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Pages 7875-8140

FAST TRACK

Friday
March 11, 1988

Briefings on How To Use the Federal Register—
For information on briefings in Tampa, FL, Fort
Lauderdale, FL, Washington, DC, and Boston, MA, see
announcement on the inside cover of this issue.



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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.

TAMPA, FL

- WHEN:** March 24; at 9:30 a.m.
- WHERE:** Auditorium
Tampa-Hillsborough County Public Library
900 North Ashley Drive, Tampa, FL.
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- WHEN:** March 25; at 10:00 a.m.
- WHERE:** Room 8 A and B
Broward County Main Library
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WASHINGTON, DC

- WHEN:** April 15; at 9:00 a.m.
- WHERE:** Office of the Federal Register,
First Floor Conference Room,
1100 L Street NW., Washington, DC
- RESERVATIONS:** Carolyn Payne, 202-523-3187

BOSTON, MA

- WHEN:** April 19; at 9 a.m.
- WHERE:** Thomas P. O'Neill Federal Building
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10 Causeway Street,
Boston, MA.
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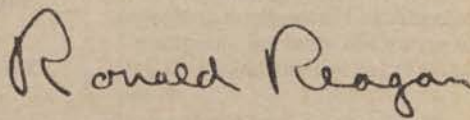
Title 3—

Executive Order 12629 of March 9, 1988

The President

Nuclear Cooperation With EURATOM

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 126a(2) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2155(a)(2)), and having determined that, upon the expiration of the period specified in the first proviso to Section 126a(2) of such Act and extended for 12-month periods by Executive Orders Nos. 12193, 12295, 12351, 12409, 12463, 12506, 12554, and 12587, failure to continue peaceful nuclear cooperation with the European Atomic Energy Community would be seriously prejudicial to the achievement of U.S. non-proliferation objectives and would otherwise jeopardize the common defense and security of the United States, and having notified the Congress of this determination, I hereby extend the duration of that period to March 10, 1989. Executive Order No. 12587 shall be superseded on the effective date of this Executive Order.



THE WHITE HOUSE,
March 9, 1988.

[FR Doc. 88-5585

Filed 3-10-88; 10:40 am]

Billing code 3195-01-M

Presidential Documents

Executive Order No. 11629

February 17, 1974

By the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby order that the Department of the Interior be directed to conduct a comprehensive study of the feasibility of establishing a national system of public lands management. The study should include a review of the existing laws and regulations governing public lands, an assessment of the current management practices, and a proposal for a new system of management that would be consistent with the principles of the Antiquities Act of 1906 and the National Park Service Organic Act of 1916. The study should also take into account the needs of the States and the local communities in which the public lands are located. The study should be completed and reported to me within six months of the date of this order.

Richard M. Nixon

THE WHITE HOUSE
WASHINGTON

Rules and Regulations

Federal Register

Vol. 53, No. 48

Friday, March 11, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary to reflect the assignment of responsibility for the State Agricultural Mediation Programs under the Agriculture Credit Act of 1987 to the Under Secretary for Small Community and Rural Development and the Administrator of Farmers Home Administration.

EFFECTIVE DATE: March 11, 1988.

FOR FURTHER INFORMATION CONTACT:

Glenn J. Hertzler, Assistant Administrator Farmer Programs, Farmers Home Administration, USDA, 14th and Independence Avenue, SW., Washington, DC 20250, telephone (202) 447-4671.

SUPPLEMENTARY INFORMATION:

Department responsibility for certification and policy development on State Agricultural Mediation Program issues has heretofore been located in the Office of the Secretary. Authority to administer the State Agricultural Mediation Programs is being delegated to the Under Secretary for Small Community and Rural Development, and then further redelegated to the Administrator of Farmers Home Administration.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rule making and opportunity for comments are not required, and this rule may be made effective less than 30 days after publication in the *Federal Register*. Further, since this rule relates to internal

agency management, it is exempt from the provisions of Executive Order 12291. Finally, this action is not a rule as defined by the Regulatory Flexibility Act and thus is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 2

Authority delegation (Government agencies).

Accordingly, Part 2, Title 7, Code of Federal Regulations is amended as follows:

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

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

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

Authority: 5 U.S.C. 301; Section 4(a) of Reorganization Plan No. 2 of 1953; 7 CFR 2.23; 7 CFR 2.70.

2. Section 2.23 is amended by adding a new paragraph (a)(17) to read as follows:

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

(a) ***

(17) Administer the State Agricultural Mediation Programs under Title 5 of the Agriculture Credit Act of 1987 (Pub. L. 100-233).

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

3. Section 2.70 is amended by adding new paragraph (a)(32) to read as follows:

§ 2.70 Administrator, Farmers Home Administration.

(a) *Delegations.* ***

(32) Administer the State Agricultural Mediation Programs under Title 5 of the Agriculture Credit Act of 1987 (Pub. L. 100-233).

Dated: March 4, 1988.

For Subparts C and I.

Richard E. Lyng,

Secretary of Agriculture.

[FR Doc. 88-5352 Filed 3-10-88; 8:45 am]

BILLING CODE 3410-07-M

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 88-017]

Oriental Fruit Fly; Removal of Portions of Los Angeles County and Orange County From Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the Oriental fruit fly regulations by removing portions of Los Angeles County and portions of Orange County in California from the list of quarantined areas.

EFFECTIVE DATE: April 11, 1988.

FOR FURTHER INFORMATION CONTACT: Eddie Elder, Chief Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, Room 661, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-6365.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule published in the *Federal Register* December 1, 1987 (52 FR 45597-45598, Docket Number 87-161) and effective November 24, 1987, we amended the Oriental fruit fly regulations by removing portions of Los Angeles and Orange Counties in California from the list of quarantined areas.

Comments on the interim rule were required to be postmarked or received on or before February 1, 1988. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have

determined that this rule will have an effect on the economy of less than \$100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

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

Within the portions of Los Angeles and Orange Counties that were removed from the quarantined area, there are fewer than 60 small entities that may be affected, including commercial growers of tomatoes and cucumbers, 38 nurseries, no more than 9 outdoor or mobile fruit stands, and 2 community gardens. The effect of this rule on these entities should be insignificant, since most of their sales are local intrastate, and were not affected by the regulatory provisions that were removed; those sales that were affected were generally articles that could be moved after compliance with treatment or inspection provisions of the regulations.

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

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

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

List of Subjects in 7 CFR Part 301

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

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR Part 301 and that was published at 52 FR 45597-45598 on December 1, 1987.

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

Done in Washington, DC, this 8th day of March, 1988.

James W. Glosser,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-5410 Filed 3-10-88; 8:45 am]

BILLING CODE 3410-34-M

Federal Crop Insurance Corporation

7 CFR Part 401

[Amdt. No. 8; Docket No. 5447S]

General Crop Insurance Regulations; Canning and Processing Bean Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule Correction.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) published a final rule in the *Federal Register* on Wednesday, March 2, 1988, at 53 FR 6559, amending the General Crop Insurance Regulations (7 CFR Part 401) to add a new section § 401.118, the Canning and Processing Bean Endorsement. In that publication, the State of Idaho was inadvertently omitted from the section listing those states where canning and processing bean crop insurance is otherwise authorized to be offered, and where bean acreage by type may be divided into more than one unit under certain conditions. This notice is published to correct that error.

EFFECTIVE DATE: March 10, 1988.

ADDRESS: Written comments on this correction may be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC., 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: FR Document 88-4529, appearing at pages

6559 through 6561, is corrected as follows:

§ 401.118 [Corrected]

On page 6560, in Column 2, Section 5 of 7 CFR § 401.118, the Canning and Processing Bean Endorsement, is corrected to read as follows:

* * * * *

5. Unit division.

For Idaho, Michigan, Minnesota, Oregon, Tennessee, Washington, and Wisconsin bean acreage by type (snap or lima) that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into more than one unit if you agree to pay an additional premium if required by the actuarial table and if for each proposed unit you maintain written, verifiable records of planted acreage and harvested production for at least the previous crop year and either:

a. Acreage planted to the insured beans is located in separate, legally identifiable sections or, in the absence of section descriptions, the land is identified by separate ASCS Farm Serial Numbers, provided:

(1) The boundaries of the sections or ASCS Farm Serial Numbers are clearly identified and the insured acreage can be easily determined; and

(2) The beans are planted in such a manner that the planting pattern does not continue into the adjacent section or ASCS Farm Serial Number; or

b. The acreage planted to the insured beans is located in a single section or ASCS Farm Serial Number and consists of acreage on which both an irrigated and nonirrigated practice are carried out, provided:

(1) Beans planted on irrigated acreage do not continue into nonirrigated acreage in the same rows or planting pattern (Nonirrigated corners of a center pivot irrigation system planted to insurable beans are part of the irrigated unit. Production on the total unit, both irrigated and non-irrigated, will be combined to determine the yield for the purpose of determining the guarantee for the unit); and

(2) Planting, fertilizing and harvesting are carried out in accordance with recognized good irrigated and nonirrigated farming practices for the area.

If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between optional units will cause those units to be combined.

Done in Washington, DC on March 7, 1988.

Glen V. Bjorklund,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 88-5368 Filed 3-10-88; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service**7 CFR Part 907**

[Navel Orange Reg. 676]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling**AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Final rule.

SUMMARY: Regulation 676 establishes the quantity of California-Arizona navel oranges that may be shipped to market during the period March 11 through March 17, 1988. Such action is needed to balance the supply of fresh navel oranges with the demand for such oranges during the period specified due to the marketing situation confronting the orange industry.

DATES: Regulation 676 (§ 907.976) is effective for the period March 11 through March 17, 1988.

FOR FURTHER INFORMATION CONTACT:

Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2528-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5697.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order 907 [7 CFR Part 907], as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 123 handlers of California-Arizona navel oranges

subject to regulation under the navel orange marketing order, and approximately 4,065 producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than \$500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than \$3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

This action is consistent with the marketing policy for 1987-88 adopted by the Navel Orange Administrative Committee (Committee). The Committee met publicly on March 8, 1988, in Visalia, California, to consider the current and prospective conditions of supply and demand unanimously recommended a quantity of navel oranges deemed advisable to be handled during the specified week. The Committee reports that the demand for navel oranges is good.

Based on consideration of supply and market conditions, and the evaluation of alternatives to the implementation of prorate regulations, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the *Federal Register* because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. To effectuate the declared purposes of the Act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Arizona, California, Marketing agreements and orders, Navels, Oranges.

For the reasons set forth in the preamble, 7 CFR Part 907 is amended as follows:

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

1. The authority citation for 7 CFR Part 907 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 907.976 is added to read as follows:

Note: [This section will not appear in the Code of Federal Regulations.]

§ 907.976 Navel Orange Regulation 676.

The quantity of navel oranges grown in California and Arizona which may be handled during the period March 11, 1988, through March 17, 1988, are established as follows:

- (a) District 1: 1,700,000 cartons;
- (b) District 2: 300,000 cartons;
- (c) District 3: Unlimited cartons;
- (d) District 4: Unlimited cartons.

Dated: March 9, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88-5506 Filed 3-10-88; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 910

[Lemon Reg. 604]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 604 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 350,000 cartons during the period March 13 through March 19, 1988. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 604 (§ 910.904) is effective for the period March 13 through March 19, 1988.

FOR FURTHER INFORMATION CONTACT:

Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended [7 CFR Part 910] regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601-674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1987-88. The committee met publicly on March 8, 1988, in Ventura, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the market for lemons is strong.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the *Federal Register* because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 910.904 is revised to read as follows:

[Note: This section will not appear in the Code of Federal Regulations.]

§ 910.904 Lemon Regulation 604.

The quantity of lemons grown in California and Arizona which may be handled during the period March 13, 1988, through March 19, 1988, is established at 350,000 cartons.

Dated: March 9, 1988.

Charles R. Brader,
Director, Fruit and Vegetable Division,
Agricultural Marketing Service.

[FR Doc. 88-5505 Filed 3-10-88; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 927

Winter Pears Grown in Oregon, Washington, and California; Increase in Expenses for 1987-88 Fiscal Period

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes an increase in expenditures for the Winter Pear Control Committee established under Marketing Order 927 for the 1987-88 fiscal year. The expenses are increased from \$3,396,563 to \$3,816,563. The designated increase reflects higher than estimated costs for market development and promotion activities undertaken by the committee in marketing the record large 1987 crop.

EFFECTIVE DATES: July 1, 1987, through June 30, 1988 [§ 927.227].

FOR FURTHER INFORMATION CONTACT: George J. Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone 202-475-3919.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 927 [7 CFR Part 927] regulating the handling of winter pears grown in Oregon, Washington, and

California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

A final rule establishing expenses in the amount of \$3,396,563 for the Winter Pear Control Committee for the fiscal period ending June 30, 1988, was published in the *Federal Register* on October 30, 1987 [52 FR 41697]. That action also fixed assessment rates to be levied on winter pear handlers during the 1987-88 fiscal period. In a mail ballot completed in January, the Winter Pear Control Committee voted unanimously to increase its budget of expenses from \$3,396,563 to \$3,816,563.

A proposed rule inviting comments on this \$420,000 increase was issued on February 10, 1988, and published in the *Federal Register* on February 17, 1988 [53 FR 4642]. The comment period ended February 29, 1988. No comments were received.

The increase is needed to expand market development and promotion activities deemed necessary by the committee to market the record large 1987 crop. The committee has adequate funds to cover the increased expenses. Hence, no changes in assessment rates are necessary because of this increase.

On the basis of the foregoing, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

It is found that the increased expenses are reasonable and likely to be incurred, and that such expenses will tend to effectuate the declared policy of the Act.

Approval of the increased expenses must be expedited because the committee needs to have authority to pay its expenses which are incurred on a daily basis. Therefore, the Secretary also finds that good cause exists for not postponing the effective date of this action until 30 days after publication in the *Federal Register* [5 U.S.C. 553].

List of Subjects in 7 CFR Part 927

Marketing agreement and order, Winter pears, Oregon, Washington, California.

For the reasons set forth in the preamble, § 927.227 is amended as follows:

PART 927—WINTER PEARS GROWN IN OREGON, WASHINGTON, AND CALIFORNIA

1. The authority citation for 7 CFR Part 927 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 927.227 is amended as follows: (Note: This section will not be published in the Code of Federal Regulations).

§ 927.227 [Amended]

Section 917.227 is amended by changing "\$3,396,563" to "\$3,816,563."

Dated: March 8, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88-5403 Filed 3-10-88; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 51

[Docket No. 88-016]

Animals Destroyed Because of Brucellosis; Indemnity Payments

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations governing the payment of indemnity for animals destroyed because of brucellosis by adding the Simbrah Association to the list of registered breed associations. This action is necessary to include all registered breed associations in the regulations.

EFFECTIVE DATE: April 11, 1988.

FOR FURTHER INFORMATION CONTACT:

Dr. R.D. Hobbs, Senior Staff Veterinarian, Regulatory Communications and Compliance Policy Staff, VS, APHIS, USDA, Room 827, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-5861.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 51 (referred to below as the regulations) provide for the payment of indemnities to owners of cattle, bison, and swine destroyed because of brucellosis.

On December 29, 1987, we published in the *Federal Register* (52 FR 49029-

49030, Docket Number 87-139), a document proposing to amend § 51.1 of the regulations by adding the Simbrah Association to the list of registered associations. Our proposal invited the submission of written comments, which were required to be postmarked or received on or before January 28, 1988. We received one comment, which supports our proposed rule. Based on the rationale set forth in the proposal, we are adopting the provisions of the proposal as a final rule.

Executive Order 12291 and Regulatory Flexibility Act

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

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

The economic impact of this rule is that it will allow approximately 2,200 small cattle producers owning registered Simbrah to receive a higher indemnity rate if these cattle must be destroyed because of brucellosis. There are many thousands of small cattle producers who do not own this registered breed of cattle and would therefore not be affected by this rule.

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

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to 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 51

Animal diseases, Bison, Brucellosis, Cattle, Hogs, Indemnity payments.

PART 51—ANIMALS DESTROYED BECAUSE OF BRUCELLOSIS

Accordingly, 9 CFR Part 51 is amended as follows:

1. The authority citation for Part 51 continues to read as follows:

Authority: 21 U.S.C. 111-113, 114, 114a, 114a-1, 120, 121, 125, 134b; 7 CFR 2.17, 2.51, and 371.2(d).

§ 51.1 [Amended]

2. In § 51.1, the definition of "Registered breed association" is amended by inserting "Simbrah Association," immediately after "Santa Gertrudis Breeders International."

Done in Washington, DC, this 8th day of March, 1988.

James W. Glosser,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-5409 Filed 3-10-88; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 21

[Docket No. 88-6]

Reports of Crimes and Suspected Crimes

AGENCY: Comptroller of the Currency, Treasury.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of the Comptroller of the Currency ("OCC") is revising 12 CFR 21.11 regarding reports by a national bank in the event of known or suspected crimes. These revisions are intended to clarify the filing requirement for these reports and will tend to reduce the overall number of criminal referral reports to be filed by national banks.

This interim rule references revisions to the two criminal referral forms, raises the threshold for filing criminal referrals where no suspect has been identified, and clarifies the filing requirement as far as reporting financial crimes where no loss is incurred by the bank, such as money laundering, bank bribery, and Bank Secrecy Act violations. The interim rule is intended to make report filing more efficient for the banks and

more useful for law enforcement agencies in identifying patterns of criminal activity and apprehending persons who commit crimes involving national banks.

DATES: This interim rule is effective April 11, 1988. Comments due on or before May 10, 1988.

ADDRESSES: Public comments should be submitted to: Office of Communications, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East SW., Washington, DC 20219.

FOR FURTHER INFORMATION CONTACT: Joel Miller, Attorney, Enforcement and Compliance Division, Office of the Comptroller of the Currency, Washington, DC 20219, (202) 447-1818.

SUPPLEMENTARY INFORMATION:

Background

The OCC is charged with safeguarding the safety and soundness of national banks and pursuant to that authority is responsible for ensuring that national banks apprise other Federal law enforcement authorities of any actual or potential violations of criminal statutes. Employee fraud, abusive insider transactions, check kiting schemes, money laundering and the like can be serious threats to a bank's security and may undermine the confidence and trust that individuals and businesses place in the banking industry. The OCC is primarily concerned with criminal transactions sufficient in size or number to impact the safety and soundness of the bank, patterns of criminal offenses, crimes committed by bank officials, and the adequacy of the bank's security systems and internal controls. The law enforcement community needs to receive reports, shortly after a crime or suspected crime has been discovered, which contain sufficient information to determine whether the matter warrants investigation and prosecution.

A Working Group was formed in December 1984 to address problems and promote cooperation toward the goal of improving the federal government's response to white collar crime in federally-regulated financial institutions. The Working Group is composed of senior officials of the federal financial institution regulatory agencies and the Justice Department. The Working Group monitors the criminal referral process and has recommended further improving and coordinating the criminal referral system now in use by all federally-insured financial institutions and the regulatory agencies.

On July 17, 1986, the OCC published its final rule in the *Federal Register* (50 FR 34857) pertaining to 12 CFR Part 21—

Minimum Security Devices and Procedures and Reports of Crimes and Suspected Crimes. That final rule imposed the criminal referral reporting requirement upon all national banks. Based upon the OCC's experience over the past year, certain needed revisions and clarifications have been incorporated into this interim rule.

The goals of this interim rule are to improve the information quality of criminal referrals, thereby making the referrals more useful, to clarify the requirement for reporting financial crimes that result in no direct loss to the bank, and to raise certain of the threshold reporting requirements for national banks, thereby making the reporting process more efficient and economical for the banks. These changes are designed to facilitate the assessment and investigation of possible criminal matters, aid in the identification of patterns of criminal misconduct, and improve the OCC's ability to track the disposition of criminal referrals.

Reasons for Issuing Interim Rule With Notice

The policy of the OCC is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions or objections regarding this interim rule, to the location identified in the **ADDRESS** section of this preamble. Comments must be received on or before 60 days after publication of this interim rule in the *Federal Register*.

This rule is being issued on an expedited basis in order to ensure consistency with analogous rules and interpretive rulings being issued by the other federal financial regulatory agencies. In addition, the federal law enforcement agencies that use the information contained in the criminal referrals need the information required by this rule in order to pursue those individuals known or suspected to have engaged in bank fraud, money laundering, and related criminal transactions. Concurrent with the issuance of this interim rule, OCC is issuing revised criminal referral forms incorporating the revisions to this reporting requirement.

Criminal Referral Forms (Short and Long)

Section 21.11 requires a bank to file a Criminal Referral Form to report known or suspected crimes to the OCC. The OCC Criminal Referral Form has two formats—a short form (CC-8010-08) and a long form (CC-8010-09). It is estimated

that the short form will be used for 75% of the reports submitted. This estimated percentage on the use of short forms has declined from the 95% figure cited in the final regulation in July 1986, due to the OCC's decision to raise the threshold reporting requirement (from \$2,500 to \$5,000) for the reporting of mysterious disappearances, unexplained shortages, and known or suspected crimes where no suspect has been identified.

The "short form" requires a bank to report the basic facts of the known or suspected criminal transaction: The approximate date and dollar amount of the known or suspected criminal transaction, the type of crime (embezzlement, check kiting, money laundering etc.), a brief summary of the violation, and where known, the identity of any person suspected. The "long form," an expanded and more detailed report, is required only in those situations where the transaction or suspected violation exceeds \$10,000, or for any transaction involving a bank insider (i.e., an executive officer, director, or principal shareholder) as defined at 12 CFR 215.2.

Submission of Criminal Referral Forms

Threshold Amounts

Revised rule § 21.11 requires that a national bank submit a Criminal Referral Form upon the discovery of any known or suspected criminal violation committed against the bank or involving a financial transaction conducted through the bank involving bank personnel. A report must be filed where bank personnel are believed to be involved regardless of the dollar amount of bank funds involved.

Revised rule § 21.11 also sets forth more general guidelines for the reporting of known or suspected criminal violations of the U. S. Code, or regulations promulgated thereunder, where a violation is committed against the bank or where a criminal transaction is undertaken using the bank to facilitate that transaction. The bank must report all such criminal transactions involving \$1,000 or more where it has a substantial basis for identifying a possible suspect or group of suspects.

For a criminal violation not involving bank personnel and involving a transaction of \$1,000 or less, a bank must file a report only when that transaction appears to be part of a pattern of criminal activity committed by one or more identifiable individuals and the aggregate value of the transactions totals \$1,000 or more. For example, a series of forged signatures

appearing on credit card purchase receipts must be reported if the bank has reason to believe one identifiable individual, or a group of identifiable individuals acting in concert, has perpetrated the forgeries, and the aggregate dollar loss is \$1,000 or more. For those situations (such as money laundering or false statements on credit applications) where the bank does not incur a "loss" *per se*, the \$1,000 test applies in that the bank must evaluate whether the transaction either involved, or had the potential to involve, \$1,000 or more.

In those situations where there is no substantial basis for the bank to identify a possible suspect or group of suspects, a bank must report a known or suspected criminal violation only when it involves \$5,000 or more. For example, where a bank is unable to identify a suspect as a perpetrator of a credit card fraud, the bank need not file a referral until the loss on any given account exceeds \$5,000. In addition, revised rule § 21.11 provides that a bank must report mysterious disappearances or unexplained shortages of bank funds or other assets only when they amount to \$5,000 or more.

What Triggers The Reporting Requirement

In order to clarify what constitutes a reportable "known or suspected criminal violation," the OCC will continue to incorporate into its Criminal Referral Forms (CC-8010-08 and 8010-09) a listing and description of the most common federal crimes involving financial institutions, their personnel, or their customers' accounts. Using this list as a base, bank personnel should, in most instances, be able to determine whether a particular situation gives rise to the reporting requirement. Of note, the revised criminal referral forms being issued concurrent with this interim regulation include reference to three additional federal criminal statutes: (1) 18 U.S.C. 1956; (2) 18 U.S.C. 1957; and (3) 31 U.S.C. 5324. Banks are encouraged to file referrals whenever they suspect criminal transactions in violation of any of the cited statutes were committed.

Suspected Violations

The reporting requirement imposes an obligation to report all "known or suspected criminal violations" that meet specified criteria. By "suspected violation" the OCC is referring to a transaction or series of transactions for which there is reasonable cause to believe that a criminal violation has occurred. The OCC cannot quantify the precise amount of evidence needed to trigger the reporting requirement any

more than it can delineate all the relevant factors that a bank must consider in deciding whether or not to report a suspicious or otherwise irregular transaction.

In many instances the suspicious nature of the transaction is a function not only of the transaction itself and its context but also of the bank's experience with the individuals associated with the transactions, either as employees or customers of the bank. In many situations, the bank will be able to discern the "intent" of those involved in a suspicious transaction. Invariably, however, the pivotal question of criminal intent will be left for the determination of law enforcement authorities. All that a bank can do in those situations is make a practical assessment of the suspicious transaction based upon a good faith examination of all the relevant factors. Clearly, the more serious the irregularity, particularly if it involves a bank insider, the greater the obligation upon the bank to fully investigate the matter.

Revised Threshold Amounts for Filing Reports

The OCC has no desire to place unnecessary reporting burdens on national banks; however, it is interested in furthering the goal of crime detection and prevention in cooperation with other federal law enforcement agencies. The OCC has determined, based upon its experience with the criminal referrals made over the past year, that where a bank has no apparent basis for identifying a possible suspect or group of suspects involved with a known or suspected criminal violation, a minimum reporting amount of \$5,000 is appropriate.

The OCC has further determined, based upon its experience with these referral forms, that where the bank has a reasonable basis for identifying a possible suspect or group of suspects, it is important that every crime of \$1,000 or more be reported. In addition, crimes of less than \$1,000 are to be reported where a bank has reason to believe that one or more identifiable individuals have committed a series of crimes which, when aggregated, total \$1,000 or more. Where a bank employee, officer, director, or shareholder is suspected of criminal activity, all bank related crimes must be reported, regardless of the dollar amount involved.

The OCC continues to be reluctant to set an arbitrary threshold dollar amount for criminal referrals, below which banks would not be required to file reports, as such a floor amount could tend to lead to multiple non-reportable criminal violations. In order to avoid

nonreporting of criminal violations, in this interim rule the OCC has established threshold amounts that require the filing of Criminal Referral Forms whenever significant criminal activity, or a pattern of criminal activity, is detected. The rule sets a threshold of \$5,000 when no suspect is identified.

Reporting Deadline

Revised rule § 21.11 continues to impose a 30-calendar day reporting period, commencing from the date of detection, during which a bank must report a reportable transaction. In those situations where the transaction requires immediate attention or where the violation is ongoing, a bank is strongly encouraged to notify the appropriate law enforcement agencies and the appropriate OCC District Office by telephone. The bank's oral notification should be followed by a timely written report.

In those situations where a bank is not obligated to file a report (e.g. an unexplained shortage of less than \$5,000), but facts subsequently come to light revealing information identifying the individual(s) known or suspected of having committed or attempting to commit a criminal act, the 30-calendar day reporting period commences from the date reportable information, such as the identity of a suspect, is first identified.

Penalty for Failure to Report

Revised § 21.11 identifies when a civil money penalty may be assessed against a bank, its officers or its directors for failure to file a report. Penalties may also be assessed where the violation is willful or demonstrates a careless disregard for compliance with § 21.11. Assessments are likely to be made where it is established that a bank officer, director or other employee has intentionally attempted to cover up a defalcation, significant loss, pattern of criminal transactions, or has intentionally failed to file reports.

If a question exists as to whether to report an incident, the OCC recommends that a report be submitted providing at least the nature of the transaction, relevant account numbers and the identities of those suspected. For example, where a bank has a substantial basis to suspect that an individual has engaged in a pattern of criminal conduct, such as engaging in monetary transactions that appear to violate the money laundering statutes, the bank should file a criminal referral describing that pattern of criminal conduct. Additionally, banks are encouraged to report suspected

violations, regardless of amount, to either state or local law enforcement authorities, whenever a violation of state or local law is suspected.

Exceptions to Reporting Requirements

Revised rule § 21.11(f) continues to provide two exceptions to the reporting requirements: one for robberies and burglaries and the other for lost or missing securities. These exceptions are provided because of the OCC's recordkeeping requirement in § 21.5(c) which requires a bank to keep a record of all crimes of violence on file, and because of the Securities and Exchange Commission's reporting requirements set forth at 17 CFR 240.17f-1 which requires the reporting of all lost and missing securities.

Notice and Comment and Regulatory Flexibility Act

The Office has found that good cause exists under 5 U.S.C. 553(b)(B), for not providing notice and public procedure for this rule. Those procedures are unnecessary and contrary to the public interest. This rule eases a reporting of information requirement used by the government, thereby benefitting national banks.

The goals of this interim rule are to improve the information quality of criminal referrals, thereby making the referrals more useful, to clarify the requirement for reporting financial crimes that result in no direct loss to the bank, and to raise certain of the threshold reporting requirements for national banks, thereby making the reporting process more efficient and economical for the banks. This rule is being issued on an expedited basis in order to ensure consistency with analogous rules and interpretive rulings being issued by the other federal financial regulatory agencies. Although implementation delay attributable to usual public procedure is not desirable since this rule benefits national banks, the Office believes that public comment is beneficial. Therefore, opportunity for public comment regarding this interim rule is provided.

Since the Office has found that notice and public procedure concerning this rulemaking are unnecessary, the provisions of the Regulatory Flexibility Act are not applicable.

Executive Order 12291

The OCC has determined that this interim rule is not a "major rule" and therefore does not require a regulatory impact analysis.

Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act of 1980, the reporting and recordkeeping requirements of 12 CFR Part 21 were submitted to and approved by the Office of Management and Budget under OMB control number 1557-0069.

List of Subjects in 12 CFR Part 21

National Banks, Criminal referrals, Insider abuse, Theft, Embezzlement, Check kiting, Defalcations, Money laundering, Criminal transactions.

Authority and Issuance

For the reasons set out in the preamble, Part 21 of Chapter I of Title 12 of the Code of Federal Regulations is amended as follows:

PART 21—[AMENDED]

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

Authority: 12 U.S.C. 1 *et seq.*, 93a, 1818, as amended, and 1881-1884.

2. In § 21.11, paragraphs (b)(5), (c) (2), (3), (e) through (h) are republished and paragraphs (a), (b) (1), (2), (3) and (4), (c)(1), and (d) are revised to read as follows:

§ 21.11 Reports of crimes and suspected crimes.

(a) *Purpose.* This section applies to known or suspected crimes involving national banks. This section ensures that the appropriate federal regulatory and law enforcement agencies are notified when unexplained losses or known or suspected criminal acts are discovered. Based on these reports, the OCC maintains a data base for monitoring the types and extent of crimes against banks.

(b) *Reports Required.* A national bank shall file OCC Criminal Referral Form (CC-8010-08 or CC-8010-09) in accordance with the instructions on the form, in case of:

(1) Any mysterious disappearance or unexplained shortage of bank funds or other assets of \$5,000 or more.

(2) Any known or suspected criminal violation, or pattern of criminal violations, of any section of the United States Code, or regulation promulgated thereunder, committed against the bank or involving a financial transaction conducted through the bank, where the bank has a substantial basis for identifying responsible bank personnel.

(3) Any known or suspected criminal violation, or pattern of criminal violations, of any section of the United States Code, or regulation promulgated thereunder, committed against the bank or involving a financial transaction

conducted through the bank and involving or aggregating \$1,000 or more in bank funds or other assets, where the bank believes, in good faith, that it was either an actual or potential victim of a criminal violation, or series of criminal violations, or that the bank was used to facilitate a criminal transaction, and the bank has a substantial basis for identifying a possible suspect or group of suspects.

(4) Any known or suspected criminal violation of any section of the United States Code, or regulation promulgated thereunder, committed against the bank and involving or aggregating \$5,000 or more in bank funds or other assets, where the bank believes, in good faith, that it is either an actual or potential victim of a criminal violation, or series of criminal violations, or that the bank was used to facilitate a criminal transaction, even though there is no substantial basis for identifying a possible suspect or group of suspects.

(5) As used in paragraphs (b) (2), (3), and (4), of this section, the term "suspected" refers to all matters, including unexplained losses, for which there is a known factual basis for a belief that a crime has been or may have been committed.

(c) *Time for reporting.* (1) A national bank shall file, no later than 30 calendar days after the date of detection of the loss or known or suspected criminal violation, any report required pursuant to paragraph (b) of this section. Where a report becomes necessary because a possible suspect or group of suspects is finally identified, the 30-calendar day reporting period commences with the identification of the suspect or group of suspects.

(2) Where a pattern of crimes committed by an identifiable individual is detected by a bank, a report shall be filed no later than 30 calendar days after the aggregate amount of the crimes exceeds \$1,000.

(3) In situations involving violations requiring immediate attention or where a reportable violation is ongoing, the bank should immediately notify, by telephone, the Offices set forth on the forms. Banks shall timely file, after telephone notification, the required written reports.

(d) *Reporting to Federal, State and local authorities.* Banks are strongly encouraged to file criminal referrals or otherwise report crimes or suspected criminal activity to federal, state and local law enforcement authorities in those situations where the facts reflect a significant likelihood that a violation of law has occurred.

(e) *Manner of reporting.* A bank may elect to file its reports on the appropriate OCC Criminal Referral Form, a legible photocopy thereof, or a facsimile of the appropriate OCC form.

(f) *Exemptions.* (1) Banks need not file Criminal Referral Forms for those robberies and burglaries explicitly covered by the recordkeeping requirements of § 21.5(c), committed or attempted at a banking office of a bank.

(2) Banks need not file Criminal Referral Forms for lost, missing, counterfeit or stolen securities if a report is filed pursuant to the reporting requirements of 17 CFR 240.17f-1.

(g) *Notification of Board of Directors.* The Bank shall have effective procedures ensuring that the board of directors of the bank is notified, not later than at their next meeting, of the filing of any report hereunder.

(h) *Penalty.* Willful failure to file or careless disregard in filing reports may subject the bank, its officers, and/or its directors to civil money penalties.

(Approved by the Office of Management and Budget under Control Number 1557-0069.)

Date: December 23, 1987.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 88-5295 Filed 3-10-88; 8:45 am]

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12 CFR Parts 29, 30, and 34

[Docket No. 88-7]

Real Estate Lending Activities of National Banks; Adjustable-Rate Mortgages, Due-on-Sale Clauses, Etc.

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (the "Office") is amending its regulations governing the real estate lending activities of national banks. These amendments implement recommendations of the Federal Financial Institutions Examination Council, and are designed to achieve greater uniformity among the regulations of the several depository institution regulatory agencies. In general, these amendments consolidate and simplify various real estate lending rules of this Office, presently codified at 12 CFR Parts 29, 30, and 34.

Important revisions are being made to the Office's adjustable-rate mortgage ("ARM") regulation. Specifically, the amendments now being adopted change the types of loans for which national banks must give consumer-oriented disclosures, and rescind the Office's

current ARM disclosure provision. National banks continue to be subject to the disclosure requirements contained in the Federal Reserve Board's Truth in Lending regulation (Regulation Z). In addition, to ease the regulatory burden of lenders and eliminate regulatory impediments to the secondary market for ARMs, these amendments facilitate the ability of national banks to deal in ARMs. Certain revisions are also made for greater clarity, and obsolete or unnecessary provisions are eliminated. Finally, obsolete portions of 12 CFR Part 30, dealing with due-on-sale clauses, are rescinded and the remaining sections of Part 30 as well as the revised ARM regulation are transferred to Part 34. This brings all of the Office's substantive real estate regulations together in one place.

EFFECTIVE DATE: March 11, 1988, except the removal of Part 29 which is effective October 1, 1988. Compliance with the amendments to Part 34 is optional until October 1, 1988.

FOR FURTHER INFORMATION CONTACT:

Roland G. Ullrich, Deputy Director, Consumer Activities Division, (202) 287-4265, or Ellen C. Starr, Attorney, Legal Advisory Services Division, (202) 447-1880.

SUPPLEMENTARY INFORMATION:

Revisions to 12 CFR Part 29

An adjustable-rate mortgage is a mortgage loan in which the interest rate is subject to change. Changes in the interest rate on ARM loans may result in changes in monthly payment amounts or changes in the rate of amortization of principal (changes in the maturity of the loan or the amount of the final payment).

Designed in response to the inflation and high interest rates which prevailed in the late 1970s and early 1980s, ARMs came into widespread use after the various federal depository institution regulatory agencies issued regulations authorizing and governing them. The Office's ARM rules, contained in 12 CFR Part 29, were adopted on March 27, 1981, 46 FR 18932. The Federal Home Loan Bank Board followed on May 23, 1983, 48 FR 23058. Because of the disclosure requirements contained in 12 CFR 29.7, national banks were exempted from compliance with certain disclosure provisions of the Federal Reserve Board's Truth-in-Lending regulation (Regulation Z) dealing with variable-rate, closed-end credit, 12 CFR 226.18(f) n.43 (1987).

Some concerns regarding ARMs have developed in recent years. For instance, there has been considerable congressional and industry interest in

developing uniform disclosures for ARM consumers. In particular, members of Congress have urged that such disclosures contain a "worst-case" payment scenario, i.e., a provision which spells out the maximum payment for which the borrower may become liable under the adjustable-rate loan to which he or she is agreeing. This is to prevent "payment shock," which can occur when the consumer finds that, following a payment adjustment, the payments are much larger than anticipated.

Another concern has been the secondary market, in which lenders buy and sell ARM contracts. Such a market has arisen, but its development has been hampered in part by the fact that the different agencies' regulations have dissimilar requirements, especially in the content and timing of disclosures that must be made to consumers. National banks that desire to purchase ARMs in the secondary market have been limited to buying loans that conform to the Office's rules. This is undesirable, since limiting the marketability of ARMs limits the incentive to provide residential mortgage loans, restricting the availability of consumer credit. ARM originators who wished to have full access to the secondary market had to make multiple disclosures to their borrowers to comply with all of the agencies' requirements. Providing multiple disclosures is both burdensome for lenders and potentially confusing for consumers.

To address these problems, the Federal Financial Institutions Examination Council (FFIEC), composed of representatives of the Office, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Federal Home Loan Bank Board, and the National Credit Union Administration, recommended uniform initial disclosure requirements for ARMs.

In a statement issued August 12, 1986, the FFIEC recommended that the following initial disclosures be given to prospective ARM borrowers: (1) "The Consumer Handbook on Adjustable-Rate Mortgages" (published jointly by the Federal Reserve Board and the Federal Home Loan Bank Board), or a suitable substitute; and (2) disclosures that demonstrate how any particular ARM loan program offered by a creditor may affect borrowers when interest rates change. The latter includes up to 14 specific elements, depending upon the specific loan program involved. The FFIEC's recommendations are similar to

the initial disclosures required by the Office's current ARM regulation.

The Federal Reserve Board ("FRB") has already acted to implement the FFIEC's recommendations. On November 24, 1986, the FRB issued a Notice of Proposed Rulemaking (51 FR 42241) proposing to amend 12 CFR Part 226 (Regulation Z) to incorporate the FFIEC's proposals. The FRB also proposed to amend Regulation Z to add most of the subsequent disclosure requirements presently contained in the Office's ARM regulation at 12 CFR 29.7. The FRB issued a Final Rule amending Regulation Z on December 24, 1987. 52 FR 48665.

Rather than duplicate the rules that the FRB now has in place, on October 2, 1987, the Office issued a Notice of Proposed Rulemaking proposing to rescind the present disclosure requirements in 12 CFR 29.7. 52 FR 36953. The Office stated, however, that to the extent they are incorporated into Regulation Z, the Office will continue to enforce these requirements with respect to national banks. 52 FR 36954.

Beyond the FFIEC's recommendations, the Office has concluded that certain portions of its ARM regulation are no longer necessary and should be rescinded. The amendments now being adopted change the types of loans for which national banks must make consumer-oriented disclosures, and rescind the Office's current ARM disclosure provision. The revised regulations, with certain portions of 12 CFR Part 30, are added to Part 34 so that all of the Office's substantive real estate regulations are located in one place under the general heading of "Real Estate Lending."

Revisions to 12 CFR Part 30

Another area of concern in the early 1980's was "due-on-sale" clauses in real estate loans. These clauses give a lender the right to declare the entire debt payable at once if title to the property securing the loan is transferred. In the early 1980's, many states restricted or prohibited due-on-sale clauses either by statute or judicial decision. These states reasoned that such provisions discouraged homeowners from selling their property and therefore constituted an unreasonable restraint on the sale of housing. The Office, on the other hand, believed that in the volatile interest rate climate of the time, a rule ensuring the enforceability of due-on-sale clauses could encourage banks to offer fixed-rate, long term mortgage loans with relatively lower interest rates, due to the reduced level of market risk. 46 FR 46964 (1981).

The debate was resolved with the passage of the Garn-St Germain Depository Institutions Act of 1982, Pub. L. 97-320, 96 Stat. 1469 ("the Garn-St Germain Act" or "the Act"). Section 341 of the Act, codified at 12 U.S.C. 1701j-3, provided generally that, notwithstanding state law, due-on-sale clauses in real estate loans, regardless of when originated, would be enforceable as to transfers occurring after the date the Act became effective (October 15, 1982). However, this general rule was not applicable during the "window period," i.e., the period beginning with the date of a state rule of law restricting the enforceability of due-on-sale clauses and ending with the effective date of the Act. Due-on-sale clauses in window-period loans were to be enforceable only after the passage of three years from the effective date of the Act, unless a different rule was established by the appropriate regulatory authority. (The Office did, in fact, establish an earlier cutoff date of April 15, 1984. 12 CFR 30.1(b)(1).) In addition, due-on-sale clauses in certain types of transactions were prohibited.

The Office implemented the Garn-St Germain Act by the publishing its due-on-sale regulation, 12 CFR Part 30, on November 8, 1983. 48 FR 51283. Major portions of the regulation are concerned with the so-called window period which, as noted above, ended on April 15, 1984. Since that time, national banks have been free to enforce due-on-sale provisions without restriction, except in the transactions exempted by the Garn-St Germain Act.

The Office believes that it would be beneficial to simplify this regulation by rescinding obsolete portions dealing with the window period, paragraphs (b) and (d) of § 30.1. Since these paragraphs constitute the bulk of the regulation, the Office proposed to transfer the remaining valid portions, paragraphs (a) and (c) of § 30.1, to Part 34, "Real Estate Lending," where they would become new section 34.4. The present text would remain unchanged except for minor, nonsubstantive revisions.

Summary of Comments; Office Action

To implement the uniform disclosures recommended by the FFIEC, and address the other concerns outlined above, the Office issued a Notice of Proposed Rulemaking (the "NPRM") to amend 12 CFR Parts 29, 30 and 34. 52 FR 36953. The comment period on the NPRM ended November 2, 1987.

Twenty of the 21 comments received generally supported the Office's proposal to adopt the FFIEC's recommendation of uniform disclosure requirements for adjustable-rate

mortgages. The only commenter opposing adoption suggested the retention of the Office's present disclosure requirement, contained in 12 CFR 29.7. Generally, commenters favored the proposed changes as beneficial to consumers, and asserted that compliance with the amendments would not be costly or difficult. One commenter stated that any additional burden would be outweighed by the convenience of a uniform disclosure requirement. Another commenter noted that national banks have operated at a competitive disadvantage to state banks, and stated that a level playing field and simplified regulation would be welcome. Few commenters specifically addressed the Office's proposal to consolidate existing real estate lending regulations, but those that did address consolidation supported it.

Most commenters made specific, technical recommendations as to ways in which the uniform ARM disclosures proposed could be improved. These technical recommendations are discussed by proposed section number and title, below.

After considering all of the comments, the Office has made changes to the final rule, designed to alleviate the burden of compliance with the regulation without compromising the goal of uniform disclosures for adjustable-rate mortgage loans extended for consumer credit purposes. In addition, other changes have been made to clarify the intentions of the proposed amendments to the regulation. For example, in response to comments received, the Office has revised the definition of an adjustable-rate mortgage loan and has clarified the effect of the transition period. All changes to the proposed rule are discussed below. The Office has not adopted changes suggested by commenters which would alter the uniform disclosure provisions recommended by the FFIEC.

Section-by-Section Analysis

Section 34.4 Due-on-sale clauses

As proposed in the NPRM, this section is drawn from the present paragraphs (a) and (c) of § 30.1, which remain unchanged except for minor, technical revisions.

Section 34.5 Definition

In the NPRM, the Office proposed to revise the definition of an adjustable-rate mortgage loan, to cover only extensions of consumer credit to natural persons. 42 FR 36955. The phrase "consumer credit" was drawn from Regulation Z, (12 CFR Part 226) and is

intended to have the same meaning as it has in that regulation. The purpose of this revision was to clarify that the Office's ARM regulation, with its requirement of consumer-oriented disclosures, was not intended to apply to purchase-money mortgage loans for investment, commercial, business or agricultural purposes.

The original ARM regulation was intended, in part, to promote the availability of mortgage funds for residential purposes and to provide protections for home purchasers. 46 FR 18932, 18935 (1981). The regulation was not intended to regulate adjustable-rate mortgage loans made for other purposes. The broad language of the definition of an adjustable-rate mortgage loan, 12 CFR 29.1, coupled with the preemption provision of 12 CFR 29.2, has enabled some banks to extend variable rate loans for investment, business, commercial, or other non-consumer credit purposes, where these loans finance or refinance the purchase of and are secured by a one-to-four family dwelling. To comply fully with the Office's ARM regulation, these banks have made the consumer-oriented disclosures that the current ARM regulation requires in investment, commercial, business, or other non-consumer credit ARM transactions.

Approximately half of the commenters responded to the proposed change in the definition of an ARM. Most commenters supported the exclusion of loans for business, commercial, and agricultural purposes, stating that commercial borrowers neither wanted nor required the ARM disclosures. Some supporting the exclusion stated that it would allow banks to compete more effectively. However, one commenter objected to "the narrower definition proposed," on the basis that a "borrower who wishes to use loan proceeds for agricultural and industrial purposes should also be fully informed as to all possible changes in loan terms in order to make an informed choice before borrowing."

One commenter asserted that a narrower definition of the ARMs to which the regulation applies may ultimately reduce the types of ARM loans that a bank could make, stating that a large number of existing ARM loans which relied on the federal preemption provision of 12 CFR 29.9 would be excluded under the proposal. This commenter suggested that consistency with Regulation Z may be outweighed by a disadvantageous narrowing of the definition.

Some commenters stated that they preferred the Office's proposed definition of ARMs to that of the FFIEC. As noted at 52 FR 36956, the FFIEC's

proposal covers only loans secured by the borrower's principal dwelling, and includes non-purchase money closed-end credit secured by the borrower's principal dwelling.

Other commenters opposed the Office's proposed definition, endorsing that recommended by the FFIEC. One commenter asserted that the Office's proposed definition left unclear the issue of whether a loan for the purpose of purchasing or refinancing a one-to-four family dwelling but secured by a different dwelling (e.g., a vacation home) is covered by the regulation. This comment advocated the approach taken by the FFIEC and the FRB, that an ARM is only covered by the regulation if the collateral used is the borrower's principal dwelling.

Two commenters maintained that, even as amended, the Office's proposed definition of a covered ARM was inconsistent with the FRB's definition. They noted that the Office's proposed definition reaches both closed- and open-ended loans; the latter are not covered by the FRB proposal. Another commenter stated that the FRB's proposed amendment to Regulation Z did not distinguish between first and second mortgage borrowings, in contrast to this Office's proposed definition, which does not include second mortgage loans that are silent with regard to whether the borrower will apply loan proceeds toward the payment of a purchase-money mortgage. This commenter advocated the FRB definition, suggesting that the FRB approach would enhance the opportunity for national banks to participate in an expanded secondary market for ARM loans.

By amending the definition of an adjustable-rate mortgage loan, the Office intended to clarify that the consumer-oriented disclosures were required only in consumer-credit transactions. The Office did not intend to prevent extensions of variable rate credit for investment, business, commercial or agricultural purposes. Therefore, this Office is revising the proposed definition. This change is accompanied by changes to the disclosure section, designed to make clear that the consumer-oriented ARM disclosures stated at Regulation Z must be given only in consumer credit transactions. As a result, ARM loans may continue to be made for investment, business, commercial or agricultural purposes, but such loans will not require the consumer credit disclosures of Regulation Z.

The NPRM also proposed to exclude short-term and demand loans from the coverage of the definition of an

adjustable-rate mortgage. 52 FR 36955. This revision is intended to make the Office's adjustable-rate mortgage definition consistent with the FRB's amended Regulation Z, which applies only to variable rate loans with a term of greater than one year. 52 FR 48761. This revision does not affect the authority of national banks to make short term or demand loans secured by real estate, as that authority is derived from 12 U.S.C. 371 and 12 CFR Part 34. 12 U.S.C. 371; 12 CFR 34.2.

Section 34.6 General Rule

The NPRM proposed to eliminate the current restriction that national banks may make, sell, purchase, participate or deal in ARM loans "only if they conform to the conditions and limitations of this part." This change was intended to enhance the ability of national banks to participate in the nationwide secondary market in ARM loans by permitting them to purchase or participate in loans made in accordance with another regulatory agency's requirements.

The commenters favored the elimination of this restriction, agreeing that this amendment would enhance the establishment of a thriving secondary market in ARMs. One commenter, however, requested that this Office clarify the effect of the amendment on existing ARM loans, i.e., whether a national bank could purchase or participate in ARM loans that complied with the requirements of another regulatory agency when made, but which were made prior to the effective date of this regulation.

In response to this comment, the Office has determined that the purposes of the amendment are best furthered if national banks may purchase or participate in adjustable-rate mortgage loans made in accordance with the regulatory requirements of another regulatory agency, regardless of when the ARM loans were originated.

Although the substantive requirements of the Office's ARM regulation, and those incorporated from the FRB's Regulation Z, apply to ARM loans made by national banks, the Office expressed some concern in its NPRM regarding the evasion of these requirements through the use of affiliates. The Office requested specific comment on whether to require that ARM loans a national bank purchased from an affiliate also comply with the amended ARM regulation.

Only one commenter requested the Office not to impose such a restriction on affiliates of national banks that originate loans. Therefore, the Office has decided to adopt a requirement that

the ARM loans which a national bank purchases from its affiliates must comply with the requirements of this Office's adjustable-rate mortgage regulation.

Section 34.7 Index

In the interest of greater clarity, the NPRM proposed to re-word this section. No substantive changes were intended. One commenter suggested that this provision be deleted, as the section offered "little or no protection to the consumer."

The Office intended that the specific requirements of this section apply only to consumer credit adjustable-rate mortgage loans. The NPRM would have achieved this result through an amended, narrower definition of an adjustable-rate mortgage loan. However, the Office is now retaining a broad definition of an adjustable-rate mortgage loan. In view of the broader definition of an adjustable-rate mortgage, the Office is now amending the index section. This amendment is intended as a clarification that the stated index requirements apply only in consumer credit transactions. This amendment will allow a bank to tie a variable interest rate to the bank's prime rate where the variable rate loan is made for investment, commercial, business, or agricultural purposes.

Section 34.8 Rate Changes

The NPRM proposed to delete the present section on rate changes, 12 CFR 29.4, believing that the information presented was superfluous. All comments that addressed the proposed deletion of 12 CFR 29.4 supported this change. One commenter stated that the note and related documents evidencing the loan contract typically established the basis for determining the index value to be used to adjust interest rates.

In place of the previous section on rate changes, the Office is adding a provision requiring that consumer credit ARM loans originated on or after December 9, 1987, include a limitation on the maximum interest rate that may apply during the term of the loan. This interest rate cap is mandated by section 1204 of the Competitive Equality Banking Act of 1987, Pub. L. No. 100-86, 100 Stat. 552.

Section 34.9 Pre-payment Fees

The NPRM proposed no changes to the current Pre-payment Fees section, 12 CFR 29.6, other than renumbering the section.

Section 34.10 Disclosure

In the NPRM, this Office proposed to adopt the recommendations of the

FFIEC, and to amend its ARM disclosure requirements accordingly. Specific FFIEC recommendations were discussed by this Office in the NPRM, 52 FR 36953. The FRB has thoroughly addressed each of these recommendations and the specific items which the FFIEC listed, 52 FR 48665. Almost every comment the Office received made some specific suggestions about the actual disclosures proposed. These comments are addressed in the order that the pertinent disclosure item appeared listed. The FRB received similar comments to those received by this Office; the FRB responded to those comments in the final rule amending Regulation Z, 52 FR 48665.

As initial disclosures, the FFIEC recommended that ARM consumers be given (1) "The Consumer Handbook for Adjustable-Rate Mortgages," prepared by the FRB and the Federal Home Loan Bank Board, or a suitable substitute; and (2) a "loan program" disclosure, covering up to fourteen items, to be prepared for each adjustable-rate loan program. Commenters generally favored the requirement that the "Consumer Handbook for Adjustable-Rate Mortgages" or a suitable substitute be provided to potential customers. One commenter suggested that a process be developed and implemented whereby those lenders that chose to develop a substitute could obtain expedient approval of that substitute's suitability. Another commenter requested that the FFIEC develop and adopt a uniform disclosure booklet to discuss adjustable-rate mortgages generally, and provide definitions and examples of the specific disclosure items required.

As to the "loan program" disclosure which the FFIEC recommended be prepared for each adjustable-rate loan program, one commenter suggested that the FFIEC develop a uniform disclosure format. This commenter stated that a uniform booklet and disclosure format would allow a consumer to read about and understand a "generic ARM," and then compare detailed data from any lender, utilizing the same format. This commenter argued that without a common format, although lenders may provide the same types of information in compliance with the regulation, differences in presentation, format, and narrative would make it difficult for a consumer to compare programs from lender to lender.

The Office has decided not to implement a process whereby lenders would obtain agency approval prior to providing potential ARM consumers a "suitable substitute" for the "Consumer Handbook for Adjustable-Rate Mortgages." Instead, national banks

should make a good faith determination whether the information they intend to provide is, in fact, a "suitable substitute." The Office considers that a "suitable substitute" should be, at a minimum, comparable to the "Consumer Handbook" in substance, comprehensiveness, and clarity. Many commenters specifically addressed the FFIEC's proposed disclosure item (j), 52 FR 36956. This item would require a lender to develop an example, based on a \$10,000 loan amount, of how payments and the loan balance would be affected by changes implemented according to the terms of the loan program. The example must be based on index values beginning in 1977, and must be updated annually until a 15-year history is shown. Thereafter, the example should reflect the most recent 15 years of index values. Finally, the proposed example should reflect "all significant loan program terms, such as caps, a discounted interest rate, and negative amortization" triggered by index movements during the years shown.

All commenters addressing item (j) opposed it. They agreed that this item would increase the disclosure burden on lenders and would be of minimal benefit to ARM borrowers. They asserted that (1) considering all variables, such as interest rate caps, discounted rates, and negative amortization may prove confusing and misleading to customers; (2) historical fluctuation does not predict future interest rate activity; (3) the 15-year example would be difficult to develop, because many banks change their rates on their accounts monthly, and only change the customer's payment annually; (4) a 15-year example showing the index value and the amount of change on a semi-annual basis will demonstrate to the consumer how the index has performed, and the additional disclosure of payments and loan balance over that term is unnecessary; and (5) the added disclosure item would provide little information to the consumer which was not already more adequately provided under this Office's existing regulations.

One commenter contrasted the requirement of present § 29.7(a)(11) to that proposed at item (j), stating that in practical effect, item (j) may require an "unrealistic disclosure." Another commenter, however, endorsed item (j) "in that it modifies the existing requirement that national banks are presently required to give a hypothetical (and usually unrealistic) example of the payment amount and loan balance using an assumed one-percentage point increase in the index every six months."

Some commenters offered suggestions for improving the proposed disclosures. One commenter advocated an example which showed the historical performance of an index, and a "worst-case" scenario, showing the maximum interest rate, payment amount, and resulting loan balance. Another commenter suggested a prospective, rather than an historical, depiction of maximum interest rate, showing each year's loan cap over the life of the loan.

Although the FRB also received comments rejecting to disclosure item (j), the FRB has retained that item unchanged. 52 FR 48671. In addition, the FRB has included examples of the interpretation of these requirements. One item which the FFIEC recommended be disclosed, that a loan program contains no limitation on the amount of payment or interest rate increases, has been omitted as no longer necessary. See § 34.8, discussed above.

Other commenters addressed other aspects of the proposed disclosure. One warned that the FFIEC's recommended disclosure items (k), (m) and (n) may confuse borrowers by presenting them with too much information that they would not understand. 52 FR 36956. Another commenter asked that lenders not be required to give specific disclosures until the borrower had paid a nonrefundable fee and submitted an ARM loan application.

As proposed in the NPRM, the Office now rescinds the disclosure provision previously stated at 12 CFR 29.7, and defers to the disclosure requirements in Regulation Z, as amended. Generally, the initial disclosure requirements recommended by the FFIEC are patterned after the requirements of § 29.7(a). The FRB has amended Regulation Z to implement the recommendations of the FFIEC. 52 FR 48665. In amending Regulation Z, the FRB noted that it did not adopt changes suggested by commenters which would alter the uniform disclosure provisions recommended by the FFIEC. 52 FR 48666. Thus, by deferring to Regulation Z, the Office is adopting the FFIEC's recommendations.

As recommended by the FFIEC, and implemented by the FRB, the "loan program" disclosure must contain:

- (i) The fact that the interest rate, payment, or term can change;
- (ii) The index or formula to be used and a source of information about the index;
- (iii) An explanation of how the interest rate and payment will be determined, including an explanation of how the index is adjusted, such as by the addition of a margin;

(iv) A statement that the consumer should ask about the current margin value and current interest rate;

(v) The fact that the interest rate will be discounted, and a statement that the consumer should ask about the amount of the interest rate discount;

(vi) The frequency of interest rate and payment changes;

(vii) Any rules relating to changes in the index, interest rate, payment amount, and outstanding loan balance, including, for example, an explanation of interest rate or payment limitations, negative amortization, and interest carryover;

(viii) An historical example, based on a \$10,000 loan amount, illustrating how payments and the loan balance would have been affected by changes implemented according to the terms of the loan program. The example shall be based on index values beginning in 1977 and be updated annually until a 15-year history is shown. Thereafter, the example shall reflect the most recent 15 years of index values. The example shall reflect all significant loan program terms, such as negative amortization, interest rate carryover, interest rate discounts, and interest rate and payment limitations, that are triggered by index movements during the period;

(ix) An explanation of how the consumer may calculate the payments for the loan amount to be borrowed based on the most recent payment shown in the historical example;

(x) The maximum interest rate and payment amount for a \$10,000 loan originated at the most recent interest rate shown in the hypothetical example assuming the maximum periodic increases in rates and payments under the program; and the initial interest rate and payment for that loan;

(xi) The fact that the loan program contains a demand feature;

(xii) The type of information that will be provided in notices of adjustments and the timing of such notices; and

(xiii) A statement that disclosure forms are available for the creditor's other variable-rate loan programs.

52 FR 48665. As recommended by the FFIEC, these disclosures must be provided to a prospective borrower when an application form is furnished or before the payment of a nonrefundable fee, whichever is earlier.

The FRB has also amended Regulation Z to impose new subsequent disclosure requirements on ARM lenders. The new subsequent disclosure provision is found at 12 CFR 226.20(c). 52 FR 48671. As with the initial disclosure requirements, the Office will enforce these provisions with respect to national banks.

These subsequent disclosure provisions resemble the subsequent disclosure requirements of § 29.7(b), with minor differences. Unlike § 29.7(b), Regulation Z as amended does not require a prompt subsequent disclosure of interest rate changes unless they are coupled with payment changes. Under the amended Regulation Z, notice of interest rate changes that do not result in payment changes must be given only once a year, instead of at the time of each change.

The FRB had originally proposed that a notice of interest rate changes, accompanied by payment changes, should be given to a consumer 30 days before a payment at the new level was due. Current § 29.7(b) requires this notice be given 25 days before a payment at the new level is due. In its Final Rule, the FRB adopted the timing of the notice provision in § 29.7, requiring notice 25 days before a payment at the new level is due.

The FRB does not incorporate in amended § 226.20 a statement, if appropriate, "that a prepayment fee will be charged if the borrower chooses to prepay the loan." The Office required this disclosure at § 29.7 (b)(6) and (c)(4). However, Regulation Z generally requires a disclosure about the existence of any prepayment penalty, which makes it unnecessary to specifically require that disclosure for adjustable-rate mortgage loans. See 12 CFR 226.18(k).

The balance of the subsequent disclosures in Regulation Z as amended are identical to this Office's requirements in § 29.7 (b) and (c). Therefore, the Office believes that it can promote regulatory simplification by rescinding present § 29.7 (b) and (c) without compromising consumer protection.

Short term and demand loans, which are defined respectively as mortgage loans which are not fully amortized by the end of the loan term and mortgage loans which are payable on demand, were addressed in § 29.7(d). That section previously required a standard, bold-faced warning of the possibility that such loans may be called or not renewed at maturity of the note. This requirement was in addition to the existing provisions applicable to these loans contained in Regulation Z, which require that a demand feature contained in a loan be disclosed, and that a payment schedule show a balloon payment when the loan matures prior to the end of the amortization schedule. See 12 CFR 226.18 (g) and (i).

Three of the four commenters who addressed the proposed elimination of a

disclosure notice for short-term and demand loans supported that proposal. Two commenters stated that the Regulation Z disclosure requirements, which will still apply to these loans, are sufficient notice to consumers. However, one commenter asserted that the bold-faced notice that this Office required for short-term or demand loans should be incorporated in the FRB's Regulation Z, thus preserving the requirement that this notice be given. As the Office is not aware of any problems with the present requirements of Regulation Z, the notice required by § 29.7(d) has been eliminated.

Finally, the Office determined § 29.7(e) to be unnecessary, since that information can be derived from the initial disclosure of the margin or other adjustment mechanism mandated by the amendments to Regulation Z and the initial interest rate. One commenter supported this proposed deletion, while another recommended that his disclosure continue. The Office still feels the requirement to be superfluous, and therefore is eliminating it.

As noted in the discussion of the amended definition of an adjustable-rate mortgage loan, the Office does not intend to require that the consumer-oriented disclosures generally outlined above and incorporated in Regulation Z at 12 CFR 226.19(b) and 229.20(c) be given in investment, business, commercial or agricultural credit transactions with a variable interest rate. This intent is expressed by the addition of a sentence to § 34.10, stating that the disclosures required by Regulation Z need only be made where application of the terms of Regulation Z would require that the disclosures be given.

In summary, by applying the definition of an adjustable-rate mortgage loan and the general rule, national banks may make, sell, purchase, participate or deal in extensions of variable rate credit made to finance or refinance the purchase of and secured by a lien on a one-to-four family dwelling. Although a national bank may make an adjustable-rate mortgage loan for business, investment, commercial or agricultural purposes, Regulation Z disclosures must only be given in consumer credit transactions, as required by that regulation. For example, where a bank extends a closed-end variable rate loan to a natural person, for the purchase of and secured by his or her single family principal dwelling, and the term of the loan is for greater than one year, the initial and subsequent disclosures of 12

CFR 226.19(b) and 226.20(c) must be given.

Section 34.11 Non-federally chartered commercial banks

The Office proposed no substantive changes to this section, which merely repeats authority conferred by § 804(a) of the Garn-St Germain Act upon state commercial banks to make ARM loans in accordance with federal regulations in lieu of state law. See 12 U.S.C. 3803(a). The section has been retained for the convenient reference of banks seeking that authority.

Previously, this section listed by number the specific provisions of the ARM regulation with which a state commercial bank must comply. One commenter suggested that the disclosure section, proposed § 34.10, should be added to the sections referenced in § 34.11 as being applicable to non-federally chartered commercial banks. As amended, § 34.11 omits any specific list of sections, and states that nonfederally chartered commercial banks relying on this provision must comply with the requirements of Subpart B of Part 34.

Section 34.12 Transition Rule

The NPRM proposed a six-month phase-in period, during which a national bank may comply with either the disclosure requirements as presently stated at 12 CFR 29.7, or with the amended disclosure requirements, § 34.10. At the end of that period, compliance with the new Part 34 will be required.

While some commenters favored the proposed six-month phase in, other commenters objected to the apparent retroactive effect of the proposed transition rule. One commenter suggested that lenders be permitted to comply with existing § 29.7(a) requirements for initial disclosures until the date on which lenders must comply with the new Regulation Z disclosure for adjustable-rate mortgages, October 1, 1988. This commenter also suggested that lenders be permitted to continue "renegotiable rate loans" in accordance with original loan commitments.

One commenter stated generally that the application of the disclosure requirement to ARM loans already being serviced may present severe compliance difficulties for some lenders. Another commenter protested its inability to comply with the subsequent disclosures of amended Regulation Z, and the terms of its own ARM loan documents.

The Office does not intend the amended disclosure provisions of the ARM regulation to have a retroactive effect. As noted above under "Effective

Date," national banks have until October 1, 1988, as a transition period, during which the banks may choose to follow either the provisions of Part 29 or the amended requirements of Part 34 and Regulation Z. For adjustable-rate mortgage loans originated on or after October 1, 1988, compliance with the new Part 34 will be mandatory. However, national banks may continue to apply the provisions of Part 29 to adjustable-rate mortgage loans originated, or as to which a binding commitment was made, prior to October 1, 1988.

Effective Date of this Rule

As indicated above, this final rule is effective immediately upon publication in the *Federal Register*. The 30 days delayed effective date otherwise required under the Administrative Procedure Act has been waived pursuant to 12 U.S.C. 553(d)(3) of that Act, which provides for waiver "by the agency for good cause found and published with the rule."

The Office has noted that the initial disclosures the FFIEC recommended and the FRB adopted in amending Regulation Z largely track those previously required by the Office at 12 CFR Part 29. Further, the FRB amendment to its Regulation Z incorporates subsequent disclosure requirements that the Office had required of national banks. Finally, compliance with the requirements of Part 34 is optional until October 1, 1988, providing national banks ample time to develop and implement new adjustable-rate mortgage loan disclosure documents. For these reasons, the Office is waiving the 30 days delayed effective date for this rule.

Regulatory Flexibility Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Comptroller of the Currency certifies that this final rule will not have a significant economic impact on a substantial number of small banks. All banks should benefit from regulatory simplification and the greater secondary market opportunities that will result from this final rule.

Executive Order 12291

The Office has determined that this final rule does not constitute a major rule within the meaning of Executive Order 12291. Accordingly, a Regulatory Impact Analysis will not be required on the grounds that this final rule: (1) Would not have an annual effect on the economy of \$100 million or more; (2) would not result in a major increase in the cost of bank operations or

government supervision, nor would it be likely to generate substantially higher payments for borrowers, and (3) would not have a significant adverse impact on competition, employment, investment, productivity, innovation, or competition with foreign-based entities.

Paperwork Reduction Act

The collection of information requirements contained in this final rule have been submitted to the Office of Management and Budget under section 3504(h) of the Paperwork Reduction Act. (OMB Control No. 1557-0183).

List of Subjects

12 CFR Part 29

Mortgages, National banks.

12 CFR Part 30

Due-on-sale clauses, National banks, Real estate loans.

12 CFR Part 34

Credit, Due-on-sale clauses, Mortgages, National banks, Real estate loans.

For the reasons set forth in the preamble, Title 12, Chapter I, Parts 29, 30 and 34 of the Code of Federal Regulations are amended as follows:

PART 29—[AMENDED]

1. The authority citation for Part 29 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*; 12 U.S.C. 93a; and 12 U.S.C. 371.

2. Part 29 is amended by adding the following:

Note.—Subpart B of Part 34 of this chapter is effective on March 11, 1988, but under § 34.12 national banks have the option of continuing to comply with this Part 29 (in lieu of Part 34) until October 1, 1988.

PART 29—[REMOVED]

3. Part 29 is removed effective October 1, 1988.

PART 30—[REMOVED]

4. Part 30 is removed.

PART 34—[AMENDED]

1. The authority citation for Part 34 is revised to read as follows:

Authority: 12 U.S.C. 1 *et seq.*; 12 U.S.C. 93a; 12 U.S.C. 371; 12 U.S.C. 1701j-3.

2. Part 34 is amended by adding the heading "Subpart A—General" immediately before § 34.1.

3. Part 34 is amended by adding a new § 34.4 to read as follows:

§ 34.4 Due-on-sale clauses.

(a) *General rule.* A national bank may make or acquire through purchase, assignment, pledge or otherwise, a loan, secured by a lien on real property, that includes a clause, known as a due-on-sale clause, giving the lender or any assignee or transferee of the lender the power to declare the entire debt payable if all or part of the legal or equitable title or an equivalent contractual interest in the property securing the loan is transferred to another person, whether by deed, contract, or otherwise. Except as set forth in paragraph (b) of this section, such clauses in loans, whenever originated, shall be valid and enforceable as to transfers of the secured property occurring after December 8, 1983, notwithstanding any contrary law or judicial decision of any state, including the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands, and Guam, which laws and judicial decisions are hereby expressly preempted. For the purposes of this part, (1) real property shall also include such residential dwellings as condominium units, cooperative housing units, and residential manufactured homes and (2) the term "lender" means a government agency or person, including corporations, partnerships, trusts or associations making a real property loan or any assignee or transferee, in whole or in part, of such a person or agency.

(b) *Exceptions.* Due-on-sale clauses shall not be enforceable according to the terms of the contract in the case of transfers described in subsection (d) of section 341 of the Garn-St Germain Depository Institutions Act of 1982 (Pub. L. 97-320), 12 U.S.C. 1701j-3(d), as interpreted by the Federal Home Loan Bank Board pursuant to the powers granted to it in paragraph (e) of that section, 12 U.S.C. 1701j-3(e).

4. Part 34 is amended by adding a new Subpart B to read as follows:

Subpart B—Adjustable-Rate Mortgages

Sec.

34.5 Definitions.

34.6 General rule.

34.7 Index.

34.8 Rate changes.

34.9 Prepayment fees.

34.10 Disclosure.

34.11 Nonfederally chartered commercial banks.

34.12 Transition rule.

Subpart B—Adjustable-Rate Mortgages

Note.—Subpart B is effective March 11, 1988, but under § 34.12 national banks have the option of continuing to comply with Part 29 until October 1, 1988.

§ 34.5 Definitions.

(a) *Adjustable-rate mortgage loans.*

(1) An adjustable-rate mortgage loan is any extension of credit made to finance or refinance the purchase of and secured by a lien on a one-to-four family dwelling, including a condominium unit, cooperative housing unit or residential manufactured home, where such loan is made pursuant to an agreement intended to enable the lender to adjust the rate of interest from time to time.

(2) Adjustable-rate mortgage loans do not include (i) fixed rate extensions of credit that are payable on demand; or (ii) fixed rate extensions of credit that are payable either without any interim amortization of the loan, or at the end of a term that, including any terms for which the bank has promised to refinance the loan, is shorter than the term of the amortization schedule.

(b) *Consumer credit.* The phrase "consumer credit" means credit offered or extended to a consumer primarily for personal, family, or household purposes.

§ 34.6 General rule.

(a) National banks and their subsidiaries may make, sell, purchase, participate, or otherwise deal in adjustable-rate mortgage loans without regard to any limitations imposed on adjustable-rate mortgage lending by the laws of any state, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands, or Guam, which limitations are hereby expressly preempted.

(b) National banks may purchase or participate in adjustable-rate mortgage loans which were not made in accordance with the regulations in this part, except that any such loans purchased, in whole or in part, from an affiliate or subsidiary shall comply with the regulations in this part. For purposes of this paragraph, the terms "affiliate" and "subsidiary" shall have the same meaning that they have in 12 U.S.C. 371c.

§ 34.7 Index.

If the adjustable-rate mortgage loan is one to which 12 CFR 226.19(b) applies, loan documents shall specify an index to which changes in the interest rate charged on an adjustable-rate mortgage loan shall be linked. This index shall be readily available to and verifiable by the borrower, and beyond the control of the bank. A bank may use as an interest rate index any measure of market rates of interest which meets these requirements. The index for an adjustable-rate mortgage loan shall be either single values of the chosen

measure or a moving average of the chosen measure calculated over a specified period.

§ 34.8 Rate changes.

All consumer credit adjustable-rate mortgage loans originated on or after December 9, 1987, shall include a limitation on the maximum interest rate that may apply during the term of the loan.

§ 34.9 Prepayment fees.

Banks offering or purchasing adjustable-rate mortgage loans may impose fees for prepayments regardless of any state law prohibitions of, or limitations on, such fees, which prohibitions or limitations are hereby expressly preempted. For the purpose of this part, prepayments shall not include:

(a) Payments that exceed the required payment amount to avoid or reduce negative amortization; or

(b) Principal payments in excess of those necessary to retire the outstanding debt over the remaining loan term at the then current interest rate that are made in accordance with rules governing the determination of monthly payments contained in the loan documents.

§ 34.10 Disclosure.

In consumer credit transactions, a national bank offering adjustable-rate mortgage loans shall make the disclosures required by regulations implementing the Truth in Lending Act as amended, Pub. L. 90-321, 82 Stat. 146 (1968), prescribed by the Board of Governors of the Federal Reserve System and commonly known as "Regulation Z." These disclosures shall be made in accordance with Regulation Z, in the instances in which Regulation Z would require that the disclosures be made.

§ 34.11 Nonfederally chartered commercial banks.

Under authority granted by section 804(a) of the Garn-St Germain Depository Institutions Act of 1982, Pub. L. 97-320, codified at 12 U.S.C. 3803(a), nonfederally chartered commercial banks may make adjustable-rate mortgage loans in accordance with the provisions of this subpart.

§ 34.12 Transition rule.

If on March 11, 1988 a national bank has already made, or during the transition period a national bank makes, a loan or a binding commitment to lend under an adjustable-rate mortgage loan program which complied with the requirements of Part 29 of this chapter, but which would violate any of the provisions of this subpart, the national bank may continue to administer those

loans or binding commitments to lend in accordance with that loan program. All adjustable-rate mortgage loans or binding commitments to make adjustable-rate mortgage loans which a national bank enters into after October 1, 1988, must comply with all provisions of this subpart.

Dated: February 19, 1988.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 88-5296 Filed 3-10-88; 8:45 am]

BILLING CODE 4810-33-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 211

[Rel. No. SAB-77]

Staff Accounting Bulletin No. 77; Allocation of Debt Issue Costs in a Business Combination Accounted for as a Purchase

AGENCY: Securities and Exchange Commission.

ACTION: Publication of Staff Accounting Bulletin.

SUMMARY: This staff accounting bulletin expresses the staff's views regarding the allocation of debt issue costs in a business combination accounted for as a purchase.

FOR FURTHER INFORMATION CONTACT: John A. Heyman or John M. Riley, Office of the Chief Accountant (202-272-2130), or Howard P. Hodges, Jr., Division of Corporation Finance (202-272-2553), Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The statements in staff accounting bulletins are not rules or interpretations of the Commission nor are they published as bearing the Commission's official approval. They represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the Federal securities laws.

Jonathan G. Katz,

Secretary.

March 4, 1988.

PART 211—[AMENDED]

Accordingly, Part 211 of Title 17 of the Code of Federal Regulations is amended by adding Staff Accounting Bulletin No. 77 to the table found in Subpart B.

The staff hereby adds Sub-Section 6 to Topic 2.A of the Staff accounting bulletin series. Topic 2.A.6 discusses the

staff's views regarding the allocation of debt issue costs in a business combination accounted for as a purchase.

Topic 2: Business Combinations

* * * * *

A. Purchase Method

* * * * *

6. Debt Issue Costs

Facts: Company A is to acquire the net assets of Company B in a transaction to be accounted for as a business combination using the purchase method. In connection with the transaction, Company A has retained an investment banker to provide advisory services in structuring the acquisition and to provide the necessary financing. It is expected that the acquisition will be financed on an interim basis using "bridge financing" provided by the investment banker. Permanent financing will be arranged at a later date through a debt offering, which will be underwritten by the investment banker. Fees will be paid to the investment banker for the advisory services, the bridge financing and the underwriting of the permanent financing. These services may be billed separately or as a single amount.

Question 1: Are all fees paid to the investment banker a direct cost of the acquisition and, as such, accounted for as an element of the purchase price of the business acquired?

Interpretive Response: No. Fees paid to an investment banker in connection with a business combination accounted for as a purchase, when the investment banker is also providing interim financing or underwriting services, must be allocated between direct costs of the acquisition and debt issue costs.

Paragraph 76 of Accounting Principles Board Opinion No. 16¹ and the related Interpretation No. 33 provide that direct costs such as finder's fees and fees paid to outside consultants should be treated as components of the cost of the acquisition, while the costs of registering and issuing any equity securities are treated as a reduction of the otherwise determined fair value of the equity securities. However, debt issue costs are an element of the effective interest cost of the debt, and neither the source of the debt financing nor the use of the debt proceeds changes the nature of such costs. Accordingly, they should not be considered a direct cost of the acquisition.

The portions of the fees allocated to direct costs and to debt issue costs should be representative of the actual services provided. Thus, in making a reasonable allocation (or in determining that an allocation made by the investment banker is reasonable²) factors such as (i) the fees

¹ Accounting Principles Board Opinion No. 16 establishes standards for the reporting of business combinations.

² This would apply irrespective of whether the fees for the services were billed as a single amount or separately, since the separate billing of the services implicitly involves an allocation by the investment banker.

charged by investment bankers in connection with other recent bridge financings and (ii) fees charged for advisory services when obtained separately, should normally be considered to determine the relative fair values of the two services. Whether these or other factors are considered, the allocation should normally result in an effective debt service cost (interest and amortization of debt issue cost³) which is comparable to the effective cost of other recent debt issues of similar investment risk and maturity. The amount accounted for as debt issue costs should be separately disclosed, if material.⁴

Question 2: May the debt issue costs of the interim "bridge financing" be amortized over the anticipated combined life of the bridge and permanent financings?

Interpretive Response: No. Debt issue costs should be amortized by the interest method over the life of the debt to which they relate. Debt issue costs related to the bridge financing should be recognized as interest cost during the estimated interim period preceding the placement of the permanent financing with any unamortized amounts charged to expense if the bridge loan is repaid prior to the expiration of the estimated period. Where the bridge financing consists of increasing rate debt, the consensus reached by the Financial Accounting Standards Board's Emerging Issues Task Force ("EITF") on this issue⁵ should be followed.

[FR Doc. 88-5302 Filed 3-10-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM87-34-000 et al., Order No. 500]

Regulation of Natural Gas Pipelines After Partial Decontrol; Public Hearing

March 8, 1988.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of public hearing.

³ See Question 2 regarding the period over which the debt issue costs related to bridge financings should be amortized.

⁴ See Rule 5-02(17) of Regulation S-X [17 CFR 210.5-02(17)].

⁵ The EITF in Issue 86-15 (May 1, 1986) addressed the accounting for interest expense and debt issue costs for a debt instrument which matures at a stated date, but which may be consecutively extended for specific periods at the option of the borrower until a set, final, maturity date. The interest rate on the debt increased by a specific amount at each renewal/extension ("increasing rate debt"). The EITF reached a consensus that (i) periodic interest cost should be determined using the interest method, based on the estimated outstanding term of the debt taking into consideration the borrower's plans, ability and intent to service the debt, and (ii) debt issue costs should be amortized over the same period used in determining interest cost.

SUMMARY: The Federal Energy Regulatory Commission (Commission) issued an interim rule and statement of policy, Order No. 500, on August 7, 1987, addressing concerns raised by the United States Court of Appeals for the District of Columbia Circuit in *Associated Gas Distributors v. FERC (AGD)*. Order No. 500 responded to the Court's concerns about take-or-pay problems in Order No. 436. Order No. 500 readopted the regulations originally promulgated by Order No. 436 with modifications designed to meet the concerns of the Court in *AGD*.

Additionally, the Commission requested data from industry participants in order to make an accurate and reliable assessment of take-or-pay problems in the context of current market conditions before issuing a final rule in this docket.

Pursuant to requests from interested persons, a public hearing will be held.

DATES: A public hearing will be held on Monday, April 11, 1988 at 10:30 a.m. If necessary, the hearing will continue on April 12, 1988. Requests to participate and the amount of time requested should be directed to the Secretary no later than March 25, 1988.

ADDRESSES: The hearing will be held at: Hearing Room A, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

Requests to participate and questions regarding participation should be directed to: The Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Julia Lake White, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8530.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission (Commission) issued an interim rule and statement of policy in Order No. 500¹ on August 7, 1987. The order addressed concerns about take-or-pay problems in Order No. 436² raised by the United

¹ 52 FR 30,334 (Aug. 14, 1987), III FERC Stats. & Regs. ¶30,761 (Aug. 7, 1987), 52 FR 35,539 (Sept. 22, 1987), III FERC Stats. & Regs. ¶ 30,764 (Sept. 16, 1987); Order No. 500-A, 52 FR 39,507 (Oct. 22, 1987), III FERC Stats. & Regs. ¶ 30,770 (Oct. 14, 1987); Order No. 500-B, 52 FR 3,630 (Oct. 23, 1987), III FERC Stats. & Regs. ¶ 30,772 (Oct. 16, 1987); Order No. 500-C, 52 FR 46,936 (Dec. 29, 1987), FERC Stats. & Regs. ¶ 30,786 (Dec. 23, 1987).

² 50 FR 42,408 (Oct. 18, 1985), FERC Stats. & Regs. [Regulation Preambles 1982-1985] ¶30,665 (Oct. 9, 1985); Order No. 436-A, 50 FR 52,217 (Dec. 23, 1985), FERC Stats. & Regs. [Regulation Preambles 1982-1985] ¶30,675 (Dec. 12, 1985); Order No. 436-B, 51 FR 6398 (Feb. 24, 1986), III FERC Stats. & Regs. ¶ 30,688 (Feb. 14, 1986).

States Court of Appeals for the District of Columbia Circuit in *Associated Gas Distributors v. FERC (AGD)*.³ Order No. 500 readopted the regulations originally promulgated by Order No. 436 with modifications designed to meet the concerns of the Court in *AGD*. Additionally, the Commission requested data from industry participants in order to make an accurate and reliable assessment of take-or-pay problems in the context of current market conditions.

The Commission has received requests for a public hearing to provide interested persons an opportunity to make oral presentations of their views on Order No. 500, under section 502(b) of the Natural Gas Policy Act of 1978 (NGPA). In response to these requests, the Commission is scheduling a public hearing. The purpose of this hearing is to provide interested persons an opportunity to make an oral presentation to the Commission on Order No. 500. The Commission will also accept written comments of a length not in excess of 15 pages, double spaced, summarizing the position of the parties making an oral presentation.

The hearing will be held on Monday, April 11, 1988, at 10:30 a.m. at the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, Hearing Room A. If necessary, the hearing will continue on April 12, 1988.

The hearing will not be of a judicial or evidentiary type. There will be no cross-examination of persons presenting statements. However, the Commission may question such persons.

Requests to participate in the hearing should be submitted by March 25, 1988, to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. Requests to participate should request the amount of time required for the oral presentation. A list of participants in the hearing will be available in the Commission's Office of Public Information and at Hearing Room A on the morning the hearing is convened.

A stenographer will prepare a transcript of the hearing which will be available in the public file for this proceeding, Docket No. RM87-34-000 et al., in the Commission's Public Reference Room and may be ordered from that office. Any further procedural rules will be addressed by the Commission at the hearing.

³ 924 F.2d 981 (D.C. Cir. 1987).

By direction of the Commission.
 Lois D. Cashell,
Acting Secretary.
 [FR Doc. 88-5382 Filed 3-10-88; 8:45 am]
 BILLING CODE 6717-01-M

PANAMA CANAL COMMISSION

35 CFR Part 60

Classified Information

AGENCY: Panama Canal Commission.
ACTION: Final rule.

SUMMARY: This final rule revises 35 CFR Part 60, which governs the Panama Canal Commission's information security program. The purpose of this document is to implement the provisions of Executive Order 12356. The regulations contained in this part are adopted pursuant to that Executive Order (which became effective on August 1, 1982) and to implement its provisions within the Panama Canal Commission. Executive Order 12356 sets forth uniform standards for the identification, classification, downgrading, declassification, and safeguarding of security information affecting the national defense and foreign relations of the United States.

EFFECTIVE DATE: March 11, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Fuller, Assistant to the Secretary for Commission Affairs, Panama Canal Commission, 2000 L Street NW., Washington DC 20036-4996 (Telephone: 202-634-6441) or Mr. Thomas C. Duty, Chief, Administrative Services Division, Panama Canal Commission, APO Miami 34011-5000 (Telephone: 011-507-52-7757).

SUPPLEMENTARY INFORMATION: The Panama Canal Commission is revising its regulations dealing with programs for safeguarding and handling of classified information in order to implement Executive Order 12356. In addition to incorporating the provisions of the Executive Order and its implementing directives, the regulations also reflect organizational changes created by the disestablishment of the agency's Internal Security Office on December 1, 1981, and the subsequent realignment of duties and responsibilities between the Offices of Executive Administration and Personnel Administration, Panama Canal Commission. As part of this realignment, the Director, Office of Executive Administration has been designated the senior agency official to direct and administer the information security program for the Commission; his duties include an active oversight

and security education program to ensure effective implementation of Executive Order 12356 and any implementing directives published by the Information Security Oversight Office. Also as a result this realignment, the Personnel Director has been designated the official responsible for directing the conduct of investigations of individuals for the purpose of security clearances, in accordance with the standards and criteria of E.O. 10450.

This is not a major rule for the purposes of Executive Order 12291. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small business entities.

List of Subjects in 35 CFR Part 60

Classified Information, Information Security, Panama Canal Commission.

For the reasons set forth in the preamble, the Panama Canal Commission proposes to revise in its entirety 35 CFR Part 60 to read as follows:

PART 60—CLASSIFIED INFORMATION

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| Sec. | |
| 60.1 | Authority, scope and definitions. |
| 60.2 | Compliance with Executive Order 12356 and implementing directives. |
| 60.3 | Classification levels, categories, and limitations. |
| 60.4 | Limitations on original classification authority. |
| 60.5 | Use of derivative classification. |
| 60.6 | Requirements for classification guides. |
| 60.7 | Duration of classification. |
| 60.8 | Identification and markings. |
| 60.9 | Declassification and downgrading. |
| 60.10 | Access to classified information. |
| 60.11 | Top Secret, Secret, and Confidential Control Officer. |
| 60.12 | Mandatory review for declassification. |
| 60.13 | Custody and storage. |
| 60.14 | Security investigations; training and orientation of employees. |
| 60.15 | Debriefing upon termination of employment. |
| 60.16 | Responsibility of individual employees. |
| 60.17 | Loss or compromise; destruction of nonrecord classified information. |
| 60.18 | Procedures for receiving and transmitting classified documents. |
| 60.19 | Reproduction of classified documents. |

Authority: E.O. 12356, 47 FR 14874; 32 CFR Part 2001 (Directive No. 1, Information Security Oversight Office), 47 FR 27836; E.O. 10450, 18 FR 2489; 22 U.S.C. 3611.

§ 60.1 Authority, scope, and definitions.

(a) Executive Order 12356, dated April 2, 1982 (47 FR 14874, April 6, 1982) and 32 CFR Part 2001 (Directive No. 1 of the Information Security Oversight Office, approved by the National Security Council on June 22, 1982, 47 FR 27836,

June 25, 1982), set forth uniform standards for the identification, classification, downgrading, declassification, and safeguarding of security information affecting the national defense and foreign relations of the United States. The regulations contained in this part are adopted pursuant to that Executive Order (which became effective on August 1, 1982) and implement its provisions within the Panama Canal Commission.

(b) Definitions:

(1) "Commission" refers to the Panama Canal Commission.

(2) "Information" means any information or material, regardless of its physical form or characteristics, that is owned by, produced by or for, or is under the control of the United States Government.

(3) "National security information" means information that has been determined pursuant to this Order or any predecessor order to require protection against unauthorized disclosure and that is so designated.

(4) "Foreign government information" means:

(i) Information provided by a foreign government or governments, an international organization of governments, or any element thereof with the expectation, expressed or implied, that the information, the source of the information, or both, be held in confidence; or

(ii) Information produced by the United States pursuant to or as a result of a joint arrangement with a foreign government or governments or an international organization of governments, or any element thereof, requiring that the information, the arrangement, or both, be held in confidence.

(5) "National security" means the national defense or foreign relations of the United States.

(6) "Confidential source" means any individual or organization that has provided, or that may reasonably be expected to provide, information to the United States on matters pertaining to the national security with the expectation, expressed or implied, that the information or relationship or both be held in confidence.

(7) "Original classification" means an initial determination that information requires, in the interest of national security, protection against unauthorized disclosure, together with a classification designation signifying the level of protection required.

(8) "ODUSD(P)" refers to the Office of the Deputy Under Secretary of Defense (Policy).

§ 60.2 Compliance with Executive Order 12356 and implementing directives.

(a) The Director, Office of Executive Administration is designated the senior agency official to direct and administer the information security program for the Commission, including an active oversight and security education program to ensure effective implementation of Executive Order 12356 and any implementing directives published by the Information Security Oversight Office.

(b) The Director, Office of Executive Administration will establish procedures to prevent unnecessary access to classified information, including procedures that (1) require that a demonstrable need for access to classified information is established before initiating administrative clearance procedures and (2) ensure that the number of persons granted access to classified information is limited to the minimum consistent with operational and security requirements and needs.

(c) The Personnel Director will direct the conduct of investigations relative to the issuance of security clearances in accordance with the standards and criteria of Executive Order 10450.

§ 60.3 Classification levels, categories, and limitations.

(a) Classification levels. Official information which requires protection against unauthorized disclosure in the interest of the national security shall be classified "Top Secret," "Secret," or "Confidential" depending upon the degree of its significance to national security. No other terms or phrases of classification shall be used to identify such information except as otherwise expressly provided by statute. If there is reasonable doubt about the need to classify information, it shall be safeguarded as if it were classified pending a determination by one of the original classification authorities listed in § 60.4(a), who shall make this determination within thirty (30) days. If there is reasonable doubt about the appropriate level of classification, it shall be safeguarded at the higher level of classification pending a determination by one of the original classification authorities, who shall make this determination within thirty (30) days.

(1) "Top Secret" shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause exceptionally grave damage to the national security. The Commission does not have the authority to classify information originally as "Top Secret."

(2) "Secret" shall be applied to information, the unauthorized disclosure

of which reasonably could be expected to cause serious damage to the national security.

(3) "Confidential" shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause damage to the national security.

(b) Classification categories. Information shall be considered for classification if it concerns:

(1) Military plans, weapons, or operations;

(2) The vulnerabilities or capabilities of systems, installations, projects, or plans relating to the national security;

(3) Foreign government information;

(4) Intelligence activities (including special activities), or intelligence sources or methods;

(5) Foreign relations or foreign activities of the United States;

(6) Scientific, technological, or economic matters relating to the national security;

(7) United States Government programs for safeguarding nuclear materials or facilities;

(8) Cryptology;

(9) A confidential source; or

(10) Other categories of information that are related to the national security and that require protection against unauthorized disclosure as determined by the President or by agency heads or other officials who have been delegated original classification authority by the President. Any determination made under this subsection shall be reported promptly to the Director of Information Security, Office of the Deputy Under Secretary of Defense (Policy).

(c) Information that is determined to concern one or more of the categories in § 60.3(b) shall be classified when one of the original classification authorities listed in § 60.4(a) also determines that its unauthorized disclosure, either by itself or in the context of other information, reasonably could be expected to cause damage to the national security. Classification on the basis of combination or association with other (classified or unclassified) information shall be supported by a written explanation which shall be maintained with the record copy of such information.

(d) Unauthorized disclosure of foreign government information, the identity of a confidential foreign source, or intelligence sources or methods is presumed to cause damage to the national security.

(e) Information classified in accordance with § 60.3 shall not be declassified automatically as a result of any unofficial publication or inadvertent or unauthorized disclosure in the United

States or abroad of identical or similar information, see § 60.11(e).

(f) Limitations on classification.

(1) In no case shall information be classified in order to conceal violations of law, inefficiency, or administrative error; to prevent embarrassment to a person, an organization, or the Panama Canal Commission or other agency; to restrain competition; or to prevent or delay the release of information that does not require protection in the interest of national security.

(2) Basic scientific research information not clearly related to the national security may not be classified.

(3) The President or the officials designated by the President in the **Federal Register** may reclassify information previously declassified and disclosed if it is determined in writing that (i) the information requires protection in the interest of national security; and (ii) the information may reasonably be recovered. These reclassification actions shall be reported promptly to the DUSD(P) for subsequent reporting to the Director of the Information Security Oversight Office.

(4) Information in the custody of the Panama Canal Commission may be classified or reclassified after an agency has received a request for it under the Freedom of Information Act (5 U.S.C. 552) or the Privacy Act of 1974 (5 U.S.C. 552a), or the mandatory review provisions of Executive Order 12356 if such classification meets the requirements of that Executive Order and is accomplished personally and on a document-by-document basis by the officials identified in § 60.4(a) or an official with original Top Secret classification authority.

§ 60.4 Limitations on original classification authority.

(a) The authority to classify information originally under this part shall be limited to the categories of Secret and Confidential. Only the following officials of the Panama Canal Commission are authorized to classify information or material originally:

(1) The Administrator; and

(2) The Director, Office of Executive Administration.

(b) Other officials and employees of the Panama Canal Commission originating documents which, in their opinion, should be classified as Secret or Confidential prior to dispatch, shall forward these documents to the Director, Office of Executive Administration with recommendation for appropriate classification. Such documents shall be protected by a cover sheet (such as Panama Canal

Commission Forms 165-Conf or 165-B Secret) of the classification recommended by the originator, and shall be handled and safeguarded as if classified, see § 60.8(a).

(c) All information originated within the Commission which is believed to require classification as Top Secret (within the meaning of this part and Executive Order 12356) shall be hand carried by the originator to the Director, Office of Executive Administration who will determine the appropriate level of classification. If the information warrants Top Secret classification, that official shall transmit the information promptly under appropriate safeguards to the agency which has appropriate subject matter interest and classification authority in accordance with the procedures established by § 60.18 of this part. If it is not clear which agency should get the information, it shall be sent to the Director of the Information Security Oversight Office for a determination.

(d) Intra-office documents, such as longhand notes or draft papers, that contain information affecting the national security shall be distinctly marked with the proper classification at top and bottom, by hand, by the originator, and shall be protected and destroyed in the same manner as an inter-office or inter-agency classified documents. Such intra-office documents shall be forwarded to the Office of Executive Administration for destruction as soon as the content has been included in a formal classified paper or as soon as the note or draft is no longer required.

(e) A holder of classified information or material shall observe and respect the classification assigned by the originator.

(f) Exceptional Cases. When an employee, contractor, licensee, or grantee of an agency that does not have original classification authority originates information believed by that person to require classification, the information shall be protected in a manner consistent with Executive Order 12356 and its implementing directives. The information shall be transmitted promptly as provided under the Order or its implementing directives to the agency that has appropriate subject matter interest and classification authority with respect to this information. That agency shall decide within thirty (30) days whether to classify this information. If it is not clear which agency has classification responsibility for this information, it shall be sent to the Director of the Information Security Oversight Office. The Director shall determine the agency

having primary subject matter interest and forward the information, with appropriate recommendations, to that agency for a classification determination.

§ 60.5 Use of derivative classification.

(a) Derivative classification is: (1) the determination that information is in substance the same as information currently classified; and (2) the application of the same classification markings. Persons who only reproduce, extract, or summarize classified information, or who only apply classification markings derived from source material or as directed by a classification guide, need not possess original classification authority.

(b) Persons who apply derivative classification markings shall:

(1) Observe and respect original classification decisions; and

(2) Carry forward to any newly created documents any assigned authorized markings. The declassification date or event that provides the longest period of classification shall be used for documents classified on the basis of multiple sources.

(c) If a person who applies derivative classification markings believes that the process of reproducing, extracting, paraphrasing, restating or summarizing may have changed the level of or removed the basis for classification, an appropriate official of the originating agency or the office of origin who has the authority to upgrade, downgrade or declassify the information must be consulted.

(d) Paper copies of derivatively classified documents shall be marked at the time of origination as follows:

(1) Classification authority. (i) The authority for classification shall be shown as follows:

CLASSIFIED BY (description of source document on classification guide).

(ii) If a document is classified on the basis of more than one source document or classification guide, the authority for classification shall be shown as follows:

CLASSIFIED BY MULTIPLE SOURCES

In these cases the derivative classifier shall maintain the identification of each source with the file or record copy of the derivatively classified document. A document derivatively classified on the basis of a source document that is marked "CLASSIFIED BY MULTIPLE SOURCES" shall cite the source document in its "CLASSIFIED BY" line rather than the term "MULTIPLE SOURCES."

(2) Declassification and downgrading instructions. Dates or events for automatic declassification or downgrading, or the notation "ORIGINATING AGENCY'S DETERMINATION REQUIRED" to indicate that the document is not to be declassified automatically, shall be carried forward from the source document, or as directed by a classification guide, and shown on a "DECLASSIFY ON" line as follows:

DECLASSIFY ON (date; description of event) or ORIGINATING AGENCY'S DETERMINATION REQUIRED (OADR)

(3) Any additional markings or abbreviations described in paragraphs (b) through (m) of § 60.8 of this part appearing on the source material shall be carried forward to the new material when appropriate.

§ 60.6 Requirements for classification guides.

(a) Classification guides used to direct derivative classification and issued pursuant to Section 2.2 of Executive Order 12356 and § 60.5 of this part shall, at a minimum:

(1) Identify or categorize the elements of information to be protected;

(2) State which of the classification designations (i.e., Top Secret, Secret, or Confidential) applies to each element or category of the information;

(3) Prescribe declassification instructions for each element or category of information in terms of (i) a period of time, (ii) the occurrence of an event, or (iii) a notation that the information shall not be declassified automatically without the approval of the originating agency; and

(4) Indicate how the designation, time limits, markings, and other requirements of Executive Order 12356 and this part are to be applied.

(b) Each classification guide shall be kept current and shall be reviewed at least once every two years and updated as necessary. The Office of Executive Administration shall compile and maintain a list of classification guides in current use.

(c) Each guide shall be approved personally and in writing by the Director, Office of Executive Administration.

(d) The Administrator may, for good cause, grant and revoke waivers of the requirement to prepare classification guides for specified classes of documents or information. A decision to waive the requirement should be based, at minimum, on an evaluation of the following factors:

(1) The ability to segregate and describe the elements of information;

(2) The practicality of producing or disseminating the guide because of the nature of the information;

(3) The anticipated usage of the guide as a basis for derivative classification; and

(4) The availability of alternative sources for derivatively classifying the information in a uniform manner. The Director of the Information Security Oversight Office shall be notified of any waivers.

§ 60.7 Duration of classification.

(a) Information shall be classified as long as required by national security considerations. When it can be determined, a specific date or event for declassification shall be set by the original classification authority at the time the information is originally classified.

(b) Automatic declassification determinations under predecessor orders shall remain valid unless the classification is extended by an authorized official of the originating agency. These extensions may be by individual documents or categories of information. The originating agency shall be responsible for notifying holders of the information of such extensions.

(c) Information classified under predecessor orders and marked for declassification review shall remain classified until reviewed for declassification under the provisions of Executive Order 12356.

§ 60.8 Identification and markings.

(a) At the time of original classification, the following information shall be shown on the face of all classified documents, or clearly associated with other forms of classified information in a manner appropriate to the medium involved, unless this information itself would reveal a confidential source or relationship not otherwise evident in the document or information:

(1) One of the three classification levels defined in § 60.3;

(2) If the original classification authority is other than the approving or signing official, the identity shall be shown as follows:

CLASSIFIED BY (identification of original classification authority)

(3) Agency and office of origin. If the identity of the originating agency and office is not apparent on the face of a document, it shall be placed below the "CLASSIFIED BY" line.

(4) Declassification and downgrading instructions. Declassification and, as applicable, downgrading instructions shall be shown as follows:

(i) For information to be declassified automatically on a specific date:

DECLASSIFY ON: (date)

(ii) For information to be declassified automatically upon occurrence of a specific event:

DECLASSIFY ON: (description of event)

(iii) For information not to be declassified automatically:

DECLASSIFY ON: ORIGINATING AGENCY'S DETERMINATION REQUIRED or "OADR"

(iv) For information to be downgraded automatically on a specific date or upon occurrence of a specific event:

DOWNGRADE TO (classification level) ON (date or description of event)

(b) Each classified document shall by marking or other means, indicate which portions are classified, with the applicable classification level, and which portions are not classified. The Administrator may, for good cause, grant and revoke waivers of this requirement for specified classes of documents or information. The Director of the Information Security Oversight Office shall be notified of any waivers.

(c) Marking designations implementing the provisions of Executive Order 12356, including abbreviations, shall conform to the standards prescribed in implementing directives issued by the Information Security Oversight Office.

(d) Foreign government information shall either retain its original classification or be assigned a United States classification that shall ensure a degree of protection at least equivalent to that required by the entity that furnished the information.

(e) Information assigned a level of classification under predecessor Executive Orders shall be considered as classified at that level of classification despite the omission of other required markings. Omitted markings may be inserted on a document by the officials listed in § 60.4(a) of this part.

(f) The overall classification of a document, whether or not permanently bound, or any copy or reproduction thereof, shall be conspicuously marked or stamped at the top and bottom of the outside of the front cover (if any), on the title page (if any), on the first page, on the back page, and on the outside of the back cover (if any). Each interior page of a classified document shall be marked or stamped at the top and bottom either according to the highest classification of the content of the page, including the designation "Unclassified" when appropriate, or according to the highest classification of the document. In any

case, the classification marking of the page shall not supersede the classification marking of portions of the page marked with lower levels of classification.

(g) Whenever practicable, subjects and titles shall be selected so as not to require classification. When the subject or title is classified, an unclassified identifier may be assigned to facilitate receipt and reference.

(h) Classifiers shall identify the level of classification of each classified portion of a document (including subjects and titles), and those portions that are not classified. Portion marking shall be accomplished by placing a parenthetical designator immediately preceding or following the text that it governs. The symbols "(TS)" for Top Secret, "(S)" for Secret, "(C)" for Confidential, and "(U)" for Unclassified, shall be used for this purpose. If individual portion marking is impracticable, the document shall contain a description sufficient to identify the information that is classified and the level of such classification. The officials listed in § 60.4(a) may for good cause, request from the DUSD(P) a waiver of the portion marking requirement for specified classes of documents or information. The Director of the Information Security Oversight Office shall be notified by the DUSD(P) of any waivers.

(i) The classification and associated markings prescribed by this part for documents shall, where practicable, be affixed to material other than documents by stamping, tagging, or other means. If this is not practicable, recipients shall be made aware of the classification and associated markings by notification or other means.

(j) A transmittal document shall indicate on its face the highest classification of any information transmitted by it. It shall also include the following or similar instruction:

(1) For an unclassified transmittal document:

UNCLASSIFIED WHEN CLASSIFIED ENCLOSURE IS REMOVED

(2) For a classified transmittal document:

UPON REMOVAL OF ATTACHMENTS THIS DOCUMENT IS (classification level of the transmittal document standing alone)

(k) Documents that contain foreign government information shall include either the marking "FOREIGN GOVERNMENT INFORMATION," or a marking that otherwise indicates that the information is foreign government information. If the fact that information is foreign government information must

be concealed, the marking shall not be used and the document shall be marked as if it were wholly of U.S. origin. Documents classified by a foreign government or an international organization of governments shall, if the foreign classification is not in English, be marked with the equivalent United States classification. Foreign government information not classified by a foreign government or an international organization of governments but provided to the United States in confidence by a foreign government or by an international organization of governments, shall be classified at an appropriate level and shall be marked with the United States classification accordingly.

(l) In addition to the marking requirement in paragraphs (a) through (k) of this section, the additional markings provided in paragraphs (1)(1)-(3) of this section shall, as appropriate, be displayed prominently on classified information. When display of these additional markings is not practicable, their applicability to the information shall be included in the written notification of the assigned classification.

(1) For classified information containing Restricted Data or Formerly Restricted Data as defined in the Atomic Energy Act of 1954, as amended, such markings as may be prescribed by the Department of Energy in regulations issued under the Act shall be applied.

(2) For classified information involving intelligence sources or methods:

WARNING NOTICE—INTELLIGENCE SOURCES AND METHODS INVOLVED.

(3) For classified information that, pursuant to Executive Order 12356, the originator has determined should be subject to special dissemination or reproduction limitations, or both, a statement placing the user on notice of the restrictions shall be included in the text of the document or on its cover sheet; e.g., "Reproduction requires approval of originator," or "Further dissemination only as directed by the Director, Office of Executive Administration."

(m) National security information that is transmitted electrically shall be marked as follows:

(1) The highest level of classification shall appear before the first line of text;

(2) A "CLASSIFIED BY" line is not required;

(3) The duration of classification shall appear as follows:

(i) For information to be declassified automatically on a specific date:

DECL:(date)

(ii) For information to be declassified upon occurrence of a specific event:

DECL:(description of event)

(iii) For information not to be automatically declassified which requires the originating agency's determination, see § 60.7(a):

DECL: OADR

(iv) For information to be automatically downgraded: DNG (abbreviation of classification level to which the information is to be downgraded and date or description of event on which downgrading is to occur).

§ 60.9 Declassification and downgrading.

(a) Information shall be declassified or downgraded as soon as national security considerations permit. Review of classified information shall be coordinated with other agencies that have a direct interest in the subject matter. Information that continues to meet the classification requirements prescribed by § 60.3 of this part, despite the passage of time, will continue to be protected in accordance with Executive Order 12356 and this part.

(b) Information shall be declassified or downgraded by the official who authorized the original classification, if that official is still serving in the same position; by the originator's successor; by a supervisory official of either; or by officials delegated such authority, in writing, by an official listed in § 60.4(a).

(c) In the case of classified information transferred in conjunction with a transfer of functions, and not merely for storage purposes, the receiving agency shall be deemed to be the originating agency for purposes of Executive Order 12356 and this part.

(d) In the case of classified information that is not officially transferred as described in § 60.9(c), but that originated in an agency that has ceased to exist and for which there is no successor agency, each agency in possession of such information shall be deemed to be the originating agency for purposes of Executive Order 12356 and this part. Such information may be declassified or downgraded by the agency in possession after consultation with any other agency that has an interest in the subject matter of the information.

(e) The Commission shall maintain a current listing of officials delegated declassification or downgrading authority by name or position.

(f) Classified information accessioned into the National Archives of the United States from the Commission shall be declassified or downgraded by the Archivist of the United States in accordance with Executive Order 12356,

the directives of the Information Security Oversight Office, and guidelines established by the Director, Office of Executive Administration of the Panama Canal Commission. Such guidelines shall be reviewed and updated if necessary at least every five years, unless earlier review is requested by the Archivist.

§ 60.10 Access to classified information.

(a) A person is eligible for access to classified information provided that a determination of trustworthiness has been made and that such access is essential to the accomplishment of lawful and authorized Government purposes. The determinations of eligibility and trustworthiness, referred to in this part as a security clearance, shall be based on such investigations as the Panama Canal Commission may require. The Personnel Director shall be responsible for conducting investigations relative to the issuance of security clearances in accordance with the standards and criteria of Executive Order 10450, and will maintain a list showing the level of security clearances granted to each person. Security clearances will be granted by the Director, Office of Executive Administration, as provided in § 60.14 of this part.

(b) In addition to a security clearance, a person must have a need for access to the particular classified information or material sought in connection with the performance of that person's official duties or contractual obligations, except in those instances provided for in paragraph (d) of this section. The determination of that need shall be made by the Director, Office of Executive Administration in coordination with officials having responsibility for the classified information or material.

(c) When a person no longer requires access to classified information or material in connection with the performance of that person's official duties or contractual obligations, the security clearance shall be withdrawn. Likewise, when a person no longer needs access to a particular security classification category, that person's security clearance shall be adjusted to the classification category still required for the performance of that person's duties and obligations. In both instances, such action shall be without prejudice to the person's eligibility for a security clearance should the need again arise.

(d) Persons engaged in historical research projects and former Presidential appointees who occupied

policy-making positions may be authorized access to classified information or material originating within the Panama Canal Commission. In such cases, the requirement in section 60.10(a) that access to classified information may be granted only as is essential to the accomplishment of lawful and authorized Government purposes, may be waived, but only if the Commission has jurisdiction over the information and:

(1) The Commission makes a written determination that access is consistent with the interests of national security;

(2) The Commission takes appropriate steps to protect classified information from unauthorized disclosure or compromise, and ensures that the information is safeguarded in a manner consistent with Executive Order 12356;

(3) The Commission limits the access granted to former Presidential appointees to items that the person originated, reviewed, signed or received while serving as a Presidential appointee; and

(4) In addition, the Director, Office of Executive Administration obtains:

(i) Written agreements from the requesters to safeguard the information to which they are given access as permitted by Executive Order 12356 and this part; and

(ii) Written consent from the requester for the Director, Office of Executive Administration to review all of their notes and manuscripts for the purpose of assuring that no classified information is contained in them.

(e) If the access requested by historical researchers and former Presidential appointees requires the rendering of services for which fair and equitable fees may be charged pursuant to 31 U.S.C. 9701, the requester shall be so notified and the fees may be imposed.

(f) Except as provided by directives issued by the President through the National Security Council, classified information originating in one agency may not be disseminated outside any other agency to which it has been made available without the consent of the originating agency.

§ 60.11 Top Secret, Secret, and Confidential Control Officer.

(a) The Director, Office of Executive Administration, Panama Canal Commission, is the Agency's designated Top Secret Control Officer and is responsible for the receipt, current accountability, and transmission of all Top Secret information. The Deputy Director, Office of Executive Administration is the Alternate Top Secret Control Officer. A physical

inventory of all Top Secret material shall be made at least annually.

(b) The Director and the Deputy Director, Office of Executive Administration are also the Agency's designated Control Officer and Alternate Control Officer, respectively, for all classified information up to and including Secret.

(c) The Director, Office of Executive Administration shall act on all suggestions and complaints received by the Commission with respect to the administration of Executive Order 12356 and this part, and may also recommend to the Administrator appropriate administrative actions or sanctions to correct abuse or violation of any provision of that Order or directives under it. The Director of the Information Security Oversight Office shall be promptly informed by the agency when such violations occur.

(d) To the extent required by applicable laws and agency regulations, the Administrator shall report to the Attorney General evidence reflected in classified information of possible violations of Federal criminal law by an agency employee and of possible violations by any other person of those Federal criminal laws specified in guidelines adopted by the Attorney General.

(e) When the Commission is the agency of primary interest, following an inadvertent or unauthorized publication or disclosure of information identical or similar to information that has been classified in accordance with the Executive Order 12356 or predecessor orders, the Director, Office of Executive Administration shall determine the degree of damage to the national security, the need for continued classification, and, in coordination with the agency in which the disclosure occurred, what action must be taken to prevent similar occurrences, see § 60.17.

§ 60.12 Mandatory review for declassification.

(a) Any United States citizen, permanent resident alien, federal agency, or the government of a U.S. state or municipality may request that classified information be reviewed for declassification by the originating agency and released. Such requests must be submitted in writing to the Chief, Administrative Services Division, Panama Canal Commission, APO Miami 34011-5000 (or Panama Canal Commission, Balboa Heights, Republic of Panama). In accordance with § 9701 of title 31, United States Code, fees may be applied to any requests for declassification and release. A request need not identify the information

requested by date or title, but must describe the document or material containing the information with sufficient specificity to enable the agency to locate it with a reasonable amount of effort. Whenever a request is deficient in its description of the information sought, the Chief, Administrative Services Division shall notify the requester that, unless additional identifying information is provided or the scope of the request is narrowed, the Commission will take no further action on the request.

(b) When the Commission receives any request for documents in its custody that were classified by another agency, it shall refer copies of the request and the requested documents to the originating agency for processing, and may, after consultation with the originating agency, inform the requester of the referral. In cases in which the originating agency determines in writing that a response is required, it is the responsibility of the referring agency to respond to the requester.

(c) When another agency refers a request to the Commission for review because the Commission originally classified the information requested, the Commission shall treat the request as though it were submitted directly to it under paragraph (a) of this section. The Commission shall send its decision directly to the requester and shall, if so requested, notify the referring agency of its decision on the request and on the appeal, if any.

(d) Requests for classification review made under paragraph (a) of this section shall be promptly acknowledged by the Chief, Administrative Services Division and then forwarded to the official who originally classified the document, or that official's successor, or when appropriate to an official designated by an official listed in § 60.4(a), who, in coordination with the Chief, Administrative Services Division, shall decide whether the requested information may be declassified, see § 60.7 and § 60.9.

(1) Unless withholding is otherwise warranted under applicable law, any information which may be declassified shall normally be forwarded to the requester within sixty (60) days after receipt of a proper request. If additional time is needed to locate or review the requested information, the Chief, Administrative Services Division will notify the requester accordingly. Except in unusual circumstances, a decision will be made within one year of receipt of the request.

(2) When information cannot be declassified in its entirety, a reasonable

effort will be made, consistent with other applicable law, to release those portions of the requested information that constitute a coherent segment.

(3) Upon the denial or a partial denial of a request, the Chief, Administrative Services Division shall reply to the requester and provide a brief statement of the reasons for the denial, a notice of the right to appeal the decision to the Director, Office of Executive Administration, and a notice that the appeal must be in writing and must be received by the Commission within sixty (60) days of receipt of the decision letter by the requester. Appeals should be addressed to: Director, Office of Executive Administration, Panama Canal Commission, APO Miami 34011-5000 (or Panama Canal Commission, Balboa Heights, Republic of Panama).

(e) Within thirty (30) days after its receipt of a proper appeal against an initial decision not to declassify information, the Director, Office of Executive Administration shall make and dispatch the decision whether the information should be declassified. If the Director, Office of Executive Administration is the original classification authority of the information under appeal, the Administrator shall determine whether the information may be declassified. The Director, Office of Executive Administration shall, after the decision, promptly make available to the requester any information that is declassified and which is otherwise releasable. If continued classification of the requested information is necessary, the requester shall be notified of that decision and the reasons therefor. If requested, the appeal determination shall also be communicated to any referring agency.

(f) The classification reviews made in response to requests and appeals under this section are in addition to the systematic review of classified information prescribed by Executive Order 12356 and 32 CFR Part 2001.

(g) Requests for access to classified material submitted under the Freedom of Information Act or the Privacy Act of 1974 (5 U.S.C. 552 and 552a) shall be processed in accordance with Parts 9 and 10 of 35 CFR, and shall be subject to the same review criteria for declassification as requests submitted under paragraphs (a) through (d) of this section. In response to a request for information under the Freedom of Information Act, the Privacy Act of 1974, or the mandatory review provisions of this Order, the Commission shall refuse to confirm or deny the existence or non-existence of requested information whenever the fact of its existence or

non-existence is itself classifiable under Executive Order 12356 or 32 CFR Part 2001.

§ 60.13 Custody and storage.

(a) Classified information shall be protected in accordance with applicable National Security Council directives or directives promulgated by the Information Security Oversight Office and approved by the National Security Council.

(b) Each bureau director and chief of an independent unit (or classified security control officer as designated by the Director, Office of Executive Administration) shall be responsible for assuring that all classified information within that official's organization is used, processed, stored, reproduced, and transmitted only under conditions which will provide adequate protection and prevent access by, or dissemination to, unauthorized persons. Containers, vaults, alarm systems, and associated security devices procured after the effective date of this part for the storage and protection of classified information shall be in conformance with the standards and specifications published by the General Services Administration and, to the maximum extent practicable, be of the type designated on its Federal Supply Schedule.

(c)(1) Top secret information shall be stored in a GSA-approved security container with an approved built-in, three-position, dial-type combination lock; in a vault protected by an alarm system and response force; or in other storage facility that meets the standards for top secret established under the provisions of paragraph (b) of this section.

(2) Secret and confidential information shall be stored in a manner and under the conditions prescribed for top secret information, or in a container, vault, or alarmed area that meets the standards for secret or confidential information established pursuant to the provisions of paragraph (c)(1) of this section, and/or paragraph (c)(3) of this section.

(3) Secret and confidential information may also be stored in a safe-type filing cabinet having a built-in, three-position, dial-type, changeable combination lock, or a steel filing cabinet equipped with a steel lock bar, provided it is secured by a three-position, changeable combination padlock approved by GSA for the purpose. The Director, Office of Executive Administration shall prescribe any necessary supplementary controls for storage of secret information in cabinets equipped with a steel lock bar.

(d) Each bureau director and chief of an independent unit is responsible for assuring that all personnel within that official's organization, having access to classified information, have a security clearance issued by the Director, Office of Executive Administration, see §§ 60.14 and 60.16.

(e)(1) Combinations of all repositories containing classified information shall be changed at least annually and forwarded in double-sealed envelopes to the Office of Executive Administration. The double-sealed envelopes shall be classified no lower than the highest category of information contained in the repositories. Combinations to dial-type locks shall be changed only by persons having appropriate security clearance, and shall be changed whenever such equipment is placed in use, whenever a person knowing the combination no longer requires access to the combination, whenever the equipment is taken out of service, and at least once every year. Knowledge of combinations protecting classified information shall be limited to the minimum number of persons necessary for operating purposes. Records of combinations shall be classified no lower than the highest level of classified information to be stored in the security equipment concerned. Bureau directors and heads of independent units shall ensure that combinations of dial-type locks shall be changed whenever there is reason to suspect possible compromise of the current combination.

(2) When security equipment having a built-in combination lock is taken out of service, the lock shall be reset to the standard combination 50-25-50. Combination padlocks shall be reset to the standard combination 10-20-30.

(3) The Commission shall establish administrative procedures for the control and accountability of keys and locks whenever key-operated, high-security padlocks are utilized. The level of protection provided such keys shall be equivalent to that afforded the classified information being protected. Under no circumstances may keys be removed from the premises. They shall be stored in a secure container.

(f) Custodians of classified matter are responsible for registering with the Office of Executive Administration the names of all persons having knowledge of combinations to repositories containing classified information.

(1) Persons entrusted with classified information shall be responsible for providing protection and accountability for such information at all times and for locking classified information in approved security equipment whenever

it is not in use or under the direct supervision of authorized persons. Custodians shall follow procedures which will ensure that unauthorized persons do not gain access to classified information.

(2) Individuals charged with the custody of classified information shall conduct the necessary inspections within their areas to ensure adherence to procedural safeguards prescribed to protect classified information. The Director, Office of Executive Administration shall ensure that periodic inspections are made to determine whether procedural safeguards prescribed by agency regulations are in effect at all times.

§ 60.14 Security investigations; training and orientation of employees.

(a) Requests for security clearances, including changes in the level of clearances, will be forwarded to the Office of Personnel Administration for background investigations and security checks. The Personnel Director shall ensure that all necessary investigations are completed, and will provide a recommendation on the issuance of a security clearance to the Office of Executive Administration. The Director, Office of Executive Administration, in consideration of all available information, will determine if a security clearance may be issued, or if the level may be changed, and establish the expiration date of the clearance.

(b) The Director, Office of Executive Administration is also responsible for establishing and maintaining a training and orientation program for employees concerned with classified information or material.

§ 60.15 Debriefing upon termination of employment.

(a) Bureau directors and heads of independent units shall be responsible for notifying the Office of Executive Administration whenever it is necessary that an employee be briefed or debriefed. Such notification should be in writing and be at least sixty (60) days, or as long as possible, in advance.

(b) Bureau directors and heads of independent units shall ensure that debriefings are accomplished for any employee whose employment is terminated, or scheduled to be terminated, or when a temporary separation from employment (not to include leave) for sixty (60) days or more has occurred or is scheduled, whenever the employee has had access to classified information within the last twelve calendar months of his employment.

§ 60.16 Responsibility of individual employees.

(a) The responsibility for the safeguarding of classified information shall rest on each individual employee having possession or knowledge of it, regardless of how such information or knowledge was obtained. In addition, each individual employee is directly responsible for acquiring familiarity with and complying with these and subsequently published security regulations.

(b) Any officer or employee, at any level of employment, determined to have been responsible for any release or disclosure of national security information or material in a manner not authorized by Executive Order 12356 or under this part, is subject to prompt and stringent administrative action, and, where a violation of criminal statute may be involved, is subject to prosecution under applicable law.

§ 60.17 Loss or compromise; destruction of nonrecord classified information.

(a) Any person who has knowledge of the loss or possible compromise of classified information in the custody of the Commission shall immediately report the circumstances to the Office of Executive Administration. The Director, Office of Executive Administration shall initiate an inquiry to (1) determine cause, (2) place responsibility, and (3) take corrective measures and appropriate administrative, disciplinary, or legal action. If it is determined that classified information has been compromised, the agency that originated the information shall be notified of the loss or possible compromise so that a damage assessment may be conducted and appropriate measures taken to negate or minimize any adverse effect of the compromise.

(b) The Administrator (or Director, Office of Executive Administration) shall initiate a damage assessment whenever there has been a compromise of classified information originated by the Commission that, in his judgment, can reasonably be expected to cause damage to the national security. Damage assessments shall be in writing and shall conform to the guidelines established by the Information Security Oversight Office, as provided in 32 CFR 2001.47(b).

(c) Nonrecord classified information that has served its intended purpose shall be destroyed in accordance with procedures and methods approved by the Administrator. The method of destruction selected must preclude recognition or reconstruction of the classified information or material.

§ 60.18 Procedures for receiving and transmitting classified documents.

(a) The procedures for handling classified documents received by any person or unit of the Panama Canal Commission shall be as follows:

(1) All classified documents received by any person or unit of the Commission shall be immediately delivered to the Office of Executive Administration. Personnel of the Office of Executive Administration shall receipt for and record all classified documents received from outside agencies (except that those officials listed in § 60.4(a) of this part may receipt for classified documents from outside agencies, and then forward them to the Office of Executive Administration, in person or by an authorized representative).

(2) The receipted documents shall be permanently recorded by the Office of Executive Administration, at which time accountability for these documents shall be assumed by that office.

(3) When classified documents addressed to an individual in the Panama Canal Commission are received by the Office of Executive Administration, the addressee shall be notified by telephone that such classified matter is awaiting him; or the classified documents may be transmitted as provided in paragraph (c) and (d) of this section. When the addressee picks up the classified documents, all items shall be recorded on an individual classified documents register furnished by the Office of Executive Administration; one copy is to be permanently retained in the library, and one is to be furnished to the addressee, or his authorized representative, who shall sign for the documents opposite each item on the register. This method of transfer may be utilized in lieu of a receipt.

(b) When any unit of the Panama Canal Commission prepares a document which is to be classified Secret or Confidential for transmission to other offices of the Commission, the procedure shall be as follows:

(1) Prepare sufficient copies of the document for whatever distribution is required, and one additional copy for file in the Office of Executive Administration.

(2) Forward draft copies, handwritten copies, and carbons to the Office of Executive Administration for retention or destruction under established procedures.

(i) In addition, all portions of electric typewriter ribbons used in the preparation of classified material must be destroyed in the same manner. Reusable cloth typewriter ribbons must

be protected if used for preparation of classified material on the first pass through typewriter.

(ii) Classified material may not be entered into electronic equipment with memory capability, such as word processors, computers, personal computers, memory typewriters and other similar equipment, *unless* specific, written permission is obtained in advance, for each specific piece of equipment or system, from the Office of Executive Administration.

(3) Bring all copies of the document to the Office of Executive Administration. Copies shall be securely fastened underneath a cover sheet of the classification recommended by the originator.

(4) At the direction of the Director, Office of Executive Administration, the proper classification, short title, and serial number shall be assigned to each document, and an accountability stamp shall be placed on each copy.

(5) All classified documents shall be appropriately and conspicuously marked to put all persons on clear notice of their classified content. In addition, all classified documents shall be marked to indicate the downgrading-declassification schedule to be followed in accordance with § 60.9.

(6) The documents shall be recorded in the permanent documents log. The accountability for the documents passes from the originator to the Office of Executive Administration at this point.

(7) Distribution of the remaining copies shall be made according to the procedures covered in paragraphs (a)(3), (c) and (d) of this section. The number of copies of documents containing classified information shall be kept to a minimum to decrease the risk of compromise and reduce storage costs.

(c) When any unit of the Panama Canal Commission transmits documents or information classified Top Secret to other offices of the Commission, or any classified documents or information to any agencies or units other than the Commission, the procedure for handling such information shall be as follows:

(1) The documents or information shall be enclosed in opaque inner and outer covers before transmitting. The inner cover shall be a sealed wrapper or envelope plainly marked with the assigned classification and addresses of both sender and addressee. The outer cover shall be sealed and addressed with no identification of the classification of its contents.

(2) A receipt shall be attached to or enclosed in the inner cover. The receipt shall identify the sender, addressee, and the document, but shall contain no classified information. It shall be

immediately signed by the recipient and returned to the sender.

(d) When the Commission transmits classified documents or information to any agency other than the Commission, or documents or information classified Top Secret to other offices of the Commission, one or more of the following methods shall be used:

(1) By specifically designated personnel having the appropriate security clearance;

(2) By State Department diplomatic pouch;

(3) By messenger-courier system specifically created for that purpose;

(4) Over authorized secure communication circuits.

(e) Secret and confidential documents or information may also be transmitted by the following methods:

(1) As provided in paragraph (c) of this section, if transmittal is to be within the Commission;

(2) By U.S. registered mail through Army, Navy, or Air Force Postal Service facilities provided that the information does not at any time pass out of U.S. citizen control and does not pass through a foreign postal system; or

(3) Under escort of appropriately cleared personnel aboard U.S. Government and U.S. Government-contract vehicles or aircraft, ships of the United States Navy, civil-service-manned U.S. Naval ships, and ships of U.S. Registry. Operators of vehicles, captains or masters of vessels, and pilots of aircraft who are U.S. citizens and who are appropriately cleared may be designated as escorts.

§ 60.19 Reproduction of classified documents.

(a) Top Secret documents may not be reproduced without the consent of the originating agency unless otherwise marked by the originating office. The reproduction of Secret and Confidential documents may be restricted by the originating agency. Reproduced copies of classified documents are subject to the same accountability and controls as the original documents.

(b) The Office of Executive Administration is the only office within the Panama Canal Commission authorized to reproduce documents which have been classified. Other offices within the Panama Canal Commission which require the reproduction of classified documents shall take them to the Office of Executive Administration, where the documents will be reproduced, properly marked, controlled and then returned to the user.

Dated: February 9, 1988.

D.P. McAuliffe,
Administrator.

[FR Doc. 88-5192 Filed 3-10-88; 8:45 am]

BILLING CODE 3640-04-M

VETERANS ADMINISTRATION

38 CFR Part 3

Frequency of Payment of Improved Pension

AGENCY: Veterans Administration.

ACTION: Final regulation.

SUMMARY: The Veterans Administration (VA) is amending its adjudication regulations pertaining to the frequency of payment of improved pension. The amendment is necessary to insure that other Federal benefits are not denied to VA beneficiaries solely because of the payment of improved pension less frequently than monthly. The effect of this amendment will be to provide VA beneficiaries with the ability to elect monthly pension payments if to do so would be to their advantage.

EFFECTIVE DATE: March 11, 1988.

FOR FURTHER INFORMATION CONTACT: Robert M. White, Chief, Regulations Staff, Compensation and Pension Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233-3005.

SUPPLEMENTARY INFORMATION: It has been brought to our attention that in some instances payment of improved pension less frequently than monthly has resulted in the denial of other Federal benefits, such as Supplemental Security Income and Medicaid, because of the amount of the payment. By amending 38 CFR 3.30 to provide an option for VA beneficiaries who receive improved pension payments less frequently than monthly to elect to receive monthly payments, other Federal benefits will not be denied solely on the basis of the frequency of payment of improved pension. An editorial change is also being made to delete the last sentence of both paragraphs (b) and (c) of § 3.30 as redundant.

The VA finds good cause for dispensing with prior publication for public comments, such comments being unnecessary and contrary to the public interest. Denial of other Federal benefits is an unintended result for those VA improved pension beneficiaries who receive their payments quarterly, semi-annually, or annually under the current provisions of § 3.30. The beneficiaries

affected by this amendment may, therefore, choose to receive their improved pension benefits in the same manner, monthly, as do the vast majority of improved pension beneficiaries.

The Administrator has determined that denial of their Federal benefits because of the current provisions of § 3.30 is an unintended result and is contrary to the best interests of our improved pension beneficiaries. Any delay in effectuating this amendment could result in further denials of other Federal benefits with resulting hardship to our beneficiaries. Public participation is unnecessary and an effective date as of publication of this amendment is warranted.

Because a notice of proposed rulemaking is unnecessary and is not being published, this change does not come within the term "rule" as defined in, and made subject to, the Regulatory Flexibility Act (RFA), 5 U.S.C. 601(2). In any case, the Administrator hereby certifies that this regulation will not have a significant economic impact on a substantial number of small entities as they are defined in the RFA, 5 U.S.C. 601-612. The reason for this certification is that this regulatory amendment imposes no regulatory burden on small entities, and only claimants for VA benefits would be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this regulation is exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Administrator has determined that this regulation is nonmajor for the following reasons:

- (1) It will not have an annual effect on the economy of \$100 million or more.
- (2) It will not cause a major increase in costs or prices.
- (3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program numbers are 61.104 and 64.105.

List of Subjects in 38 CFR Part 3

Administrative practices and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: February 12, 1988.
Thomas K. Turnage,
Administrator.

PART 3—[AMENDED]

In 38 CFR Part 3, ADJUDICATION, § 3.30 is amended by adding introductory text and by revising paragraphs (b) and (c) to read as follows:

§ 3.30 Frequency of payment of improved pension.

Payment shall be made as shown in paragraphs (a), (b), (c), (d), and (e) of this section; however, beneficiaries receiving payment less frequently than monthly may elect to receive payment monthly in cases in which other Federal benefits would otherwise be denied.

(Authority: 38 U.S.C. 210(c))

(b) *Quarterly.* Payment shall be made every 3 months on or about March 1, June 1, September 1, and December 1, if the annual rate payable is at least \$144 but less than \$228.

(c) *Semiannually.* Payment shall be made every 6 months on or about June 1, and December 1, if the annual rate payable is at least \$72 but less than \$144.

[FR Doc. 88-5379 Filed 3-10-88; 8:45 am]
BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-3340-5]

Hazardous Waste Management System: Identification and Listing of Hazardous Waste; Final Exclusion Rule

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is granting a final exclusion from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32 to the Releases Control Branch (RCB) of EPA, for certain solid wastes generated at the Denney Farm site in McDowell, Missouri by the EPA Mobile Incineration System. This action responds to a delisting petition received by the Agency under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 268, 124, 270, and Title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically

provides generators the opportunity to petition the Administrator to exclude wastes on a "generator-specific" basis from the hazardous waste lists.

EFFECTIVE DATE: March 11, 1988.

ADDRESSES: The public docket for this final rule is located at the U.S. Environmental Protection Agency, 401 M Street, SW., (Sub-basement), Washington, DC 20460, and is available for public viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475-9327 for appointments. The reference number for this docket is "F-88-MIEF-FFFF." The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost 20 cents per page.

FOR FURTHER INFORMATION CONTACT:

The RCRA Hotline, toll-free at (800) 424-9346, or (202) 382-3000. For technical information concerning this notice, contact Mr. Bob Kayser, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-4536.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

Under 40 CFR 260.20 and 260.22, facilities may petition the Agency to remove their wastes from hazardous waste control by excluding them from the lists of hazardous waste contained at 40 CFR 261.31 and 261.32. Petitioners must provide sufficient information to EPA to allow the Agency to determine that (1) the waste to be excluded is not hazardous based upon the criteria for which it was listed, and (2) that no other hazardous constituents are present in the wastes at levels of regulatory concern.

B. History of this Rulemaking

The Releases Control Branch (RCB) of EPA, located in Edison, New Jersey, petitioned the Agency to exclude from hazardous waste control certain waste it intends to generate. After evaluating the petition, on January 4, 1988, EPA proposed to exclude RCB's waste from the lists of hazardous waste contained at 40 CFR 261.31 and 261.32, conditional upon RCB meeting certain monitoring and sampling and analysis requirements (see 53 FR 31). RCB's petition was for an "upfront" exclusion. A petitioner may request an upfront exclusion for wastes that have not yet been generated or that will be subject to further treatment. An upfront delisting petition (when treatment is planned) allows an exclusion to be granted based on

untreated waste characteristics, pilot-scale treatment data if available, process descriptions and batch testing requirements. The batch testing requirements may include analytical testing of representative samples obtained from the full-scale system. These data can be used to verify that the treatment system, once on-line, is operating as described in the petition. The Agency may specify verification testing limitations (i.e., the maximum allowable levels of hazardous constituents of concern in the waste) in the conditions of the granted exclusion; when the actual levels of the constituents of concern are below these levels, the waste will not be considered hazardous.

This rulemaking addresses public comments received on the proposal and finalizes the proposed exclusion.

II. Disposition of Petition

A. EPA Releases Control Branch

1. Proposed Exclusion

The EPA Releases Control Branch (RCB) petitioned the Agency for an upfront exclusion from EPA Hazardous Waste No. F027 of incineration residues from the treatment of certain cancelled pesticides in the EPA Mobile Incineration System (MIS). RCB based its petition on the expected low concentrations of the listed constituents in the incineration residues. In the proposed rule, the Agency concluded that data submitted by RCB, in conjunction with the verification testing conditions which the Agency proposed to require as part of a final exclusion, substantiated RCB's claim that the listed constituents of concern would not be present in the incineration residues above levels of regulatory concern. Furthermore, RCB submitted data on other non-listed hazardous constituents expected to be present in the untreated pesticides and potentially present in the incineration residues as products of incomplete combustion. The verification testing conditions attached to the exclusion are designed to ensure that these constituents will not be present in the incineration residues at or above levels of regulatory concern. See 53 FR 31, January 4, 1988, for a more detailed explanation of why EPA proposed to grant RCB's petition for these incineration residues.

2. Agency Response to Public Comments

General. The Agency received public comments on the proposed rule from four different interested parties. All commenters were generally in favor of the Agency's proposed decision to exclude the incineration residues from

the treatment of the cancelled pesticides. Several commenters specifically supported the Agency's efforts to meet the Agency's statutory duties under Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). As will be discussed in more detail below, several commenters submitted detailed comments arguing that the proposed testing requirements and accompanying delisting levels were too conservative.

One commenter stated that the conditions of the exclusion are so conservative that the impact of the exclusion will be to discourage future incineration of similar dioxin-contaminated materials, despite clear Congressional preference for permanent treatment of hazardous waste. The Agency strongly disagrees. EPA believes that the successful incineration of the cancelled pesticides and upfront exclusion of the resultant incineration residues will encourage an otherwise reluctant commercial hazardous waste management industry to step into the dioxin management business. EPA also believes that the conservative approach to the exclusion of these materials demonstrates a commitment to meeting statutory requirements to ensure protection of human health and environmental safety while encouraging permanent treatment solutions.

One commenter stated that the Agency failed to provide an adequate opportunity to comment on the proposal. The commenter believed that the administrative record for the proposal was inadequate. Although EPA believes that the record was and is fully adequate to support the proposal and final action, the Agency has provided in today's rulemaking preamble additional information to address specific concerns raised by this and other commenters. This information includes historical background on the 1985 exclusion for the MIS and on the evolution of the Delisting Program's rulemaking activities and criteria over the past three years. Because many of the health-based levels used to set delisting levels have been published in previous delisting decisions and because the Delisting Program's analytical approach and the MIS technology have been subject to extensive public notice and comment and were fully referenced in the notice of proposed rulemaking, the Agency believes that the administrative record was replete with necessary and sufficient information upon which the interested parties could comment. (The Agency notes that no commenter requested an extension of the comment period.)

The remainder of this section addresses specific aspects of the proposal on which the Agency received comment, including differences from previous related exclusions, the concept of upfront delistings, EPA's modeling approach in general, the appropriateness of the modeling approach for dioxin, and specific comments on the proposed conditions. In responding to comments and in considering approaches to and criteria for the proposed and final exclusions, the Agency has kept an open mind and has applied its best, current technical judgment.

a. Differences from Related Exclusions. One commenter characterized the proposal as "a startling and largely unexplained departure" from the approach used in the original exclusion for the MIS in 1985 (see 50 FR 30272, July 25, 1985). This commenter also stated that the proposal is inconsistent with the second proposal related to the MIS, for certain lagoon sludge from Syntex Agribusiness, published on September 3, 1987 (See 52 FR 33439).

The Agency's approach to the evaluation of petitions has evolved since the 1985 exclusion. Since that time, for example, the Agency has adopted the organic leachate model (OLM) as an analytical tool in reviewing delisting petitions (see 51 FR 41084, November 13, 1986). The OLM allows the Agency to evaluate the potential mobility of hazardous organic constituents. In addition, the Agency has implemented the requirements of the Hazardous and Solid Waste Amendments of 1984 (HSWA) that the delisting process consider all factors (including additional constituents) which could cause a waste to be hazardous rather than only those factors for which a waste was listed. EPA has also published a guidance manual (see "Petitions to Delist Hazardous Wastes—A Guidance Manual," U.S. EPA, Office of Solid Waste (EPA/530-SW-003), April 1985) which outlines the information needed in a delisting petition. Further, the recent Syntex proposal and today's final rule are examples of the Agency's current ability to evaluate and grant "upfront" exclusions.

One of the major differences between the 1985 exclusion and the 1987 and 1988 proposals is that the two recent proposals were for "upfront" exclusions; that is, the treatment residues from the incineration of the Syntex lagoon sludge and the cancelled pesticides have not yet been generated and therefore have not been characterized. In the case of the 1985 exclusion, RCB had submitted

actual analytical data on treatment residues for the EP toxic metals and hazardous organic compounds (identified in the petition as potential constituents of concern), including dioxin. Upon evaluation of these data, the Agency determined that batch testing was only necessary for the three metals listed in the conditions of that exclusion. Because similar data for the Syntex and cancelled pesticides treatment residues do not yet exist, the Agency is requiring as part of this final exclusion for the cancelled pesticides (and intends to require as part of any final exclusion for the Syntex residues) extensive verification sampling and analysis of the incineration residues when generated.

A second difference is that the materials to be incinerated in these three cases vary from contaminated soils to wastewater treatment sludge to commercial pesticide products. As a result of the inherent differences among these incinerator feeds, the constituents of concern vary.

The levels of regulatory concern for the metals vary among the three petitions due to application of the vertical and horizontal spread (VHS) model (see 50 FR 48896, November 27, 1985). As discussed in the preambles to the 1987 and 1988 proposals, the VHS model results in a scale which suggests that a large volume of waste exhibiting a particular extract level could be considered hazardous, while a smaller volume of the same waste could be considered non-hazardous (see 52 FR 33441 and 53 FR 32). Because the waste volumes of the three petitions vary, levels of concern for metals in these wastes also vary.

Further discussion of specific differences among the 1985 exclusion and the two recent proposals is provided later in today's notice in Section II.A.2.e. ii, iii, and iv.

Thus, differences between these actions properly reflect differences in the petitioned wastes and the Agency's evolving technical expertise in assessing the hazards of wastes proposed for exclusions. The mere fact that differences exist reveals nothing more or less than this. These differences have been publicly noticed in numerous post-1985 actions that appeared in the *Federal Register* and were fully referenced in the proposal. The Agency believes strongly that it should be able to apply superior methods of analysis or more accurate information when they become available to ensure protection of human health and the environment. Of course, commenters are encouraged to assess the Agency's evolving methodologies and to comment on

specific criteria where proposed. Specific challenges to the analysis for the proposed exclusion of cancelled pesticides are described below.

b. *Upfront Delisting as a Concept.* Several commenters expressed their support of the concept of upfront delistings. One commenter stated that the ability to determine upfront delisting levels will encourage waste minimization and treatment activities that reduce constituent concentrations below delisting levels. One commenter also noted that the availability of upfront delisting levels will discourage petitions which are likely to be unsuccessful, thereby saving industry and Agency resources. The Agency agrees with this commenter and is planning to amend the delisting criteria contained in 40 CFR 260.22 to include specific criteria for upfront delisting petitions.

One commenter suggested that EPA should use upfront delisting levels as a "floor" in other RCRA programs so that management requirements could cease or be reduced based upon the concentrations present in a particular waste stream. Although the Agency is interested in evaluating the commenter's novel approach, this approach has ramifications beyond the scope of this rulemaking. EPA encourages the commenter to provide in another forum more specific examples of such reduced management requirements, and a more thorough analysis of how such a program could be implemented.

c. *General Comments on the OLM and VHS Models.* Several commenters expressed concern regarding the Agency's use of the OLM and VHS models as factors in setting the delisting levels. The commenters referred the Agency to comments on the Agency's models that they had made on earlier proposals, and reiterated their major concerns that (1) the models use extremely conservative assumptions and do not include all critical parameters, resulting in unrealistic conclusions, and (2) the models do not allow for the consideration of site-specific factors.

EPA believes that the models used in the Delisting Program generally represent a reasonable worst case waste disposal scenario, and that a reasonable worst case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. Because a delisted waste is no longer subject to hazardous waste control, i.e., generators may dispose of wastes on their property or at any facility that will accept the waste, EPA currently believes that it can be inappropriate for the Delisting

Program to consider extensive site-specific factors. The Agency currently is unable to predict how a waste will be managed after delisting. For example, a generator may petition the Agency for delisting of a metal hydroxide sludge which is currently being managed in an on-site landfill and provide data on the nearest drinking water well, permeability of the aquifer, dispersivities, etc. If the Agency were to base its evaluation solely on these site-specific factors, the Agency might conclude that the waste, at that specific location, cannot affect the closest well, and the Agency might grant the petition. Upon promulgation of the exclusion, however, the generator is under no obligation to continue to manage the waste at the on-site landfill. In fact, it is likely that the generator will either choose to send the delisted waste off-site immediately, or will eventually reach the capacity of the on-site facility and subsequently send the waste off-site to a facility which may have very different hydrogeological and exposure conditions.

The decision not to consider site-specific criteria is particularly appropriate in this exclusion, because the petitioner has not requested that EPA give any consideration to site-specific factors. Therefore, the Agency has not examined these factors in making a decision in this case.

For the purposes of this particular rule, EPA has considered the appropriateness of the OLM/VHS model approach and of the model's parameters. First, the Agency decided that a landfill exposure scenario would be appropriate. EPA assessed the nature of the solid residues which will be generated by the MIS and concluded that landfilling is the most reasonable disposal scenario. (Due to the lack of organic content in the residues following incineration, land treatment would probably not be used. Similarly, management in an impoundment is not expected.) In terms of the liquid residues, EPA determined that the groundwater dilution of constituents afforded by application of the VHS model was appropriate, given past management practices for the MIS's scrubber water (i.e., land application). The Agency further considered whether the OLM/VHS model was the landfill model of choice. The primary criteria in this evaluation were (1) the need to apply a generic model (i.e., non-site specific), and (2) the need to apply an environmentally conservative model. As discussed above, the Agency believes that a generic modelling approach is needed because of the potential for

delisted wastes to be subject to numerous management options. Further, the Agency believes that a conservative approach is particularly warranted in regard to upfront exclusions, because the petitioner has not generated any residues yet and therefore has not provided any waste characterization.

d. *Specific Comments on the Use of the OLM/VHS Model for Dioxin Migration.* One commenter submitted comments regarding the appropriateness of the VHS model for setting delisting levels for dioxin. Specifically, the commenter noted that the VHS model does not include consideration of actual migration potential of a compound because the model does not account for attenuative mechanisms (such as sorption) which would retard the flow of hydrophobic compounds (such as dioxin) in ground water. The commenter noted that the original version of the model adopted by the Delisting Program (see Domenico and Palciauskas, "Alternative Boundaries in Solid Waste Management", *Groundwater*, v. 20, 301-311, 1982) included a term to account for retardation due to sorption, and that other models used by EPA (e.g., the Liner Location Model) consider sorption effects. The commenter believes that the omission of a migration factor in the VHS model will result in an overestimation of receptor concentrations of dioxin, other organic constituents, and metals.

The Agency acknowledges that sorption effects can play an important part in the migration of contaminants through ground water. Sorption effects, however, are highly variable from site to site and are dependent on many factors, such as soil characteristics. In keeping with the reasonable worst case approach, the Agency has determined not to consider site-specific sorption variables in applying the VHS model to these wastes. An important aspect of this reasonable worst-case scenario is that soil and aquifer conditions would not favor the attenuation of contaminants. Thus, sorption effects, in fact all attenuative effects, are assumed to have no effect on the receptor concentrations of ground-water contaminants. For very hydrophobic compounds, this assumption is a very conservative, worst-case assumption. The Agency notes, however, that this assumption becomes significantly less conservative when the hydrophobic compounds are codisposed or leached with solvents which tend to mobilize hydrophobic constituents.

The commenter also stated that the organic leachate model (OLM) is inappropriate for predicting the leaching

capacity of highly insoluble compounds because (1) highly insoluble compounds are not well represented in the OLM leaching data base, (2) the insoluble compounds that are represented show a poor correlation with the adopted model, and (3) actual leaching data from municipal incinerator ash show that the OLM overpredicts dioxin leaching levels by a factor of 100.

In response to these comments, some background information on the OLM is appropriate. The OLM was constructed using 353 data pairs representing 53 wastes bearing 73 different constituents. A number of the wastes sampled were bound in hydrophobic matrices (e.g., lumpy oil refinery sludge, viscous chemical manufacturing sludge, and tar/dirt mixtures from production of methyl ethyl ketone), other wastes were bound in inorganic matrices, and one waste type represented incinerator ash (API sludge/incinerator ash). The commenter is correct that the correlation coefficient determined solely for the low solubility constituents in the leaching data base is low. However, the correlation coefficient for any general subset of data studied in a regression analysis will be lower than the correlation coefficient for the overall data set. Part of what the commenter noticed is due to the fact that the low correlation coefficient was generated from a small data set.

The Agency agrees, however, that the variability of leaching data in general is partly responsible for the low correlation. In keeping with the reasonable worst-case approach, the Agency is taking a conservative stance in regard to the high variability in the leaching data on mobility of hydrophobic compounds. For this reason, the municipal incinerator ash data cannot be considered by itself. Even if the municipal incinerator ash data were added to the leaching data base, the paucity of these data would result in little or no effect on the general correlation coefficient.

The commenter also stated that the time frame for dioxin to reach the compliance point in the VHS model scenario is on the order of tens of thousands of years and that the dioxin is likely to degrade before actually reaching the receptor. However, the length of time required for contaminants in an aquifer to reach a potential receptor may be highly variable; full analysis of dioxin mobility would necessarily require a substantial amount of site-specific information. As discussed above, the Delisting Program does not currently believe it appropriate to consider site-specific information in

its analysis. In fact, because the Agency cannot know with certainty how the wastes will be disposed after exclusion, the Agency cannot discount the possibility that the wastes may be exposed to solubilizing agents which will tend to mobilize any dioxin remaining in the residues. For these reasons, the Agency has assumed in using the VHS model that (1) attenuation is insignificant, and (2) soil and aquifer conditions do not favor the degradation of contaminants en route to the receptor point.

The commenter disagreed with the application of the VHS model for dioxin because it does not, in general, conserve mass. That is, due to the simplifying assumptions used in the VHS model, the initial velocity of a contaminant entering the aquifer is determined only by the velocity of the ground water, the vertical dispersivity of the aquifer, and the width of the disposal unit. The commenter claimed that this initial velocity is also affected by the properties of the waste materials and net infiltration into the ground water. The commenter stated that, by not considering these factors, the VHS model can overestimate or, more likely, underestimate the dilution that may occur in an aquifer.

EPA acknowledges that the VHS model is more likely to overpredict (rather than underpredict) the receptor concentration of contaminants in any given waste due to the conservative nature of the assumptions underlying the model. EPA also recognizes that all models do not always predict factual values accurately. Notwithstanding, EPA believes that the VHS model provides a useful analytical tool for the evaluation of the hazards posed by these wastes. EPA has considered and rejected the use of alternative models and approaches for this specific petition, as described below. Unless the Agency is able to assure protection of human health and the environment without generic, conservative assumptions, the Agency will employ these assumptions. Commenters should, however, feel free to demonstrate that more specific alternatives are scientifically valid and adequate to replace such assumptions.

Other Models. One commenter objected to the proposed dioxin delisting levels as being unreasonably low in light of the Center for Disease Control (CDC) level of 1 ppb for residential soils (See Kimbrough, R.D., H. Falk, P. Stehr, 1984. Health Implications of 2,3,7,8-Tetrachlorodibenzodioxin (TCDD) Contamination of Residential Soil, *J. Tox. Env. Health*, 14:47-93). The delisting level for solid residues is

different from the CDC number for the following reasons:

- The CDC used a significantly different unit cancer risk (a factor used to compute a regulatory dose) from that used by EPA to set the health-based level. Because the CDC unit risk factor is lower, a higher concentration could be set for the same degree of overall risk than if EPA's factor were used.

- The CDC approach considers exposures to dioxin contaminated soil via ingestion, dermal absorption, and inhalation, while the VHS model considers ingestion of ground water.

- The CDC analysis was originally meant to specify acceptable levels of contamination which have become fixed to residential soils. The delisting levels represent raw waste concentrations.

The 1 ppb action level for residential soils recommended by CDC corresponds to an acceptable dose level of 636 picogram/kg/day. CDC calculated that the Virtually Safe Dose (equivalent to a cancer risk of 10^{-6} for dioxin falls within the range of 28 fg/kg/day to 1,428 fg/kg/day, but justified the chosen value of 636 fg/kg/day as acceptable in the context of their specific analysis. If the unit cancer risk of 6.4 fg/kg/day calculated by EPA (Health Assessment Document for Polychlorinated Dibenzo-p-dioxins, U.S. EPA, 1985) is used in the methodology presented by CDC, the resultant "action level" would be about 100-fold less than the 1 ppb level, i.e., on the order of 10 ppt (see the docket to this notice for the calculations supporting this estimation). Despite the numerous differences in the exposure scenarios and modeling approaches, this level is comparable to the levels of concern predicted by the OLM/VHS model analysis for solids.

One commenter challenged the Agency's unit cancer risk value used to derive health-based levels for the VHS model groundwater exposure scenario. The Agency acknowledges that the value used is conservative, but continues to believe that this conservative unit cancer risk value is appropriate for the purposes of this delisting evaluation. The Agency's full response to these comments is available in the docket to this rule (see "Response to Public Comments on Health-based Levels Used in the Cancelled Pesticides Proposed Exclusion", March 2, 1988).

The Agency considered the appropriateness of other exposure assessment models for dioxin as alternatives to the OLM/VHS model approach. As a result of comment on the 1987 and 1988 MIS delisting proposals, the CDC approach was considered as one alternative. The CDC approach considers very different exposure routes than the VHS model. In general, the exposure scenarios considered in the

CDC approach are appropriate for dioxin, although as demonstrated briefly above, the use of EPA's unit risk number with the CDC assumptions results in a similar, conservative level of concern as the use of the OLM/VHS model. The CDC analysis did not, however, take into account other routes of exposure, including ground water and food chain bioaccumulation. Under certain circumstances, the Agency believes that bioaccumulation may be an equally significant exposure route as those addressed in the CDC approach.¹ The Agency also notes that a number of assumptions used in the CDC approach, including estimated soil ingestion rates, have been revised or have been the subject of serious scientific debate since the development of the CDC action level. Based on the uncertainty associated with the underlying assumptions of the CDC approach and the difference in unit cancer risk levels, the Agency decided that the CDC approach is not a preferable alternative to the VHS model for evaluating this petition at this time.

The Agency also considered application of developmental work by EPA's Office of Research and Development (ORD) for the evaluation of dioxin-related delisting petitions. ORD is currently preparing a detailed exposure assessment document for dioxin. One portion of this work evaluates a variety of potential exposure routes for dioxin-contaminated soils and assigns estimated risk levels to these exposure routes for a given scenario. The Delisting Program has evaluated the merits of this approach and believes that, when finalized, this approach will be a valuable tool. ORD's work, however, has not been released for use at this time and is undergoing extensive peer and Science Advisory Board (SAB) review. Given the uncertainties associated with the technical merits of this approach, the Agency has determined that the ORD approach should not be used at this time. However, application of ORD's draft document to the facts of this case supports the low levels of concern predicted by the OLM/VHS model approach (i.e., low ppt level). (This

information has also been placed in the docket.)

One commenter pointed out that the Agency has re-examined its unit cancer risk number and has prepared a draft document (which the commenter submitted as part of the comment package) revising the number upwards by a factor of 16. The Agency is continuously considering new toxicological data and re-evaluating many of its health-based numbers. Petitioners who have either withdrawn their petitions or received denial decisions in the past are free to re-petition if final revisions to these numbers would potentially improve their chances of obtaining an exclusion. The report that the commenter has referred to, however, is a preliminary draft which has not been formerly released by the Agency, is not available for use as Agency policy, and is being circulated for review within the Agency for comments on its technical accuracy. As such, it cannot at this time be adopted by the Delisting Program and should not be considered in discussions of the applicability of the existing, Agency-sanctioned risk specific dose (RSD) for dioxin.

e. *Specific Comments on Proposed Verification Conditions—i. Condition 1—Compliance with Permit Conditions.* Two commenters agreed that all incinerators should operate in compliance with their permit conditions, but objected to the requirement in the proposed exclusion that residues be retreated if the incinerator is operating out of compliance with its permit conditions (see 53 FR 36, January 4, 1988). The commenters suggested that the results of the analyses of the residues be used to determine whether the residue be considered non-hazardous.

The Agency agrees with the commenters that the petitioner should analyze any residues generated whenever the MIS is operating outside of the limits specified in its permit. The Agency is specifically concerned with a hypothetical situation where the MIS experiences a mechanical system failure (i.e., failure of the secondary combustion chamber (SCC) or the air pollution control system, failure of the kiln to fire, etc.) after RCB has made a successful demonstration under Condition 6 of the exclusion and has terminated the daily analytical testing specified in Conditions 2 through 5. Although the Agency does not expect these failures to occur, we are modifying Condition 1 in response to comments to require RCB to conduct verification testing on the

¹ Rappe, C., H.R. Buser, D.L. Stalling, L.M. Smith, and R.C. Dougherty, 1981. Identification of Polychlorinated Dibenzofurans in Environmental Samples. *Nature*, 292:524-526.

Kuehl, D.W., P.M. Cook, A.R. Batterman, D.B. Lothenback, B.C. Butterworth and D.L. Johnson, 1985. Bioavailability of 2,3,7,8-Tetrachlorodibenzo-p-dioxin from Municipal Incinerator Fly Ash to Freshwater Fish. *Chemosphere*, 14:427-437.

Jensen, D.J., R.A. Hummel, N.H. Mahle, C.W. Kocher and H.S. Higgins, 1981. A Residue Study on Beef Cattle Consuming 2,3,7,8-tetrachlorodibenzo-p-dioxin. *J. Agric. Food Chem.*, 29:265-268.

incinerator residues should such a scenario occur:

Condition (1): The incinerator is monitored continuously and is in compliance with operating permit conditions. Should the incinerator fail to comply with the permit conditions relevant to the mechanical operation of the incinerator, RCB must test the residues generated during the run when the failure occurred according to the requirements of Conditions (2) through (5), regardless of whether or not the demonstration in Condition (6) has been made.

ii. *Conditions 2 and 3—Metals Analyses.* One commenter questioned why the 1988 and 1987 proposals imposed more stringent maximum allowable leachate and treatment residue concentrations for mercury, chromium, and selenium than the 1985 rule, as well as limitations for the remainder of the EP toxic metals, nickel, and cyanide that have no counterpart in the 1985 rule. As discussed earlier, the Agency is requiring in this exclusion (and intends to require in any exclusion for the Syntex residues) that the residues be tested for all of the EP toxic metals, nickel and cyanide, because the 1987 and 1988 proposals were for upfront exclusions. The treatment residues from the incineration of the Syntex lagoon sludge and the cancelled pesticides have not been generated yet and therefore have not been characterized. In the case of the 1985 exclusion, RCB had submitted actual analytical data on treatment residues. Upon evaluation of these data, the Agency determined that batch testing was only necessary for the three metals listed in the conditions of that exclusion. No such data exist for the Syntex or cancelled pesticides treatment residues since they have not been generated yet.

The commenter also questioned why the delisting levels for chromium, mercury, and selenium are different than the levels listed in the conditions for the 1985 exclusion. As discussed earlier, the delisting levels have been determined by back-calculating from the regulatory standards through the VHS model and are a function of the waste volume. Since the waste volume covered by the 1985 exclusion differs from the volume covered by the cancelled pesticides proposal (as well as Syntex's waste volume), the dilution factors differ and the resultant delisting levels also differ.

The commenter also requested an explanation of why the proposed delisting levels are lower than the EP Toxicity characteristic limits. The general purpose of the hazardous waste characteristics, such as the EP Toxicity characteristic, is to regulate the worst, rather than all, of the hazardous wastes

exhibiting a given characteristic. Wastes leaching concentrations of the EP toxic metals at less than 100 times the National Primary Drinking Water Standards (the EP Characteristic) are not necessarily non-hazardous. Rather, such wastes may be listed as hazardous if, pursuant to the criteria for listing contained in 40 CFR 261.11 of the regulations, these lesser concentrations in combination with other factors are deemed to pose substantial present or potential threats to human health and the environment. Similarly, the Delisting Program currently believes that wastes which exhibit levels slightly less than the levels established through the hazardous waste characteristics may still be identified as hazardous. Thus, levels established by application of the VHS model that are below the EP Toxicity characteristic levels may properly be considered to be hazardous.

One commenter submitted specific comments on the Maximum Concentration Limits (MCLs) which the Agency used in this exclusion for the EP toxic metals. The commenter argued that the drinking water standards (or MCLs) should not be used by EPA in establishing the delisting levels for metals. The commenter claimed that the MCLs are based on chronic exposure scenarios, and would necessarily overestimate the adverse health impact under a scenario where "the MCL is reached only transiently."

The Agency believes that the steady-state VHS model generally provides a reasonable worst case value for constituents of concern at a receptor well. In most cases, the concentration of a constituent in the leachate represents only a small fraction of the total mass of the constituent in the waste. Sustained leaching of the constituent is possible, which would lead to chronic exposure to the chemical over long time periods. Therefore, the Agency believes that use of health-based standards (such as MCLs) derived for chronic exposures is valid.

The commenter also raised a variety of questions concerning the bases of the MCLs for a number of the metals. The Agency's response to these comments is available in the docket to today's rule (see "Response to Public Comments on Health-based Levels Used in the Cancelled Pesticides Proposed Exclusion", March 2, 1988). The Agency is in the process of revising the MCLs, and all of the points raised by the commenter were acknowledged by EPA in a proposed rule (50 FR 46936, November 13, 1985). As discussed in the docket, EPA does not believe that the questions raised warrant the use of

different health-based levels for these constituents in this rulemaking.

The same commenter also challenged the health-based levels used to establish delisting levels for nickel and cyanide. The commenter further questioned why these two chemicals should be monitored because neither chemical was detected in the waste. The bases for these health-based levels were described in detail in a proposed rule establishing prohibition levels for the land disposal of "California List" metals and cyanide (see 52 FR 29994, August 12, 1987). These proposed health-based levels were established for the same exposure route as the MCLs (i.e., drinking water), and the Agency believes these levels are adequate for setting delisting levels. For both chemicals, the commenter noted the uncertainty in the bioavailability of these chemicals when ingested in food or water. The Agency agrees that some uncertainty exists in this area, but believes that the safety factors incorporated into the health-based levels appropriately address these (as well as other) uncertainties.

In response to the commenter's statement regarding the absence of nickel and cyanide in the untreated pesticides, the Agency notes that the petitioner submitted data only for an aqueous extract of the solid cancelled pesticides. While the analyses of the extract indicate that these two chemicals do not leach from the solid pesticide material, these results do not confirm the absence of these chemicals in the pesticide wastes. If these constituents are actually present in the untreated pesticides, they may potentially be more mobile after incineration due to the removal and destruction of the organic materials which can, under certain circumstances, retard leaching. Furthermore, cyanide is a possible product of incomplete combustion and may be formed during the incineration process. For these reasons, EPA believes that the analyses of nickel and cyanide in the final waste residues are justified.

iii. *Condition 4—Organics Analyses.* One commenter expressed support of the Agency's proposed approach to allow residuals to be disposed as non-hazardous when the constituents of concern are not detected using the appropriate SW-846 methods correctly and the practical quantitation limits exceed the delisting levels.

One commenter believed that the maximum waste residue concentrations proposed for organics are excessively low and are not necessary to protect human health and the environment. The

commenter questioned why any testing for organics is necessary, because the 1985 exclusion did not require batch testing for organics. The Agency refers the commenter to the discussions earlier in this notice regarding the differences between the 1985 exclusion and the upfront exclusions proposed in 1987 and 1988.

One commenter stated that the low delisting levels for certain organics will require the MIS to operate with extended residence times to ensure destruction of these constituents to the delisting levels. The commenter believed that this is unnecessary and will (1) effectively reduce the capacity of the MIS, (2) significantly increase operating costs, and (3) deter future thermal treatment of hazardous wastes.

The Agency acknowledges that effective hazardous waste treatment and detoxification can be quite expensive and time consuming. The Agency also recognizes that its conservative approach to protecting human health and the environment may cause increased treatment costs compared with less protective approaches. Notwithstanding, the Agency believes that the availability of upfront exclusions, even with conservative conditions, will encourage such treatment.

Two commenters supported the Agency's proposed approach to eliminate certain constituents from the verification testing requirements when the delisting levels exceed 1,000 ppm. The commenters agreed with the Agency that it is highly unlikely that these constituents will be present in the residues at these levels after incineration.

One commenter noted that the maximum allowable treatment residue concentrations for a number of constituents are substantially higher than the levels for the same constituents in the 1987 proposal. The commenter correctly attributes some of these differences to updates to the Agency's health-based levels. The constituents affected by these updates include chloroform, 1,2-dichloroethane, and 2,3,4,6-tetrachlorophenol. The commenter stated that for the sake of fairness and completeness, all of the exclusions should be comparable (except where the Agency has specifically demonstrated a health-based rationale for different requirements). The commenter assumed that the Syntex exclusion, when finalized, would incorporate the updated values.

The Agency notes that part of the difference in delisting levels is due to the different volumes of waste

petitioned for exclusion by the two petitioners (see earlier discussion of the effect of volume changes in setting delisting levels). The Agency agrees that the basis for exclusions should be similar unless appropriate reasons for differences exist, and is considering several options to bring the Syntex proposal and today's rule into closer agreement.

The commenter also questioned why the delisting level for chloroform in the solid residues differs between the 1987 and 1988 proposals by 540 fold, yet the difference in the health-based level and in waste volume is about 120 fold (12 fold in the health-based regulatory level and 10 fold in the waste volume). The Agency notes that differences in health-based levels for a given constituent are not directly proportional to the resulting differences in delisting levels because of the exponential form of the OLM, which essentially amplifies the differences in health-based levels. The public is referred to the docket for the mathematical derivation of this explanation.

One commenter stated that it was unable to comment on the acceptability of the proposed delisting levels because the health-based levels were not published in the proposal. These health-based levels were, however, placed in the docket to the notice and were thus available for review to substantiate any comment. Although the Agency believes that availability of such information in the docket fully complies with applicable requirements for notice, the Agency intends to publish such numbers in future proposals for upfront exclusions.

One commenter objected to the Agency's intention to add constituents to the list of constituents in Condition 4 if health-based levels became available after the publication of the proposal and before promulgation. The commenter argued that such values must be subject to notice and comment prior to inclusion in a final rule. The Agency agrees and has not added any additional constituents to the list in Condition 4.

One commenter suggested that the list of constituents to be tested for under Condition 4 be reduced by 50 percent. The commenter believes that the reduced list would allow for a conservative, more cost-effective verification that the incineration residues are not hazardous. The Agency considered but has rejected the commenter's suggestions because justification for specific deletions from the verification lists was not provided. In addition, HSWA requires that petitioners demonstrate that any potential constituents of concern do not

cause the wastes to be hazardous; the concept of verifying only 50 percent of the constituents of concern is not consistent with this mandate. The constituents listed in Condition 4 represent compounds which are known to be present in the untreated pesticides and compounds which potentially may be present in the incineration residues as products of incomplete combustion. The verification testing list presented in the proposal (and finalized today) was abbreviated by eliminating hazardous constituents which could not possibly be present at levels of regulatory concern (i.e., the level of regulatory concern was greater than 1,000 ppm). The Agency believes this reduction was appropriate because of (1) the low or non-existent levels of the "eliminated" constituents in the untreated pesticides, (2) analytical test results on residues generated in the past by the MIS, and (3) the MIS's demonstrated ability to achieve 99.9999 percent destruction and removal efficiency. Without further information sufficient to indicate that the other specific constituents will not be present at or above levels of regulatory concern in the residues, verification testing for such constituents is appropriate.

One commenter noted that the proposal did not specify precise analytical methodologies for analysis of the solid residues and that there are no approved methods for measuring volatiles in solids. Condition 4 of the proposal (and final rule) states that "analyses must be performed according to SW-846 methodologies", and the commenter is referred to that manual for the appropriate analytical method for the chemicals of concern. SW-846 does include methods for analyzing volatile organics in solid waste. For example, Method 8240 contains procedures for purging and analyzing volatile compounds from soil/sediment samples.

The commenter suggested that SW-846 methods be applied to an aqueous extract of the solid residues because this would be appropriate for a groundwater exposure scenario. The Agency believes that an aqueous extraction is appropriate for groundwater exposure scenarios, and for this reason, used the OLM (which was derived from an aqueous leaching data base, see 51 FR 41082, November 13, 1986) to predict aqueous leachate concentrations of organics from total concentrations of constituents in waste. Because the delisting levels were back-calculated (by using the VHS/OLM models to predict leachate from total constituent levels in the residue), double-counting would result if leachate levels of the

residues were compared to the delisting levels.

iv. Condition 5—Dioxin Analyses—General. One commenter objected to the inclusion of testing for dioxin because it is inconsistent with the 1985 exclusion. As stated earlier, the conditional testing requirements have been added to verify that the MIS can treat the cancelled pesticides as successfully as the petitioner claims it can. If the petition were a conventional petition instead of an upfront petition, the conditional testing requirements may not have been needed.

One commenter referenced the 1985 exclusion, pointing out that limits were not set for dioxin at that time, and that the Agency should be consistent and apply the same criteria to the recent proposals. As stated earlier in the Agency's response to general comments, the Agency's general approach to dioxin and that of the delisting program have developed considerably since the 1985 exclusion was promulgated, and the 1985 exclusion was not an upfront exclusion.

One commenter noted that the dioxin levels in the proposal are significantly more conservative than the levels promulgated in the 1985 exclusion. The commenter further noted that the Agency indicated in 1985 that the 1985 detection limit levels for dioxin in solids and aqueous media were not of regulatory concern, even though lower levels were achievable. In 1985, the Agency viewed the determination of dioxins by HRGC/HRMS as an experimental method. The Agency now believes that the better detection limits that are available (see discussion below on Method 8290), and the more conservative levels proposed for this exclusion, are more consistent with the delisting programs' unit cancer risk values and with the evolution of its reasonable worst case modeling approach. The Agency also believes that the development of a more conservative approach is a reasonable means of ensuring protection of human health and the environment.

The same commenter stated that if verification testing is required, the Agency should only require analysis for those dioxin isomers and homologs present in the untreated residues. The Agency disagrees. HSWA clearly states that the Agency must evaluate wastes for all factors which may cause a waste to be hazardous (see 42 U.S.C. 6921(f)). Dioxins and furans are known to be products of incomplete combustion. Therefore, the Agency believes it is appropriate to analyze these incineration residues for all possible dioxin isomers and homologs.

This commenter also submitted a catalog of other thermal treatment units which have treated dioxin-contaminated materials in the U.S. and claimed that few of these units have achieved the dioxin delisting levels specified in the cancelled pesticides exclusion. The Agency has examined the commenter's catalog and has concluded that the referenced thermal treatment units may indeed have actually achieved the delisting levels of concern, as each unit achieved non-detectable levels of dioxin in their ash. Without more information, there is no means to know whether the units did or did not achieve the delisting levels. Notwithstanding, the Agency notes that in some cases the detection limits achieved were equivalent to or below the PQLs proposed for this exclusion. The Agency therefore questions why the commenter claimed that few thermal units may be able to meet the conditions of today's rule.

The commenter also questioned why the Agency is requiring such rigorous treatment when data from municipal incinerators indicates that ash from such incinerators can exceed the MIS's delisting levels. Whether dioxins are found in municipal incinerator ash is not relevant to RCB's delisting petition. Issues related to the presence of dioxin in municipal incinerator ash will be considered in the Agency's overall decision on appropriate management standards for such ash.

Method 8290. One commenter protested the Agency's proposed requirement that Method 8290 be used to analyze the residues for dioxin. The commenter objected to the use of a method which has not been subject to general notice and comment through rule-making and is not in final form. As stated in the proposal, Method 8290 has been subjected to single laboratory validation. (See: ORD Publication EPA 600/4-86-004, "Protocol for the Analysis of 2,3,7,8-Tetrachlorodibenzo-p-dioxin by High Resolution Gas Chromatography/High Resolution Mass Spectrometry", January, 1986.) According to Agency experts who were consulted in the choice of a HRGC/HRMS method, Method 8290 is the method of choice (see memorandum to Suzanne Rudzinski from Robert L. Booth dated December 3, 1987 which was and is available in the docket to the proposal). The Agency also notes that HRGC/HRMS analysis has been available for several years, and although it is a sophisticated method, it is certainly not an untried, experimental procedure. In addition, although methods which are added to SW-846 are traditionally noticed in the Federal Register for public information and

comment, SW-846 is currently used as a guidance manual by the Delisting Program rather than as a regulatory requirement. In proposed rulemakings such as the proposed cancelled pesticides exclusion, EPA proposes the use of specific SW-846 methods and the regulated community is given the opportunity to comment on the methods. Comment on the proposed use of Method 8290 was received in this case.

One commenter objected to the use of Method 8290 on the grounds that it is not widely available, has not been used extensively, is twice as expensive as the less sensitive method for dioxins which is currently in SW-846 (Method 8280), is too complicated, will be burdensome for laboratories to avoid false positives due to laboratory cross-contamination of samples and equipment, and has a long turnaround time which will be burdensome during the incineration process due to the limited storage capacity at the Denney Farm site. The Agency agrees with the commenter that there are complications associated with the use of Method 8290. Nevertheless, the Agency is responsible for choosing an analytical method which is best suited for measuring the potential hazard of the cancelled pesticides incineration residues, not the method which is most convenient and inexpensive. Given the need for high analytical sensitivity to assure careful analyses of residue constituents, the Agency remains convinced that Method 8290 is the method of choice. Additionally, the Agency notes that there are a number of laboratories which are familiar with and experienced in the conduct of Method 8290. Many of these laboratories participated in the development of the method and should be able to provide analytical services with a minimal turn-around and adequate quality control.

Practical Quantitation Limits (PQLs). Two commenters objected to the Agency specifying PQLs in delistings. One commenter stated that setting an absolute limit for an analytical method as a delisting requirement is precedent-setting and in many cases would be inappropriate. The commenter expressed concern that the Agency intends to specify PQLs routinely in all future upfront exclusions. However, the commenter also stated that the logic which the Agency used in estimating a PQL for dioxin may be reasonable for the specific application of the cancelled pesticides exclusion, since the laboratories used to conduct the analysis will be limited to the few qualified laboratories in the country. The same commenter went on to state

that for future delistings, the Agency should not estimate a PQL, but should allow a laboratory to establish a matrix-specific, laboratory-specific minimum detection limit (MDL) for the constituent of concern. The PQL should be a set multiple of this MDL. Finally, the commenter agreed that the multiplier for setting a PQL from an MDL is almost certainly in the range of three to ten, as stated by the Agency in the proposal. Another commenter stated that the low PQLs are unjustified given the lack of rigorous interlaboratory studies for Method 8290.

The Agency believes that setting specific PQLs for upfront delisting petitions is appropriate. For upfront delistings, the data submittal requirements must be described in detail to minimize situations where the petitioner submits verification data that the Agency subsequently might reject as inadequate. One of the critical elements of verification testing is the analytical detection limits. The adequacy of the detection limits is judged by comparing the achieved detection limits with the suggested detection limits in SW-846. The Agency frequently requests that the petitioner reanalyze the waste using lower detection limits or provide a detailed discussion of why lower detection limits cannot be achieved. To avoid such situations, the Agency believes that specification of reasonable but conservative MDLs and PQLs that labs must meet is appropriate. RCB's petition was for an upfront delisting and no analytical data on the treatment residues were available for EPA's review. As was discussed in detail in the proposal, the Agency considered data from a number of laboratories that have analyzed wastes for dioxin using Method 8290 in order to establish a reasonable yet conservative PQL. (The Agency notes that PQLs were only specified in the dioxin testing condition. Dioxin is the primary listed constituent of concern in the petitioned waste (EPA Hazardous Waste No. F027).)

Several commenters stated that many factors (i.e., waste matrix interferences, background levels, operator and instrument variability) can affect a method's analytical sensitivity. Method 8290 has been designed with extensive cleanup procedures and instrumentation calibration requirements. These features were added to the method to maximize the method's sensitivity and minimize potential interferences. EPA consulted with experts regarding the feasibility of the proposed PQLs and determined that, given the quality and expertise of the laboratories which may be used to conduct the dioxin analyses, the

proposed PQLs are reasonable. Future determinations of PQLs will be made on a matrix- and constituent-specific basis.

One commenter argued that the procedure used to determine minimum detection limits (MDLs) and PQLs is meant to be applied by specific laboratories for a specific chemical and specific matrix, rather than as specified in the proposal. The commenter also stated that if the Agency is concerned about laboratories having abnormally high MDLs or PQLs because of poor practices, this concern should be addressed through existing QA/QC programs instead of through the specification of PQLs. The Agency notes that the levels presented in the proposal are not specific targets for the petitioner to achieve, but rather maximum acceptable PQLs, or the upper bound of acceptable detection limits. These values were determined by evaluating the levels which have been achieved by a number of laboratories which are familiar with the method. The Agency also notes that Method 8290 is a very detailed and specific method with extensive QA/QC requirements. Agency experts believe that laboratories which follow the method procedure correctly should be able to achieve the PQLs. The Agency is not indicating that these PQLs for this dioxin waste are necessarily appropriate for all petitions. PQLs depend on the waste matrix and thus will be determined, as needed, on a case-by-case basis.

One commenter complained that the Agency has set the maximum PQLs arbitrarily. Specifically, the commenter stated that it was unclear why the Agency set the PQLs to be less than three times the minimum detection limits (MDL) after the Agency indicated that PQLs are normally set at three to ten times the MDL. One commenter, having recommended that the Agency not specify PQLs, provided an alternative recommendation that if PQLs are to be used, the Agency should use a factor of 10 to determine the PQL. The commenter did not provide specific justification as to why the factor of 10 is more appropriate than a factor of three.

Although the Agency defended its earlier choice of PQLs as reasonable because (1) the residues to be analyzed will be relatively free of interferences, (2) the petitioner will be using highly qualified and experienced operators and laboratories to conduct the analyses, and (3) the values chosen are extremely conservative, the Agency acknowledges that standard scientific protocol used to establish PQLs specifies three to ten times the MDL, rather than two or two-and-one-half times the MDL. EPA is

therefore revising the condition to raise the PQLs to three times the MDL (the most conservative value in this range), i.e., to 15 ppt and 0.120 ppt for the solid residues and wastewaters, respectively.

The Agency received comments which pointed out that the Agency had specified maximum PQLs for Method 8290 but did not specify whether they applied only to 2,3,7,8-TCDD or to all of the polychlorinated dioxins and furans. The commenter referenced the ad hoc Agency work group which had originally recommended Method 8290 and the PQLs, and stated, that (1) the PQLs specified in the proposal were meant to apply to 2,3,7,8-TCDD, (2) a laboratory achieving these PQLs would achieve "reasonable" detection limits for the other congeners and homologs, (3) equivalent PQLs should be achievable for all tetra- and penta- homologs, and (4), for the hexa- homologs, PQLs should be 2.5 times the 2,3,7,8-TCDD PQLs. The sensitivity of the 8290 method decreases somewhat for the more highly chlorinated homologs, and the method specifies that method calibration limits for the hexachlorinated compounds are 2.5-fold higher than the limits for the tetrachlorinated homologs. The Agency agrees that these levels should have been specified in the proposal. The Agency also agrees with the commenter's suggested PQLs and is modifying the condition accordingly:

Condition (5): RCB must generate, prior to disposal of residues, verification data from each eight hour run for each treatment residue (i.e., kiln ash, cyclone ash, separator sludge, and filtered wastewater) to demonstrate that the residues do not contain tetra-, penta-, or hexachlorodibenzo-p-dioxins or furans at levels of regulatory concern. Samples must be collected as specified in conditions (2) and (3). The TCDD equivalent levels for solids must be less than 5 ppt and for wastewater the levels must be below 0.002 ppt. Any residues with detected dioxins or furans in excess of these levels must be retreated or disposed as acutely hazardous. Method 8290, a high resolution gas chromatography and high resolution mass spectroscopy (HRGC/HRMS) analytical method, must be used. For tetra- and pentachlorinated homologs, the maximum practical quantitation limit must not exceed 15 ppt for solids and 0.120 ppt for wastewaters. For hexachlorinated homologs, the maximum practical quantitation limit must not exceed 37 ppt for solids and 0.3 ppt for wastewaters.

One commenter objected to the requirement that residues be retreated or managed in accordance with Subtitle C if no dioxin is detected in the residues but the laboratory cannot meet the required PQLs. One commenter suggested that the Agency validate an analytical method's ability to achieve

any future MDL that is set as a condition of an upfront delisting. The Agency has used its best technical judgment in setting MDLs at realistic values, and will continue to do so in the future. The Agency believes that this condition is necessary to protect human health and the environment, and it is appropriate because the exclusion is in response to an upfront delisting petition. The Agency notes that in such instances, the petitioner has a number of options: (1) the petitioner can retreat the residue; (2) the petitioner can also dispose of the residue as hazardous; (3) the petitioner can request that the laboratory reanalyze the residues to achieve the PQLs specified in the exclusion, or the petitioner can retain the services of a different laboratory that is capable of achieving the PQLs; or (4) the petitioner can submit the high analytical detection limits with documentation certifying the laboratory's inability to achieve lower detection limits due to specific matrix interferences which the method cannot address.

Several commenters pointed out confusing printing errors in the proposals regarding the PQLs. As a point of clarification, the final sentence in the second column on 53 FR 38 of the proposal should have read as follows: "Using a factor of three to determine the resultant PQL, most highly qualified laboratories should be able to achieve PQLs of 15 ppt for solids and 120 ppq for wastewaters."

v. Condition (6)—Termination Provision and Data Submittal Requirements. Three commenters expressed support of the termination of verification testing after four consecutive clean batches of residues are generated.

One commenter objected to the requirement that the petitioner continue testing until the Assistant Administrator of the Office of Solid Waste and Emergency Response notifies the petitioner that the testing requirement has been terminated. The commenter believes that this is an unworkable approach given the constraints of the storage capacity at the Denney Farm site, the lengthy analytical turnaround times, and the potential administrative delays at the Agency. The commenter suggests that either the Agency commit to an expedited review of the verification data or allow the petitioner to evaluate the samples independently to ensure compliance with the exclusion conditions.

The Agency believes at this time that Agency review of verification data is needed to maintain the integrity of the upfront delisting process, and the

Agency will strive to review this data expeditiously.

The two commenters objected to the requirement that all data be submitted to EPA. The commenters believe that on-site summaries should be acceptable and would save EPA the cost of handling and storing unneeded data. The Agency disagrees with the commenters' characterization of the data as unneeded. These data will serve as validation of the petitioner's claim that the residues will be non-hazardous, and must be available for public review in the docket.

3. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the incineration residues from the treatment of the cancelled pesticides, when subject to the verification testing requirements specified in the exclusion, should be excluded from hazardous waste control. The Agency, therefore, is granting a final exclusion to the Releases Control Branch for the incineration residues generated from the treatment of cancelled pesticides in the EPA Mobile Incineration System. These wastes are listed as EPA Hazardous Waste No. F027 and will be generated at the Denney Farm site in McDowell, Missouri. The exclusion remains in effect unless the wastes vary from those originally described in the petition (i.e., the wastes are altered as a result of changes in the treatment process). The current exclusion applies only to the processes covered by the original demonstration. The facility would require a new exclusion if the treatment process is altered, and accordingly would need to file a new petition. The facility must treat such wastes as hazardous until a new exclusion is granted.

Although management of the wastes covered by this petition is relieved from Subtitle C jurisdiction, the generator of a delisted waste may either treat or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

III. Effective Date

This rule is effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended section

3010 of RCRA to allow rules to become effective in less than 6 months when the regulated community does not need the 6-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense which would be imposed on this petitioner by an effective date 6 months after promulgation and the fact that a 6-month deadline is not necessary to achieve the purpose of section 3010, we believe that this rule should be effective immediately. These reasons also provide a basis for making this rule effective immediately under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

IV. Limited Effect of Federal Exclusion

States are allowed to impose requirements that are more stringent than EPA's pursuant to section 3009 of RCRA. State programs thus need not include those Federal provisions which exempt persons from certain regulatory requirements. For example, States are not required to provide a delisting mechanism to obtain final authorization. If the State program does include a delisting mechanism, however, that mechanism must be no less stringent than that of the Federal program for the State to obtain and keep final authorization.

As a result of enactment of the Hazardous and Solid Waste Amendments of 1984, any State which had delisting programs prior to the Amendments must become reauthorized under the new provisions (See RCRA Regulation Statutory Interpretation #4: Effect of Hazardous and Solid Waste Amendments of 1984 on State Delisting Decisions, May 16, 1985, Jack W. McGraw, Acting Assistant Administrator for the Office of Solid Waste and Emergency Response.) To date, only one State (Georgia) has received reauthorization for their delisting program. The final exclusion granted today, therefore, is issued under the Federal program. A state, however, can still decide whether to exclude these wastes under the State program as a matter of state law. Since a petitioner's waste may be regulated under a dual system (i.e., both Federal and State programs), petitioners are urged to contact their State regulatory authority to determine the current status of their wastes under State law.

V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is

"major" and therefore subject to the requirements of a Regulatory Impact Analysis. This rule to grant an exclusion is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding wastes generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling the facility to treat its waste as nonhazardous. There is no additional economic impact, therefore, due to today's rule.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601-612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which

describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities since its effect will be to reduce the overall costs of EPA's hazardous waste regulations and is limited to one facility. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Authority: Sec. 3001, RCRA, 42 U.S.C. 6921.

Date: March 7, 1988.

Jeffery Denit,

Acting Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is amended as follows:

PARTS 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Sections 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6912, and 6922).

2. In Appendix IX, add the following waste stream in alphabetical order to Table 1 as indicated:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
EPA's Mobile Incineration System (MIS).	McDowell, MO.....	Kiln ash, cyclone ash, separator sludge, and filtered wastewater (except spent activated carbon) (EPA Hazardous Waste No. F027) generated during the treatment of cancelled pesticides containing 2,4,5-T and Silvex and related materials by the EPA's Mobile Incineration System at the Denney Farm Site in McDowell, Missouri after [insert date of final rule publication in the Federal Register], so long as: (1) the incinerator is monitored continuously and is in compliance with operating permit conditions. Should the incinerator fail to comply with the permit conditions relevant to the mechanical operation of the incinerator, RCB must test the residues generated during the run when the failure occurred according to the requirements of Conditions (2) through (5), regardless of whether or not the demonstration in Condition (6) has been made; (2) Four grab samples of wastewater must be composited from the volume of filtered wastewater collected after each eight hour run and, prior to disposal, the composite samples analyzed for the EP toxic metals, nickel, and cyanide. If arsenic, chromium, lead, and silver EP leachate test results exceed 0.44 ppm; barium levels exceed 8.8 ppm; cadmium and selenium levels exceed 0.09 ppm; mercury levels exceed 0.02 ppm; nickel levels exceed 4.4 ppm; or cyanide levels exceed 1.8 ppm, the wastewater must be retreated to achieve these levels or must be disposed in accordance with Subtitle C of RCRA. Analyses must be performed according to SW-846 methodologies. (3) One grab sample must be taken from each drum of kiln ash generated during each eight hour run; all grabs collected during a given eight hour run must then be composited to form one composite sample. One grab sample must be taken from each drum of cyclone ash generated during each eight hour run; all grabs collected during a given eight hour run must then be composited to form one composite sample. A composite sample of four grab samples of the separator sludge must be collected at the end of each eight hour run. Prior to the disposal of the residues from each eight hour run, an EP leachate test must be performed on these composite samples and the leachate analyzed for the EP toxic metals, nickel, and cyanide. If arsenic, chromium, lead, and silver EP leachate test results exceed 1.6 ppm; barium levels exceed 32 ppm; cadmium and selenium levels exceed 0.3 ppm; mercury levels exceed 0.7 ppm; nickel levels exceed 16 ppm; or cyanide levels exceed 6.5 ppm, the wastes must be retreated to achieve these levels or must be disposed in accordance with Subtitle C of RCRA. Analyses must be performed according to SW-846 methodologies. (4) RCB must generate, prior to disposal of residues, verification data from each eight hour run for each treatment residue (<i>i.e.</i>, kiln ash, cyclone ash, separator sludge, and filtered wastewater) to demonstrate that the maximum allowable treatment residue concentrations listed below are not exceeded. Samples must be collected as specified in conditions (2) and (3). Analyses must be performed according to SW-846 methodologies. Any residues which exceed any of the levels listed below must be retreated or must be disposed as hazardous. Solid and sludge concentrations must not exceed the following levels: Aldrin—0.015 ppm Benzene—9.7 ppm Benzo(a)pyrene—0.43 ppm Benzo(b)fluoranthene—1.8 ppm Chlordane—0.37 ppm Chloroform—5.4 ppm Chrysene—170 ppm Dibenz(a,h)anthracene—0.083 ppm 1,2-Dichloroethane—4.1 ppm Dichloromethane—2.4 ppm 2,4-Dichlorophenol—480 ppm Dichlorvos—260 ppm Disulfaton—23 ppm

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		Endosulfan I—310 ppm Fluorene—120 ppm Indeno(1,2,3-cd)pyrene—330 ppm Methyl parathion—210 ppm Nitrosodiphenylamine—130 ppm Phenanthrene—150 ppm Polychlorinated biphenyls—0.31 ppm Tetrachloroethylene—59 ppm 2,4,5-TP (silvex)—110 ppm 2,4,6-Trichlorophenol—3.9 ppm. And detected wastewater concentrations do not exceed the following levels: Acetone—35 ppm Aldrin—0.000018 ppm Benzene—0.044 ppm Benzo(a)pyrene—0.000027 ppm Benzo(b)fluoranthene—0.00018 ppm Biphenyl—15 ppm Bis-2-ethylhexyl phthalate—6.2 ppm Chlordane—0.00024 ppm Chlorobenzene—8.8 ppm Chloroform—0.052 ppm Chrysene—0.0018 ppm 2,4-D—3.5 ppm Dibenz(a,h)anthracene—0.000006 ppm Dichloromethane—0.042 ppm 1,3-Dichlorobenzene—34 ppm 1,4-Dichlorobenzene—0.66 ppm 1,2-Dichlorobenzene—26 ppm 1,2-Dichloroethane—0.044 ppm 2,4-Dichlorophenol—0.88 ppm Dichlorvos—0.78 ppm Diethyl phthalate—4,400 ppm Disulfaton—0.016 ppm Endosulfan I—0.020 ppm Ethyl benzene—35 ppm Fluoranthene—1.8 ppm Fluorene—0.018 ppm Indeno(1,2,3-cd)pyrene—0.0018 ppm Isophorone—62 ppm Methyl chloride—35 ppm Methyl parathion—0.099 ppm Naphthalene—80 ppm Nitrosodiphenylamine—0.063 ppm Pentachlorophenol—8.8 ppm Phenanthrene—0.018 ppm Phenol—8.8 ppm Polychlorinated biphenyls—0.000072 ppm Pyrene—35 ppm Tetrachloroethylene—0.059 ppm 2,3,4,6-Tetrachlorophenol—8.8 ppm Toluene—88 ppm 2,4,5-TP (silvex)—0.088 ppm 1,2,4-Trichlorobenzene—6.2 ppm 2,4,6-Trichlorophenol—0.018 ppm 2,4,5-Trichlorophenol—35 ppm 2,4,5-Trichlorophenoxyacetic acid—0.88 ppm Xylene—619 ppm; (5) RCB must generate, prior to disposal of residues, verification data from each eight hour run for each treatment residue (i.e., kiln ash, cyclone ash, separator sludge, and filtered wastewater) to demonstrate that the residues do not contain tetra-, penta-, or hexachlorodibenzo-p-dioxins or furans at levels of regulatory concern. Samples must be collected as specified in conditions (2) and (3). The TCDD equivalent levels for solids must be less than 5 ppt and for wastewater the levels must be below 0.002 ppt. Any residues with detected dioxins or furans in excess of these levels must be retreated or must be disposed as acutely hazardous. Method 8290, a high resolution gas chromatography and high resolution mass spectroscopy (HRGC/HRMS) analytical method, must be used. For tetra- and penta-chlorinated dioxin and furan homologs, the maximum practical quantitation limit must not exceed 15 ppt for solids and 120 ppq for wastewaters. For hexachlorinated dioxin and furan homologs, the maximum practical quantitation limit must not exceed 37 ppt for solids and 0.3 ppt for wastewaters; (6) The test data from conditions (1), (2), (3), (4) and (5) must be kept on file by RCB for inspection purposes and must be compiled, summarized, and submitted to the Assistant Administrator for Solid Waste and Emergency Response by certified mail on a monthly basis and when the treatment of the cancelled pesticides and related materials is concluded. The testing requirements for conditions (2), (3), (4), and (5) will continue until RCB provides the Assistant Administrator with the results of four consecutive batch analyses for the petitioned wastes, none of which exceed the maximum allowable treatment residue concentrations listed in these conditions and the Assistant Administrator notifies RCB that the conditions have been lifted. All data submitted will be placed in the RCRA docket.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(7) RCB must provide a signed copy of the following certification statement when submitting data in response to the conditions listed above: "Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations, I certify that the information contained in or accompanying this document is true, accurate, and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) accuracy, I certify as the Agency official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete."

[FR Doc. 88-5467 Filed 3-10-88; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Federal Insurance Administration; Final Flood Elevation Determinations

AGENCY: Federal Emergency
Management Agency.

ACTION: Final rule.

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

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

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

ADDRESSES: See table below.

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

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

This final rule is issued in accordance with section 110 of the Flood Disaster

Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

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

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

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

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

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

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

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
ALABAMA	
Chambers County (Unincorporated Areas) (FEMA Docket No. 6917)	
<i>Chattahoochee River:</i>	
About 4.2 miles downstream of Riverview Dam.....	*527
Just downstream of Langdale Dam.....	*552
Just upstream of Langdale Dam.....	*558
About 2000 feet downstream of West Point Dam.....	*580
<i>Osanippa Creek:</i>	
About 800 feet downstream of U.S. Highway 29.....	*577
About 1,500 feet downstream of Interstate.....	*596
<i>Tributary No. 2:</i>	
At mouth.....	*579
About 1.2 miles upstream of County Road 55.....	*597
<i>Moore's Creek:</i>	
About 600 feet downstream of State Highway 29.....	*552
Just upstream of Fob James Boulevard.....	*556
<i>Ginnie Creek:</i>	
At mouth.....	*553
About 500 feet upstream of Fob James Boulevard.....	*587
Maps available for inspection at the County Commissioner's Office, Valley, Alabama.	
Lanett (city), Chambers County (FEMA Docket No. 6917)	
<i>Chattahoochee River:</i>	
About 1.6 miles downstream of U.S. Highway 29.....	*571
About 1,100 feet upstream of U.S. Highway 29.....	*575
Maps available for inspection at the City Hall, Lanett, Alabama.	
ARIZONA	
Colorado City (town), Mohave County (FEMA Docket No. 6920)	
<i>Short Creek:</i>	
Approximately 15 feet upstream of State Highway 389.....	*4,930
Approximately 30 feet downstream of North Central Road.....	*4,977
At Usona Avenue.....	*5,010
Maps are available for review at Town Hall, 15 N. Central Street, Suite A, Colorado City, Arizona.	
ARKANSAS	
Lepanto (city), Polk County (FEMA Docket No. 6917)	
<i>Left Hand Chute of Little River:</i>	
Approximately 1.1 miles downstream of most downstream crossing of State Route 140.....	*220
Approximately .61 mile upstream of Old State Route 140.....	*223
Maps available for inspection at 117 South Greenwood, Lepanto, Arkansas.	

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
CALIFORNIA		San Marcos (city), San Diego County (FEMA Docket No. 6917)		COLORADO	
<i>Pacific Ocean:</i>		<i>San Marcos Creek:</i>		<i>Boulder County (Unincorporated Areas), (FEMA Docket No. 6903)</i>	
Center of Strand Way, 200 feet along the street from its intersection with Pomona Avenue.....	*6	Just upstream of Discovery Road.....	*514	<i>Boulder Creek:</i>	
A point 100 feet due south of the southwest end of Avenida del Sol.....	*7	At the intersection of Mission Road and Twin Oaks Road.....	*581	At the intersection with Northeast County Line Street.....	*4,948
Maps are available for review at City Hall, 1825 Strand Way, Coronado, California.		Approximately 20 feet downstream of Olive Drive.....	*698	At confluence with Barker Reservoir.....	*8,028
Encinitas (city), San Diego County (FEMA Docket No. 6917)		<i>East Branch San Marcos Creek:</i>		<i>South Boulder Creek:</i>	
<i>Pacific Ocean:</i>		At confluence with San Marcos Creek.....	*565	At confluence with Boulder Creek.....	*5,175
Approximately 200 feet west of Tattenham Street.....	*15	At the intersection of Mission Road and Richland Road.....	*634	500 feet upstream of Eldorado Springs Road.....	*5,781
Approximately 260 feet west of intersection of Neptune Avenue and Jason Street.....	*9	Approximately 10 feet downstream of Rock Springs Road.....	*651	<i>Coal Creek:</i>	
Approximately 300 feet west of intersection of Neptune Avenue and Europa Street.....	*10	Maps are available for review at City Hall, 105 West Richmar Avenue, San Marcos, California.		At confluence with Boulder Creek.....	*4,960
Approximately 330 feet west of intersection of Neptune Avenue and Athena Street.....	*13	Santa Maria (city), Santa Barbara County (FEMA Docket No. 6917)		3,400 feet upstream of Third Avenue.....	5,536
Approximately 600 feet west of intersection of La Mesa Avenue and Orpheus Avenue.....	*12	<i>Bradley Ditch:</i>		<i>Dry Creek No. 1:</i>	
Approximately 325 feet west of intersection of Neptune Avenue and La Mesa Avenue.....	*11	At downstream corporate limits.....	*197	At confluence with St. Vrain Creek.....	*4,940
Approximately 300 feet west of intersection of 5th Street and 'A' Street.....	*10	Approximately 200 feet upstream of Railroad Avenue.....	*205	5,950 feet upstream of North 75th Street.....	*5,111
Approximately 150 feet west of intersection of 5th Street and 'B' Street.....	*8	Approximately 100 feet upstream of U.S. Highway 101 and State Highway 166.....	*220	<i>Clover Basin Tributary:</i>	
Approximately 350 feet west of intersection of 4th Street and 'D' Street.....	*10	Just downstream of Jones Street and the Santa Maria Valley Railroad.....	*240	At confluence with Dry Creek No. 1.....	*5,037
Approximately 330 feet west of intersection of 4th Street and 'E' Street.....	*11	Maps are available for inspection at City of Santa Maria Department of Public Works, 810 West Church Street, Santa Maria, California.		80 feet upstream of North 75th Street.....	*5,057
Approximately 250 feet west of intersection of 4th Street and 'G' Street.....	*12	Solana Beach (city), San Diego County (FEMA Docket No. 6917)		<i>Steel Lakes Tributary:</i>	
Approximately 450 feet west of intersection of 3rd Street and 'J' Street.....	*11	<i>Pacific Ocean:</i>		At confluence with Dry Creek No. 1.....	*5,050
Approximately 650 feet west of intersection of 1st Street and 2nd Street.....	*10	Approximately 700 feet southwest of the intersection of Sierra Avenue and Del Mar Shores Terrace.....	*12	At upstream face of North 75th Street.....	*5,059
Approximately 1,100 feet west of intersection of Summit Avenue and Westminster Drive.....	*9	Approximately 550 feet west of the intersection of Sierra Avenue and Palm Drive.....	*13	<i>Dry Creek No. 2:</i>	
Approximately 750 feet west of intersection of Hayden Drive and Montgomery Avenue.....	*10	Approximately 500 feet west of the intersection of Sierra Avenue and Linda-Mar Drive.....	*12	At downstream face of Northeast County Line Street.....	*4,901
Approximately 700 feet west of intersection of San Elijo Avenue and Birmingham Drive.....	*11	Approximately 450 feet west of the intersection of Sierra Avenue and Plaza Street.....	*10	50 Feet downstream of State Highway 119.....	*5,135
Approximately 500 feet west of intersection of Camino Del Mar and Chesterfield Drive.....	*10	Approximately 300 feet west of the southern intersection of Heux Avenue and Hill Street.....	*12	<i>Dry Creek No. 3:</i>	
Approximately 200 feet west of intersection of San Elijo Avenue and Kilkenny Drive.....	*7	Approximately 500 feet west of the intersections of Clark Street, Hill Street and Sierra Avenue.....	*14	At confluence with Boulder Creek.....	*5,067
At southern corporate limits.....	*13	Approximately 300 feet west of the intersection with Solana Vista Drive and Pacific Avenue.....	*13	1,450 feet upstream of Baseline Road.....	*5,277
<i>Escondido Creek:</i>		<i>San Dieguito River:</i>		<i>Elmers Twomile Creek:</i>	
Approximately 1,650 feet south of intersection of Manchester Avenue and El Camino Real.....	*13	Between Del Mar Downs Road and Valley Avenue.....	*17	230 feet upstream of Glenwood Drive.....	*5,315
Approximately 50 feet upstream of Encinitas Boulevard.....	*33	Maps are available for review at the City Manager's Office, City Hall, 380 Stevens Avenue, Solana Beach, California.		At the intersection with Iris Avenue.....	*5,326
At El Camino Del Norte.....	*54	Trinity County (unincorporated areas) (FEMA Docket No. 6917)		<i>Fourmile Creek:</i>	
Approximately 300 feet north of intersection of Via De Caballo and Val Sereno Drive.....	*65	<i>Trinity River:</i>		At confluence with Boulder Creek.....	*5,731
<i>San Elijo Creek:</i>		Approximately 2,600 feet downstream of confluence with Canyon Creek.....	*1448	860 feet upstream of Pennsylvania Gulch Road.....	*7,766
At confluence with San Elijo Lagoon.....	*13	Approximately 1,450 feet downstream of confluence with Feltzer Gulch.....	*1475	<i>Fourmile Canyon Creek:</i>	
Approximately 1,100 feet above confluence with San Elijo Lagoon.....	*16	Approximately 1,300 feet downstream of confluence with Carr Creek.....	*1520	At confluence with Boulder Creek.....	*5,163
Maps are available for review at City Hall, 535 Encinitas Avenue, Encinitas, California.		Approximately 300 feet downstream of confluence with Browns Creek.....	*1545	80 feet south of line between sections 10 and 15 in Range 7/W Township 1N.....	*6,092
National City (city), San Diego County (FEMA Docket No. 6920)		Approximately 230 feet downstream of State Highway 299.....	*1625	<i>James Creek:</i>	
<i>Sweetwater River:</i>		Approximately 820 feet downstream of confluence with McIntyre Gulch.....	*1655	At confluence with Lefthand Creek.....	*6,338
1,500 feet downstream of intersection of Plaza Bonita Road.....	*37	Approximately 150 feet downstream of confluence with Snipe Gulch.....	*1741	720 feet upstream of confluence with Jenks Gulch.....	*6,802
Approximately 150 feet downstream of Plaza Bonita Road.....	*39	Approximately 400 feet downstream of confluence with Rush Creek.....	*1780	<i>Lefthand Creek:</i>	
<i>Las Puleta Creek:</i>		Approximately 420 feet downstream of Trinity Dam Boulevard.....	*1812	At confluence with St. Vrain Creek.....	*4,926
At Highland Avenue.....	#1	Maps are available for review at the Trinity County Planning Department, 303 Trinity Lakes Boulevard, Weaverville, California.		At downstream face of Peak to Peak Drive.....	*9,220
<i>San Diego Bay:</i>				<i>Little James Creek:</i>	
At mouth of Sweetwater River.....	*6			450 feet upstream of Ward Street.....	*7,003
				1,920 feet upstream of Ward Street.....	*7,098
				<i>Little Thompson River:</i>	
				At intersection with the Larimer County-Boulder County line in Section 6 Range 69W Township 3N.....	*5,091
				At line between Sections 2 and 3 in Range 70W Township 3N.....	*5,232
				<i>Middle Boulder Creek:</i>	
				At confluence with North Beaver Creek.....	*8,185
				2,900 feet upstream of State Highway 119.....	*8,320
				<i>North Beaver Creek:</i>	
				At confluence with Middle Boulder Creek.....	*8,185
				1,080 feet upstream of State Highway 72.....	*8,302
				<i>Rock Creek:</i>	
				At confluence with Coal Creek.....	*5,129
				At downstream face of Brainard Drive.....	*5,307
				<i>St. Vrain Creek:</i>	
				At downstream face of 119th Street.....	*4,916
				At downstream face of Airport Road.....	*5,022
				<i>St. Vrain Creek: (Vicinity of Lyons)</i>	
				2,430 feet downstream of Second Avenue.....	*5,299
				690 feet downstream of Second Avenue.....	*5,314
				<i>South St. Vrain Creek:</i>	
				1,020 feet upstream of confluence with North St. Vrain Creek.....	*5,334
				At confluence with Middle St. Vrain Creek.....	*7,006
				At confluence with South St. Vrain Creek.....	*7,006
				350 feet upstream of State Highway 72.....	*8,510
				<i>Spring Gulch:</i>	
				At confluence with St. Vrain Creek.....	*4,929
				80 feet downstream of 12th Avenue.....	*4,990
				<i>Wonderland Creek:</i>	
				At confluence with North Goose.....	*5,220
				1,090 feet upstream of Broadway.....	*5,506
				At confluence with 5.....	*5,506
				<i>Dry Creek:</i>	
				At confluence with Flatirons Lake.....	*5,191

Source of flooding and location	#Depth in feet above ground. *Eleva- tion in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. *Eleva- tion in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. *Eleva- tion in feet (NGVD)
At Burlington Northern Railroad.....	*5,221	Upstream side of Campbell Road.....	*291	<i>Prairie Creek:</i>	
<i>Goose Creek:</i>		Approximately 0.9 mile upstream of Wylie Road.....	*322	Approximately 5.5 miles downstream of State	
At confluence with Boulder Creek.....	*5,205	<i>Pachaug River:</i>		Route 31.....	*32
Approximately 140 feet upstream of 9th Street.....	*5,380	At downstream corporate limits.....	*225	Approximately 1,000 feet upstream of State	
<i>Highway 93 Split Flow:</i>		Downstream side of Sawmill Pond Dam.....	*249	Route 31.....	*40
At South Boulder Road.....	*5,338	Downstream side of Shetucket Turnpike.....	*271	Maps available for inspection at the County	
At confluence with South Boulder Creek.....	*5,487	At upstream corporate limits.....	*297	Engineer's Office, Arcadia, Florida.	
<i>North Goose Creek:</i>		Maps available for inspection at the Town			
At confluence with Goose Creek.....	*5,212	Office, Voluntown, Connecticut.			
Approximately 2,600 feet upstream of Wonder- land Creek.....	*5,242	Washington (town), Litchfield County (FEMA		Fanning Springs (city), Gilchrist County (FEMA	
Maps are available for review at the Floodplain		Docket No. 6917)		Docket No. 6920)	
Administrator's Office, Public Works Depart-		<i>Bantam River:</i>		<i>Suwannee Creek:</i>	
ment, Engineering Division, Boulder County		At confluence with Shepaug River.....	*625	About 1.3 miles downstream of State Road 55.....	*20
Courthouse Annex, 13th and Spruce Streets,		At upstream corporate limits.....	*714	About 2.0 miles upstream of State Road 55.....	*22
Boulder, Colorado 80306.		<i>East Aspetuck River:</i>		Maps available for inspection at the Mayor's	
CONNECTICUT		At downstream corporate limits.....	*487	Office, City Hall, Fanning Springs, Florida.	
Cornwall (town), Litchfield County (FEMA		Approximately 5 mile downstream of U.S.			
Docket No. 6920)		Route 202.....	*556	Gilchrist County (unincorporated areas) (FEMA	
<i>Housatonic River:</i>		Downstream side of Church Street.....	*640	Docket No. 6920)	
Downstream corporate limits.....	*402	Approximately 4 mile upstream of West Shore		<i>Suwannee River:</i>	
Approximately 50 feet downstream of U.S.		Road.....	*697	Just upstream of U.S. Route 19.....	*21
Route 7.....	*440	<i>Shepaug River:</i>		At confluence of Santa Fe River.....	*32
Upstream side of State Route 128.....	*509	At downstream corporate limits.....	*373	<i>Santa Fe River:</i>	
Upstream corporate limits.....	*541	Downstream side of West Church Hill Road.....	*445	At mouth.....	*32
<i>Hollenbeck River:</i>		At most upstream crossing of State Route 47.....	*519	Just upstream of county boundary.....	*40
Approximately 420 feet downstream of corpora-		Approximately 1.1 miles downstream of Whittle-		Maps available for inspection at the Building	
te limits.....	*839	sey Road.....	*590	Inspection Department, County Courthouse,	
Downstream side of State Route 43.....	*894	Approximately .7 mile upstream of Whittlesey		Trenton, Florida.	
Approximately 1.2 miles upstream of Lake Road.....	*923	Road.....	*660		
Maps available for inspection at the Town		At upstream corporate limits.....	*732	Ormond Beach (city), Volusia County (FEMA	
Clerk's Vault, Town Office, Cornwall, Connecti-		Maps available for inspection at the Town		Docket No. 6920)	
cut.		Clerk's Vault, Washington Depot, Connecticut		<i>Tomoka River:</i>	
Lebanon (town), New London County (FEMA		06794.		Just downstream of U.S. Route 1.....	*5
Docket No. 6914)		FLORIDA		Just upstream of confluence of Shooting Range	
<i>Susquehanna Brook:</i>		Arcadia (city), DeSota County (FEMA Docket		Canal.....	*11
At downstream corporate limits.....	*241	No. 6914)		<i>Shooting Range Canal:</i>	
Upstream side of Chappell Road.....	*274	<i>Peace River:</i>		At mouth.....	*11
Approximately 0.6 mile upstream of confluence		At intersection of Lincoln Avenue and Bona-		Just downstream of Interstate 95.....	*15
of Hayward Pond.....	*340	parte Street.....	*25	Just upstream of Interstate 95.....	*23
Approximately 0.5 mile downstream of Bender		Upstream side of Old Bradenton Road.....	*27	About 2175 feet upstream of Williamson Road.....	*28
Road.....	*380	Maps available for inspection at the City Hall,		<i>Eleventh Street Canal Tributary No. 2: Within</i>	
At Bender Road.....	*453	Arcadia, Florida.		<i>community.....</i>	*28
<i>Tenmile River:</i>		DeSota County (unincorporated areas) (FEMA		<i>Eleventh Street Canal Tributary No. 2A:</i>	
At downstream corporate limits.....	*251	Docket No. 6914)		At mouth.....	*28
At Cook Hill Road.....	*298	<i>Peace River:</i>		About 2500 feet upstream of mouth.....	*29
At confluence of Gifford Brook.....	*346	At downstream County boundary.....	*8	Maps available for inspection at the City Hall,	
At confluence of Palmer Pond.....	*367	Approximately 1,000 feet downstream of conflu-		Ormond Beach, Florida.	
<i>Yantic River:</i>		ence of Horse Creek.....	*15	Union County (unincorporated areas) (FEMA	
Approximately 150 feet downstream of Gilman		Approximately 0.8 mile upstream of Old Braden-		Docket No. 6920)	
Dam.....	*218	ton Road.....	*27	<i>Santa Fe River:</i>	
At Sisson Road.....	*294	At upstream County boundary.....	*39	About 1.8 miles downstream of State Road 241.....	*58
Maps available for inspection at the Town		<i>Horse Creek:</i>		About 0.6 mile upstream of State road 121.....	*74
Office, Lebanon, Connecticut.		At confluence with Peace River.....	*15	Maps available for inspection at the Building	
Sharon (town), Litchfield County (FEMA		Approximately 400 feet downstream of State		Inspection Department, County Courthouse,	
Docket No. 6920)		Route 761.....	*20	Lake Butler, Florida.	
<i>Housatonic River:</i>		Downstream side of State Route 72.....	*29	Worthington Springs (town), Union County	
Approximately 3.1 miles downstream of U.S.		<i>Joshua Creek:</i>		(FEMA Docket No. 6920)	
Route 7, at downstream corporate limits.....	*409	At confluence with Peace River.....	*22	<i>Santa Fe River:</i>	
Approximately 0.6 mile downstream of the con-		Approximately 1,000 feet upstream of Hillsbor-		About 1600 feet downstream of State Road 121.....	*72
fluence of Carse Brook.....	*480	ough Avenue.....	*30	About 900 feet upstream of State Road 121.....	*73
Approximately 3.6 miles upstream of State		Approximately 400 feet upstream of State		Maps available for inspection at the Mayor's	
Route 128, at upstream corporate limits.....	*541	Route 31.....	*40	Home, Worthington Springs, Florida.	
<i>Webatuck Creek:</i>		Downstream side of State Route 70.....	*64	GEORGIA	
Approximately 0.2 mile upstream of the down-		<i>Durance Branch:</i>		Canton (city), Cherokee County (FEMA Docket	
stream corporate limits.....	*545	At confluence with Joshua Creek.....	*39	No. 6917)	
Approximately 0.3 mile upstream of the down-		Approximately 750 feet downstream of Durance		<i>Canton Creek:</i>	
stream corporate limits.....	*551	Street.....	*40	At mouth.....	*873
Maps available for inspection at the Town		Downstream side of Durance Street.....	*48	About 0.9 mile upstream of CSX railroad.....	*886
Clerk's Vault, Sharon, Connecticut.		Approximately .41 mile upstream of Durance		<i>Etowah River:</i>	
Voluntown (town), New London County (FEMA		Street.....	*51	About 1000 feet downstream of confluence of	
Docket No. 6914)		<i>Whidden Branch:</i>		Puckett Creek.....	*869
<i>Denison Brook:</i>		At confluence with Joshua Creek.....	*44	Just upstream of Interstate 575.....	*879
At State Route 138.....	*269	Approximately 200 feet downstream of Brown		Maps available for inspection at the City Man-	
Approximately 0.9 mile upstream of State Route		Street.....	*51	ager's Office, City Hall, 190 West Main Street,	
138.....	*274	Approximately 500 feet upstream of State		Canton, Georgia.	
Approximately 2.2 miles upstream of State		Route 70.....	*59		
Route 138.....	*318	<i>McBride Branch:</i>			
<i>Great Meadow Brook:</i>		At confluence with Peace River.....	*30		
At confluence with Pachaug River.....	*271	Downstream side of Masters Road.....	*51		
		Approximately 150 feet downstream of State	*60		
		Route 660.....			

Source of flooding and location	#Depth in feet above ground, Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground, Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground, Elevation in feet (NGVD)
Cherokee County (unincorporated areas) (FEMA Docket No. 6917)		Gordon (city), Wilkinson County (FEMA Docket No. 6912)		Maps available for inspection at the Building Department, Village Hall, 418 Main Street, 2nd Floor, Lemont, Illinois.	
Rubes Creek:		Little Commissioner Creek:		IOWA	
At mouth.....	*861	Just upstream of State Route 18.....	*332	Hamburg (city), Fremont County (FEMA Docket No. 6920)	
About 1.0 mile upstream of State Route 92.....	*898	About 2,660 feet upstream of pipe bridge.....	*333	Nishnabotna River:	
Noonday Creek:		Little Commissioner Creek Tributary:		About 750 feet downstream of U.S. Highway 275.....	*925
At mouth.....	*861	Just downstream of Norfolk-Southern Railway.....	*332	About 4,360 feet upstream of U.S. Highway 275.....	*926
About 500 feet downstream of confluence of Tate Creek.....	*894	Just downstream of Englehardt Dam.....	*358	Nishnabotna River Levee overflow:	
Little River:		Just upstream of Englehardt Dam.....	*372	About 4,700 feet downstream of U.S. Highway 275.....	*914
Just downstream of Interstate 575.....	*861	About 3,800 feet upstream of Englehardt Dam.....	*366	Just downstream of "O" Street.....	*919
About 1.15 upstream of confluence of Rocky Creek.....	*891	Maps available for inspection at the City Hall, Gordon, Georgia.		Nishnabotna River Overflow (West of Railroad):	
Tributary L:		Holly Springs (city), Cherokee County (FEMA Docket No. 6917)		About 825 feet downstream of Washington Street.....	*913
At mouth.....	*880	Toonigh Creek:		Just downstream of U.S. Highway 275.....	*917
Just downstream of State Route 92.....	*925	Just downstream of Interstate 575.....	*930	Shallow flooding (overflow from Nishnabotna River: Intersection of "O" Street and Monroe Street.....	#3
Just downstream of State Route 92.....	*932	About 1,600 feet upstream of Morgan Road.....	*1,016	Maps available for inspection at the City Hall, 1201 Main Street, Hamburg, Iowa.	
About 3000 feet upstream of State Route 92.....	*955	Maps available for inspection at the City Hall, Holly Springs, Georgia.		Hills (city), Johnson County (FEMA Docket No. 6917)	
Rocky Creek:		Woodstock (city), Cherokee County (FEMA Docket No. 6917)		Iowa River:	
At mouth.....	*884	Rubes Creek:		About 1,500 feet downstream of Main Street bridge over Iowa River.....	*628
About 3250 feet upstream of Cox Road.....	*901	About 1,200 feet upstream of Arnold Mill Road.....	*872	About 2.8 miles upstream of Main Street bridge over Iowa River.....	*634
Tributary M:		Just downstream of State Route 92.....	*887	Old Mans Bypass:	
At mouth.....	*861	Noonday Creek:		At mouth at Iowa River.....	*631
Just downstream of Blalock Road.....	*913	Just downstream of Interstate 575.....	*887	About 5,550 feet upstream of mouth.....	*635
About 400 feet upstream of Blalock Road.....	*918	At county boundary.....	*894	Maps available for inspection at the City Hall, Hills, Iowa.	
Avery Creek:		Little River:		Oelwein (city), Fayette County (FEMA Docket No. 6917)	
At mouth.....	*890	Just upstream of Interstate 575.....	*861	Otter Creek:	
Just downstream of Hickory Drive.....	*911	About 1,500 feet downstream of Trickum Road.....	*870	About 1,300 feet downstream of 10th Street Southwest.....	*1,004
Just upstream of Hickory Drive.....	*917	Maps available for inspection at the City Hall, 103 Church Street, Woodstock, Georgia.		About 450 feet upstream of Charles Street West.....	*1,019
Just downstream of SCS Dam No. 1.....	*918	IDAHO		Dry Run Creek:	
Just downstream of SCS Dam No. 1.....	*941	Teton County (FEMA Docket No. 6912)		About 450 feet downstream of 6th Avenue Southwest.....	*1,014
Just downstream of SCS Dam No. 2.....	*942	Teton River:		Just downstream of East Line Road.....	*1,071
Mill Creek:		At confluence with Fox Creek.....	*5,998	North Branch Dry Run Creek:	
At mouth.....	*861	Just upstream of White Bridge (6,600 feet above Fox Creek).....	*6,002	At mouth.....	*1,070
About 1100 feet upstream of State Route 140.....	*930	At confluence of Trail Creek.....	*6,005	Just downstream of East Line Road.....	*1,072
Owl Creek:		Trail Creek:		Maps available for inspection at the City Hall, 20 Second Avenue, SE., Oelwein, Iowa.	
About 1.15 miles downstream of Kellogg Creek Road.....	*861	At County Road Bridge (south of Victor).....	*6,227	KANSAS	
Just downstream of Victory Drive.....	*938	At upstream side of State Highway 33.....	*6,301	Atwood (city), Rawlins County (FEMA Docket No. 6920)	
Just upstream of Victory Drive.....	*943	At confluence of Game Creek.....	*6,393	North Beaver Creek:	
About 0.80 mile upstream of Victory Drive.....	*1,001	At upstream side of State Highway 33.....	*6,454	About 0.63 mile upstream of mouth.....	*2,834
Kellogg Drive:		700 feet above State Highway 33.....	*6,470	Just upstream from State Highway 25.....	*2,836
At mouth.....	*861	Teton Creek:		South Beaver Creek:	
About 2300 upstream of Victory Drive.....	*985	Just upstream of State Highway 33 (south of Driggs).....	*6,077	About 0.5 mile upstream of mouth.....	*2,834
Clark Creek:		Upstream of Cemetery Road (east of Driggs).....	*6,161	About 0.2 mile upstream of State Street.....	*2,849
About 1450 feet downstream of State Route 92.....	*861	At Idaho/Wyoming State boundary.....	*6,369	Maps available for inspection at the City Hall, Atwood, Kansas.	
Just downstream of Interstate 75.....	*903	Badger Creek:		Barton County (unincorporated areas) (FERMA Docket No. 6920)	
Just upstream of Interstate 75.....	*908	Approximately 2,560 feet downstream of Badger Creek Road.....	*6,164	Wet Walnut Creek:	
Just downstream of Dunnwood Drive.....	*954	At upstream side of Badger Creek Road Bridge.....	*6,186	Just upstream of Atchison Topeka and Santa Fe Railroad.....	*1,833
Just upstream of Dunnwood Drive.....	*959	At upstream side of Rammel Mountain Road.....	*6,283	Just downstream of county boundary.....	*1,922
About 2350 feet upstream of Dunnwood Drive.....	*978	At County Road.....	*6,283	Shap Creek:	
Tate Creek:		175 feet downstream of Badger Creek Road Bridge.....	*6,352	About 1.1 miles upstream of State Highway 281.....	*1,849
About 450 feet upstream of mouth.....	*894	Maps available for review at the Teton County Courthouse, 89 Main Street, Driggs, Idaho.		At mouth.....	*1,923
About 500 feet downstream of SCS Dam 17.....	*907	ILLINOIS		Blood Creek:	
Just upstream of SCS Dam 17.....	*940	Greenup (village), Cumberland County (FEMA Docket No. 6920)		Just downstream of Hoisington Avenue.....	*1,816
About 0.95 mile upstream of SCS Dam 17.....	*941	Embarras River:		About 0.9 mile upstream of Park Avenue.....	*1,826
Toonigh Creek:		About 1,100 feet downstream of Conrail.....	*526	Arkansas River:	
At mouth.....	*861	About 1.1 miles upstream of Interstate 70.....	*537	About 1.1 miles downstream of downstream county boundary.....	*1,741
About 1100 feet downstream of Transart Park- way.....	*866	Maps available for inspection at the Village Clerk's Office, Municipal Building, Greenup, Illi- nois.		About 0.1 miles upstream of upstream county boundary.....	*1,928
Just downstream of Sixes Road.....	*903	Lemont (village), Cook and DuPage Counties (FEMA Docket No. 6917)			
Just upstream of Sixes Road.....	*908	Tributary A:			
Just downstream of Palm Road.....	*946	At mouth.....	*595		
Just upstream of Palm Road.....	*954	About 1.22 miles upstream of New Avenue.....	*712		
Just downstream of Hickory Road.....	*1,041				
Just upstream of Hickory Road.....	*1,048				
About 1600 feet upstream of Hickory Road.....	*1,061				
Etowah River:					
About 4500 feet downstream of State Road 20.....	*861				
About 7.6 miles upstream of CSX railroad.....	*901				
Maps available for inspection at the Cherokee County Planning Commission, 140 North Street, Canton, Georgia.					
Fayetteville (city), Fayette County (FEMA Docket No. 6920)					
Ginger Cake Creek:					
Just upstream of Lanier Avenue West.....	*812				
About 2,150 feet upstream of Lanier Avenue West.....	*817				
Maps available for inspection at the Building Inspection Department, City Hall, Fayetteville, Georgia.					

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Dry Walnut Creek:		Approximately 0.5 mile downstream of Parish boundary	*13	Bayou d' Inde Lateral:	
At mouth	*1,843	Approximately 1.6 miles upstream of Parish boundary	*15	Confluence with Bayou d' Inde	*13
About 2.5 miles upstream of State Highway 96	*1,875	Northeast Outfall Ditch: Approximately 0.35 mile upstream of Parish boundary	*17	Upstream corporate limits	*13
Ash Creek Tributary A:		Gulf of Mexico:		Maps available for inspection at the City Hall, 500 N. Huntington, Sulphur, Louisiana.	
About 650 feet downstream of county boundary	*1,952	Tidal flooding east of Bell City Drainage Ditch	*5	Webster Parish (unincorporated areas) (FEMA Docket No. 6917)	
About 0.8 mile upstream of county boundary	*1,968	Tidal flooding affecting entire shoreline of Lake Arthur	*6	Bayou Dorcheat:	
Ash Creek Tributary B:		Maps available for inspection at the Parish Courthouse, 426 Davis Street, Jennings, Louisiana.		USGS Gaging Station 07349000 at Access Road	*159
About 1,800 feet downstream of Bergtal Church Road	*1,942			At landing field	*160
About 0.8 mile upstream of Bergtal Church Road	*1,968			Approximately .8 miles above landing field	*162
Ash Creek: Within unincorporated areas	*1,939	Mansfield (city), DeSoto Parish (FEMA Docket No. 6917)		Maps available for inspection at the Parish Court, 410 Main Street, Room 302, Minden, Louisiana.	
Dry Creek:		Bayou San Patricio:			
At mouth	*1,920	At approximately 500 feet upstream of south-east corporate limits	*304	MAINE	
About 2,900 feet upstream of Atchison Topeka and Santa Fe Railway	*1,925	At approximately 300 feet downstream of Jacobs Street	*313	Anson (town), Somerset County (FEMA Docket No. 6917)	
Wet Walnut Creek (right bank overflow):		Approximately .4 mile upstream of Johnson Street	*324	Kennebec River:	
About 2.4 miles downstream of Center Street	*1,914	Maps available for inspection at the City Hall, 705 Polk, Mansfield, Louisiana.		Downstream corporate limits	*196
Just upstream of Center Street	*1,919			Upstream side of Maine Central Railroad	*257
Shallow flooding (overflow from Blood Creek):				Upstream corporate limits	*272
About 1,000 feet southeast of the intersection of Hoisington Avenue and Gould Street	#1.0	Many (town), Sabine Parish (FEMA Docket No. 6917)		Carrabasset River:	
About 0.9 mile southeast of U.S. Highway 281 and unnamed county highway	#1.0	San Jose Creek Tributary:		Confluence with Kennebec river	*267
About 2.3 miles upstream of the Union Pacific Railroad along southern overbank at Wet Walnut Creek	#1.0	At downstream corporate limits	*234	At Maine Central Railroad	*308
Maps available for inspection at the County Courthouse, Great Bend, Kansas.		Upstream side of Georgia Avenue	*240	Upstream corporate limits	*344
Herington (city), Morris and Dickinson Counties (FEMA Docket No. 6920)		Upstream side of Springbrook Avenue	*247	Getchell Brook:	
Lime Creek:		Approximately 950 feet upstream of Springbrook Avenue	*252	Confluence with Kennebec River	*255
Just upstream of old railroad grade	*1,308	Maps available for inspection at the Town Hall, 955 A San Antonio, Many, Louisiana.		Approximately 2,885 feet upstream of Bridge Street	*282
About 0.92 mile upstream of Trapp Street	*1,339	Port Vincent (village), Livingston Parish (FEMA Docket No. 6920)		Maps available for inspection at the Town Clerk's Office, Anson, Maine.	
Lime Creek Tributary No. 2:		Amite River:		Madison (town), Somerset County (FEMA Docket No. 6920)	
At mouth	*1,315	At confluence of Collyell Bay	*12	Kennebec River:	
Just downstream of U.S. Highway 77	*1,344	Approximately 300 feet southeast of State Route 16 over Willis Bayou	*16	Downstream corporate limits	*184
Lime Creek Tributary No. 4:		Collyell Bay:		Upstream side of Anson Dam	*254
At mouth	*1,325	Approximately 800 feet downstream of State Route 16 & 42	*12	At confluence of Pooler Brook	*265
About 400 feet upstream of 9th and Trapp Streets	*1,331	Approximately 175 feet upstream of State Route 16 & 42	*13	At Old Patterson Bridge site	*269
Maps available for inspection at the City Hall, Herington, Kansas.		Grays Creek: Entire length within community	*16	Upstream corporate limits	*272
LOUISIANA		Maps available for inspection at the Port Vincent Community Center, Port Vincent, Louisiana, and the Livingston Parish Permit Department, Courthouse, Livingston, Louisiana.		West Branch Wesserunett Stream:	
Jefferson Davis Parish (unincorporated areas) (FEMA Docket No. 6917)		Sulphur (city), Calcasieu Parish (FEMA Docket No. 6920)		Downstream corporate limits	*261
Keystone Ditch:		Bayou d' Inde:		Upstream side of Lower West Branch Wesserunett Dam	*333
1.6 miles upstream of confluence with Mermen-tau River	*7	Downstream corporate limits	*11	At confluence with Hayden (Wesserunett) Lake	*337
Downstream of State Route 380	*11	Approximately 600 feet upstream of Arizona Street	*14	Jones Brook:	
West Bayou Grand Marais:		Approximately 1,840 feet upstream of Lewis Street	*15	At confluence with Kennebec River	*230
Downstream side of Parish Road	*18	Gilbert Lateral:		Upstream side of U.S. Route 201 A/State Route 8	*263
At confluence with West Bayou Grand Marais Tributary No. 2	*25	Confluence with Bayou d' Inde	*11	Approximately 750 feet upstream of Shusta Road	*300
West Bayou Grand Marais Tributary No. 1: Approximately 1 mile upstream of confluence with West Bayou Grand Marais	*18	Upstream side of Logan Street	*12	Maps available for inspection at the Selectment's Office Vault, Madison, Maine.	
West Bayou Grand Marais Tributary No. 2: Approximately 1.5 miles upstream of confluence with West Bayou Grand Marais	*25	Downstream side of West Lyons Street	*13	Norridgewock (town), Somerset County (FEMA Docket No. 6917)	
Keystone Ditch Tributary: Approximately 1.1 miles upstream of confluence with Keystone Ditch	*9	Upstream corporate limits	*18	Kennebec River:	
Mermen-tau River Tributary:		Maple Fork Bayou:		Downstream corporate limits	*165
Approximately .95 mile upstream of confluence with Mermen-tau River	*7	Downstream corporate limits	*9	Upstream side of Bridge Street	*171
Approximately 1.4 miles upstream of confluence with Mermen-tau River	*9	Upstream corporate limits	*10	Confluence of Bombazee Brook	*179
Mermen-tau River:		Dick Arkel Bayou:		Upstream corporate limits	*184
800 feet upstream of confluence of Keystone Ditch	*9	Confluence with Gilbert Lateral	*12	Sandy River:	
Approximately 3.7 miles upstream of New U.S. Route 90	*15	Upstream corporate limits	*14	Confluence with Kennebec River	*183
Bayou Lacassine:		Sumpter Bayou:		Approximately 40 feet downstream of Sand River Dam	*187
At State Route 14	*6	Confluence with Gilbert Lateral	*11	Approximately 1.1 miles upstream of Sandy River Dam	*192
At Lorrain Road	*8	Upstream corporate limits	*15	Upstream corporate limits	*197
Unnamed Tributary to Bayou Blue:		Lateral A of Maple Fork Bayou:		Mill Stream:	
At confluence with Bayou Blue	*39	Confluence with Maple Fork Bayou	*9	Confluence with Kennebec River	*170
Upstream to Parish boundary	*46	Approximately 60 feet downstream of Center Avenue	*13	Upstream of West Branch Station Dam	*189
East Bayou Lacassine:		Lateral B of Maple Fork Bayou:		Approximately 1.20 miles upstream of State Route 8	*193
Approximately .36 mile downstream of Parish boundary	*17	Confluence with Maple Fork Bayou	*9	Maps available for inspection at the Town Clerk's Vault, Norridgewock, Maine.	
At upstream Parish boundary	*18	Approximately 2,675 feet above confluence with Maple Fork Bayou	*14		
Lateral L-TC: At the Southern Pacific Railroad	*18				
East Grand Marais Bayou Ditch:					

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Oakland (town), Kennebec County (FEMA Docket No. 8906)		Approximately 500 feet downstream of Bean Hill Road.....	*675	MISSISSIPPI	
Messalonskee Lake: Entire shoreline within community.....	*238	Approximately 625 feet upstream of Bean Hill Road.....	*750	Beaumont (town), Perry County (FEMA Docket No. 8920)	
Salmon Lake: Entire shoreline within community.....	*279	Approximately 1,525 feet upstream of Bean Hill Road.....	*825	Carter Creek:	
Maps available for inspection at the Town Offices, Oakland, Maine.		Approximately .46 mile upstream of Bean Hill Road.....	*900	At mouth.....	*89
		Approximately 1,575 feet downstream of Cullen Road.....	*875	About 0.85 mile upstream of Railroad Street.....	*87
West Paris (town), Oxford County (FEMA Docket No. 8917)		At upstream side of Cullen Road.....	*1,052	Leaf River:	
Little Androscoggin River:		Approximately 1.02 miles upstream of Searles South Road.....	*1,107	About 3,300 feet downstream of State Highway 15.....	*89
At downstream corporate limits.....	*387	Tributary to Westfield River:		About 2,400 feet upstream of State Highway 15.....	*91
At confluence of Moose Pond Brook.....	*460	At confluence with Westfield River.....	*384	Maps available for inspection at the City Hall, Beaumont, Mississippi.	
At upstream corporate limits.....	*489	Approximately 1,400 feet upstream of State Route 112.....	*415		
Maps available for inspection at the Town Vault, West Paris, Maine.		At upstream side of Basket Road.....	*463	Clarke County (unincorporated areas) (FEMA Docket No. 8920)	
		Maps available for inspection at the Town Clerk's Vault, Town Hall, Huntington, Massachusetts.		Southern Creek:	
MASSACHUSETTS				About 2,500 feet downstream of U.S. Highway 512.....	*249
Bedford (town), Middlesex County (FEMA Docket No. 8906)		MINNESOTA		About 2,900 feet upstream of U.S. Highway 512.....	*251
Shawsheen River:		Austin (city), Mower County (FEMA Docket No. 8920)		Chickasaw River:	
Downstream side of Middlesex Turnpike.....	*99	Cedar River:		About 4,200 feet downstream of DeSoto-Brewer Road.....	*215
Upstream of U.S. Route 3 (southbound).....	*101	Downstream corporate limits.....	*1,188	At confluence of Chunky River.....	*255
Upstream side of Burlington Road (State Route 62).....	*108	Upstream side of 4th Street S.E.....	*1,192	Chunky River:	
Vine Brook:		Approximately 1,100 feet upstream of Interstate Route 90.....	*1,200	At mouth.....	*255
At confluence with Shawsheen River.....	*101	Upstream corporate limits.....	*1,204	At county boundary.....	*266
Approximately 50 feet downstream of Burlington Road (State Route 62).....	*103	Dobbins Creek:		Maps available for inspection at the County Courthouse, Quitman, Mississippi.	
Upstream side of Old Burlington Road.....	*122	Upstream side of Interstate Route 90 Bridge (westbound).....	*1,203	Copiah County (unincorporated areas) (FEMA Docket No. 8920)	
At upstream corporate limits.....	*124	At confluence with South Branch Dobbins Creek.....	*1,204	Pearl River:	
Maps available for inspection at the Town Planner's Office, Bedford, Massachusetts.		North Branch Dobbins Creek:		About 1.1 miles downstream of State Highway 28.....	*229
		Confluence with South Branch Dobbins Creek.....	*1,204	About 1.0 miles upstream of State Highway 28.....	*233
Holbrook (town), Norfolk County (FEMA Docket No. 8920)		Upstream corporate limits.....	*1,205	Maps available for inspection at the County Courthouse, Hazelhurst, Mississippi.	
Cochato River/Lake Holbrook/Trout Brook:		South Branch Dobbins Creek:		George County (Unincorporated areas) (FEMA Docket No. 8920)	
Approximately 900 feet upstream of confluence of Tributary R3.....	*136	At confluence with North Branch Dobbins Creek.....	*1,204	Pascagoula River:	
Downstream side of Spring Street.....	*138	Approximately 1,500 feet upstream of County road.....	*1,211	About 3.7 miles downstream of Abandoned Bridge.....	*34
Tributary C2B:		Wolf Creek:		About 500 feet upstream of Abandoned Bridge.....	*39
Approximately 180 feet downstream of Massachusetts Bay Transportation Authority Railroad Culvert 32.....	*131	Downstream side of the Chicago, Milwaukee, St. Paul and Pacific Railroad at the downstream corporate limits.....	*1,204	Escatawpa River:	
Approximately 250 feet upstream of Woodlawn Road (extended).....	*139	Upstream corporate limits.....	*1,207	About 0.84 mile downstream of confluence of Rocky Creek.....	*81
Tributary R2:		Turtle Creek:		About 0.82 miles upstream of confluence of Brushy Creek.....	*90
Downstream side of South Franklin Street.....	*156	Downstream corporate limits.....	*1,189	Maps available for inspection at the County Courthouse, Lucedale, Mississippi.	
Approximately 100 feet upstream of Dean Street.....	*169	Upstream corporate limits.....	*1,193	Georgetown (town), Copiah County (FEMA Docket No. 8920)	
Tributary R3: Approximately 70 feet upstream of South Franklin Street.....	*154	Maps available for inspection at the City Hall, 500 4th Avenue Northeast, Austin, Minnesota.		Pearl River:	
Tributary R4: Downstream side of Spring Street.....	*148	Wright County (unincorporated areas) (FEMA Docket No. 8920)		About 0.9 mile downstream of State Highway 28.....	*229
Beaver Brook:		Mississippi River:		Just upstream of State Highway 28.....	*231
Downstream corporate limits.....	*162	Approximately 25.4 miles above confluence of Main Stem Crow River.....	*935	Maps available for inspection at the City Hall, Georgetown, Mississippi.	
Approximately 0.4 mile upstream of Plymouth Street.....	*181	Approximately 29.6 miles above confluence of Main Stem Crow River.....	*942		
Approximately 1,000 feet upstream of Weymouth Street.....	*207	At upstream County boundary.....	*947	Gulfport (city), Harrison County (FEMA Docket No. 8917)	
Maps available for inspection at the Office of the Planning Board, Holbrook, Massachusetts.		Main Stem Crow River:		Turkey Creek:	
Huntington (town), Hampshire County (FEMA Docket No. 8920)		At confluence with Mississippi River.....	*858	About 4.6 miles upstream of mouth.....	*19
Westfield River:		Upstream side of State Route 116.....	*873	About 5.7 miles upstream of mouth.....	*22
At downstream corporate limits.....	*340	At upstream corporate limits of City of Hanover.....	*901	Canal No. 1: Within community.....	*22
At confluence of Middle Branch.....	*402	Downstream corporate limits of City of Rockford.....	*910	Maps available for inspection at the City Hall, Gulfport, Mississippi.	
At upstream corporate limits.....	*474	At confluence of North and South Forks Crow River.....	*914	Harrison County (unincorporated areas) (FEMA Docket No. 8917)	
Middle Branch:		South Fork Crow River:		Wolf River:	
At confluence with Westfield River.....	*402	At confluence with Main Stem Crow River.....	*914	At mouth.....	*12
Approximately 0.7 mile upstream of Goss Hill Road.....	*445	Upstream side of Township Road 276.....	*926	About 1.8 miles upstream of State Highway 53.....	*92
West Branch Westfield River:		Approximately 0.15 mile upstream of upstream County boundary.....	*931	Tchoutachoutta River:	
At confluence with Westfield River.....	*354	Cleanwater River:		About 0.3 mile upstream of D'Iberville Road.....	*11
At upstream corporate limits.....	*429	At downstream County boundary.....	*959	About 1.8 miles upstream of CC road.....	*37
Pond Brook:		Upstream side of County Route 40.....	*978	Tuxachania Creek:	
At confluence with Westfield River.....	*451	Upstream side of County Route 128.....	*996	At mouth.....	*13
Approximately .56 mile downstream of Bean Hill Road.....	*525	Upstream side of State Route 55.....	*1,009		
Approximately 1,650 feet downstream of Bean Hill Road.....	*600	Confluence with Scott Lake.....	*1,030		
		Maps available for inspection at the Wright County Courthouse, Buffalo, Minnesota.			

Source of flooding and location	#Depth in feet above ground, Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground, Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground, Elevation in feet (NGVD)
MISSOURI					
Howard Creek:		Prairie Creek Tributary:		MONTANA	
At mouth.....	*11	About 800 feet downstream of county road.....	*1,172	Baker (city), Fallon County (FEMA Docket No. 6920)	
About 2.8 miles upstream of State Route 67.....	*70	Just downstream of State Highway 5.....	*1,222	Sandstone Creek:	
Parker Creek:		Maps available for inspection at the City Hall, Ava, Missouri.		Approximately 470 feet downstream of Chicago, Milwaukee, Saint Paul, and Pacific Railroad.....	*2920
At mouth.....	*11			Approximately 4,200 feet upstream from Main Street, State Highway 7.....	*2932
About 1.5 miles upstream of State Route 67.....	*74			Baker Lake Tributary:	
Big Creek:		Bolivar (city), Polk County (FEMA Docket No. 6917)		At Sixth Street West.....	*2919
At mouth.....	*26	Town Branch:		Approximately 50 feet downstream of Lake Street, State Highway 7.....	*2935
About 3.1 miles upstream of Wolf River Road.....	*55	About 600 feet downstream of East Broadway Street.....	*981	Maps are available for review at the Fallon County Courthouse, Office of Clerk and Recorder, 10 West Fallon Street, Baker, Montana.	
Turkey Creek:		Just downstream of East Broadway Street.....	*986		
At mouth.....	*11	Just upstream of East Broadway Street.....	*991	Bozeman (city) Gallatin County (FEMA Docket No. 6917)	
About 1.6 miles upstream of Landon Road.....	*50	Just downstream of South Springfield Avenue.....	*1,026	Mathew-Bird Creek (Restudy Area):	
Fritz Creek Tributary:		Just upstream of South Springfield Avenue.....	*1,031	Approximately 340 feet downstream of Mason Street.....	*4877
At mouth.....	*15	Just downstream of South Clark Avenue.....	*1,038	At confluence with Figgins Creek.....	*4892
About 2.2 miles upstream of mouth.....	*52	Just upstream of South Clark Avenue.....	*1,044	Approximately 800 feet upstream of Kagy Boulevard.....	*4903
Pole Branch:		About 1,250 feet upstream of Burlington Northern railroad.....	*1,070	At confluence with Bozeman Creek.....	*4839
At mouth.....	*36	South Tributary:		Mathew-Bird Creek (Extended):	
Just downstream of Cable Bridge Road.....	61*	About 0.5 mile downstream of South Springfield Avenue.....	*1,024	Approximately 275 feet downstream of Graf Street 4936.....	*4936
Canal No. 1:		Just downstream of South Springfield Avenue.....	*1,048	Approximately 1900 feet upstream of Graf Street.....	*4960
At mouth.....	*12	Maps available for inspection at the City Hall, 116 East Jefferson Street, Bolivar, Missouri.		Approximately 30 feet downstream of Goldenstein Lane.....	*5021
Just downstream of 28th Street.....	*22			Approximately 2340 feet upstream of farm access road.....	*5071
Canal No. 3:		Clinton (city), Henry County (FEMA Docket No. 6917)		Figgins Creek:	
At mouth.....	*12	Town Creek:		At confluence with Mathew-Bird Creek.....	*4892
Just downstream of 28th Street.....	*22	Downstream corporate limits.....	*741	Approximately 400 feet downstream of S. 3rd Avenue.....	*4901
Maps available for inspection at the County Courthouse, Gulfport, Mississippi.		Upstream corporate limits.....	*753	Approximately 150 feet upstream of railroad grade.....	*4935
		Left Bank Tributary to Town Creek:		Approximately 100 feet upstream of farm access road.....	*4970
Stonewall (town), Clarke County (FEMA Docket 6920)		At confluence with Town Creek.....	*751	Approximately 2750 feet upstream of farm access road.....	*5011
Chickasawhay River:		Approximately 840 feet upstream of Antioch Road.....	*758	At confluence with Bozeman Creek.....	*4909
About 1,200 feet downstream of River Road.....	*238	Coal Creek:		Nash-Spring Creek:	
About 1.5 miles upstream of River Road.....	*243	At downstream corporate limits.....	*741	Approximately 530 feet downstream of golf course access road.....	*4935
Maps available for inspection at the City Hall, Stonewall, Mississippi.		At upstream side of Franklin Street.....	*750	Approximately 25 feet upstream of farm access road.....	*4960
		At Sedalia Street.....	*767	Approximately 275 feet upstream of Goldenstein Lane.....	*5014
Waynesboro (city), Wayne County (FEMA Docket No. 6920)		Maps available for inspection at the City Hall, 105 E. Ohio Street, Clinton, Missouri.		Approximately 3270 feet upstream of Goldenstein Lane.....	*5050
Chickasawhay River:		Keytesville (city), Charlton County (FEMA Docket No. 6917)		Maps are available for review at the City Engineer's Office, City Hall, 35 North Bozeman Avenue, Bozeman, Montana.	
About 1.9 miles downstream of State Highway 63.....	*155	Missouri River: Within community.....	*641	Fallon County (unincorporated areas) (FEMA Docket No. 6920)	
About 0.7 mile upstream of U.S. Highway 84.....	*172	Maps available for inspection at the City Hall, 404 West Bridge Street, Keytesville, Missouri.		Sandstone Creek:	
Maps available for inspection at the City Hall, Waynesboro, Mississippi.				Approximately 9,400 feet downstream of Sewage Lagoon Road.....	*2891
		Malden (city), Dunklin County (FEMA Docket No. 6917)		At County Road 673.....	*2924
Wayne County (unincorporated areas) (FEMA Docket No. 6920)		Ditch No. 1: At Broadwater Road.....	*283	Approximately 50 feet upstream of County Road 639 (Oil Field Road).....	*2940
Chickasawhay River:		Ditch No. 14: Approximately 1,250 feet west of the intersection of Broadwater Road and Charlotte Street.....	*287	Approximately 4,100 feet upstream of a service road.....	*2990
About 3.3 miles downstream of State Highway 63.....	*151	Ditch No. 1, Tributary A:		Baker Lake Tributary:	
Just downstream of Spring Street.....	*175	At downstream corporate limits.....	*288	At confluence with Sandstone Creek.....	*2918
Maps available for inspection at the County Courthouse, Waynesboro, Mississippi.		Approximately 0.9 mile upstream of State Route 25.....	*291	Approximately 1,230 feet upstream of confluence with Sandstone Creek.....	*2919
		Ditch No. 1, Tributary B:		Northern Tributary:	
MISSOURI		At St. Louis and Southwestern Railroad.....	*290	Approximately 920 feet upstream of the confluence with Sandstone Creek.....	*2926
Andrew County (unincorporated areas) (FEMA Docket No. 6917)		Approximately 0.6 mile upstream of State Route 25.....	*292	Approximately 1,200 feet upstream of County Road 493.....	*2942
Missouri River:		Maps available for inspection at the City Clerk's Office, City Hall, 115 E. Main Street, Malden, Missouri.		Northeastern Tributary:	
At downstream corporate limits.....	*821			Approximately 1,000 feet upstream of the confluence with Sandstone Creek.....	*2928
At confluence of Nodaway River.....	*832	Milan (city), Sullivan County (FEMA Docket No. 6917)		Approximately 1,575 feet upstream of a service road.....	*2972
At upstream corporate limits.....	*834	East Locust Creek:		Unnamed Tributary to Northeastern Tributary:	
Maps available for inspection at the County Clerk's Office, Andrew County Courthouse, Savannah, Missouri.		About 3,800 feet downstream of State Highway C.....	*825	At confluence with Northeastern Tributary.....	*2940
		About 3,800 feet upstream of Third Street.....	*834	Approximately 120 feet upstream of County Road 639 (Oil Field Road).....	*2944
Arbyrd (city), Dunklin County (FEMA Docket No. 6917)		Maps available for inspection at the City Hall, 201 North Market, Milan, Missouri.			
Ponding Area: Entire community.....	*248				
Maps available for inspection at the City Hall, Douglas Street, Arbyrd, Missouri.					
Ava (city), Douglas County (FEMA Docket No. 6920)					
Prairie Creek:					
About 2,300 feet downstream of SW 4th Avenue.....	*1,172				
Just downstream of State Highway 5.....	*1,197				
Just upstream of State Highway 5.....	*1,214				
About 1,600 feet upstream of NW 3rd Avenue.....	*1,231				
Prairie Creek Tributary A:					
At mouth.....	*1,217				
Just downstream of State Highway 5.....	*1,222				

Source of flooding and location	#Depth in feet above ground. Eleva- tion in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. Eleva- tion in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. Eleva- tion in feet (NGVD)
Unnamed Tributary to Sandstone Creek: Approximately 100 feet upstream of County Road 638.....	*2947	Dodge County (unincorporated areas) (FEMA Docket No. 6917)		Maps are available for review at the Lander County Courthouse, County Commissioners' Offices, 315 S. Humboldt, Battie Mountain, Nevada 89820.	
Approximately 2,280 feet upstream of County Road 638.....	*2949	Elkhorn River:		NEW HAMPSHIRE	
Maps are available for review at the Fallon County Courthouse, Office of Clerk and Recorder, 10 West Fallon Street, Baker, Montana.		Just upstream of State Highway 91.....	*1,195	Meredith (town), Belknap County (FEMA Docket No. 6912)	
Flathead County (unincorporated areas), (FEMA Docket No. 6912)		At upstream county boundary.....	*1,281	Lake Winnepesaukee: Entire shoreline within community.....	*506
Flathead River:		Maps available for inspection at the Building Inspector's Office, County Courthouse, 435 North Park, Fremont, Nebraska.		Winnisquam Lake: Entire shoreline within community.....	*486
Approximately 7,000 feet downstream of State Route 208, Somers Big Fork Highway.....	*2893	Randolph (city), Cedar County (FEMA Docket No. 6917)		Lake Waukegan: Entire shoreline within community.....	*544
At Church Slough.....	*2899	Middle Logan Creek:		Meredith Bay: Entire shoreline within community.....	*506
Approximately 900 feet upstream of the confluence of Ashley Creek.....	*2901	Approximately 2.1 mile downstream of most downstream County Road.....	*1,628	Maps available for inspection at the Town Clerk's Vault, Meredith, New Hampshire.	
Approximately 2,050 feet upstream of the confluence with Stillwater River.....	*2903	Approximately 1,440 feet upstream of Douglas Street.....	*1,863	Milton (town), Strafford County (FEMA Docket No. 6902)	
Middle Fork Flathead River at West Glacier:		Approximately .21 mile downstream of U.S. Route 20.....	*1,695	Salmon Falls River:	
Approximately 4,300 feet downstream of McDonald Creek.....	*3149	North Branch Middle Logan Creek:		At downstream corporate limits.....	*247
At confluence with McDonald Creek.....	*3153	Confluence with Middle Logan Creek.....	*1,631	Approximately 0.6 mile downstream of Crib Dam.....	*265
Approximately 3,500 feet upstream of McDonald Creek.....	*3162	Approximately 0.7 mile upstream of Sholes Road.....	*1,664	Upstream side of Crib Dam.....	*362
Approximately 1,600 feet downstream of Glacier Route 1.....	*3168	North Branch Middle Logan Creek Diversion:		Upstream side of Milton Three Ponds Dam.....	*420
Swan River:		Confluence with East Tributary North Branch Middle Logan Creek.....	*1,644	At confluence of Branch River.....	*421
Approximately 6,350 feet upstream of Big Fork Dam.....	*3012	Divergence from North Branch Middle Logan Creek.....	*1,653	Upstream side of School Street.....	*433
Approximately 1,800 feet upstream of the confluence of Mud Creek.....	*3016	East Tributary North Branch Middle Logan Creek:		Upstream side of Hopper Street.....	*501
Approximately 100 feet downstream of the confluence of Peterson Creek.....	*3024	Confluence with North Branch Middle Logan Creek.....	*1,643	At upstream corporate limits.....	*512
At the Lake County line.....	*3034	Approximately 90 feet upstream of Bridge Street.....	*1,659	Branch River:	
Maps are available for review at the Flathead County Regional Development Office, Planning Division, 723 Fifth Avenue East, Kalispell, Montana.		South Branch Middle Logan Creek:		At confluence with Salmon Falls River.....	*421
Missoula (city), Missoula County (FEMA Docket No. 6920)		Confluence with Middle Logan Creek.....	*1,650	Upstream side of State Route 16.....	*423
Clark Fork River: Approximately 1,800 feet downstream of Reserve Street.....	*3150	Approximately 0.4 miles upstream of corporate limits and Bridge Street.....	*1,665	At upstream corporate limits.....	*444
Rattlesnake Creek:		West Tributary South Branch Middle Logan Creek:		Miller Brook:	
North and south of U.S. Highway 90 and east of Rattlesnake Creek.....	*3204	Confluence with South Branch Middle Logan Creek.....	*1,658	At confluence with Salmon Falls River.....	*426
Approximately 1,900 feet downstream from Lolo Street.....	*3268	Approximately 0.65 miles upstream of corporate limits.....	*1,678	Approximately 90 feet upstream of Wiley Road.....	*445
Pattee Creek:		Maps available for inspection at the City Hall, Randolph, Nebraska.		Maps available for inspection at the Planning Board, Milton, New Hampshire.	
At intersection with Pattee Canyon Road and Hill Crest.....	#1	NEVADA		NEW JERSEY	
Approximately 600 feet west of intersection between Crestline and Pine Ridge.....	#1	Lander County (unincorporated areas) (FEMA Docket No. 6917)		Bound Brook (borough), Somerset County (FEMA Docket Nos. 6903 and 6917)	
At intersection of Benton and Bancroft Streets.....	#1	Reese River:		Middle Brook:	
Approximately 300 feet southeast of the intersection between Cohossett and Saranac.....	#1	Just downstream of Interstate Highway 80.....	*4,514	Upstream side of CONRAIL bridge (3rd upstream crossing).....	*40
At the intersection between 39th Street and Normans Lane.....	#1	Approximately 100 feet upstream of County Road 111A.....	*4,536	Approximately 600 feet upstream of State Route 28.....	*53
Approximately 300 feet south of McDonald and approximately 300 feet west of Russell Street.....	#2	Approximately 4,500 feet upstream of County Road 111A.....	*4,540	Approximately 1,750 feet upstream of State Route 28.....	*61
Approximately 1,100 feet south of Pattee Creek Road and approximately 300 feet east of Stephens.....	#3	Humboldt River and Reese River:		Green Brook:	
Approximately 400 feet south of 39th Street and approximately 250 feet east of Reserve Street.....	#3	Approximately 12,700 feet downstream of State Highway 18A (new State Highway 806).....	*4,491	At downstream corporate limits.....	*34
Maps are available for review at the City of Missoula Office of Community Development, 201 West Spruce Street, Missoula, Montana.		Just downstream of State Highway 18A.....	*4,501	Approximately 300 feet upstream of the upstream corporate limits.....	*36
NEBRASKA		Approximately 800 feet upstream of State Highway 18A.....	*4,505	Raritan River:	
Aurora (city), Hamilton County (FEMA Docket No. 6920)		Approximately 650 feet upstream of Wagon Road.....	*4,506	At Romney Road.....	*36
Lincoln Creek:		Humboldt River: Approximately 24,000 feet upstream of Wagon Road.....	*4,521	At East High Street.....	*36
About 2,350 feet downstream of O Street.....	*1,750	Kingston Creek Canyon: At the intersection of Toyabee Street and the U.S. Forest Service Road.....	#1	Maps available for inspection at the Municipal Building, 230 Hamilton Street, Bound Brook, New Jersey.	
About 400 feet upstream of Burlington Northern railroad.....	*1,774	Kingston Creek:		NEW MEXICO	
Maps available for inspection at the City Hall, Aurora, Nebraska.		Approximately 700 feet upstream of the intersection of Toyabee Street and the U.S. Forest Service Road.....	*5,977	Aztec (City), San Juan County (FEMA Docket No. 6920)	
		Just upstream of Toquimp Way crossing.....	*6,240	Animas River:	
		Approximately 1,200 feet upstream of Toquimp Way.....	*6,295	Approximately 150 feet downstream of the downstream corporate limits.....	*5,570
		Kingston Creek Tributary:		Approximately 300 feet upstream of U.S. Route 550.....	*5,597
		At confluence with Kingston Creek.....	*6,037	Hampton Arroyo:	
		Just upstream of County Road 211.....	*6,178	Approximately 750 feet upstream of confluence with Animas River.....	*5,611
		Approximately 420 feet upstream of County Road 211.....	*6,204	Maddox Avenue extended.....	*5,644
		Kingston Creek Alluvial Fan:		At the upstream corporate limits.....	*5,688
		1,200 feet downstream of Jefferson Drive.....	#4	Maps available for inspection at the City Hall, 201 West Chaco, Aztec, New Mexico.	
		2,000 feet downstream of Jefferson Drive.....	#3	San Juan County (unincorporated areas) (FEMA Docket No. 6920)	
		3,000 feet downstream of Jefferson Drive.....	#2	Animas River:	
		3,200 feet downstream of Jefferson Drive.....	#1	Approximately 5,500 feet upstream of Farmington Corporate limits.....	*5,415

Source of flooding and location	#Depth in feet above ground. Eleva- tion in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. Eleva- tion in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. Eleva- tion in feet (NGVD)
Confluence of Beeline Reservoir Tributary.....	*5,446	NORTH CAROLINA		Lower Creek:	
Confluence of Flora Vista Arroyo.....	*5,485			About 0.81 mile downstream of SR 1142.....	*1,029
Approximately 2.0 miles downstream of Aztec corporate limits.....	*5,531	Ashe County (unincorporated areas) (FEMA Docket No. 6920)		About 0.57 mile upstream of SR 1705 (up- stream crossing).....	*1,192
At City of Aztec downstream corporate limits.....	*5,571	<i>North Fork New River:</i>		<i>Zacks Fork Creek:</i>	
Approximately 500 feet downstream of conflu- ence with Williams Arroyo.....	*5,583	About 900 feet downstream of SR 1549.....	*2,493	About 200 feet upstream of Cottrell Hill Road.....	*1,067
<i>San Juan River:</i>		Just downstream of Weir Dam.....	*2,715	About 1.34 miles upstream of Cottrell Hill Road.....	*1,202
Approximately 3.3 miles downstream of conflu- ence with Shumway Arroyo.....	*5,007	Just upstream of Weir Dam.....	*2,727	<i>Abingdon Creek:</i>	
At confluence with Shumway Arroyo.....	*5,037	Just downstream of SR 1119.....	*3,020	About 250 feet upstream of Kincaid Hill Road.....	*1,087
At confluence with Stevens Arroyo.....	*5,098	Just upstream of SR 1119.....	*3,025	About 800 feet upstream of Kincaid Road.....	*1,089
At confluence with Coolidge Arroyo.....	*5,149	About 3,700 feet upstream of SR 1118 (most upstream crossing).....	*3,307	<i>Smoky Creek:</i>	
Approximately 3,500 feet upstream of conflu- ence with Locke Arroyo.....	*5,191	<i>Hellon Creek:</i> Within unincorporated areas.....	*2,556	Just upstream of county boundary.....	*1,094
Approximately 1,000 feet upstream of conflu- ence with Head Canyon.....	*5,266	<i>Buffalo Creek:</i>		About 1,500 feet upstream of SR 1134.....	*1,141
At confluence with Stewart Canyon.....	*5,303	At mouth.....	*2,673	<i>Yadkin River:</i>	
Approximately 1.5 miles upstream of confluence with Gallegos Canyon.....	*5,330	Just downstream of SR 1506 (upstream cross- ing).....	*2,687	About 1,900 feet downstream of State Road 268 (downstream crossing).....	*1,157
At Confluence with Horn Canyon.....	*5,363	<i>Little Buffalo Creek:</i>		About 1.0 mile upstream of State Road 268 (upstream crossing).....	*1,255
Approximately 1.4 miles downstream of State Route 44.....	*5,398	About 2,800 feet upstream of mouth.....	*2,805	<i>Wilson Creek:</i>	
Maps available for inspection at the county Courthouse, Aztec, New Mexico.		About 1.2 miles upstream of mouth.....	*2,840	At mouth.....	*1,056
New York		<i>Three Top Creek:</i>		About 1.04 miles upstream of SR 1337.....	*1,106
Camden (village), Oneida County (FEMA Docket No. 6920)		At mouth.....	*2,857	<i>Johns River:</i>	
<i>West Branch Fish Creek:</i>		About 1.1 miles upstream of mouth.....	*2,909	About 0.60 mile downstream of SR 1328.....	*1,054
Approximately 820 feet downstream of corpo- rate limits.....	*472	<i>Hoskins Fork:</i>		About 1.61 miles upstream of SR 1356 (the most upstream crossing).....	*1,209
At upstream corporate limits.....	*520	At mouth.....	*3,077	<i>Little Mulberry Creek:</i>	
<i>Mad River:</i>		About 2.0 miles upstream of mouth.....	*3,186	At mouth.....	*1,131
At the confluence with the West Branch Fish Creek.....	*474	<i>South Fork New River:</i>		About 0.88 mile downstream of SR 1340.....	*1,143
At upstream corporate limits.....	*520	About 4,000 feet downstream of SR 1308.....	*2,505	About 0.64 mile downstream of SR 1340.....	*1,148
Maps available for inspection at the Village Office, Camden, New York.		About 2.4 miles upstream of SR 1351.....	*2,949	Just downstream of SR 1340.....	*1,168
Dering Harbor (village), Suffolk County (FEMA Docket No. 6917)		<i>Naked Creek:</i>		Just upstream of SR 1340.....	*1,173
<i>North Shelter Island Sound:</i>		At mouth.....	*2,865	About 1.27 miles upstream of SR 1340.....	*1,216
The shoreline at Dering Lane (extended).....	*10	Just downstream of Old Gambill Convent Road.....	*2,774	<i>Mulberry Creek:</i>	
Intersection of Shore Road and Locust Point Road.....	*8	Just upstream of Old Gambill Convent Road.....	*2,780	At mouth.....	*1,098
Maps available for inspection at the Village Hall, Dering Harbor, New York.		About 1,700 feet upstream of State Road 88 (downstream crossing).....	*2,848	Just upstream of confluence of Little Mulberry Creek.....	*1,131
Spring Valley (village), Rockland County (FEMA Docket No. 6914)		<i>Little Naked Creek:</i>		<i>Gunpowder Creek:</i>	
<i>Pascack Brook:</i>		At mouth.....	*2,685	About 1.38 miles downstream of SR 1809.....	*1,115
At downstream corporate limits.....	*349	About 1,450 feet upstream of mouth.....	*2,697	About 0.66 mile upstream of SR 1809.....	*1,153
At confluence of North Branch Pascack Brook.....	*350	<i>Bower Walter's Creek:</i>		Maps available for inspection at the County Courthouse, Lenoir, North Carolina.	
Approximately 80 feet downstream of State Route 59.....	*410	At mouth.....	*2,708	Gamewell (town), Caldwell County (FEMA Docket No. 6920)	
Downstream side of State Route 45.....	*442	About 2,000 feet upstream of mouth.....	*2,749	Lower Creek:	
Downstream side of Union Road.....	*470	<i>Ezra Fork Creek:</i>		About 2,900 feet downstream of SR 1142.....	*1,030
At upstream corporate limits.....	*477	At mouth.....	*2,793	About 1.4 miles upstream of SR 1143.....	*1,056
<i>North Branch Pascack Brook:</i>		About 2,000 feet upstream of mouth.....	*2,818	<i>Abingdon Creek:</i>	
At confluence with Pascack Brook.....	*350	<i>Beaver Creek:</i>		At mouth.....	*1,052
At upstream corporate limits.....	*359	At mouth.....	*2,786	About 750 feet upstream of Morganton Boul- vard.....	*1,062
Maps available for inspection at the Spring Valley Village Hall, Building Department, 8 Maple Avenue, Spring Valley, New York.		Just downstream of Ashe Lake Road.....	*2,827	Maps available for inspection at the Town Hall, Gamewell, North Carolina.	
Vernon (town), Oneida County (FEMA Docket No. 6920)		Just upstream of Ashe Lake Road.....	*2,833	Hudson (town), Caldwell County (FEMA Docket No. 6920)	
<i>Sconodas Creek:</i>		Just downstream of Private Road (about 1,600 feet upstream of confluence of Tributary A).....	*3,035	Gunpowder Creek:	
At downstream corporate limits.....	*433	Just upstream of Private Road (about 1,600 feet upstream of confluence of Tributary A).....	*3,043	About 1,700 feet downstream of Hickory Boul- vard.....	*1,146
Approximately 900 feet downstream of Elm- wood Place.....	*484	Just upstream of SR 1144.....	*3,116	At the confluence of Little Gunpowder Creek.....	*1,182
Downstream side of Filley Road.....	*516	<i>Tributary A:</i>		<i>Little Gunpowder Creek:</i>	
At the downstream corporate limits of the Vil- lage of Vernon.....	*590	At mouth.....	*3,014	At mouth.....	*1,182
Downstream side of second upstream crossing of State Route 31.....	*653	Just upstream of U.S. Route 221.....	*3,020	Just downstream of Norwood Street.....	*1,189
Upstream side of Norton Road.....	*725	Just upstream of SR 1137.....	*3,026	Maps available for inspection at the Town Hall, Hudson, North Carolina.	
At upstream corporate limits.....	*789	Just downstream of SR 1135.....	*3,028	Jefferson (town), Ashe County (FEMA Docket No. 6920)	
Maps available for inspection at the Town Office, North Sconodas and Front Street, Vernon, New York.		Just upstream of SR 1136.....	*3,038	Naked Creek:	
		Just downstream of SR 1188.....	*3,062	About 2,150 feet downstream of Tyson Lane.....	*2,848
		Just upstream of SR 1188.....	*3,067	About 580 feet downstream of Tyson Lane.....	*2,865
		About 1,000 feet upstream of SR 1188.....	*3,089	Maps available for inspection at the City Hall, Jefferson, North Carolina.	
		<i>Tributary B:</i>		Jones County (unincorporated areas) (FEMA Docket No. 6920)	
		At mouth.....	*3,093	<i>Neuse River:</i>	
		About 1,400 feet upstream of mouth.....	*3,129	Along the Trent River from the confluence of the Reedy Branch to about 1.5 miles up- stream from Main Street in Pollocksville.....	*9
		<i>Cole Branch:</i>		Southwest Creek: Within county.....	*33
		At mouth.....	*2,949	Maps available for inspection at the County Courthouse, Trantion, North Carolina.	
		Just downstream of SR 1151.....	*3,011		
		Just upstream of SR 1151.....	*3,018		
		About 1,800 feet upstream of SR 1151.....	*3,046		
		Maps available for inspection at the County Manager's Office, Jefferson, North Carolina.			
		Cajah Mountain (town), Caldwell County (FEMA Docket No. 6920)			
		<i>Little Gunpowder Creek:</i>			
		At Wall Arney Road.....	*1,213		
		About 700 feet upstream of Wall Arney Road.....	*1,218		
		Maps available for inspection at the Town Hall, Cajah Mountain, North Carolina.			
		Caldwell County (unincorporated areas) (FEMA Docket No. 6920)			
		<i>Blairs Fork Creek:</i> Within Unincorporated Areas.....	*1,178		

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Lenoir (city), Caldwell County (FEMA Docket No. 6920)		Old Fort (town), McDowell County (FEMA Docket No. 6920)		Maps available for inspection at the Mayor's Home, Jewett, Ohio.	
<i>Little Gunpowder Creek:</i>		<i>Catawba River:</i>		Muskingum County (unincorporated areas) (FEMA Docket No. 6912)	
At mouth.....	*1,182	At confluence of Mill Creek.....	*1,416	<i>Muskingum River:</i>	
About 300 feet upstream of Walt Arney Road.....	*1,217	Just downstream of S.R. 1103.....	*1,424	At downstream County boundary.....	*677
<i>Gunpowder Creek:</i>		<i>Mill Creek:</i>		At CONRAIL.....	*708
At the confluence of Angley Creek.....	*1,178	At mouth.....	*1,416	Approximately 0.6 mile upstream of upstream County boundary.....	*733
Just downstream of Hickory Boulevard.....	*1,261	Just downstream of Mill Creek Dam.....	*1,437	<i>Licking River:</i>	
Just upstream of Hickory Boulevard.....	*1,274	Just upstream of Mill Creek Dam.....	*1,445	Approximately 1,000 feet downstream of Interstate 70.....	*694
About 750 feet upstream of Mt. Herman Road.....	*1,290	About 650 feet downstream of S.R. 1119.....	*1,455	At County Road 409.....	*698
<i>Zacks Fork Creek:</i>		Maps available for inspection at the Town Hall, Old Fort, North Carolina.		At Dillon Dam (at toe).....	*711
At mouth.....	*1,092	Pollocksville (town), Jones County (FEMA Docket No. 6920)		Maps available for inspection at the County Coordinator's Office, Muskingum County, Ohio.	
Just downstream of Powell Road.....	*1,121	<i>Trent River:</i> Within community.....	*9		
Just upstream of Powell Road.....	*1,128	Maps available for inspection at the Town Hall, Pollocksville, North Carolina.		OKLAHOMA	
About 200 feet upstream of Cottrell Hill Road.....	*1,167	Vanceboro (town), Craven County (FEMA Docket No. 6920)		Watonga (city), Blaine County (FEMA Docket No. 6917)	
<i>Zacks Fork Branch:</i>		<i>Swift Creek:</i>		<i>North Canadian River Tributary:</i>	
At mouth.....	*1,106	At confluence of Mauls Swamp.....	*13	At State Routes 3 and 33, U.S. Routes 270 and 281.....	*1,492
Just upstream of Sherlee Street.....	*1,126	About 1.5 miles upstream of Streets Ferry Road.....	*15	At downstream corporate limits.....	*1,495
<i>Abingdon Creek:</i>		<i>Mauls Swamp:</i>		At upstream corporate limits.....	*1,528
About 750 feet upstream of Morganton Boulevard.....	*1,062	At confluence with Swift Creek.....	*13	Approximately 3 mile upstream of upstream corporate limits.....	*1,535
About 250 feet upstream of Kincaid Hill Road.....	*1,087	Just downstream of Mill Pond Road.....	*16	Maps available for inspection at the City Hall, 119 N. Weigle, Watonga, Oklahoma 73772.	
<i>Lower Creek:</i>		Maps available for inspection at the Town Hall, Vanceboro, North Carolina.		Waynoka (city), Woods County (FEMA Docket No. 6912)	
About 2,600 feet upstream of confluence of Abingdon Creek.....	*1,056	West Jefferson (town), Ashe County (FEMA Docket No. 6920)		<i>Dog Creek:</i>	
Just downstream of Complex Street.....	*1,068	<i>Beaver Creek:</i>		Approximately 500 feet upstream of Ash Street.....	*1,473
Just upstream of Complex Street.....	*1,074	Just upstream of U.S. Route 221.....	*2,975	At upstream corporate limits.....	*1,482
About 700 feet upstream of Cedar Rock Road (downstream crossing).....	*1,128	Just downstream of SR 1147.....	*2,983	Maps available for inspection at the City Hall, 201 East Cecil Street, Waynoka, Oklahoma.	
<i>Greasy Creek:</i>		Maps available for inspection at the City Hall, West Jefferson, North Carolina.		OREGON	
At mouth.....	*1,066			Baker (city) Baker County (FEMA Docket No. 6917)	
About 1,700 feet upstream of Harper Avenue (State Road 18A).....	*1,075			<i>Powder River:</i>	
<i>Spainhour Creek:</i>				Approximately 30 feet upstream of Hughes Lane (corporate limits).....	*3,412
At mouth.....	*1,122			Diversion Weir near "C" Street.....	*3,425
About 500 feet upstream of Blowing Rock Boulevard.....	*1,163			At Auburn Avenue.....	*3,439
<i>Blairs Fork Creek:</i>				Approximately 50 feet upstream of Union Pacific Railroad.....	*3,453
At mouth.....	*1,075			City of Baker southern corporate limits.....	*3,476
About 650 feet upstream of Cellu Products Access Road.....	*1,177			<i>Powder River Overflow A:</i>	
Maps available for inspection at the City Hall, Lenoir, North Carolina.				At Hughes Lane.....	*3,410
McDowell County (unincorporated areas) (FEMA Docket No. 6920)				Approximately 910 feet south of Hughes Lane.....	*3,410
<i>North Fork Catawba River:</i>				<i>Old Settler's Slough:</i>	
About 1.4 miles above mouth.....	*1,225			At western corporate limits.....	*3,411
Just downstream of CSX railroad (downstream crossing).....	*1,185			Approximately 200 feet above Campbell Street.....	*3,423
Just upstream of CSX railroad (downstream crossing).....	*1,297			Approximately 50 feet below Auburn Avenue.....	*3,435
Just upstream of SR 1560.....	*1,400			At divergence from Powder River.....	*3,456
About 1,100 feet upstream of S.R. 1569.....	*1,502			Maps are available for inspection at the City Planner's Office, City Hall, 1655 First Street, Baker, Oregon 97814.	
About 2.21 miles upstream of S.R. 1569.....	*1,601			Baker County (FEMA Docket No. 6912)	
Just downstream of U.S. Route 221.....	*1,729			<i>Powder River (at Baker):</i>	
Just upstream of U.S. Route 221.....	*1,737			Approximately 5,300 feet downstream of Hughes Lane Road.....	*3,394
About 3,000 feet upstream of CSX railroad (upstream crossing).....	*1,800			Approximately 30 feet upstream of Hughes Lane (City of Baker corporate limits).....	*3,412
About 1.40 miles upstream of CSX railroad (upstream crossing).....	*1,898			Approximately 30 feet upstream of Madison Street Bridge.....	*3,433
Just downstream of S.R. 1571.....	*1,968			Upstream of the Union Pacific Railroad Bridge.....	*3,453
Just upstream of S.R. 1571.....	*1,974			City of Baker southern corporate limits.....	*3,476
About 250 feet upstream of S.R. 1571.....	*1,979			At the confluence of Griffin Gulch.....	*3,483
<i>Mill Creek:</i>				<i>Powder River Overflow A:</i>	
At mouth.....	*1,416			Approximately 5,000 feet downstream of Hughes Lane Road along profile baseline.....	*3,393
About 1,200 feet upstream of S.R. 1401.....	*1,487			South of Hughes Lane.....	*3,410
<i>Catawba River:</i>				<i>Powder River Overflow B:</i>	
About 250 feet upstream of S.R. 1501.....	*1,210			Approximately 5,000 feet downstream of confluence with Powder River along profile baseline.....	*3,394
Just downstream of U.S. Route 221.....	*1,228			Approximately 2,000 feet north of northern corporate limits of City of Baker.....	*3,403
Just upstream of U.S. Route 221.....	*1,231				
Just downstream of Norfolk Southern Railway.....	*1,292				
Just upstream of Norfolk Southern Railway.....	*1,297				
Just downstream of Interstate 40.....	*1,340				
Just upstream of Interstate 40.....	*1,348				
Just downstream of S.R. 1234.....	*1,359				
Just upstream of S.R. 1234.....	*1,364				
About 3,950 feet upstream of S.R. 1273.....	*1,450				
About 2.4 miles upstream of S.R. 1273.....	*1,532				
<i>Armstrong Creek:</i>					
At mouth.....	*1,383				
Just upstream of farm access road.....	*1,455				
About 0.76 miles upstream of farm road.....	1,531				
Maps available for inspection at the County Courthouse, Marion, North Carolina.					

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Powder River (at Sumpter):		Approximately 3,100 feet above confluence of Rock Creek.....	*618	Rainier (city), Columbia County (FEMA Docket No. 6920)	
At upstream side of Whitney Tippon Highway Bridge.....	*4,242	Scappoose Creek:		Columbia River:	
Approximately 180 feet above West Dredge Road.....	*4,272	Approximately 2,880 feet downstream of West Lane Road.....	*24	At downstream corporate limit, approximately 3,300 feet below Longview Bridge.....	*16
At City of Sumpter corporate limits.....	*4,328	Just below State Highway 30.....	*43	At upstream corporate limit.....	*17
At Sawmill Gulch Road.....	*4,356	Just upstream of Dutch Canyon Road.....	*63		
At confluence of Cracker Creek.....	*4,383	Just upstream of Branch Road.....	*75	Maps are available for review at City Hall, Rainier, Oregon.	
North Powder River (at North Powder):		At upstream of Raymond Creek Road.....	*88		
Approximately 4,200 feet above mouth.....	*3,222	Rock Creek:		Scappoose (city), Columbia County (FEMA Docket No. 6920)	
At as unnamed road located approximately 5,200 feet above mouth.....	*3,226	At confluence with Nehalem River.....	*614	Scappoose Creek:	
At Thief Valley Road.....	*3,244	North Scappoose Creek:		At downstream corporate limits, just above Columbia River Highway.....	*43
Just above Interstate 84 South.....	*3,256	At confluence with Scappoose Creek.....	*37	Upstream of Scappoose Vernonia Road.....	*46
Approximately 800 feet above State Highway 30.....	*3,261	At upstream of State Highway 30.....	*48	At centerline of J.P. West Road.....	*48
Old Settler's Slough:		Approximately 150 feet below confluence with North Scappoose Creek overflow.....	*54	At centerline of E.M. Watts Road.....	*53
At R 39/40 E.....	*3,389	Approximately 250 feet above Apple Valley Road.....	*75	At upstream corporate limit, centerline of Dutch Canyon Road.....	*62
Just above Pocahontas Road.....	*3,402	North Scappoose Creek Overflow:		Maps are available for review at City Hall, Scappoose, Oregon.	
At City of Baker corporate limits.....	*3,411	Approximately 100 feet below confluence with North Scappoose Creek.....	*54		
Approximately 50 feet below Auburn Avenue.....	*3,435	At confluence with Scappoose Creek.....	*43	St. Helens (city), Columbia County (FEMA Docket No. 6920)	
At divergence from Powder River.....	*3,456	Maps are available for review at Columbia County Courthouse, First Street, St. Helens, Oregon.		Columbia River:	
Pine Creek (at Halfway):				At upstream corporate limits.....	*23
At downstream side of Pine Creek Highway.....	*2,622	Deschutes County (unincorporated areas) (FEMA Docket No. 6920)		At downstream corporate limits confluence of Multnomah Channel.....	*23
Approximately 60 feet above Slaughterhouse Road.....	*2,638	Deschutes River at Tumalo:		Milton Creek:	
At East Pine Creek Road.....	*2,708	300 feet below River Mile 156.....	*3,137	At upstream corporate limits, 1,840 feet upstream of Pittsburg Road.....	*150
Maps are available for inspection at the Baker County Planning Office, County Courthouse, 1995 Third Street, Baker, Oregon 97814.		At Tumalo Deschutes Highway Bridge.....	*3,167	At intersection with Columbia River Highway (State Highway 30).....	*100
Bend (city), Deschutes County (FEMA Docket No. 6920)		Deschutes River at Sunriver:		At centerline of Old Portland Road.....	*67
Deschutes River:		At Cardinal Landing Bridge.....	*4,153	At confluence with Columbia River.....	*23
At upstream of Pacific Power and Light Dam.....	*3,594	1,200 feet below Harper Bridge.....	*4,158	Maps are available for review at City Hall, St. Helens, Oregon.	
100 feet above Iceboom.....	*3,607	Little Deschutes River:		Sumpter (city), Baker County (FEMA Docket No. 6912)	
4,700 feet below upstream corporate limits.....	*3,610	At confluence with Deschutes River.....	*4,159	Powder River:	
3,200 feet below upstream corporate limits.....	*3,617	1,800 feet above South Center Drive Bridge.....	*4,166	At southern corporate limit (approximately 1,000 feet east of the river channel).....	*4,321
Maps are available for review at City Hall, Planning Department, 710 Northwest Wall, Bend, Oregon.		At confluence of Paulina Creek.....	*4,182	At southern corporate limit.....	*4,328
		At upstream side of Stearns Bridge.....	*4,201	At Sawmill Gulch Road.....	*4,356
Columbia City (city), Columbia County (FEMA Docket No. 6920)		At County boundary between Deschutes and Klamath.....	*4,258	At confluence of Cracker Creek.....	*4,383
Columbia River:		Squaw Creek:		Maps are available for inspection at the Baker County Planning Office, County Courthouse, 1995 Third Street, Baker, Oregon 97814.	
At downstream corporate limits.....	*22	100 feet above County boundary between Deschutes and Jefferson County.....	*2,587		
At upstream corporate limits approximately 1,100 feet above "L" Street extended.....	*22	At River Mile 10.00.....	*2,677	Vernonia (city), Columbia County (FEMA Docket No. 6920)	
Maps are available for review at City Hall, Columbia City, Oregon 97018.		At River Mile 14.00.....	*2,853	Rock Creek:	
		120 feet above Camp Polk Bridge.....	*2,992	Approximately 1,050 feet downstream of Bridge Street, at downstream corporate limit.....	*614
Columbia County (unincorporated areas) (FEMA Docket No. 6920)		At Section line 29/32 in T 15S, R 10E.....	*3,506	At Bridge Street (State Highway 47).....	*615
Clatskanie River:		Maps are available for review at the Deschutes County Courthouse Annex, 1164 N.W. Bond, Bend, Oregon.		At upstream corporate limit, T 4/5 north line.....	*619
At confluence with Beaver Slough.....	*12	Pilot Rock (city), Umatilla County (FEMA Docket No. 6920)		Nehalem River:	
Just upstream of Olson Road.....	*18	Birch Creek:		At downstream corporate limit, approximately 1,000 feet above confluence of Knickerson Creek.....	*600
Coyers Creek:		At confluence of West and East Fork Birch Creek.....	*1,624	At intersection of Elm Street and Mist Drive.....	*606
At Kelly Road.....	*22	At downstream corporate limit.....	*1,619	At eastern end of Vernonia Lake.....	*608
Approximately 750 feet above confluence of Roaring Creek.....	*74	West Fork Birch Creek:		Just upstream of the confluence of Rock Creek, at southern corporate limit.....	*615
Columbia River:		At upstream corporate limit.....	*1,661	Maps are available for review at City Hall, 919 Bridge Street, Vernonia, Oregon.	
At Clatsop-Columbia County boundary.....	*11	Approximately 940 feet upstream of 2nd Street.....	*1,650		
At Crims Island.....	*14	At 2nd Street.....	*1,638	PENNSYLVANIA	
At confluence of Goble Creek.....	*19	Just upstream of Birch Street.....	*1,632	Berlin (township), Wayne County (FEMA Docket No. 6917)	
At confluence of Multnomah Channel.....	*23	At confluence with East Fork.....	*1,624	Delaware River:	
At Columbia-Multnomah County boundary.....	*26	East Fork Birch Creek:		At downstream corporate limits.....	*694
McNulty Creek:		At upstream limit of flooding affecting the city.....	*1,662	At upstream corporate limits.....	*697
At confluence with Columbia River.....	*23	Approximately 660 feet upstream of 3rd Street.....	*1,647	Indian Orchard Brook:	
Upstream of Columbia River Highway.....	*78	At SW. 2nd Street.....	*1,639	At downstream corporate limits.....	*981
Downstream of Ross Road.....	*100			Upstream side of downstream crossing of Camp Navajo Road.....	*1,011
Milton Creek:		Just upstream of 2nd Street.....	*1,632	Upstream side of upstream crossing of Camp Navajo Road.....	*1,050
Approximately 200 feet above Pittsburg Road and City of St. Helens corporate limit.....	*137	At confluence with West Fork.....	*1,624		
At intersection of Pittsburg Road, approximately 300 feet below intersection of Robinson and Pittsburg Road.....	*203	Maps are available for review at the Umatilla County Courthouse, 216 SE. Fourth Street, Pendleton, Oregon.			
At Pittsburg Road crossing of T 4/5 North.....	*221	Prescott (city), Columbia County (FEMA Docket No. 6920)			
Nehalem River:		Columbia River: At Riverview Avenue.....	*18		
Approximately 825 feet upstream of Knickerson Creek.....	*600	Maps are available for review at Prescott City Hall, 72742 Blakely Street, Rainier, Oregon.			
Approximately 1,300 feet upstream of the intersection of Pebble Creek Road and Alder Street extended.....	*608				
Just downstream of sewage disposal ponds.....	*613				

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Maps are available for inspection at the Township Secretary's Home, Vera E. Shields, R.D. 4, Box 885, Honesdale, Pennsylvania 18431.		Glasgow (borough), Beaver County (FEMA Docket No. 6920)		Unnamed Tributary to Middle Creek:	
Bethel (township), Berks County (FEMA Docket No. 6920)		Ohio River:		Confluence with Middle Creek.....	*509
Little Swatara Creek:		At downstream corporate limits.....	*690	Approximately 2,500 feet upstream side of LR 01072.....	*522
At downstream corporate limits.....	*454	Maps available for inspection at the Residence of Ms. Joyce Camp, Borough's Secretary, Midland, Pennsylvania.		Maps available for inspection at the Chairman's Residence, 125 Brent Road, Fairfield, Pennsylvania.	
At Township Route 492.....	*510	Hamiltonban (township), Adams County (FEMA Docket No. 6917)		Menallen (township), Adams County (FEMA Docket No. 6917)	
Crosskill Creek:		Little Marsh Creek:		Opossum Creek:	
At confluence with Little Swatara Creek.....	*454	At downstream corporate limits.....	*644	Approximately .4 mile downstream of Aspers-Bendersville Road.....	*598
Approximately .4 mile upstream of LR 06003.....	*459	Approximately 700 feet downstream side of T-315.....	*675	Approximately .4 mile upstream of State Route 34.....	*644
Unnamed tributary #1 to Little Swatara Creek:		Approximately 850 feet upstream side of T-315.....	*703	Unnamed Tributary to Opossum Creek:	
At confluence with Little Swatara Creek.....	*459	Toms Creek:		Confluence with Opossum Creek.....	*619
Approximately 1,550 feet upstream of LR 06003.....	*466	At downstream corporate limits.....	*590	At LR 01006.....	*644
Unnamed Tributary #2 to Little Swatara Creek:		Approximately 525 feet of upstream corporate limits.....	*631	Maps available for inspection at the Township Building, Aspers, Pennsylvania.	
Approximately 1,400 feet downstream of State Route 501.....	*481	Maps available for inspection at the Residence of the Township Secretary, Philis Beeche, P.O. Box 494, Fairfield, Pennsylvania.		Mount Joy (Township), Adams County (FEMA Docket No. 6917)	
Approximately .5 mile upstream of State Route 501.....	*490	Highland (township), Adams County (FEMA Docket No. 6917)		White Run:	
Mill Creek:		Marsh Creek:		Approximately .70 mile downstream of State Route 97 Bridge.....	*415
At confluence with Little Swatara Creek.....	*495	At downstream corporate limits.....	*476	Approximately 950 feet downstream of State Route 97 Bridge.....	*423
Approximately 100 feet downstream of Interstate Route 78.....	*524	200 feet upstream of upstream corporate limits.....	*522	Approximately 100 feet downstream of State Route 97 Bridge.....	*428
Maps available for inspection at the Township Building, Bethel, Pennsylvania.		Maps available for inspection at the residence of the Township Secretary, Laura Neibert, 2840 Fairfield Road, Gettysburg, Pennsylvania.		Upstream side of State Route 97 Bridge.....	*431
Bethel (township), Armstrong County (FEMA Docket No. 6917)		Huntington (township), Adams County (FEMA Docket No. 6920)		Approximately .41 mile upstream of State Route 97 Bridge.....	*436
Allegheny River:		Bermudian Creek:		Plum Run:	
At downstream corporate limits.....	*780	At downstream corporate limits.....	*516	At confluence with White Run.....	*431
At upstream corporate limits.....	*787	At T-619.....	*535	Approximately 0.21 mile upstream of confluence with White Run.....	*432
Crooked Creek:		Upstream side of L.R. 01042.....	*551	Rock Creek:	
Upstream side of CONRAIL bridge.....	*787	Upstream side of U.S. Business Route 15.....	*568	Upstream side of U.S. Route 15 Bridge.....	*422
Approximately 1,600 feet upstream of State Route 66.....	*796	At T-810 extended.....	*606	Approximately 0.47 mile upstream of U.S. Route 15 Bridge.....	*427
Maps available for inspection at the Township Building, Vandergriff, Pennsylvania.		Downstream side of L.R. 01004.....	*623	Downstream Side of State Route 97 Bridge.....	*432
Clay (township), Huntingdon County (FEMA Docket No. 6920)		Upstream side of L.R. 01011.....	*641	Approximately 0.16 mile upstream of State Route 97 Bridge.....	*433
Three Springs Creek:		Maps available for inspection at the Township Building, Trolley Road, York Springs, Pennsylvania.		Approximately 0.27 mile upstream of State Route 97 Bridge.....	*443
At downstream abandoned railroad crossing.....	*690	Lackawaxen (township), Pike County (FEMA Docket No. 6920)		Approximately 0.44 mile upstream of State Route 97 Bridge.....	*456
Upstream side of State Route 994.....	*706	Lackawaxen River:		Approximately 0.6 mile upstream of State Route 97 Bridge.....	*459
Approximately 700 feet upstream of L.R. 31010.....	*714	At confluence with Delaware River.....	*622	At upstream corporate limits.....	*461
Maps available for inspection at the Clay Township Election House, Route 655, Three Springs, Pennsylvania.		At approximately 2 miles above confluence with Delaware River.....	*647	Maps available for inspection at the Township Building, 902 Hoffman Home Road, Gettysburg, Pennsylvania.	
Delaware Water Gap (borough), Monroe County (FEMA Docket No. 6920)		At Rowland Road.....	*688	New Florence (borough), Westmoreland County (FEMA Docket No. 6914)	
Cherry Creek:		At Kimbles Road.....	*830	Conemaugh River:	
At confluence with Delaware River.....	*322	At upstream corporate limits.....	*884	Approximately 840 feet downstream of Ligonier Street.....	*1,071
At upstream corporate limits.....	*325	Delaware River:		Approximately 1,200 feet upstream of Ligonier Street.....	*1,075
Approximately 550 feet downstream of the downstream corporate limits.....	*314	At downstream corporate limits.....	*611	Maps available for inspection at the Borough Building, Franklin, Pennsylvania.	
At the upstream corporate limits.....	*322	Approximately .5 mile upstream from confluence of Lackawaxen River.....	*624	Penn (township), Berks County (FEMA Docket No. 6920)	
Maps available for inspection at the Municipal Building, Main & Sheppard Streets, Delaware Water Gap, Pennsylvania.		Confluence of Tenmile River.....	*672	Plum Creek:	
Dunbar (township), Fayette County (FEMA Docket No. #6917)		Approximately 2.8 miles upstream from confluence of Tenmile River.....	*688	At downstream corporate limits.....	*311
Youghiogheny River:		At upstream corporate limits.....	*694	At upstream corporate limits.....	*356
Downstream corporate limits.....	*848	Maps available for inspection at the Township Building, Lackawaxen, Pennsylvania.		Maps available for inspection at the Township Building, Morth Garfield Road, Bernville, Pennsylvania.	
Approximately 2.75 miles upstream of State Route 711.....	*908	Liberty (township), Adams County (FEMA Docket No. 6917)		Point Marion (borough), Fayette County (FEMA Docket No. 6917)	
Maps available for inspection at the Municipal Building, Bell Drive, Dunbar, Pennsylvania.		Toms Creek:		Monongahela River: For entire length affecting community.....	*808
Germany (township), Adams County (FEMA Docket No. 6917)		At downstream corporate limits.....	*444	Cheat River:	
Piney Creek:		At upstream corporate limits.....	*475	Approximately 600 feet downstream of U.S. Route 119.....	*808
Approximately 3,000 feet upstream of Mill Road.....	*560	Friends Creek:		Approximately 0.6 mile upstream from U.S. Route 119.....	*809
Approximately 1,850 feet downstream of State Route 97.....	*570	Approximately 1,000 feet upstream of Ranch Trail.....	*476		
At State Route 97.....	*578	Approximately 2,150 feet upstream side of Ranch Trail.....	*491		
Maps available for inspection at the residence of the Township Secretary, David Krebs, 121 Littlestown, Littlestown, Pennsylvania.		Middle Creek:			
		At downstream corporate limits.....	*488		
		Approximately 600 feet upstream of TR-318.....	*509		

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Maps available for inspection at the Borough Building, 426 Morgantown Street, Point Marion, Pennsylvania.		Snake Spring (township), Bedford County (FEMA Docket No. 6917)		At corporate limits	*649
Porter (township), Clinton County (FEMA Docket No. 6920)		<i>Raystown Branch Juniata River:</i>		Approximately 780 feet upstream of corporate limits.....	*665
<i>Fishing Creek:</i>		Approximately .35 mile downstream for Lutzville Road.....	*1,031	Maps available for inspection at the Township Building, Tunkhannock, Pennsylvania.	
At downstream corporate limits.....	*692	Approximately .5 mile upstream from Pennsylvania Turnpike.....	*1,052	West Carroll (township), Cambria County (FEMA Docket No. 6920)	
Upstream side of 2nd crossing of LR 18007.....	*714	<i>Snake Spring Valley Run:</i>		<i>West Branch Susquehanna River:</i>	
The upstream side of the downstream crossing of State Route 64.....	*792	Approximately 85 feet downstream from U.S. Route 30.....	*1,021	Approximately 125 feet downstream of the downstream corporate limits.....	*1,538
The upstream side of LR 18041.....	*826	Approximately .23 mile upstream from third upstream crossing of State Route 286.....	*1,070	Downstream side of T-602.....	*1,593
Approximately 50 feet downstream of LR 18006.....	*860	Approximately .24 mile upstream from T-489.....	*1,126	Upstream side of T-614.....	*1,665
<i>Fishing Creek Diversion Channel:</i>		Maps available for inspection at the Township Building, R.D. 1, Everett, Pennsylvania.		At upstream side of first upstream crossing of LR 11045.....	*1,707
At confluence with Fishing Creek.....	*803	Southampton (township), Cumberland County (FEMA Docket No. 6920)		Approximately 600 feet upstream of the confluence of Bakerton Reservoir Tributary.....	*1,748
Approximately 130 feet upstream of State Route 64.....	*809	<i>Middle Spring Creek:</i>		Maps available for inspection at the Township Building, Elmora, Pennsylvania.	
At divergence from Fishing Creek.....	*824	At the downstream corporate limits.....	*547		
<i>Little Fishing Creek:</i>		Upstream side of T-312.....	*578	TENNESSEE	
At confluence with Fishing Creek.....	*810	Approximately 1,750 feet above the confluence of Burd Run.....	*608	Huntington (town), Carroll County (FEMA Docket No. 6917)	
At corporate limits.....	*841	<i>Burd Run:</i>		<i>Beaver Creek:</i>	
Maps available for inspection at the Township Building, R.D. 2, Mill Hall, Pennsylvania.		At the confluence with Middle Spring Creek.....	*605	About 1,900 feet downstream of West Main Street.....	*375
Salem (township), Wayne County (FEMA Docket No. 6920)		Approximately 0.5 mile upstream of T-307.....	*621	At confluence of Poison Branch.....	*381
<i>West Branch Wallenpaupack Creek:</i>		Approximately 0.7 mile downstream of Interstate 81.....	*667	<i>Brier Creek:</i>	
Approximately .29 mile downstream from confluence of Moss Hollow Creek.....	*1,290	At the confluence of Long Pine Run.....	*697	At mouth.....	*381
At upstream side of S.R. 3004.....	*1,295	<i>Long Pine Run:</i>		About 1,580 feet upstream of State Route 22 Bypass.....	*383
Approximately .6 mile upstream from S.R. 3004.....	*1,299	Confluence with Burd Run.....	*697	<i>Lateral No. 1:</i>	
At confluence of Jones Creek.....	*1,331	Upstream side of CONRAIL.....	*718	At mouth.....	*381
<i>Jones Creek:</i>		Downstream side of Broad Street.....	*788	Just downstream of Northwood Drive.....	*394
At confluence with West Branch Wallenpaupack Creek.....	*1,331	Approximately 400 feet upstream of L.R. 21048.....	*892	<i>Lateral No. 2:</i>	
Approximately .15 mile upstream from S.R. 348.....	*1,359	<i>Gum Run:</i>		At mouth.....	*382
<i>Anel Creek:</i>		At the downstream corporate limits.....	*676	Just downstream of Northwood Drive.....	*392
Approximately .10 mile downstream from 1st crossing of Five Mile Creek Road.....	*1,195	Approximately 0.5 mile downstream of Interstate 81.....	*691	<i>Poison Branch:</i>	
At L.R. 951.....	*1,262	Downstream side of Interstate 81.....	*711	About 1,200 feet downstream of Buena Drive.....	*387
<i>Moss Hollow Creek:</i>		Maps available for inspection at the Southampton Township Building, Intersection of Airport and Hershey Road, Southampton, Pennsylvania.		Just downstream of Buena Drive.....	*390
At confluence with West Branch Wallenpaupack Creek.....	*1,290	South Newton (township), Cumberland County (FEMA Docket No. 6920)		<i>Unnamed Creek:</i>	
Approximately 1.6 miles upstream from confluence with West Branch Wallenpaupack Creek.....	*1,326	<i>Yellow Breeches Creek:</i>		At mouth.....	*378
Maps available for inspection at the Township Building, Salem, Pennsylvania.		Approximately 570 feet downstream of LR 21089.....	*713	About 120 feet upstream of Hawkins Lane.....	*405
Shohola (township), Pike County (FEMA Docket No. 6920)		Approximately 1,700 feet downstream of State Route 174.....	*726	Maps available for inspection at the City Hall, Huntingdon, Tennessee.	
<i>Ballard Creek:</i>		Approximately 280 feet upstream of CONRAIL.....	*749	TEXAS	
At confluence with Shohola Creek.....	*921	Maps available for inspection at the Township Building, High Mountain Road, South Newton, Pennsylvania.		Snook (city), Burleson County (FEMA Docket No. 6917)	
At Shohola Falls Road.....	*938	Tulpehocken (township), Berks County (FEMA Docket No. 6920)		<i>Old River Tributary 1:</i>	
<i>Grassy Brook:</i>		<i>Little Swatara Creek:</i>		At downstream corporate limits.....	*228
At confluence with Shohola Creek.....	*909	At downstream corporate limits.....	*454	Upstream side County Route 269.....	*234
At approximately 1.6 miles upstream from State Route 434.....	*965	At Township Route 492.....	*510	At upstream corporate limits.....	*239
<i>Panther Creek:</i>		Maps available for inspection at the Home of Jacob Tryon, Township Secretary/Treasurer, Godfrey Street, Rehersburg, Pennsylvania.		<i>Old River Tributary 2:</i>	
At confluence with Delaware River.....	*595	Tunkhannock (township), Wyoming County (FEMA Docket No. 6920)		At confluence with Old River Tributary 1.....	*228
At approximately .4 mile upstream from CONRAIL crossing.....	*658	<i>Susquehanna River:</i>		Approximately 0.6 mile upstream of FM 2155.....	*244
At Panther Brook Road.....	*669	At downstream corporate limits.....	*595	<i>Old River Tributary 3:</i>	
<i>Shohola Creek:</i>		At upstream corporate limits.....	*615	At confluence with Old River Tributary 1.....	*233
At approximately 1.6 miles above confluence with Delaware River.....	*687	Approximately 50 feet downstream of most downstream crossing of U.S. Route 6.....	*610	Approximately 0.6 mile upstream of County Route 269.....	*241
At approximately .5 mile above Knealing Road.....	*728	Approximately 750 feet upstream of confluence of Billings Mill Brook.....	*618	Maps available for inspection at the City Hall—FM 2155, Snook, Texas.	
At approximately 1.5 miles above Knealing Road.....	*787	Upstream face of most upstream crossing of State Route 6.....	*629	Waller County (FEMA Docket No. 6906)	
At approximately 3 miles above Knealing Road.....	*852	Approximately 1.9 miles upstream of the most upstream crossing of State Route 6.....	*641	<i>Bessies Creek:</i>	
At approximately 280 feet above confluence of Ballard Creek.....	*923	<i>Swale Brook:</i>		At County boundary.....	*115
<i>Twin Lakes Creek:</i>		Approximately 575 feet downstream of corporate limits.....	*641	Upstream side of Missouri-Kansas-Texas Railroad.....	*122
At Twin Lakes Road.....	*1,277			Upstream side of FM 1458.....	*131
At approximately .25 mile above Twin Lakes Road.....	*1,300			Maps available for inspection at the Floodplain Administration Office, 2036 Ninth Street, Hempstead, Texas.	
At access road crossing.....	*1,3542			VERMONT	
<i>Walker Lake Creek:</i>				Grand Isle (town), Grand Isle County (FEMA Docket No. 6912)	
At Seneca Road.....	*1,173			<i>Lake Champlain:</i> Entire shoreline affecting community.....	*102
At approximately .3 mile above Seneca Road.....	*1,214			Maps available for inspection at the Town Office Vault, Grand Isle, Vermont.	
<i>Delaware River:</i>					
Approximately 1.02 miles downstream from confluence of Shohola Creek.....	*578				
At upstream corporate limits.....	*611				
Maps available for inspection at the Township Building, Shohola, Pennsylvania.					

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Hartland (town), Windsor County (FEMA Docket No. 6912)		Downstream of State Route 15	*701	Leach Run:	
<i>Connecticut River:</i>		Maps available for inspection at the Selectmen's Vault, Underhill Center, Vermont.		At confluence with Happy Creek	*499
At downstream corporate limits	*331			At State Route 647	*538
Approximately 2.4 miles upstream of confluence of Lulls Brook	*335			Approximately 5,000 feet upstream of confluence of Tributary to Leach Run	*618
Approximately 400 feet upstream of confluence of Ottauquechee River	*343	Weathersfield (town), Windsor County (FEMA Docket No. 6909)		At upstream corporate limits	*720
At upstream corporate limits	*346	<i>Connecticut River:</i>		<i>Tributary to Leach Run:</i>	
<i>Ottawaquechee River Lower Reach:</i>		At downstream corporate limits	*312	Downstream corporate limits	*540
At confluence with Connecticut River	*343	Approximately 1,600 feet upstream of Downer Hill Road (extended)	*315	At confluence of Upper Leach Run Tributary	*595
At upstream side of White Current Corporation dam	*353	At upstream side of State Route 103 bridge	*319	Maps available for inspection at the Town Hall, 16 North Royal Avenue, Front Royal, Virginia.	
At downstream side of U.S. Route 5	*357	At upstream corporate limits	*320	WASHINGTON	
<i>Ottawaquechee River Upper Reach:</i>		<i>Black River:</i>		Ritzville (city), Adams County (FEMA Docket No. 6920)	
At downstream corporate limits	*626	Approximately 460 feet downstream of State Route 106 Bridge	*532	<i>Paha Creek:</i>	
At upstream corporate limits	*635	Approximately 4,980 feet downstream of Covered Bridge	*552	Approximately 730 feet downstream from center of Whittlessey Street Bridge	*1,787
<i>Lulls Brook:</i>		Approximately 1,860 feet upstream of Covered Bridge	*600	Just upstream of Division Bridge	*1,796
At upstream side of Old Mill Dam	*421	At upstream corporate limits	*625	Approximately 590 feet upstream from center of Harrison Street Bridge	*1,800
At downstream side of U.S. Route 5	*557	<i>North Branch Black River:</i>		Approximately 2,080 feet upstream from center of Harrison Street Bridge (at Northeast corporate limits)	*1,804
Approximately 120 feet upstream of first crossing of State Route 12	*601	Approximately 1,025 feet downstream of State Route 131	*561	Maps available for review at City Hall, 209 N. Adams, Ritzville, Washington.	
At upstream side of first crossing of Brownsville Road	*659	Downstream side of Little Ascutney Road bridge	*599	Wilson Creek (town), Grant County (FEMA Docket No. 6917)	
Approximately 0.5 mile upstream of second crossing of Brownsville Road	*695	Upstream side of Ascutney Basin Road bridge	*626	<i>Crab Creek:</i>	
Maps available for inspection at the Town Clerk's Vault, Town Office Building, Hartland, Vermont.		Approximately 100 feet upstream of upstream corporate limits	*654	At downstream corporate limits	*1,278
Norwich (town), Windsor County (FEMA Docket No. 6909)		Maps available for inspection at the Town Offices, Ascutney, Vermont.		At the confluence of Wilson and Crab Creeks	*1,280
<i>Connecticut River:</i>		Wells (town), Rutland County (FEMA Docket No. 6917)		<i>Wilson Creek:</i>	
At downstream corporate limits	*388	<i>Wells Brook:</i>		Just upstream of Sixth Street	*1,285
At upstream corporate limits	*399	Downstream corporate limits	*429	At upstream corporate limits	*1,300
<i>Ompompanusuc River:</i>		Confluence of Mill Brook	*439	Maps available for review at Town Hall, Fourth and Railroad Streets, Wilson Creek, Washington.	
Approximately 200 feet downstream of State Route 132	*398	Approximately 1,040 feet upstream of South Street	*515	WEST VIRGINIA	
Approximately 40 feet upstream of the upstream corporate limits	*412	Approximately 1.1 miles above South Street	*590	Barboursville (village), Cabell County (FEMA Docket No. 6917)	
<i>Bloody Brook:</i>		Approximately 3.0 miles above South Street	*805	<i>Mud River:</i> Entire shoreline within community	*555
Approximately 50 feet downstream of Elm Street	*465	<i>Mill Brook:</i>		<i>Guyandotte River:</i> Entire shoreline within community	*555
Approximately 1.1 miles upstream of Turnpike Road (5th upstream crossing)	*831	At confluence with Wells Brook	*439	Maps available for inspection at the City Hall, 721 Central Avenue, Barboursville, West Virginia.	
<i>New Boston Brook:</i>		Approximately 150 feet upstream of T.R. 8	*448	Berkeley County (unincorporated areas) (FEMA Docket No. 6912)	
Approximately 3,450 feet upstream of confluence with Bloody Brook	*728	Approximately 690 feet downstream of State Route 2	*480	<i>Potomac River:</i>	
Approximately 1.2 miles upstream of confluence with Bloody Brook	*737	At Little Lake Dam	*486	At downstream county boundary	*345
Maps available for inspection at the Town Clerk's Office, Tracy Hall, Norwich, Vermont.		<i>Lake St. Catherine:</i> At Little Lake Dam	*486	At CONRAIL	*371
Pittsford (town), Rutland County (FEMA Docket No. 6912)		<i>Lake Lucidan:</i> At Little Lake Dam	*499	At confluence of Cherry Run	*407
<i>Otter Creek:</i>		Maps available for inspection at the Hopson's County Store, Wells, Vermont.		<i>Tributary 1 of the Potomac River:</i>	
Downstream corporate limits	*360	Windsor (town), Windsor County (FEMA Docket No. 6912)		At confluence with Potomac River	*363
Upstream corporate limits	*368	<i>Connecticut River:</i> At upstream side of Bridge Street	*327	Approximately 200 feet downstream of Interstate Route 81	*385
Maps available for inspection at the Town Clerk's Vault, Planes Row, Vermont.		<i>Mill Brook:</i>		<i>Opequon Creek:</i>	
St. Albans (town), Franklin County (FEMA Docket No. 6912)		At confluence with Connecticut River	*326	At confluence with Potomac River	*358
<i>Lake Champlain:</i> Entire shoreline within the community	*102	Approximately 400 feet downstream of Mill Pond Dam	*351	Approximately 200 feet upstream of State Route 45	*366
Maps available for inspection at the Town Clerk's Vault, St. Albans, Vermont.		At upstream side of Mill Pond Dam	*386	At State Route 9	*375
Underhill (town), Chittenden County (FEMA Docket No. 6917)		Maps available for inspection at the Town Clerk's Office, Town Offices, Windsor, Vermont.		At County Route 19	*401
<i>Browns River:</i>		VIRGINIA		At County Route 51	*441
At downstream corporate limits	*685	Front Royal (town), Warren County (FEMA Docket No. 6920)		Approximately 550 feet upstream of County Route 28-5	*453
Approximately 1.0 mile upstream of downstream corporate limits	*720	<i>South Fork Shenandoah River:</i>		<i>Dry Run:</i>	
Upstream side of River Road	*781	Downstream corporate limits	*499	Approximately 0.4 mile downstream of downstream county boundary	*452
Upstream of Pleasant Valley Road	*802	Approximately 130 feet upstream of upstream corporate limits	*507	Downstream side of County Route 9-11	*489
Approximately 150 feet upstream of Stevensville Road	*822	<i>North Fork Shenandoah River:</i>		Upstream side of County Route 4	*553
<i>The Creek:</i>		At downstream corporate limits	*499	Approximately 150 feet upstream of County Route 13	*575
Approximately 0.2 mile downstream of downstream corporate limits	*687	<i>Happy Creek:</i>		<i>Tuscarora Creek:</i>	
At the confluence of Roaring Brook	*694	At downstream corporate limits	*499	Approximately 1,370 feet downstream of CSX Transport	*385
		At Eighth Street	*512	Downstream side of Interstate Route 81	*483
		Approximately 50 feet upstream of Prospect Street	*574	At County Route 15 (1st upstream crossing)	*521
		At upstream of Criser Road	*622	At County Route 15 (3rd upstream crossing)	*556
		Approximately 140 feet upstream of upstream corporate limits	*667	Approximately 1.6 miles upstream of County Route 15 (3rd upstream crossing)	*594

Source of flooding and location	#Depth in feet above ground. Eleva- tion in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. Eleva- tion in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. Eleva- tion in feet (NGVD)
Mill Creek: Approximately 0.4 mile downstream of County Route 26.....	*476	Approximately .3 mile upstream of confluence of Dents Run.....	*981	Hawkins (village), Rusk County (FEMA Docket No. 6920)	
At County Route 24-3.....	*585	Paw Paw Creek: At downstream County boundary.....	*868	Main Creek: About 2,450 feet downstream of the Soo Line Railroad.....	*1,347
At County Route 24.....	*630	At County Route 17-18.....	*904	Just upstream of Ellingson Avenue.....	*1,356
Approximately 1.7 miles upstream of County Route 24.....	*661	At confluence of Robinson Run.....	*951	Maps available for inspection at the Village Hall, Hawkins, Wisconsin.	
Middle Creek: Approximately 1.3 miles downstream of U.S. Route 11.....	*486	Approximately 1,950 feet upstream of County Route 15.....	*992	Neosho (village), Dodge County (FEMA Docket No. 6917)	
Downstream side of County Route 30.....	*559	Prickett Creek: Approximately .3 mile downstream of County Route 73.....	*904	Rubicon River: About 3,300 feet downstream of Schuyler Street.....	*867
Approximately 1,500 feet downstream of County Route 30-5.....	*606	At confluence of Reuben Run.....	*970	Just downstream of Schuyler Street.....	*869
Approximately 100 feet upstream of County Route 37.....	*625	Approximately .6 mile upstream of County Route 68-1.....	*1,002	Mill Pond: Along entire shoreline.....	*878
Evans Run: Approximately 1.4 miles downstream of U.S. Route 11.....	*454	Monongahela River: Approximately .7 mile downstream of the confluence of Paw Paw Creek.....	*866	Maps available for inspection at the Village Hall, 115 South Schuyler Street, Neosho, Wisconsin.	
At U.S. Route 11.....	*490	Approximately .3 mile upstream of confluence of Paw Paw Creek.....	*868	Oxford (village), Marquette County (FEMA Docket No. 6920)	
At Interstate Route 81.....	*521	Approximately 686 feet downstream of the confluence of Tygart Valley and West Fork Rivers.....	*875	Neenah Creek: About 2,500 feet downstream of Chauncey Street.....	*838
Approximately 1 mile upstream of Interstate Route 81.....	*558	At confluence of Tygart Valley and West Fork Rivers.....	*875	Just downstream of Oxford Dam.....	*839
Maps available for inspection at the Berkeley County Planning Office, 212 South College Street, Martinsburg, West Virginia.		West Fork River: Approximately .34 mile downstream of first upstream crossing of CSX Transportation.....	*878	Neenah Lake: Along shoreline.....	*853
Harrison County (unincorporated areas) (FEMA Docket No. 6917)		Approximately 507 feet upstream of first upstream crossing of CSX Transportation.....	*880	Maps available for inspection at the Village Hall, Oxford, Wisconsin.	
West Fork River: At downstream County boundary.....	*902	At downstream County boundary.....	*898	Princeton (city), Green Lake County (FEMA Docket No. 6917)	
At upstream corporate limits of City of Clarksburg.....	*948	Approximately 50 feet upstream of most upstream crossing of CSX Transportation.....	*898	Fox River: About 1.1 miles downstream of Main Street.....	*766
At upstream County boundary.....	*994	Bingamon Creek: Approximately 148 feet downstream of U.S. Route 19.....	*902	About 1.0 mile upstream of Main Street.....	*768
Bingamon Creek: At confluence with West Fork River.....	*902	Approximately .5 mile upstream of U.S. Route 19.....	*902	Maps available for inspection at the City Hall, Clerk's Office, 438 West Main, Princeton, Wisconsin.	
Downstream side of first County Route 8 Bridge crossing.....	*940	Tygart Valley River: At confluence with Monongahela River.....	*875	WYOMING	
Approximately 1,200 feet upstream of County Route 3-1 Bridge.....	*995	Approximately 1.5 miles upstream of confluence with Monongahela River.....	*875	Baggs (town), Carbon County (FEMA Docket No. 6920)	
Tennile Creek: At confluence with West Fork River.....	*920	Pyles Fork: At downstream County boundary.....	*976	Little Snake River: Approximately 1,150 feet downstream of State Highway 789.....	*6,243
Downstream side of Indian Run Road Bridge.....	*982	At County Route 250-5.....	*990	Approximately 2,200 feet upstream of State Highway 789.....	*6,248
Upstream side of Access Road approximately 1.1 miles upstream of confluence of Rush Run.....	*1,005	Approximately .3 mile upstream of confluence of Campbell Run.....	*1,010	Ledford Slough: Approximately 330 feet downstream of County Road.....	*6,240
Simpson Creek: At confluence with West Fork River.....	*927	Maps available for inspection at the County Commission Office, Room 403, G. Harper Meredith Building, Fairmont, West Virginia.		Approximately 100 feet downstream of State Highway 789.....	*6,246
At upstream County boundary.....	*996	WISCONSIN		Approximately 3,000 feet upstream of State Highway 789.....	*6,252
Little Tennile Creek: At confluence with Tennile Creek.....	*932	Almena (village), Barron County (FEMA Docket No. 6920)		Maps available for review at the Town Hall, 129 Penland Street, Baggs, Wyoming.	
Approximately 200 feet upstream of confluence of Caldwell Run.....	*976	Lightning Creek: Just upstream of County Highway P.....	*1,162		
Approximately 1.1 miles upstream of confluence of Middle Run.....	*1,022	Just downstream of Alma Street.....	*1,171		
Limestone Run: At City of Clarksburg corporate limits, downstream side of CSX Transport (B&O) Bridge.....	*942	Maps available for inspection at the Village Hall, Almena, Wisconsin.			
Approximately 50 feet downstream of Wilsonburg Road.....	*981	Cassville (village), Grant County (FEMA Docket No. 6920)			
Downstream side of County Route 50-10 Bridge.....	*1,036	Mississippi River: About 2.7 miles downstream of confluence of Furnace Creek.....	*618		
Approximately .77 mile upstream of County Route 50-10.....	*1,073	About 1.0 mile upstream of confluence of Furnace Creek.....	*620		
Elk Creek: Approximately 2.6 miles downstream of Cost Avenue Bridge.....	*964	Maps available for inspection at the Village Hall, 100 West Amelia, Cassville, Wisconsin.			
Approximately 250 feet upstream of County Route 20-19.....	*1,010	Colfax (village), Dunn County (FEMA Docket No. 6920)			
At County boundary.....	*1,025	Red Cedar River: About 0.5 mile downstream of Wheeler University Street.....	*918		
Gnatly Creek: At confluence with Elk Creek.....	*1,015	About 1,500 feet upstream of Wheeler University Street.....	*921		
At County boundary.....	*1,042	Eighteen Mile Creek: Just downstream of Colfax Dam.....	*920		
Maps available for inspection at the Harrison County Planning Commission, 5th Floor, County Courthouse, Clarksburg, West Virginia.		Just upstream of Colfax Dam.....	*927		
Marion County (unincorporated areas) (FERMA Docket No. 6917)		About 1,900 feet upstream of Foot Bridge.....	*930		
Booths Creek: At County Route 58.....	*913	Maps available for inspection at the Village Clerk's Office, Village Hall, 613 Main Street, Colfax, Wisconsin.			
At County Route 27-1.....	*930				
Buffalo Creek: At downstream County boundary.....	*874				
At confluence of Johnson Run.....	*919				
At CSX Transportation (2nd upstream crossing).....	*952				

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

Source of flooding and location	# Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	# Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	# Depth in feet above ground. Elevation in feet (NGVD)
CALIFORNIA					
Kings County (unincorporated areas) (FEMA Docket No. 6903)		<i>Disappointment Slough (Delta Area):</i> At the confluence of Ward Cut.....	*7	At intersection with 30th Street.....	*5,272
<i>East Branch Cross Creek:</i>		<i>Empire Cut (Delta Area):</i> At the confluence of Middle River.....	*7	480 feet upstream of 25th Street.....	*5,299
Immediately downstream of Orange Avenue.....	*193	<i>Hog Slough (Delta Area):</i> At the confluence of South Fork Mokelumne River.....	*8	<i>Bear Canyon Creek:</i>	
Approximately 100 feet upstream of the Atchison, Topeka and Santa Fe Railroad.....	*209	<i>Honker Cut (Delta Area):</i> At the confluence of White Slough.....	*8	At confluence with Boulder Creek.....	*5,231
Approximately 300 feet downstream of Kansas Avenue.....	*224	<i>Latham Slough (Delta Area):</i> At the confluence of Empire Cut.....	*7	150 feet downstream of Martin Drive.....	*5,366
<i>Tule River:</i>		<i>Little Connection Slough (Delta Area):</i> At confluence with San Joaquin River.....	*7	At downstream face of Yale Road.....	*5,476
Approximately 2,300 feet downstream of Kings County/Tulare County boundary.....	*192	<i>Little Potato Slough:</i>		<i>North Goose Creek:</i>	
Approximately 300 feet downstream of Kings County/Tulare County boundary.....	*193	At the confluence with Potato Slough.....	*7	At confluence with Goose Creek.....	*5,212
Maps available for review at the Kings County Planning Agency, Engineering Building, Government Center, Hanford, California.		At State Highway 12.....	*8	At confluence of Wonderland Creek.....	*5,220
San Joaquin County (unincorporated areas) (FEMA Docket No. 6914)		<i>Potato Slough (Delta Area):</i> At the confluence with San Joaquin River.....	*7	Approximately 215 feet downstream of Foothills Parkway.....	*5,242
<i>Mokelumne River:</i>		<i>Sycamore Slough (Delta Area):</i> At the confluence of South Fork Mokelumne River.....	*8	Maps available for review at the Utilities Development Service, City of Boulder, Box 791, Boulder, Colorado 80306.	
50 feet upstream of New Hope Road (Walnut Grove Road).....	*24	<i>Telephone Cut (Delta Area):</i> At the confluence of Bishop Cut.....	*8	Broomfield (city), Boulder, Adams and Jefferson Counties (FEMA Docket No. 6903)	
Approximately 500 feet upstream of Peltzer Road.....	*34	<i>Turner Cut (Delta Area):</i> At the confluence of Empire Cut, Whiskey Slough and Turner Cut.....	*7	<i>Airport Creek:</i>	
Approximately 750 feet upstream of State Highway 99.....	*51	<i>Whiskey Slough (Delta Area):</i> At the confluence of Empire Cut, Turner Cut and Whiskey Slough.....	*7	At intersection of Airport Drive and Pierce Street.....	*5,330
Approximately 1,250 feet downstream of State Highway 88.....	*89	<i>White Slough (Delta Area):</i>		At confluence with North Branch Airport Creek.....	*5,401
Approximately 450 feet downstream of Camanche Dam.....	*102	At the confluence with San Joaquin River.....	*7	1,500 feet upstream of State Highway 121.....	*5,496
At confluence with South Fork Mokelumne River.....	*7	At the confluence of Potato Slough.....	*8	<i>North Branch Airport Creek:</i>	
Approximately 50 feet upstream of Walnut Grove Road.....	*12	<i>Woodward Canal (Delta Area):</i> At the confluence of Middle River.....	*7	At confluence with Airport Creek.....	*5,401
At divergence from South Fork Mokelumne River.....	*15	<i>Victoria and North Canals (Delta Areas):</i> At the confluence of Middle River and Victoria and North Canals.....	*7	100 feet upstream of State Highway 121.....	*5,512
<i>Middle River:</i>		Maps are available for review at the San Joaquin County Planning and Inspection Department, 1810 East Hazelton, Stockton, California.		840 feet upstream of State Highway 121.....	*5,540
Approximately 3,000 feet upstream of State Highway 4.....	*8	COLORADO		<i>Rock Creek:</i>	
At the confluence with Old River.....	*16	Boulder (CITY), Boulder County (FEMA Docket No. 6903)		At intersection with Brainard Drive.....	*5,307
<i>Middle River (Delta Area):</i> At the confluence with Empire Cut.....	*7	<i>Boulder Creek:</i>		Just downstream of Burlington Northern Railroad.....	*5,338
<i>Old River:</i>		At intersection with Burlington Northern Railroad.....	*5,224	Approximately 100 feet upstream of Denver-Boulder Turnpike.....	*5,357
2,000 feet upstream of Fabian and Bell Canal.....	*8	50 feet upstream of Broadway.....	*5,345	<i>Big Dry Creek:</i>	
At the confluence with Salmon Slough.....	*13	400 feet downstream of Arapahoe Ave.....	*5,466	At eastern corporate limits.....	*5,194
3,000 feet downstream of the confluence with San Joaquin River.....	*22	<i>South Boulder Creek:</i>		3,600 feet east of the intersection of Lowell Boulevard, and West 124th Avenue, along West 124th Avenue extended.....	*5,199
<i>Old River (Delta Area):</i>		20 feet upstream of Burlington Northern Railroad.....	*5,222	1,900 feet north of a point on West 120th Avenue, 3,400 feet east of the intersection of Lowell Boulevard and West 120th Avenue.....	*5,303
At the confluence with Woodward Canal and Old River.....	*7	500 feet downstream of Arapahoe Avenue.....	*5,227	<i>Gay Reservoir Channel:</i>	
Approximately 1,000 feet easterly along State Highway 4 from the bridge crossing at Old River.....	*8	At downstream face of Arapahoe Avenue.....	*5,231	2,600 feet downstream of Lowell Boulevard.....	*5,218
<i>Paradise Cut:</i>		<i>Dry Creek:</i>		60 feet upstream of Lowell Boulevard.....	*5,250
At the confluence with Sugar Cut.....	*12	Approximately 1,350 feet downstream of Central Avenue.....	*5,197	1,600 feet upstream of confluence with Gay Reservoir Channel North Tributary.....	*5,313
Approximately 550 feet upstream of Paradise Road.....	*17	At downstream face of Central Avenue.....	*5,205	<i>Gay Reservoir Channel North Tributary:</i>	
Approximately 1,000 feet downstream of Paradise Dam.....	*23	At downstream face of Burlington Northern Railroad.....	*5,221	At confluence with Gay Reservoir Channel.....	*5,284
<i>South Fork Mokelumne River:</i>		<i>Elmers Twomile Creek:</i>		1,000 feet upstream of confluence with Gay Reservoir Channel.....	*5,298
At the confluence of Hog Slough.....	*8	At confluence with Goose Creek.....	*5,294	2,200 feet upstream of confluence with Gay Reservoir Channel.....	*5,323
Approximately 100 feet upstream of Walnut Grove Road.....	*15	50 feet downstream of Iris Avenue.....	*5,320	<i>City Park Channel:</i>	
<i>South Fork Mokelumne River (Delta Area):</i>		At downstream face of Kalmia Avenue.....	*5,334	760 feet downstream of West 120th Avenue.....	*5,239
Approximately 1,000 feet west along State Highway 12 from the bridge crossing of Little Potato Slough.....	*7	<i>Fourmile Canyon Creek:</i>		At downstream face of Emerald Street.....	*5,347
At confluence of Little Potato Slough.....	*8	Just downstream of 28th Street.....	*5,363	1,630 feet upstream of Burbank Street.....	*5,415
<i>San Joaquin River (Delta Area):</i>		1,000 feet upstream of 28th Street.....	*5,379	<i>Nissen Reservoir Channel:</i>	
Intersection of Jacobs Road and McDonald Road.....	*7	Just downstream of 26th Street.....	*5,391	At confluence with City Park Channel.....	*5,238
Intersection of Mathews Road and Wolfe Road.....	*17	Approximately 2,700 feet upstream of confluence with Silverlake Ditch.....	*5,635	At intersection with Main Street.....	*5,362
Approximately 3,000 feet north of the intersection of Kasson Road and Durham Ferry Road (Airport Way).....	*32	Approximately 3,680 feet upstream of confluence with Silverlake Ditch.....	*5,668	660 feet upstream of Daphin Street.....	*5,389
<i>Beaver Slough:</i> Approximately 100 feet downstream of Blossom Road.....	*9	Approximately 4,200 feet upstream of confluence with Silverlake Ditch.....	*5,888	<i>West Lake Channel North Tributary:</i>	
<i>Bishop Cut (Delta Area):</i> At confluence of Telephone Cut.....	*8	<i>Goose Creek:</i>		At confluence with West Lake.....	*5,265
<i>Columbia Cut (Delta Area):</i> At the confluence of San Joaquin River and Columbia Cut.....	*7	Approximately 1,200 feet upstream of confluence with Boulder Creek.....	*5,211	360 feet upstream of confluence with West Lake.....	*5,273
<i>Connection Slough (Delta Area):</i> Approximately 100 feet upstream of the confluence with Old River.....	*7	At upstream face of 30th Street.....	*5,275	500 feet upstream of confluence with West Lake.....	*5,275
		140 feet upstream of 9th Street.....	*5,380	<i>West Lake Channel:</i>	
		<i>Skunk Creek:</i>		30 feet downstream of West 128th Avenue.....	*5,218
		At confluence with Bear Canyon Creek.....	*5,243	At intersection with Lowell Boulevard.....	*5,267
		80 feet upstream of Aurora Avenue.....	*5,298	2,280 feet upstream of Lowell Boulevard.....	*5,299
		370 feet upstream of Bluebell Avenue.....	*5,417	<i>City Park Channel South Tributary:</i>	
		<i>Wonderland Creek:</i>		At intersection with City Park Channel.....	*5,348
		At confluence with North Goose Creek.....	*5,220	At intersection with Kohn Street.....	*5,371
		At downstream face of 47th Street.....	*5,275	800 feet upstream of Nickel Street.....	*5,402
		At downstream face of 34th Street.....	*5,292	<i>Brandywine Creek:</i>	
		At upstream face of 19th Street.....	*5,437	Approximately 70 feet upstream of West 121st Place.....	*5,239
		At downstream face of Broadway.....	*5,488	At intersection with West 121st Place.....	*5,240
		<i>Arapahoe Avenue Overflow:</i>		1,550 feet upstream of West 121st Place.....	*5,240
		At confluence with Boulder Creek.....	*5,247	Maps available for review at The City Engineers Office, 6 Garden Office Center, Broomfield, Colorado.	

Source of flooding and location	# Depth in feet above ground. Elevation in foot (NGVD)
MASSACHUSETTS	
Concord (town), Middlesex County (FEMA Docket No. 6906)	
Mill Brook:	
Upstream side of Main Street	*128
Upstream side of Cambridge Turnpike Dam	*132
Tributary No. 1: Approximately 190 feet downstream of Main Street	*125
Maps available for inspection at the Town Planner's Office, Concord, Massachusetts.	
MONTANA	
Hill County (unincorporated areas), (FEMA Docket No. 6912)	
Mill River:	
Approximately 2.1 miles upstream of Little Boxelder Creek along U.S. Highway 2	*2,464
Approximately 3.0 miles downstream of FAS Highway 232 along U.S. Highway 2	*2,469
Approximately 1.6 miles downstream of FAS Highway 232 along U.S. Highway 2	*2,474
Approximately 200 feet upstream of FAS Highway 232	*2,481
Approximately 4,000 feet downstream of Beaver Creek	*2,488
Big Sandy Creek:	
Approximately 100 feet downstream of U.S. Highway 2	*2,503
Approximately 1,100 feet downstream of Duncan Coulee Creek	*2,509
Approximately 2,000 feet upstream of Duncan Coulee Creek	*2,514
Beaver Creek:	
Approximately 200 feet upstream of U.S. Highway 2	*2,530
Approximately 100 feet upstream of Burlington Northern Railroad (BNRR) crossing, located approximately 1.4 miles south of U.S. Highway 2 along the BNRR	2,556
Approximately 100 feet downstream of BNRR crossing approximately 4,300 feet downstream of U.S. Highway 87 crossing	*2,583
Approximately 2,500 feet upstream of U.S. Highway 87	*2,618
Maps are available for inspection at the County Health and Planning Office, 300 Fourth Street, Havre, Montana.	
NORTH DAKOTA	
Bowman (city), Bowman County (FEMA Docket No. 6903)	
Left Bank Tributary of Spring Creek:	
At southern extrajurisdictional limit of City of Bowman	*2,934
At downstream side of Highway 85 Bridge south of Bowman	*2,936
West Drainage System of City of Bowman:	
At southern extrajurisdictional limit of City of Bowman	*2,934
At Eleventh Street Bridge	*2,945
One-half mile west of Eleventh Street Bridge	*2,948
East Drainage System of City of Bowman:	
At confluence with West Drainage near sewage ponds	*2,936
At upstream side of Third Avenue	*2,945
At upstream side of Highway 12	*2,951
At upstream side of Highway 85	*2,973
Maps are available for inspection at the Zoning Administrator's Office, Bowman County Courthouse, 104 West First Street, Bowman, North Dakota.	

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 87-04; Notice 3]

Federal Motor Vehicle Safety Standards; Air Brake Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This notice amends Federal Motor Vehicle Safety Standard No. 121, *Air Brake Systems*, to clarify the standard's parking brake requirements. The amendments require actuation of a mechanical means for holding the parking brakes, within three seconds after operation of the parking brake control. (For trailers, such actuation is required within three seconds after venting to the atmosphere of the front supply line connection is initiated.) In addition, vehicles are required to be capable of meeting requirements related to parking brake retardation force within the three second period. The amendments also require that the grade holding test (or alternative drawbar test) be met with only the mechanical means of holding the parking brakes in operation.

DATES: The amendments made by this rule to the Code of Federal Regulations are effective April 11, 1988. The amendments require mandatory compliance effective September 7, 1988, while permitting manufacturers to comply with the new requirements as an option to complying with requirements being superseded effective April 11, 1988. Petitions for reconsideration must be received on or before April 11, 1988.

ADDRESSES: Petitions for reconsideration should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Shadle, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC (202-366-5273).

SUPPLEMENTARY INFORMATION:

Background

On March 17, 1987, NHTSA published in the Federal Register (52 FR 8317) a notice of proposed rulemaking (NPRM) to clarify the parking brake requirements of Federal Motor Vehicle

Safety Standard No. 121, *Air Brake Systems*. The notice was issued as part of a rulemaking action which had been initiated in response to a petition submitted by the California Highway Patrol (CHP).

The CHP petition largely focused on the "Mini-Max" parking brake, produced by International Transquip Industries, Inc. In some versions, this parking brake was applied with air pressure (usually about 100 psi) and held by air until the air pressure dropped, in some cases to as low as 40 psi, to a point at which the brake became held mechanically. The drop in air pressure could occur over a period of many hours, during which time the braking force significantly decreased. CHP expressed concern that such a system could result in "false parking," i.e., a situation in which subsequent to application of a vehicle's parking brake by the driver, the parking force decreases to the point that the vehicle could roll away if parked on a hill.

CHP noted that section S5.6.3 of Standard No. 121 requires that "once applied, the parking brake shall be held in the applied position solely by mechanical means," and argued that this wording had for years made it illegal for a parking brake system to be held in the applied position by air pressure. The petitioner expressed concern that a 1984 interpretation seemed to say that the parking brake can be held in the applied position by air pressure, as long as there is a possibility of a mechanical system locking itself by the time 60 percent of the pressure leaks off or is suddenly lost. CHP requested that NHTSA either amend Standard No. 121 to prohibit systems that have the probability of resulting in false parking or issue an interpretation of section S5.6.3 with sufficient limits to accomplish the same result. Subsequent to the CHP petition, NHTSA received comments on the petition and other information from International Transquip, as well as additional information from CHP.

In evaluating the issues raised by CHP's petition, NHTSA considered whether it would be appropriate to resolve them by issuing an interpretation of section S5.6.3. As discussed in the NPRM, the wording of that section (quoted above) does raise certain issues relating to whether parking brake systems with delayed mechanical application force comply with Standard No. 121. As noted by the CHP and International Transquip submissions, NHTSA has made a number of past interpretations concerning that section. The NPRM noted, however, that while NHTSA has

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Harold T. Duryee,
Administrator, Federal Insurance
Administration.

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never concluded that brake systems resulting in false parking are safe or provided an interpretation that the particular parking brake system cited by CHP complies with section S5.6.3, some of the past interpretations could contribute to ambiguity concerning whether some of the features incorporated in that parking brake system are permitted by the standard. For this reason, and in light of a safety concern about false parking, NHTSA granted the CHP petition to initiate rulemaking on the false park issue rather than issuing an interpretation whether or not such systems comply with section S5.6.3.

The NPRM

In the March 1987 NPRM, NHTSA explained its concern about braking systems which result in false parking. The agency stated the following:

If a vehicle is parked on a grade and the parking brake can be set so that it just holds the vehicle on the grade with the force applied when the driver actuates the parking brake control, the vehicle could roll away if that parking force later drops. Thus, a driver could be misled into parking on a grade which is only initially within the holding capability of the parking brake. The driver might park the vehicle and walk away thinking it was secure, only to have it later roll away. The safety hazards connected with large, heavy trucks rolling away could be particularly serious. 52 FR 8318.

Based on this safety concern, NHTSA proposed to require that, within five seconds of the time parking brakes are actuated, they must be held in the applied position solely by mechanical means and the retardation force of the parking brake system cannot decrease in the event of a decrease in the air or brake fluid pressure of any of the vehicle's service or parking brake systems. For trucks and buses, the brake actuation was defined as when the driver actuates the parking brake control. For trailers, the brake actuation was defined as when venting to the atmosphere of the front supply line connection is initiated. The five second period was intended to be short enough to ensure that vehicles would be stably parked at the time drivers leave them, while long enough to permit the use of air applied-mechanically held parking systems. The agency believed that several seconds could be required for the air pressure in such systems to be evacuated, which would be necessary to achieve a mechanically held condition.

NHTSA also proposed to require that vehicles be capable of meeting requirements related to parking brake retardation force within two seconds of the time the parking brakes are

actuated. The agency stated that it believed that retardation force should be generated in as short a time as is practicable, since the parking brake system is sometimes also used as an emergency braking system. NHTSA also stated that there is a definite need for fast parking brake apply times on some trailers, because there are tractors which modulate the parking brakes through the supply line to provide for trailer braking in the event of a control line failure. A trailer with slow parking brake times would degrade the emergency braking performance of combinations having such tractors.

The agency indicated in the NPRM that the number of parking brake systems that might be affected by the proposal was very small. The only current system other than the Mini-Max which the agency believed might be affected was the DD3 parking brake system produced by Bendix. The agency indicated that it believed it might be possible for International Transquip to redesign all of its braking system configurations to comply with the proposed requirements.

Comments

NHTSA received numerous comments on both the proposed five second requirement related to false parking and the proposed two second requirement related to parking brake retardation force.

A number of commenters supported the proposed requirement related to false parking. The Heavy Duty Brake Manufacturers Council (HDBMC), an activity of the Heavy Duty Manufacturers Association/Motor and Equipment Manufacturers Association, stated that it strongly supports the proposal and agency rationale. Individual brake manufacturers supporting the proposal include Midland Brake, Rockwell and Bendix. Bendix, which manufactures the DD3 brake, stated that it has always been aware of the rollaway possibilities of vehicles that are parked on air. That commenter stated that it now offers the DD3 in a "demonstrated-park" version, which meets the proposed requirement. That company also submitted data showing that it is possible for a driver to actuate the parking control and exit a vehicle in about four seconds, and suggested that the five second time period be reduced to three seconds. The Truck Trailer Manufacturers Association (TTMA) stated that it supports the proposed requirement, which would assure that false parking does not become a problem in the future. Corpac Industries, a trailer manufacturer, also supported adoption of the proposed requirement.

General Motors and Ford supported the proposed requirement related to false parking. Flxible, a bus manufacturer, submitted comments indicating that it had experienced various problems, including vehicle rollaway, using test systems constructed by Mini-Max specifically for Flxible. That commenter stated that, from an opinion point of view, anything that results in, or allows a delay in setting the parking brakes to a mechanically held condition, and with its experienced conditions, could result in an operator going away from the vehicle and a runaway condition developing. The Insurance Institute for Highway Safety also supported the proposal.

While Rockwell generally supported the proposal, it stated that it believes that there may be certain unique vehicle configurations where "parking-with-air" may be desirable and perhaps necessary to achieve required performance and durability goals. According to that commenter, such configurations include one-man operation refuse packers and transit buses. Rockwell stated that allowance for configurations such as these should be considered in an amendment.

Some commenters suggested alternative means for dealing with the false park issue. Navistar stated that it believes the agency can solve the problem of false parking by defining when the parking brakes are fully applied by mechanical means, and that it is unnecessary to add a five second timing requirement. Volvo White stated that the current Standard No. 121 requirements are sufficiently clear and that a change in the rule is unnecessary. Freightliner stated that it does not believe that the false park issue is applicable to spring brake systems and that Standard No. 121's current language is sufficient to ensure that parking brakes are held solely by mechanical means.

CHP stated that while it remains concerned about the possibility of false parking, the requirement proposed by NHTSA would have the effect of eliminating some systems using the Bendix DD3 as well as Mini-Max. That commenter stated that, in its view, both devices offer beneficial characteristics and a unique small size for special applications. CHP stated that its concern remains that any system which allows movement of the pushrod before locking invites the possibility of a false park situation. That organization stated that, in response to its original concerns, International Transquip had redesigned the Mini-Max brake chamber to have the locking piston dropped on brake

application, thereby holding the brake at a much higher force. (In the Mini-Max parking brake, the locking piston is a pawl which drops to engage teeth cut in the brake pushrod.) CHP recommended that the proposed requirement be modified into a two-step test procedure, requiring actuation of the mechanical locking device within five seconds after initial brake application, and separately requiring that the slope holding test be met with only the mechanical locking device in operation, after the brakes have bled down to a zero pressure reading. CHP argued that the obvious advantages of pressure on the diaphragm at the time of the brake application should not be discarded, and that its recommended wording would ensure that the system had no false park by requiring zero pressure on the diaphragm during the slope holding test.

A number of commenters strongly opposed the proposed requirement related to false parking. International Transquip argued that the proposal had been made in response to theoretical concerns which are unjustified based on operational experience in Canada with thousands of vehicles whose braking systems employ air-applied delayed mechanical parking. That commenter asserted that the current 20 percent grade holding requirement is more than adequate since heavy vehicles do not park on grades as steep as 20 percent and a margin of additional holding force and safety is already factored into this requirement. International Transquip also argued that the proposed requirement would, in practice, prohibit use of an air back-up to any mechanical lock, and deny the industry several safety benefits such as shorter emergency stopping distances, better pneumatic balance between chambers, earlier detection of air leaks, and effective emergency modulation on trailers. That company stated that technical or economic problems may preclude compliance by air-applied mechanically held brakes with the proposed amendment, thereby denying the industry a safer shop alternative, as well as a unit suitable for lowbed trailers and other space constrained applications. That commenter also stated that air-applied mechanically held brakes can provide substantial economic benefits to the industry, which would be lost if the proposed requirement is adopted.

International Transquip argued that the current regulations as worded in a final rule published in 1979 are more than adequate to protect against the minimal hazards of parked heavy vehicles. That commenter asserted that

the 1979 rule does not have the phrase "solely by mechanical means." (The agency notes that the phrase "solely by mechanical means" was included in Standard No. 121 prior to the 1979 rule and not deleted by that rule.) International Transquip stated that if the agency is determined to amend its regulations, the agency should adopt language requiring that, within the proposed five second time period, "the parking brakes shall be held in the applied position by mechanical means or a mechanical means of holding the application in the event of loss of fluid or air pressure must be in position and must be capable of achieving the minimum performance specified in either S5.6.1 or S5.6.2."

Additional comments were submitted on behalf of International Transquip by the law firm of Crowell & Moring. That firm argued that the problem of false parking does not exist and the proposed requirement is misfocused. According to that commenter, it is not change in parking force that is unsafe but insufficient force. Crowell & Moring argued that the mechanical park of the Mini-Max comes into play at a level of parking force sufficient to prevent rollaway under any relevant circumstances. That firm also argued that adoption of the proposed requirement would eliminate a proven, safe technology and deprive the public of the safety and economic advantages of the Mini-Max brake.

Several members of Congress submitted comments opposing the proposed amendment, citing materials prepared by International Transquip. The Private Truck Council of America argued that the proposed requirement was issued without any documented evidence of rollaway. That commenter stated that restrictive regulations may stifle creative improvements in truck design and urged that the proposal be rescinded unless some clear and convincing evidence of necessity is available. John L. Schandelmeier, a private consultant on brake systems, argued that Mini-Max and DD3 brake chambers, when piped as air applied, air held, and mechanically locked brakes, offer superior emergency brake stopping and grade holding capability to spring brakes. That commenter asserted that the version of the DD3 brake in which air is immediately released is less desirable than the earlier one because emergency stopping distances are increased. Several other commenters also opposed the proposed amendment, generally making similar arguments to those of International Transquip.

Echlin commented that the air brakes it manufactures for use by vehicle manufacturers in the United States are compatible with the proposed requirements. That company expressed concern, however, that Transport Canada has in the past followed the lead of NHTSA with respect to Canadian regulations. Echlin stated that it produces a valve in Canada, used in trailer brake systems, that applies a pneumatic emergency application which is backed up by spring applied brake application. That company indicated that these vehicles differ in several respects from United States vehicles, but expressed concern that if the proposal were adopted in Canada, there could be a serious reduction in the emergency stopping capability of the Canadian trailers. TBG Warehousing Limited, a Canadian company, stated that vehicles with air park systems have been manufactured in Canada for many years and expressed concern that adoption of the proposal would be detrimental to both the United States and Canada.

As with the proposed requirement related to false parking, NHTSA received comments both supporting and opposing the proposed two second requirement concerning parking brake retardation force. HDBMC supported the proposed requirement, stating that it agrees that vehicles should be capable of meeting requirements related to parking brake retardation force within two seconds of the time the parking brakes are actuated. Midland Brake stated that it has data regarding parking brake application time for trucks and trailers which show that the two second apply time should be acceptable for these vehicles. TTMA stated that the two seconds proposed as the time for meeting the parking brake retardation force appears to be reasonable from both operational and safety aspects. Corpac stated that, based on limited tests, the proposed time of two seconds for meeting the parking brake retardation force is correct and has an ample margin of reserve to allow for variations in the manufacturing process.

Bendix commented that the stated purpose of the two second timing is to assure the parking brakes have adequate response timing when they are used to provide modulated emergency braking. That company argued that a time requirement for emergency brake systems should not be incorporated within the scope of this proposed rulemaking. Bendix stated that since its data show that current parking brake systems are capable of achieving demonstrated park in less than two

seconds, there is no need for the proposed two and five second requirements. That company suggested that the proposed response time requirement of "at any time after two seconds" to achieve the required parking force be changed to "within three seconds" the parking brake system shall achieve and thereafter maintain the required mechanically held parking force.

Volvo White opposed the two second timing requirement, stating that it would result in an unsafe "whiplash" condition during compliance testing and would require it to review all its certifications and conduct new certification tests. That commenter also argued that it and other truck manufacturers should not be required to expend resources for a potential problem it contends is limited to towed vehicles. Volvo White also stated that it disagrees that the proposal is not "major" or "significant."

Navistar stated that it believes that proposed "two second to hold" requirement would seriously jeopardize the ability of many of its current vehicles to comply with Standard No. 121, although there are no available test data. That company asserted that it would need a minimum of two years lead time to investigate all production vehicles for compliance and to develop new designs where required. Navistar also argued that to impose a timing requirement on parking brake application because the parking brake is often also used as an emergency brake system is inappropriate in a proposal to prohibit false park systems. That company stated that its emergency brake systems never employ only the parking brakes to satisfy Standard No. 121's emergency brake system performance requirements, and argued that it is not appropriate for the agency to propose changes to the emergency brake systems without a compelling need to do so and without data which indicate a problem or need for change.

Freightliner argued that timing requirements would impose a general restriction on all parking brake systems; that the metal spring system was designed for overall performance, not speed of application; and that developing additional procedures to determine compliance would use resources to document timing, not improve the braking performance of a reliable mechanical design. Ford expressed concern about imposing additional recertification burdens on truck manufacturers. MVMA stated that it assumes that the agency did not intend to impose a new requirement for spring brake parking systems.

False Parking

After reviewing the comments, NHTSA remains concerned about false parking. As the agency stated in the NPRM, if a vehicle can be set so that it just holds the vehicle on the grade with the force applied when the driver operates the parking brake control, the vehicle could roll away if that parking force later drops. Thus, a driver could be misled into parking on a grade which is only initially within the holding capability of the parking brake. The driver might park the vehicle and walk away thinking it was secure, only to have it later roll away. NHTSA notes that since the National Traffic and Motor Vehicle Safety Act is directed toward unreasonable risks, it is unnecessary for the agency to wait for actual accidents in order to issue safety standards.

While NHTSA continues to be concerned about false parking, it is also concerned that its safety standards not constrain the development and use of new designs which have the potential to offer a level of safety equivalent to that offered by existing designs. After reviewing the comments, the agency is persuaded that a requirement prohibiting any decrease in parking retardation force after five seconds from the time the parking brakes are actuated would inappropriately constrain the development and use of air-applied mechanically held parking brake systems.

The agency notes first that while the proposed requirement would effectively prohibit brake systems which result in false parking, it would also have the effect of prohibiting systems unlikely to result in false parking under reasonably foreseeable conditions. For example, brake systems with delayed mechanical parking occurring more than five seconds after actuation would be prohibited even if the final parking retardation force was sufficient to hold on any existing grade.

Second, NHTSA is persuaded by the comments that it may not be possible to design air-applied mechanically held parking brake systems acceptable for general use which can meet a requirement necessitating almost immediate evacuation of air from the brake chambers. In issuing the NPRM, the agency believed that the proposed five second time period would permit continued use of air-applied mechanically held parking systems, which could require several seconds for the air pressure to be applied to the brake chamber, a mechanical latch or lock to be activated, and the air pressure

to be evacuated to result in the mechanically held condition.

As indicated above, Bendix has designed a version of the DD3 which meets the proposed requirement. While this indicates that it is technically feasible to produce an air-applied mechanically held parking brake system that can meet the proposed requirement, it does not indicate that such systems are necessarily acceptable for the full range of air-braked vehicles. The agency notes that the DD3 is a specialized brake which is used primarily on buses. The agency also notes that the comment by John Schandelmeier indicates that some operators and drivers find the complicated "cluster valve" arrangement of that design to be unacceptable and are re-piping it to attain the performance of the earlier version.

International Transquip commented that there are no guarantees that its brake could be plumbed to meet the proposed requirement and that many of the problems experienced by Flexible with a prototype Mini-Max system were related to Flexible requiring the immediate exhausting of the application air pressure upon each parking brake application. International Transquip stated that Flexible's experience underscores the fact that problems remain to be solved. NHTSA accepts International Transquip's assertion, particularly given the problems that company experienced in attempting to develop a system in which application air pressure would be immediately exhausted. International Transquip also expressed concern that some of the potential advantages of an air-applied mechanically held parking brake would be lost as a result of immediate evacuation of air from the brake chambers.

Third, the agency believes that the basic concept of air-applied mechanically held parking brakes offers theoretical benefits. The CHP petition, for example, discussed a number of potential advantages that air applied parking brakes have compared to conventional spring brakes. In addition to savings in space, weight, initial cost, maintenance cost, and disassembly precautions, CHP cited the following advantages: (1) The fact that, the service brake hoses and diaphragms receive full reservoir pressure each time the parking brake is pulled, thereby providing a frequent check for service brake system integrity; (2) the brakes are solidly locked for special vehicle operations where a stable platform is needed, and the vehicle can be held stationary on much steeper grades than with spring

brakes as long as full air pressure is retained; (3) the increase in pushrod travel from maladjusted brakes does not decrease the parking brake torque as badly as with spring brakes, and (4) loss in application force at the air parking brake of one wheel can be detected audibly by an air leak or visually by nonoperation of the pushrod.

NHTSA cautions that in citing potential advantages of air applied parking brakes, the agency is not taking the position that the concept of air applied parking brakes is superior to spring brakes. Moreover, the agency is not taking any position about the overall safety of the Mini-Max or DD3 parking brakes as compared to each other or to spring brakes. However, given that the concept of air applied parking brakes offers potential advantages, the agency believes that care should be taken to ensure that Standard No. 121 does not unnecessarily constrain the development and use of designs incorporating this concept.

NHTSA also cautions that while it has necessarily considered whether various parking brake systems appear to meet the specific requirements being adopted by this notice, it has not conducted compliance or other tests for those parking brakes or attempted to evaluate whether, or under what circumstances, vehicles equipped with those parking brakes would meet the overall requirements of Standard No. 121. The agency notes that Standard No. 121 applies to vehicles. Under the National Traffic and Motor Vehicle Safety Act, it is the responsibility of the vehicle manufacturer to ensure that its vehicles comply with Standard No. 121. The discussion in this notice of whether various parking brake systems appear to meet particular requirements is based on the agency's understanding of those systems as presented in this notice and is limited to the specific issues and requirements being addressed. This notice should in no way be read as either an approval of any particular parking brake systems or a determination that vehicles equipped with particular parking brake systems will comply with Standard No. 121.

The agency also notes that the comparisons made by some commenters of the emergency stopping distances of vehicles equipped with Mini-Max brakes and conventional spring brakes may not be appropriate. The tests in question indicated that under certain circumstances if a vehicle is stopped solely by using the parking brake, a Mini-Max parking brake would stop the vehicle in a shorter distance than a spring brake, due to a higher application

force. This comparison may not be appropriate, however, because trucks, buses and tractor-trailer combinations are not typically stopped by solely using a parking brake. Standard No. 121 requires trucks and buses to have an emergency brake system. The emergency brake systems provided on trucks, buses and tractor-trailer combinations built in compliance with Standard No. 121 are similar to the split brake systems used on passenger cars in that when a brake failure occurs, part of the service brake system remains operable (as the emergency brake system) to permit driving in a controlled manner to a safe parking place. Emergency brake systems are required to be capable of modulation by drivers to provide for good vehicle control during braking; they are also required to be controlled by the regular service brake control valves so that drivers are not confused in crisis situations about how to operate the emergency brake system. Since parking brakes are controlled by a separate valve, they can serve as backup brake systems when something unusual causes both the service and emergency brake systems to fail, e.g., complete loss of air pressure or failure of the service brake control valve. The agency has stated in the past, however, that it is generally not desirable to have brakes used in a backup system develop overly high brake forces, given the potential for wheel lockup and loss of vehicle control.

NHTSA also notes that, unlike spring brakes, air applied parking brakes may not provide a backup braking capability in the event of a complete loss of service/emergency braking air pressure unless they are applied by an energy source which is completely separate from the service/emergency brake systems. When a failure occurs in the service brake systems of current vehicles equipped with spring brakes, the emergency brake system takes over and a driver can continue to modulate the brakes down to low pressures knowing that the spring brakes can be applied in the event a faster stop is required. However, air applied parking brakes will only apply with the pressure remaining in the emergency reservoir unless they are applied by an energy source which is completely separate from the service/emergency brakes.

In developing a final rule, NHTSA believes that weight should be given to both the potential problem of false parking and ensuring that Standard No. 121 does not unnecessarily constrain the development and use of air-applied mechanically held parking brake systems. After carefully considering the

comments, the agency believes that the amendment suggested by CHP gives appropriate weight to both concerns. As indicated above, CHP recommended that the proposed requirement be modified into a two-step test procedure, requiring actuation of the mechanical locking device within five seconds after initial brake application, and separately requiring that the slope holding test be met with only the mechanical locking device in operation, after the brakes have bled down to a zero pressure reading.

NHTSA is adopting amendments along the lines suggested by CHP in its comments. For trucks and buses, the amendments require actuation of a mechanical means for holding the parking brakes, within three seconds after operation of the parking brake control. For trailers, such actuation is required within three seconds after venting to the atmosphere of the front supply line connection is initiated. The amendments also require that the grade holding test (or alternative drawbar test) be met with only the mechanical means of holding the parking brakes in operation. In light of comments from Bendix and Midland Brake, the agency is specifying more detailed test conditions in order to ensure objectivity.

CHP's comment indicated that, in response to its original concerns, International Transquip had redesigned the Mini-Max brake chamber to have the locking piston dropped on brake application, thereby holding the brake at a much higher force. A requirement for actuation of the mechanical locking device within a three second period has the effect of requiring the locking piston to drop on brake application, thus alleviating much of the safety concern which led CHP to submit its petition. In addition to holding the brake at a much higher force (a result which is dependent on that company not reducing the brake application pressure below a certain level), the dropping of the locking piston on each parking brake application ensures that the locking piston will not stick as a result of non-use. Since International Transquip has already made this design change, the amendment will have no adverse impacts on that company.

As indicated above, the five second time period proposed in the NPRM was intended to be sufficiently long to permit air pressure to be applied to the brake chamber, a mechanical latch or lock to be activated, and the air pressure to be evacuated to result in the mechanically held condition. Since the amendment being adopted does not require the air pressure to be evacuated, it is

unnecessary to provide a time period as long as five seconds. NHTSA has concluded that the requirement that parking brakes be actuated within three seconds can easily be met by both air-applied mechanically held parking brake systems and by spring brakes. For the Mini-Max parking brake, actuation occurs when the air pressure on the lock port is sufficiently vented to allow the pawl to drop and physically contact the toothed section of the pushrod shaft. For the DD3 parking brake, actuation occurs when the air pressure on the lock port is sufficiently vented to allow locking rollers to physically contact the pushrod shaft. For spring brakes, actuation occurs when the air pressure in the spring brake chamber is sufficiently vented to allow the spring to physically contact the push rod pushplate. NHTSA believes that the redesigned Mini-Max parking brake, both versions of the DD3 parking brake, and current spring brake systems already meet the three second actuation requirement.

NHTSA notes that while the locking piston of the new Mini-Max design drops immediately on brake application, there may still be a reduction in parking retardation force over time, as there may be with other air-applied mechanically held parking brake designs. As noted earlier, in the Mini-Max parking brake, the locking piston is a pawl which drops to engage teeth cut in the brake pushrod. Under the old design, the locking piston was held off by the same air pressure used to make and temporarily hold the parking brake application until the air pressure dropped to a predetermined level, in some cases as low as 45 psi. Under the new design, the locking piston drops almost immediately. In both of these designs, the parking application is not actually held by mechanical means until the pushrod moves enough to engage one of the teeth on the pushrod. Since the locking piston of the new design drops on brake application, however, the pushrod can move no further than $\frac{1}{32}$ of an inch, the distance between the teeth on the pushrod.

The amount of parking brake force reduction associated with $\frac{1}{32}$ inch movement of the pushrod would vary depending on the application pressure and overall design of the brake system. Available data indicate that the additional air pressure necessary to move the pushrod on various types of truck, tractor and trailer brake systems 0.2 inches ($\frac{1}{32} = 0.21875$) from a starting pressure of 40 psi could range from 19 to 28 psi. By way of example, if an application pressure of 70 psi were assumed, a 28 psi reduction would mean

a reduction in pushrod force of about 40 percent. Data provided by Bendix indicate that the DD3 brake system without the "demonstrated park" feature can have a reduction of the force acting on the brake chamber pushrod of about 25 percent. However, due to the significant hysteresis in the foundation brakes of air braked vehicles, a reduction in pushrod force would result in a lesser percentage reduction in actual braking force output. (In this context, the term "hysteresis" means that the change in brake force output at the wheel due to a change in pushrod force will be different for a given change in pushrod force, depending on whether the pushrod force is increasing or decreasing.)

As indicated above, International Transquip suggested an amendment requiring that, within five seconds after operation of the parking brake control, the parking brakes "shall be held in the applied position by mechanical means or a mechanical means of holding the application in the event of loss of fluid or air pressure must be in position and must be capable of achieving the minimum performance specified in either S5.6.1 or S5.6.2." The agency considered an amendment along these lines but believes that the meaning of "in position" is unclear. In the Mini-Max design, for example, if the pawl should immediately drop onto the top of a tooth, it might not be considered "in position" to hold the vehicle until the pushrod moves enough to let the pawl drop between the teeth.

There has not been any dispute about the existing Standard No. 121 requirement that the 20 percent grade holding test (or alternative drawbar test) be met with only the mechanical locking device in operation, i.e., after any reduction in parking brake retardation force occurs. (The alternative drawbar test is of similar stringency to the 20 percent grade holding test.) NHTSA believes that new and reasonably maintained vehicles meeting this requirement and the requirement discussed above concerning actuation of the mechanical means for holding the vehicle would not experience false park problems when parked under reasonably foreseeable conditions. Twenty percent grades are rare, and it would be uncommon for air-braked vehicles to be parked on grades even approaching that steepness. The agency also notes that, after a review of available data, it is unaware of any air-applied mechanically held parking brakes which have experienced false park problems. Transport Canada has

also indicated that it is unaware of any such problems.

The agency recognizes, however, that unlike the specific amendment set forth in the regulatory text of the NPRM, the amendment being adopted does not address all theoretical false park situations. For example, the initial CHP petition noted that if brakes are at or beyond the recommended limit of pushrod travel, or the owner replaces the lining with a type having a lower coefficient of friction than the original equipment, the mechanical parking lock will not hold the vehicle on a grade even considerably less than the specified 20 percent, and also cited the possibility that a driver might park a vehicle on a steep city hill with a 22 percent grade. NHTSA does not believe that there is any way to address these theoretical situations by a new vehicle regulation short of a requirement that would unnecessarily constrain the development and use of air-applied mechanically held parking brake systems. However, NHTSA notes that manufacturers have an obligation under the National Traffic and Motor Vehicle Safety Act to produce vehicles without safety related defects. NHTSA expects that manufacturers will design vehicles in such a manner to ensure that air-braked vehicles will not experience false park problems when parked under reasonably foreseeable conditions.

NHTSA notes that General Motors commented that the condition that parking brakes be held in the applied position "solely by mechanical means" is design restrictive and excludes adoption of advanced technology parking brake systems which employ other mechanizations. That company recommended deletion of the words "solely by mechanical means" but did not elaborate on the possible technologies it had in mind. While the amendment being adopted does not include the specific term "solely by mechanical means," it does, as indicated above, require that the grade holding test (or alternative drawbar test) be met with only the mechanical means of holding the parking brakes in operation. The purpose of this requirement is to ensure that the parking brake can maintain the specified minimum parking brake retardation force level even if there are slow leaks in the air or fluid systems of the vehicle or electrical failure.

Parking Retardation Force Timing

After reviewing the comments, NHTSA continues to believe that parking retardation force should be generated quickly, since the parking

brake system is sometimes also used as an emergency system. Moreover, as part of ensuring objectivity, the agency believes that a standard specifying minimum retardation force requirements for parking brakes should specify the time when those requirements must be met.

NHTSA is adopting amendments along the lines of the proposal, although a time period of three seconds instead of two seconds is specified. Data provided by Bendix indicated that the compliance of some current parking brake systems might be marginal for the proposed two second requirement. Therefore, in light of the fact that NHTSA did not contemplate changes in current parking brake systems, the agency is adopting a three second requirement. NHTSA believes that all current parking brake systems easily meet this requirement. Since certification can be accomplished by engineering analysis and simple tests, certification costs will be minimal.

For trucks and buses, the amendments require minimum parking retardation force requirements to be met at all times after three seconds from the time of actuation of the parking brake control. For trailers, the amendments require minimum parking retardation force requirements to be met at all times after three seconds from the time venting to the atmosphere of the front supply line connection is initiated. As with the timing requirement for actuation of the mechanical means for holding the parking brakes, the agency is specifying more detailed test conditions in order to ensure objectivity.

NHTSA does not agree with the argument raised in the comments that the potential safety problem addressed by this requirement is limited to towed vehicles. While the agency stated in the NPRM that there is a definite need for fast parking brake apply times on some trailers, because there are tractors which modulate the parking brakes through the supply line to provide for trailer braking in the event of a control line failure, the parking brake systems of power units may also be used for backup emergency braking. Thus, the need for quick generation of parking retardation force is relevant to power units as well as towed vehicles.

NHTSA has carefully considered the comments arguing that the proposed requirements would cause testing and certification difficulties. The agency does not believe that manufacturers must, as a practical matter, determine their compliance with the timing requirement during their grade holding or draw bar testing. Instead, certification can easily be accomplished by using an engineering analysis of the

vehicle's parking brake system or, if necessary, a test measuring the air pressure in the parking brake system to determine when the pressure reaches zero.

NHTSA has also considered the comments arguing that the agency has not demonstrated a need to change current brake systems and that the proposed requirement would result in additional certification burdens without any safety benefit. As indicated above, the requirement being adopted is not expected to require changes in current brake systems. Spring brakes as well as the DD3 and Mini-Max parking brakes already achieve quick generation of parking retardation force. However, as new concepts in parking brake systems develop, the agency believes it is appropriate to ensure that such systems do not have significant delays in parking brake application and holding.

Effective Date

The amendments adopted by this notice require mandatory compliance effective September 7, 1988, while permitting manufacturers, effective April 11, 1988, to comply with the new requirements as an option to complying with requirements being superseded. Permitting optional compliance with amendments that become effective at a later date promotes manufacturer flexibility without creating any adverse impacts.

It is believed that all parking brakes currently being sold comply with the amendments being adopted. Since any necessary certification can be accomplished by engineering analysis and simple tests, 180 days provides a sufficient time for that purpose.

Regulatory Impacts

NHTSA has evaluated the economic and other effects of this final rule and determined that they are neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. It is believed that all parking brakes currently being sold comply with the amendments being adopted. The agency has also concluded that the impacts are so minor as not to require a full regulatory evaluation.

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the amendments will not have a significant economic impact on a substantial number of small entities. As indicated above, no parking brakes currently being sold are believed to be affected by these amendments. One

small manufacturer, International Transquip, previously produced a parking brake which would not comply with the amendments. However, during the course of this rulemaking, that company redesigned its parking brake design in a manner believed to comply with the amendments being adopted. Therefore, that company and any of its distributors which may be classified as small businesses will not be significantly affected by the amendments. Other small businesses, small organizations, and small governmental units will be affected by the amendments only to the extent that they purchase motor vehicles. The amendments will not have any significant effect on the price of those vehicles. Accordingly, no regulatory flexibility analysis has been prepared.

The agency has also analyzed this rule for the purposes of the National Environmental Policy Act, and determined that the rule will not have any significant impact on the quality of the human environment.

Finally, this rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The primary impact of the rule is to clarify the meaning of existing Federal requirements.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR Part 571 is amended as follows:

1. The authority citation for Part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.121 [Amended]

2. S5.6.3 of § 571.121 is revised to read as follows:

S5.6.3 *Application and holding.* Each parking brake system shall meet the requirements of S5.6.3.1 through S5.6.3.4, except that, at the option of the manufacturer, vehicles manufactured before September 7, 1988 may meet the requirements specified in S5.6.3.5.

S5.6.3.1 The parking brake system shall be capable of achieving the minimum performance specified either in S5.6.1 or S5.6.2 with any single leakage-type failure, in any other brake system, of a part designed to contain

compressed air or brake fluid (except failure of a component of a brake chamber housing).

S5.6.3.2 For trucks and buses, with an initial reservoir system pressure of 100 psi and, if designed to tow a vehicle equipped with air brakes, with a 50 cubic inch test reservoir connected to the supply line coupling, at all times after three seconds from the time of actuation of the parking brake control, the parking brake system shall achieve the minimum parking retardation performance specified in S5.6.3.1. For trailers, with an initial supply line pressure of 100 psi and, if designed to tow a vehicle equipped with air brakes, with a 50 cubic inch test reservoir connected to the supply line coupling, at all times after three seconds from the time venting to the atmosphere of the front supply line connection is initiated, the parking brake system shall achieve the minimum retardation performance specified in S5.6.3.1.

S5.6.3.3 A mechanical means shall be provided which is capable, with zero air pressure and zero fluid pressure in the vehicle and without electrical power, of holding the parking brake application at a level meeting the minimum parking retardation performance specified in S5.6.3.1.

S5.6.3.4 For trucks and buses, with an initial reservoir system pressure of 100 psi and, if designed to tow a vehicle equipped with air brakes, with a 50 cubic inch test reservoir connected to the supply line coupling, no later than three seconds from the time of operation of the parking brake control, the mechanical means referred to in S5.6.3.3 shall be actuated. For trailers, with an initial supply line pressure of 100 psi and, if designed to tow a vehicle equipped with air brakes, with a 50 cubic inch test reservoir connected to the supply line coupling, no later than three seconds from the time venting to the atmosphere of the front supply line connection is initiated, the mechanical means referred to in S5.6.3.3 shall be actuated.

S5.6.3.5 (Optional requirement for vehicles manufactured before September 7, 1988. The parking brake system shall be capable of achieving the minimum performance specified either in S5.6.1 or S5.6.2 with any single leakage-type failure, in any other brake system, of a part designed to contain compressed air or brake fluid (except failure of a component of a brake chamber housing). Once applied, the parking brakes shall be held in the applied position solely by mechanical means.

Issued on: March 8, 1988.

Diane K. Steed,

Administrator.

[FR Doc. 88-5355 Filed 3-8-88; 12:29 pm]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 80333-8033]

Groundfish of the Gulf of Alaska; Emergency Interim Rule

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

ACTION: Emergency interim rule.

SUMMARY: The Secretary of Commerce (Secretary) has determined that an emergency exists in the Gulf of Alaska groundfish fishery, due to unanticipated problems enforcing the prohibition on directed fishing for sablefish with hook-and-line gear prior to the scheduled April 1, 1988 fishing season. The Secretary issues this emergency rule to redefine directed fishing for sablefish. This action will restrict the amount of sablefish that a fisherman may retain and land as incidental catch while fishing for other groundfish species with hook-and-line gear in the Gulf of Alaska. This regulation is necessary to discourage illegal fishing and prevent substantial early harvests of sablefish before the beginning of the directed hook-and-line fishery on April 1, 1988. It is intended to facilitate an orderly fishery while carrying out the North Pacific Fishery Management Council's recommended allocation objectives in the sablefish fishery.

DATE: Effective March 9, 1988 until June 7, 1988. Comments are invited until March 25, 1988.

ADDRESS: Copies of the environmental assessment may be obtained from Robert W. McVey, Director, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Biologist NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION:

Background

The domestic and foreign groundfish fisheries in the exclusive economic zone (EEZ or 3-200 miles offshore) of the Gulf of Alaska are managed under the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). The FMP was prepared by the North

Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and is implemented by regulations for the foreign fishery at 50 CFR Part 611 and for the U.S. fishery at 50 CFR Part 672.

One of the groundfish species that is important to U.S. fishermen is sablefish. The annual harvest quota, or total allowable catch (TAC), for this species is further allocated among trawl, pot, and hook-and-line gear, which are the only legal gear types in the Gulf of Alaska groundfish fishery. Most of the sablefish TAC is allocated to hook-and-line fishermen. Prices that they will likely receive in 1988 will be at least \$1.00 per pound. The only other groundfish species that hook-and-line fishermen will catch in large numbers is Pacific cod, but this species is currently worth only about \$0.20 per pound. An economic incentive clearly exists to favor catching sablefish.

The 1988 directed hook-and-line fishery for sablefish will start on April 1. Until that time, hook-and-line fishermen may conduct a directed fishery for other groundfish species, including Pacific cod. Existing regulations define directed fishing to mean fishing that is intended or can be reasonably expected to result in the catching, taking, or harvesting of quantities of such groundfish that amount to twenty percent or more of the catch, take, or harvest, or to twenty percent or more of the total amount of fish or fish products on board at any time. The Council and the Secretary usually refer to catches in a non-directed fishery as bycatch.

The Regional Director, National Marine Fisheries Service, Alaska Region (Regional Director), the Alaska Department of Fish and Game, and the North Pacific Fishery Management Council have received many inquiries from fishermen and processors about whether hook-and-line sablefish bycatch is retainable for a sale prior to the April 1 season starting date. The inquiries started for the first time in January 1988 as a result of the developing hook-and-line fishery for Pacific cod in the Kodiak area. Since hook-and-line fishermen were expending significant effort for Pacific cod, they questioned the legality of retaining and landing sablefish prior to the April 1 starting date. Thus, retention of sablefish up to 20 percent of the total amount of groundfish became known.

Regulations at 50 CFR 672.23(b) state, "Directed fishing for sablefish with hook-and-line gear and pot gear in the regulatory areas and districts of the Gulf of Alaska is authorized from April 1

through December 31 . . .". Based on the definition of "directed fishing", the Agency concluded that retention of the sablefish bycatch prior to the April season starting date is clearly permissible as long as the directed fishing rule is not violated. This means that hook-and-line fishermen are allowed to catch and retain an amount of sablefish that is less than twenty percent of the total amount of the groundfish catch over any period of time or total amount of groundfish on board.

Due to the increased fishing effort being applied in the Pacific cod fishery this year, this retainable bycatch "allowance" has caused problems for the first time. As more fishermen have directed fishing effort at Pacific cod, it has become apparent that a sablefish bycatch rate of 19 percent is much more than what is needed to support a directed Pacific cod fishery. A lower bycatch is to be expected, because sablefish are targeted with hook-and-line gear at water depths of 200 fathoms and deeper, whereas Pacific cod are targeted at depths of 150 fathoms and less.

A more realistic bycatch rate has been determined by NMFS following a review of recent fishing data. In 1986, for example, the bycatch rate experienced by Japanese hook-and-line vessels while harvesting nearly all of a 15,000 metric-ton (mt) allocation of Pacific cod was about 1 percent; this fishery occurred in the same area and during the same time of year as the current domestic fishery. The foreign Pacific cod fishery was constrained by a prohibited species catch limit for sablefish, which encouraged avoidance of sablefish to prevent premature closure of the Pacific cod fishery. Another example of bycatch rates is from a limited number of actual 1988 hook-and-line landings of Pacific cod, which showed some sablefish catches can be as low as 3 percent of the Pacific cod landings.

Because a bycatch rate that could be as much as 19 percent is more than necessary to allow a directed fishery for Pacific cod, hook-and-line fishermen are able to use the bycatch allowance to circumvent the prohibition on directed fishing for sablefish by targeting on sablefish and then catching enough Pacific cod to result in a total harvest that would appear to not violate the directed fishing rule. It's clear under the current regulation that targeting a bycatch is illegal, but the actual catching would have to be observed for enforcement action to occur. That is, enforcement agents would have to be present to observe the ratio of the sablefish catch for a given haul or the

ratio of sablefish on board to determine whether a violation had occurred.

Under current regulations, bycatch amounts of sablefish in a directed Pacific cod fishery can easily exceed 1 mt in a single day. Fish tickets that were obtained from fishermen who have already made landings in 1988 have been examined. Some tickets showed a metric ton or more of sablefish having been landed with a sufficient amount of other groundfish so that the total amount of sablefish was less than 20 percent, which would make the sablefish landing appear to be legal. NMFS asserts that to catch that much sablefish, a fisherman would have to fish directly on sablefish. In one instance, a fisherman admitted to having caught 1 mt of sablefish in a single day.

Despite the current prohibition on directed fishing for sablefish, a fisherman can manipulate his catch composition by topping off his catch with other groundfish species, especially Pacific cod, and so land his sablefish as apparent bycatch. Since at-sea enforcement is not available to detect such directed fishing for sablefish, NMFS estimates that about 20 percent of the sablefish quota assigned to hook-and-line gear could be taken before April 1.

The potential thus exists for some of the hook-and-line fishermen to harvest and land large amounts of the sablefish quota prior to April 1. NMFS has heard from fishermen's representatives that many of the hook-and-line vessels in the Seattle fleet who had not planned to fish until the directed sablefish fishery opens, perceive the situation as one that provides an unfair advantage to those fishermen who are illegally targeting on sablefish. It is likely these vessels will depart for Alaska waters earlier than planned in order to compete in this early fishery. This, in turn, will increase the number of sablefish landed early as bycatch, aggravating the situation.

These vessels, and vessels in Kodiak, which are fishing the nearby Pacific cod grounds, could make many trips per vessel prior to April 1. For example, between March 1 and April 1, each vessel could make five trips before the sablefish season actually started. To illustrate the effect of this much effort, NMFS examined its 1987 permit database to estimate the numbers of hook-and-line vessels in the Kodiak and Seattle fleets as an example of vessel numbers that potentially could fish early. If about 190 Kodiak and 209 Seattle hook-and-line vessels were to make landings, and each delivered 1 mt of sablefish per trip, 1,995 mt could be landed. This amount represents about 20

percent of the 10,030 mt sablefish quota assigned to hook-and-line gear in the Central Regulatory Area where much of the Pacific cod fishing will be conducted.

Since a specified share of the total allowable catch for sablefish is allocated to hook-and-line gear, NMFS will manage the total harvest by hook-and-line gear so that the share is not exceeded. Therefore, NMFS will subtract any amounts of sablefish taken as bycatch before the April 1 starting date from the directed fishing quota. Consequently, full amounts of the quotas will not be available as expected when the season starts. NMFS's inability to enforce the prohibition on directed fishing for sablefish prior to April 1 is having the unanticipated effect of encouraging illegal fishing. Violators of the prohibition will gain an economic advantage over those fishermen who elect to honor the regulations, because they will be able to harvest sablefish stocks that have not been exploited for almost a year, and thus experience high catch rates. Fishing plans are being disrupted in that many fishermen who otherwise expected an April starting date are now changing their schedules to fish early. Some of those might have aborted their plans for vessel maintenance or might forego fishing opportunities elsewhere. Business opportunities being financed by banks on the basis of full quotas being available in April could be jeopardized. Planning by processors in terms of purchasing ice and bait for an April 1 opening could be upset.

The Council reviewed this issue at its January 20-22, 1988, meeting. It reflected on whether it had intended that sablefish should be retained as bycatch by hook-and-line gear prior to a directed fishing season when it adopted the April 1 starting date and made assignments of sablefish to gear types in Amendment 14 to the FMP. Although the Council determined that it had not specifically addressed whether sablefish should be retained as bycatch in other hook-and-line fisheries, it did affirm, after receiving recommendations from NMFS, that a bycatch between 1 and 5 percent was more realistic, and that it did not intend that the bycatch should be as high as is now permissible. It recognized that an adequate enforcement presence is not available to prevent illegal targeting on sablefish during the time this species is intended to be caught incidentally in other target fisheries. To take no action would condone illegal fishing by some fishermen, while other fishermen would be honoring the regulations. Also, to take no action

would undermine NMFS's intended 1988 management of the hook-and-line sablefish fishery. Under 50 CFR 672.24(3)(i), NMFS intends to limit the directed hook-and-line sablefish harvest to an amount that would leave an appropriate amount as bycatch to support other hook-and-line fisheries when the directed sablefish season in each of the management areas close. If fishermen are allowed to continue to harvest up to 20 percent of sablefish as a bycatch when the directed fishing is closed, they might reach the bycatch amount that was set aside much sooner. Then, under 50 CFR 672.24(3)(ii), any additional amounts of sablefish would have to be treated as a prohibited species and discarded at sea for the remainder of the year. Such treatment is a waste of a valuable resource, which otherwise could be landed in a future year's fishery to the benefit of the industry.

This waste is unacceptable to the Council, which then voted to recommend that the Secretary implement an emergency rule to redefine the directed fishing definition with respect to sablefish caught in hook-and-line fisheries. The Council recommended that a catch of sablefish or an amount of sablefish on board that is higher than a number, to be determined by NMFS, lying within the range of 1 to 5 percent or more of the catch of groundfish or amount of groundfish on board constitutes directed fishing. The Council also recommended that a regulatory amendment be prepared for its review to remedy this problem in future seasons.

The Secretary has reviewed this issue and concurs with the Council's recommendations. The Secretary finds that failure to correct an identified loophole in a fishing regulation, which could be exploited illegally is contrary to purposes of the Magnuson Act and the public interest. He is, therefore, implementing an emergency rule under Section 305(e) of the Magnuson Act that redefines directed fishing for sablefish with hook-and-line gear in such a way that a catch of sablefish, or an amount of sablefish on board, that is 4 percent or more of the catch of groundfish constitutes directed fishing for sablefish. Percentages less than 4 percent will constitute bycatch.

In arriving at this percentage, the Secretary considered the 1986 landings by the Japanese hook-and-line fishery, which experienced a bycatch rate of 1 percent, and limited 1988 landings by U.S. hook-and-line fishermen to date that demonstrated bycatch rates of 3 to 7 percent when sablefish were not being

illegally targeted. While the Secretary believes that a 1 percent bycatch rate would be too restrictive, given the increased numbers of sablefish and the fact that the 1986 Japanese fishery was actively avoiding sablefish to avoid premature closures if prohibited species catch limits were reached, he believes that a bycatch percentage that was too high would negate the purposes of this emergency rule. He has determined, therefore, that a bycatch rate that is less than 4 percent is a reasonable amount of sablefish that would inadvertently be caught as bycatch in a hook-and-line fishery.

Classification

The Assistant Secretary, NOAA, has determined that this rule is necessary to respond to an emergency situation and that it is consistent with the Magnuson Act and other applicable law. This rule is implemented for 90 days under section 305(e) of the Magnuson Act.

The Assistant Secretary, NOAA, also finds for good cause that the reasons justifying promulgation of this rule on an emergency basis also make it impractical and contrary to the public interest to provide prior notice and opportunity for comment or to delay for 30 days its effective date, under provisions of section 553 (b) and (d) of the Administrative Procedure Act. This rule must be implemented as soon as possible if it is to accomplish its intended effect.

The Assistant Administrator for Fisheries, NOAA, prepared an environmental assessment for this action and concluded that no significant impact on the human environment would result from this rule. A copy of this document may be obtained from the address above.

This emergency interim rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that order. It is being reported to the Director of the Office of Management and Budget, with an explanation of why it is not possible to follow the regular procedures of that order.

The Regulatory Flexibility Act does not apply to this rulemaking, because the Agency is not required to publish a general notice of proposed rulemaking under the Administrative Procedure Act or any other law.

This rule does not contain a collection of information requirement subject to the Paperwork Reduction Act.

The Assistant Administrator of Fisheries, NOAA has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the

approved coastal zone management program of the State of Alaska. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

This emergency interim rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subject in 50 CFR Part 672

Fisheries.

Dated: March 8, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Part 672 is amended as follows:

PART 672—GROUND FISH OF THE GULF OF ALASKA

1. The authority citation for Part 672 continues to read as follows:

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

2. In § 672.2, the definition of *Directed Fishing for the period March 9, 1988 to June 7, 1988* is added to read, until June 7, 1988 as follows:

§ 672.2 Definitions.

Directed Fishing for the period March 9, 1988 to June 7, 1988, means (1) with respect to any species, stock, or other aggregation of fish, other than sablefish caught with hook-and-line gear, fishing that is intended or can reasonably be expected to result in the catching, taking, or harvesting of quantities of such fish that amount to 20 percent or more of the catch, take, or harvest, or 20 percent or more of the total amount of fish, or fish products on board at any time. It will be a rebuttable presumption that, when any species, stock, or other aggregation of fish comprises 20 percent, or more of the catch, take, or harvest, or 20 percent or more of the total amount of fish or fish products on board at any time, such fishing was directed to fishing for such fish; or

(2) With respect to sablefish caught with hook-and-line gear, fishing that is intended or can reasonably be expected to result in the catching, taking, or harvesting of quantities of sablefish that amount to 4 percent or more of the catch, take, or harvest, or 4 percent or more of the total amount of sablefish or sablefish products on board at any time. It will be a rebuttable presumption that, when sablefish comprises 4 percent, or more of the catch, take, or harvest, or 4

percent or more of the total amount of fish or fish products on board at any time, such fishing was directed to fishing for sablefish.

[FR Doc. 88-5427 Filed 3-10-88; 9:09 am]
BILLING CODE 3510-22-M

50 CFR Part 675

[Docket No. 71147-8002]

Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that vessels of the United States have caught the prohibited species catch (PSC) limit of 80,000 *C. bairdi* Tanner crabs while conducting directed fishing for yellowfin sole and "other flatfish" in the Bering Sea subarea south of 58°00' N. latitude and east of 165°00' W. longitude (Zone 1). Therefore, further directed fishing on yellowfin sole and "other flatfish" by vessels of the United States is prohibited in Zone 1 for the remainder of the year, as required by regulations governing the groundfish fishery of the Bering Sea and Aleutian Islands area.

DATES: This notice is effective at 3:00 p.m., March 8, 1988, Alaska Standard Time (a.s.t.), until midnight, a.s.t., December 31, 1988.

FOR FURTHER INFORMATION CONTACT: Janet E. Smoker (Resource Management Specialist, NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) governs the groundfish fishery in the

exclusive economic zone under the Magnuson Fishery Conservation and Management Act. The FMP was developed by the North Pacific Fishery Management Council (Council). On March 19, 1987, the Secretary of Commerce (Secretary) published a final rule implementing Amendment 10 to the FMP (52 FR 8592). The rule at 50 CFR 675.21(a)(1) states that if, during the year, the Regional Director determines that vessels of the United States will catch the PSC limit of 80,000 *C. bairdi* Tanner crabs while conducting directed fishing for yellowfin sole and "other flatfish" in Zone 1, the Secretary will publish a notice in the **Federal Register** prohibiting a directed fishery by vessels of the United States for yellowfin sole and "other flatfish" in Zone 1 for the remainder of the year.

The 1988 Bering Sea joint venture processing (JVP) fishery for yellowfin sole and "other flatfish" began in mid-January. NMFS has monitored the daily JVP catches of prohibited species, including *C. bairdi* Tanner crabs, in each subarea of the Bering Sea. Under guidelines developed by an industry steering committee with the approval of the Council, and implemented by conditions on permits of the foreign processors receiving fish, JVP companies whose bycatch rates of *C. bairdi* exceeded permitted rates at certain checkpoints during the fishery were excluded from fishing in Zone 1. The first checkpoint (when 20 percent of the quota, or 16,000 *C. bairdi* crabs had been taken) was reached on January 25, and the second checkpoint (32,000 crabs) was reached on February 15. Despite exclusion of those companies with the highest crab bycatches, the third checkpoint (48,000 crabs) was reached on February 26, and the fourth (64,000 crabs) on March 3. Given recent daily catch rates of *C. bairdi* and current effort levels, the remaining crabs in the

80,000 crab quota will be taken on March 8.

The Regional Director finds, therefore, that the PSC limit of 80,000 *C. bairdi* Tanner crabs in Zone 1 has been taken and that further directed fishing on yellowfin sole and "other flatfish" by vessels of the United States in Zone 1 is prohibited for the remainder of the year.

In accordance with § 675.21(a)(1), the Secretary issues this closure prohibiting further directed fishing for yellowfin sole and "other flatfish" in Zone 1 by vessels of the United States from 3:00 p.m. Alaska Standard Time (2400 g.m.t.), March 8, 1988, until midnight, December 31, 1988. Fishing in Zone 1 for other target species for which quotas remain open, such as Pacific cod and turbot, may continue.

Classification

This action is required by 50 CFR 675.21(a)(1) and complies with Executive Order 12291.

The Assistant Administrator for Fisheries, NOAA finds for good cause that providing prior notice and comment is impractical and contrary to the public interest. Immediate effectiveness of the notice is necessary to prevent the risk of overfishing local crab stocks. However, interested persons are invited to submit comments in writing to the address above for 15 days after the effective date of this notice.

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Reporting and recordkeeping requirements.

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

Dated: March 8, 1988.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-5423 Filed 3-8-88; 4:43 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register

Vol. 53, No. 48

Friday, March 11, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1126

Milk in the Texas Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rules.

SUMMARY: This notice invites written comments on proposals that would suspend, for the months of March through July 1988, portions of the pool plant and producer milk definitions of the Texas order. Associated Milk Producers, Inc., a cooperative association that represents a substantial portion of the producers who supply milk to the market, has proposed that the 60 percent delivery standard for pooling a cooperative association plant and the limitation on the types of pool plants at which milk receipts are used to determine the amount of milk that a cooperative may divert to nonpool plants be suspended for March-July. The Southland Corporation, which operates distributing plants that are fully regulated under the order, has requested that the limits on the amount of milk that a pool plant operator may divert to nonpool plants be suspended for March-June. Proponents contend that this action is necessary to give handlers the necessary flexibility to dispose of the market's increasing milk supplies without engaging in uneconomic movements of milk solely for the purpose of retaining pool status for dairy farmers who regularly supply the market's fluid requirements.

DATE: Comments are due on or before March 18, 1988.

ADDRESSES: Comments (two copies) should be filed with USDA/AMS/Dairy

Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: John F. Borovics, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-2089.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers supplying the fluid needs of the market would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing. This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), the suspension of the following provisions of the order regulating the handling of milk in the Texas marketing area is being considered for the months of March through July 1988:

1. In § 1126.7(e), the words, "and 60 percent or more of the producer milk of members of the cooperative association (excluding such milk that is received at or diverted from pool plants described in paragraph (b), (c), and (d) of this section) is physically received during the month in the form of a bulk fluid milk product at pool plants described in paragraph (a) of this section either directly from farms or by transfer from plants of the cooperative association for which pool plant status under this paragraph has been requested".

2. In § 1126.13(e)(2), the paragraph references, "(a), (b), (c), and (d)".

Notice also is hereby given that,

pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), the suspension of the following provisions of the order regulating the handling of milk in the Texas marketing area is being considered for the months of March through June 1988:

3. In § 1126.13(e)(3), the sentence, "The total quantity of milk so diverted during the month shall not exceed one-third of the producer milk physically received at such pool plant during the month that is eligible to be diverted by the plant operator".

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, by the 7th day after publication of this notice in the *Federal Register*. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include March in the suspension period.

The comments that are received will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposals would suspend, for the months of March through July 1988, portions of the pool plant and producer milk definitions of the Texas order. Specifically, a proposal for the months of March-July would suspend the 60 percent delivery standard for pool plants operated by cooperative associations and the restriction on the types of pool plants at which milk must be received to count in the base which establishes the maximum amount of milk that a cooperative may divert to nonpool plants. Also, a proposal for the months of March-June would suspend the limits on the amount of milk a pool plant operator may divert to nonpool plants.

The order provides for pooling a cooperative association plant that is located in the marketing area if at least 60 percent of the producer milk of members of the cooperative association is physically received at pool

distributing plants during the month. Also, cooperative associations may divert to nonpool plants up to one-third of the amount that the cooperative causes to be physically received at pool distributing and supply plants. The suspension would make inoperative for the months of March-July the 60 percent delivery standard for plants operated by a cooperative association and allow a cooperative's deliveries to all types of pool plants to be included as a basis from which the diversion allowance would be computed.

Also, the order provides that the operator of a pool plant may divert not more than one-third of the milk that is physically received during the month at the handler's pool plant. The proposal would suspend the one-third limit for the months of March-June 1988.

Suspension of the provisions involving cooperative associations was requested by Associated Milk Producers, Inc., a cooperative association that operates supply-balancing plants that are pooled under the order and represents a substantial number of producers who supply milk for the Texas market. Suspension of the provisions that relate to pool plants was proposed by The Southland Corporation, which operates distributing plants that are fully regulated under the Texas order. Proponents contend that the increasing volume of producer milk marketed by handlers under the Texas order cannot be qualified for pooling under current order provisions. If the suspension is not granted, proponents claim that uneconomic movements of milk would have to be made solely for the purpose of qualifying the increasing production of dairy farmers who supply the fluid milk needs of the market.

In view of the foregoing, it may be appropriate to suspend the aforementioned provisions of the Texas order.

List of Subjects in 7 CFR Part 1126

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1126 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Signed at Washington, DC, on: March 4, 1988.

Patrick Boyle,

Administrator, Agricultural Marketing Service.

[FR Doc. 88-5407 Filed 3-10-88; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION Federal Highway Administration

National Highway Traffic Safety Administration

23 CFR Part 659

[FHWA Docket No. 88-5]

Certification of Speed Limit Enforcement; Revision of Procedures

AGENCY: Department of Transportation/
Federal Highway Administration/
National Highway Traffic Safety
Administration.

ACTION: Notice of Proposed Rulemaking
(NPRM).

SUMMARY: The NPRM proposes to simplify the existing procedural regulation which provides a lengthy and complicated set of procedures that are not required by statute and have proven to be unnecessary in their current format. In addition, the NPRM Proposes to update the current regulation governing the 55 MPH speed limit since it does not reflect statutory changes. Finally, provisions addressing the effect of future compliance on a State found not to be in compliance in a given fiscal year (FY) pertaining to withheld funds, are being reworded to clarify the intent.

DATES: Comments must be submitted on or before April 11, 1988.

ADDRESS: Submit written, signed comments to FHWA Docket No. 88-5, HCC-10, Room 4232, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. All comments and suggestions received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except for legal holidays. Those desiring notification of receipt for comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: In OST: Samuel E. Whitehorn, Office of the Assistant General Counsel for Regulations and Enforcement at (202) 366-9307; in FHWA: Mr. Sheldon G. Strickland, HTO-30, (202) 366-1993, or Mr. David C. Oliver, Safety Law Division (202) 366-1356; and in NHTSA: Mr. Clayton Hall, NTS-40, (202) 366-4913, or Ms. Kathy DeMeter, General Law Division, (202) 366-1834, all at the Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

The Department of Transportation (Department or DOT) is responsible for ensuring that each State enforce a national maximum 55 miles per hour

(MPH) speed limit on those roads posted at 55 MPH. The Surface Transportation and Relocation Assistance Act of 1987 (Pub. L. 100-17), enacted April 2, 1987, allows states to increase the maximum allowable speed limit to 65 MPH on certain portions of the Interstate System. The Act, however, did not change the requirement that states submit information and continue to enforce the 55 MPH limit on roads posted at that speed.

Generally, States are required to certify (and submit supporting data) to the Department that they are enforcing the speed limits on their public highways (23 U.S.C. 141 and 154). The certification must include the percentage of motor vehicles exceeding the 55 MPH speed limit. Section 154 also provides that the Department shall withhold up to 10 percent of a State's Federal-aid apportionment for the Primary, Secondary, and Urban highway programs, 23 U.S.C. 104(b) (1), (2), and (6), for the fiscal year following the submission of a certification showing that more than 50 percent of the motor vehicles traveling on that State's highways which are posted a 55 MPH exceed that limit. Further, section 154 gives the Secretary discretion to delay imposition of sanctions in hardship cases and directs that any funds withheld shall be apportioned if the State complies with the law. These statutory provisions do not require that the Department hold a hearing before taking steps to withhold funds.

Federal Highway Administration (FHWA) and National Highway Traffic Safety Administration (NHTSA) implementing regulations, 23 CFR Part 659, provide procedures concerning how each State must certify its compliance. (FHWA and NHTSA are operating administrations within DOT). Generally, each State develops a plan to monitor speeds which is subject to FHWA review and approval. By January 1 of each year, each State must certify its compliance for the preceding fiscal year and submit information to support that certification.

If the State-submitted data indicates that the State is not in compliance, the State is accorded a number of opportunities, which are described below, to convince the Department that its Federal-aid apportionment should not be reduced.

Current Procedures—Section 659.21— Procedure for the Reduction of Funds

The current procedural regulation, 23 CFR 659.21, provides:

1. *Administrators' Proposed Noncompliance Determination.* If, based on State-submitted data, a State cannot

certify its compliance, NHTSA and FHWA must notify the State of a proposed noncompliance determination.

2. *Administrators' Final Decision on Noncompliance.* The State may request an informal hearing to show cause why it should not be found in noncompliance or attempt to resolve the matter informally. If the matter is not resolved informally the State retains the right to request a formal hearing conducted according to the provisions of the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.* The right to an APA hearing is provided only by regulation and is not required under the applicable statutory provisions governing the 55 MPH national maximum speed limit. If no request for a hearing is made the Administrators then forward the proposed determination to the Secretary for acceptance.

3. *ALJ's Recommended Compliance Decision.* If a State does request an APA hearing, the Secretary is required to convene one expeditiously to determine whether a State is in compliance with the 55 MPH law. The Department generally uses administrative law judges (ALJ) to conduct such proceedings. The ALJ then issues a recommended decision on compliance.

4. *Secretary's Final Noncompliance and Proposed Sanction Decision.* If the Secretary finds that a State is not in compliance, the regulation provides that "the Administrators shall jointly notify * * * the State * * * of the determination of nonconformity and of the proposed reduction in apportioned funds."

5. *Final Decision on Sanctions and Hardship Deferral.* The State then may request an informal meeting with the Administrators to discuss the sanction and a hardship deferral. After that, a final decision on sanctions and hardship deferral is issued.

In addition, as required under 23 U.S.C. 141, the regulation provides that if a State fails to certify, or if the Secretary determines that a State is not adequately enforcing the 55 MPH maximum speed limit on all public highways (other than those now posted at 65 MPH), no Federal-aid highway project shall be approved under 23 U.S.C. 106. 23 CFR 659.19(a).

Proposed Change to Section 659.21

Based on our past experiences with the above procedures, the Department proposes to adopt a less formal and more streamlined process which would afford each State an ample opportunity to present its position to the Department. The major difference between the proposed and the current rule involves the elimination of the

formal hearing process, as outlined more fully below.

The problem which the new regulation seeks to address concerns those steps that have simply proven to be non-productive. For example, states now receive four decisions from the Department concerning compliance. Generally, the issue of compliance is a matter of reviewing data compiled by the State (and adjusted in accordance with FHWA procedures), which as a matter of mathematics, indicates whether or not the State is over or under the 50 percent threshold for compliance. In addition, the first three of the four decisions do not even address sanctions and hardship deferrals. Even when the Secretary makes the fourth and final compliance decision, only a proposed penalty decision is made.

Not only does the procedure involve unnecessary steps, it also bifurcates the process and thereby inhibits States from addressing the crux of the issue, sanctions, at the same time that the compliance decision is made. On the surface, this bifurcated process will appear to make sense—first determine if a state is not in compliance and then determine the sanction. In practice, the question of compliance is straight forward and the matter of sanctions and mitigating circumstances should, and could, be addressed at that same point.

In the Arizona, Maryland and Vermont cases instituted and concluded for FY 1984 under 23 CFR 659.21(d), (instituting orders, 50 FR 51959, December 20, 1985), each of the proceedings adhered to the regulatory regime described above. The issue of compliance was put before an ALJ, and other issues reserved for the Secretary and Administrators. At the prehearing conferences held in two of the three cases in January 1986, the ALJ's ruled that there was no question of fact to resolve concerning compliance, and thus a formal hearing on that issue was not necessary. The States were frustrated in their attempts to have the judges look at other factors, such as mitigating circumstances. The ALJs correctly determined that it was not within their authority to look at such factors since those circumstances concerned sanctions, rather than compliance. These determinations were completely consistent with the instituting order setting up the proceeding, which in turn followed the regulatory scheme. (The third case had been stayed pending a review of that State's subsequent certification.)

In each of the FY 1984 cases, where the Administrators issued proposed noncompliance determinations, the States requested and received informal

meetings to show cause why they should not be found in noncompliance. At these meetings the States fully discussed both the compliance issue and any mitigating factors. These meetings easily could have been expanded to include hardship issues, thus allowing the Department to obtain sufficient information upon which to make a determination of compliance or noncompliance and to address, or defer based on hardship, any sanctions.

Even if the hearing process were expanded to include all issues, the resulting process would still be inefficient—it would still require multiple steps and continue to be cumbersome. For instance, the Department would still have to institute formal hearings and provide ample time to conduct the hearing. In the formal cases, the Department believed that 60 days would be needed to complete the hearings, even though they involved only one issue, compliance. While the ALJs were able to issue decisions prior to the 60 day time period, the very nature of the process required that sufficient time be provided for the parties to submit briefs, etc. Adding other and more complicated issues, such as sanctions, to the hearing process probably would have required additional time without providing a corresponding benefit.

Because the right to a hearing is not provided by statute, there is no requirement that a full APA hearing be held in these cases. Thus, the Department has the flexibility to fashion other more appropriate procedures to comply with the statutes governing the national maximum speed limit.

The Department proposes the following process:

Preliminary Decision

(a)(1) Preliminary Proposed Noncompliance Determination.

The NHTSA and FHWA Administrators would send a proposed noncompliance decision to the Governor, along with the basis for the decision. This decision would be based on data submitted by the State.

(2) Decision on Compliance, Hardship and Sanctions.

A State would have 30 days from the date of receipt of the letter to request an opportunity to show cause why it should not be found in noncompliance or to discuss a possible sanction or a hardship deferral. If a State makes such a show cause request an informal conference would be held. The State could offer any relevant information concerning compliance, hardship deferrals and sanctions levels. (If the

State agrees that it is not in compliance, the conference would focus on the hardship deferrals and any proposed sanction.) In lieu of requesting a conference within the 30 day period, the State could present written information concerning compliance, sanctions and deferrals.

If the Secretary (or designee) then concluded that a State is not in compliance, a written final decision on compliance, hardship, and sanctions would be issued.

(b) If the Secretary (or designee) concluded that a State was in compliance, a final decision would be issued.

The procedural change proposed should afford all States an adequate opportunity to demonstrate to the Department that the numbers submitted on compliance do not tell the entire picture, and to show any other relevant facts that a State wishes the Department to consider. The procedure should be adequate to permit the Department to gather information to determine whether a State is in compliance, what the sanction should be and whether any sanction should be deferred.

Commenters are free to suggest alternatives and address why a particular option should not be adopted. If a commenter wishes to suggest an alternative, a specific proposal should also be included and explained. Comments are also requested on whether a separate provision specifically authorizing the Administrators at their option to utilize administrative law judges to determine questions of fact is desirable.

Other Changes

The changes discussed below reflect the Department's current interpretation and application of the statute and regulation. Therefore, they are included in this document for notice purposes, and comments, while helpful, are not requested.

Section 659.19 Effect of Failure to Certify or To Meet Compliance Standards

Much of this section now implements the earlier statutory scheme which included a phased-in compliance process. The 1981 amendment to 23 U.S.C. 154 (§ 1108(a) of Pub. L. 97-35, 95 stat. 626) replaced the phased-in compliance requirement (which set different standards for each succeeding year) with a straightforward compliance standard of 50 percent. Thus, States now must demonstrate that the percentage of motor vehicles exceeding 55 MPH on roads posted at that speed is not greater than 50 percent. The proposed

regulation would conform this section to reflect the statutory amendment. In addition, the withheld funds provision would be revised and a reserved funds provision would be added.

Withheld Funds: The current regulation states: first, that funds withheld shall be apportioned if a State demonstrates that the percentage of motor vehicles exceeding 55 MPH has dropped to the "level specified for the fiscal year" in which funds were withheld; and second, that funds withheld shall be released if the State comes into compliance based on the following year's monitoring results.

The first provision is generally consistent with the current law. However, the "level specified for the fiscal year" language is based on the Federal-Aid Highway amendments of 1974 (Pub. L. 93-643) and section 205 of the Surface Transportation Assistance Act of 1978 (Pub. L. 95-599), and thus, refers to the former phased-in compliance process. The Department, therefore, will amend this language to state that the level specified constitutes the 50 percent threshold established in the 1981 amendment to 23 U.S.C. 154 for roads posted at 55 MPH.

The second provision provides that a State whose funds are withheld because it is found in noncompliance in one year, could reacquire the use of the funds if it comes into compliance based on one full year's monitoring results.

The applicable statutory provision, which the regulation intended to implement, provides that the Secretary must—

promptly apportion to a State any funds which have been withheld pursuant to subsection (f) * * * if he [she] determines that the percentage of motor vehicles in such State exceeding fifty-five miles per hour has dropped to the level specified for the fiscal year for which the funds were withheld. 23 U.S.C. 154(h).

Consistent with an interpretation of this provision issued by the Department, a copy of which is available in the docket, the Department will make clearer that funds withheld for a fiscal year will be reinstated if the State comes into compliance within three fiscal years following the year in which the funds were withheld. This clarification ensures that withheld funds are subject to the same limitations that are applicable to other apportioned funds. Thus, funds withheld will continue to be available for expenditure "for a period of three years after the close of the fiscal year for which such sums are authorized and any amounts so apportioned remaining unexpended at the end of such period lapse." 23

U.S.C. 118(b). A full fiscal year of speed monitoring data will be required to determine if withheld funds should be reinstated.

Reservation of Funds: In the event that a final decision in a particular case has not been made before October 1, the beginning of a fiscal year, or before the date funds are apportioned, States subject to such proceedings are notified that the Department will apportion Federal-aid funds for that State, but reserve from obligation 10 percent of the primary, secondary and urban funds. This process, used in FY 86 for the three ongoing cases concerning FY 84, and in FY 87 for possible cases in FY 85, preserves the Department's ability to impose sanctions if they are deemed appropriate.

Speedometer Variability

Section 205 of the Surface Transportation Assistance Act of 1978 (STTA), Pub. L. 95-599, Stat. 2689, amended 23 U.S.C. 154 by establishing maximum allowable 55 MPH noncompliance levels, against which each State's 55 MPH enforcement effort would be judged. This amendment changed State collection of vehicular speed data and required each State to report annually a figure representing statewide driver noncompliance with the 55 MPH speed limit. The STAA also required that, in developing the criteria to measure States' speed limit enforcement effort, the Secretary include " * * * criteria which takes into account the variability of speedometer readings * * *".

When a final rule implementing the STAA was published (45 FR 64488) September 29, 1980, speedometer variability was acknowledged, but no specific procedures were put in regulatory form. Discussion of speedometer variability was confined to the rule's supplementary information section. That narrative indicated that methodologies available to implement the concept would be published and distributed at a later date. Until now, however, further information on this topic has not appeared in the *Federal Register*.

Instead, the speedometer variability adjustment process has been handled via memorandum from FHWA Headquarters to the FHWA field offices, with the appropriate information then passed on to the States. The first memorandum was sent in December, 1980 and similar information has been provided, through the same channel, each year since. This line of communication has proven to be quite adequate. The States have received

each year's memorandum far enough in advance to incorporate the information in the preparation of the annual certification of speed limit enforcement required by 23 U.S.C. 141.

Incorporation of the speedometer variability adjustment procedures into 23 CFR Part 659 at this time is not needed in response to any controversy, and no changes are being made.

Use of the adjustment process always has been, and remains, voluntary on the part of a State. However, without at least partial application, few States would be able to demonstrate compliance with the 50 percent maximum allowable 55 mph noncompliance level spelled out in 23 U.S.C. 154. To illustrate the importance of the adjustment process the following table lists, by year since FY 1982, the number of States that would have certified more than 50 percent exceeding 55 mph if the adjustment procedures were not available.

Fiscal year:	Number of States
1982.....	30
1983.....	39
1984.....	39
1985.....	44
1986.....	44

The alternate adjustment procedures incorporated are the same two procedures that have been made available to the States for use in preparing the annual enforcement certification each year since 1982.

Miscellaneous

Because of the passage of the Federal-Aid Highway Act of 1987 (Pub. L. 100-17) and specifically section 174 which amended 23 U.S.C. 154 by giving the States authority to increase, without loss of Federal-Aid funds, the maximum speed limits to 65 MPH on Interstate highways located outside of an urbanized area of 50,000 or more, certain technical changes are necessary. These too, therefore, have been included in this notice. In addition, other technical amendments were adopted and published in the *Federal Register* on August 3, 1987 (52 FR 28691).

Regulatory Evaluation/Flexibility Act

The Department has determined that this rule is not a major rule under Executive Order 12291. However, because of the public's interest in the 55/65 MPH speed limit, it is considered a significant regulation under the Department's regulatory policies and procedures. A regulatory evaluation has not been prepared because the changes

to the current regulation proposed in this document are procedural in nature or are merely technical to reflect statutory changes. In accordance with Section 553(b) of the Administrative Procedure Act, comments are not requested with respect to the latter changes.

Since this rule prescribes procedural requirements for implementation of the statute, and since any economic impact will result from the operation of the statute and not this rule, under the criteria of the Regulatory Flexibility Act, it is certified that this action will not have a significant economic impact on a substantial number of small entities.

In consideration of the foregoing, the FHWA proposes to amend Chapter I of Title 23, Code of Federal Regulations as set forth below:

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

List of Subjects in 23 CFR Part 659

Grant programs—transportation, Highways and roads, Motor vehicles, Reporting and recordkeeping requirements, Speed limit, Traffic regulations.

Issued on March 2, 1988.

Robert E. Farris,

Deputy Administrator, Federal Highway Administration.

Diane Steed,

Administrator, National Highway Traffic Safety Administration.

The FHWA and the NHTSA propose to amend 23 CFR Part 659 as follows:

PART 659—CERTIFICATION OF SPEED LIMIT ENFORCEMENT

1. The authority citation for 23 CFR Part 659 is revised as follows:

Authority: 23 U.S.C. §§ 118, 141, 154, and 315, 49 CFR 1.48(b) and 1.50.

§ 659.7 [Amended]

2. Section 659.7 is amended by revising paragraph (a) to read as follows:

§ 659.7 Adoption of a national maximum speed limit.

(a) The maximum speed limit on any highway in the State, except for a highway on the Interstate System located outside of an area of 50,000 population or more, shall be 55 MPH or less. The maximum speed limit on a highway on the Interstate System located outside of an urbanized area of 50,000 population or more shall be 65

MPH or less. Emergency and police motor vehicles may be authorized to operate at higher speeds when necessary to protect the public health or safety.

§ 659.9 [Amended]

3. In § 659.9, paragraphs (b)(5)(ii), (b)(7)(i), and (c)(2) are revised to read as follows:

§ 659.9 Formulation of a plan for monitoring speeds.

(b) * * *

(5) * * *

(ii) A 24-hour monitoring period shall be minimum duration of any individual sampling session.

(b) * * *

(7) * * *

(i) Schedule—a detailed schedule shall take into account day of the week and calendar quarter of the year.

(c) * * *

(2) Adjustments to the number of sampling locations in a state.

§ 659.13 [Amended]

4. Section 659.13 is revised to read as follows:

§ 659.13 Certification requirement.

Each State shall certify to the Secretary of Transportation before January 1 of each year that it is enforcing the National Maximum Speed Limit on all public highways in accordance with 23 U.S.C. 154. The certification shall be supported by information on activities and results achieved during the 12-month period ending on September 30 preceding the January 1 date by which certification is required.

§ 659.15 [Amended]

5. In § 659.15 the introductory text, paragraph (a), and paragraph (d) are revised to read as follows:

§ 659.15 Certification content.

The certification shall consist of the following elements:

(a)(1) A statement by the Governor of the State, or an official designated by the Governor, that the National Maximum Speed Limit on public highways in the State is being enforced. The certifying statement shall be worded as follows:

I, (name of certifying official), (position title), of the (State or Commonwealth) of

—, do hereby certify that the (State or Commonwealth) of —, is enforcing the National Maximum Speed Limit.

(2) If this statement is made by an official other than the Governor, a copy of the document designating the official, signed by the Governor, shall also be included in the certification made under this part.

(d) The statewide percentage of vehicles exceed the 55 MPH speed limit as derived from the speed sampling plan discussed in § 659.9, and adjusted to take into account variability of speedometer readings. The allowable adjustment to account for variability of speedometer readings shall be calculated using either of the two following procedures.

(1) This procedure includes separate adjustments for each of three potential error sources. First, Speedometer Variability.

Let:

A = the percent exceeding 55 MPH derived from the speed sampling plan for § 659.9.

B = the present exceeding 60 MPH from the speed sampling plan.

C = (A-B)

D = .7(C) + B

Second Statistical Error.

Let:

E = the percent exceed 55 MPH adjusted for the first and second part of speedometer variability.

(.95st) and s(_{st}) are as defined in the SMPPM.

E = D - (.95_{st}) s(_{st})

Third, Speed Monitoring Equipment Error.

Let:

F = a correction for speed measuring equipment error. Derivation and use of an equipment error correction is subject to approval by the FHWA.

G = the percent exceeding 55 MPH, fully adjusted to account for variability of speedometer readings.

G = E-F

(2) This procedure is intended to account for all three error sources discussed in (d)(1) with a single adjustment. A, B and G are as defined in (d)(1).

$$G = \frac{A+B}{2}$$

§ 659.17 [Amended]

6. In § 659.17, paragraph (c) is revised to read as follows:

§ 659.17 Certification and statistical submittal.

(c) As described in § 659.15(d), the statewide percentage of vehicles exceeding 55 MPH is the only direct

result of the speed monitoring program that is required for inclusion in the annual certification. However, additional summary statistics from the speed monitoring program are necessary to provide a complete review. A report of the average speed, median speed, 85th percentile speed, and percent of vehicles exceeding 55, 60, and 65 miles per hour shall be submitted by each State to the FHWA Division Administrator on a quarterly basis for the 3-month periods ending December 31, March 31, June 30, and September 30 of each year. The submittal for the July-September quarter shall, in addition to the quarterly report, include a summary report of the entire year's speed monitoring data starting from the previous October 1.

§ 659.19 [Amended]

7. Section 659.19 is amended by revising paragraphs (a), (b), and (d), and adding paragraph (e), to read as follows:

§ 659.19 Effect of failure to certify, enforce or to meet the compliance standards.

(a) If a State fails to certify as required by § 659.13, or if the Secretary determines that a State is not adequately enforcing the National Maximum Speed Limit on all public highways notwithstanding the certification, no Federal-aid highway project shall be approved under 23 U.S.C. 106 in that State.

(b) Notwithstanding the proper submission of a certification, or information supporting the enforcement activities of any State, if a certification shows a percentage of motorists exceeding 55 MPH greater than 50 percent on roads posted at 55 MPH, funds apportioned under 23 U.S.C. 104(b)(1), 104(b)(2), and 104(b)(6) shall be reduced an aggregate amount of up to 10 percent, and reserved from obligation as provided in subsection (e), for the fiscal year subsequent to the fiscal year in which the certification is submitted.

(d) Funds withheld pursuant to this Part shall be apportioned to a State, subject to availability of such funds under 23 U.S.C. 118(b), upon a determination that the percentage of motor vehicles exceeding 55 MPH in such State has dropped to 50 percent or lower on roads posted at 55 MPH. One fiscal year's speed monitoring results will be required to make such a determination.

(e) If a final decision for a State subject to §§ 659.19 and 659.21 has not been made before the beginning of the fiscal year in which funds would otherwise be withheld, the Secretary

may apportion 100 percent of the funds for the fiscal year. However, up to ten percent of the apportioned funds under 23 U.S.C. 104(b)(1), 104(b)(2) and 104(b)(6) may be reserved from obligation, pending a final decision.

§ 659.21 [Amended]

8. Section 659.21 is revised to read as follows:

§ 659.21 Procedures for the reduction of funds.

(a) *Noncompliance Finding.* (1) In the event that information concerning the enforcement by any State shows that a percentage of motorists exceeding 55 MPH is greater than 50 percent, the Administrators of the FHWA and NHTSA shall make, in writing, a proposed determination of noncompliance, and shall notify the Governor of the State of the proposed determination by certified mail. The notice shall state the reasons for the proposed determination.

(2) If the reason for the proposed determination is the failure to meet the compliance standards set forth in § 659.19, the State may within 30 days from the date of receipt of the letter request an informal hearing before the Department to show cause why it should not be found in compliance. If the state does not request an informal hearing, it may submit any pertinent written documents, including any relating to matters specified in § 659.21(a)(3), for consideration by the Department. Such written documents also may be submitted prior to, or at, the informal hearing, if one is requested.

(3) The State may offer any information which it considers helpful to the resolution of the matter, and the scope of review will include but is not limited to, legislative actions, budgetary considerations, judicial actions, and proposals for specific program actions which will be implemented to bring the State into compliance.

(4) If a State wishes to claim a hardship deferral and/or address the potential amount of withholding of funds in the event of a determination of noncompliance, information concerning these matters shall be conveyed to the Department.

(5) If the Department concludes that the State is in noncompliance, a final decision shall be issued. If a State makes a claim under (a)(4), the final decision will address these issues. The decision will be served on the Governor and/or his or her designee.

(b) *Compliance finding.* If, on the basis of (a)(3), the Department concludes that the State is in

compliance, a final decision shall be issued. The decision will be served on the Governor and/or his or her designee.

[FR Doc. 88-5275 Filed 3-10-88; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

31 CFR Part 103

Proposed Amendment to Bank Secrecy Act Regulations Providing for Notice to Customers of Anti-Structuring Provision by Financial Institutions

AGENCY: Departmental Officers, Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Treasury is considering issuing a Notice of proposed Rulemaking under the Bank Secrecy Act by which Treasury would require financial institutions subject to the Bank Secrecy Act to give notice to customers of the prohibition on structuring transactions for the purpose of evading the currency reporting requirements of 31 U.S.C. 5313. This prohibition is contained in 31 U.S.C. 5324. Treasury is issuing this Advance Notice to solicit the views of the affected financial institutions and other interested parties on how most effectively and efficiently to give such notice.

DATES: Comments must be received no later than April 11, 1988.

ADDRESS: Office of Financial Enforcement, Department of the Treasury, Room 4320, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Amy G. Rudnick, Director, Office of Financial Enforcement, at the address listed above, or at (202) 566-8022.

SUPPLEMENTARY INFORMATION: The Bank Secrecy Act, Pub. L. No. 91-508 (codified at 12 U.S.C. 1829(b), 12 U.S.C. 1951 *et seq.*, and 31 U.S.C. 5311-5324), authorizes the Secretary of the Treasury to require financial institutions to keep records and file reports that the Secretary determines have a high degree of usefulness in criminal, tax, and regulatory matters. Pursuant to 31 U.S.C. 5313 and the regulations thereunder, financial institutions subject to the Bank Secrecy Act are required to file Currency Transaction Reports (CTRs) with Treasury on transactions in currency in excess of \$10,000 "by, through or to such financial institutions." 31 CFR 103.22.

As part of the Money Laundering Control Act of 1986, Subtitle H of the

Anti-Drug Abuse Act of 1986, Pub. L. 99-570 (Oct. 27, 1986), Congress enacted 31 U.S.C. 5324, the so-called anti-structuring provision of the Bank Secrecy Act. Section 5324 prohibits any person from structuring transactions "for the purpose of evading" the Currency Transaction Report requirement. It also prohibits a person, for the same purpose, from causing a financial institution 1) not to file a Currency Transaction Report or 2) to file a report that contains a material omission or misstatement of fact. The "anti-structuring" requirement was aimed at drug and other money launderers who routinely conduct transactions under the \$10,000 reporting threshold of section 103.22 in order to have their currency transactions go undetected by Federal law enforcement authorities. See H.R. Rep. No. 746, 99th Cong., 2d Sess. 18-20 (1986); Sen. Rep. No. 433, 99th Cong., 2d Sess. 21-22 (1986).

In order to prosecute a person (or to assess a civil penalty against a person) for structuring to evade the currency reporting requirement or causing a financial institution not to file a Currency Transaction Report, the Government must be able to establish that the person had knowledge of the reporting requirement and specific intent to commit the crime. In addition, some defendants recently have asserted, although Treasury does not agree, that in order to sustain a prosecution of section 5324, the government must be able to establish not only that the person knew that the financial institution at which he is structuring transactions had a reporting obligation, but that the person had knowledge that structuring transactions to avoid reporting by the financial institution was prohibited by law. This problem of establishing knowledge is presenting difficulties for investigators and prosecutors and is threatening to undermine Treasury's ability to assure compliance with section 5324.

Therefore, in order to assure compliance with Section 5324, Treasury is considering requiring financial institutions subject to the Bank Secrecy Act to establish procedures to notify customers of the provisions to Section 5324, especially customers conducting currency transactions. Treasury would require such procedures pursuant to Treasury's authority in 31 U.S.C. 5318(a)(2) "to require a class of domestic financial institutions to maintain appropriate" procedures to ensure compliance with this subchapter and regulation prescribed under this subchapter." If prosecutions cannot be brought successfully under Section 5324,

Treasury clearly will be unable to assure compliance with this provision.

Treasury is issuing this Advanced Notice of Proposed Rulemaking to solicit the views of the affected financial institutions, law enforcement agencies and other interested parties on how best to formulate procedures for communicating the provisions of Section 5324 to customers at the least expense and with the least operational burden to the financial institutions.

Treasury seeks views on the following proposals under consideration. We also welcome other suggestions on how best to give notice of Section 5324 to customers. The proposals are not meant to be considered as alternatives to each other, but may be proposed in conjunction with one another. Comments should be made on each individual proposal and also should address special concerns should any of the proposals be issued together:

1. Require that a short notice prescribed by Treasury of the provisions of Section 5324 be posted conspicuously at every location where customers may conduct cash transactions, e.g., bank teller's windows, casino gaming tables and cages.

2. Require that a short Treasury form notice of the provisions of section 5324 be handed to any person conducting currency transactions over a specified amount, e.g., \$1000 or \$3000. Currency transactions would include deposits to accounts and purchases of monetary instruments such as cashier's checks, official bank checks, money orders or traveller's checks.

3. Require that all deposit tickets be imprinted with a short notice prescribed by Treasury of the provisions of Section 5324 and that a person making a currency deposit over a certain amount, i.e., \$1000 or \$3000, sign the back of the deposit slip in acknowledgment of reading such notice.

4. Require that a short Treasury form notice of the provisions of Section 5324 be sent to all customers by a certain date and to all new customers upon the opening of an account. This requirement would apply to customers with "transactional accounts" as defined in 31 CFR 103.11(n).

5. Require that a short Treasury form notice of the provisions of Section 5324 be included periodically, e.g., quarterly, in all customers' monthly statements of accounts, and upon opening a new account. This requirement would apply to statements of "transactional accounts," as defined in 31 CFR 103.11(n).

In the event that financial institutions receive inquiries from customers as the

result of any of the above proposals, Treasury could make available a form to give to customers giving a more detailed explanation of the provisions of Section 5324 and a toll free Treasury number for the customer to call for further information.

Treasury is committed to the judicious exercise of its rulemaking authority under the Bank Secrecy Act. At the same time, we must maximize the effectiveness of this authority in the fight against money laundering and the pernicious activities it sustains, especially drug trafficking. We are depending on the wholehearted cooperation of the financial community in this effort. As always, in any rulemaking under the Bank Secrecy Act, Treasury is seeking to strike an appropriate balance between law enforcement utility and cost to financial institutions.

Date: March 4, 1988.

Francis A. Keating, II,

Assistant Secretary (Enforcement).

[FR Doc. 88-5346 Filed 3-10-88; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 110 and 165

[CGD 86-079]

Anchorage Regulations; Regulated Navigation Areas and Limited Access Areas

AGENCY: Coast Guard, DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Coast Guard proposes to amend the anchorage regulations by placing a general statement at the beginning of Part 110 advising mariners that state and/or local ordinances may apply in these anchorages; by removing other notes and textual references to state and/or local ordinances which may apply to the anchorages in this part; by removing non-regulatory, obsolete or duplicative language; and by relocating sections to Part 165 which regulate navigation outside of the anchorages established in this part. These changes are primarily editorial in nature and are intended to clarify and update the regulations in this part.

DATE: Comments must be received on or before May 10, 1988.

ADDRESS: Comments should be submitted to Commandant (G-CMC/21) (CGD 86-079), U.S. Coast Guard, 2100 Second St., SW., Washington, DC 20593-0001. Comments may be delivered to

and will be available for inspection and copying at the Marine Safety Council, room 2110, between the hours of 8:00 a.m. and 4:00 p.m. Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT:

Margie G. Hegy, Project Manager, Office of Navigation (G-NSS/2), Room 1606, U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington, DC 20593-0001, telephone (202) 267-0415, between 8:00 a.m. and 3:30 p.m. Monday through Friday.

SUPPLEMENTARY INFORMATION:

Request for Comments

The public is invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Each person submitting a comment should include his or her name and address, identify this notice as CGD 86-079, and give the reasons for the comment. Persons desiring acknowledgement that their comment has been received should enclose a stamped self-addressed postcard or envelope.

All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held at a time and place to be set in a subsequent notice if written requests for a hearing are received, and it is determined that the opportunity to make oral presentations will be beneficial to this rulemaking.

Drafting Information

The principal persons involved in drafting this proposed rulemaking are: Margie G. Hegy, Project Manager, and Christena G. Green, Project Counsel, Office of Chief Counsel.

Discussion of Proposed Regulations

Responsibility for the administration and enforcement of anchorage regulations was transferred from the U.S. Army Corps of Engineers (COE) to the U.S. Coast Guard in 1967. Many of these regulations have remained basically unchanged since that time. In 1979, the authority to issue rules and regulations pertaining to anchorage grounds and special anchorage areas was delegated to Coast Guard district commanders who have made necessary changes to specific areas under their authority. State and/or local governments have also promulgated ordinances which apply in some federal anchorages. Inclusion of references to state and/or local ordinances in Part 110 is not desirable as it appears that the Coast Guard has incorporated these ordinances into the federal regulations. The Coast Guard has reviewed the

federal anchorage regulations and proposes to eliminate specific references to state and/or local ordinances and to place a general statement, as a caveat, at the beginning of Part 110 advising of the possible existence of state/or local ordinances.

The federal anchorage statute, 33 U.S.C. 471, authorizes the establishment of federal anchorage grounds in the navigable waters of the United States when required by maritime or commercial interests for safe navigation. The statute also allows for the issuance of regulations concerning anchoring therein. However, it does not specifically provide for the designation of non-anchorage areas or the regulation of navigation outside the anchorage grounds.

The Coast Guard proposes to redesignate or remove those sections containing regulations establishing "non-anchorage" grounds or regulating navigation outside the boundaries of established anchorages. These regulations are more appropriately contained in Part 165 as "regulated navigation areas".

The Coast Guard also proposes to update the regulations in Part 110 by removing obsolete regulations, by making editorial changes, and by removing non-regulatory language and informational material from the regulatory text. In the Final Rule, the Coast Guard also proposes to renumber the sections in Part 110 to eliminate non-standard section designations and facilitate future amendments.

Regulatory Evaluation

These regulatory changes are considered to be non-major under Executive Order 12291 and nonsignificant under the DOT regulatory policies and procedures (44 FR 11034; Feb. 26, 1979). The economic impact of this amendment has been found to be so minimal that further evaluation is unnecessary. The Coast Guard certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

List of Subjects

33 CFR Part 110

Special anchorage areas, Anchorage grounds.

33 CFR Part 165

Regulated navigation areas.

In consideration of the foregoing, Parts 110 and 165 of Title 33 of the Code of Federal Regulations are amended as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for Part 110 is revised to read as follows:

Authority: 33 U.S.C. 471 and 2071; 49 CFR 1.46, 33 CFR 1.05-1(g). The regulations in § 110.155 are also promulgated under the authority of 33 U.S.C. 1231.

2. Section 110.1 (a) are (b) and (e) revised to read as follows:

§ 110.1 General.

(a) The areas described in Subpart A of this part are designated as special anchorage areas for the purposes of 33 U.S.C. 2030 and 2035. Vessels less than 20 meters in length (65.6 feet), when at anchor in any special anchorage area, are not required to exhibit anchor lights and shapes or to sound signals as prescribed in those sections.

(b) The anchorage grounds described in Subpart B of this part are established, and the rules and regulations in relation thereto are adopted, under the authority of 33 U.S.C. 471.

(e) Vessel owners and operators are advised that state and/or local ordinances may apply to the anchorages established in Subparts A and B.

§ 110.1a [Removal]

3. The text of § 110.1a is redesignated as § 110.155(k) and is revised to read as follows:

§ 110.155 Port of New York.

(k) *Anchorage under Ports and Waterways Safety Act.* (1) The anchorages listed in this section are regulated under the Ports and Waterways Safety Act (33 U.S.C. 1221 et seq.).

(2) Any person who violates a regulation issued under the Ports and Waterways Safety Act:

(i) Is liable for a civil penalty, not to exceed \$25,000 for each violation;

(ii) If the violation is willful and knowing, is liable to be fined not more than \$50,000 for each violation or imprisoned for not more than five years, or both.

§ 110.5 [Amended]

4. Section 110.5 is amended by removing the notes immediately following paragraphs (a-1) and (e).

§ 110.6 [Amended]

5. Section 110.6 is amended by removing the note at the end of the section.

§ 110.6a [Redesignated as § 110.7]

6. Section 110.6a is redesignated as § 110.7 and is revised to read as follows:

§ 110.7 Fore River, Portland Harbor, Portland, ME.

The waters beginning at a point on the shoreline near the Coast Guard Base at latitude 43°38'43"N, longitude 070°14'49"W; thence 319° to latitude 43°38'55"N, longitude 070°15'03"W; thence 050° to latitude 43°39'06"N, longitude 070°14'43"W; thence 161° to mainland; and thence southwesterly along the shore to the point of beginning.

§ 110.8 [Amended]

7. Section 110.8 is amended by removing the note immediately following paragraph (c-2).

§ 110.25 [Amended]

8. Section 110.25 is amended by removing the last three sentences of paragraph (c).

§ 110.26 [Amended]

9. Section 110.26 is amended by removing the note at the end of the section.

§ 110.30 [Amended]

10. Section 110.30 is amended by removing the note at the end of the section.

§ 110.31 [Amended]

11. Section 110.31 is amended by removing the note at the end of the section.

§ 110.32 [Amended]

12. Section 110.32 is amended by removing the note at the end of the section.

§ 110.37 [Amended]

13. Section 110.37 is amended by removing the note at the end of the section.

§ 110.38 [Amended]

14. Section 110.38 is amended by removing the note at the end of the section.

§ 110.45 [Redesignated as § 110.44]

15. Section 110.45 is redesignated as § 110.44.

§ 110.45a [Redesignated as § 110.45 and amended]

16. Section 110.45a is redesignated as § 110.45 and amended by removing the note at the end of the section.

§ 110.50 [Amended]

17. Section 110.50 is amended by removing the note at the end of the section.

§ 110.50a [Amended]

18. Section 110.50a is amended by removing the note at the end of the section.

§ 110.50b [Amended]

19. Section 110.50b is amended by removing the note at the end of the section.

§ 110.50c [Amended]

20. Section 110.50c is amended by removing the note at the end of the section.

§ 110.50d [Amended]

21. Section 110.50d is amended by removing paragraphs (b), (b)(1), (b)(2), and (b)(3).

§ 110.51 [Amended]

22. Section 110.51 is amended by removing the note at the end of the section.

§ 110.52 [Amended]

23. Section 110.52 is amended by removing the note at the end of the section.

§ 110.53 [Amended]

24. Section 110.53 is amended by removing the note at the end of the section.

§ 110.55 [Amended]

25. Section 110.55 is amended by removing the notes immediately following paragraphs (b), (c), (e) (e-1), (e-2), and (g).

§ 110.55a [Amended]

26. Section 110.55a is amended by removing the note at the end of the section.

§ 110.56 [Amended]

27. Section 110.56 is amended by removing the note at the end of the section.

§ 110.58 [Amended]

28. Section 110.58 is amended by removing the note at the end of the section.

29. Section 110.60 is amended by removing the notes immediately following paragraphs (a-2), (b-1), (j-1), (m-2), (o-2), (s-1), and (u-3), and by removing paragraph (x)(4), Table 110.60(x)(4) and Figure 110.60(x)(4). Paragraph (r-1) is revised to read as follows:

§ 110.60 Port of New York and vicinity.

(r-1) *Great Kills Harbor.* Beginning at a point on the shoreline at latitude 40°32'05.6"N, longitude 74°08'24.2"W; thence to latitude 40°32'06.7"N,

longitude 74°08'27.6"W; thence to latitude 40°32'19"N, longitude 74°08'23.1"W; thence to latitude 40°32'27.8"N, longitude 74°08'25.9"W; thence to latitude 40°32'40.2"N, longitude 74°08'10.5"W; thence to latitude 40°32'44.2"N; longitude 74°08'12.9"W; thence along the northern and eastern shoreline to the point of beginning.

Note: This special anchorage area is within the limits of General Anchorage No. 28 described in section 110.155(f)(3).

§ 110.73a [Amended]

30. Section 110.73a is amended by removing the note at the end of the section.

31. Section 110.73b is amended by revising paragraph (a) and removing paragraph (c). Section 110.73b, as amended, reads as follows:

§ 110.73b Indian River at Vero Beach, FL.

(a) Area A. Beginning at a point located on the eastern shore of Fritz Is. at latitude 27°39'32.5" N, longitude 80°22'20.6" W following the shoreline northward to the northwest point at latitude 27°39'46" N, longitude 80°22'25.9" W, thence due east to a point on Orchid Is. at approximate latitude 27°39'46" N, longitude 80°22'16.2" W, thence southerly along the shoreline of Orchid Is. to latitude 27°39'32.5" N, longitude 80°22'13.4" W, thence due west to the point of beginning.

§ 110.74 [Amended]

32. Section 110.74 is amended by removing the note at the end of the section.

§ 110.77 [Amended]

33. Section 110.77 is amended by removing the note at the end of the section.

§ 110.79a [Amended]

34. Section 110.79a is amended by removing the note at the end of the section.

§ 110.80 [Amended]

35. Section 110.80 is amended by removing the note at the end of the section.

§ 110.80b [Amended]

36. Section 110.80b is amended by removing the note at the end of the section.

§ 110.81 [Amended]

37. Section 110.81 is amended by removing the note at the end of the section.

§ 110.83 [Amended]

38. Section 110.83 is amended by removing the note at the end of the section.

§ 110.84a [Amended]

39. Section 110.84a is amended by removing the note at the end of the section.

§ 110.85 [Amended]

40. Section 110.85 is amended by removing the note at the end of the section.

§ 110.86 [Amended]

41. Section 110.86 is amended by removing the note at the end of the section.

§ 110.87 [Amended]

42. Section 110.87 is amended by removing the note at the end of the section.

§ 110.90 [Amended]

43. Section 110.90 is amended by removing the note at the end of the section.

§ 110.91 [Amended]

44. Section 110.91 is amended by removing the notes immediately following paragraphs (a), (b), (c), and (d).

§ 110.95 [Amended]

45. Section 110.95 is amended by removing the notes immediately following paragraphs (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), and (n).

§ 110.111 [Amended]

46. Section 110.111 is amended by removing the note at the end of the section.

§ 110.115 [Amended]

47. Section 110.115 is amended by removing the note at the end of the section.

§ 110.120 [Amended]

48. Section 110.120 is amended by removing the note at the end of the section.

§ 110.125 [Amended]

49. Section 110.125 is amended by removing the note at the end of the section.

§ 110.126a [Amended]

50. Section 110.126a is amended by removing the note at the end of the section.

§ 110.127 [Amended]

51. Section 110.127 is amended by removing the note at the end of the section.

§ 110.127a [Amended]

52. Section 110.127a is amended by removing the note immediately following paragraph (e).

§ 110.127b [Amended]

53. Section 110.127b is amended by removing the note at the end of the section.

§ 110.127c [Amended]

54. Section 110.127c is amended by removing the note at the end of the section.

§ 110.130 [Amended]

55. Section 110.130 is amended by removing paragraph (b)(3).

56. The introductory text of § 110.131(a) is revised to read as follows:

§ 110.131 Kennebec River in vicinity of Bath, ME

(a) *The anchorage grounds.* * * *

§ 110.140 [Amended]

57. Section 110.140 is amended by removing paragraphs (d)(2), (d)(4), (d)(5), (d)(6), and (d)(7), and by redesignating paragraph (d)(3) as (d)(2).

58. Section 110.142(b) is revised to read as follows:

§ 110.142 Nantucket Harbor, MA.

(b) *The regulations.* The anchorage is for the use of commercial and pleasure craft. Temporary floats or buoys for marking anchors or moorings in place will be allowed. Fixed mooring piles or stakes are prohibited.

§ 110.145 [Amended]

59. Section 110.145 is amended by removing paragraphs (a)(2)(ii)(e), (d)(5) and (d)(6) and by removing and reserving paragraphs (d)(1) and (d)(3).

§ 110.147 [Amended]

60. Section 110.147 is amended by removing paragraph (b)(3).

61. Section 110.148(b) is revised to read as follows:

§ 110.148 Johnsons River at Bridgeport, CT.

(b) *The regulations.* The anchorage is for use by commercial and pleasure craft. Temporary floats or buoys for marking anchors or moorings will be allowed. Fixed mooring piles or stakes will not be allowed.

§ 110.155 [Amended]

62. Section 110.155 is amended by removing the note at the end of the section.

§ 110.157 [Amended]

63. Section 110.157 is amended by removing and reserving paragraphs (b)(1) and (b)(7), and by removing paragraphs (b)(10) and (c)(7).

§ 110.158 [Amended]

64. Section 110.158 is amended by removing and reserving paragraph (b)(1), and by removing paragraph (b)(8).

§ 110.159 [Amended]

65. Section 110.159 is amended by removing the last sentence of paragraph (a)(1) and the last two sentences of paragraph (a)(4), by removing the note immediately following paragraph (a)(6), and by removing paragraphs (b)(1) through (b)(6).

§ 110.168 [Amended]

66. Section 110.168 is amended by removing paragraphs (a)(7)(x), (d)(4)(iv), by removing and reserving paragraphs (h)(1), (h)(6), (h)(8), (h)(9), and by removing paragraph (h)(11).

§ 110.170 [Amended]

67. Section 110.170 is amended by removing paragraph (b)(4).

§ 110.173 [Amended]

68. Section 110.173 is amended by removing and reserving paragraph (b)(1) and by removing paragraph (b)(13).

§ 110.179 [Amended]

69. Section 110.179 is amended by removing and reserving paragraphs (b)(1) and (b)(3).

§ 110.182 [Amended]

70. Section 110.182 is amended by removing and reserving paragraph (b)(2) and by removing paragraph (d).

§ 110.185 [Amended]

71. Section 110.185 is amended by removing paragraphs (b)(1) and (b)(2).

§ 110.188 [Amended]

72. Section 110.188 is amended by removing and reserving paragraphs (b)(1), (b)(2), and (b)(5), and by removing paragraph (b)(8).

§ 110.189a [Redesignated as § 110.189 and amended]

73. Section 110.189a is redesignated as § 110.189 and is amended by removing paragraph (b)(4).

§ 110.190 [Amended]

74. Section 110.190 is amended by removing paragraph (b).

§ 110.195 [Amended]

75. Section 110.195 is amended by removing the note following the paragraph (c)(6), and removing and

reserving paragraphs (c)(1), (c)(2), (c)(5), and (c)(7).

§ 110.196 [Amended]

76. Section 110.196 is amended by removing paragraph (b)(7).

§ 110.197 [Amended]

77. Section 110.197 is amended by removing paragraph (b)(7).

§ 110.205 [Amended]

78. Section 110.205 is amended by removing and reserving paragraphs (b)(1), (b)(3), and (b)(6).

§ 110.210 [Amended]

79. Section 110.210 is amended by removing paragraph (b)(3) and by removing the note at the end of the section.

§ 110.212 [Amended]

80. Section 110.212 is amended by removing paragraphs (a)(3)(ii) and (a)(3)(iii), and by removing and reserving paragraphs (a)(2)(ii) and (b)(2).

§§ 110.214 and 165.1109 [Amended]

81. Section 110.214 is amended by removing paragraphs (a)(10)(ii), (a)(11)(ii), (a)(12)(ii), (a)(18), and (b)(15), by removing and reserving paragraph (b)(7), and by redesignating paragraphs (a)(14), (a)(15) and (a)(16) as § 165.1109(a)(2), (a)(3), and (a)(4) respectively.

§ 110.215 [Amended]

82. Section 110.215 is amended by removing and reserving paragraph (b)(3).

§ 110.216 [Amended]

83. Section 110.216 is amended by removing paragraph (b)(5).

84. Section 110.218(b)(1) is revised to read as follows:

§ 110.218 Pacific Ocean at San Clemente Island, CA; in vicinity of Wilson Cove.

(b) *The regulations.* (1) This area is reserved exclusively for anchorage of United States Government vessels or vessels temporarily operating under Government direction, and no vessel, except in an emergency, shall anchor in the area without obtaining permission from the Commander, Naval Base, San Diego, CA or his designated representative.

85. Section 110.220(b) is revised to read as follows:

§ 110.220 Pacific Ocean at San Nicolas Island, CA; restricted anchorage areas.

(b) *The regulations.* Except in an emergency, no vessel shall anchor in

these restricted areas without authority of the Commander, Naval Base, San Diego, CA or his designated representative.

§ 110.224 [Amended]

86. Section 110.224 is amended by removing paragraphs (a)(1), (a)(9), (a)(14), (a)(16), and (a)(17), by redesignating paragraphs (a)(2), (a)(3), (a)(4), (a)(5), (a)(7), (a)(8), and (a)(15) as § 165.1113 (a) through (g) respectively, and by redesignating paragraph (a)(6) as (a)(1) and by redesignating paragraphs (a)(10) through (a)(13) as (a)(2) through (a)(5), respectively. Section 110.224(a), (b)(1) and (2) are revised to read as follows:

§ 110.224 San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, Sacramento River, San Joaquin River, and connecting waters, CA.

(a) *General Regulations.* (1) No vessel in an unseaworthy condition which may become a menace or obstruction to navigation or anchorage of other vessels may occupy an anchorage, except when circumstances create conditions of imminent peril to personnel or when authorized by the Captain of the Port.

(2) Each vessel that does not have sufficient personnel on board to weigh anchor at any time, must anchor with two anchors and mooring swivel, unless authorized by the Captain of the Port.

(3) Deep-draft vessels shall take precedence over vessels of less draft in the deeper portions of all anchorages. Light-draft barges and vessels shall anchor away from the deeper portions of the anchorage so as not to interfere with the anchoring of deep-draft vessels. Should circumstances warrant, the Captain of the Port may require lighter draft vessels to move to provide safe anchorage, particularly in Anchorages 7 and 9, for deep-draft vessels.

(4) Barges towed in tandem to any anchorage shall nest together when anchoring.

(5) Each vessel that is notified by the Captain of the Port or his authorized representative to shift location shall do so promptly as directed.

(b) *Naval/Army Anchorages.* In addition to the General Regulations in paragraph (a) of this section, the following regulations apply to each naval/army anchorage described in this section.

(1) Naval/Army anchorages are intended for public vessels of the United States. They may be used by other vessels when not required for use by public vessels.

(2) Non-public vessels using a naval/army anchorage shall promptly notify

the Captain of the Port upon anchoring and upon departure and shall be prepared to move within one hour after notice that the anchorage is required for public vessels.

§ 110.229 [Removed and reserved]

87. Section 110.229 is removed and reserved.

§ 110.235 [Amended]

88. Section 110.235 is amended by removing paragraph (b)(8).

§ 110.236 [Amended]

89. Section 110.236 is amended by removing and reserving paragraph (b)(6) and by redesignating paragraphs (a)(2), (a)(4), (a)(6) and (b)(5) as § 165.1405(a)(1), (a)(2), (a)(3), and (b), respectively.

§ 110.238 [Amended]

90. Section 110.238 is amended by removing paragraph (b)(5)(ii).

§ 110.250 [Amended]

91. Section 110.250 is amended by removing the last two sentences of paragraph (b)(3), by removing and reserving paragraph (b)(4), and by removing paragraphs (b)(7), (b)(8), and (b)(9).

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

92. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5.

93. Newly designated § 165.1109(a)(2)-(a)(4) are revised to read as follows:

§ 165.1109 San Pedro Bay, CA.

(a) The following are Regulated Navigation Areas—(1) The waters of San Pedro Bay enclosed by a line beginning at Los Angeles Light, latitude 33°42'30.6"N, longitude 118°15'02.5"W; thence easterly along the Los Angeles-Long Beach Middle Breakwater to Long Beach Channel Entrance Light 2, latitude 33°43'23.5"N, longitude 118°10'46.9"W; thence southerly to latitude 33°42'09.9"N; longitude 118°10'23.0"W; thence westerly to latitude 33°42'09.0"N, longitude 118°11'33.3"W; thence southwesterly to latitude 33°41'40.5"N, longitude 118°13'02.2"W; thence westerly to latitude 33°41'36.1"N, longitude 118°13'43.0"W; thence southwesterly to latitude 33°41'13.8"N, longitude 118°14'52.5"W; thence northerly to the beginning point at Los Angeles Light.

(2) Non-anchorage U (Los Angeles Harbor). An area enclosed by a line

beginning at latitude 33°44'00.0"N, longitude 118°15'12.2"W; thence southerly to latitude 33°43'48.7"N, longitude 118°15'06.4"W; thence easterly to latitude 33°43'49.7"N, longitude 118°15'03.9"W; thence northerly to latitude 33°44'01.1"N, longitude 118°15'09.2"W; thence along the south containment dike to the beginning point.

(i) No vessel may anchor or moor in this non-anchorage.

(ii) Drugging, seining, trawling or other fishing operations, and activities which might foul submerged installations within this non-anchorage are prohibited.

Note: This non-anchorage is established for protection of a submerged sewer outfall pipeline.

(3) Non-anchorage V (Long Beach Harbor). An area enclosed by a line beginning at Long Beach Breakwater East End Light 1, latitude 33°43'23.5"N, longitude 118°08'10.1"W; thence northerly to latitude 33°43'38.4"N, longitude 118°08'10.1"W; thence easterly to latitude 33°43'38.4"N, longitude 118°07'45.5"W; thence southeasterly to latitude 33°43'27.3"N, longitude 118°07'36.8"W; thence to the beginning point.

(i) No vessel may anchor or moor in this non-anchorage.

(ii) Drugging, seining, trawling, or other fishing operations, and activities which might foul submerged installations within this non-anchorage area are prohibited.

Note: This non-anchorage is established for protection of a submerged pipeline.

(4) Non-anchorage W (Mouth of Entrance Channel to Alamitos Bay) Non-anchorage Area W is a semicircle with a 460m (approximately 1,509 ft.) radius that is centered at midchannel on a line between Alamitos Bay West Jetty Light 1 and Alamitos Bay East Jetty Light 2 and which extends seaward from that line.

(i) No vessel may anchor or moor in this non-anchorage.

94. Newly designated § 165.1113 is revised to read as follows:

§ 165.1113 San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, Sacramento River, San Joaquin River, and connecting waters, CA.

(a) No vessel may permanently moor in areas adjacent to the San Joaquin River Deep Water Channel except with the written permission of the Captain of the Port.

(b) Each vessel anchoring for safety reasons in the San Joaquin River Deep Water Channel, the Sacramento River Deep Water Ship Channel, or the

Stockton or West Sacramento Turning Basins shall be positioned as near to the edge of the channel or turning basin as possible. Such vessels shall not interfere with navigation, or obstruct the approach to any pier, wharf, slip, or boat harbor and shall move as soon as possible or when notified to move by the Captain of the Port.

(c) No vessel may anchor within a tunnel, cable, or pipeline area indicated on a U.S. Government chart.

(d) No vessel may moor, anchor, or tie up to any pier, wharf, or other vessel in such a manner as to extend into an adjacent channel or fairway.

(e) Each vessel carrying explosives shall only anchor in an explosives anchorage.

(f) No vessel other than a vessel under Federal supervision may go alongside or moor to any Government-owned vessel, mooring buoy, pontoon boom, including their anchor cables, or any of their appendages. No vessel may obstruct or interfere in any manner with the mooring, unmooring, or servicing of vessels owned by the United States.

(g) Where these regulations require that a vessel notify the Captain of the Port, the operator of the vessel shall call the San Francisco Vessel Traffic Service.

Note: Vessel Traffic Service guards VHF-FM Channel 13 (156.65 MHz) and Channel 16 (156.8 MHz); call sign "SAN FRANCISCO VESSEL TRAFFIC SERVICE".

Dated: February 2, 1988.

Martin H. Daniell,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation.

[FR Doc. 88-5284 Filed 3-10-88; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF EDUCATION

34 CFR Part 696

Special Treatment of Institutions of Higher Education Located in Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands

AGENCY: Department of Education.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On October 23, 1987, the Department of Education published in the Federal Register a notice of proposed rulemaking (NPRM) related to the implementation of waivers and priorities for institutions of higher education located in Guam, American Samoa, the Virgin Islands, the Trust

Territory of the Pacific Islands, and the Northern Mariana Islands (52 FR 39896-39897). The comment period for this proposed rule ended on November 23, 1987.

In response to requests by representatives of institutions most affected by this proposed rule, the Secretary extends the comment period

for all provisions of the NPRM of October 23, 1987.

DATE: The comment period for all provisions of the October 23, 1987, NPRM (52 FR 39896-39897) is extended until April 11, 1988.

FOR FURTHER INFORMATION CONTACT: Leo Paszkiewicz, Office of Postsecondary Education, U.S.

Department of Education (Room 4060, ROB-3) 400 Maryland Avenue SW., Washington DC 20202. Telephone (202) 732-3551.

Dated: March 8, 1988

William J. Bennett,

Secretary of Education.

[FR Doc. 88-5363 Filed 3-10-88; 8:45 am]

BILLING CODE 4000-01-M

Notices

Federal Register

Vol. 53, No. 48

Friday, March 11, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

Flue-Cured Tobacco Advisory Committee; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App. 1) announcement is made of the following committee meeting:

Name: Flue-Cured Tobacco Advisory Committee.

Date: March 29, 1988.

Time: 1 p.m.

Place: Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, Flue-Cured Tobacco Cooperative Stabilization Corporation Building, 1306 Annapolis Drive, Raleigh, North Carolina 27605.

Purpose: To discuss recommendations from the industry for improving the marketing of flue-cured tobacco during the 1988 season.

The meeting is open to the public. Persons, other than members, who wish to address the Committee at the meeting should contact the Director, Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, 300 12th Street SW., P.O. Box 96456, Washington, DC 20090-6456, (202) 447-2567, prior to the meeting. Written statements may be submitted to the Committee prior to or at the meeting.

Dated: March 8, 1988.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 88-5408 Filed 3-10-88; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 374]

Resolution and Order Approving the Application of the City of Mobile, AL, for a Special-Purpose Subzone for ADDSCO Industries, Inc.

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the City of Mobile, Alabama, grantee of Foreign-Trade Zone 82, filed with the Foreign-Trade Zones Board (the Board) on June 20, 1986, requesting special-purpose subzone status for the shipyard of ADDSCO Industries, Inc., within the Mobile Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations should be satisfied, and that the proposal would be in the public interest, if approval is subject to certain conditions, approves the application subject to the following conditions: (1) Any steel plate, angles, shapes, channels, rolled sheet stock, bars, pipes and tubes, classified under Schedule 6, Part 2, Subp. B, TSUS, and not incorporated under merchandise otherwise classified, and which is used in manufacturing shall be subject to Customs duties in accordance with applicable law, if the same item is then being produced by a domestic steel mill; and (2) in addition to the annual report, ADDSCO Industries, Inc., shall advise the Board's Executive Secretary as to significant new contracts, with appropriate information concerning foreign purchases otherwise dutiable, so that the Board may consider whether any foreign dutiable items are being imported for manufacturing in the subzone primarily because of subzone status and whether the Board should consider requiring Customs duties to be paid on such items.

The Secretary of Commerce, as Chairman and Executive Office of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81c) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose

subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the City of Mobile, Alabama, grantee of Foreign-Trade Zone No. 82, has made application (filed June 20, 1986, FTZ Docket 22-86, 51 FR 25075) in due and proper form to the Board for authority to establish a special-purpose subzone at the shipyard of ADDSCO Industries, Inc., in Mobile, Alabama;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and

Whereas, the Board has found that the requirements of the Act and the Board's regulations would be satisfied if approval is subject to the conditions stated in the resolution accompanying this action;

Now, therefore, in accordance with the application filed June 20, 1986, the Board hereby authorizes the establishment of a subzone at the shipyard of ADDSCO Industries, designated on the records of the Board as Foreign-Trade Subzone No. 82A at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the regulations, and those stated in the resolution accompanying this action, including the requirement that foreign basic steel mill products shall be subject to Customs duties prior to admission into the subzone if the same item is then being produced by a domestic mill, and also to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from Federal, State, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and District Army Engineer with the grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, DC, this 4th day of March 1988, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Gilbert B. Kaplan,

Acting Assistant Secretary of Commerce for Import Administration; Chairman, Committee of Alternates.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 88-5414 Filed 3-10-88; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 373]

Resolution and Order Approving the Application of the Greater Gulfport/Biloxi Foreign-Trade Zone, Inc. for a Special-Purpose Subzone for Moss Point Marine, Inc. in Escatawpa, MI

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Greater Gulfport/Biloxi Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 92, filed with the Foreign-Trade Zones Board (the Board) on December 4, 1985, requesting special-purpose subzone status for the shipyard of Moss Point Marine, Inc., within the Pascagoula Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations would be satisfied, and that the proposal would be in the public interest, if approval is subject to certain conditions, approves the application subject to the following conditions: (1) any steel plate, angles, shapes, channels, rolled sheet stock, bars, pipes and tubes, classified under Schedule 6, Part 2, Subp. B, TSUS, and not incorporated under merchandise otherwise classified, and which is used in manufacturing shall be subject to Customs duties in accordance with applicable law, if the same item is then being produced by a domestic steel mill; and (2) in addition to the

annual report, Moss Point Marine, Inc., shall advise the Board's Executive Secretary as to significant new contracts, with appropriate information concerning foreign purchases otherwise dutiable, so that the Board may consider whether any foreign dutiable items are being imported for manufacturing in the subzone primarily because of subzone status and whether the Board should consider requiring Customs duties to be paid on such items.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81c) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Greater Gulfport/Biloxi Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone No. 92, has made application (filed December 4, 1985, FTZ Docket 42-85, 50 FR 51442) in due and proper form to the Board for authority to establish a special-purpose subzone at the shipyard of Moss Point Marine, Inc., in Escatawpa, Mississippi;

Whereas, notice of said application has been given and published, an full opportunity has been afforded all interested parties to be heard; and

Whereas, the Board has found that the requirements of the Act and the Board's regulations would be satisfied if approval is subject to the conditions stated in the resolution accompanying this action;

Now, therefore, in accordance with the application filed December 4, 1985, the Board hereby authorizes the establishment of a subzone at the shipyard of Moss Point Marine, designated on the records of the Board as Foreign-Trade Subzone, No. 92A at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the

Act and the regulations, and those stated in the resolution accompanying this action, including the requirement that foreign basis steel mill products shall be subject to Customs duties prior to admission into the subzone if the same item is then being produced by a domestic mill, and to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, and necessary permits shall be obtained from Federal, State, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and District Army Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In Witness, whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, DC, this 4th day of March 1988, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Gilbert B. Kaplan,

Acting Assistant Secretary of Commerce for Import Administration Chairman, Committee of Alternates.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 88-5415 Filed 3-10-88; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Subcommittee on Export Administration of the President's Export Council; Partially Closed Meeting

A partially closed meeting of the President's Export Council Subcommittee on Export Administration will be held April 6, 1988, 9:00 a.m. to 3:00 p.m., Herbert C. Hoover Building, Room 4830, 14th and Constitution Avenue NW., Washington, DC.

The Subcommittee provides advice on matters pertinent to those portions of the Export Administration Act as amended, that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations, and of controlling trade for national security and foreign policy reasons.

General Session: 9:00-11:45 a.m. Introduction of new members; objectives of Subcommittee; briefing on Export Administration developments; working group status reports.

Executive Session: 1:30-3:00 p.m. Discussion of matters properly classified under Executive Order 12356 pertaining to the control of exports for national security, foreign policy or short supply reasons under the Export Administration Amendments Act of 1979, as amended. A Notice of Determination to close meetings or portions of meetings of the Subcommittee to the public on the basis of 5 U.S.C. 522(c)(1) was approved October 17, 1985 in accordance with the Federal Advisory Committee Act. A copy of the Notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, (202) 377-4217.

For further information, contact Sharon Gongwer, (202) 377-4275.

Date: March 7, 1988.

Vincent F. DeCain,
Deputy Assistant Secretary for Export
Administration.

[FR Doc. 88-5367 Filed 3-10-88; 8:45 am]

BILLING CODE 3510-DT-M

Princeton University, et al.; Consolidated Decision on Applications for Duty-free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket number: 87-211R. Applicant: Princeton University, Princeton, NJ 08544. Instrument: Surface Science Facility and Accessories. Manufacturer: University of Waterloo, Canada. Intended Use: See notice at 52 FR 27039, July 17, 1987. Reasons for this Decision: The foreign apparatus provides a pressure of 10^{-11} torr, a low temperature (30-80K) He source and allows for both cluster and crystal experiments and

detection of power oscillation (under He cooled conditions) of $\approx 10^{-13}$ watt.

Docket Number: 88-038. Applicant: University of California, Lawrence Livermore National Laboratory, Livermore, CA 94550. Instrument: Streak Camera, Model Imacon 500. Manufacturer: Hadland Photonics, United Kingdom. Intended Use: See notice at 52 FR 48557, December 23, 1987. Reasons for this Decision: The foreign article provides a guaranteed temporal resolution of < 10 picosecond. Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The capability of each of the foreign instruments described above is pertinent to each applicant's intended purposes. We know of no instrument or apparatus being manufactured in the United States which is of equivalent scientific value to either of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88-5416 Filed 3-10-88; 8:45 am]

BILLING CODE 3510-DS-M

University of Wisconsin; Decision on Application for Duty-free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 88-028. Applicant: University of Wisconsin, Madison, WI 53706. Instrument: Mass Spectrometer, Model VG 354/S. Manufacturer: VG Instruments, United Kingdom. Intended Use: See notice at 52 FR 46813, December 10, 1987.

Comments: None received.

Decision: Approved. No domestic manufacturer was both "able and willing" to manufacture an instrument or apparatus of equivalent scientific value to the foreign instrument for such purposes as the instrument was intended to be used, and have it available to the applicant without unreasonable delay in accordance with § 301.5(d)(2) of the regulations, at the time the foreign instrument was ordered, June 30, 1987.

Reasons: The foreign instrument provides precise automated variable multicollector thermal ionization of

isotopic ratios on small samples (10^{-9} to 10^{-6} grams). The capabilities of the foreign instrument described above are pertinent to the applicant's intended purposes. We know of no domestic manufacturer both able and willing to provide an instrument with the required features at the time the foreign instrument was ordered.

As to the domestic availability of instruments, § 301.5(d)(2) of the regulations provides that, in determining whether a U.S. manufacturer is able and willing to produce an instrument, and have it available without unreasonable delay, "the normal commercial practices applicable to the production and delivery of instruments of the same general category shall be taken into account, as well as other factors which in the Director's judgment are reasonable to take into account under the circumstances of a particular case." This subsection also provides that, if "a domestic manufacturer was formally requested to bid an instrument, without reference to cost limitations and within a leadtime considered reasonable for the category of instrument involved, and the domestic manufacturer failed formally to respond to the request, for the purposes of this section the domestic manufacturer would not be considered willing to have supplied the instrument."

The regulations require that domestic manufacturers be both "able and willing" to produce an instrument for the purpose of comparison with the foreign instrument. Where an applicant, as in this case, received no bid response to a formal request for quotation sent to the only known domestic manufacturer, it is apparent that the domestic manufacturer was either not able or not willing to produce an instrument of equivalent scientific value to the foreign instrument for such purposes as the foreign instrument was intended to be used at the time it was ordered.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88-5417 Filed 3-10-88; 8:45 am]

BILLING CODE 3510-DS-M

National Bureau of Standards

[Docket No. 80109-8009]

Federal Information Processing Standard (FIPS) for Programmer's Hierarchical Interactive Graphics System (PHIGS)

AGENCY: National Bureau of Standards, Commerce.

ACTION: Notice of proposed Federal Information Processing Standard (FIPS).

SUMMARY: A Federal Information Processing Standard (FIPS) adopting the Programmer's Hierarchical Interactive Graphics System (PHIGS) is proposed for Federal agency use. This proposed FIPS adopts the forthcoming American National Standard X3.144-198X. This standard specifies the control and data interchange between an application program and its graphic support system. This standard will improve the portability of graphics application programs among different manufacturers' computer systems.

Prior to submission of this proposed standard to the Secretary of Commerce for review and approval as a FIPS, it is essential to assure that consideration is given to the needs and views of manufacturers, the public, and State and local governments. The purpose of this notice is to solicit such views.

This proposed FIPS contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) a specifications section, ANIS X3.144-198X, which deals with the technical requirements of the standard. Only the announcement section of the standard is provided in this notice. Interested parties may obtain a copy of the technical specifications from the Global Engineering Documents, 1990 M Street NW., Suite 400, Washington, DC 20036, (800) 854-7179.

DATE: Comments on this proposed FIPS must be received on or before June 9, 1988.

ADDRESS: Written comments concerning the adoption of PHIGS as a FIPS should be sent to: Director, Institute for Computer Sciences and Technology, ATTN: Proposed FIPS for PHIGS, Technology Building, Room B-154, National Bureau of Standards, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Benigni, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, MD 20899, telephone (301) 975-3266.

Ernest Ambler,
Director.

Date: March 7, 1988.

Federal Information Processing Standards Publication (date)_____

Announcing the Standard for Programmer's Hierarchical Interactive Graphics System (PHIGS)

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Bureau of Standards pursuant to Section 111(f)(2) of the Federal Property and Administrative Services Act of 1949, as amended, Pub. L. 89-306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315, dated May 11, 1973), and Part 6 of Title 15 Code of Federal Regulations (CFR).

1. Name of Standard

Programmer's Hierarchical Interactive Graphics System (PHIGS) (FIPS PUB _____).

2. Category of Standard

Software Standard, Graphics.

3. Explanation

This publication announces the adoption of the American National Standard Programmer's Hierarchical Interactive Graphics System, ANSI X3.144-198X, as a Federal Information Processing Standard (FIPS). This standard specifies the control and data interchange between an application program and its graphic support system. It provides a set of functions and programming language bindings (or toolbox package) for the definition, display and modification of two-dimensional (2D) or three-dimensional (3D) graphical data. In addition, this standard supports highly interactive processing and geometric articulation, multi-level or hierarchical graphics data, and rapid modification of both the graphics data and the relationships between the graphical data. The purpose of the standard is to promote portability of graphics application programs between different installations. The standard is for use by implementors as the reference authority in developing graphics software systems; and by other computer professionals who need to know the precise syntactic and semantic rules of the standard.

4. Approving Authority

Secretary of Commerce.

5. Maintenance Agency

Department of Commerce, National Bureau of Standards (Institute of Computer Sciences and Technology).

6. Cross Index

American National Standard (ANSI, X3.144-198X) Programmer's Hierarchical Interactive Graphics System (PHIGS).

7. Related Documents

- a. Federal Information Processing Standards Publication (FIPS PUB) 120, Graphical Kernel System (GKS).
- b. Federal Information Processing Standards Publication (FIPS PUB) 128, Computer Graphics Metafile (CGM).
- c. Federal Information Resources Management Regulation 201-8.1, Federal ADP and Telecommunications Standards.
- d. American National Standard Graphical Kernel System, GKS, ANSI/ASC X3.124-1985.
- e. American National Computer Graphics Metafile, CGM, ANSI/ASC X3.122-1986.
- f. ISO 646-1983, Information Processing—7-Bit Coded Character Set for Information Interchange.
- g. ISO 2022-1982, Information Processing—ISO 7-Bit and 8-Bit Coded Character Sets—Code Extension Techniques.
- h. ISO 2382/13, Data Processing—Vocabulary—Part 13: Computer Graphics.
- i. ISO 6093, Information Processing—Representation of numeric values in character strings for information interchange (in course of preparation).
- j. ISO 7942-1985, Information Processing Systems—Computer Graphics—Functional Specification of the Graphical Kernel System (GKS).
- k. ISO 8632-1986, Information Processing Systems—Computer Graphics Metafile for the Storage and Transfer of Picture Description Information (Part 1: Functional Specifications; Part 2: Character Encoding; Part 3: Binary Encoding; Part 4: Clear Text Encoding).
1. ISO 8805, Information Processing—Computer Graphics—Graphical Kernel System (GKS) 3D Extensions Functional Description (in course of preparation).

8. Objectives

The primary objectives of this standard are:

- to allow very highly interactive graphics application programs using 2D or 3D hierarchically structured graphics data to be easily transported between installations. This will reduce costs associated with the transfer of programs among different computers and graphics devices, including replacement devices.
- to aid the understanding and use of dynamic hierarchical graphics methods by application programmers.
- to aid manufacturers of graphics equipment by serving as a guideline for identifying useful combinations of graphics capabilities in a device.

- to encourage more effective utilization and management of graphics application programmers by ensuring that skills acquired on one job are transportable to other jobs, thereby reducing the cost of graphics programmer retraining.
- to aid graphics application programmers in understanding and using graphics methods by specifying well-defined functions and names. This will avoid the confusion of incompatibility common with operating systems and programming languages.

9. Applicability

a. This standard is intended for use in computer graphics applications that are either developed or acquired for government use. It is specifically designed to meet the performance requirements of such demanding applications as Computer Aided Design/Computer Aided Engineering/Computer Aided Manufacturing, command and control, molecular modelling, simulation and process control. It emphasizes the support of applications needing a highly dynamic, highly interactive operator interface and expecting rapid screen update of complex images to be performed by the display system.

b. The use of this standard is strongly recommended when one or more of the following situations exist:

- The graphics application is very highly interactive, or contains hierarchically structured graphics data, or requires rapid modification of 2D or 3D graphics data and the relationships among the data.
- It is anticipated that the life of the graphics program will be longer than the life of the presently utilized graphics equipment.
- The graphics application or program is under constant review for updating of the specifications, and changes may result frequently.
- The graphics application is being designed and programmed centrally for a decentralized system that employs computers of different makes and models and different graphics devices.
- The graphics program will or might be run on equipment other than that for which the program is initially written.
- The graphics program is to be understood and maintained by programmers other than the original ones.
- The graphics program is or is likely to be used by organizations outside the Federal government (i.e., State and local governments, and others).

c. Nonstandard features of implementations of PHIGS should be

used only when the needed operation or function cannot reasonably be implemented with the standard features alone. Although nonstandard features can be very useful, it should be recognized that the use of these or any other nonstandard elements may make the interchange of graphics programs and future conversion more difficult and costly.

10. Specifications

American National Standard Programmer's Hierarchical Interactive Graphics System, ANSI X3.144-198X, defines the scope of the specifications, the syntax and semantics of the PHIGS elements and requirements for conforming implementations. All of these specifications apply to Federal Government implementations of this standard.

ANSI X3.144-198X defines a language independent nucleus of a graphics system for integration into a programming language. Thus, it is embedded in a language layer obeying the particular conventions of the language. This means that the standard is separated into two parts. Part 1 represents the functional aspects of PHIGS. Part 2 contains bindings of PHIGS functions to actual programming languages. These bindings are developed in cooperation with the voluntary industry standards committees of the various languages. A binding of the PHIGS functionality to the Programming Language FORTRAN (ANSI X3.9-1978), known as FORTRAN '77, appears in the first version of this standard. Subsequent language bindings for C, Ada, PASCAL, etc., will be added periodically as they become available.

As these bindings are approved by ANSI, each language binding will become part of this standard.

11. Implementation

The implementation of this standard involves two areas of consideration: acquisition of implementations and interpretations of this standard.

11.1 Acquisition of Implementations

This standard becomes effective six months after the date of publication of final document in the **Federal Register**. Implementations which meet the requirements of the applicability section and acquired after this date should comply with this standard. Conformance to this standard should be considered whether toolbox packages are developed internally, acquired as part of an ADP system procurement, used under an ADP leasing arrangement, or specified for use in contracts for programming services.

A transition period provides time for industry to produce toolbox packages conforming to the standard. The transition period begins on the effective date and continues for twelve (12) months thereafter. The provisions of this publication apply to orders placed after the date of this publication; however, a toolbox package not conforming to this standard may be acquired for interim use during the transition period.

11.2 Interpretation of this FIPS

Resolution of questions regarding this standard will be provided by NBS. Questions concerning the content and specifications should be addressed to: Director, Institute for Computer Sciences and Technology, ATTN: PHIGS Interpretation, National Bureau of Standards, Gaithersburg, MD 20899.

12. Waivers

Under certain exceptional circumstances the head of the agency is authorized to waive the application of the provisions of this FIPS PUB. Exceptional circumstances which would warrant a waiver are:

a. Significant, continuing cost or efficiency disadvantages will be encountered by the use of this standard and,

b. The interchange of information between the system for which the waiver is sought and other systems is not anticipated.

Agency heads may act only upon written waiver requests containing the information detailed above. Agency heads may approve requests for waivers only by a written decision which explains the basis upon which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to the Director, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, MD 20899.

When the determination on a waiver request applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the Commerce Business Daily as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver request, any supporting documents, the document approving the waiver request and any supporting and accompanying document(s), with such deletions as the agency is authorized and decides to make under 5 U.S.C. 552(b), shall be part

of the procurement documentation and retained by the agency.

[FR Doc. 88-5418 Filed 3-10-88; 8:45 am]

BILLING CODE 3510-CN-M

National Oceanic and Atmospheric Administration

Marine Mammals; Human/Dolphin Swim Programs; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: Notice is hereby given that the National Marine Fisheries Service (NMFS) is reviewing its authorization of human/dolphin swim programs issued pursuant to the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407). NMFS is convening two (2) meetings to ensure that all interested parties have an opportunity to comment on the issuance of authorizations for the conduct of human/dolphin swim programs. Those persons wishing to comment on the swim programs will be required to sign in at the meeting location and will be allowed ten (10) minutes to address the issue. If more than ten (10) minutes is needed, prior notification to NMFS is required.

DATES: The meetings will be held on April 1, 1988, in Washington, DC, 9:00 a.m.-noon; and April 5, 1988, in Islamorada, Florida, 7:00 p.m.-10:00 p.m.

ADDRESSES: Universal Building South, Room 928, 1825 Connecticut Avenue NW., Washington, DC; and Islamorada Fire House, US 1 at Mile Marker 80, Islamorada, Florida.

FOR FURTHER INFORMATION CONTACT: Wanda L. Cain, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, Washington, DC 20235 (202/673-5348).

SUPPLEMENTARY INFORMATION: NMFS began issuing authorization to conduct human/dolphin swim programs in 1985 under public display permits issued pursuant to the Marine Mammal Protection Act of 1972. Three (3) authorizations have been issued and three (3) additional requests for authorizations have been submitted to NMFS. NMFS has considered the programs experimental in nature until sufficient information could be obtained to assess the effects of the programs on the health and well-being of the animals involved. In the interim questions have also arisen focused on whether or not such programs constitute public display as envisioned by the Act. Concern for human safety and liability are also matters for discussion. These meetings are being held to ensure full opportunity

for interested members of the public and government agencies to provide NMFS with comments on the continued issuance of authorizations to conduct human/dolphin swim programs.

Dated: March 9, 1988.

Dr. Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 88-5424 Filed 3-10-88; 8:45 am]

BILLING CODE 3510-22-M

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council has scheduled a working meeting of its Bering Sea/Aleutian Islands Groundfish Plan Team, March 28, 1988, at 9 a.m., at the National Marine Fisheries Service, Northwest and Alaska Fisheries Center, 7600 Sand Point Way, N.E., Room 2079, Building 4, Seattle, WA, to review a working draft of the Amendment 12 package which includes a proposal to change the upper limit of the optimum yield range, and five other amendment topics. On March 29 the public meeting will convene in Room 2143, Building 4 of the Center, and will adjourn the same day.

For more information contact the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271-2809.

Dated: March 8, 1988.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-5425 Filed 3-10-88; 8:45 am]

BILLING CODE 3510-22-M

South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council will convene separate public meetings of its Summer Flounder Advisory Panel, and its Summer Flounder Committee, at the Ramada Inn, Essington, PA. On March 14, 1988, from 2 p.m. to 4 p.m., the Summer Flounder Advisory Panel will review public hearing comments regarding the Mid-Atlantic Fishery Management Council's proposed summer flounder fishery management plan. Also on March 14 from 4 p.m. to 6 p.m., the Summer Flounder Committee will conduct the same review as stated for the Summer Flounder Advisory

Panel, as well as reassess its position regarding the summer flounder plan. A detailed agenda will be available to the public on or about March 4, 1988.

For further information contact Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407; telephone: (803) 571-4366.

Date: March 8, 1988.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-5426 Filed 3-10-88; 8:45 am]

BILLING CODE 3510-22-M

COUNCIL ON ENVIRONMENTAL QUALITY

Availability of Annual Report on Endangered Species Act Exemption

March 3, 1988.

AGENCY: Council on Environmental Quality, Executive Office of the President.

ACTION: Information only: Notice of Availability of Annual Report on Endangered Species Act Exemption.

SUMMARY: This notice announces the availability of the Annual Report submitted by Basin Electric Power Cooperative, as Project Manager for the Missouri Basin Power Project in the matter of an exemption granted from the requirements of the Endangered Species Act to Grayrocks Dam. The lead Federal agency in the project is the Rural Electrification Administration.

DATES: The Report was submitted to the Council on January 19, 1988.

SUPPLEMENTARY INFORMATION:

Subsection (L)(2) of the Endangered Species Act Amendments of 1978 (16 U.S.C. 1536) requires that any agency granted an exemption under subsection (h) of the Endangered Species Act must submit to the Council on Environmental Quality an annual report describing its compliance methods with the mitigation and enhancement measures prescribed by the law. Subsection (L)(2) further requires that the Council publish availability of the report in the Federal Register.

On February 7, 1979 the Endangered Species Committee granted an exemption from the requirements of the Endangered Species Act to Grayrocks Dam. In granting the Exemption Order, the Committee, as required by the Act, established requirements for reasonable mitigation and enhancement measures. These requirements are set out in an

"Agreement of Settlement and Compromise" and is part of the Annual Report announced herein.

ADDRESS: The Annual Report is available from Basin Electric Power Cooperative, 1717 East Interstate Avenue, Bismarck, ND 58501-0564; Telephone: (701) 223-0441.

FOR FURTHER INFORMATION CONTACT: Ms. Lisa S. Defensor, Staff Attorney, Council on Environmental Quality, 722 Jackson Place NW., Washington, DC 20503. (202) 395-5754.

A. Alan Hill,

Chairman.

[FR Doc. 88-5357 Filed 3-10-88; 8:45 am]

BILLING CODE 3125-01-M

COMMISSION ON MERCHANT MARINE AND DEFENSE

Closed Meeting

SUMMARY: The Commission on Merchant Marine and Defense was established by Pub. L. 98-525 (as amended), and the Commission was constituted in December 1986. The Commission's mandate is to study and report on problems relating to transportation of cargo and personnel for national defense purposes in time of war or national emergency, the capability of the Merchant Marine to meet the need for such transportation, and the adequacy of the shipbuilding mobilization base to support naval and merchant ship construction. In accordance with the Federal Advisory Committee Act, P.L. 92-463, as amended, the Commission announces the following meeting:

DATES AND TIMES: Monday, March 21, 1988, beginning 9:00 a.m.; Tuesday, March 22, 1988, Beginning 9:00 a.m.

Place: Suite 520, 4401 Ford Avenue, Alexandria, Virginia, 22302-0268.

Type of Meeting: Closed.

CONTACT PERSON: Allan W. Cameron, Executive Director, Commission on Merchant Marine and Defense, Suite 520, 4401 Ford Avenue, Alexandria, Virginia 22302-0268, Telephone (202) 756-0411.

Purpose of Meeting: To receive additional information pertaining to the needs of the national defense for the Merchant Marine and the shipbuilding industry, and to discuss and to deliberate facts and opinions obtained from briefings and public hearings.

SUPPLEMENTARY INFORMATION: The executive meetings of the Commission will be closed to the public pursuant to 5 U.S.C. 552b(c)(1) and 552b(c)(4) in the interests of national security and to

protect proprietary information provided to the Commission in confidence.

Allan W. Cameron,

Executive Director, Commission on Merchant Marine and Defense.

[FR Doc. 88-5331 Filed 3-10-88; 8:45 am]

BILLING CODE 3820-01-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Mexico

March 7, 1988.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11851 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 16, 1988. For further information contact Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 535-9481. For information on embargoes and quota re-openings, please call (202) 377-3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry of certain cotton, wool and man-made fiber textiles and textile products, produced or manufactured in Mexico and exported during 1988, in excess of the designated levels.

Background

During negotiations held December 14-31, 1987 between the Governments of the United States and the United Mexican States, agreement was reached to establish a new bilateral agreement concerning cotton, wool and man-made fiber textiles and textile products, produced or manufactured in Mexico and exported during the period which began on January 1, 1988 and extends through December 31, 1991.

The agreement establishes, among other things, a specific limit for cotton and man-made fiber broadwoven fabric in Categories 218-220, 225-227, 313-326, 611-617 and 625-629, as a group, and sublimits within the group for Categories 218, 219, 313, 314, 315, 317, 326 and 611; Categories 201pt./669pt. (cotton and

man-made fiber cordage), 300/301/607pt. (with a sublimit for cotton carded yarn in Category 300), 334, 336/636, 341/641 (with a sublimit for cotton and man-made non-knit blouses made with two or more colors in the warp and/or the filling), 435, 604-A (staple synthetic yarn), 604-O/607-O, 635 and 669-P (man-made fiber bags); designated consultation levels for cotton, wool and man-made fiber textile products in Categories 222, 223, 229, 337/637, 359-O, 363, 369-D (cotton dishtowels); 369-O (excluding cotton webs, wadding and batting), 410, 433, 443, 447, 621, 632, 659-H (man-made fiber headwear), 659-O, 669-O and 670, and minimum consultation levels for cotton, wool and man-made fiber products in Categories 345, 350, 442, 459, 646 and 650, produced or manufactured in Mexico and exported during the twelve-month period which began on January 1, 1988 and extends through December 31, 1988.

The agreement establishes a special regime for certain categories of apparel products made of American formed and cut fabric parts. Listed below are the designated percentages of the specific limit for these categories which are not subject to the special regime:

Category	Percentage
335.....	25
338/339/638/639.....	50
340/640.....	25
342/642.....	20
347/348.....	13.5
349/649.....	20
351/651.....	15
352/652.....	45
359-C (coveralls & overalls).....	10
369-B (bags).....	15
369-U (shoe uppers).....	15
633.....	10
634.....	15
647/648.....	10
659-C (coveralls & overalls).....	10
659-S (swimwear).....	10
666.....	50

Information on procedures required to participate in the Special Regime will be published in a separate directive.

Charges will be made to the limits established for the foregoing categories as data become available.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see Federal Register notice dated December 11, 1987 (52 FR 47745)).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral

agreement, but are designed to assist only in the implementation of certain of its provisions.

Donald R. Foote,

Acting Chairman, Committee for the Implementation of Textile Agreements.

March 7, 1988.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Commissioner of Customs,

Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 13, 1988 between the Governments of the United States and the United Mexican States; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on March 16, 1988, entry into the United States for consumption, and withdrawal from warehouse for consumption, of cotton, wool and man-made fiber textiles and textile products in the following categories, produced or manufactured in Mexico and exported during the twelve-month period beginning on January 1, 1988 and extending through December 31, 1988, in excess of the following restraint limits:

Category	12 mo. limit ¹
345.....	19,022 dozen.
347/348.....	2,150,000 dozen.
349/649.....	2,500,000 dozen.
350.....	13,725 dozen.
351/651.....	290,000 dozen.
352/652.....	2,500,000 dozen.
359-C ²	1,600,000 pounds.
359-O ³	300,000 pounds.
363.....	5,500,000 numbers.
369-B ⁴	2,500,000 pounds.
369-D ⁵	400,000 pounds.
369-U ⁶	3,350,000 pounds.
369-O ¹⁰	400,000 pounds.
410.....	475,000 square yards.
433.....	11,000 dozen.
435.....	10,000 dozen.
442.....	5,556 dozen.
443.....	84,000 numbers.
447.....	12,000 dozen.
459.....	50,000 pounds.
604-A ¹¹	1,300,000 pounds.
604-O/607-O ¹²	4,000,000 pounds.
621.....	200,000 pounds.
632.....	750,000 dozen pairs.
633.....	85,000 dozen.
634.....	65,000 dozen.
635.....	115,000 dozen.
646.....	19,022 dozen.
647/648.....	1,600,000 dozen.
650.....	13,725 dozen.
659-C ¹³	1,700,000 pounds.
659-H ¹⁴	350,000 pounds.
659-S ¹⁵	500,000 pounds.
659-O ¹⁶	1,500,000 pounds.
666.....	7,200,000 pounds.
669-P ¹⁷	1,300,000 pounds.
669-O ¹⁸	650,000 pounds.
670.....	10,000,000 pounds.

¹ The limits have not been adjusted to account for any imports exported after December 31, 1987.

² In Category 201pt., only TSUSA numbers 315.0500, 315.1000, 315.1500, 316.5500 and 316.5800; in Category 669pt., TSUSA numbers 348.0065, 348.0075, 348.0565 and 348.0575.

³ Categories 300/301, and in 607pt. only TSUSA number 310.6034.

⁴ In Categories 341-Y/641-Y, only TSUSA number 384.4608, 384.4610, 384.4612, 384.0505, 384.0511, 384.0512, 384.2302, 384.2304, 384.2307, 384.8110, 384.8120 and 384.4768.

⁵ In Category 359-C, only TSUSA numbers 381.0822, 381.6510, 384.0928 and 384.5222.

⁶ In Category 359-O, all TSUSA numbers except 381.0822, 381.6510, 384.0928 and 384.5222.

⁷ In Category 369-B, only TSUSA numbers 706.3210, 706.3280, 706.3640, 706.3650, 706.4106 and 706.4111.

⁸ In Category 369-D, only TSUSA numbers 365.6615, 366.1720, 366.1740, 366.2020, 366.2040, 366.2420, 366.2440 and 366.2860.

⁹ In Category 369-U, only TSUSA numbers 386.0410 and 386.5210.

¹⁰ In Category 369-O, all TSUSA numbers except 365.6615, 366.1720, 366.1740, 366.2020, 366.2040, 366.2420, 366.2440, 366.2860 in Category 369-D; 386.0410, 386.5210 in Category 369-U; 706.3210, 706.3280, 706.3640, 706.3650, 706.4106 and 706.4111 in Category 369-B; and 355.0200 (cotton webs and wadding).

¹¹ In Category 604-A, only TSUSA numbers 310.5049 and 310.6045.

¹² In Category 604-O/607-O, all TSUSA numbers except 310.5049 and 310.6045 in Category 604-O and all TSUSA numbers except 310.6034 in Category 607-O.

¹³ In Category 659-C, only TSUSA numbers 381.3325, 381.9805, 384.2205, 384.2530, 384.8606, 384.8607 and 384.9310.

¹⁴ In Category 659-H, only TSUSA numbers 703.0510, 703.0520, 703.0530, 703.0540, 703.0550, 703.0560, 703.1000, 703.1610, 703.1620, 703.1630, 703.1640 and 703.1650.

¹⁵ In Category 659-S, only TSUSA numbers 381.2340, 381.3170, 381.9100, 381.9570, 384.1700, 384.2339, 384.8300, 384.8400 and 384.9353.

¹⁶ In Category 659-O, all TSUSA numbers except 381.3325, 381.9805, 384.2205, 384.2530, 384.8606, 384.8607, 384.9310 in Category 659-C; 703.0510,

703.0520, 703.0530, 703.0540, 703.0550, 703.0560, 703.1000, 703.1610, 703.1620, 703.1630, 703.1640 and 703.1650 in Category 659-H; and 381.2340, 381.3170, 381.9100, 381.9570, 384.1700, 384.2339, 384.8300, 384.8400 and 384.9353 in Category 659-S.

¹⁷ In Category 669-P, only TSUSA numbers 385.5300.

¹⁸ In Category 669-O, all TSUSA numbers except 348.0065, 348.0075, 348.0565, 348.0575 in Category 669pt.; and 385.5300 in Category 669-P.

To the extent that trade which now falls in the foregoing categories is within a category limit for the period January 1, 1987 through December 31, 1987, such trade, to the extent of any unfilled balances, shall be charged against the levels of restraint established for such goods during the period. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Donald R. Foote,

Acting Chairman, Committee for the Implementation of Textile Agreement.

[FR Doc. 88-5366 Filed 3-10-88; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1988; Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to Procurement List.

SUMMARY: This action adds to Procurement List 1988 a commodity to be produced by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: April 11, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On July 24, 1987 the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (52 FR 27842) of proposed addition to Procurement List 1988, December 10, 1987 (52 FR 46926).

Category	12 mo. limit ¹
218-220, 225-227, 313-326, 611-617 and 625-629, as a group.	44,000,000 square yards equivalent.
Sublevels within the group	
218.....	1,000,000 square yards.
219.....	11,000,000 square yards.
313.....	22,000,000 square yards.
314.....	11,000,000 square yards.
315.....	11,000,000 square yards.
317.....	11,000,000 square yards.
326.....	1,000,000 square yards.
611.....	2,000,000 square yards.
Individual limits not in the group	
201pt./669pt. ²	2,500,00 pounds.
222.....	900,000 pounds.
223.....	1,400,000 pounds.
229.....	2,200,000 pounds.
300/301/607pt. ³	13,500,000 pounds of which not more than 7,500,000 pounds shall be in Category 300.
334.....	70,000 dozen.
335.....	120,000 dozen.
336/636.....	180,000 dozen.
337/637.....	80,000 dozen.
338/339/638/639.....	1,100,000 dozen.
340/640.....	360,000 dozen.
341/641.....	775,000 dozen of which not more than 280,000 dozen shall be in blouses with two or more colors in the warp and/or filling in Categories 341-Y/641-Y. ⁴
342/642.....	290,000 dozen.

Two letters were received from the current contractor for this belt commenting on the proposed addition. That firm indicated that the belt is a DOD industrial preparedness program item, a safety critical life support item, and must be manufactured under stringent specification requirements. The commentator indicated further that his firm has been a consistent supplier to the Government for the item and its addition to the Procurement List would have a serious negative economic impact on his firm and that the Department of Navy had indicated that there had not been a facility survey of the workshop to determine its capability to produce the belt.

The workshop proposing to produce this belt was inspected by the procuring activity and was determined to be capable of producing the belt in compliance with Government's requirements. In addition, the workshop has produced a similar belt satisfactorily for the Government. The fact that the belt is a DOD industrial preparedness program item does not preclude its being added to the Procurement List. There are a number of items on the Procurement List for which the producing workshops have been identified as DOD industrial preparedness producers.

The value of the contract of the current contractor for this belt represents approximately 3.4 percent of the firm's total sales. This is not considered to be severe impact.

This belt meets the definition of suitability contained in 41 CFR 51-2.6.

After consideration of the relevant matter presented, the Committee has determined that the commodity listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77 and 41 CFR 51-2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered were:

- The action will not result in any additional reporting, recordkeeping or other compliance requirements.
- The action will not have a serious economic impact on any contractors for the commodity listed.
- The action will result in authorizing small entities to produce the commodity procured by the Government.

Accordingly, the following commodity is hereby added to Procurement List 1988:

Commodity

Belt, Aircraft Safety; 1680-00-407-5335.

C.W. Fletcher,
Executive Director.

[FR Doc. 88-5373 Filed 3-10-88; 8:45 am]
BILLING CODE 6820-33-M

Procurement List 1988; Proposed Additions and Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions and Deletions to Procurement List.

SUMMARY: The Committee has received proposals to add to and delete from Procurement List 1988 military resale commodities to be produced by and services to be provided by workshops for the blind or other severely handicapped.

DATE: Comments Must be Received on or Before April 11, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1775 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the military resales commodities and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following military resale commodities and services to Procurement List 1988, December 10, 1987 (52 FR 46926):

Military Resale Item Nos. and Names

- | | |
|---------|-------------------------------|
| No. 620 | Vest, Safety, Joggers, Small |
| No. 621 | Vest, Safety, Joggers, Medium |
| No. 622 | Vest, Safety, Joggers, Large |
| No. 820 | Opener, Can & Bottle |
| No. 824 | Slicer, Cheese |
| No. 826 | Peeler, Vegetable |
| No. 828 | Cutter, Pizza |
| No. 832 | Spatula, Plate & Bowl |
| No. 850 | Bib, Baby, Cotton |
| No. 860 | Hooks, Laundry, Plastic |
| No. 862 | Brush, Lint, Plastic |

Services

Cleaning of Magnetic Tapes,
Robins Air Force Base, Georgia

Janitorial Service, Fort Gillem, Georgia

Litter Pick-Up, Tinker Air Force Base,
Oklahoma

Preservation and Packaging, New
Cumberland Army Depot,
Pennsylvania

Repair of Strap, Air Cargo (1670-00-725-1437), Robins Air Force Base, Georgia

Deletions

It is proposed to delete the following military resale commodities, commodity, and service from Procurement List 1988, December 10, 1987 (52 FR 46926):

Military Resale Item Nos. and Name

No. 940 Towel, Heritage design
No. 942 Dish Cloth, Heritage design
Refill, List Finder, Automatic, 7510-00-285-2800

Administrative Services, Environmental
Protection Agency, at the following
locations:

Beltsville Research Laboratory,
Beltsville, Maryland
6100 Executive Boulevard, Rockville,
Maryland
9100 Brookville Road, Silver Spring,
Maryland

C. W. Fletcher,

Executive Director.

[FR Doc. 88-5374 Filed 3-10-88; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Intent To Prepare Environmental Impact Statement; Malmstrom AFB, MT

The United States Air Force, Department of Defense, will prepare an Environmental Impact Statement (EIS) for use in decision making regarding the proposed basing of a second KC-135R squadron at Malmstrom AFB, Montana.

The aircraft would begin arriving during the fourth quarter of Fiscal Year 1991. The 13 additional aircraft would result in an increase of about 250 personnel. The aircraft would fly about 900 missions per year.

The proposed KC-135R basing action will be incorporated in the EIS for the Peacekeeper Rail Garrison System, previously announced. The US Air Force is planning to conduct a public scoping meeting to determine the nature, extent, and scope of the environmental issues and concerns to be addressed in the EIS. The KC-135R proposal will be included in the scoping meeting for the

Peacekeeper Rail Garrison System to be held on 23 March 1988 at 7:00 p.m. in the Great Falls High School, Great Falls, Montana.

For further information concerning the proposed basing of a second KC-135R squadron at Malmstrom AFB, MT, contact Mr. William Taylor, HQ SAC/DEVE, Offutt AFB, NE 68113-5001.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88-5345 Filed 3-10-88; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF ENERGY

Advisory Committee on Nuclear Facility Safety; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Advisory Committee on Nuclear Facility Safety.

Date and Time: Tuesday, March 29, 1988, 9:00 a.m. to 6:00 p.m.
Wednesday, March 30, 1988, 9:00 a.m. to 1:00 p.m.

Place: U.S. Department of Energy, Forrestal Building, Room 8E-089, 1000 Independence Avenue SW., Washington, DC 20585.

Contact: Wallace R. Kornack Executive Director, ACNFS, S-3, 1000 Independence Avenue SW., Washington, DC 20585, Telephone: 202/586-1770.

Purpose of the Committee: The Committee was established to provide the Secretary of Energy with advice and recommendations concerning the safety of the Department's production and utilization facilities, as defined in section 11 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2014).

Tentative Agenda: March 29, 1988—Technical Session

- Presentation of DOE's Safety Philosophy, Approach and Program
- Noon to 1:00 p.m.—Lunch
- National Academy of Sciences (NAS) Presentation of NAS/NAE Report on Production Reactors
- Status of NAS/NAE Study on other Class A Reactors
- DOE Response to NAS/NAE Report
- New Production Reactor: Status Report
- Public Comment
- March 30, 1988—Planning Session
- Committee Administrative Matters
- Committee Discussion of Scope and Priorities
- Discussion of Possible Subcommittees
- Agenda for Next Meeting

Public Comment

Public Participation. The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Wallace Kornack at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room IE-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington DC, on March 7, 1988.

Howard H. Raiken,

Advisory Committee Management Officer.

[FR Doc. 88-5395 Filed 3-10-88; 8:45 am]

BILLING CODE 6450-01-M

Uranium Mill Tailings; Naturita, CO

AGENCY: Department of Energy.

ACTION: Program Information Notice: Advance notice of decision on proposed inclusion of a private property near Naturita, Colorado as a vicinity property for remedial action under section 101 of Pub. L. 95-604, the "Uranium Mill Tailings Radiation Control Act of 1978", enacted on November 8, 1978.

SUMMARY: The "Uranium Mill Tailings Radiation Control Act of 1978" authorized the Department of Energy (DOE) to conduct in cooperation with interested states, Indian Tribes, and persons who own or control certain inactive mill tailings sites, a program of assessment and remedial action to stabilize and control the tailings in a safe and environmentally sound manner and to minimize or eliminate radiation health hazards at these sites and at nearby vicinity properties.

The DOE has been requested by the Hecla Mining Company to include its "Durita" property as a vicinity property for the purposes of remedial action under the Act.

This advance notice is to alert interested parties that DOE will be soliciting the views of interested parties on its proposed decision regarding the inclusion of the "Durita" property. In a

subsequent notice, which we expect to issue within 30 days, DOE will provide more details on the request and seek comments on its decision.

FOR FURTHER INFORMATION CONTACT: Mr. W. John Arthur III, Acting Project Manager, Uranium Mill Tailings Project Office, U.S. Department of Energy, 5301 Central Avenue NE., Suite 1720, Albuquerque, New Mexico, 87108, telephone: (505) 844-3941, or Mr. James A. Turi, Director, Division of Uranium Mill Tailings Projects, Office of Nuclear Energy, U.S. Department of Energy, Mail Stop NE-22, Washington, DC 20545, telephone: (301) 353-2585.

Issued in Washington, DC, March 3, 1988.

John E. Baublitz,

Acting Director, Office of Remedial Action and Waste Technology, Office of Nuclear Energy.

[FR Doc. 88-5391 Filed 3-10-88; 8:45 am]

BILLING CODE 6450-01-M

Atomic Energy Agreements; Proposed Subsequent Arrangement; EURATOM and Switzerland

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Switzerland concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer:

RTD/SD(EU)-50, for the retransfer of 8 irradiated fuel rods containing 3,420 grams of uranium enriched to 1.46 percent in the isotope uranium-235 and 30 grams of plutonium from Belgium to Switzerland for post-irradiation examination.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy,

Dated: March 8, 1988.

George J. Bradley, Jr.,
Principal Deputy Assistant Secretary for
International Affairs and Energy
Emergencies.

[FR Doc. 88-5387 Filed 3-10-88; 8:45 am]

BILLING CODE 6450-01-M

Assistant Secretary for International Affairs and Energy Emergencies

Atomic Energy Agreements; Proposed Subsequent Arrangement; Norway and Sweden

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Sweden concerning Peaceful Uses of Nuclear Energy, and the Agreement for Cooperation between the Government of the United States of America and the Government of Norway concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer:

RTD/NO(SW)-18, for the transfer of 10 kilograms of uranium samples enriched to approximately 4.5 percent in the isotope uranium-235 from Sweden to the Institutt for Energiteknikk, Kjeller, Norway, for use in safeguards control analysis. After examination, the samples will be disposed of as waste.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: March 8, 1988.

George J. Bradley, Jr.,
Principal Deputy Assistant Secretary for
International Affairs and Energy
Emergencies.

[FR Doc. 88-5389 Filed 3-10-88; 8:45 am]

BILLING CODE 6450-01-M

Atomic Energy Agreement; Proposed Subsequent Arrangement; Sweden and Euratom

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement"

under the Agreement for Cooperation between the Government of the United States of America and the Government of Sweden concerning Peaceful Uses of Nuclear Energy, and the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer:

RTD/EU (SW)-76, for the transfer from Sweden to the Federal Republic of Germany of 26,302 kilograms of uranium oxide, enriched to approximately 4 percent in the isotope uranium-235, for fabrication of fuel for use in light water power reactors in the Federal Republic of Germany.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: March 8, 1988.

George J. Bradley, Jr.,
Principal Deputy Assistant Secretary for
International Affairs and Energy
Emergencies.

[FR Doc. 88-5390 Filed 3-10-88; 8:45 am]

BILLING CODE 6450-01-M

Atomic Energy Agreements; Proposed Subsequent Arrangement; Switzerland

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between Government of the United States of America and the Government of Switzerland concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves the post-irradiation examination of 8 irradiated rods at the Swiss Institute for Reactor Research (EIR), Wuerlingen, Switzerland. This subsequent arrangement records the joint determination of the Government of the United States of America and the Government of Switzerland that safeguards may be effectively applied to the post-irradiation examination at the EIR facility in Switzerland for the said irradiated rods.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: March 8, 1988.

George J. Bradley, Jr.,
Principal Deputy Assistant Secretary for
International Affairs and Energy
Emergencies.

[FR Doc. 88-5388 Filed 3-10-88; 8:45am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 88-05-LNG]

Distrigas Corp.; Order Granting Amended Authorization To Import Algerian Liquefied Natural Gas

AGENCY: Economic Regulatory
Administration, DOE.

ACTION: Notice of order granting
amended authorization to import
Algerian liquefied natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy gives notice that it has issued an order amending Distrigas Corporation's (Distrigas) current authorization, issued in ERA Docket No. 77-011-LNG On December 31, 1977, under which Distrigas imports liquefied natural gas (LNG) from Algeria. The order, issued in ERA Docket No. 88-05-LNG, authorized Distrigas to import up to five cargoes of LNG prior to May 15, 1988, at prices lower than are currently authorized.

A copy of this order is available in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20505, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Issued in Washington, DC, on March 4, 1988.

Constance L. Buckley,
Director, Natural Gas Division, Office of
Fuels Programs, Economic Regulatory
Administration.

[FR Doc. 88-5396 Filed 3-10-88; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA C&E 88-07; Certification Notice—12]

Coal Capability of New Electric Powerplants; Filing of Certification of Compliance by Thermo Michigan, Inc.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Filing.

In the matter of a notice of filing of certification of compliance; coal capability of new electric powerplants pursuant to provisions of the Powerplant and Industrial Fuel Use Act, as amended (42 U.S.C. 8311 section 201(d)).

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (section 201(a)). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to section 201(d) to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the **Federal Register** a notice reciting that the certification has been filed. One owner and operator of a proposed new electric base load powerplant has filed a self certification in accordance with section 201(d). Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION: The following company filed a self certification:

Name	Date received	Type facility	Mega-watt capacity	Location
Thermo Michigan, Inc., Detroit, Michigan.	2-23-88	Cogeneration Combined Cycle.	90	Big Rapids, MI.

Amendments to FUA on May 22, 1987 (Pub. L. 100-42) altered the general prohibitions to include only new electric

baseload powerplants and to provide for the self certification procedure.

Issued in Washington, DC on March 7, 1988.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-5397 Filed 3-10-88; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Agency Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of requests submitted for clearance to the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for approval under provisions of the Paperwork Reduction Act (44 U.S.C. Ch. 35).

The listing does not contain information collection requirements contained in new or revised regulations which are to be submitted under 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, or extension; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses annually; (11) Annual respondent burden, i.e., an estimate of the total number of hours needed to respond to the collection; and (12) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before April 11, 1988.

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office

of Statistical Standards, at the address below.)

FOR FURTHER INFORMATION CONTACT: Carole Patton, Office of Statistical Standards (E1-70), Energy Information Administration, M.S. 1H-023, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-2222.

SUPPLEMENTARY INFORMATION: If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this Notice, you should advise the OMB DOE Desk Officer of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395-3084.

The first energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC-544
3. N.A.
4. Gas Pipeline Rates: Rate Change (Formal)
5. New Collection
6. On Occasion
7. Mandatory
8. Businesses or other for profit
9. 125 respondents
10. 86.25 responses
11. 413,443 hours
12. Pursuant to sections 4, 5, and 16 of the Natural Gas Act, the Commission requires these data to determine if an interstate pipeline's rate filing complies with requirements and that the rate/charge for the transportation/sale of jurisdictional natural gas is just and reasonable. (Formal)

The second energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC-545
3. N.A.
4. Gas Pipeline Rates: Rate Change (Non-Formal)
5. New Collection
6. On Occasion
7. Mandatory
8. Businesses or other for profit
9. 125 respondents
10. 183.75 responses
11. 14,700 hours
12. Pursuant to sections 4, 5, and 16 of the Natural Gas Act, the Commission requires these data to determine if an interstate pipeline's rate filing complies with requirements and that the rate/charge for the transportation/sale of jurisdictional natural gas is just and reasonable. (Non-Formal)

The third energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC-546
3. N.A.
4. Gas Pipeline Rate: Certificated Rate Filings
5. New Collection
6. On occasion
7. Mandatory
8. Businesses or other for profit
9. 125 respondents
10. 583.75 responses
11. 23,350 hours
12. Pursuant to sections 4, 5 and 16 of the Natural Gas Act, the Commission requires these data to determine if an interstate pipeline's rate filing complies with requirements and that the rate/charge for the transportation/sale of jurisdictional natural gas is just and reasonable.

The fourth energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC-547
3. 1902-0084
4. Gas Pipeline Rates: Refund Obligations
5. Extension
6. On occasion
7. Mandatory
8. Businesses or other for profit
9. 125 respondents
10. 325 responses
11. 26,000 hours
12. The filing of refund reports is necessary to ensure compliance with the Natural Gas Act and the Natural Gas Policy Act, and the correct refunding of amounts which were overcharged.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. 93-275, Federal Energy Administration Act of 1974, (15 U.S.C. 764(a), 764(b), 772(b), and 790(a)).

Issued in Washington, DC, March 7, 1988.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 88-5398 Filed 3-10-88; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

Liquids Transportation Task Group, Coordinating Subcommittee on Petroleum Storage and Transportation of the National Petroleum Council; Open Meeting

Notice is hereby given of the following meeting:

Name: Liquids Transportation Task Group, Coordinating Subcommittee on Petroleum Storage & Transportation of the National Petroleum Council.

Date and Time: Thursday, March 24, 1988, 1:00 p.m.

Place: National Petroleum Council, 1625 K Street NW., Conference Room, Washington, DC.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE-1), Washington, DC 20585, Telephone: 202/586-4695.

Purpose of the Parent Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries.

Purpose of the Meeting: Discuss pipeline survey and progress on individual assignments.

Tentative Agenda:

- Opening remarks by Chairman and Government Cochairman.
- Discuss the pipeline survey.
- Review progress on individual assignments.
- Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

Public Participation: The meeting is open to the public. The Chairman of the Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Reading Room, Room 1E-190, DOE Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m. Monday through Friday, except Federal holidays.

J. Allen Wampler,

Assistant Secretary, Fossil Energy.

[FR Doc. 88-5392 Filed 3-10-88; 8:45 am]

BILLING CODE 6450-01-M

Natural Gas Transportation Task Group, Coordinating Subcommittee on Petroleum Storage and Transportation of the National Petroleum Council; Public Meeting

Notice is hereby given of the following meeting:

Name: Natural Gas Transportation Task Group, Coordinating Subcommittee on Petroleum Storage & Transportation of the National Petroleum Council.

Date and Time: Wednesday, April 6, 1988, 8:30 a.m.

Place: National Petroleum Council, 1625 K Street NW., Conference Room, Washington, DC.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE-1), Washington, DC 20585, Telephone: 202/586-4695.

Purpose of the Parent Council: To provide advice, information, and recommendations to

the Secretary of Energy on matters relating to oil and gas or the oil and gas industries.

Purpose of the Meeting: Discuss gas pipeline survey and review progress on individual assignments.

Tentative Agenda:

- Opening remarks by Chairman and Government Cochairman.
- Discuss the gas pipeline survey.
- Review progress on individual assignments.
- Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

Public Participation: The meeting is open to the public. The Chairman of the Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E-190, DOE Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

J. Allen Wampler,

Assistant Secretary, Fossil Energy.

[FR Doc. 88-5393 Filed 3-10-88; 8:46 am]

BILLING CODE 6450-01-M

Inventories and Storage Task Group, Coordinating Subcommittee on Petroleum Storage and Transportation of the National Petroleum Council; Open Meeting

Notice is hereby given of the following meeting:

Name: Inventories and Storage Task Group of the Coordinating Subcommittee on Petroleum Storage and Transportation of the National Petroleum Council.

Date and Time: Tuesday, April 19, 1988, 1:00 p.m.

Place: Doubletree Intercontinental Hotel, Seattle II Room, 15747 JFK Boulevard, Houston, Texas.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE-1), Washington, DC 20585, Telephone: 202/586-4695.

Purpose of the Parent Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries.

Purpose of the Meeting: Discuss surveys and progress on assignments.

Tentative Agenda:

- Opening remarks by Chairman and Government Cochairman.
- Discuss surveys of inventories and storage capacity.
- Review progress on individual assignments.
- Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

Public Participation: The meeting is open to the public. The Chairman of the Inventories and Storage Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E-190, DOE Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

J. Allen Wampler,

Assistant Secretary, Fossil Energy.

[FR Doc. 88-5394 Filed 3-10-88; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3339-4]

Environmental Impact Statements and Regulations; Availability of EPA Comments Prepared February 22 Through 26, 1988

Availability of EPA comments prepared February 22, 1988 through February 26, 1988 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5075/76.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the Federal Register FR dated April 24, 1987 (52 FR 13749).

Draft EISs

ERP No. D-BLM-K61088-CA, Rating EC2, California Section 202 Wilderness Study Areas Recommendation, Wilderness Designation or Nondesignation, Implementation, Bakersfield, Susanville and Ukiah

Districts, San Luis Obispo, Tulare, Kern, Modoc, Tehama, Mendocino and Trinity Counties, CA and Carson City District, Alpine County, NV.

Summary: EPA supports the proposed wilderness recommendation for best protesting air and water quality. However, EPA is concerned that the individual and cumulative effect of activities allowed under non-wilderness designation have the potential to degrade water quality and riparian habitats.

ERP No. DS-COE-H32009-00, Rating E02, Mississippi River Locks and Dam 26 Replacement Construction, Second Lock, Updated Information, Implementation, Upper Mississippi and Illinois Rivers, Alton, Madison County, IL and St. Louis, MO.

Summary: EPA continues to have concerns about the lack of information necessary to adequately assess impacts and identify mitigation. EPA is also concerned that alternatives are not thoroughly discussed. EPA requests that the deficiencies be addressed in the final EIS and that the ROD include: (1) A draft plan of study for determining impacts; (2) a detailed schedule for implementation; (3) a determination of need for mitigation; and (4) a commitment to implement mitigation. Further, EPA plans on entering into a MOU with the Corps to insure EPA involvement in the development and implementation of the study.

ERP No. D-FRC-L05196-ID, Rating E02, Twin Falls (FERC No. 18), Milner (FERC No. 2899), Auger Falls (FERC No. 4797) and Star Falls (FERC No. 5797) Hydroelectric Projects on the Mainstream of the Snake River, Construction, Operation, and Maintenance Licenses, Upper Snake River Basin, Twin Falls and Jerome Counties, ID.

Summary: EPA has environmental objections to the FERC staff-preferred alternative due to anticipated water quality and wetland impacts from the Auger Falls project. Additional information is needed to fully assess environmental impacts. Mitigation also needs to be proposed for wetland impacts.

Final EISs

ERP No. F-BLM-J61055-WY, Adobe Town and Ferris Mountain Wilderness Study Areas, Wilderness Recommendations, Designation or Nondesignation, Rawlins District, Carbon and Sweetwater Counties, WY.

Summary: EPA supports the proposed action (all wilderness) for the Ferris Mountain Wilderness Study Area. Further, EPA is pleased that BLM has chosen to recommend the partial

wilderness/conflict resolution alternative for Adobe Town WSA.

ERP No. F-BOP-D81015-PA, Schuylkill Federal Correctional Institution Complex, Construction and Operation, Schuylkill County, PA.

Summary: EPA feels this document adequately addresses all previous concerns regarding the project.

ERP No. FB-COE-K35012-CA, Sacramento River Bank Protection Project, Butte Basin Reach (River Miles 176 to 194) Stabilization, Updated Information, Butte and Glenn Counties, CA.

Summary: EPA expressed concerns that mitigation measures committed to by the Army Corps in an earlier EIS for this project was not included in this document.

ERP No. F-FHW-G40115-AR, US 65 Bypass Construction, US 65/US 270 Interchange and Bryant Street Intersection to US 65/US 65B Interchange, Funding and 404 Permit, Pine Bluff, Jefferson County, AR.

Summary: EPA feels this document adequately satisfies the requirements of NEPA and those areas within EPA's jurisdiction and expertise.

ERP No. F-MMS-L02016-AK, 1988 Chukchi Sea Outer Continental Shelf (OCS) Oil and Gas Sale No. 109, Leasing, AK.

Summary: EPA continues to have environmental concerns about the proposed full-lease alternative. EPA's major concern is the effects of oil and gas activities on endangered bowhead whales. The biological opinion indicated long-term development and production activities in the bowhead whale spring migration corridor would likely jeopardize the population. Since leasing decisions will determine where future development and production facilities are located, then leasing should not be allowed in the sensitive spring migration corridor. EPA supports the Coastal Deferral alternative.

Dated: March 8, 1988.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 88-5437 Filed 3-10-88; 8:45am]

BILLING CODE 6560-50-M

[ER-FRL-3339-3]

Environmental Impact Statements; Availability of Environmental Impact Statements Filed February 29 Through March 4, 1988

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

EIS No. 880059, Final, IBR, ND, Dunn-Nokota Methanol Project, Water Supply Contract Approval, Section 10 and 404 Permits, Lake Sakakawea, Dunn County, ND, Due: April 11, 1988, Contact: Eley P. Denson, Jr. (406) 657-6558.

EIS No. 880060, Action, COE, MD, VA, Baltimore Harbor and Channels 50 Foot Deepening Project, Cape Henry Channel and the southern portion of the York Spit Channel, Dredged Material Placement Modifications in the Virginia portion of the project, VA, MD, Contact: Larry Lower (301) 962-4710.

EIS No. 880061, Draft, AFS, AK, North Sea Otter Sound Area Resources Management Plan, Implementation, Tongass National Forest, AK, Due: April 25, 1988, Contact: Pete Johnson (907) 828-3304.

EIS No. 880062, Draft, NPS, AK, Bering Land Bridge National Preserve, Wilderness Recommendations, Designation or Nondesignation, AK, Due: May 27, 1988, Contact: Linda Nebel (907) 257-2654.

EIS No. 880063, DSUpl, IBR, CO, Dolores Water Supply Project, Salinity Control Program and Towaoc Canal Realignment, Implementation, Mc Elmo Creek Drainage, Dolores and Montezuma Counties, CO, Due: May 2, 1988, Contact: Harold Sersland (801) 524-5580.

EIS No. 880064, Draft, NPS, AK, Yukon-Charley Rivers National Preserve, Wilderness Recommendations, Designation or Nondesignation, AK, Due: May 27, 1988, Contact: Linda Nebel (907) 257-2654.

EIS No. 880065, Draft, NPS, AK, Kenai Fjords National Park, Wilderness Recommendations, Designation or Nondesignation, AK, Due: May 27, 1988, Contact: Linda Nebel (907) 257-2654.

EIS No. 880066, Draft, BOP, TX, Three Rivers Federal Correctional Institution Complex, Construction and Operation, Live Oak County, TX, Due: April 25, 1988, Contact: William J. Patrick (202) 724-3232.

EIS No. 880067, Draft, AFS, CA, Mt. Shasta Ski Area Development, Special Use Permit, Shasta-Trinity National Forests, Mt. Shasta Ranger District, Siskiyou County, CA, Due: April 25, 1988, Contact: Douglas P. Schleusner (916) 275-1587.

EIS No. 880068, Draft, FRC, RI, NY, MA, Ocean State Power Project, Natural Gas Fired Combined-Cycle Power Plant and Pipeline Construction and Operation, Licenses and Section 10 and 404 Permits, Providence County, RI; Erie, Livingston, Onondaga, Niagara and Wyoming Cos, NY and

Hampden and Worcester Counties, MA, Due: April 25, 1988, Contact: Lonnie Lister (202) 357-8874.

EIS No. 880069, Final, COE, NY, Saw Mill River Basin Flood Control Plan, Old Nepperan Avenue Bridge to near the former Tompkins Avenue Bridge, Nepara Park, City of Yonkers, Westchester County, NY, Due: April 11, 1988, Contact: Peter Doukas (212) 264-4662.

EIS No. 880070, FSUpl, COE, AL, Mallard-Fox Creek Area, Morgan County Port Access Channel and Dredged Material Disposal, Development and Use, Morgan County, AL, Due: April 11, 1988, Contact: Patricia Coffey (615) 736-5028.

EIS No. 880071, Final, FHW, KY, US 127 Improvements, Anderson County Line to I-64, Funding, Franklin County, KY, Due: April 15, 1988, Contact: Robert E. Johnson (502) 227-7321.

Amended Notices

EIS No. 870106, Draft, COE, Shorelands Commercial/Industrial Park Development and Construction, Section 10 and 404 Permits, Hayward City, Alameda County, CA, Due: May 18, 1987, Contact: Scott Miner (415) 974-0446. Published FR 2-5-88—The status of this draft EIS is still ACTIVE—Inadvertently withdrawn.

EIS No. 880047, Draft, MMS, 1989 North Atlantic Planning Area Outer Continental Shelf (OCS) Oil and Gas Sale No. 96, Lease Offerings, MA, NH, ME, RI, CT, NY and NJ, Due: April 19, 1988, Contact: Barry R. Clark (703) 285-2165.

Published FR 02-26-88—Review period extended.

Dated: March 8, 1988.

William D. Dickerson,

Acting Director, Office of Federal Activities.
[FR Doc. 88-5438 Filed 3-10-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067-0024

Title: General Admission Application and Class Attendance Roster

Abstract: Information collected in connection with stipend reimbursement programs and enrollment at the National Emergency Training Center.

Type of Respondents: Individuals or households, State or Local Governments, Federal agencies or employees, Non-profit institutions

Number of Respondents: 15,000

Burden Houses: 3,000

Frequency of Recordkeeping or Reporting: Weekly and Other

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C. Street, Washington, DC 20472.

Comments should be directed to Francine Picoult, (202) 395-7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Dated: February 19, 1988.

Wesley C. Moore,

Director Office of Administrative Support.

[FR Doc. 88-5343 Filed 3-10-88; 8:45 am]

BILLING CODE 6718-21-M

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).
Type: Extension of 3067-0113

Title: Request for a Major Disaster or an Emergency Declaration by the President-Declaration of Emergency or Major Disaster

Abstract: Requests for a Presidential declaration of a major disaster or an emergency must be made by the Governor. The request must contain certain information to comply with statutory requirements. Affected public includes families, individuals, and public facilities of State and local governments.

Type of Respondents: Individuals or households, State or Local Governments, Non-profit institutions

Number of Respondents: 59

Burden Hours: 400

Frequency of Recordkeeping or Reporting: Other—as required

Copies of the above information collection request and supporting documentation can be obtained by

calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C Street, Washington, DC 20472.

Comments should be directed to Francine Picoult, (202) 395-7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Date: February 19, 1988.

Wesley C. Moore,

Director Office of Administrative Support.

[FR Doc. 88-5344 Filed 3-10-88; 8:45 am]

BILLING CODE 6718-21-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203-011117-002

Title: North American/Australasia

Interconference and Carrier Discussion Agreement

Parties: Pacific Coast/Australia-New Zealand tariff, Bureau; U.S. Atlantic & Gulf/Australia-New Zealand Conference; Blue Star Line, Ltd.; Pacific Australia Direct Line; Columbus Line; Associated Container Transportation (Australia) Ltd.; Ocean Star Container Line A.G.; Australia-New Zealand Direct Line

Synopsis: The proposed amendment would add Scancarriers as a party to the agreement. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission

Joseph C. Polking,
Secretary.

Dated: March 8, 1988.

[FR Doc. 88-5399 Filed 3-10-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

March 7, 1988.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulation on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202-452-3822).

OMB Desk Officer—Robert Fishman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503, (202-395-7340).

Proposal To Approve Under OMB Delegated Authority the Extension, With Revision, of the Following Reports

1. *Report Title:* Criminal Referral Form
Agency Form Number: FR 2230
OMB Docket Number: 7100-0212

Frequency: On occasion

Reporters: State member banks, bank holding companies, Edge Act and Agreement corporations, and U.S. branches and agencies of foreign banks

Annual Reporting Hours: 1955

Small businesses are affected.

General Description of Report

This information collection is voluntary (12 U.S.C. 248(a)(1), 625, and 1844(c)) and is given confidential treatment (5 U.S.C. 552(b)(7) and 552a(k)(2)).

This form has been jointly designed and used by the federal financial institutions supervisory agencies, the Department of Justice, and the F.B.I. It is also used by the U.S. Secret Service and U.S. Department of Treasury. The purpose of the form is to detect and track suspected criminal misconduct involving financial institutions and persons associated with them. The revisions address issues raised by recently enacted legislation as well as suggestions made by representatives of supervisory agencies, the federal law enforcement community, and financial institutions in light of experience gained with use of the form since its inception in 1985.

2. *Report Title:* Report of Changes in Foreign Investments

Agency Form Number: FR 2064

OMB Docket Number: 7100-0109

Frequency: On occasion

Reporters: Member banks, bank holdings companies and Edge and Agreement corporations making or changing a foreign investment

Annual reporting hours: 180

Small businesses are not affected.

General Description of Report

This report is required by law (12 U.S.C. 602 and 1844). Certain portions are given confidential treatment (5 U.S.C. 552(b)(4)).

This report provides information needed to enable the Federal Reserve to monitor foreign investments by U.S. banking organizations. The report is used to notify the Federal Reserve of foreign investment changes as required under Regulation K, and to provide a basis for updating the System's information on foreign investments.

Board of Governors of the Federal Reserve System, March 7, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-5334 Filed 3-10-88; 8:45 am]

BILLING CODE 6210-01-M

Bank of Boston Corp.; Proposal To Underwrite and Deal in Certain Securities to a Limited Extent

Bank of Boston Corporation, Boston, Massachusetts ("Applicant"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.23(a)(3), of the Board's Regulation Y (12 CFR 225.23(a)(3)), for permission to engage in the activities of underwriting and dealing in, to a limited degree, commercial paper, municipal revenue bonds (including "public ownership" industrial development bonds), 1-4 family mortgage-related securities and consumer-receivable-related securities ("ineligible securities"). These securities are eligible for purchase by banks for their own account but not eligible for banks to underwrite and deal in.

Applicant has also applied to underwrite and deal in securities that state member banks are permitted to underwrite and deal in under the Glass-Steagall Act ("eligible securities") (U.S. government securities, general obligations of states and municipalities and certain money market instruments), as permitted by § 225.25(b)(16) of Regulation Y (12 CFR 225.25(b)(16)). Company would conduct the proposed activities on a nationwide basis.

The application presents issues under section 20 of the Glass-Steagall Act (12 U.S.C. 377). Section 20 of the Glass-Steagall Act prohibits the affiliation of a member bank, such as The First National Bank of Boston, with a firm that is "engaged principally" in such activities on the basis of the restrictions on the amount of the proposed activity relative to the total business conducted by the underwriting subsidiary.

Applicant has applied to underwrite and deal in ineligible securities in accordance with most of the limitations set forth in the Board's Orders approving those activities for a number of bank holding companies. See e.g., *Citicorp, J.P. Morgan & Co. Incorporated and Bankers Trust New York Corporation*, 73 Federal Reserve Bulletin 473 (1987) (underwriting and dealing in commercial paper, municipal revenue bonds and mortgage-related securities) ("*Citicorp/Morgan/Bankers Trust*"); and *Chemical New York Corporation, The Chase Manhattan Corporation, Bankers Trust New York Corporation, Citicorp, Manufacturers Hanover Corporation and Security Pacific Corporation*, 73 Federal Reserve Bulletin 731 (1987) (underwriting and dealing in consumer-receivable-related securities) ("*Chemical*"). Applicant's proposal differs from the Board's *Citicorp/Morgan/Bankers Trust* and *Chemical* Orders in the following respects:

1. Company would underwrite and deal in ineligible securities up to 10 percent of Company's gross revenue and 5 percent of the market;

2. Company would underwrite and deal in ineligible securities which, in accordance with *Citicorp/Morgan/Bankers Trust*, are rated in the top four categories by a national rating agency, but Company would also underwrite and deal in ineligible securities that it determines, based on its own credit analysis and evaluation, meet the standards used by such rating organizations to identify bonds of the four highest investment grades;

3. Company would have a limited number of management interlocks with The First National Bank of Boston (specifically, four officers of the bank would also be officers of Company and four directors of Company would also be directors or officers of the bank, but two of Company's directors would have no positions with either the bank or with Applicant);

4. Applicant would not commit to exclude its investment in Company and Company's assets in determining the holding company's consolidated primary capital under the Board's capital adequacy guidelines;

5. Company would place its affiliates' commercial paper and debt obligations as agent as an incidental activity;

6. Company would underwrite and deal in "public ownership" industrial development bonds which are not tax-exempt; and

7. Applicant would establish Company on the premises of The First National Bank of Boston (Applicant has committed that Company would be clearly identified as separate from the bank by physical separation of staff and appropriate signs).

In publishing Applicant's proposal for comment, the Board does not take any position on the differences between Applicant's proposal and the Board's prior ineligible securities underwriting orders. Notice of the proposal is published solely in order to seek the views of interested persons and does not represent a determination by the Board that the proposal is consistent with the Board's prior orders.

Any request for a hearing on this application must comply with 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)).

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Boston.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than March 30, 1988.

Board of Governors of the Federal Reserve System, March 4, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-5335 Filed 3-10-88; 8:45 am]

BILLING CODE 6210-01-M

The Boston Bancorp 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 April 4, 1988.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *The Boston Bancorp*, South Boston, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of South Boston Savings Bank, South Boston, Massachusetts.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Banks of Iowa, Inc.*, Des Moines, Iowa; to acquire 100 percent of the voting shares of United Bank & Trust, Ames, Iowa.

2. *First of America Bank Corporation*, Kalamazoo, Michigan, and *First of America Bancorporation-Illinois, Inc.*, Libertyville, Illinois; to acquire 100 percent of the voting shares of Sheridan Bank of Peoria, Peoria, Illinois.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *HRH Bancorp, Inc.*, Grant City, Missouri; to become a bank holding company by acquiring 99.4 percent of the voting shares of Farmers Bank of Grant City/Sheridan, Grant City, Missouri.

D. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Ford Bank Group, Inc.*, Lubbock, Texas; to acquire 100 percent of the voting shares of Lubbock Bancorporation, Inc., Lubbock, Texas, thereby indirectly acquire Bank of the West, Lubbock, Texas.

E. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Napa Valley Bancorp*, Napa, California; to acquire 100 percent of the voting shares of Bank of Lake County, National Association, Lakeport, California, a *de novo* bank.

Board of Governors of the Federal Reserve System, March 7, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-5336 Filed 3-10-88; 8:45 am]

BILLING CODE 6210-01-M

Acquisitions of Shares of Banks or Bank Holding Companies; Equimark Managing Partners et al.

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 4, 1988.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Equimark Managing Partners*, Pittsburgh, Pennsylvania; through Alan S. Fellheimer and Judith E. Fellheimer, general partners of the partnership, Sewickley Heights, Pennsylvania; and Claire W. Gargalli, Henry Posner, James H. McLaughlin, George F. Eichleay, David J. East, S. Raymond Rackoff, Howard W. Hanna, III, Patricia A. Muldoon, Dennis Pitocco, all of Pittsburgh, Pennsylvania; David A. Gardner, New York, New York; Charles G. Cheleden, Horsham, Pennsylvania; Judith E. Yankovic, Robinson Township, Pennsylvania; James M. Murphy, Bethel Park, Pennsylvania; J. Bruce Johnston, McMurray, Pennsylvania; William F. Jones, Jr. and Nicholas J. Zennario, both of Wexford, Pennsylvania; Dennis F. Kennedy and Emerson Wickwire, both of Sewickley, Pennsylvania; and Robert C. Payment, Butler, Pennsylvania; to acquire 21.41 percent of the voting shares of Equimark Corporation, Pittsburgh, Pennsylvania.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Lawrence O. Hauge*, Henderson, Minnesota; to acquire an additional 92.2

percent of the voting shares of Henderson Bancorporation, Inc., Henderson, Minnesota; thereby indirectly acquire Sibley County Bank, Henderson, Minnesota.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Edward L. Birkhead*, Dubois, Wyoming; to acquire an additional 1.2 percent of the voting shares of Riverton State Bank Holding Company, Riverton, Wyoming; thereby indirectly acquire Dubois National Bank, Dubois, Wyoming, and Riverton State Bank, Riverton, Wyoming.

2. *Donald A. Sloan*, Richardson, Texas; to acquire an additional 28.12 percent of the voting shares of Rawlins Bancshares, Inc., Atwood, Kansas; thereby indirectly acquire Farmers Bank and Trust, Atwood, Kansas.

D. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Donald E. Reily*, Lufkin, Texas; to acquire 29.2 percent of the voting shares of Citizens State Financial Corporation, Corrigan, Texas.

2. *Ray H. Reily*, Livingston, Texas; to acquire 27.56 percent of the voting shares of Citizens State Financial Corporation, Corrigan, Texas.

Board of Governors of the Federal Reserve System, March 7, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-5337 Filed 3-10-88; 8:45 am]

BILLING CODE 6210-01-M

Florida National Banks of Florida, Inc. et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have 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.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for

processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than April 1, 1988.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Florida National Banks of Florida, Inc.*, Jacksonville, Florida; to acquire Florida National Insurance Services, Inc., Jacksonville, Florida, and thereby engage in underwriting, as a reinsurer, of credit-related life and credit-related accident, health and disability insurance in connection with extensions of credit, pursuant to § 225.25(b)(8) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *PrairieLand Bancorp, Inc.*, Bushnell, Illinois; to acquire PrairieLand Accounting and Tax Services, Bushnell, Illinois, and thereby engage in tax preparation and planning pursuant to § 225.25(b)(2) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 7, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-5338 Filed 3-10-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Office of the Secretary****Agency Forms Submitted to the Office of Management and Budget for Clearance**

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on February 26, 1988.

Social Security Administration

(Call Reports Clearance Officer on 301-965-4149 for copies of package)

1. Request for Correction of Earnings Record—0960-0029—When an individual questions the accuracy of his or her earnings record, SSA uses the information obtained by this form to check against their record and, if necessary, to develop for evidence of earnings. Respondents: Individuals or households. Number of Respondents: 100,000; Frequency of Response: Occasionally; Estimated Annual Burden: 16,666 hours.

2. Supplement to Claim of Person Outside the United States—0960-0051—The information collected by this form is used by SSA to determine the continuing entitlement to benefits and the proper benefit amounts of aliens living outside the U.S. It is also used to determine if those benefits are subject to withholding tax. Respondents: Individuals or households. Number of Respondents: 35,000; Frequency of Response: Occasionally; Estimated Annual Burden: 2,917 hours.

3. Request to be Selected as Payee—0960-0014—This form is used by SSA to help determine the proper representative for a person who cannot receive his or her own social security benefits. Respondents: Individuals or households. Number of Respondents: 605,000; Frequency of Response: Occasionally; Estimated Annual Burden: 100,833 hours.

4. You Can Make Your Payment By Credit Card—NEW—The information collected by use of the forms SSA-4588 and SSA-4589 is needed for the Social Security Administration and certain banks in order that title II debtors may repay overpayments via credit cards. The affected public is comprised of title II beneficiaries who have been overpaid.

Respondents: Individuals or households. Number of Respondents: 160,000; Frequency of Response: Occasionally; Estimated Annual Burden: 13,333 hours. OMB Desk Officer: Elaina Norden

Health Care Financing Administration

(Call Reports Clearance Officer on 301-594-1238 for copies of package)

1. Information Collection Requirements Contained in 42 CFR 447.253—NEW—These regulatory provisions will require the Medicaid agency to submit along with their States plan, assurances and related information whenever the State makes any changes to its methods and standards for determining payment rates. Respondents: State or local governments. Number of Respondents: 54; Frequency of Response: One-time; Estimated Annual Burden: 54 hours. OMB Desk Officer: Allison Herron

Office of Human Development Services

(Call Reports Clearance Officer on 202-472-4415 for copies of package)

1. National Study of Child Care Supply, Demand and Economic Information—NEW—A national sample survey of supply and demand of licensed child care providers in both centerbased care and family based care settings. Respondents: Individuals or households, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations. Number of Respondents: 3,500; Frequency of Response: One-time; Estimated Annual Burden: 1,750 hours.

OMB Desk Officer: Shannah Koss-McCallum

Public Health Services

(Call Reports Clearance Officer on 202-245-2100 for copies of package)

National Institutes of Health

1. Preterm and Small for Gestational Age Delivery Across Generations—NEW—Previous studies have shown a correlation between maternal and infant birth weight. It is not known if this is caused by differences in duration of pregnancy or rate of growth. The proposed study will help resolve this issue. The results of this project will be used for research studies aimed at the prevention of low birth weight deliveries. Respondents: Individuals or households, State or local governments, Businesses or other for-profit. Number of Respondents: 1,577; Frequency of Response: One-time; Estimated Annual Burden: 611 hours.

2. Drug Accountability Record—0925-0240—These forms will be used by

investigational new drugs under NCI clinical protocols. These forms will serve as a link between the NCI drug distribution data and the protocol patient data to ensure that investigational drugs are being used properly, in accordance with the "Notice(s) of Claimed Investigational Exemption for a New Drug" filed by the National Cancer Institute with the Food and Drug Administration. Respondents: State or local governments, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations. Number of Respondents: 4,000; Frequency of Response: Occasionally; Estimated Annual Burden: 2,020 hours.

Food and Drug Administration

1. Premarket Notification Submission (510(k))—Subpart E-21 CFR 807-0910-0120—Manufacturers wishing to distribute new or changed medical devices must submit a premarket notification to FDA, 90 days before marketing. FDA reviews the notification and determines whether the product is substantially equivalent to a preamendments device. Those which are equivalent may be marketed immediately, and those which are not may not be marketed without further evaluation. Respondents: Businesses or other for-profit, Small businesses or organizations. Number of Respondents: 5,000; Frequency of Response: Occasionally; Estimated Annual Burden: 78,000 hours.

2. Tamper-resistant Packaging Requirements for Contact Lens Solution and Tablets—0910-0150—The regulation requires that containers for contact lens solutions and/or tablets be tamper-resistant, and appropriately labeled as such. Firms may request an exemption from the regulation's requirements. Respondents: Individuals or households, Small businesses or organizations. Number of Respondents: 35; Frequency of Response: Occasionally; Estimated Annual Burden: 350 hours.

Indian Health Service

1. Pub. L. 93-638—Initial and Renewal Contract: Application, Tribal Clearance and Contract Law Waiver—0915-0040—Pursuant to P.L. 93-638 an American Indian Tribal organization may apply to IHS for a contract to carry out certain functions of IHS and may request a contract law to be waived. Specific information is to be collected for initial contracts, Tribal clearances and contract law waivers. Respondents:

State or local governments. Number of Respondents: 260; Frequency of Response: Occasionally; Estimated Annual Burden: 1,100 hours.

OMB Desk Officer: Shannah Koss-McCallum

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:

PHS: 202-245-2100

HDS: 202-472-4415

SSA: 301-965-4149

HCFA: 301-594-1238

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503, Attn: (Name of OMB Desk Officer)

Date: March 7, 1988.

James F. Trickett,

Deputy Assistant Secretary, Administrative and Management Services.

[FR Doc. 88-5376 Filed 3-10-88; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

Workshop on the Application of Biosafety Principles in Blood Establishments; Public Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice

SUMMARY: The Food and Drug Administration (FDA) is announcing a public workshop to discuss the application of biosafety principles in the prevention of infectious disease transmission in blood establishments such as blood banks and source plasma centers.

DATE: The workshop will be held on Friday, April 8, 1988, 8 a.m.-5:00 p.m.

ADDRESS: The workshop will be held at the National Institutes of Health, Warren Grant Magnuson Clinical Center, Bldg. 10, Jack Masur Auditorium, 9000 Rockville Pike, Bethesda, MD.

FOR FURTHER INFORMATION CONTACT: Linda A. Smallwood, Center for Biologics Evaluation and Research, Food and Drug Administration (HFB-830), 8800 Rockville Pike, Bethesda, MD 20892, 301-496-0393.

SUPPLEMENTARY INFORMATION: The FDA, the Centers for Disease Control, the Occupational Safety and Health Administration, the Environmental

Protection Agency, and the Health Care Financing Administration have planned a public workshop to discuss the application of biosafety principles in the prevention of infectious disease transmission in blood establishments such as blood banks and source plasma centers. Among the major topics to be discussed are: (1) Scientific background, (2) employee protection programs, (3) operational issues, and (4) transportation issues.

Dated: March 4, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-5370 Filed 3-11-88; 8:45 am]

BILLING CODE 4160-01-M

[FDA 225-87-2001]

Memorandum of Understanding With the Department of Agriculture and Food of Ireland

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between the Department of Agriculture and Food of Ireland and FDA, U.S. Department of Health and Human Services. This MOU describes the mutual goals of the Department of Agriculture and Food of Ireland and FDA to establish certification requirements for the caseins, caseinates, and mixtures thereof exported from Ireland to the United States and to minimize the need for extensive FDA audit sampling of these certified products from Ireland.

DATE: This agreement became effective January 22, 1988.

FOR FURTHER INFORMATION CONTACT: Walter J. Kustka, Intergovernmental and Industry Affairs Staff (HFC-50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1583.

SUPPLEMENTARY INFORMATION: In accordance with § 20.108(c) (21 CFR 20.108(c)), which states that all agreements and memoranda of understanding between FDA and others shall be published in the **Federal Register**, the agency is publishing this memorandum of understanding.

Dated: March 7, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

Memorandum of Understanding Between the Food and Drug Administration Department of Health and Human Services of the United States of America and the Department of Agriculture and Food of Ireland Covering Caseins, Caseinates, and Mixtures Thereof Exported to the United States

I. Purpose

The mutual goals of the Food and Drug Administration (FDA) and of the Department of Agriculture and Food (DOAF) of Ireland in entering into this Memorandum of Understanding are to:

1. Establish certification requirements for the caseins, caseinates, and mixtures thereof exported from Ireland to the United States to assure that contaminated caseins, caseinates, and mixtures thereof will not be imported into the United States.

2. Minimize the need for extensive FDA audit sampling of these certified products from Ireland.

II. Definitions

For the purposes of this agreement, both parties agree to the following definitions:

Lot: A lot is a quantity of casein, caseinates, or mixtures thereof packaged by one manufacturer during a definite period of time not exceeding one (1) day. The manufacturing process, including milling and packaging, is performed by using a perfectly identified processing line. Caseins, caseinates, or mixtures thereof intended for export to the United States are packaged, after milling, in identical containers identified by a unique code or mark traceable to the manufacturer.

Salmonella-negative: The absence of *Salmonella* in thirty (30) subsamples, each of twenty-five (25) grams, that have been taken from the same lot of product and tested using the procedures contained in the current edition of the "Bacteriological Analytical Manual (See Section V. ANALYTICAL METHODOLOGY.)"

Phosphatase-Negative: The absence of phosphatase activity in thirty (30) subsamples, each of twenty-five (25) grams, that have been taken from the same lot of product and tested using the method contained in the current edition of the "Official Methods of Analysis" (See Section V. ANALYTICAL METHODOLOGY.)

III. Substance of Agreement

A. The Department of Agriculture and Food of Ireland

The Department of Agriculture and Food (DOAF) of Ireland is the agency of

the Irish government responsible for inspecting those caseins, caseinates, and mixtures thereof that are intended for export. Such inspection is necessary for consumer protection. To fulfill its responsibilities under this Memorandum of Understanding, DOAF will direct its activities to ensure that caseins, caseinates, and mixtures thereof that are intended for export to the United States are fit for human consumption in that they comply with the requirements of the Food, Drug, and Cosmetic Act of the United States, of the Public Health Service Act of the United States, and of this Memorandum of Understanding. DOAF will inspect and analyze samples of these caseins, caseinates, and mixtures thereof to ensure that they comply with these requirements.

To discharge its responsibilities regarding caseins, caseinates, and mixtures thereof and to fulfill its commitment under this agreement, DOAF will:

1. Inspect and analyze each lot of caseins, caseinates, and mixtures thereof produced in Ireland for export to the United States to assure that it is *Salmonella*-negative and phosphatase-negative, based on the testing of thirty (30) subsamples of twenty-five (25) gram units taken from bags in a lot of caseins, caseinates, and mixtures thereof immediately before closing, as determined by the methods cited in Section V. ANALYTICAL METHODOLOGY.

2. Issue an export certificate only for those lots that are *Salmonella*-negative and phosphatase-negative.

3. Require that all containers of a lot of caseins, caseinates, and mixtures thereof that are to be exported to the United States be certified as complying with the provisions of this Memorandum of Understanding, and identified by a lot number, and all other information required by the Federal Food, Drug, and Cosmetic Act of the United States.

4. Require that all of the information that is required by the Food, Drug, and Cosmetic Act and the Fair Packaging and Labeling Act of the United States be included on the label and labeling of individual products.

5. Include the following information on the export certificate for each lot of caseins, caseinates, and mixtures thereof exported to the United States:
 - a. Lot identification, including name and address of manufacturer;
 - b. Number and size of containers in the lot;
 - c. Analytical results for *Salmonella* and phosphatase activity;
 - d. Date of the certificate; and,
 - e. Name and stamp or seal of authorizing official.

6. Provide the exporter of caseins, caseinates, and mixtures thereof with the validated export certificate. This certificate and the packing list, which indicates those lots that are physically present in each containerized cargo unit, are to be attached to the shipping manifest.

7. Furnish FDA with a copy of the current Irish regulations and the procedures used to ensure that the caseins, caseinates, and mixtures thereof are in compliance with those regulations and with the Food, Drug, and Cosmetic Act and the Public Health Service Act of the United States.

8. Furnish FDA, upon request, with a full description of the manufacturing processes and quality controls used to ensure that the caseins, caseinates, and mixtures thereof that are produced are fit for human consumption, as discussed in III. A. SUBSTANCE OF AGREEMENT of this Memorandum of Understanding.

9. Furnish FDA with a list of the names of those officials who will sign the certificates issued in accordance with this Memorandum of Understanding.

B. The Food and Drug Administration of the United States of America

FDA is charged with the enforcement of the Food, Drug, and Cosmetic Act, the Fair Packaging and Labeling Act, certain provisions of the Public Health Service Act, and other related statutes of the United States. FDA directs its activities toward the protection of the public health in the United States by ensuring that foods are safe and wholesome and are honestly and informatively labeled. FDA accomplishes this goal in part through inspections of food processors and distributors. In addition, it collects and examines samples to ensure compliance with these statutes. FDA makes a concerted effort to ensure that food entering the United States meet the same standards as domestic products. To discharge these responsibilities regarding caseins, caseinates, and mixtures thereof and to fulfill this Memorandum of Understanding, FDA will:

1. Audit samples of caseins, caseinates, and mixtures thereof certified by DOAF under this Memorandum of Understanding to ensure that the products exported from Ireland and offered for import into the United States comply with the requirements of the Food, Drug, and Cosmetic Act, the Fair Packaging and Labeling Act, the Public Health Service Act, and other related statutes of the United States.

2. Share any information obtained through its audit sampling with DOAF

and the First Secretary of the Embassy of Ireland.

3. Promptly notify DOAF and the First Secretary of the Embassy of Ireland of the detention of any caseins, caseinates, and mixtures thereof covered by this Memorandum of Understanding.

4. Share expertise and provide consultative assistance to DOAF when necessary to assure the safety of the caseins, caseinates, and mixtures thereof exported to the United States.

IV. Sample Collection

The same samples will be used to determine both the presence, if any, of *Salmonella* and the level of phosphatase activity.

Each sample will consist of thirty (30) subsamples of caseins, caseinates, or mixtures thereof. Each subsample will consist of approximately twenty-five (25) grams that will be collected in accordance with the applicable portions of the current edition of the "Bacteriological Analytical Manual" (See Section V. ANALYTICAL METHODOLOGY).

V. Analytical Methodology

Compliance with the established criteria for *Salmonella* and phosphatase will be determined according to the methods contained in the current editions of "Bacteriological Analytical Manual" for *Salmonella* and "Official Methods of Analysis" for phosphatase.

These publications are available from: Association of Official Analytical Chemists, 1111 North 19th Street, Department 55, Arlington, VA 22209.

VI. Participating Parties

A. The Department of Agriculture and Food, Agriculture House, Kildare Street, Dublin 2, Ireland

B. Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, USA

VII. Liaison Officers

A. For DOAF—Principal Officer, Dairying Trade Division (Currently Mr. John Malone), Agriculture House, Kildare Street, Dublin 2, Ireland. Telephone: [353-1] 789011, extension 3055; Telex: 93607 AGRI EI

B. For FDA—Director, Division of Regulatory Guidance (Currently Mr. Howard Pippin), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C Street, SW., Washington, DC 20204. Telephone: (202) 485-0187; Telex: 197623 PHS PKLN 898488 PHS PKLN ROVE

VIII. Administrative Procedures

The parties shall mutually agree on the ways and means of giving instructions and guidance for the practical implementation and application of this Memorandum of Understanding.

IX. Period of Agreement

This Memorandum of Understanding will become effective upon acceptance by both parties and will continue for a period of five (5) years. It may be extended or revised by mutual consent or terminated by either party upon a thirty (3) day advance written notice to the other.

Approved and Accepted for the Food and Drug Administration of the United States of America

By: _____

Frank E. Young

Title: Commissioner of Food and Drugs.

Date: November 23, 1987.

Place: Washington, DC

Approved and Accepted for the Department of Agriculture and Food of Ireland

By: _____

Donald Denham,

Title: First Secretary, Embassy of Ireland.

Date: January 22, 1988.

Place: Washington, DC

[FR Doc. 88-5371 Filed 3-10-88; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

[HSQ-155-N]

Medicare Program; Peer Review Organization Contracts; Solicitation of Statements of Interest From In-State Organizations

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: General notice.

SUMMARY: This notice, in accordance with section 4092 of the Omnibus Budget Reconciliation Act (OBRA) of 1987, gives six months advance notice of the dates when contracts with out-of-State Utilization and Quality Control Peer Review Organizations (PROs) end. It also gives the period of time in which in-State organizations may submit statements of interest so that they may receive Requests for Proposals (RFPs) and compete for those contracts. The States currently affected are Delaware, Kentucky, South Carolina, and Wyoming.

DATE: Statements of interest must be received at the appropriate address as provided below no later than 5:00 p.m. EST on March 31, 1988.

ADDRESS: Statements of interest must be submitted to: William J. Tate, Health Care Financing Administration, OMB, Room 389 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207.

FOR FURTHER INFORMATION CONTACT: Paul Mendelsohn, (301) 966-7209.

SUPPLEMENTARY INFORMATION:

I. Background

The Peer Review Improvement Act of 1982 (Title I, Subtitle C of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Pub. L. 97-248) amended Part B of Title XI of the Social Security Act (Act) by establishing the Utilization and Quality Control Peer Review Organization (PRO) program.

PROs review health care services funded under Title XVIII of the Act (Medicare) to determine whether those services are reasonable, medically necessary, furnished in the appropriate setting, and are of a quality which meets professionally recognized standards. Congress created the PRO program in order to redirect, simplify and enhance the cost-effectiveness and efficiency of the peer review of services reimbursed by Medicare.

In June of 1984, HCFA began awarding contracts to PROs. We currently maintain 54 PRO contracts with organizations that provide medical review activities for each of the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, and American Samoa and Guam. In accordance with section 1153 of the Act, the organizations that are eligible to contract as PROs have satisfactorily demonstrated either: that they are: (1) Physician-sponsored organizations that are composed of a substantial number of the licensed doctors of medicine or osteopathy practicing medicine or surgery in the respective review area and who are representative of the physicians practicing in the area; or, (2) physician access organizations that have available, by arrangement or otherwise, the services of a sufficient number of licensed doctors of medicine or osteopathy practicing medicine or surgery in the review area to assure adequate peer review of the services provided by the various medical specialties and subspecialties. In addition, the organization must not be a health care facility, health care facility association, or a health care facility affiliate, and must have a consumer (a Medicare beneficiary) on its governing board.

Under our current contracts, the PROs for 11 of the review areas are organizations from outside the review areas. Those areas are: Alaska,

American Samoa and Guam, the District of Columbia, Delaware, Idaho, Kentucky, Maine, Nebraska, South Carolina, Vermont, and Wyoming.

The Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203) includes provisions that impose new requirements on the Secretary with respect to contracts with PROs. Section 4092 of OBRA amends section 1153 of the Act by adding a new subsection (i) that prohibits the Secretary from renewing the contract of any PRO that is not an in-State organization without first publishing in the *Federal Register* a notice announcing when the contract will expire. This notice must be published no later than six months before the date of expiration, and must specify the period of time during which an in-State organization may submit a proposal for the contract. If one or more qualified in-State organizations submit a proposal within the specified period of time, HCFA may not automatically renew the contract on a noncompetitive basis, but must instead provide for competition for the contract in the same manner used for a new contract. We note that the conference agreement accompanying the legislation specifically removed the Senate amendment requirement that the Secretary give additional consideration to any qualified in-State organization in the contract competition process.

These requirements are effective with contracts eligible for renewal on or after August 1, 1988, and, for the purposes of these contract requirements, the statute defines an in-State organization as one which has its primary place of business in the State in which review will be conducted; or one that is owned by a parent corporation which has its headquarters in such State.

We intend to implement these changes in the most equitable manner, and will therefore apply this new procedure in any State where doubt exists with respect to the "in-State" status of the incumbent PRO. In addition, rather than requiring an in-State organization to submit a fully developed contract proposal at the time of this notice, we will ask only that the organization demonstrate that it meets the definition of an in-State organization and that it is otherwise an eligible organization in accordance with section 1153 of the Act. If we receive one or more qualified statements of interest, we will conduct a full and open competition in the acquisition of medical review services for that PRO area. All eligible in-State organizations and other potential sources will be furnished with a Request for Proposal (RFP) as part of

the competitive contracting process. We are following this two-step procedure to assure the integrity of the competitive bidding process.

Additionally, section 4091 of OBRA Permits the Secretary to provide for extensions of existing PRO contracts to provide for a staggered period of contract expiration dates and to permit adequate time to complete contract renewal negotiations. We will extend PRO contracts under the authority of this section to provide an opportunity for an orderly transition. Specifically, we intend to extend the PRO contracts in Delaware, Kentucky, South Carolina, and Wyoming, which were originally scheduled to expire on June 30, 1988, through September 30, 1988.

II. Provisions of the Notice

This notice announces that current contracts (including intended extensions) between HCFA and out-of-State PROs responsible for review in the States of Delaware, Kentucky, South Carolina, and Wyoming will expire on October 1, 1988. Interested organizations in these States may submit statements of interest in those contracts. The statements must be received by HCFA no later than March 31, 1988, and, in its statement of interest, the organization must furnish materials that demonstrate that it meets the definition of an in-State organization. Specifically, the organization must have its primary place of business in the State in which review will be conducted or it must be owned by a parent corporation the headquarters of which is located in that State. In its statement, each interested organization must further demonstrate that it meets the following requirements:

A. Be either a physician sponsored or a physician access organization

1. Physician sponsored organization.

(i) The organization must be composed of a substantial number of licensed doctors of medicine and osteopathy practicing medicine or surgery in the review area and who are representative of the physicians practicing in the area.

(ii) The organization must not be a health care facility, health care facility association, or health care facility affiliate.

(iii) In order to meet the requirements of A.1.i. and A.1.ii., an organization must be composed of at least 10 percent of the licensed doctors of medicine and osteopathy practicing medicine or surgery in the review area. In order to demonstrate that it meets this criterion, an organization must state and have documentation in its files demonstrating that it is composed of at least 20 percent

of the licensed doctors of medicine and osteopathy practicing medicine or surgery in the review area; or, if the organization does not demonstrate that it is composed of at least 20 percent of the licensed doctors of medicine and osteopathy practicing medicine or surgery in the review area, then the organization must demonstrate in its statement of interest, through letters of support from physicians or physician organizations, or through other means, that it is representative of the area physicians.

2. Physician access organization.

(i) The organization must have available to it, by arrangement or otherwise, the services of a sufficient number of licensed doctors of medicine or osteopathy practicing medicine or surgery in the review area to assure adequate peer review of the services provided by the various medical specialties and subspecialties.

(ii) The organization must not be a health care facility, health care facility association, or health care facility affiliate.

(iii) An organization meets the requirements of A.2.i. and A.2.ii. if it demonstrates that it has available to it at least one physician in every generally recognized specialty; and has an arrangement or arrangements with physicians under which the physicians would conduct review for the organization.

B. Have a consumer (that is, a Medicare beneficiary) on its governing board

If one or more organizations meet the above requirements, and submit statements of interest in accordance with this notice, HCFA will consider those organizations to be potential sources for the contracts (identified above) that are expiring on October 1, 1988. These organizations will be furnished with an RFP and will be considered in full and open competition for the PRO contract to provide medical review services for that State.

III. Regulatory Impact Statement

This notice merely announces the dates when contracts with various out-of-State Peer Review Organizations expire, and the period of time in which in-State organizations may file statements of interest. This notice is not a proposed rule of a final rule issued after a proposal, and does not alter any regulations. Therefore, we have determined and the Secretary certifies that no analyses are required under Executive Order 12291, the Regulatory Flexibility Act (5 U.S.C. 601 through 612), or section 1102(b) of the Act.

IV. Information Collection Requirements

This notice contains information collection requirements that will be forwarded to the Executive Office of Management and Budget for review and approval under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

(Sec. 1153 of the Social Security Act (42 U.S.C. 1320c-2)) (Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance; and No. 13.774, Medicare—Supplementary Medical Insurance.)

Dated: February 26, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 88-5433 Filed 3-10-88; 8:45 am]

BILLING CODE 4120-01-M

Health Resources and Services Administration

Program Announcement and Proposed Study Areas Under Fellowship Eligibility Criteria for Nursing Post-baccalaureate Faculty Fellowship Grants

The Health Resources and Services Administration announces that applications for Fiscal Year 1988 Post-baccalaureate Faculty Fellowship grants will be accepted under the authority of section 830(b) of the Public Health Service Act, as amended by Pub. L. 99-92. Comments are invited on the additional areas of practice proposed for study under the fellowship eligibility criteria.

Approximately \$901,000 is being made available by the Department of Health and Human Services Appropriations Act, 1988. Of this amount, it is expected that 137 awards averaging \$6,552 will be made.

Purpose

Section 830(b) of the Public Health Service Act, as amended by the Nurse Education Amendments of 1985, Pub. L. 99-92, authorizes grants to public or private nonprofit schools of nursing to cover the costs of post-baccalaureate faculty fellowships to enable faculty to carry out studies in areas specified by the legislation or by the Secretary, Department of Health and Human Services.

Applicants

Public or private nonprofit schools of nursing are eligible to apply for grants to cover the cost of tuition and fees and, in some instances, stipends for currently employed faculty who would qualify for

a post-baccalaureate faculty fellowship. Only one application will be accepted from any one school of nursing. A school with separate departments or more than one type of program must submit a combined request. A school may request fellowship support for more than one faculty member.

Faculty Eligibility

To qualify for a fellowship faculty must:

- (1) Hold a baccalaureate degree.
- (2) Be employed by the applicant institution as a faculty member during the period of the awarded fellowship.
- (3) Be enrolled in a master's program in nursing or in a doctoral program which requires a substantial study, master's thesis or a doctoral dissertation, and anticipate meeting master's or doctoral degree requirements by August 31, 1989 or sooner.

(4) Undertake a reported study, thesis or dissertation focusing on:

- a. An investigation of cost-effective alternatives to traditional health care modalities, with special attention to the needs of at-risk populations, such as the elderly, premature infants, physically and mentally disabled individuals, and ethnic and minority groups; or
- b. Examination of nursing interventions that result in positive outcomes in health status, with attention to interventions which address family violence, drug and alcohol abuse, the health of women, adolescent care, and disease prevention; or

c. Factors within the practice setting associated with retention of nursing personnel; or

d. Acute and long-term nursing care of patients with infectious diseases, particularly illness caused by the human immunodeficiency virus (HIV).

The subject areas (a) and (b) are specified by the legislation. The subject areas (c) and (d) have been proposed for this grant cycle because they represent national health problems considered by the Secretary to require investigation.

(5) Be licensed to practice as a registered nurse in a State.

Funding Preference

A funding preference will be given to those schools that have been successful in recruiting or retaining minority faculty. The Department believes that continued efforts must be made to increase the number of minority faculty and students in schools of nursing.

Proposed Study Areas Under Fellowship Eligibility Criteria

The Secretary has proposed designation of two additional study

areas, thus expanding the fellowship eligibility criteria. These study areas include:

- An examination of factors within the practice setting associated with retention of nursing personnel; and
- Investigations dealing with acute and long term care of patients with infectious diseases, particularly illness caused by human immunodeficiency virus (HIV).

Interested persons are invited to comment on these additional study areas for fellowship eligibility. Normally, the comment period would be 60 days. However, due to the need to implement any changes for the Fiscal Year 1988 award cycle, this comment period has been reduced to 30 days. All comments received on or before April 11, 1988, will be considered before the final designated study areas of nursing practice are established. No funds will be allocated or final selections made until a final notice is published stating whether the designated study areas of nursing practice will be applied.

Written comments should be addressed to: Director, Division of Nursing, Bureau of Health Professions, Health Resources and Service Administration, Parklawn Building, Room 5C-26, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Nursing, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

Application Deadline

One review cycle will be held annually for Post-baccalaureate Faculty Fellowship grant applications. To receive consideration applications must meet the deadline of April 29, 1988. Applications shall be considered as meeting the deadline if they are either:

- (1) Received on or before the deadline, or
- (2) Postmarked on or before the deadline date, and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

The standard application form and general instructions, Form PHS 6025-1, HRSA Competing Training Grant Application and supplement for this program have been approved by the Office of Management and Budget.

The OMB clearance number is 0915-0060.

Requests for application materials should be directed to: Grants Management Officer (A-23), Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C-22, 5600 Fishers Lane, Rockville, Maryland 20857. Telephone: (301) 443-6915.

For technical assistance and other information regarding this program, contact: The Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 5C-26, 5600 Fishers Lane, Rockville, Maryland 20857. Telephone: (301) 443-6333.

This program is listed at 13.147 in the *Catalog of Federal Domestic Assistance* and is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR Part 100).

Dated: February 9, 1988.

John H. Kelso,

Acting Administrator.

[FR Doc. 88-5372 Filed 3-10-88; 8:45 am]

BILLING CODE 4160-15-M

Pediatric Acquired Immune Deficiency Syndrome (AIDS) Health Care Demonstration Projects

AGENCY: Health Resources and Services Administration, PHS, DHHS.

ACTION: Notice of availability of funds.

SUMMARY: The Bureau of Maternal and Child Health and Resources Development (BMCHRD), Health Resources and Services Administration (HRSA) announces that Fiscal Year 1988 funds are available for grants to fund projects demonstrating strategies and innovative models for intervention in pediatric AIDS and coordination of services for children and women of child-bearing age with HIV infection, AIDS or other related conditions, or those at risk for developing HIV infection and its consequences. Funds were appropriated for this purpose by Pub. L. 100-202.

DATE: The deadline for receipt of grant applications is May 5, 1988. Applications shall be considered as meeting the deadline if they are either: (1) Received by the Grants Management Office at the address below on or before the deadline date, or (2) postmarked on or before the deadline date, and received in time for submission to the review group. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private

metered postmarks shall not be acceptable as proof of timely mailing.

FOR FURTHER INFORMATION CONTACT: Additional information relating to technical and program issues may be obtained from John J. Hutchings, M.D., Division of Services for Children with Special Health Needs, BMCHRD, Parklawn Building, Room 6-40, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-2170.

Grant applications and additional information regarding business, administrative or fiscal issues related to the awarding of grants under this notice may be requested from Glenna Wilcom, Grants Management Specialist, BMCHRD, Parklawn Building, Room 9-21, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-6745.

The original and two (2) copies of the applications must be submitted to Ms. Wilcom.

SUPPLEMENTARY INFORMATION:

Program Background and Objectives

Through December 28, 1987, 49,600 cases of AIDS have been reported to the Centers for Disease Control (CDC). Of these, 737 have been infants and children 0-12 years of age and 203 are adolescents 13-19 years of age.

Approximately one half of the total of 940 cases in this pediatric population have died. The PHS predicts a nearly 350% increase in pediatric AIDS by 1991 to 3,000 cases.

The cost of providing a full range of services for the pediatric population with AIDS is expected to be high. These expected high costs largely reflect higher daily inpatient hospital rates for children and the long periods of hospitalization these children often experience. Comprehensive ambulatory care and community-based services, which these demonstration programs will encourage, are expected to reduce these high costs.

The pediatric AIDS projects are designed to further coordinate services for children and women of child-bearing age with HIV infection, AIDS or related conditions, or those at risk for developing infection and its consequences. Other PHS AIDS activities, the funding of which totals \$931 million in FY 1988, are expected to be enhanced through the funding of these projects.

Purpose

It is generally recognized that there is a need for development of strategies and innovative models for the care of pediatric AIDS patients through a case management approach, which emphasizes service delivery in outpatient and community settings. The

Pediatric AIDS Health Care Demonstration program is expected to initiate solutions to a broad range of critical problems arising from the AIDS crisis. The projects are intended to (1) demonstrate effective ways to prevent infection, especially through the reduction of perinatal transmission; (2) develop community-based, family centered, coordinated services for infected infants and children; and (3) develop programs to reduce the spread of the HIV infection to vulnerable populations of young people.

The demonstration projects to be carried out with these grants are intended to serve as models for other communities, and to identify the range of resources needed to provide appropriate, humane, and effective care to pediatric AIDS patients. These grants will be awarded to support demonstration projects which are designed to build on existing resources or networks to reach and provide health care and supportive services to women and children most at-risk. These projects will be developed in communities with varying degrees of impact from pediatric AIDS, and will focus on local capacity-building, making maximum use of all available public and private resources.

Availability of Funds

A total of \$4.435 million is available to be expended by grantees during project periods lasting from one to three years to support Pediatric AIDS Health Care Demonstration projects. It is anticipated that 10 to 20 demonstration grants will be made, depending on demonstrated need.

Collaboration/Coordination with Other AIDS Programs

Grantees supported by HRSA will be expected to coordinate their projects with other Federal, State, and local programs concerned with AIDS, including, but not limited to: (1) CDC AIDS activities; (2) Community Health Centers and Migrant Health Centers; (3) Medicaid; (4) Title V Programs: Maternal and Child Health Services Block Grants, Maternal and Child Health Hemophilia Services Projects, and other relevant SPRANS grants under Title V; (5) HRSA AIDS Service Demonstration Grants: Grants have been made in 13 metropolitan areas and are designed to support the organization of systems of care for people with HIV-related conditions which will identify unmet service needs and take measures to meet those needs; provide optimal integration of community resources through effective coordination; ensure a continuity of services through effective case management, and reduce the

overall cost of providing medical services for people with AIDS by providing alternatives to hospital care; (6) the education and outreach programs of the National Institute on Drug Abuse, especially those concerned with IV drug users, their sexual partners, and prostitutes; (7) HRSA Education and Training Centers Grants; (8) grants concerned with mothers and children funded by the National Institute of Child Health and Human Development; (9) the clinical drug trials or other relevant research conducted by other institutes of the National Institutes of Health; and, (10) discretionary grants by the Office of Human Development Services to demonstrate innovative approaches to providing child welfare services for infants with AIDS.

To the maximum extent possible, the Pediatric AIDS Health Care Demonstration program grantees also will be expected to work closely with community-based AIDS service organizations and with the activities supported by the Robert Wood Johnson Foundation Service Demonstration Grants, the National Hemophilia Foundation, or other foundations and organizations.

Eligible Applicants

Public and private entities, nonprofit and for-profit, are eligible to apply for these grant awards. Eligible entities include public or private hospitals, university medical centers, State or local health departments, or consortia of health care and community organizations which can develop Pediatric AIDS Health Care Demonstration projects.

Review and Evaluation Criteria

Grant applications will be reviewed and rated by an objective review committee according to each applicant's ability to demonstrate the most effective ways of organizing services and support to children and women of childbearing age with HIV infection, AIDS or AIDS-related conditions or those at-risk for developing infection and its consequences. More detailed information on the review and evaluation criteria may be found in the grant application kit.

Allowable Costs

The basis for determining the allowability and allocability of costs charged to PHS grants is set forth in 45 CFR Part 74, subpart Q. The five separate sets of cost principles prescribed for grant recipients are: OMB Circular A-87 for State and local governments; OMB Circular A-21 for

institutions of higher education; 45 CFR Part 74, Appendix E for hospitals; OMB Circular A-122 for nonprofit organizations; and 48 CFR chapter 1, subpart 31.2 for for-profit (commercial) organizations.

Reporting Requirements

A successful applicant under this notice will submit reports in accordance with the provisions of the general regulations which apply under 45 CFR Part 74, subpart J—Monitoring and Reporting of Program Performance.

Executive Order 12372

The Pediatric AIDS Health Care Demonstration program has been determined to be a program which is subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs, as implemented by 45 CFR Part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application packages to be made available under this notice (Form PHS 5161-1 with revised facesheet HHS Form 424 approved under OMB 0348-0006) will contain a listing of States which have chosen to set up such a review system and will provide a point of contact in the States for the review. Applicants should promptly contact their State single point of contact (SPOC) and follow their instructions prior to the submission of an application. The SPOC has 60 days after the application deadline to submit its review comments.

The OMB Catalog of Federal Domestic Assistance number for the Pediatric AIDS Health Care Demonstration program is 13.153.

Date: February 9, 1988.

John H. Kelso,

Acting Administrator.

[FR Doc. 88-5434 Filed 3-10-88; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health

National Cancer Institute; Board of Scientific Counselors, Division of Cancer Biology and Diagnosis; Open Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, Division of Cancer Biology and Diagnosis, National Cancer Institute, May 31, 1988, Building 31C, Conference Room 9, National Institutes of Health, Bethesda, Maryland 20892.

The entire meeting will be open to the public on May 31 from 8:30 a.m. to adjournment for concept review of proposed NCI research projects. Attendance by the public will be limited to space available.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide summary minutes of the meeting and roster of committee members.

Dr. Ihor J. Masnyk, Deputy Director, Division of Cancer Biology and Diagnosis, National Cancer Institute, Building 31, Room 3A03, National Institutes of Health, Bethesda, Maryland 20892 (301/496-3251) will provide substantive program information.

Dated: March 2, 1988.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 88-5361 Filed 3-10-88; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

National Toxicology Program (NTP) Board of Scientific Counselors Meetings to Review Draft NTP Technical Reports

I. Meeting of April 18 and 19, 1988

Pursuant to Pub. L. 92-463, notice is given of the next meeting of the NTP Board of Scientific Counselors Technical Reports Review Subcommittee and associated *ad hoc* Panel of Experts (*Peer Review Panel*) on April 18 and 19, 1988, in the Conference Center, Building 101, South Campus, National Institute of Environmental Health Sciences, 111 Alexander Drive, Research Triangle Park, North Carolina. The meeting will begin at 9:00 a.m. on both days and is open to the public. The primary agenda topic is the peer review of draft Technical Reports of long-term toxicology and carcinogenesis studies from the National Toxicology Program.

Tentatively scheduled to be peer reviewed on April 18 and 19 are draft technical reports of studies on the following chemicals, listed alphabetically, along with Chemical Abstracts Service registry numbers, responsible staff scientists with telephone numbers, NTP report numbers, uses, routes of administration, exposure levels used in the chronic studies, and tentative levels of evidence of carcinogenic activity (see table below). All studies were done using Fischer 344 rats and B6C3F₁ mice unless noted. For the first time, levels of evidence of carcinogenic activity proposed by NTP staff are included to provide more information in advance of the meeting. The order of presentation will be made available at a later date.

Chemical name/CAS No.	Staff scientist	TR No.	Use/Route	Exposure levels	Levels of evidence*
p-Chloroaniline, Hydrochloride, 106-47-8.	R. Chhabra, 919-541-3386	351	DYE/GAV	R:0,2,6,18; M:0,3,10,30 MG/KG...	MR:CE (spleen), FR:EE (spleen, adrenal gland), MM:SE (liver, spleen), FM:NE.
2,4-Dichlorophenol, 120-83-2	R. Melnick, 919-541-4142	353	INTR/FEED	FR:0,2500,5000; MR and M:0,5000,10,000 PPM.	MR:NE, FR:NE, MM:NE, FM:NE.
Furosemide, 54-31-9	J. Bucher, 919-541-4532	356	PHAR/FEED	R:0,350,700; M:0,700,1400 PPM.	MR:EE (kidney, brain), FR:EE (thyroid gland), MM:NE, FM:SE (mammary gland).
Hydrochlorothiazide, 58-93-5	J. Bucher, 919-541-4532	357	PHAR/FEED	R:0,250,500, 2000; M:0, 2500, 5000 PPM.	MR:EE (zybal gland), FR:NE, MM:SE (liver), FM:NE.
d-Limonene, 5989-27-5	W. Jameson, 919-541-4096	347	FOOD/GAV	FR:0,300,600;MR: 0, 75, 150; FM: 0, 500, 1000; MM: 0,250,500 MG/KG.	MR:CE (kidney), FR:NE, MM:NE, FM:NE.
8-Methoxypsoralen, 298-81-7	J. Dunnick, 919-541-4811	359	PHAR/GAV	R:0,37,5, 75 MG/KG	MR:CE (kidney, zybal gland), FR:NE.
Ochratoxin A, 303-47-9	G. Boorman, 919-541-3440	358	NATL/GAV	R:0,21,70, 210 MG/KG	MR:CE (kidney), FR:CE (kidney, mammary gland).
Pentachlorophenol, Technical, 87-86-5.	E. McConnell, 919-541-3267	349	PEST/FEED	M:0,100,200 PPM	MM:CE (adrenal gland, liver), FM:SE (liver).

Chemical name/CAS No.	Staff scientist	TR No.	Use/Route	Exposure levels	Levels of evidence*
Pentachlorophenol, Dowicide, EC-7, 67-86-5.	E. McConnell, 919-541-3267	349	PEST/FEED	M:0,100,200,600 PPM	MM:CE (adrenal gland, liver), FM:CE (adrenal gland, liver).
Tribromomethane (Bromoform), 75-25-2.	R. Melnick, 919-541-4142	350	INTR/GAV	R and FM: 0,100,200; MM:0,50, 100 MG/KG.	MR:SE (large intestine), FR:CE (large intestine), MM:NE, FM:NE.

*NOTE: The proposed results indicated are to be considered tentative until reviewed, discussed, and approved at the Peer Review Panel meeting, April 18-19, 1988.

Abbreviations Used:

Categories of Evidence of Carcinogenic Activity: CE=clear evidence; SE=some evidence; EE=equivocal evidences; NE=no evidence.

Species: MR=male rats, FR=female rats, MM=male mice, FM=female mice.

Use: Primary Use Category: DYE Used as or in the Manufacture of Dyes, Inks and Pigments; FOOD Food and Food Additives; INTR Chemical Intermediate or Catalyst; NATL Naturally Occurring Substances; PEST Pesticides; PHAR Pharmaceuticals.

Route: Route of Administration: FEED Available in Diet; GAV Gavage.

Further, we plan to present to the Peer Review Panel additional data from the toxicology and carcinogenesis studies on two chemicals, dichlorvos and nitrofurantoin, for which draft Technical Reports were reviewed and approved by the Panel on July 14, 1987. Additional data on dichlorvos (CAS No. 62-73-7, TR No. 342) will include: (1) Erythrocyte and plasma cholinesterase activities following short-term gavage administration over a range of doses to F344-rats and B6C3F₁ mice of both sexes; (2) incidences of pancreatic acinar cell adenomas after additional sectioning of pancreata from F344 rats on the two-year studies; and (3) effects of dichlorvos administration on growth of transplantable rat mononuclear cell leukemias in male F344 rats. Additional data on nitrofurantoin (CAS No. 67-20-9, TR No. 341) pertain to incidences of

renal tubular cell neoplasms after additional sectioning of kidneys from control and treated male F344 rats on the two-year studies.

Also, there will be a brief presentation on the NTP's proposed plans for the toxicological evaluation of ozone.

Persons wanting to make a formal presentation regarding a particular Technical Report should notify the Executive Secretary and provide a written copy in advance of the meeting so copies can be made and distributed to all Panel members, staff, and attendees.

II. Meeting of August 1 and 2, 1988

The meeting of the Peer Review Panel scheduled for August 1 and 2, 1988, has been cancelled.

III. Announcement of NTP Draft Technical Reports Projected for Public Peer Review From October 1988 Through October 1989

To earlier inform the public and allow interested parties to comment or obtain information on toxicology and carcinogenesis studies prior to public peer review, the NTP again publishes in the *Federal Register* a current listing of draft Technical Reports projected for evaluation by the Peer Review Panel during their four meetings after April 18-19, 1988, from October 1988 through October 1989. The listing will be updated with announcements in the *Federal Register* approximately twice a year.

The attachment gives draft Technical Reports of studies on chemicals listed alphabetically within known or estimated month of reviews and includes Chemical Abstracts Service registry numbers, responsible staff scientists with telephone numbers, NTP report numbers (if assigned), uses; species, routes of administration, and exposure levels used in the chronic studies.

Those interested in having more information about any of the studies listed in this announcement, or wanting to provide input, should contact the particular NTP staff scientist as early as possible by telephone or by mail to: NIEHS, P.O. Box 12233, Research Triangle Park (RTP), North Carolina 27709. The staff scientists would welcome receiving toxicology and carcinogenesis data from completed, ongoing or planned studies by others as well as current production data, human exposure information, and use and use patterns.

The Executive Secretary, Dr. Larry G. Hart, NTP, P.O. Box 12233, RTP, North Carolina 27709, telephone (919-541-3971), FTS (629-3971), will furnish final agendas, a roster of subcommittee and panel members, and other program information prior to a meeting, and summary minutes subsequent to a meeting.

Dated: March 4, 1988.

David P. Rall,

Director, National Toxicology Program.

NTP TOXICOLOGY AND CARCINOGENESIS STUDIES ON CHEMICALS PROJECTED FOR PEER REVIEW

Chemical name/CAS No.	Staff scientist	NTP TR No.	Use	Spec	Route	Exposure levels
Chemicals tentatively scheduled for peer review, 10/03/88						
Dimethoxane/828-00-2	Dr. K. Abdo, 919-541-7819	354	PNT	RM	GAV	MR: 0, 62.5, 125, FR: 0, 125, 250, M: 0, 250, 500 MG/KG.
N,N-dimethylaniline/121-69-7	do.....	360	SOLV	RM	GAV	R: 0, 3, 30, M: 0, 15, 30 MG/KG.
Diphenhydramine hydrochloride/147-24-0	Dr. R. Melnick, 919-541-4142	355	PHAR	RM	FEED	MR: 0, 313, 625, FR&M: 0, 156, 313 PPM.
Ethyl bromide/74-96-4	Dr. J. Roycroft, 919-541-3627	363	INTR	RM	INHAL	R&M: 0, 100, 200, 400 PPM.
Ethyl chloride/75-00-3	do.....	346	INTR	RM	INHAL	R&M: 0, 15000 PPM.
Hexachloroethane/67-72-1	Dr. W. Eastin, 919-541-7941	361	SOLV	R	GAV	MR: 0, 10, 20, FR: 0, 80, 160 MG/KG.
Hydroquinone/123-31-9	Dr. F. Kari, 919-541-2926		REAG	RM	GAV	R: 0, 25, 50, M: 0, 50, 100 MG/KG.

NTP TOXICOLOGY AND CARCINOGENESIS STUDIES ON CHEMICALS PROJECTED FOR PEER REVIEW—Continued

Chemical name/CAS No.	Staff scientist	NTP TR No.	Use	Spec	Route	Exposure levels
Iodinated glycerol/5634-39-9	Dr. J. French, 919-541-7790	340	PHAR	RM	GAV	FR&FM: 0, 62, 125, MR&MM: 0, 125, 250 MG/KG.
N-methylolacrylamide/924-42-5	Dr. J. Bucher, 919-541-4532	352	COSM	RM	GAV	R: 0, 6, 12, M: 0, 25, 50 MG/KG.
Pentaerythritol tetranitrate/78-11-5	do		PHAR	RM	FEED	FR: 0, 6200, 12500, MR&M: 0, 25000, 50000 PPM.
Rhodamine 6G/989-38-8	Dr. J. French, 919-541-7790		DYE	RM	FEED	R: 0, 120, 250, FM: 0, 500, 1000, MM: 0, 1000, 2000 PPM.
Vinyl cyclohexene diepoxide/106-87-6	Dr. R. Chhabra, 919-541-3386	382	INTR	RM	SP	R: 0, 50, 100, M: 0, 25, 50, 100 MG/ML.

Chemicals tentatively scheduled for peer review, 2/89

Allyl glycidyl ether/106-92-3	Dr. G. Boorman, 919-541-3440		SOLV	RM	INHAL	R&M: 0, 5, 10 PPM.
Benzofuran/271-89-6	Dr. R. Irwin, 919-541-3340		INTR	RM	GAV	FR&MM: 0, 60, 120, MR: 0, 30, 60, FM: 0, 120, 240 MG/KG.
Chloroacetophenone (CN)/532-27-4	Dr. R. Melnick, 919-541-4142		MLTR	RM	INHAL	R: 0, 1, 2, M: 0, 2, 4, MG/M3.
Epinephrine hydrochloride/55-31-2	Dr. D. Dietz, 919-541-2272		PHAR	RM	INHAL	R: 0, 1.5, 5.0, M: 0, 1.5, 3.0 MG/M3.
Alpha-methylbenzyl alcohol/98-85-1	Dr. M. Dieter, 919-541-3368		COSM	RM	GAV	R&M: 0, 375, 750 MG/KG.
Nalidixic acid/389-08-2	Dr. J. French, 919-541-7790		PHAR	RM	FEED	R&M: 0, 2000, 4000 PPM.
Phenylbutazone/50-33-9	Dr. F. Kari, 919-541-2926		PHAR	RM	GAV	R: 0, 50, 100, M: 0, 150, 300 MG/KG.
Toluene (nitration grade)/108-88-3	Dr. J. Huff, 919-541-3780		INTR	RM	INHAL	R: 0, 600, 1200, M: 0, 120, 600, 1200 PPM.

Chemicals tentatively scheduled for peer review, 6/89

Benzaldehyde/100-52-7	Dr. J. Bishop, 919-541-1876		INTR	RM	GAV	R&MM: 0, 200, 400, FM: 0, 300, 600 MG/KG.
D-carvone/2244-16-8	Dr. J. Roycroft, 919-541-3627		COSM	RM	GAV	R: 0, 175, 375, M: 0, 375, 750 MG/KG.
O-chlorobenzalmononitrile (CS)/2698-41-1	Dr. K. Abdo, 919-541-7819		MLTR	RM	INHAL	R: 0, 0.75, 25, 75, M: 0, 75, 1.5 MG/M3.
3,3'-dimethoxybenzidine/119-90-4	Unassigned		DYE	R	WATER	R: 0, 80, 170, 330 PPM.
Ethylene thiourea/96-45-7	Dr. R. Chhabra, 919-541-3386		PEST	RM	FEED	R: 0, 25, 83, 250, M: 0, 100, 333, 1000 PPM.
Hexamethyl-p-rosaniline chloride/548-62-9	Dr. N. Littlefield (NCTR), 501-541-4551		PHAR	RM	FEED	0, 100, 300, 600 PPM.
Succinic anhydride/108-30-5	Dr. R. Melnick, 919-541-4142		INTR	RM	GAV	R: 0, 50, 100 MG/KG, MM: 0, 50, 100, FM: 0, 5, 10 MG/KG.
Tetranitromethane/509-14-8	Dr. J. Bucher, 919-541-4532		ENVH	RM	INHAL	R: 0, 2, 5, M: 0, 0.5, 2 PPM.

Chemicals tentatively scheduled for peer review 10/89

Amphetamine sulfate/60-13-9	Dr. J. Dunnick, 919-541-4811		PHAR	RM	FEED	0, 20, 100 PPM.
3,3'-dimethylbenzidine/119-93-7	Unassigned		DYE	R	WATER	0, 30, 70, 150 PPM.
Diphenylhydantoin (phenytoin)/57-41-0	Dr. R. Chhabra, 919-541-3386		PHAR	RM	FEED	R: 0, 240, 800, 2400, MM: 0, 30, 100, 300, FM: 0, 60, 200, 600 PPM.
Glycidol/556-52-5	Dr. R. Irwin, 919-541-3340		INTR	RM	GAV	R: 0, 38, 75, M: 0, 25, 50 MG/KG.
Probenecid/57-66-9	Dr. S. Stefanski, 919-541-5739		PHAR	RM	GAV	0, 100, 400 MG/KG.
Resorcinol/108-46-3	Dr. R. Irwin, 919-541-3340		INTR	RM	GAV	MR&M: 0, 112, 225, FR: 0, 50, 100, 150 MG/KG.
Sodium azide/26628-22-8	Dr. K. Abdo, 919-541-7819		PHAR	R	GAV	0, 5, 10 MG/KG.
Tris (2-chloroethyl) phosphate/115-96-8	Dr. H. Matthews, 919-541-3252		FLAM	RM	GAV	R: 0, 44, 88, M: 0, 175, 350 MG/KG.
Vinyl toluene/25013-15-4	Dr. G. Boorman, 919-541-3440		SOLV	RM	INHAL	R: 0, 100, 300, M: 0, 10, 25 PPM.

Abbreviations used:

USE Primary Use Category: COSM Cosmetics, DYE Used as or in the Manufacture of Dyes, Inks and Pigments, ENVH Environmental (Air/Water) Pollutants, FLAM Flame Retardants, FOOD Food and Food Additives, INTR Chemical Intermediate or Catalyst, MLTR Used for Military or Policing Purposes, NATL Naturally Occurring Substances, PEST Pesticides, General or Unclassified, PHAR Pharmaceuticals, PNT Paint Ingredient, REAG Laboratory Reagent, SOLV Vehicles and Solvents.

ROUTE Route of Administration: FEED Oral in Feed, GAV Oral, Gavage, INHAL Inhalation, SP Skin Paint, WATER Oral with Water.

SPEC Species: R=Rats, M=Mice.

[FR Doc. 88-5362 Filed 3-10-88; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**Office of Administration****[Docket No. N-88-1785]****Submission of Proposed Information Collections to OMB****AGENCY:** Office of Administration, HUD.**ACTION:** Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: March 7, 1988.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Cost Certification Forms
Office: Housing

Description of the Need for the Information and Its Proposed Use: The associated forms are necessary to allow HUD to make an analysis of the cost certifications required by HUD regulations. These requirements were instituted in the Housing Act of 1954 and require that the mortgagor certify to "actual cost."

Form Number: FHA-2205, FHA-2328, and HUD-92330A

Respondents: Businesses or Other For-Profit and Non-Profit Institutions

Frequency of Respondents: On Occasion

Estimated Burden Hours: 13,280

Status: Reinstatement

Contact:

Felix Coward, HUD, (202) 755-5743

John Allison, OMB, (202) 395-6880

Date: March 7, 1988.

Proposal: Application for Coinsurance Benefits (Multifamily)—State Agencies

Office: Administration

Description of the Need for the Information and Its Proposed Use:

The information is needed for the state agencies to claim insurance benefits on defaulted loans. HUD uses the information to compute the claim settlement due the state agency.

Form Number: HUD-426, 426A, 426.1, and 427

Respondents: State of Local Governments

Frequency of Respondents: On Occasion

Estimated Burden Hours: 30

Status: Extension

Contact:

Alice P. Thomas, HUD, (202) 755-7523

John Allison, OMB, (202) 395-6880

Date: March 7, 1988.

Proposal: Application for Mortgage Insurance

Office: Housing

Description of the Need for the Information and Its Proposed Use:

This information is needed by HUD to analyze appraisals, costs, architecture, and mortgage credit to determine if a project mortgage should be insured. The information is used by HUD to try to deter substantial losses to the HUD insurance fund.

Form Number: HUD-93201.

Respondents: Businesses or Other For-Profit

Frequency of Respondents: On Occasion

Estimated Burden Hours: 91

Status: Reinstatement

Contact:

William H. Bornscheuer, HUD, (202)

755-6223

John Allison, OMB, (202) 395-6880

Date: March 3, 1988.

Proposal: Indian Housing Program:
Revised Consolidated Program
Regulations (FR-2208)

Office: Public and Indian Housing

Description of the Need for the Information and Its Proposed Use:

Under 24 CFR 905.485, Indian Housing Authorities (IHAs) may request conversion of rental units into homeownership by submitting an application to HUD for approval. Under 24 CFR 905.465, IHAs attempting to evict/terminate mutual-help homebuyers leases for noncompliance with lease-purchase contracts are instructed to document all meetings with the evictee. This information is needed and used to avoid legal repercussions.

Form Number: None

Respondents: Non-Profit Institutions

Frequency of Respondents: On Occasion

Estimated Burden Hours: 1,040

Status: New

Contact:

Patricia S. Arnaudo, HUD, (202) 755-1015

John Allison, OMB, (202) 395-6880

Dated: March 3, 1988.

Proposal: Financial Assistance Program of the Solar Energy and Energy Conservation Bank

Office: Community Planning and Development

Description of the Need for the Information and Its Proposed Use:

Under the Solar Energy Conservation Bank Act, States are required to submit semi-annual reports providing program information to the Internal Revenue Service and to Congress. The information is used to determine the eligibility and the amount of assistance an applicant may receive by State agencies administering the program. The information is also used to detect fraud and mismanagement.

Form Number: None

Respondents: Individuals or Households, State or Local Governments, and Non-Profit Institutions

Frequency of Respondents: Semi-Annually and Annually

Estimated Burden Hours: 3,000

Status: Reinstatement

Contact:

Walter R. Preysnar, HUD, (202) 755-

6300

John Allison, OMB, [202] 395-6880
Date: February 11, 1988.

[FR Doc 88-5413 Filed 3-10-88; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT-060-08-4333-11]

Environmental Assessment; San Rafael Swell, UT

AGENCY: Bureau of Land Management, Moab, Utah, Interior.

ACTION: Notice of 30-day comment period on two draft programmatic environmental assessments analyzing proposed and anticipated commercial recreation guide service within wilderness study areas.

SUMMARY: The first draft environmental assessment has been prepared in response to applications for commercial special recreation permits to conduct guided horseback trips in the San Rafael Swell within Emery County. Trips would extend into the Devil's Canyon (UT-060-025), Sid's Mountain Complex (UT-060-023 & 023A), Muddy Creek (UT-060-007), Crack Canyon (UT-060-028A), and Mexican Mountain (UT-060-054) wilderness study areas. This environmental assessment also considers proposed commercial tours by vehicle in the San Rafael Swell outside of wilderness study areas.

The second draft environmental assessment has been prepared in anticipation of receiving additional applications for commercial special recreation permits to conduct commercial hunting guide service in the portion of the Book Cliffs administered by Price River Resource Area within Carbon and Emery counties. Trips would extend into the Turtle Canyon (UT-060-067), Desolation Canyon (UT-060-068A), and Jack Canyon (UT-060-068C) wilderness study areas. All hunter base camp facilities would be located on private land. This document is being released a second time to provide an additional opportunity for public comment.

Interested parties may comment upon these environmental assessments for a period of 30 days from the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 900 N. 700 E., Price, Utah 84501 (Phone 801-637-4584).

Date: March 3, 1988.

Gene Nodine,
District Manager.

[FR Doc. 88-5327 Filed 3-10-88; 8:45 am]

BILLING CODE 4310-DQ-M

[OR110-6310-10 OR 910-GP8-088]

Medford District Advisory Council; Meeting

Notice is hereby given in accordance with Pub. L. 99-463 that a meeting of the Bureau of Land Management, Medford District Advisory Council will be held April 5, 1988.

On April 5, the meeting will begin at 9:00 a.m., in the Oregon Room of the Bureau of Land Management Office at 3040 Biddle Road, Medford, Oregon. The agenda for the meeting will include: discussion of the 1987 fire season and the outlook for 1988. Other items include an assessment of the Medford District's public involvement activities, blocking up land ownerships, discussion of the District's protest and appeal procedure, use of herbicides, status reports on District reorganization, planning for the 1990s and areas of critical environmental concern and court actions brought against the District.

Persons interested in making oral statements during the Council meeting, may do so following conclusion of the Council's other agenda items, or written statements may be submitted for the Council's consideration.

Anyone wishing to make an oral statement at the Council meeting must notify the District Manager, Bureau of Land Management, 3040 Biddle Road, Medford, Oregon 97504, by close of business April 4, 1988. Depending on the number of persons wishing to make oral statements, a per-person time limit may be established by the District Manager.

Summary minutes of the Council Meeting will be maintained in the District Office and be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Date Signed: March 4, 1988.

David A Jones,
District Manager.

Date Signed: March 4, 1988.

[FR Doc. 88-5329 Filed 3-10-88; 8:45 am]

BILLING CODE 4310-33-M

[UT-080-08-4212-13]

Realty Action; Private Exchange of Public Lands in Uintah County, UT

The following described lands have been determined to be suitable for a surface only private exchange under

section 206 of the Federal Land Policy and Management Act to 1976, 43 U.S.C. 1716. The federal lands that have been identified as suitable for disposal by exchange are:

Salt Lake Meridian, Utah

T. 1 S., R. 23 E.,
Section 19; Lot 5.

Comprising 43.16 acres.

In exchange for these federal lands, the United States will acquire the surface estate of the following non-federal lands belonging to George Searle and Miles Searle:

Salt Lake Meridian, Utah

T. 3 S., R. 23 E.,
Section 1: SW ¼ NW ¼.

Comprising 40 acres.

Upon publication of this notice, the federal lands are hereby segregated from appropriation under the public land laws, including the mining laws.

Lands to be transferred from the United States will be subject to the following reservations:

1. A reservation of a right-of-way for ditches and canals constructed by the authority of the United States in accordance with 43 U.S.C. 945.

2. All minerals with the right to prospect for, mine and remove the same under applicable laws and such regulations as the Secretary may prescribe.

For a period of 45 days from the date of the notice, interested parties may submit comments to the District manager, Vernal District Office, 170 South 500 East, Vernal, Utah 84078.

Dean L. Evans,
Assistant District Manager for Lands and Renewable Resources.

[FR Doc. 88-5330 Filed 3-10-88; 8:45 am]

BILLING CODE 4310-DQ-M

[ES-030-08-5101-YMKA; ES-00157-012; ES-37986]

Right-of-Way Grant; Hoosier National Forest and Camp Atterbury Military Reservation, IN

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Application for Right-of-Way Grant.

SUMMARY: As the lead agency for National Environmental Policy Act (NEPA) compliance, the Federal Energy Regulatory Commission, Department of Energy, in cooperation with Bureau of Land Management (BLM), Department of the Interior, Forest Service (FS), Department of Agriculture, and U.S. Army Corps of Engineers (ACOE),

Department of the Army; is preparing an environmental assessment (EA) of a proposed natural gas 16- and 20-inch diameter pipeline and related facilities in northern Kentucky and southern Indiana. The EA, when completed, will be the basis for BLM's right-of-way grant issuance decision relative to Federal land.

FOR FURTHER INFORMATION CONTACT: Duane Marti, Archeologist/Realty Specialist, Milwaukee District (BLM), P.O. Box 631, Milwaukee, Wisconsin, 53201-0631, or telephone (414) 291-4429.

SUPPLEMENTARY INFORMATION: Texas Gas Transmission Corporation (Texas Gas) has applied for a right-of-way grant across 10.3 miles of Hoosier National Forest and 11.3 miles of Camp Atterbury Military Reservation. The former area is located in Perry, Crawford, Orange, Jackson, and Brown Counties; while the latter area is located in Bartholomew and Johnson Counties. Texas Gas filed its application with BLM on February 29, 1988.

On February 13, 1987, Texas Gas applied to the Federal Energy Regulatory Commission (FERC) for a certificate of public convenience and necessity for the entire proposed pipeline. Shortly thereafter, Texas Gas initiated an environmental analysis of the proposed route. As a result of public involvement, Texas Gas later amended its application on September 4, 1987, to adopt a significant route modification affecting a portion of the final 45 miles of its original route.

Whereas the original route only crossed Federal lands administered by the Hoosier National Forest, (FS), the amended route also crossed Federal land administered by the Camp Atterbury Military Reservation, which is leased from the Department of Defense by the State of Indiana. When a proposed oil or natural gas pipeline crosses Federal lands administered by two or more Federal agencies, it becomes the responsibility of BLM to issue a right-of-way grant across the Federal lands pursuant to 43 CFR 2882.2-2. In this case, the proposed right-of-way will cross portions of the Hoosier National Forest and Camp Atterbury Military Reservation.

FERC has agreed to continue to be the lead agency for NEPA compliance on the proposed natural gas pipeline, including the proposed right-of-way. As the lead agency, FERC is preparing an EA of the proposed pipeline. BLM, FS, and ACOE (for Camp Atterbury) are participating in the preparation of the EA as cooperating agencies.

The EA, when completed, will be the basis for BLM's decisions. Those

decisions include: (1) Whether a Finding of No Significant Impacts is appropriate for the right-of-way grant, (2) If so, whether the right-of-way grant should be issued, and (3) If so, under what terms and conditions will the grant be issued.

Comments: Until April 15, 1988, interested parties may submit written comments on the proposed right-of-way grant to: District Manager, Milwaukee District, BLM, P.O. Box 631, Milwaukee, Wisconsin 53201-0631.

Bert Rodgers,

District Manager.

[FR Doc. 88-5342 Filed 3-10-88; 8:45 am]

BILLING CODE 4310-GJ-M

Fish and Wildlife Service

Intent to Prepare a Supplemental Environmental Impact Statement for the Wilderness Review of the Kenai National Wildlife Refuge

AGENCY: U.S. Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of intent.

SUMMARY: This notice advises the public that the Fish and Wildlife Service intends to prepare a Supplemental Environmental Impact Statement for the Wilderness Review of the Kenai National Wildlife Refuge Final Comprehensive Conservation Plan, Environmental Impact Statement, and Wilderness Review. The Kenai National Wildlife Refuge is located in southcentral Alaska. This notice is being furnished as required by the National Environmental Policy Act regulations to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the environmental impact statement. A public hearing on the supplemental impact statement will be held following release of the draft impact statement.

DATE: Written comments should be received by April 8, 1988.

A public hearing will be held during the public review and comment period on the Draft Supplemental Environmental Impact Statement on the Wilderness Review. The date and location of this hearing will be announced later.

ADDRESS: Comments should be addressed to: Regional Director, Attention: Bill Knauer; U.S. Fish and Wildlife Service; 1011 E. Tudor Road; Anchorage, Alaska 99503.

FOR FURTHER INFORMATION CONTACT: Bill Knauer, Resource Support; U.S. Fish and Wildlife Service; 1011 E. Tudor

Road; Anchorage, Alaska 99503; telephone (907) 786-3399.

SUPPLEMENTARY INFORMATION: This Supplemental Environmental Impact Statement on the Wilderness Review for the Kenai National Wildlife Refuge is being prepared to fulfill requirements of the Wilderness Act of 1964 and the Alaska National Interest Lands Conservation Act. The environmental review of the wilderness proposal will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended [42 U.S.C. 4371 et seq.], Council of Environmental Quality Regulations [40 CFR Parts 1500 through 1508], other appropriate federal regulations, and Fish and Wildlife Service procedures for compliance with those regulations. The five wilderness alternatives to be analyzed are the same as those in the Final Comprehensive Conservation Plan, Environmental Impact Statement, and Wilderness Review for the Kenai National Wildlife Refuge.

We estimate that the draft supplemental environmental impact statement will be made available to the public in May 1988.

Dated: March 1, 1988.

John P. Rogers,

Acting Regional Director.

[FR Doc. 88-5377 Filed 3-10-88; 8:45 am]

BILLING CODE 4310-55-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-278]

Certain Programmable Digital Clock Thermostats; Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a settlement agreement: Jameson Home Products, Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. §1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of

the initial determination. The initial determination in this matter was served upon the parties on March 3, 1988.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on, 202-252-1810.

Written Comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 500 E Street SW., Washington, DC 20436, no later than 10 days after publication of this notice in the Federal Register. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reason why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202-252-1805.

By order of the Commission.
Kenneth R. Mason,
Secretary.

Issued: March 3, 1988.

[FR Doc. 88-5340 Filed 3-10-88; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 1052(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

(A) 1. Parent Corporation and address of principal office. Aluminum Company of America, 1501 Alcoa Building, Pittsburgh, Pennsylvania 15219.

2. Wholly-owned subsidiaries which will participate in the operations and state of incorporation:

Advanced Closures, Inc., Delaware
Alcoa Defense Systems, Inc., Delaware
Alcoa Inter-America, Inc., Delaware
Alcoa Packaging Machinery, Inc., Delaware
Alcoa Recycling Company, Delaware
Alcoa Specialty Chemicals, Inc., Delaware
Alcoa Steamship Company, Inc., New York
American Powdered Metals Company, Delaware
Dalton Aluminum and Chemicals Company, Georgia
GR Holdings, Inc., Delaware
H-C Products Company, Delaware
Illinois Water Treatment Company, Delaware
Lancy International, Inc., Pennsylvania
Northwest Alloys, Inc., Delaware
Penn Way Transportation, Inc., Delaware
Permtech, Inc., Delaware
T.H.E. Tool Co., Inc., Colorado
The Stolle Corporation, Ohio
Tre Financial Corporation, California
Tifton Aluminum Company, Inc., Delaware

(B) 1. Parent corporation and address of principal office: Ashland Oil, Inc., 1000 Ashland Drive; Russell, KY 41114.

2. Wholly-owned subsidiaries which will participate in the operations and states of incorporation:

Subsidiary	Jurisdiction of incorporation
Ashland Chemical, Inc.	Delaware.
Ashland Development, Inc.	Delaware.
Ashland Ethanol, Inc.	Delaware.
Ashland Oil and Transportation Company.	Kentucky.
Ashland Petroleum, Inc.	Delaware.
Ashland Pipe Line Company	Ohio.
Inland Towing Company	Delaware.
Mid-Valley Supply Co.	Kentucky.
Southern Oil Company of New York, Inc.	New York.
Tri-State Marketing Services, Inc.	Delaware.
APAC—Alabama, Inc.	Delaware.
APAC—Arizona, Inc.	Delaware.
APAC—Arkansas, Inc.	Delaware.
APAC—Carolina, Inc.	Delaware.
APAC—Florida, Inc.	Delaware.
APAC—Georgia, Inc.	Delaware.
APAC, Inc.	Delaware.
APAC—Kansas, Inc.	Delaware.
APAC—Mississippi, Inc.	Delaware.
APAC—Oklahoma, Inc.	Delaware.
APAC—Tennessee, Inc.	Delaware.
APAC—Texas, Inc.	Delaware.
APAC—Virginia, Inc.	Delaware.
Reg X Condor, Inc.	Delaware.
Scurlock Oil Company	Kentucky.
TAP-CO, Inc.	North Carolina.
Algonquin Pipe Line Co.	Illinois.
Ohio River Pipe Line Company.	Delaware.
Owensboro-Ashland Company	Delaware.
SOCO Pipeline Company	Texas.
Transport Supply Company, Inc.	Texas.

Subsidiary	Jurisdiction of incorporation
Blanton Marine Corp.	Texas.
Rich Oil, Inc.	Delaware.
Drew Chemical Corporation	Delaware.
Warren Brothers Hauling, Inc.	Delaware.
Ig-Lo Transportation, Inc.	Delaware.
Tanner Southwest, Inc.	Arizona.
The Tanner Companies	Arizona.
RCT Company, Inc.	Arizona.
Western Equipment Company	Arizona.

(C) The parent corporation, and address of its principal office: Coleman Oil Co., Inc., P.O. Box 2009, Pikeville, KY 41501.

The wholly owned subsidiary which will participate in the operation is Coleman Trucking, Inc., which was incorporated in the Commonwealth of Kentucky.

(D) 1. Parent Corporation: Inland Container Corporation I, 151 N. Delaware Street, Indianapolis, IN 46206.

2. Directly or indirectly wholly-owned subsidiaries which will participate in the operations, and state of incorporation.

A. Anderson Box Company, Inc., Indiana
B. El Morro Corrugated Box Corporation, Delaware
C. El Morro Corrugated Box Corporation, de Puerto Rico
D. Indisc, Inc., Indiana
E. Inland Paper Company, Inc., Indiana
F. Inland Real Estate Investment, Inc., Indiana
G. Inland Rome, Inc., Delaware
H. Inland Orange, Inc., Delaware
I. Sabine River & Northern Railroad, Inc., Texas
J. Inland Container Corporation, Indiana

(E) Parent: International Paper, 6400 Poplar Avenue, Memphis, TN 38197

Wholly-Owned Subsidiaries

Name	State
1. American Central Corp.	MI
2. Anitec Image Technology	DE
3. Arvey Business Forms, Inc.	DE
4. Arvey Lamcote, Inc.	DE
5. Arvey Metals Fabrication, Inc.	DE
6. Bay Harbor Warehouse Corp.	FL
7. Bodcaw Co.	DE
8. Chisolm Development Corp.	ME
9. Crystal Products Corp.	DE
10. Crystal Valley Corp.	AR
11. Fiber Technology Corp.	DE
12. GCO Minerals Co.	TX
13. Hammermill Paper Co.	DE
14. Hastings Brook Improvement Co.	ME
15. International Box Co.	DE
16. International Logging Corp.	NY
17. International Mills, Inc.	DE
18. International Paper Australia Limited.	DE
19. International Paper Canada, Inc.	CN
20. International Paper Capitol Formation, Inc.	DE
21. International Paper Environment Protection, Inc.	DE
22. International Paper Gas Supply, Inc.	AR

Name	State
23. International Paper Investment Corp.	DE
24. International Paper Laminates, Inc.	DE
25. International Paper Pipeline Co.	MS
26. International Paper Professional Services Corp.	DE
27. International Paper Realty Corp.	DE
28. International Paper USA Ltd.	DE
29. International Pulp Sales Co.	DE
30. International Records Corp.	DE
31. IP Forest Resources Corp.	DE
32. IP Holdings Industries, Inc.	DE
33. IP Investment Holdings, Inc. Ltd.	DE
34. IP Petroleum Co., Inc.	DE
35. IP Southern Timberlands, Inc.	DE
36. IP Western Timberlands, Inc.	DE
37. Little Madawaska Improvement Co.	ME
38. Long-Bell Petroleum Co., Inc.	LA
39. Longview, Portland & Northern Railway Co.	WA
40. Magalloway River Improvement Co.	ME
41. Mattakeunk Stream Dam & Improvement Co.	ME
42. Musquacook Stream Dam & Improvement Co.	ME
43. Oniword Corp.	DE
44. Pacific Bleached Board Sales Corp.	DE
45. PAPCO Inc.	AL
46. Phillips Brook Improvement Co.	NH
47. Pineville Kraft Sales Co., Ltd.	DE
48. Pulp and Paper Sales Co., Ltd.	DE
49. Richmond Gravure, Inc.	VA
50. Samco, Inc.	NY
51. Saratoga Development Corp.	NY
52. Slaughter Industries Inc.	TX
53. Stecher-Traug-Schmidt Corp.	NY
54. Van Buren Lumbering and Manufacturing Co.	ME

(F) 1. Parent corporation and address of principal office: Bennett-Rogers Pipe Coating, Inc., 900 Kindelberger, Kansas City, Kansas 66115.

2. Wholly subsidiaries which will participate in the operations and the state of incorporation: Rota-Carrus Corporation, a Missouri corporation, 900 Kindelberger, Kansas City, Kansas 66115.

(G) 1. Parent Corporation: Texaco Inc., 2000 Westchester Avenue, White Plains, NY 10650 (Delaware)

2. Wholly-owned subsidiaries as follows:

- I. Texaco Refining and Marketing Inc., 1111 Rusk Avenue, Houston, TX 77052 (Delaware)
- II. Arbuckle Pipe Line Company, 1670 Broadway, Denver, CO 80202 (Delaware)
- III. Texaco Chemical Company, 4800 Fournace Place, Bellaire, TX 77401 (Delaware)
- IV. Texaco Trading and Transportation Inc., 1670 Broadway, Denver, CO 80202 (Delaware)
- V. Texaco Producing Inc., 1111 Rusk Avenue, Houston, TX 77052 (Delaware)
- VI. Texaco Trucking Inc., 1670 Broadway, Denver, CO 80202 (Michigan)
- VII. Texaco Pipeline Inc., 9700 Richmond Avenue, Houston, TX 77042 (Texas)

(H) 1. The parent corporation and address of its principal office: Universal Foods Corporation, a Wisconsin corporation, located at 433 East Michigan Street, Milwaukee, Wisconsin 53202.

2. Wholly-owned subsidiaries which will participate in the operations and state(s) of incorporation:

- i. Universal Frozen Foods Co., an Oregon corporation
- ii. Universal Flavor Corporation, a Delaware corporation
- (a) Universal Flavors—U.S.A., Incorporated, a wholly owned subsidiary of Universal Flavor Corporation, an Indiana corporation
- (1) Blanke Baer/Bowey Krimko Corporation, a wholly owned subsidiary of Universal Flavors—U.S.A., Incorporated, a Missouri corporation.

Noreta R. McGee,

Secretary.

[FR Doc. 88-5419 Filed 3-10-88, 8:45 am]

BILLING CODE 7035-01-M

Acceptance of Credit Cards for Payment Due the Federal Government

AGENCY: Interstate Commerce Commission.

ACTION: Notice to the public regarding acceptance of Visa or Master Card as an alternate method of payment due the Federal Government.

SUMMARY: The Department of the Treasury, Financial Management Services, has authorized the Interstate Commerce Commission to accept credit cards (Visa and Master Card only) from the public for receipts due the Federal Government.

The Commission will begin accepting credit cards for all services rendered by the Commission (headquarters and Regional Offices). These services include, but are not limited to: application filing fees; tariff filing fees; fines; and established ICC monthly billing accounts.

Individuals or companies who wish to use their credit card for payment should include on a separate sheet of paper their credit card number, expiration date, type of credit card (Visa or Master Card only) and their signature authorizing the credit card use. All credit card information will be maintained in a confidential manner as required by law.

EFFECTIVE DATE: March 21, 1988.

FOR FURTHER INFORMATION CONTACT: Noreta R. McGee, (202) 275-7428.

[TDD for hearing impaired: 202-275-1721]

Noreta R. McGee,

Secretary.

[FR Doc. 88-5200 Filed 3-10-88, 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 218X)]

CSX Transportation, Inc.; Abandonment Exemption in Lake and Osceola Counties, MI

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirement of 49 U.S.C. 10903, *et seq.*, the abandonment by CSX Transportation, Inc., of 30.64 miles of rail line extending between Baldwin and Ewart, in Lake and Osceola Counties, MI, subject to standard labor protective conditions and environmental protective conditions.

DATES: This exemption will be effective on April 10, 1988. Petitions to stay must be filed by March 28, 1988. Petitions for reconsideration must be filed by April 5, 1988. Any formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) must be filed by March 21, 1988.¹

ADDRESSES: Send pleadings referring to Docket No. AB-55 (Sub-No. 218X) to:

- (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
- (2) Petitioner's representative: Lawrence H. Richmond, 100 North Charles Street, Baltimore, MD 21201

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275-7245 [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc. Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357/4359 (DC Metropolitan area), (assistance for the hearing impaired is available through TDD services (202) 275-1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Decided: February 23, 1988.

By the Commission, Chairman Gardison, Vice Chairman Andre, Commissioners

¹ See Exemption or Rail Abandonment—Offers of Finan. Assist., 4 I.C.C. 2d 164 (1987), and final rules published December 22, 1987 (52 FR 48,440-48,446).

Sterrett, Simmons, and Lamboley
Commissioners Simmons and Lamboley
dissented with separate expressions.

Noreta R. McGee,

Secretary.

[FR Doc. 88-5420 Filed 3-10-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Information Collection(s) Under Review

March 9, 1988.

The Office of Management and Budget (OMB) has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories. Each entry contains the following information: (1) The name and telephone number of the Department's Clearance Officer from whom a copy of the form and/or supporting documentation is available; (2) the office, board or division of the Department of Justice issuing the form or administering the collection; (3) the title of the form/collection; (4) the agency form number, if any; (5) how often the report must be filled out or the information is to be collected; (6) who will be asked or required to respond, as well as a brief abstract; (7) an estimate of the total number of respondents; (8) an estimate of the total public burden hours associated with the collection; (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies; and, (10) the name and telephone number of the person or office responsible for the OMB review. Comments and/or questions regarding the item(s) contained in this notice should be directed to the OMB reviewer listed at the end of each entry AND to the Department's Clearance Officer. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should so advise the OMB reviewer AND the Department's Clearance Officer of your intent as early as possible.

The Department of Justice Clearance Officer is: Larry E. Miesse and can be reached on (202) 633-4312.

Revision of a Previously Approved Collection

- (1) Larry E. Miesse, (202) 633-4312.
- (2) Immigration and Naturalization Service, Department of Justice.
- (3) Employment Eligibility Verification.
- (4) I-9.

- (5) On occasion.
- (6) Individuals and households, State and local governments, farms, businesses or other for-profit, Federal agencies or employees, non-profit institutions, small businesses or organizations. Developed to facilitate compliance with section 101 of the Immigration Reform and Control Act of 1986. Revision allows for microfilm/fiche storage by employers.
- (7) 135,000,000 annual responses, .166 hours burden per response, 30,000,000 recordkeepers at .083 hours per.
- (8) 24,960,000 estimated public burden hours.
- (9) Not applicable under 3504(h).
- (10) Robert Fishman, (202) 395-7340.

Larry E. Miesse,

Department Clearance Officer.

[FR Doc. 88-5341 Filed 3-10-88; 8:45 am]

BILLING CODE 4410-18-M

Drug Enforcement Administration

Modern Drug Co.; Revocation of Registration

On November 20, 1987, the Administrator of the Drug Enforcement Administration (DEA) issued an Order To Show Cause to Modern Drug Company (Respondent), of 350 Main Street, Windsor Locks, Connecticut 06096, proposing to revoke DEA Certificate of Registration AM1519668, and deny any pending applications for renewal of that registration as a retail pharmacy under 21 U.S.C. 823(f). Additionally, citing his preliminary finding of imminent danger to the public health and safety, the Administrator ordered the immediate suspension of DEA Certificate of Registration AM1519668 during the pendency of these proceedings. 21 U.S.C. 824(d).

Since the president of Modern Drug Company was not available to accept service of the Order to Show Cause/Immediate Suspension, service was accepted by the firm's attorney on November 23, 1987. More than thirty days have passed since the Order to Show Cause was served and the Drug Enforcement Administration has received no response thereto. Pursuant to 21 CFR 1301.54(a) and 1301.54(d), Modern Drug Company is deemed to have waived its opportunity for a hearing. Accordingly, the Administrator now enters his final order in this matter without a hearing and based on the investigative file. 21 CFR 1301.57.

The Administrator finds that on ten occasions during the course of an undercover investigation conducted by Special Agents of the Drug Enforcement Administration and the State of

Connecticut Drug Control Division, Sidney Portnoy, the pharmacist and president of Modern Drug Company, unlawfully delivered controlled substances to undercover agents outside the course of his professional practice as a pharmacist. The undercover agents never presented prescriptions for the controlled substances.

As a result of the investigation, on October 27, 1987, Mr. Portnoy was indicted and charged with ten counts of unlawful distribution or dispensing of controlled substances in violation of 21 U.S.C. 841(a)(1).

On October 30, 1987, the Connecticut Board of Pharmacy suspended Modern Drug Company's license to operate a pharmacy. The Board also suspended Mr. Portnoy's license to practice pharmacy. As justification for both suspensions, the Board cited the imminent danger to the public health and safety posed by the continued operation of the pharmacy and the continued practice by Mr. Portnoy.

Additionally, the Administrator finds that on October 30, 1987, the Connecticut State Drug Control Agents who were conducting an inventory of the pharmacy's controlled substances pursuant to the emergency suspension of its pharmacy's license, found a bottle which was labeled as containing 25 grams of cocaine hydrochloride. Subsequent field testing and laboratory analysis revealed that the bottle contained a substance other than cocaine. The totality of the circumstances in this case support a reasonable conclusion that the cocaine hydrochloride had been diverted.

The Administrator further finds that Modern Drug Company had reported a highly unusual and suspicious series of thefts of controlled substances. On October 3, 1987, Modern Drug Company reported the theft of 26,606 dosage units of controlled substances to the Windsor Locks Police Department. Investigators have stated that they consider the purported circumstances of the theft to be of a highly suspicious nature and are continuing their investigation. Additionally, in 1986, Modern Drug Company reported a theft of controlled substances to its insurance carrier but not to the Drug Enforcement Administration. The insurance carrier denied Modern Drug Company's claim based upon the suspicious nature of the incident.

Based upon the foregoing, the Administrator concludes that the registration of Modern Drug Company would be inconsistent with the public interest. Accordingly, the Administrator of the Drug Enforcement Administration.

pursuant to 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AM1519668, previously issued to Modern Drug Company be, and it hereby is, revoked. It is further ordered that any pending applications for renewal be, and they hereby are, denied. This order is effective immediately.

When the Order to Show Cause/Immediate Suspension was served on Modern Drug Company all controlled substances possessed by the pharmacy under the authority of its then-suspended registration were placed under seal and removed for safekeeping. 21 U.S.C. 824(f) provides that no disposition may be made of such controlled substances under seal until all appeals have been concluded or until the time for taking an appeal has elapsed. Accordingly, these controlled substances shall remain under seal until April 11, 1988 or until any appeal of this order has been concluded. At this time, all such controlled substances shall be forfeited to the United States and shall be disposed of pursuant to 21 U.S.C. 881(e).

Dated: March 7, 1988.

John C. Lawn,
Administrator.

[FR Doc. 88-5339 Filed 3-10-88; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Bureau of Labor Statistics
Consumer Expenditure Surveys
CE-201 Vehicle Leasing Supplement
One time
Individuals or households
1920 responses; 128 hours; one form

The Vehicle Leasing Supplement will be used to test a more comprehensive set of leasing questions than currently appears on the Quarterly Interview Survey. The data will be analyzed to determine the suitability of a conceptual change in the treatment of new vehicles in the Consumer Price Index.

Signed at Washington, DC, this 8th day of March, 1988.

Paul E. Larson,
Departmental Clearance Officer,
[FR Doc. 88-5400 Filed 3-10-88; 8:45 am]

BILLING CODE 4510-24-M

Employment and Training Administration

Job Training Partnership Act; Policy Considerations in Administering JTPA Regulations on Fixed Unit Price Performance Based Contracts

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice publishes for 30-day comment a paper describing issues the Department of Labor is presently considering in administering JTPA regulations at 20 CFR 629.38(e)(2), which set forth conditions whereby fixed unit price, performance based contracts may be charged 100 percent to the training cost category. The paper lists a number of optional positions the Department might take in addressing policy issues in an upcoming official policy interpretation. The paper also identifies several issues which in the longer run could be treated in proposed regulatory change or in statutory amendments. The Department intends for a thorough discussion to take place involving all the partners in the JTPA system, to respond to the issues and options presented in the paper and provide the opportunity for commenters to suggest additional options or pose questions that the Department has not considered.

Following the completion of the comments period and of public discussions, the Department will analyze the information received and prepare an official policy interpretation, to be published proposed in the *Federal Register*, which will in the short run clarify selected questions under the current JTPA regulations at 20 CFR 629.38(e)(2).

DATE: Comments must be submitted on or before April 11, 1988.

ADDRESS: Submit comments to: Administrator, Office of Job Training Programs, Employment and Training Administration, Room N-4469, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Hugh S. Davies, Telephone (202) 535-0580.

Policy Considerations in Administering JTPA Regulations on Fixed Unit Price Performance-Based Contracts

Overview

In the paper which follows, the Department of Labor reviews the three principal areas of concern regarding the use of fixed unit price, performance-based agreements written under 20 CFR

629.38(e)(2), a section of the Federal regulations for the Job Training Partnership Act (JTPA) program.

These areas are:

—The nature of training activities properly chargeable under 20 CFR 629.38(e)(2);

—Issues surrounding current practices in the JTPA system for making payments to contractors; and

—The question of "profits" for public and private non-profit agencies, realized through agreements written under 20 CFR 629.38(e)(2).

This paper is in followup to Training and Employment Guidance Letter (TEGL) 3-87, dated November 18, 1987, in which the Department described a series of problems with fixed unit price, performance-based contracts that had come to light, and requested the cooperation of States and Service Delivery Areas (SDAs) to examine local practices and policies involved in entering into this type of contract and, in particular, to study procurement requirements.

In presenting an analysis of issues and options which respond to perceived problems, the Department of Labor intends to engage in a dialog with States, SDAs, and interested service providers on those questions open to interpretation rather than make immediate policy determinations. Following consultations, the Department will assess what the best course of action is for the short run, and will publish a proposed formal policy interpretation in the *Federal Register* to deal with selected issues. It is anticipated that these steps will be completed during Spring 1988.

The ideas and options presented in this paper are included for the purposes of discussion, and do not represent final DOL interpretation of the statute and regulations.

Policy Considerations in Administering JTPA Regulations on Fixed Unit Price, Performance-Based Contracts

Background

In Training and Employment Guidance Letter (TEGL) 3-87, the Department of Labor described numerous concerns with respect to fixed unit price, performance-based contracts written for training under the Job Training Partnership Act (JTPA). At the heart of the Department's concerns have been questions of compliance with the requirements of 20 CFR 629.38(e)(2), which establishes conditions whereby all contract costs can be charged to the training cost category, and flawed contracting practices that have been used to enter into agreements for

training services, sometimes in violation of State and local procurement codes.

The TEGL requested that States and SDAs institute a review of relevant aspects of procurement systems, assessing both the adequacy of provisions and the thoroughness of implementation by JTPA programs. Since the TEGL was issued on November 18, the Department has heard from a number of States and SDAs and discussions have been held at several national and regional meetings.

It is evident that an examination of procurement practices is taking place in many locations. The purpose of this paper is to focus on questions of interpretation of the Federal requirements at § 629.38(e)(2), and to focus on short and longer-term options that could be considered for clarifying or further defining the conditions whereby all contract costs can be charged to training rather than allocated among the administration, participant support and training cost categories.

Training Activities Chargeable Under 20 CFR 629.38(e)(2)

The first group of interpretation issues involves the definition of the term "training" for the purposes of § 629.38(e)(2) of the JTPA Regulations. Questions have been raised whether it is consistent or fair for the Department to hold "training" here strictly to the definition "occupational training", when at § 629.38(e)(1) "training" is defined for the purposes of the training cost category to include a range of training, remedial education, counseling and job search assistance services. The primary intention of DOL in transferring the language of § 629.38(e)(2) from the regulations of the former CETA program was to allow for simplification of contractor cost billing and accounting in exchange for guaranteed placement of participants. Also, during the JTPA implementation period, it was recognized that this regulation would provide strong incentives for higher quality training agreements which would lead to higher wage, and better quality placements for participants. The contractor would have greater flexibility in charging costs, but would only be paid for performance. Occupational specificity for placement outcomes would help tie training activities to the Private Industry Council's (PIC's) guidelines, developed per section 107(d) of the Act.

Other than DOL responses to specific inquiries received during the 1983 JTPA implementation, there was no clear Federal statements as to what constituted acceptable training for the purposes of charging contracts under

§ 629.38(e)(2). One set of options, both longer-range, would be for the Department to propose a PY 1988 regulatory amendment, or seek clarifying statutory language which would define "training," during any congressional revision to JTPA. Another option is to conclude that it is not ultimately useful to tie the meaning down at the Federal level.

There are, however, two sub-issues related to what constitutes "training" for the purposes of § 629.38(e)(2) that can be addressed in the short run through either general policy guidance or official interpretation:

—The contents of acceptable training "packages", chargeable under 20 CFR 629.38(e)(2); and

—Arrangements for charging of "umbrella contracts" 100 percent to the training cost category, under Section 629.38(e)(2).

A level of concern surrounds the allowability of training packages under § 629.38(e)(2), since the package approach is most common in fixed unit price agreements designed for the hard to serve, including at-risk youth and adults needing basic skills remediation: literacy training, adult basic education, English-as-a-second language (ESL), or GED preparation. Packages may include up front intake and assessment, and job search assistance (JSA) for placement at the end of the program. A core curriculum of occupational skills training is a variable element in such packages, as are provisions for participant support costs.

One approach is for the Department to provide general policy guidance indicating that training packages are permissible written in fixed unit price, performance-based agreements under § 629.38(e)(2). This would be consistent with DOL's emphasis on literacy skills and enriched, longer-term training interventions which will better prepare youth and adult participants facing serious barriers to productive employment.

Another option is for DOL to more formally issue an official interpretation that training packages are permissible under § 629.38(e)(2), and enumerate acceptable elements. In providing a definition of acceptable contents, DOL need not prescribe a universally acceptable package. It is understood all packages may contain a placement phase.

"Umbrella contracts" or "blanket contracts" written under § 629.38(e)(2) have generated unease as well as specific audit challenges, both because of the scale of the contracts and the range of possible participant sequences.

In some of these large, omnibus contracts, the service provider may be able to enroll and directly place some participants, without ever enrolling these individuals in any training activity, whether occupationally specific or not. Because in some locations the entire contract amount can be charged to the training cost category without allocating the cost of those participants directly placed, these contracts could be considered a ruse of statutory administrative cost limitations. There are a limited number of SDAs where virtually the entire JTPA allocation has been obligated into a few "umbrella contracts," usually with public agencies or large community-based organization (CBO's).

DOL's options in responding to problems with umbrella contracts appear to be three:

(1) Issue no general policy guidance or official interpretation, and continue to deal with problems on a case-by-case basis. For example, DOL can utilize 20 CFR 629.38(e)(3): "Training costs shall not include direct or indirect costs associated with the supervision and management of the program."

(2) In an official policy interpretation, indicate that these contracts may be written under § 629.38(e)(2) only if there is a method developed to ensure that the costs of participants who do not participate in any training activity are allocated among the cost categories.

(3) In an official policy interpretation, clarify that umbrella contracts are inconsistent with DOL's regulation at 20 CFR 629.38(e)(2).

Specific technical questions arise in training packages for youth. Section 629.38(e)(2), paragraph (iii)(B), allows for youth training packages purchased competitively if the training results in employment, or attainment of an outcome specified in section 106(b)(2) of the Act. The list of outcomes includes:

- Attainment of employment competencies recognized by the PIC;
- Completion of elementary, secondary or postsecondary school or equivalent;

- Enrollment in other training or enlistment in the Armed Forces.

Effective in Program Year 1989, the Department will be using a new stronger definition for attainment of youth employment competencies, which will require completion of two out of three skill areas for performance standards and related DOL reporting requirements. Does the DOL focus on the deliverables in performance-based contracts written under § 629.38(e)(2) limit the latitude of local JTPA programs to write training agreements where the outcome is to be a PIC-established youth employment

competency? Can performance-based contracts be structured to:

- Enable providers to meet their performance standards for youth programs?

- Mesh with reporting requirements for SDAs?

- Assign credit for outcomes among multiple service providers?

- Encourage service to at-risk youth?

If DOL elects the option to issue guidance on acceptable training packages, the policy guidance could clarify that, in the case of training packages for youth, contracts may be written under § 629.38(e)(2) for the attainment of one or more PIC-recognized youth competency (pre-employment/work maturity, basic education, or job specific skills), according to the preference of the SDA. This guidance would show that achievement of performance standards and reporting of outcomes to DOL do not limit local flexibility in choosing program designs or legitimate sequences of training and competency attainment for at-risk youth.

Payments to Contractors

The second major area for policy consideration concerns requirements for payments made to contractors under § 629.38(e)(2). The March 1983 JTPA Regulations do not prevent incremental payments to a contractor. DOL has previously indicated that incremental payments are acceptable, provided that contracts treat these payments as a form of advance against full performance, which is defined in § 629.38(e)(2)(iii) to include:

- Completion of training by a participant;

- Placement of the participant in the occupation trained for;

- At not less than the wage specified in the agreement; or,

- For youth programs, attainment of outcomes specified in section 106(b)(2) of the Act.

Contract goals for full performance may be defined under a State/SDA system on the basis of each participant served, or on the basis of a percentage of participants served. In circumstances where full performance is not achieved by the contractor, any incremental payments made must be either reimbursed to the local JTPA program or prorated among the three cost categories.

If costs are to be charged to training in accordance with § 629.39(e)(2), in DOL's judgment, there are no legal grounds for making incremental payments that are not contingent on the full performance phase. Therefore, the current practice of non-contingent payment for interim

performance benchmarks—often enrollment, training midpoint, and training completion—is inconsistent with JTPA regulations. Payments should be recalculated against the final placement, full performance record of contractors, and necessary reimbursements or prorations arranged.

Because payments to contractors under the present § 629.38(e)(2) regulation "ride" on full performance, a related question is how much of an advance should properly be made to contractors prior to the full performance, placement phase. Current practices in the JTPA system vary widely, with some programs advancing up to and over 90 percent of the contract total to service providers through interim payments. JTPA programs whose contractors do not perform per performance goals may experience delays or difficulties in obtaining reimbursement or cost proration reports. Also, interim payment practices may cause contractors to have excess cash on hand in violation of Federal cash management requirements.

DOL's options in responding to the advance payments issued under § 629.38(e)(2) stem from the level of detail determined appropriate for a general policy guidance issuance or an official interpretation notice. One approach is to provide policy guidance that all interim payments to contractors under § 629.38(e)(2) should be advances which bear a reasonable relationship to the costs incurred by the contractor prior to the placement phase. Another option would be to issue this guidance, but further state a guideline that a range of 25 to 30 percent of the "full unit price" amount be withheld prior to full performance. This guideline would be described as a range, to allow adjustments in cases of very long or very short training periods.

A related "payment to contractors" question is whether DOL should address the meaning of "at not less than the wage specified in the agreement" in § 629.38(e)(2), in light of current practices in the JTPA system. Some SDAs specify a range of acceptable placement wages, or an average wage for placements under the agreement. Also, SDAs have been identified that set no requirement other than the Federal minimum wage. The first option would be for DOL to clarify in general policy guidance or an official interpretation notice that States and SDAs may specify the placement wage as an average wage for the placements obtained by a training contractor, or as a range of acceptable placement wage rates. The second option would be for DOL to make an additional statement

concerning what constituted an acceptable floor level or lowest-value for placement wage rates in fixed unit price, performance-based contracts. For example, a system-wide general guideline on a floor level could be based on each SDA's Performance Standard model departure number for the placement wage. A third option, opposite to the second option just described, would find the question of the lowest acceptable placement wage rate to be adequately addressed by the overall JTPA Performance Standards mechanism, and not an issue to be specially treated under § 629.38(e)(2) of the regulations.

The Question of "Profits" for Public and Private Non-Profit Agencies

The final area for policy consideration regarding fixed unit price, performance-based contracts written in accordance with 20 CFR 629.38(e)(2) involves contracting between JTPA programs and public and private non-profit agencies on a fixed price basis. When revenues to the contractor exceed the contractor's actual costs in operating a training activity, how are these revenues to be considered? The most prevalent practice in the JTPA system has been to consider these revenues to be profits fairly earned by the public or private non-profit agency by accepting the risk associated with a performance-based contract, and by meeting or exceeding specified JTPA performance goals. Some States and SDAs place restrictions on the use of revenue generated, however. Organizations classified as tax-exempt under section 501(c)(3) of the Federal Internal Revenue Service code are required under the laws of some States to restrict the use of excess JTPA revenue to activities consistent with the general charitable or educational purpose of the organization, which may or may not be job training activities. State and local laws may place other restrictions on the use of any excess revenue or earnings by public agencies, for example, requiring that such funds be formally appropriated prior to any use. Few locations are known to define such excess revenue as JTPA "program income", to be retained by the program generating the revenue and used to further program objectives consistent with JTPA's overall program income regulation found at 20 CFR 629.32.

This final issue presents a real challenge to DOL in its role to provide national policy leadership and oversight of the JTPA system. On the one hand, Federal regulatory history militates against unrestricted use of excess revenues accrued through operation of a job training program. Office of

Management and Budget (OMB) Circulars A-87 (cost principles applicable to grants with State and local governments) and A-122 (cost principles applicable to grants with non-profit organizations) state that "No provision for profit or other increment above cost is intended" (A-87), and "Provision for profit or other increment above cost is outside the scope of this circular" (A-122). These Federal management circulars were not referenced in JTPA regulations as requirements as they had been for previous training and employment programs. States have been given a choice as to the cost principles they wish to adopt for JTPA programs, although a number of States did choose the option of formally adopting A-87. Implementation of the Federal cost principles in those States has been unclear with respect to the allowability of "profit"-generating contractual arrangements with public and private non-profit agencies.

Federal grant administrative requirements historically have been determined under OMB Circulars A-102 (State and local governments) and A-110 (non-profit organizations). In July 1979, DOL codified these circulars for its grant programs at 41 CFR 29.70. These DOL regulations do make provision for program income from various sources, such as service fees, with the requirement that program income can be used to expand the DOL-grant assisted program, reduce the total Federal cost, or be applied towards any matching cost. Therefore, 20 CFR 629.32 treats JTPA program income in a way consistent with other DOL grant regulations.

In seeking to understand the background of the OMB circulars, the Department has been advised by OMB officials involved in the initial drafting of the Federal cost principles that the circulars simply did not anticipate or address the question of profits by State, local governments, and private non-profit agencies. Similarly, while DOL officials recognized after JTPA implementation that contracts with governmental or private-non-profit agencies might generate excess revenues in the normal course of operation, it was assumed that these revenues would be modest in scale as the result of sound procurement and price negotiation, and would be expended for program purposes, rather than be identified as no-strings "profits."

At State, SDA, and service provider levels, however, there is a strongly held view that JTPA represented an important departure from past Federal

training and employment programs. The Act mandated that the program would be run through a partnership with the private sector, and that the program would be performance-driven, focusing on placement results, with operations influenced by incentives for successful programs and sanctions against poor programs. In this environment, the argument is frequently made to DOL that public and private non-profit agencies which succeed should not be treated differently from private for-profit training providers. If these agencies succeed in meeting or exceeding their goals specified in fixed unit price, performance-based contracts written per § 626.38(e)(2), then these agencies should have free use of revenues in excess of costs as profits.

TEGL 3-87, in discussing the "profits" issue, enumerated a series of excessive profit situations that have been flagged as program abuse problems by DOL during specific investigations. Most "excessive profit" situations can be traced to flaws in actual procurement practices, and in fewer cases, to the procurement system legally in place for a State or SDA program. There have been instances where an administrative decision was made not to hold a competitive selection, although a number of public, private non-profit, and private for-profit potential service providers existed in the local area who would have submitted bids under a request for proposal. Some jurisdictions, in seeking to stream-line contracts, reduced agreement provisions to the point where contracts do not specify clearly the services to be provided or detail deliverables, i.e., the terms of placement or youth competencies to be attained.

Relatedly, agreements in which a variety of services and training activities are authorized without contractual commitments for the minimum number of participants to be provided each service or training course have resulted in agreements that are difficult or impossible to price. One "fixed unit price" may be offered by the bidder, based on participant sequence assumptions that are not guaranteed by the contract. Simply by reducing the number of participants assigned to longer-term or more intensive sequences, a contractor could eliminate risk and assure any desired level of profit from placements.

To control against excessive profits, JTPA contracting officials should penetrate "behind" each proposal and understand the prospective costs associated with what is offered, particularly when a "fixed unit price" is

proposed for a complicated aggregate. Most but not all procurement systems in use do require cost and price analysis. Shortcomings in the application of procurement system requirements and any shortcomings in those systems themselves should be uncovered as States and SDAs complete review of procurement practices and policies.

Improved compliance with applicable procurement requirements, greater attention paid to questions of contract negotiation, and prudent public administration can be expected to minimize cases of excessively high contractor profits in the future. The basic issue remains of the appropriateness of any public/private non-profit agency gaining "profit", and the uses made of such "profit", versus restricted-use program income. Questions remain whether the "profit" concept is consistent with the proper use of public funds, and whether a public perception of the potential for abuse through self-serving contractual arrangements poses a threat to the integrity of the JTPA program nationwide.

The options to address the controversial "profits" issue appear to be three:

(1) In the short run, issue policy guidance or an official interpretation notice, to clarify that revenues in excess of costs incurred by public and private non-profit agencies through JTPA contracts written under 20 CFR 629.38(e)(2) are subject to all constraints on use under State and local law, and limitation under IRS requirements for organizations designated as tax exempt under 501(c)(3). At a later date, propose this clarification for inclusion as an amendment to JTPA regulations, to be effective for PY 1989.

(2) Add to option (1) above, by indicating that it is DOL's official interpretation that profits earned by public and private non-profit agencies through contracts written under 20 CFR 629.38(e)(2) are in fact "program income", and programs are accountable for use of this income per the JTPA regulations at 20 CFR 629.32. As with option (1), at a later date DOL would propose this official interpretation for inclusion as an amendment to JTPA regulations.

(3) Take no Federal-level action in the short run to clarify use of profits earned by agencies through contracts written under 20 CFR 629.38(e)(2). DOL would continue to deal with situations where excessive profits appear to have been earned by public and private non-profits on a case-by-case basis. In the longer run, DOL would consider suggesting legislative amendment to address the

allowability of such profits, and any "program income" restrictions on use.

Conclusion

In the long run, the problems with the requirements of 20 CFR 629.38(e)(2) and current practices in the JTPA system are amenable to solution through either regulatory revision to address technical issues, or statutory amendment. The performance-based contracting mode preferred by an increasing body of JTPA administrators and private sector representatives on the PICs can be maintained, as well as fixed unit price agreements, while at the same time the JTPA system responds with adjustments. Potential long-range options include those which address particular issues in each area—the nature of training, payments to contractors, and profits—as well as those that call for replacing or simplifying the present regulatory framework so as to deal with all three main areas of concern. It is important to outline and to study these longer-range answers, at the same time more immediate options are identified.

The Department anticipates that a great deal of discussion will ensue in the JTPA system regarding each of the three areas outlined in this paper. The Department trusts that contributors to this process will consider the overall welfare and future health of the JTPA system as each advances their views and suggestions. DOL will finalize no plan until there has been opportunity for thorough discussion, and as previously agreed, will provide ample notice to the JTPA system prior to the effective date of any new policy interpretations on the use of fixed unit price, performance-based contracts.

Signed at Washington, DC, March 4, 1988.

Roberts T. Jones,

Acting Assistant Secretary of Labor.

[FR Doc. 88-5401 Filed 3-10-88; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and

fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the *Federal Register*, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by

contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the *Federal Register* are in parentheses following the decisions being modified.

Volume I

District of Columbia:	
DC88-1 (Jan. 8, 1988)	pp. 78,82.
Florida:	
FL88-35 (Jan. 8, 1988)	p. 184.
FL88-36 (Jan. 8, 1988)	pp. 186-187.
FL88-37 (Jan. 8, 1988)	pp. 190-191.
FL88-38 (Jan. 8, 1988)	pp. 194-195.
FL88-39 (Jan. 8, 1988)	pp. 198-199.
FL88-40 (Jan. 8, 1988)	p. 202.
FL88-42 (Jan. 8, 1988)	p. 206.
FL88-43 (Jan. 8, 1988)	p. 208.
FL88-44 (Jan. 8, 1988)	p. 210.
Maryland:	
MD88-12 (Jan. 8, 1988)	p. 448.
New York:	
NY88-7 (Jan. 8, 1988)	pp. 738-754.
Pennsylvania:	
PA88-15 (Jan. 8, 1988)	pp. 954-955.
PA88-16 (Jan. 8, 1988)	p. 958.
PA88-17 (Jan. 8, 1988)	p. 960.
PA88-18 (Jan. 8, 1988)	pp. 966-968, 971.
PA88-19 (Jan. 8, 1988)	pp. 974-976.
PA88-21 (Jan. 8, 1988)	pp. 986-987.
PA88-22 (Jan. 8, 1988)	pp. 990-998b.
PA88-23 (Jan. 8, 1988)	pp. 1000-1002.
PA88-24 (Jan. 8, 1988)	pp. 1006-1007.

Volume II

Indiana:	
IN88-2 (Jan. 8, 1988)	p. 257.
Missouri:	
MO88-2 (Jan. 8, 1988)	p. 602.
MO88-5 (Jan. 8, 1988)	p. 624.
Texas:	
TX88-40 (Jan. 8, 1988)	pp. 1048-1049.
TX88-41 (Jan. 8, 1988)	pp. 1052-1053.
TX88-42 (Jan. 8, 1988)	pp. 1056-1057.

TX88-43 (Jan. 8, 1988)	pp. 1060-1061.
TX88-44 (Jan. 8, 1988)	pp. 1064-1065.
TX88-45 (Jan. 8, 1988)	pp. 1066b-1066c.
TX88-46 (Jan. 8, 1988)	pp. 1068-1069.
TX88-47 (Jan. 8, 1988)	pp. 1072-1073.
TX88-48 (Jan. 8, 1988)	pp. 1076-1077.
TX88-49 (Jan. 8, 1988)	pp. 1080-1081.

Volume III

California:	
CA88-4 (Jan. 8, 1988)	p. 76.
Utah:	
UT88-3 (Jan. 8, 1988)	pp. 349-357.
Washington:	
WA88-1 (Jan. 8, 1988)	pp. 361,371-384.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, [202] 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 3rd day of March 1988.

Alan L. Moss

Director, Division of Wage Determinations.

[FR Doc. 88-5000 Filed 3-10-88; 8:45 am]

BILLING CODE 4510-27-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-409]

Environmental Assessment and Finding of No Significant Impact; Dairyland Power Cooperative

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR Part

550.54(o) and Part 50, Appendix J to Dairyland Power Cooperative (the licensee) for the La Crosse Boiling Water Reactor (LACBWR).

Environmental Assessment

Identification of Proposed Action

The exemption will delete the requirements for Type A testing of the containment building.

LACBWR was permanently shutdown on April 30, 1987 and reactor defueling completed on June 11, 1987. The LACBWR operating License No. DPR-45 was modified to possess-but-not-operate status on August 4, 1987.

Need for Proposed Action

The exemption is needed to eliminate requirements that were appropriate for an operating plant but are not needed at the permanently shutdown LACBWR facility.

Environmental Impact of the Proposed Action

The proposed action will have no environmental impact because all fuel has been removed from the reactor vessel and the worst case accident would not require containment integrity.

Alternative Use of Resources

This action does not involve the use of resources.

Agencies and Persons Consulted

The licensee initiated this exemption action. The NRC staff is reviewing their request. No other agencies or persons were consulted.

Finding of no Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For details with respect to this action, see the licensee's application dated August 21, 1987 as revised August 28, 1987, which are available in the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555 and at the La Crosse Public Library, 800 Main Street, La Crosse, Wisconsin 54601.

Dated at Rockville, Maryland, this 7th day of March 1988.

For the Nuclear Regulatory Commission.
Lester S. Rubenstein,

*Director, Standardization and Non-Power
Reactor Project Directorate, Division of
Reactor Projects III, IV, V and Special
Projects, Office of Nuclear Reactor
Regulation.*

[FR Doc. 88-5359 Filed 3-10-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-388]

**Pennsylvania Power & Light Co. and
Allegheny Electric Cooperative, Inc.;
Consideration of Issuance of
Amendment to Facility Operating
License and Opportunity for Hearing**

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-22 issued to Pennsylvania Power & Light Company and (the licensee) for operation of the Susquehanna Steam Electric Station, Unit 2, located in Luzerne County, Pennsylvania.

The proposed amendment would revise the Technical Specifications (TS) Table 3.6.3-1 by replacing existing containment isolation valves with new isolation valves which will be installed as a result of modifications proposed for Residual Heat Removal (RHR) system. The proposed RHR modifications are intended to reduce the potential of waterhammer and consequent damage to the RHR system during the operation of the RHR system in Suppression Pool Cooling (SPC) mode of operation. The proposed modification is needed because the SPC mode of RHR system operation is being utilized more frequently than anticipated at the time of plant licensing. The increased use of the SPC mode of RHR system operation increases the likelihood of an event which could cause a switchover of the RHR system from SPC mode to Low Pressure Coolant Injection (LPCI) mode of operation. In the present plant configuration, the switchover can cause a waterhammer and damage to the piping and valves of safety systems. The proposed modification is intended to reduce the waterhammer potential and will consist of installation of a new section of piping from RHR system pump discharge header to the SPC system return line in each RHR loop to be used for normal SPC mode of operation. The modified configuration is intended to assure that the LPCI mode piping remains filled and minimizes the potential of waterhammer. As a result of the proposed modifications existing valves which are classified as containment isolation valves are being replaced by a new set of containment

isolation valves. The licensee proposed to change the Technical Specifications showing the revised containment isolation valves.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By April 11, 1988, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner

shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Walter R. Butler: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a subsequent notice for public comment of its intent to make a no significant hazards consideration finding in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated December 23, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the Ousterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Dated at Rockville, Maryland, this 7th day of March 1988.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Director, Project Directorate I-2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-5360 Filed 3-10-88; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-25419; File No. SR-OCC-88-01]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Options Clearing Corp.

On February 26, 1988, the Options Clearing Corporation ("OCC") filed a proposed rule change with the Commission under section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") to provide for the continued effectiveness of OCC Rule 609A, which by its terms expires on February 28, 1988.¹ The Commission is publishing this notice to solicit comments on the proposal.

The proposal continues the effectiveness, through May 1988, of OCC Rule 609A which enables OCC to waive clearing member margin requirements in certain circumstances. Specifically, Rule 609A authorizes the Chairman or President of OCC to waive, in whole or in part, conditionally or unconditionally, any deposit or margin that would

otherwise be required to be made by any clearing member in any account at any time during any business day. Such a waiver must be based upon a determination that it (1) is advisable in the interest of maintaining fair and orderly markets or is otherwise advisable in the public interest or for the protection of investors, and (2) is consistent with maintaining the financial integrity of OCC.

Additionally, Rule 609A subjects OCC to certain obligations. The rule requires OCC to consult with the Commission before exercising its authority to waive margin requirements. The rule also requires that record of any such waiver be prepared and maintained with the corporate records of OCC.

OCC states that the proposal is consistent with the purposes and requirements of section 17A of the Act. OCC believes that continued effectiveness of Rule 609A serves the public interest and the protection of investors by giving OCC needed flexibility in dealing with unusual market conditions.

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the proposal. Persons making written submissions should file six copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington DC 20549.

Copies of the filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to file number SR-OCC-88-01 and should be submitted by April 1, 1988.

For The Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 4, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-5350 Filed 3-10-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25420; File No. SR-OCC-87-24]

Self-Regulatory Organizations; Options Clearing Corp.; Filing of Proposed Rule Change

Pursuant to section 19 of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 31, 1987, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described below. The proposal would make permanent a temporary rule that enables OCC to waive clearing member margin requirements in certain circumstances.¹ The Commission is publishing this notice to solicit comment.

I. Description of the Proposal

The proposal would make permanent OCC Rule 609A dealing with clearing member margin requirements, which, by its terms, expires on February 28, 1988.² Rule 609A authorizes the Chairman or the President of OCC to waive, in whole or in part, conditionally or unconditionally, any deposit of margin that would otherwise be required to be made by any clearing member in any account at any time during any business day.³ Such a waiver must be based upon a determination that it (1) is advisable in the interest of maintaining fair and orderly markets or is otherwise advisable in the public interest or for the protection of investors, and (2) is consistent with maintaining the financial integrity of OCC.

Currently, Rule 609A subjects OCC to certain obligations. Specifically, the rule requires OCC staff to consult with SEC staff before granting a waiver and, after

¹ To enable OCC to respond to extraordinary market conditions in October 1987, the Commission approved, on a temporary accelerated basis, a rule change substantially in the form of the proposed rule change. See Securities Exchange Act Release No. 25059 (October 23, 1987), 52 FR 41645.

² On February 26, 1988, OCC filed a rule change pursuant to § 19(b)(3)(A) of the Act that continues temporary approval of the rule through May 1988. See Securities Exchange Act Release No. 34-25419 (3-4-88).

³ The term "waive" includes, but is not limited to, adjustments or modifications to OCC's formula for calculating margin requirements.

¹ To enable OCC to respond to extraordinary market conditions in October 1987, the Commission approved Rule 609A on a temporary, accelerated basis. See Securities Exchange Act Release No. 25059 (October 23, 1987), 52 FR 41645. On December 31, 1987, OCC filed, and the Commission currently is reviewing, a rule change that would make Rule 609A permanent. See SR-OCC-87-24.

granting a waiver, to make and keep a record of action taken under the rule. The proposal replaces the prior consultation requirement with the requirement that OCC's Chairman or President use his best efforts to consult with the Commission prior to taking action under the rule. In the event the Chairman or President is unable to accomplish prior consultation, he would advise the Commission, as soon as practicable, after any waiver was granted. Additionally, the proposal retains the requirements in Rule 609A that OCC maintain with its corporate records a record of any action taken under the rule.

II. OCC's Rationale for the Proposal

OCC believes that the proposed rule change is consistent with the purposes and requirements of Section 17A of the Act. OCC states in its filing that the proposed rule change serves the public interest and the protection of investors by providing OCC needed flexibility in dealing with extraordinary market conditions.

OCC also believes there is good cause for modifying the prior consultation requirement. OCC states that this requirement could undermine the effectiveness of the rule, which is intended to enable OCC to apply its margin requirements flexibly in extraordinary market conditions. OCC believes that ability may be impaired if the Chairman or President has to consult with the Commission before OCC can take any ameliorative action under the rule.

III. Request for Comments

Within 35 days of the date of publication of this notice in the *Federal Register* or within such longer period (1) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (2) as to which OCC consents, the Commission will by order approve such proposed change or institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons can submit written comments about the proposal by filing six copies of their comments with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that

may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing also will be available for inspection and copying at OCC's principal office. All comments should refer to file number SR-OCC-87-24 and should be submitted by April 1, 1988.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority. 17 CFR 200-30-3.

Dated: March 4, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-5351 Filed 3-10-88; 8:45 am]

BILLING CODE 8010-M

[Release No. IC-16301; (812-6627)]

MetLife-State Street Equity Trust et al.; Notice of Application

March 7, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: MetLife-State Street Equity Trust; MetLife-State Street Fixed Income Trust; MetLife-State Street Income Trust; MetLife-State Street Money Market Trust; MetLife-State Street Tax-Exempt Trust (collectively, "Trusts"); and MetLife-State Street Investment Services, Inc (the "Adviser").

Relevant 1940 Act Sections: Exemption requested pursuant to Section 6(c) from sections 13(a)(2), 17(d), 18(f)(1) and 22 (f) and (g) and approval pursuant to Section 17(d) and Rule 17d-1 thereunder.

Summary of Application: Applicants seek an order (i) to permit the Trusts and all subsequent or similar registered investment companies organized or sponsored by the Adviser or its affiliates to enter into deferred fee arrangements with their Board of Trustees or Directors ("Trustees") and (ii) to permit the Trust and participating Trustees to effect transactions incident to such arrangements.

Filing Date: The application was filed on February 12, 1987 and letters from counsel were submitted on April 22, and December 30, 1987. An amendment incorporating the representations contained in the letters was filed on March 1, 1988. A second amendment will be filed during the notice period the substance of which is contained herein.

Hearing or Notification of Hearing: If no hearing is ordered, the requested exemption will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on March 30, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, in the case of an attorney, by certificate. Request notifications of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, One Financial Center, Boston, MA 02111.

FOR FURTHER INFORMATION CONTACT: Sherry Hutchins Perkins, Staff Attorney (202) 272-3026 or Brion R. Thompson, Special Counsel (202) 272-3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION:

Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (8000 231-3282 (in Maryland (301) 258-4300)).

Applicants' Representations:

1. The Trusts are diversified open-end management investment companies organized as business trusts under the laws of the Commonwealth of Massachusetts and currently consist, in the aggregate, of ten separate funds, eight of which currently either offer their shares to the public. The Adviser, a wholly-owned subsidiary of State Street Research & Management Company ("State Street"), serves as the investment adviser and distributor for the Trusts. State Street is, in turn, an indirect wholly-owned subsidiary of Metropolitan Life Insurance Company (New York).

2. The Trustees of MetLife-State Street Fixed Income Trust consists of seven persons, five of whom are not "interested persons" of that Trust within the meaning of section 2(a)(19) of the 1940 Act. The Trustees of each of the other Trusts consists of nine persons, seven of whom are not "interested persons" of such Trusts within the meaning of section 2(a)(19) of the 1940 Act. Each of the Trustees who is not an interested person of the Adviser or State Street are compensated on the basis of \$500 for each regular or special meeting of the Trustees or Audit Committee of a

Trust attended and reimbursement for reasonable expenses incurred in connection therewith, plus an annual retainer of \$2,500 from each Trust. No Trustee who is an "interested person" of the Adviser or State Street will receive any remuneration from the Trusts.

3. The proposed deferred fee arrangements would be implemented by means of a Deferred Fee Agreement (the "Agreement") entered into between a Trustee and each participating Trust. The effect of such Agreement would be to permit individual Trustees to elect to defer receipt of their Trustees' fees, to enable them to defer payment of income taxes on such fees, or for other reasons. The Agreement will allow each individual Trustee to defer receipt of all Trustee's fees which otherwise would become payable by a Trust to him for services performed after the date of such Agreement. A Trustee will be able to enter into agreements with any number of the Trusts. Each Trust believes that the availability of deferred fee arrangements will enhance its ability to attract and retain Trustees of the same high caliber as those who now serve on its Board of Trustees.

4. Under the Agreement, deferred Trustee fees will be credited to a book reserve account established by the participating Trust (the "Deferred Fee Account"), as of the date such fees would have been paid to such Trustee. The value of the Deferred Fee Account shall be equal to the value such account would have had as if the amounts credited had been invested and reinvested in certain designated securities ("Underlying Securities"). The Underlying Securities for a Deferred Fee Account will consist of shares of the MetLife-State Street Money Market Fund of the MetLife-State Street Money Market Trust provided, however, that in the discretion of the Board of Trustees of the Trust entering into such Agreement (subject to the restriction described below) such account shall be deemed to have been invested in such other Underlying Securities as the Board of Trustees and the participating Trustee shall have agreed upon in writing from time to time. In such event the account shall be credited or charged with all interest, dividends and other earnings and all gains and losses which would have been realized had such account been invested in the Underlying Securities.

5. Under the Agreement, such other Underlying Securities will be restricted to securities which could then be

purchased by the Trust entering into the Agreement without violating section 13(a)(3) of the 1940 Act. As a matter of prudent risk management, each Trust intends in all cases to purchase Underlying Securities in an amounts equal to the deemed investment of the Deferred Fee Accounts of its Trustees. No Trust will enter into an Agreement specifying shares of a registered investment company as Underlying Securities for any Deferred Fee Account if there is a material risk that the purchase of such shares would result in a violation of section 12(d)(1) of the 1940 Act.

6. The Agreement provides that the participating Trust's obligation to make payments of the Deferred Fee Account will be a general obligation of such Trust, and payments made pursuant to the Agreement will be made from the Trust's general assets and property. With respect to the obligations created under the Agreement, the relationship of the Trustee to the Trust will only be that of a general unsecured creditor. The Agreement also provides that the Trust will be under no obligation to purchase, hold or dispose of any investments under the Agreement, but, if the Trust chooses to purchase investments to cover obligations, any and all such investments will continue to be a part of the general assets and property of the Trust.

Applicants' Legal Analysis

1. Applicants believe that the deferral of Trustee fees in accordance with the Agreement will have a negligible effect on each Trust's assets, liabilities, net assets and net income per shares. The effect of the Agreement would merely be to defer the payment of fees that the Trusts would otherwise be obligated to pay on a current basis. Liabilities created by the credits to the Deferred Fee Account under the Agreement would be held by the equal amount of assets, which assets would not be held by the Trust if fees were paid on a current basis. In addition, when all payments under the Agreement have been made to a Trustee, such Trustee would be in a position no better than if any deferred fees had been paid on a current basis. Further, the Agreement will not obligate any Trust to retain a Trustee in such capacity, nor will it obligate any Trust to pay any (or any particular level of) Trustee fees to any Trustee.

2. Applicants contend that the Agreement possesses none of the

characteristics of "senior securities" that led to the adoption of restrictions pertaining to such securities, that the restriction on transferability or negotiability of the deferred fees will have no adverse affects on the Trusts' shareholders, and that the deferral of fees under the Agreement should be viewed as being issued not for services, but in return for the Trusts not being required to pay such fees on a current basis. Thus, Applicants request exemptions from the provisions of sections 13(a)(2), 18(f)(1), 22(f) and 22(g) of the 1940 Act, to the extent necessary, to permit implementation of the Agreement.

3. Applicants assert that the Agreement does not involve joint transactions between the Trusts and their Trustees within the meaning of section 17(d) of the 1940 Act and Rule 17d-1 thereunder. In this respect, Applicants submit that the Agreement does not possess the profit-sharing characteristics required for a joint transaction as contemplated by the 1940 Act. To the extent that the Agreement may be deemed to involve joint transactions between the Trusts and their Trustees, Applicants submit that the participation in the Agreement by the Trusts will not be on a basis that is less advantageous than that of any other participant.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 88-5349 Filed 3-10-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

Office of Protocol

[Public Notice 1055]

Gifts to Federal Employees From Foreign Governments Reported to Employing Agencies in Calendar Year 1987

The Department of State submits the following comprehensive listing of the statements which, as required by law, Federal employees filed with their employing agencies during calendar year 1987 concerning gifts received from

foreign government sources. The compilation includes reports of both tangible gifts and gifts of travel or travel expenses of more than minimal value, as defined by statute.

Publication of this listing in the **Federal Register** is required by section 7342(f) of Title 5, United States Code, as added by section 515(a)(1) of the Foreign Relations Authorization Act, Fiscal Year

1978 (Public Law 95-105, August 17, 1977, 91 Stat. 865).
Dated: March 4, 1988.
Ronald I. Spiers,
Under Secretary for Management.

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Agency: Executive Office of the President			
President and First Lady.....	Artwork: Set of original steel plate engravings of the first 21 Presidents of the United States with facsimiles of their signatures, dated 1880; housed in a leather-covered case; each card is 5x7 inches; gold imprinted presentation text on case cover. Archives. Recd—June 12, 1987. Est. Value—\$150.	The Honorable Eberhard Diepgen, Governing Mayor of Berlin.	Nonacceptance would have caused embarrassment to donor and U.S. Government
Do	Photograph: An album of twenty-three 8x10 inch color photographs of the President and First Lady's visit to Canada, April 5-6, 1987. Archives. Recd—April 5, 1987. Est. Value—\$145.	The Right Honorable Brian Mulroney, P.C., M.P. Prime Minister of Canada.	Do.
Do	Photograph: An autographed color photograph of Governor General Sauve by Karsh, who also signed the print; displayed in a sterling silver frame with engraved royal crest at top, by Garrard & Co., Ltd; 4 1/2" x 6 1/2" image; 9 1/2" x 13" overall (\$450); Archives. Consumables: A small bottle of maple syrup made from sap of trees at Rideau Hall (\$10). Perishable. Recd—April 6, 1987. Est. Value—\$460.	The Right Honorable Jeanne Sauve, P.C., C.C. Governor General of Canada.	Do.
Do	Household: A pair of brass camels with riders, measuring 22" long, 10" wide, & 25" tall and 13" long, 6 1/2" long, & 13 1/2" tall respectively (\$500); Archives. Assortment: A circular woven basket with removable lid and brown leather designs, 13" in diameter, 13" tall; a leather purse or shoulder bag, 11" square; two framed pictures made of butterflies, 9 1/4" x 12 1/4" and 7" x 12 1/4"; a handheld fan made of colored yarns; and an inscribed color photograph of President Habre, 8 1/2" x 11 1/2" (\$175). Archives. Recd—June 19, 1987. Est. value—\$675.	His Excellency Hissain Habre, President of the Republic of Chad.	Do.
Do	Artwork: Calligraphic sculpture, featuring the two Hebrew letters, resh and nun, which spell the word "Ron" phonetically and stand for the Hebrew characters for "Ronald" and "Nancy" as well; polished metal on black base, by Michel Schwartz, signed; engraved brass presentation plaque attached; 27" tall. Archives. Recd—February 18, 1987. Est. value—\$750.	His Excellency and Mrs. Yitzhak Shamir, Prime Minister of Israel.	Do.
Do	Household: Two sterling silver paperweights; one is rectangular with an antique floral mosaic, "Flowers and the Colloseum," and bearing a facsimile signature of President Cossiga underneath, 3 1/2" x 5 3/4" overall; the second is oval with an antique miniature mosaic, "The Arch of Tito," mounted in 18 kt. gold, bearing a facsimile signature of President Cossiga on top, 3 3/4" length. Archives. Recd—August 7, 1987. Est. Value—\$750.	His Excellency Francesco Cossiga, President of the Italian Republic.	Do.
Do	Photograph: A black and white photograph of the Crown Prince and Princess of Japan, inscribed in Japanese calligraphy; displayed in a sterling silver frame with the imperial gold crest at top; 8 1/2" x 11" image; 10 1/2" x 13 1/4" overall. West Wing—For Official Use/Display. Recd—October 6, 1987. Est. Value—\$250.	Their Imperial Highnesses, the Crown Prince and Princess of Japan.	Do.
Do	Flowers: A large floral arrangement depicting birds in a nest, surrounded by anthurium, azaleas, fruit, & greens; mounted on a moss-covered base. Residence—For Official Use/Display. Recd—December 17, 1987. Est. Value—\$250.	His Excellency and Mrs. Ahmed Abdulla Zaid Al-Mahmoud, Ambassador of the State of Qatar.	Do.
Do	Book: "Lincoln and His America 1809-1865" arranged by David Plowden and autographed; navy-blue leather binding with gold-tooled motif, gilt-edged pages, moire-covered end-papers; number 4 of a limited edition of 265 copies; published by the Arcadia Press, London, 1971; hand-bound by Zaehnsdorf of London (\$600); Archives.	His Royal Highness Prince Bandar Bin Sultan, Ambassador of Saudi Arabia.	Do.
Do	Household: A 1988 calendar appointment book with a donor's name and title printed inside (\$10). Archives. Recd—December 15, 1987. Est. Value—\$610.		
Do	Historic Artifacts: Facsimiles of documents from Christopher Columbus, reproduced on parchment and attached to a skippet (seal); contained in a tan sheep skin leather folio, together with a softcover copy of book, "Tratado de Tordesillas" (Treaty); 10 1/2" x 14" overall (\$800); Archives. Photograph: Color photograph of Prince Felipe of Asturias, in formal naval attire, inscribed "To Nancy and Ronald Reagan, with all my affection and best wishes, Felipe, Prince of Asturias;" in silver frame; 12" x 16" overall (\$300). Archives. Recd—May 26, 1987. Est. Value—\$1,180.	His Royal Highness Don Felipe de Borbon, Prince of Asturias Spain.	Do.

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Do	Household: Crystal bowl and matching platter, depicting a rhododendron motif; by Kosta Boda; handblown by Lisa Bauer and J. Neikter, 1984; bowl is numbered 108845004 and measures 15" in diameter; platter is numbered 108847004 and measures 16 1/4" in diameter (\$12,600); Archives. Photograph: Color photograph of Prime Minister and Mrs. Carlsson, inscribed; in maroon leather frame with brass corners; 7 1/2" x 9 1/2" image, 10 1/2" x 12 1/2" overall (\$60). Archives. Recd—September 9, 1987. Est. Value—\$12,660.	His Excellency Ingvar Carlsson, Prime Minister of Sweden.	Do.
Do	Clothing and Accessories: Two walking sticks, "The Devrek Walking Sticks," handcrafted from the cornel tree and embellished with silver-colored metal motifs; one dog head handle design, one rabbit's foot handle design; the President and First Lady's picture is on each; 35" x 37 1/2" long respectively. Archives. Recd—January 5, 1987. Est. Value—\$120.	His Excellency Turgut Ozal, Prime Minister of Turkey.	Do.
Do	Household: A black lacquered box depicting a medieval scene on hinged lid; crafted in the Soviet Union, 1985; 5 3/4" x 4" x 1 1/2" deep. Archives. Recd—December 22, 1987. Est. Value—\$400.	His Excellency and Mrs. Yuri V. Dubinin, Ambassador of the Union of Soviet Socialist Republics.	Do.
President	Artwork: Oil painting of the Brandenburg Gate by Reinhold Timm, signed; matted under glass in gold-painted wood frame; 20" x 27 1/2" image; 31" x 38" overall. Archives. Recd—June 12, 1987. Est. Value—\$575.	The Honorable Eberhard Diepgen, Governing Mayor of Berlin.	Do.
Do	Consumables: Twenty-four bottles of red Algerian wine and five boxes of dates on vine. Perishable. Recd—December 29, 1987. Est. Value—\$197.	His Excellency Chadli Bendjedid, President of the Democratic and Popular Republic of Algeria.	Do.
Do	Gun: A .38 Special revolver, serial No. J 041700, gold-electroplated with wood handle; engraved "Ronald Reagan" and made by Amadeo Rossi in Brazil; two screwdrivers also included. Archives. Recd—June 1, 1987. Est. Value—\$1,500.	His Excellency Jose Sarney, President of the Federative Republic of Brazil.	Do.
Do	Jewelry: An 18 kt. gold tie clasp with large pearl in center, engraved on reverse: "To President R. Reagan FR: Ne Win 1987." Archives. Recd—April 10, 1987. Est. Value: \$2,000.	His Excellency U Ne Win, Chairman of the Burma Socialist Program Party, Burma.	Do.
Do	Artwork: Stone sculpture of a polar bear from the Frobisher Bay Region, handcrafted by Inuk artist Mosa Kelly, signed and numbered (25046) on underside; 5 1/2" high x 4" deep x 9" long. Archives. Recd—April 5, 1987. Est. Value—\$400.	The Right Honorable Brian Mulroney, P.C., M.P. Prime Minister of Canada.	Do.
Do	Photograph: Album of color photographs of the President and Mrs. Reagan with Prime Minister and Mrs. Mulroney et al., on the occasion of the Ottawa Summit; leather-bound with embossed cover. Archives. Recd—July 8, 1987. Est. Value—\$450.	do	Do.
Do	Household: A sterling silver letter opener with circular handle bearing royal crest, engraved on blade; by Garrard & Co., Ltd.; 8" long; contained in a navy blue box bearing the royal crest on lid. Archives. Recd—April 6, 1987. Est. Value—\$90.	The Right Honorable Jeanne Sauve, P.C., C.C. Governor General of Canada.	Do.
Do	Artwork: A multi-colored jadeite floral arrangement in a cloissone bowl; 19" tall. Archives. Recd—May 20, 1987. Est. Value—\$250.	His Excellency Shangkun Yang, Vice-Chairman, Central Military Commission of the People's Republic of China.	Do.
Do	Artwork: A 13" x 19 1/2" modernistic painting, and two modernistic style 10" square ceramic plaques; all by Fernando Llort, signed; and all in gold-colored wood frames. Archives. Recd—October 14, 1987. Est. Value—\$900.	His Excellency Jose Napoleon Duarte, President of the Republic of El Salvador.	Do.
Do	Artwork: Bronze sculpture, "Horse at the Barrier," by Pierre Jules Mene, signed, 1846; 17 1/2" long x 12" high x 6 1/2" deep. Archives. Recd—March 31, 1987. Est. Value—\$4,500.	His Excellency Jacques Chirac, Prime Minister of the French Republic.	Do.
Do	Coins: Proof set of four 100 franc coins (gold, silver, platinum, & palladium) with image of General Lafayette, 1987; marking the 70th anniversary of the entry of the United States into World War I and the Bicentennial of the French Revolution; contained in a navy blue leather case. Archives. Recd—September 23, 1987. Est. Value—\$1,457.	do	Do.
Do	Sculptures: A Kota reliquary guardian form wood and copper figure, 26" tall; a pair of contemporary carvings of a male and female, approximately 21" tall; an ivory contemporary carving of two giraffes, 6" tall; and an ivory carving of a cup in the style of drums, 7" tall (\$940); Archives. Artwork: Three sets of color prints, each set contained in a colored faux leather bound case titled "Cultes," "Homes," and "Prinives" with accompanying French text; each set measures 13" x 20" and is printed in France (\$1,350). Archives. Recd—July 31, 1987. Est. Value—\$2,290.	His Excellency El Hadj Omar Bongo, President of the Gabonese Republic.	Do.
Do	Book: A folio containing a copy of a 1987 reproduction of an original volume, "Das Reichstags-Gebäude in Berlin," by Paul Wallot and a set of the individual plates depicting interior and exterior views of the Reichstate Building in Berlin. Archives. Recd—June 9, 1987. Est. Value—\$750.	Dr. Philipp Jenninger, President of the German Bundestag, Federal Republic of Germany.	Do.

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Do	Consumables: One case of German wine; Two bottles of Rheinhessen 1976 Riesling Auslese, two bottles of Riesling Beerenauslese, 1981 Rheinpfalz, and 1976 Rheingau, and eight bottles of Riesling Spatlese, 1979-1984. Perishable. Recd—December 22, 1987. Est. Value—\$300.	His Excellency Helmut Kohl, Chancellor of the Federal Republic of Germany.	Do.
Do	Household: A white Nymphenburg porcelain figure of the royal Bavarian lion holding a blue and white shield; 6½" tall. Archives. Recd—October 22, 1987. Est. Value—\$1,000.	Dr. Theo Waigel, Member of the German Bundestag Federal Republic of Germany.	Do.
Do	Artwork: Cotton wallhanging of the Great Seal of the United States, on white background, lettered "To President Ronald Reagan from President Vinicio Cerezo, Guatemala, May 1987," 72" long x 58" wide (\$750); Archives. Artwork: Tapestry, by "R," of seven men in native dress from the town of Solola; in golden wood frame with mirrored border; 33" x 35" (\$600). Archives. Recd—May 13, 1987. Est. Value—\$1,350.	His Excellency Vinicio Cerezo, President of the Republic of Guatemala.	Do.
Do	Household: Crystal pedestal style bowl with scalloped edge by Cavan Crystal, etched Irish inscription and shamrock motif; 10" in diameter, 8" tall. Archives. Recd—March 17, 1987. Est. Value—\$190.	His Excellency Charles J. Haughey, Prime Minister of Ireland.	Do.
Do	Historic Artifacts: A ballistic stone fired by the Romans in the First Century siege of Masada; mounted on block of black marble with engraved presentation plaque and displayed in lucite case; case measures 7½" x 5" x 5". Archives. Recd—November 10, 1987. Est. Value—Indeterminable.	His Excellency Chaim Herzog, President of Israel.	Do.
Do	Artwork: A ceramic figure of the Statue of Liberty by G. Visentin, 18 kt. gold and silver overlay with black face, arms, and feet; No. 41 of 281; displayed on a black and clear lucite base with plaque bearing artist's name; 24" tall figure, 32" tall overall. Archives. Recd—June 8, 1987. Est. Value—\$1,200.	His Excellency Giulio Andreotti, Minister of Foreign Affairs of the Italian Republic.	Do.
Do	Household: A pedestal bowl of handblown cobalt blue Venetian glass depicting maidens bathing and on horseback, by M. Dalton, signed on underside; 8" tall and 8" in diameter (\$1,200); Archives. Photograph: Ten color photographs of scenes in Italy, the President, Mrs. Reagan, and others; attached to white paper titled "Immagini" (\$250). Archives. Recd—June 8, 1987. Est. Value—\$1,450.	Dr. Carlo Bernini, President of the Veneto Region Italy.	Do.
Do	Coins: Set of five silver (AG 986) coins, reproducing originals of the Republic of Venice, 1848; Republic of Rome, 1849; Republic of Neapolitana (undated); Liberta Ecuaglianza, 1804; and Governo Provisorio di Lombardia, 1848; all contained in a navy blue leather case. Archives. Recd—May 27, 1987. Est. Value—\$250.	His Excellency Amintore Fanfani, Prime Minister of the Italian Republic.	Do.
Do	Artwork: An oil on canvas entitled "Piazzetta San Marco" by Amintore Fanfani, signed; inscribed to President Reagan on reverse of antique goldleaf frame; 18¾" x 26½" image, 25" x 33" overall (\$150); Archives. Household: Silver cigarette box, etched with "Vertice Economic di Venezia, 8-10 Giugno 1987" (Venice Economic Summit, June 8-10, 1987) on hinged lid with small floral motif on underside of lid; by Federico Buccellati, Orafo, Italy; 7¼" x 5¼" x 1¼" (\$500). Archives. Recd—June 8, 1987. Est. Value—\$650.	do	Do.
Do	Household: A silver cigarette box etched with a scene in Rome on its hinged lid, small floral design on the underside of the lid; Federico Buccellati, Orafo, Italy; 7¼" x 5¼" x 1¼". Archives. Recd—December 16, 1987. Est. Value—\$750.	His Excellency Giovanni Gorla, President of the Council of Ministers of the Italian Republic.	Do.
Do	Household: A pedestal style candelabra with removable curved arms and decorative leaf attachments, swag chains, and a finial (four extra arm pieces included); by Murano Glass; signed "Barovier & Torso;" 28" tall (\$850); Archives. Book: "Murano, Il Vetro La Sua Gente" (Murano, Its Glass and Its People), published by Consorzio Venezia Vetro, 1986 (\$40). Archives. Recd—June 8, 1987. Est. Value—\$890.	The Honorable Nereo Laroni, Mayor of Venice Italy.	Do.
Do	Photograph: An album of 167 black and white photographic prints reproduced from the original negatives of pictures featuring the Italian Cavalry, taken from the 1890s to the early 1900s of riders jumping hurdles, etc., in various European horse shows. Ranch—For Official Use/Display. Recd—November 6, 1987. Est. Value—\$217.	His Excellency Valerio Zanone, Minister of Defense of the Italian Republic.	Do.
Do	Household: A cloisonne tray depicting two white cranes in flight; approximately 9½" square. Archives. Recd—April 21, 1987. Est. Value—\$200.	His Excellency Shintaro Abe Chairman, General Council, Liberal Democratic Party Japan.	Do.
Do	Household: A black wooden lacquerware vase (new) with gold handpainted fans and ocean wave motifs; silver-colored metal removable liner; 8½" tall. Archives. Recd—April 30, 1987. Est. Value—\$600.	His Excellency Yasuhiro Nakasone, Prime Minister of Japan.	Do.
Do	Book: "The Imperial Palace," published by Imperial Household Agency, 1969, Japan; bound in navy blue buckram; included is an accompanying softcover publication of the same title. Archives. Recd—October 6, 1987. Est. Value—\$225.	Their Imperial Highnesses The Crown Prince and Princess of Japan.	Do.

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Do	Coins: A 24 kt. gold coin (½ ounce in weight) bearing a depiction of King Hussein I. Archives. Recd—September 11, 1987. Est. Value—\$275.	Her Majesty Queen Noor, Queen of the Hashemite, Kingdom of Jordan.	Do.
Do	Artwork: A figure of a rhinoceros, "The Running Rhino," carved by a Kenyan artist from the kisii stone; 37" long, 10" wide, and 15" tall (\$2,500); Archives. Artwork: a figure of an African man, "The Sculpture of Happiness," carved in an openwork design by a Kenyan artist from ebony wood; 37" high, 8" wide, x 5" deep (\$2,500). Archives. Recd—March 12, 1987. Est. Value—\$5,000.	His Excellency Daniel T. Arap Moi, President of the Republic of Kenya.	Do.
Do	Coins: Set of 8 gold and 20 silver coins—"Games of the XXIVth Olympiad Seoul 1988 Commemorative Coins"—under glass in aluminum frame; 18½" x 24¼" overall. Archives. Recd—July 22, 1987. Est. Value—\$5,700.	His Excellency Chun Doo Hwan, President of the Republic of Korea.	Do.
Do	Coins: A proof set of seven silver and gold coins, commemorating the XXIVth Olympiad, Seoul, 1988; displayed in blue suede box. Archives. Recd—September 14, 1987. Est. Value—\$1,375.	Mr. Tae-Woo Roh, President, Democratic Justice Party Republic of Korea.	Do.
Do	Household: A wool wallhanging woven with composite scenes of Lesotho; 4½ feet x 3 feet, 3 inches; and, a set of six placements depicting color photographs of the country, 8" x 10½" each. Archives. Recd—October 27, 1987.	His Majesty Moshoeshe II, King of Lesotho.	Do.
Do	Artwork: A statuette, "Mujer Chamula de la Buena Suerte" (Chamula Woman of Good Fortune), from Chiapas, Mexico; gold-electroplated sterling silver; gold-electroplated sterling silver; 8¾" tall. Archives. Recd—January 13, 1987. Est. Value—\$500.	His Excellency and Mrs. Miguel de la Madrid Hurtado President of the United Mexican States.	Do.
Do	Book: "Palacio Nacional" texts by Carlos Fuentes and Guillermo Tovar Y de Caceres: general coordination and artistic direction by Nicolas H. Sanchez-Osorio; edited by President de la Madrid; published in Mexico, 1986; No. 0005 of 2001 copies of an edition of 5000; leather bound in green, white and red, simulating the Mexican flag with the Mexican crest on front cover; marbled endpapers. Archives. Recd—February 10, 1987. Est. Value—\$850.	His Excellency Miguel de la Madrid Hurtado, President of the United Mexican States.	Do.
Do	Flowers: A large floral arrangement mostly orchids, in a basket (\$150); Residence—For Official Use/Display. Consumables: A large basket of delicacies and foodstuffs (\$100). Perishable. Recd—January 4, 1987. Est. Value—\$250.	His Majesty Hassan II, King of Morocco.	Do.
Do	Flowers: A large arrangement of anthurium, tulips, bird of paradise, etc., in a porcelain container with overall floral motif (\$250); Residence—For Official Use/Display. Household: A basket containing a Waterford crystal decanter; crystal handled razor and letter opener; and Baccarat elephant; and food delicacies (\$575). Archives. Recd—February 6, 1987. Est. Value—\$825.	His Majesty Hassan II, King of Morocco.	Do.
Do	Artwork: A gold-plated figure of a falcon perched atop a pedestal base of malachite; the sculpture stands approximately 9" tall, the base is 5½" in diameter at its widest point and stands 6¼" tall. Residence—For Official Use/Display. Recd—October 19, 1987. Est. Value—\$2,000.	His Royal Highness Abdallah Ibn Abd Al-Aziz Al Saud, Crown Prince and Deputy Prime Minister of Saudi Arabia.	Do.
Do	Book: "Libro de la Primera Navegacion" (softcover) and "Diario de la Primera Navegacion, 1492," published by Fray Bartolome de las Casas; leather-bound with embossed shield on front cover, in a composition leather-cover case. Archives. Recd—May 26, 1987. Est. Value—\$550.	His Royal Highness Don Felipe de Borbon, Prince of Asturias, Spain.	Do.
Do	Household: A silk, hand-knotted carpet depicting floral motifs in predominate shades of blue within bordered design, fringed on two ends; 29½" x 45". Archives. Recd—January 5, 1987. Est. Value—\$1,200.	His Excellency Turgut Ozal, Prime Minister of Turkey.	Do.
Do	Athletic Equipment: A leather saddle and accessories, embellished with niello work and affixed with steel and brass hardware; housed in a blond-colored wood chest with black metals bands (\$350); Archives. Consumables: A crate of Russian black caviar, consisting of five 4-ounce jars, 2-ounce jars, and five 1-ounce jars (\$875); Perishable. Artwork: Sculpture entitled "Power of Life," a composition crafted of Urals semi-precious stones of jasper, jade, lapis lazuli, malachite and others; created by Evgeny E. Vasiliev, signed and dated 1987 on underside; 18¼" tall, 10½" wide, and 3½" deep (\$900). Archives. Recd—December 9, 1987. Est. Value—\$2,025.	His Excellency Mikhail Gorbachev, General Secretary of the Central Committee of the Communist Party of the Soviet Union.	Do.
Do	Household: A porcelain coffee pot and a tea pot, blue and white design; 10" tall and 7½" tall respectively. Archives. Recd—September 15, 1987. Est. Value—\$283.	His Excellency Eduard A. Shevardnadze, Minister of Foreign Affairs of the Union of Soviet Socialist Republics.	Do.
Do	Household: A crystal decanter with etched floral motif and a diamond faceted stopper and four crystal glasses by Stuart crystal, England (\$332); Archives. Household: A framed message of greetings from Chairman Gough, 10½" x 2½" overall (\$7). Archives. Recd—July 17, 1987. Est. Value—\$339.	Mr. Howard J. Gough, Chairman, South Glamorgan County Council Wales.	Do.

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Do	Artwork: A copper picture of an African native woman, 1986; in a wood frame; measuring 22½" x 39½" overall (\$300); Archives. Artwork: An ivory figure of an African man, mounted on a circular wood base; 20½" tall (\$650). Archives. Recd—February 24, 1987. Est. Value—\$950.	His Excellency Marshal Mobutu Sese Seko, President of the Republic of Zaire.	Do.
First Lady	Jewelry: An 18 kt. gold bracelet with 68 rubies; engraved on clasp: "FR: NW." Archives. Recd—April 10, 1987. Est. Value—\$3,000.	His Excellency U Ne Win, Chairman of the Burma Socialist Program Party, Burma.	Do.
Do	Household: An egg-shaped blown glass perfume bottle with red swirled design and glass stopper, handcrafted in Canada and signed "Eberhart," 6½" tall. Archives. Recd—April 5, 1987. Est. Value—\$130.	The Right Honorable Brian Mulroney, P.C., M.P., Prime Minister of Canada.	Do.
Do	Household: A 55" x 80" red silk tablecloth with Oriental motif and green silk fabric with blue floral design, 6 yards long, 46 inches wide. Archives. Recd—May 20, 1987. Est. Value—\$245.	His Excellency Shangkun Yang, Vice-Chairman, Central Military Commission of the People's Republic of China.	Do.
Do	Household: A handmade jewelry box with handpainted floral design on a fitted wood stand; 12¼" x 9¼" x 8" box, 14¼" x 10¼" x 14" stand; and a wood photograph frame with floral motifs in opposite corners, 9" x 11" (\$415); Archives. Household: A white woven fishnet style hammock (\$250). Archives. Recd—October 14, 1987. Est. Value—\$665.	Mrs. Ines Duran de Duarte, Wife of the President of El Salvador.	Do.
Do	Household: A porcelain jelly jar with matching lid and saucer in an overall floral design with applied silver rims and finial by Puiforcat Lefevre of Reynaud; bowl is 5" tall, 5" in diameter; saucer is 7" in diameter (\$1,740); Archives. Photograph: Two photographs taken by French satellite. One is of the Santa Ynez area highlighting the President's ranch; the other is an enlargement of the northwest quadrant of the first photograph; in black frames; 38" square each (\$1,500). Archives. Recd—March 31, 1987. Est. Value—\$3,240.	His Excellency Jacques Chirac, Prime Minister of the French Republic.	Do.
Do	Household: A crystal vase on pedestal base by Baccarat, 13¾" tall (\$590); Archives. Flowers: Two potted "Nancy Reagan Rose" bushes (\$60). Residence—For Official Use/Display. Recd—February 26, 1987. Est. Value—\$650.	The Honorable and Mrs. Andre Rossinot, Mayor of Nancy, France.	Do.
Do	Jewelry: A set of gold jewelry, consisting of a bracelet, necklace ring, and earrings; all of a filigree design. Archives. Recd—July 31, 1987. Est. Value—\$3,032.	His Excellency El Hadj Omar Bongo, President of the Gabonese Republic.	Do.
Do	Jewelry: A set of pale jade, consisting of a necklace, earrings, and ring; all in 14 kt. gold settings; displayed in wood case with engraved plaques. Archives. Recd—May 13, 1987. Est. Value—\$535.	Mrs. Raquel Blandon de Cerezo, Wife of the President of Guatemala.	Do.
Do	Jewelry: A palm and pomegranate necklace, sterling silver, specially designed by Yaacov and Boaz Yemini; displayed in an olive wood case with parchment descriptive card and an engraved presentation plaque attached. Archives. Recd—November 10, 1987. Est. Value—\$1,000.	Mrs. Aura Herzog, Wife of the President of Israel.	Do.
Do	Household: An ancient glass vessel with modern silvered ornamental top and legs, designed by Miriam Hirsowicz; 2½" tall, 2½" in diameter. Archives. Recd—February 18, 1987.	Mrs. Yitzhak Shamir, Wife of the Prime Minister of Israel.	Do.
Do	Household: Two ceremonial dolls on stands; "Okina" (Old Man) and "Ouna" (Old Lady) dressed in elaborate brocade costumes, each holding a fan, and, a rake and a broom respectively; approximately 9" tall; displayed on a black lacquered platform inside a glass case with hinged door; case measures 16¼" tall, 25¼" long, and 15" deep. Archives. Recd—April 30, 1987. Est. Value—\$350.	His Excellency Yasuhiro Nakasone, Prime Minister of Japan.	Do.
Do	Household: An all-purpose container molded ruby glass with fluted sides and raised leaf design on removable lid, 3" square. Archives. Recd—October 6, 1987. Est. Value—\$250.	Their Imperial Majesties, The Crown Prince and Princess of Japan.	Do.
Do	Jewelry: A malachite with coral and goldplate set of necklace, earrings, bracelet, and ring (\$200); Archives. Clothing and Accessories: A tote bag, "Chondo," woven by hand by Kenyan women from sisal fibre; 14" in diameter (\$40); Archives. Consumables: Four small packets of Kenyan coffee (\$8). Perishable. Recd—March 12, 1987. Est. Value—\$248.	His Excellency Daniel T. Arap Moi, President of the Republic of Kenya.	Do.
Do	Household: A porcelain cachepot depicting a "Reproduction of the tobacco leaf pattern commonly found on China trade porcelain in the second half of the XVIII Century" by Mottahedeh for the Metropolitan Museum of Art in New York; 6½" tall. Archives. Recd—May 18, 1987. Est. Value—\$275.	Mrs. Maria Barroso Soares, Wife of the President of Portugal.	Do.
Do	Household: A silver tray, engraved with facsimile signature of Prince Felipe and the royal crown; 16½" square. Archives. Recd—May 26, 1987. Est. Value—\$200.	His Royal Highness Don Felipe de Borbon, Prince of Asturias, Spain.	Do.
Do	Household: A gold-plated sterling silver trinket box etched with landscape scenes and facsimile signatures of Juan Carlos I and Queen Sofia on inside of hinged lid; 3½" x 2¼" x 1½" deep; enclosed in navy blue box depicting gold crown on lid. Archives. Recd—September 25, 1987. Est. Value—\$400.	Their Majesties Juan Carlos I and Sofia, The King and Queen of Spain.	Do.

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Do	Garments: A brown leather one-piece dress with 3/4-length sleeves and black velvet floral motifs with gold-colored bugle beaded design at top; a brown leather jacket with white fur collar by "Modello;" and a two-piece evening suit, consisting of a black leather skirt and a black leather top with "gold-mesh" design and black fur around hem. Archives. Recd—February 5, 1987. Est. Value—\$700.	Mrs. Semra Ozal, Wife of the Prime Minister of Turkey, Foundation for Advancement and Recognition of Turkish Women.	Do.
Do	Household: A lacquered box depicting handpainted medieval scene on hinged lid, signed 1986; 6 1/2" x 4" x 1 1/2" deep. Archives. Recd—September 15, 1987. Est. Value—\$450.	Mrs. Rnanuli Razhdenovna Shevardnadze, Wife of the Minister of Foreign Affairs of the Union of Soviet Socialist Republics.	Do.
Frank C. Carlucci, Assistant to the President for National Security Affairs.	Consumables: Two 4-ounce jars of Russian black caviar and six bottles of liquor. General Services Administration. Recd—November 2, 1987. Est. Value—\$275.	His Excellency Eduard Shevardnadze, Minister of Foreign Affairs of the Union of Soviet Socialist Republics.	Do.
Anne N. Foreman, Associate Director Office of Presidential Personnel.	Jewelry: An 18 kt. gold brooch with five turquoise stones and eight diamonds from Michalis of Athens, Geneva, and Kuwait. General Services Administration. Recd—June 22, 1987. Est. Value—\$1,200.	Her Royal Highness Princess Shaika Hessa, Bahrain.	Do.
Colin L. Powell, Assistant to the President for National Security Affairs.	Historic Artifacts: A pottery juglet with horizontal ribbing decoration dating from the Early Middle Roman Period; 3" in diameter, 4 1/4" tall; in a clear lucite display case. Presidential Staff—Official Use/Display. Recd—December 14, 1987. Est. Value—Indeterminable.	His Excellency Yitzhak Rabin, Defense Minister of Israel.	Do.

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Agency: Office of Vice President			
Mrs. Barbara Bush, wife of the Vice President.	Gold & Diamond Pin with 18 pearls Recd.—January 7, 1987. Est. Value—\$750. Delivered to GSA for disposition. June 19, 1987.	Toshio Yamaguchi, Member of Japanese Diet, Japan.	Nonacceptance would have caused embarrassment to donor and U.S. Government.
Vice President George Bush.	Hand held, Gyro-stabilized binoculars British Aerospace Stady-scope type, GS-907 (x7 magnification). Recd.—January 7, 1987. Est. Value—\$4,475. Reported to GSA, January 15, 1987.	General Zeid Bin Shaker, Jordan.....	Do.
Do	Set of coins commemorating 188 Olympic Games, gold and silver. Recd.—July 21, 1987. Est. Value—\$5,700. Reported to GSA, September 9, 1987.	President Chun Doo Hwan, Korea...	Do.
Do	18" Herend Urn with Handpainted floral motif. Recd.—April 9, 1987. Est. Value—\$965..	Matyas Szuros, Secretary of the Central Committee Hungarian Socialist Workers' Party, Hungary.	Do.
Do	Two panels, black with bird design, 4' High. Recd.—May 1987. Est. Value—\$400. Accepted for display at Vice President's Residence.	Yang Shangkun, Central Military Commission, Peoples Republic of China.	Do.
Vice President and Mrs. George Bush.	35 ounces of Maloffol caviar. Recd.—December 8, 1987. Est. Value—\$875.00. Accepted for official use.	Mikhail Gorbachev, Secretary General of the Union of Soviet Socialist Republic.	Do.

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Agency: U.S. Senate			
Robert C. Byrd, U.S. Senator.	Ornamental Plate. Recd—April 30, 1987. Est. Value—\$200. Deposited with the Secretary of the Senate for transmittal to the Commission on Arts and Antiquities of the U.S. Senate.	Prime Minister Nakasone, Japan.....	Refusal would likely cause offense or embarrassment.
Do	Crystal pike vase. Recd—October 8, 1987. Est. Value \$400—\$1,000. Deposited with the Secretary of the Senate for transmittal to the Commission on Arts and Antiquities of the U.S. Senate.	Viktor P. Nikonov, Member of Politbureau, Soviet Union.	Do.
Do	Lacquered painting. Recd—December 9, 1987. Est. Value \$300—\$500. Deposited with the Secretary of the Senate for transmittal to the Commission on Arts and Antiquities of the U.S. Senate..	General Secretary Gorbachev, Soviet Union.	Do.
Gregory B. Craig, Foreign Policy Advisor to Senator Kennedy.	Gold watch and cufflinks. Recd—December 22, 1987. Est. Value—watch \$2,000, cufflinks \$600. Deposited with the Secretary of the Senate for transmittal to the Commission on Arts and Antiquities of the U.S. Senate.	Amir of Bahrain, Bahrain.....	Do.
Bob Dole, U.S. Senator	Black lacquer box with picture of Moscow. Recd—December 9, 1987. Est. Value \$300—\$500. Deposited with Secretary of the Senate for transmittal to the Commission on Arts and Antiquities on the U.S. Senate.	General Secretary Gorbachev, Soviet Union.	Do.

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Do	Russian lacquer set of bowls and spoons. Recd—October 8, 1987. Est. Value \$400—\$500. Deposited with Secretary of the Senate for transmittal to the Commission on Arts and Antiquities on the U.S. Senate.	Viktor P. Nikonov, Soviet Union	Do.
Robert W. Kasten, Jr., U.S. Senator.	Pair of elephant tusks. Recd—April 17, 1987. Est. Value—no market value available. Deposited with Secretary of the Senate for transmittal to the Commission on Arts and Antiquities on the U.S. Senate.	President Hissein Habre, Chad.....	Do.
Edward M. Kennedy, U.S. Senator.	Gold watch and cufflinks. Recd—December 22, 1987. Est. Value—watch \$4,500, cufflinks \$1,000.	Amir of Bahrain, Bahrain	Do.
William Lynn, Legislative Assistant to Senator Kennedy.	Watch. Recd—December 22, 1987. Est. Value \$400. Deposited with Secretary of the Senate for transmittal to the Commission on Arts and Antiquities of the U.S. Senate.	Amir of Bahrain, Bahrain	Do.

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
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Agency: U.S. Senate

William A. Reinsch, Chief Legislative Assistant to Senator John Heinz.	Food, lodging and ground transportation in Cracow, Poland over \$180.	Polish Ministry of Foreign Trade, Polish Chamber of Commerce.	Refusal would likely cause offense or embarrassment.
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Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
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Agency: U.S. House of Representatives

Tony Coelho, Member of Congress.	Silver Plate. Recd September 1986/reported May 1987. Est. Value—\$200. Approved for official display.	Antonio Magalhaes Pacheco (Lisbon City Council).	Nonacceptance would have caused embarrassment to donor.
Louis Stokes, Member of Congress.	3x5 rug. Recd August 1987. Est. Value—\$450. Approved for official display.	President General Mohammed Zia-Ul-Haq, Pakistan.	Do.

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
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Agency: Department of the Air Force

Edward C. Aldridge, Secretary of the Air Force.	Pakistani Rug, approx 5' x 7', brown background, w/Pakistan Air Force Insignia in center, with fringed border. Recd—November 5, 1986 (Report not filed until 1987). Est. Value—\$350. Being held in the Office of the Secretary of the Air Force for official display.	Air Chief Marshal Jamal Ahmed Kahan, Commander, Pakistan Air Force..	Nonacceptance would have caused embarrassment to donor and U.S. Government.
Do	Moroccan Rug, approx 6' x 8', red background, w/woven pattern through it, with fringed border. Recd—November 16, 1986 (Report not filed until 1987). Est. Value—\$320. Being held in the Office of the Secretary pending transfer to GSA for disposition.	Moroccan Air Force	Do.
Brigadier General Richard S. Beyea, Commander, Air Force Office of Special Investigations.	Two Spanish Dueling Pistols, wooden handles, in a wooden display case. Recd—October 16, 1987. Est. Value—\$522. Being held in the Protocol Room at Headquarters Air Force Office of Special Investigations, Bolling Air Force Base, Washington DC.	Lieutenant General Emilio Alonso Manglano, Director General, Superior Center for Defense Intelligence, Spain.	Do.
Colonel Timothy D. Gill, Wing Commander, 18th Combat Support Wing.	Kabuto (replica of a helmet worn by historic Japanese military leaders). Recd—April 13, 1987. Est. Value—\$914. Being held in the Skoshi Koom, Kadena Air Base, Japan, for official display.	Seichoku Arasaki, Representative of Okinawa City Tourist Association, Japan.	Do.

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Agency: Department of the Air Force			
Major General Richard A. Pierson, Chief, Joint United States Military Aid Group, Greece.	Provided air transportation from Marakesh to Rabat, Morocco; provided some motor transportation between Moroccan cities; and paid for hotels and some meals while in Morocco. Est. Value—\$500.	General M. Kabbaj, Chief of Staff, Moroccan Air Force.	Gifts were extended to recipient after arrival in Morocco. Attempts to decline acceptance were unsuccessful; further efforts would have caused embarrassment to donor.

AGENCY: UNITED STATES ARMY, REPORT OF TANGIBLE GIFTS

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
GEN Arthur E. Brown Jr., Chief of Staff, US Army Washington.	Oil Painting with frame and blue cape with yellow and red trim. Recd—September 22, 1987. Est. Value—\$200. US Total Army Personnel Agency, Alexandria, VA.	General Acosta, Ecuadorian Army...	Non-acceptance would have caused embarrassment to donor & US Government
MG Gary E. Luck, Commanding General, 2d Infantry Division, Republic of Korea.	Sam Jung Do Saber. Recd—December 9, 1986. Est. Value—\$300. US Army 2d Infantry Division Museum, Camp Casey, Korea, for official display.	Chun Doo Hwan, President, Republic of Korea.	Do.
HON John O. Marsh, Jr., Secretary of the Army Washington.	Swarovski, Crystal Pineapple. Recd—January 5, 1987. Est. Value—\$250. Office of the Secretary of the Army, Washington, for official display.	Mr. & Mrs. Gernot, Langes Swarovski, Tirol, Austria.	Do.
Do.	Rossi Model 68 Piston, 3" barrel engraved & gold chrome plated with case. Serial #D652079. Recd—April 28, 1987. Est. Value—\$250. Office of the Secretary of the Army, Washington, for official display.	General Pamplona, Chief of Staff, Brazilian Army.	Do.
LTG James E. Moore, Jr., Commanding General, Combined Field Army, Republic of Korea.	Sam Jung Do Saber. Recd—May 25, 1987. Est. Value—\$300. US Army 7th Infantry Division Museum, Fort Ord, CA, for official display.	Chun Doo Hwan, President, Republic of Korea.	Do.
GEN Maxwell R. Thurman, Commanding General, Training and Doctrine Command, Fort Monroe, VA.	Oil Painting with wood frame. Recd—August 18, 1987. Est. Value—\$350. Fort Monroe, VA, for official display.	LTG Carlot Jarrin, Head of Ecuadorian delegation to US/Ecuador, Staff Talks.	Do.
GEN John A. Wickham, Jr., Chief of Staff, US Army Washington.	Two (2) blue topaz stones. Recd—January 28, 1987. Est. Value—\$245. US Total Army Personnel Agency, Alexandria, VA.	General Pamplona Chief of Staff, Brazilian Army.	Do.
Headquarters, US Army South, Fort Clayton, Panama.	Twelve (12) bottles of Moet e Chandon-Brut Imperial Champagne. Recd—July 4, 1987. Est. Value—\$285. US Army South, Fort Clayton, Panama, for use in appropriate official social functions hosted by US Army South.	General Manuel Noriega, Commander in Chief, Panama Defense Force.	Do.
US Central Command, MacDill Air Force Base.	Four (4) gold coins, total weight 16.966 grams, 91.67% 22 carat gold. Recd—November 21, 1987. Est. Value—\$948. US Total Army Personnel Agency, Alexandria, VA.	Ali Khalifa Al-Sabah, Kuwaiti Oil Minister.	Do.

AGENCY: CENTRAL INTELLIGENCE AGENCY, REPORT OF TANGIBLE GIFTS

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
William H. Webster Director, CIA.	Sindhi Khes shawl, green and gold on black ground. Recd September 1987. Est. Value—\$200.00 To be reported to GSA for disposition.	Public Law 95-105, A(F)(4).....	Non-acceptance would have caused embarrassment to donor.
Do.	Stone sculpture of otter, probably Alaskan. Signed with copyright, numbered 5-A-22435. H:9. Recd June 1987. Est. Value—\$250.00. Retained for official display.	do.....	Do.
Do.	Ancient redware handled jar, probably first Century A.D. (chips on lip and hole in body). H:6. Recd September 1987. Est. Value—\$250.00. Retained for official display.	do.....	Do.
Do.	Indo-Persian silk rug (mounts for wall hanging). Square, approximately 24. Recd September 1987. Est. Value—\$350.00. Retained for official display.	do.....	Do.
Do.	Middle Eastern glazed pottery temple vase. Brown ground with gilt and grisaille decoration with script medallions. (base repaired) H: 38. Recd September 1987. Est. Value—\$500.00. To be reported to GSA for disposition.	do.....	Do.

AGENCY: CENTRAL INTELLIGENCE AGENCY, REPORT OF TANGIBLE GIFTS—Continued

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Do	Egyptian yellow gold and bone ceremonial sword by Ahmad Bader, in fitted case. Chrome blade with engraved gold scabbard with Egyptian great seal and two chain-hung coin medallions. L: overall 41 1/2. Recd September 1987. Est. Value—\$1,000.00. Retained for official display.	do	Do.
Do	Indo-Keshan tree-of-life prayer rug. 5.7 Ivory ground with flowering tree field, palmette and trellising vine guard border on wine-red ground. Mounted as wall hanging. Recd September 1987. Est. Value—\$700.00. Retained for official display.	do	Do.
Do	Indo-Keshan rug 5x7. Ivory ground, floral trellising field, and centering a pulled star medallion, trellising vine guard border on mauve ground. Recd September 1987. Est. Value—\$300.00. Retained for official display.	do	Do.
Do	Moroccan rug 8x10. Wine-red ground with ivory medallion, blue spandrels, and four guard borders. Recd September 1987. Est. Value—\$650.00. Retained for official display.	do	Do.
Do	Moroccan rug 8x10. Chinese red ground with multicolored medallion, complementary spandrels, palmette guard border on black ground. Recd September 1987. Est. Value—\$550.00. Retained for official display.	do	Do.
Do	Pair diamond and opal earring studs. 14 karat yellow gold mounts. Each centering an oval cabochon opal surrounded by 12 round melee diamonds (one diamond missing). Recd April 1987. Est. Value—\$275.00. To be reported to GSA for disposition.	do	Do.
Do	African filigree gold bracelet with hairpin catch. Weight approximately 2 oz. Recd September 1985. Est. Value—\$700.00. To be reported to GSA for disposition.	do	Do.
Do	African yellow gold necklace with gold nugget pendant (chain in two pieces). L: approximately 15. Recd September 1985. Est. Value—\$450.00. To be reported to GSA for disposition.	do	Do.
Do	African yellow gold necklace with fish pendant. L of chain: 14-1/2. Recd September 1985. Est. Value—\$375.00. To be reported to GSA for disposition.	do	Do.
Do	African yellow gold necklace, twisted and plain loop design with coiled spacers. L: 23. Recd September 1985. Est. Value—\$250.00. To be reported to GSA for disposition.	do	Do.
Do	African yellow gold necklace with two English sovereigns: (a) Victoria, dated 1882; and (b) George V, dated 1927. L of necklace 16. Each sovereign with soldered link. Recd September 1985. Est. Value—\$450.00. To be reported to GSA for disposition.	do	Do.
Do	Middle Eastern yellow gold necklace hung with 16 gold beads. L: 15. Recd May 1985. Est. Value—\$350.00. To be reported to GSA for disposition.	do	Do.

AGENCY: CENTRAL INTELLIGENCE AGENCY, REPORT OF TRAVEL OR EXPENSES OF TRAVEL

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Agency employee	Hotel lodging—\$250	Public Law 95-105 A(F)(4)	Non-acceptance would have caused embarrassment to donor.

AGENCY: DEPARTMENT OF DEFENSE, REPORT OF TANGIBLE GIFTS

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance.
Richard L. Armitage, Assistant Secretary of Defense (International Security Affairs)P.	Two ivory elephant tusks. Recd—April 1987. Est. value—\$1,000. Approved for official display in office of donee.	President Hissain Habre, Chad.....	Nonacceptance would have caused embarrassment to donor and U.S. Government.
Frank C. Carlucci, Secretary of Defense.	Four (4) bottles of French red wine. Recd—November 1987. Est. value—\$240. Approved for official use at an official function hosted by the donee.	Field Marshal Zeid bin, Shaker, Commander-in-Chief, Jordanian Armed Forces.	Do.
Do	Box of Caspian Brand Caviar, one dozen 2 oz. jars, produced and packed by the Soviet Fisheries of the Caspian Sea for V/O "Prodimorg". Recd—Dec. 9, 1987. Est. value—\$800. Approved for official use at an official function hosted by the donee.	Mikhail S. Gorbachev, The General Secretary of the Central Committee of the Communist Party of the Soviet Union.	Do.

AGENCY: DEPARTMENT OF DEFENSE, REPORT OF TANGIBLE GIFTS—Continued

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance.
Do	Large black lacquer box, decorated with Russian scenic view on top and gold design around the sides, red interior, footed, 13"x9", in light blue box. Recd—Dec. 9, 1987. Est. value—\$1,000. Approved for official display in office of donee.	do	Do.
Do	Moroccan rug (orange tones, cream, blue and gray), approx. 3'4"x6'2". Recd—Dec. 22, 1987. Est. value—\$385. Approved for official display in office of donee.	M'Hamad and Mrs. Bargach, The Ambassador of Morocco.	Do.
Do	Book, "Royal Illuminated Manuscripts of Morocco" (Al-Hassania library), by Mohamed Sijlmessi, with red velour cover and case. Recd—Dec. 22, 1987. Est. value—\$75. Approved for official display in office of donee.	do	Do.
Adm. William J. Crowe, Jr., USN, Chairman, Joint Chiefs of Staff.	Silver-plated jewelry, including a belt, bracelet, and dangle earrings, hand-made, decorated with artificial stones. Recd—March 1987. Est. value—\$750. Delivered to GSA for disposition Nov. 6, 1987.	Mrs. Mohammad Saleh Hammad, Saudi Arabi.	Do.
Do	22K gold bracelet. Recd—March 1987. Est. value—\$1,200. Delivered to GSA for disposition Nov. 6, 1987.	The Amir of Bahrain.....	Do.
Do	Ceremonial sword with gold-plated sheath decorated with clusters of rhinestones. Recd—March 1987. Est. value—\$750. Delivered to GSA for disposition Nov. 1987.	His Royal Highness Major General Khaled Bin Sultan Bin Abdulaziz, Commander-in-Chief of the Royal Saudi Air Defence Forces, Saudi Arabia.	Do.
Do	Wooden model ship, Bahraini "Pearler" sailing ship, approx. 57" long by 39" high, mounted on pedestal with multiple wooden figurines performing pearl harvesting duties. Recd—March 12, 1987. Est. value—\$200. Delivered to GSA for disposition Nov. 6, 1987.	Major General Khalifa, Chief of Defense, Bahrain.	Do.
Do	Multicolored carpet, 74"x49 1/4", with Pakistani Air Force Seal. Recd—March 1987. Est. value—\$700. Approved for official display in office of the Under Secretary of Defense (acquisition).	Commander, Pakistan Air Force, Pakistan.	Do.
Do	Set of three gold-plated khunjars (small swords), with mother-of-pearl handles, in large case. Recd—Nov. 5, 1987. Est. value—\$500. Approved for official display in office of donee.	R. Bisogniero, Italian Defense Chief of Staff.	Do.
Lt. Gen. Philip C. Gast, USAF, Director, Defense Security Assistance Agency.	Rug, 3'4 1/2"x7'8", multicolored. Recd—Apr. 25, 1987. Est. value—\$200. Delivered to GSA for disposition Aug 5, 1987.	President Habre of Chad.....	Do.
Do	Candelabrum, onyx and brass, three-light holder, approx. 12" high. Recd—Apr. 27, 1987. Est. value—\$250. Delivered to GSA for disposition Nov. 6, 1987.	Field Marshal Abu Ghazala, Minister of Defense of Egypt.	Do.
Do	Staiger quartz clock, onyx and brass, approx. 5 1/2"x5 1/2". Recd—May 20, 1987. Est. value—\$350. Delivered to GSA for disposition Nov. 6, 1987.	Secretary of Defense Zaidi of Pakistan.	Do.
Do	Polished pewter tray commemorating 6th Pak-UK CG meeting May 1987, 12" diameter. Recd—May 20, 1987. Est. value—\$75. Delivered to GSA for disposition Nov. 6, 1987.	do	Do.
Mrs. Ann Kerr, Program Manager, Nuclear Monitoring Research, Defense Advanced Research Projects Agency.	Sterling silver pearl pin/pendant, with chain (5 pearls). Recd—November 1987. Est. value—\$350. Reported to GSA and stored in Real Estate and Facilities Directorate pending disposition by GSA.	Dr. Shegegi Suyehiro, Ministry of Foreign Affairs, Japan.	Do.
Lt. Cdr. Robert M. Meissner, USN, Action Officer, Office of Assistant Secretary of Defense (Legislative Affairs).	Baume, & Mercier watch, with matching cuff links, 18K gold and stainless steel. Recd—Dec. 24, 1987. Est. value—\$1,900. Reported to GSA and stored in Office of the Deputy Assistant Secretary (Administration) pending disposition by GSA.	Isa bin Salman Al Khalifa, The Amir of the State of Bahrain.	Do.
Glenn A. Rudd, Deputy Director, Defense Security Assistance Agency.	Ceremonial dagger, gold-plated with white handle, 14 1/2" long, in small wooden box. Recd—Sept. 21, 1987. Est. value—\$90. Approved for official display in office of donee.	General Mustapha Cheloufi, Secretary General and Ministry of Defense, Algerian Armed Forces.	Do.
Do	Ceremonial dagger, silver-plated, 13 1/2" long, in wooden box. Recd—Sept. 21, 1987. Est. value—\$175. Approved for official display in office of donee.	do	Do.
William H. Taft, IV, Deputy Secretary of Defense.	Ceremonial dagger, silver-plated, 13 1/2" long, in wooden box. Recd—Sept. 21, 1987. Est. value—\$175. Approved for official display in office of donee.	General Mustapha Cheoufi, Member of the Central Committee and Secretary General of the Ministry of National Defense of Algeria.	Do.
Do	Plaque with emblem in plastic case, with brass trim, in green box. Recd—Sept. 21, 1987. Est. value—\$75. Approved for official display in office of donee.	do	Do.
Caspar W. Weinberger, Secretary of Defense.	Bronze spear head (8th-6th Century B.C.E.), Kingdom of Judah, in wooden box. Recd—February 1987. Est. value—\$600. Reported to GSA and stored in Real Estate and Facilities Directorate pending disposition by GSA.	Prime Minister Yitzhak, Shamir of Israel.	Do.
Mrs. Caspar W. Weinberger, Wife of the Secretary of Defense.	Turkish rug, 41"x66" Recd—Mar. 19, 1987. Est. value—\$600. Approved for official display in office of the Assistant Secretary of Defense (Comptroller).	Rahmi M. Koc, Turkey.....	Do.

AGENCY: DEPARTMENT OF DEFENSE, REPORT OF TANGIBLE GIFTS—Continued

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance.
Caspar W. Weinburger, Secretary of Defense.	Pakistani rug, 4'x6', old Persian pattern, beige, brown, and gold with animal figures in design. Recd—May 20, 1987. Est. value—\$1,850. Approved for official display in office of donee.	Syed Ijlal Haider Zaidi, Secretary of Defense Pakistan.	Do.
Do	Onyx plate with mother-of-pearl design, approx. 12 1/4" diameter, in large green velour box. Recd—May 20, 1987. Est. value—\$150. Delivered to GSA for disposition Nov. 6, 1987.	do	Do.
Do	Onyx plate with mother-of-pearl design, approx. 12 1/4" diameter, in large green velour box. Recd—May 20, 1987. Est. value—\$150. Reported to GSA and stored in Real Estate and Facilities Directorate pending disposition by GSA.	do	Do.
Do	AK-47 semi-automatic rifle in wooden box, with separate box of ammunition. Recd—May 20, 1987. Est. value—\$1,575. Transferred to DIA.	General Yang Shangkun, Vice Chairman of the Central Military Commission, People's Republic of China.	Do.
Do	An original 41-Colt, single-action Army revolver, which was known as "The Peacemaker," with ivory handle and ivory-handled tools and accessories. It is in a custom-made case made in Rio rosewood with ebony inlay. Recd—Date unknown. Est. value—\$1,230. Delivered to GSA for disposition Nov. 6, 1987.	Sheik Hamed, Minister of Defense, Bahrain.	Do.
Do	Rug, approx. 6'x10 1/2'. Recd—Sept. 15, 1987. Est. value—\$850. Approved for official display in office of donee.	Minister of Defense Baly, Tunisia.....	Do.
Do	18K gold dagger in blue and brown, velour box. Recd—Date unknown. Est. value—\$1,000. Reported to GSA and stored in Real Estate and Facilities Directorate pending disposition by GSA.	Prince Sultan Bin Abdulaziz, Second Deputy Premier and Minister of Defense and Aviation and Inspector General, Saudi Arabia.	Do.

AGENCY: U.S. DEPARTMENT OF ENERGY, REPORT OF TANGIBLE GIFTS

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Mrs. Lois H. Harrington, Spouse of the Secretary of Energy.	Diamond and Gold—Necklace, Earrings, Ring and Bracelet Set. Recd October 1987. Est. Value \$2,200. Being held in the Office of Administrative Services pending transfer to GSA.	Wife of Minister of Petroleum and Minerals Al Otaiba, Abu Dhabi, Qatar.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Mr. John S. Herrington, Secretary of Energy.	Moroccan (Handcrafted) Rug 10' x 6". Recd Oct 1987. Est. Value \$200. Being held in the Office of Administrative Services pending transfer to GSA.	Minister of Interior and Information, Driss Basri, Morocco.	Do.

AGENCY: EXPORT-IMPORT BANK OF THE U.S., REPORT OF TANGIBLE GIFTS

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
William M. Arnold, Senior Vice President—Insurance and Banking.	Animal skin rug, approx. 6' diam., starburst pattern, Recd October 29, 1987. Est. value—\$700.00. On display in Room 919.	State Company for Food Stuff Trading, Baghdad, Iraq.	Gift delivered following U.S. departure of donor. Non-acceptance would have caused embarrassment to donor and U.S. Government.
John A. Bohn, Jr., President and Chairman.	Minolta Camera, model number A-5000 and lens, model number AF-35-70 mmF4. Recd October 6, 1987. Est. value \$500.00. To be used by Eximbank for official photographs.	Osaka Chamber of Commerce, Osaka, Japan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
John A. Bohn, Jr., President and Chairman.	Animal skin rug, approx. 6' diam., starburst pattern, Recd August 27, 1987. Est. value—\$700.00. Being held in Office of Administration pending transfer to GSA for disposition.	Ministry of Trade, Baghdad, Iraq.....	Do.
Richard W. Heldridge, Director.	Animal skin rug, approx. 6' diam., starburst pattern, Recd November 9, 1987. Est. value—\$700.00. Being held in Office of Administration pending transfer to GSA for disposition.	Ministry of Trade, Baghdad, Iraq.....	Do.

AGENCY: FEDERAL COMMUNICATIONS COMMISSION, REPORT OF TANGIBLE GIFTS

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition of location	Identity of foreign donor and government	Circumstances justifying acceptance
Mark S. Fowler, Chairman.....	Seiko TFT Pocket Color TV—Model LVD-302. Recd January 14, 1987. Est. Value: \$300. Gift held by Internal Review and Security Division, FCC pending final disposition.	Shunjiro Karasawa MP, Minister of Posts and Telecommunications, Japanese Government.	Gift presented at the conclusion of a meeting at FCC headquarters, non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: FEDERAL COMMUNICATIONS COMMISSION, REPORT OF TRAVEL OR EXPENSES OF TRAVEL

Name and title of person accepting travel or travel expenses consistent with the interest of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
David L. Donovan, legal assistant to FCC Commissioner Quello and his spouse, Jacqueline Donovan.	The expenses consisted of:..... (1) hotel accommodations in Vicenza, Italy, from September 20-23, 1987. (2) several meals during the course of the Prix Italia Conference..... (3) Est. Value: \$500	Mr. Alvise Zorzi, Secretariat of the Prix Italia. Radio-Television Italiana (RAI), an arm of the Italian Government.	These expenses were provided to allow Mr. Donovan's participation in the Prix Italia Conference on politics and the media, at the request of RAI.
Albert Halprin, chief, Common Carrier Bureau.	In-country expenses (lodging and meals) for trip to Vancouver, Canada, to participate in meeting of senior communications decisionmakers from countries participating at the World Exposition (Expo '86): (a) hotel accommodations from June 8-11, 1986..... (b) meals during period of meeting participation, June 8-11, 1986; and. (c) Estimated Value: \$600.....	Honorable Marcel Masse, Minister of Communications, Canadian Government..	This gift of expenses of travel was accepted to avoid international embarrassment while in a foreign country.

AGENCY: AGENCY FOR INTERNATIONAL DEVELOPMENT, REPORT OF TANGIBLE GIFTS

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Marshall Brown, Mission Director.	Two tickets to opera "AIDA". Recd—September 1987. Est. Value—\$100-440. Value depended on location of seats and nationality of buyer. Location: Given to senior Egyptian employee.	GOVT of Egypt Min of Tourism.....	Do.
Peter McPherson, Administrator, A.I.D.	24" x 60" inlaid coffee table donated to USAID/Pakistan in name of Mr. McPherson. Recd—February 1987. Est. Value—\$200. Location—Official Use Only at U.S. Mission.	Mr. Mian Mohamed Yasin Khan Wattoo, Minister of Finance of Pakistan.	Do.
Daniel Chaij, Mission Director.	Painting. Recd—December 1984 (late reporting). Est. Value—\$484. Location—Official Use Only at U.S. Mission.	GOVT of Costa Rica.....	Do.
Do.....	Silverplate. Recd—September 1986 (late reporting). Est. Value—\$210 Location—Official Use Only at U.S. Mission.	Govt of Costa Rica.....	Do.

AGENCY: AGENCY FOR INTERNATIONAL DEVELOPMENT, REPORT OF TRAVEL OR EXPENSES OF TRAVEL

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Joseph Wheeler, Chairman, Development Assistance Committee, Paris.	Hotel room, 2 nights + one meal, Ottawa, Canada. March 15-18, 1987. Est. \$250.	GOVT of Canada.....	Invited to testify before Canadian Parliamentary Committee.
Do.....	Hotel room, 5 nights + meals, Abuja, Nigeria. June 19-21, 1987. Est. \$350.	UN Economic Commission on Africa.	Received invitation to speak at a conference on African Development.

AGENCY: AGENCY FOR INTERNATIONAL DEVELOPMENT, REPORT OF TRAVEL OR EXPENSES OF TRAVEL—Continued

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Do	Hotel room, 4 nights + meals, Bellagio, Italy. June 29–July 3, 1987. Est. \$350.	Rockefeller Foundation.....	Invited to attend meeting on tropical forests.
Do	Hotel room, 2 nights + meals, Leeds Castle, UK. July 10–12, 1987. Est. \$100.	GOVT of United Kingdom	Annual Tidewater Meeting.
Do	Hotel room, 3 nights + meals, September 6–9, 1987. Est. \$300.....	UNDP	North/South Roundtable sponsored by UNDP where all participants provided room and board by UNDP.
Do	Hotel room, 1 night + air fare RT Paris/London, September 23–24, 1987. Cost \$514.90.	Business International.....	Attended conference on Africa.

AGENCY: DEPARTMENT OF THE NAVY, REPORT OF TANGIBLE GIFTS

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Major George M. Brown, USMC Commander in Chief, U.S. Central Command.	Rolex Oyster Perpetual Datejust Watch. Recd—March 18, 1987. Est. Value—\$2,800. Held in CCJ3 Building, U.S. Central Command for official use.	Colonel Mohamed Bin Zayed, Commander, Uae Air Force and son of the President of Uae.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
General George B. Crist, USMC Commander in Chief, U.S. Central Command.	One 6 ft. X 4 ft. Oriental rug, macoon, blue and tan with fringe around border. Recd—June 16, 1987. Est. Value—\$297. Held in Headquarters, U.S. Central Command for official use.	General Mohammed Zia Al Haq, President of Pakistan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Do	One 3 ft. 6 in. X 5 ft. Oriental rug, blue and tan with fringe around the border. Recd—June 17, 1987. Est. Value—\$521. Held in Headquarters, U.S. Central Command for official use.	Sheikh Khalifa Al Thani, Amir of Qatar.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Rear Admiral Charles F. Horne, III, USN, Commander, U.S. Naval Forces, Korea.	Ceremonial Sword in presentation case. Recd—October 15, 1986. Est. Value—\$1,000. Being held in Chief of Naval Operations (OP-09B33) pending transfer to GSA for disposition.	Minister of Defense, Republic of Korea.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF STATE, REPORT OF TANGIBLE GIFTS

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Charles Allegron, Post Management Officer, NEA/EX.	Man's Baume & Mercier wristwatch, time/date w/stainless steel band, gold face. Recd—July 1, 1987. Est. Value—\$600. Reported to GSA 10/19/87.	Chief of the Diwan, Amiri Court of the State of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Jerald H. Barnes, Department of State (DS).	Man's Omega 14K wristwatch with black strap (9349-2). Recd—April 16, 1987. Est. Value—\$700. Delivered to GSA 6/30/87.	H.E. Hisham Nazer, Minister of Saudi Arabia.	Do.
Lawrence S. Blackburn, Administrative Officer, American Embassy, Manama, Bahrain.	Man's Baume & Mercier wristwatch, time/date w/stainless steel band, gold face. Recd—July 1, 1987. Est. Value—\$600. Reported to GSA 10/19/87.	Chief of the Diwan, Amiri Court of the State of Bahrain.	Do.
Wat T. Cluverius IV, Senior Advisor on Middle East Peace.	Rolex man's gold watch "oyster day/date"—serial 8952330 in brown leather presentation box; and brown leather portfolio with pan; and tan linen hankchief. Recd—November 20, 1986. Est. Value—\$2,000 Delivered to GAS 6/30/87.	H.E. Sheikh Isa Bin Salman al-Khalifa, Emir of the State of Bahrain.	Do.
Mrs. Isabel K. Cutler, Spouse of the U.S. ambassador to Saudi Arabia.	Gold bracelet with medium dark sapphire in center, three small light emeralds, two small rubies, and approx. 23 tiny diamonds (two small stones missing). Recd—April 1987. Est. Value—\$300 Delivered to GSA 6/30/87.	A member of the Saudi royal family ..	Do.
Mrs. Walter L. Cutler, Spouse of the U.S. Ambassador to Saudi Arabia.	Two 21K gold bracelets each with a total of 26 small rubies and sapphires; in black velvet box. Recd—June 1987. Est. Value—\$1,500 Reported to GSA 10/19/87.	Mohammed Al-Sheikh, Director of Royal Protocol, Saudi Arabia.	Do.
Do	18K gold chain (approx. 22" long) with pendant with one large and one medium turquoise stone; and 45 large chip diamonds—shaped in a tear-drop. Recd—June 1987. Est. Value—\$6,000 Reported to GSA 10/19/87.	Faiz Bader, Director of Ports, Saudi Arabia.	Do.
Walter L. Cutler, U.S. Ambassador to Saudi Arabia.	Silk Persian carpet in colors of red, brown, and cream, in traditional design; approx. 4' x 8' Recd—August 1, 1987. Est. Value—\$3,000. Approved for official use by the Office of Protocol.	H.R.H. Sultan bin Salman of Saudi Arabia.	Do.

AGENCY: DEPARTMENT OF STATE, REPORT OF TANGIBLE GIFTS—Continued

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Georgia DeBell, Administrative Officer, American Embassy, Yemen Arab Republic.	(a) Jambiya silver dagger with scabbard 13" from top of scabbard to tip of blade; attached to Yemeni style embroidered cotton/wool belt with leather buckle. (b) Red wool carpet 9½' x 3¼' with fringe. Recd—June 30, 1987. Est. Value—(a) \$450; (b) \$600. Approved for official use at American Embassy, Yemen Arab Republic.	Mohsen al Yousifi, Governor of Province of Taiz, Yemen Arab Republic.	Do.
Samuel F. Hart, Former U.S. Ambassador to Ecuador.	Oil painting of village scene by Visquez 84 in colors of brown and golds; framed in light wood 26"x26". Recd—April 1985. Est. Value—\$170. Reported to GSA 10/19/87.	H.E. the Foreign Minister of Ecuador.	Do.
W. Nathaniel Howell, U.S. Ambassador to Kuwait.	S.T. Dupont 18K man's watch with leather band; No. 66383D. Recd—August 31, 1987. Est. Value—\$3,000. Reported to GSA 10/19/87.	Abdul Fattah Al Bader, Director of Kuwait Oil Tanker Co., Kuwait.	Do.
Barrington King, U.S. Ambassador to Brunei.	Gold cuff links with square blue stone with Brunei insignia. Recd—April 23, 1987. Est. Value—\$950. Delivered to GSA 6/30/87.	H.E. Hassanah Bolkiah, Sultan of Brunei.	Do.
Sarah King, Spouse of the U.S. Ambassador to Brunei.	Gold pendant with 40 diamond chips surrounding oval pendant and 3 diamond chips on clasp for chain; pendant has Brunei insignia in center. Recd—April 29, 1987. Est. Value—\$1,600. Delivered to GSA 6/30/87.	Saleha, First Wife of the Sultan of Brunei.	Do.
Barrington King, Former U.S. Ambassador to Brunei.	Sterling silver cigarette box. 6"x3½" x2¼". Recd—July 16, 1987. Est. Value—\$450. Reported to GSA 10/19/87.	H.E. Mohamed Bolkiah, Minister of Foreign Affairs.	Do.
David Mack, U.S. Ambassador to United Arab Emirates.	Set of 22K gold electroplated implements: a coffee pot, a sandalwood stand and a rose water holder in traditional, Arab design. Recd—August 1987. Est. Value—\$815. Approved for official use at American Embassy, Ambassador's Residence, United States Arab Emirates.	Sheikh Hamdan bin Zayed, Under Secretary, Ministry of Foreign Affairs.	Do.
Richard W. Murphy, Assistant Secretary of State.	Sterling silver small round dish 3" in diameter; circular handle with crown design and Arabic inscription. Recd—October 1987. Est. Value—\$300. Reported to GSA 12/31/87.	HRH Hassan, Crown Prince of Jordan.	Do.
Laurence E. Pope, Deputy Chief of Mission, Manama, Bahrain.	Man's Chopard wristwatch Monte-Carlo model w/stainless steel and gold band, white face. Recd—July 1, 1987. Est. Value—\$2,500. Reported to GSA 10/19/87.	The Amir of the State of Bahrain.....	Do.
Mrs. Laurence E. Pope, Spouse of the Deputy Chief of Mission, Manama, Bahrain.	Woman's Chopard wristwatch Monte-Carlo model w/stainless steel and gold band, gray face. Recd—July 1, 1987. Est. Value—\$2,000. Reported to GSA 10/19/87.	do	Do.
Amb. A.C.E. Quainton, U.S. Ambassador to Kuwait.	Omega man's wristwatch, Swiss made, quartz w/date. Watch face, rim, and band are all gold tone—"Seamaster" model in red box, Omega trademark inside. Recd—July 17, 1987. Est. Value—\$385. Reported to GSA 10/19/87.	Mr. Mohammad Hassan Rajah, formerly in Ministry of Commerce in Kuwait.	Do.
Rozanne L. Ridgway, Assistant Secretary of State.	Miniature porcelain samovar in colors of pink and green pattern with gold decoration (6 pieces). Recd—September 18, 1987. Est. Value—\$200. Reported to GSA 11/17/87.	HE Eduard Shevardnadze, Foreign Minister of the Union of Soviet Socialist Republics.	Do.
Selwa Roosevelt, Chief of Protocol of the United States.	Baume and Mercier ladies watch with blue shaded face and Saudi insignia small blue sapphire on stem; 18K gold; black leather band. Recd—October 19, 1987. Est. Value—\$1,200. Reported to GSA 11/17/87.	HRH Abdullah Bin Abdulaziz Al-Saud, Crown Prince of Saudi Arabia.	Do.
Do	Oval black enamel plaque of eight women in colorful costume; approx. 16½" x 11½". Recd—December 1987. Est. Value—\$350. Being held in the Office of Protocol pending delivery to GSA.	H.E. Mikhail Gorbachev, General Secretary of the Central Committee of the Communist Party of the Soviet Union.	Do.
Mrs. George P. Shultz, Spouse of the Secretary of State.	(a) Beaded round footstool, approx. 17" high with figures of two men holding up the top; beads of yellow, blue maroon, white, green and red. Douala, Cameroon. (b) Beaded lamp base approx. 33" high with removable bird ornament on top; beads of red, white, black, green and yellow. (c) Fringed off-white tablecloth, hand-woven, approx. 62" x 120"; design of circles and fleur de lis in blue; with twelve matching napkins, approx. 16" x 16". (d) Three footed round beaded table, approx. 21¼" high; star design on in yellow, green, red, white, and black; wood underneath all the beads. (e) Curven beaded cane, approx. 37" high in beads of yellow, green, red, white and black. (f) Horse tail fly whisk with beaded handle; beads of red, white, and black. Recd—January 9, 1987. Est. Value—(a) \$50; (b) \$25; (c) \$100; (d) \$80; (e) \$15; (f) \$20. Delivered to GSA 2/25/87.	Officials and members of Woman's Wing of Cameroon People's Democratic Movement.	Do.
Do	Ebony carving, approx. 42" high of female figures intertwined. Recd—January 10, 1987. Est. Value—\$200. Delivered to GSA 2/25/87.	Mrs. Janet Mwangale, Spouse of the Minister of Foreign Affairs of the Republic of Kenya.	Do.
The Secretary of State and Mrs. George P. Shultz.	Portrait of the Secretary of State and Mrs. George P. Shultz done by Leslie Van Orgle—approx. 32" x 36" in frame. Recd—January 12, 1987. Est. Value—\$50. Delivered to GSA 2/25/87.	H.E. Air Vice Marshall Alfa, Chief of Air Staff of the Nigerian Air Force, and Mrs. Alfa.	Do.
Do	(a) Two ivory bracelets, approx. 1¼" wide; each has carved bust of woman—one facing right on a bracelet and one facing left on a bracelet.	do	Do.

AGENCY: DEPARTMENT OF STATE, REPORT OF TANGIBLE GIFTS—Continued

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
George P. Shultz, The Secretary of State.	(b) Ivory necklace, approx. 22" long, small round ivory beads at end, five elongated ivory beads in center divided equally by ten flat ivory beads. (c) Carved ivory bust of woman wearing necklace; approx. 9 3/4" overall; (1 3/4" wooden pedestal, 8" ivory bust). Recd—January 12, 1987. Est. Value—(a) \$70; (b) \$25; (c) \$100. Delivered to GSA 2/25/87.	H.E. Ibrahim Babangida, President of the Federal Republic of Nigeria.	Do.
The Secretary of State and Mrs. George P. Shultz.	(a) Bronze bust of Oba (traditional ruler), approx. 23 1/2" high (b) Ebony carving approx. 2' high of mermaid with arms and hands raised over head and forming circle; tail curled to form circle under mermaid. (c) Gold-tone metal tie bar with Presidential seal on 3/4" circle at end of bar and President's signature on actual bar; gold-tone metal matching cuff links. (d) Three leather unstuffed footstools: one 18" x 23" green and beige w/black trim; Presidential seal with inscription: Presented by Major General Ibrahim Babangida, CFR; President, Commander in Chief of the Nigerian Armed Forces. Two 2" round leather unstuffed footstools with colors, decorations and inscription as described above. Recd—January 12, 1987. Est. Value—(a) \$200; (b) \$50; (c) \$20; (d) \$90. Delivered to GSA 2/25/87.	H.E. Felix Houphouet-Boigny, President of the Republic of Cote d'Ivoire.	Do.
Do	(a) 18 karat gold filigree necklace and matching bracelet in modified diamond design. (Bracelet: 8 1/4" long, 2" wide. Necklace: 31" long, approx. 1" x 1 1/4" wide at points. (b) Ivory carving of hunter with antelope over shoulder and standing dog at feet; approx. 17 1/4" high with 1 1/4" ebony base. (c) Ivory slice approx. 3 1/2" at highest point; sloping to 1 1/4" in front, with 18 karat gold head mounted on top; approx. 3" x 4 1/4"; in black suede case. Recd—January 13, 1987. Est. Value—(a) \$500. Est. Value—(b) \$250. Est. Value—(c) \$300. Delivered to GSA 2/25/87.	H.E. Yitzhak Shamir, Prime Minister of Israel and Mrs. Shamir.	Do.
Do	(a) Ancient Roman glass brooch mounted in silver, approx. 2 1/4" x 1 3/4" in olive wood box 3/8" x 2 5/8" x 1 1/2". (b) Small-necked pottery jug, approx. 8 1/2" high; genuine antique from Iron Age I-1200 B.C.E.-930 B.C.E.; with certificate of antiquity from Ariele Klein Ltd. Antiquities; in case with olive wood base and lucite cover. Recd—February 17, 1987. Est. Value—(a) \$100. Est. Value—(b) \$300. Delivered to GSA 2/25/87.	H.E. A.C. Shahul Hameed, Minister of Foreign Affairs of the Democratic Republic of Sri Lanka.	Do.
Do	Sterling silver handmade bowl, 15 1/4" x 10" with applied filigree engraved design border, with thirty 6 x 4 mm oval amethyst stones and four 6x4 mm oval garnet stones set around the border in four prong settings. Engraved design in center of bowl. Recd—February 16, 1987. Est. Value—\$3,500. Delivered to GSA 6/30/87.	HE Giovanni Spadolini, Minister of Defense, Italy.	Do.
The Secretary of State and Mrs. George P. Shultz.	Silver and enamel equestrian statue, numbered No. 15—copy of Sardinian soldier on horseback—approx. 4 1/2". Recd—February 23, 1987. Est. Value—\$500. Delivered to GSA 6/30/87.	HE Vahit Halefoglu, Minister of Foreign Affairs, Turkey, and Mrs. Halefoglu.	Do.
George P. Shultz, Secretary of State.	(a) Two-handled copper pot, approx. 17" at widest point—approx. 13". (b) Two (2) Kutahya ceramic plates, handmade and signed on reverse; same type of floral & bird design on each in colors of navy, orange, blue, green & beige—birds on one are orange, blue, green, navy and yellow; birds on other are brown, orange and blue. (c) Three (3) costumed dolls, each approx. 15" high: (i) Kırşehir Gunluk Giysi in gold, purple & green; (ii) Daily dress ORDU—multi-color dress (iii) Malatya Besni, purple dress. (d) Kilim rug, approx. 5'4" x 11'9 1/2", in colors of red, green, brown, beige, blue and black. Est. Value—(a) \$40; (b) \$100; (c) \$30; (d) \$1,000. Delivered to GSA 6/30/87.	Dr. Matyas Szuros, Secretary of the Central Committee of the Hungarian Socialist Workers' Party.	Do.
Do	Lidded urn—Hungarian hand-painted Herend china with two handles, approximately 19" tall x 12" at widest part; Rothschild birds pattern (birds in tree with jewelry, butterflies and insects sprinkled around); handles in shape of leaf, embellished with gold. In burgundy simulated leather presentation case. Recd—April 1, 1987. Est. Value—\$500. Approved for official use by the Office of Protocol.	H.E. Hedi Mabrouk, Minister of Foreign Affairs, Tunisia.	Do.
The Secretary of State and Mrs. George P. Shultz.	Framed mosaic of Abraham Lincoln by Ben Tara Mahmoud done in 1960 using antique tiles; 2' diameter; wooden, rope-style brown frame. Recd—April 20, 1987. Est. Value—\$300. Delivered to GSA 6/30/87. (a) Framed Tapestry depicting the Kanda Festival; approx. 19 1/4" x 24"; orange background shot through with gold; burgundy silk border. (b) Two traditional Japanese dolls, each approx. 5" high with glass display case and separate lacquer piece for floor. Recd—April 30, 1987. Est. Value—(a) \$250; (b) \$100. Delivered to GSA 6/30/87.	H.E. Yasuhiro Nakasone, Prime Minister of Japan, and Mrs. Nakasone.	Do.

AGENCY: DEPARTMENT OF STATE, REPORT OF TANGIBLE GIFTS—Continued

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
George P. Shultz, Secretary of State.	Imari porcelain hand-painted bowl, approx. 12" diameter; red, navy, white and gold coloring, pot of flowers in the center. Recd—April 30, 1987. Est. Value—\$250. Delivered to GSA 6/30/87.	H.E. Tadashi Kuranari, Foreign Minister of Japan.	Do.
The Secretary of State and Mrs. George P. Shultz.	(a) Double-sided Chinese embroidery of a white cat with red ribbon around its neck approx. 8 1/4" diameter, in reversible wooden frame which fits into carved wooden stand approx. 6" high x 7 1/4" wide. (b) Silk brocade material, approx. 6 yards, 29 1/4" wide; floral/swirl design in shades of blue with silver. Recd—May 19, 1987. Est. Value—(a) \$200; (b) \$75. Delivered to GSA 6/30/87.	H.E. Yang Shangkun, Vice Chairman, Central Military Commission of the People's Republic of China.	Do.
Do	(a) Two antique-finish Murano glass ducks, one is approx. 12 1/4" high, one approx. 10" high; both are opaque, with shades of red and black with a hint of orange. (b) Brushed silver cigarette box, approx. 4"x3"x3/4"; engraved picture of Cini Foundation on front, also the words "Vertice Economico di Venezia 6-10 Giugno 1987"; on back the words "Federico Buceletti Grafo". (c) Murano glass decanter and stand; Decanter 10" high with glass stopper; stand is cone shaped diameter 10 1/2"; 8 1/2" highest point; blue presentation case. (d) Proof of copper-plate lithograph, approx. 26"x32 1/2"; entitled "Angle of Peace" and executed by Amintore Fanfani; arrived with glass shattered, but metal frame intact. Rec'd—June 9, 1987. Est. Value—(a) \$1,000; (b) \$100; (c) \$500; (d) \$100. (a) Approved for official use at Department of State, Diplomatic Reception Area. (b, c, d) Reported to GSA 10/19/87.	H.E. Amintore Fanfani, President of Council of Ministers of Italian Rep. and Mrs. Fanfani.	Do.
George P. Shultz, Secretary of State.	Complete set of Games of XXIVth Olympiad Seoul 1988. Set of 29 coins, 8—gold, 21—silver. Rec'd—July 8, 1987. Est. Value—\$3,900. Reported to GSA 10/19/87.	H.E. Chun Doo Hwan, President of the Republic of Korea.	Do.
Do	Stone sculpture; head of a woman with 18k gold in braids of hair and on eyelids; approx. 20" x 7" at widest part. Rec'd—July 31, 1987. Est. Value—\$500. Reported to GSA 10/19/87.	H.E. El Hadj Omar Bongo, President of Gabonese Republic.	Do.
Do	Set of five Olympic silver coins: 10,000 won; 5,000 won; 2,000 won; 1,000 won. Rec'd—September 17, 1987. Est. Value—\$185. Reported to GSA 10/19/87.	TH Roh Tae Woo, President of Democratic Justice Party of Korea.	Do.
Do	Two identical cloisonne vases, approx. 13" high and 8" at widest point, black background w/floral design in green, yellow, pink, blue, brown, and white; each has carved wooden stand, approx. 6" wide. In presentation box of gold and blue silk material. Rec'd—October 2, 1987. Est. Value—\$200. Approved for official use by the Office of Protocol.	HRH Prince Samdech Norodom Sihanouk, President of the Coalition Government of Democratic Kampuchea.	Do.
Do	Ceremonial dagger, approx. 10 3/4" long decorated in 18K gold with 46 small diamonds; intricate design of leaves and flowers with Saudi Arabian national symbol; silver blade. Recd—October 26, 1987. Est. Value—\$1,000. Reported to GSA 11/18/87.	HRH Abdullah ibn Abd al-Aziz Al Saud, Crown Prince and Prime Minister of Saudi Arabia.	Do.
Do	Antique print of Trevi Fountain in Rome; approx. 25 1/2" x 19 1/2" unframed; written in pencil on reverse: "Stampe all acquaforte disegnate de Barbault pitbre e meisore (1718-1762)". Recd—November 6, 1987. Est. Value—\$500. Reported to GSA 11/18/87.	H.E. Valerio Zanone, Minister of Defense Italian Republic.	Do.
Do	Framed, signed and numbered lithography entitled "Entebbe"; metal plaque on print inscribed "Mordecai Ardon (B.1896), Entebbe Lithography presented by Chaim Herzog, President of Israel, November 1987". Recd—November 10, 1987. Est. Value—\$300. Reported to GSA 11/18/87.	H.E. Chaim Herzog, President of Israel.	Do.
Do	Herend hand-painted china vase with lid; Rothschild Birds pattern; approx. 10" high; "loving cup" handles embellished with gold. Recd—November 20, 1987. Est. Value—\$200. Approved for official use by the Office of Protocol.	H.E. Jozsef Marjai, Deputy Chairman of the Council of Ministers of Hungarian People's Republic.	Do.
Do	(a) Silver letter knife, approx. 7 1/2" long; in brown suede case and white box with German seal. Recd—December 15, 1987. Est. Value—\$200. Held in the Office of Protocol pending delivery to GSA. (b) KPM porcelain oval dish, approx. 11" x 8"; latticed sides, gold edge, floral bouquet with butterfly on inside bottom. Recd—December 15, 1987. Est. Value—\$140. Approved for official use by the Office of Protocol.	H.E. Dr. Helmut Kohl, Chancellor of the Federal Republic of Germany, and Mrs. Kohl.	Do.
The Secretary of State and Mrs. Shultz.	Three-volume, leatherbound set of <i>Quadrupeds of North America</i> by John James Audubon, F.R.S., &c. &c. and The Rev. John Bachman, D.D., &c. &c.; published by V.G. Audubon, 1856, New York. Each book approx. 7 1/2" x 11". Recd—December 15, 1987. Est. Value—\$10,580. Approved for official use in the office of the donee.	HRH Bandar bin Sultan bin Abdula-ziz, Ambassador of Saudi Arabia, and HRH Princess Haifa bint Faisal.	Do.
Do	Hand-painted Herend china vase, approx. 6" tall, with fluted top, 6" across at top; coral flowers painted at random around outside of vase; with gold trim and gold and floral design around rim. Recd—December 17, 1987. Est. Value—\$250. Approved for official use by the Office of Protocol.	HE Dr. Vencel Hazi, Ambassador of the Hungarian People's Republic, and Madame Judit Hazi.	Do.

AGENCY: DEPARTMENT OF STATE, REPORT OF TANGIBLE GIFTS—Continued

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
George P. Shultz, Secretary of State.	Five Italian coins (reproductions): five lire 1848; 8 lire 1804; 3 baiocchi 1849; 5 lire 1848; 12 cartini 1799. Recd—December 17, 1987. Est. Value—\$500. Held in the Office of Protocol pending delivery to GSA.	H.E. Giovanni Goria, President of the Council of Ministers of the Italian Republic.	Do.
Ellie Vandenburg, Acting Branch Chief FBO.	Man's Baume & Mercier wristwatch time/date w/stainless steel band and gold face. Recd—July 1, 1987. Est. Value—\$600. Reported to GSA 10/19/87.	Chief of the Diwan Amiri Court of the State of Bahrain.	Do.
Allen Wallis, Under Secretary of State.	Oval coffee table with white and blue design; approx. 60" x 28". Recd—March 5, 1987. Est. Value—\$200. Approved for official use in the office of donee.	H.E. Finance Minister Attoo of Pakistan.	Do.
Frank Wisner, U.S. Ambassador to Egypt.	Binoculars. Recd—October 5, 1987. Est. Value: \$300. Approved for official use at American Embassy, Egypt.	Arab International Optronics Factory, El Salaam City, Cairo, Egypt.	Do.
John C. Whitehead, Deputy Secretary of State.	Framed Indian print of rider on elephant and rider on horse in battle; 15½" x 17½". Recd—October 26, 1987. Est. Value—\$250. Approved for official use in office of the donee.	H.E. Rajiv Gandhi, Prime Minister of India.	Do.
John C. Whitehead, Deputy Secretary of State.	Dagger with gold handle and sheath with 44 small diamonds and silver blade; approx. 11" long. Recd—October 22, 1987. Est. Value—\$1,000. Reported to GSA 11/17/87.	HRH Abdullah ibn Abd al-Aziz Al Saud, Crown Prince and Prime Minister of Saudi Arabia.	Do.

AGENCY: SUPREME COURT OF THE UNITED STATES, REPORT OF TANGIBLE GIFTS

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Sandra Day O'Connor, Associate Justice.	Small lacquer screen. Recd—August 1987. Est. Value—\$200. Delivered to GSA, Forrestal Vault, December 3, 1987.	H.E. Chung Haechang, Minister of Justice Korea.	Non-acceptance would have caused embarrassment to donor, and I did not believe object was more than of minimal value.

AGENCY: DEPARTMENT OF TRANSPORTATION, REPORT OF TANGIBLE GIFTS

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Adm. Thomas King, Superintendent, U.S. Merchant Marine Academy.	Carpet, 4' by 6'. Est. value—\$500. Rcvd—February, 1987. Displayed in offices of the Superintendent.	Maritime Academy of the Government of Morocco.	Non-acceptance would have caused embarrassment to the donor and U.S. Government.

AGENCY: DEPARTMENT OF TRANSPORTATION, REPORT OF TRAVEL OR EXPENSES OF TRAVEL

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
LCDR Thomas A. Nies, USCG Fisheries Regulations and Procedures Officer.	Banquet held for U.S. and Korean delegations. Est. Value—\$200.....	Korean Deep Sea Fisheries Association, Korea.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
CAPT J.R. Sproat, Commander, USCG Far East Section.	Round trip rail ticket from Yokota, Japan to Maizuru, Japan, lodging and meals to attend the graduation ceremony at the Maritime Safety School. Est. Value—\$400.	Akio Tanai, Director, International Affairs Division, Maritime Safety Agency, Japan.	Do.

AGENCY: DEPARTMENT OF THE TREASURY—DEPARTMENTAL OFFICES REPORT OF TANGIBLE GIFTS

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
James A. Baker, Jr., Secretary of the Treasury.	Ceramic birds, February 1987, \$300.00, Retain at Treasury.....	Kasuga Ikko, former chairman, Democratic Socialist Party.	Embarrassment to return.
Do	2 1987 Belgium coins, April 1987, \$250.00, Retain at Treasury.....	Eyskens Mark, Minister of Finance, Belgium.	Do.
Do	Korean Olympics Commemorative Coin Set, April 1987, \$1,475.00, Retain at Treasury.	Chung In Young, Minister of Finance, South Korea.	Do.
Do	Silver box, June 1987, \$400.00, Retain at Treasury	Amintore Fanfani, Prime Minister, Italy.	Do.

AGENCY: DEPARTMENT OF THE TREASURY—DEPARTMENTAL OFFICES REPORT OF TANGIBLE GIFTS—Continued

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Do	Korean legal tender issued by the Bank of Korea in Commemoration of the Games of the XXIVth Olympiad in Seoul, Korea—5 coins in case, September 1987, \$1,250.00, Retain at Treasury.	Il Yakong, Minister of Finance, South Korea.	Do.
David C. Mulford, Assistant Secretary of the Treasury for International Affairs.	Korean legal tender issued by the Bank of Korea in Commemoration of the Games of the XXIVth Olympiad in Seoul, Korea—5 coins in case, April 1987, \$1,250.00, Retain at Treasury.	do	Do.

AGENCY: UNITED STATES MINT REPORT OF TANGIBLE GIFTS

Name and title of recipient	Gift, date of acceptance, estimated value and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Donna Pope, Director, U.S. Mint.	Two series of 6-coin sets with two (2) Gold and four (4) Silver coins in each series. (Equaling 4-Gold coins and 8 Silver coins) Estimated Value: \$1465—Set 1, \$1365—Set 2. August 26, 1987. San Francisco Old Mint.	Kang, Shin Joe President, Korea Security Printing and Minting Corp., Republic of Korea.	Presentation of Korea Olympic Coin to Mrs. Pope at the ANA Convention.
Eugene H. Essner, Deputy Director, U.S. Mint.	Brown leather case containing one Gold Belgian ECU Proof coin and one (1) Silver Belgian ECU Proof Coin. \$380—Set. September 28, 1987. Office of the Director.	Eyskens, Mark Minister of Finance Belgium.	Press Conference introducing the new Belgian ECU Coins in the United States.

AGENCY: U.S. INFORMATION AGENCY, REPORT OF TANGIBLE GIFTS

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Charles Z. Wick, Director.....	Bronze Vase, globular body cylindrical neck, ring handle, signed by artist-Eiji Tsuda. H: 7½". Rec'd—Jan. 1987. Est. value—\$300. Approved for official display in the office of donee.	Toshio Ohata, Foreign Editor, Yomiur Shimbun, Japan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: VETERANS ADMINISTRATION, REPORT OF TRAVEL OR EXPENSES OF TRAVEL

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
W. Ross Adey, M.D., Chief, Research Service.	Recd—August 1987. Est. Value—\$450. Expended for travel expenses.	School of Medicine and University of Lubeck, Berlin, West Germany.	To participate in the International Conference on the "Dynamics of Sensory and Cognitive Processing by the Brain."
Herbert L. Baker, M.D., Chief, ENT Section.	Recd—February 1987. Est. Value—\$2,600. Expended for airfare and other travel expenses.	Israel	To attend and participate in training in the use of CO ₂ Laser.
William Banks, M.D., Staff Physician, Medicine Service.	Recd—May 1987. Est. Value—\$500. Expended for travel expenses..	Serbian Academy of Science and Art, Belgrade, Yugoslavia.	To attend national conventions of scientific organizations, and present a paper concerning his research at the International Symposium on Peptide and Amino Acid Transport Mechanisms in the Central Nervous System.
Michael Bonnet, Ph.D., Clinical Psychologist, Pulmonary Section.	Recd—June 1987. Est. Value—\$1,300. Expended for airfare and other travel expenses.	Denmark	To speak at the Fifth International Congress of Sleep Research.
Javier I. Escobar, M.D., Associate Chief of Staff for Education.	Recd—January 1987. Est. Value—\$1,580. Expended for airfare and other travel expenses.	Swedish Society of Medicine, Stockholm, Sweden.	To attend and present a paper at the International Symposium on Transcultural Psychiatry.
Gerald W. Friedland, M.D., Chief, Radiology Service.	Recd—(1) April 1987. Recd—(2) September 1987. Est. Value—(1) \$780, (2) \$1,720. Expended for airfare and other travel expenses.	(1) Royal Alexandra Hospitals and University Hospital, Alberta, Canada. (2) University of Verona, Verona, Italy.	(1) Visiting Professor of Radiology. (2) To participate in a meeting on Functional Abnormalities of the Pelvis.
Leslie Rendell-Baker, M.D., Staff Anesthesiologist, Anesthesiology Service.	Recd—July 1987. Est. Value—\$410. Expended for travel expenses...	The Association of Anesthetists of Great Britain and Ireland, London, England.	To attend the Second Symposium on the History of Anesthesia.

AGENCY: VETERANS ADMINISTRATION, REPORT OF TRAVEL OR EXPENSES OF TRAVEL—Continued

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Andrew V. Schally, Ph.D., Senior Medical Investigator and Chief, Endocrine, Polypeptide and Cancer Institute.	Recd—May 1987. Est. Value—\$2,525. Expended for airfare and other travel expenses.	Ministry of Health and Social Security, Madrid, Spain.	Nobel Laureate; invited to give plenary lecture at the opening of the Special Congress in celebration of the 100th anniversary of the birth of Professor Gregorio Marañon, father of Spanish endocrinology.

AGENCY: OFFICE OF THE MAYOR, REPORT OF TANGIBLE GIFTS

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Marion Barry, Jr., Mayor of the District of Columbia.	AMC Jeep Cherokee, May 1987. \$14,000. Use for Official Purposes Only.	People's Republic of China, Mayor Chen Xitong, Beijing.	Sister Cities—would cause embarrassment if returned.

[FR Doc. 88-5260 Filed 3-10-88; 8:45 am]

BILLING CODE 4710-20-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filled During the Week Ending March 4, 1988

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 408, 409, 412, and 414. Answers may be filed within 21 days of date of filing.

Docket No. 45475

Parties: Members of International Air Transport Association
Date Filed: February 26, 1988
Subject: No. Atlantic—Mid East Fares
Proposed Effective Date: April 1, 1988

Docket No. 45476

Parties: Members of International Air Transport Association
Date Filed: February 26, 1988
Subject: 1988-89 Mid East—TC3 Fare Structure
Proposed Effective Date: April 1, 1988

Docket No. 45477

Parties: Members of International Air Transport Association
Date Filed: February 26, 1988
Subject: Europe-Africa Fares
Proposed Effective Date: April 1, 1988

Docket No. 45478

Parties: Members of International Air Transport Association
Date Filed: February 26, 1988
Subject: TC1 Passengers Fares
Proposed Effective Date: April 1, 1988

Docket No. 45479

Parties: Members of International Air Transport Association
Date Filed: February 26, 1988
Subject: Mileage Manual Changes
Proposed Effective Date: April 1, 1988

Docket No. 45484

Parties: Members of International Air Transport Association
Date Filed: March 1, 1988
Subject: Japan-Korea Resolutions
Proposed Effective Date: April 1, 1988

Docket No. 45486

Parties: Members of International Air Transport Association
Date Filed: March 1, 1988
Subject: North Atlantic-Africa Fares
Proposed Effective Date: April 1, 1988

Docket No. 45487

Parties: Members of International Air Transport Association
Date Filed: March 1, 1988
Subject: Cargo Services Conference
Proposed Effective Date: April 1, 1988

Docket No. 45490

Parties: Members of International Air Transport Association
Date Filed: March 3, 1988
Subject: Rate Levels ex Poland
Proposed Effective Date: April 1, 1988

Docket No. 45491

Parties: Members of International Air Transport Association
Date Filed: March 3, 1988
Subject: Standard Condition Resolution
Proposed Effective Date: April 1, 1988

Docket No. 45492

Parties: Members of International Air Transport Association
Date Filed: March 3, 1988
Subject: Cargo Rates Ex Poland
Proposed Effective Date: April 1, 1988

Docket No. 45493

Parties: Members of International Air Transport Association
Date Filed: March 3, 1988
Subject: TC3 Cargo Rates
Proposed Effective Date: April 1, 1988

Docket No. 45497

Parties: Members of International Air Transport Association
Date Filed: March 4, 1988
Subject: Lusaka-Mexico/Montreal/MYC first class fares
Proposed Effective Date: April 15, 1988

Docket No. 45498

Parties: Members of International Air Transport Association
Date Filed: March 4, 1988
Subject: Fares to/from Libya
Proposed Effective Date: April 1, 1988

Docket No. 45499

Parties: Members of International Air Transport Association
Date Filed: March 4, 1988
Subject: Convert Hong Kong-TC1 rates from USD to HKD
Proposed Effective Date: March 15, 1988

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 88-5384 Filed 3-10-88; 8:45 am]

BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended March 4, 1988.

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 45481

Date Filed: February 29, 1988

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 28, 1988

Description: Application of The Air-Shuttle, L.P., pursuant to section 401 of the Act and Subpart Q of the Regulations requests a certificate of public convenience and necessity authorizing it to engage in scheduled interstate and overseas air transportation of persons, property and mail.

Docket No. 45482

Date Filed: February 29, 1988

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: March 28, 1988

Description: Application of Hawaiian Airlines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations requests amendment to its certificate of public convenience and necessity issued authorizing scheduled non-stop service for passengers, property and mail between Honolulu, Hawaii and three cities in Japan including Fukuoka, Tokyo, and Nagoya.

Docket No. 45483

Date Filed: March 1, 1988

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: March 29, 1988

Description: Application of Aero-Chago, S.A. pursuant to section 402 of the Act and Subpart Q of the Regulations requests amendment to its foreign air carrier permit to authorize scheduled services over its presently authorized routes to add Mayaguez, P.R.

Docket No. 45485

Date Filed: March 1, 1988

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: March 29, 1988

Description: Application of Federal Express Corporation pursuant to section 401 of the Act and Subpart Q of the Regulations requests issuance of a new or amended certificate of public convenience and necessity authorizing it to provide foreign air transportation of property and mail between a point or points in the United States, on the one hand, and Rio de Janeiro, Sao Paulo and Manaus, Brazil, on the other hand.

Docket No. 45488

Date Filed: March 2, 1988

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: March 30, 1988

Description: Application of Northwest Airlines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations applies for a certificate of public convenience and necessity authorizing it to provide service between the United States and Mexico over U.S. Routes B.14, B.17, C.12, D.4, D.16, and D.21, as authorized by the U.S. Mexico Memorandum of Consultations signed on January 29, 1988.

Docket No. 45489

Date Filed: March 3, 1988

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: March 31, 1988

Description: Application of United Air Lines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations applies for an amendment of its certificate of public convenience and necessity for Route 57 in order to authorize United to provide round-trip foreign air transportation of passengers, property, and mail between San Francisco, Los Angeles, and San Diego, California, on the one hand, and Acapulco, Guadalajara, Haululco, Manzanillo, Mexico City/Toluca, and Zihuatanejo, Mexico, on the other hand.

Docket No. 45495

Date Filed: March 3, 1988

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: March 17, 1988

Description: Conforming Application of American Airlines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity authorizing service between Los Angeles, California, and Mexico City, Mexico.

Docket No. 45433

Date Filed: March 3, 1988

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: March 31, 1988

Description: Amendment No. 1 to the Application of Federal Express Corporation pursuant to section 401 of the Act and Subpart Q of the Regulations, amends Paragraph 4 and Appendix A, page 3 of its U.S.-Mexico all-cargo certificate application so as to delete its request for authority to serve McAllen, Texas.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 88-5385 Filed 3-10-88; 8:45 am]

BILLING CODE 4910-62-M

Office of the Secretary

Privacy Act of 1974; System of Records

The Department of Transportation (DOT) herewith publishes a proposal to alter a system of records.

Any person or agency may submit written comments on the proposed altered system to the U.S. Coast Guard (G-KOM), ATTN: LT R.S. Condon, 400 7th St., SW., Washington, DC 20590-0001. Comments must be received within 30 days to be considered.

If no comments are received, the proposed changes will become effective 30 days from the date of issuance. If comments are received, the comments will be considered and where adopted, the document will be republished with the changes.

Issued in Washington, DC, March 4, 1988.

Jon H. Seymour,

Assistant Secretary for Administration.

Narrative Statement Department of Transportation Office of the Secretary On Behalf of the United States Coast Guard For Alteration of the USCG Military Personnel Health Record System

The Office of the Secretary, on behalf of the Coast Guard, proposes to amend the USCB Military Personnel Health Record System, DOT/CG 572, to cover all medical records maintained on Coast Guard personnel and all records maintained on other uniformed services active duty, reserve and retired personnel and dependents provided care at a Coast Guard health care facility.

The purposes of this notice is to revise the system to include all medical files at Coast Guard treatment facilities, and at Coast Guard administrative offices, and to more accurately reflect current

agency practices. These files contain treatment records and computerized medical record data used for the purposes described under the appropriate headings in the attached copy of the system notice prepared for publication in the **Federal Register**.

The changes include amendments to: System location, Categories of records in the system, Routine uses of records maintained in the system, Storage, Retrievability, Retention and disposal, Record access procedures, Contesting record procedures and Record source categories.

Since this proposal is an amendment of an existing record system, the probable effects of this proposal on the privacy interests of the general public is minimal.

A description of the steps taken to safeguard these records is given under the appropriate heading of the attached **Federal Register** system of records notice.

The purpose of this report is to comply with Office of Management and Budget Circular, A-130, Appendix I, dated December 12, 1985.

Amendment—DOT/CG 572

System location: Amended to reflect inclusion of records retained at the service member's unit or the Coast Guard health care facility at which the members or dependents receive treatment.

Categories of records in the system: Amended to reflect inclusion of x-rays; physical examinations; ADP records containing due dates for physical/dental and eye examinations, inoculations, screening tests and results of actions required by Coast Guard or other federal, state or local government or agency, including body weight/measurements, HIV, PPD, etc.; records concerning line of duty determination and eligibility for disability benefits.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Amended to reflect that:

a. Records are provided to Department of Defense to determine suitability of members for overseas assignments and to develop automated information relating to medical readiness in wartime and contingency operations.

b. Records are provided to federal, state or local governments and agencies to compile statistical data for research and auditing; to provide quality assurance; to report medical conditions and other data required by law; to aid in preventive health and communicable disease control programs.

c. Records are provided to the Joint Commission on Accreditation of Healthcare Organizations to evaluate health care provided, personnel and facilities for professional certification and hospital accreditation; to provide quality assurance.

d. Records of communicable disease are provided to the Department of Defense to analyze the results, to ensure uniformity of record keeping, and to centralize production of reports for all uniformed services.

e. Records are provided to Department of Defense or other federal, state or local governments and agencies for casualty identification purposes.

f. Records are provided to the Social Security Administration and Veterans Administration for use in determining entitlement to benefits administered by those agencies.

g. Records are provided to the Public Health Service, Department of Defense, or Veterans Administration medical personnel or to personnel or facilities providing care to eligible beneficiaries under contract in connection with medical treatment of individuals.

Storage: Amended to indicate that portions of records are automated at some units.

Retrievability: Amended to reflect that a member's or dependent's social security number may be used as a method of retrieving records.

Retention and disposal: Amended to reflect inclusion of retention and disposal actions of medical files for retired personnel, dependents, and reservists. Records for retired personnel and dependents are retained at the health care facility for a period of 4 years from the date of the last activity. They are forwarded to the National Personnel Records Center 4 years after last activity. Records for reserve personnel are retained in custody of the reserve group or unit or district commander(s) so long as the reservist is assigned to the particular area. Records are transferred to new reserve unit or district commander(s) upon reassignment of reservist. They are incorporated into the Official Coast Guard Reserve Service Record System upon separation or retirement.

Record access procedures: Amended to indicate that active duty personnel may write or visit the health care facility where the record is located in addition to writing Commandant (G-CMA) to gain access to records; that retired personnel and dependents should write or visit the health care facility where the record is/was located, and to write National Personnel Records Center if otherwise unable to locate the records; that reserve personnel should write or

visit the reserve group or unit or district commander(s) of the district where command is located or write Commandant (G-CMA).

Contesting record procedures: Amended to indicate that Commandant (G-CMA) should be contacted in all cases.

Record source categories: Amended to reflect inclusion of records obtained from investigations resulting from illness or injury, and from the individual to whom the record pertains.

SYSTEM NAME:

USCG Military Personnel Health Record System.

SYSTEM LOCATION:

At the member's unit or the Coast Guard health care facilities at which the member or dependents receive treatment.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Active duty, reserve, and retired members of the uniformed services and their dependents.

CATEGORIES OF RECORDS IN THE SYSTEM:

- Records of medical and dental treatment, including x-rays.
- Physical Examinations.
- ADP Records containing due dates for physical/dental and eye examinations, inoculations, screening tests and results of actions required by Coast Guard or other federal, state or local government or agency.
- Records concerning line of duty determination and eligibility for disability benefits.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

- Provided to the Department of Defense to determine suitability of members for overseas assignments and to develop automated information relating to medical readiness in wartime and contingency operations.
- Provided to federal, state, or local governments and agencies to compile statistical data for research and auditing; to provide quality assurance; to report medical conditions and other data required by law; to aid in preventive health and communicable disease control programs.
- Provided to the Joint Commission on Accreditation of Healthcare Organizations to evaluate health care provided, personnel and facilities for professional certification and hospital accreditation; to provide quality assurance.

d. Records of communicable disease are provided to the Department of Defense to analyze the results, to ensure uniformity of record keeping, and to centralize production of reports for all uniformed services.

e. Provided to Department of Defense or other federal, state or local governments and agencies for casualty identification purposes.

f. Provided to the Social Security Administration and Veterans Administration for use in determining an individual's entitlement to benefits administered by those agencies.

g. Provided to the Public Health Service, Department of Defense, or Veterans Administration medical personnel or to personnel or facilities providing care to eligible beneficiaries under contract in connection with medical treatment of individuals.

See Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Storage of individual files are in folders. Portions of records are automated at some units

RETRIEVABILITY:

Name or social security number of member or dependent.

SAFEGUARDS:

Rooms or cabinets in which records are located are locked when unattended. Access limited to these records at all times by personnel screening.

RETENTION AND DISPOSAL:

a. Active Duty Personnel: Individual medical files are retained at the members' unit or medical administration office for so long as the member is assigned to the particular area. When the member is reassigned, the individual medical file is transferred to the new duty station upon reassignment of member. Upon separation or retirement, the individual medical file is incorporated into the Official Officer Service Records System (DOT/CG 626) or Enlisted Personnel Record System (DOT/CG 629), as appropriate.

b. Retired Personnel: Individual medical files are retained at the medical facility for a period of 4 years from date of last activity. Transferred to National Personnel Records Center (Military Personnel Records) 9700 Page Blvd., St. Louis, MO 63132, 4 years after last activity.

c. Dependents: Individual medical files are retained at the medical treatment facility for period of 4 years

from date of last activity. Transferred to new duty station of sponsor upon written request of dependent. Records not transferred are forwarded to National Personnel Records Center (CPR) 111 Winnebago St., St. Louis, MO 63118, 4 years after last activity.

d. Reserve Personnel: Individual medical files are retained in custody of the reserve group or unit, or district commander(r) for so long as the reservist is assigned to the particular area. When the member is reassigned, the individual medical file is transferred to the new reserve group or unit or district commander(r), as appropriate. Upon separation or retirement, the individual medical file is incorporated into Official Coast Guard Reserve Service Record System (DOT/CG 676).

SYSTEM MANAGER(S) AND ADDRESS:

System Manager: Chief, Office of Health Services, Department of Transportation, United States Coast Guard, 2100 2nd Street, SW., Washington, DC 20593-0001.

NOTIFICATION PROCEDURE:

Department of Transportation, United States Coast Guard, Commandant (G-CMA), 2100 2nd Street, SW., Washington, DC 20593-0001. Written request must be signed by the individual.

RECORD ACCESS PROCEDURES:

a. Active Duty Personnel: Write or visit the health care facility where the record is located, or write Commandant (G-CMA) at the address in "Notification Procedure."

b. Retired Personnel and all Departments: Write or visit the health care facility where the record is/was located. If unable to locate records, write:
(Retired) National Personnel Records Center, (Military Personnel Records), 9700 Page Blvd, St. Louis, MO 63132
(Dependents) National Personnel Records Center (CPR), 111 Winnebago Street, St. Louis, MO 63118

c. Reserve Personnel: Write or visit reserve group or unit or district commander(r) of the district where command is located, or write: U.S. Coast Guard (G-CMA), 2100 2nd Street, SW., Washington, DC 20593-0001.

The decision to release medical records directly to the individual shall be made by a medical practitioner per 49 CFR 10.35(c).

CONTESTING RECORD PROCEDURES:

Contact Commandant (G-CMA) at the address in "Notification Procedure."

RECORD SOURCE CATEGORIES:

- Medical facilities where beneficiaries treated or examined.
- Investigations resulting from illness or injury.
- From the individual.

[FR Doc. 88-5383 Filed 3-10-88; 8:45 am]

BILLING CODE 4910-62-M

Research and Special Programs Administration

Office of Hazardous Materials Transportation; Applications for Renewal or Modification of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for renewal or modification of exemptions or application to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of the Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Except as otherwise noted, renewal application are for extension of the exemption terms only. Where changes are requested (e.g., to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATE: Comment period closes March 29, 1988.

Comment:

Address comments to: Docket Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Docket Branch, Room 8426, Nassif Building, 400 7th Street, SW, Washington, DC.

Application number	Applicant	Renewal of exemption
970-X	U.S. Department of Defense, Falls Church, VA	970
3004-X	Union Carbide Corporation, Danbury, CT	3004
3004-X	Airco Industrial Gases, Murray Hill, NJ	3004
3004-X	Big Three Industries, Inc., Houston, TX	3004
3121-X	U.S. Department of Defense, Falls Church, VA	3121
3549-X	U.S. Department of Energy, Washington, DC	3549
3941-X	Aerofuel Solid Propulsion Company, Sacramento, CA	3941
4039-X	Airco Industrial Gases, Murray Hill, NJ	4039
4453-X	Kentucky Powder Company, Lexington, KY	4453
5403-X	Vann Systems, Division of Halliburton Company, Houston, TX	5403
5701-X	Mallinckrodt, Inc., Paris, KY	5701
6016-X	Acety Arc, Inc., Paducah, KY	6016
6016-X	Magnolia Welding Supply Company, Houston, TX	6016
6016-X	Strate Welding Supply Company, Inc., Buffalo, NY	6016
6080-X	U.S. Department of Energy, Washington, DC	6080
6309-X	Foam Supplies, Inc., Olive, MO	6309
6309-X	Freeman Chemical Corporation, Port Washington, WI	6309
6309-X	General Latex and Chemical Corporation of Georgia, Dalton, GA	6309
6349-X	Union Carbide Corporation, Danbury, CT (See Footnote 1)	6349
6418-X	The Dow Chemical Company, Midland, MI	6418
6418-X	Great Lakes Chemical Corporation, El Dorado, AR	6418
6484-X	W.R. Grace & Company, Lexington, MA	6484
6611-X	Teisan Kabushiki Kaisha, Tokyo, 105 Japan	6611
6651-X	Enthone, Incorporated, West Haven, CT	6651
6704-X	The Dow Chemical Company, Midland, MI	6704
6765-X	Bureau of Mines, Amarillo, TX	6765
6890-X	U.S. Department of Defense, Falls Church, VA	6890
6895-X	GTE Products Corporation, Danvers, MA	6895
6929-X	U.S. Department of Energy, Washington, DC	6929
6962-X	U.S. Department of Energy, Washington, DC	6962
6971-X	Chem Service, Inc., West Chester, PA	6971
7024-X	B.I. Transportation, Inc., Burlington, NC	7024
7052-X	Crompton Parkinson, Limited, Tyne & Wear, England	7052
7052-X	Allen-Bradley Company, Milwaukee, WI	7052
7052-X	Eveready Battery Company, Inc., Rocky River, OH	7052
7052-X	Terra Tek Systems, Salt Lake City, UT	7052
7052-X	Technical Oil Tool Corporation, Norman, OK	7052
7052-X	Pointer Inc., Tempe, AZ	7052

Application number	Applicant	Renewal of exemption	Application number	Applicant	Renewal of exemption
7218-X	Structural Composites Industries, Inc., Pomona, CA	7218	9549-X	Western Atlas International, Houston, TX	9549
7625-X	Hydrite Chemical Company, Milwaukee, WI (See Footnote 2)	7625	9571-X	National Institutes of Health, Bethesda, MD	9571
7694-X	Applied Companies, San Fernando, CA	7694	9571-X	Environmental Health Research & Testing, Inc., Lexington, KY	9571
7708-X	HTL Division, Pacific Scientific Company, Duarte, CA	7708	9571-X	U.S. Department of Justice, Washington, DC	9571
7876-X	General Chemical Corporation, Parsippany, NJ	7876	9571-X	U.S. Department of State, Washington, DC	9571
7945-X	HTL Division, Pacific Scientific Company, Duarte, CA (See Footnote 3)	7945	9606-X	Ensign-Bickford Company, Simsbury, CT	9606
7948-X	Erickson Inc., Richmond, CA	7948	9617-X	E.I. du Pont de Nemours & Company, Inc., Wilmington, DE	9617
7987-X	Stauffer Chemical Company, Westport, CT	7987	9780-X	Majestic Lubricating Company Tulsa, OK (See Footnote 9)	9780
8091-X	AT&T Technologies, Inc., Greensboro, NC	8091	9788-X	Certified Cylinder, Inc., Crossville, TN	9788
8369-X	Dequasa Corporation, Teeterboro, NJ	8369	(1) To amend exemption to change proper shipping name, to eliminate the requirement for weighing the tank, to revise the retest period from 2-5 years and to delete the OWTT requirement for liquid helium. (2) To authorize shipment of two additional materials classed as Corrosive material. (3) To amend exemption to increase the maximum allowable service pressure to 1500 psig from 900 psig and to change the wording in certain sections to make more correct. (4) To amend exemption to include a provision for Competent Authority Approval for air shipments. (5) To authorize the reporting of shipments, incidents and accidents in the renewal application instead of every six months. (6) To authorize renewal and an alternative notification procedure to provide the FAA with advance notice of an operation. (7) To amend exemption to include any manufacturer's non-DOT specification packaging, to increase the weight limit to 3000 lbs., and to allow shipments in full container loads in stack trains. (8) To authorize renewal and to amend the exemption to provide for alternative air carriers and to reword certain provisions for accuracy. (9) To authorize shipment of four additional materials classed as flammable liquid in the approved packaging.		
8390-X	Mallinckrodt, Inc., Paris, KY	8390			
8390-X	Jones-Hamilton Company, Newark, CA	8390			
8394-X	Whirlpool Corporation, La Porte, IN	8394			
8414-X	SLEMI, Paris 75116, France	8414			
8445-X	Eveready Battery Company, Inc., Rocky River, OH	8445			
8451-X	ICI Americas, Incorporated, Byron, GA	8451			
8451-X	ICI Americas, Incorporated, Byron, GA (See Footnote 4)	8451			
8597-X	McDonnell Douglas Corporation, Saint Louis, MO	8597			
8627-X	Chemlink Petroleum, Inc., Sand Springs, OK	8627			
8733-X	ICI Americas, Incorporated, Wilmington, DE (See Footnote 5)	8733			
8761-X	The Heil Company, Athens, TN	8761	6039-P	Industrial Polymer Corporation, Orange, CA	6309
8780-X	Container Corporation of America, Wilmington, DE	8780	6626-P	National Welders Supply Company, Inc., Charlotte, NC	6626
8781-X	Mausser Packaging, Limited, Litchfield, CT	8781	6810-P	U.S. Department of the Interior, Amarillo, TX	6810
8791-X	Stauffer Chemical Company, Westport, CT	8791	7052-P	Acme Aerospace Products Group, Salt Lake City, UT	7052
8826-X	Phoenix Air, Marietta, GA (See Footnote 6)	8826	7052-P	Hoppecke Battery Company, Hoppecke, West Germany	7052
8840-X	Walter Kidde Company, Mebane, NC	8840	7549-P	ICI Americas Inc., Wilmington, DE	7549
8842-X	HTL Division, Pacific Scientific Company, Duarte, CA	8842	7607-P	Radian Corporation, Herndon, VA	7607
8844-X	Beall Trailers of Montana, Inc., Billings, MT	8844	7616-P	Burlington Northern Railroad Company, Overland Park, KS	7616
8845-X	Western Atlas International, Houston, TX	8845	7753-P	Albright & Wilson Americas, Richmond, VA	7753
8896-X	Petrolane Gas Service Limited Partnership, Anchorage, AL	8896	7835-P	U.S. Airgas, Inc., Randnor, PA	7835
8915-X	Ethyl Corporation, Baton Rouge, LA	8915	7963-P	ICI Americas Inc., Wilmington, DE	7963
8915-X	Union Carbide Corporation, Danbury, CT	8915	7987-P	ICI Americas Inc., Wilmington, DE	7987
9015-X	Monsanto Company, Saint Louis, MO (See Footnote 7)	9015	8230-P	Fisher Scientific Company, Fair Lawn, NJ	8230
9066-X	BMW of North America, Inc., Montvale, NJ	9066	8445-P	Keegan Technology & Testing Associates, Inc., South Plainfield, NJ	8445
9232-X	U.S. Department of Defense, Falls Church, VA (See Footnote 8)	9232	8451-P	Rocket Research Company, Redmond, WA	8451
9248-X	Kross, Inc., Valencia, CA	9248	8518-P	Central Pumping Company, Inc., La Habra, CA	8518
9279-X	Keystone Steel & Wire Company, Peoria, IL	9279	8791-P	ICI Americas Inc., Wilmington, DE	8791
9491-X	E.I. du Pont de Nemours & Company, Inc., Wilmington, DE	9491	8978-P	GTE Products Corporation, Waltham, MA	8978
9549-X	Pesco, Inc., Mills, WY	9549	9289-P	ICI Americas Inc., Wilmington, DE	9289
9549-X	Schlumberger Well Services, Rosharon, TX	9549			

Application number	Applicant	Parties to exemption
9617-P	Explo-Tech, Inc., Norristown, PA.	9617
9723-P	Bishop & Associates, Inc., Brooklandville, MD.	9723
9723-P	Emergency Technical Services Corp. of Illinois, Schaumburg, IL.	9723
9781-P	Jones Chemicals, Caledonia, NY.	9781
9781-P	Aldrich Chemical Company, Inc., Milwaukee, WI.	9781
9785-P	Polish Ocean Lines, 81-364 Gdynia, Poland.	9785
9785-P	Trans Freight Lines, Wayne, NJ.	9785
9896-P	ICI Americas Inc., Wilmington, DE.	9896

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with Section 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on March 8, 1988.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 88-5386 Filed 3-10-88; 8:45 am]

BILLING CODE 4910-60-M

Urban Mass Transportation Administration

Intent To Prepare an Environmental Impact Statement on Alternative Transit Improvements in the Pittsburgh, Pennsylvania Region

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Notice of Intent to prepare an environmental impact statement.

SUMMARY: This notice announces that the Urban Mass Transportation Administration (UMTA) and Port Authority of Allegheny County are undertaking the preparation of an Environmental Impact Statement (EIS) for alternative transit improvements in the Northside, Downtown, Oakland, and Squirrel Hill corridor of the Pittsburgh, Pennsylvania area. This area is locally referred to as the Spine Line Corridor. The EIS is being prepared in conformance with 40 CFR Parts 1500-1508, Council on Environmental Quality (CEQ), Regulations for Implementing the Procedural Requirements of the National Environmental Policy Act of 1969 as amended; and 23 CFR Part 771, Federal Highway Administration and Urban Mass Transportation Administration, Environmental Impact and Related Procedures.

FOR FURTHER INFORMATION CONTACT: Elaine Burick, Transportation Representative, UMTA Region III, 841

Chestnut Street, Suite 714, Philadelphia, Pennsylvania 19107 (215) 597-8098.

SUPPLEMENTARY INFORMATION:

Scoping Meeting

Two public scoping meetings will be held on April 6, 1988 at 11:30 a.m., and again at 6:30 p.m., in the Young Women's Christian Association Building, First Floor (Fourth Avenue and Wood Street, Pittsburgh, Pennsylvania 15222). The meetings will be held to help establish the purpose, scope, framework, and approach for the analysis. At the scoping meeting, a presentation will be made which will provide a description of the proposed scope of the study using maps and visual aids, as well as a plan for an active citizen involvement program, a projected work schedule, and an estimated budget. Members of the public and interested Federal, State, and local agencies are invited to comment on alternatives to be assessed, the environmental, social and economic impacts to be analyzed, and the evaluation approach to be used to arrive at a decision. Comments may be made either orally at the meetings or in writing, to Allen D. Biehler, Director of Planning and Business Development, Port Authority of Allegheny County, Beaver and Island Avenues, Pittsburgh PA 15233. Written comments must be postmarked no later than April 11, 1988.

Corridor Description

The Spine Line Corridor, linking the Northside, Downtown Pittsburgh, Oakland, and Squirrel Hill, is one of the most heavily traveled corridors in the Pittsburgh Metropolitan area. The natural attraction of the compact Central Business District (CBD) of Pittsburgh, located in close proximity to the unique community of Oakland with its technical, cultural and educational facilities, and the highly developed Northside create dense travel patterns which strain the roadway network serving them. The corridor area generally encompasses an area of the lower Northside across the Allegheny River to the Central Business District of Pittsburgh, and through the Hill District, Midtown, Soho, and Oakland areas to Squirrel Hill. The lower Northside is bordered by Pennsylvania Avenue on the north, Allegheny Avenue on the west, and a line just east of the Sixteenth Street Bridge on the east. The eastern portion of the corridor is bordered generally by Bigelow Boulevard, Craig Street, Centre Avenue and Wilkins Avenue. The easternmost border is a north-south line just east of Shadow Avenue to the northern edge of the Parkway East Corridor. The

Monongahela River is the southern corridor border.

Alternatives

Transportation alternatives proposed for consideration in the corridor are the following:

1. Null Alternatives—Existing transit service with level of service expanded as appropriate to meet projected year 2005 travel demand.

2. Transportation Systems Management (TSM) Alternative—Low cost transit improvements that include actions such as one-way streets, exclusive bus lines and intersection channelization.

3. Light Rail Transit (LRT) Northside to Oakland via Centre Avenue Alternative—The construction and operation of a LRT line which begins at a below grade station at Allegheny Community College and goes east underground to Allegheny Center Mall at South Commons Avenue. The alignment then turns south at Federal Street and surfaces at General Robinson Street. The alignment is at-grade on Federal Street and onto the Sixth Street Bridge. Turning west in the median of the Fort Duquesne Boulevard for two blocks, the alignment then traverses south under Stanwix Street to connect with the existing subway at the Gateway Station. Outbound movement from the subway toward Oakland is effected through a grade separated loop at the Manor Building under the existing LRT tracks. Heading east the alignment is a tunnel under Centre Avenue to approximately Kirkpatrick Street then proceeds diagonally southeast to the intersection of Fifth and Craft Avenues. Continuing as tunnel, the alignment follows Fifth Avenue east to Bigelow Boulevard, traverses south one block to Forbes Avenue and extends east on Forbes to Morewood Avenue in Oakland.

4. LRT Northside to Oakland via Colwell Street Alternative—The construction and operation of a LRT line which follows the same alignment through the Northside then connects to the existing subway in the CBD as Alternative 3. Outbound movement from the subway toward Oakland is effected through a grade separated loop at the Manor Building under the existing LRT tracks, then north to Crosstown Boulevard where tunneling begins. The tunnel continues northeast under Diamond Street to Fifth Avenue and continues east on Fifth to just east of Washington Place. Here the alignment becomes at-grade in a northeast direction to the intersection of Colwell and Magee Streets. The alignment

continues east on Colwell as elevated structure (parallel to Fifth Avenue) to just past Kirkpatrick Street, then tunnels southeast to Fifth Avenue at approximately Halket Street. Continuing as tunnel, the alignment follows Fifth Avenue east to Bigelow Boulevard, traverses south one block to Forbes Avenue and extends east on Forbes to Morewood Avenue in Oakland.

5. LRT Northside to Oakland Via Fifth Avenue Alternative—The construction and operation of a LRT line which follows the same alignment through the Northside and connects to the existing subway in the CBD as Alternative 3. Outbound movement from the subway toward Oakland is similar to Alternative 4. The alignment proceeds east under Fifth Avenue to Bigelow Boulevard where it turns south one block to Forbes Avenue and extends east on Forbes to Morewood Avenue in Oakland. With the exception of the at-grade connection to the Manor Building, this alignment east of the CBD is tunnel construction.

6. LRT Northside to Squirrel Hill via Centre Avenue Alternative—Following the same alignment through the Northside and Oakland as Alternative 3, the alignment then proceeds east along Forbes Avenue to Shady Avenue in Squirrel Hill. The connection between Oakland and Squirrel Hill is tunnel construction.

7. LRT Northside to Squirrel Hill via Colwell Street Alternative—Following the same alignment through the Northside and Oakland Alternative 4, the alignment proceeds east along Forbes Avenue to Shady Avenue in Squirrel Hill. The connection between Oakland and Squirrel Hill is tunnel construction.

8. LRT Northside to Squirrel Hill via Fifth Avenue Alternative—Following the same alignment through the Northside and Oakland as Alternative 5, the alignment proceeds east along Forbes Avenue to Shady Avenue in Squirrel Hill. The connection between Oakland and Squirrel Hill is tunnel construction.

9. LRT Downtown to Pittsburgh Technology Center Alternative—Following the B&O Railroad east at-grade from the CBD to just past the Birmingham Bridge, the alignment then tunnels northeast to Fifth Avenue at approximately Craft Avenue and follows the same alignment to Oakland as Alternative 5.

Comments on the alternatives should focus on the appropriateness of these and other options for consideration in the study, not on individual preferences for a particular alternative as most desirable for implementation.

Probable Effects

Impacts proposed for analysis are potential changes in the natural environment (air quality, noise, water quality, aesthetics . . .), changes in the social environment (land use, development patterns, neighborhoods . . .), impacts on parkland and historic sites, changes in transit service and ridership, associated changes in highway congestion, impacts on capital, operating and maintenance costs, and impacts on Port Authority's financial condition. Impacts will be identified both for the construction period and for the long term operation of the alternatives.

The proposed evaluation criteria include transportation, environmental, social, economic and financial measures as required by current Federal laws and current CEQ and UMTA regulations. Mitigating measures will be explored for any adverse impacts that are identified.

Comments on the environmental, social and economic impacts should focus on the completeness of the proposed sets of impacts and the evaluation approach. Other impacts or criteria judged relevant to local decision-making should be identified.

Herman C Shipman,

Acting Deputy Regional Manager.

[FR Doc. 88-5322 Filed 3-10-88; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: March 4, 1988.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515-0063

Form Number: CF-5129

Type of Review: Reinstatement

Title: Crew Members Declaration

Description: The document is used to accept and record importations of merchandise by crew members, enforce agricultural quarantines, the

currency reporting laws, and enforce revenue collection laws.

Respondents: Individuals or households

Estimated Burden: 27,978 hours

Clearance Officer: Dennis Dore, (202)

566-7529, U.S. Customs Service, Room 6426, 1301 Constitution Avenue NW., Washington, DC 20229

OMB Reviewer: Milo Sunderhauf, (202)

395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-5347 Filed 3-10-88; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: March 7, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New

Form Number: None

Type of Review: New Collection

Title: Conducting 1988 Focus Group

Interviews on Federal Tax Forms.

Description: The group interviews are necessary to obtain public input on some of the major tax forms that have been revised for 1988. The results will be used to further simplify and improve the forms so that they will be more easily understood by taxpayers.

Respondents: Individuals or households, Farms, Businesses or other for-profit.

Estimated Burden: 1,080 hours

Clearance Officer: Garrick Shear, (202)

535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202)

395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-5348 Filed 3-10-88; 8:45 am]

BILLING CODE 4810-25-M

VETERANS ADMINISTRATION**Special Medical Advisory Group;
Availability of Annual Report**

Under section 10(d) of Pub. L. 92-463 (Federal Advisory Committee Act) notice is hereby given that the Annual Report of the Veterans Administration's Special Medical Advisory Group for calendar year 1987 has been issued.

The report summarizes activities of the Group on matters relative to the care and treatment of disabled veterans, and other matters pertinent to the Veterans Administration's Department of Medicine and Surgery. It is available for public inspection at two locations.

Federal Documents Section, Exchange and Gift Division, LM 632, Library of Congress, Washington, DC 20540
and

Veterans Administration, Office of the Chief Medical Director, Room 800, 810 Vermont Avenue, NW., Washington, DC 20420

Dated: March 3, 1988.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 88-5380 Filed 3-10-88; 8:45 am]

BILLING CODE 5320-01-M

Sunshine Act Meetings

Federal Register

Vol. 53, No. 48

Friday, March 11, 1988.

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMISSION ON CIVIL RIGHTS

March 8, 1988.

PLACE: 1121 Vermont Avenue, NW., Room 512, Washington, DC 20425.

DATE AND TIME: Friday, March 18, 1988. 9:00 a.m.—5:00 p.m.

STATUS OF MEETING: Open to the public.

MATTERS TO BE CONSIDERED:

- I. Approval of Agenda
- II. Approval of Minutes of Last Meeting
- III. Briefing Panel #1: Reauthorization of the U.S. Commission on Civil Rights
- IV. Report of Commissioner Subcommittee Regarding Proposed Projects
- V. SAC Report: "Collecting Data on Bias-Related Incidents in Connecticut"
- VI. SAC Recharter
- VII. Presentations by SAC Chairs
- VIII. Briefing Panel #2: Reauthorization of the U.S. Commission on Civil Rights

PERSON TO CONTACT FOR FURTHER

INFORMATION: John Eastman, Press and Communications Division, (202) 376-8105.

William H. Gillers,
Solicitor.

[FR Doc. 88-5428 Filed 3-9-88; 10:02 am]

BILLING CODE 6335-01-M

FEDERAL HOME LOAN MORTGAGE CORPORATION

DATE AND TIME: Friday, March 11, 1988, 2:00 p.m..

PLACE: 1776 G Street, NW., Board Room, Third Floor, Washington, DC.

STATUS: Closed.

CONTACT PERSON FOR MORE

INFORMATION: Alan Hausman, 1759 Business Center Drive, P.O. Box 4115, Reston, Virginia 22090, (703) 759-8405.

MATTERS TO BE CONSIDERED:

Minutes of February 8, 1988 Board of Directors, Meeting
President's Report
Dividend Policy
SOTP and Development Projects Briefing
Review of Financials for 1987

Date sent to Federal Register: March 8, 1988.

Maud Mater,
Secretary.

[FR Doc. 88-5432 Filed 3-9-88; 10:06 am]

BILLING CODE 6719-01-M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m. March 16, 1988.

PLACE: Hearing Room One, 1100 L Street, NW., Washington, DC 20573.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Assessment of the Adequacy of the Commission's Requirements of (a) Casualty Coverage, (b) Civil Penalties, and (c) Administrative Proceedings in Relation to the Passenger Cruise Industry.

2. Baton Rouge Marine Contractors, Inc.—Proposed Investigation of Unfiled Agreement.

3. Docket No. 86-17-Mobil Oil Corporation v. Barber Blue Sea Lines—Review of Order of Dismissal.

4. Docket No. 86-30—Investigation of Unfiled Agreements—Yangming Marine Transport, Evergreen Marine Corporation and Orient Overseas Container Lines, Inc.—Review of Initial Decision.

5. Docket No. 87-4—California Shipping Line, Inc. v. Korea shipping Corporation—Review of Order of Dismissal.

CONTACT PERSON FOR MORE

INFORMATION: Tony P. Kominoth, Assistant Secretary, (202) 523-5725.

Tony P. Kominoth,

Assistant Secretary.

[FR Doc. 88-5536 Filed 3-9-88; 8:45 am]

BILLING CODE 6730-01-M

Grants to Federal Government

Friday
March 11, 1988

Part II

Office of Management and Budget

Grants and Cooperative Agreements With
State and Local Governments; Revision
of Circular A-102; Notice

OFFICE OF MANAGEMENT AND BUDGET

Grants and Cooperative Agreements with State and Local Governments

AGENCY: Office of Management and Budget.

ACTION: Revision of Circular A-102.

SUMMARY: This notice sets forth the final revision of Office of Management and Budget Circular A-102, "Grants and Cooperative Agreements with State and Local Governments".

FOR FURTHER INFORMATION CONTACT: Jonathan Breul, Financial Management Division, Office of Management and Budget, Washington, DC 20503. (202) 395-3050.

SUPPLEMENTARY INFORMATION: An interagency task force under the President's Council on Management Improvement (PCMI) was established to review existing guidance for managing Federal aid programs. On June 18, 1984, OMB published a Notice in the *Federal Register* (49 FR 24958) announcing the review and seeking public comment on over 50 issues and possible options for each. Federal agencies, States, local governments, interest groups, business organizations, and nonprofit organizations, as well as members of Congress submitted several hundred comments.

Five agency-chaired teams studied the comments, Circular A-102, and the existing Federal agency regulations implementing it to develop and draft two products: a revised OMB Circular—addressed solely to Federal agencies, and a "common" government-wide regulation—addressed to State and local grantees. The proposed government-wide "common rule" stated the fiscal and administrative conditions governing grants to State and local governments and subgrantees which are State and local governments.

On March 12, 1987, the President directed OMB to revise Circular A-102 and all affected Federal agencies to simultaneously propose a common rule to adopt verbatim government-wide grants management terms and conditions. The revised Circular and common rule were to be proposed within 90 days, and issued final within one year.

OMB published a proposed revision to Circular A-102 as a Notice in the June 9, 1987 issue of the *Federal Register* (52 FR 21816-21818). Simultaneously in the same issue (52 FR 21820-21852), Federal grant-making agencies proposed a common rule.

Comments and Changes to the Proposed Revision

While OMB and the agencies received nearly 100 comments on the proposed common rule, only a handful addressed the revision to Circular A-102 itself.

Advance Public Notice and Priority Setting (paragraph 6b.) A number of Federal agencies questioned the need for, and type of official responsible for, advance public notice and priority setting in discretionary grant and cooperative agreement programs. Consistent with recent recommendations by the U.S. General Accounting Office (GAO) ("Discretionary Grants: Opportunities to Improve Federal Discretionary Award Practices"), this section aims to improve managerial accountability for the discretionary award process by emphasizing the need for upfront priority setting and policy-level sign-off on grant and cooperative agreement awards. "Policy-level official" was deliberately not defined in order for agency heads to determine the appropriate placement of such responsibilities. Such officials include program heads or political appointees located sufficiently high in an organization to ensure that funding priorities and actual awards are consistent with the agency's overall priorities. OMB is willing to work with agencies to identify appropriate officials where there is question.

Standard Forms for Applying for Federal Assistance (paragraph 6c.) Several Federal agencies, particularly those with programs which fund both governmental (State and local) and nonprofit grantees, requested *not* to use the standard application facesheet (SF-424) as well as the project approval checklist, budget sheet, and standard assurances in Attachment "M" to Circular A-102. They pointed out that unlike 1971, when Circular A-102 and the forms were originally developed, there is less duplication and overlap in Federal funding for grantees and consequently less need by grantees for uniform application forms. Further, OMB now reviews and approves all forms and application packages under the Paperwork Reduction Act of 1980. In recognition of these changes in the makeup of Federal assistance programs, the types of recipients receiving funding and the paperwork control authorities in OMB's Office of Information and Regulatory Affairs (OIRA), OMB asked for public comment on revised standard application forms in a May 29, 1987 Notice in the *Federal Register* (52 20178-20179).

The great majority of the over 80 public comments to the May 1987 Notice were concerned about the proposed financial reporting formats for the open ended entitlement programs, rather than either the need for, or design of, the standard application forms. We attribute much of this lack of interest to the fact that, with the approval of OMB's Office of Information and Regulatory Affairs, few programs use the forms display in Circular A-102 "as is". In fact, aside from the SF-424 Facesheet, nearly every program extensively tailors the forms or develops its own instructions and supplemental program-specific requirements.

In recognition of current practice and approved forms, the proposed circular has been revised to require use of either (1) three types of pre-approved standard forms: facesheet, standard budget information (construction or non-construction) and standard assurances (construction or non-construction) or (2) forms approved by OMB under the Paperwork Reduction Act of 1980. Two forms previously displayed in Circular A-102, the Part II, "Project Approval Checklist," and Part IV, "Narrative," are eliminated. The contents of the latter are reflected as guidance to agencies in paragraph 6c. of the circular. Agencies are free to use the standard forms without further OMB clearance. Use of any other forms and application packages requires OMB approval and clearance under the Paperwork Reduction Act of 1980.

Exception to the common rule (paragraph 6g.) A number of grantees expressed concern that paragraph 6g. "Special Conditions or Restrictions," coupled with the corresponding "Exceptions" (§ —.6) and "High-Risk" (§ —.12) provisions of the common rule are loopholes which permit Federal agencies to circumvent the rule and impose additional or unwarranted requirements. In recognition of this concern and to permit oversight, the circular is revised to make it clear that agencies will document the use of these provisions.

Financial Status Reports (paragraph 7c.) A new section was added to require use of the SF-269, Financial Status Report-Long Form, or SF-269a, Financial Status Report-Short Form. These forms are a revision of the SF-269 previously required under Circular A-102, with changes based on a May 29, 1987 *Federal Register* Notice (discussed above under "Standard Forms for Applying for Federal Assistance"). Both the short and long forms are simplified to require a single column rather than 6-column breakout of the status of funds.

The long form responds to recommendations from the GAO for a form which permits reporting matching as well as the various uses of program income. The new paragraph 7c expresses a longstanding but unstated prohibition against agencies using the form to collect object class expenditure data (e.g., expenditures broken down by personnel, travel, equipment, etc.). Further, it limits collection of expenditure detail by programs, functions or activities within the program or project, unless required by statute or regulation.

Contracting with small and minority firms, women's business enterprise and labor surplus area firms (paragraph 7d). A number of commenters expressed concern that the proposed circular did not contain policy language from the old Circular A-102 which encouraged use of small, minority women's and labor surplus area firms. This was true because all of the substantive requirements from Attachment "O" in the old A-102 for grantees to use such firms when possible were proposed to be codified in the June 9, 1988, 24-agency, common rule. Unfortunately, in the interest of streamlining the rule, the prefatory sentence explaining that this is national policy was dropped. To remove any doubt that grantees are encouraged to contract with such firms, the opening sentence concerning small and minority business, as well as those concerning women's enterprises and labor surplus area firms have been restored to the circular.

Program Income (paragraph 7e). A number of State and local grantees were concerned that agencies will only sparingly permit the use of the addition or matching share alternatives for use of program income. On the other hand, others such as the GAO supported the circular, stating that there should be a preference for deducting program income from program costs since this alternative will result in financial savings to the Federal Government and grantees. No change is made to the proposed circular. In the event this provision serves as a disincentive to earning such income, § —.25(g) of the common rule permits agencies to specify another alternative (or combination of alternatives) in program regulations or a specific grant agreement.

Site visits and technical assistance (paragraph 7f). Federal agencies expressed concern that the proposal would unduly restrict their ability to travel to grantee project sites or offer technical assistance. OMB proposed site visits "only as warranted by program or project needs" and restricted technical

assistance visits "only (1) in response to requests from recipients, or (2) when recipients are designated 'high risk.'" The proposed approach represented a departure from the original Circular A-102 which "encouraged" agencies to travel and offer technical assistance. Frequent travel and gratuitous technical assistance are no longer realistic given the Federal budget deficit and they are inconsistent with Federal deference to States' authority and competence under Federalism. However, to enable Federal agencies to address genuine program needs, an additional justification for technical assistance visits has been added based on "demonstrated program need."

Property Management (paragraph 8a). A number of commenters misinterpreted the provisions of the closeout provisions of the circular (as well as the property sections of the common rule) dealing with "federally owned property". They mistakenly concluded these provisions covered all grant-acquired property and equipment, not just that which is Federally owned and provided. This is not so because title to grant-acquired property vests with the grantee, not the Federal Government. The circular and common rule have been changed to make this distinction clear.

Another commenter suggested that closeout review cover all non-expendable personal property purchased with grant funds where title rests with the recipient. We do not believe such a mandatory Federal review of grant-acquired property is warranted. The common rule contains explicit instructions as to the grantee's property records and calls for the grantee to perform a physical inventory at least once every two years.

Closeout (paragraph 8a.) One agency expressed the opinion that Section 8a requiring written notification to grantees of required closeout documents may be too staff intensive. The agency recommended that published program regulations detailing this requirement should be sufficient. We agree. Since closeout reports do not generally vary significantly, a published program regulation or standard notice can satisfy the requirement.

[Circular No. A-102 (Revised)]

March 3, 1988.

To the Heads of Executive Departments and Establishments
Subject: Grants and Cooperative Agreements with State and Local Governments

1. *Purpose.* This Circular establishes consistency and uniformity among Federal agencies in the management of grants and cooperative agreements with State, local, and federally recognized

Indian tribal governments. This revision supersedes Office of Management and Budget (OMB) Circular No. A-102, dated January 1981.

2. *Authority.* This Circular is issued under the authority of the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Procedures Act of 1950, as amended; Reorganization Plan No. 2 of 1970; and Executive Order 11541. Also included in the Circular are standards to ensure consistent implementation of sections 202, 203, and 204 of the Intergovernmental Cooperation Act of 1968, the Office of Federal Procurement Policy Act Amendments of 1983, and sections 6301-08, title 31, United States Code.

3. *Background.* On March 12, 1987, the President directed all affected agencies to issue a grants management common rule to adopt government-wide terms and conditions for grants to State and local governments. This revised Circular provides guidance to Federal agencies on business-like management of grant programs and other matters not covered in the common rule. The revision replaces and rescinds Circular A-102, dated January 1981, including Attachments A-P.

4. *Coverage.* Consistent with their legal obligations, all Federal agencies administering programs that involve grants and cooperative agreements with State, local and Indian tribal governments (grantees) shall follow the policies in this Circular and issue a common grants management rule (common rule). If the enabling legislation for a specific grant program prescribes policies or requirements that differ from those in this Circular, the provisions of the enabling legislation shall govern.

5. *Deviations.* The Office of Management and Budget may grant deviations from the requirements of this Circular when permissible under existing law. However, in the interest of uniformity and consistency, deviations will be permitted only in exceptional circumstances.

6. *Pre-Award Policies.*

a. *Use of grants and cooperative agreements.* Sections 6301-08, title 31, United States Code govern the use of grants, contracts and cooperative agreements. A grant or cooperative agreement shall be used only when the principal purpose of a transaction is to accomplish a public purpose of support or stimulation authorized by Federal statute. Contracts shall be used when the principal purpose is acquisition of property or services for the direct benefit or use of the Federal Government. The statutory criterion for

choosing between grants and cooperative agreements is that for the latter, "substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement."

b. Advance Public Notice and Priority Setting.

(1) Federal agencies shall provide the public with an advance notice in the **Federal Register**, or by other appropriate means, of intended funding priorities for discretionary assistance programs, unless funding priorities are established by Federal statute. These priorities shall be approved by a policy level official.

(2) Whenever time permits, agencies shall provide the public an opportunity to comment on intended funding priorities.

(3) All discretionary grant awards in excess of \$25,000 shall be reviewed for consistency with agency priorities by a policy level official.

c. Standard Forms for Applying for Grants and Cooperative Agreements.

(1) Agencies shall use the following standard application forms unless they obtain OMB approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 35) and the 5 CFR Part 1320, "Controlling Paperwork Burdens on the Public":

- SF-424 Facesheet
- SF-424a Budget Information (Non-Construction)
- SF-424b Budget Information (Construction)
- SF-424c Standard Assurances (Non-Construction)
- SF-424d Standard Assurances (Construction)

When different or additional information is needed to comply with legislative requirements or to meet specific program needs, agencies shall also obtain prior OMB approval.

(2) A preapplication shall be used for all construction, land acquisition and land development projects or programs when the need for Federal funding exceeds \$100,000, unless the Federal agency determines that a preapplication is not needed. A preapplication is used to:

- (a) Establish communication between the agency and the applicant,
- (b) Determine the applicant's eligibility,
- (c) Determine how well the project can compete with similar projects from others, and
- (d) Discourage any proposals that have little or no chance for Federal funding before applicants incur significant costs in preparing detailed applications.

(3) Agencies shall use the Budget Information (Construction) and Standard Assurances (Construction) when the major purpose of the project or program is construction, land acquisition or land development.

(4) Agencies may specify how and whether budgets shall be shown by functions or activities within the program or project.

(5) Agencies should generally include a request for a program narrative statement which is based on the following instructions:

(a) Objectives and need for assistance. Pinpoint any relevant physical, economic, social, financial, institutional, or other problems requiring a solution. Demonstrate the need for the assistance and state the principal and subordinate objectives of the project. Supporting documentation or other testimonies from concerned interests other than the applicant may be used. Any relevant data based on planning studies should be included or footnoted.

(b) Results or Benefits Expected. Identify results and benefits to be derived. For example, show how the facility will be used. For land acquisition or development projects, explain how the project will benefit the public.

(c) Approach. Outline a plan of action pertaining to the scope and detail how the proposed work will be accomplished for each assistance program. Cite factors which might accelerate or decelerate the work and your reasons for taking this approach as opposed to others. Describe any unusual features of the project, such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvements. Provide for each assistance program quantitative projections of the accomplishments to be achieved, if possible. When accomplishments cannot be quantified, list the activities in chronological order to show the schedule of accomplishments and their target dates. Identify the kinds of data to be collected and maintained, and discuss the criteria to be used to evaluate the results and success of the project. Explain the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved. List each organization, cooperator, consultant, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

(d) Geographic Location. Give a precise location of the project and area to be served by the proposed project.

Maps or other graphic aids may be attached.

(e) If applicable, provide the following information: for research and demonstration assistance requests, present a biographical sketch of the program director with the following information: name, address, telephone number, background, and other qualifying experience for the project. Also, list the name, training and background for other key personnel engaged in the project. Describe the relationship between this project and other work planned, anticipated, or underway under Federal assistance. Explain the reason for all requests for supplemental assistance and justify the need for additional funding. Discuss accomplishments to date and list in chronological order a schedule of accomplishments, progress or milestones anticipated with the new funding request. If there have been significant changes in the project objectives, location, approach or time delays, explain and justify. For other requests for changes, or amendments, explain the reason for the change(s). If the scope or objectives have changed or an extension of time is necessary, explain the circumstances and justify. If the total budget has been exceeded or if the individual budget items have changes more than the prescribed limits, explain and justify the change and its effect on the project.

(6) Additional assurances shall not be added to those contained on the standard forms, unless specifically required by statute.

d. Debarment and Suspension. Federal agencies shall not award assistance to applicants that are debarred or suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549. Agencies shall establish procedures for the effective use of the Consolidated List of Debarred, Suspended, Voluntarily Excluded and Ineligible Assistance Participants to assure that they do not award assistance to listed parties in violation of the Executive Order. Agencies shall also establish procedures to provide for effective use and/or dissemination of the list to assure that their grantees and subgrantees (including contractors) at any tier do not make awards in violation of implementing regulations.

e. Awards and Adjustments.

(1) Ordinarily awards shall be made at least ten days prior to the beginning of the grant period.

(2) Agencies shall notify grantees immediately of any anticipated

adjustments in the amount of an award. This notice shall be provided as early as possible in the funding period. Reductions in funding shall apply only to periods after notice is provided. Whenever an agency adjusts the amount of an award, it shall also make an appropriate adjustment to the amount of any required matching or cost sharing.

f. Carryover Balances. Agencies shall be prepared to identify to OMB the amounts of carryover balances (e.g., the amounts of estimated, grantee unobligated balances available for carryover into subsequent grant periods). This presentation shall detail the fiscal and programmatic (level of effort) impact in the following period.

g. Special Conditions or Restrictions. Agencies may impose special conditions or restrictions on awards to "high risk" applicants/grantees in accordance with § 12 of the common rule. Agencies shall document use of the "Exception" provisions of § 6 and "High-risk" provisions of § 12 of the common rule.

h. Waiver of Single State Agency Requirements.

(1) Requests to agencies from the Governors, or other duly constituted State authorities, for waiver of "single" State agency requirements in accordance with section 6504, title 31, United States Code, shall be given expeditious handling and, whenever possible, an affirmative response.

(2) When it is necessary to refuse a request for waiver of "single" State agency requirements under section 204, the Federal grantor agency shall advise the Office of Management and Budget prior to informing the State that the request cannot be granted. The agency shall indicate to OMB the reasons for the denial of the request.

(3) Legislative proposals embracing grant-in-aid programs shall avoid inclusion of proposals for "single" State agencies in the absence of compelling reasons to do otherwise. In addition, existing requirements in present grant-in-aid programs shall be reviewed and legislative proposals developed for the removal of these restrictive provisions.

i. Patent Rights. Agencies shall use the standard patent rights clause specified in "Rights to Inventions made by Nonprofit Organizations and Small Business Firms" (37 CFR Part 401), when providing support for research and development.

7. Post-award Policies.

a. Cash Management. Agency methods and procedures for transferring

funds shall minimize the time elapsing between the transfer to recipients of grants and cooperative agreements and the recipient's need for the funds.

(1) Such transfers shall be made consistent with program purpose, applicable law and Treasury regulations at 31 CFR Part 205.

(2) Where letters-of-credit are used to provide funds, they shall be in the same amount as the award.

b. Grantee Financial Management Systems. In assessing the adequacy of an applicant's financial management system, the awarding agency shall rely on readily available sources of information such as audit reports to the maximum extent possible. If additional information is necessary to assure prudent management of agency funds, it shall be obtained from the applicant or from an on-site review.

c. Financial Status Reports.

(1) Federal agencies shall require grantees to use the SF-269, Financial Status Report-Long Form, or SF-269a, Financial Status Report-Short Form, to report the status of funds for all nonconstruction projects or programs. Federal agencies need not require the Financial Status Report when the SF-270, Request for Advance or Reimbursement, or SF-272, Report of Federal Cash Transactions, is determined to provide adequate information.

(2) Federal agencies shall not require grantees to report on the status of funds by object class category or expenditure (e.g., personnel, travel, equipment).

(3) If reporting on the status of funds by programs, functions or activities within the project or program is required by statute or regulation, Federal agencies shall instruct grantees to use block 12, Remarks, on the SF-269 or a supplementary form approved by the OMB under the Paperwork Reduction Act of 1980.

(4) Federal agencies shall prescribe whether the reporting shall be on a cash or an accrual basis. If the Federal agency requires accrual information and the grantee's accounting records are not normally kept on an accrual basis, the grantee shall not be required to convert its accounting system but shall develop such accrual information through an analysis of the documentation on hand.

d. Contracting With Small and Minority Firms, Women's Business Enterprise and Labor Surplus Area Firms. It is national policy to award a fair share of contracts to small and minority business firms. Grantees shall

take similar appropriate affirmative action to support of women's enterprises and are encouraged to procure goods and services from labor surplus areas.

e. Program Income.

(1) Agencies shall encourage grantees to generate program income to help defray program costs. However, Federal agencies shall not permit grantees to use grant-acquired equipment to compete unfairly with the private sector.

(2) Federal agencies shall instruct grantees to deduct program income from total program costs as specified in the common rule at § 25(g)(1), unless agency regulations or the terms of the grant award state otherwise. Authorization for recipients to follow the other alternatives in § 25(g)(2) and (3) shall be granted sparingly.

f. Site Visits and Technical Assistance. Agencies shall conduct site visits only as warranted by program or project needs. Technical assistance site visits shall be provided only (1) in response to requests from grantees, (2) based on demonstrated program need, or (3) when recipients are designated "high risk" under § 12 of the common rule.

8. After-the-grant Policies.

a. Closeout. Federal agencies shall notify grantees in writing before the end of the grant period of final reports that shall be due, the dates by which they must be received, and where they must be submitted. Copies of any required forms and instructions for their completion shall be included with this notification. The Federal actions that must precede closeout are:

- (1) Receipt of all required reports,
- (2) Disposition or recovery of federally-owned assets (as distinct from property acquired under the grant), and
- (3) Adjustment of the award amount and the amount of Federal cash paid the recipient.

(b) Annual Reconciliation of Continuing Assistance Awards. Federal agencies shall reconcile continuing awards at least annually and evaluate program performance and financial reports.

Items to be reviewed include:

- (1) A comparison of the recipient's work plan to its progress reports and project outputs,
- (2) the Financial Status Report (SF-269),
- (3) Request(s) for payment,
- (4) Compliance with any matching, level of effort or maintenance of effort requirement, and

(5) A review of federally-owned property (as distinct from property acquired under the grant).

9. *Entitlements (Reserved)*

10. *Policy Review (Sunset)*. The Circular will have a policy review three years from the date of issuance.

11. *Effective Date*. The Circular is effective on publication.

12. *Inquiries*. Further information concerning this Circular may be obtained from: Financial Management Division, New Executive Office Building, Room 10215, Office of Management and Budget, Washington, DC 20503, (202) 395-3050.

James C. Miller III,
Director.

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March 11, 1988

Part III

Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments; Final Rule

Department of Agriculture
Department of Energy
Small Business Administration
Department of Commerce
Department of State
Department of Housing and Urban Development
Department of Justice
Department of Labor
Federal Mediation and Conciliation Service
Department of Defense
Department of Education
National Archives and Records Administration
Veterans Administration
Environmental Protection Agency
Department of the Interior
Federal Emergency Management Agency
Department of Health and Human Services
National Foundation on the Arts and the Humanities
 National Endowment for the Arts
 National Endowment for the Humanities
 Institute of Museum Services

ACTION
Commission on the Bicentennial of the United
States Constitution
Department of Transportation

DEPARTMENT OF AGRICULTURE

7 CFR PARTS 3015 AND 3016

DEPARTMENT OF ENERGY

10 CFR PART 600

SMALL BUSINESS ADMINISTRATION

13 CFR PART 143

DEPARTMENT OF COMMERCE

15 CFR PART 24

DEPARTMENT OF STATE

22 CFR PART 135

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR PARTS 44, 85, 111, 511, 570, 571, 575, 590, 850, 882, 905, 941, 968, 970, AND 990

DEPARTMENT OF JUSTICE

28 CFR PART 66

DEPARTMENT OF LABOR

29 CFR PART 97

FEDERAL MEDIATION AND CONCILIATION SERVICE

29 CFR PART 1470

DEPARTMENT OF DEFENSE

32 CFR PART 278

DEPARTMENT OF EDUCATION

34 CFR PARTS 74 AND 80

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR PART 1207

VETERANS ADMINISTRATION

38 CFR PART 43

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PARTS 30, 31, AND 33

DEPARTMENT OF THE INTERIOR

43 CFR PART 12

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR PART 13

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR PARTS 74 AND 92

NATIONAL SCIENCE FOUNDATION

45 CFR PART 602

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES**National Endowment for the Arts**

45 CFR PART 1157

National Endowment for the Humanities

45 CFR PART 1174

Institute of Museum Services

45 CFR PART 1183

ACTION

45 CFR PART 1234

COMMISSION ON THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION

45 CFR PART 2015

DEPARTMENT OF TRANSPORTATION

49 CFR PART 18

Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments

AGENCIES: Department of Agriculture; Department of Commerce; Department of Defense; Department of Education; Department of Energy; Department of Health and Human Services; Department of Housing and Urban Development; Department of the Interior; Department of Justice; Department of Labor; Department of State; Department of Transportation; ACTION; Commission on the Bicentennial of the United States Constitution; Environmental Protection Agency; Federal Emergency Management Agency; Federal Mediation and Conciliation Service; Institute of Museum Services; National Archives and Records Administration; National Endowment for the Arts; National Endowment for the Humanities; National Science Foundation; Small Business Administration; Veterans Administration.

ACTION: Final rule.

SUMMARY: This action finalizes a common rule establishing consistency and uniformity among the Federal agencies shown above in the administration of grants and cooperative agreements to State, local and federally recognized Indian tribal governments.

EFFECTIVE DATE: This rule is effective October 1, 1988, except for the Department of Transportation. See the Department of Transportation agency specific preamble below.

FOR FURTHER INFORMATION CONTACT:
See individual agencies below.**SUPPLEMENTARY INFORMATION:****Background**

In November 1983, a 20-agency task force under the President's Council on Management Improvement (PCMI), chaired by the Office of Management and Budget (OMB), was established to explore streamlining grants management and review OMB Circular A-102, "Uniform Administrative Requirements for Grants to State and Local Governments."

On June 18, 1984, OMB published a Notice in the *Federal Register* (49 FR 24958-24959) seeking comments on over 50 issues and possible options for each. Federal agencies, States, local governments, interest groups, business organizations, and nonprofit organizations, as well as members of Congress, submitted several hundred comments.

Five agency-chaired teams studied the comments, existing Federal agency grants administration regulations, and noncodified manuals and handbooks implementing OMB Circular A-102 to draft a government-wide "common" rule. The proposed common rule contained fiscal and administrative requirements for grants to State and local governments (grantees) and subrecipients which are State and local governments (subgrantees). At the same time, OMB and the agencies prepared a revised Circular A-102—directed solely to Federal agencies—containing guidance to Federal agencies on how they should manage the award and administration of Federal grants.

On March 12, 1987, the President directed all affected agencies to simultaneously propose and subsequently adopt a common rule verbatim, except where inconsistent with statutory requirements. The President explained that at the time it was issued "Circular A-102 was a significant step toward simplification of grants management." He went on to say, however, that "after 16 years, some of the provisions are out of date, there are gaps where the standards do not cover important areas, and agencies have interpreted the circular in numerous different ways in their regulations. It is now time for the circular to be revised to reflect developments consistent with our Federalism policies and State and local regulatory relief objectives and the President's Management Improvement Program." The President directed the affected agencies to propose a common rule within 90 days and adopt a final common rule within one year. To meet

this schedule, 23 agencies proposed a governmentwide "common rule" in the June 9, 1987 *Federal Register* (52 FR 21820-21862). In the same issue, OMB proposed a revised Circular A-102 (52 FR 21816-21818).

The final common rule will be codified in each agency's portion of the Code of Federal Regulations, as indicated in the information provided for individual agencies below. Several agencies' rules reflect differences required in statute (e.g., the five-year record retention requirement for the Department of Education programs under the General Education Provisions Act (GEPA)). Such differences are indicated in the text.

All grants administration provisions in program regulations which are inconsistent with the common rule are rescinded, except to the extent they are required by legislation or approved as a deviation by OMB. Each agency will specify in the agency-specific preamble and amendments additional to the common rule those agency regulations that are rescinded. Likewise, all grants administration provisions of noncodified program manuals, handbooks, and other materials which are inconsistent with the rule are superseded, except to the extent they are required by legislation or approved by OMB.

This rule is effective for grants and cooperative agreements awarded on or after October 1, 1988, the start of the next Federal fiscal year. As noted in the agency-specific preambles, some Federal agencies may authorize earlier effective dates. For example, some Federal agencies may allow grantees to use the new definition of equipment and the increase in the threshold for small purchase procedures as of the issuance of the final rule.

Comments on the Proposed Common Rule

OMB and the Federal agencies received over 85 comments on the proposed common rule from States, local governments, counties, Indian tribes, councils of governments, interest groups, business organizations, universities and nonprofit organizations. All comments received by any agency were reproduced and exchanged among all of the agencies and used to prepare this final rule.

Commenters supported the codification of common governmentwide policies in federal agency regulations. As the General Accounting Office (GAO) explained, this approach "should go a long ways towards providing a more standardized and efficient approach to administering federal assistance" and "create a more

certain environment for State and local governments."

The proposed rule invited comments on three issues in particular: Federalism, "Flow-down," and Open-Ended Entitlements.

Federalism

As explained in E.O. 12612, Federalism, States possess unique constitutional authority, resources and competence. Under Federalism, States should be given the maximum administrative discretion possible with respect to national programs they administer. Intrusive, Federal oversight is neither necessary nor desirable. Federal agencies should refrain from establishing uniform, national standards, and, where possible, defer to the States to establish them.

Consistent with the President's Federalism Executive Order, the proposed common rule provided that in three important areas (financial management systems, § _____.20, equipment, § _____.32, and procurement, § _____.36), States will expend and account for grant funds according to their own laws and procedures. This flexibility for States in these three areas applies only to funds expended by the State itself.

Most commenters reacted favorably to granting States increased flexibility. A number of States as well as the National Association of State Budget Officers, who were commenting on behalf of the Governors and the National Governors' Association, enthusiastically endorsed these changes. The GAO as well was supportive, pointing out that "This policy would provide greater flexibility to States to standardize the management of related State and Federal programs. The policy also recognizes the improvements made by many States in recent years to upgrade their management systems and personnel."

"Flow-down"

In the past, OMB Circular A-102 required that its provisions be applied to State and local governments when they were subgrantees under Federal grants as well as when they were primary grantees. The purpose of this "flow-down" of requirements was to ensure that subgrantees had the same rights and protections as grantees. To maintain this uniformity for subgrantees, the requirements in the proposed rule applied not only to direct Federal grantees, but also when funds "flow-down" to governmental subgrantees. Grantees, in their dealings with subgrantees, were subject to the same rules as Federal awarding agencies in

dealing with them. The proposal did not address the administrative requirements applicable to nongovernmental grantees and subgrantees, because they are covered by Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations." A June 24, 1987 Notice in the *Federal Register* (52 FR 23729) announced that OMB and the Department of Health and Human Services (HHS) are co-chairing a follow-on effort to similarly review and issue a common rule and revised Circular for nongovernmental grantees covered by Circular A-110. Grants to nongovernmental grantees and subgrantees will be addressed at that time. The proposed rule, however, did address which cost principles apply or "flow-down" to grantees, subgrantees, or contractors. Section _____.22, Allowable Costs, stipulated that depending on the organization, Circular A-21 (educational institutions), A-87 (governments), or A-122 (nonprofits), or 48 CFR Part 31 (for-profits) will apply.

From the outset of the review of Circular A-102, OMB and the agencies recognized the importance of the policy requiring the "flow-down" of administrative requirements to subgrantees. The June 18, 1984 *Federal Register* Notice which announced the review specifically asked for public comment on a number of issues and provided options for each. The "flow-down" issue asked: "To what extent should States or other applicants be required to apply Federal administrative requirements to subrecipients (subgrantees)?" It offered three options which included: (1) Letting States manage and condition subgrants (except for requirements which fulfill a Federal need), (2) letting all grantees (besides States) do so, and (3) maintaining the status quo. The policy issue made reference to a full discussion and illustration of the first or "Federalism" option (giving States flexibility to condition and manage subgrants) in the Department of Health and Human Services (HHS) proposed rule published in the *Federal Register*, February 24, 1984 on pages 6933-5.

There was considerable public comment on the June 1984 Notice. The several interest groups representing local governments indicated they "do not want major policy modifications to the Circular." Many local governments and nonprofits alleged that States' administration and conditioning of subgrants is uneven at best and typically heavy-handed, i.e., has more "strings." States and the National

Association of State Budget Officers (NASBO), writing in conjunction with the National Governors' Association (NGA), strongly supported the review of the Circular. NASBO further indicated a preference for continued application of the uniform administrative requirements to subgrantees. Thus, continued "flow-down" of the rules to subgrantees appeared to satisfy both the States as well as the local governments.

On March 12, 1987, the President directed all affected grant-making agencies to adopt a government-wide common rule reflecting Federalism and regulatory relief. The resulting June 9, 1987 proposed common rule maintained the "flow-down" policy. The status quo approach for subgrantees was taken in spite of Federalism and regulatory relief because of the comments made earlier by State and local governments.

A number of commenters on the June 1987 proposal were concerned about the clarity of the flow-down policy. Several recommended that rather than incorporating the policy throughout the text (e.g., by repeating the applicability to grantees and subgrantees), that the rule contain a separate section entitled "Subgranting" or "Subgrants" to explain "flow-down" and distinguish such funding from contracting in § 36. Procurement.

A greater number of commenters addressed the substance of the "flow-down" policy. States in particular pointed out that the proposal constituted undue regulation of State administration of Federal funds and is inconsistent with Federalism. NASBO and several Governors said that the flexibility in the June 1987 proposal was not enough—that States should be able to condition and manage subgrants according to State law and procedures without any required "flow-down" of the Federal administrative standards.

On the other hand, a number of subgrantees wrote urging maintenance of "flow-down" to ensure that the rules they follow under State subgrants would be the same as those for direct Federal grants. One regional grantee argued that they have "a vital interest in simplicity and consistency in regulations governing the administration of grants which are received both directly from the Federal Government and, indirectly, as passed through various State agencies" and thus "applaud and strongly support the retention and clarification of the flow-down policy requiring grantees to follow A-102 with subrecipients."

In reconsidering this important matter, it is our view that most restrictions and requirements on States in administering subgrants are no longer necessary. As explained in E.O. 12612, Federalism,

States have unique Constitutional authority, resources, and competence. "Flow-down" provisions cannot be reconciled with the goal of this common rule to place maximum reliance on a State's own management systems, including a State's system for administering grants from its non-Federal funds. In response to clear and strong recommendations from NASBO, the NGA and Governors themselves, the rule is modified to permit States to more freely manage subgrants. A new § 37, Subgrants, has been added to clarify the policy, distinguish subgrants from the award and administration of procurement contracts, and, with regard to States, to rely on a State's own laws and procedures.

This will mean that local governments and Indian tribal governments will administer *direct* Federal grants according to the standards in the common rule and Federal "pass-through" funds *subgranted* from the State according to State laws and procedures. This change represents a shift in the basis upon which uniformity is established. When Circular A-102 was first issued in 1971, uniformity for local governments was based on Federal standards. This made sense because at that time there were many more Federal programs directly funding local governments and State aid to local governments was proportionally lower. Now, according to the Bureau of the Census, this is no longer the case. Local governments receive 5 times as much aid from States as they do from the Federal Government. Further, due to the ten block grants authorized in 1981 and 1982, States occupy a much more pivotal position in the administration of the remaining Federal grant programs. The common rule shifts the basis for uniformity to one which recognizes States' increased role in financing and administering intergovernmental programs.

Open-Ended Entitlements

The regulatory requirements in the June 9, 1987 proposal did not apply to open-ended entitlement grants. These are the grants for public assistance programs, such as Medicaid and Aid to Families with Dependent Children, the child nutrition programs and the administrative costs of the Food Stamps program, for which the Federal Government pays a statutorily-required share of costs without dollar limit. Because of this open-ended feature and because of special statutory requirements, these grants are administered differently from other grants in important aspects. Subpart E of the proposed rule was reserved to

subsequently and separately address these programs.

Commenters agreed with the proposal to address entitlement programs separately from the closed-ended grants. The GAO, for example, explained that "Since the Federal role varies among the types of assistance programs, we agree that the accountability rules should also vary to reflect the differential Federal roles."

The Departments of Agriculture (USDA) and Health and Human Services (HHS) which administer these programs will collaborate in the drafting of the common Subpart E for these programs.

Other Public Comments

Subpart A—General

Section 3 Definitions.

"Subgrant"—There were four comments regarding the definitions of subgrants and contracts between governmental entities. The primary comments came from local governments that were concerned that States would bypass the flow-down requirements of § 4(a) by using a procurement contract to pass Federal assistance funds to substate units of government. The definition of subgrant is worded to include contracts used to provide financial assistance to an eligible subgrantee; however, a section on subgrants, § 37, has been added to help clarify when requirements flow through to subgrantees.

"Share"—There was one comment concerning the definition of the term "share." The commenter was concerned that this definition excluded donated equipment and supplies for subrecipients. This definition is used for determining the proportionate share when disposing of property, equipment or supplies acquired with Federal grant funds and has no effect on the eligibility of in-kind contributions.

Section 4 Applicability.

Two commenters recommended that the coverage of the common rule be extended to block grant programs to obtain uniformity. The commenters said that, although block grant programs had been exempt from the requirements of Office of the Management and Budget (OMB) Circular A-102, many States used the procedures of OMB Circular A-102. The common rule does not prohibit States from using these requirements when dealing with subgrantees; however, to subject these programs to the requirements of the common rule would be contrary to the broad discretion granted to States to run block grant programs.

Several comments were received regarding the applicability of other

Federal regulations. Section ____4 implies that Federal regulations that are inconsistent with this common rule, whether or not they had been approved by OMB or required by statute, would apply to grants and subgrants. In § ____5, regulations that are inconsistent with the common rule are superseded except those required by statute or approved by OMB as an exception. Section ____4(a) has been rewritten to match the wording of § ____5.

Section ____6 Exceptions.

Three comments were received objecting to the provisions of § ____6(c) that allows Federal agencies to authorize exceptions on a case-by-case basis or for subgrantees. The commenters believed that OMB should be the only organization allowed to grant exceptions. This provision was included to provide Federal agencies the flexibility to respond to individual situations for grantees and to provide Federal agencies the same oversight over subgrantee requirements that OMB has over requirements on grantees. There should be limited use of this provision by Federal agencies just as OMB has authorized few exceptions to the common rule. No substantive change was made to the common rule.

Subpart B—Pre-Award Requirements

Section ____10 Forms for applying for grants.

The existing application forms are a five-part package including: the SF-424 Facesheet; Part II, Project Approval Information checklist; Part III, Budget Information; Part IV, Narrative; and Part V, Assurances. Unlike 1971 when Circular A-102 was first issued, there is less duplication and overlap in Federal funding for grantees and consequently less need by grantees for uniform application forms. Further, OMB now reviews and approves all forms and application packages under the Paperwork Reduction Act of 1980. In recognition of these changes in the makeup of Federal grant and cooperative agreement programs, the types of recipients receiving funding, and the paperwork control authorities in OMB's Office of Information and Regulatory Affairs (OIRA), OMB asked for public comment on revised standard application forms in a May 29, 1987 Notice in the *Federal Register* (52 FR 20178-20179). The great majority of the over 80 public comments concerned the proposed financial reporting formats for the open-ended entitlement programs, rather than either the need for, or design of, the standard application forms. We

attribute much of this lack of interest to the fact that, with the approval of OMB's Office of Information and Regulatory Affairs (OIRA), few programs use the forms displayed in Circular A-102 "as is." In fact, aside from the SF-424 Facesheet, every program extensively tailors the forms or develops its own instructions and supplemental program-specific requirements. In recognition of this, § ____10 has been revised to require use of either (1) three types of pre-approved standard forms: Facesheet, standard budget information (construction or non-construction) and standard assurances (construction and non-construction) or (2) forms approved by OMB under the Paperwork Reduction Act of 1980.

Section ____11 State Plans.

To further implement E.O. 12372, this section offered States three additional means to simplify, consolidate or substitute State plans for Federally required plans. All three commenters supported the language and intent, particularly in response to some Federal agencies which had indicated in their agency-specific preambles that this section was not applicable to their programs. Since the public comment was supportive, there was no need to make any change.

Section ____12 Special grant or subgrant conditions for "high-risk" grantees.

This section clearly identified the controls or conditions which awarding agencies may use when making grants to high risk grantees. These conditions were not mandatory, nor were they exclusive to this section. For example, some conditions such as payment on a reimbursement basis are available in other circumstances, in §§ ____21 and ____43. Further, under § ____6, agencies are permitted to depart from the common rule on a case-by-case basis or with the approval of OMB. Three commenters addressed this section: one supported the section as is; another requested more detailed due process procedures; the third wanted more clearly described controls over Federal agency use of the conditions. No change is made to this section, but the revised OMB Circular A-102 issued elsewhere in this issue has been changed to require Federal agencies to document the use of high risk conditions to permit oversight.

Subpart C—Post-Award Requirements

Section ____20 Standards for financial management systems.

A number of Inspectors General were concerned that in State-administered

programs the effect of § ____20 is that subgrantees and cost-type contractors are not subject to any requirements to account for funds. This is not the case. Section ____20 requires a State to follow its own laws and procedures regarding financial management systems. Section ____20 does not require States to meet specific Federal financial management standards because such requirements are an unwarranted intrusion into State affairs and could effect a State's ability to administer subgrants effectively. However, the rule has been revised to clarify that States, *as well as* their subgrantees and cost-type contractors, must have sufficient control and accounting procedures to show that Federal funds have not been used for unauthorized purposes.

One comment was received regarding the provision of § ____20(b)(7) that requires grantees to establish procedures with subgrantees to ensure timely receipt of cash management reports. The commenter wanted the rule to include a concept of "reasonableness" for grantee imposed requirements on subgrantees. One purpose of this rule is to provide uniform and "reasonable" requirements on grantees, and we do not expect grantees to impose unreasonable requirements on subgrantees based on the requirements of this common rule. However, the rule has been revised to include the reasonable concept for grantee procedures imposed on subgrantees to prepare cash management reports.

Section ____21 Payment.

In anticipation of legislation amending the Intergovernmental Cooperation Act of 1968, the proposed rule merely cross-referenced the Department of the Treasury rules governing payment. Many commenters therefore noted the absence of any provisions addressing the disposition of interest earned on advances or use of receivables from audit disallowances, credits and other adjustments. In order to address these concerns, the section has been expanded to address interest earned on advances, payments to subgrantees and contractors, and use of refunds, credits and other receivables. In addition, provisions for payments to grantees through the method of electronic transfer of funds have been added.

Section ____22 Allowable costs.

A comment was received that the complete reference to cost principles for for-profit organizations was too broad and should be 41 CFR Subpart 31.2; however, other portions of Part 31, such

as definitions and applicability, also apply to commercial organizations. Another commenter objected to the provision that allows Federal agencies to prescribe cost principles, such as railroads that use the Uniform System of Accounts established by the Interstate Commerce Commission. To require these organizations to adopt a second set of Federal cost principles would be counter productive. No changes were made to the common rule.

Section _____.23 Period of availability of funds.

Several comments were received regarding the requirement in § _____.23(b) for grantees to liquidate all obligations within 90 days after the end of the funding period (or as specified in program regulations). Two commenters only wanted exceptions to the 90-day period if specified in law, and one commenter recommended an extension to 9 months. The 90-day period was established as standard for programs that have a funding period, but a provision is contained in the common rule that allows Federal agencies to establish a different time limit in program regulations to provide for different program requirements. Because the common rule contains a provision that permits the flexibility needed to meet differing program needs, the common rule was not changed.

Section _____.24 Matching or cost sharing.

A comment was received that indicated an inconsistency in the use of Federal cash for satisfying matching requirements in § _____.24, and the definition of "cash contributions" in § _____.3. The definition allows Federal funds received from other assistance agreements to be considered as a recipient's cash contribution if authorized by Federal statute. The exception in § _____.24(b)(1) allows costs borne by another Federal grant if authorized by Federal statute. The term "cost borne by another Federal grant" includes grant funds used to pay the recipient's cash contribution. Therefore, no change was made to the common rule.

Two comments were received regarding the provision of § _____.24(e)(2) on the valuation of building and land donated to the grantee. The common rule provides that unless approval is received from the awarding agency, no amount can be allowed for donated land, and only depreciation or use allowances may be counted for donated equipment and buildings. The commenters recommended that the fair rental rate be used for such property.

The common rule values such property in the same manner as grantee-owned property is valued in OMB Circular A-87, Cost Principles for State and Local Governments, which is the government-wide directive on such matters. Consequently, no change was made to the common rule.

Section _____.25 Program income.

One commenter did not believe that the definition of program income in § _____.25(b) covered the proceeds derived by grantees from the products of the land, such as oil, gas, and other minerals. The definition of program income includes income "earned only as a result of the grant agreement during the grant period." This definition includes items, such as oil and gas revenues, that a grantee would earn from land acquired with Federal grant funds. Earnings on items such as oil or gas revenues are not considered or contemplated when making awards. No change was made to the common rule.

Several commenters objected to what they interpreted were the provisions of § _____.25(g). They believed that this paragraph required the use of the deductive method in handling program income. The common rule encourages the use of the deductive method for using program income; however, the common rule does not require Federal agencies to use only this method. The common rule does require specific Federal action before other uses can be made of program income. No change was made to the rule.

Two commenters objected to the provision in § _____.25(g) that allows Federal agencies to distinguish between the treatment of grantee and subgrantee program income. This provision is included because different functions are often performed by grantees and subgrantees. In some situations the purpose of the program may be better served if a subgrantee uses the additive method, while the grantee uses the deductive method because there is no need for the grantee to enlarge its efforts. This provision allows for such a situation. Therefore, no change was made to the common rule.

Section _____.26 Non-Federal Audit.

Since all of the agencies participating in the common rule have regulations implementing the Single Audit Act of 1986, this section merely cross-referenced the Act. Nonetheless, a number of commenters asked for a fuller explanation of grantee audit responsibilities. We agree there should be a fuller explanation. The section has been expanded to address grantee audit responsibilities. However, for a

complete discussion of the Single Audit Act, audit standards, requirements, and reporting, grantees should look to the agency regulations implementing the Act and OMB Circular A-128.

Section _____.30 Changes.

Three significant revisions have been made to the "Changes" provisions based on the recommendations of Federal agencies. First, the prior approval requirement for budget transfers exceeding 10 percent has been made waivable by Federal agencies. (§ _____.30(c)(1)(ii)). Second, the prior approval requirement for changes in key persons has been elaborated to require approval for any change in the project director or principal investigator of a research project, unless this requirement is waived by the Federal grantor agency. In most research programs, the qualifications of this person are a major factor in the approval of the project. Consequently, this requirement is needed for almost all research grants. (§ _____.30(d)(3)). Third, the prohibition on approval requirements for grant administration project revisions other than those listed in paragraph (d) has been deleted because it was found to be unnecessary. A number of other changes have been made for editorial or clarifying purposes. Several public commenters suggested allowing even more latitude, in various ways, for changes that do not require approval. Because the proposed regulation represents a significant loosening of prior approval requirements, we have decided not to go further before experience is gained on the effect of these changes.

Section _____.32 Equipment.

Several comments were received related to the increase in the accountability thresholds to \$5,000. Most commenters applauded the Federal Government's move to relieve the administrative burden placed on State and local governments by current requirements. One commenter expressed concern that raising the thresholds would virtually eliminate inventory records maintained by grantees of general office furniture and equipment. The commenter went on to say, however, that without doubt all grantees would follow their own definition of equipment and continue to maintain records regardless of Federal agency guidelines. The very purpose of raising the thresholds was to alleviate the recordkeeping burden placed on State and local government's assistance recipients. Consequently, no change was made to the proposed common rule.

Two commenters expressed concern over § ____32(c)(3), which prohibits grantees or subgrantees from using equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by Federal statute. The commenters believed that the provision is vague and could lead to inconsistent implementation by the various Federal agencies. One commenter also expressed concern that this provision will prohibit use of equipment acquired with a Federal grant for legitimate charitable purposes. However, several business organizations strongly endorsed the provision. They applauded the restriction, saying it would be extremely helpful in controlling abuses in use of grant-acquired equipment. No change was made to the rule.

One commenter stated that the provision of § ____32(e)(3) that allows an awarding agency to make a unilateral excess property and disposition decision, is unduly vague and may invite arbitrary implementation. This provision has been revised to state that in cases where a grantee or subgrantee fails to take appropriate disposition action, the awarding agency may direct the grantee to take appropriate excess and disposition actions.

Finally, paragraph 6(g) of Attachment N, Property Management Standards, in Circular A-102 reserves to the Federal Government the right to direct the transfer of equipment acquired with grant funds to the Federal Government or a third party. This provision was rarely, if ever, used in the case of grants to State and local governments and consequently not included in the June 9 proposal. One Federal agency expressed concern about the deletion of this provision, citing instances where a principal investigator under a research grant leaves one entity and continues the research at a successor entity. That agency believed it was in the best interest of the Government to maintain the right to direct the transfer of title to equipment in these instances. The common rule has been revised to add such a provision based on the language in the current Circular A-102.

Section ____33 Supplies.

Two commenters recommended that the provision of § ____33(b) on disposition of supplies should be deleted because grantees should not be required to calculate the cumulative Federal share of their supplies to compensate the grantor. During the development stages of the proposed regulation, this

provision was considered necessary to protect the Federal interest and requesting grantees to keep records of their supplies (which the majority do anyway) did not seem reasonable. This provision merely continues existing policy (Attachment N to OMB Circular A-102) except for raising the threshold from \$1,000 to \$5,000 to be consistent with the revised threshold established throughout the proposed common regulation.

Section ____35 Subawards to debarred and suspended parties.

One commenter opposed the Federal Government's system of nonprocurement suspension and debarment with government-wide effect. This system, which is in the final stages of development, was directed by the President in E.O. 12549. Because Federal agencies' regulations implementing the Executive Order will be issued later this year, the rule was revised to delete detailed procedural requirements.

Section ____36 Procurement.

Section ____36(b)(12). One commenter suggested that grantee protest procedures should be modified to set up a Federal agency review process to provide a forum for appeal to the grantor agency of any adverse grantee protest determination. Under § ____36(b)(12) (i) and (ii), the Federal agencies are involved in the review of protests where there have been violations of Federal law or regulations and standards of § ____36, or violations of the grantee's protest procedures. This provides Federal agencies the avenue to review and rectify adverse grantee actions. The same provisions are contained in the current procurement standards of Attachment O to A-102. Several Federal agencies have instituted review procedures of complaints against the award of contracts under grants. However, other agencies have determined a formal review process or board of appeals is unnecessary due to the low incidence of appeals. On January 23, 1985, the General Accounting Office decided to discontinue reviewing protests against grantee contracting activities largely because of the diminishing number of complaints filed by disappointed contractors over the nine years that protests were reviewed. We know of no major problems that grantees or Federal agencies are experiencing under the current procedures. Further, Federal agencies are permitted to set up a formal agency review when they deem it necessary. Therefore, we do not believe the provisions should be changed to

require Federal agencies to set up formal agency review process.

Section ____36(c)(1)(vi). Two commenters suggested a modification to the provision specifying a "brand name" product as being restrictive of competition. They believed that there are special instances, such as nonavailability of a product, quality needs or unique requirements, where only a "brand name" product should be purchased. Section ____36(c) *Competition* requires all procurement transactions to be conducted in a manner providing full and open competition. Section ____36(c)(1)(iv) identifies as being restrictive to competition the situation of specifying only a "brand name" product instead of allowing "an equal" product in the specifications. It does not prohibit the award to the "brand name" manufacturer when an award is justified on a basis such as nonavailability of a product. Therefore, to promote competition to its fullest as required by § ____36(c), the suggestion was not adopted.

Section ____36(c)(2). Several comments were made regarding the prohibition against using statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals. The provision was strongly supported by several commenters, although one commenter believed it should not be imposed without a study detailing the results of the prohibition. One commenter was concerned that the section would preempt State licensing laws. Also, one commenter had concern because in contracting for architectural and engineering (A/E) services geographic location is used as a selection criterion provided its application leaves an appropriate number of qualified firms to compete for a given project. The application of unreasonably restrictive qualifications and any percentage factors that give bidding advantages to in-State or local firms are barriers to open and free competition which are not in the public interest. Section ____36(c)(2) was included in the proposed regulation to foster competition, fairness, and economy in the award of contracts. The provision is viewed as being federally appropriate for a regulation covering a wide range of procurement actions, and consequently the prohibition was retained. However, two provisos have been added to handle the special situations that the commenters noted which make it clear that State licensing laws are not preempted and that geographic location may be used when

appropriate as a selection factor when contracting for A/E services.

Section ____36(d)(1). Procurement by small purchase procedures. Several commenters were complimentary of the increase in the dollar threshold for use of small purchase procedures from \$10,000 to \$25,000. However, there was an equal number of commenters that suggested raising the threshold even higher because of the cost of work in today's dollars. We believe that \$25,000 is the proper level of threshold at this time, and it is consistent with the policy that is followed for Government direct procurements.

Section ____36(d)(2) Procurement by sealed bids (formal advertising). Two comments were received suggesting that a statement be included emphasizing that the use of competitive sealed bidding is the preferred procurement method of construction. Federal procurement policy for direct procurement is to acquire construction using sealed bid procedures if certain conditions exist. Those conditions are essentially the same as described under § ____36(d)(2)(i) (A), (B), and (C) of the proposed rules concerning procurement by sealed bids. We believe this to be sound procurement policy when acquiring construction for direct Federal and for assistance programs. In view of this, we have adopted the suggestion by adding a provision to the subsection which expresses a preference for the sealed bid method when purchasing construction.

Section ____36(d)(3). Several comments were submitted concerning procurement by competitive proposals. A few commenters believed the proposed regulation should more clearly identify the qualifications-based selection process for the procurement of A/E services. One commenter believed that the qualifications-based selection process for A/E services should be required. The proposed regulation more clearly identifies and describes the requirements for procuring A/E services than was done under the procurement standards of Attachment O to A-102. In the proposed regulation, a separate paragraph to the provisions on competitive procurements clearly identifies at § ____36(d)(3)(v) a distinctive qualifications-based selection process that may be used for A/E services. However, this process is not mandated because to do so would override many State and local procurement rules which provide for the consideration of price in the selection of firms for certain A/E services. Consequently, no change was made to the proposed common regulation.

Section ____36(e). Contracting with small and minority firms, women's business enterprises, and labor surplus area firms. One commenter recommended that this section should be amended to include the preamble that is in Section 9 of Attachment O to A-102. The current statement is: "It is national policy to award a fair share of contracts to small and minority business firms." The commenter believed that the elimination of this statement would stop all Federal agencies from complying with Executive Order 12432, Minority Business Enterprise Development. Two commenters supported the proposed rule which requires grantees to take all necessary affirmative steps (six steps are detailed) to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible. They believe the requirements are appropriate to ensure that grantees and contractors extend best faith efforts to use these firms while still allowing the open competitive bidding system to operate. While the proposed regulation is more concise, the total requirements that were in Section 9 of Attachment O remain intact. Also, the mere elimination of the preamble in the standards on grantee procurements does not in any way reduce or change the requirements listed in the Executive Order on Minority Business Enterprise Development. Consequently, the proposed common rule was not modified.

Section ____36(f). Contract cost and price. One commenter requested that legal services be singled out as being subject only to price analysis, but not to cost analysis because legal firms do not maintain their financial systems in a manner to permit cost analysis. The cost and price provision as circulated is intended to provide general guidance, and to set forth the requirement for cost or price analysis. Under a certain type of procurement, such as legal services, where there are an adequate number of sources available and the price or unit price can be determined as being reasonable through price analysis, a cost analysis would not be required. The standard appears to adequately provide for situations where price analysis would be used and, therefore, the commenter's request was not adopted.

Section ____36(g)(3)(ii). One comment was received supporting the provision which allows grantees to self-certify their procurement systems as complying with the regulation's requirements. However, another commenter objected to the provision because it does not allow sufficient time to take corrective action when a bidder protests. In cases

of a protest, whether or not a grantee's procurement system has been self-certified should not affect the time required for any needed corrective action. A protest is lodged against a single procurement action and only one action needs to be addressed. System deficiencies do not need to be corrected to respond to a protest. Consequently, no change was made in the common rule.

Section ____36(h) Bonding requirements. One commenter requested that this section be modified to apply only to construction projects as is currently the case under the provisions of Attachment B to OMB Circular A-102. The bonding provisions are applicable to construction and the section has been modified to make this clear.

Section ____36(i). Contract provisions. One commenter recommended that Federal agencies be permitted to require standard contract clauses in grantee contracts. Two other commenters believed that standard or "model" clauses would be beneficial and should be allowed. Such clauses make it easier for grantees to manage their projects, and for contractors to understand the contractual requirements that will consistently be applied on federally assisted contracts. The proposed regulation and the current procurement standards in Attachment O require a grantee's contracts to contain certain provisions. In addition, Attachment O permits grantor agencies to require clauses approved by the Office of Federal Procurement Policy. Pursuant to the authority provided in Attachment O, Federal agencies have promulgated model clauses to be used by grantees. Clauses for changes, differing site conditions, suspension of work, termination, and remedies have been issued using the same type of language that has been recommended by the American Bar Association's Model Procurement Code and is required in direct Federal acquisition by virtue of FAR 43.205, FAR 36.502, FAR 12.505, and FAR 49.504. Under many of the Federal assistance programs the use of model clauses appears to be appropriate. Consequently, the authority that is included under current Attachment O was added to the common rule.

Section ____40 Monitoring and reporting program performance.

One commenter questioned whether the language in § ____40(a) requires the grantee to monitor its own activities as it administers the subgranting of funds or instead to monitor the activities of its subgrantees. The commenter believed there was an overlap between

§ ____40(a) and OMB Circular A-128. OMB Circular A-128, which implements the Single Audit Act of 1984, concerns auditing of State and local governments. There is no overlap between the requirements of that Circular and this § ____40, which concerns monitoring, not auditing. In response to the commenter's specific concern, the grantee is responsible for monitoring both its own activities and the activities of its subgrantees.

Another commenter recommended the regulation clarify the explicit responsibility of a grantee to monitor contract performance. The proposed common regulation only imposes minimal requirements regarding contracts entered into by grantees under § ____36. The grantee is ultimately responsible for administering the grant and for monitoring the contractor's activities to ensure compliance with applicable Federal requirements and achievement of performance goals. Because the factors involved in the monitoring will vary depending upon the nature of the work being performed under the contract, we do not believe specific detailed monitoring requirements should be imposed at the Federal level.

Section ____41 Financial reporting.

One commenter noted a conflict between the proposed common regulation at § ____41(b)(2) and the Circular at 7(b)(2), setting forth procedures for financial reporting on either a cash or accrual basis. The Circular requires Federal agencies to prescribe whether reporting shall be on a cash or accrual basis and the proposed common regulation requires grantees to report on the same accounting basis it uses in its own accounting system. In addition, several commenters objected to the option of allowing financial reporting on either a cash or accrual basis and thought a standard format should be established. The conflict noted between the proposed common regulation and the Circular has been corrected. The proposed common regulation has been changed to authorize each Federal agency to determine whether financial reporting shall be required on a cash or accrual basis. It is essential for Federal agencies to be given discretion to determine the appropriate type of information necessary to administer the programs for which they are responsible. The option of allowing financial reporting on a cash or accrual basis was determined to be the most feasible and the least burdensome to accommodate the accounting systems in place at Federal and grantee levels. The

proposed common regulation has been modified at § ____41(b)(2) to authorize Federal agencies to determine whether financial reporting shall be required on a cash or accrual basis.

One commenter requested that the language permitting OMB to authorize supplementary financial reporting forms "from time-to-time" be deleted. In the alternative, if this could not be done, the commenter requested that respondents be given an opportunity to review the forms prior to OMB approval. If after original clearance, forms could not be supplemented to meet the needs of particular Federal agencies, the basic form would have to contain all financial reporting requirements for every agency of the Federal Government. Such a requirement is not feasible given the complexities of the various programs administered by the Federal Government. Therefore, the language permitting agencies to request supplementation of forms has not been deleted. The requirements for OMB clearance of forms is contained in the Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520. OMB implements the Act in regulations appearing at 5 CFR Part 1320. These regulations require an agency that wishes to collect information to submit a request for approval to OMB. The agency must also publish a notice in the *Federal Register* informing the public of the request. If anyone wishes to comment on agency-specific financial reporting forms prior to OMB approval, the forms clearance regulations contained in 5 CFR Part 1320 offer the appropriate vehicle.

Several commenters were very supportive of requiring, at the maximum, quarterly Financial Status Reports (SF-269). However, one commenter was concerned that quarterly financial reporting is not adequate to monitor large awards. This commenter suggested awarding agencies be given the option to require more frequent reporting for large awards. A significant emphasis of the proposed common regulation and Circular is to reduce unnecessary paperwork and reporting burdens at both the Federal Government and grantee levels. We believe that financial reporting on a quarterly basis, regardless of the size of the award, is adequate to monitor grantees. If reporting is insufficient, Federal agencies may impose additional financial reporting requirements through the "high-risk" provisions of § ____12.

A commenter believed the authority to allow awarding agencies to require financial reports more frequently or in more detail if a grantee's accounting system does not meet the standards for

financial management systems may invite arbitrary implementation and should require due process procedures. The authority to review the adequacy of the financial management system of a grantee is established in the proposed common regulation at § ____20(b)(7). The standards for financial management systems established in the proposed common regulation in § ____20(a)-(c) are such basic fiscal management principles that failure to meet these standards would have to involve egregious errors. Therefore, we do not believe this requirement to be arbitrary. In addition, a grantee has no due process rights to report information a certain number of times or a specific level of detail. This requirement, when imposed, would only require more detailed or frequent financial reporting. We believe that these requirements are essential to ensure the proper stewardship of Federal funds.

One commenter suggested that unliquidated obligations reported on an interim or final Financial Status Report (SF-269) be required to be liquidated within a reasonable time after the required 90-day reporting period. The proposed common regulation, at § ____23(b), requires that obligations incurred under an award be liquidated within 90 days after the end of the funding period, unless an extension has been granted by the awarding agency. We believe that the authorization to extend the liquidation date offers sufficient flexibility to handle any unique liquidation problems.

Another commenter suggested that the requirement to file Federal Cash Transactions Reports (SF-272) 15 days following the end of a quarter or month be increased to 30 days. The 15-day requirement is necessary for Federal Cash Transactions Reports (SF-272) in order for awarding agencies to complete cash requirement forecasts for the Treasury Department on a timely basis. Since grantees are required to establish methods and procedures for minimizing the time between transfer of funds and disbursement in accordance with Treasury regulations at 31 CFR 205, this timely reporting should not be burdensome.

A commenter believed the authority to allow awarding agencies to require reporting on the amount of cash advances in excess of three days' needs in the hands of their subgrantees or contractors, when considered necessary and feasible, may invite arbitrary implementation. Another commenter was concerned because many subgrantees get funds from the State on a monthly basis and therefore, the three

days needs test would be impossible to meet, except at the very end of the month. In addition, other commenters believed a dollar threshold for requiring such reporting by subgrantees or contractors should be established. As required by Treasury regulation at 31 CFR Part 205, grantees must establish methods and procedures for payment that minimize the time elapsing between the transfer of funds from the U.S. Treasury and disbursements by grantees and subgrantees. Grantees must monitor cash drawdowns by their subgrantees to assure that they conform substantially to the same standards of timing and amount as apply to advances to the grantees. Therefore, grantees should readily have information available related to subgrantee cash advances and be prepared to report on such advances if requested. Also, payment systems that meet the requirement to minimize time elapsed between transfer of funds and subgrantee disbursements will provide funds at a rate sufficient to meet the three-days needs test. To ensure prudent management of Federal funds, awarding agencies need to know whether grantees have excess cash regardless of the amount of the award. Therefore, establishing a dollar threshold is inappropriate.

Section ____43 Enforcement.

One commenter requested clarification on whether grantees can use the enforcement process described in § ____43 to require subgrantees to resolve any audit findings, recommendations or exceptions cited in a previous year's audit. Yes, a grantee, as an awarding agency, is authorized under this section to resolve audits through the audit process.

Section ____44 Termination for convenience.

One commenter was concerned that termination for convenience may only be carried out with the consent of the grantee and that the awarding agency may wish to terminate an award unilaterally without involving remedies for noncompliance. The commenter misunderstands the nature of a termination action. A termination involves a Federal grantor agency terminating a grantee's authority to obligate funds before the authority would otherwise expire. Incidental to that function, a grantee may be required, as the result of an audit, to return funds that were improperly expended. A grantee has a constitutionally protected property right to obligate funds until the end of its normal grant period. Therefore, a grantor agency, before it may cut short that period of obligation

through a termination action, must either offer the grantee due process of law or obtain the grantee's consent to the termination. As a result, it is impossible to terminate a grant unilaterally even though a Federal agency may be willing to forego recovery of improperly expended funds.

Subpart D—After-the-Grant Requirements

Four comments were received on After-the-Grant requirements. Two State agencies commented that the 90-day timeframe in § ____50(b) for grantees to submit all reports associated with the grant was not sufficient. One of the commenters suggested that 120 days or longer would be more appropriate, since they experienced difficulty with some grants in meeting the 90-day deadline. We agree that in some rare cases, 90 days may not be sufficient time for grantees to submit all required reports, particularly when there are unliquidated obligations or delays in receiving reports from subgrantees. In recognition of this, the section has been amended to provide the opportunity for the Federal agency to grant an extension upon the request of the grantee.

One Federal agency commented that the 60-day deadline for cost adjustments in § ____50(c) was unrealistic, given large formula grants and the administrative burden of closing them out. Recognizing the problems such a short deadline will cause, the rule has been changed to a 90-day deadline. We believe all agencies should be able to make a cost adjustment based on the reports on hand within that timeframe. Section ____51, Later disallowances and Adjustments provides the opportunity to make further adjustments if Single Audit reports or other findings question costs.

Another commenter stated that use of § ____52(a)(2) authorizing withholding advance payments to a grantee to satisfy a debt owed to the Government could impede program implementation and not necessarily result in the actual collection of the amounts due. While we agree that use of this provision to satisfy delinquent debts to the Government may at times raise difficult issues, it is nevertheless necessary to insure that the Government has the tools to collect funds that are due. We are certain Federal agencies will continue, as in the past, to use good judgment in the exercise of this authority.

Subpart E—Entitlements [Reserved]

Impact Analyses

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared

for "major" rules which are defined in the Order as any rule that has an annual effect on the economy of \$100 million or more, or certain other specified effects. We intend the rule to result in savings to State and local governments in the costs of administering grants. However, we do not believe that the rule will have an annual economic effect of \$100 million or more or the other effects listed in the order. For this reason, we have determined that this rule is not a major rule within the meaning of the Order.

Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act (5 U.S.C. 605(b)) requires that, for each rule with "significant economic impact on a substantial number of small entities," an analysis be prepared describing the rule's impact on small entities and identifying any significant alternatives to the rule that would minimize the economic impact on small entities. We certify that this rule will not have a significant economic impact on a substantial number of small entities because they do not affect the amount of funds provided in the covered programs, but rather modify and update administrative and procedural requirements.

Paperwork Reduction Act

Sections ____10(c); ____20(b)(2); ____24(b)(6); ____30 (f)(1) and (f)(3); ____32 (d)(1) and (f)(2); ____36 (b)(9), (c)(3), and (i); ____40 (b)(2), (c) and (d); ____41 (b), (c), (d) and (e); ____42(b); and, ____50(b) of this rule contain collection-of-information requirements. As required by the Paperwork Reduction Act of 1980, each agency will submit a copy of this rule to the Office of Management and Budget (OMB) for its review of these reporting and recordkeeping requirements. No recipient may be subject to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number.

BILLING CODES 3410-KS-M, 6450-01-M, 8025-01-M, 3510-FE-M, 4710-24-M, 4210-32-M, 4410-18-M, 4510-23-M, 6732-01-M, 3810-01-M, 4000-01-M, 7515-01-M, 8320-01-M, 6560-50-M, 4310-RF-M, 6718-21-M, 4150-04-M, 7555-01-M, 7537-01-M, 7536-01-M, 7036-01-M, 6050-28-M, 6340-01-M, 4910-62-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Parts 3015 and 3016

FOR FURTHER INFORMATION CONTACT:
Gerald Miske (Branch Chief), (202)382-1553.

ADDITIONAL SUPPLEMENTARY

INFORMATION: USDA has Uniform Federal Assistance Regulations found at 7 CFR Part 3015 which establish Departmentwide policies and standards for the administration of grants and cooperative agreements. The rules primarily implement OMB Circular A-102, "Uniform Requirements for Grants to State and Local Governments," Circular A-110, "Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations," Circular A-128, "Audits for State and Local Governments," and Executive Order 12372, "Intergovernmental Review of Federal Programs." Part 3015 also sets forth the Department's policy on competition in awarding discretionary grants and cooperative agreements and identifies the cost principles specified in Circular A-21 for universities, A-87 for State and local governments, A-122 for nonprofit organizations, and 41 CFR 1-15.2 for for-profit organizations.

Presidential Memorandum, "Uniform Requirements for Grants to State and Local Governments," dated March 12, 1987, directed that Executive departments and agencies simultaneously propose common regulations that adopt the Governmentwide terms and conditions of the proposed revisions to Circular A-102 verbatim.

The Circular A-102 common rule, Subparts A-D, does not apply to open-ended entitlement programs. Coverage for those programs will be provided in a future Subpart E. Pending the issuance of Subpart E, open-ended entitlements remain subject to the requirements of Part 3015.

USDA is adopting the A-102 common regulation by adding a new Part 3016, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments." Part 3016 applies only to assistance relationships documented by grants and cooperative agreements, and subawards to State and local governments. Thus, this part does not apply to transactions entered into under sections 1472(b), 1473A, and 1473C of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended by the Food Security Act (7 U.S.C. 3318, 3319a and 3319c). Part 3016 also does not apply to the following open-ended entitlement grant programs administered by the Food and Nutrition Service:

- (a) State Administrative Matching Grants for Food Stamp Program.
- (b) National School Lunch Program.
- (c) School Breakfast Program.
- (d) Summer Food Service Program.
- (e) Child Care Food Program.

(f) Special Milk Program for Children. Part 3015 no longer governs assistance relationships with State and local governments, except as provided below. However, the above listed open-ended entitlement grant programs, as well as grants and cooperative agreements documenting assistance transactions with institutions of higher education, hospitals, other nonprofit organizations, and for-profit organizations continue to be subject to Part 3015.

The following subparts of Part 3015 remain in effect for State and local governments that receive assistance from USDA.

(a) Subpart I on audits of State, local, and Indian Tribal governments.

(b) Subpart Q, § 3015.158 on competition.

(c) Subpart T on cost principles.

(d) Subpart V on the intergovernmental review of Federal programs.

(e) Subpart W on nonprocurement debarment and suspension (to be issued at a later date).

Comments

In the June 9, 1987 *Federal Register* (FR) (52 FR 21822-21824), USDA requested comments on the proposal to amend 7 CFR 3015.1 and 3015.2 in order to redefine the recipients to which this rule applies. Since no comments were received on this and the policy in Part 3015 is not being revised for those recipients which it still covers, §§ 3015.1 and 3015.2 are amended as proposed.

The Department received no agency specific comments from the public on 7 CFR Part 3016. However, an internal comment was made concerning a statutory deviation.

The comment was that section 17(f)(4) of the Child Nutrition Act (CNA) of 1966, as amended, specifically requires State submission of monthly financial reports and participation data for the Food and Nutrition Service's (FNS) Women, Infants and Children (WIC) Program. Additionally, paragraph 17(i) of the authorizing legislation requires FNS to reallocate funds periodically if it is determined that a State agency is unable to spend its allocation. In order to fulfill this obligation, FNS must consistently make funding determinations that involve the continuous forecasting and reevaluation of State agencies' funding needs which necessitates compliance with the legislatively mandated monthly financial reporting requirement. Sections 3016.40 and 3016.41 of the common rule limit grantor agencies to quarterly requirements for submission of financial and program performance reports by grantees. Since monthly reporting is a statutory requirement for the WIC

program, FNS must ask WIC grantees for financial and program performance reports on a monthly basis.

List of Subjects**7 CFR Part 3015**

Grant programs (Agriculture), Intergovernmental relations.

7 CFR Part 3016

Grant programs (Agriculture).

Issued at Washington, DC.

Accordingly, Title 7 of the Code of Federal Regulations is amended as set forth below.

John J. Franke, Jr.,

Assistant Secretary for Administration.

Approved: February 19, 1988.

Richard E. Lyng,

Secretary of Agriculture.

PART 3015—[AMENDED]

1. USDA is amending Subpart A of 7 CFR Part 3015 as follows:

a. The authority citation for Part 3015 continues to read as follows:

Authority: 5 U.S.C. 301.

Subpart A—General

b. Section 3015.1(a) is revised to read as follows:

§ 3015.1 Purpose and scope of this part.

(a) (1) This part establishes USDA-wide uniform requirements for the administration of grants and cooperative agreements and sets forth the principles for determining costs applicable to activities assisted by such USDA awards. This part contains rules that apply to USDA grants and cooperative agreements to institutions of higher education, hospitals, and other nonprofit organizations, as well as those that apply to open-ended entitlement grants, and specifies the set of principles for determining allowable costs under USDA grants and cooperative agreements to State and local governments, universities, non-profit and for-profit organizations as set forth in OMB Circulars A-87, A-21, A-122, and 41 CFR 1-15.2, respectively.

(2) Additionally, this part establishes uniform audit requirements for State, local, and Indian Tribal governments pursuant to the Single Audit Act of 1984 and OMB Circular A-128, intergovernmental review provisions required by Executive Order 12372 for any programs listed in the *Federal Register* as covered, and policy on competition in awarding discretionary grants and cooperative agreements.

(3) Rules for nonentitlement grants and cooperative agreements to State and local governments are found in Part 3016.

c. Section 3015.2(d) introductory text is republished and paragraph (d)(5) is added to read as follows:

§ 3015.2 Applicability.

(d) Recipients to which this part does not automatically apply. This part does not automatically apply to the kinds of recipients listed below unless other conditions set forth in the grant, cooperative agreement, subgrant, or specific subpart in this part make all or specified portions apply:

(5) State and local governments, except open-ended entitlements to State and local governments.

2. Title 7 of the Code of Federal Regulations is being amended by adding Part 3016 as set forth at the end of this document.

PART 3016—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.

- 3016.1 Purpose and scope of this part.
- 3016.2 Scope of subpart.
- 3016.3 Definitions.
- 3016.4 Applicability.
- 3016.5 Effect on other issuances.
- 3016.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

- 3016.10 Forms for applying for grants.
- 3016.11 State plans.
- 3016.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements

Financial Administration

- 3016.20 Standards for financial management systems.
- 3016.21 Payment.
- 3016.22 Allowable costs.
- 3016.23 Period of availability of funds.
- 3016.24 Matching and cost sharing.
- 3016.25 Program income.
- 3016.26 Non-Federal audit.

Changes, Property, and Subawards

- 3016.30 Changes.
- 3016.31 Real property.
- 3016.32 Equipment.
- 3016.33 Supplies.
- 3016.34 Copyrights.
- 3016.35 Subawards to debarred and suspended parties.
- 3016.36 Procurement.
- 3016.37 Subgrants.

Reports, Records Retention, and Enforcement

- 3016.40 Monitoring and reporting program performance.
- 3016.41 Financial reporting.
- 3016.42 Retention and access requirements for records.
- 3016.43 Enforcement.
- 3016.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

- 3016.50 Closeout.
- 3016.51 Later disallowances and adjustments.
- 3016.52 Collections of amounts due.

Subpart E—Entitlements [Reserved]

Authority: 5 U.S.C. 301.

BILLING CODE 3410-KS-M

DEPARTMENT OF ENERGY

10 CFR Part 600

FOR FURTHER INFORMATION CONTACT:

Cherlyn Seckinger, Business and Financial Policy, Division (MA-422), Procurement and Assistance Management Directorate, Washington, DC 20585, (202) 586-9737.

ADDITIONAL SUPPLEMENTARY INFORMATION:

I. Introduction

The proposed common rule was published in the *Federal Register* (52 FR 21820-21862) on June 9, 1987. In the DOE preamble to the proposed rule, we stated that amendments conforming Subparts A, B, and C of 10 CFR Part 600 to Subpart E would be issued with the final rule.

Since that time, DOE has promulgated a comprehensive revision of Subpart C, Cooperative Agreements (52 FR 5260, February 22, 1988). Among other things, this revision made, with a few exceptions, the administrative requirements for grants applicable to cooperative agreements in § 600.205. The common rule (Subpart E) similarly makes the administrative requirements for grants applicable to cooperative agreements except that it covers only State, local, and Indian tribal governments.

Subpart E is more limited in scope than the existing Subparts A, B, and C because it covers primarily external (applicant/recipient) requirements rather than both internal (Federal agency) and external requirements.

In order to integrate Subpart E into Part 600 and, consistent with the recent changes DOE has made to Subpart C, we believe it is necessary to restructure Part 600, to the extent possible, into Subparts which (1) group requirements according to recipient type (governmental vs non-governmental), (2)

segregate internal from external requirements and (3) consolidate the common administrative requirements applicable to both grants and cooperative agreements. This restructuring does not change any of the existing requirements, it merely conforms the provisions of Part 600 as necessary to accommodate Subpart E and reorganizes the rule into a more comprehensible format.

Consequently, Part 600 is amended into the following Subparts: Subpart A—General, Subpart B—Uniform Administrative Requirements for Grants and Cooperative Agreements to Other than State and Local Governments, Subpart C—Cooperative Agreements, Subpart D—Audits of State and Local Governments, and Subpart E—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (Common Regulation).

While Subparts A and C focus primarily on DOE policy and internal procedural requirements which we believe applicants/recipients also need to know, Subparts B and E establish the external requirements or general terms and conditions applicable to recipients. Subpart B applies to non-governmental entities; Subpart E applies to State and local governments. Subpart D contains the Audit requirements for State and local governments. To effect this realignment in Part 600, certain sections which are discussed below, are being relocated.

In addition to these structural and conforming changes within Subparts A, B, and C, Subpart E is being changed in a few sections also described below to establish DOE policy in areas not covered by the common rule (e.g. cost principles for hospitals) and for purposes of clarification.

Please note in the Table of Contents of Subpart E, we have inserted in parenthesis the section numbers as they appear in the common rule following the Subpart E section numbers to show the relationship between the two.

II. Amendments to Subparts A, B, and C

Sections 600.3, 600.4, 600.10, 600.14, 600.19, 600.20, 600.25, 600.26 of Subpart A are amended to remove the obsolete cross-references to OMB Circular A-102, to provide the appropriate cross-references to Subpart E and to change references resulting from restructuring Part 600.

The scope and applicability of Subpart B as stated in § 600.100 is being amended. The amended Subpart B provides the common administrative requirements for grants and cooperative

agreements for recipients who are *not* State, local, and Indian tribal governments. The term "grant" as used in Subpart B is redefined in § 600.101 to also include "cooperative agreement". The amended scope and applicability of Subpart B parallels that of Subpart E which establishes the common administrative requirements for grants and cooperative agreements to State and local governments.

Sections 600.102, 600.103, 600.109, and 600.112 are amended to change references due to restructuring.

Sections 600.104, 600.106, 600.108, 600.121 (a) and (c), and 600.122 of Subpart B are transferred to Subpart A because they primarily cover DOE policy and internal procedural requirements applicable to both grants and cooperative agreements rather than external requirements for recipients. Section 600.118 which establishes DOE patents, data, and copyrights policy and procedures is also moved to Subpart A. Paragraphs (a) and (c) of § 600.121 are reiterated in a new § 600.28 to continue the applicability of these procedures when DOE takes enforcement actions against recipients regardless of the type of recipient involved.

Sections 600.105, 600.107, 600.110, 600.111, 600.116, 600.117, and 600.119 of Subpart B are amended to remove the references to OMB Circular A-102 and to State, local, and Indian Tribal Governments.

Section 600.200 of Subpart C is amended to revise the scope and applicability of this subpart to cover DOE policies and procedures specific to cooperative agreements, but not the general administrative requirements for recipients which, as a result of this rulemaking, are covered in Subparts B and E.

Sections 600.203, 600.204, 600.205, 600.206 are amended to provide the appropriate cross-references to Subpart E.

III. Requirements for State and Local Governments—Subpart E

Section 600.403 of Subpart E of the common rule is amended to define "prior approval" as documentation signed by a *Contracting Officer*. We believe this information is necessary to let the recipient know the DOE official authorized to approve such requests.

Section 600.406 of the common rule is amended to include a cross-reference to the DOE process for obtaining a deviation to Part 600. Because this process is applicable to applicants and recipients as well as DOE staff, the common rule will provide this cross-reference to Subpart A.

Section 600.422 of the common rule is amended to include the cost principles to be used for hospitals (45 CFR Part 74, Appendix E) and to specify the cost principles applicable to commercial organizations receiving DOE financial assistance (48 CFR 31.2 as modified by 48 CFR 931.2).

List of Subjects in 10 CFR Part 600

Administrative practice and procedure, Applications, Audit, Cooperative agreements/energy, Copyrights, Educational institutions, Eligibility, Energy financial assistance, For-profit organizations, Grants, Hospitals, Indian tribes, Individuals, Inventions and patents, Local governments, Management standards, Nonprofit organizations, Patents, Reporting and recordkeeping requirements, Solicitations, Small businesses, States, Technical data, Uniform administrative requirements.

For the reasons set out in the preamble, Part 600 of Title 10 of the Code of Federal Regulations is amended as set forth below.

Berton J. Roth,

Director, Procurement and Assistance Management Directorate.

PART 600—FINANCIAL ASSISTANCE RULES

1. The Authority citation for Part 600 continues to read as follows:

Authority: Secs. 644 and 646, Pub. L. 95-91, 91 Stat. 599 (42 U.S.C. 7254 and 7256; Pub. L. 97-258, 98 Stat. 1003-1005 (31 U.S.C. 6301-6306).

2. Part 600 is amended by adding Subpart E to read as set forth at the end of this document:

Subpart E—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments

General

- 600.400 (—1) Purpose and scope of this subpart.
- 600.401 (—2) Scope of §§ 600.400 through 600.405.
- 600.402 (—3) Definitions.
- 600.403 (—4) Applicability.
- 600.404 (—5) Effect on other issuances.
- 600.405 (—6) Additions and Exceptions.

Pre-Award Requirements

- 600.410 (—10) Forms for applying for grants.
- 600.411 (—11) State plans.
- 600.412 (—12) Special grant or subgrant conditions for "high risk" recipients.

Post-Award Requirements

Financial Administration

- 600.420 (—20) Standards for financial management systems.
- 600.421 (—21) Payment.

- 600.422 (—22) Allowable costs.
- 600.423 (—23) Period of availability of funds.
- 600.424 (—24) Matching or Cost sharing.
- 600.425 (—25) Program income.
- 600.426 (—26) Non-Federal audit.

Changes, Property, and Subawards

- 600.430 (—30) Changes.
- 600.431 (—31) Real property.
- 600.432 (—32) Equipment.
- 600.433 (—33) Supplies.
- 600.434 (—34) Copyrights.
- 600.435 (—35) Subawards to debarred and suspended parties.
- 600.436 (—36) Procurement.
- 600.437 (—37) Subgrants.

Reports, Records Retention, and Enforcement

- 600.440 (—40) Monitoring and reporting program performance.
- 600.441 (—41) Financial reporting.
- 600.442 (—42) Retention and access requirements for records.
- 600.443 (—43) Enforcement.
- 600.444 (—44) Termination for convenience.

After-the-Grant Requirements

- 600.450 (—50) Closeout.
- 600.451 (—51) Later disallowances and adjustments.
- 600.452 (—52) Collection of amounts due.

Entitlements [Reserved]

3. Part 600 is further amended as set forth below:

§ 600.3 [Amended]

a. Section 600.3 is amended by changing the reference in the definition for "non-profit organization" and "Small business" from "600.118(b)(1)" to "600.33(b)(1)".

§ 600.4 [Amended]

b. Section 600.4 is amended as follows:

(1) In paragraph (a), after "\$ 600.105" add "and § 600.412" and revise "\$ 600.118" to read "\$ 600.33".

(2) In paragraph (c)(2)(i) and (c)(3) revise "\$ 600.118" to read "\$ 600.33".

c. Section 600.10 is amended by revising paragraph (a) to read as follows:

§ 600.10 Form and content of applications.

(a) Forms. Application or preapplications shall be on the form or in the format and in the number of copies specified by DOE either in this part, in a program rule, or in the applicable solicitation and must include all required information. For State governments, local governments, or Indian tribal governments, applications shall be made on the forms prescribed in § 600.410. Such applicant shall not be required to submit more than the original and the two copies of the application or preapplication.

(Approved by OMB under OMB control number 1910-0400.)

d. Section 600.14 is amended by revising paragraph (c)(1) to read as follows:

§ 600.14 Unsolicited applications.

(c) * * *

(1) Unsolicited applications shall be in the format set forth in "The Guide for Submission of Unsolicited Proposals," except that a State government, local government, or Indian tribal government shall use one of the applications forms prescribed in § 600.410, as appropriate.

§ 600.19 [Amended]

e. Section 600.19(d) is amended by revising the reference "§ 600.106" to read "§ 600.31".

§ 600.20 [Amended]

f. Section 600.20(c) is amended by revising "§ 600.103(g) or § 600.108 of this part" to read "§ 600.103(g), § 600.108 or § 600.422(b)".

g. Section 600.25 is amended by revising paragraph (d) to read as follows:

§ 600.25 Access to records.

(d) *Duration of access right.* The right of access may be exercised for as long as the applicable records are retained by the recipient, subrecipient, contractor, or subcontractor. (See § 600.124 and § 600.442 for record retention requirements for grants and cooperative agreements based on recipient type.)

h. Section 600.26 is amended by revising paragraphs (d)(1) introductory text, (d)(1) (i), (ii), (iii), (iv), and (v) to read as follows:

§ 600.26 Disputes and appeals.

(d) *Review on appeal.* (1) The Board shall have no jurisdiction to review:

(i) Any preaward dispute (except as provided in paragraph (d)(2)(ii) of this section), including use of any special restrictive condition pursuant to § 600.105 or § 600.412;

(ii) DOE denial of a request for a deviation under § 600.4 or § 600.406 of this part;

(iii) DOE denial of a request for a budget revision or other change in the approved project under §§ 600.103, 600.114, 600.422, or 600.430 of this part or under another term or condition of the award;

(iv) Any DOE action authorized under §§ 600.121(b) (1), (2), (3) or (5); or

§ 600.443 (a)(1), (a)(3) for suspensions only; or § 600.443(a)(4) for actions disapproving renewal applications or other requests for extension of time or additional funding for the same project when related to recipient noncompliance, or such actions authorized by program rule;

(v) Any DOE decision about an action requiring prior DOE approval under §§ 600.112(g), 600.119, or 600.436 of this part or under another term or condition of the award;

i. Section 600.28 is added to Subpart A to read as follows:

§ 600.28 Noncompliance.

(a) Except for noncompliance determinations under 10 CFR Part 1040, whenever DOE determines that a recipient has not complied with the applicable requirements of this part, with the requirements of any applicable program statute or rule, or with any other term or condition of the award, a DOE Contracting Officer shall provide to the recipient (by certified mail, return receipt requested) a written notice setting forth

(1) The factual and legal bases for the determination of noncompliance;

(2) The corrective actions and the date (not less than 30 days after the date of the notice) by which they must be taken.

(3) Which of the actions authorized under § 600.121(b) or § 600.443(a) of this part DOE may take if the recipient does not achieve compliance within the time specified in the notice, or does not provide satisfactory assurances that actions have been initiated which will achieve compliance in a timely manner.

(b) DOE may take any of the actions set forth in § 600.121(b) or § 600.443(a) of this part concurrent with the written notice required under paragraph (a) of this section or with less than 30 days written notice to the recipient whenever:

(1) There is evidence the award was obtained by fraud;

(2) The recipient ceases to exist or becomes legally incapable of performing its responsibilities under the financial assistance award;

(3) There is a serious mismanagement or misuse of financial assistance award funds necessitating immediate action; or

(4) An immediate debarment in accordance with § 600.27(g) is warranted.

j. In § 600.100, paragraph (a) is revised and paragraph (b) is amended by revising "§ 600.122" to read "§ 600.29".

§ 600.100 Scope and applicability.

(a) This subpart establishes administrative rules for grants and

cooperative agreements and subawards to other than State, local, and Indian tribal governments. This subpart implements OMB Circular A-110 and the Federal cost principles.

Administrative rules for grants and cooperative agreements and subawards to State, local and Indian tribal governments are prescribed in Subpart E.

k. Section 600.101 is amended by adding the term "grant" to read as follows:

§ 600.101 Definitions.

"Grant" means an award of financial assistance, including cooperative agreements, in the form of money or property in lieu of money, by the Federal Government to an eligible recipient.

§ 600.102 [Amended]

l. Section 600.102 is amended by changing the reference in paragraph (c) from "§ 600.106" to "§ 600.31".

§ 600.103 [Amended]

m. Section 600.103 is amended by changing the reference in paragraph (g) from "§ 600.108" to "§ 600.32".

§ 600.104 [Redesignated as § 600.30]

n. Section 600.104 of Subpart B is redesignated as § 600.30 in Subpart A. In the newly redesignated § 600.30, "grant", "grantee", and "subgrant" are revised to read "award", "awardee", and "subaward" respectively wherever they appear.

§ 600.105 [Amended]

o. Section 600.105(b)(3) is amended by removing "A-102 or".

§ 600.106 [Redesignated as § 600.31]

p. Section 600.106 is redesignated as § 600.31 in Subpart A. In newly redesignated § 600.31 "grant" and "grantee" are revised to read "award" and "awardee" respectively wherever they appear. Also, the reference to "§ 600.108(c)" in paragraph (b)(3) is revised to read "§ 600.32(c)".

q. Section 600.107 is amended by revising paragraph (e) to read as follows:

§ 600.107 Cost sharing.

(e) Valuation of in-kind contributions. Any grantee or subgrantee shall determine the value of services or property donated by non-Federal third parties in accordance with OMB Circular A-110, Attachment E, Paragraph 5.

§ 600.108 [Redesignated as § 600.32]

r. Section 600.108 is redesignated as § 600.32 in Subpart A. In newly redesignated § 600.32, "grant", "grants", "grantee", and "subgrantee" are revised to read "award", "awards", "awardee", and "subawardee", respectively wherever they appear. Also, the reference to "§ 600.108(c)(2)" in paragraph (d) is revised to read "paragraph (c)(2) of this section".

§ 600.109 [Amended]

s. Section 600.109 is amended by changing the reference in paragraph (d) from "§ 600.104" to "§ 600.30".

§ 600.110 [Amended]

t. Section 600.110 is amended by revising "Attachments A of OMB Circulars A-102 and A-110," to read "Attachment A of OMB Circular A-110".

§ 600.111 [Amended]

u. Section 600.111(a)(1) is amended by revising "Attachments B of OMB Circulars A-102 and A-110" to read "Attachment B of OMB Circular A-110".

§ 600.112 [Amended]

v. Section 600.112(f)(1) is amended by revising "§ 600.122" to read "§ 600.29".

§ 600.116 [Amended]

w. Section 600.116(g) is amended by removing "in OMB Circular A-102, Attachment H and".

x. In § 600.117, paragraph (d)(1) introductory text is amended by removing "OMB Circular A-102, Attachment N, Paragraph 6.d. or" and paragraph (d)(3) is revised to read as follows:

§ 600.117 Property management.

(d) ***
(3) Grantees and subgrantees shall comply with OMB Circular A-110, Attachment N, Paragraphs 6. b, c, and d for use, disposition, and management of such equipment.

§ 600.118 [Redesignated as § 600.33]

y. Section 600.118 of Subpart B is redesignated as § 600.33 in Subpart A.

z. In § 600.119, paragraph (b) is revised, paragraph (c)(1)(ii) is removed and reserved, paragraph (c)(2)(ii) is amended by revising "OMB Circulars A-102 or A-110" to read "OMB Circular A-110", paragraph (d) is amended by revising "OMB Circulars A-102 and A-110" to read "OMB Circular A-110", to read as follows:

§ 600.119 Procurement under grants and subgrants.

(b) *Grantee and subgrantee responsibilities.* Grantees and subgrantees shall comply with the grantee and subgrantee responsibility requirements of OMB Circular A-110, Attachment O, Paragraphs 2, 3, and 4.

§ 600.122 [Redesignated as § 600.29]

aa. Section 600.122 of Subpart B is redesignated as § 600.29 in Subpart A. In newly redesignated § 600.29, "grant" and "grantee" are revised to read "award" and "awardee" respectively wherever they appear. Also, citations need to be added in the following places:

(a) In paragraph (a)(1) add "or § 600.28" after "§ 600.121".

(b) In paragraph (b) add "or § 600.28(b)" after § 600.121(c)" and add "or § 600.28(a)" after "§ 600.121(a)".

(c) In paragraph (d) add "or § 600.28" after "§ 600.121".

(d) In paragraph (f) add "or § 600.28" after "§ 600.121".

bb. Section 600.200 is amended by revising paragraph (a) and by revising the reference "§ 600.122" in paragraph (b) to read "§ 600.29".

§ 600.200 Scope and applicability.

(a) This subpart establishes policies and procedures for the award and administration of cooperative agreements.

§ 600.203 [Amended]

cc. Section 600.203 is amended by revising "and 600.205" to read ", 600.102 and 600.410" wherever it appears.

§ 600.204 [Amended]

dd. Section 600.204(b)(4) is amended by revising "§ 600.122(d)" to read "§ 600.29".

ee. Section 600.205 is revised to read as follows:

§ 600.205 Application, funding, and administrative requirements.

Unless otherwise specified in this subpart or Subpart A of this part, the application, funding, and administrative requirements for cooperative agreements are specified in Subpart B of this part for recipients who are other than State, local, or Indian tribal governments and Subpart E of this part for State, local and Indian tribal governments. Furthermore, the audit requirements set forth in Subpart D of this part shall apply to cooperative agreements with State and local governments.

§ 600.206 [Amended]

ff. The introductory paragraph and paragraph (c) in § 600.206 are amended

by adding "or § 600.424" after "§ 600.107" wherever it appears.

Subpart E—[Amended]

gg.-1 In newly added Subpart E, remove the terms "Part", "part", "Subpart" and "subpart" and insert "Subpart", "subpart", "Section", "section" respectively, wherever they appear.

§ 600.401 Scope of §§ 600.400 through 600.405.

gg.-2 The heading for § 600.401 is revised to read as set forth above.

hh. In § 600.402, the definition of "prior approval" amended by adding paragraph (1) to read as follows:

600.402 Definitions.

* * * * *
"Prior approval" * * * * *

(1) For the Department of Energy this must be signed by a Contracting Officer.

ii. § 600.406 of Subpart E is amended by adding paragraph (d) to read as follows:

§ 600.406 Additions and Exceptions.

(d) The DOE procedural requirements for requesting additions and exceptions are specified in § 600.4.

jj. The cost principles chart in § 600.422 of Subpart E is amended by adding a second paragraph to "For-profit organization" in the "Use in principles in-" column and by adding a new entry for "Hospitals" to read as follows:

For the cost of—	Use the principles in—
For-profit organization other than a hospital and an organization named in OMB Circular A-122 as not subject to that circular.	48 CFR 931.2
Hospitals.....	45 CFR Part 74, Appendix E

BILLING CODE 6450-1-M

SMALL BUSINESS ADMINISTRATION**13 CFR Part 143**

FOR FURTHER INFORMATION CONTACT:
Patricia R. Forbes, (202) 653-6573.

ADDITIONAL SUPPLEMENTARY
INFORMATION: The Small Business
Administration is authorized to make

grants to State and local governments only in its 7(j) program, and is authorized to enter into cooperative agreements with State and local governments only in its Small Business Development Center (SBDC) program. At present there are no outstanding 7(j) grants to State governments and only one outstanding grant to a local government, with the city of Tuskegee, Alabama.

The SBA currently has SBDC cooperative agreements with five States, Illinois, Indiana, Ohio, North Dakota and West Virginia. However, SBA may not apply this regulation to those State SBDCs at this time. The Continuing Resolution on Appropriations for Fiscal Year 1988, Pub. L. No. 100-202, which passed on December 22, 1987, prohibits SBA from using appropriated funds to publish or implement regulations with respect to the SBDC program. Consequently, during Federal Fiscal Year (FY) 1988, all States which have entered into cooperative agreements with SBA to administer an SBDC are exempted from this regulation for purposes of the SBDC cooperative agreement. Also during FY 1988, any State or local government with which SBA might enter into an SBDC cooperative agreement is exempt from this regulation for purposes of the SBDC cooperative agreement.

List of Subjects in 13 CFR Part 143

Accounting, Administrative practice and procedure, Grant programs, Business Grants Administration, Insurance, Reporting and recordkeeping requirements, Small businesses.

Title 13 of the Code of Federal Regulations is amended by adding Part 143 as set forth at the end of this document.

Date: March 3, 1988.

James Abdnor,
Administrator.

PART 143—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.

- 143.1 Purpose and scope of this part.
- 143.2 Scope of subpart.
- 143.3 Definitions.
- 143.4 Applicability.
- 143.5 Effect on other issuances.
- 143.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

- 143.10 Forms for applying for grants.
- 143.11 State plans.

- 143.12 Special grant or subgrant conditions for "high risk" grantees.

Subpart C—Post-Award Requirements

Financial Administration

- 143.20 Standards for financial management systems.
- 143.21 Payment.
- 143.22 Allowable costs.
- 143.23 Period of availability of funds.
- 143.24 Matching or cost sharing.
- 143.25 Program income.
- 143.26 Non-Federal audit.

Charges, Property, and Subawards

- 143.30 Changes.
- 143.31 Real property.
- 143.32 Equipment.
- 143.33 Supplies.
- 143.34 Copyrights.
- 143.35 Subawards to debarred and suspended parties.
- 143.36 Procurement.
- 143.37 Subgrants.

Reports, Records Retention, and Enforcement

- 143.40 Monitoring and reporting program performance.
- 143.41 Financial reporting.
- 143.42 Retention and access requirements for records.
- 143.43 Enforcement.
- 143.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

- 143.50 Closeout.
- 143.51 Later disallowances and adjustments.
- 143.52 Collection of amounts due.

Subpart E—Entitlements [Reserved]

Authority: 15 U.S.C. 634(b)(6).

BILLING CODE 8025-01-M

DEPARTMENT OF COMMERCE

15 CFR Part 24

[Docket No. 70502-8030]

FOR FURTHER INFORMATION CONTACT:
Robert M. McNamara, 202-377-5817.

ADDITIONAL SUPPLEMENTARY

INFORMATION: After publication of the proposed rule in Part IV, No. 110, Vol. 52 in the Federal Register, June 9, 1987, 52 FR 21825, 21848-21862, the Department of Commerce further reviewed the effects of the rule upon program activities under existing regulations and administrative practices. The amendments below reflect the Department's determination to clarify the intended impact of Part 24 upon such current activities.

Section 24.31(b) is amended by adding paragraph (b)(1), stating that Federal awarding agencies may require the recording of notices concerning real property acquired or improved with Federal grant assistance. The added paragraph is in support of the existing

Department of Commerce practice, based upon existing regulations, of requiring the recording of notices of conditions applicable to grant acquired or improved property, for the benefit of persons who may not have actual knowledge of Federal use and disposition requirements applicable to the property.

Section 24.34 is revised by retitling and adding a paragraph to confirm that certain property assets which may be acquired with Department of Commerce grant program assistance are intended to be covered under the rule. For instance, the Economic Development Administration awards grants, under Title IX of the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. 3241-3245), to aid in the establishment of revolving loan funds. Loan notes given by borrowers to grantees in exchange for grant funds are held by the grantees as project assets. There may be uncertainty, under the law of some jurisdictions, as to whether such notes are considered tangible or intangible property, and § 24.34 is revised to eliminate any ambiguity as to that result.

The Department of Commerce interprets § 24.6(a) as authorizing the continued application of administrative requirements under pre-existing codified regulations published in the Federal Register (e.g., the requirement, at 15 CFR 2301.28, that national Telecommunications and Information Administration grantees execute and record a priority lien document on facilities purchased with the funds under the Public Telecommunications Facilities Program of the Communications Act of 1934, as amended).

List of Subjects in 15 CFR Part 24

Accounting, Grant programs, Grant administration, Insurance Reporting and recordkeeping requirements.

Sonya G. Stewart,
Director for Finance and Federal Assistance.

1. Title 15 of the Code of Federal Regulations is amended by adding part 24 as set forth at the end of this document.

PART 24—UNIFORM ADMINISTRATIVE REQUIREMENT FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.

- 24.1 Purpose and scope of this part.
- 24.2 Scope of subpart.
- 24.3 Definitions.
- 24.4 Applicability.

Sec.

- 24.5 Effect on other issuances.
24.6 Additions and exceptions.

Subpart B—Pre-award Requirements

- 24.10 Form for applying for grants.
24.11 State plans.
24.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post Award Requirements**Financial Administration**

- 24.20 Standards for financial management systems.
24.21 Payment.
24.22 Allowable costs.
24.23 Period of availability of funds.
24.24 Matching or cost sharing.
24.25 Program income.
24.26 Non-Federal audit.

Changes, Property, and Subawards

- 24.30 Changes.
24.31 Real property.
24.32 Equipment.
24.33 Supplies.
24.34 Other property.
24.35 Subawards to debarred and suspended parties.
24.36 Procurement.
24.37 Subgrants.

Reports, Records Retention, and Enforcement

- 24.40 Monitoring and reporting program performance.
24.41 Financial reporting.
24.42 Retention and access requirements for records.
24.43 Enforcement.
24.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

- 24.50 Closeout.
24.51 Later disallowances and adjustments.
24.52 Collection of amounts due.

Subpart E—Entitlements [Reserved]

Authority: 5 U.S.C. 301.

2. Part 24 is further amended as follows:

(a) Section 24.31(b) is amended by adding paragraph (b)(1) as follows:

§ 24.31 Real property.

* * *

(b) * * *

(1) The Federal awarding agency may require the placing of appropriate notices of record to advise that property has been acquired or improved with Federal financial assistance, and that use and disposition conditions apply to the property.

* * *

(b) Section 24.34 is revised to read as follows:

§ 24.34 Other property.

(a) *Copyrights.* The Federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:

(1) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and

(2) Any rights of copyright to which a grantee, subgrantee, or a contractor purchases ownership with grant support.

(b) *Intangible property.* Title to such property as loans, notes, and other debt instruments (whether considered tangible or intangible) acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively. Such property will be used for the originally authorized purpose as long as needed for that purpose, and the grantee or subgrantee shall not dispose of or encumber its title or other interests. When no longer needed for the originally authorized purpose, disposition of such property will be made as provided in § 24.32(e).

BILLING CODE 3510-FE-M

DEPARTMENT OF STATE**22 CFR Part 135**

[108.869]

FOR FURTHER INFORMATION CONTACT:

James Tyckoski, Office of the Procurement Executive, Room 227, SA-6, U.S. Department of State, Washington, DC 20520. Tel. (703) 875-7044.

ADDITIONAL SUPPLEMENTARY

INFORMATION: The Department of State establishes this final rule as Part 135 of Title 22 of the Code of Federal Regulations.

The Department's notice of proposed rulemaking for this regulation (52 FR 21825, June 9, 1987) included the following statement.

The Department has one program that uses cooperative agreements, but these agreements are outside the meaning of "grants," which includes "cooperative agreements," as defined in the common rule.

The Department's Bureau for Refugee Programs may effect grants or cooperative agreements with state or local governments for the initial reception and placement of refugees under the authority of section 412(b) of the Immigration and Nationality Act, as amended (8 U.S.C. 1522(b)). Reception and placement cooperative agreements under this program are not subject to the proposed regulations because they are lump sum awards. The funds are not awarded to reimburse specific costs for which the recipient is required to account. Rather, subject to certain restrictions, the recipient has wide latitude in spending its money, provided that it provides the required services or ensures that those services are provided.

The Department did not receive any comments relative to this statement.

List of Subjects in 22 CFR Part 135

Administrative practice and procedure, Grant programs, Grants administration, Reporting and recordkeeping requirements.

Title 22 of the Code of Federal Regulations is amended by adding Part 135 as set forth at the end of this document.

John J. Conway,

Procurement Executive.

PART 135—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.

- 135.1 Purpose and scope of this part.
135.2 Scope of subpart.
135.3 Definitions.
135.4 Applicability.
135.5 Effect on other issuances.
135.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

- 135.10 Forms for applying for grants.
135.11 State plans.
135.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements**Financial Administration**

- 135.20 Standards for financial management systems.
135.21 Payment.
135.22 Allowable costs.
135.23 Period of availability of funds.
135.24 Matching or cost sharing.
135.25 Program income.
135.26 Non-Federal audit.

Changes, Property, and Subawards

- 135.30 Changes.
135.31 Real property.
135.32 Equipment.
135.33 Supplies.
135.34 Copyrights.
135.35 Subawards to debarred and suspended parties.
135.36 Procurement.
135.37 Subgrants.

Reports, Records Retention, and Enforcement

- 135.40 Monitoring and reporting program performance.
135.41 Financial reporting.
135.42 Retention and access requirements for records.
135.43 Enforcement.
135.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

- 135.50 Closeout.
135.51 Later disallowances and adjustments.
135.52 Collection of amounts due.

Subpart E—Entitlements (Reserved)

Authority: 22 U.S.C. 2658.

BILLING CODE 4710-24-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**24 CFR Parts 44, 85, 111, 511, 570, 571, 575, 590, 850, 882, 905, 941, 968, 970, and 990****[Docket No. R-88-1338; FR-2178]****FOR FURTHER INFORMATION CONTACT:**

Edward L. Girovasi, Jr., Director, Policy and Evaluation Division, Office of Procurement and Contracts, Department of Housing and Urban Development, Room 5260, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 755-5294. (This is not a toll-free number.)

ADDITIONAL SUPPLEMENTARY

INFORMATION: The Department has determined that the following HUD programs with codified regulations are affected by the adoption of this rule implementing OMB Circular A-102 as a new Part 85:

1. Fair Housing Assistance Program (24 CFR Part 111);
2. Rental Rehabilitation Grant Program (24 CFR Part 511);
3. Programs Authorized under Title I of the Housing and Community Development Act of 1974 and codified at 24 CFR Part 570 (Entitlement Grants, the Secretary's Fund, the HUD-Administered Small Cities Program, Urban Development Action Grants, and Loan Guarantees) but not including the State's Program;
4. Community Development Block Grant Program for Indian Tribes and Alaskan Native Villages (24 CFR Part 571);
5. Emergency Shelter Grant Program (24 CFR Part 575);
6. Housing Development Grant Program (24 CFR Part 850);
7. Indian Housing (24 CFR Part 905);
8. Public Housing Development Program (24 CFR 941);
9. Comprehensive Improvement Assistance Program (24 CFR Part 968); and
10. Annual Contributions for Operating Subsidies for Public Housing Projects (24 CFR Part 990).

These HUD program regulations are being revised by this final rule to cross reference to the requirements for State, local, and federally recognized Indian tribal governments under OMB Circular A-102, as set out in the new Part 85. These revisions serve two purposes: First, they afford grantees a ready reference to the existence and

applicability of A-102 requirements set out in Part 85, and the relevance of those requirements to the particular grant program in which the cross reference appears. Second, where the requirements of A-102 (as set out in Part 85) are wholly or partially inapplicable, the cross reference in the program regulation specifies the effect of the new rulemaking on the existing grant program.

Note: Section 85.43, Enforcement, permits HUD to use any other remedies allowed by law and, therefore would not conflict with HUD's right, for example, to declare a substantial breach or default under an Annual Contributions Contract.

Exemptions and Substantive Revisions*Urban Homesteading Program*

The Urban Homesteading Program (24 CFR Part 590) is not subject to Part 85. The purpose of the Urban Homesteading Program is to use existing housing stock to provide homeownership. HUD transfers federally owned properties without payment to local urban homesteading agencies and the local agencies administer a program to provide the properties to "homesteaders" at nominal cost. The properties passed through local agencies to homesteaders are not provided as "grants" to local government. The local government agency serves merely as the facilitator of a program aimed at benefitting qualified candidates for homeownership. A technical change is being made to Part 590 to remove an existing reference to OMB Circular A-102, even though Standard Form 424 is used in the program.

Section 8 Program

The several Section 8 housing assistance payments programs also remain outside the scope of A-102 and Part 85 and HUD will continue separately regulating financial management associated with the Section 8 program as part of 24 CFR Chapter VIII.

The Section 8 Existing, Moderate Rehabilitation, and Housing Voucher programs are exempted from Part 85. Under these programs, housing assistance payments are made to private owners for the purpose of subsidizing rental charges for lower income families occupying privately owned housing units. Public Housing Agencies administer these funds and assist lower income families in locating suitable housing under these programs, but the public agency essentially acts as a conduit for Federal financial assistance to the private owners.

Similarly, Section 8 assistance under the New Construction and Substantial

Rehabilitation Programs is made available to owners of dwelling units that have been constructed or rehabilitated for lease to lower income families. Among the owners are profit-motivated and non-profit owners, including PHAs, the majority of which are the so-called "agency or instrumentality PHA's established under State not-for-profit laws for the purpose of owning and leasing the projects to their "parent entity PHAs" for subleasing to eligible lower income families. Less than 10 percent of Section 8 New Construction and Substantial Rehabilitation projects are owned outright by housing authorities. The great majority of the projects are privately owned. The duties and responsibilities of PHA Owners receiving housing assistance payments for eligible lower income families under the Section 8 New Construction and Substantial Rehabilitation programs do not differ from those of a private owner participating in this same program. In all cases, the assistance is being provided to lower income families; the owner is merely the conduit for the Federal financial assistance.

Accordingly, these programs are not appropriate for management under the uniform requirements of Part 85, and HUD will continue its existing administrative requirements with reference to 24 CFR Parts 880 through 886 (HUD's program regulations governing the Section 8 program) and Part 887 (HUD's pending final regulations to govern the Housing Voucher program). This rule, nonetheless, makes a technical correction to Part 882 to remove reference to audit requirements under OMB Circular A-102 and to instead refer to the audit requirements of Part 44.

Grant Programs in General

Subpart B—Pre-award Requirements—does not apply to the Community Development Block Grant Entitlement program (24 CFR Part 570, Subpart D) or to the Rental Rehabilitation program (24 CFR Part 511) because § 85.10 (Forms for applying for grants) does not apply to formula grant programs, and § 85.11 (State plans) is inapplicable when the program statute does not require State plans. In this connection, § 85.10 does not apply to the Emergency Shelter Grant program (24 CFR Part 575) because it also is a formula grant program. Additional revisions to Parts 511, 570, and 575 are discussed below.

Rental Rehabilitation Program

Section 85.40(b)(1), regarding the submission of annual performance reports, does not apply to the Rental Rehabilitation Program (24 CFR Part 511). Section 17(m) of the Rental Rehabilitation Program statute (42 U.S.C. 1437c) requires that the annual report be submitted prior to the end of the fiscal year and provides for specific information to be included. The regulations at 24 CFR Part 511 already sufficiently implement Section 17(m).

Since the Rental Rehabilitation Program currently involves no property acquisition, § 85.31 (Real property) is inapplicable by its own terms. However, for clarity, we are specifying the inapplicability of § 85.31 to the Rental Rehabilitation Program.

With respect to program income under § 85.25, we have elected to draft a new § 511.76 *Program income* to provide specific regulatory direction consistent with the basic thrust of the common rule, but in the special context of the Rental Rehabilitation Program.

We note that although § 85.43 is applicable to the Rental Rehabilitation Program, the program regulation at § 511.82, which is statutorily based, would not be superseded but rather would provide "other remedies that may be legally available" as indicated in § 85.43(a)(5).

Community Development Block Grant (CDBG) Entitlement Program

Grant administration requirements for the CDBG Entitlement Program are described in 24 CFR Part 570 at Subpart J, "Grant Administration." The subpart has been substantially revised for clarity and for consistency with Parts 85. The sections in existing Subpart J set forth the requirements of the various attachments to A-102, as well as other grant administration requirements. Subpart J, as revised, generally consolidates the applicable sections of Part 85 into one section (§ 570.502), excises some of the options provided to the Federal agencies in Part 85, and sets forth CDBG statutory requirements.

The requirements of Part 85 have been made applicable, except to the extent differences are required by Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301-5320) ("the HCD Act of '74") or have been authorized by the Office of Management and Budget (OMB). These differences are explained below, as are the reasons why certain provisions in Part 85 are not identified as being applicable to the CDBG program.

—The payment provisions in § 85.21 (Payment requirements) apply to the

program except with respect to payments made for financing property rehabilitation activities. Section 104(g) of the HCD Act of '74 permits lump sum draws from the grantee's letter of credit to finance property rehabilitation activities. Section 570.513 of Subpart J implements this statutory requirement.

—Section 104(i) of the HCD Act of '74 permits grantees to retain any program income realized from the CDBG grant, if such income is used for eligible community development activities in accordance with program requirements. Therefore, the CDBG rules on program income reflect the "Addition" alternative for the use of program income described at § 85.25(g)(2).

—Sections 105(a) (1) and (7) of the HCD Act of '74 make the provisions at § 85.25(f) and § 85.31 on disposition of real property inapplicable to the CDBG program. These sections of the HCD Act of '74 make eligible for CDBG assistance both the acquisition and disposition "through sale, lease donation or otherwise" of real property for community development. Consequently, the sale of real property is itself an authorized use of property acquired with grant funds, rather than a disposition of property no longer needed for the grant purpose. Such properties are commonly sold by the grantee for redevelopment and the sale proceeds are appropriately treated as program income subject to the statutory provisions of the program that income may be retained by the grantee, in which case it must be used in accordance with the same requirements applicable to the use of grant funds. Accordingly, proceeds from the disposition of real property are included in the examples of program income listed in the definition of that term at § 570.500(a), and the treatment of real property acquired with CDBG funds is governed by the requirements at § 570.505.

—Section 104(d) of the HCD Act of '74 requires that each grantee submit a performance and evaluation report and describes the content of the report. This report, which is submitted annually, substitutes for the performance reports described at §§ 85.40 (b), (c), (d), and (f) and 85.41 (a), (b), and (c). The contents and timing of the statutorily required report are discussed at § 570.507.

—Section 105(a)(2)(D) of the HCD Act of '74 requires grantees to provide citizens with reasonable access to records regarding the past use of

CDBG funds received by the grantee. This section provides the basis for the requirement at § 570.508 on public access to program records, and affects the implementation of § 85.42(f), "Restrictions on public access."

—Sections 104(d) and 111 of the HCD Act of '74 set forth sanction mechanisms for handling performance and compliance problems. These sections are implemented by §§ 570.910-570.913 of the CDBG regulations. It is the Department's position that the enforcement mechanisms in those regulatory sections are not superseded by the enforcement provisions in § 85.43 (Enforcement).

The applicability to the CDBG program of the various sections of Part 85 is described in § 570.502. The provisions not shown as being applicable fall into one or another of several categories:

—Four sections are inapplicable because they do not contain requirements applicable to grantees or subgrantees. These are §§ 85.1 (Purpose and scope of this part), 85.2 (Scope of subpart), 85.4 (Applicability), and 85.5 (Effect on other issuances).

—Five sections are inapplicable because, by their own terms, they do not apply to the CDBG entitlement program. Section 85.10 (Forms for applying for grants) does not apply "to formula grant programs which do not require applicants to apply for funds on a project basis." Section 85.11 (State plans) applies to programs that "require States to submit plans before receiving grants." Section 85.23 (Period of availability of funds) applies "where a funding period is specified." Section 85.24 (Matching or cost sharing) applies only where a program has matching or cost-sharing requirements. Section 85.30 (Changes under discretionary (project) awards) does not apply to formula award programs. None of the conditions which would trigger these requirements is present in the CDBG entitlement program.

—Certain provisions in Part 85 are inapplicable because they apply only to State grantees. States are not eligible applicants for CDBG Entitlement Program grants. These provisions are at §§ 85.20(a), 85.32(b), and 85.36(a).

—Certain other provisions in Part 85 are inapplicable because, as explained above, they are inconsistent with statutory requirements. These provisions are § 85.31 (Real Property)

and the performance report provisions in §§ 85.40 (b), (c), (d), and (f) and in 85.41 (a), (b), and (e).

- Two sections of Part 85 are inapplicable because their provisions are covered in sections of the CDBG rule specifically tailored to the nature of the CDBG entitlement program. Rather than cross-referencing § 85.25 (Program income) and § 85.50 (Closeouts), program income provisions are covered in §§ 570.500(a) and 570.504 and closeout provisions are covered in § 570.509. Covering program income in Subpart J allows the Department to indicate which options permitted under § 85.25 it has chosen for the CDBG program. For example, the Department has chosen to permit costs incident to the generation of income to be deducted from gross income to determine program income. (This choice is permitted under § 85.25(c).) Covering program income in Subpart J also provides a forum for stating that proceeds from the disposition of real property and equipment are treated as program income in the CDBG program (for the reasons explained elsewhere in this preamble) and for providing additional examples of the types of income received under the CDBG program that fall within the definition of program income. Similarly, covering the subject of closeouts in Subpart J allows the Department to adjust the closeout provisions in Part 85 to fit the nature of the CDBG entitlement program. For example, § 85.50(a) states, "The Federal agency will close out the award when it determines that all applicable administrative actions and all required work of the grant has been completed." However, this description of when closeout shall occur does not fit the entitlement program because there is no process by which "required work" is specified. Also, the closeout provisions in Part 85 do not cover two items of major importance to the CDBG program—the future use of real property acquired with grant funds and the future use of program income.
- One provision of Part 85, § 85.32(e) on disposition of equipment, is not shown as applicable based on an exception authorized by the Office of Management and Budget. This provision requires the proceeds from the sale of equipment with a fair market value in excess of \$5,000 to be returned to the awarding agency. Sales proceeds remitted to HUD by a CDBG recipient whose program is still active would be treated as a return of grant funds and made available for disbursement (e.g., under the

recipient's letter of credit). Since the amount of proceeds from the sale of equipment purchased with CDBG funds is relatively small in most cases, requiring such proceeds to be returned would be burdensome both to HUD and to the recipient. Further, the typical CDBG entitlement recipient retains its entitlement status so long as funding for the CDBG program is continued and, thus, its program remains active. Consequently, proceeds from the sale of equipment are handled as program income.

The Office of Management and Budget has also authorized the addition of two grant administration requirements for the CDBG program which are not contained in Part 85:

- Section 570.503, "Agreements with subrecipients", has been added because of the need for improved control by grantees over the thousands of subrecipients receiving CDBG funds, as evidenced by reports issued by the Department's Office of the Inspector General. This area has been identified as one of high vulnerability to fraud, waste and mismanagement.
- Section 570.509(c), "Closeout agreement", has been added to facilitate the closeout process and to cover grantee responsibilities after closeout for items such as the future use of real property and program income and continued enforcement of flood insurance coverage.

Urban Development Action Grants

Urban Development Action Grants (UDAGs) are authorized under section 119 of the Housing and Community Development Act of 1974 (42 U.S.C. 5318). Regulations governing the UDAG program are provided in 24 CFR Part 570, Subpart G, and Subparts A, C, J, K, and O except to the extent that they are modified or augmented by Subpart G. As noted above, Subpart J, "Grant Administration", is being amended to implement the requirements of Part 85. The UDAG program follows the provisions of Part 85 as set forth in Subpart J.

The reasons for nonapplicability of some provisions of Part 85 to the Community Development Block Grant program (which is the primary program to which Subpart J is geared) hold true for the nonapplicability to the UDAG program, with a few exceptions:

- Section 85.10 (Forms for applying for grants) has not been made applicable to the UDAG program. Instead, OMB has approved the requirements for application forms and instructions set forth in § 570.458. Section 85.10

specifically permits the Federal agency to prescribe application forms and instructions approved by OMB.

- Section 85.25 (Program income) has not been made applicable because the definition and use of program income is specified by the UDAG grant agreement and program regulations. The definition used for the UDAG program is tailored to the program and is consistent with the definition in § 85.25.
- Section 85.30 (Changes under discretionary (project) awards) has not been made applicable. OMB has approved the requirements for amendments set forth in the UDAG regulations at § 570.463. This regulation is tailored to the UDAG program (consistent with § 85.30) and is needed to assure that the changes to the UDAG project are not such that the project would not have been funded if the changes had been part of the original project.

The provisions of § 85.43 are applicable to the UDAG program. However, that section's applicability does not affect the program regulations at §§ 570.910–570.913, which implement statutory remedies for performance and compliance problems.

CDBG Indian Program

Section 571.502(e) is being revised to cross reference the procurement requirements of § 85.36. This provision is also being amended to provide alternative requirements in the event that compliance with the bonding requirements set forth in § 85.36(h) is infeasible or incompatible with the Indian preference requirements set forth in § 571.503. The Department has found alternative arrangements to be necessary because Indian contractors whose businesses are located on tribal land may be unable to secure performance and other bonds. These Indian contractors may be unable to satisfy the security arrangements to sureties because of the trust status of Indian land. This situation may make adequate competition impracticable and makes it difficult for grantees to comply with statutory Indian preference requirements.

Emergency Shelter Grant Program

Program requirements for the Emergency Shelter Grants (ESG) Program are described in 24 CFR Part 575 at Subpart E and grant administration requirements at Subpart F. Both Subparts have been revised to be consistent with the common regulations, as codified at 24 CFR Part 85, except to the extent differences are

authorized by statute or by the Office Management and Budget. These provisions are explained below:

- Section 85.10 (Forms for applying for grants) does not apply because the ESG program is a formula grant program.
- The payment provisions described in § 85.21 provide for working capital if: (1) The grantee or subgrantee cannot establish procedures required under the advance payment method that will minimize the time elapsing between the transfer of funds from the U.S. Treasury and disbursement by the grantee or subgrantee and (2) the awarding agency determines that reimbursement is not feasible because the grantee or subgrantee lacks sufficient working capital. The ESG program requirements in § 575.63 allow for "a working capital advance for 30 days' cash needs or an advance of \$5,000, whichever is greater", without any such conditions. This provision was included because of the presumption that most of the shelter grant funds would be flowing through grantees to small non-profit recipients which would not be able to meet either of the above-cited conditions in § 85.21, thereby avoiding the unnecessary step of determining this to be the case in every situation. This presumption has been borne out during the first year of the program's operation.
- The matching or cost sharing provisions in § 85.24(a)(1) refer to satisfying the matching requirement through "allowance costs". The ESG statute (Pub. L. 99-500, section 101(g)), however, contains broader language:

Responsibilities of Grantees

- (a) Matching Amounts.—
- (1) Each grantee under this part shall be required to supplement the assistance provided under this part with an equal amount of funds from sources other than this part. Each grantee shall certify to the Secretary its compliance with this paragraph, and shall include with such certification a description of the sources and amounts of such supplemental funds.
- (2) In calculating the amount of supplemental funds provided by a grantee under this part, a grantee may include the value of any donated material or building, the value of any lease on a building, any salary paid to staff to carry out the program of the grantee, and the value of the time and service contributed by volunteers to carry out the program of the grantee at a rate determined by the Secretary.

Program regulations (§ 575.51) therefore allow any funds spent as part of the grantee's homeless program, whether or not such expenditures are allowable costs under ESG, to be

counted as satisfying the matching requirements.

- The valuation of volunteer services described in § 85.24(c)(1) is set "at rates consistent with those ordinarily paid for similar work in the grantee's organization." However, the legislative history of ESG established the rate at \$5 per hour and it is this rate which is reflected in the program regulations (§ 575.51(b)).
- Requirements for the contents and the timing of the submission of performance reports described in § 85.40(b)-(d) and (f) have not been made applicable. The ESG program regulations (§ 575.65(b)(2)) specify report contents and require the submission of annual reports for the period through December 31 "no later than 30 days after December 31." Given the emergency nature of the program, the streamlined program requirements, the modest size of the grants, the intense Congressional and public interest in the way program funds are being used, and the vital role such reports will play in HUD's monitoring of grantee performance, the simplicity and brevity of the reporting format and a 30- rather than 90-day deadline seem to be not only justified but also necessary to the effective and expeditious operation of the program.

The remedies in § 85.43 have been made applicable to the ESG program. However, the remedies set forth in § 575.69 are not superseded, but are "other remedies that may be legally available" in accordance with § 85.43(a)(5).

Housing Development Grant Program

Housing Development Grants (HDG) are authorized under section 17 of the U.S. Housing Act of 1937, 42 U.S.C. 1437o ("1937 Act"). Regulations regarding the HDG program are provided at 24 CFR Part 850. Certain provisions of Part 85 are inconsistent with Federal statutory and regulatory requirements governing the HDG program. The following sections are not applicable to the HDG program for the reasons stated:

- Section 85.23 (Period of availability of funds) is not applicable because a funding period is not specified for the HDG program.
- Section 85.24 (Matching) does not apply because no matching is required for the HDG program.
- Section 85.25 (Program income) has not been made applicable to the program. Instead, HUD has exercised the options afforded to the Federal agency in § 85.25 and has tailored

program income requirements to the HDG program. These requirements (including the definition and use) are specified in the HDG regulations and grant agreement. These program requirements are based in part on section 17(d)(7) of the 1937 Act and in part on the requirement of § 85.25 to the extent not inconsistent with statutory requirements.

- Section 85.30 has not been made applicable because the requirements for amendments are set forth in the HDG regulations at § 850.31(e). HDG regulations do not permit any increase in the grant amount and require HUD prior approval of any changes in costs in excess of ten percent of those originally approved. This is in keeping with section 17(d)(5)(E) of the 1937 Act which requires that project selections be made which will bring the least cost to the Federal Government.
 - Section 85.31(c) (Real Property) covering real property disposition is not applicable. HUD retains no interest after the project term (as defined in the grant agreement) in property acquired with HDG funds, and HUD would receive no payment upon disposition. The disposition during the project term of HDG acquired property is governed by the grant agreement, consistent with the 1937 Act.
 - Sections 85.40 (b)-(d) and (f) (Monitoring and reporting program performance) covering reports, do not apply. These provisions of § 85.40 are inconsistent with HDG reporting requirements that are specified in section 17(m) of the 1937 Act and program regulation at § 850.75.
 - Section 85.50 (Closeout) has not been made applicable to the HDG program. Instead, the HDG regulation at § 850.79, which is consistent with § 85.50 and which is written to fit more closely the HDG program, sets forth the closeout requirements and procedures.
- We note that although § 85.43 (Enforcement) has been made applicable to the HDG program, the sanctions in that section are in addition to the enforcement provisions in section 17(d)(7) of the 1937 Act and in implementing regulations in §§ 850.63, 850.103, 850.105, 850.107, 850.151, and 850.155.
- In addition, the Department wishes to clarify the coverage of § 85.36 (Procurement) as it relates to the HDG program. The grantee's selection of the project owner is not subject to the requirements of § 85.36 because it is not a procurement of property or services.

The project owner is not required to follow the requirements of § 85.36 because § 85.4 indicates that Part 85 applies only to State, local, and Indian tribal governments.

Public Housing

HUD previously took the position that annual contributions for public housing development and modernization were not subject to Circular A-102 requirements because the Federal assistance to public housing agencies (PHAs) was in the form of loans and loan guarantee commitments made by HUD. The Department's current method of funding public housing development and modernization by means of capital grants (as opposed to loans, as in the past) has the effect of subjecting public housing development and modernization funding to A-102 requirements. Public housing operating subsidies are administered as grants and therefore are also appropriate for A-102 grant management treatment.

In order to avoid the problem of maintaining a separate set of procedures for those few PHAs which are state agencies, the definition of "state" in § 85.3 has been revised to except PHAs from the definition, and the definition of "local government" has been revised to include specifically any PHA—State or local—under the U.S. Housing Act of 1937. These changes are necessary so that there is a consistency of treatment for all PHAs.

The standards for financial management systems contained in § 85.20, and for monitoring and reporting in § 85.41 are currently encompassed within the requirements of the Annual Contributions Contracts (ACCs) executed between HUD and each local public agency and further defined in the *Low-Rent Accounting Handbook*, HM 7510.1, and *Audits of Public Housing Agencies (PHAs) and Indian Housing Authorities (IHAs) by Independent Public Accountants (IPAs)*, 7476.1, CHG-5. These requirements are applicable to the development, operation, and modernization phases of the public housing program. Section 85.6 precludes Federal agencies from imposing additional administrative requirements except in codified regulations published in the **Federal Register**. While the principles and standards prescribed in Handbook 7510.1, which is not codified, are basically compatible with the requirements in §§ 85.20, 85.40 and 85.41, certain requirements for detailed information necessary for proper program management exceed the limited information which would be provided by completing the forms included in

Circular A-102. Departmental financial management and record requirements, however, do not exceed the statutory standard established by HUD as directed by Congress in Section 814 of the Housing Act of 1954, which required local agencies to adhere to accounting and record keeping requirements prescribed by HUD. Also, because of the financial magnitude of the development, operation, and modernization phases of the public housing program, it is necessary that the Department retain a number of provisions in addition to Part 85 and that the three phases be able to utilize and rely upon the same accounting data. HUD's financial management monitoring and reporting regulations for PHA-owned rental units are added by this rule as a new paragraph (c) to 24 CFR 990.103, and as a new Subpart B for those public housing programs other than PHA-owned.

While HUD's financial reporting requirements are compatible with those in § 85.41, the Financial Management Handbook, 7475.1, was recently revised to increase the submission time for year-end financial statements from 30 to 45 days. Section 85.41(b)(4) states that annual reports will be due 90 days after year end. However, because of § 85.41(a)(3), which directs grantees to follow all applicable Federal agency instructions approved by OMB under the Paperwork Reduction Act of 1980, we have determined that HUD is not bound by § 85.41(b)(4), and the revised handbook should be followed regarding the year-end submission time.

There is one determination regarding public housing management that we wish to emphasize. Section 85.25 (Program income) provides that program income does not include interest on grant funds and, thus, might be interpreted to mean that the Department can no longer offset interest income against subsidy amounts. However, under the public housing program management phase (including modernization), interest income is treated the same as other program income in the determination of operating subsidy eligibility. Because the calculation of operating subsidy is part of the operating budget that is set from the beginning, the public housing program management phase will not be affected by the stated provisions in § 85.25 of this rule, and 24 CFR 990.109(e)(3) is being revised by this rule to reflect this variation from A-102 requirements.

In further connection with the treatment of A-102 as it impacts on public housing development and

modernization, the Department has made another determination. In HUD's public housing development and modernization regulations (24 CFR Parts 941 and 968, respectively and including Part 905), alternative means are provided for the provision of bonding or other security for the performance of construction or equipment contractors beyond the single bonding procedure set out in § 85.36(h)(2). Section 85.36(h) (Procurement—Bonding requirements) requires a 100% performance or payment bond for contracts exceeding \$100,000. In contrast, HUD's rules (e.g., 24 CFR 968.12(c)) provide for a variety of alternatives. While 100% bonds are among these, in 24 CFR 968.12(c) HUD allows for separate performance and payment bonds, each for 50 percent or more of the contract price, or for a 20 percent cash escrow, or for a 25 percent letter of credit. These HUD rules are intended to promote greater opportunity for participation in construction and equipment contracting by small or minority or women-owned firms, and the Department's experience with these requirements has been a successful one. Accordingly, 24 CFR 968.12(c) is being revised by this rule to continue HUD's existing rules on bonding, notwithstanding the general applicability of 24 CFR Part 85 to these programs. Also, 24 CFR 905.203 (b)(c) and (d)(2) require a 100 percent performance and payment bond or other security as may be acceptable, and 24 CFR 941.102(a) requires a 100 percent performance and payment bond or other assurances approved by the field office. These sections also are being revised to continue HUD's existing rules on bonding, notwithstanding Part 85.

Currently, the Comprehensive Improvement Assistance Program (CIAP) allows PHAs to execute architect/engineer contracts, invite bids, and issue change orders (contract modifications) without prior Field Office approval where the PHA certifies in writing that all HUD requirements have been met. However, based on an assessment of PHA past performance in modernization and PHA technical capability, Field Offices may establish dollar thresholds for PHAs in these three areas, over which the PHA is required to submit documents for prior HUD review and approval. (Recognized performers, as defined under the Decontrol Handbook, are allowed to certify in all cases.) To retain this incentive for PHAs to improve their performance and to ensure that the "scope or objective of the project" is not revised without prior HUD approval (see

§ 85.30(d)), changes are being made to §§ 968.12 (d), (e), and (g).

In this connection, changes are also being made to §§ 905.211(b) and 968.12(f), and a new paragraph (g) is added to § 941.208, to preserve the authority under these programs for prior HUD approval of the grantee's decision to award a contract. Under the public housing program, the Federal involvement is a long-term financial commitment—not a single purpose activity. HUD provides funds to pay the capital costs of developing new projects and later provides additional funds for the modernization and operation of these same projects. The quality of design and construction has a direct impact on funding for modernization and operations.

Another specific area of Part 85 that requires further discussion is the treatment of "high-risk" recipients under § 85.12 (Special grant or subgrant conditions for "high-risk" grantees). Section 85.12 sets forth special grant or subgrant conditions for "high-risk" recipients. The Department wishes to stress that this section is not being interpreted by HUD as allowing the setting of special conditions *only* for high-risk recipients. Other recipients who are not high-risk may have special conditions or restrictions imposed on them by HUD in appropriate cases. In response to public concern that agency discretion to set special conditions on grants or subgrants be limited to restrictions intended by Congress, § 85.12 is governed by paragraph 6g of the revised OMB Circular A-102, which requires agencies to keep records of all situations in which the high-risk provision of § 85.12 is used.

Part 85 makes cross-references to OMB Circular A-87 at § 85.22(b) to identify applicable cost principles. However, below are listed two of the provisions of OMB Circular A-87 which we believe require specific discussion.

1. Attachment B, Part B—Allowable Costs

—Provision (11) permits PHAs to depreciate the cost of buildings and equipment. However, the Department's accounting system does not provide for depreciation of capital assets. For the most part, PHA's capital assets are funded separately from operations through development and CIAP grants. It would be inaccurate to distort the results of the operations phase of the public housing program by including depreciation expenses for assets for which there is separate funding mechanism.

2. Attachment B, Part D—Unallowable Costs

We construe this provision as not affecting the write-off of uncollected rental charges. The very purpose of the public housing programs is to provide assistance to those who cannot pay their rent. For this reason, after PHAs/IHAs have made reasonable efforts to collect unpaid rental charges from former tenants, a resolution of the Board of Commissioners is passed to write off the receivables. In order to accomplish the write-off, a charge is made against the grant, in that an expense is reflected in the PHA/IHA accounting records. In the Public Housing Program and the Indian Housing Program, rents charged to tenants are accounted as income and to the extent they are not collected, as "receivables," and are a positive amount in the PHA/IHA operating reserve. Such receivables must be "written-off" in accordance with the existing financial management system in order to avoid creating a false picture of the PHA/IHA financial situation.

Additional Technical Corrections and Accommodations

Technical corrections and accommodations are being made throughout Parts 44, 111, 570, 571, 850, 905, and 968 to cross-reference to the new Part 85 and to make necessary technical changes in compliance with the new Part 85. Technical corrections are also being made in Parts 882, 905, and 968 to cross-reference to Part 44, which treats requirements under the Single Audit Act. An exception clause is added to Part 970, Demolition and Disposition of Public Housing Projects, because that part is statutorily based and, therefore, overrides inconsistent part 85 requirements (e.g., § 85.31(c)).

Responses to HUD-Specific Public Comments

Public comments focused on HUD concerns were received from four commenters: a local housing development agency, a minority contractors' association, a community and economic development agency, and the National Association of Housing and Redevelopment Officials. Most of the comments pertained to technical understanding of the application of the rule and have been addressed in the preamble to the common rule and elsewhere in this HUD-specific preamble.

A concern was raised that grantees and subgrantees may have to comply with the new requirement, *as well as* with old policies. In compliance with the common rule, all grant administration

provisions in HUD program regulations which are inconsistent with this final rule are rescinded, except to the extent they are required by statute or have been approved as deviations by OMB as discussed in this preamble. All grant administration provisions of uncodified program manuals, handbooks, and other materials which are inconsistent with this final rule are superseded.

The Department received two comments concerning the prohibition in the procurement provision (§ 85.36(c)(2)) against the use of statutorily imposed in-state on local geographic preferences in the evaluation of bids or proposals. The regulation provides an exception in those cases where applicable Federal statutes expressly mandate or encourage geographic preferences.

One commenter opposed the prohibition on the basis that it would have an adverse impact on the planning process for State and local governments in regard to grantee selection. The Department believes that this prohibition will have no effect on grantee selection, because grantees are not required to be selected in accordance with § 85.36.

The other commenter strongly objected to the geographic preference prohibition, characterizing it as a sweeping change which should be studied first and which could prove damaging to a city's economic development efforts. The commenter was particularly concerned about the effects on participation of local firms, contractors, and employees in projects funded under the Urban Development Action Grant (UDAG) and Community Development Block Grant (CDBG) programs. The commenter pointed out that the so-called "Section 3 Clause" (i.e., section 3 of the Housing and Urban Development Act of 1968) would provide a basis for geographic preference, but that the geographic area would be the metropolitan area, not the city.

The Department believes that the prohibition in § 85.36(c)(2) does not constitute a change from the procurement requirements that are in OMB Circular A-102, Attachment O. Although Attachment O does not specifically prohibit geographic preferences, such preferences are inconsistent with the requirement, stated in Attachment O, of maximum open and free competition.

Even though the prohibition applies to procurement by grantees and subgrantees, the prohibition will not have the consequences envisioned by the commenter. The prohibition will not affect community development activities (i.e., providing assistance to for-profits

to carry out economic development projects) under the UDAG and CDBG programs. This is because the procurement requirements do not apply to the selection of the UDAG developer, and the developer does not have to follow the requirements of Part 85, because it is not a subgrantee. In addition, a private for-profit entity receiving CDBG assistance (permitted in 24 CFR 570.203) is not required to be selected in accordance with § 85.36, and such an entity does not have to follow the requirements of Part 85 because it is not a subgrantee.

The Department agrees with the commenter that section 3 of the Housing and Urban Development Act of 1968 is a Federal statute expressly encouraging geographic preference and that the geographic preference is for the metropolitan area. Section 3, implemented for the CDBG and UDAG programs in 24 CFR 570.607, requires that to the greatest extent feasible opportunities for contracts for work in connection with CDBG or UDAG projects be awarded to eligible business concerns which are located in, or owned in substantial part by persons residing in, the same metropolitan area as the project.

Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1959. The Finding of No Significant Impact is available for public inspection during regular business hours at the Office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

This rule is listed as item number 1052 in the Department's Semiannual Agenda of Regulations published on October 26, 1987 (52 FR 40358) under Executive Order 12291 and the Regulatory Agenda.

The Catalog of Federal Domestic Assistance program numbers affected by this rule are 14.174, 14.218, 14.219, 14.221, 14.223, 14.225, 14.227, 14.230, 14.231, 14.401, 14.850, and 14.852.

List of Subjects

24 CFR Part 44

Audit requirements: Non-federal governmental entities, Reporting and recordkeeping requirements.

24 CFR Part 85

Grant administration, State and local governments, Cooperative agreements.

24 CFR Part 111

Fair housing, Cooperative agreements, Grant programs: housing and community development.

24 CFR Part 511

Rental Rehabilitation grants, Administrative practice and procedure, Grant programs: housing and community development, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 570

Community development block grants, Grant programs: housing and community development, Loan programs: Housing and community development, Low and moderate income housing, New communities, Pockets of poverty, Small cities.

24 CFR Part 571

Community development block grants, Grant programs: housing and community development, Grant programs: Indians, Indians.

24 CFR Part 575

Grant programs: Housing and community development, Emergency shelter grants, Reporting and recordkeeping requirements.

24 CFR Part 590

Government property, Homesteading, Housing, Intergovernmental relations, Loan programs: housing and community development.

24 CFR Part 850

Grant programs: Housing and community development, Relocation assistance, Rental housing, Low and moderate income housing, Cooperatives.

24 CFR Part 882

Grant programs: Housing and community development, Housing, Mobile homes, Rent subsidies, Low and moderate income housing.

24 CFR Part 905

Grant programs: Housing and community development, Grant programs: Indians, Indians, Loan programs: Indians, Low and moderate income housing, Public housing, Homeownership.

24 CFR Part 941

Loan programs: Housing and community development, Public housing, Prototype costs, Cooperative agreements, Turnkey.

24 CFR Part 968

Loan programs: Housing and community development, Public

housing, Reporting and recordkeeping requirements, Grant programs: Housing and community development, Indians.

24 CFR Part 970

Public housing.

24 CFR Part 990

Grant programs: Housing and community development, Low and moderate income housing, Public housing.

Accordingly, the Department of Housing and Urban Development (HUD) amends Title 24, Code of Federal Regulations, by adding a new Part 85—Administrative Requirements for State, Local, and Federally Recognized Indian Tribal Governments under OMB Circular A-102, as set forth at the end of this document and by amending Parts 44, 85, 111, 511, 570, 571, 575, 590, 850, 882, 905, 941, 968, 970, and 990 as follows:

PART 44—NON-FEDERAL GOVERNMENT AUDIT REQUIREMENTS

1. The authority citation for Part 44 continues to read as follows:

Authority: Single Audit Act of 1984 (31 U.S.C. 7501-7507); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 44.1, paragraph (d) is revised to read as follows:

§ 44.1 Purpose.

(d) The Act does not exempt State or local governments from maintaining records of Federal financial assistance or from providing access to such records to Federal agencies, as provided in Federal law or in 24 CFR Part 85.

3. Section 44.15 is revised to read as follows:

§ 44.15 Auditor selection.

In arranging for audit services, State and local governments shall follow the procurement standards prescribed in 24 CFR 85.36. The standards provide that, while recipients are encouraged to enter into intergovernmental agreements for audit and other services, analysis should be made to determine whether it would be more economical to purchase the services from private firms. In instances where use of such intergovernmental agreements are required by a State statute (e.g., audit services) the State statute will take precedence.

PART 111—FAIR HOUSING ASSISTANCE PROGRAM

4. The authority citation for Part 111 continues to read as follows:

Authority: Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601-19); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

5. In § 111.108, a new paragraph (e) is added, to read as follows:

§ 111.108 Program administration.

(e) Agencies receiving support (financial assistance in the form of grants or cooperative agreements) under this program shall comply with requirements and standards contained in 24 CFR Part 85.

PART 511—RENTAL REHABILITATION GRANT PROGRAM

6. The authority citation for Part 511 continues to read as follows:

Authority: Sec. 17 of the United States Housing Act of 1937 (42 U.S.C. 1437c); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

7. In § 511.11, paragraph (c) is revised to read as follows:

§ 511.11 Other Federal requirements.

(c) *Applicability of 24 CFR Part 85.* The Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments set forth in 24 CFR Part 85 are applicable to grants under this part, except for §§ 85.10, 85.11, 85.25, 85.31, and 85.40(b)(i). In lieu of § 85.25, HUD has adopted § 511.76 of this part.

8. A new § 511.76 is added, to read as follows:

§ 511.76 Program income.

(a) *General.* Grantees are neither encouraged to earn nor discouraged from earning program income in using rental rehabilitation grant amounts under this part.

(b) *Definition of program income.* "Program income" means gross income received by the grantee or State recipient (or by another party at the direction of the grantee or State recipient) which is directly generated from the use of rental rehabilitation grant amounts. Primarily, it includes repayments of the principal amount of a rental rehabilitation grant or loan, whether in installments or a lump-sum, and any interest or penalties in connection with the grant or loan, under the terms of the commitment or project assistance agreement between the

owner and the grantee or State recipient. Program income also includes interest earned on program income. Grantees or State recipients are not authorized to deduct costs incident to the generation or management of income from gross income for purposes of determining program income. Governmental fees and taxes, including income taxes, property taxes, special assessments, transfer taxes, recording fees and other normal governmental revenues, do not constitute program income if they are imposed by generally applicable law, regulation, or ordinance and are not imposed in consideration of the project's receipt of assistance under this part. Program income also does not include grant amounts returned to HUD as a result of cancellation of a project before completion, or interest on those grant amounts, or any interest earned by the grantee or State recipient on grant funds after drawdown and before disbursement for a project. (For disposition of such interest, see 24 CFR 85.21(i)).

(c) *Eligible uses.* (1) Program income may be used for any activity which is eligible under this part, including § 511.11. In particular, the total of rental rehabilitation grant amounts and rental rehabilitation program income used for any project (except under § 511.76(c)(2)) may not exceed the amount per unit allowed under § 511.10(e)(2) or 50 percent of the total project costs (except as noted in § 511.10(e)(1)).

(2) Program income may also be used to provide rental assistance to lower income tenants in properties rehabilitated through the Rental Rehabilitation Program. This includes the use of program income to pay for administrative costs associated with the provision of rental assistance but not to exceed the amount allowed for administrative fees in the Housing Voucher Program authorized under Section 8(o) of the United States Housing Act of 1937, 42 U.S.C. 1437f. In order to use program income for rental assistance, the grantee must—

(i) Use the funds to assist lower income tenants who initially occupy properties rehabilitated with rental rehabilitation grant amounts or rental rehabilitation program income;

(ii) Have a written policy which is available to the public stating that program income will be so used and specifying who is eligible to receive such assistance; and

(iii) Have an agreement with the public housing authority stating that the PHA will utilize the program income to provide rental assistance in accordance with the written policy.

(d) *Timing the use of program income.* Grantees and State recipients shall not commit available rental rehabilitation grant amounts to specific local projects if sufficient program income is on hand and available to fund the project, or a substantial portion of the project. However, in order to avoid possible overcommitment of funds, grantees shall not anticipate the receipt of program income and enter into binding commitments with owners cumulatively exceeding the total amount of program income on hand plus uncommitted rental rehabilitation grant amounts.

(e) *Accounting for and reporting program income.* Program income shall be accounted for and reported in the grantee's Annual Performance Report under § 511.81(b) and in the Cash Management Information System under § 511.74, in the manner prescribed by HUD.

(f) *Authority of State grantees.* States administering rental rehabilitation grants have discretion to choose whether program income is to be earned at all or is to be paid to or retained by the State or paid to or retained by the State recipient. The State's determination should be contained in a written agreement between the State and its State recipients. However, once earned, program income must be used and accounted for in accordance with this section by the State or by the State recipient, as applicable.

(g) *Authority of urban counties.* Because the configuration of an urban county may change from time to time, particularly at the time of requalification of an urban county in the Community Development Block Grant program, special provisions must be made for urban county program income. The urban county may determine whether program income generated by a project located in a unit of general local government which, for whatever reason, no longer participates in the urban county shall be retained by the urban county for its rental rehabilitation program or by the unit of general local government. However, the program income must otherwise be used and accounted for by the urban county and the unit of general local government in accordance with this section.

(h) *Closeout and disposition of program income.* Program income must be accounted for by the grantee when a rental rehabilitation program is closed out. "Closeout" will occur when the following conditions have been met: all grant funds from all program years (excluding program income) have been expended; the grantee does not expect (or has elected not) to receive any

additional rental rehabilitation grant amounts and the annual performance report covering the last program year has been submitted to HUD. Program income shall be treated in the following manner before and after a closeout:

(1) Program income received before closeout or on hand at the time of closeout shall be used for activities eligible under this section; and

(2) Program income received after closeout is not subject to the provisions of this section.

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

9. The authority citation for Part 570 continues to read as follows:

Authority: Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301-5320); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

10. In § 570.4, paragraph (e) is revised to read as follows:

§ 570.4 Allocation of funds.

(e) Amounts remaining after closeout of a grant which are required to be returned to HUD under the provisions of § 570.509, Grant closeouts, shall be considered as funds available for reallocation.

11. In § 570.200, paragraphs (d)(2) and (f)(1)(ii) are revised to read as follows:

§ 570.200 General policies.

(d) * * *

(2) *Independent contractor relationship.* Consultant services provided under an independent contractor relationship are governed by the procurement requirements in 24 CFR 85.36 and are not subject to the GS-18 limitation.

(f) * * *

(1) * * *

(ii) Procurement contracts governed by the requirements of 24 CFR 85.36; or

12. In § 570.201, paragraph (b) is revised to read as follows:

§ 570.201 Basic eligible activities.

(b) *Disposition.* Disposition, through sale, lease, donation, or otherwise, of any real property acquired with CDBG funds or the property's retention for public purposes, including reasonable costs of temporarily managing such property or property acquired under urban renewal, provided that the proceeds from any such disposition shall

be program income subject to the requirements set forth in § 570.504.

13. In § 570.402, paragraph (f)(4)(ii) is revised to read as follows:

§ 570.402 Technical assistance grants and contacts.

(f) * * *

(4) * * *

(ii) Standard Form 424;

14. In § 570.403, paragraph (i)(1) is revised to read as follows:

§ 570.403 New communities.

(i) *Exceptions to regulations.* (1) The provisions of Subpart J, Grant Administration, shall be applicable to recipients, except that a community association or private developer recipient eligible under § 570.403(b)(2) is not required to comply with competitive bidding requirements of 24 CFR 85.36(d) (2), (3), or (4).

15. In § 570.458, paragraphs (c)(1), (c)(14)(ix)(L), and (c)(14)(ix)(M) are revised to read as follows:

§ 570.458 Full applications.

(c) * * *

(1) Standard Form 424 and the urban development action grant application.

(14) * * *

(ix) * * *

(L) OMB Circular A-87 and the provisions of 24 CFR Part 85, as made applicable in § 570.502(a);

(M) All requirements imposed by HUD concerning special requirements of law, program requirements and other administrative requirements;

16. Section 570.464 is revised to read as follows:

§ 570.464 Project closeout

HUD will advise the recipient to initiate closeout procedures when HUD determines, in consultation with the recipient, that there are not impediments to closeout. Closeout shall be carried out in accordance with § 570.509 and applicable HUD guidelines.

17. Subpart J of Part 570 is revised to read as follows:

Subpart J—Grant Administration

Sec.

570.500 Definitions.

570.501 Responsibility for grant administration.

Sec.

570.502 Applicability of uniform administrative requirements.

570.503 Agreements with subrecipients.

570.504 Program income.

570.505 Use of real property.

570.506 {Reserved.}

570.507 Performance and evaluation report.

570.508 Public access to program records.

570.509 Grant closeout procedures.

570.510 Transferring projects from urban counties to metropolitan cities.

570.511 {Reserved.}

570.512 {Reserved.}

570.513 Lump sum drawdowns for financing of property rehabilitation activities.

Subpart J—Grant Administration

§ 570.500 Definitions.

For the purposes of this subpart, the following terms shall apply:

(a) "Program income" means gross income received by the recipient or a subrecipient directly generated from the use of CDBG funds. When program income is generated by an activity that is only partially assisted with CDBG funds, the income shall be prorated to reflect the percentage of CDBG funds used.

(1) Program income includes, but is not limited to, the following:

(i) Proceeds from the disposition by sale or long-term lease of real property purchased or improved with CDBG funds;

(ii) Proceeds from the disposition of equipment purchased with CDBG funds;

(iii) Gross income from the use or rental of real or personal property acquired by the recipient or by a subrecipient with CDBG funds, less costs incidental to generation of the income;

(iv) Gross income from the use or rental of real property, owned by the recipient or by a subrecipient, that was constructed or improved with CDBG funds, less costs incidental to generation of the income;

(v) Payments of principal and interest on loans made using CDBG funds;

(vi) Proceeds from the sale of loans made with CDBG funds;

(vii) Proceeds from sale of obligations secured by loans made with CDBG funds;

(viii) Interest earned on funds held in a revolving fund account;

(ix) Interest earned on program income pending its disposition; and

(x) Funds collected through special assessments made against properties owned and occupied by households not of low and moderate income, where the assessments are used to recover all or part of the CDBG portion of a public improvement.

(2) Program income does not include interest earned (except for interest described in § 570.513) on grant advances from the U.S. Treasury. Such interest shall be remitted to HUD for transmittal to the U.S. Treasury and will not be reallocated under section 106 (c) or (d) of the Act. Examples of other receipts that are not considered program income are proceeds from fundraising activities carried out by subrecipients receiving CDBG assistance; funds collected through special assessments used to recover the non-CDBG portion of a public improvement; and proceeds from the disposition of real property acquired or improved with CDBG funds when the disposition occurs after the applicable time period specified in § 570.503(b)(7) for subrecipient-controlled property, or in § 570.505 for recipient-controlled property.

(b) "Revolving fund" means a separate fund (with a set of accounts that are independent of other program accounts) established for the purpose of carrying out specific activities which, in turn, generate payments to the fund for use in carrying out the same activities.

(c) "Subrecipient" means a public or private nonprofit agency, authority or organization, or an entity described in § 570.204(c), receiving CDBG funds from the recipient to undertake activities eligible for assistance under Subpart C. The term includes a public agency designated by a metropolitan city or urban county to receive a loan guarantee under Subpart M, but does not include contractors providing supplies, equipment, construction or services subject to the procurement requirements in 24 CFR 85.36, or in Attachment O of OMB Circular A-110, as applicable.

§ 570.501 Responsibility for grant administration.

(a) One or more public agencies, including existing local public agencies, may be designated by the chief executive officer of the recipient to undertake activities assisted by this part. A public agency so designated shall be subject to the same requirements as are applicable to subrecipients.

(b) The recipient is responsible for ensuring that CDBG funds are used in accordance with all program requirements. The use of designated public agencies, subrecipients, or contractors does not relieve the recipient of this responsibility. The recipient is also responsible for determining the adequacy of performance under subrecipient agreements and procurement contracts, and for taking appropriate action when performance problems arise, such as the

actions described in § 570.910. Where a unit of general local government is participating with, or as part of, an urban county, or as part of a metropolitan city, the recipient is responsible for applying to the unit of general local government the same requirements as are applicable to subrecipients.

§ 570.502 Applicability of uniform administrative requirements.

(a) Recipients and subrecipients which are governmental entities (including public agencies) shall comply with the requirements and standards of OMB Circular No. A-87, "Principles for Determining Costs Applicable to Grants and Contracts with State, Local and Federally recognized Indian Tribal Governments", OMB Circular A-128, "Audits of State and Local Governments" (implemented at 24 CFR Part 44) and with the following sections of 24 CFR Part 85 "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments":

- (1) Section 85.3, "Definitions";
- (2) Section 85.6, "Exceptions";
- (3) Section 85.12, "Special grant or subgrant conditions for 'high-risk' grantees";
- (4) Section 85.20, "Standards for financial management systems," except paragraph (a);
- (5) Section 85.21, "Payment," except as modified by § 570.513;
- (6) Section 85.22, "Allowable costs";
- (7) Section 85.26, "Non-federal audits";
- (8) Section 85.32, "Equipment," except in all cases in which the equipment is sold, the proceeds shall be program income;
- (9) Section 85.33, "Supplies";
- (10) Section 85.34, "Copyrights";
- (11) Section 85.35, "Subawards to debarred and suspended parties";
- (12) Section 85.36, "Procurement," except paragraph (a);
- (13) Section 85.37, "Subgrants";
- (14) Section 85.40, "Monitoring and reporting program performance," except paragraphs (b) through (d) and paragraph (f);
- (15) Section 85.41, "Financial reporting," except paragraphs (a), (b), and (e);
- (16) Section 85.42, "Retention and access requirements for records";
- (17) Section 85.43, "Enforcement";
- (18) Section 85.44, "Termination for convenience";
- (19) Section 85.51 "Later disallowances and adjustments" and
- (20) Section 85.52, "Collection of amounts due."

(b) Subrecipient except subrecipients which are governmental entities, shall comply with the requirements and standards of OMB Circular No. A-122, "Cost Principles for Non Profit Organizations" or OMB Circular No. A-21, "Cost Principles for Educational Institutions," as applicable, and with the following Attachments to OMB Circular No. A-110:

(1) Attachment A, "Cash Depositories", except for paragraph 4 concerning deposit insurance;

(2) Attachment B, "Bonding and Insurance";

(3) Attachment C, "Retention and Custodial Requirements for Records", except that in lieu of the provisions in paragraph 4, the retention period for records pertaining to individual CDBG activities starts from the date of submission of the annual performance and evaluation report, as prescribed in § 570.507, in which the specific activity is reported on for the final time;

(4) Attachment F, "Standards for Financial Management Systems";

(5) Attachment H, "Monitoring and Reporting Program Performance", Paragraph 2;

(6) Attachment N, "Property Management Standards", except for paragraph 3 concerning the standards for real property, and except that paragraphs 6 and 7 are modified so that—

(i) In all cases in which personal property is sold, the proceeds shall be program income, and

(ii) Personal property not needed by the subrecipient for CDBG activities shall be transferred to the recipient for the CDBG program or shall be retained after compensating the recipient; and

(7) Attachment O, "Procurement Standards."

§ 570.503 Agreements with subrecipients.

(a) Before disbursing any CDBG funds to a subrecipient, the recipient shall sign a written agreement with the subrecipient. The agreement shall remain in effect during any period that the subrecipient has control over CDBG funds, including program income.

(b) At a minimum, the written agreement with the subrecipient shall include provisions concerning the following following items:

(1) *Statement of work.* The agreement shall include a description of the work to be performed, a schedule for completing the work, and a budget. These items shall be in sufficient detail to provide a sound basis for the recipient effectively to monitor performance under the agreement.

(2) *Records and reports.* The recipient shall specify in the agreement the particular records the subrecipient must maintain and the particular reports the subrecipient must submit in order to assist the recipient in meeting its recordkeeping and reporting requirements.

(3) *Program income.* The agreement shall include the program income requirements set forth in § 570.504(c).

(4) *Uniform administrative requirements.* The agreement shall require the subrecipient to comply with applicable uniform administrative requirements, as described in § 570.502.

(5) *Other program requirements.* The agreement shall require the subrecipient to carry out each activity in compliance with all Federal laws and regulations described in Subpart K of these regulations, except that:

(i) The subrecipient does not assume the recipient's environmental responsibilities described at § 570.604; and

(ii) The subrecipient does not assume the recipient's responsibility for initiating the review process under the provisions of 24 CFR Part 52.

(6) *Conditions for religious organizations.* Where applicable, the conditions prescribed by HUD for the use of CDBG funds by religious organizations shall be included in the agreement.

(7) *Suspension and termination.* The agreement shall specify that, in accordance with 24 CFR 85.43, suspension or termination may occur if the subrecipient materially fails to comply with any term of the award, and that the award may be terminated for convenience in accordance with 24 CFR 85.44.

(8) *Reversion of assets.* The agreement shall specify that upon its expiration the subrecipient shall transfer to the recipient any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds. It shall also include provisions designed to ensure that any real property under the subrecipient's control that was acquired or improved in whole or in part with CDBG funds in excess of \$25,000 is either:

(i) Used to meet one of the national objectives in § 570.901 until five years after expiration of the agreement, or for such longer period of time as determined to be appropriate by the recipient; or

(ii) Disposed of in a manner that results in the recipient's being reimbursed in the amount of the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, or improvement to, the

property. (Reimbursement is not required after the period of time specified in paragraph (b)(8)(i) of this section.)

§ 570.504 Program income.

(a) *Recording program income.* The receipt and expenditure of program income as defined in § 570.500(a) shall be recorded as part of the financial transactions of the grant program.

(b) *Disposition of program income received by recipients.* (1) Program income received before grant closeout may be retained by the recipient if the income is treated as additional CDBG funds subject to all applicable requirements governing the use of CDBG funds.

(2) If the recipient chooses to retain program income, that income shall affect withdrawals of grant funds from the U.S. Treasury as follows:

(i) Program income in the form of repayments to, or interest earned on, a revolving fund as defined in § 570.500(b) shall be substantially disbursed from the fund before additional cash withdrawals are made from the U.S. Treasury for the same activity. (This rule does not prevent a lump sum disbursement to finance the rehabilitation of privately owned properties as provided for in § 570.513.)

(ii) Substantially all other program income shall be disbursed for eligible activities before additional cash withdrawals are made from the U.S. Treasury.

(3) Program income on hand at the time of closeout shall continue to be subject to the eligibility requirements in Subpart C and all other applicable provisions of this part until it is expended.

(4) Unless otherwise provided in any grant closeout agreement, and subject to the requirements of paragraph (b)(5) of this section, income received after closeout shall not be governed by the provisions of this part, except that, if at the time of closeout the recipient has another ongoing CDBG grant received directly from HUD, funds received after closeout shall be treated as program income of the ongoing grant program.

(5) If the recipient does not have another ongoing grant received directly from HUD at the time of closeout, income received after closeout from the disposition of real property or from loans outstanding at the time of closeout shall not be governed by the provisions of this part, except that such income shall be used for activities that meet one of the national objectives in § 570.901 and the eligibility requirements described in section 105 of the Act.

(c) *Disposition of program income received by subrecipients.* The written agreement between the recipient and the subrecipient, as required by § 570.503, shall specify whether program income received is to be returned to the recipient or retained by the subrecipient. Where program income is to be retained by the subrecipient, the agreement shall specify the activities that will be undertaken with the program income and that all provisions of the written agreement shall apply to the specified activities. When the subrecipient retains program income, transfers of grant funds by the recipient to the subrecipient shall be adjusted according to the principles described in paragraphs (b)(2)(i) and (iii) of this section. Any program income on hand when the agreement expires, or received after the agreement's expiration, shall be paid to the recipient as required by § 570.503(b)(8).

(d) *Disposition of certain program income received by urban counties.* Program income derived from urban county program activities undertaken by or within the jurisdiction of a unit of general local government which thereafter terminates its participation in the urban county shall continue to be program income of the urban county. The urban county may transfer the program income to the unit of general local government, upon its termination of urban county participation, provided that the unit of general local government has become an entitlement grantee and agrees to use the program income in its own CDBG entitlement program.

§ 570.505 Use of real property.

The standards described in this section apply to real property within the recipient's control which was acquired or improved in whole or in part using CDBG funds in excess of \$25,000. These standards shall apply from the date CDBG funds are first spent for the property until five years after closeout of an entitlement recipient's participation in the entitlement CDBG program or, with respect to other recipients, until five years after the closeout of the grant from which the assistance to the property was provided.

(a) A recipient may not change the use or planned use of any such property (including the beneficiaries of such use) from that for which the acquisition or improvement was made unless the recipient provides affected citizens with reasonable notice of, and opportunity to comment on, any proposed change, and either:

(1) The new use of such property qualifies as meeting one of the national objectives in § 570.901 and is not a

building for the general conduct of government; or

(2) The requirements in paragraph (b) of this section are met.

(b) If the recipient determines, after consultation with affected citizens, that it is appropriate to change the use of the property to a use which does not qualify under paragraph (a)(1) of this section, it may retain or dispose of the property for the changed use if the recipient's CDBG program is reimbursed in the amount of the current fair market value of the property, less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, and improvements to, the property.

(c) If the change of use occurs after closeout, the provisions governing income from the disposition of the real property in § 570.504(b) (4) or (5), as applicable, shall apply to the use of funds reimbursed.

(d) Following the reimbursement of the CDBG program in accordance with paragraph (b) of this section, the property no longer will be subject to any CDBG requirements.

§ 570.506 [Reserved].

§ 570.507 Performance and evaluation report.

(a) *Content.* Each performance and evaluation report must contain completed copies of all forms and narratives prescribed by the Secretary and approved by the Office of Management and Budget, including a summary of the citizen comments received on the report, as prescribed in paragraph (c) of this section.

(b) *Timing.*

(1) *Entitlement grants.* Each entitlement grant recipient shall submit a performance and evaluation report:

(i) No later than 90 days after the completion of the most recent program year, showing the status of all activities as of the end of the program year;

(ii) No later than November 30 of each year, showing housing assistance performance as of the end of the Federal fiscal year; and

(iii) No later than 90 days after the recipient has met the criteria for grant closeout, as described in § 570.509(a).

(2) *HUD-administered small cities grants.* Each small cities recipient shall submit a performance and evaluation report on each grant:

(i) No later than 12 months after the date of the grant award and annually thereafter on the date of the award until completion of the activities funded under the grant; and

(ii) No later than 90 days after the recipient has met the criteria for grant closeout, as described in § 570.509(a). If

HUD determines that the previous report adequately describes project results, HUD will notify the recipient that a final report is not necessary.

(c) *Citizen comments on the report.* Each recipient shall make copies of the performance and evaluation report available to its citizens in sufficient time to permit the citizens to comment on the report before its submission to HUD. Each recipient may determine the specific manner and time the report will be made available to citizens, consistent with the preceding sentence.

(Approved by the Office of Management and Budget under control No. 2506-0077)

§ 570.508 Public access to program records.

Notwithstanding 24 CFR 85.42(f), recipients shall provide citizens with reasonable access to records regarding the past use of CDBG funds, consistent with applicable State and local laws regarding privacy and obligations of confidentiality.

§ 570.509 Grant closeout procedures.

(a) *Criteria for closeout.* A grant will be closed out when HUD determines, in consultation with the recipient, that the following criteria have been met:

(1) All costs to be paid with CDBG funds have been incurred, with the exception of closeout costs (e.g., audit costs) and costs resulting from contingent liabilities described in the closeout agreement pursuant to paragraph (c) of this section. Contingent liabilities include, but are not limited to, third-party claims against the recipient, as well as related administrative costs.

(2) With respect to activities (such as rehabilitation of privately owned properties) which are financed by means of escrow accounts, loan guarantees, or similar mechanisms, the work to be assisted with CDBG funds (but excluding program income) has actually been completed.

(3) Other responsibilities of the recipient under the grant agreement and applicable laws and regulations appear to have been carried out satisfactorily or there is no further Federal interest in keeping the grant agreement open for the purpose of securing performance.

(b) *Closeout actions.* (1) Within 90 days of the date it is determined that the criteria for closeout have been met, the recipient shall submit to HUD a copy of the final performance and evaluation report described in § 570.507. If an acceptable report is not submitted, an audit of the recipient's grant activities may be conducted by HUD.

(2) Based on the information provided in the performance report and other relevant information, HUD, in

consultation with the recipient, will prepare a closeout agreement in accordance with paragraph (c) of this section.

(3) HUD will cancel any unused portion of the awarded grant, as shown in the signed grant closeout agreement. Any unused grant funds disbursed from the U.S. Treasury which are in the possession of the recipient shall be refunded to HUD.

(4) Any costs paid with CDBG funds which were not audited previously shall be subject to coverage in the recipient's next single audit performed in accordance with 24 CFR Part 44. The recipient may be required to repay HUD any disallowed costs based on the results of the audit, or on additional HUD reviews provided for in the closeout agreement.

(c) *Closeout agreement.* Any obligations remaining as of the date of the closeout shall be covered by the terms of a closeout agreement. The agreement shall be prepared by the HUD field office in consultation with the recipient. The agreement shall identify the grant being closed out, and include provisions with respect to the following:

(1) Identification of any closeout costs or contingent liabilities subject to payment with CDBG funds after the closeout agreement is signed;

(2) Identification of any unused grant funds to be canceled by HUD;

(3) Identification of any program income on deposit in financial institutions at the time the closeout agreement is signed;

(4) Description of the recipient's responsibility after closeout for:

(i) Compliance with all program requirements, certifications and assurances in using program income on deposit at the time the closeout agreement is signed and in using any other remaining CDBG funds available for closeout costs and contingent liabilities;

(ii) Use of real property assisted with CDBG funds in accordance with the principles described in § 570.505;

(iii) Compliance with requirements governing program income received subsequent to grant closeout, as described in § 570.504(b) (4) and (5); and

(iv) Ensuring that flood insurance coverage for affected property owners is maintained for the mandatory period;

(5) Other provisions appropriate to any special circumstances of the grant closeout, in modification of or in addition to the obligations in paragraphs (c) (1) through (4) of this section. The agreement shall authorize monitoring by HUD, and shall provide that findings of noncompliance may be taken into

account by HUD, as unsatisfactory performance of the recipient, in the consideration of any future grant award under this part.

(d) *Status of housing assistance plan after closeout.* Unless otherwise provided in a closeout agreement, the housing assistance plan (HAP) will remain in effect after closeout until the expiration of the fiscal year covered by the last approved HAP. The HAP will be used for allocations of HUD-assisted housing and local review and comment under 24 CFR Part 791 for purposes of achieving the housing goals under the performance criteria of § 570.903.

(e) *Termination of grant for convenience.* Grant assistance provided under this part may be terminated for convenience in whole or in part before the completion of the assisted activities, in accordance with the provisions of 24 CFR 85.44. The recipient shall not incur new obligations for the terminated portions after the effective date, and shall cancel as many outstanding obligations as possible. HUD shall allow full credit to the recipient for those portions of obligations which could not be canceled and which had been properly incurred by the recipient in carrying out the activities before the termination. The closeout policies contained in this section shall apply in such cases, except where the approved grant is terminated in its entirety. Responsibility for the environmental review to be performed under 24 CFR Part 50 or 24 CFR Part 58, as applicable, shall be determined as part of the closeout process.

(f) *Termination for cause.* In cases in which the Secretary terminates the recipient's grant under the authority of Subpart O of this part, or under the terms of the grant agreement, the closeout policies contained in this section shall apply, except where the approved grant is cancelled in its entirety. The provisions in 24 CFR 85.43(c) on the effects of termination shall also apply. HUD shall determine whether an environmental assessment or finding of inapplicability is required, and if such review is required, HUD shall perform it in accordance with 24 CFR Part 50.

§ 570.510 Transferring projects from urban counties to metropolitan cities.

Section 106(c)(3) of the Act authorizes the Secretary to transfer unobligated grant funds from an urban county to a new metropolitan city, provided: the city was an included unit of general local government in the urban county immediately before its qualification as a metropolitan city; the funds to be transferred were received by the county

before the qualification of the city as a metropolitan city; the funds to be transferred had been programmed by the urban county for use in the city before such qualification; and the city and county agree to transfer responsibility for the administration of the funds being transferred from the county's letter of credit to the city's letter of credit. The following rules apply to the transfer of responsibility for an activity from an urban county to the new metropolitan city.

(a) The urban county and the metropolitan city must execute a legally binding agreement which shall specify:

(1) The amount of funds to be transferred from the urban county's letter of credit to the metropolitan city's letter of credit;

(2) The activities to be carried out by the city with the funds being transferred;

(3) The county's responsibility for all expenditures and unliquidated obligations associated with the activities before the time of transfer, including a statement that responsibility for all audit and monitoring findings associated with those expenditures and obligations shall remain with the county;

(4) The responsibility of the metropolitan city for all other audit and monitoring findings;

(5) How program income (if any) from the activities specified shall be divided between the metropolitan city and the urban county; and

(6) Such other provisions as may be required by HUD.

(b) Upon receipt of a request for the transfer of funds from an urban county to a metropolitan city and a copy of the executed agreement, HUD, in consultation with the Department of the Treasury, shall establish a date upon which the funds shall be transferred from the letter of credit of the urban county to the letter of credit of the metropolitan city, and shall take all necessary actions to effect the requested transfer of funds.

(c) HUD shall notify the metropolitan city and urban county of any special audit and monitoring rules which apply to the transferred funds when the date of the transfer is communicated to the city and the county.

§§ 570.511 and 570.512 [Reserved]

§ 570.513 Lump sum drawdown for financing of property rehabilitation activities.

Subject to the conditions prescribed in this section, recipients may draw funds from the letter of credit in a lump sum to establish a rehabilitation fund in one or more private financial institutions for the purpose of financing the

rehabilitation of privately owned properties. The fund may be used in conjunction with various rehabilitation financing techniques, including loans, interest subsidies, loan guarantees, loan reserves, or such other uses as may be approved by HUD consistent with the objectives of this section. The fund may also be used for making grants, but only for the purpose of leveraging non-CDBG funds for the rehabilitation of the same property.

(a) Limitation on drawdown of grant funds.

(1) The funds that a recipient deposits to a rehabilitation fund shall not exceed the grant amount that the recipient reasonably expects will be required, together with anticipated program income from interest and loan repayments, for the rehabilitation activities during the period specified in the agreement to undertake activities, based on either:

(i) Prior level of rehabilitation activity; or

(ii) Rehabilitation staffing and management capacity during the period specified in the agreement to undertake activities.

(2) No grant funds may be deposited under this section solely for the purpose of investment, notwithstanding that the interest or other income is to be used for the rehabilitation activities.

(3) The recipient's rehabilitation program administrative costs and the administrative costs of the financial institution may not be funded through lump sum drawdown. Such costs must be paid from periodic letter of credit withdrawals in accordance with standard procedures or from program income, other than program income generated by the lump sum distribution.

(b) *Standards to be met.* The following standards shall apply to all lump sum drawdowns of CDBG funds for rehabilitation:

(1) *Eligible rehabilitation activities.* The rehabilitation fund shall be used to finance the rehabilitation of privately owned properties eligible under the general policies in § 570.200 and the specific provisions of either § 570.202, including the acquisition of properties for rehabilitation, or § 570.203.

(2) *Requirements for agreement.* The recipient shall execute a written agreement with one or more private financial institutions for the operation of the rehabilitation fund. The agreement shall specify the obligations and responsibilities of the parties, the terms and conditions on which CDBG funds are to be deposited and used or returned, the anticipated level of rehabilitation activities by the financial institution, the rate of interest and other

benefits to be provided by the financial institution in return for the lump sum deposit, and such other terms as are necessary for compliance with the provisions of this section. Upon execution of the agreement, a copy must be provided to the HUD field office for its record and use in monitoring. Any modifications made during the term of the agreement must also be provided to HUD.

(3) *Period to undertake activities.* The agreement must provide that the rehabilitation fund may only be used for authorized activities during a period of no more than two years. The lump sum deposit shall be made only after the agreement is fully executed.

(4) *Time limit on use of deposited funds.* Use of the deposited funds for rehabilitation financing assistance must start (e.g., first loan must be made, subsidized or guaranteed) within 45 days of the deposit. In addition, substantial disbursements from the fund must occur within 180 days of the receipt of the deposit. (Where CDBG funds are used as a guarantee, the funds that must be substantially disbursed are the guaranteed funds.) For a recipient with an agreement specifying two years to undertake activities, the disbursement of 25 percent of the fund (deposit plus any interest earned) within 180 days will be regarded as meeting this requirement. If a recipient with an agreement specifying two years to undertake activities determines that it has had substantial disbursement from the fund within the 180 days although it had not met this 25 percent threshold, the justification for the recipient's determination shall be included in the program file. Should use of deposited funds not start within 45 days, or substantial disbursement from such fund not occur within 180 days, the recipient may be required by HUD to return all or part of the deposited funds to the recipient's letter of credit.

(5) *Program activity.* Recipients shall review the level of program activity on a yearly basis. Where activity is substantially below that anticipated, program funds shall be returned to the recipient's letter of credit.

(6) *Termination of agreement.* In the case of substantial failure by a private financial institution to comply with the terms of a lump sum drawdown agreement, the recipient shall terminate its agreement, provide written justification for the action, withdraw all unobligated deposited funds from the private financial institution, and return the funds to the recipient's letter of credit.

(7) *Return of unused deposits.* At the end of the period specified in the

agreement for undertaking activities, all unobligated deposited funds shall be returned to the recipient's letter of credit unless the recipient enters into a new agreement conforming to the requirements of this section. In addition, the recipient shall reserve the right to withdraw any unobligated deposited funds required by HUD in the exercise of corrective or remedial actions authorized under §§ 570.910(b), 570.911, 570.912 or 570.913.

(8) *Rehabilitation loans made with non-CDBG funds.* If the deposited funds or program income derived from deposited funds are used to subsidize or guarantee repayment of rehabilitation loans made with non-CDBG funds, or to provide a supplemental loan or grant to the borrower of the non-CDBG funds, the rehabilitation activities are considered to be CDBG-assisted activities subject to the requirements applicable to such activities, except that repayment of non-CDBG funds shall not be treated as program income.

(9) *Provision of consideration.* In consideration for the lump sum deposit by the recipient in a private financial institution, the deposit must result in appropriate benefits in support of the recipient's local rehabilitation program. Minimum requirements for such benefits are:

(i) Grantees shall require the financial institution to pay interest on the lump sum deposit.

(A) The interest rate paid by the financial institution shall be no more than three points below the rate on one year Treasury obligations at constant maturity.

(B) When an agreement sets a fixed interest rate for the entire term of the agreement, the rate should be based on the rate at the time the agreement is executed.

(C) The agreement may provide for an interest rate that would fluctuate periodically during the term of the agreement, but at no time shall the rate be established at more than three points below the rate on one year Treasury obligations at constant maturity.

(ii) In addition to the payment of interest, at least one of the following benefits must be provided by the financial institution:

(A) Leverage of the deposited funds so that the financial institution commits private funds for loans in the rehabilitation program in an amount substantially in excess of the amount of the lump sum deposit;

(B) Commitment of private funds by the financial institution for rehabilitation loans at below market interest rates, at higher than normal risk,

or with longer than normal repayment periods; or

(C) Provision of administrative services in support of the rehabilitation program by the participating financial institution at no cost or at lower than actual cost.

(c) *Program income.* Interest earned on lump sum deposits and payments on loans made from such deposits are program income and, during the period of the agreement, shall be used for rehabilitation activities under the provisions of this section.

(d) *Outstanding findings.*

Notwithstanding any other provision of this section, no recipient shall enter into a new agreement during any period of time in which an audit or monitoring finding on a previous lump sum drawdown agreement remains unresolved.

(e) *Prior notification.* The recipient shall provide the HUD field office with written notification of the amount of funds to be distributed to a private financial institution before distribution under the provisions of this section.

(f) *Recordkeeping requirements.* The recipient shall maintain in its files a copy of the written agreement and related documents establishing conformance with this section and concerning performance by a financial institution in accordance with the agreement.

18. Section 570.610 is revised to read as follows:

§ 570.610 Uniform administrative requirements.

The recipient, its agencies or instrumentalities, and subrecipients shall comply with the policies, guidelines, and requirements of 24 CFR Part 85 and OMB Circulars A-87, A-110, A-122, and A-128 (implemented at 24 CFR Part 44), as applicable, as they relate to the acceptance and use of Federal funds under this part. The applicable sections of 24 CFR Part 85 and OMB Circular A-110 are set forth at § 570.502.

19. In § 570.611, paragraphs (a) (1) and (2) are revised to read as follows:

§ 570.611 Conflict of interest.

(a) *Applicability.* (1) In the procurement of supplies, equipment, construction, and services by recipients, and by subrecipients (including those specified at § 570.204(c)), the conflict of interest provisions in 24 CFR 85.36 and OMB Circular A-110, respectively, shall apply.

(2) In all cases not governed by 24 CFR 85.36 and OMB Circular A-110, the provisions of this section shall apply.

Such cases include the acquisition and disposition of real property and the provision of assistance by the recipient, by its subrecipients, or to individuals, businesses and other private entities under eligible activities which authorize such assistance (e.g., rehabilitation, preservation, and other improvements of private properties of facilities pursuant to § 570.202, or grants, loans and other assistance to businesses, individuals and other private entities pursuant to § 570.203, § 570.204 or § 570.455).

20. In § 570.801, paragraph (c)(2) is revised to read as follows:

§ 570.801 Payment of the cost of completing a project.

(c) * * *

(2) In the subsequent disposition of project land acquired by the unit of general local government pursuant to paragraph (c)(1) of this section, the provisions of section 110(c)(4) of Title I of the Housing Act of 1949, regarding fair use value shall not apply. Any proceeds received by the unit of general local government in the event of such disposition shall be treated as program income in accordance with § 570.504;

21. In § 570.804, paragraph (b)(7)(i) is revised to read as follows:

§ 570.804 Application for approval of financial settlement.

(b) * * *

(7) * * *

(i) All remaining project property owned by the local public agency shall be identified and the proceeds from the sale or lease of such property after financial settlement shall be treated as program income of the unit of general local government under the provisions § 570.504; provided, however, that such proceeds may be applied to the reimbursement of any funds of the unit of general local government, other than funds made available under this part for cash local grants-in-aid required on the basis of incurred net project costs, which were used for the payment of temporary loans for the project. Any remaining project land may be retained for disposition by the local public agency, or transferred to the unit of general local government for use or disposition subject to the covenants specified in § 570.801(c)(1)(i), (ii), (iii) and (iv). In the disposition of such land, the provisions of section 110(c)(4) of title I of the Housing Act of 1949, as amended, regarding fair use value shall not apply.

22. In § 570.905, paragraph (b) is revised to read as follows:

§ 570.905 Reports to be submitted by recipients.

(b) *Financial management.* Each recipient shall submit such financial reports as are determined to be necessary by the Secretary, consistent with the requirements of 24 CFR Part 85.

§ 570.906 [Removed and Reserved].

23. § 570.906 is removed and reserved.

24. In § 570.907, paragraph (a) is revised to read as follows:

§ 570.907 Records to be maintained by recipients.

(a) *Financial Management.* Recipients are to maintain records, in accordance with 24 CFR 85.20, which identify adequately the source and application of funds for grant supported activities. The records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

PART 571—COMMUNITY DEVELOPMENT BLOCK GRANTS FOR INDIAN TRIBES AND ALASKAN NATIVE VILLAGES

25. The authority citation for Part 571 continues to read as follows:

Authority: Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301-5320); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

26. In § 571.502, paragraph (e) is revised to read as follows:

§ 571.502 Force account construction.

(e) The contracting and procurement standards set forth in 24 CFR 85.36 apply to material, equipment, and supply procurements from outside vendors under this section, but not to other activities undertaken by force account. HUD may approve alternative requirements in lieu of bonding if compliance with the bonding requirements specified in § 85.36(h) is determined by HUD to be infeasible or incompatible with the Indian preference requirements set forth in § 571.503.

27. In § 571.503, paragraphs (d)(2)(iii) and (d)(3) are revised to read as follows:

§ 571.503 Indian preference requirements.

(d) * * *

(2) * * *

(iii) If one approvable bid is received, request Field Office review and

approval of the proposed contract and related procurement documents, in accordance with 24 CFR 85.36, in order to award the contract to the single bidder.

(3) Procurements that are within the dollar limitations established for small purchases under 24 CFR 85.36 need not follow the formal bid procedures of paragraph (d) of this section, since these procurements are governed by the small purchase procedures of 24 CFR 85.36. However, a grantee's small purchase procurement shall, to the greatest extent feasible, provide Indian preference in the award of contracts.

28. § 571.607, paragraphs (a)(1) and (2) are revised to read as follows:

§ 571.607 Conflict of interest.

(a) *Applicability.* (1) In the procurement of supplies, equipment, construction, and services by grantees and subrecipients, the conflict of interest provisions in 24 CFR 85.36 and OMB Circular A-110 shall apply.

(2) In all cases not governed by 24 CFR 85.36 and OMB Circular A-110, the provisions of this section shall apply. Such cases include the provision of assistance by the recipient or by its subrecipients to individuals, business, and other private entities under eligible activities that authorize such assistance (e.g., rehabilitation, preservation, and other improvements of private properties or facilities under § 570.202; or grants, loans, and other assistance to businesses, individuals and other private entities under § 570.203 or § 570.204)

PART 575—EMERGENCY SHELTER GRANTS

29. The authority citation for Part 575 continues to read as follows:

Authority: Sec. 101(g), Pub. L. 99-500 (approved October 18, 1986), making appropriations as provided for in sec. 525(a) of H.R. 5313, 99th Cong., 2d Sess. (1986) (as passed by the House of Representatives and by the Senate), to the extent and in the manner provided for in H.R. Rep. No. 977, 99th Cong. 2d Sess. (1986); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

30. In § 575.59, paragraphs (b) and (e) are revised to read as follows:

§ 575.50 Other Federal requirements

(b) *Grant Administration.* The policies, guidelines, and requirements of OMB Circulars Nos. A-110 and A-112, as they relate to the acceptance and use of emergency shelter grant amounts by

private nonprofit organizations, and OMB Circular A-87 and OMB Circular A-102 (as set forth in 24 CFR Part 85), as they relate to the acceptance and use of emergency shelter grant amounts by States and units of general local government, except that 24 CFR 85.10, 85.24(a)(1) and (c)(1), 85.40(b)-(d) and (f) do not apply. Program income is authorized to be used in accordance with § 85.25(g)(2).

(e) *Conflicts of interest.* In addition to the conflict of interest requirements in OMB Circular A-110 and 24 CFR Part 85, no person (1) who is an employee, agent, consultant, officer, or elected or appointed official of the grantee, State recipient, or nonprofit recipient (or of any designated public agency) that receives emergency shelter grant amounts and who exercises or has exercised any functions or responsibilities with respect to assisted activities or (2) who is in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect to the activity, or the proceeds of any contract, subcontract, agreement related to the activity, either for his or herself or those with whom he or she has family or business ties, during his or her tenure or for one year thereafter. (HUD may grant an exception to this exclusion as provided in § 570.611(d) and (e) of this chapter.)

31. Section 575.63 is revised to read as follows:

§ 575.63 Method of payment

Payments are made to a grantee upon its request and may include a working capital advance for 30 days' cash needs or an advance of \$5,000, whichever is greater. Thereafter, the grantee would be reimbursed for the amount of its actual cash disbursement needs. If a grantee requests a working capital advance, it must base the request on a realistic, firm estimate of the amounts required to be disbursed over the 30-day period in payment of eligible activity costs. Payments with respect to grants of \$120,000 or more will be made by letter of credit if the grantee meets the requirements of 24 CFR Part 85.

PART 590—URBAN HOMESTEADING

32. The authority citation for Part 590 continues to read as follows:

Authority: Sec. 810 of the Housing and Community Development Act of 1974 (12 U.S.C. 1706e); sec. 7(d) of the Department of

Housing and Urban Development Act (42 U.S.C. 3535(d)).

33. In § 590.11, paragraph (a)(1) is revised to read as follows:

§ 590.11 Applications.

(a) * * *

(1) Standard Form-424;

PART 850—HOUSING DEVELOPMENT GRANTS

34. The authority citation for Part 850 continues to read as follows:

Authority: Sec. 17 of the U.S. Housing Act of 1937 (42 U.S.C. 1437o); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

35. In § 850.33, paragraph (a) is revised to read as follows:

§ 850.33 Submission requirements.

* * * * *

(a) *Standard form.* Standard Form 424.

* * * * *

36. In § 850.35, paragraph (g) is revised to read as follows:

§ 850.35 Other program requirements.

* * * * *

(g) *Grant administration.* The policies, guidelines, and requirements of 24 CFR Part 85 (except for §§ 85.23, 85.24, 85.25, 85.30, 85.31(c), 85.40(b)-(d) and (f), and 85.50) and OMB Circular A-122, as they relate to the acceptance and use of housing development grant amounts under this part, (24 CFR 85.36 does not apply to a grantee's selection of a project owner, because that selection is not a procurement of property or services. A project owner is not required to follow the requirements of 24 CFR 85.36 because Part 85 applies only to State, local, and Indian tribal governments.)

* * * * *

37. Section 850.69 is revised to read as follows:

§ 850.69 Financial management systems.

Each grantee is required to maintain a financial management system that complies with 24 CFR 85.20.

PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

38. The authority citation for Part 882 continues to read as follows:

Authority: Secs. 3, 5, and 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437a, 1437c and 1437f); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

39. In § 882.516, paragraph (e) is revised to read as follows:

§ 882.516 Maintenance, operation and inspections.

* * * * *

(e) Periodic PHA audits must be conducted as required by HUD, in accordance with guidelines prescribed by 24 CFR Part 44.

PART 905—INDIAN HOUSING

40. The authority citation for Part 905 continues to read as follows:

Authority: Sec. 3, 4, 5, 6, 9, 11, 12, and 16 of the United States Housing Act of 1937 (42 U.S.C. 1437a, 1437b, 1437d, 1437g, 1437j; and 1437n); sec. 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

41. In § 905.107, new paragraphs (g) and (h) are added to read as follows:

§ 905.107 Compliance with other Federal requirements.

* * * * *

(g) *Audits.* IHAs that receive financial assistance under this part shall comply with audit requirements in 24 CFR Part 44.

(h) *Applicability of 24 CFR Part 85.* The Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally Recognized Indian Tribal Governments set forth in 24 CFR Part 85 are applicable to grants under this part, except as specified in this part and in 24 CFR 990.103(c) and in 24 CFR Part 990, Subpart B.

42. In § 905.203, paragraph (d)(1) is republished and paragraphs (b), (c), and (d)(2) are revised to read as follows:

§ 905.203 Production methods and requirements.

* * * * *

(b) *Turnkey method.* Under the Turnkey method, the IHA advertises for developers to submit proposals to build a Project described in the IHA's invitation for proposals. The Invitation for Proposals may, when approved by HUD, prescribe the sites to be used. The IHA selects, subject to HUD approval, the best of the proposals received, taking into consideration price, design, the developer's experience and other evidence of the developer's ability to complete the Project. After HUD approval of the proposal selected by the IHA, the working drawings and specifications are agreed to by the developer, the IHA, and HUD, and the developer and the IHA enter into a Contract of Sale. Upon completion of the project in accordance with the contract of sale, the IHA purchases the Project from the developer. The IHA may employ an architect to assist in

evaluating proposals and negotiating the working drawings and specifications. The IHA provides inspection services by an architect, engineer or other qualified person. Notwithstanding 24 CFR 85.36(h), the IHA may require the developer to furnish assurance in the form of 100 percent performance and payment bonds, or other security as may be acceptable. The decision by the IHA whether or not to require bonding or other security shall be included in the invitation for bids or proposals.

(c) *Conventional method.* Under the Conventional Method, the IHA, after HUD approval of the plans and specifications, shall advertise for contractors to build the project, and the award shall be made to the lowest, responsible bidder. The contractor shall be required to provide assurance in the form of 100 percent performance and payment bonds or, notwithstanding 24 CFR 85.36(h), a lesser percentage or other security approved by HUD. The contractor receives progress payments during construction, and a final HUD-approved payment upon completion in accordance with the contract.

(d) *Modified Turnkey (or Modified Conventional) Method.* Under this modified method the procedure is the same as under the Conventional Method, except that:

(1) The developer will receive no progress payments from the IHA and will be responsible for acceptable completion before receiving any payment from the IHA; and

(2) Notwithstanding 24 CFR 85.36(h), the IHA may, but need not, require the developer to furnish assurance in the form of 100 percent performance and payment bonds, or other security as may be acceptable. The decision by the IHA whether or not to require bonding or other security shall be included in the invitation for bids or proposals.

* * *

43. In § 905.211, paragraph (b) is revised to read as follows:

§ 905.211 Contracts in connection with development

* * *

(b) Notwithstanding 24 CFR 85.36(g), the IHA shall not, without HUD approval, enter into any contract in connection with the development of a Project, including contracts for work, materials or equipment, or for architectural, engineering, consultant, legal, or other professional services. This requirement does not apply to MHO Agreements in the form prescribed by HUD, or to such other types of contracts as HUD may specify.

* * *

PART 941—PUBLIC HOUSING DEVELOPMENT

44. The authority citation for Part 941 continues to read as follows:

Authority: Secs. 4, 5, and 9 of the United States Housing Act of 1937 (42 U.S.C. 1437b, 1437c, and 1437g); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

45. In § 941.102, the introductory text is republished and paragraph (a) is revised to read as follows:

§ 941.102 Development methods.

A PHA may use one of three different methods to develop a project. The following are brief summaries of these development methods.

(a) *Conventional.* The conventional method may be used for either new construction or rehabilitation. The PHA is responsible for selecting a site or property and designing the project. After field office approval of a PHA proposal which identifies a site or property, the ACC is executed, site engineering studies or property inspections are performed, and the PHA acquires the sites or property. The PHA contracts with an architect to prepare the project design and construction documents. Following field office approval of these documents, the PHA advertises for competitive bids to build or rehabilitate the project on the PHA-owned site and, after field office approval, awards a construction contract to the lowest responsible bidder. The contractor is required to furnish a 100 percent performance and payment bond or, notwithstanding 24 CFR 85.36(h), other assurances approved by the field office. The contractor receives progress payments from the PHA during construction or rehabilitation and a final payment upon completion of the project in accordance with the construction contract.

* * *

46. In § 941.208, a new paragraph (g) is added to read as follows:

§ 941.208 Other Federal requirements.

* * *

(g) *Applicability of 24 CFR Part 85.* The Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally Recognized Indian Tribal Governments set forth in 24 CFR Part 85 are applicable to grants made under this part on or after October 1, 1988, except that § 941.502 is not subject to § 85.36(g), and as otherwise specified in this part.

PART 968—COMPREHENSIVE IMPROVEMENT ASSISTANCE PROGRAM

47. The authority citation for Part 968 continues to read as follows:

Authority: Secs. 8 and 14, United States Housing Act of 1937 (42 U.S.C. 1437d and 1437l); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

48. In § 968.9, paragraph (j) is revised to read as follows:

§ 968.9 Other program requirements.

* * *

(j) *Applicability 24 CFR Part 85.* The Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally Recognized Indian Tribal Governments set forth in 24 CFR Part 85 are applicable to grants under this part, except as specified in this part and in 24 CFR 990.103(c) and 24 CFR 990.201.

49. In § 968.12, paragraphs (b), (c), (d), (e), (f), and (g) are revised to read as follows:

§ 968.12 Contracting requirements.

* * *

(b) *Formal advertising requirements.* For each construction or equipment contract over \$25,000, the PHA shall conduct formal advertising as discussed in 24 CFR 85.36(d)(2), except for procurement under the HUD Consolidated Supply Program.

(c) *Bonding requirements.* For each construction or equipment contract over \$25,000, the contractors shall furnish a performance and payment bond for 100 percent of the contract price or, notwithstanding 24 CFR 85.36(h) and as may be required by law, separate performance and payment bonds, each for 50 percent or more of the contract price, or a 20 percent cash escrow, or a 25 percent letter of credit.

(d) *PHA agreement with architect/engineer.* The PHA shall obtain architectural/engineering services through the competitive negotiation process, except where FFY 1981 or subsequent year funds are being used to finance additional services under an existing contract. Notwithstanding 24 CFR 85.36(g), the PHA shall comply with HUD requirements either to submit the contract for prior HUD approval before execution or to certify that the scope of work is consistent with any agreements reached with HUD, and that the fee is appropriate and does not exceed the HUD-approved budget amount.

(e) *Construction and bid documents.* Notwithstanding 24 CFR 85.36(g), the

PHA shall comply with HUD requirements either to—

(1) Submit for prior HUD approval complete construction and bid documents before inviting bids or

(2) Certify to receipt of the required architect's/engineer's certification that the construction documents accurately reflect HUD-approved work and that the bid documents are complete and include all mandatory items.

(f) *Contract award.* The PHA shall obtain HUD approval of the proposed award of modernization construction and equipment contracts if the bid amount exceeds the HUD-approved budget amount or if the procurement meets the criteria set forth in 24 CFR 85.36(g)(2) (i) through (iv). In all other instances, the PHA shall make the award without HUD approval after the PHA has certified that—

(1) The bidding procedures and award were conducted in compliance with State, tribal or local laws and Federal requirements,

(2) The award does not exceed the approved budget amount and does not meet the criteria in § 85.36(g)(2) (i) through (iv) for prior HUD approval, and

(3) HUD clearance has been obtained for the award under previous participation procedures, including absence of the contractor from the HUD Consolidated List of Debarred, Suspended or Ineligible Contractors and Grantees.

(g) *Contract modifications.* Notwithstanding 24 CFR 85.36, except in an emergency endangering life or property, the PHA shall comply with HUD requirements either to submit for prior HUD approval the proposed contract modifications or to certify that such modifications are within the scope of the contract and that any additional costs are within the latest HUD-approved budget or otherwise approved by HUD.

50. Section 968.13 is revised to read as follows:

§ 968.13 Fund requisitions.

To request modernization funds against the total approved modernization budget, the PHA shall:

(a) Submit, in a form prescribed by HUD, a request to the HUD office for only the amount of modernization funds needed for actual cash disbursements, identifying the amounts by account and date due; and

(b) Submit the latest required progress reports under § 968.14, unless the first required report is not yet due.

51. Section 968.17 is revised to read as follows:

§ 968.17 Fiscal closeout of a modernization program.

Upon completion of a modernization program, the PHA shall submit the actual modernization cost certificate, in a form prescribed by HUD, to the HUD office for review, audit verification and approval. The audit shall follow the guidelines prescribed by 24 CFR Part 44. If the audited modernization cost certificate indicates that excess funds have been approved, the PHA shall dispose of the excess funds as directed by HUD. If the audited modernization cost certificate discloses unauthorized expenditures, the PHA shall take such corrective actions as HUD may direct.

(Approved by the Office of Management and Budget under control number 2577-0049)

PART 970—PUBLIC HOUSING PROGRAM—DEMOLITION OR DISPOSITION OF PUBLIC HOUSING PROJECTS

52. The authority citation for Part 970 continues to read as follows:

Authority: Sec. 18, of the United States Housing Act of 1937 (42 U.S.C. 1437p); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

53. Section 970.1 is revised to read as follows:

§ 970.1 Purpose.

This part sets forth requirements for HUD approval of a public housing agency's application for demolition or disposition (in whole or in part) of public housing projects assisted under the U.S. Housing Act of 1937 (the "Act"). The rules and procedures contained in 24 CFR Part 85 are inapplicable.

PART 990—ANNUAL CONTRIBUTIONS FOR OPERATING SUBSIDY

54. The authority citation for Part 990 continues to read as follows:

Authority: Sec. 9 of the U.S. Housing Act of 1937 (42 U.S.C. 1437g); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

55. In § 990.103, a new paragraph (c) is added to read as follows:

§ 990.103 Applicability of PFS.

(c) *Financial management, monitoring and reporting.* The financial management system, monitoring and reporting on program performance and financial reporting will be in compliance with 24 CFR 85.20, 85.40 and 85.41 except to the extent that HUD requirements provide for additional specialized procedures which are determined by HUD to be necessary for the proper management of the program

in accordance with the requirements of the U.S. Housing Act of 1937 and the Annual Contributions Contracts between the PHAs and HUD.

56. Section 990.109, paragraph (e)(3) is revised to read as follows:

§ 990.109 Projected income level.

* * * * *

(e) * * *

(3) *Total.* The estimated total amount of income for investments and Other Income, as approved, shall be divided by the number of Unit Months Available to obtain a per unit per month amount. This amount shall be added to the projected average dwelling rental income per unit to obtain the Projected Operating Income Level. This amount shall not be subject to the provisions regarding program income in 24 CFR 85.25.

57. A new Subpart B—Financial Management systems, Monitoring and reporting—is added to Part 990, to read as follows:

Subpart B—Financial Management Systems, Monitoring and Reporting

§ 990.201 Purpose—General policy on financial management, monitoring and reporting.

The financial management systems, reporting and monitoring on program performance and financial reporting will be in compliance with the requirements of 24 CFR 85.20, 85.40 and 85.41 except to the extent that HUD requirements provide for additional specialized procedures necessary to permit the Secretary to make the determinations regarding the payment of operating subsidy specified in section 9(a)(1) of the United States Housing Act of 1937.

§ 990.202 Applicability.

The provisions of this Subpart B are applicable to the development, modernization (CIAP), and operation of the Turnkey III and Turnkey IV Homeownership Opportunity Programs and the housing owned by the PHAs of the Virgin Islands, Guam, Puerto Rico and Alaska.

PART 85—ADMINISTRATIVE REQUIREMENTS FOR STATE, LOCAL AND FEDERALLY RECOGNIZED INDIAN TRIBAL GOVERNMENTS UNDER OMB CIRCULAR A-102

58. A new Part 85 is added, to read as set forth at the end of this document.

The part heading is revised to read as set forth below.

PART 85—ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE, LOCAL AND FEDERALLY RECOGNIZED INDIAN TRIBAL GOVERNMENTS

Subpart A—General

Sec.

- 85.1 Purpose and scope of this part.
- 85.2 Scope of subpart.
- 85.3 Definitions.
- 85.4 Applicability.
- 85.5 Effect on other issuances.
- 85.6 Additions and Exceptions.

Subpart B—Pre-Award Requirements

- 85.10 Forms for applying for grants.
- 85.11 State plans.
- 85.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements

Financial Administration

- 85.20 Standards for financial management systems.
- 85.21 Payment requirements.
- 85.22 Allowable costs.
- 85.23 Period of availability of funds.
- 85.24 Matching or cost sharing.
- 85.25 Program income.
- 85.26 Non-Federal audits.

Changes, Property, and Subawards

- 85.30 Changes under discretionary (project) awards.
- 85.31 Real property.
- 85.32 Equipment.
- 85.33 Supplies.
- 85.34 Copyrights.
- 85.35 Subawards to debarred and suspended parties.
- 85.36 Procurement.
- 85.37 Subgrants.

Reports, Records Retention, and Enforcement

- 85.40 Monitoring and reporting program performance.
- 85.41 Financial reporting.
- 85.42 Retention and access requirements for records.
- 85.43 Enforcement.
- 85.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

- 85.50 Closeout.
- 85.51 Later disallowances and adjustments.
- 85.52 Collection of amounts due.

Subpart E—Entitlements [Reserved]

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 10, 1988.

Carl D. Covitz,
Acting Secretary.

BILLING CODE 4210-32-M

DEPARTMENT OF JUSTICE

28 CFR Part 66

[Atty. Gen. Order No. 1252-88]

FOR FURTHER INFORMATION CONTACT:

Jack A. Nadol, Department of Justice, Office of Justice Programs, 633 Indiana Ave., NW., Room 942, Washington, DC 20531, (202) 724-7611.

ADDITIONAL SUPPLEMENTARY

INFORMATION: The Department of Justice has adopted uniform administrative rules for Federal grants and cooperative agreements and subawards to State, local and Indian tribal governments which will be applicable to nonprocurement assistance activities of components of the Department of Justice which have grant-making authority. These include: The Office of Justice Programs, the National Institute of Justice, the Bureau of Justice Assistance, the Office of Juvenile Justice and Delinquency Prevention, the Bureau of Justice Statistics, the National Institute of Corrections, the Bureau of Prisons, the U.S. Marshals Service, the Immigration and Naturalization Service, the Federal Bureau of Investigation, and the Drug Enforcement Administration.

Drug Enforcement Administration (DEA) contracts that are issued under 21 U.S.C. 873(a)(7) are exempt. However, in the event DEA is authorized to fund grants to state and local agencies in the future, DEA would be subject to the common grants management regulation.

With respect to grants and cooperative agreements of the Office of Justice Programs (OJP), this regulation replaces Appendix 3 of OJP Guideline Manual 7100.1C, Financial and Administrative Guide for Grants.

List of Subjects in 28 CFR Part 66

Administrative practice and procedures, Grant programs—Law Grant administration, Reporting and recordkeeping requirements.

Title 28 of the Code of Federal Regulations is amended as set forth below.

Edwin Meese III,
Attorney General.

February 25, 1988.

1. Part 66 is added to read as set forth at the end of this document.

PART 66—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.

- 66.1 Purpose and scope of the part.
- 66.2 Scope of subpart.
- 66.3 Definitions.
- 66.4 Applicability.
- 66.5 Effect on other issuances.
- 66.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

- 66.10 Forms for applying for grants.
- 66.11 State plans.
- 66.12 Special grant or subgrant conditions for "high-risk" recipients.

Subpart C—Post-Award Requirements

Financial Administration

- 66.20 Standards for financial management systems.
- 66.21 Payment requirements.
- 66.22 Allowable costs.
- 66.23 Period of availability of funds.
- 66.24 Matching or cost sharing.
- 66.25 Program income.
- 66.26 Non-Federal audits.

Changes, Property, and Subawards

- 66.30 Changes.
- 66.31 Real Property.
- 66.32 Equipment.
- 66.33 Supplies.
- 66.34 Copyrights.
- 66.35 Subawards to debarred and suspended parties.
- 66.36 Procurement.
- 66.37 Subgrants.

Reports, Records Retention, and Enforcement

- 66.40 Monitoring and reporting program performance.
- 66.41 Financial reporting.
- 66.42 Retention and access requirements for records.
- 66.43 Enforcement.
- 66.44 Termination for convenience.

Subpart D—After the Grant Requirements

- 66.50 Closeout.
- 66.51 Later disallowances and adjustments.
- 66.52 Collections of amounts due.

Subpart E—Entitlements [Reserved]

Authority: The Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3711, *et seq.* (as amended); Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. 5601, *et seq.* (as amended); Victims of Crime Act of 1984, 42 U.S.C. 10601, *et seq.* (as amended); 18 U.S.C. 4042; and U.S.C. 4351-4353.

2. Newly added Part 66 is further amended by revising §§ 66.32(a) and 66.33(a) to read as follows:

§ 66.32 Equipment.

(a) The Omnibus Crime Control and Safe Streets Act of 1968, as amended, Pub. L. 90-351, Section 808, requires that the title to all equipment and supplies

purchased with Section 403 or 1302 (block or formula funds) shall vest in the criminal justice agency or nonprofit organization that purchased the property if it certifies to the State office described in Section 408 or 1308 that it will use the property for criminal justice purposes. If such certification is not made, title to the property shall vest in the State office, which shall seek to have the property used for criminal justice purposes elsewhere in the State prior to using it or disposing of it in any other manner.

§66.33 Supplies

(a) The Omnibus Crime Control and Safe Streets Act of 1968, as amended, Pub. L. 90-351, Section 808, requires that the title to all equipment and supplies purchased with Section 403 or 1302 (block or formula funds) shall vest in the criminal justice agency or nonprofit organization that purchased the property if it certifies to the State office described in Section 408 or 1308 that it will use the property for criminal justice purposes. If such certification is not made, title to the property shall vest in the State office, which shall seek to have the property used for criminal justice purposes elsewhere in the State prior to using it or disposing of it in any other manner.

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

29 CFR Part 97

FOR FURTHER INFORMATION CONTACT: Theodore Goldberg, Telephone: 202-523-9174.

ADDITIONAL SUPPLEMENTARY

INFORMATION: As indicated in the previously-published Department of Labor specific NPRM preamble to these rules, (52 FR 21830, June 9, 1987), the Department of Labor had previously published regulations implementing both OMB Circulars A-102, *Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments*, and A-110, *Uniform Administrative Requirements for Grants and Cooperative Agreements to Non-profit Institutions*, at 41 CFR Part 29-70. With the adoption of this common rulemaking, notice is given that 41 CFR Part 29-70 is no longer applicable to grants to State and local governments (including federally recognized Indian Tribal governments) and Indian and Native American entities.

List of Subjects in 29 CFR Part 97

Accounting, Administrative practice and procedure, Grant programs—grants and administration, Insurance, Reporting and recordkeeping requirements.

Title 29 of the Code of Federal Regulations is amended by adding Part 97 as set forth at the end of this document.

Ann McLaughlin,
Secretary of Labor.

PART 97—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.

- 97.1 Purpose and scope of this part.
- 97.2 Scope of subpart.
- 97.3 Definitions.
- 97.4 Applicability.
- 97.5 Effect on other issuances.
- 97.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

- 97.10 Forms for applying for grants.
- 97.11 State plans.
- 97.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements

Financial Administration

- 97.20 Standards for financial management systems.
- 97.21 Payment.
- 97.22 Allowable costs.
- 97.23 Period of availability of funds.
- 97.24 Matching or cost sharing.
- 97.25 Program income.
- 97.26 Non-Federal audit.

Changes, Property, and Subawards

- 97.30 Changes.
- 97.31 Real property.
- 97.32 Equipment.
- 97.33 Supplies.
- 97.34 Copyrights.
- 97.35 Subawards to debarred and suspended parties.
- 97.36 Procurement.
- 97.37 Subgrants.

Reports, Records Retention, and Enforcement

- 97.40 Monitoring and reporting program performance.
- 97.41 Financial reporting.
- 97.42 Retention and access requirements for records.
- 97.43 Enforcement.
- 97.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

- 97.50 Closeout.
- 97.51 Later disallowances and adjustments.
- 97.52 Collection of amounts due.

Subpart E—Entitlements [Reserved]

Authority: 5 U.S.C. 301; OMB Circular A-102.

BILLING CODE 4510-23-M

FEDERAL MEDIATION AND CONCILIATION SERVICE

29 CFR Part 1470

FOR FURTHER INFORMATION CONTACT: Lee Buddendeck—202-653-5320.

ADDITIONAL SUPPLEMENTARY

INFORMATION: Due to the nature of the grantees of the Federal Mediation and Conciliation Service and/or their representatives as tax supported or dues paying entities, the Service does not consider in kind contributions to be an acceptable grantee match. Because the grants program has a very small annual appropriation, grantee changes to their grant projects for indirect costs are discouraged.

List of Subjects in 29 CFR Part 1470

Grant programs, Grants Administration, reporting and recordkeeping requirements.

Title 29 of the Code of Federal Regulations is amended by adding Part 1470 as set forth at the end of this document.

Kay McMurray,
Director.

PART 1470—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.

- 1470.1 Purpose and scope of this part.
- 1470.2 Scope of subpart.
- 1470.3 Definitions.
- 1470.4 Applicability.
- 1470.5 Effect on other issuances.
- 1470.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

- 1470.10 Forms for applying for grants.
- 1470.11 State plans.
- 1470.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements

Financial Administration

- 1470.20 Standards for financial management systems.
- 1470.21 Payment.
- 1470.22 Allowable costs.
- 1470.23 Period of availability of funds.
- 1470.24 Matching or cost sharing.
- 1470.25 Program income.
- 1470.26 Non-Federal audit.

Changes, Property, and Subawards

- 1470.30 Changes.
- 1470.31 Real property.
- 1470.32 Equipment.
- 1470.33 Supplies.
- 1470.34 Copyrights.
- 1470.35 Subawards to debarred and suspended parties.

- 1470.36 Procurement.
1470.37 Subgrants.

Reports, Records Retention, and Enforcement

- 1470.40 Monitoring and reporting program performance.
1470.41 Financial reporting.
1470.42 Retention and access requirements for records.
1470.43 Enforcement.
1470.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

- 1470.50 Closeout.
1470.51 Later disallowances and adjustments.
1470.52 Collections of amounts due.

Subpart E—Entitlements [Reserved]

Authority: 29 U.S.C. 175a.

BILLING CODE 6732-01-M

DEPARTMENT OF DEFENSE

32 CFR Part 278

FOR FURTHER INFORMATION CONTACT: Mr. Ronald D. Good, or Mr. William L. Blumberg. Telephone (202) 697-8282.

ADDITIONAL SUPPLEMENTARY INFORMATION: With this rule, the Department of Defense will adopt rules and regulations governing the administration and use of grants and cooperative agreements with state and local government. This "common" rule establishes consistency and uniformity among the Office of the Secretary of Defense, Military Departments and Defense Agencies in the employment and management of grants and cooperative agreements with state, local, and federally recognized Indian tribal governments. There are no deviations or differences between the model regulation promulgated by the Office of Management and Budget, which forms the basis for the "common" rule, and the Department of Defense regulation governing the same.

List of Subjects in 32 CFR Part 278

Accounting, Administrative practice and procedure, Grant programs, Grants administration, Insurance, Reporting and Recordkeeping requirements.

Title 32 of the Code of Federal Regulations is amended by adding Part 278 as set forth at the end of this document.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 18, 1988.

PART 278—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

- Sec.
278.1 Purpose and scope of this part.
278.2 Scope of subpart.
278.3 Definitions.
278.4 Applicability.
278.5 Effect on other issuances.
278.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

- 278.10 Forms for applying for grants.
278.11 State plans.
278.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements

Financial Administration

- 278.20 Standards for financial management systems.
278.21 Payment.
278.22 Allowable costs.
278.23 Period of availability of funds.
278.24 Matching or cost sharing.
278.25 Program income.
278.26 Non-Federal audit.

Changes, Property, and Subawards

- 278.30 Changes.
278.31 Real property.
278.32 Equipment.
278.33 Supplies.
278.34 Copyrights.
278.35 Subawards to debarred and suspended parties.
278.36 Procurement.
278.37 Subgrants.

Reports, Records Retention, and Enforcement

- 278.40 Monitoring and reporting program performance.
278.41 Financial reporting.
278.42 Retention and access requirements for records.
278.43 Enforcement.
278.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

- 278.50 Closeout.
278.51 Later disallowances and adjustments.
278.52 Collections of amounts due.

Subpart E—Entitlements [Reserved]

Authority: 5 U.S.C. 301; 10 U.S.C. 113.

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

34 CFR Parts 74 and 80

FOR FURTHER INFORMATION CONTACT: Mary Hughes. Telephone (202) 732-7400.

ADDITIONAL SUPPLEMENTARY INFORMATION:

The Secretary establishes a new Part 80 to implement the common regulations to be used by all Federal agencies under Office of Management and Budget (OMB) Circular A-102. The Secretary simultaneously makes technical amendments to the existing Part 74 to limit its application to the institutions covered by OMB Circular A-110. The changes to Part 74 are contained in a separate final rulemaking document published elsewhere in this issue of the Federal Register.

The Department of Education currently implements both OMB Circulars A-102 and A-110 in Part 74 of the Department's regulations (34 CFR Part 74). Circular A-110 applies to institutions of higher education, hospitals, and other nonprofit organizations and contains provisions similar to those contained in Circular A-102 for State and local governments and Indian tribal organizations. However, due to the significant changes contained in the common regulations implementing revised Circular A-102, the common regulations and current Circular A-110 can no longer conveniently be implemented together.

As a result, State and local governments and Indian tribal organizations are now subject to the less burdensome requirements in Part 80 and other grantees are subject to the requirements of Part 74. However, the Department is aware that the President's Council on Management Improvement has initiated a task force to review Circular A-110. If, as a result of that review, the differences between A-110 and A-102 are reduced sufficiently, the Department may again implement the two Circulars in a single set of regulations.

The Secretary published in the Federal Register of June 9, 1987 (52 FR 21864) proposed technical amendments to 34 CFR Part 74. These proposed amendments were designed to limit the applicability of Part 74 to institutions of higher education, hospitals, and other nonprofit organizations. The Secretary is publishing those amendments as final regulations elsewhere in this issue of the Federal Register.

Section _____.5 of the common regulations provides—

All other grants administration provisions of codified program regulations, program

manuals, handbooks and other nonregulatory materials which are inconsistent with this part are superseded, except to the extent they are required by statute, or authorized in accordance with the exception provision in § _____.6.

As stated in the general preamble to this rulemaking document, each agency must specify those regulations that are revoked under this section. The Department is in the process of identifying those program regulations that must be revoked and in the near future will publish a notice of proposed rulemaking to take appropriate action. The Secretary plans to publish the final rulemaking document regarding revocations before the effective date for Part 80, October 1, 1988.

There are hundreds of cross references to the current Part 74 throughout the Department's program regulations. These cross references are being reviewed to determine which of them should be amended to refer only to Part 80, to Part 74, or only to Part 74. The technical amendments necessary to make these changes will be published in the document addressing inconsistent program regulations.

In the notice of proposed rulemaking for the common regulations the Secretary proposed three changes to the common regulations. The Secretary did not receive any comments on these proposed changes. They are discussed below.

The first change is necessary under section 412 of the Department of Education Organization Act (DEOA), 20 U.S.C. 3472. Under this section the Secretary may delegate the functions of the Department only to officers and employees of the Department. However, § _____.6(b) of the common regulations has the effect of delegating one of the Secretary's functions to employees of the Office of Management and Budget—authorizing OMB to grant exceptions to the common regulations as promulgated by the Secretary for the programs administered by the Department of Education. In order to avoid any conflict with the DEOA, the Secretary revises § _____.6(b) so that the Secretary may authorize exceptions to the common regulations after consultation with appropriate officials of OMB.

The second change is necessary to ensure that disaster assistance under 20 U.S.C. 241-1(b)-(c) and the construction provisions of the Impact Aid program (20 U.S.C. 631-647) are administered consistently with their statutory purpose. Under the disaster assistance program the Department provides assistance to local educational agencies (LEAs) that have been affected by certain major disasters. Under the

construction program the Department provides assistance to LEAs to build educational facilities. Under the statute an LEA must use the facility to educate eligible children. However, if there are no longer any eligible children to educate at the facility, the facility may be used for any purpose subject only to the requirement that the LEA maintain accessibility to the facility for 20 years after its construction. The application of § _____.31(c) is inappropriate in the context of these statutory programs. A similar analysis applies to the equipment provisions of § _____.32 (c), (d), (e), and (g). Therefore the Secretary excepts the disaster assistance program and the Impact Aid construction program from the requirements of §§ 80.31(c) and 80.32 (c), (d), (e), and (g).

The third change is necessary to implement the five-year record retention rule required by section 437 of the General Education Provisions Act (GEPA) (20 U.S.C. 1232f). Section _____.42(b) of the common regulations requires a recipient to maintain a record for only 3 years unless a longer retention period is necessary to resolve issues pursuant to any litigation, claim, negotiation, audit, or other action involving the record. The Secretary adds a paragraph (b)(4) to § _____.42 of the common regulations to clarify that a recipient must maintain a record for a minimum of five years after the completion of the activity for which funds are used under an "applicable program" covered by GEPA.

This amendment has the effect of establishing a minimum 5-year record retention period under most programs administered by the Department. However, we note that certain programs such as those programs administered by the Commissioner of the Rehabilitative Services Administration under the Rehabilitation Act of 1973, as amended, still are subject to the 3-year record retention rule contained in the common regulations.

Finally, the Secretary adds authority citations after every substantive provision of the common regulations. These authority citations are required under section 431 of GEPA (20 U.S.C. 1232(a)(2)).

List of Subjects in 34 CFR Part 80

Accounting, Administrative practice and procedures, Grant programs—education, Grants administration, Insurance, Reporting and recordkeeping requirements.

Dated: February 16, 1988.

[Catalog of Federal Domestic Assistance Number: Not Applicable]

William J. Bennett,
Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations by adding a new 34 CFR Part 80 as set forth below.

1. Part 80 is added as set forth at the end of this document:

PART 80—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

- Sec.
- 80.1 Purpose and scope of this part.
- 80.2 Scope of subpart.
- 80.3 Definitions.
- 80.4 Applicability.
- 80.5 Effect on other issuances.
- 80.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

- 80.10 Forms of applying for grants.
- 80.11 State plans.
- 80.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements

Financial Administration

- 80.20 Standards for financial management systems.
- 80.21 Payment.
- 80.22 Allowable costs.
- 80.23 Period of availability of funds.
- 80.24 Matching or cost sharing.
- 80.25 Program income.
- 80.26 Non-Federal audit.

Changes, Property, and Subawards

- 80.30 Changes.
- 80.31 Real property.
- 80.32 Equipment.
- 80.33 Supplies.
- 80.34 Copyrights.
- 80.35 Subawards to debarred and suspended parties.
- 80.36 Procurement.
- 80.37 Subgrants.

Reports, Records Retention, and Enforcement

- 80.40 Monitoring and reporting program performance.
- 80.41 Financial reporting.
- 80.42 Retention and access requirements for records.
- 80.43 Enforcement.
- 80.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

- 80.50 Closeout.
- 80.51 Later disallowances and adjustments.
- 80.52 Collections of amounts due.

Subpart E—Entitlements [Reserved]

Appendix to Part 80—Audit Requirements for State and Local Governments

Authority: 20 U.S.C. 3474; OMB Circular A-102, unless otherwise noted.

2. Part 80 is further amended, as follows.

a. Section 80.3 is amended by adding paragraph (1) following the definition of "State" to read as follows:

§ 80.3 Definitions

(1) The definition of "State" in this section is used for the purpose of determining the scope of Part 80 regulations. Some program regulations contain different definitions for "State" based on program statute eligibility requirements.

(Authority: 20 U.S.C. 3474; OMB Circular A-102.)

b. Section 80.6, paragraph (b), is revised to read as follows:

§ 80.6 Additions and exceptions.

(b) Exceptions for classes of grants or grantees may be authorized only by the Secretary after consultation with OMB.

c. Section 80.22 is amended by revising paragraph (b) to read as follows:

§ 80.22 Allowable costs.

(b) For each kind of organization, there is a set of Federal principles for determining allowable costs. For the costs of a State, local, or Indian tribal government, the Secretary applies the cost principles in OMB Circular A-87, as amended on June 9, 1987.

(Authority: 20 U.S.C. 3474; OMB Circular A-102.)

d. A note is added following § 80.26, to read as follows:

§ 80.26 Non-Federal audit.

Note: The requirements for non-Federal audits are contained in the Appendix to Part 80—Audit Requirements for State and Local Governments.

(Authority: 20 U.S.C. 3474; OMB Circular A-102.)

e. Section 80.31 is amended by adding a new paragraph (d) to read as follows:

§ 80.31 Real property.

(d) The provisions of paragraph (c) of this section do not apply to disaster assistance under 20 U.S.C. 241-1(b)-(c) and the construction provisions of the Impact Aid Program, 20 U.S.C. 631-647.

(Authority: 20 U.S.C. 3474; OMB Circular A-102.)

f. Section 80.32 is amended by adding a new paragraph (h) to read as follows:

§ 80.32 Equipment.

(h) The provisions of paragraphs (c), (d), (e), and (g) of this section do not apply to disaster assistance under 20 U.S.C. 241-1(b)-(c) and the construction provisions of the Impact Aid Program, 20 U.S.C. 631-647.

(Authority: 20 U.S.C. 3474; OMB Circular A-102.)

g. Section 80.42(b) is amended by adding a new paragraph (b)(4) to read as follows:

§ 80.42 Retention and access requirements for records.

(b) *Length of retention period.* * * *
(4) A recipient that receives funds under a program subject to 20 U.S.C. 1232f (section 437 of the General Education Provisions Act) shall retain records for a minimum of five years after the starting date specified in paragraph (c) of this section.

(Authority: 20 U.S.C. 3474; OMB Circular A-102.)

h. An authority citation is added after each section in Part 80 to read as follows:

(Authority: 20 U.S.C. 3474; OMB Circular A-102.)

PART 74—[AMENDED]

Appendix G to Part 74—[Redesignated as Appendix to Part 80]

i. Appendix G—Audit Requirements for State and Local Governments at the end of 34 CFR Part 74 is redesignated as "Appendix to Part 80—Audit Requirements for State and Local Governments" and added to the end of Part 80.

BILLING CODE 4000-01-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1207

FOR FURTHER INFORMATION CONTACT:
Adrienne C. Thomas at 200-523-3214 (FTS 523-3214).

ADDITIONAL SUPPLEMENTARY INFORMATION: The National Historical Publications and Records Commission (NHPRC) program provides grants, when funds are available, to State and local governments, historical societies, archives, libraries and associations for the preservation, arrangement and description of historical records and for a broad range of archival training and development programs. The Catalog of Federal Domestic Assistance number is 89.003.

List of Subjects in 36 CFR Part 1207

Accounting, Administrative practice and procedure, Grant programs—Archives and records, Grants administration, Insurance, Reporting and recordkeeping requirements.

Title 36 of the Code of Federal Regulations is amended by adding Part 1207 as set forth at the end of this document.

Dated: February 17, 1988.

Don W. Wilson,
Archivist of the United States.

PART 1207—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

- Sec.
1207.1 Purpose and scope of this part.
1207.2 Scope of subpart.
1207.3 Definitions.
1207.4 Applicability.
1207.5 Effect on other issuances.
1207.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

- 1207.10 Forms for applying for grants.
1207.11 State plans.
1207.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements

Financial Administration

- 1207.20 Standards for financial management systems.
1207.21 Payment.
1207.22 Allowable costs.
1207.23 Period of availability of funds.
1207.24 Matching and cost sharing.
1207.25 Program income.
1207.26 Non-Federal audit.

Changes, Property, and Subawards

- 1207.30 Changes.
1207.31 Real property.
1207.32 Equipment.
1207.33 Supplies.
1207.34 Copyrights.
1207.35 Subawards to debarred and suspended parties.
1207.36 Procurement.
1207.37 Subgrants.

Reports, Records Retention, and Enforcement

- 1207.40 Monitoring and reporting program performance.
1207.41 Financial reporting.
1207.42 Retention and access requirements for records.
1207.43 Enforcement.
1207.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

- 1207.50 Closeout.
1207.51 Later disallowances and adjustments.
1207.52 Collection of amounts due.

Subpart E—Entitlements [Reserved]

Authority: 44 U.S.C. 2104.

BILLING CODE 7515-01-M

VETERANS ADMINISTRATION**38 CFR Part 43****FOR FURTHER INFORMATION CONTACT:**

Gail A. Gompf, Director, Office of Intergovernmental Affairs (00A1), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-3116.

ADDITIONAL SUPPLEMENTARY

INFORMATION: This new authority codifies the long-standing OMB Circular A-102 used in whole or in part by all Federal agencies in their grant programs. The effect upon the Veterans Administration (VA) will be felt in its State home acquisition or construction grants and its State cemetery grants. Specifically, the regulations will affect applicants for Federal assistance from the VA for acquisition or construction of State extended care facilities and State cemeteries.

Applicants shall follow all applicable standard instructions promulgated by these final regulations. All other grant administration provisions of codified program regulations, program manuals, handbooks, and other nonregulatory materials which are inconsistent with these final regulations are superseded, except to the extent that they are required by statute, or authorized in accordance with certain exceptions (see § 43.6).

These regulations will not apply to payments to States at statutorily required per diem rates for each eligible veteran who receives care in a recognized State home (38 U.S.C. 641(a)). These payments are excepted from these regulations because the payments are computed on a per diem basis (38 CFR 43.4(a)).

List of Subjects in 38 CFR Part 43

Accounting, Administrative practice and procedure, Grant programs—State cemeteries and State home facilities, Grants administration, Insurance, Reporting and recordkeeping requirements.

Title 38 of the Code of Federal Regulations is amended by adding Part 43 as set forth at the end of this document.

Thomas K. Turnage,
Administrator.

Approved: February 3, 1988.

(Authority: 38 U.S.C. 641-643)

BILLING CODE 8320-01-M

PART 43—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS**Subpart A—General**

Sec.

- 43.1 Purpose and scope of this part.
- 43.2 Scope of subpart.
- 43.3 Definitions.
- 43.4 Applicability.
- 43.5 Effect on other issuances.
- 43.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

- 43.10 Forms for applying for grants.
- 43.11 State plans.
- 43.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements**Financial Administration**

- 43.20 Standards for financial management systems.
- 43.21 Payment.
- 43.22 Allowable costs.
- 43.23 Period of availability of funds.
- 43.24 Matching or cost sharing.
- 43.25 Program income.
- 43.26 Non-Federal audit.

Changes, Property, and Subawards

- 43.30 Changes.
- 43.31 Real property.
- 43.32 Equipment.
- 43.33 Supplies.
- 43.34 Copyrights.
- 43.35 Subawards to debarred and suspended parties.
- 43.36 Procurement.
- 43.37 Subgrants.

Reports, Records Retention, and Enforcement

- 43.40 Monitoring and reporting program performance.
- 43.41 Financial reporting.
- 43.42 Retention and access requirements for records.
- 43.43 Enforcement.
- 43.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

- 43.50 Closeout.
- 43.51 Later disallowances and adjustments.
- 43.52 Collection of amounts due.

Subpart E—Entitlements [Reserved]

Authority: 38 U.S.C. 210, 38 U.S.C. 612, E.O. 11541.

Newly added Part 43 is further amended by adding paragraph § 43.4(a)(10) to read as follows:

§ 43.4 Applicability.

(a) * * *

(10) Payments to States at per diem rates for veterans receiving care in recognized State homes.

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Parts 30, 31, and 33**

[FRL 3320-9]

FOR FURTHER INFORMATION CONTACT:

Richard Mitchell, Grants Policy and Procedures Branch (PM-216F), United States Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-5297 (This is not a toll free number.)

ADDITIONAL SUPPLEMENTARY

INFORMATION: On March 12, 1987, President Reagan directed all Federal assistance awarding agencies to publish for State and local government grantees "common regulations that adopt the government-wide terms and conditions *verbatim* (emphasis added), except where there are inconsistent statutory requirements." The President's directive calls for promulgation of the final rule on March 11, 1988. To that end, Federal Agencies are jointly publishing a common rule to establish consistency and uniformity among all Federal assistance awarding agencies in the administration of grants and cooperative agreements to State, local, and federally recognized Indian tribal governments. The common rule, as part of the President's regulatory relief program, is further designed to reduce the burden of regulation and paperwork for the Environmental Protection Agency's (EPA) grantees. When effective (on October 1, 1988), this rule will become 40 CFR Part 31 and will supersede certain of EPA's general assistance regulations at 40 CFR Parts 30 and 33.

In the Federal Register of June 9, 1987, EPA, along with other agencies, published its proposed agency-specific preamble to the common rule. EPA's preamble discussed certain proposed additions to the rule and changes to the current 40 CFR Parts 30 and 33. These additions/changes will be applicable only to grants and cooperative agreements awarded by EPA. EPA requested that its readers comment on the proposed additions/changes. EPA received no comments specifically addressing our proposed additions/changes. The Office of Management and Budget (OMB), however, received a number of comments on the common rule itself. Those comments and their reconciliation are discussed in detail in the common preamble to the rule,

published in conjunction with this notice.

In the June 9, 1987, *Federal Register* EPA indicated that, after the effective date of the common rule, our general assistance regulation at 40 CFR Part 30 would consist of two Subparts: Subpart A, the common rule with EPA's additions; and Subpart B, the current Part 30 paragraphs applicable to grantees other than State and local governments. Subsequent to that publication, it was determined that such a format might be confusing. Therefore, EPA has decided to publish the common rule with EPA's additions at 40 CFR Part 31. Part 31 will be applicable to State, local and federally recognized Indian tribal governments. Part 30 will be revised so as to consist of those paragraphs which are applicable to grantees other than State and local governments.

Inasmuch as no negative comments were received on EPA's other proposed additions/changes as discussed in the June 9, 1987, *Federal Register*, they are being adopted.

Following is a summary of EPA's additions/changes:

The common rule with EPA's additions will become 40 CFR Part 31 and will be applicable to State, local and federally recognized Indian tribal governments. 40 CFR Part 30 will consist of those paragraphs of the current Part 30 which are applicable to grantees other than State and local governments.

The additions which are part of the common rule at Part 31 include:

(1) A list of the principal environmental statutory provisions applicable to EPA assistance programs. This list is at § 31.13.

(2) Buy American, 40 CFR 33.710 (required by section 215 of the Clean Water Act) is part of § 31.36 at subparagraph (c)(5) and applies only to the wastewater treatment construction grants program.

(3) Payments to Consultants, 40 CFR 33.280 (required by Pub. L. 99-591) is part of § 31.36 at subparagraph (j).

(4) Quality Assurance, 40 CFR 30.503. Many of EPA's grant awards involve the development and use of scientific and technical data. Reports, findings, data, etc., developed under such grants are used for a variety of purposes, each having a potential for wide-ranging environmental impacts. Because of the sensitive nature of these impacts, it is imperative that EPA's grantees develop a quality assurance program designed to ensure that the project will result in the highest quality scientific and technical data possible. This will be § 31.45.

(5) 40 CFR Part 30, Subpart L, "How are Disputes Between EPA Officials and

Me Resolved?" is 40 CFR Part 31, Subpart F: Disputes.

(6) 40 CFR Part 30, Appendix E—Part 30 Audit Requirements for State and Local Government Recipients, will become 40 CFR Part 31, Appendix A—Audit Requirements for State and Local Government Grantees.

EPA's Part 30 contains those sections of current 40 CFR Part 30 which will be applicable to grantees other than State and local governments (i.e., institutions of higher education, hospitals, or other nonprofit organizations). Listed below are those sections of the current 40 CFR Part 30 which are deleted. Those sections *not* listed will remain at 40 CFR Part 30 (for grantees other than State and local governments) and are renumbered as appropriate.

40 CFR	Reason for deletion/revision
§ 30.302(d) (2) and (3).	Application requirements for State and local governments only.
§ 30.501(a)(2)	State and local requirement for submitting Financial Status Report (SF269).
§ 30.503 (e), (g), and (h).	State and local requirement for submitting a quality assurance plan.
§ 30.505(b)(2)	Report submittal required only for construction grant projects.
§ 30.540(b) and Appendix E.	Requirements for audits of State and local governments only.

Publication of the common rule requires changes in our current regulation at 40 CFR Part 33, Procurement Under Assistance Agreements, to delete or revise certain sections which are applicable only to State and local governments and, therefore, are superseded by the common rule. Those remaining are applicable only to institutions of higher education, hospitals, and other nonprofit organizations. Listed below are those sections which EPA is deleting or revising:

40 CFR	Reason for Deletion
§ 33.110(e)(5)	Delete this section because it is a procurement requirement related only to Superfund remedial action construction awards.
§ 30.210(f)	Delete this section as it relates to formal advertising only for remedial action awards under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA).
§ 33, Subpart C	Delete this Subpart because it is applicable only to the wastewater treatment construction grant program.

40 CFR

Reason for Deletion

§ 33, Subpart E	Delete this Subpart because it is applicable only to remedial action awards under CERCLA and are not required for grantees other than State and local governments.
§ 33, Subpart F, § 33.1021 and § 33.1030, paragraphs 3, 4, 8, and 12.	Delete these provisions in Subpart F because they do not apply to institutions of higher education, hospitals, and other nonprofit organizations.

In the June 9, 1987, Notice of Proposed Rulemaking, EPA specifically requested its readers to comment on two additional matters being considered for inclusion in the common rule. These were:

(1) The current 40 CFR Part 30, Subpart I includes a provision for annulling assistance agreements if the grantee, without good cause, inordinately delayed or made no substantial progress on the project, obtained the award by fraud or misrepresentation, or practices corrupt administrative procedures. Annulment can result in recovery of all funds received for the project including those already expended.

(2) In the conduct of EPA's wastewater treatment construction grants program, grantees may be allowed to retain the services of the same architect or engineer during subsequent work on the project. This provision has been invaluable in this program as it helps ensure continuity through the life of a project since the architect or engineer is familiar with the project and it minimizes procurement actions for the grantee.

Since no negative comments were received, EPA is adding these provisions to EPA's version of the common rule. The information collection requirements for the application procedures in this rule were approved by OMB under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* (OMB control number 2030-0020).

List of Subjects in 40 CFR Parts 30, 31, and 33

Accounting, Administrative practice and procedures, Grant programs, Grants Administration, Reporting and recordkeeping requirements

Title 40 of the Code of Federal Regulations is amended as set forth below.

Lee M. Thomas,
Administrator.

March 3, 1988.

1. Part 31 is added as set forth at the end of this document.

PART 31—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

- Sec.
31.1 Purpose and scope of this part.
31.2 Scope of subpart.
31.3 Definitions.
31.4 Applicability.
31.5 Effect on other issuances.
31.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

- 31.10 Forms for applying for grants.
31.11 State plans.
31.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements

Financial Administration

- 31.20 Standards for financial management systems.
31.21 Payment.
31.22 Allowable costs.
31.23 Period of availability of funds.
31.24 Matching or cost sharing.
31.25 Program income.
31.26 Non-Federal audit.

Changes, Property, and Subawards

- 31.30 Changes.
31.31 Real Property.
31.32 Equipment.
31.33 Supplies.
31.34 Copyrights.
31.35 Subawards to debarred and suspended parties.
31.36 Procurement.
31.37 Subgrants.

Reports, Record Retention, and Enforcement

- 31.40 Monitoring and reporting program performance.
31.41 Financial reporting.
31.42 Retention and access requirements for records.
31.43 Enforcement.
31.44 Termination for convenience.

Subpart D—After-The-Grant Requirements

- 31.50 Closeout.
31.51 Later disallowances and adjustments.
31.52 Collection of amounts due.

Subpart E—Entitlement [Reserved]

Subpart F—Disputes

- 31.70 Disputes.
Authority: 33 U.S.C. 1251 et seq.; 42 U.S.C. 7401 et seq.; 42 U.S.C. 6901 et seq.; 42 U.S.C. 300f et seq.; 7 U.S.C. 136 et seq.; 15 U.S.C. 2601 et seq.; 42 U.S.C. 9601 et seq.; 20 U.S.C. 4011 et seq.; 33 U.S.C. 1401 et seq.
2. Further amend Part 31 as follows:
a. Amend § 31.6 by adding new paragraphs (c)(1) and (d) to read follows:

§ 31.6 Additions and exceptions.

- (c) * * *
(1) In the Environmental Protection Agency, the Director, Grants

Administration Division, is authorized to grant the exceptions.

(d) The EPA Director is also authorized to approve exceptions, on a class or an individual case basis, to EPA program—specific assistance regulations other than those which implement statutory and executive order requirements.

b. Add a new § 31.13 to Subpart B to read as follows:

§ 31.13 Principal environmental statutory provisions applicable to EPA assistance awards.

Grantees shall comply with all applicable Federal laws including:

(a) Section 306 of the Clean Air Act, (42 U.S.C. 7606).

(b) Section 508 of the Federal Water Pollution Control Act, as amended, (33 U.S.C. 1368).

(c) Section 1424(e) of the Safe Drinking Water Act, (42 U.S.C. 300h-3(e)).

c. Amend § 31.36 by adding new paragraphs (c)(5), (j), and (k) to read as follows:

§ 31.36 Procurement.

(c) * * *
(5) Construction grants awarded under Title II of the Clean Water Act are subject to the following "Buy American" requirements in paragraphs (c)(5)(i)-(iii) of this section. Section 215 of the Clean Water Act requires that contractors give preference to the use of domestic material in the construction of EPA-funded treatment works.

(i) Contractors must use domestic construction materials in preference to nondomestic material if it is priced no more than 6 percent higher than the bid or offered price of the nondomestic material, including all costs of delivery to the construction site and any applicable duty, whether or not assessed. The grantee will normally base the computations on prices and costs in effect on the date of opening bids or proposals.

(ii) The award official may waive the Buy American provision based on factors the award official considers relevant, including:

- (A) Such use is not in the public interest;
(B) The cost is unreasonable;
(C) The Agency's available resources are not sufficient to implement the provision, subject to the Deputy Administrator's concurrence;
(D) The articles, materials or supplies of the class or kind to be used or the articles, materials or supplies from which they are manufactured are not mined, produced or manufactured in the

United States in sufficient and reasonably available commercial quantities or satisfactory quality for the particular project; or

(E) Application of this provision is contrary to multilateral government procurement agreements, subject to the Deputy Administrator's concurrence.

(iii) All bidding documents, subagreements, and, if appropriate, requests for proposals must contain the following "Buy American" provision: In accordance with section 215 of the Clean Water Act (33 U.S.C. 1251 et seq.) and implementing EPA regulations, the contractor agrees that preference will be given to domestic construction materials by the contractor, subcontractors, materialmen and suppliers in the performance of this subagreement.

* * *
(j) *Payment to consultants.*

(1) EPA will limit its participation in the salary rate (excluding overhead) paid to individual consultants retained by grantees or by a grantee's contractors or subcontractors to the maximum daily rate for a GS-18. (Grantees may, however, pay consultants more than this amount). This limitation applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. This rate does not include transportation and subsistence costs for travel performed; grantees will pay these in accordance with their normal travel reimbursement practices. (Public Law 99-591)

(2) Subagreements with firms for services which are awarded using the procurement requirements in this part are not affected by this limitation.

(k) *Use of the same architect or engineer during construction.*

(1) If the grantee is satisfied with the qualifications and performance of the architect or engineer who provided any or all of the facilities planning or design services for a waste-water treatment works project and wishes to retain that firm or individual during construction of the project, it may do so without further public notice and evaluation of qualifications, provided:

(i) The grantee received a facilities planning (Step 1) or design grant (Step 2), and selected the architect or engineer in accordance with EPA's procurement regulations in effect when EPA awarded the grant; or

(ii) The award official approves noncompetitive procurement under § 31.36(d)(4) for reasons other than simply using the same individual or firm that provided facilities planning or design services for the project; or

(iii) The grantee attests that:

(A) The initial request for proposals clearly stated the possibility that the firm or individual selected could be awarded a subagreement for services during construction; and

(B) The firm or individual was selected for facilities planning or design services in accordance with procedures specified in this section.

(C) No employee, officer or agent of the grantee, any member of their immediate families, or their partners have financial or other interest in the firm selected for award; and

(D) None of the grantee's officers, employees or agents solicited or accepted gratuities, favors or anything of monetary value from contractors or other parties to subagreements.

(2) However, if the grantee uses the procedures in paragraph (k)(1) of this section to retain an architect or engineer, any Step 3 subagreements between the architect or engineer and the grantee must meet all of the other procurement provisions in § 31.36.

d. Section 31.43 is amended by adding paragraph (a)(3)(i) to read as follows:

§ 31.43 Enforcement.

(a) * * *

(3) * * * (i) EPA can also wholly or partly annul the current award for the grantee's or subgrantee's program.

(e) Add a new § 31.45 to Subpart C to read as follows:

§ 31.45 Quality assurance.

If the grantee's project involves environmentally related measurements or data generation, the grantee shall develop and implement quality assurance practices consisting of policies, procedures, specifications, standards, and documentation sufficient to produce data of quality adequate to meet project objectives and to minimize loss of data due to out-of-control conditions or malfunctions.

f. Add a new 40 CFR Part 31, Subpart F, consisting of § 31.70 to read as follows:

Subpart F—Disputes

§ 31.70 Disputes.

(a) Disagreements should be resolved at the lowest level possible.

(b) If an agreement cannot be reached, the EPA disputes decision official will provide a written final decision. The EPA disputes decision official is the individual designated by the award official to resolve disputes concerning assistance agreements.

(c) The disputes decision official's decision will constitute final agency action unless a request for review is filed by registered mail, return receipt requested, within 30 calendar days of the date of the decision.

(1) For final decisions issued by an EPA disputes decision official at Headquarters, the request for review shall be filed with the Assistant Administrator responsible for the assistance program.

(2) For final decisions issued by a Regional disputes decision official, the request for review shall be filed with the Regional Administrator. If the Regional Administrator issued the final decision, the request for reconsideration shall be filed with the Regional Administrator.

(d) The request shall include:

(1) A copy of the EPA disputes decision official's final decision;

(2) A statement of the amount in dispute;

(3) A description of the issues involved; and

(4) A concise statement of the objections to the final decision.

(e) The disputant(s) may be represented by counsel and may submit documentary evidence and briefs for inclusion in a written record.

(f) Disputants are entitled to an informal conference with EPA officials.

(g) Disputants are entitled to a written decision from the appropriate Regional or Assistant Administrator.

(h) A decision by the Assistant Administrator to confirm the final decision of a Headquarters disputes decision official will constitute the final Agency action.

(i) A decision by the Regional Administrator to confirm the Regional disputes decision official's decision will constitute the final Agency action. However, a petition for discretionary review by the Assistant Administrator responsible for the assistance program may be filed within 30 calendar days of the Regional Administrator's decision. The petition shall be sent to the Assistant Administrator by registered mail, return receipt requested, and shall include:

(1) A copy of the Regional Administrator's decision; and

(2) A concise statement of the objections to the decision.

(j) If the Assistant Administrator decides not to review the Regional Administrator's decision, the Assistant Administrator will advise the disputant(s) in writing that the Regional Administrator's decision remains the final Agency action.

(k) If the Assistant Administrator decides to review the Regional Administrator's decision, the review will generally be limited to the written record on which the Regional Administrator's decision was based. The Assistant Administrator may allow the disputant(s) to submit briefs in support of the petition for review and

may provide an opportunity for an informal conference in order to clarify technical or legal issues. After reviewing the Regional Administrator's decision, the Assistant Administrator will issue a written decision which will then become the final Agency action.

(l) Reviews may not be requested of:

(1) Decisions on requests for exceptions under § 31.6;

(2) Bid protest decisions under § 31.36(b)(12);

(3) National Environmental Policy Act decisions under Part 6;

(4) Advanced wastewater treatment decisions of the Administrator; and

(5) Policy decisions of the EPA Audit Resolution Board.

PART 30—GENERAL REGULATION FOR ASSISTANCE PROGRAMS FOR OTHER THAN STATE AND LOCAL GOVERNMENTS

3. Amend Part 30 by revising the title to read as set forth above; the authority citation continues to read as follows:

Authority: 33 U.S.C. 1251 et seq.; 42 U.S.C. 7401 et seq.; 42 U.S.C. 6901 et seq.; 42 U.S.C. 300f et seq.; 7 U.S.C. 136 et seq.; 15 U.S.C. 2601 et seq.; 42 U.S.C. 9601 et seq.

4. Further amend Part 30 as follows:

§ 30.302 [Amended]

a. Amend § 30.302 by removing paragraphs (d) (2) and (3).

§ 30.501 [Amended]

b. Amend § 30.501 by removing paragraph (a)(2) and redesignating (a)(3) as (a)(2).

§ 30.503 [Amended]

c. Amend § 30.503 by removing paragraphs (e), (g) and (h) and redesignating (f) as (e).

§ 30.505 [Amended]

d. Amend § 30.505 by removing paragraph (b)(2) and redesignating (b)(3) as (b)(2).

§ 30.540 [Amended]

e. Amend § 30.540 by removing paragraph (b) and redesignating (c) as (b).

Appendix E—Redesignated as Appendix A to Part 31

f. Appendix E is redesignated as Appendix A to Part 31.

PART 33—PROCUREMENT UNDER ASSISTANCE AGREEMENTS

5. Amend Part 33 as follows:

a. The authority citation for Part 33 continues to read as follows:

Authority: 7 U.S.C. 135 et seq.; 15 U.S.C. 2601 et seq.; 33 U.S.C. 1251 et seq.; 42 U.S.C. 241, 242b, 243, 246, 300j-1, 300j-2, 300j-3, 1857 et seq., 6901 et seq.; and 42 U.S.C. 9601 et seq.

§ 33.110 [Amended]

b. Amend § 33.110 by removing paragraph (e)(5) and redesignating (e)(6) as (e)(5).

§ 33.210 [Amended]

c. Amend § 33.210 by removing paragraph (f) and redesignating (g) and (h) as (f) and (g) respectively.

Subparts C and E—[Removed and Reserved]

d. Subparts C and E are removed and reserved.

§ 33.1021 [Removed and Reserved]

e. § 33.1021 is removed and reserved.

§ 33.1030 [Amended]

f. Amend § 33.1030 by removing clauses 3, 4, 8, and 12 and redesignating 5 as 3, 6 as 4, 7 as 5, 9 as 6, 10 as 7, 11 as 8, 13 as 9, and 14 as 10.

BILLING CODE 5560-50-M

DEPARTMENT OF THE INTERIOR

43 CFR Part 12

FOR FURTHER INFORMATION CONTACT:

Colonel C. Armstrong, Deputy Director, Office of Acquisition and Property Management, Room 5512, Department of the Interior, Washington, DC 20240. Phone: 202-343-6431.

ADDITIONAL SUPPLEMENTARY INFORMATION:

Rescissions

Provisions of Department of the Interior regulations listed at 43 CFR 12.2(b) which are inconsistent with the common rule are hereby rescinded. 43 CFR 12.3(b) has been revised accordingly.

Comments on the Proposed Rule

Comments received by the Department of the Interior were reproduced and exchanged among all of the agencies and used to prepare this final rule.

One commentor suggested that all statutes applicable to Indian tribal governments be listed as exceptions to the common rule because of the unique status of tribal governments. Since § 12.44 (§ 4) provides a preference for Federal statutes which are inconsistent with the provisions of the common rule, no change has been made.

Another comment recommended that § 12.72(b) (§ 32(b)) be changed to allow equipment acquired by tribal

governments under grants to be used, managed and disposed of in accordance with tribal laws and procedures. This recommendation cannot be adopted since local governments and Indian tribal governments will administer direct grants according to the requirements of the common rule (i.e., paragraphs (c) through (e) of § 12.45 (§ 32)). "Pass-through" funds subgranted by a State to an Indian tribal government are administered according to State laws and procedures.

This rule is effective for grants and cooperative agreements awarded on or after October 1, 1988, the start of the next Federal fiscal year.

List of Subjects in 43 CFR Part 12

Cooperative agreements, Grants administration, Grant program, Indians.

Title 43, Part 12, of the Code of Federal Regulations is amended as set forth below.

Rick Ventura,

Assistant Secretary-Policy, Budget and Administration.

Date: February 1, 1988.

PART 12—ADMINISTRATIVE REQUIREMENTS AND COST PRINCIPLES FOR ASSISTANCE PROGRAMS

1. The authority citation for Part 12 is revised to read as follows:

Authority: 5 U.S.C. 301; Pub. L. 98-502; OMB Circular A-102; OMB Circular A-110; OMB Circular A-128.

Subpart A—Administrative Requirements and Cost Principles

2. Subpart A is amended as set forth below.

a. Section 12.2 (b)(1) is amended by adding an additional sentence to the end of the paragraph to read as follows:

§ 12.2 Policy.

* * * * *

(b)(1) * * * Departmental regulations implementing Circular A-102 are contained in Subpart C, 43 CFR Part 12.

* * * * *

b. Section 12.3 (b) is amended by revising "All" to read "all" and inserting the following words at the beginning of the sentence to read as follows:

§ 12.3 Effect on prior issuances.

* * * * *

(b) Except to the extent inconsistent with the regulations in 43 CFR Part 12, Subpart C, * * *

3. Subpart C is added to read as set forth at the end of this document.

Subpart C—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments

General

Sec.

- 12.41 (____.1) Purpose and scope of this part.
- 12.42 (____.2) Scope of subpart.
- 12.43 (____.3) Definitions.
- 12.44 (____.4) Applicability.
- 12.45 (____.5) Effect on other issuances.
- 12.46 (____.6) Additions and exceptions.

Pre-Award Requirements

- 12.50 (____.10) Forms for applying for grants.
- 12.51 (____.11) State plans.
- 12.52 (____.12) Special grant or subgrant conditions for "high-risk" grantees.

Post-Award Requirements

Financial Administration

- 12.60 (____.20) Standards for financial management systems.
- 12.61 (____.21) Payment.
- 12.62 (____.22) Allowable costs.
- 12.63 (____.23) Period of availability of funds.
- 12.64 (____.24) Matching or cost sharing.
- 12.65 (____.25) Program income.
- 12.66 (____.26) Non-Federal audit.

Changes, Property, and Subawards

- 12.70 (____.30) Changes.
- 12.71 (____.31) Real Property
- 12.72 (____.32) Equipment
- 12.73 (____.33) Supplies.
- 12.74 (____.34) Copyrights
- 12.75 (____.35) Subawards to debarred and suspended parties.
- 12.76 (____.36) Procurement.
- 12.77 (____.37) Subgrants.

Reports, Records Retention, and Enforcement

- 12.80 (____.40) Monitoring and reporting program performance.
- 12.81 (____.41) Financial reporting.
- 12.82 (____.42) Retention and access requirements for records.
- 12.83 (____.43) Enforcement.
- 12.84 (____.44) Termination for convenience

After the Grant Requirements

- 12.90 (____.50) Closeout.
- 12.91 (____.51) Later disallowances and adjustments.
- 12.92 (____.52) Collection of amounts due.

Entitlements [Reserved]

BILLING CODE 4310-RF-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 13

FOR FURTHER INFORMATION CONTACT:

Arthur E. Curry, Office of the

Comptroller Policy Division (202) 646-3717.

ADDITIONAL SUPPLEMENTARY

INFORMATION: The Federal Emergency Management Agency intends to incorporate the proposed rule as Part 13 of Title 44 of the Code of Federal Regulations.

Though the agency has never issued formal Assistance Standards in the Code of Federal Regulations, it did issue guidance for its recipients in FEMA's issuance of Financial Assistance Guidelines, CPG 1-32. These guidelines were issued to all of our assistance programs with the exception of the Disaster Assistance Program for the reasons cited:

As a general comment, the proposed revision to OMB Circular A-102 may work well for most Federal assistance grant programs under which pre-determined amounts of Federal funds from annual appropriations are made available to grantees with expenditures governed by OMB's applicable administrative standards and cost-principles. By contrast, FEMA's Disaster Relief Assistance Program immediately follows unanticipated major disasters and consists of open-ended reimbursement-type grants made from no-year appropriations to large numbers of disasters affected communities, many of which are very small and do not have approved indirect cost agreements.

It is difficult to assess the full impact of the final common rule on FEMA's administration of the disaster relief program, and the public assistance program in particular, without further indepth review. Some of the significant impacts contained in the draft final rule include:

- An effective date of October 1, 1988, (or earlier) for grants awarded after that date or an earlier date. This could result in major disasters declared prior to October 1, 1988, with some grants awarded before and some awarded after the effective date.
- The supersession of program regulations and handbooks not in compliance (Subpart A, Section 5, page 8). Presumably, grants awarded prior to October 1, 1988, would be governed by the existing regulations and handbooks.
- The possible requirement for State plans for major disasters declared after October 1, 1988 (Subpart B, Section 1), page 10). This would also imply that a State Plan would be required for grants awarded subsequent to October 1, 1988, on previously declared major disasters.
- The application of Allowable Costs in OMB Circular A-87 to State and local

governments for grants awarded subsequent to October 1, 1988 (Subpart C, Section 22, page 13). Also, it would require the use of OMB Circular A-21 and A-122 for grants made to private nonprofit organizations and educational institutions after October 1, 1988.

- The application of the value of third-party in-kind contributions to meet FEMA cost sharing requirements on grants awarded subsequently to October 1, 1988 (Subpart C, Section 24, page 14). Although such records must be verifiable, this provision will weaken the existing cost-sharing requirement for disaster relief assistance.
- The requirement that State grantees and subgrantees develop and utilize comprehensive procurement policies and procedures, including a contract administration system (Subpart C, Section 36, page 24).

FEMA will submit a formal request to exempt the Disaster Assistance Program prior to October 1, 1988.

In the future, we may amend Part 13 of Title 44 as future needs dictate.

List of Subjects in 44 CFR Part 13

Accounting, Administrative practice and procedure, Grant programs—civil defense, disaster, hazardous materials and fire training, Grants Administration, Insurance, Reporting and recordkeeping requirements.

It is proposed that Title 44 of the Code of Federal Regulations be amended by adding Part 13 as set forth at the end of this document.

Arthur E. Curry,
Chief, Policy Division.

PART 13—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.

- 13.1 Purpose and scope of this part.
- 13.2 Scope of subpart.
- 13.3 Definitions.
- 13.4 Applicability.
- 13.5 Effect on other issuances.
- 13.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

- 13.10 Forms for applying for grants.
- 13.11 State plans.
- 13.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements

Financial Administration

- 13.20 Standards for financial management systems.
- 13.21 Payment.

- 13.22 Allowable costs.
- 13.23 Period of availability of funds.
- 13.24 Matching or cost sharing.
- 13.25 Program income.
- 13.26 Non-Federal audit.

Changes, Property, and Subawards

- 13.30 Changes.
- 13.31 Real property.
- 13.32 Equipment.
- 13.33 Supplies.
- 13.34 Copyrights.
- 13.35 Subawards to debarred and suspended parties.
- 13.36 Procurement.
- 13.37 Subgrants.

Reports, Records Retention, and Enforcement

- 13.40 Monitoring and reporting program performance.
- 13.41 Financial reporting.
- 13.42 Retention and access requirements for records.
- 13.43 Enforcement.
- 13.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

- 13.50 Closeout.
- 13.51 Later Disallowances and adjustments.
- 13.52 Collection of amounts due.

Subpart E—Entitlements [Reserved]

Authority: Reorg. Plan No. 3 1978, EO 12127; EO 12148.

BILLING CODE 6718-21-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Parts 74 and 92

FOR FURTHER INFORMATION CONTACT: Mr. Gary Houseknecht, Acting Director, Division of Assistance and Cost Policy, Department of Health and Human Services, Room 513-D, 200 Independence Avenue SW., Washington, DC 20201. Telephone (202) 245-7565.

ADDITIONAL SUPPLEMENTARY

INFORMATION: Currently, the administration of most HHS grants, including grants to State and local governments, is governed by 45 CFR Part 74, which contains the HHS implementation of OMB Circulars A-102 and A-110, plus HHS grant rules which do not derive from OMB circulars.

With the adoption of 45 CFR Part 92, "Uniform Administrative Requirements For Grants and Cooperative Agreements to State and Local Governments," as a final rule, (effective on October 1, 1988), 45 CFR Part 74 for the most part will no longer be applicable to the grants covered by Part 92. However, Part 74 will continue to apply to grants to nongovernmental recipients—institutions of higher education,

hospitals, other nonprofit organizations and for-profit concerns. Also, Part 74, in its entirety, would continue to govern HHS's grants to States under open-ended entitlement programs under the Social Security Act, as set forth in § 92.4(a)(3).

In addition, there are a number of provisions affecting governmental grantees that are now in 45 CFR Part 74, but not in 45 CFR Part 92, which we believe should remain in effect for grants to governments even after Part 92 is in effect. Therefore with the adoption of 45 CFR Part 92 (effective October 1, 1988) it is necessary to preserve the applicability of certain longstanding HHS Rules to grants which will be subject to Part 92. We described this plan in the Part 92 Notice of Proposed Rulemaking, on June 9, 1987 [52 FR 21820 and 21839], and gave examples of the rules which would be preserved. At that time we planned to issue a separate Notice of Proposed Rulemaking on the subject. However that step has proved unnecessary because no new rules are being adopted.

The Part 74 provisions which will continue to apply to grants under Part 92 are:

1. Section 74.62(a) which simplifies submission of audit reports;
 2. Section 74.173 which specifies cost principles for hospitals;
 3. Section 74.174(b) which establishes certain special cost rules for nonprofit organizations;
 4. Section 74.304 which describes grantee responsibilities regarding final decisions in disputes; and
 5. Sections 74.710 and 74.715 which apply special conditions to grants and subgrants to for-profit organizations.
- Additionally, § 74.62(a) is being amended to update its internal reference to the previous version of OMB Circular A-102, which continues to apply to prior periods.

Finally, two other Part 74 policies are being retained, and incorporated in Part 92 itself. We are adding the following provisions to Part 92 to reflect these two policies:

1. Section 92.30(a) which specifies the HHS officials who may approve project changes. (See § 74.102(a).); and
2. Section 92.30(d)(5) which requires prior approval for research patient care. (See § 74.103(d)(3).)

Grantees should also note that 45 CFR Part 92 will not apply to block grant programs covered by 45 CFR Part 96.

List of Subjects in 45 CFR Parts 74 and 92

Accounting, Administrative practice and procedures, Grant programs—health; Grant programs—social

programs, Grant administration, Reporting and recordkeeping requirements.

Accordingly Title 45 of the Code of Federal Regulations is amended as set forth below.

Dated: February 1, 1988.

Otis R. Bowen,

Secretary of Health and Human Services.

1. Part 92 is added as set forth at the end of this document.

PART 92—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.

- 92.1 Purpose and scope of this part.
- 92.2 Scope of subpart.
- 92.3 Definitions.
- 92.4 Applicability.
- 92.5 Effect on other issuances.
- 92.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

- 92.10 Forms for applying for grants.
- 92.11 State plans.
- 92.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements

Financial Administration

- 92.20 Standards for financial management systems.
- 92.21 Payment.
- 92.22 Allowable costs.
- 92.23 Period of availability of funds.
- 92.24 Matching or cost sharing.
- 92.25 Program income.
- 92.26 Non-Federal audit.

Changes, Property, and Subawards

- 92.30 Changes.
- 92.31 Real property.
- 92.32 Equipment.
- 92.33 Supplies.
- 92.34 Copyrights.
- 92.35 Subawards to debarred and suspended parties.
- 92.36 Procurement.
- 92.37 Subgrants.

Reports, Records Retention, and Enforcement

- 92.40 Monitoring and reporting program performance.
- 92.41 Financial reporting.
- 92.42 Retention and access requirements for records.
- 92.43 Enforcement.
- 92.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

- 92.50 Closeout.
- 92.51 Later disallowances and adjustments.
- 92.52 Collection of amounts due.

Subpart E—Entitlements [Reserved]

Authority: 5 U.S.C. 301.

2. New Part 92 is amended as follows:

a. Section 92.30 is amended by adding paragraphs (a)(1) and (d)(5) to read as follows:

§ 92.30 Changes.

(a) * * * (1) Approvals shall not be valid unless they are in writing, and signed by at least one of the following officials of the Department of Health and Human Services (HHS):

- (i) The responsible Grants Officer or his or her designee;
- (ii) The head of the HHS Operating or Staff Division that awarded the grant; or
- (iii) The head of the Regional Office of the HHS Operating or Staff Division that awarded the grant.

(d) *Programmatic changes* * * *

(5) Providing medical care to individuals under research grants.

PART 74—ADMINISTRATION OF GRANTS

3. Part 74 is amended as follows:

a. The authority citation for Part 74 continues to read:

Authority: 5 U.S.C. 301; § 74.62(a) and Appendix J also issued under sec. 7505 Pub. L. 98-502, 98 Stat. 2333 (31 U.S.C. 7505).

b. Section 74.4 is amended by designating the text following "General," in paragraph (a) as paragraph (a)(1) and by adding a new paragraph (a)(2) to read as follows:

§ 74.4 Applicability of this part.

(a) *General.* * * *

(2) For grants which are subject to 45 CFR Part 92, only the following provisions of this part apply:

- (i) Section 74.62(a);
- (ii) Section 74.173;
- (iii) Section 74.174(b);
- (iv) Section 74.304;
- (v) Section 74.710; and
- (vi) Section 74.715.

c. Section 74.62 is amended by revising paragraph (a)(1) to read as follows:

§ 74.62 Non-Federal audits.

(a) *Governmental recipients*—(1) *Fiscal periods of recipients beginning before January 1, 1985.* Recipients that are governments shall comply with the requirements concerning non-Federal audits in Attachment P to OMB Circular A-102 (October 1979).¹

BILLING CODE 5150-04-M

NATIONAL SCIENCE FOUNDATION**45 CFR Part 602**

FOR FURTHER INFORMATION CONTACT: Sharon Graham, Policy Office, Division of Grants and Contracts, telephone (202) 357-7880.

ADDITIONAL SUPPLEMENTARY INFORMATION: Because the National Science Foundation (NSF) does not differentiate in its administrative practices among types of organizations, and because State and local governments make up less than 30 of its 1500 grantees, NSF expects all prospective and existing grantees to continue following the policies and procedures found in NSF's publications and forms which have received OMB clearance. These policies and procedures, which are consistent with or less restrictive than the common rule, are found in: "Grants for Research and Education in Science and Engineering" which outlines the procedures for applying for NSF grants, and contains the necessary cover page, forms and format for submitting a proposal; NSF F.L. 200, "Grant General Conditions," which contains the terms and conditions which are usually applicable to NSF grants; and "NSF Grant Policy Manual" which outlines NSF's grant administration provisions. Where existing requirements appear inconsistent with the common rule, grantees should consult with NSF.

List of Subjects in 45 CFR Part 602

Accounting, Administration practice and procedures, Grant administration, Grant programs—education, Grant programs—science and technology, Insurance, Reporting and recordkeeping requirements.

Title 45 of the Code of Federal Regulations is amended by adding Part 602 as set forth at the end of this document.

Jeff Fenstermacher,
Assistant Director for Administration.

PART 602—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.

- 602.1 Purpose and scope of this part.
- 602.2 Scope of subpart.
- 602.3 Definitions.
- 602.4 Applicability.
- 602.5 Effect of other issuances.
- 602.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

- 602.10 Forms for applying for grants.
- 602.11 State plans.
- 602.12 Special grant or subgrant conditions for "high risk" grantees.

Subpart C—Post-Award Requirements**Financial Administration**

- 602.20 Standard for financial management systems.
- 602.21 Payment.
- 602.22 Allowable costs.
- 602.23 Period of availability of funds.
- 602.24 Matching or cost sharing.
- 602.25 Program income.
- 602.26 Non-Federal audit.

Changes, Property, and Subawards

- 602.30 Changes.
- 602.31 Real property.
- 602.32 Equipment.
- 602.33 Supplies.
- 602.34 Copyrights.
- 602.35 Subawards to debarred and suspended parties.
- 602.36 Procurements.
- 602.37 Subgrants.

Reports, Records Retention, and Enforcement

- 602.40 Monitoring and reporting program performance.
- 602.41 Financial reporting.
- 602.42 Retention and access requirements for records.
- 602.43 Enforcement.
- 602.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

- 602.50 Closeout.
- 602.51 Later disallowances and adjustments.
- 602.52 Collections of amounts due.

Subpart E—Entitlements [Reserved]

Authority: 42 U.S.C. 1870(a).

BILLING CODE 7555-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES**National Endowment for the Arts****45 CFR Part 1157****FOR FURTHER INFORMATION CONTACT:**

Arthur Warren, Deputy General Counsel, or Laurence Baden, Grants Officer, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, (202) 682-5403.

ADDITIONAL SUPPLEMENTARY

INFORMATION: The National Endowment for the Arts (hereinafter "Arts Endowment") received three comments concerning the notice of proposed rulemaking regarding Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments published in the *Federal Register* on June 9, 1987. Two comments addressed state plans requirements; one of these specifically noted the legislative override of § 1157.11

discussed in the Arts Endowment's agency specific preamble. The third comment was unrelated to matters addressed in the Arts Endowment's agency specific preamble. These comments were shared with all agencies participating in the common rulemaking and considered in preparing the final rule. The exceptions described by the National Endowment for the Arts in its preamble in the June 9, 1987, *Federal Register* publication of the notice of proposed rulemaking remain.

Legislative Overrides

1. Section 1157.4 makes the final common rule applicable to all grant programs except where the regulation is inconsistent with federal statutes or regulations. The common rule has been determined to be inconsistent with the Challenge Program of the National Endowment for the Arts [20 U.S.C. 954(1)]. In creating the Challenge Program, Congress recognized the necessity of broadening the range and enlarging the number of sources of financial support for arts institutions as well as increasing the levels of support, thus creating a more effective private-public sector partnership. The Challenge Program encourages grantees to improve and integrate their program, audience, and financial development planning to build new and continuing sources of support and a more stable pattern of future operations and growth. In meeting its mandate, the Challenge Program is unique in every phase of the grant process—the application, the grant purposes, the allowable use of grant funds, and the reporting requirements.

For the reasons stated above, §§ 1157.10, 1157.41 and certain portions of § 1157.22 of the common rule are not applicable to grant funds awarded pursuant to subsection 5(l) of the National Foundation of the Arts and the Humanities Act of 1965, as amended (hereinafter "NFAH Act"), [20 U.S.C. 954(l)] unless otherwise provided in the grant agreement. Congress intended Challenge grants to assist arts organizations in obtaining nonfederal support and to improve their financial stability through long-range financial and program planning. Challenge grant applications must supply specifically tailored financial and programmatic data to the agency to allow the agency to review applications in a manner consistent with the statutory purpose of the program. Challenge grantees are subject to the applicable cost principles except where provided otherwise by the NFAH Act (e.g., endowment, cash reserve, fundraising, notes payable, deficit elimination, and capital funds).

Finally, grantees must maintain and report financial data beyond that required by standard forms to demonstrate achievement of matching and other program requirements.

2. Section ____11 of the final common rule allows states to "simplify, consolidate, and substitute plans" required to be submitted to federal agencies in order to receive federal assistance. Pursuant to subsection 5(g)(2) of the NFAH Act [20 U.S.C. 954(g)(2)], state applicants are required to submit a specifically described state plan in order to receive basic state operating grant assistance. Because this Agency's authorizing legislation specifies certain information and assurances which must be included in this state plan, it would not be legally permissible to substitute a different state plan for this purpose, or to simplify the state plan requirements. Given timing requirements, it would be impractical to consolidate these plans with other state plans. Also, Congress has directed, at 20 U.S.C. 954(m), that information gathered through these plans be used to provide biennial reports to Congress on the state of the arts. These legal mandates were not considered by the comment received on this.

In addition, it should be noted that for the purposes of section ____10 of the final common rule, the Arts Endowment considers the basic state grant program to be a "formula grant program" not subject to the application forms provision of § ____10 of the OMB common regulation. However, as a matter of policy, the Agency has determined to adopt the "Changes" provisions at § ____30 of the common regulation for these grants. Adoption of this provision would be consistent with the intent of Congress for the administration of this program as reflected in the statutory state plan requirements and in the statutory requirement [20 U.S.C. 954(g)(1)] that these funds be used only for projects and productions in the arts which meet certain statutory standards or goals.

3. Sections ____40(e) and ____41(a)(7) of the final common rule provide that grantor agencies may waive any performance or financial reports required by the common rule if they are needed. Subsections 10(d)(1) and 10(d)(2)(A) of the Arts Endowment's authorizing legislation [20 U.S.C. 959(d)] require specific performance and financial reports. Because of the statutory requirements, the Arts Endowment is unable to waive the various provisions of the common rule

regarding the performance and financial reports.

Application Form

Also concerning section .10 of the final common rule, the agency specific preamble to the June 9, 1987 *Federal Register* publication requested public comment as to the impact of the use of the standard application forms with the Arts Endowment's existing application forms as supplements would have for state and local government applicants.

No comments were received as a result of the notice in the June 9 *Federal Register* and the Arts Endowment thus concluded that potential applicants concurred with the Endowment's existing practice. However, the Arts Endowment published an additional notice in the *Federal Register* (52 FR 42687-42688) on November 6, 1987 to provide the public with an additional opportunity to comment.

In response to this notice, the Endowment received two comments. The National Assembly of State Arts Agencies (NASAA), which represents the 56 states and jurisdictional arts agencies, concurred strongly with the Endowment's position: "We submit this public comment in support of the recommendation of the National Endowment for the Arts that applicants to a program use the application forms specifically developed for each program. It appears that the new OMB proposal to require a standard form for state and local governments would place an undue burden on state arts agency applicants." NASAA's comment also discussed the problems of comparability of information. It should be noted that NASAA represents organizations that receive state appropriations of over \$200 million annually in support of the arts.

The Endowment also received a comment from a public school district. It advised that units of state and local government should not be required to use forms developed for nonprofits, but those published in OMB Circular A-102. The comment did not address how to achieve comparability of information for application review if different forms were required. It should be noted that a public school system would be eligible for few categories of support within the programs designed for nonprofits. It should also be recognized that, according to our records, this commenter has not made an application to the Endowment during the past five years.

Upon consideration of these comments and based on the experience of the Agency, the Arts Endowment intends to continue its use of forms approved under the Paperwork

Reduction Act of 1980 for all applicants to programs oriented to nonprofits. This practice is consistent with § ____10(b) of the final common rule.

List of Subjects in 45 CFR Part 1157

Accounting, Administrative practice and procedures, Grant programs, Grants administration, Insurance, Reporting and recordkeeping requirements.

Title 45 of the Code of Federal Regulations is amended by adding Part 1157 as set forth at the end of this document.

Peter J. Basso,

Deputy Chairman for Management.

PART 1157—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.

- 1157.1 Purpose and scope of this part.
- 1157.2 Scope of subpart.
- 1157.3 Definitions.
- 1157.4 Applicability.
- 1157.5 Effect on other issuances.
- 1157.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

- 1157.10 Forms for applying for grants.
- 1157.11 State plans.
- 1157.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements

Financial Administration

- 1157.20 Standards for financial management systems.
- 1157.21 Payment.
- 1157.22 Allowable costs.
- 1157.23 Period of availability of funds.
- 1157.24 Matching or cost sharing.
- 1157.25 Program income.
- 1157.26 Non-Federal audit.

Changes, Property, and Subawards

- 1157.30 Changes.
- 1157.31 Real property.
- 1157.32 Equipment.
- 1157.33 Supplies.
- 1157.34 Copyrights.
- 1157.35 Subawards to debarred and suspended parties.
- 1157.36 Procurement.
- 1157.37 Subgrants.

Reports, Records Retention, and Enforcement

- 1157.40 Monitoring and reporting program performance.
- 1157.41 Financial reporting.
- 1157.42 Retention and access requirements for records.
- 1157.43 Enforcement.
- 1157.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

- 1157.50 Closeout.
- 1157.51 Later disallowances and adjustments.

1157.52 Collection of amounts due.

Subpart E—Entitlements [Reserved]

Authority: 20 U.S.C. 959(a)(1).

BILLING CODE 7537-01-M

National Endowment for the Humanities

45 CFR Part 1174

FOR FURTHER INFORMATION CONTACT:

David Wallace, Grants Officer, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, (202) 786-0494.

ADDITIONAL SUPPLEMENTARY

INFORMATION: The National Endowment for the Humanities received two comments during the comment period concerning the notice of proposed rulemaking published in the *Federal Register* on June 9, 1987, regarding Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. These comments were shared with all of the agencies and considered in preparing the final rule. The exceptions described by the National Endowment for the Humanities in its preamble in the June 9, 1987, publication in the *Federal Register* of the notice of proposed rulemaking remain.

Section ____4 makes the final common rule applicable to all grant programs except where the regulation is inconsistent with federal statutes or regulations. The common rule has been determined to be inconsistent with the challenge grant program of the National Endowment for the Humanities [20 U.S.C. 956(h)]. In creating challenge grants as a unique program of grants, Congress recognized the necessity of broadening the range and enlarging the number of sources of financial support for cultural institutions as well as increasing the levels of support, thus creating a more effective private-public sector partnership. The challenge grant program encourages grantees to improve and integrate their program, audience, and financial development planning to build new and continuing sources of support and a more stable pattern of future operations and growth. Thus the challenge grant program in meeting its mandate is unique in every phase of the grant process—the application, the grant purposes, the allowable use of grant funds, and the reporting requirements.

For the reasons stated above, certain portions of § ____22, "Allowable Costs," of the common rule are not applicable to challenge grant funds awarded pursuant to subsection 7(h) of the National

Foundation of the Arts and the Humanities Act of 1965, as amended (hereinafter "NFAH Act"), [20 U.S.C. 956(h)] unless otherwise provided in the grant agreement. Congress intended challenge grants to assist humanities organizations in obtaining nonfederal support and to improve their financial stability through long-range financial and program planning. Challenge grantees are subject to the applicable cost principles except when provided otherwise by the NFAH Act. For example, under the challenge grant program grantees may expend funds for endowments, cash reserves, reduction or deferral of debts, notes or mortgages, or fundraising.

Section ____11 allows states to "simplify, consolidate, and substitute plans" required to be submitted to federal agencies in order to receive federal assistance. However, subsection 7(f) of the NFAH Act, [20 U.S.C. 956(f)], provides that an applicant may apply for grant assistance either as a state humanities agency or, in the absence of a state agency application, as a private group within the state. Applicants, whether a state humanities agency or a private group, are required to submit a specific, statutorily described, state plan in order to receive basic grant assistance. Although thus far no state has chosen to create a state humanities agency to apply under this provision, were a state agency to apply, because the Humanities Endowment's authorizing legislation specifies certain information and assurances that must be included in the state plan, it would not be legally permissible for a state to substitute a different state plan for this purpose, or to simplify the state plan requirements. One comment stated that under Executive Order 12372 and the common rule states would still be required to meet federal statutory requirements in simplified and consolidated plans. The National Endowment for the Humanities agrees that were a state humanities agency formed and applied for funding it would be required to meet federal statutory requirements, but because of timing requirements, it would be impracticable to consolidate these plans with other state plans.

In the event a state chose to apply for a grant under the provisions under 20 U.S.C. 956(f), the Humanities Endowment would consider that application to be a "formula grant program" not subject to the application forms provision of section .10 of the common rule.

Sections ____40(e) and ____41(a)(7) provide that grantor agencies may waive any performance or financial

reports required by the common rule if they are not needed. Subsections 10(d)(1) and 10(d)(2)(A) of the Humanities Endowment's authorizing legislation [20 U.S.C. 959(d)] require performance and financial reports. Because of the statutory requirements, the Humanities Endowment would be unable to waive the various provisions of the common rule regarding the performance and financial reports.

In its preamble to the notice of proposed rulemaking, the National Endowment for the Humanities explained the reasons why it requests applicants to submit multiple copies of applications. The reasons are as follows. Applications are evaluated by the staff of the Humanities Endowment, its panels, its reviewers, and members of the National Council on the Humanities. To be able to insure that applications receive a thorough and objective review in the Endowment's comprehensive peer review process, the Endowment has traditionally requested applicants to submit multiple copies of an application. The Endowment administers purely voluntary, non-entitlement, grant programs, rather than legally mandated entitlement grant programs. Once any applicant voluntarily elects to apply to the Endowment for discretionary public funds, the applicant should properly bear the costs of applying, not the American taxpayer. No negative comments were received with respect to this matter. Therefore, the Endowment intends to continue to request multiple copies of applications.

Lists of Subjects in 45 CFR Part 1174

Accounting, Administration practice and procedures, Grant programs—National Endowment for the Humanities, Grants Administration, Insurance, Reporting and recordkeeping requirements.

Title 45 of the Code of Federal Regulations is amended by adding Part 1174 as set forth at the end of this document.

Lynne V. Cheney,

Chairman, National Endowment for the Humanities.

PART 1174—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.

- 1174.1 Purpose and scope of this part.
- 1174.2 Scope of subpart.
- 1174.3 Definitions.
- 1174.4 Applicability.

Sec.

- 1174.5 Effect on other issuances.
1174.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

- 1174.10 Forms for applying for grants.
1174.11 State plans.
1174.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements**Financial Administration**

- 1174.20 Standards for financial management systems.
1174.21 Payment.
1174.22 Allowable costs.
1174.23 Period of availability of funds.
1174.24 Matching or cost sharing.
1174.25 Program income.
1174.26 Non-Federal audit.

Changes, Property and Subawards

- 1174.30 Changes.
1174.31 Real property.
1174.32 Equipment.
1174.33 Supplies.
1174.34 Copyrights.
1174.35 Subawards to debarred and suspended parties.
1174.36 Procurement.
1174.37 Subgrants.

Reports, Records Retention, and Enforcement

- 1174.40 Monitoring and reporting program performance.
1174.41 Financial reporting.
1174.42 Retention and access requirements for records.
1174.43 Enforcement.
1174.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

- 1174.50 Closeout.
1174.51 Later disallowances and adjustments.
1174.52 Collection of amounts due.

Subpart E—Entitlements [Reserved]

Authority: 20 U.S.C. 959(a)(1).

BILLING CODE 7536-01-M

Institute of Museum Services**45 CFR Part 1183****FOR FURTHER INFORMATION CONTACT:**

Rebecca Danvers, (202) 786-0539.

ADDITIONAL SUPPLEMENTARY

INFORMATION: The Institute of Museum Services, by notice in the Federal Register published on June 9, 1987, 52 FR 21842, proposed the inclusion in its regulations of a new Part 1183 that would incorporate the revised OMB Circular A-102 containing government-wide application and other requirements applicable to grants to State, Local and federally recognized Indian tribal governments. Public comments on the proposed common regulations were received and changes have been made in response to those comments. This document incorporates the common, uniform regulatory provisions reflecting

the revised circular, as changed in response to public comment. As revised, the uniform regulations will become a new Part 1183 of the IMS regulations. Except as otherwise provided by regulation, Part 1183 as set forth below will apply generally to applications by those applicants to the Institute of Museum Services for grants under general operating support and conservation project support programs, as well as to other forms of federal financial assistance provided by IMS.

For the most part these regulations should involve little change in the administration of IMS programs. The previous regulations indicated the applicability of A-102 principles to record keeping requirements and fiscal control and fund accounting procedures. However, inclusion of the text of the circular in comprehensive regulations may result in greater focus on those provisions in the administration and monitoring of IMS grants. Moreover, in a few areas, significant change may be encountered. IMS staff will seek to work with applicants and grantees in adjusting to this change. IMS believes that the changes made to § 1183.10, as explained in the explanation of the general purpose to public comments under "Subpart B—Pre-Award Requirements," adequately addresses concerns expressed by commenters regarding the effect of the new Part 1183 on application procedures. With respect to the use of application forms, IMS expects to proceed under the alternative procedures set forth in § 1183.10.

List of Subject in 45 CFR Part 1183

Accounting, Administrative practice and procedure, Grant programs—Museums, Grants Administration, Insurance, Reporting and recordkeeping requirements.

Title 45 of the Code of Federal Regulations be amended by adding Part 1183 as set forth at the end of this document.

Lois Burke Shepard,

Director.

**PART 1183—UNIFORM
ADMINISTRATIVE REQUIREMENTS
FOR GRANTS AND COOPERATIVE
AGREEMENTS TO STATE AND LOCAL
GOVERNMENTS**

Subpart A—General

Sec.

- 1183.1 Purpose and scope of this part.
1183.2 Scope of subpart.
1183.3 Definitions.
1183.4 Applicability.
1183.5 Effect on other issuances.
1183.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

- 1183.10 Forms for applying for grants.
1183.11 State Plans.
1183.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements**Financial Administration**

- 1183.20 Standards for financial management systems.
1183.21 Payment.
1183.22 Allowable costs.
1183.23 Period of availability of funds.
1183.24 Matching or cost sharing.
1183.25 Program income.
1183.26 Non-Federal audits.

Changes, Property, and Subawards

- 1183.30 Changes.
1183.31 Real property.
1183.32 Equipment.
1183.33 Supplies.
1183.34 Copyrights.
1183.35 Subawards to debarred and suspended parties.
1183.36 Procurement.
1183.37 Subgrants.

Reports, Records Retention, and Enforcement

- 1183.40 Monitoring and reporting program performance.
1183.41 Financial reporting.
1183.42 Retention and access requirements for records.
1183.43 Enforcement.
1183.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

- 1183.50 Closeout.
1183.51 Later disallowances and adjustments.
1183.52 Collection of amounts due.

Subpart E—Entitlements [Reserved]

Authority: 20 U.S.C. 961068.

BILLING CODE 7036-01-M

ACTION**45 CFR Part 1234****FOR FURTHER INFORMATION CONTACT:**

Margaret M. McHale, Acting Chief, Grants Branch, on (202) 634-9150.

ADDITIONAL SUPPLEMENTARY

INFORMATION: None.

List of Subjects in 45 CFR Part 1234

Accounting, Administrative practice and procedures, Grant programs—Volunteer services, Grants administration, Insurance, Reporting and recordkeeping requirements.

Title 45 of the Code of Federal Regulations is amended by adding Part

1234 as set forth at the end of this document.

Donna M. Alvarado,
Director.

PART 1234—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.

- 1234.1 Purpose and scope of this part.
- 1234.2 Scope of subpart.
- 1234.3 Definitions.
- 1234.4 Applicability.
- 1234.5 Effect on other issuances.
- 1234.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

- 1234.10 Forms for applying for grants.
- 1234.11 State plans.
- 1234.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements

Financial Administration

- 1234.20 Standards for financial management systems.
- 1234.21 Payment.
- 1234.22 Allowable costs.
- 1234.23 Period of availability of funds.
- 1234.24 Matching or cost sharing.
- 1234.25 Program income.
- 1234.26 Non-Federal audit.

Changes, Property, and Subawards

- 1234.30 Changes.
- 1234.31 Real property.
- 1234.32 Equipment.
- 1234.33 Supplies.
- 1234.34 Copyrights.
- 1234.35 Subawards to debarred and suspended parties.
- 1234.36 Procurement.
- 1234.37 Subgrants.

Reports, Records Retention, and Enforcement

- 1234.40 Monitoring and reporting program performance.
- 1234.41 Financial reporting.
- 1234.42 Retention and access requirements for records.
- 1234.43 Enforcement.
- 1234.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

- 1234.50 Closeout.
- 1234.51 Later disallowances and adjustments.
- 1234.52 Collections of amounts due.

Subpart E—Entitlements [Reserved]

Authority: Pub. L. 93-113; 42 U.S.C. 4951, et seq; 42 U.S.C. 5060.

BILLING CODE 6050-28-M

COMMISSION ON THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION

45 CFR Part 2015

FOR FURTHER INFORMATION CONTACT:

Kemp Harshman, Associate General Counsel, Commission on the Bicentennial of the United States Constitution, 736 Jackson Place NW., Washington, DC 20503, (202) 653-7451.

List of Subjects in 45 CFR Part 2015

Accounting, Administrative practice and procedure, Grant programs, Grants administration, Reporting and recordkeeping requirements.

Title 45 of the Code of Federal Regulations is amended by adding a new Part 2015 as set forth at the end of this document.

Mark W. Cannon,
Staff Director.

PART 2015—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.

- 2015.1 Purpose and scope of this part.
- 2015.2 Scope of subpart.
- 2015.3 Definitions.
- 2015.4 Applicability.
- 2015.5 Effect on other issuances.
- 2015.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

- 2015.10 Forms for applying for grants.
- 2015.11 State plans.
- 2015.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements

Financial Administration

- 2015.20 Standards for financial management systems.
- 2015.21 Payment.
- 2015.22 Allowable costs.
- 2015.23 Period of availability of funds.
- 2015.24 Matching or cost sharing.
- 2015.25 Program income.
- 2015.26 Non-Federal audit.

Changes, Property, and Subawards

- 2015.30 Changes.
- 2015.31 Real property.
- 2015.32 Equipment.
- 2015.33 Supplies.
- 2015.34 Copyrights.
- 2015.35 Subawards to debarred and suspended parties.
- 2015.36 Procurement.
- 2015.37 Subgrants.

Reports, Records Retention, and Enforcement

- 2015.40 Monitoring and reporting program performance.
- 2015.41 Financial reporting.

- 2015.42 Retention and access requirements for records.
- 2015.43 Enforcement.
- 2015.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

- 2015.50 Closeout.
- 2015.51 Later disallowances and adjustments.
- 2015.52 Collections of amounts due.

Subpart E—Entitlements [Reserved]

Authority: Pub. L. 98-101 as amended and Pub. L. 99-194 as amended.

BILLING CODE 6340-01-M

DEPARTMENT OF TRANSPORTATION

Office of The Secretary

49 CFR Part 18

[Docket 44910]

EFFECTIVE DATE: This rule is effective October 1, 1988, except for the \$5,000 threshold for the definition of "equipment" in § 18.3, the \$5,000 threshold for disposition of equipment in § 18.32(e), and the \$25,000 threshold for the use of small purchase procedures in § 18.36(d)(1), which are effective March 12, 1988. For a discussion of implementation, see the additional supplementary information below.

FOR FURTHER INFORMATION CONTACT: Charles E. Ventura, Department of Transportation, Office of Acquisition and Grant Management—M-63, 400 Seventh Street SW., Room 9100, Washington, DC 20590, (202) 366-4286.

ADDITIONAL SUPPLEMENTARY INFORMATION:

Background

Most significant changes are noted in the common preamble. The Department of Transportation has chosen to implement the higher thresholds for the definition and disposition of equipment, and for the use of small purchase procedures, on the date the regulation is issued. The revised threshold for equipment also applies to equipment owned by grantees that had been acquired with grants that are currently active or have been closed. The Department views these changes as beneficial to the efficient operation of our grant programs and a significant step in reducing the red tape associated with grant administrative requirements.

The "Federalism" provisions of §§ 18.20(a), 18.32(b), 18.36(a), and 18.37(a) that allow States to use their own procedures for financial management, equipment, procurement management, and managing subgrants are extended to all grants active on

October 1, 1988. Because many of our programs fund projects that will cross over the October 1, 1988 implementation date, the Department has chosen to extend the Federalism provisions to grants active as of October 1, 1988. This will allow our State grantees to use the same provisions for current grants as they will use for new grants. This authority does not apply if the awarding agency specifically withholds the authority from a grantee.

The payment requirements of § 18.21(g)(3) do not allow payments to grantees for amounts withheld from payments to contractors to assure satisfactory completion of work. We define payments to contractors to include amounts paid to escrow accounts which can be withdrawn by the contractor upon satisfactory completion of work. The rule has been changed to note that payments to escrow accounts are allowable costs.

The disposition requirements for equipment in § 18.32(e)(3) allow the awarding agency to direct a grantee or subgrantee to take appropriate excess and disposition actions if the grantee or subgrantee fails to take such actions. Section 18.31(c) does not contain an identical provision for real property; however, the policy of the Department of Transportation is that grantees or subgrantees who do not take appropriate disposition actions for real property can be directed by the awarding agency to take such actions.

Section 18.36(b)(7) encourages grantees to use value engineering clauses in contracts for construction projects. The intent of this subsection is to ensure that the essential function is provided at the lowest life-cycle cost. In this regard, design contracts, as well as, construction contracts are possible candidates for value engineering clauses.

The Federal Highway Administration (FHWA) had proposed requiring its own application forms and procedures. The FHWA had been exempted from the application requirements of OMB Circular A-102, and FHWA application forms and procedures have been approved by OMB. The common rule has been revised to allow Federal agencies to use their own forms and procedures provided they have been approved by OMB. This change eliminates the need for a deviation. However, the rule has been amended to highlight the payment procedures that are used for FHWA programs.

Deviations

Because of existing statutory requirements which do not conform with the provisions of the common regulation,

or due to special efforts to reduce Federal red tape, the Department will not comply with some of the sections of the common rule. The deviations not required by statute received no negative comments, and these deviations have been approved by the Office of Management and Budget (OMB). A new airport State Block Grant Pilot Program was authorized in section 534 of the Airport and Airway Improvement Act of 1982, as amended. The Federal Aviation Administration has requested an exemption from the requirements of this rule for this program, although no specific program regulations have been developed. A formal request for exemption will be made when regulations for the program are developed.

Additional statutory deviations, such as one required by the recently passed aviation legislation, and the non-statutory deviations approved by OMB are listed below.

Section 21, Payment. Section 404 of the Surface Transportation Assistance Act of 1982 directs the Secretary to reimburse States for the Federal share of costs incurred.

Section 36, Procurement. 23 U.S.C. 112(a) directs the Secretary to require recipients of highway construction grants to use bidding methods that are "effective in securing competition." Detailed construction contracting procedures are contained in 23 CFR Part 635, Subpart A.

Section 36, Procurement. 23 U.S.C. 112(d) requires concurrence by the Secretary before highway construction contracts can be awarded. One comment was received that this provision does not apply for projects approved under certification acceptance or the Secondary Road Plan. Subsection 18.36(q) has been revised to note this exception.

Section 36, Procurement. The requirement for the use of qualifications-based (e.g., architectural and engineering services) contract selection procedures in § 18.36(t) has been revised to highlight that subgrantees as well as grantees are covered by this requirement. Grantees or subgrantees must either use qualifications-based procedures, use equivalent State procedures, or choose to establish a formal procurement procedure by State statute. A similar provision has also been added for the Airport Improvement Program in section 511 of the Airport and Airway Improvement Act of 1982, as amended. The Subsection has also been revised to note that this procedure can only be used in certain areas, specific areas will be noted in highway,

mass transportation, and airport directives.

Section 41, Financial Reporting. FHWA will require State recipients to use FHWA or State financial reports as opposed to the standard forms referenced in the common rule.

Section 41, Financial Reporting. The National Highway Traffic Safety Administration (NHTSA) will use existing State forms for financial reporting.

Impact Analyses

Executive Order 12291 and DOT Regulatory Policies and Procedures

Executive Order 12291 requires that a regulatory impact analysis be prepared for "major" rules which are defined in the Order as any rule that has an annual effect on the national economy of \$100 million or more, or certain other specified effects.

We intend the regulations to result in savings to State and local governments in the costs of administering grants. However, we do not believe that the regulations will have an annual economic effect of \$100 million or more or the other effects listed in the Order. For this reason, we have determined that these regulations are not a major rule within the meaning of the Order.

This common rule restates, in regulatory form, most of the provisions of OMB Circular A-102 that had been implemented in our program regulations and directives. In addition, some of provisions of the regulation that were not in Circular A-102, or are different from Circular A-102, will reduce the red tape burden on our grantees. Because of this, we certify that this regulation is nonsignificant under the Department of Transportation's Regulatory Policies and Procedures.

Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act (5 U.S.C. 605(b)) requires that, for each rule with a "significant economic impact on a substantial number of small entities," an analysis be prepared describing the rule's impact on small entities and identifying any significant alternatives to the rule that would minimize the economic impact on small entities.

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they do not affect the amount of funds provided in the covered programs, but rather modify and update administrative and procedural requirements.

Paperwork Reduction Act

The recordkeeping and information collection requirements included in these regulations were submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1960 (44 U.S.C. 3504(h)), and were approved August 11, 1987. The OMB approval number is 2105-0520.

List of Subjects in 49 CFR Part 18

Accounting, Administrative practice and procedure, Grant programs, Grants Administration, Insurance, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, Title 49 of the Code of Federal Regulations, is amended as set forth below:

Issued this 3rd day of March, 1988 at Washington, D.C.

Jim Burnley,

Secretary of Transportation.

1. Part 18 is added as set forth at the end of this document.

PART 18—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.

- 18.1 Purpose and scope of this part.
- 18.2 Scope of subpart.
- 18.3 Definitions.
- 18.4 Applicability.
- 18.5 Effect on other issuances.
- 18.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

- 18.10 Forms for applying for grants.
- 18.11 State plans.
- 18.12 Special grant or subgrant conditions for "high risk" recipients.

Subpart C—Post-Award Requirements**Financial Administration**

- 18.20 Standards for financial management systems.
- 18.21 Payment.
- 18.22 Allowable costs.
- 18.23 Period of availability of funds.
- 18.24 Matching or cost sharing.
- 18.25 Program income.
- 18.26 Non-Federal audits.

Changes, Property, and Subawards

- 18.30 Changes.
- 18.31 Real property.
- 18.32 Equipment.
- 18.33 Supplies.
- 18.34 Copyrights.
- 18.35 Subawards to debarred and suspended parties.
- 18.36 Procurement.
- 18.37 Subgrants.

Reports, Records Retention, and Enforcement

- 18.40 Monitoring and reporting program performance.

Sec.

- 18.41 Financial reporting.
- 18.42 Retention and access requirements for records.
- 18.43 Enforcement.
- 18.44 Termination of convenience.

Subpart D—After-the-Grant Requirements

- 18.50 Closeout.
- 18.51 Later disallowances and adjustments.
- 18.52 Collection of amounts due.

Subpart E—Entitlements [Reserved]

Authority: 49 U.S.C. 322(a).

2. New Part 18 is further amended as follows:

a. Section 18.10 is amended by adding paragraph (a)(3) to read as follows:

§ 18.10 Forms for applying for grants.

(a) * * *

(3) Forms and procedures for Federal Highway Administration (FHWA) projects are contained in 23 CFR Part 630, Subpart B, 23 CFR Part 420, Subpart A, and 49 CFR Part 450.

* * * * *

b. Section 18.20 is amended by adding paragraph (d) to read as follows:

§ 18.20 Standards for financial management systems.

* * * * *

(d) Certain Urban Mass Transportation Administration (UMTA) grantees shall comply with the requirements of section 15 of the Urban Mass Transportation (UMT) Act of 1964, as amended, as implemented by 49 CFR Part 630, regarding a uniform system of accounts and records and a uniform reporting system for certain grantees.

c. Section 18.21 is amended by adding paragraphs (j) and (k) to read as follows:

§ 18.21 Payment.

* * * * *

(j) 23 U.S.C. 121 limits payments to States for highway construction projects to the Federal share of the costs of construction incurred to date, plus the Federal share of the value of stockpiled materials.

(k) Section 404 of the Surface Transportation Assistance Act of 1982 directs the Secretary to reimburse States for the Federal share of costs incurred.

d. Section 18.22 is amended by adding paragraphs (c), (d), and (e) to read as follows:

§ 18.22 Allowable costs.

* * * * *

(c) The overhead cost principles of OMB Circular A-87 shall not apply to State highway agencies for FHWA funded grants.

(d) Sections 3(1) and 9(p) of the UMT Act of 1964, as amended, authorize the Secretary to include in the net project cost eligible for Federal assistance, the amount of interest earned and payable

on bonds issued by the State or local public body to the extent that the proceeds of such bonds have actually been expended in carrying out such project or portion thereof. Limitations are established in Sections 3 and 9 of the UMT Act of 1964, as amended.

(e) Section 9 of the UMT Act of 1964, as amended, authorizes grants to finance the leasing of facilities and equipment for use in mass transportation services provided leasing is more cost effective than acquisition or construction.

e. Section 18.24 is amended by adding paragraphs (b)(8), (9), and (10) and (c)(3) to read as follows:

§ 18.24 Matching or cost sharing.

* * * * *

(b) * * *

(8) 23 U.S.C. 121(a) permits reimbursement for actual construction cost incurred by States for highway construction projects. Except for private donations of right-of-way, contributions and donations shall not be considered State costs, and shall not be allowable for matching purposes for highway construction contracts. 23 U.S.C. 323 permits private donations of right-of-way to be used for a State's matching share, and establishes procedures for determining the fair market value of such donated right-of-way.

(9) Section 4(a) of the UMT Act of 1964, as amended, provides that the Federal grant for any project to be assisted under section 3 of the UMT Act of 1964, as amended, shall be in an amount equal to 75 percent of the net project costs. Net project cost is defined as that portion of the cost of the project which cannot be reasonably financed from revenues.

(10) Section 18(e) of the UMT Act of 1964, as amended, limits the Federal share to 80 percent of the net cost of construction, as determined by the Secretary of Transportation. The Federal share for the payment of subsidies for operating expenses, as defined by the Secretary, shall not exceed 50 percent of the net cost of such operating expense projects.

(c) * * *

(3) Section 5(g) of the Department of Transportation Act (49 U.S.C. 1654(g)) limits in-kind service contributions under the local Rail Service Assistance Program to "the cash equivalent of State salaries for State public employees working in the State rail assistance program, but not including overhead and general administrative costs."

* * * * *

f. Section 18.25 is amended by adding paragraphs (g)(4), (5), (6), and (7) to read as follows:

§ 18.25 Program income.

(g) * * *
(4) Section 3(a)(1)(D) of the UMT Act of 1964, as amended, provides that the Secretary shall establish requirements for the use of income derived from appreciated land values for certain UMTA grants. Specific requirements shall be contained in grant agreements.

(5) UMTA grantees may retain program income for allowable capital or operating expenses.

(6) For grants awarded under Section 9 of the UMT Act of 1964, as amended, any revenues received from the sale of advertising and concessions in excess of fiscal year 1985 levels shall be excluded from program income.

(7) 23 U.S.C. 156 requires that States shall charge fair market value for the sale, lease, or use of right-of-way airspace for non-transportation purposes and that such income shall be used for projects eligible under 23 U.S.C.

g. Section 18.31 is amended by adding paragraph (d) to read as follows:

§ 18.31 Real property.

(d) If the conditions in 23 U.S.C. 103(e) (5), (6), or (7), as appropriate, are met and approval is given by the Secretary, States shall not be required to repay the Highway Trust Fund for the cost of right-of-way and other items when certain segments of the Interstate System are withdrawn.

h. Section 18.36 is amended by adding paragraphs (j) through (t) to read as follows:

§ 18.36 Procurement.

(j) 23 U.S.C. 112(a) directs the Secretary to require recipients of highway construction grants to use bidding methods that are "effective in securing competition." Detailed construction contracting procedures are contained in 23 CFR Part 635, Subpart A.

(k) Section 3(a)(2)(C) of the UMT Act of 1964, as amended, prohibits the use of grant or loan funds to support procurements utilizing exclusionary or discriminatory specifications.

(l) 46 U.S.C. 1241(b)(1) and 46 CFR Part 381 impose cargo preference requirements on the shipment of foreign made goods.

(m) Section 165 of the Surface Transportation Assistance Act of 1982, 49 U.S.C. 1601, Section 337 of the Surface Transportation and Uniform

Relocation Assistance Act of 1937, and 49 CFR Parts 660 and 661 impose Buy America provisions on the procurement of foreign products and materials.

(n) Section 105(f) of the Surface Transportation Assistance Act of 1982, section 106(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987, and 49 CFR Part 23 impose requirements for the participation of disadvantaged business enterprises.

(o) Section 308 of the Surface Transportation Assistance Act of 1982, 49 U.S.C. 1068(b)(2), authorizes the use of competitive negotiation for the purchase of rolling stock as appropriate.

(p) 23 U.S.C. 112(b) provides for an exemption to competitive bidding requirements for highway construction contracts in emergency situations.

(g) 23 U.S.C. 112 requires concurrence by the Secretary before highway construction contracts can be awarded, except for projects authorized under the provisions of 23 U.S.C. 171

(r) 23 U.S.C. 112(e) requires standardized contract clauses concerning site conditions, suspension or work, and material changes in the scope of the work for highway construction contracts.

(s) 23 U.S.C. 140(b) authorizes the preferential employment of Indians on Indian Reservation road projects and contracts.

(t) FHWA, UMTA, and Federal Aviation Administration (FAA) grantees and subgrantees shall extend the use of qualifications-based (e.g., architectural and engineering services) contract selection procedures to certain other related areas and shall award such contracts in the same manner as Federal contracts for architectural and engineering services are negotiated under Title IX of the Federal Property and Administrative Services Act of 1949, or equivalent State (or airport sponsor for FAA) qualifications-based requirements. For FHWA and UMTA programs, this provision applies except to the extent that a State adopts or has adopted by statute a formal procedure for the procurement of such services.

i. Section 18.40 is amended by adding paragraph (c)(1) to read as follows:

§ 18.40 Monitoring and reporting program performance.

(c) * * *
(1) Section 12(h) of the UMT Act of 1964, as amended, requires pre-award testing of new buses models.

j. Section 18.41 is amended by adding paragraph (f) to read as follows:

§ 18.41 Financial reporting.

(f) Notwithstanding the provisions of paragraphs (a)(1) of this section, recipients of FHWA and National Highway Traffic Safety Administration (NHTSA) grants shall use FHWA, NHTSA or State financial reports.

BILLING CODE 4910-62-M

Text of the Common Rule

The text of the common rule as adopted by the agencies in this document appears below.

PART —UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.

- 1 Purpose and scope of this part.
- 2 Scope of subpart.
- 3 Definitions.
- 4 Applicability.
- 5 Effect on other issuances.
- 6 Additions and exceptions.

Subpart B—Pre-Award Requirements

- 10 Forms for applying for grants.
- 11 State plans.
- 12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements

Financial Administration

- 20 Standards for financial management systems.
- 21 Payment.
- 22 Allowable costs.
- 23 Period of availability of funds.
- 24 Matching or cost sharing.
- 25 Program income.
- 26 Non-Federal audit.

Changes, Property, and Subawards

- 30 Changes.
- 31 Real property.
- 32 Equipment.
- 33 Supplies.
- 34 Copyrights.
- 35 Subawards to debarred and suspended parties.
- 36 Procurement.
- 37 Subgrants.

Reports, Records, Retention, and Enforcement

- 40 Monitoring and reporting program performance.
- 41 Financial reporting.
- 42 Retention and access requirements for records.
- 43 Enforcement.
- 44 Termination for convenience.

Subpart D—After-the-Grant Requirements

- 50 Closeout.
- 51 Later disallowances and adjustments.
- 52 Collection of amounts due.

Subpart E—Entitlements (Reserved)

Subpart A—General

§ 1. Purpose and scope of this part.

This part establishes uniform administrative rules for Federal grants and cooperative agreements and subawards to State, local and Indian tribal governments.

§ 2. Scope of subpart.

This subpart contains general rules pertaining to this part and procedures for control of exceptions from this part.

§ 3. Definitions.

As used in this part:

"Accrued expenditures" mean the charges incurred by the grantee during a given period requiring the provision of funds for: (1) Goods and other tangible property received; (2) services performed by employees, contractors, subgrantees, subcontractors, and other payees; and (3) other amounts becoming owed under programs for which no current services or performance is required, such as annuities, insurance claims, and other benefit payments.

"Accrued income" means the sum of: (1) Earnings during a given period from services performed by the grantee and goods and other tangible property delivered to purchasers, and (2) amounts becoming owed to the grantee for which no current services or performance is required by the grantee.

"Acquisition cost" of an item of purchased equipment means the net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the grantee's regular accounting practices.

"Administrative" requirements mean those matters common to grants in general, such as financial management, kinds and frequency of reports, and retention of records. These are distinguished from "programmatic" requirements, which concern matters that can be treated only on a program-by-program or grant-by-grant basis, such as kinds of activities that can be supported by grants under a particular program.

"Awarding agency" means (1) with respect to a grant, the Federal agency, and (2) with respect to a subgrant, the party that awarded the subgrant.

"Cash contributions" means the grantee's cash outlay, including the

outlay of money contributed to the grantee or subgrantee by other public agencies and institutions, and private organizations and individuals. When authorized by Federal legislation, Federal funds received from other assistance agreements may be considered as grantee or subgrantee cash contributions.

"Contract" means (except as used in the definitions for "grant" and "subgrant" in this section and except where qualified by "Federal") a procurement contract under a grant or subgrant, and means a procurement subcontract under a contract.

"Cost sharing or matching" means the value of the third party in-kind contributions and the portion of the costs of a federally assisted project or program not borne by the Federal Government.

"Cost-type contract" means a contract or subcontract under a grant in which the contractor or subcontractor is paid on the basis of the costs it incurs, with or without a fee.

"Equipment" means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above.

"Expenditure report" means: (1) For nonconstruction grants, the SF-269 "Financial Status Report" (or other equivalent report); (2) for construction grants, the SF-271 "Outlay Report and Request for Reimbursement" (or other equivalent report).

"Federally recognized Indian tribal government" means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs.

"Government" means a State or local government or a federally recognized Indian tribal government.

"Grant" means an award of financial assistance, including cooperative agreements, in the form of money, or property in lieu of money, by the Federal Government to an eligible grantee. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include

assistance, such as a fellowship or other lump sum award, which the grantee is not required to account for.

"Grantee" means the government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.

"Local government" means a county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937) school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under state law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

"Obligations" means the amounts of orders placed, contracts and subgrants awarded, goods and services received, and similar transactions during a given period that will require payment by the grantee during the same or a future period.

"OMB" means the United States Office of Management and Budget.

"Outlays" (expenditures) mean charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of actual cash disbursement for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the amount of cash advances and payments made to contractors and subgrantees. For reports prepared on an accrued expenditure basis, outlays are the sum of actual cash disbursements, the amount of indirect expense incurred, the value of in-kind contributions applied, and the new increase (or decrease) in the amounts owed by the grantee for goods and other property received, for services performed by employees, contractors, subgrantees, subcontractors, and other payees, and other amounts becoming owed under programs for which no current services or performance are required, such as annuities, insurance claims, and other benefit payments.

"Percentage of completion method" refers to a system under which payments are made for construction work according to the percentage of completion of the work, rather than to the grantee's cost incurred.

"Prior approval" means documentation evidencing consent prior to incurring specific cost.

"Real property" means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

"Share", when referring to the awarding agency's portion of real property, equipment or supplies, means the same percentage as the awarding agency's portion of the acquiring party's total costs under the grant to which the acquisition costs under the grant to which the acquisition cost of the property was charged. Only costs are to be counted—not the value of third-party in-kind contributions.

"State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. The term does not include any public and Indian housing agency under United States Housing Act of 1937.

"Subgrant" means an award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases, nor does it include any form of assistance which is excluded from the definition of "grant" in this part.

"Subgrantee" means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

"Supplies" means all tangible personal property other than "equipment" as defined in this part.

"Suspension" means depending on the context, either (1) temporary withdrawal of the authority to obligate grant funds pending corrective action by the grantee or subgrantee or a decision to terminate the grant, or (2) an action taken by a suspending official in accordance with agency regulations implementing E.O. 12549 to immediately exclude a person from participating in grant transactions for a period, pending completion of an investigation and such legal or debarment proceedings as may ensue.

"Termination" means permanent withdrawal of the authority to obligate previously-awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee or subgrantee. "Termination" does not include: (1) Withdrawal of funds awarded on the basis of the grantee's underestimate of the unobligated balance in a prior period; (2) Withdrawal of the unobligated balance

as of the expiration of a grant; (3) Refusal to extend a grant or award additional funds, to make a competing or noncompeting continuation, renewal, extension, or supplemental award; or (4) voiding of a grant upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

"Terms of a grant or subgrant" mean all requirements of the grant or subgrant, whether in statute, regulations, or the award document.

"Third party in-kind contributions" mean property or services which benefit a federally assisted project or program and which are contributed by non-Federal third parties without charge to the grantee, or a cost-type contractor under the grant agreement.

"Unliquidated obligations" for reports prepared on a cash basis mean the amount of obligations incurred by the grantee that has not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the grantee for which an outlay has not been recorded.

"Unobligated balance" means the portion of the funds authorized by the Federal agency that has not been obligated by the grantee and is determined by deducting the cumulative obligations from the cumulative funds authorized.

§ 4. Applicability.

(a) *General.* Subparts A–D of this part apply to all grants and subgrants to governments, except where inconsistent with Federal statutes or with regulations authorized in accordance with the exception provision of § 6, or:

(1) Grants and subgrants to State and local institutions of higher education or State and local hospitals.

(2) The block grants authorized by the Omnibus Budget Reconciliation Act of 1981 (Community Services; Preventive Health and Health Services; Alcohol, Drug Abuse, and Mental Health Services; Maternal and Child Health Services; Social Services; Low-Income Home Energy Assistance; States' Program of Community Development Block Grants for Small Cities; and Elementary and Secondary Education other than programs administered by the Secretary of Education under Title V, Subtitle D, Chapter 2, Section 583—the Secretary's discretionary grant program) and Titles I–III of the Job Training Partnership Act of 1982 and under the Public Health Services Act (Section 1921), Alcohol and Drug Abuse Treatment and Rehabilitation Block Grant and Part C of Title V, Mental

Health Service for the Homeless Block Grant).

(3) Entitlement grants to carry out the following programs of the Social Security Act:

(i) Aid to Needy Families with Dependent Children (Title IV–A of the Act, not including the Work Incentive Program (WIN) authorized by section 402(a)(19)(C); HHS grants for WIN are subject to this part);

(ii) Child Support Enforcement and Establishment of Paternity (Title IV–D of the Act);

(iii) Foster Care and Adoption Assistance (Title IV–E of the Act);

(iv) Aid to the Aged, Blind, and Disabled (Titles I, X, XIV, and XVI–AABD of the Act); and

(v) Medical Assistance (Medicaid) (Title XIX of the Act) not including the State Medicaid Fraud Control program authorized by section 1903(a)(6)(B).

(4) Entitlement grants under the following programs of The National School Lunch Act:

(i) School Lunch (section 4 of the Act),

(ii) Commodity Assistance (section 6 of the Act),

(iii) Special Meal Assistance (section 11 of the Act),

(iv) Summer Food Service for Children (section 13 of the Act), and

(v) Child Care Food Program (section 17 of the Act).

(5) Entitlement grants under the following programs of The Child Nutrition Act of 1966:

(i) Special Milk (section 3 of the Act), and

(ii) School Breakfast (section 4 of the Act).

(6) Entitlement grants for State Administrative expenses under The Food Stamp Act of 1977 (section 16 of the Act).

(7) A grant for an experimental, pilot, or demonstration project that is also supported by a grant listed in paragraph (a)(3) of this section;

(8) Grant funds awarded under subsection 412(e) of the Immigration and Nationality Act (8 U.S.C. 1522(e)) and subsection 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96–422, 94 Stat. 1809), for cash assistance, medical assistance, and supplemental security income benefits to refugees and entrants and the administrative costs of providing the assistance and benefits;

(9) Grants to local education agencies under 20 U.S.C. 236 through 241–1(a), and 242 through 244 (portions of the Impact Aid program), except for 20 U.S.C. 238(d)(2)(c) and 240(f) (Entitlement Increase for Handicapped Children); and

(10) Payments under the Veterans Administration's State Home Per Diem Program (38 U.S.C. 641(a)).

(b) *Entitlement programs.* Entitlement programs enumerated above in § _____.4(a) (3)-(8) are subject to Subpart E.

§ _____.5 Effect on other issuances.

All other grants administration provisions of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with this part are superseded, except to the extent they are required by statute, or authorized in accordance with the exception provision in § _____.6.

§ _____.6 Additions and exceptions

(a) For classes of grants and grantees subject to this part, Federal agencies may not impose additional administrative requirements except in codified regulations published in the *Federal Register*.

(b) Exceptions for classes of grants or grantees may be authorized only by OMB.

(c) Exceptions on a case-by-case basis and for subgrantees may be authorized by the affected Federal agencies.

Subpart B—Pre-Award Requirements

§ _____.10 Forms for applying for grants.

(a) *Scope.* (1) This section prescribes forms and instructions to be used by governmental organizations (except hospitals and institutions of higher education operated by a government) in applying for grants. This section is not applicable, however, to formula grant programs which do not require applicants to apply for funds on a project basis.

(2) This section applies only to applications to Federal agencies for grants, and is not required to be applied by grantees in dealing with applicants for subgrants. However, grantees are encouraged to avoid more detailed or burdensome application requirements for subgrants.

(b) *Authorized forms and instructions for governmental organizations.* (1) In applying for grants, applicants shall only use standard application forms or those prescribed by the granting agency with the approval of OMB under the Paperwork Reduction Act of 1980.

(2) Applicants are not required to submit more than the original and two copies of preapplications or applications.

(3) Applicants must follow all applicable instructions that bear OMB clearance numbers. Federal agencies may specify and describe the programs, functions, or activities that will be used

to plan, budget, and evaluate the work under a grant. Other supplementary instructions may be issued only with the approval of OMB to the extent required under the Paperwork Reduction Act of 1980. For any standard form, except the SF-424 facesheet, Federal agencies may shade out or instruct the applicant to disregard any line item that is not needed.

(4) When a grantee applies for additional funding (such as a continuation or supplemental award) or amends a previously submitted application, only the affected pages need be submitted. Previously submitted pages with information that is still current need not be resubmitted.

§ _____.11 State plans.

(a) *Scope.* The statutes for some programs require States to submit plans before receiving grants. Under regulations implementing Executive Order 12372, "Intergovernmental Review of Federal Programs," States are allowed to simplify, consolidate and substitute plans. This section contains additional provisions for plans that are subject to regulations implementing the Executive Order.

(b) *Requirements.* A State need meet only Federal administrative or programmatic requirements for a plan that are in statutes or codified regulations.

(c) *Assurances.* In each plan the State will include an assurance that the State shall comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding. For this assurance and other assurances required in the plan, the State may:

(1) Cite by number the statutory or regulatory provisions requiring the assurances and affirm that it gives the assurances required by those provisions.

(2) Repeat the assurance language in the statutes or regulations, or

(3) Develop its own language to the extent permitted by law.

(d) *Amendments.* A State will amend a plan whenever necessary to reflect: (1) New or revised Federal statutes or regulations or (2) a material change in any State law, organization, policy, or State agency operation. The State will obtain approval for the amendment and its effective date but need submit for approval only the amended portions of the plan.

§ _____.12 Special grant or subgrant conditions for "high-risk" grantees.

(a) A grantee or subgrantee may be considered "high risk" if an awarding agency determines that a grantee or subgrantee:

(1) Has a history of unsatisfactory performance, or

(2) Is not financially stable, or

(3) Has a management system which does not meet the management standards set forth in this part, or

(4) Has not conformed to terms and conditions of previous awards, or

(5) Is otherwise not responsible; and if the awarding agency determines that an award will be made, special conditions and/or restrictions shall correspond to the high risk condition and shall be included in the award.

(b) Special conditions or restrictions may include:

(1) Payment on a reimbursement basis;

(2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given funding period;

(3) Requiring additional, more detailed financial reports;

(4) Additional project monitoring;

(5) Requiring the grantee or subgrantee to obtain technical or management assistance; or

(6) Establishing additional prior approvals.

(c) If an awarding agency decides to impose such conditions, the awarding official will notify the grantee or subgrantee as early as possible, in writing, of:

(1) The nature of the special conditions/restrictions;

(2) The reason(s) for imposing them;

(3) The corrective actions which must be taken before they will be removed and the time allowed for completing the corrective actions and

(4) The method of requesting reconsideration of the conditions/restrictions imposed.

Subpart C—Post-Award Requirements Financial Administration

§ _____.20 Standards for financial management systems.

(a) A State must expand and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the State, as well as its subgrantees and cost-type contractors, must be sufficient to—

(1) Permit preparation of reports required by this part and the statutes authorizing the grant, and

(2) Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.

(b) The financial management systems of other grantees and subgrantees must meet the following standards:

(1) *Financial reporting.* Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.

(2) *Accounting records.* Grantees and subgrantees must maintain records which adequately identify the source and application of funds provided for financially-assisted activities. These records must contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.

(3) *Internal control.* Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Grantees and subgrantees must adequately safeguard all such property and must assure that it is used solely for authorized purposes.

(4) *Budget control.* Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

(5) *Allowable cost.* Applicable OMB cost principles, agency program regulations, and the terms of grant and subgrant agreements will be followed in determining the reasonableness, allowability, and allocability of costs.

(6) *Source documentation.* Accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.

(7) *Cash management.* Procedures for minimizing the time elapsing between the transfer of funds from the U.S. Treasury and disbursement by grantees and subgrantees must be followed whenever advance payment procedures are used. Grantees must establish reasonable procedures to ensure the receipt of reports on subgrantees' cash balances and cash disbursements in sufficient time to enable them to prepare complete and accurate cash transactions reports to the awarding agency. When advances are made by letter-of-credit or electronic transfer of funds methods, the grantee must make drawdowns as close as possible to the time of making

disbursements. Grantees must monitor cash drawdowns by their subgrantees to assure that they conform substantially to the same standards of timing and amount as apply to advances to the grantees.

(c) An awarding agency may review the adequacy of the financial management system of any applicant for financial assistance as part of a preaward review or at any time subsequent to award.

§ 21 Payment.

(a) *Scope.* This section prescribes the basic standard and the methods under which a Federal agency will make payments to grantees, and grantees will make payments to subgrantees and contractors.

(b) *Basic standard.* Methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or subgrantee, in accordance with Treasury regulations at 31 CFR Part 205.

(c) *Advances.* Grantees and subgrantees shall be paid in advance, provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the funds and their disbursement by the grantee or subgrantee.

(d) *Reimbursement.* Reimbursement shall be the preferred method when the requirements in paragraph (c) of this section are not met. Grantees and subgrantees may also be paid by reimbursement for any construction grant. Except as otherwise specified in regulation, Federal agencies shall not use the percentage of completion method to pay construction grants. The grantee or subgrantee may use that method to pay its construction contractor, and if it does, the awarding agency's payments to the grantee or subgrantee will be based on the grantee's or subgrantee's actual rate of disbursement.

(e) *Working capital advances.* If a grantee cannot meet the criteria for advance payments described in paragraph (c) of this section, and the Federal agency has determined that reimbursement is not feasible because the grantee lacks sufficient working capital, the awarding agency may provide cash or a working capital advance basis. Under this procedure the awarding agency shall advance cash to the grantee to cover its estimated disbursement needs for an initial period generally geared to the grantee's disbursing cycle. Thereafter, the awarding agency shall reimburse the grantee for its actual cash

disbursements. The working capital advance method of payment shall not be used by grantees or subgrantees if the reason for using such method is the unwillingness or inability of the grantee to provide timely advances to the subgrantee to meet the subgrantee's actual cash disbursements.

(f) *Effect of program income, refunds, and audit recoveries on payment.* (1) Grantees and subgrantees shall disburse repayments to and interest earned on a revolving fund before requesting additional cash payments for the same activity.

(2) Except as provided in paragraph (f)(1) of this section, grantees and subgrantees shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(g) *Withholding payments.* (1) Unless otherwise required by Federal statute, awarding agencies shall not withhold payments for proper charges incurred by grantees or subgrantees unless—

(i) The grantee or subgrantee has failed to comply with grant award conditions or

(ii) The grantee or subgrantee is indebted to the United States.

(2) Cash withheld for failure to comply with grant award condition, but without suspension of the grant, shall be released to the grantee upon subsequent compliance. When a grant is suspended, payment adjustments will be made in accordance with § 43(c).

(3) A Federal agency shall not make payment to grantees for amounts that are withheld by grantees or subgrantees from payment to contractors to assure satisfactory completion of work. Payments shall be made by the Federal agency when the grantees or subgrantees actually disburse the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.

(h) *Cash depositories.* (1) Consistent with the national goal of expanding the opportunities for minority business enterprises, grantees and subgrantees are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members). A list of minority owned banks can be obtained from the Minority Business Development Agency, Department of Commerce, Washington, DC 20230.

(2) A grantee or subgrantee shall maintain a separate bank account only when required by Federal-State agreement.

(i) *Interest earned on advances.* Except for interest earned on advances of funds exempt under the

Intergovernmental Cooperation Act (31 U.S.C. 6501 et seq.) and the Indian Self-Determination Act (23 U.S.C. 450), grantees and subgrantees shall promptly, but at least quarterly, remit interest earned on advances to the Federal agency. The grantee or subgrantee may keep interest amounts up to \$100 per year for administrative expenses.

§ 22 Allowable costs.

(a) *Limitation on use of funds.* Grant funds may be used only for:

(1) The allowable costs of the grantees, subgrantees and cost-type contractors, including allowable costs in the form of payments to fixed-price contractors; and

(2) Reasonable fees or profit to cost-type contractors but not any fee or profit (or other increment above allowable costs) to the grantee or subgrantee.

(b) *Applicable cost principles.* For each kind of organization, there is a set of Federal principles for determining allowable costs. Allowable costs will be determined in accordance with the cost principles applicable to the organization incurring the costs. The following chart lists the kinds of organizations and the applicable cost principles.

For the costs of a—	Use the principles in—
State, local or Indian tribal government.	OMB Circular A-87.
Private nonprofit organization other than an (1) institution of higher education, (2) hospital, or (3) organization named in OMB Circular A-122 as not subject to that circular.	OBM Circular A-122.
Educational institutions.....	OMB Circular A-21.
For-profit organization other than a hospital and an organization named in OBM Circular A-122 as not subject to that circular.	48 CFR Part 31. Contract Cost Principles and Procedures, or uniform cost accounting standards that comply with cost principles acceptable to the Federal agency.

§ 23 Period to availability of funds.

(a) *General.* Where a funding period is specified, a grantee may charge to the award only costs resulting from obligations of the funding period unless carryover of unobligated balances is permitted, in which case the carryover balances may be charged for costs resulting from obligations of the subsequent funding period.

(b) *Liquidation of obligations.* A grantee must liquidate all obligations incurred under the award not later than

90 days after the end of the funding period (or as specified in a program regulation) to coincide with the submission of the annual Financial Status Report (SF-269). The Federal agency may extend this deadline at the request of the grantee.

§ 24 Matching or cost sharing.

(a) *Basic rule: Costs and contributions acceptable.* With the qualifications and exceptions listed in paragraph (b) of this section, a matching or cost sharing requirement may be satisfied by either or both of the following:

(1) Allowable costs incurred by the grantee, subgrantee or a cost-type contractor under the assistance agreement. This includes allowable costs borne by non-Federal grants or by others cash donations from non-Federal third parties.

(2) The value of third party in-kind contributions applicable to the period to which the cost sharing or matching requirements applies.

(b) *Qualifications and exceptions—(1) Costs borne by other Federal grant agreements.* Except as provided by Federal statute, a cost sharing or matching requirement may not be met by costs borne by another Federal grant. This prohibition does not apply to income earned by a grantee or subgrantee from a contract awarded under another Federal grant.

(2) *General revenue sharing.* For the purpose of this section, general revenue sharing funds distributed under 31 U.S.C. 6702 are not considered Federal grant funds.

(3) *Cost or contributions counted towards other Federal costs-sharing requirements.* Neither costs nor the values of third party in-kind contributions may count towards satisfying a cost sharing or matching requirement of a grant agreement if they have been or will be counted towards satisfying a cost sharing or matching requirement of another Federal grant agreement, a Federal procurement contract, or any other award of Federal funds.

(4) *Costs financed by program income.* Costs financed by program income, as defined in § 25, shall not count towards satisfying a cost sharing or matching requirement unless they are expressly permitted in the terms of the assistance agreement. (This use of general program income is described in § 25(g).)

(5) *Services or property financed by income earned by contractors.* Contractors under a grant may earn income from the activities carried out under the contract in addition to the amounts earned from the party

awarding the contract. No costs of services or property supported by this income may count toward satisfying a cost sharing or matching requirement unless other provisions of the grant agreement expressly permit this kind of income to be used to meet the requirement.

(6) *Records.* Costs and third party in-kind contributions counting towards satisfying a cost sharing or matching requirement must be verifiable from the records of grantees and subgrantee or cost-type contractors. These records must show how the value placed on third party in-kind contributions was derived. To the extent feasible, volunteer services will be supported by the same methods that the organization uses to support the allocability of regular personnel costs.

(7) *Special standards for third party in-kind contributions.* (i) Third party in-kind contributions count towards satisfying a cost sharing or matching requirement only where, if the party receiving the contributions were to pay for them, the payments would be allowable costs.

(ii) Some third party in-kind contributions are goods and services that, if the grantee, subgrantee, or contractor receiving the contribution had to pay for them, the payments would have been an indirect costs. Costs sharing or matching credit for such contributions shall be given only if the grantee, subgrantee, or contractor has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of the contributions.

(iii) A third party in-kind contribution to a fixed-price contract may count towards satisfying a cost sharing or matching requirement only if it results in:

(A) An increase in the services or property provided under the contract (without additional cost to the grantee or subgrantee) or

(B) A cost savings to the grantee or subgrantee.

(iv) The values placed on third party in-kind contributions for cost sharing or matching purposes will conform to the rules in the succeeding sections of this part. If a third party in-kind contribution is a type not treated in those sections, the value placed upon it shall be fair and reasonable.

(c) *Valuation of donated services—(1) Volunteer services.* Unpaid services provided to a grantee or subgrantee by individuals will be valued at rates consistent with those ordinarily paid for similar work in the grantee's or subgrantee's organization. If the grantee

or subgrantee does not have employees performing similar work, the rates will be consistent with those ordinarily paid by other employers for similar work in the same labor market. In either case, a reasonable amount for fringe benefits may be included in the valuation.

(2) *Employees of other organizations.* When an employer other than a grantee, subgrantee, or cost-type contractor furnishes free of charge the services of an employee in the employee's normal line of work, the services will be valued at the employee's regular rate of pay exclusive of the employee's fringe benefits and overhead costs. If the services are in a different line of work, paragraph (c)(1) of this section applies.

(d) *Valuation of third party donated supplies and loaned equipment or space.* (1) If a third party donates supplies, the contribution will be valued at the market value of the supplies at the time of donation.

(2) If a third party donates the use of equipment or space in a building but retains title, the contribution will be valued at the fair rental rate of the equipment or space.

(e) *Valuation of third party donated equipment, buildings, and land.* If a third party donates equipment, buildings, or land, and title passes to a grantee or subgrantee, the treatment of the donated property will depend upon the purpose of the grant or subgrant, as follows:

(1) *Awards for capital expenditures.* If the purpose of the grant or subgrant is to assist the grantee or subgrantee in the acquisition of property, the market value of that property at the time of donation may be counted as cost sharing or matching.

(2) *Other awards.* If assisting in the acquisition of property is not the purpose of the grant or subgrant, paragraphs (e)(2)(i) and (ii) of this section apply:

(i) If approval is obtained from the awarding agency, the market value at the time of donation of the donated equipment or buildings and the fair rental rate of the donated land may be counted as cost sharing or matching. In the case of a subgrant, the terms of the grant agreement may require that the approval be obtained from the Federal agency as well as the grantee. In all cases, the approval may be given only if a purchase of the equipment or rental of the land would be approved as an allowable direct cost. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost-sharing or matching.

(ii) If approval is not obtained under paragraph (e)(2)(i) of this section, no amount may be counted for donated

land, and only depreciation or use allowances may be counted for donated equipment and buildings. The depreciation or use allowances for this property are not treated as third party in-kind contributions. Instead, they are treated as costs incurred by the grantee or subgrantee. They are computed and allocated (usually as indirect costs) in accordance with the cost principles specified in § 22, in the same way as depreciation or use allowances for purchased equipment and buildings. The amount of depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.

(f) *Valuation of grantee or subgrantee donated real property for construction/acquisition.* If a grantee or subgrantee donates real property for a construction or facilities acquisition project, the current market value of that property may be counted as cost sharing or matching. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost sharing or matching.

(g) *Appraisal of real property.* In some cases under paragraphs (d), (e) and (f) of this section, it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in a building. In these cases, the Federal agency may require the market value or fair rental value be set by an independent appraiser, and that the value or rate be certified by the grantee. This requirement will also be imposed by the grantee on subgrantees.

§ 25. Program income.

(a) *General.* Grantees are encouraged to earn income to defray program costs. Program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant agreement, and from payments of principal and interest on loans made with grant funds. Except as otherwise provided in regulations of the Federal agency, program income does not include interest on grant funds, rebates, credits, discounts, refunds, etc. and interest earned on any of them.

(b) *Definition of program income.* Program income means gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. "During the grant period" is the time between the effective date of the award and the ending date of the award reflected in the final financial report.

(c) *Cost of generating program income.* If authorized by Federal regulations or the grant agreement, costs incident to the generation of program income may be deducted from gross income to determine program income.

(d) *Governmental revenues.* Taxes, special assessments, levies, fines, and other such revenues raised by a grantee or subgrantee are not program income unless the revenues are specifically identified in the grant agreement or Federal agency regulations as program income.

(e) *Royalties.* Income from royalties and license fees for copyrighted material, patents, and inventions developed by a grantee or subgrantee is program income only if the revenues are specifically identified in the grant agreement or Federal agency regulations as program income. (See § 34.)

(f) *Property.* Proceeds from the sale of real property or equipment will be handled in accordance with the requirements of §§ 31 and 32.

(g) *Use of program income.* Program income shall be deducted from outlays which may be both Federal and non-Federal as described below, unless the Federal agency regulations or the grant agreement specify another alternative (or a combination of the alternatives). In specifying alternatives, the Federal agency may distinguish between income earned by the grantee and income earned by subgrantees and between the sources, kinds, or amounts of income. When Federal agencies authorize the alternatives in paragraphs (g) (2) and (3) of this section, program income in excess of any limits stipulated shall also be deducted from outlays.

(1) *Deduction.* Ordinarily program income shall be deducted from total allowable costs to determine the net allowable costs. Program income shall be used for current costs unless the Federal agency authorizes otherwise. Program income which the grantee did not anticipate at the time of the award shall be used to reduce the Federal agency and grantee contributions rather than to increase the funds committed to the project.

(2) *Addition.* When authorized, program income may be added to the funds committed to the grant agreement by the Federal agency and the grantee. The program income shall be used for the purposes and under the conditions of the grant agreement.

(3) *Cost sharing or matching.* When authorized, program income may be used to meet the cost sharing or matching requirement of the grant agreement. The amount of the Federal grant award remains the same.

(h) *Income after the award period.* There are no Federal requirements governing the disposition of program income earned after the end of the award period (i.e., until the ending date of the final financial report; see paragraph (a) of this section), unless the terms of the agreement or the Federal agency regulations provide otherwise.

§ 26 Non-Federal audit.

(a) *Basic Rule.* Grantees and subgrantees are responsible for obtaining audits in accordance with the Single Audit Act of 1984 (31 U.S.C. 7501-7) and Federal agency implementing regulations. The audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

(b) *Subgrantees.* State or local governments, as those terms are defined for purposes of the Single Audit Act, that receive Federal financial assistance and provide \$25,000 or more of it in a fiscal year to a subgrantee shall:

(1) Determine whether State or local subgrantees have met the audit requirements of the Act and whether subgrantees covered by OMB Circular A-110, "Uniform Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations" have met the audit requirement. Commercial contractors (private for-profit and private and governmental organizations) providing goods and services to State and local governments are not required to have a single audit performed. State and local governments should use their own procedures to ensure that the contractor has complied with laws and regulations affecting the expenditure of Federal funds;

(2) Determine whether the subgrantee spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subgrantee made in accordance with the Act, Circular A-110, or through other means (e.g., program reviews) if the subgrantee has not had such an audit;

(3) Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instance of noncompliance with Federal laws and regulations;

(4) Consider whether subgrantee audits necessitate adjustment of the grantee's own records; and

(5) Require each subgrantee to permit independent auditors to have access to the records and financial statements.

(c) *Auditor selection.* In arranging for audit services, § 36 shall be followed.

Changes, Property, and Subawards

§ 30 Changes

(a) *General.* Grantees and subgrantees are permitted to rebudget within the approved direct cost budget to meet unanticipated requirements and may make limited program changes to the approved project. However, unless waived by the awarding agency, certain types of post-award changes in budgets and projects shall require the prior written approval of the awarding agency.

(b) *Relation to cost principles.* The applicable cost principles (see § 22) contain requirements for prior approval of certain types of costs. Except where waived, those requirements apply to all grants and subgrants even if paragraphs (c) through (f) of this section do not.

(c) *Budget changes.* (1) *Nonconstruction projects.* Except as stated in other regulations or an award document, grantees or subgrantees shall obtain the prior approval of the awarding agency whenever any of the following changes is anticipated under a nonconstruction award:

(i) Any revision which would result in the need for additional funding.

(ii) Unless waived by the awarding agency, cumulative transfers among direct cost categories, or, if applicable, among separately budgeted programs, projects, functions, or activities which exceed or are expected to exceed ten percent of the current total approved budget, whenever the awarding agency's share exceeds \$100,000.

(iii) Transfer of funds allotted for training allowances (i.e., from direct payments to trainees to other expense categories).

(2) *Construction projects.* Grantees and subgrantees shall obtain prior written approval for any budget revision which would result in the need for additional funds.

(3) *Combined construction and nonconstruction projects.* When a grant or subgrant provides funding for both construction and nonconstruction activities, the grantee or subgrantee must obtain prior written approval from the awarding agency before making any fund or budget transfer from nonconstruction to construction or vice versa.

(d) *Programmatic changes.* Grantees or subgrantees must obtain the prior approval of the awarding agency whenever any of the following actions is anticipated:

(1) Any revision of the scope or objectives of the project (regardless of whether there is an associated budget revision requiring prior approval).

(2) Need to extend the period of availability of funds.

(3) Changes in key persons in cases where specified in an application or a grant award. In research projects, a change in the project director or principal investigator shall always require approval unless waived by the awarding agency.

(4) Under nonconstruction projects, contracting out, subgranting (if authorized by law) or otherwise obtaining the services of a third party to perform activities which are central to the purposes of the award. This approval requirement is in addition to the approval requirements of § 36 but does not apply to the procurement of equipment, supplies, and general support services.

(e) *Additional prior approval requirements.* The awarding agency may not require prior approval for any budget revision which is not described in paragraph (c) of this section.

(f) *Requesting prior approval.* (1) A request for prior approval of any budget revision will be in the same budget form the grantee used in its application and shall be accompanied by a narrative justification for the proposed revision.

(2) A request for a prior approval under the applicable Federal cost principles (see § 22) may be made by letter.

(3) A request by a subgrantee for prior approval will be addressed in writing to the grantee. The grantee will promptly review such request and shall approve or disapprove the request in writing. A grantee will not approve any budget or project revision which is inconsistent with the purpose or terms and conditions of the Federal grant to the grantee. If the revision, requested by the subgrantee would result in a change to the grantee's approved project which requires Federal prior approval, the grantee will obtain the Federal agency's approval before approving the subgrantee's request.

§ 31 Real property.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to real property acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *Use.* Except as otherwise provided by Federal statutes, real property will be used for the originally authorized purposes as long as needed for that

purposes, and the grantee or subgrantee shall not dispose of or encumber its title or other interests.

(c) *Disposition*. When real property is no longer needed for the originally authorized purpose, the grantee or subgrantee will request disposition instructions from the awarding agency. The instructions will provide for one of the following alternatives:

(1) *Retention of title*. Retain title after compensating the awarding agency. The amount paid to the awarding agency will be computed by applying the awarding agency's percentage of participation in the cost of the original purchase to the fair market value of the property. However, in those situations where a grantee or subgrantee is disposing of real property acquired with grant funds and acquiring replacement real property under the same program, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

(2) *Sale of property*. Sell the property and compensate the awarding agency. The amount due to the awarding agency will be calculated by applying the awarding agency's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the grant is still active, the net proceeds from sale may be offset against the original cost of the property. When a grantee or subgrantee is directed to sell property, sales procedures shall be followed that provide for competition to the extent practicable and result in the highest possible return.

(3) *Transfer of title*. Transfer title to the awarding agency or to a third-party designated/approved by the awarding agency. The grantee or subgrantee shall be paid an amount calculated by applying the grantee or subgrantee's percentage of participation in the purchase of the real property to the current fair market value of the property.

§ 32. Equipment.

(a) *Title*. Subject to the obligations and conditions set forth in this section, title to equipment acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *States*. A State will use, manage, and dispose of equipment acquired under a grant by the State in accordance with State laws and procedures. Other grantees and subgrantees will follow paragraphs (c) through (e) of this section.

(c) *Use*. (1) Equipment shall be used by the grantee or subgrantee in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a Federal agency.

(2) The grantee or subgrantee shall also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, providing such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by the awarding agency. User fees should be considered if appropriate.

(3) Notwithstanding the encouragement in § 25(a) to earn program income, the grantee or subgrantee must not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by Federal statute.

(4) When acquiring replacement equipment, the grantee or subgrantee may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property, subject to the approval of the awarding agency.

(d) *Management requirements*. Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part with grant funds, until disposition takes place will, as a minimum, meet the following requirements:

(1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft shall be investigated.

(4) Adequate maintenance procedures must be developed to keep the property in good condition.

(5) If the grantee or subgrantee is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

(e) *Disposition*. When original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency, disposition of the equipment will be made as follows:

(1) Items of equipment with a current per-unit fair market value of less than \$5,000 may be retained, sold or otherwise disposed of with no further obligation to the awarding agency.

(2) Items of equipment with a current per unit fair market value in excess of \$5,000 may be retained or sold and the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency's share of the equipment.

(3) In cases where a grantee or subgrantee fails to take appropriate disposition actions, the awarding agency may direct the grantee or subgrantee to take excess and disposition actions.

(f) *Federal equipment*. In the event a grantee or subgrantee is provided federally-owned equipment:

(1) Title will remain vested in the Federal Government.

(2) Grantees or subgrantees will manage the equipment in accordance with Federal agency rules and procedures, and submit an annual inventory listing.

(3) When the equipment is no longer needed, the grantee or subgrantee will request disposition instructions from the Federal agency.

(g) *Right to transfer title*. The Federal awarding agency may reserve the right to transfer title to the Federal Government or a third party named by the awarding agency when such a third party is otherwise eligible under existing statutes. Such transfers shall be subject to the following standards:

(1) The property shall be identified in the grant or otherwise made known to the grantee in writing.

(2) The Federal awarding agency shall issue disposition instruction within 120 calendar days after the end of the Federal support of the project for which it was acquired. If the Federal awarding agency fails to issue disposition instructions within the 120 calendar-day period the grantee shall follow § 32(e).

(3) When title to equipment is transferred, the grantee shall be paid an amount calculated by applying the percentage of participation in the purchase to the current fair market value of the property.

§ 33 Supplies.

(a) *Title.* Title to supplies acquired under a grant or subgrant will vest, upon acquisition, in the grantee or subgrantee respectively.

(b) *Disposition.* If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate fair market value upon termination or completion of the award, and if the supplies are not needed for any other federally sponsored programs or projects, the grantee or subgrantee shall compensate the awarding agency for its share.

§ 34 Copyrights.

The Federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:

(a) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and

(b) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

§ 35 Subawards to debarred and suspended parties.

Grantees and subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

§ 36 Procurement

(a) *States.* When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and subgrantees will follow paragraphs (b) through (i) in this section.

(b) *Procurement standards.* (1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(2) Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(i) The employee, officer or agent,

(ii) Any member of his immediate family,

(iii) His or her partner, or

(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

(4) Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(6) Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing

new equipment and property whenever such use is feasible and reduces project costs.

(7) Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(8) Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(9) Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(10) Grantees and subgrantees will use time and material type contracts only—

(i) After a determination that no other contract is suitable, and

(ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(11) Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

(12) Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency.

Reviews of protests by the Federal agency will be limited to:

(i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and

(ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or subgrantee.

(c) *Competition.* (1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of § 36. Some of the situations considered to be restrictive of competition include but are not limited to:

(i) Placing unreasonable requirements on firms in order for them to qualify to do business,

(ii) Requiring unnecessary experience and excessive bonding,

(iii) Noncompetitive pricing practices between firms or between affiliated companies,

(iv) Noncompetitive awards to consultants that are on retainer contracts,

(v) Organizational conflicts of interest,

(vi) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance of other relevant requirements of the procurement, and

(vii) Any arbitrary action in the procurement process.

(2) Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(3) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which

unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and

(ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(4) Grantees and subgrantees will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.

(d) *Methods of procurement to be followed.* (1) Procurement by *small purchase procedures.* Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than \$25,000 in the aggregate. If small purchase procurements are used, price or rate quotations will be obtained from an adequate number of qualified sources.

(2) Procurement by *sealed bids* (formal advertising). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in § 36(d)(2)(i) apply.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;

(B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;

(C) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(D) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(3) Procurement by *competitive proposals.* The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(ii) Proposals will be solicited from an adequate number of qualified sources;

(iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(v) Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E

professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(4) Procurement by *noncompetitive proposals* is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

(A) The item is available only from a single source;

(B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.

(C) The awarding agency authorizes noncompetitive proposals; or

(D) After solicitation of a number of sources, competition is determined inadequate.

(ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, is required.

(iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section.

(e) *Contracting with small and minority firms, women's business enterprise and labor surplus area firms.*

(1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps shall include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and

(vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2)(i) through (v) of this section.

(f) *Contract cost and price.* (1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

(2) Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(3) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see § _____.22). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.

(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(g) *Awarding agency review.* (1) Grantees and subgrantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review

generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solicitation has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(2) Grantees and subgrantees must on request make available for awarding agency pre-award review [delete ";"] procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc., when:

(i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this section; or

(ii) The procurement is expected to exceed \$25,000 and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or

(iii) The procurement, which is expected to exceed \$25,000, specifies a "brand name" product; or

(iv) The proposed award over \$25,000 is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than \$25,000.

(3) A grantee or subgrantee will be exempt from the pre-award review in paragraph (g)(2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section.

(i) A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third-party contracts are awarded on a regular basis;

(ii) A grantee or subgrantee may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

(h) *Bonding requirements.* For construction or facility improvement contracts or subcontracts exceeding \$100,000, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) *A bid guarantee from each bidder equivalent to five percent of the bid price.* The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) *A performance bond on the part of the contractor for 100 percent of the contract price.* A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) *A payment bond on the part of the contractor for 100 percent of the contract price.* A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(i) *Contract provisions.* A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this Section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Procurement Policy.

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts other than small purchases)

(2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000)

(3) Compliance with Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Part 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees)

(4) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). (All contracts and subgrants for construction or repair)

(5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts in excess of \$2,000 awarded by grantees and subgrantees when required by Federal grant program legislation)

(6) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by grantees and subgrantees in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers)

(7) Notice of awarding agency requirements and regulations pertaining to reporting.

(8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.

(10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

(11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

(12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000)

(13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

§ ____ 37 Subgrants.

(a) *States.* States shall follow state law and procedures when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. States shall:

(1) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations;

(2) Ensure that subgrantees are aware of requirements imposed upon them by Federal statute and regulation;

(3) Ensure that a provision for compliance with Section ____ 42 is placed in every cost reimbursement subgrant; and

(4) Conform any advances of grant funds to subgrantees substantially to the same standards of timing and amount that apply to cash advances by Federal agencies.

(b) *All other grantees.* All other grantees shall follow the provisions of this part which are applicable to awarding agencies when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. Grantees shall:

(1) Ensure that every subgrant includes a provision for compliance with this part;

(2) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations; and

(3) Ensure that subgrantees are aware of requirements imposed upon them by Federal statutes and regulations.

(c) *Exceptions.* By their own terms, certain provisions of this part do not apply to the award and administration of subgrants:

(1) Section ____ 10;

(2) Section ____ 11;

(3) The letter-of-credit procedures specified in Treasury Regulations at 31 CFR Part 205, cited in § ____ 21; and

(4) Section ____ 50.

Reports, Records, Retention, and Enforcement

§ ____ 40 Monitoring and reporting program performance.

(a) *Monitoring by grantees.* Grantees are responsible for managing the day-to-day operations of grant and subgrant supported activities. Grantees must monitor grant and subgrant supported activities to assure compliance with applicable Federal requirements and that performance goals are being

achieved. Grantee monitoring must cover each program, function or activity.

(b) *Nonconstruction performance reports.* The Federal agency may, if it decides that performance information available from subsequent applications contains sufficient information to meet its programmatic needs, require the grantee to submit a performance report only upon expiration or termination of grant support. Unless waived by the Federal agency this report will be due on the same date as the final Financial Status Report.

(1) Grantees shall submit annual performance reports unless the awarding agency requires quarterly or semi-annual reports. However, performance reports will not be required more frequently than quarterly. Annual reports shall be due 90 days after the grant year, quarterly or semi-annual reports shall be due 30 days after the reporting period. The final performance report will be due 90 days after the expiration or termination of grant support. If a justified request is submitted by a grantee, the Federal agency may extend the due date for any performance report. Additionally, requirements for unnecessary performance reports may be waived by the Federal agency.

(2) Performance reports will contain, for each grant, brief information on the following:

(i) A comparison of actual accomplishments to the objectives established for the period. Where the output of the project can be quantified, a computation of the cost per unit of output may be required if that information will be useful.

(ii) The reasons for slippage if established objectives were not met.

(iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(3) Grantees will not be required to submit more than the original and two copies of performance reports.

(4) Grantees will adhere to the standards in this section in prescribing performance reporting requirements for subgrantees.

(c) *Construction performance reports.* For the most part, on-site technical inspections and certified percentage-of-completion data are relied on heavily by Federal agencies to monitor progress under construction grants and subgrants. The Federal agency will require additional formal performance reports only when considered necessary, and never more frequently than quarterly.

(d) *Significant developments.* Events may occur between the scheduled

performance reporting dates which have significant impact upon the grant or subgrant supported activity. In such cases, the grantee must inform the Federal agency as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.

(e) Federal agencies may make site visits as warranted by program needs.

(f) *Waivers, extensions.* (1) Federal agencies may waive any performance report required by this part if not needed.

(2) The grantee may waive any performance report from a subgrantee when not needed. The grantee may extend the due date for any performance report from a subgrantee if the grantee will still be able to meet its performance reporting obligations to the Federal agency.

§ 41 Financial Reporting.

(a) *General.* (1) Except as provided in paragraphs (a) (2) and (5) of this section, grantees will use only the forms specified in paragraphs (a) through (e) of this section, and such supplementary or other forms as may from time to time be authorized by OMB, for:

(i) Submitting financial reports to Federal agencies, or

(ii) Requesting advances or reimbursements when letters of credit are not used.

(2) Grantees need not apply the forms prescribed in this section in dealing with their subgrantees. However, grantees shall not impose more burdensome requirements on subgrantees.

(3) Grantees shall follow all applicable standard and supplemental Federal agency instructions approved by OMB to the extent required under the Paperwork Reduction Act of 1980 for use in connection with forms specified in paragraphs (b) through (e) of this section. Federal agencies may issue substantive supplementary instructions only with the approval of OMB. Federal agencies may shade out or instruct the grantee to disregard any line item that the Federal agency finds unnecessary for its decisionmaking purposes.

(4) Grantees will not be required to submit more than the original and two copies of forms required under this part.

(5) Federal agencies may provide computer outputs to grantees to expedite or contribute to the accuracy of reporting. Federal agencies may accept the required information from grantees in machine usable format or computer printouts instead of prescribed forms.

(6) Federal agencies may waive any report required by this section if not needed.

(7) Federal agencies may extend the due date of any financial report upon receiving a justified request from a grantee.

(b) *Financial Status Report.*—(1) *Form.* Grantees will use Standard Form 269 or 269A, Financial Status Report, to report the status of funds for all nonconstruction grants and for construction grants when required in accordance with paragraph § 41(e)(2)(iii) of this section.

(2) *Accounting basis.* Each grantee will report program outlays and program income on a cash or accrual basis as prescribed by the awarding agency. If the Federal agency requires accrual information and the grantee's accounting records are not normally kept on the accrual basis, the grantee shall not be required to convert its accounting system but shall develop such accrual information through and analysis of the documentation on hand.

(3) *Frequency.* The Federal agency may prescribe the frequency of the report for each project or program. However, the report will not be required more frequently than quarterly. If the Federal agency does not specify the frequency of the report, it will be submitted annually. A final report will be required upon expiration or termination of grant support.

(4) *Due date.* When reports are required on a quarterly or semiannual basis, they will be due 30 days after the reporting period. When required on an annual basis, they will be due 90 days after the grant year. Final reports will be due 90 days after the expiration or termination of grant support.

(c) *Federal Cash Transactions Report.*—(1) *Form.* (i) For grants paid by letter or credit, Treasury check advances or electronic transfer of funds, the grantee will submit the Standard Form 272, Federal Cash Transactions Report, and when necessary, its continuation sheet, Standard Form 272a, unless the terms of the award exempt the grantee from this requirement.

(ii) These reports will be used by the Federal agency to monitor cash advanced to grantees and to obtain disbursement or outlay information for each grant from grantees. The format of the report may be adapted as

appropriate when reporting is to be accomplished with the assistance of automatic data processing equipment provided that the information to be submitted is not changed in substance.

(2) *Forecasts of Federal cash requirements.* Forecasts of Federal cash requirements may be required in the "Remarks" section of the report.

(3) *Cash in hands of grantees.* When considered necessary and feasible by the Federal agency, grantees may be required to report the amount of cash advances in excess of three days' needs in the hands of their subgrantees or contractors and to provide short narrative explanations of actions taken by the grantee to reduce the excess balances.

(4) *Frequency and due date.* Grantees must submit the report no later than 15 working days following the end of each quarter. However, where an advance either by letter of credit or electronic transfer of funds is authorized at an annualized rate of one million dollars or more, the Federal agency may require the report to be submitted within 15 working days following the end of each month.

(d) *Request for advance or reimbursement—(1) Advance payments.* Requests for Treasury check advance payments will be submitted on Standard Form 270, Request for Advance or Reimbursement. (This form will not be used for drawdowns under a letter of credit, electronic funds transfer or when Treasury check advance payments are made to the grantee automatically on a predetermined basis.)

(2) *Reimbursements.* Requests for reimbursement under nonconstruction grants will also be submitted on Standard Form 270. (For reimbursement requests under construction grants, see paragraph (e)(1) of this section.)

(3) The frequency for submitting payment requests is treated in § 41(b)(3).

(e) *Outlay report and request for reimbursement for construction programs.* (1) Grants that support construction activities paid by reimbursement method.

(i) Requests for reimbursement under construction grants will be submitted on Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. Federal agencies may, however, prescribe the Request for Advance or Reimbursement form, specified in § 41(d), instead of this form.

(ii) The frequency for submitting reimbursement requests is treated in § 41(b)(3).

(2) Grants that support construction activities paid by letter of credit,

electronic funds transfer or Treasury check advance.

(i) When a construction grant is paid by letter of credit, electronic funds transfer or Treasury check advances, the grantee will report its outlays to the Federal agency using Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. The Federal agency will provide any necessary special instruction. However, frequency and due date shall be governed by § 41(b)(3) and (4).

(ii) When a construction grant is paid by Treasury check advances based on periodic requests from the grantee, the advances will be requested on the form specified in § 41(d).

(iii) The Federal agency may substitute the Financial Status Report specified in § 41(b) for the Outlay Report and Request for Reimbursement for Construction Programs.

(3) *Accounting basis.* The accounting basis for the Outlay Report and Request for Reimbursement for Construction Programs shall be governed by § 41(b)(2).

§ 42 Retention and access requirements for records.

(a) *Applicability.* (1) This section applies to all financial and programmatic records, supporting documents, statistical records, and other records of grantees or subgrantees which are:

(i) Required to be maintained by the terms of this Part, program regulations or the grant agreement, or

(ii) Otherwise reasonably considered as pertinent to program regulations or the grant agreement.

(2) This section does not apply to records maintained by contractors or subcontractors. For a requirement to place a provision concerning records in certain kinds of contracts, see § 36(i)(10).

(b) *Length of retention period.* (1) Except as otherwise provided, records must be retained for three years from the starting date specified in paragraph (c) of this section.

(2) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

(3) To avoid duplicate recordkeeping, awarding agencies may make special arrangements with grantees and subgrantees to retain any records which are continuously needed for joint use.

The awarding agency will request transfer of records to its custody when it determines that the records possess long-term retention value. When the records are transferred to or maintained by the Federal agency, the 3-year retention requirement is not applicable to the grantee or subgrantee.

(c) *Starting date of retention period—*

(1) *General.* When grant support is continued or renewed at annual or other intervals, the retention period for the records of each funding period starts on the day the grantee or subgrantee submits to the awarding agency its single or last expenditure report for that period. However, if grant support is continued or renewed quarterly, the retention period for each year's records starts on the day the grantee submits its expenditure report for the last quarter of the Federal fiscal year. In all other cases, the retention period starts on the day the grantee submits its final expenditure report. If an expenditure report has been waived, the retention period starts on the day the report would have been due.

(2) *Real property and equipment records.* The retention period for real property and equipment records starts from the date of the disposition or replacement or transfer at the direction of the awarding agency.

(3) *Records for income transactions after grant or subgrant support.* In some cases grantees must report income after the period of grant support. Where there is such a requirement, the retention period for the records pertaining to the earning of the income starts from the end of the grantee's fiscal year in which the income is earned.

(4) *Indirect cost rate proposals, cost allocations plans, etc.* This paragraph applies to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(i) *If submitted for negotiation.* If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the grantee) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(ii) *If not submitted for negotiation.* If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the grantee) for negotiation purposes, then the 3-year retention period for the proposal plan, or

computation and its supporting records starts from end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

(d) *Substitution of microfilm.* Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

(e) *Access to records—(1) Records of grantees and subgrantees.* The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of grantees and subgrantees which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts.

(2) *Expiration of right of access.* The rights of access in this section must not be limited to the required retention period but shall last as long as the records are retained.

(f) *Restrictions on public access.* The Federal Freedom of Information Act (5 U.S.C. 552) does not apply to records unless required by Federal, State, or local law, grantees and subgrantees are not required to permit public access to their records.

§ _____.43 Enforcement.

(a) *Remedies for noncompliance.* If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, the awarding agency may take one or more of the following actions, as appropriate in the circumstances:

(1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency.

(2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance.

(3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program.

(4) Withhold further awards for the program, or

(5) Take other remedies that may be legally available.

(b) *Hearings, appeals.* In taking an enforcement action, the awarding agency will provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of grantee or subgrantee resulting from obligations incurred by the grantee or subgrantee during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

(1) The costs result from obligations which were properly incurred by the grantee or subgrantee before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are noncancellable, and,

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to Debarment and Suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude grantee or subgrantee from being subject to "Debarment and Suspension" under E.O. 12549 (see § _____.35).

§ _____.44 Termination for convenience.

Except as provided in § _____.43 awards may be terminated in whole or in part only as follows:

(a) By the awarding agency with the consent of the grantee or subgrantee in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or

(b) By the grantee or subgrantee upon written notification to the awarding agency, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the awarding agency determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety under either § _____.43 or paragraph (a) of this section.

Subpart D—After-The-Grant Requirements

§ _____.50 Closeout.

(a) *General.* The Federal agency will close out the award when it determines that all applicable administrative

actions and all required work of the grant has been completed.

(b) *Reports.* Within 90 days after the expiration or termination of the grant, the grantee must submit all financial, performance, and other reports required as a condition of the grant. Upon request by the grantee, Federal agencies may extend this timeframe. These may include but are not limited to:

(1) *Final performance or progress report.*

(2) *Financial Status Report (SF 269) or Outlay Report and Request for Reimbursement for Construction Programs (SF-271) (as applicable.)*

(3) *Final request for payment (SF-270) (if applicable.)*

(4) *Invention disclosure (if applicable.)*

(5) *Federally-owned property report:* In accordance with § _____.32(f), a grantee must submit an inventory of all federally owned property (as distinct from property acquired with grant funds) for which it is accountable and request disposition instructions from the Federal agency of property no longer needed.

(c) *Cost adjustment.* The Federal agency will, within 90 days after receipt of reports in paragraph (b) of this section, make upward or downward adjustments to the allowable costs.

(d) *Cash adjustments.* (1) The Federal agency will make prompt payment to the grantee for allowable reimbursable costs.

(2) The grantee must immediately refund to the Federal agency any balance of unobligated (unencumbered) cash advanced that is not authorized to be retained for use on other grants.

§ _____.51 Later disallowances and adjustments.

The closeout of a grant does not affect:

(a) The Federal agency's right to disallow costs and recover funds on the basis of a later audit or other review;

(b) The grantee's obligation to return any funds due as a result of later refunds, corrections, or other transactions;

(c) Records retention as required in § _____.42;

(d) Property management requirements in §§ _____.31 and § _____.32; and

(e) Audit requirements in § _____.26.

§ _____.52 Collection of amounts due.

(a) Any funds paid to a grantee in excess of the amount to which the grantee is finally determined to be entitled under the terms of the award constitute a debt to the Federal

Government. If not paid within a reasonable period after demand, the Federal agency may reduce the debt by:

(1) Making an administrative offset against other requests for reimbursements.

(2) Withholding advance payments otherwise due to the grantee, or

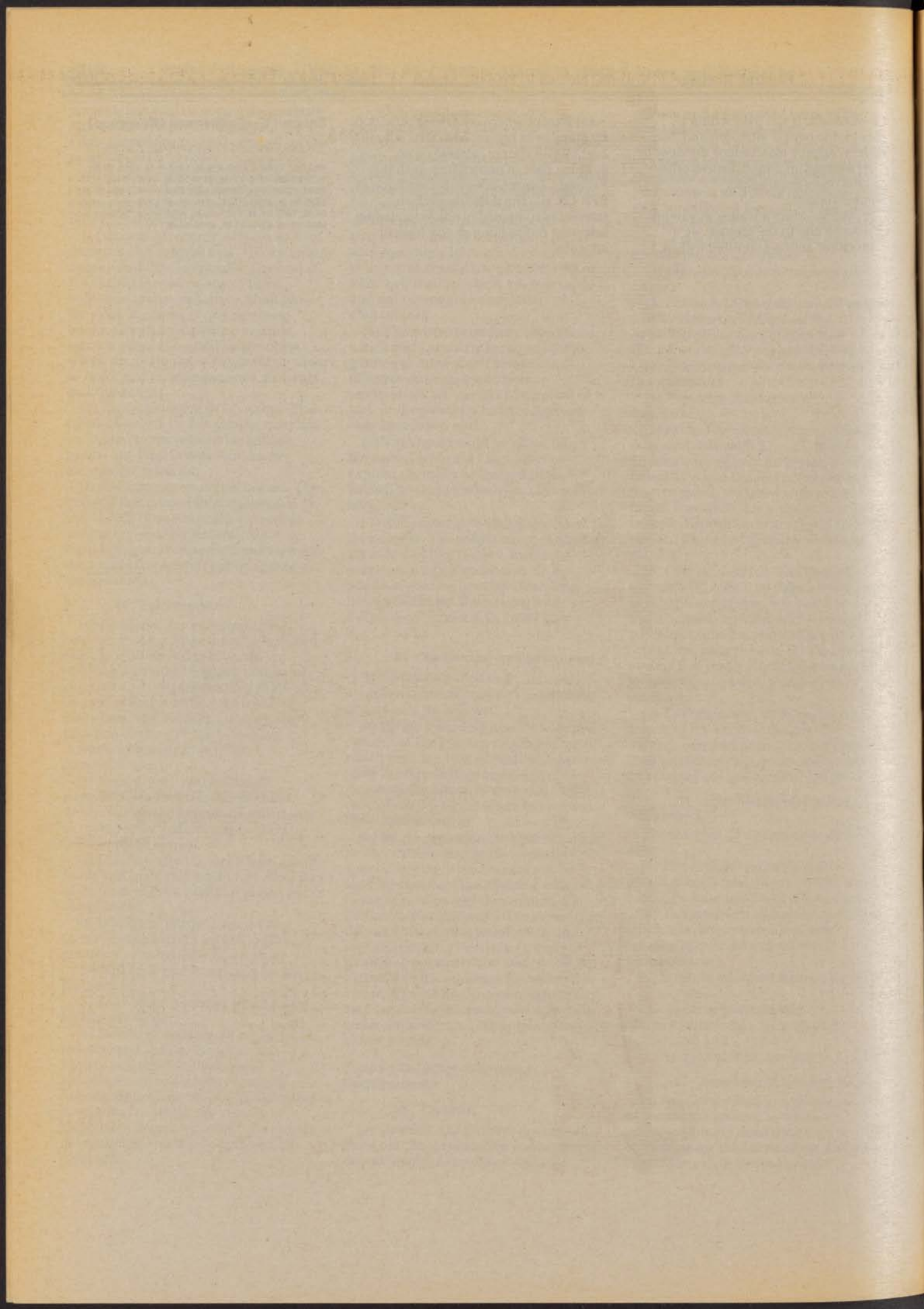
(3) Other action permitted by law.

(b) Except where otherwise provided by statutes or regulations, the Federal agency will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (4 CFR Ch. II). The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

Subpart E—Entitlement [Reserved]

[FR Doc. 88-5251 Filed 3-10-88; 8:45 am]

BILLING CODES 3410-KS-M, 6450-0-M, 8025-01-M, 3510-FE-M, 4710-2Y-M, 4210-32-M, 4410-18-M, 4510-23-M, 6732-01-M, 3810-01-M, 4000-01-M, 7515-01-M, 8320-01-M, 6560-50-M, 4310-RF-M, 6718-21-M, 4150-04-M, 7555-01-M, 7537-01-M, 7536-01-M, 7036-01-M, 6050-28-M, 6340-01-M, 4910-62-M



Best of Federal

Friday
March 11, 1988

Part IV

Department of Education

34 CFR Part 74

Administration of Grants to Institutions
of Higher Education, Hospitals, and
Nonprofit Organizations; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 74

Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends 34 CFR Part 74 of the Education Department General Administrative Regulations (EDGAR) to limit the applicability of that Part to institutions of higher education, hospitals, and other nonprofit organizations. Part 74 establishes grant management requirements and currently applies to institutions of higher education, hospitals, and other nonprofit organizations under Office of Management and Budget (OMB) Circular A-110 and to State and local governments and Indian tribal organizations under OMB Circular A-102. This amendment is necessary because, in a separate document published in this issue of the *Federal Register*, the Secretary establishes a new Part 80 to implement proposed revisions to OMB Circular A-102, which applies only to State and local governments and Indian tribal organizations.

EFFECTIVE DATE: These regulations take effect on October 1, 1988.

FOR FURTHER INFORMATION CONTACT: Mary Hughes, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue SW. (Room 3122, GSA Regional Office Building No. 3), Washington, DC 20202. Telephone (202) 732-7400.

SUPPLEMENTARY INFORMATION: In a separate document published in this issue of the *Federal Register*, the Secretary has joined with the heads of 22 other Federal agencies to promulgate common regulations implementing revisions to OMB Circular A-102. In that document the Secretary implements the common regulations in a new Part 80. The Director of OMB also publishes in this issue of the *Federal Register* a notice containing the revisions to the Circular upon which the common regulations are based.

The Department of Education is one of six agencies that uses departmentwide regulations to implement the current Circulars A-102 and A-110. The Secretary now implements Circular A-102 in a new Part 80. The Secretary, therefore, limits the applicability of Part 74 to those institutions covered only by OMB Circular A-110—institutions of

higher education, hospitals, and other nonprofit organizations.

For a discussion of the background of the common regulations and a statement about the general issues raised by the common regulations see the general preamble to the final rulemaking document for the common regulations. As discussed earlier, that document is published elsewhere in this issue of the *Federal Register*. The Secretary has also included in that document an ED-specific preamble discussing certain issues raised by the Department's implementation of the proposed common regulations. Please see that other rulemaking document for the agency-specific preamble discusses the specific changes necessary to Part 74 in order to limit its applicability to institutions subject to Circular A-110—institutions of higher education, hospitals, and other nonprofit organizations.

A majority of programs administered by the Secretary that apply to institutions of higher education, hospitals, or other nonprofit organizations are direct grant programs. The Secretary does not permit subgrants under direct grant programs (34 CFR 75.708(a)). Thus, the Secretary removes the provisions in Part 74 that tell a grantee what is permissible for inclusion in a subgrant issued by the grantee. However, for example, nonprofit organizations are eligible to receive subgrants under Title III, Part A, of the Carl D. Perkins Vocational Education Act (20 U.S.C. 2351, 2352). Thus, those provisions of Part 74 that apply directly to subgrantees have not been removed by the Secretary.

The Secretary removes Appendix C from Part 74. Appendix C establishes cost principles for State and local governments and Indian tribal organizations. The new Part 80 requires these entities to comply with the cost principles in OMB Circular A-87. Thus, there is no need for Appendix C in Part 74. In the rule adopting the new Part 80, the Secretary removed Appendix G from Part 74 and added that Appendix to the new Part 80. The Secretary made this move because Part 80 applies to State and local governments and the appendix implements the Single Audit Act of 1984 which applies only to State and local governments.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Assessment of Education Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed regulations and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 74

Accounting, Administrative practice and procedure, Grant programs—education, Grants administration, Insurance, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance number does not apply)

Dated: February 16, 1988.

William J. Bennett,
Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations, Part 74, as follows:

1. In Part 74 the table of contents and §§ 74.1 through 74.176 are revised and Appendix C is removed and reserved, to read as follows:

PART 74—ADMINISTRATION OF GRANTS TO INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS AND NONPROFIT ORGANIZATIONS

Subpart A—General

- Sec.
- 74.1 Purpose and scope of this part.
- 74.2 Scope of subpart.
- 74.3 Definitions.
- 74.4 Applicability of this part.
- 74.6 Deviations.
- 74.7 Special grant conditions.

Subpart B—Cash Depositories

- 74.10 Physical segregation and eligibility.
- 74.11 Checks-paid basis letter of credit.
- 74.12 Minority-owned banks.

Subpart C—Bonding and Insurance

- 74.15 General.
- 74.16 Construction and facility improvements.
- 74.17 Fidelity bonds.
- 74.18 Source of bonds.

Subpart D—Retention and Access Requirements for Records

- 74.20 Applicability.
- 74.21 Length of retention period.
- 74.22 Starting date of retention period.
- 74.23 Substitution of microfilm.
- 74.24 Access to records.
- 74.25 Restrictions on public access.

Subpart E—[Reserved]**Subpart F—Grant-Related Income**

- 74.40 Scope of subpart.
- 74.41 Meaning of program income.
- 74.42 General program income.
- 74.43 Program income—proceeds from sale of real property and from sale of equipment and supplies acquired for use.
- 74.44 Program income—royalties and other income earned from a copyrighted work.
- 74.45 Program income—royalties or equivalent income earned from patents or from inventions.
- 74.46 Program income—income after grant or subgrant support not otherwise treated.
- 74.47 Interest earned on advance of grant funds.

Subpart G—Cost Sharing or Matching

- 74.50 Scope of subpart.
- 74.51 Definitions.
- 74.52 Basic rule: Costs and contributions acceptable.
- 74.53 Qualifications and exceptions.
- 74.54 Valuation of donated services.
- 74.55 Valuation of donated supplies and loaned equipment or space.
- 74.56 Valuation of donated equipment, buildings, and land.
- 74.57 Appraisal of real property.

Subpart H—Standards for Grantee and Subgrantee Financial Management Systems and Non-Federal Audits

- 74.60 Scope of subpart.
- 74.61 Financial management standards.

Subpart I—Financial Reporting Requirements

- 74.70 Scope and applicability of subpart.
- 74.71 Definitions.
- 74.72 General.
- 74.73 Financial Status Report.
- 74.74 Federal Cash Transactions Report.
- 74.75 Request for Advance or Reimbursement.
- 74.76 Outlay report and request for reimbursement for construction programs.

Subpart J—Monitoring and Reporting of Program Performance

- 74.80 Scope of subpart.
- 74.81 Monitoring by recipients.
- 74.82 Performance reports under nonconstruction grants.
- 74.83 Performance reports under construction grants.
- 74.84 Significant developments between scheduled reporting dates.
- 74.85 Site visits.

Subpart K—Grant and Subgrant Payment Requirements

- 74.90 Scope of subpart.
- 74.91 Definitions.
- 74.92 Basic standard.
- 74.93 Payment methods under nonconstruction grants.
- 74.94 Payment methods under construction grants.
- 74.95 Withholding of payments.
- 74.96 Requesting advances or reimbursements.

Subpart L—Programmatic Changes and Budget Revisions

- 74.100 Scope and applicability of this subpart.
- 74.101 Relationship to cost principles.
- 74.102 Prior approval procedures.
- 74.103 Programmatic changes.
- 74.104 Budgets generally.
- 74.105 Budget revisions-nonconstruction projects.
- 74.106 Budget revisions-construction projects.
- 74.107 Construction and nonconstruction work under the same grant.
- 74.108 Authorized funds exceeding needs.

Subpart M—Grant and Subgrant Closeout, Suspension, and Termination

- 74.110 Definitions.
- 74.111 Closeout.
- 74.112 Amounts payable to the Federal Government.
- 74.113 Violation of terms.
- 74.114 Suspension.
- 74.115 Termination.

Subpart N—Forms for Applying for Grants

- 74.120 Scope of subpart.
- 74.121 [Reserved].
- 74.122 Preapplications for Federal assistance.
- 74.123 Notice of preapplication review action.
- 74.124 [Reserved].
- 74.125 [Reserved].
- 74.126 [Reserved].
- 74.127 Authorized forms and instructions for nongovernmental organizations.

Subpart O—Property**General**

- 74.130 Scope and applicability of this subpart.
- 74.131 Prohibition against additional requirements.
- 74.132 Definitions.
- 74.133 Title to real property, equipment, and supplies.

Real Property

- 74.134 Real property.

Equipment and Supplies

- 74.135 Exemptions for equipment and supplies subject to certain statutes.
- 74.136 Rights to require transfer of equipment.
- 74.137 Use of equipment.
- 74.138 Replacement of equipment.
- 74.139 Disposition of equipment.
- 74.140 Equipment management requirements.
- 74.141 Supplies.

Federal Share of Real Property, Equipment, and Supplies

- 74.142 Federal share of property.
- 74.143 Subgrantee's share of market value or sales proceeds.

Intangible Personal Property

- 74.144 Inventions and patents.
- 74.145 Copyrights.

Subpart P—Procurement Standards

- 74.160 Scope of subpart; terminology.

- 74.161 General.
- 74.162 Code of conduct.
- 74.163 Free competition.
- 74.164 Procedural requirements.
- 74.165 [Reserved].
- 74.166 Contract provisions.

Subpart Q—Cost Principles

- 74.170 Scope of subpart.
- 74.171 [Reserved].
- 74.172 Institutions of higher education.
- 74.173 Hospitals.
- 74.174 Other nonprofit organizations.
- 74.175 Subgrants and cost-type contracts.
- 74.176 Costs allowable with approval.
- Appendix A—[Reserved]
- Appendix B—[Reserved]
- Appendix C—[Reserved]
- Appendix D—Part 1—Principles for determining costs applicable to research and development under grants and contracts with educational institutions
- Part II—Principles for determining costs applicable to training and other educational services under grants and contracts with educational institutions
- Appendix E—Principles for determining costs applicable to research and development under grants and contracts with hospitals.

Authority: 20 U.S.C. 3474; OMB Circular A-110, unless otherwise noted.

Subpart A—General**§ 74.1 Purpose and scope of this part.**

(a) This part establishes uniform requirements for the administration of ED grants and principles for determining costs applicable to activities assisted by ED grants for all grantees other than State and local governments and Indian tribal organizations.

(b) Uniform requirements for State and local governments and Indian tribal organizations are in 34 CFR Part 80—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

(c) Recipients subject to this part are also subject to 34 CFR Parts 75, 76, 77, 78, and 79, to the extent applicable.

§ 74.2 Scope of subpart.

This subpart contains general rules pertaining to this Part 74 (definitions, purpose and scope, applicability, and appeals) and procedures for control of deviations from the part.

§ 74.3 Definitions.

As used in this part:

"Awarding party" means (1) with respect to a grant, ED, and (2) with respect to a subgrant, the grantee. [See § 74.4(b)]

"Contract" means (except as used in the definitions for "grant" in this section and except where qualified by "Federal") a procurement contract under a grant and "subcontract" means a

procurement subcontract under such a contract.

"Cost-type contract" means a contract or subcontract in which the contractor or subcontractor is paid on the basis of the costs it incurs, but the term does not include such subcontracts under a non-cost-type contract or subcontract.

"ED" means the U.S. Department of Education.

"Expenditure report" means: (1) For nonconstruction grants, the "Financial Status Report" (or other equivalent report); (2) for construction grants, the "Outlay Report and Request for Reimbursement for Construction Programs" (or other equivalent report). (See Subpart I of this part.)

"Grant" means an award of financial assistance in the form of money, or property in lieu of money, by the Federal Government to an eligible recipient. The term does not include any Federal procurements subject to the procurement regulations in 48 CFR, nor does it include technical assistance, which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, which the recipient is not required to account for on an actual cost basis.

"Grantee" means the nonprofit corporation or other legal entity to which a grant is awarded and which is accountable to the Federal Government for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the award document. For example, a grant award document may name as the grantee one school or campus of a university. In this case, the granting agency usually intends, or actually requires, that the named component assume primary or sole responsibility for administering the grant-assisted project or program. Nevertheless, the naming of a component of a legal entity as the grantee in a grant award document shall not be construed as relieving the whole legal entity from accountability to the Federal Government for the use of the funds provided. (This definition is not intended to affect the eligibility provision of grant programs in which eligibility is limited to organizations, such as State educational agencies, which may be only components of a legal entity.) The term "grantee" does not include any secondary recipients such as subgrantees, contractors, etc., who may receive funds from a grantee pursuant to a grant.

"OMB" means the Office of Management and Budget within the Executive Office of the President.

"Recipient" means grantee or subgrantee.

"Terms of a grant or subgrant" means all requirements of the grant or subgrant, whether in statute, regulations, the award document or elsewhere.

§ 74.4 Applicability of this part.

(a) *General.* (1) Except as provided in paragraphs (a) (2) and (3) of this section or where inconsistent with Federal statutes, regulations, or other terms of a grant, this part applies to all ED grants.

(2) With the exception of 34 CFR 74.62, which applies to Chapter 1, this part does not apply to the programs authorized under Chapter 1 and Subchapters A through C of Chapter 2 of the Education Consolidation and Improvement Act of 1981.

(3) Unless expressly made applicable by ED, this part does not apply when the grantee is a Federal agency, foreign government or organization, international organization such as the United Nations, for profit organization, or individual.

(b) *Public institutions of higher education and hospitals.* Grants and subgrants to institutions of higher education and hospitals operated by a government shall be subject to provisions of this subpart.

§ 74.6 Deviations.

(a) Except as provided in § 74.7, a deviation is any exception to this part not required by Federal statute without allowance of agency discretion. A deviation may be either:

(1) Use of any policy, procedure, form, standard, or grant term which is inconsistent with an applicable provision of this part, or

(2) Failure to use any applicable policy, procedure, form, standard, or grant term which is required by this part.

(b) In order to maintain uniformity to the greatest extent feasible, deviations shall be kept to a minimum. A deviation, whether proposed by an applicant, a recipient, or an official of ED may be authorized only when it is necessary to meet programmatic objectives, or to conserve grant funds, or when it is otherwise essential in the public interest.

(c) A deviation from this part may be made only when authorized by the Secretary.

§ 74.7 Special grant conditions.

(a) Without regard to the deviation control procedures of § 74.6, special

grant conditions more restrictive than those prescribed in this Part 74 may be imposed as needed when ED has determined that the grantee:

- (1) Is financially unstable.
- (2) Has a history of poor performance, or

(3) Has a management system which does not meet the standards of this part.

(b) When special conditions are imposed under paragraph (a) of this section, the grantee will be notified in writing:

(1) Why the special conditions were imposed and

(2) What corrective action is needed. Furthermore, in accordance with OMB Circular A-110, OMB and other Federal agencies in a granting relationship with the grantee will be provided copies of the notice to the grantee.

Subpart B—Cash Depositories

§ 74.10 Physical segregation and eligibility.

Except as provided in § 74.11, awarding parties shall not impose grant terms which:

(a) Require the recipient to use a separate bank account for the deposit of grant funds, or

(b) Establish any eligibility requirements for banks or other financial institutions in which recipients deposit grant funds.

§ 74.11 Checks-paid basis letter of credit.

A separate bank account shall be used when payments under letter of credit are made on a "checks-paid" basis. A checks-paid basis letter of credit is one under which funds are not drawn until the recipient's checks have been presented to its bank for payment. (See Subpart K for definition of "letter of credit.")

§ 74.12 Minority-owned banks.

Consistent with the national goal of expanding opportunities for minority business enterprises, grantees and subgrantees are encouraged to use minority-owned banks. Upon request, ED will furnish a list of minority-owned banks.

Subpart C—Bonding and Insurance

§ 74.15 General.

In administering grants and subgrants, recipients shall observe their regular requirements and practices with respect to bonding and insurance. No additional bonding and insurance requirements, including fidelity bonds, shall be imposed by the terms of the grant or subgrant except as provided in §§ 74.16 through 74.18.

§ 74.16 Construction and facility improvements.

(a) *Scope of this section.* This section covers requirements for bid guarantees, performance bonds, and payment bonds when the recipient will contract for construction or facility improvement (including alterations and renovations of real property) under a grant or subgrant.

(b) *Definitions.* (1) "Bid guarantee" means a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, if its bid is accepted, execute the required contractual documents within the time specified.

(2) "Performance bond" means a bond executed in connection with a contract to secure fulfillment of all the contractor's obligations under the contract.

(3) "Payment bond" means a bond executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(c) *Bids and contracts of \$100,000 or less.* The recipient shall follow its own requirements and practices relating to bid guarantees, performance bonds, and payment bonds.

(d) *Bids and contracts exceeding \$100,000.* The recipient may follow its own regular policy and requirements if the Secretary has determined that the Federal Government's interest will be adequately protected. If this determination has not been made, the minimum requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to 5 percent of the bid price;

(2) A performance bond on the part of the contractor for 100 percent of the contract price; and

(3) A payment bond on the part of the contractor for 100 percent of the contract price.

§ 74.17 Fidelity bonds.

(a) ED may require a grantee to carry adequate fidelity bond coverage where the absence of coverage for the grant-supported activity is considered as creating an unacceptable risk.

(b) A fidelity bond is a bond indemnifying the recipient against losses resulting from the fraud or lack of integrity, honesty or fidelity of one or more employees, officers or other persons holding a position of trust.

§ 74.18 Source of bonds.

Any bonds required under § 74.16(d)(1) through (3) or § 74.17 shall be obtained from companies holding certificates of authority as acceptable

sureties (31 CFR Part 223). A list of these companies is published annually by the Department of the Treasury in its Circular 570.

Subpart D—Retention and Access Requirements for Records**§ 74.20 Applicability.**

(a) Except as provided in paragraph (b) of this section, this subpart applies to all financial and programmatic records, supporting documents, statistical records and other records of recipients and of contractors and subcontractors under grants and subgrants, which are:

(1) Required to be maintained by the terms of an ED grant, or

(2) Otherwise reasonably considered as pertinent to an ED grant.

(b) This subpart does not apply to records maintained by the contractor or subcontractor for any of the following types of awards it has received under a grant or subgrant:

(1) Any contract or subcontract of \$10,000 or less, or

(2) Any contract or subcontract awarded using the formal advertising method of procurement, whether or not required to be so awarded, or

(3) Any subcontract awarded under a contract or subcontract described in paragraph (b)(2) of this section.

§ 74.21 Length of retention period.

(a) Except as provided in paragraphs (b) and (c) of this section, records shall be retained for 3-years from the starting date specified in § 74.22.

(b) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3 year period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

(c) In order to avoid duplicate recordkeeping, awarding parties may make special arrangements with recipients to retain any records which are continuously needed for joint use. The awarding party will request transfer of records to its custody when it determines that the records possess long-term retention value. When the records are transferred to or maintained by the awarding party the 3-year retention requirement is not applicable to the recipient.

Cross-reference: See 34 CFR 75.734—Record retention period. Section 75.734 contains record retention requirements imposed by the General Education Provisions Act.

§ 74.22 Starting date of retention period.

(a) *General.* (1) Where ED grant support is continued or renewed at annual or other intervals, the retention period for the records of each funding period starts on the day the grantee submits to ED its single or last expenditure report for that period. However, if ED grant support is continued or renewed quarterly, the retention period for each year's records starts on the day the grantee submits to ED its expenditure report for the last quarter of the Federal fiscal year. In all other cases, the retention period starts on the day the grantee submits its final expenditure report to ED. If an expenditure report has been waived, the retention period starts on the day the report would have been due.

"Expenditure report" is defined in § 74.3.

(2) Exceptions to this paragraph are contained in paragraphs (b) through (d) of this section.

(b) *Equipment records.* The retention period for the equipment records required by § 74.140(a) starts from the date of the equipment's disposition (§ 74.139) or replacement (§ 74.138) or transfer at the direction of the awarding party (§ 74.136).

(c) *Records for income transactions after grant or subgrant support.* (1) In some cases an ED requirement concerning the disposition of program income, as defined in Subpart F of this part, will be satisfied by applying the income to costs incurred after expiration or termination of grant or subgrant support for the activity giving rise to the income. In such a case, the retention period for the records pertaining to the costs starts from the end of the recipient's fiscal year in which the costs are incurred.

(2) In some cases, there may be an ED requirement concerning the disposition of copyright royalties or other program income which is earned after expiration or termination of grant or subgrant support. Where there is such a requirement, the retention period for the records pertaining to the earning of the income starts from the end of the recipient's fiscal year in which the income is earned. (See Subpart F of this part.)

(d) *Indirect cost rate proposals, cost allocation plan, etc.—(1) Applicability.* This paragraph applies to the following types of documents, and their supporting records:

(i) Indirect cost rate computations or proposals;

(ii) Any similar accounting computations of the rate at which a particular group of costs is chargeable

(such as computer usage chargeback rates or composite fringe benefit rates).

(2) *If submitted for negotiation.* If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the grantee) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(3) *If not submitted for negotiation.* If the proposal, plan, or other computation is not required to be submitted to the Federal Government for negotiation purposes, then the 3-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

Cross-Reference: See 34 CFR 75.734—Record retention period. Section 75.734 contains record retention requirements imposed by the General Education Provisions Act.

§ 74.23 Substitution of microfilm.

Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

§ 74.24 Access to records.

(a) *Records of grantees.* The Secretary and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any books, documents, papers, or other records of the grantee which are pertinent to the ED grant, in order to make audit, examination, excerpts, and transcripts.

(b) *Records of subgrantees.* The Secretary, the Comptroller General of the United States, and the grantee, or any of their authorized representatives, shall have the right of access to any books, documents, papers, or other records of the subgrantee which are pertinent to the ED grant, in order to make audit, examination, excerpts, and transcripts.

(c) *Records of contractors and subcontractors.* Except as provided in § 74.20(b), the Secretary, the Comptroller General of the United States, the grantee, and (if the contract was awarded under a subgrant) the subgrantee, or any of their authorized representatives, shall have the right of access to any books, documents, papers, or other records of the contractor or subcontractor which are pertinent to the ED grant, in order to make audit, examination, excerpts, and transcripts.

(d) *Expiration of right of access.* The rights of access in this section shall not be limited to the required retention period but shall last as long as the records are retained.

§ 74.25 Restrictions on public access.

Unless required by Federal statutes, awarding parties may not impose grant terms which limit public access to records covered by this subpart except after a determination by ED that the records must be kept confidential and would have been excepted from disclosure under ED's "Freedom of Information" regulation (Part 5 of this title) if the records had belonged to ED. This section does not require recipients or their contractors and subcontractors to permit public access to their records.

Subpart E [Reserved]

Subpart F—Grant-Related Income

§ 74.40 Scope of subpart.

This subpart contains policies and requirements relating to (a) program income and (b) interest and other investment income earned on advances of grant funds.

§ 74.41 Meaning of program income.

(a) Except as explained in paragraphs (b) and (c) of this section, program income means gross income earned by a recipient from activities part or all of the cost of which is either borne as a direct cost by a grant or counted as a direct cost towards meeting a cost sharing or matching requirement of a grant. It includes but is not limited to such income in the form of fees for services performed during the grant or subgrant period, proceeds from sale of tangible personal or real property, usage or rental fees, and patent or copyright royalties. If income meets this definition, it shall be considered program income regardless of the method used to calculate the amount paid to the recipient—whether, for example, by a cost-reimbursement method or fixed price arrangement. Nor will the fact that the income is earned by the recipient from a Federal procurement contract or from a procurement contract under a Federal grant awarded to another party affect the income's classification as program income.

(b) For research grants that are subject to an institutional cost-sharing agreement, income shall be considered program income only if it is earned from an activity part of all or the cost of which is borne as a direct cost by the Federal grant funds. An institutional cost-sharing agreement is one entered into between ED and a grantee covering all of ED's research project grants to the grantee in the aggregate.

(c) The following shall not be considered program income:

(1) [Reserved]

(2) Tuition and related fees received by an institution of higher education for a regularly offered course taught by an employee performing under a grant or subgrant.

(d) For the purposes of this subpart, program income is divided into several categories. Each category is treated in a separate section of this subpart.

§ 74.42 General program income.

(a) *Definition.* General program income means all program income accruing to a grantee during the period of grant support or to a subgrantee during the period of subgrant support, other than the special categories of such income treated in §§ 74.43 through 74.45.

(b) *Use.* General program income shall be retained by the recipient and used in accordance with one or a combination of the alternatives in paragraphs (c), (d), and (e) of this section, as follows: The alternative in paragraph (c) of this section may always be used by recipients and must be used if neither of the other two alternatives is permitted by the terms of the grant. The alternatives in paragraph (d) or (e) of this section may be used only if expressly permitted by the terms of the grant. In specifying alternatives that may be used, the terms of the grant may distinguish between income earned by the grantee and income earned by subgrantees and between the sources, kinds, or amounts of income.

(c) *Deduction alternative.* (1) Under this alternative, the income is used for allowable costs of the project or program. If there is a cost-sharing or matching requirement, costs borne by the income may not count toward satisfying that requirement. Therefore, the maximum percentage of Federal participation is applied to the net amount determined by deducting the income from total allowable costs and third-party in-kind contributions. The income shall be used for current costs unless ED authorizes deferral to a later period.

(2) To illustrate this alternative, assume a project in which the grantee incurs \$100,000 of allowable costs and receives no third-party in-kind contributions. If the grantee earns \$10,000 in general program income and this alternative applies, that \$10,000 must be deducted from the \$100,000 before applying the maximum percentage of Federal participation. If that percentage is 90 percent, the most that could be paid to the grantee would therefore be \$81,000 (90 percent times \$90,000).

(d) *Cost-sharing or matching alternative.* (1) Under this alternative,

the income is used for allowable costs of the project or program but, in this case, the costs borne by the income may count toward satisfying a cost-sharing or matching requirement. Therefore, the maximum percentage of Federal participation is applied to total allowable costs and third-party in-kind contributions. The income shall be used for current costs unless ED authorizes deferral to a later period.

(2) To illustrate this alternative, assume the same situation as in paragraph (c)(2) of this section. Under this alternative, the 90 percent maximum percentage of participation would be applied to the full \$100,000, and \$90,000 could therefore be paid to the grantee. (It should be noted that if \$20,000 of general program income is earned, only \$80,000 could be paid, since a grant cannot pay for costs which have been borne by general program income.)

(e) *Additional cost alternative.* Under this alternative, the income is used for costs which are in addition to the allowable costs of the project or program but which nevertheless further the objectives of the Federal statute under which the grant was made. Provided that the costs borne by the income further the broad objectives of that statute, they need not be of a kind that would be permissible as charges to Federal funds. Examples of purposes for which the income may be used are:

- (1) Expanding the project or program.
- (2) Continuing the project or program after grant or subgrant support ends.
- (3) Supporting other projects or programs that further the broad objectives of the statute.
- (4) Obtaining equipment or other assets needed for the project or program or for other activities that further the statute's objectives.

§ 74.43 Program income—proceeds from sale of real property and from sale of equipment and supplies acquired for use.

The following kinds of program income shall be governed by Subpart O of this part:

- (a) Proceeds from the sale of real property purchased or constructed under a grant or subgrant.
- (b) Proceeds from the sale of equipment and supplies fabricated or purchased under a grant or subgrant and intended primarily for use in the grant- or subgrant-supported project or program rather than for sale or rental.

§ 74.44 Program income—royalties and other income earned from a copyrighted work.

(a) This section applies to royalties, license fees, and other income earned by a recipient from a copyrighted work

developed under the grant or subgrant. Income of that kind is covered by this section whether a third party or the recipient itself acts as the publisher, seller, exhibitor, or performer of the copyrighted work. In some cases the recipient incurs costs to earn the income but does not charge these costs to ED grant funds, to required cost-sharing or matching funds, or to other program income. Costs of that kind may be deducted from the gross income in order to determine how much must be treated as program income.

(b) The terms of the grant govern the disposition of income subject to this section. If the terms do not treat this kind of income, there are no ED requirements governing the disposition.

§ 74.45 Program income—royalties or equivalent income earned from patents or from inventions.

Disposition of royalties or equivalent income earned on patents or inventions arising out of activities assisted by a grant or subgrant shall be governed by determinations made or agreements entered into under ED's patent regulations. (See Parts 6 and 8 of this title.) If the determination or agreement does not provide for the disposition of the royalties or equivalent income, the disposition shall be in accordance with the recipients' own policies.

§ 74.46 Program income—income after grant or subgrant support not otherwise treated.

(a) This section applies to program income not treated elsewhere in this part which arises from or is attributable to an activity while supported by a grant or subgrant but which does not accrue until after the period of grant or subgrant support. An example is proceeds from the sale or rental of a residual inventory or merchandise fabricated or purchased by a grant-supported workshop during the period of support.

(b) The terms of the grant govern the disposition of income subject to this section. If the terms do not treat this kind of income, there are no ED requirements governing the disposition.

§ 74.47 Interest earned on advances of grant funds.

(a) Except when exempted by Federal statute grantees shall remit to the Federal Government any interest or other investment income earned on advances of ED grant funds. This includes any interest or investment income earned by cost-type contractors on advances to them that are attributable to advances of ED grant funds to the grantee. Unless the grantee receives other instructions from the

responsible ED official, the grantee shall remit the amount due by check or money order payable to the Department of Education.

(b) Recipients are cautioned that they are subject to the provisions in § 74.61(e) for minimizing the time between the transfer of advances and their disbursement. Those provisions apply even if there is no accountability to the Federal Government for interest or other investment income earned on the advances.

Subpart G—Cost Sharing or Matching

§ 74.50 Scope of subpart.

(a) This subpart contains rules for satisfying Federal requirements for cost sharing or matching. These rules apply whether the cost sharing or matching is required by Federal statute or by other terms of the grant.

(b) ED and a grantee may enter into an institutional cost-sharing agreement covering all of ED's research project grants to that grantee in the aggregate. Except as provided by the institutional cost-sharing agreement, this subpart applies to the satisfaction of the grantee's obligation under the agreement, as well as to the satisfaction of cost-sharing or matching requirements that apply only to a single grant.

§ 74.51 Definitions.

For purposes of this subpart:

"Cost sharing or matching" means the value of third-party in-kind contributions and that portion of the costs of a grant-supported project or program not borne by the Federal Government.

"Equipment" has the same meaning given to that term in § 74.132, except that instead of "acquisition cost," the words "market value at the time of donation" shall be substituted.

"Supplies" means all tangible personal property other than "equipment" as defined in this section.

"Third-party in-kind contributions" means property or services which benefit a grant-supported project or program and which are contributed by non-Federal third parties without charge to the grantee, the subgrantee, or a cost-type contractor under the grant or subgrant.

§ 74.52 Basic rule: Costs and contributions acceptable.

With the qualifications and exceptions listed in § 74.53, a cost-sharing or matching requirement may be satisfied by either or both of the following:

(a) Allowable costs incurred by the grantee, the subgrantee, or a cost-type contractor under the grant or subgrant. This includes allowable costs borne by non-Federal grants or by other cash donations from non-Federal third parties.

(b) The value of third-party in-kind contributions applicable to the period to which the cost-sharing or matching requirement applies.

§ 74.53 Qualifications and exceptions.

(a) *Costs borne by other Federal grants.* Except as provided by Federal statute, a cost-sharing or matching requirement may not be met by costs borne by another Federal grant. This prohibition does not apply to costs borne by general program income earned from a contract awarded under another Federal grant.

(b) *Costs or contributions counted towards other Federal cost-sharing requirements.* Neither costs nor the values of third-party in-kind contributions may count towards satisfying a cost-sharing or matching requirement of an ED grant if they have been or will be counted towards satisfying a cost-sharing or matching requirement of another Federal grant, a Federal procurement contract, or any other award of Federal funds.

(c) *Costs financed by general program income.* Costs financed by general program income, as defined in § 74.42, shall not count towards satisfying a cost-sharing or matching requirement of the ED grant supporting the activity giving rise to the income unless the terms of the grant expressly permit the income to be used for cost sharing or matching. (This is the alternative for use of general program income described in § 74.42(d).)

(d) *Records.* Costs and third-party in-kind contributions counting towards satisfying a cost-sharing or matching requirement must be verifiable from the records of recipients or cost-type contractors. These records must show how the value placed on third-party in-kind contributions was arrived at. To the extent feasible, volunteer services shall be supported by the same methods that the organization uses to support the allocability of its regular personnel costs.

(e) *Special standards for third-party in-kind contributions.* (1) Third-party in-kind contributions shall count towards satisfying a cost-sharing or matching requirement only where, if the party receiving the contributions were to pay for them, the payments would be allowable costs.

(2) A third-party in-kind contribution shall not count as direct cost sharing or

matching where, if the party receiving the contribution were to pay for it, the payment would be an indirect cost. Cost-sharing or matching credit for such contributions shall be given only if the recipient or contractor has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of the contributions.

(3) The values placed on third-party in-kind contributions for cost-sharing or matching purposes shall conform to the rules in the succeeding sections of this subpart. If a third party in-kind contribution is of a type not treated in those sections, the value placed upon it shall be fair and reasonable.

§ 74.54 Valuation of donated services.

(a) *Volunteer services.* Unpaid services provided to a recipient by individuals shall be valued at rates consistent with those ordinarily paid for similar work in the recipient's organization. If the recipient does not have employees performing similar work, the rates shall be consistent with those ordinarily paid by other employers for similar work in the same labor market. In either case, a reasonable amount for fringe benefits may be included in the valuation.

(b) *Employees of other organizations.* When an employer other than a recipient or cost-type contractor furnishes free of charge the services of an employee in the employee's normal line of work, the services shall be valued at the employee's regular rate of pay exclusive of the employer's fringe benefits and overhead costs. If the services are in a different line of work, paragraph (a) of this section shall apply.

§ 74.55 Valuation of donated supplies and loaned equipment or space.

(a) If a third party donates supplies, the contribution shall be valued at the market value of the supplies at the time of donation.

(b) If a third party donates the use of equipment or space in a building but retains title, the contribution shall be valued at the fair rental rate of the equipment or space.

§ 74.56 Valuation of donated equipment, buildings, and land.

If a third party donates equipment, buildings or land, and title passes to a recipient, the treatment of the donated property shall depend upon the purpose of the grant, as follows:

(a) *Awards for capital expenditures.* If the purpose of the grant is to assist the recipient in the acquisition of property, the market value of that property at the

time of donation may be counted as cost sharing or matching.

(b) *Other awards.* If assisting in the acquisition of property is not the purpose of the grant, the following rules apply:

(1) If approval is obtained from the awarding party, the market value at the time of donation of the donated equipment or buildings and the fair rental rate of the donated land may be counted as cost sharing or matching. In all cases, the approval may be given only if a purchase of the equipment or buildings or a purchase or rental of the land would be approved as an allowable direct cost.

(2) If approval is not obtained under paragraph (b)(1) of this section, no amount may be counted for donated land, and only depreciation or use allowances may be counted for donated equipment and buildings. The depreciation or use allowances for this property are not treated as third party in-kind contributions. Instead, they are treated as costs incurred by the recipient. They are computed and allocated (usually as indirect costs) in accordance with the cost principles specified in Subpart Q of this part, in the same way as depreciation or use allowances for purchased equipment and buildings. The amount of depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.

§ 74.57 Appraisal of real property.

In some cases under §§ 74.55 and 74.56, it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in a building. In these cases, ED may require that the market value or fair rental rate be established by a certified real property appraiser (or by a representative of the U.S. General Services Administration, if available) and that the value or rate be certified by a responsible official of the party to which the property or its use is donated.

Subpart H—Standards for Grantee and Subgrantee Financial Management Systems and Non-Federal Audits

§ 74.60 Scope of subpart.

(a) This subpart contains standards for financial management systems and non-Federal audits of recipients.

(b) Awarding parties may not impose on recipients additional financial management standards or requirements concerning non-Federal audits. The awarding parties may, however, provide

recipients with suggestions and assistance on these subjects.

§ 74.61 Financial management standards.

Grantees and subgrantees shall meet the following standards for their grant and subgrant financial management systems.

(a) *Financial reporting.* Accurate, current, and complete disclosure of the financial results of each project or program shall be made in accordance with the financial reporting requirements of the grant or subgrant. The terms of grants and subgrants shall not require financial reporting on the accrual basis if the recipient's accounting system is maintained on the cash basis. When accrual reporting is statutorily required, a recipient whose accounting system is not maintained on that basis shall not be required to convert it to the accrual basis; the recipient may develop the accrual information through an analysis of the documentation on hand.

(b) *Accounting records.* Records which identify adequately the source and application of funds for grant or subgrant-supported activities shall be maintained. These records shall contain information pertaining to grant or subgrant awards, authorizations, obligations, unobligated balances, assets, outlays, income, and, if the recipient is a government, liabilities.

(c) *Internal control.* Effective control and accountability shall be maintained for all grant or subgrant cash, real and personal property covered by Subpart O of this part, and other assets. Recipients shall adequately safeguard all such property and shall assure that it is used solely for authorized purposes.

(d) *Budgetary control.* The actual and budgeted amounts for each grant or subgrant shall be compared. If appropriate or specifically required, recipients shall relate financial information to performance or productivity data, including the production of unit cost information. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

(e) *Advance payments.* Procedures shall be established to minimize the time elapsing between the advance of Federal grant or subgrant funds and their disbursement by the recipient. When advances are made by a letter-of-credit method, the recipient shall make drawdowns as close as possible to the time of making disbursements. Grantees advancing cash to subgrantees shall conform substantially to the same standards of timing and amount as apply to advances by Federal agencies to grantees, including requirements for

timely reporting of cash disbursements and balances. (See Subpart K of this part.)

(f) *Allowable costs.* Procedures shall be established for determining the reasonableness, allowability, and allocability of costs in accordance with the applicable cost principles prescribed by Subpart Q of this part and the terms of the grant.

(g) *Source documentation.* Accounting records shall be supported by source documentation such as cancelled checks, paid bills, payrolls, contract and subgrant award documents, etc.

(h) *Audit—(1) General.* (i) This paragraph applies to each recipient that is not subject to the audit requirements in the appendix to 34 CFR Part 80.

(ii) Public hospitals and public colleges and universities are subject to this paragraph if excluded under paragraph 4 of the appendix to 34 CFR Part 80.

(iii) A financial and compliance audit shall be made in accordance with generally accepted auditing standards, including the standards of the U.S. General Accounting Office's publication "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions."¹ The auditors engaged by a recipient shall meet the criteria for qualifications and independence in that publication.

(2) *Purpose and scope.* The purpose of these audits shall be to determine the effectiveness of the financial management systems and internal procedures established by the recipient to meet the terms of its grants and subgrants. The recipient's auditors need not examine every grant or subgrant awarded to the recipient. Rather, audits generally should be made on an organization-wide basis to test the fiscal integrity of financial transactions and compliance with the terms of awards. These tests would include an appropriate sampling of Federal grants and subgrants.

(3) *Frequency.* These audits shall be conducted on a continuing basis or at scheduled intervals, usually once a year, but at least every two years. The frequency shall depend on the nature, size and complexity of the recipient's grant- or subgrant-supported activities.

(4) *Relation to Federal audit.* These audits may affect the frequency and scope of Federal audit. However, nothing in this section is intended to limit the right of the Federal Government to conduct an audit of a grant- or subgrant-supported activity.

¹ Available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(5) *Audit resolution.* The recipient shall follow a systematic method to assure timely and appropriate resolution of audit findings and recommendations.

(6) *Copies of audit reports.* A copy of each audit report, and a description of its resolution, shall be furnished to ED.

Subpart I—Financial Reporting Requirements

§ 74.70 Scope and applicability of subpart.

This subpart prescribes requirements and forms for grantees to report financial information to ED, and to request grant payments when a letter of credit is not used.

§ 74.71 Definitions.

As used in this subpart or in the forms identified by this subpart:

"Accrued expenditures" are the charges by grantee during a given period requiring the provision of funds for: (a) Goods and other tangible property received; (b) services performed by employees, contractors, and other payees; and (c) amounts "becoming owed" for which no current services or performance is required, such as annuities, insurance claims, and other benefit payments.

"Accrued income" is the sum of (a) earnings during a given period from services performed by the grantee and from goods and other tangible property delivered to purchasers, and (b) amounts becoming owed to the grantee for which no current services or performance is required by the grantee.

"Federal funds authorized" means the total amount of Federal funds obligated by the Federal Government and authorized for use by the grantee.

"In-kind contributions" means "third party in-kind contributions" as defined in Subpart G of this part.

"Obligations" are the amounts of orders placed, contracts awarded, services received, and similar transactions during a given period, which will require payment during the same or a future period.

"Outlays" are charges made to the grant project or program. Outlays may be reported on a cash or accrual basis.

"Program income" has the same meaning it has in Subpart F of this part.

"Unliquidated obligations," for reports prepared on a cash basis, are the amount of obligations incurred by the grantee that has not been paid. For reports prepared on an accrued expenditure basis, they are the amount of obligations incurred by the grantee for which an outlay has not been recorded.

"Unobligated balance" is the portion of the Federal funds authorized which has not been obligated by the grantee and is determined by deducting the grantee's cumulative obligations from the cumulative Federal funds authorized.

§ 74.72 General.

(a) Except as provided in paragraphs (d) and (e) of this section, grantees shall use only the forms specified in §§ 74.73 through 74.76, and such supplementary or other forms as may from time to time be authorized by ED, for:

(1) Submitting grant financial reports to granting agencies, or

(2) Requesting advances or reimbursements when letters of credit are not used.

(b) Grantees shall follow all applicable standard instructions issued by OMB for use in connection with the forms specified in §§ 74.73 through 74.76. ED may issue substantive supplementary instructions. ED may shade out or instruct the grantee to disregard any line item that ED finds unnecessary for its decision making purposes.

(c) Grantees will not be required to submit more than the original and two copies of forms required under this subpart.

(d) ED may provide computer outputs to grantees to expedite or contribute to the accuracy of reporting. ED may accept the required information from grantees in machine usable format or computer printouts instead of prescribed formats.

(e) When ED has determined that a grantee's accounting system does not meet the standards for financial management systems contained in Subpart H of this part, it may require financial reports with more frequency or more detail (or both), upon written notice to the grantee (without regard to § 74.7), until such time as the standards are met.

(f) ED may waive any report required by this subpart if not needed.

(g) ED may extend the due date for any financial report upon receiving a justified request from the grantee.

§ 74.73 Financial Status Report.

(a) *Form.* Grantees shall use Standard Form 269, Financial Status Report, to report the Status of funds for all nonconstruction grants.

(b) *Accounting basis.* Each grantee shall report program outlays and program income on the same accounting basis, i.e., cash or accrued expenditure (accrual), which it uses in its accounting system.

(c) *Frequency.* ED may prescribe the frequency of the report for each project or program. However, the report shall not be required more frequently than quarterly except as provided in §§ 74.7 and 74.72(e). If ED does not specify the frequency of the report, it shall be submitted annually. A final report shall be required upon expiration or termination of grant support.

(d) *Due date.* When reports are required on a quarterly or semiannual basis, they shall be due 30 days after the reporting period. When required on an annual basis, they shall be due 90 days after the grant year. Final reports shall be due 90 days after the expiration or termination of grant support.

§ 74.74 Federal Cash Transactions Report.

(a) *Form.* (1) For grants paid by letters of credit (or Treasury check advances) through any ED payment office except the Departmental Federal Assistance Financing System (DFAFS), the grantee shall submit to the payment office Standard Form 272, Federal Cash Transactions Report, and when necessary, its continuation sheet, Standard Form 272a. For grants paid by DFAFS, the grantee shall submit DFAFS Report 27, Recipient Report of Expenditures, to DFAFS.

(2) These reports will be used by the ED payment office to monitor cash advanced to grantees and to obtain disbursement or outlay information for each grant from grantees. The format of the report may be adapted as appropriate when reporting is to be accomplished with the assistance of automatic data processing equipment: *Provided*, That the information to be submitted is not changed in substance.

(b) *Forecasts of Federal cash requirements.* Forecasts of Federal cash requirements may be required in the "Remarks" section of the report.

(c) *Cash in hands of secondary recipients.* When considered necessary and feasible by the ED payment office, grantees may be required to report the amount of cash subadvances in excess of three days' needs in the hands of their contractors and to provide short narrative explanations of actions taken by the grantee to reduce the excess balances.

(d) *Frequency and due date.* Grantees shall submit the report no later than 15 working days following the end of each quarter. However, where a letter of credit authorizes advances at an annualized rate of one million dollars or more, the ED payment office may require the report to be submitted within 15 working days following the end of each month.

§ 74.75 Request for Advance or Reimbursement.

(a) (1) *Advance payments.* Requests for Treasury check advance payments shall be submitted on Standard Form 270, Request for Advance or Reimbursement. (This form is not used for drawdowns under a letter of credit or when Treasury check advance payments are made to the grantee automatically on a predetermined basis.)

(2) *Reimbursements.* Requests for reimbursement under non-construction grants shall also be submitted on Standard Form 270. (For reimbursement requests under construction grants, see § 74.76(a).)

(b) The frequency for submitting payment requests is treated in § 74.96.

§ 74.76 Outlay report and request for reimbursement for construction programs.

(a) *Construction grants paid by reimbursement method.* (1) Requests for reimbursement under construction grants shall be submitted on Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. ED may, however, prescribe the Request for Advance or Reimbursement form specified in § 74.75 instead of this form.

(2) The frequency for submitting reimbursement requests is treated in § 74.96.

(b) *Construction grants paid by letter of credit or Treasury check advance.* (1) When a construction grant is paid by letter of credit or Treasury check advances, the grantee shall report its outlays to ED using Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. ED will provide any necessary special instruction. However, frequency and due date shall be governed by § 74.73 (c) and (d).

(2) When a construction grant is paid by Treasury check advances based on periodic requests from the grantee, the advances shall be requested on the form specified in § 74.75.

(3) ED may substitute the Financial Status Report specified in § 74.73 for the Outlay Report and Request for Reimbursement.

(c) *Accounting basis.* The accounting basis for the Outlay Report and Request for Reimbursement for Construction Programs shall be governed by § 74.73(b).

Subpart J—Monitoring and Reporting of Program Performance

§ 74.80 Scope of subpart.

This subpart sets forth the procedures for monitoring and reporting program performance of recipients. These procedures are designed to place reliance on recipients to manage the day-to-day operations of their grant- and subgrant-supported activities.

§ 74.81 Monitoring by recipients.

Recipients shall monitor the performance of grant- and subgrant-supported activities. They shall review each program, function, or activity to assure that adequate progress is being made towards achieving the goals of the grant or subgrant.

§ 74.82 Performance reports under nonconstruction grants.

(a) Where ED determines that performance information sufficient to meet its programmatic needs will be available from subsequent applications, ED will require the grantee to submit a performance report only upon expiration or termination of grant support. This report will be due on the same date as the final financial Status Report unless waived by ED. Note that the "Application for Federal Assistance (Nonconstruction Programs)" prescribed by Subpart N of this part, when used to request continued support, provides information substantially equivalent to a performance report.

(b) Except as provided in paragraph (a) of this section, grantees shall submit annual performance reports unless ED requires quarterly or semiannual reports. Annual reports shall be due 90 days after the grant year; quarterly or semiannual reports shall be due 30 days after the reporting period. A final performance report shall be due 90 days after the expiration or termination of grant support. ED may extend the due date for any performance report upon receiving a justified request from the grantee. In addition, ED may waive the requirement for any performance report which is not needed.

(c) The content of performance reports shall conform to any instructions issued by the granting agency, including, to the extent appropriate to the particular grant, a brief presentation of the following for each program, function, or activity involved:

(1) A comparison of actual accomplishments to the goals established for the period. Where the output of the project or program can be readily expressed in numbers, a computation of the cost per unit of

output may be required if that information will be useful.

(2) The reasons for slippage if established goals were not met.

(3) Other pertinent information including, when appropriate, analysis and explanation of unexpectedly high overall or unit costs.

(d) Grantees will not be required to submit more than the original and two copies of performance reports.

§ 74.83 Performance reports under construction grants.

In general, awarding parties rely heavily on on-site technical inspection and certified percentage-of-completion data to keep themselves informed as to progress under construction grants. Formal performance reports to supplement those sources of information shall be required only if considered necessary by the awarding party, and in no case more frequently than quarterly.

§ 74.84 Significant developments between scheduled reporting dates.

Between the scheduled performance reporting dates, events may occur which have significant impact upon the grant- or subgrant-supported activity. In such cases, the recipient shall inform the awarding party as soon as the following types of conditions become known:

(a) Problems, delays, or adverse conditions which will materially impair the ability to attain the objective of the award. This disclosure shall be accompanied by a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(b) Favorable developments which enable meeting time schedules and goals sooner or at less cost than anticipated or producing more beneficial results than originally projected.

§ 74.85 Site visits.

Site visits may be made as necessary by representatives of ED to:

(a) Review program accomplishments and management control systems.

(b) Provided such technical assistance as may be required.

Subpart K—Grant and Subgrant Payment Requirements

§ 74.90 Scope of subpart.

This subpart prescribes the basic standard and the methods under which ED will make grant payments to grantees.

§ 74.91 Definitions.

As used in this subpart:

"Advance by Treasury check" is a payment made by a Treasury check to a grantee, upon its periodic request or

through the use of predetermined payment schedules, before payments are made by the grantee.

"Letter of credit" is an instrument certified by an authorized official which authorizes a recipient to draw funds needed for immediate disbursement in accordance with Treasury Circular No. 1075.

"Percentage of completion method" refers to a system under which payments are made for construction work according to the percentage of completion of the work, rather than to the grantee's rate of disbursements.

§ 74.92 Basic standard.

Methods and procedures for making payments to recipients shall minimize the time elapsing between the transfer of funds and the recipient's disbursements.

§ 74.93 Payment methods under nonconstruction grants.

(a) Letters of credit will be used to pay ED grantees when all of the following conditions exist:

(1) There is or will be a continuing relationship between the grantee and the ED payment office for at least a year and the total amount of advances to be received from the ED payment office is \$120,000 or more per year.

(2) The grantee has maintained, or demonstrated to ED the willingness and ability to maintain, procedures that minimize the time elapsing between the transfer of funds from the Treasury and their disbursement by the grantee, and

(3) The grantee's financial management system meets the standards for fund control and accountability in Subpart H of this part.

(b) Advances by Treasury check will be used, in accordance with Treasury Circular No. 1075, when the grantee does not meet the requirements in paragraph (a)(1) of this section but does meet the requirements in paragraphs (a)(2) and (3) of this section.

(c) Reimbursement by Treasury check will be preferred method when the requirements of either paragraph (a)(2) or paragraph (a)(3) of this section are not met. This method may also be used when the major portion of the program is accomplished through private market financing or Federal loans, and the Federal grant assistance constitutes a minor portion of the program.

§ 74.94 Payment methods under construction grants.

(a) Reimbursement by Treasury check shall be the preferred method when the grantee does not meet the requirements specified in § 74.93(a) (2) or (3), and may be used for any ED construction grant

unless ED has entered into an agreement with the grantee to use a letter of credit for all ED grants, including construction grants.

(b) When the reimbursement by Treasury check method is not used, § 74.93 (a) and (b) shall apply to the construction grant. Implementing procedures under § 74.93 (a) and (b) will be insofar as possible the same for construction grants as for nonconstruction grants awarded to the same grantee.

(c) ED will not use the percentage of completion method to pay its construction grants. The grantee may use that method to pay its construction contractor, but if it does, ED's payments to the grantee will nevertheless be based on the grantee's actual rate of disbursements.

§ 74.95 Withholding of payments.

(a) Unless otherwise required by Federal statute, payments for proper charges incurred by grantees will not be withheld unless (1) the grantee has failed to comply with Federal reporting requirements or (2) the grant is suspended pursuant to § 74.114 or (3) the grantee owes money to the United States and collection of the debt by withholding grant payments will not impair the accomplishment of the objectives of any grant program sponsored by the United States.

(b) Cash withheld for failure to comply with reporting requirements but without suspension of the grant will be released to the grantee upon subsequent compliance. When a grant is suspended, payment adjustments will be made in accordance with § 74.114. When a debt is to be collected, ED may withhold payments or require appropriate accounting adjustments to recorded grant cash balances for which the grantee is accountable to the Federal Government, in order to liquidate the indebtedness.

§ 74.96 Requesting advances or reimbursements.

(a) If advances are made by Treasury check and the advances are not prescheduled, the grantee shall submit its requests for payment monthly. Less frequent requests are not permitted because they would result in advances covering excessive periods of time.

(b) If payments are made through reimbursement by Treasury check, the grantee may submit its requests for reimbursement monthly and may submit them more often if authorized. The grantee will be paid as promptly as possible, ordinarily within 30 days after receipt of a proper request for reimbursement.

(c) The forms for requesting advances or reimbursements are identified in Subpart I of this part.

Subpart L—Programmatic Changes and Budget Revisions

§ 74.100 Scope and applicability of this subpart.

This subpart deals with prior approval requirements for post-award programmatic changes and budget revisions by recipients.

§ 74.101 Relationship to cost principles.

The cost principles in Appendices D and E to this part contain requirements for prior approval of certain types of cost (see § 74.176). Except when waived, those requirements apply to all grants and subgrants even if § 74.103 through 74.106 do not.

§ 74.102 Prior approval procedures.

(a) *For grants.* When requesting a prior approval required by this subpart, grantees shall address their requests to the responsible ED grants officer. Approvals shall not be valid unless they are in writing and signed by the authorized ED official.

(b) *Timing.* Within 30 days from the date of receipt of a request for approval, the approval authority shall review the request and notify the recipient of its decision. If the request for approval is still under consideration at the end of 30 days, the approval authority shall inform the recipient in writing as to when to expect the decision.

§ 74.103 Programmatic changes.

(a) *Scope.* This section contains requirements for prior approval of departures, other than budget revisions, from approved project plans. In addition to the requirements in this section, awarding parties may require prior approval for other kinds of programmatic changes to an approved grant project.

(b) *Changes to project scope or objectives.* The recipient shall obtain prior approval for any change to the scope or objectives of the approved project. (For construction projects, any material change in approved space utilization or functional layout shall be considered a change in scope.)

(c) *Changes in key people.* The recipient of a grant or subgrant for research (or any other kind of grant or subgrant if the terms of the award make this rule applicable) shall obtain prior approval:

(1) To continue the project during any continuous period of more than 3 months without the active direction of an approved project director or principal investigator; or

(2) To replace the project director or principal investigator (or any other persons named and expressly identified as key project people in the notice of grant or subgrant award) or to permit any such people to devote substantially less effort to the project than was anticipated when the grant or subgrant was awarded.

(d) *Other programmatic changes.* The following shall require prior approval except to the extent explicitly included in the project plan as approved by the awarding party at the time of award:

(1) Transferring to a third party, by contracting or any other means, the actual performance of the substantive programmatic work. The term "substantive programmatic work" means activities which are central to carrying out the purpose of the project, and not merely incidental. Transfer of substantive programmatic work does not include purchase of supplies, materials, or equipment; acquisition of general or incidental support services; obtaining advice; or transfer of activities whose cost is treated as an indirect cost.

(2) Providing medical care to individuals under research grants.

Cross-Reference: See 34 CFR 75.708—Prohibition of subgrants.

§ 74.104 Budgets generally.

(a) *Definitions.* In this subpart:

(1) "Budget" means the recipient's financial plan for carrying out the project or program.

(2) "Approved budget" means a budget (including any revised budget) which has been approved by the awarding party.

(b) *Research project budgets.* For research projects, approved budgets shall not include the recipient's share of project costs.

(c) *Non-research project budgets.* For non-research projects which involve cost sharing or matching, approved budgets shall ordinarily consist of a single set of figures covering total project cost (the sum of the awarding party's share and the recipient's share). However, the awarding party may specify that the recipient's share not be included in the approved budget. In no case, however, shall the approved budget be in the form of a separate set of figures for each share.

(d) *Subdivision by programmatic segments.* Some grants encompass two or more programmatic segments (such as discrete programs, projects, functions, or types of activities). In these cases, the awarding party may require that the approved budget be subdivided to show the anticipated cost of each programmatic segment.

§ 74.105 Budget revisions—nonconstruction projects.

(a) Except as provided in paragraph (b) of this section, the recipient of a grant or subgrant having an approved budget shall obtain prior approval for any budget revision which will:

- (1) Involve transfer of amounts budgeted for indirect costs to absorb increases in direct costs, or
- (2) Involve transfer of amounts previously budgeted for student support (tuition waivers, stipends, and other payments to or for trainees), or
- (3) Result in a need for the award of additional funds, e.g., an increase in the base upon which indirect costs are calculated which will increase allocable indirect costs and result in a claim for a supplementary award.

(b) Any or all of the prior approval requirements in paragraph (a) of this section may be waived by the awarding party.

(c) Except as provided in §§ 74.107 and 74.176, other budget changes under nonconstruction grants do not require approval.

§ 74.106 Budget revisions—construction projects.

Unless provided otherwise by the terms of the grant or subgrant, revisions to construction project budgets do not require approval.

§ 74.107 Construction and nonconstruction work under the same grant.

When a grant provides support for both construction and nonconstruction work, the awarding party may require prior approval before any fund or budget transfers between the two types of work.

§ 74.108 Authorized funds exceeding needs.

The recipient shall notify the awarding party promptly whenever the amount of grant or subgrant authorized funds is expected to exceed needs by more than \$5,000 or 5 percent of the grant or subgrant, whichever is greater. This notification will not be required under continuing grants or subgrants if the application for the next period's funding will include an estimate of what the unobligated balance of authorized funds will be at the end of the current period.

Subpart M—Grant and Subgrant Closeout, Suspension, and Termination**§ 74.110 Definitions.**

"Grant closeout" means the process by which ED determines that all applicable administrative actions and

all required work of the grant have been completed by the grantee and ED.

"Suspension" of a grant means temporary withdrawal of the grantee's authority to obligate grant funds pending corrective action by the grantee or a decision to terminate the grant.

"Termination" of a grant means permanent withdrawal of the grantee's authority to obligate previously awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee.

"Termination" does not include:

(a) Withdrawal of funds awarded on the basis of the grantee's underestimate of the unobligated balance in a prior period;

(b) Refusal by ED to extend a grant or award additional funds (such as refusal to make a competing or noncompeting continuation, renewal, extension, or supplemental award);

(c) Withdrawal of the unobligated balance as of the expiration of a grant;

(d) Annulment, i.e., voiding, of a grant upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

§ 74.111 Closeout.

(a) Each grant shall be closed out as promptly as is feasible after expiration or termination.

(b) In closing out ED grants, the following shall be observed:

(1) Upon request, ED shall promptly pay the grantee for any allowable reimbursable costs not covered by previous payments.

(2) The grantee shall immediately refund or otherwise dispose of, in accordance with instructions from ED, any unobligated balance of cash advanced to the grantee.

(3) The grantee shall submit, within 90 days of the date of expiration or termination, all financial, performance, and other reports required by the terms of the grant. ED may extend the due date for any report upon receiving a justified request from the grantee, and may waive any report which is not needed.

(4) ED shall make a settlement for any upward or downward adjustment of the Federal share of costs, to the extent called for by the terms of the grant.

(c)(1) The closeout of a grant does not affect the retention period for, or Federal rights of access to, grant records. See Subpart D of this part.

(2) If a grant is closed out without audit, ED retains the right to disallow and recover an appropriate amount after fully considering any recommended disallowances resulting from an audit which may be conducted later.

(3) The closeout of a grant does not affect the grantee's responsibilities with respect to property under Subpart O of this part, or with respect to any program income for which the grantee is still accountable under Subpart F of this part.

§ 74.112 Amounts payable to the Federal Government.

For each grant, the following sums shall constitute a debt or debts owed by the grantee to the Federal Government, and shall, if not paid upon demand, be recovered from the grantee or its successor or assignees by setoff or other action as provided by law:

(a) Any grant funds paid to the grantee by the Federal Government in excess of the amount to which the grantee is finally determined to be entitled under the terms of the grant;

(b) Any interest or other investment income earned on advances of grant funds which is due the Federal Government pursuant to § 74.47;

(c) Any royalties or other special classes of program income which, under the terms of the grant, are required to be remitted to the Federal Government (see Subpart F of this part);

(d) Any amounts due the Federal Government under Subpart O of this part; and

(e) Any other amounts finally determined to be due the Federal Government under the terms of the grant.

§ 74.113 Violation of terms.

(a) When a grantee has materially failed to comply with the terms of a grant, ED may suspend the grant, in accordance with § 74.114, terminate the grant for cause, as provided in § 74.115, or take such other remedies as may be legally available and appropriate in the circumstances.

(b) If a project or program is supported over two or more funding periods, a grant may be suspended or terminated in the current period for failure to submit a report still due from a prior period.

§ 74.114 Suspension.

(a) When a grantee has materially failed to comply with the terms of a grant, ED may, upon reasonable notice to the grantee, suspend the grant in whole or in part. The notice of suspension will state the reasons for the suspension, any corrective action required of the grantee, and the effective date. The suspension may be made effective at once if a delayed effective date would be unreasonable considering ED's responsibilities to protect the

Federal Government's interest. Suspensions shall remain in effect until the grantee has taken corrective action satisfactory to ED or given evidence satisfactory to ED that such corrective action will be taken, or until ED terminates the grant.

(b) New obligations incurred by the grantee during the suspension period will not be allowed unless ED expressly authorizes them in the notice of suspension or an amendment to it. Necessary and otherwise allowable costs which the grantee could not reasonably avoid during the suspension period will be allowed if they result from obligations properly incurred by the grantee before the effective date of the suspension and not in anticipation of suspension or termination. At the discretion of ED, third-party in-kind contributions applicable to the suspension period may be allowed in satisfaction of cost sharing or matching requirements.

(c) Appropriate adjustments to payments under the suspended grant will be made either by withholding subsequent payments or by not allowing the grantee credit for disbursements made in payment of unauthorized obligations incurred during the suspension period.

§ 74.115 Termination.

(a) *Termination for cause.* ED may terminate any grant in whole, or in part, at any time before the date of expiration, whenever ED determines that the grantee has materially failed to comply with the terms of the grant. ED shall promptly notify the grantee in writing of the determination and the reasons for the termination, together with the effective date.

(b) *Termination on other grounds.* Except as provided in paragraph (a) of this section, grants may be terminated in whole or in part only as follows:

(1) By ED with the consent of the grantee, in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial terminations, the portion to be terminated, or

(2) By the grantee, upon written notification to ED, setting forth the reasons for such termination, the effective date, and in the case of partial terminations, the portion to be terminated. However, if, in the case of a partial termination, ED determines that the remaining portion of the grant will not accomplish the purposes for which the grant was made, ED may terminate the grant in its entirety under either paragraph (a) or paragraph (b)(1) of this section.

(c) *Termination settlements.* When a grant is terminated, the grantee shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. ED will allow full credit to the grantee for the Federal share of the noncancellable obligations properly incurred by the grantee prior to termination.

Subpart N—Forms for Applying for Grants

§ 74.120 Scope of subpart.

(a) This subpart is not applicable to mandatory or formula grant programs which do not require applicants to apply to ED for funds on a project basis.

(b) ED may prescribe the form of applications by nongovernmental organizations (including hospitals and institutions of higher education operated by a government), and may use a standard facesheet for these applications.

§ 74.121 [Reserved]

§ 74.122 Preapplications for Federal assistance.

The purposes of preapplications shall be to:

(a) Establish communications between the applicant and ED;

(b) Determine the applicant's eligibility;

(c) Determine how well the project can compete with similar applications from others in order to discourage proposals which have little or no chance for Federal funding before applicants incur significant expenditures for preparing an application.

§ 74.123 Notice of preapplication review action.

(a) ED will inform applicants of the results of the review of the preapplications submitted to them.

(b) ED will send a notice to the applicant ordinarily within 45 days of the receipt of the preapplication form.

(c) If the review cannot be made within 45 days, the applicant will be informed by letter as to when the review will be completed.

§ 74.124-74.126 [Reserved]

§ 74.127 Authorized forms and instructions for nongovernmental organizations.

Nongovernmental organizations shall use application forms and instructions prescribed by ED, except that the facesheet of such applications shall be standard form 424 for grants under programs covered by Executive Order 12372.

Subpart O—Property

General

§ 74.130 Scope and applicability of this subpart.

(a) Except as explained in paragraphs (c), (d), and (e) of this section this subpart applies to real property, equipment, and supplies acquired with grant support. To be considered acquired with grant support, some or all of the property's acquisition cost must be a direct cost under the grant, a subgrant, or a cost-type contract and must be either borne by grant funds or counted toward satisfying a grant cost-sharing or matching requirement.

(b) This subpart also deals with inventions, patents, and copyrights arising out of activities assisted by a grant or subgrant.

(c) This subpart does not apply to—
(1) Property for which only depreciation or use allowances are charged;

(2) Property donated entirely as a third-party in-kind contribution (as defined in § 74.51); or

(3) Equipment or supplies acquired primarily for sale or rental rather than for use.

(d) Equipment or supplies acquired by a contractor under a grant or subgrant shall be subject to this subpart only if, by terms of the contract, title vests in the grantee or subgrantee.

(e) For research grants that are subject to an institutional cost-sharing agreement (see § 74.50(b)), real property, equipment, and supplies shall be subject to this subpart only if at least some part of the acquisition cost is borne as a direct cost by Federal grant funds.

§ 74.131 Prohibition against additional requirements.

Recipients may follow their own property management policies and procedures: *Provided*, They observe the requirements of this subpart. Awarding parties may not impose on recipients property requirements (including property reporting requirements) not authorized by this subpart, unless specifically required by Federal statutes or Executive Orders.

§ 74.132 Definitions.

As used in this subpart:

"Acquisition" of property includes purchase, construction, or fabrication of property, but does not include rental of property or alterations and renovations of real property.

"Acquisition cost" of an item of purchased equipment means the net invoice price of the equipment, including the cost of modifications, attachments,

accessories, or auxiliary apparatus necessary to make the equipment usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance shall be included in or excluded from the unit acquisition cost in accordance with the regular accounting practices of the organization purchasing the equipment. If the item is acquired by trading in another item and paying an additional amount, "acquisition cost" means the amount received for trade-in plus the additional outlay.

"Amount received for trade-in" of an item of equipment traded in for replacement equipment means the amount that would have been paid for the replacement equipment without a trade-in minus the amount paid with the trade-in. The term refers to the actual difference, not necessarily the trade-in value shown on an invoice.

"Equipment" means tangible personal property having a useful life of more than one year and an acquisition cost of \$300 or more per unit except that organizations subject to Cost Accounting Standards Board (CASB) regulations may use the CASB standard of \$500 or more per unit and useful life of two years. An organization may use its own definition of equipment: *Provided*, That such definition would at least include all tangible personal property as defined herein.

"Personal property" means property of any kind except real property. It may be tangible—having physical existence, or intangible—having no physical existence, such as patents, inventions, and copyrights.

"Real property" means land, including land improvements, structures and appurtenances thereto, but excluding movable machinery and equipment.

"Replacement equipment" means property acquired to take the place of other equipment. To qualify as replacement equipment, it must serve the same function as the equipment replaced and must be of the same nature or character, although not necessarily the same model, grade, or quality.

"Supplies" means all tangible personal property other than equipment.

§ 74.133 Title to real property, equipment, and supplies.

Subject to the obligations and conditions set forth in this subpart, title to real property, equipment, and supplies acquired under a grant or subgrant shall vest, upon acquisition, in the grantee or subgrantee respectively.

Real Property

§ 74.134 Real property.

Except as otherwise provided by Federal statutes, real property to which this subpart applies shall be subject to the following requirements, in addition to any other requirements imposed by the terms of the grant:

(a) *Use.* The property shall be used for the originally authorized purpose as long as needed for that purpose. When no longer so needed, approval of the Secretary may be requested to use the property for other purposes. Use for other purposes shall be limited to:

(1) Projects or programs supported by other Federal grants or assistance agreements.

(2) Activities not supported by other Federal grants or assistance agreements but having, nevertheless, purposes consistent with those of the legislation under which the original grant was made.

(b) *Transfer of title.* Approval may be requested from ED to transfer title to an eligible third party for continued use for authorized purposes in accordance with paragraph (a) of this section. If approval is permissible under Federal statutes and is given, the terms of the transfer shall provide that the transferee shall assume all the rights and obligations of the transferor set forth in this subpart or in other terms of the grant or subgrant.

(c) *Disposition.* When the real property is no longer to be used as provided in paragraphs (a) and (b) of this section, the disposition instructions of ED shall be followed. Those instructions will provide for one of the following alternatives:

(1) The property shall be sold and the Federal Government shall be paid an amount computed by multiplying the Federal share of the property (see § 74.142) times the proceeds from sale (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). Proper sales procedures shall be used that provide for competition to the extent practicable and result in the highest possible return.

(2) The recipient shall have the option either of selling the property in accordance with paragraph (c)(1) of this section or of retaining title. If title is retained, the Federal Government shall be paid an amount computed by multiplying the market value of the property by the Federal share of the property.

(3) The recipient shall transfer the title to either the Federal Government or an eligible non-Federal party named by ED. The grantee shall be entitled to be paid an amount computed by multiplying the market value of the property by the non-

Federal share of the property. If the property belonged to a subgrantee, see § 74.143 for subgrantee's share.

Equipment and Supplies

§ 74.135 Exemptions for equipment and supplies subject to certain statutes.

(a) Some Federal statutes, in certain circumstances, permit title to equipment or supplies acquired with grant funds to vest in the recipient without further obligation to the Federal Government or on such terms and conditions as deemed appropriate. An example of such a statute is the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95-224, which provides this authority for equipment and supplies purchased with the funds of grants (and Federal contracts and cooperative agreements) for the conduct of basic or applied scientific research at nonprofit institutions of higher education or at nonprofit organizations whose primary purpose is the conduct of scientific research.

(b) If equipment is subject to a statute of the kind described in paragraph (a) of this section, it shall be exempt from the requirements in the remaining sections of this subpart. However, an item of such equipment having a unit acquisition cost of \$1,000 or more shall be subject to § 74.136, concerning rights to require transfer, and, while subject to such a right, to the rules on replacement in § 74.138.

(c) If supplies are subject to a statute of the kind described in paragraph (a) of this section, they shall be exempt from all provisions of the remainder of this subpart which would otherwise apply.

§ 74.136 Rights to require transfer of equipment.

(a) *ED right.* For items of equipment having a unit acquisition cost of \$1,000 or more, ED shall have the right to require transfer of the equipment (including title) to the Federal Government or to an eligible non-Federal party named by ED. This right will normally be exercised by ED only if the project or program for which the equipment was acquired is transferred from one grantee to another. The right shall be subject to the following conditions:

(1) In order for ED to exercise the right, a specific notice that it is exercising the right or considering doing so must be issued no later than the 120th day after the end of ED grant support for the project or program for which the equipment was acquired. Furthermore:

(i) If the equipment is eligible for the exemptions in § 74.135 and ceases to be needed for the project or program for

which it was acquired while the project or program is still being performed by the recipient, the notice must have been received by the grantee while the equipment was still needed for that project or program.

(ii) If the equipment is not eligible for those exemptions, the notice must have been received by the grantee before other permissible disposition of the equipment took place in accordance with § 74.139.

(2) If the right is exercised, the grantee shall be entitled to be paid any reasonable, resulting shipping or storage costs incurred, plus an amount computed by multiplying the market value of the equipment by the non-Federal share of the equipment. (See §§ 74.142 and 74.143.)

(b) *Equipment lists.* If at any time an awarding party is considering exercising its right to require transfer of equipment, it may require the recipient to furnish it a listing of all items of equipment that are subject to the right. This will enable the awarding party to determine which items, if any, should be transferred.

§ 74.137. Use of equipment.

(a) *Basic rule.* Equipment which has not been transferred under § 74.136 shall be used by the recipient in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original project or program, the recipient shall use the equipment, if needed, in other projects or programs currently or previously sponsored by the Federal Government, in the following order of priority:

(1) Projects or programs currently or previously sponsored by ED.

(2) Projects or programs currently or previously sponsored by other Federal agencies.

(b) *Shared use.* If equipment is being used less than full time in the project or program for which it was originally acquired, the recipient shall make it available for use in other projects or programs currently or previously sponsored by the Federal Government: *Provided*, Such other use will not interfere with the work on the original project or program. First preference for such other use shall be given to other projects or programs sponsored by ED.

(c) *Use by other recipients.* When the recipient can no longer use the equipment as required by paragraph (a) of this section, it may voluntarily make the equipment available for use on projects or programs currently or previously sponsored by the Federal Government which the recipient is supporting through subgrants or through

non-Federal grants. If the recipient is a subgrantee, it may also voluntarily make the equipment available for use on projects or programs currently or previously sponsored by the Federal Government which are being conducted or supported by the grantee.

(d) *Other uses.* Unless ED provides otherwise, while equipment is being used as described in the preceding paragraphs of this section, it may also be used part time for other purposes. However, use as described in those paragraphs shall be given priority over other uses.

§ 74.138 Replacement of equipment.

(a) Equipment may be exchanged for replacement equipment if needed. The replacement may take place either through trade-in or through sale and application of the proceeds to the acquisition cost of the replacement equipment. In either case, the transaction must be one which a prudent person would make in like circumstances.

(b) If an additional outlay to acquire the replacement equipment is charged as a direct cost to either Federal funds or required cost-sharing or matching under a Federal award, the replacement equipment shall be subject to whatever property requirements or exemptions are applicable to that award. If the award is a grant from ED the full acquisition cost of the replacement equipment shall determine which provisions of this subpart apply.

(c) For any replacement not covered by paragraph (b) of this section, the provisions of this subpart applicable to the equipment replaced shall carry over to the replacement equipment. However, none of the provisions of this subpart shall carry over if (1) the Federal share of the equipment replaced was 10 percent or less or (2) the product of that share times the amount received for trade-in or sale is \$100 or less.

§ 74.139 Disposition of equipment.

When original or replacement equipment is no longer to be used in projects or programs currently or previously sponsored by the Federal Government, disposition of the equipment shall be made as follows:

(a) *Equipment with a unit acquisition cost of less than \$1,000 and equipment with no further use value.* The equipment may be retained, sold, or otherwise disposed of, with no further obligation to the Federal Government.

(b) *All other equipment.* (1) The equipment may be retained or sold, and the Federal Government shall have a right to an amount calculated by multiplying the current market value or

the proceeds from sale by the Federal share of the equipment (see § 74.142). If part of the Federal share in the equipment came from an award under which the exemptions in § 74.135 were applicable, the amount due shall be reduced pro rata. In any case, if the equipment is sold, \$100 or 10 percent of the total sales proceeds, whichever is greater, may be deducted and retained from the amount otherwise due for selling and handling expenses.

(2) If the grantee's project or program for which or under which the equipment was acquired is still receiving grant support from the same Federal program and if ED approves, the net amount due may be used for allowable costs of that project or program. Otherwise, the net amount must be remitted to the granting agency by check.

§ 74.140 Equipment management requirements.

Procedures for managing equipment (including replacement equipment) until transfer, replacement, or disposition takes place shall, as a minimum, meet the following requirements:

(a) Property records shall be maintained accurately. (Retention and access requirements for these records are explained in Subpart D of this part.) For each item of equipment, the records shall include:

(1) A description of the equipment, including manufacturer's model number, if any.

(2) An identification number, such as the manufacturer's serial number.

(3) Identification of the grant under which the recipient acquired the equipment.

(4) The information needed to calculate the Federal share of the equipment. (See § 74.142.)

(5) Acquisition date and unit acquisition cost.

(6) Location, use, and condition of the equipment and the date the information was reported.

(7) All pertinent information on the ultimate transfer, replacement, or disposition of the equipment.

(b) A physical inventory of equipment shall be taken and the results reconciled with the property records at least once every 2 years to verify the existence, current utilization, and continued need for the equipment. A statistical sampling basis is acceptable. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the differences.

(c) A control system shall be in effect to insure adequate safeguards to prevent

loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented.

(d) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.

(e) Where equipment is to be sold and the Federal Government is to have a right to part or all of the proceeds, selling procedures shall be established which will provide for competition to the extent practicable and result in the highest possible return.

§ 74.141 Supplies.

(a) If supplies exceeding \$1,000 in total aggregate market value are left over upon termination or expiration of the grant or subgrant for which they were acquired and the supplies are not needed for any project or program currently or previously sponsored by the Federal Government, the grant shall be credited by an amount computed by multiplying the Federal share of the supplies times the current market value or, if the supplies are sold, the proceeds from sale. If the supplies are sold, 10 percent of the proceeds may be deducted and retained from the credit, for selling and handling expenses.

(b) For possible exemptions from this section, see § 74.135.

Federal Share of Real Property, Equipment, and Supplies

§ 74.142 Federal share of property.

Several sections of this subpart require a determination of the Federal (or non-Federal) share of real property, equipment, or supplies. In making such a determination, the following principles shall be observed:

(a) *General.* (1) Except as explained in the succeeding paragraphs of this section, the Federal share of the property shall be the same percentage as the Federal share of the acquiring party's total costs under the grant during the grant or subgrant year (or other funding period) to which the acquisition cost of the property was charged. For this purpose, "costs under the grant" means allowable costs which are either borne by the grant or counted towards satisfying a cost-sharing or matching requirement of the grant. Only costs are to be counted—not the value of third-party in-kind contributions.

(2) If the property is acquired by a subgrantee, the Federal share of the subgrantee's costs under the grant and hence of the property shall be calculated by multiplying the Federal share of the grantee's costs by the latter's share of the subgrantee's costs. For example, if the Federal share of a grantee's costs is 50 percent and the subgrant bears only

50 percent of a subgrantee's costs, then the Federal share of that subgrantee's costs (and of the property acquired by that subgrantee) is 25 percent.

(b) *Property acquired only partly under a grant.* (1) Sometimes only a part of the acquisition cost of an item of property is borne as a direct cost by the grant or counted as a direct cost towards a cost-sharing or matching requirement. The remainder might, for example, represent voluntary cost sharing or matching, or it might be charged to a different activity. Occasionally, the amount paid for the property is only a part of its value, and the remainder is donated as an in-kind contribution by the party that provided the property.

(2) To calculate the Federal share of such property, first determine the Federal share of the acquiring party's total costs under the grant, as explained in the paragraph (a) of this section. Then multiply that share by the percentage of the property's acquisition cost (or its market value, if the item was partly donated) which was borne as a direct cost by the grant or counted as a direct cost towards a cost-sharing or matching requirement.

(c) *Replacement equipment.* The Federal share of replacement equipment shall be calculated as follows:

(1) *Step 1.* Determine the Federal share (percentage) of the equipment replaced.

(2) *Step 2.* Determine the percentage of the replacement equipment's cost that was covered by the amount received for trade-in or the sales proceeds from the equipment replaced.

(3) *Step 3.* Multiply the step 1 percentage by the step 2 percentage.

(4) *Step 4.* If an additional outlay for the replacement equipment was charged as a direct cost either to ED grant funds or to required cost-sharing or matching funds, calculate the Federal share attributable to that additional outlay as explained in paragraph (b)(2) of this section. Add that additional percentage to the step 3 percentage.

(d) *Institutional cost-sharing agreements.* If a grant is subject to an institutional cost-sharing agreement (see § 74.130(e)), the Federal share of property acquired under the grant shall be calculated as though there were no cost-sharing requirements applicable to the grant (that is, as if all the grantee's cost sharing were voluntary).

§ 74.143 Subgrantee's share of market value or sales proceeds.

Where this subpart requires a sharing of the market value or sales proceeds of property acquired under a subgrant, the non-Federal share shall be

proportionally divided between the grantee and the subgrantee. The subgrantee shall be entitled to the amount it would have received or retained if the award to it had been made directly by the Federal Government. The remainder of the non-Federal share shall belong to the grantee.

Intangible Personal Property

§ 74.144 Inventions and patents.

ED's regulations on inventions and patents arising out of activities assisted by a grant are set forth in Parts 6 and 8 of this title.

§ 74.145 Copyrights.

(a) *Works under grants.* Unless otherwise provided by the terms of the grant, when copyrightable material is developed in the course of or under a grant, the grantee is free to copyright the material or permit others to do so.

(b) *Works under subgrants.* Unless otherwise provided by the terms of the grant or subgrant, when copyrightable material is developed in the course of or under a subgrant, the subgrantee is free to copyright the material or permit others to do so.

(c) *ED rights.* If any copyrightable material is developed in the course of or under an ED grant or subgrant, ED shall have a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for Federal Government purposes.

(d) *Exemption of student-developed works.* ED awards training grants and other kinds of grants under which individuals are provided stipends or other financial assistance for the primary purpose of aiding them to further their education or training. Except as provided by the terms of the grant, copyrightable material developed by an individual or group of individuals in the course of education or training pursued with such assistance shall be subject to the ED right described in paragraph (c) of this section, unless the development of the material also receives other forms of support under the same or another ED grant (such as a research grant).

Subpart P—Procurement Standards

§ 74.160 Scope of subpart; terminology.

(a) This subpart contains standards for use by recipients in establishing procedures for the procurement of supplies, equipment, construction, and other services whose cost is borne in whole or in part as a direct cost by Federal grant funds.

(b) No additional procurement standards or requirements shall be imposed by awarding parties upon recipients unless specifically required by Federal statutes or Executive Orders.

(c) As used in this subpart:

(1) "Formal advertising" refers to that procurement method which involves adequate purchase description, sealed bids, and public opening of bids.

(2) "Negotiation" refers to any method of procurement other than formal advertising.

§ 74.161 General.

(a) Recipients may use their own procurement policies: *Provided*, That procurements subject to this subpart are made in accordance with the standards in this subpart.

(b) The standards in this subpart do not relieve the recipient of the contractual responsibilities arising under its contracts. The recipient is the responsible authority, without recourse to ED, regarding issues arising out of its procurements. This includes but is not limited to: Disputes, claims, protests of award, source evaluation, or other matters of a contractual nature. Matters concerning violation of law are to be referred to such local, State, or Federal authority as may have proper jurisdiction.

§ 74.162 Code of conduct.

(a) The recipient shall maintain a code of standards of conduct that shall govern the performance of its officers, employees or agents engaged in the awarding and administration of contracts that are subject to this subpart. The code or standards shall provide for disciplinary actions to be applied for violations of the code or standards by the recipient's officers, employees, or agents. For governmental recipients, such disciplinary actions are required only to the extent otherwise permissible under the Government's laws, rules, or regulations. To the extent permissible under its laws, rules, or regulations, the governmental recipient shall also provide for actions to be taken against contractors or their agents who wrongfully take part in a violation of the code or standards of conduct.

(b) The recipient's officers, employees or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or potential contractors. This is not intended to preclude bona-fide institutional fund-raising activities.

(c) No employee, officer, or agent of a nongovernmental recipient shall participate in the selection, award, or administration of a contract subject to this subpart where, to his or her

knowledge, any of the following has a financial interest in that contract:

- (1) The employee, officer, or agent;
- (2) Any member of his or her immediate family;
- (3) His or her partner;
- (4) An organization in which any of the above is an officer, director, or employee;
- (5) A person or organization with whom any of the above individuals is negotiating or has any arrangement concerning prospective employment.

§ 74.163 Free competition.

(a) All procurement transactions shall be conducted in a manner to provide, to the maximum extent practicable, open and free competition.

(b) The recipient should be alert to organizational conflicts of interest or noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In particular, a contractor that develops or drafts specifications, requirements, a statement of work, an invitation for bids or a request for proposals for a particular procurement by a nongovernmental recipient should be excluded from competing for that procurement except when, upon request of the recipient, ED waives this requirement for a particular procurement.

(c) Solicitations shall clearly set forth all requirements that the bidder/offeree must fulfill in order for his bid/offer to be evaluated. Awards shall be made to the responsible bidder/offeree whose bid/offer is responsive to the solicitation and is most advantageous to the recipient, price and other factors considered. Factors such as discounts, transportation costs, and taxes may be considered in determining the lowest bid. Any and all bids/offers may be rejected when it is in the recipient's interest to do so, and, in the case of governmental recipients, such rejections are in accordance with the government's applicable law, rules, or regulations.

§ 74.164 Procedural requirements.

The recipient shall establish procurement procedures which provide for, as a minimum, the following:

(a) Proposed procurement actions shall follow a procedure to assure that unnecessary or duplicative items are not purchased. Where appropriate, an analysis shall be made of lease and purchase alternatives to determine which would be the most economical, practical procurement.

(b) Solicitations for goods and services shall be based upon a clear and accurate description of the technical requirements for the material, product,

or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. "Brand name or equal" description may be used as a means to define the performance of other salient requirements of a procurement, and when so used the specific features of the named brand which must be met by bidders/offers should be clearly specified.

(c) Where applicable, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)) shall be observed.

(d) Positive efforts shall be made by procuring parties to utilize small business and minority-owned business sources of supplies and services. Such efforts should allow these sources the maximum feasible opportunity to compete for contracts subject to this subpart.¹

(e) The type of procuring instruments used—e.g., fixed-price contracts, cost reimbursable contracts, purchase orders, incentive contracts—shall be determined by the recipient but must be appropriate for the particular procurement and for promoting the best interest of the grant project or program involved. The "cost-plus-a-percentage-of-cost" method of contracting shall not be used.

(f) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources.

(g) The terms of the grant may require that the following be submitted for prior approval of ED if the aggregate expenditure is expected to exceed \$5,000: (1) Any proposed sole source contract and (2) any contract which a nongovernmental recipient proposes to award after seeking competition but receiving only one bid or proposal.

(h) Non-governmental recipients should make some form of price or cost analysis in connection with every negotiated procurement action. Price analysis may be accomplished in various ways, including the comparison

¹ Advice and assistance regarding the use of small or minority businesses may be obtained from the following Federal organizations:

1. The Small Business Administration and its field offices.
2. The Office of Minority Business Enterprise, Department of Commerce.
3. The Office for Civil Rights, ED.

of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost proposed by the offeror to determine reasonableness, allocability and allowability.

(i) Procurement records and files for purchases in excess of \$10,000 shall include the following:

- (1) Basis for contractor selection;
 - (2) Justification for lack of competition when competitive bids or offers are not obtained;
 - (3) Basis for award cost or price.
- (j) A system for contract administration shall be maintained to ensure contractor conformance with terms, conditions and specifications of the contract, and to ensure adequate and timely followup of all purchases.

§ 74.165 [Reserved]

§ 74.166 Contract provisions.

(a) *Scope.* This section contains requirements relating to provisions that must be included in contracts that are subject to this part. The requirements shall also apply to subcontracts of any tier under such contracts, and the term "contracts" in this section shall be construed as including subcontracts.

(b) *General.* All contracts shall contain sufficient provisions to define a sound and complete agreement.

(c) *Administrative remedies for violations.* Contracts in excess of \$10,000 shall contain contractual provisions or conditions that will allow for administrative, contractual or legal remedies in instances in which contractors violate or breach contract terms, and provide for such remedial actions as appropriate.

(d) *Termination provisions.* Contracts in excess of \$10,000 shall contain suitable provisions for termination by the party awarding the contract, including the manner by which termination will be effected and the basis for settlement. These contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(e) *Executive Order 11246.* Where applicable, construction contracts in excess of \$10,000 shall contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

(f) *Copeland Act.* Contracts in excess of \$2,000 for construction or repair shall

include a provision for compliance with the Copeland "Anti-Kick-Back Act" (18 U.S.C. 874) as supplemented in Department of Labor regulation (29 CFR Part 3). All suspected or reported violations shall be reported to the granting agency by the grantee.

(g) *Davis-Bacon Act.* When required by the Federal legislation governing the grant program, all construction contracts in excess of \$2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5). All suspected or reported violations shall be reported to the granting agency by the grantee.

(h) *Contract Work Hours and Safety Standards Act.* All contracts subject to the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) shall include a provision requiring the contractor to comply with the applicable sections of the act and the Department of Labor's supplementing regulations (29 CFR Parts 5 and 1926).

(i) *Inventions and patents.* Contracts which may give rise to inventions subject to Part 6 of this title shall include a provision requiring compliance with those parts.

(j) *Access to Records.* Contracts that are subject to Subpart D of this part shall include a provision reflecting § 74.24(c) on rights of access to the contractor's records.

(k) *Clean Air and Water Acts.* Contracts in excess of \$100,000 shall contain provisions requiring compliance with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act as amended (42 U.S.C. 1857 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported in writing to the appropriate regional office of the Environmental Protection Agency, and a copy of the report shall be submitted to the granting agency. (See 40 CFR Part 15 for relevant regulations of the Environmental Protection Agency.)

Subpart Q—Cost Principles

§ 74.170 Scope of subpart.

This subpart identifies the principles to be used in determining costs applicable to grants, subgrants, and cost-type contracts under grants and subgrants.

§ 74.171 [Reserved]

§ 74.172 Institutions of higher education.

(a) *Research and development.* The principles for determining the allowable costs of research and development work performed by institutions of higher

education (other than for-profit institutions) are in Part I of Appendix D to this part.

(b) *Training and other educational services.* The principles for determining the allowable costs of training and other educational services provided by institutions of higher education (other than for-profit institutions) are in Part II of Appendix D to this part.

(c) *Other activities.* Appendix D to this part shall be used as a guide for determining the allowable costs of other activities conducted by institutions of higher education (other than for-profit institutions).

§ 74.173 Hospitals.

(a) *Research and development.* The principles for determining the allowable costs of research and development work performed by hospitals are in Appendix E to this part.

(b) *Other activities.* Appendix E to this part shall be used as a guide for determining the allowable costs of other activities conducted by hospitals.

§ 74.174 Other nonprofit organizations.

A nonprofit organization, other than an institution of higher education or a hospital, shall comply with the cost principles stated in OMB Circular A-122, as published in the Federal Register of July 8, 1980 at 45 FR 46022 and revised in the Federal Register on April 27, 1984 at 49 FR 18260, with corrections published on May 8, 1984 at 49 FR 19588.

(Approved by the Office of Management and Budget under control number 1880-0509)
(Authority: 20 U.S.C. 3474)

§ 74.175 Subgrants and cost-type contracts.

(a) The cost principles applicable to a subgrantee or cost-type contractor under an ED grant will not necessarily be the same as those applicable to the grantee. For example, where a State government awards a subgrant or cost-type contract to an institution of higher education, Appendix D to this part would apply to the costs incurred by the institution of higher education, even though OMB Circular A-87 would apply to the costs incurred by the State.

(b) The principles to be used in determining the allowable costs of work performed by for-profit organizations under cost-type contracts awarded to them under ED grants are in 48 CFR Chapter 34.

§ 74.176 Costs allowable with approval.

Each set of cost principles identifies certain costs that, in order to be allowable, must be approved by the awarding party. Other costs do not

require approval. The following procedures govern approval of these costs.

(a) When costs are treated as indirect costs, acceptance of the costs as part of the indirect cost rate shall constitute approval.

(b)(1) When the costs are treated as direct costs, they must be approved in advance by the awarding party.

(2) If the costs are specified in the budget, approval of the budget shall constitute approval of the costs.

(3) If the costs are not specified in the budget, or there is no approved budget, the recipient shall obtain specific prior

approval in writing from the awarding party. For this purpose the prior approval procedures of § 74.102 shall be followed, except that for formula or mandatory grants, ED's written approval may be signed by any authorized ED official.

(c) The awarding party may waive or conditionally waive the requirement for its approval of the costs. Such a waiver shall apply only to the requirement for approval. If, upon audit or otherwise, it is determined that the costs do not meet other requirements or tests for allowability specified by the applicable cost principles, such as reasonableness

and necessity, the costs may be disallowed.

(d) In the case of cost-type contracts, no approval shall be given which is inconsistent with the purpose or the terms of the Federal grant.

Appendix C—[Reserved]

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2. Part 74 is amended by adding the authority citation "(Authority: 20 U.S.C. 3474; OMB Circular A-110)" after each section to the regulations.

[FR Doc. 88-4672 Filed 3-10-88; 8:45 am]

BILLING CODE 4000-01-M

Grand Report Federal

Friday
March 11, 1988

Part V

Office of Management and Budget

Cumulative Report on Rescissions and
Deferrals; Notice

**OFFICE OF MANAGEMENT AND
BUDGET****Cumulative Report on Rescissions and
Deferrals**

March 1, 1988.

This report is submitted in fulfillment of the requirements of section 1014(e) of the Impoundment Control Act of 1974 (Pub. L. 93-344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to the Congress.

This report gives the status as of March 1, 1988 of 22 deferrals contained in the three special messages of FY 1988. There have been no rescissions proposed. These messages were transmitted to the Congress on October 1 and 29, 1987 and February 19, 1988.

Rescissions (Table A and Attachment A)

As of March 1, 1988, there were no rescission proposals pending before the Congress.

Deferrals (Table B and Attachment B)

As of March 1, 1988, \$7,644.6 million in budget authority was being deferred from obligation. Attachment B shows

the history and status of each deferral reported during FY 1988.

Information from Special Messages

The special messages containing information on the deferrals covered by this cumulative report are printed in the Federal Registers listed below:

Vol. 52, FR p. 37739, Thursday, October 8, 1987

Vol. 52, FR p. 42400, Wednesday, November 4, 1987

Vol. 53, FR p. 6734, Wednesday, March 2, 1988

James C. Miller III,
Director.

BILLING CODE 3110-01-M

TABLE A

STATUS OF 1988 RESCISSIONS

	Amount (In millions of dollars)
Rescissions proposed by the President.....	0
Accepted by the Congress.....	0
Rejected by the Congress.....	0
Pending before the Congress.....	0

TABLE B

STATUS OF 1988 DEFERRALS

	Amount (In millions of dollars)
Deferrals proposed by the President.....	9,310.0
Routine Executive releases through March 1, 1988.. (OMB/Agency releases of \$1,672.2 million and cumulative adjustments of \$6.8 million)	-1,665.4
Overtaken by the Congress.....	0
Currently before the Congress.....	7,644.6

Attachments

Attachment A - Status of Rescissions - Fiscal Year 1988

As of March 1, 1988 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
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NONE

Attachment B - Status of Deferrals - Fiscal Year 1988

As of March 1, 1988 Amounts in Thousands of Dollars	Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congres- sionally Required Releases	Congres- sional Action	Amount Deferred as of 3-1-88
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance	Foreign military sales credit.....	D88-20	2,949,000		2-19-88				2,949,000
	Economic support fund.....	D88-1	40,000		10-1-87				
		D88-1A		1,960,727	2-19-88	177,700			1,823,027
	Military assistance.....	D88-21	608,186		2-19-88				608,186
	International disaster assistance.....	D88-22	13,479		2-19-88	6,200			7,279
Special Assistance for Central America	Promotion of stability and security in Central America.....	D88-2	1,000		10-1-87				1,000
DEPARTMENT OF AGRICULTURE									
Forest Service	Expenses, brush disposal.....	D88-3	120,425		10-1-87				130,954
		D88-3A		10,529	2-19-88				24,385
	Timber salvage sales.....	D88-4	34,841		10-1-87	10,456			628,025
	Cooperative work.....	D88-5	628,025		10-1-87				
	Gifts, donations, and bequests for forest and rangeland research.....	D88-6	104		10-1-87	60			44
DEPARTMENT OF DEFENSE - MILITARY									
Military Construction	Military construction, Defense.....	D88-7	900		10-1-87				900
		D88-7A		1,297,848	2-19-88	1,297,848			
Family Housing	Family housing, Defense.....	D88-8	51,015		10-1-87				29,015
		D88-8A		135,940	2-19-88	157,940			
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations	Wildlife conservation, Defense.....	D88-9	636		10-1-87				785
		D88-9A		149	2-19-88				

Attachment B - Status of Deferrals - Fiscal Year 1988

As of March 1, 1988 Amounts in Thousands of Dollars	Deferral Number	Amount Transmitted Original Request	Amount Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congres- sionally Required Releases	Congres- sional Action	Cumulative Adjustments	Amount Deferred as of 3-1-88
Agency/Bureau/Account									
DEPARTMENT OF ENERGY									
Power Marketing Administration									
Alaska Power Administration, Operation and maintenance.....	D88-14	120		10-29-87					120
Southeastern Power Administration, Operation and maintenance.....	D88-15	2,000		10-29-87	2,000				0
Southwestern Power Administration, Operation and maintenance.....	D88-16 D88-16A	6,000	7,200	10-29-87 2-19-88	13,200				0
Western Area Power Administration, Construction, rehabilitation, operation and maintenance.....	D88-17 D88-17A	774	2,426	10-29-87 2-19-88					3,200
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Office of Assistant Secretary for Health Scientific activities overseas (special foreign currency program).....	D88-18 D88-18A	2,391	569	10-29-87 2-19-88					2,960
Social Security Administration Limitation on administrative expenses (construction).....	D88-10 D88-10A	6,171		10-1-87 36 2-19-88					6,207
DEPARTMENT OF JUSTICE									
Office of Justice Programs Crime victims fund.....	D88-19	85,000		10-29-87	6,800			6,800	85,000
DEPARTMENT OF STATE									
Bureau for Refugee Programs United States emergency refugees and migration assistance fund, executive.....	D88-11	11,638		10-1-87					11,638

Attachment B - Status of Deferrals - Fiscal Year 1988

As of March 1, 1988 Amounts in Thousands of Dollars	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congres- sionally Required Releases	Congres- sional Action	Cumulative Adjustments	Amount Deferred as of 3-1-88
Agency/Bureau/Account									
DEPARTMENT OF TRANSPORTATION									
Federal Aviation Administration Facilities and equipment (Airport and airway trust fund).....	D88-12 D88-12A	879,049	450,858	10-1-87 2-19-88					1,329,907
DEPARTMENT OF THE TREASURY									
Office of Revenue Sharing Local government fiscal assistance trust fund.....	D88-13	2,933		10-1-87					2,933
TOTAL, DEFERRALS.....		5,443,688	3,866,281		1,672,204	0		6,800	7,644,565

[FR Doc. 88-5421 Filed 3-10-88; 8:45 am]

BILLING CODE 3110-01-C

FRIDAY MARCH 11, 1988

Friday,
March 11, 1988

Part VI

Department of the Interior

Minerals Management Service

Outer Continental Shelf (OCS) Mining
Program; Request for Comments and
Nominations for a Lease Sale in Norton
Sound and Notice of Intent to Prepare
an Environmental Impact Statement

4310-MR

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

Outer Continental Shelf (OCS) Mining Program
Request for Comments and Nominations for a
Lease Sale in Norton Sound
and

Notice of Intent to Prepare an Environmental Impact Statement

REQUEST FOR COMMENTS AND NOMINATIONS

Purpose of the Request

The purpose of the Request is to gather information for a proposed OCS minerals lease sale in Norton Sound, tentatively scheduled for December 1988. This request covers all minerals other than oil, gas and sulphur. This information-gathering step is important to ensure that all interests and concerns are considered and evaluated in preparing an Environmental Impact Statement (EIS) and making leasing decisions.

Nominations will be used to determine which blocks will be selected for environmental analysis and potential leasing. Other responses to the Request will be considered in preparing the EIS and may be used in identifying alternatives to the proposed action and in assessing possible environmental effects and use conflicts which could occur from mining in the area selected for potential leasing. Comments may also be useful in developing terms and conditions designed to ensure environmentally acceptable mining activities. Comments regarding length of lease term, size of lease units, royalty rates, and rentals may be used in developing economic terms and conditions.

Description of the Area

The area of the Request is in Norton Sound in the vicinity of Nome, Alaska, as shown on the attached map. The area includes about 80 whole and partial blocks totaling approximately 350,000 acres. Nominations and comments should be confined to the Request area. A large-scale Request map showing boundaries is available from the Records Manager, Alaska OCS Region, Minerals Management Service (MMS), 949 East 36th Avenue, Anchorage, Alaska 99508-4302, telephone (907) 261-4621.

Background Information

Section 8(k) of the OCS Lands Act (43 U.S.C. 1337(k)), authorizes the Secretary of the Interior to grant leases on the OCS to qualified persons offering the highest cash bonuses for minerals other than oil, gas, and sulphur. The Mining and Minerals Policy Act of 1970 (30 U.S.C. 21a) establishes that it is the policy of the Federal Government to foster and

encourage private enterprise in (1) the development of economically sound and stable domestic mining, minerals, and metals and minerals reclamation industries; and (2) the orderly and economic development of domestic mineral resources, reserves, and reclamation of metals and minerals to help ensure satisfaction of industrial, security, and environmental needs. The proposed leasing action is consistent with the aforementioned laws and with the Secretary's announced program of January 19, 1982, for OCS mineral leasing activities on the Federal OCS.

U.S. Bureau of Mines Open-File Report 4-87, "An Economic Reconnaissance of Selected Heavy Mineral Placer Deposits in the U.S. Exclusive Economic Zone," notes several reported placers offshore Alaska. The gold placers near Nome are the best known and appear to have the highest potential for near-term development. Onshore placers at Nome have yielded over 5 million ounces of gold. Recently, a large bucket-line dredge has mined marine placers within Alaska's area of jurisdiction.

At least three beach deposits related to low sea level stands during intervals of Pleistocene glaciation have been identified off Nome in water depths of 35 to 42, 65 to 72, and 80 feet at approximately 1, 3, and 5 miles from shore, respectively. These relict beaches, and perhaps additional uncharted relict offshore features such as buried stream deposits, may contain economically attractive concentrations of OCS minerals in Federal waters.

Instructions on the Request

Respondents are requested to nominate areas by block numbers within the Request area that they would like to see included in a proposed Norton Sound lease sale. Although the identities of those submitting nominations become a matter of public record, individual nominations are proprietary information.

Respondents should rank the blocks which they nominate according to the priority of their interest (e.g., priority 1 [high], 2 [medium], or 3 [low]). Blanket nominations of the entire Request area are not useful in providing information pertinent to industry interests and for selecting specific blocks to be considered for leasing. Nominated blocks without priorities will be considered priority 3.

Respondents nominating are required to outline areas on the Request map along block lines. Respondents may also submit a list of whole or partial blocks nominated, by Official Protraction Diagram block designations, to ensure the correct interpretation of their nominations. The name, title, and telephone number of the person in the respondent's organization to contact for additional information should be included. Official Protraction Diagrams can be purchased for \$2.00 each from the Records Manager at the address stated in the "Description of the Area."

Comments are requested on the following specific items:

1. In the Request area, are there any OCS minerals other than gold which might have economic value which should be evaluated for mining potential?
2. Standard OCS blocks shown on Official Protraction Diagrams total about 2,304 hectares. Lease units could be individual blocks, combinations of blocks, or portions of blocks. Respondents are asked to discuss the optimal size of lease units including the basis for determining their size. If respondents have suggestions regarding the boundaries of lease units, other than individual blocks, they should be shown on a copy of the Request map.
3. Suggested rental amounts, minimum bids, and royalty rates, including possible advance royalties or delayed royalties or credits.
4. Suggested primary term of lease (years).
5. Current and projected gold or other mineral resources market data and information that would be pertinent to evaluating the quantity and value of OCS minerals in the Request area.
6. The technology presently available or anticipated for mining OCS mineral resources in this area.
7. Particular geological, environmental, biological, archaeological, socioeconomic conditions, and other information that might bear upon the potential leasing of and mining in particular areas.
8. Possible conflicts between OCS mining activities that may result from the proposed sale and the Alaska Coastal Management Program, as supplemented by approved local coastal management plans (CMP's) such as that of the City of Nome. If possible, these comments should identify specific CMP policies and concerns, the nature of the foreseen issues, and possible steps that could be taken to avoid or mitigate any potential problems.
9. Possible areas outside of the Request area that should be considered in this or future sales. If commenting on this, please identify on the Request map.
10. The need for additional geological and geophysical data collection in the area.

Comments may be either in terms of broad areas or restricted to particular blocks. Those submitting block-related comments are requested to list block numbers or outline the subject area on the Request map.

Nominations and comments must be received no later than 30 days following the publication of this document in the Federal Register, in an envelope labeled "Nominations for Proposed Norton Sound Lease Sale," or "Comments on the Proposed Norton Sound Lease Sale," as appropriate. The Request map with nominations and/or comments must be submitted to the Regional Supervisor, Leasing and Environment, Alaska OCS Region, at the address stated above under "Description of the Area."

Existing Environmental Information

Although potential environmental effects from exploration, mining, and recovery of gold and other OCS mineral resources differ from oil and gas operations, substantial environmental data have been collected through numerous environmental studies for oil and gas leasing activities in the Norton Basin Planning Area since 1976.

Data from the Environmental Studies Program have provided information regarding Norton Sound. The emphasis was on geological mapping, environmental characterization of biologically sensitive habitats, physical oceanography, ocean circulation modeling, distribution and abundance of marine biota, and ecological effects of OCS activities. These studies will provide useful information for environmental analysis. A complete listing of available study reports and information for ordering copies can be obtained from the Alaska OCS Region, Environmental Studies Section, at the address stated under "Description of the Area" or by telephone at (907) 261-4620. The reports may also be ordered for a fee directly from the National Technical Information Service by calling (703) 487-4650. The mailing address is U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161.

Tentative Schedule

Final selection of the area for possible leasing, and lease terms and conditions, will be decided at a later date only after compliance with established Departmental procedures and applicable laws, including all requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the OCS Lands Act, as amended (43 U.S.C. 1331 et seq.).

The following is a list of tentative milestones that will precede this sale proposed for December 1988.

Comments due on Request	April 1988
Scoping Comments Due	April 1988
Draft EIS Published	May 1988
Hearings on Draft EIS Held	June 1988
Final EIS Published	September 1988
Proposed Notice of Sale Published	September 1988
Proposed Notice Comment Period Closes	October 1988
Final Notice of Sale Published	November 1988
Sale	December 1988

NOTICE OF INTENT TO PREPARE AN ENVIRONMENTAL IMPACT STATEMENT (EIS)

Purpose of the Notice of the Intent

Pursuant to the regulations (40 CFR 1501.7) implementing the procedural provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.), as amended, MMS is announcing its intent to prepare an EIS regarding an OCS minerals lease sale proposal in Norton Sound in the vicinity of Nome, Alaska. The Notice of Intent serves to announce the scoping process that will be followed in this EIS. Throughout the scoping

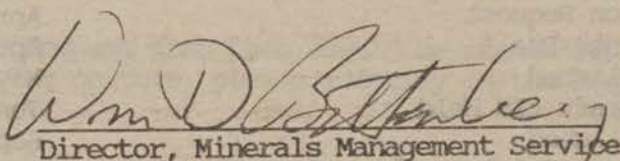
process, Federal, State, and local governmental units and other interested parties assist MMS in its determination of significant issues and alternatives to be analyzed in the EIS. The EIS analysis will focus on lease sale proposals, modified sale proposals, if any, and leasing alternatives and the potential environmental effects from alternative scenarios for the mining of gold, and other OCS mineral resources if appropriate.

Instructions on the Notice of Intent

Federal, State, or local governmental units and other interested parties are requested to send their written comments on (1) the scope of the EIS, (2) significant issues that should be addressed, and (3) alternatives that should be considered, to the Regional Supervisor, Leasing and Environment, Alaska OCS Region, at the address stated under "Description of the Area," above. Comments should be enclosed in an envelope labeled "Comments on the Notice of Intent to Prepare an EIS on the proposed Norton Sound Lease Sale." Comments are due no later than 30 days from the publication of this Notice. A scoping meeting will be held in Nome, Alaska, on March 31, 1988, at the Nome City Hall, City Council Chambers, at 7:30 p.m., for the purpose of obtaining additional comments and information regarding the scope of the EIS.

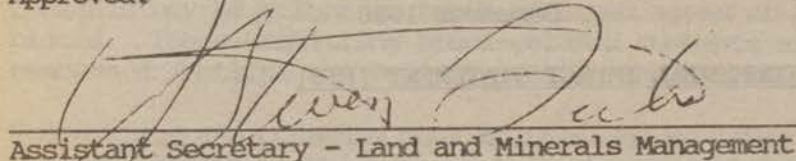
Technical Task Force

On February 5, 1988, Secretary of the Interior Donald P. Hodel and Alaska Governor Steve Cowper announced an agreement to form a Federal/State Technical Task Force to consider the economic feasibility, potential use conflicts, and environmental effects related to OCS mining for the recovery of gold and other OCS minerals on the Federal OCS. The goal of the Task Force will be to establish a close working relationship between State and Federal authorities that would permit the potential mining activities to be carried out under terms that meet the socioeconomic and environmental requirements of both the Federal Government and the State of Alaska.


Director, Minerals Management Service

Wm. D. Bettenberg

Approved:

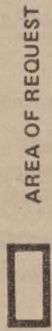

Assistant Secretary - Land and Minerals Management

MAR 8 1988

J. Steven Griles

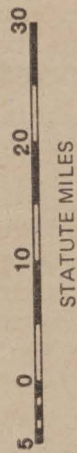
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**OCS MINING PROGRAM
NORTON SOUND
LEASE SALE**
REQUEST FOR COMMENTS
AND NOMINATIONS



AREA OF REQUEST

OFFICIAL PROTRACTION
DIAGRAM NUMBERS
(NQ 3-7 and NQ 3-8)

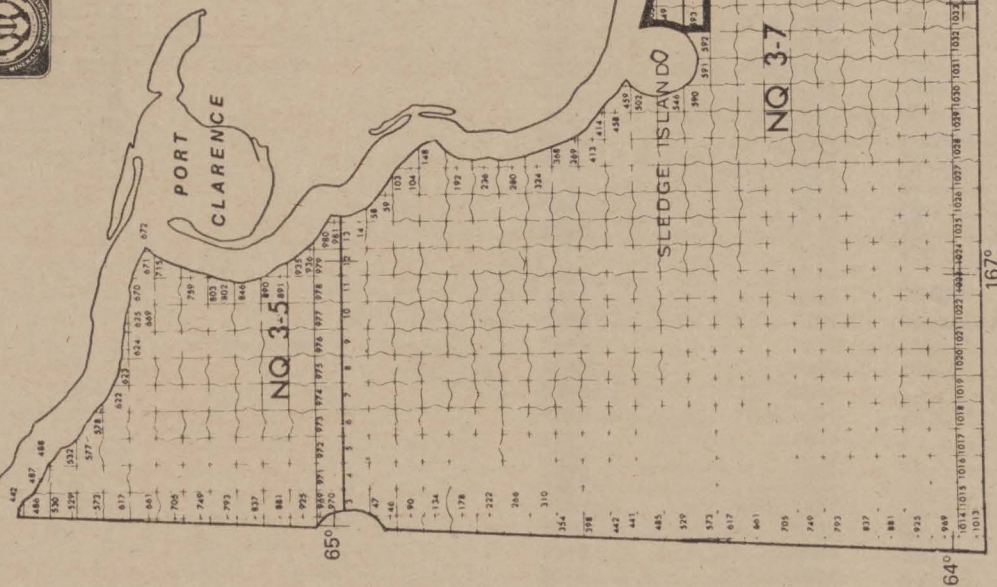


February 1988

ALASKA OCS REGION

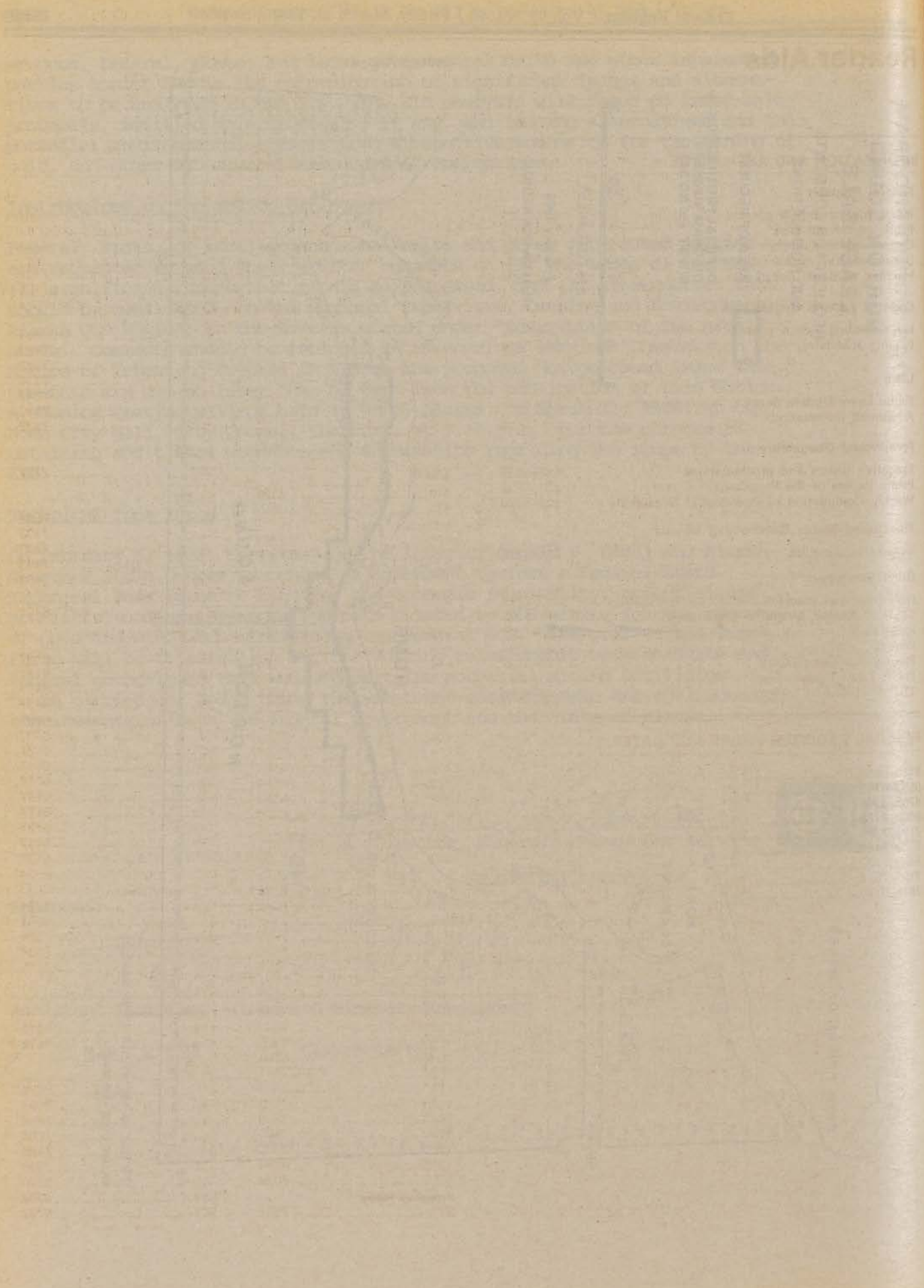


CAPE PRINCE OF WALES



[FR Doc. 88-5422 Filed 3-10-88; 8:45 am]

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Friday, March 11, 1988

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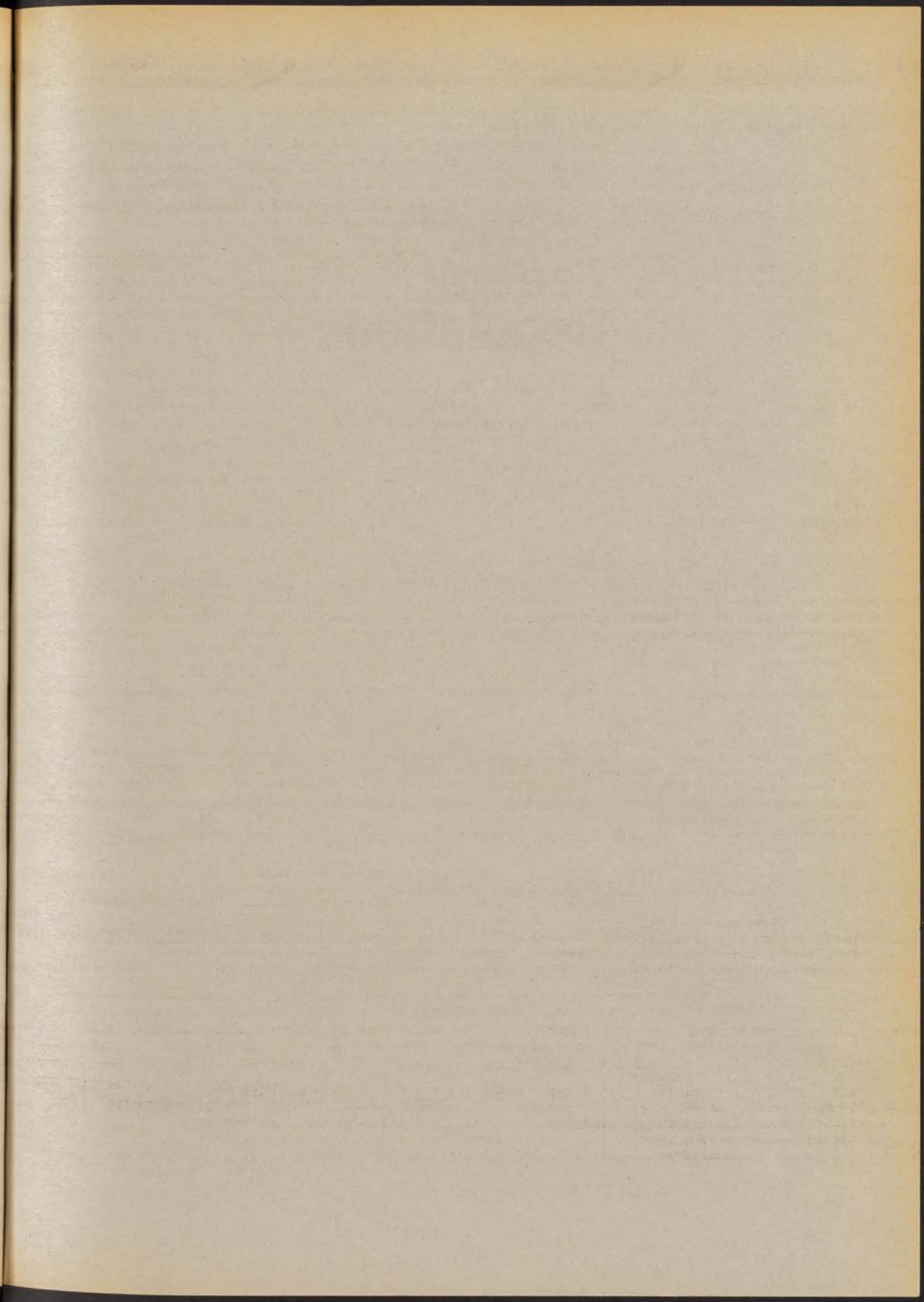
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S.J. Res. 251/Pub. L. 100-256

Designating March 4, 1988, as "Department of Commerce Day." (Mar. 8, 1988; 102 Stat. 24; 2 pages) Price: \$1.00

S.J. Res. 262/Pub. L. 100-257

To designate the month of March 1988, as "Women's History Month." (Mar. 8, 1988; 102 Stat. 26; 1 page) Price: \$1.00



The image shows three volumes of the Code of Federal Regulations, specifically the Agriculture section, Volume 7. The volumes are stacked, with the top one clearly visible. The cover of the top volume is dark with the title "code of federal regulations" in large, bold, white letters. Below the title, "Agriculture" is printed in a smaller font. The volume number "7" is prominently displayed in the center. At the bottom, it says "GOVERNMENT PRINTING OFFICE: 1975". A circular logo with the letters "GPO" is visible in the bottom right corner. The background is a plain, light-colored surface.

Code of Federal Regulations

Revised as of October 1, 1987

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	Title 50—Wildlife and Fisheries (Parts 1-199) (Stock No. 869-001-00183-6)	16.00	
		Total Order	\$

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