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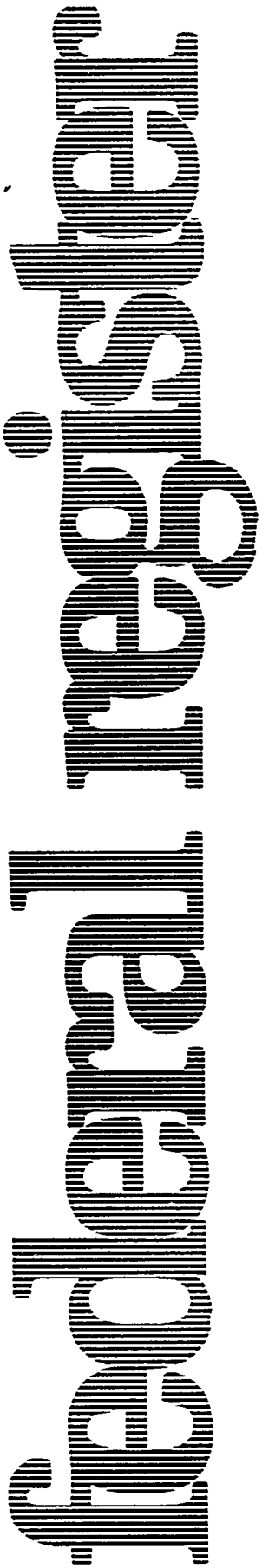

Friday
June 1, 1984

Selected Subjects

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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

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Selected Subjects

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CFR PARTS AFFECTED IN THIS ISSUE

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

Federal Register
Vol. 49, No. 107
Friday, June 1, 1984

Presidential Documents

Title 3—

The President

Proclamation 5201 of May 31, 1984

National Physical Fitness and Sports Month, 1984

By the President of the United States of America

A Proclamation

Regular, vigorous physical activity is essential to good health and effective performance of our daily responsibilities. In addition, physical activity and sports programs can provide rich sources of personal pleasure and satisfaction.

Many individuals, families, communities, and others are increasingly concerned about physical fitness, and there is a growing recognition that physical activity is an important part of daily life for people of both sexes and all ages. Americans who are not reaping the benefits and pleasures of physical activity and sports should develop a personal physical fitness program in accordance with their capability.

In recognition of the importance of physical activity as a part of our daily life, the Congress, by Senate Joint Resolution 232, has authorized and requested the President to designate the month of May 1984 as "National Physical Fitness and Sports Month."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the month of May 1984 as National Physical Fitness and Sports Month and urge communities, schools, States, employers, voluntary organizations, churches, and other organizations to stage appropriate observances and special events. Furthermore, I urge individuals and families to use this occasion to renew their commitments to make regular physical activity an integral part of their lives.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of May, in the year of our Lord nineteen hundred and eighty-four, and of the Independence of the United States of America the two hundred and eighth.

Ronald Reagan

[FR Doc. 84-14956
Filed 5-31-84; 11:56 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 5202 of May 31, 1984

National Animal Health Week, 1984

By the President of the United States of America

A Proclamation

Unparalleled progress in agricultural production has made the United States the world's food production model. Our ability to conquer disease and advance the health and productivity of our livestock has brought animal scientists and animal production specialists from around the world to our shores to learn the secret of America's agriculture.

A major milestone in this progress was the creation of the Bureau of Animal Industry on May 29, 1884. The efforts of the Bureau, followed by its successor agencies within the United States Department of Agriculture, have resulted in great strides forward to ensure an abundant supply of safe, wholesome animal products.

In today's dynamic economy, it is difficult to remember that these high-quality, healthy animal products have not always been with us. Whenever we enjoy a meal of meat, eggs, or milk, administer a life-improving health supplement, or enjoy a fine leather or wool item, we reap the benefits of persistent hard work over the decades. Without the progress represented by the improved health and productivity of our animals, we, in the United States, would not enjoy these items as we do for a fraction of the cost often paid by the people in other nations.

On this centennial of progress in advancing the health of livestock and production of animals through research and cooperative endeavors, we salute all who have contributed to the progress we enjoy today. The sound, scientific, and humane principles which have guided those in the forefront of this century of progress continue today, not only for livestock and poultry on our farms and ranches, but also for the care and feeding of our pets and wildlife.

To emphasize the combined efforts of the Government, private sector organizations, the veterinary profession and producers to combat the health hazards experienced in the past by the animal industry, the Congress, by House Joint Resolution 526, has authorized and requested the President to issue a proclamation designating the week beginning May 27, 1984, as "National Animal Health Week."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning May 27, 1984, as National Animal Health Week. I encourage all Americans to observe this week by participating in appropriate ceremonies and activities planned by government agencies, individuals, and private sector organizations and institutions throughout the country to recognize the great strides made during the past century with animal health.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of May, in the year of our Lord nineteen hundred and eighty-four, and of the Independence of the United States of America the two hundred and eighth.

Ronald Reagan

[FR Doc. 84-14957
Filed 5-31-84; 11:57 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 5203 of May 31, 1984

National Theatre Week, 1984

By the President of the United States of America

A Proclamation

Theatres enrich the lives of all Americans. They have pioneered the way for many performers and have given them a start in artistic careers. Theatres enable their audiences to take part in the creative process; they challenge and stimulate us and show us our world in a new light. The strength and vitality of America's theatres are proof of our dedication and commitment to this vital art form.

Americans in all parts of the country have made theatre a part of their lives. We participate as performers and audience members in schools, community theatres, and at the professional level. Through these efforts, we have nourished an art form that proudly celebrates the diversity and creativity of all our people.

In recognition of the many contributions theatres make to the quality of our lives, and in celebration of this art form which enriches us in so many ways, the Congress, by House Joint Resolution 292, has designated the week of June 3 through June 9, 1984, as "National Theatre Week," and authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of June 3 through June 9, 1984, as National Theatre Week. I encourage the people of the United States to observe the week with appropriate ceremonies, programs, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of May, in the year of our Lord nineteen hundred and eighty-four, and of the Independence of the United States of America the two hundred and eighth.

Ronald Reagan

[FR Doc. 84-14958
Filed 5-31-84; 11:58 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 49, No. 107
Friday, June 1, 1984

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

[Doc. No. 1133S]

General Administrative Regulations; Late Planting Agreement Option Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby revises and reissues the Late Planting Agreement Option (7 CFR Part 400, Subpart A), effective for the 1984 crop year to: (1) Change the cause of loss from excess moisture to adverse weather conditions; and (2) publish a revised list of crop insurance regulations to which the Late Planting Agreement Option applies. The intended effect of this rule is to broaden the cause of loss by relieving a restriction, and to expand the list of crops to which this option applies.

DATES: May 21, 1984. *Comment date:* Written comments, data, and opinions on this interim rule must be submitted by July 31, 1984 in order to be sure of consideration.

ADDRESS: Written comments on this rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250.

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

SUPPLEMENTARY INFORMATION: On Tuesday, February 21, 1984, FCIC published a final rule at 49 FR 6319, prescribing procedures for the implementation of a Late Planting Agreement Option for insurance on certain crops. The cause of late planting in the option was listed as "excess moisture." FCIC hereby revises and reissues the Late Planting Agreement Option to broaden the cause of late planting, for the 1984 and succeeding crop years, to include "adverse weather conditions." This action is necessary in order to relieve a restriction on producers whose principal concern over the conditions contributing to late planting is not excess moisture, but rather lack of moisture.

7 CFR 400.4 herein, contains the list of crops to which the Late Planting Agreement Option may be applicable. The Corporation has determined that Hybrid Seed Crop and Potatoes should be added to the list.

Merritt W. Sprague, Manager, FCIC, has determined that an emergency situation exists which warrants publication of this rule without a period for public comment prior to its publication because the producers who wish to file a Late Planting Agreement Option for the 1984 crop year, are concerned with lack of moisture instead of excess moisture. In order to relieve this restriction, it has been determined to broaden the reference of the cause of planting delay from "excess moisture" to "adverse weather conditions". Since insured producers are experiencing delays in planting due to lack of moisture rather than excess moisture, this action relieves the restriction and provides a needed benefit. Public comment is solicited for 60 days after publication of this rule in the Federal Register. This rule will be scheduled for review so that any amendments made necessary may be published in the Federal Register as soon as possible thereafter. All written comments made pursuant to this rule will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250 during regular business hours, Monday through Friday.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined in Executive Order No. 12291 (February 17, 1981), because it will not have an annual effect on the economy of $100 million or more; and (2) does not increase the Federal paperwork burden for individuals, small businesses, and other persons.

The title and number of Federal Assistance Program to which these regulations apply are: Title—Crop Insurance; Number 10.450.

As set forth in the rule related notice to 7 CFR Part 3015, Subpart V (48 FR 29116, June 24, 1983), the Federal Crop Insurance Corporation's program and activities are excluded from the provisions of Executive Order No. 12372, requiring intergovernmental consultation with State and local officials.

This action to promulgate regulations for the implementation of FCIC's Late Planting Agreement constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under the provisions of Departmental Regulation 1512-1 (December 15, 1983). The sunset review date established for these regulations is May 21, 1989.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility analysis was prepared.

List of Subjects in 7 CFR Part 400

Crop insurance, Late planting agreement option.

Interim Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby revises and reissues the Late Planting Agreement Option, Subpart A to Part 400 of Title 7 of the Code of Federal Regulations, effective for the 1984 and succeeding crop years, as set forth below:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

Subpart A—Late Planting Agreement Option; Regulations for the 1984 and Succeeding Crop Years

Sec.

Authority: Sec. 503, Pub. L. 75-430, 52 Stat. 73, as amended (7 U.S.C. 1503).

Subpart A—Late Planting Agreement Option; Regulations for the 1984 and Succeeding Crop Years

§ 400.1 Availability of the Late Planting Agreement Option.

The Late Planting Agreement Option shall be offered under the provisions contained in 7 CFR Parts 402 through 499 within limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), only on those crops identified in § 400.4 of this subpart. All provisions of the applicable contract for the insured crop apply, except those provisions which are in conflict with this part.

§ 400.2 Definitions.

For the purposes of the Late Planting Agreement Option:

(a) *Final planting date* means the final planting date for the insured crop contained in the actuarial table on file in the service office.

(b) *Late Planting Agreement Option* means that agreement between the FCIC and the insured whereby the insured elects, and FCIC provides, insurance on acreage planted for up to 20 days after the applicable final planting date. The production guarantee applicable on the final planting date will be reduced on the acreage planted after the final planting date by 10 percent for each 5 days that the acreage is planted after the final planting date.

(c) *Production guarantee* means the guaranteed level of production under the provisions of the applicable contract for crop insurance (sometimes expressed in amounts of insurance).

§ 400.3 Responsibilities of the insured.

The insured is solely responsible for the completion of the Late Planting Agreement Option Form and for the accuracy of the data provided on that form. The provisions of this subsection shall not relieve the insured of any responsibilities under the provisions of the insurance contract.

§400.4 Applicability to crops insured.

The provisions of this subpart shall be applicable to the provisions of FCIC policies issued under the following regulations for insuring crops:

7 CFR Part 418 Wheat
7 CFR Part 419 Barley
7 CFR Part 420 Grain Sorghum
7 CFR Part 421 Cotton
7 CFR Part 422 Potatoes
7 CFR Part 423 Flax
7 CFR Part 424 Rice
7 CFR Part 425 Peanuts
7 CFR Part 427 Oats
7 CFR Part 428 Sunflowers
7 CFR Part 429 Rye
7 CFR Part 430 Sugar Beets
7 CFR Part 431 Soybeans
7 CFR Part 432 Corn
7 CFR Part 433 Dry Beans
7 CFR Part 434 Tobacco (Dollar Plan)
7 CFR Part 435 Tobacco (Quota Plan)
7 CFR Part 436 Tobacco (Guaranteed Production Plan)
7 CFR Part 438 Tomatoes
7 CFR Part 443 Hybrid Seed
7 CFR Part 447 Popcorn

The Late Planting Option shall be available in all counties listed in Appendix A to each of the referenced regulations in this section.

§ 400.5 The Late Planting Agreement Option.

The provisions of the Late Planting Agreement Option are as follows:

FCI–9

U.S. Department of Agriculture

Federal Crop Insurance Corporation

Late Planting Agreement Option

Insured's Name _____
Address _____
Crop Year _____
Contract No _____
Crop _____

Notwithstanding the provisions of section 2 of the policy regarding the insurability of crop acreage initially planted after the final planting date on file in the service office, I elect to have insurance provided on acreage planted for 20 days after such date which delay in planting was caused by adverse weather conditions. Upon my making this election, the production guarantee or amount of insurance, whichever is applicable, will be reduced 10 percent for each five days or portion thereof that the acreage is planted after the final planting date. Each 10 percent reduction will be applied to the production guarantee or amount of insurance applicable on the final planting date. The premium will be computed based on the guarantee or amount of insurance applicable on the final planting date; therefore, no reduction in premium will occur as a result of my election to exercise this option. If planting continues under this Agreement after the acreage reporting date on file in the service office the acreage reporting date will be extended to 5 days after the completion of planting the acreage to which insurance will attach under this option.

Insured's Signature _____
Date _____
Corporation Representative's Signature and Code Number _____
Date _____

Collection of Information and Data (Privacy Act)

The following statements are made in accordance with the Privacy Act of 1974 (5 U.S.C. 552(a)).

The authority for requesting the information to be supplied on this form is the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), and regulations promulgated thereunder (7 CFR Part 400 *et seq.*). The information requested is necessary for FCIC to institute the Late Planting Agreement Option. The information may be furnished to FCIC contract agencies and contract loss adjusters, reinsured companies, processors, other U.S. Department of Agriculture agencies, the Internal Revenue Service, Department of Justice, or other State and Federal law enforcement agencies, and in response to orders of a court, magistrate, or administrative tribunal. Furnishing the information requested on this form is voluntary. However, failure to furnish the complete requested information may result in the Late Planting Agreement Option not being accepted by the Corporation.

Done in Washington, D.C. on May 23, 1984.

Peter F. Cole,
Secretary, Federal Crop Insurance Corporation.

Approved by:
Edward Hews,
Acting Manager.
May 29, 1984.

[FR Doc. 84-14768 Filed 5-31-84; 8:45 am]
BILLING CODE 3410-08-M

7 CFR Part 400

General Administrative Regulations—Standards for Approval; Reinsurance Agreement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby issues a new part in Chapter IV of Title 7 of the Code of Federal Regulations, effective for the 1984 and succeeding crop years, prescribing certain financial standards and financial reporting requirements applicable to all Reinsurance Agreements, to be known as 7 CFR Part 400—General Administrative Regulations—Subpart G, Standards for Approval; Reinsurance Agreements.

The intended effect of this proposed rule is to establish financial standards and financial reporting requirements applicable to private companies entering into Reinsurance Agreements with FCIC.

EFFECTIVE DATE: July 2, 1984.

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

The Impact Statement describing the options considered in developing this rule and the impact of implementing each option is available upon request from Peter F. Cole.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA

procedures established in Departmental Regulation 1512-1 (December 15, 1983). This action constitutes a review under such procedures as to the need, currency, clarity, and effectiveness of these regulations. The sunset review date established for these regulations is March 1, 1989.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), (2) will not increase the Federal paperwork burden for individuals, small businesses, and other persons, and (3) conforms to the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), and other applicable law.

The title and number of Federal Assistance Program to which these regulations apply are: Title—Crop Insurance; Number 10.450.

As set forth in the final rule related notice to 7 CFR Part 3015, Subpart V (48 FR 29116, June 24, 1983), the Federal Crop Insurance Corporation's program and activities, requiring intergovernmental consultation with State and local officials, are excluded from the provisions of Executive Order No. 12372.

It has been determined that this action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Impact Statement was prepared.

On Thursday, November 10, 1983, FCIC published a notice of proposed rulemaking in the Federal Register (48 FR 51635) to issue a new subpart in Chapter IV of Title 7 of the Code of Federal Regulations, effective for the 1984 and succeeding crop years, prescribing certain financial standards and financial reporting requirements applicable to all Reinsurance Agreements, to be known as 7 CFR Part 400—General Administrative Regulations—Subpart G, Standards for Approval; Reinsurance Agreement.

The public was given 60 days in which to submit written comments, data, and opinions on the proposed rule, but none were received.

FCIC, in reviewing this action for publication as a final rule, determined that 7 CFR 400.55(a) incorrectly lists Item No. 6., Change in Surplus, as being 10 percent under unusual values in determining the acceptability of an insurance company. That ratio minimum should read "—10." Also, the company should be in the acceptable range on 8 or more of the ratios to coincide with the National Association of Insurance Commissioners guidelines, instead of the 7 listed. These corrections are contained in this rule.

The ratios used in these financial standards were developed and tested by the National Association of Insurance Commissioners (NAIC), insurance regulatory information system (IRIS). The primary use of these ratios is to assist State Insurance Departments in executing their statutory mandates to oversee the financial condition of insurance companies operating in their states. The Federal Crop Insurance Corporation herein uses the same eleven ratios, the same "usual range" criteria, and the same criteria to determine financial solvency as the NAIC.

Since FCIC has codified OMB Control Numbers under the Paperwork Reduction Act at 7 CFR Part 400, Subpart H, for all of Part 400, that particular section of the proposed rule has been deleted.

Except for the changes listed above, the proposed rule is herewith published as a final rule to become effective for the 1984 and succeeding crop years.

List of Subjects in 7 CFR Part

Administrative practice and procedure, Reinsurance agreements, Standards for approval.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation herewith adds a new Subpart G to Part 400 of Title 7 of the Code of Federal Regulations, effective for the 1984 and succeeding crop years, to read as set forth below:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

Subpart G—Standards for Approval (Financial Standards); Reinsurance Agreement—Regulations for the 1984 and Succeeding Crop Years

Sec.

Authority: Secs. 506, 507, 508, Pub. L. 75-430, 52 Stat. 73, 74, as amended (7 U.S.C. 1506, 1507, 1508).

Subpart G—Standards for Approval (Financial Standards); Reinsurance Agreement—Regulations for the 1984 and Succeeding Crop Years

§ 400.50 Applicability of Standards for Approval (financial standards).

The financial standards contained herein shall be applicable to the Reinsurance Agreement, effective for the 1984 and subsequent crop year sales. The definitions, ratios and other criteria used to determine the financial solvency of an insurance company which enters into a Reinsurance Agreement with the Federal Crop Insurance Corporation are based on the insurance regulatory information system (IRIS) of the National Association of Insurance Commissioners.

§ 400.51 Definitions.

For the purpose of these financial standards, "the Corporation" means the Federal Crop Insurance Corporation, and:

(a) "Agents Balance to Surplus" means the measurement of the degree to which solvency depends upon an asset which frequently cannot be realized in the event of liquidation.

(b) "Annual Statement" means the financial statements, together with related exhibits, schedules and explanations therein contained, of the insurance company seeking to contract as a reinsured company which are submitted annually to the insurance department of the State in which the insurance company is domiciled.

(c) "Change in Surplus Ratio" means the ultimate measure of the improvement or deterioration in the company's financial condition during the year. The ratio is the difference between surplus at the end of the current year and the surplus at the end of the prior year. For this ratio, the stated surplus for each year is adjusted for deferred acquistion expenses.

(d) "Change in Writings" means major increases or decreases in net premiums written which could indicate a lack of stability in the company's operations.

(e) "CPA" means a Certified Public Accountant who is licensed as such by the state in which he/she practices.

(f) "CPA Audit" means a professional examination conducted in accordance with generally accepted auditing standards on the basis of which the auditor expresses an independent professional opinion respecting the fairness of presentation of the financial statements.

(g) "Current Assets" means assets, including cash, that are reasonably expected to be realized in cash or sold

or consumed during the normal operating cycle of the business or within one year, if the operating cycle is shorter than one year.

(h) "Current Liabilities" mean those liabilities expected to be satisfied by either the use of assets classified as current in the same balance sheet, or the creation of other current liabilities, or those expected to be satisfied within a relatively short period of time.

(i) "Estimated Current Reserve Deficiency to Surplus" means the estimated current reserve deficiency, taken as a percentage of surplus, which provides an estimate of the adequacy of current reserves. Current reserves are the current unidentified portion of net assets, in a stated amount, held or retained for the purpose of paying claims. The estimated deficiency is the difference between the estimated reserves required by the company and the actual reserve maintained.

(j) "Financial Statements" mean the documents submitted to the Corporation by an insurance company applying for a Reinsurance Agreement which have been audited by a CPA for the most recent fiscal year and include the balance sheet, the statement of income, the statement of retained earnings, and the statement of changes in financial position.

(k) "Investment Yield" means the net investment income as a percentage of the average invested assets during the year providing an indication of the general quality of the company's investment portfolio.

(l) "Liabilities to Liquid Assets Ratio" means the ratio representing liabilities taken as a percentage of liquid assets. Liquid assets are calculated as total cash, invested assets plus accrued invested income, and installment premiums booked but deferred and not yet due, minus any investment in affiliated companies, and minus any investment in real estate which exceed five percent of liabilities. An affiliated company is a company that directly or indirectly controls, is controlled by, or is under the control of the reinsured company.

(m) "One Year Reserve Development to Surplus" means the one-year reserve development to surplus measurement for accuracy with reserves were established the previous year, and provides an indirect indiction of management's opinion of the adequacy of surplus.

(n) "Premium to Surplus Ratio" is a measurement of the adequacy of a company's surplus for absorbing above-average losses.

(o) "Reinsurance Agreement" means the agreement between the Corporation and a private insurance company which provides the terms and conditions under which the private company enters into a contract with the Corporation for acceptance of surplus of crop insurance policy writings.

(p) "Surplus Aid to Surplus Ratio" is an indication that surplus may be adequate. Surplus is the total capital funds shown in the Financial Statement. The surplus aid consists of commissions on ceded reinsurance unearned premium. The ratio is determined by multiplying the ratio between ceded commissions and ceded premium for all reinsurance ceded by the amount of unearned premium on reinsurance to all nonaffiliated companies.

(q) "Two Year Overall Operating Ratio" is the measure of profitability of an insurance company. It is the combination of three ratios: the loss ratio, plus the expense ratio, minus the investment income ratio.

(r) "Two Year Reserve Development to Surplus" means the two-year reserve development to surplus measurement for accuracy with which reserves were established two years ago and provides an indirect indication of management's opinion of the adequacy of surplus.

(s) "Unqualified Opinion" means the opinion of a CPA which states that the financial statements present fairly the financial position, results of operations, and changes in financial position in conformity with generally accepted accounting principles without exception.

(t) "Usual Range" means the range of ratio results which have been established by the National Association of Insurance Commissioners from studies of the ratios for companies that have proven to be solvent or have experienced no financial difficulties in recent years.

(u) "Waiver" means the approval given by the Corporation to waive the requirements of the Financial Standards when the insurance company submits an accepted plan to eliminate a deficiency in the applicant's financial position.

§ 400.52 Certification of submissions.

The insurance company will submit to the Corporation a copy of the latest annual statement which it filed with the State Insurance Commission of the State in which it is domiciled. The statement, which may be a reproduction of the original, shall be signed by the President and another officer of such insurance company. The Corporation may require the insurance company to submit the latest insurance department examination report, the latest loss reserve certification which was filed with the regulatory authorities, and the latest letters relating to the adequacy of the company's internal control which resulted from an independent audit of their firms.

§ 400.53 Notification of deviation from financial standards.

An insurance company which holds a Reinsurance Agreement with the Corporation, shall advise the Corporation immediately if it deviates from compliance requirements of the Financial Standards. The Corporation may require the insurance company to update during the year its annual statement or certified financial statement, if the Corporation determines such submission is necessary. If such deviation is not corrected in a reasonable time, as determined by the Corporation, the Corporation may implement the provisions of § 400.54 of this part.

§ 400.54 Revocation and nonacceptance.

(a) An insurance company will be denied a Reinsurance Agreement if: (1) The annual statement is not in compliance with the provisions of the part; or (2) material false and misleading statements have been made in preparation of the annual statement, or any data contained therein. Violation of the provisions contained in this subsection shall also be grounds for revocation of an existing Reinsurance Agreement, whether such violations were discovered during the process of filing an application for, or after the issuance of, a Reinsurance Agreement.

(b) In the event of revocation of the Reinsurance Agreement between the Corporation and an insurance company, all policies obtained by the company subsequent to the time of revocation will not be reinsured by the Corporation. Policies in effect at the time of revocation will continue to be reinsured by the Corporation for the balance of the crop year then in effect.

§ 400.55 Qualifications for acceptability.

(a) The following financial ratios will be used in determining the acceptability of the insurance company:

	Unusual values (in percent) equal to or	
	Over	Under
1. Premium to surplus	300	
2. Change in writings	33	-33
3. Surplus aid to surplus	25	
4. Two-year overall operating ratio	100	
5. Investment yield		5.0
6. Change in surplus	50	-10
7. Liabilities to liquid assets	105	
8. Agent's balances to surplus	40	
9. One-year reserve development to surplus	25	
10. Two-year reserve development to surplus	25	
11. Estimated current reserve deficiency to surplus	25	

Although all data will be evaluated independently a company must be in the relevant range in at least eight of the eleven ratios.

(b) In the absence of other adverse information, if the insurance company's financial position is considered by the Corporation to be less than acceptable, the Corporation may, upon presentation and acceptance by the Corporation of a plan determined by the Corporation to be satisfactory to eliminate the deficiencies in the financial position of the insurance company, grant a waiver of the provisions of the Financial Standards under the provisions of § 400.56 of this part.

§ 400.56 Qualifications less than acceptable; waiver.

Notwithstanding the provisions of § 400.54, the Corporation may also grant a waiver of the Financial Standards when the insurance company submits a plan determined by the Corporation to be satisfactory to eliminate the deficiency causing the insurance company's annual statement to be less than acceptable. In such cases, consideration will be given to:

(a) The insurance company with a B+ rating or higher in the latest "Best's Insurance Reports," or, if less than a B+, or unrated in Best's, the most recent listing of "Surety Companies Acceptable on Federal Bonds," may be considered. The company's approval under the provisions of Department of the Treasury Circular No. 570 may also be considered.

(b) Submission of financial statements which have been examined by a CPA. These statements are to be certified and have an unqualified opinion, a ratio of current assets to current liabilities of at least 1.2 to 1, and adequate surplus to meet the company's share of potential losses. Surplus will be deemed adequate if the insurance company's projected retained risk exposure (potential underwriting losses) on multi-peril crop insurance policies (MPCI) of the Corporation and other reinsurance approved by the Corporation does not exceed 10 percent of the company's surplus for writings in any single risk area, and 25 percent of surplus for the retained MPCI risk exposure over all areas. A risk area shall be considered as a state except for states which the Corporation may, at its option, consider as more than one risk area.

(c) proof of irrevocable sources of surplus that will be provided to meet potential company obligations allowing the insurance company to meet the requirements of paragraph (b) of this section.

(d) Guarantees in the form of agreements between an insurance company and a company which has a working agreement with the insurance company to assume the financial responsibility in the event of failure of the insurance company to meet its financial obligations.

(e) Schedule P of the annual statement will be reviewed to determine the adequacy of loss reserve establishment for the combined lines of business.

(f) Other financial information deemed relevant by the Corporation. This information may be obtained from the insurance commissioners, industry leaders, lending institutions, advisory boards, and other sources the Corporation deems relevant.

Done in Washington, D.C. on March 27, 1984.

Dated: May 24, 1984.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Approved by:

Merritt W. Sprague,

Manager.

[FR Doc. 84-14713 Filed 5-31-84; 8:45 am]

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Federal Grain Inspection Service

7 CFR Part 810

U.S. Standards for Sunflower Seed

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) is establishing official U.S. Standards for Sunflower Seed to facilitate inspection, weighing, and marketing. Under such standards, sunflower seed shipped outside the United States must be officially inspected and weighed, except under certain provisions of the United States Grain Standards Act. Official inspection and weighing will be available, upon request, for domestic shipments. Production of sunflower seed in the U.S. has increased and the oil-type seed has become a major agricultural crop in some areas, especially in the North Central States. One major buyer and a number of United States industry members have requested development of official standards.

EFFECTIVE DATE: September 1, 1984.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., Information Resources Management Branch, USDA, FGIS, Room 0667, South Building, 1400 Independence Avenue SW., Washington, D.C. 20250; telephone (202) 382-1738.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512-1. The action has been classified as "Nonmajor" because it does not meet the criteria for a major regulation as established in the Order.

Regulatory Flexibility Act Certification

Dr. Kenneth A. Gilles, Administrator, FGIS, has determined that this final rule will not have a significant economic impact on a substantial number of small entities because those persons who apply the standards and most potential users of sunflower seed inspection services do not meet the requirements for small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Further, the standards are applied equally to all entities by FGIS employees or licensed persons.

Final Action

Sunflower seed is a major source of edible vegetable oil. Although production has been centered in the Soviet Union and Eastern Europe, sunflower seed has become an important agricultural crop in other countries including the United States. Markets for the oil-type seed were firmly established in the 1960's, and production in the U.S. has generally increased over the last two decades. Major export markets have been developed for Mexico and Europe.

Sunflower seed can be grown throughout the United States, but is particularly adapted to the Great Plains area. North and South Dakota, Minnesota, and Texas are the major producing states. Both the oil-type and nonoil-type (confectionary) sunflower seed are grown in these states with the oil-type accounting for approximately 90 to 95 percent of the total production. The 1983 U.S. production for oil-type seed was approximately 3.2 billion pounds.

While the quality of marketed sunflower seed generally has been established through the use of Minnesota State Standards, separate industry trading rules have also been used to determine quality and establish price in the marketing system.

In the December 28, 1979, Federal Register (44 FR 76835), FGIS requested public comments on nine proposed grain standardization studies. One of the nine studies addressed the need for official U.S. Standards for Sunflower Seed. The majority of comments that addressed

this issue favored study and/or development of official standards. However, subsequent discussions with the sunflower industry indicated the majority of producers, processors, and merchandisers did not support this proposed study. On April 14, 1982, the FGIS Advisory Committee also recommended no action be taken to develop sunflower seed standards. As a result, FGIS determined that a study should not be initiated at that time.

No further action was taken by FGIS to develop official U.S. Standards for Sunflower Seed until inquiries were received in mid-1983 from industry members and the Government of Mexico. In meetings with representatives from the sunflower industry, university researchers, and representatives from Mexico, it was concluded that official standards were needed to provide uniform Federal inspection procedures and to facilitate marketing of the crop. Industry representatives provided information on the composition of the standards and indicated preference for establishment of the standards under the U.S. Grain Standards Act (7 U.S.C. 71, *et seq.*, the Act). Both the Minnesota Standards and industry trading rules as well as the sunflower seed domestic and export marketing system were reviewed in preparation of the proposed standards which were published in the Federal Register (49 FR 3485) on January 27, 1984.

Twenty-nine comments were received on the proposed standards during the comment period, and two were received after the closing date. The majority of the comments were from individuals involved in sunflower seed merchandising or processing and personnel from testing laboratories, trade or producer associations, and grain inspection offices.

Only one comment was received in opposition to development of official U.S. Standards for Sunflower Seed. The commenter stated that official inspections cannot be performed efficiently, and this would delay loading, cause confusion, and complicate trading. The offical inspection of other grain under the U.S. Grain Standards Act has not led to these problems but, on the contrary, has facilitated the orderly marketing of the grains under the Act. For this reason the official inspection of sunflower seed will not cause the conditions predicted by the commenter but instead will benefit the sunflower seed market. No other commenters opposed development of standards, and a number of individuals expressed concurrence with the action; therefore, FGIS is establishing official U.S. Standards for Sunflower Seed.

The majority of comments on the proposed standards addressed problems associated with the determination of oil content. Other comments addressed the relevance of the factors foreign materials and/or admixture in the sunflower seed market, adequacy of the definitions and terminology, and clarification or revision to other parts of the standards.

Oil content was proposed as an official factor required to be shown on the certificate for information purposes. (An official factor is a quantified physical or chemical property of grain as identified in the Official U.S. Standards for Grain. However, the majority of commenters indicated oil content should not be an official factor in the sunflower seed standards, and the nuclear magnetic resonance (NMR) instrument should not be used to officially determine the oil content of sunflower seed traded in the export market. The oil content of sunflower seed at many ports of export is currently determined according to specifications in the National Institute of Oilseed Products (NIOP) Rule 110J. If settlement is on a destination basis, terms specified by the Federation of Oils, Seeds, and Fats Association (FOSFA) Contract 11 are commonly used. Both the FOSFA contract and NIOP rule specify oil analysis on a tale quale (as is) basis by solvent extraction which is a chemical determination. This is in contrast with NMR oil analysis which is performed by instrumentation. NMR determination is commonly used in the domestic market.

Trade and industry representatives indicated that specifications for oil determination in the NIOP rule and/or FOSFA contract are vital to the export market, and use of the NMR instrument to determine oil content would lead to confusion, complaints, and discounts on export sunflower seed. They stated that official NMR results determined on a foreign material-free basis, at a specific moisture content, at the port of export would not be accepted by many foreign buyers for settlement purposes. This could affect the entire market and force the exporters to pay for a test which would not be utilized during export. A number of commenters stated that oil analysis should be offered on a optional basis like protein in wheat.

After reviewing the comments and all available information, FGIS determined that oil content analysis will not be an official factor required to be shown on the certificate as proposed, since the determination would not facilitate marketing of sunflower seed at export. FGIS concurs that the method used by the export trade to determine and report oil content is variable; therefore sunflower seed merchandisers should not be required to adopt a procedure which could adversely effect export marketing.

Official oil determination will be provided on a permissive basis as offical criteria (other criteria) pursuant to section 7(b) of the Act (7 U.S.C. 79(b)), and § 800.76(a) of the regulations thereunder (7 CFR 800.76(a)). Applicants for service under the Act may request that domestic or export shipments of sunflower seed be officially inspected for oil content as official criteria, that is, a quantified physical or chemical property of grain that is approved by the Federal Grain Inspection Service to determine the quality or condition of grain or other facts relating to grain. Official criteria are not included in the official U.S. Standards for Grain. Accordingly, FGIS has determined that the oil content provisions finalized herein will serve the industry by facilitating the marketing of sunflower seeds at export and also by providing oil content information to those who request it.

The NMR instrument will be the approved official method for determining oil content by official inspection personnel. NMR instruments are now used in a number of inspection offices which unofficially inspect Sunflower Seed in the major production and marketing areas. The solvent extraction procedure is accurate if performed correctly, but the necessary equipment, laboratory space, and test run time preclude the use of this analysis method in inspection offices at this time.

Some comments, most of which were received from private laboratories providing solvent extraction analysis, stated that official analysis would reduce the amount of business conducted by these laboratories; the current method of testing the oil content of sunflower seed in the export market is working well; FGIS could not provide as accurate and timely analysis as the private testing laboratories; NMR analysis was not as accurate as the solvent extraction procedure at high and low oil levels; the cost of official testing would be high; more FGIS personnel would be required to carry out the service.

FGIS has carefully considered these comments, but as is discussed above, FGIS has determined that the usages of the sunflower seed trade warrant the establishment of official standards to

facilitate the marketing of sunflower seed in an orderly and timely manner.

Furthermore, private laboratories can and will continue to be used for testing of solvent extraction analysis, especially for export seed.

Also, the NMR instrument is a precise, quantitative indicator of oil content. NMR analysis is more rapid than solvent extraction, is accurate, cost effective, and requires a minimal number of personnel to operate. NMR analysis is nondestructive and is, therefore, suitable for measuring the oil content of whole seeds. Use of both NMR and solvent extraction analyses as official determinations would not be cost effective and could be confusing to the sunflower seed industry. NMR analysis must be on a foreign material-free basis, that is, after mechanical cleaning and after removal of the handpick foreign material from a portion of the mechanically cleaned sample. Solvent extraction analysis can be on either a foreign material-free basis or on an "as is" basis.

Recent FGIS calibration studies confirmed that the NMR instrument is not as accurate as the solvent extraction method at high and low oil levels. Further study resulted in the development of a new calibration equation which corrects the correlation of the NMR with the solvent extraction method in instances where sunflower seed containing high or low levels of oil is tested.

Two commenters indicated that the use of the NMR instrument necessitates oil determination on a clean seed basis, and FGIS concurs with these comments. The definition of oil in the proposed standards stated that determination would be on a mechanically cleaned portion of the original sample; however, to accurately determine oil content with the NMR, analysis must be after mechanical cleaning and removal of the handpicked foreign material. A definition of oil is not included in § 810.702 of the standards since the determination is an official criteria provided on request, but a definition will be included in the Grain Inspection Handbook.

A number of commenters expressed concern about determination of foreign material and admixture as stated in the proposed rule. Use of the term foreign material instead of the term dockage and the absence of a definition for admixture in § 810.702, *Definition of other terms,* caused some commenters to incorrectly consider the two determinations as synonymous.

Foreign material is an official factor always shown on the certificate for information purposes but is not included in the grade designation. This is not a grade determining factor and is ascertained in the same manner as dockage in the Minnesota Standards. The term foreign material is used instead of dockage to make the name of the factor compatible with the language used in the world market.

Foreign material is all matter, other than whole sunflower seeds containing kernels, which may be removed from a test portion of the original sample by use of an approved device and by handpicking a portion of the mechanically cleaned sample. Certification is in increments of 0.5 percent, but certification will be at the midpoint, e.g., 0.0 to 0.25 percent will be shown as zero percent foreign material, 0.26 to 0.75 will be 0.5 percent, 0.76 to 1.25 will be 1.0 percent, etc. The stated percentage of foreign material may differ from actual percent foreign material by no more than 0.25 percent. This favors neither the buyer nor seller.

Admixture is any material other than sunflower seed which is removed by hand-sieving and hand-picking a specified portion of the test sample. Empty hulls and parts of seed are considered sunflower seed. Results are recorded to the nearest one-tenth percent. A definition of admixture is not included in § 810.702 of the standards since the determination is an official criterion, but a definition will be included in the Grain Inspection Handbook.

Admixture, like oil, is provided on a permissive basis as official criteria (other criteria) pursuant to section 7(a) of the Act and § 800.76(b) of the regulations. Applicants for service under the Act may request that domestic or export shipments of sunflower seed be officially inspected for percent admixture under official criteria.

One commenter stated that admixture is not a necessary determination and should be excluded from the standards. However, admixture is included in many export contracts and a number of commenters indicated the determination is vital to the export market.

The large majority of commenters did not oppose use of the term "foreign material" nor the inclusion of foreign material into the standards as an official factor always shown on the certificate for information purposes. Likewise, the commenters did not oppose admixture as an official criterion available upon request. These factors will, therefore, remain as proposed.

Five commenters addressed the adequacy of the definition of cultivated sunflower seed in § 810.702(a) of the proposed standards. According to this definition, cultivated sunflower seed is sunflower seed grown for high oil content. Two commenters stated that the standards should include both the confectionery and oil-type sunflower seed; two indicated the standards should include only oil-type seed; and one commenter questioned the meaning of the terminology "high oil content" to define cultivated sunflower seed, i.e., sunflower seed grown for high oil content.

Official sunflower seed standards are for inspection of the oil-type sunflower seed; however, at meetings on August 29, 1983, and November 3, 1983, a trade representative pointed out that large, striped, confectionery seed should not be considered foreign material if found in samples of the small, black oil-type seed. The confectionery type is occasionally crushed for oil, and some large, striped seeds are commonly found in samples of the oil-type. Confectionery seed is not considered as foreign material or specifically excluded from the standards.

FGIS concurs with the commenter that questioned the meaning of the terminology "high oil content" in the definition of cultivated sunflower seed. This could be interpreted to exclude large, stripped seed and oil-type seed which is low in oil content. FGIS is, therefore, changing the wording which was proposed in the definition of cultivated sunflower seed to eliminate the word "high". The definition of cultivated sunflower seed in § 810.702(a) is sunflower seed grown for oil content.

Two commenters addressed the accuracy of the terms seed and kernel as used in the proposed standards. They stated that the seed is actually the inner meat or kernel, and the botanically correct term used to describe both the seed and outer hull is fruit or achene. One of the commenters also stated that the term sunflower, not sunflower seed, should be in the grade designation. This commenter also questioned the meaning of the phrase "whole sunflower seed" in the definition of foreign material § 810.702(e)), and the term dehulled seed in § 810.705 *Grades and grade requirements for sunflower seed.*

Most of the definitions and terms used in the proposed standards are commonly used in the marketing and inspection of sunflower seed. In some instances the wording may not be botanically correct but changing or deleting an accepted term could cause some disruption and confusion in the market place. However, FGIS concurs that the definition of cultivated sunflower seed in § 810.702(a) should be expanded to indicate the term "seed" refers to both the kernel and hull, and sunflower seed is described

botanically as a "fruit" or "achene". The definition of whole sunflower seed will be addressed in the Grain Inspection Handbook and dehulled seed is defined in § 810.702(b).

Other comments on the proposed standards addressed the limit for other grains, test weight requirements, toxic weed seeds, the need for numerical grades, and inclusion of a free fatty acid test.

Individual commenters indicated that the 10 percent limit for other grains, as defined in the definition of sunflower seed, should be increased to 15 to 20 percent to eliminate a Mixed Grain designation on many samples; the minimum test weight per bushel for U.S. No. 1 and No. 2 Sunflower Seed should be 25 and 23 pounds, respectively, to eliminate possible confusion between the grades; no limit should be placed on crotalaria and castor bean seeds; numerical grades are not needed; and FGIS considers providing a free fatty acid determination upon request as part of the inspection procedure.

Most factors and specifications, including the limit for other grains, test weight requirements, toxic weed seeds, and the numerical grades, were proposed according to guidelines set by the trade at the scheduled meetings. The large majority of commenters did not address these issues. The factors and specifications have been reviewed by FGIS and have been determined to be accurate. Accordingly, FGIS does not believe adequate justification exists for changing these factors and specifications, so they will remain as proposed.

A study by the USDA, Agricultural Research Service to evaluate the possibility of developing a rapid free fatty acid content determination for sunflower seeds is in progress. Depending on the results of the study and other available information, FGIS may consider proposing the inclusion of a free fatty acid test in the sunflower seed standards at a future date.

One commenter stated that the 1000 gram sample size specified in § 810.706 *Grades and grade requirements for sunflower seed* of the proposed standards should be changed to 600 grams. Six hundred grams is the sample size used to inspect sunflower seed under the Minnesota Standards. FGIS concurs that a 1000 gram sample is excessive, and 600 grams is the proper size of the test portion used for inspection. Therefore, according to § 810.706(2), U.S. Sample grade shall be sunflower seed which "* * * in a 600 gram sample, contains 8 or more stones which have an aggregate weight in excess of 0.20 percent of the sample weight, 2 or more pieces of glass, 3 or more crotalaria seeds (*Crotalaria* spp.), 2 or more castor beans *(Ricinus communis)*, 4 or more particles of an unknown substance(s) or a commonly recognized harmful or toxic substance(s), or 10 or more rodent pellets, bird droppings, or an equivalent quantity of other animal filth * * *"

Although no comments were expressed on the definition of test weight per bushel in § 810.702(1) of the proposed rule, FGIS believes that the definition, as stated, could affect the accuracy of the grade determination. The definition, in part, states that the results of the determination shall be expressed to the nearest tenth of a pound. This is in contrast to the current inspection procedure used in the sunflower seed market which calls for results to be stated in whole and half pounds.

The size and conformation of sunflower seed is different from most other grains, and large pieces of foreign material are sometimes present in test samples. This may cause a slight variability in results and affect the repeatability of the test weight determination. Consequently, expressing the determination to the nearest tenth of a pound could cause intermarket differences in the numerical grade of a sample which is officially inspected. FGIS is, therefore, changing the definition of test weight per bushel from that proposed to indicate that results are expressed in whole and half pounds. Section 810.702(k) reads as follows: "*Test weight per bushel.* The weight per Winchester bushel (2,150.42 cubic-inch capacity) as determined on a mechanically cleaned portion of the original sample by an approved device in accordance with procedures prescribed in the Grain Inspection Handbook.[2] Test weight per bushel shall be stated in terms of whole and half pounds; a fraction of a pound when equal to or greater than one-half shall be stated as one-half and when less than one-half shall be disregarded; e.g., 28.0 through 28.4 shall be 28.0 and 28.5 through 28.9 shall be 28.5."

Section 2 of the Act (7 U.S.C. 74) provides, in part, that "it is declared to be the policy of Congress, for the promotion and protection of such interstate or foreign commerce in the interests of producers, merchandisers, warehousemen, processors, and consumers of grain, and the general welfare of the people of the United States, to provide for the establishment of official United States standards for grain * * * with the objectives that grain may be marketed in an orderly and timely manner and that trading in grain may be facilitated * * *."

Section 4(a) of the Act (7 U.S.C. 76(a)) provides, in part, that "the Administrator is authorized * * * to fix and establish (1) standards of kind, class, quality, and condition for * * * such other grains as in his judgment the usages of the trade may warrant and permit * * *."

Further, when grain standards are established under the Act, pursuant to section 5 of the Act (7 U.S.C. 77) such grain must be officially inspected and weighed by FGIS or a delegated state if the grain is shipped outside the United States. There are certain exceptions to this requirement including when parties to a contract mutually agree not to have official inspection (a copy of the contract must be furnished to the Administrator prior to shipment) and the grain is not sold by grade. Also, when there is a domestic shipment of such grain, it may, upon request, be officially inspected and weighed by a designated agency.

Accordingly, official U.S. Standards for Sunflower Seed are established under the U.S. Grain Standards Act as authorized pursuant to section 4(a) of the Act (7 U.S.C. 76(a)). The format and structure of the standards are uniform with other standards under the Act.

Specifically, the standards are divided into three parts, and into sections, which are generally the same or similar to sections in other U.S. Standards for Grain. Part I, *Terms Defined* consists of § 810.701, *Definition of sunflower seed,* and § 810.702, *Definition of other terms* includes the terms distinctly low quality, foreign material, heat damaged, moisture, stones, and test weight per bushel. Part II, *Principles Concerning the Application of the Standards* consists of § 810.703, *Basis of determination* which references distinctly low quality and certain other quality determinations together with all other determinations; § 810.704, *Temporary modifications in equipment and procedures;* § 810.705, *Percentages;* § 810.706, *Grades and grade requirements for sunflower seeds;* and § 810.707, *Grade designation,* which includes optional grade designations. Part III, *Special Grades, Special Grade Requirements and Special Grade Designations* consists of § 810.708, *Special grade and special grade requirements* and § 810.709, *Special grade designations.*

The definition of sunflower seed in § 810.701 provides, in part, that it shall be any grain which consists of 50.0 percent or more of cultivated sunflower seed. The term cultivated sunflower

seed is defined in § 810.702 as sunflower seed grown for oil content. Dehulled seed, hull, kernel, as well as those terms previously referenced above, are also defined in this section.

In § 810.703, *Basis of determination,* distinctly low quality and certain referenced quality determinations will be upon the basis of the lot as a whole and the sample as a whole, respectively. All other determinations will be upon the basis stated in § 800.703(e) with odor as an exception. When abnormal environmental conditions exist, § 810.704 will permit minor temporary modifications in equipment or procedures to obtain results expected under normal conditions.

Percentages (§ 810.705) will be determined on the basis of weight, will be rounded if necessary and stated in whole or tenth of a percent. Exceptions include the determination of the identity of the seed which is stated in whole percent, or foreign material which is stated in increments of 0.5 percent, for example, 0.26 to 0.75 will be expressed as 0.5, 0.76 to 1.25 will be expressed as 1.0, etc.

Section 810.706 includes two numerical grades and a Sample grade. The grading factors in the standards are test weight per bushel, heat damaged seed, total damaged seed, and dehulled seed. Moisture and foreign material are not grade-determining factors but will be ascertained during the inspection process and shown on the inspection certificate as official factors pursuant to § 800.162(a) of the regulations. This section will be amended in separate rulemaking to reflect the addition of foreign material in the sunflower seed standards. "Infested" is a special grade in the standards and is included in the grade designation when the condition exists. The percent of oil and admixture are determined and certified on a request basis according to procedures prescribed in the Grain Inspection Handbook.

It should be noted that pursuant to section 4(b) of the Act, no standards established or amendments or revocations of standards under the Act are to become effective less than one calendar year after promulgation unless, in the judgment of the Administrator, the public health, interest, or safety requires that they become effective sooner. Pursuant to section 4(b) of the Act, FGIS has determined that in the public interest an effective date of less than one calendar year after promulgation is warranted because an early effective date will (1) facilitate domestic and export marketing of sunflower seeds; (2) allow implementation of the standards prior to the 1984 crop year which begins in September; (3) FGIS and the official agencies are prepared to perform the official inspection and weighing; (4) requests for services are voluntary for domestic shipments of sunflower seeds; and (5) at this time export shipments are generally inspected and weighed by state or private agencies which use standards which are very similar to the official standards promulgated herein; therefore, the standards will be effective on September 1, 1984.

List of Subjects in 7 CFR Part 810

Exports, Grain.

PART 810—OFFICIAL U.S. STANDARDS FOR GRAIN

Accordingly, § 810.701–810.709 are added to the Official U.S. Standards for Grain to provide for the establishment of official U.S. Standards for Sunflower Seed.

United States Standards for Sunflower Seed

Terms Defined

Sec.

United States Standards for Sunflower Seed [1]

Terms Defined

§ 810.701 Definition of sunflower seed.

Sunflower seed (*Helianthus annuus* L.) shall be any grain which, before the removal of foreign material, consists of 50.0 percent or more of cultivated sunflower seed and not more than 10.0 percent of other grains for which standards have been established by the Administrator pursuant to section 4(a) of the Act (7 U.S.C. 76) such as wheat, corn, barley, oats, rye, sorghum, flaxseed, soybeans, and triticale.

[1] Compliance with the provisions of these standards shall not excuse failure to comply with provisions of the Federal Food, Drug, and Cosmetic Act or other Federal laws.

§ 810.702 Definition of other terms.

For the purpose of these standards, the following terms shall have the meanings stated below:

(a) *Cultivated sunflower seed.* Sunflower seed grown for oil content. The term "seed" in this and other definitions related to sunflower seed refers to both the kernel and hull which is a "fruit" or "achene".

(b) *Dehulled seed.* Sunflower seed which has the hull completely removed from the sunflower kernel.

(c) *Damaged sunflower seed (total).* Seed and pieces of seed that are heat-damaged, sprout-damaged, frost-damaged, badly weather-damaged, mold-damaged, diseased, or otherwise materially damaged.

(d) *Distinctly low quality.* Sunflower seed which is obviously of inferior quality because it contains foreign substances or because it is in an unusual state or condition and which cannot be properly graded by use of the other grading factors provided in the standards. Distinctly low quality shall include any objects too large to enter the sampling device (for example, large stones, wreckage, and the like).

(e) *Foreign Material.* All matter other than whole sunflower seeds containing kernels which may be removed from a test portion of the original sample by use of an approved device and by handpicking a portion of the sample in accordance with procedures prescribed in the Grain Inspection Handbook.[2]

(f) *Heat-damaged sunflower seed.* Seed and pieces of seed which have been materially discolored and damaged by heat.

(g) *Hull (Husk).* The ovary wall of the sunflower seed.

(h) *Kernel.* The interior contents of the sunflower seed which are surrounded by the hull.

(i) *Moisture.* Water content in sunflower seed as determined by an approved device in accordance with procedures prescribed in the Grain Inspection Handbook [2] and Equipment Handbook.[2] For the purpose of this paragraph "approved device" shall include any equipment or method approved by the Administrator.[3]

[2] The following publications are referenced in these standards. Copies may be obtained from the U.S. Department of Agriculture, Federal Grain Inspection Service, 1400 Independence Avenue, SW., Washington, D.C. 20250.

(a) Equipment Handbook, as amended, U.S. Department of Agriculture, Federal Grain Inspection Service.

(b) Grain Inspection Handbook, as amended, U.S. Department of Agriculture, Federal Grain Inspection Service.

[3] Requests for information concerning approved devices and procedures, criteria for approved

Continued

(j) *Stones.* Concreted earthy or mineral matter and other substances of similar hardness that do not disintegrate readily in water.

(k) *Test weight per bushel.* The weight per Winchester bushel (2,150.42 cubic-inch capacity) as determined on a mechanically cleaned portion of the original sample by an approved device in accordance with procedures prescribed in the Grain Inspection Handbook.[2] Test weight per bushel shall be stated in terms of whole and half pounds; a fraction of a pound when equal to or greater than one-half shall be stated as one-half and when less than one-half shall be disregarded; e.g., 28.0 through 28.4 shall be 28.0 and 28.5 through 28.9 shall be 28.5

Principles Governing the Application of the Standards

§ 810.703 Basis of Determination.

(a) *Distinctly low quality.* The determination of distinctly low quality shall be made on the basis of the lot as a whole at the time of sampling when a condition exists that may not appear in the representative sample and/or the sample as a whole.

(b) *Certain quality determinations.* Each determination of rodent pellets, bird droppings, other animal filth, broken glass, castor beans, crotalaria seeds, foreign material, live weevils or insects injurious to sunflower seed, moisture, temperature, unknown foreign substance, and any commonly recognized harmful or toxic substance shall be upon the basis of the sample as a whole.

(c) *All other determinations.* All other determinations shall be upon the basis of sunflower seed after removal of foreign material by an approved device, except the determination of odor shall be upon either the basis of the grain as a whole or the grain after removal of foreign material by an approved device.

§ 810.704 Temporary modifications in equipment and procedures.

The equipment and procedures referenced in the sunflower seed standards are applicable to sunflower seed produced and harvested under normal environmental conditions. Abnormal environmental conditions during the production and harvesting of sunflower seed may require minor temporary modifications in equipment or procedures to obtain results expected under normal conditions. When these adjustments are necessary, Federal Grain Inspection Service Offices, official inspection agencies, and interested parties in the grain trade will be notified promptly in writing of the modification. Adjustments in interpretations (i.e., identity, quality, and condition) are excluded and shall not be made.

§ 810.705 Percentages.

(a) Percentages shall be determined on the basis of weight and shall be rounded as follows:

(1) When the figure to be rounded is followed by a figure greater than 5, round to the next higher figure; e.g., state 0.46 as 0.5.

(2) When the figure to be rounded is followed by a figure less than 5, retain the figure; e.g., state 0.54 as 0.5.

(3) When the figure to be rounded is even and it is followed by the figure 5, retain the even figure. When the figure to be rounded is odd and it is followed by the figure 5, round the figure to the next higher number; e.g., state 0.45 as 0.4; state 0.55 as 0.6.

(b) Percentages shall be stated in whole and tenth percent to the nearest tenth percent, except when determining the identity of sunflower seed and the percentage of foreign material. The percentage when determining the identity of sunflower seed shall be stated to the nearest whole percent. The percentage of foreign material shall be stated in terms of half percent, whole percent, or whole and half percent, as the case may be, as shown in the following examples: Foreign material ranging from 0.0 to 0.25 shall be expressed as 0.0 percent, from 0.26 to 0.75 shall be expressed as 0.5 percent, from 0.76 to 1.25 percent as 1.0 percent, from 1.26 to 1.75 percent as 1.5 percent, etc.

§ 810.706 Grades and grade requirements for sunflower seed. (See also, § 810.708)

Grade	Minimum test weight per bushel (pounds)	Maximum limits of—		
		Damaged sunflower seed		Dehulled seed (percent)
		Heat damage (percent)	Total (percent)	
U.S. No. 1	25.0	0.5	5.0	5.0
U.S. No. 2	25.0	1.0	10.0	5.0
U.S. Sample grade:				
U.S. Sample grade shall be sunflower seed which:				
(1) Does not meet the requirements for the grades U.S. Nos. 1 or 2; or				
(2) In a 600 gram sample, contains 8 or more stones which have an aggregate weight in excess of 0.20 percent of the sample weight, 2 or more pieces of glass, 3 or more crotalaria seeds (*Crotalaria* spp.), 2 or more castor beans (*Ricinus communis*), 4 or more particles of an unknown substance(s), or 10 or more rodent pellets, bird droppings, or an equivalent quantity of other animal filth; or				
(3) Has a musty, sour, or commercially objectionable foreign odor; or				
(4) Is heating or otherwise of distinctly low quality.				

§ 810.707 Grade designations.

(a) *Grade designation for sunflower seed.* The grade designation for sunflower seed shall include in the following order: (1) The letters "U.S."; (2) the number of the grade or the words "Sample grade"; (3) the words "Sunflower Seed"; and (4) the special grade, if applicable (see also § 810.709).

(b) *Optional grade designations.* Sunflower seed may be certificated (under certain conditions outlined in the Grain Inspection Handbook [2]) when supported by official analysis, as "U.S. No. 2 or better Sunflower Seed." The special grade designation, when applicable, also shall be included (under certain conditions outlined in the Grain Inspection Handbook[2]) in the certification.

Special Grades, Special Grade Requirements, and Special Grade Designations

§ 810.708 Special grades and special grade requirements.

A special grade, when applicable, is supplemental to the grade assigned under § 810.706. The special grade is established and determined as follows:

Infested sunflower seed. Sunflower seed which is infested with live weevils or other insects injurious to stored sunflower seed and/or other grains. As applied to sunflower seed the meaning of the term "infested" is set forth in the Grain Inspection Handbook.[2]

§ 810.709 Special grade designation.

The special grade designation shall be made in addition to all other information

devices, and requests for approval of devices should be directed to the Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue SW., Washington, D.C. 20250.

prescribed in § 810.707. The grade designation for infested sunflower seed shall, following the words "Sunflower Seed," be signified by the word "Infested."

Authority: Sec. 5, 18, Pub. L. 94-582, 90 Stat. 2869 and 2884 (7 U.S.C. 76, 87(e).

Dated: May 17, 1984.

Kenneth A. Gilles,

Administrator.

[FR Doc. 84-14643 Filed 5-31-84; 8:45 am]

BILLING CODE 3410-EN-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 466]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 325,000 cartons during the period June 3-June 9, 1984. Such action is needed to provide for orderly marketing of fresh lemons for the period due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: June 3, 1984.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202-447-5975.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512-1 and Executive Order 12291, and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This final rule 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 of 1937, as amended (7 U.S.C. 601-674). The action is based upon recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the Act.

This action is consistent with the marketing policy currently in effect. The committee met publicly on May 29, 1984, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that lemon demand is expected to improve.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the Federal Register (5 U.S.C. 553), 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 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.

PART 910—[AMENDED]

Section 910.766 is added as follows:

§ 910.766 Lemon Regulation 466.

The quantity of lemons grown in California and Arizona which may be handled during the period June 3, 1984, through June 9, 1984, is established at 325,000 cartons.

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

Dated: May 30, 1984.

Thomas R. Clark,

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

[FR Doc. 84-14659 Filed 5-31-84; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 100 and 103

Miscellaneous Amendments

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule makes various technical corrections to 8 CFR without changing the substance of the affected provisions. These amendments revise the pertinent paragraphs to include the state of Virginia under the jurisdiction of the Washington, D.C. district office; include the Administrative Appeals Unit under the supervision of the Office of Examinations; and remove Palermo, Italy from the listing of officers in charge at overseas offices.

EFFECTIVE DATE: June 1, 1984.

FOR FURTHER INFORMATION CONTACT: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536, Telephone: (202) 633-3048.

SUPPLEMENTARY INFORMATION: On July 2, 1976 (41 FR 27311), the Service published a final rule reflecting the redesignation and realignment of the regions and district offices. The word "Virginia" was inadvertently omitted from the jurisdiction of the Washington, D.C. district office.

On September 22, 1983 (48 FR 43160), the Service transferred the appellate jurisdiction held by the regional commissioners and overseas district directors to the Associate Commissioner, Examinations. The Administrative Appeals Unit was organized with the function of providing a more uniform, consistent procedure for processing appeals. This amendment includes that organization in the listing of the Office of Examinations.

On November 16, 1983 (38 FR 52029), the Service amended its organizational statement to reflect the closing of the Palermo, Italy office. Accordingly, 8 CFR 103.1(o)(2) is amended to remove that office from the listing of officers in charge at overseas offices.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is not required as this rule deals solely with agency management and organization.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule will not have a significant impact on a substantial number of small entities. This document is not a rule as defined in section 1(a) of E.O. 12291 as it deals with agency management and organization.

List of Subjects in 8 CFR Parts 100 and 103

Administrative practice and procedure, Authority delegation, Jurisdictions, Organization and functions (government agencies).

Accordingly, Chapter 1 of Title 8 of the Code of Federal Regulations is amended as follows:

PART 100—STATEMENT OF ORGANIZATION

1. In § 100.2, paragraph (c)(3) is revised to read:

§ 100.2 Organizations and functions.

* * * * *

(c) * * *

(3) *Office of Examinations.* Headed by the Associate Commissioner for Examinations who is responsible for planning, developing, directing, coordinating, and reporting on Service Examinations program activities, and participating in formulating Service Examinations policies. The Associate Commissioner for Examinations directly supervises:

(i) Adjudication and Naturalization Division;

(ii) Inspections Division,

(iii) Refugees, Asylum and Parole Division,

(iv) Office of Outreach Program, and

(v) Administrative Appeals Unit.

* * * * *

2. In § 100.4, paragraph (b)(25) is revised to read as follows:

§ 100.4 Field Service.

* * * * *

(b) * * *

(25) *Washington, D.C.* The district office in Washington, D.C., has jurisdiction over the District of Columbia and the State of Virginia.

* * * * *

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

§ 103.1 [Amended]

In § 103.1, the listing of offices located in foreign countries in paragraph (o)(2) is amended by:

Removing "Palermo, Italy".

(Sec. 103 Immigration and Nationality Act, as amended, (8 U.S.C. 1103))

Dated: May 24, 1984.

Andrew J. Carmichael, Jr.,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 84-14677 Filed 5-31-84; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 84-047]

Llamas and Alpacas From Chile

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the regulations in 9 CFR Part 92 to allow the importation through the Harry S Truman Animal Import Center (HSTAIC) of approximately 350 llamas and alpacas from Chile, a country in which foot-and-mouth disease exists. This action is taken (1) because of the unique circumstances in this case, (2) in order to efficiently use HSTAIC, and (3) because the importation of these animals into the United States can be made under conditions which would not present a significant risk of the introduction or dissemination of communicable diseases of livestock.

DATES: Effective date of the interim rule is June 1, 1984. Written comments must be received on or before July 31, 1984.

ADDRESSES: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Mark P. Dulin, VS, APHIS, USDA, Room 844–AAA, Federal Building, Hyattsville, MD 20782, 301–436–8170.

SUPPLEMENTARY INFORMATION:

Background

This document amends the regulations in 9 CFR Part 92 (referred to below as the regulations) concerning the importation of animals through the Harry S Truman Animal Import Center (referred to below as HSTAIC) to allow one shipment of approximately 350 llamas and alpacas from Chile to be imported through HSTAIC under conditions explained below.

This group of llamas and alpacas was scheduled to be imported into the United States through quarantine facilities maintained by Veterinary Services in Los Angeles, California and Newburgh, New York. Permits had been issued for the importation of these animals and the animals were in embarkation quarantine supervised by the government of Chile when the Department was notified on March 23, 1984, that an outbreak of foot-and-mouth disease (FMD) had been diagnosed in cattle in Chile. Because of the outbreak of FMD, it was necessary in accordance with the provisions of 9 CFR 94.1 to withdraw the permits for the importation.

The importers have requested that the llamas and alpacas be allowed to be imported through HSTAIC. HSTAIC, a maximum security quarantine facility located in Key West, Florida, was established for the importation of animals not otherwise eligible to be imported into the United States because they are from countries in which exotic diseases, such as FMD, exist. HSTAIC is currently available for the importation of the llamas and alpacas. It has been determined that action should be taken to allow the importation of the llamas and alpacas through HSTAIC (1) because of the unique circumstances in this case, (2) in order to efficiently use HSTAIC, and (3) because the importation can be allowed under the circumstances explained below without presenting a significant risk of the introduction or dissemination of communicable diseases of livestock.

The regulations in §§ 92.41 and 92.42 already contain provisions concerning the importation of cattle through HSTAIC from countries where exotic diseases, such as FMD, exist. The requirements include a lottery system for selection of applicants, a method of collecting fees for use of HSTAIC, a Cooperative and Trust Fund Agreement, and criteria for the establishment of an approved embarkation quarantine facility outside the United States for the purpose of importing such cattle into the United States through HSTAIC. Also, these regulations provide that Veterinary Services is to conduct inspections, perform laboratory procedures, complete examinations, and supervise the isolation, quarantine, care and handling of cattle to insure that they meet the Department's quarantine requirements at the USDA-approved embarkation facility and at HSTAIC before release into the United States. These special requirements are necessary for the importation of animals from FMD infected countries because of the risk of the introduction of FMD into the United States.

Even though the provisions in §§ 92.41 and 92.42 were established for cattle, they can also be used for the importation through HSTAIC of other domestic ruminants, such as llamas and alpacas. It is necessary to allow the group of approximately 350 llamas and alpacas to be imported through HSTAIC on an emergency basis. Therefore, the lottery procedures are not made applicable to this importation. The other provisions in § 92.41, with certain exceptions explained below, are made applicable to this importation.

Part I of the Cooperative and Trust Fund Agreement in § 92.41(d) contains provisions relating to qualifying animals for entry into the USDA-approved embarkation quarantine facility. Specifically, these provisions relate to on-the-farm testing and transportation to the USDA-approved embarkation

quarantine facility. Also, the regulations in § 92.41(c)(3)(iv) provide for three series of laboratory tests, from samples collected (1) at the farm of origin, (2) at the embarkation quarantine facility, and (3) at HSTAIC. The llamas and alpacas have been in embarkation quarantine supervised by the Government of Chile since nearly two months prior to the outbreak of FMD in Chile. Because the llamas and alpacas were already off the farm and in quarantine at the time of the outbreak of FMD, it does not appear that it would be necessary to test any animals on the farm. Also, the place where the animals are currently held is in close proximity to the embarkation quarantine facility. Therefore, these provisions of Part I of the Cooperative and Trust Fund Agreement and § 92.41(c)(3)(iv) are not made applicable to the importation of the llamas and alpacas.

The regulations in § 92.42 contain criteria and standards for approval of the embarkation quarantine facility. The llamas and alpacas have been held in an embarkation quarantine facility which does not meet such criteria and standards, and it is necessary that they be quarantined for 30 days in a Veterinary Services (VS)-supervised embarkation quarantine facility meeting the provisions of § 92.42.

The importers have indicated a desire to establish an embarkation quarantine facility in Arica, Chile, which is the town in which the llamas and alpacas are now being held in quarantine. Currently, the only approved embarkation quarantine facility for South America is in Cananeia, Brazil. It would be more practicable and present less of a disease risk if these animals are shipped to HSTAIC directly from the town at which they are presently quarantined. Therefore, it has been determined that the embarkation quarantine facility for the llamas and alpacas should be in Arica, Chile, and that otherwise the provisions in § 92.42 concerning the embarkation quarantine facility should apply for the importation of the llamas and alpacas.

Executive Order 12291 and Regulatory Flexibility Act

This action has been reviewed in conformance with Executive Order 12291 and has been determined to be not a major rule. Based on information compiled by the Department, it has been determined that this rule will not have a significant annual effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have any 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.

This action allows one importation into the United States from Chile of approximately 350 llamas and alpacas through the Harry S Truman Animal Import Center. Currently, there are approximately 10,000 llamas and alpacas in the United States.

Under the circumstances explained above, Mr. Bert W. Hawkins, 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.

Emergency Action

Dr. John K. Atwell, Deputy Administrator of APHIS for Veterinary Services, has determined that an emergency situation exists which warrants publication without prior opportunity for a public comment period on this interim action.

An importation of cattle from Europe is scheduled to enter HSTAIC on or about December 15, 1984. In order to allow the necessary time to prepare HSTAIC for receiving and quarantining cattle from Europe and to provide an ample buffer period in the event that it is necessary to extend the usual minimum quarantine period for the importation of llamas and alpacas, the llamas and alpacas must be scheduled for release from HSTAIC no later than November 1. In order to allow for the release of these animals from HSTAIC by November 1, they must enter the HSTAIC by August 1, In order for these animals to enter HSTAIC by August 1, they must enter the VS-supervised embarkation quarantine facility in Chile no later than July 1. In order to allow time to select appropriate VS personnel for testing and supervision at the embarkation facility in Chile, to test and select sentinel animals for HSTAIC, to secure necessary supplies for HSTAIC and the embarkation quarantine facility in Chile and to make other necessary arrangements for HSTAIC and the embarkation quarantine facility in Chile, it is necessary that this action take effect immediately.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that prior notice and other public procedure with respect to this interim rule are impracticable, unnecessary and contrary to the public interest and good cause is found for making this interim rule effective less than 30 days after publication in the Federal Register. Comments have been solicited for 60 days after publication of this document. A final document discussing comments received and any amendments required will be published in the Federal Register.

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Accordingly, 9 CFR Part 92 is amended as follows:

Section 92.41 is amended by adding a new paragraph (f) as follows:

§ 92.41 Requirements for the importation of animals into the United States through the Harry S Truman Animal Import Center.

* * * * *

(f) *Llamas and alpacas from Chile.* One shipment of approximately 350 llamas and alpacas from Chile may be imported into the United States through HSTAIC in 1984 in accordance with paragraphs (c) and (d) of this section; *Except That* there shall be two series of laboratory tests instead of the three series of laboratory tests referred to in paragraph (c)(3)(iv) of this section; and the provisions relating to qualifying animals for entry into the USDA-approved embarkation quarantine facility shall not apply, and the fee schedule shall be furnished to the importers but not published. Notwithstanding the provisions of § 92.42, the USDA-approved embarkation quarantine facility for this importation of llamas and alpacas shall be located in Arica, Chile. Otherwise, provisions of § 92.42 shall be applicable to the importation of these llamas and alpacas.

(Sec. 2, 32 Stat. 792, as amended; secs. 4 and 11, 76 Stat. 130, 132; sec. 1, 84 Stat. 202; 21 U.S.C. 111, 134c, 134f, 135; 7 CFR 2.17, 2.51, and 371.2(d))

Done at Washington, D.C., this 30th day of May 1984

D. F. Schwindaman,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 84-14233 Filed 5-31-84; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 83-095]

9 CFR Part 112

Viruses, Serums, Toxins, and Analogous Products; Licenses, Permits, and Labeling

Correction

In FR Doc. 84-13488 beginning on page 21042, in the issue of Friday, May 18, 1984 make the following correction.

On page 21044, second column, § 112.7(h), the caution statement should read "CAUTION: DO NOT USE AS DILUENT FOR LIVE VACCINES."

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. 22471]

High Density Traffic

AGENCY: Federal Aviation Administration (FAA), (DOT).

ACTION: Establishment of effective date.

SUMMARY: This document sets the effective date for the interim final rule issued on March 1, 1984 (Amendment No. 93-46) concerning the high density airport rule for air carriers at O'Hare International Airport.

EFFECTIVE DATE: JUNE 1, 1984.

FOR FURTHER INFORMATION CONTACT: Edward P. Faberman, Acting Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591, Telephone: (202) 426-3773.

SUPPLEMENTARY INFORMATION: On March 1, 1984, the FAA issued Amendment No. 93-46 (49 FR 8237) which revised the high density airport rule insofar as it applies to O'Hare International, Kennedy International, and LaGuardia Airports. The amendment increased the hours in which limitations at O'Hare are applicable and increased the number of operations permitted at the airport. The amendment also slightly increased the number of operations allowed at LaGuardia and Kennedy Airports. While increasing the number of hourly operations permitted at LaGuardia and O'Hare Airports, the agency also issued maximum limitations for 30-minute periods at both airports.

Amendment No. 93-46 contained an April 1, 1984, effective date. On April 3, 1984, the agency announced, in response to a number of commentors, that the new 30-minute and 60-minute limitations contained in Amendment No. 93-46 would not apply to air carriers and commuters unless the appropriate scheduling committee advises the agency that it has allocated additional capacity at those airports. the O'Hare Airport air carrier scheduling committee has advised the agency that they have reached a scheduling agreement, effective June 1, 1984. Therefore, the 30-minute and 60-minute regulations as well as all high density regulations are applicable to air carriers at O'Hare, effective June 1, 1984. The commuter scheduling committee has not reached agreement on scheduling. Therefore, although the high density rule applies to their operations, the 93-46 30-minute and 60-minute limitations do not apply to this operation.

Dated: May 25, 1984.

J. E. Murdock III,

Acting Deputy Administrator.

[FR Doc. 84-14919 Filed 5-31-84; 10:18 am]

BILLING CODE 4910-13-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1017

Procedures for Safeguarding Confidential Business Information Received From EPA

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule; corrections.

SUMMARY: This document corrects a final rule containing the Commission's procedures for safeguarding confidential business information received from the Environmental Protection Agency. The rule appeared at pages 50517-50526 in the Federal Register of Wednesday, November 2, 1983 (48 FR 50517-50526). This action is necessary to correct typographical errors.

FOR FURTHER INFORMATION CONTACT: Dorothy Drago, Directorate for Epidemiology (301-492-6468), Consumer Product Safety Commission, Washington, D.C. 20207.

The following corrections are made in the Federal Register issue of November 2, 1983:

§ 1017.5 [Amended]

1. On page 50518 a comma should be inserted after the word "employee" in the second line of § 1017.5(b)(6).

2. On page 50518 correct the second line in § 1017.5(b)(8) to read "only to the extent necessary to fulfill the specific".

§ 1017.6 [Amended]

3. On page 50518 correct the eleventh line in § 1017.6(a)(9) to read "contract employee who has access to CBI receives an".

§ 1017.9 [Amended]

4. On page 50519 insert a comma after the word "subcontractor" in the tenth line of § 1017.9(b).

§ 1017.17 [Amended]

5. On page 50519 change the word "turn" to "turned" in the first line of § 1017.17(a)(2).

Dated: May 29, 1984.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 84-14774 Filed 5-31-84; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 11

[Docket No. RM83-13-000; Order No. 379]

Annual Charges for Use of Government Dams and Other Structures Under Part I of the Federal Power Act

Issued: May 24, 1984.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) amends the regulations governing annual charges to licensees for hydroelectric power projects that use Government dams or other structures under the Federal Power Act. The rule provides for graduated flat rates based on the amount of energy produced. This approach will make annual charges easier for the Commission to assess and for licensees to predict. It will balance the statutory goals of encouraging hydropower development, especially small projects, minimizing costs to consumers, and providing a reasonable return to the Federal Government.

EFFECTIVE DATE: This rule will become effective August 15, 1984. If the Office of Management and Budget's approval and control number have not been received by this effective date, the Commission will issue a notice temporarily suspending the effective date.

FOR FURTHER INFORMATION CONTACT:
Jan Macpherson, Office of the General Counsel. Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357–8033
Dan Lewis, Office of Electric Power Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 376–9227

SUPPLEMENTARY INFORMATION:

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, J. David Hughes, A. G. Sousa and Oliver G. Richard III.

I. Introduction

This final rule adopts a graduated flat rates approach for determining annual charges for use of Government dams or other structures under section 10(e) of the Federal Power Act (FPA).[1]

Under section 10(e) of the FPA, when the Commission licenses a project that will use a Government dam or other structure, the Commission is to set "reasonable" annual charges to "recompens[e]" the Government for the use of its property. There are several other standards that govern the Commission's determination of annual charges. First, under section 10(e) the Commission "shall seek to avoid increasing the price to consumers of power by such charges * * *" Second, a basic purpose of the FPA [2] and of the Energy Security Act of 1980[3] is to encourage hydro development, and the Public Utility Regulatory Policies Act (PURPA)[4] makes it a public policy to encourage small hydro projects. Third, in addition to the statutory factors, the Commission is entitled to consider its own administrative needs in arriving at a "reasonable" method of setting annual charges.[5]

The legislative history of section 10(e) reveals that the Commission is to have broad discretion in setting annual charges. Congress discussed numerous different versions of section 10(e), including provisions setting forth minium charges;[6] maximum charges;[7] a royalty method;[8] and a requirement that the amount must be approximately the value of the power, or the value minus a fair return to the licensee.[9] In the end, Congress abandoned all these more specific provisions in favor of the deliberately general language in section 10(e) so that the Commission could have broad discretion to set annual charges after weighing all the relevant factors.[10]

The case law confirms that the courts will afford a great deal of deference to the Commission's judgment:

> When Congress has failed to provide a formula for the Commission to follow, a court is not warranted in rejecting the one which the Commission employs unless it plainly contravenes the statutory scheme of regulation.

Vanceburg, supra, 571 F.2d at 646–47, *citing Colorado Interstate Gas Co. v. FPC*, 324 U.S. 581, 589–91 (1944). The court in the *Vanceburg* case identified the goals the Commission must consider in setting annual charges:

> Within this range [zero up to the full value of the license], the Commission must set a reasonable charge by considering all relevant factors and arriving at a charge which minimizes consumer costs, encourages power development, but at the same time, compensates the Government to some extent for the benefit it has conferred on the licensee.

Vanceburg, supra, at 647.

II. Background

There are currently 16 licensed projects using Federal dams and having annual use charges assessed. The aggregate capacity of these projects is 938 megawatts and their aggregate average annual generation is 3,515 gigawatt-hours. Their present annual charges total $1,363,440 per year. The annual charges assessed to these licensees were mostly established at the time of licensing, from 1927 to 1980. In most cases the charges were determined by the Commission on the basis of a 50%–50% "sharing of the net benefits" received by the licensee (SNB method) calculated in current dollars at the time each license was issued. This case-by-case SNB method consisted of four steps: (1) Finding the annual cost of power from the least expensive alternative source (power value); (2) finding the annual cost of project power (project powerhouse costs); (3) finding the net benefits by subtracting power cost from power value; and (4) charging the licensee for 50% of the annual levelized net benefit. The Commission usually specified the annual charge amount as a condition in each license. These annual charges have remained unchanged unless they have been readjusted at the times specified in section 10(e).[11]

Beginning in 1979, because the Commission was reconsidering its charging method and later because of the pendency of this rulemaking, most licenses issued for projects at Government dams stated the annual charges as undetermined but not to exceed specified amounts. The ceiling amounts were generally derived from the SNB calculations that appeared in the case record. Other licenses simply stated that the annual charges would be determined by the rulemaking and did not specify any amounts. Thus, more than 40 licensed projects have unspecified annual charges. As of March 1, 1984, about 60 license applications are in process that will require a determination of annual charges under this rule.

On March 31, 1983, the Commission issued a proposed rule [12] to amend the regulations governing these annual charges. The proposed rule would have replaced the case-by-case SNB determinations with a generic approach that would have kept the SNB concept as the basis for the annual charges. In this proposed rule, the Commission also discussed other possible approaches to setting annual charges, including a flat rate charge for energy produced, a flat charge per project, sharing the actual revenues from the licensee's project, and codifying the case-by-case SNB method. The Commission received comments from over 100 entities. Most of these comments were critical of the generic SNB approach, and most commenters favored a simpler, flat-rate type of approach.

III. Summary of Graduated Flat Rates Method

The graduated flat rates approach adopted in this rule is based on the amount of energy a project produces,[13]

[1] 16 U.S.C 803(e) (1976 & Supp. V 1981).

[2] City of Vanceburg v. FERC, 571 F.2d 630 (D.C. Cir. 1977), *cert. denied*, 439 U.S. 818 (1978) (hereinafter referred to as *Vanceburg*).

[3] Section 402, Pub. L. 96–294, 94 Stat. 611.

[4] Sections 2(2) and 408, 16 U.S.C. 2601, 2708 (1982).

[5] In the Permian Basin Area Rate Cases, 390 U.S. 747 (1968), the Supreme Court held that when the Commission has broad statutory authority (in that case, the "just and reasonable" standard under the NGA), it is entitled to consider practicability of administration as long as it remains within the "zone of reasonableness." 390 U.S. 777.

[6] 56 Cong. Rec. 9311, 9771 (Aug. 30, 1918); 58 Cong. Rec. 2134 (June 30, 1919).

[7] 59 Cong. Rec. 1100 (Jan. 6, 1920); 59 Cong. Rec. 1429 (Jan. 20, 1920).

[8] 56 Cong. Rec. 9302 (Aug. 29, 1918); 59 Cong. Rec. 9905 (Sept. 3, 1918).

[9] 58 Cong. Rec. 10,047 (Sept. 5, 1918).

[10] H.R. Rep. No. 910, 66th Cong., 2d Sess. 9–10 (1920).

[11] Under section 10(e), the Commission may readjust a licensee's annual charges twenty years after the project becomes available for service and at periods of 10 years thereafter.

[12] 49 FR 15,134 (April 7, 1983).

[13] The rule requires licensees to report annually the amount of energy they generate. Because this information is already required from state and municipal licensees and non-public holders of major licenses under the provisions of § 11.20, there is no additional reporting burden imposed on such licensees. Non-public holders of minor licenses are not currently required to report this information because the calculation of administrative charge assessments for such licensees is based on installed

Continued

with lower rates applied to smaller amounts of energy and higher rates to greater amounts of energy. The rates are 1 mill per kilowatt-hour (kwh) for the first 40 gigawatt-hours (gwh) of energy a project produces, 1½ mills per kwh for amounts greater than 40 gwh up to and including 80 gwh, and 2 mills per kwh for any energy the project produces over 80 gwh.

The proposed rule contained several provisions (in addition to those directly related to the generic SNB method) which are not necessary under the graduated flat rates approach adopted in this final rule. For example, there is no need to provide for nominal or deferred annual charges since under this final rule projects which produce little energy will be assessed small annual charges. (*See* Section V., "Waivers, Deferrals, and Exceptions," below, for a more detailed discussion.)

This rule applies to all licensees using Government dams or structures except where annual charges are already set in a final and definite manner in the license, as in the case with pre-1979 licenses. The Commission may apply the rule to readjustments of annual charges. However, because we have removed the inflation indexing provision from the rule (see section V.F., below), we may set new rates or apply some other method of arriving at annual charges when a project is subject to readjustment. There is no exemption for state or municipal licensees. However, the final rule does not apply the graduated flat rates to pumped storage projects, providing instead that annual charges will be assessed on a case-by-case basis. Because of the requirement for pumping energy, the generation figures alone are not a meaningful indicator of benefits received. Case-by-case determinations will not be burdensome, as the number of those projects is very low (one) and likely to remain low.

IV. Overview of Basic Reasons for Adopting Graduated Flat Rates Method

The Commission is adopting the graduated flat rates approach in this rule because we believe this method best balances the statutory goals of providing a reasonable return to the Federal government, encouraging hydropower development, especially small projects, and minimizing costs to consumers.

A major advantage of any flat rate approach is that it is relatively simple and straightforward both for the Commission to administer and for potential developers to factor into their project feasibility studies. This will enhance the certainty of hydro project development at Government dams, a need often mentioned by commenters.

A flat rate method does not require the complex calculations inherent in the generic SNB method in the proposed rule. This complexity would interfere unnecessarily with the Commission's need for administrative workability and licensees' need for predictability. By using graduated flat rates (with higher rates assessed against projects that obtain more energy—and therefore more benefit—from using the Federal dam) rather than a single flat rate, this rule will realize these advantages of flat rates while at the same time recognizing the differences between types and sizes of projects. The graduated rates are intended to obtain reasonable compensation for the use of Government property while not imposing high charges which might inhibit development of low-production projects. Thus, the graduate approach recognizes that smaller projects need special encouragement because they lack the economies of scale of larger projects.[14]

The Commission has chosen the three basic rate levels in this final rule (1, 1½), and 2 mills) because in our judgment they represent a reasonable balance among the statutory goals of minimizing costs to consumers and encouraging hydro development while obtaining reasonable compensation for the Government. The concept of reasonableness is, of course, imprecise. In this instance, however, Congress specified other goals to guide the Commission in deciding what is reasonable compensation: minimizing costs to consumers and encouraging hydro development, especially small projects.

The three rate levels chosen will result in rates higher than those suggested by commenters who requested a rate of one dollar per kilowatt of installed capacity plus one-half mill per kwh of energy produced. However, annual charges under this rule will generally be substantially lower than they would have been under the 50%–50% SNB method in the proposed rule.[15]

V. Summary and Analysis of Comments

Many of the comments concerned technical aspects of the generic SNB approach in the proposed rule. These comments are no longer significant since the Commission is not adopting that approach.[16] However, to the extent the comments raised issues relevant to the approach adopted in this final rule, they have been considered as discussed below.

A. Desirability of a Generic Approach

A number of commenters expressed general support for replacing the case-by-case approach with a generic approach, although most of them criticized some aspect of the SNB approach in the proposed rule.

Many commenters opposed the generic approach in the proposal, arguing that such an approach ignores the conditions at individual sites. For example, they argued that the regional least expensive alternative source of power may be very different from the actual alternatives available at particular projects. Some commenters argued that capacity value should not be assumed since some projects have no capacity value. Commenters raised other examples of ways in which the generic approach would not reflect the actual circumstances and financial viability of particular projects, arguing that the rule would assume (and take half of) a benefit which might not exist. Some of these commenters wanted to keep the case-by-case approach while others suggested a flat rate or some other approach.

The graduated flat rates approach in the final rule is a generic approach, with all the inherent advantages of such an approach: it will avoid the litigation and administrative burdens that accompany case-by-case determinations, it is simple and easy to understand and apply, and it avoids any non-uniformity in methodology or result that may be inherent in a case-by-case approach. At the same time, the graduated flat rates approach avoids the major problem raised by a number of commenters: It will not impose large charges on

capacity rather than energy production. However, the Commission believes that the recording of energy production information is a routine practice on the part of licensees generally, and that the only new burden imposed is in the requirement that the information be reported to the Commission. For those few cases where energy production is not routinely recorded, reasonable estimates may be filed.

[14] The Commission discussed a single or regional flat rate charge on energy produced in the preamble to the proposed rule, 48 FR 15,149 (April 7, 1983). We noted several disadvantages of such an approach: failure to recognize the differences between projects and lack of proportionality between the charges and the value of the benefits. These problems with a single flat rate or regional flat rates are ameliorated by the graduated flat rates approach adopted in this rule.

[15] See the Data Tables which we have directed to be included in the rulemaking record.

[16] For example, some commenters requested a chance to comment on the regions and power values, and some made suggestions as to how the regions should be determined. These comments are no longer relevant, as the final rule does not use a regional or power value approach.

projects which produce little energy in any given year. Instead, it will impose charges directly in proportion to the benefits received by the licensee—the amount of energy a project produces. Finally, by basing the graduated rates on kwh produced (and not on installed capacity), the individual characteristics of projects will directly affect how much the licensee will be paying each year as its annual charge.

B. Complexity and Administrative Burden

Numerous commenters argued that the proposed rule would not meet the Commission's objective of simplifying and streamlining the assessment of annual charges. They argued that the formula was too complex, that it required subjective judgments and would lead to numerous case-by-case challenges. These challenges would require hearings and increase litigation, which would allegedly negate the savings in time and resources that adopting a generic approach was intended to produce. Some commenters argued that because of the complexity of the formula, small developers in particular would have a hard time projecting their future annual charges.

As is discussed above under "Overview of Basic Reasons for Adopting Graduated Flat Rates Method," the Commission is aware of the drawbacks of the proposed rule, and this final rule is designed to resolve these problems. We expect the final rule to be relatively simple and easy for both the Commission and licensees to apply. This should meet the concerns on this issue expressed by the commenters.

C. Opposition to SNB Concept and Arguments That Charges Will Be Too High

Numerous commenters objected to the principle of SNB underlying the proposed rule. Some argued that the benefits of a hydro project should go to the local areas in which the resource is located, rather than allocating half the benefits to the Federal government. They pointed out that section 10(e) of the FPA does not require the SNB approach. Some commenters argued that the SNB approach violates the requirement in section 10(e) that annual charges be "reasonable", because it fails to serve the statutory purposes of compensating the Government for the use of its facilities, preventing excessive profits, and not increasing the cost of power to consumers. Other commenters argued that the government taking half the net benefit of a project would discourage hydro development. Some argued that as a matter of equity the licensee ought to be allowed to retain more of the profits, because it is the licensee who takes the risk of developing the project.

Many commenters argued that the charges under the proposal would be too high and too unpredictable and that this would discourage hydro development by making marginally cost-effective projects uneconomic. They also stressed that these high charges would improperly increase costs to consumers. Some commenters argued that this effect would be particularly severe in high energy cost areas because these areas would have higher net benefit values (and thereby higher annual charges). They pointed out that there is a public policy (expressed in section 2 of the Public Utility Regulatory Policies Act) of encouraging hydro development, particularly development of small projects, and that section 10(e) requires the Commission to minimize costs to consumers. (See discussion of comments on small projects in Section V.H. below). Some argued that the approach in the proposed rule would therefore violate the FPA requirement that annual charges be "reasonable." Other commenters argued that section 10(e) of the FPA, as interpreted in the *Vanceburg* case,[17] reflects a Congressional intention that annual charges be relatively low. One commenter argued that increases in annual charges which are not directly related to increases in the benefits received by the developer are unreasonable.

Most of these comments are no longer directly relevant since the Commission is abandoning the SNB concept in favor of the graduated flat rates approach in the final rule. As discussed above, the graduated flat rates approach balances the statutory goals of obtaining reasonable compensation for the Government while encouraging hydro development and minimizing the cost of hydro power to consumers. The graduated flat rates adopted in this rule will answer concerns about discouraging responsible hydro development and about excessive prices to consumers in several ways.

First, the rule will encourage small and marginal projects by assessing lower rates against smaller amounts of energy produced. Thus, any project will be assessed lower rates in years of low energy production, thereby lightening the financial burden when revenues will also be lower than normal. The benefits from this type of proportionality may be most important to small hydro developers whose projects are closer to the margin of economic and financial feasibility. Second, the rule will also encourage development by making annual charges easier to accurately predict. This will facilitate financing for all projects, particularly smaller projects that usually have smaller revenue stream. Third, potential developers will be assessed higher rates only if their projects product larger amounts of energy, thereby giving them a better revenue cushion from which to pay annual charges.

Finally, the Commission has considered the goal of seeking to avoid increased power prices to consumers. In most cases, rates under this rule will be less than they would have been under the proposed rule.[18] Even if there are instance in which this rule assesses larger annual charges than under the case-by-case SNB approach, it will be a result of greater energy being produced at the project. The FPA does not forbid any such increases. We have purposely set the graduated rates at levels that minimize, to a reasonable degree, the costs that consumers of power may ultimately bear. Furthermore, neither the FPA nor the APA prohibit the Commission from changing its approach to assessing annual charges as long as the Commission remains within the bounds set by the statute and considers the relevant factors.

D. Different Effects of Proposal on Public and Private Developers

Some commenters said that the proposed rule would lead to higher annual charges for municipal licensees than for other private licensees with certain tax advantages. These comments are not relevant to the graduated flat rates method in the final rule because in assessing annual charges, this method does not rely on the nature of the developer or on the cost of a licensee's project. Instead, this method is linked strictly to the yearly power production of a project. We also believe that the Congressional mandate for certain tax advantages reflects national policies that do not relate directly to the Commission's authority or responsibilities for setting annual charges under section 10(e) in this particular type of rule.

E. Situation Where Licensee Has Made Payments for Federal Dam

The proposed rule would not have allowed a credit to licensees who made or are making payments to the Federal agency to help defray the costs of building the dam or other structure. As

[17] Vanceburg, supra note 2, at 64 I–47

[18] See the Data Tables.

the Commission explained in the preamble, these payments "are normally designed to repay the costs of construction of the dam or for benefits not related to power produced at the dam" while 10(e) payments are meant to be for the value of the economic benefit conferred by the federal government.[19]

Numerous commenters said the rule should take into account payments the licensee has made for developing the Federal dam. They gave examples of situations where a licensee pays part of the Federal government's construction and operation costs. They suggested that the amount of these payments should either be deducted from the annual charges or included in the cost of the licensee's project in calculating net benefits. They challenged the Commission's reasons for not allowing such a credit. They argued that the basic purpose behind 10(e) is to compensate the Federal government; thus, where the licensee helped to create the benefit, it should not have to pay the full amount of the annual charges under the proposed rule. Several commenters argued that not allowing a credit is contrary to public policy because it will decrease hydro development. Another argued that it is inconsistent with the Commission's own decision in *Idaho Power Co.*, 56 F.P.C. 2687 (1976), *Idaho Power Co.*, 53 F.P.C. 1017, 1027 (1975), *South Columbia Basin Irrigation District*, 10 FERC ¶ 61,285 (1980),[20] and *Utah Power & Light Co.*, 13 FERC ¶ 62,039 (1980).

The Commission recognizes that situations may arise in which a prospective licensee agrees with a Government agency to share in certain costs of construction other than those costs directly related to electric power production. In some of these situations it may be reasonable to adjust the annual charges imposed by the Commission in this rule to account for these other payments by the licensee. Because the specific circumstances of such cases will generally be known to the prospective licensee before a license application is filed, the burden is upon the prospective licensee to explain the circumstances in the application (or in a new filing if the license is already issued) and to request a specific adjustment to the charges imposed by this Commission. Such cases will be considered by the Commission as they arise, and adjustments to the annual charges will be made when they are justified.

[19] 48 FR at 15148–15149.

[20] This decision was essentially reversed in East Columbia Basin Irrigation District, 25 FERC ¶ 61,177 (1983).

F. Inflation Indexing

Numerous commenters objected to the proposal to index annual charges based on the GNP Deflator. They argued that some utilities have long-term contracts to buy power based on flat rates. These contracts, they argued, are good for consumers and encourage hydro development because they provide the security needed to finance hydro projects. Using the GNP Deflator would undermine hydro development by creating uncertainty. Other commenters argued that using the GNP Deflator would violate section 10(e), which they characterize as mandating that consumer prices not be increased. Various commenters also argued that the benefits received by licensees are not likely to increase as fast as the GNP Deflator, and that the GNP Deflator does not necessarily accurately reflect changes in the price of alternate fuel. One commenter suggested using an index which is related to trends in power costs rather than to the entire national economy. Others said the indexing proposal violates the provision in section 10(e) that annual charges may be readjusted twenty years after a project becomes available for service and at periods of not less than ten years thereafter.

The Commission agrees that indexing annual charges to inflation could possibly make it difficult for potential developers, particularly of small projects, to predict their annual charges over the first twenty years of a project. To remove this possible negative effect on hydro project development, the final rule does not provide for indexing. Any change in the annual charge rates applied to a project will be made only at the statutory readjustment intervals—that is, after twenty years and every ten years thereafter.

G. Old and New Projects

The proposed rule stated that it would apply to readjustments of charges for existing projects and to relicensings. A few commenters expressed concern that these readjustments would have an inappropriate effect on old projects. They argued that the approach in the proposed rule would lead to distorted annual charges for old projects, because the actual construction costs of old projects are much lower than the construction costs for more recently constructed alternative plants. They said the costs of older projects are largely amortized and the gross investments in such projects are not a meaningful indicator of there current value. These commenters argued that readjustments leading to large increases in annual charges for these projects would not be justified because there is no concomitant increase in the value of using the Federal dam.

We need not consider some of these comments in detail in light of the graduated flat rates approach adopted in the final rule. Unlike the proposed SNB approach, this approach does not use the cost of the licensee's project in calculating annual charges. Thus, the commenters' concerns should be ameliorated because all charges will be proportionately related to the amount of energy produced. In addition, this rule will not be applied automatically to any readjustment of the project's annual charges. Rather, the Commission may treat readjustments on an individual license basis. *See also* the discussion of readjustments in Section III, above.

H. Special Treatment for Small Projects

Numerous commenters suggested that small projects should receive special treatment, arguing that PURPA and the Energy Security Act express a public policy of encouraging small hydro projects. They pointed out that small projects are riskier and more expensive per kilowatt-hour than larger projects and that charges under the proposed rule would reduce the benefits to the developer without reducing the risk.

The commenters made several different suggestions as to how to treat small projects. Some suggested a nominal charge or that small projects be exempted altogether. Others suggested that the Government take less than half the net benefit for small projects or that it assess a small flat fee per kilowatt or per kilowatt-hour.

One commenter opposed special treatment for small projects, arguing that their contribution to the nation's energy supply is small and that they already receive special benefits under other statutes. This commenter said that if a small project is marginal, the annual charge under the proposed rule would be minimal anyway and would not discourage the project.

The Commission has always been concerned about whether fairness dictates special treatment for the smaller entities we regulate. This concern has surfaced repeatedly in our actions on hydroelectric matters. The economic difficulties that more dramatically affect developers of small hydroelectric power projects have led us, in this final rule, to conclude once again that special measures are needed. As a result, the three-tiered system of graduated flat rates in this final rule are tied directly to the amount of output from a project. This will significantly

eliminate unacceptably disproportionate effects on projects that produce small amounts of energy. As discussed earlier, the lower rate for the first 40 gwh of energy produced is specifically designed to ease the financial burden on smaller projects.

On the other hand, the Commission also believes that development of small projects at existing Federal dams is, by and large, more predictable and less risky than other types of small hydro project development. Therefore, in keeping with the section 10(e) mandate to collect some amount of compensation for the Governmental benefit conferred on licensees, we are unwilling to impose only nominal annual charges, or to forego such charges entirely.

I. Waivers, Deferrals, and Exceptions

In response to the Commission's proposals on possible waivers, deferrals, and other types of exceptions, commenters suggested that no charge be assessed on a licensee in years when there is little or no profit and that annual charges be deferred until the original debts are paid or until the project has become profitable. Commenters also stated that marginal projects which would be rendered infeasible by the annual charges under the proposed rule be partly or completely exempted. Several commenters proposed a three-year exemption period for new projects and a nominal charge for projects which have no net benefit for a particular year but which are otherwise feasible. Other commenters also suggested some form of special treatment in years where generation is low for reasons beyond the licensee's control. One commenter believed that exceptions from the rule should be granted to licensees who show that the generic SNB method is or becomes inappropriate for their projects. Others felt that licensees should be allowed to have their annual charges determined on an individual basis when they demonstrate that the difference in annual charges would be more than 10%.

The Commission does not believe that provisions for waivers, deferrals, or nominal charges are needed under the graduated flat rates approach. This approach is specifically designed so that annual charges will weigh lightly on projects which produce small amounts of energy in any given year. Furthermore, the rates that have been selected should be low enough to avoid any economic hardship. The other reasons related to special consideration for small projects in Section V.H., above, are also pertinent to our decision on this issue as well.

One licensee (the Delaware River Basin Commission) that is an instrumentality of the Federal government [21] said it should be exempt from paying annual charges because of its status. However, if the licensee is a Federal agency for FPA purposes, it will not be licensed by this Commission at all and thus will not be subject to annual charges. Under section 3(5) of the FPA, this Commission does not license Federal agencies. Since the Delaware River Basin Commission is, in fact, a Commission licensee, there is no exemption from annual charges in section 10(e).

One commenter said there should be no annual charge when "the primary use of the dam is controlled by the U.S. Corps of Engineers," arguing that non-power uses minimize the power-producing potential of the resource. The Commission does not agree. Section 10(e) does not indicate that the purpose of the Federal dam or the agency's control over that dam are to have any direct bearing on annual charges. If the Federal dam does not allow the licensee to produce large amounts of power, the annual charges under this rule will not be high. This should be sufficient to address the commenter's concern.

One commenter said that some dams are constructed under specific authorizing legislation or are operated under Congressionally-approved operating principles, which address payments to the Government for use of the dam. In this situation, the commenter argued, the Commission should recognize any limitations on annual charges imposed by the legislation or operating principles. While the Commission would not countenance any fundamentally unjust situation, our mandate under section 10(e) is clear. Absent a clear Congressional repeal of section 10(e)'s annual charges for licensed projects at these dams, the Commission is responsible for imposing annual charges under section 10(e).

J. Headwater Benefits Charges and Licensing Fees

A few commenters argued that headwater benefits charges under section 10(f) of the FPA should either be deducted from the annual charges for use of a Government dam or treated as operating costs.

First, operating costs are not a factor in assessing annual charges under this final rule. Second, in the rulemaking concerning headwater benefits charges, the Commission has proposed to decrease the 10(e) annual charges by the amount of the 10(f) headwater benefits charges for any year in which 10(f) charges are assessed.[22] The Commission will consider this issue in the headwater benefits rulemaking and need not alter this rule now.

K. National Environmental Policy Act (NEPA)

Several commenters objected to the statement in the Notice of Proposed Rulemaking that the rule would not significantly affect the quality of the human environment. They argued that the proposed generic SNB method would discourage development of some projects, particularly small projects. They argued this would lead to increased use of fossil fuel with a concomitant environmental impact. One commenter said NEPA requires the Commission to consider reasonable alternatives and that the Commission did not sufficiently investigate alternatives.

The Commission believes that its NEPA determination remains appropriate. The final rule, which adopts the graduated flat rate approach, is designed to remove any unnecessary impediments to developing small projects, as discussed under Section V.H., above. Furthermore, NEPA requires discussion of alternatives only when there is a major Federal action significantly affecting the quality of the human environment. NEPA does not apply to this rule since this is not such an action. However, the Commission did in fact discuss several alternatives in the preamble to the proposed rule [23] and has further considered these and other alternatives, which are discussed in detail in this preamble (*see* Section V.L., below).

L. Alternatives

Numerous commenters supported adopting some type of flat rate. These commenters pointed out that it would be predictable, understandable, and easy to administer and that it would reduce the burden of litigation. Many suggested that the Commission adopt a flat rate or "cap" of one dollar per kw of installed capacity and one-half mill per kwh of energy produced. They argued that these amounts would provide reasonable compensation for the Government without discouraging development or raising the cost of power to consumers excessively. Several commenters stated that a flat rate approach would lead to varying charges depending on the characteristics of a specific project and

[21] Under article 2, Section 2.1 of Pub. L. 87-328, the commenter is an instrumentality of the Federal Government.

[22] 49 FR 1670 (January 9, 1984) (Docket No. RM83-57-000).

[23] 49 FR at 15149-15150.

that the charges would thereby be proportionate to the value of the benefit to the licensee of using the Government dam. Several commenters stated that a flat rate would compensate the Government more than the existing case-by-case SNB method.

The Commission agrees with these commenters about the advantage of flat rate approaches. The Commission's reasons for adopting the graduated flat rates approach in this rule are fully discussed above and need not be repeated here. The Commission decided to base annual charges solely on the amount of energy produced rather than on installed capacity for several reasons. First, the energy-based method is a very simple way of relating charges to the actual useful output of the facility. Second, an approach based on capacity implies that the capacity itself has value. While there usually is value assigned to the capacity of generating plants, at Government dams the scheduling of generation is dependent on water release related to purposes of the dam other than power production. A third reason for using only energy produced as the basis for charges is that the Commission does not want to discourage the installation of generators capable of taking full advantage of high stream flow that occurs during limited periods of time. If the charge were based on capacity, developers might tend to limit capacity to correspond more closely to average stream flow. In effect, a charge based solely on energy produced relieves the licensee from paying for capacity that may go unused during significant periods of time.

One commenter suggested that annual charges could be based on sharing the actual cost the licensee saves by using a Federal dam. Under that method, the Commission would determine the annual levelized cost of producing power at the project over the license period and the annual levelized cost of producing power during the same period for an equivalent hydro project not using the Federal Dam. The annual charge would be half the difference between these two figures. According to the commenter, this method would be simpler and more accurate than the method in the proposed rule. However, the commenter also said this method is less desirable than the flat rate method described above. The Commission agrees that a flat rate approach is preferable to the complex calculations of the actual cost the licensee saves by using the Federal Dam. Moreover, charges under the method the commenter proposed would be higher than those under the SNB method, since the cost of a hypothetical hydro project not using the Federal dam would generally be more than the cost of an alternative source of power, such as a coal-fired thermal plant.

Several commenters spoke favorably on the royalty method alternative. Under this method, the Commission would share in the revenues from the licensee's project. They argued that this system would not be too burdensome to administer because the Commission could use Federal tax returns and other easily available data to determine the revenue of a project. They disagreed with the statement in the proposed rule that the royalty method is not desirable because the amount of money the Government receives would depend on the managerial expertise of the licensee, pointing out that the amount of Federal income taxes also depends on the taxpaying company's expertise.

The Commission does not believe that a royalty method would be preferable to the graduated flat rates approach. In addition to our observations in the NOPR on the drawbacks of this alternative, many of the licensees affected by this rule (such as municipalities) do not have to file Federal tax returns or otherwise provide information on their revenues. Therefore, the Commission would have to impose complex new information collection and reporting requirements in order to administer a royalty method.

One commenter suggested that licensees pay a proportionate share of the cost of the Government dam, arguing that this approach would be consistent with the Commission's traditional cost-of-service approach to ratemaking and that the Government should not earn a return which is disproportionate to its investment in the dam. Similarly, one commenter suggested a provision limiting annual charges to the amount of the Government's investment in the facilities. One commenter said that annual charges should reflect a proportionate share of operation and maintenance costs of the Government facilities.

The Commission does not agree that the cost of building or operating the dam or the Government's investment should be central factors in determining annual charges. Section 10(e) sets forth the factors the Commission is to consider in setting annual charges, and these types of costs are not among them.

One commenter argued that where the Government project is primarily for purposes other than power, no annual charge should be made because "no optimization of flows for power production purposes can be made." The graduated flat rates adopted in this rule are based on the amount of energy a project produces, so if the Government dam does not allow the licensee to produce much energy, the annual charges will be correspondingly low.

M. Role of Secretary of the Interior

Section 10(e) states that the Commission is to set annual charges for use of Government dams or other structures "subject to the approval of the Secretary of the Interior in the case of such dams or structures in reclamation projects . . . ." In the preamble to the proposed rule, 48 FR 15148 (April 7, 1983), the Commission concluded this language does not mean the Secretary has veto power over the Commission's assessment of annual charges, but that the Secretary has certain procedural rights in Commission proceedings through which he may press his views on the reasonableness of annual charges.

The Secretary objected to the interpretation in the proposed rule, arguing that the Commission's reliance on *Montana Power Co.* v. *FPC.*[24] to support its interpretation is incorrect, because that case concerned annual charges for projects on Indian lands. Further, the Secretary interpreted section 10(e) to say he is bound by the Commission's decision if the issue has been appealed to the Commission because the Secretary and the licensee are unable to reach an agreement.

The Commission, of course, recognizes the Secretary's right to participate fully in our hearing process and in our rulemakings. We also recognize the Secretary's special role under section 10(e) in setting annual charges for use of reclamation projects. As a result, we have given careful consideration to the Secretary's views in setting annual charges generically in this rulemaking. The Commission has modified this final rule significantly from the rule proposed in the NOPR. These modifications—lowering the annual charges, reducing the complexity of the rule, adopting a flat rate approach, and eliminating indexing—are consistent with the recommendations made by the Secretary in his comments. We assume that, if useful, discussion and agreements between the Secretary and license applicants will continue to take place on a variety of issues. Thus, the Commission believes that there is accord with the Secretary on the approach taken in this final rule.

[24] 459 F.2d 863 (D.C. Cir. 1972).

N. Miscellaneous

Some commeneters noted that charges based on the proposed rule would have no relationship to the cost of constructing the Federal facility. However, neither the statute, its legislative history, nor the case law indicate that the cost of the Federal facility is relevant to setting annual charges.

One commenter suggested that the annual charges rule should be merely a guideline. The Commission does not agree. A binding rule is necessary both for ease of administration and to allow developers to predict their charges.

One commenter suggested that annual charges be offset by the value of power provided by the licensee to a Federal agency for navigation purposes. Under the final rule, the amount of energy on which annual charges are assessed will be the amount generated minus any energy the licensee provides a Federal agency free of charge.

One commenter argued that since the Commission already charges for the administrative costs of licensing, it should not impose any additional annual charge. The Commission does not agree. Section 10(e) of the FPA requires the Commission to impose two separate charges—one for use of a Government dam and one to reimburse the United States for the costs of administering the FPA.

Several commenters were concerned with the disposition of the money collected under the rule. The Department of the Interior (DOI) said that some of the annual charges collected for use of Federal reclamation dams should be paid into the Reclamation Fund. DOI also recognized, however, that section 17(a) of the FPA provides for the money to be distributed in a manner that does not pay money for use of reclamation projects into the Reclamation Fund.[25] This rulemaking does not address the distribution of annual charges, and the Commission will continue to abide by section 17(a).

DOI suggested that the Commission and the Bureau of Reclamation sign a memorandum of understanding (MOU) in which the Commission would delegate its responsibility for collecting annual charges for use of reclamation projects to the Bureau. That type of activity is beyond the scope of this rulemaking and need not be addressed.

One commenter asked whether the Army Corps of Engineers will be able to impose separate charges and whether licensees will be required to provide the Corps with free power. Again, the Commission is setting annual charges under section 10(e) in this rulemaking. Any question on the statutory authority of the Army Corps of Engineers or on its power arrangements with licensees is beyond the scope of this rulemaking.

One commenter asked that the rule make it clear that projects which are not on Government land but which obtain a hydraulic head due to a Government dam are not subject to the rule. A licensee must pay annual charges under this rule if the project *uses* a Government dam without regard to whether it is on Government land.

One commenter requested an oral hearing on the rulemaking. Such hearings are not a necessary or standard element of rulemaking procedure, and the Commission does not believe such a hearing would provide it with any information that cannot be presented by commenters in writing.

VI. Regulatory Flexibility Act Statement

The Regulatory Flexibility Act (RFA)[26] requires certain statements, descriptions, and analyses of rules that will have "a significant economic impact on a substantial number of small entitites."[27] The Commission is not required to make an RFA analysis if it certifies that the rule will not have such an impact.[28]

Most electric utilities and many hydro developers are not small entities under the RFA.[29] In addition, out of a total of 798 hydroelectric project licensees, only 41 licensees (5%) are involved with projects using Government dams and other structures. Similarly, out of a total of 875 pending hydro license and permit applications, only 117 (13%) are for projects using Government dams. These figures reveal that this rule would not affect a substantial number of small entities even among those now subject to Commission jurisdiction. This is even more evident when measured against the large number of potential hydroelectric applicants that might seek Commission licenses. The Small Business Administration (SBA) contends that these conclusions on the number of small entities are not appropriate. We have re-examined this issue and find no need to alter our conclusions. However, since the SBA also indicated its approval of a flat-rate approach of the sort adopted here, any difference of views on the number of small entities affected is purely an academic matter.

Moreover, the Commission does not expect this rule to have a significant economic effect on these entities. The graduated flat rates method is designed to charge higher rates only where there are larger amounts of energy produced. This rule will provide certainty for developers when they make financial and project feasibility studies and projections. Licensees will also save the considerable resources now spent on individual annual charges determinations.

Since the Commission is obliged by section 10(e) to impose reasonable charges on all licensees and nothing in the RFA abridges this responsibility, the special consideration given to small projects and to small developers leads us to conclude that all aspects of the RFA have been satisfied. In keeping with the thrust of the RFA, the Commission has selected an alternative that takes into account the differential impact on small entities operating small projects. Rather than impose a single flat fee that may penalize some small projects and their developers, the three-level graduated rates approach seeks to minimize the economic impact on all entities, large and small, that own and operate projects with small amounts of energy production. Alternatives to this approach and our reasons for selecting the graduated rates methodology have been fully discussed above, and that discussion bears directly on our conclusions vis-a-vis the RFA.

For these reasons, the Commission certifies under section 605(b) of the RFA that this rule will not have a significant economic effect on a substantial number of small entities.

VII. Effective Date and Paperwork Reduction Act Statement

This information collection provisions in §§ 11.22(d) and 11.22a(b) of this final rule are being submitted to the Office of Management and Budget (OMB) for its approval under the Paperwork Reduction Act, 44 U.S.C. 3501–3502 (Supp. V 1981), and OMB's regulations, 48 FR 13666, 13694 (1983) (to be codified at 5 CFR Part 1320). Inquiries relating to the information collection provisions in this rule can be made to: Jan Macpherson, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol, NE., Washington, D.C. 20426 (202) 357–8033. Comments on the information collection

[25] *But see*, 43 U.S.C. 392a (1932); 45 Comp. Gen. 724 (1966) (discussing the division of funds between the Army Corps of Engineers and the Interior Department).

[26] 5 U.S.C. 601–612 (Supp. V 1981).

[27] *Id.* Section 603, 604.

[28] *Id.* Section 605 (b).

[29] *Id.* section 601(3), *citing to* section 3 of the Small Business Act, 15 U.S.C. section 632 (1982), which defines "small business concern" as a business which is independently owned and operated and which is not dominant in its field of operation. See also SBA's revised Small Business Size Standards, 49 FR 5,024 (Feb. 9, 1984) (to be codified at 13 CFR Part 121).

provisions can be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, D.C. 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

This rule will become effective August 15, 1984. If OMB's approval and control number have not been received by this effective date, the Commission will issue a notice temporarily suspending the effective date.

List of Subjects in 18 CFR Part 4 and 11

Electric power.

In consideration of the foregoing, the Commission amends Part 11, Subchapter B, Title 18, Chapter I, *Code of Federal Regulations,* as set forth below.

By the Commission. Commissioners Hughes and Sousa concurred with separate statements to be issued later.

Kenneth F. Plumb,

Secretary.

PART 11—[AMENDED]

1. 18 CFR 11.22 is revised to read as follows:

§ 11.22 Annual charges for use of Government dams or other structures under section 10(e) of the Act, excluding pumped storage projects.

(a) *General rule.* (1) Any licensee whose non-Federal project uses a Government dam or other structure for electric power generation and whose annual charges are not already specified in final form in the license must pay the United States an annual charge for the use of that dam or other structure as determined in accordance with this section. Payment of such annual charge is in addition to any reimbursement paid by a licensee for costs incurred by the United States as a direct result of the licensee's project development at such Government dam.

(2) Any licensee that is obligated under the terms of a license issued on or before [insert the effective date of this section] to pay specified annual charges for the use of a Government dam must continue to pay the annual charges prescribed in the project license pending any readjustment of the annual charge for the project made pursuant to section 10(e) of the Federal Power Act.

(b) *Graduated flat rates.* Annual charges for the use of Government dams or other structures owned by the United States are 1 mill per kilowatt-hour for the first 40 gigawatt-hours of energy a project produces, 1½ mills per kilowatt-hour for over 40 up to and including 80 gigawatt-hours, and 2 mills per kilowatt-hour for any energy the project produces over 80 gigawatt-hours.

(c) *Information reporting.* Each licensee shall file with the Commission, on or before February 1 of each year, a sworn statement showing the gross amount of energy generated during the preceding calendar year and the amount of energy provided free of charge to the Government. The determination of the annual charge hereunder will be based on the gross energy production less the energy provided free of charge to the Government. Excepted from this requirement are licensees who have filed these data under another section of Part 11 or who have submitted identical data with FERC or the Energy Information Administration for the same calendar year. Referenced filings should be identified by company name, date filed, docket or project number, and form number.

§§ 11.24 through 11.32 [Redesignated from §§ 11.23 through 11.31]

2. 18 CFR 11.23 through 11.31 are redesignated as §§ 11.24 through 11.32 respectively.

3. A new §§ 11.23 is added to 18 CFR Part II to read as follows:

§ 11.23 Annual charges for pumped storage projects using Government dams or other structures and for any project using tribal lands.

(a) *General Rule.* The Commission will determine on a case-by-case basis under section 10(e) of the Federal Power Act the annual charges for any pumped storage project using a Government dam or other structure and for any project using tribal lands within Indian reservations.

(b) *Information reporting.* Licensees whose projects include pumped-storage facilities shall file with the Commission, on or before February 1 of each year, a sworn statement showing the gross amount of energy generated during the preceding calendar year, and the amount of energy provided free of charge to the Government, and the amount of energy used for pumped storage pumping. Excepted from this requirement are licensees who have filed these data under another section of Part 11 or who have submitted identical data with FERC or the Energy Information Administration for the same calendar year. Referenced filings should be identified by company name, data filed, docket or project number, and form number.

§ 11.25 [Amended]

4. The reference to "(by § 11.27)" in paragraph (i) of newly-redesignated § 11.25 is revised to read "(by § 11.28)".

§ 11.26 [Amended]

5. The reference to "§§ 11.25, 11.26, 11.27 and 11.30" in footnote 1 of newly-redesignated § 11.26 is revised to read "§§ 11.26, 11.27, 11.28, and 11.31".

6. The reference to "§§ 11.25 through 11.31" in paragraph (d) of newly-redesignated § 11.26 is revised to read "§§ 11.26 through 11.32".

§ 11.27 [Amended]

7. The reference to "§§ 11.26(a) and 11.27(a)" in footnote 3 of newly-redesignated § 11.27 is revised to read "§§ 11.27(a) and 11.28(a)".

§ 11.28 [Amended]

8. The reference to "§ 11.25" in footnote 5 of newly-redesignated § 11.28 is revised to read "§ 11.26".

[FR Doc. 84-14744 Filed 5-31-84; 8:45 am]
BILLING CODE 6717-01-M

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18 CFR Part 154

[Docket No. RM83-71-000; Order No. 380]

Elimination of Variable Costs From Certain Natural Gas Pipeline Minimum Commodity Bill Provisions

Issued: May 25, 1984.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing a final rule that eliminates variable costs from the minimum commodity charge portion of natural gas pipeline sales tariffs. The rule implements a finding by the Commission, under sections 4 and 5 of the Natural Gas Act, that use of minimum commodity bills to recover variable costs is anticompetitive and can result in unjust and unreasonable rates and charges.

The rule, which amends Part 154 of the Commission's regulations, does three things. First, it provides that currently existing sales tariffs shall be inoperative to the extent they provide for recovery of purchased gas costs for gas not taken by the buyer. Second, it stipulates that no tariffs filed in the future may provide for recovery of any variable costs associated with gas not taken by the buyer. Third, it requires purchased gas costs to be stated separately on pipeline sales tariff sheets.

The rule will have the effect of allowing certain natural gas distribution companies to pick and choose among their pipeline suppliers without incurring charges for gas they do not take.

DATES: Effective Date: The final rule is effective July 31, 1984. The filing requirement of paragraph (a)(3) of § 154.111 will not become effective until August 15, 1984, and the deadline for actually filing will be September 14, 1984. If OMB's approval and control number have not been received by August 15, 1984, the Commission will issue a notice temporarily suspending the effective date.

FOR FURTHER INFORMATION CONTACT: Carol M. Lane, Office of Commissioner Richard, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 (202 357-8383).

SUPPLEMENTARY INFORMATION:

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, J. David Hughes, A. G. Sousa and Oliver G. Richard III.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending Part 154 of its regulations[1] by the addition of a new § 154.111 that requires elimination from natural gas pipeline sales tariffs of any minimum commodity bill provisions that operate to recover variable costs.

II. Explanatory Background

The sales rates of most natural gas pipelines regulated by this Commission consist of two parts. The first part is a demand charge, which recovers a certain portion of a pipeline's fixed costs.[2] The demand charge is a reflection of the contractual obligations between the pipeline and the customer, respectively, to provide and pay for a particular service. As such, the demand charge is paid each billing period (month) regardless of the level at which a customer purchases natural gas during that period.

The second part of the sales rate is a commodity charge. The commodity charge includes whatever fixed costs are not included in the demand charge. It also includes the pipeline's variable costs.[3] The commodity charge is levied on each unit of gas sold; consequently the amount paid by a customer each billing period varies according to the amount of gas purchased. It is the commodity portion of pipeline rates with which the Commission is concerned in this rule.[4]

A number of pipelines include in certain of their sales rate schedules a provision known as "minimum commodity bill." The minimum commodity bill generally requires the customer to pay the full commodity charge for a specified percentage of its contract entitlement,[5] whether or not the customer actually takes gas at that percentage level. For example, if a minimum commodity bill is set at 75 percent per month, the customer must pay the commodity charge for 75 percent of its entitlement during the billing period, even if it is only taking at 50 percent of the that level.[6]

Thus, a minimum commodity bill ensures a pipeline recovery of a certain percentage of the fixed costs that are in the commodity component of its rates. But at the same time, it also ensures a pipeline recovery of a certain percentage of the variable costs as well. The presence of variable costs in a minimum commodity bill does two things about which the Commission is concerned. First, in cases where a customer is taking gas below its minimum commodity bill level, the minimum commodity bill operates to recover variable costs that are not actually incurred by the pipeline. Second, a minimum commodity bill can serve as a barrier to competition. A customer is not likely to purchase gas from an alternate supplier if it is required to pay for gas it does not take from the original supplier.[7] As such, a minimum commodity bill may inhibit natural gas price decreases that could otherwise result from competitive forces.

Concern about these two factors led the Commission to issue on August 25, 1983, a Notice of Proposed Rulemaking[8] pursuant to sections 4, 5 and 16 of the Natural Gas Act.[9] In that Notice, the Commission announced its intent to eliminate variable costs from minimum commodity bills to the extent such tariff provisions permit recovery of costs not actually incurred. The Commission sought public comment on this proposal.

Ninety-five comments reflecting the views of pipelines, distributors, end-users, and public bodies were initially filed in this docket.[10] Further, in response to the suggestions of a number of commenters, the Commission provided for a round of reply comments [11] in order to join the various issues raised. Thirty reply comments were filed.

Many of the comments in the record before us provide detailed charts and other factual information setting forth historical developments in the industry as well as the specific situations faced by pipelines or customers. Some provide hypothetical examples of situations that could arise. These figures and examples have been very helpful to the Commission in its study of the minimum commodity bill question.

On the basis of the record thus established, the Commission has determined that collection of variable costs via a pipeline's minimum bill tariff provision is unjust and unreasonable under the Natural Gas Act, and that a final rule should be issued to implement this finding. The Commission's reasons for doing so and its findings on issues raised by the commenters are set forth *infra*.

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[1] 18 CFR Part 154 (Natural Gas, reporting and recordkeeping requirements).

[2] Fixed costs are those that do not vary, regardless of the level of usage of the pipeline. Examples of fixed costs are principal/interest on debt, return of and on equity, and income taxes. The portion of fixed costs that is collected via the demand charge depends on the way a particular pipeline's costs are classified. The apportionment of fixed costs among various jurisdictional customers also depends on both cost allocation and rate design.

[3] Variable costs are those that vary depending on the volume level of deliveries through the pipeline. By far the largest variable cost in a pipeline's rates is the cost of purchased gas.

[4] Commodity charges may take different forms from tariff to tariff. For example, some pipelines have two separate commodity charges. One is intended to recover all "gas costs" (i.e., purchased gas costs and expenses related to the cost of gas, such as compressor fuel and line losses). The other is intended to recover "non-gas costs." For purposes of this rule, the Commission makes no distinction among single or dual commodity rate charges, straight-line rate charges, cost-of-service rate charges, or any other label that may be placed upon the form within which variable costs are collected.

[5] A customer's contract entitlement (this term may vary from pipeline to pipeline) can be generally described as the maximum amount of natural gas a customer is entitled to demand from a pipeline during a given period. During a peak demand period, a customer may need to purchase at its full entitlement level. During an off-peak period, it may buy at far below its entitlement level.

[6] Minimum commodity bills are generally figured by multiplying the set percentage level of the customer's maximum daily quantity under its contract by the commodity charge times the number of days in the month. Some minimum bills are calculated and billed annually. The Notice of Proposed Rulemaking in this docket noted that set percentages may range from 50 percent to above 90 percent. 48 FR 39238.

[7] By contrast, if the minimum commodity charge a customer must pay each month is limited to the fixed cost component of the minimum bill, some customers may find it economically advantageous to incur the minimum bill yet purchase gas from another supplier. This would occur if the differential between the two suppliers' commodity prices is larger than the fixed cost component of the original supplier's minimum bill. *See, e.g.*, comments of Consolidated Edison Company of New York, Inc.

[8] 48 FR 39238, August 30, 1983; FERC Stats. and Regs., Proposed Regulations ¶ 32,334 (1983) (cited hereinafter as "Notice").

[9] 15 U.S.C. 717-717w (1976).

[10] *See* Appendix for list of commenters. Comments filed out of time are hereby accepted in view of the fact that no party has suffered a detriment as a result of Commission consideration of late-filed comments.

[11] Notice of Opportunity to File Reply Comments, 49 FR 3093 (Jan. 25, 1984).

III. Historical Background

Minimum commodity bills are not a new phenomenon. The Notice in this docket cited a landmark 1967 case in which the Commission considered what the functions of a minimum commodity bill might be.[12] In that case it identified three ratemaking functions that could possibly justify pipeline minimum bills: Fixed cost recovery; equitable recovery of both fixed and variable costs; and take-or-pay recovery. These functions, which are interrelated, will be briefly reviewed in the context of the following background information.

A. Two Types of Pipeline Customers

Jurisdictional pipeline sales customers can generally be divided into two types. The first is the "full requirements" customers, so called because they purchase their entire natural gas supply from one pipeline. Full requirements customers are sometimes referred to as "captive" customers since, in most cases, they are geographically located in areas where there is only one pipeline supplier. Local distribution companies, both privately and publicly owned, generally make up this group.[13]

The other general type is the "partial requirements" customers, so called because they do not rely solely on one pipeline for their gas supply. Partial requirements customers are sometimes referred to as "swing" customers, since they are geographically located in areas where they can swing from one source of supply to another (assuming that physical connections have been installed). Local distributors and other pipelines make up this group.

There is some tension inherent in the relationship between full and partial requirements customers. This tension is due to the nature of the gas industry itself. Interstate pipeline systems were designed based on the estimated markets of both full and partial requirements customers. Large scale investments were made to provide physical facilities and long-term supplies of gas to serve both groups. Costs reflecting these commitments have therefore traditionally been considered the responsibility of both groups. For this reason, the Commission designs a pipeline's rates so as to allocate fixed costs among both types of customers, based on their annual and peak period usage of the system. In this manner an equitable allocation of fixed costs is achieved.

To the extent that fixed costs are included in the demand portion of the rate, the pipeline is assured of their recovery. But to the extent they are included in the commodity portion, they are at risk to the pipeline.[14] To the extent that a customer takes less gas than expected, the pipeline does not collect the commodity charge for as much gas as it had planned to sell. If it cannot sell that gas elsewhere, the pipeline may underrecover some of its fixed costs. It is at this point that the tension can arise between full and partial requirements customers.

Partial requirements customers have the ability to swing off the system, causing a reduction in expected sales volumes which, in turn, creates an underrecovery of costs. If the pipeline is unable to make up the lost volumes by selling the excess supply elsewhere, it may file new rates to offset the decreased sales. In these new rates, the pipeline's fixed costs will be spread over the lower volumes the pipeline expects to sell, resulting in higher rates on that system. Although the higher rates will apply to all customers, the captive customers have no alternative to paying these rates, at least in the short run, while the swing customers (absent a minimum commodity bill) can avoid higher commodity charges. Thus the tension exists.

B. The Traditional Functions of Minimum Commodity Bills

From the above explanation, it can be seen that minimum commodity bills have traditionally served several functions. First, they have protected pipelines from the risk of under-recovering fixed costs in the commodity component of rates, up to a particular level. As such, they have acted as a kind of additional demand charge. Second, they have protected full requirements customers from having to bear an unbounded portion of fixed costs resulting from swings off the system by partial requirements customers. Third—and this third function is actually an outgrowth of the second—minimum bills have been recognized as protecting all customers from increased "take-or-pay" costs that may otherwise be incurred by the pipeline.

C. Take-or-Pay Recovery

In recent years, when pipelines have contracted with producers to purchase natural gas, they have tended to agree to contracts with "take-or-pay" clauses. Under these clauses, the pipeline agrees that it will take a particular level of gas from a supply source (usually a certain percentage of reserves or annual deliverability) or pay for that level of gas anyway.[15] If the pipeline's sales fall off, it may find itself unable to take enough gas to meet its contractual take-or-pay obligations. When that happens, it may be required to make annual take-or-pay payments to its producer suppliers. Any such payments, if prudently incurred, are eligible to be placed in the pipeline's rate base, and the associated carrying charges, usually in the form of return and related income taxes, thus become a fixed cost on that system.[16]

Therefore, if a partial requirements customer significantly decreases its purchases in order to swing to a lower-cost pipeline, there may be take-or-pay liability associated with the gas not taken. If the pipeline is unable to make up this liability over the course of its contract year with the producer, it may actually incur take-or-pay payments, causing its costs to go up. In this manner all customers will feel the effect of the decreased purchases. Minimum commodity bills, which discourage swinging, can therefore be said to perform the function of helping to prevent take-or-pay costs on some pipeline systems.

D. Variable Cost Recovery

As a final note to this summary of the traditionally-argued justification for minimum commodity bills, it should be

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[12] Notice at p. 32669, citing Atlantic Seaboard Corp., 38 F.P.C. 91, 95 (1967).

[13] Some industrial customers served directly by the pipeline, rather than through an intermediary distributor, may be similarly "captive." The Commission's jurisdiction does not extend, however, to the rates changed by pipelines to these types of customers.

[14] While all production-related fixed costs are in the commodity charge, the portion of storage- and transmission-related fixed costs in the commodity charge varies. For pipelines that are on the "*United*" methodology, 75 percent of these fixed costs are in the commodity charge. For those on the "*Seaboard*" methodology, 50 percent of these fixed costs are in the commodity charge. For those on the "modified fixed-variable" methodology, the only storage- and transmission-related fixed costs in the commodity charge are return on equity and related income taxes. While these are the most common methodologies, they are by no means the only possible ones. *See* Natural Gas Pipeline Company of America, 25 FERC ¶ 61,176 (1983).

[15] Take-or-pay clauses generally have make-up rights so that the pipeline can later take delivery of any gas it paid for but did not actually take. A general discussion of the reasons for take-or-pay clauses and the Commission's policy on same can be found in "Take-or-Pay Provisions in Gas Purchase Contracts," Statement of Policy, FERC Stats. and Regs., Regulations Preambles ¶ 30,410 (1982). (Make-up rights with respect to minimum bills are discussed in this rule at Part VII, *infra*.)

[16] Gas prepayments are recorded in an Asset Account (No. 165) and are generally included in rates only through a section 4 rate proceeding. Representative levels of prepayments are included in the Working Capital component of rate base, but the prepayment amounts are not recovered as a part of amortization or depreciation. This treatment compensates the pipeline for the carrying costs associated with making the prepayments, but makes recovery of the principal dependent upon make-up of the prepaid gas volumes.

recognized that all of the above discussion relates to recovery of *fixed* pipeline costs. The recovery of *variable* costs via minimum commodity billsl was simply not an issue in the past. This is because interstate pipelines generally were buying all the gas they were offered (*see* discussion *infra*) and because the major variable cost—the gas supply itself—represented a far smaller proportion of the total minimum commodity bill than it does today.[17] Any potential recovery of unincurred variable costs via a minimum commodity bill was incidental to the issues traditionally surrounding fixed cost recovery.

For reasons explained below, there has been a recent shift in the role played by variable costs, a shift that necessitates a new look at the functions of minimum commodity bills.

E. Recent Changes in the Natural Gas Industry

Dramatic changes have occurred in the natural gas industry since passage of the Natural Gas Policy Act of 1978 (NGPA) [18] These changes call into question whether, regardless of the traditional reasons for minimum commodity bills, such provisions are acceptable today.

Until December 1978, the regulated wellhead price of gas in the interstate market kept the burner-tip price generally below that of alternative fuels. This made gas a desirable energy source, and a major problem facing interstate pipelines and their customers was ensuring a sufficient supply to meet demand. In part to alleviate this supply problem, Congress enacted the NGPA, which established a schedule for gradually deregulating wellhead prices and set higher ceiling prices for a number of categories of gas. This legislation had the intended effect: It increased exploration for and development of natural gas supplies. Pipelines, for reasons set forth in detail in the Commission's Notice, began to enter into long-term gas purchase contracts that reflected the new, higher ceiling prices and certain other non-price concessions designed to increase their bidding power. Among these concessions were high take-or-pay requirements. Within a few years of passage of the NGPA, the average cost of gas had risen markedly on most pipeline systems.

At the same time, however, the nation was experiencing a substantial and extended economic downturn. This development, combined with higher gas prices, led to a significant drop in industrial purchases of natural gas. It also led to strong and unanticipated conservation efforts by industries, commercial concerns and homeowners, further lowering the demand for gas. In addition, as gas prices rose, gas began to lose its market share to alternative fuels in some areas. The price of oil declined and oil supplies became increasingly available. The convergence of these factors has resulted in the current deliverability surplus of natural gas, much of which surplus is governed by contracts containing take-or-pay requirements. The surplus was further exacerbated on some systems by reduced space heating demand due to unusually mild weather and on other systems by competition from increased hydroelectric power.

This situation has left the industry in a difficult position. As one commenter put it, citizens and their representatives have observed this continuing oversupply, and at the same time have observed significant and steady increases in natural gas prices, at least until recently. This set of phenomena has led members of the public to question whether gas markets are responsive to traditional theories of supply and demand.

To the extent that gas markets are not responsive, it is due at least in part to the failure of price signals to flow from the burner tip to the wellhead. Many commenters have observed that a major obstacle to the transmittal of price signals is the existence of pipeline minimum commodity bills.

IV. Analysis of the Rule

A. The Basic Issue

Section 4 of the Natural Gas Act requires the Commission to ensure that jurisdictional pipeline rates and charges are "just and reasonable." Section 5 requires that whenever the Commission finds that any rate or charge is "unjust, unreasonable, unduly discriminatory, or preferential," it shall act to remedy that rate or charge.

This rulemaking considers whether the collection of variable costs via a minimum commodity bill represents a just and reasonable rate or charge under sections 4 and 5 of the Natural Gas Act.

B. The Effect of Minimum Commodity Bills in the Post-NGPA Era

Since passage of the NGPA, gas prices have risen to the point that purchased gas costs make up the majority of a pipeline's variable costs and hence its commodity rate. As a result, two significant new functions are now being performed by minimum commodity bills. First, minimum commodity bills have become a vehicle by which enormous purchased gas "costs" can be collected even if the pipeline never actually incurs such costs. Second, minimum commodity bills have become a major obstacle to the transmittal of clear market signals from the burner tip back to the wellhead.

1. Minimum Commodity Bills Can Result in Collection of Costs Not Incurred.

It is an initial tenet of the ratemaking process that rates should reflect cost incurrence. *Carolina Power and Light Company*, 4 FERC ¶ 61,107 at 61,232 (1978); *Indiana & Michigan Electric Co.*, 10 FERC ¶ 61,238 (1980); *Connecticut Light & Power Co.*, 14 FERC ¶ 61,139 (1981). Only costs that are necessary and reasonably incurred in providing gas service can be charged to ratepayers under the Natural Gas Act. *Midwestern Gas Transmission Co.*, 36 F.P.C. 61, 70 (1966), *aff'd Midwestern Gas Transmission Co. v. F.P.C.*, 383 F.2d 444 (7th Cir. 1968), *cert. denied*, 392 U.S. 928 (1968).

By definition, there are no variable costs incurred for volumes not purchased for resale. Accordingly, a minimum commodity bill that includes variable costs gives a pipeline the right to collect for "costs" it has not in fact paid out to provide jurisdictional natural gas service. On its face then, a minimum bill that permits such "cost" collection is unjust and unreasonable.

A great many commenters expressed this conclusion. Some provide figures setting forth the variable costs they could potentially incur in current and future periods for gas they cannot take because they have no market for it. These costs are considerable.[19] Another

[17] As the Notice in this docket reported (at p. 32 671), the average wellhead price of gas in 1955 was $.10/Mcf, or approximately 40 percent of the pipeline's delivered cost to the city gate (point of resale to distributors). By 1983, the average purchased gas cost of the Major Class A and B pipelines was $3.08/Mcf, or almost 75 percent of the average city gate price.

[18] 15 U.S.C. 3301, *et seq.*

[19] For example, Consumers Power Company states that the latest rate filing of its major supplier (Trunkline Gas Co.) indicates that Consumers will fall some 59,000,000 dekatherms below minimum bill volumes. Consumers and Trunkline have worked out a settlement on the minimum bill problem. Absent this settlement, however, Consumers would have had to pay approximately $251,000,000 in minimum bill charges for gas not taken. "That extravagant sum," notes Consumers, "would be pure profit to Trunkline's stockholders, since the variable costs actually incurred by Trunkline with respect to the volumes not taken would be zero." Consumers states that the Trunkline settlement expires after 1984, so that the minimum bill issue

Continued

commenter noted that it had recently invoked *force majeure* in an effort to suspend its supplier's minimum commodity bill because of an inability to take at the established level. A state commission pointed out that variable costs in minimum commodity bills discourage and penalize energy conservation efforts because they require distributors to pay for supplies that are no longer needed due to the conservation efforts of their customers. Why conserve gas, a commenter asked, when you must pay for it whether you take it or not. Another commenter stated that potential collection of costs not incurred "defies common sense."

Further, to the extent that minimum commodity bills compel payment for a certain amount of gas even when the customer cannot take it, they provide an artificial market that fails to convey signals through the interstate pipeline that demand is reduced. Failure to convey this signal may encourage producers and pipelines to continue contracting for gas at the same or higher prices. (This issue is discussed at length *infra.*)

No commenters really took issue with the above statements. Instead, those favoring retention of variable costs in minimum commodity bills made two other arguments. First, they argued that collection of these "costs" is necessary to cover any take-or-pay payments that might come about if a customer takes below its minimum commodity bill level. The Commission rejects this argument for reasons explained *infra* in its discussion of responsibility for take-or-pay.

Second, some commenters asserted that if the Commission's real concern is simply the elimination of potential windfall profits to pipelines, there are other ways of accomplishing this objective. They suggested that to the extent a pipeline recovers variable costs not actually incurred, it simply be required to credit those sums (presumably with interest added) back to customers through Account No. 191.[20]

In fact, the Commission has adopted such an approach in several cases where it was faced with the overcollection problem.[21] It must be noted, however, that this approach is flawed. Amounts credited to Account No. 191 flow back to the system as a whole, not to individual customers. Thus, the customer paying for the unincurred "costs" will receive only a percentage of these "costs" back again. This means that a customer is not actually relieved of the variable costs in its minimum commodity bill. It still has to come up with the cash to pay the total amount, its only comfort being that with the pipeline's next PGA filing a portion of those payments will be returned to it in the form of lower gas costs systemwide.

The Commission finds that this collection/crediting device can result in unduly discriminatory and preferential rates. Unincurred "costs" can be collected from certain customers and later, through crediting, shared with other customers.[22] Any matching of collections and credits may be purely coincidental. Indeed, those customers not making minimum commodity bill payments would receive a pure windfall.

In addition, under the pay-now/get-credit-later scheme, a customer will not know the true effect of minimum bill payments (in terms of payment versus credits) until after the fact. This does not allow for fully informed and effective decision-making by a pipeline customer at the time it schedules its gas purchases.

Further, even if the Account No. 191 mechanism were an appropriate means of preventing windfall profits, this mechanism would not relieve the Commission of all its concerns. As will be discussed *infra*, a related concern is the role minimum commodity bills play as a restraint on competition. This concern would not be alleviated by use of the proposed Account No. 191 mechanism.

In sum, based on the applicable legal standards and on the record with respect to the question of recovery of variable costs not incurred, the Commission finds that to the extent minimum commodity bills permit the recovery of such costs, they are unjust and unreasonable under the Natural Gas Act.

2. Minimum Commodity Bills Act as a Restraint on Competition.

While many commenters did address the above-discussed cost recovery issue, the bulk of the comments in support of the rule went to the restraint-on-competition issue. These comments stated that the presence of variable costs in minimum commodity bills creates serious market distortions, insulates pipelines and producers from price signals, hinders competition, and prevents pipelines and distributors from pursuing a least-cost purchasing strategy.[23] These effects occur because partial requirements customers cannot purchase lower cost gas supplies if they are required to pay for the higher-cost gas they do not take. One pipeline described the situation as being "coerced" into purchasing gas from a pipeline supplier in lieu of other, cheaper sources.

In support of these general comments, a number of commenters provided data demonstrating how their own system costs have been or could be reduced via removal of variable costs in their minimum commodity bills. The Commission is further convinced by these data that the presence of variable costs in a minimum commodity bill constitutes an unjust and unreasonable rate or charge and is contrary to the public interest. This decision is based on the following factors.

a. *Variable Costs in Minimum Commodity Bills Insulate Pipelines and Producers From Market Risk and Thus Inhibit Decreases in Price.* The comments filed in this docket make it clear that the presence of variable costs in minimum commodity bills blocks proper communication among producers, pipelines, distributors, and ultimate consumers.[24] When distributors and pipelines are required to purchase gas under a minimum commodity bill, even when less expensive sources are available, the supplier pipeline can continue to operate profitably without having to worry about keeping its gas costs at a reasonable level. Thus, minimum commodity bills result in gas prices being "propped up," as one

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has not gone away. (Trunkline's Reply Comments assert that without the minimum commodity bill obligation, its customers will be "free to ignore" the commitments the pipeline has made to meet its full contract quantities. This argument is considered *infra.)*

[20] Account No. 191 records Unrecovered Purchased Gas Costs. Credits to this account thus offset the systemwide cost of purchased gas. Pipelines reconcile their Account No. 191 balance against their actual revenues each time they make a purchased gas adjustment (PGA) filing. For most pipelines, the PGA is filed every six months. *See* 18 CFR 154.38(d)(4).

[21] *See* El Paso Natural Gas Co., 22 FERC ¶ 61,358 (March 31, 1983); Transwestern Pipeline Co., 24 FERC ¶ 61,009 (July 8, 1983).

[22] In some instances a customer might not have any of these "costs" returned at all. For example, a customer may purchase little or no gas from a pipeline during certain periods. If that customer pays for unincurred "costs" during period A, but the crediting back of these "costs" occurs during period B, the customer will receive some benefit only to the extent it is purchasing from the pipeline during period B.

[23] Many of these commenters recommended total elimination of minimum bills rather than elimination of variable costs only. This question is separately considered at Part VII *infra.*

[24] The Commission has already recognized this problem in several individual cases. *See* Tennessee Gas Pipeline Co., 21 FERC ¶ 61,004 (1982); United Gas Pipe Line Co., 21 FERC ¶ 61,283 (1982).

commenter put it, at levels higher than the market would otherwise support.[25]

Removal of the insulating minimum commodity bill, on the other hand, places much of the risk of market loss on the pipeline. This risk creates an incentive for the pipeline to go back to its producers and convey the message that its customers will not buy gas, or will buy less gas, at such a high price.

One commenter notes that removal of the insulation factor should also give pipelines more leverage in their negotiations with producers. It may be difficult to argue the need for lower prices or reduced take-or-pay when the producer knows that automatic minimum commodity bill recovery of most gas costs is provided.[26] Removal of such automatic recovery should alter the bargaining situation and result in lower prices for natural gas.

Further, in an unregulated market, sellers who are willing to accept a price that is below the prevailing price are generally able to increase their sales volumes. By the same token, buyers may be able to offer to increase their purchases if sellers will accept reduced prices. This ability to exchange price concessions for increased sales volumes is essential to the efficient functioning of a price responsive market.

But including variable costs in minimum commodity bills prevents this exchange. A pipeline cannot offer to buy more gas from a producer that lowers its prices if that pipeline's customers are under minimum commodity bill obligations elsewhere. Thus, minimum commodity bills can act to deprive producers of the opportunity to increase sales volumes in exchange for accepting a reduction in price.

The Commission therefore finds that utilization of minimum commodity bills to recover costs for gas not taken is fundamentally inconsistent with the increasingly competitive wellhead market mandated by the Congress in 1978. Congress intended that there be an opportunity for gas prices to increase or decrease—whichever the market demands. Implementation of the instant rule will further this Congressional intent by removing one obstacle that inhibits response to market demand.

b. *Variable Costs in Minimum Commodity Bills Prevent Purchasers From Pursuing A Least-Cost Purchasing Policy.* During this period of sharply-increased gas costs, pipelines and distributors are attempting to pursue a least-cost gas purchasing policy, and some states have mandated such an approach.[27] This Commission has encouraged regulated utilities to pursue least-cost strategies in Order No. 298, 48 FR 24323 (June 1, 1983) and Opinion No. 186, 24 FERC ¶61,299 (1983).

As noted above, the presence of variable costs in minimum commodity bills thwarts this policy since it forces purchasers to take higher priced gas when lower priced gas is available.[28]

c. *Variable Costs in Minimum Commodity Bills Lead to Load Loss in the Industry As A Whole.* The propped-up high price of natural gas creates an incentive for large industrial and commercial customers of distributors to switch to lower-cost alternate fuels.[29] Comments from distributors indicate that they do not have minimum commodity bills in their state-regulated rates, leaving their customers free to switch to other fuels. The resulting load losses place greater and greater fixed cost responsibility on the remaining residential and small commercial customers.

A further point was made in this regard by one commenter. When load is lost due to high price, the price that undercuts the gas is usually that of fuel oil. Increased use of fuel oil may be detrimental to the national interest since it increases dependence on foreign oil supplies.

d. *The Traditional Justifications for Minimum Commodity Bills Do Not Compel Variable Cost Recovery.* Several commenters point out that the three traditional justifications for minimum bills described *supra* (fixed cost recovery, equitable cost recovery, take-or-pay recovery[30]) are linked to the traditional rate design methodologies that have generally been applied to interstate pipelines. Those rate design methodologies ("*United*" and "*Seaboard*"[31]) respectively recover only 25 percent or 50 percent of storage and transmission related fixed costs in the demand rate. Thus minimum commodity bills have traditionally been a device for ensuring some minimum degree of *fixed* cost recovery through the commodity rate. The commenters note that this was particularly important during periods when pipelines were making large expenditures for construction of facilities needed to meet new demands, and fixed costs represented the majority of pipeline costs.[32]

Today, however, most pipelines are not in this situation. Very little overall increase in demand is occurring. Major gas supply facility expenditures once made by existing pipelines are now generally made by newly certificated pipelines utilizing special approaches such as project financing. (Project-financed pipelines are discussed separately at Part VII *infra.*) In response to the current market, pipelines and the Commission have been moving away from "*United*" and "*Seaboard*" in the direction of unloading the commodity charge by utilizing a "modified fixed-variable"[33] rate design.[34] This approach permits recovery of more fixed costs in the demand charge and diminishes much of the formerly perceived need for minimum commodity bills.

Not all pipelines, of course, currently utilize the modified fixed-variable rate design, nor does the Commission at this time find it necessarily appropriate for all pipelines. But even for those with more fixed costs at risk, the rule adopted herein does not represent a departure from the traditional use of the minimum commodity bill to ensure greater fixed cost recovery. Only *variable* costs are removed from the

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[25] One state commission put it more strongly, saying minimum bills violate the antitrust policy of the United States. *See* comments of State of Michigan and the Michigan Public Service Commission.

[26] For example, one pipeline that does *not* have a minimum bill states that for this reason it has had to maintain competitive prices, and that its prices are among the lowest of major pipelines. It adds, however, that it could have picked up other sales due to its low prices, but its customers could not buy due to their minimum bill obligations to other suppliers. *See* comments of Natural Gas Pipeline Co. of America.

[27] *See* comments of State of California and California Public Utilities Commission.

[28] For example, Philadelphia Electric Co. (PECO) and Philadelphia Gas Works (PGW) are distributors supplied by two pipelines, Texas Eastern Transmission Corp. (Tetco) and Transcontinental Gas Pipeline Corp. (Transco). PECO/PGW state that at the time they filed their comments, Transco's full commodity charge was $3.679/dth. At the same time, Tetco had available interruptible gas at a total charge of $2.9523/dth, or about 73¢/dth less. Transco and its customers negotiated a settlement under which purchased gas costs were removed from its minimum bill, resulting in a minimum commodity bill of only $0.32. Thus, PECO/PGW were in a position to pay Transco's minimum commodity bill, yet buy gas from Tetco, saving money for their customers. This example demonstrates how removal of variable costs from minimum bills can permit purchasers to pursue a least-cost policy resulting in significant savings.

[29] Many large users installed alternative fuel capability during the 1970's when gas curtailments were frequent. These users often have the ability to switch to fuel oil on only a few hours notice. *See* U.S. Energy Information Administration, The Natural Gas Market Through 1990 (Part IV of An Analysis of the Natural Gas Policy Act and Several Alternatives) (May 1983) at 31.

[30] Further detailed discussion of the three traditional justifications for minimum commodity bills is set forth at p. 32659 of the Notice.

[31] *See* n. 14, *supra* at 7.

[32] *See* Hooley, R., *Financing the Natural Gas Industry*, Columbia University Press, 1961.

[33] *See* n. 14, *supra* at 7.

[34] *See* Natural Gas Pipeline Company of America, 25 FERC ¶ 61,176 (1933), *reh'g denied*, 26 FERC ¶ 61,203 (1934). The Commission has also approved several settlements in the past year that incorporate a modified fixed-variable type of rate design. Commission approval of a settlement does not necessarily equate with adoption of its individual components, but these settlements are indicative of a trend in the industry.

minimum bill under the rule. Prudently incurred fixed costs continue to be recovered at whatever level the minimum commodity bill provides.

To the extent that the traditional justifications are also related to shifting of fixed costs among customers and to potential take-or-pay exposure, the Commission finds that these factors do not justify the use of minimum commodity bills to collect gas costs in today's market. The reasons for this conclusion are set forth *infra* under the discussion of "Effects on Full Requirements Customers."

e. *Recovery of Variable Costs in Minimum Commodity Bills Violates the Mandate of the Natural Gas Act.* The Commission has a basic mandate under the Natural Gas Act to protect consumers from excessive rates and charges. *FPC* v. *Hope Natural Gas Co.*, 320 U.S. 591, 610 (1944). To this end, the courts have recognized that economic efficiency and greater competition in the industry are appropriate goals for the Commission to pursue. *Atlantic Seaboard Corp.* v. *FPC*, 404 F.2d 1268, 1272 (D.C. Cir. 1968). *See Central Illinois Light Co.* v. *Panhandle Eastern Pipeline Co.*, 21 FERC ¶61,147 (1982); *State of Michigan* v. *Trunkline Gas Co.*, 20 FERC ¶61,100 (1982).

Indeed, it has been made clear that fostering competition is not only an appropriate goal but must take a high priority in the values which the Commission considers when it determines whether rate structures are just and reasonable. *Otter Tail Power Co.* v. *United States*, 410 U.S. 366 (1973); *Lynchburg Gas Co.* v. *FPC*, 336 F.2d 942 (D.C. Cir. 1964).

Recently speaking to the importance of competitive considerations in *City of Florence* v. *Alabama-Tennessee Gas Pipeline Co.*, 24 FERC ¶61,395 (1983), the Commission observed:

> Congress and the courts have agreed that competition has a role even in a regulated industry such as the natural gas industry. If competition exists, incentives are created for innovation by the regulated companies. This, in turn, encourages lower prices and better services. (Citation omitted.) In short, competition can, and should, complement our regulation of the natural gas industry. 24 FERC at p. 61,839.

The record in this docket establishes without question the anti-competitive effects of collecting variable costs in minimum commodity bills. Further, the record does not demonstrate that other considerations are so compelling that the Commission must overlook these anti-competitive effects. Accordingly, based on the mandate of the Natural Gas Act, the relevant legal precedent, and the record before it, the Commission finds that variable costs in minimum commodity bills represent unjust and unreasonable rates or charges.

3. Arguments In Opposition To The Rule Are Not Compelling.

If, as one commenter stated, it is "difficult to envision a provision more anticompetitive and less in the public interest" than a minimum commodity bill, why is there opposition to the proposed rule? In fact, there is strong opposition from many commenters. Their arguments are as follows:

a. *The Two-Way Street.* A number of commenters took the position that the proposed rule, because it would change the economic relationship between pipelines and customers, would amount to a "basic restructuring of the industry." They pointed out that the pipeline-distributor relationship has always been a "two-way street," with the obligation to provide the gas on one side, and the obligation to buy it on the other. The proposed rule would present more of a "one-way street" in that the pipeline would still be expected to stand ready with the supply, but some customers would be free to swing off and on the system at will.

For these reasons, it was argued, the removal of variable costs from minimum commodity bills would fundamentally alter one of the premises upon which planning in the natural gas industry is structured. The Commission should not take such an action, another commenter stated, without giving pipelines some other vehicle by which they can reasonably plan their purchases of natural gas.

The two-way street argument was discounted by other commenters, one of whom termed it a "strawman." These commenters responded that the *quid pro quo* for a pipeline's obligation to render service is the demand charge. Customers pay a demand charge regardless of whether or not they buy gas. Under modified fixed-variable rate designs, the demand charge recovers *all* storage and transmission fixed costs except return on equity and related income taxes.[35] Thus the pipeline, in exchange for standing by to render service, is compensated for nearly all of its fixed costs. Whatever fixed costs are not guaranteed represent the risk of doing business.

It was observed by other commenters that the two-way-street, mutuality-of-obligation theory was more illusory than real. These commenters pointed out that minimum commodity bills are inequitable in light of a lack of concomitant obligation on the part of the pipeline seller. This, they argued, is because pipeline curtailment plans generally permit curtailment without penalty when gas supply is insufficient. Given this lack of obligation to serve when gas is scarce, they asked why customers should be obligated to buy when gas is plentiful.

The commenters further pointed out that the need for gas supply planning should not come at the expense of competition. They conceded that it is undoubtedly easier to plan a gas purchasing strategy when one is assured of a given level of sales. On the other hand, they noted that it does not seem unthinkable that a pipeline plan its purchases by taking into account its competitive position vis-a-vis other pipelines and alternative fuels. The Commission agrees on this point. It also recognizes that the lack of a minimum commodity bill may indeed require more flexibility than some pipelines have become accustomed to. The Commission believes this may lead to new and creative approaches to gas purchase contracts.

Another consideration raised with respect to the two-way street theory is responsibility for any take-or-pay costs the pipeline could incur due to inability to estimate how much gas it will need to purchase. All issues related to the take-or-pay question are discussed separately at Part V *infra*.

Finally, to the extent that the rule may shift certain risks, alter approaches to planning, and allow for more competition in the industry, the Commission agrees with the commenters who observed that the rule will "restructure" traditional ways of conducting pipeline business. Ultimately, however, these commenters must recognize that it is not this rule that is "restructuring" the natural gas industry. The restructuring that has been, is, and will be taking place—with or without this rule—is the unavoidable outgrowth of the wellhead deregulation process that the Congress began in 1978. The Commission is simply adapting its regulations to reflect the realities of that process.

The Commission recognizes that change is difficult, particularly in an institutionalized structure such as the natural gas industry, but regulatory policy cannot remain static in the face of both Congressional action and significant changes in the nation's economy. The changes that have occurred since the NGPA cannot be

[35] These latter items represent the pipeline's profit; it is generally accepted that they should be at risk in order to give the pipeline some incentive to keep its gas marketable. If *all* fixed costs were in the demand component, the pipeline could earn a profit without selling a single Mcf of gas.

ignored or (absent Congressional action) undone. Rather, the Commission must move forward and deal with matters as they exist today. This rule represents part of that movement.[36]

b. *Effects on Full Requirements Customers.* Many commenters raised another major issue in opposition to the rule. They noted that natural gas pipelines rely on the estimates of *all* of their customers as the basis for contracting to purchase natural gas. If a partial requirements customer estimates a particular level of need, that need will be taken into account when the pipeline enters into gas purchase contracts. Yet, if that customer is not obligated (via a minimum commodity bill) to purchase gas every month, it may swing to another supplier. Its departure from the system (even though it continues to pay a demand charge and to retain its right to return to the system [37] could have a detrimental effect on the remaining customers in several ways.

First, if the pipeline incurs take-or-pay payments as a result of the downturn in its sales, the pipeline may seek to carry these costs in its rate base. Under traditional ratemaking treatment, the costs would be considered production-related and thus assigned to the pipeline's commodity charge.[38] In this manner, the remaining customers could end up assuming a larger cost burden in the form of increased fixed costs in their commodity charge. Further, the remaining customers might have to continue carrying a share of any take-or-pay related costs that resulted from the pipeline's maintaining enough gas supply to meet its standby obligation to the swing customer. Finally, if the pipeline acted to decrease its purchased gas commitments to producers, take-or-pay might be reduced, but another problem could arise. Should there be a curtailment situation, during which the partial requirements customer came back to the system and demanded its full entitlement again, available gas would be allocated among *all* customers[39] and there might not be enough to serve the needs of the full requirements customers who stayed on the system all along. Thus, argue many pipelines and full requirements customers, there could result significant harm without a minimum commodity bill. In sum, the commenters who oppose the rule fear that if the pipeline buys too much gas, full requirements customers may suffer increased costs; if it buys too little gas, full requirements customers may face curtailments.

These arguments make some valid points. Initially, there may be some cost shifting and take-or-pay cost increases on systems that lose partial requirements customers to cheaper suppliers. At the same time, however, these swing customers, once relieved of the variable cost portion of their minimum bill, may purchase gas from a lower-priced pipeline. As the latter pipeline's sales increase, it can be expected that there will be benefits to *its* full requirements customers in terms of lower take-or-pay payments and higher volumes over which to spread fixed costs. Thus, viewed from a national perspective, the rule may create offsetting benefits and detriments to captive customers, depending on whether they are served by a high-cost or a low-cost pipeline.[40] This national perspective, however, is small comfort to customers of a high-cost pipeline. To these customers, the Commission would observe the following.

First, if a high-cost pipeline loses load, the pipeline itself will be the first to feel the impact. Any increased costs it experiences are not automatically passed on to customers. Rather, the pipeline must prepare and file a new rate case with the Commission, which has 30 days in which to act on the filing. The Commission suspends most major rate cases for five months, the maximum period permitted under the Natural Gas Act. This means that for a period approximating six months, the pipeline itself carries any increased costs resulting from load loss. Thus pipelines are not indifferent to the loss of a swing customer and should be motivated to prevent such losses or, if they occur, to renegotiate take-or-pay liability.

Next, in its rate filing, the pipeline must demonstrate that the filed rates are just and reasonable under the Natural Gas Act. At this point captive customers will have an opportunity to argue that the new take-or-pay costs should not be recovered by the pipeline because they are the result of imprudent purchasing practices that led to high gas costs on the pipeline's system. These high gas costs, in turn, led the partial requirements customer to swing to another source of supply. The Commission expects that a high-cost pipeline, aware that this argument will be made, would again be motivated to renegotiate both prices and take-or-pay levels with its producer suppliers in order to regain the lost load. Thus, after a period of adjustment and renegotiation, the price of gas should go down, the load should be regained, and the level of take-or-pay costs on the system should decline. Any decline in price of gas would be reflected in the pipeline's next PGA filing,[41] while other changes would be reflected in the next rate case.

Second, as some comments note, to the extent a pipeline loses sales as a result of its inability to meet competition, its allowed return on equity may have to be adjusted, a possibility the Commission has already acknowledged. *Tennessee Gas Pipeline Co.*, 21 FERC ¶ 61,004 (1982). In this situation, fixed costs to all customers would be reduced in the rate case.

Third, it is noted that if a pipeline files new rates to reflect increased take-or-pay costs, it cannot be assumed that these costs will automatically be allocated among its customers on the same basis that other costs are allocated. The question of appropriate allocation of take-or-pay costs is discussed in detail *infra*.

Finally, the Commission recognizes that while pipelines have a public service duty, they are also in business to make money. If their cost of service has been properly established, the only way they should be able to recover their allowed return on equity is by selling all the volumes upon which their rates are designed. (A minimum bill that recovers fixed costs may guarantee this recovery up to a certain level.) The only way they should be able to exceed their allowed return is by selling more gas than the volume upon which their rates are designed. Thus, pipelines have an incentive—indeed have a duty to their shareholders—to maximize sales. Given

[36] The Commission has taken a number of other actions that reflect the changing face of the industry. *See, e.g.*, Take-or-Pay Statement of Policy (n.15, *infra* at 9); the Off-System Sales Statement of Policy (23 FERC ¶61,140 (1983); the Blanket Certificate Rules (FERC Stats. and Regs. ¶30,476; 30,477 (1983)); the Special Marketing Program orders (*e.g.*, Transcontinental Gas Pipe Line Corp., *et al.*, 25 FERC ¶61,219 (1983) and 26 FERC ¶61,029 (1984)); and the recent Notice of Inquiry on the Impact of Special Marketing Programs (FERC Stats. and Regs. ¶35,513 (1984)).

[37] Indeed, the pipeline could not abandon a certificated service to the customer absent Commission approval.

[38] *See* n. 14, *supra* at 7 and n. 16, *supra* at 10.

[39] Curtailment priorities established in the NGPA require that gas be distributed according to its end-use, with residential use coming first, and so forth.

[40] The Commission notes that a pipeline's "lower cost" status may not necessarily be the result of management efficiency but may instead result from gas supplies that were "locked in" at a low price by the NGPA. This rule should give higher cost pipelines an opportunity to compete with lower cost pipelines by providing them with leverage for renegotiation with producers selling high-cost supplies.

[41] In some cases, the Commission has permitted out-of-cycle PGA filings to enable pipelines to reflect decreased prices on an expedited basis.

this situation, pipelines will be unable simply to ignore the loss of a swing customer. Rather, the Commission expects pipelines to make vigorous efforts to compete in the market, which efforts should result in proper transmittal of price signals and lower prices for natural gas.

Accordingly, while this rule may result in short-term shifts in markets that could be detrimental to some customers, in the long term there should be benefits to all customers of all pipelines as the industry moves toward a competitive balance.

The final matter with respect to the rule's effect on captive customers is the above-mentioned curtailment issue. Some commenters raised the spectre that if lower-priced gas is available, a swing customer will leave the system absent a minimum commodity bill, and the pipeline will then either have to incur take-or-pay costs or adjust its gas supply requirements downward. If it chooses the latter course, its producer-suppliers will reduce their gas exploration and development efforts accordingly. Then, if a partial requirements customer returns to the system and demands its full contract entitlement, the pipeline will not have sufficient deliverability available to meet demand and will have to curtail. Supplies will be allocated among all customers and those who stayed on the system all along will be unable to get the gas they need.

While this scenario may appear plausible at first glance, it bears further scrutiny. If a customer swings to a lower-cost pipeline as a result of this rule, that lower-cost pipeline will, using the same logic, adjust its gas supply requirements upward. This, in turn, will lead to increased exploration and development by *its* producers. In other words, while swinging potentially could lead to reduced activities by some producers (those selling expensive gas), it could also lead to increased activities by other producers (those selling cheaper gas). Thus, it seems unlikely that this rule could lead to a nationwide shortage of gas. If anything, the opposite effect is likely, as noted earlier. To the extent, however, that swinging could create shortages on a particular system under particular circumstances, emergency procedures are available for sales and transportation of gas from one pipeline system to another to prevent curtailment.[42] The Commission believes that the circumstances described by the commenters are unlikely, however, in that this rule should help gas markets straighten out, thereby easing planning strategies.

In sum, the Commission has carefully considered the above-discussed concerns about the rule's effect on captive customers. It does not take these concerns lightly, and it acknowledges that on some systems that rule could cause temporary difficulties for these customers for the reasons discussed above. The Commission must, however, balance these potential difficulties—which it expects to be isolated and of short duration—against the benefits it expects the rule to produce: Prohibition of collection of unincurred gas "costs"; removal of market constraints; greater competition; more accurate price signals to the wellhead; and increased quantities of lower-priced gas supplies, all leading to reasonable overall prices that can compete in the market. Given these public policy considerations, the Commission's finding that variable costs in minimum commodity bills are unjust and unreasonable is not altered by the comments in opposition to the rule.[43]

C. Scope of the Rule

In its Notice, the Commission proposed a rule that would prohibit minimum commodity bills that recover "purchase[d] gas costs, fuel costs, or other variable costs * * * which are not actually incurred in rendering service." Notice at p. 32,674.

A number of commenters told the Commission that it had not been explicit enough as to what costs were to be removed from the minimum bill. They pointed out that most minimum commodity bill tariff provisions simply specify payment of a percentage of monthly contract volumes multiplied by the commodity charge. Fixed and variable costs are generally not broken out, and there are no other figures in the tariff from which such a breakout can be calculated. Further, they noted that historically there has been uncertainty about whether certain compression and transmission costs are fixed or variable. Other commenters asked about the commodity portion of Account No. 858 (Transmission and Compression of Gas by Others) and the systemwide cost of service for total gas supply function expenses.

It was suggested that the rule would be more straightforward and easily administered if all commodity bills were required to be similarly structured. One commenter proposed that this be accomplished by simply requiring that purchased gas costs, which make up the vast portion of variable costs and are easily identified, be separately stated in each pipeline's tariff, and that recovery of such costs not be permitted for gas not taken.

The Commission has found the collection of variable costs via minimum commodity bills to be an unjust and unreasonable rate or charge. This finding must be implemented, however, in a manner that is clear and administratively sensible. As one commenter noted, it is important that pipeline customers be able to look at a tariff and know exactly what costs will or will not be incurred under the minimum bill. Armed with this knowledge, they will be able to evaluate the cost impact of purchasing from an alternate supplier.

The Commission recognizes that identification of variable costs other than purchased gas costs in the commodity charge may be difficult between rate proceedings. On the other hand, such identification can be performed by the parties and established routinely during the course of a rate case. Accordingly, the Commission is adopting the suggestion that the rule require purchased gas costs to be stated separately in all pipeline sales tariffs, and that recovery of purchased gas costs for gas not taken by the buyer be immediately prohibited on the effective date of the rule itself. The Commission defines "purchased gas costs" to include compressor fuel gas and line loss or shrinkage gas for purposes of the instant rule.

As for any remaining variable costs, the rule provides that they be isolated from fixed costs and eliminated from any minimum commodity charge in any pipeline rate case filed with the Commission after the effective date of the rule. Any differences of opinion as to whether the pipeline has properly performed this variable cost elimination can then be resolved in the course of the rate case.

[42] *See* 18 CFR Part 157, Subpart C and § 157.210; Part 284. Further, the Commission has a number of regular transportation programs under which gas may be moved from system to system.

[43] In balancing the potential effects of the rule, the Commission also takes official notice of a recent report by the American Gas Association which found that over 80 percent of gas pipeline sales for resale are to distributors with other sources of supply, or to other pipelines. AGA Energy Analysis 1984–2, "Competition in the Natural Gas Industry" (February 14, 1984). While this analysis may overstate the extent of competition (for example, the AGA Analysis does not discuss whether distributors get the bulk of their supply from a single pipeline and only a small amount from alternate sources), it is nevertheless an important indication that a great deal of pipeline load is susceptible to competition. This supports the Commission's finding that the rule will make it possible for potential competition to become reality. Such an event should eventually benefit even the captive customers of high cost pipelines.

In this manner, the unjust and unreasonable effects of minimum commodity bills that are identified in this rule will largely be eliminated immediately by the removal of purchased gas costs, while removal of any other variable costs will be accomplished over time in a reasonable and administratively efficient way. The Commission may eventually find it appropriate to address the handling of variable costs other than purchased gas costs generically after further study.

V. Recovery of Take-or-Pay Costs

Noted at several points in the foregoing discussion is the question of recovery of take-or-pay costs. Many commenters noted that pipeline contracts with producers typically contain take-or-pay provisions that require the pipeline to pay for a certain volume of gas even if the gas is not taken. Therefore, these commenters asserted, minimum commodity bills should be allowed to recover gas costs in order to compensate for these take-or-pay costs, which are contractually required to be paid whether or not gas is taken. Put another way, these commenters would have the Commission characterize take-or-pay prepayments as "variable" costs that are "actually incurred" so as to remove them from the ambit of the rule as proposed.[44]

Opposing comments have convinced the Commission, however, that there is no clear nexus between a pipeline's annual take-or-pay obligations and its minimum commodity bills to its customers.[45] At the same time, there are compelling reasons for separating take-or-pay recovery and minimum bills.

First, commenters note that a pipeline may not necessarily incur any additional take-or-pay payments when a customer cuts back its takes below minimum bill levels. Clearly, in cases where no such payments are incurred, no gas costs should be recovered via the minimum commodity bill.

But, even in those cases where a customer's cutbacks below minimum bill levels do cause additional take-or-pay payments to be made, the commenters have not shown how the minimum commodity bill revenues collected from that customer would be used to compensate for the resulting associated carrying costs. Thus, it is unclear how remaining customers would be protected from increased rates. The Commission's experience with section 4 rate cases has been that pipelines seek to increase their rates to recover take-or-pay carrying costs independently of any consideration of minimum commodity bill revenue collections. Thus, existing minimum commodity bill revenue collections do not appear to accomplish the purpose that they are asserted to perform, *i.e.*, to compensate for take-or-pay. Rather, existing minimum commodity bills seem designed to prevent take-or-pay prepayments from being incurred in the first instance, by discouraging customer cutbacks. This effect is, as noted earlier, anti-competitive, unjust, and unreasonable.

Further, it should be noted that prepaid gas can generally be made up. If the prepaid gas is in fact made up later, then the customers who actually take the gas should pay for it at that time. The Commission's decisions on pipeline rates have consistently followed this approach. The customer that cut back its takes should not necessarily pay for the prepaid gas.[46]

To summarize, customer cutbacks below minimum bill levels may not cause *any* take-or-pay costs. Second, even if take-or-pay payments do result from such cutbacks, existing minimum commodity bills generally do not serve to compensate for the cost of the take-or-pay gas, and thus do not protect a pipeline's remaining customers from any resulting rate increases. Third, it is not clear that minimum commodity bills should force customers that cut back below minimum levels to compensate for the cost of any prepaid gas, since other customers may take that gas later. For these reasons, the Commission concludes that take-or-pay considerations do not justify including gas costs in a minimum commodity bill.

In addition, several commenters point out discrimination problems associated with take-or-pay recovery. They note that, generally, not all of a pipeline's customers are subject to a minimum commodity bill. But, all customers are affected by conservation and economic downturn, which may cause load losses throughout the pipeline system. With respect to these overall economic effects, full requirements customers not subject to a minimum commodity bill may be as much responsible for take-or-pay payments as swing customers who are subject to a minimum commodity bill. Under these conditions, all customers should absorb a fair share of the pipeline's take-or-pay liability. But if the pipeline is permitted to "cover" its take-or-pay costs via minimum bill charges, the customers subject to a minimum commodity bill will bear a disproportionate burden of the pipeline's take-or-pay obligations. Such a result is inequitable. When the system as a whole cannot keep load factors high, swing customers should not be required to subsidize captive customers take-or-pay costs.

While the Commission has found no justification for including gas costs in the minimum bill on the basis of take-or-pay liability, the record in this docket does indicate that take-or-pay carrying costs may require special consideration with respect to their allocation among jurisdictional customers when rates are designed. Commenters note that if a pipeline incurs take-or-pay payments as a result of a particular customer's cutbacks, that pipeline may subsequently be allowed to recover the carrying costs on those prepayments in its rates.[47] (Those carrying costs in any one year would be only a fraction of the actual cost of the prepaid gas.) Opponents of the rule argue that no customer should be forced to pay part of those carrying costs to the extent that they were caused by another customer's cutbacks.

The Commission is somewhat sympathetic to this line of reasoning. There may be some justification for requiring prepayment carrying costs to be paid by certain customers if it can be demonstrated that their cutbacks caused the prepayments. No conclusion is reached on this point today; the matter requires further investigation. Accordingly, the Commission encourages its Staff to consider in individual rate cases whether and under what circumstances take-or-pay carrying costs should be allocated

[44] Several commenters suggested methodologies under which they believe minimum bills and take-or-pay obligations could be linked.

[45] An exception to this finding may exist in the case of some Cost-of-Service pipelines, which are dealt with separately *infra* at Part VII.

[46] It is the Commission's understanding that most prepaid gas has, in fact, ultimately been made up. Indeed, no pipeline to our knowledge has yet permanently lost the right to take any prepaid gas because the make-up period expired. It is at least theoretically possible, however, that some pipelines may ultimately fail to take some prepaid gas before the make-up period expires. Should this occur, the question will arise as to who should pay for the unrecovered gas. That question is speculative and need not be addressed here. Meanwhile, it would be premature to require a customer taking below minimum levels in one year to pay for the gas costs on any resulting take-or-pay in that year, since the Commission could not know for several years whether that prepaid gas would ultimately be made up.

[47] The Commission's regulations provide that a cost of service allowance for take-or-pay prepayments shall be based on the average of 13 monthly balances for a 13-month period ending no later than the end of the test period upon which the rate filing is based. 18 CFR 154.63(f). Through this methodology a take-or-pay level can be placed into rate base with the assurance that it is reasonably related to what the pipeline will actually experience. Tennessee Gas Pipeline Co., 26 FERC ¶61,102 (1984); Northwest Central Pipeline Corporation, 26 FERC ¶ 61,247 (1984).

separately from other costs. The Staff's recommendations to the Commission in each case should consider all of the above-discussed factors, as well as any other factors Staff or the parties believe to be relevant. [48]

In sum, the Commission finds that the record supports a finding that incurrence of take-or-pay is not necessarily related to whether or not a customer takes gas at minimum commodity bill levels.[49] Accordingly, the Commission concludes that take-or-pay considerations do not justify inclusion of gas costs in minimum commodity bills. Instead, take-or-pay matters will continue to be handled in individual pipeline rate cases in accord with the foregoing discussion.[50]

VI. Legal Issues

A. Rulemaking v. Adjudication

A number of commenters oppose the rule on a legal basis. They assert that the Commission does not have the requisite legal authority to promulgate a rule that changes existing tariffs. They state that section 5(a) of the Natural Gas Act permits such actions only "after a hearing." This statutory language, they argue, bars the Commission from altering existing minimum bills without an adjudicatory proceeding, pipeline by pipeline.

The Commission disagrees. The public interest mandates generic action on this subject, and legal precedent clearly establishes the Commission's authority to so act under section 5. During the past eighteen months the problems associated with minimum bills have become particularly acute. Numerous complaints have been filed[51] and minimum bills have been the subject of controversy in a great many pipeline rate cases before this Commission. Some of these proceedings have gone to hearing and await decision; some have recently been set for hearing; some are in the settlement discussion stage; some have been settled. Some settlements are about to expire ort will expire in the near future.

While the Commission could continue to consider the issue on a case-by-case basis, it has determined that the problem is so pervasive and so significant as to make action on a generic basis far more appropriate, not to mention expedient.

Legal precedent clearly permits such an approach. The Supreme Court has expressly recognized that written comments may satisfy the statutory requirements of a hearing. *United States* v. *Florida Each Coast Ry. Co.*, 410 U.S. 224 (1973). Further, circuit courts have confirmed that this Commission may employ a rulemaking as an informal hearing under the Natural Gas Act. *Phillips Petroleum Co.* v. *FPC*, 475 F.2d 842 (10th Cir. 1973), *cert. denied*, 414 U.S. 1146 (1974); *Tenneco Oil Co.* v. *FERC*, 571 F.2d 834 (5th Cir. 1978), *cert. dismissed*, 439 U.S. 801.

Indeed, section 5 has never been construed to require a formal evidentiary hearing in all cases, not even when some parties disagree with a proposed settlement. *Placid Oil Co.* v. *F.P.C.*, 483 F.2d 880 (5th Cir. 1973), *aff'd*, 417 U.S. 283 *Amoco Production Co.* v. *F.P.C.*, 465 F.2d 1350 (10th Cir. 1972). *See also Pennsylvania Gas & Water Co.* v. *F.P.C.*, 463 F.2d 1242 (D.C. Cir. 1972); *Mich. Consolidated Gas Co.* v. *F.P.C.*, 283 F.2d 204 (D.C. Cir. 1960). Nor does the Commission violate the Natural Gas Act by not conducting an evidentiary hearing when it has solicited data and comments, provided an opportunity for reply comments, issued its opinion and entertained rehearing petitions. *Tenneco Oil Co.* v. *F.E.R.C.*, 571 F.2d at 841. Thus, the Commission has substantial flexibility under section 5 to act without evidentiary hearing, particularly in ruling on a matter that involves policy as broad as that of the instant rule.

Finally, any question as to the Commission's ability to alter rates by rulemaking was certainly laid to rest by the enactment in 1977 of the Department of Energy Organization Act, 42 U.S.C. 7102–7332. Section 403(c) of that Act specifically provides that the Commission may act by rulemaking on rate matters:

> Any function * * * which relates to the establishment of rates and charges under the * * * Natural Gas Act, may be conducted by rulemaking procedures.

With respect to the conduct of any such rulemaking procedures, a rulemaking is considered procedurally adequate as long as it gives the parties fair notice of what the Commission proposes to do and an opportunity to make written submissions with or without opportunity for oral presentation. 5 U.S.C. 553; *American Public Gas Ass'n* v. *F.P.C.*, 498 F.2d 718, 722–723 (D.C. Cir. 1974). The Commission's Notice also meets this standard and its further provision for reply comments enabled parties to respond to the initial comments submitted.

Discretion in the selection of procedures is especially important to the Commission's functions under the Natural Gas Act, which demand flexibility. As the Supreme Court has stated:

> The breadth and complexity of the Commission's responsibilities demand that it be given every reasonable opportunity to formulate methods of regulation appropriate for the solution of its intensely practical difficulties.[52]

The Commission believes that the administrative procedure chosen to deal with the minimum commodity bill issue is entirely appropriate to the generic nature of the problem. [53]

B. Effect on Existing Settlements

Some commenters also argued that whatever rule is promulgated should not

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[48] The Staff should also consider whether take-or-pay carrying costs might be more appropriately handled as a sub-account of the pipeline's rate base that earns a lower level of return than the rest of the rate base. In addition, Staff should consider whether the pipeline's operational situation should bear on the handling of take-or-pay prepayments, *i.e.*, should upstream pipelines (those that buy most of their supply directly from producers) be treated differently from downstream pipelines (those that purchase most of their supply from other pipelines). Staff should also study whether carrying costs should be based on interest costs less taxes.

[49] This finding is augmented by the Commission's general understanding that many pipelines are not making take-or-pay payments in any case. *See, e.g.*, Tennessee Gas Pipeline Co., Docket No. RP83–109, "Complaint, Request for Evidentiary Hearing and for Expedited Consideration, and Petition for Declaratory Orders."

[50] Some pipelines are currently operating under settlements that link minimum bill relief and take-or-pay recovery. This rule does not affect any such take-or-pay treatment for the terms of those settlements.

[51] Among these are Columbia Gas v. Kentucky-West Virginia, RP83–12; Columbia Gas v. Panhandle Eastern, RP83–5; Columbia Gas v. Tennessee Gas, RP83–3; Tennessee Gas v. Columbia Gas, RP83–19; Inland Gas v. Tennessee Gas, RP83–10; Central Illinois v. Panhandle Eastern, RP82–105; State of Michigan v. Trunkline Gas, RP81–103; Northwest Central v. Arkansas-Louisiana Gas, RP83–85; Michigan Consolidated v. Panhandle Eastern, RP83–84. There are a number of other dockets.

[52] Permian Basin Area Rate Cases, 390 U.S. 747, 790 (1968).

[53] At the same time it issues this rule, the Commission is also issuing an order in Colorado Interstate Gas Co., Docket No. RP82–54–000. That order is the Commission's decision on a fully adjudicated minimum bill proceeding conducted before an Administrative Law Judge. In that case, the Judge found that recovery of variable costs in CIG's minimum bill to Natural Gas Pipeline Co. was unjust and unreasonable and ordered its elimination. The Commission's decision affirms the Judge's finding. While the Judge considered the particular facts presented by CIG, Natural, Staff and others, the essential issue was the same as the essential issue considered in the instant rule. In another adjudicated minimum bill case, United Gas Pipe Line Co., 23 FERC ¶ 63,125 (1983), United's minimum bill to its pipeline customers was found unjust and unreasonable by the presiding judge. (The Commission did not reach the merits of that case because it was settled following the Initial Decision (25 FERC ¶ 61,088 (1983)). The Commission believes that if it were to proceed case-by-case to consider every minimum bill in every existing pipeline tariff, the issues would essentially boil down to the same ones considered in this rule, and the results could be expected to be the same as the result reached in this rule.

be applicable to existing settlement agreements. They stated that the minimum commodity bill provisions of a particular settlement may have been a trade-off for some other concession, and that it would therefore be unfair to change the minimum commodity bill alone. Others believe the Commission is legally bound by the terms of a settlement once it has been approved.

The Commission agrees with these commenters that approved settlements are of a binding nature. *Texas Gas Transmission Corp.* v. *F.P.C.*, 441 F.2d 1392, 1395 (6th Cir. 1971). This binding nature, however, is not so inviolate that a settlement must remain in force when the Commission later finds, pursuant to section 5 of the Natural Gas Act, that the settlement reflects a provision found to be unjust and unreasonable. The Commission recently spoke on this specific point in *Mid-Louisiana Gas Co.*, 21 FERC ¶ 61,072 at p. 61251:

> In addition to binding the parties to a litigated proceeding, a settlement, once approved, also binds the Commission. In accepting a settlement, the Commission makes a finding that the settlement is compatible with the public interest and it is therefore precluded from reversing this finding *absent an order after an investigation under Section 5 of the NGA.* (Emphasis added).

The record and finding in the instant rulemaking docket constitute a section 5 proceeding that comports with requirements of the Natural Gas Act, the Department of Energy Organization Act, the Administrative Procedure Act, and judicial precedent. As such, the Commission's section 5 findings in this docket apply to all tariffs currently on file or filed in the future. Whether these tariffs were the product of an uncontested filing, an adjudicated case, or a settlement agreement is irrelevant for purposes of this rule.

C. Effect of Rule on Current Cases

As noted above, there are a number of ongoing cases at the Commission which involve minimum commodity bills. In some of these cases the minimum commodity bill is the only issue; in others it is joined by additional matters.

All of these cases will obviously be affected by the instant rule, which will remove purchased gas costs from minimum commodity bills, and thus alter the participants' starting point. This does not mean, however, that any of these cases will necessarily be terminated. Major issues in many cases, for example, are the types of *fixed* costs in the pipeline's minimum commodity bill and the volumes to which the minimum commodity bill applies. These are matters that the Commission does not address on a generic basis in the instant rule. *See* discussion *infra*. Accordingly, the Commission expects ongoing cases to continue and leaves to the respective Administrative Law Judges the ordinary responsibility for managing each case. The participants are, of course, encouraged to enter into settlements whenever possible.

VII. Other Issues

A. The Need for Pipeline-by-Pipeline Proceedings

Some commenters state that their particular situations differ from those of the industry as a whole.[54] For this reason, if a rule is promulgated, they seek separate proceedings on whether their own minimum commodity bills should be altered.

The Commission notes that these commenters do not necessarily reject the notion that minimum bills are a serious problem in the natural gas industry. They would merely have the rule not apply to them and have the Commission deal with their particular situations separately.

In response to these commenters, the Commission notes that once a generic regulation takes effect, any person is free to file a petition for waiver of that regulation under 18 CFR 385.207. The procedures for filing such a petition are set forth at 18 CFR 385.203. The Commission cautions, however, that it will not be generally inclined to grant exceptions to the rule in light of the strong public interest considerations that it embodies.

B. Cost-of-Service Tariffs

A number of commenters asked the Commission to make it clear that the instant rule is limited to stated-rate tariffs and does not apply to so-called "cost-of-service" tariffs.

Under a cost-of-service tariff, the pipeline is permitted recovery of its actually incurred costs, essentially at the same time the costs are incurred. Tariffs of this nature have occasionally been permitted by the Commission in order to make reasonably-priced financing more feasible for projects of an unusual nature.[55] Cost-of-service tariffs have also been permitted where the pipeline provides only one type of service (*e.g.*, transportation) and where only one customer (such as an affiliated company) or a limited number of customers are provided service.

Cost-of-service tariffs do not generally have a commodity charge and a demand charge. Rather, customers are required to pay their allocated share, according to a prescribed formula, of the fixed and variable costs the pipeline incurs every month. Accordingly, the commenters allege, there is no possibility of collection of variable costs not incurred. For this reason they believe cost-of-service tariffs should not fall within the scope of the instant rule.

The Commission disagrees. There is nothing in this record to indicate that cost-of-service tariffs do not necessarily contain the same anti-competitive restrictions as stated-rate tariffs. Rather, the record demonstrates to the contrary.[56] The Commission has found *supra* that the anti-competitive aspects of minimum commodity charges for variable costs make such charges unjust and unreasonable. Accordingly, it would be inconsistent with that finding and with the purposes of this rule to carve out an exception for cost-of-service tariffs.

The rule as promulgated herein makes inoperative "any pipeline * * * tariff governing the sale of natural gas * * * to the extent it provides for recovery of purchased gas costs for gas not taken by the buyer." This means that to the extent the customer of a cost-of-service pipeline purchases below the minimum level required in the tariff,[57] it may not be charged for the gas it does not take.

Accordingly, cost-of-service pipelines will be placed in the same position as fixed-rate pipelines with respect to recovery of variable costs. They will be able to charge their customers for only the gas those customers actually wish to purchase. If cost-of-service pipelines incur take-or-pay obligations with their producers or supply sources as a result of this rule, they may flow through the carrying charges on those obligations in the manner currently provided in their tariffs,[58] or they may seek changes in

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[54] *See*, for example, comments of MIGC, Inc. (casinghead gas wells).

[55] Some cost-of-service pipelines have been certificated on a "project financing" basis. These pipelines are discussed separately *infra*.

[56] *See* comments of El Paso Natural Gas Company.

[57] The minimum level provision in a cost-of-service tariff may be labeled a "take-or-pay" or "minimum take" requirement rather than a "minimum commodity bill." The label is irrelevant for purposes of this rule. *See* n.4, supra at 2.

[58] To this extent, cost-of-service pipelines do maintain an advantage over stated-rate pipelines in that the former receive automatic flowthrough or take-or-pay carrying charges, while the latter must make a section 4 filing to reflect any changes in take-or-pay costs. This advantage, however, is necessitated by the nature of cost-of-service tariffs, which are intended to provide automatic recovery of fixed costs such as carrying charges on debt.

their rate treatment by making a section 4 filing with the Commission.

The commission stresses that this result does not alter any take-or-pay obligations a cost-of-service pipeline may have with its supply sources. Further, it leaves unchanged the recovery of fixed costs such as debt service via a cost-of-service tariff.

C. Transportation Tariffs

The Commission's Notice invited comments as to whether minimum bills in transportation tariffs as well as sales tariffs should be precluded from recovering variable costs. A number of commenters responded to this investigation, and the Commission is pleased to have these comments. For the present time, the Commission has decided not to address this issue. The matter may be taken up at a later time. Accordingly, the terms of the instant rule do not apply to transportation tariffs.[59]

D. Total Elimination of Minimum Commodity Bills

The Notice in this docket stated that the Commission would also explore the extent to which pipelines should be assured recovery of their fixed costs through minimum commodity bill provisions. In response to this statement, a significant number of commenters urged the Commission to eliminate not only variable costs but also fixed costs from minimum commodity bills. In other words, these commenters suggested that minimum commodity bills be totally eliminated.

The Commission has considered the arguments made on both sides of this issue and does not rule out the possibility of such a rule in the future. For the present, however, the Commission believes it would be best to take only the step proposed in the Notice. Accordingly, the Commission intends to assess the impact of removal of variable costs from minimum commodity bills before it takes any further generic steps on this subject. Parties and Staff are, of course, free to make such arguments in individual cases.

E. Project-Financed Pipelines

The Notice requested comment on whether the proposed rule should be extended to include pipelines certificated under "project financing." (Notice at p. 32673) "Project financing" is a financing technique under which the lender relies on an assured stream of income from the project as collateral for the loan.[60] Most project-financed pipelines operate under a cost-of-service tariff.

Some commenters expressed the opinion that the rule should not apply to project-financed pipelines, because changes in tariffs associated with these types of pipelines could have a negative impact on lenders' perceptions of regulatory risk in the pipeline industry.

For the reasons discussed *supra* regarding cost-of-service pipelines, the Commission finds that project-financed pipelines should not be exempted from the instant rule. In making this finding the Commission notes its understanding that under existing tariffs all debt service costs, operating and maintenance costs, and taxes other than income taxes will be collected by project-financed pipelines regardless of their throughput of natural gas. Accordingly, the Commission does not believe that the financial basis upon which these pipelines were certificated will be altered. Under these circumstances, it is in the public interest to place project-financed pipelines on the same footing as all other pipelines with respect to collection of variable costs via minimum bill requirements.

F. Make-Up Provisions.

The Commission also invited comment on the role of make-up provisions in minimum commodity bills. Notice at p. 32,672. Make-up provisions would allow customers to receive later delivery of gas paid for but not taken.

Nearly all of those commenting on this issue felt that while make-up provisions in minimum commodity bills would be preferable to no relief at all, a rule simply allowing for make-up would not resolve either of the concerns identified in the Notice. Customers might still have to pay for gas not taken and freedom to seek cheaper supplies would continue to be restricted. As one commenter put it, a make-up proviso would "merely lessen somewhat the gross inequity of the minimum commodity bill."

Many commenters reflected the concern expressed in the Notice that make-up relief would only be useful if reduced takes were temporary rather then permanent in nature. They stated that current depressed market conditions may continue for some time, leaving make-up provisos of little benefit. One commenter further pointed out that capacity constraints could limit make-up utility. Most customers, it was noted, take up to their contract entitlement in winter. Thus, the pipeline may be at full capacity during the only period that a customer might be able to utilize make-up gas in excess of its regular entitlement. Again, this would leave the make-up clause of little value.

The Commission considered all comments on this issue in reaching its conclusions in this docket. In view of the rule adopted herein, it is unnecessary for the Commission to take any action with respect to make-up clauses.

VIII. Regulatory Flexibility Act Certification

The Notice of Proposed Rulemaking certified that the rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The Commission affirms this finding with respect to the final rule adopted today.

As noted previously, the rule affects the contents of tariffs filed by pipelines who are regulated as natural gas companies under the Natural Gas Act. The tariff prohibition established by the rule denies these pipelines recovery of purchased gas costs (and other variable costs) for gas not taken by the buyer. The rule also requires that certain tariff sheets be refiled to state purchased gas costs separately from other costs. This refiling requirement should not result in any significant expense for affected pipelines, particularly since this information is currently known to the pipelines. The separate statement of these costs will, however, enable small entities, such as some local distribution companies, to inspect the tariff sheets in the pipeline company's office and to avoid the unnecessarily burdensome expense of locating purchased gas cost information among all the information filed by the pipeline with this Commission.

Accordingly, any economic impact resulting from this rule will not be "significant" as that term is used in the Regulatory Flexibility Act (RFA).[61] Further, these regulated pipelines are virtually all large-size companies that do not fall within the RFA's definition of small entity.[62]

[59] Consistent with this determination, the Commission notes that, by its terms, this rule does not apply to transportation rates for gas transported through any portion of the Alaska Natural Gas Transportation System (ANGTS). Several commenters expressed concern about this subject. The Commission emphasizes to these commenters that the instant rule in no way applies to ANGTS transportation tariffs.

[60] The assured revenue is generated by the provisions of the tariff. The lender's recourse for demanding repayment of the loan is limited to the discrete project and the lender has no recourse to other assets of the project owners.

[61] 5 U.S.C. 601–612 (Supp. V 1980).

[62] 5 U.S.C. 601(3)–(6), citing section 3 of the Small Business Act, 15 U.S.C. 632 (1982), which defines "small business concern" as a business which is independently owned and operated and which is not dominant in its field of operation. *See* SBA's revised Small Business Size Standards, 49 FR 5024 (Feb. 9, 1984) (to be codified at 13 CFR Part 121).

One commenter suggests that the proposed rule requires a formal RFA study because it would have an adverse effect on small producers. The rule, it is argued, would lead to reductions in takes of gas from producers, creating lease maintenance, drainage, and other operating problems.

Leaving aside the merits of this theory, the Commission believes that this commenter misunderstands the intent of the RFA. Both the language of the statute and the legislative history make clear that Congress enacted the RFA to ease any disproportionate burden on small businesses that are *subject to* federal regulations.

Small producers are not subject to this rule and the Commission is therefore not required to perform a formal RFA study of the rule's impact. Rather, as noted in another recent rulemaking proceeding,[63] this Commission, like other agencies,[64] is required by the RFA to analyze only the effect of rules on regulated small entities *to which the rules apply.*

This is clearly evident in the Congressional Findings and Purposes, Section 2, Pub. L. No. 96-354, codified at 5 U.S.C. § 601, note. The Congress found:

* * * * *

[2] laws and *regulations* designed for application to large scale entities *have been applied uniformly to small businesses, small organizations, and small governmental jurisdictions* even though the problems that gave rise to government action may not have been caused by those smaller entities;

[3] *uniform Federal regulatory and reporting requirements have in numerous instances imposed* unnecessary and disproportionately burdensome demands including legal, accounting and consulting costs upon small businesses * * * with limited resources. * * * [Emphasis added.]

Thus, Congress found that uniform regulation applied to small business entities caused unnecessary burdens. Congress therefore declared:

[b] It is the purpose of this Act * * * to establish as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations and governmental jurisdictions *subject to regulation.* * * * [Emphasis added.]

Congress could not have been plainer about the reach of the statute: when an agency issues a rule that applies to small entities, the agency must consider, and try to mitigate, the burden on those small entities of compliance with the rule. Congress was not asking agencies to study any potential economic effects on small entities *not* subject to the rule.

The legislative history echoes this focus on burdensome reporting and compliance requirements. Senate Report No. 96-878, 96th Cong., 2d Sess. 1 (1980), reprinted in 1980 U.S. Code Cong. & Ad. News 2788, states that regulatory flexibility is needed because agencies tend to promulgate regulations of uniform applicability that "implicitly assume that all those subject to them are basically alike." *Id.* at 3.

The Committee has also found that these regulations of general and uniform applicability tend to place a disproportionate burden upon small businesses, small organizations and small governmental bodies.

As evidence for this Congressional finding, the Report quotes testimony that

[l]arge firms generally already have extensive "in house" data compilation and reporting systems and specialized staff accountants, lawyers, whose primary function is regulatory compliance. Small firms, by comparison, must either hire additional personnel or purchase expensive consultive services in order to acquire the necessary regulatory expertise. *Id.* at 4.

These aspects of Senate Report No. 96-298 were repeated during the floor action on, and amendments of, the RFA bill before enactment. *See* "Description of Major Issues and Section-by-Section Analysis of Substitute for S. 299," 126 Cong. Rec. S10,930, 10,934-43 (Aug. 6, 1980); "Discussion of Issues," 126 Cong. Rec. H8,455, 8,468-70 (Sept. 8, 1980). For example, the Senate Section-by-Section Analysis explains that "[t]he bill, therefore, is designed to encourage agencies to tailor their rules to the size and nature of those to be regulated * * *" 126 Cong. Rec. at S10,935. Similarly, the House Discussion of Issues points out that "agencies are directed to assess such options as 'tiering' (that is, setting different and less burdensome requirements on smaller entities), exemptions from all or part of rules, the structuring of different timetables for compliance * * *" *Id.* at H8468. These examples clearly are grounded on the premise that the smaller entities are subject to the rules.

The Commission therefore concludes that there is no provision of the RFA that requires an analysis of the impact of minimum commodity bill regulations on small producers that are not subject to any part of this rule. Accordingly, the Commission affirms its earlier conclusion that, pursuant to section 605(b) of the RFA, this rule will not have a significant economic impact on a substantial number of small entities.

IX. Effective Dates and Paperwork Reduction Act Statement

The Commission originally proposed to make any final rule adopted as a result of this proceeding effective as of November 1, 1983. In view of the legal and practical objections to this date raised by certain commenters, the Commission will make the rule prospective only. Further, since the Commission recognizes that the rule will have an impact on pipeline planning and policy, it will become effective, except for paragraph (a)(3) of § 154.111, on July 31, 1984.

The information collection provision in paragraph (a)(3) of § 154.111, which requires that revised pipeline rate schedules and tariffs be filed where necessary to separately state purchased gas costs, will be submitted to the Office of Management and Budget (OMB) for approval and assignment of a control number under the Paperwork Reduction Act, 44 U.S.C. 3501-3520 (Supp. V 1981), and OMB's regulations, 5 CFR Part 1320 (1983). Accordingly, the filing requirement of paragraph (a)[3] of § 154.111 will not become effective until August 15, 1984, and the deadline for actually filing will be September 14, 1984. If OMB's approval and control number have not been received by August 15, 1984, the Commission will issue a notice temporarily suspending the effective date.

Any Part 381 filing fees that would otherwise be associated with paragraph (a)(3) of § 154.111 are hereby waived to the extent the filing relates exclusively to the requirements of that paragraph.

Interested persons may obtain information on the information collection provisions of this rule by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 (Attention: Carol M. Lane, (202) 357-8383). Comments on the information collection provisions may be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

List of Subjects in 18 CFR Part 154

Natural gas.

In consideration of the foregoing, the Commission is amending Part 154, Title 18, *Code of Federal Regulations*, as set forth below.

[63] Final Rule, Construction Work in Progress for Public Utilities; Inclusion of Costs in Rate Base, 48 Fed. Reg. 24,323 (June 1, 1983) [Docket No. RM81-38-000, Order No. 298], *rehearing granted in part and denied in part*, 48 FR 46012 (Oct. 11, 1983).

[64] *See, e.g.*, 47 FR 5215 (Feb. 4, 1982) (final rule of Securities and Exchange Commission).

By the Commission. Commissioner Sousa concurred with a separate statement to be issued later.

Kenneth F. Plumb,

Secretary.

PART 154—[AMENDED]

1. The authority for Part 154 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717z (1982); Department of Energy Organization Act, 42 U.S.C. 7102–7352 (1982); Executive Order 12009, 3 CFR Part 142 (1978); Independent Offices Appropriations Act, 31 U.S.C. 483a (1970).

2. Part 154 is amended in the table of contents by adding in appropriate numerical order a new § 154.111 to read as follows:

Sec.

* * * * *

154.111 Limitations on provisions in rate schedules and tariffs.

* * * * *

3. Part 154 is amended further by adding a new § 154.111 to read as follows:

§ 154.111 Limitations on provisions in rate schedules and tariffs.

(a) *Limitations.* (1) Effective July 31, 1984, any pipeline rate schedule or tariff governing the sale of natural gas shall be inoperative and of no effect at law to the extent it provides for recovery of purchased gas costs for gas not taken by the buyer.

(2) No rate schedule or tariff governing the sale of natural gas and filed on or after July 31, 1984 may provide for recovery of variable costs associated with gas not taken by the buyer.

(3)(i) Any pipeline rate schedule or tariff governing the sale of natural gas that either (A) was in effect on July 31, 1984 or (B) was filed after that date but prior to September 14, 1984 and does not state purchased gas costs separately from other charges shall be restated to state such costs separately and filed on or prior to September 14, 1984, and

(ii) Any pipeline rate schedule or tariff governing the sale of natural gas and filed on or after September 14, 1984, shall state purchased gas costs separately from other charges.

(b) *Definition.* For purposes of this section, the term "purchased gas costs" means the cost of purchased gas, compressor fuel gas, and line loss or shrinkage gas.

Appendix

Comments Filed By

Maryland Public Service Commission
The Berkshire Gas Company
The American Gas Association
Northern States Power Company
Baltimore Gas and Electric Company
North Penn Gas Company
The State Corporation Commission of Kansas
Equitable Gas Company
San Diego Gas and Electric Company
Public Service Electric and Gas Company
Penn Fuel Gas, Inc.
New England Customer Group
Ozark Gas Transmission System
Natural Gas Pipeline Company of America
The East Ohio Gas Company
The Peoples Gas Light and Coke Company
American Paper Institute, Inc.
Phillips Petroleum Company and Phillips Oil Company
Southern California Edison Company
Trailblazer System Companies
Columbia Gas Transmission Corporation
El Paso Natural Gas Company
The Brooklyn Union Gas Company
Chattanooga Gas Company
Foothills Pipe Lines (Yukon) Ltd.
Pan-Alberta Gas Ltd.
Washington Gas Light Company, Frederick Gas Company, Inc. and Shenandoah Gas Co.
United States Steel Corporation
United Gas Pipe Line Company
Great Lakes Gas Transmission Company
Public Service Commission of the State of New York
The National Association of Regulatory Utility Commissioners
Arkansas Louisiana Gas Company
North Carolina Natural Gas Corporation & Public Service Company of North Carolina
Carolina Pipe Line Company and South Carolina Electric and Gas Company
Mississippi River Transmission Corporation
Laclede Gas Company
Texas Eastern Transmission Corporation and Transwestern Pipeline Company
New Jersey Natural Gas Company
Northern Indiana Public Service Company
The Staff of the Pennsylvania Public Utility Commission
Public Utilities Commission of Ohio
Pacific Gas and Electric Company
Mountain Fuel Supply Company
Consumers Power Company
T. W. Phillips Gas and Oil Company
Minnegasco, Inc.
The People of the State of California and the Public Utilities Commission of the State of California
Illinois Commerce Commission
New York State Electric and Gas Corporation
Colorado Interstate Gas Company
Governor George Deukmejian and Attorney General John K. Van De Kamp
Michigan Wisconsin Pipe Line Company
Northern Border Pipeline Company
The Process Gas Consumers Group, The American Iron and Steel Institute, The Association of Businesses Advocating Tariff Equity, The Aluminum Association, and the Georgia Industrial Gas Group
Kentucky West Virginia Gas Company
Northern Illinois Gas Company
Mustang Fuel Corporation
The Gas Service Company
Consolidated Edison Company of New York, Inc.
National Fuel Gas Supply Corporation
UGI Corporation
High Island Offshore System
Tennessee Gas Pipeline Company, A Division of Tenneco, Inc.
Stauffer Chemical Company
Consolidated Gas Supply Corporation
The Tennessee Gas Pipeline Company, A Division of Tenneco, Inc., and Midwestern Gas Transmission Company
Pacific Gas Transmission Company
Columbia Gas Distribution Companies
Pacific Interstate Companies
City Gas Company, Madison Gas and Electric Company, Wisconsin Fuel and Light Company, Wisconsin Gas Company, Wisconsin Natural Gas Company, Wisconsin Power and Light Company, and Wisconsin Public Service Corporation
The Philadelphia Electric Company and The Philadelphia Gas Works
Southern California Gas Company and Pacific Lighting Gas Supply Company
Northwest Alaskan Pipeline Company, as Operator, on behalf of Alaskan Northwest Natural Gas Transportation
Northwest Energy Company on behalf of Northwest Pipeline Corporation and Northwest Central Pipeline Corporation
The Public Service Commission of Wisconsin
U-T Offshore System
Michigan Consolidated Gas Company
Algonquin Gas Transmission Company
Southwest Gas Corporation, Arizona Public Service Company, Southern Union Gas Company and Gas Company of New Mexico
Southern Union Gas Company and Gas Company of New Mexico
The State of Michigan and The Michigan Public Service Commission
Texas Gas Transmission Corporation
Panhandle Eastern Pipe Line Company and Trunkline Gas Company
Northern Natural Gas Company, Division of InterNorth, Inc.
Minnesota Department of Public Service
Tennessee Gas Pipeline Company
Wyoming Public Service Commission
Kentucky Public Service Commission
Federal Trade Commission
State of New Jersey Dept. of Energy
MIGC Inc.
Nelson Yeardley, Greenville, Pennsylvania
Transwestern Pipeline Company

Reply Comments Filed By

American Gas Association
Michigan Consolidated Gas Company
Northern Indiana Public Service Company
The Peoples Gas Light and Coke Company
Pacific Gas Transmission Company and Pacific Gas & Electric Company
Natural Gas Pipeline Company of America
Arkansas Louisiana Gas Company
Transwestern Pipeline Company
UGI Corporation
Consolidated Gas Supply Corporation
The Philadelphia Electric Company and The Philadelphia Gas Works
The Process Gas Consumers Group, The American Iron & Steel Institute, The Association of Business Advocating Tariff Equity, The Aluminum

Association, and The Georgia Industrial Gas Group
ANR Pipeline Company
United Gas Pipe Line Company
El Paso Natural Gas Company
Tennessee Gas Pipeline Company, a Division of Tenneco, Inc., and Midwestern Gas Transmission Company
Northern Illinois Gas Company
Great Lakes Gas Transmission Company
Texas Gas Transmission Corporation
Southern California Gas Company and Pacific Lighting Gas Supply Company
Consumers Power Company
Southwest Gas Corporation, Arizona Public Service, Company, Southern Union Gas Company and Gas Company of New Mexico
MIGC, Inc.
Mississippi River Transmission Corporation
Consolidated Edison Company of New York, Inc.
The Brooklyn Union Gas Company
Transcontinental Gas Pipe Line Corporation
Panhandle Eastern Pipe Line Company and Trunkline Gas Company
Texas Eastern Transmission Corporation
Northwest Energy

[FR Doc. 84-14714 Filed 5-31-84; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 134

[T.D. 84-127]

Customs Regulations Amendments Relating to Country of Origin Marking

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to establish certification requirements to prohibit the concealment of country of origin information appearing on marked articles imported in bulk and repacked in the United States after release from Customs custody. Importers will be required to certify to the district director having custody of the articles that: (a) If the importer does the repacking, he must not obscure or conceal the country of origin marking information appearing on the article, or else the container (e.g., blister pack) must be marked in accordance with applicable law and regulations; or (b) if the article is sold or transferred, the importer must notify the subsequent purchaser or repacker, in writing, at the time of sale or transfer, that any repacking of the article must conform to the marking requirements. The purpose of the change is to ensure that an ultimate purchaser in the United States is aware of the country of origin of the article.

EFFECTIVE DATE: This document is effective on July 2, 1984.

FOR FURTHER INFORMATION CONTACT: Harold Loring, Entry, Licensing and Restricted Merchandise Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5765).

SUPPLEMENTARY INFORMATION: Section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless expressly excepted, every article of foreign origin (or its container) imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the article or container will permit, in such manner as to indicate to an ultimate purchaser, the English name of the country of orgin of the article.

Section 304(c) provides that any article not marked as required, shall be subject to a duty of 10 percent ad valorem, in addition to any other duty imposed by law and whether or not the article is exempt from the payment of ordinary Customs duties, unless the article is exported, destroyed, or marked, under Customs supervision. These marking duties cannot be remitted, wholly or in part.

In addition to the requirement for marking duties under section 304(c) for country of origin marking violations, civil penalties may be incurred by the importer under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), for entering merchandise into the domestic commerce by means of false documents; and criminal sanctions may be assessed under 18 U.S.C. 1001 for presenting false and misrepresented documents to the Government in connection with an entry. Criminal sanctions also may be assessed under 19 U.S.C. 1304(e) for concealing or obscuring country of origin markings. Further, if merchandise released from Customs custody under a bond is found not to be legally marked, liquidated damages also may be assessed for breach of the bond conditions.

Part 134, Customs Regulations (19 CFR Part 134), sets forth the country of origin marking requirements of 19 U.S.C. 1304, as well as the consequences and procedures to be followed if imported articles are not legally marked.

It has been brought to Customs attention by the Hand Tools Institute, an association consisting of domestic producers of hand tools, that various foreign-made tools are entering the United States in bulk containers, properly marked with the country of origin. Once in the United States however, these tools are repacked in sealed, unmarked blister packs in such a manner that the country of origin marking appearing on the article is concealed from view, i.e., by placing the article marked side down against the cardboard in a blister pack. Samples have been submitted to Customs showing this deceptive practice which is not limited to the repacking of hand tools, but extends to other imported products as well.

The intent of the marking legislation since the first enactment appeared as section 6 of the Tariff Act of 1930, has been to allow the ultimate purchaser in the United States to know the country of origin of foreign articles. By knowing the country of origin, it allows the purchaser to make an informed choice on whether to buy the foreign article or its domestic counterpart. This choice was provided in large part because Congress recognized that if given a choice, consumers prefer domestic goods. To conceal or obscure country of origin marking information prevents consumers from exercising this preference; denies domestic producers the benefit flowing from such consumer preference; and frustrates the Congressional will.

In a related matter, by T.D. 83-155 published in the Federal Register on July 26, 1983 [48 FR 33860], Customs amended its regulations by adding a new section 134.25 to provide for certification requirements for importers with respect to certain *unmarked* articles (i.e., J-list articles and articles incapable of being marked) imported in bulk and repacked in the United States after release from Customs custody. Customs believes that similar requirements should be adopted with respect to repacked *marked* articles, based on the same rational. That is, if Customs knows, or has reason to believe that the marked articles will not reach the ultimate purchaser in such a condition as to enable the purchaser to know the country of origin of the article before purchase, the Customs cannot find the marking of the article to satisfy the requirements of the statute. See *U.S. Wolfson Bros. Corp.* v. *United States*, 52 CCPA 46, C.A.D. 856 (1965), upon which this rationale is based.

Accordingly, to minimize the practice of concealing country of origin information appearing on repacked marked articles, by notice pubished in the Federal Register on July 26, 1983 [48 FR 33903], Customs proposed to require importers to certify to the district director having custody of articles that: (a) If the importer does the repacking, he must not obscure or conceal the country of origin marking information appearing on the article, or else the container (e.g.,

blister pack) must be marked in accordance with applicable law and regulations; or (b) if the article is sold or transferred, the importer must notify the subsequent purchaser or repacker, in writing, at the time of sale or transfer, that any repacking of the article must conform to the marking requirements.

Although the certification requirements are written in the disjunctive, *i.e.*, either the certifier will mark if he repacks or notify his transferee if the certifier does not repack, if a certifier repacks and marks the new containers and resells, but the merchandise is such that his transferee is also likely to repack further, then the certifier must also notify his transferee of the marking requirements.

The purpose of the proposed certification requirements are to place the responsibility on the importer to ensure, as best as possible, that the country of origin information reaches the ultimate purchaser in such a manner as to enable the purchaser by an inspection of the article (or its container) to know the country of origin of which the article is a product before he chooses to purchase it.

As now indicated in new subsection (f), the certification requirements will *not* apply to those situations where a marked article is repacked in an unmarked container that can readily be opened for inspection by the ultimate purchaser in United States. See, for instance, the analogous situation presented in 19 CFR 134.24(d)(3) in which disposable *unsealed* containers need not be marked if imported filled with a marked article and the container is normally opened by the ultimate purchaser prior to purchase. Of course, if such a container bears a U.S. address, then the country of origin of the contents must appear on the container in comparable size and in close proximity to the U.S. address in accordance with 19 CFR 134.46. This latter regulation is designed to avoid confusion in the mind of an ultimate purchaser and will now apply to container packaging added in the United States to repackage imported *marked* articles.

It should be emphasized that, under the new certification requirements, the importer who does not repack would not be liable to Customs if his transferee who does repack failed to comply with the marking requirements, provided that the importer follows through on his certification by informing the repacker of such requirements. If it is determined that the importer took the proper action according to his certification in this regard and the repacker failed to comply, Customs could seek criminal action against the repacker under 19 U.S.C. 1304(e). In addition, the certification and proof of compliance also may be useful in a civil action brought against a repacker under 15 U.S.C. 1125.

It should also be emphasized that a broker who files an entry as importer of record, posting his own bond, is liable pursuant to section 134.26(e) for marking duties and penalties if the actual owner fails to fulfill the certification requirements, at least until a superseding bond and actual owners declaration are filed under 19 CFR 141.20. This is also the position Customs has taken with respect to the general repackaging certification contained in 19 CFR 134.25; as established by T.D. 83-155 published in the Federal Register on July 26, 1983 (48 FR 33860).

In addition to these new certification requirements, Customs is reinstating former § 134.34, Customs Regulations (19 CFR 134.34), relating to certain repacked articles that are excepted from marking requirements. This section was inadvertently repealed when Customs enacted § 134.25. It was erroneously believed that these two sections overlapped and therefore § 134.34 was no longer necessary. However, after further review, it has been determined that this is no longer the case because § 134.34 relates to the repacking under Customs guidance of certain unmarked articles subject to special exemptions, i.e., semi-conductors, whereas § 134.25 relates to the repacking of J-list articles and articles incapable of being marked.

Discussion of Comments

Of the forty-two comments received in response to the notice, thirty-eight favored the proposal and four were opposed. One opposing commenter stated that this proposal was duplicative of what he believed was the Federal Trade Commission's (FTC) role to police misrepresentation with respect to packed goods. Customs does not agree. In the case of *L. Heller & Son* v. *Federal Trade Commissioner*, 191 F.2d 954 (7th Cir. 1951) the court recognized that 19 U.S.C. 1304 and section 5 of the Federal Trade Commission Act are not repugnant. The court stated that 19 U.S.C. 1304 was "concerned solely with the extent to which the Treasury Department, incidentally to its collection of Customs duties, should regulate the labeling of imported goods."

A similar comment in opposition criticized the rule on the ground that if the individual goods are marked on importation then the requirements of 19 U.S.C. 1304 are met, and Customs' role is at an end. This view is not in accord with *U.S. Wolfson Bros. Corp.* v. *United States*, 52 C.C.P.A. 46, C.A.D. 856 (1965), which recognized that, if Customs knows or has reason to believe that the marked articles will not reach the ultimate purchaser in such a condition as to enable the purchaser to know the country of origin of the article before purchase, then Customs cannot find the marking of the article to satisfy the requirements of 19 U.S.C. 1304. The same commenter also recommended that the violative practice of concealing country of origin marking by deceptive repackaging be attacked under existing regulation and law rather than imposing the certification requirements upon all importers who import bulk goods that will be repacked. Customs believes existing regulations are insufficient to remedy this problem as 19 U.S.C. 1304(e) is a criminal statute the violation of which requires "intent" for there to be a criminal prosecution. The proposed certification requirements will enable Customs to remedy the situation without necessitating a criminal prosecution requiring intent.

Another commenter opposed the rule on the ground that it is misplaced, *i.e.*, the rule as proposed will become subsection (c) in 19 CFR 134.13, which only applies to articles repacked in bonded warehouses, manipulated under 19 U.S.C. 1562, or manipulated in a foreign trade zone. Thus, the subsection as proposed, would not apply to repacking accomplished in a private non-bonded warehouse. To avoid this result, proposed § 134.13(c) will be a new § 134.26.

The same commenter stated that the certification requirements are too burdensome *i.e.*, an importer may have to certify an entire entry containing many articles, only a few of which will be repacked. The commenter also suggested that stronger language be added to the General Term Bond instead. Customs does not agree. Blanket certification, as suggested in the proposed rule, may be drawn to resolve these problems. Blanket notification procedures, however, have not yet been approved by Customs.

Finally, one commenter believed the proposal was too broad. He suggested that the language should be changed to exempt containers which will not be sealed so that the ultimate purchaser can inspect the marked article inside. As previously stated in this document, Customs agrees. The rule will not apply to this kind of situation.

E.O. 12291

It has been determined that the amendments in this document are not a "major rule" within the criteria provided in section 1(b) of E.O. 12291, and

therefore no regulatory impact analysis is required.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to these amendments because the rule will not have a significant economic impact on a substantial number of small entities.

Accordingly, the document contains a certification pursuant to section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the amendments will not have a significant economic impact on a substantial number of small entities.

Drafting Information

The principal author of this document was Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 134

Customs duties and inspection, Imports, Importers, Labeling, Packaging, and Containers.

Regulations Amendments

Part 134, Customs Regulations (19 CFR Part 134) is amended as set forth below:

William von Raab,

Commissioner of Customs.

Approved:

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

May 14, 1984.

PART 134—COUNTRY OF ORIGIN MARKING

Part 134, Customs Regulations (19 CFR Part 134), is amended by adding a new § 134.26 to read as follows:

§134.26 Imported articles repacked or manipulated.

(a) *Certification requirements.* If an article subject to these requirements is intended to be repacked in retail containers (e.g., blister packs) after its release from Customs custody, or if the district director having custody of the article, has reason to believe such article will be repacked after its release, the importer shall certify to the district director that: (1) If the importer does the repacking, he shall not obscure or conceal the country of origin marking appearing on the article, or else the new container shall be marked to indicate the country of origin of the article in accordance with the requirements of this Part; or (2) if the article is intended to be sold or transferred to a subsequent purchaser or repacker, the importer shall notify such purchaser or transferee, in writing, at the time of sale or transfer, that any repacking of the article must conform to these requirements. The importer, or his authorized agent, shall sign the following statement.

Certificate of Marking by Importer—Repacked Articles Subject to Marking

(Port of entry) _____

I, _____ of _____, certify that if the article(s) covered by this entry (entry no.(s) _____ dated _____), is (are) repacked in retail container(s) e.g., blister packs), while still in my possession, the new container(s) will not conceal or obscure the country of origin marking appearing on the article(s), or else the new container(s), unless excepted, shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the container(s) will permit, in such manner as to indicate the country of origin of the article(s) to the ultimate purchaser(s) in accordance with the requirements of 19 U.S.C. 1304 and 19 CFR Part 134. I further certify that if the article(s) is (are) intended to be sold or transferred by me to a subsequent purchaser or repacker, I will notify such purchaser or transferee, in writing, at the time of sale or transfer, of the marking requirements.

Date _____

Importer _____

The certification statement may appear as a typed or stamped statement on an appropriate entry document or commercial invoice, or on a preprinted attachment to such entry or invoice; or it may be submitted in blanket form to cover all importations of a particular product for a given period (e.g., calendar year). If the blanket procedure is used, a certification must be filed at each port where the article(s) is entered.

(b) *Facsimile signatures.* The certification statement may be signed by means of an authorized facsimile signature.

(c) *Time of filing.* The certification statement shall be filed with the district director at the time of entry summary. If the certification is not available at that time, a bond shall be given for its production in accordance with § 141.66, Customs Regulations (19 CFR 141.66). In case of repeated failure to timely file the certification required under this subsection, the district director may decline to accept a bond for the missing document and demand redelivery of the merchandise under § 134.51, Customs Regulations (19 CFR 134.51).

(d) *Notice to subsequent purchaser or repacker.* If the article is sold or transferred to a subsequent purchaser or repacker the following notice shall be given to the purchaser or repacker:

Notice to Subsequent Purchaser or Repacker

These articles are imported. The requirements of 19 U.S.C. 1304 and 19 CFR part 134 provide that the articles on their containers must be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article or container will permit, in such a manner as to indicate to an ultimate purchaser in the United States, the English name of the country of origin of the article.

(e) *Duties and Penalties.* Failure to comply with the certification requirements in paragraph (a) may subject the importer to a demand for liquidated damages under § 134.54(a) and for the additional duty under 19 U.S.C. 1304. Fraud or negligence by any person in furnishing the required certification may also result in a penalty under 19 U.S.C. 1592.

(f) *Exceptions.* The requirements of this section do not apply to repackaging in a container that can readily be opened for inspection by the ultimate purchaser in the United States, unless such container bears a U.S. address or other potentially misleading marking.

Part 134, Customs Regulations (19 CFR Part 134), is further amended by adding a new § 134.34 to read as follows:

§ 134.34 Certain repacked articles.

(a) *Exception for repacked articles.* An exception under § 134.32(d) may be authorized in the discretion of the district director for imported articles which are to be repacked after release from Customs custody under the following conditions:

(1) The containers in which the articles are repacked will indicate the origin of the articles to an ultimate purchaser in the United States.

(2) The importer arranges for supervision of the marking of the containers by Customs officers at the importer's expense or secures such verification, as may be necessary, by certification and the submission of a sample or otherwise, of the marking prior to the liquidation of the entry.

(b) *Liquidation of entries.* The liquidation of such entries may be deferred for a period of not more than 60 days from the date that a request for repacking is granted. Extensions of the 60-day deferral period may be granted by the district director in his discretion upon written application by the importer.

(R.S. 251, as amended (19 U.S.C. 66), section 304, 624, 46 Stat. 731, as amended, 759 (19 U.S.C. 1304, 1624), 77A Stat. 14 (19 U.S.C. 1202))

[FR Doc. 84-14730 Filed 5-31-84; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 184

[Docket No. 76G-0488]

Direct Food Substances Affirmed as Generally Recognized as Safe; Cocoa Butter Substitute Primarily From Palm Oil

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is establishing the term "cocoa butter substitute primarily from palm oil" as the common or usual name for 1-palmitoyl-2-oleoyl-3-stearin. The agency is also revising the regulation that affirms this substance as generally recognized as safe (GRAS) to make clear that cocoa butter substitute primarily from palm oil is not to be used as an ingredient in standardized foods unless permitted by individual standards of identity. This action is based on comments received regarding the common or usual name of this substance.

EFFECTIVE DATE: July 1, 1985. Compliance may begin June 1, 1984, and labeling of all affected products initially introduced or initially delivered for introduction into interstate commerce on or after July 1, 1985, shall comply.

FOR FURTHER INFORMATION CONTACT: Elizabeth J. Campbell, Center for Food Safety and Applied Nutrition (formerly Bureau of Foods) (HFF-312), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0177.

SUPPLEMENTARY INFORMATION: In the Federal Register of November 21, 1978 (43 FR 54238), FDA published a final rule that affirmed 1-palmitoyl-2-oleoyl-3-stearin as GRAS and temporarily listed this substance under the name "cocoa butter substitute from palm oil." That final rule also granted 60 days for additional comments on the common or usual name of this substance. FDA later extended the comment period until February 21, 1979 (44 FR 6706; February 2, 1979). FDA received comments on the common or usual name from 16 persons, including a consumer, a trade association, a consultant, the petitioner for affirmation of GRAS status, and manufacturers. The comments received on the common or usual name and FDA's responses are as follows:

1. A few comments cited FDA's proposal of September 19, 1978, dealing with cheese substitutes (43 FR 42118), and stated that in other actions, FDA has required that a substitute possess similar physical and organoleptic properties to the food simulated. These comments argued that use of the term "cocoa butter substitute" as part of the common or usual name of 1-palmitoyl-2-oleoyl-3-stearin would be inappropriate because the product does not have the same physical characteristics as cocoa butter. These comments also argued that this substitute varies considerably from cocoa butter in its physical and organoleptic properties. The comments stated that these differences might change the taste of products made using the substitute in place of cocoa butter. Other comments, however, described the product as a suitable substitute for cocoa butter in confectionary products and described its functional similarities to cocoa butter in terms of its working characteristics. One comment stated that testing of the product had demonstrated that, using a milk chocolate recipe, candy made with the substitute could not be distinguished by taste from that made with cocoa butter.

FDA advises that the criterion that it proposed in the September 19, 1978 document (43 FR 42121) for substitutes for milk, cream, and cheese was "reasonable similarity." The agency did not propose to require that a substitute food be identical to the food for which it substitutes; only that it be reasonably similar in the characteristics that are most pertinent to the usual and normal uses of the food. The pertinent characteristics that FDA considered in the September 19, 1978 document were that the substitute food should be nutritionally equivalent to the traditional food and should have similar levels of fat and moisture, as well as similar physical attributes such as color, body, and texture.

1-Palmitoyl-2-oleoyl-3-stearin is reasonably similar to cocoa butter in the characteristics that are most pertinent to cocoa butter's use in confections, soft candy, and sweet sauces and toppings. As FDA stated in the Federal Register of November 21, 1978 (43 FR 54238), cocoa butter substitute possesses the same or similar melting point, solids profile, and palatability as cocoa butter. The comments do not provide information that would justify a finding to the contrary. The differences between cocoa butter and the substitute that are reported in the comments are slight or moderate differences in physical and chemical characteristics that have not been shown to modify the value of the substitute when it is used in place of cocoa butter as a food ingredient. The comments also do not provide any basis for concluding that use of the substitute would change the taste of foods if the substitute is used in place of cocoa butter. In fact, two comments stated that use of the substitute to replace cocoa butter in a product did not produce discernible taste differences.

Therefore, based on the comments and on the administrative record, FDA concludes that the substitute is reasonably similar to cocoa butter, and that it consequently is a cocoa butter substitute for the food ingredient uses listed in 21 CFR 184.1259.

2. Several comments favored the name proposed in the November 21, 1978 document. A number of comments, however, opposed the establishment of "cocoa butter substitute from palm oil" as the common or usual name for 1-palmitoyl-2-oleoyl-3-stearin and presented a variety of opposing arguments. One of the most prevalent objections was to the use of the term "cocoa butter" in the name of the food. Several comments argued that the use of this term would mislead consumers by suggesting that the product could be used as an ingredient in all cocoa products. The comments on this aspect of the proposal pointed out that the product is not currently permitted as a replacement for cocoa butter in standardized cocoa products, and that this use is one of the most important for cocoa butter. Conversely, other comments were concerned that adoption of the term "cocoa butter substitute" would lead to changes in the standard of identity for cocoa products, and that the quality of standardized cocoa products would be adversely affected by the use of the substitute. Another comment stated that in order to be commercially successful, the petitioner would eventually seek modification of the standards of identity for chocolate, and that the adoption of the term "cocoa butter substitute" would make modification of the chocolate standard easier.

The agency disagrees with the suggestion that the term "cocoa butter substitute" is a misleading term. The agency recognizes that current standards of identity for cocoa products do not permit the use of the substitute product, but the fact that this product is not an appropriate substitute in all instances should not serve as a bar to the use of "cocoa butter substitute" as part of the name for this product. As discussed in response to comment 1, FDA finds, and this finding is supported by comments from manufacturers of confections, that this product is an appropriate substitute for cocoa butter in the manufacture of confections. The agency also has affirmed that this use of the product is GRAS (21 CFR 184.1259).

The use of the substitute in standardized cocoa products is a separate issue. The use of the substitute will not be permitted unless the standards of identity are amended to provided for its use. Such an amendment would require a separate proceeding under 21 U.S.C. 341 and 371(e), which provided interested persons with the opportunity to petition to amend standards of identity and to request a public hearing if the petition is denied. Any decision resulting from such a proceeding would be based on the record developed in that proceeding, and the prior designation of a particular ingredient as a "cocoa butter substitute" would not prejudice that decision.

3. A few comments stated that the term "cocoa butter substitute" should not be used as part of the common or usual name because it was too broad a term and refers to the potential use of the product rather than describing the basic nature of the product. Other comments stated generally that use of the term "cocoa butter substitute" obscures rather than makes clearer the basic nature of the food and its characterizing properties and ingredients.

Under 21 CFR 102.5, the common or usual name of a food must accurately identify or describe, in as simple and direct terms as possible, the basic nature of the food or its characterizing properties or ingredients. In some cases, particularly for new foods, the best way to accomplish this goal is by making clear in the common or usual name of the food that it is a substitute for a specific traditional food. FDA finds that the immediate case is one such instance because this new ingredient's ability to be used in place of cocoa butter in certain foods is its most significant characteristic. Moreover, the primary objectives in establishing a common or usual name for this substance are (1) to differentiate it from cocoa butter and (2) to differentiate it from all other cocoa butter substitutes. Including the word "substitute" in the name will adequately inform consumers that this substance is not cocoa butter. Declaration of the principal starting material (palm oil) in the name will fulfill the second objective.

4. One comment disputed FDA's authority to establish a common or usual name that utilizes the name of a traditional food. This comment asserted that FDA only has statutory authority to regulate adulteration and misbranding, and that by proposing to establish the name at issue here, FDA is seeking to give statutory lawfulness to the misbranding and adulteration that would result if this product is substituted for cocoa butter.

FDA disagrees with this comment. The agency has the legal authority to establish a common or usual name for this food ingredient. Under 21 U.S.C. 371(a), FDA has authority to adopt regulations for the efficient enforcement of the Federal Food, Drug, and Cosmetic Act (the act). The regulation establishing the common or usual name for this cocoa butter substitute contributes to the efficient enforcement of three sections of the act: Section 403(i)(1) (21 U.S.C. 343(i)(1)), which provides that a food shall be deemed to be misbranded unless its label bears the common or usual name of the food, it one exists; section 403(a) (21 U.S.C. 343(a)), which provides that a food shall be deemed to be misbranded if its labeling is false or misleading in any particular; and section 201(n) (21 U.S.C. 321(n)), which provides that in determining whether the labeling of a product is misleading, it is necessary to consider, among other factors, the extent to which the labeling fails to reveal a material fact. This regulation fulfills the purposes and requirements of these provisions by ensuring that the common or usual name for this cocoa butter substitute provides basic information about the identity of this ingredient, as well as other material facts (see response to comment 3) that are needed to prevent consumer confusion and deception. FDA's authority to adopt common or usual name regulations was upheld in *American Frozen Food Institute* v. *Mathews*, 413 F. Supp. 548 (D.D.C. 1976), *aff'd sub nom. American Frozen Food Institute* v. *Califano*, 555 F.2d 1059 (D.C. Cir. 1977). The fact that the common or usual name established by this regulation utilizes the name of a traditional food does not constitute an infirmity. As explained in response to comment 3, the common or usual name makes clear that 1-palmitoyl-2-oleoyl-3-stearin is not cocoa butter but a substitute for it. Thus, it distinguishes the substitute from cocoa butter, thereby preventing consumer confusion. In sum, the agency finds that the comment is without merit.

5. One comment stated that the substance has not been thoroughly tested, and that its use may result in an inferior product if substituted for cocoa butter in some uses of that ingredient.

FDA acknowledges that further testing of the substitute in various applications might reveal differences that would lead manufacturers to conclude that the substitute cannot replace cocoa butter in all of its uses. However, the common or usual name still adequately describes the basic nature of the food because this product is reasonably similar to, and in many instances can be used as a substitute for, cocoa butter.

6. One comment objected to the use of the term "cocoa butter substitute" on the grounds that cocoa butter is sold for use as protection against and relief of sunburn, windburn, and chapped hands and for body massage and other skin care applications. The comment asserted that adoption of the proposed name would constitute tacit approval of the substitute as a replacement for cocoa butter in these nonfood uses.

FDA is neither approving nor disapproving the use of the substitute as a replacement for cocoa butter in foods, drugs, or cosmetics. The agency has affirmed that the substance is GRAS for use in the foods that it identified in the GRAS affirmation regulation and is now only establishing a common or usual name for that substance. The agency is confident that manufacturers are aware of their responsibilities when using new ingredients in drug and cosmetic formulations, and that the establishment of this common or usual name will not result in confusion as to the uses for which this product has been approved.

7. A number of comments stated that in accordance with § 101.4(b)(4) and Part 102 (21 CFR 101.4(b)(4) and Part 102), the nomenclature for this product must reflect that it is a synthetic product obtained through esterification and derived from fully hydrogenated palm oil, food-grade oleic anhydride, and glycerol. One of the comments stated that the proposed name does not conform to the requirements of § 101.4(b)(14) because the name does not include the degree of hydrogenation of this fat.

The agency disagrees with these comments. The requirements of § 101.4 involve the listing of specific fats and oils in an ingredient statement and do not apply to the product 1-palmitoyl-2-oleoyl-3-stearin or to the designation of a common or usual name for this product. For products that are a blend of fats and oils, § 101.4(b)(14) requires that the ingredient statement list the name of the blend (e.g., "hydrogenated vegetable oil") and the names of each of the fats and oils in the blend. However, 1-palmitoyl-2-oleoyl-3-stearin is not simply a mixture of fats and oils and does not contain ingredients in the traditional sense. The substitute is synthesized by chemically combining diglycerides derived from palm oil with the anhydride of food-grade oleic acid. The resulting product is structurally different from the substances from

which it is derived and cannot be described as a blend. Therefore, adoption of a name that includes the starting materials of this substance is inappropriate, and the provisions of § 101.4(b)(14) are not applicable.

In addition, including a list of starting materials in the common or usual name would make the name long, complicated, and difficult for consumers to understand. Those commenting did not articulate any benefits that would compensate for these disadvantages of declaring the starting materials.

Finally, for the reasons set forth in response to comment 3, the common or usual name that the agency is adopting complies with 21 CFR Part 102.

8. A number of comments objected to the proposed name "cocoa butter substitute from palm oil" because it implies that the product is derived entirely from palm oil. These comments argue that this name consequently is misleading.

FDA agrees. The final rule, therefore, changes the name of this substance to "cocoa butter substitute primarily from palm oil.

9. One comment stated that the name should include either the term "synthetic" or "artificial" to inform consumers that the product is manufactured by chemical synthesis.

The agency concludes that the name "cocoa butter substitute primarily from palm oil" is more informative to consumers than the terms "synthetic" or "artificial" because the latter terms imply equivalence to cocoa butter and may, therefore, mislead consumers into believing that the substitute is an exact duplicate of cocoa butter. Although it is not an exact duplicate, this substance is sufficiently similar to cocoa butter that it may be used as a substitute in appropriate products.

10. Two comments stated that if the proposed name were adopted, those who adhere to the Jewish and Islamic dietary requirements and those who are vegetarians would not be informed of the possible animal origins of the oleic acid and glycerol components of the products.

The agency recognizes that even though animal fat is not directly added as an ingredient of this product, some consumers may consider the substitue to be derived from animal products if the oleic acid and glycerol starting materials are derived from animal sources. However, the agency traditionally has not required that the possible animal derivation of substances such as oleic acid or glycerol be indicated in the label declaration of these ingredients, and FDA does not believe that it would be appropriate to deviate from this traditional policy in this rulemaking. Nonetheless, the agency has modified the name of the substitute not only for the reason set forth in paragraph 8 but also to ensure that the name alerts consumers to the fact that this product may not be of strictly vegetable origin. FDA believes that because the name now states that this substance is primarily from palm oil, interested consumers will investigate the other sources of this cocoa butter substitute before they purchase any food in which it is an ingredient.

11. One comment stated that the common or usual name should reflect the fact that this product has been esterified because many countries have laws that prohibit the esterification of fats, and the name should include sufficient information about its processing to enable commercial users to comply with the laws of foreign countries.

The agency believes that manufacturers have sufficient access to processing information to enable them to determine whether the product meets the criteria that foreign governments apply to foods that are intended for import into their countries. Therefore, the agency does not consider it necessary to adopt a common or usual name that includes processing methods that have little or no meaning to the average consumer.

12. A variety of other names were offered by those commenting as alternatives to the common or usual name proposed. One name suggested was "modified oil from palm oil and oleic acid for confectionary," with the words "for confectionary" optional. Another name suggested was "hydrogenated vegetable oil made from partially hydrogenated palm kernel oil and/or ——— oils," with the blank to be filled in with the name of any other oils that are used. Still another name suggested was the use of a fanciful name followed in parenthesis by "a synthetic fat obtained from fully hydrogenated palm oil, oleic anhydride from ——— and glycerol from ———," with the blanks to be filled in by the source of the oleic acid derivative and the glycerol. Another comment suggested simply "——— vegetable butter," with a fanciful name to be included in the blank. Another comment suggested "noncocoa butter vegetable fat" as the common or usual name for this product.

FDA has reviewed the variety of names suggested for this product and has concluded that none of the names offered as alternatives describe the product as clearly or as succinctly as that established by this final rule. As discussed elsewhere in this document, FDA has concluded that it is not necessary to disclose in the common or usual name all of the starting materials used to make this product because the product does not bear any resemblance to the starting materials. A list of starting materials would not be meaningful to consumers and would likely mislead them into beliveing that such starting materials are actually ingredients of this product. In the case of "noncocoa butter vegetable fat," the name expresses what the product is not, rather than what the product is. The term "——— vegetable butter" is not descriptive enough of the characterizing properties of this product.

13. A few comments were concerned that the establishment of a common or usual name such as "cocoa butter substitute" will lead to a proliferation of names that merely declare the substance to be a substitute for the traditional food. For example, one of these comments asked whether horsemeat could be labeled as "pork substitute from horseflesh," and two comments pointed out that FDA would not permit margarine to be labeled as "dairy butter substitute." Another comment asked that FDA define the criteria that it will use in deciding whether to permit other fats that are used as cocoa butter substitutes to be labeled as such. These comments stated that there was no apparent restriction as to what could be designated as a "substitute," which could lead to inferior ingredients being used in confectionary products.

The act requires that if a food ingredient has a common or usual name, it must be declared by that name (21 U.S.C. 343(i)(1)). Thus, horsemeat must be labeled as horsemeat and margarine labeled as margarine. However, in the case of a new food, the criteria that the agency applies in deciding whether the degree of similarity that exists between that food and an old food justifies naming it as a substitute for the old food is the same type of criteria that FDA has applied in this case. The two foods should have the same or similar working properties; have reasonable similar physical characteristics, such as melting point, solids profile, and palatability; and produce reasonably similar organoleptic properties in the foods to which they are added.

14. One comment stated that no analytical methods are available to differentiate between products made using cocoa butter and those made using the substitute, and that, therefore, a substitution in a standardized chocolate product could not be detected.

FDA acknowledges that a substitution could occur in a standardized chocolate product. However, such a substitution can be made irrespective of the name of the food ingredient. FDA uses means other than the establishment of a common or usual name to determine whether a standardized food has been adulterated by the addition of an ingredient not provided for in the food standard. These means include factory inspections and examination of inventory data for raw materials. Thus, FDA finds this comment to be irrelevant to the question of the appropriate common or usual name for 1-palmitoyl-2-oleoyl-3-stearin.

15. The November 21, 1978 final rule affirming this ingredient as GRAS described the procedure by which any person adversely affected by that rule could request a hearing concerning the GRAS status of the substitute. One manufacturer requested a hearing if the common or usual name was not changed but did not challenge the GRAS status of the product.

FDA is denying this request for a hearing because the agency is not required to hold a hearing on either the question of the appropriate common or usual name of a substance or the question of whether a substance should be affirmed as GRAS. Neither the determination of GRAS status nor the determination of common or usual name is made under the formal rulemaking provisions of the act. (The formal rulemaking provisions are 21 U.S.C. 348 and 371(e).) FDA erred in offering a hearing on the GRAS status of this substance in the first place and hereby withdraws that offer.

16. Although not requested by comments, FDA is amending 21 CFR 184.1259(a) by adding an affirmative statement that the term "cocoa butter substitute primarily from palm oil" is the common or usual name for 1-palmitoyl-2-oleoyl-3-stearin. This change is necessary to prevent the possible misinterpretation that the scientific name could also be used as the common or usual name for this product on food labels. The agency advises that the ingredient must be uniformly designated in lists of ingredients on food labels through use of the established common or usual name. This change in the GRAS affirmation regulation is not substantive and therefore does not require publication of a new proposal. The agency is also making minor editorial changes in 21 CFR 184.1259(c) to update the language to be consistent with other recently published GRAS affirmation final rules.

FDA has carefully considered the potential environmental effects of this action and concludes that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. A copy of the environmental assessment supporting this conclusion may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

This requirement for a regulatory flexibility analysis under the Regulatory Flexibility Act does not apply to this final rule because the proposed rule was issued before January 1, 1981, and is therefore exempt.

In accordance with Executive Order 12291, the agency has carefully analyzed the economic effects of this regulation, and the agency has determined that the final rule is not a major rule as defined by the Order. The agency's finding of no major economic impact and the evidence supporting this finding is contained in a threshold assessment which may be seen in the Dockets Management Branch (address above).

The agency periodically announces by notice in the Federal Register uniform effective dates for compliance with food labeling requirements. (See, for example, the Federal Register of August 13, 1982 (47 FR 35185).) That scheduling of the next effective date (July 1, 1985) will allow sufficient time for manufacturers to use up label stocks declaring the ingredient by other names and to schedule label revisions to coincide with other label revisions (that may be necessary for reasons that are unrelated to the establishment of this common or usual name) in order to minimize costs to industry and consumers.

List of Subjects in 21 CFR Part 184

Direct food ingredients, Food ingredients, Generally recognized as safe (GRAS) food ingredients.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(n), 403, 701(a), 52 Stat. 1041 as amended, 1047-1048 as amended, 1055 (21 U.S.C. 321(n), 343, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 184 is amended in § 184.1259 by revising the section heading and paragraphs (a) and (c), to read as follows:

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

§ 184.1259 Cocoa butter substitute primarily from palm oil.

(a) The common or usual name for the triglyceride 1-palmitoyl-2-oleoyl-3-stearin is "cocoa butter substitute primarily from palm oil." The ingredient is manufactured by directed esterification of fully saturated 1,3-diglycerides (derived from palm oil) with the anhydride of food-grade oleic acide in the presence of the catalyst trifluoromethane sulfonic acid (§ 173.395 of this chapter).

* * * * *

(c) In accordance with § 184.1(b)(1), the ingredient is used in the following food categories at levels not to exceed current good manufacturing practice: Confections and frostings as defined in § 170.3(n)(9) of this chapter; coatings of soft candy as defined in §170.3(n)(38) of this chapter; and sweet sauces and toppings as defined in §170.3(n)(43) of this chapter; except that the ingredient may not be used in a standardized food unless permitted by the standard of identity.

* * * * *

Effective date. Compliance with this regulation may begin June 1, 1984, and labeling of all affected products initially introduced or initially delivered for introduction into interstate commerce on or after July 1, 1985, shall comply.

(Secs. 201(n), 403, 701(a), 52 Stat. 1041 as amended, 1047-1048 as amended, 1055 (21 U.S.C. 321(n), 343, 371(a)))

Dated: May 11, 1984.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-14032 Filed 5-31-84; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 510

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

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor name for several approved new animal drug applications (NADA's) from Feed Specialties Co. to Feed Specialties Co., Inc.

EFFECTIVE DATE: June 1, 1984.

FOR FURTHER INFORMATION CONTACT: John W. Borders, Center for Veterinary Medicine (formerly Bureau of Veterinary Medicine) (HFV-238), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6243.

SUPPLEMENTARY INFORMATION: Central Soya Co., Inc., 1300 Fort Wayne Bank Bldg., Fort Wayne, IN 46802, has informed FDA that it has purchased the

assets of Feed Specialties Co., effective February 10, 1984. The firm will continue to operate as an independent entity. However, Central Soya has filed several supplemental NADA's reflecting a change of sponsor name to Feed Specialties Co., Inc. The NADA's for affected premixes are 97–289, tylosin; 107–957, tylosin and sulfamethazine; 118–877, pyrantel tartrate; 132–448, bambermycins; 132–660, lincomycin; and 133–361, virginiamycin. This is an administrative change which does not in any other way affect the approval of the firm's NADA's. The agency is amending the regulations to reflect the change.

List of Subjects in 21 CFR Part 510

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

PART 510—NEW ANIMAL DRUGS

§ 510.600 [Amended]

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), § 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications is amended in paragraph (c)(1) in the entry for "Feed Specialties Co." by changing the firm name to read "Feed Specialties Co., Inc." and in paragraph (c)(2) in the entry for "017274" by changing the firm name "Feed Specialties Co." to read "Feed Specialties Co., Inc."

Effective date. June 1. 1984.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: May 25, 1984.

William B. Bixler,

Associate Director for Surveillance and Compliance, Center for Veterinary Medicine.

[FR Doc. 84–14630 Filed 5–31–84; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 216

[DOD Directive 1322.13]

Identification of Institutions of Higher Learning That Bar Recruiting Personnel From Their Premises

AGENCY: Office of the Secretary, DOD.

ACTION: Final rule.

SUMMARY: This rule updates DOD's implementation of the Act of September 26, 1972, section 606, Pub. L. 92–436, 86 Stat. 734, 740. The statute provides that funds appropriated by the Department of Defense may not be used at any institution of higher learning if military recruiting personnel are being barred by the policy of the institution from the premises of the institution.

EFFECTIVE DATE: This rule was signed by the Deputy Secretary of Defense on May 9, 1984, and will be effective July 2, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald G. Liveris, Office of the Assistant Secretary of Defense (Manpower, Installations, and Logistics) (Military Personnel and Force Management) (Accession Policy), The Pentagon, Room 2B269, Washington, D.C. 20301, telephone 202–697–9269.

SUPPLEMENTARY INFORMATION: In FR Doc. 82–26699, appearing in the Federal Register on September 29, 1982 (47 FR 42757), as amended by FR Doc. 82–31465, appearing in the Federal Register on November 17, 1982 (47 FR 31766), the Office of the Secretary of Defense (OSD) published a proposed revision of this part. The Supplementary Information accompanying the proposed revision described the prior history of the rule.

In response to the notice of proposed rulemaking, DOD received six comments. Each comment was reviewed and given careful consideration. The major factors considered in evaluating the public comments are set forth below.

Favorable comments were received with respect to the clarity of the rule and the improved procedures for determining whether an institution should be denied funds under the statutory prohibition. The new procedures are designed to promote a dialogue between the institution and DOD in the event the institution proposes to bar military recruiting on campus. It is DOD's desire to minimize involvement with the placement policies of institutions of higher learning to the extent consistent with the statutory requirements.

Several commenters also noted with approval § 216.3(a), which provides that a bar from recruiting at a subordinate element of an institution which does not effectively bar military recruiting at other subordinate elements of the institution, will be considered only with respect to the elements in which recruiting is effectively barred for the purpose of the prohibition on expenditure of DOD funds. This is not a new policy; rather, it reflects DOD's interpretation of the law and its legislative history as applicable only to the extent that military recruiting is barred by the policy of the institution. Subordinate elements of an institution of higher learning that administer their own placement policies to permit recruiting will not be subject to a prohibition on receiving DOD funds. It is consistent with DOD's intent to avoid entanglement with the internal decisionmaking processes of institutions of higher learning.

Several comments addressed that portion of § 216.3 that applies the prohibition on expenditure of DOD funds to "circumstances in which a policy of the institution is applied to bar military recruiting personnel because of the policies or practices of the Department of Defense or of a DOD Component." One comment favored this provision; others were opposed. One opponent noted that this might lead to a prohibition on expenditure of funds under the rule with respect to an institution of higher learning that prohibits military recruiting because the institution has a policy of excluding organizations that discriminate against the handicapped. Because the armed forces do not recruit persons with physical handicaps for military service (with certain exceptions), DOD funding for the school would be terminated if the institution barred military recruiters. The opposition to applying the DOD rule, in such circumstances, as expressed in the comments, rested primarily on two general grounds: first, it was contended that the legislative history underlying the statute excludes from the funding cut-off institutions that have recruiting policies generally applicable to all employers; second, applying the funding cut-off in such circumstances would interfere with the constitutional rights of the institutions to academic freedom.

Before discussing the specific details of these comments, several general points are important. First, the Department of Defense does not desire to engage in a confrontation with institutions of higher learning over their career placement policies. The Department has attempted to interpret it in a manner that minimizes friction between the Department and the academic community.

Second, this is not a new interpretation. The issue was raised first in 1980 in an inquiry from an institution of higher learning. The Department replied at that time that it interpreted that law as requiring a funding cut-off when an institution barred military recruiters as a result of military policy even if the institution happened to apply the same recruiting policy to other employers. (In order to ensure that all institutions have adequate notice of this interpretation, the Department will apply it only to actions by institutions

on or after the effective date of this amendment.)

Third, the Department of Defense does not sanction unlawful discrimination by military recruiters. To the extent that limitations are placed on enlistment of certain persons, such as those with physical handicaps, the restrictions are generated by the necessities of military life or the rigors of military training and operations.

Finally, the rule does not permit a funding cut off merely because the Department has been informed of an institution's recruiting policy in this regard. There are extensive procedures in the rule that are designed to ensure that no funds will be cut-off until an institution has had an ample opportunity to consider and reconsider whether it desires to bar military recruiters. Under § 216.5(b), the application of the institution's placement policy will be at issue only if it arises as a result of an institution's refusal to schedule or conduct a normal military recruiting visit. This will then lead to an initial inquiry under § 215.6(c) to conform whether military recruiting is barred. Contact will then be made with the head of the institution to obtain official confirmation of the exclusion of military recruiters. If the military department determines that the institution has a policy of barring military recruiters, the institution will be reported to the Assistant Secretary of Defense (Manpower, Installations, and Logistics) in a semi-annual report under § 215.6(c)(7). The Assistant Secretary will then notify the institution of higher learning of the proposed prohibition of DOD funding, and of an opportunity to respond. Only after there has been such a notice and opportunity will the Assistant Secretary make a determination as to whether the institution should be prohibited from receiving DOD funds. These procedures ensure that a funding cut-off will not take place until the institution of higher learning has had a full opportunity to decide whether it wishes to exclude military recruiters from the campus as a matter of policy. It is noteworthy in this regard that several institutions that have general restrictions on campus access based upon employers' policies have granted exceptions to permit military recruiting in recognition of the unique nature of military service.

The following matters are in response to the specific comments.

There is little legislative history surrounding this statute. A similar prohibition, effective only on an annual basis, was contained in authorization legislation for the National Aeronautics and Space Administration from 1969 through 1973, and in Department of Defense authorization bills in 1970 and 1971. The permanent law concerning this rule was enacted in 1972. With respect to each of the foregoing enactments, there was little or no debate surrounding adoption of the amendments concerning military recruiting. There were no recorded votes on these specific provisions in either House of Congress, and no significant expression of opposition during the debates. (In contrast, a contemporaneous proposal to ban DOD funding at institutions disestablishing R.O.T.C., which attracted opposition, was not adopted.) The legislation in which these provisions appeared involved multi-billion dollar authorizations, accompanied by extensive debates and numerous amendments concerning the space program, weapons systems, the war in Vietnam, DOD procurement practices, force levels, military pay, and similar issues. The absence of recorded votes or controversial debate concerning the issue of military recruiting on-campus, in the context of legislation in which the members of Congress focused on other issues, provides considerable caution against strained interpretation of isolated general statements in the legislative history.

The opponents of § 216.3(b) of the rule assert that Congress did not intend the prohibition on expenditure of funds to apply when an institution applies a recruiting ban to employers in general, including military recruiters. The legislative history cited by opponents does not support this view. The opponents have cited various statements during consideration of the bill in which members of Congress discussed exclusion of military recruiters from campuses. These isolated statements highlight the purpose for the rule—creating a disincentive for institutions to deny access to campuses by military recruiters. The statements cited in opposition to the rule do not express intent to limit its scope in any pertinent respect. There is nothing that expresses legislative intent to require continued DOD funding of institutions that bar civilian employers in addition to DOD recruiters. The wording of the legislation suggests the contrary. It is addressed solely to military recruiting without regard to civilian recruiting. Institutions that bar military recruiters come within the prohibition on expenditure of funds, and there is no exception in the statute on the grounds that the institution also bars civilian employers; conversely, an institution that bars recruiters related to, but not part of the armed forces, such as recruiters for DOD civilian components, or any other civilian recruiters, do not come within the statutory prohibition (unless they also bar military recruiters) and there is no funding cut-off under the law based on exclusion of recruiters for civilian components.

If DOD were to interpret the statute as not applying to institutions that bar military recruiters when civilians are barred for the same reasons, it would produce irrational results. Consider two hypothetical institutions in the context of the example offered by one of the opponents of the rule concerning an on-campus recruiting ban resulting from military policy regarding enlistment of handicapped persons. Assume that the first institution adopts a policy prohibiting military recruiting as a result of the limitations on enlistment in the armed forces of handicapped persons. Under the view of some of the opponents of § 215.6(b), a funding cut-off would be permissible (at least in terms of the intent of Congress) because it involves a policy applied by institution to the armed forces. Assume that the second institution adopts a general policy, applicable to all employers, precluding use of placement facilities by organizations that limit recruitment of the handicapped. On the basis of this policy, the second institution refuses to allow military recruiting, and it adheres to the ban on military recruiting through the entire procedure of clarification, notice, and opportunity to respond that is afforded by the rule. Under the opponent's view of the statute, the cut-off of DOD funds could not be implemented against the second institution because the institution did not single out the military when it adopted the recruiting policy. Such a distinction between the institutions—applying a funding cut-off to the first and not the second merely because the latter includes civilian employers in its restriction on recruiting—is difficult to rationalize.

In order to reach the result desired by the opponents of the rule, one would have to conclude that the second institution, which, as a matter of institutional policy, barred military recruiters from campus as a result of military policy, did not, in the words of the statute, bar military recruiters "by the policy of such institutions from the premises of the institution." Such a conclusion would be contrary to the plain meaning of the statute, and is not compelled by any of the legislative history cited by the opponents of that portion of the rule. It would be contrary to the legislative purpose, which was to promote access to information on campus by creating a disincentive for

schools that might otherwise seek to exclude military recruiters because of military policies.

There are other circumstances that might arise creating even further difficulties if DOD were to adopt the view of the opponents of this portion of the rule. For example, an institution might adopt a policy excluding military recruiters from campus for the purpose of taking institutional action against the military, but the institution could avoid the funding cut-off under the opponent's view if it expressed such a policy in terms of a prohibition applicable to all employers. The legislation provides no support for allowing the statute to be circumvented in such a manner.

The words of the legislation—and the statements in the legislative history concerning the importance of on-campus recruiting—provide a sound basis for DOD's interpretation of the statute. If an institutional policy bars military recruiting on the basis of DOD policy, the prohibition on expenditure of funds applies regardless of whether the institution applies a similar policy to other employers.

The legislation prohibits use of DOD funds at an institution when "recruiting personnel of any of the Armed Forces of the United States are barred by the policy of such institution from the premises of the institution." The statute does not create an exception for institutions that extend recruiting bans to other employers out of favor with the students or faculty; nor does the legislation require the Department of Defense to determine whether the source of a policy barring military recruiters is solely an anti-military bias or whether it reflects broader concerns. DOD seeks to avoid such entanglement in internal university procedures. Once an institution has announced that it will not permit military recruiters on campus because of DOD policies, the institution has adopted a policy that calls into play the sanctions of the statute. The Department of Defense has attempted to interpret the statute reasonably by recognizing that neutral time, place, and manner criteria are not within the intent of Congress in requiring a cut-off of DOD funds. The same cannot be said with respect to an institutional policy that bars military recruiters on the basis of DOD policy. Such a recruiting ban was the focus of Congress when it enacted the law in 1972. The opponents of DOD's interpretation of the statute have not cited any expression of congressional intent to exclude institutions that apply such a bar to other employers in addition to the military.

On a related point, several commenters suggested that the statute should be interpreted to avoid interference with the academic prerogatives of institutions of higher learning. DOD agrees with that general principle, and has attempted to limit application of the statute to the congressional purpose. One commenter suggested that an institution's career counseling program might be intimately linked to its academic program, and that an institution's policy of denying placement services to all employers who discriminate might be related to a special academic commitment, such as a commitment to the handicapped. In such circumstances, according to the commenter, if the school then bars military recruiters because of military limitations on recruiting handicapped persons, a cut-off of DOD funds to the institution would impact adversely on the institution's first amendment academic freedom.

At the outset, it must be emphasized that the rule implements the underlying statute. The statute does not seek to govern in any matter the content of classroom instruction or to otherwise impact on scholarly pursuits; rather, the statute provides a means to obtain employment related information. To the extent that the career counseling process is related to academic freedom, it is ironic that some commenters would seek to invoke the first amendment to justify a restriction in the flow of ideas on-campus by barring military recruiters. The relationship between academic freedom and the first amendment involves an emphasis on promoting the market-place of ideas, with a view towards expanding access to information. *See, e.g., Board of Education* v. *Pico,* 102 S.Ct. 2799 (1982). Congress, in enacting this law, employed a reasonable incentive to promote students' access to information about the armed forces. It is noteworthy that Congress adopted this law at the same time it rejected a funding cut-off to schools that disestablished R.O.T.C. This suggests a congressional sensitivity to academic freedom, and underscores the fact that the statute is intended to promote availablity of competing ideas.

Under the statute, a student concerned about military policy on enlistment of handicapped persons, for example, is provided with a means of obtaining face-to-face information about that policy. Under the opponent's view, however, students would be denied that access whenever a university banned military recruiting so long as the ban was applied in conjunction with the recruiting by other employers. This would deprive students of the ability to learn directly about the basis of the military policy in question, denying them the right to determine on the basis of such first-hand information whether there might be a sufficient justification for the enlistment limitations imposed by the armed forces. Indeed, it would deny a person with a nondisqualifying handicap the right to talk with a recruiter on campus. In this regard, the interpretation of the statute suggested by the several of the opponents of this part of the rule—permitting institutions to preclude military recruiting so long as such a ban is in conjunction with a rule applicable to other employers—does not do justice to the first amendment values that the comments purport to serve.

Finally, with respect to other first amendment interests, several comments suggested that the rule impermissibly seeks to punish those who protest against military policy. It is the Department's view that Congress was well within its powers, including its constitutional powers with respect to the armed forces, when it determined that student access to military recruiters should be a reasonable condition of an institution's access to DOD funding. Moreover, the Department takes note of the fact that there is nothing inconsistent between student access to recruiters on campus and the robust exercise of a variety of first amendment activities. The presence of a recruiter on campus permits an exchange of ideas and the exercise of first amendment rights, including the opportunity to question and debate military policy. Of course, it is not the intent of this rule or any other DOD policy to direct institutions dealing with opposition, if any, to DOD policies. However, it is the intent of DOD to administer the statute in a manner that is consistent with the intent of Congress by providing student access to military recruiters with a minimum of DOD involvement in the academic community.

List of Subjects in 32 CFR Part 216

Armed Forces, Colleges and universities, Recruiting personnel.

Accordingly, Chapter 1, 32 CFR Part 216, is revised to read as follows:

PART 216—IDENTIFICATION OF INSTITUTIONS OF HIGHER LEARNING THAT BAR RECRUITING PERSONNEL FROM THEIR PREMISES

Sec.

Sec.
216.6 Information requirements.
Appendix A—Sample Letter of Inquiry

Authority: Pub. L. 92–436, 606(a), 1973.

§ 216.1 Purpose.

This part implements Pub. L. 92–436 and updates policy, procedures, and responsibilities for identifying and taking action against institutions of higher learning that bar recruiting personnel from their premises.

§ 216.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified and Specified Commands, and the Defense Agencies (hereafter referred to collectively as "DOD Components"). The term "Military Services," as used herein, refers to the Army, the Navy, the Air Force, and the Marine Corps.

§ 216.3 Policy.

(a) Under Pub. L. 92–436, funds appropriated for the Department of Defense may not be used at any institution of higher learning if the Secretary of Defense or designee determines that recruiting personnel of any Military Service are barred by the policy of the institution from the premises of the institution. If recruiting personnel are barred from the premises of a subordinate element of an institution by the policy of such subordinate element, and the policy does not bar effectively recruiting at other subordinate elements, the prohibition on use of funds applies only to the elements in which recruiting is barred effectively.

(b) A determination that military recruiting personnel are barred by policy from the premises of an institution shall be made when military personnel cannot obtain permission to recruit on the premises of the institution. This includes circumstances in which policy of the institution is applied to bar military recruiting personnel because of the policies or practices of the Department of Defense, including the policies or practices of a DOD Component. A determination that military recruiting personnel are barred by policy will not be made when the institution:

(1) Excludes all employers from recruiting on the premises of the institution.

(2) Permits employers to recruit on the premises of the institution only in response to an expression of student interest, and the institution:

(i) Provides the Military Services with the same opportunities to inform the students of military recruiting activities as are available to other employers.

(ii) Certifies that too few students have expressed an interest to warrant accommodating military recruiters, applying the same criteria that are appliable to other employers.

(3) Has been unable to schedule military recruiting visits in the past academic year, but agrees to schedule military recruiting visits on the premises of the institution in the coming academic year.

(4) Otherwise establishes reasonable restrictions on the time and place of recruiting activities that generally are applicable to all employers and are not based on the policies or practices of the Department of Defense.

(c) Under Pub. L. 92–436, the prohibition on use of funds may be waived if the Secretary of the Military Department concerned certifies to the Congress in writing that a specific course of instruction is not available at any other institution of higher learning and frurnishes to the Congress the reasons why such a course of instruction is of vital importance to the security of the United States.

(d) Under Pub. L. 92–436, the prohibition on use of research and development (R&D) fund may be waived if the Secretary of Defense, or designee, determines that the expenditure is a continuation or a renewal of a previous program with the institution that is likely to make significant contribution to the defense effort.

§ 216.4 Responsibilities.

(a) The *Assistant Secretary of Defense (Manpower, Installations, and Logistics)* (ASD(MI&L)) shall:

(1) Determine whether recruiting personnel have been barred by policy from the premises of an institution of higher learning.

(2) Disseminate to DOD Components the names of institutions of higher learning that are subject to the prohibition on use of funds.

(b) The *Under Secretary of Defense for Research and Engineering* (USDR&E) shall exercise the authority to waive the prohibition on use of R&D funds under § 216.3(d), above. Such waivers shall be reported promptly to the ASD(MI&L).

(c) The *Secretaries of the Military Departments* shall:

(1) Submit semiannual reports to the ASD(MI&L) under § 216.6(a), below, concerning institutions of higher learning that bar recruiting personnel from the premises of the institutions.

(2) Determine whether to waive the prohibition on use of funds under § 216.3(c), above.

(d) The *Heads of DOD Components* shall submit semiannual reports on actions related to the prohibition on use of funds under § 216.6(b), below.

§ 216.5 Procedures.

(a) Recruiters shall continue to observe the traditional DOD policy to accommodate an institution's preferences as to times and places for scheduling oncampus recruiting.

(b) The procedures prescribed herein shall be applied to institutions of higher learning that are visited for recruiting purposes. A survey of institutions of higher learning may not be undertaken for purposes of this part. Action taken under the part shall be limited to experiences obtained as a result of attempts to schedule or conduct normal recruiting visits and on any further information related to such recruiting endeavors.

(c) The following procedures shall be used by the Military Departments to determine whether recruiting personnel are barred by policy from the premises of an institution of higher learning.

(1) An inquiry as to the policy of the institution concerning military recruiting shall be made when an official of the institution informs the Military Service concerned, orally or in writing, that the policy of the institution is not to permit recruiting by the Military Service, or when repeated requests to schedule recruiting visits are unsuccessful. An inquiry need not be made when the Military Service concerned otherwise has determined that recruiting personnel are not barred by policy under one or more provisions of § 216.3(b)(1) through § 216.3(b)(4), above.

(2) The inquiry shall consist solely of official contact with officers of the institution who are responsible for recruiting or placement activities, or their superiors.

(3) The Military Service shall obtain written confirmation of the refusal to permit recruiting by the Military Service. If written confirmation cannot be obtained, oral policy statements attributed to an appropriate official of the institution shall be used.

(4) Based upon the initial inquiry, written clarification of the institution's present policy shall be sought by a letter of inquiry to the head of the institution from the headquarters level of the military recruiting organization concerned (or higher official if so designated by the Secretary of the Military Department concerned). The sample letter of inquiry at Appendix A shall be followed as closely as possible.

(5) Under the procedures established by the Secretary of the Military

Department concerned, a determination shall be made whether military recruiting personnel are being barred by the policy of the institution from the premises of the institution. The determination shall be based on the responses to the letter of inquiry and on such other evidence obtained in accordance with this part as may be appropriate, consistent with the policy in § 216.3, above.

(6) If it is determined that one or more of the provisions of § 216.3(b)(1) through § 216.3(b)(4), above, are applicable, the actions shall be terminated.

(7) The Secretary of the Military Department concerned shall submit a report for each Military Service to the ASD(MI&L) and the USDR&E each January 31 and June 30 (see § 216.6, below).

(i) The report shall list each institution of higher learning that is recommended for inclusion on the list of institutions subject to the prohibition on use of funds. Full documentation, including the basis for the listing, shall be furnished for each institution named, including the institution's formal response to the letter of inquiry.

(ii) Repetitive listing of institutions subject to the prohibition at the time of the report is not required.

(iii) Each institution that has been granted a waiver by the Secretary of the Military Department concerned under § 216.3(c), above, shall be listed in a separate portion of the report. A copy of the transmittal to Congress shall be included.

(d) The USDR&E shall inform the ASD(MI&L) promptly when the waiver provisions are invoked for R&D funds under § 216.3(d), above, with respect to any institution listed on a Military Department's report. Negative reports from the USDR&E are not required.

(e) Not later than 30 days after receipt of the reports from the Military Departments, the ASD(MI&L) shall provide each institution listed by the Military Departments under § 216.5(c)(7)(i), above, with the following information:

(1) The portions of each Military Department's report that pertain to the institution, including the supporting documentation.

(2) Notice that the prohibition on use of funds under Pub. L. 92-436 and this part shall be invoked within 60 days of the date of the letter unless the institution provides sufficient information to enable the ASD(MI&L) to determine that the institution will permit recruiting by the Military Services during the coming academic year or that one or more of the provisions of § 216.3, above, are otherwise applicable. A reasonable extension of time, not to exceed 30 days, may be granted at the request of the institution.

(3) Notice that communications concerning the waiver provisions based upon the availability of a specific course of instruction (§ 216.3(c), above) or expenditure of R&D funds (§ 216.3(d), above) shall be submitted to the ASD(MI&L) for transmittal to the appropriate official.

(f) When the response of the institution has been received, or if no response is received by the suspense date, the ASD(MI&L) shall determine whether the institution shall be prohibited from receiving funds as provided in § 216.3, above. The determination shall be transmitted promptly to the institution and to all DOD Components. If the USDR&E has invoked the waiver provisions with respect to R&D funds under § 216.3(d), above, that fact shall be noted. If the prohibition on use of funds extends only to subordinate elements of an institution, only those elements that are subject to the prohibition shall be listed.

(g) On a semiannual basis, but not later than November 30 and April 30 of each year, the ASD(MI&L) shall transmit to the heads of DOD Components a cumulative list of all institutions currently subject to the prohibition on use of funds under paragraph 216.3.

(1) An institution may be removed from the list under the following circumstances:

(i) When an institution provides information to the ASD(MI&L) to permit a determination that the institution is willing to schedule recruiting by the Military Services on the premises of the institution in the coming academic year, or that one or more of the provisions of § 216.3(b)(1) through § 216.3(b)(4), above, are otherwise applicable.

(ii) When the Secretary of a Military Department invokes the waiver provisions of § 216.3(c), above.

(2) If the USDR&E invokes the waiver provisions of § 216.3(d), above, to permit the use of R&D funds at an institution on the list, that fact shall be noted, but the institution may not be removed from the list solely on that basis.

(3) An institution may be added to the list only in accordance with this paragraph. If the Secretary of a Military Department proposes to withdraw a waiver previously granted under § 216.3(c), above, the Secretary shall notify the institution of that fact and shall initiate an inquiry under this section to determine whether the institution intends to continue barring military recruiters by policy from the premises of the institution. If it is determined that such a bar is in effect, the matter shall be processed by the Military Department Secretary and the ASD(MI&L) under this paragraph.

§ 216.6 Information requirements.

(a) The semiannual reports from the Secretaries of the Military Departments as to the recommendations of institutions for inclusion on the list of institutions prohibited from receiving funds shall be submitted on January 31 and June 30 of each year. This reporting requirement has been assigned Report Control Symbol DD-MIL(SA)1386.

(b) On January 31 and June 30 of each year, the heads of DOD Components shall submit a list of all actions in which an institution listed by the ASD (MI&L) under §§ 216.5(f) and 216.5(g), above, has been subjected to a termination of funding or other disqualification from eligibility to receive funds on the basis of this part. This reporting requirement has been assigned Report Control Symbol DD-MIL(SA)1640.

Appendix A—Sample Letter of Inquiry

Dr. John Doe
President
(name of institution)
Washington, D.C.

Dear Mr. Doe: My understanding is that military recruiting personnel are barred from the premises of *(name of institution)* by the policies of the institution. DoD Directive 1322.13 published in the Code of Federal Regulations under title 32, Part 216, obligates me to inform you of the law regarding policies that bar military recruiting personnel from the premises of institutions of higher learning. Moreover, I am required by the DoD Directive 1322.13—and also would like personally—to provide you the opportunity to clarify your institution's policy since DoD funding for programs at your institution may be at stake.

Section 606 of Public Law 92-436 (the Department of Defense Authorization Act for 1973) prohibits use of DoD appropriations at any institution of higher learning that by policy bars military recruiting personnel from the premises of the institution. It further provides that the Secretaries of the Military Departments shall furnish the Secretary of Defense the names of any institutions of higher learning that the Secretaries determine are barring military recruiting personnel from the institution's premises or property.

Funds for tuition assistance and for research, development, test, and evaluation for the Armed Forces are included in this Act. The applicable section of Pub. L. 92-436 is attached for your information.

So that the *(Military Service recruiting organization)* can provide authoritative information for use in complying with the requirements of this law, I would appreciate clarification of the current policy of your institution concerning on campus military recruiting. (Recite information previously received concerning the institution's policy or intentions in regard to on campus recruiting,

record of unsuccessful efforts to schedule recruiting visits, and other facts or points of departure, as appropriate.)

Specifically, I would appreciate answers to the following questions:

Is it the present policy of *(name of institution)* to bar military recruiting personnel from its premises or property?

Does *(name of institution)* intend to permit military recruiting on campus in the near future and is not able to schedule a date for a recruiting visit?

What is the policy of *(name of institution)* with respect to the visits of civilian employers (public or private) to the campus for the purpose of recruiting college students?

To comply with the reporting requirements of the law, I should appreciate your response by *(date)*. I am hopeful that it will be possible for the *(Military Service)* to schedule a recruiting visit in the near future at a mutually agreed upon time and place.

If you have any questions regarding this matter, please call me at *(phone number)*.

Sincerely,

Dated: May 25, 1984.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84-14648 Filed 5-31-84; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD3-84-18]

Regatta; Harvard-Yale Regatta, Thames River; Connecticut

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special Local Regulations are being adopted for the Harvard-Yale Regatta. This crew race will be held on June 3, 1984 on the Thames River in New London, Connecticut. This regulation is needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: This regulation becomes effective on June 3, 1984 at 10:00 a.m. and terminates the same day at 1:30 p.m.

FOR FURTHER INFORMATION CONTACT: LTJG D. R. Cilley, (212) 668-7974.

SUPPLEMENTARY INFORMATION: On April 26, 1984, the Coast Guard published a notice of proposed rule making in the Federal Register for this regulation (49 FR 17977). Interested persons were requested to submit comments, and no comments were received, accordingly no changes are made to the regulation as proposed. The regulation is being made effective in less than 30 days from the date of publication. There was not sufficient time remaining in advance of the event to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are LTJG D. R. Cilley, Project Officer, Boating Safety Office and Ms. MaryAnn Arisman, Project Attorney, Third Coast Guard District Legal Office.

Discussion of Regulations

The annual Harvard-Yale Regatta is a crew race event to be held on the Thames River on June 3, 1984. It is sponsored by the Harvard Yale Regatta Committee and is well known to the boaters and residents of this area. Due to the large number of spectator boats present on the river for the purpose of watching this crew race it is anticipated that there will be considerable congestion in the area. In order to provide for the safety of life and property, the Coast Guard will restrict vessel movement in the area prior to, during, and after the races. The crew shells will race upriver again this year. This helped to reduce congestion at the Penn Central Draw Bridge at the conclusion of the races. This will also help to ensure the safe movement of the spectator fleet down the Thames River after the races. Any races not held will be postponed until the next day.

Discussion of Comments

No comments were received.

Economic Assessment and Certification

This regulation is considered to be nonsignificant in accordance with DOT Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5). Its economic impact is expected to be minimal since this event will draw a large number of spectator craft into the area for the duration of the event. This should easily compensate area merchants for the slight inconvenience of having navigation restricted. Based upon this assessment, it is certified in accordance with section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this regulation will not have a significant economic impact on a substantial number of small entities. Also, the regulation has been reviewed in accordance with Executive Order 12291 of February 17, 1981, on Federal Regulation and has been determined not to be a major rule under the terms of that order.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulation

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended by adding a temporary § 100.35-302 to read as follows:

§ 100.35-302 Harvard-Yale Regatta, Thames River.

(a) *Regulated Area.* The Thames River at New London, Connecticut, from the Penn Central Draw Bridge to Bartlett Cove.

(b) *Effective Period.* This regulation will be effective from 10:00 a.m. to 1:30 p.m. on June 3, 1984. In case of postponement, the raindate will be June 4, 1984 and this regulation will be in effect from 8:30 a.m. to 11:30 a.m.

(c) *Special Local Regulations.* (1) All persons or vessels not registered with sponsor as participants or not part of the regatta patrol are considered spectators.

(2) No spectator or press boats shall be allowed out onto or across the race course without Coast Guard escort.

(3) No person or vessel may transit through the regulated area during the effective period unless participating in the event, or as authorized by the sponsor or Coast Guard Patrol personnel. The Patrol Commander may open up the regulated area to allow for vessel movement between scheduled races.

(4) Spectator vessels must be at anchor within a designated spectator area or moored to a waterfront facility within the regulated area in such a way that they shall not interfere with the progress of the event at least 30 minutes prior to the start of the races, that is 10:30 a.m. on June 3, 1984. They must remain moored or at anchor until the men's varsity have passed their positions. At that time, spectator vessels located south of the Harvard Boathouse may proceed downriver at a reasonable speed. Vessels situated between the Harvard Boathouse and the finish line must remain stationary until both crews return safely to their boathouses. If for any reason the men's varsity crew race is postponed, spectator vessels will remain in position until notified by Coast Guard or regatta patrol personnel.

(5) The last 1000 feet of the race course near the finish line will be delineated by four (4) temporary white buoys provided by the sponsor. All spectator craft shall remain behind these buoys during the event.

(6) Spectator craft shall not anchor: (i) To the west of the race course, between Monocoke Hill and Bartlett Point Light.

(ii) Within the race course boundaries or in such a manner that would allow

their vessel to drift or swing into the race course.

(7) During the effective period all vessels shall proceed at a speed not to exceed six (6) knots in the regulated area.

(8) Spectator vessels shall not follow the crews during the races.

(9) Swimming is prohibited in the vicinity of the race course during the races.

(10) A vessel operating in the vicinity of the Submarine Base shall not cause waves which result in damage to submarines or other vessels in the floating drydocks.

(11) All persons and vessels shall comply with the instructions of U.S. Coast Guard patrol personnel. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and other applicable laws.

(12) For any violation of this regulation, the following maximum penalties are authorized by law:

(i) $500 for any person in charge of the navigation of a vessel.

(ii) $500 for the owner of a vessel actually on board.

(iii) $250 for any other person.

(iv) Suspension or revocation of a license for a licensed officer.

(46 U.S.C. 454; 33 CFR 100.35 and 33 CFR 1.01–1)

Dated: May 25, 1984.

W. E. Caldwell,

Vice Admiral, U.S. Coast Guard, Commander, Third Coast Guard District.

[FR Doc. 84–14754 Filed 5–31–84; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 100

[CGD 5–T84–05]

Special Local Regulations; Marine Event; Elizabeth River Independence Day Celebration, Virginia

AGENCY: Coast Guard, DOT

ACTION: Final rule.

SUMMARY: Special local regulations are adopted for the Elizabeth River Independence Day Celebration. This event will be held on the Elizabeth River, adjacent to "Waterside" between the Norfolk and Portsmouth downtown areas. It will consist of a fireworks display from barges commencing at 9:30 pm and ending at 10:30 pm on July 4, 1984. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations become effective at 7:30 pm, 4 July 1984 and terminate at 11:00 pm, 4 July 1984. In case of inclement weather causing the event to be postponed, these regulations become effective at 7:30 pm 5 July 1984 and terminate at 11:00 pm 5 July 1984. If the event is postponed, the Patrol Commander will issue a broadcast Notice to Mariners.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Duane I. Preston, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23705 (804–398–6204).

SUPPLEMENTARY INFORMATION: A notice of proposed rule making has not been published for these regulations. Following normal rule making procedures would have been impracticable. The application to hold the event was not received until 26 April 1984, and there was not sufficient time remaining to publish proposed rules in advance of the event.

Drafting Information

The drafters of this regulation are LCDR Duane I. Preston, project officer, Chief, Boating Affairs Branch, Fifth Coast Guard District, and LT Walter J. Brudzinski, project attorney, Fifth Coast Guard District Legal Office.

Discussion of Regulations

The City of Portsmouth and Norfolk Festevents, Inc. are sponsors of this event. Norfolk Ship Company tugs will maneuver two barges used for shooting fireworks. Closure of the waterway for any extended period is not anticipated and thus commercial traffic should not be severely disrupted at any given time.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended by adding a temporary § 100.35–504 to read as follows:

§ 100.35–504. Elizabeth River, Norfolk, Virginia.

(a) *Regulated Area.* The waters of the Elizabeth River and its branches from shore to shore, bounded by the Midtown tunnel on the north, the Downtown tunnel on the south, and the Berkley Bridge on the east.

(b) *Special Local Regulations.* Except for participants in the Elizabeth River Independence Day Celebration, or persons or vessels authorized by the Coast Guard Patrol Officer, no person or vessel may enter or remain in the above area. The operator of any vessel in the immediate vicinity of this area shall:

(1) Stop his vessel immediately upon being directed to do so by any Coast Guard officer or petty officer on board a vessel displaying a Coast Guard ensign, and

(2) Proceed as directed by any Coast Guard officer or petty officer.

(c) Any spectator vessel may anchor outside of the area specified in paragraph (a) of this section.

(d) The Coast Guard Patrol Officer is a commissioned officer of the Coast Guard who has been designated by the Commander, Fifth Coast Guard District. The Patrol Commander will be stationed on the patrol vessel.

(e) These regulations and other applicable laws and regulations will be enforced by Coast Guard officers and petty officers on board Coast Guard and private vessels displaying the Coast Guard ensign.

(46 U.S.C. 454; 49 U.S.C. 1655(b); 49 CFR 1.46(b); and 33 CFR 100.35)

Dated: May 17, 1984.

John D. Costello,

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

[FR Doc. 84–14755 Filed 5–31–84; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 100

[CGD2 84–01]

Special Local Regulations; Cape Girardeau Riverfest '84, Cape Girardeau, MO

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for Miles 051.6 to 054.1, Upper Mississippi River for the Cape Girardeau Riverfest '84. This event will be held on June 16, 1984, at Cape Girardeau, Missouri. Should inclement weather prevent the event from being held on that date, then it will be rescheduled to be held on June 17, 1984, at Cape Girardeau, Missouri. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations become effective on June 16, 1984 (or on June 17, 1984, if inclement weather requires the event to be rescheduled) only between the hours of 11:00 a.m. and 9:30 p.m., local time.

FOR FURTHER INFORMATION CONTACT: CDR. R. B. Bower, Chief, Boating Technical Branch Second Coast Guard District, 1430 Olive St., St. Louis, MO 63103 (314) 425-5971.

SUPPLEMENTARY INFORMATION: This special local regulation is issued pursuant to 46 U.S.C. 454 and 33 CFR 100.35, for the purpose of promoting the safety of life and property on the Upper Mississippi River between miles 051.6 and 054.1 during the "Cape Girardeau Riverfest '84" on June 16, 1984, or on June 17, 1984, if inclement weather requires the event to be rescheduled.

This event will consist of three water ski shows and a fireworks display which could pose hazards to navigation in the area. (The water ski shows are expected to begin at 11:00 a.m., 1:30 p.m., and 5:00 p.m. respectively, and the fireworks display is expected to start at 9:00 p.m. on this date.) Therefore, these special local regulations are deemed necessary for the promotion of safety of life and property in the area during this event. A notice of proposed rule making has not been published for these regulations and they are being made effective less than 30 days from the date of publication. Following normal rule making procedures would have been impracticable. The application to hold the event was not received until May 14, 1984, and there was not sufficient time remaining to publish proposed rules in advance of the event, or to provide for a delayed effective date.

These regulations have been reviewed under the provisions of Executive Order 12291 and have been determined not to be a major rule. This conclusion follows from the fact that the duration of the regulated area is short. In addition, these regulations are considered to be nonsignificant in accordance with guidelines set out in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 5-22-80). An economic evaluation has not been conducted since, for the reasons discussed above, its impact is expected to be minimal. In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), is also certified that these rules will not have a significant economic impact on a substantial number of small entities. This rule is necessary to insure the protection of life and property in the area during the event.

Drafting Information

The drafters of this regulation are BMCM W. L. Giessman, USCGR, Project Officer, Boating Technical Branch, and Lt. T. A. Councilor, USCG, Project Attorney, Second Coast Guard District Legal Office.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended by adding a temporary § 100.35-0205 to read as follows:

§ 100.35-0205 Upper Mississippi River, miles 051.6 through 054.1.

(a) *Regulated Area.* The following portion of the Upper Mississippi River will be closed to commercial navigation or mooring from 11:00 a.m. (local time) until 9:30 p.m. (local time) on June 16, 1984. Should inclement weather prevent the event from being held on that date, then it will be rescheduled to be held on June 17, 1984, during the same time period.

(1) The area between Mile 051.6-054.1 Upper Mississippi River is designated the regatta area. The above times represent a guideline for possible river closure times not to exceed TWO (2) hours in duration.

(b) *Special Local Regulations.* Vessels desiring to transit the restricted area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. The rules contained in the above two sentences shall not apply to participants in the event or vessels of the patrol, while they are operating in the performance of their assigned duties.

(1) The Patrol Commander may be reached on Channel 16 (156.8MHZ) when required, by the call sign "PATCOM".

(c) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signalled shall stop and shall comply with the orders of the Patrol Vessel. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(d) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(e) The Patrol Commander may restrict vessel operation within the marine event area to vessels having particular operating characteristics.

(f) The Patrol Commander may terminate the marine event at any time it is deemed necessary for the protection of life and property.

(g) This section 100.35-0205 will become effective at 11:00 a.m. (local time) on June 16, 1984, and will no longer be effective after 9:30 p.m. (local time) on June 16, 1984. If inclement weather requires the event to be rescheduled, then this paragraph 100.35-0205 will become effective at 11:00 a.m. (local time) on June 17, 1984, and will no longer be effective after 9:30 p.m. (local time) on June 17, 1984.

(46 U.S.C. 454, 46 U.S.C. 1461(d), 46 U.S.C. 1483, 46 U.S.C. 1484(b), 49 U.S.C. 1655(b)(1), 33 CFR 100.35, 33 CFR 100.50, 49 CFR 1.46(b), 49 CFR 1.46(n)(1))

Dated: May 21, 1984.

S. B. Vaughn,

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

[FR Doc. 84-14720 Filed 5-31-84; 8:45 am]
BILLING CODE 4910-14-M

VETERANS ADMINISTRATION

38 CFR Part 36

Increase in Maximum Permissible Interest Rates on Guaranteed Manufactured Home Loans, Home and Condominium Loans, and Home Improvement Loans

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The VA (Veterans Administration) is increasing the maximum interest rates on guaranteed manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans. In addition, the maximum interest rates applicable to fixed payment and graduated payment home and condominium loans, and to home improvement and energy conservation loans are also increased. These increases are necessary because previous rates were not competitive enough to induce lenders to make guaranteed or insured home loans without substantial discounts, or to make manufactured home loans. The increase in the interest rates will assure a continuing supply of funds for home mortgages, home improvement and manufactured home loans.

EFFECTIVE DATE: May 29, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. George D. Moerman, Loan Guaranty Service (264), Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420, (202-389-3042).

SUPPLEMENTARY INFORMATION: The Administrator is required by section

1819(f), Title 38, United States Code, to establish maximum interest rates for manufactured home loans guaranteed by the VA as he finds the manufactured home loan capital markets demand. Recent market indicators—including the prime rate, the general increase in interest rates charged on conventional manufactured home loans, and the increase in other short-term and long-term interest rates—have shown that the manufactured home capital markets have become more restrictive. It is now necessary to increase the interest rates on manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans in order to assure an adequate supply of funds from lenders and investors to make these types of VA loans.

The Administrator is also required by section 1803(c), Title 38, United States Code, to establish maximum interest rates for home and condominium loans, including graduated payment mortgage loans, and for loans for home improvement purposes. Recent market indicators—including the rate of discount charged by lenders on VA and Federal Housing Administration loans and the general increase in interest rates charged by lenders on conventional loans, have shown that the mortgage money market has become more restrictive. The maximum rates in effect for VA guaranteed home and condominium loans and those for energy conservation and home improvement purposes have not been sufficiently competitive to induce private sector lenders to make these types of VA guaranteed or insured loans without imposing substantial discounts. To assure a continuing supply of funds for home mortgages through the VA loan guaranty program, it has been determined that an increase in the maximum permissible rates applicable to home and improvement loans is necessary. The increased return to the lender will make VA loans competitive with other available investments and assure a continuing supply of funds for guaranteed and insured mortgages.

Regulatory Flexibility Act/Executive Order 12291

For the reasons discussed in the May 7, 1981 Federal Register, (46 FR 25443), it has previously been determined that final regulations of this type which change the maximum interest rates for loans guaranteed, insured, or made pursuant to chapter 37 of Title 38, United States Code, are not subject to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601–612.

These regulatory amendments have also been reviewed under the provisions of Executive Order 12291. The VA finds that they do not come within the definition of a "major rule" as defined in that Order. The existing process of informal consultation among representatives within the Executive Office of the President, OMB, the VA and the Department of Housing and Urban Development has been determined to be adequate to satisfy the intent of this Executive Order for this category of regulations. This alternative consultation process permits timely rate adjustments with minimal risk of premature disclosure. In summary, this consultation process will fulfill the intent of the Executive Order while still permitting compliance with statutory responsibilities for timely rate adjustments and a stable flow of mortgage credit at rates consistent with the market.

These final regulations come within exceptions to the general VA policy of prior publication of proposed rules as contained in 38 CFR 1.12. The publication of notice of a regulatory change in the VA maximum interest rates for VA guaranteed, insured, and direct home and condominum loans, loans for energy conservation and other home improvement purposes, and loans for manufactured home purposes would create an acute shortage of funds pending the final rule publication date which would necessarily be more than 30 days after publication in proposed form. Accordingly, it has been determined that publication of proposed regulations prior to publication of final regulations is impracticable, unnecessary, and contrary to the public interest.

(Catalog of Federal Domestic Assistance Program numbers, 64.113, 64.114, and 64.119)

These regulations are adopted under authority granted to the Administrator by sections 210(c), 1803(c)(1), 1811(d)(1) and 1819 (f) and (g) of Title 38, United States Code. The regulations are clearly within that statutory authority and are consistent with Congressional intent.

These increases are accomplished by amending sections 36.4212(a) (1), (2) and (3), and 36.4311 (a), (b), and (c), and 36.4503(a), Title 38, Code of Federal Regulations.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing, Loan programs—housing and community development, Manufactured homes, Veterans.

Approved: May 25, 1984.

By direction of the Administrator.

John W. Hagan, Jr.,

Deputy Chief Benefits Director.

PART 36—LOAN GUARANTY

The Veterans Administration is amending 38 CFR Part 36 as follows:

1. In § 36.4212, paragraph (a) is revised as folows:

§ 36.4212 Interest rates and late charges.

(a) The interest rate charged the borrower on a loan guaranteed or insured pursuant to 38 U.S.C. 1819 may not exceed the following maxima except on loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the Veterans Administration prior to the respective effective date: (38 U.S.C. 1819(f))

(1) Effective May 29, 1984, 16 percent simple interest per annum for a loan which finances the purchase of a manufactured home unit only.

(2) Effective May 29, 1984, 15½ percent simple interest per annum for a loan which finances the purchase of a lot only and the cost of necessary site preparation, if any.

(3) Effective May 29, 1984, 15½ percent simple interest per annum for a loan which will finance the simultaneous acquisition of a manufactured home and a lot and/or the site preparation necessary to make a lot acceptable as the site for the manufactured home.

* * * * *

2. In § 36.4311, paragraphs (a), (b), and (c) are revised as follows:

§ 36.4311 Interest rates.

(a) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the VA which specify an interest rate in excess of 14 per centum per annum, effective May 29, 1984, the interest rate on any home or condominium loan other than a graduated payment mortgage loan, guaranteed or insured wholly or in part on or after such date may not exceed 14 per centum per annum on the unpaid principal balance. (38 U.S.C. 1803(c)(1))

(b) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the VA which specify an interest rate in excess of 14¼ per centum per annum, effective May 29, 1984, the interest rate of any graduated payment mortgage loan guaranteed or insured wholly or in part on or after such date may not exceed 14¼ per centum per annum. (38 U.S.C. 1803(c)(1))

(c) Effective May 29, 1984, the interest rate on any loan solely for energy conservation improvements or other alterations, improvements or repairs, which is guaranteed or insured wholly or in part on or after such date may not exceed 15½ per centum per annum on the unpaid balance. (38 U.S.C. 1803(c)(1))

* * * * *

3. In § 36.4503, paragraph (a) is revised as follows:

§ 36.4503 Amount and amortization.

(a) The original principal amount of any loan made on or after October 1, 1980, shall not exceed an amount which bears the same ratio to $33,000 as the amount of the guaranty to which the veteran is entitled under 38 U.S.C. 1810 at the time the loan is made bears to $27,500. This limitation shall not preclude the making of advances, otherwise proper, subsequent to the making of the loan pursuant to the provisions of § 36.4511. Except as to home improvement loans, loans made by the VA shall bear interest at the rate of 14 percent per annum. Loans solely for the purpose of energy conservation improvements or other alterations, improvements, or repairs shall bear interest at the rate of 15½ percent per annum. (38 U.S.C. 1811(d) (1) and (2)(A))

* * * * *

[FR Doc. 84-14761 Filed 5-31-84; 8:45 am]
BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-3-FRL 2599-4; Docket No. AM050VA]

Approval and Promulgation of Implementation Plans; Approval of Revision to the Commonwealth of Virginia State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This notice announces the Administrator's approval of a variance to the Virginia State Implementation Plan (SIP) for the Portsmouth Municipal Incinerator. This revision was submitted to EPA on May 6, 1983 and consists of a variance from Part IV, Rule Ex-7, section 4.71 of the Virginia Air Pollution Control Regulations. This action will waive the TSP emissions standard until February 15, 1985 by which time the incinerator will be completely phased-out and an alternate method of refuse disposal used. This variance meets all of the applicable requirements of the Clean Air Act and 40 CFR Part 51.

EFFECTIVE DATE: July 2, 1984.

ADDRESSES: Copies of the amendment and associated support materials are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Air Management Division, Curtis Building, Sixth and Walnut Streets, Philadelphia, PA 19103, Attn: Mr. Harold A. Frankford

Public Information Reference Unit, Room 2922, EPA Library, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460

Virginia State Air Pollution Control Board, Room 801, Ninth Street Office Building, Richmond, Virginia 23219, Attn: Mr. John M. Daniel

The Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, D.C. 20408.

FOR FURTHER INFORMATION CONTACT: Mr. Harold Frankford (3AM13) at the Region III address stated above or telephone 215/597-1325.

SUPPLEMENTARY INFORMATION: On May 6, 1983, the Commonwealth of Virginia submitted to EPA Region III a variance from Rule EX-7, section 4.71 of the Commonwealth of Virginia Regulations for the Control and Abatement of Air Pollution. This variance would allow the City of Portsmouth Municipal Incinerator to discharge particulate matter in excess of 0.14 grains per standards cubic feet of dry flue gas corrected to 12% carbon dioxide.

The Commonwealth has certified that the variance was subject to a public hearing on February 25, 1983 in Virginia Beach as required by 40 CFR 51.4.

The variance will terminate on February 15, 1985, by which time the incinerator operations will have ceased. The variance places the following conditions on the incinerator operations:

1. All operating personnel must be certified in the operation of the incinerator and air pollution control regulations.

2. The operating load of the Municipal Incinerator shall not exceed 360 tons per day or 15 tons per hour.

3. Emissions from the Municipal Incinerator shall not exceed 116 pounds per hour or 435 tons per year.

4. The Municipal Incinerator shall be properly maintained in good working order at all times.

5. All public complaints concerning the Municipal Incinerator shall be kept on file and reported to the Virginia Region VI Office (804/449-6845) as soon as possible but not later than four daytime business hours after the complaint is received.

6. The Board personnel at reasonable times shall have access to the facility to investigate incidents or review records.

7. Final compliance must be met by February 15, 1985 as shown below.

Compliance Schedule

June 30, 1983—City of Portsmouth reports to the State Air Pollution Control Board on the status of repairs to the incinerator and the progress being made toward establishment of the regional landfill

January 1, 1984—Interim report to the State Air Pollution Control Board on progress being made toward establishment of the regional landfill

June 30, 1984—Interim report to the State Air Pollution Control Board on progress being made toward establishment of the regional landfill

November 30, 1984—Notification to the State Air Pollution Control Board on landfill completion

January 1, 1985—Notification to the State Air Pollution Control Board of complete phase-out of the Municipal Incinerator.

Currently, the incinerator emits TSP at a rate of 116.3 lbs/hr. While the rate exceeds the SIP-approved incinerator standard, the Commonwealth demonstrated that the variance will not violate the ambient air quality standards for TSP. The PTMAX model was used to predict the conditions at the period of highest instantaneous concentration. This model predicted that the incinerator emissions would cause an 8.7 $\mu g/m^3$ increase in the 24-hour concentration. Therefore, the expected TSP concentration from this source, combined with the highest 24-hour concentration measured at 137 $\mu g/m^3$ will not exceed the TSP secondary standard of 150 $\mu g/m^3$. Also, the facility operates with an opacity reported below 20%, which complies with Virginia's Air Regulation 4.22.

Proposed Rulemaking/Public Comment Period

On January 18, 1984, 49 FR 2122, EPA proposed approval of this variance as a revision to the Virginia SIP. There were no comments received during the 30-day public comment period ending February 17, 1984.

EPA Evaluation

The EPA has reviewed the information for the revision submitted by the Commonwealth of Virginia and believes that it meets the requirements of 40 CFR Part 51. Although the original May 6, 1983 variance request did not

address the issue of PSD increment consumption, Virginia informed EPA on November 9, 1983 that the Portsmouth Incinerator was emitting the same TSP emissions rate at the time the baseline was triggered in the Portsmouth area as that which this variance request allows. Therefore, this SIP revision only has to address the ambient TSP standard but not PSD increment consumption.

Conclusion

In view of the above evaluation, the Administrator approves this variance to Part IV, Rule EX-7, section 4.71 of the Commonwealth of Virginia State Implementation Plan for the Portsmouth Municipal Incinerator. In conjunction with the Administrator's approval, 40 CFR 52.2420 (Identification of Plan) of Subpart VV (Virginia) is revised to incorporate these amendments.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Clean Air Act, judicial review of this action is available *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

Authority: 42 U.S.C. 7401-7642.

Dated: May 29, 1984.

William D. Ruckelshaus,

Administrator.

Note.—Incorporation by reference of the State Implementation Plan for the Commonwealth of Virginia was approved by the Director of the Federal Register on July 1, 1982.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Part 52 of Title 40, Code of Federal Regulations is amended as follows:

Subpart VV—Virginia

In § 52.2420 Identification of Plan, paragraph (c)(84) is added as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) The plan revision listed below was submitted on the dates specified.

* * * * *

(84) A variance issued to the City of Portsmouth, exempting their Municipal Incinerator from Rule EX-7, section 4.71 for particulate emissions until February 15, 1985, submitted on May 6, 1983 by the Commonwealth of Virginia.

[FR Doc. 84-14672 Filed 5-31-84; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 52

[A-3-FRL-2599-5; EPA Docket No. AWO15DC and AWO16DC]

Approval of a Revision of the District of Columbia State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving two revisions to the District of Columbia State Implementation Plan (SIP), provided that no adverse comments are received within 30 days of this notice. The revisions being approved consist of procedures for public notification of air quality levels in the District and for assuring that decision makers involved in issuing and enforcing permits for sources in the District represent the public and disclose any potential conflicts of interest in these matters.

EFFECTIVE DATE: This action will be effective on July 31, 1984 unless notification is received by July 2, 1984 that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of the District's revisions, along with associated support materials, are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Air Programs Branch (3AM10), Curtis Building, 6th & Walnut Streets, Philadelphia, PA 19106

Office of Environmental Standards & Compliance, D.C. Department of Environmental Services, 5010 Overlook Avenue SW., Washington, DC 20032-5397

Public Information Reference Unit, EPA Library, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

The Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, DC 20408.

All comments submitted on or before July 2, 1984 will be considered and should be submitted to Mr. James E. Sydnor at the EPA Region III address stated above. Please reference the EPA docket numbers found in the heading of this notice in any correspondence.

FOR FURTHER INFORMATION CONTACT: Mr. Danial Ryan at the EPA Region III address above, or at (215) 597-8555.

SUPPLEMENTARY INFORMATION: On December 5, 1983, Mayor Marion Barry submitted a request for a revision to the District of Columbia State Implementation Plan (SIP). This revision consisted of procedures for publication of air quality, as required under section 127(a) of the Clean Air Act. The District's procedures for public notification are contained in a document dated September 1983 entitled "Revision to the Implementation Plan for the District of Columbia for Public Notification of Air Quality.

The District's procedures include provisions for daily and annual reporting. The daily reporting, coordinated by the Metropolitan Washington Council of Governments, consists of the Pollutant Standards Index (PSI) reports in the news media (newspaper and TV), and recorded messages from several sources.

The area covered by the PSI reporting encompasses the entire District of Columbia. The public is advised of health hazards associated with different air pollution levels by using standard index ranges in the PSI system.

The annual report, prepared by the D.C. Department of Environmental Services, lists all exceedances of the primary National Ambient Air Quality Standards, and indicates the area which each exceedance affects. The annual report includes a description of the health effects associated with elevated levels of air pollution.

The District also presented an extensive description of the procedures used to assure adequate public awareness and involvement, as well as procedures for public notification and follow-up for hearings concerning air quality plans and/or transportation measures.

On December 6, 1983, Mayor Barry submitted a request for approval of a revision to the D.C. SIP for procedures to implement Section 128 of the Act. This revision consists of various existing sections of the D.C. Code and other applicable regulations. These regulations ensure that: (1) The majority of the authorities who act on permits and enforce orders under the Act represent the public interest and do not derive any significant portion of their income from persons subject to these permits and orders, and (2) that any potential conflicts of interest of these

authorities is adequately disclosed. The District has submitted extensive documentation of the requirements which are intended to satisfy section 128 of the Clean Air Act.

The District has submitted information indicating that public hearings were held with proper notification and documentation for both of these SIP revisions. In addition, all other requirements for SIP revisions have been met.

EPA Action

EPA has reviewed the information submitted by the District and is approving these SIP revisions for Public Notification (section 127) and Conflict of Interest (section 128).

The Administrator's decision to approve the proposed revision was based on a determination that the amendments meet the requirements of section 110(a)(2) of the Clean Air Act and 40 CFR Part 51, Requirements for Preparation, Adoption and Submittal of State Implementation Plans.

The public should be advised that this action will be effective 60 days from the date of this Federal Register notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and subsequent notices will be published before the effective date. One notice will withdraw the final action and the other will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because this action only approves State actions and imposes no new requirements.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator has certified that SIP approvals under sections 110 and 172 of the Clean Air Act will not have a significant economic impact on a substantial number of small entities. See 40 FR 8709 (Jan. 27, 1981).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from today). This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Intergovernmental relations, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

Authority: 42 U.S.C. 7401–7642.

Dated: May 29, 1984.

William D. Ruckelshaus,

Administrator.

Note.—Incorporation by reference of the State Implementation Plan for the District of Columbia was approved by the Director of the Federal Register on July 1, 1982.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Section 52.470 is amended by adding paragraphs (c)(23) and (c)(24) as follows:

Subpart J—District of Columbia

§ 52.470 Identification of plan.

* * * * *

(c) * * *

(23) Revision for Public Notification of Air Quality, submitted on December 5, 1983.

(24) Revision for Conflict of Interest procedures, submitted on December 6, 1983.

* * * * *

[FR Doc. 84-14091 Filed 5-31-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[EPA Action MO 1341; AD-FRL-2593-3]

Approval and Promulgation of Implementation Plans; Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: This notice takes final action to approve a minor revision to the Missouri State Implementation Plan (SIP). On March 23, 1983, the Missouri Air Conservation Commission (MACC) granted a variance from the Missouri process weight regulation to the St. Joe Minerals Corporation, Pea Ridge Iron Ore Company located in Washington County near Sullivan, Missouri. The variance will allow the facility to continue operating in excess of the Missouri particulate regulation while it tests, evaluates, and installs new control equipment on each of its five furnaces. This SIP revision would not cause or contribute to violations of the National Ambient Air Quality Standards (NAAQS).

DATE: This action is effective July 2, 1984.

ADDRESSES: The State submittal is available for inspection during normal business hours at the following locations:

Environmental Protection Agency, 324 East 11th Street, Kansas City, Missouri 64106

Environmental Protection Agency, Public Information Reference Unit, Room 2922, 401 M Street SW., Washington, D.C. 20460

Missouri Department of Natural Resources, 1101 Rear Southwest Boulevard, Jefferson City, Missouri 65101

Office of the Federal Register, 1100 L Street NW., Rm. 8401, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Larry A. Hacker at (816) 374–3791 or FTS 758–3791.

SUPPLEMENTARY INFORMATION: On March 23, 1983, after proper notice and public hearing, the MACC granted a variance to the St. Joe Minerals Corporation for its Pea Ridge Iron Ore facility located in Washington County near Sullivan, Missouri. The variance allows the facility to emit in excess of Missouri Rule 10 CSR 10–3.050, "Restriction of Emissions of Particulate Matter from Industrial Processes." This variance was submitted to EPA as a revision to the Missouri SIP on July 1, 1983.

EPA reviewed the State's submittal and published a proposal to approve this variance on February 2, 1984 (49 FR 4113). The public comment period ended on March 5, 1984. No public comments were received.

This variance constitutes a revision to a variance issued to the plant on April 22, 1981, and approved by EPA on October 28, 1981, at 46 FR 53141. Final compliance with State regulation 10 CSR 10–3.050 was required by July 1, 1985. The allowable emission rate during the term of the variance was limited to that rate which existed on November 11, 1977. The plant is located in an area which is designated attainment for primary and secondary particulate NAAQS. Dispersion modeling demonstrated that the NAAQS would not be violated as a result of the emission rate specified in this variance. The new variance requires that the emission rate shall not exceed that which was specified in the variance already approved by EPA. Therefore, the NAAQS will not be violated as a result of the new variance.

The compliance schedule in the new variance calls for final compliance by

the source with Missouri Rule 10 CSR 10-3.050 by December 31, 1988. The extended compliance schedule is necessitated by the plant's economic difficulties. This variance was effective until March 23, 1984. After that time, the plant may apply for an extension of this variance from year to year until the final compliance date of December 31, 1988. The variance will finally expire on the said final compliance date.

Under the Clean Air Act, Section 110(a)(2), EPA is required to approve a SIP revision if it meets the requirements in that section. Among other requirements, the State must demonstrate that a revision would not cause or contribute to any violations of the NAAQS. As discussed above, EPA has determined that the source, operating at the particulate emission rate allowed by the variance, would not cause or contribute to any violations of the NAAQS. In addition, EPA finds that all other relevant requirements of Section 110(a)(2) have been met.

EPA Action

EPA takes final action to approve the Pea Ridge Iron Ore Company variance as a revision to the Missouri SIP.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under Section 307(b)(1) of the Clean Air Act, as amended, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit within 60 days of today. This action may not be challenged in proceedings to enforce its requirements. (See Section 307(b)(2).)

Incorporation by reference of the State Implementation Plan for the State of Missouri was approved by the Director of the Office of the Federal Register on July 1, 1982.

This notice of final rulemaking is issued under the authority of Section 110 of the Clean Air Act (42 U.S.C. 7410).

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

Dated: May 29, 1984.

William D. Ruckelshaus,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart AA—Missouri

1. Section 52.1320 is amended by adding a new paragraph (c)(44) to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified:

(44) A variance from Missouri Rule 10 CSR 10-3.050, Restriction of Emission of Particulate Matter from Industrial Processes, for the St. Joe Minerals Corporation, Pea Ridge Iron Ore facility, was submitted by the Missouri Department of Natural Resources on July 1, 1983.

2. Section 52.1335 is amended by changing the compliance schedule listing for the St. Joe Minerals Corporation in § 52.1335(a) as follows:

§ 52.1335 Compliance schedules.

(a) * * *

MISSOURI

Source	Location	Regulation involved	Date adopted	Effective date	Final compliance date
St. Joe Minerals Corp., -Pea Ridge Iron Ore Facility.	Washington County, Missouri.	10 CSR, 10-. 3050.	Mar. 23, 1983.....	Mar. 23, 1983.....	Dec. 31, 1988.

[FR Doc. 84-14680 Filed 5-31-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[Region II Docket No. 30; AD-FRL 2599-2]

Approval and Promulgation of Implementation Plans; Revison to the State of New York Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This notice announces that, under the provisions of the Clean Air Act, the Environmental Protection Agency (EPA) is approving a request by New York to revise its State Implementation Plan (SIP) for attainment of the ozone and carbon monoxide standards in the New York City metropolitan area. The revision request deals with certain procedural aspects in the operation of New York's motor vehicle emission inspection program. Specifically the revision makes modifications to certain monitoring and enforcement procedures of this program. These modifications are not expected to have any adverse effect on air quality.

EFFECTIVE DATE: This action will be effective July 31, 1984, unless notice is received by July 2, 1984 that someone wishes to submit adverse or critical comments.

ADDRESSES: All comments should be addressed to: Jacqueline E. Schafer, Regional Administrator, Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278.

Copies of the State's submittal are available for inspection during normal business hours at the following locations:

Environmental Protection Agency, Air Programs Branch, Room 1005, Region II Office, 26 Federal Plaza, New York, New York 10278

Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, D.C. 20460

New York State Department of Environmental Conservation, 50 Wolf Road, Albany, New York 12233-0001

Office of the Federal Register, Room 8401, 1100 L Street NW., Washington, D.C. 20408.

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 26 Federal Plaza, Room 1005, New York, New York 10278, (212) 264-2517.

SUPPLEMENTARY INFORMATION:

I. Background

On November 5, 1979, as a part of its State Implementation Plan (SIP) for attainment of the ozone and carbon monoxide standards in the New York City metropolitan area, the State of New York submitted to the Environmental

Protection Agency (EPA) information specifying the design and operational procedures for its motor vehicle emission inspection and maintenance (I/M) program. Among these were monitoring and enforcement procedures designed to ensure that private inspection stations properly perform their emission inspections, adequately maintain the exhaust analyzers and keep satisfactory records. They included provision for:

- Periodic (approximately once every 60 days) unannounced inspection visits by New York State Department of Motor Vehicle (NYSDMV) personnel.
- Other unannounced, concealed identify inspection visits by NYSDMV personnel,
- Investigation by NYSDMV of consumer complaints,
- Periodic analysis by NYSDMV of inspection station records and follow-up investigations,
- Monthly calibration of exhaust analyzers by the equipment contractor, Hamilton Test Systems of New York (HTSNY), and
- Periodic calibration of exhaust analyzers by New York State Department of Environmental Conservation (NYSDEC) and NYSDMV personnel.

On January 1, 1981 the I/M program began with mandatory inspection and voluntary repair. On January 1, 1982 mandatory inspection and repair became effective. The enforcement and monitoring procedures described earlier have been implemented from the program's inception.

II. State Submittal

On February 15, 1984 the Director of the Division of Air of the NYSDEC submitted a SIP revision request concerning the following proposed modifications to I/M monitoring and enforcement procedures used by NYSDMV:

- Reducing the periodic monitoring visits at stations from once every two months to once every four months.
- Doubling the concealed identity monitoring visits at stations to ensure that at least 25% of the 4200 inspection stations receive undercover investigation every year. (543 concealed identity monitoring visits were conducted during 1982).
- Expanding the public's awareness of the consumer complaint services offered by NYSDMV through updating and distributing consumer pamphlets, issuing press releases and participating in consumer protection educational seminars.
- Increasing the oversight of stations with less than satisfactory performance. Upgraded analysis of data tapes collected monthly at each station would be one tool used in this activity.

Other aspects of the monitoring and enforcement procedures will remain unchanged.

NYSDEC stated that these changes are being made to ensure more efficient and effective use of resources. The State believes that, while periodic monitoring visits were valuable as an enforcement, public relations and educational tool when the I/M program was first established, these visits appear to be losing their effectiveness. The State indicated that most of the stations are now familiar with the procedures and requirements of the I/M program and adequately carry them out. Further, the open and regular nature of the periodic monitoring visits has reduced their enforcement value. Moreover, concealed identity monitoring visits and investigation of consumer complaints have continued to result in a significant amount of enforcement activity.

The State has found that the effect of these modifications on air quality cannot be quantified. However, the State believes that the modifications will reduce the number of incomplete and improperly performed motor vehicle inspections and, therefore, will lead to some improvements in air quality.

The submittal also notes other improvements to New York's monitoring and enforcement procedures that have been made recently, including:

- HTSNY now immediately informs NYSDMV of a decision to discontinue analyzer calibration and service. NYSDMV has initiated procedures to ensure that inspections are not performed using uncalibrated analyzers. The lag time that once existed between discontinuation of service and calibration and suspension of the right to perform inspections has been virtually eliminated.
- The rate of data capture of the emission analyzer for the last quarter of 1983 approached 100%. Formerly the rate of data capture had been as low as 65%. This improvement has been accomplished through modified data handling techniques and more frequent changing of analyzer cassette tapes at high volume stations.
- One of the major causes of leaks in the exhaust analyzer sampling system in New York had been the use of defective flexible probe tips. HTSNY is replacing these tips at no cost to the inspection stations. Recent information from NYSDEC reveals that the overall monthly rate of leaking analyzers has been reduced from 3.0% to 1.5%. New York State has stated its intent to continue to reduce the number and size of exhaust analyzer leaks.

III. Findings

EPA has reviewed the State's submittal and finds that it provides I/M enforcement and monitoring procedures that are equivalent to those previously included in the SIP. Further, the State has satisfactorily addressed related issues raised by EPA. Through these efforts, the overall quality of the I/M program will be improved.

EPA is approving this SIP revision request. This action is taken without prior proposal because it is viewed as noncontroversial and no adverse comments are anticipated. The public should be advised that this action will be effective 60 days from the date of this Federal Register notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and the other will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of the Executive Order 12291.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this action is available only by the filing of a petition for a review in the United States Court of Appeals for the appropriate circuit within sixty days of today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Under 5 U.S.C. Section 605(b), I certify that this rule will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

Dated: May 23, 1984.

William D. Ruckelshaus,

Administrator, Environmental Protection Agency.

(Sec. 110, 172, and 301, Clean Air Act, as amended (42 U.S.C. 7410, 7502, and 7601)).

Note.—Incorporation by reference of the Implementation Plan for the State of New York was approved by the Director of the Federal Register on July 1, 1982.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Title 40, Chapter I, Subchapter C, Part 52, Code of Federal Regulations is amended as follows:

Subpart HH—New York

1. Section 52.1670 is amended by adding new paragraph (c)(69) as follows:

§ 52.1670 Identification of plan.

* * * * *

(c) The plan revision listed below was submitted on the date specified.

* * * * *

(69) State Implementation Plan revision dated February 15, 1984 from the Department of Environmental Conservation consisting of changes to New York State Department of Motor Vehicles monitoring and enforcement procedures for motor vehicle emission inspection stations.

[FR Doc. 84-14679 Filed 5-31-84; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 52

[A-5-FRL 2598-8]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: EPA is removing several conditions and retaining conditions for specific areas on EPA's approval of the 1979 revision of the ozone portion of Ohio's State Implementation Plan (SIP). EPA's action is based upon a revision request and supportive documentation which was submitted by the State to satisfy EPA's conditional approval of the ozone SIP. The intent of the State's action is to satisfy the requirements of part D of the Clean Air Act.

EFFECTIVE DATE: July 2, 1984.

ADDRESSES: Copies of this revision to the Ohio SIP are available for inspection at: The Office of the Federal Register, 1100 L Street,NW., Room 8401, Washington, D.C. 20408.

Copies of the SIP revision, public comments on the notice of proposed rulemaking and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Debra Marcantonio, at (312) 886-6088 before visiting the Region V Office).

Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Debra Marcantonio, Air and Radiation Branch (5AR-26), Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886-6088.

SUPPLEMENTARY INFORMATION: On October 31, 1980. (45 FR 72122, 45 FR 2143) EPA conditionally approved certain revisions to the ozone portion of the Ohio 1979 SIP submitted to EPA pursuant to Part D of the Clean Air Act (42 U.S.C. 7502). EPA's approval was based upon the State's commitment to remedy the conditionally approved items in a manner outlined at 40 CFR 52.1885 and 52.1886.

In today's rulemaking action, EPA is removing several of the conditions and retaining certain other conditions. EPA proposed these actions on August 8, 1983 (48 FR 35918). Each condition is discussed below.

1. Stage I Vapor Control

The first condition concerns the size cutoff below which gasoline service stations are not required to install Stage I vapor balance equipment. In EPA's Control Technique Guideline (CTG) for Stage I vapor recovery, EPA recommends that this cutoff be set at a sales volume of 120,000 gallons per year. Ohio set this cutoff at 240,000 gallons per year. Thus, EPA requested that Ohio either justify or modify its cutoff.

In determining whether to retain or remove this condition, EPA considered the ambient air quality status of each area of the State. EPA policy does not require RACT regulations on sources emitting under 100 tons per year in areas attaining the ozone standard by 1982, although, EPA does require these regulations for such sources which do not attain the standard until after 1982. The gasoline dispensing facilities which are exempted from Ohio's rule clearly emit under 100 tons per year, and so the criterion used in the August 8, 1983, proposed rulemaking was that the condition should be removed for areas expected to have attained by the end of 1982, and should be retained for areas not expected to have attained until after 1982.

Specifically, on August 8, 1983, EPA proposed to retain this condition for the Akron area (Portage and Summit Counties) and to remove this condition for the remainder of the state. At the time of proposed rulemaking, only the Akron area (Portage and Summit Counties) was expected not to attain until 1982. This expectation for the Akron area was based on the relatively high ozone concentrations recorded in Akron in 1981 (see the February 3, 1983, Federal Register, 48 FR 4972). The proposal also noted that removal of this condition for the Cincinnati and Cleveland areas was contingent on EPA approving Ohio's demonstrations that these areas would attain the ozone standard by the end of 1982.

The Ohio EPA submitted a public comment which objected to the retention of this condition for any area in Ohio. Ohio EPA based its objections on economic considerations. Ohio correctly commented that EPA allows states to consider economic and technical feasibility when defining what is reasonably available control technology (RACT). The control technique guidelines (CTGs) present presumptive norms of the definition of RACT, but EPA does accept different definitions of RACT when a state can demonstrate based on economic and other considerations that a different definition is appropriate. However, EPA has found that Ohio has not presented a convincing case that a definition of RACT which differs from the presumptive norm is appropriate. A more detailed discussion of EPA's evaluation of Ohio's economic consideration is contained in the record of this rulemaking action.

EPA also has a policy of approving an alternative regulation, if the State demonstrates that its rule will result in a controlled emissions level which is within five percent of the emissions level that would be achieved with the definition of RACT recommended in the CTGs. Ohio has not demonstrated that this is the case for its Stage I vapor recovery regulations.

EPA today, continues to find that the condition should be retained for the Akron area. EPA's proposal was based on the relatively high ozone concentrations recorded in Akron in 1981. EPA's expectations regarding the failure to attain the NAAQS for ozone in the Akron area has been confirmed by 1983 air quality data. This area experienced five exceedances at each of the two monitoring sites in the area. Therefore, EPA is retaining this condition for the Akron area.

The proposed rulemaking also indicates that if the EPA could not approve the demonstrations of attainment by 1982 for Cincinnati and

Cleveland areas, the condition pertaining to Stage I vapor control should remain for these areas. The 1983 air quality data have led EPA to the conclusion that Ohio's demonstration of attainment by 1982 should not be approved. Therefore, because these areas did not in fact attain the standard by the end of 1982, the condition pertaining to Stage I vapor control will also remain for the Cincinnati and Cleveland areas.

In a separate Federal Register notice EPA is proposing to give the State of Ohio until December 31, 1984, to satisfy this condition for the Akron, Cincinnati and Cleveland demonstration areas.

2. Cutback Asphalt

Ohio's 1979 SIP submittal assumed that the cutback asphalt regulation would completely eliminate paving emissions. The second condition required that Ohio calculate and document the emissions from uses of cutback asphalt which are exempted from the regulation. EPA sought this information to assess whether attainment would be demonstrated given a corrected paving emissions estimate.

Ohio has documented both the emissions from wintertime use (when emulsified asphalts are difficult to use) and the emissions from summertime use (principally road patching). The emission estimates appear reasonable and inclusion of these emissions does not cause the total emissions in any urban area to exceed the area's allowable emissions as of the end of 1982. Although the Akron area (Summit and Portage Counties) and the Cincinnati and Cleveland demonstration areas appears unlikely to have attained the NAAQS by the end of 1982, this potential problem is not attributable to any deficiencies in Ohio's cutback asphalt regulation.

During the public comment period, Ohio EPA supported EPA's proposed removal of this condition. No other public comments were received on EPA's proposed action.

Therefore, EPA is removing this condition on the approval of the 1979 ozone SIP.

3. Reasonable Further Progress

The third condition required that Ohio submit demonstrations of reasonable further progress toward attaining the ozone standard in the Canton and Youngstown areas. Ohio submitted these reasonable further progress demonstrations on March 2, 1983. This submittal provided a suitable demonstration that these areas were achieving reasonable further progress. During the public comment period, Ohio EPA supported EPA's proposed removal of this condition. No other public comments were received on EPA's proposal action. Therfore, because Ohio has fulfilled this condition, EPA is removing this condition on the approval of the 1979 ozone SIP from 52.1886.

4. Carbon Monoxide

There were several outstanding conditions regarding Ohio's carbon monoxide SIP for the Dayton and Steubenville urban areas. Because these areas were redesignated to attainment in previous rulemaking actions (Dayton—March 15, 1983 (48 FR 10836) and Steubenville—July 26, 1982 (47 FR 32126)), these conditions are no longer relevant and should have been removed from the codification. Therefore, EPA is deleting reference to these conditions in § 52.1887.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from today). This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

Note.—Incorporation by reference of the State Implementation Plan for the State of Ohio was approved by the Director of the Federal Register on July 1, 1982.

This notice is issued under authority of Sections 110 and 172 of the Clean Air Act, as amended (42 U.S.C. 7410 and 7502).

Dated: May 29, 1984.

William D. Ruckelshaus,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Ohio

Title 40 of the Code of Federal Regulations, Chapter I, Part 52 is amended as follows:

Subpart KK—Ohio

1. Section 52.1870 is amended by adding paragraph (c)(61) as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(61) On January 11, 1983, the Ohio EPA submitted justification and supportive documentation for the two categories of gasoline dispensing facilities and cutback asphalt. On March 2, 1983, Ohio EPA submitted demonstrations of reasonable further progress in the Canton and Youngstown areas. This information was submitted to satisfy the conditions on the approval of the 1979 ozone SIP.

2. Section 52.1885 is amended by revising paragraphs (a) (2) and (3); adding a sentence to paragraph (b)(2) and removing and reserving paragraphs (b) (5) and (6).

§ 52.1885 Control strategy: Ozone.

(a) * * *

* * * * *

(2) The Attainment Demonstrations for the following urban areas: Akron, Canton, Cincinnati, Cleveland, Columbus, Dayton, Toledo and Youngstown.

(3) The Reasonable Further Progress Demonstration for the following areas: Akron, Canton, Cincinnati, Cleveland, Columbus, Dayton, Toledo and Youngstown.

* * * * *

(b) * * *

(2) * * * This condition applies only to Akron (Portage and Summit Counties) Cleveland (Cuyahoga, Medina, Lake, Lorain and Geauga Counties) and Cincinnati (Hamilton, Warren, Clermont and Butler Counties) demonstration areas.

* * * * *

(5)–(6) [Reserved]

* * * * *

§ 52.1886 [Removed]

3. Part 52 is amended by removing and reserving § 52.1886.

§ 52.1887 [Amended]

4. Section 52.1887 is amended by removing and reserving (b).

[FR Doc. 84-14070 Filed 5-31-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 60

[A-2-FRL 2593-6]

Standards of Performance for New Stationary Sources Delegation of Authority to the State of New Jersey

AGENCY: Environmental Protection Agency.

ACTION: Notice of Delegation of Authority.

SUMMARY: This notice announces the delegation of authority by the Environmental Protection Agency to the State of New Jersey to implement and enforce additional source categories of the Standards of Performance for New Stationary Sources (NSPS). This delegation was requested by the New Jersey Department of Environmental Protection (NJDEP). NSPS is an air pollution control requirement set under the Clean Air Act. NSPS are applicable to certain categories of new air pollution sources.

EFFECTIVE DATE: This action was effective March 30, 1984.

FOR FURTHER INFORMATION CONTACT: Francis W. Giaccone, Chief, Air Compliance Branch, Air and Waste Management Division, Region II Office, 26 Federal Plaza, New York, New York 10278, (212) 264–9627.

SUPPLEMENTARY INFORMATION: Section 111(c) of the Clean Air Act directs the Administrator of the Environmental Protection Agency (EPA) to delegate EPA's authority to implement and enforce Standards of Performance for New Stationary Sources (NSPS) to any state which has submitted adequate procedures. Nevertheless, the Administrator still retains concurrent authority to enforce the standards following delegation of authority to a state.

On February 22, 1984 EPA notified NJDEP of four newly promulgated NSPS and revisions and amendments to existing NSPS promulgated between June 10, 1983 and December 31, 1983, in accordance with the EPA/NJDEP delegation agreement dated November 23, 1984. NJDEP accepted delegation of the newly promulgated NSPS and revisions and amendments to existing NSPS in a letter dated March 27, 1984 from the Commissioner of the NJDEP to the EPA Regional Administrator, Region II. The following provides a complete listing of NSPS delegated to the NJDEP. The new categories now being delegated by today's action are identified with an asterisk(*). All revisions and amendments to the existing NSPS from June 10, 1983 to December 31, 1983 are included here by reference.

D Fossil-Fuel Fired Steam Generators for Which Construction Commenced After August 17, 1971 (Steam Generators and Lignite Fired Steam Generators)
Da Electric Utility Steam Generating Units for Which Construction Commenced After September 18, 1978
E Incinerators
F Portland Cement Plants
G Nitric Acid Plants
H Sulfuric Acid Plants
I Asphalt Concrete Plants
J Petroleum Refineries—(All Categories)
K Storage Vessels for Petroleum Liquids Constructed After June 11, 1973, and prior to May 19, 1978.
Ka Storage Vessels for Petroleum Liquids Constructed After May 18, 1978
L Secondary Lead Smelters
M Secondary Brass and Bronze Ingot Production Plants
N Iron and Steel Plants
O Sewage Treatment Plants
P Primary Copper Smelters
Q Primary Zinc Smelters
R Primary Lead Smelters
S Primary Aluminum Reduction Plants
T Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants
U Phosphate Fertilizer Industry: Superphosphoric Acid Plants
V Phosphate Fertilizer Industry: Diammonium Phosphate Plants
W Phosphate Fertilizer Industry: Triple Superphosphate Plants
X Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities
Y Coal Preparation Plants
Z Ferroalloy Production Facilities
AA Steel Plants: Electric Arc Furnaces
BB Kraft Pulp Mills
CC Glass Manufacturing Plants
DD Grain Elevators
EE Surface Coating of Metal Furniture
GG Stationary Gas Turbines
HH Lime Plants
KK Lead Acid Battery Manufacturing Plants
MM Automobile and Light-Duty Truck Surface Coating Operations
NN Phosphate Rock Plants
PP Ammonium Sulfate Manufacturing Plants
QQ Graphic Art Industry Publication Rotogravure Printing
*RR Pressure Sensitive Tape and Label Surface Coating Operations
SS Industrial Surface Coating: Large Appliances
UU Asphalt Processing and Asphalt Roofing Manufacture
*VV Equipment Leaks of Volatile Organic Compounds in Synthetic Organic Chemical Manufacturing Industry
*WW Beverage Can Surface Coating Industry
*XX Bulk Gasoline Terminals.

EPA's findings

EPA's determination that the delegation be approved is based on the Agency's review of the New Jersey Air Pollution Control Act, N.J.S.A. 26:2C; the State Public Records Act, N.J.S.A. 47:1A–1; and Title 7, Chapters 27 and 27B of the New Jersey Administrative Code. Based on that review, EPA determined that such delegation is, therefore, appropriate and so notified the Commissioner of the NJDEP, in a letter dated February 22, 1984. This delegation of additional NSPS is based on the conditions delineated in EPA's letter to the Commissioner of November 23, 1983. NJDEP subsequently accepted delegation of the additional categories in a letter dated March 27, 1984. Copies of all correspondence and EPA's delegation letter are available for public inspection in the Office of the Air Compliance Branch at the Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278.

Consequences of EPA's action

Effective March 30, 1984, all correspondence, reports and notifications required by the delegated NSPS should be submitted to the Offices of the New Jersey Department of Environmental Protection, Bureau of Enforcement Operations, Division of Environmental Quality at John Fitch Plaza—CN–027, Trenton, New Jersey 08625.

The Office of Management and Budget has exempted this action from the requirements of section 3 of Executive Order 12991.

This Notice is issued under the authority of section 111 of the Clean Air Act, as amended (42 U.S.C. 7411).

List of Subjects in 40 CFR Part 60

Air Pollution Control, Reporting and Recordkeeping Requirements.

Dated: May 10, 1984.

Jacqueline E. Schäfer,

Regional Administrator.

[FR Doc. 84–14776 Filed 5–31–84; 8:45 am]
BILLING CODE 6560–50–M

LEGAL SERVICES CORPORATION

45 CFR Part 1620

Priorities in Allocation of Resources; Correction

AGENCY: Legal Services Corporation.

ACTION: Final rule—correction.

SUMMARY: On May 9, 1984, the Corporation published as a final rule a revised Part 1620, Priorities in Allocation of Resources (49 FR 19657). In the preparation of this document, ten words were inadvertently dropped from the text of § 1620.3 Access. This correction

is therefore published to give the complete version of that section as adopted by the Corporation.

FOR FURTHER INFORMATION CONTACT: Richard N. Bagenstos, Assistant General Counsel, (202) 272-4010.

SUPPLEMENTARY INFORMATION:

PART 1620—[CORRECTED]

For the reasons set out above, § 1620.3 of 45 CFR Part 1620 is corrected to read as follows:

§ 1620.3 Access.

A recipient shall allocate resources consistent with the purposes and requirements of the Act, regulations, guidelines and instructions, including § 1620.2 of these regulations, so as to substantially provide that all potentially eligible clients in the recipient's service area have reasonably equal access to the same type of services and level of representation to the maximum extent economically practical. Type of services may vary as required to meet different priorities in different parts of the recipient's service area, and level of representation may vary based on differences in client financial resources. Availability of services should be reasonably proportional to the distribution of eligible clients by county or parish within the recipient's service area. Where a recipient serves an area that is not easily defined by parish or county jurisdictions, other units of political subdivision should be utilized.

Dated: May 23, 1984.

Alan R. Swendiman,

General Counsel.

[FR Doc. 84-14508 Filed 5-31-84; 8:45 am]

BILLING CODE 6820-35-M

FEDERAL MARITIME COMMISSION

46 CFR Parts 536 and 580

[General Order 13, Revised, Docket No. 84-24]

Publishing and Filing Tariffs by Common Carriers in the Foreign Commerce of the United States

Correction

In FR Doc. 84-13827, beginning on page 21713, in the issue of Wednesday, May 23, 1984, on page 21714, in the second column, in paragraph "2.", in the first line of the authority "5 U.S.C. 533" should read "5 U.S.C. 553".

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 63

[FCC 84-235]

Changes in Certain Circuit and Dollar Limits

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has amended the circuit and dollar limits that determine whether applications must be filed under section 214 of the Communications Act and whether the applications may be filed with reduced information. The Commission has also changed the reporting requirements relating to the construction of small facilities. Reports had been required semi-annually and in the future will be required annually. These changes are being made to reflect changes in the industry that have occurred since the rules originally were adopted and are intended to make the rules less burdensome for carriers.

EFFECTIVE DATE: May 25, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Emily Williams, Common Carrier Bureau, (202) 634-1869.

List of Subjects in 47 CFR Part 63

Communications Common Carriers, Common Carrier facilities, Discontinuance of service, Extension of lines.

Report and Order

In the matter of amendment of Part 63 of the Commission's rules to Increase the circuit limits of § 63.03(a)(5), and to Adjust the Dollar Limits contained in §§ 63.03(a)(6) and 63.03(e) (FCC 84-235).

Adopted: May 18, 1984.
Released: May 25, 1984.

By the Commission.

1. The American Telephone and Telegraph Company has informally requested that the Commission increase certain circuit and dollar limits contained in Part 63 of the rules that determine whether section 214 applications must be filed and whether the applications may be filed with reduced information. In light of changes that have taken place since these rules were adopted in 1976, we believe that a broadening of the scope of projects that come under the reduced regulatory requirements of § 63.03 is necessary at this time.

2. AT&T first asks that we amend § 63.03(a)(5). This section currently limits the number of circuits for which certification may be sought under the relaxed filing requirements of that section to seven voice grade circuits for international voice carriers or two voice grade circuits for international record carriers. AT&T proposes that the number of circuits that should be permitted to be activated under this provision be increased to 32 circuits (two groups of sixteen 3 kHz circuits) for voice carriers. AT&T believes that the current limit of seven circuits is constrictive in view of the rapid growth of the international telecommunications traffic and that little use can be made of this provision today. In addition, AT&T believes that increasing the current limit to 32 circuits would reduce the regulatory burden on the industry and the Commission.

3. AT&T also asks that we amend § 63.03(a)(6) and 63.03(e). Section 63.03(a)(6) currently allows less information to be filed when construction or acquisition costs for domestic channels do not exceed $500,000 or rental fees are $100,000 or less per year. Applications filed pursuant § 63.03(a) are commonly referred to as "informal" applications and are deemed to have been authorized by the Commission on the 21st day after filing unless the Commission notifies the applicant to the contrary. AT&T asks that the limits on these informal applications be increased to $5,000,000 for construction or acquisition costs and $500,000 for annual rental fees. Section 63.03(e) currently provides a procedure by which a carrier can obtain "continuing authority" to commence small domestic or international projects for supplementing existing facilities up to $35,000 in construction or acquisition costs or $7,000 in annual rentals. AT&T requests that the § 63.03(e) limits be increased to $2,000,000 and $100,000 respectively.

4. AT&T's requests have some merit and we believe that we can immediately make the less burdensome procedures of § 63.03 applicable to a greater number of projects.[1] The changes we adopt below

[1] Because these rule amendments effectuate relatively minor changes in our rules and are unlikely to generate comment or opposition from the public, we find for good cause that affording prior public notice and an opportunity for comment is unnecessary. 5 U.S.C. 553(b)(3)(B). In addition, the reduction in our reporting requirements under § 63.03(e) largely affects internal Commission procedure and for that reason may be exempted from notice and comment requirements. *See* 5 U.S.C. 553(b)(3)(A)

also can be made without affecting our continuing regulatory responsibilities. The more fundamental changes to the methods by which we regulate AT&T are being considered in another proceeding and we may issue a notice proposing additional changes in the facilities authorization requirements imposed on AT&T in the near future. *See* Long-Run Regulation of AT&T's Basic Domestic Interstate Services, 48 FR 51340, 51347 (November 8, 1983).[2]

5. First, we believe that an increase in the circuit limitation to 16 circuits at this time would make the special provisions of § 63.03(a) more useful to AT&T and other voice carriers and reduce regulatory burdens on both the carriers and the Commission. Our review of the applications filed by AT&T in fiscal years 1982, 1983, and 1984 to date reveals that, of those applications, almost 50 percent more applications could have been filed under § 63.03 if the circuit limitation were raised from seven to 16 circuits.[3] We therefore will raise the circuit limitation to 16 circuits for voice carriers. In addition, we believe that raising the current limitation on all international record carriers from two to six circuits is appropriate and will take this opportunity to do so.

6. In addition, we believe that a doubling of the dollar limits contained in §§ 63.03(a)(6) and 63.03(e) is appropriate at this time. The dollar limits were adopted in 1976. From the beginning of 1975 to the end of 1983, inflation was approximately 60% based upon the implicit price deflator for fixed, nonresidential investment.[4] In light of this, we believe that a 100% increase in the dollar limits is warranted. This increase covers past inflation and gives carriers a cushion against future inflation. In addition, these changes will allow significant savings by the carriers, in the fillng of applications.[5]

7. Finally, we take this opportunity to reduce the reporting requirements under § 63.03(e). The rule currently provides that not later than the 30th day following the end of each six-month period covered by continuing authority, the carrier shall file a statement detailing the facilities constructed or acquired. We believe that an annual report will satisfy our needs in this area and we shall amend the rules accordingly. The reports shall be due on January 31 of each year to cover the proceeding year except that, for administrative convenience, we will require all companies filing an annual blanket application pursuant to § 63.06 of the Rules, 47 CFR 63.06, to file the report as an exhibit to their blanket application. The report should be included with, and be in the same format as, Exhibit 1 of AT&T's 1984 blanket application, W-P-C-5010.

8. Accordingly, it is ordered, pursuant to sections 4(i), 4(j), and 214 of the Communications Act, 47 U.S.C. 154(i), 154(j), and 214, that the rules contained in Appendix A are hereby adopted effective upon release of this order.[6]

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

PART 63—[AMENDED]

Part 63 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

§ 63.03 [Amended]

1. Section 63.03 is amended by revising (a)(5) and (a)(6) as follows:

(a) * * *

(5) International channels exceeding 16 voice grade circuits for voice carriers or 6 voice grade circuits for record carriers; or

(6) Domestic channels where the construction or acquisition cost exceeds $1,000,000 or where the annual rental exceeds $200,000.

* * * * *

2. Section 63.03 is further amended by revising paragraph (e) to read as follows:

* * * * *

(e) Any carrier may request continuing authority, subject to termination by the Commission at any time upon 10 days' notice to the carrier, to commence small projects for the supplementing of existing facilities. Such an application shall set forth the need for such authority; however, it shall not be considered granted pursuant to paragraph (d) of this section. Upon authorization of such continuing authority by the Commission, the carrier may commence small projects subject to the limitations set forth in paragraph (a) of this section, except that the construction, installation and acquisition cost for each project shall be limited to $70,000 or an annual rental of $14,000. Not later than the 30th day following the end of each calender year covered by such authority, the carrier shall file a report in writing on the projects commenced pursuant to continuing authority except that carriers planning to file an application under an approved annual program, see § 63.06, shall file their report as an exhibit to the annual application. The report shall make reference to this paragraph and set forth, with respect to each project (construction, installation, acquisition, lease including any renewal thereof, and operation) which was commenced thereunder, the following information:

(1) The type of facility constructed, installed, acquired, or leased;

(2) The route mileage thereof (excluding leased facilities);

(3) The terminal communities served and airline mileage between such communities;

(4) The cost thereof, including construction, installation, acquisition, or lease; and

(5) When appropriate, the name of the lessor company and the dates of commencement and termination of the lease.

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BILLING CODE 6712-01-M

[2] AT&T also requests changes to the two-step procedure whereby carriers file an application to construct facilities and then file additional applications for authority to activate channels thereon. Since these would be significant changes in our procedures, we conclude that they should not be made without more information.

[3] During fiscal years 1982 and 1983 and 1984 to date, AT&T filed a total of 65 section 214 applications in the international area. Eighteen of those applications were filed under § 63.03(a) of the Rules. Thirty-seven applications could not have qualified to be filed under § 63.03 even if the current circuit limitation was 32 circuits because they requested certification to new points, blanket satellite authorization, new facilities, discontinuance of operation of certain facilities, modification of existing circuit activation plans, sale of IRUs to foreign correspondents, or they simply requested more than 32 circuits. Of the remaining 10 applications, eight could have been filed under § 63.03 if the limitation was 16 circuits while only two more could have been filed under the section if the limitation was 32 circuits. Thus, it does not appear necessary to raise the limit to 32, when such an action also could result in the inclusion of applications that may otherwise require close Commission scrutiny.

[4] Economic Report of the President 224 (Feb. 1984).

[5] In 1983; for example if these rules had been in effect AT&T and the Bell Operating Companies would have been required to file only 14 applications under the full filing requirements of § 63.03.

[6] Because these rule changes relieve restrictions on carriers, they may be made effective immediately. 5 U.S.C. 553(d)(1).

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 32 and 33

Addition of Thirteen National Wildlife Refuges to the Lists of Open Areas for Migratory Bird Hunting, Upland Game Hunting, Big Game Hunting, and/or Sport Fishing

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule adds thirteen refuges to the lists of open areas for migratory bird hunting, upland game hunting, big game hunting, and/or sport fishing. The Secretary has determined that this action would be in accordance with the provisions of all applicable laws, would be consistent with the principles of sound wildlife management, would otherwise be in the public interest, and that such uses would be compatible with the major purposes for which each refuge was established. The hunting of migratory birds, upland game and big game, and/or sport fishing will provide additional public recreational opportunities.

EFFECTIVE DATE: July 2, 1984.

FOR FURTHER INFORMATION CONTACT: James Gillett, Division of Refuge Management, U.S. Fish and Wildlife Service, Washington, D.C. 20240; Telephone (202) 343–4311.

SUPPLEMENTARY INFORMATION: National wildlife refuges are closed to hunting and sport fishing until opened by rulemaking. The Secretary may open refuge areas to hunting and/or fishing upon a determination that such uses are compatible with the major purposes for which refuge areas were established, and that funds are available for development, operation, and maintenance of a hunting or fishing program. The action also must be in accordance with provisions of all laws applicable to the areas, must be consistent with the principles of sound wildlife management, and must otherwise be in the public interest. The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. On September 7, 1983, a rule was published (48 FR 40411) that proposed the addition of the thirteen refuges cited below to the lists of areas open to the hunting of migratory birds, upland game or big game, and/or sport fishing. The Department did receive written comments regarding the opening of these refuges to hunting and fishing, and these are considered in the following section.

Responses to Comments Received

A total of five written comments were received in response to the proposed rulemaking. Comments were received from four organizations and one individual. Three organizations supported the proposal. The remaining organization opposed the opening of the refuges to hunting, and the individual opposed the openings to hunting and fishing. The following is a listing of each substantive issue raised during this rulemaking.

1. The proposed hunting programs violate the Refuge Administration Act of 1966 and the Refuge Recreation Act of 1962 with regard to compatibility standards and funding availability.

Service Response: In accordance with the Refuge Administration Act (16 U.S.C. 668dd) and the Refuge Recreation Act (16 U.S.C. 460k), the Secretary of the Interior has determined that the proposed openings for hunting and fishing are compatible with the primary purposes for which each of the refuges was established. A discussion of the compatibility of the hunting and fishing programs with the purposes for which each of the refuges was established and the availability of funding for each program follows:

Big Boggy NWR was acquired by the Migratory Bird Conservation Commission for the conservation of migratory birds. Opening Big Boggy NWR to migratory game bird hunting will result in only minor temporary disturbances to refuge habitat as hunters gain access to hunting sites and use refuge vegetation to build blinds. In the experience of the Service, such minor disturbances have no effect on wildlife populations. Therefore, this hunting program is consistent with the conservation purposes for which the refuge was acquired. In compliance with the Refuge Administration Act, less than 40 percent of the refuge will be opened to migratory game bird hunting; thus, 857 of the 1409 acres that comprise the refuge will be closed even to these minor disturbances. Therefore, the opening of Big Boggy NWR to migratory game bird hunting is compatible with the purposes for which the refuge was established and in compliance with the Refuge Administration Act. The initial cost of this hunting program will be approximately $9,000, and the annual cost thereafter will be less than $3,000. Within the annual refuge budget of approximately $47,000, the necessary funds are available for the administration of the migratory bird hunting program. Therefore, the opening of Big Boggy NWR to migratory game bird hunting is in compliance with the Refuge Recreation Act.

Chassahowitzka NWR was acquired by the Migratory Bird Conservation Commission for the conservation of migratory birds. Disturbances to refuge waterfowl habitat that result from the opening of Chassahowitzka NWR to upland game and big game hunting will occur only infrequently because most hunting will take place in the upland portions (non-waterfowl habitat) of the refuge. Only temporary noise and vegetation disturbances may occur. Therefore, the opening of Chassahowitzka NWR to upland game and big game hunting is compatible with the purposes for which the refuge was established and in compliance with the Refuge Administration Act. The annual cost of these hunt programs is estimated to be less than $4,000. Within the annual refuge complex budget of approximately $229,000, the necessary funds are available for the administration of the upland game and big game hunting programs. Therefore, the opening of Chassahowitzka NWR to upland game and big game hunting is in compliance with the Refuge Recreation Act.

Deer Flat NWR was one of several areas established as "preserves and breeding grounds for native birds" (Executive Order 1032; February 25, 1909). Nesting by waterfowl and other birds on the refuge islands that lie in the Snake River will not be disturbed by the opening of the refuge to upland game and big game hunting and sport fishing because the islands will be closed during the entire nesting season, February through May.

Therefore, the opening of the Oregon portion of Deer Flat NWR to upland game and big game hunting and sport fishing is compatible with the purposes for which the refuge was established and in compliance with the Refuge Administration Act. The annual cost of these hunting and sport fishing programs is estimated to be less than $2,000. Within the annual refuge budget of approximately $231,000, the necessary funds are available for the administration of the upland game and big game hunting and sport fishing programs. Therefore, the opening of Deer Flat NWR to upland game and big game hunting and sport fishing is in compliance with the Refuge Recreation Act.

Eufaula NWR was established in September 1964 "for wildlife conservation purposes" in a cooperative agreement with the U.S. Army Corps of Engineers. Time and space zoning have been implemented in the upland game hunting and sport fishing programs so

that these programs will be integrated with the management of other wildlife species on the refuge including use of the refuge by waterfowl. Hunting is widely recognized as an integral part of a comprehensive wildlife conservation program. Upland game hunting will be limited to the 6,960 acres of upland on this 11,160-acre refuge, and sport fishing on refuge impoundments (those under direct control of the Service) will be permitted only from March through October when waterfowl use of the refuge is at a minimum. Therefore, the opening of Eufaula NWR to upland game hunting and sport fishing is compatible with the puposes for which the refuge was established and in compliance with the Refuge Administration Act. The initial cost of the hunting and sport fishing programs will be approximately $27,000, and the annual cost thereafter will be approximately $8,000. Within the annual refuge budget of approximately $190,000, the necessary funds are available for the administration of the upland game hunting and sport fishing programs. Therefore, the opening of Eufaula NWR to upland game hunting and sport fishing is in compliance with the Refuge Recreation Act.

Upper Souris NWR was established "as a refuge and breeding ground for migratory birds and other wildlife" (Executive Order 7161; August 28, 1935). National wildlife refuges are established primarily to safeguard wildlife populations and their habitats, but are not intended to be "safe havens" for individual animals. Thus, the use of hunting as a management tool on national wildlife refuges is in keeping with refuge purposes to preserve wildlife populations and habitat.

The breeding, nesting and fledging activities of migratory birds on Upper Souris NWR will be completed before the beginning of the upland hunting season. Time and space zoning have been implemented in the upland game hunting program so that it will be integrated with the management of other wildlife species on the refuge. Therefore, the opening of Upper Souris NWR to upland game hunting is compatible with the purposes for which the refuge was established and in compliance with the Refuge Administration Act. The annual cost to administer this hunt program is estimated to be less than $4,000. Within the annual refuge budget of approximately $237,000, the necessary funds are available for the administration of the upland game hunting program. Therefore, the opening of Upper Souris NWR to upland game hunting is in compliance with the Refuge Recreation Act.

Muscatatuck NWR was established by the Migratory Bird Conservation Commission as an inviolate sanctuary for migratory birds. Eighty-five percent of the area that will be open to big game hunting is upland habitat, and big game hunting will result in only minor temporary disturbances to migratory birds and their habitat. In addition, the big game hunting season will begin after waterfowl use has decreased considerably from their maximum use of the refuge in the fall. Therefore, the opening of Muscatatuck NWR to big game hunting is compatible with the purposes for which the refuge was established and in compliance with the Refuge Administration Act. The annual cost of this hunting program is estimated to be less than $7,000. Within the annual refuge budget of approximately $331,000, the necessary funds are available for the administration of the big game hunting. Therefore, the opening of Muscatatuck NWR to big game hunting is in compliance with the Refuge Recreation Act.

Pee Dee NWR was acquired by the Migratory Bird Conservation Commission for the conservation of migratory birds. With the exception of Brown Creek Bottoms, migratory waterfowl use areas will be closed to migratory game bird and upland game hunting. Space zoning of upland game hunting in Brown Creek Bottoms will eliminate most disturbances to fall feeding wood ducks. Even if they should occur, temporary disturbances such as noise and vegetation disturbances will not harm waterfowl populations. In compliance with the Refuge Administration Act, only 40 percent of the refuge will be open to migratory game bird hunting. Therefore, the opening of Pee Dee NWR to migratory game bird and upland game hunting is compatible with the purposes for which the refuge was established. The annual cost of these hunting programs is expected to be less than $6,000. Within the annual refuge budget of approximately $163,000, the necessary funds are available for the administration of the migratory game bird and upland game hunting programs. Therefore, the opening of Pee Dee NWR to migratory game bird and upland game hunting is in compliance with the Refuge Recreation Act.

Tensas River NWR was established "for the preservation and development of the environmental resources in the basins of the Tensas, Bouef and Red Rivers of the State of Louisiana" (Pub. L. 96-285; June 28, 1980). Migratory game bird, upland game and big game hunting will cause only minor temporary disturbances to refuge habitat and wildlife, and the implementation of these hunting programs will be an integral part of the management of refuge wildlife populations. For example, big game hunting will be used to reduce the deer population which at the present time exceeds the carrying capacity of refuge habitat. Migratory game bird and upland game hunting will also utilize a renewable resource while maintaining balanced wildlife populations on the refuge. These hunting programs will be used as management techniques in the preservation and development of the environmental resources of the refuge. Therefore, the opening of Tensas NWR to migratory game bird, upland game and big game hunting is compatible with the purposes for which the refuge was established and in compliance with the Refuge Administration Act. The annual cost of these hunting programs is expected to be less than $8,000. Within the annual refuge budget of approximately $230,000, the necessary funds are available for the administration of these hunting programs. Therefore, the opening of Tensas NWR to migratory game bird, upland game and big game hunting is in compliance with the Refuge Recreation Act.

Great Dismal Swamp NWR was established "for the conservation and management of wildlife and natural resources, the development of outdoor recreation opportunities, and interpretive education" (Pub. L. 93-402; August 30, 1974). Big game hunting will provide a management tool to maintain the proper balance of the deer herd with the carrying capacity of the refuge habitat and will also provide outdoor recreational opportunities. Therefore, big game hunting is compatible with the purposes for which the refuge was established and in compliance with the Refuge Administration Act. The annual cost of the big game hunting program is expected to be less then $10,000. Within the annual refuge budget of approximately $508,000, the necessary funds are available for the administration of the big game hunting program. Therefore, the opening of Great Dismal Swamp NWR to big game hunting is in compliance with the Refuge Receation Act.

San Francisco Bay NWR was established "for the preservation and enchancement of highly significant wildlife habitat in the area known as south San Francisco Bay in the State of California, for the protection of migratory waterfowl and other wildlife, including species known to be threatened with extinction, and to

provide an opportunity for wildlife-oriented recreation and nature study" (Pub. L. 92–330; June 30, 1972). The opening of San Francisco Bay NWR to sport fishing will provide an opportunity for wildlife-oriented recreation. Most of the sport fishing will occur on two fishing piers located on the Bay because fishing from the Bay shore is impractical in most parts of the refuge. Certain sloughs will be closed seasonally to sport fishing to protect sensitive wildlife species such as the harbor seal and nesting herons and egrets. Therefore, the opening of San Francisco Bay NWR to sport fishing is compatible with the purposes for which the refuge was established and in compliance with the Refuge Administration Act. The annual cost of the sport fishing program will be approximately $60,000. Within the annual refuge complex budget of approximately $889,000, the necessary funds are available for the administration of the sport fishing program. Therefore, the opening of San Francisco Bay NWR to sport fishing is in compliance with the Refuge Recreation Act.

Antioch Dunes NWR was established in 1980 to protect the critical habitat and remaining populations of these endangered species: Lange's Metalmark Butterfly, Contra Costa Wallflower and Antioch Dunes Evening Primrose. Sport fishing will be permitted along the San Joaquin River where it traditionally occurred prior to acquisition of the refuge by the Service. Access to the San Joaquin River bank will be permitted only by specific routes, where endangered species and habitat are not likely to be disturbed. All areas, except parking lots, trails and fishing areas will be closed to the public. Therefore, the opening of Antioch Dunes NWR to sport fishing is compatible with the purposes for which the refuge was established and in compliance with the Refuge Administration Act. The annual cost of the sport fishing program is expected to be less than $2,000. Within the annual refuge complex budget of approximately $889,000, the necessary funds are available for the administration of the sport fishing program. Therefore, the opening of Antioch Dunes NWR to sport fishing is in compliance with the Refuge Recreation Act.

Minnesota Valley NWR was established "for the conservation and management of wildlife and natural resources, the development of wildlife recreational opportunities, wildlife interpretation, and environmental education" (Pub. L. 94–466; October 8, 1976). The sport fishing program will be used as a technique for managing the fishery resource on the refuge, and will provide a wildlife recreational opportunity. Therefore, the opening of Minnesota Valley NWR to sport fishing is compatible with the purposes for which the refuge was established and in compliance with the Refuge Administration Act. The annual cost of the sport fishing program is expected to be less than $2,000. Within the annual refuge budget of approximately $460,000, the necessary funds are available for the administration of the sport fishing program. Therefore, the opening of Minnesota Valley NWR to sport fishing is in compliance with the Refuge Recreation Act.

Nisqually NWR was acquired by the Migratory Bird Conservation Commission for the conservation of migratory birds. Sport fishing will be restricted to the banks of McAllister Creek and the Nisqually River where this activity will have no significant effect upon the management of other wildlife resources. In addition, the refuge will be closed to sport fishing in the winter when waterfowl use is at its peak. Therefore, the opening of Nisqually NWR to sport fishing is compatible with the purposes for which the refuge was established and in compliance with the Refuge Administration Act. The annual cost of the sport fishing program is expected to be less than $1,000. Within the annual refuge budget of approximately $331,000, funds are available for the administration of the sport fishing program.

In summary, the Service concludes that these hunting and fishing programs are appropriate incidental or secondary uses of these refuges; are compatible with and will not interfere with the primary purposes for which these refuges were established; are biologically sound and compatible with the principles of sound wildlife management; and are not inconsistent with any other previously authorized Federal programs or with the primary objectives of these refuges. The Service further concludes that these programs are economically feasible and are practicable uses of these refuges, that funds are available for administration of these programs, and that these programs are otherwise in the public interest in that they will provide needed recreational opportunities without impairment of the resource.

2. Recreation should not be used as a basis for opening refuges to hunting.

Service Response: The Refuge Recreation Act states that the Secretary of the Interior is authorized to administer refuges for public recreation. The Refuge Administration Act of 1966, states that the Secretary is authorized to permit the use of any area within the Refuge System for any purpose, including hunting. Thus, Congress clearly intended that recreation be an important part of a refuge management program to the extent that it can be reconciled as incidental to the primary purposes of a refuge. This was affirmed in the decision of the U.S. District Court for the District of Columbia on February 8, 1973, in the matter of the Humane Society of the United States v. Morton (Civil Action No. 3627) where the court found that public hunting on Great Swamp, Eastern Neck and Chincoteague National Wildlife Refuges was a valid and legal form of public recreation on these refuges.

Hunting, a recreational opportunity, is an integral part of a wildlife management program on each refuge where it is permitted. Hunting is closely monitored and restrictions, such as bag limits, season lengths, and the number of hunters permitted on the refuge, are adjusted so that the hunting program poses no detriment to any of the wildlife populations.

3. In reference to the proposed hunting program at Upper Souris National Wildlife Refuge, the Service is attempting to extend the concept of surplus to a point where all animals may be hunted on refuges, so long as a few of each species remain to reproduce. Sections 31.1 and 31.2 of 50 CFR are directed only to situations in which excessive populations of wildlife exist on a refuge and they must be controlled for the good of refuge habitat.

Service Response: Section 31.1 of 50 CFR describes what methods should be used to estimate populations and determine the requirements of wildlife species on refuges. Section 31.2 of 50 CFR describes how surplus animals can be utilized. These sections do not define surplus as excessive populations that must be controlled for the good of refuge habitat. Opening of a refuge to sport hunting is governed by Part 32 of 50 CFR.

In this case, the determination has been made that sharp-tailed grouse and gray partridge can be harvested while maintaining healthy populations of these species on the refuge. The Service does not manage its game species on refuges so only a few of each species remain to reproduce. Refuge hunting programs are managed so that well-balanced populations of game and nongame species are maintained in harmony with available habitat throughout the year on refuge lands.

4. The Service's argument of controlling the spread of diseases transmitted by raccoons through a hunting program on Pee Dee NWR has serious flaws.

Service Response: Reduction of disease was only one reason for proposing a raccoon hunting program. A portion of the refuge raccoon population is available for harvest, and a raccoon hunt will be implemented for recreational purposes. The Service has determined that the upland game hunting is compatible with the purposes for which Pee Dee NWR was established (see Service response to Substantive Issue 1).

5. Removal of feral hogs from Chassahowitzka NWR should be done in the most humane manner, and an official control operation would be more appropriate than a public hunting program.

Service Response: The Service has noted an increase in feral hog population on Chassahowitzka NWR after several years of decline. The feral hog is not a native species of wildlife and is generally an unwanted animal on a refuge because it competes with wildlife species for food resources. The inclusion of this feral species in the refuge's hunt program is in anticipation of potential habitat destruction by the feral hog on the refuge. The refuge hunt program will allow additional recreational opportunities for the public and, at the same time, will provide some degree of control and utilization of the species at minimal costs. If further reductions are needed, the Service is prepared to take appropriate actions including a Service control operation.

6. The Service's Office of Migratory Bird Management (MBMO) has shown that populations of many important migratory waterfowl have decreased. Migratory waterfowl hunting on Big Boggy and Pee Dee NWRs will contribute to the decline of these waterfowl populations.

Service Response: The recent declines in flyway migratory waterfowl populations are in large part due to loss of habitat rather than hunting pressure. Limited hunting on these two refuges will not affect in any measurable way the population trends of migratory waterfowl. The MBMO estimates that 18 million ducks and geese were harvested in North Carolina and Texas during the 1982 hunting season. The harvest that would be expected from the opening of these two refuges to migratory game bird hunting is less than .0001 percent of the total number of ducks harvested in these states in 1982.

7. The Service is violating the Endangered Species Act because the proposed hunting programs for Big Boggy and Pee Dee NWRs do not show a positive benefit for the endangered species that use those refuges.

Service Response: The listed species that are known to occur on Big Boggy NWR are the American alligator, bald eagle, Arctic peregrine falcon, and brown pelican. These species, with the exception of the American alligator, occur as transients on the refuge. The listed species that are known to occur on Pee Dee NWR are the bald eagle and the red-cockaded woodpecker.

Section 7 of the Endangered Species Act imposes a specific duty to avoid jeopardizing listed species or destroy or adversely modify their habitat. The Service examined each proposed hunting and fishing program and concluded that they will not have this effect or interfere with the implementation of endangered species recovery plans. The comment suggests that Section 7 applies a far greater burden on the Service. The Service disagrees with this interpretation. Congress has required the Service to discharge many duties including the protection of game species and marine mammals not listed under the Endangered Species Act, law enforcement, recreation, fish hatchery operations and maintenance of refuges. There is no reason to believe that Section 7 was intended to forbid the discharge of these duties except where a listed species could be proven to benefit.

8. The environmental assessment that was prepared for the proposed hunt on Upper Souris NWR does not include a description of the affected environment; and therefore, the Service has violated NEPA.

Service Response: Page four of the EA that was prepared for the hunting program on Upper Souris NWR contains a description of the affected environment.

9. The Service has apparently not done the Section 7 consultation on eagles for the proposed action on Upper Souris NWR, therefore violating the Endangered Species Act.

Service Response: A Section 7 consultation on the bald eagle was completed on February 9, 1984. The acting regional director for Region 6 determined that upland game hunting on Upper Souris NWR will not jeopardize the continued existence of the bald eagle.

10. Evidence is not presented to show that the proposed limited hunting program for Eufaula NWR will not lead to decline in wintering waterfowl and a concurrent decline in bald eagle use on the refuge.

Service Response: Eufaula NWR consists of approximately 2,180 acres of timberland, 1,600 acres of cropland and open lands, 2,750 acres of marshland and other wetlands, and 4,630 acres of open water. Upland game hunting will be limited to 2,780 of upland habitat. There may be some temporary disturbance of waterfowl use near the contiguous areas of marsh and timberland during daylight hours of parts of the upland game seasons. The Service does not expect any changes in winter waterfowl or bald eagle populations. In addition, the hunting program developed for Eufaula NWR has the flexibility to allow the adjustment of season lengths and the size of the hunt area, so that undue disturbances to wintering waterfowl populations will be avoided. Areas of significant bald eagle use, if any, will be zoned to prohibit hunting activity. A Section 7 evaluation for the bald eagle resulted in a "will not affect" determination for the hunting plan.

11. Florida panther sightings are mentioned in the Tensas River hunt plan, but the panther is not included in the Section 7 evaluation or in EA.

Service Response: Panther sightings have not been confirmed nor has physical evidence of panther use of refuge lands been found. Therefore, consideration of the panther was not included in the EA or in the Section 7 evaluation.

12. A lead poisoning problem is likely to develop at Tensas River NWR. The refuge should be designated as a non-toxic shot zone at the outset of the migratory game bird hunting program

Service Response: The Service policy regarding the use of non-toxic shot on NWRs was delineated by the Director to the regional directors in his January 27, 1983, memorandum, a part of which follows: "Non-toxic shot will be required for waterfowl hunting *only* if a lead poisoning problem has been documented in the area where waterfowl hunting will take place. Evidence of a lead poisoning problem must be documented as verified deaths or high levels of lead in soft tissues (e.g., 6 ppm wet weight in liver or 0.5 ppm in blood) in conjunction with gross lesions and clinical signs of lead poisoning." We are aware of evidence of the above situation at Tensas River NWR.

Conformance With Statutory and Regulatory Authorities

The National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C 668dd) and the Refuge Recreation Act of 1962 (16 U.S.C. 460k) govern the administration and public

use of national wildlife refuges. Specifically, section 4(d)(1)(A) of the Refuge System Administration Act authorizes the Secretary to permit the use of any area within the System for any purpose, including but not limited to hunting, fishing, public recreation and accommodations and access when he determines that such uses are compatible with the major purposes for which such areas were established, provided that the taking of migratory game birds will be permitted on no more than 40 percent of any area that has been designated as an inviolate sanctuary for migratory game birds. Of the refuges that will be opened to the hunting of migratory birds by this rule, Big Boggy and Pee Dee National Wildlife Refuges were originally acquired as inviolate sanctuaries for the conservation of migratory birds. This rule considers the opening of 40 percent or less of the above mentioned refuges to migratory game bird hunting and therefore conforms to the 40 percent provision of this Act.

The Refuge Recreation Act authorizes the Secretary of the Interior to administer refuge areas within the National Wildlife Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary objectives for which the areas were established. In addition, the Refuge Recreation Act requires that the Secretary shall determine that funds be made available for the development, operation, and maintenance of these permitted forms of recreation, prior to initiating such uses of refuge areas. A discussion of the Service's compliance with the Refuge Administration and Refuge Recreation Acts for each refuge that will be opened to hunting and/or sport fishing can be found in the Service's response to the first substantive issue listed above in the Responses to Comments Received section of this document.

Economic Effect

Executive Order 12291, "Federal Regulation," of February 17, 1981, requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) further requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions.

It is estimated that the opening of these refuges to hunting and fishing will generate approximately 90,000 annual visits. Using data from the 1980 National Survey of Hunting, Fishing, and Wildlife-Associated Recreation, total annual receipts generated from purchases of food, transportation, hunting equipment, fishing gear, fees, licenses, etc., associated with these programs are expected to be approximately $2.3 million, or substantially less than $100 million. In addition, since these estimated receipts will be spread over 12 states, the implementation of this rule should not have a significant economic impact on the overall economy, or a particular region, industry or group of industries, or level of government.

With respect to small entities, this rule will have a positive aggregate economic effect on small businesses, organizations and governmental jurisdictions. The openings will provide recreational opportunities and generate economic benefits that would not otherwise exist, and will impose no new costs on small entities. While the number of small entities likely to be affected is not known, the number is judged to be small. Moreover, the added cost to the Federal government of law enforcement, posting etc., needed to implement activities under this rule would be less than the income generated from the implementation of these hunting and/or sport fishing programs.

Accordingly, the Department of the Interior has determined that this rule is not a "major rule" within the meaning of Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Paperwork Reduction Act

The rule does not contain information collection requirements that require approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Environmental Considerations

The "Final Environment Statement for the Operation of the National Wildlife Refuge System" [FES 76-59] was filed with the Council on Environmental Quality on November 12, 1976; a notice of availability was published in the Federal Register on November 19, 1976 (41 FR 51131). Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 [42 U.S.C. 4332(C)], environmental assessments and Findings of No Significant Impact have been prepared for these openings. Section 7 evaluations have been prepared where appropriate pursuant to the Endangered Species Act of 1973, as amended (16 U.S.C. 1531-1543). These documents are available for public inspection and copying in Room 2343, Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20240, or by mail, addressing the Director at the same address.

Richard Frietsche, Division of Refuge Management, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (Telephone 202/343-3719) is the primary author of this rulemaking document.

List of Subjects

50 CFR Part 32

Hunting, National Wildlife Refuge System, Wildlife, Wildlife refuges.

50 CFR Part 33

Fishing, National Wildlife Refuge System, Wildlife refuges.

PART 32—HUNTING

Accordingly, Part 32 of Chapter I of Title 50 of the *Code of Federal Regulations* is amended by the addition of Big Boggy National Wildlife Refuge, Chassahowitzka National Wildlife Refuge, Deer Flat National Wildlife Refuge, Eufaula National Wildlife Refuge, Great Dismal Swamp National Wildlife Refuge, Muscatatuck National Wildlife Refuge, Pee Dee National Wildlife Refuge, Tensas River National Wildlife Refuge and Upper Souris National Wildlife Refuge in § 32.11, 32.21, and 32.31 as follows:

§ 32.11 List of open areas; migratory game birds.

* * * * *

Louisiana

* * * * *

Tensas River National Wildlife Refuge

* * * * *

North Carolina

* * * * *

Pee Dee National Wildlife Refuge

* * * * *

Texas

* * * * *

Big Boggy National Wildlife Refuge

* * * * *

§ 32.21 List of open areas; upland game.

Alabama

* * * * *

Eufaula National Wildlife Refuge

* * * * *

Florida
* * * * *
Chassahowitzka National Wildlife Refuge
* * * * *
Georgia
* * * * *
Eufaula National Wildlife Refuge
* * * * *
Louisiana
* * * * *
Tensas River National Wildlife Refuge
* * * * *
North Carolina
* * * * *
Pee Dee National Wildlife Refuge
* * * * *
North Dakota
* * * * *
Upper Souris National Wildlife Refuge
* * * * *
Oregon
* * * * *
Deer Flat National Wildlife Refuge
* * * * *

§ 32.21 List of open areas; big game.

* * * * *
Florida
* * * * *
Chassahowitzka National Wildlife Refuge
* * * * *
Indiana
* * * * *
Muscatatuck National Wildlife Refuge
* * * * *
Louisiana
* * * * *
Tensas River National Wildlife Refuge
* * * * *
North Carolina
* * * * *
Great Dismal Swamp National Wildlife Refuge
* * * * *
Oregon
* * * * *
Deer Flat National Wildlife Refuge
* * * * *

PART 33—SPORT FISHING

Accordingly, Part 33 of Chapter I of Title 50 of the *Code of Federal Regulations* is amended by the addition of Antioch Dunes National Wildlife Refuge, Deer Flat National Refuge, Eufaula National Wildlife Refuge, Minnesota Valley National Wildlife Refuge, Nisqually National Wildlife Refuge and San Francisco Bay National Wildlife Refuge in § 33.4 as follows:

§ 33.4 List of open areas; sport fishing.

Alabama
* * * * *
Eufaula National Wildlife Refuge
* * * * *
California
* * * * *
Antioch Dunes National Wildlife Refuge
San Francisco Bay National Wildlife Refuge
* * * * *
Georgia
* * * * *
Eufaula National Wildlife Refuge
* * * * *
Minnesota
* * * * *
Minnesota Valley National Wildlife Refuge
* * * * *
Oregon
* * * * *
Deer Flat National National Wildlife Refuge
* * * * *
Washington
* * * * *
Nisqually National Wildlife Refuge
* * * * *

Authority: 16 U.S.C. 460k, 668dd.

Dated: April 21, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-14633 Filed 5-31-84; 8:45 am]
BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 49, No. 107
Friday, June 1, 1984

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 COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

15 CFR Part 930

[Docket No. 40565-4065]

Coastal Zone Management; Federal Consistency Regulations; Advance Notice of Proposed Rulemaking

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Advance notice of proposed rulemaking (ANPR).

SUMMARY: On January 11, 1984, the United States Supreme Court issued its decision in *Secretary of the Interior et al.* v. *California et al.* The Court held that the sale of Outer Continental Shelf (OCS) oil and gas leases is not an activity "directly affecting" the coastal zone within the meaning of Section 307(c)(1) of the Coastal Zone Management Act of 1972 (the CZMA, Pub. L. 92-583, as amended) and, therefore, a determination of consistency with approved state coastal management programs is not required before such sale is made.

The National Oceanic and Atmospheric Administration (NOAA), which administers the CZMA, is undertaking a review of its regulations to determine which existing regulations may have to be revised as a result of the Supreme Court's decision. NOAA is also taking this opportunity to determine whether new regulations applicable to Section 307(c)(1) activities should be promulgated at this time. This advance notice of proposed rulemaking (ANPR) announces NOAA's intent to remove those references in the existing regulations, and associated comments, which identify OCS lease sales as activities covered by the Section 307(c)(1) requirements; to solicit comments on whether NOAA should develop a definition of the term "directly affecting" and, if so, what that definition should be; and to solicit comments on other Federal consistency regulations under the CZMA which may need revision. Interested persons are invited to submit written comments on the issues raised by this advance notice as well as on other related issues. In addition, public meetings will be held. See Supplementary Information for dates and addresses.

DATE: Comments must be received by Friday, August 31, 1984.

ADDRESS: Written comments, identifying this notice, should be sent to: JoAnn L. Chandler, Chief, Policy Coordination Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 3300 Whitehaven Street NW., Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: Nan Evans, Senior Policy Analyst, Office of Ocean and Coastal Resource Management, (202/634-4249).

SUPPLEMENTARY INFORMATION:

A. General Background

The Coastal Zone Management Act of 1972, as amended (CZMA), requires each Federal agency conducting or supporting activities directly affecting the coastal zone to conduct or support those activities in a manner which is, to the maximum extent practicable, consistent with approved state management programs (Section 307(c)(1). NOAA regulations implementing this section are found at 15 CFR Part 930 Subpart C. The CZMA also requires that federally licensed or permitted activities affecting land or water uses in the coastal zone, including activities described in detail in Outer Continental Shelf (OCS) exploration, development and production plans, be conducted in a manner consistent with federally approved state coastal management programs (Section 307(c)(3)(A) and (B)). NOAA regulations implementing these sections are found at 15 CFR Part 930 Subparts D and E. Section 307(d) of the CZMA requires that Federal assistance be granted to State and local governments for activities affecting the coastal zone only when such activities are consistent with federally approved coastal zone management programs. NOAA regulations implementing this section are found at 15 CFR 930 Subpart F. NOAA's current regulations interpreting Section 307 were promulgated in 1979 (44 FR 37142-37161, June 25, 1979).

B. Supreme Court Decision on Whether OCS Lease Sales "Directly Affect" the Coastal Zone Within the Meaning of Section 307(c)(1) of the CZMA.

The Supreme Court in *Secretary of the Interior et al.* v. *California et al.*, 104 S. Ct. 656, 52 U.S.L.W. 4063. (U.S., Slip Op. No. 82-1326), specifically concludes "Interior's sale of Outer Continental Shelf oil and gas leases is not an activity 'directly affecting' the coastal zone within the meaning of the statute" [CZMA] (104 S. Ct. at 658), and therefore, reverses the previous contrary conclusion of the Ninth Circuit Court of Appeals (at 693 F.2d 1253 (1982)). After an analysis of the legislative history, the Court concludes that the term "directly affecting" represents a legislative compromise between the definition of the coastal zone in the Senate bill, which would have excluded all activities on Federal lands from compliance with State coastal management plans, and the definition in the House bill, which would have defined the coastal zone to include such lands and would, therefore, have required activities on Federal lands to be subject to the requirements of Section 307(c)(1). The Court observes that under both bills, submerged lands on the OCS were excluded from the coastal zone and, therefore, exempt from the Federal consistency requirements. (104 S. Ct. at 662.) The term "directly affecting," therefore, is "aimed at activities conducted or supported by Federal agencies on Federal lands physically situated in the coastal zone but excluded from the zone as formally defined by the Act." (104 S. Ct. at 665.) The CZMA defines the coastal zone to mean the coastal waters and adjacent shorelands, strongly influenced by each other and in proximity to the shorelines of the several coastal states. The definition of the coastal zone does not include the Outer Continental Shelf (OCS) which "belongs to the federal Government." (104 S. Ct. at 658.) Also excluded from the coastal zone are "lands the use of which is by law subject solely to the discretion of or which is held in trust by the Federal Government, its officers or agents." (Section 304(1), (CZMA.)

The Court also finds that OCS lease sales are "a type of federal agency activity not intended to be covered by section 307(c)(1) at all," that section

being irrelevant "if only because drilling for oil or gas on the OCS is neither 'conduct[ed]' nor 'support[ed]' by a federal agency." (104 S. Ct. at 667.) The Court reasons that lease sales are the sort of activity dealt with in section 307(c)(3), which covers "federally approved activities of third parties." (Id.) The Court concludes that section 307(c)(3) "does *not* require consistency review of OCS lease sales." (*Id.*) The Court reaches this conclusion based on the absence of the word "lease" from section 307(c)(3) as well as the fact that the Congress specifically rejected proposals to add the word "lease" to section 307(c)(3). The Court notes that the term "lease" is used in a specific sense in the Outer Continental Shelf Lands Act of 1953 (43 U.S.C. 1331 *et seq.*, OCSLA), which is referenced by incorporation in section 307(c)(3)(B) of the CZMA. The 1978 OSCLA Amendments establish four distinct statutory stages of development—(1) formulation of a five year leasing plan by the Department of the Interior; (2) lease sales; (3) exploration; and (4) development and production. As to the first two stages; the Court finds that consistency requirements of the CZMA do not apply; as to the exploration and development and production stages, the Court finds that the consistency requirements of CZMA section 307(c)(3)(B) expressly apply. (104 S. Ct. at 669–71.)

Finally, the Court examines the type of activity that occurs as a result of a lease sale and concludes that "the possible effects on the coastal zone that may eventually result from the sale of a lease cannot be termed 'direct'." (104 S. Ct. at 672.) This is because, in the Court's view, a lease sale only authorizes a lessee to conduct "very limited, 'preliminary activities' on the OCS" and "does not authorize full scale exploration, development, or production. Those activities may not begin until separate federal approval has been obtained, and approval may be denied on several grounds." (*Id.*)

C. Issues To Be Resolved Through Rulemaking

Revision of the existing regulations in light of the Supreme Court's ruling is being used as an occasion to determine whether new rules applicable to section 307(c)(1) activities should be developed. NOAA is also taking this opportunity to review the need for other revisions in the Federal consistency regulations at 15 CFR Part 930. The following discussion identifies general issue areas which may be the subject of rulemaking and sets forth questions to be addressed in each area.

Federal activities subject to Section 307(c)(1). The current NOAA regulations provided that "Federal activities outside of the coastal zone (e.g., on excluded Federal lands, on the Outer Continental Shelf, or landward of the coastal zone) are subject to Federal agency review to determine whether they directly affect the coastal zone" (15 CFR 930.33(c)). The Supreme Court decision clearly holds that OCS lease sales conducted by the Department of the Interior are not subject to section 307(c)(1). NOAA will make the necessary revisions in the current regulations at 25 CFR 930.33(c) to comport with the Supreme Court decision.

The Supreme Court decision does not address the question whether other Federal activities outside of the coastal zone, apart from those pertaining to OCS resources, are excluded from section 307(c)(1). After concluding that the term "directly affecting" is a legislative compromise, the Court finds that section 307(c)(1) is "aimed at activities conducted or supported by federal agencies on federal lands physically situated in the coastal zone but excluded from the zone as formally defined by the Act." (104 S. Ct. at 666.) The Court states that "we need not, however, decide whether any OCS activities other than oil and gas leasing might be covered by section 307(c)(1)." (104 S. Ct. at 663.)

NOAA requests any comments on the question of whether there is any legal basis for distinguishing between Federal activities which occur outside the coastal zone with respect to the applicability of section 307(c)(1). Specifically:

- Are any Federal activities outside the coastal zone other than OCS lease sales, (e.g., ocean dumping, ocean mining, forest management plans, fishery management plans, channel dredging, etc.), subject to the consistency requirements of Section 307(c)(1)?

Directly Affecting. For those Federal activities which are subject to the consistency requirements of Section 307(c)(1), the standards of "directly affecting" still applies. The Court has provided an apparent geographic limitation on the definition of the term "directly affecting." This limitation is discussed above. The Court does not, however, provide a specific definition for this term as it applies to Federal activities that do fall within Section 307(c)(1). The Court finds no support in the CZMA or its legislative history for the definitions offered by the parties in the case and, therefore, rejects these definitions:

> Interior contends 'directly affecting' means [h]av[ing] a [d]irect, [i]dentifiable [i]mpact on [t]he [c]oastal [z]one . . . Respondents insist that the phrase means '[i]nitiat[ing] a [s]eries of [e]vents of [c]oastal [m]anagement [c]onsequence.' (104 S. Ct. at 661.)

In 1978, NOAA had defined "directly affecting" in Section 307(c)(1) to mean "significantly affecting the coastal zone." The phrase "significantly affecting the coastal zone," was then defined as "changes in the manner in which land, water or other coastal zone natural resources are used; limitations on the range of uses of coastal zone natural resources; or changes in the quality of coastal zone natural resources". (15 CFR 930.21, 43 FR 10518–10519, March 13, 1978.) In arriving at this definition, NOAA was guided by the Council on Environmental Quality's guidelines, which have since been codified at 40 CFR Parts 1500–1508, for defining major Federal actions "significantly" affecting the human environment as used in section 102(2)(C) of the National Environmental Policy Act. The Department of Justice, in an advisory opinion issued in April 1979, concluded that NOAA's definition was inconsistent with the plain language of the CZMA, which should control. In response to the Justice opinion, NOAA amended its consistency regulations by deleting the definition of significantly affecting and returning to the statutory language of "directly affecting". (44 FR 37142, June 25, 1979.) NOAA left it to Federal agencies to determine as a matter of fact which of their activities directly affected the coastal zone. (See 15 CFR 930.33(a).)

NOAA requests views on the meaning of the phrase "directly affecting" and on the need to develop a regulatory definition of this phrase. Specifically:

- Should NOAA develop a regulatory definition of the phrase "directly affecting"?
- If so, what should the definition of "directly affecting" be, and what legal support is there for that definition?

State/Federal Collaboration. While the Court states that OCS lease sales are not subject to the Federal consistency provisions of the CZMA, it clearly indicates that "section 307(c)(3) provides for consistency review prior to exploration, development, and production." (104 S. Ct. at 671, fn. 21.) Mindful of this requirement, the Court recognizes that "[c]ollaboration among state and federal agencies is certainly preferable to confrontation in or out of the courts." (104 S. Ct. at 672.) The Court also indicates that "[i]n view of the substantial consistency requirements imposed at the exploration,

development, and production stages of OCS planning, the Department of the Interior, as well as private bidders on OCS leases, might be well advised to ensure in advance that anticipated OCS operations can be conducted harmoniously with state coastal management programs." (*Id.*)

In a final rule, 15 CFR 930.37, published in the Federal Register, Vol. 46, No. 130, on July 8, 1981, and later withdrawn, NOAA suggested early consultation similar to that recommended by the Supreme Court opinion. In light of the suggestion from the Court, NOAA requests any comments on if and how NOAA should include in its rules an exhortation to Federal agencies to establish procedures through which such collaboration could be facilitated. Specifically:

- Should NOAA, through rulemaking, encourage an exchange of views and comments between affected state coastal zone management agencies and Federal agencies conducting early stage activities which may lead to subsequent operational activities with effects in the coastal zone, whether carried out by the Federal agency or its permittees or licensees, in order to help assure that such subsequent activities can be conducted harmoniously with state coastal mangement programs?
- Should NOAA suggest the form that such collaboration should follow?

Other Issues. Finally, NOAA is seeking the comments of interested persons on other consistency provisions in 15 CFR Part 930 which they believe require revision.

Legislation has been introduced into the 98th Congress, Second Session (H.R. 4589 and S. 2324), to amend section 307(c)(1) of the CZMA. If necessary, NOAA will revise its rulemaking efforts to respond to legislative action.

D. Authority

This advance notice of proposed rulemaking is issued under authority of Section 317 of the CZMA (Pub. L. 92–583).

E. Availability of Comments

All comments submitted in response to this advance notice of proposed rulemaking will be available for examination during normal business hours in Room 328A, Page Building No. 1, 2001 Wisconsin Avenue, NW., Washington, D.C. 20235.

F. Mailing List

Persons interested in receiving any public regulatory documents as they are developed during the rulemaking should submit their name, address, affiliation and phone number to the Chief, Policy Coordination Division, at the above address in order to be placed on the mailing list.

G. Public Participation

In addition to providing an opportunity for interested persons to submit written comments, NOAA will hold seven regional meetings at the following times and locations to discuss the issues raised in this advance notice of proposed rulemaking and to gather information:

1. Sacramento, California. Tuesday, July 17, 1984. 10:00 AM
   Federal Office Building, 2800 Cottage Way, Room West 2142, Sacramento, California 95825
2. Seattle, Washington. Wednesday, July 18, 1984. 10:00 AM
   Federal Office Building, 909 First Avenue, Room B–063, Seattle, Washington 98174
3. Anchorage, Alaska. Friday, July 20, 1984. 10:00 AM
   Anchorage Federal Building, U.S., Court House, 701 C Street, Room C 117, Anchorage, Alaska 99513
4. Detroit, Michigan. Tuesday, July 24, 1984. 10:00 AM
   Patrick McNamara Federal Building, 477 Michigan Avenue, Room 1194, Detroit, Michigan 48226
5. Tampa, Florida. Thursday, July 26, 1984. 10:00 AM
   Robert Timberlake Federal Building, 500 Zack Street, Room 718, Tampa, Florida 33602
6. Boston, Massachusetts. Tuesday, July 31, 1984. 10:00 AM
   J. F. Kennedy Federal Building, Government Center, Room E–226, Cambridge & New Sudbury Streets, Boston, Massachusetts 02203
7. Washington, D.C. Thursday, August 2, 1984. 10:00 AM
   DOC/Secretary's Conference Room 5859, Herbert C. Hoover Building, 14th & Constitution Avenue, NW., Washington, D.C. 20230

These informational meetings will be informal. NOAA anticipates that the meetings will provide an opportunity for an exchange of information and viewpoints. Although meeting notes will be kept, no formal transcripts will be prepared. The time for oral presentations may be limited to allow the opportunity for all interested parties to speak.

NOAA will accept written material for the record at these meetings and until the close of the public comment period. Interested parties who wish to provide comments are encouraged to do so in writing.

H. Proposed Rules

NOAA will issue proposed rules after the comments received in response to this ANPR have been evaluated.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Administration)

Dated: May 29, 1984.

Paul M. Wolff,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 84-14760 Filed 5-31-84; 8:45 am]

BILLING CODE 3510-08-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Fees for Contract Market Rule Enforcement Reviews and Financial Reviews

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed Schedule of Fees.

SUMMARY: As part of the Futures Trading Act of 1982, Congress amended Section 26 of the Futures Trading Act of 1978 to make it clear that the Commission had the authority to promulgate schedules of fees "to be charged for activities and functions performed by the Commission in conjunction with its administration and enforcement of the Commodity Exchange Act." 17 U.S.C. 16a(c). Consistent with this authority, the Commission proposes to charge a board of trade ("exchange") an annual fee for the costs the Commission incurs in conducting rule enforcement reviews and financial reviews with respect to contract markets. The proposed fee for each exchange is based on a formula which takes into account both the trading volume of the exchange and the number of contracts trading on the exchange.

DATE: Comments must be received on or before July 2, 1984.

ADDRESS: Comments should be sent to: Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, Attention: Secretariat.

FOR FURTHER INFORMATION CONTACT: Daniel S. Goodman, Esquire, Office of General Counsel, Commodity Futures Trading Commission, 2033 K Street, NW, Washington, D.C. 20581. Telephone (202) 254–9880.

SUPPLEMENTARY INFORMATION:

1. Introduction

The Futures Trading Act of 1982 (Pub. L. 97–444, 96 Stat. 2294, 2326, Jan. 11, 1983) amended section 26 of the Futures Trading Act of 1978 (7 U.S.C. 16a) to add specific authority for the Commission

to promulgate, after notice and opportunity for hearing, a schedule of appropriate fees to be charged for services rendered and activities and functions performed by the Commission in conjunction with its administration and enforcement of the Commodity Exchange Act: *Provided,* That the fees for any specified service or activity or function shall not exceed the actual cost thereof to the Commission.

The Conference Report accompanying the legislation (H.R. Rep. No. 964, 97th Cong. 2d Sess. 57 (1982)) states that "the conferees intend that the fee schedule addressed by the Conference substitute be strictly limited to Commission activities directly related to" eight enumerated Commission functions, including "(2) contract market and registered futures association rule enforcement reviews and financial reviews."

In this regard, the Commission proposes to add an Appendix B to Part 1 of its regulations to set forth an annual fee for rule enforcement and financial reviews which it would charge each board of trade which has been designated as a contract market for one or more actively traded contracts. The Commission is not proposing at this time to charge a fee for reviews of registered futures associations but will consider the cost of these reviews in the future and determine whether to charge an appropriate fee.

Under the proposed fee, the total amount which would be collected by the Commission is based on the average costs incurred by the Commission in conducting rule enforcement and financial reviews during the previous three fiscal years. The percentage of this total cost which would be charged to each exchange is computed by looking at two factors: (1) The percentage of all exchange trades taking place on that exchange during the previous three fiscal years and (2) the percentage of all contracts in which at least one trade had taken place during the current fiscal year. [1] In analyzing historical cost figures for rule enforcement and financial reviews, the Commission determined that both of these factors had a direct effect upon the amount of time that the Commission spent conducting reviews of each exchange. Since the volume factor had a greater effect upon Commission review costs, the Commission weighted that factor twice as heavily as the contracts factor. An example of the Commission's computation for one exchange is provided below. The Commission anticipates that, using the same methodology, it will recalculate the amount charged to each exchange at the end of each fiscal year as updated figures become available. The Commission will then publish a list of the annual fees for each exchange.

[1] In future years, the annual fee will be computed at the beginning of the fiscal year. Consequently, the Commission will calculate the fee using the number of actively trading contracts during the previous fiscal year.

2. Rule Enforcement Reviews and Financial Reviews

Section 5a(8) of the Commodity Exchange Act ("Act"), 7 U.S.C. 7a(8), provides that each contract market must "enforce all bylaws, rules, regulations, and resolutions, made or issued by it or by the governing board thereof or any committee, * * * ." In addition, under section 5a(9) of the Act, 7 U.S.C. 7a(9), each contract market must "enforce all bylaws, rules, regulations, and resolutions made or issued by it or by the governing board thereof or by any committee, which provide minimum financial standards and related reporting requirements for futures commission merchants who are members of such contract market * * *." The Commission has authority to investigate and take action, including revocation of contract market designations, against exchanges which fail properly to monitor and enforce their rules and financial requirements. *See, e.g.,* sections 5b, 6b, and 8(a) of the Act, 7 U.S.C. 7b, 13a, and 12(a).

Pursuant to its rule enforcement and financial review authority, the Commission has promulgated regulations which specify necessary ingredients of a contract market's rule enforcement program, 17 CFR 1.51, and of an exchange's financial reporting program for member futures commission merchants, 17 CFR 1.52. The Commission's Guideline No. 2, Comm. Fut, L. Rep. (CCH) ¶6430, provides additional detail as to the elements which an exchange should include in its enforcement sub-programs identified in § 1.51 of the regulations. Financial and Segregation Interpretation No. 4, Comm. Fut. L. Rep. (CCH) ¶7114, sets forth particular elements of a satisfactory financial compliance program.

The Commission's regulations contain additional requirements for exchanges which are designated as contract markets for the trading of commodity options. 17 CFR 33.4. In particular, an exchange must establish procedures and conduct sales practice audits of member futures commission merchants which sell regulated option contracts. 17 CFR 33.4(c).

Each year, the Commission's Division of Trading and Markets conducts general reviews of the rule enforcement programs of several exchanges ("rule enforcement reviews"). As of fiscal year 1983, the Division also conducts specialized rule enforcement reviews of the exchanges' sales practice audit programs. In addition, the Division reviews the exchanges' enforcement of their financial programs ("financial reviews"). The Commission is now proposing to recover the costs of these rule enforcement and financial reviews by charging each exchange an annual fee.

In fiscal year 1981, the total cost to the Commission of exchange rule enforcement reviews and financial reviews was $209,110.46 ($160,235.06 for rule enforcement reviews +$48,875.40 for financial reviews). The corresponding figure for fiscal year 1982 was $272,720.84 ($212,653.55 + $60,067.29). In fiscal year 1983, the figure was $284,032.41 ($178,743.02 for general rule enforcement reviews, $31,521.60 for sales practice rule enforcement reviews, and $73,767.79 for financial reviews). Thus, the average total cost for fiscal years 1981, 1982, and 1983 was $255,287.90 (($209,110.46 + $272,720.84 +$284,032.41) divided by 3).

The total cost figure for each fiscal year was derived by adding the appropriate cost figures listed under the headings "Rule Enforcement Reviews," "Surveillance/Audits," and "Self-Regulatory Financial Program Reviews" in the Commission's Budget Accounting Codes and applying an overhead figure of 32%. [2] The cost figures include salaries

[2] The Commission is confident that it will not be charging fees for its rule enforcement and financial reviews which "exceed the actual costs thereof to the Commission." 7 U.S.C. 16a(c). In calculating its costs, the Commission included only figures within the Budget Accounting Code entries specifically related to rule enforcement reviews and financial reviews.

The fees being proposed at this time do not include the costs attributable to the Division Directors or the Commissioners or the overhead associated with such costs. Nor do the cost figures include the costs of staff support provided to the Commission by the Secretariat, Administrative Services, Personnel, and other support units. Moreover, while the staff in several Divisions may incur costs related to rule enforcement reviews, the figures described herein do not include any costs incurred by the staff of any Division or Office other than the Division of Trading and Markets, although these costs will be included in the figures for future years, beginning with fiscal year 1984.

Among the costs which were included in the total Commission cost figures for fiscal years 1981, 1982, and 1983 were all Division of Trading and Markets staff costs directly attributable to the review of a

Continued

and benefits attributable to the staff time devoted to conducting the reviews, travel costs associated with the reviews, and service costs for the transcription of interviews. The overhead figure encompasses costs for space, supplies, utilities, etc.

3. Computation of Fees

In determining how best at this time to apportion the total rule enforcement and financial review costs among the various exchanges, the Commission first decided that it would be preferable to charge each exchange an appropriated amount each year, rather than charging only the exchanges being reviewed in a given year.[3] While the cost to an exchange of either method should be approximately the same over the long run, the method chosen by the Commission enables an exchange to predict with some certainty what its annual costs will be. Moreover, this method should prevent extraneous considerations, such as the financial condition of individual exchanges, from affecting the Commission staff's decisions as to which exchanges should be reviewed in a particular year.

The Commission next decided that each exchange should be charged at least $2,000 per year, since even the smallest exchange will incur average annual review costs in that amount. Beyond that base fee, the Commission determined that it would not be appropriate to charge each exchange the same amount for its share of rule enforcement and financial review costs. Historically, the Commission has spent considerably more time reviewing the larger exchanges, and it will continue to do so. Although there is no precise way to determine what percentage of total review costs will be attributable to each exchange over a period of time, in general there is strong correlation between review costs and trading volume. For example, as the volume of an exchange grows, so do the number of customer complaints and thus the costs of reviewing whether the exchange has conducted a meaningful inquiry into every such complaint. *See* 17 CFR 1.51(a)(4). To a lesser extent, however, some review costs, such as those associated with market surveillance, are also a function of the number of different contracts trading on an exchange. *See* 17 CFR 1.51(a)(1). Thus, as illustrated in the example below, the Commission decided to use both of these factors, weighted in a two-to-one ratio, to compute the fee of each exchange.

The Commission calculation of a proposed annual fee of $29,000.00 for Commodity Exchange, Inc. ("Comex") is provided as an example. First, the staff determined that during the first six months of fiscal year 1984, trading took place in five Comex contracts, including both futures contracts and options contracts.[4] During these months, there was trading in a total of 82 contracts on all 11 exchanges.[5] Thus, for the first six months of fiscal year 1984, Comex's active contracts represented 6.09% of all active contracts (5 divided by 82, rounded down to the nearest one-hundredth of a percent).

Next, the Commission looked at Comex's trading volume for fiscal years 1981, 1982, and 1983. In those years, a total of 49,774,862 contracts were traded on the exchange (13,328,598, 16,077,256, and 20,369,008, respectively). A total of 344,845,364 contracts were traded on all 11 exchanges during fiscal years 1981, 1982, and 1983.[6] Thus, trading on Comex amounted to 14.43 percent of all domestic futures trading during those three years (49,774,862 divided by 344,845,364, rounded down to the nearest one-hundredth of a percent).

To determine the percentage of total Commission rule enforcement and financial review costs which would be charged to Comex, the Commission then added the exchange's active contract percentage (6.09) to double its trading volume percentage (2 + 14.43 = 28.86) and then divided the sum by three. The resulting quotient, 11.65 percent, was multiplied by $233,287.90, the Commission's average total rule enforcement anf financial review cost figure for fiscal years 1981, 1982, and 1983 ($255,287.90) minus $2,000 per exchange ($22,000). This product, $27,178.04, was added to the $2,000 base fee and then rounded down to $29,000.00 to arrive at Comex's fee for fiscal year 1984. In like manner, the following fees for all 11 exchanges were computed:

Chicago Board of Trade	$89,000
Chicago Mercantile Exchange	64,000
Commodity Exchange, Inc.	29,000
MidAmerica Commodity Exchange	21,000
Coffee, Sugar & Cocoa Exchange	12,000
New York Mercantile Exchange	11,000
New York Cotton Exchange	7,000
Kansas City Board of Trade	6,000
New York Futures Exchange	5,000
Minneapolis Grain Exchange	3,000
Chicago Rice & Cotton Exchange[7]	2,000

The total cost proposed to be recovered by the Commission is $249,000.00, slightly less than the actual average total cost for fiscal years 1981, 1982, and 1983.

The Commission intends to revise these figures each fiscal year to reflect updated cost, volume, and contract data. If a new exchange is designated as a contract market, the Commission will include the exchange in the fee schedule for the first fiscal year after the fiscal year in which it was designated. Although it is presently the intention of the Commission to use the formula described above to compute the fees for each succeeding fiscal year, the Commission plans to review its methodology to ensure that it is distributing the costs of its rule enforcement and financial review program among the active exchanges in an equitable manner. In no event will the exchanges be charged more than the actual costs of review.

4. Regulatory Flexibility Act

The Commission has previously determined that contract markets are not "small entities" for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* 47 FR 18618 (Apr. 30, 1982). The requirements of the Regulatory Flexibility Act therefore do not apply to contract markets. Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the rule proposed herein, if promulgated, will not have a significant economic impact on a substantial number of small entities.

Note.— Attachment 1 will not be shown in the Code of Federal Regulations.

Attachment 1

The following is a list of the 82 contracts traded during the first six months of fiscal year 1984 in which the 11 boards of trade have been designated as contract markets.

Chicago Board of Trade (17)—20.73%

Corn
Oats
Soybeans
Soybean Meal
Soybean Oil
Wheat

presently-active exchange. These costs were included even where the review did not result in the issuance of a formal written report, as was the case, for instance, when certain follow-up financial reviews were performed. Also included in the total cost figures were general costs incurred as part of the review program. For example, the planning costs incurred by the Division of Trading and Markets in deciding which exchanges to review in each fiscal year and what aspects of their review programs to look at were included in the total cost figures.

[3] Beginning in fiscal year 1984, the Commission staff intends to conduct a financial review of each exchange every fiscal year. However, each exchange will not necessarily be subject to a rule enforcement review or a sales practice review every year.

[4] *See* footnote 1, *supra*.

[5] A complete list of these contracts, by exchange, is included as Attachment 1.

[6] A list of trading volumes for each exchange is included as Attachment 2.

[7] Formerly, the New Orleans Commodity Exchange

Plywood
GNMA Mortgages, CDR
T-Bonds, 15 year
T-Bonds, Option
T-Bonds, 6½–10 year
Heating Oil, Gulf
Crude Petroleum
Gasoline, Unleaded
Gold
Silver
GNMA II

Chicago Mercantile Exchange (22)—26.82%

Live Cattle
Live Hogs
Pork Bellies
Feeder Cattle
Lumber
Certificates of Deposit, 90 day
T-Bills, 90 day
S&P 500 Stock Index
S&P 100 Stock Index
S&P 500 Stock Index, Option
Eurodollar
Gold
Swiss Franc
British Pound
Canadian Dollar
Deutsche Mark
Deutsche Mark, Option
Japanese Yen
French Franc
Mexican Peso
Gasoline, Leaded
No. 2 Fuel Oil

Commodity Exchange, Inc. (5)—6.09%

Gold
Silver
Copper
Gold, Option
Aluminum

MidAmerica Commodity Exchange (17)—20.73%

Soybeans
Wheat
Corn
Oats
Refined Sugar
Live Cattle
Live Hogs
T-Bonds
T-Bills, 90 day
Silver
Silver, New York
Gold
Canadian Dollar
Deutsche Mark
Japanese Yen
British Pound
Swiss Franc

Coffee, Sugar and Cocoa Exchange (5)—6.09%

Coffee C
Sugar, No. 11
Sugar, No. 11 Option
Sugar, No. 12
Cocoa

New York Mercantile Exchange (6)—7.31%

Potatoes, Round White
Heating Oil, New York No. 2
Gasoline, New York Leaded
Crude Oil
Palladium
Platinum

New York Cotton Exchange (3)—3.65%

Cotton, No. 2
Orange Juice, Frozen Concentrated
Propane

Kansas City Board of Trade (3)—3.65%

Wheat
Value Line Stock Index
Mini Value Line Stock Index

New York Futures Exchange (2)—2.43%

NYSE Composite Stock Index
NYSE Composite, Option

Minneapolis Grain Exchange (1)—1.21%

Wheat

Chicago Rice & Cotton Exchange (1)—1.21%

Rice, Rough

Note.—Attachment 2 will not be shown in the Code of Federal Regulations

Attachment 2

The following is a list of trading volume, by exchange, for fiscal years 1981, 1982, and 1983.

Chicago Board of Trade—46.16%

1981— 51,474,049
1982— 48,510,002
1983— 59,205,337
SUM—159,189,388

Chicago Mercantile Exchange—26.96%

1981—23,748,154
1982—31,191,637
1983—38,043,739
SUM—92,983,530

Commodity Exchange, Inc.—14.43%

1981—13,328,598
1982—16,077,256
1983—20,369,008
SUM—49,774,862

MidAmerica Commodity Exchange—2.40%

1981—3,086,253
1982—2,151,695
1983—3,041,461
SUM—8,279,409

Coffee, Sugar and Cocoa Exchange—3.39%

1981— 3,827,785
1982— 3,243,899
1983— 4,637,263
SUM—11,708,947

New York Mercantile Exchange—2.21%

1981—1,728,011
1982—2,323,378
1983—3,580,697
SUM—7,632,086

New York Cotton Exchange—1.50%

1981—1,972,261
1982—1,561,436
1983—1,648,433
SUM—5,182,130

Kansas City Board of Trade—1.26%

1981—1,204,456
1982—1,425,530
1983—1,744,388
SUM—4,374,374

New York Futures Exchange—1.31%

1981— 378,062
1982— 757,320
1983—3,413,820
SUM—4,549,209

Minneapolis Grain Exchange—0.32%

1981— 355,393
1982— 364,908
1983— 383,350
SUM—1,103,651

Chicago Rice & Cotton Exchange—0.01%

1981—21,274
1982—36,958
1983— 9,546
SUM—67,778

All Exchanges—100.00%

1981—101,124,296
1982—107,644,019
1983—136,077,049
SUM—344,845,364

List of Subjects in 17 CFR Part 1

Contract market rule enforcement reviews, Contract market financial reviews, Fees, commodity futures.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act, and in particular in sections 4c, 5c 5a, 5b, 6b, 8, and 8a, 7 U.S.C. 6c, 7, 7a, 7b, 13a, 12, and 12a, and in section 26 of the Futures Trading Act of 1978, as amended by section 237 of the Futures Trading Act of 1982, 7 U.S.C. 16a, the Commission hereby proposes to amend Part 1 of Chapter 1 of Title 17 of the Code of Federal Regulations by adding Appendix B. In taking this action, the Commission has considered the public interest to be protected by the antitrust laws and has endeavored to take the least anticompetitive means of achieving the regulatory objectives of the Commodity Exchange Act.

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

Appendix B—Schedule of Fees

(a) Within 30 days of the publication of a final fee schedule for each fiscal year, each exchange which has been designated as a contract market for at least one actively trading contract shall submit a check or money order, made payable to the Commodity Futures Trading Commission, to cover the Commission's actual costs in conducting contract market rule enforcement reviews and financial reviews.

(b) The fee for each exchange shall be computed by (1) taking the number of contracts in which the exchange was designated as a contract market and in which at least one trade has taken place during the previous fiscal year, (2) dividing that number by the number of contracts in which all exchanges were designated and in which at least one trade has taken place during the

previous fiscal year, (3) taking the total trading volume of the exchange for the preceding three fiscal years, (4) dividing that number by the total trading volume during that period for all exchanges to be charged a fee, (5) multiplying that quotient by two, (6) adding the quotient computed in (2) to the product computed in (5), (7) dividing that sum by 3, (8) multiplying $2,000 by the number of exchanges which have been designated as a contract market for at least one actively trading contract, (9) subtracting that product from the average annual cost to the Commission of conducting rule enforcement reviews and financial reviews during the preceding three fiscal years, (10) multiplying the quotient computed in (7) by the difference computed in (9), (11) adding $2,000 to that product, and (12) rounding that sum down to the nearest multiple of $1,000.

(c) Checks should be sent to the attention of the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C., 20581.

Issued in Washington, D.C., on May 25, 1984, by the Commission.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 84-14651 Filed 5-31-84; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM84-9-000]

Calculation of Cash Working Capital Allowance for Electric Utilities; Extension of Comment Period

May 29, 1984.

AGENCY: Federal Energy Regulatory Commission DOE.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: On April 5, 1984, the Commission issued a Notice of Proposed Rulemaking involving the calculation of cash working capital allowance for electric utilities (49 FR 14384, April 11, 1984). The comment period is being extended at the request of the Edison Electric Institute.

DATE: Comments must be submitted on or before July 5, 1984.

ADDRESS: Submit comments to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Kenneth F. Plumb, Secretary, telephone (202) 357-8400.

SUPPLEMENTARY INFORMATION: On May 24, 1984, Edison Electric Institute (EEI) filed a motion for an extension of time to file comments in response to the Commission's Notice of Proposed Rulemaking issued April 5, 1984, in the above-docketed proceeding. The motion states that EEI requires additional time in order to obtain and coordinate input from its member companies and to prepare a response that will address the issues raised in the proposed rule.

Upon consideration, notice is hereby given that an extension of time for the filing of comments is granted to and including July 5, 1984.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-14624 Filed 5-31-84; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 102

[Docket No. 82N-0389]

Common or Usual Names for Nonstandardized Foods; Diluted Fruit or Vegetable Juice Beverages

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the regulation establishing common or usual names for diluted fruit or vegetable juice beverages to exempt cranberry juice products from percent ingredient labeling requirements and to allow manufacturers of other diluted high-acid juice beverages to request a similar exemption for their products. FDA also is proposing to eliminate the requirement for the percentage of individual juices in diluted multiple-juice beverages. FDA is retaining the requirement that the total percentage of juice in multiple-juice beverages be declared in the labeling but is proposing to extend the effective date of this requirement for affected products, now set for July 1, 1984, to until the completion of this rulemaking. This extension is proposed elsewhere in this issue of the Federal Register. The proposed amendments are the result of the retrospective review of the regulation and of the common or usual name regulations for noncarbonated beverage products containing no fruit or vegetable juice and for diluted orange juice beverages.

DATES: The agency proposes that any final rule based on this proposal become effective in accordance with a uniform effective date for compliance with food labeling requirements, which is announced by notice in the Federal Register and which is not sooner than 1 year after publication of any final rule based upon this proposal. (See Supplementary Information for a full discussion of the proposed effective date.) Comments by July 31, 1984.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Elizabeth J. Campbell, Center for Food Safety and Applied Nutrition (formerly Bureau of Foods) (HFF-312), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-485-0177.

SUPPLEMENTARY INFORMATION: In the Federal Register of July 14, 1981 (46 FR 36333), FDA announced the undertaking of a systematic review of its rules as required by the Regulatory Flexibility Act, Executive Order 12291, and the Paperwork Reduction Act of 1980. Three of the regulations FDA identified for immediate review that established common or usual names for diluted juice and juice-type beverages are the subject of this document: (1) The common or usual name for noncarbonated beverage products containing no fruit or vegetable juice (21 CFR 102.30), which was published in the Federal Register of August 2, 1973 (38 FR 20742); (2) the common or usual name for diluted orange juice beverages (21 CFR 102.32), which was published in the Federal Register of March 14, 1973 (38 FR 6333); and (3) the common or usual name for diluted fruits or vegetable juice beverage products other than diluted orange juice (21 CFR 102.33), which was published in the Federal Register of June 10, 1980 (45 FR 39247). The effective date of § 102.33 was extended to July 1, 1984, in the Federal Register of January 21, 1983 (48 FR 2735).

Sections 102.30 and 102.32

Before 1974, when §§ 102.30 and 102.32 became effective, consumers were confronted with a number of diluted orange juice beverages that bore misleading and noninformative names such as "orange drink" or "orange juice beverage." A nationwide consumer survey by Florida's Department of Citrus and the Florida Citrus Commission revealed substantial consumer confusion about the amount of orange juice contained in the various beverages. This survey disclosed that consumers perceived many diluted orange juice beverages to be 100 percent orange juice or to contain substantially more orange

juice than was actually present. Also, the survey disclosed that many consumers perceived orange-flavored noncarbonated beverages that contained no juice to contain substantial amounts of orange juice. In light of this inforamtion FDA concluded that consumers were not being provided in product labeling with the information necessary to distinguish between products that were apparently alike when the principal difference in the products, the juice content, had a material bearing on the cost of the product. Accordingly, the agency proposed and in 1973 established common or usual name regulations providing for the labeling of diluted orange juice beverages CFR 102.32) and noncarbonated beverages containing no fruit or vegetable juice (21 CFR 102.30). These two regulations became effective on December 31, 1974. Each of these regulations requires that, as part of the name of the diluted juice product, there appear on the label a statement concerning the amount of, or absence of, juice in the beverage. The label statements required by the regulations are simple and concise and need occupy only one one. Also, the required percent declaration may be based on the formulation of the beverage, so that manufacturers need not perform analyses to confirm the percentage of juice present.

The two regulations have stimulated competition between diluted orange products and have resulted in informed purchases by consumers. In fact, Florida's Department of Citrus submitted information in its comments that the beverages subject to the regulations continue to compete in the fruit juice/fruit-flavored beverage market.

The agency has carefully reviewed the premises and the effects of the regulations, as well as alternatives to the regulations, and has determined that there is no reasonable, less costly alternative to the resolution of the potential for consumer deception documented to exist before the regulations were published. The label requirements found in the regulations have provided a purchasing tool which, if removed, would result in resumption of the state of confusion that existed before the adoption of the regulations. Therefore, the agency is not amending or repealing §§ 102.30 and 102.32.

Section 102.33

In 1980, FDA published § 102.33 concerning the labeling of diluted fruit or vegetable juice beverages. The regulation represents the logical progression of the two earlier regulations. A Federal court has held that the administrative record for the regulation, at least in the context of lemonade products, supports the agency's decision to promulgate the regulation and that in promulgating the regulation FDA did not abuse its discretion or act arbitrarily. *Processors Council of the California-Arizona Citrus League* v. *FDA*, No. CV-80-3714 (C.D. Cal. Sept. 1, 1982). The regulation, however, has never become effective. Like its predecessors, the regulation requires that the name of any diluted juice beverage—including multiple-juice beverages—bear a declaration of the percentage of the amount of juice present. The regulation requires that the percentage of juice be listed in 5-percent increments not greater than the actual amount of juice present. In the original rulemaking and in the retrospective review of the regulation, manufacturers of multiple juices and high-acid juices filed comments criticizing aspects of the regulation that pertain to their products.

1. *Multiple-juices.* Under § 102.33(a)(2)(ii), a diluted multiple-juice beverage represented as containing, for example, pineapple and grapefruit juices, would have to be labeled "Pineapple-Grapefruit Drink contains —% fruit juice (—% pineapple, —% grapefruit)". Comments noted that the percent declaration for individual juices as required by the regulation may result in a long name because each juice and percentage would have to be listed. Comments also stated that the percent declaration may also result in a misleading name because the total percentage of juice shown from adding the rounded off percent declarations of the individual juices could be significantly different from the actual total percentage of juices present.

As originally proposed, juice content would have been listed in 5-percent increments not greater than the actual amount of juice contained in the beverage.

The agency is proposing to modify this provision to require percentage juice declaration with the percentage expressed as a whole number not greater than the actual percent contained in the beverage. Thus, consumers will not be misled because of rounding problems as suggested by the comment. The agency is also proposing to revise the multiple juice content labeling provision to provide manufacturers with the option of declaring either the percentage of individual juice content or the percentage of total juice content.

2. *High-acid juices.* High-acid juices are not ordinarily consumed full strength. Consumers of these juices generally recognize that they are not consuming a full strength juice product. Under § 102.33, these consumers would be able to ascertain the percentage of juice contained in the beverage product, even though the percentage would always be considerably less than 100 percent.

Manufacturers of diluted cranberry juice beverages have argued that, for these beverages, any percent declaration would be misleading to consumers. For example, one manufacturer contended that its cranberry cocktail beverage product was viewed by consumers to be more like a full strength juice than like a lemon or lime beverage and that this perception was reasonable because a cranberry juice cocktail beverage, though not 100 percent juice, often contains a greater percentage of soluble solids than full strength juices from other fruits. The manufacturer suggested that a consumer comparing a diluted cranberry juice beverage with a 100 percent strength noncranberry juice beverage, e.g., orange juice, would probably conclude that the latter beverage is a better value because it contains more juice, a conclusion the cranberry beverage manufacturer believes would be erroneous.

In light of these comments, the agency believes that in the case of diluted cranberry juice beverages, the requirement of percent declaration, instead of heightening consumer understanding and perception of a product, may not add any measurable degree of understanding and may, in fact, result in confusion or misunderstanding. Also, if percent declaration were required of cranberry juice beverages currently being marketed, the declaration, although truthful, might be misinterpreted by consumers as indicating a drastic change from the juice beverage currently being marketed.

The comments have persuaded the agency that the requirement for the percent declaration of juice in diluted cranberry juice beverages may not be in the interest of the consumer. Accordingly, FDA is proposing to exempt diluted cranberry juice beverages from the percentage declaration requirements of § 102.33. The agency is also proposing to amend the regulation to provide for the opportunity for manufacturers of other diluted high-acid juice beverages affected by the regulation in a manner similar to diluted cranberry juice beverages to request an exemption from the requirements of the regulation. In

addition, comments are solicited at this time as to whether additional high acid products should be exempted when this proposal is finalized. If sufficient comments are received from a number of manufacturers of other diluted high-acid beverages requesting exemption from the percentage declaration requirements of § 102.33, the agency will consider exempting this class of beverages from this requirement. If the agency considers exemption of all diluted high-acid beverages from § 102.33 justified, FDA will reconsider whether the application of this section to all other diluted juice beverages would still be warranted and in the public interest.

Manufacturers of lemonade also criticized § 102.33. Although FDA has a standard of identity for frozen concentrate for lemonade (21 CFR 146.120), there is no standard of identity for ready-to-drink lemonade, although the agency in the past considered such a standard. Therefore, any ready-to-drink lemonade would be a diluted juice beverage subject to the labeling requirements of § 102.33. The concerns of the manufacturers of ready-to-drink lemonade differ from those of manufacturers of cranberry juice beverages and involve the requirement that the label of a ready-to-drink lemonade must, according to § 102.33, bear a declaration of the percent of lemon juice in the beverage in 5-percent increments. The manufacturers of frozen concentrate for lemonade argue that the percent declaration requirement would place their product at a disadvantage because they could not adjust the juice content of their product to make a diluted juice product that more closely approximates the 10-percent declaration that would be required if they elected such a declaration on their products. The manufacturers also contend that any nonstandardized lemon juice beverage would be formulated to contain only 10 percent juice to conform with the label declaration and not the 13 percent that would result from diluting the concentrate according to directions on product labeling. This, too, the manufacturers of frozen lemonade concentrate argue, would create a market disadvantage.

If added flavoring is used to achieve an acceptable beverage, the added flavoring would be required to be declared under 21 CFR 101.22. Thus, any beverage with the added flavoring would have to bear a term such as "lemon flavored," and thus its label would be distinguishable from that of a beverage prepared from frozen lemonade concentrate.

The agency agrees with the comment that the requirement that juice content be listed in 5-percent increments not greater than the actual amount of juice present discriminates against those juice products that contain juice in increments other than 5 percent. Therefore, the agency is proposing to revise the regulation to require percentage juice declarations with the percentage expressed as a whole number not greater than the actual percentage contained in the beverage. Thus, a diluted juice beverage containing 12.6 percent juice would be required to round down to 12 percent.

Cost Implications

In accordance with Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96-354), FDA has reviewed the economic impact of § 102.33 if amended as proposed. The present declaration required by § 102.33 may be placed on the label on the basis of the manufacturer's formula and therefore will impose little or no additional analytical responsibilities on manufacturers. The primary expense associated with this regulation is the initial revision of the label of products subject to the regulation to add the percentage statement.

The agency estimates that approximately 760 labels may be affected by this rule, and that the total costs for these label changes will total about $200,000. This cost estimate does not take into consideration the agency's policy of applying labeling changes prospectively, and its use of uniform effective dates so that changes resulting from more than one regulation can be implemented in the same level revision process. Therefore, the eventual costs attributable to this rule may be substantially less than $200,000. The rule allows sufficient time for firms to use current label stocks so that no costs will be incurred for the destruction of existing inventories. Therefore, the agency concludes that this proposal will not have the effect of a major rule in terms of Executive Order 12291. Similarly, the agency certifies under section 3 of the Regulatory Flexibility Act that the final rule, if promulgated, will not have a significant impact on a substantial number of small entities.

Implementation

In light of the amendments proposed herein, FDA has chosen not to implement any aspect of § 102.33 pending this rulemaking proceeding. Elsewhere in this issue of the Federal Register, FDA is proposing to extend the effective date of § 102.33 from July 1, 1984, until the effective date of the final rule based on this proposed amendment. The agency proposes that any final rule that may be issued based upon this proposal become effective in accordance with a uniform effective date for compliance with food labeling requirements that is announced by notice in the Federal Register and that is not sooner than 1 year after publication of any final rule based on this proposal. The final rule would apply to affected products initially introduced or initially delivered for introduction into interstate commerce after that uniform effective date.

List of Subjects in 21 CFR Part 102

Common or usual name, Food labeling.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(n), 403(a), 701(a), 52 Stat. 1041 as amended, 1047 as amended, 1055 (21 U.S.C. 321(n), 343(a), 371(a))) and under 21 CFR 5.11, it is proposed that § 102.33 be amended by revising the section heading, by revising the introductory text of paragraph (a), and by revising paragraph (a)(2), to read as follows:

PART 102—COMMON OR USUAL NAME FOR NONSTANDARDIZED FOOD

§ 102.33 Diluted fruit or vegetable juice beverages other than diluted orange juice and cranberry juice beverages.

(a) The common or usual name of a noncarbonated beverage containing less than 100 percent but more than zero percent fruit or vegetable juice(s) shall be as described in paragraph (a) (1) and (2) of this section. Diluted beverages containing only orange juice or only cranberry juice are exempted from this regulation. Petitions for exemption may be filed under the procedures provided in § 10.30 of this chapter and must show that the requirement for juice declaration would not be in the public interest.

* * * * *

(2) A statement of the percent of each juice contained in the beverage in the manner set forth in § 102.5(b)(2); except that for beverage containing multiple juices, the declaration may be the percent of the total juice content instead of individual juice contents. The percentage of juice shall be expressed as a whole number not greater than the actual percentage of the juice contained in the beverage, except that the percent of any juice in beverages containing more than zero percent but less than 5 percent of that juice shall be declared in the statement as "less than 5" percent.

* * * * *

Interested persons may, on or before July 31, 1984, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 5, 1984.

Mark Novitch,

Acting Commissioner of Food and Drugs.

Margaret M. Heckler,

Secretary of Health and Human Services.

[FR Doc. 84-14764 File 5-30-84; 11:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 102

[Docket No. 80N-0140]

Common or Usual Name for Nonstandardized Foods; Diluted Fruit or Vegetable Juice Beverages; Proposed Extension of Effective Date

AGENCY: Food and Drug Administration.

ACTION: Proposed extension of effective date.

SUMMARY: The Food and Drug Administration (FDA) is proposing to extend the effective date of the requirements of the common or usual name regulation for diluted fruit or vegetable beverages until the effective date of a final rule amending the regulation. Elsewhere in this issue of the Federal Register, FDA is publishing a proposed amendment to that regulation that would leave in place certain aspects of the regulation but would modify others, FDA is proposing to extend the requirements of the common or usual name for diluted fruit or vegetable beverages regulation because of the pending rulemaking proceeding.

DATE: Comments by June 18, 1984.

ADDRESS: Written comments are to be submitted to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Elizabeth J. Campbell, Center for Food Safety and Applied Nutrition (formerly Bureau of Foods) (HFF-312), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-485-0177.

SUPPLEMENTARY INFORMATION: In the Federal Register of June 10, 1980 (45 FR 39247), FDA published a final regulation concerning label requirements for the common or usual name of diluted fruit or vegetable juice beverages (21 CFR 102.33). The effective date was extended until July 1, 1982, by a document published in the Federal Register of December 5, 1980 (45 FR 80497). Subsequently, FDA published a proposal in the Federal Register of March 26, 1982 (47 FR 13003) and then a final rule in the Federal Register of January 21, 1983 (48 FR 2735) extending the effective date to July 1, 1984, for compliance with this common or usual name regulation.

Elsewhere in this issue of the Federal Register, FDA is publishing a proposal to amend § 102.33, the regulation concerning label requirements for the common or usual name of diluted fruit or vegetable juice beverages. (See that proposal for a full discussion of the history of this proceeding and the relevant issues.) Because of the impossibility of completing the proiposed rulemaking by July 1, 1984, FDA believes that it is in the best interest of the public to propose to extend the effective date of § 102.33 until the effective date of a final rule resulting from the proposal. Because of the imminence of the effective date, good cause within the meaning of 21 CFR 10.40(b)(2) exists to limit the comment period to 15 days. If the effective date is not extended, manufacturers will be required to comply with the requirements of § 102.33. In light of the proposal to amend the regulation, compliance with it in its current form might be wasteful and costly. Furthermore, because § 102.33 has not been enforced, prejudice to the interest of any affected groups or individuals will be minimal.

List of Subjects in 21 CFR Part 102

Common or usual name, Food labeling.

PART 102—COMMON OR USUAL NAME FOR NONSTANDARDIZED FOOD

§ 102.33 [Effective date extended]

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(n), 403, 701(a), 52 Stat. 1041 as amended, 1047-1048 as amended, 1055 (21 U.S.C. 321(n), 343, 371(a))) and under 21 CFR 5.11, it is proposed that the effective date of the regulation establishing a common or usual name for diluted fruit or vegetable juice beverages (21 CFR 102.33) be extended until the effective date of a final rule amending this regulation.

Interested persons may, on or before June 18, 1984, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 29, 1984.

Mark Novitch,

Acting Commissioner of Food and Drugs.

Margaret M. Heckler,

Secretary of Health and Human Services.

[FR Doc. 84-14765 Filed 5-30-84; 11:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 161

[Docket No. 84N-0081]

Canned Tuna and Bonito in Water or Oil; Advance Notice of Proposed Rulemaking on the Possible Amendment of the U.S. Standard of Identity for Canned Tuna and Establishment of a Standard of Identity for Canned Bonito

Correction

In FR Doc. 84-10668 beginning on page 16807 in the issue of Friday, April 20, 1984, make the following corrections:

1. On page 16809, second column, twenty-second line, "(AWL-6.5)" should have read "(AQL-6.5)".

2. On page 16810, first column, fourth complete paragraph, fifth line; "(B)" should have read "(8)".

BILLING CODE 1505-01-M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners

AGENCY: United States Parole Commission, Justice.

ACTION: Proposed rule with request for comment.

SUMMARY: The Parole Commission is proposing an amendment to its rules at 28 CFR 2.12, Initial Hearings: Setting Presumptive Release Dates, providing that following an initial hearing a presumptive release date can be set within fifteen years of the hearing. This proposal is designed to give prisoners serving long sentences for serious offenses earlier notice of the amount of prison time the Commission determines

they must serve, absent significant changes in circumstances.

DATE: Public comment must be received July 2, 1984.

ADDRESS: Peter Hoffman, Director of Research and Program Development, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, Telephone (301) 492–5980.

FOR FURTHER INFORMATION CONTACT: Peter Hoffman, Telephone (301) 492–5980.

SUPPLEMENTARY INFORMATION: Currently following an initial hearing the Commission sets (1) an effective parole date or (2) a presumptive release date within ten years of the hearing or (3) continues the prisoner to a ten year reconsideration hearing. The Commission is proposing an amendment to its rules at 28 CFR 2.12 which would provide for the setting of presumptive parole dates within fifteen years of the hearing or, if a presumptive parole date is not found warranted within fifteen years of the hearing, a fifteen year reconsideration hearing. This proposal will give prisoners serving long sentences earlier notice of their expected parole dates.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

PART 2—[AMENDED]

Accordingly, pursuant to the provisions of 18 U.S.C. 4203(a)(1) and 4204(a)(6), the Commission is proposing the following amendments to 28 CFR Part 2.

28 CFR 2.12(b) is revised to read as follows:

§ 2.12 Initial hearings: Setting presumptive release dates.

* * * * *

(b) Following initial hearing, the Commission shall (1) set a presumptive release date (either by parole or by mandatory release) within fifteen years of the hearing; (2) set an effective date of parole; or (3) continue the prisoner to a fifteen year reconsideration hearing pursuant to § 2.14(c).

* * * * *

The following conforming amendments are also proposed:

28 CFR 2.14 is amended by substituting "fifteen year reconsideration hearing" at each place that "ten year reconsideration hearing" now appears.

§ 2.25 [Amended]

28 CFR 2.25 is amended by substituting "fifteen-year reconsideration hearing" where "ten-year reconsideration hearing" now appears.

I certify that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Dated: May 8, 1984.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 84-14734 Filed 5-31-84; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF INTERIOR

National Park Service

36 CFR Part 13

National Park System Units in Alaska

AGENCY: National Park Service, Interior.

ACTION: Extension of the comment period.

SUMMARY: On April 3, 1984 (49 FR 13160), the National Park Service published proposed rulemaking in accordance with the Alaska National Interest Lands Act (ANILCA) that provides a relatively comprehensive regulation concerning cabins and other structures on National Park System lands in Alaska. Because of requests from several individuals and at least one political entity this notice extends the comment period on that rulemaking.

DATE: The National Park Service will consider, until August 3, 1984, all comments received on the proposed rulemaking.

ADDRESS: Comments should be addressed to: Alaska Regional Director, National Park Service, 2525 Gambell Street, Room 107, Anchorage, Alaska 99503.

FOR FURTHER INFORMATION CONTACT: Roger J. Contor, Alaska Regional Director, National Park Service, 2525 Gambell Street, Room 107, Anchorage, Alaska 99503, Telephone (907) 271–4196.

SUPPLEMENTARY INFORMATION: Several individuals living in rural Alaska and at least one political entity (Borough) have requested an additional period of time in which to comment. Because of the widespread public interest in this rulemaking and in an effort to ensure maximum public involvement, the National Park Service is extending the comment period until August 3, 1984.

Dated: May 25, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-14805 Filed 5-31-84; 8:45 am]

BILLING CODE 4310-70-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL 2597-3]

Standards of Performance for New Stationary Sources; Fossil-Fuel-Fired Steam Generators

AGENCY: Environmental Protection Agency (EPA)

ACTION: Supplement to Proposed Rule and Reopening of Public Comment Period.

SUMMARY: On October 21, 1983, revisions to the existing new source performance standards for large fossil-fuel-fired steam generating units constructed after August 17, 1971 (40 CFR Part 60, Subpart D), were proposed (48 FR 48980). These revisions would establish sulfur dioxide (SO_2) emission monitoring, reporting, and continuous compliance requirements on a 30-day rolling average basis.

Today's action supplements the October 21, 1983, proposal by pointing out that in determining what the averaging period will be for the final SO_2 emission monitoring, reporting, and compliance requirements, alternative averaging periods will be considered. Such alternatives may include, but not be limited to, 7-day, 24-hour, and 3-hour averages.

To evaluate the impacts that may be associated with alternatives to the 30-day rolling average, an analysis of typical SO_2 emissions from Subpart D electric utility steam generating units firing compliance coal has been prepared. Copies of this analysis may be obtained from the ADDRESSES section below. The analysis identifies and describes 140 coal-fired electric utility steam generating units subject to Subpart D that were operating at the end of 1983. Available fuel quality data from 49 of the 78 compliance coal-fired units are used to calculate monthly and long-term average SO_2 emission levels. These levels are used in turn to project maximum 3-hour, 24-hour, 7-day, and 30-day average SO_2 emission levels. Additionally, the sensitivity of the projected maximum SO_2 emission levels to coal sulfur variability and to alternative assumptions about

compliance (for example, one exceedance per year or one exceedance in 10 years) is analyzed.

Today's action also reopens the public comment period for the October 21, 1983, proposal for 60 days. Public comment is solicited on alternatives to the 30-day rolling average, and on the assumptions used to project the impacts associated with each alternative.

If requested, a public hearing will be held to provide interested persons an opportunity for oral presentation of data, views or arguments concerning the proposed revision.

DATES: Comments on the proposed revisions and on alternative averaging periods are requested by July 31, 1984.

Public Hearing. If anyone requests a public hearing by June 18, 1984, a public hearing will be held on July 2, 1984. Persons interested in attending the hearing should call Ms. Shelby Journigan at (919) 541–5578 to verify that a hearing will occur.

Requests to Speak at Hearing. Persons wishing to present oral testimony at a hearing must contract Ms. Shelby Journigan at (919) 541–5578 by June 22, 1984.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Central Docket Section (LE–131), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C., 20460. Attention: Docket No. A–81–15.

Analysis. A copy of an analysis entitled "Typical Sulfur Dioxide Emissions from Subpart D Power Plants Firing Compliance Coal" may be obtained at no charge from: Standards Development Branch, Emission Standards and Engineering Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711. Telephone: (919) 541–5624.

Public Hearing. If anyone requests a public hearing, it will be held at Research Triangle Park, North Carolina 27711. Persons should call Ms. Shelby Journigan at (919) 541–5578 to find out if a hearing will be held. If a hearing is held, Ms. Shelby Journigan will also be able to provide the exact time and location of the hearing.

Docket. Docket No. A–81–15, which contains supporting information used in developing the proposed revisions, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, SW., Washington, D.C., 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Porter or Mr. Walter Stevenson, Standards Development Branch, Emission Standards and Engineering Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, N.C., 27711. Telephone: (919) 541–5624.

Dated: May 25, 1984.

Joseph A. Cannon,

Assistant Administrator for Air and Radiation.

[FR Doc. 84–14766 Filed 5–31–84; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 761

[OPTS–62037; TSH–FRL 2566–6]

Polychlorinated Biphenyls; Proposed Incorporation by Reference Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA has incorporated by reference certain American Society for Testing and Materials (ASTM) test methods in the Polychlorinated Biphenyl (PCB) regulations. One of these methods has been revised by ASTM. EPA is proposing that the revised method be used to meet particular PCB testing requirements. The Agency invites comments on the revised method.

DATES: Comments on this proposed amendment must be submitted by July 2, 1984.

ADDRESS: Address written comments to: TSCA Public Information Office (TS–793), Office of Toxic Substances, Environmental Protection Agency, Rm. E–108, 401 M St. SW., Washington, D.C., 20460.

EPA requests that written comments be submitted in triplicate. Comments should include the docket control number OPTS–62037. Comments on this proposed rule will be available for review and copying from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays, in Rm. E–107, at the address given above.

FOR FURTHER INFORMATION CONTACT: Jack P. McCarthy, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543, 401 M St. SW., Washington, D.C. 20460, Toll free: (800–424–9065), In Washington, D.C.: (554–1404), Outside the USA: (Operator–202–554–1404).

SUPPLEMENTARY INFORMATION: The test method "ASTM D 1796–68—Standard Test Methods for Water and Sediment in Crude Oils and Fuel Oils by Centrifuge" has been revised. The new number designation for the test method is "ASTM D 1796–83". EPA invites comments on the revised test method, copies of which are available from the Document Control Officer (see ADDRESS reference above).

List of Subjects in 40 CFR Part 761

Environmental protection, Hazardous materials, Labeling, Polychlorinated biphenyls, Recordkeeping and reporting requirements, Incorporation by reference.

(Sec. 6, 90 Stat. 2020, (15 U.S.C. 2065))

Dated: March 29, 1984.

John Moore,

Assistant Administrator for Pesticides and Toxic Substances.

PART 761—[AMENDED]

Therefore, it is proposed that Part 761 of Title 40 of Chapter I be amended as follows:

§ 761.19 [Amended]

1. In § 761.19(b), the entry for "ASTM D 1796–68" is changed to read "ASTM D 1796–83."

§ 761.60 [Amended]

2. In paragraph (a)(3)(iii)(B)(*6*), the reference "ASTM D 1796–68" is changed to read "ASTM D 1796–83."

[FR Doc. 84–14667 Filed 5–31–84; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 170

[CGD 83–071]

Mobile Offshore Drilling Unit Operating Manual Requirements

AGENCY: Coast Guard, DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering amending the regulations listing the information required to be addressed in mobile offshore drilling unit (MODU) operating manuals. Investigation reports on the sinking of the MODU Ocean Ranger recommend that the operating manual requirements be revised to make them more easily understood by MODU operating personnel. Also, additional safety information should be considered for inclusion in the manuals. Suggestions as to what should be clarified in, added to, or deleted from the existing MODU operating manual requirements are solicited.

EFFECTIVE DATE: Comments must be received on or before July 31, 1984.

ADDRESSES: Comments should be mailed to Commandant (G–CMC/44) (C GD 83–071), U.S. Coast Guard, 2100 Second St. SW., Washington, D.C. 20593. Comments will be available for inspection or copying from 7:00 a.m. to 5:00 p.m., Monday through Friday, except holidays, at the Marine Safety Council (G–CMC/44), Room 4402, at the address above. The telephone number is 202–426–1477.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander W. Robert Shilland, Office of Merchant Marine Safety, 202–426–2197.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in these preliminary rulemaking procedures by submitting written comments, data, or arguments. Each comment should include the name and address of the person submitting the comment, reference the docket number (CGD 83–071), and include sufficient detail to indicate the basis on which each comment is made. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed postcard or envelope. No public hearing is anticipated at this stage. All comments received on or before the closing date for comments will be considered by the Coast Guard before taking further rulemaking action.

Drafting Information

The principal persons involved in drafting this proposal are Lieutenant Commander W. Robert Shilland, Office of Merchant Marine Safety, and Mr. Stephen H. Barber, Office of the Chief Counsel.

Discussion

The existing mobile offshore drilling unit (MODU) operating manual regulations were recently transferred from 46 CFR 109.121 to 46 CFR 170.110 and 170.130 (48 FR 51013; November 4, 1983). The need for numerous editorial and substantive changes to the MODU regulations has been identified. Although a regulatory project has been initiated to revise and update the MODU regulations in general, a separate rulemaking limited just to the revision of MODU operating manual requirements is appropriate.

This separate action stems from the investigation of the February 15, 1982 capsizing and sinking of the MODU Ocean Ranger. The Coast Guard Marine Board of Investigation Report and Commandant's Action (Report No. USCG 16732/0001 HQS 82) and the NTSB report on the Ocean Ranger contain several recommendations directed toward refining operating manuals. Mindful of the fact that operating manuals should be prepared "with a goal to assist the user in performing his duties properly and efficiently," the Marine Board recommended that the Coast Guard require that manuals "be arranged and written in a manner that is easily understood by the MODU's operating personnel."

Even though operating manuals need to be made more readable, the inclusion of some additional information may be necessary. A MODU evacuation plan which will "facilitate a timely and safe evacuation of personnel under all conditions" was recommended by the Marine Board. Some form of evacuation plan should already appear in operating manuals because of the requirement that they contain guidance for the safe operation of the unit under emergency conditions (46 CFR 170.110(d)(15)); however, more specific and detailed requirements may be needed.

The NTSB has recommended that MODU operating manuals contain guidance regarding: (1) Accidental flooding of empty or partially empty lower hull compartments or tanks and the appropriate countermeasures; (2) any limitations in the functioning of the ballast pumps due to trim or heel; and (3) precautions for preventing downflooding into chain lockers from wave action.

In addition, the following items are being considered for inclusion in MODU operating manuals; towing plan, damage control plan, schematics of vital systems, fire control plan, cold start plan, action to take if power is lost, and instructions on emergency closures.

This advance notice is issued under the Coast Guard's policy for early public participation in rulemaking proceedings. Your comments and supporting data are solicited.

List of Subjects in 46 CFR Part 170

Marine safety, Reporting and recordkeeping requirements, Vessels.

Dated: May 29, 1984.

Clyde T. Lusk, Jr.,

Rear Admiral, U.S. Coast Guard Chief, Office of Merchant Marine Safety.

[FR Doc. 84-14757 Filed 5-31-84; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL MARITIME COMMISSION

46 CFR Part 505

[Docket No. 84-20]

Compromise, Assessment, Settlement and Collection of Civil Penalties Under the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933

Correction

In FR Doc. 84–11935, beginning on page 18874 in the issue of Thursday, May 3, 1984, the third line of the second column of page 18874 should have read, "**DATE:** Comments due on or before June 18, 1984."

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

Comments Requested on Application of Streamlined Regulatory Treatment or Forbearance to Digital Electronic Message Service (CC Docket 79–252)

AGENCY: Federal Communications Commission.

ACTION: Request for comments.

SUMMARY: On May 9, 1984 ICOM, Inc. filed a petition with the Commission requesting the Commission to forbear from imposing tariff regulation and to impose only streamlined Section 214 regulation on its Digital Electronic Message Service (DEMS). ICOM has also filed a motion requesting expedited treatment of its petition for forbearance and streamlining. ICOM states that its petition is filed pursuant to the Commission's invitation in the *Fourth Report and Order* in the Competitive Carrier Rulemaking, CC Docket 79–252 (March 28, 1984; 49 FR 11856), to certain classes of carriers not previously included in that proceeding.

Interested parties may file comments regarding ICOM's petition and on application of streamlined regulatory treatment or forbearance to DEMS carriers or services generally.

This notice supersedes the Commission's Public Notice of May 23, 1984 assigning File No. W–P–C–5442 to the proceeding. All comments filed should be captioned CC Docket 79–252.

DATES: Comments may be filed by June 20, 1984. Reply comments may be filed by June 29, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:
Joanne Salvatore 202–632–6917.

William J. Tricarico,
Secretary, Federal Communications Commission.

[FR Doc. 84–14858 Filed 5–31–84; 8:45 am]
BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 40441–4041]

Atlantic Tuna Fisheries

Correction

In FR Doc. 84–11629 beginning on page 18574 in the issue of Tuesday, May 1, 1984, make the following corrections:

1. On page 18574, third column under "For Further Information Contact" both telephone numbers should read "617–281–3600".

2. On page 18576, first column, first paragraph, tenth line, "reversed" should have read "reserved".

3. Same page, same paragraph, sixth line from the bottom "effective" should have read "effected".

4. On page 18577, first column, second paragraph, second line from the bottom "effected" should have read "affected".

5. On page 18577, third column, fourth paragraph, § 285.4(f)(2) the signal in the first line should be corrected to read as follows: "(.–. –.— –.–. –.—)".

6. Same page, same column, fifth paragraph, § 285.4(f)(3) the signal in the first line should be corrected to read as follows: "(... —.– ...—)".

BILLING CODE 1505–01–M

Notices

Federal Register
Vol. 49, No. 107
Friday, June 1, 1984

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

Office of the Secretary

National Plant Genetic Resources Board; Renewal

The Department of Agriculture has renewed the National Plant Genetic Resources Board for a 2-year period.

This Board was originally established in July 1975 by the Secretary and was last renewed on May 12, 1982.

The purpose of the Board is to advise the Secretary of Agriculture and officers of the National Association of State Universities and Land-Grant Colleges in order to assess national needs and identify high priority programs for conserving and utilizing plant genetic resources, including such things as collection, maintenance and description of genetic stocks, and utilization of the stocks in plant improvement programs.

The Secretary has determined that continuation of the Board is necessary and in the public interest in order to assure adequate supplies of food, feed, and fiber by minimizing the genetic vulnerability of crops.

This notice is given in compliance with Pub. L. 92-463.

Done at Washington, D.C., this 24th day of May 1984.

John J. Franke, Jr.,

Assistant Secretary for Administration.

[FR Doc. 84-14683 Filed 5-31-84; 8:45 am]

BILLING CODE 3410-03-M

Agricultural Stabilization and Conservation Service

Feed Grain Donations for the Fort Berthold Reservation Indian Tribes in North Dakota

Pursuant to the authority set forth in section 407 of the Agriculutural Act of 1949, as amended (7 U.S.C. 1427) and Executive Order 11336, I have determined that:

The termination date for the Notice published in the Federal Register (49 FR 11695), shall be extended from May 31, 1984, through June 30, 1984, because of extreme cold weather, severe winter storms, late arrival of spring and soft road conditions.

Signed at Washington, D.C., May 25, 1984.

Milton J. Hertz,

Acting Administrator, Agricultural Stablization and Conversation Service.

[FR Doc. 84-14003 Filed 5-31-84; 8:45 am]

BILLING CODE 3410-05-M

Federal Grain Inspection Service

Designation Renewal of R. A. Gray Grain Inspection Service, Inc. (KY) and North Dakota Grain Inspection Service, Inc. (ND)

AGENCY: Federal Grain Inspection Service..

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of R. A. Gray Grain Inspection Service, Inc. (Gray), and North Dakota Grain Inspection Service, Inc. (North Dakota), as official agencies responsible for providing official services under the U.S. Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*) (Act).

EFFECTIVE DATE: July 1, 1984.

ADDRESS: James R. Conrad, Chief, Regulatory Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The January 3, 1984, issue of the Federal Register (49 FR 128) contained a notice from the Federal Grain Inspection Service (FGIS) announcing that Gray's and North Dakota's designations terminate on June 30, 1984, and requesting applications for designation as the agency to provide official services within each specified geographic area. Applications were to be postmarked by February 2, 1984.

Gray and North Dakota were the only applicants for each respective designation.

FGIS announced the names of these applicants and requested comments on same in the March 1, 1984, issue of the Federal Register (49 FR 7617). Comments were to be postmarked by April 16, 1984.

No comments were received regarding the designation renewal of Gray and North Dakota.

FGIS has evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act, and in accordance with Section 7(f)(1)(B), has determined that Gray and North Dakota are able to provide official services in the respective geographic areas for which their designations are being renewed. Each assigned area is the entire geographic area, as previously described in the January 3 Federal Register issue.

Effective July 1, 1984, and terminating June 30, 1987, the responsibility for providing official inspection services in their respective specified geographic areas are assigned to Gray and North Dakota.

A specified service point, for the purpose of this notice, is a city, town, or other location specified by an agency to conduct official inspection services and where the agency and one or more of its licensed inspectors are located. In addition to the specified service points within the assigned geographic area, an agency will provide official services not requiring a licensed inspector to all locations within its geographic area.

Interested persons may contact the Regulatory Branch, specified in the address section of this notice, to obtain a list of the specified service points. Interested persons also may obtain a list of the specified service points by contacting the agencies at the following address:

R. A. Gray Grain Inspection Service, Inc. 121 Pearl Street, P.O. Box 91, Owensboro, KY 42301.

North Dakota Grain Inspection Service, Inc., 1601 Seventh Avenue North, Fargo, ND 58102.

(Sec. 8, Pub. L. 94-582, 90 Stat. 2873 (7 U.SC. 79))

Dated: May 25, 1984

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 84-14640 Filed 5-31-84; 8:45 am]

BILLING CODE 3410-EN-M

Request for Comments on Designation Applications in the Areas Currently Assigned to Oregon Department of Agriculture (OR) and Southern Illinois Grain Inspection Service, Inc. (IL)

AGENCY: Federal Grain Inspection Service.

ACTION: Notice.

SUMMARY: This notice requests comment from interested parties on the applications for official agency designation in the areas currently assigned to Oregon Department of Agriculture and Southern Illinois Grain Inspection Service, Inc.

DATE: Comments to be postmarked on or before July 16, 1984.

ADDRESS: Comments must be submitted, in writing, to Lewis Lebakken, Jr., Information Resources Management Branch, Resources Management Division, Federal Grain Inspection Service, U.S. Department of Agriculture, Room 0667 South Building, 1400 Independence Avenue, SW., Washington, DC 20250. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 382-1738.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The April 2, 1984, issue of the Federal Register (49 FR 13061) contained a notice from the Federal Grain Inspection Service requesting applications for designation to perform official services under the U.S. Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*) (Act), in the areas currently assigned to the official agencies. Applications were to be postmarked by May 2, 1984.

Oregon Department of Agriculture and Southern Illinois Grain Inspection Service, Inc., the only applicants for each respective designation, requested designation for the entire geographic area currently assigned to each of those agencies.

In accordance with § 800.206(b)(2) of the regulations under the Act, this notice provides interested persons the opportunity to present their comments concerning the applicants for designation. All comments must be submitted to the Information Resources Management Branch, Resources Management Division, specified in the address section of this notice, and postmarked not later than July 16, 1984.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the Federal Register, and the applicants will be informed of the decision in writing.

(Sec. 8, Pub. L. 94-582, 90 Stat. 2873 (7 U.S.C. 79))

Dated: May 25, 1984.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 84-14641 Filed 5-31-84; 8:45 am]

BILLING CODE 3410-EN-M

Request for Designation Applicants to Perform Official Services in the Geographic Areas Currently Assigned to Aberdeen Grain Inspection, Inc. (SD), McGregor Grain Inspection and Weighing Corporation, Inc. (IA), and Missouri Department of Agriculture (MO)

AGENCY: Federal Grain Inspection Service.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as amended (Act), official agency designations shall terminate not later than triennially and may be renewed in accordance with the criteria and procedures prescribed in the Act. This notice announces that the designation of three agencies will terminate, in accordance with the Act, and requests applications from parties, including the agencies currently designated, interested in being designated as the official agency to conduct official services in the geographic area currently assigned to each specified agency. The official agencies are Aberdeen Grain Inspection, Inc., McGregor Grain Inspection and Weighing Corporation, Inc., and Missouri Department of Agriculture.

DATE: Applications to be postmarked on or before July 2, 1984.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Regulatory Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250. All applications received will be made available for public inspection at the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act (7 U.S.C. 71 *et seq.*, at 79(f)(1)) specifies that the Administrator of the Federal Grain Inspection Service (FGIS) is authorized, upon application by any qualified agency or person, to designate such agency or person to perform official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area. Aberdeen Grain Inspection, Inc. (Aberdeen), 15 S. Dakota Street, P.O. Box 842, Aberdeen, SD 57401; McGregor Inspection and Weighing Corporation, Inc. (McGregor), 125 B Street, P.O. Box 201, McGregor, IA 52157; and Missouri Department of Agriculture (Missouri), P.O. Box 630, Jefferson City, MO 65101, were designated under the Act as official agencies for the performance of inspection functions on December 1, 1981.

The agencies' designations terminate on November 30, 1984. Section 7(g)(1) of the Act states generally that official agencies' designations shall terminate no later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Aberdeen, in the States of North and South Dakota, pursuant to section 7(f)(2) of the Act, and which is the area that may be assigned to the applicant selected for designation, is the following:

Bounded on the North by U.S. Route 12 east to State Route 22; State Route 22 north to the Chicago Milwaukee St. Paul and Pacific Railroad line; the Chicago, Milwaukee, St. Paul and Pacific Railroad line east to State Route 21; State Route 21 east to State Route 49; State Route 49 south to the North Dakota-South Dakota State line; the North Dakota-South Dakota State line east to U.S. Route 83; U.S. Route 83 north to State Route 13; State Route 13 east and north to McIntosh County; the northern McIntosh County line east to Dickey County; the

northern Dickey County line east to U.S. Route 281; U.S. Route 281 south to the North Dakota-South Dakota State line; the North Dakota-South Dakota State line east;

Bounded on the East by the eastern South Dakota line (the big Sioux River) to A54B);

Bounded on the South by A54B west to State Route 11; State Route 11 north to State Route 44 (U.S. 18); State Route west to the Missouri River; the Missouri River south-southeast to the South Dakota State line; the southern South Dakota State line west; and

Bounded on the West by the western South Dakota State line north; the western North Dakota State line north to U.S. Route 12.

The following locations, all in North Dakota, outside of the foregoing contiguous geographic area are presently assigned to Aberdeen and are part of this geographic area assignment:

1. Farmer Elevator, Guelph, Dickey County;

2. Farmers Equity Exchange and Sun Grain, New England, Hettinger County; and

3. Regent Grain Company and Regent Equity, Regent, Hettinger County.

Exceptions to the described geographic area are the following locations situated inside Aberdeen's area which have been and will continue to be serviced by Sioux City Inspection & Weighing Agency, Inc., Sioux City, Iowa; Farmers Elevator Company and Feeders Mill & Elevator Inc., Plattee, Charles County, South Dakota.

The geographic area presently assigned to McGregor, in the State of Iowa, pursuant to section 7(f)(2) of the Act, and which is the area that may be assigned to the applicant selected for designation, is the following:

Bounded on the North by the Iowa-Minnesota State line from the western Howard County line east to the Mississippi River;

Bounded on the East by the Mississippi River south-southeast to the southern Clayton County line;

Bounded on the South by the southern Clayton, Fayette, and Bremer County lines; and

Bounded on the West by the western Bremer County line north to State Route 3; State Route 3 east to U.S. Route 218; U.S. Route 218 north to Chickasaw County; the western Chickasaw County line north the Howard County; the western Howard County line north to the Iowa-Minnesota State line.

Exceptions to the described geographic area are the following locations situated inside McGregor's area which have been and will continue to be serviced by Central Iowa Grain Inspection Service, Inc., Des moines, Iowa:

1. Nashua Equity Co-op, Nashua, Chickasaw, County; and

2. Plainfield Co-op, Plainfield, Bremer County.

The geographic area presently assigned to Missouri, pursuant to section 7(f)(2) of the Act, and which is the area that may be assigned to the applicant selected for designation, is the entire State of Missouri.

Interested parties, including Aberdeen, McGregor, and Missouri are hereby given opportunity to apply for designation as the official agency to perform the official services in the geographic areas, as specified above, under the provisions of section 7(f) of the Act and § 800.196(b) of the regulations issued thereunder. Designations in the specified geographic areas are for the period beginning December 1, 1984, and ending November 30, 1987. Parties wishing to apply for designation should contact the Regulatory Branch, Compliance Division, at the address listed above for appropriate forms and information.

Applications submitted and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

(Sec. 8, Pub. L. 94-582, 90 Stat. 2873 (7 U.S.C. 79))

Dated: May 25, 1984.

Neil E. Porter,

Acting Director Compliance Division.

[FR Doc. 84-14643 Filed 5-31-84; 8:45 am]

BILLING CODE 3410-EN-M

Soil Conservation Service

Whitley County High School Critical Area Treatment RC&D Measure, Kentucky

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact/Environmental Assessment.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Whitley County High School Critical Area Treatment RC&D Measure, Whitley County, Kentucky.

FOR FURTHER INFORMATION CONTACT: Randall W. Giessler, State Conservationist, Soil Conservation Service, 333 Waller Avenue, Lexington, KY 40504; telephone: 606-233-2749.

SUPPLEMENTARY INFORMATION: The Finding of No Significant Impact/Environmental Assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Randall W. Giessler, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The measure concerns a plan for land grading, water disposal, and land drainage for the establishment of vegetative cover. The planned works of improvement includes: A total of seventeen acres of critical area treatment including 3.5 acres to be graded, 200 feet of subsurface drains, 1,980 feet of grass waterways, 1,020 feet of diversion channel, 111 cubic yards of riprap. The treatment will consist of seedbed preparation, liming, fertilizing, seeding, and mulching.

The Finding of No Significant Impact/Environmental Assessment has been forwarded to the Environmental Protection Agency and to various federal, state and local agencies, and interested parties. A limited number of copies of the Finding of No Significant Impact/Environmental Assessment are available to fill single-copy requests at the above address. Basic data developed during the FONSI/EA are on file and may be reviewed by contacting Mr. Randall W. Giessler, State Conservationist, Soil Conservation Service, 333 Waller Avenue, Lexington, KY 40504.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the Federal Register.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A-95 regarding state and local clearinghouse review of federal and federally assisted programs and projects is applicable)

Randall W. Giessler,

State Conservationist.

[FR Doc. 84-14720 Filed 5-31-84; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 254]

Approval for Expansion of Foreign-Trade Zone No. 12, McAllen, Texas, Adjacent to the Hidalgo Customs Port of Entry

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board (the Board) adopts the following order:

Whereas, the McAllen Trade Zone, Inc., Grantee of Foreign-Trade Zone No. 12, has applied to the Board for authority to expand its general-purpose zone located in the McAllen Southwest Industrial Area in McAllen, Texas, adjacent to the Hidalgo Customs port of entry;

Whereas, the application was accepted for filing on September 14, 1983, and notice inviting public comment was given in the Federal Register on September 23, 1983 (Docket No. 35–83, 48 FR 43364);

Whereas, an examiners committee has investigated the application in accordance with the Board's regulations and recommends approval;

Whereas, the expansion is necessary to improve and expand zone services in the McAllen area; and,

Whereas, the Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby orders:

That the Grantee is authorized to expand its zone in accordance with the application filed September 14, 1983. The Grantee shall notify the Executive Secretary of the Board for approval prior to the commencement of any manufacturing operations. The authority given in this Order is subject to settlement locally by the District Director of Customs and the District Army Engineer regarding compliance with their respective requirements relating to foreign-trade zones.

Signed at Washington, D.C., this 2nd day of May 1984.

Alan F. Holmer,

Acting Assistant Secretary of Commerce for Trade Administration, Chairman, Committee of Alternates Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 84-14786 Filed 5-31-84; 8:45 am]

BILLING CODE 3510-25-M

[Order No. 255]

Approval for Expansion of Foreign-Trade Zone No. 68, El Paso, Texas

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board (the Board) adopts the following order:

Whereas, the City of El Paso, Texas, Grantee of Foreign-Trade Zone No. 68, has applied to the Board for authority to expand its general-purpose zone at the El Paso International Airport, El Paso, Texas, within the El Paso Customs port of entry;

Whereas, the application was accepted for filing on November 30, 1983, and notice inviting public comment was given to the Federal Register on December 14, 1983 (Docket No. 41–83, 48 FR 55599);

Whereas, an examiners committee has investigated the application in accordance with the Board's regulations and recommends approval;

Whereas, the expansion is necessary to improve and expand zone services in the El Paso area; and,

Whereas, the Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby orders:

That the Grantee is authorized to expand its zone in accordance with the application filed November 30, 1983. The Grantee shall notify the Executive Secretary of the Board for approval prior to the commencement of any manufacturing operations. The authority given in this Order is subject to settlement locally by the District Director of Customs and the District Army Engineer regarding compliance with their respective requirements relating to foreign-trade zones.

Signed at Washington, D.C. this 2nd day of May 1984.

Alan F. Holmer,

Acting Assistant Secretary of Commerce for Trade Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 84-14787 Filed 5-31-84; 8:45 am]

BILLING CODE 3510-DS-M

[Docket No. 29-84]

Proposed Foreign-Trade Zone—Peoria, Illinois With Subzone for Caterpillar; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zone Board (the Board) by EDC, Inc., the Economic Development Council for the Peoria Area, a non-profit Illinois corporation affiliated with the Peoria Area Chamber of Commerce, requesting authority to establish a general-purpose foreign-trade zone in Peoria, Illinois, and a special-purpose subzone for Caterpillar Tractor Company plants in the Peoria area, adjacent to the Peoria Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zone Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on May 21, 1984. The applicant is authorized to make this proposal under Public Act 83-440 of the 83rd General Assembly of the State of Illinois, approved September 17, 1983.

The general-purpose zone will involve five sites totalling 314 acres. Site 1 covers 105 acres at 1925 Darst St., Peoria, operated by Peoria Barge Terminal, Inc. Site 2 covers 150 acres at United Facilities, Inc., 603 N. Main St., East Peoria. Site 3 is a 17-acre site operated by Central Illinois Dock Company at 1001 Wesley Rd., Creve Coeur. Site 4 is at O'Neill Brothers Transfer and Storage Company's 2-acre facility at 706 SW., Commercial St., Peoria. Site 5 is a 40-acre site operated by KMI Sales, Inc., at 278 Koch St., Peoria. Each of the 5 sites has public warehousing facilities and three are involved in storage activities for Caterpillar.

The subzone for Caterpillar will be located at the company's three Peoria area plants. Caterpillar is a producer of industrial engines, and earthmoving and construction equipment with world-wide sales of over $5 billion. With its headquarters and major manufacturing facilities in the area, Caterpillar is Peoria's largest employer, providing some 20,000 local jobs. Subzone Site 1 is Caterpillar's Mossville, Illinois, Plant, a 267-acre facility that produces engines for industrial vehicles and equipment.

Site 2 is the Company's 412-acre Morton, Illinois, Parts Distribution Center. It is the headquarters for Caterpillar's worldwide parts distribution network. Site 3 is the 412-acre East Peoria Plant, the company's main facility for manufacturing agricultural, earthmoving, construction, and materials-handling machinery and equipment, such as track-type tractors, loaders and pipelayers. Approximately 5 to 7 percent of the parts and material used at the plants are purchased from foreign sources, including steel, castings, weldments, engine parts, bearings, pumps, radiators, winches, and seats. About half of the products are exported.

The application contains evidence of the need for zone procedures in the Peoria area. In addition to Caterpillar, which uses three of the five proposed general-purpose facilities as a part of its parts supply network, several firms have indicated as interest in using zone services at these facilities for warehousing/distribution of products such as machinery and parts, agricultural equipment, castings, tools, electronic components and products, precision instruments, paper and foil products. No specific manufacturing approvals are being sought for the general-purpose zone at this time. Such requests would be made to the Board on a case-by-case basis.

Subzone status for Caterpillar would exempt the company from duty payments on the foreign parts and materials it uses for its exports. On its domestic sales the company will be able to take advantage of the same duty rate available to importers of complete equipment. These savings will contribute to Caterpillar's cost-reducing efforts designed to make its domestic plants more competitive with equipment manufacturing facilities abroad.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, Jr. (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; Leo W. Partyka, District Director, U.S. Customs Service, No. Central Region, 610 South Canal St., Chicago, IL 60607; and Colonel Bernard P. Slofer, District Engineer, U.S. Army Engineer District Rock Island, Clock Tower Bldg., Rock Island, IL 61201.

As part of its investigation, the examiners committee will hold a public hearing on June 28, 1984, beginning at 9:00 a.m., in City Council Chambers, City Hall, 402 Fulton, Peoria.

Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202/377-2862) by June 22. Instead of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through July 30, 1984.

A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

Port Director's Office P.O. Bldg., Room 332, P.O. Box 1015, Peoria, IL 61653

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1872, 14th and Pennsylvania NW., Washington, D.C. 20230.

Dated: May 25, 1984.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 84-14705 Filed 5-31-84; 8:45 am]

BILLING CODE 3510-25-M

International Trade Administration

[A-423-074]

Perchlorethylene From Belgium; Final Results of Administrative Review and Revocation of Antidumping Finding

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Final Results of Administrative Review and Revocation of Antidumping Finding.

SUMMARY: On February 28, 1984, the Department of Commerce published the preliminary results of its administrative review and tentative determination to revoke the antidumping finding on perchlorethylene from Belgium. The review covered the one known exporter of this merchandise to the United States, and the period May 1, 1982 through May 18, 1983. There were no known shipments of this merchandise to the United States during the period and there are no known unliquidated entries.

We gave interested parties an opportunity to submit oral or written comments on the preliminary results and tentative determination. We received no comments. We also determined that there were no shipments of this merchandise to the United States from Belgium during the period May 19, 1983 through the date of the tentative determination. We advised all interested parties that there were no shipments and we provided an additional opportunity to comment. Again we received no comments.

Accordingly, these final results cover up to the date of our tentative determination to revoke and we revoke the antidumping finding on perchlorethylene from Belgium.

EFFECTIVE DATE: June 1, 1984.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois or Susan Crawford, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-1130.

SUPPLEMENTARY INFORMATION:

Background

On February 28, 1984, the Department of Commerce ("the Department") published in the Federal Register (49 FR 7263) the preliminary results of its administrative review and a tentative determination to revoke the antidumping finding on perchlorethylene from Belgium (44 FR 29045, May 18, 1979). The Department has now completed that administrative review.

Scope of the Review

Imports covered by the review are shipments of perchlorethylene including technical grade and purified grades perchlorethylene. Perchlorethylene is a clear water-white liquid at ordinary temperature with a sweet odor and is completely capable of being mixed with most organic liquids. It is a chlorinated solvent used mainly for drycleaning of clothing, but is also used in other applications such as vapor degreasing of metals. Such merchandise is currently classifiable under item 429.3400 of the Tariff Schedules of the United States Annotated.

The review covered the one known exporter of Belgian perchlorethylene to the United States, Solvay & CIE, and the period May 1, 1982 through May 18, 1983. There were no known shipments of this merchandise to the United States during the period and there are no known unliquidated entries. The Department has also determined that there were no shipments of this merchandise to the United States during the period May 19, 1983 through the date of publication of the tentative determination to revoke revocation.

Final Results of Review and Revocation

We invited interested parties to comment on the preliminary results and tentative determination to revoke. We received no comments or requests for a hearing. The Department provided all interested parties further preliminary results for the period up to the date of the tentative revocation determination, and gave interested parties an additional opportunity to comment. Again we received no comments.

Based on our analysis, the final results of our review are the same as those presented in the preliminary results. As a result of this review, in accordance with § 353.54(c) of the Commerce Regulations, we revoke the antidumping finding on perchlorethylene in accordance with § 353.54(c) of the Commerce Regulations, we revoke the antidumping finding on perchlorethylene from Belgium. This revocation applies to all unliquidated entries of Belgian perchlorethylene entered, or withdrawn from warehouse, for consumption on or after February 28, 1934.

This administrative review, revocation, and notice are in accordance with sections 751 (a)(1) and (c) of the Tariff Act of 1930 (19 U.S.C. 1675 (a)(1), (c)) and §§ 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53, 353.54).

Dated: May 24, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-14773 Filed 5-3-84; 3:45 am]
BILLING CODE 3510-DS-M

[A-427-044]

Stainless Steel Wire Rods From France; Final Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Final Results of Administrative Review of Antidumping Finding.

SUMMARY: On January 10, 1984, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on stainless steel wire rods from France. The review covers the one known exporter of this merchandise to the United States and the period July 1, 1981 through July 31, 1982.

We gave interested parties an opportunity to comment on the preliminary results. At the request of the respondent, we held a public hearing on March 6, 1984. Based on our analysis of the comments received, we have changed the margin from that presented in the preliminary results of review.

EFFECTIVE DATE: June 1, 1984.

FOR FURTHER INFORMATION CONTACT: Phyllis Derrick or John R. Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-3601.

SUPPLEMENTARY INFORMATION:

Background

On January 10, 1984, the Department of Commerce ("the Department") published in the Federal Register (49 FR 1264) the preliminary results of its administrative review of the antidumping finding on stainless steel wire rods from France (38 FR 9094, August 20, 1973). The Department has now completed that administrative review.

Scope of the Review

Imports covered by the review are shipments of stainless alloy steel wire rods, tempered, treated, or partly manufactured, currently classifiable under item 607.4300 of the Tariff Schedules of the United States Annotated.

The review covers the one known exporter of French stainless steel wire rods to the United States, Ugine Aciers, and the period July 1, 1981 through July 31, 1982. The Department is deferring review of certain U.S. sales during the review period until a subsequent review.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. At the request of the respsondent, Ugine Aciers, we held a public hearing on March 6, 1984.

Comment 1: The respondent argued that in its foreign market value calculation for certain renegotiated U.S. sales the Department should consider more than an average of small volume sales in one month to a single customer. Also, the wire rods sold in the home market used for comparison were made of a more restrictive form of type 302-304 steel. Finally, the prices to this customer were out of line with prices charged to other French customers of 302-304 type steel; this customer is not a redrawer of wire rod as are the respondent's other customers and is, therefore, a different type of customer with prices that reflect a different level of trade. The respondent argued that the Department should use instead a weighted-average foreign market value based on all sales to all customers over a six-month period.

The petitioners, Al Tech Specialty Steel Corporation, Armco, Inc., Carpenter Technology Corporation, Crucible Stainless Steel Division of Colt Industries, Inc., and Republic Steel Corporation, argued that the Department correctly used sales to the one home market customer to establish foreign market value; the Department does not have the authority to use weighted-average sales figures in this case. The Department can use weighted-average foreign market values only in situatuons where there are a significant number of sales or adjustments. Here there is neither. The respondent's purpose in urging the Department's use of a six-month weighted-average is to lower the foreign market value and thereby reduce the dumping margin. Continuing to use sales to the single customer as the basis for foreign market value, the Department should not allow the repondent's claims that the home market sales to that customer were of different merchandise and at a different level of trade. The respondent failed to quantify those claimed adjustments.

Department's Position: Respondent has not provided any compelling reasons for us to depart from our practice of using contemporaneous sales. Since Ugine Aciers did not quantify claimed adjustments for differences in level of trade or differences in physical characteristrics of the merchandise, we have not allowed such adjustments.

Comment 2: Ugine Aciers argued that sales to one home market customer, Sprint Metal, should be used in calculating foreign market value. While the respondent owns a 40 percent interest in Sprint Metal, there is no management control and there are no dividends, shares, returns, rebates, or other benefits from this relationship. The Department should conclude, then, that these transactions are at arm's-length. It is likely that Sprint Medal would enjoy the same beneficial pricing structure if it were not related to Ugine Aciers, as Spring Medal buys exclusively from Ugine Aciers and is its largest customer. Exclusion of these sales unfairly distorts foreign market value by giving inordinate weight to smaller quantity sales. Further, the respondent has relied on the Department's prior reviews which included Sprint Medal sales in establishing foreign market value. Thus, should the Department decide to exclude Sprint Medal sales in determining foreign market value, such a determination should be prospective only. This would allow Ugine Aciers to

alter its pricing practices to permit compliance with U.S. antidumping laws.

The petitioners disagreed and argued that the Department should reject these sales even in instances where there were no sales to unrelated parties of comparable merchandise and therefore no ability to test the arm's-length nature of these transactions. The Department was correct in rejecting these sales, as there is no evidence to show that these sales accurately reflected actual market prices; in fact, there is some indication that these prices were lower than prices to unrelated buyers. The fact that the Department considered these sales in establishing foreign market value in past reviews does not preclude the Department from rejecting these sales in this review, nor would such rejection be unfair to the respondents. The Department decides in each review which sales to use or not use in determining foreign market value. Further, the respondent has been fully aware of the Department's regulations, which state that sales to related parties "ordinarily" will be disregarded in determining foreign market value.

Department's Position: We agree with the petitioners that there is insufficient evidence to indicate that these sales were arm's-length transactions. The prices to Sprint Metal were lower than those to unrelated customers. The respondent did not quantify its claim that lower prices to Sprint Metal were based on the larger quantities that Sprint Metal purchased. To the extent that we used sales to Sprint Metal in our preliminary comparisons in this review, as a basis for foreign market value for certain grades sold to the U.S., we are deferring our review of those U.S. sales until the next review, to give Ugine Aciers the opportunity to indicate both the appropriate home market sales to unrelated purchasers for comparison purposes and the applicable adjustments. These final results are based on all other U.S. sales in the period.

Comment 3: For the renegotiated U.S. sales described in Comment 1, Ugine Aciers argued that the Department should reduce the foreign market value in exporter's sales price ("ESP") comparisons by the amount of home market selling expenses. While Ugine Aciers submitted its claim for an ESP offset in calculating foreign market value after the preliminary results, Ugine Aciers did not know until publication that the Department was considering the U.S. sales as ESP transactions. Absent the unique renegotiations of price, and the placement of the merchandise in warehouse during the renegotiations, the sales would have been purchase price transactions. The Department did have information concerning this type of selling expense for the subsequent review period, and could have used that information as best information available.

The petitioners argued that Ugine Aciers did not reveal the exporter's sales price nature of the transactions until the Department's verification. Even after the Department's discovery of these elements of the transactions, the respondent did not claim the exporter's sales price offset. The Department would be justified in denying the respondent's claim as untimely or unjustified because of Ugine Aciers' failure to reveal the exporter's sales price nature of the U.S. sales.

Department's Position: As in our previous administrative review of this case, we will not consider the use of new information in a review submitted after publication of the preliminary results of administrative review. The respondent had adequate opportunity to submit this information after verification and prior to such publication.

Comment 4: Ugine Aciers argued that the same renegotiated U.S. sales were the result of circumstances beyond its control, and these sales should not be included in establishing cash deposit rates. The respondent does not seek to avoid the antidumping duties payable on the sales. However, cash deposit rates are intended to be a best estimate of what margins will be in the subsequent review period. These sales were unusual and do not accurately reflect the company's pricing practice. Accordingly, the Department should establish the cash deposit rate based on the remainder of the sales made during the period.

The petitioners argued that these sales should not be ignored in establishing a cash deposit rate. They argued that section 751(a)(1) of the Tariff Act of 1930 ("the Tariff Act") stipulates that each transaction shall be reviewed and that the resulting determinations shall be the basis for cash deposits of estimated antidumping duties. The respondent was responsible for the price renegotiation and should accept responsibility for the assessment of antidumping duties and the resulting cash deposit rate.

Department's Position: The Tariff Act clearly requires the results of our review be the basis for establishing cash deposit rates for estimated antidumping duties. In reviews of antidumping duty orders the Department does not disregard the results of particular comparisons in setting the deposit rate. The respondent did not initially report the renegotiated nature of the sales to the Department; that was discovered during verification, approximately nine months after the renegotiation. We have considered those sales in establishing the cash deposit rate.

Comment 5: Ugine Aciers noted certain mathematical errors in the Department's calculations. These included calculating the shipment weight for exporter's sales price transactions as kilograms, rather than pounds. This correction does not affect the calculations of dumping margins on individual sales, but does affect the weighted-average margin. Also, the commission in exporter's sales price transactions was incorrectly calculated based on the f.o.b. price to the unrelated U.S. customer, rather than the c.i.f. price to the related U.S. importer, Intsel Corporation. Finally, the respondent requested specific corrections to individual calculations.

Department's Position: We have corrected our calculations for the first two errors noted by Ugine Aciers. However, the individual corrections are not clearly supported by the respondent's submissions, and we have not made those changes.

Final Results of the Review

As a result of our review of all comments received, we determine that a weighted-average margin of 6.49 percent exists for Ugine Aciers for the period July 1, 1981 through July 31, 1982.

The Department shall determine, and the U.S. Customs Service shall assess, dumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties of 6.49 percent shall be required on shipments of French stainless steel wire rods entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review. The Department is beginning immediately the next administrative review.

The Department encourages interested parties to review the public record and submit applications for protective orders as early as possible

after the Department's receipt of the required information.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Dated: May 24, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-14782 Filed 5-31-84; 8:45 am]

BILLING CODE 3510-DS-M

[C-791-009]

Steel Pipes and Tubes From South Africa; Preliminary Results of Administrative Review of Suspension Agreement

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Preliminary Results of Administrative Review of Suspension Agreement.

SUMMARY: The Department of Commerce has conducted an administative review of the agreement suspending the countervailing duty investigation on steel pipes and tubes from South Africa. The review covers the period June 1, 1983 through September 30, 1983.

As a result of the review, we preliminarily determine that the two signatories to the suspension agreement, Tubemakers of South Africa, Ltd., and Brollo Africa, Ltd., have complied with the terms of the suspension agreement. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: June 1, 1984.

FOR FURTHER INFORMATION CONTACT: Barbara Williams or Philip Otterness, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On June 1, 1983, the Department of Commerce ("the Department") published in the Federal Register (48 FR 24407) a notice of suspension of countervailing duty investigation regarding steel pipes and tubes from South Africa and announced its intent to conduct an administrative review. The petitioners requested that the investigation be continued, and on September 12, 1983 the Department published a notice of final countervailing duty determination (48 FR 40928). As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted the administrative review.

Scope of the Review

Imports covered by the review are shipments of South African carbon steel pipes and tubes. Such merchandise is currently classifiable under items 610.3227, 610.3241, 610.3244, 610.3955, and 610.4975 of the Tariff Schedules of the United States Annotated ("TSUSA"). The review covers the only known exporters of South African carbon steel pipes and tubes to the United States, Tubemakers of South Africa, Ltd. ("TOSA") and Brollo Africa, Ltd., the signatories to the suspension agreement.

The review covers the period June 1, 1983 through September 30, 1983. Under the terms of the suspension agreement, TOSA and Brollo agreed that during the four month subsidy phase-out period of June through September 1983, the quantity of pipe and tube exported directly or indirectly to the United States would not exceed the quantity of such exports during the four month base period of March through June 1982. This review covers that phase-out period, ending on the effective date of the suspension agreement.

Preliminary Results of the Review

As a result of the review, we preliminarily determine that TOSA and Brollo have complied with the terms of the suspension agreement for the period June 1, 1983 through September 30, 1983, shipping less steel pipe and tube during the phase-out period than during the base period of March 1 through June 30, 1982, in accordance with the suspension agreement.

The agreement can remain in force only so long as shipments covered by the review account for at least 85 percent of exports to the United States of such merchandise as covered by the original investigation. The scope of the investigation covered carbon steel pipes and tubes. The scope of the suspension agreement was expanded to include all steel pipe and tube products manufactured by TOSA and Brollo. Such merchandise is currently classifiable under items 610.3000 through 610.5200 of the TSUSA. Our information indicates that TOSA and Brollo accounted for 94.4 percent of imports into the United States of carbon steel pipes and tubes from South Africa, products covered by the investigation.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in such comments or at a hearing.

This administrative review and notice are in accordance with section 751 of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: May 22, 1984.

Alan F. Holmer,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 84-14769 Filed 5-31-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-412-013]

Postponement of Final Antidumping Determination and Postponement of Hearing; Titanium Sponge From the United Kingdom

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that the Department of Commerce has received a request from Billiton (UK) Ltd. (Billiton) that the final determination be postponed until not later than 135 days after the date of publication of the preliminary determination, as provided for in § 353.44(b) of the Department of Commerce Regulations (19 CFR 353.44(b)), and that the Department will postpone its final determination as to whether titanium sponge from the United Kingdom has been sold at less than fair value until not later than September 24, 1984.

EFFECTIVE DATE: June 1, 1984.

FOR FURTHER INFORMATION CONTACT: John J. Kenkel, Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 377-3464.

SUPPLEMENTARY INFORMATION: On December 23, 1983, the Department of Commerce published notice in the Federal Register (48 FR 56815) that it was initiating under Section 732(b) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673a(b)), an antidumping investigation to determine whether titanium sponge from the

United Kingdom is being, or is likely to be, sold at less than fair value. The Department published an affirmative preliminary determination on May 11, 1984 (49 FR 20043). The notice stated that if this investigation proceeded normally we would make a final determination by July 23, 1984. Pursuant to section 735(a)(2) of the Act, Billiton requested an extension of the final determination date. Billiton is qualified to make such a request since it accounts for one hundred percent of the exports of the merchandise. If an exporter properly requests an extension after an affirmative preliminary determination, the Department is required, absent compelling reasons, to grant the request. The Department will issue a final determination in this case not later than September 24, 1984.

The hearing originally scheduled for June 15, 1984, has been postponed. The new hearing date is July 18, 1984, at 10:00 a.m., in Room 3708, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within 10 days of this notice's publication.

Requests should contain: (1) The party's name, address, and telephone number, (2) the number of participants, (3) the reason for attending, and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by July 11, 1984. All written views should be filed in accordance with 19 CFR 353.46, at the above address and in at least 10 copies not later than the date established for the submission of post-hearing briefs which will be announced at the hearing. If no hearing is held, all written views should be submitted not later than August 1, 1984.

This notice is published pursuant to section 735(d) of the Act.

Dated: May 24, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-14783 Filed 5-31-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-475-079]

Viscose Rayon Staple Fiber From Italy; Final Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Final Results of Administrative Review of Antidumping Finding.

SUMMARY: On March 16, 1984, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on viscose rayon staple fiber from Italy. The review covers the one known exporter of this merchandise to the United States, Snia Fibre S.p.A., and the period June 1, 1982 through May 31, 1983. There were no known shipments of this merchandise to the United States during the period and there are no known unliquidated entries.

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of review are unchanged from those presented in the preliminary results of review.

EFFECTIVE DATE: June 1, 1984.

FOR FURTHER INFORMATION CONTACT: Ron Nichols or John R. Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-5255/3601.

SUPPLEMENTARY INFORMATION:

Background

On March 16, 1984, the Department of Commerce ("the Department") published in the Federal Register (49 FR 9940) the preliminary results of its adminstrative review of the antidumping finding on viscose rayon staple fiber from Italy (44 FR 33878, June 13, 1979). The Department has now completed that administrative review.

Scope of the Review

Imports covered by the review are shipments of viscose rayon staple fiber, except solution dyed, in noncontinuous form, not carded, not combed and not otherwise processed, wholly of filaments (except laminated filaments and plexiform filaments), currently classifiable under items 309.4320 and 309.4325 of the Tariff Schedules of the United States Annotated.

The review covers the one known exporter of Italian viscose rayon staple fiber to the United States, Snia Fibre, S.p.A., and the period June 1, 1982 through May 31, 1983. There were no known shipments of this merchandise to the United States during the period and there are no known unliquidated entries.

Final Results of the Review

We gave interested parties an opportunity to comment on the preliminary results. The Department received no written comments or requests for a hearing. Based on our analysis, the final results of our review are unchanged from the preliminary results, and we determine that a cash deposit of estimated antidumping duties, as provided for in § 353.48(b) of the Commerce Regulations, of 18.6 percent shall be required on all shipments of Italian viscose rayon staple fiber entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the next final result of the adminsitrative review. The Department intends to begin immediately the next adminstrative review.

The Department encourages interested parties to review the public record and submit applications for protective orders as early as possible after the Department's receipt of the requested information.

This adminstrative review and notice are in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675 (a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Dated: May 24, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-14784 Filed 5-31-84; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review; Issuance

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of issuance of export trade certificate of review.

SUMMARY: The Department of Commerce has issued an export trade certificate of review to Watsand International Ltd. ("Watsand"). This notice summarizes the conduct for which certification has been granted.

ADDRESS: The Department requests public comments on this certificate. Interested parties should submit their written comments, original and five (5) copies, to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, D.C. 20230.

Comments should refer to the certificate as "Export Trade Certificate of Review, application number 84-00011."

FOR FURTHER INFORMATION CONTACT: Charles S. Warner, Director, Office of Export Trading Company Affairs, International Trade Administration,

202/377–5131, or Eleanor Roberts Lewis, Assistant General Counsel for Export Trading Companies, Office of General Counsel, 202/377–0937. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. 97–290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing the Act are found at 48 FR 10595–10604 (March 11, 1983) (to be codified at 15 CFR Part 325). A certificate of review protects its holder and the members identified in it from private treble damage actions and government criminal and civil suits under federal and state antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions.

Standards for Certification

Proposed export trade, export trade activities, and methods of operation may be certified if the applicant establishes that such conduct will:

1. Result in neither a substantial lessening of competition or restraint of trade within the United States nor a substantial restraint of the export trade of any competitor of the applicant;
2. Not unreasonably enhance, stabilize, or depress prices within the United States of the goods, wares, merchandise, or services of the class exported by the applicant;
3. Not constitute unfair methods of competition against competitors engaged in the export of goods, wares, merchandise, or services of the class exported by the applicant; and
4. Not include any act that may reasonably be expected to result in the sale for consumption or resale within the United States of the goods, wares, merchandise, or services exported by the applicant.

The Secretary will issue a certificate if he determines, and the Attorney General concurs, that the proposed conduct meets these four standards. For a further discussion and analysis of the conduct eligible for certification and of the four certification standards, see "Guidelines for the Issuance of Export Trade Certificates of Review," 48 FR 15937–15940 (April 13, 1983).

Description of Certified Conduct

The Office of Export Trading Company Affairs received an application for an export trade certificate of review from Watsand on February 28, 1984. The application was deemed submitted on March 2, 1984. A summary of the application was published in the Federal Register on March 15, 1984 (49 FR 9761). Based on analysis of the information contained in the application and other information in their possession, the Department of Commerce has determined, and the Department of Justice concurs, that the following export trade, export trade activities, and methods of operation specified by Watsand meet the four standards of the Act:

Export Trade

Products

Medical devices; medical, laboratory, and scientific instruments and equipment; medical and research diagnostics; diagnostic substances and biological products; medicinal and botanical products; pharmaceutical and chemical preparations acting on the skin; surgical, medical, and hospital equipment and instruments; electrical and electronic devices and equipment related to medical treatment, diagnosis, and research; druggist and medical sundries; x-ray, medical, diagnostic, and therapeutic equipment; analytical, optical, and scientific instruments surgical, orthopedic, and prosthetic appliances and supplies; electronic hearing and speech aids; dental equipment and supplies; solar and alternative energy equipment, instruments, and supplies; active and passive solar heating and cooling equipment and supplies; and scientific instruments and supplies used in energy convervation, environmental control, air and water purification, and pollution control.

Related Services

Market and product research; advertising, trade promotion, and marketing; legal assistance; trade documentation and freight forwarding; communication and processing of foreign orders to and for exporters and foreign purchasers; warehousing; foreign exchange; credit investigation and collections; and business development and licensing assistance.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

To engage in the Export Trade in the Export Markets, Watsand is certified:

(1) To enter into and to terminate nonexclusive agreements with U.S. suppliers individually to act as an Export Intermediary.

(2) To enter into and and to terminate exclusive agreements with U.S. suppliers individually wherein:

(a) Watsand agrees not to represent any competitors of such supplier as an Export Intermediary unless authorized by the supplier; or

(b) the supplier agrees not to sell, directly or indirectly through any other Export Intermediary, into the Export Markets in which Watsand represents the supplier as Export Intermediary; or

(c) both (a) and (b) above;

(3) To enter into and to terminate nonexclusive agreements with persons wherein those persons will act as Export Intermediaries.

(4) To enter into and to terminate exclusive agreements with Export Intermediaries, wherein:

(a) Watsand agrees to deal in Products in the Export Markets only through that Export Intermediary, or

(b) that Export Intermediary agrees not to represent Watsand's competitors in the Export Markets or not to buy from Watsand's competitors for resale in the Export Markets, or

(c) both (a) and (b) above.

The Office of Export Trading Company affairs is issuing this notice pursuant to 15 CFR 325.5(c), which requires the Department of Commerce to publish a summary of a certificate in the Federal Register. Under Section 305(a) of the Act and 15 CFR 325.10(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4001–B, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. The certificates may be inspected and copied in accordance with regulations published in 15 CFR Part 4. Information about the inspection and copying of records at this facility may be obtained from Patricia L. Mann, the International Trade Administration Freedom of Information Officer, at the above address or by calling (202) 377–3031.

Dated: May 25, 1984.
Irving P. Margulies,
General Counsel.
[FR Doc. 84-14691 Filed 5-31-84; 8:45 am]
BILLING CODE 3510-DR-M

Computer and Terminal Exchange Division, Digital Systems of Florida, Inc.; Order

The Office of Export Enforcement, International Trade Administration, U.S. Department of Commerce, having determined to initiate an administrative proceeding pursuant to Section 11(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420 (Supp. V 1981)) (the Act), and Part 388 of the Export Administration Regulations (currently codified at 15 CFR Parts 368–399 (1983)) (the Regulations) against Digital systems of Florida, Inc. (DSF), on behalf of its Computer and Terminal Exchange Division (CTE), now defunct, based on allegations that CTE violated §§ 387.2, 387.4 and 387.6 of the Regulations; and

The Department and DSF having entered into a Consent Agreement whereby DSF has agreed to settle this matter: (1) By a denial to DSF of all export privileges for period ending two years from the date of this Order, (2) by a further denial to DSF of the privilege of participating in any transaction which requires a validated export license for a period ending two years from the date of this Order, (3) by payment of a civil penalty in the amount of $270,000, (4) by taking certain corrective measures regarding future compliance with the Regulations, and (5) by submitting certain reports to the Director, Office of Export Enforcement.

The terms of the Consent Agreement having been approved by me in complete settlement of the matter;

It is therefore ordered,

First, DSF is denied export privileges as follows:

A. For a period ending two years from this date, DSF is denied all privileges of participating, directly or indirectly, in any manner or capacity, in any export of U.S.-origin commodities or technical data from the United States or abroad. Without limiting the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department and export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of any commodities or technical data, in whole or in part exported or to be exported from the United States, and subject to the Regulations, (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations. The last 18 months of the denial period set forth in this paragraph A. are suspended under § 388.10(c) of the Regulations, to be waived at the end of this period, provided DSF has committed no further violation of the Act, the Regulations, or this Order.

B. For a period of two years following entry of this Order, DSF is denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction which (1) requires a validated export license or reexport authorization from the Office of Export Administration, and (2) involves commodities or technical data subject to the Export Administration Regulations which are exported or to be exported from the United States in whole or in part. Without limiting the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation: (i) As a party or as a representative of a party to any validated export license application; (ii) in preparing or filing any export license application or request for reexport authorization; and (iii) in obtaining or using any validated export license.

C. 1. Such denials of export privileges shall extend not only to DSF, but also to its agents, employees and successors. After notice and opportunity for comment, such denial may also be made applicable to any person, firm, corporation, or business organization with which respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services.

2. In the event that DSF is merged into another company, such denials of export privileges shall extend to the Digital Systems of Florida Division or any successor division of such company.

D. While DSF is denied export privileges, no person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Administration, shall, as to the activities denied to DSF by paragraph A or B, as the case may be, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with the respondent or any related party (within the meaning of paragraph C), or whereby the respondent or any such related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for the respondent or any such related party; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States.

Second, that a civil penalty in the amount of $270,000 is assessed against DSF. Such civil penalty shall be reduced by the amount of any fine DSF pays in the related criminal proceeding in the Northern District of Florida. The civil penalty for which DSF becomes liable in this matter shall be paid within 20 days of notification by the undersigned, as specified in the attached instructions.

Third, that DSF shall, to the extent it has not already done so, take the measures specified in paragraph 3 of the Consent Agreement, incorporated herein by reference, concerning future compliance with the Act and Regulations, and submit, within six months of the entry of this Order, a report to the Director, Office of Export Enforcement, stating the corrective measures taken by DSF pursuant to the Consent Agreement; and

Fourth, that DSF shall submit, within two months after the close of such periods, two reports to the Director, Office of Export Enforcement, the first describing the exports it has made during the first 12-month period following the date of this Order and the second covering the second 12-month period.

Fifth, that the proposed Charging Letter, the Consent Agreement and this Order be made available to the public.

This Order shall take effect only in the event that DSF's plea of nolo contendere is accepted by the court and judgment is entered thereon in the Northern District of Florida.

Entered this 10th day of May, 1984.

Theodore Wai Wu,

Deputy Assistant Secretary for Export Enforcement.

[FR Doc. 84-14644 Filed 5-31-84; 8:45 am]
BILLING CODE 3510-25-M

Minority Business Development Agency

Minority Business Development Center Program; Applications Solicitation

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: Minority Business Development Agency (MBDA) announces that it is soliciting applications under its Minority Business Development Center (NBDC) program to operate one project for 12-month period beginning October 1, 1984 in the Nashville, Tennessee SMSA. The cost of the project is estimated to be $187,000. The maximum Federal participation amount is $158,950. The minimum amount required for non-Federal participation is $28,050. The award number will be 04-10-84008-01.

Applicants shall be required to contribute at least 10% of the total program costs through non-Federal funds. Cost sharing contributions can be in the form of cash contributions, fee for services or in-kind contributions.

DATE: Closing date: June 30, 1984.

ADDRESS: 1371 Peachtree Street, NE., Suite 505, Atlanta Regional Office, Minority Business Development Agency (Appropriate Address).

FOR FURTHER INFORMATION CONTACT: Gordon Anderson, Telephone (404) 881-3094.

SUPPLEMENTARY INFORMATION: .

A. Scope and Purpose of This Announcement

Executive Order 11625 authorizes MEDA to fund projects which will provide technical and management assistance to eligible clients in areas related to the establishment and operation of businesses. The MEDC program is specifically designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit through which and from which information and assistance to and about minority businesses are funneled.

B. Eligible Applicants

Awards shall be open to all individuals, non-profit orginizations, for-profit firms, local and state governments, American Indian tribes and educational institutions.

C. Evaluation Process

All proposals received as a result of this announcement will be evaluated by a MBDA review panel.

D. Evaluation criteria for Minority Business Development Center Applications

The evaluation criteria is designed to facilitate an objective evaluation of competitive applications for the Minority Business Development Center program.

MBDA reserves the right to reject any or all applications, including the application receiving the highest evaluation, and will exercise this right when it is determined that it is in the best interest of the Government to do so (e.g., the apparent successful applicant has serious unresolved audit issues from current or previous grants, contracts or cooperative agreements with an agency of the Federal Government).

Evaluation of proposals will employ the following criteria:

I. *Capability and Experience of Firm/Staff*—provide information that demonstrates the organization's capabilities and prior experiences in addressing the needs of minority business individuals and firms. Provide information that demonstrates the staff's capabilities and prior experiences in providing management and technical assistance to minority individuals and firms. Indicate previous experience in MBE community to be served in terms of: inventorying resources and opportunities; the brokering thereof; and providing management and technical assistance.

The following are key factors to be considered in this section:

Firm

—the organization's receptivity in the MBE community to be served, i.e., business contacts in the public and private sector; leadership responsibilities; and experience in assisting MBE business persons and firms. (References from clients assisted are pertinent.)

—background credentials and references for the owners of the organization and a capability statement of what the organization can do.

—knowledge of the geographic area to be served in terms of the needs of minority businesses and past ongoing relationships with local, public and private—entities that can possibly enhance the BDC program effort—i.e., Chambers of Commerce, trade associations, venture capital organizations, banks, SBA, HUD, state, city and county government agencies, etc.

Staff

—List personnel to be used. Indicate their salaries, educational level and previous experience. Provide résumés for all professional staff personnel.

—Demonstrate competence among staff to effectuate mergers, acquisitions, spin-offs and joint-ventures.

—Provide organizational chart, job descriptions and qualification standards involving all professional staff persons to be utilized on the project.

—If any contractors are to be utilized, identify and indicate areas and level of experience. *Primary consideration will be given to in-house capability.*

Note.—All contracting proposed should be in accordance with procurement standards in Attachment O of OMB Circular A-110 or A-102.

II. *Techniques and Methodology*—specify plans for achieving the goals and objectives of the project. This section should be developed by using the outline of the Work Requirements and the MBDC responsibilities as *guides* and will become part of the award document. Include start-up plan and example of work plan format. Fully explain the procedures for: outreach, screening, assisting and monitoring clients; maintaining the profile inventory of minority businesses; and brokering of new business ownership, market and capital opportunities and prevention of business failures. In summary, address how, when and where will be done and by whom. Include level of performance.

III. *Resources*—address technical and administrative resources, i.e., computer facilities, voluntary staff time and space; and financial resources in terms of meeting MBDA's 10% cost-sharing requirement and including a fee for services for assistance provided clients. A fee for services in the amount of 10%

of the cost of assistance will be charged to all clients receiving management and technical assistance.

Cost-sharing is that portion of project costs not borne by the Federal Government. The composition and amount of cost-sharing are key factors that will be considered in determining the merit of this section. The cost sharing requirement can be met through the following order or priority: (1) Cash contributions; (2) fee for services; and (3) in-kind contributions.

A. *Cash contribution*—means cash that is contributed or donated by the recipient, and other non-Federal sources, i.e., public agencies and institutions, private organizations, corporations and individuals.

B. *Fee for services*—is a charge to a client for assistance provided by the MBDC for M&TA and/or SCS.

C. *In-Kind contribution*—represents the value of non-cash contributions provided by the recipient and other non-Federal sources. The order of priority for in-kind contributions are: high technology systems to be utilized to achieve program objectives; top level staff personnel and real and personal property donated by other public agencies, institutions and private organizations. Property purchased with Federal funds will not be considered as the recipient's in-kind contribution. Under no circumstances can the in-kind contribution exceed 50% of the total non-Federal contribution.

IV. *Costs*—demonstrate in narrative format that costs being proposed will give the minority business client and the government the most effective program possible in terms of quality, quantity, timeliness and efficiency.

Include the principal costs involved for achieving work plan under Cooperative Agreement by completing Part III—the Budget Information Section of the Request for Application.

Provide cost-sharing plan information in terms of methodology and format for billing the costs of management and technical assistance and specialized consulting services to clients.

Total project cost will be evaluated in terms of:

—clear explanations of all expenditures proposed, and
—the extent to which the applicant can leverage Federal program funds and operate with *economy* and *efficiency*.

In conclusion, the applicant's schedule for start of the MBDC operation should be included in Part II. Part II will be known as the applicant's plan of operation and will be incorporated into the Cooperative Agreement Award.

A detailed justification of all proposed costs is required for Part III and each item must be fully explained.

The failure to supply information in any given category of the criteria will result in the application being considered non-responsive and dropped from competitive review.

All information submitted is subject to verification by MBDA.

E. Disposition of Proposals.

Notification of awards will be made by the Grants Officer, U.S. Department of Commerce (DOC). Organizations whose proposals are unsuccessful will be advised by MBDA, DOC.

F. Proposal Instructions and Forms.

This program is subject to OMB Circular A-95 requirements.

Questions concerning the preceding information, copies of application forms, and applicable regulations can be obtained at the above address.

Nothing in this solicitation shall be construed as committing MBDA to divide available funds among all qualified applicants.

G. A pre-application conference to assist all interested applicants will be held at the above address on June 15, 1984 at 1:00 p.m.

(11.800 Minority Business Development (Catalog of Federal Domestic Assistance))

Dated: May 23, 1984.

Paul R. Jones,

Regional Director.

[FR Doc. 84-14743 Filed 5-31-84; 8:45 am]
BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Corrected Notice of Receipt of Application for Permit; Morris Museum of Arts and Sciences

Notice is hereby given that an Applicant has applied in due form for a permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Parts 18 and 216).[1]

1. Applicant:

a. Name: Morris Museum of Arts and Sciences (P338).

b. Address: P.O. Box 125, Convent, New Jersey 07961.

2. Type of Permit: Public Display.

3. Name and Number of Animals:

Ringed Seal (*Phoca hispida*)—
Unspecified Number

Bearded Seal (*Erignathus barbatus*)—
Unspecified Number

Walrus (*Odobenus rosarus*)—
Unspecified Number.

4. Type of Take: To import an exhibit of 112 carvings, miniature figures, hunting gear, garments, prints and drawing garments, prints & drawings & other items made by Inuits of Arctic Quebec.

5. Location of Activity: Morristown, New Jersey.

6. Period of Activity: 1 year.

Concurrent with the publication of this notice in the Federal Register the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on that portion of this application dealing with pinnipeds other than walrus should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235, within thirty days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. Comments, views or requests for a public hearing on that portion of the application dealing with walrus should be submitted to the Director, Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service or the Fish and Wildlife Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C.;

Regional Director, National Marine Fisheries Service, Northeast Region, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930-3799;

Director, Fish and Wildlife Service, Department of the Interior, 1000 Glebe Road, North Arlington, Virginia 20242.

[1] Note: The original notice corrected by this document was published at 49 FR 19037, May 4, 1984.

Dated: May 25, 1984.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 84-14511 Filed 5-3-84; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing Import Limits for Certain Cotton and Man-Made Fiber Apparel Products Exported From the Dominican Republic

May 29, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on June 1, 1984. For further information contact Ross Arnold, International Trade Specialist, (202) 377-4212.

Background

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 30, 1983 between the Governments of the United States and the Dominican Republic establishes specific limits for Categories 340 (men's and boys' woven cotton shirts), 351 (cotton nightwear), 639 (women's, girls' and infants' knit shirts and blouses of man-made fibers), and 649 (brassieres of man-made fibers) exported during the agreement year which begins on June 1, 1984 and extends through May 31, 1985. The following letter directs the Commissioner of Customs to prohibit entry for consumption and withdrawal from warehouse for consumption of textile products in the foregoing categories in excess of the designated restraint limits.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924) and December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), and April 4, 1984 (49 FR 13397).

This letter and the actions taken pursuant to its 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 it provisions.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

May 29, 1984.

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 extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 30, 1983, between the Governments of the United States and the Dominican Republic; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 1, 1984, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 340, 351, 639 and 649, produced or manufactured in the Dominican Republic, and exported during the twelve-month period beginning on June 1, 1984 and extending through May 31, 1985, in excess of the following restraint limits:

Category	12-Mo limit (dozen)
340	171,200
351	393,040
639	386,270
649	1,979,500

In carrying out this directive, entries of textile products in the foregoing categories, produced or manufactured in the Dominican Republic, which have been exported to the United States during the period which began on June 1, 1983 and extends through May 31, 1984, shall, to the extent of any unfilled balances, be charged against the restraint established for such goods during that twelve-month 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 letter.

The limits set forth above are subject to adjustment pursuant to the provisions of the bilateral agreement of December 30, 1983, between the Governments of the United States and the Dominican Republic which provide, in part, that: (1) specific limits may be exceeded by designated percentages to account for swing, provided that an equal amount in equivalent square yards is deducted from another specific limit; and (2) specific limits may also be increased for carryover and carry forward. Any appropriate future adjustments under the foregoing provisions of the bilateral agreement will be made to you by letter.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924) and December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), and April 4, 1984 (49 FR 13397).

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 actions taken with respect to the Government of the Dominican Republic and with respect to imports of cotton and man-made fiber textile products from the Dominican Republic have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affair exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

Walter C. Lenhan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-14791 Filed 5-31-84; 8:45 am]

BILLING CODE 3510-DR-M

Increasing the Import Limits for Certain Cotton and Man-Made Fiber Textile and Apparel Products From Indonesia

May 29, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on June 1, 1984. For further information contact Diana Bass, International Trade Specialist (202) 377-4212.

Background

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of November 9, 1982 between the Governments of the United States and Indonesia provides, among other things, for the borrowing of yardage from the succeeding year's level (carryforward) with the amount used being deducted from the level in the succeeding year. At the request of the Government of Indonesia, increases for carryforward are being applied to the restraint limits previously established for cotton and man-made fiber textile and apparel products in Categories 315 (printcloth), 331 (gloves), 341 (women's, girls' and infants' woven blouses) and 604 (yarn, wholly of non-continuous filament),

produced or manufactured in Indonesia and exported during the agreement year which began on July 1, 1983. (See 49 FR 5649 and 13065).

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924) and December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), and April 4, 1984 (49 FR 13397).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

May 29, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directives of February 23 and March 28, 1984 which prohibited entry into the United States of cotton and man-made fiber textile products in Categories 315, 331, 341 and 604, produced or manufactured in Indonesia and exported during the designated restraint periods.

Effective on June 1, 1984, the directives of February 23 and March 28, 1984 are hereby amended to include adjusted restraint levels for Categories 315, 331, 341 and 604, as follows:

Category	Adjusted restrain level [1]	Period of restraint
315	6,956,800 square yards	Nov. 30, 1983 to June 30, 1984.
331	157,767 dozen pairs	Dec. 29, 1983 to June 30, 1984.
341	149,757 dozen	Dec. 30, 1983 to June 30, 1984.
604	303,681 pounds	Dec. 29, 1983 to June 30, 1984.

[1] The restraint levels have not been adjusted to reflect any imports exported during the designated restraint periods.

The actions taken with respect to the government of Indonesia and with respect to imports of cotton and man-made fiber textiles and textile products from Indonesia have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-14790 Filed 5-31-84; 8:45 am]

BILLING CODE 3510-DR-M

Controlling Imports of Certain Wool Apparel Products Produced or Manufactured in Uruguay

May 29, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on June 1, 1984. For further information contact William Boyd, International Trade Specialist (202) 377-4212.

Background

The bilateral agreement of January 23, 1984 between the Governments of the United States and Uruguay established a specific restraint limit of 5,408 dozen for women's, girls' and infants' wool suits in Category 444, produced or manufactured in Uruguay and exported during the first agreement period which began on August 1, 1983 and extends through June 30, 1984. The United States Government has decided to control imports at that limit. In the letter to the Commissioner of Customs which follows this notice, the limit is being adjusted to account for imports entered during the period August 1, 1983 through March 31, 1984 which have amounted to 2,846 dozen. Further charges will be made to account for imports exported during the period which began on April 1, 1984.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924) and December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), and April 4, 1984 (49 FR 13397).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

May 29, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

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 extended on December 15, 1977 and December 22, 1981; pursuant to the bilateral agreement of January 23, 1984, between the Governments of the United States and Uruguay; and in accordance with the provisions in Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 1, 1984, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in Category 444, produced or manufactured in Uruguay and exported during the eleven-month period which began on August 1, 1983 and extends through June 30, 1984, in excess of 5,408 dozen.[1]

Wool textile products in Category 444 which have been exported to the United States before August 1, 1983 shall not be subject to this directive.

Wool textile products in Category 444 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

This limit is subject to adjustment in the future according to the provisions of the bilateral agreement of January 23, 1984 which provide, in part, that: (1) The specific limit may be adjusted for carryover and carryforward; and (2) adminstrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR. 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924) and December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), and April 4, 1984 (49 FR 13397).

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 action taken with respect to the Government of Uruguay and with respect to imports of wool textile products from Uruguay has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implemenation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-14792 Filed 5-31-84; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF EDUCATION

National Center for Research in Vocational Education Advisory Council; Meeting Cancellation

AGENCY: National Center for Research in Vocational Education Advisory Council, Education.

[1] The restraint limit has not been adjusted to reflect any imports exported after July 31, 1983. Charges for the period August 1, 1983 through March 31, 1984 have amounted to 2,846 dozen.

ACTION: Cancellation of Notice.

SUMMARY: This document is intended to notify the public of the cancellation of the notice of meeting of the National Center for Research in Vocational Education Advisory Council, published May 14, 1984 on page 20363. The Advisory Council will not meet on June 11, 1984. However, this meeting will be rescheduled at a later date and the public will be notified in advance.

FOR FURTHER INFORMATION CONTACT: Dr. Howard F. Hjelm, Director, Division of Innovation and Development, 400 Maryland Avenue, SW., Rm. 5044, ROB 3, Washington, D.C. 20202, (202) 245-2278.

Dated: May 25, 1984.

Robert M. Worthington,

Assistant Secretary, for Vocational and Adult Education.

[FR Doc. 14735 Filed 5-31-84; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

National Petroleum Council, Coordinating Subcommittee of the Committee on the Strategic Petroleum Reserve; Meeting

Notice is hereby given that the Coordinating Subcommittee of the Committee on the Strategic Petroleum Reserve will meet in June 1984. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Committee on the Strategic Petroleum Reserve will address various aspects of the Strategic Petroleum Reserve and the long-term availability and movement patterns of tankers worldwide. Its analysis and findings will be based on information and data to be gathered by the various task groups.

The Coordinating Subcommittee will hold its third meeting on Thursday, June 14, 1984, starting at 10:30 a.m., in the San Jacinto Room of the Marriott Hotel/Houston Airport, 18700 Kennedy Boulevard, Houston, Texas.

The tentative agenda for the Coordinating Subcommittee meeting follows:

1. Opening remarks by the Chairman and Government Co-Chairman.
2. Discuss study assignments.
3. Review task group study assignments.
4. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Coordinating Subcommittee 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 Coordinating Subcommittee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Gerald J. Parker, Office of Oil, Gas and Shale Technology, Fossil Energy, 301/353-3032, prior to the meeting and reasonable provision will be made for their appearance 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, D.C., between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on May 22, 1984.

William A. Vaughan,

Assistant Secretary, Fossil Energy.

[FR Doc. 84-14780 Filed 5-31-84; 8:45 am]

Billing Code 6450-01-M

Economic Regulatory Administration

[ERA Case No. 50126-9062-08-82]

Atlantic City Electric Co.; Issuance of Final Prohibition Order; Powerplant and Industrial Fuel Use Act of 1978

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Issuance of Prohibition Order to Atlantic City Electric Company.

SUMMARY: In accordance with former section 301(b) and section 702(a) of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* (FUA or "the Act"), the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of its issuance of a final prohibition order to the Atlantic City Electric Company's (ACEC) Deepwater Generating Station Unit 8 (hereafter referred to as "Deepwater 8"), located in Pennsville Township, New Jersey. The order prohibits Deepwater 8 from burning natural gas or petroleum as its primary energy source, in accordance with the effective date of the prohibition set forth in the **EFFECTIVE DATES** section, below.

The prohibition order procedures for powerplants electing continued coverage under former section 301 of FUA[1] are found at 10 CFR 501.31, 501.33, 501.51, and 504.6. Additional information on the proceeding, together with the final prohibition order to Deepwater 8 appear under **SUPPLEMENTAL INFORMATION** below.

EFFECTIVE DATES: The final prohibition order and the prohibition contained therein shall take effect on July 31, 1984, except that the use of natural gas or petroleum as a primary energy source in Deepwater 8 shall not be prohibited:

1. During any period that ACEC, due to circumstances beyond its reasonable control, is unable to burn coal in the unit, or is unable to burn coal in the unit in compliance with all applicable federal, State and local laws, rules, regulations, ordinances and orders;
2. During any period that ACEC, due to circumstances beyond its reasonable control, is unable to purchase or secure delivery of a supply of coal suitable for operation of the unit in compliance with all applicable federal, State and local laws, rules, regulations, ordinances and orders; and
3. During any other periods as provided or permitted by FUA or applicable ERA rules, regulations or orders.

FOR FURTHER INFORMATION CONTACT:

John Boyd, Department of Energy, Economic Regulatory Administration, Office of Fuels Programs, Coal and Electricity Division, Forrestal Building, Room GA-033, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-8161

Marya Rowan, Esq., Department of Energy, Office of the General Counsel, Forrestal Building, Room 6A-141, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-6739

The public file containing a copy of this notice and all other documents and supporting materials related to the proceeding is available for inspection upon request Monday through Friday from 8:00 a.m. to 4:00 p.m., at the Department of Energy, Freedom of Information Reading Room, Forrestal Building, Room 1E-190, 1000 Independence Avenue, SW., Washington, D.C. 20585, Phone (202) 252-6020.

SUPPLEMENTARY INFORMATION: (1) *Procedures.* ERA issued the proposed

[1] In accordance with procedures issued by ERA on October 1, 1981, to implement the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35, August 13, 1981), ACEC, on November 24, 1981, elected to have Deepwater 8 remain subject to former section 301(b) of FUA.

prohibition order to ACEC's Deepwater 8 on December 21, 1979 (45 FR 72, January 2, 1980), commencing a proceeding designed to prohibit the use of petroleum or natural gas as the primary energy source in the unit if the required findings of the then-effective section 301(b) of FUA (hereafter referred to as "former section 301(b)"), discussed below, could be made.

In accordance with 10 CFR 501.51(b), the issuance of the proposed prohibition order to Deepwater 8 commenced an initial three-month public comment period, during which interested parties could (1) challenge ERA's initial finding that Deepwater 8 had or previously had the technical capability to use coal as its primary energy source and (2) comment upon the proposed statutory findings which former section 301(b) requires ERA to make prior to the issuance of any final prohibition order. During the comment period neither ACEC nor any other interested persons submitted information contrary to ERA's initial finding that Deepwater 8 has or previously had the technical capability to burn coal as a primary energy source.

In accordance with the then-effective 10 CFR 501.51(b)(3),[2] ACEC identified the following exemptions for which Deepwater 8 might qualify: The temporary exemptions authorized by section 311 of FUA based upon: (1) Inability to comply with applicable environmental requirements; (2) public interest; (3) retirement; (4) powerplant necessary to maintain reliability of service, and (5) peakload; and the permanent exemptions authorized by section 312 of FUA based upon: (1) Lack of alternate fuel supply; (2) site limitations; (3) inability to comply with applicable environmental requirements; (4) State and local requirements; (5) mixtures containing natural gas or petroleum; (6) peakload powerplant, and (7) intermediate load powerplant.

Having determined on the basis of the available evidence that the proceeding should go forward, ERA issued a Notice of Intention to Proceed for Deepwater 8 on May 16, 1980 (45 FR 34961, May 23, 1980), commencing a second public comment period. Subsequently, the second comment period was extended to November 23, 1980 (from August 23, 1980), at the request of ACEC (45 FR 57519, August 28, 1980). The extension was granted by ERA to permit the anticipated conclusion of ACEC's efforts to reach accommodations with the U.S. Environmental Protection Agency and the New Jersey Department of Environmental Protection on the environmental issues associated with the proposed conversion, prior to the close of the comment period during which ACEC would have had to demonstrate Deepwater 8's qualification for an environmental exemption, if necessary. No comments adverse to ERA's proposed findings were received during the second comment period, and ACEC did not demonstrate the entitlement of Deepwater 8 to any of the potential exemptions initially identified.

On February 16, 1984, ERA issued a Notice of Availability of Tentative Staff Analysis (TSA) (49 FR 7432, February 29, 1984), in accordance with 10 CFR 501.51. The TSA concluded that the findings of technical and financial feasibility required by former section 301(b) of FUA could be made with respect to Deepwater 8 and recommended that a final prohibition order be issued to the unit. The staff conclusions were based upon information provided by ACEC and other information available to ERA, all of which is included in the administrative record of the proceeding. In accordance with 10 CFR 501.51(b)(6), the Notice of Availability established a 45-day comment period during which a public hearing could also be requested. No comments on the TSA were received during the period provided, and no public hearing was requested.

NEPA Compliance. In accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), DOE has performed an environmental review of the proposed action and has concluded that its action which would prohibit the burning of petroleum or natural gas as a primary energy source in Deepwater 8 will not result in significant effects on the quality of the human environment, and, as such, requires neither an environmental impact statement nor an environmental assessment.

Prohibition Order

After review and consideration of the whole record in this proceeding, and finding its proposed actions to be supported by reliable, probative, and substantial evidence, ERA issues the following prohibition to: Atlantic City Electric Company, Deepwater Generating Station Unit 8, Pennsville Township, New Jersey, ERA Case No. 50126-9062-08-82

Pursuant to former section 301(b) of FUA and 10 CFR 504.6, ERA hereby prohibits the above-named powerplant from burning petroleum or natural gas as a primary energy source.

As provided in former section 301(b)(1) and (2) of FUA and 10 CFR 504.6 (c), (d), (e), and (f), this prohibition order is based upon the following findings:

Finding of Technical Feasibility

As required by former section 301(b)(1) and (2) of FUA, ERA finds that (1) Deepwater 8 has the technical capability to use coal or another alternate fuel as a primary energy source, and (2) that it is technically feasible for Deepwater 8 to use coal or another alternate fuel as its primary energy source without substantial physical modification of the unit and without substantial reduction in the rated capacity of the unit.

This finding is based upon information contained in the public record and cited in the TSA (49 FR 7432, February 29, 1984), which indicates that Deepwater 8 was designed and constructed to burn coal as its primary energy source,[3] and that it is currently being so operated. The Analysis Branch of the Office of Fuels Programs confirmed this fact in a memorandum entitled Technical Feasibility, Deepwater 8, dated September 19, 1983. The record further shows that (1) modifications to the unit to permit it to burn coal included the refurbishment and replacement of some coal-handling, ash-handling, and auxiliary facilities and the addition of pollution control devices, and (2) the unit has experienced no annualized capacity derating, as a result of its operation with coal as the primary source [4] although a potential derating of approximately 1.7 MW was originally anticipated due to the increased power demands of the coal-fired operation. Neither the required modifications nor the potential derating discussed is "substantial" by regulatory definition, in the absence of evidence to the contrary.

Findings of Financial Feasibility

As required by former section 301(b)(3) of FUA, ERA finds that it is financially feasible for Deepwater 8 to use coal as its primary energy source. This finding is based upon (1) ERA staff calculations of record,[5] using the

[2] The requirement that a proposed order recipient identify any exemptions for which the powerplant might qualify during the initial three-month comment period was deleted from 10 CFR 501.51(b)(3), effective May 21, 1982 (47 FR 17037, April 21, 1982).

[3] For additional information see Final Draft, Engineering Analysis Technical Report, Atlantic City Electric Company, Deepwater Generating Station, April 24, 1981, Battelle Columbus Laboratories, prepared for Pacific Northwest Laboratory.

[4] See letter dated October 23, 1983, from Ralph Bingham, Manager of Environmental Affairs, Atlantic City Electric Company, to John Boyd, Office of Fuels Programs, Economic Regulatory Administration.

[5] See memorandum of August 31, 1981, prepared by the Analysis Branch, Office of Fuels Conversion, confirmed and updated by memorandum of September 26, 1983, from the Financial Analysis Section.

general cost calculation formula in 10 CFR 504.12, the results of which indicate that the use of coal as the primary energy source for Deepwater 8 will not substantially exceed the cost of using imported petroleum; and (2) record evidence [6] of the fact that the conversion of Deepwater 8 has been completed and that the unit is operating on coal as its primary energy source. This evidence, taken together, indicates that ACEC has the actual ability to obtain sufficient capital to finance the conversion, within the terms of 10 CFR 504.6(f).

Terms and Conditions

The Order and its prohibition to Deepwater 8, stated above, shall take effect on July 31, 1984 except that the use of natural gas or petroleum as a primary energy source in Deepwater 8 shall not be prohibited:

1. During any period that ACEC, due to circumstances beyond its reasonable control, is unable to burn coal in the unit, or is unable to burn coal in the unit in compliance with all applicable federal, State and local laws, rules, regulations, ordinances and orders;
2. During any period that ACEC, due to circumstances beyond its reasonable control, is unable to purchase or secure delivery of a supply of coal suitable for operation of the unit in compliance with all applicable federal, State and local laws, rules, regulations, ordinances or orders; and
3. During any other periods as provided or permitted by FUA or applicable ERA rules, regulations, or orders.

In the event of the enactment of any federal or State law, or the promulgation of any federal or State regulation, that requires ACEC to directly or indirectly reduce:

(1) The hourly rate of emissions of any air pollutant emitted from Deepwater 8 below the hourly rate of emissions of that air pollutant permitted in calendar year 1983 (assuming operation at maximum heat input to the boiler),

(2) The total annual emissions of any air pollutant emitted during any calendar year from Deepwater 8 below the total annual quantity (by weight) of that air pollutant emitted from Deepwater 8 during calendar year 1983, or

(3) The total annual emissions of any air pollutant emitted during any calendar year from all of ACEC's fossil-fired electric generating units in New Jersey below the total annual quantity (by weight) of that air pollutant emitted from those units in calendar year 1983, then the enactment of such law or the promulgation of such regulation shall be deemed to constitute "significantly changed circumstances" for purposes of 10 CFR 501.102(b). Upon receipt of ACEC's written certification of the existence of one or more of the conditions described above, and its request for rescission of this order and the prohibition contained therein based upon such "significantly changed circumstances," ERA shall promptly initiate a proceeding under 10 CFR Part 501, Subpart G in which it will propose to rescind this Order and the prohibition contained herein.

Pursuant to 10 CFR 501.69, any person aggrieved by this Order may petition for judicicial review thereof at any time before the 60th day following publication in the Federal Register.

Issued in Washington, D.C., on May 23, 1984.

Robert L. Davies,

Director, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 84-14778 Filed 5-31-84; 8:45 am]

BILLING CODE 6450-01-M

[6] Letter of October 28, 1983, *supra.*

Federal Energy Regulatory Commission

[Docket No. ID-1990-001]

Jonathan W. Booraem; Application

May 30, 1984.

Take notice that on May 21, 1984, Jonathan W. Booraem filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

Treasurer—Central Vermont Public Service Corporation

Secretary—Central Vermont Public Service Corporation-Bradford Hydroelectric, Inc.

Secretary—Central Vermont Public Service Corporation-East Barnet Hydrolectric, Inc.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 14, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-14722 Filed 5-31-84; 8:45]

BILLING CODE 6717-01-M

[Docket No. ER77-485-005]

Carolina Power & Light Co., Refund Report

May 30, 1984.

Take notice that on May 21, 1984, Carolina Power & Light Company (CP&L) submitted for filing a refund compliance report pursuant to Commission's Opinion No. 132-A issued March 7, 1984.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, on or before June 13, 1984. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-14717 Filing 5-31-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP79-23-020, et al.]

Distrigas of Massachusetts Corp., et al.; Filing of Pipeline Refund Reports and Refund Plans

May 29, 1984.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports or refund plans. The date of filing, docket number, and type of filing are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports and plans. All such comments should be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, on or before June 7, 1983. Copies of the respective filings are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

APPENDIX

Filing date	Company	Docket No.	Type filing
5/4/84	Distrigas of Massachusetts Corp.	RP79-23-020.....	Report.

APPENDIX—Continued

Filing date	Company	Docket No.	Type filing
5/14/84	Alabama-Tennessee Natural Gas Co.	RP73-77-024	Do.
5/15/84	Texas Eastern Transmission Corp.	RP69-13-000	Do.
5/17/84	East Tennessee Natural Gas Co.	RP71-15-015	Do.
5/23/84	Granite State Gas Transmission, Inc.	RP83-71-003	Do.

[FR Doc. 84-14719 Filed 5-31-84; 8:45 am]
BILLING CODE 6717-10-M

[Docket No. ID-2105-000]

Ronald R. Holm; Application

May 30, 1984.

Take notice that on May 21, 1984, Ronald R. Holm filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

Treasurer—Vermont Electric Power Company, Inc.
Treasurer—Vermont Electric Transmission Company, Inc.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rule 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 14, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-14726 Filed 5-31-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ID-2004-001]

F. Ray Keyser, Jr.; Applications

May 30, 1984.

Take notice that on May 16, 1984, F. Ray Keyser, Jr. filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

Chairman, Director—Central Vermont Public Service Corporation
Director—Vermont Yankee Nuclear Power Corporation

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rule 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 14, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-14721 Filed 5-31-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ID-2106-000]

Edward L. King; Application

May 30, 1984.

Take notice that on May 21, 1984, Edward L. King filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

Assistant Treasurer and Assistant Secretary—Vermont Electric Power Company, Inc.
Assistant Treasurer and Assistant Secretary—Vermont Electric Transmission Company, Inc.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rule of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 14, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-14720 Filed 5-31-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ID-1994-003]

Darrow R. McLeod; Application

May 30, 1984.

Take notice that on May 16, 1984, Darrow R. McLeod filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

Vice President—Engineering and Operations—Central Vermont Public Service Corporation
Vice President—Engineering and Division Administration—Connecticut Valley Electric Company
Vice President—Central Vermont Public Service Corporation—Bradford Hydroelectric, Inc.
Vice President—Central Vermont Public Service Corporation—E. Barnet Hydroelectric, Inc.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 14, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-14718 Filed 5-31-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ID-1663-001]

Theodore W. Millspaugh, Jr.; Application

May 30, 1984.

Take notice that on May 16, 1984, Theodore W. Millspaugh, Jr. filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

Controller—Central Vermont Public Service Corporation
Treasurer—Connecticut Valley Electric Company Inc.
Treasurer—Central Vermont Public Service Corporation—Bradford Hydroelectric, Inc.
Treasurer—Central Vermont Public Service Corporation—East Barnet Hydroelectric, Inc.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 14, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-14729 Filed 5-31-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER76-828-008; EL78-18-000]

Nantahala Power & Light Co.; Refund

May 30, 1984.

Take notice that on May 3, 1983, Nantahala Power and Light Company submitted for filing its refund compliance report pursuant to Commission's Opinion Nos. 139, 139A, and 139B.

Nantahala states that it has refunded with interest to its wholesale customer all monies collected in excess of the approved rate level during the period November 1, 1976 to March 1, 1981.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, on or before June 13, 1984. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-14723 Filed 5-31-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-381-000]

Northern Natural Gas Co., Division of InterNorth, Inc.; Request Under Blanket Authorization

May 30, 1984.

Take notice that on May 1, 1984, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP84-381-000, a request pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that Northern proposes to construct a new sales tap, 6.36 miles of 3-inch branchline and appurtenant facilities in LeSueur County, Minnesota, to accommodate natural gas deliveries to Minnegasco, Inc. (Minnegasco), under authorization issued in Docket No. CP82-401-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern states that the proposed gas would be used to serve the Unimin Corporation located within Minnegasco's service area. It is submitted that the estimated peak day and annual volumes required are 600 Mcf and 130,000 Mcf, respectively, and would be utlized primarily for its sand drying operation. The estimated cost to construct the proposed facilities is $294,400.

Northern explains that the sale would be made in accordance with the Rate Schedule CD-1 of Northern's F.E.R.C. Gas Tariff, Third Revised Volume No. 1.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-14724 Filed 5-31-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-393-000]

Panhandle Eastern Pipe Line Co.; Request Under Blanket Authorization

May 30, 1984.

Take notice that on May 7, 1984, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP84-393-000 a request pursuant to § 157.205(b) of the Regulations under the Natural Gas Act (18 CFR 157.205(b)) that Panhandle proposes to add a new delivery point to Hayes-Albion Corporation (Hayes-Albion), to reassign volumes of natural gas from an existing delivery point to the new delivery point, and to construct and operate appurtenant facilities under authorization issued in Docket No. CP83-83-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Panhandle proposes the addition of a delivery point in Calhoun County, Michigan, and a reassignment of the authorized contract demand volumes of natural gas between the proposed delivery point and the existing delivery point to Southeastern Michigan Gas Company (Southeastern) for the account of Hayes-Albion. It is stated that upon completion of construction of facilities at the new delivery point, Panhandle would cease to make deliveries to Southeastern for the account of Hayes-Albion and that the 4,000 Mcf of contract demand would be available to Hayes-Albion at the Calhoun County point. Panhandle further states that there would be no change in the total contract demand for gas delivered to Hayes-Albion as a result of the gas volume reassignment.

Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-14725 Filed 5-31-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-239-001]

Texas Gas Transmission Corp.; Supplement to Request Under Blanket Authorization

May 30, 1984.

Take notice that on May 7, 1984, Texas Gas Transmission Corporation

(Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP84-239-001 a supplement to its request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that Texas Gas proposes to transport natural gas on behalf of Middletown Paperboard Co., a Division of Newark Boxboard Co. (Middletown), under the authorization issued in Docket No. CP82-407-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the supplement on file with the Commission and open to public inspection.

Texas Gas proposes to modify its transportation arrangement with Middletown approved in Docket No. CP84-239-000 to extend the term of the transportation agreement through June 30, 1985, and provide for the addition and/or deletion of points of receipt and/or delivery under the agreement.

Texas Gas states that any changes in sources and/or receipt/delivery points would be on behalf of the same end-user at the same end-use location and would be within the maximum daily and annual volumes authorized under Docket No. CP84-239-000. Also, it is submitted that such transportation service would be rendered under the same terms and conditions authorized for the basic service (with the exception of the extended term requested herein).

Furthermore, Texas Gas agrees that within 30 days of the addition or deletion of any gas suppliers and/or receipt/delivery points to file all pertinent information required.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the supplement to request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant supplement to request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb

Secretary.

[FR Doc. 84-14728 Filed 5-31-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-399-000]

United Gas Pipe Line Co.; Request Under Blanket Authorization

May 30, 1984.

Take notice that on May 8, 1984, United Gas Pipe Line Company (United), Post Office Box 1478, Houston, Texas 77001, filed in Docket No. CP84-399-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205). United proposes to construct and operate a sales tap for the delivery of gas for resale to the City of De Quincy, Louisiana (De Quincy) to serve a residential customer under the authorization issued in Docket No. CP82-430-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states the sales tap would be located on its 14-inch Iowa-Call Junction line in Beauregard Parish, Louisiana, and would enable De Quincy to provide up to 10 Mcf of natural gas per day for residential-type heating and cooking under United's Rate Schedule G-S. It is stated that the proposed sales tap would not cause an increase in the customer's contractual maximum daily quantity nor its entitlements under United's effective curtailment plan.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natual Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-14729 Filed 5-31-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-355-000]

Virginia Electric and Power Co.; Order Accepting for Filing and Suspending Rates, Granting Intervention, Denying Summary Disposition, Granting Waiver, Rejecting Pleading, and Establishing Hearing and Price Squeeze Procedures

Issued: May 29, 1984.

On March 30, 1984, Virginia Electric and Power Company (VEPCO) filed a proposed two-step increase in its rates for service to nineteen municipal and cooperative wholesale customers.[1] The proposed Phase One rates would increase overall revenues by approximately $9.6 million (6.5%) and the Phase Two rates would increase revenues by an additional $5.3 million, representing a total income of approximately 9.2%. The Phase One rates to the cooperative customers other than Old Dominion Electric Cooperative (ODEC) represent a rate decrease, partly as a result of VEPCO's proposal to refund overcollected nuclear fuel disposal charges over approximately one year. VEPCO requests effective dates of May 30, and May 31, 1984, for the Phase One and Phase Two rates, respectively, but also requests a one day suspension with respect to both phases.

In accordance with the terms of its present contract with ODEC, VEPCO also proposes as part of its filing to discontinue service under its RC-Interruptible rate at the Bear Island delivery point of Rappahannock Electric Cooperative (Rappahannock), an ODEC member cooperative. All of ODEC's and its member cooperatives' partial requirements loads are to be served at VEPCO's supplemental rate.[2] Further, in accordance with the terms of a settlement agreement dated July 30, 1981, VEPCO proposes to discontinue its Schedule RS-A service to North Carolina Electric Membership Cooperative (NCEMC). Finally, VEPCO requests waiver of that portion of § 35.13(h)(24) of the Commission's regulations (Statement AX) which requires the submission of rate orders by other regulatory bodies.

Notice of VEPCO's filing was published in the Federal Register on

[1] *See* Attachment for a list of customers and rate schedule designations.

[2] The present agreement between VEPCO and ODEC provides that ODEC will purchase partial requirements service at VEPCO's supplemental rate for all load other than that at the Bear Island Delivery point. The contract provides that service at the Bear Island Delivery point will continue at VEPCO's interruptible rate until the effective date of the rates established by VEPCO's next wholesale rate case, *i.e.*, the instant docket.

April 17, 1984, with comments, protests, or motions to intervene due on or before April 23, 1984.[3]

On April 20, 1984, Bear Island Paper Company (Bear Island), a retail customer of Rappahannock, filed a motion to intervene, requesting a five month suspension. Bear Island states that it is presently served by Rappahannock at a rate which reflects a direct pass-through of VEPCO's RC-Interruptible rate. Among other things, Bear Island states that VEPCO had agreed to make the RC-Interruptible rate available until its next wholesale rate case (the instant docket), and ODEC had agreed to develop a new interruptible rate for service to Bear Island. Bear Island contends that, because the purchase by ODEC of a share of VEPCO's North Anna generation was delayed,[4] ODEC has not yet had sufficient time to propose a rate for service to Bear Island. Bear Island requests that a five month suspension of the termination of VEPCO's RC-Interruptible rate be ordered to permit adequate time for ODEC to develop a rate as promised.

On April 23, 1984, Virginia Municipal Electric Association (VMEA), on behalf of itself and its members,[5] filed a protest, motion to intervene, motion for summary disposition, request for a five month suspension and initiation of price squeeze proceedings. VMEA, in its motion for summary disposition, requests that VEPCO be ordered to immediately refund amounts, collected in prior rates, for spent nuclear fuel disposal costs which exceed the amount that VEPCO will be required to pay to the Department of Energy (DOE) under the Nuclear Waste Policy Act of 1982. VMEA also requests that each phase of VEPCO's proposed increase be suspended for five months on the grounds that the phasing proposal is being used only to circumvent the Commission's suspension authority. Further, VMEA requests that the Commission initiate price squeeze proceedings and consider price squeeze allegations in our suspension decision.[6]

In support of its request for a five month suspension, VMEA identifies numerous cost of service issues including: (1) The calculation of cash working capital allowance, interim storage costs for spent nuclear fuel, and materials and supplies balances; (2) reclassification to plant-in-service of materials and supplies associated with cancellation of North Anna Unit No. 3; (3) increased projections for fuel stocks, salaries and wages, administrative and general expenses, and demand and energy requirements; (4) the proposed amortization period of expenses related to cancellation of North Anna Unit No. 3; (5) allocation of gross receipts tax; (6) calculation of unfunded tax liability from prior periods; (7) failure to amortize a portion of capital gains realized from the partial sale of generating facilities; (8) the requested return on common equity; (9) the exclusion of sales to ODEC from the demands used to allocate North Anna investment and associated expenses; (10) classification of production salaries and wages; and (11) inclusion as plant-in-service of generating units which are in reserve shutdown status and generating units that are out of service while undergoing conversion from oil-fired to coal-fired operation.

On April 23, 1984, ODEC filed a motion to intervene, request for a hearing, and motion to suspend the proposed rates. In addition to raising issues similar to those identified by VMEA, ODEC asserts that VEPCO has overstated its estimated regulatory expense. On April 27, 1984, ODEC amended it prior filing, primarily to request a five month suspension of both phases of the proposed increase. Timely interventions raising similar issues were also filed by NCEMC and jointly by Craig-Botetourt Electric Cooperative and Central Virginia Electric Cooperative (Cooperatives).

On April 27, 1984, the Secretary of the Navy (Navy) filed an untimely intervention. The Navy's contract with VEPCO, while not regulated by this Commission, is tied to the wholesale rate schedules currently at issue. The Navy raises no specific issues for investigation, but asserts, as justification for filing out of time, that it did not receive actual notice of VEPCO's filing until April 24, 1984. The Navy states that its intervention would not delay the proceedings or broaden the matters at issue.

On May 4, 1984, VEPCO filed an answer to the various motions. VEPCO opposes Bear Island's motion to intervene because Bear Island is a third-tier recipient of VEPCO power, only indirectly affected by this filing.[7] Further, VEPCO alleges that Bear Island does not object to termination of the RC-Interruptible service and does not cite "a convincing basis for suspending [that] termination." VEPCO also opposes VMEA's motion for summary disposition with respect to VEPCO's proposal for refunding amounts previously collected for spent nuclear fuel disposal costs. VEPCO asserts that repayments over time (as opposed to immediate refunds) comport with the Commission-approved amortization of earlier undercollections. *VEPCO*, Opinion No. 118, Docket No. ER78-522-000, 15 FERC ¶ 61,052, at 61,1905-06 (1981). VEPCO denies the intervenors' allegations regarding cost of service irregularities and denies that a price squeeze exists. VEPCO concludes that the requested one day suspensions are appropriate.

Discussion

Under Rule 214(c)(1) of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the unopposed motions to intervene of VMEA, ODEC, NCEMC, and the Cooperatives serve to make them parties to this proceeding.

We note that the Navy has cited only one reason for its failure to file a timely intervention: it had insufficient notice. Under Rule 2009 of the Commission's Rules of Practice and Procedure (18 CFR 385.2009), notice is given by publication in the Federal Register. Thus, actual notice received on a date later than publication is not a compelling justification for delay in intervening. However, this proceeding is not at an advanced stage, and the intervention was only four days out of time. Based on the relationship of the Navy's retail rates to VEPCO's wholesale rates, we find that the Navy does have an interest in this proceeding and that its intervention is in the public interest. Therefore, we shall grant the request to intervene out of time.

Based on the relationship of Bear Island's power costs to VEPCO's rates, we also find good cause to permit Bear Island to intervene, notwithstanding VEPCO's objection. However, the service relationship between ODEC, Rappahannock, and Bear Island is not jurisdictional and we believe that it

[3] 49 FR 15,128 (1984).

[4] The partial sale of North Anna to ODEC is the point at which ODEC, rather than VEPCO, became Rappahannock's actual power supplier.

[5] Blackstone, Culpeper, Elkton, Franklin, Manassas, and Wakefield, Virginia, and the Harrisonburg (Virginia) Electric Commission.

[6] VMEA acknowledges the Commission's consistent policy that, absent extraordinary circumstances, unproven allegations of price squeeze should not be considered in determining an appropriate suspension period. VMEA alleges no such extraordinary circumstances here.

[7] Bear Island is a customer of Rappahannock which is a customer of ODEC, which in turn receives power from VEPCO. We note that, on May 14, 1984, Bear Island submitted a "reply" to VEPCO's answer in opposition to Bear Island's intervention. Because answers to answers do not lie under our regulations (18 CFR 385.213), and no good cause has been shown to depart from this rule, we shall reject Bear Island's responsive pleading.

would be inappropriate to adopt Bear Island's argument for a maximum suspension of the cancellation notice simply as a means to mitigate ODEC's failure or inability to effect a rate proposal it may have promised Rappahannock (and thus Bear Island). VEPCO's present contract with ODEC provides that service at the RC-Interruptible rate to ODEC's Rappahannock/Bear Island delivery point will cease with the effectiveness of the rates filed herein. The sale of facilities to ODEC was consummated on December 21, 1983, 90 days prior to VEPCO's instant filing—150 days prior to the proposed effective date for elimination of service under the RC-Interruptible rate. We believe that the contractual provision should be implemented in accordance with its terms. Therefore, VEPCO's proposed cancellation of the RC-Interruptible rate schedule, as well as the RS–A rate schedule applicable to NCEMC, will be accepted for filing, to become effective coincident with the first VEPCO rate increases applicable to a given customer.

As noted, VEMA has requested summary disposition of VEPCO's proposed treatment of amounts collected prior to April 7, 1983, for spent nuclear fuel disposal costs. VEPCO's collections prior to that date exceeded the lump-sum payment which VEPCO will be required to make to DOE on or before June 30, 1985. VEPCO proposes to credit the excess collections to the customers' bills over a one-year period.[8] Intervenors request that the Commission order immediate refunds. We cannot find that VEPCO's proposal is *per se* unreasonable. The overcollections do not reflect amounts wrongfully collected, but rather errors in estimates for which the exact expenditures have now become certain. Thus, we shall deny the request for summary disposition of this issue.

Having reviewed the information provided by VEPCO, we find that good cause exists to grant the request for waiver of any outstanding filing requirements of § 35.13(h)(24) of the Commission's regulations. However, our preliminary review of the filing indicates that VEPCO's proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept VEPCO's submittal for filing and suspend the proposed rates as ordered below.

In *West Texas Utilities Company*, Docket No. ER82–23–000, 18 FERC ¶ 61,189, at 61,374–75 (1982), we explained the Commission's suspension policy, noting that rate filings would ordinarily be suspended for five months where preliminary review indicates that the proposed rates may be unjust or unreasonable and may generate substantially excessive revenues, as defined in *West Texas*. In this case, our review suggests that the Phase Two rates to all customer classes, with the exception of ODEC, may produce substantially excessive revenues. With respect to ODEC, we shall therefore suspend the Phase Two rates for one day and, for the remaining customers, we shall suspend the Phase Two rates for five months.[9] As suggested by VEPCO, the Phase One rates for ODEC will be deemed withdrawn. Since our review also indicates that the Phase One rates may not be substantially excessive as applied to the remaining customers, we shall suspend those rates for one day, to become effective, subject to refund, as applicable.

In light of VMEA's price squeeze allegations, we shall institute price-squeeze proceedings and phase them in accordance with our established policy and practice. *Arkansas Power & Light Co.*, Docket No. ER79–339–000, 8 FERC ¶ 61,131, at 61,510–11 (1979).

The Commission orders:

(A) The interventions of Bear Island and the Navy are hereby granted.

(B) Bear Island's May 14, 1984 "reply" to VEPCO's May 4 answer is hereby rejected.

(C) VMEA's motion for summary disposition, as discussed in the body of this order, is hereby denied.

(D) The proposed cancellations of the RC-Interruptible and RS–A rate schedules are hereby accepted for filing, as discussed in the body of this order.

(E) The requested waiver of § 35.13(h)(24) of the Commission's regulations is hereby granted.

(F) VEPCO's proposed rates are hereby accepted for filing and suspended, to become effective, subject to refund, as applicable, as follows: the Phase Two rates to all customers other than ODEC are suspended for five months until October 31, 1984; the Phase One rates to all customers other than ODEC are suspended for one day until May 31, 1984; the Phase Two rates for ODEC are suspended for one day until June 1, 1984, and the Phase One rates for ODEC are deemed withdrawn.

(G) Pursuant to the authority contained in, and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held concerning the justness and reasonableness of VEPCO's rates.

(H) The Commission staff shall serve top sheets in this proceeding within ten (10) days of the date of this order.

(I) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding, to be held within approximately fifteen (15) days after service of top sheets, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure (18 CFR Part 385).

(J) The Commission hereby orders initiation of price squeeze procedures and further orders that this proceeding be phased so that the price squeeze procedures begin after issuance of a Commission opinion establishing the rate which, but for consideration of price squeeze, would be just and reasonable. The price squeeze portion of this case shall be governed by the procedures set forth in § 2.17 of the Commission's regulations as they may be modified prior to the initiation of the price squeeze phase of this proceeding.

(K) The Secretary shall promptly publish this order in the Federal Register.

By the Commission.

Kenneth F. Plumb,

Secretary.

Virginia Electric and Power Company, Docket No. ER84–355–000 Rate Schedule Designations

Designation and Description

(1) Sixteenth Revised Sheet Nos. 4, through 9, Seventeenth Revised Sheet No. 10 and Original Sheet Nos. 10–A and 10–B to FPC Electric Tariff, First Revised Volume No. 1 (Supersedes Fifteenth Revised Sheet Nos. 4

[8] VEPCO has developed a credit in mills/kWh on the overcharges due to each customer class, divided by test year sales. Overcharges have been allocated based on appropriate prior year sales for the relevant periods. The credit will continue until all balances have been refunded—approximately one year.

[9] Where our analysis indicates significant differences in excess revenues we consider the classes independently for suspension purposes. *See, West Texas Utilities*, 28 FERC ¶ 61,041, 61,138 (1984).

through 9 and Sixteenth Revised Sheet Sheet No. 10)—Phase One Rates
(2) Seventeenth Revised Sheet Nos. 4 through 9, Eighteenth Revised Sheet No. 10 and First Revised Sheet Nos. 10–A and 10–B to FPC Electric Tariff First Revised Volume No. 1 (Supersedes (1) above)—Phase Two Rates

Tariff Customers

Town of Blackstone
Town of Culpepper
Town of Elkton
Town of Enfield
Town of Franklin
City of Harrisonburg
Town of Iron Gate
City of Manassas
Town of Wakefield
Town of Windsor

Designation and Description

(3) Supplement No. 13 to Schedule FERC No. 106 (Supersedes Supplement No. 5)—Appendix E—Charges for Purchases by Old Dominion
(4) Supplement No. 14 to Schedule FERC No. 106 (Supersedes Supplement No. 11)—Appendix E—charges for Purchases by Old Dominion
(5) Supplement No. 15 to Schedule FERC No. 106 (Supersedes Supplement No. 7)—Appendix G—Charges for Reserve Capacity
(6) Supplement No. 16 to Schedule FERC No. 106 (Supersedes Supplement No. 13)—Appendix G—Charges for Reserve Capacity
(7) Supplement No. 5 to Rate Schedule FERC No. 105 (Supersedes Supplement No. 4)—Appendix F—Schedule NC–RC Resale Service Phase One
(8) Supplement No. 6 to Rate Schedule FERC No. 105 (Supersedes (7) above)—Appendix F—Schedule NC–RC Resale Service Phase Two
(9) Supplement No. 72 to Rate Schedule FPC No. 94 (Supersedes Supplement No. 70)—Supplement A—Schedule RC Resale Service
(10) Supplement No. 73 to Rate Schedule FPC No. 94 (Supersedes (9) above)—Supplement A—Schedule RC Resale Service
(11) Supplement No. 55 to Rate Schedule FPC No. 78 (Supersedes Supplement No. 53)—Supplement A—Schedule RC Resale Service
(12) Supplement No. 56 to Rate Schedule FPC No. 78 (Supersedes (11) above)—Supplement A—Schedule RC Resale Service

[FR Doc. 84-14731 Filed 5-31-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ID-2030-002]

Wesley W. Von Schack; Application

May 30, 1984.

Take notice that on May 16, 1984, Wesley W. Von Schack filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

Senior Vice President—Finance and Administration Services—Central Vermont Public Service Corporation
Vice President—Finance—Connecticut Valley Electric Company, Inc.
Director and Vice President—Central Vermont Public Service Corporation—E. Barnet Hydroelectric, Inc.
Director and Vice President—Central Vermont Public Service Corporation—Bradford Hydroelectric, Inc.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rule 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 14, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-14715 Filed 5-31-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. EF 84-5014-000]

Western Area Power Administration; Filing

May 30, 1984.

Take notice that on May 18, 1984, the Acting Assistant Secretary for Conservation and Renewable Energy of the Department of Energy, by Rate Order No. WAPA–23, did confirm and approve, on an interim basis, transmission rates to be effective December 14, 1983.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 13, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-14716 Filed 5-31-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ID-2104-000]

S. John Zuckernick; Application

May 30, 1984.

Take notice that on May 21, 1984, S. John Zuckernick filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

President and Chief Operating Officer and Director—Vermont Electric Power Company, Inc.
President and Chief Operating Officer and Director—Vermont Electric Transmission Company, Inc.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 14, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-14727 Filed 5-31-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP84-433-000]

Natural Gas Pipeline Co. of America et al.; Application

May 25, 1985.

Take notice that on May 21, 1984, Natural Gas Pipe Line Company of America (Natural), P.O. Box 1208, Lombard, Illinois 60148, Houston Pipe Line Company (HPL), 1200 Travis Street, Houston, Texas 77002, and Transok, Inc.

(Transok), P.O. Box 3008, Tulsa, Oklahoma 74101, filed in Docket No. CP84-433-000 a joint application pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA) and §§ 284.107 and 284.127 of the Commission's regulations for authorization to transport natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The following authorizations are sought in this application:

(1) Natural seeks a confirmation that under section 311(a)(1) of the NGPA it can acquire and operate certain pipeline facilities for the purpose of transporting natural gas in interstate commerce for a period of up to 10 years on behalf of a qualifying section 311 shipper and that a rate of 4.28 cents per million Btu be approved for such transportation service. In addition, Natural proposes that since the facilities would be used exclusively during the term of the transportation for section 311 transportation, it be permitted to retain all revenues received for such transportation service. Finally, Natural also requests waiver of the GRI surcharge;

(2) HPL seeks a determination that under section 311(a)(2) of the NGPA it can transport natural gas for a period of up to 10 years on behalf of Industrial Natural Gas Company (Industrial), a Texas local distribution company served by an interstate pipeline company, and that a rate of 20.83 cents per Mcf be charged for such transportation service pursuant to § 284.123(b)(2)(ii) of the Commission's regulations (18 CFR 284.123(b)(2)(ii)); and

(3) Transok seeks a determination that under section 311(a)(2) of the NGPA it can transport natural gas for a period of up to 10 years on behalf of Industrial and that a rate of 22.85 cents per million Btu be charged for such transportation service.

It is stated that Houston Natural Gas Corporation (HNG), an affiliate of HPL, Transok, and MidCon Ventures Inc. (MidCon), an affiliate of Natural, entered into an agreement with respect to the purchase by HNG from Texoma Pipeline Company (Texoma) of approximately 456 miles of 30-inch crude oil pipeline, including approximately 46 miles of 16-inch lateral pipeline (Pipeline), which would be converted to natural gas usage. Ownership of the Pipeline, it is said, would subsequently be divided among Transok, MidCon and HPL. It is claimed MidCon would own the approximately 39-mile-long portion of the Pipeline between Bryan County, Oklahoma, and Lamar County, Texas (Interstate Segment). MidCon would convey ownership of the Interstate Segment to Natural for the sole purpose of providing section 311(a)(1) transportation service, it is asserted.

It is also stated that the portion of the pipeline north of the Interstate Segment (Northern Segment), which is said to be approximately 146 miles long, would be owned by Transok and operated as part of its Oklahoma intrastate system. Applicants indicate Transok plans to use such segment in its intrastate operations to acquire, transport, and sell natural gas within Oklahoma and has had preliminary discussions with prospective sellers and buyers to that end. In addition, Transok proposes to use the Northern Segment to perform the section 311 service proposed herein.

Applicants state further that the portion of the Pipeline south of the Interstate Segment (Southern Segment), which is approximately 272 miles in length, would be owned by HPL and operated as part of its Texas intrastate system. Applicants state HPL plans to use the Southern Segment in its intrastate operations to acquire, transport, and sell natural gas within Texas and has had preliminary discussions with prospective sellers and buyers to that end. In addition, HPL proposes to use the Southern Segment to perform the section 311 service proposed herein.

It is claimed that Natural would enter into a section 311(a)(1) gas transportation agreement with Industrial, a Texas local distribution company served by an interstate pipeline, to transport up to 150,000 Mcf of gas per day to Texas which Industrial purchases directly from Oklahoma producers. Applicants assert the agreement would contain the provisions required by § 284.107(a)(3) of the Commission's regulations.

Industrial would also enter into individual section 311(a)(2) transportation agreements with Transok and HPL in order to transport the gas from Oklahoma to Texas. These agreements would provide that the transportation is subject to Subpart C of Part 284 of the Commission's regulations, it is claimed.

Natural proposes to retain all the revenues from the proposed transportation service during the period involved and requests waiver of the revenue crediting requirements of § 284.103(d) of the regulations. It is asserted that the Interstate Segment would be a discrete facility separate from Natural's existing transmission system and would not be used to service its jurisdictional customers. In addition, it is claimed the facilities would not be included in Natural's rate base, and no costs associated with the operation of the Interstate Segment would be included in Natural's jurisdictional cost of service. It is stated that the retention of revenues is vital in order for Natural to recoup its investment in the Interstate Segment and would therefore be consistent with § 284.103(d)(3) which permits a pipeline to retain the revenues when it is able to demonstrate that the amount represents the out-of-pocket expenses with respect to the transaction. It is averted that in these circumstances there would be no reason to require crediting revenues to Account No. 191 because Natural's system customers would not be impacted by the proposed transaction.

Natural also requests waiver of the GRI surcharge as inappropriate in these circumstances. Natural indicates that the GRI surcharge for this particular Section 311 transportation service should be waived for several reasons. First, it states that the GRI surcharge would have a substantially and disproportionately adverse impact upon the viability of the project since the GRI surcharge of 1.21 cents per million Btu would represent an additional charge of over 28 percent of the entire transportation fee. Second, it claims the Interstate Segment would be separate and discrete from Natural's system. Third, it argues the proposal presents a unique short-term factual scenario which could be limited to the peculiar circumstances of the conversion of an existing underutilized crude oil pipeline and its potential for a much more efficient use as a natural gas pipeline.

It is stated HPL would charge a rate of 20.38 cents per Mcf for its transportation service for Industrial in accordance with § 284.123(b)(2)(ii) of the regulations. It is contended that HPL would use its entire Texas system, including the Southern Segment, in providing this transportation service, and that the rate of 20.38 cents per Mcf has been computed in accordance with § 284.123(b)(2)(ii). Applicants state that based on the particular features of the service provided, including mileage, the intrastate service offered by HPL to Industrial would be in line with and comparable to the transportation services involved in making deliveries under HPL's City-Gate Domestic Sales Contract.

It is stated that for its transportation for Industrial, Transok would initially charge the rate of 22.85 cents per million Btu which has been approved in Docket No. ST80-161. It is contended that Transok would use its entire Oklahoma

system, including the Northern Segment, in providing this transportation service.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 15, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-14622 Filed 5-31-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No.QF84-305-000]

R. J. Reynolds Tobacco Co.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

May 25, 1984

On May 7, 1984, R. J. Reynolds Tobacco Company, 401 North Main Street, Winston-Salem, North Carolina 27101, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The cogeneration facility will be a topping-cycle facility; will consist of four pulverized coal-fired boilers (each: 195,000 lb./hr.; 1500 PSIG), two double automatic extraction condensing turbine generators (41 MW each) and associated peripherals including feedwater heaters, air preheaters, water treatment systems, colling towers, computerized controls, and pollution abatement equipment. Steam extracted from the turbines will be used for industrial processes. The primary energy source to be used by the facility will be coal; propane will be used for ignition and stabilization fuel. The power production capacity for each of the two turbine generators to be installed will be 41 MW each, and the total power production capacity of the facility will be 82 MW. The facility shall be located upon a tract of land totaling approximately 615 acres owned by R. J. Reynolds Tobacco Company in or near Tobacoville, North Carolina.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene of protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in detemining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-14623 Filed 5-31-84; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Issuance of Proposed Decision and Order; Period of April 23 Through May 4, 1984

During the period of April 23 through May 4, 1984, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

George B. Breznay,

Director, Office of Hearings and Appeals.

May 22, 1984.

Christmann and Welborn, Enid, Oklahoma, HEE-0065; crude oil

Christmann and Welborn filed an Application for Exception from the provisions of 10 CFR Part 212, Subpart D. The exception request, if granted, would permit Christmann and Welborn to receive retroactive exception relief for overcharges resulting from the sale of crude oil from the CWC Prentice Unit prior to August 27, 1976. On May 2, 1984, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

[FR Doc. 84-14779 Filed 5-31-84; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[A-4-FRL 2598-4]

Standards of Performance for New Stationary Sources; Delegation of Additional Standards to North Carolina

AGENCY: Environmental Protection Agency.

ACTION: Informational notice.

SUMMARY: On April 17, 1984, the North Carolina Division of Environmental Management requested that EPA delegate to the State the authority to implement and enforce EPA's new source performance standards (NSPS) for seven additional categories of air pollution sources (listed below under "Supplementary Information"). Since EPA's review of pertinent North Carolina laws, rules, and regulations showed them to be adequate to implement and enforce these Federal standards, the Agency has delegated authority for them to North Carolina. Affected sources are now under the jurisdiction of the State rather than EPA.

EFFECTIVE DATE: May 2, 1984.

ADDRESSES: Copies of the State's request and EPA's letter of delegation are available for public inspection at EPA's Region IV office, 345 Courtland Street, NE., Atlanta, Georgia 30365. All reports required pursuant to the newly

delegated standards (listed below) should be submitted to the Air Quality Section, Division of Environmental Management, North Carolina Department of Natural Resources & Community Development, Archdale Building, 512 N. Salisbury Street, Raleigh, North Carolina 27611, rather than to EPA Region IV.

FOR FURTHER INFORMATION CONTACT: Walter Bishop of the EPA Region IV Air Management Branch at the above address, telephone 404/881-3043 (FTS 257-3043).

SUPPLEMENTARY INFORMATION: Section 301, in conjunction with sections 101, 110, and 111 of the Clean Air Act, authorizes EPA to delegate authority to implement and enforce the Standards of Performance for New Stationary Sources (NSPS) to any State which has adequate implementation and enforcement procedures.

On November 24, 1976, EPA delegated to North Carolina authority to implement and enforce NSPS then extant. As additional categories have been promulgated, the State has requested authority for them; EPA has responded by making supplemental delegations of authority on October 22, 1980, December 4, 1981, and October 19, 1982. On April 17, 1984, the North Carolina Division of Environmental Management requested a delegation of authority for the following recently promulgated NSPS contained in 40 CFR Part 60:

Subpart EE—Surface Coating of Metal Furniture
Subpart QQ—Graphic Arts Industry: Publication Rotogravure Printing
Subpart SS—Industrial Surface Coating: Large Appliances
Subpart TT—Metal Coil Surface Coating
Subpart UU—Asphalt Processing and Asphalt Roofing Manufacture
Subpart WW—Beverage Can Surface Coating Industry
Subpart XX—Bulk Gasoline Terminals

After a thorough review of the request, the Regional Administrator determined that such delegation was appropriate with the conditions set forth in the original delegation letter of November 24, 1976, and granted the State's request in a letter dated May 2, 1984. North Carolina sources subject to the NSPS listed above are now under the jurisdiction of the State of North Carolina.

(Secs. 101, 110, 111, and 301 of the Clean Air Act (42 U.S.C. 7401, 7410, 7411, and 7601))

Dated: May 23, 1984.

Howard Zeller,

Acting Regional Administrator.

[FR Doc. 84-14075 Filed 5-31-84; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59000A; TSH-FRL 2599-6]

Toxic Substances; Benzenamine, 2-Ethyl-6-Methyl-N-Methylene; Premanufacture Exemption Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substances Control Act (TSCA) pursuant to section 5(h)(5) of TSCA with respect to the manufacturing or processing of any chemical substance which exists temporarily as a result of a chemical reaction in the manufacturing or processing of a mixture or another chemical substance, and to which there is no, and will not be, human or environmental exposure. Under section 5(h)(6) of TSCA, the Administrator must give interested persons an opportunity to comment on any such application and must either approve or deny it within 45 days of its receipt. This notice, issued under section 5(h)(6) of TSCA, announces receipt of one application for an exemption, provides a summary, and requests comments on the appropriateness of granting the exemption.

DATE: Written comments by June 18, 1984.

ADDRESS: Written comments, identified by the document control number "[OPTS-59000A]" and the specific section 5(h)(5) exemption number PEA 84-1 should be sent to: Document Control Officer (TS-793), Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M Street, SW., Washington, D.C. 20460, (202-382-3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-216, 401 M Street, SW., Washington, D.C. 20460, (202-382-3729).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the section 5(h)(5) exemption submission provided by the manfacturer and received by EPA. The complete nonconfidential document is available in the Public Reading Room E-107 at the above address.

PEA 84-1

Close of Review Period. July 6, 1984.

Manufacturer. Monsanto Company.

Chemical. (S) Benzenamine, 2-ethyl-6-methyl-N-methylene.

Use. (S) Site-limited and industrial process intermediate.

Toxicity Data. Acute oral: 1,127 mg/kg; Acute dermal: 1,414 mg/kg; Irritation: Skin—Corrosive, Eye—Corrosive; Ingestion: Slightly toxic; LC_{50} 96 hr (Trout): 42 mg/l; LC_{50} 96 hr (Bluegill): 45 mg/l; LC_{50} 48 hr (Daphnia magna): 17 mg/l.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by POTW.

Dated: May 29, 1984.

Linda A. Travers,

Acting Director, Information Mangement Division.

[FR Doc. 84-14003 Filed 5-31-84; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51521; TSH-FRL 2599-7]

Toxic Substances; Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5 (a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice announces receipt of thirteen PMNs and provides a summary of each.

DATES: Close of Review Period:

PMN 84-621—July 17, 1984.

PMN 84-732—August 18, 1984.

PMN 84-733, 84-734, 84-735, 84-736, 84-737 and 84-738—August 19, 1984.

PMN 84-739, 84-740 and 84-741—August 20, 1984.

PMN 84-742 and 84-743—August 21, 1984.

Written comments by:

PMN 84-621—June 17, 1984.

PMN 84-732—July 19, 1984.

PMN 84-733, 84-734, 84-735, 84-736, 84-737 and 84-738—July 20, 1984.

PMN 84-739, 84-740 and 84-741—July 21, 1984.

PMN 84-742 and 84-743—July 22, 1984.

ADDRESS: Written comments, identified by the document control number "[OPTS-51521]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M St., SW., Washington, DC 20460, (202-382-3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-216, 401 M St., SW., Washington, DC 20460, (202-382-3729).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address.

PMN 84-621

Importer. Marubeni America Corporation.

Chemical. (S) Reaction product of Phthalocyanine, chlorosulfonic acid, phosphorus trichloride and p-aminophenol-beta-sulphate ethyl sulfonate, potassium salt.

Use/Import. (S) Commercial cellulose. Import range: 10,000-15,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. No exposure.

Environmental Release/Disposal. 6 kg/day released to water. Disposal by drainage.

PMN 84-732

Importer. Confidential.

Chemical. (G) Aromatic polyglycol ether polymer.

Use/Import. (S) Dispersing agent in pesticide formulations. Import range: confidential.

Toxicity Data. Acute oral: >5,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Ames Test: Negative. Escherichia coli reverse mutation assay: Negative.

Exposure. Processing: dermal, a total of 2 persons/shift.

Environmental Release/Disposal. No data submitted.

PMN 84—733

Manufacturer. Confidential.

Chemical. (G) Functional polymer of styrene and alkyl methacrylate.

Use/Production. (G) Polymer for use in the formulation of a coating with a highly dispersive use. Prod. range: 212,000-248,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 25 workers, up to 8 hrs/da, up to 77 da/yr.

Environmental Release/Disposal. 5 to 60 kg/batch released to land. Disposal by incineration and landfill.

PMN 84—734

Manufacturer. Confidential.

Chemical (G) Acrylate terpolymer.

Use/Production. (G) Key component of a coating applied by industrial shops in an open use. Prod. range: 1,000-4,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 16 workers, up to 6 hrs/da, up to 10 da/yr.

Environmental Release/Disposal. 5 to 10 kg/batch released to land. Disposal by incineration and landfill.

PMN 84-735

Manufacturer. Confidential.

Chemical. (G) Polyester urethane.

Use/Production. (G) Adhesive. Open, non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. No release.

PMN 84-736

Manufacturer. S. C. Johnson & Son Inc.

Chemical. (G) Terpolymer, of acrylate and methacrylates.

Use/Production. (S) Industrial coating for metal, wood, plastics, paper and paperboard. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential Disposal by SCJ—private waste water treatment plant.

PMN 84-737

Manufacturer. SpecialtyChem Products Corporation.

Chemical. (G) Glycol ether.

Use/Production. (S) Industrial reaction and electrolyte solvent. Prod. range: Confidential.

Toxicity Data. Acute oral: Male—3.20 g/kg, Female—3.03 g/kg; Irritation: Skin—Non-irritant, Eye-Non-irritant; Ames Test: Not mutagenic.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by publicly owned treatment works (POTW).

PMN 84-738

Manufacturer. SpecialtyChem Products Corporation.

Chemical. (G) Glycol ether.

Use/Production. (S) Industrial reaction and electrolyte solvent. Prod. range: Confidential.

Toxicity Data. Acute oral: Male—2.29 g/kg, Female—2.86 g/kg; Irritation: Skin—Non-irritant, Eye—Irritant; Ames Test: not mutagenic.

Exposure. Confidential

Environmental Release/Disposal. Confidential. Disposal by POTW.

PMN 84-739

Manufacturer. Confidential.

Chemical (G) Phenolated rosin—modified alkyd.

Use/Production. (G) Varnish for printing inks. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. No release. Disposal by PTOW.

PMN 84-740

Manufacturer. Confidential.

Chemical. (G) Substituted dianhydride and cyclic amine polymer.

Use/Production. (G) Specialty coating. Prod. range: Confidential

Toxicity Data. Acute oral: > 5 g/kg; Acute dermal: > 2.0 g/kg; Irritation: Skin—Mild, Eye—Moderate to severe.

Exposure. Confidential.

Enviromental Release/Disposal. Confidential.

PMN 84-741

Manufacturer. Confidential.

Chemical. (G) Substituted dianhydride, cyclic amine and substituted amine terminated polymer.

Use/Production. (S) Specialty coating. Prod. range: Confidential.

Toxicity Data. Acute oral: > 5 g/kg; Acute dermal: > 2.0 g/kg, Irritation: Skin—Mild, Eye—Moderate to severe.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 84-742

Manufacturer. American Cyanamid Company.

Chemical. (G) Cross-linked modified polyvinyl amide.

Use/Production. (G) Resin for strengthening paper. Prod. range: Confidential.

Toxicity Data. Acute oral: > 5 gm/kg; Acute dermal: > 2 gm/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Mouse Micronucleus Test: Negative.

Exposure. Manufacture: a total of 5 workers, up to 8 hrs/da, up to 75 da/yr.

Environmental Release/Disposal. No release to water.

PMN 84-743

Importer. Confidential.

Chemical. (G) Aromatic polyglycolether polymer.

Use/Import. (S) Dispersing agent in pesticide formulations. Import range: Confidential.

Toxicity Data. Acute oral: > 5,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Microsome mutagenicity test: Negative, Escherichia coli mutation assay: Negative.

Exposure. Processing: dermal, a total of 2 workers shift.

Environmental Release/Disposal. No data submitted.

Dated: May 29, 1984.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 84-14670 Filed 5-31-84; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2597-7]

Availability of Environmental Impact Statements Filed May 21, Through May 25, 1984 Pursuant to 40 CFR 1506.9

Responsible agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

EIS No. 840-213 DSuppl, FHW/COE, NY, I-478 Construction/Westside Highway Replacement Battery to 42nd Street, New York City, Due: July 16, 1984, Contact: Dennis Suszkowski (212) 264-3996. Joint Lead Agency Project.

EIS No. 840222, Final, FHW, MN, County Aid Highway 62 (CSAH) Extension, CSAH-4 to CSAH-61, Hennepin County, Due: July 2, 1984, Contact: James Bednar (612) 725-5956.

EIS No. 840223, Final, FHW, WI, South Madison Beltline Improvements (US 18 and US 12) Fish Hatchery Road to I-90, Dane County, Due: July 2, 1984, Contact: James Wenning (608) 264-5975.

EIS No. 840224, FSuppl, FHW, PA, Mid-County Expressway/I-476/LR-1010 Construction, I-76 to I-95, Delaware and Montgomery Counties, Due: July 2, 1984, Contact: Louis Papet (717) 782-2222.

EIS No. 840225, Final, FHW, GA, Presidential Parkway Construction, I-75 to Boulevard, Fulton and DeKalb Counties, Due: July 2, 1984, Contact: D. J. Altobelli (404) 881-4751.

EIS No. 840226, Final, BLM, CO, Powderhorn Instant Study Area, Wilderness Designation, Gunnison and Hinsdale Counties, Due: July 2, 1984, Contact: Terry Reed (303) 249-6624.

EIS No. 840227, Final, BLM, WY, Scab Creek Primitive Area, Wilderness Designation, Sublette County, Due: July 2, 1984, Contact: Harold Johnson (307) 382-5350.

EIS No. 840228, Final, BLM, ID, Great Rift Wilderness Area, Designation, Blaine, Butte, Minidoka and Power Counties, Due: July 2, 1984, Contact: O'Dell Frandsen (208) 529-1020.

EIS No. 840229, Final, BLM, Mt, Humbug Spires Instant Study Area, Wilderness Designation, Silver Bow County, Due: July 2, 1984, Contact: Jack McIntoch (406) 494-5059.

Amended Notices:

EIS No. 840200, Draft, COE, VA, Beaverdam Swamp Water Supply Dam and Reservoir Construction, Permit, Gloucester County, Due: July 2, 1984, Contact: Bob Hume Correction (804 441-3657. Published FR 5-18-84. Incorrect Telephone Number.

Dated: May 29, 1984.

Allan Hirsch,

Director Office of Federal Activities.

[FR Doc. 14770 Filed 5-31-84; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL 2598-2]

Intent To Prepare an Environmental Impact Statement; Dredged Material Disposal Sites; Puerto Rico

AGENCY: U.S. Environmental Protection Agency—Region II.

ACTION: Preparation of an Environmental Impact Statement on the Designation of Dredged Material Disposal Sites for Arecibo, Mayaguez, Ponce, and Yabucoa, Puerto Rico.

Purpose

In accordance with the Environmental Protection Agency's (EPA) procedures for voluntary preparation of environmental impact statements (EIS) on significant regulatory actions (39 FR 37119, October 21, 1974), the EPA will prepare an EIS on the designation of dredged material disposal sites for Arecibo, Mayaguez, Ponce, and Yabucoa, Puerto Rico. This notice of intent is issued pursuant to 40 CFR Part 1501.7, section 102 of the Marine Protection, Research and Sanctuaries Act of 1972 (MPRSA), and 40 CFR Part 228 (Criteria for the Management of Disposal Sites for Ocean Dumping).

FOR FURTHER INFORMATION CONTACT: Mr. Robert Hargrove, Environmental Impacts Branch, U.S. Environmental Protection Agecny—Region II, 26 Federal Plaza, Room 400, New York, New York 10278, Telephone (212/FTS) 264-8670.

SUMMARY:

A. Background

The harbors of Arecibo, Mayaguez, Ponce, and Yabucoa, Puerto Rico must receive periodic maintenance dredging to ensure safe navigation. In the past, material from these dredging operations was disposed of at interim ocean disposal sites. However, the interim designation and use of ocean disposal sites was challenged by the National Wildlife Federation (NWF) in a 1980 law suit. In resolving the suit, EPA entered into a consent decree with the NWF, and is taking steps to designate final dredged material disposal sites for the four harbors.

B. Description of EPA Action

The EPA action is to evaluate the beneficial and adverse environmental impacts associated with the designation of sites for ocean disposal of dredged material from the harbors of Arecibo, Mayaguez, Ponce, and Yabucoa, Puerto Rico. It should be emphasized that if ocean disposal sites are designated for dredged material, such a site designation would not constitute or imply the Corps' or EPA's permit approval of the actual disposal of dredged material at the respective sites. It would remain the responsibility of each potential user to demonstrate compliance with EPA's marine environmental impact criteria in order to receive a Corps permit under the MPRSA, independent of the EIS recommendations.

C. Significant Issues To Be Discussed in the EIS Include

1. A determination of whether or not there is a need to designate ocean disposal sites for dredge material for Arecibo, Mayaguez, Ponce, and Yabucoa, Puerto Rico.

2. The alternatives to be evaluated in this EIS are as follows:

a. No-action (The no-action alternative is defined as not designating a site at each harbor for continued use. The interim site would expire without the designation of those sites or alternative sites for continued use);

b. Continued use of the interim disposal sites; and

c. Use of alternative ocean disposal sites (including any sites beyond the continental shelf).

3. All alternative disposal sites (including the interim sites) will be evaluated with the respect to the following factors:

a. Geographical position, depth of water, bottom topography and distance from the coast;

b. Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases;

c. Location in relation to beaches and other amenity areas;

d. Types and quantities of wastes proposed to be disposed of, and methods of release, including methods of packing the waste, if any;

e. Feasibility of surveillance and monitoring;

f. Dispersal, horizontal transport, and vertical mixing characteristics of the area, including prevailing current direction and velocity, if any;

g. Existence and effects of current and previous discharges and dumping in the area (including cumulative effects);

h. Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance and other legitimate uses of the ocean;

i. The existing water quality and ecology of the site as determined by available data, trend assessment, or baseline surveys;

j. Potential for development or recruitment of nuisance species at the disposal site; and

k. Existence at or in close proximity to the site of any significant natural or cultural features of historical importance.

4. The specific location(s) for disposal within the designated sites (e.g., deep versus shallow, northeast versus southeast quadrants).

D. Public Participation in the EIS Process

Full public participation by interested federal, state, and local agencies as well as other interested organizations and the general public is invited. All interested parties are encouraged to submit their names and addresses to the person indicated above for inclusion on the distribution list for the draft EIS and related public notices.

As part of the EIS scoping process, we request that all interested parties submit comments on the proposed scope of the EIS within 45 days of the date of this notice. All comments should be addressed to Chief, Environmental Impacts Branch, U.S. Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278.

Dated: May 29, 1984.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 84-14772 Filed 5-31-84; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2598-1]

Intent To Prepare an Environmental Impact Statement; Wood Incineration Site, New York Bight Area

AGENCY: U.S. Environmental Protection Agency—Region II.

ACTION: Preparation of an environmental impact statement for designation of a wood incineration site for the New York Bight Area.

Purpose

In accordance with the Environmental Protection Agency's (EPA) procedures for voluntary preparation of environmental impact statements (EISs) on significant regulatory actions (39 FR 37119, October 21, 1974), the EPA will prepare an EIS on the proposed designation of an ocean site to incinerate wood collected from the New York Harbor area. This Notice of Intent is issued pursuant to 40 CFR 1501.7, Section 102 of the Marine Protection, Research, and Sanctuaries Act of 1972 (MPRSA), and 40 CFR Part 228 "Criteria for the Management of Disposal Sites for Ocean Dumping." The purpose of the EIS is to choose an environmentally acceptable ocean site for the incineration of wood. Alternative ocean incineration sites will be examined as well as land-based alternatives to determine whether a site should be designated for the ocean incineration of wooden materials collected from the New York/New Jersey harbor and environs.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Militscher, Environmental Impacts Branch, U.S. Environmental Protection Agency—Region II, 26 Federal Plaza, Room 400, New York, New York 10278, Telephone—FTS 264-0522, Commercial (212) 264-0522.

Summary

1. Background

EPA's decision to prepare a site designation EIS is based upon the current use of an interim incineration site located approximately 14 miles (12 nautical miles-nmi) east of Point Pleasant, New Jersey. The U.S. Army Corps of Engineers (COE), through its cleanup programs, collects driftwood, timbers, pilings from deteriorated waterfront structures, derelict wooden hulks, and similar materials from New York Harbor and the surrounding coastal area. The Port Authority of New York and New Jersey, New York City, and other municipalities also conduct similar wood collection and waterfront cleanup activities. Prior to 1968, this material was burned at a COE incinerator located at Caven Point, New Jersey.

However, air quality considerations led to the discontinuance of that practice. Following the issuance of an EIS prepared by the Corps of Engineers in 1975, ocean incineration of wood at an interim site was determined to be the most viable disposal method. In recent years, the interim site has been used periodically (20 to 30 burning events per year) for this disposal activity.

Designation of an ocean incineration site requires that the need for ocean disposal be demonstrated in preference to land-based alternatives. An evaluation of the potential impacts on air quality and the marine environment will be analyzed for all ocean wood incineration sites considered.

2. Description of EPA Action

The EPA action is to evaluate the beneficial and adverse environmental impacts associated with the designation of an incineration site for wooden material collected by the COE and other permittees from the New York/New Jersey harbor and environs.

It should be emphasized that if an ocean incineration site is designated for woodburning activities, such a designation would not constitute or imply EPA's permit approval for the actual disposal of this material at sea. It would remain the responsibility of each potential permittee to demonstrate compliance with EPA's marine environmental impact criteria in order to receive an EPA permit under the MPRSA, independent of the recommendations of the EIS.

3. Significant issues to be discussed in the EIS include:

a. A determination concerning the need to designate an ocean incineration site for wood material collected by the COE and other groups (e.g., municipalities).

b. An evaluation of land-based disposal alternatives including environmental acceptability, cost-effectiveness, and the potential for recycling and reuse.

c. An assessment of the effects of such woodburning activities at an ocean site on human health and welfare, including socio-economic, aesthetic, and recreation values.

d. An assessment of the effects of ocean incineration activities at each alternative site on marine resources, fish, shellfish, widllife, shorelines, and beaches.

e. A determination of the effects of ocean incineration on air and water quality.

f. A characterization of the physical and chemical composition of the material to be disposed of and of the resulting smoke plume.

g. An assessment of the effects of ocean incineration on marine ecosystems particularly with respect to:

1. The transfer, concentration, and dispersion of the emissions through the environment,

2. Potential changes in marine ecosystem diversity, productivity, and stability, and

3. Species and community population dynamics.

h. A determination of the feasibility of surveillance and monitoring activities.

i. A description of the method of burn-barge operations.

j. The effect of specific weather conditions and climatology on woodburning activities within the designated site.

4. Description of alternatives

The alternatives to be evaluated in this EIS are as follows:

a. No action. This alternative would not allow for formal designation of an ocean incineration site.

b. Land disposal. Potential alternative land-based disposal methods will include an analysis of:

(1) Land Incineration (e.g., refuse incinerator)

(2) Landfills

(3) Reuse and Recycling

c. Ocean Incineration. Selection of a designated site:

(1) Continued use of the Interim Site

(2) Use of an Alternative Site (including potential sites located off the Continental Shelf)

5. Public and private participation in the EIS

Full participation by interested federal, state, and local agencies as well as other interested private organizations and the general public is invited. All interested parties are encouraged to submit their names and addresses to the person indicated above for inclusion on the distribution list for the draft EIS and related public notices.

As part of the EIS scoping process, we request that all interested parties submit comments on the proposed scope of the EIS outline above within 45 days of the date of this notice. All comments should be addressed to the Chief, Environmental Impacts Branch, U.S. Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278.

Dated: May 29, 1984.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 84-14771 Filed 5-31-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

Copies of the submission are available from Richard D. Goodfriend, Agency Clearance Officer, (202) 632-7513. Persons wishing to comment on this information collection should contact Marty Wagner, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503, (202) 395-4814.

Title: Part 22, Public Mobile Radio Services (Sections 22.201, 22.208, 22.307, and 22.406)

Type of Review Requested: Revision

Respondents: Businesses (including small businesses)

Estimated Annual Burden: 1,210 Respondents; 429,800 Hours.

Dated: May 24, 1984.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84-14657 Filed 5-31-84; 8:45 am]

BILLING CODE 6712-01-M

Advisory Committee on Technical Standards for DBS Service, Sub-Committee on Transmission Standards; Meeting

There will be a meeting of the sub-committee on Transmission Standards, as indicated below:

S.C. on Transmission Standards—June 12, 1984; at 9:30 (all day) CBS Network Inc.; third floor, 1800 M Street, NW.

The chairman, Dr. Ramasastry, has indicated that this will be the last sub-committee meeting. At this meeting, the sub-committee final report will be discussed and is expected to be approved before submission the full sub-committee. Members of the other sub-committees are requested to attend.

Additional information, if required, may be obtained from the chairman (212) 975-1727, or B. Pattan, FCC/OST: (202) 653-9098.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84-14658 Filed 5-31-84; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1461]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

May 22, 1984.

The following listings of petitions for reconsideration filed in Commission rulemaking proceedings is published pursuant to 47 CFR 1.429(e). Oppositions to such petitions for reconsideration must be filed within 15 days after publication of this Public Notice in the Federal Register. Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Compensation for expenses incurred in mitigating the effects of Cuban Interference to services rendered by AM radio stations in the United States. (MM Docket No. 84-1)

Filed by: Matthew L. Leibowitz, Special Counsel for Florida Association of Broadcasters and General Counsel for South Florida Radio Broadcasters Association on 4-30-84.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84-14703 Filed 5-31-84; 8:45 am]

BILLING CODE 6717-01-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 approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Regular Submission

Title: Individual and Family Grant (IFG) Program Information

Abstract: The formats presented for approval are checklists, reviews, and other management tools recommended for use by FEMA Regional staff in fulfilling their requirements for monitoring the IFG program. Some of the information is

obtained from the State implimenting the IFG program
Type of Respondents: State or Local Governments
Number of Respondents: 150
Burden Hours: 3,037.5.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 287–9906, 500 C Street SW., Washington, D.C. 20472.

Comments should be directed to Ken Allen, Desk Officer for FEMA, Office of Information and Regulatory Affairs, OMB, Rm. 3235, New Executive Office Building, Washington, D.C. 20503.

Walter A. Girstantas,
Director, Administrative Support.

[FR Doc. 84–14647 Filed 5–31–84; 8:45 am]
BILLING CODE 6718–01–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 approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Regular Submission
Title: Metropolitan Fire Department Training System Survey
Abstract: Collect relevant data from 112 metropolitan fire departments to assist FEMA's National Fire Academy in program planning; and to foster the exchange of fire training information and resources among and between levels of government
Type of Respondents: State or Local Governments
Number of Respondents: 112
Burden Hours: 1,008.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 287–9906, 500 C Street SW., Washington, D.C. 20472.

Comments should be directed to Ken Allen, Desk Officer for FEMA, Office of Information and Regulatory Affairs, OMB, Rm. 3235, New Executive Office Building, Washington, D.C. 20503.

Walter A. Girstantas,
Director, Administrative Support.

[FR Doc. 84–14646 Filed 5–31–84; 8:45 am]
BILLING CODE 6718–01–M

Tennessee; Major Disaster and Related Determinations

[FEMA–708–DR]

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Tennessee (FEMA–708–DR), dated May 25, 1984, and related determinations.

DATED: May 25, 1984.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 287–0501.

NOTICE

Notice is hereby given that, in a letter of May 25, 1984, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended, (42 U.S.C. 5121 *et seq.*, Pub. L. 93–288) as follows:

I have determined that the damage resulting from severe storms and flooding in certain areas of the State of Tennessee beginning on May 6, 1984, is of sufficient severity and magnitude to warrant a major disaster declaration under Pub. L. 93–288. I therefore declare that such a major disaster exists in the State of Tennessee.

In order to provide Federal assistance, you are hereby authorized to allocate, from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance by supplemental, any Federal funds provided under Pub. L. 93–288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

The time period prescribed for the implementation of Section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, and redelegated to me, I hereby appoint Mr. J. Rolando Sarabia of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Tennessee to have been effected adversely by this declared major disaster:

Campbell, Carter, Claiborne, Grainger, Hancock, Jackson, Unicoi and Union Counties for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83–516, Disaster Assistance)

Samuel W. Speck,
Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 84–14645 Filed 5–31–84; 8:45 am]
BILLING CODE 3510–25–M

FEDERAL RESERVE SYSTEM

BankAmerica Corp.; Applications To Engage de Novo in Nonbanking Activities

The company listed in this notice has filed applications under § 225.23(a)(3) of the Board's Regulation Y(49 FR 794) 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 (49 FR 794), to engage *de novo* through national bank subsidiaries in the making of commercial loans, and other activities specified below. The proposed subsidiaries will not engage in demand deposit transactions as defined in Regulation Y. The Board has detemined by order that such activities are closely related to banking. *U.S. Trust Company* (70 Federal Reserve Bulletin 371 (1984)). Although the Board is publishing notice of these applications, under established Board policy the record of the applications will not be regarded as complete and the board will not act on the applications unless and until a preliminary charter for each proposed national bank subsidiary has been submitted to the Board.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the applications 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 on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party

commenting would be aggrieved by approval of the proposal.

Comments regarding the applications must be received at the Federal Reserve Bank or the offices of the Board of Governors not later than June 22, 1984.

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *BankAmerica Corporation,* San Francisco, California; to engage through the following national bank subsidiaries in consumer, mortgage, and commercial lending; trust services and investment advisory services; and deposit-taking, other than demand deposit-taking: Bank of America, N.A., Phoenix, Arizona—serving Arizona; Bank of America, N.A., Dallas, Texas—serving Texas; Bank of America, N.A., Miami, Florida,—serving Florida; Bank of America, N.A., Atlanta, Georgia—serving Georgia; Bank of America, N.A., Houston, Texas—serving Texas; Bank of America, N.A., Chicago, Illinois—serving Illinois; Bank of America, N.A., Boston, Massachusetts—serving Massachusetts; Bank of America, N.A., Las Vegas, Nevada—serving Nevada; Bank of America, N.A., Albuquerque, New Mexico—serving New York and New Jersey; Bank of America, N.A., Portland, Oregon—serving Oregon; Bank of America, N.A., Salt Lake City, Utah—serving Utah; and Bank of America, N.A., Washington, D.C.—serving Washington, D.C.,s Virginia and Maryland.

Board of Governors of the Federal Reserve System, May 29, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-14635 Filed 5-31-84; 8:45 am]

BILLING CODE 6210-01-M

Equitable Bancorporation and the Maybaco Company, et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (49 FR 794) 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 (49 FR 794) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the Untied 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 interest, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 20, 1984.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261.

1. *Equitable Bancorporation and The Maybaco Company,* Baltimore, Maryland; to engage *de novo* through its subsidiary, E. B. Mortgage Corporation, Towson, Maryland, in originating, purchasing, selling and servicing loans to third parties secured by real estate.

B. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Comerica Incorporation,* Detroit, Michigan; to engage *de novo* through its subsidiary, Comerica Mortgage Corporation, Birmingham, Michigan, in commercial and residential mortgage banking activities, including the application and placement with third parties, including other subsidiaries and affiliates of Applicant, of loans secured by commercial real estate; acting as investment advisor to real estate investment trusts and/or to pension funds; furnishing general economic information and advice; origination, warehouse, and sale of residential loans to long term investors; servicing of mortgage loans on behalf of long term investors; and performing appraisals of real estate.

2. *NBD Bancorp, Inc.,* Detroit, Michigan; to expand the geographic service area of NBD Mortgage Company to engage in mortgage banking activities, including the making, acquiring and servicing of mortgage loans for its own account and for the account of others, as would be made by a mortgage company, on a nationwide basis.

Board of Governors of the Federal Reserve System, May 29, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-14635 Filed 5-31-84; 8:45 am]

BILLING CODE 6210-01-M

The Frankfort Corp., 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 (49 FR 794) 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 or these applications must be received not later than June 22, 1984.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *The Frankford Corporation,* Philadelphia, Pennsylvania; to acquire 100 percent of the voting shares of Colonial Savings Bank, Philadelphia, Pennsylvania.

B. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Fidelity Bancshares, Inc.,* Temple, Texas; to acquire 100 percent of the voting shares of Waco State Bank, a *de novo* bank.

Board of Governors of the Federal Reserve System, May 29, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-14637 Filed 5-31-84; 8:45 am]

BILLING CODE 6210-01-M

Washington Bancorporation; Application To Engage de Novo in Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(3) of the Board's Regulation Y (49 FR 794) 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 (49 FR 794) to engage *de novo* through a national bank subsidiary in deposit-taking, including the taking of demand deposits, and other activities specified below. The proposed subsidiary will not engage in commercial lending transactions as defined in Regulation Y. The Board has determined by order that such activities are closely related to banking. *U.S. Trust Company* (70 Federal Reserve Bulletin 371 (1984)). Although the Board is publishing notice of this application, under established Board policy the record of the application will not be regarded as complete and the Board will not act on the application unless and until a preliminary charter for the proposed national bank subsidiary has been submitted to the Board.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specificially any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Federal Reserve Bank or the offices of the Board of Governors not later than June 22, 1984.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Washington Bancorporation,* Washington, D.C.; to engage through a national bank subsidiary, The National Bank of Washington (MD), Baltimore, Maryland, in deposit-taking; consumer and mortgage lending (1–4 family dwellings only); and trust, investment advisory, and other banking services. These activities would be performed in Baltimore, Maryland, and surrounding communities.

Board of Governors of the Federal Reserve System, May 29, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-14638 Filed 5-31-84; 8:45 am]

BILLING CODE 6210-01-M

Washington Bancorporation; Application To Engage de Novo in Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(3) of the Board's Regulation Y (49 FR 794) 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 (49 FR 794), to engage *de novo* through a national bank subsidiary in deposit-taking, including the taking of demand deposits, and other activities specified below. The proposed subsidiary will not engage in commercial lending transactions as defined in Regulation Y. The Board has determined by order that such activities are closely related to banking. *U.S. Trust Company* (70 Federal Reserve Bulletin 371 (1984)). Although the Board is publishing notice of this application, under established Board policy the record of the application will not be regarded as complete and the Board will not act on the application unless and until a preliminary charter for the proposed national bank subsidary has been submitted to the Board.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Federal Reserve Bank or the offices of the Board of Governors not later than June 22, 1984.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Washington Bancorporation,* Washington, D.C.; to engage through a national bank subsidiary, The National Bank of Virginia (VA), Annandale, Virginia, in deposit-taking; consumer and mortgage lending (1–4 family dwellings only); and trust, investment advisory, and other banking services. These activities would be performed in Fairfax County and surrounding areas of Northern Virginia.

Board of Governors of the Federal Reserve System, May 29, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-14639 Filed 5-31-84; 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 May 25.

Public Health Service

Health Resources Services Administration

Subject: Request for Report of Immunizations Administered (0915–0030)—Extension/No Change

Respondents: Health care providers under contract to the Indian Health Service
Subject: National Sample Survey of Registered Nurses III—New Collection
Respondents: Registered nurses

Centers for Disease Control

Subject: National Surveillance of Dialysis Associated Hepatitis (0920–0033)—Revision
Respondents: Directors of dialysis facilities/units
Subject: Birth Defects and/or Adverse Reproductive Outcome Surveillance (0920–0010)—Revision
Respondents: Individuals and physicians
OMB Desk Officer: Fay S. Iudicello

Health Care Financing Administration

Subject: Home Health Agency Medical Information Form; and Intermediary Medical Information Request Form HCFA–443 and 444 (0938–0226)—Revision
Respondents: Home health agencies
Subject: Request for Certification as a Supplier of Portable X-ray Services and the Portable X-Ray Survey Report Form HCFA–1880 and 1882 (0938–0027)—Existing Collection
Respondents: State survey agencies
Subject: State Agency Work Sheets for Verifying Exclusions from the Prospective Payment System (HCFA–437)—New
Respondents: State survey agencies
OMB Desk Officer: Fay S. Iudicello

Social Security Administration

Subject: Public Assistance Agency Information Request SSA–1610–U2 (0960–0095)—Revision
Respondents: Public assistance agencies requesting information from SSA
Subject: Statement of Claimant or Other Person SSA–795 (0960–0045)—Extension/No Change
Respondents: Individuals
Subject: Request for Withdrawal of Application SSA–521 (0960–0015)—Extension/No change
Respondents: Individuals
Subject: Marriage Certification SSA–3 (0960–0009)—Extension/No Change
Respondents: Individuals
Subject: Report of Student Beneficiary at End of School Year SSA–1388–U2 through SSA–1388–CI (0960–0089)—Extension/No Change
Respondents: Student beneficiaries
Subject: Wage and Tax Statement—W–2, Transmittal of Income and Tax Statements—W–3—New
Respondents: Individuals, businesses, and organizations filing W–2 and W–3 forms with the U.S. Internal Revenue Service
OMB Desk Officer: Milo Sunderhauf

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202–245–6511.

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, D.C. 20503, ATTN: (name of OMB Desk Officer).

Dated: May 28, 1984.

Robert F. Sermier,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 84–14090 Filed 5–31–84; 8:45 am]

BILLING CODE 4110–84–M

Food and Drug Administration

[Docket No. 75N–0184; DESI 3265]

Trocinate Tablets; Denial of Hearing; Withdrawal of Approval of New Drug Application; Decisions on Petitions For Stay And Reconsideration

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug administration (FDA) is providing notice that in response to a petition for stay filed by Poythress Laboratories, Inc. (Poythress), it stayed from April 2, 1984, until May 2, 1984, the effective date of the notice denying a hearing and withdrawing approval for Trocinate Tablets. The agency is also providing notice that in response to a request by FDA's Center for Drugs and Biologics (Center), FDA continued that stay until May 11, 1984. During the pendency of the stay, in response to petitions for reconsideration filed by Poythress and United Laboratories, Inc. (United), the agency reconsidered its decision on Trocinate Tablets and concluded that it was appropriate to reaffirm that decision. The decision took effect on May 24, 1984.

FOR FURTHER INFORMATION CONTACT: Robert J. Rice, Regulations Policy Staff (HFC–10), Food and Drug Administration, 5600 Fishers Lane, Rockville MD 20857, 301–443–3480.

SUPPLEMENTARY INFORMATION: In the Federal Register on March 2, 1984 (49 FR 7875), FDA published a notice denying a hearing and withdrawing approval of the new drug application (NDA) for Trocinate Tablets (NDA 6–098). The basis for the withdrawal was the lack of substantial evidence that this product has the effect that it is represented to have under the conditions of use prescribed, recommended, or suggested in its labeling.

FDA received petitions submitted on behalf of Poythress requesting that the Acting Commissioner of Food and Drugs stay the effective date of, and that he reconsider, the March 2, 1984 notice. Section 10.35(a) of FDA's procedural regulations (21 CFR 10.35(a)) authorizes the agency to stay at any time the effective date of a decision on any matter. On March 30, 1984, the Commissioner decided to grant the stay to permit review of Poythress's petition for reconsideration.

On March 30, 1984, United also filed a petition for stay and indicated that it would file a petition for reconsideration. Because he had already stayed the March 2, 1984 decision, it was unnecessary for the Commissioner to respond separately to United's request for a stay. United filed its petition for reconsideration on April 16, 1984, and supplemented it on May 2, 1984.

On May 14, 1984 after reviewing the submissions of Poythress, United, and the Center, the Commissioner decided to deny Poythress' petition for reconsideration but to grant United's petition. On the same date, on reconsideration, the Commissioner decided to affirm the March 2, 1984 decision.

The parties' submissions and the agency's orders are on public dispaly in the Dockets Management Branch, Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and may be seen from 9 a.m. to 4 p.m., Monday through Friday.

FDA is providing notice of its action on the petitions for stay in accordance with § 10.35(f) of its regulations (21 CFR 10.35 (f)) and notice of its action on the petitions for reconsideration in accordance with §§ 10.30(e) and 10.33(f) (21 CFR 10.30(e) and 10.33(f)).

Dated: May 25, 1984.

William F. Randolph

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84–14027 Filed 5–31–84; 8:45 am]

BILLING CODE 4110–01–M

[Docket No. 84N–0147]

Proposed New Lot of U.S. Standard Pertussis Vaccine; Opportunity to Participate in Collaborative Tests

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is inviting interested persons to perform collaborative tests on a proposed new lot of U.S. Standard Pertussis Vaccine and submit to FDA the results of the tests. FDA will consider any test data that is submitted during its final evaluation of the suitablilty of the proposed new lot. If its final evaluation is satisfactory, FDA intends to use the proposed new lot of standard vaccine as the U.S. Standard Pertussis Vaccine, when the current lot of the Standard vaccine. is depleted.

DATE: Submit requests for samples of the proposed new lot of U.S. Standard Pertussi Vaccine by July 2, 1984. Submit results of any tests performed by August 30, 1984.

ADDRESS: Submit request for samples and the test data to the Office of Biologics Research and Review (HFN–869), Center for Drugs and Biologics, Food and Drug Administration, 8800 Rockville Pike, Bethesday, MD 20205.

FOR FURTHER INFORMATION CONTACT: Michael L. Hooton, Center for Drugs and Biologics (formerly National Center for Drugs and Biologics) (HFN–368), Food and Drug Administration, 5600 Fishers Lane Rockville, MD 20857, 301–443–1306.

SUPPLEMENTARY INFORMATION: As described in 21 CFR 610.20, FDA makes available various potency standards for biological products, including Pertussis Vaccine. The U.S. Standard Pertussis Vaccine that is available from FDA's Office of Biologics Research and Review (OBRR), Center for Drugs and Biologics, is used by manufacturers to determine th potency of each lot of licensed Pertussis VAccine (see 21 CFR 620.3 and 620.4). The current U.S. Standard Pertussis Vaccine (Lot No. 7) will be depleted within a few months. OBRR has prepared a proposed new lot of U.S. Standard Pertussis Vaccine (Lot No. 8) and currently is testing the lot to define and standardize its potency.

FDA is providing any interested person an opportunity to participate in collaborative tests of the proposed new lot of U.S. Standard Pertussis Vaccine. Upon request, FDA will send to each such person a package containing five ampoules of the proposed new standard lot and suggested procedures for testing the lot and submitting to FDA the results of the tests.

FDA advises that results of preliminary tests performed by OBRR demonstrate that each ampoule of the proposed new lot contains about 100 protective units. Therefore, a person performing collabrative tests should reconstitute each ampoule with.12.5 milliliters of diluent. To assure the stability of the vaccine. FDA recommends that the initial tests be performed within 24 hours after reconstitution. In addition to potency test data, FDA is interested in test data concerning stability, ampoule-to-ampoule variation, and toxicity.

Any person interested in participating in voluntary collaborative tests of U.S. Standard Pertussis Vaccine (Lot No. 8) should request samples of the proposed new lot from OBRR (address above) by July 2, 1984. The results of any tests performed should be submitted to OBRR by August 30, 1984.

Dated: May 14, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84–14629 Filed 5–31–84; 8:45 am]

BILLING CODE 4160–01–M

[FDA–225–84–0001]

Memorandum of Understanding Between the University of Arkansas at Little Rock and the Food and Drug Administration's National Center for Toxicological Research

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has provided the mechanism for a collaborative program between the University of Arkansas at Little Rock and FDA's National Center for Toxicological Research (NCTR). Through this agreement, NCTR will provide facilities, equipment, materials, and limited supervision for outstanding science students who will serve as guest workers at the Center performing collaborative research with NCTR scientists.

DATE: This agreement became effective February 29, 1984.

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 the following memorandum of understanding:

Memorandum of Understanding Between the University of Arkansas at Little Rock and the Food and Drug Administration National Center for Toxicological Research

I. Purpose

This agreement will provide the mechanism for a collaborative program between the University of Arkansas at Little Rock (UALR) and the Food and Drug Administration's National Center for Toxicological Research (NCTR).

II. Background

The University of Arkansas at Little Rock is a public institution in the University of Arkansas System with an enrollment of some 10,500 students. The University is made up of the Colleges of Business Administration, Communiucations, Education, Fine Arts, Liberal Arts, and Sciences; the School of Engineering Technology, the Graduate School of Social Work, the Law School, and the Graduate School. One of the major objectives of the University is to produce students who are well prepared and highly motivated to pursue advanced study in the sciences.

The National Center for Toxicological Research is a Federal laboratory specializing in biomedical research. A part of NCTR's goal is to assist in training highly qualified toxicologists. The collaborative program with UALR provides an opportunity to accomplish this while furthering NCRT's research goals.

III. Substance of Agreement

Through this agreement, NCTR will provide facilities, equipment, materials, and limited supervision for outstanding science students who will serve as quest workers at the Center performing collaborative research with NCTR scientists. In addition, NCTR will provide quest worker positions or appointments to do collaborative research for qualified faculty members of UALR, if spaces are available during summers or periods of sabbatical leavo, or other mutually agreeable periods.

NCTR and UALR will establish a joint quest lecture and seminar program for the benefit of all members of both institutions to promote exchange of information on the latest developments at both institutions. To further accomplish this objective, members of the staffs of NCTR and UALR will be granted access to the library facilities of both institutions.

IV. Name and Address of Participating Parties

A. University of Arkansas at Little Rock, 33d St. and University Ave., Little Rock, AR 72204.

B. Food and Drug Administration, National Center for Toxicological Reseaarch, Jefferson, AR 72079.

V. Liaison Officers

A. For University of Arkansas at Little Rock: Dean, College of Sciences (currently Robert G. Franke), 501–569–3150.

B. For National Center for Toxicological Research; Director, National Center for Toxicological Research (currently Dr. Ronald W. Hart), 501–541–4517.

VI. Period of Agreement

This agreement becomes effective upon acceptance by both parties and will continue indefinitely. It may be modified by mutual consent or terminated by either party upon a 60-day advance written notice to the other.

Approved and Accepted for University of Arkansas at Little Rock.

Dated: February 29, 1984.

James H. Young,

Chancellor, UALR.

Approved and accepted for the Food and Drug Administration

Dated: February 23, 1984.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

Effective date. This agreement became effective February 29, 1984.

Dated: May 25, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84–14628 Filed 5–31–84; 8:45 am]

BILLING CODE 4160–01–M

[FDA 225–84–2000]

Memorandum of Understanding With the Board of Customs of the Republic of Finland

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has executed an agreement with the Board of Customs of the Republic of Finland to establish certification requiremens for certain food products to assure that contaminated food products will not be imported into the United States. The agreement also minimizes the need for extensive FDA audit sampling of these certified products.

DATE: This agreement became effective March 8, 1984.

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 the following memorandum of understanding:

Memorandum of Understanding Between the Food and Drug Administration Department of Health and Human Services of the United States of America and the Board of Customs of the Republic of Finland Covering Various Food Products Exported to the United States of America

I. Purpose

The mutual goals of the Food and Drug Administration (FDA) of the United States of America and the Board of Customs of the Republic of Finland in entering into this Memorandum of Understanding are to:

1. Establish certification requirements for the various food products listed in the attachments to this document exported from Finland to the United States to assure that contaminated food products will not be imported into the United States.

2. Minimize the need for extensive FDA audit sampling of these certified products from Finland that would be necessary without this memorandum.

II. Definitions

For the purposes of this memorandum, both parties agree to the following definitions:

Lot—A lot is a quantity of a product produced by one manufacturer during a discrete period of time not exceeding 1 day. It is produced in one continuous process using a single processing line and packaged in identical containers identified by a unique code traceable to the manufacturer.

Defect action levels—The limits at or above which FDA will take legal action to remove adulterated products from the market or prohibit their entry into commerce in the United States. Defect action levels are established for natural or unavoidable defects in food on the basis of no hazard to health and the unavoidability of a substance. Defect action levels do not represent permissible levels of contamination where it is avoidable. Where no established defect action level or action level for poisonous and deleterious substances to tolerance exists, FDA may take legal action against the product at the minimal detectable level of the contaminant.

Salmonella negative—The absence of *Salmonella* in 30 25-gram portions each taken from a lot of product. The portions are reconstituted individually, or composited, and tested by procedures outlined in the "Bacteriological Analytical Manual" (BAM), 5th Ed.; or in "Methods of Analysis"— Association of Official Analytical Chemists (AOAC).

III. Substance of Agreement

The Board of Customs of the Republic of Finland. The Board of Customs of the Republic of Finland is the government agency responsible for the inspection necessary for consumer protection purposes of imported or exported foodsuffs and other products. To fulfill its responsibilities under this memorandum, the Board of Customs will direct its activities to ensure that the food products listed in the attachments are fit for human consumption. This will be accomplished by inspecting products before distribution and by collecting and examining samples to ensure compliance with appropriate regulations.

To discharge its responsibilities regarding the food products listed in the attachments and to fulfill this memorandum commitment:

1. The Board of Customs of the Republic of Finland will have the Customs Laboratory in Helsinki inspect each lot of a food product offered to it by the manufacturer for export to the United States. This inspection will be made to determine that the lot of food does not exceed specified contamination levels. The Customs Laboratory will ensure by appropriate procedures that these analyses are completed as described in Section V below.

2. The Board of Customs will issue an export certificate only for those lots that meet the criteria stipulated in each attachment for the particular food.

3. The Board of Customs will have an agreement with the National Board of Health, subordinate to the ministry of Social Welfare and Health, to the effect that the National Board of Health will inspect for and certify to the Board of Customs that acidified/low-acid canned foods meet the criteria stipulated in the relevant attachment to this document.

4. The Board of Customs will require that all containers of lots of food products exported to the United States,

under certification, be identified by a lot number and marked with the lot number. All other information required by the Federal Food, Drug, and Cosmetic Act, as amended January 1980 (21 U.S.C.A., chapter 9, sections 301–392) and the Fair Packaging and Labeling act also will be included.

5. The Board of Customs will include the following information on the certificate for each lot of food products 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 of the tests conducted as specified in the attachments to this agreement.

d. Food Canning Establishment (FCE) registration number for all acidified/low-acid canned foods;

e. Date of the certificate; and,

f. Name and stamp or seal of authorizing official.

6. The Board of Customs will affix its validated certificate to the shipping manifest and the packing list, supplies by the manufacturer, which indicates those lots physically present in each containerized cargo unit.

7. The Board of Customs will furnish FDA with a copy of the current Finnish regulations and the procedures used to ensure that each product is acceptable.

8. The Board of Customs will furnish FDA, upon request, with a full description of the manufacturing processes and quality controls used to ensure the production of sanitary food fit for human consumption.

The Food and Drug Administration of the United States of America. The Food and Drug Administration (FDA) of the Department of Health and Human Services of the United States of America is charged with the enforcement of the Federal Food, Drug, and Cosmetic Act and the Fair Packaging and Labeling Act, certain provisions of the Public Health Service Act, and other related statutes. FDA directs its activities toward the protection of the public health of 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 foods entering the United States meet the same standards as domestic products. To discharge these responsibilities regarding the food products listed in the attachments to this document and to fulfill this memorandum commitment:

1. FDA may sample those products certified under this memorandum to ensure that the products exported from the Republic of Finland comply with the applicable specifications. FDA may also examine the certified lots for other attributes to determine whether the products comply with other requirements of the Federal Food, Drug, and Cosmetic Act, the Fair Packaging and Labeling Act, the Public Health Service Act, and other related statutes.

2. FDA will share any information obtained through its audit sampling with the Board of Customs of the Republic of Finland.

3. FDA will promptly notify the Board of Customs of the Republic of Finland of any detention of any product covered by this memorandum and of any modifications to the statutes or the regulations pertaining to these products.

4. FDA will share expertise and provide assistance to the Board of Customs of the Republic of Finland when necessary. Areas of mutual cooperation will include but will not be limited to: data gathering, technical information updating, and the exchange of new and/or improved methods of sampling and testing of the enumerated food products. This will help ensure the safety of the food products listed in the attachments exported to the United States.

IV. Sample Collection

Whenever possible, the same subsample will be used to determine the levels, if any, of *Salmonella* and to determine compliance with the established FDA defect action levels in food and compliance with any specified FDA action levels for poisonous or deleterious substances in food. Samples of the food products listed in the attachments will be collected in accordance with the applicable portions of "Bacteriological Analytical Manual," 5th Ed., 1978, Chapter I—Food Sampling Plans and Initial Sampling Handling, for *Salmonella*, and Chapter 4 of the FDA "Inspection Operations Manual" for other attributes.

V. Analytical Methodology

Compliance with the established FDA defect action levels for natural or unavoidable defects in food and compliance with any specified FDA action levels for poisonous or deleterious substances in food will be determined according to the methods contained in:

1. "Bacteriological Analytical Manual," 5th Ed., 1978, the Association of Official Analytical Chemists, 1111 Nineteenth St., Arlington, VA 22209.

2. "Official Methods of Analysis, Association of Official Analytical Chemists," 13th Ed., 1980, the Association of Official Analytical Chemists, 1111 Nineteenth St., Arlington, VA 22209.

VI. Participating Parties

A. The Board of Customs of the Republic of Finland, Box 512 SF 00101, Helsinki 10, Finland.

B. Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

VII. Liaison Officers

A. For the Board of Customs, Republic of Finland, Director, Finnish Customs Laboratory, (currently Mr. Erkki Petaja), Box 512 SF 00101, Helsinki 10, Finland, 90–455–03–11, Telex 121559 TULHS SF.

B. For the Food and Drug Administration, Director, Division of Regulatory Guidance (HFF–312), (currently John Taylor), 200 C St. SW., Washington, DC 20204, 202–245–1186, Telex 197623 PHS Pkln.

VII. 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.

Additional products may be added to the list of products subject to certification under this agreement by mutual consent of the liaison officers.

IX. Period of Agreement

This memorandum will become effective upon acceptance by both parties and will continue indefinitely. It may be revised by mutual consent or terminated by either party upon a 30-day advance written notice to the other.

In witness whereof, the agencies have executed this memorandum covering the food products listed in the attachments to this document.

Approved and Accepted for the Board of Customs of the Republic of Finland.

Dated: March 8, 1984.

Jorma Uitto,

Director General, Board of Customs.

Approved and Accepted for the Food and Drug Administration of the United States of America.

Dated: March 8, 1984.

Sanford A. Miller,

Director, Food Division, FDA.

Effective date. This agreement became effective March 8, 1984.

Dated: May 24, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

Attachment A

Products: Puddings.

Criteria: Compliance will be determined by, but will not be limited to, ascertaining if the product is:

1. *Salmonella* negative; and,

2. Free of filth (should not contain any insect or animal filth as determined by the AOAC, 13th, Ed., 44.053).

Attachment B

Products: Soups: Canned and Debydrated.

Canned

Criteria: Compliance will be determined by, but will not be limited to:

1. Determining if the processes have been accepted for filing by FDA for canned soups that are acidified or low acid canned foods as defined in applicable FDA regulations.

2. Examining at the processing location a minimum of 240 unlabeled cans from each lot to be offered for certification for seam defects, dents, scratches, abrasions, and other evidence of improper handling which could cause leakage. Lots exhibiting defects of container integrity will not be offered for certification.

3. Reviewing processing records from each lot to be offered for certification with sufficient frequency to ensure the scheduled filed processes are being followed and any deviations from the scheduled processes are competently handled. The acidified/low-acid canned food from a processor showing deviations from the scheduled, filed processes will not be offered for certification.

4. Examining finished stock from each lot to be offered for certification according the attached sampling schedule for evidence of underprocessed lots. Underprocessed lots will not be offered for certification.

Dehydrated

Criteria: Compliance will be determined by, but will not be limited to, ascertaining if the product is *Salmonella* negative.

Attachment C

Products: Candies: Chocolate and Licorice.

Chocolate

Criteria: Compliance will be determined by, but will not be limited to, ascertaining if the product is:

1. *Salmonella* negative; and,

2. Contains filth that is less than the mathematical product of the percentage of the characterizing ingredient in the product (chocolate) multiplied by the defect action level for insect filth, rodent filth, or shell in that ingredient. A copy of the defect action levels for chocolate and cocoa powder press cake is attached.

Licorice

Criteria: Compliance will be determined by, but will not be limited to, ascertaining if the product contains filth that is less than the mathematical product of the percentage of wheat flour in the product multipled by the defect action level for insect filth or rodent filth in wheat flour. A copy of the defect action level is attached.

Sampling Schedule for Canned Soups

1. Examine each finished lot, offered for certification, for evidence of underprocessing, i.e.: leaking cans, wet cases, swollen cans, swarms of fruit flies around isolated pallets, etc.

2. When inspectional evidence indicates that an underprocessed lot has been produced discontinue examination. Underprocessed lots will not be offered for certification.

3. When the inspectional evidence indicates that the lot contains accidentally damaged containers or cases these will be removed from the lot before offering it for certification.

4. A lot to be examined will be one production code as defined under "II. DEFINITIONS" of this Memorandum of Understanding.

5. Each examination will consist of a maximum of 576 containers. When the inspectional evidence indicates that the lot contains abnormal containers the examination will be discontinued. *See paragraph "6. Definitions" below for definitions of abnormal containers.* A lot in which the inspectional evidence indicates the presence of abnormal containers will not be offered for certification.

6. Definitions.

a. *Flippers*—Only one end is slack or slightly bulged. That end will remain flat if pressed in. Cans which bulge when sharply and squarely struck end-down on a flat surface are flippers, provided that the bulged end remains flat when pressed. Flippers result from a lack of vacuum.

b. *Springers*—One end of a can bulges. Manual pressure on the bulged end forces the opposite end out or the same end will spring out with release of pressure. If both ends bulge out but only one will remain flat when pressed, the can is a springer. Springers result from a moderate positive pressure in the can. Bulking or extensive denting of the side wall may produce a springer.

c. *Swells*—Both ends of the can are bulged. Neither will remain flat without pressure. Soft swells yield to manual pressure, but no impression can be made manually on hard swells. Swells result from positive pressure in the cans usually because of spoilage of the contents. Some swells, especially in acid products, may result from chemical reaction between the contents and the container.

d. *Others*—Other abnormalities or defects, not defined in this paragraph, include visibly leaking cans, severe dents around seams, gross seam defects, rusted containers, etc.

FOLLOW THIS SCHEDULE FOR THE EXAMINATION

Uncased containers		Packed 48 per case		Packed 24 per case		Packed 12 per case		Packed 6 per case	
Lot size containers	Number to examine	Lot size (cases)	Cases to examine	Lot size (cases)	Cases to examine	Lot size (cases)	Cases to examine	Lot size (cases)	Cases to examine
192 or less	All	1 to 4	All	1 to 8	All	1 to 16	All	1 to 32	All
193 to 288	192	4 to 6	4	8 to 12	6	16 to 24	16	32 to 43	32
289 to 384	All-288	6 to 8	6	12 to 16	12	24 to 32	25	43 to 64	All-50
385 to 576	363	8 to 12	8	16 to 24	15	32 to 48	30	64 to 96	61
577 to 912	433	12 to 19	9	24 to 38	18	48 to 76	36	96 to 152	72
913 to 1488	480	19 to 31	10	38 to 62	20	76 to 124	40	152 to 243	80
1489 to 3408	529	31 to 71	11	62 to 142	22	124 to 284	44	248 to 568	88
3409 or more	576	71 or more	12	142 or more	24	284 or more	48	568 or more	96

Product	Action level
Chocolate and Chocolate Liquor	
Defects:	
Insect filth	Average exceeds 60 microscopic insect fragments per 100 grams, when 6 100-gram subsamples are examined or if any 1 subsample contains more than 90 insect fragments.
Rodent filth	If average exceeds 1.0 rodent hairs per 100 grams or if any 1 subsample contains more than 3 rodent hairs.
Shell	For chocolate liquor, if the shell is in excess of 2 percent calculated on the basis of alkali-free nibs.

Product	Action level
Cocoa Powder, Press Cake	
Defects:	
Insect filth	Average exceeds 75 microscopic insect fragments per subsample of 50 grams or any 1 subsample contains more than 125 microscopic insect fragments.

Product	Action level
Rodent filth	Average in 6 or more subsamples exceeds 2 rodent hairs per subsample of 50 grams or any 1 subsample contains more than 4 rodent hairs.
Shell	Shell in excess of 2 percent calculated on the basis of alkali-free nibs.
Wheat Flour	
Defects:	
Insect filth	Average of 50 or more insect fragments per 50 grams.
Rodent filth	Average of 1 or more rodent hairs per 50 grams.

[FR Doc. 84-14631 Filed 5-31-84; 8:45 am]
BILLING CODE 4160-01-M

Health Resources and Services Administration

National Advisory Council on the National Health Service Corps; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of June 1984:

Name: National Advisory Council on the National Health Service Corps.

Date and Time: June 14-15, 1984, 9:00 a.m.

Place: The June 14 meeting will be held in Conference Room B, and the June 15 meeting will be in Conference Room I, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Purpose: The Council will advise and make appropriate recommendations on the National Health Service Corps (NHSC) program as mandated by legislation. It will also review and comment on proposed regulations promulgated by the Secretary under provisions of the legislation.

Agenda: The agenda will include discussions of the 1985 Placement Policy and future directions of the Corps and a presentation by the Chief Professional Officers of the NHSC.

Anyone wishing to obtain a roster of members, minutes of meetings, or other relevant information should write to or contact Dr. Kenneth P. Moritsugu, Director, National Health Service Corps, Bureau of Health Care Delivery and Assistance, Health Resources and Services Administration, Room 6-40, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone: 301 443-1400.

Agenda items are subject to change as priorities dictate.

Dated: May 25, 1984.

George T. Lewis,

Acting Advisory Committee Management Officer, HRSA.

[FR Doc. 84-14653 Filed 5-31-84; 8:45 am]
BILLING CODE 4160-15-M

National Institutes of Health

NCI Thyroid/Iodine-131 Assessments Committee; Establishment

The Director, National Institutes of Health, announces the establishment of the NCI Thyroid/Iodine-131 Assessments Committee by the Director, National Cancer Institute, under the authority of section 405(a)(2) of the Public Health Service Act (42 U.S.C. 286(a)(2)). Such advisory committees shall be governed by the provisions of the Federal Advisory Committee Act (Pub. L. 92-463) setting forth standards governing the establishment and use of advisory committees.

The purpose of this committee is to assess the risks of thyroid cancer that may be associated with thyroid doses of Iodine-131.

Authority for this committee shall terminate two years from the date of establishment, unless renewed by appropriate action as authorized by law.

J. E. Rall,

Acting Director, NIH.

May 24, 1984.

[FR Doc. 84-14654 Filed 5-31-84; 8:45 am]
BILLING COE 4140-01-M

National Institute of Child Health and Human Development; Amended Notice of Meeting of the Population Research Committee

Notice is hereby given of the cancellation of the meeting of the Population Research Committee, National Institute of Child Health and Human Development, June 21-22, 1984, Conference Room A, Landow Building, 7910 Woodmont Avenue, Bethesda, Maryland, which was published in the Federal Register on May 14, 1984 (49 FR 20382).

(Catalog of Federal Domestic Assistance Program No. 13.864, Population Research Program)

Dated: May 23, 1984.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 84-14655 Filed 5-31-84; 8:45 am]
BILLING CODE 4140-01-M

Public Health Service

Announcement of Availability of Grants for Adolescent Family Life Demonstration Projects

AGENCY: Office of Adolescent Pregnancy Programs, PHS, HHS.

ACTION: Notice.

SUMMARY: This is to announce the availability of grant funds for the Adolescent Family Life Demonstration Grants Program for the states and territories listed below. These grants are for demonstration projects which test new approaches to providing care services for pregnant adolescents and adolescent parents or prevention services to reach adolescents before they become sexually active, as authorized by Title XX of the Public Health Service Act (42 U.S.C. 300z, et seq.).

ADDRESS: Application kits may be obtained from and applications must be submitted to: Grants Management Office, Office of Adolescent Pregnancy Program, OPA, Room 1351, HHS North Building, 330 Independence Avenue, SW., Washington, D.C. 20201.

DATE: Applications must be postmarked or received at the above address no later than July 10, 1984.

FOR FURTHER INFORMATION CONTACT: Donald Underwood, Grants Management Officer, at (202) 245-0146, or Barbara Rosengard, Program Development Specialist, at (202) 245-7473. They are available to answer questions and provide limited technical assistance in the preparation of grant applications.

SUPPLEMENTARY INFORMATION: Title XX of the Public Health Service Act, 42 U.S.C. 300z, et seq. authorizes the Secretary of Health and Human Services to award grants for demonstration projects to provide services to pregnant and nonpregnant adolescents, adolescent parents and their families. (Catalog of Federal Domestic Assistance Number 13.995). This notice announces the availability of approximately $600,000 in funding for such projects, which will be made available for *care* and *prevention* projects in certain designated states and areas as set forth below. It is anticipated that 4 to 6 projects will be funded pursuant to this announcement with the average award being $100,000 while ranging between $50,000 and $150,000. Grants may be approved for project periods of up to 5 years but funded in annual increments (budget periods). Funding for all approved budget periods beyond the first year of the grant is contingent upon

satisfactory progress of the project, adequate stewardship of Federal funds and availability of funds. A grant award may not exceed 70% of the costs of the project for the first and second years, 60% of the costs for the third year, 50% for the fourth year and 40% for the fifth year. Non-Federal contributions may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Summarized below is the statutory background of the grant program and description of the procedures for applying for grants pursuant to this notice.

Statutory Background

Title XX authorizes grants for three types of demonstration projects: (1) Projects which provide "care services" only (i.e. services for the provision of care to pregnant adolescents and adolescent parents); (2) projects which provide "prevention services" only (i.e., services to prevent adolescent sexual relations), and (3) projects which provide a combination of care and prevention services. However, in this program notice we do not purpose to consider or fund any combination projects. The specific services (termed "necessary services") which may be funded under Title XX are the following:

(1) Pregnancy testing and maternity counseling;

(2) Adoption counseling and referral services which present adoption as an option for pregnant adolescents, including referral to licensed adoption agencies in the community if the eligible grant recipient is not a licensed adoption agency;

(3) Primary and preventive health services including prenatal and postnatal care;

(4) Nutrition information and counseling;

(5) Referral for screening and treatment of venereal disease;

(6) Referral to appropriate pediatric care;

(7) Educational services relating to family life and problems associated with adolescent premarital sexual relations; including:

(a) Information about adoption;

(b) Education on the responsibilities of sexuality and parenting;

(c) The development of material to support the role of parents as the provider of sex education; and

(d) Assistance to parents, schools, youth agencies, and health providers to educate adolescents and preadolescents concerning self-discipline and responsibility in human sexuality;

(8) Appropriate educational and vocational services and referral to such services;

(9) Referral to licensed residential care or maternity home services;

(10) Mental health services and referral to mental health services and to other appropriate physical health services;

(11) Child care sufficient to enable the adolescent parent to continue education or to enter into employment;

(12) Consumer education and homemaking;

(13) Counseling for the immediate and extended family members of the eligible person;

(14) Transportation;

(15) Outreach services to families of adolescents to discourage sexual relations among unemancipated minors; (and)

(16) Family planning services * * * (Sec. 2002(a)(4)) [1]

Under the statute, the services described in subparagraph (1), (4), (5), (7), (8), (13), (14), and (15) above are "prevention services." (section 2002(a)(8)). Grantees which provide "care services" must provide those "necessary services" which are "core services." (section 2002(a)(5)). In accordance with sec. 2002(b), the regulations promulgated under Title VI of the Health Services and Centers Amendments of 1978 must presently be used to determine which of the above services are core services. Accordingly, the services described in subparagraphs (1), (2), (3), (4), (5), (6), and (7) above are core services. In addition, the referrals described by subparagraphs (8) and (10) are also core services. The services described in subparagraph (16) are core services when suitable and appropriate family planning services are not otherwise available in the community.

Eligible Applicants

Any public or private nonprofit organization or agency is eligible to apply for a grant if the organization or agency demonstrates "in the case of an organization which will provide care services, the capability of providing all core services in a single setting or the capability of creating a network through which all core services would be provided; or * * * in the case of an organization which will provide prevention services, the capability of providing such services" (Sec. 2002(a)(3)).

As this is a demonstration program, OAPP is interested in testing a variety of ways to deliver services and various combinations of services in order to achieve the objectives of the legislation. In order to complement existing models, the OAPP encourages the submission of applications from volunteer organizations, i.e., those organizations that provide services primarily by volunteers rather than by paid staff. The Office also welcomes applications from organizations, volunteer or otherwise, that provide alternate living arrangements, such as maternity homes, family settings for an individual or a small group, or other types of temporary shelters for pregnant adolescents and/or adolescent parents and their children. Other innovative proposals which test methods of service delivery or specialized services are also welcome.

The July 21, 1981 report of the Senate Committee on Labor and Human Resources, which accompanied the Senate Bill (S. 1030) proposing the Adolescent Family Life Demonstration Grants Program, stated that one of the reasons the new legislation was necessary was to provide the states with workable models of comprehensive programs. The report further states that "without a functioning demonstration project operating within a state, public officials will not have the opportunity to examine this innovative approach to a serious problem confronting State and local governments." S. Rep. No. 97-161 at 9. Accordingly, only entities from those states which will not have an Adolescent Family Life Demonstration project operating after September 30, 1984, will be eligible to apply under this announcement. The states are Alaska, Arkansas, Delaware, Iowa, Maine, Mississippi, Montana, Nevada, North Dakota, Oklahoma, South Dakota and Wyoming. Organizations from Puerto Rico, the U.S. Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands are also eligible to apply under this announcement.

Application Requirements

Applications must be submitted on the forms supplied in the application kits available from the Office of Adolescent Pregnancy Programs (OAPP). Applicants are required to submit an application signed by an individual authorized to act for the applicant agency or organization and to assume for that organization the obligations imposed by the terms and conditions of the grant award. Applicants are required to submit an original application and two copies.

A copy of the legislation governing this program and proposed rules will be sent to applicants as part of the application kit package. Applicants will be expected to revise their applications to comply with any regulations issued. In the interim, applicants should use the

[1] Statutory citations are to Title XX of the Public Health Service Act.

legislation, and the proposed regulations to guide them in developing their applications. All applicants should review and must comply with the requirements for applications in 2006(a). Awards will be made only to those applicants who have met all applicable statutory requirements.

In an attempt to encourage the development and submission of applications to complement those program models currently being tested, OAPP will consider applications providing *care* or *prevention* services only, but *not a combination* of care and prevention services.

Applicants should in particular provide the following:

(1) A description of the objectives, models and strategies for delivering services and expected results. (Care programs should describe services to be delivered before and after the baby's birth and should delineate the length of time after the baby's birth that clients will participate in program services.)

(2) A description of innovative approaches, as appropriate, for encouraging and supporting the involvement of families, and private and public organizations and voluntary associations in the provision of services.

(3) A description of the target groups to be served, client recruitment methods, selection criteria, case management and follow-up procedures.

(4) The numbers and types of clients expected to be served.

(5) Provision for the statutory evaluation requirements. *Care Programs*—Under the statute the purpose of care programs is to establish innovative, comprehensive, and integrated approaches to the delivery of care services for pregnant adolescents, with primary emphasis on unmarried adolescents who are seventeen years of age or under, and for adolescent parents, which shall be based upon an assessment of existing programs and, where appropriate, upon efforts to establish better coordination, integration, and linkages among such existing programs in order to:

(A) Enable pregnant adolescents to obtain proper care and assist pregnant adolescents and adolescent parents to become productive independent contributors to family and community life; and

(B) Assist families of adolescents to understand and resolve the societal causes which are associated with adolescent pregnancy.

Within the context of providing the required core plus necessary supplemental services and developing evaluation strategies, applicants should pay particular attention to these aspects of Title XX:

(1) The promotion of adoption as an alternative to early parenting;

(2) Involvement of the families of pregnant adolescents and adolescent parents, including the adolescent father; and

(3) Provision of services after delivery. (This is the continuation of necessary services to clients until adolescent parents have become or are well on their way to becoming "productive independent contributors to family and community life" and their children are developing normally physically, intellectually, and emotionally. Proposals should specify the services to be provided, the means of identifying clients' need for services, and the system for tracking clients for a period of at least two years following delivery.)

Prevention Programs. The purpose of prevention programs is to find an effective means, within the context of the family, of reaching adolescents before they become sexually active in order to maximize the guidance and support available to adolescents from parents and other family members, and to promote self-discipline and other prudent approaches to the problem of adolescent premarital sexual relations, including adolescent pregnancy.

In order to complement existing program models, OAPP will consider only those prevention programs which prepare parents to support and educate their children to postpone sexual activity. Only activities which clearly focus on helping parents teach postponement to their children will be funded.

Evaluation

Each grantee receiving funds for a services demonstration project is required to expend between one and five percent of the grant award on program evaluation. (See section 2006(b).) While the statute allows waiver of the 5% limit on evaluation (see section 2006(b)(1)), waivers are rarely granted. Therefore, applicants who anticipate evaluation costs in excess of the limit should exhaust all possible alternative sources of funds before considering requesting a waiver for an evaluation amount in excess of 5%. Applicants should provide a plan for meeting the evaluation requirement, describing in detail measures of program performance, data collection methods, and a plan for analyzing the data. Applicants should provide evidence of consultation or other arrangements with a college or university located in the applicant's State.

Additional Requirements

In addition to the above, applicants for grants must meet the following requirements:

(1) Requirements for Review of an Application by the Governor.

Section 2006(e) of the Public Health Service Act requires that—

"Each applicant shall provide the Governor of the State in which the applicant is located a copy of each application submitted to the Secretary for a grant for a demonstration project for services under this Title. The Governor shall submit to the applicant comments on any such application within the period of sixty days beginning on the day when the Governor receives such copy. The applicant shall include the comments of the Governor with such application."

An applicant may comply with this requirement by submitting a copy of the application to the Governor of the State in which the applicant is located at the same time the application is submitted to OAPP. To inform the Governor's office of the reason for the submission, a copy of this notice should be attached to the application. The Governor has sixty days in which to provide comments to the applicant.

The applicant must provide a copy of the comments or verification that there were no comments to the above address by September 17, 1984.

(2) Review Under Executive Order 12372

Applications under this announcement are subject to the review requirements of Executive Order 12372, State Review of Applications for Federal Financial Assistance, as implemented by 45 CFR 100. As soon as possible, applicants should discuss their project/s with the State Single Point of Contact (SPOC) for each State in the area to be served. The application kit contains the currently available listing of the SPOCs which have elected to be informed of the submission of applications. For those States not represented on the listing, further inquiries should be made by the applicant regarding the submission to the relevant SPOC. The SPOCs comment/s should be forwarded to the Grants Management Office, Office of Population Affairs, Room 1351, HHS North Building, 330 Independence Avenue SW., Washington, D.C. 20201. Such comments must be received by the Office of Population Affairs by September 17, 1984 to be considered. In the event that an application is submitted to the Office of Population Affairs without notification to the SPOC,

the SPOC will be notified of the submission.

(3) Health Systems Agency (HSA) Review

In order to comply with the HSA review requirements under section 1513(e) of the Public Health Service Act, 42 U.S.C. 3001–2(e), as amended, applicants must contact the HSA responsible for the area to be served by the proposed project to determine whether or not the HSA desires to review the application. If so, a copy of the application must be submitted to the HSA for review no later than July 10, 1984. Applicants are advised to contact the local HSA as soon as a decision is made to apply for a grant for detailed information on meeting this review requirement.

Application Consideration and Assessment

Applications which are judged to be late or which do not conform to the requirements of this program announcement will not be accepted for review. Applicants will be so notified, and the applications will be returned.

All other applications will be subjected to a competitive review and assessment. The results of this review will assist the Director of the Office of Adolescent Pregnancy Programs in considering competing applications and in making the final funding decisions.

Eligible competing grant applications will be reviewed and assessed against the following criteria:

1. The applicant's provision for the requirements set forth in section 2006(a) of Title XX of the Public Health Service Act.

2. The capacity of the proposed applicant organization and staff to provide the appropriate services and to evaluate the results.

3. The applicant's presentation of the project's objectives, the methods for achieving project objectives, the workplan and the results or benefits expected.

4. The applicant's documentation of the innovativeness of the program approach, its worth for testing and replication, and its suitability to measurement and evaluation.

5. The estimated cost of the project to the government is reasonable considering the anticipated results.

6. The applicant's detailed evaluation plan indicates an understanding of program evaluation methods and reflects a practical, technically sound approach to assessing the project's achievement of program objectives. A workplan should be included to indicate the extent and nature of the involvement of a local State college or university in this effort.

In making grant award decisions the Director of OAPP will take into account the extent to which grants approved for funding will provide an appropriate distribution of resources throughout the country taking into consideration such things as the following factors:

1. The priorities in section 2005(a) of Title XX of the Public Health Service Act.

2. The geographic area to be served.

3. The community commitment to and involvement in the planning and implementation of the demonstration project.

4. The nature of the organization applying.

5. The population to be served.

6. The organizational models for delivery of service.

7. The usefulness for policy makers and service providers of the proposed project and its potential for complementing existing AFL demonstration models.

When final funding decisions have been made, all applicants will be notified by letter of the outcome of their applications. The official document notifying an applicant that a project application has been approved for funding is the Notice of Grant Award, which specifies to the grantee the amount of money awarded, the purpose of the grant, the terms and conditions of the grant award, the budget period for which the support is being given, and the amount of funding to be contributed by the grantee to project costs.

Dated: May 17, 1984.

Marjory E. Mecklenburg,

Deputy Assistant Secretary for Population Affairs.

[FR Doc. 84-14050 Filed 5-31-84; 8:45 am]

BILLING CODE 4160-17-M

Announcement of Availability of Grants for National Demonstrations of Adolescent Family Life Programs

AGENCY: Office of Adolescent Pregnancy Programs, PHS, HHS.

ACTION: Notice.

SUMMARY: This is to announce the availability of grant funds for National Demonstrations of adolescent Family Life Programs. These grants are for demonstration projects which test new approaches to providing care services for pregnant adolescents and adolescent parents, prevention services to reach adolescents before they become sexually active, or a combination of care and prevention services as authorized by Title XX of the Public Health Service Act (42 U.S.C. 300z, et seq.). The demonstration projects must be national in scope, include a number of sites or test areas in different States and Regions and permit systematic comparisons.

EFFECTIVE DATES:

ADDRESSE: Application kits may be obtained from and applications must be submitted to: Grants Management Office, Office of adolescent Pregnancy Programs, OPA, Room 1351, HHS North Building, 330 Independence Avenue, S.W., Washington, D.C. 20201.

DATE: Applications must be postmarked or received at the above address no later than July 10, 1984.

FOR FURTHER INFORMATION CONTACT: Donald Undewood, Grants Management Officer, at (202) 245–0146, or Barbara Rosengard, Program Development Specialist, at (202) 245–7473. They are available to answer questions and provide limited technical assistance in the preparation of grant applications.

SUPPLEMENTARY INFORMATION: Title XX of the Public Health Service Act, 42 U.S.C. 300z, et seq., authorizes the secretary of Health and Human Services to award grants for demonstration projects to provide services to pregnant and nonpregnant adolescents, adolescent parents and their families. (Catalog of Federal Domestic Assistance Number 13.995.) This notice announces the availability of approximately $1.2 million in funding for national demonstration projects for care, prevention or a combination of care and prevention services. It is anticipated that 3–5 projects can be funded, ranging between $225,000 and $460,000. Grants may be approved for project periods of up to 5 years but funded in annual increments (budget periods). Funding for all approved budget periods beyond the first year of the grant is contingent upon satisfactory progress of the project, adequate stewardship of Federal funds and availability of funds. A grant award may not exceed 70% of the costs of the project for the first and second years, 60% of the costs for the third year, 50% for the fourth year and 40% for the fifth year. Non-Federal contributions may be in cash or in kind, fairly evaluated, including plant, equipment, or services. We summarize below the statutory background of the grant program and describe the procedures for applying for grants pursuant to this notice.

Statutory Background

Title XX authorizes grants for three types of demonstration projects: (1) Projects which provide "care services" only (i.e. services for the provision of

care to pregnant adolescents and adolescent parents); (2) projects which provide "prevention services" only (i.e., services to prevent adolescent sexual relations), and (3) projects which provide a combination of care and prevention services. The specific services (termed "necessary services") which may be funded under Title XX are the following:

(1) Pregnancy testing and maternity counseling;

(2) Adoption counseling and referral services which present adoption as an option for pregnant adolescents, including referral to licensed adoption agencies in the community if the eligible grant recipient is not a licensed adoption agency;

(3) Primary and preventive health services including prenatal and postnatal care;

(4) Nutrition information and counseling;

(5) Referral for screening and treatment of veneral disease;

(6) Referral to appropriate pediatric care;

(7) Educational services relating to family life and problems associated with adolescent premarital sexual relations, including:

(a) Information about adoption;

(b) Education on the responsibilities of sexuality and parenting;

(c) The development of material to support the role of parents as the provider of sex education; and

(d) Assistance to parents, schools, youth agencies, and health providers to educate adolescents and preadolescents concerning self-discipline and responsibility in human sexuality;

(8) Appropriate educational and vocational services and referral to such services;

(9) Referral to licensed residential care or maternity home services;

(10) Mental health services and referral to mental health services and to other appropriate physical health services;

(11) Child care sufficient to enable the adolescent parent to continue education or to enter into employment;

(12) Consumer education and homemaking;

(13) Counseling for the immediate and extended family members of the eligible person;

(14) Transportation;

(15) Outreach services to families of adolescents to discourage sexual relations among unemancipated minors; (and)

(16) Family planning services * * * (Sec. 2002(a)(4)).[1]

Under the statute, the services described in subparagraphs (1), (4), (5), (7), (8), (13), (14), and (15) above are "prevention services." (Sec. 2002(a)(8)). Grantees which provide "care services" must provide those "necessary services" which are "core services." (Sec. 2002(a)(5)). In accordance with sec. 2002(b), the regulations promulgated under Title VI of the Health Services and Centers Amendments of 1978 must presently be used to determine which of the above services are core services. Accordingly, the services described in subparagraphs (1), (2), (3), (4), (5), (6), and (7) above are core services. In addition, the referrals described by subparagraphs (8) and (10) are also core services. The services described in subparagraph (16) are core services when suitable and appropriate family planning services are not otherwise available in the community.

This announcement seeks applications from organizations which can develop and implement a national demonstration in a number of sites throughout the country. These demonstrations will systematically test a model or models in a number of sites or test areas in different States and regions. Projects should use field experiments, quasi-experimental or experimental designs, or other innovative research methods in order to determine program effects, both short- and long-term in client populations.

As the Adolescent Family Life program is a demonstration program, the OAPP is interested in testing a variety of ways to deliver services and various combinations of services in order to achieve the objectives of the legislation. In order to complement existing models, the OAPP encourages the submission of applications from volunteer organizations, i.e., those organizations that provide services primarily by volunteers rather than by paid staff. The Office also encourages applications from organizations, volunteers or otherwise, that provide alternate living arrangements, such as maternity homes, family settings for an individual or a small group or other types of temporary shelters for pregnant adolescents and/or adolescent parents and their children. Other innovative proposals which test methods of service delivery or specialized services are also welcome.

Eligible Applicants

Any public or private nonprofit organization or agency is eligible to apply for a grant if the organization or agency demonstrates "in the case of an organization which will provide care services, the capability of providing all core services in a single setting or the capability of creating a network through which all core services would be provided; or * * * in the case of an organization which will provide prevention services, the capability of providing such services" section 2002(a)(3).

Application Requirements

Applications must be submitted on the forms supplied in the application kits available from the Office of Adolescent Pregnancy Programs (OAPP). Applicants are required to submit an application signed by an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award. Applicants are required to submit an original application and two copies.

A copy of the legislation governing this program and proposed rules will be sent to applicants as part of the application kit package. Program regulations are presently being developed, and applicants will be expected to revise their applications to comply with any regulations issued. In the interim, applicants should use the legislation, and the proposed regulations to guide them in developing their applications. All applicants should review and must comply with the requirements for applications in Section 2006(a). Awards will be made only to those applicants who have met all applicable statutory requirements.

Applicants may submit proposals that provide for demonstrations of care services only, prevention services only, or a combination of care and prevention services. Applicants proposing to provide a combinaton of care and prevention services should submit budget requests that provide a clear delineation between funds allocated for prevention services and funds allocated for care services. Applications should include:

(1) A descripton of the project objectives and a detailed explanation of how the program design will be suitable for testing the hypotheses chosen for examination.

(2) A description of sites and organizations to be involved in the implementation of the demonstration program. Evidence should be provide of the organization's ability to conduct the demonstration project in the designated

[1] Statutory citations are to Title XX of the Public Health Service Act.

sites and to provide rigorous evaluation of the data.

(3) An overall evaluaton plan which tests the objectives of the demonstration project. This design should identify the critical issues to be examined; define the relationship among key variables; and propose relevant hypotheses, outcome measures, associated data requirements, comparison/control group recruitment, strategies, and statistical methods to be employed.

All projects must fulfill the applicable satutory requirements for care, prevention or combinaton projects.

Care Programs—Under the statute the purpose of care programs is: To establish innovative, comprehensive, and integrated approaches to the delivery of care services for pregnant adolescents, with primary emphasis on unmarried adolescents who are seventeen years of age or under, and for adolescent parents, which shall be based upon an assessment of existing programs and where appropriate, upon efforts to establish better coordination, integration, and likages among such existing programs in order to

(A) Enable pregnant adolescents to obtain proper care and assist pregnant adolescents and adolescent parents to become productive independent contributors to family and community life; and

(B) Assist families of adolescents to understand and resolve the societal causes which are associated with adolescent pregnancy.

Within the context of providing the required core plus necessary supplemental services, and developing evaluaton strategies, applicants should pay particular attention to these aspects of Title XX:

(1) The promotion of adoption as an alternative to early parenting

(2) Involvement of the families of pregnant adolescents and adolescent parents, including the adolescent father

(3) Provision of services after delivery. (This is the continuation of necessary services to clients until adolescent parents have become or are well on their way to becoming "productive independent contributors to family and community life" and their children are developing normally physically, intellectually, and emotionally. Proposals should specify the services to be provided, the means of identifying clients' need for services, and the system for tracking clients for a period of at least two years following delivery.)

Prevention Programs

The purpose of prevention programs is—to find an effective means, within the context of the family, of reaching adolsecents before they become sexually active in order to maximize the guidance and support available to adolescents from parents and other family members, and to promote self-discipline and other prudent approaches to the problem of adolescent premarital sexual relations, including adolescent pregnacy.

In order to complement existing program models, OAPP will consider only those prevention programs which prepare parents to support and educate their children to postpone sexual activity. Only activities which clearly focus on helping parents teach postponement to their children will be funded.

Evaluation

Section 2006(b)(1) requires each grantee to expend at least one percent but not more than 5 percent of the funds received under Title XX on evaluation of the project. While the statute allows waiver of the 5% limit on evaluation (see Section 2006(b)(1)), waivers are rarely granted. Therefore, applicants who anticipate evaluation costs in excess of the limit should exhaust all possible alternative sources of funds before considering requesting a waiver for an evaluation amount in excess of 5%. Applicants should provide a plan for meeting the evaluation requirement, describing in detail measures of program performance, data collecton methods and a plan for analyzing the data. Applicants should provide evidence of consultation or other arrangements with a college or university located in the applicant's State.

Additional Requirements

In addition to the above, applicants for grants must meet the following requirements:

(1) Requirements for Review of an Application by the Governor

Section 2006(e) of the Public Health Service Act requires that—each applicant shall provide the Governor of the State in which the applicant is located a copy of each application submitted to the Secretary for a grant for a demonstration project for services under this Title. The Governor shall submit to the applicant comments on any such application within the period of sixty days beginning on the day when the Governor receives such copy. The applicant shall include the comments of the Governor with such application.

An applicant may comply with this requirement by submitting a copy of the application to the Governor of the State in which the applicant is located at the same time the application is submitted to OAPP. To inform the Governor's office of the reason for the submission, a copy of this notice should be attached to the application. The Governor has sixty days in which to provide comments to the applicant.

The applicant must provide a copy of the comments or verification that there were no comments to the above address by September 17, 1984.

(2) Review Under Executive Order 12372

Applications under this announcement are subject to the review requirements of Executive Order 12372, State Review of Applications for Federal Financial Assistance, as implemented by 45 CFR Part 100. As soon as possible, applicants should discuss their project/s with the State Single Point of Contact (SPOC) for each State in the area to be served. The application kit contains the currently available listing of the SPOCs which have elected to be informed of the submission of applications. For those States not represented on the listing, further inquiries should be made by the applicant regarding the submission to the relevant SPOC. The SPOCs comment/s should be forwarded to the Grants Management Office, Office of Population Affairs, Room 1351, HHS North Building, 330 Independence Avenue, SW., Washington, D.C. 20201. Such comments must be received by the Office of Population Affairs by September 17, 1984, to be considered. In the event that an application is submitted to the Office of Population Affairs without notification to the SPOC, the SPOC will be notified of the submission.

(3) Health Systems Agency (HSA) Review

In order to comply with the HSA review requirements under section 1513(e) of the Public Health Service Act, 42 U.S.C. 3001-2(e), as amended, applicants must contact the HSA responsible for the area to be served by the proposed project to determine whether or not the HSA desires to review the application. If so, a copy of the application must be submitted to each HSA for review no later than July 10, 1984. Applicants are advised to contact the local HSA as soon as a decision is made to apply for a grant for detailed information on meeting this review requirement. Applications will not receive a formal review by OAPP without satisfying this requirement.

Application Consideration and Assessment

Applications which are judged to be late or which do not conform to the

requirements of this program announcement will not be accepted for review. Applicants will be so notified, and the applications will be returned.

All other applications will be subjected to a competitive review and assessment by qualified persons. The results of this review will assist the Director of the Office of Adolescent Pregnancy Programs in considering competing applications and in making the final funding decisions.

Eligible competing grant applications will be reviewed and assessed against the following criteria:

1. The applicant's provision for the requirements set forth in section 2006(a) of Title XX of the Pulbic Health Service Act.

2. The capacity of the proposed applicant organization and staff to provide the appropriate services and to evaluate the results.

3. The applicant's presentation of the project's objectives, the methods for achieving project objectives, the workplan and the results or benefits expected.

4. The applicant's documentation of the innovativeness of the program approach its worth for testing and replication, and its suitability to measurement and evaluation.

5. The estimated cost of the project to the government is reasonable considering the anticipated results.

6. The applicant's detailed evaluation plan indicates an understanding of program evaluation methods and reflects a practical, technically sound approach to assesing the project's achievement of program objectives. A workplan should be included to indicate the extent and nature of the involvement of a local State college or university in this effort.

In making grant award decisions the Director of OAPP will take into account the extent to which grants approved for funding will provide an appropriate distribution of resources throughout the country taking into consideration such things as the following factors:

1. The priorities in section 2005(a) of Title XX of the Public Health Service Act.

2. The geographic area to be served.

3. The community commitment to and involvement in the planning and implementation of the demonstration project.

4. The nature of the organization applying.

5. The population to be served.

6. The organizational models for delivery of service.

7. The usefulness for policy makers and service providers of the proposed project and its potential for complementing existing AFL demonstration models.

The care and prevention components of combination projects will be reviewed separately, and it is possible that only one component of a proposed combination project would be funded.

When final funding decisions have been made, all applicants will be notified by letter of the outcome of their applications. The official document notifying an applicant that a project application has been approved for funding is the Notice of Grant Award, which specifies to the grantee the amount of money awarded, the purpose of the grant, the terms and conditions of the grant award, the budget period for which support is being given, and the amount of funding to be contributed by the grantee to project costs.

Dated: May 17, 1984.

Marjory E. Mecklenburg,

Deputy Assistant Secretary for Population Affairs.

[FR Doc. 84-14659 Filed 5-31-84; 8:45 am]

BILLING CODE 4160-17-M

Social Security Administration

Income Maintenance Research and Demonstration; Availability of Grants

The Acting Commissioner of Social Security announces the availability of fiscal year (FY) 1984 funds for income maintenance research and demonstration grants related to the Aid to Families With Dependent Children (AFDC) program, title IV-A of the Social Security Act (the Act). The grants are authorized under sections 1110 and 1115 of the Act. The closing date for receipt of all applications is July 31, 1984.

Program Purpose

The research and demonstration activities are intended to add to existing knowledge and to improve methods and techniques for the management, administration, and effectiveness of public assistance programs.

Program Goals

In general, the Social Security Administration (SSA) will support the following types of projects:

1. Those which develop and demonstrate new financing mechanisms, administrative procedures, and technological innovations for improving the effectiveness of public assistance programs at the State and local levels.

2. Those which increase knowledge of the characteristics and financial needs of a target group.

3. Those which develop and implement analytical models for comparing the relative merits of alternative methods for carrying out income maintenance.

Priority Projects

In particular, the following projects will be considered for funding:

Demonstration of Saturation Work Programs in an Urban Area—SSA-84-01

State IV-A agencies have been given the option of operating a variety of work and training programs for the AFDC population, including the WIN Demonstration, Community Work Experience Program, Employment Search, grant diversion, and activities funded under the Jobs Training and Partnership Act. Some States have attempted to operate two or more of the options with the aim of serving a larger group of eligibles. However, there has been no large-scale attempt in a major urban center to involve *all* employable recipients in a comprehensive group of work activities, i.e., to "saturate" the caseload.

This section 1115 project must include a city of at least 400,000 inhabitants using a variety of work program options, including at least a job search and a work experience component, which address the specific dynamics of an urban labor market and welfare population workforce. The goal should be to involve in any given month at least 75 percent of the eligible program participants actively in a work program component. Emphasis will be on measuring levels of employment among participants, welfare grant reductions, administrative costs, deterrent effects and related outcomes attributable to this demonstration. An additional significant objective of the project will be the development of models for implementing and operating an urban saturation work program.

It is anticipated that one project will be funded for up to 3 years in duration. For the first year, a total of $350,000 in special Federal project funds will be available which may be used as part of the single State agency's share for matching regular Federal funds under section 403 of the Act. (See the example under section "Grantee Share of Project Costs" of this notice.) Two additional 12-month grants may be awarded for continuation of this activity upon satisfactory performance and availability of fiscal year appropriations.

Cost Effective Overpayment Recovery Techniques—SSA-84-02

Overpayment recovery became a State requirement under the Omnibus

Budget Reconciliation Act of 1981. States, with varying degrees of success, practice a variety of methods for implementing this requirement. This section 1110 project will involve designing and testing different models for recovering overpayments to determine what techniques are most cost effective.

This project should emphasize effective methods of maintaining information on total amounts and number of overpayments, and disposition of actions. In addition, the project should assess the cost and benefits of the recovery efforts. Applicants should describe the evaluation methodology. Non-governmental applicants should also provide collateral agreements from authorized officials in the demonstration State(s).

It is anticipated that two projects will be funded for up to 2 years in duration. For the first year, a total of $340,000 will be available in support of this section 1110 activity. An additional 12-month grant may be awarded for continuation of this activity upon satisfactory performance and availability of fiscal year appropriations.

Demonstration of Computer Matching in Eligibility Determination and Redetermination—SSA–84–03

State and local governments employ numerous automated data processing and storage systems for a variety of governmental activities. However, agencies administering AFDC have had access to very few of these data systems and only rarely has that access been through an on-line data processing system.

This section 1110 project will demonstrate the effectiveness of utilizing a variety of State data systems with the goal of reducing errors and fraud. Applicants should show how they will develop, implement, and document an on-line data processing system to verify applicant/recipient provided information. The system should have on-line access to State employment security data, and either on-line or batch-loading access to at least one other relevant State data system (motor vehicle registration, State tax data, school enrollment data, etc.). Non-governmental applicants should also provide collateral agreements from authorized officials in the demonstration States.

It is anticipated that one project will be funded for up to two years in duration. For the first year, a total of $150,000 will be available in support of this section 1110 activity. An additional 12-month grant may be awarded for continuation of this activity upon satisfactory performance and availability of fiscal year appropriations.

Demonstration of Alternative Filing Units for AFDC—SSA–84–04

Current law allows AFDC units to be self-defining.

Individuals may exclude themselves to maximize the family's grant by not having income of certain family members considered. While in most instances parental income is always considered available in determining eligibility and the amount of the grant, there are some situations when that is not the case. For example, a minor mother lving with her parents may apply for assistance for her children, but not herself, thereby excluding her parents' income. This section 1115 project will demonstrate a requirement that AFDC units include all natural or adoptive parents and siblings (except SSI recipients) of recipient children living in the household.

The evaluation component should measure the effects of including parents and siblings in the assistance unit, especially program costs including AFDC, Food Stamps, and Medicaid, and the amount and source of income that is currently excluded. The evaluation should also address the resolution of operational problems and development of a model set of procedures for implementing the filing unit requirement.

It is anticipated that two grants will be funded for up to 2 years in duration. For the first year, a total of $75,000 in special Federal project funds will be available which may be used as part of the single State agency's share for matching regular Federal funds under section 403 of the Act. (See the example under section "Grantee Share of the Project Costs" of this notice.) An additional 12-month grant may be awarded for continuation of this activity upon satisfactory performance and availability of fiscal year appropriations.

Grantee Share of the Project Costs

Section 1110 grants. Grantees receiving financial assistance to conduct projects must contribute at least 5 percent of the total project costs.

Section 1115 grants. Special Federal project funds received under section 1115 grants are available to be used as part of the single State agency funds for matching regular Federal funds under the AFDC State plan pursuant to section 403 of the Act.

Section 1115 grant applications usually include a budget proposal of which 50 percent of the total cost of the activity will be funded from regular Federal funds under section 403 of the Act and the remaining 50 percent from special Federal project and State funds. States are expected to contribute at least 5 percent of the total cost of the activity. For example, a State implementing project SSA–84–01 could receive $388,500 in regular Federal funds under section 403 of the Act to match the $350,000 in special project funds and $38,500 of its own State funds. The $38,500 State contribution would be approximately 5 percent of the total project costs.

No section 1110 or 1115 grant will be awarded which provides 100 percent Federal funding.

Non-Priority Projects

Applicants may also submit proposals for projects for funding in areas not specifically identified in this announcement but which are relevant to the goals and objectives of the AFDC program. These applications will be designated as non-priority because of limitations on funds, but will also be subject to the panel review process. They will compete with other non-priority projects, and a limited number may be approved pending available funds.

Grant Awards

Grants awards are expected to be made in August 1984.

Criteria for Review and Evaluation of Priority and Non-priority Applications

Applications will be judged primarily on the feasibility of their operational design, including their staffing plan and the quality of their evaluation plan. Competing applications will be reviewed and evaluated against the following criteria:

1. Are the project's personnel qualified and suitable for the assigned tasks? (10 points)

2. Does the applicant have adequate facilities and resources to plan, conduct, and complete the project? (10 points)

3. Is the project's design and evaluation plan adequate and feasible, as indicated by the technical approach, the use of scientifically valid methods and data and the schedule of tasks and milestones? Is the project reasonable and plausible? Can significant results be expected? Will results be replicable? (50 points)

4. Is the budget detailed with explanations and, if necessary, justifications for the requested amounts? Are the costs reasonable and adequately described? Is the project

planned in a cost-effective manner? (15 points)

5. How closely do the project objectives fit SSA program objectives and goals? (15 points)

Projects which require section 1115 waivers of section 402 of the Social Security Act must list the required waivers by subsection of the Social Security Act, discuss the implications of granting the waivers, including effects on program costs, and state the effect on recipients participating in the project. In addition, waiver projects will receive budget reviews in order to assess the potential costs and/or savings of granting the proposed waivers. Special attention must be given to fully stating the budget in accord with the requirements in the application kit.

Eligible Applicants

Section 1110 Grants. Any State, public or non-profit organization or agency may apply for a section 1110 grant under this announcement.

Section 1115 Grants. Under this announcement, only title IV–A State agencies may apply for grants under the section 1115 authority.

The Application Process

1. Availability of application forms. Application kits which contain the prescribed application forms and grant guidelines which provide supplemental descriptive information on the priority projects are available from: Social Security Administration, Division of Contracts and Grants Management, OMBP, Grants Management Branch, Room 1–C–1, Dogwood West, 1848 Gwynn Oak Avenue, Baltimore, Maryland 21207. Telephone: (301) 594–0284. Lawrence H. Pullen, Chief, Grants Management Branch.

When requesting an application kit, the applicant should specify the type of project intended (section 1110 or 1115) to insure receipt of the proper application kit. The appropriate grant guidelines will be included with the application kit.

2. Additional information. For questions concerning project development, please contact Elizabeth Barnes, Office of Family Assistance, Social Security Administration, 2100 Second Street SW., Washington, D.C. 20201, telephone (202) 245–3284.

3. Application submission. To be considered for section 1110 or section 1115 grants all applications must be submitted on standard forms provided by the Division of Contracts and Grants Management. The application shall be executed by an individual authorized to act for the applicant and to assume for the applicant the obligations imposed by the terms and conditions of the grant.

As part of the project title (page 1 of the application Form SSA–96, item 7) the applicant must clearly indicate whether the application submitted in response to a priority project identified in this announcement and must reference the unique project identifier (SSA–84–1, SSA–84–2, etc.) for which the application is to compete. If the application is not submitted in response to a priority project, indicate "Non-Priority."

4. Application consideration. Applications are initially screened for relevance to the interests of SSA. Irrelevant applications are returned to the applicants. Relevant applications are reviewed and evaluated by a review panel of not less than three persons. Written assessment of each relevant application is made by the review panel.

5. Application approval. Following approval by SSA of the applications selected for funding, financial assistance awards will be issued within the limits of available Federal funds. The grant awards will be issued in August 1984. The official award document is the Notice of Grant Award. It provides the amount of funds awarded, the purpose of the award, the terms and conditions of the award, the budget period for which support is contemplated, and the total grantee financial participation.

Closing Dates and Times.

The closing date for receipt of applications in response to this announcement will be July 31, 1984.

Applications may be mailed, sent by commercial carrier, or hand delivered to: Social Security Administration, Division of Contracts and Grants Management, OMBP, Grants Management Branch, Room 1–C–1, Dogwood West, 1848 Gwynn Oak Avenue, Baltimore, Maryland 21207.

Applications must be received by the Division of Contracts and Grants Management, Grants Management Branch, by the closing date to be considered. Hand delivered applications are accepted during normal working hours of 8:30 a.m. to 5:00 p.m., Monday through Friday. An application will be considered to be received on time if mailed or sent on or before the closing date, as evidenced by a legible U.S. Postal Service postmark or a legibly dated receipt from a commercial carrier. Private metered postmarks will not be considered acceptable as proof of timely mailing. Applications submitted by any means other than by through the U.S. Postal Service or commercial carrier shall be considered as acceptable only if hand delivered to the above address before close of business on or before the deadline date.

Applications which are not received on time will not be considered for funding.

Executive Order 12372 Intergovernmental Review of Federal Programs

These grant activities are not covered by the requirements of Executive Order 12372 relating to the Federal policy for consulting with State and local elected officials on proposed Federal financial assistance.

(Catalog of Federal Domestic Assistance Programs No. 13.812—Assistance Payments—Research/Demonstrations)

Dated: May 29, 1984.

Martha A. McSteen,

Acting Commissioner of Social Security.

[FR Doc. 84–14862 Filed 5–31–84; 8:45 am]

BILLING CODE 4190–11–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary, Interior.

Availability of Final Environmental Impact Statement for the Wilderness Recommendation for the Great Rift Instant Study Area, Idaho

AGENCY: Office of the Secretary.

ACTION: Notice of availability of final environmental impact statement.

SUMMARY: Pursuant to Section 102(c) of the National Environmental Policy Act of 1969, the Department of the Interior, Bureau of Land Management, has prepared a Final Environmental Impact Statement on the suitability for wilderness designation of the Great Rift Instant Study Area, Blaine, Butte, Minidoka, and Power Counties, Idaho.

DATES: Comments on the final environmental impact statement may be made by public agencies and interested individuals and organizations. Written comments should be submitted by July 2, 1984, to Director (340), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240 in order to be considered in the record of decision.

ADDRESSES: Copies of the statement are available for review at the following locations:

Director (340), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240, Telephone: (202) 343–6064

Idaho Falls District Office, Bureau of Land Management, 940 Lincoln Road, Idaho Falls, Idaho 83401, Telephone: (208) 529–1020

Shoshone District Office, Bureau of Land Management, Post Office Box 2B,

Shoshone, Idaho 83352, Telephone: (208) 886–2206
Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706, Telephone: (208) 334–1770

SUPPLEMENTARY INFORMATION: The final statement recommends that the proposed Great Rift Wilderness be designated by Congress as part of the National Wilderness Preservation System. The proposed action recommends 322,450 acres of public land in Butte, Blaine, Power, and Minidoka Counties, Idaho, be designated wilderness and 33,400 acres be managed for other multiple uses. The area is a lava flow ecosystem adjacent to the Craters of the Moon National Monument. Included in the proposed wilderness boundary are 18,550 acres of State land. If the area were designated wilderness, the Bureau of Land Management would work with the State to exchange the State lands for public lands. The wilderness recommendation includes the Grassland Kipuka Natural Area (160 acres) and portions of the Craters of the Moon (267,950 acres) and Wapi (72,890 acres) lava flows.

Three wilderness alternatives are analyzed in the final statement; the proposed action cited above and two other alternatives. The Wilderness Study Area Alternative would designate an additional 33,400 acres of public lands as wilderness. The No Action Alternative would continue the administration of the Grassland Kipuka as a natural area and continue managing the Craters of the Moon and Wapi lava flows for other multiple uses. Also included in the final statement are comments on the draft from individuals, organizations and agencies, and responses to those comments.

FOR FURTHER INFORMATION CONTACT: O'dell A. Frandsen or Donald Watson, Bureau of Land Management, 940 Lincoln Road, Idaho Falls, Idaho 83401, Telephone: (208) 529–1020.

Dated: May 24, 1984.

Garrey E. Carruthers,

Assistant Secretary for Land and Minerals Management.

[FR Doc. 84–14500 Filed 5–31–84; 8:45 am]

BILLING CODE 4310–84–M

Availability of Final Environmental Impact Statement for the Wilderness Recommendation for the Humbug Spires Instant Study Area, Montana

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of availability of final environmental impact statement.

SUMMARY: Pursuant to Section 102(c) of the National Environmental Policy Act of 1969, the Department of the Interior, Bureau of Land Management, has prepared a Final Environmental Impact Statement on the suitability for wilderness designation of the Humbug Spires Instant Study Area, Silver Bow County, Montana.

DATE: Comments on the final environmental impact statement may be made by public agencies and interested individuals and organizations. Written comments should be submitted by July 2, 1984, to Director (340), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240 in order to be considered in the record of decision.

ADDRESSES: Copies of the statement are available for review at the following locations:

Director (340), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240
Bureau of Land Management, Montana State Office, Post Office Box 36800, Billings, Montana 59107
Bureau of Land Management, Butte District Office, Post Office Box 3388, Butte, Montana 59702
Bureau of Land Management, Dillon Resource Area Office, Post Office Box 1048, Dillon, Montana 59725

SUPPLEMENTARY INFORMATION: On the basis of the information and analysis used in the preparation of the draft statement and the information received during the public comment period, a new preferred alternative was selected. This alternative is described and analyzed in the "New Alternative" section of the final statement. Under this alternative, it is recommended that 8,791 acres be designated as wilderness and that the remaining 2,384 acres be returned to other multiple use management.

Selection of this alternative represents the continuation of a management philosophy already in effect. The protection of natural qualities was established as the best use of the area through its designation as a primitive area in 1972, and that policy was continued in the most recent Management Framework Plan for the Dillon Resource Area. Since current policy is that there will be no more primitive areas, designation of the Humbug Spires as wilderness is the most logical means of ensuring the continued protection of the area's natural qualities.

Since changes suggested during the public review of the draft statement did not necessitate a major rewrite of the draft, it is possible to effect a substantial cost saving by incorporating the draft into this final statement by reference. Therefore, this statement is not intended to stand alone; rather, it is a supplement to the draft and is to be used in conjuction with the draft. The final statement provides additional information, clarifies misimpressions made evident through public comment, and describes a new alternative proposed by the public.

All comments received at public meetings and by letter have been printed in the final statement.

Changes that should be made to the draft document are listed in the "Corrections and Revisions" section of the final statement. Copies of the draft are available from the Bureau of Land Management, Butte District Office or from the Montana State Office (addresses above).

FOR FURTHER INFORMATION CONTACT: Jack McIntosh, Bureau of Land Management, 106 North Parkmont, Post Office Box 3388, Butte, Montana 59702, Telephone: (406) 494–5059.

Dated: May 24, 1984.

Garrey E. Carruthers,

Assistant Secretary for Land and Minerals Management.

[FR Doc. 84–14501 Filed 5–31–84; 8:45 am]

BILLING CODE 4310–84–M

Availability of Final Environmental Impact Statement for the Wilderness Recommendation for the Powderhorn Instant Study Area, Colorado

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of availability of final environmental impact statement.

SUMMARY: Pursuant to Section 102(c) of the National Environmental Policy Act of 1969, the Department of the Interior, Bureau of Land Management, has prepared a Final Environmental Impact Statement on the suitability for wilderness designation of the Powderhorn Instant Study Area, Gunnison and Hinsdale Counties, Colorado.

DATE: Comments on the final environmental impact statement may be made by public agencies and interested individuals and organizations. Written comments should be submitted by July 2, 1984, to Director (340), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240 in order to be considered in the record of decision.

ADDRESSES: Copies of the statement are available for review at the following locations:

Director (340), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240
Montrose District Office, Bureau of Land Management, 2465 S. Townsend, Montrose, Colorado 81401
Colorado State Office, Bureau of Land Management, 1037 20th Street, Denver, Colorado 80202

SUPPLEMENTARY INFORMATION: The proposed action in the final statement recommends that Congress designate 43,311 acres in southwestern Colorado as a part of the National Wilderness Preservation System and that the remaining 7,109 acres be returned to other multiple use management.

The Powderhorn Instant Study Area and contiguous lands with wilderness characteristics encompass 48,500 acres total; 38,840 acres in the existing Powderhorn Primitive Area and 9,660 acres of contiguous lands. Five alternatives and the proposed action were considered: (I) Designation of the 38,840-acre Primitive Area and 4,471 Contiguous Acres (Proposed Action); (II) Designation of the Existing Primitive Area (38,840 acres); (III) Use Alternative; (IV) No Action; (V) Designation of All Lands With Wilderness Character (38,840 acres plus 9,660 acres of contiguous lands).

The final statement is a full reprint of the draft. It includes changes made as a result of public comment on the draft statement. Copies of the comment letters and transcripts of the public hearings are included in the final statement, as well as responses to those comments.

FOR FURTHER INFORMATION CONTACT: Terry Reed, Gunnison Basin Resource Area, Bureau of Land Management, 11 South Park, Montrose, Colorado 81401, Telephone: (303) 249–6624.

Dated: May 24, 1984.

Garrey E. Carruthers,

Assistant Secretary for Land and Minerals Management.

[FR Doc. 84–14502 Filed 5–31–84; 8:45 am]

BILLING CODE 4310–84–M

Availability of Final Environmental Impact Statement for the Wilderness Recommendation for the Scab Creek Instant Study Area, Wyoming

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of availability of final environmental impact statement.

SUMMARY: Pursuant to Section 102(c) of the National Environmental Policy Act of 1969, the Department of the Interior, Bureau of Land Management, has prepared a Final Environmental Impact Statement on the suitability for wilderness designation of the Scab Creek Instant Study Area, Sublette County, Wyoming.

DATE: Comments on the final environmental impact statement may be made by public agencies and interested individuals and organizations. Written comments should be submitted by July 2, 1984, to Director (340), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240 in order to be considered in the record of decision.

ADDRESSES: Copies of the statement are available for review at the following locations:

Director (340), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240
Bureau of Land Management, Rock Springs District Office, Post Office Box 1869, Highway 187 North, Rock Springs, Wyoming 82902
Bureau of Land Management, Wyoming State Office, Post Office Box 1828, 2515 Warren Avenue, Cheyenne, Wyoming 82001

SUPPLEMENTARY INFORMATION: The proposed action in the final statement recommends designation of the Scab Creek Primitive Area and 956 contiguous acres for inclusion in the National Wilderness Preservation System. A total of 7,636 acres is proposed for designation. The general location of the proposed Scab Creek Wilderness Area is adjacent to the Bridger-Teton National Forest about 20 miles southeast of Pinedale, Wyoming, and 90 miles northeast of Rock Springs, Wyoming.

The environmental impact statement analyzes the environmental consequences of the proposal and two alternatives. The alternatives include a no-action (no wilderness) alternative and an alternative which would recommed designation of only the 6,680-acre Scab Creek Primitive Area as wilderness.

The abbreviated final statement incorporates the draft by reference. Copies of the draft are available from the Bureau of Land Management, Rock Springs District Office or from the Wyoming State Office (addresses above).

FOR FURTHER INFORMATION CONTACT:

Harold Johnson, Bureau of Land Management, Rock Springs District Office, Post Office Box 1869, Rock Springs, Wyoming 82902, Telephone: (307) 382–5350
Wayne Erickson, Bureau of Land Management, Wyoming State Office Post Office Box 1828, Cheyenne, Wyoming 82003 Telephone: (307) 772–2073

Dated: May 24, 1984.

Garrey E. Carruthers,

Assistant Secretary for Land and Minerals Management.

[FR Doc. 84–14503 Filed 5–31–84; 8:45 am]

BILLING CODE 4310–84–M

Fish and Wildlife Service

Receipt of Application for Permit; Roxy Engesser

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Savannah River Ecology Laboratory, Aiken, SC.; APP No. 0212BM.

The applicant requests a permit to take (=harass) 200 wood storks (*Mycteria americana*) for scientific research. Receipt of this application was published 4/24/84 as APP No. 591958 under the name of Joseph Meyers. The research proposal remains the same as in that application and the public comment period closed 5/2/84.

Applicant: Roxy Engesser, Trenton, FL.; APP No. 5306AB.

The applicant requests a permit to purchase one captive-born female jaguar (*Panthera onca*) from the Penny Lou Zoo, Scotch Plains, NJ, for educational purposes.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 601, 1000 North Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service, P.O. Box 3654, Arlington, Virginia 232203.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT 2/APP number when submitting comments.

Dated: May 24, 1984.

R. K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 84–14793 Filed 5–31–84; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[I-20813]

Sale of Public Lands in Power County, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, I-20813. Sale of Public Lands in Power County, Idaho.

SUMMARY: The following land has been examined and, through land use planning which included public input, it has been determined that the sale of this parcel is consistent with section 203(a)(1) of the Federal Land Policy and Management Act of 1976 (FLPMA). The parcel is not presently available for livestock grazing; therefore, no cancellation of grazing preference is required under the regulations in 43 CFR 4110.4-2(a). Legal access to the parcel will not be provided by BLM. The land will be offered for sale using competitive bidding procedures (43 CFR 2711.3-1) for no less than the appraised fair market value. Any bids for less than such value will be rejected as required by FLPMA. Only sealed bids will be accepted. A bid will also constitute an application for conveyance of the mineral rights, except oil and gas. The mineral interests being offered for conveyance have no known monetary value. Each bidder must submit a fifty dollar ($50) (non-returnable for high bidder) filing fee for the mineral conveyance (43 CFR 2720.1-2(c)) and one-fifth of the full bid price (43 CFR 2711.3-1(d)), with the bid. Failure to deposit these sums will result in disqualification as the high bidder. The authorized officer shall then determine whether to accept the next highest bid, withdraw the public lands from the market or re-offer them for sale at a later date.

BOISE MERIDIAN, IDAHO

Name	Legal description	Acreage	Type bidding	Appraised fair market value
Parcel I-20813 (Sunbeam, I-2(35))	T. 8 S., R. 31 E.; Sec. 12: W½E½, E½W½	320	Competitive	Available upon request after June 25, 1984.

The patent when issued will contain the following reservations to the United States:

1. A right-of-way for ditches and canals constructed under the Act of August 30, 1890 (43 U.S.C. 945).
2. All oil and gas rights (43 U.S.C. 1719).

In addition, the patents will be subject to the following condition:

1. All valid existing rights and reservations of record.

DATE: All sealed bids must be received by 1:30 p.m. on July 25, 1984. At this time all bids will be opened at the Burley District Office.

ADDRESSES: Sealed bids will be accepted at the Burley District Office, Rt. 3, Box 1, 200 South Oakley Highway, Burley, Idaho 83318. Additional information concerning the land, terms and conditions of the sale, and bidding instructions may be obtained from Curt Krambeer, Deep Creek Realty Specialist, at the above address, or by calling (208) 678-5514.

FOR FURTHER INFORMATION CONTACT: John S. Davis, (208) 678-5514.

SUPPLEMENTARY INFORMATION: For a period of 45 days from the date of this notice, interested parties may submit comments regarding the proposed action. Any adverse comments will be evaluated by the District Manager who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of the Interior.

The BLM reserves the right to accept or reject any and all offers, or withdraw any land or interest in land from sale if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with section 203(g) of FLPMA or other applicable laws.

Dated: May 22, 1984.

John S. Davis,

District Manager.

[FR Doc. 84-14705 Filed 5-31-84; 8:45 am]

BILLING CODE 4310-GG-M

Availability of New Geothermal Lease Form

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of new geothermal application/lease form, "Offer to Lease and Lease for Geothermal Resources."

SUMMARY: In an effort to streamline procedures, reduce paperwork, contain costs and facilitate processing, the Bureau of Land Management announces the availability to the public of a new combined geothermal application/lease form, numbered 3200-24. The form replaces the existing noncompetitive geothermal resources application form and the geothermal resources lease form. Forms 3200-8 and 3200-21 shall become obsolete and shall not be accepted or used by the Bureau upon the effective date shown below.

EFFECTIVE DATE: July 1, 1984.

ADDRESS: Inquiries or suggestions should be sent to: Director (620) Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Karl Duscher, (202) 653-2187 or Jean Austin (202) 653-2109. Copies of the new form may be obtained from any Bureau of Land Management State Office (see 43 CFR 1821.2-1 for office locations).

SUPPLEMENTARY INFORMATION: On December 29, 1983, the Bureau of Land Management published in the Federal Register (48 FR 57374) a proposed geothermal application/lease form. Comments were invited for a period of 30 days, during which a total of four comments were received, all from industry sources. The comments were given careful consideration during the review process for the final revision of the new form. The comments contained discussions of specific sections of the proposed form and recommended changes. The final form has been revised in certain respect as a result of the comments received.

Two comments suggested that it would be helpful to clarify the "percent United States interest" phrase. The Bureau of Land Management believes that the term is already adequately clarified in the instructions at Part B, Item 2.

One commenter recommended that the amount of the filing fee be specified in the instructions. This recommendation was not adopted. The filing fee appears in the regulations and should be well known by those participating in the geothermal leasing program.

Another commenter recommended that references to the regulations be included in the lease form. However, given that the regulations are often renumbered, it was not considered feasible to cite specific regulations on the form. Therefore, the recommendation was not adopted.

Two comments recommended that the granting clause paragraph under number 3 be expanded because it did not appear to be as inclusive as the granting clause of the existing lease form. The Bureau of Land Management disagrees. In the interest of space, the granting clause has been abbreviated. However, the rights granted are identical to those granted under the previous lease form.

One commenter was concerned that the new form might make it difficult for lessees to comply with the lease acreage limitations in an orderly fashion. Under current procedures, a lessee has 30 days to accept a lease offered by the Bureau of Land Management. With the new form, lessees would not have this 30-day period to accept leases. However, the 30-day period was simply a consequence of having separate application and lease forms. There is no provision in the law or the regulations that accords a 30-day acceptance period to applicants. However, the Bureau appreciates the difficulties experienced by lessees in complying with the lease acreage limitation requirements while trying to aggressively explore and develop Federal geothermal resources. Therefore, until such time as the geothermal acreage limitation is increased, the Bureau will administratively provide applicants a 30-day acceptance period. No change in the final form is necessary to accomplish this. Such an administrative change will be made through internal instructions to the Bureau State Offices.

One commenter recommended under section 4, that, the phrase, "shall prevent unnecessary damage" be amended to read "shall endeavor to prevent unnecessary damage." The Bureau of Land Management disagrees. All surface disturbing activities must be approved by the Bureau. Once approved, activities need be conducted in close conformance to the conditions of approval in order to ensure protection of the public's interest.

Another commenter maintained, under section 5, that furnishing expenditures and depreciation costs other than those for diligent exploration should not be a requirement because these expenses are privileged items to the company making the expenditures. The Bureau of Land Management disagrees. Any cost that may have an effect on the pricing of products may be of value to the Bureau in assessing royalties. The information submitted is protected in accordance with the Freedom of Information Act.

One commenter suggested, with respect to section 5, that references to subsurface data need to be clarified to indicate that only raw data is required and not in-house interpretation. Interpretations of data, however, are not data. As such, section 5 required no change. If interpretations of data are requested, they would be submitted only at the option of the lessee.

One commenter recommended that the beneficial use requirements in section 7 with respect to whether or not a lessee's rights to development will be protected should be clarified. Another commenter maintained that requiring the lessee to produce commercially valuable demineralized water could be uneconomical. Section 7, however, is written consistent with section 9 of the Geothermal Steam Act. Also, if production of demineralized water is not economical, it would not be commercially valuable. Therefore, the wording in the section was not revised.

One commenter recommended that section 12 be revised to specify the right of a lessee to voice a protest of noncompliance. The final form is revise to reflect this comment.

Finally, although not in response to specific comments, several editorial changes were made in the final form for clarification purposes.

The information collection requirements contained in form 3200–24, "Offer to Lease and Lease for Geothermal Resources," have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1004–0038, with an expiration date of January 31, 1986.

Dated: May 25, 1984.

James M. Parker,

Acting Director.

[FR Doc. 84–14504 Filed 5–31–84; 8:45 am]

BILLING CODE 4310–84–M

San Juan-San Miguel; Draft Resource Management Plan and Environment Impact Statement

AGENCY: USDI, Bureau of Land Management, Interior.

ACTION: Public hearing in Utah for San Juan-San Miguel Resource Management Plan; Extension of Public Comment Period.

SUMMARY: An additional public hearing has been added to the four hearings listed in the April 25, 1984, Federal Register. This hearing will be held Monday, July 2, 1984, at the San Juan County Library in Monticello, Utah, from 2 to 4 p.m. This wilderness hearing will be held to fulfill requirements of the Wilderness Act of 1964. Two Wilderness Study Areas (WSAs) within the planning area are found in Utah—Cross Canyon WSA (CO–030–265; UT–060–229, Colorado–11,734 acres and Utah–1,008 acres; and Squaw/Papoose Canyon WSA (CP–030–265A; UT–060–227), Colorado–4,611 acres and Utah—6,676 acres.

DATE: The public comment period will be extended until Wednesday, August 1, 1984.

ADDRESS: Send comments to: David J. Miller, Area Manager, Bureau of Land Management, San Juan Resource Area Office, Federal Building, Room 102, 701 Camino del Rio, Durango, Colorado 81301. Telephone: (303) 247–4082.

FOR FURTHER INFORMATION CONTACT: David J. Miller, Area Manager, Bureau of Land Management, San Juan Resource Area Office, Federal Building, Room 102, 701 Camino del Rio, Durango, Colorado 81301. Telephone: (303) 247–4082.

Dated: May 23, 1984.

Bob Moore,

Acting State Director, Colorado, Bureau of Land Management.

[FR Doc. 84–14694 Filed 5–31–84; 8:45 am]

BILLING CODE 4310–JB–M

[A–16772]

Public Lands Exchange; Mohave County, Arizona

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Realty Action—Exchange, Public Lands in Mohave County, Arizona.

SUMMARY: The following described public lands and interests have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Gila and Salt River Meridian, Arizona

T. 23 N., R. 13 W., Sec. 28, all.

Comprising 640 acres of public land, including all minerals with the exception of the oil and gas estate in the W½ and W½E½ section 28, T. 23 N., R. 13 W.

In exchange for these lands, the Federal government will acquire non-Federal land from X-One Ranch, Inc., described as follows:

Gila and Salt River Meridian, Arizona

T. 23 N., R. 14 W., Sec. 9, N½, E½SW¼, and SE¼; Sec. 17, S½SW¼.

Comprising 640 acres of private land, excluding the mineral estate.

The above described public lands were previously segregated by Bureau action of May 24, 1982. Whereas, final appraisals have been completed and an exchange agreement consummated, it is necessary to initiate an additional segregative action to afford the

proponents ample time to obtain mortgage releases.

Lands to be transferred from the United States will be subject to the following reservations, terms and conditions:

1. A right-of-way for ditches and canals constructed by the authority of the United States. Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. A reservation of all the oil and gas in the W½ and W½E½ section 28, T. 23 N., R. 13 W. to the United States with the right to prospect for, mine and remove such deposits.

3. A public road easement sixty-six (66) feet-in-width traversing the south half of the subject public section to be transferred.

Private lands to be acquired by the United States will be subject to the following reservations, terms and conditions:

1. All minerals in the subject are reserved to the Santa Fe Pacific Railroad Company.

2. A reservation to John P. Rubel and Margaret Ann Rubel reserving an undivided one-half (½) of all unreserved minerals.

The publication of this notice in the Federal Register will segregate the public lands described herein to the extent that they will not be subject to appropriation under the public land laws, including the mining laws, but not the mineral leasing laws as they apply to the W½ and W½E½ section 28, T. 23 N., R. 13 W. This segregative effect shall terminate upon issuance of patent to such lands, upon publication in the Federal Register of a termination of the segregation, or 2 years from date of this publication, whichever occurs first.

SUPPLEMENTARY INFORMATION: Detailed information concerning the exchange including the environmental analysis and the record of public discussions, is available for review at the Kingman Resource Area Office, 2475 Beverly Avenue, Kingman, Arizona 86401.

For a period of 45 days, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of the Interior.

Dated: May 25, 1984.

Marlyn V. Jones,

District Manager.

[FR Doc. 84-14702 Filed 5-31-84; 8:45 am]

BILLING CODE 4310-32-M

[C-34320]

Realty Action—Exchange Public Lands in Routt County, Colorado

The following described public lands have been determined to be suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Sixth Principal Meridian

T. 4 N., R. 84 W.,
Sec. 34, SE¼NE¼, E½SE¼
Sec. 33, W½NE¼,[1] W½, SE¼
Containing 680 acres.

In exchange for these lands, the Federal government will obtain non-federal lands in Routt County from Energy Fuels Corporation, P.O. Box 773457, Steamboat Springs, Colorado 80477, described as follows:

Sixth Principal Meridian

T. 4 N., R. 84 W.,
Sec. 19: Lots 2-4, SE¼NW¼, E½SW¼, W½SE¼, SE¼SE¼
Sec. 30: Lots 1, 2, N½NE¼, E½NW¼, *EXCEPT* a tract of land in lot 2 in said Section bounded by a line described as follows: Beginning at the NW corner of said Section 30, thence S. 00°09'E. 1915.97 feet to the true point of beginning; thence N 89°51' E 587.20 feet; thence S. 00°09' E. 778.44 feet; thence N. 88°44' W. 555.85 feet to the intersection of the Easterly ROW of County Road No. 14; thence N. 00°42'49" W. 71.32 feet along said ROW, thence N. 11°26'00" E. 104.28 feet along said ROW; thence N. 05°57'13" W. 259.78 feet along said ROW, thence N. 26°38'28" W. 57.14 feet along said ROW to the intersection with the West line of said Section 30; thence N. 00°09' W. along said West line 281.6 feet to the true point of beginning;

Sixth Principal Meridian

T. 4 N., R. 85 W.,
Sec. 25: All that part of the SE¼NE¼ lying east of County Road 14 *EXCEPT* a tract of land bounded by a line described as follows: Beginning at a point on the East line of SE¼NE¼ from which the NE corner Section 25 bears N. 00°09'00" W. 1915.97 feet; thence S. 89°51'00" W. to the East ROW fence of Yellow Jacket Pass Road (Routt County No. 14); thence Southerly along said ROW fence to the East line of the SE¼SE¼; thence N. 00°09'00" W. 281.63 feet along said East line to the point of beginning.
Containing 615 acres, more or less.

[1] Part of this parcel may be dropped from consideration depending upon final appraisal.

The purpose of the exchange is to obtain non-federal lands for use in Federal wildlife programs. The exchange conforms with the Bureau planning for the land involved. The public interest will be well served by making the exchange. The values of the lands to be exchanged are approximately equal and the acreage will be adjusted and/or money will be used to equalize values upon completion of the final appraisal of the lands.

The terms and conditions applicable to the exchange are:

1. The exchange involves surface estates only; all minerals will be reserved, along with the right to prospect, mine and remove such deposits under applicable law.

2. The reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

3. The reservation to the United States the right to itself, its permittees or licensees, to enter upon, occupy and use, any part or all of the land in the SE¼SE¼, section 28, and the N½N½, section 33, T. 4 N., R. 84 W., 6th P.M., for the purposes set forth in and subject to the conditions and limitations of section 24 of the Federal Power Act of June 10, 1920, and subject to the stipulation that, if and when the lands are required in whole or in part, for power development purposes, any structures or improvements placed thereon which shall be found to obstruct or interfere with such development shall, without expense to the United States, its permittees or licensees, be removed or relocated insofar as is necessary to eliminate interference with power development.

Additional information about the exchange, including the environmental assessment, is available for review at the Bureau of Land Management District Office, 455 Emerson St., Craig, CO 81625.

For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager, Bureau of Land Management, 455 Emerson Street, Craig, CO 81625. Any adverse comments will be evaluated by the District Manager who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become

the final determination of the Department of the Interior.

Lee Carie,

District Manager.

[FR Doc. 84-14695 Filed 5-31-84; 8:45 am]

BILLING CODE 4310-JB-M

Arizona Strip District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Arizona Strip District Grazing Advisory Board will be held at 10 a.m., Thursday, June 28, 1984 at the Four Seasons Convention Center, 747 East St. George Blvd., St. George, Utah.

FOR FURTHER INFORMATION CONTACT: G. William Lamb, District Manager, Arizona Strip District, 196 E. Tabernacle, St. George, Utah 84770, (801/673-3545).

SUPPLEMENTARY INFORMATION: Topics on the agenda are discussion of maintenance policy, followup on range projects, and grazing memorandums of understanding. At 1 p.m. an open house will be held and a special program to commemorate the 50th anniversary of the Taylor Grazing Act will begin at 2 p.m.

G. William Lamb,

Arizona Strip District Manager.

May 24, 1984.

[FR Doc. 84-14709 Filed 5-31-84; 8:45 am]

BILLING CODE 4310-84-M

Susanville District Advisory Council; Meeting

Notice is hereby given in accordance with Pub. L. 94-579 (FLPMA) that a meeting of the Susanville District Advisory Council will be held on June 29 and 30, 1984.

The meeting will begin at 10:00 a.m. on June 29, in the Conference Room at the U.S. Forest Service Engineering Building, 1600 Main Street, Susanville, California.

The agenda will include presentations to the Council from two ad hoc "Technical Review Teams" established by the Council to review the District's 13 Wilderness Study Areas (WSAs) and recommend each area, or positions of each area, as suitable or non-suitable for inclusion into the Natinal Wilderness Preservation System. The Council will use these recommendations along with comments presented by public to develop a recommendation for BLM District Manager, Rex Cleary.

Other items for discussion will include the District's minerals program and forestry and fuelwood programs.

The meeting is open to the public and time will be provided for public comment.

Summary minutes of the Council meeting will be maintained in the District Office and will be available for public inspection and reproduction within 30 days following the meeting.

C. Rex Cleary,

District Manager.

[FR Doc. 84-14701 Filed 5-31-84; 8:45 am]

BILLING CODE 4310-40-M

[U-52794]

Sale of Lands in San Juan County, Utah; Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Sale of Public Lands in San Juan County, Utah.

SUMMARY: The Bureau of Land Management, based upon land use plans and field examination, has determined that the following described tract of land is suitable for sale at no less than the appraised fair market value of $12,000.00, under the authority of section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713).

Legal Description

T. 32 S., R. 24E., SLBM

Sec. 29: SE¼SW¼, SW¼SE¼

Acreage—80.

There is no legal access to the tract.

The terms and conditions applicable to the sale are:

1. The sale of the land is subject to valid existing rights.

2. A right-of-way thereon for ditches and canals constructed by the authority of the United States under the Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945 (1970)].

3. A reservation to the United States for all minerals with the right to prospect for, mine and remove same under applicable law and regulation.

The parcel will be offered for sale by sealed bid August 24, 1984, subject to a preference right of the adjoining landowner to meet the highest bid.

Federal law requires that all bidders be U.S. citizens, or in the case of corporations, be authorized to own real estate in Utah.

Bids must be made by a principal or his agent by sealed bid, mailed or delivered to the Bureau of Land Management, San Juan Resource Area, 480 S., 1st West, P.O. Box 7, Monticello, Utah after 7:45 A.M., August 13, 1984 and prior to 10:00 A.M., August 24, 1984. A bid must be in a sealed envelope accompanied by certified check, postal money order, bank draft, or cashier's check made payable to the Bureau of Land Management for no less than one-fifth (20%) of the amount of the bid. The envelope must be marked as follows: "Bid for Public Sale, Serial # U-52794, San Juan County." Bids will not be accepted for less than the appraised fair market value of $12,000.00 The sealed bids will be opened publicly after 1:00 P.M. on August 24, 1984 at the San Juan Resource Area Office.

The high bid will be declared by the authorized officer. If two or more envelopes are received containing valid bids of the same amount, the determination of which is the apparent high bid will be by drawing. The designated bidder (adjoining landowner) will be contacted to determine if he wishes to exercise his preference right. This will establish the successful high bidder. All unsuccessful bidders will be notified and monies returned within 30 days of the date of the sale.

A decision will be mailed to the high bidder who must submit the remainder of the full bid price to the BLM San Juan Resource Area Office within 30 days of receipt of the decision. Failure to do so shall result in cancellation of the sale and forfeiture of the deposit.

If the parcel is not sold on the day of the sale, it will be offered for sale by sealed bid anytime after the original sale. The sealed bids will be opened at 7:45 A.M., on the first Monday of every month. This will continue until it is sold or until the appraisal is no longer valid. Sealed bids prepared as described above, should be mailed or delivered to the Bureau of Land Management, San Juan Resource Area, 480 S., 1st West, P.O. Box 7, Monticello, Utah 84535.

From the publishing date of this notice until July 23, 1984 interested parties may submit comments to the District Manager, P.O. Box 970, 82 East Dogwood, Moab, Utah 84532. Any adverse comments will be evaluated by the District Manager, and forwarded to the State Director who may vacate or modify this realty action and issue a final determination of the Department of Interior. In the absence of any action by the State Director, this realty action will become the final determination.

Additional information is available from the Moab District Office, P.O. Box 970, Moab, Utah 84532 or the San Juan

Resource Area, P.O. Box 7, Monticello, Utah 84535.

C. DeLano Backus,

Acting District Manager.

May 23, 1984.

[FR Doc. 84-14706 Filed 5-31-84; 8:45 am]

BILLING CODE 4310-DQ-M

[W-86390]

Conveyance Sale of Public Land in Carbon County, Wyoming

Notice is hereby given that pursuant to section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713 (1976), Michael and Nancy McNulty and Jerry and Wendy Niederriter have purchased and received a patent for the following described public land in Carbon County, Wyoming:

Sixth Principal Meridian

T. 15 N., R. 84 W.,
Sec. 23, W½SW¼ and SE¼SW¼;
Sec. 26, NW¼NW¼;
Sec. 27, NE¼NE¼.

Containing 200.00 acres.

May 22, 1984.

James L. Edlefsen,

Chief, Branch of Land Resources.

[FR. Doc. 84-14707 Filed 5-31-84; 8:45 am]

BILLING CODE 4310-22-M

[A-18283]

Arizona; Realty Action; Non-Competitive Lease of Public Land in Graham County

The following described land has been identified as suitable for residential and commercial lease by non-competitive means under section 302 of the Federal Land Policy and Management Act of 1976 43 U.S.C. 1732.

Gila and Salt River Meridian, Arizona

T. 2 S., R. 23 E.,
Sec. 31: SE¼SE¼
Sec. 32: SW¼SW¼

Containing ± .84 acres, more or less.

Purposes of the lease is to legalize a residential use in conjunction with a ranching operation on public land. The lessee will be Mr. and Mrs. Alf Claridge.

The lands involved are an integral part of a long-established ranching operation and will serve as the ranch headquarters. The analysis required by 43 CFR 1600 has been done in reports prepared specifically for this action.

Provisions in 43 CFR 2920.5-4(b) provide where prior use of the land exists, land use authorizations may be offered on a non-competitive basis. An appraisal has been completed and a fair-market rental will be charged for use of the land.

Detailed information concerning this lease is available for review at the Safford District Office, Bureau of Land Management, 425 E. 4th Street, Safford Arizona 85546.

For a period of 45 days, interested parties may submit comments to the Safford District Manager, 425 East 4th Street, Safford, Arizona 85546. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of the Interior.

Dated: May 22, 1984.

Vernon L. Saline,

Acting District Manager.

[FR Doc. 84-14696 Filed 5-31-84; 8:45 am]

BILLING CODE 4310-32-M

[C-35152]

Colorado; Order Providing for Opening of Public Lands

AGENCY: Bureau of Land Management, Colorado State Office, Interior.

ACTION: Order Providing for Opening of Public Lands.

SUMMARY: 1. In an exchange of land made under section 206 of the Act of October 21, 1976 (43 U.S.C. 1716), the following lands have been reconveyed to the United States:

Sixth Principal Meridian, Colorado

T. 12 S., R. 101 W.,
Sec. 7, E½NE¼, E½SE¼

Containing 160.00 acres in Mesa County.

2. The United States owns the lands in fee.

3. Subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable law, the lands described in paragraph 1 are hereby opened to the operation of the public land laws. All valid applications received at or prior to 10:00 a.m., on May 22, 1984, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. At 10:00 a.m., on May 22, 1984, the lands described in paragraph 1 will be opened to applications and offers under the mineral leasing laws, and to location under the United States mining laws. Appropriation of lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes betweeen rival locators over possessory rights, since Congress has provided for such determinations in local courts.

5. Inquiries concerning the lands should be addressed to the Bureau of Land Management, 1037-20th Street, Denver, Colorado 80202.

Dated: May 22, 1984.

Robert D. Dinsmore,

Chief, Branch of Lands & Minerals Operations.

[FR Doc. 84-14633 Filed 5-31-84; 8:45 am]

BILLING CODE 4310-JB-M

[Group 839]

California; Filing of Plat of Survey

May 24, 1984.

1. This plat of survey of the following described land will be officially filed in the California State Office, Sacramento, California, immediately:

Mount Diablo Meridian, Siskiyou County

T. 43 N., R. 7 W., MDM

2. This plat, representing the corrective dependent resurvey of a portion of the subdivisional lines, T. 43 N., R. 7 W., Mount Diablo Meridian, California under Group 839, California, was accepted May 8, 1984.

3. This plat will immediately become the basic record for describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This survey was executed to meet certain administrative needs of this Bureau.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Celia Anderson,

Acting Chief, Records & Information Section.

[FR Doc. 84-14703 Filed 5-31-84; 8:45 am]

BILLING CODE 4310-40-M

[C-9-83]

California; Filing of Plat of Survey

May 24, 1984.

1. This plat of survey of the following described land will be officially filed in the California State Office, Sacramento, California, immediately:

Mount Diablo Meridian, Nevada County T. 15 N., R. 8 E., MDM.

2. This supplemental plat of a portion of Section 2, Township 15 North, Range 8 East, Mount Diablo Meridian, California, was accepted May 8, 1984.

3. This plat will immediately become the basic record for describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This supplemental plat was executed to meet certain administrative needs of this Bureau.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Celia Anderson,

Acting Chief, Records & Information Section.

[FR Doc. 84-14704 Filed 5-31-84; 8:45 am]

BILLING CODE 4310-40-M

Colorado; Filing of Plats of Survey

May 24, 1984.

The plats of survey of the following described lands were officially filed in the Colorado State Office, Bureau of Land Management, Denver, Colorado, effective 10:00 a.m., May 24, 1984.

The plat, in two sheets, representing the dependent resurvey of the west boundary, and a portion of the south boundary and subdivisional lines, T. 27 S., R. 71 W., Sixth Principal Meridian, Colorado, Group No. 553, was accepted May 17, 1984.

The plat, in two sheets, representing the dependent resurvey of the east boundary, a portion of the south and north boundaries, and subdivisional lines, T. 27 S., R. 72 W., Sixth Principal Meridian, Colorado, Group No. 553, was accepted May 17, 1984.

These surveys were executed to meet certain administrative needs of the U.S. Forest Service.

The plat representing the corrective dependent resurvey of a portion of the subdivisional lines, and the corrective survey of the subdivision of sections 22 and 23, T. 15 S., R. 93 W., Sixth Principal Meridian, Colorado, Group No. 762, was accepted May 17, 1984.

This survey was executed to meet certain administrative needs of this Bureau.

The plat of survey of the following described lands will be officially filed in the Colorado State Office, Bureau of Land Management, Denver, Colorado, effective July 18, 1984.

The plat representing the survey of T. 27 S., R. 71½ W., Sixth Principal Meridian, Colorado, Group No. 553, was accepted May 17, 1984.

This survey was executed to meet certain administrative needs of the U.S. Forest Service.

All inquiries about these lands should be sent to the Colorado State Office, Bureau of Land Management, 1037-20th Street, Denver, Colorado 80202.

Kenneth D. Witt,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 84-14692 Filed 5-31-84; 8:45 am]

BILLING CODE 4310-84-M

New Mexico; Filing of Plat of Survey

May 23, 1984.

The plat of survey described below was officially filed in the New Mexico Office, Bureau of Land Management, Santa Fe, New Mexico, effective at 10 a.m. on May 22, 1984.

New Mexico Principal Meridian

A dependent resurvey of a portion of the north boundary of Township 22 South, Range 3 East, New Mexico Principal Meridian, New Mexico, under Group 821 and accepted May 15, 1984.

This survey was requested by the Las Cruces District Office, New Mexico.

This plat will be placed in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87501.

Copies of this plat may be obtained from that office upon payment of $2.50 per sheet.

Ronald G. Williams,

Acting Chief, Branch of Cadastral Survey.

[FR Doc. 84-14700 Filed 5-31-84; 8:45 am]

BILLING CODE 4310-FB-M

New Mexico; Filing of Plat of Survey

May 23, 1984.

The plat of survey described below was officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, effective at 10 a.m. on May 23, 1984.

New Mexico Principal Meridian

A dependent resurvey of portions of the east and north boundaries, a portion of the subdivisional lines and the subdivision of sections 1,2, 11 and 12, Township 9 South, Range 24 East, NMPM, under Group 811 and was accepted May 16, 1984.

This survey was requested by the District Manager, Roswell, New Mexico. The plat will be placed in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87501.

Copies of the plat may be obtained from that office upon payment of $2.50 per sheet.

Gary S. Speight,

Chief, Branch of Cadastral Survey.

[FR Doc. 84-14699 Filed 5-31-84; 8:45 am]

BILLING CODE 4310-FB-M

Realty Action; Modified Competitive Sale of Public Lands in New Mexico; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action; Modified Competitive Sale of Public Lands; Correction.

SUMMARY: The notice published at 49 FR 19907, Thursday, May 10, 1984, is hereby corrected to add the following:

To be considered, sealed bids must be received in a sealed envelope marked on the lower, front, lefthand corner as follows: Sealed Bid, Public Land Sale, Tract No., (insert tract number of bid), Sale Date: August 15, 1984.

Dated: May 22, 1984.

Richard Bastin,

Associate District Manager.

[FR Doc. 84-14708 Filed 5-31-84; 8:45 am]

BILLING CODE 4310-FB-M

[C-09006]

Colorado; Proposed Continuation of Withdrawal; Air Force Academy, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Army Corps of Engineers proposes that the land withdrawals made for the Air Force Academy be modified and continued for 50 years. These national forest lands will remain closed to surface entry and mining but will be open to mineral leasing.

DATE: Comments should be received within 90 days of publication date.

ADDRESS: Comments should be sent to the State Director, Colorado State Office, 1037—20th Street, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT: Richard D. Tate, Colorado State Office, 303-844-2592.

The Department of the Army Corps of Engineers proposes that the existing land withdrawals made by public land orders 1151 of May 19, 1955, and 1220 of September 17, 1955, made for the Air

Force Academy be modified and continued for a period of 50 years pursuant to section 204 of the Federal Land Policy and Management Act of 1076, 90 Stat. 2751, 43 U.S.C. 1714.

These orders withdrew 8,897.51 acres of land which are located within the Pike National Forest approximately ten miles north of Colorado Springs in Townships 11 and 12 South, Range 67 West, Sixth Principal Meridian.

The purpose of the withdrawal is to protect the Air Force Academy. The present withdrawal segregates the land from operation of the public land laws, including the mining and mineral leasing laws. No change is proposed in the purposes of the withdrawal but the land will be open to the mineral leasing laws.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with this proposed withdrawal continuation may present their views in writing to the State Director, Colorado State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the Federal Register. The existing withdrawal will continue until such final determination is made.

Robert D. Dinsmore,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 84-14698 Filed 5-31-84; 8:45 am]

BILLING CODE 4310-JB-M

[I-14655, I-15076]

Idaho; Proposed Continuation of Withdrawals

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes that two withdrawals for the Boise Reclamation Project, totalling 161.16 acres, continue for an additional 100 years. The lands will remain closed to surface entry and mining but have been and will remain open to mineral leasing.

DATE: Comments should be received within 90 days of the date of publication of this notice.

ADDRESS: Comments should be sent to: Chief, Branch of Land Operations, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706.

FOR FURTHER INFORMATION CONTACT: William E. Ireland, Idaho State Office, 208-334-1597

The Bureau of Reclamation proposes that the existing land withdrawals made by the Executive Order of June 22, 1915, and the Secretarial Order of February 21, 1946, be continued for a period of 100 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714.

The land is described as follows:

Boise Meridian

T. 2 N., R. 4 W.,
Sec. 1, SE¼NW¼SE¼.
T. 16 N., R. 3 E.,
Sec. 6, lots 2, 7, 8, 11 and 16.
T. 17 N., R. 3 E.,
Sec. 31, lots 7, 8, 11 and 12.

The area described contains 161.16 acres in Canyon and Valley Counties.

The purpose of the withdrawals is to provide for protection of the Cascade Reservoir (151.16 acres) and to provide a source of mineral materials (10 acres) for project maintenance purposes. The withdrawals segregate the land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawals.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuations may present their views in writing to the Chief, Branch of Land Operations, in the Idaho State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued and if so, for how long. The final determination on continuation of the withdrawals, will be published in the Federal Register. The existing withdrawals will continue until such final determination is made.

Dated: May 24, 1984.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 84-14697 Filed 5-31-84; 8:45 am]

BILLING CODE 4310-GG-M

[W-86106]

Nebraska; Conveyance Sale of Public Land in Rock County, Nebraska

May 23, 1984.

Notice is hereby given that pursuant to section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713 (1976), David E. Hutchinson has purchased and received a patent for the following described public land in Rock County, Nebraska:

Sixth Principal Meridian, Nebraska

T. 25 N., R. 20 W.,
Sec. 9, W½NW¼.

Containing 80.00 acres.

James L. Edlefsen,

Chief, Branch of Land Resources.

[FR Doc. 84-14719 Filed 5-31-84; 8:45 am]

BILLING CODE 4310-22-M

[W-86128]

Nebraska; Conveyance Sale of Public Land in Brown County, Nebraska

May 23, 1984.

Notice is hereby given that pursuant to Section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713 (1976), Lincoln Corporation, Inc. has purchased and received a patent for the following described public land in Brown County, Nebraska:

Sixth Principal Meridian, Nebraska

T. 32 N., R. 20 W.,
Sec. 30, lot 2.

Containing 39.49 acres.

James L. Edlefsen,

Chief, Branch of Land Resources.

[FR Doc. 84-14752 Filed 5-31-84; 8:45 am]

BILLING CODE 4310-22-M

[W-86127]

Nebraska; Conveyance Sale of Public Land in Brown County, Nebraska

May 23, 1984.

Notice is hereby given that pursuant to Section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713 (1976), Clifford and James Barta have purchased and received a patent for the following described public land in Brown County, Nebraska:

Sixth Principal Meridian, Nebraska

T. 27 N., R. 20 W.,
Sec. 19, E½NE¼.

Containing 80.00 acres.

James L. Edlefsen,

Chief, Branch of Land Resources.

[FR Doc. 84-14747 Filed 5-31-84; 8:45 am]

BILLING CODE 4310-22-M

Minerals Management Service

Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that ODECO Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on lease OCS 0605, Block 86, South Timbalier Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from onshore bases located at Dulac and Houma, Louisiana.

DATE: The subject DOCD was deemed submitted on May 25, 1984.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Manager, Gulf of Mexico Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Emile H. Simoneaux, Jr., Minerals Management Service, Gulf of Mexico Region; Rules and Production; Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 838-0872.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: May 25, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico Region.

[FR Doc. 84-14742 Filed 5-31-84; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

[Investigative No. 731-TA-139 (Final)]

Acrylic Sheet From Taiwan

Determination

On the basis of the record[1] developed in investigation No. 731-TA-139 (Final), the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673(b)), that an industry in the United States is not materially injured, is not threatened with material injury, and that the establishment of an industry in the United States is not materially retarded by reason of imports from Taiwan of acrylic sheet at least 0.030 inch in thickness, provided for in items 771.41 and 771.45, of the Tariff Schedules of the United States, which have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this final investigation, effective January 11, 1984, following a preliminary determination by the Department of Commerce that imports of acrylic sheet from Taiwan are likely being sold at LTFV. Commerce's preliminary affirmative LTFV determination was published in the Federal Register of January 11, 1984 (49 FR 1410).

Notice of the institution of the Commission's investigation and of the public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing the notice in the Federal Register of February 1, 1984 (49 FR 4044). The hearing was held in Washington, D.C. on April 12, 1984, and all persons who requested the opportunity were permitted to appear in person or through counsel. The Commission's determination in this investigation was made in an open "Government in the Sunshine" meeting, held on May 1, 1984.

On July 28, 1983, petitions were filled with the Commission and with the U.S. Department of Commerce by counsel for E. I. du Pont de Nemours & Co., alleging that acrylic sheet from Taiwan was being, or was likely to be, sold in the United States at LTFV. Accordingly, effective July 28, 1983, the Commission instituted investigation No. 731-TA-139 (Preliminary) under section 733(a) of the Tariff Act of 1930 to determine whether there was a reasonable indication that an industry in the United States was materially injured, or was threatened with material injury, or the establishment of an industry in the United States was materially retarded, by reason of imports from Taiwan of acrylic sheet provided for in TSUS items 771.41 and 771.45.

On September 12, 1983, the Commission notified the Commerce Department of its unanimous affirmative determinaton with respect to its preliminary investigation on imports of acrylic sheet from Taiwan. Notice of the Commission's preliminary determination was published in the Federal Register on September 21, 1983 (48 FR 43108). Commerce's final determination with respect to LTFV imports from Taiwan was published in the Federal Register of March 23, 1984 (49 FR 10968).

The Commission transmitted its report on the investigation to the Secretary of Commerce on May 9, 1984. A public version of the Commission's report, Acrylic Sheet from Taiwan (investigation No. 731-TA-139 (Final), USITC Publication 1525, 1984), contains the views of the Commission and information developed during the investigation.

By order of the Commission.

Issued: May 8, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-14688 Filed 5-31-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-148 (Final)]

Fresh Cut Roses From Colombia

AGENCY: United States International Trade Commission.

ACTION: In conformance with the determination of the International Trade Administration of the Department of Commerce to amend its schedule for the conduct of the referenced investigation, the Commission hereby revises its schedule as follows: The prehearing conference will be held on July 23, 1984; the hearing will be held on July 30, 1984; and the Commission's final determination shall be issued on or before September 10, 1984.

EFFECTIVE DATE: May 25, 1984.

[1] The "record" is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 U.S.C. 207.2(i)).

[2] Commissioner Susan Liebeler did not participate.

SUPPLEMENTARY INFORMATION: The Commission instituted this final antidumping investigation effective March 14, 1984, and scheduled a hearing to be held in connection therewith for June 28, 1984 (49 FR 13440, April 4, 1984). However, the Department of Commerce extended its investigation in response to a request from counsel for respondents in its investigation. The effect of the extension was to change the scheduled date for Commerce to make its final determination (already rescheduled from May 22, 1984, to June 27, 1984) from June 27, 1984 to July 27, 1984. Accordingly, the Commission is revising its schedule in the investigation to conform with Commerce's new schedule.

The Commission's hearing, which was to have been held on June 28, 1984, has been rescheduled to begin at 10 a.m. on July 30, 1984, in the Hearing Room, U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on July 19, 1984. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 10 a.m. on July 23, 1984, in Room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is July 26, 1984. A public version of the prehearing staff report containing preliminary findings of fact in this investigation will be placed in the public record on July 16, 1984. The deadline for filing posthearing briefs will be announced at the hearing.

FOR FURTHER INFORMATION CONTACT: Stephen Buret, (202-724-0088), Office of Industries, U.S. International Trade Commisison, Washington, D.C. 20436.

By order of the Commission.

Issued: May 25, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-14637 Filed 5-31-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-173]

Certain Valves; Commission Decision Not To Review Initial Determination Terminating Respondent Valve Services, Inc.

Correction

In FR Doc. 84-13210 appearing on page 20767 in the issue of Wednesday, May 16, 1984, first column, the Docket number should have appeared as set forth above.

BILLING CODE 1505-01-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage In Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

(1) The parent corporation, the address of its principal office and its State of incorporation are as follows: Falconer Glass Industries, Inc., 500 South Work Street, Falconer, New York 14733, a New York Corporation.

(2) The wholly owned subsidiary which will participate in the operations, the address of its principal office and its State of incorporation are as follows: Falconer-Lewistown, Inc., 1 Belle Avenue, Lewistown, Pennsylvania 17044, a Pennsylvania Corporation.

1. Parent Corporation and Address of Principal Office: Sanderson Plumbing Products, Inc., P.O. Box 1367, Columbus, Mississippi 39703.

2. List of wholly owned subsidiaries and address of their principal place of business is as follows:

I. Santran, Inc., P.O. Box 9300, Columbus, Mississippi 39705, Incorporated in the State of Mississippi

II. Beneke Industries, Ltd., 280 Carlingview Drive, Rexdale, Toronto, Ontario, Canada M9W 5G1, Incorporated in Canada.

1. Parent corporation and address of principal office: Sterling Beef Company (Formerly Sterling Colorado Beef Company), Post Office Box 1720, Sterling, Colorado 80751.

2. Wholly owned subsidiaries which will participate in the operations and State(s) of incorporation:

(i) Circle C Transportation Company, a Colorado corporation

(ii) Pepcol Manufacturing Company, a Colorado corporation.

James H. Bayne,

Secretary.

[FR Doc. 84-14633 Filed 5-31-84; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-19 (Sub-74X)]

Baltimore & Ohio Railroad Co.; Abandonment in Youngstown, Mahoning County, OH; Exemption

The Baltimore and Ohio Railroad Company (applicant) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments*. The line to be abandoned is B&O's Old Main Line Branch located in Youngstown, Mahoning County, OH, between Valuation Stations 1030+00 and 1082+92, a distance of approximately one mile.

Applicant has certified (1) that no local or overhead traffic has moved over the line for at least 2 years, and (2) that no formal complaint filed by a user of rail service on the line or by a State or local governmental entity acting on behalf of a user regarding cessation of service over the line either is pending with the Commission or has been decided in favor of the complainant within the 2-year period preceding this notice. The Public Utilities Commission (or equivalent agency) in Ohio has been notified in writing at least 10 days prior to the filing of this notice. *See Exemption of Out of of Service Rail Lines*, 366 I.C.C. 885 (1983).

As a condition to use of this exemption, any employees affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective on July 1, 1984 (unless stayed pending reconsideration). Petitions to stay the effective date of the exemption must be filed by June 11, 1984, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by June 21, 1984, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representatives:

Rene J. Gunning, Suite 2204, 100 North Charles Street, Baltimore, MD 21201

Peter J. Shudtz P.O. Box 6419, Cleveland, OH 44101.

If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: May 22, 1984.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 84-14662 Filed 5-31-84; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-19 (Sub-72X)]

The Baltimore & Ohio Railroad Co. Abandonment in Howard County, MD; Exemption

The Baltimore and Ohio Railroad Company (B&O) filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments.* The line to be abandoned is between Valuation Station 39+00 and Valuation Station 47+85, a distance of 0.17 mile, in Howard County, MD.

B&O has certified (1) that no local traffic has moved over the line for at least 2 years, and that there is no overhead traffic on the line, and (2) that no formal complaint filed by a user of rail service on the line or by a State or local government entity acting in behalf of such user regarding cessation of service over the line either is pending with the Commission or has been decided in favor of the complainant within the 2-year period. The Public Service Commission (or equivalent agency) in Maryland has been notified in writing at least 10 days prior to the filing of this notice. *See Exemption of Out of Service Rail Lines,* 366 I.C.C. 885 (1983).

As a condition to use of this exemption, any employees affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment-Goshen,* 360 I.C.C. 91 (1979).

The exemption will be effective on July 1, 1984 (unless stayed pending reconsideration). Petitions to stay must be filed by June 21, 1984, and petitions for reconsideration, including environmental, energy and public use concerns, must be filed June 11, 1984, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to B&O's representative: Rene J. Gunning, Suite 2204, 100 North Charles Street, Baltimore, MD 21201.

If the notice of exemption contains false or misleading information, the use of the exemption is void ad initio.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: May 23, 1984.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 84-14664 Filed 5-31-84; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-43 (Sub-109)]

Illinois Central Gulf Railroad Co., Abandonment in Gibson and Obion Counties, TN; Findings

The Commission has found that the public convenience and necessity permit Illinois Central Gulf Railroad Company to abandon its 26.61-mile rail line between milepost 404.70, near Humboldt (excluding Humboldt), and milepost 431.31, at Kenton, in Gibson and Obion Counties, TN. A certificate will be issued authorizing this abandonment unless within 15 days after this publication the Commission also finds: (1) A financially responsible person has offered assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C 10905 and 49 CFR 1152.27.

James H. Bayne,

Secretary.

[FR Doc. 84-14661 Filed 5-31-84; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-19 (Sub-75X)]

The Baltimore & Ohio Railroad Co.; Abandonment in Marshall County, WV; Exemption

The Baltimore and Ohio Railroad Company (B&O) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments.* The line to be abandoned is that portion of B&O's former main line at or near Moundsville, WV, between milepost 368.79 and milepost 366.94 at the end of the line, a distance of 1.85 miles, in Marshall County, WV.

B&O has certified (1) that no local traffic has moved over the line for at least 2 years, and that no overhead traffic moves over the line, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or has been decided in favor of the complainant within the 2-year period. The Public Service Commission (or equivalent agency) in West Virginia has been notified in writing at least 10 days prior to the filing of this notice. *See Exemption of Out of Service Rail Lines,* 366 I.C.C. 885 (1983).

As a condition to use of this exemption, any employees affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

The exemption will be effective on July 1, 1984 (unless stayed pending reconsideration). Petitions to stay the effective date of the exemption must be filed by June 11, 1984, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by June 21, 1984, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Rene J. Gunning, 100 North Charles St., Suite 2204, Baltimore, MD 21201.

If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio.*

A notice of the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: May 29, 1984.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 84-14751 Filed 5-31-84; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on May 11, 1984, a proposed consent decree in *United States* v. *Valley Stream Transportation Co., Inc.,* Civil Action No. V81-2563 was lodged with the United States District Court for the Eastern District of New York. The proposed consent decree concerns an action alleging violations of section

203(a)(3)(B) of the Clean Air Act which prohibits any person who operates a fleet of motor vehicles from tampering with emission control devices on such vehicles. Under the decree, the defendant, Valley Stream, must instruct all employees, agents, lessees, and service and maintenance personnel that it is illegal to tamper with any emission control device on the vehicles which Valley Stream owns or operates. Valley Stream must also obtain written commitment from such personnel that they will abide by the requirements of the Act and must also immediately discontinue use of the vehicles involved in the alleged violations until it can demonstrate that the vehicles have been corrected to conform to the requirements of the Act. Further, Valley Stream has agreed to pay a civil penalty of $3,500 within two months of the entry of the decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Valley Stream Transportation Co., Inc.*, D.J. Reference No. 90-5-1-1-1611.

The proposed consent decree may be examined at the office of the United States Attorney, Courthouse and Federal Building, 225 Cadman Plaza East, Brooklyn, New York 11201 and at the Environmental Protection Agency, Field Operations and Support Division, Eastern Field Office I (EN-397F) 401 M Street, SW., Washington, D.C. 20460. Copies of the consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, D.C. 20530.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 84-14738 Filed 5-31-84; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Final Judgment on Consent Pursuant to Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on May 7, 1984 a proposed Consent Decree in *United States* v. *Trident Seafoods Corp.*, Civil Action No. A 83-327 was lodged with the United States District Court for the District of Alaska. The proposed Consent Decree concerns defendant's violations of the Clean Water Act by discharge of pollutants from its Seafood processing operations into the Akutan Harbor, Alaska, without a National Pollutant Discharge Elimination System ("NPDES") permit. The Consent Decree assesses civil penalties in the amount of $50.000. In addition, the Consent Decree imposes injunctive relief requiring, *inter alia*, that defendant comply for three years with interim limitations for discharge of seafood wastes and other monitoring and reporting requirements stated in the decree. The injunctive provisions are enforced by stipulated civil penalties of $5,000 per day for failure to comply with interim discharge, monitoring or reporting requisites. Defendant is required to achieve compliance with an NPDES permit within the three-years, and also to complete a restoration of Akutan Harbor by removing and disposing of debris not later than October 31, 1984.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Trident Seafood Corp.* Ref. 90-5-1-1-2002.

The proposed Consent Decree may be examined at the office of the United States Attorney, District of Alaska, United States Courthouse, 701 C Street, Anchorage, Alaska 99513 and at the Region X Office of the Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 93101. Copies of the Consent Decree may be examined at the Environmental Enforcement Section of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $3.70 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

F. Henry Habicht, II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 84-14739 Filed 5-31-84; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Stipulation and Judgment Pursuant to Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on May 10, 1984 a proposed Consent Decree in *United States* v. *Perma-Steel, Inc.*, Civ. No. 83-3901, was lodged with the United States District Court for the Eastern District of New York. Under the Consent Decree, Perma-Steel is required to achieve compliance with the New York State Implementation Plan, relating to emissions of volatile organic compounds from its Brooklyn, New York metal furniture manufacturing plant, as of September 30, 1983. Perma-Steel is also required to pay civil penalties of $5,000 for past violations of the Clean Air Act. The Decree also provides for stipulated civil penalties of up to $500 per day in the event that Perma-Steel fails to comply with the injunctive provisions of the Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Perma-Steel, Inc.*, D.J. Ref. 90-5-2-1-620.

The proposed Decree may be examined at the office of the United States Attorney, Eastern District of New York, United States Courthouse, 225 Cadman Plaza East, Brooklyn, New York 11201 and at the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, D.C. 20530. Copies of the proposed Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 84-14740 Filed 5-31-84; 8:45 am]

BILLING CODE 4410-01-M

LEGAL SERVICES CORPORATION

Announcement of Availability of Funds To Develop and Implement IOLTA Programs

AGENCY: Legal Services Corporation.

ACTION: Notice.

SUMMARY: The Legal Services Corporation (LSC) announces the continued availability of funds for grants to develop and implement Interest on Lawyers' Trust Accounts (IOLTA) Programs. All applications received before the date of this announcement will be considered. LSC has extended its previous deadline of April 30, 1984, for acceptance of applications. LSC has given prior informal notice to eligible parties.

DATE: All applications for grant funds must be received on or before November 30, 1984.

FOR FURTHER INFORMATION CONTACT: Heidi J. Ackerman, Assistant Director, Office of Program Development, Legal Services Corporation, 733 Fifteenth Street, NW., Washington, D.C. 20005 (202) 272–4340.

SUPPLEMENTARY INFORMATION: The LSC grants are intended to assist in the development and implementation of state-wide IOLTA programs. LSC intends these grants to foster IOLTA programs which will serve as a source of private sector funding to supplement federal funding for the direct delivery of civil legal services to poor persons.

LSC has made available up to $550,000 to States for IOLTA developmental and implementation grants. Developmental grants range from $1,000 to $2,500 and are for States in the process of planning IOLTA programs. Implementation grants range from $10,000 to $25,000 and are limited to States with IOLTA programs approved by their enacting authority. A state that has received a developmental grant may be eligible for an implementation grant.

All IOLTA program grant proposals must be submitted to LSC's Office of Program Development.

Peter P. Broccoletti,

Director, Office of Program Development.

[FR Doc. 84-14682 Filed 5-31-84; 8:45 am]

BILLING CODE 6820-35-M

MARINE MAMMAL COMMISSION

Employee Responsibilities and Conduct

AGENCY: Marine Mammal Commission.

ACTION: Notice of Applicability of Employee Responsibility and Conduct Regulations.

SUMMARY: This notice announces that all employees of the Marine Mammal Commission are subject to the Office of Government Ethics Employee Responsibilities and Conduct regulations set forth in 5 CFR Part 735. Implementation of Commission Employee Responsibilities and Conduct regulations is required by 5 CFR 735.104(a).

DATE: Effective June 1, 1984.

FOR FURTHER INFORMATION CONTACT: Donald C. Baur, General Counsel, Marine Mammal Commission, Room 307, 1625 I Street, NW., Washington, DC 20006 (202) 653–6237.

SUPPLEMENTARY INFORMATION: Under Executive Order 11222, "Prescribing Standards of Ethical Conduct for Government Officers and Employees," each "officer, employee, or adviser of government" is directed to earn and honor the trust that "every citizen is entitled to have * * * in the integrity of * * * government" (E.O. 11222, May 8, 1965). To assist employees in meeting this obligation, the Order establishes standards of conduct and financial reporting requirements that are to be followed by government employees and special government employees.

The requirements of Executive Order 11222 are implemented by Office of Government Ethics regulations published in 5 CFR Part 735. Under 5 CFR 735.104(a), the Marine Mammal Commission is required to implement employee responsibilities and conduct standards that fulfill the requirements of Executive Order 11222, the Office of Government Ethics regulations, and applicable law. In 5 CFR 735.104(f), it is provided that a small agency such as the Commission may satisfy this requirement by making the Office of Government Ethics regulations applicable to its employees.

On May 22, 1984, the Office of Government Ethics approved the request of the Marine Mammal Commission that it be allowed to make the 5 CFR Part 735 regulations applicable to its employees and special government employees. This approval was granted in consideration of the small number of individuals employed by the Commission and the determination that the Part 735 regulations adequately cover the activities of Commission employees and special government employees. Each Commission employee and special government employee will be informed of the applicability of the Part 735 regulations in accordance with 5 CFR 735.104(b).

To make the Part 735 regulations applicable to the operations of the Commission, certain designations and deletions are required. Accordingly, notice is provided that 5 CFR Part 735 is made applicable to Marine Mammal Commission employees and special government employees, subject to the following:

1. The term "agency" defined in 5 CFR 735.102(a) and used throughout Part 735 is hereby substituted by the term "Marine Mammal Commission," which means the Commission established under 16 U.S.C. 1401, its Committee of Scientific Advisors on Marine Mammals established under 16 U.S.C. 1403, and its staff.

2. The term "agency head" used throughout Part 735 is hereby substituted by the term "Executive Director," which means the Executive Director of the Marine Mammal Commission.

3. For purposes of 5 CFR 735.105(a), the General Counsel of the Marine Mammal Commission will serve as the ethics counselor, unless otherwise designated by the Executive Director.

4. Due to the small size of the Commission, a deputy ethics counselor will not be designated under 5 CFR 735.105(b).

5. In 5 CFR 735.104(a)(2), it is provided that agencies may establish special standards of conduct provided that they are not inconsistent with applicable law, Executive Order 11222, or the Part 735 regulations. In accordance with this provision, the Commission announces that the exceptions from the 5 CFR 735.202(a) prohibition on the acceptance of gifts, entertainment, and favors for food and refreshments, § 735.202(b)(2), and unsolicited advertising or promotional material, § 735.202(b)(4), shall not be applicable to the Commission. The Commission believes that this step is appropriate to further the purposes of Executive Order 11222 and the Office of Government Ethics regulations.

6. In accordance with 5 CFR 735.403(d), the following positions are required to submit employment and financial interests statements: Administrative Officer, all Staff Assistants, Secretary to the Executive Director.

In consideration of the foregoing, the Employee Responsibilities and Conduct regulations set forth in 5 CFR Part 735 are made applicable to the Marine Mammal Commission, with the exceptions and designations noted above.

Dated: May 23, 1984.

John R. Twiss, Jr.,

Executive Director, Marine Mammal Commission.

[FR Doc. 84-14741 Filed 5-31-84; 8:45 am]

BILLING CODE 6820-31-M

NATIONAL TRANSPORTATION SAFETY BOARD

Deposition Proceeding; Chemical Waste Management, Inc.

In connection with its investigation of the Chemical Waste Management, Inc., Unintentional Release of Waste Acids, in Orange County, Florida, March 6, 1984, the National Transportation Safety Board will conduct a deposition proceeding on June 5 and 6, 1984, at 9 a.m. in the Cabinet Room of the Howard Johnson Florida Center Hotel, Orlando, Florida. Charles H. Batten, Chief, Hazardous Materials and Pipeline Accident Division, of the National Transportation Safety Board will be the Deposition Proceeding Officer.

Dated: May 29, 1984.

H. Ray Smith, Jr.,

Federal Register Liaison Officer.

[FR Doc. 84-14763 Filed 5-31-84; 8:45 am]

BILLING CODE 4910-58-M

NUCLEAR REGULATORY COMMISSION

Nominations for Membership on Advisory Committee on the Medical Uses of Isotopes

Correction

In FR Doc. 84-13054 beginning on page 20587 in the issue of Tuesday, May 15, 1984, make the following correction.

On page 20588, first column, in the paragraph headed "For Further Information Contact:", last line, the telephone number "427-4402" should read "427-4002".

BILLING CODE 1505-01-M

[Docket No. 40-3392]

Negative Declaration Regarding Renewal of License No. Sub-526; Allied Corp. and Allied Chemical Co., Metropolis, Illinois

The U.S. Nuclear Regulatory Commission (the Commission) is considering the renewal of Materials License No. SUB-526 for the continued operation of the Allied Chemical Company UF_6 Conversion Plant at Metropolic, Illinois.

The Commission's Division of Fuel Cycle and Material Safety has prepared an Environmental Impact Appraisal for the proposed renewal of Materials License No. SUB-526. On the basis of this appraisal, the Commission has concluded that the environmental impact created by the proposed license renewal action would not be significant and does not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Negative Declaration is appropriate. The Environmental Impact Appraisal (NUREG-1071) is available for public inspection at the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C. Copies of NUREG-1071 may be purchased by calling (301) 492-9530 or by writing Publication Service Section, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, or purchased from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

Dated at Silver Spring, Maryland this 22nd day of May, 1984.

For the Nuclear Regulatory Commission.

R. G. Page,

Chief, Uranium Fuel Licensing Branch, Division of Fuel Cycle and Material Safety, NMSS.

[FR Doc. 84-14781 Filed 5-31-84; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Information Collection for OMB Review

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice of proposed information collection submitted to OMB for clearance.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (Title 44, U.S.C. Chapter 35), this notice announces a proposal to collect information from the public. SF 50-A is completed by applicants for temporary Federal employment for one year or less.

ADDRESSES: Send or deliver comments to:

John P. Weld, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street, NW (Room 6410), Washington, DC 20415

and

Katie Lewin, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235, Washington, DC 20503

FOR FURTHER INFORMATION CONTACT: Carol E. Porter, on (202) 632-4453.

U.S. Office of Personnel Management.

Donald J. Devine,

Director.

[FR Doc. 84-14023 Filed 5-31-84; 8:45 am]

BILLING CODE 6325-01-M

Proposed Information Collection for OMB Review

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice of proposed extension of BRI 49-224.1, "Initial Certification of Full-Time School Attendance".

SUMMARY: In accordance with the Paperwork Reduction Act of 1930 (Title 44, U.S.C., Chapter 35), this notice announces a proposed extension of a form which collects information from the public. BRI 49-224.1, "Initial Certification of Full-Time School Attendance", was developed by the Office of Personnel Management, Civil Service Retirement System (OPM/CSRS), to determine survivor annuity eligibility for dependent children between 18 and 22 years of age. The form is sent to collect information regarding the student's marital status and his/her immediate plans to continue in school on a full-time basis. For copies of this proposal, call John Weld, Agency Clearance Officer, on (202) 632-7720.

ADDRESSES: Send or deliver comments within ten working days from the date of publication to:

John P. Weld, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street, NW., Washington, D.C. 20415

and

Katie Lewin, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235, Washington, D.C. 20503

FOR FURTHER INFORMATION CONTACT: James L. Bryson, (202) 632-5472.

U.S. Office of Personnel Management.

Donald J. Devine,

Director.

[FR Doc. 84-14024 Filed 5-31-84; 8:45 am]

BILLING CODE 6325-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for

the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s):

(1) Collection title: Vocational Report.
(2) Form(s) submitted: G–251.
(3) Type of request: Reinstatement of a previously approved collection for which approval has expired.
(4) Frequency of use: On occasion.
(5) Respondents: Individuals or households.
(6) Annual responses: 7,850.
(7) Annual reporting hours: 3,990.
(8) Collection description: Section 2 of the Railroad Retirement Act provides for payment of disability annuities to qualified employees and widow(er)s. The collection obtains the information needed to determine ability to work.

Additional Information or Comments

Copies of the proposed forms and supporting documents may be obtained from Pauline Lohens, the agency clearance officer (312–751–4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Milo Sunderhauf (202–395–6880), Office of Management and Budget, Room 3201, New Executive Office Building, Washington, D.C. 20503.

Pauline Lohens,
Director of Information and Data Management.

[FR Doc. 84–14732 Filed 5–31–84; 8:45 am]
BILLING CODE 7905–01–M

DEPARTMENT OF STATE

[Public Notice CM 8/748]

Secretary of State's Advisory Committee on Private International Law—Study Group on Trusts; Meeting

There will be a meeting of the Study Group on Trusts, a study group of the subject Advisory Committee, at 10:30 a.m. on Wednesday, June 20, 1984 in Room 1207 of the Department of State in Washington, D.C. Members of the general public may attend up to the capacity of the meeting room and participate in the discussion subject to instructions of the Chairman.

The purpose of the meeting is to review the preliminary draft convention on the law applicable to trusts and on their recognition developed during three meetings of a Special Commission of the Hague Conference on Private International Law and the 35-page report with commentary on that draft convention. Also to be reviewed are draft written comments for the United States Government prepared by the U.S. legal expert who attended the Special Commission meetings and will be a U.S. delegate to the Hague Conference session in October, 1984 that is to adopt the convention in its final form.

The convention, if adopted by civil law countries where the common law institution of the trust is largely unknown, would establish a treaty basis for those countries to accord recognition to trusts, for example with regard to trust property located in their territory. A number of other countries have taken the position that the convention's provisions regarding applicable law for and recognition of trusts should be binding on countries that have become parties to the convention only with regard to trusts established under the laws of countries that have also become parties to the convention—a reciprocity requirement. The possibility that the benefits of the convention would be available to U.S. trusts only if the United States were to become a party to the convention makes particularly important the review of draft written comments for the U.S. Government and a full discussion of the draft convention by members of the Study Group and interested members of the public.

Entry to the Department of State building is controlled and members of the general public should use the "C" Street or "diplomatic" entrance. As entry will be facilitated by advance arrangements, members of the general public planning to attent should, prior to June 20, 1984, notify the Office of the Assistant Legal Adviser for Private International Law, Department of State (telephone (202) 632–8134), of their name, affiliation, address, and phone number.

Peter H. Pfund,
Assistant Legal Adviser for Private International Law and Vice Chairman, Advisory Committee on Private International Law.

May 16, 1984

[FR Doc. 84–14733 Filed 5–31–84; 8:45 am]
BILLING CODE 4710–08–M

Office of the Secretary

Foreign Assistance and Related Programs; Determination; Mozambique

Pursuant to section 512 of the Foreign Assistance and Related Programs Appropriations Act of 1982 (Pub. L. 97–121), as made applicable to fiscal year 1984 by section 101(b)(1) of the Joint Resolution making further continuing appropriations for the fiscal year 1984 (Pub. L. 98–151), and Executive Order 12163, as amended, I hereby determine that the furnishing of assistance directly to Mozambique would further the foregin policy interests of the United States.

This determination shall be reported to the Congress and published in the Federal Register.

Dated: April 5, 1984.

George P. Shultz,
Secretary of State.

[FR Doc. 84–14737 Filed 5–31–84; 8:45 am]
BILLING CODE 4710–08–M

DEPARTMENT OF TRANSPORTATION

[OST Notice 84–7]

Controlled Admittance to DOT Headquarters Buildings

Correction

In FR Doc. 84–13879 appearing on page 21817 in the issue of Wednesday, May 23, 1984, make the following correction:

In the first column, between the **"ACTION"** line and the **"DATE"** line a summary paragraph should be inserted to read,

"SUMMARY: DOT is changing the procedures for gaining admittance to its headquarters buildings in Washington, DC. Admittance during normal duty hours will be limited to Federal employees and to others with prior authorization."

BILLING CODE 1505–01–M

Coast Guard

[CGD 84–041]

Houston/Galveston Navigation Safety Advisory Committee, Offshore Waterway Management Subcommittee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Offshore Waterway Management Subcommittee of the Houston/Galveston Navigation Safety Advisory Committee. The meeting will be held on Wednesday, June 27, 1984 at the offices of the West Gulf Maritime Association, 2616 South Loop West, Suite 600, Houston, Texas. The meeting is scheduled to begin at 10 a.m. and end at 12 p.m. The agenda for the meeting consists of the following items:

1. Call to Order
2. Discussion of previous recommendations made by the full Advisory Committee and the Offshore

Waterway Management Subcommittee
3. Presentation of any additional new items for consideration to the Subcommittee
4. Adjournment

Attendance is open to the public. With advance notice, members of the public may present oral statements at the meeting. Prior to presentation of their oral statements, but no later than the day before the meeting, members of the public shall submit, in writing, to the Executive Secretary of the Houston/Galveston Navigation Safety Advisory Committee, the subject of their comments, a general outline signed by the presenter, and the estimated time required for presentation. The individual making the presentation shall also provide their name, address, and, if applicable, the organization they are representing. Any member of the public may present a written statement to the Advisory Committee at any time.

Additional information may be obtained from Commander R. A. Brunell, Executive Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (mps), Room 1341, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130, telephone number (504) 589-6901.

Dated: May 21, 1984.

W. H. Stewart,

Rear Admiral, U.S. Coast Guard.

[FR Doc. 84-14758 Filed 5-31-84; 8:45 am]

BILLING CODE 4910-14-M

[CGD 84-042]

Houston/Galveston Navigation Safety Advisory Committee, Inshore Waterway Management Subcommittee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Inshore Waterway Management Subcommittee of the Houston/Galveston Navigation Safety Advisory Committee. The meeting will be held on Wednesday, June 20, 1984 at the Houston Pilots Office, 8150 South Loop East, Houston, Texas. The meeting is scheduled to begin at 10 a.m. and end at 12 p.m. The agenda for the meeting consists of the following items:

1. Call to Order
2. Discussion of previous recommendations made by the full Advisory Committee and the Offshore Waterway Management Subcommittee
3. Presentation of any additional new items for consideration to the Subcommittee
4. Adjournment

Attendance is open to the public. With advance notice, members of the public may present oral statements at the meeting. Prior to presentation of their oral statements, but no later than the day before the meeting, members of the public shall submit, in writing, to the Executive Secretary of the Houston/Galveston Navigation Safety Advisory Committee, the subject of their comments, a general outline signed by the presenter, and the estimated time required for presentation. The individual making the presentation shall also provide their name, address, and, if applicable, the organization they are representing. Any member of the public may present a written statement to the Advisory Committee at any time.

Additional information may be obtained from Commander R. A. Brunell, Executive Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (mps), Room 1341, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130, telephone number (504) 589-6901.

Dated: May 21, 1984.

W. H. Stewart,

Rear Admiral, U.S. Coast Guard.

[FR Doc. 84-14759 Filed 5-31-84; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Airway Science Demonstration Project Grant

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Airway Science Grant.

SUMMARY: Pub. L. 98-63 authorizes the Federal Aviation Administration (FAA) to award a single grant of $2,250,000 to a minority university or college to conduct a demonstration project in the development, advancement, or expansion of an airway science curriculum. The monies are available for the purchase or lease of buildings and associated facilities, instructional materials, or equipment to be used in conjunction with an airway science curriculum. No further funding of this airway science demonstration project is expected.

Closing Deadline: Proposals from interested institutions must be postmarked or hand delivered (8:30 A.M.—4:30 P.M.) by August 3, 1984, to: Federal Aviation Administration, Airway Science Program Coordinator, APT-30, Room 520, 800 Independence Ave., SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: Cecelia English, (202) 426-3437.

Background

The Federal Aviation Administration (FAA) has underway a comprehensive effort to modernize the Nation's airway system to meet the challenge of aviation growth in the coming decades. The modernization program is reflected in the agency's National Airspace System Plan which takes advantage of current technological advances to increase the capacity and efficiency of the Nation's airspace system while reducing relative costs to the Nation's taxpayers. FAA employees are an integral part of the modernization effort and must possess an ever increasing array of managerial and technical abilities to accommodate the technological advances in equipment, systems, and configurations being planned and implemented. FAA's sponsoring of an airway science curriculum was a direct consequence of this assessment of the human resources needed to realize the full benefits of airspace and airway system modernization.

Demonstration Project Approval

On July 7, 1983, the Office of Personnel Management (OPM), pursuant to Title VI of the Civil Service Reform Act of 1978, approved a 5-year demonstration project submitted by the FAA entitled "Airway Science Curriculum Demonstration Project" (See 48 FR 32490). The project's purpose is to compare the performance, job attitudes, and perceived potential for supervisory positions of individuals recruited for several of FAA's technical occupations who have aviation-related college-level education or its equivalent, with individuals recruited for the same occupations through traditional methods. The FAA, in association with the University Aviation Association, has developed and recommended a specific college-level airway science curriculum.

The airway science curriculum is designed to meet normal university academic and accreditation requirements, to be easily adapted to existing aviation-related programs, and to allow individual educational institutions the option of offering any number of the five areas of concentration according to their individual resources (See 48 FR 11678). The five areas of concentration are (1) Airway Science Management, (2) Airway Computer Science, (3) Aircraft Systems Management, (4) Airway

Electronics Systems, and (5) Aviation Maintenance Management. Graduates of educational institutions offering recognized airway science programs will be eligible for recruitment/hiring by the FAA in one of four agency career fields: Air traffic control, electronics technology, aviation safety inspection (general aviation operations and maintenance), and computer sciences.

The FAA has recognized 21 institutions with one or more airway science areas of concentration. These curricula directly support FAA's human resource needs by producing graduates with the necessary knowledges and skills to pursue aviation-related technical careers in Government and the private sector.

Airway Science Grant for Demonstration Project

Authority: Pub. L. 98–63 (97 Stat. 339) authorizes the FAA to award a single grant of $2,250,000 to one minority university or college to conduct a demonstration project in the development, advancement, or expansion of an airway science curriculum. The monies are available for the purchase or lease of buildings and associated facilities, instructional materials, or equipment to be used in conjunction with an airway science curriculum. Monies are not available for salaries, operating expenses, or for research and development.

Eligibility: Institutions eligible to submit demonstration project grant proposals must be accredited four-year institutions of higher learning whose student enrollment is predominantly (more than 50 percent) Native American, Alaskan Native, Black American, Mexican American, Puerto Rican, Cuban, Central or South American, Asian American, or Pacific Islander, or combination thereof. Applicants must have a recognized airway science curriculum in place, or submit such a curriculum for recognition as part of their application. The requirements for submission and recognition of an airway science curriculum may be obtained from the named contact person for further information. In no event will the award be made to an institution without a recognized airway science curriculum.

Proposal Review: Demonstration projects will be reviewed by a panel composed of education and aviation specialist outside the FAA and by appropriate subject matter specialists within the FAA. Final decisions on demonstration project grant proposals will be made by the FAA. Selection will be made in merit order except that in the case of proposals of substantially equal merit, use may be made of other criteria consistent with airway science objectives, FAA policies, and the intent of the law. The award recipient will be required to enter into a 20-year grant agreement with the FAA containing various oversight provisions and standard federal assurances (e.g., OMB Ciculars A–95 and A–110.)

The approval of proposed airway science curricula for institutions without established programs will be accomplished by FAA in conjunction with the University Aviation Association as part of the demonstration grant approval process.

Award Date: The FAA expects to announce the recipient of the Airway Science Demonstration Project Grant on or before November 1, 1984.

Proposal Format and Content: Each airway, science demonstration project grant proposal should contain the following in the order listed:

1. *Cover Sheet.* Near the top of the Cover Sheet, type the title "Airway Science Demonstration Project Grant Proposal." The name of submitting organization should be centered on the Cover Sheet and be the official name of the proposed grantee institution. The names, titles, and telephone numbers of the proposed grant director and of an offficial authorized to sign for the proposed grantee institution should be typed on the lower left and right corners, respectively, of the Cover Sheet. The Cover Sheet of one copy of the proposal must bear the original signature of each individual. The signature of the authorized official signifies cognizance of eligibility and limitation requirements, endorsement of the proposal and commitment to provide the specific support of the proposed activities in the event the grant is made.

2. *Budget Sheet.* The demonstration project described in the proposal may use a variety of means of effect development and/or improvement in airway science facilities and equipment deemed appropriate in the local context. On the proposal budget, proposed expenditures are to be summarized according to the following categories:

(a) Equipment (list items and dollar amounts per item).

(b) Materials and supplies.

(c) Construction (renovation).

(d) Direct costs (List items and dollar amounts. Details of subcontracts, including work statements and budget, should be explained in attachment to budget sheet).

(e) Publication costs (as appropriate).

(f) Computer services.

(g) Consultant services (identify consultants by name and amount).

(h) Indirect costs (itemize and list dollar amount).

(i) Total costs for demonstration project.

(j) Institutional support (as appropriate and in conjuction with airway science curriculum).

3. *Project Summary.* A concise description of the proposal's objectives, and outline of how the proposal's objectives will be carried out, and a description of anticipated outcomes indicating the number of students to be affected or graduated under the proposal. The summary should be written so that a layperson can understand the use of Federal Funds in support of the project.

4. *Narrative.* The narrative should be no more than 40 double-spaced typewritten pages in length and must contain the following:

(a) *Introduction*—The introduction should begin with a brief description of the institution, containing such information as average enrollement, percentage of minority enrollement, type of location (small college town, urban, etc.), type of school (liberal arts college, teachers' college, state university, etc.), field of emphasis, degrees offered, etc.

(b) *Background*—A brief description of the institution's current program in mathmatics, science and technology, computers, management, and aviation, including its existing or proposed airway science curriculum. Applicants may provide information in the programs identified in areas such as: full-time facutly, highest degree(s) offered, total student enrollment, number of majors by discipline, undergraduate degrees awarded last academic year, average faculty salary, average teaching load (in semester or quarter hours), etc.

(c) *Institutional Needs in Airway Science*—An indentification and discussion of the institution's airway science needs in relation to existing conditions, resources, and the purposes for which the grant award will be made.

(d) *Objectives*—A statement of the proposed demonstration project's objectives and their relevance to the institution's stated needs for its existing or proposed airway science curriculum.

(e) *Facilities, Materials, and Equipment*—A description of the specific facilities, materials, and equipment to be acquired as part of the demonstration project must be submitted. Demonstration project plans involving the lease, purchase, construction, or renovation of buildings, or the purchase of airway science equipment should (1) describe existing major holdings for those areas in which requests are made, (2) contain a list of proposed leases, purchases, renovations, or construction with

estimated costs, and (3) provide adequate justification for such activities. Project plans involving the preparation of airway science instructional materials or related audio-visual materials must justify the need for such materials or related audio-visual materials must justify the need for such materials and state that the materials to be prepared do not already exist. In addition, proposals must justify in detail all other major items for which funding is requested. Applicants may provide pictures, drawings, or other representations of their proposed project which in their judgment would aid reviewers in assessing the relative merits of their demonstration project.

(f) *Organization/Management and Work/Monitoring Plans*—Describe the mechanisms to be used in organizing and managing the demonstration project, including a summary description of relevant skills of persons who will have major project responsibilities. (Curriculum Vitae should be appended to the Narrative including the time, as a percentage of a person-year, each individual will devote to the project). Describe a procedure for monitoring the progress of the project including a timetable for accomplishing major project tasks and milestones. Progress reports, advisory committee meetings, and similar events should be described and shown in the timetable.

(g) *Expected Outcomes*—Provide details on the expected outcomes and potential impact of the demonstration project grant on the institution particularly with respect to the number of airway science graduates over the next five years. Describe the likely institutional gain which will result from the grant award and the institution's demonstration project. Describe how minority students, in particular, will benefit from this project.

(h) *Scientific and Educational Value of the Proposed Demonstration Project*—The relationship of the proposed project to the present state of airway science education and its potential for future contibutions to airway science education should be described.

(i) *Evaluation PLan*—Describe a mechanism for determining whether demonstration project objectives have been accomplished and for measuring impact of the project. Such an evaluation plan may be entirely internal in nature or it may involve outside consultants. Outline specific roles or responsibilities of individuals and/or committees.

(j) *Plan for Continuation*—Discuss procedures for integrating demonstration project activities and related costs into the institution's on-going educational program and budget.

5. *Local Review Statement.* A local review statement signed by the chief executive officer of the institution must be appended to the proposal. Such a statement should contain: (a) A description of how the objectives of the proposed demonstration project relate to the institution's goals and objectives in airway science and (b) evidence of commitment of those institutional resources necessary for the successful implementation of the proposed demonstration project and to the continuation of the airway science program after the grant funds are expended.

Evaluation Criteria: The FAA considers the award of a one-time grant of $2,250,000 to a minority institution for the purpose of establishing and supporting an Airway Science Curriculum a unique opportunity to assure minority students' participation in aviation-related technical career fields. The evaluation criteria developed to assess the relative merit of proposals submitted are the minimum necessary to properly evaluate institutional submissions; they are not so exhaustive as to burden an applicant with needless paperwork. The panelist will be instructed to consider the weighted factors listed below and assign a numerical score based on a 100-point scale. The evaluation criteria are as follows:

1. *Identification of Needs for Project.* The quality and substance of the airway science needs assessment along with evidence of the involvement of appropriate individuals especially faculty in establishing the institution's needs will be weighed. (10 points)

2. *Institutional Impact.* Each proposal's assessment of the need for funding of its airway science program and how such funding, along with any other available non-federal funds, would materially and directly support the objectives of the institution's airway science program and the institution's overall mathematics, science and technology, management, computer, and aviation objectives, will be considered. (15 points)

3. *Institutional Commitment.* Each proposal will be reviewed as to how well it addresses the after-grant burden imposed by the receipt of this demonstration grant and how institutional resources would be committed to the continued sustenance of an efficient and effective airway science program. Further, each local review statement's assurances indicating how the proposal would support the attainment of the institution's goal for providing a quality airway science program for its students will be evaluated. (15 points)

4. *Qualifications of Key Personnel.* The qualifications of an instutition's airway science personnel and of the airway science project director and other key staff to be used in the demonstration project including any evidence of past experience and training in fields related to the objectives of the demonstration project will be examined and weighed. (15 points)

5. *Project Plan Quality.* The quality of each demonstration project plan design will be critically reviewed, including (a) innovative approaches that maximize the practicability and transferability of the demonstration project to other educational institutions, (b) effective management plans that insure proper and efficient administration of the project, (c) clear descriptions of how the project's objectives relate to the purposes of the airway science program, (d) the effective coordination of the institution's faculty, administrative, and technical resources to achieve the institution's airway science curriculum objectives, (e) specific, time-oriented project objectives including milestones that permit the monitoring of the project's progress and the measurement of its overall effectiveness, and (f) sufficient budget and financial controls to allow periodic review of resources and to assure that costs are reasonable in relation to the project's stated objectives. (30 points)

6. *Expected Outcomes.* Each proposal's discussion of expected outcomes likely to result in the accomplishment of stated airway science program goals will be assessed including (a) the number of airway science graduates it expects to have over the next five years, (b) the long-term benefits to the students, faculty, or the institution, (c) effective techniques and approaches in science education, and (d) potential use of some aspects of the project at other institutions. (15 points)

Details regarding the grant award schedule may be obtained from the named information contact.

Issued in Washington, D.C., on May 29, 1984.

H. R. Richardson,

Acting Director of Personnel and Training.

[FR Doc. 84-14013 Filed 5-31-84; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

Studies of Federal-State-Local Fiscal Relations; Meeting

The Congress has directed the Secretary of the Treasury to consult with organizations of State and local government officials in the conduct of a series of studies of Federal-State-local fiscal relations. Pursuant to this mandate, a meeting will be held on Tuesday, June 5, at 9:30 a.m. in the Cash Room of the Treasury Building, 15th Street and Pennsylvania Avenue NW., Washington, D.C. The meeting will address the design of the studies and the formation of an advisory group. The press and the public are invited to attend.

Inquiries concerning this meeting should be addressed to Michael Springer, Room 5130, Department of the Treasury, Washington, D.C. 20220, telephone 566–5681.

Thomas J. Healey,

Assistant Secretary, Domestic Finance.

[FR Doc. 84–14685 Filed 5–31–84; 8:45 am]

BILLING CODE 4810–25–M

Internal Revenue Service

[Delegation Order No. 97; Rev. 23]

Delegation of Authority; Service Center Directors

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of Authority.

SUMMARY: This revision to Delegation Order No. 97 provides the authority to Service Center Directors to enter into and approve a written agreement with any person relating to the Internal Revenue tax liability of such person (or of the person or estate for who he/she acts) for a taxable period or periods ended prior to the date of agreement and related specific items affecting other taxable periods in cases under their jurisdiction. This authority may be redelegated but not below Chief, Examination Support Unit, with respect to agreements concerning the administrative disposition of certain tax shelter cases. The text of the delegation order appears below.

EFFECTIVE DATE: May 4, 1984.

FOR FURTHER INFORMATION CONTACT: Chuck Shauger, OP:EX:D: E, 1111 Constitution Avenue NW., Washington, D.C. 20224, Room 2010, 202–566–3632 (Not a toll-free telephone number).

The document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury directive appearing in the Federal Register for Wednesday, November 8, 1978.

William C. Roth,

Director, Office of District Examination Programs.

Order No. 97 (Rev. 23)

Closing Agreements Concerning Internal Revenue Tax Liability

Effective date: 5–4–84.

Pursuant to authority granted to the Commissioner of Internal Revenue by 26 CFR 301.7121–1(a); Treasury Department Order No. 150–32; Treasury Department Order No. 150–36; and Treasury Department Order No. 150–83, subject to the transfer of authority covered in Treasury Department Order No. 221, as modified by Treasury Department Order No. 221–3(Rev.2), as revised, this authority is hereinafter delegated.

1. The Chief Counsel is hereby authorized in cases under his/her jurisdiction to enter into and approve a written agreement with any person relating to the Internal Revenue tax liability of such person (or of the person or estate for whom he/she acts) in respect to any prospective transactions or completed transactions if the request to the Chief Counsel for determination or ruling was made before any affected returns have been filed.

2. The Deputy Chief Counsel and the Assistant Commissioner (Examination), are hereby authorized to enter into and approve a written agreement with any person relating to the Internal Revenue tax liability of such person (or of the person or estate for whom he/she acts) for a taxable period or periods ended prior to the date of agreement and related specific items affecting other taxable periods. The Associate Commissioner (Operations) is also authorized to enter into and approve a written agreement with any person relating to the Internal Revenue tax liability of such person (or of the person or estate for whom he/she acts) with respect to the performance of his/her functions as the competent authority under the tax conventions of the United States.

3. The Assistant Commissioner (Employee Plans and Exempt Organizations) is hereby authorized to to enter into and approve a written agreement with any person relating to the Internal Revenue tax liability of such person (or of the person or estate for whom he/she acts) in cases under his/her jurisdiction, that is, in respect of any transaction concerning employee plans or exempt organizations.

4. Regional Commissioners; Regional Counsel; Regional Directors of Appeals; Assistant Regional Commissioners (Examinations); Service Center Directors; District Directors; Chiefs and Associate Chiefs of Appeals Offices; and Appeals Team Chiefs with respect to his/her team cases, are hereby authorized in cases under their jurisdiction (but excluding cases docketed before the United States Tax Court) to enter into and approve a written agreement with any person relating to the Internal Revenue tax liability of such person (or of the person or estate for whom he/she acts) for a taxable period or periods ended prior to the date of agreement and related specific items affecting other taxable periods.

5. The Associate Chief Counsel (Technical); the Assistant Commissioner (Employee Plans and Exempt Organizations); Regional Commissioners; Regional Counsel; Regional Directors of Appeals; Chiefs and Associates Chiefs of Appeals Offices; and Appeals Team Chiefs with respect to his/her team cases, are hereby authorized in cases under their jurisdiction docketed in the United States Tax Court and in other Tax Court cases upon the request of Chief Counsel or his/her delegate to enter into and approve a written agreement with any person relating to the Internal Revenue tax liability of such person (or of the person or estate for whom he/she acts) but only in respect to related specific items affecting other taxable periods.

6. The Director, Foreign Operations District, is hereby authorized to enter into and approve a written agreement with any person relating to the Internal Revenue tax liability of such person (or of the person or estate for whom he/she acts) to provide for the mitigation of economic double taxation under section 3 of Revenue Procedure 64–54, C.B. 1964–2, 1008, under Revenue Procedure 72–22, C.B. 1972–1, 747, and under Revenue Procedure 69–13, C. B. 1969–1, 402, and to enter into and approve a written agreement providing the treatment available under Revenue Procedure 65–17, C.B. 1965–1, 833.

7. The authority delegated herein does not include the authority to set aside any closing agreement.

8. Authority delegated in this Order may not be redelegated, except that the Chief Counsel may redelegate the authority contained in paragraph 1 to the Associate Chief Counsel (Technical) and to the technical advisors on the staff of the Associate Chief Counsel (Technical) for cases that do not involve precedent issues, the Assistant Commissioner (Examination) may redelegate the authority contained in

paragraph 2 of this Order to the Deputy Assistant Commissioner (Examination), the Deputy Chief Counsel may redelegate the authority in paragraph 2 of the Order but not lower than the Deputy Associate Chief Counsel (Litigation), and the Assistant Commissoner (Employee Plans and Exempt Organizations) may redelegate the authority contained in paragraph 3 of this Order to the Deputy Assistant Commissioner (Employee Plans and Exempt Organizations) and to the Technical Advisors on the Staff of the Assistant Commissioner (Employee Plans and Exempt Organizations) for cases that do not involve precedent issues; Service Center Directors may redelegate the authority contained in paragraph 4 of this Order but not below the Chief, Examination Support Unit with respect to agreements concerning the administrative disposition of certain tax shelter cases; and District Directors may redelegate the authority contained in paragraph 4 of this Order but not below the Chief, Quality Review Staff, or Section Chief, Quality Review Staff, with respect to all matters, and not below the Chief, Examination Support Staff/section, or Returns Program Manager, with respect to agreements concerning the administrative disposition of certain tax shelter cases.

9. Delegation Order No. 97 (Rev. 22), effective May 4, 1983, is hereby superseded.

Dated: April 2, 1984.

Approved:

James I. Owens,

Deputy Commissioner.

[FR Doc. 84-14760 Filed 5-31-84; 8:45 am]

BILLING CODE 4830-01-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, (43 FR 13359, March 29, 1978), and Delegation of Authority of December 17, 1982 (47 FR 57600, December 27, 1982), I hereby determine that the objects in the exhibit, "African Mankala" (included in the list [1] filed as a part of this determination) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements between the National Museum of African Art, Washington, D.C. and foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the National Museum of African Art, Washington, D.C., beginning on or about June 20, 1984, to on or about October 7, 1984, is in the national interest.

Public notice of this determination is ordered to be published in the Federal Register.

Thomas E. Harvey,

General Counsel and Congressional Liaison.

Dated: May 30, 1984.

[FR Doc. 84-14913 Filed 5-31-84; 8:45 am]

BILLING CODE 8230-01-M

[1] An itemized list of objects included in the exhibit is filed as part of the original document.

VETERANS ADMINISTRATION

Scientific Review and Evaluation Board for Health Services Research and Development; Meeting

The Veterans Administration give notice under the provisions of Pub. L. 92-463 that a meeting of the Scientific Review and Evaluation Board for Health Services Research and Development will be held at the Executive House, 1515 Rhode Island Avenue, NW., (at Scott Circle) Washington, D.C. on June 14, 1984. The meeting will open at 8:30 a.m. and adjourn at 3:00 p.m. The purpose of the meeting will be to develop general advice to the Director, Health Services Research and Development Service regarding the administration of that Service's research program.

The meeting will be open to the public to the seating capacity of the room. Members of the public may submit written statements or questions to the Chairman, David M. Levine, M.D., for consideration by the Committee. Such members of the public may be asked to clarify submitted material prior to its consideration by the Committee.

Dated: May 18, 1984.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 84-14852 Filed 5-31-84; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 107
Friday, June 1, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

COMMISSION ON CIVIL RIGHTS

PLACE: Departmental Auditorium, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, D.C.

DATE AND TIME: Wednesday, June 6, 1984, 2:00–2:30 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. Approval of Housing Contract Cost
IV. Response from Presidential Candidates

PERSON TO CONTACT FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications Division, (202) 376–8312.

Lawrence B. Glick,
Solicitor.

[FR Doc. 84-14767 Filed 5-30-84; 9:13 am]
BILLING CODE 6335-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 11:30 a.m. Tuesday, May 29, 1984, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider a personnel matter (names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6))).

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director C. T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matter on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting pursuant to subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6)).

Dated: May 29, 1984.

Federal Deposit Insurance Corporation.
Alan J. Kaplan,
Deputy Executive Secretary.

[FR Doc. 84-14810 Filed 5-30-84; 11:22 am]
BILLING CODE 6714-01-M

3

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

May 29, 1984.

TIME AND DATE: Thursday, May 31, 1984.

PLACE: Room 600, 1730 K Street, NW., Washington, D.C.

STATUS: Closed (Pursuant to 5 U.S.C. 552b(c)(10)).

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. U.S. Coal, Inc., v. Secretary of Labor and Federal Mine Safety & Health Review Commission, Docket No. 3–84–383, E.D. Tenn. (For discussion of district court litigation involving challenge to a miner's temporary reinstatement pursuant to Commission Rule 44.)

It was determined by a unanimous vote of Commissioners that a meeting be held on this item and majority vote to close the meeting. No earlier announcement of the meeting was possible. 5 U.S.C.552b(e)(1).

CONTRACT PERSON FOR MORE INFORMATION: Jean Ellen, (202) 653–5632.

Jean H. Ellen,
Agenda Clerk.

[FR Doc. 84-14806 Filed 5-30-84; 11:02 am]
BILLING CODE 6735-01-M

4

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, June 6, 1984.

PLACE: 20th Street and Constitution Avenue, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: May 29, 1984.

William W. Wiles,
Secretary of the Board.

[FR Doc. 84-14672 Filed 5-29-84; 4:45 am]
BILLING CODE 6210-01-M

5

POSTAL RATE COMMISSION:

TIME AND DATE: Periodic meetings scheduled on short notice during the business day in the period June 1–6, 1984.

PLACE: Conference Room, Room 500, 2000 L Street, NW., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED: The resubmission by the United States Postal Service of its request for new rates for E-COM service. (See Decision of the Governors of the United States Postal Service Regarding the Opinion and Recommended Decision of the Postal Rate Commission for E-COM Rate and Classification Changes, 1983, Docket No. R83–1.) Closed pursuant to 5 U.S.C. 552b(c)(10).

CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Room 500, 2000 L Street, NW., Washington, D.C. 20268, Telephone: (202) 254–3880.

Charles L. Clapp,
Secretary.

[FR Doc. 84-14814 Filed 5-30-84; 11:40 am]
BILLING CODE 7715-01-M

6

POSTAL RATE COMMISSION:

TIME AND DATE: Periodic meetings scheduled on short notice during the business day in the period June 1–15, 1984.

PLACE: Conference Room, Room 500, 2000 L'Street, NW., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED: The interlocutory matters in Docket No. R84–1, Postal Rate and Fee Changes.

CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Room 500, 2000 L Street, NW., Washington, D.C. 20268, Telephone: (202) 254–3880

Charles L. Clapp,

Secretary.

[FR Doc. 84–14815 Filed 5–30–84; 11:46 am]

BILLING CODE 7715–01–M

Federal Register

Friday
June 1, 1984

Part II

Department of Transportation

Office of the Secretary

48 CFR Ch. 12
Acquisition Regulations

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

48 CFR Ch. 12

[Docket No. 19; Amdt. 6]

Acquisition Regulations

AGENCY: DOT.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule establishes the Department's acquisition regulation, which implements and supplements the Federal Acquisition Regulation (FAR) jointly promulgated on September 19, 1983, by the Department of Defense, the General Services Administration and the National Aeronautics and Space Administration. The FAR was promulgated as the uniform, simplified acquisition regulation called for by Executive Order 12352, Federal Procurement Reforms. The uniform regulation will eliminate the confusion caused contractors by differing policies among the various Federal agencies. The intended effect of the Department's acquisition regulation is to implement the FAR where required and to supplement the FAR in areas where there is no FAR coverage of policies unique to DOT.

DATES: Effective date is June 1, 1984. Comment due date is July 31, 1984.

ADDRESS: Interested persons are invited to submit comments to the Docket Clerk, OST Docket No. 19 Office of General Counsel, C-50, Room 10105, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590. Comments are available for public examination at that address Monday through Friday, except legal holidays, from 9:00 a.m. to 5:30 p.m. EDT. Persons wishing to have receipt of their comments acknowledged must send a stamped, self-addressed post card with their comments.

FOR FURTHER INFORMATION CONTACT: Roger Martino, Chief, Procurement Management Division, telephone (202) 426-4238. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background and This Rule

The policies and procedures of the Federal Government regarding the procurement of supplies and services have been developed in a largely independent fashion. Many statutes bearing on Federal contracting have been directed toward specific agencies. Federal agencies traditionally have developed their own contracting procedures with limited attention to uniformity among agencies. The result of this is the current system of procurement policies that vary from agency to agency and cause confusion within the contracting community. As long ago as 1972, the Commission on Government Procurement recommended that there be a standard Government-wide procurement regulatory system. The Office of Federal Procurement Policy, created in 1974, has worked with the agencies and the public to create a uniform procurement regulation to be known as the Federal Acquisition Regulation (FAR).

The FAR was published in the Federal Register on September 19, 1983 with an effective date of April 1, 1984. (See 48 FR 42102). The FAR was codified as Chapter 1 of Title 48 of the Code of Federal Regulations.

Because of differing statutory authorities among Federal agencies, the FAR authorizes the agencies to issue regulations to implement or supplement FAR policies and procedures, solicitation provisions or contract clauses to satisfy the specific needs of the agency. The regulation being published today represents the Department's implementation and supplementation of the FAR.

Generally, this rule does not establish new policy. To a large extent, it is the result of: (1) Reformatting the existing DOT Procurement Regulations (41 CFR Chapter 12); (2) removing old portions which would duplicate new FAR coverage of subject matter not previously contained in Federal Procurement Regulations (41 CFR Chapter 1); and (3) inserting necessary Departmental procedures at those places where the FAR requires agency implementation. (Existing regulations in 41 CFR Chapter 12 are superseded by these regulations, but remain in effect in Title 41 for those contracts entered into before the effective date of the new acquisition regulations.)

The Department highlights the following areas which contain new or revised provisions:

Part 1201—Acquisition Regulation System
Part 1217—Special Contracting Methods
Part 1219—Small Business and Small Disadvantaged Business Concerns
Part 1227—Patents, Data and Copyrights
Part 1237—Service Contracting
Part 1245—Government Property
Part 1252—Solicitation Provisions and Contract Clauses

Since the FAR is to be the uniform Government-wide acquisition regulation, reviewers of this rule must remember that lack of coverage of a particular topic in the DOT Acquisition Regulation (TAR) means that the Department accepts the FAR coverage of the topic without need for further implementation.

Procedural Requirements

A. *Executive Order 12291.* The Director, Office of Management and Budget has exempted procurement regulations from the requirements of a regulatory impact analysis and review required by Executive Order 12291 (see memorandum dated December 15, 1983 to Don Sowle, Administrator, Office of Procurement Policy and Christopher DeMuth, Administrator, Information and Regulatory Affairs, Office of Management and Budget).

B. *National Environmental Policy Act.* DOT has concluded that promulgation of this rule would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 432 et seq. 1976). Therefore, neither an environmental impact statement nor an environmental assessment will be made pursuant to NEPA.

C. *Regulatory Flexibility Act.* Consistent with the provisions of section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601), the undersigned certifies that this rule does not have a significant economic impact on a substantial number of small entities because the rule contains few changes in current acquisition regulations.

D. *Paperwork Reduction Act.* The collection of information requirements contained in this rule have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Please send any comments on the collection of information requirements to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, Attention: Desk Officer for DOT. No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when it is assigned, will be announced by separate notice in the **Federal Register.**

E. *Administrative Procedure Act.* Section 553 of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) exempts rules relating to public contracts from the prior notice and comment procedure normally required for informal rulemaking. However, the Office of Federal Procurement Policy (OFPP), Office of Management and Budget, has established procedures to be used by all Federal agencies in the

promulgation of procurement regulations. In OFPP Policy Letter 83-2, OFPP states that an agency must provide an opportunity for public comment before adopting procurement regulations if the regulations represent a "significant" change to existing regulations. "Significant" is defined generally as something which has an effect beyond the internal operating procedures of the agency or has a cost or administrative impact on contractors.

The Department has determined that this rule does not represent a significant change. As described earlier in the Preamble, changes made to DOT's procurement regulations are principally in the areas of format and internal procedures. The internal procedural changes are necessary to implement new policies established by the FAR.

The Department has traditionally provided for prior notice and comment even when not required by the Administrative Procedure Act. Although this is the general policy of the Department, we have determined that, for the reasons already stated, it would be contrary to all interests involved to provide for prior notice and comment in this rulemaking. Since the FAR has a scheduled effective date of April 1, 1984, it is imperative that DOT's acquisition regulation be effective as close to the effective date of the FAR as possible. For these reasons, the Department is issuing the Transportation Acquisition Regulation (TAR) as an interim final rule. Because the Department believes in soliciting comments to the extent practicable, it is accepting comments on this regulation for 60 days after the date of publication. The Department will review all comments and will consider changes to the rule to the extent possible.

List of Subjects in 48 CFR Chapter 12

Government procurement, DOT acquisition regulation,

Accordingly, the Department amends 48 CFR by establishing a new Chapter 12 as set forth below.

Issued in Washington, D.C. on May 18, 1984.

Robert L. Fairman,

Assistant Secretary for Administration.

STRUCTURE OF THE TRANSPORTATION ACQUISITION REGULATION

PART 1201—FEDERAL ACQUISITION REGULATION SYSTEM

Authority: Sec. 205(C) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1201.1—Purpose, Authority, Issuance

1201.101 Purpose.

(a) This subpart establishes Chapter 12, the Department of Transportation Acquisition Regulation (TAR), within Title 48, the Federal Acquisition Regulation System.

(b) The purpose of the TAR is to implement and supplement the Federal Acquisition Regulation (FAR).

1201.102 Authority.

The TAR is prescribed by the Assistant Secretary for Administration and the Procurement Executive under a delegation of authority from the Secretary.

1201-103 Applicability.

(a) The FAR and the TAR apply to all acquisitions within the Department of Transportation except where expressly excluded in the FAR or in this supplement (i.e. TAR).

(b) The Maritime Administration may depart from the requirements of the FAR and TAR as authorized by 40 U.S.C. 474(16), but shall adhere to those regulations to the maximum extent practicable. Deviations from the FAR/

TAR requirements shall be documented in administration regulations or procedures, or in each contract file.

1201.104 Issuance.

1201.104-1 Publication and code arrangement.

(a) The TAR is published in: (1) the Federal Register, (2) cumulated form in the Code of Federal Regulations (CFR), and (3) a separate loose-leaf form.

(b) The TAR is issued as Chapter 12 of Title 48 of the CFR.

1201.104-2 Arrangement of regulations.

(a) *General.* The TAR conforms with the arrangement and numbering system prescribed by FAR 1.104. The numbering illustrations at FAR 1.104-2(b) are equally applicable to the TAR.

(b) *Numbering.* (1) All coverage in the TAR that is unique to DOT will use Part, Subpart, Section and Subsection numbers 70-89.

(2) All coverage in the TAR, other than that identified with a 70 or higher number, implements the FAR and will bear the identical number sequence and title of the FAR segment being implemented down to the subsection level with the Department's "12" prefix (e.g., 1215.402) implements FAR 15.402).

1201.104-3 Copies.

Copies of the TAR in Federal Register and CFR form may be purchased from the Superintendent of Documents, Government Printing Office (GPO), Washington, DC 20402. Copies of the TAR in loose-leaf form are distributed within DOT and may be obtained from the Chief, Procurement Management Division, Office of the Secretary.

Subpart 1201.2—Administration

1201.201-1 The two councils.

The procurement executive shall appoint the Department of Transportation representative to the CAA Council.

1201.270 Amendment of regulation.

This Regulation will be amended from time to time as determined necessary by the Procurement Executive. Requests for changes to the TAR should be submitted to the Procurement Executive, Office of the Secretary (M-60).

1201.270-1 Revisions.

This Regulation will be amended by issuance of TAR Directives (TDs) containing loose-leaf replacement pages which revise Parts, Subparts, or paragraphs (also see 1201.270-2 below). Each replacement page will bear at the top the TD number, page number and date. A vertical bar at the beginning or end of a line indicates that a change has been made within that line.

1201.270-2 TAR Notices.

(a) TAR Notices (TNs) shall also be published as often as may be necessary or advisable under any of the following circumstances:

(1) To promulgate as rapidly as possible selected material revising this Regulation, in a general or narrative manner, in advance of a specific page replacement to this Regulation.

(2) To disseminate material applicable to the acquisition process which is not suitable for insertion in this Regulation.

(3) When the policy and/or procedure is expected to be effective for a period of 1 year or less.

(b) Unless otherwise indicated, each item in a TN will remain in effect until the effective date of that subsequent revision which incorporates the item or until specifically cancelled.

1201.270-3 Effective date.

(a) Statements in TDs and TNs to the effect that the material published therein in "effective upon receipt," upon a specified date, or that changes set forth in the Directive or Notice are "to be used upon receipt," mean that any new or revised provisions, clauses, procedures, or forms included in the Directive or Notice shall be included in solicitations, contracts or modifications issued thereafter, unless a different meaning is expressed in the Directive or Notice.

(b) Compliance with a revision to this Regulation shall be in accordance with the TD or TN which contains the revision.

(c) Unless otherwise stated, solicitations which have been issued and bilateral agreements upon which negotiations have been completed prior to the receipt of new or revised contract clauses need not be amended if the amendment would delay the acquisition action.

1201.270-4 Numbering.

TAR Directives and Notices will be numbered consecutively on a calendar year basis beginning with number 1 prefixed by the last two digits of the calendar year, e.g., 84-1; 84-2; 84-3, etc.

Subpart 1201.3—Agency Acquisition Regulations

1201.303 Codification and public participation.

(a) The TAR is codified as Chapter 12 in Title 48, Code of Federal Regulations, Parts 1201—1285.

(b) Public participation in promulgation of the TAR shall be in the same manner as specified for the FAR in FAR 1.501.

1201.303-70 Administration regulations.

Administration regulations are assigned Parts 1286—1299 under 48 CFR as follows:

1286—Office of the Secretary
1287—Federal Aviation Administration
1288—United States Coast Guard
1289—Federal Highway Administration
1290—National Highway Traffic Safety Administration
1291—Federal Railroad Administration
1292—Urban Mass Transportation Administration
1293—Saint Lawrence Seaway Development Corporation
1294—Maritime Administration
1295—Research and Special Programs Administration
1296—1299 [Reserved]

1201.304 Agency control and compliance procedures.

(a) All administration acquisition regulations, and all TAR Directives and Notices, shall be approved by the procurement executive prior to promulgation to assure compliance with FAR Part 1.

(b) Prior to approval submission:

(1) All TAR issuances shall be reviewed by the OST Office of the General Counsel.

(2) Administration acquisition regulations shall be reviewed by appropriate administration counsel.

Subpart 1201.4—Deviations

1201.401 Definition.

A deviation to the TAR is defined in the same manner as a deviation to the FAR.

1201.403 Individual deviations.

Requests for individual deviations from the FAR and the TAR shall be submitted by the head of the contracting activity (HCA) to the agency head for approval. Requests submitted shall cite the specific part of the FAR or TAR from which it is desired to deviate; shall set forth the nature of the deviation(s); and shall give the reasons for the action requested. The agency head shall transmit copies of approved individual FAR and TAR deviations to the procurement executive.

1201.404 Class Deviations.

Requests for class deviations to the TAR shall be submitted to the procurement executive for approval. Requests submitted shall include the same type of information as required for individual deviations as prescribed in 1201.403.

Subpart 1201.6—Contracting Authority and Responsibility

1201.601 General.

In accordance with 49 CFR 1.45(a)(2), the authority and responsibility vested in the Secretary to contract for authorized supplies and services is delegated to the agency heads. Any authority established at or below the agency head level by this regulation may be redelegated, unless authority to redelegate is specifically withheld.

1201.602 Contracting officers.

The HCA shall maintain information on the limits of contracting officer authority.

1201.603 Selection, appointment, and termination of appointment.

1201.603-1 General.

The agency head shall select and appoint contracting officers and terminate such appointments. This authority may be altered upon establishment of the "DOT Contracting Officer Warrant Program."

1201.670 Ratification of unauthorized commitments.

1201.670-1 Authority.

Only contracting officers acting within the scope of their authority (see FAR 1.602) may enter into contracts on behalf of the Government. Subject to the limitations in 1201.670-4 below, the HCA may ratify an unauthorized commitment, *provided:*

(a) The Government has obtained a benefit resulting from the unauthorized commitment;

(b) The HCA could have granted authority to enter into the commitment at the time it was made and still has the power to do so; and

(c) The resulting contract would otherwise have been proper if made by an authorized contracting officer.

1201.670-2 Definitions.

"Ratification," as used in this section, means the act of approving an unauthorized commitment, by an official who has the authority to do so, for the purpose of paying for supplies or services provided to the Government as a result of the unauthorized commitment.

"Unauthorized commitment," as used in this section, means an agreement that is not binding solely because the Government representative who made it lacked the authority to enter into a contract on behalf of the Government.

1201.670-3 Procedures.

DOT components shall process unauthorized commitments using the ratification authority set forth herein in lieu of referral of such actions to the General Accounting Office for resolution as "quantum meruit/quantum valebant" claims.

1201.670-4 Limitations on exercise of authority.

The authority in 1201.670-1 above may be exercised only where—

(a) Supplies or services have been provided to and accepted by the Government;

(b) The contracting officer determines the price to be fair and reasonable;

(c) The contracting officer recommends payment and legal counsel concurs in the recommendation;

(d) Funds are available and were available at the time the unauthorized commitment was made; and

(e) Administrative settlement of the unauthorized commitment would not involve a claim subject to resolution under the Contract Disputes Act of 1978.

1201.670-5 Nonratifiable commitments.

Cases that are not ratifiable under this section may be subject to resolution as recommended by the General Accounting Office under its claim procedure (4 GAO 5.1), or as authorized by FAR Part 50. Legal advice should be obtained in these cases.

PART 1202—DEFINITIONS OF WORDS AND TERMS

Subpart 1202.1—Definitions

1202.101 Definitions.

"Department of Transportation" means all of the administrations, including the Office of the Secretary.

"Administration" means the following:

Office of the Secretary (OST)
Federal Aviation Administration
U.S. Coast Guard
Federal Highway Administration
Federal Railroad Administration
National Highway Traffic Safety Administration
Urban Mass Transportation Administration
St. Lawrence Seaway Development Corporation
Maritime Administration
Research and Special Programs Administration

"Head of the agency" (also called "agency head") means the Assistant Secretary for Administration for OST acquisitions; and for acquisitions within their administrations, the Administrators of the Federal Aviation Administration, Federal Highway Administration, Federal Railroad Administration, Urban Mass Transportation Administration, National Highway Traffic Safety Administration, Maritime Administration, St. Lawrence Seaway Development Corporation, Research and Special Programs Administration, and the Commandant, U.S. Coast Guard, except to the extent that any law or executive order limits the exercise of authority to persons at the Secretarial level. In the latter situation, the Assistant Secretary for Administration shall exercise the authority for the administrations.

"Head of the contracting activity" (HCA) means the following:

In the Office of the Secretary

The Chief, Procurement Division, Washington, D.C.

In the Federal Aviation Administration

The Director, Acquisition and Materiel Service, Washington, DC
The Director, Metropolitan Washington Airports, Arlington, VA
The Director, Alaskan Region, Anchorage, AL
The Director, Western Pacific Region, Los Angeles, CA
The Director, Southern Region, Atlanta, GA
The Director, Northwest Mountain Region, Seattle, WA
The Director, Central Region, Kansas City, MO
The Director, Eastern Region, Jamaica, NY
The Director, Southwest Region, Fort Worth, TX
The Director, Aeronautical Center, Oklahoma City, OK
The Director, FAA Technical Center, Atlantic City, NJ
The Director, New England Region, Burlington, MA
The Director, Great Lakes Region, Des Plaines, IL
The Director, Northwest Region, Seattle, WA

In the Coast Guard

Chief, Procurement Division (G-FCP), Washington, DC [1]
Commander, First Coast Guard District, Boston, MA
Commander, Second Coast Guard District, St. Louis, MO
Commander, Third Coast Guard District, New York, NY
Commander, Fifth Coast Guard District, Portsmouth, VA
Commander, Seventh Coast Guard District, Miami, FL
Commander, Eighth Coast Guard District, New Orleans, LA
Commander, Ninth Coast Guard District, Cleveland, OH
Commander, Eleventh Coast Guard District, Long Beach, CA
Commander, Twelfth Coast Guard District, Alameda, CA
Commander, Thirteenth Coast Guard District, Seattle, WA
Commander, Fourteenth Coast Guard District, Honolulu, HI
Commander, Seventeenth Coast Guard District, Juneau, AL

[1] HCA for other Designated Headquarters Units.

Superintendent, U.S. Coast Guard Academy, New London, CT

In the Federal Highway Administration

Associate Administrator for Administration, Washington, DC

In the Federal Railroad Administration

Director, Office of Procurement, Washington, DC
General Manager, Alaska Railroad, Anchorage, AL

In the National Highway Traffic Safety Administration

Director, Office of Contracts and Procurement, Washington, DC

In the Urban Mass Transportation Administration

Director, Office of Procurement and Third Party Contract Review, Washington, DC

In the Research and Special Programs Administration

Chief, Procurement Division, Washington, DC
Chief, Acquisition Division, Transportation Systems Center, Cambridge, MA.

In the Maritime Administration

Associate Administrator for Policy and Administration, Washington, DC
Associate Administrator for Shipbuilding, Operations and Research, Washington, DC
Central Region Director, New Orleans, LA
Western Region Director, San Francisco, CA
Assistant Superintendent for Administration, U.S. Merchant Marine Academy

"Procurement executive" in accordance with E.O. 12352, means that individual formally designated by the Secretary, currently the Director of Installations and Logistics, Office of the Secretary.

"Acquisition executive" means the Deputy Secretary for programs defined as major systems in accordance with OMB Circular A-109 and DOT Order 4200.14A, Major Systems Acquisition Review and Approval.

(Sec. 205(C), Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59)

PART 1203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 1203.1—Safeguards

Sec.
1203.101 Standards of conduct.
1203.101-1 General.

Subpart 1203.5—Other Improper Business Practices

1203.502 Subcontractor kickbacks.

Subpart 1203.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

1203.602 Exceptions.

Subpart 1203.70—Contracts Between DOT and Former DOT Employees

1203.70-1 Policy.

Authority: Sec. 205(C) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1203.1—Safeguards

1203.101 Standards of conduct.

1203.101-1 General.

(a) Personnel involved in contracting activities must familiarize themselves with a number of Federal criminal statutes prohibiting certain acts by Government officials or employees and, in varying degrees, special Government employees (as defined in 18 U.S.C. 202), which generally provide, among other things, the following:

(1) *18 U.S.C. 201:* Prohibits the asking, demanding, exacting, soliciting, seeking, acceptance, or receipt of or agreement to accept anything of value for him or herself or for any other person or entity in return for being influenced in the performance or non-performance of their offical duties or other conduct of their office (i.e., "bribes").

(2) *18 U.S.C. 203:* Prohibits compensation for services rendered by any officer, employee, or another, such as partnership income in an accounting firm in relation to any particular matter in which the United States is a party.

(3) *18 U.S.C. 205:* Prohibits acting as an agent or attorney in prosecuting any claim against the United States or before any United States agency in relation to any matter in which the United States is a party, with or without compensation.

(4) *18 U.S.C. 208:* Prohibits personal and substantial participation in any particular matter in which an individual or an individual's spouse, minor child, partner, organization in which the individual serves as an officer, director, trustee, partner, or employee, or potential employer (with whom the individual is negotiating or has an arrangement for future employment) has a financial interest.

(5) *18 U.S.C. 209:* Prohibits receipt of any salary or supplementation of salary (anything of value) from a non-Government source as compensation for services as an officer or employee.

(b) Under 18 U.S.C. 218, a conviction under one of these statutes in relation to a contract makes the contract voidable.

(c) In addition to these statutory provisions, personnel involved in contracting activities must familiarize themselves with the Department's Employee Responsibilities and Conduct regulations in 49 CFR Part 99. These regulations, among other things, set forth standards of employee conduct and probibit an employee's doing anything which could result in, or create the appearance of having, a conflict of interest.

(d) Personnel involved in contracting activities must be particularly aware of the prohibitions against accepting gifts. In general, contracting personnel must not accept a gift from anyone who has, is seeking, or is likely to seek a contract with the Department. Gifts include meals (lunches, dinners, etc.), entertainment (theater or sporting event tickets, weekends at private retreats, private cocktail parties, hospitality suites, etc.), and travel expenses (airplane tickets, hotel accommodations, etc.), as well as tangible gifts. The only general exception is gifts of unsolicited advertising or promotional material, such as pens, calendars, or desk toys, that are worth $10 or less.

(e) Refer any questions concerning the matters discussed in this subpart to administration legal counsel.

Subpart 1203.5—Other Improper Business Practices

1203.502 Subcontractor kickbacks.

Contracting officers shall report suspected violations of the Anti-kickback Act through the head of the contracting activity to legal counsel.

Subpart 1203.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

1203.602 Exceptions.

The agency head has the authority to authorize an exception to the policy in FAR 3.601. This authority may be redelegated to the head of the contracting activity for contracts under $25,000. Before an exception is granted in any case, consult legal counsel as to the effect of the conflict of interest laws.

Subpart 1203.70—Contracts Between DOT and Former DOT Employees

1203.70-1 Policy.

(a) For either a competitive or non-competitive contract, all possible precautions must be taken to ensure that no preferential treatment is given to an individual who has been employed by DOT within the last two years or a firm in which such a former employee is a partner, principal officer, majority stockholder, or which is otherwise controlled or predominantly staffed by such former employees. All such contracts must be approved by the agency head.

(b) When current DOT employees are contacted by a former DOT official or employee on behalf of him or herself or a contractor, contact administration

legal counsel who can determine if that person is in danger of violating the post employment laws.

PART 1204—ADMINISTRATIVE MATTERS

Subpart 1204.6—Contract Reporting

Subpart 1204.8—Contract Files

Subpart 1204.70—Procurement Requests

Authority: Sec. 205(C), Federal Property and Administrative Services Act; as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1204.6—Contract Reporting

1204.601 Federal Procurement Data System.

The DOT Contract Information System (CIS) collects the information required to comply with the reporting required for the Federal Procurement Data System (FPDS). Each contracting officer is responsible for proper reporting of contracts under his/her cognizance. A copy of each individual procurement action report affecting the contract shall be included in the contract file or in one or more central files. DOT Order 1340.5, Contract Information System provides detailed reporting instruction.

Subpart 1204.8—Contract Files

1204.804 Closeout of contract files.

1204.804–5 Detailed procedures for closing out contract files.

In addition to those procedures set forth in FAR 4.804–5, the contracting officer shall, before final payment is made under a cost-reimbursement type contract, verify the allowability, allocability, and reasonableness of costs claimed. Verification of total costs incurred shall be obtained in the form of a final audit certification, unless the contract is below the threshold for audit certification. Similar verification of actual costs must be made for fixed-price contracts when cost incentives or price redeterminations are involved.

Subpart 1204.70—Procurement Requests

1204.7001 General.

(a) Procurement requests will be prepared and submitted to the contracting office in accordance with administration procedures.

(b) Except in unusual circumstances, the contracting office will not issue solicitations until an approved procurement request, containing a certification that funds are available, has been received. However, the contracting office may take all necessary actions up to the point of contract award prior to the receipt of the approved procurement request certifying that funds are available when:

(1) Such action is necessary to meet critical program schedules;

(2) It has been established that program authority has been issued and that funds to cover the acquisition will be available prior to the date set for contract award or contract modification;

(3) A person at a level above the contracting officer authorizes such action prior to the issuance of the solicitation, and the contract file is properly documented; and

(4) The solicitation document clearly indicates that the award is subject to the availability of funds.

(c) The procurement request shall be assigned within the contracting office to an individual who, if not the contracting officer, will be responsible to the contracting officer for conducting the business aspects of the transaction. This individual shall review the request to ensure that it complies with the FAR and this Regulation and that the information contained in the request is in sufficient detail to prepare pre-solicitation and solicitation documents. The contracting officer, or other designated individual in the contracting office, shall discuss uncertain requirements or inconsistencies in the procurement request with the initiator of the request and obtain clarification prior to taking any further action.

PART 1205—PUBLICIZING CONTRACT ACTIONS

Subpart 1205.2—Synopses of Proposed Contracts

Subpart 1205.4—Release of Information

Subpart 1205.5—Paid Advertisements

Authority: Sec. 205(C), Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)), 48 CFR 1.301; 49 CFR 1.59.

Subpart 1205.2—Synopses of Proposed Contracts

1205.270 Use of synopses to perform market surveys.

(a) The issuance of either a notice of the proposed noncompetitive acquisition ("Notice of Intent"), or a sources-sought synopsis that is detailed enough to permit submission of meaningful responses and subsequent evaluation of the responses by the Government, constitutes an acceptable market survey.

(b) As a minimum, the synopsis shall include:

(1) A clear statement of the supplies or services being procured;

(2) Required contractor capabilities, experience, and any other factors salient to the requirement; and

(3) Criteria to be used in the evaluation of responses, listed in descending order of their relative importance.

Subpart 1205.4—Release of Information

1205.402 General Public.

1205.402–70 Furnishing additional contract information to the general public.

(a) *Policy.* (1) In addition to publicizing proposed contracts and contract awards in the Commerce Business Daily, it is DOT policy to furnish the general public, upon request, the following information on proposed contracts and contract awards.

(i) The names of firms invited to submit bids or proposals;

(ii) The names of firms which attended pre-proposal briefing conferences when held;

(iii) After the award of contracts, names of firms which submitted proposals; and

(iv) After the date established for receipt of bids, names of firms which submitted bids.

(2) Exceptions to this policy will be permitted only when the head of the contracting activity determines that the disclosure of such information would not be prejudicial to the interests of DOT.

(b) *Procedures.* Contracts or modifications requiring either approval by the Assistant Secretary for Administration or release by the Assistant Secretary for Governmental Affairs will not be executed, distributed, or any information given to any source outside of DOT that the contract has been approved until the Director, Office of Public Information, has advised the contract activity that the contract can be released.

Subpart 1205.5—Paid Advertisements

1205.502 Authority.

Authority to approve publication of paid advertisements in newspapers is

delegated to the head of the contracting activity.

PART 1207—ACQUISITION PLANNING

Subpart 1207.1—Acquisition Plans

Sec.
1207.102 Policy.

Subpart 1207.3—Contractor Versus Government Performance

1207.302 General.
1207.307 Appeals.

Authority: Sec. 205(C), Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1207.1—Acquisition Plans

1207.102 Policy.

The Department has implemented its acquisition planning system in DOT Orders in the 4200 Series, which are available for inspection in DOT contracting offices. This system meets the criteria prescribed in FAR Subpart 7.1 covering major projects. Planning for smaller projects is the responsibility of the agency head.

Subpart 1207.3—Contractor Versus Government Performance

1207.302 General.

The Department's implementation of OMB Circular A–76 and FAR Subpart 7.3 is set forth in DOT Order 4400.2C, Performance of Commercial Activities, which is available for inspection in DOT Contracting Offices.

1207.307 Appeals.

The Department's appeals procedures required by OMB Circular A–76 and FAR 7.307 are set forth in DOT Order 4400.2C.

PART 1209—CONTRACTOR QUALIFICATIONS

Subpart 1209.4—Debarment, Suspension, and Ineligibility

Sec.
1209.402 Policy.

Subpart 1209.5—Organizational Conflicts of Interest

1209.508 Solicitations provisions and contract clause.
1209.508–1 Solicitation provisions.

Authority: Sec. 205(C), Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1209.4—Debarment, Suspension, and Ineligibility

1209.402 Policy.

DOT procedures to implement the policy of FAR 9.402 are set forth in DOT Order 4200.5 "Government-Wide Debarment, Suspension and Ineligibility."

Subpart 1209.5—Organizational Conflicts of Interest

1209.508 Solicitation provisions and contract clause.

1209.508–1 Solicitation provisions.

In addition to the provisions discussed at FAR 9.508–1 (used where appropriate), the contracting officer may insert the provision at 1252.209–71 "Disclosure of Conflicts of Interest" in solicitations for negotiated acquisitions (see also 1215.407(b)).

PART 1210—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

Sec.
1210.004 Selecting specifications or descriptions for use.
1210.004–70 Brand name products or equal.
1210.004–71 Limits on the use of brand name or equal purchase descriptions.
1210.004–72 Solicitations, brand name or equal descriptions.
1210.004–73 Offer evaluation and award, brand name or equal descriptions.
1210.007 Deviations.
1210.011 Solicitation provisions.

Authority: Sec. 205(C), Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

1210.004 Selecting specifications or descriptions for use.

1210.004–70 Brand name products or equal.

(a) *General.* Consistent with the policy stated in FAR 12.004(a)(2), DOT acquisitions will generally *not* be based on a specifically identified product or feature(s) thereof. However, under unusual circumstances such an approach may be used as described below.

(b) *Citing brand name products.* Brand name or equal purchase descriptions shall cite all brand name products know to be acceptable and of current manufacture. If the use of a brand name or equal purchase description results in the purchase of an acceptable brand name product which was not listed as an "equal" product, a reference to that brand name product should be included in the purchase description for later acquisitions. If a brand name product is no longer applicable, the reference thereto shall be deleted from subsequent purchase description.

(c) *Specifying essential characteristics.* (1) It is imperative that brand name or equal purchase descriptions specify each physical or functional characteristic of the product that is essential to the intended use. Failure to do so may result in a defective solicitation and the necessity to readvertise the requirements. (See 1210.004–73) Care must be taken to avoid specifying characteristics that cannot be shown to materially affect the intended end use and which unnecessarily restrict competition.

(2) When describing essential characteristics, permissible tolerances should be indicated. Avoid specifying a characteristic (e.g. a specific dimension) of a brand name product unless it is essential to the Government's need. The contracting officer must be able to justify the requirement.

1210.004–71 Limits on the use of brand name or equal purchase descriptions.

(a) *General.* The use of brand name or equal purchase descriptions in solicitations is intended to promote competition by encouraging the offering of products that are equal in all material respects to brand name products cited in such descriptions. Identification by brand name does not indicate a preference for the products mentioned but indicates the quality and characteristics of products that will meet the Government's needs. Where a component of an item is described in the solicitation by a brand name or equal purchase description and the contracting officer determines that application of the provision at 1252.210–71 would be impracticable, the requirement to include the entry described in 1210.004–72(a) shall not apply. If the provison is included in the solicitation for other reasons, there also shall be included in the solicitation a statement to identify either the component parts (described by brand name or equal descriptions) to which the provision applies or those to which it does not apply. This also applies to accessories related to an end item where a brand name or equal purchase description of the accessories is a part of the description of an end item. Brand name or equal descriptions shall not be used to acquire a particular product under the guise of competitive acquisition to the exclusion of other products that would meet the actual needs.

(b) In small purchases within the open market limitations, brand name policies and procedures shall be applicable to the extent practical.

(c) *Approval required.* A brand name or equal purchase description shall not be used unless it has been approved at one level above the contracting officer.

1210.004-72 Solicitations, brand name or equal descriptions.

(a) An entry substantially as follows shall be prominently inserted in the item listing after each item or component part of an end item to which a brand name or equal purchase description applies.

Bidding on:
Manufacturer's Name_____
Brand_____
No._____

(b) Because bidders frequently overlook the requirements of the clause at 1252.210-71 "Brand Name of Equal," the following note shall be inserted in the item listing after each brand name or equal item (or component part), or at the bottom of each page, listing several such items, or in a manner that may otherwise direct the offeror's attention to this clause.

Offerors offering other than brand name items identified herein should furnish with their offers adequate information to ensure that a determination can be made as to equality of the product(s) offered (see the provision "brand name or equal" set forth in section 1252.210-71 of the transportation acquisition regulation.)

(c) If offeror samples are requested for brand name or equal acquisitions, the above notice shall not be included in the solicitation.

1210.004-73 Offer evaluation and award, brand name or equal descriptions.

An offer may not be rejected for failure of the offered product to equal a characteristic of a brand name product if it was not specified in the brand name or equal description. However, if it is clearly established that the unspecified characteristic is essential to the intended end use, the solicitation is defective and no award may be made. In such cases, the contracting officer should readvertise the requirements, using a purchase description that sets forth the essential characteristics.

1210.007 Deviations.

The head of the contracting activity is the designated official responsible for ensuring that Federal specifications are used and exceptions and deviations are justified in accordance with FAR 10.007(a).

1210.011 Solicitation provision.

The contracting officer shall include the provision at 1252.210-71. "Brand Name of Equal" in solicitations for which a brand name or equal purchase is used.

PART 1212—CONTRACT DELIVERY OR PERFORMANCE

Subpart 1212.70—Delays

1212.701 Delays.

The contracting officer shall insert the clause at 1252.212-71 in all DOT contracts.

(Sec. 205(C), Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59)

PART 1213—SMALL PURCHASES AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Subpart 1213.1—General

Sec.
1213.106 Competition and price reasonableness.
1213.106-70 Data to support small purchases over $1,000.
1213.107 Solicitation and evaluation of quotations.

Subpart 1213.2—Blanket Purchase Agreements

1213.201 General.
1213.203 Establishment of blanket purchase agreements.
1213.203-1 General.

Subpart 1213.4—Imprest Fund

1213.403 Agency responsibilities.
1213.404 Conditions for use.
1213.405 Procedures.

Subpart 1213.5—Purchase Orders

1213.505 Purchase order and related forms.
1213.505-2 Agency order forms in lieu of Optional Forms 347 and 348.
1213.505-3 Standard Form 44-Purchase Order—Invoice—Voucher.

Authority: Sec. 205(C), Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1213.1—General

1213.106 Competition and price reasonableness.

1213.106-70 Data to support small purchases over $1,000.

Form DOT F 4230.1, Small Purchase Summary, may be used to satisfy documentation requirements of FAR 13.106(c).

1213.107 Solicitation and evaluation of quotations.

Standard Form 18, Request For Quotations, shall be used to obtain written quotations as prescribed in FAR 13.107(a) unless an administration equivalent form has been authorized for use by the procurement executive. (See also FAR 53.103). Exceptions under this subpart shall be processed through the procurement executive.

Subpart 1213.2—Blanket Purchase Agreements

1213.201 General.

The head of the contracting activity may require that only contracting officers make purchases under a blanket purchase agreement.

1213.203 Establishment of blanket purchase agreements (BPAs).

1213.203-1 General.

Optional Form 347, Order for Supplies Or Services, shall be used for BPAs unless an administration equivalent form has been authorized for use by the agency head.

Subpart 1213.4—Imprest Fund

1213.403 Agency responsibilities.

(a) Regulations governing the use and administration of Imprest Funds within the Department are contained in DOT Order 2770.7A, Imprest Fund Manual.

(b) Heads of contracting activities (HCAs) shall establish procedures for designation of personnel authorized to approve requisitions and make purchases using imprest funds. HCAs may require that only contracting officers may approve requisitions using imprest funds.

1213.404 Conditions for use.

Imprest funds may be used for small purchases when the transaction does not exceed $250 ($500 under emergency conditions).

1213.405 Procedures.

(a) The individual making an approved purchase from the imprest fund shall be responsible for compliance with the documentation requirements of FAR 13.405(f) and DOT Order 2770.7A, Chapter 6.

(b) The individual having acquisition authority to approve purchases from the imprest fund shall be responsible for checking the authorized purchase requisition for compliance with the internal control requirements mandated by DOT Order 2770.7A, Chapter 6, Paragraph 2a.

Subpart 1213.5—Purchase Orders

1213.505 Purchase order and related forms.

1213.505-2 Agency order forms in lieu of Optional Forms 347 and 348.

Optional Forms 347 and 348 shall be used as prescribed in FAR 13.505 unless an administration equivalent form has been authorized for use by the agency head. Exceptions may be granted, on a case by case basis, in order to

accommodate computer-generated purchase order forms. Exception approval for overprinting (FAR 53.104) is not needed.

1213.505-3 Standard Form 44 Purchase Order—Invoice—Voucher.

(a) In addition to the procedures in FAR 13.505-3, DOT Order 4230.2 Standard Form 44 (SF 44), Purchase Order—Invoice—Voucher contains guidance on the use of Standard Form 44.

(b) Agency heads are responsible for establishing procedures to control the use of Standard Form 44 and accounting for all purchases made using the form, including:

(1) Maintenance of a list of designated individuals authorized to make purchases using the form;

(2) Controls for issuance of the form to authorized individuals; and

(3) Review of purchase transactions using the form to assure compliance with authorized procedures.

PART 1214—FORMAL ADVERTISING

Subpart 1214.2—Solicitation of Bids

Sec.

Subpart 1214.3—Submission of Bids

Subpart 1214.4—Opening of Bids and Award of Contract

Authority: Section 205(C), Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1214.2—Solicitation of Bids

1214.201 Preparation of invitation for bids.

1214.201-1 Uniform contract format.

In those cases where the uniform contract format need not be used, the contract still should be structured to conform to the various uniform contract format sections as closely as is practicable.

1214.202 General rules for solicitation of bids.

1214.202-4 Bid samples.

The justification required by FAR 14.202-4(d) shall be prepared by the requiring activity and approved in writing by the contracting officer.

1214.205 Solicitation mailing lists.

1214.205-1 Establishment of lists.

Requests for supplemental information shall be attached to the Standard Form 129 and forwarded to potential suppliers for completion.

Subpart 1214.3—Submission of Bids

1214.302 Bid submission.

As permitted by FAR 14.302(b)(1), a telegraphic bid may be communicated by means of a telephone call to the designated office.

Subpart 1214.4—Opening of Bids and Award of Contract

1214.406 Mistakes in bids.

1214.406-3 Other mistakes disclosed before award.

The head of the contracting activity is authorized to make the determinations under FAR 14.406-3 (a), (b), (c), and (d). This authority may not be redelegated. Any doubtful case under FAR 14.406-3 may be forwarded for advance decision to the Comptroller General, with a copy to the procurement executive.

1214.406-4 Mistakes after award.

The contracting officer shall make the determination required by FAR 14.406-4(b) after coordination with legal counsel.

1214.407 Award.

1214.407-8 Protests against award.

(a) The head of the contracting activity has the responsibility to provide GAO with the information required by FAR 14.407-8(a)(5). Prior to submitting a protest response to GAO, the completed response shall be submitted to the procurement executive for review and coordination.

(b) The Assistant Secretary for Administration is responsible for the determination authorizing award of a contract prior to resolution of a protest. Requests should be submitted for approval through the procurement executive.

1214.408 Information to bidders.

1214.408-2 Award of classified contracts.

Each administration having access to classified information during the acquisition process shall comply with appropriate security procedures.

PART 1215—CONTRACTING BY NEGOTIATION

Subpart 1215.1—General Requirements for Negotiation

Sec.

Subpart 1215.2—Negotiation Authorities

Subpart 1215.3—Determinations and Findings to Justify Negotiations

Subpart 1215.4—Solicitation and Receipt of Proposals and Quotations

Subpart 1215.5—Unsolicited Proposals

Subpart 1215.6—Source Selection

Subpart 1215.7—Make-or-Buy Programs

Subpart 1215.8—Price Negotiation

Subpart 1215.9—Profit

Authority: Sec. 205(C) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1215.1—General Requirements for Negotiation

1215.105 Competition.

1215.105-70 Noncompetitive acquisition approval.

(a) The contracting officer is the approving authority for the following proposed noncompetitive actions:

(1) Estimated cost under $25,000;

(2) Federal Supply Schedule orders;

(3) 8(a) set-asides;

(4) Educational services from nonprofit institutions;

(5) Utility contracts; and

(6) Emergency pollution containment and oil spill cleanup.

(b) For proposed noncompetitive acquisition from $25,000 up to and including $100,000, the approving authority, not subject to any redelegation, is:

(1) For OST acquisitions—Assistant/Deputy Assistant Secretary for Administration

(2) For the Coast Guard—Comptroller

(3) For all other DOT Administrations—Associate Administrator for Administration.

The head of the administration is the approving authority for all proposed noncompetitive procurement actions over $100,000. This authority may not be redelegated.

(c) The format and specific procedures for obtaining the required approvals for noncompetitive procurement shall be established by each administration. All such procedures shall be approved by the procurement executive prior to implementation by the administrations.

1215.105-71 Justification for noncompetitive procurement.

(a) The Justification for Noncompetitive Procurement (JNCP) shall be prepared by the office which initiates the procurement request, and shall be submitted to the contracting officer. The JNCP shall:

(1) *Fully* express the circumstances which make competitive negotiation impractical or not feasible;

(2) Explain in detail the exclusive or predominant capability the proposed contractor possesses which meets the requirements of the procurement; and

(3) Contain in the first sentence an appropriate recommendation (e.g., "I recommend that negotiations be conducted only with the (name of company) * * * for * * *".).

(b) Each JNCP shall state the degree of consideration which has been given to other sources in the particular field and the reasons they lack the capability which the proposed contractor evidences. The following illustrations represent factors which should be considered, as appropriate, in preparing the JNCP:

(1) What capability, important to the specific effort, does the proposed contractor have which makes it clearly more desirable than another firm in the same general field?

(2) What prior experience of a highly specialized nature does the contractor possess which is vital to the proposed effort?

(3) What facilities and test equipment does the contractor have which are specialized and vital to the proposed effort?

(4) Does the contractor have a substantial investment of some kind which would have to be duplicated at Government expense by another source entering the field?

(5) If schedules are involved, why are they critical and why can only the proposed contractor meet them?

(6) If lack of drawings or specifications is a guiding factor, why can only the proposed contractor perform under these conditions? Why are drawings and specifications lacking? What is the lead time required to get drawings and specifications suitable for competition?

(7) Are Government-owned facilities involved?

(8) State whether the acquisition is/is not a continuation of previous effort performed by the proposed contractor. If a continuation, include the following:

(i) The basis on which the initial selection was made (i.e., competitive or noncompetitive and, if noncompetitive, a summary of the reasons therefor), contract number, contract period, dollar value, and a brief description of the scope of work.

(ii) A resume of all subsequent awards up to the current action, including contract number, scope, dollar value and title.

(9) Does the proposed contractor have personnel considered predominant experts in the particular field?

(10) Is competition precluded because of the existence of patent rights, copyrights, or secret processes?

(11) Are parts or components being acquired as replacement parts in support of equipment specially designed by a manufacturer where data available are not adequate to assure that the parts or components will perform the same function in the equipment as those parts or components being replaced?

(12) State if the potential for continuation of the acquisition does/does not exist. If the potential exists, state whether it will be competitive or noncompetitive, and identify the contemplated performance period.

(13) Identify what steps have or will be taken to foster competition in the future.

(c) The justification shall be signed and dated by the person responsible for the technical requirement.

1215.106 Contract clauses.

1215.106-70 Key personnel and facilities.

Whenever contractor selection (either sole source or competitive acquisition) has been substantially predicated on the contractor's possession of special capabilities (i.e. personnel and/or facilities) the contracting officer shall include the clause at 1252.215-71 in the awarded contract.

1215.170 Pre-contract costs.

(a) Except as authorized in 1215.170(b), no DOT employee shall encourage or authorize any potential contractor to incur costs prior to contract award.

(b) No contract provision for reimbursement of a contractor's pre-contract costs shall be negotiated or included in any contractual document prior to approval of such provision by the head of the contracting activity. The request for HCA approval shall include the following:

(1) Identification of the requirement;

(2) Name of the proposed contractor;

(3) Brief description of the work for which precontract costs are necessary;

(4) Total amount of pre-contract costs involved and approximate duration of the period over which costs will be incurred;

(5) Reason(s) why use of pre-contract costs are necessary and in the best interest of the Government.

Subpart 1215.2—Negotiation Authorities

1215.211 Experimental, developmental, or research work.

1215.211-70 Reporting requirement.

(a) Reports required by 10 U.S.C. 2304(e) to be made to the Congress on May 19 and November 19 of each year shall be submitted by the U.S. Coast Guard to the procurement executive by May 1 and November 1 of each year for purchases and contracts made under

FAR 15.211 since the date of the last report.

(b) Reports shall contain the following information:

(1) Name of contractor;

(2) Dollar amount of contract (including modifications); and

(3) Brief description of the work required to be performed under the contract (when necessary, because of the national security, the word "Classified" may be used in lieu of the description).

1215.213 Technical equipment requiring standardization and interchangeability of parts.

Each administration using this negotiation authority shall establish procedures for periodically reviewing Determinations and Findings made under FAR 15.213, and shall maintain the list of items procured which cite 10 U.S.C. 2304(a)(13) or 41 U.S.C. 252(c)(13) as the negotiation authority (see FAR 15.213(c)(4)).

1215.217 Purchases in the interest of national defense or industrial mobilization.

1215.217-70 Reporting requirements.

The reporting procedures specified in 1215.211-70 also apply to those contracts negotiated under 10 U.S.C. 2304(a)(16).

Subpart 1215.3—Determinations and Findings to Justify Negotiations

1215.304 Content.

1215.304-70 Format for negotiation authority D & F.

Each administration shall establish formats to be used for determinations and findings authorizing negotiation.

Subpart 1215.4—Solicitation and Receipt of Proposals and Quotations

1215.405 Solicitations for information or planning purposes.

All determinations to issue solicitation for information or planning purposes shall be approved at least one level above the contracting officer.

1215.406 Preparing requests for proposals (RFPs) and requests for quotations (RFQs).

1215.406-1 Uniform contract format.

In those cases where the uniform contract format is optional or does not apply, the solicitation and contract should be structured to conform to the various uniform contract format sections as closely as is practicable.

1215.407 Solicitation provisions.

(a) The contracting officer shall insert the provision at 1252.209-71 "Disclosure of Conflicts of Interest", in accordance with 1209.508-1.

(b) The contracting officer may insert a provision substantially the same as that at 1252.215-72, Cost Proposal Instructions, in requests for proposal when cost or pricing data are to be obtained.

(c) When automatic data processing (ADP) hardware and/or software will be acquired either as part or all of the acquisition, contracting officers shall include Form DOT F. 4220.21 in the request for proposal (see 1253.215(a)). The form shall be completed by offerors and submitted with SF 1411 and other supporting data.

1215.408 Issuing solicitations.

Each administration having access to classified information during the acquisition process shall comply with appropriate security procedures.

1215.411 Receipt of proposals and quotations.

The requirement set forth in 1215.408 applies.

1215.413 Disclosure and use of information before award.

The alternate procedure at FAR 15.413-2 shall be used in lieu of those prescribed at FAR 15.413-1. Each administration shall establish procedures to implement this section. In so doing, the stipulations contained in FAR 15.413-2(f) shall be followed.

Subpart 1215.5—Unsolicited Proposals

1215.506 Agency procedures.

(a) Each administration shall establish procedures for controlling the receipt, evaluation, and timely disposition of unsolicited proposals.

(b) A central receiving office shall be established to implement these procedures. Each central receiving office shall:

(1) Serve as the point of contact with the submitter;

(2) Maintain records showing the receipt and status of unsolicited proposals; and

(3) Coordinate with other administrations or other Federal agencies when appropriate.

(c) An information copy of central office designations and any implementing instructions will be furnished to the procurement executive.

Subpart 1215.6—Source Selection

1215.605 Evaluation factors.

Actual numerical weights, which may be employed in the evaluation of technical proposals, shall not be disclosed in the solicitation.

1215.612 Formal source selection.

1215.612-70 Scope.

(a) Formal source selection procedures, as set forth in DOT Order 4200.11, Source Selection, shall apply to competitively negotiated acquisitions when:

(1) The estimated cost exceeds $2,000,000; or

(2) The estimated cost does not exceed $2,000,000, but the selected source is likely to receive funding for a future phase or phases of the same project and the aggregate amount of such funding (including the current acquisition) if estimated to exceed $2,000,000; or

(3) The estimated cost exceeds $1,000,000, and the acquisition has for its principal purpose research, development, test, or evaluation of a product or process that is likely to have widespread commercial application, usage, or sale.

(b) Formal source selection procedures do not apply to the acquisition of Architect-Engineer services, acquisitions from other Government (including State and local) agencies, or any other acquisition which is specifically exempted by the Secretary, Deputy Secretary, or Assistant Secretary for Administration.

1215.612-71 Source selection official.

(a) The Secretary or Deputy Secretary normally shall serve as the Source Selection Official (SSO) for acquisitions, when:

(1) The estimated cost exceeds $5,000,000; or

(2) The estimated cost does not exceed $5,000,000, but the selected source is likely to receive funding for a future phase or phases of the same project and the aggregate amount for such funding (including the current acquisition) is estimated to exceed $5,000,000.

(b) The Assistant Secretary for Administration normally shall serve as SSO for all other formal source selections.

(c) The authorities in 1215.612-71(a) and 1215.612-71(b) may be delegated for individual acquisitions.

Subpart 1215.7—Make-Or-Buy Programs

1215.704 Items and work included.

As a rule, make-or-buy programs should not include items or work efforts estimated to cost less than (a) 1 percent of the total estimated contract price or (b) $500,000, whichever is greater.

Subpart 1215.8—Price Negotiation

1215.803 General.

(a) The procurement request initiator shall provide, as part of the procurement request, an independent Government estimate for all acquisitions in excess of $25,000. This estimate shall include, to the extent applicable, the major cost areas of labor (by category), materials, travel, consultant, computer usage, etc. The level of detail and rationale for the estimate shall be commensurate with the complexity and value of the acquisition. Any prior cost experience the Government has had in buying the same, or like items, should be referenced. The contracting officer may require, at his/her discretion, an estimate where the anticipated cost is less than $25,000. Under no circumstances should the estimate be based on information furnished solely by a potential contractor who may be considered for award.

(b) Unreasonable profit or fee demands made by an offeror, if not resolved by the contracting officer, shall be referred to the head of the contracting activity.

1215.804 Cost or pricing data

1215.804-3 Exemptions from or waiver of submission of certified cost or pricing data.

(a) Administrations shall establish monitoring procedures to ensure that exemptions from the requirement to submit certified cost or pricing data are properly applied.

(b) The head of the agency may waive the requirement for submission of certified cost and pricing data under exceptional circumstances. Waivers should rarely be granted and utmost discretion must be exercised.

1215.805 Proposal analysis.

1215.805-4 Technical analysis.

(a) The head of the agency shall ensure that contracting activities are properly supported by agency technical personnel in the proposal evaluation process.

(b) A copy of the technical evaluation should be provided to the auditor for incorporation into the audit report whenever feasible.

1215.805-5 Field pricing support.

(a) Contracting officers normally shall allow a minimum of 30 days for receipt of an audit report. Exceptions to this 30-day minimum period may be made only when unusally urgent program considerations require a shorter time. Urgency caused by end of year funding considerations shall not be used as a justification for requiring a shorter period for advisory audit review.

(b) Administrations shall establish procedures for monitoring audit waivers. Urgency caused by end of year funding considerations shall not be used as justification for waiving audit.

(c) Administrations shall establish procedures for requesting and handling audit or other field pricing reports.

1215.807 Prenegotiation objectives.

(a) Administrations shall establish procedures for review and approval of prenegotiation objectives. These procedures shall require Prenegotiation Memoranda (see 1215.807-70 below) for each administration's higher dollar value and most complex acquisitions. The approval levels established should be commensurate with the value and complexity of the proposed acquisition. Under no circumstances shall the procedures undermine the contracting officer's responsibility for determining a fair and reasonable price. The procurement executive shall approve these procedures prior to implementation by the administration.

(b) Written documentation of all prenegotiation objectives is required and shall be made a part of the permanent contract file. (See also 1215.808(c) below).

1215.807-70 Content of prenegotiation memorandum.

The Prenegotiation Memorandum (PM) shall fully explain the Government's position as well as identify and justify the elements that are acceptable as proposed. Since the PM will ultimately become the basis for negotiation, it should be structured to provide an audit trail to the Price Negotiation Memorandum (see FAR 15.808 and 1215.808). Generally, the PM should address the following subjects in the order presented.

(a) *Introduction.* Include a brief description of the acquisition and a brief history indicating the extent of competition and results thereof. Identify the prospective contractor(s) and the place(s) of performance (if not evident from the description of the acquisition), summarize the negotiation schedule, and identify the Government negotiating team members by name and position.

(b) *Special features and requirements.* In this area, discuss any special features (and related cost impact) of the acquisition including such items as:

(1) Letter contract or pre-contract cost requirements;

(2) Government property to be furnished;

(3) Contract option requirements;

(4) Contractor/Government investment in facilities and equipment (and any modernization thereof to be provided by the contractor/Government); and

(5) Any deviations, special clauses or conditions anticipated.

(c) *Cost and profit/fee analysis.* Include a parallel tabulation by element of cost and profit/fee of the offeror's proposal, the Government's negotiation objective, the auditor/field pricing position, and the Government's maximum position. For each element of cost, compare the offeror and Government estimates and explain how the latter was developed, including the estimating assumptions and projection techniques employed. Further, explain how historical costs, including costs incurred under a letter contract (if applicable), were used in developing the negotiation objective. Significant differences between the field pricing report (including any audit reports) and the negotiation objectives and/or offeror's proposal should be highlighted and explained. Also, technical evaluation results which caused the Government's cost negotiation objectives to significantly differ from the offeror's proposed costs, such as differences in staffing, should be highlighted and explained. Further, there should be an identification and brief discussion of each major subcontract involved, citing the type of subcontract and stating the degree of analysis performed on the subcontract cost estimate. In addition, the rationale for the Government's profit/fee objectives, and a completed copy of the DOT "Weighted Guidelines, Profit/Fee Objective" (DOT Form 4220.32), shall be included.

(d) *Type of contract contemplated.* Explain the type of contract contemplated and the reasons for its suitability. For an incentive contract, including award fee contracts, describe the planned profit/fee patterns, share lines, ceilings, and so forth.

(e) *Negotiation approval sought.* Indicate the specific approvals sought, e.g. total dollar amount, special clauses/conditions not constituting deviations, type of contract, fee/profit objectives, and so forth.

1215.808 Price negotiation memorandum.

(a) A price negotiation memorandum is required for all negotiated acquisitions, regardless of dollar value. The extent and complexity of the memorandum shall depend upon the nature of the individual contract. The contracting officer shall include an affirmative statement in the

memorandum that the price is fair and reasonable and give the basis for the determination. For those unusual circumstances where a fair and reasonable price is not readily achievable by the contracting officer, and the matter is referred to a higher level in the administration, the manager who makes the final decision on the matter shall sign an affirmative statement that the price finally established is acceptable.

(b) The price negotiation memorandum serves as a detailed summary of: (1) The technical, business, contractual, pricing, and other aspects of the contract negotiated, and (2) the methodology and rationale used in arriving at the final negotiated agreement.

(c) Normally, the price negotiation memorandum is a "stand alone" document. However, when a prenegotiation memorandum (see 1215.807–70) has been prepared, the subsequent price negotiation memorandum need explain: (1) Only the differences between the prenegotiation position and the final negotiated settlement, and the basis for those differences; and (2) the areas identified in FAR 15.808(a).

(d) The contracting officer shall sign and date the memorandum.

Subpart 1215.9—Profit

1215.902 Policy.

(a) Use of a structured approach for determining profit or fee is mandatory for all negotiated actions over $500,000 except:

(1) Architect-engineering contracts;

(2) Management contracts for operation and/or maintenance of Government facilities;

(3) Construction contracts;

(4) Contracts primarily requiring delivery of material supplied by subcontractors;

(5) Termination settlements;

(6) Cost-plus-award-fee-contracts;

(7) Unusual pricing situations where the weighted guidelines method has been determined to be unsuitable. Such exceptions shall be authorized by the head of the contracting activity.

(b) If the contracting officer makes a written determination that the pricing situation meets any of the circumstances set forth in 1215.902(a) other methods for establishing the profit objective may be used. These methods shall be supported in a manner similar to that used in the weighted guidelines (profit factor breakdown and documentation of profit objectives); however, investment or other factors that would not be applicable to the contract shall be excluded from the profit objective determination. It is intended that the methods will result in profit objectives for non capital-intensive contracts that are below those generally developed for capital-intensive contracts.

1215.905 Profit-analysis factors.

1215.905–70 Methods.

(a) DOT Form 4220.32, "Weighted Guidelines Profit/Fee Objective", shall be used to compute profit or fee for actions covered under 1215.902.

(b) Profit/fee objectives shall be computed according to the following criteria:

(1) The profit/fee objective for manufacturing contracts shall be computed, except as provided in the following sentence, using the manufacturing weighted guidelines method which provides profit opportunity based on facilities capital investment. Certain contracts for the manufacture of small quantities of high technology supplies and equipment may not require a significant amount of facilities; in such cases, the research and development weighted guidelines method shall be used.

(2) The profit/fee objective for research and development contracts shall be computed using the research and development weighted guidelines method unless, in the judgment of the contracting officer, a significant amount of facilities is required for efficient contract performance, in which case the manufacturing weighted guidelines shall be used.

(3) The profit/fee objective for service contracts shall be computed using the service contract weighted guidelines method unless, in the judgment of the contracting officer, a significant amount of facilities is required for efficient contract performance, in which case the manufacturing weighted guidelines shall be used.

(4) In determining whether a particular contract shall be classified as manufacturing, research and development, or services, primary reliance shall be placed on the nature of the work to be performed.

(5) Generally, assignment of specific percentages from within the "profit weight ranges" shown in columns 6 (c), (d) or (e) of DOT Form 4220.32 can be established after appropriate analysis of the elements of cost (i.e. items 7 through 12 of DOT Form 4220.32). However, to ensure consistency of contract risk assessment for DOT acquisitions, the assigned weight (%) shall generally be selected as follows:

(i) Type of contract and percentage ranges for profit objectives developed by using the manufacturing weighted guidelines method:

	Percent
Cost-plus-fixed fee	0 to 0.5.
Cost-plus-incentive fee:	
With cost incentives only	1 to 2.
With multiple incentives	1.5 to 3.
Fixed-price-incentive:	
With cost incentives only	3 to 5.
With multiple incentives	4 to 6.
Prospective price redetermination	4 to 6.
Firm fixed-price	6 to 8.

(ii) Type of contract and percentage ranges for profit objectives developed by using the research and development weighted guidelines method:

	Percent
Cost-plus-fixed fee	0 to 0.5.
Cost-plus-incentive fee:	
With cost incentives only	1 to 2.
With multiple incentives	1.5 to 3.
Fixed-price-incentive:	
With cost incentives only	2 to 4.
With multiple incentives	3 to 5.
Prospective price redetermination	3 to 5.
Firm fixed-price	5 to 7.

(iii) Type of contract and percentage ranges for profit objectives developed by using the service contract weighted guidelines method:

	Percent
Cost-plus-fixed fee	0 to 0.5.
Cost-plus-incentive fee	1 to 2.
Fixed-price-incentive	2 to 3.
Firm fixed-price	3 to 4.

(6) For "manufacturing" contracts where contractor facilities are required and will benefit the fulfillment of contract requirements, DD Form 1861 "Contract Facilities Capital Cost of Money" shall be completed in accordance with the instructions on the reverse thereof, and the dollar amount of "Contract Facilities Capital Employed" (line 8 of DD Form 1861) shall be inserted in column 6(b), item 16 of DOT Form 4220.32.

1215.905–71 Profit/fee objective for non-commercial enterprises.

(a) In determining the fee or profit, consideration must be given to the tax posture of the organization. A fair and reasonable profit to a non-profit or not-for-profit organization with tax exempt status should be considerably lower than a fee to a commercial enterprise with no tax exempt status.

(b) The weighted guidelines method was designed for arriving at profit or fee objectives for other than nonprofit organizations. However, if appropriate adjustments are made to reflect differences between profit and non-

profit organizations, the weighted guidelines method can be used as a basis for arriving at fee objectives for non-profit organizations. Therefore, the policy of the Department is to use the weighted guidlines method, as modified in subparagraph (b)(2), below, to establish fee objectives that will stimulate efficient contract performance and attract the best capabilities of nonprofit organizations to Government oriented activities. The modifications shall not be applied as deductions against historical fee levels but to the fee objective for such a contract as calculated under the weighted guidelines method.

(1) Nonprofit organizations are defined as those business entities organized and operated exclusively for charitable, scientific, or educational purposes, of which no part of the net earnings accrue to the benefit of any private shareholder or individual, of which no substantial part of the activities is carrying on propaganda or otherwise on behalf of any candidate for public office, and which are exempt from Federal income taxation under Section 501 of the Internal Revenue Code.

(2) For contracts with nonprofit organizations where fees are involved, the following adjustments are required in the weighted guidelines method:

(i) An adjustment of minus one percent of the total effort shall be assigned in all cases where the manufacturing weighted guidelines method is used. An adjustment of minus three percent of the total effort shall be assigned in all cases where the research and development or services weighted guidelines method is used.

(ii) The weight range under "Contractor Cost Risk" shall be minus one percent to zero in lieu of zero percent to eight percent for contracts with those nonprofit organizations.

PART 1216—TYPES OF CONTRACTS

Subpart 1216.2—Fixed-Price Contracts

Sec.

Subpart 1216.3—Cost Reimbursement Contracts

Subpart 1216.4—Incentive Contracts

Subpart 1216.5—Indefinite Delivery Contracts

Subpart 1216.6—Time-and-Materials, Labor-Hour, and Letter Contracts

Authority: Sec. 205(C), Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1216.2—Fixed-Price Contracts

1216.203 Fixed-price contracts with economic price adjustment.

1216.203.4 Contract clauses.

When none of the clauses prescribed in FAR 16.203–4 is appropriate, the contracting officer may use an alternate clause approved by the head of the contracting activity.

1216.203–470 Adjustment based on cost indices of labor or material.

(a) All economic price adjustment clauses utilizing indices must be approved by the head of the contracting activity.

(b) The contracting officer may also determine it appropriate to provide for certain economic price adjustment arrangements between the prime contractor and subcontractors to properly allocate risks. In such circumstances, provision for incorporation of price adjustment clauses in specified subcontracts should be included in the price adjustment provision of the prime contract.

1216.203–471 Evaluation of proposals.

The contracting officer shall insert the provision at 1252.216–71, "Evaluation of Proposed Price Subject to Economic Price Adjustment" in all solicitations that contain an economic price adjustment clause.

1216.206 Fixed-ceiling-price contracts with retroactive price redetermination.

1216.206–3 Limitations.

The head of the contracting activity may approve the use of a fixed-ceiling-price contract with retroactive price redetermination.

Subpart 1216.3—Cost Reimbursement Contracts

1216.301 General.

1216.301–3 Limitations.

Each administration shall establish a format for the determination and findings (D&F) required by FAR 16.301–3(c). The D&F shall cover all the elements set forth in FAR 16.301–3 and shall be executed by the contracting officer.

Subpart 1216.4—Incentive Contracts

1216.403 Fixed-price incentive contracts.

The determination and findings required by FAR 16.403(c) shall be executed by the contracting officer.

1216.404 Cost-reimbursement incentive contract.

1216.404–2 Cost-plus-award-fee contracts.

1216.404–270 Contract clauses.

(a) The general provisions required for cost reimbursement contracts should be modified for use under award fee contracts as cited below:

(1) The words "base fee and award fee" should be substituted for the term "fixed fee" where it appears in the clause at FAR 52.243–2, Changes.

(2) The words "base fee" should be substituted for the word "fee" where it appears in the clause at FAR 52.232–22, Limitation of Funds.

(3) The words "base fee, if any and such additional fee as may be awarded as provided for in the schedule" should be substituted for the term "fee" wherever it appears in the clause at FAR 52.216–7, "Allowable Cost and Payment".

(b) The contracting officer shall insert the clauses at 1252.216–71, 1252.216–72, 1252.216–73, 1252.216–74, and 1252.216.75 in award fee contracts. Each clause may be modified to meet individual situations.

Subpart 1216.5—Indefinite Delivery Contracts

1216.503 Requirements contracts.

The procurement request initiator shall prepare a written statement outlining the basis and methodology for determining the estimated quantity under a requirements contract. This statement shall be forwarded with the procurement request.

Subpart 1216.6—Time-and-Materials, Labor-Hour, and Letter Contracts

1216.603 Letter contracts.

1216.603–70 Procedures.

(a) Requests for authority to issue letter contracts shall be approved by the head of the contracting activity. The request shall include the following:

(1) Name and address of proposed contractor.

(2) Location where contract is to be performed.

(3) Contract number, including modification number if applicable.

(4) Brief description of the work or services to be performed.

(5) Performance period or delivery schedule.

(6) Amount of letter contract.

(7) Performance period of letter contract.

(8) Estimated total amount of definitive contract.

(9) Type of definitive contract to be executed (fixed price, cost-plus-award-fee, etc.).

(10) Statement that the definitive contract will contain all required clauses or that deviations therefrom have been approved.

(11) Statement as to the necessity and advantage to the Government of the use of the proposed letter contract, and that no other contract type is suitable.

(12) If a modification, date of letter contract approval and of execution.

(b) As a minimum, information in the letter contract shall include:

(1) Signature of the contracting officer.

(2) Provision for written acceptance by the contractor.

(3) Statement of work.

(4) Provision for delivery or performance schedule and place of inspection and acceptance.

(5) Maximum dollar amount of Government liability and a statement that expenditure or obligation in excess of that amount shall be at the contractor's own risk.

(6) Target date for negotiation and execution of a definitive contract and a statement of the type of contract contemplated.

(7) Statement that no profit or fee shall be paid under the letter contract.

(c) It is DOT policy to pay profit or fee on definitized contracts only.

PART 1217—SPECIAL CONTRACTING METHODS

Subpart 1217.1—Multiyear Contracting

Sec.
1217.102 Policy.
1217.102-3 Objectives.

Subpart 1217.4—Leader Company Contracting

1217.402 Limitations.

Subpart 1217.70—Fixed Price Contracts for Vessel Repair, Alteration and Conversion

1217.7001 Clauses.

Authority: Sec. 205(C) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)) 48 CFR 1.301; 49 CFR 1.59.

Subpart 1217.1—Multiyear Contracting

1217.102 Policy.

1217.102-3 Objectives.

The head of the contracting activity is designated as the approval authority for all clause modifications described in FAR 17.102-3(d). This authority may not be redelegated.

Subpart 1217.4—Leader Company Contracting

1217.402 Limitations.

Leader company contracting shall not be used without the written authorization of the procurement executive.

Subpart 1217.70—Fixed Price Contracts for Vessel Repair, Alteration or Conversion

1217.7001 Clauses.

(a) Clauses set forth in 1252.217-71 through 1252.217-701 shall be included in formally advertised fixed-price contracts for vessel repair, alteration or conversion, and which are to be performed within the United States, its possessions, or Puerto Rico. Unless inappropriate, the clauses should also be included in negotiated contracts and contracts to be performed outside the United States.

(b) The clause at 1252.217-702 shall be used where general guarantee provisions are deemed desirable by the contracting officer. When inspection and acceptance tests will afford full propection to the Government in ascertaining conformance to specfications and the absence of defects and deficiencies, no guarantee clause for that purpose shall be included in the contract. The customary guarantee period, to be inserted in the first sentence of the clause at 1252.217-702, is 60 days. However, in certain instances, the contracting officer may desire to include a clause in a contract for a guarantee period of more than 60 days. In such instances, and where, after full inquiry, it has been determined that such longer guarantee period will not involve increased costs, a longer guarantee period may be substituted for the usual 60 days. Where the full inquiry discloses that such longer guarantee period will involve, or is reasonably expected to involve, increased costs, such fact and the reason for the need for such longer period shall be set forth in letter form to the head of the contracting activity, requesting approval for use of guarantee period in excess of 60 days. Upon approval, the longer period may be inserted in the first sentence of the clause at 1252.217-702.

(c) The clause at 1252.217-703 shall be used when appropriate.

PART 1219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 1219.2—Policies

Sec.
1219.201 General Policy.
1219.201-70 Director, Office of Small and Disadvantaged Business Utilization.
1219.201-71 Small and Disadvantaged Business Utilization Specialists.
1219.501 General.
1219.503 Setting aside a class of acquisitions.
1219.503-70 Class set-aside for construction.

Subpart 1219.6—Certificates of Competency and Determinations of Eligibility

1219.602 Procedures.
1219.602-1 Referral.

Subpart 1219.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

1219.705 Responsibilties of the contracting officer under the subcontracting assistance program.
1219.705-1 General support of the program.
1219.705-2 Determining the need for a subcontracting plan.
1219.705-6 Postaward responsibilities of the contracting officer.
1219.705-70 Synopsis of contracts containing Pub. L. 95-507 subcontracting plans and goals.

Authority: Sec. 205(C), Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1219.2—Policies

1219.201 General policy.

The heads of the agencies shall be responsible for recommending goals for small, and small, disadvantaged business utilization for programs under their cognizance. The recommended goals shall be developed in collaboration with the supporting head of the contracting activity, program officials, the Small and Disadvantaged Business Utilization Specialists (SDBUS) and shall take into account both past performance relative to such goals and the number, type, and dollar value of acquisitions projected for the ensuing fiscal year.

1219.201-70 Director, Office of Small and Disadvantaged Business Utilization.

The Director, OSDBU, is responsible for the implementation and execution of the small, and small, disadvantaged business programs required by sections 8 and 15 of the Small Business Act, as amended, and provides guidance and advice, as appropriate, to agency program and contracts officials. The

Director, OSDBU, is the central point of contact for general inquiries concerning the small and disadvantaged business programs from industry, the Small Business Administration (SBA), and from the Congress. The Director, OSDBU, shall represent the Department in discussions with other Government agencies on small and small disadvantaged business matters.

1219.201-71 Small and Disadvantaged Business Utilization Specialist.

(a) SBDUSs shall be appointed by the heads of contracting activities.

(b) The SBDUS shall perform the following duties, as appropriate:

(1) Maintain a program designed to locate capable small and small, disadvantaged business sources for current and future acquisitions;

(2) Coordinate inquiries and requests for advice from small and small, disadvantaged business concerns on acquisition matters;

(3) Review procurement requests to: (i) Assure that small business concerns will be afforded an equitable opportunity to compete; (ii) as appropriate, initiate recommendations for small business set-asides, (individual and class) or offers of requirements to the SBA for the 8(a) program; (iii) identify possible breakout of items or services suitable for acquisition from small business and small, disadvantaged business concerns;

(4) Take action to assure the availability of adequate specifications and drawings, when necessary, to obtain small business participation in an acquisition. When small business concerns cannot be given an opportunity on a current acquisition, initiate action, in writing, with appropriate technical and contracting personnel to ensure that necessary specifications and/or drawings for future acquisitions are available.

(5) Advise small business with respect to the financial assistance available under existing laws and regulations and assist such concerns in applying for financial assistance;

(6) Participate in the evaluation of prime contractor's small business subcontracting programs;

(7) Assure that adequate records are maintained, and accurate reports prepared, concerning small business participation in acquisition programs;

(8) Make available to SBA copies of solicitations when so requested;

(9) Act as liaison with the appropriate SBA office or representative in connection with set-asides, certificates of competency, size classification, and any other matter concerning the small and small, disadvantaged business programs; and

(10) May participate, if required, in Business Opportunity/Federal Procurement Conference, and other Government-industry conferences and meetings.

1219.501 General.

The SBDUS shall initiate recommendations to the contracting officer for small business set-asides with respect to individual acquisitions or classes of acquisitions or portions thereof.

1219.503 Setting aside a class of acquisitions.

1219.503-70 Class set-aside for construction.

(a) Each proposed acquisition for construction estimated to cost from $2,000 to $2,000,000 shall be set-aside for exclusive small business participation. Such set-asides shall be considered to be unilateral small business set-asides, and shall be withdrawn in accordance with the procedure of FAR 19.506 only if found not to serve the best interest of the Government.

(b) Small business set-aside preferences for construction acquisition in excess of $2,000,000 shall be considered on a case-by-case basis.

Subpart 1219.6—Certificates of Competency and Determinations of Eligibility

1219.602 Procedures.

1219.602-1 Referral.

A copy of the documentation supporting the determination that a small business concern is *not* responsible, as required by FAR 19.602-1(a), shall be transmitted to the Director, OSDBU, concurrently with the submission of a copy of the documentation to the appropriate SBA Regional Office.

Subpart 1219.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

1219.705 Responsibilities of the contracting officer under the subcontracting assistance program.

1219.705-1 General support of the program.

1219.705-2 Determining the need for a subcontracting plan.

A copy of all determinations that there are no subcontracting opportunities (see FAR 1219.705-2(c)) shall be provided to the Director, OSDBU.

1219.705-6 Postaward responsibilities of the contracting officer.

A copy of all contracts or contract modifications containing or referencing a subcontracting plan, and the plan if not included in the contract document, shall be provided to the Director, OSDBU.

1219.705-70 Synopsis of contracts containing Pub. L. 95-507 subcontracting plans and goals.

The synopsis of contract award, where applicable, shall include a statement identifying the contract as one containing Pub. L. 95-507 subcontracting plans and goals.

PART 1222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 1222.1—Basic Labor Policies

Sec.
1222.101 Labor relations.
1222.101-3 Reporting labor disputes.
1222.101-70 Admittance of union representatives to DOT installations.
1222.101-71 Contract clauses.

Subpart 1222.3—Contract Work Hours and Safety Standards Act

1222.303 Administration and enforcement.
1222.305 Contract clauses.

Subpart 1222.6—Walsh-Healey Public Contracts Act

1222.603 Procedures.
1222.603-2 Determination of eligibility.
1222.603-3 Protests against eligibility.
1222.603-4 Award pending final determination.
1222.603-6 Postaward.

Subpart 1222.70—Administration's Labor Advisors

1222.701 Administration's labor advisors.

Subpart 1222.71—Fair Labor Standards Act of 1938

1222.710 Fair Labor Standards Act of 1938.

Subpart 1222.72—Notification to 8(a) Subcontractors

1222.720 Notification to 8(a) subcontractors.

Subpart 1222.73—Forms and Publications

1222.730 Forms and publications.

Authority: Section 205(C), Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)); 48 CFR 1.301; 49 CFR 1.59.

Subpart 1222.1—Basic Labor Policies

1222.101 Labor relations.

1222.101-3 Reporting labor disputes.

(a) When a strike or labor dispute occurs or is anticipated which has, or is expected to have, a serious impact on DOT operations or when for other reason notification of the administration's headquarters is

warranted, the contracting officer shall report the following information to the administration labor advisor, if appointed (see 1222.70):

(1) Identification and location of strike, contract number, contractor's name, and name of contractor's representative at the plant or construction site.

(2) Urgency or criticality of affected contract.

(3) Date strike began or may begin.

(4) Main issues involved.

(5) Name and number of local union and name and address of cognizant local union official.

(6) Evaluation of strike situation with regard to possibilities of settlement.

(7) Current apparent temper of the work site situation with regard to ingress and egress.

(8) Number of employees affected.

(9) Participation, if any, by the Federal Mediation and Conciliation Service or by a state mediation agency.

(10) If the acquisition is urgent and the strike appears likely to be one of extended duration, include comment on the feasibility of acquisition from an alternate source.

(b) When a strike or labor dispute at the plant of a subcontractor is an actual or potential threat to timely completion of the DOT contract and when such delay will be a serious handicap to operations, the above report shall contain the following in lieu of the information indicated above.

(1) Urgency or criticality of affected contract.

(2) Description and quantity of the material tied up by strike.

(3) Percent completion of contractor's order in supplier's plant.

(4) Evaluation of strike situation with regard to possibilities of settlement. (This may be obtained from the DOT contractor or from the subcontractor.)

(5) Contractor's position as to use of alternate supply sources.

(c) Upon settlement of a strike or labor dispute reported under (a) or (b) above, the administration labor advisor, if appointed, shall be informed as to the date on which work was resumed.

1222.101-70 Admittance of union representatives to DOT installations.

It is the Department's policy to admit accredited labor union representatives of contractor employees to DOT installations to visit work sites for the purpose of transacting business with contractors, their employees, or union stewards pursuant to existing collective bargaining agreements; provided that their presence and activities will not interfere with the work progress or violate the safety or security regulations applicable to installation visitors. Restrictions in excess of those imposed on other visitors transacting business at the installation should not be imposed on such employee representatives. Permission to visit an installation shall not include the right to hold meetings, collect dues, or make speeches. In the event employee representatives are denied entry to a work site for any reason, a report of such denial will immediately be sent to the administration labor advisor, if appointed, (see 1222.70). Such report shall include the reasons for denial, including names of representatives denied entry and their union affiliation, including local union number.

1222.101-71 Contract clauses.

(a) The contracting officer shall insert the clause at 1252.222-71, "Strikes or Picketing Affecting Timely Completion of the Contract Work", in all FAA construction contracts. The clause may also be used in construction contracts awarded by other administrations.

(b) The contracting officer shall insert the clause at 1252.222-71, "Strikes or Picketing Affecting Access to FAA Facility", in all contracts requiring work at an FAA facility. The clause, appropriately modified, may also be used by other administrations.

Subpart 1222.3—Contract Work Hours and Safety Standards Act

1222.303 Administration and enforcement.

The contracting agency has primary responsibility for administration and enforcement of the overtime provisions of the Contract Work Hours and Safety Standards Act. While the contractor is not required to submit payrolls to the contracting officer unless the Davis-Bacon Act applies, the contracting officer is responsible for assuring by other means that laborers and mechanics are paid any overtime premium due them under the Contract Work Hours and Safety Standards Act. This may be done by reviewing payroll records at the contractor's office and by interviewing employees.

1222.305 Contract clauses.

The contracting officer shall insert the clauses at 1252.222-73 and 1252.222-74 in lieu of the clause at 52.222-4 until such time as the latter is updated to reflect the requirements of DOL Regulations, 29 CFR 5.5(c), published at 48 FR 19532, 19540, April 29, 1983, effective June 28, 1983, implemented by FPR Temp. Reg. 70, dated June 28, 1983.

Subpart 1222.6—Walsh-Healey Public Contracts Act

1222.608 Procedures.

1222.608-2 Determination of eligibility.

The contracting officer shall transmit the information described in FAR 22.608-2 (f)(1)(ii) and (f)(2). The contracting officer shall furnish a copy of such transmittals to the administration labor advisor, if appointed (see Subpart 1222.70).

1222.608-3 Protests against eligibility.

The contracting officer shall transmit the information described in FAR 22.608-3(b). The contracting officer shall furnish a copy of such transmittals to the administration labor advisor, if appointed (see 1222.70).

1222.608-4 Award pending final determination.

Award may be made immediately, as provided in FAR 22.608-4(a), if the contracting officer's certification is approved in writing by the head of the contracting activity. The contract file documentation addressed at TAR 22.608-4(b) is the approved certification required by FAR 22.608-4(a). A copy of the written notice shall be furnished to the administration's labor advisor, if appointed (see 1222.70).

1222.608-6 Postaward.

(a) See 1249.1 for procedures regarding contract termination.

(b) A copy of notification furnished the Department of Labor as required by FAR 22.608-6(c) shall be furnished the administration's labor advisor, if appointed (see subpart 1222.70).

Subpart 1222.70—Administration's Labor Advisors

1222.701 Administration's labor advisors.

Each administration may appoint a labor advisor. If so appointed: (a) the individual shall be located in its headquarters; and (b) appointment shall be made by memorandum, with a copy sent to each of the administration's contracting offices.

Subpart 1222.71—Fair Labor Standards Act of 1938

1222.710 Fair Labor Standards Act of 1938.

The Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201-219), establishes minimum wage and maximum hour standards applicable to employees, unless otherwise exempted, engaged in interstate or foreign commerce or in the production of goods for such commerce. Thus, the statute

may or may not cover employees on a Government contract, depending upon the nature of the contract work. Since the Department of Labor has responsibility for administering and enforcing the statute, an investigation in connection therewith may be of vital concern to DOT because it may divulge violations of the Davis-Bacon Act, Contract Work Hours and Safety Standards Act, or Copeland (Anti-kickback) Act for which DOT has enforcement responsibility. When access to a contractor's submitted records is requested by the Department of Labor in connection with its investigation under the Fair Labor Standards Act, the contracting officer shall cooperate fully, and shall immediately request the Labor Department representative to furnish promptly any information developed indicating violation of the above statutes for which DOT has enforcement responsibility.

Subpart 1222.72—Notification to 8(a) Subcontractors

1222.720 Notification to 8(a) subcontractors.

Contracting officers shall assure that firms receiving 8(a) subcontracts subject to the Davis-Bacon Act, Service Contract Act, the Contract Work Hours and Safety Standards Act, and Copeland (Anti-Kickback) Act are made aware during contract negotiation of the requirements of these Acts.

Subpart 1222.73—Forms and Publications

1222.730 Forms and publications.

Requests for any Labor Department forms or publications required for compliance with the following FAR subparts should be addressed to the offices indicated below.

(a) Subparts 22.2, 22.3, 22.4, 22.6, and 22.10

Administrator, Wage and Hour Division, U.S. Department of Labor, Washington, D.C. 20210.

(b) Subparts 22.8, 22.9, 22.13, and 22.14

Director, Office of Federal Contract Compliance Programs, U.S. Department of Labor, Washington, D.C. 20210.

PART 1223—ENVIRONMENT, CONSERVATION, AND OCCUPATIONAL SAFETY

Subpart 1223.1—Pollution Control and Clean Air and Water

Sec.
1223.106 Delaying award.
1223.107 Compliance responsibilities.

Subpart 1223.70—Safety Requirements for Selected DOT Contractors

1223.7001 Contract clauses.

Authority: Sec. 205(C) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1223.1—Pollution Control and Clean Air and Water

1223.106 Delaying award.

The contracting officer shall submit all notifications initiated under FAR 23.106 to the Environmental Protection Agency through the procurement executive.

1223.107 Compliance responsibilities.

Notification required by FAR 23.107 shall be submitted in the same manner as required by 1223.106.

Subpart 1223.70—Safety Requirements for Selected DOT Contracts

1223.7001 Contract clauses.

(a) Where all or part of a contract will be performed on Government owned or leased property, the contracting officer shall insert the clause at 1252.223-71 "Accident and Fire Reporting."

(b) For all NHTSA contracts under which human test subjects will be utilized, the contracting officer shall insert the clause at 1252.223-72 "Protection of Human Subjects Compliance."

PART 1224—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 1224.1—Protection of Individual Privacy

Sec.
1224.102 General.
1224.102-70 Applicability.

Authority: Sec. 205(C), Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1224.1—Protection of Individual Privacy

1224.102 General.

DOT rules and regulations implementing the Privacy Act and Freedom of Information Act are located at 49 CFR Part 7.

1224.102-70 Applicability.

(a) Illustrations of systems of records to which the Act *applies* include the following:

(1) Records which are maintained for administrative functions of a Federal agency, such as personnel and payroll records.

(2) Health records which are maintained by a contractor engaged to provide health services to agency personnel.

(b) Illustrations of systems of records to which the Act does *not* apply include the following:

(1) Records which are maintained by a contractor on individuals whom the contractor employs in the process of providing goods and services to the Federal Government.

(2) Under contracts with a State or private educational organization to provide training, the records generated on contract students pursuant to their attendance (admission forms, grade reports), provided that they are similar to those maintained on other students and are commingled with records on other students.

(3) A system used by a contractor as a result of management discretion, for example, systems of personnel records maintained by contractors on their own behalf.

PART 1225—FOREIGN ACQUISITION

Subpart 1225.1—Buy American Act—Supplies

Sec.
1225.102 Policy.

Subpart 1225.2—Buy American Act—Construction Materials

1225.202 Policy.

Subpart 1225.3—Balance of Payments Program

1225.302 Policy.
1225.304 Excess and near-excess foreign currencies.

Authority: Sec. 205(C), Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1225.1—Buy American Act—Supplies

1225.102 Policy.

The head of the contracting activity shall approve the determination required by FAR 25.102(a)(4) for contracts exceeding $1 million.

Subpart 1225.2—Buy American Act—Construction Materials

1225.202 Policy.

The head of the contracting activity shall approve the determination required by FAR 25.202(a)(3) for contracts exceeding $100,000.

Subpart 1225.3—Balance of Payments Program

1225.302 Policy.

The head of the contracting activity shall make the determinations/provide the authorization required by FAR 25.302 (b)(2), (b)(3) and (c).

Subpart 1225.304—Excess and Near-Excess Foreign Currencies.

The head of the contracting activity shall make the determination required by FAR 25.304(c).

PART 1227—PATENTS, DATA AND COPYRIGHTS

Subpart 1227.4—Rights in Data and Copyrights

Sec.
1227.400 Scope of subpart.
1227.401 Definitions.
1227.402 Policy.
1227.403 Procedures.
1227.404 Acquisition of data.
1227.405 Solicitation provisions and contract clauses.

Authority: Sec. 205(C), Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1227.4—Rights in Data and Copyrights

1227.400 Scope of subpart.

This subpart sets forth policies, procedures, and instructions with respect to (a) rights in data and copyrights and (b) requirements for data.

1227.401 Definitions.

"Data," as used in this subpart, means recorded information, regardless of form or the media on which it may be recorded. The term includes computer software. The term does not include information incidental to contract administration, such as contract cost analysis or any financial, business and management information required for contract administration purposes.

"Computer software," as used in this subpart, means computer programs, computer data bases, and documentation thereof.

"Form, fit, and function data," as used in this subpart, means data relating to, and sufficient to enable, physical and functional interchangeability; as well as data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements.

"Limited-rights data," as used in this subpart, means data that embodies trade secrets or is commercial or financial and confidential or privileged, to the extent that such data pertains to items, components or processes developed at private expense, including minor modifications thereof. (Agencies may, however, adopt the following alternate definition: "Limited-rights data," as used in this subpart, means data developed at private expense that embodies trade secrets or is commercial or financial and confidential or privileged.)

"Restricted computer software," as used in this subpart, means computer software developed at private expense and that is a trade secret, is commercial or financial and confidential or privileged, or is published copyrighted computer software.

"Unlimited rights," as used in this subpart, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

"Limited rights," as used in this subpart, means the rights of the Government in limited-rights data, as set forth in a Limited Rights Notice if included in the data rights clause of the contract.

"Restricted rights," as used in this subpart, means the rights of the Government in restricted computer software as set fotth in a Restricted Rights Notice if included in a data rights clause of the contract or as otherwise may be included or incorporated in the contract.

1227.402 Policy.

It is necessary for the Department of Transportation (DOT), in order to carry out its missions and programs, to acquire or obtain access to many kinds of data produced during or used in the performance of its contracts. Such data may be required to: obtain competition among suppliers; fulfill certain responsibilities for disseminating and publishing the results of DOT activities; insure appropriate utilization of the results of research, development, and demonstration activities; and meet other programmatic and statutory requirements. At the same time, the Government recognizes that its contractors may have a property right or other valid economic interest in certain data resulting from private investment, and that protection from unauthorized use and disclosure of this data is necessary in order to prevent the compromise of such property right or economic interest, avoid jeopardizing the contractor's commercial position, and maintain the Government's ability to obtain access to or use of such data. The protection of this data by the Government is necessary to encourage qualified contractors to participate in Government programs and apply innovative concepts to such programs. The specific procedures and prescriptions for use of solicitation provisions and contract clauses set forth below are framed in light of the above considerations to strike a balance between the Government's needs and the contractor's property rights and economic interests.

1227.403 Procedures.

(a) *General.* All contracts that require data be produced, furnished, or acquired must contain terms that delineate the respective rights and obligations of the Government and the contractor regarding the use, duplication, and disclosure of such data, except certain contracts resulting from formal advertising that require only existing data (other than limited-rights data and restricted computer software) to be delivered and reproduction rights are not needed for such data. As a general rule, the data rights clause at 1252.227-71, Rights in Data—General, including Alternates I–V where determined appropriate by the administration (agency) as discussed in paragraph (b) below, is to be used for this purpose. However, certain types of contracts, the particular subject matter of a contract, or the intended use of the data, may require the use of other clauses or no clause at all, as discussed in paragraphs (c) and (d) below.

(b) *Basic Rights in Data.* (1) *Summary.* The clause at 12552.227-71, Rights in Data—General, is structured to strike a balance between DOT's needs in carrying out its missions and programs and the contractor's needs to protect property rights and valid economic interests in certain data arising out of private investment. This clause enables the contractor to protect from unauthorized use and disclosure data that qualified as limited-rights data or restricted computer software (see paragraph (b)(2) below for an alternate definition of limited-rights data). This clause also specifically delineates the categories or types of data that DOT is to acquire with unlimited rights (see paragraph (b)(3) below). The contractor may protect qualifying limited-rights data and restricted computer software under this clause by either withholding such data from delivery to DOT, or when DOT has a need to obtain delivery of limited-rights data or restricted computer software, by delivering such data with limited rights or restricted rights with authorized notices on the data. (See paragraphs (b) (4) and (5) below.) In addition, this clause enables contractors to establish and/or maintain copyright protection for data first produced and/or delivered under the contract, subject to certain license rights in the Government. (See paragraph (b) (6) below.) This clause also includes procedures that apply when the

Govenment questions whether notices on data are authorized (see paragraph (b) (7) below) or when a contractor wishes to add or correct omitted or incorrect notices on data (see paragraph (b)(8) below); addresses the contractor's right to release, publish or use certain data involved in contract performance (see paragraph (b)(9) below); and provides for the possibility for the Government to inspect certain data at the contractor's facility (see paragraph (b)(10) below).

(2) *Alternate definition of limited-rights data.* In the clause at 1252.227–71, Rights in Data—General, in order for data to qualify as limited-rights data, in addition to being data that either embodies a trade secret or is data that is commercial or financial and confidential or privileged, such data must also pertain to items, components, or processes developed at private expense, including minor modifications thereof. However, where appropriate, the contracting officer may determine to adopt in the clause the alternate definition for limited-rights data that does not require that such data pertain to items, components, or processes developed at private expense; but rather that the data that either embodies a trade secret or is commercial or financial and confidential or privileged be produced at private expense in order to qualify as limited-rights data. As an example, this alternate definition may be used where the principal purpose of a contract does not involve the development, use or delivery of items, components, or processes that are intended to be acquired for use by or for the Government (either under the contract in question or any anticipated follow-on contracts relating to the same subject matter). Other examples include contracts for market research and surveys, economic forecasts, socio-economic reports, educational material, health and safety information, management analysis, and related matters. This alternate definition of limited-rights data may be adopted, where appropriate, by using the clause with its Alternate.

(3) *Unlimited-rights data.* Under the clause at 1252.227–71, Rights in Data—General, the Government acquires unlimited rights in the following data except as provided in paragraph (b)(6) below for copyrighted data: (i) Data first produced in the performance of a contract; (ii) form, fit, and function data delivered under contract; (iii) data (except as may be included with restricted computer software) that constitutes manuals or instructional and training material for installation, operation, or routine maintenance and repair delivered under a contract; and (iv) all other data delivered under the contract unless such data qualifies as limited-rights data or restricted computer software. If any of the foregoing data is published copyrighted data, the Government acquires it under a copyright license as set forth in paragraph (b)(6) below rather than with limited rights or restricted rights.

(4) *Protection of limited-rights data.* (i) The contractor may protect data (other than unlimited rights data or published copyrighted data) that qualifies as limited-rights data under the clause at 1252.227–71, Rights in Data—General, by withholding such data from delivery and providing form, fit, and function data in lieu thereof; or, if the clause is used with its Alternate II and DOT specifies the delivery of the data, by delivering such data with limitations on its use and disclosure. These two modes of protection afforded the contractor (i.e., withhold, or deliver with limited rights) are provided for in paragraph (g) of the clause at 1252.227–71, Rights in Data—General. Subparagraph (g)(1) of this clause allows the contractor to withhold limited-rights data and provide form, fit, and function data in lieu thereof. Alternate II adds subparagraph (g)(2) to this clause to enable DOT selectively to obtain the delivery of withheld or withholdable data with limited rights. The limitations on the Government's right to use and disclose limited-rights data when the clause is used with its Alternate II are set forth in a "Limited Rights Notice" that the contractor is required to affix to such data. The specific limitations in the Notice are described below.

(ii) Limited-rights data delivered to the Government with the Limited Rights Notice contained in subparagraph (g)(2) (Alternate III) will not, without permission of the contractor, be used by the Government for purposes of manufacture, and will not be disclosed outside the Government except for certain limited purposes as may be set forth in the Notice, and then only if the Government makes the disclosure subject to prohibition against further use and disclosure by the recipient. The following are examples of specific purposes which may be selected by an agency and added to the Limited Rights Notice of subparagraph (g)(2) of the clause (Alternate II):

(A) Use by support service contractors.

(B) Evaluation by nongovernment evaluators.

(C) Use by other contractors participating in the DOT program of which this contract is a part, for information and use in connection with the work performed under their contracts.

(D) Emergency repair or overhaul work.

(E) Release to a foreign government, as the interests of the United States may require, for information or evaluation, or for emergency repair or overhaul work by such Government.

(iii) As an aid in determining whether the clause should be used with its Alternate II, the provision at 1252.227–72, Notification of Limited Rights Data and Restricted Computer Software, may be included in any solicitation containing the clause at 1252.227–71, Rights in Data—General. In addition, the need for Alternate II should be considered during the negotiations of a contract, particularly if negotiations are based on an unsolicited proposal. However, use of the clause at 1252.227–71, Rights in Data—General, without Alternate II does not preclude this Alternate from being used subsequently by amendment during contract performance should the need arise for delivery of limited-rights data that has been withheld or identified as withholdable.

(5) *Protection of restricted computer software.* (i) If computer software qualifies as restricted computer software, the clause at 1252.227–71, Rights in Data—General, permits the contractor to protect such software by either withholding it from delivery and providing form, fit, and function data in lieu thereof; or if the clause is used with its Alternate III and DOT specifies delivery of the software, by delivering the software with restricted rights regarding its use, disclosure, and reproduction. The two modes of protection afforded the contractor (i.e. withhold or deliver with restricted rights) are provided for in paragraph (g) of the clause at 1252.227–71, Rights in Data—General. Subparagraph (g)(1) of this clause allows the contractor to withhold restricted computer software and provide form, fit, and function data in lieu thereof. Alternate III adds subparagraph (g)(3) to this clause to enable DOT selectively to obtain delivery of the withheld or withholdable computer software with restricted rights. The restrictions on the Government's right to use, disclose, and reproduce restricted computer software when the clause is used with its Alternate III are set forth in "Restricted Rights Notice" that the contractor is required to affix to such computer software. When restricted computer software delivered with such Notice is published

copyrighted computer software, it is acquired with a restricted copyright license, without disclosure prohibitions, as also set forth in the Notice. The specific restrictions in the Notice are set forth below.

(ii) Restricted computer software delivered with the Restricted Rights Notice of subparagraph (g)(3) (Alternate III) will not be used or reproduced by the Government, or disclosed outside the Government, except that the computer software may be:

(A) Used, or copied for use in or with the computer for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;

(B) Used, or copied for use in or with a backup computer if the computer or computers for which it is acquired is inoperative;

(C) Reproduced for safekeeping (archives) or backup purposes;

(D) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of any derivative software incorporating restricted computer software are made subject to the same restricted rights; and

(E) Disclosed and reproduced by support contractors or their subcontractors, subject to the same restrictions under which DOT acquired the software.

(iii) The restricted rights set forth in 1227.403(b)(5)(ii) above are the minimum rights the Government normally obtains with restricted computer software and will automatically apply when such software is acquired under the Restricted Rights Notice of subparagraph (g)(3) (Alternate III) of the clause. However, either greater or lesser rights, consistent with the purposes and needs for which the software is to be acquired, may be specified in the contract. Any additions to, or limitations on, the restricted rights set forth in the Restricted Rights Notice of subparagraph (g)(3) of the clause are to be expressly stated in the contract; or, with approval of the contracting officer, in a collateral agreement incorporated in and made part of the contract. (See subparagraph (d)(2) below.)

(iv) As an aid in determining whether the clause should be used with its Alternate III, the provision at 1252.227–72, Notification of Limited-Rights Data and Restricted Computer Software, may be included in any solicitation containing the clause at 1252.227–71, Rights in Data—General. In addition, the need for Alternate III should be considered during negotiations of a contract, particularly if negotiations are based on an unsolicited proposal. However, use of the clause at 1252.227–71, Rights in Data—General, without Alternate III does not preclude this Alternate from being used subsequently by amendment during contract performance, should the need arise for the delivery of restricted computer software that has been withheld or identified as withholdable.

(6) *Copyrighted data.*—(i) *Data first produced in the performance of a contract.* (A) In order to enhance the transfer or dissemination of information produced at Government expense, contractors may be permitted to establish claim to copyright subsisting in data first produced in the performance of work under a contract containing the clause at 1252.227–71, Rights in Data—General. This right is granted in subparagraph (c)(1) of the clause for any data first produced under the contract. DOT may, however, specifically exclude items or categories of data from the right of the contractor to establish claim to copyright when appropriate; for example, where the data is to be disseminated in useful form by the Government. Also, agencies having programs for the transfer or dissemination of information resulting from its programs may, by use of the clause with its Alternate IV, include a substitute subparagraph (c)(1) in the clause to limit the right of the contractor granted in subparagraph (c)(1) to establish claim of copyright to scientific and technical articles based on or derived from work performed under the contract and published in academic, professional, or technical journals. However, when Alternate IV is used, permission may be granted to establish claim to copyright in all other data in accordance with the procedures set forth below.

(B) Usually permission for a contractor to establish claim to copyright for data first produced under the contract will be granted when copyright protection will enhance the appropriate transfer or dissemination of such data. The request for permission must be in writing, and may be made either at the time of contracting or subsequently during contract performance. It should identify the data involved or furnish a copy of the data for which permission is requested, as well as a statement as to the intended publication or dissemination media or other purpose for which copyright is desired. The request normally will be granted unless: (*1*) The data consists of a report that represents the official views of DOT or that DOT is required by statute to prepare; (*2*) the data is intended primarily for internal use by the Government; (*3*) the data is of the type that DOT itself distributes to the public under an established program; or (*4*) DOT determines that limitation on distribution of the data is in the national interest.

(C) Whenever a contractor establishes claim to copyright subsisting in data first produced in the performance of a contract, the Government normally is granted a paid-up, nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute to the public, perform publicly and display publicly by or on behalf of the Government, for all such data, as set forth in subparagraph (c)(1) of the clause at 1252.227–71, Rights in Data—General. However, DOT may on a case-by-case basis or on a class basis obtain on equitable terms a license of lesser scope than set forth in subparagraph (c)(1) of the clause if DOT determines that such lesser license will substantially enhance the tranfer or dissemination of any data first produced under the contract.

(ii) *Data not first produced in the performance of a contract.* (A) Contractors are not to incorporate in data delivered under contract any data not first produced under the contract with the copyright notice of 17 U.S.C. 401 or 402 without either: Acquiring for, or granting to the Government and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government, for all such data; or obtaining permission from the contracting officer to do otherwise. However, if computer software not first produced under contract is delivered with the copyright notice of 17 U.S.C. 401 or 402, the Government's license will be as set forth in subparagraph (g)(3) (Alternate 111) if included in the clause at 1252.227–71, Rights in Data—General, or as otherwise may be provided in a collateral agreement incorporated in or made part of the contract.

(B) Contractors delivering data with an authorized limited rights or restricted rights notice and a copyright notice of 17 U.S.C. 401 or 402 should modify the copyright notice to include the following (or similar) statement: "Unpublished—all rights reserved under the copyright laws." If this statement is omitted, the contractor may be afforded opportunity to correct it in accordance with 1227.403(b)(8). Otherwise, data delivered with a copyright notice of 17 U.S.C. 401 or 402 may be presumed to be published copyrighted data subject to the applicable license rights set forth in (A)

above, without disclosure limitations or restrictions.

(C) If contractor action causes limited rights or restricted rights data to be published with copyright notice after its delivery to the Government, the Government is relieved of disclosure and use limitations and restrictions regarding such data, and the contractor should advise the Government and request that a copyright notice be placed on the data, and acknowledge that the applicable copyright license.

(7) *Unauthorized marking of data.* The Government has, in accordance with paragraph (e) of the clause at 1252.227–71, Rights in Data—General, the right either to return to the contractor data containing markings not authorized by that clause or to cancel or ignore such markings. However, markings will not be cancelled or ignored without making written inquiry of the contractor and affording the contractor at least 30 days to substantiate the propriety of the markings. The contracting officer will also give the contractor notice of any determination made based on any response by the contractor. Any such determination to cancel or ignore the markings shall be a final decision under the Contract Disputes Act. Failure of the contractor to respond to the contracting officer's inquiry within the time afforded may, however, result in Government action to cancel or ignore the markings. The above procedures may be modified in accordance with DOT regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request for data thereunder.

(8) *Omitted or incorrect notices.* (i) Data delivered under a contract containing the clause at 1252.227–71, Rights in Data—General, without a limited-rights notice or restricted rights notice, or without a copyright notice, shall be presumed to have been delivered with unlimited rights, and the Government assumes no liability for the disclosure, use or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the contractor may within six months (or a longer period approved by the contracting officer for good cause shown) request permission of the contracting officer to have omitted limited rights or restricted rights notices, as applicable, placed on qualifying data at the contractor's expense, and the contracting officer may agree to so permit if the contractor—

(A) Identifies the data for which a notice is to be added or corrected;

(B) Demonstrates that the omission of the proposed notice was inadvertent;

(C) Establishes that use of the proposed notice is authorized; and

(D) Acknowledges that the Government has no liability with respect to any disclosure or use of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(ii) The contracting officer may also (A) permit correction at the contractor's expense of incorrect notices if the contractor identifies the data on which correction of the notice is to be made and demonstrates that the correct notice is authorized, or (B) correct any incorrect notices.

(9) *Release, publication and use of data.* (i) In the clause at 1252.227–71, Rights in Data—General, paragraph (d) provides that contractors normally have the right to use, release to others, reproduce, distribute, or publish data first produced or specifically used by the contractor in the performance of a contract; however, to the extent the contractor receives or is given access to data that is necessary for the performance of the contract and the data contains restrictive markings, the contractor agrees to treat the data in accordance with such markings unless otherwise specifically authorized in writing by the contracting officer.

(ii) DOT may, on a case-by-case basis, or on a class basis, place further limitations or restrictions on the contractor's right to use, release to others, reproduce, distribute or publish any data first produced (but not data specifically used) in the performance of the contract. Such restrictions are not to be imposed on a class basis unless they are pursuant to statutory requirements, determined to be necessary in the furtherance of DOT mission objectives, or determined to be necessary in support of specific DOT programs.

(10) *Inspection of data at the contractor's facility.* DOT may obtain the right to inspect data at the contractor's facility by use of Alternate V, which adds paragraph (j) to provide that right in the clause at 1252.227–71, Rights in Data—General. The data subject to inspection may be data withheld or withholdable under subparagraph (g)(1) of the clause, or any data specifically used in the performance of the contract. Such inspection may be made by the contracting officer or representative for the purpose of verifying a contractor's assertion regarding the limited rights or restricted rights status of the data, or for evaluating work performance under the contract. This right may be exercised at all reasonable times up to three years after acceptance of all items to be delivered under the contract. The contract may specify data items that are not subject to inspection under paragraph (j) (Alternate V). If the contractor demonstrates to the contracting officer that there would be a possible conflict of interest if inspection were made by a particular representative, the contracting officer shall designate an alternate representative.

(c) *Production of special works.* (1) The clause at 1252.227–74, Rights in Data—Special Works, applies to contracts (or may be made applicable to portions thereof) that are primarily for the production or compilation of data (other than limited-rights data or restricted computer software) for the Government's internal use, or when there is a specific need to limit distribution and use of the data and/or to obtain indemnity for liabilities that may arise out of the content, performance, or disclosure of the data. Examples are contracts for—

(i) The production of audiovisual works including motion pictures or television recordings with or without accompanying sound, or for the preparation of motion picture scripts, musical compositions, sound tracks, translations, adaptions, and the like;

(ii) Histories of the respective agencies, departments, services, or units thereof;

(iii) Works pertaining to recruiting, morale, training, or career guidance;

(iv) Surveys of Government establishments;

(v) Works pertaining to the instruction or guidance of Government officers and employees in the discharge of their official duties;

(vi) The compilation of reports, studies, surveys, or similar documents that do not involve research, development, or experimental work performed by the contractor;

(vii) The collection of data containing identifiable personal information such that the disclosure thereof would violate the right of privacy or publicity of the individual to whom the information relates;

(viii) Investigatory reports; or

(ix) The development, accumulation, or compilation of data (other than that resulting from research, development, or experimental work performed by the contractor), the early release of which could prejudice follow-on acquisition activities.

(2) The contract may specify the purposes and conditions (including time limitations) under which the data may be used, released, or reproduced other than for contract performance. Contracts for the production of

audiovisual works, sound recordings, etc., may include limitations in connection with talent releases, music licenses, and the like that are consistent with the purposes for which the works are acquired.

(d) *Acquisition of existing data other than limited-rights data.* (1) *Existing audiovisual and similar works.* The clause at 1252.227–75, Rights in Data—Existing Works, is for the use in contracts exclusively for the acquisition (without modification) of existing motion pictures, television recordings, and other audiovisual works; sound recordings; musical, dramatic, and literary works; pantomimes and choreographic works; pictorial, graphic, and sculptural works; and works of a similar nature. The contract may set forth limitations consistent with the purposes for which the works covered by the contract are being acquired. Examples of these limitations are: (i) Means of exhibition or transmission, (ii) time, (iii) type of audience, an (iv) geographical location. If the contract requires that works of the type indicated above are to be modified through editing, translation, or addition of subject matter, etc. (rather than purchased in existing form), the clause at 1252.227–74, Rights in Data—Special Works, is to be used. (See 1227.403(c))

(2) *Separate acquisition of existing computer software.* (i) If the contract is for the separate acquisition of existing computer software, no specific contract clause contained in this subpart need be used. However, the contract must specifically address the Government's rights to use, disclose, and reproduce the software, and must contain terms obtaining sufficient rights for the Government to fulfill the need for which the software is being acquired. The restricted rights set forth in 1227.403(b)(5) should be used as a guide and are usually the minimum the Government should accept. If the computer software is to be acquired with unlimited rights, the contract must also so state: In addition, the contract must adequately describe the computer programs and/or data bases, the form (tapes, punch cards, disc pack, and the like), and all the necessary documentation pertaining thereto. If the acquisition is by lease or license, the disposition of the computer software (by returning to the vendor or destroying) at the end of the term of the lease or license must be addressed.

(ii) If the contract incorporates, makes reference to, or uses a vendor's standard commercial lease, license, or purchase agreement, such agreement shall be reviewed to assure that it is consistent with paragraph (d)(2)(i) above. Caution should be exercised in accepting a vendor's terms and conditions since they may be directed to commercial sales and may not be appropriate for Government contracts. Any inconsistencies in a vendor's standard commercial agreement shall be addressed in the contract, and the contract terms shall take precedence over the vendor's standard commercial agreement.

(iii) If a prime contractor under a contract containing the clause at 1252.227–71, Rights in Data—General, with subparagraph (g)(3) (Alternate III) in the clause, acquires restricted computer software from a subcontractor (at any tier) as a separate acquistion for delivery to the Government, the contracting officer may approve any additions to, or limitations on the restricted rights in the Restricted Rights Notice of subparagraph (g)(3) in a collateral agreement incorporated in and made part of the contract. (See also 1227.403(b)(5).)

(3) *Other existing works.* (i) Except for existing audiovisual and similar works pursuant to paragraph (d)(1) above, and existing computer software pursuant to paragraph (d)(2) above, no clause contained in this subpart need be included in: (A) Contracts solely for the acquisition of books, publications and similar items in the exact form in which such items exist prior to the request for purchase (i.e. the off-the-shelf purchase of such items) unless reproduction rights of such items are to be obtained; or (B) contracts resulting from formal advertising that require only existing data to be delivered unless reproduction rights for such data (other than limited-rights data) are to be obtained. If reproduction rights are to be obtained, such rights must be specifically set forth in the contract.

1227.404 Acquisition of data.

(a) *General.* (1) It is important to recognize and maintain the conceptual distinction between contract terms whose purpose is to identify the data required for delivery to, or made available to, the Government (i.e. data requirements); and those contract terms whose purpose is to define the respective rights of the Government and the contractor in such data (i.e. data rights). This section relates to data requirements; 1227.403 relates to the data rights.

(2) It is the Government's practice to determine, to the extent feasible, its data requirements in time for inclusion in solicitations. The data requirements are subject to revision during contract negotiations. Since the preparation, reformatting, maintenance and updating, cataloging, and storage of data represents an expense to both the Government and the contractor, efforts should be made to keep the contract data requirements to a minimum.

(3) To the extent feasible, all known data requirements, including the time and place for delivery and any limitations and restrictions to be imposed on the contractor in the handling of the data, shall be specified in the contract.

(b) *Additional data requirements.* Recognizing that in some contracting situations, such as experimental, developmental, research, or demonstration contracts, it may not be possible or appropriate to ascertain all the data requirements at the time of contracting, the clause at 1252.227–73, Additional Data Requirements, is provided to enable the subsequent ordering by the Government of additional data first produced or specifically used in the performance of such contracts as the actual requirements become known. Data may be ordered under the clause at any time during contract performance or within a period of three years after acceptance of all items to be delivered under the contract. The contractor is to be compensated for converting the data into the prescribed form, for reproduction, and for delivery. In order to minimize storage costs for the retention of data, the contractor may be relieved of retention requirements for specified data items by the contracting officer at any time during the retention period required by the clause. Any data ordered under the clause will be subject to the Rights in Data—General clause in the contract and data authorized to be withheld under that clause will not be required to be delivered under this Additional Data Requirements clause.

1227.405 Solicitation provisions and contract clauses.

(a) *Rights in Data—General.* (1) The contracting officer shall insert the clause at 1252.227–71(a), Rights in Data—General, (see 1227.403(b)) in solicitations and contracts if it is contemplated that data will be produced, furnished, or acquired under the contract, unless the contract is—

(i) For the production of special works of the type set forth in 1227.403(c). In this circumstance, the contracting officer shall include the clause at 1252.227–71, Rights in Data—General, and make it applicable to data other than special works, as appropriate;

(ii) For the separate acquisition of existing works, as described in 1227.403(d);

(iii) To be performed outside the United States, its possessions, and Puerto Rico, in which case the contracting officer may prescribe different clauses (see pargraph (h) below);

(iv) For architect-engineer services or construction work, in which case the contracting officer may prescribe different clauses (see paragraph (i) below), but the clause at 1252.227-71, Rights in Data—General, may be included in the contract and made applicable to data pertaining to other than architect-engineer services and construction work;

(v) A Small Business Innovative Research (SBIR) contract, in which case the contracting officer shall prescribe clauses consistent with the requirements of Pub. L. 97-219 (the Small Business Innovation Development Act of 1982) and the Small Business Administration Policy Directive No. 65-01 (see paragraph (j) below);

(vi) For the operation of a Government-owned facility to perform research, development or production work, in which case the contracting officer may prescribe different clauses (see paragraph (k) below).

(2) If the contracting officer determines, in accordance with 1227.403(b)(2), to adopt the alternate definition of "Limited Rights Data" in paragraph (a) of the clause, the clause at 1252.227-71(a) shall be used with its Alternate I (see 1252.227-71(b)).

(3) If DOT needs to obtain the delivery of limited-rights data (see 1227.403(b)(4)), the clause shall be used with its Alternate II (see 1252.227-71(c)). The contracting officer shall, when Alternate II is used, assure that the purposes, if any, for which limited-rights data is to be disclosed outside the Government are included in the "Limited Right Notice" of subparagraph (g)(2) of the clause in accordance with 1227.403(b)(4). The contract may exclude identified items of data from delivery under subparagraph (g)(2) of the clause. Alternate II may be used at the time of contracting or subsequently by amendment if the need to acquire limited-rights data arises during contract performance.

(4) If an administration (Agency) needs to obtain the delivery of restricted computer software (see 1227.403(b)(5)), the clause shall be used with its Alternate III (see 1252.227-71(d)). Any greater or lesser rights regarding the use, duplication, or disclosure of restricted computer software than those set forth in the Restricted Rights Notice of subparagraph (g)(3) of the clause must be specified in the contract. Alternate III may be used at the time of contracting or subsequently by amendment if the need to acquire restricted computer software arises during contract performance.

(5) If DOT wishes to limit the automatic right of the contractor to establish claim to copyright subsisting in data first produced in the performance of the contract, to scientific and technical articles based on or derived from the work performed under the contract and published in academic, technical, or professional journals, the clause shall be used with its Alternate IV (see 1252.227-71(e)). (See 1227.403(b)(6).) Alternate IV provides a substitute subparagraph (c)(1) in the clause with such limitation. This subparagraph (c)(1) does, however, allow the contracting officer to give permission to the contractor to establish claim to copyright subsisting in other data first produced in the performance of the contract, either at the time of contracting or subsequently during contract performance, in accordance with 1227.403(b)(6).

(6) If DOT needs to have the right to inspect certain data at a contractor's facility, (see 1227.403(b)(10)), the clause shall be used with its Alternate V (see 1252.227-71(f)). Alternate V adds a paragraph (j) to the clause to provide for such right, including the limitations thereon. Inspection may be by the contracting officer or representative and may be made at all reasonable times up to three years after acceptance of all items to be delivered under the contract. The contract may specify data items that are not to be subject to inspection under paragraph (j) of the clause. If the contractor demonstrates to the contracting officer that there would be a possible conflict of interest if inspection were made by a particular representative, the contracting officer shall designate an alternate representative.

(b) If DOT desires to have an offeror state in response to a solicitation, to the extent feasible, whether limited-rights data or restricted computer software is likely to be used in meeting the data requirements set forth in the solicitation, the contracting officer shall insert the provision at 1252.227-72, Notification of Limited-Rights Data and Restricted Computer Software, in any solicitation containing the clause at 1252.227-71, Rights in Data—General. The contractor's response will aid in determining whether the clause should be used with Alternate II and/or Alternate III. (See 1227.403(b) (4) and (5).)

(c) The contracting officer shall insert the clause at 1252.227-73, Additional Data Requirements, in solicitations and contracts involving experimental, developmental, research, or demonstration work unless all the requirements for data are believed to be known at the time of contracting and specified in the contract. (See 1227.404.) This clause may also be used in other contracts when considered appropriate. If the clause at 1252.227-71, Rights in Data—General, is used in the contract with its Alternates II or III, the contracting officer may permit the contractor to identify data the contractor does not wish to deliver, and may specifically exclude in the contract any requirement that such data be delivered under paragraphs (g)(2) or (g)(3) of that clause or ordered for delivery under the Additional Data Requirements clause if such data is not necessary to meet the Government's requirements for data. Also, the contracting officer may alter the Additional Data Requirements clause by deleting the term "or specifically used" in subparagraph (a) thereof if delivery of such data is not necessary to meet the Government's requirements for data.

(d) The contracting officer shall insert the clause at 1252.227-74, Rights in Data—Special Works, in solicitations and contracts primarily for the production or compilation of data (other than limited-rights data or restricted computer software) for the Government's internal use, or when there is a specific to limit distribution and use of the data and/or to obtain indemnity for liabilities that may arise out of the content, performance, or disclosure of the data. Examples of such contracts are set forth in 1227.403(c). The contract may specify the purposes and conditions (including time limitations) under which the data may be used, released or reproduced by the contractor for other than contract performance. Contracts for the production of audiovisual works, sound recordings, etc. may include limitations in connection with talent releases, music licenses, and the like that are consistent with the purposes for which the data is acquired.

(e) The contracting officer shall insert the clause at 1252.227-75, Rights in Data—Existing Works, in solicitations and contracts exclusively for the acquisition, without modification, of existing audiovisual and similar works of the type set forth in 1227.403(d)(1). The contract may set forth limitations consistent with the purposes for which the work is being acquired. The clause at 1252.227-74, Rights in Data—Special

Works, shall be used if existing works are to be modified, as by editing, translation, addition of subject matter, etc.

(f) While no specific clause of this subpart need be included in contracts for the separate acquisition of existing computer software, the contracting officer shall assure that the contract contains terms to obtain sufficient rights for the Government to fulfill the need for which the software is being acquired and is otherwise consistent with 1227.403(d)(2).

(g) While no specific clause of this subpart need be included in contracts solely for the acquisition of books, publications and similar items in the exact form in which such items exists prior to the request for purchase (i.e., the off-the-shelf purchase of such items) (see 1227.403(d)(3)), if reproduction rights are to be acquired the contract shall include terms addressing such rights. (See 1227.403(d)(3).)

(h) The contracting officer may prescribe, as appropriate, clauses consistent with the policy of Section 1227.402 in contracts to be performed outside the United States, its possessions, and Puerto Rico.

(i) The contracting officer may prescribe, as appropriate, clauses consistent with the policy in subpart 1227.402 in contracts for architect-engineer services and construction work.

(j) The contracting officer shall prescribe clauses consistent with the requirements of Pub. L. 97-219 (the Small Business Administration Development Act of 1982) and the Small Business Innovative Policy Directive No. 65-01 in Small Business Innovative Research (SBIR) contracts.

(k) The contracting officer may prescribe, as appropriate, clauses consistent with the policy of § 1227.402 in contracts for the operation of Government-owned research, development, or production facilities.

PART 1228—BONDS AND INSURANCE

Subpart 1228.1—Bonds

Sec.

Subpart 12282.3—Insurance

Authority: Sec. 205(C) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1228.1—Bonds

1228.106 Administration.

1228.106-70 Execution and administration of bonds.

(a) When required by Instruction Number 2 of the standard bond forms, the evidence of authority of a principal's representative shall be a duly executed power of attorney reciting that the individual executing the bond or consent of surety is authorized to do so. A corporation, in lieu of such power of attorney, may submit a "Certificate as to Corporate Principal" in the format shown below.

Certificate as to Corporate Principal

I, ———, certify that I am ——— (Office held) of the corporation named as principal in the (performance) (and) (payment) bond(s); that ——— who signed the said bond(s) on behalf of the principal was then *(Capacity of which bond was executed)* of said corporation; That I know his signature and that his signature therefore is genuine; and that said bond(s) was (were) duly signed, sealed, and attested for and on behalf of said corporation by authority of its governing body.

——— (Affix Corporate Seal)

(b) The surety shall be notified, as soon as feasible, of the contractor's failure to perform in accordance with the terms of the contract.

(c) When a partnership is a principal on a bond, the names of all the members of the firm shall be listed in the bond following the name of the firm, and the phrase "a partnership composed of." If a principal is a corporation, the state of incorporation must appear.

(d) Performance or payment bond other than an annual bond shall not antedate the contract to which it pertains.

(e) Bonds shall be filed with the original contract to which they apply, or all bonds shall be separately maintained and reviewed quarterly for validity. If separately maintained, each contract file shall cross reference the applicable bonds.

Subpart 1228.3—Insurance

1228.306 Insurance under fixed-price contracts.

1228.306-70 Contracts for lease of aircraft.

1228.306-701 Clauses.

(a) The clauses at 1252.228-71 through -73 shall, unless otherwise indicated by the specific instructions for their use, be inserted in any contract for the lease of aircraft (including aircraft used in out-service flight training).

(b) Insert the clause in 1252.228-71 except in the following circumstances:

(1) When the hourly rental rate does not exceed $250.00 and the total rental cost for any single transaction is not in excess of $2,500 or

(2) Where the cost of hull insurance does not exceed 10% of the contract rate, or

(3) When the lessor's insurer does not grant a credit for uninsured hours, thereby preventing the lessor from granting the same to the Government.

(c) When fair market value of the aircraft can be determined, insert the clause at 1252.228-72.

(d) Section 504 of the Federal Aviation Act of 1958 provides "* * * no lessor of any such aircraft * * * under a *bona fide* lease of thirty days or more, shall be liable * * * by reason of his interest as lessor or owner of the aircraft * * * for any injury to or death of persons, or damage to or loss of property * * * *unless such aircraft * * * is in the actual possession or control of such person* at the time of such injury, death, damage or loss * * * (*Underscoring* supplied.) On short-term or intermittent-use leases, however, the owner may be liable for damage caused by operation of the aircraft. It is usual for the aircraft owner to retain insurance convering this liability during the term of such lease. Such insurance can, often for little or no increase in premium, be made to cover the Government's exposure to liability as well. In order to take advantage of this coverage, the Risks and Indemnities clause prescribed in paragraph (d)(1) below shall be used.

(1) Insert the clause in 1052.228-73 in any contract for out-service flight training or for the lease of aircraft where the Government will have exclusive use of the aircraft for a period of less than thirty days.

(2) Any contract for out-service flight training shall include a clause in the contract Schedule stating substantially that the contractor's personnel shall at all times during the course of the training be in command of the aircraft, and that at no time shall other personnel be permitted to take command of the aircraft.

PART 1229—TAXES

Subpart 1229.1—General

1229.101 Resolving tax problems.

(a) The Office of General Counsel will represent DOT in all negotiations under FAR Part 29.

(b) Communications with the Department of Justice for representation

or intervention in proceedings concerning taxes shall be made only by the General Counsel.

(c) Matters involving foreign taxes requiring the assistance of other executive departments shall be forwarded to the General Counsel for appropriate action.

(d) Tax problems which cannot be solved readily by reference to FAR Part 29 shall be forwarded to the General Counsel through the administration legal counsel. The forwarding of tax problems to the General Counsel is particularly important where:

(1) The amount of tax actually or potentially involved is substantial;

(2) The legal incidence of a tax appears to be upon the United States or its property, a specific exemption pertinent to the transaction appears to exist, or a State or local tax appears to have a direct effect upon a transaction in interstate commerce;

(3) Judicial or administrative action against a contractor is threatened;

(4) The imposition or potential imposition of a tax is the result of an amendment of a tax law or a change of position by the tax authorities; or

(5) The possibility exists of obtaining refunds of taxes previously paid.

(e) Tax problems forwarded to the General Counsel shall be accompanied by the following material, which shall be furnished by the initiating office or by intervening offices:

(1) A comprehensive statement of pertinent facts, including documents and correspondence.

(2) A copy of the contract.

(3) A thorough review of the legal issues involved and recommended action to be taken.

(4) If appropriate, a statement of the problem's effect(s) on procurement policies and procedures with recommendations.

(f) Information copies of tax-related correspondence shall be sent to the procurement executive.

(Sec. 205(C) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59)

PART 1230—COST ACCOUNTING STANDARDS

Subpart 1230.3—CAS Contract Requirements

1230.304 Waiver.

The head of the contracting activity is authorized to waive CAS requirements for nondefense contracts.

(Sec. 205(C) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59)

PART 1231—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 1231.1—Applicability

1231.101 Objectives.

Requests for individual deviations to the cost principles shall be submitted to the agency head. Request for administration supplements and class deviations shall be submitted through the procurement executive who will coordinate the request with the Civilian Agency Acquisition Council

(Sec. 205(C) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59)

PART 1232—CONTRACT FINANCING

Subpart 1232.1—General

Sec.

Authority: Sec. 205(C) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(C)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1232.1—General

1232.102 Description of contract financing methods.

Progress payments based on a percentage or stage of completion are authorized for use as a payment method under DOT contracts or subcontracts for construction, alteration or repair, and shipbuilding and conversion. For all other contracts, progress payment provisions shall be based on costs, as provided in FAR Subpart 32.5, and Subpart 1232.5, of this chapter, except that progress payments based on a percentage or stage of completion may be authorized by the head of the contracting activity when a determination is made that progress payments based on costs cannot be practically employed and that it is feasible to administer progress payments based on a percentage or stage of completion.

Subpart 1232.4—Advance Payments

1232.402 General.

(a) The head of the contracting activity shall have the responsibility and authority for making findings and determinations concerning advance payments, except advance payments in excess of $50,000 pursuant to Pub. L. 85-804, as amended, must be approved by the Secretary of Transportation. The latter authority may not be redelegated.

(b) Before requesting authorization for any advance payment arrangements, the proposed advance payments shall be coordinated with the finance office.

Subpart 1232.5—Progress Payments Based on Cost

1232.501 General.

1232.501-2 Unusual progress payments.

Requests for unusual progress payments will not be considered as a handicap or adverse factor in the award of a contract, provided the bid or proposal is not conditioned on approval of such request.

1232.502 Preaward matters.

1232.502-2 Contract finance office clearance.

The approving authority for actions specified in FAR 32.502-2 is the head of the contracting activity.

1232.504 Subcontracts.

The head of the contracting activity is the approving official for *unusual* progress payments to subcontractors.

Subpart 1232.7—Contract Funding

1232.702 Policy.

In addition to the requirements of (a) in the second sentence of FAR 32.702, and for fixed price incentive or redeterminable contracts, the contracting officer shall prior to award ensure that sufficient funds are available to cover the ceiling price thereof.

1232.703 Contract funding requirements.

1232.703-1 General.

Incrementally funded cost reimbursement contracts shall state:

(a) The limit of the Government's liability (i.e., amount of funds available);

(b) The portion of the contract scope (i.e. specific property or services, or period of time) for which funds are available;

(c) The proportionate cost and fee for the property, services or period identified per (b) above; and

(d) For contracts containing separately priced portions (e.g. Task

Order contracts), the individual cost and fee for each incrementally funded portion.

Subpart 1232.70—Prompt Payments

1232.701 Prompt payments.

Pending future coverage in the FAR, administrations shall implement Pub. L. 97-177 (the Prompt Payment Act) and Office of Management and Budget (OMB) Circular A-125, by continuing to follow the policies and procedures in FPR Temporary Regulation 66, Prompt Payment Procedures (dated October 5, 1982) and Supplement 1 thereto (dated September 29, 1983), and administration procedures instituted thereunder.

PART 1233—DISPUTES AND APPEALS

Sec.
1233.011 Contracting officer's decision.
1233.012 Contracting officer's duties upon appeal.
1233.013 Obligation to continue performance.
1233.070 Department of Transportation Contract Appeals Board.

Authority: Sec. 205(C) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

1233.011 Contracting officer's decision.

In the second sentence of FAR 33.011(a)(4)(v), contracting officers shall replace "* * * the Board of Contract Appeals * * *" with: "Department of Transportation Contract Appeals Board (S-20), 400 7th Street, SW., Washington, D.C. 20590."

1233.012 Contracting officer's duties upon appeal.

Upon receipt of notice of appeal by a contractor, the contracting officer will notify administration legal counsel who will appoint an attorney to represent the Government before the Contract Appeals Board.

1233.013 Obligation to continue performance.

The contracting officer shall use the clause at FAR 52.233-1, Disputes, with its Alternate I where continued performace is vital to national security, the public health and welfare, critical/major agency programs, or other essential supplies or services whose timely reprocurement from other sources would be impracticable.

1233.070 Department of Transportation Contract Appeals Board.

Title 49, Subchapter A, establishes the Department of Transportation Contract Appeals Board, pursuant to Pub. L. 95-563, prescribes its functions and procedures, provides for the appointment of a Chair, a Vice-Chair, and members of the Board, and sets forth their duties.

PART 1234—MAJOR SYSTEM ACQUISITION

1234.002 Policy.

DOT's implementation of OMB Circular No. A-109 and FAR Part 34 is contained in DOT Orders 4200.9A Acquisition of Major Systems, and 4200.14B Major Systems Acquisition Review and Approval.

(Sec. 205(C) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59)

PART 1235—RESEARCH AND DEVELOPMENT CONTRACTING

Sec.
1235.003 Policy.
1235.010 Scientific and technical reports.
1235.070 Contract clause.

Authority: Sec. 205(C) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

1235.003 Policy.

Recoupment. It is DOT policy in negotiating contracts under which the Government pays a part or all of the costs of research or development to recover a fair share of its investment when the product(s) thus developed or their related technology is sold or licensed to a foreign government, international organization, foreign commercial firm or domestic organization (all of which are collectively termed "customers"). (See 1235.70 below for instructions on use of the recoupment clause).

1235.010 Scientific and technical reports.

When the statement of work calls for a scientific and technical report which presents interim and final results of R&D work, the contracting officer shall insure that DOT document DOT-TST-75-97 (Appendix 1 to DOT Order 1700.18 Acquisition, Publication and Dissemination of DOT Scientific and Technical Reports) is included in the contract.

1235.070 Contract clause.

Contracting officers shall insert the clause at 1252.235-71 "Recoupment of Development Costs" in contracts which: (a) Totally or partly require design, research, development, test or experimental (D, R, D, T or E) work; (b) call for a product (e.g., equipment, hardware, software or a combination thereof) to be delivered as an end item; and (c) involve D, R, D, T or E valued at $1,000,000 or more.

PART 1236—CONSTRUCTION AND ARCHITECT—ENGINEER CONTRACTS

Subpart 1236.2—Special Aspects of Contracting for Construction

Sec.
1236.203 Government estimate of construction costs.
1236.206 Liquidated damages.
1236.209 Construction contracts with architect-engineer firms.

Subpart 1236.3—Special Aspects of Formal Advertising in Construction Contracting

1236.305 Preconstruction conference.

Subpart 1236.5—Contract Clauses

1236.570 Special precautions for work at operating airports.

Subpart 1236.6—Architect—Engineer Services

1236.602 Selection of firms for architect-engineer contracts.
1236.602-1 Selection criteria.
1236.602-2 Evaluation boards.
1236.603-3 Evaluation board functions.
1236.602-4 Selection authority.
1236.602-5 Short selection processes for contracts not to exceed $10,000.
1236.603 Collecting data on and appraising firms' qualifications.
1236.606 Negotiations.
1236.606-70 General.

Authority: Sec. 205(C) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1236.2—Special Aspects of Contracting for Construction

1236.203 Government estimate of construction cost

(a) The Government estimate shall be designated "For Official Use Only" unless the nature of the information therein requires a security classification, in which event it shall be handled in accordance with applicable security regulations. The "For Official Use Only" designation shall be removed only when the estimate is made public in accordance with instructions below.

(b) If the acquisition is by formal advertising, a sealed copy of the detailed Government estimate shall be filed with the bids until bid opening. After the bids are read and recorded, the "For Official Use Only" designation shall be removed and the estimate shall be read and recorded in the same detail as the bids.

(c) If the acquisition is by negotiation, the following procedures apply: (1) The overall amount of the Government's estimate shall not be disclosed prior to award; (2) at the time of award the "For Official Use Only" designation on the Government's estimate shall be removed; and (3) after award, the

Government's estimate may be revealed, upon request.

1236.206 Liquidated damages.

Liquidated damage provisions are generally appropriate in construction contracts in accordance with the provisions of FAR Subpart 12.2. However, inclusion of liquidated damages provisions may be inappropriate in situations such as a construction contract consisting of repairs, alteration or improvements where any delay in the completion would still permit the user to continue its normal function in an uninterrupted manner, without resulting in added expense to the Government.

1236.209 Construction contracts with architect-engineer firms.

(a) As provided in FAR 36.209, no contract for construction shall be awarded (as the result of *either* a solicited or unsolicited proposal) to the architect-engineer (A–E) firm responsible for the design of the facility to be constructed, or to any subsidiary or affiliate of that firm, without the approval of the agency head. This approval authority may not be redelegated.

(b) Unless a construction award to an A–E design firm is approved per (a) above, an A–E firm selected for negotiation of an architect-engineer services contract which, together with its subsidiaries or affiliates, possesses construction capabilities, shall be advised of the policy set forth in paragraph (a) above prior to the initiation of negotiations. The firm shall have the option of either:

(1) Declining to enter into contract negotiations in order to be eligible to compete for the related construction contract; or

(2) Entering into contract negotiations with the clear understanding that, if such negotiations are successful, the firm (including its subsidiaries or affiliates) will be ineligible to compete for the related construction contract. This understanding shall be certified by the architect-engineer firm upon the completion of negotiation, and the certification shall be entered into the official contract file.

(c) Architect-Engineer firms awarded construction contracts under 1236.209[c] shall not be engaged to supervise and inspect, on behalf of the Government, the construction of the facility for which contracted.

Subpart 1236.3—Special Aspects of Formal Advertising in Construction Contracting

1236.305 Preconstruction conference.

(a) When the contracting officer considers such action warranted, he/she shall arrange a preconstruction conference with the contractor and such subcontractors as the contractor may designate to assure that there is a clear understanding of the contract requirements (including labor standards provisions) and the rights and obligations of the parties.

(b) DOT Form F 4220.3 titled "Preconstruction Conference Agenda and Checklist", or a similar checklist, shall be used as the agenda of, or checklist for, the preconstruction conference.

Subpart 1236.5—Contract Clauses

1236.570 Special precautions for work at operating airports.

Where any acquisition will require work at an operating airport, insert the clause at 1252.236–71 in the solicitation and contract.

Subpart 1236.6—Architect-Engineer Services

1236.602 Selection of firms for architect-engineer contracts.

1236.602–1 Selection criteria.

(a) Appropriate criteria in addition to those under FAR 36.602–1 (a) may include, but are not limited to, the criteria listed below. The extent to which these criteria are used will depend on the size and the complexity of the project. For instance, for small and straightforward projects, particularly those under $10,000, the data provided by the Standard Forms 254 and 255 may provide an adequate measure of the firm's experience and qualifications required for the project. However, on larger and more complex projects, the evaluation criteria should be extended to consider such factors as the firm's suggested design approach, methods to be used by firms to control time and costs, and the firm's ability to achieve design excellence.

(1) Specialized Experience of the Firm-Relevant recent experience of the firm (including joint venture or association) in projects similar to the one being solicited.

(2) Capability and Capacity of Firm to Accomplish the Work—

(i) Relevant recent experience and technical knowledge of key project personnel, and key outside consultants.

(ii) Total number of personnel the A–E firm employs in the technical disciplines required for the proposed work.

(iii) Firm's current workload. Total number of ongoing projects, their construction value or A–E fee, and percentage of completion.

(3) Design Ability and Understanding of the Requirements—

(i) Technical approach (planning and design process, overall planning and design philosophy, possible concepts (narrative), special design opportunities, innovative design possibilities (including environmental), and provisions for the handicapped.

(ii) Understanding of, and Experience in, Energy Conservation Design.

(A) Approach to maximizing energy conservation.

(B) Project building and equipment systems that would significantly impact energy consumption.

(C) Criteria and engineering considerations to be used in building and equipment design.

(D) Examples of previously used design techniques and measure of results (in Btus consumed per square foot or energy costs).

(iii) Proposed project schedule and man-loading plan.

(iv) Quality of examples of previous work.

(v) Design Recognition. Major awards and other major recognition the firm or members of the firm have received for design excellence.

(4) Organization and Management:

(i) Project team organization and key personnel roles and responsibilities.

(ii) Project management procedures such as coordination of design effort among technical disciplines.

(iii) Methods used to control project schedule and construction cost estimates.

(iv) Quality control procedures.

(v) A–E client relationship.

(5) Past Record of Performance:

(i) DOT and other Government contracts.

(ii) Contracts with private industry.

(iii) Quality of work.

(iv) Ability to meet contractual performance/delivery schedules.

(v) Accuracy of construction cost estimates (compared to construction bids received and value of awarded construction contract).

(vi) Number, dollar amount and reason for construction change orders.

(vii) A–E/client relationship. (For Government contracts, the above information is available from SF 1421-Performance Evaluation (A–E)).

(b)(1) The following evaluation criterion reflects Department policy and

shall be used in the A–E evaluation process for A–E acquisitions above $10,000. It shall be used separately from the other criteria in terms of bonus or penalty points to the basic numerical evaluation rating.

(2) Minority/Women Employment—Percentage of minority employees in all job classifications and pay scales, noting the percentage of minorities in the immediate locality and general surrounding area. In addition, the number of women in all job classifications and pay scales shall also be considered.

(c) If design competition is to be used (see FAR 36.602–1(b)), written approval shall be obtained by the agency head prior to soliciting proposals.

1236.602–2 Evaluation boards.

Heads of contracting activities shall establish an ad-hoc architect-engineer evaluation board for each acquisition of architect-engineer (A–E) services. For acquisitions where the estimated A–E fee is $200,000 or more, the HCA shall notify the procurement executive prior to establishing the A–E evaluation board. For A–E acquisitions above $10,000, the following requirements apply in addition to those set forth in FAR 36.602–2:

(a) The A–E evaluation board shall be composed of the following members:

(1) One member with experience in acquisition of A–E services. This member will normally be the contracting officer or the contract negotiator.

(2) Two members with technical experience in the fields of architecture, engineering or construction. These members will normally be from the organization responsible for establishing the A–E work requirements.

(3) One member with technical knowledge of the functional (user) requirements of the project.

(4) One member from OST if approinted by the procurement executive, where the A–E fee is $200,000 or more.

(5) Other special members as are deemed necessary.

(b) A–E board members may be appointed from among highly qualified professional employees of other Government agencies or the private sector who are engaged in the practice of architecture, engineering, construction or related professions. When a proposed architect-engineer evaluation board includes a member from the private sector, the procurement executive shall be notified before the board is established. No firm or organization shall be eligible for consideration for a contract during the period in which any of its principals or associates are participating as members of an A–E evaluation board on behalf of that contracting activity.

(c) Administrations that do not have: (1) Personnel experienced in A–E selection procedures; or (2) personnel with the necessary technical disciplines to evaluate A–E firms for a particular project, may request the assistance of the procurement executive in establishing the A–E evaluation board.

1236.602–3 Evaluation board functions.

For A–E acquisitions above $10,000, the A–E evaluation board shall perform the following functions in addition to, or in combination with, those of FAR 36.602–3, and in the sequence indicated:

(a) Analyze the nature and scope of the project work requirements.

(b) Develop the evaluation criteria and rating systems to be used in screening firms for the pre-selection list and in the final selection. The screening criteria should be based only on information provided by the Standard Form 254 and 255.

(c) Prepare the public announcement for the project and provide it to the contracting office for publication.

(d) Screen the Standard Forms 254 and 255 and any other qualification data received in response to the public announcement of the project and prepare a pre-selection list of the best qualified firms for further consideration. The pre-selection list must consist of at least three firms.

(e) When appropriate, obtain in writing more specific and detailed qualification, experience and past performance data (see 1236.602(a)) not provided by the Standard Forms 254 and 255 which are needed to evaluate the firms using the criteria established for final selection. The firms should also be provided with a description of the nature and the scope of work to be accomplished to assist the firm in its response. The A–E firms shall be advised not to submit price proposals, design sketches, drawings or design data at the time the qualification and past performance information is due.

(f) Conduct interviews with the firms on the pre-selection list. As part of the interview, the architect-engineer firms shall be given an opportunity to make an oral presentation of their qualifications and experience, proposed project approach and any other relevant data. The project manager and other key project personnel and consultants proposed by a firm should participate in the interview.

(g) Whenever it is practical and advantageous, the A-E evaluation board should visit the offices of the A-E firms on the pre-selection list to inspect their facilities and work environments, to meet members of the proposed project team, and to see both work in progress and additional examples of completed projects.

(h) Review the Standard Forms 254 and 255 and other experience and qualification data for each firm on the pre-selection list, and perform a systematic numerical evaluation rating of the firms.

(i) Develop a rank order listing of at least three firms considered most highly qualified to perform the required work, based on the numerical evaluation ratings of the firms on the pre-selection list.

(j) Prepare a report to the HCA, including in sufficient detail: (1) The extent of the board's review and evaluation; (2) the list described in (i) above; (3) recommendations; and (4) considerations on which the recommendations are based.

1236.602–4 Selection authority.

(a) Heads of contracting activities shall review the recommendations of the architect-engineer evaluation board. The recommendations of the architect-engineer evaluation board will normally be acepted, unless the report does not adequately support the recommendations. If the recommendations are not accepted, the architect-engineer evaluation board shall be required to reconvene until an acceptable set of recommendations is agreed upon.

(b) The accepted report shall serve as authorization for the contracting officer to commence negotiations with the A-E firm ranked number one by the A-E evaluation board.

1236.602–5 Short selection processes for contracts not to exceed $10,000.

Administrations are authorized to use either of the short selection processes of FAR 36.602.5.

1236.603 Collecting data on and appraising firms' qualifications.

(a) Establishing Offices. Because it is the Department's policy to establish ad hoc evaluation boards instead of permanent boards to select architect-engineers, each administration shall establish, or designate, an office or offices to meet the requirements of FAR 36.603(a). Administrations may choose not to maintain A-E qualification data files and arrange to use existing data files of other DOT organizations including the files available in the Office of Installations and Logistics, OST (M–60). If any organization choose this option, it should forward all A-E qualification data it receives from

interested firms to the organization maintaining the data file.

1236.606 Negotiations.

1236.606-70 General.

The limitation on architect-engineer fees of 6% of the estimated construction cost applies to all services that are an integral part of the production and delivery of plans, designs, drawings and specifications of a construction project. The limitation, however, does not apply to the cost of investigative and other services including but not limited to the following:

(a) Development of program requirements (scope of work).

(b) Determination of project feasibility.

(c) Preparation of drawings of an existing facility, where current drawings are not available.

(d) Subsurface investigations (soil borings).

(e) Structural, electrical and mechanical investigations of an existing building, where current information is not available.

(f) Surveys: topographic, boundary, utility.

(g) Preparation of models, color renderings, photographs or other presentation materials.

(h) Travel and per diem for special presentations.

(i) Supervision and inspection of construction.

(j) Preparation of operating and maintenance manuals.

(k) Master planning.

PART 1237—SERVICE CONTRACTING

Subpart 1237.1—Service Contracts—General

Sec.

Subpart 1237.2—Consulting Services

Subpart 1237.70—Mortuary Services

Authority: Sec. 205 (C) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1237.1—Service Contracts—General

1237.104 Personal services contracts.

1237.104-70 Taxes.

Where the individual is to render personal services, the compensation generally is subject to FICA (Social Security), FUTA (Unemployment Compensation), and Federal income withholding taxes. It may also be necessary to report or withhold state income tax under 5 U.S.C. 5517. The contracting officer shall take appropriate steps in coordination with the cognizant personnel office to have deductions and reports made where required by law.

1237.104-71 Administrative treatment.

Individuals who are to render personal services under contract are charged against personnel ceilings in the same way as experts and consultants employed by excepted appointments. Also, the cognizant personnel office must maintain certain records on individuals who render personal services. Therefore, the contracting officer shall effect necessary coordination with the cognizant personnel office before award of a contract for personal services and may also designate the appropriate personnel officer as his representative for the purpose of obtaining necessary data from the contractor for tax withholding purposes, for suitability investigation under Executive Order 10450, and for administering applicable conflict of interest provisions.

1237.110 Solicitation provisions and contract clauses.

Contracting officers shall insert the provision at 1252.237-71 "Qualifications of Employees" in all solicitations and contracts for services which require performance at a Government facility.

Subpart 1237.2—Consulting Services

1237.204 Policy.

In addition to the prohibitions regarding consulting services listed at FAR 37.204(c), the following apply:

(a) Consulting services shall normally be obtained only on an intermittent or temporary basis; repeated or extended arrangements are not to be entered into except under extraordinary circumstances.

(b) Grants and cooperative agreements shall not be used to acquire consulting services.

1237.205 Management controls.

DOT management controls, including approvals required, are set forth in DOT Order 4200.15, Criteria and Guidelines for the Use of Consulting Services.

1237.270 Contracts for stenographic reporting services.

Stenographic reporting services normally are provided by Federal Government employees appointed under the usual civil service procedures. However, these services may be acquired by contract from individuals or firms pursuant to 5 U.S.C. 3109 or other statutory authority where there are variable requirements or insufficient qualified personnel, and necessity of economy to the Government demands acquisition by contract. Such contracts normally shall be written on an end-product basis and payment made according to delivered items (e.g., number of copies of transcript, words per page, etc.), and the contract ordinarily shall be required to furnish the necessary material (typewriter, paper, bindings, etc.). These contracts are subject to all provisions of this subpart.

Subpart 1237.70—Mortuary Services

1237.7000 Scope of subpart.

This subpart is applicable only to the Coast Guard. It sets forth acquisition procedures peculiar to contracts for mortuary services (the care of remains) of Coast Guard personnel.

1237.7001 Acquisition by contract.

(a) Where an existing contract for the care of remains is not available for Coast Guard use, acquisition of such services shall be formally advertised except where negotiation is authorized.

(b) The contract format and terms and conditions set forth in this subpart are appropriate for inclusion in a requirements type contract. They should be altered as deemed necessary by the contracting officer to fit a different contract type or acquisition situation.

1237.7002 Area of performance.

Each contract for care of remains shall clearly define the geographical area covered by the contract. The area shall be determined by the activity entering into the contract in accordance with the following general guidelines. It shall be an area using political boundaries, streets, and other features such as demarcation lines. Generally, this should be a size roughly equivalent to the contiguous metropolitan or municipal area enlarged to include the activities served. In the event the area of performance best suited to the needs of a particular contract is not large enough to include a carrier terminal commonly used by people within such area, the

contract area of performance shall specifically state that it includes such terminal as a pickup or delivery point.

1237.7003 Schedule format.

Set forth below is an example of a schedule format suitable for use in solicitations.

Item No. and supplies, services, and transportation	Estimated quantity	Unit	Unit price	Amount
1. For a type I casket, standard size, supplies and services in accordance with specifications		(1)		
2. For a type II casket, standard size supplies and services in accordance with specifications		(1)		
3. For a shipping case, standard size, in accordance with specifications. (For use with items 1 and 2)		(1)		
4. For a type I casket, exceeding standard size, supplies and services in accordance with specifications		(1)		
5. For type II casket, exceeding standard size, supplies and services in accordance with specifications		(1)		
6. For shipping case, exceeding standard size, in accordance with specifications. (To be used with items 4 and 5.)		(1)		
7. For transportation of remains, in accordance with specifications and as provided for in pars (b) and (c) of the area of performance clause of this contract		(2)		

[1] Each.
[2] Loaded mile.

1237.7004 Small purchases.

Purchases under $25,000 which cannot be covered by any existing contract shall be handled in accordance with FAR Part 13.

1237.7005 Solicitation provisions and contract clauses.

(a) All the regulatory citations in this 1237.7005 are to the Department of Defense (DOD) FAR Supplement (except that to FAR 52.245–4 in paragraph (e) below).

(b) The contracting officer shall insert the provision at 52.237–7100, "Award to Single Bidder," in formally advertised solicitations for mortuary services contracts.

(c) The contracting officer shall insert the provision at 52.237–7101, "Award to Single Offeror," in negotiated solicitations for mortuary services contracts.

(d) The contracting officer shall insert the following clauses in mortuary services solicitations and contracts except those for port of entry requirements:

52.237–7102, Requirements;
52.237–7103, Area of Performance;
52.237–7104, Specifications;
52.237–7105, Using Activities;
52.237–7106, Delivery Orders and Invoices;
52.237–7107, Delivery and Performance;
52.237–7108, Subcontracting;
52.237–7109, Additional Default Provisions;
52.237–7110, Group Interment;
52.237–7111, Professional Requirements;
52.237–7112, Facility Requirements;
52.237–7113, Preparation History.

(e) Except for the "Area of Performance" and the "Facility Requirements" clauses, the contracting officer shall insert all of the clauses in (d) above, as well as the Government-Furnished Property (Short Form) clause at FAR 52.245–4 in port of entry solicitations and contracts for mortuary services.

PART 1242—CONTRACT ADMINISTRATION

Subpart 1242.1—Interagency Contract Administration and Audit Services

Sec.
1242.101 Policy.

Subpart 1242.2—Assignment of Contract Administration

1242.203 Retention of contract administration.
1242.203–70 Contract clauses.

Subpart 1242.7—Indirect Cost Rates

1242.705 Final indirect cost rates.
1242.705–2 Auditor determination procedure.
1242.708 Quick-closeout procedure.

Subpart 1242.12—Inovatation and Change-of-Name Agreements

1242.1202 Responsibility for executing agreements.
1242.1203 Processing agreements.

Authority: Sec. 205(C) Federal Property and Administrative Services, Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1242.1—Interagency Contract Administration and Audit Services

1242.101 Policy.

It is the policy of the Department of Transportation to make optimum use of the contract administration, audit and related support functions available from the Department of Defense and other Government agencies. However, technical direction of all contracts awarded, regardless of the agency responsible for administration, shall remain with DOT.

Subpart 1242.2—Assignment of Contract Administration

1242.203 Retention of contract administration.

(a) Except as provided elsewhere in FAR 42.203, DOT contracting officers shall retain contract administration responsibility when it is clear that the contracting office can best perform this function.

(b) In all cases, the contracting officer shall retain the responsibility for contract administration related to the clause entitled "Contractor Testimony" (see 1242.203–70).

1242.203–70 Contract clauses.

(a) The contracting officer shall insert the clause at 1252.242–71 "Contractor Testimony" in all solicitations and contracts issued by the National Highway Traffic Safety Administration. The clause may be used by other administrations, as deemed appropriate.

(b) The contracting officer shall insert the clause at 1252.242–72 "Dissemination of Contract Information" in all DOT contracts except those whose statement of work requires the release or coordination of information.

Subpart 1242.7—Indirect Cost Rates

1242.705 Final indirect cost rates.

1242.705–2 Auditor determination procedure.

DOT contracting officers shall request final indirect cost rate determinations in accordance with DOT Order 8000.1A.

1242.708 Quick-closeout procedure.

DOT contracting officers may utilize quick-closeout procedures on contracts not exceeding $250,000, provided the stipulations at FAR 42.708(a) (1) through (3) are met.

Subpart 1242.12—Novation and Change-of-Name Agreements

1242.1202 Responsibility for executing agreements.

When more than one administration has outstanding contracts with a contractor seeking a novation or change of name agreement, a single agreement covering all such contracts shall be executed by the administration having the largest unsettled (unbilled plus billed but unpaid) dollar balance. Such agreements shall be executed by a contracting officer of the appropriate office listed below:

Federal Aviation Administration

Director, Acquisition and Materiel Service, 800 Independence Avenue, SW., Washington, D.C. 20591

Federal Highway Administration

Office of Contracts and Procurement, 400 7th St., SW., Washington, D.C. 20590

U.S. Coast Guard

Commandant (GFCP), 2100 Second Street, SW., Washington, D.C. 20593

Federal Railroad Administration

Office of Procurement, 400 7th St., SW., Washington, D.C. 20590

St. Lawrence Seaway Development Corporation

Office of Procurement and Supply, 800 Independence Avenue, SW., Washington, D.C. 20591

Research and Special Programs Administration

Procurement Division, DMA-14, 400 7th Street, SW., Washington, D.C. 20590
Transportation Systems Center, Acquisition Division, DTS-85, Kendall Square, Cambridge, Massachusetts 02142

National Highway Traffic Safety Administration

Office of Contracts and Procurement, NAD-30, 400 7th Street, SW., Washington, D.C. 20590

Office of the Secretary of Transportation

Procurement Division (M-43), 400 7th St., SW., Washington, D.C. 20590

Urban Mass Transportation Administration

Office of Procurement and Third Party Contract Review, 400 7th St., SW., Washington, D.C. 20590

Maritime Administration

Office of Management Services and Procurement, 400 7th St., SW., Washington, D.C. 20590

1242.1203 Processing agreements.

(a) The administration processing a proposed novation agreement shall promptly provide notice of the proposed agreement, including the list of contracts as required by FAR 42.1203(b)(2), to the other administrations having contracts with the contractor or contractors concerned. Such notice shall be transmitted to the appropriate addressee listed in 1242.1202 above. Within 30 days after receipt of such notice, the administration(s) may submit comments to the processing administration, which comments shall be considered prior to execution of the proposed agreement. The absence of comment from an administration within 30 days after its receipt of notice of a proposed novation agreement shall be construed as approval by that administration.

(b) Where substantial alteration or additions to the formats set forth in FAR 42.1204 and FAR 42.1205 are considered appropriate by the administration processing the proposed agreement, that administration shall coordinate the agreement with the other administrations affected by the agreement prior to execution. Any objection shall be resolved before the agreement is executed.

(c) A signed copy of the executed novation agreement or change of name agreement shall be forwarded to the contractor. A signed copy shall be retained in the administration executing the agreement. Where more than one administration is involved, two copies of the agreement shall be distributed to the appropriate addressee listed in 1242.1202.

(d) After execution and distribution of an agreement, a modification (Standard Form 30) shall be prepared by the processing activity incorporating a summary of the agreement and attaching a complete list of the contracts affected. For single administration agreements, three copies of the Standard Form 30 shall be furnished for each contract to the contracting offices concerned and, for multi-administration agreements, to the appropriate addressee listed in 1242.1202.

PART 1244—SUBCONTRACTING POLICIES AND PROCEDURES

Subpart 1244.3—Contractors' Purchasing Systems Reviews

1244.302 Requirements.

In those cases where CPSR approval may be required, the contracting officer will obtain the following information from prospective contractors:

(a) Date of most recent CPSR;

(b) Name, address, and telephone number of the administrative contracting officer who conducted the most recent CPSR; and

(c) Expected total dollar value of negotiated sales to the Government over the next 12 month period.

(Sec. 205(C) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59)

PART 1245—GOVERNMENT PROPERTY

Subpart 1245.1—General

Sec.
1245.101 Definitions.
1245.102 Policy.
1245.102-70 Reporting of contractor-held property by DOT administrations.
1245.102-71 Contract property control file
1245.102-72 Special test equipment and special tooling.
1245.104 Review and correction of contractors' property control system.
1245.104-70 Evaluation and approval of contractors' property control system.
1245.104-71 Review of contractors' property control system during contract performance.

Subpart 1245.3—Providing Government Property to Contractors

1245.302-1 Policy.

Subpart 1245.4—Contractor Use and Rental of Government Property

1245.407 Non-Government use of plant equipment.

Subpart 1245.5—Management of Government Property in the Possession of Contractors

1245.501 Definitions.
1245.502-1 Receipts for Government property.
1245.505 Records and reports of Government property.
1245.505-5 Records of plant equipment.
1245.505-11 Records of transportation and installation costs of plant equipment.
1245.505-14 Reports of Government property.
1245.506 Identification.
1245.508 Physical inventories.

Subpart 1245.6—Reporting, Disposition, and Disposal of Contractor Inventory

1245.603 Disposal methods.
1245.603-70 Plant clearance function.
1245.607 Scrap.
1245.607-2 Recovering precious metals.
1245.608-3 Agency screening.
1245.608-5 Special items screening.
1245.610-4 Contractor inventory in foreign countries.

Authority: Sec. 205(C) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)); 48 CFR 1.301; 49 CFR 1.59

Subpart 1245.1—General

1245.101 Definitions.

"Capitalized equipment" means personal property (plant equipment) of a nonexpendable nature having a unit cost of $1000 or more.

"Special test equipment" and "special tooling". These definitions are not applicable in DOT (See also 1245.102-72).

"Noncapitalized equipment" means personal property (plant equipment) of a nonexpendable nature having a unit acquisition cost of $50 or more but less than $1000, and other items of personal property regardless of cost when so designated by the Government.

1245.102 Policy.

1245.102-70 Reporting of contractor-held property by DOT administrations.

By October 31 each year, each DOT administration shall report the following information to the Director, Office of Installations and Logistics (M-60):

(a) Name and address of each contractor with DOT property in its possession, or in the possession of their subcontractors (do not include grants, cooperative agreements, interagency

agreements, or agreements with state or local governments).

(b) Contract number of each DOT contract with Government property.

(c) Date contractor's property management system was approved and by whom (DOT Office, Defense Contract Administration Service, etc.)

(d) Dollar value of DOT real property, capitalized equipment, and material maintained in stocks (when value is $50,000 or more) as reported in the contractor's annual financial report for each DOT contract administered by the contracting activity.

1245.102-71 Contract property control file.

Upon award of a contract, the property administrator will establish a contract property control file which will include as a minimum:

(a) Copy of the contract or extract of provisions thereof establishing requirements for property administration (except when the property control file is maintained as an adjunct to the contract working file);

(b) Letters designating authorized representatives of the contracting officer for property matters;

(c) Report of initial review, evaluation, and approval of the contractor's property control system;

(d) Record of visits, property system examinations and analyses, and appropriate work papers;

(e) Documents evidencing the furnishing of Government property;

(f) Contractor's receipts for Government furnished property;

(g) Contractor's notices of acquisitions of contractor purchased or fabricated Government property;

(h) Contractor's physical inventory and financial property reports as prescribed;

(i) Documents evidencing the removal of Government property from the custody of the contractor, the transfer of Government property to another contract or another contractor, and the disposal of Government property;

(j) Documents evidencing relief of the contractor from responsibility for Government property due to loss, damage, destruction, or unreasonable wear or deterioration or unjustifiable consumption in the performance of the contract;

(k) Any other correspondence affecting that status of Government property under the contract; and

(l) Statement of closure of the contract property account.

1245.102-72 Special test equipment and special tooling.

Since special test equipment and special tooling are not recognized in DOT *as separate categories of property,* no special accounting or property management controls will be established. Accordingly, references to this property in the FAR are not applicable to DOT contractor operations. Property of this nature will be controlled in the same way as other items of plant equipment.

1245.104 Review and correction of contractors' property control system.

When review of the contractor's property control system is not delegated to DOD, the DOT contracting officer of property administrator will conduct the review as required by § 1245.104–70 and 1245.104–71.

1245.104-70 Evaluation and approval of contractors' property control system.

(a) The choice of the methods to be used for evaluation and approval of the contractor's property control system is a matter of judgment by the property administrator, predicated in the nature and amount of Government property involved in any particular contract. Regardless of the methods used, it is the responsibility of the property administrator to determine that the contractor's system will meet the requirements of FAR 45.5, and of 1245.5 and other contract requirements, as appropriate.

(b) It is normal contractor practice to provide for the control of property by means of written procedures that communicate the organization's standards, techniques, and instructions to operational personnel for uniform application. However, depending on the number of contractor employees and the nature, quantity, and value of the property, a contractor may not need written procedures for effective management of Government property. In such cases, the property administrator, if he/she agrees that written procedures are not required, will evaluate the adequacy of the contractor's system on the basis of the contractor's explanation of its controls and prepare a brief description of the applicable procedures for inclusion in the contract property control file.

(c) Upon completing the evaluation of the contractor's system, the property administrator will prepare a written summary of findings to support approval of the system or requirement for corrective action prior to such approval. The property administrator will forward to the contractor a listing of any deficiencies found as a result of the evaluation. The contractor will be requested to indicate within 30 days after receipt of the listing its willingness to correct the deficiencies or to forward to the property administrator a statement of its position.

(d) When the property administrator is not successful in obtaining compliance with contract requirements, he/she will advise the contracting officer. If the contracting officer concurs with the property administrator, he/she will advise the contractor in writing of the changes or additions required in its property control system and will establish a schedule for accomplishment of the corrective actions. The contractor will be informed that approval of its property control system will be withheld (or withdrawn if previously approved) unless corrective action is accomplished within the specified period. Such notice will also advise the contractor that in the event approval of its property control system is withheld (or withdrawn if previously approved) its liability for loss or damage may be increased. If the contractor fails to make satisfactory progress for correction of the deficiencies in accordance with the schedule, the contracting officer will so inform the contractor in writing, and state that approval of its property control system is withheld or withdrawn, as the case may be. A copy of that advisement shall be provided to the property administrator.

(e) When the contractor's property control system is acceptable, the property administrator will so advise the contractor in writing. When the contract involves Government property at subcontractor plants or prime contractor secondary locations, and the controls for the property at such locations have been determined to be adequate, the approval will be expanded to include the procedures governing Government property at such locations.

1245.104-71 Review of contractors' property control system during contract performance.

(a) While the contractor has an incurred obligation to comply with the property control requirements of the contract, it is incumbent upon the Government to ensure that the contractor does in fact comply. The preferred method for carrying out this responsibility is for the Government to periodically conduct system reviews at the contractor's premises. The need for, and frequency of, such reviews should be based on case-by-case determinations, considering the particular circumstances relative to a given contract or contractor. When the property adminstrator feels that a system review is necessary, then he/she

must arrange for the conduct of such a review by any appropriate means.

(b) Notwithstanding the requirements of paragraph (a) of this section, it is the continuing responsibility of the property administrator to be alert to any indications that the contractor's property control system may be deficient. Examples of such indications are as follows:

(1) Failure of the contractor to acknowledge receipt of Government furnished property;

(2) Failure of the contractor to provide notices of contractor acquisitions of Government property when the contract provides for such acquisition;

(3) Failure of the contractor to submit the annual financial property and physical inventory reports specified in 1245.505–14 and 1245.508;

(4) Discrepancies in contractor's records and weaknesses in control as reflected by the contractor's physical inventory reports;

(5) Contractor's financial property reports do not reconcile with DOT financial control accounts;

(6) Analysis of contractor's costs indicates consumption of material in excess of that considered reasonable;

(7) Inability of the contractor to furnish property listings when requested to do so; or

(8) Analysis of contractor's request for relief of responsibility due to loss or damage indicates inadequate control.

(c) When the property administrator has reason to believe that the contractor's property control system is deficient or inadequate, the property administrator must take prompt action to obtain correction of such problems. In some cases, discussions with the contractor may suffice. In other cases, it may be necessary to arrange for an on-site system review as discussed in paragraph (a) of this section. Another alternative is to request the conduct of an audit by the appropriate Government contract audit activity. If the situation demands, the procedures set forth in 1245.104–70(d) will be applied.

(d) Records and accounts of Government property will be audited by the Government as frequently as conditions warrant or as may be specifically requested by the contracting officer. Audits may take place at any time during the performance of the contract, upon completion or termination of the contract, or at any time thereafter. Audits will include records maintained by the contractor and Government-maintained records for the property involved. Government personnel and the contractor are required to make all property records, including correspondence related thereto, available to the auditors.

Subpart 1245.3—Providing Government Property to Contractors

1245.302–1 Policy.

Contracting officer have been designated to make determinations required by FAR 45.302–1(a)(4) on providing Government facilities.

Subpart 1245.4—Contractor Use and Rental of Government Property

1245.407 Non-Government use of plant equipment.

The prior written approval of the contracting officer is required for any non-Governmental use of active Government-owned plant equipment. Before non-Government use exceeding 25 percent may be authorized, prior approval of the head of the contracting activity shall be obtained.

Subpart 1245.5—Management of Government Property in the Possession of Contractors

1245.501 Definition.

To supplement the definition at FAR 45.501, "property administrator", as used in this subpart, means an authorized representative of the contracting officer, when designated, *or* the contracting officer.

1245.502–1 Receipts for Government property.

Immediately upon receipt of any Government-furnished property, the contractor shall sign and return the Government transfer document to the property administrator. For contractor-acquired capitalized equipment, the contractor shall submit itemized reports as a condition of reimbursement of costs incurred in the purchase or fabrication of such property. Each item shall be adequately described, including unit cost. Reports shall be provided by the contractor not later than the time it submits its application for payment (public voucher) for the property. Upon request of the Government, the contractor shall submit supporting data for any material cost or noncapitalized equipment included in the voucher.

1245.505 Records and reports of Government property.

1245.505–5 Records of plant equipment.

The individual records requirements of FAR 45.505–5 apply to plant equipment (capitalized equipment) having a unit cost of $1000 or more. Summary stock records may be maintained for plant equipment (noncapitalized equipment) costing less than $1000 per unit, except where the property administrator determines that individual item records are necessary for effective control, calibration, or maintenance.

1245.505–11 Records of transportation and installation costs of plant equipment.

The requirements of FAR 45.505–11 apply to plant equipment having a unit cost of $1000 or more.

1245.505–14 Reports of Government property.

(a) *Control system.* The contractor's property control system shall be such as to provide, at any time, the dollar amount of Government property for which it is accountable under each contract in the following classifications:

(1) Real property;

(2) Capitalized equipment;

(3) Noncapitalized equipment; and

(4) Material maintained in stocks.

The contractor's accounts shall be susceptible to reconciliation in totals and subtotals as to whether contractor-acquired or Government-furnished.

(b) *Submissions of financial property reports.* (1) The contractors shall prepare a report as of July 31 each year, for each contract, showing the dollar amount of Government real property, capitalized equipment, and material maintained in stocks (when value is $50,000 or more) in the possession of the contractor and his subcontractors. Reports shall be prepared in the format shown below and shall be furnished to the property administrator not later than September 15 each year. Subcontract reports shall be consolidated with prime contract reports. The contractor shall certify that the reports have been reconciled and are in balance with the contract property records. If specifically requested by the property administrator, the contractor shall submit similar reports for Government noncapitalized equipment and material maintained in stocks when value is less than $50,000.

(2) *Financial property report format.*

	Real property	Capitalized equipment	Material ($50,000 or over)	Total
Balance Beginning of Period				
Acquisitions During Period: Government Furnished				
Contractor Acquired				
Dispositions During Period: Government Furnished				
Contractor Acquired				
Balance End of Period				

(3) Contractor's reports of physical inventory shall be submitted on an annual basis as set forth in 1245.508.

1245.506 Identification.

The requirements of FAR 45.506 apply to Government property having a unit cost of $1000 or more.

1245.508 Physical inventories.

(a) *Annual inventories.* The contractor shall perform an annual physical inventory of the following categories of Government property in his possession or control and shall require such inventories of any subcontractors that are in possession of Government property provided under the contract: (1) Capitalized property; (2) noncapitalized property; (3) material maintained in stocks.

(b) *Reporting results of annual inventories.* Within 30 days after the completion of an annual inventory, the contractor shall submit the folowing information to the property administrator:

(1) A list on both a quantitative and monetary basis of all discrepancies disclosed by the inventory in each category of Government property.

(2) A signed statement that physical inventory of Government property under the contract was completed on a specified date and that the contractor's official property records were found to be in agreement with the physical inventory except for the discrepancies noted; and

(3) If specifically requested by the property administrator, a list of all items of capitalized equipment.

Subpart 1245.6—Reporting, Disposition, and Disposal of Contractor Inventory

1245.603 Disposal methods.

1245.603-70 Plant clearance function.

If the plant clearance function has not been formally delegated to another Federal agency, the contracting officer must assume all responsibilities of the plant clearance officer identified in FAR 45.6.

1245.607 Scrap.

1245.607-2 Recovering precious metals.

DOT Order 4430.5, Recovery and Utilization of Precious Metals, establishes procedures for the recovery and acquisition of precious metals.

1245.608-3 Agency screening.

Excess and residual contract inventory is subject to the same Departmental redistribution requirements as are prescribed for internal Departmental excess property. Accordingly, contracting officers shall assure that excess and residual contract property are screened within the Department in accordance with DOT Order 4600.1E, Redistribution of Excess Personal Property.

1245.608-5 Special items screening.

Excess automatic data processing equipment shall be screened internally within the Department as required by DOT Order 4000.6A, Reassignment of Excess Automatic Data Processing Equipment.

1245.610-4 Contractor inventory in foreign countries.

DOT contractor inventory located in foreign countries shall be utilized and disposed of in accordance with FPMR 101-43.5.

PART 1246—QUALITY ASSURANCE

Subpart 1246.6—Material Inspection and Receiving Reports

Sec.
1246.601 Material inspection and receiving reports.

Subpart 1246.7—Warranties

1246.704 Authority for use of warranties.

Authority: Sec. 205(C) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1246.6—Material Inspection and Receiving Reports

1246.601 Material inspection and receiving reports.

Each administration shall use FAA Form 256 or an alternate procedure.

Subpart 1246.7—Warranties

1246.704 Authority for use of warranties.

(a) The procurement request initiator is responsible for preparing a written recommendation for those purchases deemed to be appropriate for application of warranty provisions. The recommendation shall state why a warranty is appropriate by specifically addressing the criteria set forth in FAR 46.703. The recommendation shall also identify the specific parts, subassemblies, assemblies, systems, or contract line items to which a warranty should apply.

(b) Prior to solicitation of the requirement, the contracting officer shall make a written determination when a warranty provision is to be included.

PART 1249—TERMINATION OF CONTRACTS

Subpart 1249.1—General Principles

1249.111 Review of proposed settlements.

All proposed settlement agreements shall be coordinated with legal counsel.

(Sec. 205(C) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59)

PART 1250—EXTRAORDINARY CONTRACTUAL ACTIONS

Subpart 1250.2—Delegation of and Limitations on Exercise of Authority

Sec.
1250.202 Contract adjustment boards.

Subpart 1250.4—Residual Powers

1250.401 Standards for use.

Authority: Sec. 205(C) Federal Property and Administrative Services Act, as amended (40 U.S.C. 468(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1250.2—Delegation of and Limitations on Exercise of Authority

1250.202 Contract adjustment boards.

DOT Order 1100.60, Department of Transportation Organizational Manual establishes the Contract Appeals Board as the approving authority to consider and dispose of requests for extraordinary contractual adjustments for DOT contractors.

Subpart 1250.4—Residual Powers

1250.401 Standards for use.

It is DOT policy *not* to use the "residual powers" authorized by the Act and FAR Subpart 50.4. Contracting officers shall *not* include in DOT contracts the clause at FAR 52.250-1, Indemnification Under Pub. L. 85-804, unless specifically authorized by the Secretary or delegee.

PART 1252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Sec.
1252.000 Scope of part.

Subpart 1252.1—Instructions for Using Provisions and Clauses

1252.101 Using FAR Part 52.
1252.102 Incorporating provisions and clauses.
1252.102-2 Incorporation in full text.
1252.104 Procedures for modifying and completing provisions and clauses.

Subpart 1252.2—Texts of Provisions and Clauses

1252.209-71 Disclosure of conflicts of interest.
1252.210-71 Brand name or equal.

Authority: Sec. 205(C) Federal Property and Administrative Services Act, as amended (40 U.S.C. 468(c)). 48 CFR 1.301; 49 CFR 1.59.

1252.000 Scope of part.

This part, in conjunction with FAR Part 52, contains the DOT provisions and clauses whose use is prescribed elsewhere in this regulation.

Subpart 1252.1—Instructions for Using Provisions and Clauses

1252.101 Using FAR Part 52.

Administrations which prescribe or develop provisions or clauses under the authority of FAR 52.101(b)(2)(i) (B) or (C) shall ensure that the requirements of 1201.4 and FAR Subpart 1.4 are met.

1252.102 Incorporating provisions and clauses.

1252.102-2 Incorporation in full text.

All provisions and clauses prescribed or developed by administrations shall be incorporated in solicitations and/or contracts in *full text* as required by FAR 52.102-2(a)(4).

1252.104 Procedures for modifying and completing provisions and clauses.

TAR provisions and clauses shall not be modified (see FAR 52.101(a)) unless authorized by this regulation, and when so authorized, contracting officers must comply with the procedures in FAR 52.104.

Subpart 1252.2—Texts of Provisions and Clauses

1252.209-71 Disclosure of conflicts of interest.

As prescribed in 1209.508-1 and 1215.407 insert the following in solicitations for negotiated acquisitions:

Disclosure of Conflicts of Interest (Apr. 1984)

It is the Department of Transportation's (DOT's) policy not to award contracts to offerors whose objectivity may be impaired because of any related past, present, or planned interest, financial or otherwise, in organizations regulated by DOT or in organizations whose interests may be substantially affected by Departmental activities. Based on this policy:

(1) The offeror shall provide a statement in its technical proposal which describes in a concise manner all past, present or planned organizational, financial, contractual or other interest(s) with an organization regulated by DOT, or with an organization whose interests may be substantially affected by Departmental activities, and which is related to the work under the request.

The interest(s) described shall include those of the proposer, its affiliates, proposed consultants, proposed subcontractors and key personnel of any of the above. Past interest shall be limited to within one year of the date of the offeror's technical proposal. Affected organizations shall include, but are not limited to, the insurance industry. Key personnel shall include any person owning more than 20% interest in the offeror, and the offeror's corporate officers, its senior managers and any employee who is responsible for making a decision or taking an action on this contract where the decision or action can have an economic or other impact on the interests of a regulated or affected organization.

(2) The offeror shall describe in detail why it believes, in light of the interest(s) identified in (1) above, that performance of the proposed contract can be accomplished in an impartial and objective manner.

(3) In the absence of any relevant interest identified in (1) above, the offeror shall submit in its technical proposal a statement certifying that to its best knowledge and belief no affiliation exists relevant to possible conflicts of interest. The offeror must obtain the same information from potential subcontractors prior to award of a subcontract.

(4) The Contracting Officer will review the statement submitted and may require additional relevant information from the offeror. All such information, and any other relevant information known to DOT will be used to determine whether an award to the offeror may create a conflict of interest. If such conflict of interest is found to exist, the Contracting Officer may (i) disqualify the offeror, or (ii) determine that it is otherwise in the best interest of the United States to contract with the offeror and include appropriate provisions to mitigate or avoid such conflict in the contract awarded.

(5) The refusal to provide the disclosure or representation, or any additional information required, may result in disqualification of the offeror for award. If nondisclosure or misrepresentation is discovered after award, the resulting contract may be terminated. If after award the Contractor discovers a conflict of interest with respect to this contract which could not reasonably have been known prior to award, an immediate and full disclosure shall be made in writing to the Contracting Officer which shall include a description of the action the contractor has taken or proposes to take to avoid or mitigate such conflict. The DOT Contracting Officer may, however, terminate the contract for convenience if it deems that termination is in the best interest of the Government.

(End of Provision)

1252.210-71 Brand Name or Equal.

As prescribed in 1210.011 insert the following provision when a "brand name or equal" purchase description is used in the solicitation:

Brand Name or Equal (Apr. 1984)

(As used in this provision, the term "brand name" includes identification of products by make and model.)

(a) If items called for by this invitation for bids have been identified in the schedule by an "brand name or equal" description, such identification is intended to be descriptive, but not restrictive, and is intended to indicate the quality and characteristics of products that will be satisfactory. Bids offering "equal" products (including products of the brand name manufacturer other than the one described by brand name) will be considered for award if such products are clearly identified in the bids and are determined by the Government to meet fully the salient characteristics requirements listed in the solicitation.

(b) Unless the bidder clearly indicates in its bid that it is offering an "equal" product, its bid shall be considered as offering a brand name product referenced in the solicitation.

(c)(1) If the bidder proposed to furnish an "equal" product, the brand name, if any, of the product to be furnished shall be inserted in the space provided in the invitation for bids, or such product shall be otherwise clearly identified in the bid. The evaluation of bids and the determination as to equality of the product offered shall be the responsibility of the Government and will be based on

information furnished by the bidder or identified in its bid as well as other information reasonably available to the contracting office. CAUTION TO BIDDERS: The contracting office is not responsible for locating or securing any information which is not identified in the bid and reasonably available to the contracting office. Accordingly, to insure that sufficient information is available, the bidder must furnish as a part of its bid all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the contracting office to: (i) Determine whether the product offered meets the salient characteristics requirement of the solicitation, and (ii) establish exactly what the bidder proposes to furnish and what the Government would be binding itself to acquire by making an award. The information furnished may include specific reference to information previously furnished or to information otherwise available to the contracting office.

(2) If the bidder proposes to modify a product so as to make it conform to the requirements of the solicitation, it shall: (i) Include in its bid a clear description of such proposed modifications, and (ii) clearly mark any descriptive material to show the proposed modifications.

(3) Modifications proposed after bid opening to make a product conform to a brand name product reference in the solicitation will not be considered.

(End of Provision)

1252.212-71 Notice of delay.

As prescribed at 1212.70, insert the following clause in all contracts:

Notice of Delay (Apr. 1984)

If the Contractor becomes unable to complete the contract work at the time(s) specified because of technical difficulties, notwithstanding the exercise of good faith and diligent efforts in the performance of the work called for hereunder, the Contractor shall give the Contracting Officer written notice of the anticipated delay and the reasons therefor. Such notice and reasons shall be delivered promptly after the condition creating the anticipated delay becomes known to the Contractor but in no event less than forty-five (45) days before the completion date specified in this contract, unless otherwise directed by the Contracting Officer. When notice is so required, the Contracting Officer may extend the time specified in the Schedule for such period as deemed advisable.

(End of Clause)

1252.215-71 Key personnel and facilities.

As prescribed in 1215.106-70 insert the following clause in appropriate contracts:

Key Personnel and Facilities (Apr. 1984)

The personnel and/or facilities listed below (or as specified in the Schedule of this contract) are considered essential to the work being performed hereunder. Prior to removing replacing, or diverting any of the specified individuals or facilities, the Contractor shall notify the Contracting Officer reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on this contract. No diversion shall be made by the Contractor without the written consent of the Contracting Officer; *provided*, that the Contracting Officer may ratify in writing the change and such ratification shall constitute the consent of the Contracting Officer required by this clause. The personnel and/or facilities listed below (or as specified in the Schedule of this contract) may, with the consent of the contracting parties, be amended from time to time during the course of the contract to either add or delete personnel and/or facilities, as appropriate.

(End of Clause)

1252.215-72 Cost Proposal Instructions.

As prescribed in 1215.407(b) a provision substantially as follows may be inserted in RFPs when cost or pricing data are to be obtained:

Cost Proposal Instructions (Apr. 1984)

Offerors are instructed to prepare their cost proposals in sufficient detail to permit thorough and complete evaluation by the Government. Where proposed rates are not based upon catalog or list prices, the basis for the proposed rates shall be identified.

The cost proposal shall be submitted on Standard Form 1411, Contract Pricing Proposal Cover Sheet, prepared in accordance with the instructions in FAR 15.804-6. Summary data shall be placed on SF 1411 and the line item summaries (by element of cost) described in paragraph 7.A. of FAR Table 15-3. The following format shall be followed in preparing the supporting attachments referenced in column (4) of the line item summaries. Clearly identify all subcontracted items and include the name and address of the proposed subcontractor. Written quotations for all subcontracted services must be included with the cost proposal.

1. Direct material

a. *Purchased Parts*—Provide a consolidated price summary of individual material quantities for the proposed contract. Give details on an attached schedule.

b. *Subcontracted Items*—Show the total cost of subcontract effort in line b. below and provide supporting data for each subcontractor.

c. *Other*: (1) Raw Material—Show total cost on line c.(1) below and give details on an attached schedule.

(2) Standard Commercial Items—Show total cost on line c.(2) below and give details on an attached schedule.

Direct material	Estimated cost (dollars)	Reference
a. Purchased parts		
b. Subcontracted items		
c. Other: (1) Raw material		
(2) Your standard commercial items		
Total direct material		

2. Material overhead

Show cost here only if your accounting system provides for such cost segregation and only if this cost is not computed as part of labor overhead or G&A.

Material Overhead Rate ——%×$—— base=—— Reference ——

3. Direct labor

Show the hourly rate and the total hours for each category of direct labor proposed. Indicate whether actual rates or projected rates are used.

Direct labor	Estimated hours	Rate/hour	Estimated cost (dollars)	Reference
Total direct labor				

4. Labor overhead

Use the overhead rate(s) and base(s) approved by a Government audit agency for use in proposals. If no such approval has been given, or if the approval is more than 12 months old, furnish data supporting the proposed rates. The data shall include a breakdown of the items comprising overhead and the base(s) upon which the burden(s) is(are) computed.

Labor overhead	Overhead rate	Times base equals	Estimated cost (dollars)	Reference
Total labor overhead				

5. Special test equipment

Identify specific equipment and unit prices as shown below. Equipment rates may be proposed on any basis (i.e., hourly, daily, weekly, monthly).

Item description	Estimated usage	Rate (dollars)	Estimated cost (dollars)

Item description	Estimated usage	Rate (dollars)	Estimated cost (dollars)
Total equipment cost			

6. Travel.

Identify each trip proposed and the persons (or labor categories) designated to make each trip. Identify transportation and per diem rates.

(a) Transportation:

No. of persons	Location		Mileage or fare	Cost per trip	Estimated cost (dollars)
	From	To			
Transportation subtotal					

(b) Subsistence:

No. of persons	Days	Per diem	Estimated cost (dollars)	Reference

(c) Miscellaneous Travel Expenses (incl. car rental, taxis, airport limos., etc.):

Type of expense	Estimated cost (dollars)
Miscellaneous subtotal	
Total travel and per diem	

7. Individual consultant service

Identify the contemplated consultants(s). State the amount of service estimated to be required and the consultant's quoted daily or hourly rate.

Name	Estimated hours/days	Rate	Estimated cost (dollars)
Total consultant			

8. Other direct costs

List all other direct charge costs not otherwise included in the categories described above (e.g., services of specialized trades, computer services, preservation, packaging and packing, leasing of equipment) and provide bases for pricing.

Item description	Estimated quantity	Unit amount	Estimated cost (dollars)	Reference
Total other direct cost				

9. General and administrative expense

Use the G&A rate and base approved by a Government audit agency for use in proposals. If no such approval has been given, or if the approval is more than 12 months old, furnish data supporting the proposed rates. The data shall include a breakdown of the items comprising G&A and the base(s) upon which the burden(s) is (are) computed.

G&A Rate——% of Cost Element Nos.——
Reference——

10. Royalties

$ ——————————

11, Contract facilities capital and cost of money

$ ——————————

(End of Provision)

1252.216-71 Evaluation of proposals subject to economic price adjustment.

As prescribed in 1216.203-471 insert the following provision in all solicitations that contain an economic price adjustment clause:

Evaluation of Proposals Subject to Economic Price Adjustment (Apr. 1984)

Notwithstanding the requirements of the clause entitled "*(insert the title of the clause for economic price adjustment)", proposals shall be evaluated on the basis of quoted prices without an amount for economic price adjustment being added. Proposals which provide for a ceiling lower than that stipulated, if a ceiling is stipulated in the clause, will also be evaluated on this basis, but any resultant award will be made at the lower ceiling. Proposals which provide for adjustment that may exceed the maximum adjustment stipulated, if a maximum is stipulated in the clause, or which limit or delete the downward adjustment, if a downward adjustment is stipulated in the clause, shall be rejected as nonresponsive.

(End of provision)

1252.216-72 Estimated cost, base fee, and award fee.

As prescribed in 1216.404-270(b), insert the following clause in solicitations and contracts when a cost plus award fee contract is contemplated:

Estimated Cost, Base Fee, and Award Fee (Apr 1984)

The estimated cost of this contract is $(insert amount). A base fee of $(insert amount) and a maximum Award Fee of $(insert amount) are payable in accordance with 1252.216-73 "Payment of Base and Award Fee."

(End of clause)

1252.216-73 Payment of base and award fee.

As prescribed in 1216.404-270(b), insert the following clause in solicitations and contracts when a cost plus award fee contract is contemplated:

Payment of Base and Award Fee (Apr 1984)

(a) The Government will make payment of the base fee in (insert number) increments. The amount payable shall be based on the progress as determined by the Contracting Officer and shall be subject to any withholdings as may be provided for elsewhere in this contract.

(b) The Government will promptly make payment of any Award Fee upon the submission by the Contractor to the Contracting Officer, or his authorized representative, of a public voucher or invoice in the amount of the total fee earned for the period evaluated. Payment shall be made without the need for a contract modification.

(End of clause)

1252.216-74 Determination of award fee earned.

As prescribed in 1216.404-270(b), insert the following clause in solicitations and contracts when a cost plus award fee contract is contemplated.

Determination of Award Fee Earned (Apr 1984)

(a) The Government shall, at the conclusion of each specified evaluation period(s), evaluate the Contractor's performance for a determination of award fee earned. The Contractor agrees that the determination as to the amount of award fee earned will be made by the Government Fee Determination Official (FDO) and such determination concerning the amount of award fee earned is binding on both parties and shall not be subject to appeal under the "Disputes" clause or to any board or court.

(b) It is agreed that the evaluation of Contractor performance shall be in accordance with the Performance Evaluation Plan referenced in the article entitled "Performance Evaluation Plan" and that the contractor shall be promptly advised in writing of the determination and the reasons why it was or was not earned. It is further agreed that the Contractor may submit a self-evaluation of performance of each period under consideration. While it is recognized that the basis for determination of the fee shall be the evaluation by the Government, any self-evaluation which is received within (insert number) days after the end of the period being evaluated may be given such consideration, if any, as the FDO shall find appropriate.

(c) The FDO may, in his/her discretion, specify in any fee determination that fee not earned during the period evaluated may be accumulated and be available for allocation to one or more subsequent periods. In that

event, the "Distribution of Award Fee" shall be adjusted to reflect such allocations.

(End of clause)

1252.216-75 Performance Evaluation plan.

As prescribed in 1216.404-270(b), insert the following clause in solicitations and contracts when a cost plus award fee contract is contemplated:

Performance Evaluation Plan (Apr. 1984)

(a) A Contractor Performance Evaluation Plan, upon which the determination of award fee shall be based (including the criteria to be considered under each area evaluated and the percentage of award fee, if any, available for each area), will be unilaterally established by the Government. A copy of the plan shall be provided to the Contractor (insert number) calendar days prior to the start of the first evaluation period.

(b) The Performance Evaluation Plan shall set forth the criteria upon which the Contractor will be evaluated for performance relating to any: (1) Technical (including Schedule) requirements if appropriate; (2) Management; and (3) Cost Functions selected for evaluation.

(c) The Performance Evaluation Plan may, consistent with the contract, be revised unilaterally by the Government at any time during the period of performance. Notification of such changes shall be provided to the Contractor (insert number) calendar days prior to the start of the evaluation period to which the change will apply.

(End of clause)

1252.216-76 Distribution of Award Fee.

As prescribed in 1216.404-270(b), insert the following clause in solicitations and contracts when a cost plus award fee contract is contemplated:

Distribution of Award Fee (Apr. 1984)

(a) The total amount of award fee available under this contract is assigned to the following evaluation periods in the following amounts:

Evaluation Period ——————————
Available Award Fee ——————————

(b) Payment of the base fee and award fee shall be made, provided that after payment of 85 percent of the base fee and potential award fee, the Government may withhold further payment of the base fee and award fee until a reserve is set aside in an amount that the Government considers necessary to protect its interest. This reserve shall not exceed 15 percent of the total base fee and potential award fee or $100,000, whichever is less.

(c) In the event of contract termination, either in whole or in part, the amount of award fee available shall represent a pro-rata distribution associated with evaluation period activities or events as determined by the Fee Determination Official.

(End of clause)

1252.217-71 Delivery and Shifting of Vessel.

As prescribed at 1217.7001(a) insert the following clause in solicitations and contracts:

Delivery and Shifting of Vessel (Apr. 1984)

The Government shall deliver the vessel to the Contractor at his place of business. Upon completion of the work the Government shall accept delivery of the vessel at the Contractor's place of business. The Contractor shall provide, at no additional charge, upon 24 hours' advance notice, a tug or tugs and docking pilot, acceptable to the contractor officer, to assist in handling the vessel between (to and from) the Contractor's plant and the nearest point in a waterway regularly navigated by vessels of equal or greater draft and length. While the vessel is in the hands of the Contractor, any necessary towage, cartage, or other transportation between ship and shop or elsewhere, which may be incident to the work herein specified, shall be furnished by the Contractor without additional charge to the Government.

[End of clause)

1252.217-72 Performance.

As prescribed at 1217.7001(a) insert the following clause in solicitations and contracts:

Performance (Apr. 1984)

(a) The Contractor shall make the necessary arrangements for receiving the vessel on the specified date, such arrangements to be satisfactory to the contracting officer or his duly authorized representative.

(b) The Contractor shall promptly commence the work required by the contract and shall diligently prosecute same to completion to the satisfaction of the contracting officer.

(c) Except as otherwise provided in this contract, the Contractor shall furnish all necessary material, labor, services, equipment, supplies, power, accessories, facilities and such other things and services as are necessary for accomplishing the work specified in this contract subject to the right reserved in the Government under the "Government-furnished Property" clause of the contract.

(d) The Contractor shall without charge and without specific requirement therefor:

(1) Make available at the plant to personnel of the vessel, while in drydock or on a marine railway, toilet and similar facilities acceptable to the contracting officer as adequate in number and sanitary standards. For cutters or boats fitted with pollution abatement systems, provide for disposal of shipboard waste (non-oily) by installing a portable hose between the cutter's or boat's weather deck sewage overboard discharge connection and either a shore-side holding facility, sewage treatment plant, or a municipal sewage system. Directing of shipboard waste to waters covered by the Federal Water Pollution Control Act, as amended, will not be allowed. In freezing conditions the Contractor will provide protection to the hook up system.

(2) Supply and maintain, in such condition as the contracting officer may reasonably require, suitable brows and gangways from the pier, drydock or marine railway to the vessel (access to vessel shall be lighted by the Contractor during the periods of darkness).

(3) Treat salvage, scrap, or other ship's material of the Government resulting from performance of work as though they were items of Government-furnished property in accordance with provisions of the "Government-furnished Property" clause of this contract.

(4) Perform, or pay the cost of, any repairs, reconditioning or replacements necessary as a result of the use of the Contractor of any of the vessel's machinery, equipment or fittings including, but not limited to winches, pumps, rigging or pipelines.

(e) The Contractor shall conduct dock and sea trials of the vessel as required by the specifications. During such trials the vessel shall be under the control of the vessel's commander and crew with representatives of the Contractor and the Government on board to determine whether or not the work done by the Contractor has been satisfactorily performed. Dock and sea trials not specified herein which the Contractor requires for his own benefit shall not be undertaken by the Contractor without prior notice to and approval of the contracting officer; any such dock trials shall be conducted at the risk and expense of the Contractor.

(End of clause)

1252.217-73 Inspection and Manner of Doing Work.

As prescribed at 1217.7001(a) insert the following clause in solicitations and contracts:

Inspection and Manner of Doing Work (Apr. 1984)

(a) All work and material shall be subject to the approval of the contracting officer or his duly authorized representative. Work shall be performed in accordance with the plans and specifications of this contract as modified by any change order issued under the "Changes" clause in this contract.

(b) Unless otherwise specifically provided for herein, all operational practices of the Contractor and all workmanship and material, equipment and articles used in the performance of work thereunder shall be in accordance with American Bureau of Shipping Rules for Building and Classing Steel Vessels, U.S. Coast Guard Marine Engineering Regulations and Material Specifications (Subchapter J, 46 CFR), U.S. Coast Guard Electrical Engineering Regulations (Subchapter J, 46 CFR), U.S. Coast Guard Navigation and Vessel Inspection Circular No. 4-60 (Part IV—Notes on Repair), and U.S.P.H.S. Handbook on Sanitation in Vessel Construction, in effect at the time of the Contractor's submission of bid (or acceptance of the contract, if negotiated), and the best commercial maritime practices, except when Navy specifications are specified, in which case such standards of

material and workmanship shall be followed. Where the detailed specifications do not require a Navy standard, or the requirements are not clearly or specifically covered by one of the aforementioned standards, the contracting officer or his designated representative shall prescribe a Navy or industrial standard for the work wherever applicable, and the decision shall be final: *Provided,* however, that where the requirements of the representative for development of detailed drawings, selection of materials and equipment, standards of workmanship, which are not specifically required in the specifications result in a change in unit price, total contract price, quantity, or delivery schedule, the contracting officer will be advised accordingly and the Contractor will not proceed with the work until specifically directed to do so by the contracting officer.

(c) All material and workmanship shall be subject to inspection and test at all times during the Contractor's performance of the work to determine their quality, and suitability for the purpose intended and compliance with the contract. In case any material or workmanship furnished by the Contractor is found to be defective prior to redelivery of the vessel, or not in accordance with the requirements of the contract, the Government, in addition to its rights under any "Guarantee" clause which may be contained in this contract shall have the right prior to redelivery of the vessel to reject such material or workmanship, and to require its correction or replacement by the Contractor at the Contractor's cost and expense. If the Contractor fails to proceed promptly with the replacement or correction of such material or workmanship, as required by the contracting officer, the Government may, by contract or otherwise, replace or correct such material or workmanship and charge to the Contractor the excess cost occasioned the Government thereby. The Contractor shall provide and maintain an inspection system acceptable to the Government covering the work specified in the contract. Records of all inspection work by the Contractor shall be kept complete and available to the Government during the performance of the contract and for a period of sixty days after completion of all work required by the contract.

(d) No welding, including welding and brazing, shall be permitted in connection with repairs, completions, alterations, or additions to hulls, machinery, or components of vessels, by a welder or procedure not qualified in accordance with MIL-STD-248C. Procedure qualifications tests shall be conducted in accordance with the requirements of MIL-STD-248C.

(e) The Contractor shall exercise reasonable care to protect the vessel from fire, and the Contractor shall maintain a reasonable system of inspection over the activities of welders, burners, riveters, painters, plumbers and similar workers, particularly where such activities are undertaken in the vicinity of the vessel's magazine, fuel oil tanks or storerooms containing flammable material. A reasonable number of hose lines shall be maintained by the Contractor ready for immediate use on the vessel at all times while the vessels is berthed alongside the Contractor's pier or in drydock or on a marine railway. All tanks under alteration or repair shall be cleaned, washed and steamed out or otherwise made safe by the Contractor if and to the extent necessary, and the contracting officer shall be furnished with a "gas-free" or "safe-for-hotwork" certificate before any hotwork is done on a tank. Unless otherwise provided in this contract, the Contractor shall at all times maintain a reasonable fire watch about the vessel, including a fire watch on the vessel while work is being performed thereon.

(f) The Contractor shall place proper safeguards and/or effect such safety precautions as necessary, including suitable and sufficient lighting for the prevention of accidents or injury to persons or property during the prosecution of work under this contract and/or from time of receipt of the vessel until acceptance or work performed by the Government.

(g) Except as otherwise provided in this contract, when the vessel is in the custody of the Contractor or in drydock or on a marine railway and the temperature becomes as low as 35 degrees Fahrenheit, the Contractor shall keep all pipelines, fixtures, traps, tanks, and other receptacles on or hooked up to the vessel drained to avoid damage from freezing, or if this is not practical, the vessels shall be kept heated to prevent such damage. It shall be the Contractor's responsibility to insure adequate circulation in the firemain water supply to prevent freezing of the water lines. The vessel's stern tube and propeller hubs shall be protected from frost damage by applied heat through the use of a salamander or other proper means.

(h) The work shall, whenever practicable, be performed in such manner as not to interfere with the berthing and messing of civilian or military personnel attached to the vessel, and provisions shall be made so that personnel assigned shall have access to the vessel at all times, it being understood that such personnel will not interfere with the work or the Contractor's workmen. The Contractor shall provide messing and sanitary facilities for his employees, subcontractors and agents separate from the vessel.

(i) The Government does not guarantee the correctness of the dimensions, sizes and shapes given in any sketches, drawings, plans or specifications prepared or furnished by the Government. The Contractor shall be responsible for the correctness of the shape, sizes and dimensions of parts to be furnished hereunder, other than those furnished by the Government.

(j) The Contractor shall at all times keep the site of the work on the vessel free from accumulation of waste material or rubbish caused by his employees or the work, and at the completion shall remove all rubbish from and about the site of the work and shall leave the work in its immediate vicinity "broom clean" unless more exactly specified in this contract.

(k) Any question regarding or rising out of the interpretations of plans and specifications of this contract or any discrepancies between the plans and specifications shall be determined by the contracting officer or his duly authorized representative; *Provided,* however, that any interpretations or determinations by the authorized representative which affect the price or delivery time specified in this contract must be approved in writing by the contracting officer prior to proceedings with the requirements of such interpretations or determinations.

(l) While in drydock or on a marine railway, the commanding officer of the vessel, if then in commission, shall be responsible for the proper closing of openings to the ship's bottom upon which no work is being done by the Contractor. The Contractor shall be responsible for the closing, before the end of working hours, of all valves and openings upon which work is being done by its workmen when such closing is practicable. The Contractor shall keep the commanding officer cognizant of the closure status of all valves and openings upon which the Contractor's workmen have been working.

(End of clause)

1252.217-17 Subcontracts.

As prescribed at 1217.7001(a) insert the following clause in solicitations and contracts:

Subcontracts (Apr. 1984)

(a) Nothing contained in the contract shall be construed as creating any contractual relationship between any subcontractor and the Government. The divisions or sections of the specifications are not intended to control the Contractor in dividing the work among subcontractors or to limit the work performed by any trade.

(b) The Contractor shall be responsible to the Government for acts and omissions of his own employees, and of subcontractors and their employees. He shall also be responsible for the coordination of the work of the trades, subcontractors, and material men.

(c) The Contractor shall, without additional expense to the Government, employ specialty subcontractors where required by the specifications.

(d) The Government or its representatives will not undertake to settle any differences between the Contractor and his subcontractors, or between subcontractors.

(End of clause)

1252.217-75 Lay Days.

As prescribed at 1217.7001(a) insert the following clause in solicitations and contracts:

Lay Days (Apr. 1984)

(a) Lay day time will be paid by the Government at the Contractor's stipulated bid price for this item of the contract when the vessel remains on the dry dock or Marine Railway as a result of any change that involves work in addition to that required under the basic contract.

(b) No cost for lay day time shall be paid until all accepted items of the basic contract for which a price was established by the Contractor and for which docking of the vessel was required have been satisfactorily completed.

(c) Days of hauling out and floating, whatever the hour, shall not be paid as lay day time, and days when no work is performed by the Contractor shall not be paid as lay day time.

(d) Payment of lay day time shall constitute complete compensation for all cost except for the direct cost of performing the changed work.

(End of clause)

1252.217-76 Liability and insurance.

As prescribed at 1217.7001(a) insert the following clause in solicitations and contracts:

Liability and Insurance (Apr. 1984)

(a) The Contractor shall exercise reasonable care and use his best efforts to prevent accidents, injury or damage to all employees, persons and property, in and about the work, and to the vessel or part thereof upon which work is done.

(b) The Contractor shall be responsible for and make good at his own cost and expense any and all loss of or damage of whatsoever nature to the vessel (or part thereof), its equipment, moveable stores and cargo, and Government-owned material and equipment for the repair, completion, alteration of or addition to the vessel in the possession of the Contractor, whether at the plant or elsewhere, arising or growing out of the performance of the work, except where the Contractor can affirmatively show that such loss or damage was due to causes beyond the Contractor's control, was proximately caused by the fault or negligence of agents or employees of the Government acting within the scope of their authority, or which loss or damage the Contractor by exercise of reasonable care was unable to prevent; *Provided,* that the Contractor shall not be responsible for any such loss or damage discovered after redelivery of the vessel unless: (i) Such loss or damage is discovered within sixty (60) days after redelivery of the vessel, and (ii) such loss or damage is affirmatively shown to have been the result of the fault or negligence of the Contractor. To induce the Contractor to perform the work for the compensation provided, it is specifically agreed that the Contractor's actions, claims, costs or demands resulting from death, personal injury, and property damage to which the Government, its agencies and instrumentalities, the vessel or its owner may be subject or put by reason of damage or injury (including death) to the property or person of any one other than the Government, its agencies, instrumentalities and personnel, the vessel or its owner, arising or resulting in whole or in part from the fault, negligence, wrongful act or wrongful omission of the Contractor, or any subcontractor, his or their servants, agents or employees; *Provided,* that the Contractor's obligation to indemnify under this paragraph (c) shall not exceed the sum of $300,000 on account of any one accident or occurrence in respect of any one vessel. Such indemnity shall include, without limitation, suits, actions, claims, costs or demands of any kind whatsoever, resulting from death, personal injury or property damage occurring during the period of performance of work on the vessel or within 60 days after redelivery of the vessel; and with respect to any such suits, actions, claims, cost, or demands resulting from death, personal injury or property damage occurring after the expiration of such period, the rights and liabilities of the Government and the Contractor shall be as determined by other provisions of this contract and by law; *Provided,* however, that such indemnity shall apply to death occurring after such period which results from any personal injury received during the period covered by the Contractor's indemnity as provided herein.

(d) The Contractor shall, at his own expense, procure, and thereafter maintain such casualty, accident and liability insurance, in such forms and amounts as may be approved by the contracting officer, insuring the performance of his obligations under paragraph (c) of this clause. In addition, the Contractor shall at his own expense procure and thereafter aggregate liability on account of loss of or damage to the vessel (or part thereof), its equipment, movable stores and cargo and said Government-owned materials and equipment shall in no event exceed the sum of $300,000, and the Government assumes as to the Contractor the risk of loss or damage (including, but not limited to loss or damage from negligence of whatsover degree of the Contractor's servants, employees, agents or subcontractors but specifically excluding loss or damage from willful misconduct or lack of good faith on the part of any of the Contractor's directors, officers and any of his managers, superintendents or other equivalent representatives who have supervision or direction of: (i) All or substantially all of the Contractor's business of (ii) all or substantially all or the Contractor's operation at any one plant) to the vessel (or part thereof), its equipment, moveable stores and cargo and said Government-owned materials and equipment in excess of $300,000, *Provided,* however, that as to such risk assumed and borne by the Government, the Government shall be subrogated to any claim, demand or cause of action against third persons which exists in favor of the Contractor, and the Contractor shall, if required, execute a formal assignment or transfer of claims, demands or causes of action; *Provided, further,* that nothing contained in this paragraph shall create or give rise to any right, privilege or power in any person except the Contractor, nor shall any person (except the Contractor) be or become entitled thereby to proceed directly aganist the Government, or join the Government as a co-defendent in any action against the Contractor brought to determine the Contractor's liability or for any other purpose.

(c) The Contractor's indemnifies and holds harmless the Government, its agencies and instrumentalities, the vessel and its owners against all suits, actions, claims, costs or demands (including, without limitation, suits, maintain such ship repairer's legal liability insurance as may be necessary to insure the Contractor against his liability as ship repairer in the amount of $300,000 or the value of the vessel as determined by the contracting officer, whichever is the lesser, with respect to the each vessel on which work is performed: *Provided,* that, in the discretion of the contracting officer, no such insurance need be procured whenever the contract requires work on parts of a vessel only and such work is to be performed at a plant other than the site of the vessel. Further, the Contractor shall procure and maintain in force Workmen's Compensation Insurance (or its equivalent) covering his employees engaged on the work and shall insure the procurement and maintenance of such insurance by all subcontractors engaged on the work. The Contractor shall provide such evidence of such insurance as may be, from time to time, required by the contracting officer.

(e) No allowance shall be made the Contractor in the contract price for the inclusion of any premium expense or charge for any reserve made on account of self insurance for coverage against any risk assumed by the Government under this clause.

(f) As soon as practicable after the occurrence of any loss or damage the risk of which the Government has assumed, written notice of such loss or damage shall be given by the Contractor to the contracting officer, which notice shall contain full particulars of such loss or damage. If claim is made or suit is brought thereafter against the Contractor as a result or because of such event, the Contractor shall immediately deliver to the Government every demand, notice, summons or other process received by him or his representatives. The Contractor shall cooperate with the Government and, upon the Government's request, shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits; and the Government shall pay to the Contractor the expense, other than the cost of maintaining the Contractor's usual organization, incurred in so doing. The Contractor shall not, except at his own cost, voluntarily make any payment, assume any obligation, or incur any expense other than shall be imperative for the protection of the vessel or vessels at the time of said occurrence of such event.

(End of clause)

1252.217-77 Title.

As prescribed at 1217.7001(a) insert the following clause in solicitations and contracts:

Title (April 1984)

Unless title to materials and equipment acquired or produced for, or allocated to, the performance of this contract shall have vested previously in the Government by virtue of other provisions of this contract, title to all materials and equipment to be incorporated in any vessel or part thereof, or to be placed upon any vessel or part thereof in accordance with the requirements of the contract, shall vest in the Government upon delivery thereof at the plant or such other location as may be specified in the Contract for the performance of the work: *Provided,* however, that the provisions of this clause or other provisions of this contract shall not be construed as relieving the Contractor from

the full responsibility for all such Contractor-furnished materials and equipment or the restoration of any damaged work or as a waiver of the right of the Government to require the fulfillment of all the terms of this contract, it being expressly understood and agreed that the Contractor shall assume without limitation the risk of loss for any such materials and equipment until such time as all work is completed and accepted by the Government and the vessel is redelivered to the Government. Upon completion of the contract, or with the approval of the contracting officer at any time during the performance of the contract, all such Contractor-furnished materials and equipment not incorporated in any vessel or part thereof or not placed upon any vessel or part thereof, in accordance with the requirements of the contract, shall become the property of the Contractor, except those materials and equipment the cost of which has been reimbursed by the Government to the Contractor.

(End of clause)

1252.217-78 Discharge of liens.

As prescribed at 1217.7001(a) insert the following clause in solicitations and contracts:

Discharge of Liens (Apr. 1984)

The Contractor shall immediately discharge or cause to be discharged any lien or right *in rem* of any kind, other than in favor of the Government, which at any time exists or arises in connection with work done or materials furnished under this contract with respect to the machinery, fittings, equipment or materials for any vessel. If any such lien or right *in rem* is not immediately discharged, the Government may discharge or cause to be discharged such lien or right at the expense of the Contractor.

(End of clause)

1252.217-79 Delays.

As prescribed at 1217.7001(a) insert the following clause in solicitations and contracts:

Delays (Apr. 1984)

When during the performance of this contract the Contractor is required to delay work on a vessel temporarily, due to orders or actions of the Government respecting stoppage of work to permit shifting the vessel, stoppage of hot work to permit bunkering, stoppage of work due to embarking or debarking passengers and loading or discharging cargo, and the Contractor is not given sufficient advance notice or is otherwise unable to avoid incurring additional costs on account thereof, an equitable adjustment shall be made in the price of the contract pursuant to the "Changes" clause.

(End of clause)

1252.217-701 Department of Labor Safety and Health Regulations for Ship Repairing.

As prescribed at 1217.7001(a) insert the following clause in solicitations and contracts:

Department of Labor Safety and Health Regulations for Ship Repairing (Apr. 1984)

Attention of the contractor is directed to Pub. L. 85-742, approved August 23, 1958 (72 Stat. 835, 33 U.S.C. 941), amending section 41 of the Longshoremen's and Harbor Worker's Compensation Act and to the Safety and Health Regulations for Ship Repairing promulgated thereunder by the Secretary of Labor (29 CFR Part 1501). These regulations apply to all ship repair and related work, as defined in the regulations, performed under this contract on the navigable waters of the United States including any drydock or marine railway. Nothing contained in this contract shall be construed as relieving the Contractor from any obligations which it may have for compliance with the aforesaid regulations.

(End of clause)

1252.217-702 Guarantee.

As prescribed at 1217.7001(b), insert the following clause in solicitations and contracts:

Guarantee (Apr. 1984)

In case any work done or materials furnished by the Contractor under this contract on or for any vessel or the equipment thereof shall, within *—days from date of delivery of the vessel by the Contractor, prove defective or deficient, such defects or deficiencies shall, as required by the Government, be corrected and repaired by the Contractor at his expense to the satisfaction of the contracting officer: *Provided,* however, that with respect to any individual work item incomplete at the delivery of the vessel the guarantee period shall run from the date of completion of such item. The Government shall, if and when practicable, afford the Contractor an opportunity to effect such corrections and repairs himself, but when, because of conditions or the location of the vessel or for any other reason, it is impracticable or undesirable to return it to the Contractor, or the Contractor fails to proceed promptly with any such repairs as directed by the contracting officer, such corrections and repairs shall be effected at the Contractor's expense at such other locations as the Government may determine. Where corrections and repairs are to be effected by other than the Contractor, due to nonreturn of the vessel to him, the Contractor's liability may be discharged by an equitable deduction in the price of the job. The Contractor's liability under this clause shall, however, in no event extent beyond the correction of such defects or deficiencies or payment for the cost thereof: *Provided,* however, that nothing in this clause shall be deemed to limit or relieve the Contractor of his responsibilities as set forth in the clause entitled "Liability and Insurance" and the clause entitled "Inspection" of this contract. At the option of the contracting officer, defects and deficiencies may be left in their then condition, and an equitable deduction from the Contract price, as agreed by the Contractor and contracting officer, shall be made therefor. If the Contractor and contracting officer fail to agree upon the equitable deduction from the contract price to be made, the dispute shall be determined as provided in the "Disputes" clause of this contract.

(End of clause)

* To be inserted by the contracting officer (see 1217.7001(b)).

1252.217-703 Index for specifications.

As prescribed at 1217.7001(c), insert the following clause in solicitations and contracts:

Index for Specifications (Apr. 1984)

If an index or table of contents is furnished in connection with specifications, it is understood that such index or table of contents is for convenience only. Its accuracy and completeness is not guaranteed, and it is not to be considered as part of the specifications. In case of discrepancy between the index or table of contents and the specifications, the specifications shall govern.

(End of clause)

1252.222-71 Strikes or Picketing Affecting Timely Completion of the Contract Work.

As prescribed in 1222.103-5(a) insert the following in solicitations and contracts:

Strikes or Picketing Affecting Timely Completion of the Contract Work (Apr. 1984)

Notwithstanding any other provision hereof, the Contractor is responsible for delays arising out of labor disputes, including but not limited to strikes, if such disputes are reasonably avoidable. A delay caused by a strike or by picketing which constitutes an unfair labor practice is not excusable unless the Contractor takes all reasonable and appropriate action to end such a strike or picketing, such as the filing of a charge with the National Labor Relations Board, the use of other available Government procedures, and the use of private boards or organizations for the settlement of disputes.

(End of Clause)

1252.222-72 Strikes or Picketing Affecting Access to FAA Facility.

As prescribed in 1222.103-5(b), insert the following in solicitations and contracts:

Strikes or Picketing Affecting Access to FAA Facility (Apr. 1984)

If Contracting Officer notifies the Contractor in writing that a strike or picketing: (1) Is directed at the Contractor or any subcontractor or any employee of either, and (2) impedes or threatens to impede access by any person to the DOT facility or facilities where the site(s) of the work is (are) located, the Contractor shall take all appropriate action to end such strike or picketing, including, if necessary, the filing of a charge of unfair labor practice with the National Labor Relations Board of the utilization of any other available judicial or administrative remedies.

(End of Clause)

1252.222-73 Contract Work Hours and Safety Standards Act—Overtime Compensation.

As prescribed in 1222.305 insert the following in solicitations and contracts:

Contract Work Hours and Safety Standards Act—Overtime Compensation (Apr. 1984)

This contract, to the extent that it is of a character specified in the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), is subject to the following provisions and to all other applicable provisions and exceptions of such Act and the regulations of the Secretary of Labor thereunder.

(a) *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 8 hours in any calendar day or in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or in excess of forty hours in such workweek, whichever is greater.

(b) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the provisions set forth in paragraph (a) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the provisions set forth in paragraph (a) of this clause in the sum of $10 for each calendar day for which such individual was required or permitted to work in excess of 8 hours or in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this clause.

(c) *Withholding for unpaid wages and liquidated damages.* The Contracting Officer shall upon his/her own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same Prime Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same Prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in paragraph (b) of this clause.

(d) *Subcontracts.* The Contractor or subcontractor shall insert in any subcontracts the text of paragraphs (a) through (d) of this clause and also a clause requiring the subcontractors to include that text in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor of whatever tier with paragraphs (a) through (d) of this clause.

(End of Clause)

1252.222-74 Payrolls and Basic Records.

As prescribed in 1222.305 insert the following in solicitations and contracts:

Payrolls and Basic Records (Apr. 1984)

(a) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the contract work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classification, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

(b) The records to be maintained under paragraph (a) of this clause shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by the Contracting Officer or the Department of Labor or their authorized representatives. The Contractor and subcontractors will permit such representatives to interview employees during working hours on the job.

(c) The Contractor shall insert paragraphs (a) through (c) of this clause in all subcontracts, and shall require their inclusion in all subcontracts of any tier.

(End of clause)

1252.223-71 Accident and Fire Reporting.

As prescribed in 1223.7001(a) insert the following in solicitations and contracts:

Accident and Fire Reporting (Apr. 1984)

(a) The Contractor shall report to the Contracting Officer any accident or fire occurring at the site of the work which causes:

1. A fatality or as much as one lost workday on the part of any employee of the Contractor or any subcontractor at any tier;

2. Damage of $1,000 or more to Federal property either real or personal;

3. Damage to Contractor or subcontractor owned or leased motor vehicles or mobile equipment;

4. Damage for which a contract time extension may be requested.

(b) Accident and fire reports required by paragraph (a) above shall be accomplished by the following means:

1. Accidents or fires resulting in a death, hospitalization of five or more persons, or destruction of Federal property (either real or personal) the total value of which is estimated at $100,000 or more, shall be reported immediately by telephone to the Contracting Officer or his authorized representative and shall be confirmed by telegram within 24 hours to the Contracting Officer. Such telegram shall state all known facts as to extent of injury and damage and as to cause of the accident or fire.

2. Other accident and fire reports required by paragraph (a) above may be reported by the Contractor using a state, private insurance carrier, or contractor accident report form which provides for the statement of: (1) The extent of injury; and (2) the damage and cause of the accident or fire. Such report shall be mailed or otherwise delivered to the Contracting Officer within 48 hours of the occurrence of the accident or fire.

(c) The contractor shall assure compliance by subcontractors at all tiers with the requirements of this clause.

(End of clause)

1252.223-72 Protection of Human Subjects Compliance.

As prescribed in 1223.7001(b) insert the following in solicitations and contracts:

Protection of Human Subjects Compliance (Apr. 1984)

The contractor shall comply with the NHTSA principles and procedures for the protection of human subjects participating in activities supported directly or indirectly by grants or contracts from NHTSA. In fulfillment of its assurance:

A committee competent to review projects and activities that involve human subjects shall be established and maintained by the contractor.

The committee shall be assigned responsibility to determine for each activity planned and conducted that:

The rights and welfare of subjects are adequately protected.

The risks to subjects are outweighed by potential benefits.

The informed consent of subjects shall be obtained by methods that are adequate and appropriate.

Committee reviews are to be conducted with objectivity and in a manner to ensure the exercise of independent judgment of the members. Members shall be excluded from reviews of projects or activities in which they have an active role or a conflict of interests.

Continuing constructive communication between the committee and the project directors must be maintained as a means of safeguarding the rights and welfare of subjects.

Facilities and professional attention required for subjects who may suffer physical, psychological, or ther injury as a result of participation in an activity shall be provided.

The committee shall maintain records of committee reviews of applications and active projects, of documentation of informed consent, and of other documentation that may pertain to the selection, participation, and protection of subjects. Detailed records shall be maintained of circumstances of any

reviews that adversely affect the rights or welfare of the individual subjects. Such materials shall be made available to NHTSA upon request.

Periodic reviews shall be conducted by the contractor to assure, through appropriate administrative overview, that the practices and procedures designed for the protection of the rights and welfare of subjects are being effectively applied.

(End of clause)

1252.227-71 Rights in Data—General.

(a) As prescribed in 1227.405(a)(1) insert the following clause:

(a) Rights in Data—General (Apr. 1984)

(a) *Definitions.*

"Data," as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term shall be construed broadly; it includes all writings within the scope of Article 1, Section 8, Clause 8 of the United States Constitution, as well as all works subject to copyright under Title 17, United States Code. The term does not include information incidental to contract administration, such as contract cost analysis or financial, business, and management information required for contract administration purposes.

"Computer software," as used in this clause, means computer programs, computer data bases, and documentation thereof.

"Form, fit, and function data," as used in this clause, means data describing, and sufficient to enable, physical and functional interchangeability; as well as data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements.

"Limited-rights data," as used in this clause, means data that embodies trade secrets or is commercial or financial and confidential or privileged, but only to the extent that the data pertains to items, components, or processess developed at private expense, including minor modifications thereof.

"Restricted computer software," as used in this clause, means computer software developed at private expense and that is a trade secret, is commercial or financial data which is confidential or privileged, or is published copyrighted computer software.

"Unlimited rights," as used in this clause, means the right to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

"Limited rights," as used in this clause, means the rights of the Government in limited-rights data as set forth in the Limited Rights Notice of subparagraph (g)(2) if included in this clause.

"Restricted rights," as used in this clause, means the rights of the Government in restricted computer software, as set forth in a Restricted Rights Notice of subparagraph (g)(3) if included in this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract.

(b) *Allocation of rights.* (1) Except as provided in paragraph (c) below regarding copyright, the Government shall have unlimited rights in—

(i) Data first produced in the performance of this contract;

(ii) Form, fit, and function data delivered under this contract;

(iii) Data delivered under this contract (except for restricted computer software) that constitutes manuals or instructional and training material for installation, operation, or routine maintenance and repair; and

(iv) All other data delivered under this contract unless otherwise provided for limited-rights data or restricted computer software in accordance with paragraph (g) below.

(2) The contractor shall have the right to—

(i) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract unless provided otherwise in paragraph (d) below;

(ii) Protect from unauthorized disclosure and use that data which is limited-rights data or restricted computer software to the extent provided in paragraph (g) below;

(iii) Substantiate use of, add, or correct limited rights or restricted rights notices, and to take other appropriate action, in accordance with paragraphs (e) and (f) below; and

(iv) Establish claim to copyright subsisting in data first produced in the performance of this contract to the extent provided in subparagraph (c)(1) below.

(c) *Copyright*—(1) *Data first produced in the performance of this contract.* Except as otherwise specifically provided in this contract, the Contractor may establish claim to copyright subsisting in any data first produced in the performance of this contract. When claim to copyright is made, the contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 to the data when such data is delivered to the Government, and include that notice as well as acknowledgement of Government sponsorship on the data when published or deposited in the U.S. Copyright Office. The contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government, for all such data.

(2) *Data not first produced in the performance of this contract.* The contractor shall not, without prior written permission of the contracting officer, incorporate into data delivered under this contract any data not first produced in the performance of this contract and which contains the copyright notice of 17 U.S.C. 401 or 402 unless the contractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (1) above; *provided,* however, that if such data is computer software, the Government shall acquire a copyright license as set forth in subparagraph (g)(3) below if included in this contract, or as otherwise may be provided in a collateral agreement incorporated in or made part of this contract.

(3) The Government agrees not to remove any copyright notices placed on data pursuant to this paragraph (c), and to include such notices on all reproductions of the data.

(d) *Release, publication and use of data.* (1) The contractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the contractor in the performance of this contract, except as may be provided otherwise below in this paragraph.

(2) The contractor agrees that to the extent it receives or is given access to data necessary for the performance of this contract which contains restrictive markings, the contractor shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the contracting officer.

(e) *Unauthorized marking of data.* (1) Notwithstanding any other provisions of this contract concerning inspection or acceptance, if any data delivered under this contract is marked with the notices specified in subparagraphs (g)(2) or (g)(3) below and use of such is not authorized by this clause, the contracting officer may either return the data to the contractor, or cancel or ignore the markings. However, markings will not be cancelled or ignored unless—

(i) The contracting officer makes written inquiry to the contractor concerning the propriety of the markings, providing the contractor 30 days to respond; and

(ii) The contractor fails to respond within the 30 day period (or such longer time approved by the contracting officer for good cause shown), or the contractor's response fails to substantiate the propriety of the markings.

(2) The contracting officer shall consider the contractor's response, if any, and determine whether the markings shall be cancelled or ignored. The contracting officer shall furnish written notice to the contractor of the determination, which shall be a final decision under the Contract Disputes Act.

(3) The above procedures may be modified in accordance with DOT administrations' regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request for data thereunder.

(f) *Omitted or incorrect markings.* (1) Data delivered to the Government without any notice authorized by paragraph (g) below, or without a copyright notice, shall be deemed to have been furnished with unlimited rights, and the Government assumes no liability for the disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the contractor may request, within six months (or such longer time approved by the contracting officer for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the contractor's expense, and the contracting officer may agree to do so if the contractor—

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the use of the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability with respect to the disclosure or use of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(2) The contracting officer may also (i) permit correction, at the contractor's expense, of incorrect notices if the contractor identifies the data on which correction of the notice is to be made and demonstrates that the correct notice is authorized, or (ii) correct any incorrect notices.

(g) *Protection of limited-rights data and restricted computer software.* (1) When data other than that listed in subdivisions (b)(1) (i), (ii), and (iii) above, is specified to be delivered under this contract and qualifies as either limited-rights data or restricted computer software, the contractor, if it desires to continue protection of such data, shall withhold such data and not furnish it to the Government under this contract. As a condition to this withholding the contractor shall identify the data being withheld and furnish form, fit, and function data in lieu thereof. Limited-rights data that is formatted as a computer data base for delivery to the Government is to be treated as limited-rights data and not restricted computer software.

(2)–(3) [Reserved]

(h) *Subcontracting.* The contractor has the responsibility to obtain from its subcontractors all data and right therein necessary to fulfill the contractor's obligations to the Government under this contract. If a subcontractor refuses to accept terms affording the Government such rights, the contractor shall promptly bring such refusal to the attention of the contracting officer and not proceed with subcontract award without further authorization.

(i) *Relationship to patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

(b) *Alternate I* (APR 1984). As prescribed in 1227.405(a)(2) substitute the following definition for "Limited-Rights Data" in paragraph (a) of the clause:

"Limited-rights data," as used in this clause, means data produced at private expense that embodies trade secrets or is commercial or financial and confidential or privileged.

(c) *Alternate II* (APR 1984). As prescribed in 1227.405(a)(3) insert the following subparagraph (g)(2) in the clause:

(g)(2) Notwithstanding subparagraph (g)(1) above, the contract may identify and specify the delivery of limited-rights data, or the contracting officer may require by written request the delivery of limited-rights data that has been withheld or would otherwise be withholdable. If delivery of such data is so required, the contractor may affix the following "Limited Rights Notice" to the data and the Government will thereafter treat the data, subject to the provisions of paragraphs (e) and (f) above, in accordance with such Notice:

Limited Rights Notice (Apr. 1984)

(a) This data is submitted with limited rights under Government contract No——— (subcontract———, if appropriate). It may be reproduced and used by the Government with the express limitation that it will not, without permission of the contractor, be used for purposes of manufacture or disclosed outside the Government; except that the Government may disclose this data outside the Government for the following purposes, if any, provided that the Government makes such disclosure subject to prohibition against further use and disclosure:

———(The contracting officer may list additional purposes as set forth in 1227.403(b)(4).)

(b) This Notice shall be marked on any reproduction of this data, in whole or in part.

(End of Notice)

(d) *Alternate III* (APR 1984). As prescribed in 1227.405(a)(4) insert the following subparagraph (g)(3) in the clause:

(g)(3) Notwithstanding subparagraph (g)(1) above, the contract may identify and specify the delivery of restricted computer software, or the contracting officer may require by written request the delivery of restricted computer software that has been withheld. If delivery of such computer software is so required, the contractor may affix the following "Restricted Rights Notice" to the computer software and the Government will thereafter treat the computer software, subject to paragraphs (e) and (f) above, in accordance with the Notice:

Restricted Rights Notice (Apr. 1984)

(a) This computer software is submitted with restricted rights under Government contract No.——— (and subcontract———, if appropriate). It may not be used, reproduced, or disclosed by the Government except as provided below or as otherwise expressly stated in the contract.

(b) This computer software may be—

(1) Used or copied for use in or with the computer for which it was acquired, including use at any Government installation to which such computer may be transferred;

(2) Used with a backup computer if the computer for which it was acquired is inoperative;

(3) Reproduced for safekeeping (archives) or backup purposes;

(4) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating restricted computer software shall be subject to the same restricted rights; and

(5) Disclosed and reproduced for use by support contractors or their subcontractors in accordance with subparagraphs (1) through (4) above, provided the Government makes such disclosure subject to these restricted rights.

(d) Any other rights or limitations regarding the use, duplication or disclosure of this computer software are to be expressly stated in the contract.

(e) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of notice)

(ii) Where it is impractical to include the above Notice on restricted computer software, the following short-form Notice may be used in lieu thereof:

Restricted Rights Notice (Short Form) (Apr. 1984)

Use, reproduction, or disclosure is subject to restrictions set forth in contract No ——— (and subcontract ——— if appropriate) with ——— (name of contractor and subcontractor).

(End of Notice)

(e) *Alternate IV* (APR 1984). As prescribed in 1227.405(a)(5) substitute the following subparagraph (c)(1) in the clause:

(c)(1) *Data first produced in the performance of this contract.* Unless provided otherwise in subparagraph (d) below, the contractor may establish claim to copyright subsisting in scientific and technical articles based on or derived from data first produced in the performance of this contract and published in academic, technical, or professional journals. The prior, express written permission of the contracting officer is required to establish claim to copyright subsisting in all other data first produced in the performance of this contract in accordance with Transportation Acquisition Regulation 1227.403(b)(6). When claim to copyright is made, the contractor shall affix the applicable copyright notices of 17 U.S.C. 401 or 402 to the data when such data is delivered to the Government, and include that notice as well as acknowledgement of Government sponsorship on the data when published or deposited in the U.S. Copyright Office. The contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government, for all such data.

(f) *Alternate V* (APR 1984). As prescribed in 1227.405(a)(6), add the following paragraph (j) to the clause:

(j) The contractor agrees, except as may be otherwise specified in this contract for specific data items listed as not subject to this paragraph, that the contracting officer or an authorized representative may, at all reasonable times up to three years after acceptance of all items to be delivered under this contract, inspect at the contractor's facility any data withheld under subparagraph (g)(1) of this clause, or any data specifically used in the performance or verifying the contractor's assertion pertaining to the limited rights or restricted rights status of the data. Where the contractor whose data is to be inspected demonstrates to the contracting officer that there would be a possible conflict of interest if the inspection were made by a particular representative, the

contracting officer shall designate an alternative inspector.

(End of clause)

1252.227-72 Notification of Limited-Rights Data and Restricted Computer Software.

As prescribed in 1227.405(b) insert the following provision in solicitations that include the clause at 1252.227-71, Rights in Data—General:

Notification of Limited-Rights Data and Restricted Computer Software (Apr. 1984)

(a) This solicitation sets forth the work to be performed and the Government's known requirements for data (as defined in Transportation Acquisition Regulation, 1227.401). Any resulting contract may also provide the Government the option to order additional data under the Additional Data Requirements clause (Transportation Acquisition Regulation 1252.227-73) if included in the contract. Any data delivered under the resulting contract will be subject to the Rights in Data—General clause (Transportation Acquisition Regulation 1252.227-71) that is to be included in this contract. Under this clause, a contractor may withhold from delivery data that qualifies as limited-rights data or restricted computer software, and deliver form, fit, and function data in lieu thereof. This clause also may be used with Alternates II and/or III to obtain delivery of limited-rights data or restricted computer software with limited rights or restricted rights. In addition, use of Alternate V with this clause provides the Government with the right to inspect such data at the contractor's facility.

(b) As an aid in determining the Government's need to include any of the above Alternates in the clause at 1252.227-71, Rights in Data—General, the offeror's response to this solicitation shall, to the extent feasible, either state that none of the data qualifies as limited-rights data or restricted computer software, or identify which of the data qualifies as limited-rights data or restricted computer software. Any identification of limited-rights data or restricted computer software in the offeror's response is not determinative of the status of such data should a contract be awarded to the offeror.

1252.227-73 Additional Data Requirements.

As prescribed in 1227.405(c), insert the following clause in solicitations and contracts involving experimental, developmental or research work, except those awards using small purchase procedures. This clause may be used in solicitations and contracts for other types of work after consultation with legal counsel:

Additional Data Requirements (Apr. 1984)

(a) In addition to the data (as defined in the Rights in Data—General clause included in this contract) specified elsewhere in this contract to be delivered, the contracting officer may at any time during contract performance or within a period of three years after acceptance of all items to be delivered under this contract, order any data first produced or specifically used in the performance of this contract.

(b) The Rights in Data—General clause included in this contract is applicable to all data ordered under this Additional Data Requirements clause. Nothing contained in this clause shall require the contractor to deliver any data: (1) The withholding of which is authorized by the Rights in Data—General clause of this contract; or (2) which is specifically identified in this contract as not subject to this clause.

(c) When data is to be delivered under this clause, the contractor will be compensated for: (1) Converting the data into the prescribed form, (2) reproduction; and (3) delivery.

(d) The contracting officer may release the contractor from the requirements of this clause for specifically identified data items at any time during the three-year period set forth in (a) above.

1252.227-74 Rights in Data—Special Works.

As prescribed in 1227.405(d) insert the following clause:

Rights in Data—Special Works (Apr. 1984)

(a) *Definitions.*

"Data", as used in this clause, means recorded information regardless of form or the media on which it may be recorded. The term shall be construed broadly; it includes all writings within the scope of Article I, Section 8, Clause 8 of the United States Constitution, as well as all works subject to copyright under Title 17, United States Code. The term does not include information incidental to contract administration, such as contract cost analyses or financial, business, and management information required for contract administration purposes.

"Unlimited rights," as used in this clause, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose whatsoever, and to have or permit others to do so.

(b) *Allocation of Rights.* (1) The Government shall have—

(i) Unlimited rights in data delivered under this contract, and in all data first produced in the performance of this contract, except as provided in paragraph (c) below for copyright.

(ii) The right to limit exercise of claim to copyright in data first produced in the performance of this contract, and to obtain assignment of copyright in such data, in accordance with subparagraph (c)(1) below.

(iii) The right to limit the release and use of certain data in accordance with paragraph (d) below.

(2) The contractor shall have, to the extent permission is granted in accordance with subparagraph (c)(1) below, the right to establish claim to copyright subsisting in data first produced in the performance of this contract.

(c) *Copyright*—(1) *Data first produced in the performance of this contract.*

(i) The contractor agrees not to assert, establish, or authorize others to assert or establish, any claim to copyright subsisting in any data first produced in the performance of this contract without the prior written permission of the contracting officer. When claim to copyright is made, the contractor shall affix the appropriate copyright notice of 17 U.S.C. 401 or 402 to such data when delivered to the Government, and include that notice as well as acknowledgement of Government sponsorship on the data when published or deposited in the U.S. Copyright Office. The contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government, for all such data.

(ii) If the Government desires to obtain copyright in data first produced in the performance of this contract and permission has not been granted as set forth in subdivision (i) above, the contracting officer may direct the contractor to establish, or authorize the establishment of, or obtain the assignment of, such copyright to the Government or its designated assignee.

(2) *Data not first produced in the performance of this contract.* The contractor shall not, without prior written permission of the contracting officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract and which contains the copyright notice of 17 U.S.C. 401 or 402, unless the contractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (1) above.

(d) *Release and use restrictions.* Except as otherwise specifically provided for in this contract, the contractor shall not use for purposes other than the performance of this contract, nor release, reproduce, distribute or publish any data first produced in the performance of this contract, nor authorize others to do so, without written permission of the contracting officer.

(e) *Indemnity.* The contractor shall indemnify the Government and its officers, agents, and employees acting for the Government, against any liability, including costs and expenses, incurred as the result of the violation of trade secrets, copyrights, or right of privacy or publicity, arising out of the creation, delivery, publication or use of any data furnished under this contract or any libelous or other unlawful matter contained in such data. The provisions of this paragraph do not apply unless the Government provides notice to the contractor as soon as practicable of any claim or suit, affords the contractor an opportunity under applicable laws, rules, or regulations to participate in the defense thereof, and obtains the contractor's consent to the settlement of any suit or claim other than as required by final decree of a court of competent jurisdiction, and do not apply to material furnished to the contractor by the Government and incorporated in data to which this clause applies.

(End of clause)

1252.227-75 Rights in Data—Existing Works.

As prescribed in 1227.405(e) insert the following clause:

Rights in Data—Existing Works (Apr. 1984)

(a) Except as otherwise provided in this contract, the contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute to the public, and perform publicly and display publicly, by or on behalf of the Government, for all the material or subject matter called for under this contract or for which this clause is specifically made applicable.

(b) The contractor shall indemnify the Government and its officers, agents, and employees acting for the Government against any liability, including costs and expenses, incurred as the result of (1) the violation of trade secrets, copyrights, or right of privacy or publicity, arising out of the creation, delivery, publication or use of any data furnished under this contract; or

(2) any libelous or other unlawful matter contained in such data. The provisions of this paragraph do not apply unless the Government provides notice to the contractor as soon as practicable of any claim or suit, affords the contractor an opportunity under applicable laws, rules, or regulations, to participate in the defense thereof, and obtains the contractor's consent to the settlement of any suit or claim other than as required by final decree of a court of competent jurisdiction. The provisions of this paragraph also do not apply to material furnished to the contractor by the Government and incorporated in data to which this clause applies.

(End of clause)

1252.228-71 Loss of or Damage to Leased Aircraft.

As prescribed in 1228.306-701 (a) and (b) insert the following clause in solicitations and contracts:

Loss of or Damage to Leased Aircraft (Apr. 1984)

(a) The Government assumes all risk of loss of, or damange (except normal wear and tear) to, the leased aircraft during the term of this lease while the aircraft is in the possession of the Government.

(b) In the event of damage to the aircraft, the Government, at its option, shall make the necessary repairs with its own facilities or by contract, or pay the Contractor the reasonable cost of repair of the aircraft.

(c) In the event the aircraft is lost or damaged beyond repair, the Government shall pay the Contractor a sum equal to the fair market value of the aircraft at the time of such loss or damage, which value may be specifically agreed to in the clause "Fair Market Value of Aircraft", less the salvage value of the aircraft. However, the Government may retain the damaged aircraft or dispose of it as it wishes. In that event, the Contactor will be paid the fair market value of the aircraft as stated in the clause.

(d) The Contractor certifies that the contract price does not include any cost attributable to hull insurance or to any reserve fund it has established to protect its interest in the aircraft. If, in the event of loss or damage to the leased aircraft, the Contractor receives compensation for such loss or damage in any form from any source, the amount of such compensation shall be: (1) credited to the Government in determining the amount of the Government's liability; or (2) for an increment of value of the aircraft beyond the value for which the Government is responsible.

(e) In the event of loss of or damage to the aircraft, the Government shall be subrogated to all rights of recovery by the Contractor against third parties for such loss or damage and the Contractor shall promptly assign such rights in writing to the Government.

(End of clause)

1252.228-72 Fair Market Value of Aircraft.

As prescribed in 1228.306-7001(c) insert the following clause in solicitations and contracts.

Fair Market Value of Aircraft (Apr. 1984)

For purposes of the clause entitled "Loss of or Damage to Leased Aircraft", it is agreed that the fair market value of the aircraft to be used in the performance of this contract shall be the lesser of the two values set out in paragraphs (a) and (b) below:

(a) $ ——— or

(b) If the contractor has insured the same aircraft against loss or destruction in connection with other operations, the amount of such insurance coverage on the date of the loss or damage for which the Government may be responsible under this contract.

1252.228-73 Risk and Indemnities.

As prescribed in 1228.306-7001(d) insert the following clause in solicitations and contracts:

Risk and Indemnities (Apr. 1984)

The Contractor hereby agrees to indemnify and hold harmless the Government, its officers and employees from and against all claims, demands, damages, liabilities, losses, suits and judgments (including all costs and expenses incident thereto) which may be suffered by, accrue against, be charged to or recoverable from the Government, its officers and employees by reason of injury to or death of any person other than officers, agents, or employees of the Government or by reason of damage to property of others of whatsoever kind (other than the property of the Government, its officers, agents or employees) arising out of the operation of the aircraft. In the event the Contractor holds or obtains insurance in support of this covenant, a Certificate of Insurance shall be delivered to the Contracting Officer.

(End of clause)

1252.235-71 Recoupment of Development Costs.

As prescribed in 1235.070 insert the following clause in solicitations and contracts:

Recoupment of Development Costs (Apr. 1984)

(a) As may be determined by the contracting officer to be fair, reasonable and equitable, the contractor shall pay to the Government up to 5% of sums hereafter received by or credited to the Contractor or its privies (including subcontractors) on sales or leases (exclusive of sales or leases to the U.S. Government, either directly or indirectly through Government prime contractors or subcontractors) of any product which is substantially the same in design as, or which is directly derived from, that developed by the Contractor or any of its subcontractors in the performance of this contract.

(b) In selling or leasing the product identified in paragraph (a) above to the Government, either directly or indirectly through Government prime Contractors or subcontractors, the Contractor or its privies (including subcontractors) shall notify the purchaser or lessee in writing that the product was developed under a Department of Transportation contract containing a Recoupment of Development Costs clause and that the purchase or lease price of such product is less than the price of such product when sold or leased to other than the Government by an amount no less than the Government's share under the Recoupment of Development Costs clause. A copy of each such notice shall be sent to the Contracting Officer. In the event the product is sold or leased to the Government, the amount by which the sales or lease price was reduced, by virtue of this clause shall be credited to the amount recoverable under this clause.

(c) As may be determined by the Contracting Officer to be fair, reasonable and equitable, the Contractor shall also pay to the Government up to 33% of all sums hereafter received by, or credited to, the Contractor or its privies (including subcontractors) as payments under technical agreements permitting others (1) to sell, lease, or manufacture the product identified in paragraph (a) above, and (2) to use any process which is substantially the same as, or which is directly derived from, that developed by the Contractor or any of its subcontractors in the performance of this contract.

(d) Recoupment by the Government under this clause shall be limited to amounts paid and credited to the Contractor under this contract. Payments to the Government under this clause shall not be so high as to destroy the Contractor's competitive position for the product involved, provided that the product is otherwise reasonably priced and efficiently and economically produced.

(3) The Contractor shall report to the Government all sales, leases, licensing agreements, royalties and receipts which might reasonably be considered to be subject to this clause; and the Contractor shall promptly render accurate, certified accounts thereon to the Government at reasonable intervals.

(End of clause)

1252.236-71 Special Precautions for Work at Operating Airports.

As prescribed in 1236.570 insert the following in solicitations and contracts:

Special Precautions for Work at Operating Airports (Apr. 1984)

(a) When work is to be performed at an operating airport, the Contractor must arrange its work schedule so as not to interfere with flight operations. Such operations will take precedence over construction convenience. Any operations of the Contractor which would otherwise interfere with or endanger the operations of aircraft shall be performed only at times and in the manner directed by the Contracting Officer. The Government will make every effort to reduce the disruption of the Contractor's operation.

(b) Unless otherwise specified by local regulations, all areas in which construction operations are underway shall be marked by yellow flags during daylight hours and by red lights at other times. The red lights along the edge of the construction areas within the existing aprons shall be the electric type of not less than 100 watts intensity placed and supported as required. All other construction markings on roads and adjacent parking lots may be either electric or battery type lights. These lights and flags shall be placed so as to outline the construction areas and the distance between any two flags or lights shall not be greater than 25 feet. The Contractor shall provide adequate watch to maintain the lights in working condition at all times other than daylight hours. The hour of beginning and the hour of ending of daylight will be determined by the Contracting Officer.

(c) All equipment and materials in the construction areas or when moved outside the construction area shall be marked with airport safety flags during the day and, when directed by the Contracting Officer, with red obstruction lights at night. All equipment operating on the apron, taxiway, runway and intermediate areas after darkness hours shall have clearance lights in conformance with instructions from the Contracting Officer. No construction equipment shall operate within 50 feet of aircraft undergoing fuel operations. Open flames are not allowed on the ramp except at times authorized by the Contracting Officer.

(d) Trucks and other motorized equipment entering the airport or construction area shall do so only over routes determined by the Contracting Officer. Use of runways, aprons, taxiways or parking areas as truck or equipment routes will not be permitted unless specifically authorized for such use. Flagmen shall be furnished by the Contractor at points on apron and taxiway for safe guidance of its equipment over these areas to assure right of way to aircraft. Areas and routes used during the contract must be returned to their original condition by the Contractor. The maximum speed allowed at the airport shall be as established by the airport management. Vehicles shall be operated so as to be under safe control at all times, weather and traffic conditions considered. Vehicles must be equipped with head and tail lights during the hours of darkness.

(End of clause)

1252.237-71 Qualifications of employees.

As prescribed in 1237.110 insert the following clause in solicitations and contracts:

Qualifications of Employees (Apr. 1984)

The Contracting Officer may require dismissal from work of those employees which he/she deems incompetent, careless, insubordinate, unsuitable or otherwise objectionable, or whose continued employment he/she deems contrary to the public interest or inconsistent with the best interest of national security. The Contractor shall fill out, and cause each of its employees on the contract work to fill out, for submission to the Government, such forms as may be necessary for security or other reasons. Upon request of the Contracting Officer, the Contractor's employees shall be fingerprinted. Each employee of the contractor shall be a citizen of the United States of America, or an alien who has been lawfully admitted for permanent residence as evidence by Alien Registration Receipt Card Form I-151, or who presents other evidence from the Immigration and Naturalization Service that employment will not affect his/her immigration status.

(End of clause)

1252.242-71 Contractor testimony.

As prescribed in 1242.203-70(a) insert the following clause in solicitations and contracts:

Contractor Testimony (Apr. 1984)

All requests for the testimony of the contractor or its employees, and any intention to testify as an expert witness relating to: (1) Any work required by, and/or performed under, this contract; or (2) any information provided by any party to assist the contractor in the performance of this contract, shall be immediately reported to the contracting officer. Neither the contractor nor its employees shall testify on a matter related to work performed or information provided under this contract, either voluntarily or pursuant to a request, in any judicial or administrative proceeding unless approved by the contracting officer or required by a judge in a final court order.

(End of clause)

1252.242-72 Dissemination of contract information.

As prescribed in 1242.203-70(b) insert the following clause in solicitations and contracts:

Dissemination of Contract Information (Apr. 1984)

The Contractor shall not publish, permit to be published, or distribute for public consumption, any information, oral or written, concerning the results or conclusions made pursuant to the performance of this contract, without the prior written consent of the Contracting Officer. (Two copies of any material proposed to be published or distributed shall be submitted to the Contracting Officer).

(End of clause)

PART 1253—FORMS

Authority: Sec. 205(C) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

1253.000 Scope of part.

This part (a) prescribes Department of Transportation (DOT) forms for use in acquisition of supplies and services, including construction, and (b) contains procedures for exceptions to forms prescribed in FAR Part 53 or this Part 1253.

Subpart 1253.1—General

1253.103 Exceptions.

(a) Requests for exceptions to standard forms in FAR Part 53 shall be submitted, as prescribed in FAR 53.103, to the procurement executive for further action.

(b) Requests for exceptions to DOT forms in Part 1253 shall be handled as deviations (see 1201.4).

Subpart 1253.2—Prescription of Forms

1253.200 Scope of subpart.

Consistent with the approach used in FAR Subpart 53.2, this subpart is arranged by subject matter, in the same order as, and keyed to, the parts of the TAR in which the form usage requirements are addressed. Copies of the forms are available from Chief, Procurement Management Division, Office of the Secretary, Department of Transportation, 400 7th St. SW., Washington, DC, 20590.

1253.204 Administrative matters.

1253.204-6 Contract reporting (DOT F.4220.11)

Form DOT F.4220.1, prescribed in DOT Order 1340.5C Contract Information System, shall be used to provide acquisition records and statistics in lieu of the SF 279, Individual Contract Action Report (over $10,000). A copy of each Data Input Form shall be retained in the individual contract file.

1253.204-70 Procurement request forms (DOT F.4200.1 and 4200.2)

Procurement request forms DOT F.4200.1 and DOT F.4200.2 (continuation sheet) shall be used to request the acquisition of supplies, services, or construction, and may be used to request items obtained through FEDSTRIP, MILSTRIP, or similar single- or multi-line requisitioning methods.

1253.213 Small purchase and other simplified purchase procedures.

1253.213-70 Small purchase summary (DOT F.4230.1)

DOT Form F.4230.1 shall be used to satisfy the small purchase documentation requirements set forth in FAR 13.106.

1253.215 Contracting by negotiation.

1253.215-70 Price negotiation (DOT F.4220.21; DOT F.4220.32; and DD 1861)

(a) ADP equipment and services. As prescribed in 1215.407(c), Form DOT F.4220.21) shall be included in solicitations and required to be completed by offerors in addition to SF 1411 and other supporting documents.

(b) Weighted guidelines profit/fee objective. The following forms shall be used to compute profit or fee for actions covered under 1215.905-70 and FAR 15.9:

(1) DOT F.4220.32 Weighted Guidelines Profit/Fee Objective.

(2) DD 1861 Contract Facilities Capital and Cost of Money.

1253.222 Application of labor laws to Government acquisitions.

The following DOT forms are prescribed for use in connection with construction contracts.

1253.222-70 Labor standards interviews (DD Form 1567)

DD Form 1567 shall be used to record the results of interviews with contractor employees working at the construction site. Sec. 5.6(a)(3) of the Labor Department regulations (29 CFR) requires Federal agencies to make such investigations as are deemed necessary to insure compliance with the labor standards provisions contained in the contract. These investigations include interviews with employees to ascertain whether laborers and mechanics are being or have been properly classified and paid.

1253.222-71 Employee claim for wage restitution (DOT F.4220.7)

DOT Form F.4220.7 shall be used by contractor employees to file claim for unpaid wages when contract funds have been transferred to the General Accounting Office to cover such underpayment. (Even though contract funds have been transferred to GAO to cover the underpayment, GAO requires that a claim be submitted before it will make payment directly to the employee.)

1253.222-72 Labor standards investigation summary sheet (DD Form 1568)

DD Form 1568 shall be used as the first page of reports on special labor standards investigations to summarize the findings of the investigation.

1253.222-73 Summary of underpayments. (DOT F. 4220.8)

DOT Form F. 4220.8 shall be used to summarize the findings of wage underpayment and liquidated damages and shall be included in the investigation report when a special labor standards investigation is made.

1253.222-74 Establishment of additional wage rates. (DOT F. 4220.10)

(a) Except as provided in (b) below, DOT Form F. 4220.10 shall be used by the contractor to obtain the contracting officer's approval or disapproval of the contractor's proposed classification and wage rate for any category of laborers or mechanics not listed in the contract wage determination but needed in performance of the contract work. Procedures shall be established to assure contracting officer approval of additional classifications and rates prior to their use by the contractor.

(b) FHWA Form PR-1140 may be used by the Federal Highway Administration for direct Federal contracts and Federal-aid contracts in lieu of DOT Form F. 4220.10.

1253.227 Report of inventions and subcontracts. (DD Form 882)

DD Form 882, Report of Inventions and Subcontracts, may be used as prescribed in administration procedures.

1253.236 Construction and architect-engineer contracts.

1253.236-70 Preconstruction conference agenda and checklist. (DOT F. 4220.3)

DOT Form F. 4220.3 Preconstruction conference agenda and checklist, or a similar checklist, shall be used as prescribed in 1236.305(b).

1253.242 Contract administration. (FAA Form 4450-2 and DD Form 375)

The following forms may be used in the administration of contracts as prescribed by administration procedures.

Post-Award conference record (FAA Form 4450-2).

Production progress report (DD Form 375).

1253.242-70 Contract close-out. (DOT F. 4220.4, 4220.5 and 4220.6)

The following forms shall be used to facilitate and document the close-out of cost-reimbursement contracts. Form DOT F. 4220.4 Contractor's Release shall also be used for construction contracts when the contracting officer requires a release, and may be used for any other type of contract when the contracting officer determines its use to be appropriate.

(a) DOT Form 4220.4 Contractor's Release.

(b) DOT Form 4220.5 Contractor's Assignment of Refunds, Rebates, Credits and Other Amounts.

(c) DOT Form 4220.6 Cummulative Claim and Reconciliation.

1253.246-70 Quality assurance. (FAA Form 256)

FAA Form 256, Inspection Report of Material and/or Services, or a substantially similar form, shall be used as prescribed in 1246.6.

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Federal Register

Friday
June 1, 1984

Part III

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions; Notice

DEPARTMENT OF LABOR

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 specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made 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 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12–71 and 15–71 (36 FR 8755, 8756). 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 procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the Federal Register without limitation as to time and 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 subsequent to its publication date shall 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 contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made 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 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's orders 13–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded 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 in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the Federal Register without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate 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, Office of Government Contract Wage Standards, Division of Government Contract Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the Federal Register are listed with each State.

Arkansas: AR84–4090	Jan. 13, 1984.
Connecticut: CT83–3021	June 3, 1983.
Delaware: DE82–3015	June 4, 1982.
Illinois: IL84–5008	Mar. 23, 1984.
Kansas: KS83–4065	Sept. 2, 1983.
Kentucky:	
KY84–1006	Mar. 16, 1984.
KY84–1003	Mar. 9, 1984.
KY84–1010	Mar. 30, 1984.
Oklahoma:	
OK84–4034	May 18, 1984.
OK84–4033	May 18, 1984.
Oregon: OR83–5111	June 10, 1983.
Pennsylvania:	
PA81–3068	Sept. 25, 1981.
PA81–3073	Oct. 2, 1981.
PA81–3081	Oct. 23, 1981.
PA82–3011	Mar. 12, 1982.
PA82–3016	May 14, 1982.
PA83–3001	Aug. 19, 1983.
South Dakota: SD84–5000	Jan. 27, 1984.
Virginia: VA82–3033	Dec. 3, 1982.
Washington: WA83–5110	June 3, 1983.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the Federal Register are listed with each State. Supersedeas decision numbers are in parentheses following the number of the decisions being superseded.

Kentucky: KY81–1197 (KY84–1012)	Mar. 20, 1981.
Pennsylvania: PA81–3066 (PA84–3015)	Oct. 23, 1981.

Signed at Washington, D.C. this 25th day of May 1984.

James L. Valin,

Assistant Administrator.

BILLING CODE 4510-27-M

DECISION #AR84-4090-MOD.#3 (49 FR 1844-Jan. 13, 1984)	Basic Hourly Rates	Fringe Benefits
Garland, Clark, and Hot Spring Counties, Arkansas		
CHANGE:		
Electricians:		
Electricians	$13.42	$1.80+ 3%
Cable Splicers	13.545	1.80+ 3%
Line Construction:		
Lineman	13.42	1.80+ 3-3/4%
Cable Splicers	13.545	1.80+ 3-3/4%
Groundman	64%JR	1.80+ 3-3/4%
Truck Driver with winch	80%JR	1.80+ 3-3/4%
Truck Driver (flat bed)	64%JR	1.80+ 3-3/4%

DECISION NO. SD84-5000 - MOD. # 1 (49 FR 3573 - January 27, 1984) Statewide, South Dakota	Basic Hourly Rates	Fringe Benefits
Change:		
Concrete Finisher	$8.90	
Power Equipment Operators:		
Asphalt Distributor	7.74	
Asphalt Paving Machine	8.08	
Asphalt Plant, Stationary & Traveling	8.64	
Truck Drivers:		
Truck Drivers, Single Axle	5.92	
Omit:		
Welders receive rate for craft to which the welding is incidental.		
Add:		
Welders, General	7.58	

DECISION NO. OR83-5111 - Mod #1 (48 FR 27001 - June 10, 1983) Clackamas, Multnomah, and Washington Counties, Oregon	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Electricians	$13.15	3%+2.25

DECISION NO. DE82-3015 - MOD. #15 (47 FR 24526 - June 4, 1982) State of Delaware	Basic Hourly Rates	Fringe Benefits
CHANGE:		
CARPENTERS:		
Building Carpenters	16.38	3.67
Residential Carpenters	12.23	3.67
Residential Floor Layers	11.73	3.67
LINE CONSTRUCTION:		
Lineman	17.94	.80+6%
Winch Truck Operator	12.56	.80+6%
Truck Driver	11.66	.80+6%
Groundman	10.76	.80+6%
POWER EQUIPMENT OPERATOR BUILDING & HEAVY CONSTRUCTION		
Group 1	16.92	26.6% +h
Group 2	16.63	26.6% +h
Group 3	15.35	26.6% +h
Group 4	15.04	26.6% +h
Group 5	14.02	26.6% +h
Group 6	13.51	26.6% +h

DECISION NO. IL84-5008 - Mod #2 (49 FR 11061 - March 23, 1984) Madison & St. Clair Counties, Illinois	Basic Hourly Rates	Fringe Benefits
CHANGE:		
IRONWORKERS	$17.80	$2.45
OMIT:		
PAINTERS:		
All classifications and rates		
ADD:		
PAINTERS:		
Commercial Building and Residential:		
Brush	15.69	1.86
Blast & Spray	16.69	1.86
Industrial:		
Brush	15.72	1.86
Blast & Spray	16.72	1.86

DECISION #KS83-4065-MOD.#4 (48 FR 40089-Sept. 2, 1983)	Basic Hourly Rates	Fringe Benefits
Leavenworth Co., Kansas		
CHANGE:		
Marble and Tile Setters	$17.52	$ 2.11
Roofers	16.48	2.91

DECISION NO. CT83-3021 - MOD. #11 (48 FR 25090 - June 3, 1983) Statewide Connecticut	Basic Hourly Rates	Fringe Benefits
CHANGE:		
ELECTRICIANS:		
Area 5	16.33	3.78+ 3%
Area 6	17.90	4.01+ 3.5%
ROOFERS:		
Area 2:		
Composition Roofers	15.15	3.075
Slate & Tile	15.65	3.075

MODIFICATIONS P. 3

DECISION #OK84-4034-MOD.#1 (49 FR 21252-May 18, 1984)	Basic Hourly Rates	Fringe Benefits
Alfalfa, Beckham, Blaine, Caddo, Canadian, Carter, Cleveland, Comanche, Cotton, Custer, Dewey, Ellis, Garfield, Garvin, Grady, Grant, Greer, Harmon, Harper, Jackson, Jefferson, Johnston, Kay, Kingfisher, Kiowa, Lincoln, Logan, Love, McClain, Major, Marshall, Murray, Noble, Oklahoma, Payne, Pontotoc, Roger Mills, Pottawatomie, Seminole, Stephens, Tillman, Washita, Woods, & Woodward Counties Oklahoma.		
CHANGE:		
Electricians Area 5	$15.90	3%+1.77
Plasterers Area 1	15.60	.95

DECISION #OK84-4033-MOD.#1 (49 FR 21257-May 18, 1984)	Basic Hourly Rates	Fringe Benefits
Adair, Atoka, Bryan, Coal, Cherokee, Craig, Creek, Delaware, Haskell, Hughes, Leflore, Latimer, McIntosh, Mayes, Muskogee, Nowata, Okfuskee, Okmulgee, Osage, Ottawa, Pawnee, Pittsburg, Pushmataha, Rogers, Tulsa, Sequoyah, Wagoner, and Washington, Counties, Oklahoma		
CHANGE:		
Carpenters-Area 1 Carpenters	$11.85	$1.70
Millwrights and Piledrivermen	13.20	1.70
Electricians Area 4	15.90	3% + $1.77

DECISION NO. KY84-1006 Mod # 1 (49 FR 9997 - March 16, 1984) Warren County, Kentucky	Basic Hourly Rates	Fringe Benefits
CHANGE:		
BRICKLAYERS; Stone Masons; Marble Masons; Tile Setters; & Terrazzo Workers	$12.99	2.00

DECISION NO. KY84-1003 Mod # 3 (49 FR 9057 - March 9, 1984) McCracken County, Kentucky	Basic Hourly Rates	Fringe Benefits
CHANGE:		
BRICKLAYERS; Stone Masons; Marble Masons; Tile Setters; & Terrazzo Workers	$13.53	2.00

DECISION NO. KY84-1010 Mod # 1 (49 FR 12888 - March 30, 1984) Fort Campbell (Christian County, Kentucky and Montgomery County, Tennessee)	Basic Hourly Rates	Fringe Benefits
CHANGE:		
BRICKLAYERS; Stone Masons; Marble Masons; Tile Setters; Terrazzo Workers; Cement Masons; and Plasterers	$12.99	2.00

MODIFICATIONS P. 4

DECISION NO. PA81-3068 - MOD. #15 (46 FR 47403 - September 25, 1981) Lebanon County, Pennsylvania	Basic Hourly Rates	Fringe Benefits
CHANGE:		
POWER EQUIPMENT OPERATORS		
GROUP 1	16.52	26.6%+a
GROUP 2	16.23	26.6%+a
GROUP 3	15.17	26.6%+a
GROUP 4	14.52	26.6%+a
GROUP 5	13.26	26.6%+a
GROUP 6	12.36	26.6%+a

DECISION NO. PA81-3073 - MOD. #8 (46 FR 48853 - October 2, 1981) Northumberland County, Pennsylvania	Basic Hourly Rates	Fringe Benefits
CHANGE:		
POWER EQUIPMENT OPERATORS		
GROUP 1	16.52	26.6%+a
GROUP 2	16.23	26.6%+a
GROUP 3	15.17	26.6%+a
GROUP 4	14.52	26.6%+a
GROUP 5	13.26	26.6%+a
GROUP 6	12.36	26.6%+a

DECISION NO. PA81-3081 - MOD. #6 (46 FR 52080 - October 23, 1981) Sullivan County, Pennsylvania	Basic Hourly Rates	Fringe Benefits
CHANGE:		
POWER EQUIPMENT OPERATORS		
GROUP 1	16.52	26.6%+a
GROUP 2	16.23	26.6%+a
GROUP 3	15.17	26.6%+a
GROUP 4	14.52	26.6%+a
GROUP 5	13.26	26.6%+a
GROUP 6	12.36	26.6%+a

DECISION NO. PA82-3011 - MOD. #8 (47 FR 10963 - March 12, 1982) Bradford, Tioga & Union Counties, Pennsylvania	Basic Hourly Rates	Fringe Benefits
CHANGE:		
POWER EQUIPMENT OPERATORS		
GROUP 1	16.52	26.6%+a
GROUP 2	16.23	26.6%+a
GROUP 3	15.17	26.6%+a
GROUP 4	14.52	26.6%+a
GROUP 5	13.26	26.6%+a
GROUP 6	12.36	26.6%+a

DECISION NO. PA82-3016 - MOD. #8 (47 FR 20990 - May 14, 1982), Northampton County, Pennsylvania	Basic Hourly Rates	Fringe Benefits
CHANGE:		
POWER EQUIPMENT OPERATORS		
GROUP 1	16.52	26.6%+a
GROUP 2	16.23	26.6%+a
GROUP 3	15.17	26.6%+a
GROUP 4	14.52	26.6%+a
GROUP 5	13.26	26.6%+a
GROUP 6	12.36	26.6%+a

MODIFICATIONS P. 5

DECISION NO. PA83-3001 - MOD. NO. 6 (48 FR 37805 - August 19, 1983) Adams, Berks, Bradford, Carbon, Columbia, Cumberland, Dauphin, Juniata, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Monroe, Montour Northampton, Northumberland, Perry, Pike, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union Wayne, Wyoming, and York Counties, Pennsylvania	Basic Hourly Rates	Fringe Benefits
OMIT:		
IRONWORKERS:		
Structural, Ornamental & Reinforcing Lancaster County	$17.265	3.745
ADD:		
IRONWORKERS:		
Berks, Schuylkill Counties:		
Eastern part of Lancaster County		
Structural, Ornamental & Reinforcing	17.40	3.75
Western part of Lancaster County	17.265	3.745
Columbia, Lackawanna, Luzerne, Sullivan, Wayne, Wyoming, Pike Counties: (Monroe County Tobyhanna Depot only)		
Structural & Ornamental	17.85	3.70
Reinforcing	17.75	3.70
Carbon, Lehigh, Northampton, Counties (Monroe County entire County except Tobyhanna Army Depot)		
Structural, Ornamental & Reinforcing	18.45	3.70
Bradford, & Tioga Counties:		
Structural, Ornamental & Reinforcing	14.40	2.87
Susquehanna County:		
Structural, Ornamental & Reinforcing	14.55	2.75

	Basic Hourly Rates	Fringe Benefits

MODIFICATIONS P. 6

DECISION NO. VA82-3033-MOD. #7 (47 FR 54744-December 3, 1982) HENRICO COUNTY & THE INDEPENDENT CITY OF RICHMOND	Basic Hourly Rates	Fringe Benefits
OMIT:		
LABORERS:		
Unskilled	7.95	.71
Tenders, motorized Georgia buggy operators, nozzlemen (gunnite or sandblasting) concrete saw operators, air tool and vibrator ops	8.05	.71
Mortar mixers, hod carriers pipelayers, caulkers, marble tile and terrazzo worker helpers	8.20	.71
Burners (wrecking)	8.30	.71
Floor, base, and terrazzo grinder	8.35	.71
Wagon drill and air trac	8.45	.71
Powdermen	8.70	.71
ADD:		
LABORERS:		
Unskilled	7.95	.71
Tenders (excluding brick mason tenders), motorized Georgia buggy operators, nozzlemen, (gunnite or sandblasting) concrete saw operators, air tool and vibrator operators	8.05	.71
Mortar mixers, hod carriers, pipelayers, caulkers, marble, tile and terrazzo worker helpers	8.20	.71
Burners (wrecking)	8.30	.71
Floor, base, and terrazzo grinder	8.35	.71
Wagon drill and air trac	8.45	.71
Powdermen	8.70	.71

DECISION NO. WA83-5110 - Mod #13 (48 FR 25108 - June 3, 1983) Statewide Washington	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Carpenters:		
Area 3:		
Acoustical and Drywall Applicator, Automatic Nailing machine, Carpenters, Form Strippers, Manhole Builder	$16.31	$3.72
Floor Layers and Finishers, Stationary Power Saw Operator	16.46	3.72
Millwrights and Machine Erectors	16.56	3.72
Certified Welders	16.71	3.72
Piledrivermen; Bridge, Dock, and Wharf Builders	16.41	3.72
Boomman	16.51	3.72
Cement Masons:		
Area 4:		
Cement Masons	15.49	4.47
Composition Materials and Power Machinery	15.80	4.47
Laborers:		
Area 3:		
Change Fringe Benefits only, all zones and groups		4.07
Power Equipment Operators:		
Area 3:		
Change Fringe Benefits only, all zones and groups		4.60
Truck Drivers:		
Area 3:		
Change Fringe Benefits only, all zones and groups		4.19

SUPERSEDEAS DECISION

STATE: KENTUCKY
DECISION NUMBER: KY84-1012
COUNTIES: See Below
DATE: Date of Publication
Supersedes Decision No. KY81-1197 dated March 20, 1981 in 46 FR 17987.
DESCRIPTION OF WORK: Residential Construction Projects - includes single family homes and apartments up to and including four stories.

Anderson, Breckinridge, Bullitt, Grayson, Hardin, Larue, Marion, Meade, Nelson, Spencer and Washington Counties, Kentucky

	Basic Hourly Rates	Fringe Benefits
AIR CONDITIONING & HEATING MECHANICS	$ 6.35	
BRICKLAYERS	6.77	
CARPENTERS	6.63	
CEMENT MASONS	6.70	
DRYWALL HANGERS & FINISHERS	6.64	
ELECTRICIANS	6.67	
INSULATION INSTALLERS	5.06	
LABORERS:		
General	5.06	
Mason Tenders	5.06	
Asphalt Rakers & Lutemen	6.37	
PAINTERS	7.00	
PLASTERERS	7.00	
PLUMBERS & PIPEFITTERS	7.67	
ROOFERS	6.36	
SHEET METAL WORKERS	6.30	
SOFT FLOOR LAYERS/CARPET LAYERS	9.00	
TRUCK DRIVERS	5.06	
POWER EQUIPMENT OPERATORS:		
Backhoe	7.00	
Bulldozer	7.57	
Distributor Operator	8.10	
Front End Loader	7.36	
Grader	8.00	
Roller	7.41	
Paver	8.52	
WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.		
Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5 (a)(1)(ii)(A))		

SUPERSEDEAS DECISION

STATE: Pennsylvania
COUNTIES: Cumberland, Dauphin, Perry, Juniata, New Cumberland Deport in York County
DECISION NO.: PA84-3015
DATE: Date of Publication
Supersedes Decision No. PA81-3066 dated October 23, 1981, in 46 FR 52082.
DESCRIPTION OF WORK: Building Erection and Foundation Excavation Project, (does not include single family homes or apartments up to and including 4 stories), excluding Sewage and Water Treatment projects.

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	17.51	2.04
BOILERMAKERS	18.88	2.865
BRICKLAYERS & BLOCK LAYERS	14.22	1.73
CARPENTERS	14.50	2.55
CEMENT MASONS	13.87	2.40
ELECTRICIANS	15.21	1.67+ 3%
ELEVATOR CONSTRUCTORS	15.56	3.00+ a+b
ELEVATOR CONSTRUCTORS' HELPERS	10.89	3.00+ a+b
ELEVATOR CONSTRUCTORS' HELPERS (PROB.)	7.78	
GLAZIERS	13.51	1.66
IRONWORKERS, STRUCTURAL	17.265	3.745
IRONWORKERS, ORNAMENTAL	17.265	3.745
IRONWORKERS, REINFORCING	17.265	3.745
LABORERS:		
Group 1	10.45	1.53
Group 2	10.92	1.53
Group 3	9.85	1.53
Group 4	11.02	1.43
LATHERS	14.50	2.55
LEAD BURNERS	10.75	.66+c
MARBLE SETTERS	15.40	2.02
MILLWRIGHTS	16.57	2.25
LINE CONSTRUCTION:		
Linemen	14.74	.80+3 3/8%
Groundmen	9.52	.80+3 3/8%
Cable Splicers	14.74	.80+3 3/8%
Winch Truck Operator	10.26	.80+3 3/8%
PAINTERS:		
Brush	11.57	1.15
Structural Steel	12.02	1.15
Spray	12.32	1.15
Tanks, Bridges, Stacks	12.82	1.15
PILEDRIVERMEN	14.82	6.16+c
PLASTERERS	12.40	2.41
PLUMBERS	17.05	2.39
ROOFERS:		
Composition	12.61	2.10
SHEET METAL WORKERS	15.23	4.39
SOFT FLOOR LAYERS	12.29	2.55
SPRINKLER FITTERS	16.92	3.23
STEAM FITTERS	17.05	2.39
STONE MASONS	14.22	1.73
TERRAZZO WORKERS & TILE SETTERS	14.15	2.02
POWER EQUIPMENT OPERATORS		
Group 1	16.52	26.6% +e
Group 2	16.23	26.6% +e
Group 3	15.17	26.6% +e
Group 4	14.52	26.6% +e
Group 5	13.26	26.6% +e
Group 6	12.36	26.6% +e
TRUCK DRIVERS:		
Truck Drivers, Pick-ups, dump, service trucks, flat trucks, to and including 2 highway license plates	9.47	f+g
Transit mix, winch trucks, tractors all types euclids, ross lumber and over 2 plates	9.72	f+g
Welders - Receive rate prescribed for craft performing operation to which welding is incidental.		
"Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii))."		

DECISION NO. PA84-3015

LABORERS CLASSIFICATIONS DEFINITIONS

Group 1. General Laborers: Air, fuel and electric tool operators and all other pneumatic and mechanical tools, including blow-pipe and vacum cleaners. Caisson workers (top men), piplelayers for all clay, terra cotta, ironstone, vitrified concrete or non-metallic pipe & the making of joints for same. Power-buggy, precast slab placer & signal men, Blaster helper, excavation of all foundation, digging of trenches, piers and manholes. Wrecking and moving of all structures. Underpinning & shoring, stripping, dismantling, oiling & moving of concrete forms, loading and carrying, of reinforcing steel, handling & distribution of lumber, and all other building materials to stock piles, unloading, carring, distrubution, and laying of precast concrete slabs and planks for flooring & roofing, general cleanup & removal of refuge, debris, and all scrap material(s), vibrator operator (concrete placing - whose power is supplied by compressed air, electric, gasoline & any other means).

Group 2 Semi-Skilled: Caisson worker (bottom men), blasters, wagon air track and diamond point drill operators, burning torches, green cutting machine (nozzle men), and steam jenny. Plasterer & cement mason tenders, machine mixers, plasterer pump and scaffold builders (excluding masonry scaffolding). Sand blasting (nozzle man).

Group 3 Nursery Workers, window washers, floor scrubbers, and watchmen. Tenders of propane gas burners, salamander(s), smudge pots, tool room workers. Fire watch.

Group 4 Mason Tenders: (Brick & Block), machine mixers, motorized stockers, scaffold builders (masonry), motor pump, conveyors, mechanical cleaners and sandblasting for masonry and masonry equipment.

POWER EQUIPMENT OPERATORS CLASSIFICATIONS DEFINITIONS

Group 1: Machines doing hook work, any machine handling machinery, cable spinning machines, helocopters, machines similar to the above

Group 2: All types of cranes, all types of backhoes, cableways, draglines, keystones, all types of shovels, derricks, trench shovels, trenching machines, hoist with two towers, pavers 21E and over, all types overhead cranes, building hoists (double drum) gradalls, mucking machines in tunnel, all front end loaders 3-½ c.y. and over, tandem scrapers, pippin type backhoes, boat Captains, batch plant operators (concrete) drills, self-contained rotary drills, fork lifts, 20 ft. lift and over machine to the above

POWER EQUIPMENT OPERATORS DEFINITIONS CONTINUED

Group 3: Conveyors, building hoist (single drum) scrapers and tournapulls, spreaders, high or low pressure boilers, concrete pumps, well drillers, bulldozers and tractors, asphalt plant engineers, roller (high grade finishing), ditch witch type trencher, all loaders under 3-½ cu. yds., mechanic-welders, motor patrols, drill helper-self contained rotary drills, core drill operator, forklift trucks under 20 ft. lift, machines similar to the above

Group 4: Welding machines, well points, compressors, pumps, heaters, farm tractors, form line graders, fine grade machines, road finishing machines concrete breaking machines, rollers, seaman pulverzing mixer, power broom, seeding spreader, tiremar (for power equipment) machines similar to above

Group 5: Fireman, grease truck

Group 6: Oilers and deck hands (personnel boats), core drill helper

PAID HOLIDAYS: (Where Applicable)
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:

a. Employer contributes 8% basic hourly rate for 5 years or more of service or 6% basic hourly rate for 6 months to 5 years of service as vacation pay credit.

b. Paid Holidays: A through F, plus the Friday after Thanksgiving Day.

c. Eight paid holidays, A through F and Washington's Birthday, Good Friday and Christmas Eve provided the employee has worked 45 full days prior to the holiday, and is available for work the days preceding and following the holiday.

d. Paid Holidays: Washington's Birthday; Good Friday; Memorial Day; Labor Day; Presidential Election Day; Veteran's Day and Thanksgiving Day.

e. Paid Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day, provided the employee works the day before and after the holiday.

f. $93.03 per month for employees who have worked sixty hours or more during the month.

g. $57.09 per month for employees who have worked sixth hours or more during the month.

[FR Doc. 04-14021 Filed 6-31-04; 8:45 am]
BILLING CODE 4510-27-C

Federal Register

Friday
June 1, 1984

Part IV

Department of Energy

Federal Energy Regulatory Commission

NGPA Notices of Determination by Jurisdictional Agencies; Notices

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

NGPA Notices of Determination by Jurisdictional Agencies

Issued: May 25, 1984.

Note.—By final rule issued by the Commission on February 22, 1984 (Order No. 362, Docket RM83-50-000, 49 FR 7109-13, February 27, 1984), notices of determination issued by the Commission after May 27, 1984, *will not be published in the* Federal Register. Applicants listed on FERC Form 121 will be notified by mail of Commission receipt of determination. All other parties should contact: TS Infosystems, Inc., Attn: Mr. Milton Chichester, 825 North Capitol Street, Room 1000, Washington, DC 20426, to inquire about subscribing to these notices. Copies of Order No. 362 are available from the same source.

The following notices of determination were received from the indicated jurisdictional agencies by the FERC pursuant to the NGPA and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production is in million cubic feet (MMcf).

The applications for determination are available for inspection, except for material which is confidential under 18 CFR 275.206, at the FERC, 825 North Capitol St., Room 1000, Washington, D.C. Persons objecting to any of these determinations may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date the notice is issued by the Commission.

Source data from the FERC Form 121 for this and all previous notices is available on magnetic tape from the National Technical Information Service (NTIS). For information, contact Stuart Weisman (NTIS) at (703) 487-4808, 5285 Port Royal Road, Springfield, Virginia 22161.

Categories within each NGPA section are indicated by the following codes:

Section 102-1: New OCS lease
102-2: New well (2.5 mile rule)
102-3: New well (1000 ft rule)
102-4: New onshore reservoir
102-5: New res. on old OCS lease
103: New onshore production well
Secion 107-DP: 15,000 ft or deeper
107-GB: Geopressured brine
107-DV: Devonian shale
107-CS: Coal seam gas
107-PE: Production enhancement
107-TF: New tight formation
107-RT: Recompletion tight formation
Section 108: Stripper well
108-SA: Seasonally affected
108-ER: Enhanced recovery
108-PB: Temporary pressure buildup

Kenneth F. Plumb,

Secretary.

NOTICE OF DETERMINATIONS VOLUME 1136

ISSUED MAY 25, 1984

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
TEXAS RAILROAD COMMISSION									
-AAA OPERATING CO INC				RECEIVED:	05/04/84	JA: TX			
8432605	F-03-080742	4247730504		102-4		LINDY "B" #2	MELINDA (WILCOX - "B"	129.0	PHILLIPS PETROLEU
8432611	F-03-080808	4247730531		102-4		LINDY "H" #8	MELINDA (WILCOX B)	55.0	PHILLIPS PETROLEU
-ACOCK ENGINEERING & OPERATING CO				RECEIVED:	05/04/84	JA: TX			
8432604	F-01-080727	4231131969		102-4		ZAVISCH	A W P (OLMOS)	109.5	H P I TRANSMISSIO
-ADA OIL EXPLORATION CORP				RECEIVED:	05/04/84	JA: TX			
8432388	F-03-074576	4205100000		102-2		BIRCH CREEK PARK #A-5	GIDDINGS AUSTIN CHALK	0.0	PHILLIPS PETROLEU
8432387	F-03-074511	4205100000		102-2		BIRCH CREEK PARK #A-6	GIDDINGS AUSTIN CHALK	0.0	PHILLIPS PETROLEU
8432378	F-03-072616	4247700000		102-2		COLVIN UNIT #1	GIDDINGS (AUSTIN CHAL	0.0	PHILLIPS PETROLEU
-ALLAR CO				RECEIVED:	05/04/84	JA: TX			
8432583	F-09-080453	4250300000		103		ALLAR "J" #1	YOUNG COUNTY REGULAR	73.0	
-AMOCO PRODUCTION CO				RECEIVED:	05/04/84	JA: TX			
8432710	F-8A-081507	4230330964		103		ANTON IRISH CLEARFORK UNIT #477	ANTON IRISH	45.0	WESTAR TRANSMISSI
8432713	F-6E-081511	4240131761		103		BETTIE COLEMAN #10	EAST TEXAS FIELD	0.1	ARCO OIL & GAS CO
8432497	F-7C-079338	4210534575		103		E H CHANDLER #9-A	OZONA NW (CANYON)	450.0	SHELL OIL CO
8432707	F-08-081503	4213534351		103		ELLIOTT F COWDEN "A" #167	COWDEN SOUTH (CANYON	2.5	WESTAR TRANSMISSI
8432709	F-8A-081506	4221934146		103		ELLWOOD "A" #161	SMYER	8.0	AMOCO PRODUCTION
8432712	F-8A-081509	4221934145		103		ELLWOOD "A" #162	SMYER	5.0	AMOCO PRODUCTION
8432706	F-8A-081502	4221934147		103		ELLWOOD "A" #165	SMYER	4.0	AMOCO PRODUCTION
8432711	F-8A-081508	4221934149		103		ELLWOOD "A" #166	SMYER	8.0	AMOCO PRODUCTION
8432616	F-04-080925	4235531454		103		G H MCCANN #36	LUBY 5230	12.0	VALLEY GAS TRANSM
8432702	F-08-081498	4249531663		103		HENDRICK-WEEKS #11	HENDRICK	61.0	PHILLIPS PETROLEU
8432700	F-08-081496	4200333785		103		J E PARKER-H- #20	PARKER (PENNSYLVANIAN	104.0	PHILLIPS PETROLEU
8432701	F-7C-081497	4210534376		103		J S TODD "A" R/A "A" #14	WYATT	1.0	PERMIAN CORP
8432572	F-02-080386	4239130587		103		MARY ELLEN O'CONNOR #42	MARY ELLEN O'CONNOR /	5.5	LA ROSA CORP
8432698	F-08-081493	4200333606		103		MIDLAND FARMS "AY" #4	FASKEN (PENN)	60.0	AMOCO PRODUCTION
8432699	F-08-081494	4200333697		103		MIDLAND FARMS DEEP UNIT #109	MIDLAND FARMS (WOLFCA	135.0	AMOCO PRODUCTION
8432697	F-8A-081492	4250132404		103		OWNBY UPPER CLEARFORK UNIT #3-10	OWNBY (CLEARFORK UPPE	1.0	AMOCO PRODUCTION
8432696	F-8A-081491	4203330918		103		P N HENSLEY #2	BORDEN (SPRAYBERRY)	95.0	INSERV GAS CO
8432626	F-06-081292	4220330979		102-4		POPE GAS UNIT #3L	WOODLAWN (TRAVIS PEAK	270.0	TEXAS GAS TRANSMI
8432695	F-04-081490	4235531203		103		ROBERT LA PRELLE #14	PETRONILLA (7300)	46.0	VALLEY GAS TRANSM
8432703	F-08-081499	4249531614		103		T G HENDRICK T-89 E #6	KERMIT	12.0	PHILLIPS PETROLEU
8432704	F-08-081500	4200331613		103		T G HENDRICK T-89-C #8	HENDRICK	0.0	PHILLIPS PETROLEU
8432708	F-8A-081505	4211531891		103		T J GOOD "A" #40	ACKERLY NO (CANYON RE	129.0	GETTY OIL CO
8432689	F-08-081484	4200333804		103		UNIV MCFARLAND QUEEN CON #10-02	MCFARLAND (QUEEN)	7.0	PHILLIPS PETROLEU
8432688	F-08-081483	4200333801		103		UNIV MCFARLAND QUEEN CON #13-03	MCFARLAND (QUEEN)	6.0	PHILLIPS PETROLEU
8432687	F-08-081482	4200333809		103		UNIV MCFARLAND QUEEN CON #13-05	MCFARLAND (QUEEN)	4.0	PHILLIPS PETROLEU
8432690	F-08-081485	4200333803		103		UNIV MCFARLAND QUEEN CON #13-07	MCFARLAND (QUEEN)	3.0	PHILLIPS PETROLEU
8432705	F-8A-081501	4221933891		103		W G FRAZIER #131	SLAUGHTER	49.0	AMOCO PRODUCTION
8432477	F-10-079025	4217931376		103		WILLIAM JACKSON #11	PANHANDLE - GRANITE W	10.0	PHILLIPS PETROLEU
8432694	F-8A-081489	4221934174		102-4		YELLOWHOUSE UNIT #96	YELLOWHOUSE	20.0	WESTAR TRANSMISSI
8432693	F-8A-081488	4221934171		102-4		YELLOWHOUSE UNIT #97	YELLOWHOUSE	24.7	WESTAR TRANSMISSI
8432692	F-8A-081487	4221934172		102-4		YELLOWHOUSE UNIT #98	YELLOWHOUSE	7.3	WESTAR TRANSMISSI
8432691	F-8A-081486	4221934173		102-4		YELLOWHOUSE UNIT #99	YELLOWHOUSE	47.0	WESTAR TRANSMISSI
-ARCO OIL AND GAS COMPANY				RECEIVED:	05/04/84	JA: TX			
8432723	F-10-081530	4234100000		108		C R JONES #1	PANHANDLE WEST	15.0	PANHANDLE EASTERN

BILLING CODE 6717-01-M

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8432631	F-10-081364	42393000000		108		CHARLES LIPS TRACT "K" WELL #11	LIPS (MORROW)	15.0	NATURAL GAS PIPEL
8432653	F-08-081415	4213532799		103		CORRIGAN COWDEN UNIT #311	NORTH COWDEN	2.6	AMOCO PRODUCTION
8432559	F-06-080235	42423307?4		102-4		D WALTON #3	CHAPEL HILL NE (TRAVI	73.0	E TEXAS PRODUCERS
8432436	F-02-078491	4229733355		102-4		E L RISER #2	MOUNTAIN VIEW (SAND 4	350.0	HOUSTON PIPELINE
8432656	F-08-081419	4213534177		103		GOLDSMITH CUMMINS (DEEP) UNIT #184	GOLDSMITH (CLEARFORK)	30.0	PHILLIPS PETROLEU
8432655	F-08-081418	4213534178		103		GOLDSMITH CUMMINS (DEEP) UNIT #185	GOLDSMITH (CLEARFORK)	40.0	PHILLIPS PETROLEU
8432492	F-01-079257	4231131524		107-TF		H C EDRINGTON ESTATE I #33	SOUTH CAMPANA (WILCOX	292.0	HOUSTON PIPELINE
8432646	F-08-081408	4213533358		103		J L JOHNSON "AB" #107	JOHNSON (GRAYBURG)	11.6	AMOCO PRODUCTION
8432645	F-08-081407	4213533424		103		J L JOHNSON "AB" #109	JOHNSON (GRAYBURG)	1.7	AMOCO PRODUCTION
8432644	F-08-081406	4213533423		103		J L JOHNSON "AB" #112	JOHNSON (GRAYBURG)	2.7	AMOCO PRODUCTION
8432643	F-08-081405	4213533435		103		J L JOHNSON "AB" #113	JOHNSON (GRAYBURG)	6.0	AMOCO PRODUCTION
8432660	F-08-081424	4213533615		103		J L JOHNSON "AB" #123	JOHNSON (GRAYBURG)	3.3	AMOCO PRODUCTION
8432659	F-08-081423	4213533628		103		J L JOHNSON "AB" #125	JOHNSON (GRAYBURG)	2.7	AMOCO PRODUCTION
8432658	F-08-081422	4213533891		103		J L JOHNSON "AB" #133	JOHNSON (GRAYBURG)	8.3	AMOCO PRODUCTION
8432657	F-08-081420	4213534053		103		J L JOHNSON "AB" #144	JOHNSON (GRAYBURG)	1.7	AMOCO PRODUCTION
8432647	F-08-081409	4213533213		103		J L JOHNSON "AB" #98	JOHNSON (GRAYBURG)	2.7	AMOCO PRODUCTION
8432654	F-7C-081417	4223532100		103		J R SCOTT "50" #3	SPRADBERRY (TREND AREA	16.0	J L DAVIS
8432560	F-06-080236	42423307?2		102-4		J WALTON #2	CHAPEL HILL NE (TRAVI	128.0	
8432652	F-08-081414	4213533051		103		JOHNSON (DEEP) UNIT #14	JOHNSON (GLORIETA)	1.5	AMOCO PRODUCTION
8432651	F-08-081413	4213533052		103		JOHNSON (DEEP) UNIT #15	JOHNSON (GLORIETA)	0.4	AMOCO PRODUCTION
8432650	F-08-081412	4213533074		103		JOHNSON (DEEP) UNIT #16	JOHNSON (GLORIETA)	7.7	AMOCO PRODUCTION
8432649	F-08-081411	4213533095		103		JOHNSON (DEEP) UNIT #17	JOHNSON (GLORIETA)	1.1	AMOCO PRODUCTION
8432648	F-08-081410	4213533985		103		JOHNSON (DEEP) UNIT #19	JOHNSON (GLORIETA)	0.0	AMOCO PRODUCTION
8432724	F-10-081531	4223300000		108		JOHNSON RANCH /D/ #K-1	PANHANDLE WEST	12.0	PHILLIPS PETROLEU
8432725	F-10-081533	4223300000		108		JOHNSON RANCH "A" WELL #44	PANHANDLE WEST	15.0	PHILLIPS PETROLEU
8432495	F-03-079291	4219931788		103		SILSBEE GAS UNIT #26	SILSBEE (Z)	72.0	TEXAS EASTERN TRA
-ART MACHIN & ASSOCIATES INC				RECEIVED:	05/04/84	JA: TX			
8432367	F-06-062792	4218330508		103		L BRUTON #1	WILLOW SPRINGS (TRAVI	360.0	WESTERN GAS CORP
-ASAMERA OIL U S INC				RECEIVED:	05/04/84	JA: TX			
8432404	F-7B-076367	4244132531		102-4		EDGAR #1	MCNIECE (GRAY 4100)	40.0	LONE STAR GAS CO
-DALLARD EXPLORATION CO INC				RECEIVED:	05/04/84	JA: TX			
8432735	F-05-081559	4221330391		102-4		TEXAS POWER & LIGHT CO #1	S E TRINIDAD (TRAVIS	73.0	TEXAS UTILITIES F
-BILL FORNEY INC				RECEIVED:	05/04/84	JA: TX			
8432440	F-02-078539	4229733343		102-4		ERWIN HOLLE UNIT 2 #4 RRC #N/A	HOUDMAN (PETTUS "C")	42.0	TRANSCONTINENTAL
-BODAN OIL & GAS CO				RECEIVED:	05/04/84	JA: TX			
8432756	F-7C-08164	4208131049		103		JAMESON 1-B	SILVER (CANYON)	50.0	SUN OIL CO
-BRIDWELL OIL CO				RECEIVED:	05/04/84	JA: TX			
8432534	F-7B-080151	4241700000		102-4		JAMES SANDERS "D" #10	CROMERA	5.0	WARREN PETROLEUM
8432533	F-7B-080150	4241700000		102-4		JAMES SANDERS "D" #11	CROMERA	5.0	WARREN PETROLEUM
8432532	F-7B-080146	4241700000		102-4		JAMES SANDERS "D" #13	CROMERA	5.0	WARREN PETROLEUM
8432544	F-7B-080161	4241700000		102-4		JAMES SANDERS "D" #14	CROMERA	5.0	WARREN PETROLEUM
8432543	F-7B-080160	4241700000		102-4		JAMES SANDERS "D" #15	CROMERA	5.0	WARREN PETROLEUM
8432542	F-7B-080159	4241700000		102-4		JAMES SANDERS "D" #2	CROMERA	5.0	WARREN PETROLEUM
8432541	F-7B-080158	4241700000		102-4		JAMES SANDERS "D" #3	CROMERA	5.0	WARREN PETROLEUM
8432540	F-7B-080157	4241700000		102-4		JAMES SANDERS "D" #4	CROMERA	5.0	WARREN PETROLEUM
8432539	F-7B-080156	4241700000		102-4		JAMES SANDERS "D" #5	CROMERA	5.0	WARREN PETROLEUM
8432538	F-7B-080155	4241700000		102-4		JAMES SANDERS "D" #6	CROMERA	5.0	WARREN PETROLEUM
8432537	F-7B-080154	4241700000		102-4		JAMES SANDERS "D" #7	CROMERA	5.0	WARREN PETROLEUM
8432536	F-7B-080153	4241700000		102-4		JAMES SANDERS "D" #8	CROMERA	5.0	WARREN PETROLEUM
8432535	F-7B-080152	4241700000		102-4		JAMES SANDERS "D" #9	CROMERA	5.0	WARREN PETROLEUM
-BRITTON OPERATING INC				RECEIVED:	05/04/84	JA: TX			
8432565	F-09-080289	4223735647		102-4		F H RHODES #23862	T J N (STRAWN)	108.0	TEXAS UTILITIES F
-BTA OIL PRODUCERS				RECEIVED:	05/04/84	JA: TX			
8432430	F-8A-078369	4211531908		103		SHAPPELL #1	WELCH S E (SPRABERRY)	5.0	PHILLIPS PETROLEU
8432545	F-08-080164	4217331495		102-4		7613 JV-P COX "B" #17	BLALOCK LAKE SE (WOLF	37.0	PHILLIPS PETROLEU
-BURNETT OIL CO INC				RECEIVED:	05/04/84	JA: TX			
8432424	F-01-077975	4231131962		102-4 103		A L HENRY #1	AWP (OLMOS)	0.0	MPI TRANSMISSION
8432501	F-01-079388	4231131991		102-4 103		A L LASITER #1	A W P (OLMOS)	0.0	MPI TRANSMISSION
-C F LAWRENCE & ASSOC INC				RECEIVED:	05/04/84	JA: TX			
8432451	F-7C-078786	4210500000		103		TODD "W" #2	TODD SW (SAN ANDRES L	0.0	APACHE GAS CORP
-CHAMPLIN PETROLEUM COMPANY				RECEIVED:	05/04/84	JA: TX			
8432487	F-03-079152	4205100000		102-2		F J KRODUT "D" #1	GIDDINGS (AUSTIN CHAL	0.0	FERGUSON CROSSING
-CIBOLA OIL & GAS CORP				RECEIVED:	05/04/84	JA: TX			
8432472	F-06-078954	42423307?5		102-4 103		DAVIS WALTON #1 RRC #210461	CHAPEL HILL N E (TRAV	0.0	TRIANGLE GAS PIPE
-COASTAL OIL & GAS CORP				RECEIVED:	05/04/84	JA: TX			
8432481	F-08-079052	4217331465		102-4		L BLALOCK #1201	BLALOCK (WOLFCAMP)	200.0	PHILLIPS PETROLEU
-COMPUTECH ENERGY & EXPLORATION INC				RECEIVED:	05/04/84	JA: TX			
8432413	F-7B-076723	4244132317		103		THORNTON #1-A (19810)	THORNTON (MORRIS)	24.0	UNION TEXAS PETRO
-CONOCO INC				RECEIVED:	05/04/84	JA: TX			
8432627	F-08-081326	4238931485		102-4 103		HUCKABEE #5 ID 28343	JESS DURNER	8.4	EL PASO NATURAL G
8432592	F-08-080543	4213500000		108		KLOH 3-7 #3 I D 20260	TXL	4.4	SHELL OIL CO
8432562	F-01-080239	4232332129		103		N J CHITTIM #6415	SACATOSA (SAN MIGUEL	0.7	VALERO TRANSMISSI
8432563	F-01-080240	4232332130		103		N J CHITTIM #6416	SACATOSA (SAN MIGUEL	0.7	VALERO TRANSMISSI
8432564	F-01-080255	4232332131		103		N J CHITTIM #6952A	SACATOSA (SAN MIGUEL	0.7	VALERO TRANSMISSI
8432561	F-01-080238	4232332063		103		N J CHITTIM NO 6414	SACATOSA (SAN MIGUEL	0.7	VALERO TRANSMISSI
8432681	F-8A-081468	4216900000		108		SOUTH HUNTLEY UNIT #10 ID 64382	HUNTLEY	0.1	MID PLAINS PETROC
8432680	F-8A-081467	4216900000		108		SOUTH HUNTLEY UNIT #11 ID 64382	HUNTLEY	0.0	MID PLAINS PETROC
8432679	F-8A-081466	4216900000		108		SOUTH HUNTLEY UNIT #12 ID 64382	HUNTLEY	0.0	MID PLAINS PETROC
8432678	F-8A-081465	4216900000		108		SOUTH HUNTLEY UNIT #13 ID 64382	HUNTLEY	0.1	MID PLAINS PETROC
8432677	F-8A-081464	4216900000		108		SOUTH HUNTLEY UNIT #14 ID 64382	HUNTLEY	0.1	MID PLAINS PETROC
8432676	F-8A-081463	4216900000		108		SOUTH HUNTLEY UNIT #20 ID 64383	HUNTLEY	0.3	MID PLAINS PETROC
8432675	F-8A-081462	4216900000		108		SOUTH HUNTLEY UNIT #25 ID 64383	HUNTLEY	0.5	MID PLAINS PETROC
8432684	F-8A-081471	4216900000		108		SOUTH HUNTLEY UNIT #3 ID 64382	HUNTLEY	0.0	MID PLAINS PETROC
8432674	F-8A-081461	4216900000		108		SOUTH HUNTLEY UNIT #35 ID 64383	HUNTLEY	0.8	MID PLAINS PETROC
8432673	F-8A-081460	4216900000		108		SOUTH HUNTLEY UNIT #39 ID 64383	HUNTLEY	0.3	MID PLAINS PETROC
8432683	F-8A-081470	4216900000		108		SOUTH HUNTLEY UNIT #6 ID 64382	HUNTLEY	0.0	MID PLAINS PETROC
8432682	F-8A-081469	4216900000		108		SOUTH HUNTLEY UNIT #9 ID 64382	HUNTLEY	0.0	MID PLAINS PETROC
-COOK EXPLORATION CO				RECEIVED:	05/04/84	JA: TX			
8432375	F-06-071076	4218330572		103		PINE TREE I S D #4	WILLOW SPRINGS - T PE	400.0	LIBRA ENERGIES IN
-COPET INC				RECEIVED:	05/04/84	JA: TX			
8432519	F-7B-079842	4204900000		108		STONE-STEPHENS #1 (RRC 066078)	BROWN CO REGULAR (MAR	2.8	EL PASO HYDROCARB
8432523	F-7B-079948	4204900000		108		STONE-STEPHENS #3 (RRC 069715)	BROWN CO REGULAR (MAR	1.0	EL PASO HYDROCARB
-CROMEENS PETROLEUM INC				RECEIVED:	05/04/84	JA: TX			
8432598	F-7B-080620	4223735774		102-4		HALSELL #4	KEVIN (ATOKA)	0.0	SOUTHWESTERN GAS
-CRYSTAL OIL AND LAND COMPANY				RECEIVED:	05/04/84	JA: TX			
8432638	F-06-081397	4236530612		108		GILLIAM #1	PANOLA	14.2	UNITED GAS PIPELI
8432639	F-06-081398	4236530621		108		GILLIAM #2	PANOLA	14.2	UNITED GAS PIPELI
8432640	F-06-081399	4236530835		108		REAVIS #2	PANOLA	7.0	UNITED GAS PIPELI
-CYCLONE EXPLORATION INC				RECEIVED:	05/04/84	JA: TX			
8432414	F-7C-076854	4243533009		103	107-TF	JOHN D FIELDS #2-59	SAWYER (CANYON)	100.0	EL PASO NATURAL G
-DAKKAR PRODUCTION CO				RECEIVED:	05/04/84	JA: TX			
8432453	F-10-078924	4217900000		108		PARKER FEE #1		8.0	COLTEXO CORP
8432459	F-10-078933	4217900000		108		PARKER FEE #10		16.5	COLTEXO CORP
8432460	F-10-078934	4217900000		108		PARKER FEE #11		11.4	COLTEXO CORP

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8432461	F-10-078935	4217900000		108		PARKER FEE #12		4.6	COLTEXO CORP
8432462	F-10-078936	4217900000		108		PARKER FEE #13		14.2	COLTEXO CORP
8432463	F-10-078937	4217900000		108		PARKER FEE #14		9.8	COLTEXO CORP
8432464	F-10-078938	4217900000		108		PARKER FEE #15		4.4	COLTEXO CORP
8432465	F-10-078939	4217900000		108		PARKER FEE #16		3.9	COLTEXO CORP
8432466	F-10-078940	4217900000		108		PARKER FEE #17		4.7	COLTEXO CORP
8432467	F-10-078941	4217900000		108		PARKER FEE #19		17.0	COLTEXO CORP
8432454	F-10-078925	4217900000		108		PARKER FEE #2		13.5	COLTEXO CORP
8432468	F-10-078942	4217900000		108		PARKER FEE #21		4.6	COLTEXO CORP
8432469	F-10-078943	4217900000		108		PARKER FEE #22		6.9	COLTEXO CORP
8432470	F-10-078944	4217900000		108		PARKER FEE #25		4.3	COLTEXO CORP
8432471	F-10-078945	4217900000		108		PARKER FEE #27		2.7	COLTEXO CORP
8432455	F-10-078929	4217900000		108		PARKER FEE #3		3.1	COLTEXO CORP
8432456	F-10-078930	4217900000		108		PARKER FEE #4		4.7	COLTEXO CORP
8432457	F-10-078931	4217900000		108		PARKER FEE #7		11.7	COLTEXO CORP
8432458	F-10-078932	4217900000		108		PARKER FEE #9		19.1	COLTEXO CORP
-DELTA DRILLING CO				RECEIVED:	05/04/84	JA: TX			
8432368	F-03-067114	4220100000		102-4	103	DELTA #1 107896	ALIEF (7500)	0.0	UNITED TEXAS TRAN
-DIAMOND CHEMICALS CO				RECEIVED:	05/04/84	JA: TX			
8432365	F-05-05678	4216130718		102-2	107-TF	C N WILLIFORD #1	BOSSIER SAND	0.0	UNITED TEXAS TRAN
8432380	F-10-073468	4229500000		103		MILDRED F GREER #1	MAMMOTH CREEK N	0.0	
-DIAMOND SHAMROCK EXPLORATION CO				RECEIVED:	05/04/84	JA: TX			
8432431	F-06-078371	4200331520		102-4		BYRDIE ROBERTSON #1	WOLF CREEK	0.0	ESPARANZA PIPE LI
8432444	F-10-078642	4221131534		103		ELMER E SPARKS "A" #3	HIGGINS WEST	0.0	
8432600	F-7C-080699	4243532626		103	107-TF	NAHURSKI 45 #1	PHYLLIS SONORA	380.0	
-DINERO OIL CO				RECEIVED:	05/04/84	JA: TX			
8432613	F-01-080835	4250732018		103		R B WILLOUGHBY #8	LEONA (ELAINE	60.0	VALERO TRANSMISSI
-DISCOVERY OIL CORP				RECEIVED:	05/04/84	JA: TX			
8432597	F-7B-080601	4208333940		102-4		GLENDA GASSIOTT #23 #1-23 (GAS)	G F R (GRAY SAND)	300.0	EL PASO HYDROCARB
-DISCOVERY OPERATING INC				RECEIVED:	05/04/84	JA: TX			
8432630	F-8A-081362	4231732843		103		MERINGUE #1	ACKERLY (DEAN SAND)	20.4	TEXACO INC
-DORCHESTER EXPLORATION INC				RECEIVED:	05/04/84	JA: TX			
8432737	F-10-081589	4221131640		103		LUCILLE WRIGHT #6	CANADIAN S E	69.4	ARKANSAS LOUISIAN
-EL PASO EXPLORATION CO				RECEIVED:	05/04/84	JA: TX			
8432499	F-7C-079376	4210534574		102-4		ODESSA ET AL 1 84-A	INGHAM (QUEEN) FIELD	39.0	EL PASO NATURAL G
-EL PASO NATURAL GAS COMPANY				RECEIVED:	05/04/84	JA: TX			
8432489	F-7C-079197	4243533023		103	107-TF	DAVIS F #3	SONORA (UPPER CANYON)	52.0	EL PASO NATURAL G
8432490	F-7C-079199	4243533022		103	107-TF	DAVIS F #4	SONORA (UPPER CANYON)	52.0	EL PASO NATURAL G
8432491	F-7C-079200	4243533021		103	107-TF	DE BERRY A #11	SONORA (UPPER CANYON)	67.0	EL PASO NATURAL G
8432488	F-7C-079196	4243533020		103	107-TF	MARTIN #3	SONORA (UPPER CANYON)	36.0	EL PASO NATURAL G
8432433	F-7C-078391	4243533019		103	107-TF	STEEN #16	SONORA (UPPER CANYON)	80.0	EL PASO NATURAL G
-ENERGETICS INC				RECEIVED:	05/04/84	JA: TX			
8432731	F-10-081549	4237500000		103		MASTERSON G-57	PANHANDLE (RED CAVE)	9.9	COLORADO INTERSTA
-ENERGY RESERVES GROUP INC				RECEIVED:	05/04/84	JA: TX			
8432596	F-7C-080592	4223531863		108		R S WILLIAMS "B" #3	VELREX	10.7	NORTHERN NATURAL
-ENRE CORP				RECEIVED:	05/04/84	JA: TX			
8432593	F-09-080548	4207733155		102-4		CONSTANDINE #1 (OIL)	WILDCAT	91.0	BENGAL GAS TRANSM
8432567	F-7B-080320	4205934589		103		SNYDER MINERAL TR "143" #11 (19970)	CALLAHAN COUNTY REGUL	8.0	BENGAL GAS TRANSM
-ENSERCH EXPLORATION INC				RECEIVED:	05/04/84	JA: TX			
8432426	F-05-078119	4221330382		103		MAUDE BAKER #8	TRI-CITIES / PETTIT	0.0	
-ESENJAY PETROLEUM CORP				RECEIVED:	05/04/84	JA: TX			
8432528	F-03-080065	4203931883		103		TODD UNIT #1	LIVERPOOL (11,400)	1.8	AMOCO GAS CO
-EVEREST MINERALS CORP				RECEIVED:	05/04/84	JA: TX			
8432385	F-03-074405	4208931104		102-4	103	MCLANE TEXAS TRUST #1-43 WELL	ROOT (2170)	0.0	GOLDENROD TRANSMI
-EXXON CORPORATION				RECEIVED:	05/04/84	JA: TX			
8432633	F-05-081379	4216130835		102-4	107-TF	C E NEAL JR #1	NAN-SU-GAIL	300.0	TEJAS GAS CORP
8432716	F-03-081517	4233930620		103		CONROE FIELD UNIT #1942	CONROE	15.0	MORAN UTILITIES C
8432753	F-03-081629	4233930633		103		CONROE FIELD UNIT #3209	CONROE	300.0	MORAN UTILITIES C
8432669	F-06-081444	4200131536		103		G W EATON ESTATE #37	NECHES (WOODBINE)	91.0	UNITED GAS PIPELI
8432717	F-06-081518	4200131535		103		G W EATON ESTATE #38	NECHES (WOODBINE)	45.0	UNITED GAS PIPELI
8432452	F-03-078884	4207131488		103		H A GRIPON A/C 1 #35	ANAHUAC	24.0	HOUSTON PIPELINE
8432634	F-03-081380	4207131476		103		H A GRIPON A/C 1 #36	ANAHUAC	18.0	HOUSTON PIPELINE
8432718	F-03-081519	4215731434		103		J H P DAVIS #68	THOMPSON SOUTH	30.0	ARMCO STEEL CORP
8432406	F-04-076398	4226130812		102-4		K R S JOSE DE LA PARRA 51-F 107641	CAT TDRIA (G-15)	678.0	ARMCO STEEL CORP
8432738	F-03-081591	4215731492		103		M C CAMP #19	SUGARLAND	36.0	UNITED TEXAS TRAN
8432571	F-05-080383	4216130843		102-4	107-TF	MARGIE GUNTER EMMONS #1	NAN-SU-GAIL (COTTON V	425.0	
8432526	F-08-080035	4200333798		103		MEANS/SAN ANDRES/UNIT #2520	MEANS	15.0	PHILLIPS PETROLEU
8432446	F-08-078654	4200333484		103		MEANS/SAN ANDRES/UNIT #6460	MEANS	15.0	PHILLIPS PETROLEU
8432591	F-08-080540	4200333483		103		MEANS/SAN ANDRES/UNIT #6468	MEANS	15.0	PHILLIPS PETROLEU
8432445	F-08-078653	4200333874		103		MEANS/SAN ANDRES/UNIT #7370	MEANS	15.0	PHILLIPS PETROLEU
8432635	F-05-081384	4216130810		102-4	107-TF	MRS TOM S PEYTON #1	NAN-SU-GAIL (COTTON V	1200.0	TEJAS GAS CORP
8432752	F-05-081626	4246730558		103		R S BLAKE #25	VAN	25.0	UNITED GAS PIPELI
8432714	F-03-081512	4220131660		103		WEBSTER FIELD UNIT #163	WEBSTER	219.0	ENTEX PETROLEUM I
8432754	F-03-081637	4220131652		103		WEBSTER FIELD UNIT #2783	WEBSTER	550.0	HOUSTON PIPELINE
-FAME OIL CO				RECEIVED:	05/04/84	JA: TX			
8432515	F-03-079826	4248132188		103		H D CORBETT #2	SPANISH CAMP (SPANISH	136.0	NATURAL GAS PIPEL
-FISCHER PETROLEUM CORP				RECEIVED:	05/04/84	JA: TX			
8432442	F-02-078602	4217531793		102-4		SWICKHEIMER GAS UNIT "B" WELL #1	TERRELL POINT (4470)	58.0	DELHI GAS PIPELIN
-FRIEMEL & CARPENTER				RECEIVED:	05/04/84	JA: TX			
8432632	F-08-081377	4200333859		103		UNIVERSITY "16" #4	FUHRMAN-MASCHO	18.2	PHILLIPS PETROLEU
-FRIO EXPLORATION CO				RECEIVED:	05/04/84	JA: TX			
8432392	F-03-075258	4203931868		102-4		FINGER MARVIN HEIRS ET AL	CHOCOLATE BAYOU NE (9	200.0	TEXAS UTILITIES F
-GENERAL PRODUCTION CO INC				RECEIVED:	05/04/84	JA: TX			
8432393	F-03-075279	4205132526		102-2		JOHN PLASEK "C" #1	WILLARD (NAVARRO)	0.0	FERGUSON CROSSING
-GEOSOUTHERN ENERGY CORP				RECEIVED:	05/04/84	JA: TX			
8432408	F-03-076521	4214931619		102-2	103	SYBLE #1	GIDDINGS (AUSTIN CHAL	0.0	PHILLIPS PETROLEU
-GETTY OIL COMPANY				RECEIVED:	05/04/84	JA: TX			
8432377	F-03-072103	4248100000		103		F B DUNCAN #7	WEST BERNARD (2800' F	0.0	NATURAL GAS PIPEL
8432517	F-8A-079831	4207900000		108		SOUTHWEST LEVELLAND UNIT #108	LEVELLAND	1.2	CITIES OIL & GAS
8432518	F-8A-079832	4207900000		108		SOUTHWEST LEVELLAND UNIT #109	LEVELLAND	0.7	CITIES OIL & GAS
8432516	F-8A-079829	4207900000		108		SOUTHWEST LEVELLAND UNIT #19	LEVELLAND	2.0	CITIES OIL & GAS
-GHR ENERGY CORP				RECEIVED:	05/04/84	JA: TX			
8432381	F-04-073546	4247933567		102-4	107-TF	B M T #15	LA ROSITA (LOBO)	400.0	GHR PIPELINE CORP
-GIEBEL AARON F				RECEIVED:	05/04/84	JA: TX			
8432585	F-8A-080479	4216500000		102-4		ADAMS #1 I D #64374	GIEBEL (CLEARFORK LOW	0.0	PHILLIPS PETROLEU
8432586	F-8A-080480	4200300000		102-4		ADAMS B#1 I D #64552	GIEBEL (CLEARFORK LOW	0.0	PHILLIPS PETROLEU
8432587	F-8A-080481	4216500000		102-4		STATE #1 I D #64515	GIEBEL (CLEARFORK LOW	0.0	PHILLIPS PETROLEU
-GRAND BANKS ENERGY CO				RECEIVED:	05/04/84	JA: TX			
8432722	F-08-081523	4200333868		103		RIGGAN #2	FUHRMAN-MASCHO	15.5	PHILLIPS PETROLEU
-GRANITE PRODUCTION INC				RECEIVED:	05/04/84	JA: TX			
8432665	F-10-081435	4217931126		103		DENNIS #4	PANHANDLE GRAY COUNTY	71.0	CABOT PIPELINE CO
-HAWN BROTHERS-CHAPMAN OIL-LA FETE				RECEIVED:	05/04/84	JA: TX			
8432618	F-01-081033	4231131883		102-4		SOUTH TEXAS SYNDICATE #203	BIG MULE (5500' SAND)	219.0	ESPERANZA TRANSMI
-HENRY PETROLEUM CORP				RECEIVED:	05/04/84	JA: TX			

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8432475	F-7C-078998	4238300000		103		ROAK 83-1	SPRADBERRY (TREND AREA	0.0	UNION TEXAS PETRO
8432476	F-8A-078999	4211500000		102-4		V O BARRON 83-1	KEY WEST (SPRAYBERRY)	0.0	PHILLIPS PETROLEU
-HILL INTERNATIONAL PRODUCTION CO				RECEIVED:	05/04/84	JA: TX			
8432372	F-06-070431	4234730691		102-4		MARJORIE M MOORE #1T	TOOLAN	0.0	LIBERTY NATURAL G
-HILL PRODUCTION CO-WISCONSIN				RECEIVED:	05/04/84	JA: TX			
8432612	F-03-080834	4204131053		102-2		WICKSON WARRIOR "A" #1	KURTEN (DUDA)	0.0	FERGUSON CROSSING
-HILLIARD OIL & GAS INC				RECEIVED:	05/04/84	JA: TX			
8432568	F-08-080337	4217331449		102-4		BRUNSON #1		115.0	PHILLIPS PETROLEU
-HINTON PRODUCTION COMPANY				RECEIVED:	05/04/84	JA: TX			
8432434	F-05-078394	4216130853		102-4		FLORENCE HANSON WELL #1	RISCHER STORE (HANSON	292.0	LONE STAR GAS CO
-HNG OIL COMPANY				RECEIVED:	05/04/84	JA: TX			
8432419	F-7C-077712	4243500000		103	107-TF	FIELDS "16" #6	SAWYER (CANYON)	0.0	INTRATEX GAS CO
-HORIZON OIL & GAS CO OF TEXAS				RECEIVED:	05/04/84	JA: TX			
8432595	F-10-080570	4219530912		103		MCCLELLAN #6-12	GRUVER NW (MORROW UPP	219.0	PHILLIPS PETROLEU
-HRUBETZ OIL CO				RECEIVED:	05/04/84	JA: TX			
8432743	F-7B-081606	4239933011		102-4		G BROOKSHIER #2	HRUDETZ (ELLEN)	21.9	LONE STAR GAS CO
-HUMBLE EXPLORATION CO INC				RECEIVED:	05/04/84	JA: TX			
8432420	F-03-077743	4214900000		102-2		LEONA #1	GIDDINGS (AUSTIN CHAL	0.0	PHILLIPS PETROLEU
8432394	F-03-075611	4214931631		102-2		MARY LOUISE #1	GIDDINGS (AUSTIN CHAL	0.0	PHILLIPS PETROLEU
-INLAND OCEAN INC				RECEIVED:	05/04/84	JA: TX			
8432671	F-04-081454	4240931734		102-4		PAINTER #1 (RRC ID NO 10261)	TAFT N (6480)	37.0	GAS AFFILIATED SY
-IRISH OIL & GAS CO				RECEIVED:	05/04/84	JA: TX			
8432614	F-03-080836	4215700000		102-4		TXI #1	CORNERSTONE NE (CLODI	0.0	HOUSTON PIPE LINE
-J B HERRMANN				RECEIVED:	05/04/84	JA: TX			
8432448	F-10-078716	4223331778		103		KILLOUGH B #1	PANHANDLE FIELD	7.3	PHILLIPS PETROLEU
-JENNINGS EXPLORATION CO				RECEIVED:	05/04/84	JA: TX			
8432757	F-01-081646	4250732021		102-4		H&F PROPERTIES "33" #2 109475	RANDOLPH WEST (DEL MO	0.0	REATA INDUSTRIAL
-KENNEDY & CHANEY				RECEIVED:	05/04/84	JA: TX			
8432721	F-08-081522	4247532591		103		DORR #15	WARD SOUTH	20.0	DELHI GAS PIPELIN
8432720	F-08-081521	4247532723		103		DORR #17	WARD SOUTH	14.6	DELHI GAS PIPELIN
8432719	F-08-081520	4247532867		103		DORR #19	WARD SOUTH	21.9	DELHI GAS PIPELIN
-KIM PETROLEUM CO INC				RECEIVED:	05/04/84	JA: TX			
8432740	F-10-081595	4217931566		103		RENDLEMAN #3	PANHANDLE GRAY COUNTY	108.0	NORTHERN NATURAL
8432741	F-10-081596	4217931562		103		RENDLEMAN #5	PANHANDLE GRAY COUNTY	96.0	NORTHERN NATURAL
-L & L PETROLEUM CORP & MUSSELMAN			GA	RECEIVED:	05/04/84	JA: TX			
8432748	F-02-081620	4246931974		103		C K MCCAN JR "A" #1	SALEM (3880)	50.0	BAM ENERGY INC
8432734	F-02-081555	4246932045		103		C K MCCAN JR "D" #1	SALEM (3820)	3.5	BAM ENERGY INC
8432745	F-02-081611	4246931990		103		C K MCCAN JR A-2	SALEM (3700)	100.0	BAM ENERGY INC
-LA PARRITA OIL & GAS CORP				RECEIVED:	05/04/84	JA: TX			
8432590	F-04-080511	4227379200		103		TEXAS TR 84 3U RIVIERA 040032444	YEARY	14.2	VALLEY GAS TRANSM
-LONGHORN OIL & GAS CO				RECEIVED:	05/04/84	JA: TX			
8432661	F-03-081427	4235130355		102-4		ARCO FEE #1	DEMPSEY CREEK (WILCOX	540.0	RELIANCE PIPELINE
8432662	F-03-081428	4235130368		102-4		ARCO FEE #2	DEMPSEY CREEK (WILCOX	540.0	RELIANCE PIPELINE
8432663	F-03-081429	4235130388		102-4		HAROLD H BEVIL #1	DEMPSEY CREEK (WILCOX	540.0	RELIANCE PIPELINE
-LORDSTONE CORP				RECEIVED:	05/04/84	JA: TX			
8432369	F-7B-067351	4220700000		102-4		REYNOLDS #23	PRECISION (BLUFF CREE	729.0	HST GATHERING CO
-M BRAD BENNETT INC & RKH LTD				RECEIVED:	05/04/84	JA: TX			
8432686	F-08-081477	4247533190		102-4		MOBIL "A" #3	COLLIE (DELAWARE)	73.0	COLONY GATHERING
-M/E PETROLEUM INC				RECEIVED:	05/04/84	JA: TX			
8432624	F-09-08114	4223735701		103		TURNER #1	BEARING (CADDO)	0.0	SOUTHWESTERN GAS
-MADDUX OIL & GAS				RECEIVED:	05/04/84	JA: TX			
8432546	F-7B-080165	4236732395		102-4		B E BEATY #1	KIDD(STRAWN UPPER)	0.0	PARKER GAS INC
-MARALO INC				RECEIVED:	05/04/84	JA: TX			
8432751	F-09-081625	4223735727		103		CHERRYHOMES #1	CHAPMAN-CHERRYHOMES (	32.5	
-MARSHALL EXPLORATION INC				RECEIVED:	05/04/84	JA: TX			
8432374	F-03-070927	4231330444		102-4	103	MOSS-MALONE #3	MADISONVILLE NE (GEOR	100.0	LONE STAR GAS CO
-MATZINGER PETROLEUM CO				RECEIVED:	05/04/84	JA: TX			
8432398	F-01-076117	4250731738		102-4	103	PRYOR-BRANSCOME "H-1"	BRANSCOME (OLMOS) FIE	300.0	REATA INDUSTRIAL
-MCCLYMOND BROTHERS				RECEIVED:	05/04/84	JA: TX			
8432441	F-7B-078578	4242900000		108		R L MORRISON #2 RRC #11083	STEPHENS COUNTY REGUL	7.2	BRECKENRIDGE GASO
-MCZ INC				RECEIVED:	05/04/84	JA: TX			
8432601	F-03-080701	4204100000		102-2		H J GENTRY #1-L	BRYAN N (GEORGETOWN)	90.0	FERGUSON CROSSING
-MELBOURNE OIL COMPANY				RECEIVED:	05/04/84	JA: TX			
8432395	F-10-075847	4229531378		102-4	103	SCHULTZ "117" #4 ID #05647	BOOKER N (MORROW UPPE	396.0	CALICHE PIPELINE
-MILESTONE PETROLEUM INC				RECEIVED:	05/04/84	JA: TX			
8432421	F-02-077745	4212331297		103		ROYAL ZENGERLE #1	THOMASTON (WILCOX 780	46.0	REATA INDUSTRIAL
-MITCHELL ENERGY CORPORATION				RECEIVED:	05/04/84	JA: TX			
8432520	F-7B-079896	4236732616		102-4	103	J C MADDUX CU "A" #1-C	GARNER N W (3900)	235.2	NATURAL GAS PIPEL
8432521	F-7B-079897	4236732616		102-4	103	J C MADDUX CU "A" #1-T	GARNER N W (4475)	40.1	NATURAL GAS PIPEL
8432622	F-09-081058	4249732617		102-4	103	J O WILSON #2	NEWARK EAST (BARNETT	46.0	NATURAL GAS PIPEL
8432603	F-09-080714	4223735521		103		JOHN HENDERSON #3	JACK COUNTY REGULAR	16.5	NATURAL GAS PIPEL
8432726	F-05-081537	4239530273		102-4		LLOYD WILLIAMS #1 #102841	DALD PRAIRIE (COTTON	0.0	UNITED TEXAS TRAN
8432494	F-05-079298	4239530285		103	107-TF	NESTER L LEAMON #1	DALD PRAIRIE (CU-DOSS	273.8	UNITED TEXAS TRAN
8432599	F-09-080636	4249732658		108		ROBERT N GREGG #2	DOONSVILLE (BEND CONG	22.1	NATURAL GAS PIPEL
8432450	F-09-078768	4249700000		108		TARRANT CO WATERBOARD #14 17160	CAP YATES (CONS CONSL	0.0	NATURAL GAS PIPEL
-MOBIL PRDG TEXAS & NEW MEXICO INC				RECEIVED:	05/04/84	JA: TX			
8432608	F-04-080805	4224903529		107-PE		A GARCIA GAS UNIT #1	LOMA BLANCA (FRIO 782	91.0	AMOCO PRODUCTION
8432610	F-04-080807	4204700000		107-PE		CONCEPTION ZAMORA GAS UNIT #1	LOMA BLANCA (9000)	183.0	AMOCO PRODUCTION
8432628	F-02-081356	4239131373		108		F B ROOKE & SONS #N-1	ROOKE RANCH NE (CRETA	5.9	UNITED GAS PIPE L
8432498	F-8A-079374	4216532643		103		H & J SEC 325 #13	ROBERTSON N (CLEARFOR	0.4	PHILLIPS PETROLEU
8432607	F-8A-080804	4216532646		103		H&J SEC 325 #16	ROBERTSON N (CLEARFOR	9.0	PHILLIPS PETROLEU
8432609	F-04-080806	4204700000		107-PE		TRAD GAS UNIT #1	LOMA BLANCA (9000)	146.0	AMOCO PRODUCTION
-MONSANTO COMPANY				RECEIVED:	05/04/84	JA: TX			
8432750	F-08-081624	4217331550		103		BRUNSON #4	POWELL (8300)	365.0	PHILLIPS PETROLEU
-MOSBACHER PRODUCTION CO				RECEIVED:	05/04/84	JA: TX			
8432594	F-03-080555	4216700000		102-4		STATE TRACT 152 #1	STEPHENSON POINT (FRI	219.0	TRANSCONTINENTAL
-NEUMIN PRODUCTION CO				RECEIVED:	05/04/84	JA: TX			
8432500	F-02-079378	4205731286		102-4	103	STATE TRACT 200 WELL 2-D	GRASS ISLAND W	961.2	ALUMINUM CO OF AM
8432429	F-02-078309	4205731274		102-4	103	STATE TRACT 38 WELL #3	LAVACA BAY	456.0	ALUMINUM CO OF AM
-NORTH RIDGE CORP				RECEIVED:	05/04/84	JA: TX			
8432382	F-7B-073878	4213335095		103		J C HARRELL "X" #3	EASTLAND COUNTY REGUL	0.0	PRISM ENTERPRISES
8432383	F-7B-073879	4213335094		103		J C HARRELL "X" #4	EASTLAND COUNTY REGUL	0.0	PRISM ENTERPRISES
-OIL CREEK ENERGY INC				RECEIVED:	05/04/84	JA: TX			
8432566	F-09-080297	4233732086		103		GIFFORD #1	DOEDEKER S E (VIOLA L	55.0	TEXAS UTILITIES F
-ONEOK EXPLORATION CO				RECEIVED:	05/04/84	JA: TX			
8432502	F-10-079429	4229531314		103		SQUIRE #1	WILEY TONKAWA	5.0	PHILLIPS PETROLEU
-PANHANDLE PRODUCING COMPANY				RECEIVED:	05/04/84	JA: TX			
8432664	F-10-081431	4223300000		108		ANTELOPE CREEK #6 (023778)	PANHANDLE HUTCHINSON	7.0	COLORADO INTERSTA
-PARKER & PARSLEY INC				RECEIVED:	05/04/84	JA: TX			
8432439	F-08-078505	4232900000		103		FASKEN "I" #1	SPRADBERRY (TREND AREA	1.5	PHILLIPS PETROLEU
8432438	F-08-078504	4232900000		103		MIDKIFF "A" #1	SPRADBERRY (TREND AREA	1.5	PHILLIPS PETROLEU
8432527	F-08-080044	4251700000		103		NAIL "I" #1	SPRADBERRY (TREND AREA	1.5	ADOBE OIL & GAS C
8432493	F-7C-079279	4246100000		103		POWELL "B" #1	SPRADBERRY (TREND AREA	1.5	MOBIL PRODUCING T
-PENNZOIL PRODUCING COMPANY				RECEIVED:	05/04/84	JA: TX			

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8432641	F-04-081401	4235531248		108		E A KINSEY #A-3	AGUA DULCE (6400')	19.0	UNITED GAS PIPE L
-PETRO JET INC				RECEIVED:	05/04/84	JA: TX			
8432376	F-03-071579	4208900000		108-ER		KENNEITH DANKLEFS #1	NADA	0.0	TEXAS EASTERN TRA
-PETRO-LEWIS CORPORATION				RECEIVED:	05/04/84	JA: TX			
8432715	F-09-081513	4207700000		103		VELMA TREADWELL "A" #1	DILLARD W (CADDO)	97.9	LONE STAR GAS CO
-PHILLIPS OIL CO				RECEIVED:	05/04/84	JA: TX			
8432584	F-08-080474	4210303657		108		(21554) CENTRAL DUNE (SA) U #607	DUNE	0.0	WARREN PETROLEUM
-PHILLIPS PETROLEUM COMPANY				RECEIVED:	05/04/84	JA: TX			
8432443	F-10-078619	4235700000		108		RICHARDSON A #1	FARNSWORTH E MORROW	0.0	TRANSWESTERN PIPE
-POLK & PATTON INC				RECEIVED:	05/04/84	JA: TX			
8432437	F-03-078494	4205132439		102-2		B L M UNIT #1	GIDDINGS (AUSTIN CHAL	0.0	PHILLIPS PETROLEU
8432733	F-01-081554	4217731502		102-2		C G UNIT #1	PEACH CREEK (AUSTIN C	0.0	
-PRAIRIE PRODUCING CO				RECEIVED:	05/04/84	JA: TX			
8432547	F-05-080173	4237930117		102-4		G C HOPKINS GU #1 WELL #2	S E GINGER (SMACKOVER	1095.0	TEXAS UTILITIES F
-REALM RESOURCES INC				RECEIVED:	05/04/84	JA: TX			
8432588	F-02-080493	4229733367		102-4		JANSSEN GAS UNIT #1 WELL #1	MAXINE EAST (MAIULA)	800.0	
-RICHARD W THOMPSON INC				RECEIVED:	05/04/84	JA: TX			
8432425	F-7B-078113	4244733603		102-4		DAWS #2	JOE & GRADY DAWS (STR	146.0	HASKELL GATHERING
-RICHARDSON ENERGY CORP				RECEIVED:	05/04/84	JA: TX			
8432478	F-09-079029	4250300000		103		DYSINGER-HEAVEN #1 (22637)	JAMES	14.0	EAGLE THRIFTWAY G
-RICKS EXPLORATION CO				RECEIVED:	05/04/84	JA: TX			
8432366	F-10-058961	4235731222		102-4		SANTA FE #1087-B	RICKS (MORROW LOWER)	344.0	PRODUCERS GAS CO
-ROBERTS & HAMMACK INC				RECEIVED:	05/04/84	JA: TX			
8432606	F-7C-080781	4246132049		103		ELKIN 31-3	CALVIN (DEAN)	60.0	PHILLIPS PETROLEU
-ROME EXPLORATION CO INC				RECEIVED:	05/04/84	JA: TX			
8432371	F-01-069271	4250700000		102-4		LYLES #15	LYLES RANCH (OLMOS)	0.0	ESPERANZA TRANSMI
-RYDER SCOTT OIL CO				RECEIVED:	05/04/84	JA: TX			
8432732	F-09-081553	4249732636		102-4		FLETCHER UNIT #7 RRC 23250	FLETCHER (CONGLOMERAT	190.0	DELHI GAS PIPELIN
-S K ROGERS OIL CO				RECEIVED:	05/04/84	JA: TX			
8432506	F-8A-079551	4207931693		103		DELTA #1	LEVELLAND	5.0	CITIES SERVICE OI
8432508	F-8A-079554	4221900000		103		JAMES IRA DELOACHE #1	LEVELLAND	5.0	AMOCO PRODUCTION
8432507	F-8A-079553	4221933542		103		JAMES IRA DELOACHE #3	LEVELLAND	5.0	AMOCO PRODUCTION
8432504	F-8A-079549	4207900000		103		LATE #1	SLAUGHTER	5.0	CITIES SERVICE OI
8432505	F-8A-079550	4207931694		103		SLAUGHTER #1	LEVELLAND	5.0	CITIES SERVICE OI
8432513	F-8A-079687	4207931715		103		SNODGRASS "B" #1	LEVELLAND	5.0	CITIES SERVICE OI
8432503	F-8A-079547	4207900000		103		ST CLAIR "B" #1	LEVELLAND	5.0	CITIES SERVICE OI
-SANCHEZ-OBRIEN OIL & GAS CORP				RECEIVED:	05/04/84	JA: TX			
8432412	F-04-076687	4213133623		102-4		ESTELLA GARCIA #2	SAN DIEGO SW (YEGUA 6	0.0	UNITED GAS PIPELI
8432397	F-02-076095	4229700000		102-4		GEFFERT GAS UNIT 2 WELL 1	FANT S (WILCOX 10760)	0.0	
8432432	F-03-078377	4207131494		102-4		WHITES BAYOU S	WHITES BAYOU S (TX WA	0.0	
-SANTA FE-ANDOVER OIL CO				RECEIVED:	05/04/84	JA: TX			
8432615	F-03-080924	4219931908		102-4		SCHNEIDER "B" #1	BEECH CREEK SW (Y-9)	0.0	ARCO OIL & GAS CO
-SBC ENERGY INC				RECEIVED:	05/04/84	JA: TX			
8432568	F-7B-080176	4208333753		102-4		ILENE HAYNES #2	TRICKHAM (CROSSCUT)	115.0	EL PASO HYDROCARB
-SBO CORP				RECEIVED:	05/04/84	JA: TX			
8432407	F-8A-076493	4207931617		102-4		DOUG DUNN #3	BONANZA (SAN ANDRES)	3.7	WARREN PETROLEUM
-SCANDRILL INC				RECEIVED:	05/04/84	JA: TX			
8432400	F-09-076292	4223735341		103		W L RICHARDS "A" #2	BRYSON EAST	54.8	LONE STAR GAS CO
-SHELL OIL CO				RECEIVED:	05/04/84	JA: TX			
8432410	F-08-076573	4200300000		108		RAINEY DONNA MRS #2-L	UNION	1.5	PHILLIPS PETROLEU
8432386	F-08-074433	4213500000		108		WITCHER J E #11	COWDEN SOUTH (CANYON	0.8	ODESSA NATURAL CO
-SHELL WESTERN E&P INC				RECEIVED:	05/04/84	JA: TX			
8432418	F-01-077669	4231131849		102-4		BRACKEN #18	A W P (OLMOS)	350.0	HOUSTON PIPELINE
8432522	F-01-079941	4231131956		102-4		BRACKEN #22	A W P (OLMOS)	100.0	HPI TRANSMISSION
8432581	F-01-080444	4231132004		102-4		BRACKEN #25	A W P (OLMOS)	100.0	HPI TRANSMISSION
8432582	F-01-080445	4231132003		102-4		BRACKEN #26	A W P (OLMOS)	100.0	HPI TRANSMISSION
8432396	F-04-076022	4204730868		102-4		HECTOR LOPEZ #2	LOPEZ RANCH (VICKSBUR	350.0	LONE STAR GAS CO
-SMITH PRODUCING CO				RECEIVED:	05/04/84	JA: TX			
8432621	F-7B-081048	4204933021		102-4		REID M J #1A	M J REID (MARBLE FALL	25.0	LONE STAR GAS CO
8432620	F-7B-081047	4204933020		102-4		REID M J #1B	M J REID (MARBLE FALL	27.0	LONE STAR GAS CO
8432619	F-7B-081046	4204933263		102-4		REID M J #1C	M J REID (MARBLE FALL	14.0	LONE STAR GAS CO
-SOHIO PETROLEUM CO				RECEIVED:	05/04/84	JA: TX			
8432589	F-08-080494	4230130385		103		LUDEMAN "14" #1	LINEBERY (STRAWN)	1898.0	INTRATEX GAS CO
-SOUTHLAND ROYALTY CO				RECEIVED:	05/04/84	JA: TX			
8432670	F-08-081450	4232931205		103		JONES #1	BRAZOS	3.0	PHILLIPS PETROLEU
-STEVE STAMPER				RECEIVED:	05/04/84	JA: TX			
8432728	F-09-081540	4223735502		103		RUTH BAILEY #2	BRYSON EAST	52.0	TEXAS UTILITIES F
-SUGARBERRY OIL & GAS CORP				RECEIVED:	05/04/84	JA: TX			
8432529	F-7C-080117	4241331364		103	107-TF	HARPER #5	VELREX (HENDERSON UPP	62.0	FARMLAND INDUSTRI
-SUN EXPLORATION & PRODUCTION CO				RECEIVED:	05/04/84	JA: TX			
8432370	F-04-067403	4242700000		108-ER		AGUSTIN OLIVARES #1	SUN	0.0	TRANSCONTINENTAL
8432486	F-08-079124	4233500000		108		B A ANDERSON #10	JAMESON N	8.0	LONE STAR GAS CO
8432427	F-7B-078129	4242932715		103		BABER-ACKERS (CADDO) UNIT #47	STEPHENS COUNTY REGUL	3.0	DAMSON GAS PROCES
8432428	F-7B-078130	4242932716		103		BABER-ACKERS (CADDO) UNIT #48	STEPHENS COUNTY REGUL	0.3	DAMSON GAS PROCES
8432373	F-04-070683	4242700000		108-ER		C V DE LOPEZ #5	SUN	0.0	TRANSCONTINENTAL
8432482	F-7C-079079	4208100000		108		CENTRAL NATIONAL BANK A #14	LYGAY	15.0	LONE STAR GAS CO
8432555	F-7B-080196	4242900000		108		ELIASVILLE CADDO UNIT #119	STEPHENS COUNTY REGUL	0.1	BRECKENRIDGE GASO
8432558	F-7B-080215	4242900000		108		ELIASVILLE CADDO UNIT #32	STEPHENS COUNTY REGUL	0.1	BRECKENRIDGE GASO
8432403	F-04-076363	4235532096		102-4		F E LONDON #9	DOUGHTY SW	1143.0	HOUSTON PIPE LINE
8432480	F-04-079040	4242700000		108		F-1-M 4950 FT SAND UNIT #1-17	SUN	9.0	TRANSCONTINENTAL
8432479	F-04-079039	4242700000		108		F-1-M 4950 FT SAND UNIT #2-16	SUN	16.0	TRANSCONTINENTAL
8432484	F-7B-079112	4242900000		108		G B WALKER #2	VEALE	2.0	SOUTHWESTERN GAS
8432747	F-02-081615	4223900000		108		G T BROOKING #30	SWAN LAKE	6.0	ALUMINUM CO OF AM
8432579	F-7C-080432	4208100000		108		H L BLOODWORTH #3	JAMESON	17.0	LONE STAR GAS CO
8432554	F-7B-080191	4220700000		108		HASKELL SOJOURNER UNIT #26	SOJOURNER	0.1	CITIES SERVICE CO
8432524	F-7C-079977	4208100000		108		JAMESON STRAWN SAND UNIT #11-33	JAMESON (STRAWN)	14.0	EL PASO NATURAL G
8432580	F-7B-080436	4213300000		108		N CENTRAL RANGER UNIT #3-19	EASTLAND COUNTY REGUL	2.0	LONE STAR GAS CO
8432575	F-7B-080427	4213300000		108		N CENTRAL RANGER UNIT #3-35	EASTLAND COUNTY REGUL	0.3	
8432576	F-7B-080428	4213300000		108		N CENTRAL RANGER UNIT #3-40	EASTLAND COUNTY REGUL	1.0	
8432577	F-7B-080429	4213300000		108		N CENTRAL RANGER UNIT #3-44	EASTLAND COUNTY REGUL	0.1	
8432578	F-7B-080430	4213300000		108		N CENTRAL RANGER UNIT #3-9	EASTLAND COUNTY REGUL	0.3	LONE STAR GAS CO
8432574	F-7B-080404	4213300000		108		NORTH CENTRAL RANGER UNIT #11-23	EASTLAND COUNTY REGUL	2.0	
8432683	F-7B-079093	4213300000		108		NORTHWEST RANGER UNIT #6-10	EASTLAND COUNTY REGUL	1.0	
8432759	F-08-081677	4213534390		103		O B HOLT A/C 2 #4A	COWDEN NORTH	14.0	AMOCO PRODUCTION
8432758	F-08-081676	4200333836		103		O B HOLT A/C 2 #9A	COWDEN NORTH	16.0	AMOCO PRODUCTION
8432760	F-08-081678	4200333835		103		O B HOLT ACCT 2 #28	COWDEN NORTH	2.0	AMOCO PRODUCTION
8432573	F-04-080400	4224900000		108		P CANALES #1-24A-U	SEELIGSON	5.0	HOUSTON PIPELINE
8432449	F-7C-078753	4209530498		103		R L CARTER #13	SPECK NORTH	10.0	DAVIS GAS PROCESS
8432485	F-09-079113	4209700000		108		S F MURRELL #3	BOB-K NW SHUGGS	1.0	UNION TEXAS PETRO
8432415	F-7B-076934	4213300000		108		S M BRATTON #1	GAILEY ALLEN	9.0	SOUTHWESTERN GAS
8432602	F-08-080712	4233500000		103		V T MCCABE #51	JAMESON N	104.0	LONE STAR GAS CO
8432746	F-08-081614	4233500000		108		V T MCCABE #8	JAMESON N (STRAWN)	2.0	LONE STAR GAS CO
-SUPERIOR OIL CO				RECEIVED:	05/04/84	JA: TX			
8432636	F-04-081389	4221500710		108		F I JOHNSON #2-T	MONTE CHRISTO (57)	0.0	FLORIDA GAS TRANS

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8432637	F-04-081390	4221530855		108		F I JOHNSON #8	MONTE CHRISTO (9000)	0.0	FLORIDA GAS TRANS
-TAMARACK PETROLEUM CO INC				RECEIVED:	05/04/84	JA: TX			
8432730	F-08-081542	4217331545		103		REED "21" #1 (RRC #28709)	SPRADERRY (TREND AREA	14.0	PHILLIPS PETROLEU
8432729	F-08-081541	4217331542		103		REED "21" #2 (RRC #28709)	SPRADERRY (TREND AREA	12.0	PHILLIPS PETROLEU
-TENNECO OIL COMPANY				RECEIVED:	05/04/84	JA: TX			
8432417	F-10-077592	4217931560		103		COMBS #178	PANHANDLE GRAY	0.5	PHILLIPS PETROLEU
-TERRELL OIL CO				RECEIVED:	05/04/84	JA: TX			
8432668	F-7B-081445	4215131779		102-4		WILSON ESTATE "A" #3 - RRC #20716	ROUND TOP (CANYON 425	45.0	CONOCO INC
-TEXACO INC				RECEIVED:	05/04/84	JA: TX			
8432379	F-04-072990	4247933563		103	107-TF	A M BRUNI FEE #14	JUANITA	800.5	INTRASTATE GATHER
8432553	F-08-080189	4243131395		107-TF		E B COPE "D" #3	CONGER S W (PENN)	369.0	REATA INDUSTRIAL
8432549	F-08-080184	4243131394		107-TF		E B COPE "D" #4	CONGER S W (PENN)	276.3	REATA INDUSTRIAL
8432530	F-08-080129	4200331631		103		J E MADEE "A" NCT-1 #49-A	MADEE	4.7	
8432416	F-8A-077182	4216532451		103		ROBERTSON UNIT #63	ROBERTSON N (CLEARFOR	29.2	PHILLIPS PETROLEU
8432551	F-08-080187	4243131397		107-TF		STERLING "I" FEE #8	CONGER (PENN)	223.4	REATA INDUSTRIAL
8432570	F-08-080360	4243131375		107-TF		STERLING "J" FEE #8	CONGER (PENN)	0.4	REATA INDUSTRIAL
8432550	F-08-080186	4243131371		107-TF		STERLING "N" FEE #8	CONGER (PENN)	194.6	REATA INDUSTRIAL
8432556	F-08-080205	4243131418		107-TF		STERLING "O" FEE #8	CONGER (PENN)	115.3	REATA INDUSTRIAL
8432552	F-08-080188	4243131419		107-TF		STERLING "U" FEE #2	CONGER S W (PENN)	51.5	REATA INDUSTRIAL
8432557	F-08-080206	4243131386		107-TF		V E BROWNFIELD #8	CONGER (PENN)	237.3	REATA INDUSTRIAL
8432531	F-8A-080130	4221934162		103		W T CODLE "A" NCT-1 #45	LEVELLAND	11.0	AMOCO PRODUCTION
8432423	F-8A-077780	4216532695		103		WHARTON UNIT #160	HARRIS	36.1	PHILLIPS PETROLEU
-THOMPSON J CLEO & JAMES CLEO JR				RECEIVED:	05/04/84	JA: TX			
8432384	F-7C-073898	4210534489		102-4	107-TF	UNIVERSITY 32-12-W2	UNIVERSITY 31 (STRAWN	300.0	
-THREE-B OIL CO				RECEIVED:	05/04/84	JA: TX			
8432749	F-08-081623	4237100000		103		CREDO-STARK #4	CATLYNN WEST (CLEARFO	43.6	DELHI GAS PIPELIN
-TOM L INGRAM				RECEIVED:	05/04/84	JA: TX			
8432672	F-08-081455	4200333909		103		THORNBERRY "F" #4	FUHRMAN-MASCHO	16.5	PHILLIPS PETROLEU
-TUCKER DRILLING COMPANY INC				RECEIVED:	05/04/84	JA: TX			
8432685	F-7C-081475	4245131371		102-2	103	BROWN "C" #13	K W B (STRAWN)	46.8	LONE STAR GAS CO
-TXO PRODUCTION CORP				RECEIVED:	05/04/84	JA: TX			
8432401	F-03-076306	4248132559		103		ALLENSON #10	LOUISE N (4600'E)	0.0	TENNESSEE GAS PIP
8432399	F-05-076163	4216130836		102-4	103	BAILEY "G" #1	MIMMS CREEK	0.0	DELHI GAS PIPELIN
8432399	F-05-076163	4216130836		107-TF		BAILEY "G" #1	MIMMS CREEK	0.0	DELHI GAS PIPELIN
8432474	F-05-078963	4216130733		102-4		CULLUM #1	REED N (DOSSIER SAND)	0.0	DELHI GAS PIPELIN
8432389	F-04-074806	4240931806		102-4		EGGERT #1	WILLMANN	0.0	REATA INDUSTRIAL
8432473	F-06-078960	4234932093		102-4		INMON "C" #1	KERENS S (COTTON VALL	0.0	DELHI GAS PIPELIN
8432496	F-7B-079308	4236333244		103		MONTGOMERY #1	PALO PINTO COUNTY REG	30.0	SOUTHWESTERN GAS
8432435	F-09-078432	4223735486		103		POWERS #1	H F L (CONGLOMERATE)	250.0	LONE STAR GAS CO
8432509	F-7C-079605	4208131238		103		SIMPSON "H" #1	MEADOW CREEK	17.0	SUN OIL CO
8432402	F-05-076325	4216130833		102-4	103	UTLEY "H"	MIMMS CREEK (DOSSIER)	0.0	UNITED TEXAS TRAN
8432402	F-05-076325	4216130833		107-TF		UTLEY "H"	MIMMS CREEK (DOSSIER)	0.0	UNITED TEXAS TRAN
8432422	F-7C-077761	4223532129		103		WINTERBOTHAM #4	COVE CREEK (CANYON)	146.0	COLUMBIA GAS TRAN
-UNION OIL COMPANY OF CALIF				RECEIVED:	05/04/84	JA: TX			
8432625	F-08-081237	4243131410		103	107-TF	W L FOSTER JR "D" #14	CONGER (PENN)	2.0	ESPERANZA PIPELIN
-UNION TEXAS PETROLEUM				RECEIVED:	05/04/84	JA: TX			
8432525	F-03-080002	4219931520		102-4		KIRBY LUMBER COMPANY #3	SOUR LAKE EAST (YEGUA	0.0	TEXAS GAS TRANSMI
-UNIT DRILLING & EXPLORATION CO				RECEIVED:	05/04/84	JA: TX			
8432405	F-10-076375	4229531256		103		IONE BOOTH #1	LIPSCOMB SW (CLEVELAN	300.0	DIAMOND CHEMICALS
-VERNON E FAULCONER INC				RECEIVED:	05/04/84	JA: TX			
8432623	F-10-081070	4206500000		108		BURNETT "D" 3 RRC ID #025310	PANHANDLE WEST	0.0	PHILLIPS PETROLEU
-W H M ENERGY INC				RECEIVED:	05/04/84	JA: TX			
8432739	F-10-081592	4206531647		103		MOHAWK #1 (ID#)	PANHANDLE CARSON	64.0	CABOT PIPELINE CO
8432727	F-10-081538	4206531648		103		MOHAWK #2 (ID#)	PANHANDLE CARSON	93.0	CABOT PIPELINE CO
-WAGNER & BROWN				RECEIVED:	05/04/84	JA: TX			
8432742	F-08-081601	4243131314		103		BARBEE #3-6	CONGER (PENN)	60.3	TEXAS UTILITIES F
-WARREN PETR CO A DIV OF GULF OIL CO				RECEIVED:	05/04/84	JA: TX			
8432667	F-08-081440	4210333283		103		M B MCKNIGHT #155	RUNNING W (WADDELL)	139.6	EL PASO NATURAL G
8432511	F-08-079658	4210333330		103		P J LEA ETAL (TR A) #163	LEA (SAN ANDRES)	56.5	EL PASO NATURAL G
8432512	F-08-079660	4210333032		103		P J LEA ETAL #151 (TR A)	LEA (SAN ANDRES)	26.7	EL PASO NATURAL G
8432510	F-08-079655	4210313207		103		W N WADDELL ETAL (TR A) #1253	SAND HILLS (MCKNIGHT)	27.9	EL PASO NATURAL G
8432666	F-08-081438	4210333123		103		W N WADDELL ETAL (TR N) #1250	LEA (SOUTH CLEARFORK)	90.6	EL PASO NATURAL G
8432642	F-08-081403	4210333303		103		W N WADDELL ETAL (TRA) #1269	SAND HILLS (MCKNIGHT)	9.0	EL PASO NATURAL G
-WESTERN CHIEF OIL & GAS CO				RECEIVED:	05/04/84	JA: TX			
8432447	F-09-078710	4223725089		102-4	103	DUNLAP JOHNNY "C"	TJN (STRAWN)	0.0	SOUTHWESTERN GAS
-WESTLAND OIL DEVELOPMENT CORP				RECEIVED:	05/04/84	JA: TX			
8432736	F-7C-081579	4241331372		103		MARGARET D BYARS #2	HULLDALE WEST	15.0	LONE STAR GAS CO
-WHEELER OIL COMPANY				RECEIVED:	05/04/84	JA: TX			
8432411	F-01-076614	4223231659		103		BRITAIN-UMPHREYS #1	PANHANDLE E (ALBANY D	456.0	PHILLIPS PETROLEU
8432629	F-10-081360	4217931307		103		CATHY (05579) #1	PANHANDLE GRAY COUNTY	1.0	GETTY OIL CO
8432409	F-10-076534	4248331000		103		GRAGG (106371) #1	EAST PANHANDLE	32.0	HIGH PLAINS NATUR
-WILBROOK EXPLORATION INC				RECEIVED:	05/04/84	JA: TX			
8432569	F-7B-080351	4242933947		102-4		S & E REAL ESTATE #3	MICAP (DEVO CONSL 372	32.0	SOUTHWESTERN GAS
-WILLIAMS PETROLEUM CO				RECEIVED:	05/04/84	JA: TX			
8432617	F-7B-080980	4236300000		103		KENDRICK - SOUTH 1-S	MINERAL WELLS NORTH (	500.0	SOUTHWESTERN GAS
-WILLIFORD ENERGY CO				RECEIVED:	05/04/84	JA: TX			
8432391	F-10-074980	4229531299		102-4		D SELL #1-30	SELL (UPPER MORROW)	104.0	PHILLIPS PETROLEU
8432390	F-10-074951	4229531302		102-4		D SELL #2-30	DOOKER NORTH (MORROW	104.0	PHILLIPS PETROLEU
8432514	F-10-079723	4229500000		102-4		MASON 1-4	SELL (UPPER MORROW) F	150.0	PHILLIPS PETROLEU
-WY-VEL CORP				RECEIVED:	05/04/84	JA: TX			
8432744	F-10-081609	4206531525		103		BURNETT (02470) #14	PANHANDLE-CARSON COUN	3.4	PHILLIPS PETROLEU
8432755	F-10-081644	4223331602		103		SOUTHLAND (04361) #16	PANHANDLE	0.5	PHILLIPS PETROLEU

[FR Doc. 84-14625 Filed 5-31-84; 8:45 am]

BILLING CODE 6717-01-C

NGPA Notices of Determination By Jurisdictional Agencies

Issued: May 25, 1984.

Note.—By final rule issued by the Commission on February 22, 1984 (Order No. 362, Docket RM83-50-000, 49 FR 7109-13, February 27, 1984), notices of determination issued by the Commission after May 27, 1984, will not be published in the Federal Register. Applicants listed on FERC Form 121 will be notified by mail of Commission receipt of determinations. All other parties should contact: TS Infosystems, Inc., Attn: Mr. Milton Chichester, 825 North Capitol Street, Room 1000, Washington, DC 20426, to inquire about subscribing to these notices. Copies of Order No. 362 are available from the same source.

The following notices of determination were received from the indicated jurisdictional agencies by the FERC pursuant to the NGPA and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production is in million cubic feet (MMcf).

The applications for determination are available for inspection, except for material which is confidential under 18 CFR 275.206, at the FERC, 825 North Capitol St., Room 1000, Washington, D.C. Persons objecting to any of these determinations may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date the notice is issued by the Commission.

Source data from the FERC Form 121 for this and all previous notices is available on magnetic tape from the National Technical Information Service (NTIS). For information, contact Stuart Weisman (NTIS) at (703) 487-4808, 5285 Port Royal Road, Springfield, Virginia 22161.

Categories within each NGPA section are indicated by the following codes:

Section 102-1: New OCS lease
102-2: New well (2.5 mile rule)
102-3: New well (1000 ft rule)
102-4: New onshore reservoir
102-5: New res. on old OCS lease
103: New onshore production well
Section 107-DP: 15,000 ft or deeper
107-GB: Geopressured brine
107-DV: Devonian shale
107-CS: Coal seam gas
107-PE: Production enhancement
107-TF: New tight formation
107-RT: Recompletion tight formation
Section 108: Stripper well
108-SA: Seasonally affected
108-ER: Enhanced recovery
108-PB: Temporary pressure buildup

Kenneth F. Plumb,
Secretary.

NOTICE OF DETERMINATIONS VOLUME 1137

ISSUED MAY 25, 1984

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
KANSAS CORPORATION COMMISSION									
-CABOT PETROLEUM CORP				RECEIVED:	05/07/84	JA: KS			
8432764	K-79-1696	1517500000		108-SA		CLEO A ADAMSON #2		0.0	NORTHWEST CENTRAL
-CHAMPLIN PETROLEUM COMPANY				RECEIVED:	05/07/84	JA: KS			
8432762	K-79-1962	1500700000		108-SA		DAVIS RANCH "D" #2	AETNA	10.0	NORTHWEST CENTRAL
8432763	K-79-1962	1500700000		108-SA		DAVIS RANCH "D" #2	AETNA	10.0	NORTHWEST CENTRAL
-HELMERICH & PAYNE INC				RECEIVED:	05/07/84	JA: KS			
8432761	K-79-1055	1508100000		108-ER		HAMMER #1		0.0	NORTHERN NATURAL
OKLAHOMA CORPORATION COMMISSION									
-AGATE PETROLEUM INC				RECEIVED:	05/07/84	JA: OK			
8432792	27715	3500321117		103		CLARK #1-15	BYRON EAST	75.0	SUN EXPLORATION &
-AMOCO PRODUCTION CO				RECEIVED:	05/07/84	JA: OK			
8432837	9406	3509320345		108-ER		CASE UNIT "F" #1	CEDARDALE N E	2.5	ANR PIPELINE CO
-ANADARKO PRODUCTION COMPANY				RECEIVED:	05/08/84	JA: OK			
8432893	18228	3505320523		108-ER		SCHUNEMAN A 1-33	RENFROW	0.0	PANHANDLE EASTERN
-ANDERMAN/SMITH OPERATING CO				RECEIVED:	05/08/84	JA: OK			
8432898	26021	3503920942		102-1		J JOE SMITH #1-16		1095.0	
-APOLLO PRODUCTION LTD				RECEIVED:	05/07/84	JA: OK			
8432850	28093	3507323173		103		BEECHER #24-13	NE OKARCHE	0.0	PHILLIPS PETROLEU
-ARCO OIL AND GAS COMPANY				RECEIVED:	05/07/84	JA: OK			
8432801	27727	3508720981		103		LINDSAY DEESE UNIT #20-2	GOLDEN TREND	25.6	WARREN PETROLEUM
-ARKLA EXPLORATION COMPANY				RECEIVED:	05/07/84	JA: OK			
8432802	27725	3500321020		103		DIEL #1-20	ALVA EAST	73.0	
-BEEDE & STEPHENS OIL CO				RECEIVED:	05/07/84	JA: OK			
8432806	27699	3511123149		108		SNELSON #2		7.3	PHILLIPS PETROLEU
8432787	27698	3511124057		108		SNELSON #3		7.3	PHILLIPS PETROLEU
8432789	27712	3510121230		108		WILKINS #2	COLE	5.8	PHILLIPS PETROLEU
8432790	27713	3510121231		108		WILKINS #3	COLE	5.8	PHILLIPS PETROLEU
8432791	27714	3510121232		108		WILKINS #4	COLE	5.8	PHILLIPS PETROLEU
-BOSWELL ENERGY CORP				RECEIVED:	05/07/84	JA: OK			
8432841	23364	3510910669		102-4		GALLOWAY #1-29		0.0	PHILLIPS PETROLEU
8432839	21946	3510920670		102-4		MCGEE #1-30		0.0	PHILLIPS PETROLEU
-BROWN & BORELLI INC				RECEIVED:	05/08/84	JA: OK			
8432905	27813	3507323893		103		MITCHELL #1	SOONER TREND	27.0	EXXON CO USA
-BURKHART PETROLEUM CORP				RECEIVED:	05/07/84	JA: OK			
8432795	27721	3500722625		103		WELLS #1-16	S E LOGAN FIELD	100.0	TRANSWESTERN PIPE
-C J CASSELMAN				RECEIVED:	05/07/84	JA: OK			
8432809	27343	3511124424		108		MC CARTY #1	MORRIS	7.2	PHILLIPS PETROLEU
-CHANSE PETROLEUM CORPORATION				RECEIVED:	05/08/84	JA: OK			
8432889	27779	3503700000		103		EAST DEEBA #1	DEEBA	13.0	KERR MCGEE CORP
8432888	27780	3503700000		103		EAST DEEBA #2	DEEBA	13.0	KERR-MCGEE CORP
-CUESTA ENERGY CORP				RECEIVED:	05/07/84	JA: OK			
8432793	27719	3504700000		103		EASTERLY #1-27	E KREMLIN	365.0	UNION TEXAS PETRO
8432794	27720	3504700000		103		SEARS #1-28	E KREMLIN	365.0	UNION TEXAS PETRO
-CUESTA ENERGY CORP				RECEIVED:	05/08/84	JA: OK			

BILLING CODE 6717-01-M

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME
8432887	27786	3504723466		103		DUNN #1-14
-DAB LTD				RECEIVED:	05/07/84	JA: OK
8432823	27578	3504321450		103		GORE #1-32
-DAWN ENERGY CO				RECEIVED:	05/08/84	JA: OK
8432886	27791	3504723543		103		KINCERY #2-23
-DELMAC CO				RECEIVED:	05/07/84	JA: OK
8432845	27772	3508121600		103		HARMON #1
8432817	27771	3511922205		103		PEARL GRAVES #1
-DILLEY J P				RECEIVED:	05/08/84	JA: OK
8432900	27074	3511900000		108		DILLEY #1
-DYCO PETROLEUM CORPORATION				RECEIVED:	05/07/84	JA: OK
8432797	24936	3503920885		102-4		BURGTORF-RANDOL 1-6
8432796	24935	3503920872		102-4		SHEPARD THOMPSON 1-1
-EARLSBORO ENERGIES CORP				RECEIVED:	05/08/84	JA: OK
8432904	27806	3515121443		103		HFK #1-12
-EL DORADO DRILLING INC				RECEIVED:	05/07/84	JA: OK
8432828	23844	3510321541		102-2	103	ROLLY SOUTH #4
8432829	23845	3510321859		102-2	103	ROLLY SOUTH #5
-EL PASO NATURAL GAS COMPANY				RECEIVED:	05/07/84	JA: OK
8432849	00414	3500935434		108-ER		BROOKSHIRE #1
-ENSERCH EXPLORATION INC				RECEIVED:	05/08/84	JA: OK
8432901	27410	3508720938		103		J G HATTER #2-6
-EQUITY EXPLORATION INC				RECEIVED:	05/07/84	JA: OK
8432826	24909	3507323803		102-4	103	RUTH #12-1
-ESTORIL PRODUCING CORP				RECEIVED:	05/07/84	JA: OK
8432811	24594	3510721550		102-2	103	MIOZZI #1
8432830	24594	3510721550		102-2	103	MIOZZI #1
-EXXON CORPORATION				RECEIVED:	05/07/84	JA: OK
8432857	27693	3504922015		103		HARRY K MOORE #1
-GETTY OIL COMPANY				RECEIVED:	05/07/84	JA: OK
8432824	27369	3513723704		103		FRENSLEY-MARTIN #2
8432835	0543	3513900000		108-PB		MARTIN D #2
-GRAHAM-MICHAELIS CORP				RECEIVED:	05/07/84	JA: OK
8432816	27774	3513900000		108		SYLVESTER #1-32
-GULF OIL CORPORATION				RECEIVED:	05/07/84	JA: OK
8432827	23769	3501922388		102-4		E C HIRSCHLER #1-13
8432848	23769	3501922388		102-4		E C HIRSCHLER #1-13
8432836	1633	3512920075		108-PB		HORRELL #1
-HOLMAN PETROLEUM INC				RECEIVED:	05/07/84	JA: OK
8432832	24116	3511124017		102-2		BARD #3 11124016
8432831	24117	3511124017		102-2		BARD #4 11124017
-HUNGERFORD OIL & GAS INC				RECEIVED:	05/07/84	JA: OK
8432834	23782	3509321379		103		BULLER #1
-J WALTER DUNCAN JR				RECEIVED:	05/07/84	JA: OK
8432825	24510	3514920207		102-4		MELVIN #1
-JET OIL COMPANY				RECEIVED:	05/07/84	JA: OK
8432815	27782	3508322314		103		MATTHEWS #1
8432814	27783	3508322332		103		TAYLOR "C" #1
-JONES & PELLOW OIL CO				RECEIVED:	05/07/84	JA: OK
8432808	27668	3501922926		103		SMITH #14-2
-JONES & PELLOW OIL CO				RECEIVED:	05/08/84	JA: OK
8432899	26383	3501700000		107-PE		BRODERSON #1
-KAISER-FRANCIS OIL COMPANY				RECEIVED:	05/07/84	JA: OK
8432807	27687	3505921000		103		CARLISLE #3-8
-KEITH F WALKER				RECEIVED:	05/07/84	JA: OK
8432785	27510	3501922778		103		GALT-TEXACO #1
8432805	27700	3508520731		103		RAY #3
-KETAL OIL PRODUCING CO				RECEIVED:	05/08/84	JA: OK
8432903	27654	3504723377		103		BETCHAN #2
-L E JONES PRODUCTION COMPANY				RECEIVED:	05/07/84	JA: OK
8432798	25858	3501922821		102-2		JONES-KALKMAN FEE #1
8432799	25858	3501922821		103		JONES-KALKMAN FEE #1
8432833	24001	3506720532		102-2		KESSLER #1
-LOBAR OIL CO INC				RECEIVED:	05/08/84	JA: OK
8432897	25168	3510910767		102-4		GOLSEN-BROWN #2
-M M RESOURCES INC				RECEIVED:	05/07/84	JA: OK
8432846	27406	3511722014		103		FOOT #1
-MARATHON OIL COMPANY				RECEIVED:	05/07/84	JA: OK
8432804	27707	3512121012		103		MASS UNIT #2
-MEGA EXPLORATION INC				RECEIVED:	05/07/84	JA: OK
8432844	27776	3503725513		103		MILLS #1
-MILLER EXPLORATION CO				RECEIVED:	05/07/84	JA: OK
8432803	27724	3511922359		103		REDEL #1
-MUREXCO PETROLEUM INC				RECEIVED:	05/07/84	JA: OK
8432812	27793	3506322007		103		LYONS #1-6
-NONDORF OIL & GAS INC				RECEIVED:	05/08/84	JA: OK
8432894	23930	3508322255		103		PATTERSON #2-20
-OAKLAND PETROLEUM OPERATING CO INC				RECEIVED:	05/08/84	JA: OK
8432885	27797	3506300000		103		STEWART "D" #1
-OFS-TULSA CORP				RECEIVED:	05/08/84	JA: OK
8432911	27502	3509322781		103		BILL #1-12
-PALM-COOK PRODUCTION CO				RECEIVED:	05/08/84	JA: OK
8432908	27801	3509300000		103		LINDA LOVELY #1
-PETROLEUM RESOURCES CO				RECEIVED:	05/07/84	JA: OK
8432813	27250	3512500000		103		STATE #5-36
8432800	27289	3512500000		103		STATE #6-36
-PHILLIPS PETROLEUM COMPANY				RECEIVED:	05/07/84	JA: OK
8432818	27769	3501721974		108		COFFEY A #1
8432819	27768	3501721458		108		HOEDING "D" #1
8432840	23015	3513921684		102-2		WAUCH #2
-PROSPECTIVE INVESTMENT & TRADING CO				RECEIVED:	05/07/84	JA: OK
8432847	23794	3504521118		102-4	103	DENNETT #1
-RIC PETROLEUM				RECEIVED:	05/08/84	JA: OK
8432891	27683	3511779360		103		BROWN #1
8432892	27682	3511721789		103		GRIESEL #1
-SAKET PETROLEUM CO				RECEIVED:	05/08/84	JA: OK
8432910	27387	3511123542		103		PATTON #3
-SANGUINE LTD				RECEIVED:	05/08/84	JA: OK
8432884	28145	3505121449		107-DP		ANNIE #1
-SANTA FE MINERALS INC				RECEIVED:	05/08/84	JA: OK
8432909	27803	3507323888		103		WITTROCK #32-1
-SEARCH DRILLING CO				RECEIVED:	05/07/84	JA: OK
8432788	27708	3500722189		108		CORNELSON #1-24
-SOUTHLAND ROYALTY CO				RECEIVED:	05/07/84	JA: OK

FIELD NAME	PROD	PURCHASER
DA[illegible]G EAST	292.0	ARCO OIL & GAS CO
SOUTH WOOD	1058.5	DELHI GAS PIPELIN
EAST BARNES	73.0	
CUSHING	27.0	
MEHAN	100.0	COLORADO GAS COMP
	0.0	PHILLIPS PETROLEU
	150.0	ARKANSAS LOUISIAN
	180.0	ARKANSAS LOUISIAN
RINCWOOD	250.0	PHILLIPS PETROLEU
	6.6	SUN EXPLORATION &
	18.2	SUN EXPLORATION &
ERICK SOUTH	0.0	EL PASO NATURAL G
BLANCHARD	0.0	LONE STAR GAS CO
SOONER TREND	365.0	PHILLIPS PETROLEU
UNION VALLEY	0.0	
UNDESIGNATED (UNION V	124.1	
EAST LINDSAY	291.0	
SHO-VEL-TUM	0.0	GETTY OIL CO
SOUTH CLYMON	0.0	NORTHWEST CENTRAL
HOOKER SOUTHWEST	18.0	NORTHERN NATURAL
MUSTANG NORTH (PRUE)	18.0	
NORTH MUSTANG (RED FO	140.0	
	0.0	PANHANDLE EASTERN
WEST DEGOS	7.6	PHILLIPS PETROLEU
WEST DEGOS	22.6	PHILLIPS PETROLEU
RINCWOOD	120.0	UNION TEXAS PETRO
ELK CITY	620.5	EL PASO NATURAL G
MULHALL	0.0	EASON OIL CO
MULHALL	0.0	EASON OIL CO
TATUM	30.0	MOBIL OIL CORP
	0.0	MUSTANG FUEL CORP
MOCANE LAVERNE	180.0	ANR PIPE LINE CO
	40.2	MOBIL OIL CORP
	36.5	AMINOIL USA INC
SOUTH HAYWARD	438.0	
	73.0	AMINOIL USA INC
	73.0	AMINOIL USA INC
	73.0	AMINOIL USA INC
	0.0	PHILLIPS PETROLEU
	3.7	COLORADO GAS COMP
WILBURTON	1825.0	ARKANSAS LOUISIAN
S BRISTOW	108.0	GOLDEN ARROW GAS
	0.0	AMINOIL USA INC
	73.4	HILL TOP INVESTME
N W CUSHIE	1.0	EASON OIL CO
YEAGER	125.0	MEGA NATURAL GAS
	10.0	PHILLIPS PETROLEU
	0.0	UNION TEXAS PETRO
SHAWNEE LAKE	0.9	BETHEL GAS PROCES
SHAWNEE LAKE	0.0	BETHEL GAS PROCES
WAYNOKA	0.0	OKS WESTERN INC
NORTH CONCHO	0.0	PANHANDLE EASTERN
GUYMON-HUGOTON GAS AR	0.0	PANHANDLE EASTERN
	0.0	PHILLIPS PETROLEU
	36.5	HJD GAS CO
	18.3	HJD GAS CO
	0.0	PHILLIPS PETROLEU
	1284.8	TRANSWESTERN PIPE
	170.0	PHILLIPS PETROLEU
DOYD	2.9	NORTHERN NATURAL

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8432838	19495	3513900377		108-PB		ELMORE #1	EAST HOOKER	21.5	NORTHERN NATURAL
-SUN EXPLORATION & PRODUCTION CO				RECEIVED:	05/07/84	JA: OK			
8432853	27736	3504920908		103		ELLA COOK C #1-A	EOLA 2598	18.0	SOHIO PETROLEUM C
8432854	27735	3508700000		108		SUE WILLIAMS #1	E WASHINGTON (OSBORNE	17.0	OKLAHOMA GAS & EL
-TENNECO OIL COMPANY				RECEIVED:	05/08/84	JA: OK			
8432902	27431	3509322798		103		REGIER #1-2	RINGWOOD	75.0	PIONEER GAS PRODU
-THE WIL-MC OIL CORP				RECEIVED:	05/07/84	JA: OK			
8432842	25856	3508300000		102-2	103	BACKHAUS #1	SOUTH LANGSTON	49.0	SUN EXPLORATION &
8432855	27711	3510300000		103		PRIBIL #1	SAMS	19.0	
8432856	27710	3510300000		103		PRIBIL #2	SAMS	19.0	
8432843	25857	3511900000		102-2	103	SWANK #1	STILLWATER AIRPORT	14.0	ARCO OIL & GAS CO
-THREE SANDS OIL INC				RECEIVED:	05/07/84	JA: OK			
8432810	24851	3510322000		102-2		BAR W #2-33		54.7	ARCO OIL & GAS CO
8432853	25868	3510322010		102-2	103	GROOM #3-17		9.1	AMINOIL USA INC
-TXO PRODUCTION CORP				RECEIVED:	05/08/84	JA: OK			
8432906	25931	3509120561		102-2		VINSON #1	S E CHECOTAH	417.0	
-UNION TEXAS PETROLEUM				RECEIVED:	05/08/84	JA: OK			
8432896	24886	3509300000		103		LEONA THOMAS #1	HODGE I	36.0	PANHANDLE EASTERN
8432895	24884	3500300000		108		P H HERTZLER 'B' #1	HODGE	0.0	PANHANDLE EASTERN
-UTC ENERGY RESOURCES INC				RECEIVED:	05/08/84	JA: OK			
8432907	27640	3511124690		103		HURST 5	DUTCHER	46.0	PHILLIPS PETROLEU
-WEBER ART				RECEIVED:	05/07/84	JA: OK			
8432851	27762	3511100000		108		HENSON #1	BEGGS FIELD	2.1	PHILLIPS PETROLEU
8432820	27760	3511121863		108		M & H SMITH #1-B	SCHULTER	3.2	PHILLIPS PETROLEU
8432822	27759	3511100000		108		M & H SMITH #4	SCHULTER	3.2	PHILLIPS PETROLEU
8432821	27759	3511100000		108		M & H SMITH #6	SCHULTER	3.2	PHILLIPS PETROLEU
8432852	27761	3511100000		108		M&H SMITH #1	SCHULTER	3.2	PHILLIPS PETROLEU
-WESTERN OIL RESOURCES LTD				RECEIVED:	05/07/84	JA: OK			
8432786	27697	3511720910		108		WJ 1-05	WEST JENNINGS	5.7	MID-AMERICA GAS L
-WESTERN OIL RESOURCES LTD				RECEIVED:	05/08/84	JA: OK			
8432890	27777	3511721880		103		BLANCHARD #1	WEST JENNINGS	6.1	MID-AMERICA GAS L
********** TENNESSEE OIL & GAS BOARD **********									
-AMTEX RESOURCES INC				RECEIVED:	05/04/84	JA: TN			
8432783	A-2692	4104921162		102-2		BRUNO GERNT ESTATE #2 B	BURRVILLE	2.0	FENTRESS GAS TRAN
-B & W OIL CO				RECEIVED:	05/04/84	JA: TN			
8432782	A-2657	4112921162		102-2		HUTCHERSON-HOLMES #1	DOUGLAS BRANCH	10.0	EAST TENNESSEE NA
8432784	A-2691	4112921070		102-2		LOY TOMPKINS #1	GLADES EAST	10.0	EAST TENNESSEE NA
-BRADY ENERGY CORP				RECEIVED:	05/04/84	JA: TN			
8432781	A-2690	4115120840		102-4		BYRD LAND COMPANY #1	HUNTSVILLE	21.9	INTRASTATE ENERGY
-DEEP VENTURES OIL & GAS EXPL INC				RECEIVED:	05/04/84	JA: TN			
8432778	A-2671	4112921119		102-2		GREEN ACRES EXPLORATION #1	PILOT MOUNTAIN	15.0	INTRASTATE ENERGY
8432780	A-2672	4112921148		102-2		GREEN ACRES EXPLORATION #2	PILOT MOUNTAIN	17.0	INTRASTATE ENERGY
8432779	A-2677	4112921289		102-2		LONNIE BOLDEN #1	LANCING	15.0	INTRASTATE ENERGY
-DIXIE OIL COMPANY				RECEIVED:	05/04/84	JA: TN			
8432777	A-2685	4104921208		102-2		BRUNO GERNT ESTATE #51	BURRVILLE	37.0	TENNESSEE GAS PIP
8432776	A-2686	4104921208		107-TF		BRUNO GERNT ESTATES #51	BURRVILLE	37.0	TENNESSEE GAS PIP
-EDDIE HOOD				RECEIVED:	05/04/84	JA: TN			
8432775	A-2667	4104921203		102-4		D DUNKELBERG #1	BURRVILLE	15.0	FENTRESS GAS TRAN
8432773	A-2666	4104921177		102-4		EXEN WHEELER #1	BURRVILLE	10.0	FENTRESS GAS TRAN
-ENERGY DRILLING CO				RECEIVED:	05/04/84	JA: TN			
8432774	A-2655	4103520149		103		GREGORY HOUSTON #2	CHESTNUT HILL	30.0	GENESIS GAS SYSTE
-GLEN A WRIGHT				RECEIVED:	05/07/84	JA: TN			
8432861	A-2586	4112921268		102-2		ALLEN CHANEY-CLYDE LINDSEY #1	PILOT MOUNTAIN	6.0	INTRASTATE ENERGY
8432862	A-2689	4112921166		102-2		AVERY STRUNK UNIT #1	HUNTSVILLE	10.0	INTRASTATE ENERGY
8432863	A-2688	4115121165		102-2		AVERY STRUNK UNIT #2	HUNTSVILLE	10.0	INTRASTATE ENERGY
8432864	A-2687	4112921408		102-2		WEBB-BAILEY UNIT #1	PILOT MOUNTAIN	10.0	INTRASTATE ENERGY
-JARVIS DRILLING INC				RECEIVED:	05/04/84	JA: TN			
8432769	A-2656	4115121131		102-2		EDWIN MARCUM UNIT #1	NORMA	49.2	INTRASTATE ENERGY
-JOHNSON ENERGY INC				RECEIVED:	05/04/84	JA: TN			
8432768	A-2647	4103520173		102-2		EDWARD BROOKHART UNIT #2	NORTH CREEK	35.0	GENESIS GAS SYSTE
8432772	A-2653	4103520159		102-2		GREER/SHERRILL/KIRKLAND UNIT #1	NORTH CREEK	35.0	GENESIS GAS SYSTE
8432771	A-2652	4103520152		102-2		PLATLAU PROPERTIES UNIT #1	NORTH CREEK	40.0	GENESIS GAS SYSTE
8432770	A-2649	4103520161		102-2		RUFUS GREER UNIT #2	NORTH CREEK	39.0	GENESIS GAS SYSTE
-KENTENTEX DRILLING PROGRAM #1				RECEIVED:	05/04/84	JA: TN			
8432767	A-2662	4115120999		108		ARLIE LAY - KENTENTEX #1	ONEIDA WEST	11.3	INTRASTATE ENERGY
8432765	A-2661	4115121007		108		LAY - KENTENTEX #2	ONEIDA WEST	11.3	INTRASTATE ENERGY
8432766	A-2660	4115121029		108		LAY-KENTENTEX #3	ONEIDA WEST	11.3	INTRASTATE ENERGY
-KENTENTEX DRILLING PROGRAM #1				RECEIVED:	05/07/84	JA: TN			
8432860	A-2659	4115121046		108		ARLIE LAY #4	ONEIDA WEST	11.3	INTRASTATE ENERGY
8432859	A-2658	4115121050		108		ARLIE LAY #5	ONEIDA WEST	11.3	INTRASTATE ENERGY
-QUAIL-RUN FARMS INC				RECEIVED:	05/07/84	JA: TN			
8432873	A-2676	4104921209		102-4		BEATY FARM #1	BURRVILLE	3.0	
-T & V DRILLING CO				RECEIVED:	05/07/84	JA: TN			
8432867	A-2668	4104921195		102-2		YOUNG-EDWARDS UNIT #1	JONES KNOB	1.7	FENTRESS GAS TRAN
-TARTAN OIL COMPANY				RECEIVED:	05/07/84	JA: TN			
8432870	A-2491	4112920199		108		CONWAY JOHNSON #2 (PERMIT #945)	TWIN BRIDGES	1.5	GAS LINES OF TENN
8432869	A-2683	4115120228		102-2		ORA ROBBINS #1 (PERMIT #1418)	ROBBINS	10.0	
8432868	A-2684	4115120878		102-2		ORA ROBBINS #2 (PERMIT #4475)	CECIL HOLLOW	12.0	
8432871	A-2492	4112921156		108		PAUL WITMER #2	DAN BRANCH	8.8	GAS LINES OF TENN
8432872	A-2515	4115120441		108		PEMBERTON-HICKS-FOX UNIT #1	GUM BRANCH	7.0	INTRASTATE ENERGY
-TENEXCO CO				RECEIVED:	05/07/84	JA: TN			
8432865	A-2664	4115120355		102-2		NORA REED WEST #1	ONEIDA SOUTH	101.4	INTRASTATE ENERGY
8432866	A-2663	4115120273		102-2		ROBERT M THOMPSON #1	HUNTSVILLE	81.7	INTRASTATE ENERGY
********** UTAH DIVISION OF OIL,GAS, & MINING **********									
-AMOCO PRODUCTION CO				RECEIVED:	05/08/84	JA: UT			
8432876	K-121-22	4304330217		102-2		ANSCHUTZ RANCH EAST W3I-06	ANSCHUTZ RANCH EAST-N	453.0	MOUNTAIN FUEL SUP
8432877	K-121-23	4304330210		102-2		CHAMPLIN 544 AMOCO "D" #1	WILDCAT	9.7	MOUNTAIN FUEL SUP
-BOWERS OIL & GAS EXPLORATION INC				RECEIVED:	05/08/84	JA: UT			
8432874	K-115-5	4301930747		108		BO-TX STATE #2-36	GREATER CISCO AREA	10.0	NATURAL GAS PIPEL
-LOMAX EXPLORATION COMPANY				RECEIVED:	05/08/84	JA: UT			
8432878	K-152-7	4301330787		102-2		GILSONITE STATE #12-32	MONUMENT BUTTE	18.0	MOUNTAIN FUEL SUP
-MOUNTAIN RESOURCE CORP				RECEIVED:	05/08/84	JA: UT			
8432879	K-157-2	4301530154		103		FERRON-MRC #12	FERRON AREA	36.5	MOUNTAIN FUEL SUP
8432875	K-157-3	4301530182		103		FERRON-MRC #16	FERRON AREA	73.0	MOUNTAIN FUEL SUP
** DEPT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, ROSWELL, NM **									
-YATES PETROLEUM CORPORATION				RECEIVED:	05/08/84	JA: NM L			
8432882	RNM 251-83	3001524263		102-4		ALLISON "CQ" FED #8	BOYD MORROW	0.0	TRANSWESTERN PIPE
8432883	RNM 0363-83	3001524238		102-4		BLUFFSIDE "WF" FED #1	WILDCAT	0.0	TRANSWESTERN PIPE
8432881	RNM0062-84	3001524633		103		FEDERAL "CD" #5	EAGLE CREEK S/A	0.0	TRANSWESTERN PIPE
** DEPT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, TULSA, OK **									
-PHILLIPS PETROLEUM COMPANY				RECEIVED:	05/08/84	JA: OK M			
8432880	OK-T-12-84	3503700000		108		E CHARLES #10	BIG POND	0.0	KERR MCGEE CORP

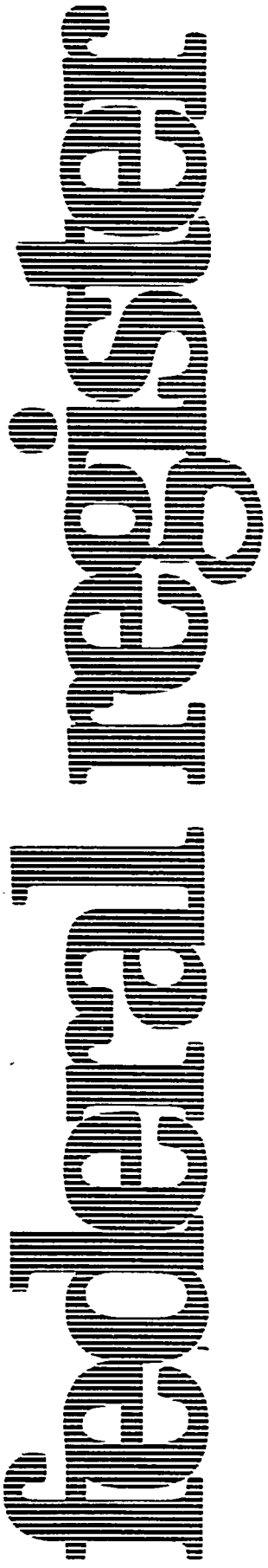
CORRECTIONS TO PREVIOUS NOTICES / REVISIONS TO PRIOR DETERMINATIONS

JD No.	JA	Applicant	Well Name	Orig. FERC Vol. No.	Date Pub. in Federal Register	C: Correction to prior Fed. Register notice
82-10691	TX	Humble Exploration	Michelle Lynn #1	575	1-14-82	C: 102-2 & 103 approved
83-10381	WV	Ashland Exploration	Kanawha Valley Bank #3	787	12-29-82	C: Well Name
83-26330	OK	Core Petroleum	Jennings #1-20	862	4-05-83	C: 102-2 (Morrow) & 107-DP (Springer) approved
83-29218	AR	TXO Production Corp	Tobey 1-C & Tobey 1-T	873	4-22-83	C: 102 approved (tubing 1-T) 103 approved (casing 1-C)
83-34841	TX	Superior Oil Co.	Edgeon-Cameron #7	899	5-28-82	C: 102-2 & 103 approved
83-42106	LA	Marshall Exploration	ROD RA SUD Welch #1	929	7-12-83	C: 102-4 & 103 approved
83-52522	US(MT)	Midlands Gas	2670 Federal #2	967	9-20-83	C: Well Name
84-06813	LA	Union Texas Petroleum	Dowling 21-1	1018	12-14-83	C: 102-4 & 107 TF Approved
84-10706	TX	Borger Welding	O'Neal #3	1036	1-12-84	C: Applicant Name
84-11224	LA	TXO Production Corp.	Pipes #1	1039	1-18-84	C: Applicant Name
84-11759	US(UT)	Coastal Oil & Gas	NBU 212-19	1041	1-20-84	C: 103 & 107-TF approved
84-11868	US(NM)	Turner Production Co.	Turner 26 #1	1041	1-20-84	C: 103 & 107-TF approved
84-12076	CO	William Perlman	James H Mayfield #1-10U	1042	1-20-84	C: 107-CS approved, Not 107-TF
84-12077	CO	William Perlman	James H Mayfield #1-11U	1042	1-20-84	C: 107-CS approved Not 107-TF
84-12078	CO	William Perlman	Mabel C. Payne #1-33	1042	1-20-84	C: 107-CS approved Not 107-TF
84-12093	CO	J-W Operating Company	D Crossland #3-26	1042	1-20-84	C: 107-TF approved, not 107-PE
84-12094	CO	J-W Operating Company	C. Josh #3-34	1042	1-20-84	C: 107-TF approved, not 107-PE
84-12095	CO	J-W Operating Company	Klinzmann #2-11	1042	1-20-84	C: 107-TF approved, not 107-PE
84-12291	OK	DLB Energy	Struck No. 18-5	1043	1-20-84	C: 102 & 103 approved
84-12396	CO	William Perlman	Southern UTE #1-3Z	1044	1-23-84	C: 107-CS approved, not 107-TF
84-12399	VA	Philadelphia Oil Co.	Jesse Wampler P-151	1044	1-23-84	C: 103 & 107-TF approved
84-12611	WV	Peake Operating Company	New River #8 AR	1045	1-26-84	C: Well Name
84-12923	WY	Energetics Inc.	State 20-16	1046	1-26-84	C: 102-2 & 107-TF approved
84-12924	WY	Energetics Inc.	LMU State 30-16	1046	1-26-84	C: 102-2 & 107-TF approved
84-13029	US(NM)	Yates Pet. Corp.	Witter VW Fed #1	1047	1-26-84	C: 102-3 & 107-TF approved
84-13030	US(NM)	McClellan Oil Corp.	Coyote Fed. #4-Y	1047	1-26-84	C: 102-4 & 107-TF approved
84-13031	US(NM)	Yates Pet. Corp.	Peek WV Fed. #1	1047	1-26-84	C: 102-2 & 107-TF approved
84-13032	US(NM)	Yates Pet. Corp.	Huckaby, TJ Fed. #5	1047	1-26-84	C: 102-2 & 107-TF approved
84-13034	US(NM)	Yates Pet. Corp.	Ritz TZ Fed. #2	1047	1-26-84	C: 102-3 & 107-TF approved
84-13035	US(NM)	Yates Pet. Corp.	Binnon T. T. Fed. #2	1047	1-26-84	C: 102-2 & 107-TF approved
84-13040	US(NM)	Depco Inc.	Rose Fed. #6	1047	1-26-84	C: 102-2 & 107-TF approved
84-13041	US(NM)	Mesa Pet. 6	Macho Fed #5	1047	1-26-84	C: 102-2 & 107-TF approved
84-13042	US(NM)	Yates Pet. Corp.	Fed. HY #8	1047	1-26-84	C: 102-2 & 107-TF approved
84-13043	US(NM)	Mesa Pet. Co.	Leila Fed. #2	1047	1-26-84	C: 102-2 & 107-TF approved
84-13045	US(NM)	McClellan Oil Corp.	McClellan L. Fed. #2	1047	1-26-84	C: 102-4 & 107-TF approved
84-13046	US(NM)	Yates Pet. Corp.	Huckaby, T. J. Fed. #4	1047	1-26-84	C: 102-2 & 107-TF approved
84-13047	US(NM)	Yates Pet. Corp.	Ingram, WY Fed. #1	1047	1-26-84	C: 102-3 & 107-TF approved
84-13048	US(NM)	Yates Pet. Corp.	Doris RI Fed. #3	1047	1-26-84	C: 102-2 & 107-TF approved
84-13049	US(NM)	Yates Pet. Corp.	Thomas, LN Fed. #7	1047	1-26-84	C: 102-2 & 107-TF approved
84-13050	US(NM)	Yates Pet. Corp.	Sorenson, IB Fed. #2	1047	1-26-84	C: 102-2 & 107-TF approved
84-13051	US(NM)	Depco Inc.	Rose Fed. #8	1047	1-26-84	C: 102-2 & 107-TF approved
84-13052	US(NM)	McClellan Oil Corp.	McClellan Fed. MOC #5	1047	1-26-84	C: 102-4 & 107-TF approved
84-13053	US(NM)	McClellan Oil Corp.	McClellan Fed. MOC #6	1047	1-26-84	C: 102-4 & 107-TF approved
84-13054	US(NM)	Yates Pet. Corp.	Binnon T. T. Fed. #6	1047	1-26-84	C: 102-2 & 107-TF approved
84-13055	US(NM)	Yates Pet. Corp.	Teckla MD Fed #6	1047	1-26-84	C: 102-3 & 107-TF approved
84-13442	OK	Kaiser-Frances Oil Co.	Berryman #1-19	1049	1-26-84	C: 102-4 approved, not 102-2
84-13644	TX	Natural Resources Corp.	NRC Mattie Poole #1	1051	1-26-84	C: 107-PB approved, not 107-TF
84-14043	NM	Blackwood & Nichols	Northeast Blanco Unit #65	1053	1-27-84	C: 103-PB approved
84-14058	NM	Mobil PRDG Texas & NM	Stevens Unit #1	1053	1-27-84	C: Well Name
84-14137	LA	Gulf Oil Corporation	SL 195 QQ #304-D	1053	1-27-84	C: 102-4 approved, not 102-1
84-14150	LA	Moran Exploration Inc.	Prairie Land Co. #1	1053	1-27-84	C: 102 & 103 approved
84-14153	LA	Vernon E. Fankoner	Bagley #1 RRA SUA 173061	1053	1027-84	C: 102 & 103 approved
84-14185	LA	Pennzoil Company	SL 6310 "A" No. 17	1053	1-27-84	C: Well Name
84-14200	LA	Texaco inc.	Williams Jr. et ux #3	1053	1-27-84	C: 102-4 & 103 approved
84-14239	WV	Peake Operating Company	New River #20-AR	1054	1-31-84	C: 107-TF approved, not 107-DV
84-14242	WV	Sterling Drilling and	Romine #772	1054	1-31-84	C: 107-DV approved, not 107-TF
84-14456	OK	Cuyahoga Expl.& Devlp.	Frank Rose #4	1055	2-03-84	C: 103 & 107-DV approved
84-14613	UT	Coastal Oil & Gas Corp.	Natural Buttes Unit 81V (35-9-21)	1056	2-3-84	C: 103 & 107-TF approved
84-14815	TX	TXO Production Corp.	Terry "C" #1	1056	2-3-84	C: Well Name
84-15009	LA	Texaco	#1 Caddo Levee Dist. 9248	1057	2-7-84	C: 102-4 & 103 approved
84-15306	US(NM)	Mesa Petroleum Co.	Depco Federal #1	1059	2-8-84	C: 108 Denied by JA
84-15336	NM	Yates Petroleum Co.	Eagle Creek "BL" No. 3	1059	2-8-84	C: Well Name
84-15565	KY	Kentucky WV Gas Co.	Wilson Whittaker #7068	1059	2-8-84	C: 107-DV approved, not 107-DP

JD No.	JA	Applicant	Well Name	Orig. FERC Vol. No.	Date Pub. in Federal Register	C: Correction to prior Fed. Register notice
84-15999	OK	Perspective Inv & Trad	Jerry No. 1	1061	2-15-84	C: 102-2 & 103 approved
84-16280	MS	Mosbacker Production Company	Edward Hedgepeth #1	1062	2-15-84	C: 103 & 107-DP approved
84-16376	CO	Energy Minerals Corp.	Duff 23-31	1063	2-15-84	C: 108-ER approved, not 108
84-16378	CO	American Petroleum Ener	Argenta UTE #2	1063	2-15-84	C: 108-PB approved, not 108
84-16383 thru 84-16394	WV	J & J Enterprises	B-346 et al.	1063	2-15-84	C: 107-DV approved, not 107-TF
84-16843	OH	Berresford Enterprises	Ralph Rocker #1	1065	2-22-84	C: 107-TF approved, not 107-DP
84-17346	TX	Rankin Oil Co.	Pebsworth "C" #2	1067	2-23-84	C: Well name
84-17482	KS	Hinkle Oil company	Gatterman #1	1068	2-23-84	C: 108 Approved, not 108-SA
84-17483	KS	Jim Osborn O & G	ARNDT #1	1068	2-23-84	C: 102-4 amended to 102-2
84-17484	KS	Jim Osborn O & G	ARNDT #2	1068	2-23-84	C: 102-4 amended to 102-2
84-17613	US(WY)	Natural Gas Corp of CA	NGC 2-20 FED	1068	2-23-84	C: 102-2 & 107-TF approved
84-17615	US(WY)	Northwest Production	New Fork #1	1068	2-23-84	C: 103 & 107-TF approved
84-17649	KS	Triad Energies Inc.	Myers North #7	1068	2-23-84	C: 102-2 approved, not 108-2
84-17650	KS	Triad Energies Inc.	Myers North #6	1068	2-23-84	C: 102-2 approved, not 108-2
84-17651	KS	Triad Energies Inc.	Myers North #5	1068	2-23-84	C: 102-2 approved, not 108-2
84-17652	KS	Triad Energies Inc.	Myers North #8	1068	2-23-84	C: 102-2 approved, not 108-2
84-17653	KS	Triad Energies Inc.	Myers North #9	1068	2-23-84	C: 102-2 approved, not 108-2
84-17654	KS	Triad Energies Inc.	Myers North #2	1068	2-23-84	C: 102-2 approved, not 108-2
84-17655	KS	Triad Energies Inc.	Myers North #1	1068	2-23-84	C: 102-2 approved, not 108-2
84-18228	WV	Peake Operating Co.	New River #16-AR	1071	2-24-84	C: 107-TF approved, not 107-DV
84-18229	WV	Peaks Operating Co.	Jones & Gibson #7-AJ	1071	2-24-84	C: 107-TF approved, not 107-DV
84-18230	WV	Peake Operating Co.	Jones & Gibston #9-AJ	1071	2-24-84	C: 107-TF approved, not 107-DV
84-18354	US(WY)	Patrick Petroleum	Red Desert Federal #1	1071	2-24-84	C: 103 & 107-TF approved
84-18357	US(WY)	Synder Oil Co.	CIGE Petcorp. Federal 1C-26-18-93	1071	2-24-84	C: 103 & 107-TF approved
84-18358	US(WY)	Snyder Oil Co.	PTS Federal 1C-8-17-92	1071	2-24-84	C: 103 & 107-TF approved
84-18359	US(WY)	Snyder Oil Co.	CIGE Petcorp. Federal 1C-24-18-93	1071	2-24-84	C: 103 & 107-TF approved
84-18360	US(WY)	Snyder Oil Co.	CIGE Petcorp. Federal	1071	2-24-84	C: 103 & 107-TF approved
84-18363	US(WY)	Chippewa Oil & Gas Inc.	Mari Federal 43-26	1071	2-24-84	C: 102-4 approved, not 103
84-18854	US(CO)	Celeron Oil & Gas Co.	Federal 1-5-3-97	1073	2-29-84	C: 107-TF approved, not 107-DP
84-19039	AR	Stephens Production Co.	E L Kibler #4-T	1074	2-29-84	C: Well name
84-19490	TX	Triton Oil & Gas	H. W. Bowen #5	1075	2-29-84	C: Well name
84-19641	OK	El Paso Natural Gas Co.	Vannerson #2	1076	3-2-84	C: 108 & 108-PB approved
84-19654	OK	Fortuna Energy Corp.	Segelquist	1076	3-3-84	C: 102-4 (Stray Rogers only) & 103 (Red Fork only) approved
84-19813	US(WY)	Conoco Inc.	Cloverly-Morrison Well #7	1077	3-5-84	C: 108-ER Denied by JA
84-19825	PA	Petro Evaluation Services Inc.	Ramey #2	1077	3-5-84	C: 107-TF approved, not 103
84-20094	NM	El Paso Natural Gas Co.	San Juan 27-5 Unit #10	1078	3-6-84	C: Well name
84-20178	TX	Diamond Shamrock Corp.	Robertson C #4	1078	3-6-84	C: Well Name
84-20414	LA	Jeems Boyou Prod. Co.	Martin #1	1079	3-9-84	C: 102-2 approved
84-20452	LA	McCrae Oil Corp.	#1 Reed Lbr.Co.LEV RA SUY	1079	3-9-84	C: 107-TF approved, not 107-DP
84-20575	KY	Appalachian Natural Gas Corp.	App #18 (Ridgeway Fuel) #50949	1080	3-9-84	C: 107-TF approved, not 107-DV
84-20576	KY	Appalachian Natural Gas Corp.	App #10 (Ridgeway Fuel) Permit #48248	1080	3-9-84	C: 107-TF approved, not 107-DV
84-20578	KY	Appalachian Natural Gas Corp.	App #2 (Ridgeway Fuel) Permit #49298	1080	3-9-84	C: 107-TF approved, not 107-DV
84-20579	KY	Appalachian Natural Gas Corp.	App #8 (Ridgeway Fuel) Permit #50678	1080	3-9-84	C: 107-TF approved, not 107-DV
84-20582	KY	Appalachian Natural Gas Corp.	App #5 (Ridgeway Fuel) Permit #48247	1080	3-9-84	C: 107-TF approved, not 107-DV
84-20597	KY	Appalachian Natural Gas Corp.	App #19 (Ridgeway Fuel) Permit #49519	1080	3-9-84	C: 107-TF approved, not 107-DV
84-20598	KY	Appalachian Natural Gas Corp.	App. #3 (Ridgeway Fuel) Permit #49297	1080	3-9-84	C: 107-TF approved, not 107-DV
84-20645	KY	Appalachian Natural Gas Corp.	App. #6	1080	3-9-84	C: 107-TF approved, not 107-DV
84-20646	KY	Appalachian Natural Gas Corp.	App. #12	1080	3-9-84	C: 107-TF approved, not 107-DV
84-20647	KY	Appalachian Natural Gas Corp.	App. #11	1080	3-9-84	C: 107-TF approved, not 107-DV
84-20651	KY	Appalachian Natural Gas Corp.	App-Walbridge #2 #52239	1080	309084	C: 107-TF approved, not 107-DV
84-20733	KY	Wiser Oil Co.	Sawyer Mills #1	1080	3-9-84	C: 108 approved, not 108-SA
84-20734	KY	Wiser Oil Co.	J E. Davidson #1	1080	3-9-84	C: 108 approved, not 108-SA

JD No.	JA	Applicant	Well Name	Orig. FERC Vol. No.	Date Pub. in Federal Register	C: Correction to prior Fed. Register notice
84-20735	KY	Wiser Oil Co.	Fordson Coal #1	1080	3-9-84	C: 108 approved, not 108-SA
84-20743	KY	Alert Oil & Gas Co.	Joseph Clevenger #3	1080	3-9-84	C: 108 approved, not 108-PB
84-20746	KY	Alert Oil & Gas Co.	John Stewart #7	1080	3-9-84	C: 108 approved, not 108-PB
84-20804	KY	Ashland Exploration	Colony Coal & Coke #60	1080	3-9-84	C: 108-SA approved, not 108
84-21222	US(NM)	HNG Oil Co.	Pitchfork "34" Fed Com 1	1080	3-19-84	C: 102-2 & 103 approved
84-21227	US(NM)	Sun Expl. & Prod.	Chaves "A" Fed. #1U	1082	3-19-84	C: 103 & 107-TF approved
84-21565	TX	Robert P. Lamberts	Ransom #2U	1084	3-19-84	C: Well Name
84-21802	US(NM)	Fred Pool Operating Co.	Pearl State #1	1085	3-19-84	C: 102-2 Denied by JA
84-21827	US(NM)	Amnex Petroleum	Mesa State #2	1085	3-19-84	C: 102-4 & 103 approved
84-21867	US(NM)	Conoco	Stevens B #19	1085	3-19-84	C: Well Name
84-21948	OH	Appalachian Explo. Inc.	Collins Unit #1	1085	3-19-84	C: 107-TF approved, not denied
84-21949	OH	Appalachian Explo. Inc.	D Manes #1	1085	3-19-84	C: 107-TF Denied by JA
84-22247	TX	Austin Oil & Mineral	V. Hervey #2	1087	3-21-84	C: Well Name
84-22252	TX	Katlaco Operating Co.	Katlaco Fee "D" #8	1087	3-21-84	C: Well Name
84-22646	OK	TXO Production Corp.	Keeton C #1	1088	3-27-84	C: Applicant Name
84-22667	OK	TXO Production Corp.	Garrison B #1	1088	3-27-84	C: Well Name
84-22811	US(WY)	CIG Exploration	Long Butte #5	1089	3-27-84	C: 102-2 approved, not 107-2
84-22822	US(WY)	Cities Ser. O & G Corp.	Hartzog Draw U TR 6305205	1089	3-27-84	C: Well Name
84-22887	OK	Prospective Inv. & Ind.	Carl 1-35	1089	3-27-84	C: 102-2 & 103 approved
84-22903	OK	Santa Fe-Andover Oil	School Lands #36-3	1089	3-27-84	C: 102-4 & 103 approved
84-22994	OH	Araparo Ventures of NY	Reed Carrel #1	1090	4-03-84	C: 103 approved, not 107-TF
84-23009	OH	Derby Oil & Gas Corp.	Robert Morehead #4	1090	4-03-84	C: 103 approved, 107-TF denied
84-23175	OK	Shell Oil	Elk City Hoxbar SD Congl #1-23-2	1091	4-03-84	C: Well Name
84-23223	OK	Anadarko Production Co.	Gribi Trust A No. 1	1091	4-03-84	C: Chester & Marrow approved
84-23249	OK	Apollo Production	#31-5 Hoehner	1091	4-03-84	C: 102-4 & 103 approved
84-23752	US(NM)	HNG Oil Co.	Diamond 5 Fed #1	1094	4-03-84	C: 102-2 & 107-DP approved
84-23771	US(NM)	Stevens Operating Corp.	Helen Collins Federal #2	1094	4-03-84	C: 102-4 & 107-TF approved
84-23781	US(NM)	Sanders Oil & Gas Inc.	Mesa Diablo Federal #1	1094	4-03-84	C: 103 & 107-TF approved
84-23787	OH	B & K Drilling Co.	Clark #2	1094	4-03-84	C: Well Name
84-23790	OH	B J Inc.	Logsdon #1	1094	4-03-84	C: 103 approved, 107-TF denied
84-23791 thru 84-23796	OH	B J Inc.	B Giauque #2-A, 3,4,5,6,7	1094	4-03-84	C: 103 approved, 107-TF denied
84-24060	PA	Richard M. Stewart	Shearwood Terrace Dev. #1	1095	4-03-84	C: Well Name
84-24070	PA	Tetra Energy Group Ltd.	Martin Hanas #1	1095	4-03-84	C: 107-TF approved
84-24134	WV	Ashland Explo. Inc.	Courtney Co #18-094132	1095	4-03-84	C: 107-DV approved, not 107-DP
84-24151	US(NM)	Stevens Operating Corp.	Nichols Dale Federal #6	1095	4-03-84	C: 102-4 & 107-TF approved
84-24152	US(NM)	McKay Oil Corporation	McKay-Pennzoil Federal #1	1095	4-03-84	C: 102-2 & 107-TF approved
84-24159	NY	Envirogas Inc.	H Heath #1	1095	4-03-84	C: Well Name
84-24196	LA	TXO Production Corp.	Wright "C" 1-D	1096	4-03-84	C: 103 & 107-TF approved
84-24301	US(WY)	Kenal Oil & Gas Inc.	Federal #1-5	1096	4-03-84	C: 102-2 & 107-TF approved
84-24992	TX	Mobil Prdg. TX & NM	Field Unit #2 Well # 2312	1100	4-11-84	C: Well Name
84-24998	TX	Tom Brown Inc.	Holt Ranch "A" #7	1100	4-11-84	C: Well Name
84-25213	US(CO)	Norris Oil Company	Livingston 11-2	1101	4-11-84	C: 103 & 107-TF approved
84-25215	US(CO)	Coseka Resources (USA)	Federal 17-0-23-4-103	1101	4-11-84	C: 102-2 & 107-PB approved
84-25226	LA	Rabwin Oil & Gas	J B David #1	1101	4-11-84	C: Well Name
84-25297	US(NM)	HNG Oil Company	Half 5 Federal Com #1	1101	4-11-84	C: 102-2 & 107-DP approved
84-25484	KS	Ox Bow Gas Company	Donald Odell #1	1102	4-11-84	C: Well Name
84-26641	OK	Tenneco Oil Company	S Lone Elm Cleveland SU094	1106	4-24-84	C: Well Name
84-26999	OK	Santa Fe Energy Prod.	Noble 1-1	1107	4-27-84	C: 102-2 & 107-DP approved
84-27424	OK	Arkla Exploration Co.	Cornell #1	1110	5-01-84	C: Well Name
84-27449	OK	Service Drilling Co.	McKibbon #1-34	1110	5-01-84	C: Well Name
84-27451	OK	Cimmaron Pet. Corp.	Wallace CPC #181-1	1110	5-01-84	C: Well Name
84-27452	OK	Westwind Prod. Company	Surgnier #7	1110	5-01-84	C: Well Name

[FR Doc. 84-14626 Filed 5-31-84; 8:45 am]
BILLING CODE 6717-01-C



Friday
June 1, 1984

Part V

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1956

Initial Approval Determination; New York State Plan Applicable Only to Public Employees; Rule

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Initial Approval Determination; New York State Plan Applicable Only to Public Employees

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

ACTION: Initial State plan approval.

SUMMARY: The New York State Occupational Safety and Health plan covering only public sector employees (employees of the State and its political subdivisions) is approved as a developmental plan under section 18 of the Occupational Safety and Health Act of 1970 and 29 CFR Part 1956. Under the approved plan, the New York State Labor Department is designated as the State agency responsible for the development and enforcement of occupational safety and health standards applicable to public employment throughout the State. The Federal Occupational Safety and Health Administration retains full authority for coverage of private sector employees in the State of New York as well as for coverage of Federal government employees.

EFFECTIVE DATE: June 1, 1984.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Public Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3637, 200 Constitution Avenue, NW., Washington, D.C. 20210. Telephone: 523-8148.

SUPPLEMENTARY INFORMATION:

Introduction

Section 18 of the Occupational Safety and Health Act of 1970 (hereinafter referred to as the Federal Act) provides that a State which desires to assume responsibility for the development and enforcement of occupational safety and health standards may do so by submitting and obtaining Federal approval of a State plan describing in detail the State's proposed occupational safety and health program. Part 1956 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Federal Act whereby States may submit for approval, under the requirements of that section, plans to assume responsibility for the development and enforcement of occupational safety and health standards applicable only to employees of the State and its political subdivisions (hereinafter referred to as public employees).

Under these regulations, the Assistant Secretary may approve a State plan for public employees if in his judgment the plan provides for the development and enforcement of standards relating to hazards in employment covered by the plan which are or will be at least as effective in providing safe and healthful employment and places of employment for public employees as standards promulgated and enforced by the Occupational Safety and Health Administration (OSHA) in the private sector under section 6 of the Federal Act. In making this determination the Assistant Secretary will consider, among other things, the criteria and indices of effectiveness set forth in 29 CFR Part 1956, Subpart B. A State plan for public employees may receive initial approval even though, upon submission, it does not fully meet the criteria set forth in §§ 1956.10 and 1956.11, if it includes satisfactory assurances by the State that it will take the necessary "developmental steps," and establishes an acceptable developmental schedule, to meet the criteria within a 3-year period (29 CFR 1956.2(b)). The Assistant Secretary publishes a notice of "certification of completion of developmental steps" when all of a State's developmental commitments have been met satisfactorily (29 CFR 1956.23, 1902.33 and 1902.34). After certification of a State plan for public employees, OSHA initiates a period of at least one year of intensive monitoring, after which OSHA makes a determination under the procedures of §§ 1902.38, 1902.39, 1902.40 and 1902.41 as to whether, on the basis of actual operations, the criteria set forth in §§ 1956.10 and 1956.11 are being applied under the plan.

History of the Present Proceeding

A State plan for the enforcement of occupational safety and health standards in New York was approved by the Assistant Secretary on May 14, 1973 (39 FR 13482; 29 CFR 1952.180 *et seq.*). This plan included coverage of private workplaces as well as a program for public employees. The plan was subsequently withdrawn effective June 30, 1975, under the authority of then Governor Hugh L. Carey (40 FR 27655).

During 1980, the New York State Legislature passed legislation, signed into law by the governor on June 30, 1980, which provided the basis for establishing a comprehensive occupational safety and health program applicable to the public employees in the State. This statute, the Public Employee Safety and Health Act (hereinafter referred to as the New York Act), Chapter 729 of the Laws of 1980, became effective on December 29, 1980. Pursuant to the New York Act, the State formally submitted for Federal approval a plan applicable only to public employees (Ex. 1, hereinafter referred to as the New York plan) on February 11, 1982. In response to Federal review of the proposed New York plan, supplemental assurances, and revisions, corrections and additions to the plan were submitted on March 4, 1984 and March 15, 1984.

On March 30, 1984, OSHA published notice in the Federal Register (49 FR 12713) concerning the submission of the New York plan (Ex. 2), announcing that initial Federal approval of the plan was at issue, and offering interested parties an opportunity to review the plan and submit data, views, arguments or requests for a hearing concerning the plan. The New York Department of Labor published similar notices in the State on April 2, 1984, in the *New York Times, Albany Times Union* and the *Buffalo Evening News* (Ex. 4).

To assist and encourage public participation in the initial approval process, copies of the New York plan were maintained in the Docket Office, Department of Labor, Occupational Safety and Health Administration, Third Street and Constitution Avenue, N.W., Room S-6212, Washington, D.C. 20210; Office of the Regional Administrator, U.S. Department of Labor, Occupational Safety and Health Administration, 1515 Broadway (1 Astor Plaza), Room 3445, New York, New York 10036; State of New York Department of Labor, State Office Building Campus, Building 12, Room 579, Albany, New York 12220; Division of Occupational Safety and Health, State of New York Department of Labor, Room 6994, 2 World Trade Center, New York, New York 10047.

Summary and Evaluation of Comments Received

In response to OSHA's March 30, 1984 Federal Register notice, which announced submission of the New York Plan and its availability for public comment, comments were received from: (1) The New York State Professional Fire Fighters Association, Inc., (2) the New York State Committee for Occupational Safety and Health (COSH), (3) the State of Michigan Department of Labor, (4) the American Federation of State, County and Municipal Employees, AFL-CIO, and (5) the New York State AFL-CIO.

The comments from the New York State Professional Fire Fighters

Association (Exs. 3–1 and 3–3), representing unions in 13 cities in New York State, supported approval of the New York plan.

Arthur Wilcox, Chairperson of the New York State Committee on Occupational Safety and Health (COSH), expressed support from the organization for the New York plan (Ex. 3–2). COSH indicated that the plan will provide coverage to New York State's public employees and employees of its political subdivisions that is similar to OSHA's coverage for private employees, and that Federal approval and partial funding of the plan will enable New York to add to its staff in order to create a strong public employee safety and health plan.

Comments were also received from the Michigan State Department of Labor (Ex. 3–4), which itself administers a State occupational safety and health plan for both private and public sector employment, under initial approval from OSHA. Michigan stated its belief that employees in both private and public sector employment need to be protected by an occupational safety and health program. Because private sector employees in New York State are protected by Federal OSHA, Michigan supports Federal approval of the New York plan so that public employees will be protected similarly. Michigan also urged that any Federal funds used for a 50% grant to New York to offset the costs of administering the approved plan should be appropriated separately from and in addition to the appropriation for Federal grants to the 24 existing State plans, so that there is no reduction in funding for these plans.

Comments from the American Federation of State, County and Municipal Employees, AFL–CIO (Ex. 3–5) and the New York State AFL–CIO (Ex. 3–6) cite examples of safety and health risks faced by public employees in the performance of their duties and urge immediate approval by OSHA of the New York plan.

A review of all of the comments received indicates that none of the commenters offered specific facts or observations regarding the question of whether the New York plan meets the statutory and regulatory criteria for initial plan approval. However, all commenters supported approval of the New York plan. There were no requests for a public hearing.

Review Findings

As required by 29 CFR 1956.2 in considering the granting of initial approval to a State public employee plan, OSHA must determine whether the State plan meets or will meet the criteria in 29 CFR 1956.10 and the indices of effectiveness in 29 CFR 1956.11. Findings and conclusions in each of the major State plan areas addressed by 29 CFR Part 1956 are as follows:

(1) Designated Agency

Section 18(c)(1) of the Federal Act provides that a State occupational safety and health plan must designate a State agency or agencies responsible for administering the plan throughout the State (29 CFR 1956.10(b)(1)). The plan must describe the authority and responsibilities of the designated agency and provide assurance that other responsibilities of the agency will not detract from its responsibilities under the plan (29 CFR 1956.10(b)(2)). The New York Act (section 27–a(4)) mandates that the Industrial Commissioner (now Labor Commissioner) shall adopt and enforce occupational safety and health standards applicable to all public employees throughout New York State. Under this authority, the New York State Labor Department is designated as the agency responsible for administering the plan throughout the State (New York plan, section I, p. 15). The plan also describes the authority of the New York Labor Department and its other responsibilities (id., p. 16).

(2) Scope

Section 18(c)(6) of the Federal Act provides that the State, to the extent permitted by its law, shall under its plan establish and maintain an effective and comprehensive occupational safety and health program applicable to all employees of the State and its political subdivisions. Only where a State is constitutionally precluded from regulating occupational safety and health conditions in certain political subdivisions may the State exclude such political subdivision employees from coverage (29 CFR 1956.2(c)(1)). Further, the State may not exclude any occupational, industrial or hazard grouping from coverage under its plan unless OSHA finds that the State has shown there is no necessity for such coverage (29 CFR 1956.2(c)(2)).

The scope of the New York plan includes any employee of the State and any political subdivision thereof, including a public authority or any other governmental agency or authority (New York plan, section I, p. 6). No employees of any political subdivision of the State or local government are excluded from the plan (id., p. 7). The New York State Labor Department adopts all Federal occupational safety and health standards, and the plan excludes no occupational, industrial or hazard grouping (id., p. 10). Among the concerns identified during OSHA review of the New York plan was language in section 27–a(2) of the New York Act which raised questions as to the New York Act's applicability to employees of the various school boards in the State. OSHA thus requested clarification of the basis and extent of the perceived exclusion of school board employees. This issue was subsequently discussed at several meetings between OSHA and State officials. OSHA's final review comments, including the question of public school employee coverage, were contained in a February 14, 1984 memorandum to OSHA's New York Regional Administrator, and were the subject of further discussion with the State. In response, New York submitted on March 4, 1984 (id., appendix 23), the State Labor Department Counsel's opinion that all public school employees are fully covered by the State plan and gave assurance that should the Department's interpretation be challenged successfully, the Department would seek appropriate legislative correction.

Consequently, OSHA finds that the New York plan and assurances contained therein demonstrate that no employees of the State and its political subdivisions are excluded from coverage and that the plan excludes no occupational, industrial, or hazard grouping.

(3) Standards

Section 18(c)(2) of the Federal Act requires State plans to provide for occupational safety and health standards which are at least as effective as Federal standards. A State plan for public employees must therefore provide for the development or adoption of such standards and must contain assurances that the State will continue to develop or adopt such standards (29 CFR 1956.10(c); 1956.11(b)(2)(ii)). A State may establish the same standards as Federal OSHA (29 CFR 1956.11(a)(1)), or alternative standards that are at least as effective as those of Federal OSHA (29 CFR 1956.11(a)(2)). Where a State's standards are not identical to the Federal, they must meet the following criteria: They must be promulgated through a procedure allowing for consideration of all pertinent factual information and participation of all interested persons (29 CFR 1956.11(b)(2)(iii)); must, where dealing with toxic materials or harmful physical agents, assure employee protection throughout his or her working life (29 CFR Part 1956.11(b)(2)(i)); must provide for furnishing employees appropriate information regarding hazards in the workplace through labels,

posting, medical examinations, etc. (29 CFR 1956.11(b)(2)(vi)); and, must require suitable protective equipment technological control, monitoring, etc. (29 CFR 1956.11(b)(2)(vii)).

In addition, the State plan must provide for prompt and effective standards setting actions for protection of employees against new and unforeseen hazards, by such means as authority to promulgate emergency temporary standards (29 CFR 1956.11(b)(2)(v)).

The New York Act (section 27–a(4)(a)) mandates that the State Labor Commissioner (hereinafter referred to as the Commissioner) adopt all safety and health standards promulgated under the Occupational Safety and Health Act of 1970 which are in effect on the effective date of the New York State Act (December 29, 1980) and to incorporate future revisions (New York plan, section I, p. 20). The procedures for adoption of occupational safety and health standards promulgated under the New York Act are contained in the State Administrative Procedure Act (id., Appendix 6, section 202, subdivision 2). The State has provided assurance, contained in its developmental schedule (New York plan, section II) that within three months of initial plan approval it will adopt all Federal OSHA standards promulgated as of July 1, 1983. The State further has assured that it will adopt new, permanent, Federal OSHA standards within six months of Federal promulgation (id., p. 30).

Under the New York plan, the State may adopt alternative or different occupational safety and health standards if a determination is made that an issue is not adequately addressed by OSHA standards as it applies to the safety and health of public employees. In such cases, the State shall propose legislation mandating the development of an alternative standard to protect the safety and health of public employees. Specific procedures for the adoption of alternative standards will be developed by New York and submitted for OSHA approval in accord with the State's developmental schedule (id., section II). Procedures for the adoption of alternative standards will contain criteria for development and consideration of expert technical knowledge in the field covered by any legislation mandating alternative standards. The procedures will contain provisions allowing interested persons to submit information requesting development or promulgation of any standard or the modification or evaluation of existing standards. The procedures also will contain provisions which give interested persons the opportunity to participate in any hearing for the development, modification or establishment of standards (id. section I, pp. 22–23).

The New York plan also provides for the adoption, within 30 days of receipt of notification from OSHA of Federal promulgation (which is defined as publication in the Federal Register), of an emergency temporary standard. In situations where public employees are apparently exposed to unique hazards for which OSHA standards do not exist, if after investigation and review of the facts of the purported situation, the Director, Division of Safety and Health, forms an opinion that the situation as presented is hazardous, he shall make a finding to this effect. A recommendation that proposed legislation be developed and sent to the legislature for consideration shall be forwarded to the Commissioner. The proposed legislation shall normally take the form of a mandate to the Commissioner to develop and adopt standards covering the discovered hazard (id., p. 25).

Based on the foregoing plan provisions, assurances and developmental commitments, OSHA finds the New York plan to have met the statutory and regulatory requirements for initial plan approval with respect to occupational safety and health standards.

(4) Variances

A State plan must provide authority for the granting of variances from State standards upon application of a public employer or employers which corresponds to variances authorized under the Federal Act, and for consideration of the views of interested parties, by such means as giving affected employees notice of each application and an opportunity to request and participate in hearings or other appropriate proceedings relating to applications for variances (29 CFR 1956.11(b)(2)(iv)).

The New York Act (section 27–a(8)) includes provisions for the granting of permanent and temporary variances from State standards in terms substantially similar to the variance provisions contained in the Federal Act. The State provisions require employee notification of variance applications as well as employee rights to participate in hearings held on variance applications. Variances may not be granted unless it is established that adequate protection is afforded employees under the terms of the variance. Specific regulations governing the granting of variances will be developed and submitted by New York in accord with its developmental schedule (New York plan, section II).

Accordingly, OSHA finds that the New York plan effectively provides or will provide opportunity and procedures for variances from its occupational safety and health standards.

(5) Enforcement

Section 18(c)(2) of the Federal Act and 29 CFR 1956.10(d)(1) require a State plan to include provisions for enforcement of State standards which is or will be at least as effective in providing safe and healthful employment and places of employment as the Federal program, and to assure that the State's enforcement program for public employees will continue to be at least as effective as the Federal program in the private sector.

(a) *Legal Authority.* The State must require public employer and employee compliance with all applicable standards, rules and orders (29 CFR 1956.10(d)(2)) and must have the legal authority for standards enforcement (section 18(c)(4)) including compulsory process (29 CFR 1956.11(c)(2)(viii)).

Section 27–a(3)(a) of the New York Act requires public employers to comply with the New York Labor Department's occupational safety and health standards; section 27–a(3)(b) requires employees to comply with all standards, rules, regulations and orders applicable to their own actions and conduct.

Sections 38 and 39 of the New York Labor Law (New York plan, section I, appendices 15 and 16, respectively) provide that the Industrial Commissioner may subpoena witnesses and administer oaths, and take affidavits and depositions of witnesses, in matters relating to the Labor Law. The State, in accord with Part 65, Subpart D, Prehearing Procedure and Discovery, of the "Rules of Procedure and Practice," of the Industrial Board of Appeals (the independent State agency that acts on petitions for review of the Commissioner of Labor's determinations under the New York Act) may, by order, obtain discovery depositions and interrogatories, and issue subpoenas (id., p. 91.)

(b) *Inspections.* A State plan must provide for inspection of covered workplaces, including in response to complaints, where there are reasonable grounds to believe a hazard exists (29 CFR 1956.11(c)(2)(i)).

When no compliance action results from inspection of violations alleged by employee complaints, the State must notify the complainant of its decision not to take compliance action by such means as written notification and

opportunity for informal review (29 CFR 1956.11(c)(2)(iii)).

Section 27–a(5) of the New York Act provides for inspections of covered workplaces including inspections in response to employee complaints. The New York plan (Section I, pp. 60–61) provides that when a determination has been made that a complaint does not warrant an inspection, the complainant shall be notified in writing of the decision. Included in the letter of determination will be a statement explaining the right of the complainant to obtain a review of the determination by submitting a written statement of position to the State and providing the employer with a copy of the statement by certified mail. If the complainant or the employer so request, an informal conference in which they may orally present their views may be held. After considering all views presented the State shall affirm, modify or reverse the determination in question and the complainant and the employer shall be furnished with written notification of the decision and the reason therefor.

(c) *Employee Notice and Participation in Inspection.* In conducting inspections, the State plan must provide an opportunity for employees and their representatives to point out possible violations through such means as employee accompaniment or interviews with employees (29 CFR 1956.11(c)(2)(ii)).

Section 27–a(5)(b) of the New York Act provides the opportunity for an employer and employee representative to accompany an inspector for the purpose of aiding in the inspection. Where there is no authorized employee representative, the Commissioner is required to consult with a reasonable number of employees concerning matters of safety and health in the workplace.

In addition, the State plan must provide that employees be informed of their protections and obligations under the Act by such means as the posting of notices (29 CFR 1956.11(c)(2)(iv)); and provide that employees have access to information on their exposure to regulated agents and access to records of the monitoring of their exposure to such agents (29 CFR 1956.11(c)(2)(vi)).

Section 27–a(9)(a) of the New York Act provides that the Commissioner issue regulations requiring employers to, through posting of notices, training or other appropriate means, keep their employees informed of their protections. A poster, which outlines employee protections and obligations under the Act, has been designed and distributed to public employers. Specific regulations as well as the poster will be submitted by New York in accord with its developmental schedule (New York plan, section II).

Information on employee exposure to regulated agents (in the public sector) and access to medical and exposure records is provided through State standards, including the Access to Employee Exposure and Medical Records standard, which will be promulgated by New York within three months of plan approval.

(d) *Nondiscrimination.* A State is expected to provide appropriate protection to employees against discharge or discrimination for exercising their rights under the State's program, including provision for employer sanctions and employee confidentiality (29 CFR 1956.11(c)(2)(v)).

Section 27–a(10)(a) of the New York Act provides that no person shall discharge, or otherwise discipline, or in any manner discriminate against any employee because such employee has filed a complaint or instituted or caused to be instituted any proceeding under or related to this section or has testified or is about to testify in any such proceeding, or because of the exercise by such employee on behalf of the employee or others of any right under this section.

Section 27–a(10)(b) of the New York Act provides that an employee who believes that he or she has suffered such discrimination may file a complaint thereon with the Commissioner within 30 days after such discrimination has occurred. The Commissioner shall investigate such complaints as appropriate, and if requested, shall preserve the confidentiality of complainants. If the Commissioner determines that a violation of section 27–a(10)(a) exists, the New York Attorney General shall be requested to bring an action in the State Supreme Court. The State Supreme Court has jurisdiction, for cause shown, to restrain violations and order all appropriate relief, including rehiring or reinstatement of the employee to his or her former position with all back pay. The Commissioner is required to notify the complainant of the determination within 90 days of receiving a discrimination complaint.

Specific regulations in this area will be submitted by New York in accord with its developmental schedule (New York plan, section II).

(e) *Restraint of Imminent Danger.* A State plan is required to provide for the prompt restraint of imminent danger situations (29 CFR 1956.11(c)(2)(vii)).

Section 27–a(7) of the New York Act provides that upon petition of the State, the Supreme Court of the State shall have jurisdiction to restrain any practices or conditions in any place of public employment where a situation exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of the danger can be eliminated through ordinary abatement procedures. Any order issued under this section may require steps to be taken that may be necessary to avoid, correct, or remove such imminent danger and prohibit the employment or presence of any individual in locations or under conditions where such imminent danger exists, except individuals whose presence is necessary to avoid, correct, or remove such imminent danger or to maintain the capacity of a continuous process operation to resume normal operations without a complete cessation of operations, or where a complete cessation of operations is necessary, to permit such to be accomplished in a safe and orderly manner. In addition, section 200 of the New York Labor Law authorizes the Commissioner to post a notice to any machinery, equipment or device, or in any area prohibiting use of the machinery, equipment or device or occupancy of the area until the imminency of the hazard is eliminated (New York plan, section I, pp. 56–57).

Whenever and as soon as it is determined that an imminent danger exists in any place of public employment, the affected employees and employers shall be informed and advised that relief is being sought. If relief is not sought within 48 hours of being notified of the condition, any employee who may be injured by this failure or the authorized employee representative may seek injunctive relief. In addition, section 200.3 of the New York Labor Law provides that the State Attorney General may obtain an injunction ordering the cessation and unsafe practices (id. p. 58).

Specific regulations and detailed procedures on the elimination of imminent danger situations will be submitted by New York in accord with its developmental schedule (New York plan, section II).

(f) *Right of Entry; Advance Notice.* A State program is required to have authority for right of entry to inspect and compulsory process to enforce such right equivalent to the Federal program (section 18(c)(3) of the Act and 29 CFR 1956.10(e)). Likewise, a State is expected to prohibit advance notice of inspection, allowing exception thereto no broader than in the Federal program (29 CFR 1956.10(f)).

Section 27–a(5)(e) of the New York Act authorizes the Commissioner to

conduct an inspection of any premises occupied by a public employer if there is reason to believe that a violation of this section has occurred. On August 22, 1980, OSHA provided to New York an advisory opinion on the New York Act's right of entry provision which among other concerns, judged that the State's right of entry for inspections appeared to be limited to situations where a complaint had been filed or where the Commissioner has reason to believe a violation may exist. This authority appeared to OSHA to restrict the Commissioner's authority to a greater degree than Federal OSHA's right of entry authority. Consequently, New York included in its plan the State Labor Department Counsel's opinions, dated September 17, 1980 and January 12, 1981 (New York plan, section I, Appendices 8 and 9, respectively), citing additional right of entry authority derived from sections 25 and 31 of the New York Labor Law, which sections do not contain the "reason to believe that a violation . . . has occurred" limitation. Additionally, New York, in order to eliminate any possible confusion about its authority, introduced in the State legislature on February 2, 1984, an amendment to the New York Act to delete the "reason to believe that a violation . . . has occurred" limitation. This amendment was enacted and became effective on April 30, 1984, and was submitted by the State on May 1, 1984 (Ex. 5) for incorporation in the plan and for OSHA approval. Enactment of this amendment satisfactorily resolved OSHA's concerns about New York's right of entry authority.

The New York plan (section I, p. 54) describes its general policy and procedures prohibiting advance notice of inspections and allowing exception thereto, in terms substantially similar to the Federal OSHA program. Specific regulations and procedures on advance notice will be submitted by New York in accord with its developmental schedule (New York plan, section II).

Accordingly, OSHA finds that the New York plan contains right of entry authority and provides appropriate prohibition of advance notice which are equivalent to the Federal OSHA program.

(g) *Citations, Sanctions, and Abatement.* A State plan is expected to have authority and procedures for promptly notifying employers and employees of violations, including proposed abatement requirements, identified during inspection, for the proposal of effective first-instance sanctions against employers found in violation of standards, and for prompt employer notification of any such sanctions. In lieu of monetary penalties as a sanction, a complex of enforcement tools and rights, including administrative orders and employee right to contest citations (as well as abatement dates), may be demonstrated to be as effective as monetary penalties in achieving compliance in public employment (29 CFR 1956.11(c)(2) (ix) and (x)).

Sections 27–a (6) and (7) of the New York Act describe the authority and general procedures of the Commissioner to promptly notify public employers and employees of violations, and abatement requirements and to compel compliance therewith.

The New York plan (section I, pp. 69–84) provides that when an inspection of an establishment is made the employer and the employee representative will be told of the alleged violations at the closing conference and will be advised of the requirement for abatement. A written citation (Notice of Violation and Order to Comply) will be issued, citing the sections of the law, standards, rules or regulations alleged to be violated, the location of the violation, the abatement period, posting requirements and will also include the employer's and employee's right to contest any or all orders. If orders to comply were issued as a result of an employee-requested inspection or an employee notification of a violation, a copy of such order will be made available to the employee or the employee representative. Section 27–a(6)(d) of the New York Act provides that if the time for compliance with an order has elapsed, and the employer has not contested and has not complied with the provisions of the order, judicial enforcement of the order may be sought by commencing a proceeding pursuant to Article 78 of the Civil Practice Law and Rules; therefore, a court may take action to enforce compliance. Relief sought by the Commissioner normally will take the form of an order of the court to the employer compelling compliance.

Additionally, since New York has determined that a monetary penalty system would not be appropriate because of the nature of public employment, in lieu of the monetary penalty system the State plan incorporated several methods of obtaining compliance, as follows: administrative orders (written orders to comply) issued to a public employer after an inspection and review of a workplace (id., p. 72); judicial enforcement (mandamus actions) (id., p. 73); employee right to contest citations as well as abatement periods if parties consider issued citation to be erroneous, excessive or insufficient for the violation and the abatement period proposed too long or unreasonably short (id., p. 75); and, encouragement of public agency self-inspection programs (id., p. 76).

Specific regulations and detailed procedures on compliance orders, abatement and sanctions will be submitted by New York in accord with its developmental schedule (id., section II).

(h) *Contested Cases.* A State plan must have authority and procedures for employer contest of violations alleged by the State, penalties/sanctions and abatement requirements at full administrative or judicial hearings. Employees must also have the right to contest abatement periods and the opportunity to participate as parties in all proceedings resulting from an employer's contest (29 CFR 1956.11(c)(2)(xi)).

Section 27–a(6)(c) of the New York Act provides that any employer, or other party (including an employee) affected by a determination of the Commissioner may petition the Industrial Board of Appeals for review of such determination in accordance with section 101 of the New York Labor Law. Part 65, Subpart B and Part 66, Section 66.1 of the "Rules of Procedure and Practice" of the Industrial Board of Appeals permit employees or their representatives to participate in the review process under section 101 of the New York Labor Law. Parties affected by a decision of the Board may appeal by commencing a judicial review proceeding pursuant to Article 78 of the Civil Practices Law and Rules (New York plan, section I, pp. 85–87.)

The period fixed for contesting a determination by the Commissioner is 60 calendar days, which is significantly longer than the 15 working day contest period under the Federal OSHA program. OSHA review of this aspect of the New York plan resulted in concern about the effect of this lengthy contest period on requirements to comply and the abatement period, which concern was conveyed in a February 18, 1981 letter from OSHA to then Director of the State Division of Safety and Health Carl J. Mattei. In a response dated March 5, 1981, Mr. Mattei indicated that a filing of contest does not automatically stay the abatement period or compliance required by the contested order. This issue was discussed at meetings between OSHA and State officials on February 25, 1981 and April 26, 1982. As a result of the April 26, 1982 meeting, OSHA requested that New York provide an explanation of how prompt

abatement could or would be enforced in view of the 60 day contest period. This issue was discussed further at the March 1, 1984 meeting between OSHA and State officials on OSHA's remaining concerns about approval of the plan. In response to this concern, New York submitted to OSHA and incorporated in its plan on March 4, 1984, a State Labor Department Counsel's opinion that when the time for compliance with an order of the Commissioner of Labor has lapsed, the State is authorized to obtain judicial enforcement, even prior to expiration of the 60 day contest period (provided that a contest has not been filed), by commencing a proceeding pursuant to Article 78 of the New York Civil Practice Law. Additionally, New York has provided assurance that should the Department of Labor's interpretation be challenged successfully, the Department would seek appropriate legislative correction (id., Appendix 23.)

OSHA believes that the Commissioner's authority to obtain judicial enforcement of abatement requirements prior to expiration of the 60 day contest period obviates concern about the length of time permitted for contesting an order.

(i) *Enforcement Conclusion.* In summary, OSHA finds that the enforcement provisions of the New York plan meet the statutory and regulatory requirements for initial State plan approval.

(6) Staffing and Resources

Section 18(c)(4) of the Federal Act requires State plans to provide the qualified personnel necessary for the enforcement of standards. In accordance with 29 CFR 1956.10(g), one factor which OSHA must consider in considering a plan for initial approval is whether the State has or will have a sufficient number of adequately trained and competent personnel to discharge its responsibilities under the plan.

The New York plan (section I, pp. 124–127) provides assurances of a fully trained, adequate staff, including 30 safety and 8 health compliance officers for inspections, and 10 safety and 12 health consultants to perform consultation services in the public sector.

The staffing requirements (or "benchmarks") for State plans covering both the private and public sectors are established based on the "fully effective" test established in *AFL–CIO* v. *Marshall,* 570 F.2d 1030 (D.C. Cir., 1978). There is some question whether this staffing test, and the complicated formula used to derive benchmarks for complete private/public sector plans, was intended, or is appropriate for application to, the staffing needs of public employee plans. However, the State has given satisfactory assurance (New York plan, section I, p. 130) in its plan that it will meet the compliance staffing benchmarks OSHA will establish for New York's public employee plan in accord with the 1980 benchmarks formula or any subsequent revisions thereto, and the schedule for their attainment, thereby meeting the requirements of 29 CFR 1956.10.

Section 18(c)(5) of the Federal Act requires that the State plan will devote adequate funds to administration and enforcement of its standards (29 CFR 1956.10(h)). New York has funded its public employee occupational safety and health program since 1981 solely utilizing State funds. The State plan will be funded at $820,373 (State 50% share) for the period from plan approval through the remainder of FY 1984.

Accordingly, OSHA finds that the New York plan has provided for sufficient, qualified personnel and funding for the various activities to be carried out under the plan.

(7) Records and Reports

State plans must assure that employers in the State submit reports to the Secretary in the same manner as if the plan were not in effect (section 18(c)(7) of the Federal Act). Under a public employee State plan, public employers must maintain records and make reports on occupational injuries and illnesses in a manner similar to that required of private employers under the Federal Act and (29 CFR 1956.10(i)). The plan must also provide assurances that the designated agency will make such reports to the Secretary in such form and containing such information as he may from time to time require (section 18(c)(8) of the Federal Act and 29 CFR 1956.10(j)).

New York has provided assurance in its State plan (section I, pp. 115–119) that all jurisdictions covered by the State plan will maintain valid records and make timely reports on occupational injuries and illnesses as required for private employers under Federal OSHA. Specific regulations on this aspect of the State plan will be submitted by New York in accord with its developmental schedule (id., section II).

New York has also provided assurance in its plan (section I, p. 20) that it will continue its participation in the Bureau of Labor Statistics Annual Survey of Injuries and Illnesses (for the private sector under a contract with the Bureau of Labor Statistics) and will extend its statistical survey to the public sector under its approved plan. The New York plan also contains assurances (id., p. 123) that it will provide reports to OSHA in the desired form and participate in OSHA's Integrated Management Information System.

For the foregoing reasons, OSHA finds that the New York plan has met the requirements of section 18(c) (7) and (8) of the Federal Act on employer and State reports to the Secretary.

(8) Voluntary Compliance Program

A State plan must undertake programs to encourage voluntary compliance by employers by such means as conducting training and consultation with employers and employees (29 CFR 1956.11(c)(2)(xii)).

The New York plan (section I, pp. 102–105) provides that the State Labor Department will include voluntary compliance as an essential component of its program. Training will be provided to public employers and employees; seminars will be conducted to familiarize affected individuals with OSHA standards and requirements, and safe work practices; an on-site consultation program in the public sector parallel to New York State's existing private sector on-site consultation program (under section 7(c)(1) of the Federal Act) will be established. The public employee consultation program will have both safety and health consultants available to employers who request such service. All State agencies and political subdivisions will also be encouraged to develop and maintain self-inspection programs.

Based on the foregoing, OSHA finds that the New York plan provides for the establishment and administration of an effective voluntary compliance program.

Decision

OSHA, after carefully reviewing the New York State plan for the development and enforcement of State standards applicable to State and local government employees and the record developed during the above described proceedings, has determined that the requirements and criteria for initial approval of a developmental plan have been met. The plan is hereby approved as a developmental plan under section 18 of the Act and 29 CFR Part 1956. This decision incorporates the requirements of the Act and of regulations applicable to State plans generally.

Regulatory Flexibility Act Analysis

OSHA certifies pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) that this initial approval will not have a significant

adverse economic impact on a substantial number of small entities. By its own terms, the New York State plan will have no effect on private sector employment, but rather, is limited to the State and its political subdivisions. Moreover, the New York legislation has been in effect since 1980, public sector employers and employees have been subject to its terms since that time, and accordingly no new obligations would be placed on public sector employers and employees as a result of Federal approval of the plan. A copy of this certification has been forwarded to the Chief Counsel for Advocacy, Small Business Administration.

List of Subjects in 29 CFR Part 1956

Intergovernmental relations, Law enforcement, Occupational Safety and Health.

Effective Date

OSHA's decision granting initial Federal approval to the New York State plan for public sector employees is effective upon the date of publication of the present Federal Register notice.

The safety and health program described in the plan has been in effect for several years and no immediate modifications of the program are required by today's decision. Notice of proposed initial approval of the plan was published both in the Federal Register and in several newspapers in the State with requests for comment. No comments opposing initial approval of the plan were received, and OSHA believes that no party is adversely affected by initial approval of the plan. OSHA therefore finds, pursuant to section 553(d) of the Administrative Procedures Act, that a delay of the effective date of initial approval of the plan is unnecessary.

Signed at Washington, D.C. this 29th day of May, 1984.

Patrick R. Tyson,

Deputy Assistant Secretary of Labor.

Accordingly, Part 1956 is hereby amended by adding thereto a new Subpart F as follows:

Subpart F—New York

Sec.

Authority: Secs. 8(g), 18; 84 Stat. 1600, 1608; (29 U.S.C. 657(g), 667)); 29 CFR Part 1956, Secretary of Labor's Order 9-83 (48 FR 35736).

Subpart F—New York

§ 1956.50 Description of the plan as initially approved.

(a) *Authority and scope.* The New York State Plan for Public Employee Occupational Safety and Health received initial OSHA approval on June 1, 1984. The plan designates the New York Department of Labor as the State agency responsible for administering the plan throughout the State. The plan includes legislation, the New York Act (Public Employees Safety and Health Act, Chapter 729 of the Laws of 1980), enacted in 1980, and amended on April 30, 1984, to clarify the State's right of entry for inspection authority. Under this legislation, the Industrial Commissioner (now the Commissioner of Labor), has full authority to enforce and administer all laws and rules protecting the safety and health of all employees of the State and its political subdivisions. In response to OSHA concern that language in section 27-a(2) of the New York Act, regarding the Commissioner of Education's authority with respect to school buildings, raised questions about the coverage under the plan of public school employees, New York submitted amendments to its plan consisting of Counsel's opinion and assurance that public school employees are fully covered under the terms of the New York Act. In a March 4, 1984 letter from Lee O. Smith, Deputy Commissioner of Labor for Legal Affairs, New York indicated that the Commissioner of Education's authority applies only to ensuring the safety and health of pupils, and that the Commissioner of Labor has exclusive authority to enforce occupational safety and health standards covering public employees in school buildings. Furthermore, New York has provided assurance that should the Department of Labor's interpretation on coverage of public school employees be challenged successfully, appropriate legislative correction would be sought.

(b) *Standards.* The New York plan provides for the adoption of all Federal OSHA standards promulgated as of July 31, 1983, and for the incorporation of any subsequent revisions or additions thereto in a timely manner, including in response to Federal OSHA emergency temporary standards. The procedure for adoption of Federal OSHA standards calls for publication of the Commissioner of Labor's intent to adopt a standard in the *New York State Register* 30 days prior to such adoption. Subsequent to adoption and upon filing of the standard with the Secretary of State, a notice of final action will be published as soon as is practicable in the *State Register.* The plan also provides for the adoption of alternative or different occupational safety and health standards if a determination is made by the State that an issue is not properly addressed by OSHA standards and is relevant to the safety and health of public employees. In such cases, the State shall propose legislation mandating the development of an alternative standard to protect the safety and health of public employees. The procedures for adoption of alternative standards will contain criteria for development and consideration of expert technical knowledge in the field to be addressed by the standard, and provisions allowing interested persons to submit information requesting development or promulgation of any standard and to participate in any hearing for the development, modification or establishment of standards.

(c) *Variances.* The plan includes provisions for the granting of permanent and temporary variances from State standards in terms substantially similar to the variance provisions contained in the Federal Act. The State provisions require employee notification of variance applications as well as employee rights to participate in hearings held on variance applications. Variances may not be granted unless it is established that adequate protection is afforded employees under the terms of the variance.

(d) *Employee notice and discrimination protection.* The plan provides for notification to employees of their protections and obligations under the plan by such means as a State poster, and required posting of notices of violations. The plan also provides for protection of employees against discharge or discrimination resulting from exercise of their rights under the State's Act in terms essentially identical to section 11(c) of the Federal Act.

(e) *Inspections and enforcement.* The plan provides for inspection of covered workplaces including inspections in response to employee complaints. If a determination is made that an employee complaint does not warrant an inspection, the complainant shall be notified, in writing, of such determination and afforded an opportunity to seek informal review of the determination. The plan also provides the opportunity for employer and employee representatives to accompany the inspector during an

inspection for the purpose of aiding in the inspection. The plan also provides for right of entry for inspection and prohibition of advance notice of inspection. In lieu of monetary penalties for violations, the plan establishes a scheme of enforcement for compelling compliance under which public employers are issued notices of violation and orders to comply, for any violation of standards and orders. Such notices will fix a reasonable time for compliance. The Commissioner of Labor may seek judicial enforcement (mandamus actions) of orders to comply by commencing a proceeding pursuant to Article 78 of the New York Civil Practice Law and Rules against public employers who fail to abide by the requirements of the order.

(f) *Review procedures.* Under the plan, employers, employees and other affected parties may seek informal review with the Department of Labor of a notice of violation, including the reasonableness of the abatement period, and/or may seek formal administrative review with the Industrial Board of Appeals, the independent State agency authorized by section 27–a(6)(c) of the New York Act to consider petitions from affected parties for review of the Commissioner of Labor's determinations pursuant to the New York Act. The "Rules of Practice and Procedure" of the Industrial Board of Appeals also permit public employees or their representatives to participate in the review process when a public employer contests a notice. Judicial review of the decision of the Industrial Board of Appeals may be sought pursuant to Article 78 of the New York Civil Practice Law and Rules. The period fixed in the plan for contesting notices of violation is 60 calendar days, which is significantly longer than the 15 working day period allowed under the Federal OSHA program. However, New York has provided assurance, by Counsel's opinion of March 4, 1984, that it has the authority under Article 78 of the New York Civil Practice Law and Rules to obtain judicial enforcement of an uncontested order to comply upon expiration of the period stipulated for abatement, regardless of whether the 60 day contest period has expired or not. New York has also assured that should the State Labor Department's interpretation be challenged successfully appropriate legislative correction would be sought.

(g) *Staffing and Resources.* The plan provides assurances of a fully trained, adequate staff, including 30 safety and 8 health compliance officers for enforcement inspections and 10 safety and 12 health consultants to perform consultation services in the public sector. The State has also given satisfactory assurances of adequate funding to support the plan. In addition, the plan assures that New York will meet the compliance staffing benchmarks established pursuant to the terms of the court order in *AFL–CIO* v. *Marshall* (CA 74–406).

(h) *Records and reports.* The plan provides that public employers in New York will maintain appropriate records and make timely reports on occupational injuries and illnesses in a manner substantially identical to that required for private sector employers under Federal OSHA. New York has assured that it will continue its participation in the Bureau of Labor Statistics Annual Survey of Injuries and Illnesses and will include the public sector under its plan after approval. The plan also contains assurances that the Commissioner of Labor will provide reports to OSHA in such form as the Assistant Secretary may require, and that New York will participate in OSHA's Integrated Management Information System.

(i) *Voluntary compliance programs.* The plan provides that training will be provided to public employers and employees; seminars will be conducted to familiarize affected individuals with OSHA standards and requirements (as adopted by New York), and safe work practices; an on-site consultation program in the public sector will be established to provide services to public employers who so desire; and, all State agencies and political subdivisions will be encouraged to develop and maintain self-inspection programs as an adjunct to but not substitute for the Commissioner of Labor's enforcement inspections.

§ 1956.51 Developmental schedule.

The New York plan is developmental. The following is a schedule of major developmental steps as provided in the plan:

(a) Adopt all OSHA standards promulgated as of July 1, 1983 (within three months after plan approval).

(b) Promulgate regulations for inspections, citations and abatement, equivalent to 29 CFR Part 1903 (within three months after plan approval).

(c) Submit State poster (within six months after plan approval).

(d) Extend BLS Survey of Injuries and Illnesses to State and local government (within one year after plan approval).

(e) Promulgate regulations for granting variances, equivalent to 29 CFR Part 1905 (within one year after plan approval).

(f) Promulgate regulations for injury/illness recordkeeping, equivalent to 29 CFR Part 1904 (within two years after plan approval).

(g) Develop employee non-discrimination procedures (within two years after plan approval).

(h) Promulgate procedures for review of contested cases (within two years after plan approval).

(i) Promulgate regulations for development of alternative State standards, equivalent to 29 CFR Part 1911 (within three years after plan approval).

(j) Develop Field Operations Manual (within three years after plan approval).

(k) Develop Industrial Hygiene Manual (within three years after plan approval).

(l) Promulgate regulations and implement program for on-site consultation (within three years after plan approval).

(m) Fully implement public employer/employee training and education program (within three years after plan approval).

§ 1956.52 Completion of developmental steps and Certification. [Reserved]

§ 1956.53 Determination of operational effectiveness. [Reserved]

§ 1956.54 Location of plan for inspection and coying.

A copy of the plan may be inspected and copied during normal business hours at the following locations: Office of State Programs, U.S. Department of Labor, Occupational Safety and Health Administration, Third Street and Constitution Avenue, NW., Room N–3476, Washington, D.C. 20210; Office of the Regional Administrator, U.S. Department of Labor, Occupational Safety and Health Administration, 1515 Broadway (1 Astor Plaza) Room 3445, New York, New York 10036; State of New York Department of Labor, State Office Building Campus, Building 12, Room 579, Albany, New York 12226; Division of Occupational Safety and Health, State of New York Department of Labor, Room 6994, 2 World Trade Center, New York, New York 10047.

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Friday
June 1, 1984

Part VI

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 630

Additional Standards for Viral Vaccines; Poliovirus Vaccine, Live, Oral; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 630

[Docket No. 84N-0178]

Additional Standards for Viral Vaccines; Poliovirus Vaccine, Live, Oral

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulation governing testing of Poliovirus Vaccine, Live, Oral used in clinical trials performed for determining the antigenicity of the vaccine. The amendment eliminates the provision that the five lots of poliovirus vaccine used in clinical trials be manufactured as consecutive lots and that the five lots be shown to have satisfactory results in all prescribed tests. FDA is amending the regulation because of questions concerning the proper interpretation of clinical data used in the early 1960's as part of the basis for licensure of the sole Poliovirus Vaccine, Live, Oral, Trivalent product that is currently licensed for sale in the United States. The amendment also makes the requirements concerning clinical studies more flexible and consistent with current scientific knowledge. FDA will, however, continue to have authority to ensure that poliovirus vaccine used in clinical trials shows satisfactory results in all tests necessary to assure the safety, purity, and potency of the vaccine.

DATES: Effective June 1, 1984; comments by July 31, 1984.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Steven F. Falter, Center for Drugs and Biologics (formerly National Center for Drugs and Biologics) (HFN-368), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1306.

SUPPLEMENTARY INFORMATION:

I. Background History of Poliomyelitis Vaccine

Three monovalent forms of Poliovirus Vaccine, Live, Oral were first licensed for use in the United States in August 1961. A vaccine consisting of each of the monovalent forms, called Poliovirus Vaccine, Live, Oral, Trivalent (hereafter "oral poliovirus vaccine"), was licensed initially in June 1963.

Since introduction of the oral poliovirus vaccine, it has largely replaced the killed-virus, injectable vaccine, often called the "Salk Vaccine," as the vaccine of choice for the immunization of children. The selection of oral poliovirus vaccine as the principal polio vaccine in the United States has been made by various public health organizations including the Committee on Infectious Diseases of the American Academy of Pediatrics (Ref. 1), the Immunization Practices Advisory Committee (Ref. 2), and a special expert committee of the Institute of Medicine, National Academy of Sciences (Ref. 3). All 50 States require that children be immunized with oral poliovirus vaccine as a prerequisite to entering elementary school. Over 95 percent of the children entering school in the United States have completed primary immunization with oral poliovirus vaccine. Currently only one manufacturer holds a U.S. license for the manufacturer and sale of oral poliovirus vaccine.

The initial results of immunization with killed-virus, injectable poliovirus vaccine and subsequent results with oral poliovirus vaccine have been dramatic. In 1954, the last year before general immunization programs against polio began, over 18,000 cases of paralytic poliomyelitis were reported in the United States; in 1983, only 8 cases of paralytic poliomyelitis were reported (Ref. 4). Thus, concerted immunization programs, using an oral poliovirus vaccine which has been consistently safe and nearly 100 percent effective, have resulted in virtual elimination of paralytic poliomyelitis in the United States. However, several minor outbreaks of poliomyelitis, occurring in 1970, 1972, and 1979 in unimmunized populations in the United States and abroad, indicate the importance of maintaining the polio immunization programs in the United States.

II. Amendments to 21 CFR 630.11

In addition to published general standards for all biological products and requirements contained in the license issued to the manufacturer, FDA's regulations contain specific standards for the safety, purity, and potency of Poliovirus Vaccine, Live, Oral (both monovalent and trivalent). These additional standards are set forth in 21 CFR 630.10 through 630.17. The additional standards for oral poliovirus vaccine originally were issued on March 25, 1961, and were subsequently recodified in Title 21 of the Code of Federal Regulations.

Section 630.11 of the additional standards contains requirements concerning clinical trials for determining the antigenicity of oral poliovirus vaccine that must be performed to qualify the vaccine for licensure. The antigenicity of a vaccine is its ability to induce the production of specific, protective antibodies in human recipients. These clinical trials are designed to demonstrate the effectiveness of the oral poliovirus vaccine. Included in § 630.11 is a requirement that the clinical trials be conducted using five consecutive lots of poliovirus vaccine, all manufactured by the same methods, and each of which has shown satisfactory results in all prescribed tests. FDA has determined that two amendments to this requirement should be made.

A. The "Consecutive Manufacture" Requirement

FDA is amending § 630.11 by removing the word "consecutive" so that the five lots of oral poliovirus vaccine used in clinical trials need not be consecutively manufactured. This "consecutive manufacture" requirement is contained in a number of additional standards for vaccines, and is intended generally to assure that the manufacturer can control the manufacturing process. The agency has concluded, however, that this requirement is unnecessary to assure the safety, purity, and potency of the oral poliovirus vaccine used in clinical trials and could be the cause of a meaningless waste of effort and vaccine by a manufacturer conducting clinical studies in the United States or abroad.

The manufacture of a viral vaccine is a complex operation involving living organisms. Therefore, it is inevitable that occasionally an attempt to manufacture a safe, pure, and potent oral poliovirus vaccine will be unsuccessful depite the use of good manufacturing practices. Under current § 630.11, a failure to manufacture successfully one lot could result in the consecutive sequence of lot manufacture being broken and the use of the remaining lots in a clinical trial would be prohibited. Thus, the lots of vaccine that were properly manufactured would be wasted and any clinical studies already under way would not be acceptable to FDA because they would not comply with § 630.11. There is, however, no scientific justification for rejecting the use of such lots of vaccine in clinical studies or the results of such studies. FDA has therefore concluded that the requirement that the five lots

used in clinical trials be of consecutive manufacture is unnecessarily restrictive.

The agency believes that any five lots of poliovirus vaccine manufactured using the same methods, regardless of the sequence of manufacture, are appropriate for use in clinical trials to demonstrate antigenicity. Indeed, there may be some scientific advantages to conducting clinical trials using oral poliovirus vaccine that has been manufactured over a long period of time. FDA believes that clinical trials conducted using vaccine manufactured over several years, rather than several months, may provide a better indication of the manufacturer's ability to produce consistently a fully safe and antigenic vaccine.

The agency emphasizes that this amendment will not affect the regulatory requirements for the consistency of manufacture of licensed oral poliovirus vaccine for commercial use. FDA will continue to impose the requirements in § 630.17(b) for the release of individual lots of vaccine. These requirements include the requirement that each lot be one of five consecutive lots that have been manufactured satisfactorily. In addition, FDA inspections of manufacturing facilities will assure the consistency of manufacture of licensed oral poliovirus vaccine.

In addition to assuring the continued safety, purity, and potency of oral poliovirus vaccine used in clinical trials, the amendment will provide manufacturers greater flexibility in scheduling clinical trials. The opportunity to conduct clinical trials of a vaccine is often limited by such factors as difficulty in identifying a suitable, unimmunized test population and a shortage of qualified clinical scientists to conduct the trials. By removing the consecutive lot requirement, the sponsoring manufacturer will have greater flexibility in selecting the appropriate times and opportunities for conducting the required clinical trials.

The agency further notes that, since the agency first issued § 630.11, a number of clinical studies have been performed in other countries to demonstrate the antigenicity of various oral poliovirus vaccines. Some of the studies were performed to qualify the vaccine for approval in the host nation. Other clinical studies have been performed on approved oral poliovirus vaccines to assure that the vaccine continues to display adequate antigenicity in humans. FDA has determined that many of these clinical studies provide an appropriate demonstration of the antigenicity of the vaccine. Therefore, FDA should be able to rely on the data from these clinical trials as part of the basis for approving U.S. licensure of the manufacturer's oral poliovirus vaccine. However, because these studies generally were not performed on five consecutive lots of vaccine, the studies would not meet the requirements of § 630.11. By removing the "consecutive manufacture" requirement, in addition to the amendment discussed later in this preamble, FDA can accept appropriate clinical studies performed in other countries as part of the basis of approval for U.S. licensure.

B. The Testing Requirement

FDA is also amending § 630.11 by removing the provision that the five lots of oral poliovirus vaccine used in the required clinical trials each show satisfactory results in all prescribed tests.

This change is prompted by questions concerning whether all lots of poliovirous vaccine used in clinical trials in 1961 and 1962 as a basis for the currently licensed oral poliovirus vaccine showed satisfactory results in several tests. This change will also facilitate FDA's ability to rely on oral poliovirous vaccine clinical studies performed in other nations.

In tort litigation involving the Federal government and private parties, questions have been raised concerning whether some of the lots of vaccine used in the 1961 and 1962 clinical trials met the test standard for neurovirulence prescribed in § 630.16(b)(1). The purpose of the neurovirulence tests, which is performed in monkeys, is to assure that the live virus used in the oral poliovirus vaccine is properly attenuated (nonvirulent). In 1962, the reviewing scientists in the Public Health Service, the responsible regulating agency at that time, judged that the test results demonstrated that the poliovirus vaccine used in clinical trials for antigenicity was of acceptably low neurovirulence.

FDA has reviewed the data and has concluded that, although there may be a question as to whether the results of all of the neurovirulence tests met the standard in the regulations, there is no doubt that the oral poliovirus vaccine used in the clinical trials involving 195,000 subjects was of acceptably low neurovirulence. FDA's conclusion was confirmed by an FDA advisory committee, the Panel on Review of Viral Vaccines and Rickettsial Vaccines, which, as part of its general review of the safety and effectiveness of viral vaccines, reexamined the data supporting the licensure of the currently available oral poliovirus vaccine. As stated in its final report published in the Federal Register of April 15, 1930 (45 FR 25652), the panel found that the data met the requirements of § 630.11 and found the vaccine to be fully safe and effective.

Nevertheless, for the oral poliovirus vaccine used in the initial clinical trials, the results of the test for monkey neurovirulence are open to interpretation and might be considered not to meet the specific terms of § 630.16(b)(1). Continued uncertainty about whether technical conformity with this requirement was achieved when the license was first issued could unjustifiably diminish public confidence in the proven safety of the vaccine and the vital public health program to which it is indispensable. Because the vaccine used in the initial clinical trials was not neurovirulent in the subjects tested and because the oral poliovirus vaccine currently in use in the United States is safe and effective, FDA has concluded that it is in the best interest of the public health to amend § 630.11 to eliminate the unnecessary requirement that the vaccine used in clinical trials show satisfactory results in all tests applicable to lots used in clinical trials, and thus avert any possible loss of confidence in the polio immunization program.

The agency emphasizes that there is no basis for concern about the actual safety of oral poliovirus vaccine. The best indication of the low neurovirulence of licensed oral poliovirus vaccine is the history of its use. It is characteristic of any live oral poliovirus vaccine that, in rare instances, the vaccine recipient or a close contact of the vaccine recipient will contract paralytic poliomyelitis. During the clinical trials conducted prior to licensure, no cases of paralytic poliomyelitis associated with the vaccine were reported. For many years, the Centers for Disease Control (CDC) of the Public Health Service have closely monitored the incidence of poliomyelitis in the United States, including the incidence of poliomyelitis in the United States, including the incidence of vaccine-associated paralytic poliomyelitis. In the 12-year period 1969 through 1980, approximately 290 million doses of oral poliovirus vaccine were distributed and 92 cases of paralytic poliomyelitis associated with the vaccine were reported to CDC (1 case per 3.3 million doses distributed). In 1983, a total of eight cases of paralytic poliomyelitis were reported to CDC. In 1982, the World Health Organization (WHO) Consultive Group on Live Poliomyelitis Vaccine (Sabin Strains) published a 10-year study comparing the

incidence of vaccine-associated poliomyelitis among 13 nations (Ref. 5). The study shows that the safety (neurovirulence) of the vaccine used in the United States compares favorably with that of the oral poliovirus vaccines used by other nations in the study. Accordingly, FDA finds that the low neurovirulence of the currently licensed oral poliovirus vaccine has been demonstrated thoroughly throughout its history of manufacture.

The agency further emphasizes that this amendment will not compromise the safety, purity, or potency of oral poliovirus vaccine used in any future clinical trials. The agency has authority under the licensing provisions of the Public Health Service Act (42 U.S.C. 262(a)) to ensure the safety, purity, and potency of the poliovirus vaccine used in clinical trials. Section 601.2 of FDA's regulations (21 CFR 601.2) requires that, to obtain a license, manufacturers submit "data derived from nonclinical laboratory and clinical studies which demonstrate that the manufactured product meets prescribed standards of safety, purity, and potency * * *." In addition, under the applicable requirements of 21 CFR Part 312 of FDA's investigational new drug regulations, FDA will continue to assure that an investigational oral poliovirus vaccine has been shown by appropriate methods to be of acceptably low neurovirulence and otherwise safe for administration to humans before permitting its use in a clinical trial in the United States.

FDA believes that eliminating the requirement that the oral poliovirus vaccine used in clinical trials show satisfactory results in all prescribed tests will also facilitate FDA's ability to rely on clinical trials performed in foreign countries in support of an application for a U.S. license. These clinical trials are usually performed in accordance with the applicable regulations of the foreign country in which the study is conducted and the WHO's requirements for oral poliovirus vaccine (Ref. 6). The regulations sometimes differ in certain technical respects from FDA's regulations, and the revision of FDA's regulations will enable FDA to accept clinical trials that have been performed using a vaccine that has been shown to be of adequate safety, but has not been subjected to the precise battery of tests required by FDA for clinical trials. Such clinical trials would also be required to meet FDA's regulations concerning foreign clinical studies of investigational new drugs (§ 312.20; see also proposed § 312.120 published as part of a proposal to revise Part 312 in the Federal Register of June 9, 1983 (48 FR 26720)).

FDA again emphasizes that this amendment will not change the requirements that apply to the manufacture of licensed oral poliovirus vaccine. FDA will continue to require that each lot of licensed oral poliovirus vaccine meet the lot release criteria of § 630.17(b), including the requirements that each monovalent pool contained in the vaccine be one of five consecutive pools meeting the criteria of neuovirulence for monkeys in § 630.16(b)(1) and for in vitro markers prescribed in § 630.16(b)(3).

For many years, because of careful selection by the vaccine manufacturers of virus seed strains for use in the vaccine, licensed oral poliovirus vaccine has demonstrated a markedly low neurovirulence and, if properly manufactured, can readily meet the requirements of § 630.16(b)(1). Continuation of the current lot release requirements will assure consistency of manufacture of the licensed product.

At a later time, FDA intends to publish a proposed rule to revise the additional standards for other viral vaccines, consistent with the amendments made to § 630.11 in this final rule. The additional standards for Measles, Mumps, Rubella, and Measles-Smallpox Vaccines contained in §§ 630.31, 630.51, 630.61, and 630.81, respectively, inlucde provisions similar to those in § 630.11. FDA believes it is appropriate to amend those sections consistent with the amendments made to § 630.11. However, FDA finds that these amendments are not immediately necessary for the protection of the public health and, in order to expedite the revisions for oral poliovirus vaccine, will initiate procedures for revising the additional standards for the other viral vaccines at a later date.

III. References

The following information has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. American Academy of Pediatrics, "Report of the Committee on Infectious Diseases," 19th Ed., Evanston, IL, 1982.
2. "Recommendation of the Immunization Practices Advisory Committee (ACIP)—Poliomyelitis Prevention," *Morbidity and Mortality Weekly Report*, 31:12–34, 1982.
3. Nightingale, E. L., "Recommendations for a National Policy on Poliomyelitis Vaccination," *The New England Journal of Medicine*, 297:249–253, 1977.
4. Centers for Disease Control, "Corrected Cumulative 1983 Totals for Tables I and II," *Morbidity and Mortality Weekly Report*, 33:63, 1984.
5. WHO Consultive Group, "The Relation Between Acute Persisting Spinal Paralysis and Poliomyelitis Vaccine—Results of a Ten-Year Enquiry," *Bulletin of the World Health Organization*, 60(2):231–242, 1982.
6. WHO Expert Committee on Biological Standardization, "Requirements for Poliomyelitis Vaccine (Oral); Thirty-Third Report," Technical Report Series 687, pp. 107–174, 1983.

IV. Economic, Environmental, and Procedural Considerations

The agency has determined pursuant to 21 CFR 25.24(d)(10) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

The agency has examined the economic impact of this rule and has determined that it does not require either a regulatory impact analysis, as specified in Executive Order 12291, or a regulatory flexibility analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96–354). The amendment removes unnecessary restrictions from the regulations and makes the regulations more consistent with current scientific knowledge. Therefore, the agency concludes that this final rule is not a major rule as defined in Executive Order 12291. One large manufacturer is affected by the regulation. Accordingly, the agency certifies that even if this rule were subject to the Regulatory Flexibility Act because it was preceded by a proposed rule, it will not have a significant economic impact on a substantial number of small entities, as these terms are used in the Regulatory Flexibility Act. This rule does not impose any paperwork requirements.

Under the Administrative Procedure Act (5 U.S.C. 553(b) and (d)), FDA finds that notice, public procedure, and delayed effective date for the amendment of § 630.11 are contrary to the public interest. Section 553(b)(B) provides that the notice and comment provisions in section 553(b) are not required to be followed where the agency "for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." Section 553(d) allows an agency to make a rule effective less than 30 days after publication if it relieves a

restriction or the agency otherwise finds good cause for the earlier effective date.

FDA believes that delaying the change made by the amendment to § 630.11 would be contrary to the public interest. As discussed above, questions have been raised in litigation about whether the vaccine used in the clinical trials conducted in 1962 for the approval of the sole license for oral poliovirus vaccine met all of the technical requirements in § 630.11. FDA believes it is in the interest of the public health to make the amendment effective as soon as possible to make certain that questions concerning whether the vaccine lots used in the original clinical trials technically conformed with the requirements of the additional standards in 21 CFR 630.10 to 630.17 do not cast doubt on the safety of the vaccine and on the continued viability of the polio immunization program. As noted above, oral poliovirus vaccine is the vaccine of choice in the United States. As a result of the use of the vaccine, cases of paralytic poliomyelitis have been reduced from 18,000 in 1953 to only 8 cases in 1983. Moreover, the several minor outbreaks of poliomyelitis arising in 1970, 1972, and 1979 in unimmunized populations in the United States and abroad make clear that the immunization program is essential to the protection of the public health. FDA emphasizes that the lots used in the clinical trials submitted in support of the license were properly judged to be safe for purposes of the initial licensure decision and that, in view of the technical nature of any possible deficiencies in the lots, FDA does not believe that action to revoke the license under § 601.5 is warranted. However, although the continued availability of the vaccine may not be in immediate jeopardy, any possible doubts, whether or not well founded, about the safety of the vaccine cannot be allowed to exist in view of the need to assure that the vaccine will continue to be used to the maximum extent consistent with the nation's public health objectives. Accordingly, because of the importance of the vaccine and of maintaining public confidence in the immunization program that depends on it, good cause exists to issue these amendments as a final rule effective immediately. The fact that the amendment relieves a restriction also justifies making the rule effective immediately.

List of Subjects in 21 CFR Part 630

Biologics.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201, 502, 505, 701, 52 Stat. 1040–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321, 352, 355, 371)), the Public Health Service Act (sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262)), and the Administrative Procedure Act (secs. 4, 10, 60 Stat. 238 and 243 as amended (5 U.S.C. 553, 701–706)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 630 is amended by revising § 630.11, to read as follows:

PART 630—ADDITIONAL STANDARDS FOR VIRAL VACCINE

§ 630.11 Clinical trials to qualify for license.

To qualify for license, the antigenicity of the vaccine shall have been determined by clinical trials of adequate statistical design conducted in compliance with Part 56 of this chapter unless exempted under § 56.104 or granted a waiver under § 56.105, and with Part 50 of this chapter. Such clinical trials shall be conducted with five lots of poliovirus vaccine which have been manufactured by the same methods. Type specific neutralizing antibody shall be induced in 80 percent or more of susceptibles when administered orally as a single dose, or in 90 percent or more of susceptibles when administered orally after a series of doses. A separate clinical trial shall have been conducted for each monovalent and each polyvalent vaccine for which a license application is made.

Interested persons may, on or before July 31, 1984, submit to the Dockets Management Branch (address above) written comments regarding this rulemaking. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Such comments will be considered in determining whether the amendment made in this document should be modified. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation is effective June 1, 1984.

(Secs. 201, 502, 505, 701, 52 Stat. 1040–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321, 352, 355, 371); sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262); secs. 4, 10, 60 Stat. 238 and 243 as amended (5 U.S.C. 553, 701–706))

Dated: May 29, 1984.

Mark Novitch,

Acting Commissioner of Food and Drugs.

[FR Doc. 84-14000 Filed 5-30-84; 4:50 pm]

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Federal Register

Friday
June 1, 1984

Part VII

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 400, 405, 408, 409, 418, 420, 421, and 489

Medicare Program; Hospice Care and Prospective Payment for Medicare Inpatient Hospital Services; Correction; Final Rule

Medicare Program; Schedule of Target Rate Percentages for Limits on the Rate of Hospital Cost Increases and Updating Factors for Transition Prospective Payment Rates (Second Quarter FY 84); Correction; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 400, 405, 408, 409, 418, 420, 421, and 489

[BERC-241-CN/263-CN]

Medicare Program; Hospice Care and Prospective Payment for Medicare Inpatient Hospital Services; Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction to final rules.

SUMMARY: This document corrects errors that appeared in the final rule on hospice care published on December 16, 1983 (48 FR 56008) and the final rule on the prospective payment system for inpatient hospital services published on January 3, 1984 (49 FR 234). The former rule implemented section 122 of Pub. L. 97-248 providing coverage for hospice care and responded to comments received on a proposed rule published August 22, 1983 (48 FR 38146). The latter final rule amended, in response to public comments received, the interim final rule published on September 1, 1983 (48 FR 39752). In certain instances, we have made nonsubstantive changes in the prospective payment regulations text for purposes of clarification.

EFFECTIVE DATE: January 3, 1984.

FOR FURTHER INFORMATION CONTACT: William Rush, 301-594-9777.

SUPPLEMENTARY INFORMATION: In FR Doc. 83-33331, (the Hospice Care final regulations published December 16, 1983) beginning on page 56008, make the following corrections:

1. On page 56019, in the second column, in the 41st line, "$3.24" should read "$2.91".

2. On page 56032, in the second column, in the last sentence of § 418.100 (l)(6), remove "approved by the pharmaceutical services committee".

In FR Doc. 83-34405 (the Prospective Payment final regulations published January 3, 1984), beginning on page 234, make the following corrections:

1. On page 236, in the second column, in the first sentence of the last full paragraph, "§ 405.471(c)(4)(ii)(E)(3)(i)" should read "§ 405.471(c)(4)(ii)(D)(3)(i)".

2. Also on page 236, in the third column, in the 11th line from the bottom, "§ 405.471(c)(4)(ii)(D)(*4*)," should read "§ 405.471(c)(4)(ii)(C)(*4*)", and the 10th line from the bottom, the phrase beginning with "which" and ending with "plan,", should be removed.

3. On page 241, in the first column, in the 16th line from the top, within the parenthesis, "§ 405.471(c)(4)(i)(G)" should read "§ 405.471(c)(3)(i)(G) in the interim final rule".

4. Also on page 241, in the second column, in the 15th line from the top, the second "of" should read "or".

5. On page 242, in the first column, in the third line from the top, "(c)(4)(ii)(C)" should read "(c)(4)(ii)(B)".

6. On page 245, in the first column, in the 38th line from the top, "quality" should read "qualify".

7. On page 248, in the first column, in the 12th line from the top, change "four" to "three".

8. On page 249, in the first column, in the second line of the second full paragraph, ".0510" should read ".5010".

9. Also on page 249, in the third column, in the first paragraph of item C., the cross reference should read "§ 405.470(b)(3)".

10. On page 251, in the third column, in the second line from the bottom, "(c)" should be capitalized.

11. On page 252, in the first column, in the first and fourth lines from the top, "For all" should read "for *all*".

12. Also on page 252, in the third column, following the first full paragraph and before the second paragraph beginning with "*Comment*", add the following new paragraph:

"For the interested reader, the revised national standardized amounts for FY 84 have been calculated to be $2,825.58 as the urban average ($2,196.63 for the labor share and $628.95 for the nonlabor share) and $2,254.16 as the rural average ($1,839.39 for the labor share and $414.77 for the nonlabor share). As stated in the preamble to the interim final rule, these amounts are only estimates that, for comparison purposes, have been computed in the same manner as the regional amounts contained in Table 1, section VII of the addendum."

13. On page 253, in the second column, under item four, in the third sentence of the first response paragraph, add "area" between "rural" and "within"; and in the fourth sentence, "on" should read "one".

14. Also on page 253, in the third column, in the second through fifth lines from the top, remove "status of those hospitals which have been reclassified by paying at the appropriate standardized amount for their revised", and in the last sentence of the first full paragraph, "other" should read "earlier".

15. On page 254, in the first column, in the first sentence of the last paragraph, insert "is" following "98-21".

16. On page 258, in the table in the center of the page, insert "$" before the following figures in the second line: 2,000, 500, 1,913.88, and 500. Also, in the same table, in the last column to the right, "1,0450" should read "1.0450".

17. On page 259, in the first column, in the formula in the middle of the page, remove "Outlier adjustment X", and beginning in the 12th line from the bottom, remove the bullet point and "The intermediary reduces the case-mix adjusted base year costs to take into account outlier payments."

18. Also on page 259, in the second column, in the second line from the top, "D.3." should reas "C.2.".

19. On page 262, in the third column, in the ninth line from the top, "$35.000" should read "$35,000".

20. On page 267, in the third column, in the 11th line from the top, insert "should" between "hospital" and "be", and in the 15th line from the top, "if" should read "it".

21. On page 268, in the first column, beginning on the 14th line from the top, remove the entire parenthetical statement.

22. On page 271, in the first column, in the 16th line from the top, insert "regional" between "the" and "Federal", and beginning on the 17th line from the top, remove the phrase "of payment to SCHs".

23. On page 283, in the first column, in the fourth line, delete "the", and insert "covered" before the word "stays".

24. On page 293, in the first column, in the title of item D., "Physical" should read "Physician".

25. On page 295, in the first column, in the first response paragraph, in the eighth line, insert the following phrase between the words "the" and "hospitals": "statutory requirements concerning *extensive billing* and that immediate compliance would *threaten the stability of patient care.* We are optimistic that".

26. On page 300, in the first column, in the third line from the top, "§ 405.463(C)(5)(iii)" should read "§ 405.463(c)(5)(iii)", and, beginning with the 22nd line from the top, revise the paragraph beginning with "Distinguish" and ending with "appealed." to read as follows:

"—Clarify when, and to what extent, estimates of base year costs by fiscal intermediaries are subject to administrative and judicial review."

27. Also on page 300, in the second column, beginning with the second indented point in section F, revise the paragraph beginning with "Section" and ending with "services." to read as follows:

"Section 405.476(b)(3)(ii)(B) was changed to permit a rural hospital, located between 25 and 50 miles from other like hospitals, to be classified as

an SCH if it meets one of three stated criteria. We added a provision, regarding the 25 percent utilization criteria, that permits, if data on general resident utilization are not available, use of the Medicare beneficiary utilization percentage in the service area. Additionally, we will permit classification as an SCH if the hospital has less than 50 beds and the PSRO or intermediary certifies that the hospital would have met the above criteria (that is, 25 percent utilization) except that beneficiaries or residents were forced to seek care outside the service area due to the unavailability of needed specialty services."

28. On page 307, in the first column, in the second line of the second full paragraph, insert "come" between "not" and "into".

29. Also on page 307, in the second column, in the sixth sentence of the first paragraph under item H.1., delete "With this exception," and begin the sentence with "Over".

30. On page 309, in the first column, in the third sentence of the first full paragraph, insert "1886" after "section".

31. On page 310, in the third column, in the fifth line, "$151" should read "$197".

32. On page 311, in the first column, the second full paragraph should be revised to read as follows: "In addition, as noted above in section IV.C.1. of this preamble, we removed paragraph (b)(5) of § 405.474, which concerned outlier adjustments in the determination of the hospital-specific rate. This change is effective with cost reporting periods beginning on or after October 1, 1983."

33. On page 312, in the second column, in the amendatory language and authority citation for subpart D of Part 405, in the ninth line from the bottom, "reads" should be changed to "is revised to read", and in the fifth line from the bottom, "1395(a)" should read "1395l(a)".

34. On page 313, in the third column, in the amendatory language for § 405.463, the second line under item 7 should read "(h)(1) (i), (ii), and (iii) are revised to read as".

35. On page 314, in § 405.463, in the first column, following paragraph (h)(1)(ii) and preceding the five stars, add paragraph (h)(1)(iii) to read as follows:

(iii) HCFA may adjust the amount of operating costs, under paragraph (c)(1) of this section, to take into account factors such as a change in the inpatient hospital services that a hospital provides, that are customarily provided directly by similar hospitals, or the manipulation of discharges to increase reimbursement. A change in the inpatient hospital services provided could result from changes that include, but are not limited to, opening or closing a special care unit or changing the arrangements under which such services may be furnished, such as leasing a department.

36. On page 315, in the second column, in the eighth line from the top in § 405.471(c)(3)(viii), insert a comma after "houses" and remove "and" before the word "recovery"; and in the ninth line from the top, insert "with" between "and" and "self-help".

37. On page 316, in the second column, in § 405.471(c)(4)(iii), "distant" should read "distinct".

38. On page 317, in the first column, in the last line under item 10, "and (e)(3)" should read "(e)(3), (e)(4), and (e)(5)".

39. On page 317, in the first column, the introductory language of paragraph (b)(1) under § 405.472 should be revised to read as follows:

(b) *Charge to beneficiaries.*

(1) *Permitted charges—stay covered.* A hospital receiving payment under the prospective payment system for a covered hospital stay (that is, a stay that includes at least one covered day) may charge the Medicare beneficiary or other person only for the following items and services furnished during that stay—

40. Also on page 317, in the first column, paragraph (b)(1)(ii) under § 405.472 should be revised to read as follows:

(ii) Noncovered items and services, furnished at any time during a covered stay, unless they are excluded from coverage only on the basis of the following:

(A) The exclusion of custodial care under § 405.310(g) (see paragraph (b)(1)(iii) of this section for when charges may be made for custodial care);

(B) The exclusion of medically unnecessary items and services under § 405.310(k) (see paragraphs (b)(1) (iii) and (iv) of this section for when charges may be made for medically unnecessary items and services);

(C) The exclusion under § 405.310(m) of nonphysician services furnished to hospital inpatients by other than the hospital or a provider or supplier under arrangements made by the hospital;

(D) The exclusion of items and services furnished when the patient is not entitled to Medicare Part A benefits under Subpart A of Part 408 of this chapter (see paragraph (b)(1)(v) of this section for when charges may be made for items and services furnished when the patient is not entitled to benefits); or

(E) The exclusion of items and services furnished after Medicare Part A benefits are exhausted under § 409.61 of this chapter (see paragraph (b)(1)(v) of this section for when charges may be made for items and services furnished after benefits are exhausted);

41. On page 317, in the second column, in § 405.472(b)(1)(iii)(A), beginning with the 12th line from the top, revise the parenthetical statement to read "(The phrase "inpatient hospital care" includes cases where a beneficiary needs a SNF level of care, but, under Medicare criteria, a SNF-level bed is not available.

This also means that a hospital may find that a patient awaiting SNF placement no longer requires inpatient hospital care because either a SNF-level bed has become available or the patient no longer requires SNF-level care.)."

42. On page 318, in the second column, following paragraph (e)(3), add paragraphs (e)(4) and (e)(5) to read as follows:

(4) Any person furnishing services described in paragraph (e)(1) of this section who is dissatisfied with a determination made by the Office of the Inspector General under paragraph (e)(3) is entitled to reasonable notice and opportunity for a hearing thereon to the same extent as is provided in section 205(b) of the Act and to judicial review of the final decision after such hearing as is provided in section 205(g).

(5) The Office of the Inspector General will promptly notify each State agency which administers or supervises the administration of a State plan approved under title XIX of the Act of any determination made under the provisions of paragraph (e)(3) of this section.

* * * * *

43. Also on page 318, in the second column, item 11 is revised to read as follows:

11. Section 405.474 is amended by revising paragraphs (b) and (c)(1) to read as follows:

44. Also, beginning on page 318, in § 405.474, in the second column following the title to § 405.474 and five stars, and ending on page 319, in the first column before paragraph (c), for purposes of general clarification and to clarify that a provider's rights to appeal become available upon receipt of its notice of amount of program reimbursement following the close of its cost reporting period, paragraphs (b)(1) through (b)(8) should be added or revised to read as follows:

* * * * *

(b) *Determining the hospital-specific rate.*—(1) *Base-year costs.*(i) For each hospital, the intermediary will estimate the hospital's Medicare Part A

allowable inpatient operating costs, as described in § 405.470(b)(3), for the 12-month or longer cost reporting period ending on or after September 30, 1982 and before September 30, 1983.

(ii) If the hospital's last cost reporting period ending before September 30, 1983 is for less than 12 months, the base period will be the hospital's most recent 12-month or longer cost reporting period ending before such short-period report, with an appropriate adjustment for inflation. (See paragraph (c) of this section for rules applicable to new hospitals.)

(2) *Modifications to base year costs.* (i) Prior to determining the hospital-specific rate, the intermediary will adjust the hospital's estimated base year inpatient operating costs, as necessary, to eliminate nursing differential costs (as described in § 405.430), direct medical education costs (as described in § 405.421), capital-related costs (as described in § 405.414), and kidney acquisition costs incurred by hospitals approved as renal transplantation centers (as described in § 405.476(h)). Kidney acquisition costs in the base year will be determined by multiplying the hospital's average kidney acquisition cost per kidney times the number of kidney transplants covered by Medicare Part A during the base period. Malpractice insurance costs will be included in the inpatient operating costs, as described in § 405.452. Also, higher costs that were incurred for purposes of increasing base year costs, or either one-time nonrecurring higher costs or revenue offsets that have the effect of distorting base year costs as an appropriate basis for computing the hospital-specific rate or higher costs that result from changes in hospital accounting principles initiated in the base year, will be excluded from base year costs for purposes of this section.

(ii) Prior to the date it becomes subject to the prospective payment system, a hospital may request the intermediary to further adjust its estimated base period costs to take into account—

(A) Services paid for under Medicare Part B during the hospital's base year that will be paid for under prospective payments. The base year costs may be increased to include estimated payments for certain services previously billed as physicians' services before the effective date of § 405.550(b), and estimated payments for nonphysicians' services that were not furnished either directly or under arrangements before October 1, 1983 (the effective date of § 405.310(m)), but may not include the costs of anesthetists' services for which a physician employer continues to bill under § 405.553(b)(4).

(B) The payment of FICA taxes during cost reporting periods subject to the prospective payment system, if the hospital had not paid such taxes for all its employees during its base period and will be required to participate effective January 1, 1984.

(iii) If a hospital requests its base period costs to be adjusted under paragraph (b)(2)(ii) of this section, it must timely provide the intermediary with sufficient documentation to justify the adjustment and adequate data to compute the adjusted costs. The intermediary will decide whether to use part or all of the data based on audit, survey and other information available.

(3) *Limitations on modifying calculations.* (i) The intermediary will use the best data available at the time in estimating each hospital's base year costs and the modifications to those costs authorized by paragraph (b)(2) of this section. The intermediary's estimate of base year costs and modifications thereto is final and may not be changed after the first day of the first cost reporting period beginning on or after October 1, 1983, except as follows:

(A) A hospital that becomes subject to the prospective payment system beginning on or after October 1, 1983 and before November 16, 1983, may request its intermediary up to November 15, 1983, to reestimate its base period costs to take into account inadvertent omissions in its previous submissions to the intermediary related to changes made by the prospective payment legislation for purposes of estimating the base period costs. The intermediary may also initiate changes to the estimation for any reason prior to the date the hospital becomes subject to prospective payment, and before November 16, 1983, for corrections to take into account inadvertent ommissions in the hospital's previous submissions related to changes made by the prospective payment legislation for purposes of estimating the base period costs. Such omissions pertain to adjustments to exclude capital-related costs and the direct medical education costs of approved educational activities and to adjustments specified in paragraph (b)(2)(ii) of this section. The intermediary must notify the provider of any change to the hospital-specific amount as a result of the provider's request within 30 days of receipt of the additional data. Any change to base period costs made pursuant to the above exception will be made effective retroactively, beginning with the first day of the affected hospital's fiscal year.

(B) To correct mathematical errors of calculations. The hospital must report such errors of calculations to the intermediary within 90 days of the intermediary's notification to the hospital of the hospital's payment rates. The intermediary may also identify such errors and initiate their correction during this period. The intermediary will either make an appropriate adjustment or notify the hospital that no adjustment is warranted within 30 days of receipt of the hospital's report of an error. Corrections of errors of calculation will be effective with the first day of the hospital's first cost reporting period subject to the prospective payment system.

(C) To take into account a successful appeal of the provider's base period notice of amount of program reimbursement under Subpart R of this part. If a hospital successfully contests a disallowance of costs incurred in its base year, the intermediary will recalculate the hospital's base year costs, incorporating the additional costs recognized as allowable as a result of the appeal. Adjustments to base period costs to take into account such previously disallowed costs will be effective with the first day of the hospital's first cost reporting period beginning on or after the date of the appeal decision. The hospital's revised base period costs will not be used to recalculate the hospital-specific portion as determined for fiscal years beginning before the date of the appeal decision.

(D) To take into account a successful appeal relating to modifications to base year costs that were made pursuant to paragraph (b)(2) of this section. If a hospital successfully contests a modification to base year costs, the intermediary will recalculate the hospital's base year costs to reflect the modification determined appropriate as a result of the appeal. Such adjustments will be effective retroactively to the time of the intermediary's initial estimation of base year costs.

(E) To exclude costs that were unlawfully claimed as determined as a result of criminal conviction, imposition of a civil judgment under the False Claims Act (31 U.S.C. 3729–3731), or a proceeding for exclusion from the Medicare program. In addition to adjusting base year costs, HCFA will recover both the excess costs reimbursed for the base period and the additional amounts paid due to the inappropriate increase of the hospital-specific portion of the hospital's transition payment rates. The amount to be recovered will be computed based on

the final resolution of the amount of the inappropriate base-year costs.

(ii) An intermediary's estimation of a hospital's base year costs, and modifications thereto, made for purposes of determining the hospital-specific rate, is subject to administrative and judicial review (available to a hospital upon receipt of its notice of amount of program reimbursement following the close of its cost reporting period (see §§ 405.1803 and 1807)) only with respect to whether the intermediary followed the provisions of this paragraph (b). In any administrative or judicial review of whether the intermediary used the best data available at the time, as required by paragraph (b)(3)(i) of this section, an intermediary's estimation will be revised based on this review only if the estimation was unreasonable and clearly erroneous in light of the data available at the time the estimation was made. Specifically excluded from administrative or judicial review are any issues based on data, information, or arguments not presented to the intermediary at the time of the estimation.

(4) *Costs on a per discharge basis.* The intermediary will determine the hospital's estimated adjusted base year operating cost per discharge by dividing the total adjusted operating costs by the number of discharges in the base period.

(5) *Case-mix adjustment.* The intermediary will divide the adjusted base year costs by the hospital's 1981 case-mix index. If the hospital's case-mix index is statistically unreliable (as determined by HCFA), the hospital's base year costs will be divided by the lower of:

(i) The hospital's estimated case-mix index; or

(ii) The average case-mix index for the appropriate classifications of all hospitals subject to cost limits, established under § 405.460 for cost reporting periods beginning on or after October 1, 1982 and before October 1, 1983.

(6) *Updating base year costs.*

(i) *For Federal fiscal year 1984.* The case-mix adjusted base year cost per discharge will be updated by the applicable updating factor (that is, the target rate percentage determined under § 405.463(c)(3), as adjusted for budget neutrality.

(ii) *For Federal fiscal year 1985.* The amount determined under paragraph (b)(6)(i) of this section will be updated by the applicable updating factor, as adjusted for budget neutrality.

(iii) *For Federal fiscal year 1986.* The amount determined under paragraph (b)(6)(ii) of this section will be updated by the applicable updating factor, that is, the target rate percentage determined under § 405.463(c)(3).

(7) *Budget neutrality.*

(i) *Federal fiscal year 1984.* For cost reporting periods beginning on or after October 1, 1983 and before October 1, 1984, HCFA will adjust the target rate percentage used under paragraph (b)(6) of this section by a factor actuarially estimated to ensure that the estimated amount of aggregate Medicare payments made based on the hospital-specific portion of the transition payment rates are neither greater nor less than 75 percent of the payment amounts that would have been payable for the inpatient operating costs for those same hospitals for fiscal year 1984 under the law in effect before April 20, 1983.

(ii) *Federal fiscal year 1985.* For cost reporting periods beginning on or after October 1, 1984 and before October 1, 1985, HCFA will adjust the target rate percentage used under paragraph (b)(6) of this section by a factor actuarially estimated to ensure that the estimated amounts of aggregate Medicare payment made based on the hospital-specific portion of the transition payment rates are neither greater nor less than 50 percent of the payment amounts that would have been payable for the inpatient operating costs for those same hospitals for fiscal year 1985 under the Social Security Act as in effect on April 19, 1983.

(8) *DRG adjustment.* The applicable hospital-specific cost per discharge will be multiplied by the appropriate DRG weighting factor to determine the hospital-specific base payment amount (target amount) for a particular covered discharge.

45. On page 319, in the second column, the amendatory language in item 12 should read as follows:

12. Section 405.475 is amended by revising the title of paragraph (c), and paragraphs (c)(1), (c)(2), (c)(3), (c)(4), (d)(3), and (d)(6) to read as follows:

46. Also on page 319, in the second column in the introductory language of § 405.475(c)(2), following the word "approve", add "to the extent required by HCFA—".

47. Also on page 319, in § 405.475(c)(3), in the second column, following the table, remove the five stars, and insert paragraph (c)(4) to read as follows:

(4) Any days in a covered stay identified as noncovered will reduce the number of days reimbursed at the day outlier rate but not to exceed the number of days which occur after the day outlier threshold.

48. Also on page 319, in the second column in § 405.475(d)(3), beginning with the eighth line of text from the bottom, revise paragraph (d)(3) to read as follows:

* * * * *

(d) *Payment for extraordinarily highcost cases (cost outliers).*

(1)* * *

(3) The hospital must request review of all services by a medical review entity. Payment cannot be made for non-approved services. The entity, at the direction of HCFA, using the medical records and itemized charges, must determine whether:

(i) The admission was medically necessary and appropriate.

(ii) Services were medically necessary and delivered in the most appropriate setting.

(iii) Services were actually rendered, ordered by the physician, and not duplicatively billed, and

(iv) The diagnostic and procedural coding are correct.

* * * * *

49. Also on page 319, in the third column, in § 405.475(d)(6), in the second line from the top, "(3)" should read "(4)".

50. On page 320, in § 405.476(g)(2), in the second column, in the eighth line from the top, "(c)(6)" should read "(c)(5)".

51. Also on page 320, in the second column in § 405.477(d)(2)(v)(B), insert "and" after "hospital;".

52. Also on page 320, in the second column in § 405.477(e)(3), in the fourth line from the bottom, "Part P" should read "Part B", and "Part B payment to outside suppliers." should be italicized.

53. Also on page 320, in the third column in § 405.1042(c)(2)(i), in the fifth line from the bottom, "§ 405.575(a)(1)" should read "§ 405.475(a)(1)".

54. On page 321, in the first column, in § 405.1627(a)(1)(ii), § 405.470" should read "§ 405.475".

55. Also on page 321, in the second column, in the title of § 405.1627(e)(1) after "the" insert "prospective".

56. On page 322, in the first and second columns, items (1) and (2), under the definition of "Intermediary determination" in § 405.1801(a), are revised to read as follows:

§ 405.1801 Introduction.

(a) *Definitions.* * * *

"Intermediary determination" means the following:

(1) With respect to a provider of services that has filed a cost report under §§ 405.406 and 405.453(f), the term means a determination of the amount of total reimbursement due the provider, pursuant to § 405.1803 following the close of the provider's cost reporting period, for items and services furnished to beneficiaries for which

reimbursement may be made on a reasonable cost basis under Medicare for the period covered by the cost report.

(2) With respect to a hospital that receives payments for inpatient hospital services under the prospective payment system (§§ 405.470–405.477), the term means a determination of the total amount of payment due the hospital, pursuant to § 405.1803 following the close of the hospital's cost reporting period, under that system for the period covered by the determination.

* * * * * *

57. On page 325, in the second column, in the first line of item C.l., "(c)" should be capitalized.

58. On page 326, in the second column, in the second line from the top, insert "(" before "20.85%)".

59. On page 328, in the second column, in the 25th line from the top, remove "(Transmittal 291)".

60. Also on page 328, in the third column, in the fourth line from the bottom, insert "1 plus" between "to" and "the".

61. On page 329, in the first column, in the fourth line from the bottom, insert "meet the criteria in § 405.474(c)(ii) or that" between "that" and "have".

62. On page 333, in the second column, in the second paragraph under item F., change the reference "section III." to read "section IV.C.".

(Secs. 1102, 1814(b), 1815, 1833(a), 1861(v), 1862(a), 1871, 1876, 1881, 1883, 1886, and 1887 of the Social Security Act, as amended (42 U.S.C. 1302, 1395f(b), 1395g, 1395l(a), 1395x(v), 1395y(a), 1395hh, 1395mm, 1395rr, 1395tt, 1395ww, and 1395xx))

(Catalog of Federal Domestic Assistance Programs No. 13.773, Medicare—Hospital Insurance; No. 13.774, Medicare—Supplementary Medical Insurance.)

Dated: May 4, 1984.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: May 29, 1984.

Margaret M. Heckler,

Secretary.

[FR Doc. 84-14869 Filed 5-31-84; 11:32 am]
BILLING CODE 4120-03-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Medicare Program; Schedule of Target Rate Percentages for Limits on the Rate of Hospital Cost Increases and Updating Factors for Transition Prospective Payment Rates (Second Quarter FY 84); Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction notice.

SUMMARY: This document corrects technical errors that appeared in the notice, published on January 3, 1984 (49 FR 336), that set forth target rate percentages needed to limit the rate of increase of hospital inpatient operating costs for cost reporting periods ending on or after January 1, 1984 and before September 30, 1984. The notice also contained updating factors and related information for use in computing transition payment rates under the prospective payment system.

FOR FURTHER INFORMATION CONTACT: Mike Fiore, (301) 597-0722.

SUPPLEMENTARY INFORMATION: In FR Doc. 83-34634 beginning on page 336 in the issue of Tuesday, January 3, 1984 make the following corrections:

1. On page 336, in column three, the eighth line in section II.—The cross reference to § 402.463(b) should be § 405.463(b).

2. On page 337, in column one, the ninth line in the second paragraph of section III.—The phrase "that is" is corrected to read "for example".

3. Also on page 337, in column one, the last line in the second paragraph of section III.—The line should read "September 1, 1983 and in the final rule located elswhere in this issue of the Federal Register".

4. Also on page 337, in column one, at the bottom of the page—The third indented point should be relabeled: "Psychiatric, rehabilitation, and alcohol/drug (until October 1, 1985) distinct part units". In addition, between the third and fourth indented points, a point should be added as follows: "Alcohol/Drug hospitals (until October 1, 1985):".

5. Also on page 337, in the third column, in the eighth line of the first full paragraph—The word "interim" should be removed.

6. On page 337, in the third column, the third full paragraph should be removed from the document.

7. On page 338, in the second column, in Example B in the eighth line, the figure "7.8" should be "6.8".

8. On page 339, in the first column—Table C at the top of the page was incomplete. We note that this table and a discussion of updating factors were included in the final rule on prospective payment for Medicare inpatient hospital services on January 3, 1984 (49 FR 328-329). Therefore, the table should be revised to read as follows:

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TABLE C

Updating Factors [1]

(Applicable to Hospitals Under the Prospective Payment System for Discharges Occurring after 30 days following the date of publication of the final prospective payment rates)

If Base Year Cost Reporting Period Ends	And First Cost Reporting Period Under PPS Ends	Updating Factor [2]
September 30, 1982	September 30, 1984	1.13242
October 31, 1982	October 31, 1984	1.12938
November 30, 1982	November 30, 1984	1.12635
December 31, 1982	December 31, 1984	1.12333
January 31, 1983	January 31, 1985	1.12395
February 28, 1983	February 28, 1985	1.12456
March 31, 1983	March 31, 1985	1.12517
April 30, 1983	April 30, 1985	1.12578
May 31, 1983	May 31, 1985	1.12639
June 30, 1983	June 30, 1985	1.12701
July 31, 1983	July 31, 1985	1.12762
August 31, 1983	August 31, 1985	1.12823

1/ Incorporates budget neutrality factor of .983.

2/ If a hospital's base year cost reporting period ends on a date other than as specified above, the fiscal intermediary will contact HCFA for the appropriate adjustment factor.

BILLING CODE 4120-03-C

9. On page 340, in the first column, the second sentence in the first paragraph—The sentence should read "The modification of the budget neutrality reduction and the revised updating factors for hospitals under the prospective payment system with cost reporting periods beginning on or after October 1, 1983, and before January 1, 1984, are the direct result of changes in the regulations implementing the prospective payment system."

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare-Hospital Insurance)

(Secs. 1102, 1871 and 1886 (b) and (d) of the Social Security Act (42 U.S.C. 1302, 1395hh, and 1395ww (b) and (d)); 42 CFR 405.463 and 405.474)

Dated: May 4, 1985.

Carolyne K. Davis,

Administrative, Health Care Financing Administration.

Approved: May 29, 1984.

Margaret M. Heckler,

Secretary.

[FR Doc. 84-14870 Filed 5-31-84; 11:24 am]

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Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

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TABLE OF EFFECTIVE DATES AND TIME PERIODS—JUNE 1984

This table is for determining dates in documents which give advance notice of compliance, impose time limits on public response, or announce meetings.

Agencies using this table in planning publication of their documents must allow sufficient time for printing production.

In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or a holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

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June 5	June 20	July 5	July 20	August 6	September 4
June 6	June 21	July 6	July 23	August 6	September 4
June 7	June 22	July 9	July 23	August 6	September 5
June 8	June 25	July 9	July 23	August 7	September 6
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June 22	July 9	July 23	August 6	August 21	September 20
June 25	July 10	July 25	August 9	August 24	September 24
June 26	July 11	July 26	August 10	August 27	September 24
June 27	July 12	July 27	August 13	August 27	September 25
June 28	July 13	July 30	August 13	August 27	September 26
June 29	July 16	July 30	August 13	August 28	September 27