June 22, 1986.
KS–205	Ma Belle's, Inc., Linwood, Kansas.	Feb. 24, 1986.
KS–206	Sunflower Horse Auction, Chapman, Kansas.	Feb. 12, 1986.
MO–259	Sarcoxie Community Sales, Inc., Sarcoxie, Missouri.	Feb. 17, 1984.
MO–260	Diamond Feeder Pig and Hog Auction, Diamond, Missouri.	Jan. 30, 1985.
MO–261	Mo Cow Co Livestock Exchange, Lancaster, Missouri.	June 5, 1985.
MO–262	Phelps County Livestock Improvement, Assn., St. James, Missouri.	Feb. 23, 1986.
NC–156	Lucky Dollar Horse Auction, Grifton, North Carolina.	July 31, 1986.
OK–203	Southern Oklahoma Livestock Auction, Inc., Ada, Oklahoma.	Jan. 28, 1985.
OK–204	Hobart Stockyard, Inc., Hobart, Oklahoma.	May 27, 1986.
TX–329	San Augustine Livestock, San Augustine, Texas.	July 16, 1984.

Done at Washington, DC, this 14th day of August 1986.

Griffin E. Bonham,

Acting Director, Livestock Marketing Division.

[FR Doc. 86–18728 Filed 8–19–86; 8:45 am]

BILLING CODE 3410–02–KD

DEPARTMENT OF COMMERCE

International Trade Administration

Performance Review Board Membership

This notice announces the appointment by the Department of Commerce Under Secretary for International Trade, S. Bruce Smart, of the Performance Review Board for ITA (PRB). This is a revised list of membership which includes previous members as listed in the October 16, 1985 **Federal Register** announcement (49 FR 33040) with additional members added to serve out the remainder of the one year term. The purpose of the International Trade Administration PRB is to review performance actions for recommendations to the appointing authority as well as other related matters. The names of the PRB members are:

International Trade Administration

Franklin Vargo, Chairman, Deputy Assistant Secretary for Europe
Marjory Searing, Director, Office of Industry Assessment
T. Fleetwood Mefford, Deputy Assistant Secretary for Domestic Operations
George DeBakey, Deputy Assistant Secretary for Science and Electronics
John Evans, Deputy to the Deputy Assistant Secretary for Import Administration
Marilyn Wagner, Assistant General Counsel for Administration
John Richards, Director, Office of Industrial Resource Administration
James V. Lacy, Director, Office of Export Trading Company Affairs
J. Hayden Boyd, Director, Office of Consumer Goods.

Dated: August 8, 1986.

Peggy Hemsley,

Acting, Personnel Officer, ITA.

[FR Doc. 86-18763 Filed 8-19-86; 8:45 am]

BILLING CODE 3510-25-M

Short Supply Review of High-Grade, Cold-Rolled, Grain-Oriented Silicon Steel ("High-Tech" Silicon Steel) Used in the Manufacture of Power Transformers and Distribution Transformers; Request For Comments

Correction

In FR Doc. 86-17913, appearing on page 28615, in the issue of Friday, August 8, 1986, in the second column, under "Distribution Transformers", second line, before "Core" insert "or less."

BILLING CODE 1505-01-M

National Oceanic and Atmospheric Administration

Permits; Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of issuance of an expermental fishing permit.

SUMMARY: This notice announces the issuance of an experimental fishing permit (EFP) to U.S. fishermen to harvest groundfish species incidental to a white croaker fishery using a trawl net with a small-mesh codend in the fishery conservation zone (FCZ) off the coast of California. The permit authorizes the use of experimental fishing gear which otherwise would be prohibited by Federal regulations. This action is authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP) and its implementing regulations.

EFFECTIVE DATES: January 1, 1986, through December 31, 1986.

ADDRESS: Rolland A. Schmitten, Director, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115; or E. Charles Fullerton, Director, Southwest Region, NMFS, 300 S. Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten, 206-526-6150 or E. Charles Fullerton, 213-514-6196.

SUPPLEMENTARY INFORMATION: The FMP and its implementing regulations at 50 CFR Part 663 specify that EFPs may be issued to authorize fishing that would otherwise be prohibited by the FMP and regulations. The procedures for issuing EFPs appear at § 663.10.

An EFP application to harvest groundfish species incidental to a fishery targeting on white croaker (*Genyonemus lineatus*) using a two-inch-mesh codend in a Canadian-style pair trawl net in the FCZ off the coast of California was received on August 16, 1985. Current groundfish regulations at § 663.26(b)(2) prohibit the use of a mesh size smaller than three inches in pelagic trawls in the FCZ. A notice acknowledging receipt of the application, describing the proposal, and requesting public comment was published in the **Federal Register** on September 30, 1985 (50 FR 39753). No comments were received. The application was considered by the Pacific Fishery Management Council, including the directors of the fishery management agencies of Washington, Oregon, California, and Idaho, at its November 1985 public meeting in Portland, Oregon. The Council recommended that NMFS issue an EFP for the purposes described in the application, and NMFS has issued the EFP under the provisions of § 663.10.

The EFP, although effective from January 1 to December 31, 1986, was not signed and executed until July 8, 1986, as the applicant encountered logistical problems in commencing the experimental fishery. The EFP authorizes the use of two-inch mesh in the codend of a Canadian-style pair trawl net to incidentally harvest groundfish species while targeting on white croaker in the FCZ off California. Under its terms and conditions, the two domestic vessels authorized under the EFP may harvest up 1,000 pounds of groundfish species on each trip. However, if more than 30,000 pounds of groundfish species are caught, the EFP will be suspended unless the Director, Northwest Region, NMFS, determines that an adjustment of the operation will reduce the incidental catch of other groundfish species sufficiently to continue the conduct of a clean white croaker fishery. The permittee must provide advance notification to NMFS of the expected experimental fishery operating schedule to allow for assignment and placement of an observer aboard the permitted vessels. Detailed logs on the fishing operations must be maintained and submitted to NMFS.

Further details or a copy of the permit may be obtained from the Director of the Northeast Region at the above address.

(16 U.S.C. 1801 *et seq.*)

Dated: August 15, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 86-18816 Filed 8-19-86; 8:45 am]

BILLING CODE 3510-22-M

National Telecommunications and Information Administration

Senior Executive Service; Performance Review Board; Membership

Below is a listing of individuals who are eligible to serve on the Performance Review Board in accordance with the National Telecommunications and Information Administration Senior Executive Service (SES) Performance Appraisal System:

Harold G. Kimball
Dennis R. Connors
Linda A. Townsend
Carol R. Emery
Richard D. Parlow
William D. Gamble
Larry Eads
Robert J. Mayher
Francis S. Urbany
William F. Utlaut
Roger K. Salaman
Charles M. Rush
Neal B. Seitz
Jimmie D. Brown

Edward A McCaw,

Executive Secretary, Performance Review Board, National Telecommunications and Information Administration.

[FR Doc. 86-18737 Filed 8-19-86; 8:45 am]

BILLING CODE 3510-BS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Cancelling Staged Entry Periods Established for Certain Cotton Textile Products Produced or Manufactured in Turkey

August 15, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority

contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on August 21, 1986. For further information contact Ann Fields, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

On May 30, June 18, and June 27, 1986, notices were published in the **Federal Register** (51 FR 19590, 22106 and 23458) announcing thirty-day periods for staging the entry and withdrawal from warehouse for consumption in the United States of women's, girls' and infants' cotton coats and cotton knit shirts in Categories 335 and 339 and men's and boys' cotton shirts in Category 340, produced or manufactured in Turkey. CITA has decided, inasmuch as the thirty-day levels are no longer needed, to cancel further legal entry for these categories. Accordingly, in the letter which follows this notice the Chairman of CITA cancels the directives to the Commissioner of Customs of May 27, June 13 and June 24, 1986.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

William H. Houston III,

Chairman, Committee for the Implementation of Textiles Agreements.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive cancels the directives of May 27, June 13, and June 24, 1986 which directed you to stage entry into the United States during specified thirty-day periods of cotton textile products in Categories 335, 339 and 340, produced or manufactured in Turkey, effective on August 21, 1986.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86–18762 Filed 8–15–86; 2:43 pm]

BILLING CODE 3510-DR-M

Exemption for Certain Handloomed Textile Products Produced or Manufactured in India

August 15, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on August 20, 1986. For further information contact Ann Fields, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

In consultations held pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 21, 1982, as amended and extended, between the Governments of the United States and India, the United States Government agreed to permit entry and withdrawal from warehouse for consumption in the United States until December 31, 1986 of certain handloomed textile products in Categories 360–369 (except Category 363), 464–469 and 665–669, produced or manufactured in India, regardless of the date of export, which have been certified exempt by the Government of India, even though the goods may contain some machine stitching. Products imported on and after January 1, 1987 will require the appropriate export visa in order to be entered.

Accordingly, in the letter which follows this notice the Chairman of CITA directs the Commissioner of Customs to permit entry of the aforementioned products through December 31, 1986.

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

August 15, 1986.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: To facilitate implementation of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 21, 1982, as amended and extended, between the Governments of the United States and India, I request that, effective on August 20, 1986 and until December 31, 1986, you permit entry of certain handloomed textile products in Categories 360–369 (except Category 363), 464–469 and 665–669, produced or manufactured in India, regardless of the date of export, which have been certified exempt by the Government of India, but which may contain some machine stitching.

Products in the foregoing categories, imported on and after January 1, 1987 which contain any machine stitching, will require an export visa in order to be entered or withdrawn from warehouse for consumption in the United States.

The Committee for the Implementation of Textile Agreement has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

William H. Houston, III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86–18761 Filed 8–15–86; 2:43 pm]

BILLING CODE 3510-DR-N

DEPARTMENT OF DEFENSE

Department of the Air Force

Air Force Academy Board of Visitors; Meeting

Pursuant to section 9355, Title 10, United States Code, the Air Force Academy Board of Visitors will meet at the Air Force Academy, Colorado Springs, Colorado, September 18–20, 1986. The purpose of the meeting is to consider morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, academic methods, and other matters relating to the Academy.

This meeting will be closed to the public to discuss matters analogous to those listed in subsections (2), (4), and (6) of section 552b(c), Title 5, United States Code. These closed sessions will include: attendance at cadet classes and panel discussions with groups of cadets and military staff and faculty officers involving personal informaton and opinions, the disclosure of which would result in a clearly unwarranted invasion of personal privacy. Closed sessions will also include executive sessions involving discussions of personal information, including financial information, and information relating solely to internal personnel rules and practices of the Board of Visitors and the Academy. Meeting sessions will be held in the Superintendent's Conference Room, Harmon Hall, USAF Academy.

For further information, contact Major Randall R. Cantrell, Headquarters, U.S.

Air Force (DPPA), Washington, DC 20330–5060, at (202) 697–7116.

Patsy J. Conner,

Air Force Federal Register, Liaison Officer.

[FR Doc. 86–18741 Filed 8–19–86; 8:45 am]

BILLING CODE 3910–01–M

Performance Review Boards; List of Members

Below is a list of additional individuals who are eligible to serve on the Preformance Review Boards for the Department of the Air Force in accordance with the Air Force Senior Executive Appraisal and Award System.

Air Staff

BG Richard E. Carr
MG Sloan R. Gill
BG Frank S. Goodell
John R. Graham
Joseph C. Ksycewski
Charles R. Torpy

Air Force Systems Command

MG Vincent L. Luchsinger
LG George L. Monahan, Jr.

Air Force Logistics Command

BG Gary H. Mears
BG John M. Nowak
Philip P. Panzarella
Steve N. Smith

Others

John A. Kline.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86–18742 Filed 8–19–86; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Military Traffic Management Command, Military Personal Property Claims Symposium; Cancellation of Open Meeting

The Military Personal Property Claims Symposium scheduled for 28 August 1986, published in the **Federal Register**, August 11, 1986 (51 FR 28741), has been canceled.

If you have questions, contact the Commander, Military Traffic Management Command, ATTN: MT–PPM, at telephone number 756–1600, between 0800–1530 hours.

Dated: 15 August, 1986.

Brenda K. Hagstrom,

Department of the Army, Alternate Liaison Officer with the Federal Register.

[FR Doc. 86–18721 Filed 8–19–86; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Expansion of the Alcatraz Disposal Site (SF–11) in San Francisco Bay, CA

AGENCY: Army Corps of Engineers Defense.

ACTION: Notice of Intent to prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: 1. The proposed action is the expansion of an existing Bay disposal site located near Alcatraz Island in San Francisco Bay, California in accordance with the Clean Water Act, within the following corner coordinates:

37°49'32" W	122°25'8"
37°49'32" W	122°24'51"
37°49'17" W	122°25'8"
37°49'17" W	122°24'51"

The site, once designated, could be used for disposal of material dredged in San Francisco Bay which meets the criteria for bay disposal as described at 40 CFR Part 230. The proposed action would allow the disposal of coarse-grained material, such as sandy sediments, or material that can not be readily dispersed. The expended site would supplement the use of the existing Alcatraz disposal, site which has experienced material accumulation from non-dispersive type materials.

2. *Alternatives.* The following alternatives are being considered. Baseline data on the proposed site is now being collected.

a. No action alternative.

b. Designation of another open-water, bay site.

c. Use of other existing bay sites.

d. Designation of an ocean site.

e. Upland disposal

3. *Scoping.* Federal, state and local agencies, and interested private organizations and individuals are invited to submit written comments on the proposed action within 30 days of the publication of this notice to the Chief, Environmental Branch, San Francisco District, Corps of Engineers, 211 Main Street, San Francisco, California 94105 (ATTN: Mr. Les Tong, SPNPE–R). A public scoping meeting will be held in the Presidio Theater on Wednesday, September 13, 1986, at one o'clock to discuss issues raised during the 30-day review period.

4. *Important Issues.* The following issues have been identified as significant, and will be addressed in the DEIS:

Biotic resources
Sediment transport
Sediment characteristics
Navigational safety
Water quality and depth
Feasibility of monitoring
Consistency with Coastal Zone Regulations
Distance from dredging sites
Areas of concentrated commercial fishing
Areas of potential minerals management
Areas of military importance
Cultural resources

5. The DEIS is scheduled to be issued in May 1987.

6. Questions about the proposed action and DEIS can be directed to Mr. Les Tong at (415) 974–0440 or FTS 454–0440.

Dated: August 15, 1986.

Brenda K. Hagstrom,

Department of the Army, Alternate Liaison Officer with the Federal Register

[FR Doc. 86–18727 Filed 8–19–86; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Deaf-Blind Children and Youth Program Grants Availability; Correction

AGENCY: Department of Education.

ACTION: Correction: Application Notice for new awards under the services for Deaf-Blind Children and Youth Program for fiscal year 1987.

SUMMARY: This notice corrects an error made in the application notice published on August 6, 1986, in 51 FR 28258. The correct closing date is December 8, 1986 for the following programs: Technical Assistance to State and Multi-State Projects (84.025C), Technical Assistance for Transitional Services (84.025E), and Dissemination of Information—Services for Deaf-Blind Children and Youth (84.025G).

FOR FURTHER INFORMATION CONTACT: Charles Freeman, Severely Handicapped Branch, Office of Special Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW., (Rm. 3511, Switzer Building), Washington, DC 20202. Telephone: (202) 732–1165.

Program Authority: 20 U.S.C. 1422.

(Catalog of Federal Assistance No. 84.025, Services for Deaf-Blind Children and Youth)

Dated: August 15, 1986.

Madeleine Will,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 86-18715 Filed 8-19-86; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

DEPARTMENT OF DEFENSE

Federal Energy Regulatory Commission

Corps of Engineers

[FERC Project No. 5251-001; COE No. W-D-050-03-3541]

Joint Notice of Public Meeting

Notice is hereby given that a public meeting will be held on Tuesday, 23 September 1986, to receive comments on a Draft Environmental Impact Statement (DEIS) prepared on a hydroelectric and water supply project proposed for construction by the City of Fort Smith, Arkansas on Lee Creek at stream mile 3.2, Crawford County, Arkansas. The meeting will be held at 7 p.m. in the Van Buren High School Cafeteria, Van Buren, Arkansas. A map showing the location of the high school is not be printed in the Federal Register, but is available from the Commission's Division of Public Reference, Room 1000, 825 North Capitol St., N.E., Washington, DC 20406.

The purpose of the public meeting is to provide an opportunity for any and all persons to give statements and provide information on the content of the DEIS. The information presented at the meeting will be considered by the Federal Energy Regulatory Commission (FERC) and the Little Rock District of the U.S. Army Corps of Engineers (COE) in rendering final decisions on the regulatory actions currently before them on the proposed project. FERC's regulatory authority is pursuant to the Federal Power Act (16 U.S.C. 791(a)–825(r)) and COE's regulatory authority is pursuant to section 404 of the Clean Water Act (33 U.S.C. 1344). FERC is the lead agency on preparation of the DEIS and COE is acting as a cooperating agency.

The location and general plan for the applicant's proposed work are not being printed in the Federal Register, but are available from the Commission's Division of Public Reference, Room 1000, 825 North Capitol St., NE., Washington, DC 20406.

The purpose of the work is to construct a concrete ogee-overflow dam for public water supply and hydroelectric generation for the city of Fort Smith and surrounding areas. The ogee section of the dam would be approximately 1,000 feet long and 34 feet in height above the streambed. The west abutment end section would have a top elevation of 440.0 feet mean sea level (m.s.l.), as would the powerhouse. The raw water intake station at the east end would have a top elevation of 480.0 feet. Dam and reservoir data are listed below:

Top of Dam—Ogee Section	420 m.s.l.
Spillway Crest Elevation	420 m.s.l.
Lake Area at Elevation 420	634 acres.
Municipal Pool Elevation	420 m.s.l.
Sediment Pool Elevation	407 m.s.l.
Lake Area at Elevation 407	376 acres.
Drainage Area	279,040 acres.
Sediment Storage	1,403 acre-feet.
Floodwater Storage	0 acre-feet.
Municipal Storage	5,715 acre-feet.
Firm Net Yield of Water Supply.	10 m.g.d.

The DEIS has been prepared for the project by FERC pursuant to the National Environmental Policy Act of 1969. The statement describes the hydroelectric potential of the project and its alternatives, the 10 m.g.d. water supply source alternatives considered, the environmental impacts of all reasonable 10 m.g.d. alternatives including the applicant's proposed alternative and the potential for future development of each 10 m.g.d. alternative. Some of the principal environmental issues considered in the statement are land use and geology changes, water quality and aquatic community changes both in the reservoir and upstream, terrestrial community changes, the effects on archeological and historical resources, and the implications of future expansion of the 10 m.g.d. water supply.

Copies of the statement are available for review at the following locations:

City of Fort Smith, AR Library, 61 South 8th Street, Fort Smith, Arkansas 72901

City of Little Rock, AR Library, 700 Louisiana Street, Little Rock, Arkansas 72201

Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426

U.S. Army Corps of Engineers, Little Rock District, Permits Branch, Room 5138, Federal Building, 700 West Capitol, Little Rock, Arkansas 72201, Contact: Mr. Jerry Harris, 501–378–5296

Van Buren Public Library, 111 North 12th, Van Buren, Arkansas 72910

Sallisaw City Library, 101 East Cherokee, Sallisaw, Oklahoma 74955

Westark Community College, Learning Resources Center, Fort Smith, Arkansas 72913.

FERC will preside at the meeting. Any person may submit oral or written statements concerning the DEIS. The presiding officer shall have the discretion to establish reasonable limits upon the time allowed for statements. A meeting file will be established and available for public inspection. The file will include a verbatim report of the meeting and all written statements, charts, tabulations, and similar data offered, subject to exclusion for reasons of redundancy. Written statements or informational materials for inclusion in the record, including documentary materials, may be presented during the meeting or mailed to FERC, 825 N. Capitol St. NE., Washington, DC 20426, or District Engineer, Little Rock District COE, ATTN: Permits Branch, P.O. Box 867, Little Rock, Arkansas 72203–0867. Any written submissions should contain the FERC and OCE numbers listed at the head of this notice. Any person may present written statements for the meeting files for a period of 15 days following the meeting, after which time the meeting record will be closed to additional public comments.

Copies of this notice are furnished to all known interested parties. Copies are also furnished to newspapers and radio and TV stations with advice that the information may be used as a news story. Postmaters, public officials, cooperatives, trade associations, union locals, and similar addressees are requested to post the notice in an appropriate place for public review.

All persons receiving a copy of this notice are requested to advise other parties they believe to be interested about the time, place, date, and purpose of the public meeting.

Interested parties may purchase a copy of the transcript of the meeting. Copies will be available from the Corps at the above address within 30 to 45 days after the meeting. Persons ordering copies of the transcript will be charged reproduction costs for each copy.

Dated: August 15, 1986, Washington, DC.

Kenneth F. Plumb,

Secretary, Federal Energy Regulatory Commission.

Robert W. Whitehead,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 86-18717 Filed 8-19-86; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TA86-1-63-002]

Carnegie Natural Gas Co.; Filing

August 15, 1986.

Take notice that on Augusts 13, 1986, Carnegie Natural Gas Company (Carnegie) tendered for filing Substitute First Revised Sheet No. 47 and Substitute First Revised Sheet No. 48 to its FERC Gas Tariff, First Revised Volume No. 1. Carnegie requests that these sheets be substituted for the First Revised Sheet No. 47 and First Revised Sheet No. 48 that were filed on August 1, 1986. Carnegie states the reason for the substitution is that its primary gas pipeline supplier, Texas Eastern Transmission Corporation filed a further reduction to its commodity rates, which reduction has the effect of reducing the commodity portion of Carnegie's LVWS rate and LVIS rate by $.09.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's rules of practice and procedure (18 CFR §§ 385.214, 385.211 (1985)). All such motions or protests should be filed on or before August 22, 1986. 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-18806 Filed 8-19-86;8:45am]

BILLING CODE 6717-01-M

[Docket No. TA86-1-24-000, 001]

Equitable Gas Company, a Division of Equitable Resources, Inc.; Proposed Change in Rates

August 15, 1986.

Take notice that on August 1, 1986, Equitable Gas Company, a Division of Equitable Resources, Inc. (Equitable) tendered for filing Ninth Revised Sheet No. 6f to its FERC Gas Tariff, First Revised Volume No. 1. Equitable requests an effective date of September 1, 1986 for the sheet. According to § 381.103 (b)(2)(iii) of the Commission's regulations (18 CFR 381.103 (b)(2)(iii)) the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until August 11, 1986. Equitable states that the change in rates results from the application of the purchased gas cost rate adjustment provision in section 6 of its Rate Schedule GS-1.

Copies of this filing have been served upon the purchaser, interested state commissions, and all parties on the service lists in Docket Nos. CP79-290, RP79-69 and RP79-49.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's rules of practice and procedure (18 CFR 385.214, 385.211 (1985)). All such motions or protests should be filed on or before August 22, 1986. 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-18807 Filed 8-19-86;8:45am]

BILLING CODE 6717-01-M

[Docket No. RP86-113-001]

Gas Transport, Inc.; Compliance Filing

August 15, 1986.

Take notice that on July 15, 1986, Gas Transport, Inc. (Gas Transport) tendered for filing First Revised Sheet No. 5 to its FERC Gas Tariff, First Revised Volume No. 1. Gas Transport states this sheet is filed in compliance with the Commission's order issued June 30, 1986, which required that Gas Transport refile Original Sheet No. 5 to reflect variable costs in the minimum rates for both firm and interruptible service. In its original filing, Gas Transport was unable to identify any variable costs with the exception of retainage. However, to cover any possible variable costs which have not been identified (*i.e.*, "out-of-pocket" costs), Gas Transport has established a nominal charge of 1¢ per MMBtu as the minimum rate as shown on First Revised Sheet No. 5.

On August 13, 1986, Gas Transport filed a Petition For Waiver Of Filing Fee. Previously, on July 29, 1986, Gas Transport filed a Request For Rehearing, Or In The Alternative, Motion For Waiver, in which it asked the Commission to eliminate the requirement to file a revised Sheet No. 5 or alternatively, to waive the provisions of its June 30, 1986 order to the extent necessary to allow Gas Transport to continue rendering transportation services until it could make one filing encompassing all of the necessary changes to its tariff filing. As yet, the Commission has not acted on the July 29, 1986 pleading. If the Commission grants the relief sought, the July 15, 1986 filing would become moot and the need for a filing fee eliminated. Gas Transport also states that because it is a small interstate pipeline, the $3,400 filing fee represents a significant cost.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC. 20426, in accordance with Rules 214 and 211 of the Commission's rules of practice and procedure (18 CFR 385.214, 385.211 (1985)). All such motions or protests should be filed on or before August 22, 1986. 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-18808 Filed 8-19-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-4-41-000, 001]

Southwest Gas Corp.; Change in Rates Pursuant to Purchased Gas Cost Adjustment

August 15, 1986.

Take notice that SOUTHWEST GAS CORPORATION (Southwest) on August 8, 1986, tendered for filing Thirty-first Revised Sheet No. 10 pursuant to Section 9, Purchased Gas Adjustment Clause (PGAC), of the General Terms and Conditions contained in its FERC Gas Tariff, Original Volume No. 1. The purpose of said filing is to reflect a decrease in rates occasioned by a decrease in rates from Northwest Pipeline Corporation, Southwest's sole supplier of gas in northern Nevada, effective August 1, 1986. Southwest has requested that its filing become effective

August 1, 1986, concurrent with Northwest's approved rate reduction.

Southwest states that a copy of this filing has been mailed to the Nevada Public Service Commission, the California Public Utilities Commission, Sierra Pacific Power Company and CP National Corporation.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protest should be filed on or before Augfust 22, 1986. 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 18809 Filed 8-19-86; 8:45 a.m.]

BILLING CODE 6717-01-M

[Docket No. RP86-9-003]

Southwest Gas Corp.; Compliance Filing

August 15, 1986.

Take notice that on August 8, 1986, Southwest Gas Corporation (Southwest) tendered for filing Revised Substitute Twenty-ninth Revised Sheet No. 10 and Second Substitute Thirtieth Revised Sheet No. 10 to its FERC Gas Tariff, Original Volume No. 1, in compliance with the Commission's July 23, 1986, letter order which approved the stipulation and agreement in Docket No. RP86-9-000.

Southwest states that effective April 1, 1986, it began charging its FERC jurisdictional customers at the settlement rates. Pursuant to the terms of the settlement agreement, said rates were made effective March 1, 1986. Therefore, Southwest is required to make refunds for the period March 1, 1986 through March 31, 1986. Southwest will submit its refund report to the Commission, and in compliance with the Commission's aforementioned letter order, Southwest will make a one-time refund with interest computed in accordance with the Commission's rules and regulations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's rules of practice and procedure (18 CFR 385.214, 385.211 (1985)). All such motions or protests should be filed on or before August 22, 1986. 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-18810 Filed 8-19-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP86-625-000, et al.]

Natural Gas Certificate Filings; Consolidated Gas Transmission Corp. et al.

August 15, 1986.

Take notice that the following filings have been made with the Commission

1. Consolidated Gas Transmission Corp.

[Docket No. CP86-625-000]

Take notice that on July 16, 1986, Consolidated Gas Transmission Corporation (Consolidated), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP86-625-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to add an additional delivery point to Pennzoil, Exploration and Production Company (Pennzoil) under Consolidated's Rate Schedule X-50, as more fully set forth in the application which is on file with the Commission and open to public inspection.

The Commission issued Consolidated's blanket certificate authorization in Docket No. CP82-537 by order dated November 3, 1982.

On March 13, 1984, Consolidated filed a request in Docket No. CP84-300-000 for authorization to exchange gas with Pennzoil pursuant to an October 31, 1983, exchange agreement. The Commission order issued July 19, 1984, in Docket No. CP84-300-000 authorized Consolidated and Pennzoil to perform the exchange. The exchange agreement appears as Rate Schedule X-50 in Consolidated's Original Volume No. 2 of its FERC Gas Tariff and Pennzoil's Rate Schedule No. 10.

On January 17, 1986, Consolidated commenced an emergency exchange service with Pennzoil under Part 157 Subpart C of the Commission's Regulations. Consolidated states that it filed an initial report of commencement of service on January 21, 1986, and filed a request on February 27, 1986, to extend the service through May 16, 1986. Pennzoil represented that the service was necessary in order to supply approximately 500 consumers that Pennzoil serves in the Lincoln County, West Virginia, area.

Consolidated anticipates that this emergency situation will continue. Consolidated states that the availability of gas at this delivery point is necessary to maintain adequate line pressure for peak deliveries during the winter. Accordingly, Consolidated and Pennzoil have agreed to provide for the additional delivery point on a permanent basis under the exchange agreement.

No change in volumes or terms is anticipated. Since the deliveries would be made under their exchange agreement on a gas-for-gas basis, no rate would be charged for the service. The new delivery point located at Consolidated's Griffith Station in Duval District, Lincoln County, West Virginia.

Comment date: September 29, 1986, in accordance with Standard Paragraph G at the end of this notice.

2. El Paso Natural Gas Co.

[Docket No. CP86-649-000]

Take notice that on August 1, 1986, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP86-649-000 an application pursuant to section 7(c) of the Natural Gas Act and § 284.221 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of others, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

El Paso states that it would comply with the conditions in paragraph (c) of § 284.221 of the Commission's Regulations which paragraph refers to Subpart A of Part 284 of the Commission's Regulations. El Paso requests that the Commission waive its regulations to the extent necessary to grant El Paso until 10 days following a final Commission order on rehearing in El Paso's filing in Docket No. RP86-45-000 to decide whether to accept or reject a blanket certificate issued in this proceeding.

Comment date: September 5, 1986, in accordance with Standard Paragraph F at the end of this notice.

3. Kern River Gas Transmission Co.

[Docket No. CP85-552-001]

Take notice that on July 25, 1986, the Public Utilities Commission of the State of California (CPUC), 5066 State Building, San Francisco, CA 94102, filed in Docket No. CP85-552-001 a petition pursuant to Rule 207 of the Commission's Rules of Practice and Procedure (18 CFR 385.207) for a declaratory order to resolve uncertainties concerning Kern River Gas Transmission Company's (Kern River) proposed facilities in Docket No. CP85-552-000.

The CPUC alleges that Kern River is proposing to construct certain distribution facilities within the State of California. The CPUC has notified this Commission that it will require Kern River to apply and receive a certificate of public convenience and necessity from the CPUC before it may begin the construction of facilities related to, and before it may engage in, the local distribution of natural gas in California. The CPUC alleges that once the gas has been transported to Kern County, there is no way that Kern River can deliver it to the customer without engaging in a local distribution function or employing a local distribution facility. The CPUC claims that every piece of equipment and gas plant employed in a local distribution function and every connection to the interstate transmission facility, alteration in the interstate transmission facility, agreement or authorization to another person to connect to or alter the interstate transmission facility, and every other action which facilitates locally the ultimate delivery of the gas to a local distribution or end-user, fall within the purview of the state's authority under section 1(b) of the Natural Gas Act (15 U.S.C. 717(b)). The CPUC requests that the Commission issue a declaratory order making clear that this limited assertion of state jurisdiction is fully consistent with section 1(b) of the Natural Gas Act.

Comment date: September 5, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

4. K N Energy Inc.

[Docket No. CP86-643-000]

Take notice that on July 31, 1986, K N Energy, Inc. (K N), Post Office Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP86-643-000 an application pursuant to section 7(c) of the Natural Gas Act for authorization to make a sale-for-resale of natural gas to Public Service Company of Colorado (PSCo) and to construct and operate certain facilities necessary to effectuate the proposed sale, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, K N proposes to sell natural gas, on a firm basis, to PSCo at an initial volume of 25,000 Mcf of natural gas per day and 3,193,750 Mcf of natural gas for the fiscal year beginning October 1, 1986; 30,000 Mcf per day and 3,832,500 Mcf for the fiscal year beginning October 1, 1987; and 40,000 Mcf per day and 5,110,000 Mcf beginning October 1, 1988 through 1996 and year-to-year thereafter. K N states that it intends to deliver gas for PSCo to its wholly-owned, intrastate affiliate, Colorado Gas Transmission Corp. (CGT) at a to-be-established interconnection with CGT in Weld County, Colorado. K N asserts that CGT would then transport gas on behalf of PSCo to an interconnection with Western Gas Supply Company (West Gas), a wholly-owned intrastate affiliate of PSCo, for ultimate redelivery by West Gas to PSCo. K N proposes to charge PSCo the applicable rates under Rate Schedules SF-1 and IOR-1 of K N's FERC Gas Tariff, Third Revised Volume No. 1

K N also proposes to construct and operate a tap, meter station and appurtenant facilities at the proposed interconnection with CGT and make certain modifications to the piping at its Huntsman Compressor Station to allow gas to flow west from the station. K N states that the estimated cost of these facilities is $103,000 which cost would be met from internally generated loans or from interim bank loans which at a later date may be funded through a security issue.

Comment date: September 5, 1986, in accordance with Standard Paragraph F at the end of this notice.

5. Northern Natural Gas Co., Division of Enron Corp.

[Docket No. CP86-653-000]

Take notice that on August 6, 1986, Northern Natural Gas Company, Division of Enron Corp. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP86-653-000, a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to install and operate six small volume measurement stations to accommodate natural gas deliveries to six non-right-of-way grantors served by the local distribution company, Peoples Natural Gas Company (Peoples) under the authorization issued in Docket No. CP82-401-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Northern requests authority to install, operate and maintain six small volume measurement stations as follows:

End-user	Distributor	Location	End-use
Buffalo Dunes Golf Course.	Peoples	Sec. 19, Twp. 35, Rge 32, Finney Co., KS	Commercial Heat.
Al Dewey	Peoples	Sec. 9, Twp. 23S, Rge 32W, Finney Co., KS	Irrigation.
Urban Kuennen	Peoples	Sec. 31, Twp. 92N, Rge 8W, Fayette Co., IA	Residential Heat & Crop Dryer.
City of Madison Sewage Plant.	Peoples	Sec. 27, Twp. 118N, Rge 44W, LacQui Parle Co., MN	Commercial Heat.
Raymond Moore	Peoples	Sec. 34, Twp. 17N, Rge 3E, Butler Co., NE	Residential Heat.
Matt Smith	Peoples	Sec. 31, Twp. 85N, Rge 17W, Marshall Co., IA	Residential and Crop Dryer.

Northern states that deliveries to these small volume measurement stations would be made within the existing firm entitlement of Peoples.

Northern also states that installation of the proposed measurement facilities will be financed in accordance with Paragraph 2 of the General Terms and Conditions of Northern's FERC Gas Tariff, Third Revised Volume No. 1 and the letter agreements between Northern and Peoples. It is stated that the estimated cost to install the proposed small volume measurement stations is $12,639. Peoples will be required to contribute $8,092 in aid of construction.

Comment date: September 29, 1986, in accordance with Standard Paragraph G at the end of this notice.

5. Northern Natural Gas Co., Division of Enron Corp.

[Docket No. CP86-658-000]

Take notice that on August 7, 1986, Northern Natural Gas Company, Division of Enron Corp. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP86-658-000, a request pursuant to §§ 157.205 and 157.212 of the Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to construct

one delivery point and appurtenant facilities to accommodate natural gas deliveries to the communities of Montrose and Waverly, Minnesota, under the certificate issued in Docket No. CP82-401-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that the distributor, Western Gas Utilities, Inc. (Western) would deliver the gas to Montrose and Waverly to be used for residential and commercial heating. Northern indicates that Western for the first year, would serve Montrose and Waverly from the firm entitlement designated to Watertown and Delana, Minnesota. It is explained, that the expansion of natural gas service anticipated for the 1987/1988 heating season, would require the purchase by Western of an incremental firm entitlement, commensurate with the peak day needs of Montrose and Waverly, and that such increases in entitlement would be the subject of future and separate application. The estimated peak day and annual volumes to be sold through the proposed facilities would amount to 1,011 Mcf and 107,621 Mcf, respectively, in the fifth year.

Northern states that Montrose and Waverly are currently using #2 fuel oil as their primary energy source and are located within Western's service area, but have franchise with Western for natural gas service in order to utilize a more economical and convenient fuel.

The total cost to construct the facilities is estimated to be $73,500, and Western would not be required to make any contribution, it is stated.

Comment date: September 29, 1986, in accordance with Standard Paragraph G at the end of this notice.

7. Panhandle Eastern Pipe Line Co.

[Docket No. CP86-645-000]

Take notice that on July 31, 1986, Panhandle Eastern Pipe line Company (Applicant), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP86-645-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas on an interruptible basis on behalf of Amoco Production Company (Amoco), and granting authority to the Applicant to report annually additional points of receipt, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

It is stated that pursuant to a transportation agreement dated July 24, 1986 (Agreement), Applicant has agreed to transport up to 45,000 Mcf of natural gas per day on an interruptible basis on behalf of Amoco. It is further stated that Applicant would receive gas for Amoco's account at one hundred and sixty five points of receipt presently attached to Applicant's Wattenberg Gathering System in Adams and Weld Counties, Colorado. All such transport gas would be released by Applicant and would be gas which is certificate deregulated under section 601 of the Natural Gas Policy Act of 1978 (NGPA) or permanently or temporarily abandoned under section 7(b) of the Natural Gas Act. Applicant avers that it would receive Mcf-for-Mcf take-or-pay relief for all volumes transported pursuant to the proposal.

Applicant states that it would redeliver volumes to Amoco, at the existing meter located at the inlet flange of Amoco's Gas Processing Plant located at the terminus of Applicant's Wattenberg Gathering System. Applicant further requests authority to add or delete existing receipt points from the Agreement as may be required from time to time for gas that is certificate deregulated under section 601 of the NGPA. Applicant proposes to file annually such revisions to Exhibit C of the Agreement which reflect the addition and deletion of receipt points under the Agreement. Such filing would be submitted to the Commission pursuant to Part 154 of the Regulations.

Applicant states that the term of the proposed service is five years from the date of the first delivery and continuing month to month thereafter unless either party terminates the Agreement by giving thirty days written notice to the other party. It is further stated that Amoco would pay Applicant a unit transportation charge of 27.80 cents per Mcf.

Comment date: September 5, 1986, in accordance with Standard Paragraph F at the end of this notice.

8. Southern Natural Gas Co.

[Docket No. CP86-638-000]

Take notice that on July 25, 1986, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP86-638-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for permission and approval to abandon certain facilities, with no abandonment in service, and for authority to construct, install and operate certain other facilities at the delivery point, under the certificate issued in Docket No. CP-406-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Southern states that Alabama Gas Corporation (Alagasco) provides natural gas service in the city of Oak Grove, Alabama, and surrounding areas by purchases it makes from Southern at the measuring station referred to as the Oak Grove delivery point (Oak Grove) in the currently effective Exhibit A to the service agreement between Southern and Alagasco dated September 19, 1969. Although Exhibit A provides that Southern would deliver gas to Alagasco at Oak Grove at a delivery pressure of 150 psig, the measurement facilities have a maximum allowed operating pressure of 100 psig and deliveries of gas at Oak Grove have historically been made at or below that pressure.

In order to have the capability to make deliveries at the contract pressure authorized for Oak Grove, Southern proposes to abandon the metering and regulating facilities and to construct, install and operate replacement metering and regulating facilities, all located at Oak Grove delivery point on Southern's 24-inch North Main Line and Loop Line in Jefferson County, Alabama. Southern states that the replacement facilities would have a design maximum allowed operating pressure of 175 psig, which would facilitate the contract delivery pressure of 150 psig; however, there would be no increase in the Oak Grove contract demand quantity of 294 Mcf per day and no significant impact on Southern's peak-day and annual deliveries, it is stated. Southern indicates that the total estimated cost of the abandonment and subsequent construction and installation is approximately $37,000. Southern further states that it would not propose an increase in Alagasco's requirements under Southern's curtailment plan as a result of sales through the replacement facilities.

Comment date: September 29, 1986, in accordance with Standard Paragraph G at the end of this notice.

9. Southern Natural Gas Co.

[Docket No. CP86-644-000]

Take notice that on July 31, 1986, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP86-644-000 an application pursuant to section 7(c) of the Natural Gas Act for limited-term certificate of public convenience and necessity authorizing for one year the transportation of natural gas for United Cities Gas Company (United Cities), the Utilities Board of the City of Phenix City (Phenix City), the City of Union Springs,

Alabama (Union Springs), and Southeast Alabama Gas District (Southeast Alabama), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern requests a limited-term certificate of public convenience and necessity authorizing it to transport gas on behalf of United Cities, Phenix City, Union Springs and Southeast Alabama, acting as agents in arranging for the transportation of natural gas supplies for Columbus Mills, Inc. (Columbus Mills), in accordance with the terms and conditions of a transportation agreement between United Cities and Southern dated June 13, 1986 (United Cities Agreement), a transportation agreement between Phenix City and Southern dated July 7, 1986 (Phenix City Agreement), a transportation agreement between Union Springs and Southern dated July 9, 1986 (Union Springs Agreement), and a transportation agreement between Southeast Alabama and Southern dated July 10, 1986, (Southeast Alabama Agreement). Southern states that Columbus Mills has entered into gas sales contracts dated April 14, 1986, to purchase natural gas from SNG Trading Inc. (SNG Trading) in order to serve the natural gas requirements of its plants in Columbus, Georgia and Phenix City, Union Springs, and Eufaula, Alabama. It is said that in order to effectuate delivery of the gas purchased, Columbus Mills has entered into separate agreements with the agents wherein the agents have agreed to transport through their facilities the gas purchased by Columbus Mills to its plants, and in conjunction therewith, to obtain as agent for Columbus Mills the transportation of said gas through Southern's pipeline system.

It is stated that subject to the receipt of all necessary governmental authorizations, Southern has agreed to transport on an interruptible basis up to 3.7 billion Btu equivalent of gas per day purchased by Columbus Mills from SNG Trading. Southern requests that the Commission issue a limited-term certificate for a term expiring one year from the date of the Commission's order issuing the requested authorization.

The Agreements, it is said, provides that the Agents would cause gas to be delivered to Southern for transportation at various existing points of delivery on Southern's contiguous pipeline system as specified in Exhibit F to the Application. Southern states that it would redeliver to United Cities at the Columbus Area Delivery Point, to Phenix City at the Phenix City area Delivery Point located in Russell County, Alabama, to Union Springs at the Union Springs Meter Station located in Macon County, Alabama, and to Southeast Alabama at the Southeast Alabama Gas District Meter Station-Highway 169 Gate, Lee County, Alabama, an equivalent quantity of gas less 3.25 percent of such amount which shall be deemed to have been used as compressor fuel and company-use gas (including system unaccounted-for gas losses); less any and all shrinkage, fuel or loss resulting from or consumed in the processing of gas; and less Agent's pro-rata share of any gas delivered for Agent's account which is lost or vented for any reason.

Southern states that United Cities, Phenix City and Southeast Alabama has agreed to pay Southern each month, the following transportation rates:

(a) Where the aggregate of the volumes transported and redelivered by Southern on any day to the particular Agent under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's Rate Schedule OCD on such day to such Agent do not exceed the daily contract demand of such Agent, the transportation rate shall be 39.9 cents per billion Btu equivalent; and

(b) Where the aggregate of the volumes transported and redelivered by Southern on any day to the particular Agent under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's Rate Schedule OCD on such day to such shipper exceed the daily contract demand of such Agent, the transportation rate for the excess volumes would be 64.9 cents per billion Btu equivalent.

Union Springs has agreed to pay Southern a transportation rate of 64.9 cents per billion Btu equivalent of gas redelivered by Southern.

Southern also requests flexible authority to provide transportation from additional delivery points in the event Columbus Mills obtains alternative sources of supply of natural gas. The additional transportation service, it is said, would be to the same redelivery point, the same recipients, and within the maximum daily transportation volumes of gas as stated in the application. Southern indicates that it would file a report providing certain information with regard to the addition of any delivery points.

Southern states that the transportation arrangement would enable Columbus Mills to diversify its natural gas supply sources and to obtain gas at competitive prices. It is said that Columbus Mills has the installed capability to utilize fuel oil and has advised Southern that unless it is able to obtain the transportation services requested by Southern, it would switch to fuel oil to the maximum extent possible causing a corresponding loss of throughput on Southern's system. Thus, it is alleged that to the extent the transportation service proposed would enable Columbus Mills to obtain access to competitively priced natural gas, the entire Southern system would benefit by retaining the Columbus Mills load. In addition, it is said that Southern would obtain take-or-pay relief on the gas Columbus Mills may obtain from its suppliers.

Comment date: September 5, 1986, in accordance with Standard Paragraph F at the end of this notice.

10. Southern Natural Gas. Co.

[Docket No. CP86-654-000]

Take notice that on August 6, 1986, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP86-654-000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing for one year the transportation of natural gas for Atlanta Gas Light Company (Atlanta), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern requests a limited-term certificate of public convenience and necessity authorizing it to transport gas on behalf of Atlanta, acting as agent in arranging for the transportation of natural gas supplies for Southwire Company (Southwire), in accordance with the terms and conditions of a transportation agreement between Atlanta and Southern dated July 21, 1986 (Agreement). Southern states that Southwire has entered into gas sales contracts dated August 5, 1985, to purchase natural gas from Entrade Corporation (Entrade) in order to serve the natural gas requirements of its plant in Carrollton, Georgia. It is said that in order to effectuate delivery of the gas purchased, Southwire has entered into an agreement with Atlanta dated July 14, 1986, wherein Atlanta has agreed to transport through its facilities the gas purchased by Southwire to its plant, and in conjunction therewith, to obtain as agent for Southwire the transportation of said gas through Southern's pipeline system.

It is stated that subject to the receipt of all necessary governmental authorizations, Southern has agreed to transport on an interruptible basis up to

4 billion Btu equivalent of gas per day purchased by Southwire from Entrade. Southern requests that the Commission issue a limited-term certificate for a term expiring one year from the date of the Commission's order issuing the requested authorization.

The agreement, it is said, provides that Atlanta would cause gas to be delivered to Southern for transportation at various existing points of delivery on Southern's contiguous pipeline system as specified in Exhibit F to the Application. Southern states that it would redeliver to Atlanta at the Carrollton Meter Station, Carrollton County, Georgia, an equivalent quantity of gas less 3.25 percent of such amount which shall be deemed to have been used as compressor fuel and company-use gas (including system unaccounted-for gas losses); less any and all shrinkage, fuel or loss resulting from or consumed in the processing of gas; and less Atlanta's pro-rata share of any gas delivered for Atlanta's account which is lost or vented for any reason.

Southern states that Atlanta has agreed to pay Southern each month, the following transportation rates:

(a) Where the aggregate of the volumes transported and redelivered by Southern on any day to Atlanta under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's Rate Schedule OCD on such day to Atlanta do not exceed the daily contract demand of Atlanta, the transportation rate shall be 48.2 cents per billion Btu equivalent; and

(b) Where the aggregate of the volumes transported and redelivered by Southern on any day to Atlanta under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's Rate Schedule OCD on such day to Atlanta exceed the daily contract demand of Atlanta, the transportation rate for the excess volumes would be 77.6 cents per billion Btu equivalent.

Southern also requests flexible authority to provide transportation from additional delivery points in the event Southwire obtains alternative sources of supply of natural gas. The additional transportation service, it is said, would be to the same redelivery point, the same recipient, and within the maximum daily transportation volumes of gas as stated in the application. Southern indicates that it would file a report providing certain information with regard to the addition of any delivery points.

Southern states that the transportation arrangement would enable Southwire to diversify its natural gas supply sources and to obtain gas at competitive prices. It is said that Southwire has the installed capability to utilize fuel oil and has advised Southern that unless it is able to obtain the transportation services requested by Southern, it would switch to fuel oil to the maximum extent possible causing a corresponding loss of throughput on Southern's system. Thus, it is alleged that to the extent the transportation service proposed would enable Southwire to obtain access to competitively priced natural gas, the entire Southern system would benefit by retaining the Southwire load. In addition, it is said that Southern would obtain take-or-pay relief on the gas Southwire may obtain from its suppliers.

Comment date: September 5, 1986, in accordance with Standard Paragraph F at the end of this notice.

11. Tennessee Gas Pipeline Co., a Division of Tenneco Inc.

[Docket Nos. CP75-23-026, CP75-120-019]

Take notice that on July 30, 1986, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, filed in Docket Nos. CP75-23-026 and CP75-120-019 a petition to amend the certificates issued March 7, 1977 in Docket Nos. CP-75-23 and CP75-120, as amended, pursuant to section 7(c) of the Natural Gas Act so as to add receipt points for deliveries of gas from Tenneco Oil Company (TOC) uncommitted interest in two blocks offshore Louisiana, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Specifically, Tennessee proposes to add new receipt points as its Meter No. 1-1706 in Main Pass Block 69 (MP 69) and at its Meter No. 0-0653 in South Marsh Island Block 160 (SMI 160), offshore Louisiana. It is stated that TOC would make deliveries of gas from its MP 75 source directly to Tennessee at the MP 69 receipt point and that TOC would also make deliveries from its SMI 160 source to Tennessee at Tennessee's SMI 160 receipt point. TOC's SMI 160 gas received at this new point would be transported and exchanged at various offshore interconnections with United Gas Pipe Line Company (United), Sea Robin Pipeline Company (Sea Robin) and/or Columbia Gulf Transmission Company (Columbia Gulf), it is asserted.

Tennessee proposes to charge TOC a transportation rate of 13.04 cents and 7.31 cents per dth of gas transportation from the MP 75 and SM 160 receipt points, as filed under Tennessee's Rate Schedules T-43 and T-44, respectively.

Tennessee indicates that its obligation to receive the gas for further transport from the new SMI 160 receipt point is subject to United, Sea Robin and Columbia Gulf obtaining certificate authorization to transport such gas.

Comment date: September 5, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

12. Tennessee Gas Pipeline Co., a Division of Tenneco Inc.

[Docket NO. CP86-646-000]

Take notice that on July 31, 1986, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, filed an application pursuant to section 7(b) of the Natural Gas Act for authorization to abandon its T-66 transportation service for Mid Louisiana Gas Company (Mid Louisiana) to be effective June 1, 1986, as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee states that it was authorized to render the subject transportation service for Mid Louisiana in Docket No. CP78-131. Tennessee states that the service was necessary to enable Mid Louisiana to receive volumes of natural gas produced in Plaquemines Parish, Louisiana. It is further explained that the service proposed to be abandoned involved the receipt and transportation by Tennessee of up to 4,000 Mcf of natural gas per day from reserves located in Plaquemines Parish, Louisiana, which Mid Louisiana purchased from Louisiana Land and Exploration Company. The application contains a letter dated May 22, 1985, whereby Mid Louisiana has informed Tennessee of its election to terminate the transportation arrangement effective 12 months from the date of such letter. Tennessee requests an effective date of June 1, 1986, so that Mid Louisiana will not be liable for minimum bill charges after the month Mid Louisiana requested the service to terminate.

Comment date: September 5, 1986, 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 authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-18718 Filed 8-19-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP86-578-000]

Northwest Pipeline Corp.; Informal Settlement Conference

August 13, 1986.

Take notice that an informal settlement conference will be convened in this proceeding at 10:00 a.m. on August 26, 1986, at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. The purpose of the informal settlement conference is to consider the application filed by Northwest Pipeline Corporation on June 20, 1986, pursuant to sections 7(c) and 7(b) of the Natural Gas Act and to ascertain the extent to which the issues raised by Northwest's application can be resolved by the participants at an early date. Notice of the application was issued on July 11, 1986.

In its application, Northwest requests an Order No. 436 blanket certificate authorizing it to transport natural gas for others under proposed new rate schedules. Northwest's proposal to implement transportation rates and conditions applicable to Order No. 436 is conditioned upon certain modifications to its existing tariff. Northwest also requests authorization, to the extent required, for partial abandonment of its firm sales delivery obligations. A preliminary review of Northwest's application indicates that an informal settlement conference would be beneficial and could lead to a significant refinement in Northwest's application and narrowing of the issues. By convening this conference, the Commission is not determining whether the application as filed complies entirely with Order No. 436.

Parties to this proceeding and Commission Staff are invited to attend; however, attendance will not confer party status. Persons wishing to become parties must file a motion to intervene pursuant the Commission's Rules of Practice and Procedure 18 CFR 385.214 (1985)) and have their motion granted.

For additional information, contact John P. Roddy or William J. Collins at (202) 357-8560.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-18705 Filed 8-19-86; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Order Implementing Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Order implementing modified departmental policy for restitution of crude oil overcharges.

SUMMARY: The Order confirms the intention of the Office of Hearings and Appeals to apply the modified DOE policy for restitution of crude oil overcharges which was issued in connection with the settlement of the DOE Stripper Well Exemption Litigation, MDL No. 378 (D. Kan.). The modified policy specifies the process to be used for restitution of crude oil overcharges. Under the policy, 20 percent of crude oil overcharges in escrow at DOE will be set aside to satisfy claims for restitution, and 80 percent will be disbursed to the state and federal governments for indirect restitution. Claims for restitution by injured parties will be accepted by OHA pursuant to 10 CFR Part 205, Subpart V. The OHA intends to apply DOE's modified policy in all present and future Subpart V proceedings involving alleged crude oil violations.

DATE AND ADDRESS: Comments and objections must be filed on or before September 19, 1986 with the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. Applications for refund may also be filed at the same address.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-2094 (Mann); 252-2383 (Klurfeld).

SUPPLEMENTARY INFORMATION: On July 7, 1986, the United States District Court for the District of Kansas approved a final Settlement Agreement in the Department of Energy Stripper Well Exemption Litigation, MDL No. 378 (D. Kan.). Paragraph IV.B.1. of the Agreement requires the Department of Energy (DOE) to modify the Statement of Restitutionary Policy Concerning Alleged Crude Oil Violations issued on June 21, 1985 (50 FR 27400; July 2, 1985) (hereinafter referred to as the "1985

policy statement"). Accordingly, the DOE has issued a Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges on July 28, 1986. 51 FR 27899 (August 4, 1986) (hereinafter referred to as the "MSRP"). The MSRP announces a modified refund process for restitution of crude oil overcharges utilizing the special refund procedures codified at 10 CFR Part 205, Subpart V. Under the modified refund process, DOE will reserve 20 percent of crude oil overcharge funds to satisfy valid claims and disburse 80 percent of the funds to the state and federal governments for indirect restitution. Under this process, the Office of Hearings and Appeals (OHA) will accept and process refund applications from persons who claim they were injured by crude oil overcharges. After all valid claims are paid, unclaimed funds will be divided equally between the state governments and the federal government. The federal government's share of the unclaimed funds will ultimately be deposited into the general fund of the Treasury of the United States.

This notice announces that the OHA intends to apply the MSRP in all crude oil refund proceedings, whether pending now or filed in the future. Consequently, the portion of a previous order issued by the OHA on June 21, 1986, 50 FR 27402 (1985), that is inconsistent with this notice is revoked. Under the portion of the order that is not revoked, OHA will continue to fund entitlements exception relief receive orders from the overcharge funds. Under the terms of the Settlement Agreement, receive orders funded after the approval of the Agreement will be paid from monies that would otherwise accrue to the DOE.

I. Background

The 1985 policy statement arose from the remedy phase of the Stripper Well Exemption Litigation. On September 13, 1983, the United States District Court for the District of Kansas had remanded the remedial phase of that litigation to the OHA for findings of fact concerning the impact of the crude oil overcharges involved. *In re The Department of Energy Stripper Well Exemption Litigation*, 578 F.Supp. 586 (D. Kan. 1983). In addition, the court had requested DOE's suggestions regarding an appropriate restitutionary plan. On December 30, 1983, the OHA published a Federal Register Notice concerning the fact-finding referral, which discussed the background of the litigation and invited public comment on all aspects of the referral, including the impact of the overcharges and possbile refund distribution mechanisms. 48 FR 57608. In response to the Notice, the OHA received over one hundred comments.

On May 9, 1984, the OHA published another Notice in the Federal Register, announcing that it would hold an evidentiary hearing on the feasibility of tracing the impact of the overcharges. 49 FR 19718. That hearing was held over a period of 22 days, between June and October 1984. Sixty-four public and private entities, representing thousands of members, participated actively in the hearing. Following the hearing, the OHA began analyzing the record of nearly 13,000 pages of written and oral testimony that had been developed, in order to prepare its report to the District Court.

On May 7, 1985, the District Court issued an order which clarified the manner in which the fact-finding report from OHA was to be submitted. *In re Department of Energy Stripper Well Exemption Litigation*, MDL No. 378 (D. Kan., May 7, 1985) (order denying motion to expedite issuance of OHA's report). The court ordered the OHA to issue its findings of fact on the tracing and impact of the overcharges in one separate report. However, the court also recognized that the DOE's position on the utility of further efforts by the OHA and a recommended plan of restitution was a matter of agency policy, and directed that these concerns be addressed in a second report.

On June 21, 1985, the DOE filed its report with the District Court in Kansas. The OHA Report concluded that it was generally impossible to trace the overcharges through any particular refiner's marketing system. However, based on the econometric evidence in the record, the OHA determined that refiners as a class absorbed between 2.7 to 8.1 percent of the crude oil overcharges, and that the remainder was passed on to the petroleum distribution network. *See* Report of the Office of Hearings and Appeals, *In Re Department of Energy Stripper Well Exemption Litigation*, CCH Fed. Energy Guidelines, Par. 90,507 (June 19, 1986). The second part of the report was the 1985 policy statement, which recommended to the court that restitution to parties injured by crude oil overcharges should not be attempted, and that the stripper well overcharges be placed in escrow until Fall 1986 to afford the Congress of the United States the opportunity to select the means of making indirect restitution. If Congress declined to act, DOE's policy was that the monies should be paid into the general fund of the United States Treasury.

Also on June 21, 1985, the OHA issued an Order Implementing Departmental Policy. That order announced that OHA intended to apply the 1985 policy statement to refund proceedings involving other crude oil overcharge funds representing entitlements period crude oil miscertification violations being administered under the authority of 10 CFR Part 205, Subpart V. 50 FR 27402 (July 2, 1985). As a practical matter, adoption of the 1985 policy statement by OHA resulted in a moratorium on the processing of claims for restitution which had already been submitted in crude oil Subpart V refund proceedings. The sole use that the 1985 policy statement authorized for crude oil overcharge funds under Subpart V was for the payment of refiners with adjudicated final "receive orders" arising from the entitlements program. The OHA's order provided a period of 30 days for: (i) The filing of claims based on receive orders; and (ii) the filing of objections to implementation of the 1985 policy statement.

On October 2, 1985, the OHA issued a decision which considered the receive order payment claims and objections to the 1985 policy statement that were filed in response to the July 2, 1985 Federal Register Notice. *Amber Refining, Inc.*, 13 DOE Par. 85,217 (1985). In that determination, OHA rejected the challenges which had been lodged against the application of the 1985 policy statement to pending crude oil Subpart V refund proceedings. *Id.* at 88,567. With respect to the receive order claims, the *Amber* decision determined that certain valid claims should be granted, and directed that they be paid with crude oil overcharge funds held in a DOE escrow account. *Id.* at 88,567–74. Under this order, OHA will continue to fund entitlements exception relief receive orders from the overcharge funds. Under the terms of the Settlement Agreement, receive orders funded after the approval of the Agreement will be paid from monies that would otherwise accrue to the DOE.

II. The Stripper Well Settlement

The finding in the OHA Report that refiners as a class absorbed a specified range of the crude oil overcharges became part of the basis for a comprehensive settlement of that case, which also resolved two related matters: The debate over what policy should govern restitution in other crude oil overcharge cases, and the litigation over the termination of the Entitlements Program. In the present determination, we are concerned only with the impact of the Settlement Agreement on DOE's restitutionary policy in the crude oil overcharge area. The Agreement, as well as the MSRP, states that the DOE will utilize the current Subpart V refund regulations, without amendment, to permit individuals and firms to apply for

refunds. This will be accomplished by reserving 20 percent of the funds available to satisfy claims, and disbursing 80 percent of the funds to the state and federal governments for indirect restitution. The Agreement further requires that any funds remaining after all valid claims have been paid will be divided equally between the state governments and the federal government for indirect restitution.

A. Individual Claims for Restitution

The MSRP has now modified the 1985 policy statement to provide that the policy of DOE is to process applications for refunds pursuant to existing Subpart V regulations. It further states that in such administrative proceedings involving Alleged Crude Oil Violations, OHA will continue to require that each claimant demonstrate that it has been injured by the alleged violation and that it should therefore receive a refund. The MSRP goes on to state that OHA will not accept claims on behalf of classes, associations or trade groups. The modified policy further provides that a claimant may seek to prove injury through the use of econometric evidence of the type that was submitted in the Stripper Well evidentiary proceedings before the OHA, and that OHA may use the findings contained in its report to the District Court in that litigation. Finally, the MSRP is to be applied by OHA in all pending and future Subpart V cases involving crude oil.

B. Indirect Restitution to State and Federal Governments

The modified policy specifies that all funds which are not needed to satisfy individual claims for restitution will be distributed 50 percent to state governments, and 50 percent to the DOE for deposit in the general fund of the U.S. Treasury. Under Paragraph IV.B.6. of the settlement agreement, OHA may reserve up to 20 percent of the crude oil overcharge funds in Subpart V proceedings to satisfy claims filed by injured parties who have not waived thier claims by electing to take shares of the special escrow accounts set up for their benefit. It is anticipated that the Settlement Agreement will resolve, by payment from the stripper well funds and accompanying waivers, the majority of claims of individual purchasers of crude oil or refined petroleum products, and the 20 percent reserve, which is subject to downward adjustment, should therefore be more than sufficient to pay claimants. The remaining percentage of the crude oil overcharge funds not reserved for payment of claims will be distributed to the state and federal governments for indirect restitutionary purposes.

III. Application of the Modified Policy in Subpart V Cases

The OHA intends to apply the modified crude oil restitutionary policy described above to all pending and future Subpart V cases. The refund proceedings currently pending before the OHA to which the MSRP applies are listed in the Appendix to this order. Objections to the application of the MSRP may be filed on or before September 15, 1986. We will also welcome comments concerning the appropriate procedures to follow in processing refund applications in crude oil refund proceedings. Applications for Refund may now be filed. It is not necessary to file applications in each of the refund proceedings listed in the appendix; only one application for a refund from crude oil overcharges should be filed. However, we are not establishing a filing deadline at this time. After we consider the comments that are filed in response to this notice, we will establish further procedures to process refund applications in crude oil refund proceedings.

We expect that many potential claimants in the oil industry itself—refiners, resellers and retailers—will waive their claims for crude oil refunds in Subpart V proceedings and elect instead to take refunds under one of the escrow funds established under the settlement. In addition, most members of certain groups of petroleum product consumers who are participating in the settlement can also be expected to waive their Subpart V rights: surface transporters (buses, trucks and taxis), water transporters, railroads, airlines and oil burning electric utilities. However, other large consumers of petroleum products that are not covered by one of escrow accounts established under the settlement are now in a position to file claims. It is likely on the basis of existing OHA precedent in the refund area that refunds made ot successful claimants will be calculated according to a volumetric method, in which the amount of money available will be appropriated over all gallons of product sold. *See* 48 Fed. Reg. 57608 (1983). It is also likely that small consumers will not receive refunds, since any refunds they receive will be smaller than the cost of processing their applications. We seek comments on the appropriateness of applying these procedents in crude oil refund proceedings.

In view of the foregoing, any party that believes it was injured by crude oil overcharges may file an application of refund with the Office of Hearings and Appeals. No deadline for filing claims is being established at this time. In order to expedite implementation of the Department's new MSRP for crude oil overcharges, any person alleging that it is adversely affected by this order must file any objection on or before September 15, 1986. We also seek comments regarding appropriate procedures to follow in these cases.

Dated: August 8, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

APPENDIX.—NOTICE OF ORDER IMPLEMENTING MODIFIED STATEMENT OF RESTITUTIONARY POLICY CONCERNING CRUDE OIL OVERCHARGES

Name of case	Consent order No.	OHA case No.
Adams Resources and Energy	610C00431Y	BEF-0055
Adco Producing Co, Inc	422C00261Z	HEF-0313
Alkek, Albert B	602X00222Y	DFF-0002
Allerkamp, Ernest E	610C00201Z	HEF-0489
Alpar Resources Inc	600C20046Z	HEF-0314
Alta Loma Oil Co	675C00292Y	BEF-0088
Amax Petroleum Corp	422C00064Z	HEF-0315
Amcole Energy Corp	600C20060Z	HEF-0585
American Pacific Internat	940C00112Z	HEF-0316
Aminoil USA	610C00458Z	HEF-0317
Aminoil USA Inc	740V01315Z	HEF-0229
An-Son Corp	660C00531Y	HEF-0004
Andrus Interests/Affiliat	650X00340Z	HEF-0488
Arizona Fuel Corp	N00S98067Z	HEF-0463
Armour Oil Company	940X00179Z	HEF-0278
Armstrong Petrl/City/Newp	960C00023W	KEF-0041
Atlantic Oil Co	960C00046Z	HEF-0318
Atlantic Oil Corp	810C00252Z	HEF-0319
Atlantic Richfield Co	RARH00001Z	HEF-0591
Axis Petroleum Co	940C00181Z	HEF-0320
B&M Operating	600C20078Z	HEF-0321
Barnhart Company	840C00402Z	HEF-0322
Barton, A.L	6A0X00299Z	HEF-0279
Bass Enterprises Producti	6D0C00090Z	HEF-0323
Baxter, Murphy H	6E0C00031Z	HEF-0324
Bayou/IDA	641S00396Z	HEF-0202
Beebe, J.S	6C1C00206Z	HEF-0505
Belco Petroleum	240C00002Z	HEF-0325
Benson-Montin-Greer Drill	740C01253Y	BEF-0087
Berg, Laney, & Brown	740C01250Z	HEF-0326
Berry Holding Company	910C00059Z	KEF-0027
Beta Development Co	673C00290Y	BFF-0009
Bettis, Boyle & Stovall	600C20047Z	HEF-0327
Beverly Hills Oil Co	940C00142Z	HEF-0328
Big Lane Co	422C00187Z	HEF-0329
Big Six Drilling Co	6E0C00037Z	HEF-0330
Big-Tex Crude Oil Co	6A0X00303Z	HEF-0280
Blackwood & Nichols Co	660C00668Z	HEF-0331
Bock & Bacon	6E0C00061Z	HEF-0332
Bolin Oil Co	600C20048Z	HEF-0333
Brown Oil Operator	6E0C00036Z	HEF-0334
Brownlie, Wallace, Armstrong	810C00362Z	HEF-0564
BTA Oil Producers	672C00182Y	HEF-0083
Buxton, F.M	660C00508Z	HEF-0335
C&K Petroleum, Inc	610C00439Z	HEF-0336
C N Operation	733C02015Z	HEF-0337
Cajun Energy	650X00322Z	HEF-0281
Calvin Petroleum Corp	810C00378Y	HEF-0003
Caukins Oil	840C00056Z	HEF-0338
Centura, Inc	610C00477Z	HEF-0339
Century Oil Management, Inc	960C00067Z	HEF-0340
Claire-Benz-Stoddard	6A0C00259Z	HEF-0341
Clark & Clark	660C00622Y	BEF-0084
Coastal Corp	RCLE00501Y	BFF-0005
Cobra Oil & Gas Corp	600C20051Z	HEF-0342
Coffield Pipeline Co	650X00295Z	HEF-0282
Commanche Oil Co	740C01374Z	HEF-0343
Connally Oil Co	6A0C00133Y	BEF-0082
Conoco, Inc	RC0A00002Y	HEF-0484
Cooper & Brain, Inc	980C00029Z	HEF-0344
Coors Energy	6C0X00252A	HEF-0283
Coral Petroleum	602X00004Y	BEF-0031
Cordele Operating Co	600C20052Z	HEF-0565
Cotton Petroleum Corp	6C0C00213Z	HEF-0486

APPENDIX.—NOTICE OF ORDER IMPLEMENTING MODIFIED STATEMENT OF RESTITUTIONARY POLICY CONCERNING CRUDE OIL OVERCHARGES—Continued

Name of case	Consent order No.	OHA case No.
Cox, Jim	660C00412Z	HEF-0345
Cross Oil & Refining Co	N00S90114Z	HEF-0464
Crysen Corporation	940X00234Z	HEF-0498
Crystal Oil Co	641C00386Y	BEF-0019
Culpepper Oil	660C00444Z	HEF-0346
Cummings, Douglas R	670C00225Y	BEF-0058
Da Vinci Co., Inc	6C0X00250Z	HEF-0284
Decalta International	930C00073Z	HEF-0347
Delta Drilling	6A0C00120Y	BEF-0044
Depco, Inc	810C00377Z	HEF-0348
Diamond Shamrock Corp	675S00011Y	BEF-0076
Diamond Shamrock Corp	N00S90124Z	HEF-0465
Dolley, Chester F	960C00048Z	HEF-0349
Duggan Machine	6A0C00295Z	HEF-0350
Dunlap, E. Corp	660C00439Z	HEF-0351
Earth Resources	N00S80097Z	HEF-0466
Eddy Refining Co	N00S98093Z	HEF-0467
Edwards Producing Co., Inc	422C00248Z	HEF-0352
El Paso Natural Gas Co	660C00646Z	HEF-0353
Elm City Filling Stations	N00M90030Z	HEF-0468
Encorp, Inc	6Z0X00291Z	HEF-0285
Energy Acquisition	740C01404Z	HEF-0354
Energy Development of Cal	940C00131Z	HEF-0355
Energy Reserves Group	740C01203Z	KEF-0037
Energy Services, Inc	720C00577Z	HEF-0356
Engle Enterprise & R. Young	6C0X00300Z	HEF-0286
Ensearch Corp	6A0C00160Y	BEF-0045
Equipment, Inc	640C00327Z	HEF-0357
Exchange Oil & Gas	640C00429Z	HEF-0358
Farmers Union Central Exc	740C01248Z	HEF-0359
Ferguson Oil & Gas Co	660C00502Z	HEF-0360
Fletcher Oil	N00S90203Z	HEF-0469
Florida Gas Exploration Co	413C00021Z	HEF-0361
Flying Diamond Oil Corp	840C00127Z	HEF-0490
Forgotson, James M	640C00312Y	BEF-0043
Forney, Bill, Inc	610C00473Z	HEF-0362
Franks Petroleum	641S00421Z	HEF-0208
Franks, John	6A0C00294Z	HEF-0363
Freeport Minerals Co	640C00024Z	HEF-0364
GCO Minerals Co	NGCP00001Z	HEF-0570
Geer Tank Trucks, Inc	6A0X00287Z	HEF-0287
General Exploration Co	610C00441Z	HEF-0365
Ginther, N.C	6E0C00039Y	BEF-0059
Golden Eagle Oil Co	N00M90034Z	HEF-0470
Gonsoulin Energy Corp/Ind	640X00434Z	HEF-0288
Grace Petroleum Corp	660C00633Z	HEF-0366
Granier Oil Co	960C00034Y	BEF-0015
Grisby Oil & Gas	641C00011Z	KEF-0035
Gruenewald & Assoc	840C00083Y	BEF-0262
Guam Oil & Refining Co	N00S90096A	HEF-0471
Guenther	602X00028Y	DFF-0004
Gulf Energy Development	610C00418Z	HEF-0568
Gulf Oil Corp	RGFA00001Z	HEF-0590
Hankamer, Curtis	610C00474Z	HEF-0367
Hanover Mgmt. Co	6A0C00230Z	HEF-0368
Haring	610C00406Y	BEF-0075
Harris, James W	422C00201Z	HEF-0369
Hassie Hunt Exploration Co	6A0C00256Z	HEF-0370
Hawn Brothers	610C00350Z	HEF-0371
Hawthorne Oil & Gas Corp	640C00314Z	HEF-0372
Hendrix, John H. Corp	670C00282Y	BEF-0040
Henry H. Gungoll, Assoc	660C00387Z	HEF-0572
Hewitt & Dougherty	610C00117Z	HEF-0373
Hixon Dev. Co	610C00398Y	BEF-0016
HNG Oil Co	610C00329Z	HEF-0374
Hollingsworth, C.D	422C00196Z	HEF-0375
Homestake, Proc. Co	660C00639Y	BEF-0074
Houston Oil & Minerals Co	640C00400Z	HEF-0376
Howell Drilling Inc	610C00283Z	HEF-0377
Hudson & Hudson	720C00597Z	HEF-0378
Huffington Inc	6E0C00038Z	HEF-0379
Hunt Oil Co	6A0C00008Z	HEF-0380
Hunt, D.H	N00C00779Z	HEF-0381
Hunt, W.H	6A0C00244Z	HEF-0382
Independent Oil Producers	940X00159Z	HEF-0290
Inland Crude Purchasing Co	6C0X00256Z	HEF-0291
Int'l Petrol Ref & Su	6C0X00242Z	KEF-0010
Internorth, Inc	730V02000Z	HEF-0255
J.N. Abel, Inc	610C00285Z	KEF-0034
Johnson A. and Co. Inc	N00S98007Z	HEF-0472
Johnson, Lyle & Lee	660C00315Z	HEF-0384
Josey, Lenoir M	6E0C00063Z	HEF-0385
Juniper Petroleum Corp	999C90001Z	HEF-0579
Kalama Chemical Inc	N00S90474Z	HEF-0507
Kansas-Nebraska Natural	730V01244Z	HEF-0257
Karchmer Pipe & Supply	572C00179Z	HEF-0386

APPENDIX.—NOTICE OF ORDER IMPLEMENTING MODIFIED STATEMENT OF RESTITUTIONARY POLICY CONCERNING CRUDE OIL OVERCHARGES—Continued

Name of case	Consent order No.	OHA case No.
Kastman/Fern Parks Cons	6C0C00256Z	HEF-0492
Kemco & Kenneth Walker	N00X06233Z	HEF-0292
Kent Oil & Trading Co	940X00232Z	HEF-0576
Kimbark Oil & Gas	810C00384Z	HEF-0387
Kirkpatrick Oil & Gas Co	660C00437Z	HEF-0388
Kirkpatrick Oil & Gas Co	670C00224Y	BEF-0061
Kite Operating Co	660C00492Y	BEF-0057
Lacy, R. Inc	6A0C00229Z	HEF-0389
Lacy, R. Inc	6A0X00263Z	HEF-0294
Lakeside/Crystal Refin	540S00278Z	HEF-0214
Landsea Oil Co	940X00220Z	HEF-0573
Langham Petroleum & Dev	640X00433Z	HEF-0295
Lesback Oil	710C01303Z	HEF-0390
Liberty Oil & Gas Co	640C00294Y	BEF-0092
Lindsey, W.W. & Elliott W	433C00466Z	HEF-0391
Lobo Oil Corp	670C00271Z	HEF-0392
Loeb, Herman L	572C00260A	HEF-0393
Lundell's Inc	610C00339Y	BEF-0013
Lyons Petroleum Inc	641C00426Z	HEF-0394
Mabee Petroleum Corp	670C00295Y	BEF-0068
Machin, Art	600C20090Z	HEF-0395
Mackellar Inc	660C00246Z	HEF-0396
Macmillan Ring-Free Oil	960S00053Z	HEF-0506
Mallard Resources	N00S90125Z	HEF-0474
Mapco	660C00625Z	HEF-0577
Marathon Petroleum Co	RMNA00001Z	KEF-0021
Marob Energy Corp	670C00242Y	BEF-0052
Marion Corp	N00S90043Z	HEF-0475
Marion Corporation	N00S98138Z	KEF-0030
Marshall Pipe and Supply	600C20099Z	HEF-0397
MCBO Oil Company	940C00141Z	HEF-0398
McCormick Oil	6E0C00026Z	HEF-0399
McCullogh Oil	940C00118Y	BEF-0026
McFarland Energy	960C00022Y	BEF-0023
Mctan Corp	6A0X00266Z	HEF-0576
Meason Optg. Co	422C00249Z	HEF-0400
Mertz, Bruce	572C00260B	HEF-0401
Mesa Petroleum Corp	675C00245Z	HEF-0402
Michaelson Producing Co	670C00214Y	BEF-0063
Michaux, Frank W	6E0C00028Y	BEF-0020
Mid-Plains, Petroleum Co	6COX00311Z	HEF-0297
Milam	572C00221Y	BEF-0090
Milinda Oil Co	840C00105Y	HEF-0001
Mitchell, William	572C00260D	HEF-0403
Mobley, O.B	640C10000Z	HEF-0499
Moncrief, W.A. Jr	6A0C00134Z	HEF-0404
Moor & Miller	660C00377Z	HEF-0405
Mosbacher Production Co	610C00457Z	HEF-0406
Mosbacher Production Co	610C00436Z	HEF-0407
Mountain Fuel Supply Co	820C00185Z	HEF-0408
Mt. Fuel Supply	820C00035Z	KEF-0025
Mustang Fuel Corp	6C0X00238Z	HEF-0298
National Coop Refinery AS	740C01299Z	HEF-0409
Natomas North America	6D0C00047Y	BEF-0037
Nevada Refining Co	N00S98002Z	HEF-0476
New York Petroleum Corp	640C00247Y	BEF-0023
Newmont Oil Co	610C00430Y	BEF-0017
NFC Petroleum Corp	660C00609Z	HEF-0410
Nielson Enterprises Inc	810C00339Z	HEF-0411
North Central Oil	6E0C00064Z	HEF-0412
Northeast Nat. Gas	530C00103Z	HEF-0413
Northwest Pipeline	710V03015Z	HEF-0264
NRG Oil Corn./Brock & Moor	650X00332Z	HEF-0300
O'Donnell Oil Co	940C00176Y	BEF-0035
Oil California Exploration	910C00107Z	HEF-0414
Oilco	6C0X00293Z	HEF-0301
OKC Corp	6D0S00003Y	BEF-0032
OKC Corporation	N00S98080Z	HEF-0477
Osage Oil & Transportation	6C0X00215Z	HEF-0302
Oxnard Refining Co	N00S90075Z	HEF-0478
Panhandle Eastern Pipe	710V02003Z	HEF-0265
Panhandle Eastern Pipe	710V02005Y	BEF-0065
Park, Robert E	691C00051Z	HEF-0415
Parten	610C00304Y	BEF-0011
Partlow & Cochonour	572C00224Y	BEF-0091
Pauley Petroleum Inc	910C00127Z	HEF-0416
Pawnee Petroleum Corp	660C00306Z	HEF-0417
Payne Inc	660C00292Z	HEF-0418
Payne-Johnson & Byars	600C20069Z	HEF-0419
Pennzoil Co	RPNA00001Y	BEF-0072
Perry Gas Proc	670V00087Y	BEF-0048
Perta Oil	930H00088Z	HEF-0418
Petroleum Consulting Serv	6C0X00298Z	HEF-0303
Petroleum Corp. of Texas	6A0C00105Z	HEF-0420
Petrominerals Corp	6C0X00306Z	HEF-0304
PGP Gas Products	670V00086Y	BEF-0010

APPENDIX.—NOTICE OF ORDER IMPLEMENTING MODIFIED STATEMENT OF RESTITUTIONARY POLICY CONCERNING CRUDE OIL OVERCHARGES—Continued

Name of case	Consent order No.	OHA case No.
Phillips Oil Operating Co	660C00319Z	HEF-0421
Phillips, B.F	6A0C00232Z	HEF-0422
Phillips, Loyce (Estate)	6D0C00081Z	HEF-0423
Phoenix Resources	840C00077Y	BEF-0088
Prudential	600C20084Z	HEF-0424
Pyro Energy Corp	610C00052Z	HEF-0589
Quintana Petroleum Corp	610C00122Y	BEF-0060
Quintin Little Co	660C00458Y	BEF-0024
Riddle Oil Co	610C00394Z	HEF-0425
Roark & Hocker	610C00483Z	HEF-0426
Robinson Energy	740C01415Z	HEF-0427
Rocky Petroleum	533C00273Y	BEF-0071
Rollert-Waddell	610C00397Y	BEF-0064
Rose, Hubert	572C00199Z	HEF-0428
Ross Production	641C00219Z	HEF-0429
Rupe Oil Company	740C01267Z	HEF-0430
Ryder Truck Rental Inc	6A0X00276Z	HEF-0305
Santa Fe Energy Products	640X00448Z	HEF-0306
Sater, Ronald E	572C00260C	HEF-0431
Sauder, Earl W	710C01109Z	HEF-0432
Saxon Operating/Oil Co	670C00311Z	KEF-0028
Search Drilling Co	740C01331Z	HEF-0433
Secor Petroleum Co	6C0X00297Z	HEF-0307
Seminole Refining	411S00023Z	HEF-0221
Shawnee Oil & Gas	660C00400Y	BEF-0039
Shenandoah Oil Corp	6A0C00138Z	HEF-0434
Siegrfried R.H. Inc	740C01390Z	HEF-0435
Signal Petroleum	640C00396Z	HEF-0437
Southern Crude Oil Resources	6A0X00314Z	HEF-0495
Southern Union	673S00336Z	HEF-0223
Southern Union/Midland-LE	6A0X00325A	HEF-0308
Southland Drilling & Produc	6C0C00020Z	HEF-0438
Southland Royalty Co	600C00034Z	HEF-0582
Standard Oil Co. of Indiana	RAMA00010Y	BEF-0007
Standard Oil Company	RAMA0001AZ	HEF-0562
Stevens Oil Co	720C00587Z	HEF-0439
Summit Trans Co. & Marvin	602X00002Y	BEF-0053
Sundance Oil Co	810C00007Z	HEF-0440
Superior Oil Co	610C00442Z	HEF-0441
T-C Oil Co	610C00118Y	BEF-0047
Tauber Oil Co	650X00304Z	HEF-0309
Texas American Petrochemical	6C0X00267Z	HEF-0310
Texas Oil & Gas	6D0C00038Z	HEF-0442
Texas Pacific Oil Co	600C00104Z	HEF-0496
Texas Recovery Co	6A0C00108Z	HEF-0443
Texland Petroleum	600C20081Z	HEF-0444
Timco Oil Company	940C00147Z	KEF-0006
Tipperary Oil & Gas	670C00264Y	BEF-0018
Toco Corp	810C00321Z	HEF-0445
Todd & Saunders	600C20088Z	HEF-0446
Transpec Petroleum Inc	940C00189Z	HEF-0447
Travelers Oil Co	740C01254Z	HEF-0448
Twin Montana	6A0C00242Z	HEF-0449
Twin Montana, Inc	6A0C00242A	HEF-0450
TX, AK, CO, OK Oil Purcha	6A0X00258Z	KEF-0036
TXO Oil Co	6A0X00297Z	HEF-0311
U.S.A. Petroleum Corp	960S00093Z	HEF-0500
Union Oil of California	RUNA00002Z	KEF-0004
Union Texas Petroleum	610C00435Y	BEF-0025
Vallecitos Oil Co	910C00044Z	HEF-0451
Van Horn, James M	940C00239Z	HEF-0452
Varn Petroleum Co	610C00368Z	HEF-0453
Vaughn Petroleum Inc	610C00440Y	BEF-0012
Venture Trading Co	940X00161Z	HEF-0312
Virginia Dare Oil Co	940C00140Z	HEF-0454
Wadsworth Oil Co	6E0C00035Z	HEF-0455
Wall, Earl E	640C00295Z	HEF-0456
Westates Petroleum	940C00096Z	HEF-0457
Western Avenue Properties	940C00228Z	HEF-0458
Westland Oil Development	602X00005Y	BEF-0026
Williams Exploration	N00C00780Z	HEF-0459
Wilshire Oil Co. of Texas	660C00499Z	HEF-0460
Windfohr Oil	6D0C00083Z	HEF-0461
Windsor Gas Corp	6E0C00034Z	KEF-0002
Woods, Dalton J	640C00285Z	HEF-0462

[FR Doc. 86-18746 Filed 8-19-86; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-36125; FRL-3067-3]

Pesticide Registration Standards; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability of Registration Standards.

SUMMARY: This notice announces the availability of Registration Standard documents for certain pesticides. EPA is making available a document for each of the pesticides describing the Agency's regulatory conclusions and actions for those pesticides whose reviews have been completed or the draft Registration Standard for those whose review has not yet been completed. All Registration Standards listed in this notice are available immediately in the public docket for inspection and copying. Completed Registration Standards are available from the National Technical Information Service (NTIS).

ADDRESSES: Published Registration Standards may be purchased from the NTIS at the following address: National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161 (703–487–4650).

Orders may be placed by telephone to the NTIS order desk and charged against a deposit account or American Express, VISA, or MasterCard, or sent by mail with check, money order, or account number.

The public dockets for these Registration Standards and indices to the public dockets are available for inspection and copying, from 8 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays, at the following address: Rm 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT:

Concerning NTIS availability, by mail:

Nancy Hemming, Registration Support and Emergency Response Branch, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 718–B, CM#2, 1921 Jefferson Davis Highway, Arlington, VA (703–557–2126).

Concerning the public docket, or to request indices to the public docket or draft Registration Standards, by mail contact:

Frances S. Mann, Information Services Branch, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA (703–557–2805).

SUPPLEMENTARY INFORMATION: The Environmental Protection Agency conducts a systematic review of pesticides to determine whether they continue to meet the criteria for registration under section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). That review culminates in the issuance of a Registration Standard, a document describing the Agency's regulatory conclusions and positions on the continued registrability of the pesticide. Final or draft Registration Standards for the pesticides listed in this notice are available.

For each published Registration Standard desired, the order should specify the title of the document, the corresponding NTIS order number, and whether hard copy or microfiche is desired. The NTIS order number is the same for hard copy and microfiche, but the price differs. All microfiche copies are $5.95 each; the price for hard copies differs according to the length of the document. To obtain the current hard-copy price, please contact NTIS before ordering. Registration Standards are available for the following pesticides:

Name	NTIS order No.
Acephate	(1)
Alachlor	PB 86–179835/AS
Aldicarb	PB 84–207653
Aliette (Fosetyl-Al)	PB 84–206564
Aluminum Phosphide	PB 82–137514
4-Aminopyridine (Avitrol)	PB 84–209907
Amitraz	(1)
Ammonium Sulfamate	PB 82–133570
Anilazine	PB 84–168301
Aspon	PB 84–206549
Atrazine	PB 84–149541/AL
Barium Metaborate	PB 84–168376
Benomyl	(1)
Bentazon	PB 86–159653/AS
Bolster (Sulprofos)	PB 82–133646
Brominated Salicylanilides (3-5-Dibromo)	PB 86–168150/AS
Butoxicarboxime (Plantpin)	PB 82–177585
Captan	PB 86–181674
Carbaryl	PB 84–232602
Carboxin	PB 82–132994
Chloramben	PB 82–134347
Chlordimeform HC1	(1)
Chlorobenzilate	PB 85–197605
Chloroneb	PB 81–123804
Chloropicrin	PB 86–182094/AS
Chlorothalonil	PB 85–247245/AS
Chlorsulfuron (Glean)	PB 85–122505
Coumaphos	PB 82–133570
Cyanazine	PB 86–175098/AS
Cycloheximide	PB 84–211954
Cyhexatin	PB 86–173184/AS
DCNA	PB 84–210178
Deet	PB 81–277722
Demeton	PB 86–168820/AS
Dialifor	PB 82–133638
Diallate	PB 85–144814/AS
3,5-Dibromo (see BROMINATED SALICYLANILIDES).	
Dicamba	PB 84–243492
Dichlone	PB 81–207383
Dicofol	PB 84–160084
Dicrotophos	PB 82–204383
Diflubenzuron (Dimilin)	PB 86–176500/AS
Butylate	PB 85–147304/AS
Dioxathion	PB 85–245033/AS
Dipropetryn	PB 86–171147/AS
Disulfoton	PB 86–178167/AS
Diuron	PB 84–210327
Endosulfan	PB 82–243999
Ethion	PB 86–177565
Ethoprop	PB 84–210194
Ethoxyquin	PB 82–131418
Fenaminosulf	PB 86–177573
Fensulfothion	PB 85–148963/AS
Fluchloralin	PB 86–176476/AS
Fonofos	PB 84–210186
Formetanate Hydrochloride	PB 84–141456
Fumarin	PB 81–123812
Heliothis NPV	PB 85–134393
Hyamine 3500	PB 86–169406/AS
Isapropalin	PB 82–131293
Landrin (see TRIMETHACARB)	
Lindane	PB 86–175114/AS
Linuron	PB 85–149011/AS
Magnesium Phosphide	PB 82–195777
Metalaxyl	PB 82–172297
Methomyl	PB 82–180738
Metolachlor	PB 81–123280
Metribuzin	PB 86–174216/AS
Monocrotophos	PB 86–173895/AS
Monuron	PB 85–201867
Monuron TCA	PB 84–166669
Naled	PB 84–158980
Naphthalene	PB 82–139437
Naphthaleneacetic Acid	PB 82–131145
Naptalam	PB 86–173861/AS
Nitrapyrin	PB 86–176468/AS
Norflurazon	PB 86–135159/AS
OBPA	PB 82–172271
Oryzalin	(1)
Paraquat	(1)
Pendimethalin	PB 86–172814/AS
Perfluidone	PB 86–173879/AS
Phosalone	PB 82–131731
Picloram	PB 86–173887/AS
Potassium Bromide	PB 86–106978/AS
Potassium Permanganate	PB 86–173135/AS
Propachlor	PB 86–174182/AS
Simazine	PB 84–212349
Sodium Omadine	PB 86–173929/AS
Sulfur	PB 86–102043/AS
Sulfuryl Fluoride	PB 86–173937/AS
Temephos	PB 82–140641
Terbacil	PB 85–120186
Terbufos	PB 84–210335
Terrazole	PB 81–126716
Thiophanate Methyl	(1)
Thiram	PB 85–102705
TPTH (Triphenyltinhydroxide)	PB 85–248797

Name	NTIS order No.
Trichlorfon	PB 85-149300/AS
Trimethacarb (Landrin)	PB 86-169414/AS
Warfarin	PB 82-140716
Zinc phosphide	PB 85-102499
6-12	PB 81-234098

[1] Draft document sent out for public comment. Copies of draft document available from Frances S. Mann, Information Services Branch, address above.

Additional notices will be published in the **Federal Register** as other Registration Standards become available through NTIS.

Dated: August 11, 1986.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 86-18757 Filed 8-15-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180698; FRL-3067-2]

Receipt of Application for an Emergency Exemption From Florida To Use Triflumizole; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Florida Department of Agriculture and Consumer Services (hereafter referred to as "Applicant") to use the pesticide triflumizole (CAS 68694-11-1) to treat 245 acres of nursery and greenhouse grown Spathiphyllum varieties to control Cylindrocladium root and petiole rot.

The Applicant proposes the use of a new chemical, therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATE: Comments must be received on or before September 4, 1986.

ADDRESS: Three copies of written comments, bearing the identification notation "OPP-180698" should be submitted by mail to: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By Mail: Jim Tomkins, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716D, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1806).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption for the use of Terraguard 50W on *Spathiphyllum* spp. to control Cylindrocladium root and petiole rot.

Information in accordance with 40 CFR Part 166 was submitted as part of this request. Triflumizole is not a currently registered chemical. The proposed use on Spathiphyllum is a non-food use.

The Applicant states that *Cylindorocladium spathiphylli* was introduced into Florida around 1977 by movement of infected plants from the tropics. Dissemination of the disease was easily accomplished by transfer of infected seedlings, and contaminated seeds and plants.

The Applicant states that research on efficacy has shown the registered alternatives to be less effective in controlling Cylindrocladium on Spathiphyllums than triflumizole. Benomyl provided the best control of the registered fungicide tested. However, benomyl applied at rates necessary to achieve control is phytotoxic to the plants and is not effective at rates low enough to avoid phytotoxicity.

The 1985 Florida foliage production was estimated to have a wholesale value of $272 million. Sales of Spathiphyllum are estimated to represent 10 percent of this value. Seventy-one percent of Spathiphyllum sold is produced by growers who are having problems with controlling Cylindrocladium. Spathiphyllum losses to Cylindrocladium are estimated to be 8 percent of the total crop value (about $1.8 million). Available methods of control are not expected to provide economic control next season.

The Applicant plans to treat up to 245 acres using 14,700 pounds of product (7,350 pounds active ingredient). Applications are proposed for a period of one year from the date of approval. Applications of 4 to 8 ounces of Terraguard 50W in 100 gallons of water will be applied as a soil drench or through chemigation every two to four weeks or as needed to Spathiphyllum grown in greenhouse, interiorscapes, or commercial nurserys.

This notice does not constitute a decision by EPA on this application. The regulations governing section 18 require publication of a notice in the *Federal Register* of receipt of an application for a specific exemption proposing use of a new chemical (i.e. an active ingredient not contained in any currently registered pesticide). The regulations also provide for the opportunity for public comment.

Accordingly, interested persons may submit written views on this subject to the Program Management and Support Division at the address given above.

The Agency will review and consider all comments received during the comment period in determining whether to issue this emergency exemption request.

Dated: August 8, 1986.

James W. Akerman,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86-18756 Filed 8-19-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59780; FRL-3067-9]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the

Federal Register of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of five such PMNs and provides a summary of each.

DATES: Close of Review Period:

Y 86–214, August 24, 1986.

Y 86–215, 86–216, 86–217 and 86–218, August 25, 1986.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street, SW., Washington, DC 20460, (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemption received by EPA. The complete non-confidential document is available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 86–214

Importer. Dynamit Nobel Chemicals.

Chemical. (G) Saturated polyester resin of an aryl ester, aryl dicarboxylic acid, alkyl dicarboxylic acid and alkyl diol.

Use/Import: (S) Industrial sealant for side seams of cans. Import. range: 9,000 to 45,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Y 86–215

Importer. Confidential.

Chemical. (G) Polyamide copolymer.

Use/Import: (S) Textile adhesive. Import. range: Confidential.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Y 86–216

Importer. Confidential.

Chemical. (G) Polyether block polyamide copolymer.

Use/Import: (S) Molding resin and extrusion resin general purpose. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Y 86–217

Importer. Confidential.

Chemical. (G) Polystyrene acrylate.

Use/Import: (S) Prepare flexible paints and coatings. Import range: 100 to 400 kg/yr.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Y 86–218

Importer. Confidential.

Chemical. (G) Keytone resin.

Use/Import: (G) Additive to provide fluid loss reduction and additive for water retention. Import range: Confidential.

Toxicity Data. No data on PMN substance submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Dated: August 11, 1986.

Denise Devoe,

Acting Division Director, Information Management Division.

[FR Doc. 86–18759 Filed 8–19–86; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–51636; FRL–3067–8]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of MAY 13, 1983 (48 FR 21722). This notice announces receipt of forty-four such PMNs and provides a summary of each.

DATES: Close of Review Period.

P 86–1461, 86–1462, 86–1463, 86–1464, 86–1465, 86–1466, 86–1467, 86–1468, 86–1469, 86–1470, 86–1471, 86–1472, 86–1473, 86–1474, 86–1475, 86–1476, 86–1477, 86–1478, 86–1479, 86–1480, 86–1481, 86–1482, 86–1483, 86–1484, 86–1485, 86–1486, 86–1487, 86–1488, 86–1489, 86–1490, 86–1491, 86–1492, 86–1493, November 3, 1986.

P86–1494, 86–1495, 86–1496, 86–1497, and 86–1498, and November 4, 1986.

P 96–1499, 86–1500 and 86–1501, November 5, 1986.

P 86–1502, 86–1503 and 86–1504, November 6, 1986.

Written comments by:

P 86–1461, 86–1462, 86–1463, 86–1464, 86–1465, 86–1466, 86–1467, 86–1468, 86–1469, 86–1470, 86–1471, 86–1472, 86–1473, 86–1474, 86–1475, 86–1476, 86–1477, 86–1478, 86–1479, 86–1480, 86–1481, 86–1482, 86–1483, 86–1484, 86–1485, 86–1486, 86–1487, 86–1488, 86–1489, 86–1490, 86–1491, 86–1492, and 86–1493, October 4, 1986.

P 86–1494, 86–1495, 86–1496, 86–1497, and 86–1498, October 5, 1986.

P 86–1499, 86–1500, and 86–1501, October 6, 1986.

P 86–1502, 86–1503, and 86–1504, October 7, 1986.

ADDRESS: Written comments, identified by the document control number "[OPTS–51636]" and the specific PMN number should be sent to: Document Control Officer (TS–790), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Ageny, Rm. E–201, 401 M Street, SW., Washington, DC 20460, (202) 382–3582.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street, SW., Washington, DC 20460, (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 86–1461

Importer. Naarden International U.S.A., Inc.

Chemical. (G) Anthranilic acid/ methyl ester, N–heteropolycyclic alkenyl substituted.

Use/Import. (S) Fragrance ingredient. Import. range: Confidential.

Toxicity Data. Acute oral: Non-toxic; Irritation: Skin-Not irritant, Eye-Slight; Ames test: Non-mutagenic.

Exposure. Processing: dermal, a total of 5 workers, up to 6 hrs/ day, up to 6 day/yr.

Environmental Release/Disposal. Less than 10 parts per million (ppm) released to air.

P 86–1462

Manufacturer. Confidential.
Chemical. (G) Metal (II), borate 2-ethylherxanoate complex.
Use/Production. (G) Bonding agent, open non-dispersive use. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 26 workers, up to 8 hrs/days, up to 75 day/yr.
Environmental Release/Disposal. 10 kg/batch released to land.

P 86–1463

Manufacturer. Confidential.
Chemical. (G) Expoxy functional urethane.
Use/Production. (G) Site-limited polymer having dispersive industrial use. Prod. range: 50,000 to 613,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 33 workers, up to 8 hrs/da, up to 260 da/yr.
Environmental Release/Disposal. 2.5 to 180 kg/batch released to land. Disposal by incineration.

P 86–1464

Manufacturer. Confidential.
Chemical. (G) Aliphthatic polyurethane polyester.
Use/Production. (S) Industrial, commercial and consumer general purpose coating 60% modifier for coatings, adhesives, and inks 40%. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 4 workers, up to 4 hrs/day, up to 10 day/yr.
Environmental Release/Disposal. No release.

P 86–1465

Manufacturer. Confidential.
Chemical. (G) Dithiophosphate amine salt.
Use/Production. (G) Consumptive use. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86–1466

Manufacturer. Confidential.
Chemical. (G) Substituted benzenesulfonyl chloride.
Use/Production. (G) Site-limited chemical intermediate consumed in the preparation of a commerical product. Prod. range: Confidential.
Toxicity Data. No data on PMN substance submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86–1467

Manufacturer. Confidential.
Chemical. (G) Substituted benzenesulfonamide.
Use/Production. (G) A component of a vehicle used in a printing ink. Prod. range: Confidential.
Toxicity Data. Acute dermal: > 2.0 mg/kg; Irritation: Eye—Non-irritant; Ames test: Non-mutagenic.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86–1468

Manufacturer. Milliken Chemical.
Chemical. (G) Substituted phenyldiethanolamine.
Use/Production. (S) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86–1469

Manufacturer. Milliken Chemical.
Chemical. (G) Substituted phenylethanolamine.
Use/Production. (S) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86–1470

Manufacturer. Milliken Chemical.
Chemical. (G) (Substituted phenyl)-di-(polyoxyethylenepolyoxy-propylene)amine.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86–1471

Manufacturer. Milliken Chemical.
Chemical. (G) Chlorocarboheterocycleazo substituted phenyl-amino(hydroxyalkylpolyoxy alkylene).
Use/Production. (G) Colorant. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86–1472

Manufacturer. Confidential.
Chemical. (G) Reaction product of an aromatic acid and an amine.
Use/Production. (G) Molding compound additive. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86–1473

Manufacturer. Confidential.
Chemical. (G) Phosphoric acid, mono alkyl ester, compound with alkyl amine.
Use/Production. (G) Fuel/lube additive and hydrocarbon process anti-foulant. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 22 workers, up to 9.5 hrs/da, up to 18 da/yr.
Environmental Release/Disposal. 12 kg/batch released to land with 32 kg/day to water.

P 86–1474

Manufacturer. Confidential.
Chemical. (G) Phosphoric acid, dialkyl ester, compound with alkyl amine.
Use/Production. (G) Fuel/lube additive and hydrocarbon process anti-foulant. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 22 workers, up to 9.5 hrs/da, up to 18 da/yr.
Environmental Release/Disposal. 12 kg/batch released to land with 32 kg/day to water.

P 86–1475

Manufacturer. Confidential.
Chemical. (G) Phosphoric acid, mono alkyl ester, compound with alkyl amine.
Use/Production. (G) Fuel/lube additive and hydrocarbon process anti-foulant. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 22 workers, up ot 9.5 hrs/da, up to 18 da/yr.
Environmental Release/Disposal. 12 kg/batch released to land with 32 kg/day released to water.

P 86–1476

Manufacturer. Confidential.
Chemical. (G) Phosphoric acid, dialkyl ester, compound with alkyl amine.
Use/Production. (G) Fuel/lube additive and hydrocarbon process anti-foulant. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 22 workers, up to 9.5 hrs/da, up to 18 da/yr.
Environmental Release/Disposal. 12 kg/batch released to land with 32 kg/day released to water.

P 86–1477

Manufacturer. Confidential.
Chemical. (G) Hydroxypropyl acrylate, acrylic acid polymer, sodium salt.
Use/Production. (G) dispersant. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86–1478

Manufacturer. Diversitech General.
Chemical. (G) Soya protein-styrene-butadiene terpolymer.
Use/Production. (S) Industrial and consumer binder for paper coatings. Prod. range: 1,360,000 to 2,000,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacturer: dermal, a total of 2 workers, up to 2 hrs/day, up to 200 day/yr.
Environmental Release/Disposal. Minimal release to water. Disposal by publicly owned treatment work (POTW).

P 86–1479

Importer. Confidential.
Chemical. (G) Aliphatic esters.
Use/Import. (G) Highly dispersive use. Import. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86–1480

Manufacturer. E.I. duPont de Nemours and Company, Inc.
Chemical. (G) Halogenated substituted ethylene copolymer.
Use/Production. (G) Coatings, separators, barriers and insulators. Prod. range: Confidential.
Toxicity Data. Acute oral: >5,000 mg/kg; Irritation: Skin—Mild; Skin Sensitization: Mild.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86–1481

Manufacturer. GAF Chemicals Corporation.
Chemical. (G) Polyoxoalkenyldiene.
Use/Production. (S) Component of a radiation induced cationic curable coating. Prod. range: Confidential.
Toxicity Data. Acute oral: >5,000 mg/kg; Irritation: Skin—Slight; Skin Sensitization: Non-irritant.
Exposure. Manufacture: dermal, a total of 8 workers, up to 2 hrs/da, up to 200 da/yr.
Environmental Release/Disposal. .8 to 630 kg/batch released to air. Disposal by incineration.

P 86–1482

Manufacturer. Confidential.
Chemical. (G) Polyurethane.
Use/Production. (S) Industrial and commercial oligomer. Prod. range: 1,000 to 3,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 1 worker, up to 8 hrs/day, up to 4 day/yr.
Environmental Release/Disposal. Minimal release to land.

P 86–1483

Manufacturer. Confidential.
Chemical. (G) Polyalkylene oxide, aromatic diisocyanate prepolymer.
Use/Production. (G) Reactive elastomer. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86–1484

Manufacturer. Atlantic Industrial, Inc.
Chemical. (G) substituted heterocyclic diazonium sulfate.
Use/Production. (S) Site-limited and industrial intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Less than 1 to 50 kg/batch released to water. Disposal by POTW.

P 86–1485

Manufacturer. Texaco, Inc.
Chemical. (G) Alkylphenylpolyetheramine, 2-substituted carboxylic acid salt.
Use/Production. (S) Industrial corrosion inhibitor for oil and gas production. Prod. range: Confidential.
Toxicity Data. Acute oral: >1,000 mg/kg; Acute dermal: <8 mg/kg; Irritation: Skin—Corrosive; Skin Sensitization: Extremely corrosive.
Exposure. Manufacture: dermal, a total of 5 workers, up to .5 hr/day, up to 35 day/yr.
Environmental Release/Disposal. No release.

P 86–1486

Manufacturer. Texaco, Inc.
Chemical. (G) Alkylphenylpolyetheramine, carboxylic acid salt.
Use/Production. (S) Industrial corrosion inhibitor for oil and gas production. Prod. range: Confidential.
Toxicity Data. Acute oil: >1,000 mg/kg; Acute dermal: >8 mg/kg; Irritation: Skin—Corrosive; Skin Sensitization: Extremely corrosive.
Exposure. Manufacture: dermal, a total of 5 workers, up to .5 hr/day, up to 35 day/yr.
Environmental Release/Disposal. No release.

P 86–1487

Manufacturer. Texaco, Inc.
Chemical. (G) Alkylphenylpolyetheramine, polycarboxylic acid salt.
Use/Production. (S) Industrial corrosion inhibitor for oil and gas production. Prod. range: Confidential.
Toxicity Data. Acute oral: >1,000 mg/kg; Acute dermal: >8 gm/kg; Irritation: Skin—Corrosive; Skin Sensitization: Extremely corrosive.
Exposure. Manufacture: dermal, a total of 5 workers, up to .5 hr/day, up to 35 day/yr.
Environmental Release/Disposal. No release.

P 86–1488

Manufacturer. Texaco, Inc.
Chemical. (G) Alkylphenylpolyetheramine, alkylphenylpolyether phosphate salt.
Use/Production. (S) Industrial corrosion inhibitor for oil and gas production. Prod. range: Confidential.
Toxicity Data. Acute oral: >1,000 mg/kg; Acute dermal: >8 gm/kg; Irritation: Skin—Corrosive; Skin Sensitization: Extremely corrosive.
Exposure. Manufacture: dermal, a total of 5 workers, up to .5 hr/day, up to 35 day/yr.
Environmental Release/Disposal. No release.

P 86–1489

Manufacturer. Texaco Chemical Company.
Chemical. (S) Poly[oxy-1,2-ethanediyl), alpha-(nonylphenyl]-omega-[(2-amino-2-methylethoxy)-poly[oxy(methyl-1,2-ethanediyl)]]-.
Use/Production. (S) Industrial and commercial surface-active agent, raw material for corrosion inhibitor and fuel additive. Prod. range: Confidential.
Toxicity Data. Acute oral: 1081 mg/kg, Males–1098 mg/kg; Irritation: Skin-Irritant, Eye-Irritant.

Exposure. Manufacture: dermal, a total of 12 workers, up to 8 hrs/da, up to 30 da/yr.
Environmental Release/Disposal. 2 kg/day released to land.

P 86–1490

Manufacturer. Confidential.
Chemical. (G) Polyester of carbomonocyclic anhydrides, alkanedioic acid, neopentyl glycol and an alkyl diol.
Use/Production. (G) Industrial coating polymer for vehicles.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal, a total of 43 workers, up to 8 hrs/da, up to 56 da/yr.
Environmental Release/Disposal. 3 to 198 kg/batch released to land.

P 86–1491

Manufacturer. Lucidol Division, Pennwalt Corporation.
Chemical. (G) 3-hydroxy-1,1-dimethyl butyl derivative.
Use/Production. (G) Intermediate, polymerization initiator and crosslinking agent. Prod. range: Confidential.
Toxicity Data. Acute oral: >1,800 mg/kg; Acute dermal: >2.0 gm/kg; Irritation: Skin—Mild; Ames test: Mutagenic.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86–1492

Manufacturer. Lucidol Division, Pennwalt Corporation.
Chemical. (G) Substituted alkyl peroxy-2-ethyl hexanoate.
Use/Production. (G) Polymerization initiator. Prod. range: Confidential.
Toxicity Data. Acute oral: >5.0 gm/kg; Acute dermal: >2.0 gm/kg; Irritation: Skin—Mild; Ames test: Non-mutagenic.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86–1493

Manufacturer. Lucidol Division, Pennwalt Corporation.
Chemical. (G) Substituted alkyl peroxyhexane carboxylates (mixed isomers).
Use/Production. (G) Polymerization initiator. Prod. range: Confidential.
Toxicity Data. Acute oral: >5.0 g/kg; Irritation: Skin—Slight.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86–1494

Manufacturer. Confidential.
Chemical. (G) Acrylic solid grade polymer.
Use/Production. (G) Open, non-dispersive. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86–1495

Manufacturer. The Dow Chemical Company.
Chemical. (G) Unsaturated organic substituted siloxane.
Use/Production. (S) Industrial intermediate for polymer manufacture. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86–1496

Manufacturer. The Dow Chemical Company.
Chemical. (G) Lithium alkoxide.
Use/Production. (S) Industrial catalyst. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. No release.

P 86–1497

Manufacturer. The Dow Chemical Company.
Chemical. (S) 1,3 phenylenebis (methylphenyl) methanone.
Use/Production. (S) Industrial chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral: >1,000 mg/kg; Irritation: Skin—Moderate; Skin—Sensitization: Non-irritan t.
Exposure. Confidential.
Environmental Release/Disposal. Minimal release to water.

P 86–1498

Manufacturer. The Dow Chemical Company.
Chemical. (G) B-stage organo-silicone polymer.
Use/Production. (S) Commercial electronic protective polymers. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86–1499

Importer. Sherex Chemical Company, Inc.
Chemical. (G) Branched fatty alcohols.
Use/Import. (S) Industrial ingredient in personal care formulations and lubricants. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. No release.

P 86–1500

Manufacturer. Confidential.
Chemical. (G) Dihydroxyalkyl alkanoic acid, polymer with alkane diisocyanate, 1,6-hexanediol, and 2-hydroxyethyl ester of 2-propenoic acid.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 5 workers, up to 8 hrs/day, up to 19 day/yr.
Environmental Release/Disposal. 1 to 90 kg/yr released to land. Disposal by approved landfill or incineration at an approved facility.

P 86–1501

Manufacturer. Confidential.
Chemical. (G) Modified maleated metal resinate.
Use/Production. (S) Publication gravure printing inks. Prod. range: Confidential.
Toxicity Data. No data on PMN substance submitted.
Exposure. Manufacture: dermal, a total of 6 workers, up to 2 hrs/day.
Environmental Release/Disposal. Less than 0.2 kg/batch released to water with 20 kg/day to land. Disposal by sanitary landfill and plant air oxidization lagoon.

P 86–1502

Manufacturer. Confidential.
Chemical. (G) Polyester-imide resin.
Use/Production. (S) Used as an intermediate for electrical insulation coatings. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86–1503

Manufacturer. Confidential.
Chemical. (G) Unsaturated polyester-urethane resin.
Use/Production. (C) Fiber reinforced coating. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86–1504

Manufacturer. Confidential.
Chemical. (G) Water reducible epoxy ester copolymer resin.
Use/Production. (S) Water reducible industrial air-dry coatings. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

Dated: August 11, 1986.

Denise Devoe,

Acting Division Director, Information Management Division.

[FR Doc. 86-18760 Filed 8-19-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180697; FRL-3067-4]

Emergency Exemptions; Sulfur Dioxide, etc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests in the 11 States listed below. Also listed are 10 crisis exemptions. These exemptions, issued during the month of June, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific and crisis exemption for its effective dates.

FOR FURTHER INFORMATION CONTACT: See each exemption for the name of the contact person. The following information applies to all contact people:

By mail: Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Office location and telephone number: Room 716, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1806).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. Arizona Commission of Agriculture and Horticulture for the use of sulfur dioxide on table grapes as a post-harvest fumigant; June 30, 1986 to July 31, 1986. (Jim Tompkins)

2. Arkansas State Plant Board for the use of iprodione on rice to control sheath blight; June 16, 1986 to September 1, 1986. (Jim Tompkins)

3. California Department of Food and Agriculture for the use of metalaxyl on leaf lettuce to control downy mildew; June 3, 1986 to December 1, 1986. (Jim Tompkins)

4. Florida Department of Agriculture and Consumer Services for the use of anilazine on watercress to control leaf spot; approved June 20, 1986, and effective from September 1, 1986 to August 31, 1987. (Gene Asbury)

5. Idaho Department of Agriculture for the use of fluvalinate on alfalfa grown for seed to control various insects. This specific exemption was authorized on the basis that available registered alternatives applied during bloom present significant risks to beneficial pollinators. The emergency exemption is effective from June 23, 1986 to August 31, 1986. (Libby Pemberton)

6. Louisiana Department of Agriculture for the use of iprodione on rice to control sheath blight; June 16, 1986 to September 1, 1986. (Jim Tompkins)

7. Nevada Department of Agriculture for the use of fluvalinate on alfalfa grown for seed to control various insects. This specific exemption was authorized on the basis that available registered alternatives applied during bloom present significant risks to beneficial pollinators. The emergency exemption is effective from June 23, 1986 to August 31, 1986. (Libby Pemberton)

8. New York State Department of Environmental Conservation for the use of metolachlor on transplanted cabbage to control yellow nutsedge and hairy galinsoga; June 13, 1986 to December 31, 1986. (Libby Pemberton)

9. New York State Department of Environmental Conservation for the use of cryolite on potatoes to control the Colorado potato bettle; June 3, 1986 to September 15, 1986. (Libby Pemberton)

10. Oregon Department of Agriculture for the use of glyphosate on wheat to control common rye; June 3, 1986 to July 1, 1986. (Jim Tompkins)

11. Oregon Department of Agriculture for the use of fluvalinate on alfalfa grown for seed to control various insects. This specific exemption was authorized on the basis that available registered alternatives applied during bloom present significant risks to beneficial pollinators. The emergency exemption is effective from June 23, 1986 to August 20, 1986. (Libby Pemberton)

12. Rhode Island Department of Environmental Management for the use of cryolite on potatoes to control the Colorado potato beetle; June 3, 1986 to September 15, 1986. (Libby Pemberton)

13. Washington Department of Agriculture for the use of fluvalinate on alfalfa grown for seed to control various insects. This specific exemption was authorized on the basis that available registered alternatives applied during bloom present significiant risks to beneficial pollinators. The emergency exemption is effective from June 23, 1986 to August 31, 1986. (Libby Pemberton)

14. Washington Department of Agriculture for the use iprodione on irrigated potatoes to control sclerotinia; June 6, 1986 to July 31, 1986. (Jim Tompkins)

15. Washington Department of Agriculture for the use of vinclozolin on raspberries to control botrytis fruit rot; June 4, 1986 to July 31, 1986. (Jim Tompkins)

Crisis exemptions were initiated by the:

1. Arkansas State Plant Board on June 6, 1986, for the use of sodium chlorate on wheat as a desiccant. The need for this program has ended. (Libby Pemberton)

2. Florida Department of Agriculture and Consumer Services on June 13, 1986, for the use of fluazifop-butyl on peanuts to control grasses. The need for this program has ended. (Jim Tompkins)

3. Louisiana Department of Agriculture on June 26, 1986, for the use of fenvalerate on sorghum grain to control the sorghum midge. Since it was anticipated that this program would be needed for more than 15 days, Louisiana requested a specific exemption to continue it. The need for this program is expected to last until September 30, 1986. (Stan Austin)

4. Louisiana Department of Agriculture on June 10, 1986, for the use of bromoxynil on rice to control Mexican weeds. The need for this program has ended. (Jim Tompkins)

5. Mississippi Department of Agriculture and Commerce on June 12, 1986 for the use of sodium chlorate on wheat as a desiccant. The need for this program has ended. (Libby Pemberton)

6. Montana Department of Agriculture on June 30, 1986, for the use of fluvalinate on alfalfa seed to control grasshoppers. Since it was anticipated that this would be needed for more than 15 days, Montana is expected to request a specific exemption to continue it. The need for this program is expected to last until August 31, 1986. (Libby Pemberton)

7. North Carolina Department of Agriculture on June 5, 1986, for the use of metalaxyl on peppers to control phytophthora blight. Since it was anticipated that this program would be needed for more than 15 days, North Carolina will request a specific exemption to continue it. The need for this program is expected to last until September 30, 1986. (Jim Tompkins)

8. Oklahoma Department of Agriculture on June 6, 1986, for the use of sodium chlorate on wheat as a desiccant. The need for this program has ended. (Libby Pemberton)

9. Texas Department of Agriculture on June 19, 1986, for the use of sodium chlorate on wheat as a desiccant. The need for this program has ended. (Libby Pemberton)

10. Texas Department of Agriculture on June 17, 1986, for the use of fenvalerate on sorghum grain to control the sorghum midge. Since it was anticipated that this program would be

needed for more than 15 days, Texas has requested a specific exemption to continue it. The need for this program is expected to last until September 30, 1986. (Stan Austin)

Authority: 7 U.S.C. 136.

Dated: August 11, 1986.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 86-18758 Filed 8-19-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL RESERVE SYSTEM

Carlson Bankshares, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) 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 acquire or control voting securities or assets of a company engaged 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 September 11, 1986.

A. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Carlson Bankshares, Inc.*, Comfrey, Minnesota; to acquire Peoples State Agency, Inc., Comfrey, Minnesota and thereby engage in general insurance agency activities in a community with a population not exceeding 5,000 pursuant to § 225.25(b)(8)(ii) of the Board's Regulation Y. These activities will be conducted in the counties of Brown, Cottonwood, Redwood and Watonwan in Minnesota.

Board of Governors of the Federal Reserve System, August 14, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-18791 Filed 8-19-86; 8:45 am]

BILLING CODE 6210-01-M

Equimark 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.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 10, 1986.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Equimark Corporation*, Pittsburgh, Pennsylvania; to engage *de novo* through its subsidiary, Equimanagement, Pittsburgh, Pennsylvania, in management consulting services to nonbank depository institutions and their operations subsidiaries pursuant to § 225.25(b)(11) of the Board's Regulation Y, including the provision of investment advice pursuant to § 225.25(b)(4) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 15, 1986.

Barbara R. Lowrey,

Associate Secretary of the Board.

[FR Doc. 86-18794 Filed 8-19-86; 8:45 am]

BILLING CODE 6210-01-M

Second 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 Compact Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 12, 1986.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Second Bancorp, Inc.*, Warren, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of The Second National Bank of Warren, Warren, Ohio.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *CCB Financial Corporation*, Durham, North Carolina; to acquire 100 percent of the voting shares of Republic Bank & Trust Co., Charlotte, North Carolina.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *LBT Bancshares Inc.*, Litchfield, Illinois; to acquire at least 57 percent of the voting shares of First National Bank of Mt. Auburn, Mt. Auburn, Illinois.

2. *Poplar Bluff Bancshares, Inc.*, Poplar Bluff, Missouri; to merge with Mingo Bancshares, Inc., Poplar Bluff, Missouri.

D. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Fidelity Bancorp, Inc.*, Houston, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Northport National Bank, Houston, Texas.

2. *S.B.T. Bancshares, Inc.*, San Marcos, Texas; to become a bank holding company by acquiring 92 percent of the voting shares of State Bank and Trust Co. of San Marcos, San Marcos, Texas.

Board of Governors of the Federal Reserve System, August 15, 1986.

Barbara R. Lowrey,

Associate Secretary of the Board.

[FR Doc. 86-18795 Filed 8-19-86; 8:45 am]

BILLING CODE 6210-01-M

Sovran Financial Corp.; Application To Engage de Novo in 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. 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 September 9, 1986.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Sovran Financial Corporation*, Norfolk, Virginia; to engage *de novo* through its subsidiary, Sovran Investment Corporation, Richmond, Virginia, in the purchase and sale of gold and silver bullion and gold coins for its own account.

Board of Governors of the Federal Reserve System, August 14, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-18792 Filed 8-19-86; 8:45 am]

BILLING CODE 6210-01-M

SunTrust Banks, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 11, 1986.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *SunTrust Banks, Inc.*, Atlanta, Georgia and Trust Company of Georgia, Atlanta, Georgia, to merge with Baxley State Banking Company, Baxley Georgia, and thereby indirectly acquire Baxley State Bank, Baxley, Georgia.

B. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *El Paso Financial Corporation*, El Paso, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of El Paso State Bank, El Paso, Texas, a *de novo* bank.

Board of Governors of the Federal Reserve System, August 14, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-18793 Filed 8-19-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Cooperative Agreement To Develop a Demonstration Research and Investigation Project To Strengthen Country Field Epidemiology Programs; Availability of Funds for Fiscal Year 1986

The Centers for Disease Control announces the availability of funds to support a cooperative agreement to develop a demonstration research and investigation project designed to strengthen individual country Field Epidemiology Training Programs (FETPs). The program is authorized in accordance with section 301(a) of the Public Health Service Act. The Catalog of Federal Domestic Assistance Number is 13.283.

The purpose of this cooperative agreement is to assist an academic

institution to develop a demonstration research and investigation project which would; (1) Permit the development of a Masters of Public Health Degree granting program for FETP graduates; (2) Assist governments involved in FETPs in the development of surveillance and epidemiologic reporting instruments; (3) Develop the methodology for initiating FETPs in least developed countries; and (4) Develop an appropriate on-campus public health program for middle level health professionals from developing countries. No student support will be provided.

Eligible applicants are limited to the 38 Schools of Public Health and Graduate Public Health Programs offering a Masters of Public Health Degree and accredited by the Council on Education for Public Health. Because of the nature of the activities being developed (degree granting program in public health), accreditation is a requirement. A Masters of Public Health is the most recognized post-graduate degree for individuals involved in planning, implementing, and evaluating ongoing public health programs throughout the world. Many positions in the international arena have a mandatory requirement of a Masters of Public Health Degree for consideration. Application information is being provided directly to the eligible applicants. No other applications will be accepted.

Approximately $110,000 is available for a one-year project.

Further information on this program may be obtained from:

Technical:

Mrs. Carol Coettl, International Health Program Office, Building 14, Centers for Disease Control, Atlanta, GA 30333, Telephone (404) 329-3415

Business:

Mrs. Betty P. Feeley, Grants Management Specialist, Grants Management Branch, Centers for Disease Control, Room 321, 255 East Paces Ferry Rd., NE, Atlanta, GA 30305, Telephone: (404) 262-6575

Dated: August 14, 1986.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 86-18729 Filed 8-19-86; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Medicaid Program; Hearing; Reconsideration of Disapproval of an Indiana State Plan Amendment

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on October 1, 1986 in Chicago, Illinois to reconsider our decision to disapprove Indiana State Plan Amendment 85-8.

DATE: Requests to participate in the hearing as a party must be received by the Docket Clerk September 4, 1986.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, Hearing Staff, Bureau of Eligibility, Reimbursement and Coverage, 365 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 594-8261.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove an Indiana State Plan Amendment.

Section 1116 of the Social Security Act and 45 CFR Parts 201 and 213 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues which will be considered at the hearing, we will also publish that notice.)

Any individiual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 45 CFR 213.15(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained in 45 CFR 213.15(c)(1).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

Indiana submitted State Plan Amendment (SPA) 85-8 in response to HCFA Action Transmittal 85-3 (dated February 1985) which issued a new Medicaid State plan preprint format. Under SPA 85-8 the State proposes Medicaid eligibility policies for the aged, blind and disabled.

The issues in this matter are whether several aspects of Indiana's proposed plan violates section 1902(a)(10)(A), 1902(f) of the Social Security Act and Federal regulations at 42 CFR 435.121, 42 CFR 435.122, 42 CFR 435.230(b)(2) and 42 CFR 435.733. Also raised as an issue is whether HCFA acted in a timely manner as required by section 1915(b) of the Social Security Act.

The State of Indiana has elected to use more restrictive requirements of eligibility for the aged, blind and disabled (section 1902(f) of the Act and regulations at 42 CFR 435.121). Under these provisions a State may use more restrictive requirements of eligibility than those used under the Supplemental Security Income (SSI) program. The more restrictive requirements used, however, can be no more restrictive than those used under a State's January 1, 1972 Medicaid plan.

Therefore, a State cannot employ policies included in its January 1, 1972 plan unless the policy in effect on that date was more restrictive than SSI program policy. Where a State's January 1, 1972 policy was more liberal than SSI policy, a State must adopt the comparable SSI policy.

States electing to use more restrictive requirements of eligibility may make supplementary payments of SSI recipients and individuals who do not receive SSI benefits. If payments are made to specific categories of individuals described at 42 CFR 435.230 and the payments made meet the requirements set forth at 42 CFR 435.230(b)(2), a State may use its State supplemental standard and income disregards in determination of eligibility under 42 CFR 435.121. Indiana apparently seeks to exercise this option as well.

HCFA concluded that three of the proposed policies are more liberal than SSI policies. One is an earned income disregard, one is a disregard of income producing property, and another is in deeming for cases in which there is an ineligible spouse. HCFA determined these more liberal policies violate section 1902(a)(10)(A), and are not authorized under the exception to that provision which is established by section 1902(f) of the Act and implementing regulations at 42 CFR 435.121.

The State also proposes a policy for disregarding life insurance that is in some respects more liberal than SSI policy and in other respects more restrictive than its January 1, 1972 policy. This policy was previously disapproved as part of SPA 84-7. HCFA determined these more liberal and more restrictive policies violate section 1902(a)(10)(A), and are not authorized under the exception to that provision which is established by section 1902(f) of the Act and its implementing regulations at 42 CFR 435.121.

The State also proposes to deem income from stepparents who are not legally liable for support of stepchildren under a State law of general

applicability. HCFA determined such policy violates 42 CFR 435.122 which limits deeming to parents and spouses.

The State also proposes disregards of income for State supplement recipients that are more restrictive than the disregards used under the SSI program. HCFA determined such disregards violate 42 CFR 435.230(b)(2).

The State proposes a personal needs allowance for post-eligibility treatment of income that includes $28.50 plus an allowance for court-ordered guardianship fees. HCFA has determined this allowance violates 42 CFR 435.733 because there has been no showing that it is a reasonable amount, as required by 42 CFR 435.733.

Finally, the State of Indiana claims that HCFA did not act in a timely manner as required by section 1915(f) of the Social Security Act. This issue will also be considered at the hearing.

The notice to Indiana announcing an administrative hearing to reconsider our disapproval of its State plan amendment reads as follows:

Mr. Donald L. Blinzinger,
Administrator, Department of Public Welfare, State of Indiana, 100 North Senate Avenue—Room 701; Indianapolis, Indiana 46204

Dear Mr. Blinzinger: This is to advise you that your request for reconsideration of the decision to disapprove Indiana State Plan Amendment 85–8 was received on July 15, 1986. You have requested a reconsideration of whether the plan amendment conforms to the requirements for approval under the Social Security Act and pertinent Federal regulations.

Indiana SPA 85–8 proposes Medicaid eligibility policies for the aged, blind and disabled using more restrictive requirements of eligibility for the aged, blind and disabled than those used under the Supplemental Security Income Program.

The issues to be considered at the hearing are: (1) Whether three of the proposed policies (one is an earned income disregard, one is a disregard of income producing property, and another is in deeming for cases in which there is an ineligible spouse) are more liberal than SSI policies and therefore violate section 1902(a)(10)(A), and 1902(f) of the Social Security Act, and implementing regulations at 42 CFR 435.121; (2) whether the proposed policy for disregarding life insurance is in some respects more liberal than SSI policy and in other respects more restrictive than the State's January 1, 1972 policy and therefore violates section 1902(a)(10)(A) and 1902(f) of the Social Security Act and implementing regulations at 42 CFR 435.121; (3) whether the State's proposal to deem income from stepparents who are not legally liable for support of stepchildren under a State law of general applicability violates 42 CFR 435.122 which limits deeming to parents and spouses; (4) whether the State's proposed disregards of income for State supplement recipients are more restrictive than the disregards used under the SSI program and therefore violates 42 CFR 435.230(b)(2); (5) whether the State's proposal of a personal needs allowance for post-eligibility treatment of income that includes $28.50 plus an allowance for court-ordered guardianship fees violates 42 CFR 435.733 which requires there is a showing that it is a reasonable amount; and (6) whether HCFA acted on the plan within 90 days as required by section 1915(f) of the Social Security Act.

I am scheduling a hearing on your request to be held on October 1, 1986 at 10:00 a.m. in the 8th Floor Conference Room, 175 W. Jackson Boulevard, Chicago, Illinois. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties.

I am designating Mr. Albert Miller as the presiding official. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 594–8261.

Sincerely,
William L. Roper, M.D.
Administrator.

Authority: Section 1116 of the Social Security Act (42 U.S.C. 1316).
(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: August 14, 1986.
William L. Roper,
Administrator, Health Care Financing Administration.

[FR Doc. 86–18730 Filed 8–19–86; 8:45 am]
BILLING CODE 4120–01–M

[BERC–355–CN]

Medicare Program; Schedule of Limits on Home Health Agency Costs per Visit for Cost Reporting Periods Beginning on or After July 1, 1986, but Before July 1, 1987

Correction

In FR Doc. 86–17810 beginning on page 28439 in the issue of Thursday, August 7, 1986, the docket number should have appeared as it does in the heading of this document.

BILLING CODE 1505–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974; Revision of Notice of Systems of Records

This notice updates and revises the information which the Department of the Interior has published describing systems of records maintained which are subject to the requirements of section 3 of the Privacy Act of 1974, as amended, 5 U.S.C. 552a. On May 20, 1986, the Department published in the **Federal Register** (51 FR 18152), a revised notice describing a system of records maintained by the Bureau of Mines. The notice is titled "Personnel Security Files-Interior, Mines-7", and public comments on the revised notice were solicited.

One comment on the proposal was received from the Office of Personnel Management (OPM). OPM recommended the addition of a new routine disclosure to that agency specifically for onsite security appraisal functions authorized by Section 14 of Executive Order 10450, as amended, and for OMP oversight activities as authorized by law. We have reviewed the OMP recommendation and find that such routine disclosures would be compatible with the purposes for which the records have been established and maintained. Therefore, the notice published on May 20, 1986, is being amended to add an additional routine disclosure to OPM for the purposes of carrying out its oversight functions as authorized by law. The section of the notice describing routine uses of records maintained in the system is published in its entirety below.

5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment. Therefore, written comments on this proposed change can be addressed to the Department Privacy Act Officer, Office of the Secretary (PIR), Room 7357, Main Interior Building, U.S. Department of the Interior, Washington, DC 20240. Comments received within 30 days of publication in the **Federal Register** will be considered. The amendment shall be effective as proposed without further notice at the end of the comment period, unless comments are received which would require a contrary determination.

Dated: August 11, 1986.
Oscar W. Mueller, Jr.,
Director, Office of Information Resources Management.

INTERIOR/WBM–7

SYSTEM NAME: Personnel Security Files—Interior, Mines-7.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM:

The primary use of the records is to identify individuals who have national security clearance and/or ADP access authorizations and their level of clearance. Disclosure outside the Department of the Interior may be made (1) to a Federal agency which has

requested information relevant or necessary to its hiring or retention of an employee, or issuance of a security clearance, license, contract, grant or other benefit; (2) to Federal, State or local agencies where necessary to obtain information relevant to the hiring or retention of an employee, or the issuance of a security clearance, contract, license, grant or other benefit; (3) to the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the Government, an employee of the Department if a party to litigation or anticipated litigation or has an interest is such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessay to the litigation and is compatible with the purpose for which the records were compiled; (4) of information indicating a violation or potential violation of a statute, regulation, rule, order or license, to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations or for enforcing or implementing the statute, rule, regulation, order or license; (5) to a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office;

(6) to the Office of Personnel Management for matters concerned with oversight activities necessary for the Office to carry out its legally authorized Governmentwide personnel management programs and functions.

* * * * *

[FR Doc. 86-18734 Filed 8-19-86; 8:45 am]

BILLING CODE 4310-53-M

Bureau of Land Management

[UT-040-06-4132-12]

Availability of Draft Environmental Assessment on Alabaster Mining Within a wilderness Study Area

AGENCY: Department of Interior, Bureau of Land Management, Cedar City Utah District, UT-040-06-4132-12.

ACTION: Notice of availability of draft environmental assessment.

SUMMARY: The Bureau of Land Management discovered unauthorized alabaster mining in the Wahweap Wilderness Study Area (WSA). About one acre had been disturbed within less than 100 years of the Cottonwood road, which forms part of the west WSA boundary. A cease and desist order was issued and the claimant was required to submit a proposed plan of operations, including rehabilitation of the area already disturbed, for consideration under WSA interim management protection regulations. This draft EA addresses the plan of operations and reclamation that was submitted.

DATE: Comments on the draft EA are due at the address listed below not later then September 15, 1986.

ADDRESS: To obtain a copy of the draft EA, request additional information, or submit comments, contact Pete Kilbourne, Bureau of Land Management, P. O. Box 458, Kanab, Utah 84741 or telephone 801-644-2672.

Dated: August 12, 1986.

Dennis Curtis,

Acting District Manager.

[FR Doc. 86-18707 Filed 8-19-86; 8:45 a.m.]

BILLING CODE 4310-DQ-M

[AZ-020-06-4212-18; A-22271]

Realty Action; Sale of Public Land; Gila and Salt River Meridian, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; sale of public land.

SUMMARY: The following described federal lands have been identified by Apache County, Arizona, and are designated as potentially suitable for selection by Apache County in compensation for certain private lands which were previously subject to taxation by Apache County and which have been or may be acquired by the Zuni Indian Tribe under Pub. L. 98-408.

Cila and Salt River Meridian, Arizona

T. 11 N., R. 24 E.,
Sec. 26, NW¼NE¼, N½NW¼, SW¼NW¼, W½SW¼, SE¼SW¼, SE¼SE¼.
T. 10 N., R. 25 E.,
Sec. 18, Lot 1, W½NE¼NW¼, NW¼SE¼NW¼.
T. 13 N., R. 25 E.,
Sec. 18, E½SW¼.
T. 19 N., R. 25 E.,
Sec. 6, All lands lying south of I-40.
T. 18 N., 27 E.,
Sec. 22, S½SW¼, SW¼SE¼;
Sec. 28, E½, SE¼SW¼, E½SW¼, SW¼SW¼.
T. 11, N., R. 28 E.,
Sec. 17, All;
Sec. 18, Lot 3, NE¼SW¼, N½SE¼;
Sec. 20, All;
Sec. 26, W½NE¼, NW¼, E½SE¼, SW¼SE¼;
Sec. 27, NW¼NE¼, W½, SW¼SE¼;
Sec. 28, All;
Sec. 29, E½, W½W½;
Sec. 33, All;
Sec. 34, NW¼NW¼, S½SW¼, SW¼SE¼.
T. 13 N., R. 28 E.,
Sec. 10, NE¼, E½NW¼, N¼NW¼, NE¼SW¼;
Sec. 14, All;
Sec. 24, N½N½;
Sec. 30, NE¼SW¼.
T. 12 N., R. 29 E.,
Sec. 12, N½NE¼, SW¼NE¼, W½NW¼, SE¼SW¼, S½SE¼.
T. 13 N., R. 29 E.,
Sec. 6, Lot 3;
Sec. 18, Lots 1-4, E½W½, E½.
T. 16 N., R. 29 E.,
Sec. 34, N½NE¼ SW¼NE¼, W½, NW¼SE¼.

Comprising 8278.73 acres.

Upon completion of a resource inventory it may become necessary to substitute other federal lands for the above described lands if the identified lands are found unsuitable for transfer. An amended Notice of Realty Action will be published should it become necessary to substitute other federal lands.

Apache County may receive title to no more than five thousand eight hundred and eighty one (5881) acres of the selected lands in accordance with section 5 of Pub. L. 98-408.

The above described lands are also being considered for disposal under section 206 of the Federal Land Policy and Management Act of 1976.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this Notice will segregate the public lands, as described in this Notice, from appropriation under the public land laws, including the mining laws, except disposal under Pub. L. 98-408.

The segregation of the above described lands shall terminate upon issuance of a document conveying such lands or upon publication in the **Federal Register** of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

For a period of 45 days from the date of publication interested persons may submit comments to the District Manager, Phoenix District, 2015 W. Deer Valley Road, Phoenix, Arizona 85027. Any adverse comments will be reviewed by the State Director, who may modify, vacate, or sustain this realty action.

Dated: August 11, 1986.

Marlyn V. Jones,

District Manager.

[FR Doc. 86-18708 Filed 8-19-86; 8:45 am]

BILLING CODE 4310-32-M

[NV-943-06-4220-10]

Public Lands in Nevada; Notice of Proposed Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service proposes to withdraw 8,910 acres of public lands in Mineral County, Nevada, to protect the lands pending a legislative exchange for privately owned lands in Florida. This notice closes the lands until April 10, 1988, from surface entry and mining. The lands will remain open to mineral leasing.

ADDRESS: Inquiries concerning the land should be sent to: Nevada State Director, Federal Building, 300 Booth Street, Reno, Nevada 89520.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, BLM Nevada State Office, 702–784–5703.

On August 15, 1986, a petition was approved allowing the U.S. Fish and Wildlife Service to file an application to withdraw the following described public land from settlement, sale, location, or entry under the general public lands laws, including the mining laws, subject to valid existing rights:

Mount Diablo Base and Meridian

T. 6 N., R. 33 E.,
Secs. 10 through 13;
Sec. 14, E½;
Sec. 15, W½;
Sec. 21;
Sec. 22, W½, S½SE¼;
Sec. 23, E½, S½SW¼;
Sec. 24, E½, W½NW¼, NE¼NW¼, N½SE¼NW¼, SE¼SE¼NW¼;
Sec. 25;
Sec. 26, NE¼, W½, NE¼SE¼, W½SE¼;
Sec. 27;
Sec. 34;
Sec. 35, NE¼NE¼, W½, W½SE¼, SE¼SE¼;
Sec. 36.

The lands described aggregate approximately 8,910 acres in Mineral County.

The purpose of the withdrawal is to protect the lands pending a legislative exchange for privately owned lands in Florida. Until an application is filed, no further action will be taken on this proposal.

Until April 10, 1988, the lands will be segregated as specified above unless the application is denied or canceled, or the withdrawal is approved prior to that date.

The temporary segregation of the lands in connection with a withdrawal application or proposal shall not affect administrative jurisdiction over the lands, and the segregation shall not have the effect of authorizing any use of the lands by the U.S. Fish and Wildlife Service.

Henry R. Smith,

Assistant Director, Bureau of Land Management.

August 15, 1986.

[FR Doc. 86–1880 Filed 8–19–86; 8:45 am]

BILLING CODE 4310-HC-M

[NV-943-06-4220-10]

Public Lands in Nevada; Amendment to Notice of Proposed Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service requests that its proposal to withdraw 45,298 acres of public land in Nevada be amended to allow for issuance of rights-of-way if located within the existing highway rights-of-way for U.S. Highway No. 93.

EFFECTIVE DATE: August 14, 1986.

ADDRESS: Inquiries concerning the land should be sent to: Nevada State Director, Bureau of Land Management, 850 Harvard Way, Reno, Nevada 89520.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, BLM Nevada State Office, 702–784–5703.

The Notice of Proposed Withdrawal signed April 8, 1986, and published in the **Federal Register** dated April 11, 1986, at page 12574 (FR Doc. 86–8157) is hereby amended to add the following sentence to the end of the penultimate paragraph: Rights-of-way which would be located within the existing U.S. Highway No. 93 and recorded in the Nevada State Office, Bureau of Land Management, records as Nevada–060729 and Nevada–061281 and which would be consistent with the purposes for which the land is to be withdrawn may be granted.

Henry R. Smith,

Assistant Director, Bureau of Land Management.

August 15, 1986

[FR Doc. 86–18801 Filed 8–19–86; 8:45 am]

BILLING CODE 4310-HC-M

Minerals Management Service

Royalty Management Advisory Committee, Ad Hoc Subcommittee on Coal Product Valuation Issues; Meeting

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of meeting.

SUMMARY: The Minerals Management Service (MMS), Royalty Management Program, hereby gives notice that an Ad Hoc Subcommittee on Coal Product Valuation Issues, established by the Royalty Management Advisory Committee (RMAC), will meet in Denver, Colorado, at the location and the date indicated below.

DATES: Location and Date: The Subcommittee will meet on August 21, 1986, at the Stapleton Plaza Hotel, 3333 Quebec Street, Denver, Colorado, in Suite 8900. The meeting is scheduled to begin at 8:00 a.m. and will continue until the work of the Subcommittee is finished.

The Public is invited to attend the meeting and to make oral or written comments. A time will be set aside by the Subcommittee chairperson during which the public will be invited to make oral comments. Written comments should be submitted by August 28, 1986, to the address listed below.

FOR FURTHER INFORMATION CONTACT: Vernon B. Ingraham, Minerals Management Service, Royalty Management Program, Office of External Affairs, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 660, Denver, Colorado 80225, telephone number (303) 231–3360, (FTS) 326–3360.

SUPPLEMENTARY INFORMATION: On July 30, 1986, the RMAC discussed the final report, dated July 25, 1986, of the Coal Valuation Regulations Review Working Panel. The Working Panel was unable to reach a consensus on a number of coal valuation issues. The unresolved issues include: (1) Whether or not gross proceeds should be defined to include take-or-pay payments, (2) whether or not gross proceeds should be defined to include tax or fee reimbursements, and (3) whether or not a coal washing allowance should be an allowable deduction from value. Consequently, the Subcommittee was appointed to draft language representing options for resolving these issues. The Subcommittee is not charged with making recommendations or taking positions, but is to bring its work before the RMAC for action.

The Subcommittee is comprised of three RMAC members from State, Indian, and industry organizations.

Dated: August 14, 1986.

Carolita Kallaur,

Acting Director, Minerals Management Service.

[FR Doc. 86–18714 Filed 8–19–86; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL JOINT COMMISSION—UNITED STATES AND CANADA

Great Lakes-St. Lawrence River Basin

The International Joint Commission announces that by letters of Reference dated August 1, 1986, the Governments of the United States and Canada have requested the Commission, pursuant to Article IX of the Boundary Waters Treaty of 1909, to undertake a study on methods of alleviating the adverse consequences of fluctuating water levels in the Great Lakes-St. Lawrence River Basin.

The Reference requests that the Commission:

(1) Propose any measures Governments could take under crisis situations to alleviate problems caused by high and low lake levels;

(2) Review its previous lake regulation studies and revise their engineering, economic and environmental evaluations;

(3) Examine past, present and potential future changes in land use and management practices along the shorelines of the Great Lakes, their connecting channels and the St. Lawrence River;

(4) Determine, to the maximum extent practicable, the socio-economic costs and benefits of alternative land use and shoreline management practices and compare these with the revised costs and benefits of lake regulation schemes;

(5) Investigate any feasible methods of improving the outflow capacity of connecting channels and the St. Lawrence River;

(6) Develop an information program which could be carried out by responsible government agencies to better inform the public on lake level fluctuations; and,

(7) Consider any other matter that the Commission deems relevant to the purpose of this study.

David A. LaRoche,

Secretary, U.S. Section.

August 13, 1986.

The Commission is requested to build upon previous studies in its investigations and to examine the effects of the measures it considers on a number of interests and concerns listed in the letter of Reference.

Anyone interested in the subject matter of this Reference is invited to inform the Commission of the nature of their interest. At an appropriate time, the Commission will hold public hearings to give convenient opportunity for all interested parties to be heard.

Copies of the complete text of the Reference to the International Joint Commission are available upon request to the Secretaries.

David A. LaRoche, Secretary, United States Section, International Joint Commission, 2001 S Street, NW, Second Floor, Washington,DC 20440

David G. Chance, Secretary, Canadian Section, International Joint Commission, 100 Metcalfe Street, 18th Floor, Ottawa, Ontario K1P 5M1.

[FR Doc. 86-18740 Filed 8-19-86; 8:45 am]

BILLING CODE 4710-14-M

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review

AGENCY: International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Commission has submitted a proposal for the collection of information to the Office of Management and Budget (OMB) for review.

Purpose of information collection: The proposed information collection is for use by the Commission in connection with investigation No. 332-235, Competitive Evaluation of a U.S.-Canada Free Trade Arrangement in Services.

Summary of proposal: (1) Number of forms submitted: one

(2) Title of form: Competitive Evaluation of a U.S.-Canada Free Trade Arrangement in Services—Service Industries Questionnaire

(3) Type of request: new

(4) Frequency of use: nonrecurring

(5) Description of respondents: firms which provide accounting, advertising, construction/engineering, data processing, insurance, motor transportation, or telecommunication services to Canada

(6) Estimated number of respondents: 300

(7) Estimated total number of hours to complete the forms: 4800

(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

Additional information or comment: Copies of the proposed form and supporting documents may be obtained from Therese Palmer Weise (USITC tel. no. 202-523-0270) or Deborah McNay (202-523-0445). Comments about the proposal should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Attention: Francine Picoult, Desk Officer for U.S. International Trade Commission. Any comments should be specific, indicating which part of the questionnaire or study plan is objectionable, describing the problem in detail, and including specific suggested revisions or language changes.

Submission of comments: Comments should be submitted to OMB within two weeks of the date this notice appears in the **Federal Register.** If you are unable to submit them promptly you should advise OMB within the two week period of your intent to comment on the proposal. Ms. Picoult's telephone number is 202-395-7231. Copies of any comments should be provided to Charles Ervin (United States International Trade Commission, 701 E Street, NW., Washington, D.C. 20436).

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 724-0002.

Issued: August 13, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR. Doc. 86-18780 Filed 8-19-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-242]

Certain Dynamic Random Access Memories, Components Thereof, and Products Containing Same; Prehearing Conference

Notice is hereby given that the prehearing conference in this matter will commence at 9:00 a.m. on August 18, 1986, in Hearing Room B at the Interstate Commerce Commission Building at 12th and Constitution Avenue, NW., Washington, DC, and the hearing will commence immediately thereafter.

The Secretary shall publish this notice in the **Federal Register.**

Issued: August 13, 1986.

Janet D. Saxon,

Administrative Law Judge.

[FR Doc. 86-18778 Filed 8-19-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-237]

Certain Miniature Hacksaws; Commission Determination Not To Review Initial Determination Finding Respondent In Default

AGENCY: International Trade Commission.

ACTION: Nonreview of an initial determination (ID) finding respondent in default.

SUMMARY: Notice is hereby given that the Commission has determined not to review the presiding administrative law judge's (ALJ's) ID (Order No. 27) finding respondent The Disston Company (Disston) of Greenboro, North Carolina, in default.

FOR FURTHER INFORMATION CONTACT: E. Clark Lutz, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone (202) 523-1641.

SUPPLEMENTARY INFORMATION: The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in § 210.25 of the Commission's Rules of Practice and Procedure (19 CFR 210.25). .

By Order No. 21, issued July 3, 1986, Disston was ordered by the ALJ to answer requests for admissions. By Order No. 20, also issued July 3, 1986, Disston was ordered to comply with a subpoena issued earlier in the investigation. By Order No. 24, issued July 11, 1986, the ALJ ordered Disston to show cause why it should not be held in default. Disston did not respond to Orders Nos. 20, 21, or 24. On July 18, 1986, the ALJ issued an ID finding Disston in default based upon Disston's failure to respond to the complaint and notice of investigation, Disston's failure to appear at the hearing in the investigation, and Disston's noncompliance with a subpoena and orders compelling discovery. No petitions for review of the ID or agency comments were received.

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, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161

Hearing-impaired persons are advised that information concerning this investigation can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

Issued: August 12, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-18781 Filed 8-19-86; 8:45 am]

BILLING CODE 7020-02-M

[332-235]

Competitive Evaluation of a U.S.-Canada Free Trade Arrangement In Services

AGENCY: International Trade Commission.

ACTION: Institution of an investigation.

EFFECTIVE DATE: August 7, 1986.

FOR FURTHER INFORMATION CONTACT: Ms. Therese Palmer Weise (202-523-0270), or Ms. Deborah McNay (202-523-0445) Minerals and Metals Division, U.S. International Trade Commission, Washington, DC 20436.

Background and scope of investigation: The Commission instituted investigation No. 332-235, following receipt on July 23, 1986, of a letter from the United States Trade Representative (USTR), requesting, at the direction of the President, that the Commission conduct an investigation under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) to assess the implications of a Free Trade Arrangement with Canada in Services.

In accordance with the request, the Commission will examine the magnitude of U.S.-Canada trade and operations in selected service industries, the competitive position vis-a-vis Canadian services industries, major problems and concerns of these service industries with nontariff measures, and U.S. service industry priorities in such negotiations.

In conducting the investigation, the Commission, at the request of USTR, will cover the following points: (1) A perspective on U.S. Government initiatives and the unique issues affecting services trade; (2) an overview of U.S.-Canada services trade, including sectoral distribution, structural/competitive relationships and the regulatory environment; (3) analyses of selected service sectors; (4) an examination of the economic implications of liberalizing trade in the selected service sectors; (5) an analysis of the problems or obstacles that currently exist in Canada in these sectors; and (6) an assessment of the potential trade benefits and impact to U.S. service exporters should those obstacles be removed.

Written submissions: Interested persons are invited to submit written statements concerning the investigation. Commercial or financial information which a submitting party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be available for inspection by interested persons. To be assured of consideration by the Commission, written statements should be submitted at the earliest possible date, but no later than November 5, 1986. All submissions should be addressed to the Secretary, United States International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 724-0002.

Issued: August 11, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-18779 Filed 8-19-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-300 (Final)]

Dynamic Random Access Memory Semiconductors of 256 Kilobits and Above From Japan

AGENCY: International Trade Commission.

ACTION: Suspension of final antidumping investigation.

EFFECTIVE DATE: August 7, 1986.

FOR FURTHER INFORMATION CONTACT: Ilene Hersher (202-523-4616), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-imparied individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

SUMMARY: On August 1, 1986, the United States Department of Commerce entered into an agreement that suspends the antidumping investigation involving dynamic random access memory semiconductors (DRAM's) of 256 kilobits (256K) and above from Japan (51 FR 28396, August 7, 1986). The agreement calls for Japanese producers/exporters to revise their U.S. prices to eliminate sales of DRAM's of 256K and above at less than fair value. Accordingly, the

United States International Trade Commission hereby gives notice of the suspension of antidumping investigation No. 731–TA–300 (Final)), involving imports from Japan of DRAM's of 256K and above, provided for in item 687.74 of the Tariff Schedules of the United States. The schedule of this investigation, which was included in the Commission's notices of revised schedule (51 FR 15554, April 24, 1986), is hereby cancelled.

This notice is published pursuant to § 207.40 of the Commission's rules of practice and procedure (19 CFR 207.40).

Issued: August 13, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–18789 Filed 8–19–86; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–288 (Final)]

Erasable Programmable Read Only Memories (EPROM's) From Japan

AGENCY: International Trade Commission.

ACTION: Suspension of final antidumping investigation.

EFFECTIVE DATE: August 6, 1986.

FOR FURTHER INFORMATION CONTACT: Judith C. Zeck (202–523–0339), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on 202–724–0002.

SUMMARY: On July 30, 1986, the United States Department of Commerce entered into an agreement that suspends the antidumping investigation involving erasable programmable read only memories (EPROM's) from Japan (51 FR 28253, August 6, 1986). The agreement calls for Japanese producers/exporters to revise their U.S. prices to eliminate sales of EPROM's at less than fair value. Accordingly, the United States International Trade Commission hereby gives notice of the suspension of antidumping investigation No. 731–TA–288 (Final)), involving imports from Japan of EPROM's, provided for in item 687.74 of the Tariff Schedules of the United States. The schedule of this investigation, which was included in the Commission's notice of revised schedule (51 FR 16905, May 7, 1986), is hereby cancelled.

This notice is published pursuant to § 207.40 of the Commission's rules of practice and procedure (19 CFR 207.40).

Issued: August 13, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–18788 Filed 8–19–86; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 751–TA–11]

Salmon Gill Fish Netting of Manmade Fibers From Japan

AGENCY: Internaitonal Trade Commission.

ACTION: Institution of a review investigation concerning the Commission's affirmative determination in investigation No. AA1921–85, Fish Nets and Netting of Manmade Fibers from Japan.

SUMMARY: The Commission hereby gives notice that it has initiated an investigation pursuant to section 751(b) of the Tariff Act of 1930 (19 U.S.C. 1675(b)) to review its determination in investigation No. AA1921–85. The purpose of the investigation is to determine whether an industry in the United States would be materially injured, or would be threatened with material injury, or the establishment of an industry in the United States would be materially retarded, by reason of imports of salmon gill fish netting of manmade fibers from Japan if the outstanding order regarding such merchandise were to be modified or revoked. Salmon gill fish netting is provided for in item 355.45 of the Tariff Schedules of the United States. As provided in § 207.45(b) of the Commission's Rules of Practice and Procedure (19 CFR 207.45(b)), the 120-day period for completion of this investigation begins on the date of publication of this notice in the **Federal Register.**

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult part 207, Subparts A and E (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201) of the Commission's rules.

EFFECTIVE DATE: August 20, 1986.

FOR FURTHER INFORMATION CONTACT: Martha Mitchell (202–523–6620), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

SUPPLEMENTARY INFORMATION:

Background

On April 18, 1972, in investigation No. AA1921–85, the Commission determined that an industry in the United States was being injured within the meaning of the Antidumping Act, 1921, by reason of imports of fish netting of manmade fibers from Japan determined by the Secretary of the Treasury to be sold or likely to be sold at less than fair value (LTFV). As a result of this determination, the Department of the Treasury issued a dumping order applicable to this merchandise on June 1, 1972 (Treasury Decision 72–158). The Commission has conducted two 751 review investigations with respect to salmon gill fish netting of manmade fibers from Japan (investigations Nos. 751–TA–5, March 31, 1982, and 751–TA–7, May 24, 1983), and, in both instances, determined that the portion of the order dealing with salmon gill fish netting should not be revoked.

On June 20, 1986, the Commission received a new request from counsel representing Seattle, Washington/Portland, Oregon importers of salmon gill fish netting, including Seattle Marine and Fishing Supply Co., Redden Net Co., and LSS, Inc. (formerly Lummi Fishery Supply Co.). The petition requests that the Commission modify its affirmative determination and revoke that portion of the outstanding order on fish nets and netting of manmade fibers from Japan dealing with salmon gill fish netting retroactively to June 1, 1972. Modification or revocation of the dumping finding as to salmon gill fish netting would not affect the Commission's affirmative determination as to other forms of fish netting of manmade fibers from Japan. The petition alleges the existence of changed circumstances which warrant the institution of a third section 751 review investigation. In July 3, 1986, the Commission requested written comments in the **Federal Register** (51 FR 24451) as to whether the changed circumstances alleged by the petitioner were sufficient to warrant a review investigation. After reviewing comments received in response to that request, the Commission has determined that the changed circumstances alleged in the petition were sufficient to warrant a review investigation.

Participation in the investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 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 this investigation 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 investigation must be served on all other parties to the investigation (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.

Staff report

A public version of the prehearing staff report in this investigation will be placed in the public record on October 17, 1986, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on October 30, 1986, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on October 14, 1986. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on October 17, 1986, in room 117 of the U.S. Internaitonal Trade Commission Building. The deadline for filing prehearing briefs is October 27, 1986.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR § 201.6(b)(2))).

Written Submissions

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on November 6, 1986. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before November 6, 1986.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with section 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority

This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.45 of the Commission's rules (19 CFR 207.45).

Issued: August 13, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-18787 Filed 8-19-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-253]

Certain Electrically Resistive Monocomponent Toner; Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the International Trade Commission on July 15, 1986, pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of Aunyx Corporation, 65 Industrial Park Road, Hingham, Massachusetts 02043. An amended complaint was filed on July 30 1986 and supplements to the amended complaint were filed on July 30 and August 1, 5, and 12, 1986. The complaint as amended alleges unfair methods of competition and unfair acts in the importation of certain electrically resistive monocomponent toner into the United States, and in its sale, by reason of alleged conduct (1) of a type actionable under the U.S. antitrust laws, such as (a) use of leverage over dealers to coerce such dealers not to purchase toner from Aunyx; (b) use of leverage over dealers to coerce such dealers to buy toner only from respondent Canon U.S.A., Inc.; (c) interference with Aunyx's supply of materials necessary to the manufacture and packaging of toner; and (d) interference with Aunyx's ability to market its toner products; and (2) of a type actionable not only under the U.S. antitrust laws, but also under the common and statutory law of unfair competition, such as (a) interference with Aunyx's business relations with its customers; and (b) disparagement of Aunyx's products and reputation. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to monopolize and restrain trade and commerce in the United States, to destroy or substantially injure an industry, efficiently and economically operated, in the United States, and to prevent the establishment of a United States industry.

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sulzer, Esq., or Steven Schwartz, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-523-0419 and 202-523-4877, respectively.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of practice and procedure (19 CFR 210.12).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on August 13, 1986, Ordered That—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of

subsection (a) of section 337 in the unlawful importation of certain electrically resistive monocomponent toner into the United States, or in its sale, by reason of alleged (1) monopolization; (2) attempt to monopolize; and (3) conspiracy to monopolize the relevant market for said toner; (4) exclusive dealing; and (5) conduct actionable under the common and statutory law of unfair competition, such as (a) alleged interference with Aunyx's business relations with its customers and (b) alleged disparagement of Aunyx's products and reputation, the effect or tendency of which is to monopolize and restrain trade and commerce in the United States, to destroy or substantially injure an industry, efficiently and economically operated, in the United States, and to prevent the establishment of a United States industry;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Aunyx's Corporation, 65 Industrial Park Road, Hingham, Massachusetts 02043

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Canon Inc, 7–1, Nishi-Shinjuku 2 Chome, Shinjuku Dai-Ichi Seimei Building, Shinjuku-Ku, Tokyo, Japan

Canon U.S.A., Inc., One Canon Plaza, Lake Success, New York 11042

(c) Stephen L. Sulzer, Esq., or Steven Schwartz, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 701 E Street NW., Room 124, Washington, DC 20436, shall be the Commission investigative attorneys, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of practice and procedure (19 CFR 210.21). Pursuant to § 201.16(d) and 210.21(a) of the rules (19 CFR 201.16(d) and 210.21(a)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is 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, 701 E Street NW., Room 156, Washington, DC 20436, telephone 202–523–0471. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Issued: August 14, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–18783 Filed 8–19–86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337–TA–231]

Certain Soft Sculpture Dolls Popularly Known as "Cabbage Patch Kids," Related Literature and Packaging Thereof; Commission Decision Extending the Time For Determining Whether To Review an Initial Determination Granting a Motion for Summary Determination

AGENCY: International Trade Commission.

ACTION: Extension of period for determining whether to review an initial determination.

SUMMARY: The Commission has extended from August 12, 1986, to August 27, 1986, its deadline for determining whether to review the initial determination (ID) issued by the presiding administrative law judge (ALJ) in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Stephen McLaughlin, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0421.

SUPPLEMENTARY INFORMATION: On March 10, 1986, complainants filed a motion for summary determination on all issues raised in this investigation. (Motion Docket No. 232–12.) The motion was granted by the presiding (ALJ) in an ID issued on July 16, 1986.

The deadline imposed by the Commission's rules for deciding whether to review the ID was the close of business on Tuesday, August 12, 1986. The Commission has determined to extend the deadline to the close of business on Wednesday, August 27, 1986.

This action is taken under authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and §§ 201.14(b), 210.53(h), and 210.54(b)(1) of the Commission's Rules of practice and procedure (19 CFR 201.14(b), 210.53(h), and 210.54(b)(1)).

Copies of the nonconfidential version of the ALJ's 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, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Issued: August 13, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–18782 Filed 8–19–86; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701–TA–279 (Preliminary) and 731–TA–336 (Preliminary)]

Porcelain-On-Steel Cooking Ware From Spain

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines, pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)), that there is a reasonable indication that an industry [2] in the United States is materially injured [3] by reason of imports from Spain of porcelain-on-steel cooking ware,[4] provided for in item 654.08 of the

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Commissioners Lodwick and Rohr determine that there are two domestic industries.

[3] Commissioner Stern determines that there is a reasonable indication of material injury of threat of material injury by reason of the subject imports.

[4] Cooking ware, including teakettles, not having self-contained electric heating elements, all the foregoing to steel and enameled or glazed with vitreous glasses, but not including kitchen ware (currently reported under item 654.0828 of the Tariff Schedules of the United States Annotated).

Tariff Schedules of the United States, which are alleged to be subsidized by the Government of Spain. The Commission also determines, pursuant to section 733(a) of the Act (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry [2] in the United States is materially injured [3] by reason of such imports from Spain, which are allegedly being sold at less than fair value (LTFV).

Background

On June 30, 1986, a petition was filed with the Commission and the Department of Commerce by General Housewares Corp., alleging that an industry in the United States is materially injured and threatened with material injury by reason of subsidized and LTFV imports of porcelain-on-steel cooking ware from Spain. Accordingly, effective June 30, 1986, the Commission instituted preliminary countervailing duty investigation No. 701–TA–279 (Preliminary) and preliminary antidumping investigation 731–TA–336 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 9, 1986 (51 FR 24948). The conference was held in Washington, DC, on July 22, 1986, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on August 14, 1986. The views of the Commission are contained in USITC Publication 1883 (August, 1986), entitled "Porcelain-On-Steel Cooking Ware from Spain: Determination of the Commission in Investigation No. 701–TA–279 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation; Determination of the Commission in Investigation No. 701–TA–336 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: August 14, 1986.

By Order of The Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–18785 Filed 8–19–86; 8:45 am]

BILLING CODE 7020-02-M

[TA–131(b)–11 and 332–236]

Probable Economic Effect on U.S. Industries and Consumers of Establishment of a Free-Trade Area Between the United States and Canada

AGENCY: International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

SUMMARY: Following receipt on July 2, 1986, of a request from the U.S. Trade Representative made in part at the direction of the President, the Commission instituted investigation No. TA–131(b)–11 and 332–236 under sections 131 (b) and (c) of the Trade Act of 1974 (19 U.S.C. 2151 (b) and (c)) and 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g))—

(1) Pursuant to section 131(b) of the Trade Act, to advise the President, with respect to each item in the Tariff Schedules of the United States, as to the probable economic effect of providing duty-free treatment for imports from Canada on industries in the United States producing like or directly competitive articles and on consumers;

(2) Pursuant to section 131(c) of the Trade Act, advise the President as to the probable economic effects on domestic industries and purchasers and on prices and quantities of articles in the United States if the U.S. nontariff measures listed in Annex I to his letter were not applied to imports from Canada; and

(3) Pursuant to section 332(g) of the Tariff Act and at the direction of the President, to assess the degree to which U.S. exports to Canada may be expected to increase and U.S. industries to otherwise benefit if imports into Canada of all products of the United States were free of duty and not subject to the Canadian nontariff measures listed in Annex II to his letter.

As requested by the USTR, the Commission will structure its advice in terms of the Harmonized System tariff nomenclature and will provide its advice and assessment by no later than January 2, 1987. Copies of the request from the USTR with Annexes I and II may be obtained from the Secretary, United States International Trade Commission.

EFFECTIVE DATE: August 14, 1986.

FOR FURTHER INFORMATION CONTACT: Reuben Schwartz, project leader, U.S. International Trade Commission, Washington, DC 20436 (telephone 202–523–0114). For information on the legal aspects of the investigation, contact William W. Gearhart of the Commission's Office of the General Counsel (telephone 202–523–0487). For information on a product basis, contact the appropriate member of the Commission's Office of Industries, as follows:

(1) Agricultural products, David Ingersoll (202–724–0068)
(2) Chemical products, John J. Gersic (202–523–0451)
(3) General Manufactures, Walter S. Trezevant (202–724–1719)
(4) Machinery and Equipment, Aaron H. Chesser (202–523–0353)
(5) Minerals and Metals, Larry L. Brookhart (202–523–0275)
(6) Textiles and Apparel, Robert Wallace (202–523–0120)

Supplemental: President Reagan has agreed to the proposal of Prime Minister Brian Mulroney of Canada to enter into negotiations on an agreement that would establish free trade between Canada and the United States. These negotiations began on June 17, 1986.

Public Hearings and Prehearing Briefs: A public hearing in connection with this investigation will be held in the Commission Hearing Room, 701 E Street NW, Washington, DC 20436, beginning at 9:30 a.m. each day on September 9–10, 1986, to be continued on September 11, if necessary. All persons shall have the right to appear in person or be represented by counsel, to present information, and to be heard. Persons wishing to appear at the public hearing should file a request to appear not later than noon, August 29, 1986, and should file prehearing briefs (original and 14 copies) with the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, not later than noon, September 4, 1986.

Written Submissions: In lieu of, or in addition to, appearance at the public hearing, interested persons are invited to submit written statements concerning the investigation. Commercial or financial information which a submitting party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of practice and procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. To be assured of consideration by the Commission, written statements should be submitted at the earliest possible date, but not later than September 19, 1986. All submissions should be addressed to the

Secretary at the Commission's office in Washington, DC.

Posthearing Submissions: Post hearing submissions are due no later than close of business on September 19, 1986, and are to be limited to five double-spaced pages.

All statements and written briefs should relate to the three areas noted in the summary that the Commission will address in its response to the USTR. A description of the article(s) of interest, including the proposed Harmonized System (HS) item number, if known, should be included, and the domestic industry likely to be affected by a free-trade area between the United States and Canada should be identified. Testimony is invited on both the tariff and nontariff-measure aspects of the proposed free-trade agreement.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 724–0002.

Issued: August 14, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–18784 Filed 8–19–86; 8:45 am]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Lodging of Partial Consent Decree Pursuant to Comprehensive Environmental Response, Compensation, and Liability Act; Resource Conservation and Recovery Act; and Toxic Substances Control Act

In accordance with Departmental policy, 28 CFR 50.7 notice is hereby given that on July 28, 1986, a proposed partial consent decree in *United States* v. *Pacific Hide and Fur Depot, Inc., et al.,* Civil Action No. 83–4052 was lodged with the United States District Court for the District of Idaho. The complaint filed by the United States alleges violations of the Comprehensive Environmental Response, Compensation, and Liability Act; Resoure Conservation and Recovery Act; and Toxic Substances Control Act by Pacific Hide Depot, Inc., et al., due to PCB contaminated capacitors at its recycling and scrap facility in Pocatello, Idaho. The complaint sought recovery of costs and injunctive relief in connection with the cleanup of the PCB capacitors. The partial consent decree provides that defendants will conduct an RI/FS to identify the nature of contamination at the site and propose remedial alternatives.

The Department of Justice will receive for a period of thrity (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer the to *United States* v. *Pacific Hide and Fur Depot, Inc., et al.,* D.J. Ref. 90–11–2–47.

The proposed partial consent decree may be examined at the office of the United States Attorney, Rm. 693 Federal Building, Box 037, 550 W. Fort St., Boise, Idaho 83724 and at the Region X Office of the Environmental Protection agency, 1200 Sixth Avenue, Seattle, Washington 98101. Copies of the partial consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed partial 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 $2.20 payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86–18735 Filed 8–19–86; 8:45 am]

BILLING CODE 4401–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–17,611]

A.O. Smith Electrical Products Division; Union City, IN; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on July 14, 1986 in response to a petition which was filed by the International Union of Electrical Workers, Local 906, on behalf of workers at A.O. Smith, Electrical Products Division, Union City, Indiana.

A.O. Smith purchased the Union City, Indiana plant from Westinghouse Electric Corporation in May 1986. An active certification covering the petitioning group of workers at the Union City plant is currently in effect (TA–W–16,609). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 1st day of August 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86–18702 Filed 8–19–86; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–17,672]

Gearhart Industries, Incorporated, Williston, ND; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on July 14, 1986 in response to a worker petition which was filed on behalf of workers at Gearhart Industries, Incorporated, Williston, North Dakota.

The petitioning group of workers are subject to an ongoing investigation for which a determination has not yet been issued (TWA–W–17,517). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 7th day of August 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86–18703 Filed 8–19–86; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment

Assistance, at the address shown below, not later than September 1, 1986.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustments Assistance, at the address shown below, not later than September 1, 1986.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 11th day of August 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
LaSalle Steel Co (workers)	Spring City, PA	8/2/86	7/31/86	TA-W-17,813	Cold drawn steel bars and specialty drawn steel bars.
E.B. Sportswear Inc. (workers)	Lowell, NC	8/2/86	7/23/86	TA-W-17,814	Children's knit and woven tops and bottoms (shorts).
Cooper Ind. Arrow Hart Div., Inc. (workers)	Hartford, CT	8/2/86	7/29/86	TA-W-17,815	Electrical switches.
Globe Drilling Co. (workers)	Tyler, TX	7/21/86	7/24/86	TA-W-17,816	Oil and gas drilling.
Mac Services, Inc. (workers)	Victoria, TX	7/31/86	7/28/86	TA-W-17,817	Oil drilling.
Willis Enterprises, Inc. (company)	Abilene, TX	7/28/86	7/22/86	TA-W-17,818	Oil and gas well service.
Lomak Petroleum Inc. (workers)	Hartville, OH	8/1/86	7/16/86	TA-W-17,819	Oil rig services.
C.G. Conn, Ltd (workers)	Abilene, TX	7/28/86	7/15/86	TA-W-17,820	Musical instruments.
Franks Fuel Inc. (workers)	Odessa, TX	6/25/86	6/23/86	TA-W-17,821	Oil and gas drilling.
Bandera Drilling Co. (workers)	Abilene, TX	8/1/86	7/18/86	TA-W-17,822	Oil drilling.
Cactus Drilling Co. (workers)	Midland, TX	7/29/86	7/23/86	TA-W-17,823	Oil drilling.
Globe Marine, Inc. (workers)	Houston, TX	7/3186	7/22/86	TA-W-17,824	Oil drilling.
WellTech, Inc. (workers)	Sidney, MT	7/31/86	7/28/86	TA-W-17,825	Oil well servicing.
Fiberglass Systems Inc. (workers)	Big Spring, TX	7/31/86	7/23/86	TA-W-17,826	Fiberglass oilfield pipes.
Maxwell Herring Drilling Corp. (workers)	Tyler, TX	7/31/86	7/22/86	TA-W-17,827	Oil drilling.
Halliburton Service (workers)	Mission, TX	7/3/86	6/27/86	TA-W-17,828	Gas and oil well service.
Clark Material Systems Technology Co. (AIW)	Battle Creek, MT	8/2/86	7/28/86	TA-W-17,829	Components for trucks.
Ft. Worth Pipe Co. (company)	Ft. Worth, TX	7/29/86	7/23/86	TA-W-17,830	Welded steel pipes.
Ft. Worth Pipe Co. (company)	Conroe, TX	7/29/86	7/23/86	TA-W-17,831	Welded steel pipes.
Ft. Worth Pipe Co. (company)	Abilene, TX	7/29/86	7/23/86	TA-W-17,832	Welded steel pipes.
Ft. Worth Pipe Co. (company)	Ft. Morgan, CO	7/29/86	7/23/86	TA-W-17,833	Welded steel pipes.
G.H. Bear (workers)	Wichita Falls, TX	7/28/86	7/23/86	TA-W-17,834	Oilfield equipment.
Kenworth Truck Co. (UAW)	Kansas City, MO	7/30/86	7/25/86	TA-W-17,835	Highway tractors.

[FR Doc. 86-18701 Filed 8-19-86; 8:45 am]
BILLING CODE 4510-30-M

Federal-State Unemployment Compensation Program; Unemployment Insurance Program Letters Interpreting the Federal Unemployment Insurance Law

The Employment and Training Administration (ETA) interprets Federal law pertaining to unemployment insurance as part of the fulfillment of its role in administration of the Federal-State unemployment insurance system. These interpretations are issued in Unemployment Insurance Program Letters (UIPLs) to State Employment Security Agencies. The four UIPLs described below are published in the **Federal Register** in order to inform the public.

Unemployment Insurance Program Letter No. 1-86

This directive clarifies the Department of Labor's interpretation of section 3304(a)(14)(A) of the Federal Unemployment Tax Act (FUTA) regarding the eligibility of aliens for unemployment compensation. Under this section, compensation generally is not payable on the basis of service performed by an alien. This UIPL discusses the three categories of aliens exempt from the denial of benefits due to alien status.

Unemployment Insurance Program Letter No. 30-86

Section 1202(b)(5) of the Social Security Act (SSA) provides that interest on Title XII advances shall not be paid (directly or indirectly) by a State from amounts in its unemployment fund. This directive advises State agencies regarding the use of a special State fund apart from the unemployment fund for the payment of interest due on Title XII advances.

Unemployment Insurance Program Letter No. 37-86

This directive advises State agencies of the amendments made by the Food Security Act of 1985, Pub. L. 99-198, to Title III of the SSA, permitting the intercept of unemployment benefits to offset food stamp overissuances. The amendments to section 303(d), SSA, create options for the States regarding (1) requesting information from individuals, (2) notifying the food stamp agency regarding the individual's eligibility for unemployment benefits, and (3) deducting uncollected overissuances of food stamps from unemployment benefits.

Unemployment Insurance Program Letter No. 50-86

This directive advises State agencies of the amendments made by Pub. L. 99-272 to section 303 of the SSA, sections 3304 and 3306 of the FUTA, the Federal Supplemental Compensation Act of 1982 (FSC), and the Trade Act of 1974. The significant provisions of this law which may require changes in State law and will require new agreements by the States with the Secretary of Labor are as follows: (1) Permits recovery of overpayments made under State and Federal unemployment compensation (UC) laws through offset from unemployment benefits payable to an individual under another State's UC law or a Federal UC program; (2) amends FSC law by waiving the consecutive weeks requirement for certain individuals to collect the remaining benefits in their FSC accounts if these individuals were called up for National Guard duty by the Governor in a disaster declared by the President on June 3, 1985; (3) reauthorizes the Trade Adjustment Assistance Program for workers effective December 18, 1985, and extends the program to September 30, 1991; and (4) amends the FUTA definition of "employment" for three groups of workers which includes agricultural labor performed by certain non-resident farmworkers admitted to work temporarily under specific provisions of the Immigration and Nationality Act, certain full-time students employed by certain summer camps, and crews of certain fishing boats.

Dated: August 11, 1986.

Roger D. Semerad,

Assistant Secretary of Labor

Directive: Unemployment Insurance Program Letter No. 1–86

To: All State Employment Security Agencies

From: Barbara Ann Farmer, Acting Administrator for Regional Management

Date: October 28, 1985

Subject: Eligibility of aliens for unemployment compensation under section 3304(a)(14)(A), FUTA

1. *Purpose.* To clarify the Department of Labor's interpretation of section 3304(a)(14)(A) of the Federal Unemployment Tax Act (FUTA) regarding the eligibility of aliens for unemployment compensation.

2. *References.* Section 3304(a)(14)(A), FUTA; UIPL 6–83; UIPL 15–78; FM 18–83; GAL 43–80; *Draft Language and Commentary to Implement the Unemployment Compensation Amendments of 1976-P.L. 94–566* (including Supplement No. 3, Questions and Answers, issued May 6, 1977).

3. *Background.* Section 3304(a)(14)(A), FUTA, requires, as a condition for the Secretary of Labor's certification of a State to the Secretary of the Treasury, that the State law provide that:

> compensation shall not be payable on the basis of services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed (including an alien who was lawfully present in the United States as a result of the application of the provisions of section 203(a)(7) or section 212(d)(5) of the Immigration and Nationality Act).

To be eligible for unemployment compensation under this section of FUTA, an alien must fall within one of the three categories specified in the law at the time the work on which the claim is based was performed. In addition, the individual must be legally available for work at the time benefits are claimed.

Department of Labor guidelines on this subject have advised States to rely on information or documents presented by aliens to determine whether they qualify under any of these three categories. States have also been advised to consult the Immigration and Naturalization Service (INS) when necessary to resolve questions of an alien's status or entitlement to work in the United States.

In the case of the first two categories, the alien can usually provide one of several documents which confirm his or her right to work. GAL No. 43–80 and Supplement No. 3 of the *Draft Language and Commentary to Implement the Unemployment Amendments of 1976-Pub. L. 94–566* describe the most common acceptable documents.

It has been more difficult for State agencies to implement a uniform policy regarding the third category, aliens who claim unemployment benefits based on permanent residence under color of law. Generally, States have followed INS guidelines in determining whether an alien meets this criterion. However, neither FUTA nor immigration law specifically define the terms "permanently residing" or "under color of law." In addition, there have been conflicting court and appeals board decisions on this issue. In some cases, State agency decisions have been overturned and agencies have requested Department of Labor guidance regarding how to proceed in future cases.

The purpose of this program letter is to ensure that section 3304(a)(14)(A), FUTA, is uniformly interpreted and applied. Some of the information provided below has also been issued in earlier directives and where this occurs references are provided. The information is provided again in this program letter for continuity in the interpretation of the Federal statute.

4. *Interpretation.* Under section 3304(a)(14)(A), FUTA, compensation generally is not payable on the basis of service performed by an alien. However, three categories of aliens are exempt from the denial of benefits due to alien status:

- Aliens lawfully admitted for permanent residence at the time the services were performed.
- Aliens lawfully present for purposes of performing the services.
- Aliens permanently residing in the United States under color of law at the time the services were performed.

Following is an interpretation of section 3304(a)(14)(A), FUTA, as it applies to aliens in general, as well as an interpretation of each of the three exemptions in the law.

a. *General Monetary Entitlement and Eligibility Requirements.* Section 3304(a)(14)(A), FUTA, exempts certain classes of aliens from denial of unemployment compensation due to their alien status. However, the alien must also meet State eligibility requirements which all claimants. Two such eligibility requirements which *all* aliens must meet are summarized below. Any issues involving either of these requirements must be resolved through a nonmonetary determination before authorizing payment of benefits. Guidelines for adjudicating these issues are provided in UIPL No. 15–78.

(1) *Allowable Wage Credits/ Monetary Entitlement.* The wage credits used to establish a claim and monetary entitlement to benefits must be earned while an alien is legally authorized to work in the United States. For example, if an alien enters the country illegally and later becomes an immigrant or permanent resident under color of law, only services performed after legal status is established may be used to support a claim.

(2) *"Able and Available" Requirement.* Under the laws of all States, a claimant must be "able and available" to work to be eligible for unemployment compensation. In addition to meeting other State availability requirements, an alien must be legally authorized to work in the United States to be considered "available for work." Therefore, an alien without current, valid authorization to work from the INS is not legally available for work and not eligible for benefits.

Availability for work while claiming benefits is a separate issue from the alien's status while working during the base period. For example, an alien may have been authorized to work at the time services were performed, but not authorized to work when he or she files a claim for benefits. Or an alien's work authorization may expire while he or she is in active claim status. In these cases, the alien's wage credits could be used to establish a claim, but the alien would not be eligible for benefits because he or she is not available for work. Current, valid authorization to work is necessary for an alien to be considered "available for work."

b. *Lawfully Admitted for Permanent Residence.* The term "lawful permanent resident" is defined in the immigration and Nationality Act. It includes aliens who have been lawfully admitted to the United States as "immigrants" and those whose status has been adjusted from that of "nonimmigrant." 8 U.S.C. 1101(a)(20). Evidence of this status is the Alien Registration Receipt Card (Form I–151 or I–551), commonly called a "green card," issued to each lawful permanent resident by the INS.

Any wage credits earned in covered employment while a prospective claimant is a lawful permanent resident can be used to establish a claim for benefits. In addition, lawful permanent residents who are otherwise eligible for benefits under State law would meet the availability requirement (authorization to work in the United States) needed to be eligible for benefits.

c. *Lawfully Present for Purposes of Performing Services.* This category is not defined in the Immigration and Nationality Act. However, based on the language of the statute and its legislative history, three groups of aliens are included in this category: Canadian and Mexican alien commuters authorized to work in the United States, nonimmigrants granted a status by the INS authorizing them to work in the United States, and other aliens with INS authorization to work in the United States regardless of their status. Section 3304(a)(14)(A), FUTA, is interpreted to apply to these three groups as follows.

(1) *Commuters.* This group includes aliens who live in Canada and Mexico and commute daily or seasonally to work in the United States. In some respects commuters are treated as "lawful permanent residents" in that they are issued green cards by the INS. These commuters have the right to reside permanently in the United States but choose not to exercise that right. Commuters must be distinguished from other Canadian and Mexican aliens who enter the United States for limited periods. Short term visitors may be issued nonresident alien border crossing cards, known as "white cards." These cards do *not* include authorization to work. Various types of white cards are discussed in Supplement #3 of the *Draft Language and Commentary to Implement the Unemployment Amendments of 1976–Pub.L. 94–556.*

(2) *Nonimmigrants whose status authorizes them to work.* This group includes aliens legally admitted to the United States as nonimmigrants (i.e., temporary visitors) *and* whose status authorizes them to work during their stay. These are aliens admitted to the United States as temporary workers or trainees (H–1, H–2, or H–3) after the Secretary of Labor has certified that their admission will not have an "adverse affect" on domestic workers. These aliens will be issued documents by the INS indicating the kinds of work they are allowed to perform and how long they can remain in the United States. In most cases, a failure by the alien to maintain certified employment results in a corresponding failure to maintain status in this category. Therefore, if the alien becomes unemployed, he or she would probably not meet the legal availability requirement for entitlement to benefits.

(3) *Other aliens with INS authorization to work.* This group includes other aliens who are permitted to work by the INS regardless of their status in the United States. The INS has broad discretionary authority to permit an alien to work "for humanitarian reasons" pending determination of the alien's status. Beneficiaries of this discretion may range from applicants for asylum or suspension of deportation to deportable or excludable aliens. To be included in this group, the alien must have specific documentation from the INS indicating he or she is authorized to work. The authorization may be for a specific time only or may be for an indefinite period. Aliens in this group must be distinguished from those who are permanently residing in the United States under color of law (discussed under Item d. (3) below).

As long as an alien in one of the above three groups is authorized by the INS to work in the United States, he or she is "lawfully present for purposes of performing such services." Therefore, any wage credits earned in covered employment may be used to establish a claim for benefits. However, the alien must also be currently authorized to work in the United States while claiming benefits.

Because the status of aliens in this category can depend on many factors and also may be subject to change, each case must be reviewed carefully by the State agency to determine the alien's status both at the time of work and the time benefits are claimed. There is one exception to this legal availability requirement: Canadian nationals claiming benefits against a State of the United States under the Interstate Benefit Payment Plan must satisfy only Canadian availability requirements if they reside in Canada.

d. *Permanently Residing in the United States Under Color of Law.* The third category of individuals exempt from denial of benefits due to alien status are aliens who were "permanently residing in the United States under color of law" when the services on which the claim is based were performed. FUTA does not define the term "under color of law," nor is this term defined in the Immigration and Nationality Act. However, section 3304(a) (14) (A), FUTA, does identify two groups of aliens who are included in this category. These aliens are usually referred to as refugees and parolees. In addition, this category is interpreted to include aliens "presumed to have been lawfully admitted for permanent residence" and certain aliens whom the INS has determined may remain in the United States for an indefinite period. These groups are discussed below.

(1) *Refugees/Parolees.* FUTA specifically includes in the category of "permanently residing under color of law" those aliens who are lawfully present in the United States under the provisions of section 203(a) (7) or section 212(d) (5) of the Immigration and Nationality Act. Section 203(a) (7) involves the general INS authority to admit refugees, while section 212(d) (5) deals with aliens temporarily paroled into the United States. Aliens admitted to the United States under these provisions are entitled to work for specific periods indicated on the forms issued to them by the INS. These groups of aliens and the documents they are issued are discussed in Supplement #3 of the *Draft Language and Commentary to Implement the Unemployment Amendments of 1976–Pub. L. 94–566.*

(2) *Aliens presumed to be lawfully admitted for permanent residence.* Under immigration law, several other groups of aliens are presumed to have been lawfully admitted for permanent residence even though their actual admission to the United States is undocumented. 8 CFR Part 101. These aliens are considered exempt from the denial of unemployment compensation as aliens "lawfully admitted for permenent residence" described in item 4 b above. A list of these groups and the documents that are issued to them by INS is provided in Supplement #3 of the *Draft Language and Commentary to Implement the Unemployment Amendments of 1976–Pub. L. 94–566.*

(3) *Other aliens permanently residing under color of law.* This group includes those aliens who, after review of their particular circumstances under INS statutory or regulatory procedures, have been granted a status which allows them to remain in the United States for an indefinite period of time. This interpretation is consistent with the language and legislative history of the FUTA provision and related case law.

Congress has enacted a complex set of statutes on immigration and has created the INS as an agency with broad powers, both regulatory and adjudicatory. Under the Immigration and Nationality Act and its implementing regulations, the INS determines the status of each alien in the United States. In addition, the Supreme Court recently confirmed the discretionary authority of the INS in alien matters.[1] Therefore, in making a determination about an alien's status, the INS is acting "under color of law." A case which illustrates this point is *Holley v. Lavine.*[2] In *Holley*, the INS

[1] Immigration and Naturalization Service v. Rios-Pineda,——U.S.——, 105 S. Ct. 2098 (1985).

[2] 553 F.2d 845 (2d Cir. 1977), *cert. denied*, 435 U.S. 947 (1978).

sent a letter informing a Canadian citizen with six United States citizen children that she would not be deported at least until her children were grown. This discretionary act by the INS gave "color of law" to her status as a resident of the United States.

For informal INS action to authorize an alien's residence under "color of law", the INS must know of the alien's presence, *and* must provide the alien with official assurance that enforcement of deportation is not planned. If the INS issues a letter or other document to the alien stating that departure will not be enforced, the alien is present under color of law.

In addition to the term "color of law," FUTA includes the term "permanently residing." This term is not defined in FUTA; however, the term "permanent" is defined in the Immigration and Nationality Act, 8 U.S.C. 1101(a) (31), as follows:

> The term "permanent" means a relationship of continuing or lasting nature, as distinguished from temporary, but a relationship may be permanent even though it is one that may be dissolved eventually at the instance either of the United States or of the individual, in accordance with the law.

The Immigration and Nationality Act also defines the term "residence" as "the place of general abode," which is the "principal, actual dwelling place in fact, without regard to intent." 8 U.S.C. 1101(a) (38). Therefore, an individual actually living in the United States who receives assurance from the INS that departure will not be enforced is "permanently residing" in the United States within the meaning of section 3304(a) (14) (A), FUTA.

Any wage credits earned by the individual in covered employment while the individual is "permanently residing in the United States under color of law" may be used to establish a claim for benefits. However, if an alien enters the country illegally and later becomes a permanent resident under color of law, *only* services performed *after* the later date may be used to establish a claim. In addition, the individual must be legally authorized to work in the United States when the claim is filed and during any claim series to be legally available for work.

The issue of whether an alien is permanently residing in the United States under color of law has been the subject of recent State of appeals board and court decisions. Usually these cases concern aliens who entered the United States illegally, or who were lawfully admitted to the United States but not authorized to work during their stay. Later the alien may apply to the INS for permanent residence, political asylum, suspension of deportation or some other change in status. While a status determination is pending or deportation proceedings are being considered, the alien may file a claim for unemployment compensation. In some (but not all) of these cases, appeals boards or courts have ruled that if the INS knows of an alien's illegal presence in the United States and has taken no action on the case, the alien is "permanently residing in the United States under color of law."

Rulings of this type do not conform with the intent of section 3304(a)(14)(A), FUTA, or its legislative history. INS Inaction is *not* sufficient to show that an alien is present under color of law and States may not interpret it as such. Unless the INS has affirmatively exercised its discretion against deportation *or* authorized the alien to work, the alien is not entitled to work and cannot be considered available for work. Therefore, the alien could not meet the two general eligibility requirements discussed in Item 4.a above.

This interpretation is in accord with the legislative history of section 3304(a)(14)(A), FUTA, which reflects that Congress did not intend State agencies to administer immigration law. 122 Cong. Rec. 33284–87 (1976) (Statement of Sen. Cranston). If INS inaction could validate an alien's claim that he or she was permanently residing in the United States under color of law, State agencies would need to learn and apply the intricacies of INS enforcement procedure. State agencies would also have to determine the legal question of the length of delay needed to show INS acquiescence to the alien's presence in the United States.

Moreover, without affirmative action by the INS, any alien, regardless of the legality of entry, could become eligible to receive unemployment compensation simply by filing an application for permanent residence or suspension of deportation. Congress has indicated no intent to include such persons under the provisions of section 3304(a)(14)(A), FUTA. In short, the filing of an application alone cannot change an alien's resident status. The INS must affirmatively determine each alien's status in accordance with its authority and the alien's specific circumstances.

The cases discussed here differ from those where the INS Has granted an alien *permission to work* pending deportation or a determination of the alien's status. If the INS grants an alien permission to work, the alien's status changes to that of "lawfully present for the purposes of performing such services." This category is discussed under Item 4c(3) above. This interpretation is also in line with Congress' intent that State agencies not administer immigration law. State agencies may only determine whether an alien was entitled to work at the time his or her wage credits were earned, and whether the alien is legally available for work while claiming benefits.

5. *Action Required.* All State laws currently provide for the payment of unemployment compensation to aliens under the terms specified by section 3304(a)(14)(A), FUTA. Therefore, no amendments to State law are necessary for States to remain in conformity with these FUTA requirements unless State or Federal courts construe the State law in a manner inconsistent with the Department's interpretation of section 3304(a)(14)(A). State administrators are requested to take necessary action to assure that the State law continues to be applied consistently with section 3304(a)(14)(A), FUTA, as interpreted in this letter.

6. *Inquiries.* Please direct questions to the appropriate regional office.

Directive: Unemployment Insurance Program Letter No. 30–86

To: All State Employment Security Agencies

From: Barbara Ann Farmer, Acting Administrator for Regional Management

Date: May 12, 1986

Subject: Permissibility of the use of special funds for the payment of interest due on Title XII Advances

1. *Purpose.* To clarify the Employment and Training Administration's (ETA) position regarding the use of a special State fund apart from the employment fund for the payment of interest due on Title XII advances.

2. *Reference.* Sections 1202(b)(5) and 303(c)(3) of the Social Security Act; section 3304(a)(17) of the Federal Unemployment Tax Act.

3. *Background.* Section 1202(b)(5) of the Social Security Act provides that:

> Interest required to be paid under paragraph (1) shall not be paid (directly or indirectly) by a State from amounts in its unemployment fund. If the Secretary of Labor determines that any State action results in the paying of such interest directly or indirectly (by or equivalent reduction in State unemployment taxes or otherwise) from such unemployment fund, the Secretary of Labor shall not certify such State's unemployment compensation law under section 3304 of the Internal Revenue Code of 1954. Such noncertification shall be made in accordance with section 3304(c) of such code.

Section 303(c)(3) of the Social Security Act and section 3304(a)(17) of the Federal Unemployment Tax Act also

prohibit paying interest directly or indirectly from the State's unemployment fund. ETA has previously taken the position that the use of funds from a special State fund created for other purposes—such as a penalty and interest fund—may not be used for the payment of interest if surplus funds or amounts in excess of a specified ceiling in such special fund would be transferred into the State's unemployment fund. Questions have arisen as to whether payment of interest from these types of special funds is indeed prohibited by Federal law. Based on these questions, ETA has undertaken a thorough review of the issue, taking into consideration concerns and points of view from a number of sources.

4. *Revised Interpretation.* Payment of interest on Title XII advances from any State fund other than the State unemployment fund is not prohibited by Federal law even if State law requires or permits excess amounts in that fund to be transferred to the unemployment fund. Accordingly, States may use penalty and interest funds (or similar type funds) to pay interest on Title XII advances regardless of whether the State law provides for transfer (either mandatory or permissive) of excess amounts to the unemployment fund. Similarly, States are not prohibited from making interest payments from special funds which have been created solely for the payment of interest and provide for transfer of excess amounts to the unemployment fund.

5. *Action Required.* Administrators are requested to provide the information to the appropriate staff.

6. *Inquiries.* Questions should be directed to appropriate regional staff.

Directive: Unemployment Insurance Program Letter No. 37–86

To: All State Employment Security Agencies

From: Barbara Ann Farmer, Acting Administrator for Regional Management

Date: May 19, 1986

Subject: Food stamp intercept (withholding from unemployment compensation)

1. *Purpose.* To advise State agencies of the amendments made by the Food Security Act of 1985, Pub. L. 99–198, to Title III of the Social Security Act (SSA), permitting the intercept of unemployment benefits to offset food stamp overissuances.

2. *References.* Section 1535 of Pub. L. 99–198; section 303(d) of the Social Security Act; the Food Stamp Act of 1977, Pub. L. 95–133, 7 U.S.C. 2011 *et seq.*

3. *Background.* Section 1535(b)(3) of Pub. L. 99–198 amended section 303(d)(2), SSA, to provide for the recoupment of "uncollected overissuances" of food stamp coupons from unemployment compensation. An "uncollected overissuance" is an overissuance of food stamp coupons resulting from fraud or willful misrepresentation which has not been recovered by repayment under section 13(b)(1) of the Food Stamp Act of 1977 (7 U.S.C. 2022(b)(1)). This change to section 303 was necessary before such an intercept could be authorized because, with the exception of UI overpayments and child support intercept, Federal requirements prohibit interception of unemployment benefits to satisfy any public or private debt or claim.

The amendment to section 303(d) creates options for the States regarding (1) requesting information from the claimant, (2) notifying the food stamp agency regarding the claimant's UI eligibility, and (3) deducting uncollected overissuances of food stamps. The amendments require the State Employment Security Agency (SESA) to pay any amounts withheld to the State food stamp agency. The amendments also require that all administrative costs of implementing these provisions will be borne by the food stamp agency.

The statutory language authorizing the food stamp intercept closely follows the language for child support intercept contained in section 303(e)(2), SSA, with one major exception. The food stamp intercept provisions are permissive, not mandatory. This means that States have the option of which, if any, of the new provisions to implement. However, if any of the optional provisions are implemented, SESAs must adhere to certain requirements described in this UIPL. These requirements generally relate to reimbursement of costs and treatment of any amount withheld as a repayment of a food stamp overissuance and as a payment of UI to the claimant.

The effective date of the amendment to section 303(d), SSA, made by section 1535(b)(3) of Pub. L. 99–198 is December 23, 1985. The statutory language is attached.

4. *Types of Unemployment Compensation Subject to Intercept.* "Unemployment compensation" is defined in section 303(d)(2)(A), SSA, as including any regular, extended or additional unemployment compensation payable under State law, and amounts payable under any Federal unemployment compensation law administered under an agreement by the SESA. This includes payments made under the UCFE and UCX programs, trade readjustment allowances payable under the Trade Act of 1974, disaster unemployment assistance payable under section 407 of the Disaster Relief Act of 1974 and weekly layoff and vacation replacement benefits payable under the Redwood National Park Expansion Act (Pub. L. 95–250). States which apply the food stamp intercept provisions to State unemployment compensation must also apply the provisions to the UCFE, UCX, TRA and DUA programs.

5. *Disclosure to Food Stamp Authorities.* Under the amendments to section 303(d)(2)(B)(i), SSA, SESAs may require each new claimant to indicate whether an uncollected overissuance of food stamps is owed. SESAs may, for example, add a question to the initial claim form. This question should be separate from the question regarding child support intercept, but the language may be similar. If the claimant indicates that an uncollected overissuance exists, and the claimant is eligible for unemployment compensation, the SESA may notify the State food stamp agency of the claimant's eligibility for unemployment compensation. Acknowledgment that a food stamp overissuance is owed is not sufficient to allow SESAs to deduct an amount from a claimant's unemployment compensation. An amount must first be determined under one of the methods provided for under clause (iii) of section 303(d)(2)(B), SSA, which are described in section 6 of this UIPL. Until this amount is determined, benefits otherwise due shall be paid without deduction for uncollected overissuances. When an amount is determined, the SESA may, if State law so provides, withhold the amount specified from future benefit payments.

6. *Methods for Recouping Overissuances.* Under clause (iii) of section 303(d)(2)(B), SSA, SESAs may deduct and withhold from any unemployment compensation payable to an individual an amount determined by any of the following methods:

a. *The amount specified by the individual to the SESA.* The claimant may specify in writing to the SESA the amount to be deducted and withheld from each benefit payment. We urge SESAs to clear these amounts with the food stamp agency before any intercept is made. Subclause (I) of section 303(d)(2)(B)(iii).

b. *The amount determined under an agreement between the individual and the State food stamp agency.* Section 13(c)(3)(A)(ii) of the Food Stamp Act of 1977 specifies that the food stamp agency is responsible for submitting a copy of this agreement to the SESA. The SESA may not intercept benefits under

this method until the food stamp agency furnishes the SESA a copy of the agreement. Subclause (II) of section 303(d)(2)(B)(iii).

c. *An amount required to be deducted and withheld under a court order obtained by the food stamp agency.* Section 13(c)(3) of the Food Stamp Act of 1977 provides that the State food stamp agency may, in the absence of an agreement entered into under section 13(c)(3)(A), obtain a "writ, order, summons, or other similar process in the nature of garnishment from a court of competent jurisdiction to require the withholding of amounts from the unemployment compensation." When a court order is served under a State law which provides for the food stamp intercept, the SESA is required to intercept future benefit payments to the claimant in the amount specified in the order. Subclause (III) of section 303(d)(2)(B)(iii).

7. *Amounts to be Deducted and Withheld.* Before withholding an amount for uncollected overissuances, the SESA shall first apply State law provisions regarding disqualifying income and recoupment of overpayments. Child support obligations will also be deducted before Food Stamp overissuances. If, due to other deductions, the amount remaining is less than the amount specified to be deducted for uncollected overissuances, only the amount remaining may be intercepted. The SESA may not increase the amount to be deducted from a subsequent week's payment to make up the deficit. Section 303(d)(2)(C) requires that any amounts withheld and forwarded by SESAs shall be treated as payment to the claimant of unemployment compensation due, and shall be treated as repayment of the individual's uncollected overissuance. This eliminates any basis for a claim against the SESA for any amounts forwarded to the food stamp agency under the permissive language of section 303(d)(2), SSA.

8. *Administrative Cost Paid by State Food Stamp Agencies.* Section 302(d)(2)(D) requires the State food stamp agency to reimburse the SESA for administrative costs incurred in the administration of the food stamp intercept provisions. Because granted funds may not be used for this purpose, the Department interprets section 302 and 303, SSA, as requiring the SESAs to collect from the State food stamp agencies all costs incurred in administering the food stamp intercept provisions. These costs include start-up and continuing costs. Because no granted funds under Title III, SSA, will be provided or may be used to administer the food stamp intercept provisions, SESAs should require payment in advance.

A written agreement between the SESA and the food stamp agency is needed and should include specific terms regarding the information and services supplied by the SESA to the State food stamp agency, the costs covered and charges to be made for all information and other services, billing and payment arrangements (including advance payment), handling of errors, adjustment of prices and termination. It may be possible for the SESA to amend an existing agreement with the State food stamp agency rather than create a new agreement. In any case, SESAs may undertake activities under section 303(d)(2) only after agreements for reimbursement of all costs have been made.

9. *Amendments to State Law.* States wishing to implement any of these provisions will need to review their laws to determine whether amendment of the State law is needed to permit the intercept of food stamp overissuances. Because all State laws contain provisions voiding any agreement to waive benefit rights or any assignment of such benefits, and presumably preclude attachment, levy, garnishment, etc. of benefits, we assume such amendments will be necessary. Amendments for this purpose should be crafted to avoid interpretations allowing any expansion of the exceptions provided in section 303(d), SSA, and to provide the SESA clear authority for interception and administration fully consistent with section 303(d)(2).

10. *Procedural Guidelines.* Since the provisions for food stamp intercept closely follow the provisions for child support intercept, the procedural steps and agreement should be quite similar. SESAs deciding to implement the food stamp intercept provisions may wish to review their procedures for the child support intercept to determine their applicability to the food stamp provisions. SESAs should particularly note the following:

a. *Notice of Claimants.* SESAs must give each claimant an initial, written notice which explains the beginning date and amount of deduction from each weekly benefit payment, the remitting of amounts to the State food stamp agency, and the legal consequences of such withholding and remittance as set forth in section 303(d)(2)(C). This notice may be issued with the first benefit check from which a deduction is made. The notice must explain the authority for the deduction and include the claimant's right to appeal and that any appeal is limited to the validity of SESA's authority to make deductions and the accuracy of the amount deducted. Claimants should be advised to seek remedy through the court or food stamp agency when the reasonableness or fairness of the amount deducted is questioned. Issuing notices and processing appeals are administrative costs which are payable by the State food stamp agency.

b. *Accounting.* ETA does not plan on any reporting requirements. However, SESAs should maintain separate accounting and billing records for food stamp intercept to support these costs if audited by State or Federal authorities. Any additional costs incurred by SESAs in maintaining such records will be borne by the State food stamp agency.

c. *Interstate Claims.* Procedures for interstate claims will be the same as for child support intercept. No intercept of food stamp overissuances will be made unless the liable State has entered into an agreement with the State owed the overissuance. To enter into an agreement, an SESA must have the authority under State law to perform such an intercept.

11. *Action Required.* SESAs are requested to cooperate with State food Stamp agencies desiring to implement the food stamp intercept provisions of section 303(d)(2), SSA.

12. *Inquiries.* Inquiries should be directed to the appropriate regional office.

13. *Attachment.* Amendment to section 303(d)(2), SSA.

Attachment to UIPL No. 37–86

Section 1535(b)(3) of Pub. L. 99–198 redesignated paragraphs (2) and (3) of section 303(d), SSA, as paragraphs (3) and (4), respectively, and added new paragraph (2). New section 303(d)(2) now provides as follows:

(2)(A) For purposes of this paragraph, the term "unemployment compensation" means any unemployment compensation payable under the State Law (including amounts payable pursuant to an agreement under a Federal unemployment compensation law).

(B) The State agency charged with the administration of the State law—

(i) May require each new applicant for unemployment compensation to disclose whether the applicant owes an uncollected overissuance (as defined in section 13(c)(1) of the Food Stamp Act of 1977) of food stamp coupons,

(ii) May notify the State food stamp agency to which the uncollected overissuance is owed that the applicant has been determined to be eligible for

unemployment compensation if the applicant discloses under clause (i) that the applicant owes an uncollected overissuance and the applicant is determined to be so eligible,

(iii) May deduct and withhold from any unemployment compensation otherwise payable to an individual—

(I) The amount specified by the individual to the State agency to be deducted and withheld under this clause,

(II) The amount (if any) determined pursuant to an agreement submitted to the State food stamp agency under section 13(c)(3)(A) of the Food Stamp Act of 1977, or

(III) Any amount otherwise required to be deducted and withheld from the unemployment compensation pursuant to section 13(c)(3)(B) of such Act, and

(iv) Shall pay any amount deducted and withheld under clause (iii) to the appropriate State food stamp agency.

(C) Any amount deducted and withheld under subparagraph (B)(iii) shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by the individual to the State food stamp agency to which the uncollected overissuance is owed as repayment of the individual's uncollected overissuance.

(D) A State food stamp agency to which an uncollected overissuance is owed shall reimburse the State agency charged with the administration of the State unemployment compensation law for the administrative costs incurred by the State agency under this paragraph that are attributable to repayment of uncollected overissuance to the State food stamp agency to which the uncollected overissuance is owed.

Directive: Unemployment Insurance Program Letter No. 50–86

To: All State Employment Security Agencies

From: Donald J. Kulick, Administrator for Regional Management

Date: July 21, 1986

Suject: Amendments made by Pub. Law. 99–272, the Consolidated Omnibus Budget Reconciliation Act of 1985, which affect the Federal-State Unemployment Compensation Program

1. *Purpose.* To advise State agencies of the amendments made by Pub. L. 99–272 to section 303 of the Social Security Act (SSA), Sections 3304 and 3306 of the Federal Unemployment Tax Act (FUTA), and the Federal Supplemental Compensation Act of 1982 (FSC).

2. *References.* Sections 12401, 12402, and 13303 of Pub. L. 99–272

3. *Background.* The President signed into law on April 7, 1986, the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), Pub. L. 99–272. The amendments made by Pub. L. 99–272 have made several significant changes affecting the unemployment compensation (UC) program which may require changes in State law and will require new agreements with the U.S. Secretary of Labor.

Section 12401 amends section 303(a)(5), SSA, and sections 3304(a)(4) and 3306(f), FUTA, to permit recovery of overpayments made under State and Federal UC laws through offset from unemployment benefits payable to an individual under another State's UC law or a Federal UC program in accordance with a new subsection (g) to section 303, SSA, which provides that:

(1) a State may deduct overpayments from benefits payable under a UC program of the United States (U.S.) or another State, with the same procedural safeguards for notice and opportunity for a hearing as apply to the deduction of overpayments of UC paid by the State; and

(c) *Permanently* extends the exclusion from "employment" under section 3306(c)(18), FUTA, remuneration paid afte December 31, 1980, for services performed by crews of certain fishing boats.

4. *Action Required.* SESAs are requested to notify appropriate staff of these amendments.

5. *Inquiries.* Inquiries should be directed to your regional office.

6. *Attachments.* Text, explanation and interpretation of UC amendments; and draft language to implement the provisions of new section 303(g), SSA.

Attachment I to UIPL No. 50–86—Text, Explanation and Interpretation of UC Amendments made by Pub.L. 99–272

I. *Section 12401. Recovery of Overpayments by a State Under the State's UC Program, a Federal UC Program or a UC Program of Another State.*

A. *Text of Amendments.*

1. *Amendment to section 303(a)(5), SSA:*

Provided further, That amounts may be deducted from unemployment benefits and used to repay overpayments as provided in subsection (g).

2. *New Subsection (g) of section 303, SSA:*

(g)(1) A State may deduct from unemployment benefits otherwise payable to an individual an amount equal to any overpayment made to such individual under an unemployment benefit program of the United States or of any other State, and not previously recovered. The amount so deducted shall be paid to the jurisdiction under whose program such overpayment was made. Any such deduction shall be made only in accordance with the same procedures relating to notice and opportunity for a hearing as apply to the recovery of overpayments of regular unemployment compensation paid by such State.

(2) Any State may enter into an agreement with the Secretary of Labor under which—

(A) The State agrees to recover from unemployment benefits otherwise payable to an individual by such State any overpayments made under an unemployment benefit program of the United States to such individual and not previously recovered, in accordance with paragraph (1), and to pay such amounts recovered to the United States for credit to the appropriate account, and

Section 12401 allows three types of offset under the new subsection (g) of section 303, SSA. The three types are defined below:

1. *Interstate Offset* means:

a. the withholding of State UC benefits payable by State A to recover an overpayment made by State B under its State UC program, and

b. the withholding of Federal UC benefits payable by State A to recover an overpayment made by State B under a Federal UC program.

2. *Intrastate Cross-Program Offset* means:

a. the withholding of State UC benefits payable by State A to recover an overpayment made by State A under a Federal UC program, and

b. the withholding of Federal UC benefits payable by State A to recover an overpayment made by State A under its State UC program.

Note that the authority for withholding of UC benefits under one Federal program payable by State A to recover an overpayment made by State A under the the same or a different Federal program continues in effect under previously existing statutory authority.

3. *Interstate Cross-Program Offset* means:

a. the withholding of State UC benefits payable by State A to recover an overpayment made by State B under a Federal UC program, and

b. the withholding of Federal UC benefits payable by State A to recover an overpayment made by State B under its State UC program.

Procedures, requirements and guidance for the implementation of these three types of offsets are discussed further in this Attachment.

b. *Recovering State.* The recovering State must follow the same procedures relating to notice to the claimant and opportunity for a hearing as apply under its own State law for the recovery of overpayments of regular UC paid by the recovering State.

3. *Guidance for Interstate Offset.* This new subsection applies to the offset of any overpayment not previously recovered under the requesting State's law. The State receiving the request for recoupment must apply its own law in offsetting an overpayment to the same extent as provided for the same type (fraud or nonfraud) of intrastate overpayment.

a. *Interstate Reciprocal Overpayment Recovery Arrangement.* The ICESA Interstate Benefit (IB) Committee has under consideration a reciprocal arrangement. This Arrangement will facilitate implementation of interstate overpayment recovery.

b. *Interstate Request for Recoupment.* A form to be used by the requesting State has been drafted and is before the IB Committee for approval. Once issued this form should be used by all States.

c. *Notice of Recoupment.* Recovering States should individually develop a notice that must include at a minimum the following information:

(1) The statutory authority for the offset and the name of the State requesting recoupment;

(2) The amount of outstanding balance certified by the requesting State;

(3) The date of the original notice of determination of overpayment;

(4) Type of overpayment (fraud or nonfraud);

(5) Program type (UI, UCFE, UCX, etc.);

(6) The amount to be offset weekly; and

(7) The right to request redetermination and appeal.

Claimant's right of appeal should be limited to the recovering State's authority to offset and the amount of the weekly offset. Claimants should be informed that any issue concerning the correctness or validity of the requesting State's overpayment determination should be addressed to the requesting State.

overpayment previously made to the claimant under the State's UC program. The State also agrees to deduct from regular, extended, and additional UC benefits an overpayment previously made to the claimant under the Federal unemployment benefit program. The Federal benefits applicable under a 303(g)(2) agreement will be listed in the agreement.

This new subsection also permits interstate cross-program offset, but only if the two States involved have a section 303(g)(2) agreement with the Secretary of Labor and participate in the 303(g)(1) program.

4. *Priorities of Overpayments.* When a State receives a request for recoupment from more than one State, it is recommended that, after any intrastate overpayments have been satisfied, the oldest overpayment determination be given first priority. This, however, does not apply when there is an overpayment outstanding in a transferring State participating in a Combined-Wage Claim, since 20 CFR 616.8(e) gives priority to a transferring State when overpayments are recovered through a Combined-Wage Claim.

E. *Action Required.* The States are encouraged to implement the provisions of this new section of SSA. These procedures allow the States a viable method for recoupment of overpayments that might not otherwise be collected.

F. *Effective Date.* Section 303(g), SSA, is effective for recoveries made on or after April 7, 1986, and may apply with respect to overpayments made before, on, or after such date.

(1) That is made on a form provided by the State agency concerned and signed by the individual; and

(2) That identifies the weeks of unemployment for which the individual is making the certification.

(d) *Limitaiton on Amount of Payment.*—In no case may the total amount paid to an individual under subsection (a) exceed the amount remaining in the account established for such individual under section 602(e) of the Fedeal Supplemental Compensation Act of 1982 after payments were made from such account for weeks of unemployment beginning before the period described in subsection (a)(2).

(e) *Definition.*—For purposes of subsection (a), the term "temporary disaster services" means services performed as a member of the National Guard after being called up by the Governor of a State to perform services related to a major disaster that was declared on June 3, 1985, by the President of the United States under the Disaster Relief Act of 1974.

(f) *Modification of Agreement.*—(1) The Secretary of Labor shall, at the earliest possible date after the date of the enactment of this Act, propose to any State concerned a modification of the agreement that the Secretary has with such State under section 602 of the Federal Supplemental Compensaiton Act of 1982 in order to carry out this section.

(2) Pending modification of the agreement, the State may make payment in accordance with the provisions of this section and shall be reimbursed in accordance with the provisions of section 604(a) of the Federal Supplemental Compensation Act of 1982. For purposes of carrying out this paragraph, the term "this subtitle" in such section 604(a) shall include this section.

(g) *Effective Date.*—The provisions of this section shall apply to weeks beginning after March 31, 1985.

B. *Discussion.* The FSC program was due to expire April 6, 1985. Pub. L. 99–15, enacted April 4, 1985, allowed individuals receiving FSC for the week which included March 31, 1985, to continue receiving the remainder of their benefits, as long as these remaining benefits were collected in consecutive weeks of unemployment. Any interruption of benefits, for whatever reason, ended the FSC benefits.

Section 12402 allows certain individuals in the States of Pennsylvania and Ohio to collect the balance in their FSC account, notwithstanding Pub. L. 99–15. This Section pertains only to a class of individuals who were on National Guard duty during a major disaster declared by the President on June 3, 1985. There are specific provisions as to who is eligible and as to the conditions for payment of any remaining FSC.

C. Procedures for FSC Payments (Ohio and Pennsylvania).

1. *Eligibility for FSC for Weeks Beginning After March 31, 1985.* Pub. L. 99–272 provides for payment of FSC to individuals whose FSC benefit payments were terminated because their FSC claims series were interrupted by their service in the National Guard. It pertains only to individuals who received FSC payments for the weeks which included March 31, 1985, and subsequent, consecutive weeks, until they were called up for duty in the National Guard by their Governor during a major disaster declared by the President on June 3, 1985. This amendment to the FSC Act of 1982 concerns only the States of Ohio and Pennsylvania.

2. *Modification to Agreements.* Pub. L. 99–272 requires a modification of the agreement made under section 602 of the FSC Act. However, pending modification of this agreement, the two States may make FSC payments to eligible individuals and will be reimbursed under section 604(a) of the FSC Act of 1982.

3. *Notice to Claimants.* The SESA shall identify the FSC claimants affected by the call up of the National Guard and inform each of them in writing that they may be eligible for FSC payments. It is recommended that the States identify the affected claimants by obtaining from the National Guard a list of the Social Security account numbers of the individuals who served during the disaster and crossmatch this list with the FSC claim files.

4. *Limits on FSC Payments.* SESAs shall pay FSC to eligible claimants to the extent of the balances in their FSC accounts when their claims were terminated. The FSC payments may be made for weeks of unemployment which begin the first week beginning after the end of the individual's National Guard service during the major disaster declared on June 3, 1985. A claimant's FSC payments for weeks of unemployment end with the beginning of the first week in which the individual was employed after the end of National Guard service. This means that no FSC payments may be made to any individual for any week of *partial* unemployment. For each week of FSC claimed, the individuals shall indicate the week ending date of the week of unemployment claimed and certify to their unemployment for each such week by signing forms provided by the State agency.

5. *Special Eligibility Rule.* Individuals' eligibility for FSC during the period which begins with the first week of unemployment following their National Guard service shall not be limited, reduced, or terminated because of issues regarding State law requirements for active search for work, availability for work or refusals to accept or apply for offers of work.

6. *Reporting Procedures.* FSC activity may be reported in the comments section of the appropriate report.

7. *Reductions.—Pub. L. 99–177.* The FSC payments and administrative costs to implement Pub. L. 99–272 are not subject to reduction under title II of Pub. L. 99–177.

D. *Action Required.* This section applies only to the States of Pennsylvania and Ohio.

E. *Effective Date.* This provision shall apply to weeks beginning after March 31, 1985.

IV. *Section 13303(b). Reinstatement of the FUTA Exemption of Full-Time Students Employed by Summer Camps.*

A. *Text of Reinstated Paragraph of Section 3306(c)(20):*

(20) Service performed by a full-time student (as defined in subsection (q)) in the employ of an organized camp—

(A) If such camp—

(i) Did not operate for more than 7 months in the calendar year and did not operate for more than 7 months in the preceding calendar year, or

(ii) Had average gross receipts for any 6 months in the preceding calendar year which were not more than 33⅓ percent of its average gross receipts for the other 6 months in the preceding calendar year; and

(B) If such full-time student performed services in the employ of such camp for less than 13 calendar weeks in such calendar year.

B. *Discussion.* Section 276(b) of the Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982 added a new paragraph (20) to section 3306(c), FUTA, to be applicable to remuneration paid during calendar year 1983 only. Section 13303(b) now amends TEFRA so that section 3306(c)(20), FUTA, is applicable to remuneration paid after September 19, 1985.

Under section 3306(c)(20), FUTA, the service of a full-time student (see definition below) who is paid wages for less than 13 calendar weeks after September 19, 1985, in the employ of an organized camp (see definition below) is excluded from coverage under FUTA.

This exclusion applies only to "full-time students" in the employ of an "organized camp" who work "less than 13 calendar weeks." All three conditions must be met for such services to be excluded from coverage under FUTA.

1. "Full-Time Student" is defined by Section 3306(q), FUTA:

(q) Full-Time Student.—For purposes of subsection (c)(20), an individual shall be treated as a full-time student for any period—

weeks and any additional day(s) beyond that 12 calendar week into a 13th calendar week would not be excluded from FUTA coverage under section 3306(c)(20).

Since the Internal Revenue Service has the primary authority for administration of this provision, it will have the responsibility for interpreting and applying the language of this provision.

C. *Action Required.* A State has the option of whether to seek an amendment to State law to provide for a similar exclusion in its law. It is not a Federal requirement for conformity.

D. *Effective Date.* This amendment to FUTA became effective upon enactment, April 7, 1986.

C. *Action Required.* A State has the option of whether to seek an amendment to State law to provide for a similar exclusion in its law. It is not a Federal requirement for conformity.

D. *Effective Date.* This amendment to FUTA became effective upon enactment, April 7, 1986.

Attachment II to UIPL No. 50–86—Recommended Draft Language To Implement Section 303(g)

The recommended draft language is keyed to the *Manual of State Employment Security Legislation, Revised September 1950* and later supplementals. It adds a new subsection (f) to section 15.

(Alternative 1)

(f) Notwithstanding any other provision of this chapter, the commissioner may recover an overpayment of benefits paid to any individual under this State or another State law or under an unemployment benefit program of the United States.

(Alternative 2)

(f) *Interstate and cross-offset of State and Federal unemployment benefits.*—To the extent permissible under the laws and Constitution of the United States, the commissioner is authorized to enter into or cooperate in arrangements or reciprocal agreements with appropriate and duly authorized agencies of other States or the United States Secretary of Labor, or both, whereby, notwithstanding the provisions of subsections (j), (k), or (l) of section 5:

(1) Overpayments of unemployment benefits as determined under section 5(j) shall be recovered by offset from unemployment benefits otherwise payable under the unemployment compensation law of another State, and overpayments of unemployment benefits as determined under the unemployment compensation law of such other State shall be recovered by offset from unemployment benefits otherwise payable under this Act; and

(2) Overpayments of unemployment benefits as determined under applicable federal law, with respect to benefits or allowances for unemployment provided under a federal program administered by this State under an agreement with the United States Secretary of Labor, shall be recovered by offset from unemployment.

[FR Doc. 86–18704 Filed 8–19–86; 8:45 am]
BILLING CODE 4510–30–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATE: Comments on this information collection must be submitted by September 5, 1986.

ADDRESSES: Send comments to Ms. Judy McIntosh, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3208, Washington, DC 20503; (202–395–6880). In addition, copies of such comments may be sent to Ms. Marianna Dunn, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202–682–5464).

FOR FURTHER INFORMATION CONTACT: Ms. Marianna Dunn, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington DC 20506, (202–682–5464); from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests the reinstatement of a previously approved collection for which approval has expired. The entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) an estimate of the total number of hours needed to prepare the form.

This entry is not subject to 44 U.S.C. 3504(h).

Title: Challenge Grants Application Guidelines FY 1987/88.

QMB Number: 3135–0046.

Frequency of Collection: One-time

Respondents: Non-profit institutions.

Use: Guideline instructions and applications elicit relevant information from nonprofit organizations that apply for funding under specific Program categories. This information is necessary for the accurate, fair and thorough consideration of competing proposals in the peer review process.

Estimated Number of Respondents: 200.

Estimated Hours for Respondents to Provide Information: 24,000.

D.K. Stephens,

Acting Chairman for Management, National Endowment for the Arts.

[FR Doc. 86–18817 Filed 8–19–86; 8:45 am]

BILLING CODE 7537-01-M

National Endowment for the Arts Tilted Arc Site Review Advisory Committee; Notice of Establishment

In accordance with provisions of the Federal Advisory Committee Act (Pub. L. 92–463), section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4) and Paragraph 9 of Office of Management and Budget Circular A–63) notice is hereby given that establishment of the Tilted Arc Site Review Advisory Committee has been approved by the Chairman of the National Endowment for the Arts for a period of one year from the date this Charter is filed. In response to a request by the General Services Administration (GSA), this committee will review and make recommendations on the appropriateness or inappropriateness of proposed sites for the relocation of a sculpture entitled *Tilted Arc* by Richard Serra. This Committee will report its recommendations to the Administrator of the GSA or the Administrator's designee, through the Chairman of the Arts Endowment.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and with the Library of Congress.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

August 7, 1986.

[FR Doc. 86–18731 Filed 8–19–86; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

Availability of Accident Reports, Safety Recommendations, and Responses Issued

Recommendation	No respondent	Date	Subject
I-86-01—02	DOE	5/12/86	National clearinghouse for alcohol and drug information.
I-86-03	DHHS	5/12/86	Assist DOE in creating a national clearing house for alcohol and drug information.
I-86-04	DOD	6/17/86	Identify hazardous ingredients in waste shipments.
I-86-05—08	Res. and Special Programs Admin	7/21/86	Establish standards for repairs to tanks with corrosion damage and weld defects; establish standards for qualification of persons performing inspections, tests, and examinations.
P-86-14	American Gas Assoc	7/8/86	Cathodic protection shielding conditions and in-line inspection methods.
R-86-04—08	New York City Transit Authority	5/12/86	Management review and evaluation program; wear limit of wheel flange; circuit schematic drawings; management coordination between divisions.
R-86-09—12	New York State DOT	5/12/86	Same as above.
R-86-13—15	Burlington Northern Railroad Co	7/24/86	Backup procedures; signing of train register; modify radio system.
M-86-33 and 34	USCG	5/23/86	Rescue equipment and liferafts.
M-86-35 and 36	Keystone Shipping Co	5/23/86	Inspection of underdeck spaces and revision of station bills.
M-86-37	FCC	5/23/86	Radio antenna on oil tankers.
M-86-38	USCG	5/23/86	Search and Rescue Manual.
M-86-39	Canaveral Seafood Co	5/23/86	Safe loading of fishing vessels.
M-86-40	National Council on Fishing Vessel Safety & Insurance.	5/23/86	Installation of alarm in crew berthing spaces on fishing vessels, stowing ring life buoys and liferafts so they can float free.
M-86-41—43	Drynorth (U.S.A.), Inc	5/29/86	Equipment conditions and operating procedures on life boats.
M-86-44	OSHA	7/8/86	Establishing safety requirements for industrial workers aboard non-USCG approved drilling barges.
M-86-45—48	Temple Drilling Co	7/8/86	Assign qualified barge mover; keep only necessary people aboard during moves; put one tug in charge of flotilla; wear personal floatation devices.
M-86-49	Indian Marine Co., Inc	7/8/86	Assign a tug operator to be in charge of the flotilla; communications.
M-86-50	Int. Assoc. of Drilling Company	7/8/86	Relate to association members the details of the Tonkawa accident and the associated recommendations.
M-86-51	USCG	7/24/86	Require all passenger vessels to have overnight accommodations for 50 or more passengers; vessels on routes other than rivers to be equipped with gyrocompass.
M-86-52	USCG	7/24/86	Passenger vessels on routes other than rivers be equipped with gyrostabilized bar.
M-86-53	USCG	7/24/86	Passenger vessels on routes other than rivers be equipped with fathometer.
M-86-54	USCG	7/24/86	Passenger vessels that operate on routes other than rivers be equipped with electronic position fixing device.
M-86-55	USCG	7/24/86	Comply with navigation procedures 33 CFR 164.11.
M-86-56	USCG	7/24/86	Define lakes, bays, and sounds at 46 CFR SubChapter H and T or eliminate.
M-86-57	USCG	7/24/86	Harmonize the intact stability requirements with specified routes.
M-86-58	USCG	7/24/86	Provide precise information to masters as to the damage a vessel can safely withstand.
M-86-59	USCG	7/24/86	Require a fixed firefighting system in the engineroom.
M-86-60	USCG	7/24/86	Require abandon ship drills.
M-86-61	USCG	7/24/86	Require primary lifesaving equipment.
M-86-62	USCG	7/24/86	Research to find best location for stowing life preservers.

Recommendation	No respondent	Date	Subject
M-86-63	USCG	7/24/86	Amend the Certificate of Inspection of the Colonial Explorer to require a motorized rescue boat if launches are removed from the vessel.
M-86-64	USCG	7/24/86	Require all passenger vessels with overnight accommodations for 50 or more passengers to meet construction, licensing, and manning requirements for a vessel over 100 gross tons.
M-86-65	USCG	7/24/86	Require masters to pass an examination on sections of 46 CFR regulations.
M-86-66	USCG	7/24/86	Anmend the Certificates of Inspection on passenger vessels to indicate that the master/operator must be examined in 46 CFR regulations.
M-86-67	Hyannis Harbor Tours	7/24/86	Provide precise information to masters as to the damage a vessel can safely withstand under assumed loading conditions.
M-86-68	USCG	7/21/86	Require that operators of passenger vessels exclude passengers from the pilothouse and navigator's bridge.
M-86-69	USCG	7/21/86	Require that vents on vessels penetrating watertight bulkheads be above the weatherdeck.
M-86-70	USCG	7/21/86	Require that stability information be written clearly and is understood by its master.
M-86-71	USCG	7/21/86	Require applicants or a master's license pass an examination on stability.
M-86-72	USCG	7/21/86	Require that passengers receive a safety briefing.
M-86-73	USCG	7/21/86	Require training of crew in emergency procedures.
M-86-74	USCG	7/21/86	Require life preservers be equipped with lights.
M-86-75	USCG	7/21/86	Require passenger vessels with 50 or more passengers be equipped with one motorized rescue boat.
M-86-76	USCG	7/21/86	Require the master deposit a passenger and crew manifest ashore before sailing and update during the voyage.
M-86-77	USCG	7/21/86	Require the master/operator of vessels in river service maintain logbooks.
M-86-78	Delta Queen Steamboat Company	7/21/86	Require pilots to avoid passing large downbound tows while flanking in sharp bends during high water conditions in the Mississippi River.
M-86-79	do	7/21/86	Require masters to properly train lookouts in duties and use lookouts while underway.
M-86-80	do	7/21/86	Compensate for the obstructed view from the pilothouse by requiring lookouts to be stationed on the bridge wings during close maneuvers.
M-86-81	do	7/21/86	Review maintenance program and revise to ensure all valves in the drain system are in working condition.
M-86-82	do	7/21/86	Rewrite the trim and stability booklet to provide complete information regarding accidental flooding.
M-86-83	do	7/21/86	Relocate the life preservers near exterior muster stations.
M-86-84	do	7/21/86	Require passengers to receive emergency procedures after boarding.
M-86-85	do	7/21/86	Modify placards to illustrate the lifejackets carried aboard and eliminate marine terms unfamiliar to passengers.
M-86-86	do	7/21/86	Update muster list to state duties of the crew and reflect the emergency equipment aboard.
M-86-87	do	7/21/86	Develop an emergency operations and procedures manual.
M-86-88	Delta Queen Steamboat	7/21/86	Develop a training program for crew in emergency procedure.
M-86-89	do	7/21/86	Require that all crew and passengers report to their stations during fire and boat drills.
M-86-90	do	7/21/86	Require emergency loudspeaker systems to instruct crew and passengers during an emergency.
M-86-91	do	7/21/86	Equip life preservers with lights.
M-86-92	do	7/21/86	Equip the Mississippi Queen with motorized rescue boat.
M-86-93	do	7/21/86	Provide lifesaving equipment for all passengers and crew.
M-86-94	Agri-Trans Corporation	7/21/86	Require operators of vessels post a lookout while maneuvering near other vessels.
M-86-95	Ascension Parish Police Jury	7/21/86	Develop a mutual aid pact with neighboring jurisdictions for emergency services.
M-86-96	do	7/21/86	Develop a disaster plan and conduct periodic disaster drills.
M-86-97—99	Offshore Marine Service Association	7/7/86	Equipment condition and operating procedures on lifeboats.

Single copies of these recommendation letters are available on written request to public Inquiries Section, National Transportation Safety Board, Washington, DC 20594. Please include addressee's name, date of the letter, and the recommendation number(s) in your request. The photocopies will be billed at a cost of 14 cents per page ($1 minimum charge).

Monica Revelle,

Alternate Federal Register Officer.

August 14, 1986.

[FR Doc. 86-18732 Filed 8-19-86; 8:45 am]

BILLING CODE 7533-01-M

Reports Issued, Availability of Responses to Safety Recommendations

Aircraft Accident Report: China Airlines Boeing 747-SP, N4522V 300 Nautical Miles Northwest of San Francisco, California, February 19, 1985 (NTSB/AAR-86/03) (NTIS Order No. PB86-910403)

Highway Accident Report: Collapse of the U.S. 43 Chickasawbogue Bridge Spans Near Mobile, Alabama, April 24, 1985 (NTSB/HAR-86/01) (NTIS Order No. PB86-916201)

Marine Accident Report: Explosion and Fire on board U.S. Chemical Tankship Puerto Rican in the Pacific Ocean near San Francisco, California, October 31, 1984 (NTSB/MAR-86/05) (NTIS Order No. PB86-916405)

Marine Accident Report: Sinking of the U.S. Fishing Vessel Santo Rosario about 35 Nautical Miles East of New Smyrna Beach, Florida, July 23, 1984(NTSB/MAR-86/06) (NTIS Order No. PB86-916406)

Marine Accident Report: Capsizing and Sinking of the Drilling Barge Tonkawa in Bayou Chene Near Morgan City, Louisiana, May 20, 1985 (NTSB/MAR-86/07) (NTIS Order No. PB86-916407)

Marine Accident Report: Grounding of the U.S. Passenger Vessel Pilgrim Belle on Sow and Pigs Reef Vineyard Sound, Massachusetts, July 28, 1985 (NTSB/MAR-86/08) (NTIS Order No. PB86-916408)

Railroad Accident/Incident Summary Reports: Connellsville, Pennsylvania—May 29, 1984; Grandby, Colorado—April 16, 1985 (NTSB/RAR-86/01/SUM) (NTIS Order No. PB86-916502)

Marine Accident/Incident Summary Reports: Bristol Bay, Alaska—August 7, 1985; Gulf of Mexico—October 16, 1985 (NTSB/MAR-86/01/SUM) (NTIS Order No. PB86-916410)

Safety Study: Training, Licensing, and Qualification Standards for Drivers of Heavy Trucks (NTSB/SS-86/02) (NTIS Order No. PB86-917002)

Safety Study: Performance of Lap Belts in 26 Frontal Crashes (NTSB/SS-86/03) (NTIS Order No. PB86-917006)

Special Investigation Report: Runway Incursions at Controlled Airports in the Unites States (NTSB/SIR-86/01) (NTIS Order No. PB86-917003)

NATIONAL TRANSPORTATION SAFETY BOARD—RESPONSES TO SAFETY RECOMENDATIONS

Recommendation No.	Respondent	Date	Subject
A-81-15	Federal Aviation Admin. (FAA)	5/20/85	Requirement that seat rail stops be positioned to permit proper seat locking in all seat positions.
A-84-126	FAA	5/16/86	Localizer approach to runway 11 at San Luis Obispo Country Airport; traffic advisories for VFR flights on practice instrument approaches and departures.

NATIONAL TRANSPORTATION SAFETY BOARD—RESPONSES TO SAFETY RECOMENDATIONS—Continued

Recommendation No.	Respondent	Date	Subject
A-85-33	FAA	5/13/86	Coordination between local and ground controllers regarding requests and approvals to clear airplanes to taxi across active runways.
A-76-64	FAA	5/9/86	Bird ingestion in turbine engines with large inlets.
A-84-46	FAA	5/5/86	Implied consent to toxicological testing as a condition of issuance of an airman certificate.
A-81-48	FAA	5/5/86	Physiology of aerobatic G forces.
A-86-20	FAA	5/5/86	Air carrier use of actual, versus average, weights, for passengers.
A-86-13	FAA	5/5/86	Proper installation of the nose gear centering spring bolt on Piper PA-34-200 airplanes.
A-74-13, A-77-63, A-80-118.	FAA	5/5/86	Terminal air traffic control radar capable of locating severe weather and displaying convective turbulence; aviation weather subsystem for both enroute and terminal area environments; integrated weather radar/air traffic control radar single video display system.
A-84-36	FAA	4/21/86	Research and development of submerged low-impact resistance support structures for airport facilities.
A-85-59 through -65	FAA	4/21/86	Compliance of certificated air carriers conducting passenger revenue operations with traffic advisiory practice at uncontrolled airports; notification of air traffic control facility of type of approach to be flown; San Luis Obispo County Airport midair collision; elimination of potential conflicts between arriving and departing air traffic; radar traffic advisory services; Traffic Alert and Collision Avoidance System.
A-82-11 and -12	FAA	4/21/86	Effect of engine inlet pressure probe blockage on engine instrument readings.
A-81-139 through -143	FAA	4/16/86	Crashworthiness requirements for transport category aircraft.
A-83-73	FAA	4/16/86	Electrical circuit protection needed to eliminate the potential for overheating of the wiring and components in the lavatory flushing pump motor systems in transport category airplanes.
A-86-6	FAA	4/16/86	Spongs-filled fuel reservoir tanks on Beech series 33, 35, 36, 55, 58, and 95-67 airplanes.
A-86-4 and -5	FAA	4/16/86	Inspection of engine assemblies on Cessna T310, 320, 340, 401, and 411 series airplanes and on Model 402, 402A, 402B, 414, 421, 421A and 421B airplanes.
A-85-39, -95, -97	Eastern Air Lines, Inc	4/15/86	Air carrier overwater emergency equipment and procedures; airline passenger safety education.
A-80-90 through -92 and -94.	FAA	4/15/86	Incorporation of flexible, crash-resistant fuel lines and self-sealing frangible fuel line couplings on all newly certificated general aviation aircraft; light weight, flexible crash-resistant fuel cells for aircraft with nonintegal fuel tank designs; feasibility of requiring the installation of selected crash resistant fuel system components on a retrofit basis.
A-86-21	Department of Defense	4/14/86	Computation of passenger and baggage weights.
A-76-97 and -98	FAA	4/14/86	Amendment of 14 CFR 23. 149 to require that a safe one-engine speed (V_{sse}) be specified.
A-86-14 through -19	FAA	4/10/86	Air start access door surveillance of operators, in-flight emergency training.
A-86-7 through -12	FAA	4/10/86	Standardized departure/arrival routes for helicopter traffic at Washington National Airport; visual flight rules helicopter routes for civilian and military helicopter operations throughout Washington, D.C. metropolitan area and at major airports throughout the National Airspace System; inclusion of visual flight rules helicopter control procedures in using standard routes in classroom and on-the-job training of local controllers; administration of the Technical Appraisal Program at Washington National Airport tower; qualifications of controller instructors.
A-85-35 through -49	Cranfield Aviation Safety	4/10/86	Aircarrier overwater emergency equipment and procedures.
A-85-126	General Aviation Manufacturers Association.	4/7/86	General aviation crashworthiness; acceleration loads and velocity changes.
A-79-14 and -15	FAA	4/4/86	Exit conspicuity and operability on air taxi aircraft with a capacity of 10 or more passengers.
A-78-5 through -8, -11 and -12.	FAA	4/3/86	Consistency of ELT operation with the RTCA-SC 127 revised Minimum Performance Standards; battery system that will provide useful operation of the ELT for at least 50 hours and −40 degrees C.; ELT inclusion on preflight checklists.
A-86-1 thorugh -3	FAA	4/3/86	Torquing of Nos. 1 through 3 and Nos. 6 through 8 flap track forward attachment fittings on Boeing 757 airplanes.
A-86-14 though -19	FAA	3/26/86	Cockpit resource management.
A-84-104 through -107	FAA	3/21/86	Installation of quick drains on fuel reservoir tanks of all Cessna Model 177, 206, 207, and 210 airplanes produced before 1975.
A-79-2	FAA	3/21/86	L4 CFR 45.15; permanent identification of parts.
A-85-108 through -111	FAA	3/21/86	Cessna Model T303 airplanes; inspection of turbocharger inlet surfaces, replacement of silicon oil separator drain hoses with flexible fireproof stainless steel braided hoses; bolt torque specifications; manufacturing quality control procedures during aircraft assembly at Cessna Aircraft Company.
A-85-141	FAA	3/14/86	Inspection procedures for JT8D engines.
A-86-21	Department of Defense	2/24/86	Passenger and baggage weights for aircraft passengers.
Highway			
H-85-13	Kentucky Dept. of Education	5/16/86	Schoolbus driver training.
H-80-16, -17, -18 and -20	Federal Highway Administration	4/8/86	Unsafe Interstate Commercial Drivers.
H-85-31 through -35, H-85-36 through -40.	do	4/16/86	Transportation of Hazardous Materials.
H-85-25 through -28	do	4/14/86	Hazardous materials cargo tank sheet thickness.
H-80-50 and -51	do	4/9/86	Effectiveness of the "limited Sight Distance" sign.
H-85-23 through -26	National Highway Traffic Safety Administration.	4/10/86	Child restraints.
H-84-66 through -68	Federal Highway Administration	4/17/86	Identification of all motor carriers engaged in interstate commerce in their respective jurisdictions using the Management Information System (MIS).
H-85-47 and -48	National Highway Traffic Safety Administration.	4/18/86	Blood alcohol testing.
H-85-56 through -58	South Carolina Dept. of Education.	4/23/86	16- and 17-year old schoolbus drivers.
H-85-53	National Highway Traffic Safety Administration.	4/18/86	Schoolbus driver training.
H-85-53	National Highway Traffic Safety Administration.	3/24/86	Child passenger protection.
H-85-22	Rhode Island Office on Highway Safety.	2/27/86	Child restraint use and misuse.
H-84-61 and -62	Trailways Corporation	4/3/86	Driver compliance with speed limits and seat belt use.
H-85-51	National Highway Traffic Safety Administration.	3/31/86	Maintenance access panels in certain occupant contactable zones.

Single copies of these response letters are available on written request to : Public Inquiries Section, National Transportation Safety Board, Washington, DC 20594. Please inlcude respondent's name, date of letter, and recomendation number(s) in your request. The photocopies will be billed at a cost of 14 cents per page ($1 minimum charge).

Monica Revelle,

Alternate Federal Register Liaison Officer.

August 12, 1986.

[FR Doc. 86-18709 Filed 8-19-86; 8:45 am]

BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: Extension.

2. The title of the information collection: Request for Records.

3. The form number if applicable: NRC Form 57.

4. How often the collection is required: On occasion.

5. Who will be required or asked to report: Individuals.

6. An estimate of the number of responses: 75,000.

7. An estimate of the total number of hours needed to complete the requirement or request: 1,250.

8. An indication of whether section 3504(h), Pub. L. 96-511 applies: Not applicable.

9. Abstract: This form is utilized by the public of the Public Document Room (PDR) in requesting documents for their use at the PDR; this form then serves as a suspense slip on the shelf when the document is charged out to a member of the public.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer Jefferson B. Hill, (202) 395-7340.

The NRC Clearance Officer is R. Stephen Scott, (301) 492-8585.

Dated at Bethesda, Maryland, this 12th day of August 1986.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 86-18777 Filed 8-19-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-250 and 50-251; License Nos. DPR-31 and DPR-41 EA 86-20]

Florida Power and Light Co., (Turkey Point Nuclear Plant, Units 3 and 4); Confirmatory Order

I

The Florida Power and Light Company (FP&L, the licensee) is the holder of Facility Operating License Nos. DPR-31 and DPR-41 (the licenses) which authorize the operation of the Turkey Point Nuclear Plant Units 3 and 4 at steady state power levels not in excess of 2200 megawatts thermal (rated power). The licenses were originally issued on July 19, 1972 for Unit 3, and April 10, 1973 for Unit 4. The facility consists of two pressurized water reactors located at the licensee's site in Dade County, Florida.

II

Based on recent NRC inspection activities and the enforcement history at the Turkey Point Plant, the NRC has concluded that FP&L has not maintained effective management controls in the operation of its facilities. Inspections conducted August-November 1985 and January-May 1986, identified significant deficiencies in various plant systems, including the Auxiliary Feedwater and Back-up Nitrogen systems, the 125-volt vital batteries, the Component Cooling Water system, and the Emergency Diesel Generator system. These deficiencies included inadequate control of Plant Changes/Modifications, surveillance, preoperational and functional testing, and independent verification. 10 CFR 50.59 deficiencies, a continuing problem at Turkey Point, and two significant violations of Technical Specifications involving the Auxiliary Feedwater System and Safety Injection Pump operability were also identified. These concerns have been expressed to FP&L management during various management and enforcement conferences. Violations associated with these problems are described in the Notice of Violation and Proposed Imposition of Civil Penalties also being issued on this date.

Previous enforcement history related to the Auxiliary Feedwater System and its Nitrogen Back-up System indicate that licensee management has been ineffective in resolving identified deficiencies. Previous escalated enforcement actions issued in 1984 and 1985 (EA 84-41, EA 84-121, and EA 85-80) involved deficiencies similar to those identified during the recent inspections, including examples of failures to control Plant Change/Modifications, to perform adequate safety evaluations in accordance with the requirements of 10 CFR 50.59, to implement independent verification as required, and to establish or implement adequate procedures. The number of problems which have occurred involving the control and operability of the Auxiliary Feedwater and Nitrogen Back-up systems have raised serious concerns over the control and operability of other safety-related systems which have not received the level of NRC inspection and attention that the Auxiliary Feedwater and Nitrogen Back-up systems have received.

As a result of problems identified during 1984, FP&L established the Turkey Point Performance Enhancement Program to improve the operation of its facility and to correct the deficiencies identified. A Confirmatory Order was issued on July 13, 1984 to confirm the implementation of this corrective action program. Because of the NRC's concerns regarding the adequacy of the Performance Enhancement Program due to the extent of the recent problems identified at the Turkey Point facilities, FP&L presented information to the NRC on January 8, 1986 describing management actions taken and planned to correct deficiencies identified during the Safety System Functional Inspection and the Region II follow-up inspections. A comprehensive program was then developed to assess the operability of other safety systems. A description of this program was presented to the NRC in a management meeting on February 26, 1986. The details of this program were described in FP&L Letter L-86-112 and its enclosures dated March 19, 1986 and FP&L Letter L-86-197 dated May 19, 1986. The management actions described in this letter appear responsive to the concerns of the NRC regarding the licensee's failure to maintain effective management controls in the operation of its facilities. Therefore, in view of the extent of the deficiencies identified in the recent inspection activities and the enforcement history at the Turkey Point Plant, I have determined that the public health, safety and interest require that the actions set forth below be confirmed by an immediately effective Order to

ensure that they are implemented expeditiously. This Order supersedes the Confirmatory Order of July 13, 1984 since it confirms the implementation of the Turkey Point Performance Enhancement Program including the Phase II Assessment Program as described in FP&L Letters L/86–112 and L–86–197. The provisions of 10 CFR 50.109(a)(2) and (a)(3) are not applicable since this Order is necessary to ensure that the facility is in compliance with regulatory requirements and to bring the facility into comformance with written commitments by the licensee.

III

Accordingly, pursuant to Sections 103, 161i, 161o, and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR Part 50, it is hereby ordered effective immediately that:

1. The licensee shall continue to implement the Turkey Point Performance Enhancement Program (TPPEP) (Revision 1) and the commitments outlined in its letter dated April 11, 1984 that were included in the Enclosure to the Confirmatory Order of July 31, 1984 and shall continue to implement the later additions to the TPPEP discussed in FP&L Letter L–84–265 of September 28, 1984 and modified by FP&L Letter L–84–275 of October 3, 1984. The licensee shall not extend the scheduled times for completing the tasks described in the TPPEP without the approval of the Region II Administrator.

2. The licensee shall initiate the Phase II Assessment Program, as described in FP&L Letter L–86–112 and its enclosures dated March 19, 1986 and FP&L Letter L–86–197 dated May 19, 1986 as part of the TPPEP. The Phase II Assessment Program will include reconstitution of the system design bases, detailed inspections including walkdowns of the systems, comprehensive reviews by the Safety Engineering Group, and assessment of the Configuration Control Program. The licensee shall periodically update the Phase II Assessment Program and shall not change the completion dates contained in FP&L letter L–86–112 without approval of the Region II Administrator. The systems to be covered in the Phase II Assessment areas include:

a. *Safety Injection*, including low and high pressure, active and passive injection;

b. *Emergency Power*, including Vital dc, 4160 and 480-volt ac supplies, and the Emergency Diesel Generators;

c. *Reactor Protection*, including sensors or transmitters;

d. *Main Steam Isolation*, including safety relief valves;

e. *Component Cooling Water and Intake Cooling Water;*

f. *Containment Systems*, including normal and emergency coolers, emergency containment filters, containment isolation, and containment sprays;

g. *Radiation Monitoring System*, including process and area;

h. *Instrument Air*

i. *Chemical and Volume Control System* (Emergency Boration)

3. The progress of the Phase II Assessment Program will be described in monthly reports to NRC Region II so that confirmatory inspections of the progress can be conducted. The licensee shall periodically (approximately quarterly) present a written status report to the Region II Administrator on the other TPPEP areas. This status report shall address the implementation of the existing program tasks, including the plans and schedules for competing each section of the task elements. The licensee shall also include all plans and schedules for implementing each recommendation resulting from the implementation of the TPPEP. For any recommendation which the licensee decides not to implement, an evaluation which supports that decision shall also be included. The licensee shall notify the Region II Administrator if it intends to alter any of the plans and schedules for implementation of the recommendations resulting from the TPPEP.

4. The licensee shall notify the Region II Administrator, within 30 days following the date of this Order, of any action item tasks associated with either the original Confirmatory Order (EA 84–55) or this Order for which scheduled completion dates preceding the date of this Order have not been met and have not yet been reported, and establish for those tasks new completion dates which are acceptable to the NRC Region II Administrator.

IV

The Region II Administrator may relax or terminate any of the provisions set forth in Section III of this Order for good cause shown by the licensee.

V

The licensee or any other person whose interest is adversely affected by this Order may request a hearing on this Order. Any request for hearing on this Order shall be submitted within 30 days of its issuance to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A copy of the request shall also be sent to the Assistant General Counsel for Enforcement at the same address. A request for a hearing shall not stay the immediate effectiveness of this order.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Dated at Bethesda, Maryland, this 12th day of August 1986.

For the Nuclear Regulatory Commission.

James M. Taylor,

Director, Office of Inspection and Enforcement.

[FR Doc. 86–18773 Filed 8–19–86; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 59–89, 50–163 and 70–734]

Transfer of Control of General Atomic Technologies, Inc., to General Atomic Technologies, Corp.

Nuclear Regulatory Commission

In the matter of Environmental assessment and notice of finding of no significant environmental impact related to the transfer of control of General Atomic Technologies, Inc. from Chevron Corporation to General Atomic Technologies Corporation.

The U.S. Nuclear Regulatory Commission (the Commission) is considering a request for approval of the transfer of control of General Atomic Technologies, Inc. (GA) to General Atomic Technologies Corporation (GATC). By application dated May 7, 1986, GATC requested approval for the transfer of control of GA from Chevron, USA, a wholly-owned subsidiary of Chevron Corporation, to GATC. Under the proposed transfer all management and operating aspects of the existing organization of GA would transfer intact to GATC.

Environmental Assessment

Description of Proposed Action

As a result of proposed acquisition by GATC of all GA outstanding stock, all NRC licenses and NRC-licensed activities would come under the control of GATC. Among these licenses and activities are those pertainiung to two research reactors and a fuel fabrication facility.

Environmental Impact of the Proposed Action

Under the proposed new corporate structure, the licensed operations will continue top be performed in the same manner they have been by GA. No changes are anticipated in the operating

and management personnel, in the minimum qualifications and in personnel responsible for safety, or in the organization of GA. All reactor activities will be conducted in accordance with the reactor licenses and Technical Specifications. All activities described in the special nuclear materials license will continue to be performed in accordance with existing license requirements. Based on the above review, the staff has determined that there will be no significant changes in the types of significant increase in the amounts of effluents that may be released offsite, and there will be no significant increase in individiual or cumulative occupational or population radiation exposure.

Approval of the proposed transfer does not otherwise affect radiological effluents. Likewise, the proposed transfer does not affect non-radiological effluents, and has no other environmental impact. Therefore, the Commission concludes that there are no non-radiological impacts associated with this proposed action.

Since we have concluded that there are no measurable negative environmental impacts associated with this proposed action, any alternatives would not provide any significant additional protection of the environment.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in authorizing the licenses as to which control is proposed to be transferred.

Agencies and Persons Contacted

The NRC did not consult other agencies or persons.

Conclusions and Basis for Finding of No Significant Environmental Impact

The Commission has determined not to prepare an environmental impact statement for this action. Based upon the environmental assessment, we conclude that this action will not have a significant effect on the quality of the human environment.

For details with respect to this action, see the request for transfer of control of GA, dated May 7, 1986 and the supplemental information provided by the licensee, dated June 17, 1986. These documents utilized in the NRC staff's evaluation of the request, are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555. The staff's evaluation of the request will also be available for insepction at the location listed above.

Dated at Bethesda, Maryland, this 8th day of August 1986.

For the Nuclear Regulation Commission.

Herbert N. Berkow,

Director, Standardization and Special Projects Directorate, Division of PWR Licensing–B Office of Nuclear Reactor Regulation.

[FR Doc. 86–18776 Filed 8–19–86; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–395]

South Carolina Electric and Gas Co. and South Carolina Public Service Authority; Issuance of an Amendment

In the matter of South Carolina Electric and Gas Company and South Carolina Public Service Authority Virgil C. Summer Nuclear Station, Unit 1. Notice of environmental assessment and finding of no significant impact.

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–12, issued to South Carolina Electric & Gas Company and South Carolina Public Service Authority (the licensees), for operation of the Virgil C. Summer Nuclear Station, Unit 1, located in Fairfield County, South Carolina.

Environmental Assessment

Identification of Proposed Action

The amendment would revise Technical Specification 3/4.4.5, "Steam Generators" and its bases to allow for the repair of steam generator tubes. The licensee's application for amendment was dated January 16, 1986 as supplemented March 18, May 8, and July 22, 1986.

The Need for the Proposed Action

During the last refueling outage, pure water stress corrosion cracking (PWSSC) was observed in some steam generator tubes and approximately 170 tubes were plugged as a result.

The licensee has pursued an aggressive program to limit the effects of PWSSC. During the last refueling outage, the Westinghouse rotopeening process was applied in the steam generator hot legs. Because of tooling problems, this process was only applied in the central region of the tube sheet. Current plans are to shotpeen the remaining peripheral region during the next refueling outage, if an acceptable process is available. In the interim, it is expected that some cracking may occur in this unpeened region.

Steam generator tube repair is needed to recover some tubes (approximately 71) previously plugged, and to keep from plugging new tubes with indications greater than 40% through the tube wall.

The plugging of steam generator tubes is undesirable because it reduces reactor coolant system flow, increases moisture carry-over in the steam lines, and shortens component life. The application of tube repair processes (e.g., by sleeving, brazing or partial tube replacement) allows the tubes to remain in service, thereby reducing, if not negating, the above mentioned effects. In addition, tube repair capability would allow the plant to maintain margin with respect to the limits assumed in the safety analysis.

Environmental Impacts of the Proposed Action

The proposed amendment regarding steam generator tube repair would allow imperfect tubes to be returned to their original integrity. Accordingly, accident radiological releases will not be greater than previously determined.

Tube repair produces occupational radiation doses and solid radioactive wastes approximately in the same amount as that incurred by tube plugging. For the 71 tubes currently plugged that could be unplugged and have tube repair performed, the estimated occupational radiation exposure to unplug and repair the tubes is 12.43 REM, which is less than 1% of the estimated annual occupational radiation exposure contained in the Final Environmental Statement, dated May 1981.

It is estimated that approximately 125 ft^3 of solid radioactive waste would be created from unplugging and repairing these 71 tubes. This is less thant 2.5% of the estimate for solid radioactive waste shipped annually contained in the Final Environmental Statement.

From the above evaluation of accidents, occupational radiation exposure, and radiological effluents, the Commission concludes that there are no significant radiological environmental impacts associated with granting of the proposed amendment.

With regard to potential non-radiological impacts, the proposed amendment involves systems located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents

and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

Alternatives to the Proposed Action

Since the Commission has concluded that the environmental effects of the proposed action are not significant, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce the environmental impacts associated with correction of steam generator tube imperfections and would result in reduced reactor coolant system flow, potentially leading to derating of the plant.

Alternative Use of Resource

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement Related to the Operation of Virgil C. Summer Nuclear Station, Unit 1" (NUREG–0719), dated May 1981.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendment. 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 action, see the request for amendment dated January 16, 1986, as supplemented March 18, May 8, and July 22, 1986, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29810.

Dated at Bethesda, Maryland, this 12th day of August 1986.

For the Nuclear Regulatory Commission.

Lester S. Rubenstein,

Director, PWR Project Directorate No. 2, Division of PWR Licensing-A, Office of Nuclear Reactor Regulation.

[FR Doc. 86–18774 Filed 8–19–86; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–293]

Boston Edison Co.; (Pilgrim Nuclear Power Station); Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by Petition submitted July 15, 1986, William B. Golden and others have requested that Boston Edison Company show cause why the Pilgrim Nuclear Power Station should not remain closed or have its operating license suspended by NRC until the licensee demonstrates that the issues raised by Petitioners have been resolved. Petitioners also requested that NRC require the licensee to submit a feasibility study related to certain structural modifications.

Petitioners assert as grounds for their request (1) numerous deficiencies in licensee management, (2) inadequacy of the existing radiological emergency response plan and (3) inherent deficiencies in the facility's containment structure.

The Petition is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. As provided by § 2.206, appropriate action will be taken on the Petition within a reasonable time.

A copy of the Petition is available for inspection in the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555 and in the local public document room for the Pilgrim Nuclear Power Station located at the Plymouth Public Library, 11 North Street, Plymouth, MA 02360.

Dated at Bethesda, Maryland, this 12th day of August 1986.

For the Nuclear Regulatory Commission.

James M. Taylor,

Director, Office of Inspection and Enforcement.

[FR Doc. 86–18772 Filed 8–19–86; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

SES Performance Review Board

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: Notice is given to members of the SES Performance Review Board for OPM.

DATE: August 20, 1986.

FOR FURTHER INFORMATION CONTACT: Jerry Burchard, Administration Group, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415, (202) 632–9402.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of title 5, United States Code, requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The board(s) will review and evaluate the initial appraisal of a senior exectuive's performance by the supervisor and make recommendations to the appointing authority relating to the performance of these executives.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Members of the OPM Performance Review Board are—

1. Thomas J. Simon, [Chair], Associate Director, Administration Group.
2. Anthony F. Ingrassia, [Vice-Chair] Deputy Associate Director for Personnel Systems and Oversight.
3. Jean M. Barber, Deputy Associate Director for Retirement and Issurance.
4. Helen J. Christrup, Assistant Director for Staffing Policy, Career Entry Group.
5. Frederick A. Kistler, Regional Director, Philadelphia Region.
6. Bruce C. Navarro, Office of Congressional Relations.
7. Curtis J. Smith, [ad hoc member], Associate Director for Career Entry.
8. Raymond J. Sumser, [ad hoc member], Director of Civilian Personnel, Department of the Army.

[FR Doc. 86–18768 Filed 8–19–86; 8:45 am]

BILLING CODE 6325–01–M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Mainstem Passage Advisory Committee; Meeting

AGENCY: The Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting.

Status: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Mainstem Passage Advisory Committee to be held

pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1–4. Activities will include:

- Subcommittee report on initial results of FISHPASS model sensitivity analysis.
- Discussion of Section 400 draft amendment document measures.
- Other.
- Public comment.

DATE: September 11, 1986. 9:00 a.m.

ADDRESS: The meeting will be held in the Council's Meeting Room, 850 S.W. Broadway, Suite 1100, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Jim Ruff, 503–222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 86–18710 Filed 8–19–86; 8:45 am]

BILLING CODE 0000–00–M

RAILROAD RETIREMENT BOARD

Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C. 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning October 1, 1986 shall be at the rate of 22.5 cents.

In accordance with directions in section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning October 1, 1986, 28.9 percent of the taxes collected under sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 71.1 percent of the taxes collected under such sections 3211(b) and 3221(c) plus one hundred percent of the taxes collected under section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

Dated: August 12, 1986.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 86–18711 Filed 8–19–86; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–23527; File No. SR–NASD–86–22]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to proposed Amendments to Subsections 5(e) and 5(f) of Appendix F to Article III, Section 34 of the NASD's Rules of Fair Practice

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 5, 1986 the National Association of Securities Dealers, 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 following is the text of the proposed amendment of Subsections 5(e) and (f) of Appendix F to Article III, section 34 of the Rules of Fair Practice ("Appendix F") of the National Association of Securities Dealers, Inc. Additions are underlined; deletions are bracketed.

Section 5

Organization and Offering Expenses

(e) No sponsor, affiliate of a sponsor (other than a member dealing with persons associated with that member), or program shall *directly or indirectly offer or* provide [any] *non-cash compensation or* sales incentive items *including, but not limited to, travel bonuses, prizes, and awards to a member or a person associated with a member and no member or person associated with a member shall agree to accept such compensation. This section shall not prohibit a sponsor, affiliate of a sponsor, or program from providing any sales incentive items* directly to a person associated with a member [unless] *where:*

(1) The aggregate value of all such items [to be received] *paid* by *any sponsor or affiliate of a sponsor to* each associated person during any year does not exceed $50.00;

(2) The value of all such items to be made available in connection with an offering is included as compensation to be received in connection with the offering for purposes of subsection (b) of this section; and

(3) The proposed payment or transfer of all such items is disclosed in the prospectus or similar offering document.

(f) No sponsor, affiliate of a sponsor, or program shall provide compensation to a member, *including* [in the form of] *cash* sales incentives [or bonuses], unless all of the following conditions are satisfied:

(1) All *compensation is* [sales incentives and bonsues are] paid directly to the member in cash and the distribution, if any, of *compensation, including cash sales* incentives or bonuses], to associated persons is controlled solely by the member;

(2) The value of all *items of compensation, including cash sales* incentives, to be made available in connection with an offering *are* [is] included as compensation to be received in connection with the offering for purposes of subsection (b) of this section;

(3) Arrangements relating to the proposed payment of all *items of compensation, including cash sales* incentives [or bonuses], are disclosed in the prospectus or similar offering document; and

(4) The value of all *items of compensation, including cash sales incentives* [and bonuses], *are* [is] reflected on the books and records of the recipient member as compensation received in connection with the offering.

II. Self-Regulatory Organization's Statement Regarding the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concening the purpose of, and basis for the proposed rule change and discussed any comments if received on the proposed rule change. The text of these statements may be examined at the places specified in Items 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 Association is proposing to amend section 5(e) of Appendix F to prohibit a sponsor, affiliate of a sponsor (other than a member dealing with persons associated with that member) or a program from directly or indirectly offering or providing non-cash compensation with a value in excess of

$50.00 in the form of sales incentive items to any member or its associated persons, including but not limited to travel bonuses, prizes and awards. In addition, members and their associated persons would be prohibited from accepting such non-cash compensation.

The proposed amendment to Appendix F will alleviate several problems which have arisen under the present sales incentive rules. By prohibiting DPP sponsors from offering any form of non-cash sales incentives, the proposed amendment will assist members in maintaining supervisory control over their retail sales personnel.

The proposed rule change would also modify the language of Subsection 5(e)(1) Appendix F to clarify that sourvenir-type non-cash sales incentives given by a sponsor directly to a person associated with a member may not exceed $50.00 per year per associated person for all programs of that sponsor. The current language of this provision appears to apply the $50.00 limit on a per program basis rather than on a per year basis.

Subsection 5(f): It is proposed that subsection 5(f) be amended to require that all compensation received in connection with a direct participation program be controlled solely by the member, that the value of all items of compensation be included in the calculation of underwriting compensation under subsection 5(b) of Appendix F, that arrangements with respect to all items of compensation be disclosed in the offering document and that the value of such compensation be reflected on the books and records of the member as compensation received in connection with the offering. The modifications to subsection 5(f) would insure that all compensation is paid to the member, as opposed to registered representatives, and would provide guidelines on the member's receipt of such compensation.

The proposed rule change is consistent with the provisions of section 15A(b)(6) of the Securities Exchange Act of 1934, amended, as the proposal will strengthen the ability of member firms to supervise their associated persons, thereby providing greater protection to public investors.

The Association is also proposing that the proposed amendment to Appendix F be effective with respect to all offerings of direct participation program securities on January 1, 1987. Therefore, members and their associated persons may apply sales made through December 31, 1986 to a program's non-cash sales incentive program. Further, during the year 1987, members and their associated persons will be permitted to receive non-cash incentives earned prior to January 1, 1987.

The proposed effective date is consistent with the provisions of section 15A(b)(2) of the Securities Exchange Act of 1934, ascended, as it is intended to facilitate compliance by members and the associated persons with the proposed amendment to Appendix F.

B. Self-Regulatory Organization's Statement on Burden on Competition

A number of commentators, both in favor and opposed to the proposed rule change, who responded to the Association's request for comments in Notice to Members 85–17 (March 15, 1985), raised issues of the discriminatory impact of the proposed rule change. Each of these issues is addressed below.

Inter-Industry Competition

A number of commentators, both opposed and in favor of the proposed rule change, urged that if non-cash incentives are inappropriate in connection with the sale of direct participation programs, neither are they appropriate in connection with the sale of mutual funds or insurance products. Some of the commentators stated that it was unfair and discriminatory for the NASD to single out the direct participation programs industry.

In response to these comments, the Board of Governors referred the issue of whether the prohibition should be extended to other product areas to the Investment Companies, Variable Contracts and Corporate Financing Committees. These three Committees considered the issue in late 1985. The Investment Companies Committee and the Variable Contracts Committee concluded that a complete prohibition of non-cash sales incentives was unnecessary for the reason that the problems detailed above, found to be present in the direct participation program industry, are not present in the sale of mutual fund securities and insurance products.

The Corporate Financing Committee found that current tax proposals and other factors in the real estate market have resulted in a marked increase in the number of real estate investment trusts (REITs) filed with the Association for review. Non-cash sales incentives substantially similar to those offered in connection with direct participation programs are utilized in the distribution of REITs. Therefore, the Committee recommended to the Board of Governors at its January 20–21, 1986 meeting, and the Board approved, the issuance of a notice requesting comment on a proposed amendment to the Interpretation of the Board of Governors—Review of Corporate Financing, Article III, section 1 of the NASD Rules of Fair Practice which prohibits non-cash sales incentives in connection with the sale of corporate and REIT offerings. Further, the Board approved the Committee's recommendation that any prohibition be effective concurrent with that proposed herein with respect to DPPs. The NASD issued Notice to Members 86–33 on May 7, 1986 to effectuate the above recommendation.

Inter-Sponsor and Inter-Broker/Dealer Competition

The NASD's proposed rule change to prohibit the use of non-cash sales incentives in connection with sales of direct participation programs specifically excludes in-house sales incentive programs of member firms from its prohibition. A number of commentators, both in favor and opposed to the proposed rule change, urged that the proposal would be anti-competitive and discriminatory with respect to unaffiliated small and medium-size members and to sponsors unaffiliated with a member firm which utilized unaffilated member firms to distribute its product.

The operation of the proposed amendment to subsection 5(e) of Appendix F would continue to permit both independent (broker/dealers not affiliated with a sponsor) and affiliated *members* (broker/dealers affiliated with a DPP sponsor) to provide any kind of compensation to their associated persons, including non-cash sales incentives in the form of trips or merchandise. It is intended by the amendment that both independent (sponsors not affiliated with a broker/dealer) and integrated *sponsors* (sponsors affiliated with a broker/dealer) be prohibited from offering or providing any non-cash incentive compensation to any NASD member and its associated persons.

Inter-Sponsor Competition: The NASD believes that comments to Notice to Members 85–17 regarding inter-sponsor competition suggest that the proposed rule change will provide a competitive advantage to integrated sponsors. The Association believes that the competitive advantage being suggested is only with respect to integrated sponsors whose affiliated member is a major "wire house," i.e. a national general securities broker/dealer. The NASD believes that the proposed rule change does not result in a burden on competition. To the extent such burden may result, the NASD believes it is

necessary in furtherence of the purposes of the Securities Exchange Act of 1934.

Where the affiliated member sells the programs of other sponsors in addition to those of its affiliated sponsor, the NASD does not believe that the proposed rule change provides such integrated sponsors a competitive advantage with respect to other integrated and independent sponsors that are seeking to sell their programs through the same affiliated member. The situation referenced by several commentators to Notice to Members 85–17 is that where the integrated sponsor is affiliated with a "wire house" that sells its properietary direct participation program to its customers. Such affiliated wire house member would also offer the direct participation program products of other sponsors.

The NASD believes that the proposed rule change will not place independent sponsors at a competitive disadvantage that they do not currently experience as a result of their independent status. The NASD believes that where an affiliated member sells a proprietary product, such member is naturally in a position, through its cash compensation structure and employer-employee relationship, to encourage the sales of its proprietary product. To expect otherwise is unrealistic. In addition, it is general industry practice among large general securities firms to provide non-cash compensation based on total sales of all securities products sold through the member rather than having compensation directly related to one type of security or product.

The NASD points out that a number of commentators suggested that the proposal will correct a current competitive advantage provided large integrated and independent sponsors as a result of the NASD's current rules permitting the use of non-cash sales incentives by DPP sponsors. Such commentators state that non-cash sales incentives are expensive and can only be afforded by large DPP sponsors. They indicate that the proposed rule change will permit small sponsors to compete on a more equitable basis with large sponsors for the interest of member firms and their associated persons, as programs will be compared on the basis of their merits, not the sales incentives being offered to associated persons.

Inter-Broker/Dealer Competition: Commentators to Notice to Members 85–17 also suggested that affiliated members will have a competitive advantage over independent members as a result of the NASD proposal. Two commentators stated that ". . . only large broker/dealers with an affiliated sponsor of direct participation programs would be permitted to conduct incentive educational conferences."

First, the foregoing commentators may misunderstand the NASD proposal as the proposed rule change continues to permit all members, regardless of size or affiliation, to provide non-cash compensation to *their* associated persons and to conduct "educational conferences" for *their* associated persons to the extent that they wish to do so.

Second, the NASD is uncertain of the nature of the competitive advantage afforded affiliated members that is being suggested by commentators to the proposed rule change. The NASD proposal permits affiliated members to provide items of non-cash compensation to their associated persons, but does not permit the member's affiliated sponsor to provide non-cash sales incentives to any member and/or their associated persons. With respect to competition for employees, the NASD does not believe that affiliated members will have a competitive advantage in attracting employees in comparison to independent members, since independent members are also permitted to provide non-cash compensation items to associated persons as part of their compensation structure.

Third, the NASD does not agree, as argued by one commentator that as a result of the proposed rule change large members will "pressure . . . sponsors into paying for all or portions of in-house incentives, particularly travel incentives for the members' own purposes." It was the intention of the NASD in adopting the particular language contained in subsection 5(e) of Appendix F to prohibit any such circumvention of the rule. The language of the rule amendment prohibits a sponsor from directly or *indirectly* offering or providing non-cash compensation to members and their associated persons and prohibits both members and their associated persons from accepting such non-cash compensation.

For the foregoing reasons, the Association believes that the proposed rule change presents no impact on competition that is not in furtherance of the purposes of the Securities Exchange Act of 1934, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

In response to NASD Notice to Members 85–17 (March 15, 1985), fifty-eight (70%) of the commentators, representing large and small member firms and sponsors, were in agreement with the proposed amendment. Twenty-six (30%) of the commentators, also representing both large and small members and sponsors, were opposed to the proposed amendment.

Many of the NASD member commentators in favor of the proposed change expressed concern over the adverse effects non-cash sales incentives have had on the supervision of their sales forces. Several sponsor commentators also expressed the opinion that from a competitive standpoint, the proposed amendment would be beneficial in that it would put all DPP sponsors on an equal footing with regard to the type of incentive offered, thereby resulting in competition among sponsors based upon the merits of their programs instead of their programs' sales incentives. Another reason advanced in support of the proposed amendment were the totally inappropriate nature of non-cash sales incentives in connection with the sale of financial products.

The major argument advanced by those commentators opposed to the amendment was that non-cash sales incentives are necessary in order to support marketing efforts and to motivate sales personnel. It was argued by commentators that any concerns over investor suitability are alleviated by the fact that it is the investor who makes the ultimate investment decision, regardless of the recommendation of the salesperson. The Association believes cash sales incentives provide sufficient support for marketing efforts and motivation of sales personnel without the drawbacks inherent in non-cash sales incentives such as luxury merchandise and exotic trips.

Many of the commentators also opposed the proposed rule change on the basis that the current provisions of Appendix F, which require all sales incentives to be paid in cash directly to the qualifying member firm, provide an adequate basis for NASD members to supervise their sales personnel. In this connection, the Association has found that many sponsors appeal directly to the registered representatives. Commentators in favor of the proposed amendment stated that such direct solicitation of registered representatives makes it extremely difficult for members to adequately supervise the participation of their registered representatives in programs offering non-cash sales incentives.

Further, several commentators stated that non-cash sales incentives in the form of trips serve an educational purpose that is beneficial to investors.

The Association believes that "educational" trips for member firms should occur prior to an offering for the purpose of conducting due diligence, with the member's reimbursement of its costs related to such trips limited by Appendix F to 0.5% of offering proceeds.

Finally, commentators both in favor and against the proposal recommended that the proposed amendment should be made applicable to the distribution of other financial products such as mutual funds or insurance products. The Board of Governors referred to issue of whether non-cash sales incentives should be prohibited in other product areas to the Variable Contracts, Investment Companies and Corporate Financing Committees of the Association.

III. Date of Effectiveness of 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 filing. The Commission invites comment on all issues presented by the filing. In particular, the Commission would appreciate comments on the following issues:

First, the proposed rule change only limits the amount of non-cash compensation that a sponsor may give to any member or, through the member, to the associated persons of any member. It does not limit the amount of cash that sponsors may give. Is there a need to limit the amount of cash compensation a sponsor may pay to a member or its associated person? If not, why is cash compensation different from non-cash compensation?

Second, in response to the NASD's proposal, a number of commentators stated that the prohibition on non-cash compensation should not be limited to the sale of DPP's. They suggested that non-cash compensation also was inappropriate in connection with the sale of mutual funds and insurance products. As previously noted, the NASD has preliminarily determined that non-cash compensation is not appropriate in connection with the sale of corporate and real estate investment trust offerings, but may well be appropriate in connection with the sale of mutual funds and insurance products. Is there a need to limit the use of non-cash compensation in connection with the sale of mutual funds and insurance products, or are the problems experienced in the DDP market and the corporate and real estate investment trust market not present in the mutual fund and insurance market?

Third, the rule filing does not limit the use of non-cash compensation by members in dealing with their own associated persons. In other words, a member that serves as the sponsor for a DDP may provide its own associated persons with whatever sales incentives the member feels are appropriate. A number of commentators argue that member firms that serve as program sponsors will have a competitive advantage over sponsors that offer their DPPs through unaffiliated broker-dealers. The NASD states that the putative competitive advantage is only with respect to integrated sponsors whose affiliated member is a major wire house, and that if there is such a competitive advantage, it is inherent in the structure of the industry. Does this proposed rule change give member firms who serve as program sponsors an inappropriate competitive advantage over independent sponsors?

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. 522 will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of the aove-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 10, 1986.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: August 13, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-18724 Filed 8-19-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15253; File No. 812-6456]

Application and Opportunity for Hearing: John J. Flynn

August 14, 1986.

I

Notice is hereby given that John J. Flynn, referred to herein as Applicant, has filed an application pursuant to section 9(c) of the Investment Company Act of 1940, 15 U.S.C. 80a-1 et. seq., as amended (the "Act"), for an order granting him an exemption from the provisions of section 9(a) of the Act.

All interested persons may review the application on file with the Commission for a statement of the representations therein, pertinent parts of which are summarized below.

In January 1982, the Commission commenced a civil injunctive action entitled *Securities and Exchange Commission* v. *Edward J. Falvey et al.* (Civil Action No. 82-0197-S) in the United States District Court for the District of Massachusetts. The Commission's Complaint alleged, *inter alia*, that Flynn aided and abetted violations of section 31(a), 34(a) and 34(b) of the Investment Company Act of 1940 (the "Act") and Rule 31a-1 promulgated thereunder. In April 1986, the Commission and Flynn entered into a stipulation and consent whereby it was agreed that a Final Judgment of Permanent Injunction would enter against Flynn without trial, argument, or adjudication of any issue of fact or law and without Flynn admitting or denying any allegations in the Complaint. On April 30, 1986, the Court entered the agreed Final Judgment of Permanent Injunction which enjoined Flynn from knowingly aiding and abetting any registered investment company and failing to maintain, preserve, and keep current such accounts, books, and other documents as constitute the record forming the basis for financial statements required to be filed by a registered investment company pursuant to section 30 of the Act, in violation of section 31(a) of the Act; from knowingly aiding and abetting the willful alteration of any account, book, or other document, the preservation of which is required by section 31(a) of the Act, in violation of section 34 of the Act; and knowingly aiding and abetting the making of any untrue statement of a

material fact or admitting to state any fact necessary in order to prevent the statement made, in light of the circumstances under which it was made, from being materially misleading in any account, record, or other document required to be kept pursuant to section 31(a) of the Act, in violation of section 34(b) of the Act. Section 9(a) of the Act, insofar as it is pertinent here, disqualifies any person, or any company with which such person is affiliated, from serving or acting in the capacity of employee, officer, director, member of an advisory board, investment adviser, or depositor of any registered investment company, or principal underwriter for any registered open-end company, registered unit investment trust, or registered face-amount certificate company, if such person is by reason of any misconduct enjoined by order, judgment or decree by any court of competent jurisdiction from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security.

Section 9(c) of the Act provides that upon application the Commission shall by order grant an exemption from the provisions of section 9(a) of the Act, either unconditionally or on an appropriate, temporary or conditional basis, if it is established that the probitions of section 9(a), as applied to the Applicant, are unduly or disproportionately severe or that the conduct of the Applicant has been such as not to make it against the pubic interest or protection as not to make it against the public interest or protection of investors to grant such application.

Applicant has submitted an application pursuant to section 9(c) of the Act stating, *inter alia*, that:

1. The prohibitions of section 9(a) of the Act would deprive Flynn of the opportunity to serve as an employee, officer, or director of any investment company or investment adviser. Much of Flynn's working life has been spent in such capacity and, as a result, the prohibitions of section 9(a) severely restrict his employment opportunities.

2. Other than in the Complaint noted hereinbefore, Flynn has never been the subject of any federal or state proceeding either judicial or administrative, involving allegations of violations of federal or state securities laws.

3. Prior to the entry of the Final Judgment in the S.E.C. action, Flynn had never been subject to the disabilities imposed by section 9(a) of the Act.

4. The entry of the Final Judgment did not constitute an adjudication of any of the allegations contained in the Commission's Complaint and was entered into with the consent of Flynn, who neither admitted or denied the allegations of the Complaint.

5. The violations alleged were solely of record-keeping provisions of the Act and the records in question were not maintained by Flynn.

6. No investor suffered any loss due to the conduct alleged in the Complaint.

7. Flynn did not profit or otherwise benefit from the alleged misconduct.

In addition, Applicant has undertaken, until June 30, 1989 that if he contemplates becoming an employee, officer, director, member of an advisory board, investment adviser, or depositor of any registered investment company, or principal underwriter for any registered open-end company, registered unit investment trust, or registered face-amount certificate company, he will notify that employer of the Final Judgment prior to commencing employment with such employer.

II

Notice is further given that any interested person may, not later than September 17, 1986, at 5:30 pm., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication shall be addressed to Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. A copy of such request shall be served personally or by mail upon Steven W. Hansen, Esq., Bingham, Dana & Gould, 100 Federal Street, Boston, Massachusetts 02110. Proof of such service (by affidavit, or in the case of attorney-at-law, by certificate) shall be filed contemporaneously with request. At any time after said date, as provided by the rules and regulations promulgated under the Investment Company Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in the application, unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered will receive notices and orders issued in this matter, including the dates of the hearing (if ordered), and any postponements thereof.

By the Commission.

Johnathan G. Katz,

Secretary.

[FR Doc. 86-18811 Filed 8-19-86; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-15250; File No. (812-6425)]

Royal Insurance p.l.c., Foreign Insurance Company Application

August 13, 1986.

Notice Is Hereby Given that Royal Insurance p.l.c., c/o James W. Lillie, Jr., Esq., Bryan, Cave, McPheeters & McRoberts, 350 Park Avenue, New York, New York 10022 ("Applicant"), a public limited company organized under the laws of the United Kingdom ("U.K."), filed an application on July 2, 1986, and amendments thereto on July 17 and 25, 1986, for an order of the Commission pursuant to section 6(c) of the Investment Company Act of 1950 ("Act") exempting Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the applicable provisions.

Applicant states that it writes almost all classes of insurance and is one of the largest international insurance companies in the world; that in 1985 it wrote non-life premiums of $4,169,250,000, of which its subsidiaries in the United States ("U.S.") accounted for $1,905,000,000 or about 45%. For the year ended December 31, 1985, the Applicant reported net property-casualty income, before extraordinary items, of $43,350,000, total assets of $13,578,750,000 including life assets of $4,681,800,000. Applicant further states that its capital and reserves amount to $2,856,750,000.

According to the application, under The Insurance Companies Act 1982 and The Insurance Companies Regulations which extensively regulates the life insurance business of the U.K., Applicant and its U.K. insurance subsidiaries are supervised in the U.K. by the Department of Trade and Industry ("Department"). Applicant represents that the Department has wide supervisory and investigative powers, including the requiring of margins of solvency and annual statements which are similarly detailed and comprehensive as those imposed by the applicable State insurance authorities in the U.S. The Department also has the authority to impose limits on premium income an insurance company writes, as

well as the categories of investments which an insurance company may make. Applicant further asserts that its U.S. insurance subsidiaries are regulated by various State regulatory agencies in the U.S.

According to the application, Applicant proposes to issue and sell in the U.S. unsecured, prime quality commercial paper notes ("Notes") in bearer form and denominated in U.S. dollars. Applicant states that the Notes will be used to provide for short term cash needs from time to time and as an alternative source of supply of U.S. dollars which will supplement U.S. dollars currently obtained by Applicant from the Eurodollar market. Applicant states that no Note will be in a denomination smaller than $100,000 and that the Notes will not be advertised or otherwise offered for sale to the general public, but instead will be offered and sold by a commercial paper dealer to institutional investors and other entities and individuals who normally purchase commercial paper notes. It is further asserted that Applicant does not intend to sell the Notes in the U.S. in excess of an aggregate of $250 million at any one time outstanding.

Applicant has been advised by its U.S. counsel that the Notes will qualify for the exemption from registration under section 3(a)(3) of the Securities Act of 1933, as amended ("Securities Act"). Applicant states that it does not request Commission review or approval of such U.S. counsel's opinion regarding the availability of an exemption under section 3(a)(3) of the Securities Act. It is further asserted that Applicant is not subject to the reporting requirements of the Securities Exchange Act of 1934, as amended, and will not become subject to such requirements in connection with the issuance and sale of the Notes.

Applicant represents that it may, from time to time, offer other debt securities for sale in the U.S., but that this application is not intended to cover its issuance of equity securities in the U.S. at any future time. Applicant undertakes that any future offerings of debt securities in the U.S. will be done on the basis of transactions exempt from the provisions of the Securities Act, by virtue of section 3(a)(3) or section 4(2) therof. Applicant further undertakes with regard to debt securities that are not issued in the U.S. or sold to U.S. nationals or residents and are not so exempt from the Securities Act, that it will adopt agreements or procedures reasonably designed to prevent such foreign debt securities from coming into the hands of a U.S. national or resident (except to foreign branches of U.S. banks which take for their own account and without a view to distribution).

Applicant also represents that the presently proposed issue of Notes and any future issues of debt securities will be conditioned on the receipt, prior to issuance, of one of the three highest investment grade ratings from at least one nationally recognized statistical rating organization, and that Applicant's U.S. counsel will certify that such a rating has been received. As liabilities of the Applicant, the Notes and any future offerings of debt securities will rank pari passu among themselves and equally with all other unsecured indebtedness of Applicant and will rank superior to equity securities of Applicant. It is further stated that Applicant will appoint a bank in the U.S. as its authorized agent to issue the Notes from time to time.

Applicant undertakes to ensure that the dealer in the Notes, or of any future debt securities offered by Applicant, will receive, prior to offering of the Notes, a memorandum ("Offering Memorandum") briefly describing Applicant's business and containing the most recent publicly available fiscal year end balance sheet and income statement for Applicant, audited in the manner customarily used for Applicant by its auditors. Applicant states that the Offering Memorandum will describe material differences, if any, to investors between the accounting principles applied in the preparation of its financial statements and "generally accepted accounting principles" employed by similar insurance companies in the U.S. Applicant states that its Offering Memoranda and financial statements will be at least as comprehensive as those customarily used by U.S. insurance companies or similar financial institutions in offering commercial paper in the U.S. and will be updated promptly to reflect material changes in the financial condition of Applicant.

Applicant also undertakes to appoint some U.S. person to accept any process which may be served in any action based on any Note or any other future offering of debt securities and instituted by the holder of a Note or such other debt security in any State or Federal court. It is asserted that Applicant will expressly accept the jurisdiction of any State or Federal court in the City and State of New York in respect of any such action. It is further asserted that such appointment of an authorized agent to accept service of process and such consent to jurisdiction will be irrevocable until all amounts due and to become due in respect of the Notes or other debt securities have been paid. Applicant further agrees to be subject to suit in any other court in the U.S. which would have jurisdiction because of the manner of the offering of the Notes or other debt securities or otherwise. Finally, Applicant consents to having the order granting the relief requested under section 6(c) of the Act expressly conditioned on the above-stated undertakings.

Notice Is Further Given that any interested person wishing to request a hearing on the application may, not later than September 5, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investigation Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-18720 Filed 8-19-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15251; File No. 812-6438]

Smith Barney Mortgage Capital Corp.; Application Pursuant to Section 6(c) for Exemption From All Provisions of the Act

August 13, 1986.

Notice Is Hereby Given that Smith Barney Mortgage Capital Corp. ("Applicant") 5300 InterFirst Two Building, Dallas, Texas 75270, filed an application on July 22, 1986, for an order of the Commission pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicant from all provisions of the Act to the extent necessary to permit Applicant to issue and sell mortgage-backed securities. All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below, and to the Act for the text of its relevant provisions.

According to the application, Applicant, a Delaware corporation, is a wholly-owned limited purpose

subsidiary of Smith Barney Inc. Applicant was formed for the purpose of engaging in asset-backed financing, including acquiring, owning, holding and pledging mortgages and mortgage-backed securities ("Mortgage Collateral"), issuing and selling, or establishing owner trusts to issue and sell series of bonds ("Bonds") secured by Mortgage Certificates (defined below) and engaging in activities incidental thereto. Applicant requests an order of exemption only with respect to the issuance and sale of Bonds by the Applicant and that any other business activity of Applicant permitted by its certificate of incorporation (including the establishment of owner trusts) will be subject to future application.

Applicant states that each series of Bonds issued by Applicant will be separately secured by collateral consisting primarily of mortgage pass-through certificates ("GNMA Certificates") which are fully guaranteed as to principal and interest by the Government National Mortgage Association, Mortgage Participation Certificates ("FHLMC Certificates") issued and guaranteed by the Federal Home Loan Mortgage Corporation and/or Guaranteed Mortgage Pass-Through Certificates ("FNMA Certificates") issued and guaranteed by the Federal National Mortgage Association (GNMA Certificates, FHLMC Certificates and/or FNMA Certificates collectively, "Mortgage Certificates"). Mortgage Certificates pledged to secure a series of Bonds may or may not represent the entire beneficial interest in the mortgage pools related to such Mortgage Certificates. Applicant states that it anticipates the Mortgage Certificates securing each series of Bonds will be acquired by Applicant using the net proceeds of the sale of such Bonds.

According to the application, each series of Bonds will be issued by Applicant pursuant to an indenture between an independent trusteee ("Trustee") and Applicant as supplemented by one or more supplemental indentures for such series ("Indenture"). Until such Bonds are paid, the Mortgage Certificates pledged to secure a series of Bonds will not be released from the lien of the Indenture except in certain, limited circumstances. Applicant contemplates that the Bonds will be sold pursuant to a prospectus or private placement memorandum containing all material disclosures required by the terms of the Securities Act of 1933 ("Securities Act"). The Indenture for each public offering will be qualified under the Trust Indenture Act of 1939.

Applicant states that each Bond offering will meet the following six conditions and Applicant consents to such conditions with respect to the issuance of an order by the Commission:

(1) Each series of Bonds will be registered under the Securities Act, unless offered in a transaction exempt from registration pursuant to section 4(2) of the Securities Act.

(2) The Bonds will be "mortgage related securities" within the meaning of section 3(a)(41) of the Securities Exchange Act of 1934. In addition, the Mortgage Collateral underlying the Bonds will be limited to GNMA Certificates, FNMA Certificates and FHLMC Certificates.

(3) If new Mortgage Certificates are substituted for Mortgage Certificates initially pledged as security for a series of Bonds, the substitute Mortgage Certificates must: (i) Be of equal or better quality than the Mortgage Certificates replaced; (ii) have similar payment terms and cash flow as the Mortgage Certificates replaced; (iii) be insured or guaranteed to the same extent as the Mortgage Certificates replaced; and (iv) meet the conditions set forth in paragraphs (2), (4) and (6). In addition, new Mortgage Certificates may not be substituted for more than 40% of the aggregate face amount of the Mortgage Certificates initially pledged to the Trustee as security for a series of Bonds. In no event may any new Mortgage Certificates be substituted for any substitute Mortgage Certificates.

(4) All Mortgage Certificates, funds, accounts or other collateral securing a series of Bonds (collectively, the "Bond Collateral") will be held by the Trustee or on behalf of the Trustee by an independent custodian. The custodian may not be an "affiliate" (as the term "affiliate" is defined in Securities Act Rule 405, 17 CFR 230.405) of the Applicant. The Trustee will be provided with a first priority perfected security or lien interest in and to all Bond Collateral.

(5) Each series of Bonds will be rated in one of the highest bond rating categories by at least one nationally recognized statistical rating organization that is not affiliated with the Applicant. The Bonds will not be considered redeemble securities within the meaning of section (2)(a)(32) of the Act.

(6) No less often than annually, an independent public accountant will audit the books and records of the Applicant and, in addition, will report on whether the anticipated payments of principal and interest on the Mortgage Certificates continue to be adequate to pay the principal and interest on the Bonds in accordance with their terms. Upon completion, copies of the auditor's reports(s) will be provided to the Trustee.

According to the application, except when exercising remedies following a default on the Bonds and under the other limited circumstances specified in Indenture, the Trustee will not release from the lien of the Indenture any Mortgage Certificates collateralizing Applicant's Bonds. Pursuant to the Indenture, the proceeds of the Mortgage Certificates held by the Trustee pending distribution to Bondholders may only be invested in United States obligations and cash equivalents, guaranteed investment contracts and other investments meeting the requirements of the investment rating agency or agencies rating the Bonds of such series (collectively, "Eligible Investments"). Each series of Bonds will receive the highest rating from one or more nationally recognized investment rating agencies, none of which will be affiliated with the Applicant or the Trustee. Applicant states that at the time the Bonds are issued the cash flow from the Mortgage Certificates and other collateral securing a series of Bonds plus the reinvestment rate specified in the Indenture will be sufficient to pay the principal of and interest on the Bonds when due to Bondholders.

According to Applicant, certain series of Bonds may provide for mandatory redemtions to the extent that principal payments on the Mortgage Certificates cannot be invested at a rate that will provide sufficient income to pay interest on the Bonds. Other series of Bonds may provide for optional redemtions by the holders of such Bonds to the extent payments on the underlying Mortgage Certificates and related reserve funds are available to pay the principal of, and interest on, the Bonds so redeemed. Except in limited circumstances arising upon an event of default of the Bonds under the Indenture, Bondholders cannot liquidate Mortgage Certificates in order to redeem the Bonds prior to maturity.

Applicant submits that requested exemption is in the public interest because it enhances Applicant's ability to purchase Mortgage Certificates and will expand the sources of funds available to finance the purchase and retention of Mortgage Certificates and, thereby, the sources of funds available

to finance housing. Applicant also submits that the requested exemption is both consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicant states that among the protections provided to purchasers of the Bonds is that neither the Trustee nor the Applicant will be able to impair the security of the Mortgage Collateral. The terms of the Bonds, including maturity, rate of interest, Indenture provisions, and application of collateral to payments on the Bonds cannot be changed without Bondholder approval.

Applicant states that its activities are not those that the Act was intended to regulate. Applicant's principal asset, Mortgage Certificates, will be held in trust until the Bonds are paid in full or no longer required to fully collateralize the Bonds they secure. Applicant will not exercise investment discretion with respect to the Mortgage Certificates. The Trustee will invest the cash proceeds of the Mortgage Certificates only in Eligible Investments, all of which meet the criteria of the investment rating agency or agencies rating the Bonds specified in the Indenture, and only for the limited period of time between receipt of such proceeds and payment to Bondholders. Applicant states that, under these circumstances, a Bondholder's risk and return will in no material respect depend upon the ability of Applicant to successfully invest and reinvest Bond proceeds.

Notice is Further Given that any interested person wishing to request a hearing on the application may, not later than September 5, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-18723 Filed 8-19-86; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2246]

Declaration of Disaster Loan Area; California

The City of Anaheim constitutes a disaster area because of a disastrous fire which occurred in the Casa De Valenica Apartment Complex on July 3, 1986. Applications for loans for physical damage as a direct result of this fire may be filed until the close of business on October 13, 1986, and for economic injury, as a direct result of this fire, until the close of business on May 12, 1987, at the address listed below: Disaster Area 4 Office, Small Business Administration, 77 Cadillac Drive, Suite 158, Sacramento, California 95825, or other locally announced locations.

The interest rates are:

	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)	10.500

The number assigned to this disaster is 224605 for physical damage and for economic injury the number is 642900.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: August 12, 1986.

Charles L. Heatherly,

Acting Administrator.

[FR Doc. 86-18804 Filed 8-19-86; 8:45 am]

BILLING CODE 8025-01-M

Las Vegas District Advisory Council Meeting

The Small Business Administration, Las Vegas District Advisory Council will hold a public meeting on September 16, 1986, at the Small Business Administration Office, located at 301 East Stewart Avenue, Downtown Station, Post Office, 3rd Floor, Las Vegas, Nevada, from 10:00 a.m. to 12:00 Noon to discuss such matters as may be presented by Council members, staff of the Small Business Administration, or others present.

For further information, write or call Elizabeth Sutton, Secretary for the Advisory Council, U.S. Small Business Administration, 301 East Stewart, Post Office Box 7527, Las Vegas, Nevada 89125, or call (702) 388-6616.

Jean M. Nowak,

Director, Office of Advisory Councils.

August 12, 1986.

[FR Doc 86-18802 Filed 8-19-86; 8:45 am]

BILLING CODE 8025-01-M

New Jersey, Region II—Advisory Council; Public Meeting

The Small Business Administration, Region II, Newark District Advisory Council, located in the geographical area of Newark, New Jersey, will hold a public meeting at 9:00 AM on Tuesday, September 30, 1986, at the Ramada Inn, 36 Valley Road, Clark, New Jersey 07066, to discuss such business as may be presented by members and the staff of the Small Business Administration or others attending. For further information, write or call Stanley H. Salt, District Director, U.S. Small Business Administration, 60 Park Place, Newark, New Jersey 07102, (201) 645-3580.

Jean M. Nowak,

Director, Office of Advisory Councils.

August 12, 1986.

[FR Doc. 86-18803 Filed 8-19-86; 8:45 am]

BILLING CODE 8025-01-M

[License No. 05/05-5109]

SC Opportunities, Inc.; Surrender of License

Notice is hereby given that SC Opportunities, Inc., (SC) 1112 Seventh Avenue, Monroe, WI 53566 has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). SC was licensed by the Small Business Administration on January 16, 1976.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on July 21, 1986 and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.001, Small Business Investment Companies)

Dated: August 11, 1986.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 86-18805 Filed 8-19-86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[CM-8/989]

Advisory Committee on South Africa; Closed Meetings

The Advisory Committee on South Africa will meet in closed sessions on September 8, 15 and October 6, 1986. The meetings will commence at 9 a.m. and will be held in Room 7219, Department of State, Washington, DC.

The sessions will be closed to the public pursuant to section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b(c)(1) and (c)(9)(B). The Committee will have access to and will discuss classified information. Disclosure of the Committee's deliberations could adversely affect the Committee's ability to function as a group in providing the Secretary of State with advice on matters of critical importance to the conduct of United States foreign policy. The purpose of the meetings will be to discuss the current situation in South Africa and to evaluate U.S. policy toward South Africa.

Requests for further information should be directed to: Ann Miller (202) 632-0190, 1730 K Street NW., Washington, DC 20006.

Dated: August 12, 1986.

C. William Kontos,

Executive Director.

[FR Doc. 86-18767 Filed 8-19-86; 8:45 am]

BILLING CODE 4710-10-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences: Correction of Notice of Review of Petitions, Public Hearings, List of Articles To Be Sent to the U.S. International Trade Commission for Review

On July 25, the Trade Policy Staff Committee provided notice (51 FR 26784) of an amendment to its notice of July 18 (51 FR 26088) concerning petitions accepted for review in the 1986 annual review of the Generalized System of Preferences. The purpose of this notice is to make two corrections in the notice of July 25:

(1) In respect of case number 86-55, the TSUSA number should read 735.0970 instead of 735.0995pt and in the column titled "Article" the "]" after the words "polyvinyl chloride" should be deleted.

(2) In respect of case number 86-56, in the column title "Article" the words "Toy ballons" should read "Toy ballons and punch balls".

David P. Shark,

Acting Chairman, Trade Policy Staff Committee.

[FR Doc. 86-18743 Filed 8-19-86; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Office of Hearings

[Docket 44247]

Texas-Mexico (1986) Service Case; Assignment of Proceeding

This proceeding has been assigned to Administrative Law Judge William A. Kane, Jr. Future communications with respect to this proceeding should be addressed to him at U.S. Department of Transportation, Office of Hearings, M-50, Room 9400A, Nassif Bldg, 400 7th Street, SW., Washington, DC 20590, telephone (202) 366-2142.

Dated: Washington, DC, August 14, 1986.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 86-18797 Filed 8-19-86; 8:45 am]

BILLING CODE 4920-67-M

[Docket No. 44247]

Texas-Mexico (1986) Service Case; Prehearing Conference

Notice is hereby given that a prehearing conference in the above-titled proceeding will be held on September 4, 1986, at 10:00 a.m. (local time), in Room 5332, Nassif Building, 400 7th Street, SW., Washington, DC before the undersigned administrative law judge.

The parties are directed to submit one copy to each other and four copies to the Judge of (1) any proposals for changes in the evidence request contained in the Appendix to Order 86-8-17, (2) proposed procedural dates, (3) proposed stipulations and (4) a statement of position. This material shall be submitted on or before September 2, 1986.

Dated at Washington, DC, August 14, 1986.

William A. Kane, Jr.,

Administrative Law Judge.

[FR Doc. 86-18796 Filed 8-19-86; 8:45 am]

BILLING CODE 4910-62-M

UNITED STATES INFORMATION AGENCY

Privacy Act of 1974; System of Records

AGENCY: United States Information Agency.

ACTION: Privacy Act of 1974; Proposed amendment of existing system of records.

SUMMARY: As required by the Privacy Act of 1974 (5 U.S.C. 552a), the United States Information Agency is publishing for comment a revision to System USIA-61, entitled "American Travelers Funded by USIA Private Sector Grants." The new title of the System will be "Americans Funded by USIA Private Sector Grants." The kinds of records being collected consist of names of individuals who have traveled overseas at U.S. Government expense under USIA grants, and also individuals who are competing in regional auditions for designations as "Artistic Ambassadors," and a chance to represent the U.S. Government overseas in musical presentations to foreign audiences.

The kinds of information being collected consist of:

For travelers: Name, position, organization affiliation, grantee organization, grant number, date, destination, purpose of travel;

For musical talent: Name, biographic data, where nominee will perform, nominee's repertoire, past concerts and performances, address, phone number, education, date and place of birth and citizenship.

USIA's Office of Private Sector Programs will use these records to aid in responding to the Congress on travelers who travel on U.S. Government grants, and in the evaluation of applicants' musical talent and ability to act as spokespersons for the United States in communicating with foreign audiences.

EFFECTIVE DATE: The system shall become effective as proposed without further comment on October 15, 1986, unless comments are received which would result in a contrary determination.

FOR FURTHER INFORMATION CONTACT: John Robilette, Director, Artistic Ambassador Program, USIA, 301 Fourth Street, SW., Washington, DC 20547, telephone (202) 485-7338, or Sidney Hamolsky, Deputy Director, Office of Private Sector Programs, USIA, 301 Fourth Street, SW., Washington, DC 20547, telephone 485-7348.

Dated: August 8, 1986.

Robert F. Smith,

Director, Office of Private Sector Programs.

USIA—61

SYSTEM NAME:

Americans Funded by USIA Private Sector Grants.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

USIA, Office of Private Sector Programs, Room 216, 301–4th Street, SW., Washington, DC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have traveled at U.S. Government expense under USIA Private Sector grants in the performance of grant requirements and biographic information on individuals nominated for the Agency's Artistic Ambassador Program from eligible graduate music schools and conservatories in the United States.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, position, organizational affiliation, grantee organization, grant number, date, destination, purpose of travel; biographic data—where nominee will peform, nominee's repertoire, past concerts and performances, address, telephone number, education, date and place of birth and citizenship.

AUTHORITY FOR MAINTENANCE OF SYSTEM:

The United States Information Agency Authorization Act, Fiscal Years 1984 and 1985, Pub. L. 98–164 and the Fullbright-Hays Act (22 U.S.C. 2451, et seq.).

PURPOSES:

To comply with the provisions of Pub. L. 98–164 which require USIA to report to Congress the names of individuals who in the preceding five years made two or more trips involving foreign travel financed in whole or substantial part by grants from the Private Sector Program. The Artistic Ambassador Program files will be used to select individuals to compete in regional auditions designated by geographical distribution (*i.e.* West and Southwest, Midwest and South, East Coast).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information relating to American Travelers in this system will be used to compile an annual report for the Speaker of the House of Representatives and the Chairman of the Senate Foreign Relations Committee as required by Pub. L. 98–164. This file has no other use. Users of this file will be employees of the USIA Office of Private Sector Programs having a need to access the information.

The Artistic Ambassador Program file will be used by employees of the USIA Office of Private Sector Programs in performance of their duties and by judges to record information on the technical and artistic ability of the artist, which information is ultimately used in selecting winners of competition.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information will be maintained in a word processor on list processing with limited access and in file folders under individuals' names.

RETRIEVABILITY:

Records are retrieved by name and organizational affiliation.

SAFEGUARDS:

Records of American travelers are maintained on a word processor located in the USIA Office of Private Sector Programs, and are password protected, so that the file can only be accessed by employees having a need to obtain information which is available only in the file.

Records of the Artistic Ambassador Program are maintained in file folders and kept in file cabinets secured by bar lock or combination lock.

RETENTION AND DISPOSAL:

Files will be retained for a minimum of five years, but not longer than seven years, at which time they will be disposed of in accordance with the USIA disposal schedules.

SYSTEM MANAGERS AND ADDRESS:

Chief, Private Sector Programs Division (E/PS), U.S. Information Agency, 301–4th Street, SW., Washington, DC 20547.

NOTIFICATION PROCEDURE:

Freedom of Information/Privacy Acts Coordinator (GC), U.S. Information Agency, 301–4th Street, SW., Washington, DC 20547.

RECORDS ACCESS PROCEDURES:

Requests from individuals should be addressed to the Freedom of Information/Privacy Acts Coordinator (GC), U.S. Information Agency, 301–4th Street, SW., Washington, DC 20547.

CONTESTING RECORD PROCEDURES:

The U.S. Information Agency's rules for access and for contesting contents and appeal of initial determinations by the individual concerned are published in Part 505, Title 22, U.S. Code of Federal Regulations.

RECORD SOURCE CATEGORIES:

Information obtained from grantee organizations and individual grantees.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 86–18713 Filed 8–19–86; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 161
Wednesday, August 20, 1986

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).

CONTENTS

1

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 1:54 p.m. on Thursday, August 14, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to:

(A)(1) receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in The State Exchange Bank, Yates Center, Kansas, which was closed by the State Bank Commissioner for the State of Kansas on Thursday, August 14, 1986; (2) accept the bid for the transaction submitted by The Girard National Bank, Girard, Kansas; and (3) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction; and

(B) consider a recommendation with respect to the initiation, termination, or conduct of administrative enforement proceedings involving a certain insured bank or officers, directors, employees, agents, or other persons participating in the conduct of the affairs thereof:

Names of persons and name and location of bank authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

In calling the meeting, the Board determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Mr. Dean S. Marriott, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), 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 pursuant to subsections (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)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was recessed at 2:04 p.m. and at 3:35 p.m. that same day the meeting was reconvened in the Board Room on the Sixth Floor of the FDIC Building located at 550 17th Street, NW., Washington, DC, at which time the Board of Directors considered a request for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act.

In reconvening the meeting, the Board determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), 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 pursuant to 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)(B)).

The meeting was recessed at 3:53 p.m. and at 8:15 p.m. that same day the meeting was reconvened, by telephone conference call, at which time the Board of Directors adopted a resolution: (1) Making funds available for the payment of insured deposits made in Citizens National Bank & Trust Co., Oklahoma City, Oklahoma, which was closed by the Senior Deputy Comptroller for Bank Supervision, Office of the Comptroller of the Currency, on Thursday, August 14, 1986; (2) accepting the bid of The Liberty National Bank and Trust Company of Oklahoma City, Oklahoma City, Oklahoma, for the transfer of the insured and fully secured or preferred deposits of the closed bank; and (3) designating The Liberty National Bank and Trust Company of Oklahoma City, Oklahoma City, Oklahoma, as the agent for the Corporation for the payment of insured and fully secured or preferred deposits of the closed bank.

In reconvening the meeting, the Board determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Mr. Dean S. Marriott, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), 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 pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: August 15, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary

[FR Doc. 86-18887 Filed 8-18-86; 2:41 pm]

BILLING CODE 6714-01-M

2

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

August 14, 1986.

TIME AND DATE: 10 a.m., Thursday, August 21, 1986.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Greenwich Collieries, Docket No. PENN 85-188-R, and Pennsylvania Mines Corp., Docket No. PENN 86-33. (Consideration of a Petition for Interlocutory Review and Motion to Stay).

2. U.S. Steel Mining Co., Docket No. PENN 82-335, and

3. U.S. Steel Mining Co., Docket No. WEVA 83-82 and WEVA 83-95 (Issues in these two cases include whether the administrative law judges erred in concluding that violations of 30 CFR 70.101, a mandatory standard dealing with control of respirable dust with quartz present, were significant and substantial.)

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary

aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 20 CFR 2706.150(a)(3) and 2706.160(e).

CONTACT PERSON FOR MORE INFORMATION: Jëan Ellen (202) 653–5629.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 86–18835 Filed 8–18–86; 10:27 a.m.]

BILLING CODE 6735–01–M

3

RAILROAD RETIREMENT BOARD

Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on August 26, 1986, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 Rush Street, Chicago, Illinois, 60611. The agenda for the meeting follows:

(1) Proposed Changes in the RUIA Regulations
(2) Board Order 75–3
(3) Final Rule Regulation on Primary Insurance Amount Determinations
(4) Reorganization of Bureau of Unemployment and Sickness Insurance
(5) Requisitions for the Office of Inspector General
(6) Appeal of J.R. Dickerson under the Railroad Unemployment Insurance Act

The entire meeting will be open to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board, COM No. 312–751–4920, TFS No. 387–4920.

Dated: August 15, 1986.

Beatrice Ezerski,

Secretary of the Board.

[FR Doc. 86–18888 Filed 8–18–86; 2:46 pm]

BILLING CODE 7905–01–M

4

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of August 18, 1986:

A closed meeting will be held on Tuesday, August 19, 1986, at 10:00 a.m.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Grundfest, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, August 19, 1986, at 10:00 a.m., will be:

Post oral argument discussion.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Gerald Laporte at (202) 272–3085.

Jonathan G. Katz,

Secretary.

August 18, 1986.

[FR Doc 86–18911 Filed 8–18–86; 3:55 pm]

BILLING CODE 8010–01–M

federal register

Wednesday
August 20, 1986

Part II

Department of Energy

Office of Conservation and Renewable Energy

10 CFR Part 435

Mandatory Energy Conservation Standards for New Federal Residential Buildings; Notice of Proposed Interim Rule and Public Hearings and Finding of No Significant Impact (FONSI) on Proposed Energy Conservation Standards for New Federal Residential Buildings

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 435

[Docket No. CAS-RM-79-112-B]

Mandatory Energy Conservation Standards for New Federal Residential Buildings

AGENCY: Conservation and Renewable Energy Office, DOE.

ACTION: Notice of proposed interim rule and public hearings.

SUMMARY: In accordance with Title III of the Energy Conservation and Production Act, the U.S. Department of Energy (DOE) is developing energy conservation performance standards for new buildings. The law provides that the standards will be voluntary for new non-Federal buildings, but will be mandatory for new federal buildings.

Today, DOE is proposing interim mandatory energy conservation standards for new Federal residential buildings. The proposal requires a Federal agency to establish an energy consumption goal for the design of a new Federal residential building using the computerized calculation procedure provided in a designated Federal microcomputer program and to adopt such procedures as may be necessary to assure that the design of a new Federal residential building is not less energy conserving than the energy consumption goal established for the design. The computer program determines the most effective set of energy conservation measures, selected from among the measures included within the program, that will produce the optimum life cycle cost for a specific type of residential building in the geographic location where it will be constructed. This most effective set of measures is expressed as a total point score which, in turn, serves as the energy consumption goal for the design of the Federal residential building. The computer program produces a compliance point system that is intended to be attached to housing Requests for Proposals issued by Agencies of the Federal government. The point system, which is specifically tailored to each Request, is to be used by proposers to demonstrate that their specific designs comply with the energy consumption goal. The point system also provides a standard method for each proposer to estimate the energy cost over the life of the building in discounted dollars. This estimate can then be used by evaluators to estimate the total energy performance of each proposal.

The interim standards were designed specifically to accommodate the types of Federal construction most commonly built, Federal economic parameters and Federal procurement procedures. The Department is in the process of developing energy conservation voluntary standards that would be more applicable to the non-Federal residential and commercial sectors to be issued at a future date. The Department recognizes that the standards proposed today could be modified for other than Federal use. It cautions any person or entity that wishes to do so. The Department does not recommend use of the proposed interim standards for non-Federal sector application without a substantial review of the interim standards for applicability to the particular use.

DATES: Written comments on the proposed interim rule must be received by the Department by November 18, 1986.

Public hearings will be held in Chicago, Illinois on October 21, 1986, San Francisco, California on October 23, 1986, and Washington, DC on October 28, 1986.

Requests to speak at the public hearings must be received by October 17, 1986.

ADDRESSES: All written comments (7 copies), requests to speak at the public hearings, and requests for the supporting documentation are to be submitted to: Office of Conservation and Renewable Energy, Hearings and Dockets Branch, U.S. Department of Energy, Docket Number CAS-RM-79-112-B, 1000 Independence Avenue SW., Room 6B-025, Washington, DC 20585, (202) 252-9319.

All of the public hearings will begin at 9:30 a.m., and will be held at the following locations:

Chicago, Illinois, Kluczynski Federal Office Building, 230 Dearborn Street, Room 3864 (38th Floor), Chicago, Illinois 60604

San Francisco, California, Federal Office Building, 450 Golden Gate Avenue (between Polk and Larkin Streets), Room 2007 (2nd Floor), San Francisco, California 94102

Washington, DC, U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue SW., Room 1E-245 (1st Floor, E Corridor), Washington, DC 20585

Copies of the transcripts of the public hearings, the supporting documentation, and the written public comments received may be obtained from the DOE Freedom of Information Reading Room, Room 1E-190, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-6020, 9:00 a.m.-4:00 p.m.

FOR FURTHER INFORMATION CONTACT:

Jean J. Boulin, Building Systems Division, CE-131, U.S. Department of Energy, Room GF-253, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-9835

Paul C. Cahill, Esq., Office of General Counsel, GC-12, U.S. Department of Energy, Room 6B-144, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-9519

SUPPLEMENTARY INFORMATION: Today, the U.S. Department of Energy (DOE) is proposing interim energy performance standards that will be mandatory for new Federal residential buildings as required by the Energy Conservation Standards for New Buildings Act of 1976, as amended, (Act) 42 U.S.C. 6831 *et seq.* The proposal would require Federal agencies to design new Federal residential buildings in accordance with the energy conservation requirements required by proposed § 435.33. This proposal would not regulate non-Federal construction. These proposed interim standards have been developed specifically for Federal agencies that construct residential buildings. The calculation procedures used to apply the proposed interim standards to Federal residential construction are not intended for use by the non-Federal sector. DOE intends to develop and promulgate a more appropriate format for voluntary interim energy performance standards for use in the private sector at some future date.

I. Background

A. Legislative History

Originally enacted on August 14, 1976 as Title III of the Energy Conservation and Production Act, Pub. L. 94–385, 90 Stat 1144 *et seq.*, the Act required the U.S. Department of Housing and Urban Development (HUD) to develop, promulgate, implement and enforce the compliance with performance standards to improve the energy efficiency of all new buildings in the nation. On August 4, 1977, the Act was amended by section 304(a), 42 U.S.C. section 7154, of the Department of Energy Organization Act, Pub. L. 95–91, 91 Stat. 565 *et seq.*, which transferred from HUD to DOE the responsibility to develop and promulgate the standards. HUD retained its implementation responsibilities.

In November, 1979, DOE published proposed building energy performance standards (BEPS) in the **Federal Register**, 44 FR 68120 (November 28, 1979). The notice was controversial and generated over 1800 comments totaling 40,000 pages. The comments included technical and other substantive criticisms of the performance standards. Many who commented expressed concern that the proposed standards were not technically practicable nor economically achievable. Furthermore, many who commented stated that the proposed standards placed too great a reliance upon the use of a large and complex computer program that many who commented said they neither understood nor could afford to use. Section II discusses these comments in more detail.

Less than a year after the publication of the proposed standards, the Act was again amended. Section 326, 94 Stat. 1629, of the Housing and Community Development Act of 1980, Pub. L. 96–399 (October 8, 1980) required that DOE promulgate interim standards by August 1, 1981, and extended the promulgation date of the final standards to April 1, 1983. The interim standards were only to apply to new Federal buildings. In addition, the Act required that demonstration projects be conducted in at least two geographical areas.

In August 1981, Congress again amended the Act. Subtitle D of Title 10 of the Omnibus Reconciliation Act of 1981, Pub. L. 97–35, amended the Act to create the term "voluntary performance standards," eliminated the provision for a possible statutory sanction for noncompliance, added a provision that, except for Federal buildings, "voluntary standards will be developed solely as guidelines to provide technical assistance for the design and construction of energy efficient buildings," and extended the deadline for DOE to furnish reports on the demonstration projects to the Congress.

The legislative change of direction that has taken place since original enactment of the Act in 1976 required DOE to make a fundamental change in the regulatory approach that Congress had earlier directed the Department to take. DOE retains the responsibility for developing performance standards to achieve the maximum practicable improvements in energy efficiency and use of non-depletable resources for all new buildings. However, these standards now serve a dual purpose. The first purpose of the performance standards is to prescribe mandatory design requirements for the Federal sector. However, for non-Federal buildings, voluntary performance standards serve only as guidelines for the purpose of providing technical assistance for the design and construction of energy efficient buildings. Accordingly, the performance standards serve a second purpose of providing sound technical information and examples of efficient design practices for voluntary use in the private sector. Today's proposed rulemaking only partially fulfills DOE's responsibility for residential buildings. DOE intends to modify the approach taken in today's proposal to provide guidelines that can serve as technical assistance for residential building design and that are more applicable in the non-Federal sector.

B. The 1979 BEPS Proposal

In November 1979, DOE proposed Building Energy Performance Standards (the BEPS) for new buildings, 44 FR 68120 (November 28, 1979), that specified maximum levels, expressed in Btu/ft^2/yr, of total building energy consumption to which new buildings would be designed. The most significant aspect of the BEPS was that it was a whole building performance standard that set limits for the building as a whole.

It attempted to combine energy use of specific energy-using systems such as the heating, cooling or domestic hot water systems. The proposed BEPS consisted of three requirements. First, energy budget levels would be set; second, they would be applied to a specific building design to obtain an annual rate of consumption; and third, the estimated rate of energy consumption had to be calculated using a method established by DOE. Instead of a hand-written compliance procedure, the proposed BEPS required the use of complex main-frame computer simulations to demonstrate that the designed energy consumption of a new building did not exceed the energy level specified for that residential building type in its applicable climate area. The proposed BEPS were based on life cycle cost analyses and defined for four different residential building types—multifamily high-rise, multifamily low-rise, single family attached and single family detached—and included a procedure to select an appropriate climate zone from 78 Standard Metropolitan Statistical Areas (SMSA).

DOE recognized that many aids would be needed to simplify compliance using approaches such as model codes or computer software that assisted in determining the whole building budget levels but in formats familiar to members of the building industry. These compliance assistance tools were in the process of being developed by DOE when the implementation sections of the statutes were repealed by the Omnibus Budget Reconciliation Act. Accordingly, the compliance assistance tools were never completed.

DOE received more than 1,800 written responses during the official comment period from architects, engineers, builders, building trades organizations, state and local governments, financial institutions, conservation associations and private citizens. In addition, individuals and organizations representing large memberships prepared testimony and additional documents for DOE to consider.

II. Summary of Public Comment on the BEPS Proposal

When Congress enacted the several amendments to the Act cited above, it changed the regulatory scope of the performance standards. Consequently, many of the comments received in November 1979 are no longer applicable or appropriate. Only those comments that continue to have relevance to today's issuance are discussed below.

This section is organized as follows: First, the general comments made in support of or in opposition to the standards are described; second, comments by subject are identified.

DOE has learned a great deal from the comments made on the BEPS proposal. Most of these comments have been addressed in the research subsequent to the BEPS. Many of the suggestions made by those who commented have been incorporated into the proposed interim residential standards. In addition, many of the remaining issues are the subject of current DOE research projects. For further reference to many of the issues listed below, the reader is referred to the *Proposed Interim Energy Conservation Standards for the Design of New Federal Residential Buildings-Technical Support Document* (September 1985) prepared for the proposed interim standards that discusses the technical materials, the assumptions and the procedures used in developing the proposed interim residential standards. A copy of the *Technical Support Document* can be obtained by contacting the DOE Office of Conservation and Renewable Energy, Office of Hearings and Dockets whose address and phone number are listed in the addresses section. DOE is interested in the comments and responses of the public on the many issues that were part of the BEPS proposal and their treatment in today's proposal.

A. General Comments

Only a minority of those who commented favored some form of mandatory, whole building performance standard; and most who commented, even those in favor of the mandatory performance approach, had some form of criticism of the BEPS as written. Those from several building industry groups who commented, but especially from consumer groups, representatives of the American Institute of Architects (AIA), the Masonry Institute Committee and manufacturers from the National Fenestration Council, supported the performance approach because it permitted maximum design flexibility. Furthermore, only a few of those who commented advocated the performance path as the only acceptable approach. Many were willing to accept the BEPS only if the standards were made voluntary and only if adequate equivalent component and prescriptive standards were permitted.

The majority of those who commented opposed the concept of performance standards under any circumstances. More than 300 of those who commented suggested that DOE discard the performance standards in total and adopt a standard based on the codes developed by the national code-setting associations such as the Southern Building Code Conference. This would provide the building industry with the option of using either the BEPS or a familiar equivalent. An overwhelming majority of those who commented objected to the imposition of such an untested approach as the whole building performance standards, especially in the absence of approved alternatives. The whole building performance approach, as proposed by DOE, was found to be technically complicated and not understood by the majority of those who would have to use it, mainly, designers, builders and code officials; it would therefore prove both costly and ineffective. In addition, many of those who commented suggested that DOE could satisfy the legislative requirement to develop performance standards for buildings, as well as greatly simplify the standards program, if it established thermal standards for the building envelope using traditional "R" (thermal resistance) and "U" (thermal transmittance) values. Many of those who commented specifically identified themselves as builders and members of the National Association of Home Builders (NAHB), as well as architects, engineers, product manufacturers, and state and local code enforcement officials.

DOE Response: The proposed interim standards are not designed in the traditional sense as described by those who commented on the 1979 BEPS proposal, nor do they require a complex application of a complicated computer program. Instead they are performance standards based on the latest and most complete energy and economic analysis available. While they are performance-based standards, they are applied through a simplified point system that allows design flexibility without requiring difficult calculations. They use a computer program, but it is simple to use and does not require lengthy schooling in its use.

B. Specific Comments

1. Climate

The BEPS were based on climate considerations derived on 10 base cities. This information was used to simulate climate data for an additional 68 climate zones. Each of the 78 climate zones was a Standard Metropolitan Statistical Area (SMSA). The BEPS expressed the range of climatic variations expected in the U.S. About 175 comments discussed the issue of climate. Of these, 80% addressed DOE's selection of climate zones. Most who commented believed that the procedures for determining an applicable climate zone allowed for human error and misinterpretation and were unduly complicated for those not located within the 78 SMSAs.

Many who commented opposed the selection of climate zones from SMSAs because they are political and geographic boundaries, not climate boundaries. There was a general feeling that extrapolation of 78 zones from climate data simulated in only ten cities was inadequate and would produce unacceptable and erroneous results. Many state and local officials claimed that the climate determination approach caused their building budgets to be unrealistic for their actual climates. Other comments, about 25%, suggested that DOE had not considered enough factors in its evaluation of climate data. Other important factors mentioned were humidity, wind chill, earth sheltering, trees, orientation, ventilation and microclimate.

A few who commented objected to using heating and cooling degree days as a criterion. They argued that DOE's approach tended to penalize regions that had relatively short periods of large temperature differentials to the benefit of those regions with the same degree days and longer periods of moderate temperature differentials.

DOE Response: The problem of selecting reasonable climate zones for use in the proposed interim standards has largely been taken care of through the availability of more up-to-date and comprehensive weather data and more extensive research into climate effects. To develop climate data for today's proposal, DOE chose to use heating and cooling degree days for the 3400 National Oceanographic and

Atmospheric Administration (NOAA) stations (20-year average 1951–1980), and latent humidity calculated from Test Reference Year (TRY) weather tapes for 51 locations.

2. Prototypes and Conservation Options

One hundred and four individuals and organizations made specific comments on the residential prototypes selected by DOE. The majority (73) of the comments came from public interest groups and the building industry: home builders, building products manufacturers, and designers. There was a general consensus that the range of conservation options considered was too narrow and that the prototypes did not represent current home building practices.

DOE Response: For today's proposed interim standards, DOE selected prototypes that matched as closely as possible the building types currently built by the Federal government. Prototypes were originally selected from data derived from the *National Association of Homebuilders' Survey on New Residential Construction* (1979) and then modified to meet the specific criteria of Federal government construction specifications.

The proposed interim standards are comprised of an expanded number of possible energy conservation options from what was included in the proposed BEPS. These include conventional and widely-used ceiling, wall and floor insulation; infiltration control measures; glazing materials and construction; and, heating and cooling equipment options. Also included were options that dealt with orientation, sunspaces and movable insulation. The options are representative of current building practices as determined by surveys conducted by the National Association of Homebuilders and the Manufactured Housing Institute and verified by DOE.

(a) Evaluation of Passive Solar Design Inadequate

Solar groups commented that DOE failed to conduct a comprehensive evaluation of passive storage and distribution systems because it treated solar energy as an add-on to various levels of energy conservation design, rather than an integral part of the building design. These groups cited the fact that DOE only considered the passive solar benefits of 4" slab-on-grade construction in combination with window redistribution, and assumed that the exterior appearance of a house would not change. Also, passive cooling systems were not analyzed at all, ignoring proven solar techniques such as solar load controls (shades, awnings, and overhangs), mass walls, and earth sheltering. They also suggested that DOE provide incentives to incorporate solar features in the original house design.

DOE Response: More attention has been paid to solar options in the proposed interim standards, especially passive solar options. The proposed interim standards allow a builder to integrate orientation, window treatments and sunspaces into the building design as alternatives to other conservation options. Many of the other options, such as the effects of thermal mass, shading, vegetation, and earth sheltering, have not been incorporated because they warrant additional research or they were not particularly applicable to Federal construction. For certain of those techniques, such as thermal mass, DOE currently has research projects underway and intends to incorporate that research into the standards at some later date.

(b) Treatment of Masonry Construction Inadequate

DOE's treatment of masonry construction was criticized by fifteen representatives of the masonry industry. They cited studies that, they claimed, repudiated DOE's conclusions. They argued that, because of thermal storage and lag properties, masonry, concrete, or similar weight walls having low R-values may be as effective as frame or metal paneled walls having higher R-values.

DOE Response: Although not included in this proposed rule, the treatment of masonry construction is currently the subject of a DOE research project (see previous response). During development of the proposed interim standards, available data were inadequate to justify conclusion on this topic.

(c) User Operated Conservation Measures Should Be Included

BEPS excluded conservation measures that, although potentially cost-effective, depended upon user operation. This decision was challenged by more than one-third of those who commented on the prototypes and energy conservation options. Their main point was that DOE had been inconsistent in the treatment of user behavior because it assumed that a homeowner would be sufficiently involved in energy conservation to open windows for natural ventilation in the summer, but not sufficiently involved to use night-setback of heating controls in the winter. Other user operated measures that were suggested included cross ventilation and exhaust fans; solar load controls, such as insulated drapes, shutters and awnings; and the use of parlor doors and transoms for indoor heat control.

DOE Response: Where adequate information is available, DOE has included provision for energy conservation options such as movable insulation and a night setback thermostat in the proposed interim standards. The criteria for including these options was dependent on their possible impact and whether or not they were still viable if not correctly operated most of the time. DOE studies, conducted by the Office of Renewable Energy and referred to in the *Technical Support Document*, show that while some occupants diligently make daily or seasonal use of manually-operated conservation devices, a significant number have been shown to irregularly operate or neglect to operate conservation options requiring regular attention. This suggests the likelihood of a net energy loss. However, DOE continues to believe that seasonal setting of night setback thermostats and the proper operation of movable insulation falls in the same category as more widely-used options, such as combination screen and storm windows, where the occupant will follow proper operation procedures.

(d) Treatment of House Orientation Inadequate

Tract developers commented that orientation requirements would raise costs unnecessarily and discourage tract development. Others who commented felt that DOE did not pay enough attention to house orientation in the proposed BEPS standards and placed too much emphasis on the building envelope.

DOE Response: As part of the overall analysis to develop the energy data base that provides the substance for the proposed interim standards, DOE performed analysis on the effect of eight different structure orientations (N, NE, E, NW, W, SW, S, SE), and the relative percentage of window area at each orientation, on heating and cooling load criteria. In the proposed interim standards, designers are given credit for such things as increasing the window-to-wall ratio on southern exposures in appropriate climate locations.

3. Design Energy Budgets

More than one hundred and sixty comments discussed the Design Energy Budgets for single-family residences. The energy Budgets, as contemplated in the BEPS program, are no longer relevant. However, many of the comments received were based on technical information that is still

relevant and, consequently, are being included in this section.

(a) Research Basis for the Design Energy Budgets Inadequate

First of all, those who commented felt that the research basis for the selection of the budgets was never properly explained. Many who commented pointed out that the data used for energy costs and construction costs in the life cycle cost analysis were too old, that the budgets had never been tested against actual energy consumption, and that the stringency of the budget levels was not uniform.

DOE Response: Inconsistent budgets for the BEPS may have been the result of modeling the prototypes in only ten cities and then extrapolating for the remaining 68 SMSAs. In developing the data base for the proposed interim standards, DOE selected 45 cities as representative of the continental United States plus Hawaii and Alaska. These cities were selected because they individually reflected the climates of virtually any locality in the U.S. As stated earlier, the 45 cities were deemed representative of more than 3400 U.S. locations. The costs used in the life cycle cost analyses were taken directly from the 45 cities and are believed to be representative. The selection of standard levels outside the 45 locations is performed through the use of a location climate multiplier which is built directly into the proposed interim standards' compliance procedures.

The comments that the energy and construction costs used in the BEPS were too out-dated, are no longer relevant. The costs used in the proposed interim standards are current, are regionally disaggregated, and can be updated at any time. The comment that the budget levels had never been tested is true but also no longer relevant. Since development of the BEPS, the research conducted in support of today's proposal has demonstrated the agreement between the data underlying the proposed interim standards and actual energy consumption. For further reference, please consult the *Technical Support Document.*

(b) Air Conditioning and Heating Budgets Should Not Be Combined

Many who commented disagreed with DOE's assumption that all homes will be built with central air conditioning and heating. They claimed that this assumption of air conditioning for all residences requires levels of conservation investment that are not cost-effective for homes built without air conditioning. According to the National Institute for Building Sciences (NIBS), 33% of all new residences built in 1978 had no central air conditioning. Others who commented noted that the BEPS allowance for air conditioning gives designers a loophole; they could use the air conditioning allowance to reduce building envelope requirements by not including air conditioning in the design, and then add room air conditioning later. Some private citizens wrote that all residences should be constructed to be comfortable without air conditioning. Natural gas utilities, in general, protested that DOE should not assume that air conditioning will be supplied by electricity. Gas industry representatives said that DOE should establish separate cooling budgets by fuel type in order to encourage continued development of efficient gas-fired absorption air conditioners.

DOE Response: The analysis conducted to develop the proposed interim standards assumed that heating and cooling equipment are part of the design of all new homes. This was done for two reasons. First, for reasons of occupant comfort, virtually all Federal residences are built with both types of equipment. Second, in an attempt to cover all possible energy conservation options, heating and cooling equipment was factored into the energy analysis. However, in complying with the standard the user can remove either heating or cooling compliance requirement and still meet the minimum levels.

DOE is not interested in creating what has been termed a "loophole", by some who commented, in the design of new Federal residences. In this case the "loophole" would be a method designers could use to circumvent the proposed interim standards by designing homes without central air conditioning for purposes of reducing envelope requirements and then later on adding room air conditioning. The proposed interim standards will allow for the design of a home without air conditioning, but DOE believes that air conditioning is necessary under some conditions in virtually all climates to meet occupant comfort needs. In low cooling areas, the proposed interim standards compensate for the air conditioning equipment cost by reducing the necessary equipment efficiencies for the equipment.

(c) Assumptions on Foundation Types and Basements Invalid

Several designers, home builders (including the National Association of Home Builders), and building materials manufacturers questioned the validity of DOE's treatment of foundation types and house shapes in calculating the energy budget levels for single family residences.

Some who commented disagreed with the BEPS assumptions that all basements will be insulated and that there will be no transfer of heating energy between the basement and the living space above.

DOE Response: DOE agrees that having only one basement option would be too limiting. This issue has been resolved by including the three different foundation and basement spaces found in Federal residential construction-full basements, crawl spaces, and slabs-on-grade. Energy analysis was performed for a minimum of three different insulation levels for each basement or foundation type, but insulation is not required if the minimum conservation level is met by other options. Also, the proposed rule does take into consideration the heat energy transfer between basement and living spaces.

4. Domestic Hot Water Budgets

Approximately one hundred people criticized the domestic hot water (DHW) budgets for single family residences. Of these comments, thirty-seven were from utilities and twenty-three from the building industry. Some who commented, including the National Association of Home Builders and the Mineral Insulation Manufacturers Association, believed that domestic hot water should not be included in the BEPS at all because water heaters have a short life span and are easily replaced. Several others who commented said that, as minimum efficiency standards for hot water heaters go into effect, inclusion of DHW budgets in the BEPS would be unnecessary. Many who commented, including home builders, utilities, and public interest groups, disagreed with DOE's decision to allow energy saved through solar water heating to be added on to the budget for heating and cooling. One home builder wrote that this amounted to "curing the losses of a not-too-efficient building shell with a not-too-cost-effective solar water heater." Utilities, the Center for Renewable Resources, and the National Conference of States on Building Codes and Standards believed that energy budget credits for solar water heating would discourage conservation measures in the building shell.

Others who commented suggested that, should BEPS allow credit for any conservation techniques in hot water heating, it would discourage conservation measures in the building shell.

DOE Response: Efficient domestic hot water systems, whether they are

conventional or solar systems, provide significant opportunities for energy conservation. Depending on envelope and equipment efficiency, DHW systems can use up to 60% of a single residence's annual energy consumption. The fact that water heaters have a shorter life than other residential components has been taken into consideration in the life cycle cost analyses; expected life of appliances and equipment are factored into the optimization process. DOE has attempted to give designers a great deal of flexibility in their use of DHW systems and, at the same time, require the selection of energy efficient systems. Accordingly, the use of minimum efficiency levels based on cost-effectiveness is an integral part of the proposed interim standards.

Several comments addressed the appropriateness of including solar hot water systems in the BEPS proposal. Since that time, solar water systems have become more cost-effective, more reliable and a viable feature on homes in many climates. Therefore, the proposed interim standards allow solar hot water systems as an appropriate option.

Finally, the proposed interim standards consider heating and cooling levels separately from domestic hot water levels. They are not interactive. Therefore a more efficient hot water system will not affect the minimum levels set for heating and cooling compliance requirements in any climate location.

5. Life Cycle Cost Analysis

Eighty-five individuals or organizations commented specifically on the life cycle cost analysis for single-family residences. Thirty-five comments came from the building industry and twenty comments came from public interest groups and private citizens. Only three comments favored DOE's treatment of the life cycle cost analysis. A few home builders, private citizens, and electric utilities felt that life cycle costing is too complex for single-family residences, and that energy budgets should be based on simple R or U value calculations for the building shell. Many who commented said that DOE's life cycle cost analysis is meaningless because of the use of forecasts, estimates and untested assumptions. They felt that if a life cycle costing approach is used, accurate data for all variables must be developed and any assumptions should be backed by evidence. Much of this criticism of the BEPS life cycle cost analysis focused on the data used by DOE to calculate energy costs and costs for construction.

DOE Response: Federal agencies are required to use the life cycle cost methodology provided by Subpart A, as amended, of 10 CFR Part 436, issued by DOE pursuant to Executive Order 12003 and section 545, 42 U.S.C. Sec. 8255 of the "National Energy Conservation and Policy Act" (NECPA) (Pub. L. 95–619). Subpart A has been amended since the publication of the BEPS proposal, on November 18, 1981 (46 FR 56718). Those persons interested in a further understanding of the assumptions in the life cycle cost methodology are referred to the text of Subpart A. The life cycle cost methodology in Subpart A is subject to periodic updating, in separate rulemakings. Comments concerning the methodology should be raised in the course of such a future proceeding and not as part of the comments on today's proposal.

(a) Range of Conservation Options Too Limited

Others who commented, including solar interests, builders, electric utilities, and public interest groups, found that the life cycle cost analysis was too limited, i.e., DOE did not include enough conservation options in the small number of prototypes that were analyzed. The budgets at best minimize life cycle costs for these prototypes, but were too lax or too stringent for other homes. The National Conference of States on Building Codes and Standards also wrote that the analysis should cover a wider range of house types and sizes, and more conservation options.

The Consumer Energy Council of America, Rural America, and several others who commented criticized DOE's decision to set an upper limit on insulation levels considered in the life cycle cost analysis. They asserted that this restriction makes it impossible to go to the true life cycle minimum in colder climates and that it invalidates the sensitivity analyses DOE performed.

DOE Response: DOE agrees that the number of building prototypes and conservation options were too limited in the BEPS proposal and has included additional prototypes and conservation options in the proposed interim standards. DOE is especially interested in comments that would address other prototypes and conservation options and the Proposed reasons for their inclusion. Comments on the range of conservation options considered by DOE are discussed below in more detail in "Single-Family Residences—Prototypes".

The proposed interim standards, as did the BEPS, have upper insulation limits. The upper limits for insulation correspond to normal building practice in the climate locations. Insulation levels above the set upper limits are not considered because they are rarely used and rarely life cycle cost-effective.

(b) Fuel Price Projections Inaccurate

Many who commented noted that the projected fuel prices used by DOE in the life cycle cost analysis were already out-of-date and as much as 50% too low. The impossibility of accurately projecting fuel prices for thirty years was given as one reason for shortening the life cycle term. Several public interest groups urged DOE to use replacement or marginal costs for fuels to encourage maximum conservation. Gas industry members, however, favored DOE's use of average rather than replacement costs for fuel, arguing that the marketplace does not purchase energy at replacement costs and that forcing conservation investments based on replacement costs would not be perceived as cost-effective.

Ten utilities asserted that DOE did not accurately assess the sensitivity of the life cycle cost analysis results to variations in critical parameters such as energy costs, construction costs, and mortgage rates; construction costs and energy costs vary dramatically across the nation and even within relatively small geographic areas, and these variations render the net present value analysis performed by DOE meaningless.

DOE Response: In calculating life cycle costs for energy conservation investments, Federal agencies are required to use fuel price projections and other assumptions prescribed by Subpart A, as amended, of 10 CFR Part 436, as referenced above The assumptions used in the life cycle cost methodology are unchanged from those found in Subpart A. Although the proposal uses the fuel price projections in future years prescribed in Subpart A, energy, materials and labor costs were gathered from regional and local sources for use in the proposed interim standards. The proposal allows these factors to be amended as newer information becomes available. Mortgage rates are, of course, not relevant to Federal standards.

(c) Life Cycle Term Too Long

Thirty comments indicated that a life cycle term of thirty years is too long. They argued that it is impossible to accurately predict either fuel costs or interest rates for thirty years. The comments generally suggested that a thirty year life cycle term would put an undue burden on the first owner of a new home. The average ownership time

for a new single-family residence is seven to ten years, and those who commented thought investments in conservation options should have a payback period of seven to ten years. This was the time-period recommended by most who commented, although a few also suggested that the life cycle term be the estimated occupancy of the first two owners. DOE's life cycle cost analysis did not include replacement and maintenance costs of residential HVAC equipment, and those who commented noted that most HVAC equipment will be replaced within thirty years. They thought that the life cycle term should be less than the life of residential HVAC equipment (10 to 15 years).

DOE Response: One of the 1981 amendments to Subpart A of 10 CFR Part 436 was to lower the 30 year life cycle cost period to 25 years. DOE, therefore, has used a term of 25 years in the proposed interim standards as required by the Federal government life cycle cost methodology. The analysis also takes account of equipment replacement and maintenance costs. The comment of undue burden on the first owner of the home is not relevant to a Federal standard because it is expected that the Federal government will pay the costs of any home it builds or procures for the useful life of the home.

(d) All Costs Not Included

Designers, builders and utilities all commented that the life cycle cost analysis should allow for regional variation in costs for labor, building materials, mortgage rates, and energy. About ten who commented, including several appliance manufacturers, noted that DOE failed to include replacement and maintenance costs of HVAC systems in the life cycle cost analysis. Several who commented believed that other costs which were not included by DOE should be considered, including costs for other conservation options such as night-setback thermostats, shutters, wood stoves, zonal heating and air conditioning, dehumidifiers, fans, passive solar features, and super insulation.

The Solar Energy Industries Association also thought that a 3% discount rate is too high because mortgage interest rates have been averaging less than 3% above the rate of inflation. These comments suggested that by selecting an unrealistically high discount rate in the life cycle cost analysis, DOE will discourage investment in conservation. The Washington State Energy Office, however, felt that a 3% discount rate is too low. One private citizen commented that a life cycle approach is not appropriate for single family residences because discounting plays practically no role in decisions by homeowners.

DOE Response: As stated in an earlier response, energy, labor and materials costs have been regionalized, and replacement and maintenance costs for appliances have been included in the life cycle cost analysis. DOE believes that the expansion of the number of energy conservation options available to the designer in the proposed interim standards is adequate for residential construction for Federal agencies. With respect to the 3% discount rate, it has been changed to reflect the 7% and 10% discount used by most Federal agencies and the Department of Defense, respectively.

6. Health and Safety

(a) Infiltration Rate

There were seventy-two specific comments on DOE's decision to assume an air infiltration rate of 0.6 air changes per hour (ach) for residential buildings. Of these comments, twenty-eight were from the design community or home builders, and twenty were from utilities.

Most who commented agreed with DOE that further research is needed on the effects of reduced infiltration on indoor air quality and occupants' health. Comments from diverse groups such as the National Wildlife Federation and the National Coal Association concurred that the BEPS were likely to have a substantial impact on indoor air quality even though no credit is given for reduced infiltration levels. The National Wildlife Federation wrote that "DOE cannot avoid responsibility for the indoor air pollution problem simply by denying designers credit for cutting air infiltration. The fact is that reduced infiltration methods are so inexpensive that designers will employ them regardless of whether or not DOE grants credit for them. Studies were deemed necessary in order to determine the sources of indoor air pollutants, the levels at which health effects occur, as well as technical fixes and regulatory approaches for reducing high concentrations of indoor pollutants." The New York State Energy Office concluded that homes built in accordance with BEPS would have 0.4 to 0.5 ach. They cautioned that this would raise humidity levels and increase concentration of indoor pollutants such as carbon monoxide, radon gas, sulfur dioxide, nitrogen dioxide, and formaldehyde. The Bureau of Consumer Protection of the Federal Trade Commission urged DOE to disclose the results of all ongoing research on indoor air pollution, including information on the availability, cost, and effectiveness of indoor air quality control mechanisms, in order to stimulate innovation and competition in the development of these devices.

DOE Response: DOE considers the issue of air infiltration and its effect on indoor air quality to be one of the most significant issues faced in the development of new building standards. Since the BEPS proposal in 1979, the Department has funded a significant research program in the area of air infiltration, ventilation and indoor air quality. This program, conducted primarily by the Lawrence Berkeley Laboratory, has concentrated on the effects of indoor air pollutants such as radon, formaldehyde and various other chemical compounds. References to this research may be found in the Environmental Assessment prepared for this proposed rulemaking and available from the Office of Hearings and Dockets. When setting relative air infiltration levels in the proposed interim standards, information from this research was taken into account. It was found that an air change rate of 0.7 ach was low enough to have a positive energy conservation impact and yet high enough so as not to create any undue health hazards. The Environmental Assessment prepared on the proposed interim standards bears this out even when comparing the proposed air change rates with a worst case scenario.

(b) Fire Safety Issues Ignored by the BEPS

One who commented, a fire protection engineer from California, protested that DOE had not, in any way, considered the effect of the BEPS on fire safety. He pointed out that a tight building will develop a positive atmospheric pressure within the building if a fire occurs, thereby reducing fire resistance significantly. It might also cause smoke and toxic gases to spread more quickly, and oxygen depletion to occur more rapidly. This individual and several others cautioned that the BEPS could lead to increased use of foam sheathing materials and insulation, thereby increasing the danger of toxic gases from fire. The Federal Emergency Management Agency wrote that the BEPS should have included a section that would explicitly address the fire safety problems of structures built in conformance with the BEPS, and make recommendations for changes.

DOE Response: DOE does not take lightly its responsibility for health and safety issues in developing new building

standards. The issue of fire safety, while not directly related to energy conservation, could become significant for the reasons cited in the comments. DOE has continued a program of materials research that, for example, has studied the danger of toxic gases from smoldering insulation. This research, entitled "Smoldering Combustion Hazards of Thermal Insulation Materials", was performed by the National Bureau of Standards and Oak Ridge National Laboratory in 1980 and 1981. As noted earlier, however, the proposed interim standards are unlikely to increase the tightness of new buildings and, therefore, should not negatively affect fire safety.

III. The Guides for Designing and Constructing Energy Efficient Site-Built and Manufactured Homes

On May 9, 1983, and again on February 22, 1984, DOE published Notices of Inquiry (NOI) in the **Federal Register** announcing the availability of draft guides for home builders, manufacturers and retailers, entitled *Affordable Manufactured Housing through Energy Conservation: A Guide to Designing and Constructing Energy Efficient Homes* (48 FR 20866) and *Affordable Housing through Energy Conservation: A Guide to Designing and Constructing Energy Efficient Homes* (49 FR 6537), respectively. The guides were developed for two purposes. The first, and most important for this issuance, was to develop an energy analysis data base for the significant residential building types built for today's market and for a significant number of energy conservation options. The data base was to be used for the development of standards.

The second purpose was to provide a simplified calculation technique for analyzing whether the design of a home meets an energy consumption goal. The guides were designed to provide a simple, reliable way to determine the cost-effectiveness of different energy conservation options without prescribing a specific level of investment for energy conservation. They allow the user to consider regional differences in climatic conditions, building materials and labor costs, energy prices, and energy types.

The design guides were developed by the American Institute of Architects Foundation, Lawrence Berkeley Laboratory and Steven Winter Associates, under contract to DOE. The project was also aided by several review panels that provided guidance and assistance to the project team. This group of review panels included representation from the home manufacturing and retailing industries, the home building industry, architects and researchers whose specialties ranged from passive solar to climate. The research review panels reviewed research methods, assumptions, and results. The home builder and home manufacturer and architect panels reviewed the development of the guides as the projects progressed. Representatives from utilities, public interest groups, consumer groups, environmental groups, and the financial community were asked to provide their views and advice as appropriate. Additionally, a masonry and log industry review panel is reviewing the more recent thermal mass project.

The main goal of the design guide projects was to develop a credible energy analysis tool for both the site-built and manufactured home industries. Considerable attention was given to examining all research assumptions and procedures to ensure their adequacy and accuracy. In addition, all research methods, assumptions, and results have been documented to ensure that all research results are reproducible and verifiable. Very limited quantities of this research are still available and may be obtained from the Office of Hearings and Dockets.

The first steps in both research efforts were to define building prototypes. For site-built homes they were ranch, two-story, split-level and mid- and end-unit townhouse prototypes. For manufactured homes they were single-section and multi-section prototypes. The prototypes were defined largely on the basis of data provided by the respective industries, especially the National Association of Home Builders-Research Foundation and the Manufactured Housing Institute. The data included such things as demographic data for site selection, size, configuration, construction type, materials and typical glazing area. DOE-2.1, a public domain computer program,[1] was then used to determine the rate of energy consumption of each prototype in 45 U.S. climate locations. This program estimates hour-by-hour energy use of a building at the design stage from available information such as location, construction, operation, and heating, ventilating, and air conditioning equipment specifications. It was developed by Lawrence Berkeley Laboratory in collaboration with Los Alamos National Laboratory with financial support from DOE. Next, a variety of energy conservation options were defined, and DOE-2.1 sensitivity analyses were performed for the prototypical homes in various climates and locations to determine the energy use effects of each option. This was done by comparing the effects of each option-type, and at different levels of conservation (such as different insulation levels), on each prototypical design. Several thousand computer runs were made in order to properly compare the effects of each option.

The data from this research provided the basis for a data base for displaying the research results. This process enabled the researchers to determine the energy effects of a variety of options. The results were analyzed further, and an easy to use slide rule appeared to provide the most practical format to display the information. This decision was made before micro-computers enjoyed such a widespread acceptance.

Fifty-one cities included in an original DOE-2.1 data base were selected because they included most major cities (Continental U.S., Alaska, and Hawaii) and covered the range of climate types in which there is significant building construction and acquisition.

The data base was subsequently modified through climate analysis. Locations were eliminated if the changes in both heating and cooling were within 5% of that of another base city. This resulted in the elimination of eight cities. At the same time, two new locations were added for better coverage, resulting in the 45 base cities.

To develop results for other locations the following climate data was used: (1) Heating and cooling degree days for the 3400 National Oceanographic and Atmospheric Administration (NOAA) stations (20-year average 1951–1980). and (2) latent humidity calculated from Test Reference Year (TRY) weather tapes for 51 U.S. locations.

IV. Summary of Public Comment From Research to Develop Residential and Manufactured Home Design Guides

A. Affordable Housing Through Energy Conservation Comments

Approximately 200 comments were received after the Notice of Inquiry on site-built homes was issued on February 22, 1984. A majority of those who commented (62%) expressed views on the format, general usability and need for the document. The remaining comments pertained to specific technical questions and findings contained within the guides and the technical support documents.

[1] DOE-2 Building Energy Use Analysis Program (Version 2.B) may be obtained from NTIS by telephone, (703) 487–4650 or FTS 737–4650, or by mail, 5285 Port Royal Road, Springfield, Virginia 22161.

1. General Comments

Many who commented shared the general concern that only an already energy-sophisticated builder will have the patience and desire to use the guides and perform the required calculations. Many utility representatives, builders and designers with experience in energy conscious design expressed apprehension with the organization of the guides and stated that they could not comfortably take advantage of the information provided.

Several who commented stated that basic assumptions and data used in the development of the slide rule were unknown making it difficult to provide any real evaluation. Others who commented just stated that there is a need for more references and information on topics such as superinsulated homes, passive solar design, low infiltration construction and innovative masonry construction. In addition, many who commented suggested that a chapter should be included which provides a priority list of energy conservation measures and examples of good packages for different climate zones.

DOE Response: Most of the general comments specifically addressed the guides and slide rules and do not have particular application to the proposed interim standards. The questions on basic assumptions are, however, pertinent. The basic assumptions used in developing the proposed interim standards may be found in the *Technical Support Documents* that accompanied the Notice of Inquiry and today's proposal. These assumptions were taken from the best available data gathered from various sectors of the building industry, on current building practices. The assumptions were used in setting base information for the DOE–2.1 computer simulations of the various prototypes and conservation measures. DOE takes the position that the basic assumptions used in creating the data base represent a sound technical judgement. It also believes that the DOE–2.1 computer program is the most accurate research tool available on which to base residential energy analysis.

2. Specific Comments

(a) Insulation

Many who commented stated that conclusive data are not yet available to substantiate the statements alleging the energy conservation advantages of heavyweight walls, and DOE was cautioned not to use statements or draw conclusions that compare insulated wood frame and masonry wall energy efficiency.

With regard to movable insulation, many who commented stated that, while they recognized that movable insulation could provide benefits when properly installed, it is extremely difficult to ensure proper use of these devices because of their dependence on the actions and lifestyle of the home occupant. Other questions, such as the useful life of these devices, their availability and cost, raise questions about the accuracy of any payback period attributed to their use and imply that such devices be removed from consideration for the guides.

DOE Response: Based on the comments received from the Notice of Inquiry, DOE is undertaking further research in the area of thermal mass. This research will be the subject of future DOE reports and will be reviewed to determine whether or not it will be included in future proposed rulemakings.

With respect to movable insulation, DOE still believes it can be a viable and useful option and has included it as an option in the proposed interim standards. It has been determined that movable insulation is still an effective energy conservation measure when properly. It would have to be properly operated at minimum 50% of the time, during the day and 100% of the time during the night to be cost-effective. This assumption is built into the energy analysis on the proposed interim standards.

(b) Infiltration

Several comments expressed concern that the guides did not take into account the different infiltration characteristics of fossil fuel-heated homes and electrically-heated homes. These comments asserted that an electrically heated home could only be listed as a tight home because it would have no vents, chimneys or piping associated with the heating system. Electrically-heated homes require no outside air for equipment combustion and ventilation purposes and, therefore, can have a less porous envelope design.

Another group of comments noted that DOE has in the past characterized infiltration rates as 1.0 ach for average construction, 0.7 ach for tight construction, and 0.4 ach for very tight construction. This has been done with little published backup data and without differentiating between types of heating systems. These comments strongly recommended that it would be appropriate for DOE to signify the differential between infiltration rates of similar fossil fuel heated and all electrically heated homes in the guides

DOE Response: DOE recognizes that electrically- and gas-heated homes should be treated differently, especially homes heated with non-combustion heating equipment such as electric baseboard, electric furnace or heat pump and also gas or oil sealed-combustion furnaces. This has been done in the proposed interim standards by giving electrically heated homes credit in the calculation of infiltration rates.

(c) Climate

Those who commented from Florida felt that the energy savings from ceiling and wall insulation were overstated and that foundation insulation savings exceed those based on local construction recommendations by as much as 20%. They blamed the major sources of error on DOE's lack of experience with Florida climate and construction techniques as well as extremely high assumptions on compressor hours.

DOE Response: DOE has conducted significant research since the NOI was published on hot-humid and hot-dry climates. At this point, the research is not at a point where conclusive data are available. Until such time as more data are available, DOE will continue to use the assumptions built into the DOE–2.1 computer program.

(d) Economics

Those who commented noted that the implementation of options such as increased insulation, reduced infiltration and improved glazing will reduce the size requirement for heating and cooling equipment. This downsizing of required equipment will be reflected in reduced costs to the consumer. It was suggested that the economic analysis be revised to acknowledge and credit the benefit from equipment downsizing due to an improved thermal envelope. Several consumer groups commented that the economic calculations ignore the fact that increased mortgage expenses of energy saving options are often recovered in the resale price when the home is sold. None of the costs of energy used during home ownership are recovered. If the investment in an energy conserving feature in a new home is fully recovered in resale, the analysis should reflect this recovery. First year cash flow analysis ignores this important fact.

Also, by ranking energy conserving options according to first year cash flow, many who commented felt that DOE did not have a defensible economic

analysis. Their suggestion was to more strongly incorporate a life cycle cost analysis which includes future energy costs, maintenance costs, life expectancy, interest rates and resale values.

DOE Response: While these comments are germane to the guides themselves, they are not particularly relevant to the proposed interim standards since life cycle cost, rather than simple payback, has been used as the economic methodology. DOE is very interested in comment on the economic parameters used in the proposed rulemaking and asks that the assumptions used be reviewed carefully by those who commented.

The proposed interim standards do include tradeoffs between envelope requirements and equipment efficiency. They do not include, however, the effect of downsizing primarily because of the difficulty of including the economic effects in the analysis. DOE does recognize the importance of this factor and solicits comments on the issue.

B. Affordable Manufactured Housing through Energy Conservation Comments

1. General Comments

Overall, the general feeling among those who commented was that DOE had done a good job of presenting technical conservation materials for constructing efficient manufactured housing. Recognizing that accuracy was critical to the overall usefulness of the guides and slide rules, there was a bit of concern regarding the format and the materials used to physically produce the slide rules. It was felt that a laminated cardboard slide rule may deteriorate and therefore not maintain its accuracy. It was also anticipated that the guides would not be perceived as "simple" to use by the average salesperson.

Many of those who commented felt that, in some cases, the document lacked a strong connection between many of the conservation features suggested in the guides and the supporting research documents referenced. These comments indicated that the guides should only consider conservation options that are not dependent upon the building owner for operation and maintenance.

Representatives of appliance manufacturing organizations felt that some of the examples used by DOE in the guide materials were not representative regarding what consumers can actually find in the marketplace. Many who commented noticed, and pointed out, that discussions on many technical requirements and options typically considered for energy conserving housing 32 were missing, such as zoned heating, the siting of heat pumps, duct design, equipment sizing, hydronic systems, building orientation, etc.

DOE Response: As with the comments on the housing guides and slide rules, most of the general comments specifically addressed the guides and slide rules themselves and not the data base upon which they were based. Many of the issues addressed in the comments, such as duct design, equipment placement, and hydronic systems, were deliberately left out of the guides because related design practices are regulated by HUD in the Manufactured Housing Construction and Safety Standards (24 CFR Part 3282), and either do not apply or are not typically used in manufactured housing. These comments were useful, however, in determining an emphasis for the research conducted specifically for the proposed interim standards. For example, the comments brought to DOE's attention additional heating and cooling strategies and different opinions on what makes a manufactured home energy efficient. The one major area that still requires additional research is equipment sizing.

2. Specific Comments

(a) Equipment Efficiencies

Many who commented recognized the merit in expressing the equipment efficiencies by a single uniform measure (Seasonal Coefficients of Performance, SCOP). They felt as a whole that there is not sufficient information included in the materials to tie the SCOP to the efficiency measures found in product information provided by a manufacturer for the different types of equipment. One comment recommended that the guides mention the Federal Trade Commission (FTC) regulation requiring the availability of FTC "Energy Guide Fact Sheets".

With regard to heat pumps, a few who commented asserted that the generic support of heat pumps is unsubstantiated. However, the majority of those who commented challenged the DOE assumption that heat pumps degrade uniformly. They claimed that high efficiency designs actually degrade less than other designs and they feared that this assumption could result in precluding truly superior heat pump designs from achieving any credit in the slide rule 33 analysis.

There were many industry comments questioning the sources of the equipment efficiency information used in the guides. Most found the DOE Consumer Products Efficiency Standards Engineering Analysis Document (DOE/CE-0030) and the publications made available by the American Gas Association (AGA) the only credible sources.

DOE Response: For the proposed interim standards, DOE has used the DOE Document and the information from AGA. It also conducted a survey of other trade organizations, including the American Refrigeration Institute and the Gas Appliance Manufacturers Association, as well as equipment and appliance manufacturers to obtain up-to-date efficiency information. DOE has also used the FTC labeling program as a guide to efficient appliances.

With regard to heat pumps, the life cycle cost procedure in the proposed interim standards takes account of relevant equipment costs to compare alternative heat pump designs.

(b) Economic Analysis

A few utility representatives were concerned that erroneous cost benefit analysis would result if incremental electric prices geared to specific energy uses were not used. Their suggestion was to permit several methods for determining local energy costs, i.e., actual energy bills for a similar home located in the same area or rates obtained directly from a utility.

DOE Response: It was found that electricity prices differ in some cases from the heating to the cooling season. In the proposed interim standards, fuel costs for both seasons must be chosen. Also, fuel costs are to be determined on a local basis with the most up to date information possible.

V. Summary of the Proposed Rule

Proposed § 435.33 requires a Federal agency to establish an energy consumption goal for a new Federal residential building using the computerized calculation procedure provided in a micro-computer program called "Conservation Optimization Standard for Savings in Federal Residences (COSTSAFR)" and to adopt such procedures as may be necessary to assure that the design of a new Federal residential building is not less energy efficient than its energy consumption goal. The energy consumption goal is calculated by using COSTSAFR in accordance with its accompanying user manual.

Proposed § 435.33 explains that the COSTSAFR calculation program determines the most effective set of energy conservation measures, selected from among the measures included within the program, that will produce the optimum life cycle cost for a type of

residential building in a specific geographic location. This most effective set of measures is expressed as a total point score that, in turn, serves as the energy consumption goal for the design of the Federal residential building.

To facilitate compliance with the energy consumption goal, COSTSAFR also prints out a point system that identifies a wide array of energy conservation measures showing how many points various levels of each measures would contribute to reaching the total point score of the energy consumption goal. This enables a Federal agency to use the energy consumption goal and the point system in its design and procurement procedures. Designers and builders can pick and choose among different combinations of energy conservation measures to meet or exceed the total point score required to meet the energy consumption goal.

The COSTSAFR program and its accompanying user manual may be obtained for purposes of review and comment from the Office of Hearings and Dockets at the address listed at the beginning of this Notice. There is no charge for the program, however, DOE asks that requests be made only by those individuals who intend to comment on the proposed interim standards, as supplies are limited. Following publication of the interim standards, the COSTSAFR program and user manual will be available from the National Technical Information Service at a nominal cost.

The use of micro-computer technology was chosen partly on the basis of the emergence of the technology over the period of the last few years and partly because of the ease in which complex energy and cost calculations are made. The use of micro-computers has become common among Federal agencies, and increased productivity clearly established the use of the technology for the proposed interim standards. Its use eliminates the need for anyone to perform lengthy manual calculations or make uninformed choices regarding the economic optimization of conservation measures. Research has shown that in the majority of cases, the optimization of conservation measures is not derived from professional judgement alone, and the amount of time it takes to perform adequate analysis has been a deterrent to the advancement of energy conserving residential building design in the U.S. The need to perform analyses that continually trade off conservation measures is required to produce cost effective building designs.

COSTSAFR was developed to make the selection of optimal conservation measures and, consequently, the design of cost-effective energy conserving buildings a relatively simple process. The output from the COSTSAFR program are the data to be used in determining compliance with the proposed interim standards. COSTSAFR is designed to provide specific information on the interaction of up to 30 energy conservation measures in any U.S. locations. It will enable the Federal government to develop cost-effective residential building standards for a single project, thus enabling Federal agencies to set standards specifically adopted to the geographic location of the building site instead of having to depend on the more general national standards now available. Finally, it is designed to be effective for any of several building types including single-family, small multifamily, and manufactured housing.

Before developing a compliance design tool, DOE reviewed the design and construction procedures currently used by the military as well as other Federal agencies responsible for residential construction. The military is responsible for in excess of 95% of the Federal government's housing construction. It was determined that a simplified tool that could display energy conservation options in terms of dollars saved to the government was necessary and could be used early enough in the design and construction process to preserve designer flexibility. COSTSAFR has been designed so that implementing officials can easily tell which combination of measures will result in energy conservation levels that meet or exceed an optimized level for cost effective energy conservation in a building.

The COSTSAFR program performs life cycle cost optimization for a broad set of standard conservation measures and establishes an optimum set of measures for each proposed building. These are translated into a point system. The result is a total point value required for the sum of conservation measures to be incorporated in the building design.

COSTSAFR then prints out a point system for all conservation options indicating how various levels of each option perform relative to the optimum option. This point system is provided to bidders who can then select the most appropriate set of measures for their bid proposals and be assured that their combination of measures meets or exceeds the optimum levels required by the proposed interim standards.

Procedurally, to comply a procurement official will have to obtain a copy of the COSTSAFR software, its accompanying User's Manual and have access to a microcomputer system that runs on the MS DOS disk operating system. The software and the manual will lead the user through the steps of selecting a building prototype, location and fuel type; selecting the set of conservation measures that are to be considered; calculating the optimum life cycle cost for the prototypical building; and finally, calculating the points corresponding to alternative conservation options and printing them out in a set of compliance forms The builder using the compliance forms must show that the proposed design is equivalent or more energy conserving than its corresponding prototypical design with its optimized set of conservation measures. The COSTSAFR program will be made available to all Federal construction agencies. Compliance with the energy consumption goal can be achieved by manual calculation and does not require use of COSTSAFR. However. DOE believes that the COSTSAFR program will prove to be a time-saving tool for bidders on Federal residential projects and will make it available through the National Technology Information Service (NTIS) The address for NTIS and the COSTSAFR order number may be found in the proposed interim standards.

Under § 435.33. it would be possible for the head of a Federal agency to select an energy performance standard that was more stringent than the interim standards proposed today. DOE cautions those agencies, that may wish to prescribe an alternative standard, to conduct a thorough study of the alternative to avoid possible question of the comparability of the two standards.

The following paragraphs discuss. section by section, the proposed interim standards:

Section 435.30 Purpose.

This section restates the purpose of the proposed interim standards to be used by Federal agencies in the design and construction of new residential buildings.

Section 435.31 Scope.

Under the scope of the proposed interim standards, new residential buildings include all new buildings for Federal residential occupancy in the Continental U.S., Alaska and Hawaii, except a multifamily building more than three stories above grade, after the effective date of this proposed rule.

Section 435.32 Definitions.

This section defines terms that are used throughout this subpart.

Section 435.33 Requirements for the Design of a Federal Residential Building.

This section identifies the proposed interim standards and the requirements for compliance.

Section 435.34 The COSTSAFR Program.

The COSTSAFR micro-computer program is the source for developing the total point score that serves as the energy consumption goal for the design of new Federal residential buildings. The basis for the point score is the practicable optimum life cycle cost of the most effective energy conservation measures for a given building type and climate location. Once a housing type has been selected and the appropriate fuel price forecasts identified, the responsible Federal official is free to use local fuel costs, local construction, maintenance and operation costs, and to select climate data appropriate for the construction location.

COSTSAFR is intended to be used by Federal officials in the very beginning of the procurement process enabling Federal officials to develop Requests for Proposals for their construction projects. This will give bidders the ultimate amount of design flexibility while assuring that energy conservation objectives will not be compromised.

The COSTSAFR program is written in an IBM compatible procedure because IBM or compatible machines have been found to be predominant in Federal use. DOE would like comments from agencies that use other systems and whether it is necessary to apply COSTSAFR to these systems.

VI. The Research Conducted for the Proposed Rule

A. General Research Overview

The proposed interim standards are supported by the integration of several different research projects and building research analyses, some of which have been sponsored by DOE over the last 10 years. The research was initiated in 1975 with the analysis of an existing housing survey of more than 120,000 residences conducted by the National Association of Home Builders-Research Foundation. This large baseline sample encompassed all major varieties of single family and multifamily low rise residential construction throughout the country. Climate analysis was conducted and calculations were performed, to estimate the energy use for space heating and cooling. A data base was produced that consisted of building characteristics and estimated energy use for space conditioning for 120,000 dwellings. This study is documented in the *U.S. Department of Housing and Urban Development and the U.S. Department of Energy, Phase I and Phase II Reports for the Development of Energy Performance Standards for New Buildings* (January 1979).

From the survey analysis, four prototypes were selected which represented approximately 90% of all new site-built residences constructed in the country; ranch, split-level, townhouse and two-story. With the assistance of Lawrence Berkeley Laboratories, a comprehensive data base was generated that predicted the energy consumption for these four prototypes in 45 weather locations using DOE–2.1A, a computer simulation program which predicts energy consumption on an hour-by-hour basis.

For each prototype in each location, a full range of energy conserving options was identified and simulated. These options included various combinations of ceiling, wall and foundation insulation, window glazings and infiltration levels. In addition, standard building operating conditions were established to include such things as occupancy and internal load levels, thermostat settings for both heating and cooling, natural ventilation schedules, etc. Sensitivity analyses were performed to discern the effects variations in design have on the energy use of a building. Sensitivity studies were conducted for building floor area, building orientation, equipment efficiencies, window size, orientation and glass types, the absence of thermostat setbacks, levels of air infiltration and suntempered designs such as south dominant window orientations and attached sun spaces.

The resulting comprehensive data were used by DOE to develop a slide rule that was capable of accurately estimating the energy savings associated with various energy conservation measures typically included in site built housing. The slide rule, together with guidelines that described its use and its technical support documents were made available to the public on February 22, 1984, through the publication of a **Federal Register** Notice of Inquiry (49 FR 6537), which was entitled *Affordable Housing Through Energy Conservation: A Guide to Designing and Constructing Energy Efficient Homes.*

At the same time, a similar research effort was undertaken to provide a method for selecting and using cost effective energy conservation measures for manufactured homes. This research effort is described in a May 9, 1983, **Federal Register** Notice of Inquiry (48 FR 20866), entitled *Affordable Manufactured Housing Through Energy Conservation: A Guide to Designing and Constructing Energy Efficient Homes.*

Ultimately, the tasks of developing standards that are mandatory for the Federal government and voluntary for the private sector had to be separated. While the significant data base that underlies the development of these residential slide rules serves as the principal technical basis for the development of the proposed interim Federal standards, at least three major differences between the guides and the proposed interim standards were anticipated. First, minimum performance levels must be achieved if the proposed interim standards are to be met. The guidelines present energy conservation as a function of construction details, but do not specify minimum levels. Second, the proposed interim standards' requirements must be set at the optimum life cycle cost; consequently, detailed costing and economic evaluation was included as a part of the research effort. In the guides, the application of cost benefit analysis is left to the user. Finally, there was uncertainty about whether the building types procured by Federal agencies were the same as those analyzed in the existing research.

In addition, DOE recognized that the procurement and building practices of Federal agencies differ greatly from those in the private sector. With the objective of developing interim standards that is both feasible and acceptable to the needs of DOE and the user Federal agencies, the following research was authorized by DOE: The identification of the physical characteristics of housing currently being constructed by the Federal agencies; identification of economic, construction and other pertinent assumptions for use in the proposed interim standards that are reflective of Federal unit costs of construction; and the development of a format that integrates the proposed interim standards' technical and required life cycle cost components.

All of the research cited above, except for this last part, has been made available for public review and comment in the two Notices of Inquiry described above. Only the research conducted in preparation of the COSTSAFR computer program is discussed below. A discussion of other research activity is found earlier in this notice. A detailed description of the technical documentation of the COSTSAFR program can be found in the *Technical Support Document* (TSD).

B. Typical Current Practice in Federal Construction

The vast majority of federally purchased housing is for the military. Military housing procurement officials were contacted to obtain Request-for-Proposals (RFP's), blueprints, and specifications for housing activities (projects) constructed under their jurisdiction. Construction documents were gathered for six major housing construction activities, representing over 800 units in 19 configurations and various climatic zones of the continental U.S. The TSD includes a description of construction practices identified for each of these activities.

In brief, the military services now use turnkey RFP's for housing activities, and these provided details common to all activities. Some characteristics, such as insulation levels, were related to activity location and were evaluated regionally from the construction documents provided by the military. The documents also provided information on typical finish materials, floorplans, utilities, and mixtures of unit types.

Based on the information gathered on military housing activities, a hypothetical housing activity description was developed by modifying blueprints and specifications to represent typical current practices with respect to housing types, sizes, occupancies, foundations, etc. This hypothetical activity was then assumed to be located at four sites representing the range of climates in the continental U.S.:

New Orleans, LA (hot, humid);
Barstow, CA (hot, dry);
Washington, DC (moderate); and
Sheridan, WY (cold).

Changes to the plans and specifications were made to represent typical window and insulation design practices for the sites. Descriptions for seven typical housing unit types were developed for the hypothetical housing activity. The typical housing units vary somewhat from the prototypical designs used for the development of energy savings budgets in the proposed interim standards. This variation was expected, however, because military housing is not uniform in design and incorporates some features not normally found in residential housing built for the private consumer. The energy data base used in the research project was designed to reflect this fact.

The typical military housing units that were identified correspond to the single- and two-story single-family residences, middle- and end-unit apartments and townhouses, and multi-section mobile homes used in the development of the slide rules and guides. Typical split-level single-family residences and single-section mobile homes were not identified because they were determined to be atypical in military housing activities.

The six typical site-built housing units have many features in common. All are constructed with slab-on-grade foundations, with wood frame walls and trussed roof systems. The walls and ceilings are insulated with fiber-glass batts, and the slabs insulated with extruded polystyrene insulation board around the perimeter. Insulation thicknesses vary with location (climate). Roof sheathing is ½" CDX plywood. Exterior wall finishes consist of approximately 50% brick veneer and 50% factory finished wood siding over ½" CDX plywood sheathing. Interior wall and ceiling finishes consist of ⅝" gypsum board (wall board). Windows have aluminum sashes, and the number of glazings varies with location. Forty percent of the windows have drapes and the remainder have blinds. Doors are insulated metal units with exterior storm doors. Second floors (not applicable to single-story residences) are constructed of ⅝" CDX plywood underlayment covered with 1½" of gypcrete (lightweight gypsum concrete).

All floors are finished with vinyl floor tiles or sheet vinyl, except for carpeting on the second floor levels of townhouses and apartments and stairways in two story residences.

Other characteristics apply to all typical housing units, including the manufactured housing units. Cabinets are constructed from hardwood plywood for exposed surfaces and particleboard for dividers, shelves, and countertop bases. Moisture and air infiltration control measures include vapor barriers under slabs (under the floor in manufactured units) and on the interior side of walls and ceilings. Windows and doors are weatherstripped and caulked. Gas-fired appliances are typically used in the residences when gas is available. Each unit is equipped with a kitchen range exhaust hood capable of exhausting 150 cubic feet per minute (cfm), and all bathrooms include 50 cfm exhaust fans. Air-to-air heat exchangers are not used and outside air is not introduced into the furnace return air. Heating systems are forced-air type with standard residential furnace filters. Fireplaces and wood stoves are not typical in military housing. Water supply is from a base-wide system rather than individual wells. The typical single-story, single-family detached residence (SFD) has four bedrooms and 2 full baths, and is occupied by a family of 5 persons. It has a gross floor area of 1746 square feet.

The typical two story SFD has four bedrooms and 2½ baths, and is also occupied by a family of five. All bedrooms and two baths are located on the second floor. The unit has a gross floor area of 1655 square feet.

The typical townhouse unit has 3 bedrooms and 2½ baths, and is occupied by a family of four. The unit has a gross floor area of 1343 square feet on two floors, and all the bedrooms and two of the baths are located on the second floor. End-unit and middle-unit townhouses have identical floorplans, the only difference being that the end-unit has only one wall in common with an adjacent unit, while the middle-unit shares two common walls. The end-unit has all its windows on two walls, as does the middle-unit, so the window and door areas and locations are the same for both types.

The typical apartment unit pair consists of an upstairs unit and a downstairs unit, identical in plan and located one above the other. An apartment unit has 2 bedrooms and 1 bath, and is occupied by a family of three. Each unit has a gross floor area of 1057 square feet. Upstairs units are carpeted except for the kitchen and bathroom. Like townhouses, end-unit and middle unit apartments are identical with respect to windows and doors.

The typical multi-section manufactured home has three bedrooms and 2 baths, and is occupied by a family of four. The unit has a gross floor area of 1263 square feet. Typical manufactured homes have some characteristics different than the typical site-built homes. They do not have brick veneer exterior finish, using 100% wood siding instead. Exterior wall sheathing is not used. Interior finishes are typically ½" gypsum board for military housing. Roof sheathing is ⅜" CDX plywood. Foundations are not typically used, but a crawl space is created by constructing a concrete perimeter skirting to give the appearance of a foundation. The floor space is insulated with fiberglass, with thickness varying with climate.

The seven typical housing types comprising the hypothetical housing activity descriptions were delivered to a subcontractor (Steven Winter Associates) for quantification of construction materials, infiltration rates, water usage, and other parameters determined to affect indoor air quality. This information was used to develop input data for air quality models of the typical military housing units.

C. Technical Analysis Used To Develop the Proposed Interim Standards and COSTSAFR Program

DOE's intention was to develop interim standards that enable Federal agencies to identify and achieve the optimum package of energy conservation measures for the design of new residential buildings by permitting tradeoffs between envelope, windows, infiltration control measures, and heating and cooling equipment efficiencies. Water heaters and refrigerators are included in the energy budget at the discretion of the official implementing the proposed interim standards.

As required by the Act, the proposed interim standards are a whole building performance-based standard and are implemented by using a microcomputer program that provides a point system for demonstrating compliance. A summary of the technical analysis supporting this program follows.

1. Prototypes

The proposed interim standards recognize housing as being characterized by nine typical designs for the development of energy savings budgets. Seven of these types represent 90% of the building types identified in the original survey of 120,000 buildings. The apartment building prototypes were added to the study when DOE learned that a very large amount of housing constructed by the military consisted of apartment housing. The nine designs used in the analysis consist of the following:

1. Single-story single-family residences,
2. Split-level single-family residences,
3. Two-story single-family residences,
4. End-unit townhouses,
5. Middle-unit townhouses,
6. End-unit apartments,
7. Middle-unit apartments,
8. Single-section mobile homes,
9. Multi-section mobile homes.

The first three prototype designs are typical detached homes characterized by the number and arrangement of the floors in the plans. Drawings of the prototypical single-family residences used to develop the proposed interim standards are available in the *Technical Support Document.*

The fourth and fifth prototypes are two-story townhouse dwelling units which share common walls with the adjacent units in the building. The units in a townhouse building are arranged in a single row. Middle units are in the middle of the building, sharing two common walls with the units on either side. End-unit townhouses are on each end of the building, sharing a single common wall.

The sixth and seventh prototypical designs are apartment units. They consist of separate dwelling units on two floors, the second floor units directly above those on the first floor. The pairs of apartment units are arranged in a single row. Like the townhouses, middle-unit apartments share two common walls with the units on either side, and end-unit apartments share a single common wall. The energy savings budget for apartments is developed by considering dwelling units in pairs, consisting of an upstairs and a downstairs dwelling unit.

The eighth and ninth prototypical designs are manufactured housing units, commonly called mobile homes. They are mounted on permanent chassis for transport from factory to site. Single-section prototypes are transported in one piece and are a maximum of 14 feet in width and multi-section prototypes consist of more than one module, joined on site to form a single dwelling.

2. Cost Analysis

Research conducted for the development of the proposed interim standards included the assembly of two construction cost data bases—one for manufactured homes built to aforementioned HUD National Manufactured Home Construction and Safety Standards construction requirements and one for conventional site-built homes. Both data bases include information on material and labor costs and are intended to reflect costs to the Federal housing purchaser. The *Technical Support Document* provides the detailed information on the development of these cost data and the actual costs used in the proposed interim standards and the COSTSAFR computer program.

All cost developed for the proposed interim standards are presented on a per unit basis and are incorporated in the COSTSAFR program to reflect incremental costs associated with specific energy conservation options.

Manufactured housing costs reflect the cost characteristics specific to the manufactured housing industry. Specifically, many material costs benefit from large volume purchase discounts, and labor costs typically benefit from the production-line nature of construction. A survey of 14 manufacturers provided the basic data on construction practices and costs. Data from standard industry literature sources provided additional information where required. Time-study information provided data on labor requirements. The cost were developed on the basis of the manufactured home prototypes described in the *Affordable Manufactured Housing through Energy Conservation Technical Support Document* (May 1983). These prototypes provided the basic take-offs from which specific dimensions and construction details were developed. The costs were generated for both single-section and double-section manufactured homes. The energy conservation option categories analyzed included: ceiling insulation, wall insulation, floor insulation, roof color, glazing (windows), movable window insulation, and infiltration control. For ceiling insulation, the cost data cover insulation R-values from R–7 to R-38. For wall insulation, the data cover R-values from R–7 to R–24. For floor insulation, R-values covered range from R–0 to R–28. Windows include wood sash, aluminum, and aluminum with thermal break. Window configurations include single pane, single pane with storm windows, and double pane with storm windows. Glazing costs also include reflective and heat absorptive glass. The cost data cover movable insulation values of R–1, R–3, and R–5. Finally, the infiltration control cost data cover the costs of achieving a "tight" house (0.7 ach) and a "very tight" house (0.4 ach, but including an air-to-air heat exchanger to maintain an effective air exchange rate of 0.7 ach).

The site-built home cost data base relies on information obtained from a survey, industry data sources, and published cost data. Labor costs include both the effects of labor rates for different skills and the time required to accomplish specific tasks. The take-offs developed for the site-built prototypes and described in *Affordable Housing Through Energy Conservation Technical Support Document* (February 1984) provided the construction details needed to develop the cost data base. The conservation design options for site-built homes include those listed above for manufactured homes, with the addition of slab-on-grade and basement foundation types and their associated insulation options. The levels of some options considered also differ from the levels for manufactured homes because of the fundamental differences between the construction characteristics. For examle, site-built home ceiling insualtion levels typically can be considerably higher than manufactured home levels because of the height limitations usually associated with manufactured homes.

The cost base includes several components-space and water heating equipment, cooling equipment,

refrigerators/freezers, and air-to-air heat exchangers. The data base includes data on the cost of different heating equipment types, including gas and oil furnaces and heat pumps, as a function of their efficiency. DOE data and industry information provided the basis for these relationships. The data base includes similar information for air conditioning equipment and gas and electric domestic hot water (DHW) equipment. This information originates primarily from DOE published sources. The data base includes similar information for refrigerators/freezers as a function of their DOE/FTC EnergyGuide Label. The data base provides first cost information for a group of air-to-air heat exchangers, based on industry information. It also provides estimates of heat exchanger oprating costs based on number of hours used and consumption rates. The cost data base provides data for all elements of life cycle costs associated with purchasing, operating, and maintaining the energy conservation options included. These cost elements include first cost; annual maintenance cost; first, second, and third replacement costs, if appropriate; and the negative costs attributable to salvage at the end of the 25 year analysis period.

3. Energy Analysis

Two refinements were made to existing energy data bases during development of the propsed interim standards. The existing site-built and manufactured home energy data bases, described in the two technical support documents noted earlier, provide the fundamental data used in the development of the proposed interim standards. Integrating the existing data bases, however, required using consistent assumptions about the thermostat setback. Supporting research modified the manufactured home energy data base to make it consistent with the site-built data base. In addition, new research provided improved information on the effects of heat absorbing and reflecting glazing.

The thermostat setback analysis used results from DOE–2.1a computer program runs and linear regression techniques to modify the energy effects of various energy conservation options to incorporate the effects of thermostat setback. Analyses were conducted for insulation options, infiltration options, and window options. Using the regression analyses, the results were extended from a set of four typical climate zones to the entire set of climate zone locations included in the data base.

The greater accuracy allowed by the analysis approach underlying the proposed interim standards justified improving the existing manufactured home energy data base to better approximate the effects of absorptive and reflective glazing. The effects of these glazing types were estimated using a linear function based on window area. Specific relationships were developed for single-section and multi-section manufactured homes. Results for representative climate zones, or cities, were then used to characterize the relevant set of cities in the data base.

4. Cost-Effectiveness Analysis

The cost-effectiveness analysis is a critical component of the proposed interim standards. Cost-effectiveness provides an economics-based test of the maximum practicable energy conservation achievable in new residential buildings. The Federal Energy Management Program (FEMP) specifies a life cycle cost methodology in Subpart A, as amended, of 10 CFR Part 436 that prescribes the required investment analysis approach for Federal investment, and the proposed interim standards use this approach.

Life cycle cost includes all the costs associated with a particular investment, including current and future costs. Likewise, it accounts for all returns on investment or cost savings. By using discounting techniques, it permits the combination of costs and savings on a comparable basis.

Cost-effectiveness provides a criterion for selecting between alternative investments based on their relative cost for a given effectiveness level, or relative effectiveness for given cost. For the proposed interim standards, the effectiveness level corresponds to the level of comfort provided occupants of Federal housing. Maintaining that same effectiveness level, the proposed interim standards provide an approach for minimizing the corresponding cost from the life cycle cost perspective. Because the proposed interim standards achieve the minimum cost level by optimizing energy consumption through proper design, they produce the maximum practicable energy savings in Federal housing when both energy consumption and costs are taken into account.

The proposed interim standards use the minimization of net life cycle cost as the basis for design energy requirements. Net life cycle cost compares the life cycle of a base case building with the same building including a given energy conservation option (ECO). If the modified building has a lower life cycle cost than the base case building, the specific ECO is considered to be cost-effective. The selection of this approach made the analysis tractable and consistent with the underlying data base used for the analysis. This method also can handle mutually exclusive ECOs (e.g., R–11 and R–19 wall insulation) and dependent ECOs (e.g, wall insualtion and heating equipment efficiency). This method, however, may not produce the exact optimum since it does not consider all possible ECO combinations. Extensive prior research information, however, suggests that the life cycle cost tends to be relatively flat near the minimum. Based on this observation, it was determined that the net life cycle cost approach produced results sufficiently close to the true optimum. This fact, and the feasibility of implementing this method, made it the most appropriate approach for the proposed interim standards.

The life cycle cost minimization consists of two steps. The first step involves ranking the ECOs according to their relative cost-effectiveness bases on the ratio of their savings to investment cost. The second step involves determining which ECOs result in life cycle cost reductions and should, therefore, be implemented.

This approach is relatively direct except for situations where ECOs interact with one another. One category of such interacting ECOs consists of options that interact directly with one other ECO type, such as movable insulation and glazing type. For these, the approach includes all possible combinations of the interacting options as a new set of options. The second category consists of ECOs that interact with several other ECO types, such as heating equipment efficiency. Specifically, as heating equipment efficiency improves, the savings attributable to envelope improvement decreases. The approach deals with these situations by considering these interactions on an individual basis.

5. COSTSAFR Computer Program.

The proposed interim standards are implemented through a computer program that is designed to operate on a microcomputer and that performs all the necessary energy, cost, and optimization analyses required. Furthermore, the computer program provides a point system that is the performance requirement of the proposed interim standards and informs the Federal procurement official and builder about the relative value alternative ECOs.

This computer program only requires input data that are directly relevant to a specific building locale or situation-all other necessary information and data are self-contained. The program contains climate data, cost data, energy

data, economics data, and the optimization methodology. It requires situation-specific data that ensure that the results reflects the optimum requirements for a given location, building type, fuel availability, etc. This approach provides a wide variety of design choices to the user while requiring a minimum of information from the user.

The document *Conservation Optimization Standards for Savings in Federal Residences (COSTSAFR)—User's Manual* describes how to operate the computer program. DOE sought to develop a computer program that was not only technically accurate, but also easy to use. It incorporates a series of screens that display the information entered by the user and allow the user to make modifications to critical data inputs. The research also focused on utilizing the compter tool as a device for assisting with implementation of the proposed interim standards. As a result, the program uses the results of the internal optimization analysis to provide comparisons of all ECOs. It makes the comparisons by calculating points for each ECO that correspond to the change in life cycle energy cost resulting from implementing that ECO. The point system thus provides a mechanism the user can employ to make easy calculations of the consequences of trading off investments in alternative ECOs.

VII. Enironmetal Assessment

DOE performed an Environmental Assessment (EA) of the proposed interim standards under the Implementing Regulations of the Council of Environmental Quality (CEQ) (40 CFR parts 1500–1808 and the National Environmental Policy Act of 1969, as amended (NEPA) (Pub. L. 91190, U.S.C. 4221 et, seq.)), that requires agencies to conduct environmental assessments when their regulations constitue a significant Federal action. The EA addresses the possible incremental environmental effects attributable to the application of the proposed interim standards to the design of Federal residential buildings and this section summarizes the findings.

A. Official Finding

A *Finding of No Significant Impact*, is published jointly with this document.

The Environmental Assessment concludes that no significant impacts will result to the indoor or outdoor environment from implementing the proposed interim standards.

Specific conclusions are summarized below:

B. Contents of the EA Document

As mentioned above, when an agency is going to undertake what may be considered a significant Federal action, it is required to perform an environmental assessment to ascertain whether there will be any negative environmental consequences. Depending on the results of these assessments, agencies must either conduct additional research culminating in the filing of an environmental impact statement or make an official Finding of No Significant Impact. Because, in the recent past, new building standards have generated an enormous amount of public interest and concern, and because these proposed standards will be available as a guideline to private sector designers, the DOE was persuaded that an environmental assessment would be prudent.

In preparing the EA, DOE attempted to use as much of the still operative *Draft Environmental Impact Statement* (EIS), issued in 1979, as is relevant to this issuance before undertaking additional analysis. Two major changes are evident. The draft EIS inadequately discussed the subject of indoor air quality. Many of the comments received from government agencies, research oragnizations and the public reflected their concern that energy standards programs could result in the deterioration of indoor air quality and adversely affect public health. The EA therefore, includes a more substantive discussion of this subject.

C. Approach Used in the Analysis

As required by NEPA, the analysis looks at a No Action Alternative and the Preferred Alternative. The No Action Alternative is the baseline of residential construction (base case) from which point the research begins. In this program, the baseline represents the buildings currently being built by the Federal establisment. This information was collected from the survey work on the construction practices of the military establishment performed by Steven Winter Associates for Pacific Northwest Laboratory.

The Preferred Alternative is the proposed interim standards (redesign case) or the building prototypes with the set of conservation measures that represent the optimum energy life cycle cost to the government. The environmental assessment compared the typical buildings presently being constructed by the government to the buildings that are likely to be built after using the COSTSAFR computer program once the proposed interim standards are promulgated.

D. Specific Findings From EA

1. Particulate Matter

Implementation of the proposed interim standards is expected to reduce the level of particulate matter slightly in all residences where electric cooking appliances are used and in residences where the indoor/outdoor air exchange rate is increased from 0.7 to 1.0 ach.

2. Carbon Monoxide

Calculated indoor concentrations of carbon monoxide (CO) from cooking and smoking are well below levels currently associated with health risk. The proposed interim standards will only reduce CO concentrations.

3. Carbon Dioxide

Residential units designed under the proposed interim standards are expected to maintain low concentration levels of carbon dioxide (CO_2). The health risks from indoor CO_2 concentration are not increased.

4. Nitrogen Dioxide

Release of nitrogen dioxide NO_2 in residential indoor environments is small. The calculated concentrations of NO_2 for the redesign residential units are either the same as the base case design or are slightly lower.

5. Radon

Calculated values for indoor air concentrations of radon indicate that for site-built residential units, indoor concentration levels for the base case and the redesign case are either the same or are slightly reduced in the case where the redesign units have an increased air exchange rate. The redesign case study for manufactured homes shows a 2 inch reduction in floor insulation at one of the four climate sites evaluated. This reduction in floor insulation may have a very small effect on the infiltration of radon from soil into the residential unit.

6. Formaldehyde

The proposed interim standards are expected to reduce the level of formaldehyde concentrations. The reduction may benefit certain sensitive individuals who have a very low threshold to formaldehyde.

7. Chemical Compounds

A large number of chemical pollutants have been identified in indoor residential air. Many of these chemical compounds are either odorous, have been identified as being irritants, or are suspected carcinogens. The proposed interim standards are not expected to

measurably increase or decrease health risks due to chemical pollutants in residential indoor air.

8. Microorganisms

Microorganisms can become indoor air pollutants with potential health risk under certain conditions. The most severe indoor microorganism pollution problems result from growth of organisms on a damp surface or stagnant water reservoir within the residential unit. The principal building design change affecting the residential building's ability to shed moisture-laden air is the use of air-to-air heat exchangers in selected redesigned apartment units. Moisture condensation is expected as warm moisture-laden air is exhausted through the heat exchanger. Condensed moisture, if not effectively collected and disposed of over the entire life of the operating unit, may eventually create host areas for microorganisms. The use of air-to-air heat exchangers in large numbers is a relatively new phenomenon in the U.S. To date, research and use have not proven that air-to-air heat exchanger ventilation systems, over the long term, will always be operated and maintaneed as intended. Thus, the effects of air-to-air heat exchangers on microorganism growth and distribution is of concern over the longer term.

9. Outdoor Environmental Impacts

The overall magnitude of the improvement in outdoor environmental quality from reduced fuel usage and reduced insulation production is so small it is not measurable. Although the magnitude of changes in outdoor environmental quality cannot be measured, they are likely to be positive.

E. *EPA Review:* As required by section 7(a)(2), 15 U.S.C. 776(c)(2), of the Federal Energy Administration Act of 1974, 15 U.S.C. 761 *et seq.*, a copy of this proposed rule was submitted to the Administrator of the Environmental Protection Agency for comments on the impact of the proposed rule on the quality of the environment. On July 22, 1986, the EPA advised the Department of Energy that EPA has no objections to the publication of this proposed interim rule.

VIII. Economic Analysis

Although no preliminary determination was made that this issuance constitutes a "major rule", DOE prepared an *Economic Analysis* to follow the philosophy and intent of Executive Order 12291 of February 17, 1981, and to respond to the public interest expressed after the issuance of BEPS in November 1979. The analysis concluded that no significant direct or indirect impacts are expected to occur as a result of requiring Federal agencies to design their new residential buildings to the proposed interim standards as specified in this issuance.

The discussion below is a summary of the research and findings which are presented in the Economic Analysis Document which accompanies this rulemaking.

A. Objective and Scope of the Research

The Draft Regulatory Impact Analysis prepared and issued jointly with the BEPS in 1979, as Technical Support Document No. 6, is no longer applicable to the present standards program because it addressed a different proposed standard and because it considered all new housing, not just new Federal housing. Consequently, additional analysis was undertaken to discern what economic impacts, if any, might result from applying the proposed interim standards to Federally constructed housing. Only impacts which result from compliance by Federal agencies were covered in the analysis. The analysis did not calculate the effects and impacts on the private sector from voluntary compliance since the proposal is considered mandatory only as applied to Federal construction practices.

B. Impacts

The primary national effects of Federal agencies enforcing the proposed interim standards would be to reduce energy expenditures, increase construction and equipment expenditures over the life cycle of new residential buildings and generate a net life cycle cost savings. This savings would range from near zero to nearly $4,000 per unit, depending on the type of building constructed, its location and the major heating fuel used. On average, the savings per unit, exclusive of costs to install and operate, would be about $2,650 over the 25-year life cycle of the building. To calculate the net savings, $1,230 in construction and maintenance costs are subtracted; this additional expense would be for more efficient heating and cooling equipment and better insulation. The net savings in fuel costs per unit is $1,420.

When this savings is applied to the forecasts of Federal residential construction, the total savings over the next 5 years would amount to only $27 million. This savings is not deemed large enough to be of major consequence. Accordingly, the adoption of the proposed rule would have no major national impact.

C. The Analysis Process

Estimates of the costs and benefits of adopting the proposed interim standards were obtained by calculating the minimum life cycle cost of seven building prototypes in four different locations under current practice and under the proposed interim standards. The seven building prototypes were single- and two-story detached residences, end- and mid-unit townhouses, end- and mid-unit apartments and multi-section manufactured homes. The four locations and their respective climate types were New Orleans (hot, humid), Barstow, California (hot, dry), Washington, DC (moderate), and Sheridan, Wyoming (cold). The difference in life cycle costs between current practice and the proposed interim standards was then calculated for fuel costs, non-fuel costs, and the total. These differences were averaged to obtain an estimate of the costs and benefits of adopting the proposed interim standards. A measure of the range around this average was obtained by considering the minimum and maximum costs and benefits by building prototype and location. Using any of the ranges would not alter the findings of the economic analysis.

These estimates of costs and benefits were then applied to forecasts of Federal residential construction obtained from the military (which undertakes over 95% of all Federal residential construction) for fiscal years 1986–1990. To exaggerate the effect of imposing the proposed interim standards, the sum of all residences forecast to be constructed over this 5-year period were used as an estimate to measure the impact. This sum of units forecast was then multiplied by the average difference in life cycle costs to obtain a total of the costs and benefits of adopting the proposed interim standards. A similar estimate was obtained for the high and low range, reported above.

To complete the analysis, there is a discussion of the probable effects of adopting the proposed interim standards on different industries and on small businesses. There is also a brief discussion on non-quantifiable impacts.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 603, 604) requires DOE to calculate the effect its rulemaking will have on small businesses in the nation. Small business impacts have been analyzed for manufacturers of building and construction materials and

equipment, architects, builders and construction companies, and utilities.

The analysis contained in Chapter 3 of the Economic Analysis document, determined that this proposed rulemaking will have no impact on small business concerns.

IX. Opportunities for Public Comment

A. Participation in Rulemaking

DOE encourages the maximum level of public participation in this rulemaking. Following the publication of the previous Notice of Proposed Rulemaking on November 28, 1979, five public hearings were held to acquaint the public with the issues related to the proposed standards. More than 1,800 comments were received by DOE in response to the NOPR, many coming during the public hearings.

The Department encourages interested persons to participate in this rulemaking. Individuals, Federal agencies, architects, engineers, manufacturers, manufacturer associations, construction industry associations, utilities, state and local governments, building code organizations, builders, builder associations, building owners, building product manufacturers, manufactured housing manufacturers, consumers, and others are invited to submit written statements on the proposal. The Department also encourages interested persons to participate in the public hearings to be held in Washington, DC; Chicago, Illinois; and San Francisco, California, at the times and places indicated in the beginning of this notice.

Several documents have been prepared in connection with this proposed rule which have been referenced in the text. Copies of these documents may be found in the DOE Freedom of Information Reading Room. Interested persons may obtain copies of these documents by writing to the Hearings and Dockets Branch address specified at the beginning of this notice.

DOE has established a comment period of 90 days following publication of this notice, for persons to comment on this proposal. All comments will be available for review in the DOE Freedom of Information Reading Room.

B. Written Comment Procedures

Interested persons are invited to participate in this proceeding by submitting written data, views or arguments with respect to the subjects set forth in this notice. Instructions for submitting written comments are set forth below.

Comments should be labeled both on the envelope and on the documents, "Residential Building Standards (Docket No. CAS–RM–79–112–B)" and must be received by the date indicated in the beginning of this notice, in order to insure full consideration. Seven (7) copies are requested to be submitted. All comments and other relevant information received by the date specified at the beginning of this notice will be considered by DOE before final action is taken on the proposed regulation.

All written comments received on the proposed rule will be available for public inspection at the Freedom of Information Reading Room as provided at the beginning of this notice.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information or data which is believed to be confidential and exempt by law from public disclosure, should submit one complete copy of the document, and six copies, if possible, from which the information believed to be confidential has been deleted. DOE will make its own determination with regard to the confidential status of the information or data and treat it according to its determination.

Factors of interest to DOE, when evaluating requests to treat as confidential information that has been submitted, include: (1) A description of the item; (2) an indication as to whether and why such items of information have been treated by the submitting party as confidential within the industry; (3) whether the information is generally known or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) an indication as to when such information might lose its confidential character due to the passage of time; and, (7) whether disclosure of the information would be in the public interest.

C. Public Hearings

1. Procedure for Submitting Requests to Speak

In order to have the benefit of a broad range of public viewpoints in this rulemaking, DOE will hold three public hearings. Listed earlier in this notice are the dates and addresses for the hearings. Any person who has an interest in these proceedings, or who is a representative of a group or class of persons having an interest, may make a request for an opportunity to make an oral presentation at the public hearings. Such requests should be labeled both on the letter and the envelope, "Residential Building Standards (Docket No. CAS–RM–79–112–B)" and should be sent to the address listed at the beginning of this notice and must be received by the time specified at the beginning of this notice.

The person making the request should briefly describe the interest concerned and, if appropriate, state why he or she is a proper representative of the group or class of persons that has such an interest, and give a telephone number where he or she may be contacted.

Each person to be heard is required to bring to the hearing seven copies of their statement. In the event any person wishing to testify cannot meet this requirement, alternative arrangements can be made with the Office of Hearings and Dockets in advance by so indicating in the letter requesting to make an oral presentation.

Lists of the persons to be heard at the hearings will be available upon request from the Office of Hearings and Dockets at the address and after dates specified at the beginning of this notice. The lists will also be available for inspection in the DOE Freedom of Information Reading Room as specified at the beginning of this notice.

2. Conduct of Hearings

DOE reserves the right to select the persons to be heard at the hearings, to schedule the respective presentations, and to establish the procedures governing the conduct of the hearings. The length of each presentation is limited to 20 minutes.

A DOE official will be designated to preside at each of the hearings. The hearings will not be judicial or evidentiary-type hearings, but will be conducted in accordance with 5 U.S.C. 553 and section 336 of the Act. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity to make a rebuttal statement, subject to time limitations. The rebuttal statements will be given in the order in which the initial statements were made. The official conducting the hearings will accept additional comments or questions from those attending, as time permits. Any interested person may submit to the presiding official written questions to be asked of any person making a statement at the hearings. The presiding official will determine whether the question is relevant and whether time limitations permit it to be presented for response.

Any further procedural rules regarding proper conduct of the hearings will be announced by the presiding official.

A transcript of the hearings will be made, and the entire record of this rulemaking, including the transcript, will be retained by DOE and made available for inspection at the DOE Freedom of Information Reading Room as provided at the beginning of this notice. Any person may also purchase a copy of the transcript from the transcribing reporter.

DOE may consolidate any or all of the public hearings if DOE does not receive indication of sufficient interest concerning a particular hearing. In that event, DOE will contact each speaker and provide that person the opportunity to present testimony at any of the other hearings. However, DOE will not provide transportation of lodging for such speakers to appear at a hearing. DOE will include, for the record, at one of the other hearings a copy of the statement of any person who requested to speak at a hearing that was cancelled by DOE.

List of Subjects in 10 CFR Part 435

Architects, Building code officials, Buildings, Energy conservation, Energy conservation building performance standards, Engineers, Federal buildings and facilities, Housing, Insulation, Voluntary performance standards.

For the reasons set out in the preamble, Chapter II of Title 10 of the Code of Federal Regulations is proposed to be amended as set forth below:

Issued in Washington, DC on August 5, 1986.

Donna R. Fitzpatrick,

Assistant Secretary, Conservation and Renewable Energy.

Chapter II of Title 10, Code of Federal Regulations is proposed to be amended by adding a new Part 435 to read as set forth below:

PART 435—ENERGY CONSERVATION VOLUNTARY PERFORMANCE STANDARDS FOR NEW BUILDINGS

Subpart A—Voluntary Performance Standards for New Commercial Buildings [Reserved]

Subpart B—Voluntary Performance Standards for New Residential Buildings [Reserved]

Subpart C—Mandatory Performance Standards for New Federal Residential Buildings

Sec.

Authority: Energy Conservation Standards for New Buildings Act of 1976, as amended, enacted as Title III of the Energy Conservation and Production Act [42 U.S.C. 6831–6840]; section 545 of the National Energy Conservation Policy Act [42 U.S.C. 8255]; the Department of Energy Organization Act [42 U.S.C. 7101 *et seq*].

Subpart A—Voluntary Performance Standards for New Commercial Buildings [Reserved]

Subpart B—Voluntary Performance Standards for New Residential Buildings [Reserved]

Subpart C—Mandatory Performance Standards for New Federal Residential Buildings

§ 435.30 Purpose.

(a) This subpart establishes voluntary energy performance standards for new residential buildings. The voluntary energy performance standards are designed to achieve the maximum practicable improvements in energy efficiency and increases in the use of non-depletable sources of energy.

(b) Voluntary energy perforamnce standards prescribed under this subpart shall be developed solely as guidelines for the purpose of providing technical assistance for the design of energy conserving buildings, and only shall be mandatory for the design of Federal buildings.

(c) The energy performance standards will direct Federal policies and practices to ensure that cost-effective energy conservation features will be incorporated into the designs of all new residential buildings designed and constructed by and for Federal agencies.

§ 435.31 Scope.

(a) The energy performance standards for new Federal residential buildings will apply to the design of all new residential buildings except multifamily buildings more than three stories above grade.

(b) The primary types of buildings built by or for the Federal agencies, to which the energy performance standards will apply, are:

(1) Single-story single-family residences;

(2) Split-level single-family residences;

(3) Two-story single-family residences;

(4) End-unit townhouses;

(5) Middle-unit townhouses;

(6) End-units in multifamily buildings (of three stories above grade or less);

(7) Middle-units in multifamily buildings (of three stories above grade or less);

(8) Single-section mobile homes; and

(9) Multi-section mobile homes.

§ 435.32 Definitions.

(a) "Building" means any new residential structure (1) that includes or will include a heating or cooling system, or both, or a domestic hot water system, and (2) for which a building design is created after the effective date of this rule.

(b) "Building design" means the development of plans and specifications for human living space.

(c) "Conservation Optimization Standard for Savings in Federal Residences" means the computerized calculation procedure that is used to establish an energy consumption goal for the design of Federal residential buildings.

(d) "COSTSAFR" means the Conservation Optimization Standard for Savings in Federal Residences.

(e) "Energy performance standard" means an energy consumption goal or goals to be met without specification of the method, materials, and processes to be employed in achieving that goal or goals, but including statements of the requirements, criteria evaluation methods to be used, and any necessary commentary.

(f) "Federal agency" means any department, agency, corporation, or other entity or instrumentality of the executive branch of the Federal Government, including the United States Postal Service, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation.

(g) "Federal residential building" means any residential building to be constructed by or for the use of any Federal agency in the Continental U.S., Alaska, or Hawaii that is not legally subject to state or local building codes or similar requirements.

(h) "Life cycle cost" means the minimum life cycle cost calculated by using the methodology specified in Subpart A of 10 CFR Part 436.

(i) "Point system" means the tables that display the effect of the set of energy conservation options on the design energy consumption and energy costs of a residential building for particular location, building type and fuel type.

(j) "Practicable optimum life cycle energy cost" means the energy costs of the set of conservation options that has the minimum life cycle cost to the Federal government incurred during a 25 year period and including the costs of construction, maintenance, operation, and replacement.

(k) "Project" means the group of one or more Federal residential buildings to be built at a specific geographic location that are included by a Federal agency in

specifications issued or used by a Federal agency for design or construction of the buildings.

(l) "Residential building" means a new building that is designed to be constructed and developed for residential occupancy.

(m) "Set of conservation options" means the combination of envelope design and equipment options that influences the long term energy use in a building designed to maintain a minimum ventilation level of 0.7 air changes per hour, including the heating and cooling equipment, domestic hot water equipment, glazing, insulation, refrigerators and air infiltration control measures.

§ 435.33 Requirements for the Design of a Federal Residential Building.

(a) The head of each Federal agency responsible for the construction of Federal residential buildings shall establish an energy consumption goal for each building to be designed or constructed by or for the agency.

(d) The energy consumption goal for a Federal residential building shall be a total point score derived by using the micro-computer program and user manual entitled "Conservation Optimization Standard for Savings in Federal Residences (COSTSAFR)," unless the head of the Federal agency shall establish more stringent requirements for that agency.

(c) The head of each Federal agency shall adopt such procedures as may be necessary to ensure that the design of a Federal residential building is not less energy conserving than the energy consumption goal established for the building.

§ 435.34 The Costsafr Program.

(a) The COSTSAFR Program provides a computerized calculation procedure to determine the most effective set of energy conservation measures, selected from among the measures included within the Program that will produce the practicable optimum life cycle cost for a type of residential building in a specific geographic location. The most effective set of energy conservation measures is expressed as a total point score that serves as the energy consumption goal.

(b) The COSTSAFR Program also prints out a point system that identifies a wide array of different energy conservation measures indicating how many points various levels of each measure would contribute to reaching the total point score of the energy consumption goal. This enables a Federal agency to use the energy consumption goal and the point system in the design and procurement procedures so that designers and builders can pick and choose among different combinations of energy conservation measures to meet or exceed the total point score required to meet the energy consumption goal.

(c) The COSTSAFR Program operates on a micro computer system that uses the MS DOS operating system and is equipped with an 8087 co-processor.

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BILLING CODE 6450-01-M

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10 CFR Part 435

Energy Conservation Standards for New Federal Residential Buildings

AGENCY: Conservation and Renewable Energy Office, DOE.

ACTION: Finding of No Significant Impact (FONSI) on Proposed Energy Conservation Standards for New Federal Residential Buildings.

SUMMARY: The U.S. Department of Energy (DOE) is proposing interim energy conservation standards for new federal residential buildings (to be identified as a newly established Subpart C of Part 435, Ch. II of Title 10 CFR) as required by the Energy Conservation Standards for New Buildings Act of 1976, as amended, (the Act) 42 U.S.C. 6831 *et seq.* The Notice of Proposed Rulemaking (NOPR) for this action is being published in today's **Federal Register.** Federal agencies would be required to design federal residential buildings to satisfy the energy efficiency requirements of the proposed interim standards. The proposal requires a federal agency to establish an energy consumption goal for the design of a new federal residential building using the computerized calculation procedure provided in a microprocessor program (COSTSAFR) and to adopt such procedures as may be necessary to assure that the design of a new federal residential building is not less energy conserving than the energy consumption goal established for the design. The computer program determines the most effective set of energy conservation measures, selected from among the measures included within the program, that will produce the optimum life cycle cost for a specific type of residential building in the geographic location where it will be constructed. This most effective set of measures is expressed as a total point score which, in turn, serves as the energy consumption goal for the design of the federal residential building.

The computer program produces a compliance point system that is intended to be attached to housing Requests for Proposals issued by agencies of the federal government. The point system, which is specifically tailored to each request, is to be used by proposers to demonstrate that their specific designs comply with the energy consumption goal. The point system also provides a standard method for each proposer to estimate the energy cost over the life of the building in discounted dollars. This estimate can then be used by evaluators to estimate the total energy performance of each proposal.

The interim standards were designed specifically to accommodate the types of federal construction most commonly built, federal economic parameters and federal procurement procedures. The Department is in the process of developing residential standards that would be more applicable to the non-federal sector. These will be issued at some future date as voluntary standards.

Based on an environmental assessment (EA), DOE has determined that the proposed interim standards are not a major federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act. Therefore, an environmental impact statement will not be prepared. Single copies of the EA (DOE/EA-0300) are available on request at the following address.

Public availability: Hearings and Dockets Branch, Office of Conservation and Renewable Energy, U.S. Department of Energy, Docket Number CAS-RM-79-112-B, 1000 Independence Avenue, SW., Room 6B-025, Washington, DC 20585, (202) 252-9319

FOR FURTHER INFORMATION CONTACT:

Jean J. Boulin, Building Systems Division, CE-131, U.S. Department of Energy, Room GF-253, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-9837

Donald E. Henninger, Office of Environmental Guidance, EH-23, U.S. Department of Energy, Room 3G-092, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-4597

Martha S. Crosland, Office of General Counsel, GC-11, U.S. Department of Energy, Room 6A-113, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-6947

SUPPLEMENTARY INFORMATION: DOE prepared an environmental assessment

(EA) of the proposed interim standards pursuant to the National Environmental Policy Act of 1969, as amended, Pub. L. 91–190, 40 U.S.C. 4221 *et seq.*), and the implementing regulations of the Council on Environmental Quality (40 CFR Parts 1500–1808). The EA addresses the possible incremental environmental effects attributable to the application of the proposed interim standards to the design of new federal residential buildings.

The EA concludes that the effect of the proposed interim standards on a building's habitability as well as on the outdoor environment, the economy and federal institutions, will be very small. Specific conclusions are summarized below.

Approach Used in the Analysis

The analysis looks at a No Action Alternative and the Proposed Standard. The No Action Alternative represents current practices in federal residential construction and is the base case against which the Proposed Standard is evaluated. Base case information was collected from the survey work on the construction practices of the military establishment.

To evaluate the effects that the proposed interim standards would have on the environment, DOE reviewed current construction plans for federal residential units typical of current and expected construction during the FY 1986–FY 1990 period. A design was selected for each type of residential unit. Each of these nine "base case" residential units was tested in a series of computer simulations to achieve the maximum practicable improvements in energy efficiency. This assessment included the use of life cycle analysis. The energy efficiency and life cycle cost information was used to architecturally redesign each residential unit to meet the proposed interim standards. These architectually upgraded residential units became the "redesign case" units, or the Proposed Standards. The EA compared the typical buildings presently being constructed by the government to the buildings that are likely to be built after using the COSTSAFR computer program once the proposed interim standards are promulgated, and evaluated environmental consequences with emphasis on possible alterations to indoor air quality.

General Findings

The EA finds that the effect of the proposed residential building energy conservation standards on building habitability, as well as on the outdoor environment, the economy and federal institutions, will be very small. General findings are summarized below:

A. Habitability

In the assessment, habitability is expressed in terms of changes in indoor air pollutant concentrations. Various pollutants are released continuously or intermittently within residential buildings. An indoor air quality computation model that uses specific pollution emission values (release rates) for selected materials and occupant activities was used to calculate pollutant concentration levels in the nine case-study residential buildings, based on their design characteristics for the base case (current practice) and redesign case (proposed interim standards). Incremental pollutant concentrations were calculated for particulate matter, carbon monoxide, carbon dioxide, nitrogen dioxide, radon and formaldehyde. In addition, a qualitative assessment was made of chemical compounds and microorganisms. The changes in the various indoor air pollutant concentrations and concommitant occupant health and safety effects that can be attributed to design changes called for by the proposes interim standards are minimal.

1. Particulate Matter

Implementation of the proposed interim standards is expected to reduce the level of particulate matter slightly in all residences where electric cooking appliances are used and in residences where the indoor/outdoor air exchange rate is increased from 0.7 to 1.0 air changes per hour.

2. Carbon Monoxide

Calculated indoor concentrations of carbon monoxide (CO) from cooking and smoking are well below levels currently associated with health risk. The proposed interim standards will reduce CO concentrations.

3. Carbon Dioxide

Residential units designed under the proposed interim standards are expected to maintain low concentration levels of carbon dioxides (CO_2). The health risks from indoor CO_2 concentration are not increased.

4. Nitrogen Dioxide

Release of nitrogen dioxide (NO_2) in residential indoor environments is small. The calculated concentrations of NO_2 for the redesign residential units are either the same as the base case design or are slightly lower.

5. Radon

Calculated values for indoor air concentrations of radon indicate that for site-built residential units, indoor concentration levels for the base case and the redesign case are either the same or are slightly reduced in the case where the redesign units have an increased air exchange rate. The redesign case study for manufactured homes shows a two-inch reduction in floor insulation at one of the four climate sites evaluated. This reduction in floor insulation may result in a very small increase in radon infiltration from soil into the residential unit.

6. Formaldehyde

The proposed interim standards are expected to reduce the level of formaldehyde concentrations. The reduction may benefit certain sensitive individuals who have a very low threshold to formaldehyde.

7. Chemical Compounds

A large number of chemical pollutants have been identified in indoor residential air. Many of these chemical compounds are odorous, irritants, or suspected carcinogens. The proposed interim standards are not expected to measurably increase or decrease health risks due to chemical pollutants in residential indoor air.

8. Microorganisms

Microorganisms can become indoor air pollutants with potential health risk under certain conditions. The most severe indoor microorganism pollution problems result from growth of organisms on a damp surface or stagnant water reservoir within the residential unit. The principal building design change affecting the residential building's ability to shed moisture-laden air is the use of air-to-air heat exchangers in selected redesigned apartment units. Moisture condensation is expected as warm moisture-laden air is exhausted through the heat exchanger. Condensed moisture, if not effectively collected and disposed of over the entire life of the operating unit, may eventually create host areas for microorganisms. The use of air-to-air heat exhangers in large numbers is a relatively new phenomenon in the U.S. To date, research and use have not proven that air-to-air heat exchanger ventilation systems, over the long term, will always be operated and maintained as intended. Thus, the effects of air-to-air heat exchangers on microorganism growth and distribution is of concern over the longer term.

B. Outdoor Environmental Impacts

The overall magnitude of the improvement in outdoor environmental quality from reduced fuel usage and reduced insulation production is so small it is not measurable. Although the magnitude of changes in outdoor environmental quality cannot be measured, they are likely to be positive.

C. Economic Effects

The primary national effects of adopting the proposed interim standards by federal agencies, cumulated over five years, would be to reduce federal government expenditures over the life cycle of these residential buildings by about $27 million (1985 dollars). This $27 million savings is comprised of fuel savings of approximately $53 million, offset by increased capital costs of about $26 million. Regional impacts are also expected to be small. There are no discernible impacts on any industrial sector as a result of adopting the proposed interim standards, nor will there be any adverse impacts on small business. Some modest non-quantifiable effects may be associated with a change in the procedures that result from adopting the proposed interim standards, but these also are expected to be very small.

D. Institutional Effects

The proposed interim standards are not radically different from standards already being used by the federal government or by the private sector. They do, however, require computer algorithms to be used in the assessment of compliance. Offsetting this will be a reduction in the amount of paperwork currently required to assure compliance.

Determination

Based upon the findings of the EA, DOE has determined that the proposed interim standards do not constitute a major federal action significantly affecting the quality of the human environment, within the meaning of NEPA. Therefore, an environmental impact statement is not required.

Issued in Washington, DC, April 17, 1986.

Mary L. Walker,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 86-18744 Filed 8-19-86; 8:45 am]

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federal register

Wednesday
August 20, 1986

Part III

Consumer Product Safety Commission

16 CFR Part 1500

Household Products Containing Methylene Chloride; Status as Hazardous Substances; Proposed Rule

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500

Household Products Containing Methylene Chloride; Status as Hazardous Substances

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.

SUMMARY: In order to resolve uncertainties about whether methylene chloride and household products containing methylene chloride are hazardous substances under the Federal Hazardous Substances Act due to a risk of cancer from inhalation of methylene chloride vapor, the Commission [1] initiates a rulemaking that, if appropriate, could result in a declaration that products that contain methylene chloride, and that are intended, or packaged in a form suitable, for use in the household, are hazardous substances because of this risk. The Commission's concern about the potential cancer risk to humans from methylene chloride arises from certain tests indicating that methylene chloride is an animal carcinogen by inhalation and from data showing that paint strippers and spray paints containing methylene chloride can expose consumers to high concentrations of vapor when the products are used under conditions of poor ventilation.

DATE: Comments on the proposed rule to declare products containing methylene chloride to be hazardous substances should be submitted by October 20, 1986.

ADDRESSES: Comments should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to the Public Reading Room, Consumer Product Safety Commission, 8th Floor, 1111 18th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sandra Eberle, Program Manager, Chemical Hazards Program, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492–6554.

SUPPLEMENTARY INFORMATION:

A. Background and Introduction

Potential Risks to Consumers

The Commission originally became concerned about methylene chloride, also known as dichloromethane or DCM, because of its acute health effects. (When DCM is inhaled, a portion is converted to carbon monoxide in the body, forming carboxyhemoglobin and interfering with the capacity of the blood to carry oxygen.) In 1980, an industry inhalation bioassay in Sprague-Dawley rats and hamsters was completed. This bioassay, published in 1984, showed salivary gland tumors in male rats and an increased number of mammary gland tumors per tumor-bearing rat. There was no carcinogenic effect noted in hamsters. [101] [2] Since then, a number of other bioassays have been published. [102–107]

The National Toxicology Program ("NTP") of the Public Health Service, Department of Health and Human Services, undertook cancer bioassays of methylene chloride by the oral (gavage) and inhalation routes of exposure. [102, 103] The gavage bioassay was completed first and the draft report was reviewed by the NTP Board of Scientific Counselors in September of 1982. The study results showed positive evidence of carcinogenicity in rats. However, an audit of the contractor that performed the bioassay, conducted by the Toxicology Audit Subcommittee of the Health and Science Committee of the Halogenated Solvents Industry Alliance, uncovered a number of discrepancies in the conduct of the bioassay. [108] A subsequent audit, performed by NTP, confirmed these discrepancies. As a result, the NTP withdrew the draft report on the gavage bioassay. [706, 707] The inhalation bioassay report was released after a complete audit was performed.

On March 29, 1985, the NTP Board of Scientific Counselors reviewed the NTP inhalation bioassay and concluded that there was "clear evidence" of carcinogenicity of methylene chloride in female rats, as shown by an increased incidence of benign neoplasms of the mammary gland, and in male and female mice, as shown by increased incidences of alveolar/bronchiolar carcinomas and adenomas and of hepatocellular carcinomas and adenomas (lung and liver cancers). There was also "some evidence" of carcinogenicity in male rats as shown by an increased incidence of benign neoplasms of the mammary gland.[3] [109]

The results of the NTP inhalation bioassay in rats are consistent with data developed in an inhalation study conducted for Dow Chemical (1980) in another strain of rat. [101] Section B of this notice discusses in more detail the animal test data relevant to the Commission's concerns about the potential carcinogenicity of methylene chloride vapor.

Because of concern over the acute and possible chronic risks of methylene chloride, the Commission funded studies, first at Edgewood Arsenal in 1976 and then at Lawrence Berkeley Laboratory in 1984 and 1985, to obtain estimates of the concentrations of methylene chloride vapor that consumers might be exposed to when paint strippers and spray paints are used in certain reasonably foreseeable ways in the home. These studies showed that consumers could be exposed to concentrations of methylene chloride vapor, during spray painting and paint stripping operations involving inadequate ventilation conditions, that are similar to the concentrations at which carcinogenic responses were obtained in the NTP bioassay. Section C of this notice discusses the potential exposure of consumers to methylene chloride in more detail.

The staff presented to the Commission the following preliminary findings: (1) The NTP bioassay indicated that methylene chloride is an animal carcinogen, (2) the available information indicated that methylene chloride can cause genotoxic effects, (3) the available epidemiologic data for humans were not adequate to determine whether methylene chloride is or is not a human carcinogen, (4) the staff was not aware of any data that would warrant a conclusion that humans are not susceptible to the carcinogenic effect of methylene chloride, so it concluded that methylene chloride should be presumed to present a risk of cancer to humans, and (5) the available data showed that consumers could be exposed to concentrations of methylene chloride vapor similar to those to which the test animals were subjected.

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[1] Chairman Terrence Scanlon and Commissioners Carol Dawson and Anne Graham voted to approve this proposal document, which includes certain changes from the original draft of the proposal. Commissioner Saundra Brown Armstrong voted for the document as originally drafted.

[2] Numbers in brackets indicate the number of the relevant document as listed in the "List of Relevant Documents" at Appendix 3 to this notice.

[3] The vote in favor of a finding of "clear evidence" in female rats was 6–2, with 2 abstentions by reason of company affiliation. The finding of "some evidence" of carcinogenicity in male rats was adopted by a vote of 7–1, with 2 abstentions due to company affiliation. The adoption of the findings of "clear evidence" of carcinogenicity in male and female mice was by a single vote of 8–0, again with 2 abstentions by virtue of company affiliation.

On June 19, 1985, the staff forwarded a briefing package to the Commission that outlined various options that the Commission could consider for taking action to reduce consumer exposure to methylene chloride. [724] The Commission continued to consider the matter, while asking the staff to provide additional information on the identified options and on the risk to humans of cancer from inhalation of methylene chloride vapor.

After receiving additional information from the staff and from other parties having various views on the potential risks of cancer from inhalation of methylene chloride vapor, the Commission decided that scientific evidence indicates that exposure to products containing methylene chloride could present a chronic health hazard to consumers, but also indicates some uncertainty concerning any cancer risks to humans which should be explored further and documented. The Commission therefore decided to initiate formal rulemaking under section 3(a) of the FHSA. The applicable provisions of the FHSA are explained subsequently in this notice. In short, this process will provide an opportunity for full participation by consumers, the industry, scientists, health experts, and any other concerned parties in this very important process.

In addition to important due process considerations, it is believed that this procedure will provide the highest level of protection to the public in the long run, as well as greater assurances that the final regulation is legally and technically sound.

Given the unlikelihood that a final rule will be issued before the end of the year, the Commission also voted unanimously to take additional interim measures to reduce consumer exposure to methylene chloride *immediately*. Specifically, the Commission directed the staff to continue to work with consumer and industry groups on a voluntary basis to develop chronic hazard labeling, to initiate a cooperative information and education program, and to facilitate manufacturers' efforts to reformulate products to eliminate methylene chloride or reduce emission rates.

Products Involved

The Commission believes that the household products containing methylene chloride can be grouped into five major categories: fabric care products (including shoe, clothing, and leather care products); paints, paint strippers, and other paint-related products; adhesives and adhesive removers; automotive products, including specialty cleaners and lubricants; and miscellaneous non-automotive products, including, but not limited to, artificial snow aerosols and all-purpose lubricants. Where present, the methylene chloride concentration of individual products in these categories varies widely both within and across product groups; the overall range is from less than five percent to above 90 percent. For the reasons given in Section E of this notice, the Commission is proposing to determine that household products containing methylene chloride are hazardous substances due to a risk of cancer to humans from inhalation of the methylene chloride vapor.

Provisions of the Federal Hazardous Substances Act

Among the statutes administered by the Commission is the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. 1261–1276, which establishes certain requirements and gives the Commission certain remedial powers with respect to hazardous household substances. Under section 2(g) of the FHSA, 15 U.S.C. 1261(g), a "toxic" substance is defined as "any substance (other than a radioactive substance) which has the capacity to produce personal injury or illness to man through ingestion, inhalation, or absorption through any body surface." This broad definition would include a substance that was capable of causing cancer in humans. Section 2(f)(1) of the FHSA defines "hazardous substance" as including:

> (A) Any substance or mixture of substances which (i) is toxic, [or other enumerated hazards] . . ., if such substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children.

Thus, in order for a human carcinogen to be a hazardous substance, it must be available to humans by a route of exposure that presents a carcinogenic risk during any reasonably, foreseeable handling or use.

Under section 2(p)(1) of the FHSA, a hazardous substance that is intended, or packaged in a form suitable, for use in the household is misbranded if it fails to bear a label with certain specified labeling. Included in the required labeling is:

> . . . (D) the signal word "WARNING" or "CAUTION" . . . (E) an affirmative statement of the principal hazard or hazards, such as "Flammable", "Combustible," "Vapor Harmful", "Causes Burns", "Absorbed Through Skin", or similar wording descriptive of the hazard; (F) precautionary measures describing the action to be followed or avoided, . . ."

15 U.S.C. 1261(p)(1).

If the Commission determines that household products which give off methylene chloride vapor are hazardous substances because they present a risk of cancer to humans, such products will be required to bear labeling that meets the requirements of section 2(p)(1) of the FHSA. For a discussion of the factors the staff considers in determining the appropriate labeling for a particular hazardous substance, see document no. 764.

Under section 3(a) of the FHSA, "[w]henever in the judgment of [the Commission] such action will promote the objectives of [the FHSA] by avoiding or resolving uncertainty as to its application, the [commission] may by regulation declare" that a particular substance is a hazardous substance.

If the Commission finds "that the requirements of section 2(p)(1) are not adequate for the protection of the public health and safety in view of the special hazard presented by any particular hazardous substance, [it] may by regulation establish such reasonable variations or additional label requirements as [it] finds necessary for the protection of the public health and safety." Section 3(b) of the FHSA, 15 U.S.C. 1262(b).

The Commission also may, by regulation, declare a substance to be a banned hazardous substance if it finds:

> that, notwithstanding such cautionary labeling as is or may be required under [the FHSA] for that substance, the degree or nature of the hazard involved in the presence or use of such substance in households is such that the objective of the protection of the public health and safety can be adequately served only by keeping such substance, when so intended or packaged, out of the channels of interstate commerce . . .

15 U.S.C. 1261(q)(1)(B).

Section 2(q)(1)(A) of the FHSA also provides that "any toy, or other article intended for use by children, which is a hazardous substance, or which bears or contains a hazardous substance in such manner as to be susceptible of access by a child to whom such toy or other article is entrusted" is a banned hazardous substance. Therefore, a determination that household products containing methylene chloride are hazardous substances would have the effect of banning toys, and other articles intended for use by children, that contain methylene chloride. The Commission is not aware of any such products and solicits comment on the

extent to which such products currently may be marketed.

Consumer Federation of America Petition

On September 3, 1985, the Commission received a request from the Consumer Federation of America ("CFA") that the Commission begin a rulemaking proceeding under section 3(a) of the FHSA to declare methylene chloride to be a hazardous substance and, upon a finding that methylene chloride is a hazardous substance, to commence a proceeding to declare it to be a banned hazardous substance. [731] CFA's request subsequently was amended [754], and the Commission has docketed CFA's requests as Petition No. HP 85-1. [744, 761] CFA's petition is reproduced as Appendix 1 to this notice.

Potential Product Reformulations To Reduce Consumer Exposure to Methylene Chloride

The Commission has been informed that many manufacturers of spray paints are taking action to eliminate or reduce the use of methylene chloride as an ingredient in spray paints intended for consumer use. [758] Comment is solicited on the extent to which the use of methylene chloride is being reduced or eliminated in spray paints and other products and on the feasibility of the use of substitutes for methylene chloride in various applications.

Also, manufacturers are investigating the possible use of additives for paint strippers that would reduce the tendency of these products to give off methylene chloride vapor. One possible way to do this that has been suggested, and is reportedly being tested, is to use an additive that would form a film over the surface of the applied paint stripper to retard evaporation; it is possible that this could also maintain the effectiveness of the product with a lower percentage of methylene chloride in the formulation. However, the Commission does not have specific information on the composition or effectiveness of such additives. In addition, it is possible that such additives may not be as effective in reducing methylene chloride emissions during the scraping operation as they may be while the stripper is sitting undisturbed on the surface to be stripped. Comment is solicited on the potential effectiveness of additives to reduce consumer exposure to methylene chloride during paint stripping operations.

Recent Action by the Commission

In addition to voting to commence this rulemaking to determine whether household products containing methylene chloride are hazardous substances, the Commission voted unanimously (5-0) to direct its staff to continue its activities in working with industry, consumer groups, and other interested parties in the voluntary efforts relating to methylene chloride in which they were already engaged, including: (1) Development of appropriate labeling language for products containing methylene chloride, (2) development of information and education programs directed to consumers and sellers of products containing methylene chloride, and (3) reformulating products now containing methylene chloride. This effort has been conducted by means of the Steering Committee on Methylene Chloride, a group consisting of industry and consumer interest representatives working with the Commission's staff. The Steering Committee, which did not address the question of whether methylene chloride is carcinogenic to humans, was chaired by the National Paint and Coatings Association and cochaired by the Consumer Federation of America and the staff of the Consumer Product Safety Commission. The labeling for products containing methylene chloride that has been recommended by the committee is discussed in section F of this notice.

The Commission's decision to conduct a rulemaking proceeding under section 3(a) to resolve uncertainties concerning the status of methylene chloride as a hazardous substance satisfies the first of the requests in CFA's petition, and thus constitutes a partial granting of CFA's petition. The remainder of CFA's petition, that the commission commence a proceeding to ban methylene chloride, will be decided by the Commission at a later time.

Applicable Rulemaking Procedure

A proceeding under section 3(a) of the FHSA is governed by the provisions of sections 701(e)-(g) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 371(e)-(g). Under these provisions, a proceeding is commenced by a proposal made either by the Commission on its own initiative or by petition of any interested person, showing reasonable grounds therefor, filed with the Commission. After giving all interested parties an opportunity to present their views on the proposal, orally or in writing, the Commission is required to issue an order acting on the proposal, specifying, if appropriate, the effective date of the Commission's action.

Within 30 days of the time the Commission's order is made public, any person who will be adversely affected by the order may file objections to the order with the Commission. The objections must specify the particular provisions of the order that are deemed objectionable, state the grounds for the objections, and request a public hearing on the objections. Until final action is taken on the objections by the Commission, the filing of the objections serves to stay the effectiveness of those provisions of the order to which the objections are made. The Commission shall publish a notice in the **Federal Register** specifying those parts of the order which have been stayed by the filing of objections or, if no objections have been filed, stating that fact.

As soon as practicable after objections are filed, the Commission shall hold a public hearing on the issues raised by the objections. At the hearing, any interested persons may be heard in person or by representative. The hearing would be conducted in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. 554-559. The procedures the Commission proposes to use if a public hearing is requested are explained in Appendix 2 to this notice. Any comments received on these proposed procedures will be considered before the Commission makes a final decision on what procedures to use in any public hearing on objections filed in this rulemaking.

Any person who would be adversely affected by the Commission's order after hearing may, at any time prior to the ninetieth day after such order is issued, file a petition, with the United States court of appeals for the circuit wherein such person resides or has his principal place of business, for judicial review of such order. The findings of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. *See* 15 U.S.C. 1262(a)(2); 21 U.S.C. 371(e)-(g), 409(f)(2), (g)(2) [fourth sentence], (g)(3).

Other Agencies' Activities

The Environmental Protection Agency has issued a notice for methylene chloride under section 4(f) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. 2063(f). 50 FR 20126 (May 14, 1985). Section 4(f) requires that if the Administrator of EPA obtains information indicating that there may be a reasonable basis to conclude that a chemical presents a significant risk of serious or widespread harm to humans from cancer, gene mutations, or birth defects, he must either initiate an action to regulate the substance under section 5, 6, or 7 of TSCA or publish in the **Federal Register** the finding that the risk

presented by the substance is not unreasonable.

The Food and Drug Administration has proposed a ban of methylene chloride in aerosol cosmetic products. 50 FR 51551 (December 18, 1985). In this proposal, however, FDA indicated that it did not intend to reduce the permitted residual level of methylene chloride in decaffeinated coffee, since that level was deemed to constitute a *de minimus* risk. The organizations Public Citizen and Consumer Federation of America have filed suit contesting the legality of this latter determination.

The Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, has issued OSHA Instruction PUB 8–1.2, "Guideline for Controlling Exposure to Methylene Chloride," March 10, 1986. This instruction provides guidelines to employers and employees for controlling exposure to methylene chloride in the workplace. [777]

Also, OSHA has issued a hazard communication regulation, 29 CFR 1910.1200. The hazard communication program required by OSHA's regulation includes container labeling and, other forms of warnings, material safety data sheets, and employee training. The hazard communication program applies to, among other substances, substances having 0.1 or greater concentration of a "carcinogen."

EPA, CPSC, OSHA, and FDA are also coordinating, in the form of the Integrated Chlorinated Solvents Project, the regulatory investigation of the health risks posed by chlorinated solvents, including methylene chloride.

B. Animal Test Data

In the NTP bioassay, methylene chloride was tested in 50 rats and 50 mice of each sex at each exposure level. The mice were exposed to 0, 2000, and 4000 parts per million (ppm) and the rats were exposed to 0, 1000, 2000, and 4000 ppm. Exposure was 6 hours a day, 5 days a week, for 24 months.

The NTP bioassay report, as approved by the NTP Board of Scientific Counselors Peer Review Panel on March 29, 1985, concludes:

> Under the conditions of the NTP inhalation bioassay there was *some evidence of carcinogenicity* of dichloromethane for male F344/N rats as shown by an increased incidence of benign neoplasms of the mammary gland. There was *clear evidence of carcinogenicity* of dichloromethane for female F344/N rats as shown by the increased incidence of benign neoplasms of the mammary gland. There was *clear evidence of carcinogenicity* of dichloromethane for male and female . . . mice as shown by increased incidences of alveolar/bronchiolar neoplasms and of hepatocellular neoplasms [lung and liver cancers]. (Emphasis in original.)
> [106]

A Dow (1980) inhalation bioassay [101] indicated that, in another rat strain, there was an increased number of tumors per tumor-bearing female. This result is consistent with the NTP findings of benign mammary tumors in rats. There was also an increased incidence of salivary gland tumors in the male rats.

A study done by the National Coffee Association ("NCA"), in which rats and mice were exposed to methylene chloride in drinking water, did not report a significant association between exposure to methylene chloride and increased tumor incidence at any site. [104, 105] However, methylene chloride was not administered by inhalation in the NCA study. Also, the doses to which animals were exposed in the NCA study were far less than the Maximum Tolerated Dose (MTD), while the high dose animals in the NTP study were exposed at the MTD. After analyzing the differences between the dosage levels and the number of animals at risk in each study, the CPSC staff concluded that the results of the two studies are not inconsistent. [741] Thus, the NTP inhalation bioassay, which was a well-conducted study in both sexes of two species of rodents, is considered by the staff to be the best study for assessing the hazard posed by methylene chloride.

The OSTP has stated that "[t]he consensus of available information suggests that short-term tests, when properly used and validated, can provide strong indications of potential carcinogenicity." [720 (OSTP, p. 45)] There are reports of short-term tests indicating that methylene chloride causes damage to genes (genotoxicity), resulting in: (1) An increase in the number of mutations [213], (2) visible chromosome breakage in animal and human cells [225], (3) increased susceptibility of cells to cancer-causing viruses [220], and (4) transformation of cultured cells into cells which have the ability to cause malignant tumors when injected into living animals [220]. An increase in the rate of mutation (mutagenicity) after methylene chloride exposure has been reported in bacteria, plants, and animals. [727(2)]

Detection of covalent binding to cellular constituents by chemicals is thought to represent a measure of the amount of reactive metabolic intermediates generated and thus to provide clues to the carcinogenic mechanism of a chemical. Current concepts known to the staff suggest that covalent binding by a chemical to DNA may represent a genotoxic mode of action by that chemical. [305, 308, 312, 316, 323, 326, 349, 350, 353]

Studies to determine if methylene chloride and other halogenated methane hydrocarbons covalently bind to cellular constituents have been carried out *in vivo* (studies in animals) and in cells and in tissues exposed *in vitro* to the chemicals. With the exception of one *in vivo* study [326], *in vitro* and *in vivo* studies suggest that reactive metabolites of methylene chloride and other halogenated methane hydrocarbons interact with proteins. [349, 350, 305, 312, 323, 308, 316] There are indications from these same studies that the reactive metabolites may also interact with DNA. Some of these studies, however, were not sufficiently sensitive to assess adequately whether such interaction occurred. Therefore, at this time, the data are not sufficient to determine whether or not methylene chloride and other halogenated methane hydrocarbons covalently bind to DNA. The positive findings in mutation studies, however, provide indirect evidence of the ability of methylene chloride to interact with DNA.

The results of both *in vitro* and *in vivo* studies in animals indicate that methylene chloride is metabolized via two pathways. [301] One pathway yields carbon monoxide (CO) and, possibly, carbon dioxide (CO_2) as end products, and the other pathway yields CO_2 as an end product. Humans are known to metabolize methylene chloride to CO [313, 314, 341], but the data on the metabolism of methylene chloride to CO_2 in humans are inconclusive. However, based on metabolism studies in animals, some investigators have speculated that this pathway probably functions in humans. [313, 314] Both pathways require formation of a metabolically reactive intermediate; such intermediates are theoretically capable of irreversible covalent binding to cellular macromolecules.

C. Human Exposure to Methylene Chloride Vapor From Household Products

A study that was conducted for the Commission at Edgewood Arsenal was completed in 1976. [343] That study involved applying one quart of paint stripper containing 88 percent methylene chloride to a painted 4 foot by 8 foot piece of plywood in a 20 cubic meter chamber. Immediately after applying the paint stripper, the person performing the application removed himself and the can from the chamber. After application of the paint remover, the panel was left

undisturbed for three hours. The study was conducted under both static conditions and at 6 air changes per hour. The study did not attempt to simulate consumer exposure by actually performing the paint stripping operation.

When no ventilation was provided to the chamber, concentrations of about 4000 ppm and 5000 ppm were measured at one and two hours respectively. The concentration did not change appreciably between two and three hours.

When ventilation was set at six air changes per hour, a maximum concentration of about 260 ppm occurred after 15 minutes; the concentration then declined to about 100 ppm for the remainder of the three hours of the experiment.

In order to determine the concentrations of methylene chloride vapor that persons might be exposed to in some likely uses of paint strippers and spray paints, the Commission arranged with the Department of Energy to have Lawrence Berkeley Laboratory ("LBL") measure concentrations of methylene chloride vapor produced by the use of spray paints and paint strippers in a room-size environmental chamber. [741, Tab D] For each product, experiments were conducted at ventilation rates of 0.5 and 3.0 air changes per hour. The percent weight composition of the products ranged from about 83 and 87 percent for the paint removers to about 21 to about 27 percent for the spray paints. Measured personal exposures resulting from the use of paint removers ranged from 1040 to 1200 ppm-hours at the high ventilation rate and from 1970 to 2400 ppm-hours at the low ventilation rate, for work periods of about 90 minutes. Personal exposures from the use of aerosol paints ranged from 32 to 35 ppm-hours for a single coat of a polyurethane finish and from 121 to 160 ppm-hours for two coats of a metallic paint for work periods of 23 minutes or less.

The tests at LBL showed that concentrations of methylene chloride vapor could reach levels as high as 3500 ppm during paint stripping operations. Some industry members have contended that because of the irritant effects of methylene chloride, it is unlikely that anyone would stay in a room containing 2000 ppm for more than a short time. However, staff has received indications that this may not be the case.

First, the tasks simulated by the LBL tests would appear to be use scenarios that actually are likely to occur with many users. Persons who strip paint in basement workrooms or indoors during the winter without opening windows or doors would seem to be exposed to conditions comparable to those producing the levels measured in the LBL tests.

It is also likely that individuals vary greatly in their ability to endure the acute effects of exposure to high levels of methylene chloride. Even among users that do experience unpleasant effects from exposure to these levels, it seems likely that many will simply walk out of the room for a few minutes and then return to complete the task they had started. The overall exposure of the users to methylene chloride would not vary greatly if the work, instead of being accomplished in the manner of the LBL tests, was accomplished over a longer period of time with small periods of interruption caused by the unpleasant side effects of methylene chloride exposure. Comment is solicited on the validity of the conditions of use simulated by the LBL test methodology.

Exposure models based on concentration models were also developed and were evaluated by comparing theoretical and measured exposures for the experiments. The exposure models appeared to have sufficient accuracy and precision for use in assessment of consumer health risks from the use of consumer products containing methylene chloride.

The potential human exposure resulting from the use of paint removers was estimated mathematically using a mass balance equation described in [704] and [711]. [724, Tab B] Air exchange rates for the work room were chosen to be 0.5, 4, and 8 changes per hour. These exchange rates are believed to approximate, respectively, a closed room, a room with an interior door open, and a room with windows open or with an exhaust fan blowing air to the outdoors. The rate of evaporation of methylene chloride was estimated for these predictions from laboratory studies performed at Edgewood Arsenal. [343]

Table 1 below presents the estimated exposures and corresponding individual risks. [735, Tab B] The table also presents preliminary estimates of exposure from the use of spray paints in self-pressurized containers. These estimates, predicted mathematically, were based on the methylene chloride content of such paints and the net weight of typical containers of these paints. The estimates also assume that nearly all of the methylene chloride vaporizes in the time between when the paint leaves the spray nozzle and when the paint is deposited on the article being painted.

LIFETIME ESTIMATES OF HUMAN CARCINOGENIC, RISK FOR EXPOSURE TO METHYLENE CHLORIDE

Air exchange [1]	Estimated individual risks expressed as chances per million that a cancer will occur		
	Ppm-hours exposure [2] (3-hour exposure/can)	Use frequency [3] (cans/year)	Lifetime individual risk
Paint stripping:			
0.5	5500–7000	0.25	870–1100
4	1400–1800	0.25	220–290
8	690–870	0.25	110–130
0.5	5500–7000	0.5	1700–2200
4	1400–1800	0.5	440–570
8	690–870	0.5	210–270
0.5	5500–7000	1.0	3400–4400
4	1400–1800	1.0	890–1100
8	690–870	1.0	420–540

[1] 0.5 represents a closed workroom; 4 represents workroom door open to remainder of house; 8 represents doors and windows of workroom open.
[2] Range is due to use of two different brands of paint stripper; assumes one can per use, which may lead to an underestimation of exposure as LBL found that use of between one pint and one quart gave these values.
[3] Assumes use starting at age 25 until age 70.

Air exchange [1]	Drying time [2]	Ppm-hours exposure [3] (use of one can)	Use frequency [4] (cans/year)	Lifetime individual risk
Spray painting:				
0.5	20 min	370	0.25	58
4	do	170	0.25	26
8	do	110	0.25	17
0.5	overnight	210	0.25	33
4	do	140	0.25	23
8	do	95	0.25	15
0.5	20 min	370	0.5	120
4	do	170	0.5	52
8	do	110	0.5	34
0.5	overnight	210	0.5	66
4	do	140	0.5	44
8	do	95	0.5	29
0.5	20 min	370	1	230
4	do	170	1	105
8	do	110	1	68
0.5	overnight	210	1	130
4	do	140	1	88
8	do	95	1	59

[1] 0.5 represents a closed workroom; 4 represents workroom door open to remainder of house; 8 represents doors and windows of workroom open.
[2] Two different types of paint were used; one requires a short time to dry, while the other requires overnight drying (thus only one exposure per day).
[3] Assumes one can is used for two or six separate painting operations; LBL data indicate that approximately one-half of a can is used per two-coat operation (20 minutes drying time between coats), and that one-sixth of a can is used per single-coat operation (drying time overnight) for the particular brands of aerosol paints tested. One can, under LBL test methods, gives about 0.7 hours exposure.
[4] Assumes use starting at age 25 until age 70.

The exposures and risks based on the LBL data are somewhat higher than those predicted from the Edgewood Arsenal study. The LBL data are higher by factors of about 1.1–1.5 for paint strippers and 1.2–1.4 for spray paints. For risk assessment purposes, the commission's staff has used the LBL data, since it is thought to more closely

estimate exposure to consumers during the simulated tasks performed at LBL.

Additional studies are being performed by LBL in homes, home workshops, garages, carports, and on patios, to validate the exposure model and to obtain exposure data under home use conditions and to assess stratification of methylene chloride vapor. These studies should be completed within the next few months. Further, the EPA is considering studies to define exposure from the use of self-pressurized containers of spray paint. The EPA studies will investigate varying ventilation and chamber volumes under laboratory conditions.

Additionally, EPA is conducting a consumer use survey (OMB No. 2070–0079). Data from this survey should be available in Fiscal Year 1987. This survey should provide data on the frequency with which consumers use various products containing methylene chloride, the duration of exposure, and the conditions under which exposure is most likely to occur (outdoors, basement workroom, etc.). This will enable the refinement of the risk estimate to include an estimation of the number of cases of cancer in the general population that could result from the use of products containing methylene chloride if methylene chloride is a human carcinogen.

The currently available data do not provide a picture of the way paint strippers and spray paints are used that can be evaluated to determine the average consumer exposure to methylene chloride or the number of consumers exposed. Better data on these aspects should become available from the EPA consumer use survey. However, the data now available to the staff make it likely that a significant number of consumers are being exposed to high concentrations of methylene chloride by using paint strippers, spray paints, and other products under inadequate conditions of ventilation. If methylene chloride is a human carcinogen, the situation could be serious, because at least some of these consumers are being exposed to concentrations of methylene chloride vapor that are similar to the concentrations known to cause cancer in animals.

Unlike the situation in which the Commission might wish to ban a product containing a carcinogen, a declaration that a product is a hazardous substance due to a risk of cancer does not require that the Commission have substantial evidence of the number of human cancers that might be associated with the exposure to that product. Except where toys and other children's articles are involved, the only immediate effect of declaring a product to be a hazardous substance is to require the labeling specified in section 2(p)(1) of the FHSA. Where exposure to a carcinogen is as high as the current exposure of consumers to methylene chloride vapor is believed to be, the Commission would consider the household product producing that exposure to be a hazardous substance, regardless of the particular number of cancers that might be estimated if the number of persons exposed and the average exposure were known.

For these reasons, the Commission does not consider it necessary or desirable to delay consideration of the issue of whether methylene chloride vapor is a probable human carcinogen in order to first obtain the additional data on consumer exposure that may become available from the survey being conducted by EPA.

D. Estimating Risks to Humans From Animal Data

During the time the Commission has been considering the issue of the potential carcinogenicity of methylene chloride, a number of comments have been submitted to the agency advancing reasons why the NTP bioassay should not lead to a conclusion that methylene chloride presents a risk of cancer to humans. The general principles that the Commission proposes to use in its determination, and the more significant of the arguments previously advanced by commenters concerning methylene chloride, are discussed briefly below.

The Office of Science and Technology Policy (OSTP), Executive Office of the President, has published "Chemical Carcinogens; A Review of the Science and Its Associated Principles, February 1985." 50 FR 10371–10442 (March 14, 1985). This document describes the scientific principles widely recognized as a framework for assessing cancer risks from chemicals. It represents a consensus of all the federal agencies concerned with health-related matters and has been extensively reviewed by government, academic, and industry scientists.

Principle 8 of the OSTP document states, "In the evaluation of long-term test results, the term carcinogen should be used in a broad sense, i.e. a substance which is capable under appropriate test conditions (Principles 10–13) of increasing the incidence of neoplasms (combining benign and malignant when scientifically defensible) or decreasing the time it takes for them to develop . . ." It further states that "Deference should be given to the IARC principle: 'that in the absence of adequate data in humans, it is reasonable, for practical purposes, to regard chemicals for which there is sufficient evidence of carcinogenicity in animals as if they presented a carcinogenic risk to humans.'"

The OSTP document also states that the weight of evidence is increased by reproducibility, dose response increases, and marked elevation of response compared to the control group. All of these criteria are met for methylene chloride.

With regard to chemicals that are positive in some tests and negative in others, the OSTP document states:

> Because of differences in the production of critical metabolites and because of other differences between species, a given carcinogen may not produce cancer in all species or in all strains of rodents. Many substances are known that seem to be carcinogenic in one animal species but not in another. But a finding of carcinogenicity in rodents is proof that the chemical is carcinogenic in a mammalian species. And "in the absence of adequate data on humans, it is reasonable, for practical purposes, to regard chemicals for which there is sufficient evidence of carcinogenicity in animals as if they posed a carcinogenic risk to humans." . . . But this need not foreclose further scientific inquiry in individual cases *if* experimental evidence on the mechanism of tumor formation in the animal is available. As science advances, and more sophisticated studies are done, it may *become* possible to demonstrate the existence of unique susceptibilities to chemical carcinogenesis in rodents that have no relevance for humans. All the available scientific information should be used in attempting to reach the most likely correct scientific conclusion. The inferential relevance of observed animal carcinogenesis to potential carcinogenic risk in humans is obviously justifiable in the absence of such mechanistic information. (Emphasis added.)
>
> 50 FR 10371, Chapter 3, sections I(A) and II(B)(4), (March 14, 1985).

Thus, the Dow hamster study [101], which showed no significant increase in tumors at any site from exposure to methylene chloride, may not be inconsistent with or detract from the positive NTP study. The results of this study may only mean that hamsters are less sensitive to the carcinogenic effects of methylene chloride than are mice or rats.

It has also been suggested that the cancer response in the NTP study should not be considered fully applicable to humans because the mice in that study have a high background rate of spontaneous lung and liver cancers. However, although the background rate of these cancers in this strain of mice differs greatly for males and females, a similar variation in the carcinogenic response after exposure to methylene

chloride does not occur. In fact, the females (the sex with the lower background incidence of tumors) developed more lung and liver tumors than did the males after exposure to methylene chloride. Further, both the males and females responded to methylene chloride exposure with a high incidence of liver tumors. In addition, there is concern about whether methylene chloride causes types of cancers (mammary, lung) for which there are in fact also high background rates in humans, particularly women and smokers. Comment is invited on the significance to the prediction of human carcinogenicity of the background cancer rates and the response to methylene chloride exposure.

A similar argument that has been advanced is that methylene chloride is not genotoxic and only acts as a promoter; this argument contends that methylene chloride acts only by enhancing the tumor incidence at sites where there is a high background tumor rate and not by causing tumors at sites where tumors are not already likely to occur. Comment would be welcome on this issue as well. However, as discussed below, there is evidence that methylene chloride is genotoxic. Additionally, as noted above, there is concern since methylene chloride causes cancers in some animals at sites that also have high background tumor rates in humans.

The International Agency for Research on Cancer ("IARC") has concluded that methylene chloride is mutagenic in *Salmonella Typhimurium* TA 98 and TA 100, both with and without a metabolizing system, when cells are exposed to methylene chloride vapor. [507] The vapor is mutagenic to the plant *Tradescantia* and causes genetic changes in yeast. [223, 203] Methylene chloride also induced chromosomal aberrations in the Chinese hamster ovary cells, a mammalian cell culture system. [225] Thus, studies have shown methylene chloride to be mutagenic, and thus genotoxic, in bacteria, plant, yeast, and mammalian cells.

The negative results which have been obtained in some systems designed to measure covalent binding of halogenated methanes to DNA (*i.e.*, a genotoxic action by that chemical) may have been due to insufficient exposure times or inappropriate methodologies. As noted previously, definitive conclusions cannot be reached at this time on whether methylene chloride and other halogenated methane hydrocarbons covalently bind to DNA.

The exact mechanism of the carcinogenic action of methylene chloride is not known. It may be that it acts by several different mechanisms, one of which may be by enhancing tumors at sites with an already high background. This could be of particular relevance to women; since mammary tissue is a target in the rat and women have a high spontaneous breast cancer incidence, women may be a very susceptible population. In addition, given the high rate of lung cancer in the U.S. population, the effect of methylene chloride on mouse lung is a matter of concern. It is known that there is a synergistic effect between smoking and asbestos exposure; smokers exposed to asbestos are at much higher risk of lung cancer than are nonsmokers. [702] Thus, it is possible that methylene chloride, which also affects the lung, could behave in the same way. The Commission solicits comment on the contentions that methylene chloride acts only as a promoter or that, if it acts only as a promoter, it would not pose a risk to humans.

Some comments to date have also suggested that the NTP rat study results should be discounted for human risk assessment purposes to the extent the study showed merely an enhancement of the spontaneous background incidence of benign mammary gland tumors which did not progress to malignancy (*i.e.*, they are not cancerous).

The issue of chemically induced benign tumors has been extensively considered by a panel of experts under the auspices of the Office of Science and Technology Policy (OSTP). Their report [720] stated:

> It is often necessary, at least in the judgment of many pathologists, to combine certain benign tumors with malignant ones occurring in the same tissue and at the same organ site. This practice can make the total neoplastic response (benign and malignant) clearly significant despite the lack of statistical significance in the tumors diagnosed as malignant. These pathologists believe that truly benign tumors in rodents are rare and that most tumors diagnosed as benign really represent a stage in the progression to malignancy. For some tissue sites, this view is widely accepted. Examples of this type are adenomas versus adenocarcinomas in the pituitary, thyroid, *lung*, kidney tubules, and, according to some experts, in *mouse liver*. (Emphasis added.)
> 50 FR 10416 (March 14, 1985).

In addition, the International Agency for Research on Cancer ("IARC") states in its Guidelines:

> . . . few, if any, chemicals exist which produce only benign tumours and no malignant tumours in any species . . . Chemical agents that markedly increase the incidence of benign tumours are now viewed with almost as much suspicion as potential human hazards as they would have been if the induced tumours had been malignant. [508]

Further, in humans, there has been no standard terminology for many types of benign mammary tumors, making it difficult to determine if there is a correlation between benign tumors and breast cancers in humans. However, a recent study has shown an association between the increased risk of breast cancer and benign breast disease, especially if there is evidence of epithelial proliferation (abnormal multiplication or increase in the number of normal cells in normal arrangement of tissue). [717] The risk of breast cancer in women is significant; during the period of 1975 through 1978, the age-adjusted annual rate for breast cancer was 86.7 per 100,000. [510] In other words, about one woman in every eleven can expect to have breast cancer during her lifetime.

Finally, based on available data, the staff finds there is no reason to believe that methylene chloride will not induce malignant cancer in another species (*e.g.*, man). As noted above, the background level of breast and lung cancer in the U.S. is very high, and there may be an interaction between this high background and the action of methylene chloride. Comment is requested on the issue of benign versus malignant tumors and on this possible interaction.

It has also been suggested that it is significant that the salivary gland tumors found in the Dow study were not observed in the NTP study. However, the fact that results are obtained in one strain or species does not necessarily mean that similar results would be expected in another strain or species.

Comments have also been made suggesting that a pharmacokinetic model developed by Anderson and Reitz [306, 346] should be used for risk assessment. This model divides the body into a number of compartments and calculates how much methylene chloride is available to each compartment over time. For two of the compartments, lung and liver, certain assumptions are made regarding the ability of these organs to metabolize methylene chloride via either of two pathways. These pathways are (1) the cytochrome (CO and, possibly, CO_2) pathway, which is postulated by the developers of the model to lead to metabolites which ultimately have no carcinogenic effect, and (2) the glutathione-S-transferase (GST) pathway (CO_2), which is postulated to lead to metabolites which may have a carcinogenic effect.

The major conclusion drawn by Anderson and Reitz from the model is that the GST pathway does not become important until the cytochrome pathway is saturated. In other words, they postulate that at high levels the cytochrome pathway becomes saturated and the excess spills over into the GST pathway, producing toxic metabolites. At low levels, such as those claimed by various parties to be associated with the proper use of consumer products containing methylene chloride, this theory asserts that the "harmless" pathway is not saturated and therefore no spillover to the "harmful" pathway occurs, resulting in a non-linear dose-response curve and much lower predicted risk. However, this conclusion may not necessarily follow.

One major problem with the use of this model is in the determination of which metabolites are toxic and which are not. The mechanism by which methylene chloride causes cancer is not understood. In the Anderson-Reitz model, only the metabolite(s) of the (GST) pathway are judged by the model's developers to be harmful. The developers of the model, however, provide no evidence for this conclusion, and its basis is not clear. First, methylene chloride itself may be able to contribute to the carcinogenic process through mechanisms such as increasing cellular proliferation or promotion. Second, the so-called "harmless" pathway may not be harmless. No evidence is provided to show that the CO pathway leads to completely "safe" metabolites with respect to cancer induction.

Another major problem with the use of this pharmacokinetic model is that the output of a model is only as good as the available input data. In this case, the input data are uncertain and variations can greatly alter the conclusions. An example of this is the development of the enzyme kinetic constants which the model relies on to determine when a metabolic pathway is saturated or activated. The input constants used in an early version of the methylene chloride model were not determined in experiments using methylene chloride; rather, a completely unrelated compound (7-ethoxycoumarin) was used. It is well known that enzyme kinetic constants will vary depending upon the substance tested. In fact, the EPA reports that the same kinetic constants using benzo(a) pyrene instead of 7-ethoxycoumarin can vary the results by factors as high as 20. [709, 728] Use of pharmacokinetic data obtained by methods other than those chosen by Anderson and Reitz could lead to higher projected risks, as demonstrated recently by EPA. [*Id.*]

Since the original submission of this pharmacokinetic model by Anderson and Reitz, discussed above, CPSC has received a prepublication copy [306] of a refined version of the model. This new submission proposes an alternative method ("scaling") to estimate values for human kinetic constants. CPSC staff are currently evaluating this new methodology, and comments on this alternative are also invited.

The reasons given above, plus others, may negate the potential utility of the Anderson-Reitz pharmacokinetic model for risk assessment purposes in the case of methylene chloride. Comment is invited on this model, particularly on the availability of better input data for the model and on the validity of the conclusion that only the GST pathway is harmful.

CPSC staff have evaluated the available epidemiological data to determine whether these data are adequate to detect risks of the magnitude predicted by the staff's risk assessments. The best available study, that of Friedlander *et al.*, was analyzed to determine the ppm-years of exposure experienced by the cohort, and the number of cases of cancer that would be predicted for this exposure was calculated from the CPSC staff's "best" estimate of risk based on the data available from the rats and mice in the NTP bioassay. The staff found, and Dr. Friedlander agreed (at a meeting with CPSC staff), that the study is not powerful enough to detect the risks at the potencies predicted by the CPSC staff from the animal data. [767] Therefore, these epidemiological data do not permit a determination of whether methylene chloride is or is not a human carcinogen. Comment is solicited on any available epidemiological data concerning methylene chloride.

Industry has provided the Commission with data on the "cytotoxic" effect of methylene chloride on specific cells (Clara cells) in the lungs of mice. [769] This communication contends that Clara cells of humans are more similar to those of rats than to those of mice. It further hypothesizes that the cytotoxic effect seen in mice is a prerequisite to the development of cancer. Therefore, it concludes that, since rats displayed neither the "cytotoxic" nor carcinogenic lung responses to methylene chloride and since human Clara cells are more similar to rat Clara cells, data for mice should not be extrapolated to humans. [751, Tab D] Comments are invited on these contentions.

Based upon all the data reviewed, it appears to the staff that a reasonable argument can be made that inhalation of methylene chloride vapor presents a carcinogenic risk to humans. The EPA has concluded that the NTP inhalation bioassay shows that methylene chloride is a sufficient evidence animal carcinogen. [728, p. 9] Also, an IARC Work Group met in February, 1986, and concluded that methylene chloride was a "sufficient evidence" animal carcinogen. [463] Methylene chloride also could be considered a genotoxic agent based upon its ability to cause mutations in bacteria and evidence of its damaging effects on DNA in mammalian systems. In the absence of adequate human data to prove or disprove the carcinogenicity of methylene chloride in humans, it thus can be argued that, under the principles articulated by OSTP, IARC, and others, the chemical should be regarded as if it presents a carcinogenic risk to humans. On the other hand, arguments have been raised in opposition to any conclusion that methylene chloride is genotoxic and to the relevance of the NTP test results to a risk to humans. The Commission will address the many issues involved in making such a determination after it considers all the comments, alternative recommendations, and other data that are available on the question.

As noted above, if the Commission determines that methylene chloride vapor given off by household products presents a risk of cancer to consumers, the Commission is not required, for the purposes of this rulemaking, to estimate the precise number of cancers that may be caused by the exposure of consumers to such household products. Nevertheless, risk assessment methodology can be used to attempt to gain an idea of the degree of risk that may be associated with a particular carcinogen.

The Commission's staff has performed risk assessments for a number of scenarios for exposure to methylene chloride, using a number of assumptions reflected in the risk assessment models and using the data from the NTP inhalation bioassay and the exposure study at LBL. A detailed explanation of the bases for the risk assessments is set forth in documents 418 (Tab C) and 430 (Tab B). The basic results of the staff's risk assessment are shown in Table 1 above for "Lifetime Estimates of Human Carcinogenic Risk for Exposure to Methylene Chloride." [735, Tab B]

The Commission's staff's risk assessment is based on the results of the NTP bioassay. These results were chosen because of the quality of the

bioassay, because the bioassay used the relevant route of administration (inhalation), and because clear positive responses were observed in two species of test animals. [724, Tab C]

In extrapolating the results of animal tests to humans, assumptions must be made about the differences in response between the animals and humans. Also, it is necessary to estimate how humans, who ordinarily would be exposed to amounts of a carcinogen that may be much less than the amounts to which the animals were exposed, will react to these lower amounts.

In attempting to estimate the respective susceptibilities of the NTP test animals and humans to methylene chloride, the staff applied a surface area correction factor to the animal data that reflects differences in the body weights and surface areas of humans and test animals. This factor was thought, in the absence of additional data, to best address the known differences in response between humans and animals. However, comments are invited on the use of the surface area correction factor and the other factors used in risk assessment. Also, it should be noted that the CPSC believes the available data are insufficient to include metabolic and pharmacokinetic influences that might affect human risk estimates.

In attempting to model the possible effects caused by the fact that users of household products containing methylene chloride may not experience the degree of exposure that the rats and mice in the NTP study received, models were used that took into account the amount of time required in the NTP bioassay for the tumors to occur, the respective concentrations of methylene chloride vapor to which the animals were exposed and to which humans would be exposed under various use scenarios, and the respective proportions of lifetime involved in the animal and human exposures.

The staff's risk assessment also included consideration of a concept of carcinogenic response known as "linearity at low dose." This concept, on which comment is invited, follows from the idea that carcinogenicity results from a multistage process (possibly including initiation and promotion), with carcinogenic processes having to cause a number of stages to occur before a malignant tumor is produced. Some stages are thought to involve direct interaction of a chemical with the genetic material ("initiation"), while other stages may proceed due to processes such as cellular proliferation/turnover, the so-called "promotion" of initiated cells to a more transformed state, and other, largely unknown indirect processes leading to heritable genetic alterations.

At any site in the body, especially the lung, liver, and mammary gland, there is a background, or spontaneous, cancer incidence that is likely the result of constant progressions such as described above. For a bioassay to be positive, the background incidence rate must be substantially exceeded so that the response is not masked. At the very high doses and defined conditions used in bioassays, the chemical in many cases may be influencing or causing multiple events, acting as a so-called "complete carcinogen." In other words, no other known external contributors to the carcinogenic process must be added to produce a carcinogenic response.

A substance which is positive in a carcinogenic bioassay by virtue of its ability to influence or cause multiple events, however, need not act in that fashion under conditions of animal or human exposure at lower levels of that substance. Rather, the substance may, at low levels of exposure, cause or influence only one event, with the spontaneous background processes able to complete the carcinogenic development. Thus, if a carcinogen, at low levels of exposure, adds a small component to the background incidence of cancer at a specific site by "initiating" cells, then if the dose of the substance and the number of initiative events are doubled, the resulting risk of cancer is likely doubled. In this case, if the dose of the chemical and the resulting carcinogenic response are plotted on a graph, a straight line will result, and the response is said to be "linear." At higher doses, the chemical may cause or influence more than one stage in the progression to cancer. In this case, the rate of response to the carcinogen could increase, causing a nonlinear response at the higher doses.

In the NTP bioassay, methylene chloride acts as a complete carcinogen, and, in short term tests, shows genotoxic potential. Therefore, the Commission's staff concludes that the more likely estimates of the carcinogenic response of methylene chloride are those that are based on methodologies that incorporate the linear at low dose concept. Thus, for methylene chloride, if Maximum Likelihood Estimates ("MLEs"), which are based on mathematical extrapolations from the high dose data, were linear because the bioassay data were linear, they were used. If the MLE extrapolations were nonlinear, the upper confidence limit ("UCL") of the multistage model was used, because the UCL accounts for the concept of low dose linearity. The resulting estimates are given in Table 1; however, estimates involving other methodologies have been made for comparison. Comment is solicited on these models and their use.

It must be kept in mind that the science of predicting cancer risks to humans based on animal data is not a precise one, and that it involves many uncertainties. However, in many cases adequate human data are not available, and risk assessment methodologies provide the best means of estimating the possible risk to humans from a chemical shown to be carcinogenic in animals. With these qualifications in mind, the staff's risk assessment for methylene chloride indicates that it is not a very potent carcinogen in terms of the amount of exposure required to produce a given carcinogenic response. However, the data available to date indicate that consumers can be exposed to very high concentrations of methylene chloride when paint strippers and spray paints are used with inadequate ventilation, and, under these conditions, the estimated risk to consumers is higher than those calculated for any of the other 9 chemicals in household products on which the Commission's staff has done risk assessments.[4]

E. Scope of Proposal.

As noted above, the Commission believes that household products containing methylene chloride can, for the most part, be categorized into five major categories: paints, paint strippers, and other paint-related products; fabric care products (including shoe, clothing, and leather care products); adhesives and adhesive removers; automotive products, including specialty cleaners and lubricants; and miscellaneous non-automotive products, including, but not limited to, artificial snow aerosols and all-purpose lubricants. Not every product in each category, however, necessarily contains methylene chloride. For those that do, however, the user is likely to be in close proximity to the product for varying periods of time, depending on the product involved. Since methylene chloride is a highly volatile substance, it is likely that much of the methylene chloride vapor in the products would evaporate into the air surrounding the products and subsequently, in the absence of adequate precautions against inhalation of the vapor, be inhaled by the products' users.

[4] A chart indicating the identity and ranking of chemicals on which the Commission has done risk assessments may be found in Tab C of document no. 735.

In addition to the likelihood that significant amounts of methylene chloride vapor could be inhaled by the users of any product containing methylene chloride, in the absence of adequate precautions to prevent inhalation, consideration must be given to the potential effects of cumulative exposure to methylene chloride vapor emitted from the multiplicity of household products containing methylene chloride that typical consumers are likely to use.

For these reasons, the Commission has decided preliminarily that all products containing more than contaminant levels of methylene chloride may present a significant carcinogenic risk to persons in the vicinity of the products while they are being used.

After considering these factors, the Commission has decided to propose declaring that household products containing methylene chloride are hazardous substances. The Commission believes that such products would give off significant amounts of DCM vapor during use. Where the reasonably foreseeable uses of a product include indoor use, this could result in significant exposure of the user to the vapor, in the absence of special precautions to avoid exposure.

Although the Commission is proposing to declare all household products containing methylene chloride to be hazardous substances, comments or other information may persuade the Commission that particular products do not present a carcinogenic risk, either because the product's formulation contains a minute amount of methylene chloride, because the product inherently must be used outdoors or under other circumstances where there would be minimal exposure, or for other reasons. Comment is invited on whether there are specific household products that should be excluded from any rule establishing household products containing methylene chloride to be hazardous substances.

F. Labeling That Would Be Required Under the FHSA

As explained in section A of this notice, section 2(p)(1) of the FHSA requires hazardous substances intended, or packaged in a form suitable, for use in the household or by children to bear a label containing specified types of information. 15 U.S.C. 1261(p)(1). However, there may be questions about what statements would comply with the FHSA's requirements that the label contain "an affirmative statement of the principal hazard or hazards" and "precautionary measures describing the action to be followed or avoided."

The Commission's regulations, at 16 CFR 1500.121, contain a number of requirements for the prominence, placement, and conspicuousness of labeling required by the FHSA. These regulations provide that all items of labeling required by the FHSA may be placed on the "principal display panel" (hereinafter called the "front panel") on the immediate container and, if appropriate, on any other container or wrapper. The signal word (*i.e.*, "DANGER", "WARNING", or "CAUTION") and the statement of principal hazard(s) are required to be on the front panel. The other items of required labeling may be placed on some other display panel on the container (hereinafter called the "back panel"), provided that the front panel contains the statement "Read carefully other cautions on the [back] panel" or its practical equivalent.

The insidious nature of the hazard of being exposed to a carcinogen is that the hazard does not necessarily present itself to the senses of persons exposed to the substance. Where a product presents only acute hazards, preliminary symptoms of the acute exposure, such as dizziness, eye watering, or headaches, may serve to warn the user that he or she is being exposed to an excessive amount of the substance. With a potentially carcinogenic substance, however, the exposure level that may cause acute symptoms could exceed the level that could present a significant risk of cancer to persons using a product containing the substance. Thus, since the product itself may not warn of the danger associated with exposure to the substance, it is especially important that the product's label communicate the hazard to the user in a way that will motivate the user to take adequate precautions against overexposure.

The Commission believes that in order for a label to motivate the user to take adequate precautions against overexposure to a carcinogen, the label should provide the following items of information:

1. An indication that a risk of cancer is presented by exposure to the product. This could be accomplished by having the front panel carry the statement of principal hazard "vapor harmful" or the equivalent, while the back panel would contain a more specific indication that the hazard is that of carcinogenicity, such as "cancer hazard," "this product contains methylene chloride, which has been shown to cause cancer in certain laboratory animal tests," or the equivalent. Alternatively, the statement of principal hazard on the front panel could state both "vapor harmful" or the equivalent and the more specific indication that one of the particular hazards is that of carcinogenicity.

2. A statement that the risk to the user is related to the level and duration of exposure. This statement is needed in order to convey that both the concentration of the vapors to which one is exposed and the length of exposure are factors in the risk to the user. This statement will also have the effect of reinforcing in the user the notion that there are actions that the user can take to protect himself from the risks associated with use of the product.

3. Detailed instructions concerning the particular precautions that are necessary. This element of required labeling includes an explanation of the specific actions that should be taken or avoided by users. An example of such instructions is given below, but statements such as "use with adequate ventilation" that have been used commonly in the past with respect to acute inhalation hazards are insufficient for this purpose.

The Steering Committee for Methylene Chloride, a group of industry and consumer interest representatives working with the Commission's staff (see section A of this notice) has considered the question of labeling language that will adequately convey to users the information needed to enable users to protect themselves and that will also comply with the requirements of the FHSA. The Steering Committee has recommended the following labeling for products such as paint strippers. The Commission believes that this labeling meets the minimum requirements of section 2(p)(1) of the FHSA as to precautionary measures for the hazard of inhalation of potentially carcinogenic vapor.

[Front Panel]

CAUTION: Vapor Harmful

Read Other Cautions and HEALTH HAZARD INFORMATION on Back Panel

[or equivalent language]

[Back Panel]

Contains methylene chloride, which has been shown to cause cancer in certain laboratory animals. Risk to your health depends on level and duration of exposure.

[Or equivalent language.]

[The back panel labeling given above would be placed separately from use precaution information such as the following.]

Use this product outdoors, if possible. If you must use it indoors, open all windows and doors or use other means to ensure fresh

air movement during application and drying. If properly used, a respirator may offer additional protection. Obtain professional advice before using. A dust mask does not provide protection against vapors. Do not use in basement or other unventilated area.

Open container carefully and close after each use. Clean up rags, papers, and waste promptly. Allow solvent to evaporate, then dispose of in metal containers.

[Or equivalent language suitable for the particular product involved.]

A label such as that stated above would be required by the potential chronic inhalation hazard, although some of the precautions also may serve to protect against acute hazards that might be presented by the product. It should be kept in mind that the product's labeling would also have to meet the other requirements of the FHSA and to address other hazards that the product may present. For example, the label may have to address the acute toxicity of methylene chloride, flammability hazards associated with a product, toxic gases that can be produced by contact with flame or hot surfaces, or the need to avoid contact with skin or eyes because of irritant or corrosive qualities in a product. Also, the label would have to include, when necessary or appropriate, instructions for first aid treatment, including instructions on actions to take if overcome by vapors.

It should also be kept in mind that the particular precautions about actions to be taken or avoided given in the above example may not be applicable to a number of products that fall within the proposed scope of this rule. For example, some products may not involve rags or other items that need to be disposed of separately. Furthermore, the instructions concerning the need to use outdoors, etc., may not be required where the foreseeable use of a product involves very small amounts of the product or where there is a very low concentration of methylene chloride in the product's formulation.

The present rulemaking proceeding has as its purpose the determination of whether household products containing methylene chloride are hazardous substances due to a risk of cancer from the inhalation of methylene chloride vapor. If the Commission ultimately makes the determination that such is the case, labeling adhering to the principles described above would be automatically required by section 2(p)(1) of the FHSA. However, until a determination is made by the Commission that household products containing methylene chloride are hazardous substances due to a risk of cancer from inhalation, the Commission will not require labeling addressing this carcinogenic risk. However, considering the fact that the use precautions given above would be helpful in addressing acute risks associated with methylene chloride, and considering that the NTP animal test data showing the carcinogenicity of methylene chloride vapor in animals raises a significant possibility that the substance should be considered carcinogenic in humans, the Commission encourages the voluntary use of labeling similar to that given above for these products.

The Commission's staff routinely provides labeling advice to manufacturers on labeling necessary to comply with the FHSA. While the staff remains available for such informal advice where desired, the Commission encourages the submission, as comments in this rulemaking, of data or views on its interpretation of the requirements of the FHSA, explained above.

G. Effective Date

The Commission intends to select an effective date for the rule that will minimize the adverse effects on manufacturers that might be caused by the need to change the labels of a large number of products in order to provide the labeling required by the FHSA.

Past experience with labeling changes has demonstrated that an effective date of one year is sufficient to enable entire industries to change labeling without the need to discard labels that had been printed but had not yet been applied to the products involved. [787] Accordingly, the Commission proposes that the effective date of any final rule be such that it applies to any of the subject products that are packaged after that date. This date should enable manufacturers with an inventory of preprinted labels or labeled, but empty, containers to exhaust their inventory before the effective date of the rule.

On the other hand, manufacturers who do not have large inventories of labels or labeled containers should be able to incorporate the required labeling changes in a lesser period of time. Manufacturers should be able to obtain any new printing plates that would be required to provide the labeling required by the FHSA and to incorporate the new plates into production within six months of the publication of a final rule. Accordingly, the Commission proposes that the rule shall also apply to products using labels that were printed after six months from the date that a final rule is published.

Another factor that could affect the choice of an appropriate effective date is the possibility that, by the time a rule could issue in this proceeding, a large number of household products containing methylene chloride already would bear labels that will satisfy the minimum labeling requirements of the FHSA. If a large majority of affected products already comply with the FHSA, the rule will not cause a significant adverse impact on the affected industries, since no change in these labels will be required. In such a case, no more than a 30 day effective date might be needed. Comment is solicited on the extent to which an effective date shorter than one year, as to products packaged after that date, or shorter than six months, as to labels printed after that date would have a significant impact on affected manufacturers and other parties.

H. Effects on Small Businesses and Other Small Entities

Potentially, numerous companies could be affected by this rulemaking. In accordance with the Regulatory Flexibility Act, the Commission has considered the effects that this proposed rule would have on small entities, including small businesses. [787] Using information from the U.S. Small Business Administration (SBA) [606] and the Bureau of the U.S. Census, U.S. Department of Commerce [604, 605], preliminary information from the U.S. Environmental Protection Agency [601], and Dun and Bradstreet references [602, 603], it appears that many small businesses could be involved in the manufacture of products that would be subject to the proposed rule.

For the purposes of this rulemaking, the Commission believes that the number of employees established by the size standards issued by the SBA for the Standard Industrial Classification ("SIC") codes that include the products affected by this rulemaking is appropriate for determining whether a firm is a small entity. Therefore, any firm that has less than 500 employees and which is independently owned and operated and is not dominant in its field is considered to be a small business. [606]

In order to gain a better understanding of the number of small businesses that might be affected by the proposed rule, the Commission staff examined concentration ratio data from the 1982 *Census of Manufactures* [605] and company size and number of employees data from the 1977 *Enterprise Statistics* [604].

The task of estimating the number of small businesses is complicated by the fact that the applicable SIC codes may include companies making products that

do not contain methylene chloride and by the fact that companies that do make products with methylene chloride may not be classified in the relevant product category because the main product of the company is classified in a different code. Another complicating factor is that the product categories represented in the SIC codes and the *Enterprise Statistics* are not directly comparable.

Despite these limitations, the Commission's staff believes that it is reasonable to conclude that numerous small businesses manufacture products that would be subject to the proposed declaration.

The type of labeling that would be required if the Commission declares household products containing methylene chloride to be hazardous substances is discussed in detail in section F of this notice. Since inhalation of methylene chloride vapor has various acute effects, and since such products often contain other ingredients that are toxic, products containing methylene chloride are likely to already incorporate front panel labeling with the statement of principal hazard "vapor harmful" or the equivalent. When combined with appropriate back panel labeling, the present front panel labeling for products containing methylene chloride would satisfy the requirements of section 2(p)(1) of the FHSA. Thus, there is little potential effect of this rule on present front panel labeling.

However, if the proposed rule is issued, there would probably be a need to change back panel labeling on products containing methylene chloride. In the past, labeling for products containing methylene chloride generally has not contained the reference to the cancer hazard, the statement that risk is dependent on level and duration of exposure, and the detailed actions to be taken or avoided that the Commission believes section 2(p)(1) of the FHSA requires for a potentially carcinogenic vapor. As described in sections A and F of this notice, there has been recent voluntary action by the affected industries to improve labeling in this regard. The labeling recommended by the Steering Committee on Methylene Chloride, described in section F, would comply with the FHSA with respect to this risk. Such voluntary labeling could be largely implemented by the time any declaration by the Commission that household products containing methylene chloride are hazardous substances could become effective. In this event, the potential impact of the Commission's possible action would be greatly reduced.

To the extent that manufacturers do not adopt voluntarily labeling complying with the FHSA with respect to a risk of cancer from inhalation, however, a rule issued by the Commission would result in costs for the manufacturers of products containing methylene chloride. In a 1978 study of the costs of relabeling paint strippers [701], the Commission's Directorate for Economic Analysis identified and estimated the various cost elements associated with changes in labeling. These estimates have been updated and expressed in 1985 dollars. [787]

Labeling of the consumer products subject to this rule takes two basic forms: lithograph and paper labels. Lithograph labels are printed directly onto plastic containers or onto flat metal sheets prior to forming the sheets into cans. These containers then are delivered to the manufacturer for filling. Paper labels are affixed to finished containers, often after filling.

The costs of changing labels include fixed and variable costs. The fixed costs involve changing the lithographic or paper printing plates. The total fixed costs are determined by multiplying the cost of the new printing plate by the number of such plates required to meet size or color requirements. Based on the 1978 study referred to above, the fixed costs would be about $800 per lithographic plate and about $300 per paper plate. These costs are not likely to be significant for individual firms, and, if changes are accommodated in the labeling schedule, the cost would be no more than that borne by a firm for a labeling change for marketing reasons.

Variable costs are those associated with label printing and are the costs of the label multiplied by the number of labels ordered. The products will continue to be labeled much as they were before the rulemaking, and the new labels are not likely to cost any more than before the change. These variable costs will not be increased, so long as producers can phase in the new labels within the framework of their typical labeling schedule.

As explained in section G of this notice, the Commission proposes to apply any rule issued in this proceeding to two categories of products: those that are packaged more than one year after publication of the final rule and those whose labels are printed more than six months after the rule is published. These dates were selected in order that manufacturers would not have to discard or overlabel preprinted labels or previously labeled containers in order to comply with the FHSA. However, if these dates are not sufficiently long to achieve the intended result, the rule would affect inventories of labeled but unfilled containers, preprinted labels that have not been applied to containers, and printed metal sheets that have not yet been made into containers.

If the time between the promulgation of the rule and its effective date is too short to allow manufacturers to deplete existing inventories of preprinted labels, manufacturers would either have to overlabel (also called stickering) or discard the unused labels. The amount of stickering necessary, and the resultant cost of the stickering, depends inversely on the length of time between the date of promulgation and the effective date, *i.e.*, the shorter the lead time, the higher the costs to manufacturers. The 1978 study indicated that small, medium, and large firms would be able to exhaust any inventory within a year after promulgation. Since the Commission proposes that any rule would give manufacturers up to a year to deplete existing inventories, there should be no need for manufacturers to sticker existing inventories.

Besides the dollar costs of changing labels, it is possible that there could be competitive costs of a labeling requirement. No information is available to predict whether consumer buying patterns will change in reaction to more specific labeling addressing the risk of cancer. No information about the extent, if any, of such costs is available.

Although there may be many small firms within the industry segments of concern, costs are not expected to be significant. Thus, the Commission concludes that the proposed rule is not expected to create significant costs for a substantial number of small entities, including small business.

I. Environmental Considerations

The Commission's staff has assessed the potential environmental effects of a declaration that household products containing methylene chloride are hazardous substances, pursuant to the National Environmental Policy Act, Council on Environmental Quality regulations, and CPSC procedures for environmental review. [788]

As discussed previously in this notice, there are two possible effects of the proposed declaration: a change in the hazard warning labels on household products containing methylene chloride and a ban of any toy or other article intended for use by children which is, bears, or contains methylene chloride in a manner so as to be susceptible of access by a child to whom such toy or other article is entrusted. The Commission is not aware of any toys or other children's articles that bear or contain methylene chloride. Therefore,

the only effect predicted if the proposed declaration is issued is that some household products containing methylene chloride would have to change their labeling to comply with the requirements of section 2(p)(1) of the FHSA.

If the rule, when issued, requires a change in the hazard warning language on consumer products containing methylene chloride, it is reasonable to expect that the labels of a number of products in each of several product categories would have to be changed. CPSC staff estimate that as many as several hundred million units of production may be affected.

A normal change of labeling, which occurs periodically for many products for marketing and other reasons, entails redesign and production of new printing plates for printed (lithographic) or paper labels. The Commission's staff estimates that no more than several thousand new printing plates would be required as a one-time adjustment to the new labeling required by the rule. Some of these changes would likely be phased in at the same time that a change in labeling would have occurred anyway. In relation to the large number of labels made each year by the printing industry, the number of new label plates required by the FHSA for products containing methylene chloride would not be significant and would cause no significant change in the disposal of used plate material or in the use of new plate material.

The Commission expects to set an effective date that will allow sufficient time for manufacturers to exhaust their inventories of noncomplying previously printed labels. Even if a large part of manufacturers' inventory, which is estimated to be from one to ten months production, had to be overlabeled, however, the effect on the printing industry, on materials used in printing, and on increased material to be disposed of would not be significant.

The requirements of the proposed rule are not expected to have a significant effect on the materials used in printing labels or on the amount or type of material disposed of after use. Therefore, the Commission concludes that the proposed rule will have no significant environmental effects.

J. Effect on State and Local Laws

Section 18(b)(1)(A) of the FHSA, 15 U.S.C. 1261n, provides:

(b)(1)(A) Except as provided in paragraphs (2) and (3) [15 U.S.C. 1261n], if a hazardous substance or its packaging is subject to a cautionary labeling requirement under section 2(p) or 3(b) [15 U.S.C. 1261(p), 1262(b)] designed to protect against a risk of illness or injury associated with the substance, no State or political subdivision of a State may establish or continue in effect a cautionary labeling requirement applicable to such substance or packaging and designed to protect against the same risk of illness or injury unless such cautionary labeling requirement is identical to the labeling requirement under section 2(p) or 3(b).

Therefore, the Commission concludes that, if household products containing methylene chloride are declared to be hazardous substances due to a risk of cancer from inhalation of methylene chloride vapor, any statutes or regulations of state or local governments establishing cautionary labeling requirements designed to protect against this risk would become void and unenforceable to the extent that the state or local requirement is not identical to the requirements under section 2(p)(1) of the FHSA.

K. Conclusion

For the reasons described above, the Commission has decided to initiate a rulemaking proceeding under section 3(a) of the Federal Hazardous Substances Act, 15 U.S.C. 1262(a), for the purpose of resolving any uncertainties about whether household products containing methylene chloride are hazardous substances due to a risk of cancer to humans from inhalation of methylene chloride vapor.

After considering the currently available information, the Commission preliminarily concludes, and proposes to find, that:

(1) The currently available evidence presents a substantial likelihood that methylene chloride is a human carcinogen by inhalation and is thus "toxic," as that term is defined in the Federal Hazardous Substances Act.

(2) Household substances containing methylene chloride have the potential for inhalation of significant amounts of methylene chloride vapor during, or as the result of, the reasonably foreseeable use and handling of the substances. Due to the likely carcinogenic nature of methylene chloride vapor, such household substances may cause significant personal injury or substantial illness during or as a proximate result of customary or reasonably foreseeable handling or use.

(3) Therefore, methylene chloride is a hazardous substance as defined in section 2(f)(1)(A) of the Federal Hazardous Substances Act.

Effective date: The Commission proposes that the rule described above shall become effective six months after the publication of any final rule, as to products whose labels are printed after that date, and twelve months after the publication of a final rule, as to products that are packaged after that date.

List of Subjects in 16 CFR Part 1500

Consumer protection, Hazardous materials, Hazardous substances, Imports, Infants and children, Labeling, Law enforcement, Toys.

PART 1500—[AMENDED]

Accordingly, the Commission proposes to amend Part 1500 of Title 16 of the Code of Federal Regulations as follows:

1. The authority citation for Part 1500 would be revised to read as follows, and the authority citations following the sections in Part 1500 are removed.

Authority: Secs. 1–21, Pub. L. 86–613, 74 Stat. 372–381, 80 Stat. 1305, 83 Stat. 189–190, 92 Stat. 3747, 95 Stat. 718, as amended [15 U.S.C. 401 note, 1261 and note, 1262–1276).

2. A new § 1500.12(a)(2) would be added, to read as follows (the introductory text of § 1500.12(a), although unchanged, is republished:

§ 1500.12 Products declared to be hazardous substances under section 3(a) of the Act.

(a) The Commission finds that the following articles are hazardous within the meaning of the act because they are capable of causing substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use:

* * * * *

(2) Because of a risk that cancer can be caused by inhalation of methylene chloride vapor, household products containing methylene chloride have been determined to be hazardous substances. [In some cases, household products containing methylene chloride also may be hazardous substances because of acute effects such as toxicity.]

Dated: August 11, 1986.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Appendix 1—Petition From the Consumer Federation of America

Note.—The following appendix will not appear in the Code of Federal Regulations.

I. The Original Petition:

Before the Consumer Product Safety Commission

No._____

In the matter of the petition of Consumer Federation of America to Declare Methylene Chloride a Hazardous Substance and to Initiate Proceedings to Ban such Substance.

Pursuant to the Administrative Procedures Act, 5 U.S.C. 553(e) and regulations of the Consumer Product Safety Commission (CPSC), 16 CFR 1500.201(a), Consumer Federation of America (CFA) hereby petitions CPSC to immediately commence proceedings to declare methylene chloride (or dichloromethane or DCM) a hazardous substance under the Federal Hazardous Substances Act (FHSA), section 3(a), 15 U.S.C. 1262. Upon a finding that DCM is a hazardous substance, this petition seeks further proceedings establishing DCM as a banned hazardous substance under FHSA, section 2(q)(1)(B), 15 U.S.C. 1261.

I—Interest of Petitioner

The Consumer Federation of America is the nation's largest consumer advocacy organization representing 200 organizations and over 30 million consumers. For the past several years CFA has been working to protect consumers from the adverse health consequences from indoor air pollutants and the CFA membership has designated indoor air quality as our organization's number one health and safety priority. In September 1984, CFA communicated its concerns about methylene chloride to CPSC and was assured that the Commission "was working actively as a member of various groups of the Interagency Risk Management Council, including those dealing with formaldehyde and methylene chloride." [1] To the extent that this research disclosed "significant new information," the Commission promised to "take appropriate steps to inform consumers." [2]

II—Methylene Chloride Hazards

Methylene chloride is a multipurpose solvent found in paint strippers, aerosal preparations and other consumer products. Approximately 584 million pounds of DCM are produced annually in the United States and an additional 44 million pounds are imported.[3] Over 50 percent of DCM is used in aerosal products and paint removers.[4]

There is ample evidence that methylene chloride poses serious adverse health consequences. This evidence includes findings on carcinogenicity, mutagenicity, and effects on the brain and central nervous system.[5]

Of greatest concern are recent findings concluding that DCM is a clear animal carcinogen. On March 29, 1985, the National Toxicology Program (NTP) Board of Scientific Counselors Peer Review Panel approved the following conclusions regarding the NTP methylene chloride inhalation bioassay:

> Under the conditions of the NTP inhalation bioassay there was *some evidence of carcinogenicity* of dichloromethane for male F344/N rats as shown by an increased incidence of benign neoplasms of the mammary gland. There was *clear evidence of carcinogenicity* of dichloromethane for female F344/N rats as shown by the increased incidence of benign neoplasms of the mammary gland. There was *clear evidence of carcinogenicity* of dichloromethane for male and female B6C3F, mice as shown by increased incidences of alveolar/bronchiolar neoplasms and of heptocellular neoplasms.[6]

These findings are consistent with other DCM inhalation bioassays on rats.[7]

Where a substance is found to be a sufficient evidence animal carcinogen and there is an absence of adequate data in humans, as is the case with methylene chloride, a presumption arises that the substance poses a carcinogenic risk to humans.[8] Based on the NTP and other research findings [9] and the use of recognized risk extrapolation models,[10] the Commission staff estimates that the use of a paint stripper containing methylene chloride in a closed workroom or basement poses an individual risk of cancer of 3 in 1,000. Given the fact that an estimated 135 million retail sized units of paint stripper are sold annually in the U.S.,[11] the hazard posed from the use of DCM in this product alone is very substantial.

Similar assessments of increased risk of cancer from use of aerosol spray paints containing methylene chloride show a risk of 170 in a million. Both these estimates are based on "reasonably foreseeable consumer uses" of products containing methylene chloride. As the commission staff itself so aptly points out: *"These risks are among the highest ever calculated for chemicals from consumer products."*[12]

III—Actions Requested

A. *Petitioner seeks to have CPSC declare methylene chloride a hazardous substance under section 3(a) of the Federal Hazardous Substances Act.*[13]

This section provides for the issuance of a regulation declaring a substance or mixture to be a hazardous substance when the Commission finds that the substance meets the requirements of subparagraph (1)(A) of section 2(f). Included in the section 2(f)(1)(A) definition of hazardous substance is "any substance or mixture of substances which is toxic . . . if such substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children." The Act further defines "toxic" in section 2(g) as "any substance which has the capacity to produce personal injury or illness to man through ingestion, inhalation, or absorption through any body surface."

As previously explained, methylene chloride has the capacity to cause tumors, central nervous system disorders and affect the structure of genes as a result of being inhaled. This exposure occurs during the course of normal foreseeable household use, whether it be when stripping furniture or using aerosol sprays. As has been noted, the adverse health consequences of methylene chloride, including the risk of cancer, are indeed substantial.

In issuing an order declaring DCM a hazardous substance, CFA additionally requests the Commission to proceed in an expedited manner. This will allow for enforcement of the misbranding provisions of section 2(p) and thus provide interim protection for consumers, in the form of mandatory warnings regarding the cancer risk associated with DCM, while further CPSC actions are considered.

B. *Upon a finding that DCM is a hazardous substance, petitioner seeks further proceedings establishing DCM as a banned hazardous substance under section 2(g)(1)(B), 15 U.S.C. 1261.*

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[1] Letter from Leonard DeFiore, Executive Director, CPSC to Mary Ellen Fise, Consumer Federation of America, March 19, 1985.

[2] *Id.*

[3] Call, H. 1985. Economics and Technology Division, Office of Pesticides and Toxic Substances, U.S. Environmental Protection Agency, Washington, D.C. DCM Preliminary Use Report. (Jan 3, 1985).

[4] *Id.*

[5] Staff Briefing Package, June 19, 1985 at 4–5. (hereafter CPSC, SBP, June 1985); CPSC, SBP, June 1985, Tab E, National Paint and Coating Association, Safety and Health Bulletin No. 56, Sample Label Format for Solvent Containing Consumer Products.

[6] CPSC, SBP, June 1985, Tab A, at 3.

[7] *Id.*

[8] "In accordance with the policies of the International Agency for Research on Cancer, the White House Office of Science and Technology Policy, the Department of Health and Human Services and the Environmental Protection Agency, the finding of sufficient evidence in animals, and the absence of adequate data in humans, means that for practical purposes, methylene chloride can be regarded as presenting a carcinogenic risk to humans." CPSC, SBP, June 1985, 1.

[9] *Id.* Tab C at 2.

[10] *Id.* Tab C.

[11] *Id.* at 2.

[12] *Id.* at 4, (emphasis added).

[13] All section references hereafter are to the Federal Hazardous Substances Act unless otherwise noted.

This section defines a banned hazardous substance as "any hazardous substance intended, or packaged in a form suitable, for use in the household, which the Secretary (Commission) by regulation classifies as a "banned hazardous substance" on the basis of a finding that, notwithstanding such cautionary labeling as is or may be required under this Act for that substance, the degree or nature of the hazard involved in the presence or use of such substance in households is such that the objective of the protection of the public health and safety can be adequately served only by keeping such substance, when so intended or packaged, out of the channels of interstate commerce."

Because methylene chloride is an animal carcinogen and a suspected human carcinogen, cautionary labeling regarding limited use or exposure will not adequately protect consumers from this cancer risk.

CPSC has previously recognized the ineffectiveness of cautionary labeling for a carcinogenic substance in its regulation of self—pressurized products containing vinyl chloride as a banned hazardous substance. See 16 CFR 1500.17(a)(10). These products, like consumer products containing DCM, present a cancer risk resulting from inhalation as the primary route of exposure.

The efficacy of cautionary labeling, as well as other types of consumer information and education, has been disputed by critics who claim that such informational efforts are least effective when seeking to modify consumer behavior, as opposed to efforts to promote a safer device or product.[14] Thus, while some might argue that use of products containing DCM may be safe if done so for short periods of time while outdoors and using a respirator, it is very unlikely that a label can bring about such a drastic behavioral change.

Before promulgating a regulation under section 2(q)(1) classifying a substance as a banned hazardous substance, CPSC must find that the "regulation imposes the least burdensome requirement which prevents or adequately reduces the risk of injury for which the regulation is being promulgated." See section 3(i)(2)(C). Congress specifically addressed labeling as an alternative when discussing the imposition of this finding,[15] stating:

> The Conferees recognize the inherent difficulty in proving or disproving the potential efficacy of labels and instructional data in determining the least burdensome requirement which prevents or adequately reduces a risk of injury. While the Conferees intend to require the Commission to undertake positive steps to study contemplated labeling or instructional rules, they do not intend to require that the need for performance standards or bans be proved with mathematical accuracy. For example, a study of the reaction of a sample of consumers to warning labels or instructions might be sufficient to determine whether or not performance requirements were justified under this section. More general studies, or studies of warnings or instructions regarding related risks of injury, might be sufficient as well. The Conferees do not intend to require the Commission to undertake specific studies of the specific wording for labeling or instructional rules once the agency has decided to issue such rules. . . . In evaluating whether labels or instructions, or rules requiring notification of data, would adequately reduce the risk of injury addressed, the Commission is expected to consider whether the risk will be reduced to a sufficient extent that there will no longer exist an unreasonable risk of injury.[16]

Thus, the Commission only need determine that a cautionary label regarding DCM's risk of carcinogenicity would effectively reduce that risk. We believe it will not and therefore that some type of ban is needed.

However, a finding of DCM as a banned hazardous substance may or may not require a total and absolute ban of the solvent. Rather upon study by the Commission, and a Chronic Hazard Advisory Panel (convened by CPSC under section 31(b)(2)(A)(iii) of the Consumer Product Safety Act) the Commission may be able to determine a level at which consumer risk is adequately reduced. Thus, the effect of such an action would be a ban of products containing more than a certain specified percentage of DCM.

IV—Conclusion

For the foregoing reasons, Consumer Federation of America petitions the Consumer Product Safety Commission to declare methylene chloride a hazardous substance under section 3(a) of the Federal Hazardous Substances Act and to initiate proceedings to ban such substance under section 2(q)(1)(B) of the same.

Respectfully submitted,

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Attorney for Petitioner.
Consumer Federation of America, 1424 16th St., NW., Suite 604, Washington, DC 20036, (202) 387–6121

II. Amendment to the Petition:

Before the Consumer Product Safety Commission

No. HP 85–1.

In the matter of the petition of Consumer Federation of America to Declare Methylene Chloride a Hazardous Substance and to Initiate Proceeding to Ban Such Substance.

The Consumer Federation of America (CFA) hereby amends its September 3, 1985 petition to the Consumer Product Safety Commission (CPSC) regarding the chemical methylene chloride. That petition has been docketed (file number HP 85–1) as a petition to declare methylene chloride a hazardous substance under the Federal Hazardous Substances Act (FHSA). This amendment is in response to the determination by the CPSC Office of the General Counsel that the CFA petition did not supply enough information concerning a ban of methylene chloride and specifically that the petition failed to "set forth a brief description of the substance of the proposed rule" as required by Commission regulation, 16 CFR 1051.5(a)(5). The CPSC Office of the General Counsel also alleged that the CFA petition failed to meet the requirement that a petition set forth the facts which establish the claim that the rule is necessary, 16 CFR 1051.5(a)(4), because the petition did not sufficiently explain that labeling of methylene chloride would not adequately reduce the risk to consumers.

This amendment relates only to section III.B. of our original petition dated September 3, 1985 (copy attached). The amendment as to that portion of our petition, as is set forth hereinafter, is made without prejudice to our rights with respect to the original petition, which we maintain in its original form satisfied all legislative, regulatory and procedural requirements to compel consideration by CPSC as a petition to ban methylene chloride.

There is nothing in the legislative history or procedural regulations applicable to CPSC which authorizes the Office of General Counsel to make findings which operate to delay or preclude consideration by the full

[14] See, Adler and Pittle, Cajolery or Command: Are Education Campaigns an Adequate Substitute for Regulation?, 1 YALE J.R. 159, 166–167, 191 (1984); and Staelin, The Effects of Consumer Education on Consumer Product Safety Behavior, 5 J. CONSUMER RESEARCH, 30, 31 (1978).

[15] The section of the legislative history cited references the requirement of the Consumer Product Safety Act. However the report later states that: "The requirements for advance notice of proposed rulemaking, preliminary and final regulatory analyses, and the three additional findings required for rulemaking under section 9 of the CPSA are extended to rulemaking proceedings authorized by section 2(q) and section 3(e) of the FHSA (Federal Hazardous Substances Act)." Omnibus Budget Reconciliation Act of 1981, Conference Report, H.R. Rep. No. 97–208, 97th Cong., 1st Sess. 876 (1981).

[16] *Id.*

Consumer Product Safety Commission of a recommended regulatory action to ameliorate a recognized public health hazard. The petition stated on its face its status as a petition for "proceedings establishing DCM as a banned hazardous substance under section 2(q)(1)(B), 15 U.S.C. 1261," and met all legislative and regulatory requirements for a petition to ban a hazardous substance. The conclusion stated in the letter of October 16, 1985 that "(t)he Office of the General Counsel does not view this request as providing the "brief description of the proposed rule" required by 16 CFR 1051.5(a)(5), and related findings attributed to the Office of the General Counsel is arbitrary and capricious and without substantial evidence. The failure to act promptly on the clear facts and regulatory recommendations in the original petition has rendered no service to consumers, and rather has contributed to the danger by increasing the exposure to this substance.

While CFA hereby amends section III.B. of its original petition to respond to the criticisms in the Commission's letter of October 16, we do so primarily to achieve a prompt placement of this issue on the Commission's active docket. We reserve for the present the option of judicial challenge to the Commission's failure to consider and act upon our petition as submitted.

Consumer Federation of America hereby petitions the Consumer Product Safety Commission to initiate proceeding to declare methylene chloride a banned hazardous substance under FHSA, section 2(q)(1)(B), 15 U.S.C. 1261. Addressed below are the two petition requirements of concern to the CPSC Office of the General Counsel.

I—Brief Description of Proposed Rule

By CPSC regulation a petition must:

> Contain an explicit request to initiate Commission Rulemaking and set forth a brief description of the substance of the proposed rule or amendment or revocation thereof which it is claimed should be issued by the Commission. (A general request for regulatory action which does not reasonably specify the type of action requested shall not be sufficient for purpose of this subsection.) 16 CFR 1051.5(5).

In line with this requirement, CFA petitions CPSC to initiate proceedings to declare methylene chloride a banned hazardous substance under FHSA, section 2(q)(1)(B), 15 U.S.C. 1261. Such a ban would prohibit manufacturers or others from introducing into interstate commerce any consumer product which contains methylene chloride.

II—Facts Establishing That a Ban Is Necessary

By CPSC regulation a petition must:

> Set forth facts which establish the claim that the issuance, amendment, or revocation of the rule is necessary (for example, such facts may include personal experience; medical, engineering or injury data; or a research study). 16 CFR 1051.5(a)(4).

In its September 3, 1985 petition CFA set out in section II the hazards posed by methylene chloride. Additionally in section III.B. we discussed why we have concluded that labeling is an inadequate remedy for the serious hazard posed by methylene chloride. It is our contention that these two sections satisfy the requirement (set out above). The petition *contains the facts.* The regulation does not require that the petition prove conclusively the need for the requested regulation. Rather, that is the subject of the rulemaking requested by the petition.

As stated in the legislative history "[M]ore general studies, or studies of warnings or instructions regarding related risks of injury, might be sufficient as well." Omnibus Budget Reconciliation Act of 1981, Conference Report, H.R. Rep. No. 97–208, 97th Cong. 1st Sess. 876 (1981). This finding by Congress was with respect to the Commission's determination of whether labeling is an adequate alternative when choosing the least burdensome requirement *during rulemaking.* A petition should not have to do more than the Commission would ultimately have to do in promulgating a regulation. CFA believes it has met the threshold burden required by 16 CFR 1051.5(a)(4).

While we believe that our petition, as originally submitted, contained facts sufficient to establish the need for a ban, CFA calls the Commission's attention to two additional sources of evidence.

As a result of a recent holiday safety investigation, CFA determined that methylene chloride is contained in four brands of artificial spray snow. Two of these products (BLIZ Snow and Frosty Simulated Snow Flock, both manufactured by Rauch Industries of Gastonia, NC) are labeled as containing methylene chloride. Two other brands (Santa Snow Spray and The Snow Machine, both manufactured by Chase Products of Broadview, IL) are labeled as containing chlorinated solvents. A telephone call to Chase Products revealed that the chlorinated solvent contained in these products is methylene chloride. Thus, exposure to methylene chloride from consumer products is not limited to paint strippers and aerosal spray paints.

Secondly, we call the Commission's attention to the Food and Drug Administration's recently proposed ban of methylene chloride in cosmetic products, 50 FR 51551 (December 18, 1985). The proposed regulation reviews the animal and epidemiological studies and concludes that:

> [m]ethylene chloride is an animal carcinogen by inhalation and may be carcinogenic to humans. It has been the agency's policy that substances that cause cancer in laboratory animals should be considered potential human carcinogens unless there is other evidence that the effects observed in animals are not relevant to humans. In the case of methylene chloride, FDA has found that although the epidemiological studies that have been conducted have not reported any increase in cancer attributable to methylene chloride, these results must be considered inconclusive due to design limitation such as small numbers of workers and insufficient duration of exposure. The Environmental Protection Agency reached a similar conclusion about these studies in its **Federal Register** notice of October 17, 1985 [50 FR 42037]. In addition, the agency is unaware of any basis on which to find that the animal studies discussed above are not relevant to humans. 50 FR 51552.

The estimated risk to consumers from methylene chloride in cosmetic products is similar if not less than that posed by methylene chloride in paint strippers and aerosal spray paints.

III—Conclusion

For the foregoing reasons and for the reasons stated in our petition of September 3, 1985 (copy attached) CFA petitions CPSC to declare methylene chloride a hazardous substance under section 3(a) of the Federal Hazardous Substances Act and to ban the use of this solvent in consumer products under section 2(q)(1)(B) of the same.

Respectfully submitted,

Mary Ellen R. Fise,
Attorney for Petitioner.
Consumer Federation of America, 1424 16th Street, NW., Suite 604, Washington, DC 20036, (202) 387–6121

Date Submitted: December 20, 1985.

Appendix 2—Procedures for Public Hearing on Objections

Note.—The following appendix will not appear in the Code of Federal Regulations.

Introduction

The Commission has issued rules for rulemaking proceedings conducted under section 701 (e)–(g) of the Federal Food, Drug, and Cosmetic Act. These rules are published at 16 CFR 1500.201. Also, to the extent that they have not been repealed, modified, or superseded, the Food and Drug Administration's

previous rules governing section 701(e) petitions, 21 CFR 2.65–2.75 (1973), apply by virtue of section 30(e)(2) of the Consumer Product Safety Act, 15 U.S.C. 2079(E)(2). The Commission's rules of practice for adjudicative proceedings, published at 16 CFR Part 1025, do not apply to rulemaking proceedings.

With regard to the procedures to be used in public hearings on objections to orders issued by the Commission under section 701 (e)–(g), the Commission's rules at § 1500.201 and FDA's previous rules, to the extent they remain applicable, provide general guidance concerning how the hearings are to be conducted, but there are a number of issues that could arise during the hearing that are not specifically addressed by these rules. The Commission believes that it would be preferable for more detailed procedures to be available to govern the public hearing that would be held on any objections that may be filed if the Commission issues an order declaring household products containing methylene chloride to be hazardous substances.

Accordingly, the Commission proposes to use the following procedures in any public hearing held on objections in this rulemaking. These proposed procedures are based on those currently used by the Food and Drug Administration in section 701(e) proceedings.

Proposed Procedures for Formal Evidentiary Public Hearing

Subpart A—General Provisions

Section 1.0 Scope.

The procedures in this part apply when—

(a) A person has a right to an opportunity for a hearing under sections 2(q)(1)(B) or 3(a) of the Federal Hazardous Substances Act (FHSA) and 701(e) of the Federal Food, Drug, and Cosmetic Act (15 U.S.C. 1261(q)(1)(B) and 1262(a), and 21 U.S.C. 321(e)) or

(b) The Commission concludes that it is in the public interest to hold a formal evidentiary public hearing on any matter before it in such a proceeding.

Section 1.1 Computation of time periods.

Whenever a time period for taking action is specified by these procedures, by the presiding officer, or by the Commission, and the last day for taking such action falls on a weekend or Federal holiday, the action shall be timely if taken on or before the next Federal Government business day.

Section 1.2 Confidential information.

Whenever any participant desires or is required to submit information in this proceeding, and the participant believes that such information consists of trade secret or other confidential business or financial information that should not be disclosed publicly, the participant may, instead of submitting such information, submit a general description of the information desired to be withheld, together with a detailed argument supporting the claim that the information should be held in confidence. Participants desiring to have such information considered in the proceeding should file appropriate motions with the presiding officer for disclosure or for a protective order.

Section 1.3 Office of the Secretary.

(a) The mailing address of the Commission's Office of the Secretary is: Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

(b) The address for delivery to the Office of the Secretary is: Office of the Secretary, Room 510, 5401 Westbard Avenue, Bethesda, Maryland.

(c) The telephone number of the Office of the Secretary is (301) 492–6800.

Subpart B—Initiation of Proceedings

Section 2.0 Initiation of a hearing involving the issuance, amendment, or revocation of a regulation.

(a) The **Federal Register** notice promulgating the regulation will describe how to submit objections and requests for hearing.

(b) On or before the 30th day after the date of publication of a final regulation in the **Federal Register**, a person may file written objections, with or without a request for a hearing, with the Commission. The 30-day period may not be extended, except that additional information supporting an objection may be received after 30 days upon a showing of inadvertent omission and hardship, if consideration of the additional information will not delay review of the objection and request for hearing.

Section 2.2 Filing objections and requests for a hearing on a regulation.

(a) Objections and requests for a hearing under section 2.0(a) must be filed with the Office of the Secretary and will be accepted for filing if they meet the following conditions:

(1) They are submitted within the time specified in section 2.0(b).

(2) Each objection is separately numbered.

(3) Each objection specifies with particularity the provision(s) of the regulation to which that objection is directed.

(4) Each objection on which a hearing is requested specifically requests a hearing. Failure to request a hearing on an objection constitutes a waiver of the right to a hearing on that objection.

(5) Each objection for which a hearing is requested includes a detailed description and analysis of the factual information to be presented in support of the objection. Failure to include a description and analysis for an objection constitutes a waiver of the right to a hearing on that objection. The description and analysis may be used only for the purpose of determining whether a hearing has been justified under section 2.4, and do not limit the evidence that may be presented if a hearing is granted.

(i) A copy of any report, article, survey, or other written document relied upon must be submitted, unless the document is—

(A) A CPSC document that is routinely publicly available; or

(B) A recognized medical or scientific textbook or journal readily available to the agency.

(ii) A summary of the nondocumentary testimony to be presented by any witnesses relied upon must be submitted.

(b) If an objection or request for a public hearing fails to meet the requirements of this section and the deficiency becomes known to the Office of the Secretary. The Office of the Secretary shall return it with a copy of the applicable regulations, indicating those provisions not complied with. A deficient objection or request for a hearing may be supplemented and subsequently filed if submitted within the 30-day time period specified in section 2.0(b).

(c) If another person objects to a regulation issued in response to a petition, the petitioner may submit a written reply to the Office of the Secretary on or before the 15th day after the last day for filing objections.

Section 2.3 Notice of filing of objections.

As soon as practicable after the expiration of the time for filing objections to and requests for hearing on agency action involving the issuance, amendment, or revocation of a regulation under section 701(e) of the Federal Food, Drug, and Cosmetic Act, the Commission shall publish a notice in the **Federal Register** specifying those parts of the regulation that have been stayed by the filing of proper objections and, if no objections have been filed, stating that fact. The notice does not constitute a determination that a hearing is justified on any objections or requests for hearing that have been filed. When to do so will cause no undue delay, the notice required by this section may be combined with the notices described in sections 2.8 and 3.5.

Section 2.4 Ruling on objections and requests for hearing.

(a) As soon as practicable, the Commission will review all objections and requests for hearing filed under section 2.2 and determine—

(1) Whether the regulation should be modified or revoked under section 2.6;

(2) Whether a hearing has been justified.

(b) A request for a hearing will be granted if the material submitted shows the following:

(1) There is a genuine and substantial issue of fact for resolution at a hearing. A hearing will not be granted on issues of policy or law.

(2) The factual issue can be resolved by available and specifically identified reliable evidence. A hearing will not be granted on the basis of mere allegations or denials or general descriptions of positions and contentions.

(3) The data and information submitted, if established at a hearing, would be adequate to justify resolution of the factual issue in the way sought by the person. A hearing will be denied if the Commission concludes that the data and information submitted, even though accurate, are insufficient to justify the factual determination urged.

(4) Resolution of the factual issue in the way sought by the person is adequate to justify the action requested. A hearing will not be granted on factual issues that are not determinative with respect to the action requested, *e.g.*, if the Commission concludes that the Commission's action would be the same even if the factual issue were resolved in the way sought, or if a request is made that a final regulation include a provision not reasonably encompassed by the proposal.

(5) The action requested is not inconsistent with any provision in the FHSA or any regulation in 16 CFR Subchapter C explaining or particularizing the requirements of the FHSA. The proper procedure in the latter circumstance is for the person requesting the hearing to petition for an amendment or waiver of the regulation involved.

(6) The requirements in other applicable regulations, *e.g.*, 16 CFR 1500.201, and in the notice promulgating the final regulation or the notice of opportunity for hearing are met.

(c) In making the determinations specified in paragraph (a) of this section, the Commission may issue an appropriate order on the determinations without further notice or opportunity for comment from interested parties. However, the Commission optionally may use the procedure specified in 16 CFR Part 1052 or any other applicable public procedure available to it.

(d) If it is uncertain whether a hearing has been justified under the principles in paragraph (b) of this section, and the Commission concludes that summary decision against the person requesting a hearing should be considered, the Commission may serve upon the person by registered mail a proposed order denying a hearing. The person has 30 days after receipt of the proposed order to demonstrate that the submission justifies a hearing.

Section 2.6 Modification or revocation of regulation or order.

If, upon review of an objection or request for hearing, the Commission determines that the regulation should be modified or revoked, the Commission will promptly take such action by notice in the **Federal Register**. Further objections to or requests for hearing on the modification or revocation may be submitted under sections 2.0 through 2.2, but no further issue may be taken with other provisions in the regulation. Objections and requests for hearing that are not affected by the modification or revocation will remain on file and be acted upon in due course.

Section 2.8 Denial of hearing in whole or in part.

(a) If the Commission determines upon review of the objections or requests for hearing that a hearing is not justified, in whole or in part, a notice of the determination will be published in the **Federal Register.**

(b) The notice will state whether the hearing is denied in whole or in part. If the hearing is denied in part, the notice will be combined with the notice of

hearing required by section 3.5, and will specify the objections and requests for hearing that have been granted and denied.

(c) Any denial will be explained. A denial based on an analysis of the information submitted to justify a hearing will explain the inadequacy of the information.

(d) The notice will confirm, modify, or stay the effective date of the regulation involved.

(e) The record of the administrative proceeding relating to denial in whole or in part of a public hearing on an objection or request for hearing consists of the following:

(1) The entire rulemaking record;

(2) The objections and requests for hearing filed by the Office of the Secretary; and

(3) The notice denying a formal evidentiary public hearing.

(f) The record specified in paragraph (e) of this section is the exclusive record for the Commission's decision on the complete or partial denial of a hearing. The record of the proceeding will be closed as of the date of the Commission's decision unless another date is specified. A person who requested and was denied a hearing may submit a petition for reconsideration or a petition for stay of the Commission's action. A person who wishes to rely upon information or views not included in the administrative record shall submit them to the Commission with a petition to modify the final regulation.

(g) Denial of a request for a hearing in whole or in part is final agency action reviewable in the courts, under the statutory provisions governing the matter involved, as of the date of publication of the denial in the **Federal Register**.

(1) Before requesting a court for a stay of the Commission's action pending judicial review, a person shall first submit a petition to the Commission for a stay of action.

(2) The time for filing a petition for judicial review of a denial of a hearing on an objection or issue begins on the date the denial is published in the **Federal Register**. The failure to file a petition for judicial review within the period established in the statutory provision governing the matter involved constitutes a waiver of the right to judicial review of the objection or issue, regardless whether a hearing has been granted on other objections and issues.

Section 3.0 Judicial review after waiver of hearing on a regulation.

(a) A person with a right to submit objections and a request for hearing under section 2.0(a) may submit objections and waive the right to a hearing. The waiver may be either an explicit statement, or a failure to request a hearing, as provided in section 2.2(a)(4).

(b) If a person waives the right to a hearing, the Commission will rule upon the person's objections under sections 2.4 through 2.8. As a matter of discretion, the Commission may also order a hearing on the matter.

(c) If the Commission rules adversely on a person's objection, the person may petition for judicial review in a U.S. Court of Appeals under the FHSA.

(1) The record for judicial review is the record designated in section 2.8(e).

(2) The time for filing a petition for judicial review begins on the date of publication of the Commission's ruling on the objections in the **Federal Register.**

Section 3.2 Request for alternative form of hearing.

(a) A person with a right to request a formal hearing may waive that right and request a hearing before the Commission under 16 CFR Part 1052.

(b) The request—

(1) May be on the person's own initiative or at the suggestion of the Commission;

(2) Must be submitted by the person in the form of a petition before publication of a notice of hearing under section 3.5 or a denial of hearing under section 2.8; and

(3) Must be—

(i) In lieu of a request for a formal hearing under section 2.0; or,

(ii) If submitted with or after a request for formal hearing, accompanied by a waiver of the right to a formal hearing, conditioned on the request for the alternative form of hearing. Upon acceptance by the Commission, the waiver becomes binding and may be withdrawn only by waiving any right to any form of hearing, unless the Commission determines otherwise.

(c) When more than one person requests and justifies a formal hearing under these procedures, an alternative form of hearing may be used only if all the persons concur and waive their right to request a formal hearing.

(d) The Commission will determine whether an alternative form of hearing should be used after considering the requests submitted and the appropriateness of the alternative hearing for the issues raised in the objections. The Commission's determination is binding unless, for good cause, the Commission subsequently determines otherwise.

(e) The Commission will publish a **Federal Register** notice of an alternative form of hearing setting forth the following information:

(1) A description of the regulation that is the subject of the hearing.

(2) A statement specifying any part of the regulation that has been stayed by operation of law or in the Commission's discretion.

(3) The time, date, and place of the hearing, or a statement that such information will be contained in a later notice.

(4) The parties to the hearing.

(5) The issues at the hearing. The statement of issues determines the scope of the hearing.

Section 3.5 Notice of hearing; stay of action.

(a) If the Commission determines upon review of the objections and requests for hearing that a hearing is justified on any issue, the Commission will publish a notice setting forth the following:

(1) A description of the regulation that is the subject of the hearing.

(2) A statement specifying any part of the regulation or order that has been stayed by operation of law or in the Commission's discretion.

(3) The parties to the hearing.

(4) The issues of fact on which a hearing has been justified.

(5) A statement of any objections or requests for hearing for which a hearing has not been justified, which are subject to section 2.8.

(6) The presiding officer, or a statement that the presiding officer will be designated in a later notice.

(7) The time within which notices of participation should be filed under section 4.5.

(8) The date, time, and place of the prehearing conference, or a statement that the date, time, and place will be announced in a later notice. The prehearing conference may not commence until after the time expires for filing the notice of participation required by section 4.5(a).

(9) The time within which participants should submit written information and views under section 8.5(b). Additional copies of material already submitted under section 8.5 need not be included with any later submissions.

(10) The contents of the portions of the administrative record relevant to the issues at the hearing. Except for trade secret or other confidential information, the disclosure of which is prohibited by statute, the portions listed will be placed on public display in the Office of the Secretary before the notice is published.

(b) The statement of the issues determines the scope of the hearing and

the matters on which evidence may be introduced. The issues may be revised by the presiding officer. A participant may obtain interlocutory review by the Commission of a decision by the presiding officer to revise the issues to include an issue on which the Commission has not granted a hearing or to eliminate an issue on which a hearing has been granted.

(c) A hearing is deemed to begin on the date of publication of the notice of hearing.

Section 3.7 Effective date of a regulation when no objections are filed.

(a) If no objections are filed and no hearing is requested on a regulation under section 2.0(3), the regulation is effective on the date specified in the regulation as promulgated.

(b) The Commission shall publish a confirmation of the effective date of the regulation. The **Federal Register** document confirming the effective date of the regulation may extend the time for compliance with the regulation.

Subpart C—Appearance and Participation

Section 4.0 Appearance.

(a) A person who has filed a notice of participation under section 4.5 may appear in person or by counsel or other representative in any hearing and, subject to section 8.9, may be heard concerning all relevant issues.

(b) The presiding officer may strike a person's appearance for violation of the requirements regarding conduct in section 9.0.

Section 4.5 Notice of participation.

(a) Within 30 days after publication of the notice of hearing under section 3.5, a person desiring to participate in a hearing is to file with the Office of the Secretary a notice of participation in the following form:

(Date)

Office of the Secretary, Consumer Product Safety Commission, Room 520, 5401 Westbard Ave., Bethesda, MD 20207 (or 8th Floor, 1111 18th St., NW., Washington, DC 20207).

Notice of Participation

(Title of Regulation)

Docket No. _____

Please enter the participation of:

(Name) _____
(Street address) _____
(City and State) _____
(Telephone number) _____

Service on the above will be accepted by:

(Name) _____
(City and State) _____
(Telephone number) _____

The following statements are made as part of this notice of participation:

A. *Specific interests.* (A statement of the specific interest of the person in the proceeding, including the specific issues of fact concerning which the person desires to be heard. This part need not be completed by a party to the proceeding.)

B. *Commitment to participate.* (A statement that the person will present documentary evidence or testimony at the hearing and will comply with the requirements of section 8.5 of these procedures.)

(Signed) _____

(b) Any amendment to a notice of participation should be filed with the Office of the Secretary and served on all participants.

(c) No person may participate in a hearing who has not filed a written notice of participation or whose participation has been stricken under paragraph (e) of this section.

(d) The presiding officer may permit the late filing of a notice of participation upon a showing of good cause.

(e) The presiding officer may strike the participation of a person for nonparticipation in the hearing or for failure to comply with any requirement of this subpart, *e.g.*, disclosure of information as required by section 8.5 or the prehearing order issued under section 9.2. Any person whose participation is stricken may partition the Commission for interlocutory review of that decision.

Section 5.0 Advice on public participation in hearings.

(a) *Designated agency contact.* All inquiries from the public about scheduling, location, and general procedures should be addressed to the Office of the Assistant General Counsel for Regulatory Affairs, Consumer Product Safety Commission, Washington, DC 20207, or telephone 301–492–6980. The staff of the Assistant General Counsel for Regulatory Affairs will attempt to respond promptly to all inquiries from members of the public, as well as to simple requests for information from participants in hearings.

(b) *Hearing schedule changes.* Requests by hearing participants for changes in the schedule of a hearing or for filing documents, briefs, or other pleadings should be made in writing directly to the presiding officer.

(c) *Legal advice to individuals.* CPSC does not have the resources to provide legal advice to members of the public concerning participation in hearings. Furthermore, to do so would compromise the independence of the Commission's staff and invite charges of improper interference in the hearing process. Accordingly, the Assistant General Counsel for Regulatory Affairs will not answer questions about the strengths or weaknesses of a party's position at a hearing, litigation strategy, or similar matters.

(d) *Role of the Office of the General Counsel.* Under no circumstances will the Office of the General Counsel of CPSC directly provide advice about a hearing to any person who is participating or may participate in the hearing. In every hearing, certain attorneys in the office are designated to represent the staff. Other members of the office, ordinarily including the General Counsel, are designated to advise the Commission on a final decision in the matter. It is not compatible with these functions, nor would it be professionally responsible, for the attorneys in the Office of the General Counsel also to advise other participants in a hearing, or for any attorney who may be called on to advise the Commission to respond to inquiries from other participants in the hearing; such participants may be urging views contrary to those of the staff involved or to what may ultimately be the final conclusions of the Commission. Accordingly, members of the Office of the General Counsel, other than the attorneys responsible for representing the staff, will not answer questions about the hearing from any participant or potential participant.

(e) *Communication between participants and attorneys.* Participants in a hearing may communicate with the attorneys responsible for representing the staff, in the same way that they may communicate with counsel for any other party in interest about the presentation of matters at the hearing. It would be inappropriate to bar discussion of such matters as stipulations of fact, joint presentation of witnesses, or possible settlement of hearing issues. Members of the public, including participants at hearings, are advised, however, that all such communications, including those by telephone, will be recorded in memoranda that can be filed with the office of the Secretary.

(f) *Separation of functions; ex parte communications.*

(1) An interested person may meet or correspond with any CPSC representative concerning a matter prior to publication of a notice announcing a formal evidentiary public hearing on the matter. The provisions of 16 CFR Part 1012 apply to such meetings.

(2) Upon publication of a notice announcing a formal evidentiary public hearing, the following separation of functions apply:

(i) The CPSC staff responsible for preparing evidence and participating in the hearing in the matter is, as a party to the hearing, responsible for all investigative functions and for presentation of the position of the staff at the hearing and in any pleading or oral argument before the Commission. These representatives of the staff may not participate or advise in any decision except as witnesses or counsel in public proceedings. Except as provided herein, there shall be no other communication between representatives of the staff and representatives of the various Commissioners' offices concerning the matter prior to the decision of the Commission. The Commission may, however, designate other representatives of the staff to advise the Commission. The designation will be in writing and filed with the Office of the Secretary no later than the time specified in paragraph (f)(2) of this section for the application of separation of functions. All employees of the CPSC other than representatives of the involved staff (except for those specifically designated otherwise) may be called upon to advise and participate with the offices of the Commissioners in their functions relating to the hearing and the final decision.

(ii) The General Counsel of CPSC shall designate members of the Office of the General Counsel to advise and participate with the staff in its functions in the hearing and shall designate other members to advise the offices of the Commissioners in their functions related to the hearing and the final decision. The members of the Office of the General Counsel designated to advise the staff may not participate or advise in any decision of the Commission except as counsel in public proceedings. The designation shall be in the form of a memorandum filed with the Office of the Secretary and made a part of the administrative record in the proceeding. There may be no other communication between those members of the Office of General Counsel designated to advise the offices of the Commissioners and any other person in the Office of General Counsel or in the involved staff with respect to the matter prior to the decision of the Commission. The General Counsel may assign different attorneys to advise either the staff or the offices of the Commissioners at any stage of the proceedings. The General Counsel will ordinarily advise and participate with the offices of the Commissioners in their functions relating to the hearing and the final decision.

(iii) The Commissioners are responsible for the agency review and final decision of the matter, with the advice and participation of anyone in CPSC other than representatives of the responsible staff and those members of the Office of General Counsel designated to assist in the staff functions in the hearing.

(iv) Between the date that separation of functions apply and the date of the Commission's decision on the matter, communication concerning the matter involved in the hearing will be restricted as follows:

(A) No person outside CPSC may have an ex parte communication with the presiding officer or any person representing the offices of the Commissioners concerning the matter in the hearing. Neither the presiding officer nor any person representing the offices of the Commissioners may have any ex parte communications with a person outside CPSC concerning the matter in the hearing. All communications are to be public communications, as witness or counsel under the applicable procedures.

(B) A participant in the hearing may submit a written communication to the offices of the Commissioners with respect to a proposal for settlement. These communications are to be in the form of pleadings, served on all other participants, and filed with the Office of the Secretary like any other pleading.

(C) A written communication contrary to this section must be immediately served on all other participants and filed with the Office of the Secretary by the presiding officer at the hearing, or by the Commissioner, depending on who received the communication. An oral communication contrary to this section must be immediately recorded in a written memorandum and similarly served on all other participants and filed with the Office of the Secretary. A person, including a representative of a participant in the hearing, who is involved in an oral communication contrary to this section, must, if possible, be made available for cross-examination during the hearing with respect to the substance of that conversation. Rebuttal testimony pertinent to a written or oral communication contrary to this section will be permitted. Cross-examination and rebuttal testimony will be transcribed and filed with the Office of the Secretary.

(D) The making of a communication contrary to this section may, consistent with the interests of justice and the policy of the underlying statute, result in a decision adverse to the person knowingly making or causing the making of such a communication.

Subpart D—Presiding Officer

Section 6.0 Presiding officer.

The presiding officer in a hearing will be a Commissioner or an administrative law judge qualified under 5 U.S.C. 3105.

Section 6.2 Commencement of functions.

The functions of the presiding officer begin upon designation and end upon the filing of the initial decision.

Section 7.0 Authority of presiding officer.

The presiding officer has all powers necessary to conduct a fair, expeditious, and orderly hearing, including the power to—

(a) Specify and change the date, time, and place of oral hearings and conferences;

(b) Establish the procedures for use in developing evidentiary facts, including the procedures in section 9.2(b) and to rule on the need for oral testimony and cross-examination under section 8.7(b);

(c) Prepare statements of the areas of factual disagreement among the participants;

(d) Hold conferences to settle, simplify, or determine the issues in a hearing or to consider other matters that may expedite the hearing;

(e) Administer oaths and affirmations;

(f) Control the course of the hearing and the conduct of the participants;

(g) Examine witnesses and strike or limit their testimony if they fail to respond fully to proper questions;

(h) Admit, exclude, or limit evidence;

(i) Set the time for filing pleadings;

(j) Rule on motions and other procedural matters;

(k) Rule on motions for summary decision under section 9.3;

(l) Conduct the hearing in stages if the number of parties is large or the issues are numerous and complex;

(m) Waive, suspend, or modify any procedure in this subpart if the presiding officer determines that no party will be prejudiced, the ends of justice will be served, and the action is in accordance with law;

(n) Strike the participation of any person under section 4.5(e) or exclude any person from the hearing under section 9.0, or take other reasonable disciplinary action; and

(o) Take any other action required for the fair, expeditious, and orderly conduct of the hearing.

Section 7.5 Disqualification of presiding officer.

(a) A participant may request the presiding officer to disqualify himself/herself and withdraw from the proceeding. The ruling on any such request may be appealed in accordance with section 9.7(b).

(b) A presiding officer who is aware of grounds for disqualification, whether or not raised by a participant, shall withdraw from the proceeding.

Section 7.8 Unavailability of presiding officer.

(a) If the presiding officer is unable to act for any reason, the Commission will assign the powers and duties to another presiding officer. The substitution will not affect the hearing, except as the new presiding officer may order.

(b) Any motion based on the substitution must be made within 10 days.

Subpart E—Hearing Procedures

Section 8.0 Filing and service of submissions.

(a) Submissions, including pleadings in a hearing, are to be filed with the Office of the Secretary. Two copies shall be filed. To determine compliance with filing deadlines in a hearing, a submission is considered submitted on the date it is actually received by the Office of the Secretary. When this part allows a response to a submission and prescribes a period of time for the filing of the response, an additional 3 days are allowed for the filing of the response if the submission is served by mail.

(b) The person making a submission shall serve copies of it on the other participants. Submissions of documentary data and information are not required to be served on each participant, but any accompanying transmittal letter, pleading, summary, statement of position, certification under paragraph (d) of this section, or similar document must be served on each participant.

(c) Service is accomplished by mailing a submission to the address shown in the notice of participation or by personal delivery.

(d) All submissions are to be accompanied by a certificate of service or by a statement that service is not required, stating the reason therefor.

(e) No written submission or other portion of the administrative record may be held in confidence, except as provided in section 10.5.

Section 8.2 Petition to participate in forma pauperis.

(a) A participant who believes that compliance with the filing and service requirements of this section constitutes an unreasonable financial burden may submit to the Commission a petition to participate in forma pauperis.

(b) The petition will be captioned: "Request to Participate *In Forma Pauperis*, Docket No. _____." Filing and service requirements for the petition are described in paragraph (c) of this section, whether or not the petition is granted. The petition must demonstrate that either: (1) The participant is indigent and a strong public interest justifies participation, or (2) the participant's participation is in the public interest because it can be considered of primary benefit to the general public.

(c) The Commission may grant or deny the petition. If the petition is granted, the participant need file only one copy of each submission with the Office of the Secretary. The Office of the Secretary will make sufficient additional copies for the administrative record, and serve a copy on each other participant.

Section 8.5 Disclosure of data and information to be relied on by the participants.

(a) Before the notice of hearing is published under section 3.5, the Assistant General Counsel for Regulatory Affairs shall submit the following to the Office of the Secretary:

(1) The relevant portions of the administrative record of the proceeding. Portions of the administrative record not relevant to the issues in the hearing are not required to be submitted.

(2) Other documents in the CPSC staff's files containing factual information, whether favorable or unfavorable to the regulation issued by the Commission, which relate to the issues involved in the hearing. Internal memoranda reflecting the deliberative process, attorney work product, or material prepared specifically for use in connection with the hearing are not required to be submitted.

(3) All other documentary data and information relied upon.

(4) A narrative position statement on the factual issues in the notice of hearing and the type of supporting evidence the Assistant General Counsel intends to introduce.

(b) Within 60 days of the publication of the notice of hearing or, if no participant will be prejudiced, within another period of time set by the presiding officer, each participant shall submit to the Office of the Secretary all data and information specified in paragraph (a) (3) and (4) of this section and any objections that the administrative record filed under paragraph (a)(1) of this section is incomplete, and any documents in the participants' files containing factual information, whether favorable or unfavorable to the regulation issued by the Commission, which relates to the issues involved in the hearing.

(c) Submissions required by paragraphs (a) and (b) of this section may be supplemented later in the proceeding, with the approval of the presiding officer, upon a showing that the material in the supplement was not reasonably known or available when the submission was made, that the relevance of the material contained in the supplement could not reasonably have been foreseen, or that admission of the material in the supplement is necessary for a fair determination of the issues involved in the hearing.

(d) A participant's failure to comply substantially and in good faith with this section constitutes a waiver of the right to participate further in the hearing; failure of a party to comply constitutes a waiver of the right to a hearing.

(e) Participants may reference each other's submissions. To reduce duplicative submissions, participants are encouraged to exchange and consolidate lists of documentary evidence. If a particular document is bulky or in limited supply and cannot reasonably be reproduced, and it constitutes relevant evidence, the presiding officer may authorize submission of a reduced number of copies.

(f) The presiding officer will rule on questions relating to this section.

Section 8.7 Purpose; oral and written testimony; burden of proof.

(a) The objective of a formal evidentiary hearing is the fair determination of relevant facts consistent with the right of all interested persons to participate and with the public interest in promptly settling controversial matters affecting the public health and welfare.

(b) Accordingly, the evidence at a hearing is to be developed to the maximum extent through written submissions, including written direct testimony, which may be in narrative or in question-and-answer form.

(1) Direct testimony will be submitted in writing, except on a showing that written direct testimony is insufficient for a full and true disclosure of relevant facts and that the participant will be prejudiced if unable to present oral

direct testimony. If the proceeding involves particular issues, each party may determine whether, and the extent to which, each wishes to present direct testimony orally or in writing.

(2) Oral cross-examination of witnesses will be permitted if it appears that alternative means of developing the evidence are insufficient for a full and true disclosure of the facts and that the party requesting oral cross-examination is the most effective and efficient means to clarify the matters at issue.

(3) Witnesses shall give testimony under oath.

(c) A participant who proposes to substitute a new provision for a provision objected to has the burden of proof in relation to the new provision.

Section 8.9 Participation of nonparties.

(a) A nonparty participant may—

(1) Attend all conferences (including the prehearing conference), oral proceedings, and arguments;

(2) Submit written testimony and documentary evidence for inclusion in the record;

(3) File written objections, briefs, and other pleadings; and

(4) Present oral argument.

(b) A nonparty participant may not—

(1) Submit written interrogatories, and

(2) Conduct cross-examination.

(c) A person whose petition is the subject of the hearing has the same right as a party.

(d) A nonparty participant will be permitted additional rights if the presiding officer concludes that the participant's interests would not be adequately protected otherwise or that broader participation is required for a full and true disclosure of the facts, but the rights of a nonparty participant may not exceed the rights of a party.

Section 9.0 Conduct at oral hearings or conferences.

All participants in a hearing will conduct themselves with dignity and observe judicial standards of practice and ethics. They may not indulge in personal attacks, unseemly wrangling, or intemperate accusations or characterizations. Representatives of parties shall, to the extent possible, restrain clients from improprieties in connection with any proceeding. Disrespectful, disorderly, or contumacious language or conduct, refusal to comply with directions, use of dilatory tactics, or refusal to adhere to reasonable standards of orderly and ethical conduct during any hearing shall constitute grounds for immediate exclusion from the proceeding by the presiding officer.

Section 9.1 Time and place of prehearing conference.

A prehearing conference will commence at the date, time, and place announced in the notice of hearing, or in a later notice, or as specified by the presiding officer in a notice modifying a prior notice. At the prehearing conference, insofar as practicable at that time, the presiding officer will establish the methods and procedures to be used in developing the evidence, determine reasonable time periods for the conduct of the hearing, and designate the times and places for the production of witnesses for direct and cross-examination, if leave to conduct oral examination is granted on any issue.

Section 9.2 Prehearing conference procedure.

(a) Participants in a hearing are to appear at the prehearing conference prepared to discuss and resolve all matters specified in paragraph (b) of this section.

(1) To expedite the hearing, participants are encouraged to prepare in advance for the prehearing conference. Participants should cooperate with each other, and should request information and begin preparation of testimony at the earliest possible time. Failure of a participant to appear at the prehearing conference or to raise matters that reasonably could be anticipated and resolved at that time will not delay the progress of the hearing and constitutes a waiver of the rights of the participant regarding such matters as objections to the agreements reached, actions taken, or rulings issued by the presiding officer at or as a result of the prehearing conference and may be grounds for striking the participation under section 4.5.

(2) Participants shall bring to the prehearing conference the following specific information, which will be filed with the Office of the Secretary under section 8.0:

(i) Any additional information desired to supplement the submission filed under section 8.5; the supplement may be filed if approved under section 8.5.

(ii) A list of all witnesses whose testimony will be offered, orally or in writing, at the hearing, with a full curriculum vitae for each. Additional witnesses may be identified later, with the approval of the presiding officer, on a showing that the witness was not reasonably available at the time of the prehearing conference, that the relevance of the witness' views could not reasonably have been foreseen at that time, or for other good cause shown, as where a previously identified witness is unforeseeably unable to testify.

(iii) All prior written statements, including articles and any written statement signed or adopted, or a recording or transcription of an oral statement made, by persons identified as witnesses if—

(A) The statement is available without making a request to the witness;

(B) The statement relates to the subject matter of the witness' testimony; and

(C) The statement either was made before the time the person agreed to become a witness or has been made publicly available by the person.

(b) The presiding officer will conduct a prehearing conference for the following purposes:

(1) To determine the areas of factual disagreement to be considered at the hearing. The presiding officer may hold conferences off the record in an effort to reach agreement on disputed factual questions, subject to the ex parte limitations in section 5(f).

(2) To identify the most appropriate techniques for developing evidence on issues in controversy and the manner and sequence in which they will be used, including, where oral examination is to be conducted, the sequence in which witnesses will be produced for, and the time and place of, oral examination. The presiding officer may consider, but is not limited to, the following techniques.

(i) Submission of narrative statements of position on factual issues in controversy;

(ii) Submission of evidence or identification of previously submitted evidence to support such statements, such as affidavits, verified statements of fact, data, studies, and reports;

(iii) Exchange of written interrogatories directed to particular witnesses;

(iv) Written requests for the production of additional documentation, data, or other relevant information;

(v) Submission of written questions to be asked by the presiding officer of a specific witness; and

(vi) Identification of facts for which oral examination and/or cross-examination is appropriate.

(3) To group participants with substantially like interests for presenting evidence, making motions and objections, including motions for summary decision, filing briefs, and presenting oral argument.

(4) To hear and rule on objections to admitting information submitted under section 8.5 into evidence.

(5) To obtain stipulations and admissions of facts.

(6) To take other action that may expedite the hearing.

(c) The presiding officer shall issue, orally or in writing, a prehearing order reciting the actions taken at the prehearing conference and setting forth the schedule for the hearing. The order will control the subsequent course of the hearing unless modified by the presiding officer for good cause.

Section 9.3 Summary decisions.

(a) After the hearing commences, a participant may move, with or without supporting affidavits, for a summary decision on any issue in the hearing. Any other participant may, within 10 days after service of the motion, which time may be extended for an additional 10 days for good cause, serve opposing affidavits or countermove for summary decision. The presiding officer may set the matter for argument and call for the submission of briefs.

(b) The presiding officer will grant the motion if the objections, requests for hearing, other pleadings, affidavits, and other material filed in connection with the hearing, or matters officially noticed, show that there is no genuine issue as to any material fact and that a participant is entitled to summary decision.

(c) Affidavits should set forth facts that would be admissible in evidence and show affirmatively that the affiant is competent to testify to the matters stated. When a properly supported motion for summary decision is made, a participant opposing the motion may not rest upon mere allegations or denials or general descriptions of positions and contentions; affidavits or other responses must set forth specific facts showing that there is a genuine issue of fact for the hearing.

(d) Should it appear from the affidavits of a participant opposing the motion that for sound reasons stated, facts essential to justify the opposition cannot be presented by affidavit, the presiding officer may deny the motion for summary decision, allow additional time to permit affidavits for additional evidence to be obtained, or issue other just order.

(e) If on motion under this section a summary decision is not rendered upon the whole case or for all the relief asked, and evidentiary facts need to be developed, the presiding officer will issue an order specifying the facts that appear without substantial controversy and directing further evidentiary proceedings. The facts so specified will be deemed established.

(f) A participant submitting or opposing a motion for summary decision may obtain interlocutory review by the Commission of a summary decision of the presiding officer.

Section 9.4 Receipt of evidence.

(a) A hearing consists of the development of evidence and the resolution of factual issues as set forth in this subpart and in the prehearing order.

(b) All orders, transcripts, written statements of position, written direct testimony, written interrogatories and responses, and any other written material submitted in the proceeding is a part of the administrative record of the hearing, and will be promptly placed on public display in the Office of the Secretary, except as ordered by the presiding officer.

(c) Written evidence, identified as such, is admissible unless a participant objects and the presiding officer excludes it on objection of a participant or on the presiding officer's own initiative.

(1) The presiding officer may exclude written evidence as inadmissible only if—

(i) The evidence is irrelevant, immaterial, unreliable, or repetitive;

(ii) Exclusion of part or all of the written evidence of a participant is necessary to enforce the requirements of this subpart; or

(iii) The evidence was not submitted as required by section 8.5.

(2) Items of written evidence are to be submitted as separate documents, sequentially numbered, except that a voluminous document may be submitted in the form of a cross-reference to the documents filed under section 8.5.

(3) Written evidence excluded by the presiding officer as inadmissible remains a part of the administrative record, as an offer of proof, for judicial review.

(d) Testimony, whether on direct or on cross-examination, is admissible as evidence unless a participant objects and the presiding officer excludes it.

(1) The presiding officer may exclude oral evidence as inadmissible only if—

(i) The evidence is irrelevant, immaterial, unreliable, or repetitive; or

(ii) Exclusion of part or all of the evidence is necessary to enforce the requirements of these procedures.

(2) If oral evidence is excluded as inadmissible, the participant may take written exception to the ruling in a brief to the Commission, without taking oral exception at the hearing. Upon review, the Commission may reopen the hearing to permit the evidence to be admitted if the Commission determines that its exclusion was erroneous and prejudicial.

(e) The presiding officer may schedule conferences as needed to monitor the program of the hearing, narrow and simplify the issues, and consider and rule on motions, requests, and other matters concerning the development of the evidence.

(f) The presiding officer will conduct such proceedings as are necessary for the taking of oral testimony, for the oral examination of witnesses by the presiding officer on the basis of written questions previously submitted by the parties, and for the conduct of cross-examination of witnesses by the parties. The presiding officer shall exclude irrelevant or repetitious written questions and limit oral cross-examination to prevent irrelevant or repetitious examination.

(g) The presiding officer shall order the proceedings closed for the taking of oral testimony relating only to trade secrets and privileged or confidential commercial or financial information. Participation in closed proceedings will be limited to the witness, the witness' counsel, and Federal Government employees.

Section 9.5 Official notice.

(a) Official notice may be taken of such matters as might be judicially noticed by the courts of the United States or of any other matter peculiarly within the general knowledge of CPSC as an expert agency.

(b) If official notice is taken of a material fact not appearing in the evidence of record, a participant, on timely request, will be afforded an opportunity to show the contrary.

Section 9.6 Briefs and arguments.

(a) Promptly after the taking of evidence is completed, the presiding officer will announce a schedule for the filing of briefs. Briefs are to be filed ordinarily within 45 days of the close of the hearing. Briefs must include a statement of position on each issue, with specific and complete citations to the evidence and points of law relied on. Briefs must contain proposed findings of fact and conclusions of law.

(b) The presiding officer may, as a matter of discretion, permit oral argument after the briefs are filed.

(c) Briefs and oral argument shall refrain from disclosing specific details of written and oral testimony and documents relating to trade secrets and privileged or confidential commercial or financial information, except as specifically authorized in a protective order issued by the presiding officer.

Section 9.7 Interlocutory appeal from ruling of presiding officer.

(a) Except as provided in paragraph (b) of this section and in sections 3.5(b), 4.5(e), 9.3(f), and 9.9(d) when an interlocutory appeal is specifically authorized by this subpart, rulings of the presiding officer may not be appealed to the Commission before the Commission's consideration of the entire record of the hearing.

(b) A ruling of the presiding officer is subject to interlocutory appeal to the Commission if the presiding officer certifies on the record or in writing that immediate review is necessary to prevent exceptional delay, expense, or prejudice to any participant or substantial harm to the public interest.

(c) When an interlocutory appeal is made to the Commission, a participant may file a brief with the Commission only if such is specifically authorized by the presiding officer or the Commission, and, if such authorization is granted, within the period the Commission directs. If a participant is authorized to file a brief, any other participant may file a brief in opposition, within the period the Commission directs. If no briefs are authorized, the appeal will be presented as an oral argument to the Commission. The oral argument will be transcribed. If briefs are authorized, oral argument will be heard only at the discretion of the Commission.

Section 9.8 Official transcript.

(a) The presiding officer will arrange for a verbatim stenographic transcript of oral testimony and for necessary copies of the transcript.

(b) One copy of the transcript will be placed on public display in the Office of the Secretary upon receipt.

(c) Copies of the transcript may be obtained by application to the official reporter and payment of costs thereof.

(d) Witnesses, participants, and counsel have 30 days from the time the transcript becomes available to propose corrections in the transcript of oral testimony. Corrections are permitted only for transcription errors. The presiding officer shall promptly order justified corrections.

Section 9.9 Motions.

(a) Except for a motion made in the course of an oral hearing before the presiding officer, a motion on any matter relating to the proceeding shall be filed under section 8.0 and must include a draft order.

(b) A response may be filed within 10 days of service of a motion. The time may be shortened or extended by the presiding officer for good cause shown.

(c) The moving party has no right to reply, except as permitted by the presiding officer.

(d) The presiding officer shall rule upon the motion and may certify that ruling to the Commission for interlocutory review.

Subpart F—Administrative Record

Section 10.0 Administrative record of a hearing.

(a) The record of a hearing consists of—

(1) The regulation or notice of opportunity for hearing that gave rise to the hearing;

(2) All objections and requests for hearing filed with the Office of the Secretary under sections 2.0 through 2.2;

(3) The notice of hearing published under section 3.5;

(4) All notices of participation filed under section 4.5;

(5) All **Federal Register** notices pertinent to the proceeding;

(6) All submissions filed under section 8.2, *e.g.*, the submissions required by section 8.5, all other documentary evidence and written testimony, pleadings, statements of position, briefs, and other similar documents;

(7) The transcript, written order, and all other documents relating to the prehearing conference, prepared under section 9.2;

(8) All documents relating to any motion for summary decision under section 9.3;

(9) All documents of which official notice is taken under section 9.5;

(10) All pleadings filed under section 9.6;

(11) All documents relating to any interlocutory appeal under section 9.7;

(12) All transcripts prepared under section 9.9; and

(13) Any other document relating to the hearing and filed with the Office of the Secretary by the presiding officer or any participant;

(b) The record of the administrative proceeding is closed—

(1) With respect to the taking of evidence, when specified by the presiding officer; and

(2) With respect to pleadings, at the time specified in section 9.6(a) for the filing of briefs.

(c) The presiding officer may reopen the record to receive further evidence at any time before the filing of the initial decision.

Section 10.5 Examination of record.

Except as provided in section 1.2, documents in the record will be publicly available. Documents available for examination or copying will be placed on public display in the Office of the Secretary promptly upon receipt in that office.

Subpart G—Initial and Final Decision

Section 12.0 Initial decision.

(a) The presiding officer shall prepare and file an initial decision as soon as practicable after the filing of briefs and oral argument.

(b) The initial decision shall contain—

(1) Findings of fact based upon relevant, material, and reliable evidence of record;

(2) Conclusions of law;

(3) A discussion of the reasons for the findings and conclusions, including a discussion of the significant contentions made by any participant;

(4) Citations to the record supporting the findings and conclusions;

(5) An appropriate regulation supported by substantial evidence of record and based upon the findings of fact and conclusions of law (unless the initial decision is to not issue a regulation); and

(6) An effective date for the regulation (if any), together with an explanation of why the effective date is appropriate.

(7) The periods of time for filing exceptions to the initial decision with the Office of the Secretary and for filing replies to such exceptions, in accordance with sections 12.5(a)–(c).

(c) The initial decision must refrain from disclosing specific details of trade secrets and privileged or confidential commercial or financial information, except as specifically authorized in a protective order issued by the presiding officer.

(d) The initial decision is to be filed with the Office of the Secretary and served upon all participants. Once the initial decision is filed with the Office of the Secretary, the presiding officer has no further jurisdiction over the matter, and any motions or requests filed with the Office of the Secretary will be decided by the Commission.

(e) The initial decision becomes the final decision of the Commission by operation of law unless a participant files exceptions with the Office of the Secretary under section 12.5(a) or the Commission files a notice of review under section 12.5(f).

(f) Notice that an initial decision has become the decision of the Commission without appeal to or review by the Commission will be published in the **Federal Register**. The Commission also may publish the decision when it is of widespread interest.

Section 12.5 Appeal from or review of initial decision.

(a) A participant may appeal an initial decision to the Commission by filing exceptions with the Office of the Secretary, and serving them on the other participants within the period specified in the initial decision. The period for appeal to the Commission may not exceed 30 days, unless extended by the Commission under paragraph (d) of this section.

(b) Exceptions must specifically identify alleged errors in the findings of fact or conclusions of law in the initial decision, and provide supporting citations to the record. Oral argument before the Commission may be requested in the exceptions.

(c) Any reply to the exceptions shall be filed and served within the period specified in the initial decision. The period may not exceed 30 days after the end of the period (including any extensions) for filing exceptions, unless extended by the Commission under paragraph (d) of this section.

(d) The Commission may extend the time for filing exceptions or replies to exceptions for good cause shown.

(e) If the Commission decides to hear oral argument, the participants will be informed of the date, time, and place of the argument, the amount of time allotted to each participant, and the issues to be addressed.

(f) Within 10 days following the expiration of the time for filing exceptions (including any extensions), the Commission may file with the Office of the Secretary, and serve on the participants, a notice of the Commission's determination to review the initial decision. The Commission may invite the participants to file briefs or present oral argument on the matter. The time for filing briefs or presenting oral argument will be specified in that or a later notice.

Section l3.0 Decision by Commission on appeal or review of initial decision.

(a) On appeal from or review of the initial decision, the Commission has all the powers given to the presiding officer with respect to the initial decision. On the Commission's own initiative or on motion, the Commission may remand the matter to the presiding officer for any further action necessary for a proper decision.

(b) The scope of the issues at the public hearing is the same as the scope of the issues on appeal at the public hearing unless the Commission specifies otherwise.

(c) As soon as possible after the filing of briefs and the presentation of any oral argument, the Commission will issue a final decision in the proceeding, which meets the requirements established in sections 12.0 (b) and (c).

(d) The Commission may adopt the initial decision as the final decision.

(e) Notice of the Commission's decision will be published in the **Federal Register.** The Commission may also publish the decision when it is of widespread interest.

Section 13.9 Reconsideration and stay of Commission's action.

Following notice or publication of the final decision, a participant may petition the Commission for reconsideration of any part or all of the decision or may petition for a stay of the decision.

Subpart H—Judicial Review

Section 14.0 Review by the courts.

(a) The Commission's final decision constitutes final agency action from which a participant may petition for judicial review under the statutes governing the matter involved. Before requesting an order from a court for a stay of the Commission's action pending judicial review, a participant shall first submit a petition for a stay of action under section 13.9.

(b) Under 28 U.S.C. 2112(a), CPSC will request consolidation of all petitions related to a particular matter.

Section 15.9 Copies of petitions for judicial review.

The General Counsel of CPSC has been designated by the Commission as the officer on whom copies of petitions for judicial review are to be served. This officer is responsible for filing the record on which the final decision is based. The record of the proceeding is certified by the Secretary of the Commission.

Appendix 3—List of Relevant Documents

Note.—The following appendix will not appear in the Code of Federal Regulations.

Document No.—Title/Description

Bioassays

101—Burek JD, KD Nitschke, TJ Bell, DL Wackerle, RC Childs, JE Beyer, DA Dittenber, LW Rampy and MJ McKenna. Methylene chloride: A two-year inhalation toxicity and oncogenicity study in rats and hamsters. Fund Appl. Tox. 4:30–47, 1984.

102—US National Toxicology Program. Draft Technical Report on the Carcinogenesis Bioassay of Dichloromethane in F344/N rats and B6C3F$_1$ mice (Gavage Study). NTP–TR–254. September 1982. Cancelled August 4, 1983.

103—US National Toxicology Program. Draft Technical Report on the Toxicology and Carcinogenesis Studies of Dichloromethane in F344/N rats and B6C3F$_1$ mice (Inhalation Studies) NTP–TR–306. February 1985.

104—National Coffee Association. 24-Month Oncogenicity Study of Methylene Chloride in Mice. Final Report. New York. November 1983.

105—National Coffee Association. 24-Month Chronic Toxicity and Oncogenicity Study of Methylene Chloride in Rats. Final Report. August 1982.

106—US National Toxicology Program. Toxicology and Carcinogenesis Studies of Dichloromethane (Methylene Chloride) (CAS No. 75–09–2) in F344/N Rats and B6C3F$_1$ Mice (Inhalation Studies). NTP–TR–306, January 1986.

107—Nitschke KD, JD Burek, TJ Bell, LW Rampy and MG McKenna. Methylene Chloride; A Two-Year Inhalation Toxicity and Oncogenicity Study. Toxicology Research Laboratory, Health and Environmental Sciences, Dow Chemical USA, Midland MI. October 1982.

108—Bell ZB, Jr. Report of Audit findings of the National Toxicology Program (NTP) Carcinogenesis Bioassay of Dichloromethane (Methylene Chloride), NTP–TR–254. Halogenated Solvents Industries Alliance. Washington. September 1983.

109—US National Toxicology Program. Board of Scientific Counselors Transcript. Research Triangle Park, NC. March 29, 1985.

Mutagenicity/Genotoxicity References

201—Andrae V and T Wolff. Dichloromethane is not genotoxic in isolated rat hepatocytes. Arch. Toxicol. 52:287–290, 1983.

202—Barber ED, WH Donish and KR Nueller. A procedure for the quantitative measurement of the mutagenicity of volatile liquids in the Ames Salmonella/microsome assay. Mutat. Res. 90:31–48, 1981.

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TAB A—CPSC staff memorandum (Health Sciences) concerning request to OMB for approval of consumer use survey, "Methylene Chloride," Feb. 4, 1985.

TAB B—Letter dated Dec. 2, 1984, to Chairman Nancy Harvey Steorts, CPSC, from Robert P. Bedell, Deputy Administrator for Information and Regulatory Affairs, Office of Management and Budget.

TAB C—Letter from Bert G. Simson, Deputy Executive Director, CPSC, to Andrew Velez-Rivera, Office of Management and Budget requesting clearance for a consumer use survey on chlorocarbons, including methylene chloride, with enclosures:

(1) CPSC staff document, "Response to OMB Questions,"

(2) Standard Form SF 83 with supporting statement and attached questionnaires.

TAB D—CPSC staff memorandum (Economics), "Chlorocarbons Project Support," Feb. 1, 1985; CPSC staff memorandum (Economics), "Laundromats Having Coin-Operated Dry Cleaning Equipment," November 17, 1983.

TAB E—CPSC staff document, "Statistical Considerations Concerning the Chlorocarbon Exposure Survey and the Utilization of a Consumer Panel to obtain the Samples of Users."

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721—CPSC staff memorandum (Health Sciences) to CPSC's Executive Director, recommending continuation of the chlorocarbon project as a priority project, "Priority Project on Chlorocarbons," May 8, 1985, 7 pp.

722—**Federal Register** notice by the Environmental Protection Agency, "Methylene Chloride; Initiation of Accelerated Review," 50 FR 20126, May 14, 1985.

723—Memorandum from CPSC's Executive Director to the Commission recommending continuation of the chlorocarbon project (including methylene chloride) as a priority project, "Adding Chlorocarbons as a Priority Project for FY 1986," May 21, 1985.

724—CPSC staff briefing package dated June 19, 1985, from Sandra Eberle, Program Manager, Chemical Hazards Program, to the Commission, "Briefing Package on Methylene Chloride," 131 pp.

TAB A—CPSC staff memorandum, "Health Effects of Methylene Chloride—Summary and Conclusions," April 11, 1985.

TAB B—CPSC staff memorandum, "Preliminary Estimates of Exposure from Methylene Chloride (DCM) Containing Products," April 3, 1985.

TAB C—CPSC staff memorandum, "Inhaled Methylene Chloride Unit Risk Carcinogenic Risk Assessment," March 29, 1985.

TAB D—CPSC staff memorandum, "Current Labeling Practices for Methylene Chloride," May 16, 1985.

TAB E—(1) Letter dated April 18, 1985, from Stephen R. Sides, Manager, Health Affairs, Technical Division, National Paint and Coatings Association ("NPCA"), enclosing NPCA Safety and Health Bulletin No. 56, "Solvent Toxicity." (2) Log of meeting between CPSC staff and NPCA on March 20, 1985.

TAB F—(1) "Statement on Behalf of the Halogenated Solvents Industry Alliance in Regard to NTP Bioassay on Methylene Chloride," to the NTP Board of Scientific Counsellors, March 29, 1985. (2) Log of meeting between CPSC staff and HSIA on April 4, 1985.

TAB G—**Federal Register** notice by the Environmental Protection Agency, "Methylene Chloride; Initiation of Accelerated Review," 50 FR 20126, May 14, 1985.

TAB H—CPSC staff memoranda concerning a proposed system for ranking carcinogens in consumer products:

(1) "Ranking of Carcinogenic Chemicals in Consumer Products," April 30, 1985.

(2) "Commissioner Statler's request for carcinogen hazard comparisons," April 19, 1985.

(3) "Request for Updated Potency Comparison on Methylene Chloride," March 14, 1985.

(4) "Carcinogenic Potency Comparison," May 5, 1983.

725—Transcript of Commission briefing on methylene chloride on June 26, 1985 (unedited), 129 pp.

726—Record of Commission action—June 26, 1985, 2 pp.

727—CPSC staff memorandum dated July 1, 1985, from Sandra Eberle, Program Manager, Chemical Hazards Program, to Sadye Dunn, Secretary, CPSC, "Additional Documents on Methylene Chloride," 116 pp., transmitting the following CPSC staff documents:

(1) "Update—Methylene Chloride Carcinogenicity"

(2) "Methylene Chloride Mutagenicity/ Short Term Tests"

(3) "Exposure/Epidemiology"

(4) "Teratogenicity of Methylene Chloride"

(5) "Covalent Binding of Methylene Chloride"

(6) "Metabolism of Methylene Chloride"

(7) "Review of Halogenated Solvents Industry Alliance (HSIA) Audit of NTP Gavage Bioassay"

(8) "National Coffee Association Bioassay"

728—Addendum to EPA's Health Assessment Document for Dichloromethane (methylene chloride), August 1985.

729—Statement by the Halogenated Solvents Industry Alliance, "Statement by Methylene Chloride Producers on the Consumer Product Safety Commission Staff Briefing Paper," August 22, 1985.

730—Report prepared for Exposure Evaluation Division, Office of Toxic Substances, Office of Pesticides and Toxic Substances, U.S. Environmental Protection Agency, by Westat, Inc., and Battelle Columbus Laboratories, "Nationwide Household Survey of Exposure to Products Containing Methylene Chloride and Its Substitutes," August 28, 1985.

731—Petition (No. HP 85-1) from the Consumer Federation of America to commence a proceeding to declare methylene chloride to be a hazardous substance under the Federal Hazardous Substances Act and, upon a finding that it is a hazardous substance, to commence a proceeding to declare it to be a banned hazardous substance, dated August 30, 1985 (received by the Commission's Office of the Secretary Sept. 3, 1985). The petition cited the following documents:

(1) Staelin R, *The Effects of Consumer Education on Consumer Product Safety Behavior*, J. Consumer Research, June 1978 at 30-40.

(2) Adler R and RD Pittle, *Cajolery or Command: Are Education Campaigns an Adequate Substitute for Regulation?*, 1 Yale J. Reg. 159 (1984).

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733—Undated papers supplied by the Halogenated Solvents Industry Alliance: "White Paper on Methylene Chloride," "A Summary of the Primary Uses of Methylene Chloride in Industry and Consumer Products," and "Methylene Chloride: A Significant Solvent in Consumer Products."

734—Industry materials, "Concerns About the Methylene Chloride Bioassay and Risk Assessment" (1 p.) and "Methylene Chloride Background Information" (1 p.).

735—CPSC staff memorandum dated September 5, 1985, from Sandra Eberle, Program Manager, Chemical Hazards Program, to the Commission, "Methylene Chloride—Additional Information," 66 pp., transmitting the following additional information:

TAB A—CPSC staff memorandum (Economics) [contains restricted economic data]

TAB B—CPSC staff memoranda:

1. "Follow-up of Commission briefing on Methylene Chloride," answering questions from the Commissioners on effect of air conditioners on air exchange rates, concentrations of DCM in paint strippers used in the LBL study, NTP peer review process, and the Edgewood Arsenal Study.

2. "Revised Human Carcinogen Risk Estimates Under Specific Exposure Circumstances for Exposure to Methylene Chloride by Inhalation."

TAB C—"Updated Chart for Ranking of Carcinogens in Consumer Products."

TAB D—Ott *et al., Health evaluation of employees occupationally exposed to methylene chloride*, Scand. J. Work Environ Health 9 (1983): suppl 1, 1-16 [Dow study].

TAB E—(1) Friedlander, *et al., Epidemiologic Investigation of Employees Chronically Exposed to Methylene Chloride*, J. Occupational Med. 20 (Oct. 1978), 657-666. (2) Letter to the Editor, Hearne and J. Friedlander. Occupational Med. 23 (Oct. 1981), 660-61 [Kodak study].

TAB F—Excerpt, Environmental Protection Agency's Health Assessment Document discussing studies noted above at Tab D and Tab E, 5-82 through 5-89.

TAB G—CPSC staff memorandum, "Exposure to Methylene Chloride."

736—Transcript, Industry/CPSC meeting on methylene chloride, September 12, 1985 (unedited), 145 pp.

737—HSIA Statement Before the Consumer Product Safety Commission on Methylene Chloride in Consumer Products, Sept. 12, 1985, 9 pp.

738—Statement of Ralph Engel, President, Chemical Specialties Manufacturers Association, Before the Consumer Product Safety Commission on Methylene Chloride, Sept. 12, 1985, 8 pp.

739—Written Statement *In re* Use of Methylene Chloride in Spray Paints and Paint Strippers On Behalf of National Paint and Coatings Association, Inc., Sept. 12, 1985, 17 pp. and attachments.

740—Written Statement of Jules Rapp on Behalf of the Adhesive and Sealant Council, Inc., Sept. 12, 1985.

741—CPSC staff memorandum to the Commission, "Additional Information on Methylene Chloride," October 1, 1985, 121 pp., transmitting the following:

TAB A—CPSC staff memorandum, "Transmittal of Responses to Issues Raised by Industry on Methylene Chloride" (Health Sciences).

TAB B—CPSC staff memorandum, "Updated or Additional Information About Methylene Chloride" (Economics).

TAB C—Comments from The Adhesive and Sealant Council, Sept. 20, 1985.

TAB D—Report, Girman and Hodgson, Source Characterization and Personal Exposure to Methylene Chloride from Consumer Products, Lawrence Berkeley Laboratory, Sept. 1985.

742—Letter from P. M. Midgley, Mond Liason Manager, ICI Americas Inc., to Chairman Terrence Scanlon, CPSC, transmitting comments that were made to EPA by the CEFIC Methylene Chloride Producers Association, Oct. 2, 1985.

744—Letter dated October 16, 1985, from Sadye E. Dunn, Secretary of the Commission, to Mary Ellen Fise, Product Safety Director, Consumer Federation of America, advising that CFA's August 30, 1985, request had been docketed as a petition to declare methylene chloride a hazardous substance under the FHSA (Petition No. HP 85-1), but that the request did not supply enough information to warrant docketing the request as a petition to declare methylene chloride a banned hazardous substance, 2 pp.

745—CPSC staff memorandum, November 5, 1985, "Transmittal of Meeting Logs Related to Methylene Chloride," 16 pp., transmitting the following:

(1) CPSC staff memorandum, "Methylene Chloride Data," dated Oct. 30, 1985, describing meetings with HSIA on Oct. 15, with Dr. Melvin Anderson (U.S. Air Force) on Oct. 22, and with Dr. Richard Reitz (Dow Chemical U.S.A.) on Oct. 23, with attached meeting logs.

(2) Errata sheet for Oct. 1, 1985, briefing package, Tab A, issue 12.

(3) Memorandum from Stanley L. S. Dombrowski, Dow Chemical U.S.A., "Evaluating Ways to Lower Airborne Levels of Methylene Chloride Generated from Paint Strippers," October 15, 1985.

746—CPSC staff (Health Sciences) memorandum, "Supplemental Discussion of the Consumer Federation of America Petition on Methylene Chloride," Nov. 6, 1985, 3 pp.

747—Letters from Paul A. Cammer, Executive Director, HSIA, to Chairman Terrence Scanlon, CPSC, with comments on the CPSC staff briefing package dated Oct. 1, 1985, and a correction to those comments, Nov. 6, 1985.

748—Minutes of Commission meeting, November 7, 1985.

749—Letter dated December 6, 1985, from Commissioner Stuart M. Statler to Paul F. Oreffice, Chief Executive Officer, Dow Chemical.

750—Letter dated Dec. 16, 1985, from Mary Ellen R. Fise, Product Safety Director, Consumer Federation of America, to Sandra Eberle, CPSC Chemical Hazards Program, concerning DCM in self-pressurized artificial snow products.

751—CPSC Staff briefing package dated Dec. 18, 1985, from Sandra Eberle, Program Manager, Chemical Hazards Program, to the Commission, "Responses to Commission Questions from the November 7th Briefing."

TAB A—CPSC staff memorandum, "Methylene Chloride," Nov. 25, 1985 (Economics).

TAB B—CPSC staff memorandum, "Answer to Chairman Scanlon's DCM questions on acute vs. chronic labeling," Nov. 25, 1985 (Compliance).

TAB C—CPSC staff memorandum, "Methylene Chloride," Dec. 5, 1985 (Health Sciences).

TAB D—CPSC staff meeting logs: (1) meeting with HSIA on Nov. 21, 1985; (2) meeting with NPCA on Nov. 18, 1985.

752—Federal Register notice published by the Food and Drug Administration, "Cosmetics; Proposed Ban on the Use of Methylene Chloride as an Ingredient of Aerosol Cosmetic Products," 50 FR 51551 (Dec. 18, 1985).

753—Letter from Paul A. Cammer, Executive Director of HSIA, to Sandra Eberle, Program Manager, enclosing HSIA's comments on the Lawrence Berkeley Laboratory Report "Source Characterization and Personal Exposure to Methylene Chloride from Consumer Products," December 19, 1985.

754—Letter dated December 20, 1985, from Mary Ellen Fise, Product Safety Director, Consumer Federation of America, with attached request to amend its September 3, 1985, petition on methylene chloride to include further information supporting its request that the Commission initiate a rulemaking proceeding to declare methylene chloride to be a banned hazardous substance.

755—Letter from Stephen R. Sides and J. Andrew Doyle, NPCA, to Sandra Eberle, CPSC, concerning NPCA activities on methylene chloride, Dec. 26, 1985.

756—CPSC staff memorandum to the Commission, "FDA Action on Methylene Chloride," Dec. 31, 1985.

757—CPSC staff briefing package from Sandra Eberle, Program Manager, Chemical Hazards Program, to the Commission, "Voluntary Action Plan to Reduce Exposure to Methylene Chloride," January 7, 1986.

TAB A—CPSC staff memorandum, "Blueprint, Timeframe, and Resource Estimates for Voluntary Program for Methylene Chloride in Paint Strippers and Spray Paint Products."

TAB B—Letter dated December 19, 1985, from Paul A. Cammer, Executive Director, HSIA, to Sandra Eberle, CPSC Chemical Hazards Program, concerning HSIA's program to lower consumer exposure to methylene chloride.

TAB C—Letter from Stephen R. Sides and J. Andrew Doyle, NPCA, to Sandra Eberle, CPSC Chemical Hazards Program, concerning NPCA's program for methylene chloride.

758—Letter dated January 13, 1986, to CPSC Acting Chairman Carol Dawson from Larry Thomas, Executive Director, NPCA, concerning NPCA's position with regard to consumer exposure to methylene chloride in spray paints and paint strippers.

759—Statement of Larry Thomas, Executive Director, NPCA at the Commission meeting on January 16, 1986.

760—Record of Commission Actions—January 16, 1986.

761—Letter dated January 23, 1986, from Sadye E. Dunn, Secretary of the Commission, to Mary Ellen Fise, Product Safety Director, Consumer Federation of America, advising that the Commission had voted to docket as a petition the amendment to Petition HP 85-1 that CFA had submitted by letter dated December 20, 1985.

762—Letter from the Methylene Chloride Producers Association (CEFIC) to Sandra Eberle, CPSC, transmitting two interim and three final reports covering the first phase of their studies into species difference in response to methylene chloride, Feb. 12, 1986.

763—Telephone log, conversation between Dr. Marilyn Wind, CPSC, and Dr. J. Haseman, member of the IARC Work Group. Feb. 18, 1986.

764—CPSC staff memorandum (Compliance), "Methylene Chloride and the Federal Hazardous Substances Act," Feb. 19, 1986.

765—Memorandum from Commissioner Terrence Scanlon to Dr. Paul H. Rubin, AED for Economics, requesting an economic analysis for various options on methylene chloride, Feb. 21, 1986.

766—CPSC staff memorandum (Health Sciences) to Dr. Paul Rubin, Associate Executive Director ("AED") for Economics, "Your request for a methylene chloride risk calculation," Feb. 25, 1986.

767—Log of meeting of CPSC staff with Dr. Barry Friedlander and Robert Brothers of Eastman Kodak, attended by EPA and FDA staff, Feb. 25, 1986. The meeting discussed Dr. Friedlander's epidemiologic study of Kodak workers.

768—CPSC staff memorandum from Dr. Paul H. Rubin, AED for Economics, to Terrence Scanlon, Commissioner, concerning economic analyses of various options for methylene chloride, Feb. 26, 1986.

769—CPSC staff memorandum (Health Sciences), "Report from Imperial Chemical Industries, Great Britain, on Methylene Chloride Studies," Feb. 25, 1986, with attached CPSC staff memorandum, "Receipt of Reports from Imperial Chemical Industries, ICI," Feb. 25, 1986.

770—Letter from Paul A. Cammer, Executive Director, HSIA, to CPSC Acting Chairman Carol Dawson expressing the view that, without conducting a rulemaking proceeding, a determination by the Commission that methylene chloride is a hazardous substance would not be appropriate. Feb. 26, 1986.

771—Minute of Commission meeting of Feb. 27, 1986, 2 pp.

772—Statement of Commissioner Saundra Brown Armstrong concurring with the Commission decision on methylene chloride, 1 p.

773—Statement of Commissioner Terrence Scanlon on Methylene Chloride, February 28, 1986, 1 p.

774—Dissenting Statement of Commissioner Stuart M. Statler on Methylene Chloride (DCM), Feb. 27, 1986, 1 p.

775—CPSC News Release, "CPSC To Begin Rulemaking Process on Methylene Chloride," February 28, 1986, 2 pp. with attached Commissioners' statements.

776—Letter to Sandra Eberle (CPSC Chemical Hazards Program) from Robert F. Brothers, Director Regulatory Affairs, Eastman Kodak Company, transmitting a copy of a preliminary report on Kodak's epidemiologic study, Feb. 28, 1986.

777—OSHA Instruction PUB 8-1.2, "Guideline for Controlling Exposure to Methylene Chloride," Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, March 10, 1986.

778—Log of March 27, 1986, meeting of the CPSC/NPCA/CFA Steering Committee on Methylene Chloride.

779—Letter from Todd A. Stevenson, CPSC Freedom of Information Officer, to Harold M. Shaw, Esq., with additional information on paint removers used in the LBL study, April 3, 1986.

780—Log of April 17, 1986, meeting of the Steering Committee on Methylene Chloride, April 21, 1986.

781—CPSC staff memorandum (Health Sciences) to Sandra Eberle, Program Manager, "Response to HSIA Comments on LBL Study dated December 19, 1985," dated April 21, 1986.

782—Letter from Sandra Eberle, Program Manager, to Paul Cammer, HSIA, transmitting responses to HSIA's comments on the work done at LBL, April 23, 1986.

783—CPSC staff memorandum, Murray S. Cohn and Amy R. Rock to Andrew G. Ulsamer (HS), "Review of Epidemiological Study on Methylene Chloride (DCM) by Friedlander," April 25, 1986.

784—Memorandum from Sandra Eberle, CPSC Program Manager, to the Commission, "Analysis of Updated Data from Kodak Cohort of Workers Exposed to Methylene Chloride (Friedlander Study)," transmitting 4/25/86 HS memorandum, May 5, 1986.

785—Letter from Dr. M.R. Harris, Regulatory Affairs, Methylene Chloride Producers Association (CEFIC) to Sandra Eberle, CPSC, with an interim report on their studies into species difference in response to methylene chloride, May 6, 1986.

786—Press release from Public Citizen and Consumer Federation of America, "Lawsuit Seeks Order Requiring FDA to Prohibit Use of Carcinogen Methylene Chloride in Decaffeinated Coffee," with attached copy of the Complaint for Declaratory and Injunctive Relief, June 4, 1986.

787—CPSC staff memorandum (Economics), "Regulatory Flexibility Analysis for Methylene Chloride," June 13, 1986.

788—CPSC staff memorandum (Executive Director), "Environmental Assessment of Rulemaking Regarding Labeling of Products Containing Methylene Chloride—Finding of No Significant Impact," June 13, 1986.

789—CPSC staff briefing package, "Methylene Chloride: Report on Voluntary Program and Draft Federal Register Notice Proposing 3(a) Rule," June 19, 1986, with attachments:

TAB A—Log of Meeting #3 of the CPSC/NPCA/CFA Steering Committee on Methylene Chloride with attached "Use Paint Removers Safely" outline and outline of "Methylene Chloride Information Campaign."

TAB B—Draft Federal Register notice, "Household Products Containing Methylene Chloride; Status as Hazardous Substances."

TAB C—CPSC staff memorandum, "Initial Regulatory Flexibility Analysis of Proposed Rulemaking for Methylene Chloride," June 13, 1986; memorandum from CPSC Executive Director, "Environmental Impact of Proposed Labeling Rule for Consumer Products Containing Methylene Chloride."

790—Memorandum to the Commission from the office of the General Counsel, "Proposal to Declare Household Products

Containing Methylene Chloride to Be Hazardous Substances and Voluntary Labeling Program Developed by the Steering Committee on Methylene Chloride," June 19, 1986.

791—Vote sheet for the Commission from CPSC's Office of the General Counsel, "Proposal to Declare Household Products Containing Methylene Chloride to Be Hazardous Substances—VOTE SHEET," June 19, 1986.

792—Letter to Ann Graham, Acting Chairman, CPSC, from Larry L. Thomas, Executive Director, NPCA, and Paul A. Cammer, Executive Director, HSIA, recommending that the Commission consider an attached Statement of Policy as an alternative to the previously recommended rulemaking proceedings, June 24, 1986.

793—Letter from Stephen Brobeck, Executive Director, Consumer Federation of America, to Paul A. Cammer, Executive Director, HSIA, dated June 30, 1986.

794—CPSC staff memorandum to the Commission, "Substitute Pages [6, 27, 48, 65] for Draft **Federal Register** Notice on Methylene Chloride," July 3, 1986.

795—Draft **Federal Register** notice with annotated changes adopted by the Commission at its July 30, 1986, meeting.

[FR Doc. 86-18494 Filed 8-19-86; 8:45 am]
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federal register

Wednesday
August 20, 1986

Part IV

Environmental Protection Agency

40 CFR Parts 264 and 265
Hazardous Waste Land Disposal Facilities; Statistical Procedures for Detecting Ground-Water Contamination

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 264 and 265

[SW-FRL-3045-7]

Hazardous Waste Land Disposal Facilities; Statistical Procedures for Detecting Ground-Water Contamination

AGENCY: Environment Protection Agency.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: EPA promulgated regulations for detecting contamination of ground water at hazardous waste land disposal facilities under the Resource Conservation and Recovery Act of 1976 (RCRA). The methods in the regulations for detecting contamination have been criticized by industry for a number of technical reasons. EPA is considering revision of the regulations. Today EPA is providing advance notice of this proposed rulemaking and requests comments from the public to assist in the regulatory development process.

DATE: EPA will accept comments on this advance notice of proposed rulemaking until October 6, 1986.

ADDRESSES: Send comments to: Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Comments should be identified as follows: "Docket No. F-86-GWSA-FFFFF, Ground-water Monitoring Statistics."

The public docket for this advance notice of proposed rulemaking is located at EPA RCRA Docket (Sub-basement), 401 M Street, SW., Washington, DC 20460. The docket is open from 9:30 to 3:30 Monday through Friday, except for Federal holidays. Copies of USEPA "Description of Statistical Procedures for Detection of Ground-Water Contamination at Hazardous Waste Land Disposal Facilities" are available for *viewing only* in the RCRA Docket room. The public must make an appointment to review docket materials. Call Mia Zmud at (202) 475-9327 or Kate Blow at (202) 382-4675 for appointments. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost $.20/page.

FOR FURTHER INFORMATION CONTACT: For general information contact: RCRA/Superfund Hotline, Office of Solid Waste (WH-563C), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, telephone (800) 424-9346, or (202) 382-3000. For technical information contact Vern Myers, (202) 382-4658.

SUPPLEMENTARY INFORMATION:

I. Background

Subtitle C of the Resource Conservation and Recovery Act of 1976 (RCRA) creates a comprehensive program for the safe management of hazardous waste. Section 3004 of RCRA requires owners and operators of facilities that treat, store, or dispose of hazardous waste to comply with standards established by EPA that are "necessary to protect human health and the environment." Section 3005 provides for implementation of these standards under permits issued to owners and operators by EPA or authorized States. Section 3005 also provides that owners and operators of existing facilities that comply with applicable notice requirements may operate until a permit is issued or denied. This statutory authorization to operate prior to permit determination is commonly known as "interim status." Owners and operators of interim status facilities also must comply with standards set under Section 3004.

EPA promulgated standards for interim status facilities in 1980 (45 FR 33154 (May 19, 1980)), codified in 40 CFR Part 265, Subpart F, and permitted facilities in 1982 (47 FR 32274 (July 26, 1982)), codified in 40 CFR Part 264, Subpart F. Both sets of standards establish programs for protecting ground water from releases of hazardous wastes from treatment, storage, and disposal units. Both programs require owners and operators to sample ground water at specified intervals and use a statistical procedure to determine whether or not hazardous wastes or constituents from the facility are contaminating ground water. As explained in more detail below, the sampling and statistical procedures EPA promulgated in 1980 and 1982 have generated criticism. EPA is today providing advance notice of its intent to consider proposing changes to these rules and solicits public comment on a number of issues it will consider in formulating proposed rules.

II. Existing Regulations in 40 CFR Parts 265 and 264

The ground-water regulations for interim status facilities require that the upgradient well(s) be sampled quarterly for one year (§ 265.92 (c) (1) and (2)). The regulations specify a set of indicator parameters for which concentrations must be measured. An initial background concentration for each parameter must be determined by measuring at least four replicates obtained from each sample from a well(s) located upgradient of the hazardous waste units and calculating an arithmetic mean and variance (§ 265.92(c)(2)). After the first year, the owner or operator must compare concentrations measured at downgradient wells with these background concentrations. The owner or operator must calculate the arithmetic mean and variance of the concentration of each parameter based on at least four replicate measurements for each sample for each downgradient well. The owner or operator must compare the mean concentration at each downgradient well with the initial background concentration mean using the Student's t-test at the .01 significance level to determine statistically significant increases over background (§ 265.93(b)). If these comparisons indicate contamination, the owner or operator must obtain additional samples and determine if the significant increase was due to laboratory error (§ 265.93(c)(2)). If the significant difference is confirmed, the owner or operator must take measures to determine the rate and extent of the contamination (§ 265.93 (d)(4) (i) and (ii)).

The standards for permitted facilities that have not detected ground-water contamination prior to permit issuance require the owner or operator to establish a detection monitoring program. Under this program, the owner or operator must determine background ground-water quality for a site specific set of parameters or constituents by taking a minimum of one sample from each well and a minimum of four samples from the system used to determine background ground-water quality each time the system is sampled (§ 264.97(g)(4)). At least semi-annually (§ 264.98(d)), the owner or operator must take at least four replicate measures of a sample at each downgradient well and determine if the mean of the constituent differs from the mean upgradient using Cochran's Approximation to the Behren's-Fisher Student's t-test (CABF) at the .05 significance level. The owner or operator must repeat the procedure with new samples if this test indicates significance (§ 264.97(h)(1)(i)). The owner or operator may also use an equivalent statistical procedure specified by the Regional Administrator to determine if a statistically significant change has occurred (§ 264.97(h)(1)(ii)).

If a statistically significant increase is found, the owner or operator must sample all monitoring wells to determine the concentration of constituents listed in Appendix VIII of section 261 (see 51 FR 5561 (February 14, 1986) for further

information on Appendix VIII). The owner or operator must also submit an application for a permit modification to establish a compliance monitoring program to monitor the levels of all constituents found in the ground water (§ 264.98(h)). Under this program, the Regional Administrator will specify in the facility permit the ground-water protection standard (§ 264.99(a)). This ground-water protection standard shall include a list of hazardous constituents identified under § 264.93 and concentration limits established under § 264.94. The owner or operator must determine the concentration of hazardous constituents in ground water at each downgradient monitoring well at least quarterly (§ 264.99(d)).

If the owner or operator determines that the ground-water protection standard is being exceeded by showing that a statistically significant increase over the concentration limits for any hazardous constituents has occurred (§ 264.99(h)), he must submit an application for a permit modification to establish a corrective action program (§ 264.99(i)).

III. Changes Under Consideration

EPA is considering changes in the current regulations because the procedures may indicate contamination when it is not present. Concerns have been raised that the statistical procedure in the current regulations is not appropriate for the replicate sampling method, does not adequately consider the number of comparisons that must be made, and does not control for seasonal variation. Specifically, the concerns are that these procedures could result in an owner or operator having to further characterize the site when it may not be necessary. In addition to collecting additional ground-water samples and analyzing for additional constituents, an owner or operator of a permitted facility would have to apply for a permit modification which EPA must review. A second reason EPA is considering changes is that there may be instances where actual contamination goes undetected. This may occur because the mean concentration at the upgradient well is calculated by combining observations which may vary widely over the four quarters rather than comparing upgradient and downgradient concentrations each quarter.

EPA is considering changing the statistical procedure and the sampling and analytic (quality control/quality assurance) requirements in both sets of regulations for the analysis of groundwater quality data. EPA plans to require that the owner or operator more completely characterize the ground water and hydrogeology at the facility. EPA also intends to include a performance standard in the regulations which the statistical procedures and the sampling methods must meet. Such procedures would have a low probability of missing contamination that exists at a facility and a low probability of indicating contamination when it is not present. The facility owner or operator would have to demonstrate that a procedure is appropriate for the conditions at that facility provided that it meets the performance standard outlined below. Specific procedures EPA is considering are identified below.

EPA recognizes that the selection of appropriate monitoring parameters is also important and has a separate effort devoted to this issue (51 FR 5561 (February 14, 1986).

A. Performance Standard

EPA is considering a performance standard that would include the following requirements:

1. The procedure(s) and sampling requirements must be protective of human health and the environment.

2. The owner or operator must determine the statistical distribution of each parameter or constitutent listed in the facility permit. The statistical procedure(s) must be appropriate for the distribution. The owner or operator could demonstrate that the distributions of constitutents differ and, thus, more than one procedure is needed at a facility.

3. The procedure(s) should have a low probability of indicating contamination when it is not present and of failing to detect contamination that is actually there. The owner or operator should consider different numbers of sample points for different constituents or procedures.

4. The procedure(s) should be appropriate for the hydrogeologic setting and the physical layout of the ground-water monitoring system.

5. The owner or operator should describe how observations below the detection limit will be handled in the procedure(s).

6. The owner or operator should consider, or control for, seasonal and spatial variability and temporal correlation in developing the procedure(s).

EPA is evaluating the following statistical procedures and sampling requirements and believes they will meet the performance standard at many facilities.

B. Statistical Procedures

1. Comparisons of individual upgradient wells and downgradient wells using a form of the F-test (parametric) or the Wilcoxon test (non-parametric). The specific forms of these tests EPA is considering are Dunnett's test (parametric) and Steel's test (non-parametric). A publication "Description of Tests for Detecting Ground-Water Contamination at Land Disposal Facilities" describing these procedures is available for viewing in the Docket for this rulemaking.

2. Comparisons of concentrations at downgradient wells to expected concentrations using control charts. This technique is also described in the publication named above.

3. Set the Type I error (probability of indicating contamination when it is not present) level at 0.01 or 0.05.

C. Sampling Requirements

1. Initially, samples should be taken daily for approximately a week each month in order to better characterize the distribution of ground-water constitutents at a facility. The number and frequency of samples may be reduced once the owner or operator has characterized the facility.

2. Conduct comparisons between upgradient and downgradient wells at least two times per year. During each of these sampling periods, the owner or operator must take daily samples for as long as it takes to achieve a reasonable probability of detecting actual contamination.

3. Use replicate samples only as a quality control measure, rather than as a means to gather additional samples to improve the ability of a statistical procedure to detect contamination.

4. Require at least two upgradient wells.

D. Quality Control

EPA plans to require that the owner or operator implement a quality control program for taking ground-water samples and determining concentrations of constituents therein.

E. Demonstrations That Alternate Procedure is More Appropriate

EPA is considering allowing the owner or operator to select the procedure for detecting ground-water contamination. Selecting a procedure other than those recommended by EPA, would require a demonstration that the other procedure is appropriate. Currently, EPA thinks this demonstration should include the following in addition to meeting the peformance standard.

1. References indicating that the procedure is documented in statistical or mathematical literature,

2. An explicit example showing calculations using data from the facility,

3. A list of the data from the facility,

4. Quality control measures used at the facility.

Part 265 standards for interim status facilities were written to be self-implementing. The ground-water monitoring regulations in Part 265 allow owners and operators to select and use variants of the Student's t-test without EPA review and approval. EPA is considering several options for modifying Part 265 to accommodate the more complex statistical and sampling procedures described today. EPA may try to develop more specific standards that owner or operators could implement without EPA review. Alternatively, EPA may make an exception to the Part 265 approach and require the owner or operator to submit a site-specific statistical procedure and sampling plan for review and approval.

IV. Comments From the Public

There are several approaches to determining if a facility is contaminating the ground-water. Two major differences in approach EPA would like to resolve are:

- Comparisons of concentrations at all wells upgradient against all wells downgradient or comparisons of concentrations at each upgradient well against each downgradient well.
- Comparisons at a point in time or over time.

EPA wants to ensure that ground-water contamination is detected as soon as possible after it occurs.

EPA is soliciting information that will help evaluate the ways to approach determining if a facility is contaminating the groundwater, the performance standard, and the specific approach outlined in the previous section. EPA would like any available data that owners or operators may have to evaluate these items. EPA needs to evaluate the following specific questions or issues:

1. How will the procedures perform in actual practice?

2. How sensitive will the procedures be to different distributions?

3. Type I error (indicating contamination when it is not present) is closely related to Type II error (missing existing contamination). EPA would like the public to provide available data for EPA to use to determine Type II error levels for procedures described in section III B, using the sampling program described in section III C.

4. Are there other statistical procedures or sampling requirements that minimize both Type I and Type II errors? EPA would also like to receive data showing the number of Type II errors expected under any alternate statistical procedure or sampling scheme.

5. Are there modelling or measurement techniques that make it possible to determine the flow path of the ground water from an upgradient well to a particular downgradient well, or to several adjacent downgradient wells?

6. Does transforming data to its logarithm or square root improve conformance to assumptions of a statistical procedure or are there appropriate procedures for untransformed data?

7. EPA needs to take steps to protect human health and the environment while the owner or operator is taking samples to characterize the facility. EPA is considering a simple comparison of mean concentrations rather than a statistical procedure during this period. EPA needs information to use to determine if this would have acceptable Type I and Type II error levels.

8. What Type I and Type II error levels result for the recommended procedures when concentrations of constituents are below the detection limit? What error levels would result for other procedures?

9. Groundwater monitoring data may be autocorrelated. EPA needs information on the degree of autocorrelation at facilities and appropriate corrections such as altering critical values of statistical tests or procedures that might be more appropriate for autocorrelated data.

10. Are intra-well comparisons appropriate for new facilities?

11. EPA needs information that could be used to evaluate the frequency control comparison and to determine an acceptable range for them.

V. Regulatory Analysis

A. Regulatory Flexibility Act

Small businesses should be favorably affected because it is possible that fewer entities will unnecessarily trigger cleanup or extensive ground-water investigations. Thus, fewer will be required to continue the process of modifying the permit. At this point, EPA has not determined the number of small businesses potentially affected in the regulated community, but will investigate this before proposing a rule.

B. Paperwork Reduction Act

This new approach should reduce the total amount of paperwork an owner or operator must complete by reducing the number who must do further characterization of a facility which is falsely identified as contaminating ground water. This further characterization is much more burdensome than additional samples which may be required for revising facility permits. This advance notice of proposed rulemaking is a condition of continuing clearance of the current information collection request.

List of Subjects

40 CFR PART 264

Hazardous material, Insurance, Packaging and containers, Reporting requirements, Security measures, Surety bonds, Waste treatment and disposal.

40 CFR PART 265

Hazardous material, Insurance, Packaging and containers, Reporting requirements, Security measures, Surety bonds, Waste treatment and disposal.

Dated: August 11, 1986.

Lee M. Thomas,

Administrator.

[FR Doc. 86-18648 Filed 8-19-86; 8:45 am]

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federal register

Wednesday
August 20, 1986

Part V

Equal Employment Opportunity Commission

29 CFR Part 1620

The Equal Pay Act; Interpretations; Final Rule

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1620

The Equal Pay Act; Interpretations

AGENCY: Equal Employment Opportunity Commission (EEOC).

ACTION: Final rules.

SUMMARY: Pursuant to Reorganization Plan No. 1 of 1978 and Exec. Order No. 12144 responsibility for enforcement of the Equal Pay Act was transferred from the Department of Labor to the EEOC. Pursuant to that authority, the EEOC publishes its final interpretations of the Equal Pay Act. With the publication of these final regulations, employers may no longer rely upon the Department of Labor's EPA interpretations at 29 CFR Part 800 or the Department of Labor EPA opinion letters.

EFFECTIVE DATE: August 20, 1986.

FOR FURTHER INFORMATION CONTACT: Nicholas M. Inzeo, Assistant Legal Counsel, or Kathleen Oram, Staff Attorney, Office of Legal Counsel, Legal Services, EEOC, 2401 E Street, NW., Washington, DC 20507; telephone (202) 634–6690.

SUPPLEMENTARY INFORMATION: Pursuant to Reorganization Plan No. 1 of 1978, 43 FR 19807 (May 9, 1978) and Exec. Order No. 12144, 44 FR 37193 (June 26, 1979), responsibility and authority for enforcement of the Equal Pay Act of 1963 (EPA), 29 U.S.C. 206(d), was transferred from the Department of Labor (DOL) to the EEOC on July 1, 1979. At that time, the EEOC published a notice in the Federal Register which indicated that the EEOC was not adopting the EPA interpretations and opinions of the DOL as its own although employers could continue to rely on them to the extent that they were consistent with statutory revisions and judicial interpretations until the EEOC issued its own interpretations. 44 FR 38671 (July 2, 1979).

On September 1, 1981, the EEOC published its own interpretations of the EPA for comment. *See* 46 FR 43848 (Sept. 1, 1981). Approximately 115 comments were received. Many of the comments were favorable and supportive. More than 75% of the comments addressed the proposed interpretations on fringe benefits. In light of the Department of Labor's long-standing interpretation of the EPA to include all payments made to an employee as remuneration for employment and the Supreme Court's decision in *Arizona Governing Committee, Etc. v. Norris*, 103 S.Ct. 3492, (1983), and its prior holding in *City of Los Angeles Department of Water and Power v. Manhart*, 435 U.S. 702 (1978), the EEOC has decided to retain the sections on fringe benefits [proposed interpretation § 1620.5 (now numbered § 1620.11) and § 1620.4 (now numbered § 1620.10)].

A number of the comments criticized the proposed interpretations because they did not include guidance and examples as detailed as that contained in DOL's interpretations at 29 CFR Part 800. The EEOC's intent in publishing the proposed interpretations was to clarify, update and simplify the prior DOL interpretations. In view of the comments received and upon review of the proposed and former interpretations, the EEOC has decided to add several sections to its interpretations based upon 29 CFR 800.6.–.11, 800.110–.11, 800.115, 800.121–.123, and 800.125–.132. It was decided that the addition of these sections would aid compliance efforts on the part of the public. Accordingly, several sections have been added to the proposed interpretations and all proposed interpretations except for § 1620.1 have been renumbered. In response to some comments received, § 1620.12 as proposed was deleted because the Commission believes that it did not provide adequate guidance. Sections 1620.19 through 1620.26 contain more specific guidance on defenses under the Act.

After reviewing the remaining comments, the EEOC has determined that some modifications to the language of the proposed interpretations are necessary. A discussion of the comments received and the modifications made on each of the proposed sections is contained below.

Section 1620.1 Basic applicability of the Equal Pay Act.

Several comments noted generally that this proposed interpretation lacked sufficient clarity. In the interest of clarity, this section was further edited and modified to better communicate its original content; no substantive changes were made.

Section 1620.2 General coverage of employees "engaged in commerce."

With the exception of minor editorial changes, this section is taken verbatim from 29 CFR 800.6. The changes include only the deletion of the first sentence of the old § 800.6(a) and the deletion of case citations and other references from § 800.6(b).

*Section 1620.3 General coverage of employees "engaged in * * * the production of goods for commerce."*

With the exception of minor editorial changes, this section is taken verbatim from 29 CFR 800.7. Changes include the substitution of new language for the first sentence of the old § 800.7(a), the deletion of case citations, and editorial changes in the same subsection.

Section 1620.4 "Closely related" and "directly essential" activities.

With the exception of minor editorial changes, including making pronoun references gender neutral and deleting case citations, this section is taken verbatim from 29 CFR 800.8.

Section 1620.5 What goods are considered as "produced for commerce."

With this exception of minor editorial changes, including making pronoun references gender neutral and clarifying the second to last sentence, this section is taken verbatim from 29 CFR 800.9.

Section 1620.6 Coverage is not based on amount of covered activity.

With the exception of minor editorial changes, including the deletion of case citations, this section is taken verbatim from 29 CFR 800.10.

Section 1620.7 "Enterprise" coverage.

This section is a fuller explanation of the enterprise concept, adapted from 29 CFR 800.11 and Subpart C of 29 CFR Part 779, and based upon current judicial interpretation.

Section 1620.8 "Employer," "employee," "employ," defined.

Two commentors thought that the last sentence of this section (numbered § 1620.2 in the 1981 proposed interpretations) concerning the possible joint or separate responsibility of two or more employers for the employment of a particular employee was an overly broad interpretation of the EPA's requirements. The Commission disagrees. The possibility that two or more employers could be held jointly or individually responsible for compliance with the Act in appropriate circumstances is well-established. *See* 29 CFR 800.107 and Part 791. In addition, an employer cannot avoid its obligation under the Act by delegating its wage administration decisions to another entity in order to frustrate the purposes of, or escape obligations under, the EPA. The Commission believes that this statement is a correct interpretation of the law.

Section 1620.9 Meaning of "establishment."

This section, numbered §1620.3 in the 1981 proposed interpretations, has been renumbered § 1620.9 in these final interpretations. Several comments characterized this definition of establishment as a departure from the DOL's definition at 29 CFR 800.108. That definition stated that each physically separate place of business is usually considered a separate establishment. There is no intention to change that basic presumption. Subsections (a) and (b) make clear that in the usual case each physically separate place of business will be considered a separate establishment. Portions of subsection (b), however, illustrate that in certain circumstances more than one establishment may be contained in a single place of business or, two or more separate physical places of business may constitute a single establishment. The Commission believes that this section continues in effect the traditional meaning of the term establishment as it has evolved under the FLSA. At the same time, it recognizes the DOL approach which allowed a measure of flexibility whenever called for by the facts of a given case. The section acknowledges that certain factual situations may call for a restricted use of the term while others may call for an expanded use.

The Commission has redrafted the interpretation to make it clear that it intends to continue in effect the DOL interpretation that each separate place of business is ordinarily considered a separate establishment.

Section 1620.10 Meaning of "wages."

The definition contained in this section (numbered § 1620.4 in the 1981 proposed interpretations) tracks the Department of Labor proposed amendments to § 800.110 and § 800.116(d) published at 43 FR 38029 (August 25, 1978), but which were never finalized because of the transfer of Equal Pay Act enforcement responsibility to the EEOC.

Section 1620.11 Fringe benefits.

This section, numbered § 1620.5 in the 1981 proposed interpretations elicited the highest number of responses from commentors. Virtually all of the negative responses (primarily from schools, colleges and insurance companies) cited the cost to the employer of providing equal contributions and benefits in employee pension or retirement plans. Most of the comments also asserted that it was premature (in 1981) to write fringe benefits into the interpretations while litigation interpreting *City of Los Angeles Dept. of Water & Power v. Manhart*, 435 U.S. 702 (1978), was moving through the lower courts, and requested that the Commission delay issuing these regulations pending resolution of the issue in the courts.

During the period of time that these regulations have been under consideration, the courts have given their interpretation of *Manhart*. The resolution of some unanswered issues in *Manhart* came in the Supreme Court's decision in *Arizona Governing Committee, etc. v. Norris*, 103 S. Ct. 3492 (1983). The Court clearly reaffirmed its holding in *Manhart* that the EEOC's statutory interpretation of what constitutes sex-based discrimination in fringe benefits in 29 CFR 1604.9 was the proper one and rejected the Labor Department's interpretation under the Equal Pay Act. The *Norris* majority held unequivocally that "it is just as much discrimination 'because of . . . sex' to pay a woman lower benefits when she has made the same contributions as a man as it is to make her pay larger contributions to obtain the same benefits." 103 S. Ct. at 3499. The Court majority noted in passing that an employer cannot escape liability because he offers some but not all options on a nondiscriminatory basis. 103 S. Ct. at 3497, n.10.

While the Court in *Norris* was not required to decide whether retirement benefits constitute "wages" under the Equal Pay Act, 103 S. Ct. at 3496, n.8, the Commission believes both *Norris* and *Manhart*, which rejected the Labor Department's EPA interpretation regarding contributions to employee benefit plans at 29 CFR 800.116(d), indicate the Court's intention to apply consistent interpretations to both Title VII and the EPA with respect to fringe benefits. *Norris* specifically included fringe benefits within the definition of "compensation" under Title VII. 103 S.Ct. at 3496. The Commission is primarily persuaded because wages have been consistently defined for EPA purposes as "all payments made to an employee as remuneration for employment." 29 CFR 800.110. This definition is adopted unchanged in § 1620.10. *Hodgson v. Robert Hall Clothes, Inc.*, 326 F.Supp. 1264, 1272 (D. Del. 1971), *rev'd on other grounds*, 473 F.2d 589 (3rd Cir.), *cert. denied*, 414 U.S. 866 (1973). *See also, Laffey v. Northwest Airlines*, 366 F.Supp. 763, 789 (D.D.C. 1973), 374 F.Supp. 1382, 1385–86 (D.D.C. 1974), *aff'd* 567 F.2d 429 (D.C. Cir. 1976) ("paying female stewardesses lower salaries *and pensions* than male pursers" violates the EPA), *cert. denied*, 434 U.S. 1086 (1978). Indeed, by the mere inclusion of "employee benefits plans" in the Labor Department examples of equality and inequality of pay in particular situations in 29 CFR 800.116, the applicability of the EPA to employee fringe benefits was recognized. See Opinion Letter No. 1117 (WH–70), August 25, 1970, CCH Wage-Hour Admin. Rulings ¶ 30681. Thus, the Commission believes that all forms of compensation to an employee are to be considered "wages" for EPA purposes. The specific reference to "fringe benefits" in §§ 1620.10 and 1620.11 is intended simply to resolve any doubt as to their inclusion under the concept of wages.

The Supreme Court's decision in *Manhart* and *Norris* would preclude pension adjustments under Title VII for unequal benefits based on contributions made prior to August 1, 1983. These EPA interpretations take no position on the issue of retroactivity for *Manhart* and *Norris* types of cases. Where, unlike the plans involved in *Manhart* and *Norris*, there are neither equal contributions nor equal benefits the Department of Labor's "either or" rule as embodied in 29 CFR 800.116 does not apply. These interpretations continue in effect the valid prohibition of both unequal benefits and unequal contributions embodied in the interpretations in effect since September 5, 1965.

In order to avoid duplicative regulations under Title VII and the EPA, both of which are enforced by the Commission, § 1620.11 is patterned after the pre-existing Title VII regulation that appears at 29 CFR 1604.9 The head of household reference in § 1620.11(c) was modified to conform with the discussion in § 1620.21. Wording in § 1620.11 has been slightly modified to conform to the language of the Equal Pay Act; however, no difference in meaning is intended. Also, the last sentence of 29 CFR 1604.9(f) referring to a General Counsel statement under Title VII is not applicable to the Equal Pay Act and is, therefore, deleted from § 1620.11.

Section 1620.12 Wage "rate."

Subsection (a), numbered § 1620.6 in the 1981 proposed interpretations, was expanded to include additional examples of types of systems of compensation encompassed by the term wage "rate." Furthermore, the use of a general definition of wage "rate" as the "standard or measure by which an employee's wage is determined" is designed to provide guidance in applying the term to other systems of pay not enumerated as examples.

Upon review of the proposed interpretation, subsection (b) was added and is intended to clarify the wage standard to be used for comparison purposes in determining whether a violation of the EPA has occurred.

Section 1620.13 "Equal work"—What it means.

(a) In general. This subsection was numbered § 1620.7 in the 1981 proposed interpretations. One commentor felt that a person could infer from the language of this section that equal work comparisons could be based upon review of dissimilar jobs. The section clearly states that only substantially equal jobs may be compared for EPA purposes. The EEOC believes that the proposed interpretation constitutes a clear and correct statement of the law. Several commentors requested that the constituent criteria of equal work, i.e., equal skill, effort and responsibility, be analyzed in the interpretations in order to facilitate understanding. The EEOC agrees and has added sections to the final interpretations separately discussing and analyzing these concepts. See §§ 1620.14–1620.17. A sentence has been included to emphasize that while in many, if not most, cases, inequality of pay for equal work harms women, the EPA itself is gender neutral and applies as well to those cases in which a man is paid a lesser wage rate than a woman for substantially equal work.

Paragraph (b)(1) of this section is adapted from and incorporates the concepts embodied in 29 CFR 800.114(a). Likewise, paragraph (b)(2) incorporates and restates § 800.114(b), to emphasize the principle that women assigned to take the place of men to perform substantially the same jobs are entitled to the same rate of pay as the men whom they replace. Paragraphs (b) (3) and (4) are new and are intended to illustrate the principles set forth in this section. Judicial authority supporting (b)(4) is found in *Plemer v. Parsons—Gilbane,* 713 F.2d 1127 (5th Cir. 1983); *Clymore v. Far-Mar-Co., Inc.,* 549 F. Supp. 438, 443–44 (N.D. Mo. 1982), *aff'd,* 709 F.2d 499, 503 (8th Cir. 1983); *Hodgson v. Behrens Drug Co.,* 475 F.2d 1041, 1049 (5th Cir.), *cert. denied,* 414 U.S. 822 (1973). Subsection (c) is new language added to illustrate the principle that compliance with the EPA involves more than merely establishing that the dollar amount of wages or salary is equal. If criteria such as seniority, education and experience are applied in determining the rate of pay, those criteria must be applied equally to men and women. *EEOC v. Liggett and Myers Co.,* 690 F.2d 1072, 107778 (4th Cir. 1982); *Hodgson v. American Bank of Commerce,* 447 F.2d 416, 421 (5th Cir. 1971); *Grove v. Frostburg National Bank,* 549 F. Supp. 922, 925 (D. Md. 1982); *Schultz v. Saxonburg Ceramics, Inc.,* 314 F. Supp. 1139, 1146 (W.D. Pa. 1970). Subsection (d) was taken verbatim from 29 CFR 800.115. Subsection (e) was likewise taken verbatim from 29 CFR 800.121.

Section 1620.14 Testing equality of jobs.

With the exception of minor editorial changes, this section is taken verbatim from 29 CFR 800.122 and 800.123.

Section 1620.15 Jobs requiring equal skill in performance.

With the exception of minor editorial changes to update the illustration in paragraph (b), this section is taken verbatim from 29 CFR 800.125 and 800.126.

Section 1620.16 Jobs requiring equal effort in performance.

With the exception of minor editorial changes, this section is taken verbatim from 29 CFR 800.127 and 800.128.

Section 1620.17 Jobs requiring equal responsibility in performance.

With the exception of minor editorial changes, this section is taken verbatim from 29 CFR 800.129 and 800.130.

Section 1620.18 Jobs performed under similar working conditions.

This section, numbered § 1620.9 in the 1981 proposed interpretations, elicited several comments. One commentor stated that limiting working conditions to surroundings and hazards was too narrow; however, the interpretation was intended only to reflect the Supreme Court's interpretation of the term "working conditions" in *Corning Glass Works v. Brennan,* 417 U.S. 188, 202 (1974). The Commission did not intend to narrow that interpretation by the Supreme Court. Two commentors requested that further analysis similar to that contained in DOL's regulations at 29 CFR 800.131 and 800.132 be added to the section. The Commission agrees and has integrated portions of the language of 29 CFR 800.131 and 800.132 into this revised section.

Section 1620.19 Equality of wages—Application of the principle.

Three commentors criticized this section, numbered § 1620.11 in the 1981 proposed interpretations, because it does not state that pay differentials based upon reasons other than sex are permissible under the EPA. The EPA allows pay differentials based upon merit, seniority, quantity or quality of production or any other factor other than sex. Defenses to the Act are discussed in §§ 1620.20 through 1620.24 of these interpretations. There is no need to include them here. The final three sentences, however, have been deleted as being redundant of concepts expressed elsewhere in the interpretations [i.e., § 1620.13 (b)(2) and (b)(3)].

Section 1620.20 Pay differentials claimed to be based on extra duties.

This section was numbered § 1620.8 in the 1981 proposed interpretations. The section explains that the Commission will closely scrutinize reasons for wage differentials between men and women performing equal jobs when the reasons have no relationship to job requirements or job performance. The section recognizes that bona fide factors other than sex for wage differentials may be successfully asserted as affirmative defenses to alleged violations of the EPA. Comments on proposed § 1620.8 generally stated that the examples were overbroad. The examples have been rewritten to be clearer.

Section 1620.21 Head of household.

This section was numbered § 1620.13 in the proposed interpretations. The section makes clear that factors asserted for wage differentials in equal jobs which are in no fashion job-related frequently are not bona fide. Employers are informed that head of household claims will be closely scrutinized.

Section 1620.22 Employment cost factors.

This section, numbered § 1620.14 in the 1981 proposed interpretations, received no comments and is included without change except for minor editorial changes to make references gender neutral.

Section 1620.23 Collective Bargaining Agreements Not a Defense.

Upon review of the proposed interpretations, this section was added to make clear that an employer or labor organization cannot escape the requirements of the EPA merely by including allegedly negotiated unequal rates of pay in a collective bargaining agreement.

Section 1620.24 Time unit for determining violations.

One commentor construed this interpretation, § 1620.10 in the 1981 proposed interpretations, as implying that a work cycle can never be a full year in duration. This is a misconception. An appropriate work

cycle can only be identified in the context of a specific factual situation. Once the appropriate work cycle has been identified for the lower paid sex, a comparison can be made with employees of the higher paid sex during the same or similar work cycle.

Section 1620.26 Red circle rates.

Several commentors objected to subsection (b) of the proposed interpretation, numbered § 1620.15 in the 1981 proposed interpretations, on the ground that it departs from Department of Labor policy and only allows red circle rates on a temporary basis. Upon review, it appears that the language of subsection (b) was unduly rigid. Accordingly, the Commission has returned to the language of 29 CFR 800.146 and 800.147.

Section 1620.27 Relationship of the Equal Pay Act to Title VII of the Civil Rights Act.

Two commentors objected to this section [numbered § 1620.16 in the 1981 proposed interpretations] insofar as they perceive it to be an attempt to interpret Title VII and the EPA as co-extensive. The EEOC does not believe that the two statutes are co-extensive and the proposed interpretation does not so state or imply. Both Title VII and EPA prohibit sex-based wage discrimination; however, Title VII is much broader in its prohibitions than the EPA. Proposed § 1620.26 merely states that any violation of the EPA by an employer who is covered by Title VII will also constitute a violation of Title VII since both statutes prohibit sex-based wage discrimination. This section does not appear to need further clarification. A paragraph (b) has been added to discuss how relief under both statutes is to be computed when violations of both Title VII and the EPA are found. A paragraph (c) has been added to illustrate that Title VII and the EPA are independent remedies.

Sections 1620.28 and 1620.29, numbered §§ 1620.17 and 1620.18, respectively, in the 1981 proposed interpretations, received no comments and are included without substantive change.

Current sections 1620.19 through 1620.23 have been renumbered as sections 1620.30 through 1620.34.

These regulations have been reviewed in accordance with Executive Order 12291 and have been determined not to be a major rule. With the publication of these final regulations, employers may no longer rely upon the Department of Labor's EPA interpretations at 29 CFR Part 800 or the Department of Labor EPA opinion letters.

Signed at Washington, DC, this 8th day of August, 1986.

For the Commission,

Clarence Thomas,

Chairman.

PART 1620—[AMENDED]

Accordingly, 29 CFR Part 1620 is amended as follows:

1. The authority citation for Part 1620 continues to read:

Authority: Sec. 1–19, 52 Stat. 1060, as amended; Sec. 10, 61 Stat. 84; Pub. L. 88–38, 77 Stat. 56 (29 U.S.C. 201, *et seq.*); sec. 1, Reorg. Plan No. 1 of 1978, 43 FR 19807; Executive Order 12144, 44 FR 37193.

2. Sections 1620.19 to 1620.23 are redesignated as §§ 1620.30 to 1620.34, and new §§ 1620.1 to 1620.29 are added.

PART 1620—THE EQUAL PAY ACT

Secs.

* * * * *

§ 1620.1 Basic applicability of the Equal Pay Act.

(a) Since the Equal Pay Act, 29 U.S.C. 206(d) (hereinafter referred to as the EPA), is a part of the Fair Labor Standards Act, 29 U.S.C. 201, *et seq.* (hereinafter referred to as the FLSA), it has the same basic coverage as the FLSA with two principal exceptions:

(1) The EPA applies to executive, administrative, and professional employees who are normally exempted from the FLSA for most purposes by section 13(a)(1) of that statute, and

(2) The EPA covers all state and local government employees unless they are specifically exempted under section 3(e)(2)(C) of the FLSA.

(b) The EPA does not apply where the employer has no employees who are engaged in commerce or in the handling of goods that have moved in commerce and the employer is not an enterprise engaged in commerce or in the production of goods for commerce.

(c) Men are protected under the Act equally with women. While the EPA was motivated by concern for the weaker bargaining position of women, the Act by its express terms applies to both sexes.

(d) Most employees of the United States Government, as described in section 3(e)(2) (A) and (B) of the FLSA, are covered by the EPA. Accordingly, these interpretations and principles may generally be applied to federal sector employment.

§ 1620.2 General coverage of employees "engaged in commerce."

(a) Like the FLSA, the EPA applies to employees "engaged in commerce." "Commerce" is broadly defined in section 3(b) of the FLSA. It includes both interstate and foreign commerce and is not limited to transportation across State lines, or to activity of a commercial character. All parts of the movement among the several States, or between any State and any place outside thereof, of persons or things, tangibles or intangibles, including communication of information and intelligence, constitute movement in "commerce within the statutory definition. This includes those parts of any such activity which take place wholly within a single State. In addition, the instrumentalities for carrying on such commerce are so inseparable from the commerce itself that employees working on such instrumentalities within the borders of a single State, by virtue of the contribution made by their work to the movement of the commerce, are "engaged in commerce" within the meaning of the FLSA.

(b) Consistent with the purpose of the FLSA to apply Federal standards "thoughout the farthest reaches of the channels of interstate commerce," the courts have made it clear that the employees "engaged in commerce" include every employee employed in the channels of such commerce or in activities so closely related to such commerce as to be considered a part of it as a practical matter. Engaging "in commerce" includes activities connected therewith such as management and control of the various physical processes, together with the accompanying accounting and clerical activities. Thus, employees engaged in interstate or foreign commerce will typically include, among others, employees in distributing industries such as wholesaling or retailing who sell, transport, handle, or otherwise work on goods moving in interstate or foreign commerce as well as workers who order, receive, guard, pack, ship or keep records of such goods; employees who handle payroll or personnel functions for workers engaged in such activities; clerical and other workers who regularly use the mails, telephone, or telegraph for communication across State lines; and employees who regularly travel across State lines while working. For other examples, see 29 CFR Part 776.

§ 1620.3 General coverage of employees "engaged in * * * the production of goods for commerce."

(a) Like the FLSA, the EPA applies to employees "engaged in * * * the production of goods for commerce." The broad meaning of "commerce" as defined in section 3(b) of the FLSA has been outlind in § 1620.2. "Goods" is also comprehensively defined in section 3(i) of the FLSA and includes "articles or subjects of commerce of any character, or any part or ingredient thereof" not expressly excepted by the statute. The activities constituting "production" of the goods for commerce are defined in section 3(j) of the FLSA. These are not limited to such work as manufacturing but include handling or otherwise working on goods intended for shipment out of the State either directly or indirectly or for use within the State to serve the needs of the instrumentalities or facilities by which interstate or foreign commerce is carried on. Employees engaged in any closely related process or occupation directly essential to such production of any goods, whether employed by the producer or by an independent employer, are also engaged, by definition, in "production." Thus, employees engaged in the administration, planning, management, and control of the various physical processes together with the accompanying clerical and accounting activities are, from a productive standpoint and for purposes of the FLSA, "engaged in the production of goods for commerce."

(b) Employees engaged in the production of goods for interstate or foreign commerce include those who work in manufacturing, processing, and distributing establishments, including wholesale and retail establishments that "produce" (including handling or working on) goods for such commerce. This includes everyone employed in such establishments, or elsewhere in the enterprises by which they are operated, whose activities constitute "production" of such goods under the principles outlined in paragraph (a) of this section. Thus, employees who sell, process, load, pack, or otherwise handle or work on goods which are to be shipped or delivered outside the State either by their employer or by another firm, and either in the same form or as a part or ingredient of other goods, are engaged in the production of goods for commerce within the coverage of the FLSA. So also are the office, management, sales, and shipping personnel, and maintenance, custodial, and protective employees who perform as a part of the integrated effort for the production of the goods for commerce, services related to such production or to such goods or to the plant, equipment, or personnel by which the production is accomplished.

§ 1620.4 "Closely related" and "directly essential" activities.

An employee is engaged in the production of goods for interstate or foreign commerce within the meaning of the FLSA even if the employees's work is not an actual and direct part of such production, so long as the employee is engaged in a process or occupation which is "closely related" and "directly essential" to it. This is true whether the employee is employed by the producer of the goods or by someone else who provides goods or services to the producer. Typical of employees covered under these principles are computer operators, bookkeepers, stenographers, clerks, accountants, and auditors and other office and whitecollar workers, and employees doing payroll, timekeeping, and time study work for the producer of goods; employees in the personnel, labor relations, employee benefits, safety and health, advertising, promotion, and public relations activities of the producing enterprise; work instructors for the producers; employees maintaining, servicing, repairing or improving the buildings, machinery, equipment, vehicles or other facilities used in the production of goods for commerce, and such custodial and productive employees as watchmen, guards, firemen, patrolmen, caretakers, stockroom workers and warehousemen; and transportation workers bringing supplies, materials, or equipment to the producer's premises, removing waste materials therefrom, or transporting materials or other goods, or performing such other transportation activities, as the needs of production may require. These examples are illustrative, rather than exhaustive, of the employees who are "engaged in the production of goods for commerce" by reason of performing activities closely related and directly essential to such production.

§ 1620.5 What goods are considered as "produced for commerce."

Goods (as defined in 3(i) of the FLSA) are "produced for commerce" if they are "produced, manufactured, mined, handled or in any other manner worked on" in any State for sale, trade, transportation, transmission, shipment, or delivery, to any place outside thereof. Goods are produced for commerce where the producer intends, hopes, expects, or has reason to believe that the goods or any unsegregated part of them will move (in the same or in an altered form or as a part of ingredient of other goods) in interstate or foreign commerce. If such movement of the goods in commerce can reasonably be anticipated by the producer when the goods are produced, it makes no difference whether the producer or the person to whom the goods are transferred puts the goods in interstate or foreign commerce. The fact that goods do move in interstate or foreign commerce is strong evidence that the producer intended, hoped, expected, or had reason to believe that they would so move. Goods may also be produced "for commerce" where they are to be used within the State and not transported in any form across State lines. This is true where the goods are used to serve the needs of the instrumentalities or facilities by which interstate or foreign commerce is carried on within the State. For examples, see 29 CFR 776.20.

§ 1620.6 Coverage is not based on amount of covered activity.

The FLSA makes no distinction as to the percentage, volume, or amount of activities of either the employee or the employer which constitute engaged in commerce or in the production of goods for commerce. Every employee whose activities in commerce or in the

production of goods for commerce, even though small in amount, are regular and recurring, is considered "engaged in commerce or in the production of goods for commerce".

§ 1620.7 "Enterprise" coverage.

(a) The terms "enterprise" and "enterprise engaged in commerce or in the production of goods for commerce" are defined in subsections 3(r) and 3(s) of the FLSA. Under the enterprise concept, if a business is an "enterprise engaged in commerce or in the production of goods for commerce," every employee employed in such enterprise or by such enterprise is within the coverage of the EPA unless specifically exempted in the FLSA, regardless of whether the individual employee is actually engaged in commerce or in the production of goods for commerce. The term "enterprise" is not synonymous with the terms "employer" or "establishment" although on occasion the three terms may apply to the same business entity. An enterprise may consist of a single establishment operated by one or more employers. (See definitions of "employer" and "establishment" in §§ 1620.8 and 1620.9.)

(b) In order to constitute an enterprise, the activities sought to be aggregated must be related to each other, they must be performed under a unified operation or common control, and they must be performed for a common business purpose. Activities are related when they are the same or similar, or when they are auxiliary services necessary to the operation and maintenance of the particular business. Activities constitute a unified operation when the activities are operated as a single business unit or economic entity. Activities are performed under common control when the power to direct, restrict, regulate, govern or administer the performance of the activities resides in a single person or entity or when it is shared by a group of persons or entities. Activities are performed for a common business purpose when they are directed to the same or similar business objectives. A determination whether the statutory characteristics of an enterprise are present in any particular case must be made on a case-by-case basis. See generally, Subpart C of 29 CFR Part 779 for a detailed discussion of the term "enterprise" under the FLSA.

§ 1620.8 "Employer," "employee," and "employ" defined.

The words "employer," "employee," and "employ" as used in the EPA are defined in the FLSA. Economic reality rather than technical concepts determines whether there is employment within the meaning of the EPA. The common law test based upon the power to control the manner of performance is not applicable to the determination of whether an employment relationship subject to the EPA exists. An "employer," as defined in section 3(d) of the FLSA, means "any person acting directly or indirectly in the interest of an employer in relation to an employee" and includes a "public agency," as defined in section 3(x). An "employee," as defined in section 3(e) of the FLSA, "means any individual employed by an employer." "Employ," as used in the EPA, is defined in section 3(g) of the FLSA to include "to suffer or permit to work." Two or more employers may be both jointly or severally responsible for compliance with the statutory requirements applicable to employment of a particular employee.

§ 1620.9 Meaning of "establishment."

(a) Although not expressly defined in the FLSA, the term "establishment" had acquired a well settled meaning by the time of enactment of the Equal Pay Act. It refers to a distinct physical place of business rather than to an entire business or "enterprise" which may include several separate places of business. Accordingly, each physically separate place of business is ordinarily considered a separate establishment.

(b) In unusual circumstances, two or more portions of a business enterprise, even though located in a single physical place of business, may constitute more than one establishment. For example, the facts might reveal that these portions of the enterprise are physically segregated, engaged in functionally separate operations, and have separate employees and maintain separate records. Conversely, unusual circumstances may call for two or more distinct physical portions of a business enterprise being treated as a single establishment. For example, a central administrative unit may hire all employees, set wages, and assign the location of employment; employees may frequently interchange work locations; and daily duties may be virtually identical and performed under similar working conditions. Barring unusual circumstances, however, the term "establishment" will be applied as described in subsection (a) of this section.

§ 1620.10 Meaning of "wages."

Under the EPA, the term "wages" generally includes all payments made to [or on behalf of] an employee as remuneration for employment. The term includes all forms of compensation irrespective of the time of payment, whether paid periodically or deferred until a later date, and whether called wages, salary, profit sharing, expense account, monthly minimum, bonus, uniform cleaning allowance, hotel accommodations, use of company car, gasoline allowance, or some other name. Fringe benefits are deemed to be remuneration for employment. "Wages" as used in the EPA (the purpose of which is to assure men and women equal remuneration for equal work) will therefore include payments which may not be counted under section 3(m) of the FLSA toward the minimum wage (the purpose of which is to assure employees a minimum amount of remuneration unconditionally available in cash or in board, lodging or other facilities). Similarly, the provisions of section 7(e) of the FLSA under which some some payments may be excluded in computing an employee's "regular rate" of pay for purposes of section 7 do not authorize the exclusion of any such remuneration from the "wages" of an employee in applying the EPA. Thus, vacation and holiday pay, and premium payments for work on Saturdays, Sundays, holidays, regular days of rest or other days or hours in excess or outside of the employee's regular days or hours of work are deemed remuneration for employment and therefore wage payments that must be considered in applying the EPA, even though not a part of the employee's "regular rate."

§ 1620.11 Fringe benefits.

(a) "Fringe benefits" includes, e.g., such terms as medical, hospital, accident, life insurance and retirement benefits; profit sharing and bonus plans; leave; and other such concepts.

(b) It is unlawful for an employer to discriminate between men and women performing equal work with regard to fringe benefits. Differences in the application of fringe benefit plans which are based upon sex-based actuarial studies cannot be justified as based on "any other factor other than sex."

(c) Where an employer conditions benefits available to employees is the "head of the household" or "principal wage earner" in the family unit, the overall implementation of the plan will be closely scrutinized.

(d) It is unlawful for an employer to make available benefits for the spouses or families of employees of one gender where the same benefits are not made available for the spouses or families of opposite gender employees.

(e) It shall not be a defense under the EPA to a charge of sex discrimination in benefits that the cost of such benefits is

greater with respect to one sex than the other.

(f) It is unlawful for an employer to have a pension or retirement plan which, with respect to benefits, establishes different optional or compulsory retirement ages based on sex or which otherwise differentiates in benefits on the basis of sex.

§ 1620.12 Wage "rate."

(a) The term wage "rate," as used in the EPA, refers to the standard or measure by which an employee's wage is determined and is considered to encompass all rates of wages whether calculated on a time, commission, piece, job incentive, profit sharing, bonus, or other basis. The term includes the rate at which overtime compensation or other special remuneration is paid as well as the rate at which straight time compensation for ordinary work is paid. It further includes the rate at which a draw, advance, or guarantee is paid against a commission settlement.

(b) Where a higher wage rate is paid to one gender than the other for the performance of equal work, the higher rate serves as a wage standard. When a violation of the Act is established, the higher rate paid for equal work is the standard to which the lower rate must be raised to remedy a violation of the Act.

§ 1620.13 "Equal Work"—What it means.

(a) *In general.* The EPA prohibits discrimination by employers on the basis of sex in the wages paid for "equal work on jobs the performance of which requires equal skill, effort and responsibility and which are performed under similar working conditions * * *." The word "requires" does not connote that an employer must formally assign the equal work to the employee; the EPA applies if the employer knowingly allows the employee to perform the equal work. The equal work standard does not require that compared jobs be identical, only that they be substantially equal.

(b) *"Male jobs" and "female jobs."*

(1) Wage classification systems which designate certain jobs as "male jobs" and other jobs as "female jobs frequently specify markedly lower rates for the "females jobs." Such practices indicate a pay practice of discrimination based on sex. It should also be noted that it is an unlawful employment practice under Title VII of the Civil Rights Act of 1964 to classify a job as "male" or "female" unless sex is a bona fide occupational qualification for the job.

(2) The EPA prohibits discrimination on the basis of sex in the payment of wages to employees for work on jobs which are equal under the standards which the Act provides. For example, where an employee of one sex is hired or assigned to a particular job to replace an employee of the opposite sex but receives a lower rate of pay than the person replaced, a prima facie violation of the EPA exists. When a prima facie violation of the EPA exists, it is incumbent on the employer to show that the wage differential is justified under one or more of the Act's four affirmative defenses.

(3) The EPA applies when all employees of one sex are removed from a particular job (by transfer or discharge) so as to retain employees of only one sex in a job previously performed interchangeably or concurrently by employees of both sexes. If a prohibited sex-based wage differential had been established or maintained in violation of the EPA when the job was being performed by employees of both sexes, the employer's obligation to pay the higher rate for the job cannot be avoided or evaded by the device of later confining the job to members of the lower paid sex.

(4) If a person of one sex succeeds a person of the opposite sex on a job at a higher rate of pay than the predecessor, and there is no reason for the higher rate other than difference in gender, a violation as to the predecessor is established and that person is entitled to recover the difference between his or her pay and the higher rate paid the successor employee.

(5) It is immaterial that a member of the higher paid sex ceased to be employed prior to the period covered by the applicable statute of limitations period for filing a timely suit under the EPA. The employer's continued failure to pay the member of the lower paid sex the wage rate paid to the higher paid predecessor constitutes a prima facie continuing violation. Also, it is no defense that the unequal payments began prior to the statutory period.

(c) Standards for determining rate of pay. The rate of pay must be equal for persons performing equal work on jobs requiring equal skill, effort, and responsibility, and performed under similar working conditions. When factors such as seniority, education, or experience are used to determine the rate of pay, then those standards must be applied on a sex neutral basis.

(d) Inequalities in pay that raise questions under the Act. It is necessary to scrutinize those inequalities in pay between employees of opposite sexes which may indicate a pattern of discrimination in wage payment that is based on sex. Thus, a serious question would be raised where such an inequality, allegedly based on a difference in job content, is in fact one in which the employee occupying the job purportedly requiring the higher degree of skill, effort, or responsibility receives the lower wage rate. Likewise, because the EPA was designed to eliminate wage rate differentials which are based on sex, situations will be carefully scrutinized where employees of only one sex are concentrated in the lower levels of the wage scale, and where there does not appear to be any material relationship other than sex between the lower wage rates paid to such employees and the higher rates paid to employees of the opposite sex.

(e) *Job content controlling.* Application of the equal pay standard is not dependent on job classifications or titles but depends rather on actual job requirements and performance. For example, the fact that jobs performed by male and female employees may have the same total point value under an evaluation system in use by the employer does not in itself mean that the jobs concerned are equal according to the terms of the statute. Conversely, although the point values allocated to jobs may add up to unequal totals, it does not necessarily follow that the work being performed in such jobs is unequal when the statutory tests of the equal pay standard are applied. Job titles are frequently of such a general nature as to provide very little guidance in determining the application of the equal pay standard. For example, the job title "clerk" may be applied to employees who perform a variety of duties so dissimilar as to place many of them beyond the scope of comparison under the Act. Similarly, jobs included under the title "stock clerk" may include an employee of one sex who spends all or most of his or her working hours in shifting and moving goods in the establishment whereas another employee, of the opposite sex, may also be described as a "stock clerk" but be engaged entirely in checking inventory. In the case of jobs identified by the general title "retail clerk", the facts may show that equal skill, effort, and responsibility are required in the jobs of male and female employees notwithstanding that they are engaged in selling different kinds of merchandise. In all such situations, the application of the equal pay standard will have to be determined by applying the terms of the Act to the specific facts involved.

§ 1620.14 Testing equality of jobs.

(a) *In general.* What constitutes equal skill, equal effort, or equal responsibility

cannot be precisely defined. In interpreting these key terms of the statute, the broad remedial purpose of the law must be taken into consideration. The terms constitute separate tests, each of which must be met in order for the equal pay standard to apply. It should be kept in mind that "equal" does not mean "identical." Insubstantial or minor differences in the degree or amount of skill, or effort, or responsibility required for the performance of jobs will not render the equal pay standard inapplicable. On the other hand, substantial differences, such as those customarily associated with differences in wage levels when the jobs are performed by persons of one sex only, will ordinarily demonstrate an inequality as between the jobs justifying differences in pay. However, differences in skill, effort or responsibility which might be sufficient to justify a finding that two jobs are not equal within the meaning of the EPA if the greater skill, effort, or responsibility has been required of the higher paid sex, do not justify such a finding where the greater skill, effort, or responsibility is required of the lower paid sex. In determining whether job differences are so substantial as to make jobs unequal, it is pertinent to inquire whether and to what extent significance has been given to such differences in setting the wage levels for such jobs. Such an inquiry may, for example, disclose that apparent differences between jobs have not been recognized as relevant for wage purposes and that the facts as a whole support the conclusion that the differences are too insubstantial to prevent the jobs from being equal in all significant respects under the law.

(b) *Illustrations of the concept.* Where employees of opposite sexes are employed in jobs in which the duties they are required to perform and the working conditions are substantially the same, except that an employee of one sex is required to perform some duty or duties involving a higher skill which an employee of the other sex is not required to perform, the fact that the duties are different in this respect is insufficient to remove the jobs from the application of the equal pay standard if it also appears that the employer is paying a lower wage rate to the employee performing the additional duties notwithstanding the additional skill which they involve. In other situations, where employees of the opposite sex are employed in jobs which are equal in the levels of skill, effort, and responsibility required for their performance, it may be alleged that the assignment to employees of one sex but not the other of certain duties requiring less skill makes the jobs too different for comparison under the equal pay provisions. But so long as the higher level of skill is required for the performance of the jobs occupied by employees of both sexes, the fact that some of the duties assigned to employees of one sex require less skill than the employee must have for the job as a whole does not warrant any conclusion that the jobs are outside the purview of the equal pay standard.

(c) *Determining equality of job content in general.* In determining whether employees are performing equal work within the meaning of the EPA, the amounts of time which employees spend in the performance of different duties are not the sole criteria. It is also necessary to consider the degree of difference in terms of skill, effort, and responsibility. These factors are related in such a manner that a general standard to determine equality of jobs cannot be set up solely on the basis of a percentage of time. Consequently, a finding that one job requires employees to expend greater effort for a certain percentage of their working time than employees performing another job, would not in itself establish that the two jobs do not constitute equal work. Similarly, the performance of jobs on different machines or equipment would not necessarily result in a determination that the work so performed is unequal within the meaning of the statute if the equal pay provisions otherwise apply. If the difference in skill or effort required for the operation of such equipment is inconsequential, payment of a higher wage rate to employees of one sex because of a difference in machines or equipment would constitute a prohibited wage rate differential. Where greater skill or effort is required from the lower paid sex, the fact that the machines or equipment used to perform substantially equal work are different does not defeat a finding that the EPA has been violated. Likewise, the fact that jobs are performed in different departments or locations within the establishment would not necessarily be sufficient to demonstrate that unequal work is involved where the equal pay standard otherwise applies. This is particularly true in the case of retail establishments, and unless a showing can be made by the employer that the sale of one article requires such higher degree of skill or effort than the sale of another article as to render the equal pay standard inapplicable, it will be assumed that the salesmen and saleswomen concerned are performing equal work. Although the equal pay provisions apply on an establishment basis and the jobs to be compared are those in the particular establishment, all relevant evidence that may demonstrate whether the skill, effort, and responsibility required in the jobs in the particular establishment are equal should be considered, whether this relates to the performance of like jobs in other establishments or not.

§ 1620.15 Jobs requiring equal skill in performance.

(a) *In general.* The jobs to which the equal pay standard is applicable are jobs requiring equal skill in their performance. Where the amount or degree of skill required to perform one job is substantially greater than that required to perform another job, the equal pay standard cannot apply even though the jobs may be equal in all other respects. Skill includes consideration of such factors as experience, training, education, and ability. *It must be measured in terms of the performance requirements of the job.* If an employee must have essentially the same skill in order to perform either of two jobs, the jobs will qualify under the EPA as jobs the performance of which requires equal skill, even though the employee in one of the jobs may not exercise the required skill as frequently or during as much of his or her working time as the employee in the other job. *Possession of a skill not needed to meet the requirements of the job cannot be considered in making a determination regarding equality of skill.* The efficiency of the employee's performance in the job is not in itself an appropriate factor to consider in evaluating skill.

(b) Comparing skill requirements of jobs. As a simple illustration of the principle of equal skill, suppose that a man and a woman have jobs classified as administrative assistants. Both jobs require them to spend two-thirds of their working time facilitating and supervising support-staff duties, and the remaining one-third of their time in diversified tasks, not necessarily the same. Since there is no difference in the skills required for the vast majority of their work, whether or not these jobs require equal skill in performance will depend upon the nature of the work performed during the latter period to meet the requirements of the jobs.

§ 1620.16 Jobs requiring equal effort in performance.

(a) *In general.* The jobs to which the equal pay standard is applicable are jobs that require equal effort to perform. Where substantial differences exist in the amount or degree of effort required

to be expended in the performance of jobs, the equal pay standard cannot apply even though the jobs may be equal in all other respects. Effort is concerned with the measurement of the physical or mental exertion needed for the performance of a job. Job factors which cause mental fatigue and stress, as well as those which alleviate fatigue, are to be considered in determining the effort required by the job. "Effort" encompasses the total requirements of a job. Where jobs are otherwise equal under the EPA, and there is no substantial difference in the amount or degree of effort which must be expended in performing the jobs under comparison, the jobs may require equal effort in their performance even though the effort may be exerted in different ways on the two jobs. Differences only in the kind of effort required to be expended in such a situation will not justify wage differentials.

(b) Comparing effort requirements of jobs. To illustrate the principle of equal effort exerted in different ways, suppose that a male checker employed by a supermarket is required to spend part of his time carrying out heavy packages or replacing stock involving the lifting of heavy items whereas a female checker is required to devote an equal degree of effort during a similar portion of her time to performing fill-in work requiring greater dexterity—such as rearranging displays of spices or other small items. The difference in kind of effort required of the employees does not appear to make their efforts unequal in any respect which would justify a wage differential, where such differences in kind of effort expended to perform the job are not ordinarily considered a factor in setting wage levels. Further, the occasional or sporadic performance of an activity which may require extra physical or mental exertion is not alone sufficient to justify a finding of unequal effort. Suppose, however, that men and women are working side by side on a line assembling parts. Suppose further that one of the men who performs the operations at the end of the line must also lift the assembly, as he completes his part of it, and places it on a waiting pallet. In such a situation, a wage rate differential might be justified for the person (but only for the person) who is required to expend the extra effort in the performance of his job, provided that the extra effort so expended is substantial and is performed over a considerable portion of the work cycle. In general, a wage rate differential based on differences in the degree or amount of effort required for performance of jobs must be applied uniformly to men and women. For example, if all women and some men performing a particular type of job never perform heavy lifting, but some men do, payment of a higher wage rate to all of the men would constitute a prohibited wage rate differential if the equal pay provisions otherwise apply.

§ 1620.17 Jobs requiring equal responsibility in performance.

(a) *In general.* The equal pay standard applies to jobs the performance of which requires equal responsibility. Responsibility is concerned with the degree of accountability required in the performance of the job, with emphasis on the importance of the job obligation. Differences in the degree of responsibility required in the performance of otherwise equal jobs over a wide variety of situations. The following illustrations in subsection (b), while by no means exhaustive, may suggest the nature or degree of differences in responsibility which will constitute unequal work.

(b) *Comparing responsibility requirements of jobs.*

(1) There are many situations where one employee of a group performing jobs which are equal in other respects is required from time to time to assume supervisory duties for reasons such as the absence of the regular supervisor. Suppose, for instance, that it is the employer's practice to pay a higher wage rate to such a "relief" supervisor with the understanding that during the intervals in which the employee performs supervisory duties the employee is in training for a supervisory position. In such a situation, payment of the higher rate to the employee might well be based solely on the additional responsibility required to perform the job and the equal pay provisions would not require the same rates to be paid to an employee of the opposite sex in the group who does not have an equal responsibility. There would clearly be no question concerning such a wage rate differential if the employer pays the higher rate to both men and women who are called upon from time to time to assume such supervisory responsibilities.

(2) Other differences in responsibilities of employees in generally similar jobs may require similar conclusions. Sales clerks, for example, who are engaged primarily in selling identical or similar merchandise may be given different responsibilities. Suppose that one employee of such a group (who may be either a man or a woman) is authorized and required to determine whether to accept payment for purchases by personal checks of customers. The person having this authority to accept personal checks may have a considerable, additional degree of responsibility which may materially affect the business operations of the employer. In this situation, payment of a higher wage rate to this employee would be permissible.

(3) On the other hand, there are situations where one employee of the group may be given some minor responsibility which the others do not have (e.g., turning out the lights in his or her department at the end of the business day) but which is not of sufficient consequence or importance to justify a finding of unequal responsibility. As another example of a minor difference in responsibility, suppose that office employees of both sexes work in jobs essentially alike but at certain intervals a male and female employee performing otherwise equal work within the meaning of the statute are responsible for the office payroll. One of these employees may be assigned the job of checking time cards and compiling the payroll list. The other, of the opposite sex, may be required to make out paychecks, or divide up cash and put the proper amounts into pay envelopes after drawing a payroll check. In such circumstances, although some of the employees' duties are occasionally dissimilar, the difference in responsibility involved would not appear to be of a kind that is recognized in wage administration as a significant factor in determining wage rates. Under such circumstances, this difference would seem insufficient to justify a wage rate differential between the man's and woman's job if the equal pay provisions otherwise apply.

§ 1620.18 Jobs performed under similar working conditions.

(a) *In general.* In order for the equal pay standard to apply, the jobs are required to be performed under similar working conditions. It should be noted that the EPA adopts the flexible standard of similarity as a basis for testing this requirement. In determining whether the requirement is met, a practical judgment is required in light of whether the differences in working conditions are the kind customarily taken into consideration in setting wage levels. The mere fact that jobs are in different departments of an establishment will not necessarily mean that the jobs are performed under dissimilar working conditions. This may or may not be the case. The term "similar working conditions" encompasses two subfactors: "surroundings" and "hazards."

"Surroundings" measure the elements, such as toxic chemicals or fumes, regularly encountered by a worker, their intensity and their frequency. "Hazards" take into account the physical hazards regularly encountered, their frequency and the severity of injury they can cause. The phrase "working conditions" does not encompass shift differentials.

(b) *Determining similarity of working conditions.* Generally, employees performing jobs requiring equal skill, effort, and responsibility are likely to be performing them under similar working conditions. However, in situations where some employees performing work meeting these standards have working conditions substantially different from those required for the performance of other jobs, the equal pay principle would not apply. On the other hand, slight or inconsequential differences in working conditions which are not usually taken into consideration by employers or in collective bargaining in setting wage rates would not justify a differential in pay.

§ 1620.19 Equality of wages—application of the principle.

Equal wages must be paid in the same medium of exchange. In addition, an employer would be prohibited from paying higher hourly rates to all employees of one sex and then attempting to equalize the differential by periodically paying employees of the opposite sex a bonus. Comparison can be made for equal pay purposes between employees employed in equal jobs in the same establishment although they work in different departments.

§ 1620.20 Pay differentials claimed to be based on extra duties.

Additional duties may not be a defense to the payment of higher wages to one sex where the higher pay is not related to the extra duties. The Commission will scrutinize such a defense to determine whether it is bona fide. For example, an employer cannot successfully assert an extra duties defense where:

(a) Employees of the higher paid sex receive the higher pay without doing the extra work;

(b) Members of the lower paid sex also perform extra duties requiring equal skill, effort, and responsibility;

(c) The proffered extra duties do not in fact exist;

(d) The extra task consumes a minimal amount of time and is of peripheral importance; or

(e) Third persons (i.e., individuals who are not in the two groups of employees being compared) who do the extra task as their primary job are paid less than the members of the higher paid sex for whom there is an attempt to justify the pay differential.

§ 1620.21 Head of household.

Since a "head of household" or "head of family" status bears no relationship to the requirements of the job or to the individual's performance on the job, such a claimed defense to an alleged EPA violation will be closely scrutinized as stated in § 1620.11(c).

§ 1620.22 Employment cost not a "factor other than sex."

A wage differential based on claimed differences between the average cost of employing workers of one sex as a group and the average cost of employing workers of the opposite sex as a group is discriminatory and does not qualify as a differential based on any "factor other than sex," and will result in a violation of the equal pay provisions, if the equal pay standard otherwise applies.

§ 1620.23 Collective bargaining agreements not a defense.

The establishment by collective bargaining or inclusion in a collective bargaining agreement of unequal rates of pay does not constitute a defense available to either an employer or to a labor organization. Any and all provisions in a collective bargaining agreement which provide unequal rates of pay in conflict with the requirements of the EPA are null and void and of no effect.

§ 1620.24 Time unit for determining violations.

In applying the various tests of equality to the requirements for the performance of particular jobs, it is necessary to scrutinize each job as a whole and to look at the characteristics of the jobs being compared over a full work cycle. For the purpose of such a comparison, the appropriate work cycle to be determined would be that performed by members of the lower paid sex and a comparison then made with job duties performed by members of the higher paid sex during a similar work cycle. The appropriate work cycle will be determined by an examination of the facts of each situation. For example, where men and women custodial workers in a school system perform equal work during the academic year, but the men perform additional duties in the summer months, the appropriate work cycle for EPA purposes would be the academic year. In that instance, the additional summer duties would not preclude the application of the equal pay standard or justify the higher wage rate for men for the period when the work was equal.

§ 1620.25 Equalization of rates.

Under the express terms of the EPA, when a prohibited sex-based wage differential has been proved, an employer can come into compliance only by raising the wage rate of the lower paid sex. The rate-reduction provision of the EPA prohibits an employer from attempting to cure a violation by hiring or transferring employees to perform the previously lower-paid job at the lower rate. Similarly, the departure of the higher paid sex from positions where a violation occurred, leaving only members of the lower paid sex being paid equally among themselves, does not cure the EPA violations.

§ 1620.26 Red circle rates.

(a) The term "red circle" rate is used to describe certain unusual, higher than normal, wage rates which are maintained for reasons unrelated to sex. An example of bona fide use of a "red circle" rate might arise in a situation where a company wishes to transfer a long-service employee, who can no longer perform his or her regular job because of ill health, to different work which is now being performed by opposite gender-employees. Under the "red circle" principle the employer may continue to pay the employee his or her present salary, which is greater than that paid to the opposite gender employees, for the work both will be doing. Under such circumstances, maintaining an employee's established wage rate, despite a reassignment to a less demanding job, is a valid reason for the differential even though other employees performing the less demanding work would be paid at a lower rate, since the differential is based on a factor other than sex. However, where wage rate differentials have been or are being paid on the basis of sex to employees performing equal work, rates of the higher paid employees may not be "red circled" in order to comply with the EPA. To allow this would only continue the inequities which the EPA was intended to cure.

(b) For a variety of reasons an employer may require an employee, for a short period, to perform the work of a job classification other than the employee's regular classification. If the employee's rate for his or her regular job is higher than the rate usually paid for the work to which the employee is temporarily reassigned, the employer may continue to pay the higher rate under the "red circle" principle. For instance, an employer who must reduce help in a skilled job may transfer employees to less demanding work

without reducing their pay, in order to have them available when they are again needed for their former jobs. Although employees traditionally engaged in performing the less demanding work would be paid at a lower rate than those employees transferred from the more skilled jobs, the resultant wage differential would not constitute a violation of the equal pay provisions since the differential is based on factors other than sex. This would be true during the period of time for which the "red circle" rate is bona fide. Temporary reassignments may also involve the opposite relationship of wage rates. Thus, an employee may be required, during the period of temporary reassignment, to perform work for which employees of the opposite sex are paid a higher wage rate than that paid for the duties of the employee's regular job classification. In such a situation, the employer may continue to pay the reassigned employee at the lower rate, if the rate is not based on quality or quantity of production , and if the reassignment is in fact a temporary one. If, however, a piece rate is paid employees of the opposite sex who perform the work to which the employee in question is reassigned, failure to pay the reassigned employee the same piece rate paid such other employees would raise questions of discrimination based on sex. Also, failure to pay the higher rate to a reassigned employee after it becomes known that the reassignment will not be of a temporary nature would raise a question whether sex rather than the temporary nature of the assignment is the real basis for the wage differential. Generally, failure to pay the higher rate to an employee reassigned for a period longer than one month will raise questions as to whether the reassignment was in fact intended to be temporary.

§1620.27 Relationship to the Equal Pay Act of Title VII of the Civil Rights Act.

(a) In situations where the jurisdictional prerequisites of both the EPA and Titel VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 200e *et seq.*, are satisfied, any violation of the Equal Pay Act is also a violation of Title VII. However, Title VII covers types of wage discrimination not actionable under the EPA. Therefore, an act or practice of an employer or labor organization that is not a violation of the EPA may nevertheless be a violation of Title VII.

(b) Recovery for the same period of time may be had under both the EPA and Title VII so long as the same individual does not receive duplicative relief for the same wrong. Relief is computed to give each individual the highest benefit which entitlement under either statute would provide. (e.g., liquidated damages may be available under the EPA but not under Title VII.) Relief for the same individual may be computed under one statute for one or more periods of the violation and under the other statute for other periods of the violation.

(c) The right to equal pay under the Equal Pay Act has no relationship to whether the employee is in the lower paying job as a result of discrimination in violation of Title VII. Under the EPA a prima facie violation is established upon a showing that an employer pays different wages to employees of opposite sexes for equal work on jobs requiring equal skill, effort and responsibility, and which are performed under similar working conditions. Thus, the availability of a remedy under Title VII which would entitle the lower paid employee to be hired into, or to transfer to, the higher paid job does not defeat the right of each person employed on the lower paid job to the same wages as are paid to a member of the opposite sex who receives higher pay for equal work.

§ 1620.28 Relationship to other equal pay laws.

The provisions of various State or local laws may differ from the equal pay provisions set forth in the FLSA. No provisions of the EPA will excuse noncompliance with any State or other law establishing fewer defenses or more liberal work criteria than those of the EPA. On the other hand, compliance with other applicable legislation will not excuse violations of the EPA.

§ 1620.29 Relationship to other labor laws.

If a higher minimum wage than that required under the FLSA is applicable to a particular sex pursuant to State law, and the employer pays the higher State minimum wage to male or female employees, it must also pay the higher rate to employees of the opposite sex for equal work in order to comply with the EPA. Similarly, if overtime premiums are paid to members of one sex because of a legal requirement, such premiums must also be paid to employees of the other sex.

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federal register

Wednesday
August 20, 1986

Part VI

Office of Management and Budget

Congressional Budget Office

Initial Sequestration Report for Fiscal Year 1987—A Joint Report to the Congress of the United States

OFFICE OF MANAGEMENT AND BUDGET

CONGRESSIONAL BUDGET OFFICE

Initial Sequestration Report for Fiscal Year 1987—A Joint Report to the Congress of the United States

AGENCY: Office of Management and Budget, Congressional Budget Office.

ACTION: Report transmittal.

SUMMARY: This notice transmits the initial Sequestration Report for Fiscal Year 1987 to the Congress of the United States in accordance with the provisions of the Balanced Budget and Emergency Deficit Control Act of 1985, Public Law 99–177.

BILLING CODE 3110-01-M

Congressional Budget Office
Congress of the United States

Office of Management and Budget
Executive Office of the President

August 20, 1986

Honorable George Bush
President of the Senate
Washington, D.C. 20510

Dear Mr. President:

In accordance with the alternative procedures of the Balanced Budget and Emergency Deficit Control Act of 1985, Public Law 99-177, the Director of the Office of Management and Budget and the Director of the Congressional Budget Office do hereby submit to you our initial Sequestration Report for Fiscal Year 1987.

This joint report estimates budget levels for 1987 following the specifications set forth in the Act. The budget estimates are based on laws and regulations in effect on August 15, 1986, and on appropriations for fiscal year 1986, because no appropriations for 1987 have been enacted. Since the projected deficit exceeds the maximum deficit amount by more than $10 billion, the report also calculates the amounts and percentages by which various budgetary resources must be sequestered to eliminate the deficit excess.

The report is in two parts: a summary and an appendix that provides a detailed listing of all sequestration reductions by agency and budget account. The summary section includes our economic assumptions and a discussion of conceptual differences regarding the application of P.L. 99-177 to a number of budget accounts. The report does not contain a listing of sequestration reductions for defense programs, projects, and activities because no defense appropriations bills for 1987 have been enacted.

With best wishes,

Sincerely yours,

Rudolph G. Penner
Director
Congressional Budget Office

James C. Miller III
Director
Office of Management and Budget

IDENTICAL LETTERS SENT TO HONORABLE THOMAS P. O'NEILL JR., HONORABLE PETE V. DOMENICI, HONORABLE WILLIAM H. GRAY III

CONTENTS

GENERAL NOTES

1. All years referred to are fiscal years unless otherwise noted.
2. Details in the tables and text may not add to totals because of rounding.
3. The sources for all data in this report are the Congressional Budget Office and the Office of Management and Budget, unless otherwise noted.

INTRODUCTION

The Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99-177) stipulates that budget deficits must be decreased annually and specifies measures that must be taken to achieve this result. The maximum deficit amounts specified by the Act are:

Fiscal Year	Maximum Deficit (in billions of dollars)
1987.....	144.0
1988.....	108.0
1989.....	72.0
1990.....	36.0
1991.....	zero

The Act provides that a deficit estimate that exceeds the maximum level by any amount in 1986 and 1991, or by more than $10 billion in 1987-1990, triggers an automatic spending reduction procedure to eliminate the excess deficit through the "sequestration" of budgetary resources. Except for special and trust funds, sequestration is the permanent cancellation of new budget authority and other authority to obligate and expend funds. (Amounts sequestered in special and trust funds remain in such funds.)

For 1986, the automatic procedure took place between January and March. In July, however, the Supreme Court ruled the procedure by which the sequestration occurred was unconstitutional because the Act violated the principle of separation of powers by granting the Comptroller General final authority to determine the size and composition of the sequestration the President must order. The Act contains a "fallback" mechanism (described below) that was implemented after the Supreme Court's decision that the Comptroller General's role was unconstitutional. The Congress passed a joint resolution reaffirming the 1986 reductions made earlier, and the President signed it (Public Law 99-366).

Under the fallback mechanism, the first step in the sequestration process for 1987 is submission of this joint report by the Director of the Office of Management and Budget (OMB) and the Director of the Congressional Budget Office (CBO) to the Congress. The report will be referred to the Temporary Joint Committee on Deficit Reduction, composed of the entire membership of the House and Senate Budget Committees. The report:

- o estimates budget base levels, including the amount by which the projected deficit exceeds the maximum deficit amount for the fiscal year covered by the report;
- o provides OMB and CBO economic assumptions, including the estimated rate of real economic growth; and

- o calculates the amounts and percentages by which various budgetary resources must be sequestered in order to eliminate any deficit excess.

This document is the Directors' initial report for 1987. The budget estimates reflect laws and regulations in effect on August 15, 1986. A revised report will be submitted on October 6. That report will reflect laws enacted and regulations promulgated after August 15 that affect the 1987 budget. If either report estimates a 1987 deficit in excess of $154 billion, the Directors must calculate the sequester needed to reduce the deficit to $144 billion -- the maximum deficit amount. After receiving the report the Temporary Joint Committee must, within five calendar days, report to the House and Senate a joint resolution "setting forth the contents of the report." Within the next five days the Congress is in session, both Houses are required to vote on the joint resolution. If the resolution becomes law, the President must follow its terms in issuing his sequester order.

This procedure applies to both the initial and the revised reports of the Directors. A sequester order based on the August 20 report would become effective October 1. A sequester order based on the October 6 report would become effective on October 15 or on the date the President signs the order, whichever is later.

BUDGET BASE LEVELS

This report deals only with fiscal year 1987. The OMB and CBO estimates of total revenues, outlays, and the deficit for 1987 are shown in Table 1. These estimates are made in accordance with the specifications set forth in the Act. They assume that current law for revenues and entitlements will continue unchanged, and that expiring provisions will terminate as scheduled.1/

For spending accounts that require appropriations, the OMB and CBO estimates are based on the appropriations enacted for fiscal year 1986, because no appropriations have yet been enacted for fiscal year 1987.2/ As required by the Act, the budget estimates include the receipts and outlays of the social security trust funds, even though they are legally off-budget and the benefits are exempt from sequestration.

1/ The Act permits an exception to the expiring-provision assumption for excise taxes dedicated to a trust fund (but not for spending authority in that trust fund) and for Commodity Credit Corporation price support programs. In these cases, the budget base levels are to assume extension of the provisions and programs through the fiscal year at current rates.

2/ See the discussion of conceptual issues on page 21.

Table 1.--BUDGET BASE LEVELS FOR 1987
(in billions of dollars)

Budget Aggregates	OMB Estimates	CBO Estimates	Average
Revenues	826.4	827.8	827.1
Outlays	982.6	998.5	990.5
Deficit	156.2	170.6	163.4

OMB's deficit estimate for 1987 is $156.2 billion, and CBO's deficit estimate is $170.6 billion. The average of the two deficit estimates is $163.4 billion, which exceeds the maximum deficit amount of $144.0 billion by $19.4 billion. Since the average deficit excess of $19.4 billion is greater than $10.0 billion, sequestration calculations are required in this report. They are discussed in a separate section below.

The major factors accounting for the $14.5 billion difference between the OMB and CBO baseline deficits are shown in Table 2. Conceptual differences regarding the baselines for appropriated entitlements and Federal pay raises, which are discussed in a separate section below, increase CBO's estimate of outlays by $4.7 billion above OMB's estimate. Technical estimating differences account for most of the remaining difference. Excluding pay raises, CBO's estimates of defense outlays are $5.2 billion higher than OMB's. Most of this difference is due to different assumptions about spendout rates. OMB assumes defense spendout rates consistent with the 1987 Congressional Budget Resolution. CBO assumes that defense outlays will follow historical spending patterns.

CBO's estimates for Commodity Credit Corporation (CCC) farm price supports is $5.1 billion higher than OMB's estimate due to CBO's assumption of advance deficiency payments for the 1987 crop year in fiscal year 1987 ($4.3 billion) and technical estimating differences ($0.8 billion).

Economic assumptions account for only $0.9 billion of the difference in the deficits. Both OMB and CBO project that the inflation rate underlying the cost-of-living adjustment (COLA) for social security and related programs will be below the 3 percent threshold set in current law. If legislation is enacted to override this threshold and pay a COLA in 1987, CBO projects a benefit increase of 1.3 percent and would raise its estimate of the baseline deficit by $0.8 billion. Under the lower benefit increase of 0.8 percent assumed by OMB, however, the higher outlays associated with the benefit increase would be offset by higher revenues and medicare premiums, leaving the OMB estimate of the baseline deficit unchanged.

On August 7, CBO estimated that the baseline deficit for 1987 was $173 billion. Subsequent developments have reduced the estimate by $2 billion. On August 15, the Health Care Financing Administration published final regulations eliminating periodic interim payments under Medicare, reducing 1987 outlays by $3.5 billion. On the other hand, estimated outlays for farm price supports have increased by $1.5 billion. About $1.2 billion of this

increase is due to higher estimated corn and soybean production; the remainder is due to the feed cost-sharing program announced by the Secretary of Agriculture on August 1. Other changes have little net effect on CBO's estimate of outlays.

Table 2.--DIFFERENCES BETWEEN OMB AND CBO BASELINE DEFICITS
(in billions of dollars)

OMB deficit	156.2
Differences:	
Conceptual:	
Appropriated entitlements	1.7
Pay raises:	
Defense	2.8
Nondefense	0.1
Subtotal, conceptual	4.7
Technical:	
Defense function	5.2
Farm price supports	5.1
Other outlays	0.7
Receipts	-2.2
Subtotal, technical	8.8
Economic:	
Receipts	0.7
Outlays	0.2
Subtotal, economic	0.9
Total differences	14.5
CBO deficit	170.6

ECONOMIC ASSUMPTIONS

The principal economic assumptions underlying the OMB and CBO budget base level estimates for fiscal year 1987 are shown in Table 3.

The Act requires the OMB and CBO Directors to estimate the rate of real economic growth for the fiscal year covered by their report, for each quarter of the fiscal year, and for the last two quarters of the preceding fiscal year. If either OMB or CBO projects real economic growth to be less than zero for any two consecutive quarters, or if the Department of Commerce reports actual real growth to have been less than 1 percent for two consecutive quarters, many of the provisions of the Act can be suspended by

the Congress. The OMB and CBO estimates for the rate of real economic growth for fiscal year 1987 are included in Table 3 and the quarterly estimates are shown in Table 4. Neither office projects real economic growth to be less than zero in any quarter during fiscal year 1987.

Table 3.--ECONOMIC ASSUMPTIONS
(Fiscal Year 1987)

Economic Variable	OMB	CBO
Gross National Product:		
Current dollars (in billions of dollars)	4449	4423
Percent change, year over year	6.8	6.2
Constant (1982) dollars (in billions of dollars)	3797	3777
Percent change, year over year	3.7	3.2
GNP Implicit Price Deflator (percent change, year over year)	3.0	2.9
CPI-W (percent change, year over year)	2.1	2.6
Civilian Unemployment Rate (percent, fiscal year average)	6.7	6.8
Interest Rates (fiscal year average):		
91-day Treasury bills	6.2	6.3
10-year Treasury notes	7.5	7.7

Table 4.--REAL ECONOMIC GROWTH RATES BY QUARTER
(in percents, annual rates)

	FY 1986			FY 1987 Estimates			
	Actual		Estimate				
	Jan-Mar 1986 a/	Apr-Jun 1986 a/	Jul-Sep 1986	Oct-Dec 1986	Jan-Mar 1987	Apr-Jun 1987	Jul-Sep 1987
OMB	3.8	1.1	4.0	4.0	4.2	4.2	4.2
CBO	3.8	1.1	3.0	3.6	3.9	3.7	3.3

a/ As reported by the Department of Commerce (July 22, 1986).

SEQUESTERABLE RESOURCES

The required reductions in outlays are not made directly; rather, they are to be achieved by the permanent cancellation -- referred to under the Act as "sequestration" -- of budget authority and other authority to obligate and expend funds. For defense programs, sequesterable budgetary resources are new budget authority provided for 1987 and unobligated balances of budget authority provided in previous years. For nondefense programs, the sequesterable budgetary resources are new budget authority, new direct loan obligations, new loan guarantee commitments, obligation limitations, and spending authority as defined in Section 401(c)(2) of the Congressional Budget Act of 1974. This definition of spending authority includes Federal payments financed by offsetting collections that are credited to budget accounts as well as various permanent appropriations.

Not all budgetary resources are subject to sequestration. The Act exempts a number of programs and activities of the Federal Government from the sequestration process. As shown in Table 5, the largest are social security benefits, net interest, certain low-income programs, veterans compensation and pensions, and regular State unemployment insurance benefits. Also exempt from sequestration are prior legal obligations of the Government in certain specified budget accounts, as well as the program bases for programs with automatic spending increases resulting from changes in price indexes (mostly retirement and disability programs). Federal administrative expenses for otherwise exempt programs and activities, however, are sequesterable, including programs that are self-supporting. Outlays from obligated balances for defense programs and outlays from obligated and unobligated balances of prior-year appropriations for nondefense programs are generally not subject to sequestration. Defense contracts can be modified or terminated to achieve outlay savings, but the President has until September 5 to choose whether or not to do so for fiscal year 1987.

Certain programs and activities, while not exempt, are subject to special rules that have the effect of limiting the amount of the spending reduction. For example, the sequestration of budgetary resources for medicare, veterans medical care, and certain health programs (but not for the administrative expenses of these programs) is limited to 2 percent annually in 1987 through 1991. The total amount of the automatic spending increases (primarily cost-of-living adjustments) is sequesterable.

For credit programs, the measures governing sequesterable budgetary resources are direct loan obligations and loan guarantee commitments. In the event of a sequester, the Act requires that credit limitations enacted in annual appropriation acts be reduced, and that de facto limitations be imposed on both types of new credit activity where there is no enacted limitation.

Although for most accounts CBO and OMB agree or are close to each other on the levels of budgetary resources and outlays, there are some exceptions. The largest exception concerns the sequestration of the administrative expenses of the Postal Service. Both CBO and OMB agree that $1.2 billion of budgetary resources are sequesterable. CBO believes that there is no evidence that the Postal Service has taken any steps to reduce spending in response to the President's sequestration order of March 1986 (as reaffirmed

by P.L. 99-366). Moreover, the Administration appears to have no mechanism for enforcing a sequestration order with regard to the Postal Service. CBO assumes that, as in 1986, a 1987 sequester order would not cause the Postal Service to make any specific spending reductions. CBO therefore shows no outlay savings resulting from the sequestration of budgetary resources for the Postal Service. In contrast, OMB believes that the Postal Service will comply with the Act to reduce its outlays, consistent with the across-the-board percentage sequestration applied to the functions and programs of the executive, legislative, and judicial branches -- despite the fact that the Postal Service's budgetary resources are not subject to OMB apportionment controls, and despite questions concerning the amount of savings achieved in 1986.

In accordance with the provisions of the Panama Canal Commission Authorization Act, Fiscal Year 1987 (P.L. 99-368), the sequestration report shows no reduction in budgetary resources or outlays for the Panama Canal Commission. Section 6 of that Act amends the Panama Canal Act of 1979 by adding the following new subsection: "Notwithstanding any other provision of law, no reduction under any order issued pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985 shall apply to the Commission if the implementation of such an order would result in a payment to the Republic of Panama...." While this provision does not change the instructions given to the Directors in the Balanced Budget Act with regard to preparation of their joint report, it is intended to make any sequestration order against the Panama Canal Commission unenforceable. One way to handle these conflicting instructions would be to show sequesterable budgetary resources for the Commission but no outlay savings. To avoid this peculiar result, the Directors have decided to show no sequesterable resources for the Panama Canal Commission, even though the Balanced Budget Act makes no provision for exempting the Commission.

Congress has also passed, but the President has not yet signed, the Insular Areas Regulation Act (H.R. 2478). Section 19 of the bill requires that Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands be paid the full amounts required under the laws establishing their relationships with the United States, notwithstanding the Balanced Budget Act. Like the Panama Canal Commission Authorization, however, the bill does not amend the instructions to the Directors contained in the Balanced Budget Act.

If such legal ambiguities are to be avoided, exempting these and other programs from sequestration should be accomplished by amending the specifications for the sequestration report contained in the Balanced Budget Act.

Table 5 provides further detail on the OMB and CBO base level outlay estimates for 1987. An estimated $169.0 billion of 1987 outlays for defense programs, or 62 percent of total defense outlays, are associated with budgetary resources subject to an across-the-board percentage reduction.

An estimated $231.1 billion, or about one-third of estimated outlays for nondefense programs, are associated with sequesterable budgetary resources. Of this, $48.8 billion in estimated outlays are for programs with automatic spending increases, primarily Federal employee retirement and disability programs. For these programs, the amount of spending reduction required by

the Act is limited to the cost-of-living adjustments. Another $86.4 billion in estimated outlays are associated with certain special rule programs, of which the largest is medicare. The Act also limits the extent of spending reductions for these programs.

Of the total estimated 1987 nondefense outlays of $716.9 billion, an estimated $96.0 billion -- about 13 percent of nondefense outlays -- are associated with budgetary resources subject to an across-the-board percentage reduction.3/ An estimated $485.8 billion, or two-thirds of total estimated outlays for nondefense programs, are exempt from sequestration by the Act.

For both defense and nondefense programs, an estimated $590.4 billion in outlays, or 60 percent of total outlays, are associated with budgetary resources exempt from sequestration.

3/ The estimated $96.0 billion nondefense total subject to across-the-board reduction, which is shown in Table 5, does not include $11.7 billion of 1988 outlays for CCC. The sum of these two figures is $107.7 billion, the estimated nondefense outlays associated with across-the-board sequesterable budgetary resources, as shown in Table 6.

Table 5.--BASE LEVEL OUTLAY ESTIMATES FOR 1987
(dollars in billions)

Category	OMB Estimates	CBO Estimates	Average Estimate	Average Percent of Total
Defense Programs a/:				
Subject to across-the-board reduction	164.3	173.6	169.0	17.1%
Exempt from sequestration b/	105.3	104.0	104.6	10.6
Subtotal, defense programs	269.6	277.6	273.6	27.6
Nondefense Programs:				
Subject to sequestration:				
Programs with automatic spending increases c/	49.1	48.4	48.8	4.9
Certain special rule programs d/	86.3	86.5	86.4	8.7
Subject to across-the-board reduction	94.2	97.8	96.0	9.7
Subtotal, subject to sequestration	229.6	232.7	231.1	23.3
Exempt from sequestration:				
Social security	204.3	204.3	204.3	20.6
Net interest	139.1	138.3	138.7	14.0
Earned income tax credit	1.2	1.3	1.3	0.1
Low-income programs e/	61.8	63.6	62.7	6.3
Veterans compensation and pensions	14.2	14.1	14.2	1.4
State unemployment benefits	14.8	14.5	14.7	1.5
Offsetting receipts	-51.5	-51.4	-51.5	-5.2
Other f/	99.4	103.4	101.4	10.2
Subtotal, exempt from sequestration	483.4	488.2	485.8	49.0
Subtotal, nondefense programs	713.0	720.9	716.9	72.4
Total	982.6	998.5	990.5	100.0%

a/ Budget function 050 excluding FEMA programs.
b/ Largely outlays from obligated balances.
c/ Primarily Federal employee retirement and disability programs.
d/ Guaranteed student loans, foster care and adoption assistance, medicare, veterans medical care, and other health programs.
e/ AFDC, child nutrition, medicaid, food stamps, SSI and WIC.
f/ Outlays from prior-year appropriations, certain prior legal obligations, and small exempt programs.

SEQUESTRATION CALCULATIONS

The Act establishes the following steps for the sequestration calculations, which are shown in Table 6.

First, the deficit excess is calculated by subtracting the maximum deficit amount from the estimated deficit in the budget base. One-half of the excess is assigned to defense programs (budget accounts in the national defense function, 050, excluding the Federal Emergency Management Agency) and the other half to nondefense programs.

Second, the total amount of outlay savings from eliminating automatic spending increases is calculated. Provided that the resulting savings are not more than one-half of the total required reduction, the automatic increases are eliminated. One-half of the resulting savings for indexed retirement and disability programs are applied toward the required reduction amount for defense programs and the other half to nondefense programs. All savings from eliminating automatic spending increases in three other specific programs -- the National Wool Act, the special milk program, and vocational rehabilitation -- are applied to the required reduction in outlays for nondefense programs.

Third, the amount of outlay savings to be obtained by applying four special rules is calculated. These special rules are for guaranteed student loans, foster care and adoption assistance, medicare, and certain health programs, and are described in a later section of this report.[4/] The estimated savings from these four special rules are applied toward the required spending reductions in nondefense programs.

The remaining reductions in defense programs and nondefense programs must be taken on a uniform percentage basis, computed separately for each category. The uniform reduction percentages are computed from outlay estimates. The remaining outlay savings to be achieved in defense and nondefense spending are divided by the estimated outlays associated with sequesterable budgetary resources in each category. These uniform percentages are then applied to all of the remaining sequesterable budgetary resources (budget authority, credit authority, and other spending authority) for defense and nondefense programs.

In the event that the Directors of OMB and CBO are unable to agree on any of these calculations, the Act requires that their estimates be averaged to the extent necessary to produce a single, consistent set of data that achieves the required deficit reduction.

4/ A number of special rules apply to other programs, such as the Commodity Credit Corporation, but they do not enter into the sequester calculations at this step.

Table 6.--SEQUESTRATION CALCULATIONS FOR 1987
(outlays in millions of dollars)

Category	OMB	CBO	Average
Defense Programs:			
Total required reductions	6,086	13,323	9,704
Estimated savings from automatic spending increases:			
Indexed retirement programs a/	139	221	180
Amount remaining to be obtained from uniform percentage reductions of budget resources	5,947	13,102	9,525
Estimated outlays associated with across-the-board sequesterable budget resources	164,330	173,635	168,983
Uniform reduction percentage	3.6%	7.5%	5.6%
Nondefense Programs:			
Total required reductions	6,086	13,323	9,704
Estimated savings from automatic spending increases:			
Indexed retirement programs	139	221	180
Other indexed programs	7	7	7
Estimated savings from the application of special rules:			
Guaranteed student loans	29	31	30
Foster care and adoption assistance	2	2	2
Medicare	1,115	1,240	1,178
Other health programs	164	161	163
Amount remaining to be obtained from uniform percentage reductions of budget resources	4,631	11,661	8,146
Estimated outlays associated with across-the-board sequesterable budget resources b/	108,350	106,998	107,674
Uniform reduction percentage	4.3%	10.9%	7.6%

a/ These retirement programs are not included in the national defense function of the budget; most are included in the income security function.

b/ Includes estimated 1988 outlays for the Commodity Credit Corporation (CCC) that can be affected by a 1987 sequester (see discussion of special rule for the CCC). The OMB estimate is $14,137 million, the CBO estimate is $9,215 million, and the average is $11,676 million.

Table 6 shows the OMB and CBO calculations and the averaged amounts for each of the steps described above. The total required outlay reduction for 1987 is $19.4 billion, one-half of which -- $9.7 billion -- must be obtained from defense programs and the other half from nondefense programs. An estimated $359 million in outlay savings in 1987 can be achieved by eliminating the automatic spending increases scheduled for civil service, military, and other Federal retirement and disability programs. One-half, or $180 million, is allocated to defense programs, and one-half to nondefense programs. Another $7 million in savings can be obtained by eliminating the automatic spending increase for the National Wool Act. (The special milk program is also an indexed program but in 1987 the change in the price index is projected to be below the threshold needed to trigger an increase.) The outlay savings for programs where the spending reductions are limited by special rules (guaranteed student loans, foster care and adoption assistance, medicare, and several other health programs) are estimated to be $1.4 billion.

After crediting one-half of the retirement cost-of-living adjustment savings to defense programs, the remaining outlay reductions of $9,525 million in the national defense function in 1987 must be obtained by reducing new budget authority and unobligated balances by a uniform percentage. The 1987 outlays associated with sequesterable budgetary resources for defense programs are estimated to be $164.3 billion by OMB and $173.6 billion by CBO. The average of these amounts is $169.0 billion. Thus, the uniform percentage to be applied to sequesterable defense budgetary resources is 5.6 percent. The uniform percentage to be applied to nondefense programs, after deducting the savings from one-half of the retirement cost-of-living adjustments and from the special rule calculations, is 7.6 percent.

The OMB and CBO calculations generally assume that all nonexempt budgetary resources can be sequestered so as to produce outlay savings, including entitlement programs and other mandatory spending programs where the spending authority is not controlled through the annual appropriations process. In a few instances, where the uniform percentage reduction of budgetary resources would not produce any outlay savings (for example, for credit programs where new direct loan limits are higher than expected program levels), no outlays were included in the sequester base used for calculating the reduction percentages.

AUTOMATIC SPENDING INCREASES

The programs with automatic spending increases subject to sequestration by the Balanced Budget and Emergency Deficit Control Act are listed in Table 7. The scheduled percentage increases are shown as well as the amount of estimated outlay savings to be gained by eliminating these increases. The OMB and CBO estimates differ for the amounts to be reduced by sequestration, because OMB projects a 0.8 percent cost-of-living adjustment (COLA) for civil service and military retirement, while CBO projects a 1.3 percent increase. Table 7 shows the OMB and CBO estimates of the COLAs for each program, and the average outlay savings from a 100 percent reduction as a result of sequestration.

Table 7.--AUTOMATIC SPENDING INCREASES FOR 1987 SUBJECT TO SEQUESTRATION
(estimated outlays in millions of dollars)

Program	Scheduled Increase (percent) OMB	Scheduled Increase (percent) CBO	Sequestration Reductions Outlays	Sequestration Reductions Percent
Part A, Retirement and Disability Progams:				
Black lung benefits a/	2.0	2.0	7.8	100
CIA retirement and disability	0.8	1.3	b/	100
Civil service retirement and disability fund	0.8	1.3	186.4	100
Comptrollers General retirement system	0.8	1.3	*	100
Foreign service retirement and disability fund	0.8	1.3	2.0	100
Judicial survivors' annuities fund c/	---	---	---	---
Longshoremen's and harbor workers' compensation benefits d/	1.7	1.7	1.1	100
Military retirement fund	0.8	1.3	142.0	100
NOAA retirement	0.8	1.3	*	100
Pensions for former Presidents e/	2.0	2.0	*	100
Railroad retirement tier II f/	---	---	---	---
Retired pay, Coast Guard	0.8	1.3	2.9	100
Retirement pay for commissioned PHS officers	0.8	1.3	0.7	100
Special benefits, FECA g/	0.5	1.2	3.5	100
Special benefits for disabled coal miners a/	2.0	2.0	13.0	100
Tax Court judges survivors' annuity fund c/	---	---	---	---
Total, Part A			359.4	
Part B, Other Indexed Programs:				
National Wool Act h/	3.5	3.5	6.8	100
Special milk programs i/	---	---	---	---
Vocational rehabilitation j/	---	---	---	---
Total, Part B			6.8	

a/ Benefits are indexed to General Schedule pay, which is assumed to increase by 2 percent for fiscal year 1987.
b/ Classified; not included in total.
c/ Benefits are indexed to judicial pay if increases are 5 percent or more. Judicial pay is assumed to increase by 2 percent for fiscal year 1987.
d/ Benefits are indexed to the change in national average private weekly earnings from October to June 1985 to October to June 1986.
e/ Benefits are indexed to Executive Level pay, which is estimated to increase by 2 percent for fiscal year 1987.
f/ Tier II beneficiaries receive 32.5 percent of the full-year increase in the CPI-W, but only if that increase is at least 3 percent. Since both OMB and CBO project an increase of less than 3 percent, no COLA is anticipated for this account.

(see footnotes on next page)

Table 7.--AUTOMATIC SPENDING INCREASES FOR 1987 SUBJECT TO SEQUESTRATION (CONT.)

g/ The scheduled percent increase is the estimated change in the CPI-W from December 1985 to December 1986.
h/ Payment increases are based on changes in the wool parity price.
i/ Benefits are indexed to the Producer Price Index for Fresh Processed Milk. The increase during the measuring period (May 1986 to May 1987) is expected to be too small to trigger a COLA.
j/ This program is maintained at the 1986 appropriated level for the budget base, allowing for no sequesterable automatic spending increase.
* $50 thousand or less.

SPECIAL RULES

The Act provides special rules for the sequestration of budgetary resources for certain Federal programs. This section describes these special rules and their application to the 1987 sequestration calculations. The estimated outlay savings derived from the first four rules are shown separately in Table 6. Any outlay savings resulting from the remaining special rules are included in the amount to be obtained from the uniform percentage reductions.

Guaranteed Student Loan Program

The Act requires two changes in the guaranteed student loan (GSL) program to occur automatically under sequestration. First, the statutory factor for calculating the quarterly special allowance payments to lenders will be reduced by 0.40 percentage points for the first four quarters after the loan is made. Second, a student's origination fee will increase by 0.50 percentage points. In both cases, sequestration affects only GSL loans made during the applicable fiscal year, but after the order is issued. For 1987, these changes are estimated to reduce spending authority by $48 million and outlays by $30 million.

Foster Care and Adoption Assistance Programs

The Act limits the amount to be sequestered in the foster care and adoption assistance programs to increases in foster care maintenance payment rates or adoption assistance payment rates taking effect during the current fiscal year. Moreover, they are limited to the extent that the reductions can be made by reducing Federal matching payments by a uniform percentage across States. The increases in payment rates for these programs are made by the States and localities. Any increases planned by the States for fiscal year 1987 were included in the OMB and CBO calculations for sequestration reductions. The estimated savings in 1987 from sequestration are $2.4 million in spending authority and $1.7 million in outlays.

Medicare

The sequestration reductions in the medicare program are to be achieved by reducing payment amounts for covered services. No changes in co-insurance or deductible obligations are to be made, and covered services are unaffected under a sequestration order. Under such an order, each payment amount would be reduced by a maximum of 2 percent for 1987 and each subsequent year in which there is sequestration, relative to whatever level of payment would otherwise be made under medicare law and regulation. The reduction would be proportionately reduced in any year in which the excess deficit is small enough to permit a smaller reduction. Based on the need for a $19.4 billion sequestration in 1987, a reduction of 2 percent will be required for this year. The estimated outlay savings to be achieved in 1987 by applying this special rule is $1.2 billion.

Veterans Medical Care and Other Health Programs

The Act limits reductions in budget authority for veterans medical care, community and migrant health centers, and Indian health services and facilities to 2 percent in 1987 and any subsequent year. The amount of savings to be achieved in 1987 by applying this special rule for the nonadministrative funds in these programs is $192 million in budget authority and $163 million in estimated outlays.

Child Support Enforcement Program

In the child support enforcement (CSE) program, the Act provides that sequestration of entitlement payments to States, including incentive payments from the assistance payments account, is to be accomplished by reducing the Federal matching rates for State administrative expenses. For 1987, the Federal matching rate on most expenditures will be reduced from 70 percent to 63.91 percent, and the rate for computer-related expenditures will be reduced from 90 percent to 82.17 percent. This reflects a reduction in the matching rates to achieve the same 7.6 percent reduction applied to other nondefense programs, adjusted to allow also for the sequestration of spending on incentive payments.

If States increase their share of CSE spending to maintain total program spending at the expected 1987 level, this reduction in the Federal matching rate will lower Federal outlays by the same percentage as other nondefense programs. If States do not increase their 1987 spending, however, the lower Federal matching rate would result in a larger percentage reduction in Federal spending than the Act requires. The amount of savings to be achieved in 1987 by applying this special rule is estimated to be $63.5 million in spending authority and $62.9 million in outlays. In addition, savings of $1.7 million in outlays are to be achieved by cutting Federal administration and research and by offsetting collections.

Unemployment Compensation Programs

The Act provides that the following items are not to be sequestered: regular State unemployment benefits, the State share of extended unemployment benefits, benefits paid to former Federal employees and former members of the armed services, and loans and advances to the State and Federal unemployment

accounts. The Federal share of extended benefits, unemployment insurance for railroad employees, other federally paid benefits, and State and Federal administrative expenses are to be sequestered.

Both the Federal and State shares of extended unemployment benefits are paid from the unemployment trust fund -- the Federal share from a Federal account and the State share from each State's account. The amount of each weekly extended benefit is set by State law. The Act permits any State to reduce the weekly extended benefit amount by a percentage equal to the percentage reduction in the Federal share. If States do not change their laws to provide for such a reduction, weekly benefit payments will not be reduced, the State share will increase by the amount of the decrease in the Federal share, and total budget outlays, which include both Federal and State benefits, will not be changed by the sequestration. Only one State expected to be paying extended benefits in 1987 has reduced its weekly benefit amount, as permitted by the Act. That State (Louisiana) has reduced each payment by the amount of the reduction in the Federal share, leaving the State share unreduced.

Commodity Credit Corporation

The Act requires that payments and loan eligibility under any contract entered into by the Commodity Credit Corporation (CCC) after a sequestration order has been issued for a fiscal year be subject to a percentage reduction. The Act requires that reductions for all farm commodities supported by the CCC be made in a uniform manner, including all noncontract programs, projects, and activities within CCC's jurisdiction. The Act further stipulates that outlay reductions in the post-sequester year that are the result of contract adjustments in the sequester year should be credited to the overall outlay reduction required in the sequester year. The amount of outlay savings to be achieved by applying this special rule is estimated to be $0.4 billion in 1987, and $0.9 billion in 1988. The actual amount of savings realized in each year will depend upon how the sequester is implemented for the various CCC programs. In accordance with the Act, however, all $1.3 billion of these estimated outlay savings are credited toward the $19.4 billion spending reduction required for 1987.

Mine Workers Disability Compensation

Increases in disability benefits under the Federal Mine Safety and Health Act are to be treated in the same manner as other automatic spending increases. This Act covers black lung and special benefits for disabled coal miners, which are indexed to changes in Federal pay for civilian employees. Since the President has proposed a 2 percent increase in these pay levels in 1987, the savings from the application of this special rule are estimated to be $21 million.

Federal Pay

The Act provides that rates of pay for civilian employees (and rates of basic pay, basic subsistence allowances, and basic quarter allowances for members of the uniformed services), or any scheduled pay increases, may not be reduced pursuant to a sequestration order. Budgetary resources available for Federal pay, however, will be subject to sequestration as part of the

reduction of administrative expenses. The total amount of Government-wide savings to be achieved in 1987 from reducing available funds for employee compensation cannot be estimated because program managers are urged not to resort to personnel furloughs and reductions-in-force until other methods of achieving savings prove insufficient, such as reducing spending for travel, printing, supplies, and other services.

Defense Contracts

Existing contracts in defense programs can be terminated or modified to achieve outlay savings if such action would neither result in a net loss to the Government nor violate the legal obligations of the Government, and if the President notifies the Comptroller General and the Congress of proposed contract terminations and modifications by September 5.

SEQUESTRATION REDUCTIONS

A summary of the sequestration of budgetary resources and the estimated outlay savings for 1987 is provided for defense programs in Table 8 and for nondefense programs by function in Table 9. The defense outlay reduction of $9.5 billion is lower than one-half of the required $19.4 billion because the savings from eliminating automatic spending increases for Federal retirement programs -- including military retirement -- are counted in the income security function and are shown in the nondefense savings table. Table 10 provides a summary of the 1987 sequestration reductions by agency. In most instances additional outlay savings would be gained in 1988 and later years as a result of the elimination of various 1987 automatic spending increases and the cancellation of 1987 budget authority. The 1988 savings have not been estimated for this report.

A detailed listing of the sequestration reductions by agency and budget account is provided as an appendix to this report. The report does not contain a listing of sequestration reductions for defense programs, projects, and activities because no defense appropriations bills for 1987 have been enacted.

Table 8.--DEFENSE PROGRAM SEQUESTRATIONS FOR 1987
(in billions of dollars)

Function 050	Spending Authority a/	Estimated Outlays
Department of Defense-Military:		
Military personnel	3.8	3.7
Operation and maintenance	4.2	3.2
Procurement	7.7	1.0
Research, development, test, and evaluation	2.1	1.0
Military construction	0.5	0.1
Family housing and other	0.4	0.2
Subtotal, DOD	18.7	9.2
Atomic energy defense activities	0.4	0.3
Other defense-related activities b/	0.1	*
Total	19.1	9.5

a/ Includes new budget authority for 1987 and unobligated balances from budget authority provided in previous years.
b/ Includes the function 050 portion of Federal Emergency Management Agency budget accounts which are reduced at the same rate as nondefense programs.
* $50 million or less.

Table 9.--NONDEFENSE PROGRAM SEQUESTRATIONS FOR 1987 BY FUNCTION
(in billions of dollars)

Function	Spending Authority a/	Direct Loan Obligations	Loan Guarantees	Estimated Outlays
International affairs.....	1.6	0.6	0.9	0.8
General science, space and technology.....	0.7	---	---	0.5
Energy.....	0.5	0.3	0.2	0.2
Natural resources and environment.....	1.2	*	---	0.7
Agriculture.....	1.5	1.1	0.6	1.7 b/
Commerce and housing credit.	0.4	0.3	24.4	0.4
Transportation.....	2.4	*	*	0.5
Community and regional development.....	0.4	0.1	*	0.1
Education, training, employment, and social services..	2.0	*	---	0.7
Health.....	0.8	*	---	0.5
Medicare.....	1.3	---	---	1.3
Income security c/.....	1.8	*	---	1.0
Social security.....	0.2	---	---	0.1
Veterans benefits and services.....	0.4	*	2.9	0.3
Administration of justice...	0.5	---	---	0.4
General government.....	0.5	---	---	0.5
General purpose fiscal assistance.....	0.1	---	---	0.1
Allowances.....	*	---	---	*
Total.....	16.4	2.3	29.0	9.9

a/ Includes new budget authority, obligation limitations, and other spending authority for 1987.

b/ Includes $0.9 billion in estimated 1988 outlay savings for Commodity Credit Corporation (CCC) programs (see discussion of special rule for CCC).

c/ Includes $0.2 billion in spending authority and outlays from eliminating automatic spending increases for Federal retirement programs that are credited as reductions in defense programs.

* $50 million or less.

Table 10.--SEQUESTRATIONS FOR 1987 BY AGENCY
(in billions of dollars)

Department or Other Unit	Spending Authority a/	Direct Loan Obligations	Loan Guarantees	Estimated Outlays
Legislative Branch.....	0.1	---	---	0.1
The Judiciary.....	0.1	---	---	0.1
Executive Office of the President.....	*	---	---	*
Funds appropriated to the President.....	1.1	0.4	*	0.5
Agriculture.....	2.1	1.6	0.7	2.2 b/
Commerce.....	0.2	---	*	0.1
Defense-Military.....	18.7	---	---	9.2
Defense-Civil.....	0.4	---	---	0.3
Education.....	1.1	*	---	0.3
Energy.....	0.9	---	---	0.4
Health and Human Services, except Social Security.....	2.7	*	---	2.3
Health and Human Services, Social Security.....	0.2	---	---	0.1
Housing and Urban Development.....	1.1	0.1	24.1	0.1
Interior.....	0.5	*	*	0.4
Justice.....	0.3	---	---	0.2
Labor.....	0.6	---	---	0.3
State.....	0.3	*	---	0.2
Transportation.....	2.3	*	*	0.5
Treasury.....	0.5	---	---	0.4
Environmental Protection Agency.....	0.3	*	---	0.1
General Services Administration.....	0.1	---	---	*
National Aeronautics and Space Administration.....	0.6	---	---	0.4
Office of Personnel Management.....	0.3	---	---	0.3
Small Business Administration.....	*	*	0.4	*
Veterans Administration.....	0.4	*	2.9	0.3
Other independent agencies..	0.7	0.1	0.9	0.5
Allowances.....	*	---	---	*
Total.....	35.5	2.3	29.0	19.4

a/ Includes new budget authority for 1987 (except for expiring authority), unobligated balances from budget authority provided in previous years (Defense-Military and other function 050 programs and certain administrative costs), obligation limitations for and other spending authority for 1987.

b/ Includes $0.9 billion in estimated 1988 outlay savings for Commodity Credit Corporation (CCC) programs (see discussion of special rule for CCC).

* $50 million or less.

CONCEPTUAL ISSUES

In the 1986 sequestration report, the Directors of CBO and OMB reached agreement in interpreting all the various provisions of the Balanced Budget and Emergency Deficit Control Act except one: the application of the Act to interest payments made to the Washington Metropolitan Area Transit Authority (WMATA). This report has added two interest payment accounts to the WMATA issue, and three new issues on appropriated entitlements, pay raises, and Veterans Administration (VA) policy loans.

Appropriated Entitlements

The issue here is how certain "entitlement" programs, such as medicaid, supplemental security income, veterans compensation and others that are appropriated annually should be counted in determining the baseline. Should they be classified as "spending authority" programs under Section 401(c)(2) of the Congressional Budget Act of 1974 (if so, the baseline for these programs would be based on current law) or as annually appropriated programs (if so, the baseline would be equal to the latest annual appropriation)?

Section 251(a)(6) of the Act states that the budget base shall be determined by:

> "(A) assuming...the continuation of current law in the case of revenues and spending authority as defined in section 401(c)(2) of the Congressional Budget Act of 1974;
>
> (B) assuming in the case of all accounts to which subparagraph (A) does not apply, appropriations equal to prior year's appropriations except to the extent that annual appropriations or continuing appropriations for the entire fiscal year have been enacted..."

Section 401(c)(2) of the Congressional Budget Act of 1974, as amended by the Balanced Budget Act, defines "spending authority" as authority to enter into contracts, incur indebtedness, or make payments, "the budget authority for which is not provided for in advance by appropriation Acts." (This phrase is repeated in Sections 401(c)(2)(A),(B),(C), (D), and (E)).

In OMB's view this language is unambiguous: so-called appropriated "entitlement" programs cannot be classified as "spending authority" programs under the definitions of Section 401(c)(2) because they are provided budget authority in advance by appropriation acts. Whatever one might suspect

Congress intended or thought it intended in passing this legislation, the language in this section of the statute is unambiguous and can be read in only one way. In interpreting unambiguous statutory language, previous Congressional treatment of these programs is immaterial.5/ Viewing the language of the new statute as it is and finding no ambiguity, OMB believes that Congress has explicitly precluded these programs from being classified as "spending authority" programs.

In the light of twelve years of settled Congressional practices under the Congressional Budget Act, CBO believes that appropriated entitlements should be included in the budget base according to its and OMB's best estimates of next year's spending levels in those programs. Estimating appropriated entitlements at the previous year's appropriated level would lead to an understatement of the estimated deficit.

In CBO's view, "spending authority," as defined in Section 401(c)(2), applies to any program, including appropriated entitlements, whose budgetary resources precede and do not necessarily depend on annual appropriations. In programs that have independent spending authority but do not have a trust fund or similar funding mechanism, the appropriation committees annually appropriate funds to satisfy prior Federal contracts, debt, and benefit commitments. However, the Congress repeatedly has asserted that commitments in these programs would be legally enforceable in the absence of these appropriations. Because provisions of the Congressional Budget Act of 1974 -- including those defining "spending authority" and "budget authority" -- are rules of the two Houses of Congress, CBO has followed the House's and the Senate's latest definitions of entitlements, including appropriated entitlements, to the extent that they are the same.

Pay Raises

The Act states that in calculating the baseline, Federal pay adjustments should be assumed "as recommended by the President" (Section 251(a)(6)(D)). Both OMB and CBO agree that the baseline estimates should reflect the pay rates proposed in the President's Mid-Session Review -- 4 percent for military personnel effective October 1, 1986, and 2 percent for civilian employees effective January 1, 1987. OMB and CBO differ, however, in whether this section requires inclusion of additional budgetary resources to fund these higher pay rates.

In OMB's view, neither Section 251(a)(6)(D) nor any other section of the Act permits budgetary resources for higher pay rates to be added to the baseline. As described above, Section 251(a)(6) clearly defines how the budget base

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5/ Congressional treatment of these programs is also inconsistent. For example, when the law establishing the black lung disability trust fund was considered in the Congress, the requirement that spending from the trust fund be provided in appropriation acts was added to avoid referral of the authorizing legislation to appropriations committees, which Congressional rules require if "spending authority" is included in legislation. Thus, in this case, an appropriated entitlement was not considered "spending authority."

shall be determined. Anticipated or proposed appropriations are not allowed to be counted as part of the budget base under this or any other section of the Act. Because no appropriations to fund Federal pay adjustments as recommended by the President were enacted by August 15, the statute does not permit these items to be added to the base. In OMB's view, where the statute is clear there is no occasion or need to probe for alleged Congressional intent or consult report language to divine its meaning.

In any event, the purpose of including Section 251(a)(6)(D) was apparently to prevent the President from reducing outlays by proposing a reduction in pay. The President proposed to reduce pay rates in the 1986 Budget, and Congress sought to prevent this action from being used as a way to project a lower deficit.

In CBO's view, the instruction in the Balanced Budget Act concerning the President's recommended pay adjustments must be read in the complete context of Section 251(a)(6). That material instructs the agencies how to estimate next year's spending, revenues and deficit -- the so-called budget base. If, as in the OMB view, no budgetary resources are added to the budget base in order to fund pay raises, the instruction becomes meaningless, and the deficit is understated. If Federal pay increases were to be ignored for next year's estimates, Congress would not have written any instruction on Federal pay levels, especially not in the definition of the budget base. Rather, the instruction recognizes that pay raises typically are financed through a supplemental appropriation that follows the regular appropriation acts by several months. CBO concludes that this instruction tells the agencies to estimate next year's supplemental for Federal pay increases in light of the President's latest authoritative statement of what he intends Federal pay levels to be and how much of any increase he expects Federal agencies to absorb in their regular appropriations for salary and expenses. CBO therefore has included in its estimate of the budget base pay raise allowances in the dollar amounts recommended by the President in the Mid-Session Review of the 1987 Budget.

Washington Metropolitan Area Transit Authority and Other Interest Payment Programs

OMB and CBO are still unable to resolve a conceptual issue regarding the application of the Act to interest payments made to WMATA. In exploring the WMATA issue, CBO and OMB realized that they differ in the treatment of two other interest payment accounts, the medical facilities guarantee and loan fund and the higher education facilities loans and insurance (HEFLI) accounts. These accounts were not sequestered in the January report. However, in OMB's view the same arguments that apply to WMATA also apply to these accounts and thus, OMB has classified the budget authority and outlays of these accounts as sequesterable. CBO continues to believe that all three interest payment programs are not sequestrable.

Under the authority of the National Capital Transportation Act of 1969, as amended, the Secretary of Transportation has guaranteed the principal and interest of $997 million in borrowing by WMATA. The National Capital Transportation Amendments of 1979 further authorized the Secretary of Transportation to pay two-thirds of the principal and interest due on these federally guaranteed WMATA bonds. By agreements between the Secretary and

the Authority, executed in 1979 and 1982, the Federal Government has made interest payments to WMATA. These payments are conditional on compliance with the Antideficiency Act, as amended, which prohibits expenditures in advance of, or in excess of, available appropriations. The Congress has regularly and annually appropriated funds to cover the Federal obligation to WMATA, including the payments made in 1986, which amounted to $51.7 million. The medical facilities and HEFLI programs are operated in a similar manner.

CBO regards the 1987 interest payments in these programs as nonsequesterable on two grounds. First, Federal spending exists in these accounts solely to satisfy fully executed past commitments of the Federal Government under contracts authorized by law. Current budget practices concerning this type of spending are inconsistent. Sometimes such spending is shown as a spendout of obligated balances of budget authority (and, as such, exempt), and sometimes such spending is shown as appropriations (in CBO's view, to satisfy antecedent 401(c)(2) spending authority). CBO believes that interest subsidy payments should be uniformly characterized as spendouts of obligated balances of budget authority. CBO believes that, in the light of the Balanced Budget Act, budget accounting practices should be construed in a way that avoids any possibility that the Federal Government would default on loan repayments to private lenders.[6/]

Second, in the case of WMATA, the bonds are federally guaranteed both as to principal and interest. If the Federal Government defaults on its obligation to pay its interest share by reason of a sequester, the Government nevertheless would remain liable for the full payment under the guarantee, a liability that CBO believes is enforceable by a claim against the United States. CBO believes that if a sequestration would ultimately and necessarily be defeated by claims, judgments and relief acts, which are exempt from sequestration, then the amount in question should not be sequestered.

Similarly, in the case of the medical facilities loan account, the program's underlying statute authorizes the Secretary of HHS to borrow from the Treasury to avoid defaulting on these payments. Both the back-up duty and the basic loan commitments presumably are enforceable in the courts. Thus, the funds would have to be paid in any event -- either because of back-up borrowing, or because they would come from the exempt account that covers claims against the United States. In these circumstances, CBO sees no purpose to be served by sequestering this account.

OMB agrees that the appropriations for these accounts ought not to be sequestered, but does not believe this outcome is permitted by the statute's language. The Act provides exemptions only for certain named prior legal obligations and, more generally, for obligated balances in nondefense accounts. Section 255(g)(2) of the Act specifically exempts from sequestration the prior legal obligations of 46 credit programs that provide

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6/ In the case of the higher education facilities program, the effect of the sequester would be a reduced payment to the Treasury for interest on loan capital. Therefore, a sequester in this instance would not affect either outlays or the deficit. CBO nonetheless believes the account should be exempt as a spend-out of an obligated balance.

Federal guarantees similar to the guarantee provided to the WMATA bonds and medical facilities loans. OMB believes that exemptions for the WMATA and medical facilities guarantees should have been added to this list, but they were not. In addition, because the interest payments for all three programs are expressly subject to the availability of an annual appropriation, and because the Act provides for withholding from obligation of any sequestered amount pending the President's final order, OMB further believes that exemptions for WMATA, medical facilities, and HEFLI interest payments based on the existence of obligated balances are not applicable.

In its review of the 1986 CBO-OMB report, the General Accounting Office (GAO) agreed with the CBO position on WMATA, although for reasons different from those used by CBO. The Department of Transportation and Related Agencies Appropriation Act of 1986, enacted on December 19, 1985, provided $51.7 million for interest on payments; GAO claimed that a legal obligation was established at the time of this appropriation to pay WMATA interest charges, i.e., before the 1986 sequester became effective. Therefore, while GAO agreed with OMB that "the program is in the sequesterable base," GAO exempted it for 1986 because the budgetary resources had already been obligated. If a sequester order is issued in accordance with the timing specified in the Act, obligations for these payments cannot be entered into and, therefore, cannot be exempted as obligated balances.

Veterans Administration Policy Loans

Since last year's report, questions have arisen about whether the option of insured veterans to borrow against the cash values in their life insurance policies under one of several VA programs should have been sequestered. Last year's report did not exempt those options.

OMB continues to believe that the Act exempted only those portions of these life insurance accounts deemed to be prior legal obligations. Since the language of the life insurance policies at issue state clearly that the right to borrow is one within the ability of the issuer to grant as a matter of discretion, no legal obligation to act exists. Hence, the ability of the VA to deny a loan means that veterans' life insurance policy loans cannot constitute prior legal obligations and are, therefore, sequesterable.

The CBO now believes that these policy loans constitute prior legal obligations of the Government in accounts listed in Section 255(g)(2) and are therefore exempt from sequestration. In CBO's view, the phrase "prior legal obligations" exempts spending in accounts listed at Section 255(g)(2) not only to satisfy past commitments but also to support new commitmments if they clearly arise under the terms of prior legal obligation (as that term is normally understood). A loan to a veteran against the cash value of his or her policy, although a new commitment of budgetary resources, is one that arises under pre-existing contractual provisions. To interpret the purpose of paragraph 255(g)(2) more narrowly would make the specific exemption for prior legal obligations largely redundant with the Act's general exemption of obligated balances of budget authority.

Impact of Conceptual Differences

Section 251(a)(5) of the Act requires averaging whenever CBO and OMB differ. Both Directors are of the view that averaging produces a result that is not consistent with either of their legal positions on the proper treatment of these conceptual issues relating to the amounts to be included in the baseline and whether certain programs are subject to sequester. Nevertheless, the sequestration percentages of 7.6 percent for nondefense programs and 5.6 percent for defense programs were derived using an average of the conceptual differences. If CBO's positions were to prevail, OMB's estimates of baseline outlays would rise by $4.7 billion and the sequestration percentages would be 8.7 percent for nondefense and 6.3 percent for defense. If OMB's positions were to prevail, the sequestration percentages would be 6.5 percent for nondefense and 5.0 percent for defense.

APPENDIX: SEQUESTRATION REDUCTIONS BY AGENCY AND BUDGET ACCOUNT

(fiscal year 1987; in thousands of dollars)

Percentages Used: Non-Defense, 7.6%; Defense, 5.6%

Account Title	OMB	CBO	Average	Sequester
Legislative Branch				
Senate				
Mileage of the Vice President and Senators		(01-05-0101	-X-1-801-A;	00-0101)
Budget Authority	57	57	57	4
Outlays	46	46	46	3
Expense allowances of the Vice President, Pres Pro Tem		(01-05-0107	-X-1-801-A;	00-0107)
Budget Authority	54	54	54	4
Outlays	54	54	54	4
Representation allowances for the Majority and Minorit		(01-05-0108	-X-1-801-A;	00-0108)
Budget Authority	19	19	19	1
Outlays	19	19	19	1
Salaries, officers and employees		(01-05-0110	-X-1-801-A;	00-0110)
Budget Authority	163,643	163,643	163,643	12,437
Outlays	153,854	153,854	153,854	11,693
Miscellaneous items		(01-05-0123	-X-1-801-A;	00-0123)
Budget Authority	9,244	9,244	9,244	703
Outlays	9,244	9,244	9,244	703
Secretary of the Senate		(01-05-0126	-X-1-801-A;	00-0126)
Budget Authority	655	655	655	50
Outlays	392	392	392	30
Sergeant at Arms and Doorkeeper of the Senate		(01-05-0127	-X-1-801-A;	00-0127)
Budget Authority	51,824	51,824	51,824	3,939
Outlays	48,196	48,196	48,196	3,663
Inquiries and investigations		(01-05-0128	-X-1-801-A;	00-0128)
Budget Authority	48,855	48,855	48,855	3,713
Outlays	38,889	38,889	38,889	2,956
Expenses of U.S. International Narcotics Control Commi		(01-05-0129	-X-1-801-A;	00-0129)
Budget Authority	311	311	311	24
Outlays	280	280	280	21
Stationery (revolving fund)		(01-05-0140	-X-1-801-A;	00-0140)
Budget Authority	11	11	11	1
Outlays	11	11	11	1
Office of Senate Legal Counsel		(01-05-0171	-X-1-801-A;	00-0171)
Budget Authority	541	541	541	41
Outlays	491	491	491	37
Expense allowance for the Secretary of the Senate, etc		(01-05-0172	-X-1-801-A;	00-0172)
Budget Authority	11	11	11	1
Outlays	11	11	11	1
Senate policy committees		(01-05-0182	-X-1-801-A;	00-0182)
Budget Authority	1,864	1,864	1,864	142
Outlays	1,678	1,678	1,678	128
Office of the Legislative Counsel of the Senate		(01-05-0185	-X-1-801-A;	00-0185)
Budget Authority	1,375	1,375	1,375	104
Outlays	1,222	1,222	1,222	93
House of Representatives				
Mileage of Members		(01-10-0208	-X-1-801-A;	00-0208)
Budget Authority	144	144	144	11
Outlays	72	72	72	5
House leadership offices		(01-10-0408	-X-1-801-A;	00-0408)
Budget Authority	3,213	3,213	3,213	244
Outlays	2,888	2,888	2,888	219
Salaries, officers and employees		(01-10-0410	-X-1-801-A;	00-0410)
Budget Authority	46,354	46,354	46,354	3,523
Outlays	44,917	44,917	44,917	3,414
Members' clerk hire		(01-10-0415	-X-1-801-A;	00-0415)
Budget Authority	159,591	159,591	159,591	12,129
Outlays	157,197	157,197	157,197	11,947
Committee employees		(01-10-0416	-X-1-801-A;	00-0416)
Budget Authority	42,419	42,419	42,419	3,224
Outlays	40,722	40,722	40,722	3,095
Committee on Appropriations (Studies and Investigation		(01-10-0418	-X-1-801-A;	00-0418)
Budget Authority	4,091	4,091	4,091	311
Outlays	3,273	3,273	3,273	249
Committee on the Budget (Studies)		(01-10-0419	-X-1-801-A;	00-0419)
Budget Authority	283	283	283	22
Outlays	247	247	247	19
Special and select committees		(01-10-0433	-X-1-801-A;	00-0433)
Budget Authority	45,291	45,291	45,291	3,442
Outlays	43,479	43,479	43,479	3,304
Allowances and expenses		(01-10-0438	-X-1-801-A;	00-0438)
Budget Authority	127,689	127,689	127,689	9,704
Outlays	107,259	107,259	107,259	8,152
Congressional use of foreign currency, House of Repres		(01-10-0488	-X-1-801-A;	00-0488)
401(C) Authority	2,680	2,680	2,680	204
Outlays	2,680	2,680	2,680	204
Joint Items				
Capitol Guide Service		(01-12-0170	-X-1-801-A;	00-0170)
Budget Authority	830	830	830	63
Outlays	706	706	706	54

Account Title	OMB	CBO	Average	Sequester
Joint Committee on Printing		(01-12-0180	-X-1-801-A;	00-0180)
Budget Authority	879	879	879	67
Outlays	755	755	755	57
Joint Economic Committee		(01-12-0181	-X-1-801-A;	00-0181)
Budget Authority	2,530	2,530	2,530	192
Outlays	2,530	2,277	2,404	183
Office of the Attending Physician		(01-12-0425	-X-1-801-A;	00-0425)
Budget Authority	1,011	1,011	1,011	77
Outlays	404	404	404	31
Joint Committee on Taxation		(01-12-0460	-X-1-801-A;	00-0460)
Budget Authority	4,458	4,458	4,458	339
Outlays	4,235	4,235	4,235	322
Capitol Police Board		(01-12-0474	-X-1-801-A;	00-0474)
Budget Authority	13,104	13,104	13,104	996
General expenses, Capitol police		(01-12-0476	-X-1-801-A;	00-0476)
Budget Authority	1,279	1,279	1,279	97
Outlays	1,086	1,086	1,086	83
Statements of appropriations, House of Representatives		(01-12-0499	-X-1-801-A;	00-0499)
Budget Authority	13	13	13	1
Official mail costs		(01-12-0825	-X-1-801-A;	00-0825)
Budget Authority	95,700	95,700	95,700	7,273
Outlays	95,700	95,700	95,700	7,273
Congressional Budget Office				
Salaries and expenses		(01-14-0100	-X-1-801-A;	08-0100)
Budget Authority	16,160	16,160	16,160	1,228
Outlays	14,544	14,544	14,544	1,105
Architect of the Capitol				
Office of the Architect of the Capitol: Salaries		(01-15-0100	-X-1-801-A;	01-0100)
Budget Authority	5,434	5,434	5,434	413
Outlays	4,987	4,723	4,855	369
Contingent expenses		(01-15-0102	-X-1-801-A;	01-0102)
Budget Authority	96	96	96	7
Outlays	96	96	96	7
Capitol buildings		(01-15-0105	-X-1-801-A;	01-0105)
Budget Authority	18,516	18,516	18,516	1,407
Outlays	9,012	9,012	9,012	685
Capitol grounds		(01-15-0108	-X-1-801-A;	01-0108)
Budget Authority	3,359	3,359	3,359	255
Outlays	3,088	2,959	3,024	230
Senate office buildings		(01-15-0123	-X-1-801-A;	01-0123)
Budget Authority	18,876	18,876	18,876	1,435
Outlays	16,099	13,024	14,562	1,107
House office buildings		(01-15-0127	-X-1-801-A;	01-0127)
Budget Authority	21,138	21,138	21,138	1,606
Outlays	19,326	18,897	19,112	1,453
Capitol Power Plant		(01-15-0133	-X-1-801-A;	01-0133)
Budget Authority	24,068	24,068	24,068	1,829
401(C) Authority--Off. Coll.	135	135	135	10
Outlays	20,580	20,829	20,704	1,574
Structural and mechanical care, Library buildings and		(01-15-0155	-X-1-801-A;	01-0155)
Budget Authority	5,536	5,536	5,536	421
Outlays	5,071	5,071	5,071	385
Library of Congress				
Salaries and expenses		(01-25-0101	-X-1-503-A;	03-0101)
Budget Authority	128,863	128,863	128,863	9,794
401(C) Authority--Off. Coll.	4,512	4,512	4,512	343
Outlays	112,073	110,437	111,255	8,455
Copyright Office: Salaries and expenses		(01-25-0102	-X-1-376-A;	03-0102)
Budget Authority	10,413	10,413	10,413	791
401(C) Authority--Off. Coll.	6,492	6,492	6,492	493
Outlays	15,799	16,020	15,910	1,209
Congressional Research Service: Salaries and expenses		(01-25-0127	-X-1-801-A;	03-0127)
Budget Authority	37,288	37,288	37,288	2,834
Outlays	34,338	33,708	34,023	2,586
Books for the blind and physically handicapped: Salari		(01-25-0141	-X-1-503-A;	03-0141)
Budget Authority	32,309	32,309	32,309	2,455
Outlays	15,515	13,150	14,332	1,089
Collection & distribution of library materials (sp. fo		(01-25-0144	-X-1-503-A;	03-0144)
Budget Authority	796	796	796	60
Furniture and furnishings		(01-25-0146	-X-1-503-A;	03-0146)
Budget Authority	853	853	853	65
Outlays	138	138	138	10
Gift and trust fund accounts		(01-25-9971	-X-7-503-A;	03-9971)
401(C) Other--incl. ob. limit	372	346	359	27
Outlays	372	346	359	27
Government Printing Office				
Office of Superintendent of Documents: Salaries and ex		(01-30-0201	-X-1-806-A;	04-0201)
Budget Authority	21,993	21,993	21,993	1,671
Outlays	11,125	13,680	12,402	943

Account Title	OMB	CBO	Average	Sequester
Printing and binding		(01-30-0202	-X-1-801-A;	04-0202)
Budget Authority	11,058	11,058	11,058	840
Outlays	9,200	7,188	8,194	623
Congressional printing and binding		(01-30-0203	-X-1-801-A;	04-0203)
Budget Authority	66,421	66,421	66,421	5,048
Outlays	25,319	27,033	26,176	1,989
Government Printing Office revolving fund		(01-30-4505	-X-4-806-A;	04-4505)
401(C) Authority--Off. Coll.	27,208	27,208	27,208	2,068
Outlays	27,208	27,208	27,208	2,068
General Accounting Office				
Salaries and expenses		(01-35-0107	-X-1-801-A;	05-0107)
Budget Authority	287,974	287,977	287,976	21,886
Budget Authority--ASI	1	1	1	1
Outlays	256,449	237,395	246,922	18,767
United States Tax Court				
Salaries and expenses		(01-40-0100	-X-1-752-A;	23-0100)
Budget Authority	23,500	23,500	23,500	1,786
Outlays	22,065	21,691	21,878	1,663
Other Legislative Branch Agencies				
Commission on Security & Cooperation in Europe: Salari		(01-45-0110	-X-1-801-A;	09-0110)
Budget Authority	526	526	526	40
Outlays	481	481	481	37
Botanic Garden: Salaries and expenses		(01-45-0200	-X-1-801-A;	09-0200)
Budget Authority	2,094	2,094	2,094	159
Outlays	1,885	1,885	1,885	143
Copyright Royalty Tribunal: Salaries and expenses		(01-45-0310	-X-1-376-A;	09-0310)
Budget Authority	149	149	149	11
Outlays	120	133	126	10
Biomedical Ethics: Salaries and expenses		(01-45-0400	-X-1-801-A;	09-0400)
Budget Authority	144	144	144	11
Outlays	144	144	144	11
Office of Technology Assessment: Salaries and expenses		(01-45-0700	-X-1-801-A;	09-0700)
Budget Authority	14,642	14,642	14,642	1,113
Outlays	10,803	11,714	11,258	856
Railroad Accounting Principles Board: Salaries and exp		(01-45-0800	-X-1-801-A;	09-0800)
Budget Authority	718	718	718	55
Outlays	615	646	630	48
Legislative Branch		Total		
Budget Authority	1,580,267	1,580,270	1,580,268	120,100
Budget Authority--ASI	1	1	1	1
401(C) Authority	2,680	2,680	2,680	204
401(C) Authority--Off. Coll.	38,347	38,347	38,347	2,914
401(C) Other--incl. ob. limit	372	346	359	27
Outlays	1,398,989	1,374,436	1,386,713	105,391
The Judiciary				
Supreme Court of the United States				
Salaries and expenses		(02-05-0100	-X-1-752-A;	10-0100)
Budget Authority	13,382	13,382	13,382	1,017
Outlays	10,145	10,451	10,298	783
Care of the building and grounds		(02-05-0103	-X-1-752-A;	10-0103)
Budget Authority	2,223	2,223	2,223	169
Outlays	2,194	2,045	2,120	161
United States Court of Appeals for Federal Circuit				
Salaries and expenses		(02-07-0510	-X-1-752-A;	10-0510)
Budget Authority	4,259	4,259	4,259	324
Outlays	4,753	4,055	4,404	335
United States Court of International Trade				
Salaries and expenses		(02-15-0400	-X-1-752-A;	10-0400)
Budget Authority	5,417	5,417	5,417	412
Outlays	5,737	5,146	5,442	414
Courts of Appeals, District Courts, and other Judi				
Salaries of judges		(02-25-0200	-X-1-752-A;	10-0200)
Budget Authority	17,513	0	8,756	665
401(C) Authority	0	17,513	8,756	665
Outlays	17,338	17,338	17,338	1,318
Defender services		(02-25-0923	-X-1-752-A;	10-0923)
Budget Authority	59,143	59,143	59,143	4,495
Outlays	25,598	35,486	30,542	2,321
Salaries of supporting personnel		(02-25-0924	-X-1-752-A;	10-0924)
Budget Authority	455,679	455,679	455,679	34,632
Outlays	447,257	438,363	442,810	33,654
Fees of jurors and commissioners		(02-25-0925	-X-1-752-A;	10-0925)
Budget Authority	45,334	45,334	45,334	3,445
Outlays	44,840	42,160	43,500	3,306
Expenses of Operation and Maintenance of the Courts		(02-25-0926	-X-1-752-A;	10-0926)
Budget Authority	129,195	129,195	129,195	9,819
Outlays	88,650	107,232	97,941	7,444

Account Title	OMB	CBO	Average	Sequester
Court security		(02-25-0930	-X-1-752-A;	10-0930)
Budget Authority	31,342	31,342	31,342	2,382
Outlays	22,792	24,071	23,432	1,781
Space and facilities		(02-25-0931	-X-1-752-A;	10-0931)
Budget Authority	140,679	140,679	140,679	10,692
Outlays	137,095	124,642	130,868	9,946
Administrative Office of the United States Courts				
Study of construction of office building		(02-26-0105	-X-1-752-A;	10-0105)
Budget Authority	1,300	1,300	1,300	99
Salaries and expenses		(02-26-0927	-X-1-752-A;	10-0927)
Budget Authority	27,944	27,944	27,944	2,124
Outlays	22,712	24,787	23,750	1,805
Federal Judicial Center				
Salaries and expenses		(02-30-0928	-X-1-752-A;	10-0928)
Budget Authority	9,187	9,187	9,187	698
Outlays	7,365	7,322	7,344	558
The Judiciary		Total		
Budget Authority	942,597	925,084	933,840	70,972
401(C) Authority	0	17,513	8,756	665
Outlays	836,476	843,098	839,787	63,824
Executive Office of the President				
The White House Office				
Salaries and expenses		(03-10-0110	-X-1-802-A;	11-0110)
Budget Authority	23,835	23,835	23,835	1,811
Outlays	20,856	21,642	21,249	1,615
Executive Residence at the White House				
Operating expenses		(03-20-0210	-X-1-802-A;	11-0210)
Budget Authority	4,380	4,380	4,380	333
401(C) Authority--Off. Coll.	480	480	480	36
Outlays	4,422	4,641	4,532	344
Official Residence of the Vice President				
Operating expenses		(03-21-0211	-X-1-802-A;	11-0211)
Budget Authority	195	195	195	15
Outlays	141	136	138	10
Special Assistance to the President				
Salaries and expenses		(03-22-1454	-X-1-802-A;	11-1454)
Budget Authority	1,717	1,717	1,717	130
Outlays	1,683	1,494	1,588	121
Council of Economic Advisers				
Salaries and expenses		(03-28-1900	-X-1-802-A;	11-1900)
Budget Authority	2,202	2,202	2,202	167
Outlays	2,150	1,762	1,956	149
Council/Office on Environmental Quality				
Council on Environmental Quality & Off. of Environment		(03-31-1453	-X-1-802-A;	11-1453)
Budget Authority	670	670	670	51
Outlays	636	636	636	48
Office of Policy Development				
Salaries and expenses		(03-35-2200	-X-1-802-A;	11-2200)
Budget Authority	2,609	2,609	2,609	198
Outlays	2,493	2,259	2,376	181
National Security Council				
Salaries and expenses		(03-40-2000	-X-1-802-A;	11-2000)
Budget Authority	4,428	4,428	4,428	337
Outlays	3,462	3,463	3,462	263
National Critical Materials Council				
Salaries and expenses		(03-41-0111	-X-1-802-A;	11-0111)
Budget Authority	478	479	478	36
Outlays	478	431	454	34
Office of Administration				
Salaries and expenses		(03-42-0038	-X-1-802-A;	11-0038)
Budget Authority	14,926	14,926	14,926	1,134
Outlays	14,887	9,851	12,369	940
Office of Management and Budget				
Office of Federal Procurement Policy: Salaries and exp		(03-48-0201	-X-1-802-A;	11-0201)
Budget Authority	1,542	1,542	1,542	117
Outlays	1,439	1,389	1,414	107
Salaries and expenses		(03-48-0300	-X-1-802-A;	11-0300)
Budget Authority	35,695	35,695	35,695	2,713
Outlays	32,643	31,733	32,188	2,446
Office of Science and Technology Policy				
Salaries and expenses		(03-49-2600	-X-1-802-A;	11-2600)
Budget Authority	2,217	2,217	2,217	168
Outlays	1,684	1,685	1,684	128
Office of the United States Trade Representative				
Salaries and expenses		(03-50-0400	-X-1-802-A;	11-0400)
Budget Authority	12,592	12,592	12,592	957
Outlays	10,505	10,703	10,604	806

Account Title	OMB	CBO	Average	Sequester
Executive Office of the President		Total		
Budget Authority	107,486	107,487	107,486	8,169
401(C) Authority--Off. Coll.	480	480	480	36
Outlays	97,479	91,825	94,652	7,194
Funds Appropriated to the President				
Disaster Relief				
Disaster relief		(04-03-0039	-X-1-453-A;	11-0039)
Budget Authority	345,700	345,700	345,700	26,273
Outlays	125,000	231,619	178,310	13,552
Unanticipated Needs				
Unanticipated needs		(04-06-0037	-X-1-802-A;	11-0037)
Budget Authority	957	957	957	73
Outlays	827	823	825	63
International Security Assistance				
Peacekeeping operations		(04-09-1032	-X-1-152-A;	11-1032)
Budget Authority	32,538	32,538	32,538	2,473
Outlays	15,540	13,926	14,733	1,120
Economic support fund		(04-09-1037	-X-1-152-A;	11-1037)
Budget Authority	3,716,817	3,716,817	3,716,817	282,478
Direct Loan Limitation	379,450	379,450	379,450	28,838
Outlays	2,284,492	2,293,276	2,288,884	173,955
Military assistance		(04-09-1080	-X-1-152-A;	11-1080)
Budget Authority	798,374	798,374	798,374	60,676
Outlays	780,140	781,910	781,025	59,358
International military education and training		(04-09-1081	-X-1-152-A;	11-1081)
Budget Authority	52,147	52,147	52,147	3,963
Outlays	28,681	23,466	26,074	1,982
Foreign military sales credit		(04-09-1082	-X-1-152-A;	11-1082)
Budget Authority	4,966,830	4,966,830	4,966,830	377,479
Direct Loan Limitation	4,966,830	4,966,830	4,966,830	377,479
Outlays	2,014,460	1,734,773	1,874,616	142,471
Multilateral Assistance				
Contribution to the Inter-American Development Bank		(04-12-0072	-X-1-151-A;	11-0072)
Budget Authority	85,844	85,844	85,844	6,524
Outlays	766	766	766	58
Contribution to the International Development Associat		(04-12-0073	-X-1-151-A;	11-0073)
Budget Authority	669,900	669,900	669,900	50,912
Contribution to the Asian Development Bank		(04-12-0076	-X-1-151-A;	11-0076)
Budget Authority	107,097	107,097	107,097	8,139
Outlays	4,559	4,559	4,559	346
Contribution to the International Bank for Reconstruct		(04-12-0077	-X-1-151-A;	11-0077)
Budget Authority	105,003	105,003	105,003	7,980
Outlays	10,500	10,500	10,500	798
Contribution to the International Finance Corporation		(04-12-0078	-X-1-151-A;	11-0078)
Budget Authority	27,827	27,827	27,827	2,115
Outlays	27,827	27,827	27,827	2,115
Contribution to the African Development Fund		(04-12-0079	-X-1-151-A;	11-0079)
Budget Authority	59,573	59,573	59,573	4,528
Contribution to the African Development Bank		(04-12-0082	-X-1-151-A;	11-0082)
Budget Authority	15,493	15,493	15,493	1,177
Outlays	15,493	15,493	15,493	1,177
Contribution to the special facility for Sub-Saharan A		(04-12-0086	-X-1-151-A;	11-0086)
Budget Authority	71,775	71,775	71,775	5,455
Outlays	14,355	14,355	14,355	1,091
International organizations and programs		(04-12-1005	-X-1-151-A;	11-1005)
Budget Authority	265,971	265,971	265,971	20,214
Outlays	177,946	177,946	177,946	13,524
Agency for International Development				
Operating expenses, Agency for International Developme		(04-14-1000	-X-1-151-A;	11-1000)
Budget Authority	360,167	360,167	360,167	27,373
Outlays	270,125	270,125	270,125	20,530
Operating expenses of the AID Office of Inspector Gene		(04-14-1007	-X-1-151-A;	11-1007)
Budget Authority	20,145	20,145	20,145	1,531
Outlays	15,814	15,693	15,754	1,197
Sahel development program		(04-14-1012	-X-1-151-A;	11-1012)
Budget Authority	77,038	77,038	77,038	5,855
Outlays	6,163	9,476	7,820	594
American schools and hospitals abroad		(04-14-1013	-X-1-151-A;	11-1013)
Budget Authority	33,495	33,495	33,495	2,546
Outlays	8,541	8,541	8,541	649
Functional development assistance program		(04-14-1021	-X-1-151-A;	11-1021)
Budget Authority	1,477,200	1,477,200	1,477,200	112,267
Direct Loan Limitation	301,488	301,488	301,488	22,913
Outlays	118,176	181,695	149,936	11,395
International disaster assistance		(04-14-1035	-X-1-151-A;	11-1035)
Budget Authority	21,532	21,532	21,532	1,636
Outlays	5,340	5,340	5,340	406

Account Title	OMB	CBO	Average	Sequester
Housing and other credit guaranty programs		(04-14-4340	-X-3-151-A;	72-4340)
401(C) Authority--Off. Coll.	7,266	7,266	7,266	552
Guaranteed Loan Limitation	145,464	145,464	145,464	11,055
Outlays	7,100	7,100	7,100	540
Private sector revolving fund		(04-14-4341	-X-3-151-A;	72-4341)
Budget Authority	17,226	17,226	17,226	1,309
Direct Loan Limitation	17,226	17,226	17,226	1,309
Outlays	0	1,648	824	63
Trade and Development Program				
Trade and development program		(04-16-1001	-X-1-151-A;	11-1001)
Budget Authority	18,087	18,087	18,087	1,375
Outlays	4,211	4,124	4,168	317
Peace Corps				
Peace Corps operating expenses		(04-18-0100	-X-1-151-A;	11-0100)
Budget Authority	124,410	124,410	124,410	9,455
401(C) Authority--Off. Coll.	200	200	200	15
Outlays	99,728	97,862	98,795	7,508
Overseas Private Investment Corporation				
Overseas Private Investment Corporation		(04-20-4030	-X-3-151-A;	71-4030)
401(C) Authority--Off. Coll.	12,400	12,400	12,400	942
Direct Loan Limitation	13,637	13,637	13,637	1,036
Guaranteed Loan Limitation	136,372	136,372	136,372	10,364
Outlays	13,144	15,231	14,188	1,078
Inter-American Foundation				
Inter-American Foundation		(04-22-4031	-X-3-151-A;	11-4031)
Budget Authority	11,454	11,454	11,454	870
401(C) Authority--Off. Coll.	17,000	17,000	17,000	1,292
Outlays	23,243	21,582	22,412	1,703
African Development Foundation				
African Development Foundation		(04-24-0700	-X-1-151-A;	11-0700)
Budget Authority	3,706	3,706	3,706	282
Outlays	1,423	1,645	1,534	117
Military Sales Programs				
Special defense acquisition fund		(04-37-4116	-X-3-155-A;	11-4116)
Obligation Limitation	311,025	311,025	311,025	23,638
Outlays	0	3,110	1,555	118
Foreign military sales trust fund		(04-37-8242	-X-7-155-A;	11-8242)
401(C) Authority--Off. Coll.	400,000	400,000	400,000	30,400
Outlays	400,000	400,000	400,000	30,400
Funds Appropriated to the President		Total		
Budget Authority	13,486,306	13,486,306	13,486,306	1,024,959
401(C) Authority--Off. Coll.	436,866	436,866	436,866	33,202
Direct Loan Limitation	5,678,631	5,678,631	5,678,631	431,576
Guaranteed Loan Limitation	281,836	281,836	281,836	21,420
Obligation Limitation	311,025	311,025	311,025	23,638
Outlays	6,473,594	6,374,411	6,424,002	488,224
Department of Agriculture				
Office of the Secretary				
Office of the Secretary		(05-03-0115	-X-1-352-A;	12-0115)
Budget Authority	5,510	5,510	5,510	419
Outlays	5,091	5,328	5,210	396
Departmental Administration				
Rental payments and building operations		(05-05-0117	-X-1-352-A;	12-0117)
Budget Authority	65,660	65,660	65,660	4,990
Outlays	65,660	61,683	63,672	4,839
Advisory committees		(05-05-0118	-X-1-352-A;	12-0118)
Budget Authority	1,258	1,258	1,258	96
Outlays	629	823	726	55
Departmental administration		(05-05-0120	-X-1-352-A;	12-0120)
Budget Authority	18,350	18,350	18,350	1,395
Outlays	16,276	16,295	16,286	1,238
Working capital fund		(05-05-4609	-X-4-352-A;	12-4609)
Budget Authority	5,964	5,964	5,964	453
Outlays	5,964	5,886	5,925	450
Office of Governmental and Public Affairs				
Office of Governmental and Public Affairs		(05-06-0130	-X-1-352-A;	12-0130)
Budget Authority	7,343	7,343	7,343	558
Outlays	5,962	5,801	5,882	447
Office of the Inspector General				
Office of the Inspector General		(05-08-0900	-X-1-352-A;	12-0900)
Budget Authority	44,496	44,496	44,496	3,382
Outlays	38,044	38,089	38,066	2,893
Office of the General Counsel				
Office of the General Counsel		(05-10-2300	-X-1-352-A;	12-2300)
Budget Authority	15,095	15,095	15,095	1,147
Outlays	14,959	14,959	14,959	1,137
Agricultural Research Service				
Agricultural Research Service		(05-18-1400	-X-1-352-A;	12-1400)
Budget Authority	478,372	478,372	478,372	36,356
401(C) Authority--Off. Coll.	2,000	2,000	2,000	152
Outlays	384,698	384,219	384,458	29,219

Account Title	OMB	CBO	Average	Sequester
Buildings and facilities		(05-18-1401	-X-1-352-A;	12-1401)
Budget Authority	6,041	6,041	6,041	459
Outlays	906	1,166	1,036	79
Cooperative State Research Service				
Cooperative State Research Service		(05-24-1500	-X-1-352-A;	12-1500)
Budget Authority	276,146	276,146	276,146	20,987
401(C) Authority	2,800	2,800	2,800	213
Outlays	162,926	180,478	171,702	13,049
Extension Service				
Extension Service		(05-27-0502	-X-1-352-A;	12-0502)
Budget Authority	328,009	328,009	328,009	24,929
401(C) Authority--Off. Coll.	625	625	625	48
Outlays	279,433	259,424	269,428	20,477
National Agricultural Library				
National Agricultural Library		(05-30-0300	-X-1-352-A;	12-0300)
Budget Authority	10,787	10,787	10,787	820
Outlays	8,630	7,821	8,226	625
Statistical Reporting Service				
Salaries and expenses		(05-33-1801	-X-1-352-A;	12-1801)
Budget Authority	56,200	56,200	56,200	4,271
401(C) Authority--Off. Coll.	1,087	1,087	1,087	83
Outlays	49,419	46,834	48,126	3,658
Economic Research Service				
Salaries and expenses		(05-36-1701	-X-1-352-A;	12-1701)
Budget Authority	44,115	44,115	44,115	3,353
Outlays	37,939	37,101	37,520	2,852
World Agricultural Outlook Board				
World agricultural outlook board		(05-50-2100	-X-1-352-A;	12-2100)
Budget Authority	1,598	1,598	1,598	121
Outlays	1,214	1,218	1,216	92
Foreign Agricultural Service				
Foreign Agricultural Service		(05-51-2900	-X-1-352-A;	12-2900)
Budget Authority	79,475	79,475	79,475	6,040
Outlays	44,873	43,791	44,332	3,369
Office of International Cooperation & Development				
Scientific activities overseas		(05-53-1404	-X-1-352-A;	12-1404)
Budget Authority	2,854	2,854	2,854	217
Outlays	2,854	1,427	2,140	163
Salaries and expenses		(05-53-3200	-X-1-352-A;	12-3200)
Budget Authority	5,152	5,152	5,152	392
401(C) Authority--Off. Coll.	665	665	665	51
Outlays	5,817	5,714	5,766	438
Foreign Assistance Programs				
Expenses, PL 480, foreign assistance programs, Agricul		(05-57-2274	-X-1-151-A;	12-2274)
Budget Authority	1,243,294	1,243,294	1,243,294	94,490
Direct Loan Limitation	905,992	905,992	905,992	68,855
Obligation Limitation	1,607,760	1,607,760	1,607,760	122,190
Outlays	1,249,796	1,463,062	1,356,429	103,089
Agricultural Stabilization & Conservation Service				
Salaries and expenses		(05-60-3300	-X-1-351-A;	12-3300)
Budget Authority	198	198	198	15
401(C) Authority--Off. Coll.	63,117	63,117	63,117	4,797
Outlays	63,315	63,303	63,309	4,811
Dairy indemnity program		(05-60-3314	-X-1-351-A;	12-3314)
Budget Authority	9,095	9,095	9,095	691
Outlays	9,095	9,095	9,095	691
Agricultural conservation program		(05-60-3315	-X-1-302-A;	12-3315)
Budget Authority	180,739	180,739	180,739	13,736
Outlays	82,778	83,140	82,959	6,305
Emergency conservation program		(05-60-3316	-X-1-453-A;	12-3316)
Budget Authority	5,000	5,000	5,000	380
Outlays	0	1,000	500	38
Water Bank program		(05-60-3320	-X-1-302-A;	12-3320)
Budget Authority	8,371	8,371	8,371	636
Outlays	1,137	1,247	1,192	91
Forestry incentives program		(05-60-3336	-X-1-302-A;	12-3336)
Budget Authority	11,891	11,891	11,891	904
Outlays	4,162	4,590	4,376	333
Federal Crop Insurance Corporation				
Administrative and operating expenses		(05-63-2707	-X-1-351-A;	12-2707)
Budget Authority	209,608	209,608	209,608	15,930
Outlays	118,000	122,485	120,242	9,138
Commodity Credit Corporation				
Temp. stor. & distr. of CCC emgcy. food		(05-66-3635	-X-1-351-A;	12-3635)
Budget Authority	50,000	50,000	50,000	3,800
Outlays	35,019	34,215	34,617	2,631
Commodity Credit Corporation Fund		(05-66-4336	-X-3-351-A;	12-4336)
401(C) Authority	17,354,270	17,477,438	17,415,854	1,323,605
401(C) Authority--ASI	6,600	7,000	6,800	6,800
Direct Loan Limitation	13,325,000	10,474,000	11,899,500	904,362
Guaranteed Loan Limitation	5,500,000	5,500,000	5,500,000	418,000
Outlays	17,360,870	17,484,438	17,422,654	1,330,405

Account Title	OMB	CBO	Average	Sequester
Office of Rural Development Policy				
Salaries and expenses		(05-68-0801	-X-1-452-A;	12-0801)
Budget Authority	407	407	407	31
Rural Electrification Administration				
Salaries and expenses		(05-72-3100	-X-1-271-A;	12-3100)
Budget Authority	29,479	29,479	29,479	2,240
Outlays	27,533	26,855	27,194	2,067
Purchase of Rural Telephone Bank capital stock		(05-72-3102	-X-1-452-A;	12-3102)
Budget Authority	28,530	28,530	28,530	2,168
Outlays	28,530	28,530	28,530	2,168
Rural electrification and telephone revolving fund		(05-72-4230	-X-3-271-A;	12-4230)
Direct Loan Limitation	1,244,100	1,244,100	1,244,100	94,552
Direct Loan Floor	861,300	861,300	861,300	65,459
Guaranteed Loan Limitation	2,100,615	2,100,615	2,100,615	159,647
Guaranteed Loan Floor	933,075	933,075	933,075	70,914
Rural telephone bank		(05-72-4231	-X-3-452-A;	12-4231)
Direct Loan Limitation	210,540	210,540	210,540	16,001
Direct Loan Floor	177,045	177,045	177,045	13,455
Outlays	10,620	27,442	19,031	1,446
REA, FFB direct loans		(05-72-7002	-X-4-271-A;	12-7002)
Direct Loan Limitation	2,100,615	2,100,615	2,100,615	159,647
Direct Loan Floor	933,075	933,075	933,075	70,914
Outlays	68,250	0	34,125	2,594
Farmers Home Administration				
Salaries and expenses		(05-75-2001	-X-1-452-A;	12-2001)
Budget Authority	357,904	357,904	357,904	27,201
Outlays	340,009	325,773	332,891	25,300
Rural housing for domestic farm labor		(05-75-2004	-X-1-604-A;	12-2004)
Budget Authority	9,513	9,513	9,513	723
Outlays	388	381	384	29
Mutual and self-help housing		(05-75-2006	-X-1-604-A;	12-2006)
Budget Authority	7,610	7,610	7,610	578
Outlays	609	609	609	46
Very low income housing repair grants		(05-75-2064	-X-1-604-A;	12-2064)
Budget Authority	13,891	13,891	13,891	1,056
Outlays	11,294	13,613	12,454	946
Rural water and waste disposal grants		(05-75-2066	-X-1-452-A;	12-2066)
Budget Authority	109,395	109,395	109,395	8,314
Outlays	2,264	2,188	2,226	169
Rural community fire protection grants		(05-75-2067	-X-1-452-A;	12-2067)
Budget Authority	3,091	3,091	3,091	235
Outlays	1,391	1,391	1,391	106
Rural housing preservation grants		(05-75-2070	-X-1-604-A;	12-2070)
Budget Authority	19,140	19,140	19,140	1,455
Outlays	935	1,914	1,424	108
Compensation for construction defects		(05-75-2071	-X-1-371-A;	12-2071)
Budget Authority	713	713	713	54
Outlays	713	713	713	54
Agricultural credit insurance fund		(05-75-4140	-X-3-351-A;	12-4140)
401(C) Authority	233,865	233,865	233,865	17,774
Direct Loan Limitation	2,632,000	2,632,000	2,632,000	200,032
Guaranteed Loan Limitation	1,915,892	1,915,892	1,915,892	145,608
Outlays	2,722,605	2,733,865	2,728,235	207,346
Rural housing insurance fund		(05-75-4141	-X-3-371-A;	12-4141)
401(C) Authority--Off. Coll.	56,000	56,000	56,000	4,256
Direct Loan Limitation	2,033,113	2,033,113	2,033,113	154,517
Obligation Limitation	160,310	160,310	160,310	12,184
Outlays	1,334,310	896,520	1,115,415	84,772
Rural development insurance fund		(05-75-4155	-X-3-452-A;	12-4155)
401(C) Authority--Off. Coll.	350	350	350	27
Direct Loan Limitation	421,080	421,080	421,080	32,002
Guaranteed Loan Limitation	95,700	95,700	95,700	7,273
Outlays	24,352	15,658	20,005	1,520
Self-help housing land development fund		(05-75-4222	-X-3-371-A;	12-4222)
Direct Loan Limitation	1,000	1,000	1,000	76
Outlays	340	340	340	26
Soil Conservation Service				
Conservation operations		(05-78-1000	-X-1-302-A;	12-1000)
Budget Authority	348,669	348,669	348,669	26,499
401(C) Authority--Off. Coll.	13,927	13,927	13,927	1,058
Outlays	334,702	334,784	334,743	25,440
Resource conservation and development		(05-78-1010	-X-1-302-A;	12-1010)
Budget Authority	25,037	25,037	25,037	1,903
401(C) Authority--Off. Coll.	1,983	1,983	1,983	151
Outlays	18,412	16,955	17,684	1,344
Watershed planning		(05-78-1066	-X-1-301-A;	12-1066)
Budget Authority	8,487	8,487	8,487	645
401(C) Authority--Off. Coll.	750	750	750	57
Outlays	8,728	8,100	8,414	639

Account Title	OMB	CBO	Average	Sequester
River basin surveys and investigations		(05-78-1069	-X-1-301-A;	12-1069)
Budget Authority	14,180	14,180	14,180	1,078
401(C) Authority--Off. Coll.	328	328	328	25
Outlays	13,657	13,600	13,628	1,036
Watershed and flood prevention operations		(05-78-1072	-X-1-301-A;	12-1072)
Budget Authority	257,472	257,472	257,472	19,568
401(C) Authority--Off. Coll.	8,020	8,020	8,020	610
Outlays	141,276	181,041	161,158	12,248
Great plains conservation program		(05-78-2268	-X-1-302-A;	12-2268)
Budget Authority	20,482	20,482	20,482	1,557
Outlays	9,278	9,278	9,278	705
Animal and Plant Health Inspection Service				
Salaries and expenses		(05-79-1600	-X-1-352-A;	12-1600)
Budget Authority	300,869	300,869	300,869	22,866
401(C) Authority--Off. Coll.	8,993	8,993	8,993	683
Outlays	258,714	266,537	262,626	19,960
Buildings and facilities		(05-79-1601	-X-1-352-A;	12-1601)
Budget Authority	4,054	4,054	4,054	308
Outlays	203	0	102	8
Miscellaneous trust funds		(05-79-9971	-X-7-352-A;	12-9971)
401(C) Other--incl. ob. limit	2,325	2,325	2,325	177
Outlays	1,517	1,517	1,517	115
Federal Grain Inspection Service				
Salaries and expenses		(05-80-2400	-X-1-352-A;	12-2400)
Budget Authority	6,702	6,702	6,702	509
Outlays	5,596	5,596	5,596	425
Inspection and weighing services		(05-80-4050	-X-3-352-A;	12-4050)
401(C) Authority--Off. Coll.	36,829	36,829	36,829	2,799
Outlays	36,829	36,829	36,829	2,799
Agricultural Marketing Service				
Marketing services		(05-81-2500	-X-1-352-A;	12-2500)
Budget Authority	30,516	30,516	30,516	2,319
401(C) Authority--Off. Coll.	29,361	29,361	29,361	2,231
Outlays	47,310	44,833	46,072	3,501
Payments to States and possessions		(05-81-2501	-X-1-352-A;	12-2501)
Budget Authority	942	942	942	72
Outlays	1,082	25	554	42
Perishable Agricultural Commodities Act fund		(05-81-5070	-X-2-352-A;	12-5070)
401(C) Authority	3,899	3,899	3,899	296
Outlays	2,921	2,922	2,922	222
Funds for strengthening markets, income, and supply (s		(05-81-5209	-X-2-605-A;	12-5209)
401(C) Authority	420,077	420,077	420,077	31,926
Outlays	184,245	184,245	184,245	14,003
Milk market orders assessment fund		(05-81-8412	-X-8-351-A;	12-8412)
401(C) Authority--Off. Coll.	35,110	35,110	35,110	2,668
Outlays	35,110	35,110	35,110	2,668
Miscellaneous trust funds		(05-81-9972	-X-7-352-A;	12-9972)
401(C) Authority	78,378	78,378	78,378	5,957
Outlays	78,378	73,406	75,892	5,768
Office of Transportation				
Office of Transportation		(05-82-2800	-X-1-352-A;	12-2800)
Budget Authority	2,346	2,346	2,346	178
Outlays	1,920	1,919	1,920	146
Food Safety and Inspection Service				
Salaries and expenses		(05-83-3700	-X-1-554-A;	12-3700)
Budget Authority	350,210	350,210	350,210	26,616
401(C) Authority--Off. Coll.	39,100	39,100	39,100	2,972
Outlays	368,441	366,547	367,494	27,930
Exp. & refunds, insp. & grading		(05-83-8137	-X-7-352-A;	12-8137)
401(C) Authority	825	825	825	63
Outlays	624	776	700	53
Food and Nutrition Service				
Food donations program		(05-84-3503	-X-1-605-A;	12-3503)
Budget Authority	193,589	193,589	193,589	14,713
Outlays	160,597	160,597	160,597	12,205
Food stamp program		(05-84-3505	-X-1-605-A;	12-3505)
Budget Authority	55,949	55,949	55,949	4,252
Outlays	25,278	25,278	25,278	1,921
Food program administration		(05-84-3508	-X-1-605-A;	12-3508)
Budget Authority	78,481	78,481	78,481	5,965
Outlays	70,869	70,869	70,869	5,386
Special supplemental food prog. for women, infants and		(05-84-3510	-X-1-605-A;	12-3510)
Budget Authority	2,914	2,914	2,914	221
Outlays	2,914	2,914	2,914	221
Child nutrition programs		(05-84-3539	-X-1-605-A;	12-3539)
Budget Authority	3,210	3,210	3,210	244
Outlays	3,210	3,142	3,176	241

Account Title	OMB	CBO	Average	Sequester
Human Nutrition Information Service		(05-86-3501	-X-1-352-A;	12-3501)
Salaries and Expenses				
Budget Authority	12,901	12,901	12,901	980
Outlays	6,451	5,560	6,006	456
Packers and Stockyards Administration		(05-90-2600	-X-1-352-A;	12-2600)
Packers and Stockyards Administration				
Budget Authority	8,833	8,833	8,833	671
Outlays	7,856	7,860	7,858	597
Agricultural Cooperative Service		(05-92-3000	-X-1-352-A;	12-3000)
Salaries and expenses				
Budget Authority	4,484	4,484	4,484	341
Outlays	2,466	2,583	2,524	192
Forest Service		(05-96-1103	-X-1-302-A;	12-1103)
Construction				
Budget Authority	214,654	214,654	214,654	16,314
401(C) Authority--Off. Coll.	1,850	1,850	1,850	141
Outlays	126,889	126,988	126,938	9,647
Forest research		(05-96-1104	-X-1-302-A;	12-1104)
Budget Authority	120,127	120,127	120,127	9,130
401(C) Authority--Off. Coll.	436	436	436	33
Outlays	93,832	90,892	92,362	7,020
State and private forestry		(05-96-1105	-X-1-302-A;	12-1105)
Budget Authority	55,321	55,321	55,321	4,204
401(C) Authority--Off. Coll.	87	87	87	7
Outlays	47,879	47,884	47,882	3,639
National forest system		(05-96-1106	-X-1-302-A;	12-1106)
Budget Authority	1,168,924	1,168,924	1,168,924	88,838
Outlays	1,035,163	1,035,495	1,035,329	78,685
Land acquisition		(05-96-5004	-X-2-303-A;	12-5004)
Budget Authority	31,356	31,356	31,356	2,383
Outlays	12,542	12,542	12,542	953
Range betterment fund		(05-96-5207	-X-2-302-A;	12-5207)
Budget Authority	3,635	3,635	3,635	276
Outlays	2,908	2,908	2,908	221
Acquisition of lands for nat'l forests		(05-96-5208	-X-2-302-A;	12-5208)
Budget Authority	744	744	744	57
Outlays	632	627	630	48
Acq. of lands to complete land exchanges		(05-96-5216	-X-2-302-A;	12-5216)
Budget Authority	20	19	20	2
Outlays	20	19	20	2
Operations and maintenance of quarters		(05-96-5219	-X-2-302-A;	12-5219)
401(C) Other--incl. ob. limit	5,421	5,421	5,421	412
Outlays	4,337	4,337	4,337	330
Reforestation trust fund		(05-96-8046	-X-7-302-A;	20-8046)
401(C) Other--incl. ob. limit	31,290	31,290	31,290	2,378
Outlays	25,032	25,032	25,032	1,902
Forest Service permanent appropriations		(05-96-9921	-X-2-852-A;	12-9921)
401(C) Other--incl. ob. limit	289,941	262,183	276,062	20,981
Outlays	289,941	262,183	276,062	20,981
Forest Service permanent appropriations		(05-96-9922	-X-2-302-A;	12-9922)
401(C) Authority--Off. Coll.	4	4	4	0
401(C) Other--incl. ob. limit	149,874	149,874	149,874	11,390
Outlays	115,006	115,955	115,480	8,776
Miscellaneous trust funds		(05-96-9973	-X-7-302-A;	12-9973)
Budget Authority	85	85	85	6
401(C) Authority--Off. Coll.	0	1	0	0
401(C) Other--incl. ob. limit	155,131	160,322	157,726	11,987
Outlays	149,282	136,684	142,983	10,867
Department of Agriculture		Total		
Budget Authority	7,075,487	7,075,486	7,075,486	537,737
401(C) Authority	18,094,114	18,217,282	18,155,698	1,379,833
401(C) Authority--Off. Coll.	300,622	300,623	300,622	22,847
401(C) Other--incl. ob. limit	633,982	611,415	622,698	47,325
401(C) Authority--ASI	6,600	7,000	6,800	6,800
Direct Loan Limitation	22,873,440	20,022,440	21,447,940	1,630,043
Direct Loan Floor	1,971,420	1,971,420	1,971,420	149,828
Guaranteed Loan Limitation	9,612,207	9,612,207	9,612,207	730,528
Guaranteed Loan Floor	933,075	933,075	933,075	70,914
Obligation Limitation	1,768,070	1,768,070	1,768,070	134,373
Outlays	28,361,656	28,184,793	28,273,224	2,155,048
Department of Commerce				
General Administration				
Salaries and expenses		(06-05-0120	-X-1-376-A;	13-0120)
Budget Authority	30,911	30,911	30,911	2,349
Outlays	27,820	29,613	28,716	2,182
Grants and loans administration		(06-05-0125	-X-1-452-A;	13-0125)
Budget Authority	24,882	24,882	24,882	1,891
Outlays	22,394	21,846	22,120	1,681

Account Title	OMB	CBO	Average	Sequester
Economic development assistance programs		(06-05-2050	-X-1-452-A;	13-2050)
Budget Authority	175,609	175,610	175,610	13,346
Guaranteed Loan Limitation	179,437	179,438	179,438	13,637
Outlays	17,560	17,561	17,560	1,335
Bureau of the Census				
Salaries and expenses		(06-07-0401	-X-1-376-A;	13-0401)
Budget Authority	86,513	86,513	86,513	6,575
401(C) Authority--Off. Coll.	12,000	12,000	12,000	912
Outlays	88,997	90,986	89,992	6,839
Periodic censuses and programs		(06-07-0450	-X-1-376-A;	13-0450)
Budget Authority	101,059	101,059	101,059	7,680
Outlays	67,709	68,720	68,214	5,184
Economic and Statistical Analysis				
Salaries and expenses		(06-08-1500	-X-1-376-A;	13-1500)
Budget Authority	29,188	29,189	29,188	2,218
401(C) Authority--Off. Coll.	382	382	382	29
Outlays	25,484	26,973	26,228	1,993
Information products and services		(06-08-8546	-X-7-376-A;	13-8546)
401(C) Other--incl. ob. limit	31,011	31,307	31,159	2,368
Outlays	21,097	23,480	22,288	1,694
International Trade Administration				
Operations and administration		(06-25-1250	-X-1-376-A;	13-1250)
Budget Authority	183,744	183,744	183,744	13,965
401(C) Authority--Off. Coll.	8,845	8,845	8,845	672
Outlays	137,465	138,385	137,925	10,482
Minority Business Development Agency				
Minority business development		(06-40-0201	-X-1-376-A;	13-0201)
Budget Authority	43,065	43,065	43,065	3,273
Outlays	12,293	13,522	12,908	981
United States Travel and Tourism Administration				
Salaries and expenses		(06-44-0700	-X-1-376-A;	13-0700)
Budget Authority	11,484	11,484	11,484	873
401(C) Authority--Off. Coll.	1,642	1,642	1,642	125
Outlays	9,107	10,255	9,681	736
National Oceanic and Atmospheric Administration				
Operations, research, and facilities		(06-48-1450	-X-1-306-A;	13-1450)
Budget Authority	1,128,233	1,128,233	1,128,233	85,746
Budget Authority--ASI	37	50	44	44
401(C) Authority--Off. Coll.	11,213	11,213	11,213	852
Outlays	694,959	776,980	735,970	55,974
Coastal energy impact fund		(06-48-4315	-X-3-452-A;	13-4315)
401(C) Authority--Off. Coll.	8,000	8,300	8,150	619
Outlays	8,000	8,300	8,150	619
Federal ship financing fund, fishing vessels		(06-48-4417	-X-3-376-A;	13-4417)
401(C) Authority--Off. Coll.	1,261	1,261	1,261	96
Guaranteed Loan Limitation	33,495	33,495	33,495	2,546
Outlays	1,261	1,261	1,261	96
Fishermen's contingency fund		(06-48-5120	-X-2-376-A;	13-5120)
Budget Authority	718	718	718	55
Outlays	529	561	545	41
Fishermen's guaranty fund		(06-48-5121	-X-2-376-A;	13-5121)
Budget Authority	2,871	2,871	2,871	218
Outlays	2,871	2,871	2,871	218
Foreign fishing observer fund		(06-48-5122	-X-2-376-A;	13-5122)
Budget Authority	4,306	4,307	4,306	327
Outlays	4,306	4,139	4,222	321
Promote and develop fishery products and research		(06-48-5139	-X-2-376-A;	13-5139)
401(C) Other--incl. ob. limit	8,007	8,007	8,007	609
Outlays	5,177	4,437	4,807	365
Aviation weather services program		(06-48-8105	-X-7-306-A;	13-8105)
Budget Authority	26,796	26,796	26,796	2,036
Outlays	26,796	18,221	22,508	1,711
Patent and Trademark Office				
Salaries and expenses		(06-51-1006	-X-1-376-A;	13-1006)
Budget Authority	81,058	81,058	81,058	6,160
401(C) Authority--Off. Coll.	131,827	131,827	131,827	10,019
Outlays	189,865	188,487	189,176	14,377
National Bureau of Standards				
Scientific and technical research and services		(06-52-0500	-X-1-376-A;	13-0500)
Budget Authority	116,642	116,642	116,642	8,865
Outlays	90,048	90,057	90,052	6,844
Working capital fund		(06-52-4650	-X-4-376-A;	13-4650)
Budget Authority	2,012	2,012	2,012	153
Outlays	1,006	0	503	38
National Telecommunications and Information Admin.				
Salaries and expenses		(06-60-0550	-X-1-376-A;	13-0550)
Budget Authority	12,824	12,824	12,824	975
Outlays	10,900	10,259	10,580	804

Account Title	OMB	CBO	Average	Sequester
Public telecommunications facilities, planning and con (06-60-0551 -X-1-503-A; 13-0551)				
Budget Authority	22,968	22,968	22,968	1,746
Outlays	2,503	0	1,252	95
Department of Commerce		Total		
Budget Authority	2,084,883	2,084,886	2,084,884	158,451
Budget Authority--ASI	37	50	44	44
401(C) Authority--Off. Coll.	175,170	175,470	175,320	13,324
401(C) Other--incl. ob. limit	39,018	39,314	39,166	2,977
Guaranteed Loan Limitation	212,932	212,933	212,932	16,183
Outlays	1,468,147	1,546,914	1,507,531	114,613
Department of Defense--Military				
Military Personnel				
Military personnel, Marine Corps		(07-05-1105	-X-1-051-A;	17-1105)
Budget Authority	4,853,944	4,853,944	4,853,944	271,821
Outlays	4,728,227	4,659,782	4,694,004	262,864
Reserve personnel, Marine Corps		(07-05-1108	-X-1-051-A;	17-1108)
Budget Authority	270,926	270,926	270,926	15,172
Outlays	238,876	236,769	237,822	13,318
Reserve personnel, Navy		(07-05-1405	-X-1-051-A;	17-1405)
Budget Authority	1,264,599	1,264,599	1,264,599	70,818
Outlays	1,166,087	1,087,540	1,126,814	63,102
Military personnel, Navy		(07-05-1453	-X-1-051-A;	17-1453)
Budget Authority	15,875,246	15,875,246	15,875,246	889,014
Outlays	15,608,542	15,557,700	15,583,121	872,655
Military personnel, Army		(07-05-2010	-X-1-051-A;	21-2010)
Budget Authority	21,003,688	21,003,688	21,003,688	1,176,207
Outlays	20,692,833	20,583,700	20,638,266	1,155,743
National Guard personnel, Army		(07-05-2060	-X-1-051-A;	21-2060)
Budget Authority	3,056,818	3,056,818	3,056,818	171,182
Outlays	2,756,027	2,769,400	2,762,714	154,712
Reserve personnel, Army		(07-05-2070	-X-1-051-A;	21-2070)
Budget Authority	2,145,194	2,145,194	2,145,194	120,131
Outlays	1,965,641	2,008,894	1,987,268	111,287
Military personnel, Air Force		(07-05-3500	-X-1-051-A;	57-3500)
Budget Authority	17,698,217	17,698,217	17,698,217	991,100
Outlays	17,501,767	17,344,263	17,423,015	975,689
Reserve personnel, Air Force		(07-05-3700	-X-1-051-A;	57-3700)
Budget Authority	580,507	580,507	580,507	32,508
Outlays	520,947	507,300	514,124	28,791
National Guard personnel, Air Force		(07-05-3850	-X-1-051-A;	57-3850)
Budget Authority	922,797	922,797	922,797	51,677
Outlays	881,917	895,100	888,508	49,756
Operation and Maintenance				
Operation and maintenance, Defense agencies		(07-10-0100	-X-1-051-A;	97-0100)
Budget Authority	7,229,373	7,229,373	7,229,373	404,845
Outlays	6,027,128	6,455,786	6,241,457	349,522
Court of Military Appeals, Defense		(07-10-0104	-X-1-051-A;	97-0104)
Budget Authority	3,043	3,043	3,043	170
Outlays	2,374	2,967	2,670	150
Foreign currency fluctuations, Defense		(07-10-0801	-X-1-051-A;	97-0801)
Unobligated Balances--Defense	114,354	114,354	114,354	6,404
Environmental restoration, Defense		(07-10-0810	-X-1-051-A;	97-0810)
Budget Authority	50,000	50,000	50,000	2,800
Outlays	12,685	14,998	13,842	775
Tenth International Pan American games		(07-10-0812	-X-1-051-A;	97-0812)
Budget Authority	9,510	9,510	9,510	533
Outlays	5,706	8,559	7,132	399
Operation and maintenance, Marine Corps		(07-10-1106	-X-1-051-A;	17-1106)
Budget Authority	1,533,060	1,533,060	1,533,060	85,851
Outlays	1,042,481	1,247,000	1,144,740	64,105
Operation and maintenance, Marine Corps Reserve		(07-10-1107	-X-1-051-A;	17-1107)
Budget Authority	54,399	54,399	54,399	3,046
Outlays	35,800	35,000	35,400	1,982
National Board for the Promotion of Rifle Practice, Ar		(07-10-1705	-X-1-051-A;	21-1705)
Budget Authority	875	875	875	49
Outlays	700	853	776	43
Operation and maintenance, Navy		(07-10-1804	-X-1-051-A;	17-1804)
Budget Authority	23,285,795	23,285,795	23,285,795	1,304,005
Outlays	16,158,013	17,231,494	16,694,754	934,906
Operation and maintenance, Navy Reserve		(07-10-1806	-X-1-051-A;	17-1806)
Budget Authority	851,097	851,097	851,097	47,661
Outlays	534,149	607,500	570,824	31,966
Operation and maintenance, Army		(07-10-2020	-X-1-051-A;	21-2020)
Budget Authority	18,143,769	18,143,769	18,143,769	1,016,051
Outlays	13,244,951	14,333,468	13,789,210	772,196
Operation and maintenance, Army National Guard		(07-10-2065	-X-1-051-A;	21-2065)
Budget Authority	1,573,137	1,573,137	1,573,137	88,096
Outlays	1,182,527	1,392,382	1,287,454	72,097

Account Title	OMB	CBO	Average	Sequester
Operation and maintenance, Army Reserve		(07-10-2080	-X-1-051-A;	21-2080)
Budget Authority	741,875	741,875	741,875	41,545
Outlays	578,218	653,200	615,709	34,480
Operation and maintenance, Air Force		(07-10-3400	-X-1-051-A;	57-3400)
Budget Authority	18,657,940	18,657,940	18,657,940	1,044,845
Outlays	13,383,340	14,925,743	14,154,542	792,654
Operation and maintenance, Air Force Reserve		(07-10-3740	-X-1-051-A;	57-3740)
Budget Authority	858,495	858,495	858,495	48,076
Outlays	665,677	758,025	711,851	39,864
Operation and maintenance, Air National Guard		(07-10-3840	-X-1-051-A;	57-3840)
Budget Authority	1,717,698	1,717,698	1,717,698	96,191
Outlays	1,411,089	1,583,674	1,497,382	83,853
Procurement				
Procurement, Defense agencies		(07-15-0300	-X-1-051-A;	97-0300)
Budget Authority	1,228,906	1,228,906	1,228,906	68,819
Unobligated Balances--Defense	494,167	494,167	494,167	27,673
Outlays	520,368	361,894	441,131	24,703
National Guard and Reserve Equipment		(07-15-0350	-X-1-051-A;	97-0350)
Budget Authority	1,469,538	1,469,538	1,469,538	82,294
Unobligated Balances--Defense	508,687	508,687	508,687	28,486
Outlays	118,693	13,058	65,876	3,689
Defense Production Act purchases		(07-15-0360	-X-1-051-A;	97-0360)
Budget Authority	29,481	29,481	29,481	1,651
Unobligated Balances--Defense	28,340	28,340	28,340	1,587
Outlays	2,891	2,891	2,891	162
NATO cooperative defense programs		(07-15-0370	-X-1-051-A;	97-0370)
Budget Authority	14,265	14,265	14,265	799
Unobligated Balances--Defense	2,853	2,853	2,853	160
Outlays	2,305	2,160	2,232	125
Coastal defense augmentation		(07-15-0380	-X-1-051-A;	17-0380)
Budget Authority	202,235	202,235	202,235	11,325
Unobligated Balances--Defense	324,243	324,243	324,243	18,158
Outlays	73,707	52,490	63,098	3,533
Procurement, Marine Corps		(07-15-1109	-X-1-051-A;	17-1109)
Budget Authority	1,579,388	1,579,388	1,579,388	88,446
Unobligated Balances--Defense	633,276	633,276	633,276	35,463
Outlays	271,051	154,855	212,953	11,925
Aircraft procurement, Navy		(07-15-1506	-X-1-051-A;	17-1506)
Budget Authority	10,527,684	10,527,684	10,527,684	589,550
Unobligated Balances--Defense	3,253,579	3,253,579	3,253,579	182,200
Outlays	1,212,751	1,240,274	1,226,512	68,685
Weapons procurement, Navy		(07-15-1507	-X-1-051-A;	17-1507)
Budget Authority	4,971,638	4,971,638	4,971,638	278,412
Unobligated Balances--Defense	2,371,487	2,371,487	2,371,487	132,803
Outlays	771,028	808,216	789,622	44,219
Shipbuilding and conversion, Navy		(07-15-1611	-X-1-051-A;	17-1611)
Budget Authority	10,350,341	10,350,341	10,350,341	579,619
Unobligated Balances--Defense	13,137,914	13,137,914	13,137,914	735,723
Outlays	1,519,690	1,297,957	1,408,824	78,894
Other procurement, Navy		(07-15-1810	-X-1-051-A;	17-1810)
Budget Authority	6,082,913	6,082,913	6,082,913	340,643
Unobligated Balances--Defense	2,431,693	2,431,693	2,431,693	136,175
Outlays	979,180	851,372	915,276	51,255
Aircraft procurement, Army		(07-15-2031	-X-1-051-A;	21-2031)
Budget Authority	3,351,514	3,351,514	3,351,514	187,685
Unobligated Balances--Defense	862,391	862,391	862,391	48,294
Outlays	632,086	632,113	632,100	35,398
Missile procurement, Army		(07-15-2032	-X-1-051-A;	21-2032)
Budget Authority	2,762,020	2,762,020	2,762,020	154,673
Unobligated Balances--Defense	854,452	854,452	854,452	47,849
Outlays	235,070	289,499	262,284	14,688
Procurement of weapons and tracked combat vehicles, Ar		(07-15-2033	-X-1-051-A;	21-2033)
Budget Authority	4,455,245	4,455,245	4,455,245	249,494
Unobligated Balances--Defense	1,641,298	1,641,298	1,641,298	91,913
Outlays	421,881	122,061	271,971	15,230
Procurement of ammunition, Army		(07-15-2034	-X-1-051-A;	21-2034)
Budget Authority	2,374,837	2,374,837	2,374,837	132,991
Unobligated Balances--Defense	316,848	316,848	316,848	17,743
Outlays	807,505	645,951	726,728	40,697
Other procurement, Army		(07-15-2035	-X-1-051-A;	21-2035)
Budget Authority	5,018,700	5,018,700	5,018,700	281,047
Unobligated Balances--Defense	1,954,648	1,954,648	1,954,648	109,460
Outlays	697,335	415,579	556,457	31,162
Aircraft procurement, Air Force		(07-15-3010	-X-1-051-A;	57-3010)
Budget Authority	22,116,361	22,116,361	22,116,361	1,238,516
Unobligated Balances--Defense	10,266,598	10,266,598	10,266,598	574,929
Outlays	2,185,849	2,236,905	2,211,377	123,837

Account Title	OMB	CBO	Average	Sequester
Missile procurement, Air Force		(07-15-3020	-X-1-051-A;	57-3020)
Budget Authority	7,921,132	7,921,132	7,921,132	443,583
Unobligated Balances--Defense	3,382,192	3,382,192	3,382,192	189,403
Outlays	2,763,663	2,695,022	2,729,342	152,843
Other procurement, Air Force		(07-15-3080	-X-1-051-A;	57-3080)
Budget Authority	8,152,562	8,152,562	8,152,562	456,543
Unobligated Balances--Defense	3,173,314	3,173,314	3,173,314	177,706
Outlays	5,301,642	5,549,683	5,425,662	303,837
Research, Development, Test, and Evaluation				
Research, development, test, and evaluation, Defense a		(07-20-0400	-X-1-051-A;	97-0400)
Budget Authority	6,250,154	6,250,154	6,250,154	350,009
Unobligated Balances--Defense	702,982	702,982	702,982	39,367
Outlays	3,298,568	3,462,707	3,380,638	189,316
Director of test and evaluation, Defense		(07-20-0450	-X-1-051-A;	97-0450)
Budget Authority	113,918	113,918	113,918	6,379
Unobligated Balances--Defense	28,480	28,480	28,480	1,595
Outlays	38,661	42,776	40,718	2,280
Research, development, test, and evaluation, Navy		(07-20-1319	-X-1-051-A;	17-1319)
Budget Authority	9,572,042	9,572,042	9,572,042	536,034
Unobligated Balances--Defense	531,022	531,022	531,022	29,737
Outlays	5,102,047	5,253,073	5,177,560	289,943
Research, development, test, and evaluation, Army		(07-20-2040	-X-1-051-A;	21-2040)
Budget Authority	4,563,062	4,563,062	4,563,062	255,531
Unobligated Balances--Defense	634,653	634,653	634,653	35,541
Outlays	2,572,869	2,754,763	2,663,816	149,174
Research, development, test, and evaluation, Air Force		(07-20-3600	-X-1-051-A;	57-3600)
Budget Authority	13,139,218	13,139,218	13,139,218	735,796
Unobligated Balances--Defense	2,008,008	2,008,008	2,008,008	112,448
Outlays	6,664,780	8,268,299	7,466,540	418,126
Military Construction				
Military construction, Defense agencies		(07-25-0500	-X-1-051-A;	97-0500)
Budget Authority	172,488	172,488	172,488	9,659
Unobligated Balances--Defense	181,535	181,535	181,535	10,166
Outlays	23,507	28,381	25,944	1,453
North Atlantic Treaty Organization infrastructure		(07-25-0804	-X-1-051-A;	97-0804)
Budget Authority	9,510	9,510	9,510	533
Unobligated Balances--Defense	112,097	112,097	112,097	6,277
Outlays	61	1,483	772	43
Military construction, Navy		(07-25-1205	-X-1-051-A;	17-1205)
Budget Authority	1,621,807	1,621,807	1,621,807	90,821
Unobligated Balances--Defense	802,460	802,460	802,460	44,938
Outlays	464,732	436,351	450,542	25,230
Military construction, Naval Reserve		(07-25-1235	-X-1-051-A;	17-1235)
Budget Authority	39,752	39,752	39,752	2,226
Unobligated Balances--Defense	14,381	14,381	14,381	805
Outlays	10,420	4,283	7,352	412
Military construction, Army		(07-25-2050	-X-1-051-A;	21-2050)
Budget Authority	1,524,436	1,524,436	1,524,436	85,368
Unobligated Balances--Defense	912,471	912,471	912,471	51,098
Outlays	464,961	389,931	427,446	23,937
Military construction, Army National Guard		(07-25-2085	-X-1-051-A;	21-2085)
Budget Authority	97,197	97,197	97,197	5,443
Unobligated Balances--Defense	14,381	14,381	14,381	805
Outlays	11,158	6,697	8,928	500
Military construction, Army Reserve		(07-25-2086	-X-1-051-A;	21-2086)
Budget Authority	58,340	58,340	58,340	3,267
Unobligated Balances--Defense	14,658	14,658	14,658	821
Outlays	20,805	3,687	12,246	686
Military construction, Air Force		(07-25-3300	-X-1-051-A;	57-3300)
Budget Authority	1,581,727	1,581,727	1,581,727	88,577
Unobligated Balances--Defense	989,587	989,587	989,587	55,417
Outlays	306,758	308,533	307,646	17,228
Military construction, Air Force Reserve		(07-25-3730	-X-1-051-A;	57-3730)
Budget Authority	59,942	59,942	59,942	3,357
Unobligated Balances--Defense	33,283	33,283	33,283	1,864
Outlays	9,462	10,504	9,983	559
Military construction, Air National Guard		(07-25-3830	-X-1-051-A;	57-3830)
Budget Authority	115,309	115,309	115,309	6,457
Unobligated Balances--Defense	89,097	89,097	89,097	4,989
Outlays	10,220	12,297	11,258	630
Family Housing				
Family housing, Army		(07-30-0702	-X-1-051-A;	21-0702)
Budget Authority	1,360,025	1,360,025	1,360,025	76,161
Unobligated Balances--Defense	143,399	143,399	143,399	8,030
Outlays	678,285	741,415	709,850	39,752
Family housing, Navy and Marine Corps		(07-30-0703	-X-1-051-A;	17-0703)
Budget Authority	632,549	632,549	632,549	35,423
Unobligated Balances--Defense	47,768	47,768	47,768	2,675
Outlays	309,767	340,108	324,938	18,197

Account Title	OMB	CBO	Average	Sequester
Family housing, Air Force		(07-30-0704	-X-1-051-A;	57-0704)
Budget Authority	792,628	792,628	792,628	44,387
Unobligated Balances--Defense	213,031	213,031	213,031	11,930
Outlays	378,900	499,085	438,992	24,584
Family housing, Defense agencies		(07-30-0706	-X-1-051-A;	97-0706)
Budget Authority	15,755	15,755	15,755	882
Unobligated Balances--Defense	150	150	150	8
Outlays	10,443	7,927	9,185	514
Special Foreign Currency Program				
Special foreign currency program		(07-37-0800	-X-1-051-A;	97-0800)
Budget Authority	1,997	1,997	1,997	112
Unobligated Balances--Defense	930	930	930	52
Outlays	59	371	215	12
Revolving and Management Funds				
ADP equipment management fund		(07-40-3910	-X-4-051-A;	97-3910)
Budget Authority	100,000	100,000	100,000	5,600
Unobligated Balances--Defense	100,000	100,000	100,000	5,600
Outlays	0	32,400	16,200	907
Navy stock fund		(07-40-4911	-X-4-051-A;	17-4911)
Budget Authority	607,213	607,213	607,213	34,004
Outlays	212,525	461,501	337,013	18,873
Marine Corps stock fund		(07-40-4913	-X-4-051-A;	17-4913)
Budget Authority	35,853	35,853	35,853	2,008
Outlays	12,549	27,246	19,898	1,114
Air Force stock fund		(07-40-4921	-X-4-051-A;	57-4921)
Budget Authority	395,521	395,521	395,521	22,149
Outlays	138,432	300,606	219,519	12,293
Defense stock fund		(07-40-4961	-X-4-051-A;	97-4961)
Budget Authority	84,365	84,365	84,365	4,724
Outlays	29,528	64,104	46,816	2,622
Army stock fund		(07-40-4991	-X-4-051-A;	21-4991)
Budget Authority	373,743	373,743	373,743	20,930
Outlays	130,810	284,026	207,418	11,615
Allowances				
Civilian pay raise		(07-45-9913	-X-1-051-A;	97-9913)
Budget Authority	0	244,000	122,000	6,832
Outlays	0	243,000	121,500	6,804
Military pay raise		(07-45-9916	-X-1-051-A;	97-9916)
Budget Authority	0	2,611,000	1,305,500	73,108
Outlays	0	2,568,000	1,284,000	71,904
Department of Defense--Military		Total		
Budget Authority	278,309,313	281,164,313	279,736,813	15,665,262
Unobligated Balances--Defense	53,326,707	53,326,707	53,326,707	2,986,296
Outlays	159,762,704	168,826,631	164,294,668	9,200,501
Department of Defense--Civil				
Cemeterial Expenses, Army				
Salaries and expenses		(08-05-1805	-X-1-705-A;	21-1805)
Budget Authority	13,987	13,987	13,987	1,063
Outlays	4,295	4,294	4,294	326
Corps of Engineers--Civil				
Flood control, Mississippi River and tributaries		(08-10-3112	-X-1-301-A;	96-3112)
Budget Authority	301,225	301,225	301,225	22,893
401(C) Authority--Off. Coll.	500	500	500	38
Outlays	229,614	223,407	226,510	17,215
General investigations		(08-10-3121	-X-1-301-A;	96-3121)
Budget Authority	123,478	123,478	123,478	9,384
401(C) Authority--Off. Coll.	60	60	60	5
Outlays	86,954	85,740	86,347	6,562
Construction, general		(08-10-3122	-X-1-301-A;	96-3122)
Budget Authority	879,830	879,830	879,830	66,867
401(C) Authority--Off. Coll.	1,000	1,000	1,000	76
Outlays	528,898	578,168	553,533	42,068
Operation and maintenance, general		(08-10-3123	-X-1-301-A;	96-3123)
Budget Authority	1,248,764	1,248,764	1,248,764	94,906
401(C) Authority--Off. Coll.	6,000	6,000	6,000	456
Outlays	1,019,929	998,767	1,009,348	76,710
Operation and maintenance, general		(08-10-3123	-X-1-303-A;	96-3123)
Budget Authority	11,484	11,484	11,484	873
Outlays	11,484	8,958	10,221	777
General expenses		(08-10-3124	-X-1-301-A;	96-3124)
Budget Authority	105,399	105,399	105,399	8,010
Outlays	85,765	84,319	85,042	6,463
Flood control and coastal emergencies		(08-10-3125	-X-1-301-A;	96-3125)
Budget Authority	48,925	48,925	48,925	3,718
Revolving fund		(08-10-4902	-X-4-301-A;	96-4902)
Budget Authority	6,699	6,699	6,699	509
Outlays	6,699	6,699	6,699	509

Account Title	OMB	CBO	Average	Sequester
Rivers and harbors contributed funds		(08-10-8862	-X-7-301-A;	96-8862)
401(C) Other--incl. ob. limit	210,000	178,000	194,000	14,744
Outlays	169,600	70,310	119,955	9,117
Permanent appropriations (Water resources)		(08-10-9921	-X-2-301-A;	96-9921)
401(C) Other--incl. ob. limit	3,129	3,295	3,212	244
Outlays	48	56	52	4
Permanent appropriations (Other general purpose fiscal		(08-10-9921	-X-2-852-A;	96-9921)
401(C) Other--incl. ob. limit	6,258	6,492	6,375	484
Military Retirement				
Military retirement fund		(08-18-8097	-X-7-602-A;	97-8097)
401(C) Authority--ASI	108,000	176,000	142,000	142,000
Outlays	108,000	176,000	142,000	142,000
Soldiers' and Airmen's Home				
Operation and maintenance		(08-20-8931	-X-7-705-A;	84-8931)
Budget Authority	31,955	31,955	31,955	2,429
401(C) Authority--Off. Coll.	144	144	144	11
Outlays	28,278	27,945	28,112	2,137
Capital outlay		(08-20-8932	-X-7-705-A;	84-8932)
Budget Authority	14,355	14,355	14,355	1,091
Outlays	13,380	11,384	12,382	941
Forest & Wildlife Conservation, Mil. Reservations				
Wildlife conservation		(08-30-5095	-X-2-303-A;	97-5095)
401(C) Other--incl. ob. limit	2,109	2,117	2,113	161
Outlays	1,872	1,660	1,766	134
Forest products program		(08-30-5285	-X-2-302-A;	21-5285)
401(C) Authority	324	315	320	24
Outlays	0	62	31	2
Department of Defense--Civil		Total		
Budget Authority	2,786,101	2,786,101	2,786,101	211,744
401(C) Authority	324	315	320	24
401(C) Authority--Off. Coll.	7,704	7,704	7,704	586
401(C) Other--incl. ob. limit	221,496	189,904	205,700	15,633
401(C) Authority--ASI	108,000	176,000	142,000	142,000
Outlays	2,294,816	2,277,769	2,286,292	304,966
Department of Education				
Office of Elementary and Secondary Education				
Indian education		(18-10-0101	-X-1-501-A;	91-0101)
Budget Authority	64,187	64,187	64,187	4,878
Outlays	28,182	28,242	28,212	2,144
Impact aid		(18-10-0102	-X-1-501-A;	91-0102)
Budget Authority	682,722	682,722	682,722	51,887
Outlays	533,272	516,594	524,933	39,895
Compensatory education for the disadvantaged		(18-10-0900	-X-1-501-A;	91-0900)
Budget Authority	3,536,749	3,536,749	3,536,749	268,793
Outlays	177,484	177,054	177,269	13,472
Special programs		(18-10-1000	-X-1-501-A;	91-1000)
Budget Authority	674,789	674,789	674,789	51,284
Outlays	55,055	55,058	55,056	4,184
Off. of Bilingual Ed. & Minority Languages Affairs				
Bilingual education		(18-15-1300	-X-1-501-A;	91-1300)
Budget Authority	165,361	165,361	165,361	12,567
Outlays	5,898	5,789	5,844	444
Office of Special Education & Rehabilitative Svcs.				
Education for the handicapped		(18-20-0300	-X-1-501-A;	91-0300)
Budget Authority	1,350,124	1,350,124	1,350,124	102,609
Outlays	64,224	64,224	64,224	4,881
Vocational rehabilitation		(18-20-0301	-X-1-506-A;	91-0301)
Budget Authority	164,413	164,413	164,413	12,495
Outlays	126,598	126,598	126,598	9,621
Payments to institutions for the handicapped		(18-20-0604	-X-1-501-A;	91-0600)
Budget Authority	5,263	5,263	5,263	400
Outlays	5,263	5,263	5,263	400
Payments to institutions for the handicapped		(18-20-0604	-X-1-502-A;	91-0601)
Budget Authority	30,624	30,624	30,624	2,327
Outlays	30,624	30,624	30,624	2,327
Payments to institutions for the handicapped		(18-20-0604	-X-1-502-A;	91-0602)
Budget Authority	59,335	59,335	59,335	4,509
Outlays	55,774	55,774	55,774	4,239
Promotion of education for the blind		(18-20-8893	-X-7-501-A;	91-8893)
401(C) Authority	10	10	10	1
Office of Vocational and Adult Education				
Vocational and adult education		(18-30-0400	-X-1-501-A;	91-0400)
Budget Authority	900,324	900,324	900,324	68,425
401(C) Authority	7,148	7,148	7,148	543
Outlays	18,150	18,149	18,150	1,379
Office of Postsecondary Education				
Student financial assistance		(18-40-0200	-X-1-502-A;	91-0200)
Budget Authority	4,822,859	4,822,859	4,822,859	366,537
Direct Loan Limitation	181,830	181,830	181,830	13,819
Outlays	1,383,466	1,383,466	1,383,466	105,143

Account Title	OMB	CBO	Average	Sequester
Higher education		(18-40-0201	-X-1-502-A;	91-0201)
Budget Authority	435,663	435,663	435,663	33,110
Outlays	56,915	63,159	60,037	4,563
Guaranteed student loans		(18-40-0230	-X-1-502-A;	91-0230)
Budget Authority--Spec. Rules	45,610	0	22,805	22,805
401(C) Authority--Spec. Rules	0	49,600	24,800	24,800
Outlays	28,730	31,240	29,985	29,985
Higher education facilities loans and insurance		(18-40-0240	-X-1-502-A;	91-0240)
Budget Authority	17,991	123	9,057	688
Outlays	6,102	111	3,106	236
Howard University		(18-40-0603	-X-1-502-A;	91-0603)
Budget Authority	157,168	157,168	157,168	11,945
Outlays	150,384	150,881	150,632	11,448
College housing loans		(18-40-4250	-X-3-502-A;	91-4250)
401(C) Authority--Off. Coll.	394	394	394	30
Direct Loan Limitation	57,420	57,420	57,420	4,364
Outlays	355	355	355	27
Office of Educational Research and Improvement				
Libraries		(18-50-0104	-X-1-503-A;	91-0104)
Budget Authority	122,017	122,017	122,017	9,273
Outlays	29,628	29,643	29,636	2,252
Education research and improvement		(18-50-1100	-X-1-503-A;	91-1100)
Budget Authority	57,399	57,399	57,399	4,362
Outlays	32,143	32,144	32,144	2,443
Departmental Management				
Salaries and expenses (Research and general education		(18-80-0800	-X-1-503-A;	91-0800)
Budget Authority	216,154	216,154	216,154	16,428
Outlays	179,408	179,411	179,410	13,635
Salaries and expenses (Federal law enforcement activit		(18-80-0800	-X-1-751-A;	91-0800)
Budget Authority	56,413	56,413	56,413	4,287
Outlays	46,823	46,575	46,699	3,549
Department of Education		Total		
Budget Authority	13,519,555	13,501,687	13,510,621	1,026,807
Budget Authority--Spec. Rules	45,610	0	22,805	22,805
401(C) Authority	7,158	7,158	7,158	544
401(C) Authority--Off. Coll.	394	394	394	30
401(C) Authority--Spec. Rules	0	49,600	24,800	24,800
Direct Loan Limitation	239,250	239,250	239,250	18,183
Outlays	3,014,478	3,000,354	3,007,416	256,270
Department of Energy				
Atomic Energy Defense Activities				
Atomic energy defense activities		(19-10-0220	-X-1-053-A;	89-0220)
Budget Authority	7,293,989	7,293,989	7,293,989	408,463
Unobligated Balances--Defense	401	38,077	19,239	1,077
Outlays	4,484,082	4,724,786	4,604,434	257,848
Energy Programs				
Geothermal resources development fund		(19-20-0206	-X-1-271-A;	89-0206)
Budget Authority	69	69	69	5
Outlays	69	69	69	5
Federal Energy Regulatory Commission		(19-20-0212	-X-1-276-A;	89-0212)
Budget Authority	91,459	91,459	91,459	6,951
Outlays	84,368	77,741	81,054	6,160
Fossil energy research and development		(19-20-0213	-X-1-271-A;	89-0213)
Budget Authority	297,599	297,599	297,599	22,618
Outlays	89,086	89,280	89,183	6,778
Energy conservation (Energy conservation)		(19-20-0215	-X-1-272-A;	89-0215)
Budget Authority	427,512	427,512	427,512	32,491
Outlays	136,804	83,793	110,298	8,383
Energy information administration		(19-20-0216	-X-1-276-A;	89-0216)
Budget Authority	57,724	57,724	57,724	4,387
Outlays	32,964	43,293	38,128	2,898
Economic regulation		(19-20-0217	-X-1-276-A;	89-0217)
Budget Authority	23,423	23,423	23,423	1,780
Outlays	14,762	14,762	14,762	1,122
Strategic petroleum reserve		(19-20-0218	-X-1-274-A;	89-0218)
Budget Authority	107,533	107,533	107,533	8,172
Outlays	90,685	59,143	74,914	5,693
Naval petroleum and shale reserves		(19-20-0219	-X-1-271-A;	89-0219)
Budget Authority	13,002	13,002	13,002	988
Outlays	6,000	6,175	6,088	463
General science and research activities		(19-20-0222	-X-1-251-A;	89-0222)
Budget Authority	655,928	655,928	655,928	49,851
Outlays	486,216	489,537	487,876	37,079
Energy supply, R&D activities		(19-20-0224	-X-1-271-A;	89-0224)
Budget Authority	1,696,063	1,696,063	1,696,063	128,901
Outlays	881,953	878,561	880,257	66,900
Uranium supply and enrichment activities		(19-20-0226	-X-1-271-A;	89-0226)
Budget Authority	1,551,309	1,551,309	1,551,309	117,899

Account Title	OMB	CBO	Average	Sequester
Emergency preparedness		(19-20-0234	-X-1-274-A;	89-0234)
Budget Authority	5,750	5,750	5,750	437
Outlays	2,860	4,600	3,730	283
Payments to states under Federal Power Act		(19-20-5105	-X-2-852-A;	89-5105)
401(C) Other--incl. ob. limit	0	618	309	23
Alternative fuels production		(19-20-5180	-X-2-271-A;	89-5180)
Budget Authority	80,706	80,706	80,706	6,134
Nuclear waste disposal fund		(19-20-5227	-X-2-271-A;	89-5227)
Budget Authority	499,037	499,037	499,037	37,927
Outlays	249,518	249,518	249,518	18,963
Power Marketing Administration				
Operation and maintenance, Southeastern Power Administ		(19-50-0302	-X-1-271-A;	89-0302)
401(C) Authority--Off. Coll.	1,033	1,033	1,033	78
Outlays	909	909	909	69
Operation and maintenance, Southwestern Power Administ		(19-50-0303	-X-1-271-A;	89-0303)
Budget Authority	3,810	3,810	3,810	290
Outlays	3,353	3,353	3,353	255
Operation and maintenance, Alaska Power Administration		(19-50-0304	-X-1-271-A;	89-0304)
Budget Authority	826	826	826	63
Outlays	727	727	727	55
Bonneville Power Administration fund		(19-50-4045	-X-3-271-A;	89-4045)
401(C) Authority--Off. Coll.	57,614	57,614	57,614	4,379
Outlays	50,700	50,700	50,700	3,853
Colorado river basins power marketing fund, WAPA		(19-50-4452	-X-3-271-A;	89-4452)
401(C) Authority--Off. Coll.	8,686	8,686	8,686	660
Outlays	7,644	7,644	7,644	581
Construction, rehabilitation, operation and maintenanc		(19-50-5068	-X-2-271-A;	89-5068)
Budget Authority	36,982	36,982	36,982	2,811
Outlays	32,544	32,544	32,544	2,473
Departmental Administration				
Departmental administration (Energy information, polic		(19-60-0228	-X-1-276-A;	89-0228)
Budget Authority	394,260	394,260	394,260	29,964
Outlays	217,536	236,556	227,046	17,255
Department of Energy		Total		
Budget Authority	13,236,981	13,236,981	13,236,981	860,130
401(C) Authority--Off. Coll.	67,333	67,333	67,333	5,117
401(C) Other--incl. ob. limit	0	618	309	23
Unobligated Balances--Defense	401	38,077	19,239	1,077
Outlays	6,872,780	7,053,691	6,963,236	437,117
Department of Health and Human Services				
Food and Drug Administration				
Program expenses		(09-10-0600	-X-1-554-A;	75-0600)
Budget Authority	402,035	402,035	402,035	30,555
Outlays	352,023	349,943	350,983	26,675
Buildings and facilities		(09-10-0603	-X-1-554-A;	75-0603)
Budget Authority	1,379	1,379	1,379	105
Outlays	692	432	562	43
Revolving fund for certification and other services		(09-10-4309	-X-3-554-A;	75-4309)
401(C) Authority--Off. Coll.	2,799	2,799	2,799	213
Outlays	2,799	2,799	2,799	213
Health Resources and Services				
Health resources and services (health care services)		(09-15-0350	-X-1-551-A;	75-0350)
Budget Authority	790,848	790,848	790,848	60,104
Budget Authority--Spec. Rules	8,818	8,818	8,818	8,818
401(C) Authority--Off. Coll.	150	150	150	11
Direct Loan Limitation	957	957	957	73
Outlays	480,754	456,719	468,737	41,072
Health resources and services (education and training)		(09-15-0350	-X-1-553-A;	75-0350)
Budget Authority	206,103	206,103	206,103	15,664
Outlays	66,769	54,420	60,594	4,605
Indian health services		(09-15-0390	-X-1-551-A;	75-0390)
Budget Authority	65,110	65,110	65,110	4,948
Budget Authority--Spec. Rules	15,182	15,182	15,182	15,182
401(C) Authority--Spec. Rules	515	515	515	515
Outlays	72,419	71,068	71,743	16,486
Indian health facilities		(09-15-0391	-X-1-551-A;	75-0391)
Budget Authority--Spec. Rules	924	924	924	924
Outlays	271	271	271	271
Medical facilities guarantee and loan fund		(09-15-4430	-X-3-551-A;	75-4430)
Budget Authority	25,000	0	12,500	950
Outlays	17,289	0	8,644	657
Centers for Disease Control				
Disease control (Health care services)		(09-20-0943	-X-1-551-A;	75-0943)
Budget Authority	376,548	376,548	376,548	28,618
401(C) Authority--Off. Coll.	1,100	1,100	1,100	84
Outlays	262,482	267,564	265,023	20,142
Disease control (Health research)		(09-20-0943	-X-1-552-A;	75-0943)
Budget Authority	64,552	64,552	64,552	4,906
Outlays	38,494	45,989	42,242	3,210

Account Title	OMB	CBO	Average	Sequester
National Institutes of Health				
National Library of Medicine (Health research)		(09-25-0807	-X-1-552-A;	75-0807)
Budget Authority	15,792	15,792	15,792	1,200
Outlays	11,673	10,107	10,890	828
National Library of Medicine (Education and training)		(09-25-0807	-X-1-553-A;	75-0807)
Budget Authority	39,485	39,485	39,485	3,001
Outlays	27,090	25,299	26,194	1,991
John E. Fogarty International Center		(09-25-0819	-X-1-552-A;	75-0819)
Budget Authority	10,907	10,907	10,907	829
Outlays	6,108	6,190	6,149	467
Buildings and facilities		(09-25-0838	-X-1-552-A;	75-0838)
Budget Authority	14,259	14,259	14,259	1,084
Outlays	4,779	0	2,390	182
National Institute on Aging (Health research)		(09-25-0843	-X-1-552-A;	75-0843)
Budget Authority	144,069	144,069	144,069	10,949
Outlays	83,965	72,242	78,104	5,936
National Institute on Aging (Education and training)		(09-25-0843	-X-1-553-A;	75-0843)
Budget Authority	5,566	5,566	5,566	423
Outlays	2,907	2,789	2,848	216
Nat. Inst. Child Health and Human Development (Health		(09-25-0844	-X-1-552-A;	75-0844)
Budget Authority	293,394	293,394	293,394	22,298
Outlays	134,368	134,465	134,416	10,216
Nat. Inst. Child Health and Human Development (Ed. & t		(09-25-0844	-X-1-553-A;	75-0844)
Budget Authority	14,367	14,367	14,367	1,092
Outlays	1,398	1,394	1,396	106
Office of the Director (Health research)		(09-25-0846	-X-1-552-A;	75-0846)
Budget Authority	119,026	119,026	119,026	9,046
Outlays	47,540	43,970	45,755	3,477
Office of the Director (Education and training)		(09-25-0846	-X-1-553-A;	75-0846)
Budget Authority	4,130	4,130	4,130	314
Outlays	3,520	3,924	3,722	283
Research resources (Health research)		(09-25-0848	-X-1-552-A;	75-0848)
Budget Authority	291,313	291,313	291,313	22,140
Outlays	152,833	160,862	156,848	11,920
Research resources (Education and training)		(09-25-0848	-X-1-553-A;	75-0848)
Budget Authority	1,106	1,106	1,106	84
Outlays	55	63	59	4
National Cancer Institute (Health research)		(09-25-0849	-X-1-552-A;	75-0849)
Budget Authority	1,172,442	1,172,442	1,172,442	89,106
401(C) Authority--Off. Coll.	10	10	10	1
Outlays	617,017	590,252	603,634	45,876
National Cancer Institute (Education and training)		(09-25-0849	-X-1-553-A;	75-0849)
Budget Authority	31,426	31,426	31,426	2,388
Outlays	629	629	629	48
National Institute of General Medical Sciences (Health		(09-25-0851	-X-1-552-A;	75-0851)
Budget Authority	435,711	435,711	435,711	33,114
Outlays	216,159	218,836	217,498	16,530
National Institute of General Medical Sciences (Ed. &		(09-25-0851	-X-1-553-A;	75-0851)
Budget Authority	56,702	56,702	56,702	4,309
Outlays	5,029	6,181	5,605	426
National Institute of Environmental Health Sciences (R		(09-25-0862	-X-1-552-A;	75-0862)
Budget Authority	180,550	180,550	180,550	13,722
Outlays	105,682	105,675	105,678	8,032
National Institute of Environmental Health Sciences (E		(09-25-0862	-X-1-553-A;	75-0862)
Budget Authority	8,345	8,345	8,345	634
Outlays	2,040	2,111	2,076	158
National Heart, Lung and Blood Institute (Health resea		(09-25-0872	-X-1-552-A;	75-0872)
Budget Authority	779,142	779,142	779,142	59,215
Outlays	384,543	357,909	371,226	28,213
National Heart, Lung and Blood Institute (Education &		(09-25-0872	-X-1-553-A;	75-0872)
Budget Authority	42,537	42,537	42,537	3,233
Outlays	1,534	1,531	1,532	116
National Institute of Dental Research (Health research		(09-25-0873	-X-1-552-A;	75-0873)
Budget Authority	93,830	93,830	93,830	7,131
Outlays	56,984	61,222	59,103	4,492
National Institute of Dental Research (Education and t		(09-25-0873	-X-1-553-A;	75-0873)
Budget Authority	4,942	4,942	4,942	376
Outlays	3,586	3,059	3,322	252
National Insti. of Diabetes, and Digestive and Kidney		(09-25-0884	-X-1-552-A;	75-0884)
Budget Authority	517,964	517,964	517,964	39,365
Outlays	311,171	241,116	276,144	20,987
National Insti. of Diabetes, and Digestive and Kidney		(09-25-0884	-X-1-553-A;	75-0884)
Budget Authority	26,330	26,330	26,330	2,001
Outlays	8,744	6,477	7,610	578
National Institute of Allergy & Infectious Diseases (R		(09-25-0885	-X-1-552-A;	75-0885)
Budget Authority	355,378	355,378	355,378	27,009
Outlays	175,908	170,679	173,294	13,170

Account Title	OMB	CBO	Average	Sequester
National Institute of Allergy & Infectious Diseases (E	(09-25-0885	-X-1-553-A;	75-0885)	
Budget Authority	11,383	11,383	11,383	865
Outlays	1,634	1,628	1,631	124
National Institute of Neurological & Communicative Dis	(09-25-0886	-X-1-552-A;	75-0886)	
Budget Authority	401,309	401,309	401,309	30,499
401(C) Authority--Off. Coll.	12	12	12	1
Outlays	183,772	178,704	181,238	13,774
National Institute of Neurological & Communicative Dis	(09-25-0886	-X-1-553-A;	75-0886)	
Budget Authority	13,172	13,172	13,172	1,001
Outlays	3,731	3,780	3,756	285
National Eye Institute (Health research)	(09-25-0887	-X-1-552-A;	75-0887)	
Budget Authority	181,358	181,358	181,358	13,783
Outlays	85,699	88,003	86,851	6,601
National Eye Institute (Education and training)	(09-25-0887	-X-1-553-A;	75-0887)	
Budget Authority	5,255	5,255	5,255	399
Outlays	1,353	1,351	1,352	103
Alcohol,Drug Abuse, & Mental Health Administration				
Federal subsidy for St. Elizabeths Hospital	(09-30-1300	-X-1-551-A;	75-1300)	
Budget Authority	41,739	41,739	41,739	3,172
401(C) Authority--Off. Coll.	44,189	44,189	44,189	3,358
Outlays	85,928	85,928	85,928	6,531
Alcohol, drug abuse, and mental health (Health care se	(09-30-1361	-X-1-551-A;	75-1361)	
Budget Authority	490,462	490,462	490,462	37,275
Outlays	369,886	382,560	376,223	28,593
Alcohol, drug abuse, and mental health (Health researc	(09-30-1361	-X-1-552-A;	75-1361)	
Budget Authority	396,408	396,408	396,408	30,127
Outlays	275,762	274,673	275,218	20,917
Alcohol, drug abuse, and mental health (Education and	(09-30-1361	-X-1-553-A;	75-1361)	
Budget Authority	39,237	39,237	39,237	2,982
Outlays	10,541	10,555	10,548	802
Office of Assistant Secretary for Health				
Retirement pay and medical benefits for commissioned o	(09-37-0379	-X-1-551-A;	75-0379)	
Budget Authority	9,360	0	4,680	356
Budget Authority--ASI	444	0	222	222
401(C) Authority	0	10,407	5,204	396
401(C) Authority--ASI	0	1,000	500	500
Outlays	9,744	9,277	9,510	1,390
Public health service management (Health care services	(09-37-1101	-X-1-551-A;	75-1101)	
Budget Authority	39,337	39,337	39,337	2,990
401(C) Authority--Off. Coll.	310	310	310	24
Outlays	25,525	22,771	24,148	1,835
Public health service management (Health research)	(09-37-1101	-X-1-552-A;	75-1101)	
Budget Authority	59,883	59,883	59,883	4,551
Outlays	36,841	33,770	35,306	2,683
Health Care Financing Administration				
Program management (Health care services)	(09-38-0511	-X-1-551-A;	75-0511)	
Budget Authority	70,371	70,371	70,371	5,348
Outlays	62,645	60,449	61,547	4,678
Program management (Health research)	(09-38-0511	-X-1-552-A;	75-0511)	
Budget Authority	15,312	15,312	15,312	1,164
Outlays	3,832	10,412	7,122	541
Federal supplementary medical insurance trust fund	(09-38-8004	-X-7-571-A;	20-8004)	
401(C) Authority--Spec. Rules	275,000	400,000	337,500	337,500
Obligation Limitation	1,026,183	1,026,183	1,026,183	77,990
Outlays	1,258,925	1,377,687	1,318,306	412,041
Federal hospital insurance trust fund	(09-38-8005	-X-7-571-A;	20-8005)	
401(C) Authority--Spec. Rules	840,000	840,000	840,000	840,000
Obligation Limitation	694,246	694,246	694,246	52,763
Outlays	1,500,064	1,460,848	1,480,456	888,675
Social Security Administration				
Supplemental security income program	(09-60-0406	-X-1-609-A;	75-0406)	
Budget Authority	727,071	0	363,536	27,629
401(C) Authority	0	722,436	361,218	27,453
Outlays	679,298	674,729	677,014	51,453
Special benefits for disabled coal miners	(09-60-0409	-X-1-601-A;	75-0409)	
Budget Authority	6,239	0	3,120	237
Budget Authority--ASI	13,000	0	6,500	6,500
401(C) Authority	0	6,323	3,162	240
401(C) Authority--ASI	0	13,000	6,500	6,500
Outlays	19,239	19,323	19,281	13,477
Assistance payments program	(09-60-0412	-X-1-609-A;	75-0412)	
Budget Authority	200,272	0	100,136	7,610 *
401(C) Authority	0	220,685	110,342	8,386 *
401(C) Authority--Off. Coll.	100	100	100	8
Outlays	200,372	220,785	210,578	16,004
Low income home energy assistance	(09-60-0420	-X-1-609-A;	75-0420)	
Budget Authority	2,009,700	2,009,700	2,009,700	152,737
Outlays	1,808,730	1,808,730	1,808,730	137,463

* $13,300 of sequester to be applied against Child support enforcement (09-60-0430) due to application of special rule.

Account Title	OMB	CBO	Average	Sequester
Child support enforcement *		(09-60-0430	-X-1-609-A;	75-0430)
Budget Authority	570,223	0	285,112	21,669
401(C) Authority	24,063	769,939	397,001	30,172
401(C) Authority--Off. Coll.	61	61	61	5
Outlays	594,605	754,236	674,420	51,256
Refugee and entrant assistance		(09-60-0473	-X-1-609-A;	75-0473)
Budget Authority	409,363	409,363	409,363	31,112
Outlays	259,163	262,000	260,582	19,804
Payments to states from receipts for child support		(09-60-5734	-X-2-609-A;	75-5734)
401(C) Other--incl. ob. limit	469	469	469	36
Outlays	469	469	469	36
Human Development Services				
Social services block grant		(09-80-1634	-X-1-506-A;	75-1634)
Budget Authority	2,583,900	0	1,291,950	98,188
401(C) Authority	0	2,700,000	1,350,000	102,600
Outlays	2,421,900	2,538,000	2,479,950	188,476
Community services		(09-80-1635	-X-1-506-A;	75-1635)
Budget Authority	355,877	355,877	355,877	27,047
Outlays	243,505	242,800	243,152	18,480
Human development services		(09-80-1636	-X-1-506-A;	75-1636)
Budget Authority	1,928,814	1,928,814	1,928,814	146,590
Outlays	1,082,631	1,083,208	1,082,920	82,302
Work incentives		(09-80-1639	-X-1-504-A;	75-1639)
Budget Authority	210,540	210,540	210,540	16,001
Outlays	174,244	174,327	174,286	13,246
Family social services		(09-80-1645	-X-1-506-A;	75-1645)
Budget Authority	217,714	217,714	217,714	16,546
Budget Authority--Spec. Rules	2,352	0	1,176	1,176
401(C) Authority--Spec. Rules	0	2,352	1,176	1,176
Outlays	150,629	150,522	150,575	13,038
Departmental Management				
General Departmental management		(09-90-0120	-X-1-609-A;	75-0120)
Budget Authority	138,078	138,078	138,078	10,494
Outlays	125,797	125,797	125,797	9,561
Policy research		(09-90-0122	-X-1-609-A;	75-0122)
Budget Authority	6,220	6,220	6,220	473
Outlays	2,861	2,862	2,862	218
Office of the Inspector General		(09-90-0128	-X-1-609-A;	75-0128)
Budget Authority	40,128	40,128	40,128	3,050
Outlays	34,747	34,545	34,646	2,633
Office for Civil Rights		(09-90-0135	-X-1-751-A;	75-0135)
Budget Authority	15,312	15,312	15,312	1,164
Outlays	13,934	13,475	13,704	1,042
Office of Consumer Affairs		(09-90-0137	-X-1-506-A;	75-0137)
Budget Authority	1,903	1,903	1,903	145
Outlays	1,713	1,713	1,713	130
Department of Health and Human Services		Total		
Budget Authority	17,786,228	13,664,163	15,725,196	1,195,115
Budget Authority--ASI	13,444	0	6,722	6,722
Budget Authority--Spec. Rules	27,276	24,924	26,100	26,100
401(C) Authority	24,063	4,429,790	2,226,926	169,246
401(C) Authority--Off. Coll.	48,731	48,731	48,731	3,704
401(C) Other--incl. ob. limit	469	469	469	36
401(C) Authority--ASI	0	14,000	7,000	7,000
401(C) Authority--Spec. Rules	1,115,515	1,242,867	1,179,191	1,179,191
Direct Loan Limitation	957	957	957	73
Obligation Limitation	1,720,429	1,720,429	1,720,429	130,753
Outlays	15,388,973	15,586,104	15,487,538	2,296,067
Health and Human Services - Social Security				
Social Security				
Federal old-age and survivors insurance trust fund		(16-05-8006	-X-7-651-A;	20-8006)
Obligation Limitation	1,710,913	1,710,913	1,710,913	130,029
Outlays	1,439,843	1,255,599	1,347,721	102,427
Federal disability insurance trust fund		(16-05-8007	-X-7-651-A;	20-8007)
Obligation Limitation	481,316	481,316	481,316	36,580
Outlays	434,227	417,512	425,870	32,366
Health and Human Services - Social Security		Total		
Obligation Limitation	2,192,229	2,192,229	2,192,229	166,609
Outlays	1,874,070	1,673,111	1,773,590	134,793
Department of Housing and Urban Development				
Housing Programs				
Housing counseling assistance		(25-02-0156	-X-1-506-A;	86-0156)
Budget Authority	3,313	3,313	3,313	252
Subsidized housing programs (Community development)		(25-02-0164	-X-1-451-A;	86-0164)
Budget Authority	143,550	143,550	143,550	10,910
Outlays	21,533	43,066	32,300	2,455
Subsidized housing programs (Housing assistance)		(25-02-0164	-X-1-604-A;	86-0164)
Budget Authority	9,393,537	9,393,540	9,393,538	713,909
Outlays	10,363	8,430	9,396	714

* Excludes sequester from Assistance payments program (09-60-0412) due to application of special rule.

Account Title	OMB	CBO	Average	Sequester
Congregate services program		(25-02-0178	-X-1-604-A;	86-0178)
Budget Authority	2,555	2,555	2,555	194
Rental housing assistance fund		(25-02-4041	-X-3-604-A;	86-4041)
401(C) Authority--Off. Coll.	51,900	51,000	51,450	3,910
Outlays	51,900	51,000	51,450	3,910
Nonprofit sponsor assistance		(25-02-4042	-X-3-604-A;	86-4042)
Direct Loan Limitation	957	957	957	73
Outlays	326	236	281	21
Federal Housing Administration fund		(25-02-4070	-X-3-371-A;	86-4070)
401(C) Authority--Off. Coll.	296,730	296,730	296,730	22,551
Direct Loan Limitation	84,446	84,446	84,446	6,418
Guaranteed Loan Limitation	141,500,000	141,500,000	141,500,000	10,754,000
Obligation Limitation	261,959	261,959	261,959	19,909
Outlays	558,749	569,490	564,120	42,873
Housing for the elderly or handicapped fund		(25-02-4115	-X-3-371-A;	86-4115)
Budget Authority	3,738	3,738	3,738	284
Direct Loan Limitation	603,899	603,899	603,899	45,896
Outlays	3,738	3,738	3,738	284
Interstate land sales		(25-02-5270	-X-2-376-A;	86-5270)
401(C) Other--incl. ob. limit	834	834	834	63
Outlays	750	834	792	60
Manufactured home inspection and monitoring		(25-02-5271	-X-2-376-A;	86-5271)
401(C) Other--incl. ob. limit	6,989	6,989	6,989	531
Outlays	3,793	6,655	5,224	397
Public and Indian Housing Programs				
Payments for operation of low income housing projects		(25-03-0163	-X-1-604-A;	86-0163)
Budget Authority	1,158,544	1,158,544	1,158,544	88,049
Outlays	626,642	579,270	602,956	45,825
Government National Mortgage Association				
Guarantees of mortgage-backed securities		(25-04-4238	-X-3-371-A;	86-4238)
401(C) Authority--Off. Coll.	18,785	18,785	18,785	1,428
Guaranteed Loan Limitation	175,000,000	175,000,000	175,000,000	13,300,000
Outlays	18,785	16,363	17,574	1,336
Community Planning and Development				
Community development grants		(25-06-0162	-X-1-451-A;	86-0162)
Budget Authority	2,990,434	2,990,434	2,990,434	227,273
Guaranteed Loan Limitation	212,956	212,956	212,956	16,185
Outlays	59,809	59,809	59,809	4,545
Urban development action grants		(25-06-0170	-X-1-451-A;	86-0170)
Budget Authority	315,810	315,810	315,810	24,002
Outlays	15,790	15,791	15,790	1,200
Urban homesteading		(25-06-0171	-X-1-451-A;	86-0171)
Budget Authority	11,358	11,358	11,358	863
Outlays	11,358	10,222	10,790	820
Rehabilitation loan fund		(25-06-4036	-X-3-451-A;	86-4036)
401(C) Authority--Off. Coll.	23,044	23,044	23,044	1,751
Direct Loan Limitation	81,345	81,345	81,345	6,182
Outlays	74,044	74,044	74,044	5,627
Policy Development and Research				
Research and technology		(25-28-0108	-X-1-451-A;	86-0108)
Budget Authority	16,173	16,173	16,173	1,229
Outlays	4,851	4,852	4,852	369
Fair Housing and Equal Opportunity				
Fair housing assistance		(25-29-0144	-X-1-751-A;	86-0144)
Budget Authority	6,341	6,341	6,341	482
Outlays	2,000	0	1,000	76
Management and Administration				
Salaries & expenses, incl. transfer of funds (Communit		(25-35-0143	-X-1-451-A;	86-0143)
Budget Authority	189,647	189,647	189,647	14,413
Outlays	137,407	158,342	147,874	11,238
Salaries & expenses, incl. transfer of funds (Public a		(25-35-0143	-X-1-604-A;	86-0143)
Budget Authority	106,972	106,972	106,972	8,130
Outlays	120,532	96,275	108,404	8,239
Salaries & expenses, incl. transfer of funds (Federal		(25-35-0143	-X-1-751-A;	86-0143)
Budget Authority	25,342	25,342	25,342	1,926
Outlays	9,288	21,161	15,224	1,157
Department of Housing and Urban Development		Total		
Budget Authority	14,367,314	14,367,317	14,367,316	1,091,916
401(C) Authority--Off. Coll.	390,459	389,559	390,009	29,641
401(C) Other--incl. ob. limit	7,823	7,823	7,823	595
Direct Loan Limitation	770,647	770,647	770,647	58,569
Guaranteed Loan Limitation	316,712,956	316,712,956	316,712,956	24,070,185
Obligation Limitation	261,959	261,959	261,959	19,909
Outlays	1,731,658	1,719,578	1,725,618	131,147
Department of the Interior				
Bureau of Land Management				
Management of lands and resources		(10-04-1109	-X-1-302-A;	14-1109)
Budget Authority	379,139	379,139	379,139	28,815
401(C) Authority--Off. Coll.	4,000	4,000	4,000	304
Outlays	329,580	326,268	327,924	24,922

Account Title	OMB	CBO	Average	Sequester
Construction and access		(10-04-1110	-X-1-302-A;	14-1110)
Budget Authority	1,335	1,335	1,335	101
Outlays	1,378	334	856	65
Payments in lieu of taxes		(10-04-1114	-X-1-852-A;	14-1114)
Budget Authority	99,882	99,882	99,882	7,591
Outlays	99,882	99,882	99,882	7,591
Oregon and California grant lands		(10-04-1116	-X-1-302-A;	14-1116)
Budget Authority	53,379	53,379	53,379	4,057
Outlays	39,502	39,500	39,501	3,002
Special acquisition of lands and minerals		(10-04-1117	-X-1-302-A;	14-1117)
401(C) Authority	1,300	1,300	1,300	99
Service charges, deposits, and forfeitures		(10-04-5017	-X-2-302-A;	14-5017)
Budget Authority	3,872	3,872	3,872	294
Outlays	3,020	2,819	2,920	222
Land acquisition		(10-04-5033	-X-2-302-A;	14-5033)
Budget Authority	2,188	2,188	2,188	166
Outlays	1,188	1,085	1,136	86
Operation and maintenance of quarters		(10-04-5048	-X-2-302-A;	14-5048)
401(C) Authority	250	260	255	19
Outlays	240	208	224	17
Range improvements		(10-04-5132	-X-2-302-A;	14-5132)
Budget Authority	9,570	9,570	9,570	727
Outlays	6,237	6,460	6,348	482
Miscellaneous permanent appropriations		(10-04-9921	-X-2-302-A;	14-9921)
401(C) Other--incl. ob. limit	5,841	6,071	5,956	453
Outlays	4,341	5,852	5,096	387
Misc. permanent appropriations (Otr. gen. pur. fiscal		(10-04-9921	-X-2-852-A;	14-9921)
401(C) Other--incl. ob. limit	107,183	107,183	107,183	8,146
Outlays	107,183	106,249	106,716	8,110
Minerals Management Service				
Minerals and royalty management		(10-06-1917	-X-1-302-A;	14-1917)
Budget Authority	160,029	160,029	160,029	12,162
Outlays	111,757	104,089	107,923	8,202
Payments to states from receipts under Mineral Leasing		(10-06-5003	-X-2-852-A;	14-5003)
401(C) Other--incl. ob. limit	461,182	431,530	446,356	33,923
Outlays	461,182	431,530	446,356	33,923
Office of Surface Mining Reclamation & Enforcement				
Regulation and technology		(10-08-1801	-X-1-302-A;	14-1801)
Budget Authority	81,292	81,292	81,292	6,178
Outlays	48,824	47,351	48,088	3,655
Abandoned mine reclamation fund		(10-08-5015	-X-2-302-A;	14-5015)
Budget Authority	197,277	197,277	197,277	14,993
Outlays	61,089	54,646	57,868	4,398
Bureau of Reclamation				
Loan program		(10-10-0667	-X-1-301-A;	14-0667)
Budget Authority	37,624	37,624	37,624	2,859
Direct Loan Limitation	46,237	46,237	46,237	3,514
Outlays	23,327	23,139	23,233	1,766
Construction program		(10-10-0684	-X-1-301-A;	14-0684)
Budget Authority	499,267	499,267	499,267	37,944
401(C) Authority--Off. Coll.	578	578	578	44
Outlays	464,896	350,065	407,480	30,968
Lower Colorado River basin development fund		(10-10-4079	-X-3-301-A;	14-4079)
401(C) Authority--Off. Coll.	90,000	90,000	90,000	6,840
Outlays	90,000	90,000	90,000	6,840
Upper Colorado River basin fund		(10-10-4081	-X-3-301-A;	14-4081)
401(C) Authority--Off. Coll.	30,000	30,000	30,000	2,280
Outlays	30,000	30,000	30,000	2,280
Emergency fund		(10-10-5043	-X-2-301-A;	14-5043)
Budget Authority	957	957	957	73
Outlays	957	579	768	58
General investigations		(10-10-5060	-X-2-301-A;	14-5060)
Budget Authority	32,571	32,571	32,571	2,475
401(C) Authority--Off. Coll.	80	80	80	6
Outlays	24,508	21,056	22,782	1,731
Operation and maintenance		(10-10-5064	-X-2-301-A;	14-5064)
Budget Authority	126,960	126,960	126,960	9,649
401(C) Authority--Off. Coll.	12,107	12,107	12,107	920
Outlays	118,325	107,327	112,826	8,575
General administrative expenses		(10-10-5065	-X-2-301-A;	14-5065)
Budget Authority	47,084	47,084	47,084	3,578
Outlays	42,337	42,376	42,356	3,219
Colorado River Dam Fund, Boulder Canyon Project		(10-10-5656	-X-2-301-A;	14-5656)
401(C) Other--incl. ob. limit	53,810	53,810	53,810	4,090
Outlays	45,771	29,515	37,643	2,861
Reclamation trust funds		(10-10-8070	-X-7-301-A;	14-8070)
401(C) Other--incl. ob. limit	28,062	25,255	26,658	2,026
Outlays	22,360	21,821	22,090	1,679

Account Title	OMB	CBO	Average	Sequester
Miscellaneous permanent appropriations		(10-10-9922	-X-2-852-A;	14-9922)
401(C) Other--incl. ob. limit	365	379	372	28
Outlays	157	170	164	12
Geological Survey				
Surveys, investigations and research		(10-12-0804	-X-1-306-A;	14-0804)
Budget Authority	412,306	412,306	412,306	31,335
401(C) Authority--Off. Coll.	79,123	79,123	79,123	6,013
Outlays	480,875	469,576	475,226	36,117
Bureau of Mines				
Mines and minerals		(10-14-0959	-X-1-306-A;	14-0959)
Budget Authority	127,711	127,711	127,711	9,706
Outlays	86,843	86,843	86,843	6,600
Helium fund		(10-14-4053	-X-3-306-A;	14-4053)
401(C) Authority--Off. Coll.	2,836	2,836	2,836	216
Outlays	2,836	2,836	2,836	216
United States Fish and Wildlife Service				
Resource management		(10-18-1611	-X-1-303-A;	14-1611)
Budget Authority	286,529	286,529	286,529	21,776
401(C) Authority--Off. Coll.	3,900	3,900	3,900	296
Outlays	228,111	241,719	234,915	17,854
Construction		(10-18-1612	-X-1-303-A;	14-1612)
Budget Authority	20,258	20,258	20,258	1,540
Outlays	5,223	4,052	4,638	352
Land acquisition		(10-18-5020	-X-2-303-A;	14-5020)
Budget Authority	41,061	41,061	41,061	3,121
Outlays	16,624	18,478	17,551	1,334
Operations and maintenance of quarters		(10-18-5050	-X-2-303-A;	14-5050)
401(C) Other--incl. ob. limit	1,665	1,665	1,665	127
Outlays	1,166	1,163	1,164	88
National wildlife refuge fund		(10-18-5091	-X-2-852-A;	14-5091)
Budget Authority	5,370	5,370	5,370	408
401(C) Other--incl. ob. limit	13,002	7,632	10,317	784
Outlays	8,511	7,660	8,086	615
Migratory bird conservation account		(10-18-5137	-X-2-303-A;	14-5137)
Budget Authority	14,323	14,323	14,323	1,089
401(C) Other--incl. ob. limit	4,299	4,299	4,299	327
Outlays	14,950	18,622	16,786	1,276
Sport fish restoration		(10-18-8151	-X-7-303-A;	14-8151)
401(C) Other--incl. ob. limit	166,718	161,465	164,092	12,471
Outlays	91,781	80,733	86,257	6,556
Contributed funds		(10-18-8216	-X-7-303-A;	14-8216)
401(C) Other--incl. ob. limit	146	140	143	11
Outlays	145	140	142	11
Miscellaneous permanent appropriations		(10-18-9923	-X-2-303-A;	14-9923)
401(C) Other--incl. ob. limit	100,404	100,404	100,404	7,631
Outlays	45,182	50,237	47,710	3,626
National Park Service				
Operation of the national park system		(10-24-1036	-X-1-303-A;	14-1036)
Budget Authority	610,634	610,634	610,634	46,408
401(C) Authority--Off. Coll.	3,800	3,800	3,800	289
Outlays	492,111	492,307	492,209	37,408
John F. Kennedy Center for the Performing Arts		(10-24-1038	-X-1-303-A;	14-1038)
Budget Authority	4,566	4,566	4,566	347
Outlays	3,196	3,425	3,310	252
Construction		(10-24-1039	-X-1-303-A;	14-1039)
Budget Authority	112,408	112,408	112,408	8,543
401(C) Authority--Off. Coll.	8,600	8,600	8,600	654
Direct Loan Limitation	1,435	1,435	1,435	109
Outlays	27,390	25,462	26,426	2,008
National recreation and preservation		(10-24-1042	-X-1-303-A;	14-1042)
Budget Authority	10,555	10,555	10,555	802
Outlays	9,499	9,500	9,500	722
Illinois & Michigan Canal National Heritage Corridor C		(10-24-1043	-X-1-303-A;	14-1043)
Budget Authority	237	237	237	18
Outlays	237	118	178	14
Jefferson National Expansion Memorial Commission		(10-24-1044	-X-1-303-A;	14-1044)
Budget Authority	72	72	72	5
Outlays	72	28	50	4
Land acquisition		(10-24-5035	-X-2-303-A;	14-5035)
Budget Authority	93,604	93,604	93,604	7,114
401(C) Authority	30,000	30,000	30,000	2,280
Outlays	34,997	32,761	33,879	2,575
Operations and maintenance of quarters		(10-24-5049	-X-2-303-A;	14-5049)
401(C) Other--incl. ob. limit	8,951	10,399	9,675	735
Outlays	8,741	7,028	7,884	599
Historic preservation fund		(10-24-5140	-X-2-303-A;	14-5140)
Budget Authority	23,729	23,729	23,729	1,803
Outlays	8,884	12,220	10,552	802

Account Title	OMB	CBO	Average	Sequester
Construction (trust fund)		(10-24-8215	-X-7-401-A;	14-8215)
Obligation Limitation	6,700	6,700	6,700	509
Outlays	1,340	1,186	1,263	96
Miscellaneous permanent appropriations		(10-24-9924	-X-2-303-A;	14-9924)
401(C) Other--incl. ob. limit	1,326	1,326	1,326	101
Outlays	658	663	660	50
Bureau of Indian Affairs				
Operation of Indian programs (Conservation and land ma		(10-76-2100	-X-1-302-A;	14-2100)
Budget Authority	140,887	140,887	140,887	10,707
Outlays	113,661	121,527	117,594	8,937
Operation of Indian programs (Area and regional develo		(10-76-2100	-X-1-452-A;	14-2100)
Budget Authority	484,593	484,593	484,593	36,829
401(C) Authority--Off. Coll.	1,000	1,000	1,000	76
Outlays	388,674	395,944	392,309	29,815
Operation of Indian programs (Elementary, secondary, &		(10-76-2100	-X-1-501-A;	14-2100)
Budget Authority	257,299	257,299	257,299	19,555
Outlays	205,839	209,699	207,769	15,790
Construction		(10-76-2301	-X-1-452-A;	14-2301)
Budget Authority	103,318	103,318	103,318	7,852
Outlays	30,995	23,763	27,379	2,081
Road construction		(10-76-2364	-X-1-452-A;	14-2364)
401(C) Authority--Off. Coll.	1,000	1,000	1,000	76
Outlays	1,000	1,000	1,000	76
Payment to the Alaska Native Escrow Account		(10-76-2366	-X-1-806-A;	14-2366)
Budget Authority	7,493	7,493	7,493	569
Outlays	7,493	7,493	7,493	569
Revolving fund for loans		(10-76-4409	-X-3-452-A;	14-4409)
Direct Loan Limitation	15,599	15,599	15,599	1,186
Outlays	12,198	11,962	12,080	918
Indian loan guaranty and insurance fund		(10-76-4410	-X-3-452-A;	14-4410)
Budget Authority	2,103	2,103	2,103	160
Direct Loan Limitation	100	100	100	8
Guaranteed Loan Limitation	40,000	40,000	40,000	3,040
Outlays	1,262	1,045	1,154	88
Operations and maintenance of quarters		(10-76-5051	-X-2-452-A;	14-5051)
401(C) Other--incl. ob. limit	9,844	9,844	9,844	748
Outlays	4,814	1,782	3,298	251
Miscellaneous permanent appropriations (Area and regio		(10-76-9925	-X-2-452-A;	14-9925)
401(C) Other--incl. ob. limit	52,107	52,107	52,107	3,960
Outlays	41,470	33,156	37,313	2,836
Miscellaneous permanent appropriations (Other general		(10-76-9925	-X-2-806-A;	14-9925)
401(C) Authority	1,914	1,914	1,914	145
Outlays	1,889	1,866	1,878	143
Office of Territorial Affairs				
Administration of territories		(10-82-0412	-X-1-806-A;	14-0412)
Budget Authority	76,459	76,459	76,459	5,811
Outlays	66,195	60,938	63,566	4,831
Trust Territory of the Pacific Islands		(10-82-0414	-X-1-806-A;	14-0414)
Budget Authority	76,455	76,455	76,455	5,811
Outlays	63,820	13,968	38,894	2,956
Compact of free association		(10-82-0415	-X-1-806-A;	14-0415)
Budget Authority	201,500	22,750	112,125	8,522
401(C) Authority	116,350	144,270	130,310	9,904
Outlays	144,270	164,270	154,270	11,725
Payments to the United States territories, fiscal assi		(10-82-0418	-X-1-852-A;	14-0418)
401(C) Authority	65,000	62,340	63,670	4,839
Outlays	65,000	62,340	63,670	4,839
Office of the Secretary				
Salaries and Expenses		(10-84-0102	-X-1-306-A;	14-0102)
Budget Authority	41,296	41,296	41,296	3,138
Outlays	38,863	35,102	36,982	2,811
Construction management		(10-84-0103	-X-1-306-A;	14-0103)
Budget Authority	742	742	742	56
Outlays	645	668	656	50
Office of the Secretary (special foreign currency prog		(10-84-0105	-X-1-306-A;	14-0105)
Budget Authority	951	951	951	72
Outlays	95	95	95	7
Operation and maintenance of quarters		(10-84-5052	-X-2-306-A;	14-5052)
401(C) Authority	67	67	67	5
Outlays	52	60	56	4
Office of the Solicitor				
Office of the Solicitor		(10-86-0107	-X-1-306-A;	14-0107)
Budget Authority	19,385	19,385	19,385	1,473
Outlays	18,106	17,447	17,776	1,351
Office of Inspector General				
Office of Inspector General		(10-88-0104	-X-1-306-A;	14-0104)
Budget Authority	15,424	15,424	15,424	1,172
Outlays	14,985	13,882	14,434	1,097

Account Title	OMB	CBO Total	Average	Sequester
Department of the Interior				
Budget Authority	4,923,694	4,744,944	4,834,319	367,408
401(C) Authority	214,881	240,151	227,516	17,291
401(C) Authority--Off. Coll.	237,024	237,024	237,024	18,014
401(C) Other--incl. ob. limit	1,014,905	973,509	994,207	75,560
Direct Loan Limitation	63,371	63,371	63,371	4,816
Guaranteed Loan Limitation	40,000	40,000	40,000	3,040
Obligation Limitation	6,700	6,700	6,700	509
Outlays	4,928,739	4,687,085	4,807,912	365,401
Department of Justice				
General Administration				
Salaries and expenses		(11-03-0129	-X-1-751-A;	15-0129)
Budget Authority	67,756	67,756	67,756	5,149
Outlays	54,682	60,980	57,831	4,395
United States Parole Commission				
Salaries and expenses		(11-04-1061	-X-1-751-A;	15-1061)
Budget Authority	9,379	9,379	9,379	713
Outlays	8,796	8,629	8,712	662
Legal Activities				
Salaries and expenses, Foreign Claims Settlement Commi		(11-05-0100	-X-1-153-A;	15-0100)
Budget Authority	670	670	670	51
Outlays	622	623	622	47
Salaries and expenses, General Legal Activities		(11-05-0128	-X-1-752-A;	15-0128)
Budget Authority	196,185	196,185	196,185	14,910
Outlays	152,831	166,757	159,794	12,144
Fees and expenses of witnesses		(11-05-0311	-X-1-752-A;	15-0311)
Budget Authority	45,362	45,362	45,362	3,448
Outlays	36,502	36,607	36,554	2,778
Salaries and expenses, Antitrust Division		(11-05-0319	-X-1-752-A;	15-0319)
Budget Authority	42,586	42,586	42,586	3,237
Outlays	29,200	34,921	32,060	2,437
Salaries and expenses, Oversight of bankruptcy cases		(11-05-0322	-X-1-752-A;	15-0322)
Budget Authority	317,724	317,724	317,724	24,147
Outlays	267,774	279,597	273,686	20,800
Salaries and expenses, United States Marshals Service		(11-05-0324	-X-1-752-A;	15-0324)
Budget Authority	146,150	146,150	146,150	11,107
401(C) Authority--Off. Coll.	577	577	577	44
Outlays	122,329	136,497	129,413	9,835
Salaries and expenses, Community Relations Service		(11-05-0500	-X-1-752-A;	15-0500)
Budget Authority	28,614	28,614	28,614	2,175
Outlays	18,564	19,028	18,796	1,428
Support of United States prisoners		(11-05-1020	-X-1-752-A;	15-1020)
Budget Authority	57,549	57,549	57,549	4,374
Outlays	28,551	37,810	33,180	2,522
Assets forfeiture fund		(11-05-5042	-X-2-752-A;	15-5042)
Budget Authority	28,710	28,710	28,710	2,182
Outlays	18,995	28,107	23,551	1,790
Interagency Law Enforcement				
Organized crime drug enforcement		(11-07-0323	-X-1-751-A;	15-0323)
Budget Authority	957	957	957	73
Outlays	0	948	474	36
Federal Bureau of Investigation				
Salaries and expenses		(11-10-0200	-X-1-751-A;	15-0200)
Budget Authority	1,167,013	1,167,013	1,167,013	88,693
401(C) Authority--Off. Coll.	18,976	18,976	18,976	1,442
Outlays	910,114	1,010,937	960,526	73,000
Drug Enforcement Administration				
Salaries and expenses		(11-12-1100	-X-1-751-A;	15-1100)
Budget Authority	363,660	363,660	363,660	27,638
401(C) Authority--Off. Coll.	938	938	938	71
Outlays	334,321	313,686	324,004	24,624
Immigration and Naturalization Service				
Salaries and expenses		(11-15-1217	-X-1-751-A;	15-1217)
Budget Authority	571,267	571,267	571,267	43,416
401(C) Authority--Off. Coll.	14,926	14,926	14,926	1,134
Outlays	463,354	519,969	491,662	37,366
Federal Prison System				
Buildings and facilities		(11-20-1003	-X-1-753-A;	15-1003)
Budget Authority	44,082	44,082	44,082	3,350
Outlays	5,915	13,842	9,878	751
National Institute of Corrections		(11-20-1004	-X-1-754-A;	15-1004)
Budget Authority	10,527	10,527	10,527	800
Outlays	8,370	4,211	6,290	478
Salaries and expenses		(11-20-1060	-X-1-753-A;	15-1060)
Budget Authority	550,953	550,953	550,953	41,872
401(C) Authority--Off. Coll.	9,340	9,340	9,340	710
Outlays	482,946	520,624	501,785	38,136

Account Title	OMB	CBO	Average	Sequester
Federal Prison Industries, Incorporated		(11-20-4500	-X-4-753-A;	15-4500)
Obligation Limitation	2,012	2,012	2,012	153
Outlays	0	2,012	1,006	76
Office of Justice Programs				
Justice assistance		(11-21-0401	-X-1-754-A;	15-0401)
Budget Authority	195,211	195,211	195,211	14,836
Outlays	64,870	71,057	67,964	5,165
Crime Victims Fund		(11-21-5041	-X-2-754-A;	15-5041)
401(C) Other--incl. ob. limit	68,000	68,000	68,000	5,168
Outlays	68,000	0	34,000	2,584
Department of Justice		Total		
Budget Authority	3,844,355	3,844,355	3,844,355	292,171
401(C) Authority--Off. Coll.	44,757	44,757	44,757	3,402
401(C) Other--incl. ob. limit	68,000	68,000	68,000	5,168
Obligation Limitation	2,012	2,012	2,012	153
Outlays	3,076,736	3,266,842	3,171,789	241,056
Department of Labor				
Employment and Training Administration				
Program administration		(12-05-0172	-X-1-504-A;	16-0172)
Budget Authority	65,225	65,225	65,225	4,957
Outlays	56,322	56,289	56,306	4,279
Training and employment services		(12-05-0174	-X-1-504-A;	16-0174)
Budget Authority	3,336,363	3,335,412	3,335,888	253,527
Outlays	93,890	100,000	96,945	7,368
Community service employment for older Americans		(12-05-0175	-X-1-504-A;	16-0175)
Budget Authority	312,002	311,649	311,826	23,699
Outlays	62,400	62,400	62,400	4,742
State unemployment insurance and employment services		(12-05-0179	-X-1-504-A;	16-0179)
Budget Authority	22,585	22,585	22,585	1,716
Outlays	5,206	5,217	5,212	396
Federal unemployment benefits and allowances		(12-05-0326	-X-1-603-A;	16-0326)
Budget Authority	10,000	0	5,000	380
401(C) Authority	0	109,000	54,500	4,142
Outlays	9,000	109,000	59,000	4,484
Unemployment trust fund (Training and employment)		(12-05-8042	-X-7-504-A;	20-8042)
Obligation Limitation	931,237	931,237	931,237	70,774
Outlays	331,774	342,300	337,037	25,615
Unemployment trust fund (Unemployment compensation)		(12-05-8042	-X-7-603-A;	20-8042)
401(C) Other--incl. ob. limit	229,000	235,000	232,000	17,632
Obligation Limitation	1,641,333	1,641,333	1,641,333	124,741
Outlays	1,870,333	1,853,773	1,862,053	141,516
Labor-Management Services				
Salaries and expenses		(12-10-0104	-X-1-505-A;	16-0104)
Budget Authority	54,811	54,811	54,811	4,166
Outlays	47,982	47,997	47,990	3,647
Pension Benefit Guaranty Corporation				
Pension Benefit Guaranty Corporation fund		(12-12-4204	-X-3-601-A;	16-4204)
Obligation Limitation	31,345	31,345	31,345	2,382
Outlays	27,048	27,045	27,046	2,055
Employment Standards Administration				
Salaries and expenses		(12-15-0105	-X-1-505-A;	16-0105)
Budget Authority	182,009	182,009	182,009	13,833
401(C) Authority--Off. Coll.	1,000	1,000	1,000	76
Outlays	158,494	165,108	161,801	12,297
Special benefits (General retirement and disability in		(12-15-1521	-X-1-601-A;	16-1521)
Budget Authority--ASI	90	0	45	45
401(C) Authority--ASI	0	70	35	35
Outlays	90	70	80	80
Special benefits (Federal employee retirement and disa		(12-15-1521	-X-1-602-A;	16-1521)
Budget Authority	214,000	0	107,000	8,132
Budget Authority--ASI	2,000	0	1,000	1,000
401(C) Authority	0	212,000	106,000	8,056
401(C) Authority--ASI	0	5,000	2,500	2,500
Outlays	215,650	217,000	216,325	19,675
Black lung disability trust fund		(12-15-8144	-X-7-601-A;	20-8144)
Budget Authority	105,500	0	52,750	4,009
Budget Authority--ASI	8,587	0	4,294	4,294
401(C) Authority	43,595	142,595	93,095	7,075
401(C) Authority--ASI	0	7,000	3,500	3,500
Outlays	52,182	149,595	100,889	14,869
Special workers' compensation expenses		(12-15-9971	-X-7-601-A;	16-9971)
401(C) Other--incl. ob. limit	2,152	2,959	2,556	194
401(C) Authority--ASI	1,014	1,000	1,007	1,007
Obligation Limitation	389	389	389	30
Outlays	3,555	4,348	3,951	1,231
Occupational Safety and Health Administration				
Salaries and expenses		(12-18-0400	-X-1-554-A;	16-0400)
Budget Authority	208,159	208,159	208,159	15,820
Outlays	181,937	182,397	182,167	13,845

Account Title	OMB	CBO	Average	Sequester
Mine Safety and Health Administration		(12-19-1200	-X-1-554-A;	16-1200)
Salaries and expenses				
Budget Authority	145,155	145,155	145,155	11,032
Outlays	131,310	131,367	131,338	9,982
Bureau of Labor Statistics		(12-20-0200	-X-1-505-A;	16-0200)
Salaries and expenses				
Budget Authority	151,817	151,817	151,817	11,538
401(C) Authority--Off. Coll.	812	812	812	62
Outlays	137,861	137,905	137,883	10,479
Departmental Management		(12-25-0106	-X-1-505-A;	16-0106)
Inspector General salaries and expenses				
Budget Authority	36,810	36,810	36,810	2,798
Outlays	26,946	27,140	27,043	2,055
Special foreign currency program		(12-25-0151	-X-1-505-A;	16-0151)
Budget Authority	45	45	45	3
Salaries and expenses		(12-25-0165	-X-1-505-A;	16-0165)
Budget Authority	95,009	95,009	95,009	7,221
Outlays	83,257	83,250	83,254	6,327
Department of Labor		Total		
Budget Authority	4,939,490	4,608,686	4,774,088	362,831
Budget Authority--ASI	10,677	0	5,338	5,338
401(C) Authority	43,595	463,595	253,595	19,273
401(C) Authority--Off. Coll.	1,812	1,812	1,812	138
401(C) Other--incl. ob. limit	231,152	237,959	234,556	17,826
401(C) Authority--ASI	1,014	13,070	7,042	7,042
Obligation Limitation	2,604,304	2,604,304	2,604,304	197,927
Outlays	3,495,237	3,702,201	3,598,718	284,942
Department of State				
Administration of Foreign Affairs		(14-05-0113	-X-1-153-A;	19-0113)
Salaries and expenses				
Budget Authority	1,677,166	1,677,166	1,677,166	127,465
Outlays	1,466,984	1,255,186	1,361,085	103,442
Protection of foreign missions and officials		(14-05-0520	-X-1-153-A;	19-0520)
Budget Authority	9,091	9,091	9,091	691
Outlays	7,364	4,546	5,955	453
Emergencies in the diplomatic and consular service		(14-05-0522	-X-1-153-A;	19-0522)
Budget Authority	4,211	4,211	4,211	320
Direct Loan Limitation	670	670	670	51
Outlays	2,463	2,906	2,684	204
Payment to the American Institute in Taiwan		(14-05-0523	-X-1-153-A;	19-0523)
Budget Authority	9,379	9,379	9,379	713
Outlays	6,931	8,160	7,546	573
Acquisition and maintenance of buildings abroad		(14-05-0535	-X-1-153-A;	19-0535)
Budget Authority	731,509	731,509	731,509	55,595
401(C) Authority--Off. Coll.	4,200	4,200	4,200	319
Outlays	56,901	133,673	95,287	7,242
Representation allowances		(14-05-0545	-X-1-153-A;	19-0545)
Budget Authority	4,498	4,498	4,498	342
Outlays	3,868	3,868	3,868	294
Foreign Service retirement and disability fund		(14-05-8186	-X-7-602-A;	19-8186)
401(C) Authority--ASI	2,000	2,000	2,000	2,000
Outlays	2,000	2,000	2,000	2,000
International Organizations and Conferences		(14-10-1124	-X-1-153-A;	19-1124)
Contributions for international peacekeeping activitie				
Budget Authority	28,136	28,136	28,136	2,138
Outlays	25,322	25,322	25,322	1,924
International conferences and contingencies		(14-10-1125	-X-1-153-A;	19-1125)
Budget Authority	5,742	5,742	5,742	436
Outlays	3,893	3,905	3,899	296
Contributions to international organizations		(14-10-1126	-X-1-153-A;	19-1126)
Budget Authority	443,091	443,091	443,091	33,675
401(C) Authority--Off. Coll.	3,889	3,889	3,889	296
Outlays	446,980	446,980	446,980	33,970
International Commissions		(14-15-1069	-X-1-301-A;	19-1069)
Salaries and expenses, IBWC				
Budget Authority	10,814	10,814	10,814	822
401(C) Authority--Off. Coll.	56	56	56	4
Outlays	9,648	9,356	9,502	722
Construction, IBWC		(14-15-1078	-X-1-301-A;	19-1078)
Budget Authority	2,160	2,160	2,160	164
Outlays	768	432	600	46
American sections, international commissions		(14-15-1082	-X-1-301-A;	19-1082)
Budget Authority	3,594	3,594	3,594	273
Outlays	2,821	2,430	2,626	200
International fisheries commissions		(14-15-1087	-X-1-302-A;	19-1087)
Budget Authority	10,814	10,814	10,814	822
Outlays	10,771	10,803	10,787	820

Account Title	OMB	CBO	Average	Sequester
Other				
Anti-terrorism assistance		(14-25-0114	-X-1-152-A;	19-0114)
Budget Authority	7,101	7,101	7,101	540
Outlays	3,165	3,195	3,180	242
Counterterrorism research and development		(14-25-0116	-X-1-153-A;	19-0116)
Budget Authority	10,000	10,000	10,000	760
Outlays	6,000	6,000	6,000	456
Soviet-East European research and training		(14-25-0118	-X-1-153-A;	19-0118)
Budget Authority	4,594	4,594	4,594	349
Outlays	2,756	2,756	2,756	209
Payment to the Asia Foundation		(14-25-0525	-X-1-153-A;	19-0525)
Budget Authority	11,570	11,570	11,570	879
Outlays	11,503	11,570	11,536	877
International narcotics control		(14-25-1022	-X-1-151-A;	11-1022)
Budget Authority	55,055	55,055	55,055	4,184
Outlays	19,270	19,269	19,270	1,465
Migration and refugee assistance		(14-25-1143	-X-1-151-A;	19-1143)
Budget Authority	324,356	324,356	324,356	24,651
Outlays	217,319	217,319	217,319	16,516
U.S. bilateral science and technology agreements		(14-25-1151	-X-1-153-A;	19-1151)
Budget Authority	1,914	1,914	1,914	145
Outlays	1,914	1,914	1,914	145
International Center, Washington, D.C.		(14-25-5151	-X-2-153-A;	19-5151)
401(C) Authority	945	945	945	72
Outlays	945	945	945	72
Department of State		Total		
Budget Authority	3,354,795	3,354,795	3,354,795	254,964
401(C) Authority	945	945	945	72
401(C) Authority--Off. Coll.	8,145	8,145	8,145	619
401(C) Authority--ASI	2,000	2,000	2,000	2,000
Direct Loan Limitation	670	670	670	51
Outlays	2,309,586	2,172,535	2,241,060	172,169
Department of Transportation				
Federal Highway Administration				
Access highways to public recreation areas on certain		(21-05-0503	-X-1-401-A;	69-0503)
Budget Authority	4,785	4,785	4,785	364
Outlays	957	813	885	67
Motor carrier safety		(21-05-0552	-X-1-401-A;	69-0552)
Budget Authority	13,302	13,302	13,302	1,011
Outlays	11,838	10,642	11,240	854
Railroad-highway crossings demonstration projects		(21-05-0557	-X-1-401-A;	69-0557)
Budget Authority	5,104	5,104	5,104	388
Outlays	1,021	510	766	58
Waste isolation pilot projects roads		(21-05-0562	-X-1-401-A;	69-0562)
Budget Authority	6,699	6,699	6,699	509
Outlays	1,340	1,132	1,236	94
Expressway gap closing demonstration project		(21-05-0563	-X-1-401-A;	69-0563)
Budget Authority	8,613	8,613	8,613	655
Outlays	1,722	1,456	1,589	121
Trust fund share of other highway programs		(21-05-8009	-X-7-401-A;	69-8009)
Budget Authority	10,208	10,208	10,208	776
Outlays	2,042	1,021	1,532	116
Baltimore-Washington Parkway		(21-05-8014	-X-7-401-A;	69-8014)
Budget Authority	2,871	2,871	2,871	218
Outlays	574	488	531	40
Highway safety research and development		(21-05-8017	-X-7-401-A;	69-8017)
Budget Authority	8,134	8,134	8,134	618
Outlays	1,627	1,383	1,505	114
Highway-related safety grants		(21-05-8019	-X-7-401-A;	69-8019)
Obligation Limitation	9,570	9,570	9,570	727
Motor carrier safety grants		(21-05-8027	-X-7-401-A;	69-8027)
Budget Authority	16,269	16,269	16,269	1,236
Outlays	15,456	12,202	13,829	1,051
Federal-aid highways (trust fund)		(21-05-8102	-X-7-401-A;	20-8102)
401(C) Authority	4,100,000	4,100,000	4,100,000	311,600
401(C) Authority--Off. Coll.	20,160	20,160	20,160	1,532
401(C) Other--incl. ob. limit	13,525,000	13,525,000	13,525,000	1,027,900
Outlays	20,160	20,160	20,160	1,532
Right-of-way revolving fund (trust revolving fund)		(21-05-8402	-X-8-401-A;	69-8402)
Direct Loan Limitation	47,850	47,850	47,850	3,637
Outlays	47,850	47,850	47,850	3,637
National Highway Traffic Safety Administration				
Operations and research		(21-10-0650	-X-1-401-A;	69-0650)
Budget Authority	51,637	51,637	51,637	3,924
Outlays	38,452	33,564	36,008	2,737
Trust fund share of operations and research		(21-10-8016	-X-7-401-A;	69-8016)
Budget Authority	28,609	28,609	28,609	2,174
Outlays	19,914	14,305	17,110	1,300

Account Title	OMB	CBO	Average	Sequester
State and community highway safety grants		(21-10-8020	-X-7-401-A;	69-8020)
Obligation Limitation	148,622	148,622	148,622	11,295
Outlays	20,846	59,448	40,147	3,051
Federal Railroad Administration				
Northeast corridor improvement program		(21-16-0123	-X-1-401-A;	69-0123)
Budget Authority	11,962	11,962	11,962	909
Outlays	718	598	658	50
Office of the Administrator		(21-16-0700	-X-1-401-A;	69-0700)
Budget Authority	29,016	29,016	29,016	2,205
Outlays	17,815	16,449	17,132	1,302
Railroad safety		(21-16-0702	-X-1-401-A;	69-0702)
Budget Authority	36,714	36,714	36,714	2,790
Outlays	29,959	27,342	28,650	2,177
Grants to National Railroad Passenger Corporation		(21-16-0704	-X-1-401-A;	69-0704)
Budget Authority	562,237	562,237	562,237	42,730
Outlays	562,237	562,238	562,238	42,730
Railroad rehabilitation and improvement financing fund		(21-16-4411	-X-3-401-A;	69-4411)
Budget Authority	32,059	32,059	32,059	2,436
Direct Loan Limitation	32,059	32,059	32,059	2,436
Outlays	1,603	1,603	1,603	122
Railroad rehab. and imprvemnt fin. funds, FFB direct l		(21-16-7012	-X-4-401-A;	69-7012)
Direct Loan Limitation	3,828	3,828	3,828	291
Urban Mass Transportation Administration				
Urban mass transportation fund, administrative expense		(21-20-1120	-X-1-401-A;	69-1120)
Budget Authority	28,710	28,710	28,710	2,182
Outlays	25,839	25,839	25,839	1,964
Research, training and human resources		(21-20-1121	-X-1-401-A;	69-1121)
Budget Authority	16,652	16,652	16,652	1,266
Outlays	7,493	4,163	5,828	443
Interstate transfer grants		(21-20-1127	-X-1-401-A;	69-1127)
Budget Authority	191,400	191,400	191,400	14,546
Outlays	28,710	9,570	19,140	1,455
Washington metro		(21-20-1128	-X-1-401-A;	69-1128)
Budget Authority	217,239	217,239	217,239	16,510
Outlays	10,862	10,862	10,862	826
Formula grants		(21-20-1129	-X-1-401-A;	69-1129)
Budget Authority	2,057,550	2,057,550	2,057,550	156,374
Outlays	753,444	743,712	748,578	56,892
Discretionary grants		(21-20-8191	-X-7-401-A;	69-8191)
Obligation Limitation	1,000,543	1,000,543	1,000,543	76,041
Federal Aviation Administration				
Operations		(21-25-1301	-X-1-402-A;	69-1301)
Budget Authority	2,297,791	2,297,791	2,297,791	174,632
401(C) Authority--Off. Coll.	7,000	7,000	7,000	532
Outlays	2,078,082	1,966,122	2,022,102	153,680
Operation and maintenance, Metropolitan Washington Air		(21-25-1332	-X-1-402-A;	69-1332)
Budget Authority	32,634	32,634	32,634	2,480
Outlays	27,804	27,739	27,772	2,111
Construction, Metropolitan Washington Airports		(21-25-1333	-X-1-402-A;	69-1333)
Budget Authority	6,699	6,699	6,699	509
Outlays	2,968	2,827	2,898	220
Aviation insurance revolving fund		(21-25-4120	-X-3-402-A;	69-4120)
401(C) Authority--Off. Coll.	100	100	100	8
Outlays	90	90	90	7
Trust fund share of FAA Operations		(21-25-8104	-X-7-402-A;	69-8104)
Budget Authority	426,822	426,822	426,822	32,438
Outlays	426,822	426,822	426,822	32,438
Grants-in-aid for airports (Airport and airway trust f		(21-25-8106	-X-7-402-A;	69-8106)
401(C) Authority	1,017,200	1,017,200	1,017,200	77,307
Obligation Limitation	885,225	885,225	885,225	67,277
Outlays	103,166	132,775	117,970	8,966
Facilities and equipment (Airport and airway trust fun		(21-25-8107	-X-7-402-A;	69-8107)
Budget Authority	895,081	895,081	895,081	68,026
401(C) Authority--Off. Coll.	3,350	3,350	3,350	255
Outlays	88,652	74,956	81,804	6,217
Research, engineering & development (Airport & airway		(21-25-8108	-X-7-402-A;	69-8108)
Budget Authority	237,050	237,050	237,050	18,016
401(C) Authority--Off. Coll.	600	600	600	46
Outlays	125,525	115,806	120,666	9,171
Coast Guard				
Operating expenses		(21-30-0201	-X-1-403-A;	69-0201)
Budget Authority	1,617,939	1,617,939	1,617,939	122,963
401(C) Authority--Off. Coll.	6,660	6,660	6,660	506
Outlays	1,381,908	1,381,908	1,381,908	105,025
Acquisition, construction, and improvements		(21-30-0240	-X-1-403-A;	69-0240)
Budget Authority	218,806	218,806	218,806	16,629
Outlays	21,800	15,456	18,628	1,416

Account Title	OMB	CBO	Average	Sequester
Retired pay (Coast Guard)		(21-30-0241	-X-1-403-A;	69-0241)
Budget Authority	32,000	0	16,000	1,216
Budget Authority--ASI	2,747	0	1,374	1,374
401(C) Authority	0	28,053	14,026	1,066
401(C) Authority--ASI	0	3,000	1,500	1,500
Outlays	34,747	30,741	32,744	5,144
Reserve training		(21-30-0242	-X-1-403-A;	69-0242)
Budget Authority	58,857	58,857	58,857	4,473
Outlays	51,251	50,970	51,110	3,884
Research, development, test, and evaluation		(21-30-0243	-X-1-403-A;	69-0243)
Budget Authority	17,847	17,847	17,847	1,356
Outlays	9,543	4,503	7,023	534
Alteration of bridges		(21-30-0244	-X-1-403-A;	69-0244)
Budget Authority	4,976	4,976	4,976	378
Outlays	5,477	1,140	3,308	251
Offshore oil pollution compensation fund		(21-30-5167	-X-2-304-A;	69-5167)
Budget Authority	957	957	957	73
Obligation Limitation	57,420	57,420	57,420	4,364
Outlays	982	96	539	41
Pollution fund		(21-30-5168	-X-2-304-A;	69-5168)
401(C) Authority	6,699	7,000	6,850	521
Outlays	605	2,100	1,352	103
Deepwater port liability fund		(21-30-5170	-X-2-304-A;	69-5170)
Budget Authority	957	957	957	73
Obligation Limitation	47,850	47,850	47,850	3,637
Outlays	0	96	48	4
Boat safety		(21-30-8149	-X-7-403-A;	69-8149)
Budget Authority	42,900	0	21,450	1,630
401(C) Authority	0	45,000	22,500	1,710
Obligation Limitation	28,710	28,710	28,710	2,182
Outlays	17,917	34,022	25,970	1,974
Maritime Administration				
Research and development		(21-35-1716	-X-1-403-A;	69-1716)
Budget Authority	9,474	9,474	9,474	720
Outlays	1,785	2,842	2,314	176
Operations and training		(21-35-1750	-X-1-403-A;	69-1750)
Budget Authority	66,703	66,703	66,703	5,069
Outlays	58,699	60,636	59,668	4,535
Federal ship financing fund		(21-35-4301	-X-3-403-A;	69-4301)
401(C) Authority--Off. Coll.	2,250	3,000	2,625	200
Guaranteed Loan Limitation	70,000	70,000	70,000	5,320
Outlays	2,250	3,000	2,625	200
Saint Lawrence Seaway Development Corporation				
Saint Lawrence Seaway Development Corporation		(21-40-4089	-X-3-403-A;	69-4089)
401(C) Authority--Off. Coll.	10,600	10,600	10,600	806
Obligation Limitation	1,834	1,835	1,834	139
Outlays	10,600	12,435	11,518	875
Office of the Inspector General				
Salaries and expenses		(21-45-0130	-X-1-407-A;	69-0130)
Budget Authority	26,413	26,413	26,413	2,007
Outlays	21,773	22,821	22,297	1,695
Research and Special Programs Administration				
Research and special programs		(21-50-0104	-X-1-407-A;	69-0104)
Budget Authority	18,470	18,470	18,470	1,404
Outlays	12,192	12,192	12,192	927
Office of the Secretary				
Salaries and expenses		(21-55-0102	-X-1-407-A;	69-0102)
Budget Authority	52,444	52,444	52,444	3,986
Outlays	46,656	45,515	46,086	3,503
Payments to air carriers, DOT		(21-55-0150	-X-1-402-A;	69-0150)
Budget Authority	26,796	26,796	26,796	2,036
Outlays	24,652	25,456	25,054	1,904
Department of Transportation		Total		
Budget Authority	9,431,386	9,356,486	9,393,936	713,939
Budget Authority--ASI	2,747	0	1,374	1,374
401(C) Authority	5,123,899	5,197,253	5,160,576	392,204
401(C) Authority--Off. Coll.	50,720	51,470	51,095	3,883
401(C) Other--incl. ob. limit	13,525,000	13,525,000	13,525,000	1,027,900
401(C) Authority--ASI	0	3,000	1,500	1,500
Direct Loan Limitation	83,737	83,737	83,737	6,364
Guaranteed Loan Limitation	70,000	70,000	70,000	5,320
Obligation Limitation	2,179,774	2,179,775	2,179,774	165,663
Outlays	6,178,425	6,060,416	6,119,421	467,732
Department of the Treasury				
Departmental Offices				
Salaries and expenses		(15-05-0101	-X-1-803-A;	20-0101)
Budget Authority	73,417	73,417	73,417	5,580
401(C) Authority--Off. Coll.	4,827	4,827	4,827	367
Outlays	66,274	66,644	66,459	5,051

Account Title	OMB	CBO	Average	Sequester
Office of Revenue Sharing		(15-07-0107	-X-1-851-A;	20-0107)
Salaries and expenses				
Budget Authority	7,382	7,382	7,382	561
Outlays	6,315	6,370	6,342	482
Federal Law Enforcement Training Center		(15-08-0104	-X-1-751-A;	20-0104)
Salaries and expenses				
Budget Authority	22,779	22,779	22,779	1,731
Outlays	17,747	22,688	20,218	1,537
Financial Management Service		(15-10-1801	-X-1-803-A;	20-1801)
Salaries and expenses				
Budget Authority	234,102	234,102	234,102	17,792
Outlays	197,014	210,692	203,853	15,493
Federal Financing Bank Activities		(15-11-4521	-X-4-803-A;	20-4521)
Federal Financing Bank				
401(C) Authority--Off. Coll.	2,000	2,000	2,000	152
Outlays	2,000	2,000	2,000	152
Bureau of Alcohol, Tobacco and Firearms		(15-12-1000	-X-1-751-A;	20-1000)
Salaries and expenses				
Budget Authority	167,221	167,221	167,221	12,709
Outlays	141,325	142,639	141,982	10,791
United States Customs Service		(15-15-0602	-X-1-751-A;	20-0602)
Salaries and expenses				
Budget Authority	717,000	717,000	717,000	54,492
401(C) Authority--Off. Coll.	75,016	75,016	75,016	5,701
Outlays	779,101	723,901	751,501	57,114
Operation and maintenance, air interdiction program		(15-15-0604	-X-1-751-A;	20-0604)
Budget Authority	75,000	75,000	75,000	5,700
Outlays	92,835	46,125	69,480	5,280
Customs forfeiture fund		(15-15-5693	-X-2-803-A;	20-5693)
Budget Authority	7,656	7,656	7,656	582
Outlays	7,656	7,656	7,656	582
Customs services at small airports		(15-15-5694	-X-2-806-A;	20-5694)
401(C) Authority	365	0	182	14
401(C) Other--incl. ob. limit	0	365	182	14
Outlays	365	365	365	28
Refunds, transfers and expenses, unclaimed and seized		(15-15-8789	-X-7-803-A;	20-8789)
401(C) Authority	7,537	7,537	7,537	573
Outlays	7,537	7,537	7,537	573
Miscellaneous permanent appropriations		(15-15-9922	-X-2-852-A;	20-9922)
401(C) Other--incl. ob. limit	112,314	114,770	113,542	8,629
Outlays	99,283	107,425	103,354	7,855
Bureau of Engraving and Printing		(15-20-4502	-X-4-803-A;	20-4502)
Bureau of Engraving and Printing fund				
401(C) Authority--Off. Coll.	36,491	36,491	36,491	2,773
Outlays	36,491	36,491	36,491	2,773
United States Mint		(15-25-1616	-X-1-803-A;	20-1616)
Salaries and expenses				
Budget Authority	44,500	44,501	44,500	3,382
401(C) Authority--Off. Coll.	50,462	50,462	50,462	3,835
Outlays	84,144	88,288	86,216	6,552
Bureau of the Public Debt		(15-35-0560	-X-1-803-A;	20-0560)
Administering the public debt				
Budget Authority	186,830	186,830	186,830	14,199
Outlays	141,626	161,234	151,430	11,509
Internal Revenue Service		(15-45-0911	-X-1-803-A;	20-0911)
Salaries and expenses				
Budget Authority	89,958	89,958	89,958	6,837
Outlays	69,650	76,464	73,057	5,552
Processing tax returns and executive direction		(15-45-0912	-X-1-803-A;	20-0912)
Budget Authority	1,213,769	1,213,769	1,213,769	92,246
Outlays	1,016,977	971,015	993,996	75,544
Examinations and appeals		(15-45-0913	-X-1-803-A;	20-0913)
Budget Authority	1,427,121	1,427,121	1,427,121	108,461
Outlays	1,298,702	1,341,494	1,320,098	100,327
Investigation, collection, and taxpayer service		(15-45-0914	-X-1-803-A;	20-0914)
Budget Authority	1,095,289	1,095,289	1,095,289	83,242
Outlays	975,005	1,008,237	991,621	75,363
Federal tax lien revolving fund		(15-45-4413	-X-3-803-A;	20-4413)
401(C) Authority--Off. Coll.	14,500	14,500	14,500	1,102
Outlays	14,500	14,500	14,500	1,102
Internal revenue collections for Puerto Rico		(15-45-5737	-X-2-852-A;	20-5737)
401(C) Other--incl. ob. limit	255,535	255,535	255,535	19,421
Outlays	226,582	254,292	240,437	18,273
United States Secret Service		(15-55-1407	-X-1-751-A;	20-1407)
Contribution for annuity benefits				
401(C) Authority	12,000	11,429	11,714	890
Outlays	12,000	11,429	11,714	890

Account Title	OMB	CBO	Average	Sequester
Salaries and expenses		(15-55-1408	-X-1-751-A;	20-1408)
Budget Authority	281,358	281,358	281,358	21,383
Outlays	219,459	225,086	222,272	16,893
Comptroller of the Currency				
Assessment funds		(15-57-8413	-X-8-376-A;	20-8413)
401(C) Authority--Off. Coll.	208,000	206,750	207,375	15,760
Outlays	208,000	206,750	207,375	15,760
Department of the Treasury		Total		
Budget Authority	5,643,382	5,643,383	5,643,382	428,897
401(C) Authority	19,902	18,966	19,434	1,477
401(C) Authority--Off. Coll.	391,296	390,046	390,671	29,691
401(C) Other--incl. ob. limit	367,849	370,670	369,260	28,064
Outlays	5,720,588	5,739,322	5,729,955	435,477
Environmental Protection Agency				
Environmental Protection Agency				
Construction grants		(20-00-0103	-X-1-304-A;	68-0103)
Budget Authority	1,774,200	1,774,200	1,774,200	134,839
Outlays	17,742	11,355	14,548	1,106
Research and development (Energy supply)		(20-00-0107	-X-1-271-A;	68-0107)
Budget Authority	52,647	52,647	52,647	4,001
Outlays	13,951	15,794	14,872	1,130
Research and development (Pollution control and abatem		(20-00-0107	-X-1-304-A;	68-0107)
Budget Authority	158,146	158,146	158,146	12,019
Outlays	41,909	43,732	42,820	3,254
Abatement, control, and compliance		(20-00-0108	-X-1-304-A;	68-0108)
Budget Authority	552,763	552,763	552,763	42,010
Direct Loan Limitation	32,392	32,392	32,392	2,462
Outlays	251,892	248,743	250,318	19,024
Buildings and facilities		(20-00-0110	-X-1-304-A;	68-0110)
Budget Authority	4,785	4,785	4,785	364
Outlays	1,758	1,436	1,597	121
Salaries and expenses		(20-00-0200	-X-1-304-A;	68-0200)
Budget Authority	657,756	657,756	657,756	49,989
401(C) Authority--Off. Coll.	800	800	800	61
Outlays	566,470	559,893	563,182	42,802
Advances to the hazardous substance response trust fun		(20-00-0250	-X-1-304-A;	68-0250)
Budget Authority	150,000	150,000	150,000	11,400
Outlays	150,000	0	75,000	5,700
Revolving fund for certification and other services		(20-00-4311	-X-3-304-A;	68-4311)
401(C) Authority--Off. Coll.	2,000	2,000	2,000	152
Outlays	2,000	2,000	2,000	152
Hazardous substance response trust fund		(20-00-8145	-X-7-304-A;	20-8145)
Budget Authority	861,300	861,300	861,300	65,459
401(C) Authority--Off. Coll.	8,500	8,500	8,500	646
Obligation Limitation	104,330	104,330	104,330	7,929
Outlays	163,500	309,955	236,728	17,991
Environmental Protection Agency		Total		
Budget Authority	4,211,597	4,211,597	4,211,597	320,081
401(C) Authority--Off. Coll.	11,300	11,300	11,300	859
Direct Loan Limitation	32,392	32,392	32,392	2,462
Obligation Limitation	104,330	104,330	104,330	7,929
Outlays	1,209,222	1,192,908	1,201,065	91,281
General Services Administration				
Real Property Activities				
Federal buildings fund		(23-05-4542	-X-4-804-A;	47-4542)
Budget Authority	10,199	10,199	10,199	775
401(C) Authority--Off. Coll.	0	69,564	34,782	2,643
Outlays	8,315	69,564	38,940	2,959
Personal Property Activities				
Federal supply service		(23-10-0116	-X-1-804-A;	47-0116)
Budget Authority	163,742	163,742	163,742	12,444
Outlays	147,701	150,387	149,044	11,327
Expenses of transportation audit contracts		(23-10-5246	-X-2-804-A;	47-5246)
401(C) Other--incl. ob. limit	7,600	7,600	7,600	578
Outlays	7,600	7,600	7,600	578
Information Resources Management Service				
Operating expenses, information resources management s		(23-15-0900	-X-1-804-A;	47-0900)
Budget Authority	28,784	28,784	28,784	2,188
Outlays	23,844	24,466	24,155	1,836
Federal Property Resources Activities				
Operating expenses, federal property resources service		(23-25-0533	-X-1-054-A;	47-0533)
Budget Authority	27,185	27,185	27,185	1,522
Outlays	15,556	23,675	19,616	1,098
Operating expenses, federal property resources service		(23-25-0533	-X-1-804-A;	47-0533)
Budget Authority	10,923	10,923	10,923	830
Outlays	6,372	7,045	6,708	510
National defense stockpile transaction fund		(23-25-4550	-X-3-054-A;	47-4550)
401(C) Authority	19,020	19,020	19,020	1,065
Unobligated Balances--Defense	690,382	690,382	690,382	38,661
Outlays	35,000	19,020	27,010	1,513

Account Title	OMB	CBO	Average	Sequester
Expenses, disposal of surplus real and related persona		(23-25-5254	-X-2-804-A;	47-5254)
401(C) Other--incl. ob. limit	3,510	3,510	3,510	267
Outlays	2,697	2,697	2,697	205
General Activities				
Allowances and office staff for former Presidents		(23-30-0105	-X-1-802-A;	47-0105)
Budget Authority	781	781	781	59
Budget Authority--ASI	6	6	6	6
Outlays	679	697	688	58
Office of Inspector General		(23-30-0108	-X-1-804-A;	47-0108)
Budget Authority	19,097	19,097	19,097	1,451
Outlays	16,454	16,729	16,592	1,261
General management and administration, salaries and ex		(23-30-0110	-X-1-804-A;	47-0110)
Budget Authority	110,764	110,764	110,764	8,418
Outlays	88,455	90,964	89,710	6,818
Consumer information center fund		(23-30-4549	-X-3-376-A;	47-4549)
Budget Authority	1,182	1,182	1,182	90
Obligation Limitation	1,543	1,561	1,552	118
Outlays	421	924	672	51
General Services Administration		Total		
Budget Authority	372,657	372,657	372,657	27,778
Budget Authority--ASI	6	6	6	6
401(C) Authority	19,020	19,020	19,020	1,065
401(C) Authority--Off. Coll.	0	69,564	34,782	2,643
401(C) Other--incl. ob. limit	11,110	11,110	11,110	844
Obligation Limitation	1,543	1,561	1,552	118
Unobligated Balances--Defense	690,382	690,382	690,382	38,661
Outlays	353,094	413,768	383,432	28,214
National Aeronautics and Space Administration				
National Aeronautics and Space Administration				
Research and program management		(26-00-0103	-X-1-250-A;	80-0103)
401(C) Authority--Off. Coll.	5,000	5,000	5,000	380
Outlays	5,000	5,000	5,000	380
Research and program management (Space flight)		(26-00-0103	-X-1-253-A;	80-0103)
Budget Authority	568,389	568,389	568,389	43,198
Outlays	531,591	531,646	531,618	40,403
Research & program management (Space science, applicat		(26-00-0103	-X-1-254-A;	80-0103)
Budget Authority	457,335	457,335	457,335	34,757
Outlays	430,043	429,656	429,850	32,669
Research & program management (Supporting space activi		(26-00-0103	-X-1-255-A;	80-0103)
Budget Authority	53,748	53,748	53,748	4,085
Outlays	49,827	49,722	49,774	3,783
Research and program management (Air transportation)		(26-00-0103	-X-1-402-A;	80-0103)
Budget Authority	262,062	262,062	262,062	19,917
Outlays	245,593	245,313	245,453	18,654
Space Flight, Control, and Data Comm. (space flight)		(26-00-0105	-X-1-253-A;	80-0105)
Budget Authority	3,006,646	3,006,646	3,006,646	228,505
Outlays	1,910,631	2,232,404	2,071,518	157,435
Space Flight, Control, and Data Comm. (supporting act.		(26-00-0105	-X-1-255-A;	80-0105)
Budget Authority	663,493	663,493	663,493	50,425
Outlays	410,591	402,015	406,303	30,879
Construction of facilities (Space flight)		(26-00-0107	-X-1-253-A;	80-0107)
Budget Authority	28,614	28,614	28,614	2,175
Outlays	1,914	1,917	1,916	146
Construction of facilities (Space science, application		(26-00-0107	-X-1-254-A;	80-0107)
Budget Authority	4,785	4,785	4,785	364
Outlays	861	861	861	65
Construction of facilities (Supporting space activitie		(26-00-0107	-X-1-255-A;	80-0107)
Budget Authority	87,374	87,374	87,374	6,640
Outlays	5,646	5,646	5,646	429
Construction of facilities (Air transportation)		(26-00-0107	-X-1-402-A;	80-0107)
Budget Authority	12,537	12,537	12,537	953
Outlays	861	865	863	66
Research and development		(26-00-0108	-X-1-250-A;	80-0108)
401(C) Authority--Off. Coll.	35,000	35,000	35,000	2,660
Outlays	35,000	35,000	35,000	2,660
Research and development (Space flight)		(26-00-0108	-X-1-253-A;	80-0108)
Budget Authority	604,194	604,194	604,194	45,919
Outlays	322,112	314,843	318,478	24,204
Research and development (Space science, applications,		(26-00-0108	-X-1-254-A;	80-0108)
Budget Authority	1,662,282	1,662,282	1,662,282	126,333
Outlays	887,500	884,117	885,808	67,321
Research and development (Supporting space activities)		(26-00-0108	-X-1-255-A;	80-0108)
Budget Authority	15,503	15,503	15,503	1,178
Outlays	9,474	9,472	9,473	720
Research and development (Air transportation)		(26-00-0108	-X-1-402-A;	80-0108)
Budget Authority	337,278	337,278	337,278	25,633
Outlays	169,289	168,639	168,964	12,841

Account Title	OMB	CBO	Average	Sequester
National Aeronautics and Space Administration		Total		
Budget Authority	7,764,240	7,764,240	7,764,240	590,082
401(C) Authority--Off. Coll.	40,000	40,000	40,000	3,040
Outlays	5,015,933	5,317,116	5,166,524	392,656
Office of Personnel Management				
Office of Personnel Management				
Salaries and expenses		(27-00-0100	-X-1-805-A;	24-0100)
Budget Authority	95,553	95,553	95,553	7,262
Outlays	90,980	89,151	90,066	6,845
Government payment for annuitants, employees health be		(27-00-0206	-X-1-551-A;	24-0206)
Budget Authority	1,537,100	1,537,100	1,537,100	116,820
Outlays	1,370,980	1,370,980	1,370,980	104,194
Revolving fund		(27-00-4571	-X-4-805-A;	24-4571)
401(C) Authority--Off. Coll.	1,319	1,530	1,424	108
Outlays	1,319	1,530	1,424	108
Civil service retirement and disability fund		(27-00-8135	-X-7-602-A;	24-8135)
401(C) Authority--ASI	139,787	233,000	186,394	186,394
Obligation Limitation	45,399	45,399	45,399	3,450
Outlays	183,639	276,189	229,914	189,702
Employees life insurance fund		(27-00-8424	-X-8-602-A;	24-8424)
Obligation Limitation	986	986	986	75
Outlays	986	986	986	75
Employees health benefits fund		(27-00-8440	-X-8-551-A;	24-8440)
Obligation Limitation	8,558	8,558	8,558	650
Outlays	8,558	8,558	8,558	650
Retired employees health benefits fund		(27-00-8445	-X-8-551-A;	24-8445)
Obligation Limitation	128	128	128	10
Outlays	128	128	128	10
Office of Personnel Management		Total		
Budget Authority	1,632,653	1,632,653	1,632,653	124,082
401(C) Authority--Off. Coll.	1,319	1,530	1,424	108
401(C) Authority--ASI	139,787	233,000	186,394	186,394
Obligation Limitation	55,071	55,071	55,071	4,185
Outlays	1,656,590	1,747,522	1,702,056	301,584
Small Business Administration				
Small Business Administration				
Salaries and expenses		(28-00-0100	-X-1-376-A;	73-0100)
Budget Authority	199,822	199,822	199,822	15,186
Outlays	142,300	161,256	151,778	11,535
White House Conference on Small Business		(28-00-0104	-X-1-376-A;	73-0104)
Budget Authority	2,584	2,584	2,584	196
Pollution control equipment contract guarantee revolvi		(28-00-4147	-X-3-376-A;	73-4147)
Guaranteed Loan Limitation	47,850	47,850	47,850	3,637
Disaster loan fund		(28-00-4153	-X-3-453-A;	73-4153)
Direct Loan Limitation	430,650	338,000	384,325	29,209
Outlays	193,800	200,000	196,900	14,964
Business loan and investment fund		(28-00-4154	-X-3-376-A;	73-4154)
Budget Authority	112,926	112,926	112,926	8,582
Direct Loan Limitation	96,657	96,657	96,657	7,346
Guaranteed Loan Limitation	3,642,700	3,642,700	3,642,700	276,845
Outlays	76,196	74,360	75,278	5,721
Surety bond guarantees revolving fund		(28-00-4156	-X-3-376-A;	73-4156)
Guaranteed Loan Limitation	1,050,000	1,050,000	1,050,000	79,800
Section 503 guaranteed loans--FFB direct loans		(28-00-7017	-X-4-376-A;	73-7017)
Direct Loan Limitation	155,000	155,000	155,000	11,780
Small Business Administration		Total		
Budget Authority	315,332	315,332	315,332	23,965
Direct Loan Limitation	682,307	589,657	635,982	48,335
Guaranteed Loan Limitation	4,740,550	4,740,550	4,740,550	360,282
Outlays	412,296	435,616	423,956	32,221
Veterans Administration				
Veterans Administration				
Veterans job training		(29-00-0103	-X-1-702-A;	36-0103)
Budget Authority	35,000	35,000	35,000	2,660
Outlays	28,500	32,916	30,708	2,334
Construction, major projects		(29-00-0110	-X-1-703-A;	36-0110)
Budget Authority	485,544	485,544	485,544	36,901
Outlays	17,926	15,537	16,732	1,272
Construction, minor projects		(29-00-0111	-X-1-703-A;	36-0111)
Budget Authority	96,061	96,061	96,061	7,301
Outlays	37,000	31,374	34,187	2,598
Veterans insurance and indemnities		(29-00-0120	-X-1-701-A;	36-0120)
Budget Authority	42	0	21	2
Direct Loan Limitation	42	0	21	2
Outlays	42	0	21	2
Readjustment benefits		(29-00-0137	-X-1-702-A;	36-0137)
Budget Authority	877,569	0	438,784	33,348
401(C) Authority	0	750,000	375,000	28,500
Outlays	708,602	723,457	716,030	54,418

Account Title	OMB	CBO	Average	Sequester
Grants to the Republic of the Philippines		(29-00-0144	-X-1-703-A;	36-0144)
Budget Authority	474	474	474	36
Outlays	164	161	162	12
General operating expenses		(29-00-0151	-X-1-705-A;	36-0151)
Budget Authority	712,835	712,835	712,835	54,175
Outlays	624,745	641,552	633,148	48,119
Medical administration and miscellaneous operating exp		(29-00-0152	-X-1-703-A;	36-0152)
Budget Authority	51,222	51,222	51,222	3,893
Outlays	38,058	37,904	37,981	2,887
Burial benefits and miscellaneous assistance		(29-00-0155	-X-1-701-A;	36-0155)
Budget Authority	129,350	0	64,675	4,915
401(C) Authority	0	128,000	64,000	4,864
Outlays	129,180	127,822	128,501	9,766
Medical care		(29-00-0160	-X-1-703-A;	36-0160)
Budget Authority	727,320	727,320	727,320	55,276
Budget Authority--Spec. Rules	168,056	168,056	168,056	168,056
401(C) Authority--Spec. Rules	642	642	642	642
Outlays	815,651	826,107	820,879	196,005
Medical and prosthetic research		(29-00-0161	-X-1-703-A;	36-0161)
Budget Authority	181,127	181,127	181,127	13,766
Outlays	148,343	146,713	147,528	11,212
Grants for construction of state extended care facilit		(29-00-0181	-X-1-703-A;	36-0181)
Budget Authority	20,822	20,822	20,822	1,582
Grants for the construction of State veterans cemeteri		(29-00-0183	-X-1-705-A;	36-0183)
Budget Authority	2,839	2,839	2,839	216
Veterans reopened insurance fund		(29-00-4010	-X-3-701-A;	36-4010)
Direct Loan Limitation	4,920	0	2,460	187
Outlays	4,920	0	2,460	187
Service-disabled veterans insurance fund		(29-00-4012	-X-3-701-A;	36-4012)
Direct Loan Limitation	5,100	0	2,550	194
Outlays	5,100	0	2,550	194
Canteen service revolving fund		(29-00-4014	-X-3-705-A;	36-4014)
401(C) Authority--Off. Coll.	193,715	193,715	193,715	14,722
Outlays	193,715	193,715	193,715	14,722
Direct loan revolving fund		(29-00-4024	-X-3-704-A;	36-4024)
Direct Loan Limitation	946	946	946	72
Outlays	235	235	235	18
Loan guaranty revolving fund		(29-00-4025	-X-3-704-A;	36-4025)
Guaranteed Loan Limitation	38,280,000	38,000,000	38,140,000	2,898,640
Outlays	0	-240,200	-120,100	-9,128
Special therapeutic and rehabilitation activities fund		(29-00-4048	-X-3-703-A;	36-4048)
401(C) Authority--Off. Coll.	2,225	2,225	2,225	169
Outlays	2,225	2,225	2,225	169
Vocational rehabilitation revolving fund		(29-00-4114	-X-3-702-A;	36-4114)
Direct Loan Limitation	1,000	1,182	1,091	83
Outlays	1,000	1,160	1,080	82
Education loan fund		(29-00-4118	-X-3-702-A;	36-4118)
Direct Loan Limitation	40	45	42	3
Outlays	40	45	42	3
National service life insurance fund		(29-00-8132	-X-7-701-A;	36-8132)
Direct Loan Limitation	46,800	0	23,400	1,778
Outlays	46,800	0	23,400	1,778
United States government life insurance fund		(29-00-8150	-X-7-701-A;	36-8150)
Direct Loan Limitation	740	0	370	28
Outlays	740	0	370	28
Veterans special life insurance fund		(29-00-8455	-X-8-701-A;	36-8455)
Direct Loan Limitation	7,400	0	3,700	281
Outlays	7,400	0	3,700	281
Veterans Administration		Total		
Budget Authority	3,320,205	2,313,244	2,816,724	214,071
Budget Authority--Spec. Rules	168,056	168,056	168,056	168,056
401(C) Authority	0	878,000	439,000	33,364
401(C) Authority--Off. Coll.	195,940	195,940	195,940	14,891
401(C) Authority--Spec. Rules	642	642	642	642
Direct Loan Limitation	66,988	2,173	34,580	2,628
Guaranteed Loan Limitation	38,280,000	38,000,000	38,140,000	2,898,640
Outlays	2,810,386	2,540,723	2,675,554	336,960
Other Independent Agencies				
ACTION				
Operating expenses		(30-01-0103	-X-1-506-A;	44-0103)
Budget Authority	144,782	144,782	144,782	11,003
Outlays	87,694	87,694	87,694	6,665
Administrative Conference of the United States				
Salaries and expenses		(30-02-1700	-X-1-751-A;	95-1700)
Budget Authority	1,369	1,369	1,369	104
Outlays	1,190	1,095	1,142	87
Advisory Committee on Federal Pay				
Salaries and expenses		(30-05-1800	-X-1-805-A;	95-1800)
Budget Authority	201	201	201	15
Outlays	190	190	190	14

Account Title	OMB	CBO	Average	Sequester
Advisory Council on Historic Preservation		(30-10-2300	-X-1-303-A;	95-2300)
Salaries and expenses				
Budget Authority	1,507	1,507	1,507	115
Outlays	1,404	1,236	1,320	100
American Battle Monuments Commission		(30-12-0100	-X-1-705-A;	74-0100)
Salaries and expenses				
Budget Authority	11,921	11,921	11,921	906
Outlays	9,012	8,788	8,900	676
Architectural & Transportation Barriers Compliance		(30-14-3200	-X-1-751-A;	95-3200)
Salaries and expenses				
Budget Authority	1,890	1,890	1,890	144
Outlays	1,304	1,372	1,338	102
Arms Control and Disarmament Agency		(30-17-0100	-X-1-153-A;	94-0100)
Arms control and disarmament activities				
Budget Authority	24,738	24,738	24,738	1,880
Outlays	21,028	18,801	19,914	1,513
Board for International Broadcasting		(30-18-1145	-X-1-154-A;	95-1145)
Grants and expenses				
Budget Authority	117,084	117,084	117,084	8,898
Outlays	117,084	117,084	117,084	8,898
Commission of Fine Arts		(30-32-2600	-X-1-451-A;	95-2600)
Salaries and expenses				
Budget Authority	364	364	364	28
Outlays	342	316	329	25
Commission on Civil Rights		(30-35-1900	-X-1-751-A;	95-1900)
Salaries and expenses				
Budget Authority	11,771	11,771	11,771	895
Outlays	10,041	10,382	10,212	776
Committee for Purchase from the Blind & others		(30-37-2000	-X-1-505-A;	95-2000)
Salaries and expenses				
Budget Authority	699	699	699	53
Outlays	685	572	628	48
Commodity Futures Trading Commission		(30-38-1400	-X-1-376-A;	95-1400)
Commodity Futures Trading Commission				
Budget Authority	27,983	27,983	27,983	2,127
Outlays	25,314	25,297	25,306	1,923
Consumer Product Safety Commission		(30-41-0100	-X-1-554-A;	61-0100)
Product safety				
Budget Authority	34,452	34,452	34,452	2,618
401(C) Authority--Off. Coll.	5	5	5	0
Outlays	29,289	29,289	29,289	2,226
Corporation for Public Broadcasting		(30-42-0151	-X-1-503-A;	20-0151)
Public broadcasting fund				
401(C) Authority	200,000	200,000	200,000	15,200
Outlays	200,000	200,000	200,000	15,200
District of Columbia		(30-43-1700	-X-1-852-A;	20-1700)
Federal payment to the District of Columbia				
Budget Authority	530,027	530,027	530,027	40,282
Outlays	530,027	530,027	530,027	40,282
Equal Employment Opportunity Commission		(30-46-0100	-X-1-751-A;	45-0100)
Salaries and expenses				
Budget Authority	157,905	157,905	157,905	12,001
Outlays	140,246	137,377	138,812	10,550
Export-Import Bank of the United States		(30-48-4027	-X-3-155-A;	83-4027)
Export-Import Bank of the United States				
Direct Loan Limitation	1,062,270	1,062,270	1,062,270	80,733
Guaranteed Loan Limitation	11,484,000	11,484,000	11,484,000	872,784
Obligation Limitation	17,568	17,568	17,568	1,335
Outlays	66,468	212,588	139,528	10,604
Farm Credit Administration		(30-52-4131	-X-3-351-A;	78-4131)
Revolving fund for administrative expenses				
Obligation Limitation	29,403	29,403	29,403	2,235
Outlays	29,403	29,403	29,403	2,235
Federal Communications Commission		(30-60-0100	-X-1-376-A;	27-0100)
Salaries and expenses				
Budget Authority	90,341	90,341	90,341	6,866
401(C) Authority--Off. Coll.	50	50	50	4
Outlays	85,810	84,519	85,164	6,472
Federal Deposit Insurance Corporation		(30-64-8419	-X-8-371-A;	51-8419)
Federal Deposit Insurance Corporation				
401(C) Authority--Off. Coll.	228,397	228,397	228,397	17,358
Outlays	228,397	228,397	228,397	17,358
Federal Election Commission		(30-65-1600	-X-1-806-A;	95-1600)
Salaries and expenses				
Budget Authority	11,898	11,898	11,898	904
Outlays	10,638	10,363	10,500	798
Federal Emergency Management Agency		(30-67-0100	-X-1-054-A;	58-0100)
Salaries and expenses (Defense-related activities)				
Budget Authority	66,174	66,174	66,174	5,029
Outlays	59,557	62,601	61,079	4,642

Account Title	OMB	CBO	Average	Sequester
Salaries and expenses (Disaster relief and insurance)		(30-67-0100	-X-1-453-A;	58-0100)
Budget Authority	54,850	54,850	54,850	4,169
Outlays	49,365	48,897	49,131	3,734
Emergency planning and assistance (Defense-related act		(30-67-0101	-X-1-054-A;	58-0101)
Budget Authority	209,498	209,498	209,498	15,922
Outlays	94,274	160,475	127,374	9,680
Emergency planning and assistance (Community developme		(30-67-0101	-X-1-453-A;	58-0101)
Budget Authority	69,090	69,090	69,090	5,251
Outlays	38,000	36,942	37,471	2,848
Emergency food and shelter		(30-67-0103	-X-1-605-A;	58-0103)
Budget Authority	70,000	70,000	70,000	5,320
Outlays	70,000	70,000	70,000	5,320
National insurance development fund		(30-67-4235	-X-3-451-A;	58-4235)
401(C) Authority	220	220	220	17
Outlays	220	198	209	16
Federal Home Loan Bank Board				
Federal Home Loan Bank Board revolving fund		(30-69-4035	-X-3-371-A;	82-4035)
401(C) Authority--Off. Coll.	11,134	9,826	10,480	796
Obligation Limitation	25,721	25,721	25,721	1,955
Outlays	11,134	9,826	10,480	796
Federal Savings and Loan Insurance Corporation fund		(30-69-4037	-X-3-371-A;	82-4037)
401(C) Authority--Off. Coll.	63,510	63,510	63,510	4,827
Obligation Limitation	1,378	1,378	1,378	105
Outlays	63,510	63,510	63,510	4,827
Federal Labor Relations Authority				
Salaries and expenses		(30-70-0100	-X-1-805-A;	54-0100)
Budget Authority	16,330	16,330	16,330	1,241
Outlays	15,146	14,697	14,922	1,134
Federal Maritime Commission				
Salaries and expenses		(30-72-0100	-X-1-403-A;	65-0100)
Budget Authority	11,360	11,360	11,360	863
Outlays	10,105	10,224	10,164	772
Federal Mediation and Conciliation Service				
Salaries and expenses		(30-76-0100	-X-1-505-A;	93-0100)
Budget Authority	22,388	22,388	22,388	1,701
Outlays	20,514	20,507	20,510	1,559
Federal Mine Safety and Health Review Commission				
Salaries and expenses		(30-79-2800	-X-1-554-A;	95-2800)
Budget Authority	3,651	3,651	3,651	277
Outlays	3,422	3,421	3,422	260
Federal Retirement Thrift Investment Board				
Salaries and expenses		(30-81-0200	-X-1-805-A;	26-0200)
Budget Authority	250	250	250	19
Outlays	250	250	250	19
Federal Trade Commission				
Salaries and expenses		(30-84-0100	-X-1-376-A;	29-0100)
Budget Authority	62,683	62,684	62,684	4,764
Outlays	59,599	57,356	58,478	4,444
Harry S Truman Scholarship Foundation				
Harry S Truman memorial scholarship trust fund		(31-01-8296	-X-7-502-A;	95-8296)
401(C) Other--incl. ob. limit	1,993	1,993	1,993	151
Outlays	1,993	1,993	1,993	151
Commission on the Bicentennial of the U.S. Constit				
Salaries and expenses		(31-04-0054	-X-1-806-A;	76-0054)
Budget Authority	12,226	12,226	12,226	929
Outlays	6,113	6,113	6,113	465
Franklin Delano Roosevelt Memorial Commission				
Salaries and expenses		(31-05-0700	-X-1-806-A;	76-0700)
Budget Authority	20	20	20	2
Outlays	0	12	6	0
Intelligence Community Staff				
Intelligence community staff		(31-07-0400	-X-1-054-A;	95-0400)
Budget Authority	21,001	21,001	21,001	1,176
Outlays	13,304	19,003	16,154	905
Advisory Commission on Intergovernmental Relations				
Salaries and expenses		(31-08-0100	-X-1-806-A;	55-0100)
Budget Authority	1,953	1,953	1,953	148
Outlays	1,662	1,660	1,661	126
Appalachian Regional Commission				
Appalachian regional development programs		(31-09-0200	-X-1-452-A;	46-0200)
Budget Authority	116,945	116,945	116,945	8,888
Outlays	8,517	7,824	8,170	621
Delaware River Basin Commission				
Salaries and expenses		(31-10-0100	-X-1-301-A;	46-0100)
Budget Authority	161	161	161	12
Outlays	145	150	148	11
Contribution to Delaware River Basin Commission		(31-10-0102	-X-1-301-A;	46-0102)
Budget Authority	263	263	263	20
Outlays	263	263	263	20

Account Title	OMB	CBO	Average	Sequester
Interstate Commission on the Potomac River Basin				
Contribution to Interstate Commission on the Potomac R		(31-11-0446	-X-1-304-A;	46-0446)
Budget Authority	79	79	79	6
Outlays	79	79	79	6
Susquehanna River Basin Commission				
Salaries and expenses		(31-12-0500	-X-1-301-A;	46-0500)
Budget Authority	156	156	156	12
Outlays	148	147	148	11
Contribution to Susquehanna River Basin Commission		(31-12-0501	-X-1-301-A;	46-0501)
Budget Authority	220	220	220	17
Outlays	220	220	220	17
Washington Metropolitan Area Transit Authority				
Interest payments		(31-14-0300	-X-1-401-A;	46-0300)
Budget Authority	51,664	0	25,832	1,963
Outlays	51,664	0	25,832	1,963
International Trade Commission				
Salaries and expenses		(31-17-0100	-X-1-153-A;	34-0100)
Budget Authority	27,370	27,370	27,370	2,080
Outlays	23,370	23,538	23,454	1,782
Interstate Commerce Commission				
Salaries and expenses		(31-20-0100	-X-1-401-A;	30-0100)
Budget Authority	46,108	46,108	46,108	3,504
Outlays	43,802	41,497	42,650	3,241
Japan-United States Friendship Commission				
Japan-United States friendship trust fund		(31-21-8025	-X-7-154-A;	95-8025)
Budget Authority	742	742	742	56
Outlays	742	742	742	56
Legal Services Corporation				
Payment to the Legal Services Corporation		(31-22-0501	-X-1-752-A;	20-0501)
Budget Authority	292,363	292,363	292,363	22,220
Outlays	254,562	254,649	254,606	19,350
Marine Mammal Commission				
Salaries and expenses		(31-23-2200	-X-1-302-A;	95-2200)
Budget Authority	861	861	861	65
Outlays	646	763	704	54
Merit Systems Protection Board				
Salaries and expenses		(31-24-0100	-X-1-805-A;	41-0100)
Budget Authority	19,140	19,140	19,140	1,455
Outlays	18,288	17,245	17,766	1,350
Office of the Special Counsel		(31-24-0101	-X-1-805-A;	41-0101)
Budget Authority	4,396	4,396	4,396	334
Outlays	4,201	4,040	4,120	313
National Archives and Records Administration				
Operating expenses		(31-26-0300	-X-1-804-A;	88-0300)
Budget Authority	97,004	97,004	97,004	7,372
Outlays	79,831	77,603	78,717	5,982
National archives trust fund		(31-26-8436	-X-8-804-A;	88-8436)
401(C) Authority--Off. Coll.	8,222	8,222	8,222	625
Outlays	8,222	8,222	8,222	625
National Capital Planning Commission				
Salaries and expenses		(31-28-2500	-X-1-451-A;	95-2500)
Budget Authority	2,580	2,580	2,580	196
Outlays	2,457	2,423	2,440	185
National Afro-American History and Culture Commiss				
National Center for the Study of Afro-American Hist.	a	(31-29-3800	-X-1-503-A;	95-3800)
Budget Authority	191	191	191	15
Outlays	172	172	172	13
National Commission on Libraries & Info. Science				
Salaries and expenses		(31-30-2700	-X-1-503-A;	95-2700)
Budget Authority	660	660	660	50
Outlays	581	581	581	44
National Council on the Handicapped				
Salaries and expenses		(31-32-3500	-X-1-506-A;	95-3500)
Budget Authority	732	732	732	56
Outlays	581	620	600	46
National Credit Union Administration				
Operating fund		(31-33-4056	-X-3-371-A;	25-4056)
401(C) Authority--Off. Coll.	20,000	19,731	19,866	1,510
Outlays	20,000	19,731	19,866	1,510
Credit union share insurance fund		(31-33-4468	-X-3-371-A;	25-4468)
401(C) Authority--Off. Coll.	18,148	19,732	18,940	1,439
Outlays	18,148	19,732	18,940	1,439
Central liquidity facility		(31-33-4470	-X-3-371-A;	25-4470)
401(C) Authority--Off. Coll.	231,100	231,100	231,100	17,564
Direct Loan Limitation	567,884	567,884	567,884	43,159
Obligation Limitation	805	805	805	61
Outlays	231,100	231,100	231,100	17,564

Account Title	OMB	CBO	Average	Sequester
National Endowment for the Arts				
National Endowment for the Arts: Grants and administra		(31-35-0100	-X-1-503-A;	59-0100)
Budget Authority	158,538	158,538	158,538	12,049
Outlays	36,464	55,013	45,738	3,476
Arts and artifacts indemnity fund		(31-35-0101	-X-1-503-A;	59-0101)
Budget Authority	285	285	285	22
National Endowment for the Humanities				
National Endowment for the Humanities: Grants and admi		(31-36-0200	-X-1-503-A;	59-0200)
Budget Authority	134,582	134,582	134,582	10,228
Outlays	70,252	70,252	70,252	5,339
Institute of Museum Services				
Institute of Museum Services		(31-37-0300	-X-1-503-A;	59-0300)
Budget Authority	20,474	20,474	20,474	1,556
Outlays	5,118	5,139	5,128	390
National Institute of Building Sciences				
National Institute of Building Sciences trust fund		(31-38-8222	-X-7-376-A;	95-8222)
401(C) Other--incl. ob. limit	522	519	520	40
Outlays	522	519	520	40
National Labor Relations Board				
Salaries and expenses		(31-39-0100	-X-1-505-A;	63-0100)
Budget Authority	129,055	129,055	129,055	9,808
Outlays	120,705	120,666	120,686	9,172
National Mediation Board				
Salaries and expenses		(31-40-2400	-X-1-505-A;	95-2400)
Budget Authority	6,085	6,085	6,085	462
Outlays	4,859	5,172	5,016	381
National Science Foundation				
Research and related activities		(31-45-0100	-X-1-251-A;	49-0100)
Budget Authority	1,294,060	1,294,060	1,294,060	98,349
Outlays	644,372	710,439	677,406	51,483
Scientific activities overseas (special foreign curren		(31-45-0102	-X-1-251-A;	49-0102)
Budget Authority	957	957	957	73
Outlays	144	479	312	24
Science and engineering education activities		(31-45-0106	-X-1-251-A;	49-0106)
Budget Authority	53,161	53,161	53,161	4,040
Outlays	7,974	7,921	7,948	604
U.S. Antarctic program		(31-45-0200	-X-1-251-A;	49-0200)
Budget Authority	110,151	110,151	110,151	8,371
Outlays	41,088	38,553	39,820	3,026
National Transportation Safety Board				
Salaries and expenses		(31-47-0310	-X-1-407-A;	95-0310)
Budget Authority	21,341	21,341	21,341	1,622
Outlays	20,915	19,207	20,061	1,525
Neighborhood Reinvestment Corporation				
Payment to the Neighborhood Reinvestment Corporation		(31-49-1300	-X-1-451-A;	82-1300)
Budget Authority	17,669	17,669	17,669	1,343
Outlays	17,669	17,669	17,669	1,343
Nuclear Regulatory Commission				
Salaries and expenses (NRC)		(31-50-0200	-X-1-276-A;	31-0200)
Budget Authority	400,026	400,026	400,026	30,402
Outlays	300,020	300,020	300,020	22,802
Occupational Safety and Health Review Commission				
Salaries and expenses		(32-02-2100	-X-1-554-A;	95-2100)
Budget Authority	5,647	5,647	5,647	429
Outlays	5,258	5,257	5,258	400
Pennsylvania Avenue Development Corporation				
Salaries and expenses		(32-08-0100	-X-1-451-A;	42-0100)
Budget Authority	2,215	2,215	2,215	168
Outlays	1,833	1,819	1,826	139
Public development		(32-08-0102	-X-1-451-A;	42-0102)
Budget Authority	3,091	3,091	3,091	235
Outlays	1,268	1,185	1,226	93
Land acquisition and development fund		(32-08-4084	-X-3-451-A;	42-4084)
401(C) Authority--Off. Coll.	4,000	4,000	4,000	304
Outlays	4,000	4,000	4,000	304
Postal Service				
Payment to the Postal Service fund		(32-10-1001	-X-1-372-A;	18-1001)
Budget Authority	715,836	715,836	715,836	54,404
Outlays	715,836	715,836	715,836	54,404
Postal Service		(32-10-4020	-X-3-372-A;	18-4020)
401(C) Authority	1,205,818	1,205,818	1,205,818	91,642
Outlays	1,205,818	0	602,909	45,821
Railroad Retirement Board				
Federal windfall subsidy		(32-20-0111	-X-1-601-A;	60-0111)
Budget Authority	375,335	375,335	375,335	28,525
Outlays	373,230	373,230	373,230	28,365
Railroad social security equivalent benefit account		(32-20-8010	-X-7-601-A;	60-8010)
Obligation Limitation	27,950	27,950	27,950	2,124
Outlays	27,950	27,950	27,950	2,124

Account Title	OMB	CBO	Average	Sequester
Rail Industry Pension Fund		(32-20-8011	-X-7-601-A;	60-8011)
Obligation Limitation	25,089	25,089	25,089	1,907
Outlays	24,610	24,610	24,610	1,870
Securities and Exchange Commission				
Salaries and expenses		(32-35-0100	-X-1-376-A;	50-0100)
Budget Authority	106,323	106,323	106,323	8,081
Outlays	96,848	96,754	96,801	7,357
Selective Service System				
Salaries and expenses		(32-40-0400	-X-1-054-A;	90-0400)
Budget Authority	26,128	26,128	26,128	1,463
Outlays	19,141	21,746	20,444	1,145
Smithsonian Institution				
Salaries and expenses		(32-50-0100	-X-1-503-A;	33-0100)
Budget Authority	169,384	169,384	169,384	12,873
Outlays	150,569	150,582	150,576	11,444
Museum programs and related research (sp. for. currenc		(32-50-0102	-X-1-503-A;	33-0102)
Budget Authority	2,378	2,378	2,378	181
Construction and improvements, National Zoological Par		(32-50-0129	-X-1-503-A;	33-0129)
Budget Authority	5,281	5,281	5,281	401
Outlays	2,779	3,691	3,235	246
Restoration and renovation of buildings		(32-50-0132	-X-1-503-A;	33-0132)
Budget Authority	10,536	10,536	10,536	801
Outlays	2,033	4,657	3,345	254
Construction		(32-50-0133	-X-1-503-A;	33-0133)
Budget Authority	3,805	3,805	3,805	289
Outlays	1,435	1,522	1,478	112
Salaries and expenses, National Gallery of Art		(32-50-0200	-X-1-503-A;	33-0200)
Budget Authority	32,144	32,144	32,144	2,443
Outlays	31,890	29,222	30,556	2,322
Repair, restoration, and renovation of buildings		(32-50-0201	-X-1-503-A;	33-0201)
Budget Authority	3,103	3,103	3,103	236
Outlays	0	1,169	584	44
Salaries and expenses, Woodrow Wilson International Ce		(32-50-0400	-X-1-503-A;	33-0400)
Budget Authority	3,227	3,227	3,227	245
Outlays	1,997	1,959	1,978	150
Payment to the endowment challenge fund		(32-50-0401	-X-1-503-A;	33-0401)
Budget Authority	994	994	994	76
Endowment challenge fund		(32-50-8188	-X-7-503-A;	33-8188)
401(C) Authority	150	150	150	11
Outlays	150	150	150	11
Canal Zone biological area fund		(32-50-8190	-X-7-503-A;	33-8190)
401(C) Authority	119	119	119	9
Outlays	119	119	119	9
Other Temporary Commissions				
Commission on the Ukraine Famine: Salaries and expense		(33-02-0050	-X-1-153-A;	48-0050)
Budget Authority	383	383	383	29
Outlays	0	325	162	12
State Justice Institute		(33-02-0052	-X-1-752-A;	48-0052)
Budget Authority	7,656	7,656	7,656	582
Outlays	6,890	6,890	6,890	524
Navajo and Hopi Indian Relocation Commission		(33-02-1100	-X-1-806-A;	48-1100)
Budget Authority	21,395	21,395	21,395	1,626
Outlays	14,373	13,479	13,926	1,058
Tennessee Valley Authority				
TVA fund (Energy supply)		(33-16-4110	-X-3-271-A;	64-4110)
401(C) Authority--Off. Coll.	87,309	87,309	87,309	6,635
Outlays	87,309	76,832	82,070	6,237
TVA fund (Area and regional development)		(33-16-4110	-X-3-452-A;	64-4110)
Budget Authority	99,528	99,528	99,528	7,564
Outlays	29,998	24,484	27,241	2,070
United States Holocaust Memorial Council				
Holocaust Memorial Council		(33-19-3300	-X-1-806-A;	95-3300)
Budget Authority	2,021	2,021	2,021	154
Outlays	2,110	1,599	1,854	141
United States Information Agency				
Salaries and expenses		(33-22-0201	-X-1-154-A;	67-0201)
Budget Authority	550,347	550,347	550,347	41,826
Outlays	440,278	440,278	440,278	33,461
East West Center		(33-22-0202	-X-1-154-A;	67-0202)
Budget Authority	19,858	19,858	19,858	1,509
Outlays	19,065	18,468	18,766	1,426
Radio construction		(33-22-0204	-X-1-154-A;	67-0204)
Budget Authority	105,198	105,198	105,198	7,995
Outlays	17,456	16,832	17,144	1,303
Radio broadcasting to Cuba		(33-22-0208	-X-1-154-A;	67-0208)
Budget Authority	10,240	10,240	10,240	778
Outlays	8,192	8,192	8,192	623

Account Title	OMB	CBO	Average	Sequester
Educational and cultural exchange program		(33-22-0209	-X-1-154-A;	67-0209)
Budget Authority	134,458	134,458	134,458	10,219
Outlays	67,229	67,230	67,230	5,109
National Endowment for Democracy		(33-22-0210	-X-1-154-A;	67-0210)
Budget Authority	17,226	17,226	17,226	1,309
Outlays	15,000	15,503	15,252	1,159
United States Railway Association				
Administrative expenses		(33-30-0100	-X-1-401-A;	98-0100)
Budget Authority	2,297	2,297	2,297	175
Outlays	2,297	2,067	2,182	166
United States Sentencing Commission				
Salaries and expenses		(33-31-0938	-X-1-752-A;	10-0938)
Budget Authority	1,053	1,053	1,053	80
Outlays	2,111	947	1,529	116
Other Independent Agencies		Total		
Budget Authority	7,235,512	7,183,849	7,209,681	546,993
401(C) Authority	1,406,307	1,406,307	1,406,307	106,879
401(C) Authority--Off. Coll.	671,875	671,882	671,878	51,063
401(C) Other--incl. ob. limit	2,515	2,512	2,514	191
Direct Loan Limitation	1,630,154	1,630,154	1,630,154	123,892
Guaranteed Loan Limitation	11,484,000	11,484,000	11,484,000	872,784
Obligation Limitation	127,914	127,914	127,914	9,721
Outlays	7,530,647	6,543,449	7,037,048	534,083
Allowances				
Allowances				
Civilian agency pay raises		(51-05-6005	-X-1-921-A;	99-6005)
Budget Authority	0	134,000	67,000	5,092
Outlays	0	129,000	64,500	4,902
Coast Guard pay raises		(51-05-6006	-X-1-921-A;	99-6006)
Budget Authority	0	14,000	7,000	532
Outlays	0	14,000	7,000	532
Allowances		Total		
Budget Authority	0	148,000	74,000	5,624
Outlays	0	143,000	71,500	5,434
REPORT TOTAL				
Budget Authority	422,271,816	419,474,302	420,873,059	26,244,250
Budget Authority--ASI	26,912	57	13,484	13,484
Budget Authority--Spec. Rules	240,942	192,980	216,961	216,961
401(C) Authority	24,956,888	30,898,975	27,927,932	2,122,142
401(C) Authority--Off. Coll.	3,120,294	3,188,977	3,154,636	239,752
401(C) Other--incl. ob. limit	16,123,691	16,038,649	16,081,170	1,222,169
401(C) Authority--ASI	257,401	448,070	352,736	352,736
401(C) Authority--Spec. Rules	1,116,157	1,293,109	1,204,633	1,204,633
Direct Loan Limitation	32,122,544	29,114,079	30,618,312	2,326,992
Direct Loan Floor	1,971,420	1,971,420	1,971,420	149,828
Guaranteed Loan Limitation	381,434,481	381,154,482	381,294,482	28,978,381
Guaranteed Loan Floor	933,075	933,075	933,075	70,914
Obligation Limitation	11,335,360	11,335,379	11,335,370	861,488
Unobligated Balances--Defense	54,017,490	54,055,166	54,036,328	3,026,034
Outlays	274,273,299	282,515,218	278,394,259	19,384,364

[FR Doc. 86-18954 Filed 8-19-86; 1:05 pm]

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