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Monday
January 5, 1981

Highlights

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Highlights

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 82

Exotic Newcastle Disease and Psittacosis or Ornithosis in Poultry; Area Released From Quarantine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this amendment is to release a portion of Harris County in Texas, from areas quarantined because of exotic Newcastle disease. Surveillance activity indicated that exotic Newcastle disease no longer exists in the area quarantined.

EFFECTIVE DATE: December 24, 1980.

FOR FURTHER INFORMATION CONTACT: C. G. Mason, Chief, National Emergency Field Operations, Emergency Programs, Veterinary Services, USDA, 6505 Belcrest Road, Federal Building, Room 751, Hyattsville, MD 20782, 301-436-8073.

SUPPLEMENTARY INFORMATION: This amendment excludes a portion of Harris County in Texas, from the areas quarantined because of exotic Newcastle disease under the regulations in 9 CFR Part 82, as amended. Therefore, the restrictions pertaining to the interstate movement of poultry, mynah and psittacine birds, and birds of all other species under any form of confinement, and their carcasses and parts thereof, and certain other articles from quarantined areas, as contained in 9 CFR Part 82, as amended, will not apply to the excluded area.

Accordingly, Part 82, Title 9, Code of Federal Regulations, is hereby amended in the following respect.

§ 82.3 [Amended]

In § 82.3(a)(3), relating to the State of Texas, paragraph (ii) relating to the premises of Dr. R. Ann Mayes, 110 Carl Street, Houston, Harris County is removed.

(Secs. 4-7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791-792, as amended; secs. 1-4, 33 Stat. 1264, 1265, as amended; secs. 3 and 11, 76 Stat. 130, 132; (21 U.S.C. 111-113, 115, 117, 120, 123-126, 134b, 134f); 37 FR 28464, 28477; 38 FR 19141)

This amendment relieves certain restrictions no longer deemed necessary to prevent the spread of exotic Newcastle disease, and must be made effective immediately to be of maximum benefit to affected persons. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Therfore, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this final rule are impracticable and contrary to the public interest and good cause is found for making this final rule effective less than 30 days after publication of this document in the **Federal Register.**

Further, this final rule has not been designated as "significant," and is being published in accordance with the emergency procedures in Executive Order 12044 and Secretary's Memorandum 1955. It has been determined by E. C. Sharman, Assistant Deputy Administrator, Animal Health Programs, APHIS, VS, USDA, that the emergency nature of this final rule warrants publication without opportunity for prior public comment or preparation of impact analysis statement at this time.

This final rule implements the regulations in Part 82. It will be scheduled for review in conjunction with the periodic review of the regulations in that Part required under the provisions of Executive Order 12044 and Secretary's Memorandum 1955.

Done at Washington, D.C., this 24th day of December 1980.

Pierre A. Chaloux, VMD,

Deputy Administrator, Veterinary Services.

[FR Doc. 81-108 Filed 1-2-81; 8:45 am]
BILLING CODE 3410-34-M

DEPARTMENT OF COMMERCE

Economic Development Administration

13 CFR Parts 305 and 309

Funding of Health-Related Facilities and Other Projects Under the Public Works and Development Facilities Program

AGENCY: Economic Development Administration (EDA), Department of Commerce.

ACTION: Interim rule.

SUMMARY: This interim rule modifies two regulations setting forth requirements for funding certain types of projects under the Public Works and Development Facilities Program. One regulation is amended to clarify its scope by noting that its requirements apply to Public Works Impact Program projects. The other regulation is amended to tighten its standards relating to economic impact and to specify that projects involving health-related facilities must be reviewed and approved by the Department of Health and Human Services and, if appropriate, the State Health Planning and Development Agency. In addition, a third regulation regarding project modification is amended to clarify the scope of one provision.

DATES: Effective date: January 5, 1981. Comments by: March 6, 1981.

ADDRESSES: Mail comments to: Assistant Secretary for Economic Development, Room 7800B, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Charles W. Coss, Director, Office of Public Investments, Washington, D.C. 20230, (202-377-5265).

SUPPLEMENTARY INFORMATION: Under its Public Works and Development Facilities Program, EDA may provide funding for projects which will create or retain jobs in economically distressed areas. Regulations regarding this program are set forth at 13 CFR Part 305. Subpart C to Part 305 sets forth requirements regarding specific types of projects which EDA may fund under the program. This interim rule makes the following changes to two regulations in Subpart C:

1. § 305.41. This regulation sets forth the purpose of Subpart C. Currently, this regulation provides broadly that Subpart

C applies to "public works and development facility projects." Some readers have questioned whether the requirements of Subpart C apply to Public Works Impact Program (PWIP) projects funded under § 305.4. To clarify the scope of Subpart C, EDA is amending § 305.41 to note that the requirements of the subpart apply to all public works and development facility projects funded under Part 305 of the type addressed in Subpart C, including those funded as PWIP projects under § 305.4.

2. § 305.42. This regulation sets forth requirements regarding projects for hospitals, nursing homes and convalescent care facilities. This rule amends this regulation to:

a. provide a new title, "Health-related facilities";

b. tighten the requirements to ensure that EDA-assisted health care facilities have been reviewed by the Department of Health and Human Services (the primary Federal agency involved in funding such projects) and, if appropriate, the State Health Planning and Development Agency;

c. tighten the standards relating to the requisite economic impact of such projects; and

d. clarify when EDA will allow exceptions to the general criteria.

In addition, this rule amends one regulation in 13 CFR Part 309. This part sets forth general requirements which apply to EDA projects. Paragraph (a)(3) of § 309.26 sets forth certain requirements regarding project modification in the Public Works and Development Facility Program. Paragraph (a)(3)(iv) of this regulation provides that EDA will not approve project modifications involving changes in the "general geographic location (i.e., city, community, Indian Reservation, Redevelopment Area) of the project". This rule amends that paragraph by adding a clause at the end to provide that this restriction does not apply to changes in the location of the project if the project has a multi-county, regional focus which is better carried out at a different location.

Executive Order 12044 Determinations. EDA has reviewed this rule under the criteria of Executive Order 12044 regarding improving Government regulations. Because the revision to § 305.41 is editorial in nature and does not reflect a change in policy, EDA has determined that it is not a "significant" action under the criteria of that Order. Since the revision of § 305.42 concerns a type of project which EDA rarely funds (EDA is an Agency of "last resort" with respect to such projects and will consider funding them only if there is no other source of Federal assistance), EDA has also determined that this revision is not a "significant" action under the criteria of the Order. Similarly, the change to § 309.26 has extremely limited application to most projects and does not meet the criteria for determining significance. To provide an opportunity to participate in the rulemaking, EDA will not publish the rule in final form at least 60 days and invites interested persons and organizations to comment to the Assistant Secretary in writing at the above address. The "Catalogue of Federal Domestic Assistance" official number and title for the Public Works and Development Facilities Program is "11.300, Economic Development—Grants and Loans for Public Works and Development Facilities". Projects under this program are subject to the clearinghouse review requirements imposed by Office of Management and Budget Circular No. A-95 as set forth in 13 CFR 309.17.

For the reasons set out in the preamble, 13 CFR 305.41, 305.42, and 309.26(a)(3)(iv) are amended to read as follows.

1. 13 CFR 305.41 is revised to read as follows:

§ 305.41 Purpose.

The purpose of this subpart is to set forth requirements for certain specific types of public works and development facility projects which EDA may fund under this part (including § 305.4).

2. 13 CFR 305.42 is revised to read as follows:

§ 305.42 Health-related facilities.

(a) EDA will not fund a project involving health-related facilities unless there is no other source of Federal assistance available to fund that portion of the project for which EDA assistance is requested. In addition EDA will not fund such projects unless:

(1) the Department of Health and Human Services and the State Health Planning and Development Agency, if appropriate, concur; and

(2) the project meets the requirements of this section and this part.

(b) Except as provided in subsection (c) of this section, EDA will not fund health-related facilities unless EDA determines that:

(1) the proposed facility is immediately necessary to the retention, expansion or establishment of an identified commercial or industrial enterprise which has significant employment potential in relationship to the cost of the facility (job/cost ratio of $10,000 or less to one job—in calculating this ratio, EDA will not consider the effect of construction employment and employment in the operation of the health facility);

(2) the proposed project is the first priority in the Overall Economic Development Program (except for PWIP projects under § 305.4) of the area and is an integral part of the implementation of the projected plan for long-term economic development;

(3) the proposed facility meets appropriate accreditation standards; and

(4) the lack of medical facilities is seriously hampering the implementation of economic development programs of the community in which the project will be located or of the broader area planning and development districts in which the community is located.

(c) EDA may consider funding projects which do not meet all of the requirements of subsection (b)—

(1) for clinics and outpatient facilities on Indian reservations if the proposed project meets the requirements of paragraphs (b)(3) and (b)(4) of this section;

(2) for clinics and outpatient facilities located in neighborhoods with a significant number of disadvantaged persons if the proposed project meets the requirements of paragraphs (b)(3) and (b)(4) of this section;

(3) in exceptional circumstances, for other types of projects which otherwise meet the requirements of paragraph (b) and for which the Assistant Secretary has waived the requirement of paragraph (b)(1); or

(4) for projects for which EDA is supplementing assistance from the Department of Health and Human Services for construction, renovation or alteration of health facilities, if the projects otherwise meet the requirements of subsection (b) above and the Assistant Secretary has waived the requirement of (b)(1).

3. 13 CFR 309.26(a)(3)(iv) is revised to read as follows:

§ 309.26 Project modifications.

(a) *Public works projects.*

(3) * * *

(iv) Changes in the general geographic location of the project (i.e., city, community, Indian Reservation, Redevelopment Area), except that EDA may consider accepting such a change if the project has a multi-county or regional focus.

* * * * *

Authority: Sec. 701, Pub. L. 89-136, 79 Stat. 570 (42 U.S.C. 3211), Department of Commerce Organization Order 10-4, as amended (40 FR 56702, as amended).

Dated: December 22, 1980.

Robert T. Hall,

Assistant Secretary for Economic Development.

[FR Doc. 81-103 Filed 1-2-81; 8:45 am]

BILLING CODE 3510-24-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 80-SO-76; Amdt. No. 39-4008]

Airworthiness Directives; Bendix Avionics M-4(A,B,C,D) Autopilot and YD-4 Yaw Damper Servo Models 3013E, 3013F, 3013G, 3013H, 3013J and 3013K

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD) which requires the inspection of certain Bendix Avionics M-4(A,B,C,D) Autopilot and YD-4 Yaw Damper Primary Servos Models 3013E, 3013F, 3013G, 3013H, 3013J and 3013K and replacement of nonconforming magnetic clutches P/N 717503-0001. This AD is needed to prevent the possible failure of the autopilot primary servo which could result in partial loss of control of the aircraft.

DATES: Effective January 12, 1981. Compliance required within the next 50 hours time in service after the effective date of this AD unless already accomplished.

ADDRESSES: The applicable service bulletin, M-4D-060, may be obtained from Bendix Avionics Division, Post Office Box 9414, Fort Lauderdale, Florida 33310, telephone (305) 776-4100.

A copy of the service bulletin is contained in the Rules Docket, Room 275, Engineering and Manufacturing Branch, FAA, Southern Region, 3400 Norman Berry Drive, East Point, Georgia.

FOR FURTHER INFORMATION CONTACT: W. H. Trammell, telephone (404) 763-7781, Engineering and Manufacturing Branch, FAA, Southern Region, P.O. Box 20636, Atlanta, Georgia 30320.

SUPPLEMENTARY INFORMATION: There have been reports of the seizure of the magnetic clutches (P/N 717503-0001) in the primary servos of the M-4C/D Autopilot Systems installed in various make and model aircraft. Primary servo failure may result in additional stick forces commensurate with the torque setting of the primary servo slip-capstan. Since this condition is likely to exist or develop in any aircraft having the M-4(A,B,C,D) Autopilot System of the same type design installed, an AD is being issued which requires inspection of certain primary servos and replacement of nonconforming magnetic clutches in these Bendix Avionics Primary Servos Models 3013E, 3013F, 3013G, 3013H, 3013J and 3013K installed in any aircraft.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new Airworthiness Directive (AD):

Bendix Avionics: Applies to M-4 (A, B, C, D) Autopilot Primary Servo Models 3013E, 3013F, 3013G, 3013H, 3013J and 3013K and YD-4 Yaw Damper Servo Models 3013J and 3013K having magnetic clutch, P/N 717503-0001, Serial Numbers 16750 through 18396, installed, repaired or overhauled after January 1, 1979, that do not contain Modification Number 4, as defined in Bendix Service Bulletin M-4D-060.

Primary servo model No.	Primary servo part No.	Primary servo serial No.
3013E,[1] 3013F,[1] 3013G [1]	1U014-01, 1U014-02, 1U014-03.	Any primary servo that has had magnetic clutches installed after January 1, 1979.
3013H	4000523-8501	9530 through 9925 and any primary servo that has been repaired or overhauled after January 1, 1979.
3013J	4009506-8501	1775 through 1792 and any primary servo that has been repaired or overhauled after January 1, 1979.
3013K	4009506-8502	2067 through 2110 and any primary servo that has been repaired or overhauled after January 1, 1979.

[1] Older model primary servos which may contain magnetic clutches manufactured by Bendix.

Compliance is required as indicated below unless already accomplished. To prevent the possible failure of the primary servo due to seizure of the magnetic clutches (P/N 717503-0001, Serial Numbers 16750 through 18396), accomplish the following:

Within the next 50 hours' time in service after the effective date of this AD, inspect and modify the affected primary servo in accordance with Bendix Service Bulletin M-4D-060, dated November 1980 or in an equivalent manner approved by the Chief, Engineering and Manufacturing Branch, FAA Southern Region.

This amendment is effective January 12, 1981.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.89)

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified above under the caption "FOR FURTHER INFORMATION CONTACT."

Issued in East Point, Ga., on December 19, 1980.

George R. LaCaille,

Acting Director, Southern Region.

[FR Doc. 81-200 Filed 1-2-81; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 80-CE-41-AD; Amendment 39-4007]

Airworthiness Directives; Cessna Model P210N Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 80-19-16, (Amendment 39-3944) and adopts a new AD applicable to Cessna Model P210N (Serial Number P21000001 through P21000590) airplanes. To detect and preclude engine detonation damage, AD 80-19-16 required initial and repetitive inspection of the engine, engine modifications and restricted fuel leaning. This superseding AD, applicable to the same airplanes, incorporates the above requirements, except for the inspections, and requires additional engine and airplane modifications. These actions will assure improved engine and airplane performance, thereby precluding a safety hazard.

EFFECTIVE DATE: January 5, 1981.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Cessna Single-engine Customer Care Service Information Letter SE80-94 dated November 10, 1980, applicable to this AD, may be obtained from Cessna Aircraft Company, Marketing Division, Attention: Customer Service Department, Wichita, Kansas 67201; Telephone (316) 685-9111. Teledyne Continental Motors Service Bulletins M68-2, Revision 1, dated September 15, 1971; M73-19 dated December 3, 1973, and M79-8 dated May 25, 1979, also applicable to this AD, may be obtained from Teledyne Continental Motors, Aircraft Products Division, P.O. Box 90, Mobile, Alabama 36601. Copies of the Service Information Letter and Bulletins are also contained in the Rules Docket, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106; and/or Room 916, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Paul O. Pendleton, ACE-214, Aircraft Certification Program, FAA, Room 238, Terminal Building No. 2299, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 942-7927.

SUPPLEMENTARY INFORMATION: Airworthiness Directive (AD) AD-80-19-07, Amendment 39-3912 and superseding AD 80-19-16, Amendment 39-3944 (45 FR 67653), applicable to certain serial numbers of Cessna Model P210N airplanes, required initial and repetitive inspection of the engine, engine modifications and restricted fuel leaning. Subsequent to these actions, the manufacturer undertook additional investigations involving the detonation problem covered by these ADs. The results of these investigations identified additional power plant installation design and operational changes that will improve engine performance and minimize the possibility of engine detonation. These changes will also make the inspections now required by AD 80-19-16 unnecessary. Instructions for accomplishing the manufacturer's findings are contained in Cessna Single-Engine Customer Care Service Information Letter SE80-94. The FAA has determined that compliance with the manufacturer's instructions is necessary in the interest of safety. Accordingly, to accomplish this, a new AD is being issued, superseding AD 80-19-16, and applicable to Cessna Model P210N (S/Ns P21000001 through P21000590) airplanes, making compliance with the aforementioned service letter mandatory.

Since a situation exists which requires expeditious adoption of the amendment, notice and public procedure under 5 U.S.C. 553(b) is impracticable and contrary to the public interest and good cause exists for making the amendment effective in less than thirty (30) days after the date of publication in the **Federal Register.**

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new Airworthiness Directive:

Cessna: Applies to Model P210N (Serial Numbers P21000001 thru P21000590) airplanes certificated in all categories.

Compliance: Required as indicated unless already accomplished. To reduce the possibility of engine detonation, within the next 50 hours time-in-service after the effective date of this AD, accomplish the following:

(1) Reset the engine timing to 20° ± 1° before top dead center. Reference TCM Service Bulletin No. M68-2, Rev. 1, page 2, and restamp the engine nameplate accordingly.

(2) Reset the full rich fuel flow by fuel pump adjustments to the following specification referenced in TCM Service Bulletin No. M79-8:

RPM	Pump pressure (PSI)	Metered pressure (PSI)	Fuel flow lbs/Hr
600	5.5-6.5	3.5-4.0	
2,700	35-39	19.5-21	186-195

(3) Remove Cessna P/N 2105026-1 placard next to the fuel flow indicator which reads as follows:

"Set fuel flow per limitations section of POH/AFM. Do not lean to "peak EGT" above 60 percent power."

(4) Replace the cabin pressurization sonic nozzle, manifold pressure/fuel flow guage, and engine operating placards and revise the Pilot's Operating Handbook/Airplane Flight Manual (POH/AFM) in accordance with Cessna Service Kit SK-210-97 and Cessna Single-Engine Customer Care Service Information Letter SE80-94 dated November 10, 1980.

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

(6) Any equivalent method of compliance with this Airworthiness Directive must be approved by the Chief, Aircraft Certification Program Office, FAA Central Region, Room 238, Mid-Continent Airport, Wichita, Kansas 67209, telephone (316) 942-4285.

This AD supersedes AD 80-19-16, Amendment 39-3944.

This Amendment becomes effective on January 5, 1981.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended, (49 U.S.C. 1354(a), 1421 and 1423); Sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); Sec. 11.89 of the Federal Aviation Regulations (14 CFR Sec. 11.89))

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). A copy of the final evaluation prepared for this document is contained in the docket. A copy of it may be obtained by writing to the FAA, Office of the Regional Counsel, Room 1558, Central Region, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on December 19, 1980.

Paul J. Baker,

Director, Central Region.

[FR Doc. 81-198 Filed 1-2-81; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 21239; Amdt. 39-4014]

Airworthiness Directives; Costruzioni Aeronautiche Giovanni Agusta Model A109 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of Costruzioni Aeronautiche Giovanni Agusta Model A109 series helicopters by individual telegrams. The AD requires a one time inspection of the threaded area of the trunion assembly for deformation, distortion or damage due to overtorque at time of installation, replacement if necessary, and interim hand correction of the torque value specified in the maintenance and overhaul manuals. The AD is necessary to prevent loss of the main rotor blade pitch control.

DATES: Effective January 5, 1981, as to all persons except those persons to whom it was made immediately effective by telegraphic AD T80EU-22, issued May 1, 1980, which contained this amendment. Compliance schedule—as prescribed in the body of the AD.

ADDRESSES: The manufacturer's service messages may be obtained from: Costruzioni Aeronautiche Giovanni Agusta, Cascina Costa (Gallarate), Italy. A copy of each service message is contained in the Rules Docket, Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: C. Christie, Chief, Aircraft Certification Staff, AEU-100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, Brussels, Belgium, Telephone: 513.38.30, or C. Capman, Acting Chief, Technical Standards Branch, AWS-110,

FAA, 800 Independence Avenue, SW., Washington, D.C. 20591, Telephone: 202-426-8192.

SUPPLEMENTARY INFORMATION: On May 1, 1980, telegraphic AD T80EU-22 was issued and made effective immediately as to all known U.S. owners and operators of Costruzioni Aeronautiche Giovanni Agusta Model A109 series helicopters. The AD required a one time inspection of the threaded area of the trunion assembly for deformation, distortion or damage due to overtorque at time of installation and replacement of a defective trunion assembly. The AD also required interim hand correction of the torque value specified in the maintenance and overhaul manuals in accordance with the criteria described in the AD. AD action was necessary to prevent loss of the main rotor blade pitch control.

Since it was found that immediate corrective action was required, notice and public procedure thereon was impracticable and contrary to the public interest and good cause existed for making the AD effective immediately as to all known operators of Costruzioni Aeronautiche Giovanni Agusta Model A109 series helicopters by telegraphic means. These conditions still exist and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

Costruzioni Aeronautiche Giovanni Agusta (CAGA). Applies to Models A109 and A109A series helicopters, certificated in all categories.

Compliance required as indicated, unless already accomplished.

To prevent loss of the main rotor blade pitch control, accomplish the following: (a) Before further flight, hand correct the CAGA manuals referenced in paragraphs (a)(1) and (a)(2) by changing the torque value from "500 to 560 Kg, 434 to 486 inch/pound" to "311 to 345 Kg, 275 to 300 inch/pound."

(1) CAGA A109/A109A overhaul manual (all change dates), Chapter 65-10-01, page 240, paragraph 8, subparagraph (e);

(2) CAGA A109/A109A maintenance manual (all change dates), Chapter 65-10-03, page 201, paragraph 3; and

(3) Retain the hand corrected pages in both manuals until revised replacement pages are available from CAGA.

(b) Within the next 25 hours time in service after the effective date of this AD—

(1) Remove the main rotor pitch horn trunion assembly;

(2) Permanently remove from service, nut P/N MS 17825-7, and replace with a new nut of the same part number; and

(3) Using a 5X magnifying glass, visually inspect the threaded area of P/N 109-0101-09-1, for deformation, distortion or damage.

(c) If as a result of the inspection of the trunion assembly required in paragraph (b)(3) of this AD, no deformation, distortion, damage, or defect is found—

(1) Reinstall the main rotor pitch horn trunion assembly in accordance with CAGA A109/A109A overhaul manual, Chapter 65.10.01, or an FAA-approved equivalent, using the torque values listed in paragraph (a) of this AD; or

(2) Reinstall the main rotor pitch horn trunion assembly in accordance with CAGA A109/A109A maintenance manual, or an FAA-approved equivalent, using the revised torque values listed in paragraph (a) of this AD;

(3) During reinstallation of the main rotor pitch horn trunion assembly, check to insure that there is 0.10 to 0.20 millimeter play between the trunion shoulder and the bearing inner race; and

(4) Return the serviceable trunion assembly to service.

(d) If as a result of the inspection of the trunion assembly required in paragraph (b)(3) of this AD, deformation, distortion, damage, or defect indicating overtorque is found—

(1) Remove the trunion assembly from service;

(2) Replace with a new or serviceable trunion assembly of the same part number; and

(3) Reinstall the main rotor pitch horn trunion assembly and torque in accordance with paragraph (c)(1) or (c)(2) of this AD.

(e) Report defects found to the Chief, Aircraft Certification Staff, Europe, Africa and Middle East Office, c/o American Embassy, Brussels, Belgium. (Reporting approved by the Office of Management and Budget under OMB No. 04-R0174).

(f) If an equivalent means of compliance is used in complying with this AD, that equivalent must be approved by the Chief, Aircraft Certification Staff, AEU-100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, Brussels, Belgium.

Note.—Costruzioni Aeronautiche Giovanni Agusta Service Engineering Department messages LD/7/1815 and LD/7/1845, both dated April 22, 1980, refer to this subject.

This amendment becomes effective January 5, 1981, as to all persons except those persons to whom it was made immediately effective by telegraphic AD T80EU-22, issued May 1, 1980, which contained this amendment.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.89)

Note.—The FAA has determined that this document involves a regulation which is not considered to be significant under Executive Order 12044 as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Issued in Washington, D.C., on December 29, 1980.

M. C. Beard,

Director of Airworthiness.

[FR Doc. 81-205 Filed 1-2-81; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 80-NE-10; Amdt. 39-4005]

Airworthiness Directives; General Electric Company CJ610-8A and -9 Turbojet and CF700-2D and -2D-2 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment amends existing AD 80-08-06, amendment 39-3740. On March 7, 1980, an emergency Airworthiness Directive (AD) was issued requiring removal from service, within 50 cycles, certain serial numbered CJ610/CF700 turbine disks. This AD was published, April 10, 1980, in the **Federal Register** as a Final Rule. On May 30, 1980, an emergency amendment to this AD was issued which required removal from service of additional serial numbered disks. The Airworthiness Directive, as amended, is hereby published in the **Federal Register** as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations (FAR).

DATES: Effective date—This amendment was effective upon receipt of the emergency airworthiness directive dated May 30, 1980, and is effective to all others on February 2, 1981.

Comments—Comments must be received on or before April 2, 1981.

Compliance schedule—Compliance required within the next 50 cycles after the effective date of this airworthiness directive unless already accomplished.

ADDRESSES: Send comments on the rule in duplicate to:

Federal Aviation Administration (FAA), Office of Regional Counsel, Attention: Rules Docket (ANE-7), Docket No. 80-NE-D, 12 New England Executive Park, Burlington, Massachusetts 01803,

or deliver comments in duplicate to:

Federal Aviation Administration (FAA) Rules Docket, Room 311, 12 New England Executive Park, Burlington, Massachusetts 01803.

Comments may be examined in the Rules Docket, weekdays except Federal holidays between 8:00 a.m. and 4:30 p.m.

The applicable service bulletins may be obtained from General Electric Company, 1000 Western Avenue, Lynn, Massachusetts 01910.

FOR FURTHER INFORMATION CONTACT:
John E. Tigue, Engine Standards Section, ANE-215, Engineering and Manufacturing Branch, Flight Standards Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

SUPPLEMENTARY INFORMATION:

Prior Regulatory History

The Airworthiness Directive, AD 80-08-06 published in the **Federal Register** and made effective to all known U.S. operators of General Electric CJ610-8A and -9 turbojet and CF700-2D and -2D-2 turbofan engines on April 10, 1980, was required as a result of an uncontained low cycle fatigue failure of a second stage turbine disk on a military J85 engine. This disk was found to have failed because of foreign material segregation. Two other J85 disks from the same ingot were also found, upon laboratory examination, to have foreign material segregation. These disks are identical to first and second stage turbine disks used in the CJ610/CF700 engines. Specific CJ610/CF700 turbine disks are suspected of having similar defects. The emergency amendment to the airworthiness directive adopted and made effective to all known U.S. operators of General Electric CJ610-8A and -9 turbojet and CF700-2D and -2D-2 turbofan engines on May 30, 1980, was required to add additional serial numbered suspect first and second stage turbine disks which were identified after the issuance of the original airworthiness directive.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impractical and contrary to the public interest, and good cause existed for making the amended AD effective immediately to all U.S. operators of General Electric Company CJ610-8A and -9 turbojet and CF700-2D and -2D-2 turbofan engines by priority mail dated May 30, 1980. These conditions still exist, and the amended Airworthiness Directive is hereby published in the **Federal Register** as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations.

Request for Comments on the Rule

Although this action is in the form of a final rule, which involves flight safety and, thus, was not preceded by notice and public procedure, comments are invited on the rule. When the comment periods ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by amending Airworthiness Directive 80-08-06 to read as follows:

General Electric Company. Applies to CJ610-8A and -9 turbojet and CF700-2D and -2D-2 turbofan engines with turbine disks identified by serial numbers below.

To prevent low cycle fatigue failure of turbine disks suspected to have foreign material segregation, accomplish the following within the next 50 cycles.

Remove from service first stage turbine disks, P/N 5011T75P01, and second stage turbine disks, P/N 5011T76P01, with serial numbers listed below and replace with serviceable disks.

Serial Numbers:
First stage: GATWZA 00585, GATWZA 00587, GATWZA 00599, GATWZA 00601, GATWZA 00604, GATWZA 00607, GATWZA 00610, GATWZA 00611, GATWZA 00613, GATWZA 00615, GATWZA 00616, GATWZA 00617, GATWZA 00618, GATWZA 00624, GATWZA 00626, GATWZA 00627, GATWZA 00630, GATWZA 00632, GATWZA 00633, GATWZA 00634, GATWZA 00635, GATWZA 00637, GATWZA 00640, GATWZA 00641, GATWZA 00642, GATWZA 00644, GATWZA 00645, GATWZA 00646, GATWZA 00647, GATWZA 00649, GATWZA 00652, GATWZA 00658, GATWZA 00662, GATWZA 00663, GATWZA 00664, GATWZA 00665, GATWZA 00667, GATWZA 00671, GATWZA 00672, GATWZA 00673, GATWZA 00674, GATWZA 00676, GATWZA 00677, GATWZA 00679, GATWZA 00680, GATWZA 00681, GATWZA 00682, GATWZA 00683, GATWZA 00687, GATWZA 00690, GATWZA 00691, GATWZA 00692, GATWZA 00693, GATWZA 00704, GATWZA 00705, GATWZA 00706, GATWZA 00707, GATWZA 00708, GATWZA 00709, GATWZA 00710, GATWZA 00713, GATWZA 00714, GATWZA 00715, OJAWZA 11J774-22, OJAWZA 11J796-01, OJAWZA 11J796-03, OJAWZA 11J796-04, OJAWZA 11J796-05, OJAWZA 11J796-06, OJAWZA 11J796-07, OJAWZA 11J796-08, OJAWZA 11J796-09, OJAWZA 11J796-11, OJAWZA 11J796-13, OJAWZA 11J796-15, OJAWZA 11J796-16, OJAWZA 11J796-20, OJAWZA 11J796-21, OJAWZA 11J796-23, OJAWZA 11J796-24, OJAWZA 11J796-31, OJAWZA 11J796-32, OJAWZA 11J796-35, OJAWZA 11J796-41, OJAWZA 11J796-42, OJAWZA 11J796-43, OJAWZA 11J796-44, OJAWZA 11J796-45
Second stage: GATWZA 00541, GATWZA 00542, GATWZA 00545, GATWZA 00547, GATWZA 00548, GATWZA 00549, GATWZA 00550, GATWZA 00551, GATWZA 00552, GATWZA 00553, GATWZA 00554, GATWZA 00557, GATWZA 00563, GATWZA 00564, GATWZA 00565, GATWZA 00566, GATWZA 00567, GATWZA 00570, GATWZA 00571, GATWZA 00574, GATWZA 00575, GATWZA 00577, GATWZA 00580, GATWZA 00581, GATWZA 00583, GATWZA 00585, GATWZA 00587, GATWZA 00588, GATWZA 00589, GATWZA 00590, GATWZA 00592, GATWZA 00593, GATWZA 00594, GATWZA 00595, GATWZA 00596, GATWZA 00597, GATWZA 00598, GATWZA 00600, GATWZA 00601, GATWZA 00602, GATWZA 00604, GATWZA 00605, GATWZA 00607, GATWZA 00609, GATWZA 00610, GATWZA 00611, GATWZA 00612, GATWZA 00613, GATWZA 00614, GATWZA 00616, GATWZA 00617, GATWZA 00618, GATWZA 00619, GATWZA 00621, GATWZA 00622, GATWZA 00623, GATWZA 00624, GATWZA 00630, GATWZA 00632, GATWZA 00634, GATWZA 00636, GATWZA 00637, GATWZA 00638, GATWZA 00640, GATWZA 00642, GATWZA 00643, GATWZA 00646, GATWZA 00648, GATWZA 00649, GATWZA 00651, OJAWZA 11J781-01, OJAWZA 11J781-02, OJAWZA 11J781-03, OJAWZA 11J781-04, OJAWZA 11J781-05, OJAWZA 11J781-06, OJAWZA 11J781-07, OJAWZA 11J781-08, OJAWZA 11J781-09, OJAWZA 11J781-10, OJAWZA 11J781-11, OJAWZA 11J781-12, OJAWZA 11J781-13, OJAWZA 11J781-14, OJAWZA 11J781-15, OJAWZA 11J781-16, OJAWZA 11J781-17, OJAWZA 11J781-18, OJAWZA 11J781-19, OJAWZA 11J781-20, OJAWZA 11J781-21, OJAWZA 11J781-22, OJAWZA 11J781-23, OJAWZA 11J781-24, OJAWZA 11J781-25, OJAWZA 11J781-26, OJAWZA 11J781-27, OJAWZA 11J781-28, OJAWZA 11J781-29, OJAWZA 11J781-31, OJAWZA 11J781-32, OJAWZA 11J781-33, OJAWZA 11J781-34, OJAWZA 11J781-35, OJAWZA 11J781-37, OJAWZA 11J781-38

General Electric Company Alert Service Bulletin Nos. (CJ610) A72-135, Addendum 1, dated May 19, 1980, and (CF700) A72-142, Addendum 1, dated May 19, 1980, refer to this subject.

This amendment was effective upon receipt of the Emergency Airworthiness Directive dated May 30, 1980, and is effective to all others on February 2, 1981.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, 1423); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.89)

Note.—The Federal Aviation Administration has determined that this action is an emergency nonsignificant regulation under Executive Order 12044 as implemented by Department of Transportation Policies and Procedures (44 FR 11034, February 26, 1979). A final evaluation is contained in the Rules Docket.

Issued in Burlington, Massachusetts, on December 17, 1980.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 81-197 Filed 1-2-81; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 79-NE-15; Amendment 39-4004]

Airworthiness Directives; General Electric Company CT58 Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires an inspection for an undersized radius of certain stage one turbine wheels used in General Electric CT58 engines. This AD is prompted by a report of an undersized radius which contributed to a stage one turbine wheel failure.

DATES: Effective—Feburary 2, 1981. Compliance/Applicability Dates—As prescribed in text of AD.

ADDRESSES: All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to General Electric Company, 1000 Western Ave., Lynn, Massachusetts 01910.

Copies of the service bulletin are contained in the Rules Docket, Office of the Regional Counsel, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Ralph S. Hawkins, Engine Projects Section, ANE-214E, Engineering and Manufacturing Branch, Flight Standards Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7347.

SUPPLEMENTARY INFORMATION:

Prior Regulatory History

A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring inspection for undersized radius of certain stage one turbine wheels used in General Electric CT58 engines was published in the **Federal Register** at 44 FR 67435. The proposal was prompted by a report of an undersized radius which contributed to a stage one turbine wheel failure.

Interested persons have been afforded an opportunity to participate in the making of the amendment. No objections were received. Accordingly, the proposal is adopted without substantive change.

Adoption of the Amendment

Acordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new AD:

General Electric Company. Applies to all General Electric CT58 turboshaft engines incorporating stage one turbine wheel, part number 4002T17P02, with the following wheel serial numbers: 7753, 7761, 7762, 7767, 7768, 7783, 7799, 7803, 7811, 7815, 7817, 7819, 7820, 7823, 7824, 7828, 7839, 7845, and 7846.

Compliance required as indicated, unless already accomplished.

To prevent failure of stage one turbine wheels due to cracks originating from undersize rabbet groove radii, inspect forward and aft radii in accordance with the procedures contained in the accomplishment instruction section of General Electric Alert Service Bulletin CT58 (A72-159) CEB-255, dated July 9, 1979, or later FAA approved revision, or equivalent means approved by the Chief, Engineering and Manufacturing Branch, New England Region.

Inspect in accordance with the following schedule: 1. Turbine wheels with 3,950 hours or 7,900 cycles, or more, in service on the effective date of this AD, must be inspected within the next 50 hours or 100 cycles, whichever comes first.

2. Turbine wheels with less than 3,950 hours or 7,900 cycles in service, on the effective date of this AD, must be inspected prior to exceeding 4,000 hours or 8,000 cycles, whichever comes first.

Stage one turbine wheels with forward or aft rabbet groove radii of less than 0.010 inch must be removed and replaced with serviceable turbine wheels prior to further flight.

The manufacturer's specifications and procedures identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to General Electric Company, 1000 Western Avenue, Lynn, Massachusetts 01910. These documents may also be examined at Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, and at FAA Headquarters, 800 Independence Avenue, S.W., Washington, D.C.

A historical file on this AD, which includes the incorporated material in full, is maintained by the FAA at its Headquarters in Washington, D.C., and at FAA, New England Region Headquarters, Burlington, Massachusetts.

This amendment becomes effective February 2, 1981.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.89)

Note.—The Federal Aviation Administration has determined that this document involves a regulation which is not significant under Executive Order 12044, as amended, on June 27, 1980, by Executive Order 12221, as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final Regulatory Evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified above under the caption "For Further Information Contact."

Issued in Burlington, Massachusetts, on December 17, 1980.

Robert E. Whittington,

Director, New England Region.

Note.—The incorporation by reference provisions of this document was approved by the Director of the **Federal Register** on June 19, 1967.

[FR Doc. 81-206 Filed 1-2-81; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 80-NW-64-AD; Amdt. 39-4012]

Airworthiness Directive; McDonnell Douglas DC-8 Series Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends an existing Airworthiness Directive (AD) which requires repetitive inspections of flap link support fittings on McDonnell Douglas DC-8 series airplanes. This amendment identifies certain flap link support fittings which, due to the type of aluminum from which they are made, can be excluded from the repetitive inspection requirement. This amendment will enable operators to more readily identify parts affected by the AD.

DATES: Effective January 13, 1981. Compliance schedule—as prescribed in the body of the AD.

ADDRESSES: The applicable service information may be obtained from: McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publication and Training, C1-750-(54-60).

Also, a copy of the service information may be reviewed at, or a copy obtained from: Rules Docket in Room 6W14, FAA Western Region, 1500 Aviation Boulevard, Hawthorne, California 90261.

FOR FURTHER INFORMATION CONTACT: Mr. Michael E. O'Neil, Aerospace Engineer, Airframe Branch, ANW-120L, Federal Aviation Administration, Los Angeles Area Aircraft Certification Office, Northwest Region, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009, telephone (213) 536-6356.

SUPPLEMENTARY INFORMATION: This amendment further amends Amendment 39-3079 (42 FR 59375), AD 77-23-06, as amended by 39-3105 (43 FR 4) which currently requires repetitive inspections for cracks on the flap link support fittings on McDonnell Douglas DC-8 series airplanes. After issuing Amendment 39-3105, the FAA has determined that additional flap link support fittings are manufactured from 7075-T73 aluminum and can be excluded from the repetitive inspection. Therefore, the FAA is further amending Amendment 39-3079, as amended by Amendment 39-3105, by expanding paragraph (a) to include additional part numbers of fittings that are 7075-T73 material on the McDonnell Douglas DC-8 series airplanes.

Since this amendment relieves a restriction, has no adverse economic impact, and imposes no additional burden on any person, notice and public procedure hereon are unnecessary and good cause exists for making this amendment effective in less than 30 days.

Adoption of Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by further amending Amendment 39-3079 (42 FR 59375), AD 77-23-06, as amended by Amendment 39-3105 (43 FR 4), by revising paragraph (a) of the amendment to add the following DC-8 flap link support fitting assembly part numbers:

* * * * *

5614372-501, 5614374-503, 5614374-504, 5614376-505, 5614376-506, 5614376-507, 5614376-508, 5614376-501, 5614376-502

* * * * *

Note.—The FAA has determined that this document involves a regulation which is not considered to be significant under the provisions of Executive Order 12004 and as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

This amendment becomes effective January 13, 1981.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c); and 14 CFR 11.89))

Issued in Seattle, Washington, on December 24, 1980.

Jonathan Howe,

Acting Director, Northwest Region.

[FR Doc. 81-202 Filed 1-2-81; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 76-NE-14; Amdt. 39-4006]

Airworthiness Directives; Sikorsky S-61L Helicopters Prior to and Including Serial No. 61454, and S-61A, S-61D, S-61E, and S-61V Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment revises airworthiness directive (AD) 76-08-01 to include the tail rotor pylon upper and lower right hinge fitting lugs in the inspections and to increase the areas to be inspected.

DATES: Effective date—December 29, 1980. Comments must be received on or before March 2, 1981.

ADDRESSES: Send comments on the rule in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, New England Region, Attention: Rules Docket No., 12 New England Executive Park, Burlington, Massachusetts 01803.

The applicable service bulletins may be obtained from Sikorsky Aircraft, Division of United Technologies Corporation, Stratford, Connecticut 06602. Copies of the service bulletins are contained in the Rules Docket, Office of the Regional Counsel, New England Region, 12 New England Executive Park Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: William E. Garlock, Airframe Section, ANE-212, Engineering and Manufacturing Branch, Flight Standards Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

SUPPLEMENTARY INFORMATION:

Prior Regulatory History

Because of cracks found in the alignment pads of the tail rotor pylon left hinge fittings and evidence of improper contact of these pads, Amendment 39-1899 (39 FR 25645), AD 74-15-01, was issued to require inspection for cracks and rework or replacement of the fittings. Reworked fittings were required to be inspected at each of the next three 150-hour intervals of service. After issuing Amendment 39-1899, additional cracks in the alignment pads were found in service, and Amendment 39-1921 (39 FR 28975), AD 74-17-06, was issued to include an additional inspection and to provide expanded and more specific requirements for inspections. It also provided a more extensive description of the rework procedures and limits. After issuing Amendment 39-1921, reports were received of additional cracks and the separation of a pylon hinge fitting because of a fatigue crack. Therefore, Amendment 39-2581 (41 FR 16452), AD 76-08-01, superseding AD 74-17-06, was issued to require inspections whether or not there was contact between the lug alignment pads, to require extended repetitive inspections, and to require the rework or replacement of the fittings.

Need for Amendment

Subsequent to the publication of AD 76-08-01, there have been reports of cracking of the lugs of the right hinge fittings and cracking in the webs near the lugs. Therefore, this amendment revises AD 76-08-01 to include the right hinge fitting lugs in the inspections and to expand the area to be inspected to include some of the web near the lugs.

Since a situation exists that requires immediate adoption of the regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Request for Comments on the Rule

Although this action is in the form of a final rule which involves requirements affecting immediate flight safety and, thus, was not preceded by notice and public procedure, comments are invited on the rule.

When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate

rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the AD and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended effective December 29, 1980, by revising Amendment 39-2581 (41 FR 16452), AD 76-08-01, as follows:

In paragraph (a) delete the phrase "within the last 50 hours time in service" and insert in its place: "within the last 120 hours time in service."

In paragraph (a) delete: "No. 61B20-13A dated April 2, 1976," and insert in its place: No. 61B20-13C, dated November 12, 1980.

Revise paragraph (b) to read: "If a crack is found around the edge of the bushings in the lug or in the shaded area shown in Detail B, Figure 1, of the above service bulletin, replace the fitting prior to further flight."

The manufacturer's procedures identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Sikorsky Aircraft, Stratford, Connecticut 06602. These documents may also be examined at FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, and at FAA Headquarters, 300 Independence Avenue, S.W., Washington, D.C. A historical file on this AD, which includes the incorporated material in full, is maintained by the FAA at its headquarters in Washington, D.C., and at the FAA, New England Region Headquarters, Burlington, Massachusetts.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.89)

Note.—The FAA has determined that this document involves a final regulation which is not considered to be significant under Executive Order 12044 as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). In addition, the expected impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Burlington, Massachusetts, on December 18, 1980.

Robert E. Whittington,

Director, New England Region.

Note.—The incorporation by reference provisions of this document was approved by the Director of the Federal Register on June 19, 1967.

[FR Doc. 81-199 Filed 1-2-81; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Airworthiness Docket No. 80-ASW-39; Amdt. 39-4009]

Airworthiness Directives; Swearingen Models SA226-T, SA226-T(B), SA226-AT, and SA226-TC Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness (AD) which requires periodic replacement of rudder cable to rudder link attaching bolts and bushings, and inspection of rudder pedal links at bolt holes with replacement of links as necesary. This AD is prompted by 13 reports of worn rudder cable to rudder link attaching bolts and bushings, and, in some cases, elongated bolt holes in rudder pedal links at attaching bolt holes which could eventually result in complete failure of rudder cable to rudder link attachment and loss of rudder control of the airplane.

DATES: Effective January 16, 1981. Compliance required as prescribed in body of AD.

ADDRESSES: The applicable service information may be obtained from the Director of Products Support, Swearingen Aviation Corporation, P.O. Box 32486, San Antonio, Texas 78284.

These documents may also be examined at the Office of the Regional Counsel, Southwest Region, FAA, 4400 Blue Mound Road, Fort Worth, Texas, or Rules Docket in Room 916, FAA, 800 Independence Avenue, S.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Milton G. Martin, Airframe Section, Engineering and Manufacturing Branch, ASW-212, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, telephone number (817) 624-4911, extension 516.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rule Making (NPRM) to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive requiring periodic replacement of rudder cable to rudder link attaching bolts and bushings and inspection of rudder pedal links at bolt holes with replacement of links as necessary on Swearingen Models SA226-T, SA226-T(B), SA226-AT, and SA226-TC airplanes was published in the **Federal Register** (45 FR 67679).

The NPRM was prompted by 13 reports of worn rudder cable to rudder link attaching bolt holes which could eventually result in complete failure of the rudder cable to rudder link attachment and loss of rudder control of the airplane.

Interested persons have been afforded an opportunity to participate in the making of the amendment. Two comments were received. Both commenters suggested that the material of the rudder links be replaced with more durable material to eliminate repetitive replacements. An engineering evaluation indicates the problem would not be alleviated by changing materials. Swearingen is currently developing a detail redesign for the SA227 series Swearingen airplanes. If this is successful and FAA approved, this redesign may be made available as an alternate method of complying with this AD, if applicable. The wording of the Notice of Proposed Rule Making is, therefore, unchanged except for minor editing.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Section 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

Swearingen: Applies to Swearingen Models SA226-T, SA226T(B), SA226-AT, and SA226-TC airplanes certificated in all categories. Compliance required within the next 50 hours' time in service for airplanes with 5,000 or more hours' time in service, unless already accomplished, and thereafter at intervals of 5,000 hours since last compliance. (Airworthiness Docket No. 80-ASW-39).

To prevent failure of rudder cable to rudder pedal link attachments, accomplish the following: (a) Replace rudder cable to rudder pedal link attachment bolts and bushings with new parts of the same part numbers.

(b) Inspect rudder pedal links, Part Number 26-72016, at attachment bolt hole and replace links if hole is elongated.

A special flight permit may be issued in accordance with FAR 21.197 to allow flight of the aircraft to a base where this AD can be accomplished.

Equivalent methods of complying with this AD must be approved by the Chief, Engineering and Manufacturing Branch, FAA, Southwest Region. Note: Swearingen Service Bulletin SB27-027 issued July 17, 1980, refers to this same subject.

This amendment becomes effective January 16, 1981.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.89)

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12004 as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1980).

Issued in Fort Worth, Texas, on December 22, 1980.

C. R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 81-201 Filed 1-2-81; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 80-NE-38]

Amend the Description of the Portsmouth, New Hampshire (Pease AFB) 700-Foot Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment changes the Portsmouth, New Hampshire, 700-foot transition area so as to provide additional airspace for helicopters executing the RNAV-066 Standard Instrument Approach Procedure (SIAP), Tyco Heliport, Exeter, New Hampshire.

EFFECTIVE DATE: February 19, 1981.

FOR FURTHER INFORMATION CONTACT: Charles Taylor, Operations Procedures and Airspace Branch, ANE-535, Federal Aviation Administration, Air Traffic Division, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7285.

SUPPLEMENTARY INFORMATION: On Monday, October 6, 1980, a Notice of Proposed Rulemaking was published in the **Federal Register**, Volume 45, No. 195, pages 66176 and 66177, stating that the Federal Aviation Administration proposed to amend the description of the Portsmouth, New Hampshire, 700-foot transition area so as to provide additional airspace for helicopters executing the RNAV-066 Standard Instrument Approach (SIAP), Tyco Heliport, Exeter, New Hampshire.

Interested persons were invited to participate in the proposed rulemaking process by submitting comments on the proposal to the Federal Aviation Administration. No objections were received.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Subpart G of Part 71.181 of the Federal Aviation Regulations (14 CFR 71.181) is amended effective February 19, 1981, by:

1. Delete the present description of the New Hampshire (Pease AFB) 700-foot transition in its entirety and substitute in lieu thereof: "That airspace extending upward from 700 feet above the surface bounded by a line beginning at 43°-23'-00"N., 71°-11'-50"W., 43°-23'-00"N., 70°-47'-00"W., 43°-14'-00"N., 70°-36'-00"W., 42°-50'-00"N., 70°-36'-00"W., 42°-50'-00"N., 71°-05'00"W., 43°-03'-00"N., 71°-05'-00"W., 43°-09-00"N., 71°-11'-50"W to point of beginning."

(Section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 USC 1348(a)) and Section 6(c) of the Department of Transportation Act (49 USC 1655(c) and 14 CFR 11.69))

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as amended on June 27, 1980, by Executive Order 12221, as implemented by Department of Transportation Regulatory and Procedures [44 FR 11034; February 26, 1979]. The anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Burlington, Massachusetts, on December 19, 1980.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 81-203 Filed 1-2-81; 8:45 am]

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14 CFR Parts 71, 73, and 75

[Airspace Docket No. 80-AWA-18]

Compilation of Airspace Designation Regulations

Cross Reference: For a compilation of the current airspace designations and pending amendments to those designations issued by the FAA and published in the **Federal Register**, see FR Doc. 80-40450 published in the **Federal Register**, of Friday, January 2, 1981 (46 FR 401).

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DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 368, 370, 372, 373, 379 and 385

Changes in Export Administration Regulations; Special Nuclear Controls

AGENCY: Office of Export Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Final rule.

SUMMARY: A revised version of Part 378, Special Nuclear Controls, of the Export Administration Regulations was published in the **Federal Register** on June 25, 1980 (45 FR 43142). This rule amends the remainder of the Export Administration Regulations to conform them with the new Part.

EFFECTIVE DATE: January 5, 1981.

FOR FURTHER INFORMATION CONTACT: Archie Andrews, Director, Exporters' Service Staff, Office of Export Administration, Washington, D.C. 20230 (Telephone: (202) 377-5247 or 377-4811).

SUPPLEMENTARY INFORMATION: Section 13(a) of the Export Administration Act of 1979 ("the Act") exempts regulations promulgated thereunder from the public participation in rulemaking procedures of the Administrative Procedure Act. Section 13(b) of the Act, which expresses the intent of Congress that where practicable "regulations imposing controls on exports" be published in proposed form, is not applicable because these regulations do not impose controls on exports. It has been determined that these regulations are not "significant" within the meaning of Department of Commerce Administrative Order 218-7 (44 FR 2082, January 9, 1979) and Industry and Trade Administration Administrative Instruction 1-6 (44 FR 2093, January 9, 1979) which implement Executive Order 12044 (43 FR 12661, March 23, 1978), "Improving Government Regulations." Therefore these regulations are issued in final form.

Accordingly, the Export Administration Regulations (15 CFR Part 368 *et seq.*) are revised as follows:

1. Section 368.1(a)(2)(i)(B) is revised as follows:

§ 368.1 Effect of regulation.

(a) * * *

(2) * * *

(i) * * *

(B) By agreement with the Nuclear Regulatory Commission for nuclear equipment and materials under the export licensing jurisdiction of the Commission (see 10 CFR 110); and

* * * * *

2. Section 370.3(a)(1) is revised as follows:

§ 370.3 Prohibited exports.

(a) * * *

(1) Any export to Canada, for consumption in Canada.[1] However, the following do require a validated license to Canada.

(i) The types of technical data described in § 379.4(c);

[1] See § 386.1(d) for shipments to Canada, not intended for consumption in Canada, and regarding the requirement of a Shipper's Export Declaration for certain exports to Canada.

(ii) Commodities related to nuclear weapons, nuclear explosive devices, nuclear testing, the chemical processing of irradiated special nuclear or source material, the production of heavy water, the separation of isotopes of source and special nuclear material, or the fabrication of nuclear reactor fuel containing plutonium (see § 378.3);

(iii) Helium, isotopically enriched in the helium-3 isotope in any form or quantity, and whether or not admixed with other materials, or contained in any equipment or device, as described on the Commodity Control List under ECCN 4721B;

(iv) Electronic, mechanical, or other devices, as described in § 376.13(c) and the Commodity Control List under ECCN 4517B, primarily useful for surreptitious interception of wire or oral communications;

(v) Certain commodities subject to Short Supply validated licensing controls, including horses for export by sea, as set forth in Supplements to Part 377;

(vi) Communications countermeasures equipment (electronic, mechanical, optical, or other) as described in ECCN 4516B, capable of detecting, monitoring, locating, or jamming surreptitious intercepting devices; and

(vii) Mandrels and bellows forming dies; certain valves; plants specially designed for the production of uranium hexafluoride, including uranium hexafluoride purification equipment; uranium hexafluoride mass spectrometers; inverters, converters, frequency changers, and generators having a multiphase electrical power output within the range of 600 to 2,000 hertz; and cylindrical tubing, rings and discs (These commodities are identified on the Commodity Control List under ECCNs 4094B, 3131A, 3336A, 4530B, 4569B, 4675B, 4676B and 4677B.);

* * * * *

3. Section 372.11(g)(3)(v) is revised to read as follows:

§ 372.11 Amending export licenses.

* * * * *

(g) * * *

(3) * * *

(v) Amendment or extension of a license to export commodities related to nuclear weapons, nuclear explosive devices, nuclear testing, the chemical processing of irradiated special nuclear or source material, the production of heavy water, the separation of isotopes of source and special nuclear material, or the fabrication of nuclear reactor fuel containing plutonium (see § 378.3).

4. Section 373.2(b) is revised to remove paragraph (2) and revise paragraphs (3) and (4), as follows:

§ 373.2 Project license.

* * * * *

(b) * * *

(2) [Reserved]

(3) The commodities are related to nuclear weapons, nuclear explosive devices, nuclear testing, the chemical processing of irradiated special nuclear or source material, the production of heavy water, the separation of isotopes of source and special nuclear material, or the fabrication of nuclear reactor fuel containing plutonimum (see § 378.3),

(4) The technical data are not generally available to the public (see General License GTDA, § 379.3) and relate to nuclear weapons, nuclear explosive devices, nuclear testing, the chemical processing of irradiated special nuclear or source material, the production of heavy water, the separation of isotopes of source and special nuclear material, or the fabrication of nuclear reactor fuel containing plutonium, as described in § 379.4(c)(1) or other nuclear-related commodities as listed in § 379.4(c)(2) through (9).

5. Section 373.3(b)(1) is revised as follows:

§ 373.3 Distribution license.

* * * * *

(b) * * *

(1) Commodities related to nuclear weapons, nuclear explosive devices, nuclear testing, the chemical processing of irradiated special nuclear or source material, the production of heavy water, the separation of isotopes of source and special nuclear materials, or the fabrication of nuclear reactor fuel containing plutonium (see § 378.3).

6. Paragraphs (1) and (3) of § 373.7(b) are revised as follows:

§ 373.7 Service supply (SL) procedure.

* * * * *

(b) * * *

(1) Parts to service commodities related to nuclear weapons, nuclear explosive devices, nuclear testing, the chemical processing of irradiated special nuclear or source material, the production of heavy water, the separation of isotopes of source and special nuclear material, or the fabrication of nuclear reactor fuel containing plutonium (see § 378.3);

* * * * *

(3) Parts to service commodities subject to the Nuclear Regulatory Commission licensing authority referred to in Supplement No. 3 to Part 370;

* * * * *

7. Section 379.4(c), first paragraph and (1) and (2) are revised as follows:

§ 379.4 General license GTDR: Technical data under restriction.

* * * * *

(c) *Technical Data Restrictions Applicable to All Destinations.* No technical data [1] (including operating and maintenance instructional material) related to the following may be exported under this general license, and a validated export license is required for all destinations, *including Canada*, for export of technical data related to the following:

(1) Any commodity where the exporter knows or has reason to know that it will be used directly or indirectly in the following activities, whether or not it is specifically designed or modified for such activities (see § 378.3)—

(i) Designing, developing, fabricating or testing nuclear weapons or nuclear explosive devices, [12] or

(ii) Designing, constructing, fabricating, or operating the following facilities, or components for such facilities [3]—

(A) Facilities for the chemical processing of irradiated special nuclear or source material;

(B) Facilities for the production of heavy water;

(C) Facilities for the separation of isotopes of source and special nuclear material; or

(D) Facilities for the fabrication of nuclear reactor fuel containing plutonium.

(2) Training of personnel for paragraph (c)(1) of this section.

8. Section 379.5(e) (2) (i) and (x) are revised, (xi) is renumbered as (xvi), and new (xi) through (xv) are added as follows:

§ 379.5 Validated license applications.

* * * * *

(e) * * *

(2) * * *

(i) Commodities where the exporter knows or has reason to know that the

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[1] This restriction does not apply to data included in the foreign filing of a patent, provided such foreign filing of a patent application is in accordance with the regulations of the U.S. Patent Office (See § 379.3(c)).

[1] Commodities and technical data specifically designed or specifically modified for use in designing, developing or fabricating nuclear weapons or nuclear explosive devices are subject to export licensing or other requirements of the Office of Munitions Control, U.S. Department of State, or the licensing or other restrictions specified in the Atomic Energy Act of 1954, as amended. Similarly, commodities and technical data specifically designed or specifically modified for use in devising, carrying out, or evaluating nuclear weapons tests or nuclear explosions (except such items as are in normal commercial use for other purposes) are subject to the same requirements.

[3] Also see § 379.5(e) for special provisions relating to technical data for maritime nuclear propulsion plans and other commodities.

item will be used directly or indirectly, whether or not specifically designed, for developing or testing nuclear weapons or nuclear explosive devices, nuclear testing, the chemical processing of irradiated special nuclear or source material, the production of heavy water, the separation of isotopes of source and special nuclear material, or the fabrication of nuclear reactor fuel containing plutonium, as described in § 378.3, or training of personnel for any activity listed above:

* * * * *

(x) Submersible watercraft other than military or naval types;[1]

(xi) Plants specially designed for the production of uranium hexafluoride (UF_6), and specially designed or prepared equipment (including UF_6 purification equipment) and specially designed parts and accessories therefor;

(xii) Inverters, converters, frequency changers, and generators having a multiphase electrical power output within the range of 600 to 2000 hertz;

(xiii) Cylindrical tubing, raw, semifabricated, or finished forms, made of aluminum alloy (7000 series) maraging steel or high-strength titanium allows (e.g., Ti-6 Al-4 V, etc.) having the following characteristics:

(A) Wall thickness of ½ inch, or less;

(B) Diameter of 3 inches or more;

(xiv) Cylindrical rings, or single convolution bellows, made of high-strength steels having all of the following characteristics:

(A) Tensile strength equal to or greater than 150,000 psi;

(B) Wall thickness of 3 millimeters or less; and

(C) Diameter of 3 inches or more;

(xv) Pipes, valves, fittings, heat exchangers, or magnetic, electrostatic or other collectors made of graphite or stainless steel, or of other materials coated in graphite, yttrium or yttrium compounds resistant to the heat and corrosion of uranium vapor; and

(xvi) Any other commodity under the export control jurisdiction of the Office of Export Administration if such commodity is not covered by an entry on the Commodity Control List.

9. Section 385.6 is revised to read as follows:

§ 385.6 Canada.

Except as indicated below, the general policy is to permit shipments of commodities and technical data to Canada for consumption or use in that country without an export license. When the commodities or technical data are transiting Canada or are intended for reexport from Canada to another foreign destination and such shipment would require a validated license if made directly from the United States to that destination, an export license or reexport authorization is required. The licensing action will be based on the policy applicable to a direct shipment from the United States to such other destination. (See §§ 374.1 and 386.1(d) for commodities in transit via Canada.) A validated license also is required for export to Canada if—

(a) The technical data are described in § 379.4(c) or § 379.5(e) unless the technical data may be exported under the provisions of General License *GTDA*;

(b) The commodity is related to nuclear weapons, nuclear explosive devices, nuclear testing, the chemical processing of irradiated special nuclear or source material, the production of heavy water, the separation of isotopes of source and special nuclear material, or the fabrication of nuclear reactor fuel containing plutonium, as described in § 378.3; or

(c) The Commodity Control List (§ 399.1) indicates that a validated license is required for export to Canada.

(Secs. 5, 6, 13, 15, 17, and 21, Pub. L. 96-72, 50 U.S.C. App. § 2401 *et seq.*, Executive Order No. 12214 (45 FR 29783, May 6, 1980); Department Organization Order 10-3 (45 FR 6141, January 25, 1980); International Trade Administration Organization and Function Order 41-1 (45 FR 11862, February 22, 1980) and 41-4 (effective August 26, 1980).)

Dated: December 18, 1980.

Kent N. Knowles,

Director, Office of Export Administration, International Trade Administration.

[FR Doc. 81-193 Filed 1-2-81; 8:45 am]

BILLING CODE 3510-25-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 51

Procedures for the Administration of Section 5 of the Voting Rights Act of 1965; Revision of Procedures

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: Procedures with respect to the administration of Section 5 of the Voting Rights Act of 1965, as amended, the "preclearance" requirement of the Voting Rights Act, were established in 1971. 36 FR 18186 (Sept. 10, 1971), 28 CFR Part 51. As a result of experience under these Procedures, changes mandated by the 1975 Amendments to the Voting Rights Act, and interpretations of Section 5 contained in judicial decisions, it was decided that revisions were required. Proposed revised Procedures were published for comments on March 21, 1980 (45 FR 18890).

EFFECTIVE DATE: January 5, 1981.

FOR FURTHER INFORMATION CONTACT: David H. Hunter, Attorney, Voting Section, Civil Rights Division, Department of Justice, Washington, D.C. 20530, (202) 724-7189.

SUPPLEMENTARY INFORMATION: In response to the March 21, 1980 request, 22 comments were received, including 1 from a Federal agency, 7 from representatives of State governments, 6 from representatives of local governments, 6 from private organizations, 1 from a political science professor, and 1 from a private citizen. (These comments are available for inspection at the Department of Justice.) All comments have been studied carefully, and a number of changes have been made in the Procedures as a result of the comments.

The discussion that follows focuses first on a number of general issues raised by the comments and second on a number of specific topics that were the subject of comments.

Scope. A number of commenters were concerned with issues outside the scope of the Procedures, for example, procedures and substantive standards required by statute, the legal consequences of the absence of preclearance, the Department's litigation policy, the Department's policy under the Freedom of Information Act (for which see 28 CFR 16.9), and the interests of particular jurisdictions.

Formality. To satisfy some commenters would require an increase in the formality of the preclearance process. They advocate, for example, requiring a limitation on telephone communication between Department personnel and submitting authorities, the inclusion of interested individuals and groups in any informal meetings held with submitting authorities, the preparation of transcripts of conferences held under § 51.46, adherence to the rules of evidence in the information gathering process, and increased notice requirements. Because submission of changes to the Attorney General was designed to be an expeditious alternative to declaratory judgement actions brought in the U.S. District Court for the District of Columbia, we believe the level of formality suggested is not appropriate.

Exercise of discretion. Some commenters sought assurance that the Attorney General would not abuse his discretion. Concern was expressed, for example, with respect to what would

constitute "good cause" justifying expedited consideration by the Attorney General (§ 51.32) or with respect to the possibility of the Attorney General's using an unjustified request for additional information (under § 51.35) to extend the 60-day period. Although written procedures can establish standards, they cannot by themselves guarantee reasonableness. To some extent, however, safeguards or alternatives do exist. For instance, submitting authorities always have the option of an action for a declaratory judgment (§ 51.1). On the other hand, interested individuals and groups are given the opportunity to participate in the preclearance process by the various notice requirements provided (see "Role of third parties" below) and, although a decision by the Attorney General not to object is not subject to judicial review (§ 51.48), independent actions otherwise available are preserved by the statute.

Misinterpretation. Misinterpretation of the intent of the proposed Procedures may be evidence of a lack of clarity. Where a commenter has failed to discern the intended meaning, we have given close scrutiny to whether that meaning could be more effectively communicated.

Some commenters misinterpreted the Procedures by reading one section in isolation from the remainder or by overlooking the section that addressed a particular issue. For example, one commenter believed that the Attorney General would not consider a change that must be adopted by referendum until after the referendum is held; this commenter failed to note that § 51.20 excepts from the finality requirement measures subject to a referendum requirement.

Role of third parties. Providing an opportunity for interested persons to express their views with respect to a submitted change is an important part of our preclearance procedures. A number of sections have been revised to indicate more clearly the practice of the Attorney General in this regard (see §§ 51.31, 51.35, 51.43, 51.44, 51.45, and 51.47). To summarize, the submitting authority is requested to provide names of minority contacts (§ 51.26(f)) and evidence of publicity and public participation (51.26(e)) and may be requested to publicize a reconsideration request (§ 51.44(c)), and the Attorney General may publicize a submission in some circumstances (§ 51.36(b)). Persons who have commented on a submission or who have requested notification with respect to action taken on a specific submission are sent copies of letters requesting further information (§ 51.35(b)), letters of no objection (§ 51.40(c)), letters of objection (§ 51.43(d)), and letters following reconsiderations of objections (§ 51.47(d)). Such persons are also notified of reconsideration requests (§ 51.44(c)), reconsiderations at the instance of the Attorney General (§ 51.45(b)), and requests for conferences (§ 51.46(c)). Interested individuals and groups registered under § 51.30 are given notice of submissions (§ 51.31), requests for expedited consideration (§ 51.32(c)), additional information requests and receipts of additional information (§ 51.35(d)), objections (§ 51.43(e)), reconsiderations of objections (§§ 51.44(c) and 51.45(b)), and decisions after reconsideration (§ 51.47(e)). The 1971 Procedures had specified that "prompt" notice of submissions be given to registrants (§ 51.16); this was changed in the proposed Procedures (§ 51.31) to "regular" notice. In response to one comment, "weekly" notice, which has been the normal practice, is now specified.

One commenter objected to the maintenance of a registry of interested individuals and groups. Other commenters believe that the present notice system is inadequate. We believe the notice system as revised and described in the Procedures is both necessary and sufficient for the efficient and fair administration of the preclearance program.

Delegation of authority, §§ 51.2(b), 51.3. Two commenters, both representing States, expressed reservations with respect to the delegation of authority from the Attorney General to the Assistant Attorney General, Civil Rights Division, and opposed any delegation below the level of the Assistant Attorney General. As a practical matter, given the volume of Section 5 submissions, such delegation is unavoidable. It should be noted, however, that the Assistant Attorney General is the final decisionmaker when a determination adverse to a submitting authority is made.

Political parties, § 51.7. In response to one query, this section and § 51.21 have been revised to make it clear that a political party can make a submission on its own behalf.

Further clarification of what changes by political parties are subject to Section 5 has not been attempted. § 51.7 delineates in a general way which "political party" changes are covered; where there is uncertainty with respect to the applicability of Section 5, determinations should be made on a case-by-case basis.

Computation of time, § 51.8. Two commenters questioned the clarity and propriety of the method of determining when 60 days have elapsed. The method employed is identical to that of Rule 6(a) of the Federal Rules of Civil Procedure.

It was suggested that the 60-day period commence with the date of mailing of the submission rather than the date of receipt by the Attorney General, and that the date of the Attorney General's response be the date of receipt by the submitting authority rather than the date of mailing by the Attorney General. Section 5, however, provides for a 60-day period for review by the Attorney General, and it is proper for the Procedures to allow a full 60 days for review by the Attorney General. This would not be the case if delivery time for the submission and delivery time for the decision were counted in the 60-day period. In our view, the full period is necessary for proper administration. See also § 51.32.

Examples of changes, § 51.12. One commenter objected to including, as an example of a change cover by Section 5, a change with respect to vote-counting procedures. Such changes, however, are covered by Section 5. See *Allen* v. *State Board of Elections*, 393 U.S. 544, 563–68 (1969). Moreover, the submission requirement does not operate to prevent State and local governments from implementing voting changes which they decide are desirable.

A new subsection k has been added, based on experience since *Dougherty County, Board of Education* v. *White*, 439 U.S. 32 (1978), to clarify that governmental regulation of employee political activity is covered by Section 5.

Recurrent practices, enabling legislation, and procedural changes, §§ 51.13, 51.14, 51.15. These sections constitute an attempt to clarify what constitutes a change, when a change has occurred, and what the consequences of preclearance of a change are. It is hoped that § 51.13 will result in the reduction of submissions made unnecessarily. For example, a county which always conducts voter registration at extra locations prior to elections does not have to make a submission prior to each election; a submission would be required only when the practice is first instituted or is changed. Sections 51.14 and 51.15 do not require that local implementation of a precleared State requirement of general, noncontingent application be precleared. For example, were a State to lower its voting age from 18 to 17, only one submission, by the State, would be required. (See also § 51.21) On the other hand, if a State were to pass legislation making a 17-

year voting age a matter of local option, the preclearance of exercise of the option would be required (§ 51.14).

Court-ordered changes, § 51.16. Requested clarification of the exemption, from the preclearance requirement, of changes ordered by Federal courts has not been attempted. This section is designed only to alert affected jurisdictions and the public to the existence of this exemption. Its exact scope can only be determined through the application of the developing case law in this area to the particular situation in question. See *Sanchez* v. *McDaniel*, 615 F. 2d 1023 (5th Cir. 1980), application for stay pending consideration of petition for certiorari granted, —— U.S. —— (Aug. 14, 1980) (Powell, Circuit Justice).

The issue of the status of changes resulting from orders of State courts is not addressed in the Procedures. The reference in § 51.20 to approval by State courts is to the system in some States by which courts have an administrative role in the approval of some voting changes.

Premature Submissions, § 51.20. This section has been expanded to conform to present practice under which we consider unripe for review proposed changes which are based upon or are otherwise directly related to other voting changes which have not been precleared.

Contents of submissions, §§ 51.24, 51.25, 51.26. A number of commenters complained of the burden imposed on jurisdictions by these sections; some commenters sought additional clarity. The specific requests for information contained in §§ 51.25 and 51.26 should be read in conjunction with the general provisions of § 51.24. See especially § 51.24(c) and (e). Providing the information requested should usually not be burdensome for the submitting authority but will result in more prompt and efficient handling of submissions, fewer requests under § 51.35, and fewer objections. For example, in many instances, "the anticipated effect of the change on members of racial or language minority groups" (§ 51.25(m)) could be provided by a brief statement. Also, in our view, identifying minority group contacts (§ 51.26(f)) does not place an undue burden on the submitting authority. Moreover, we do not expect jurisdictions with insignificant minority populations routinely to provide the names of minority contacts.

Because legal descriptions are generally integral parts of acts or ordinances, excluding them from a submission will frequently be a greater inconvenience than including them; accordingly, the exception for legal descriptions has been dropped from § 51.25(a). Revisions to increase clarity and specificity have been made in § 51.26.

Obtaining information, § 51.35(c). One commenter noted that we did not specify the event that triggers the beginning of the 60-day period when information necessary to complete a submission is obtained from a source other than the submitting authority. § 51.35 has been revised to indicate that the 60-day period begins on the date on which the Attorney General sends notification to the submitting authority of the receipt of the information.

Failure to complete submission, § 51.38. Two commenters were critical of the discretion allowed by § 51.38. That section provides that, if requested additional information is not received within 60 days, "the Attorney General, absent extenuating circumstances and consistent with the burden of proof under Section 5 * * * may object to the change * * *." One commenter advocated the substitution of "shall" for "may", explaining that in order to postpone an adverse determination, political subdivisions will deliberately fail to provide additional information requested by the Department of Justice. To the extent that such a problem may exist, we believe that the practice described in § 51.38 provides a sufficient remedy. Ordinarily, the schedule by which requested information is provided is of greater interest to the submitting authority than to the Attorney General.

Burden of proof, § 51.39(e). One commenter opposed placing the burden of proof on the submitting authority. In our view, the burden of proof described in § 51.39(e) is consistent with and required by the scheme of Section 5. See *Georgia* v. *United States*, 411 U.S. 526, 536–39 (1973); *South Carolina* v. *Katzenbach*, 383 U.S. 301, 335 (1966); see also *Evers* v. *State Board of Election Commissioners*, 327 F. Supp. 640 (S.D. Miss. 1971), appeal dismissed 405 U.S. 1001 (1972). *No objection, §§ 51.40, 51.42, 51.48.* Concern with respect to the finality of a decision not to interpose an objection was expressed by one commenter. However, Section 5 itself states: "Neither an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure." It is the practice of the Attorney General, reflected in § 51.40, to notify submitting authorities of this provision. The "subsequent action" referred to could not be under Section 5 but would have to have some other legal basis and could not constitute judicial review of the action of the Attorney General (see § 51.48). Accordingly, the Attorney General's reservation of the right to reexamine within the 60-day period a decision not to object (§ 51.42) is necessary if the Attorney General is to continue the practice of accommodating jurisdictions by making decisions as early as possible within the 60-day period.

Failure to respond, § 51.41. One commenter asserted that there would be insufficient procedural safeguards if preclearance were accomplished by the failure of the Attorney General to respond within the 60-day period. As § 51.41 was intended to make clear, it is the practice of the Attorney General to respond within the 60-day period. This section was added to clarify the rare occasions when, through the failure of administrative mechanisms, no response is made. Another commenter considered the provisos contained in the section inappropriate. The first proviso, that the submission be properly addressed, is necessary to assure that the submission can be routed to the proper unit within the Department of Justice. The second proviso, that response on the merits be appropriate, only makes clear that, if Section 5 does not apply (for one of the reasons listed in § 51.33), no preclearance is possible. In response to concern expressed by a number of commenters, § 51.41 has been changed to indicate explicitly (what was implicit in § 51.8(c)) that actions of the Attorney General under Section 5 are in writing.

Objections and Reconsiderations, §§ 51.43, 51.44, 51.45, 51.46, 51.47. The sections relating to notification of the decision to interpose an objection and the procedures for the reconsideration of objections have been reorganized and renumbered, without substantive change, to improve the clarity of presentation.

Accordingly, 28 CFR Part 51 is revised to read as set forth below.

Dated: December 18, 1980.

Benjamin R. Civiletti,

Attorney General.

PART 51—PROCEDURES FOR THE ADMINISTRATION OF SECTION 5 OF THE VOTING RIGHTS ACT OF 1965, AS AMENDED

Subpart A—General Provisions

Sec.

Authority: The provisions of this Part 51 are issued under 5 U.S.C. 301; 28 U.S.C. 509, 510; and 42 U.S.C. 1973c.

Subpart A—General Provisions

§ 51.1 Purpose.

Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, prohibits the enforcement in any jurisdiction covered by Section 4(b) of the Act, 42 U.S.C. 1973(b), of any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on the date used to determine coverage, until either (1) a declaratory judgment is obtained from the U.S. District Court for the District of Columbia that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group, or (2) it has been submitted to the Attorney General and the Attorney General has interposed no objection within a 60-day period following submission. In order to make clear the responsibilities of the Attorney General under Section 5 and the interpretation of the Attorney General of the responsibility imposed on others under this section, the procedures in this part have been established to govern the administration of Section 5.

§ 51.2 Definitions.

As used in this part—

(a) "Act" means the Voting Rights Act of 1965, 79 Stat. 437, as amended by the Civil Rights Act of 1968, 82 Stat. 73, the Voting Rights Act Amendments of 1970, 84 Stat. 314, and the Voting Rights Act Amendments of 1975, 89 Stat. 400, 42 U.S.C. 1973 *et seq.* Section numbers, such as "Section 14(c)(3)," refer to sections of the Act.

(b) "Attorney General" means the Attorney General of the United States or the delegate of the Attorney General.

(c) "Vote" and "voting" are used, as defined in the Act, to include "all action necessary to make a vote effective in any primary, special, or general election, including but not limited to, registration, listing pursuant to this Act, or other action required by law prerequisite to voting, casting a ballot, and having such ballot counted properly and included in the appropriate totals of votes cast with respect to candidates for public or party office and propositions for which votes are received in an election." Section 14(c)(1).

(d) "Change affecting voting" means any voting qualification, prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on the date used to determine coverage under Section 4(b) and includes, *inter alia*, the examples given in § 51.12.

(e) "Political subdivision" is used, as defined in the Act, to refer to " * * * any county or parish, except that where registration for voting is not conducted under the supervision of a county or parish, the term shall include any other subdivision of a State which conducts registration for voting." Section 14(c)(2).

(f) "Covered jurisdiction" is used to refer to a State, where the determination referred to in § 51.4 has been made on a statewide basis, and to a political subdivision, where the determination has not been made on a statewide basis.

(g) "Preclearance" is used to refer to the obtaining of the declaratory judgment described in Section 5 or to the failure of the Attorney General to interpose an objection pursuant to Section 5.

(h) "Submission" is used to refer to the written presentation to the Attorney General by an appropriate official of any change affecting voting.

(i) "Submitting authority" means the jurisdiction on whose behalf a submission is made.

(j) "Language minority" or "language minority group" is used, as defined in the Act, to refer to persons who are American Indian, Asian American, Alaskan Natives, or of Spanish heritage. Section 14(c)(3). See 28 CFR Part 55, Interpretative Guidelines: Implementation of the Provisions of the Voting Rights Act Regarding Language Minority Groups.

§ 51.3 Delegation of authority.

The responsibility and authority for determinations under Section 5 have been delegated by the Attorney General to the Assistant Attorney General, Civil Rights Division. With the exception of objections and decisions following the reconsideration of objections, the Chief of the Voting Section is authorized to act on behalf of the Assistant Attorney General.

§ 51.4 Date used to determine coverage; list of covered jurisdictions.

(a) The requirement of Section 5 takes effect upon publication in the **Federal Register** of the requisite determinations

of the Director of the Census and the Attorney General under Section 4(b). These determinations are not reviewable in any court. Section 4(b).

(b) Section 5 requires the preclearance of changes affecting voting made since the date used for the determination of coverage. For each covered jurisdiction that date is one of the following: November 1, 1964; November 1, 1968; or November 1, 1972. A list of covered jurisdictions, together with the applicable date used to determine coverage, is contained in the appendix to this part. Any additional determinations of coverage will be published in the **Federal Register.**

§ 51.5 Termination of coverage.

A covered jurisdiction may terminate the application of Section 5 by obtaining the declaratory judgment described in Section 4(a) of the Act.

§ 51.6 Political subunits.

All political subunits within a covered jurisdiction (e.g., counties, cities, school districts) are subject to the requirement of Section 5.

§ 51.7 Political parties.

Certain activities of political parties are subject to the preclearance requirement of Section 5. A change affecting voting effected by a political party is subject to the preclearance requirement (1) if the change relates to a public electoral function of the party and (2) if the party is acting under authority explicitly or implicitly granted by a covered jurisdiction or political subunit subject to the preclearance requirement of Section 5. For example, changes with respect to the recruitment of party members, the conduct of political campaigns, and the drafting of party platforms are not subject to the preclearance requirement. Changes with respect to the conduct of primary elections at which party nominees, delegates to party conventions, or party officials are chosen are subject to the preclearance requirement of Section 5. Where appropriate the term "jurisdiction" (but not "covered jurisdiction") includes political parties.

§ 51.8 Computation of time.

(a) The Attorney General shall have 60 days in which to interpose an objection to a submitted change affecting voting.

(b) Except as specified in §§ 51.35, 51.37, and 51.41 the 60-day period shall commence upon receipt by the Department of Justice of a submission.

(c) The 60-day period shall mean 60 calendar days, with the day of receipt of the submission not counted. If the final day of the period should fall on a Saturday, Sunday, any day designated as a holiday by the President or Congress of the United States, or any other day that is not a day of regular business for the Department of Justice, the Attorney General shall have until the close of the next full business day in which to interpose an objection. The date of the Attorney General's response shall be the date on which it is mailed to the submitting authority.

§ 51.9 Requirement of action for declaratory judgment or submission to the Attorney General.

Section 5 requires that, prior to enforcement of any change affecting voting, the jurisdiction that has enacted or seeks to administer the change must either (1) obtain a judicial determination from the U.S. District Court for the District of Columbia that denial or abridgment of the right to vote on account of race, color, or membership in a language minority group is not the purpose and will not be the effect of the change or (2) make to the Attorney General a proper submission of the change to which no objection is interposed. It is unlawful to enforce a change affecting voting without obtaining preclearance under Section 5. The obligation to obtain such preclearance is not relieved by unlawful enforcement.

§ 51.10 Right to bring suit.

Submission to the Attorney General does not affect the right of the submitting authority to bring an action in the U.S. District Court for the District of Columbia for a declaratory judgment that the change affecting voting does not have the prohibited discriminatory purpose or effect.

§ 51.11 Scope of requirement.

Any change affecting voting, even though it appears to be minor or indirect, even though it ostensibly expands voting rights, or even though it is designed to remove the elements that caused objection by the Attorney General to a prior submitted change, must meet the Section 5 preclearance requirement.

§ 51.12 Examples of changes.

Changes affecting voting include, but are not limited to, the following examples:

(a) Any change in qualifications or eligibility for voting.

(b) Any change concerning registration, balloting, and the counting of votes and any change concerning publicity for or assistance in registration or voting.

(c) Any change with respect to the use of a language other than English in any aspect of the electoral process.

(d) Any change in the boundaries of voting precincts or in the location of polling places.

(e) Any change in the constituency of an official or the boundaries of a voting unit (e.g., through redistricting, annexation, deannexation, incorporation, reapportionment, changing to at-large elections from district elections, or changing to district elections from at-large elections).

(f) Any change in the method of determining the outcome of an election (e.g., by requiring a majority vote for election or the use of a designated post or place system).

(g) Any change affecting the eligibility of persons to become or remain candidates, to obtain a position on the ballot in primary or general elections, or to become or remain holders of elective offices.

(h) Any change in the eligibility and qualification procedures for independent candidates.

(i) Any change in the term of an elective office or an elected official or in the offices that are elective (e.g., by shortening the term of an office, changing from election to appointment or staggering the terms of offices).

(j) Any change affecting the necessity of or methods for offering issues and propositions for approval by referendum.

(k) Any change affecting the right or ability of persons to participate in political campaigns which is effected by a jurisdiction subject to the requirement of Section 5.

§ 51.13 Recurrent practices.

Where a jurisdiction implements a practice or procedure periodically or upon certain established contingencies, a change occurs (1) the first time such a practice or procedure is implemented by the jurisdiction, (2) when the manner in which such a practice or procedure is implemented by the jurisdiction is changed, or (3) when the rules for determining when such a practice or procedure will be implemented are changed. The failure of the Attorney General to object to a recurrent practice or procedure constitutes preclearance of the future use of the practice or procedure if its recurrent nature is clearly stated or described in the submission or is expressly recognized in the final response of the Attorney General on the merits of the submission.

§ 51.14 Enabling legislation and contingent or nonuniform requirements.

(a) The failure of the Attorney General to interpose an objection to legislation (1) that enables or permists political subunits to institute a voting change or (2) that requires or enables political subunits to institue a voting change upon some future event or if they satisfy certain criteria does not exempt the political subunit itself from the requirement to obtain preclearance when it seeks or is required to institute the change in question, unless implementation by the subunit is explicitly included and described in the submission of such parent legislation.

(b) Such legislation includes for example, (1) legislation authorizing counties, cities, or school districts to institute any of the changes described in § 51.12, (2) legislation requiring a political subunit that chooses a certain form of government to follow specified election procedures, (3) legislation requiring or authorizing political subunits of a certain size or a certain location to institute specified changes, (4) legislation requiring a political subunit to follow certain practices or procedures unless the subunit's charter or ordinances specify to the contrary.

§ 51.15 Distinction between changes in procedure and changes in substance.

The failure of the Attorney General to interpose an objection to a procedure for instituting a change affecting voting does not exempt the substantive change from the preclearance requirement. For example, if the procedure for the approval of an annexation is changed from city council approval to approval in a referendum, the preclearance of the new procedure does not exempt an annexation accomplished under the new procedure from the preclearance requirement.

§ 51.16 Court-ordered changes.

Changes affecting voting that are specifically ordered by a Federal court as a result of the court's equitable jurisdiction over an adversary proceeding are not subject to the preclearance requirement of Section 5. However, subsequent changes necessitated by the court order but decided upon by the jurisdiction are subject to the preclearance requirement. For example, although a court-ordered districting plan may not be subject to the preclearance requirement, changes in voting precincts and polling places made necessary by the new plan remain subject to Section 5.

§ 51.17 Request for notification concerning voting litigation.

A jurisdiction subject to the preclearance requirement of Section 5 that becomes involved in any litigation concerning voting is requested promptly to notify the Assistant Attorney General, Civil Rights Division, Department of Justice, Washington, D.C. 20530. Such notification will not be considered a submission under Section 5.

Subpart B—Procedures for Submission to the Attorney General

§ 51.18 Form of submissions.

Submissions may be made in letter or any other written form.

§ 51.19 Time of submissions.

Changes affecting voting should be submitted as soon as possible after they become final.

§ 51.20 Premature submissions.

The Attorney General will not consider on the merits (a) any proposal for a change affecting voting submitted prior to final enactment or administrative decision or (b) any proposed change which has a direct bearing on another change affecting voting which has not received Section 5 preclearance. However, with respect to a change for which approval by referendum, a State court or a Federal agency is required, the Attorney General may make a determination concerning the change prior to such approval if the change is not subject to alteration in the final approving action and if all other action necessary for approval has been taken.

§ 51.21 Party and jurisdiction responsible for making submissions.

(a) Changes affecting voting shall be submitted by the chief legal officer or other appropriate official of the submitting authority or by any other authorized person on behalf of the submitting authority. When one or more counties or other political subunits within a State will be affected, the State may make a submission on their behalf. Where a State is covered as a whole, State legislation (except legislation of local applicability) or other changes undertaken or required by the State shall be submitted by the State.

(b) A change effected by a political party (see § 51.7) may be submitted by an appropriate official of the political party.

§ 51.22 Address for submissions.

Changes affecting voting shall be mailed or delivered to the Assistant Attorney General, Civil Rights Division, Department of Justice, Washington, D.C. 20530. The envelope and first page of the submission shall be clearly marked: Submission under Section 5 of the Voting Rights Act.

§ 51.23 Withdrawal of submissions.

If while a submission is pending the submitted change is repealed, altered, or declared invalid or otherwise becomes unenforceable, the jurisdiction may withdraw the submission. In other circumstances, a jurisdiction may withdraw a submission only if it shows good cause for such withdrawal.

Subpart C—Contents of Submissions

§ 51.24 General.

(a) The source of any information contained in a submission should be identified.

(b) Where an estimate is provided in lieu of more reliable statistics, the submission should identify the name, position, and qualifications of the person responsible for the estimate and should briefly describe the basis for the estimate.

(c) Submissions should be no longer than is necessary for the presentation of the appropriate information and materials.

(d) A submitting authority that desires the Attorney General to consider any information supplied as part of an earlier submission may incorporate such information by reference by stating the date and subject matter of the earlier submission and identifying the relevant information.

(e) Where information requested by this subpart is relevant but not known or available, or is not applicable, the submission should so state.

§ 51.25 Required contents.

Each submission should contain the following information or documents to enable the Attorney General to make the required determination pursuant to Section 5 with respect to the submitted change affecting voting:

(a) A copy of any ordinance, enactment, order or regulation embodying a change affecting voting.

(b) If the change affecting voting is not readily apparent on the face of the document provided under paragraph (a) or is not embodied in a document, a clear statement of the change explaining the difference between the submitted change and the prior law or practice, or explanatory materials adequate to disclose to the Attorney General the difference between the prior and proposed situation with respect to voting.

(c) The name, title, address, and telephone number of the person making the submission.

(d) The name of the submitting authority and the name of the jurisdiction responsible for the change, if different.

(e) If the submission is not from a State or county, the name of the county and State in which the submitting authority is located.

(f) Identification of the person or body responsible for making the change and the mode of decision (e.g., act of State legislature, ordinance of city council, administrative decision by registrar).

(g) A statement identifying the statutory or other authority under which the jurisdiction undertakes the change and a description of the procedures the jurisdiction was required to follow in deciding to undertake the change.

(h) The date of adoption of the change affecting voting.

(i) The date on which the change is to take effect.

(j) A statement that the change has not yet been enforced or administered, or an explanation of why such a statement cannot be made.

(k) Where the change will affect less than the entire jurisdiction, an explanation of the scope of the change.

(l) A statement of the reasons for the change.

(m) A statement of the anticipated effect of the change on members of racial or language minority groups.

(n) A statement identifying any past or pending litigation concerning the change or related voting practices.

(o) A statement that the prior practice has been precleared (with the date) or is not subject to the preclearance requirement and a statement that the procedure for the adoption of the change has been precleared (with the date) or is not subject to the preclearance requirement, or an explanation of why such statements cannot be made.

(p) Other information that the Attorney General determines is required for an evaluation of the purpose or effect of the change. Such information may include items listed in § 51.26 and is most likely to be needed with respect to redistricting, annexations, and other complex changes. In the interest of time such information should be furnished with the initial submission relating to voting changes of this type. When such information is required, but not provided, the Attorney General shall notify the submitting authority in the manner provided in § 51.35.

§ 51.26 Supplemental contents.

Review by the Attorney General will be facilitated if the following information, where pertinent, is provided in addition to that required by § 51.25.

(a) *Demographic information.* (1) Total and voting age population of the affected area before and after the change by race and language group. If such information is contained in publications of the U.S. Bureau of the Census, reference to the appropriate volume and table is sufficient.

(2) The number of registered voters for the affected area by voting precinct before and after the change, by race and language group.

(3) Any estimates of population, by race and language group, made in connection with the adoption of the change.

(b) *Maps.* Where any change is made that revises the constitutency that elects any office or affects the boundaries of any geographic unit or units defined or employed for voting purposes (e.g., redistricting, annexation, change from district to at-large elections) or that changes voting precinct boundaries, polling place locations, or voter registration sites, maps in duplicate of the area to be affected, containing the following information:

(1) The prior and new boundaries of the voting unit or units.

(2) The prior and new boundaries of voting precincts.

(3) The location of racial and language minority groups.

(4) Any natural boundaries or geographical features that influenced the selection of boundaries of the prior or new units.

(5) The location of prior and new polling places.

(6) The location of prior and new voter registration sites.

(c) *Election returns.* Where a change may affect the electoral influence of a racial or language minority group, returns of primary and general elections conducted by or in the jurisdiction, containing the following information:

(1) The name of each candidate.

(2) The race or language group of each candidate, if known.

(3) The position sought by each candidate.

(4) The number of votes received by each candidate, by voting precinct.

(5) The outcome of each contest.

(6) The number of registered voters, by race and language group, for each voting precinct for which election returns a furnished. Information with respect to elections held during the last ten years will normally be sufficient.

(d) *Language usage.* Where a change is made affecting the use of the language of a language minority group in the electoral process, information that will enable the Attorney General to determine whether the change is consistent with the minority language requirements of the Act. The Attorney General's interpretation of the minority language requirements of the Act is contained in Interpretative Guidelines: Implementation of the Provisions of the Voting Rights Act Regarding Language Minority Groups, 28 CFR Part 55.

(e) *Publicity and participation.* For submissions involving controversial or potentially controversial changes, evidence of public notice, of the opportunity for the public to be heard, and of the opportunity for interested parties to participate in the decision to adopt the proposed change and an account of the extent to which such participation, especially by minority group menbers, in fact took place. Examples of materials demonstrating public notice or participation include:

(1) Copies of newspaper articles discussing the proposed change.

(2) Copies of public notices that describe the proposed change and invite public comment or participation in hearings or that announce submission to and invite comments for the consideration of the Attorney General and statements regarding where such public notices appeared (e.g., newspaper, radio, or television, posted in public buildings, sent to identified individuals or groups).

(3) Minutes or accounts of public hearings concerning the proposed change.

(4) Statements, speeches, and other public communications concerning the proposed change.

(5) Copies of comments from the general public.

(6) Excerpts from legislative journals containing discussion of a submitted enactment, or other materials revealing its legislative purpose.

(f) *Minority group contacts.* For submissions from jurisdictions having a significant minority population, the names, addresses, telephone numbers, and organizational affiliation (if any) of racial or language minority group members who can be expected to be familiar with the proposed change or who have been active in the political process.

Subpart D—Communications From Individuals and Groups

§ 51.27 Communications concerning voting changes.

Any individual or group may send to the Attorney General information concerning a change affecting voting in a jurisdiction to which Section 5 applies.

(a) Communications may be in the form of a letter stating the name, address, and telephone number of the individual or group, describing the alleged change affecting voting and setting forth evidence regarding whether the change has or does not have a discriminatory purpose or effect, or simply bringing to the attention of the Attorney General the fact that a voting change has occurred.

(b) The communications should be mailed to the Assistant Attorney General, Civil Rights Division, Department of Justice, Washington, D.C. 20530. The envelope and first page should be marked: Comment under Section 5 of the Voting Rights Act.

(c) Comments by individuals or groups concerning any change affecting voting may be sent at any time; however, individuals and groups are encouraged to comment as soon as they learn of the change.

(d) Department of Justice officials and employees shall comply with the request of any individual that his or her identity not be disclosed to any person outside the Department, to the extent permitted by the Freedom of Information Act, 5 U.S.C. 552. In addition, whenever it appears to the Attorney General that disclosure of the identity of an individual who provided information regarding a change affecting voting "would constitute a clearly unwarranted invasion of personal privacy" under 5 U.S.C. 552(b)(6), the identity of the individual shall not be disclosed to any person outside the Department.

(e) When an individual or group desires the Attorney General to consider information that was supplied in connection with an earlier submission, it is not necessary to resubmit the information but merely to identify the earlier submission and the relevant information.

§ 51.28 Action on communications from individuals or groups.

(a) If there has already been a submission received of the change affecting voting brought to the attention of the Attorney General by an individual or group, any evidence from the individual or group shall be considered along with the materials submitted and materials resulting from any investigation.

(b) If such a submission has not been received, the Attorney General shall advise the appropriate jurisdiction of the requirement of Section 5 with respect to the change in question.

§ 51.29 Communications concerning voting suits.

Individuals and groups are urged to notify the Assistant Attorney General Civil Rights Division, of litigation concerning voting in jurisdictions subject to the requirement of Section 5.

§ 51.30 Establishment and maintenance of registry of interested individuals and groups.

The Attorney General shall establish and maintain a Registry of Interested Individuals and Groups, which shall contain the name and address of any individual or group that wishes to receive notice of Section 5 submissions. Information relating to this registry and to the requirements of the Privacy Act of 1974, 5 U.S.C. 552a *et seq.*, is contained in Justice/CRT-004, 43 FR 44676 (Sept. 28, 1978).

Subpart E—Processing of Submissions

§ 51.31 Notice to registrants concerning submissions.

Weekly notice of submissions that have been received will be given to the individuals and groups who have registered for this purpose under § 51.30.

§ 51.32 Expedited consideration.

(a) When a submitting authority is required under State law or local ordinance or otherwise finds it necessary to implement a change within the 60-day period following submission, it may request that the submission be given expedited consideration. The submission should explain why such consideration is needed and provide the date by which a determination is required.

(b) Jurisdictions should endeavor to plan for changes in advance so that expedited consideration will not be required and should not routinely request such consideration. When a submitting authority demonstrates good cause for expedited consideration the Attorney General will attempt to make a decision by the date requested. However, the Attorney General cannot guarantee that such consideration can be given.

(c) Notice of the request for expedited consideration will be given to interested parties registered under § 51.30.

§ 51.33 Disposition of inappropriate submissions.

The Attorney General will make no response on the merits with respect to an inappropriate submission but will notify the submitting authority of the inappropriateness of the submission. Such notification will be made as promptly as possible and no later than the 60th day following receipt and will include an explanation of the inappropriateness of the submission. Inappropriate submissions include the submission of changes that do not affect voting (see, e.g., § 51.12), the submission of standards, practices, or procedures that have not been changed (see, e.g., §§ 51.4, 51.13), the submission of changes that affect voting but are not subject to the requirement of Section 5 (see, e.g., § 51.16), premature submissions (see § 51.20), and submissions by jurisdictions not subject to the requirement of Section 5 (see §§ 51.4, 51.5).

§ 51.34 Release of information concerning submissions.

The Attorney General shall have the discretion to call to the attention of the submitting authority or any interested individual or group information or comments related to a submission.

§ 51.35 Obtaining information from the submitting authority.

(a) If a submission does not satisfy the requirements of § 51.25, the Attorney General shall request such further information as is necessary from the submitting authority and advise the submitting authority that the 60-day period will not commence until such information is received by the Department of Justice. The request shall be made as promptly as possible after receipt of the original inadequate submission and no later than the 60th day following its receipt.

(b) A copy of the request shall be sent to any party who has commented on the submission or has requested notice of the Attorney General's action thereon.

(c) If, after a request for further information is made pursuant to this section, the information requested becomes available to the Attorney General from a source other than the submitting authority, the Attorney General shall promptly notify the submitting authority, and the 60-day period will commence upon the date of such notification.

(d) Notice of the request for and receipt of further information will be given to interested parties registered under § 51.30.

§ 51.36 Obtaining information from others.

(a) The Attorney General may at any time request relevant information from governmental jurisdictions and from interested groups and individuals and may conduct any investigation or other inquiry that is deemed appropriate in making a determination.

(b) If a submission does not contain evidence of adequate notice to the

public, and the Attorney General believes that such notice is essential to a determination, steps will be taken by the Attorney General to provide public notice sufficient to invite interested or affected persons to provide evidence as to the presence or absence of a discriminatory purpose or effect. The submitting authority shall be advised when any such steps are taken.

§ 51.37 Supplementary submissions.

When a submitting authority provides documents and information materially supplementing a submission (or a request for reconsideration of an objection) or, before the expiration of the 60-day period, makes a second submission such that the two submissions cannot be independently considered, the 60-day period for the original submission will be calculated from the receipt of the supplementary information or the second submission.

§ 51.38 Failure to complete submissions.

If after 60 days the submitting authority has not provided further information in response to a request made pursuant to § 51.35(a), the Attorney General, absent extenuating circumstances and consistent with the burden of proof under Section 5 described in § 51.39(e), may object to the change, giving notice as specified in § 51.43.

§ 51.39 Standards for determination by the Attorney General.

(a) Section 5 provides for submission to the Attorney General as an alternative to the seeking of a declaratory judgment from the U.S. District Court for the District of Columbia. Therefore, the Attorney General shall make the same determination that would be made by the court in an action for a declaratory judgment under Section 5: whether the submitted change has the purpose or will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group.

(b) Guided by the relevant judicial decisions, the Attorney General shall base a determination on a review of material presented by the submitting authority, relevant information provided by individuals or groups, and the results of any investigation conducted by the Department of Justice.

(c) If the Attorney General determines that a submitted change does not have the prohibited purpose or effect, no objection shall be interposed to the change.

(d) If the Attorney General determines that a submitted change has the prohibited purpose or effect, and objection shall be interposed to the change.

(e) The burden of proof on a submitting authority when it submits a change to the Attorney General is the same as it would be if the change was the subject of a declaratory judgment action in the U.S. District Court for the District of Columbia. Therefore, if the evidence as to the purpose or effect of a change is conflicting and the Attorney General is unable to determine that the submitted change does not have the prohibited purpose or effect, an objection shall be interposed to the change.

§ 51.40 Notification of decision not to object.

(a) The Attorney General shall within the 60-day period allowed notify the submitting authority of a decision to interpose no objection to a submitted change affecting voting.

(b) The notification shall state that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change.

(c) A copy of the notification shall be sent to any party who has commented on the submission or has requested notice of the Attorney General's action thereon.

§ 51.41 Failure of the Attorney General to respond.

It is the practice and intention of the Attorney General to respond to each submission within the 60-day period. However, the failure of the Attorney General to make a written response within the 60-day period constitutes preclearance of the submitted change, provided the submission is addressed as specified in § 51.22 and is appropriate for a response on the merits as described in § 51.33.

§ 51.42 Reexamination of decision not to object.

After notification to the submitting authority of a decision to interpose no objection to a submitted change affecting voting has been given, the Attorney General may reexamine the submission if, prior to the expiration of the 60-day period, information indicating the possibility of the prohibited discriminatory purpose or effect is received. In this event, the Attorney General may interpose an objection provisionally and advise the submitting authority that examination of the change in light of the newly raised issues will continue and that a final decision will be rendered as soon as possible.

§ 51.43 Notification of decision to object.

(a) The Attorney General shall within the 60-day period allowed notify the submitting authority of a decision to interpose an objection. The reasons for the decision shall be stated.

(b) The submitting authority shall be advised that the Attorney General will reconsider an objection upon a request by the submitting authority.

(c) The submitting authority shall be advised further that notwithstanding the objection it may institute an action in the U.S. District Court for the District of Columbia for a declaratory judgment that the change objected to by the Attorney General does not have the prohibited discriminatory purpose or effect.

(d) A copy of the notification shall be sent to any party who has commented on the submission or has requested notice of the Attorney General's action thereon.

(e) Notice of the decision to interpose an objection will be given to interested parties registered under § 51.30.

§ 51.44 Request for reconsideration.

(a) The submitting authority may at any time request the Attorney General to reconsider an objection.

(b) Requests may be in letter or any other written form and should contain relevant information or legal argument.

(c) Notice of the request will be given to any party who commented on the submission or requested notice of the Attorney General's action thereon and to interested parties registered under § 51.30. In appropriate cases the Attorney General may request the submitting authority to give local public notice of the request.

§ 51.45 Reconsideration of objection at the insistance of the Attorney General.

(a) Where there appears to have been a substantial change in operative fact or relevant law, an objection may be reconsidered, if it is deemed appropriate, at the insistance of the Attorney General.

(b) Notice of such a decision to reconsider shall be given to the submitting authority, to any party who commented on the submission or requested notice of the Attorney General's action thereon, and to interested parties registered under § 51.30, and the Attorney General shall decide whether to withdraw or to continue the objection only after such persons have had a reasonable opportunity to comment.

§ 51.46 Conference.

(a) A submitting authority that has requested reconsideration of an

objection pursuant to § 51.44 may request a conference to produce information or legal argument in support of reconsideration.

(b) Such a conference shall be held at a location determined by the Attorney General and shall be conducted in an informal manner.

(c) When a submitting authority requests such a conference, individuals or groups that commented on the change prior to the Attorney General's objection or that seek to participate in response to any notice of a request for reconsideration shall be notified and given the opportunity to confer.

(d) The Attorney General shall have the discretion to hold separate meetings to confer with the submitting authority and other interested groups or individuals.

(e) Such conferences will be open to the public or to the press only at the discretion of the Attorney General and with the agreement of the participating parties.

§ 51.47 Decision after reconsideration.

(a) The Attorney General shall within the 60-day period following the receipt of a reconsideration request or following notice given under § 51.45(b) notify the submitting authority of the decision to continue or withdraw the objection, provided that the Attorney General shall have at least 15 days following any conference that is held in which to decide. The reasons for the decision shall be stated.

(b) The objection shall be withdrawn if the Attorney General is satisfied that the change does not have the purpose and will not have the effect of discriminating on account of race, color, or membership in a language minority group.

(c) If the objection is not withdrawn, the submitting authority shall be advised that notwithstanding the objection it may institute an action in the U.S. District Court for the District of Columbia for a declaratory judgment that the change objected to by the Attorney General does not have the prohibited purpose or effect.

(d) A copy of the notification shall be sent to any party who has commented on the submission or reconsideration or has requested notice of the Attorney General's action thereon.

(e) Notice of the decision after reconsideration will be given to interested parties registered under § 51.30.

§ 51.48 Absence of judicial review.

The decision of the Attorney General not to object to a submitted change or to withdraw an objection is not reviewable. However, Section 5 states: "Neither an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure."

§ 51.49 Records concerning submissions.

(a) Section 5 files: The Attorney General shall maintain a Section 5 file for each submission, containing the submission, related written materials, correspondence, memoranda, investigative reports, notations concerning conferences with the submitting authority or any interested individual or group, and copies of any letters from the Attorney General concerning the submission.

(b) Objection files: Brief summaries regarding each submission and the general findings of the Department of Justice investigation and decision concerning it will be prepared when a decision to interpose, continue, or withdraw an objection is made. Files of these summaries, arranged by jurisdiction and by the date upon which such decision is made, will be maintained.

(c) Computer file: Records of all submissions and of their dispositions by the Attorney General shall be electronically stored and periodically retrieved in the form of computer printouts.

(d) The contents of the above-described files shall be available for inspection and copying by the public during normal business hours at the Civil Rights Division, Department of Justice, Washington, D.C. Materials that are exempt from inspection under the Freedom of Information Act, 5 U.S.C. 552(b), may be withheld at the discretion of the Attorney General. Communications from individuals who have requested confidentiality or with respect to whom the Attorney General has determined that confidentiality is appropriate under § 51.27(d) shall be available only as provided by § 51.27(d). Applicable fees, if any, for the copying of the contents of these files are contained in the Department of Justice regulations implementing the Freedom of Information Act, 28 CFR 16.9.

Subpart F—Sanctions

§ 51.50 Enforcement by the Attorney General.

(a) The Attorney General is authorized to bring civil actions for appropriate relief against violations of the Act's provisions, including Section 5. See Section 12(d).

(b) Certain violations may be subject to criminal sanctions. See Sections 12 (a) and (c).

§ 51.51 Enforcement by private parties.

Private parties have standing to enforce Section 5.

Subpart G—Petition To Change Procedures

§ 51.52 Who may petition.

Any jurisdiction or interested individual or group may petition to have these procedural guidelines amended.

§ 51.53 Form of petition.

A petition under this subpart may be made by informal letter and shall state the name, address, and telephone number of the petitioner, the change requested, and the reasons for the change.

§ 51.54 Disposition of petition.

The Attorney General shall promptly consider and dispose of a petition under this subpart and give notice of the disposition, accompanied by a simple statement of the reasons,to the petitioner.

Appendix—Jurisdictions Covered Under Section 4(b) of the Voting Rights Act, as Amended

The preclearance requirement of Section 5 of the Voting Rights Act, as amended, applies in the following jurisdictions. The date in parentheses is the date that was used to determine coverage for the jurisdiction it follows.

Alabama (statewide) (Nov. 1, 1964)
Alaska (statewide) (Nov. 1, 1972)
Arizona (statewide) (Nov. 1, 1972)

(The following Arizona counties were covered individually through the use of earlier dates.)

- Apache County (Nov. 1, 1968)
- Cochise County (Nov. 1, 1968)
- Coconino County (Nov. 1, 1968)
- Mohave County (Nov. 1, 1968)
- Navajo County (Nov. 1, 1968)
- Pima County (Nov. 1, 1968)
- Pinal County (Nov. 1, 1968)
- Santa Cruz County (Nov. 1, 1968)
- Yuma County (Nov. 1, 1964

California (the following counties only)
- Kings County (Nov. 1, 1972)
- Merced County (Nov. 1, 1972)
- Monterey County (Nov. 1, 1968)
- Yuba County (Nov. 1, 1968)

Colorado (the following county only)
- El Paso (Nov. 1, 1972)

Connecticut (the following towns only)
- Groton Town (Nov. 1, 1968)
- Mansfield Town (Nov. 1, 1968)
- Southbury Town (Nov. 1, 1968)

Florida (the following counties only)
- Collier County (Nov. 1, 1972)
- Hardee County (Nov. 1, 1972)
- Hendry County (Nov. 1, 1972)

Hillsborough County (Nov. 1, 1972)
Monroe County (Nov. 1, 1972)
Georgia (statewide) (Nov. 1, 1964)
Hawaii (the following county only)
Honolulu County (Nov. 1, 1964)
Idaho (the following county only)
Elmore County (Nov. 1, 1968)
Louisiana (statewide) (Nov. 1, 1964)
Massachusetts (the following towns only)
Amherst Town (Nov. 1, 1968)
Ayer Town (Nov. 1, 1968)
Belchertown (Nov. 1, 1968)
Bourne Town (Nov. 1, 1968)
Harvard Town (Nov. 1, 1968)
Sandwich Town (Nov. 1, 1968)
Shirley Town (Nov. 1, 1968)
Sunderland Town (Nov. 1, 1968)
Wrentham Town (Nov. 1, 1968)
Michigan (the following townships only)
Buena Vista Township (Saginaw County) (Nov. 1, 1972)
Clyde Township (Allegan County) (Nov. 1, 1972)
Mississippi (statewide) (Nov. 1, 1964)
New Hampshire (the following political subdivisions only)
Antrim Town (Nov. 1, 1968)
Benton Town (Nov. 1, 1968)
Boscawen Town (Nov. 1, 1968)
Millsfield Township (Nov. 1, 1968)
Newington Town (Nov. 1, 1968)
Pinkhams Grant (Nov. 1, 1968)
Rindge Town (Nov. 1, 1968)
Stewartstown (Nov. 1, 1968)
Stratford Town (Nov. 1, 1968)
Unity Town (Nov. 1, 1968)
New York (the following counties only)
Bronx County (Nov. 1, 1968)
Kings County (Nov. 1, 1968)
New York County (Nov. 1, 1968)
North Carolina (the following counties only)
Anson County (Nov. 1, 1964)
Beaufort County (Nov. 1, 1964)
Bertie County (Nov. 1, 1964)
Bladen County (Nov. 1, 1964)
Camden County (Nov. 1, 1964)
Caswell County (Nov. 1, 1964)
Chowan County (Nov. 1, 1964)
Cleveland County (Nov. 1, 1964)
Graven County (Nov. 1, 1964)
Cumberland County (Nov. 1, 1964)
Edgecombe County (Nov. 1, 1964)
Franklin County (Nov. 1, 1964)
Gaston County (Nov. 1, 1964)
Gates County (Nov. 1, 1964)
Granville County (Nov. 1, 1964)
Greene County (Nov. 1, 1964)
Guilford County (Nov. 1, 1964)
Halifax County (Nov. 1, 1964)
Harnett County (Nov. 1, 1964)
Hertford County (Nov. 1, 1964)
Hoke County (Nov. 1, 1964)
Jackson County (Nov. 1, 1972)
Lee County (Nov. 1, 1964)
Lenoir County (Nov. 1, 1964)
Martin County (Nov. 1, 1964)
Nash County (Nov. 1, 1964)
Northampton County (Nov. 1, 1964)
Onslow County (Nov. 1, 1964)
Pasquotank County (Nov. 1, 1964)
Perquimans County (Nov. 1, 1964)
Person County (Nov. 1, 1964)
Pitt County (Nov. 1, 1964)
Robeson County (Nov. 1, 1964)
Rockingham County (Nov. 1, 1964)
Scotland County (Nov. 1, 1964)
Union County (Nov. 1, 1964)
Vance County (Nov. 1, 1964)
Washington County (Nov. 1, 1964)
Wayne County (Nov. 1, 1964)
Wilson County (Nov. 1, 1964)
South Carolina (statewide) (Nov. 1, 1964)
South Dakota (the following counties only)
Shannon County (Nov. 1, 1972)
Todd County (Nov. 1, 1972)
Texas (statewide) (Nov. 1, 1972)
Virginia (statewide) (Nov. 1, 1964)
Wyoming (the following county only)
Campbell County (Nov. 1, 1968)

[FR Doc. 81-125 Filed 1-2-81; 8:45 am]
BILLING CODE 4410-01-M

DEPARTMENT OF DEFENSE

National Security Agency/Central Security Service

32 CFR Part 286f

Obtaining Information From Financial Institutions

AGENCY: National Security Agency/Central Security Service, DoD.

ACTION: Final rule.

SUMMARY: This rule establishes National Security Agency (NSA) policies and procedures for obtaining information from financial institutions in accordance with Pub. L. 95-630, Title XI, the Right to Financial Privacy Act of 1978. This rule provides for the access to financial records of individuals from financial institutions when such records are relevant to a final determination with respect to employment, continued assignment or detail, clearance, access or other related actions.

EFFECTIVE DATE: January 5, 1981.

FOR FURTHER INFORMATION CONTACT: LCDR M. E. Bowman, JAGC, USN, Office of the General Counsel, Fort George C. Meade, MD 20755, telephone 301-688-6054.

SUPPLEMENTARY INFORMATION: In FR Doc. 80-32207, appearing in the **Federal Register** (45 FR 68685) on October 16, 1980, the National Security Agency published as a proposed rule their policies and procedures for obtaining information from financial institutions in accordance with the Financial Privacy Act of 1978. No comments were received on the proposed rule and it is adopted as proposed.

Accordingly, 32 CFR is amended by adding a new Part 286f that reads as follows:

PART 286f—OBTAINING INFORMATION FROM FINANCIAL INSTITUTIONS

Authority: Title XI, Pub. L. 95-630, 92 Stat. 3697 (12 U.S.C. 3401 et seq.).

§ 286f.1 Purpose and applicability.

(a) This part establishes procedures for the National Security Agency/Central Security Service (NSA/CSS) to obtain records from financial institutions and implements 12 U.S.C. 3401-3422, 92 Stat. 3697 (Pub. L. 95-630).

(b) The provisions of this part apply only to financial records maintained by any office of a bank, savings bank, credit card issuer, industrial loan company, trust company, savings and loan, building and loan, homestead association (including cooperative banks), credit union, or consumer finance institution that is located in any district, state or territory of the United States.

(c) All NSA/CSS elements are subject to the provisions of this part.

§ 286f.2 Policy.

(a) Financial records shall be sought regarding any individual who is an applicant for employment with the NSA/CSS or who has a current security clearance and/or access granted by the NSA/CSS, and regarding any other individual assigned or detailed to the NSA/CSS when such records are relevant to a final determination with respect to employment, continued assignment or detail, clearance, access or other related actions.

(b) The NSA/CSS shall seek the consent of an individual when obtaining that individual's financial records from a financial institution. Refusal of an individual to provide such consent may be grounds for denying access to all Sensitive Compartmented Information (SCI) and to other classified information in NSA/CSS custody if the circumstances of such refusal or the nature of the records sought prevent the NSA/CSS from determining that such access is or would be clearly consistent with the national security.

(c) Any actions relative to obtaining financial records without an individual's consent shall be conducted in accordance with the provisions of DoD Directive 5400.12, found in 32 CFR Part 294, as appropriate.

§ 286f.3 Procedures.

(a) Representatives of NSA/CSS Security shall use a consent form as set out in Enclosure 2 of CFR Part 294, relative to obtaining financial records. A copy of the consent form shall be made a part of the individual's NSA/CSS security file, and an additional record copy of the form kept be security for the

purpose of an annual report. A certification form as set out in Enclosure 4 of 32 CFR Part 294 shall be provided to financial institutions by security representatives along with the consent form certifying compliance with 12 U.S.C. § 3401 *et seq.*

(b) Procedures used by security regarding matters referenced in paragraph (a) of this section, shall be established on a case-by-case basis and shall be in consonance with the appropriate provisions of 32 CFR Part 294.

(c) Financial records obtained under 12 U.S.C. § 3401 *et seq.* shall be marked: "This record was obtained pursuant to the Right to Financial Privacy Act of 1978, 12 U.S.C. § 3401 *et seq.*, and may not be transferred to another federal agency or department without prior compliance with the transferring requirements of 12 U.S.C. 3412." Except in accordance with paragraph (e) of this section such records shall not be transferred to another agency or department outside the Department of Defense unless the Chief, Security, or delegate certifies in writing that there is reason to believe that the records are relevant to a legitimate law enforcement inquiry within the jurisdiction of the receiving agency or department. Such certificates shall be maintained in the appropriate NSA/CSS security file with copies of the released records.

(d) Unless alternate procedures are involved as referenced in paragraph (b) of this section, when financial records have been transferred to another agency, a security representative shall, within 14 days, personally serve or mail to the individual whose records have been transferred, at his or her last known address, a copy of the certificate required by paragraph (c) of this section, and the following notice: "Copies of or information contained in your financial records lawfully in possession of the NSA/CSS have been furnished to (name of agency) pursuant to the Right to Financial Privacy Act of 1978 for the following purpose(s): (state reason). If you believe that this transfer has not been made to further a legitimate law enforcement inquiry, you may have legal rights under the Financial Privacy Act of 1978 or the Privacy Act of 1974."

(e) In cases where another federal agency authorized to conduct foreign intelligence or foreign counterintelligence activities requests a financial record held by the NSA/CSS, and makes such a request for the purpose of conducting that Agency's protective functions, the NSA/CSS may release the information without notifying the individual to whom the financial record pertains.

§ 286f.4 Reports.

Security shall compile an annual report setting forth the data required in the Right to Financial Privacy Act of 1978. The report shall be submitted to the Defense Privacy Board, Office of the Deputy Assistant Secretary of Defense (Administration), by 15 February annually, and shall be assigned the Report Control Symbol DD–COMP(A) of 1538.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington, Headquarters Services, Department of Defense.

December 22, 1980.

[FR Doc. 81-162 Filed 1-2-81; 8:45 am]

BILLING CODE 3810-70-M

Defense Investigative Service

32 CFR Part 298a

Defense Investigative Service, Privacy Act of 1974

AGENCY: Defense Investigative Service (DIS).

ACTION: Final rule.

SUMMARY: The Defense Investigative Service is deleting the rules establishing the general exemption (5 U.S.C. 552a(j)(2)) for three systems of records maintained by that agency.

DATES: This action shall be effective February 4, 1981.

FOR FURTHER INFORMATION CONTACT: Lt. Col. Dale L. Hartig, Office of Information and Legal Affairs, Defense Investigative Service, 1900 Half Street, SW, Washington, DC 20324. Telephone: (Area Code: 202) 693–1740.

SUPPLEMENTAL INFORMATION: The Defense Investigative Service is deleting the rules permitting the general exemption under 5 U.S.C. 552a(j)(2) to be claimed for three systems of records. These systems will no longer be exempt from any portion of the Privacy Act under the general exemption.

§ 298a.14 [Amended]

Accordingly, § 298a.14 of 32 CFR is amended by removing and reserving paragraph (c) and by removing paragraphs (g) and (h).

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

December 24, 1980.

[FR Doc. 81-84 Filed 1-2-81; 8:45 am]

BILLING CODE 3810-70-M

DEPARTMENT OF EDUCATION

Office of the Under Secretary

34 CFR Part 78

Education Appeal Board

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary of Education amends the regulations for the Education Appeal Board by designating certain proceedings, such as appeals from final audit determinations in discretionary grant programs, to be heard by the Education Appeal Board. Included in this designation are audit appeals in discretionary grant programs previously administered by the Office of Education (OE) which were pending before the Department of Health, Education and Welfare (HEW) Grant Appeals Board, and its successor, the Department of Health and Human Services (HHS) Grant Appeals Board.

EFFECTIVE DATE: These regulations are expected to take effect 45 days after they are transmitted to Congress. Regulations are usually transmitted to Congress several days before they are published in the **Federal Register**. The effective date is changed by statute if Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Dr. David S. Pollen, Chairman, Education Appeal Board, U.S. Department of Education, 400 Maryland Ave. S.W., Room 2141 (FOB–6), Washington, D.C. 20202. Telephone (202) 245–7835.

SUPPLEMENTARY INFORMATION:

A. Designation of Jurisdiction

Section 451 of the General Education Provisions Act, 20 U.S.C. 1234, empowers the Education Appeal Board (EAB) to hear certain specified proceedings, including appeals from final audit determinations in State-administered programs and from withholding, termination and cease and desist actions. It also gives the EAB the authority to conduct other proceedings designated by the Secretary of Education. The Secretary of Education through these final regulations is designating to the EAB review of appeals from final audit determinations in discretionary grant programs administered by the Department of Education. In addition, the Secretary of Education is designating to the EAB review of appeals from determinations,

in any program administered by the Department of Education, that—

(1) Void a grant;

(2) Disapprove a recipient's written request for permission to incur an expenditure during the term of a grant; or

(3) Are from an appropriate Department of Education official, with respect to cost allocation plans negotiated with State and local units of government, and indirect cost rates, computer, fringe benefit, and other special rates negotiated with colleges and universities, State and local government agencies, hospitals, and other nonprofit institutions.

In order to avoid the possibility of conflicting decisions, the Board will not have jurisdiction to review an issue regarding the appropriateness of cost allocation plans and other rates described in (3) above where the appellant has raised the same issue before another agency's review board on appeal of a determination made under a contract with the Department. These matters now may be appealed to the General Services Contract Appeal Board, and formerly were appealable to the Armed Services Board of Contract Appeals.

The following amendments to the EAB regulations give the Board jurisdiction of those proceedings designated to it by the Secretary of Education. This designation includes review of matters previously appealed to the HEW Grant Appeals Board, and which were pending before that Board or that Board's successor, the HHS Grant Appeals Board. Those pending appeals include—

1. Appeal of Alaska Federation of Natives, Inc., Docket No. 78-1;
2. Appeal of D-Q University, Docket No. 78-10;
3. Appeal of Cecil Community College, Docket No. 78-12;
4. Appeal of Southern University, Docket No. 78-63;
5. Appeal of University of the District of Columbia, Docket No. 78-64;
6. Appeal of Mississippi State University, Docket No. 76-141;
7. Appeal of University of Oklahoma, Docket No. 78-149;
8. Appeal of University of Northern Colorado, Docket No. 78-149;
9. Appeal of Snead State Junior College; Docket No. 79-19;
10. Appeal of Lummi Indian Council, Docket No. 79-24;
11. Appeal of University of Northern Colorado, Docket No. 79-65;
12. Appeal of Research Foundation of the City University of New York, Docket No. 79-91;
13. Appeal of Alaska Federation of Natives, Inc., Docket No. 79-95;
14. Appeal of Wake County Opportunities, Inc., Docket No. 79-240;
15. Appeal of American Indian Center of Dallas, Docket No. 80-67;
16. Appeal of Standing Rock Community College, Docket No. 80-91;
17. Appeal of Indian Centers, Inc., Docket No. 80-93;
18. Appeal of Ya-Ka-Ama Indian Education and Development, Docket No. 80-100;
19. Appeal of Mississippi Board of Chocktaw Indians, Docket No. 80-104.

These amendments also clarify several technical matters relating to the jurisdiction of the Education Appeal Board set forth in the Board's final regulations published on April 3, 1980 (45 FR 27634) as 45 CFR Part 100d, redesignated as 34 CFR Part 78 (45 FR 77368). The definition of "Applicable Program" contained in § 78.3 of Subpart A (Definitions) has been amended to reflect the exclusion of additional student assistance programs, that were created by the Education Amendments of 1980, from the EAB's jurisdiction to conduct withholding or termination hearings. The exclusions are required by Section 453 of the General Education Provisions Act. The definition of "Applicable Program" also has been amended to reflect the Board's jurisdiction under Section 454 of the General Education Provisions Act to conduct cease and desist actions that relate to student assistance programs authorized by Title IV and governed by Section 497 of the Higher Education Act of 1965, as amended.

In addition, § 78.2 of Subpart A (Jurisdiction) permits the Board to conduct cease and desist proceedings that involve a complaint issued in connection with any applicable program. While Section 454 of the General Education Provisions Act gives the Board specific authority to conduct cease and desist proceedings that involve complaints issued only to a State or a local educational agency, the Secretary, by virtue of Section 451 of the General Provisions Act, designated to the Board jurisdiction to conduct proceedings involving complaints issued to any recipient of an applicable program. An appropriate citation of legal authority has been added to all provisions of the regulations contained in Subpart D—Cease and Desist. Where appropriate, the citations of legal authority following other provisions of the Education Appeal Board's regulations have also been amended in order to reflect the designation of jurisdiction announced in these final regulations.

Section 455 of the General Education Provisions Act authorizes judicial review for recipients who would be adversely affected by final decisions of the Secretary of Education that result from proceedings before the Education Appeal Board. Section 455 however, expressly applies only to decisions that result from proceedings before the EAB that are specifically authorized by Sections 452–454 of the General Education Provisions Act. It does not apply to any decisions that result from proceedings designated to the EAB by the Secretary of Education. These final regulations also incorporate this statutory limitation into the regulations of the Education Appeal Board.

B. Applicable Procedures

The EAB's review of audit determinations in discretionary grant programs will be governed by the EAB regulations for final audit determinations in 34 CFR Part 78, Subpart B and by the general rules for practice and procedure in 34 CFR Part 78, Subpart E. The EAB's review of the other determinations designated in these final regulations will be governed by the EAB regulations for withholding and termination in 34 CFR Part 78, Subpart C as amended by these amendments and by the general rules for practice and procedure in 34 CFR Part 78, Subpart E.

The applicable procedures for seeking review are in the final regulations of the Education Appeal Board, published on April 3, 1980 (45 FR 22634). A recipient who failed to request review from the HEW Grant Appeals Board and whose time to do so expired before May 4, 1980, the date on which the Department of Education was created, may not file an appeal with the EAB.

A recipient who previously sought review from the HEW Grant Appeals Board, and whose case is still pending, does not have to file a new application for review with the Education Appeal Board. All documents accepted for consideration by the Grant Appeals Board will be accepted for consideration by the Education Appeal Board. The Education Appeal Board will notify the parties in these cases of further proceedings.

A recipient who was unable to request review by the HEW Grant Appeals Board because the time for filing an appeal expired on or after May 4, 1980, may seek review from the Education Appeal Board by filing an appropriate application for review within 30 days of the effective date of these regulations.

Since these amendments to the regulations merely designate a forum for review of certain determinations, they are procedural and not subject to the requirement for public comment contained in the Administrative Procedure Act.

(5 U.S.C. 553)

C. Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

(Catalog of Federal Domestic Assistance Number not applicable)

Dated: December 24, 1980.

Shirley M. Hufstedler,

Secretary of Education.

The Secretary amends Part 78 of Title 34 of the Code of Federal Regulations in the following respects: 1. Section 78.2 is amended by revising paragraphs (a)(1); redesignating paragraph (a)(4) as paragraph (a)(5) and adding a new paragraph (a)(4) to read as follows:

§ 78.2 Jurisdiction.

(a) The Board has jurisdiction to—

(1) Review final audit determinations concerning an applicable program (see § 78.3 (Definitions) for the definition of an applicable program)

* * * * *

(4) Conduct hearings, in connection with an applicable program, which involve—

(i) A determination that a grant is void;

(ii) The disapproval of a recipient's written request for permission to incur an expenditure during the term of a grant; or

(iii) A determination from an authorized ED official with respect to cost allocation plans negotiated with State and local units of government, and indirect cost rates, computer, fringe benefit, and other special rates negotiated with colleges and universities, State and local government agencies, hospitals, and other nonprofit institutions (except for determinations which are the subject of an appeal filed by the grantee to the Grant Services Contract Appeal Board or to the Armed Services Board of Contract Appeals regarding a contract with the Department); and

(5) Conduct other proceedings as designated by the Secretary of Education (the Secretary) in the **Federal Register.**

* * * * *

(20 U.S.C. 1234(a) 2832(b))

2. Section 78.3 is amended by revising the definitions of "Appellant" and "Applicable Program" to read as follows:

§ 78.3 Definitions.

"Appellant" means an SEA or other recipient that requests—

(a) A review of a final audit determination;

(b) A withholding or termination hearing; or

(c) A hearing regarding a matter described in § 78.2(a)(4) of these regulations (Jurisdiction).

"Applicable program" means—

(a) In the case of any proceeding listed in § 78.2(a) (Jurisdiction) except a cease and desist proceeding (§ 78.2(a)(3)), any program administered by an authorized ED official except the following student assistance programs authorized by Title IV and governed by Section 497 A of the Higher Education Act of 1965, as amended:

(1) National Direct Student Loan Program.

(2) College Work-Study Program.

(3) Pell Grant Program, formerly known as the Basic Educational Opportunity Grant Program.

(4) Supplemental Educational Opportunity Grant Program.

(5) Guaranteed Student Loan Program.

(6) Parent Loans for Undergraduate Students Program.

(b) In the case of a cease and desist proceedings described in § 78.2(a)(3) (Jurisdiction), any program administered by an authorized ED official.

* * * * *

(20 U.S.C. 1234(a) and (e))

3. Section 78.6 is amended by redesignating paragraph (a)(4) as paragraph (a)(7); and adding new paragraphs (a)(4), (5), and (6) to read as follows:

§ 78.6 Eligibility for review.

(a) Review under these regulations is available to a recipient that receives a written notice from an authorized ED official of—

* * * * *

(4) A determination that a grant is void;

(5) The disapproval of a recipient's written request for permission to incur an expenditure during the term of a grant;

(6) A determination with respect to cost allocation plans negotiated with State and local units of government, and indirect cost rates, computer, fringe benefit, and other special rates negotiated with colleges and universities, State and local government agencies, hospitals, and other nonprofit institutions (except for determinations which are the subject of an appeal filed by the grantee to the Grant Services Contract Appeal Board or to the Armed Services Board of Contract Appeals regarding a contract with the Department); or

(7) Any other proceeding designated by the Secretary.

* * * * *

(20 U.S.C. 1234(a) and (e), 2832(b))

4. Section 78.11 is amended by revising paragraph (a) and the citation of statutory authority at the end of the section to read as follows:

§ 78.11 Written notice of a final audit determination.

(a) An authorized ED official may issue a written notice of a final audit determination to a recipient in connection with an applicable program (See § 78.3 for the definition of an applicable program.).

* * * * *

(20 U.S.C. 1234 (a) and (e), 1234a(a))

5. The citation of statutory authority immediately following the test of each provision in §§ 78.12, 78.13, 78.14, 78.15, and 78.16 of Subpart B (Final Audit Determinations) is revised to read as follows:

(20 U.S.C. 1234 (a) and (e), 1234a(b))

6. The title of Subpart C is revised to read as follows:

Subpart C—Withholding, Termination, Voiding and Other Cost Determinations

7. Section 78.21 is amended by revising the section heading, paragraph (a), and adding paragraphs (a) (1) and (2); by redesignating paragraph (b)(3) as (b)(4) and revising paragraph (b) (1), (2) and adding new (b)(3); and revising the citation of statutory authority to read as follows;

Written Notice

§ 78.21 Written notice of an intent to withhold or terminate funds, void a grant or of other cost determinations.

(a) An authorized ED official may issue a written notice to a recipient under any applicable program of—

(1) An intent to withhold or terminate funds, or

(2) A determination, as described in paragraphs (a)(4) through (a)(6) of § 78.6 (Eligibility for review), that a grant is void, that a request to incur an expenditure during the term of a grant is denied, or with respect to cost allocation plans, indirect cost rates or other special rates.

(b) In the written notice, the authorized ED official—

(1) In the case of an intent to withhold or terminate funds, states the facts that indicate the recipient failed to comply substantially with a requirement that applies to the funds;

(2) In the case of a determination that a grant is void, that an expenditure may not be incurred, or with respect to cost allocation plans, indirect cost rates or

other special rates, states the reasons for the determination;

(3) Cites the requirement that is the basis for the alleged failure to comply or for the determination; and

(4) Advises the recipient that it may request a hearing before the Board.

* * * * *

(20 U.S.C. 1234 (a) and (e), 1234b (a) and (b))

8. The center heading is revised as follows:

Application for a Hearing

9. Section 78.22 is amended by revising the section title; revising paragraphs (a) and (b); and revising the citation of statutory authority to read as follows:

§ 78.22 Filing an application for a hearing.

(a) An appellant seeking a withholding or termination hearing, or a hearing regarding a determination described in paragraphs (a)(4) through (a)(6) of § 78.6 (Eligibility for review), before the Board, shall file a written application with the Board Chairperson within 30 calendar days after the date it receives the written notice.

(b) In the application for a hearing, the appellant shall attach a copy of the written notice and shall, to the satisfaction of the Board Chairperson—

* * * * *

(20 U.S.C. 1234 (a) and (e), 1234b(b))

10. Section 78.23 is amended by revising paragraph (a) and the citation of statutory authority to read as follows:

§ 78.23 Acceptance of the application.

(a) If the appellant files an application that meets the requirements of § 78.22 (Filing an application for a hearing), the Board Chairperson issues a notice of the acceptance of the application to the appellant and to the authorized ED official who issued the notice of the intent to withhold or terminate, or the determination that is the subject of the appeal.

* * * * *

(20 U.S.C. 1234 (a) and (e), 1234b(b))

11. Section 78.24 is amended by revising paragraphs (a) and (c) and the citation of statutory authority to read as follows:

§ 78.24 Rejection of the application.

(a) If the Board Chairperson determines that an application for a hearing does not satisfy the requirements of § 78.22 (Filing an application for a hearing), the Board Chairperson returns the application to the appellant, together with the reasons for the rejection, by certified mail with return receipt requested.

* * * * *

(c) If an application is rejected twice, ED takes appropriate administrative action to withold or terminate funds, or to enforce the determination described in § 78.21(a)(2) (Written notice of an intent to withhold or terminate funds, void a grant or of other determinations).

(20 U.S.C. 1234 (a) and (e), 1234b(b))

12. The citation of statutory authority immediately following the text of each provision in §§ 78.25, 78.26, 78.27 and 78.28 of Subpart C (Withholding, Termination, Voiding and Other Cost Determinations) is revised to read as follows:

(20 U.S.C. 1234 (a) and (e), 1234b(c))

13. The citation of statutory authority immediately following the text of § 78.31 of Subpart D (Cease and Desist) is revised to read as follows:

(20 U.S.C. 1234 (a) and (e) 1234c(a))

14. The citation of statutory authority immediately following the text of each provision in Sections 78.32 and 78.33 of Subpart D (Cease and Desist) is revised to read as follows:

(20 U.S.C. 1234 (a) and (e), 1234c(b))

15. The citation of statutory authority immediately following the text of § 78.34 of Subpart D (Cease and Desist) is revised to read as follows:

(20 U.S.C. 1234 (a) and (e), 1234c(c))

16. The citation of statutory authority immediately following the text of each provision in §§ 78.81 and 78.82 of Subpart F (Decisions and Orders) is revised to read as follows:

(20 U.S.C. 1234 (a) and (e), 1234a(d), 1234b(d))

17. Section 78.83 is amended by redesignating paragraphs (b) and (d) and revising paragraph (d) as paragraph (c) and (f) respectively and by revising paragraph (a), and adding new paragraphs (b) and (e) to read as follows:

§ 78.83 The Secretary's decision.

(a) The Panel's decision becomes the final decision of the Secretary 60 calendar days after the date the recipient receives the Panel's decision, unless the Secretary, for good cause shown, modifies or sets aside the Panel's decision.

(b) If the recipient is subject to the judicial review provisions contained in Section 455 of the General Education Provisions Act (20 U.S.C. 1234d), and the recipient wishes to file a petition for judicial review of the Panel's decision, the recipient shall file the petition within the 60 days specified in paragraph (a) of this section.

(Section 455 of the General Education Provisions Act for a discussion of judicial review.)

(c) If the Secretary modifies or sets aside the Panel's decision within the 60 days, the Secretary issues a decision that—

(1) Includes a statement of the reasons for this action; and

(2) Becomes the Secretary's final decision 60 calendar days after it is issued.

(d) The Board Chairperson sends a copy of the Secretary's final decision and statement of reasons, or a notice that the Panel's decision has become the Secretary's final decision, to the Panel and to each of the parties.

(e) If the recipient is subject to the judicial review provisions contained in Section 455 of the General Education Provisions Act (20 U.S.C. 1234d), and the recipient wishes to file a petition for judicial review of the Secretary's final decision specified in paragraph (c) of this section, the recipient shall file the petition within 60 calendar days of the date of the Secretary's final decision.

(20 U.S.C. 1234d)

(f) The final decision of the Secretary is the final decision of the Department.

(20 U.S.C. 1234 (a) and (e), 1234a(d), 1234(d), 1234d)

18. The citation of statutory authority immediately following the text of § 78.84 of Subpart F (Decisions and Orders) is revised to read as follows:

(20 U.S.C. 1234 (a) and (e), 1234a(d), 1234b(d), 1234b)

19. The citation of statutory authority immediately following the text of § 78.85 of Subpart F (Decisions and Orders) is revised to read as follows:

(20 U.S.C. 1234 (a) and (e), 1234c(d), 1234d)

20. The citation of statutory authority immediately following the text of § 78.86 of Subpart F (Decisions and Orders) is revised to read as follows:

(20 U.S.C. 1234 (a) and (e), 1234c(e))

Appendix A—[Removed]

21. Appendix A to 34 CFR Part 78 is removed.

[FR Doc. 81-101 Filed 1-2-81; 8:45 am]

BILLING CODE 4000-01-M

COPYRIGHT ROYALTY TRIBUNAL

37 CFR Part 306

[Docket No. CRT 80-1]

1980 Adjustment of the Royalty Rate for Coin-Operated Phonorecord Players

AGENCY: Copyright Royalty Tribunal.

ACTION: Final rule.

SUMMARY: The Copyright Royalty Tribunal adopts the rule establishing the rate of royalty payments for the public performance of nondramatic musical works by coin-operated phonorecord players.

EFFECTIVE DATE: February 4, 1981.

FOR FURTHER INFORMATION CONTACT: Clarence L. James, Jr., Chairman, Copyright Royalty Tribunal, (202) 653-5175.

SUPPLEMENTARY INFORMATION:

Introduction

17 U.S.C. 804(a)1 provides that the Copyright Royalty Tribunal (Tribunal) shall publish a notice in the **Federal Register** on January 1, 1980 of the commencement of proceedings concerning the adjustment of royalty rates for coin-operated phonorecord players as provided in section 116. It is further provided that the Tribunal shall render its final decisions in this proceeding within one year from the date of such publication.

Background and Chronology

The Amusement and Music Operators (AMOA) and the three principal music performing rights societies—American Society of Authors, Composers, and Publishers (ASCAP); Broadcast Music, Inc. (BMI); and SESAC, Inc. responded to the Tribunal's notice of January 2, 1980.

On February 13 in the offices of the Tribunal a meeting was held with all interested parties to discuss the economic survey to be conducted by AMOA and to make recommendations on the information to be solicited. The Tribunal and the performing rights societies offered suggestions to be included in the survey but were informed by AMOA that the questionnaire for the survey had already been mailed.

The Tribunal conducted public hearings to receive testimony on the adjustments of royalty rates as provided in section 116 on April 2, 3, 4, 21, and 22. Rebuttal was heard on May 16 and 19, 1980. In addition to the material presented at these hearings, the Tribunal also received written statements and documentary evidence submitted in accordance with the rules of the Tribunal. Proposed findings of fact and conclusions of law were submitted on September 16, 1980 at the direction of the Tribunal.

At a public session on December 10, 1980 the Tribunal made its final determination concerning the royalty rate adjustment for coin-operated phonorecord players.

Summary of Evidentiary Positions of the Parties

The American Society of Composers, Authors and Publishers (ASCAP) and SESAC considered that by application of the standards in 17 U.S.C. Sec. 801(b)(1) a reasonable compulsory license fee for the public performance of all copyrighted musical compositions by a jukebox is $70.[1] They also contended that because the royalty rate is to apply for at least a ten year period, the $70 fee should be subject to annual adjustments reflecting the increase in the cost of living as determined by the Consumer Price Index.[2] Moreover they contend that the annual adjustments should commence for the 1982 calendar year.[3]

Although ASCAP and SESAC contend that the record in this proceeding supports a compulsory license rate expressed in dollars or as a percentage of the revenue of each jukebox, they conclude that "at this time and on this record, practical considerations and the stated preference of the jukebox operators * * * convince us that the more appropriate fee for all jukeboxes is a fee expressed in dollars."[4]

These two performing rights societies stated that in order to apply the standards in Section 801(b) they felt compelled to determine a compulsory license fee similar to the fee which would be reached on the open marketplace if performing rights societies and jukebox operators were free to negotiate for licenses absent a compulsory license.[5]

With that as a benchmark they concluded that the most useful approach in reaching a marketplace value was to use close marketplace analogies.[6]

Three analogies were used: (a) general establishments, such as bars, grills, restaurants and taverns using mechanical music (i.e., music provided by non-live means); (b) background music services; and (c) foreign jukebox operators.[7]

ASCAP's direct case was presented through testimony of Robert R. Nathan, Chairman of Robert R. Nathan Associates, Inc., and Dr. Paul Fagan, ASCAP's Chief Economist and Director of Special Programs.

Mr. Nathan testified that in our economy value is usually determined in the marketplace, and when a regulatory agency must set a rate it should do so based on the most likely parallel or similar economic circumstances relating to the goods or services in question.[8]

Mr. Nathan discussed the four objectives in Sec. 801 which in his opinion the Tribunal must apply in determining a reasonable compulsory license fee. He said that the first objective, maximizing the availability of creative works to the public, means that the rate must be sufficient to maintain the creator's incentive to create the work and to encourage its exploitation. He added that the fee should not be so high as to reduce the demand for music.[9]

The second objective, providing a fair return to the copyright owner and a fair income to the copyright user, is one which would be met by free negotiation between the parties. Mr. Nathan urged the tribunal to consider market experience in parallel areas, pointing out that a fair return to owners and fair income to users does not guarantee every owner a maximum return or every user a profit.[10]

The third objective, Mr. Nathan testified, required the balancing of the relative contributions of the copyright owner and the copyright user. He pointed out that marketplace value is the only effective measure of the relative creative contributions, capital investments, costs and risks of the copyright user and owner.[11]

Mr. Nathan testified that the fourth objective was to seek to minimize the disruptive impact on both the jukebox industry and the established license structure of music performing rights.[12]

Dr. Paul Fagan detailed the three marketplace analogies ASCAP proposed to the Tribunal. The first analogy is to the license fees paid by establishments like restaurants, taverns, bars and grills which use tape recorders, record players or jukeboxes not subject to compulsory license. He testified the lowest such fee for ASCAP alone is $70. When the fees for BMI and SESAC are added, the total minimum fee paid by such establishments is $190.[13] Dr. Fagan stressed that there would be an administrative savings if all three repertories were licensed at once, estimating the resulting total minimum license fee at $140.[14]

The second analogy addressed by Dr. Fagan was to license fees paid by background music services. He said that

[1] "Proposed Findings of Fact and Conclusions of Law Submitted by ASCAP and SESAC" September 16, 1980, p. 1.
[2] Ibid., p. 1.
[3] Ibid., p. 1.
[4] Ibid., p. 2.
[5] Ibid., p. 2.
[6] Ibid., p. 2.
[7] Ibid., p. 2.
[8] Ibid., p. 20.
[9] Ibid., p. 20.
[10] Ibid., pp. 20-21.
[11] Ibid., p. 21.
[12] Ibid., p. 21.
[13] Ibid., p. 24.
[14] Ibid., p. 24.

ASCAP licenses about 700 background music operators. The annual rate charged by ASCAP alone for locations similar to those in which jukeboxes may be found is $27. This rate, however, was described as an interim fee subject to retroactive adjustment to 1971.[15] Assuming that the rates were adjusted only for inflation, he said that, it would be $52.08 in 1980.[16]

The third analogy testified to by Dr. Fagan was for license fees paid for jukeboxes abroad. He noted that the foreign analogy was particularly appropriate. One, the licenses granted by foreign performing right societies are identical in scope to the American compulsory license. Two, the fees are either negotiated with industry groups or are subject to governmental approval. Three, foreign jukebox operators operate in the same way as their American counterparts. Four, the rates here should be higher than abroad because income levels in foreign countries are generally lower than those in the United States.[17]

The average fee paid by jukeboxes in the nineteen countries ASCAP surveyed is $96.33 and the mean is $70.92.[18]

Dr. Fagan further testified that the proposed $70 fee is one that coin-machine operators can afford, amounting to only 19 cents per day.[19]

Broadcast Music, Inc. (BMI) through testimony by Edward W. Chapin, vice president and general counsel underscored its agreement with ASCAP and SESAC in the adoption of a royalty rate which would vary annually in accordance with the Consumer Price Index.[20]

BMI, based on prior congressional findings, has proposed a royalty rate of approximately $30 adjusted annually in accordance with the CPI.[21]

BMI's proposed royalty rate follows directly from the legislative history and the statutory mandate requiring balancing of economic considerations. Therefore, BMI applies historical changes in the CPI to the $19.70 base specifically recognized by Congress in 1975 as a reasonable fee.[22]

Application of the CPI from 1975 to the $19.70 base results in a royalty rate of approximately $30, adjusted annually.[23]

In BMI's view its proposal represents a compromise between maximizing the return to copyright owners, whose works presents the means by which the users gain their profits, and any economic considerations applicable to the copyright users.[24]

BMI believes the $30 fee, although considerably smaller than many applicable State, local or foreign license fees, can be considered as providing a "fair return" to the copyright owner. Moreover, the $30 fee would amount to approximately 8 cents per day per jukebox—equal to or less than the cost of one play per day—thus it would not deny a "fair income" for the copyright user.[25]

As a consequence, adoption of the proposed rate is likely to "maximize the availability of creative works," "reflect the relative roles of the copyright owner and the copyright user," and "minimize any disruptive impact on the industries involved."[26]

The Amusement and Music Operators Association (AMOA) presented its case through the testimony of eleven witnesses and the submission of thirty exhibits, the principal one being Exhibit #10, the Peat, Marwick, Mitchell and Company (PMM&Co.) survey of the economic condition of the jukebox operators' business.[27]

AMOA contends that there has been a marked increase in recent years in the numbers of amusement games that are in operation, especially in contrast to the decline in number of jukeboxes that are in operation and that many operators do not segregate their operating expenses for jukeboxes and games.[28]

AMOA estimated that there are between 3000 and 5000 operators who operate between 251,000 and 388,000 jukeboxes in the country.[29]

They introduced testimony which indicated that during the years 1975 through 1978 Rockola, Rowe and Seeburg produced between 38,000 and 42,000 jukeboxes annually, about one-half of which were for the U.S. market.[30]

The PMM&Co survey indicates that on the average a typical operator operated 77 jukeboxes and 225 amusement games, and that jukeboxes and games were both operated in 65% of all locations with 65% of all jukeboxes operating in cities of 40,000 or less.[31]

The AMOA produced testimony that new jukeboxes cost up to $2500 each, and accessories may add another $500.[32] They further indicated that the useful life of a jukebox at the operators' preferred locations is about five years.[33]

They also indicated that jukebox operators purchase phonorecords at an average rate of 2½ to 3 records per box per week, or about 130 to 150 records per box per year.[34]

Although prices per play differ between operators and between different areas popular pricing generally is two for a quarter or five for 50 cents which averages about 10 cents per play.[35]

Several of AMOA's witnesses stressed that their boxes are limited to an income based upon time.[36]

The PMM&Co survey indicates that for the industry at large 18% of the boxes in operation earned for the operators less than $300 per year, and that 47% earned less than $700 per year. For smaller operators of fewer than 40 machines, 23% of the boxes earned less than $300 per year, and 57% earned less than $600 per year.[37]

A report by professors Sequin and Malone of Notre Dame University indicates that over the 40 year period 1940 to 1980, while the Consumer Price Index increased 452%, the average price per play on jukeboxes increased 150%.[38]

AMOA reported statistics from the U.S. Department of Commerce on the jukebox manufacturing business which show a drop in total shipments and sales from a high of about 75,000 units in 1973 to about 38,000 units in 1975, and a continuation at about that level through 1978.[39]

Jukebox operator witnesses offered testimony reflecting a continuing decline in the numbers of jukeboxes that are in operation, citing two basic causes for the decline, (1) the operators' inability to increase prices per play so as to keep up with the rate of inflation, and (2) the loss of jukebox locations due to socio-economic changes such as urban redevelopment, and replacement of jukeboxes by other means of entertainment such as background music, radio, television, discos and live entertainment.[40]

The AMOA, citing evidence of the decline in the jukebox operating business, decreasing revenues and

[15] Ibid., p. 25.
[16] Ibid., p. 25.
[17] Ibid., p. 26.
[18] Ibid., p. 26.
[19] Ibid., p. 28.
[20] "Proposed Findings of Fact and Conclusions of Law submitted by BMI" September 16, 1980, p. 10.
[21] Ibid., p. 12.
[22] Ibid., pp. 12–13.
[23] Ibid., p. 13.
[24] Ibid., p. 13.
[25] Ibid., p. 14.
[26] Ibid., p. 14.
[27] "Proposed Findings of Fact and Conclusions of Law submitted by AMOA," September 16, 1980, p. 5.
[28] Ibid., p. 6.
[29] Ibid., p. 15.
[30] Ibid., p. 16.
[31] Ibid., p. 16.
[32] Ibid., p. 17.
[33] Ibid., p. 17.
[34] Ibid., p. 17.
[35] Ibid., p. 21.
[36] Ibid., p. 22.
[37] Ibid., p. 24.
[38] Ibid., p. 25.
[39] Ibid., p. 26.
[40] Ibid., p. 27.

margins of profit, and industrywide reduction in numbers of locations and of jukeboxes in operation, argued strongly that the $8 royalty fee should be left unchanged.[41]

Legal Considerations

The Issue of Burden of Proof

AMOA has asserted that the performing rights organizations have the burden of proof in this proceeding. They cite as authority McCormick, *On The Law Of Evidence* [42] and certain provision of the Administrative Procedure Act.[43]

We find the McCormick rule is inapplicable in the circumstances of this proceeding. The Copyright Act of 1976 mandates review of the interim rate pursuant to Section 804(a)(1). In Section 804 Congress clearly distinguishes between procedures applicable to the 1980 royalty determination and the subsequent 10-year review proceedings. Section 804(a)(1) states:

> (O)n January 1, 1980, the Chairman of the Tribunal shall cause to be published in the **Federal Register** notice of commencement of proceedings under this chapter * * *

17 U.S.C. Section 804(a)(1). Section 804(a)(2) states:

> (D)uring the calendar years specified in the following schedule (i.e. every subsequent tenth year for jukebox) any owner or user of a copyrighted work whose royalty rates are specified by this title, or by a rate established by the Tribunal, *may file a petition declaring that the petitioner requests an adjustment of the rate.* (Italics added)

This proceeding commenced without any petition by an owner or user according to 17 U.S.C. 804(a)(1). The Senate Report recognized the mandatory nature of these proceedings: "This subsection requires that there be a review in 1980 of such royalty rates, and it is mandatory for the CRT to commence such proceedings." [44] We conclude that none of the parties has the burden of showing that the Tribunal should examine the fee. We find the statute requires the Tribunal to do so.

Further this proceeding differs from others which may occur in future years. Proceedings in 1990 and each subsequent tenth calendar year will occur only if a copyright owner or jukebox operator petitions the Tribunal for an adjustment of the rate.[45]

We therefore conclude, that while subsequent review proceedings may be initiated only by petition of an interested party, the 1980 review is mandatory. Since none of the parties herein has initiated this royalty rate proceeding, each party carries an equal burden of proof.

The Issue of the Annual Cost of Living

AMOA's position is that the Copyright Act does not permit an annual adjustment for inflation under Section 116. They argue that the approach used by the CRT in Section 118 public broadcasting proceeding is not provided for under Section 116. They further argue that Section 118's reference to "rates and terms" for public broadcasting royalty provides the CRT with authority to adopt the annual cost of living approach, while Section 116's reference only to "rate" limits the Tribunal's flexibility.[46]

Both BMI and ASCAP/SESAC advocate the adoption of a royalty rate which would vary annually in accordance with the Consumer Price Index.[47] As both BMI and ASCAP/SESAC point out, the Tribunal adopted this approach in its Section 118 public broadcasting proceeding.

We find that the legislative history of Section 118 shows clearly that the use of the word "terms" has nothing to do with cost of living adjustments. It states:

> The Committee anticipates that the "terms" established by the Commission shall include provisions as to acceptable methods of payment of royalties by public broadcasting entities to copyright owners. For example, where the whereabouts of the copyright owner may not be readily known, the terms should specify the nature of the obligation of the public broadcasting entity to locate the owner, or to set aside or otherwise assure payment of appropriate royalties, should he or she make a claim.[48]

AMOA further claims that the Tribunal is restricted in its application of the Consumer Price Index to the jukebox rate by criteria specified in Section 801(b) (A)–(D) and that it is not so restricted under Section 118.[49]

We find that AMOA's position is at odds with the legislative history of the section. It states:

> Similar considerations (to jukebox royalty standards) are noted in connection with Commission review of rates and terms for public broadcasting in the discussion of Section 118, above.[50]

We conclude that there are no essential differences in the Tribunal's authority with respect to Sections 116 and 118 which would permit the Tribunal to provide annual cost of living adjustments in one case and not the other. We find that there is nothing in the statute or legislative history which could be construed to limit the application of annual cost of living adjustments.

In conclusion, we find that the adoption of adjusted jukebox royalty rate which varies annually with the Consumer Price Index is a proper exercise of Tribunal authority.

The Issue of the Performing Rights Societies Financial Data

AMOA sought to bring into issue in this proceeding the manner of how the performing rights organizations distributed jukebox royalties to their affiliates and members. AMOA argued that § 801(b)(1)(B) of the Copyright Act called for an investigation of the performing rights organizations distribution methods.[51] AMOA further argued that performing rights organizations are not in "compliance" with the Copyright Act unless they distribute royalties among their affiliates and members in accordance with a requirement contained in section 116(c)(5).[52]

Finally AMOA argued that there is no logical way the Tribunal can determine if a change should be made in the compensation that is to be provided without calculation of the specific compensation to individuals.[53] Under AMOA's approach this was the only way that the "fair return" standard of the Act could be met.

In summary AMOA's position in essence was asking the Tribunal to establish the value of individual musical works based on the time and expense incurred by the songwriters for each one, together with a value inexplicably derived from the placement of a work on a popularity chart. It then asks the Tribunal to investigate the internal distribution procedures of the performing rights organizations to establish the exact payout for each member or affiliate. A comparison of the two calculations—the costs and the payout—would, according to AMOA, produce the "fair return" calculations

[41] Ibid., p. 31.

[42] Pre-hearing Brief, AMOA p. 6.

[43] Memorandum in Support of AMOA Proposed Finding of Facts and Conclusions of Law, pp. 7–8.

[44] S. Rep. No. 94–473, 94th Cong. 1st. Sess. (1975) p. 156.

[45] 17 U.S.C. § 804(a)(2).

[46] AMOA Reply Brief to Prehearing Brief of BMI, pp. 5–6.

[47] Proposed Findings of Facts and Conclusions of Law of BMI, p. 13, and Proposed Findings of Facts and Conclusions of Law submitted by ASCAP and BMI, p. 11.

[48] H. Rep. No. 94–1476, 94th Cong., 2nd Sess. 118 (1976).

[49] Memorandum in Support of AMOA Proposed Findings of Facts and Conclusions of Law, p. 11.

[50] H. Rep. No. 94–1476, 94th Cong., 2nd Sess. 118 (1976).

[51] AMOA Brief on admissibility of certain exhibits.

[52] *Id.*

[53] AMOA Pre-hearing Brief, p. 9.

supposedly required by the Copyright Act.[54]

BMI argued that the language cited by AMOA "to afford the Copyright owner a fair return for his creative work", reflects the broad goal of the legislation to insure that creators are fairly compensated through adoption of license fees establishing a reasonable value for the use of the Copyright works. We agree. The language in the statute is not a directive authorizing the Tribunal to investigate individual members or affiliates collections from the performing rights organizations.

We find that there is no indication either in the statute or the legislative history, that Congress intended the Tribunal to calculate rates or return for each piece of music and then base royalty adjustments on these rates of return.

We find that the Copyright Act in section 116(c)(4)(B) specifically provides that royalty fees are to be distributed to the performing rights organizations. The section reads in pertinent part:

> (4) The fees to be distributed shall be divided as follows:
>
> * * * * *
>
> (B) to the performing rights societies, the remainder of the fees to be distributed in such pro rata shares as they shall by agreement stipulate among themselves, or, if they fail to agree, the pro rata share to which such performing rights societies prove entitlement.

The performing rights organizations are specifically referred to by name in the definition of "performing rights society" set out in section 116(e)(3) of the Act. It is thus our opinion that the Act recognizes a practical necessity for individual creators of music to adequately protect their performing rights and for users, such as the jukebox industry, to conveniently acquire performing rights. We conclude, therefore, that the "fair return" to music copyright owners, *i.e.* the reasonable value of the performing right can be established on a collective basis.

We find nothing in the Copyright Act or its legislative history which indicates that the Tribunal was intended to regulate the internal operations of the performing rights societies. In our opinion the Tribunal's authority is strictly limited to setting applicable royalty fees and establishing the distribution to claimants.

In our opinion section 116(c)(5) establishes authority in the Tribunal to promulgate regulations permitting prospective claimants to enter establishments and sample jukeboxes to establish the basis of a claim. We find, however, that this section does not require that performing rights organizations must establish that they have segregated jukebox royalties from royalties collected from other sources, and therefore, since the Copyright Act does not create authority in the Tribunal to establish such regulations, no such regulations have been adopted.

Determination of Royalty Rate

The AMOA Case

The Tribunal finds that the case presented by the AMOA, including the industry survey, has failed to provide reliable data concerning the operating expenses, revenues, or return on investment on jukebox operators.

The Tribunal convened a conference of the parties on February 13, 1980 in order to permit the Tribunal and all of the parties to make suggestions concerning the contents of a questionnaire which would be used by AMOA to survey the financial condition of jukebox operators. At that conference the representatives of AMOA stated that it was too late to revise the questionnaire.

We note the limited response rate to the questionnaire, estimated by Peat Marwick to be approximately 14%. Dr. John Scarbrough, the Peat Marwick manager in charge of the survey, testified:

> I wouldn't argue very hard if you wanted to say that it was not a good response.[55]

The record of this proceeding contains detailed testimony reciting the procedures utilized in the preparation and distribution of the questionnaire, which present significant questions as to the survey's methodology and objectivity, as well as the nature and scope of the data provided.

We also note that the survey information is not consistent with other evidence in this record, such as 1979 Playmeter survey of the jukebox industry[56] and a survey of the industry published in the March 1978 issue of Replay.[57] We have reviewed the testimony of the AMOA witnesses—five jukebox operators, representatives or distributors of the three American jukebox manufactures, a "one-stop" distributor of records, and a trade association official. We find that this testimony does not provide a basis for forming any representative picture of the jukebox industry nor does it create a foundation for the industry's claim of economic hardship. The testimony does establish an industry practice to turn over 50% of the gross revenues from jukeboxes to the location owner.

The BMI Case

BMI proposed that we determined the rate by applying the Consumer Price Index from 1975 to a proposed jukebox royalty fee of $19.70 that had been mentioned in a congressional committee report. We have concluded that this approach is not in accord with our statutory responsibilities in this proceeding.

The ASCAP/SESAC Case

In reaching our determination in this proceeding, we found the ASCAP/SESAC *concept* of basing the rate on marketplace analogies to be most attractive. We have examined the three marketplace analogies urged upon us by ASCAP/SESAC—the licenses fees paid by general establishments using mechanical music, background music services, and foreign jukebox fees.

These analogies individually and collectively are subject to limitations and distinguishing features. We believe that certain of the distinctions set forth in the AMOA pleading have validity.[58] While acknowledging that our rate cannot be directly linked to marketplace parallels, we find that they serve as an appropriate benchmark to be weighed together with the entire record and the statutory criteria.

Tribunal Rate

We find that a per box payment of $50 is a reasonable fee for the jukebox industry as a whole. We have phased in the rate to accord the jukebox industry an opportunity to adjust, since in our view the jukebox industry has never previously paid reasonable compensation for the use of copyrighted music. We note that ASCAP/SESAC, in their proposed findings, concluded that an interim fee would be appropriate "to afford the coin machine industy an opportunity to adopt to compulsory licensing at marketplace rates."[59] Consequently, the adjustment of the jukebox rate on January 1, 1982 will be limited to $25.

We are aware that some jukebox operators function on a narrow profit margin, and that certain jukeboxes produce modest revenues. The Tribunal is satisfied that adequate attention has been given to the small operator, including the adoption of an amendment to the proposed fee schedule that was proposed for the benefit of such operators.

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[54] AMOA Pre-hearing Brief, pp. 7–9.

[55] Transcript, April 4, 1980, p. 61.

[56] ASCAP Exhibit 8.

[57] BMI Rebuttal Exhibit A.

[58] AMOA Proposed Findings, p. 40–42.

[59] ASCAP Findings, p. 3.

Based on the Playmeter and Replay surveys and other evidence in this record, we believe that it would be reasonable for some operators to be paying more than $50. If the Tribunal had adopted a fee schedule based on such factors as per box revenue or the number of boxes owned by a particular operator, a higher payment by certain operators or for particular boxes might be warranted. The Tribunal has chosen to adopt a flat rate for all boxes—the course urged upon us by all parties in this proceeding.

It is not reasonable that the fees adopted in this proceeding should remain unchanged until at least 1990. We have therefore made provision for a single cost of living adjustment.

Statutory Criteria

We have reached our decision in full recognition of the application to this proceeding of the criteria in 17 U.S.C. 801(b). We observe that the criteria were not drafted for specific application exclusively to the determination of the jukebox rate. The Tribunal has analyzed each of the criteria.

To Maximize the Availability of Works

The first statutory objective of our rate determination listed in Section 801(b)(1) is "To maximize the availability of creative works to the public". We do not maintain that the jukebox rate is crucial to assuring the public of the availability of creative works. As has been observed in the pleadings, musical works were created and exploited for many years, during which, in our view, songwriters and publishers were unjustly denied reasonable compensation for a commerical use of their works. We concur in the ASCAP/SESAC finding that "reasonable payment for jukebox performances will add incrementally to the encouragement of creation by songwriters and exploitation by music publishers, and so maximize availability of musical works to the public."[60] We find nothing in this record which would justify any reasonable concern that the schedule we have adopted will deprive the public of access to music.

Fair Return to the Copyright Owner and Fair Income for the Copyright User

The second statutory criteria is "To afford the copyright owner a fair return for his creative work and the copyright user a fair income under existing economic conditions." We have previously discussed our conclusion that, within the limitations necessarily inherent in a flat industry rate, our schedule affords the copyright owner a fair return. We reject the contention that copyright owners are paid for jukebox performances by mechanical royalties derived from record sales. We recognize that performing rights are distinct from recording rights. The Congress has determined that copyright owners are entitled to be paid reasonable fees for both. The Tribunal also rejects the contention that no adjustment of the royalty fee should be made unless the copyright owners established their "need to receive" an increase.

We have above given our analysis of the testimony presented by the jukebox industry. We find nothing in that testimony which would warrant a conclusion that our schedule will deprive the jukebox operator of a fair income under existing economic conditions. In adopting the rate, we have given sympathetic consideration to the circumstances of small jukebox operators, and reflected in the determination of our rate that certain boxes produce modest revenues.

Relative Contributions

The third statutory criteria is "To reflect the relative roles of the copyright owner and the copyright user in the product made available to the public with respect to relative creative contribution, technological contribution, capital investment, cost, risk, and contribution to the opening of new markets for creative expression and media for their communication." On the basis of the record in this proceeding we have no basis for concluding that jukebox operators and owners of establishments with jukeboxes make any unique or distinctive contribution concerning creativity, technology, capital investment, cost, risk, and the opening of new markets for creative expression and media for their communication. We find in this record no basis for a conclusion that the efforts of jukebox operators through the selection of records and their performance promote the dissemination of songs in any significant manner. We find that the owners of the establishments in which jukeboxes are located do not make a contribution in the areas encompassed in this statutory objective.

On the other hand, the contribution of the copyright owner whose works are performed under the compulsory license directly benefits the jukebox operator and location owner.

Disruption of the Industries

The fourth statutory criteria is "To minimize any disruptive impact on the structure of the industries involved and on generally prevailing industry practices." We find that a failure of this Tribunal to establish a reasonable fee for jukebox performance could interfere with performing rights societies receiving reasonable fees from similar users of music, whose rates are not established in accordance with statutory provisions.

We cannot on the basis of the evidence presented by the jukebox industry find that our schedule will have a disruptive impact on the structure of the jukebox industry or disturb generally prevailing industry practices. By introducing the fee schedule in two phases, we have, in our view, adequately reflected in our decision the objective of this statutory criteria. The jukebox industry pays reasonable market prices for all other goods and services they require. We hold that they can pay the schedule we have adopted for the central commodity of their boxes without adverse impact.

Conclusion

On the basis of the marketplace analogies presented during the proceeding, taking the record as a whole, and with regard for the statutory criteria, the Tribunal has adjusted the royalty rate for coin-operated phonorecord players to $50 per machine. That rate takes account both of what is paid for music elsewhere under similar circumstances and, since it is a flat rate, of the Tribunal's concern for the smaller, less profitable operators.

In order to ease the impact of a rate increase upon the jukebox industry and in recognition of the fact that royalty payments for jukeboxes have been in effect in the United States only since 1978, the Tribunal has elected to stagger the introduction of the rate. It will take effect on January 1, 1982, and for two years, from 1982 to 1984, the rate will be half—$25.

Because the $50 rate set as a result of this proceeding cannot be reviewed until 1990, the Tribunal feels that the copyright owners might not be fairly compensated unless a provision is included to adjust for inflation. This adjustment takes place on January 1, 1987, and is based upon the Consumer Price Index convering the period February 1981 to August 1986.

Accordingly, pursuant to 17 U.S.C. 801(b)(1) and 804(e), 37 CFR Chapter III is hereby amended as follows:

By adding a new Part 306, to read as follows:

[60] ASCAP Findings, p. 4.

PART 306—ADJUSTMENT OF ROYALTY RATE FOR COIN OPERATED PHONORECORD PLAYERS

Authority: 17 U.S.C. 801(b)(1) and 804(e).

§ 306.1 General.

This Part 306 establishes the complusory license fees for coin-operated phonorecord players beginning on January 1, 1982, in accordance with the provisions of 17 U.S.C. 116 and 804(a).

§ 306.2 Definition of coin-operated phonorecord player.

As used in this Part, the term "coin-operated phonorecord player" shall have the same meaning as set forth in 17 U.S.C. 116(e)(1).

§ 306.3 Compulsory license fees for coin-operated phonorecord players.

(a) Commencing on January 1, 1982 the annual compulsory license fee for a coin-operated phonorecord player, as set forth in 17 U.S.C. 116(b)(1)(A), shall be $25.

(b) Commencing on January 1, 1984 the annual compulsory license fee for a coin-operated phonorecord player, as set forth in 17 U.S.C. 116(b)(1)(A), shall be $50, subject to adjustment in accordance with § 306.4 hereof.

(c) In accordance with 17 U.S.C. 116(b)(1)(A), if performances are made available on a particular phonorecord player for the first time after July 1 of any year, the compulsory license fee for the remainder of that year shall be one half of the annual rate of (a) or (b) above, subject to adjustment in accordance with § 306.4 hereof.

§ 306.4 Cost of living adjustment.

(a) On August 1, 1986 the Copyright Royalty Tribunal (CRT) shall publish in the **Federal Register** a notice of the change in the cost of living as determined by the Consumer Price Index (all urban consumers, all items) from the first Index published subsequent to February 1, 1981 to the last Index published prior to August 1, 1986.

(b) On the same date as the notices published pursuant to paragraph (a), the CRT shall publish in the **Federal Register** a revised schedule of the compulsory license fee which shall adjust the dollar amount set forth in § 306.3(b) according to the change in the cost of living determined as provided in paragraph (a). Such compulsory license fee shall be fixed at the nearest dollar.

(c) The adjusted schedule for the compulsory license fee shall become effective on January 1, 1987.

Adopted December 10, 1980.

Note.—Commissioners Brennan, Coulter and Burg concurred in the above opinion. Commissioner Garcia disagreed with the conclusion reached and has filed a separate conclusion. Commissioner James has filed separate Findings of Facts, Conclusions and Opinion.

Clarence L. James, Jr.,
Chairman, Copyright Royalty Tribunal.

Separate Conclusion of Commissioner Garcia

It is my considered opinion and thus my conclusion that the royalty rate increase should have been $30.00 and $60.00.

Separate Findings of Facts, Conclusions and Opinion of Commissioner James

I cannot support the findings of facts, the conclusions reached from those facts, and the specific rationale of the majority of the members of the Tribunal. In my opinion their determination of an equitable and reasonable statutory rate is unsupported by the record in this proceeding.

This is a proceeding to adjust the reasonable copyright royalty rate as provided for in section 116. The statutory authority which governs the Tribunal in this adjustment, states that the rate shall be calculated to achieve certain enumerated objectives. They are as follows:

1. To maximize the availability of creative works to the public;
2. To afford the copyright owner a fair return for his creative work and the copyright user a fair income under existing economic conditions;
3. To reflect the relative roles of the copyright owner and the copyright user in the product made available to the public with respect to relative creative contribution, technological contribution, capital investment, cost, risk, and contribution to the opening of new markets of creative expression and media for their communication;
4. To minimize any disruptive impact on the structure of the industries involved and on generally prevailing industry practices.

The compulsory license fee requires payment to copyright owners for use of their property by others, preventing free negotiation in the marketplace as to value. Thus, the issue before the Tribunal was value in the marketplace. The legislative history of the Copyright Act and the record in this proceeding supports the proposition that the Tribunal must determine a license fee comparable to the fee reached in the open marketplace by analogous music users. Because performing rights societies and jukebox operators are not free to negotiate, the only fair, logical and equitable approach to establishing a compulsory license fee is on the basis of marketplace value.

It is therefore my opinion that to determine marketplace value, the Tribunal can only rely on marketplace analogies. Based on the record in this proceeding, it is clear that the marketplace guidelines of other analogous music users, provide the *only* credible evidence in the record to establish a "reasonable" fee. Negotiated fees by analogous music users, which are identical or similar, based on this record is the only indicator of true market value.[1]

The above position is supported by ASCAP's expert economic witness, Robert E. Nathan. Mr. Nathan testified that, "In our economy, value is usually determined in the marketplace. When a regulatory agency must set a rate, it should do so based on the most likely parallel or similar economic circumstances relating to the goods and services in question."[2]

In this record the only evidence of marketplace value was based on close marketplace analogies of other music users.[3] The evidence in the record provided three such close marketplace analogies:

1. License fees paid by general establishments (on location rates);
2. License fees paid by background operators;
3. The licensing fee arrangement and foreign countries.[4]

The first analogy is license fees paid by establishments which use tape recorders, record players, or free jukeboxes. Evidence offered by ASCAP indicated the minimum fee for such an establishment is $70.[5] Evidence offered by BMI indicated that the minimum fee is $60 per year.[6] SESAC offered no evidence in this regard. Further the evidence indicated that the maximum fee for ASCAP for this type of establishment in $490, and for BMI $240. Combining the minimum for both ASCAP and BMI would result in an annual fee of $130. This evidence was uncontroverted or refuted by AMOA.

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[1] Tr. 4/2 p. 23, pp. 25–32, p. 57, pp. 73–74; Tr 4/3 p. 124.

[2] Tr. 4/2 pp. 22–23.

[3] Tr. 4/2 p. 66; ASCAP/SESAC Pre-Hearing Statement pp. 10–12; Charles T. Duncan's letter to Chairman 5/12/80 with enclosure.

[4] Ibid.

[5] Tr. 4/2 p. 66; ASCAP/SESAC Pre-Hearing Statement pp. 10–12.

[6] Charles T. Duncan's letter to Chairman 5/12/80 with enclosure.

The second analogy was license fees paid by background music service. Both ASCAP [7] and BMI [8] indicated that the fees, charged under this category, have been the subject of litigation since 1971 and consequently have been frozen since that time. Because current ASCAP and BMI fees do not reflect the rate of inflation since 1971, it was not possible to ascertain the marketplace value or background music.[9]

The third analogy is license fees paid for jukeboxes abroad.[10] In my opinion, any consideration of foreign fees by the Tribunal must be excluded. Foreign fees reflect different licensing systems and cultural values. Further, the foreign fees are applied based on various criteria. In essence, the foreign fees involve such a diversity of circumstances as to be of little or no probative value.

In essence, the majority reached a conclusion on the premise that a true market value rate would result in too large an increase in fees. The majority was set on course by what they deemed were the guiding standards of the statute which referred to minimizing the disruptive impact on the economic structure of the industries involved. It was the majority view and opinion that a large increase in fees would be oppressive to the industry and would "impact on small operators." [11] In my opinion the majority misconceived the evidence in the record when this standard was applied. First, it is apparent that the standard was applied only to jukebox operations. There apparently was no consideration given to significant disruption in existing market prices for performing rights societies, fees paid by other analogous music users. The majority, in essence, appears to have reached a conclusion based on an ability to pay theory.[12]

The real economic impact of increased fees on jukebox operators cannot be determined from this record.[13] Economic data supplied by AMOA was of questionable reliability and validity and could not be used as a basis for any rate determination.[14] In addition, the record simply does not support AMOA testimony that jukebox operators are destitute or will go out of business if fees are increased.

In fact, the evidence is clear and convincing to the contrary. The record in this proceeding shows that coin machine operators pay fair market price for all goods and services they use.[15] Further it has been established in the record that jukebox operators have traditionally shared one half of the gross revenue with a joint venture partner who neither contributes to the venture nor takes any risk.[16] This arrangement is neither bargained, nor negotiated, but traditionally given away. How is it that jukebox operators can claim destitution or inability to pay a fair and reasonable rate, when for years over one half of their revenue has been given away? Even the small operator, the concern of the majority, split revenue 50–50 with the establishment owner. Is it appropriate for jukebox operators to come before this Tribunal and claim economic hardship? [17] In my opinion it would be far better to reanalyze or reevaluate the traditional practice of giving away one half of the revenue than to seek economic redress from this Tribunal.

The rate established by the majority is not reasonable. Nor does it afford the copyright owner a fair return for his creative work. There is no evidence in the record to support the rate, no logic behind it and no equity in it.

In my opinion the record is replete with evidence that the minimum reasonable marketplace value fee should be $130, not $25 or $50. I find that the record is void of any valid argument that once a reasonable rate is established there should be a discount because of economic hardship. There is simply no probative evidence in the record that jukebox operators should not and can not pay rates comparable to those paid by other analogous music users for the same product.[18]

In conclusion, there is substantial evidence in the record to show that jukebox operators have the ability to pay a fair, equitable and reasonable rate. They already give one half of their revenues away. Further, I find $130, as a minimum, is a reasonable fee based on market value, and that it meets each of the standards of 17 U.S.C. 801(b).[19]

[FR Doc. 80-40825 Filed 12-31-80; 8:45 am]

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[7] Tr. 4/2 pp. 63–64.

[8] Charles T. Duncan's letter to Chairman 5/12/80 with enclosure.

[9] ASCAP/SESAC Pre-Hearing Statement pp. 13–14; Proposed Findings of Facts and Conclusions of Law submitted by ASCAP and SESAC p. 25, and Charles T. Duncan's letter to Chairman 5/12/80 with enclosure.

[10] ASCAP/SESAC Pre-Hearing Statement p. 15; Tr. 4/2 p. 66; Findings of Facts and Conclusions of Law submitted by ASCAP and SESAC pp. 25–26.

[11] Tr. 12/10 pp. 4–5.

[12] Determination of Royalty Rate by majority, supra.

[13] Findings of Facts and Conclusions of Law submitted by ASCAP and SESAC, p. 7.

[14] AMOA Survey; Tr. 4/3 p. 36; pp. 51–53; and Findings of Facts and Conclusions of Law submitted by ASCAP and SESAC, pp. 33–46.

[15] Tr. 4/21 p. 135; Tr. 4/2 pp. 24–25, 108–109.

[16] Tr. 4/4 p. 120; Tr. 4/21, p. 98, 138; Tr. 4/22 pp. 50–80.

[17] Tr. 5/19 pp. 52–54; ASCAP Exh. R-4 pp. 47–51; R-22 pp. 16–17; Tr. 5/19 pp. 49–52.

[18] ASCAP Exh. R-4, pp. 47–51; Tr. 4/21 pp. 72–74, 98, 102–4, 134 and 138; Tr. 4/22 pp. 73–76 and 99.

[19] Findings of Facts and Conclusions of Law submitted by ASCAP and SESAC, pp. 3–11.

37 CFR Part 307

Adjustment of Royalty Payable Under Compulsory License for Making and Distributing Phonorecords; Rates and Adjustment of Rates

AGENCY: Copyright Royalty Tribunal (CRT).

ACTION: Final rule.

SUMMARY: Copyright Royalty Tribunal adopts rule adjusting the rates of royalty payable under compulsory license of 17 U.S.C. 115 for making and distributing phonorecords embodying nondramatic musical works. The rule also provides for possible subsequent adjustment of the royalty rates.

EFFECTIVE DATE: January 31, 1981.

FOR FURTHER INFORMATION CONTACT: Clarence L. James, Jr., Chairman, Copyright Royalty Tribunal, 1111 20th St., N.W., Rm. 450, Washington, D.C. 20036, 202–653–5175.

SUPPLEMENTARY INFORMATION: The detailed findings required by 17 USC 803(b) will be published in the **Federal Register** within thirty days of this publication.

The detailed findings required by 17 U.S.C. 803(b) will be published within thirty days of this publication. For purposes of 17 U.S.C. § 809 the thirty day period shall commence with the date of this publication.

Clarence L. James, Jr.,

Chairman, Copyright Royalty Tribunal.

December 21, 1980.

Pursuant to 17 U.S.C. §§ 801(b)(1) and 804, 37 CFR Chapter III is hereby amended as follows:

By adding a new Part 307, to read as follows:

PART 307—ADJUSTMENT OF ROYALTY PAYABLE UNDER COMPULSORY LICENSE FOR MAKING AND DISTRIBUTING PHONORECORDS

Authority: 17 U.S.C. 801(b)(1) and 804.

§ 307.1 General.

This Part 307 adjusts the rates of royalty payable under compulsory license for making and distributing phonorecords embodying nondramatic musical works, under 17 U.S.C. 115.

§ 307.2 Royalty payable under compulsory license.

With respect to each work embodied in the phonorecord, the royalty payable shall be either four cents, or three-quarters of one cent per minute of playing time or fraction thereof, whichever amount is larger, for every phonorecord made and distributed on or after July 1, 1981, subject to adjustment pursuant to Sections 307.3 and 307.4.

§ 307.3 Adjustment of royalty rate.

(a) On December 1, 1981 the CRT shall publish in the **Federal Register** a notice of any changes in the rates established in § 307.2. The change, if any, shall be directly proportionate to the change, if any, in the average suggested retail list price of albums between the twelve-month period ending October 31, 1980 and the twelve-month period ending October 31, 1981. On each December 1 thereafter, the CRT shall publish in the **Federal Register** a notice of any further changes in the rates, which shall be directly proportionate to the change, if any, in the average suggested retail list price of albums between the twelve-month period ending October 31 of the preceding year and the twelve-month period ending October 31 of the year in which such notice is published. Provided however, in no event shall the rate be less than that established in § 307.2.

(b) The average suggested retail list price of albums shall be the average suggested retail list price of a representative group of all albums made and distributed in disk form in the United States, whether or not works embodied in such albums are licensed through the use of the compulsory license. In the event that a different configuration of phonorecords becomes the predominant configuration of phonorecords made and distributed in the United States, changes in the average suggested retail list price of that configuration shall be used as the basis of the adjustment.

(c) The average suggested retail list price shall be determined by the CRT from CRT-conducted surveys and/or studies which it may deem necessary, advisable and appropriate to ascertain what, if any, changes in suggested retail list prices have occurred between the relevant twelve-month periods. The CRT shall also give due consideration to comments, surveys, studies, or recommedations submitted to the CRT by November 3 of each year by any persons affected by the adjustment. Voluntary agreement on an adjusted rate by parties affected by an adjustment may be submitted and shall be given due consideration by the CRT. Any such voluntary agreement must be presented to the CRT prior to November 3 of any given year.

(d) The adjusted rate, if any, shall be effective on the January 1 immediately following publication of the CRT's notice in the **Federal Register**, and shall apply to every phonorecord made and distributed on or after that date.

§ 307.4 Use of wholesale price in certain cases.

(a) In the event that albums made and distributed in the United States without a suggested retail list price distort the average suggested retail list price, so that it does not reflect record price changes in the relevant period, the adjustment as provided for under Section 307.3 hereof shall be directly proportionate to the change in the average wholesale price of albums for the corresponding periods.

(b) For purposes of the foregoing "Wholesale Price" of an album shall mean the highest price at which the album is normally available for sale by the record manufacturer to non-affiliated, regular customers in the ordinary course of business. Said price shall be based on the average per-unit price of 100 or more albums shipped for resale. The average wholesale price of albums shall be the average wholesale price of a representative group of all albums made and distributed in disk form in the United States, whether or not works embodied in such albums are licensed through the use of the compulsory license. In the event that a different configuration of phonorecords becomes the predominant configuration of phonorecords made and distributed in the United States, changes in the average wholesale price of that configuration shall be used as the basis of the adjustment.

(c) The average wholesale price shall be determined by the CRT from CRT-conducted surveys and/or studies which it may deem necessary, advisable and appropriate to ascertain what, if any, changes in wholesale prices have occurred between the relevant twelve-month periods. The CRT shall also give due consideration to comments, surveys, studies, or recommendations submitted to the CRT by November 3 of each year by any persons affected by the adjustment. Voluntary agreement on an adjusted rate by parties affected by any adjustment may be submitted and shall be given due consideration by the CRT. Any voluntary agreement must be presented to the CRT prior to November 3 of each year.

(d) The adjusted rate, if any, shall be published by the CRT in the **Federal Register** in accordance with the provisions of Section 307.3(a), and shall be effective on the January 1 immediately following such publication and shall apply to every phonorecord made and distributed on or after that date.

[FR Doc. 80-40826 Filed 12-31-80; 8:45 am]
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37 CFR Part 308

[Docket No. CRT 80-3]

1980 Adjustment of the Royalty Rate for Cable Systems

AGENCY: Copyright Royalty Tribunal.

ACTION: Final rule.

SUMMARY: The Copyright Royalty Tribunal adopts the rule establishing the rate of royalty payments for the secondary transmission to the public by a cable system of a primary transmission made by a broadcast station

EFFECTIVE DATE: February 4, 1981.

FOR FURTHER INFORMATION CONTACT: Clarence L. James, Jr., Chairman, Copyright Royalty Tribunal, (202) 653-5175.

SUPPLEMENTARY INFORMATION:

Introduction

The Copyright Royalty Tribunal (Tribunal) instituted these proceedings by a public notice issued January 1, 1980 (45 FR 63). This notice was pursuant to 17 U.S.C. 804(a)(1) which requires that the Tribunal conduct a proceeding in 1980 in accordance with 17 U.S.C. 801(b)(2) (A) and (D) concerning the adjustment of royalty rates and gross receipts limitations established in 17 U.S.C. 111 pertaining to secondary transmissions by cable systems.

Section 801(b)(2) (A) and (D) authorizes the Tribunal to make determinations solely in accordance with the following provisions:

> The rates established by section 111(d)(2)(B) may be adjusted to reflect (i) national monetary inflation or deflation or (ii) changes in the average rates charged cable subscribers for the basic service of providing secondary transmissions to maintain the real constant dollar level of the royalty fee per subscriber which existed as of the date of enactment of this Act;
>
> The gross receipts limitations established by section 111(d)(2) (C) and (D) shall be adjusted to reflect national monetary inflation or deflation or changes in the

average rates charged cable system subscribers for the basic service of providing secondary transmissions to maintain the real constant dollar value of the exemption provided by such section.

Background and Chronology

The American Society of Composers, Authors and Publishers; Broadcast Music, Inc.; Major League Baseball; Motion Picture Association of America, Inc.; National Association of Broadcasters; National Basketball Association; National Hockey League; and North American Soccer League; filed a joint response to the Tribunal's order as published in the **Federal Register** on January 2, 1980 and shall herein be referred to as "Copyright Owners." The National Cable Television Association (NCTA) filed a response on behalf of the cable operators.

In order to establish the necessary factual information with respect to this proceeding, the Tribunal developed a cable system questionnaire which requested cable operators to list their monthly first-set subscriber rates as of October 19, 1976 and April 1, 1980. In addition, the questionnaire requested information on whether the responding cable system was subject to rate regulation and, if so, the extent to which rate increases had been denied by regulatory agencies. The Tribunal accorded Motion Picture Association of America, National Cable Television Association and Community Antenna Television Association the opportunity to review the questionnaire and to suggest additional questions. The questionnaire was then sent to all cable systems that had filed a statement of account with the Copyright Office. The Tribunal received 2,251 replies.

Pursuant to the Tribunal's Notice, a statement on jurisdictional and legal questions was filed on May 1, 1980, by National Cable Television Association (NCTA). Economic and other studies were filed with the Tribunal on May 19, 1980, by NCTA and Copyright Owners, and each of these parties filed replies on June 2, 1980. No other parties responded to the Tribunal's Notice.

The Tribunal allowed the Copyright Owners and NCTA to review the responses to the questionnaire received. These questionnaires were analyzed by the Copyright Owners and NCTA and the results included in their respective direct cases before the Tribunal.

Hearings were conducted by the Tribunal on September 29, 30, October 2, 3, and 6, 1980 at which time Copyright Owners and NCTA presented their direct cases through their respective witnesses. Rebuttal testimony was heard on November 13 and 14.

Proposed findings and conclusions concerning the adjustment of cable television compulsory license rates and gross receipts limitations were received on December 1, 1980.

Summary of Evidentiary Positions of the Parties

The "Copyright Owners" presented the testimony of three witnesses during their direct case. These witnesses were: Jack Valenti, President of Motion Picture Association of America, Inc., who testified on the need for an upward adjustment of the cable royalty rates; Allen R. Cooper, Vice President of MPAA, Inc., who testified on the results of the cable industry survey conducted by the Tribunal, and the effect on royalty payments of new cable marketing practices such as tiering and free service offerings; and Alexander Korn, an independent consultant, who testified on the choice of an inflation measurement, and the adjustment formula proposed by Copyright Owners.[1]

Mr. Valenti testified that the single product that cable systems sell to their subscribers is programming, and that cable systems obtain the benefits of programming at rates that have no relationship to the true worth of those programs.[2]

Mr. Valenti stressed that it was, therefore, critically important that the adjustments to be made in this proceeding fully maintain the 1976 real constant dollar value of the royalty payments prescribed by Congress, and insure that the value of the royalty fees paid by cable systems is not eroded by a reduction in the value of the dollar. He declared that the full measure of the royalty rate increase permitted by the Act must be granted lest the gap between the value of programs and what cable systems pay for those programs is widened further.[3]

Mr. Valenti testified that the impact of inflation on the cost of programming has been dramatic in recent years, citing that the average negative cost of a motion picture increased about 150 percent between 1976 and 1980.[4]

He further stated that during the same period the cable industry has grown to an extraordinarily profitable business dominated by large corporations, which according to reports, he said, give away stock and other valuable inducements in order to secure franchises to build new systems.[5]

Allen Cooper testified that an analysis of 620 responses by DSE cable systems to the Tribunal's cable industry questionnaire shows that the average basic subscriber rate for first sets increased from $6.605 in October, 1976, to $7.606 in April of 1980.[6] He said these figures amounted to an average increase of 15.15 percent during this period, and is consistent with subscriber rate data introduced by NCTA.

Of the DSE systems that responded to the questionnaire and were analyzed by Mr. Cooper, 72.3 percent answered that their subscriber rates were subject to regulation, and 27.7 percent indicated that their rates were not subject to regulation.[7] He continued that the subscriber rates of regulated systems increased an average of 95 cents (14.315 percent) between October, 1976 and April, 1980. The average increase for unregulated systems during this period was $1.14 (17.327 percent). Thus there was only a 19 cents (three percentage points) difference between the average rate increases of regulated and unregulated cable systems.[8]

Mr. Cooper testified that 17 percent of all regulated cable systems had not requested a subscriber rate increase since 1976. Of the remaining 83 percent, better than three-fourths (78 percent) received the full amount (or more) of the subscriber rate increases that were requested. Only 12.5 percent of all regulated systems said that they received less than the full rate increase that they had requested. Less than 2 percent reported that their request had been denied.[9]

Mr. Cooper's findings from the Tribunal's survey indicate that subscriber rate regulation has had a relatively minor impact upon basic subscriber rates. This conclusion was corroborated by the results of an analysis of information published by Paul Kagan Associates Associated in "Cable TV Regulation Newsletter." That analysis, covering the period 1976 through mid-1980, shows that 95.6 percent of the published requests for subscriber rate increases were granted by the regulating authorities, and that cable systems requesting rate increases received on the average 99.7 percent of the amount requested.[10]

Mr. Cooper also introduced evidence demonstrating that a large number of

[1] "Proposed Findings of Fact and Conslusions of Law submitted by the Copyright Owners", December 1, 1980, p. 10.

[2] Ibid, p. 11.

[3] Ibid., p. 11.

[4] Ibid., p. 11.

[5] Ibid., p. 12.

[6] Ibid., p. 12.

[7] Ibid., p. 12.

[8] Ibid., p. 12–13.

[9] Ibid., p. 13.

[10] Ibid., p. 14.

applicants for new cable franchises and some established systems are offering tiered basic services, and in a significant number of instances, very low or no-cost basic cable services. The concept of tiering relates to the packaging of various groups of retransmitted broadcast programs and programs from other sources into single price units that are sold to cable subscribers. The rates for these service tiers vary from zero to as much as $20 to $30 per month per subscriber.[11]

Mr. Cooper asserted that the Tribunal's decision must be structured to assure that cable systems that follow the trend toward tiered services are not allowed to avoid royalty payments by adopting a marketing technique that was not contemplated in 1976.[12]

Alexander Korn testified that the most appropriate measure of inflation to be utilized in adjusting cable royalty rates is the Consumer Price Index, because it is the most widely recognized general price index and is readily available for use by the Tribunal.[13]

Mr. Korn conceded that some economists feel that the CPI overstates the actual rise in prices, but responded to the criticisms by saying no index measures quality; that if the market basket were changed whenever the price changed one would not know whether the index went up because the price changed or because the market basket changed; and that the CPI gives weight to house prices and mortgage interest costs for only a small group of families who actually purchased a home during the base period.[14]

Mr. Korn recommended that the Tribunal stay out of the controversies over the CPI, and to let the specialists at the Bureau of Labor Statistics decide any questions concerning the construction of the CPI. With respect to the Personal Consumption Expenditures (PCE) index recommended by the NCTA, Mr. Korn stated that it is used only by the Commerce Department in balancing out the national accounts which make up the gross national product.[15]

If the Tribunal should choose the CPI as the most appropriate measurement of inflation, as he recommended, Mr. Korn also recommended that the Tribunal adjust the royalty rates by requiring each DSE cable system to compute the difference between the change of the CPI and the change of the system's subscriber rates since October 1976. This difference would then be applied as a surcharge on that system's royalty rates to maintain the 1976 real constant dollar value of that system's royalty payments.[16] Pursuant to this formula, the average cable system would compute its royalty payment as follows:

1. The percentage increase in the CPI since October, 1976 base period would be determined from the tables released by the Bureau of Labor Statistics, and published by the Tribunal. As of April, 1980, this figure would have been 39.9%.

2. The cable system would compute the change in its average subscriber rates for first sets since October, 1976. If the system was not in operation in 1976, it would use the industry average of $6.60 to compute the percentage change in its rates. According to the Tribunal's survey, the average DSE system's first set rate was $6.60 in October, 1976, and $7.60 in April, 1980, an increase of 15.15%.

3. The difference between the CPI increase of 39.9% and the subscriber rate increase of 15.15% is 24.75%. Because the surcharge adjustment is to be applied to the current year's royalty payment, the system would divide the 24.75% by 1.1515. The result, 21.49% is that system's royalty rate surcharge factor which simply would be applied to the total royalty rate or royalty payment as computed from the present statement of account forms.[17]

Mr. Korn rejected an industry-wide royalty rate adjustment primarily because it could be unfair to cable systems.[18]

Mr. Korn also recommended that the Tibunal include within its royalty adjustment a mechanism to automatically reflect the 1976 real constant dollar level of royalty payments for each accounting period. This would be accomplished by the procedure described above, whereby cable systems use their current subscriber rate and a current CPI factor each time they file their statements of account.[19]

Finally, Mr. Korn recommended that the gross revenue limitations defining the statutory small system exemptions be adjusted by a factor equal to the percentage change in each system's subscriber charges. Thus if a cable system increased its subscriber rates by 20% since 1976, the gross receipts limitations for that system would be increased 20% and, assuming its number of basic subscribers remained constant, that system would remain in the same gross revenue category. However, if the gross receipt limitations were increased by the inflation rate, of say 40%, that system might fall into a lower revenue category than it qualified for in 1976, again assuming all other factors remained constant. This would increase the value of the small exemptions for that system.[20]

The direct case of the National Cable Television Association consisted of the testimony of Robert Crandall, an economist and senior fellow at the Brookings Institution; Charlotte Beales, Vice President of Research for NCTA; Joseph Collins, Executive Vice President for American Television and Communications Corporation; Edward Addiss, Vice President of Development for Warner Amax Cable Communications, Inc.; and Richard Young, Vice President of Communications for the Times Mirror Cable Television Company.

Through a series of exhibits and the testimony of a witness, the NCTA argued that the easiest and most common way of measuring inflation is through the use of a publicly available government index.[21] The NCTA conceded that several were available, including consumer indices and producer indices, but contended that a consumer index was clearly preferable for the Tribunal's purposes.[22] They cited that the two most common consumer indices are the Consumer Price Index (CPI), published by the Bureau of Labor Statistics, and the Personal Consumption Expenditure deflator (PCE) published by the Bureau of Economic Analysis.[23]

The NCTA witness pointed out that although the two indices have not diverged greatly in past years, there has been an increasing difference in the most recent time periods, with the CPI rising much faster than the PCE.[24]

The NCTA witness proceeded to point out the principal criticisms of the CPI. One, the index does not recognize that higher prices may be a reflection of higher quality.[25] Two, the CPI assumes a fixed market basket of goods which is wholly unrealistic in a period of rapidly changing prices.[26] In effect a fixed weight index overstates inflation.[27] Three and four can be lumped together under the housing component of the

[11] Ibid., p. 14-15.
[12] Ibid., p. 15.
[13] Ibid., p. 16.
[14] Ibid., p. 16.
[15] Ibid., p. 17.
[16] Ibid., p. 18.
[17] Ibid., p. 18-19.
[18] Ibid., p. 19.
[19] Ibid., p. 21.
[20] Ibid., p. 22.
[21] Tr. 77, 9/30.
[22] Tr. 100, 9/29.
[23] Tr. 97, 9/29; Tr. 77, 9/30.
[24] Tr. 79-80, 9/30; NCTA Ex. 2.
[25] Tr. 106, 9/29; Tr. 82, 9/30.
[26] Tr. 82, 84, 9/30.
[27] Tr. 82, 9/30.

index, namely house prices and mortgage interest rates.[28]

Finally, the CPI measures prices for urban consumers only whereas the PCE is truly a national inflation index since it includes all consumers.[29]

The NCTA recommended, that in view of the acknowledged faults of the CPI and the relatively greater accuracy of the PCE, the Tribunal should adopt the PCE as its measurement of "national monetary inflation."[30]

In order to ascertain whether the "royalty fee per subscriber which existed as of the date of enactment of this Act" has been maintained in real constant dollar terms the NCTA argues that the royalty fee per subscriber must be determined as of the date of enactment and as of the most current possible date.

Because Congress had to estimate as to what the royalty fee per subscriber would have been on the date of enactment, it used a figure of $0.81 per annum based on a predicted $8.7 million copyright fee pool for 1976 and an actual 10.8 million subscriber total derived from publicly available data.[31]

The $8.7 million estimate for the 1976 copyright pool was supplied to the House Committee on the Judiciary by two of the most "interested parties," NCTA and MPAA.[32] The $8.7 million was not derived from the rate schedule in section 111, but rather the rate schedule was set so that it would yield $8.7 million in 1976 if fees were actually paid for that year.[33]

NCTA maintains that given that the computations in question were based on actual 1976 rate and subscriber information and a full analysis of current signal carriage there is simply no way that a more accurate number than $8.7 million can be estimated for 1976.[34]

Turning to 1980 NCTA states that actual data can be used to calculate the annual royalty fee per subscriber. The most current data available is found on the Statement of Account forms for the second half of 1979 which produce a figure as of December 31, 1979.[35] By totalling up the number of subscribers, dividing that number into the total royalty payments made, and doubling the result, an annualized royalty fee per subscriber of $1.08 for all systems is calculated.[36] For DSE systems only the annualized royalty fee per subscriber is $1.28.[37] As a check on these calculations NCTA said two additional methodologies were utilized to determine the 1980 per subscriber fee. Under one the royalty fee per subscriber figure for each cable system was calculated and the results were then averaged.[38] The second approach will resolve any minor questions about the accuracy of the number of subscribers reported on the Statement of Account forms using a methodology similar to that used by Congress in 1976. The actual royalties paid in 1978, $15.4 million, can be divided by the number of subscribers reported in the 1980 Television Factbook, and thus produce a royalty fee per subscriber.[39]

The NCTA stated that if, for whatever reason, the Tribunal finds that the increase in royalty fee per subscriber has not kept pace with inflation, it will be necessary to examine whether, and to what extent, regulatory authorities have restrained cable operators from increasing their charges.

The Tribunal's survey revealed that 72.3% of the DSE-paying systems must obtain the approval of a state or local regulatory body before rates can be raised. However, the NCTA maintains that very few of the 27.7% of the respondents classifying themselves as unregulated, or deregulated, are truly free to set their rates unfettered by regulatory-type consideration.[40]

Furthermore, NCTA contends, the experiences of regulated systems are also not adequately reflected by the raw numbers. Added to that is the length of time that it takes to get a rate increase, and the questions of whether a rate increase can be requested at all, when it should be submitted, and what amount should be requested. As to delay, the Tribunal's survey showed that, on the average, 13.9 weeks elapse between a request for a rate increase and the data on which a grant becomes effective.[41] A more precise sampling of larger systems by NCTA, asking the same questions, revealed an average delay of 17.0 weeks.[42]

NCTA said that in sum, the problem of regulatory restraint, in all of its many guises, pervades the industry and is a significant factor in holding down the average basic subscriber rates. In fact, cable industry witnesses declared that in their opinion their rates would be from 10 to 25% higher if there really was no rate regulation.[43]

In response to the suggestion that individual cable operators are beginning to effectively lower their basic service charges in order to sell other services such as pay cable, and thus shield revenue from copyright liability, via the device of tiering, i.e., giving away or charging much less for a first level of service which contains retransmitted television broadcast signals, NCTA testified that this phenomenon was virtually non-existent during the 1976–1980 time period under review.[44]

NCTA stated that the concept of tiering, is a part of many franchise proposals for the larger urban markets.[45]

The idea is to spread a system's service offerings over a number of tiers as an optimal merchandising practice since the classic methods of marketing cable are not considered viable in larger urban markets.[46] Tiering is structured to offer a free or low-priced first tier of a few channels with access channels, community service programs and sometimes the local off-air television stations.[47] Then a second or third add-on tier is offered with more channels and services including the distant broadcast signals on which copyright is paid.[48] For the most part the expanded basic must be taken before a subscriber can choose to purchase a pay cable service,[49] although occassionally a lower-priced pay service can be purchased by subscribers to a lower tier.[50]

NCTA contends that the advent of pay cable and other non-broadcast services have actually resulted in more subscribers taking the basic service and thus more revenue is exposed to copyright liability.[51] This lift phenomenon arises in two contexts. Operating cable systems with a stagnant penetration level add a significant number of new basic subscribers when pay and other non-broadcast services are introduced.[52]

Also, the existence of pay makes cable television possible in many of the major markets, again allowing copyright holders the benefit of additional cable revenue.[53]

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[28] Tr. 80–81, 9/30.
[29] Tr. 83–84, 9/30.
[30] Tr. 83, 95, 9/30.
[31] House Report No. 94–1476, p. 91; Tr. 99, 102, 9/30.
[32] House Report No. 94–1476, p. 175; Tr. 117, 11/13.
[33] Tr. 119, 145–146, 156–157, 11/13.
[34] Tr. 119–120, 9/30; Tr. 113, 10/2; Tr. 155, 11/13.
[35] Tr. 104, 9/30.
[36] Tr. 105–106, 9/30.
[37] Tr. 106–107, 9/30.
[38] Tr. 77–78, 11/13.
[39] Tr. 75–76, 11/13.
[40] Tr. 106–107, 10/2.
[41] Tr. 22, 10/2.
[42] Tr. 24, 10/2.
[43] Tr. 74, 10/3; Tr. 9, 10/6.
[44] Tr. 14, 10/2; Tr. 30–31, 10/3.
[45] Tr. 20, 10/3.
[46] Tr. 20, 10/3.
[47] Tr. 20, 74–75, 10/3; Tr. 23, 10/6.
[48] Tr. 21, 75, 10/3; Tr. 24–25, 10/6.
[49] Tr. 13, 10/2; Tr. 22, 75, 10/3; Tr. 27–28, 10/6.
[50] Tr. 22, 10/3.
[51] Tr. 25-26, 10/3.
[52] Tr. 25-26, 10/3; Tr. 25-27, 10/6.
[53] Tr. 25, 10/3; Tr. 112-113, 11/13.

Legal Issues

During this proceeding NCTA raised a number of legal issues, certain of which do not require analysis by us in view of our final determination.

NCTA maintained that the proposal of the Copyright Owners to provide for a system by system cable adjustment is contrary to the statute. We have determined to adopt an industry adjustment, consequently it is not necessary for us to reach the legal issue.

The Copyright Owners proposed that a cost of living adjustment be made on a semi-annual basis. NCTA has argued that "a semi-annual adjustment runs totally contrary to the statute." We have not adopted an interim cost of living adjustment in this proceeding. Our authority to adopt interim cost of living adjustments must be judged in each proceeding by reference to the specific statutory provisions. The Congress has chosen to narrowly confine our authority to adjust cable royalty fees to reflect national monetary inflation or deflation or changes in the average rates charged cable subscribers. We concur in the NCTA finding that a "continuous adjustment mechanism would render this periodic review scheme all but meaningless."[54]

NCTA has correctly noted the limited scope of this proceeding. We also agree with NCTA that while the Tribunal's adjustment decision must be made within the specific limits of section 801(b)(2)(A) and (D), "the Tribunal's discretion within those limits is broad, particularly under subsection (A)."[55]

We have discussed elsewhere in this document our reasons for adopting a particular adjustment mechanism. We have not found persuasive the NCTA argument that we could and should construct a rate adjustment formula on the basis of 1976 estimates of subscribers and royalty payments contained in the 1976 House report. The statute expressly states that the purpose of this proceeding is "to maintain the real constant dollar level of the royalty fee per subscriber which existed as of the date of enactment of this Act." We find nothing in the statute which compels us to base our adjustment determination on the estimates in the House committee report, even if those estimates were established as accurate.

Determination of an Equitable Statutory Rate

The Tribunal found that in adjusting for inflation the CPI was the appropriate measure. It has general acceptance and usage,[56] and whatever its alleged deficiencies, the Tribunal did not consider that the Tribunal is in a position to make judgments concerning them, or to employ an inflationary measure that, in comparison with the CPI, could not be said to enjoy the same general acceptance.[57]

The Tribunal judged that any inflationary adjustment should be made on an industry-wide basis. That is the method of payment currently under the statute, and, whatever potential advantages might be achieved from a system-by-system basis as advocated by the copyright owners, they did not, in the Tribunal's judgment, counterbalance the anomalies, inconsistencies, and complexity of such a system.[58] Furthermore, the cable operators themselves preferred an industry-wide adjustment.[59] If any party should be concerned with the inequities that the copyright owners consider an industry-wide adjustment might cause, the Tribunal judged that it should be the cable operators themselves.

Regulatory restraint was not judged by the Tribunal to be an extenuating factor in an adjustment of the rate. The record did not support that subscriber rate regulation has had any more than a minimal impact upon subscriber rates as between regulated and unregulated cable systems.[60]

The Tribunal judged, however, that a discrepancy did exist between the rate of inflation and the amount subscriber rates have increased since the date of enactment of the statute. The NCTA's claim that cable rates have in fact kept pace with inflation was not found to be substantiated by the record. The amount additional set revenues have increased, the increase in distant signal or DSE carriage, and the growth of small cable systems into larger, DSE-paying systems were not shown to be sufficient to account for the difference between the average increase in the subscriber rate found from the Tribunal study and the increase in inflation.[61] Therefore, regardless of the legal question concerning using the estimate for 1976 royalties cited in the House report as the basis for the NCTA claim, the Tribunal did not feel that its validity could be corroborated.[62] The Tribunal accepted at face value the difference between the increase in the subscriber rate and the increase in inflation produced by the analyses of the two parties. For the increase in the subscriber rate this was 15% according to the NCTA analysis for all systems, and 15.15% according to the Copyright Owners' analysis of DSE system alone.[63] For the increase in inflation this was 30.8% if the PCE is used[64] or 39.93% if the CPI.[65]

The Tribunal judged that for any adjustment the same time span must be used both for the DSE rates and for the gross receipts limitation ceilings. In its survey the Tribunal solicited information as of April 1, 1980, in order to obtain the most recent information on subscriber rate increases prior to the proceeding. However, the Tribunal's survey cut-off date has no statutory relationship with the gross receipts limitation ceilings and the maintenance of their real constant dollar value. Instead the Tribunal determined that, in order to be consistent, the inflationary adjustment for both DSE rates and gross receipts limitations should be calculated as of January 1, 1980, the date the statute stipulates for the initiation of the proceeding.

The Tribunal informed the parties on December 11, 1980 of these general determinations and solicited comments. The NCTA in its comments calculated the increase in the CPI for October 1976 until the end of December 1979 as 33.06%, however, did not calculate an average as of January 31, 1980 in order to establish the increase as of January 1, 1980.[66] The copyright owners calculated such an average and established the increase in the CPI at 33.81%.[67]

The NCTA, in its calculation of the difference between the increase in the subscriber rate and the increase of the CPI to be applied to the DSE rates, also included a factor to adjust for revenues as of 1980.[68] However, because the purpose of the adjustments is to maintain the real constant dollar value of the rates and of the gross receipts limitation as of the date of enactment of the statute, the Tribunal did not judge that such a factor could be applied.

To determine the amount subscriber rates have increased from October 19,

[54] NCTA Findings, p. 32.

[55] NCTA Statement on Jurisdictional and Legal Questions, p. 4.

[56] "Proposed Findings and Conclusions of Copyright Owners," Dec. 1, 1980, p. 16.

[57] Ibid., p. 17.

[58] Ibid., p. 22 and "Findings of Fact and Conclusions of Law", NCTA, Dec. 1, 1980, p. 35.

[59] "Findings of Fact and Conclusions of Law," NCTA, Dec. 1, 1980, p. 30.

[60] "Proposed Findings and Conclusions of Copyright Owners," Dec. 1, 1980, p. 34.

[61] Ibid., p. 26.

[62] Ibid., p. 25.

[63] Ibid., p. 26.

[64] "Findings of Fact and Conclusions of Law," NCTA, Dec. 1, 1980, p. 7.

[65] "Proposed Findings and Conclusions of Copyright Owners," Dec. 1, 1980, p. 3.

[66] Joint letter from Copyright Owners and NCTA to Chairman James, Copyright Royalty Tribunal, December 15, 1980, p.3.

[67] Joint letter from Copyright Owners and NCTA to Chairman James, Copyright Royalty Tribunal, December 15, 1980, p.4.

[68] Ibid., p. 1.

1976 to January 1, 1980, the NCTA employed a straight average.[69] The copyright owners, however, submitted an extrapolation that took into account the assumption that subscriber rates increased at an uneven rate, more closely resembling the "real world."[70] The Tribunal in its final calculations considered that the extrapolation of the Copyright owners was the most accurate basis for the rate adjustment. The Copyright owners found that according to information provided by the NCTA the difference between the increase in the CPI and the increase in subscriber rates was 21.70% [71] and that according to their own information it was 20.75%.[72] Consistent with having chosen the Copyright owners' extrapolation, the Tribunal remained with the result obtained from the Copyright owners own information—20.75%—and rounded to the nearest whole percent—21%—to reach the figure by which the DSE rates would be adjusted upward.

The gross receipts limitation ceilings were adjusted by the simple amount the CPI has increased from October 19, 1976 to January 1, 1980; once again using the figure submitted by the Copyright owners, which the Tribunal judged was the most nearly accurate—33.81%. The results were rounded to the nearest thousand dollars.

Conclusion

On December 11, 1980, the Copyright Royalty Tribunal adopted a resolution calling for an adjustment of the cable copyright royalty rates established by 17 U.S.C. 111(d)(2)(B) and the gross receipts limitations established by 17 U.S.C. 111(d)(2) (C) and (D). The parties were directed to submit proposed regulations and appropriate cost of living data in accordance with the following principles:

1. That inflation shall be measured by the Consumer Price Index (CPI).

2. That the royalty rates shall be adjusted on an industry-wide basis to reflect in the period from October 19, 1976 to January 1, 1980 the difference between inflation and the change in subscriber rates.

3. The gross receipts limitations shall be adjusted by the measure of inflation as of January 1, 1980 from October 1976.

Implementation of these principles requires measurement of two factors for the period October 19, 1976 to January 1, 1980. These are:

(a) The change in the CPI, and

(b) The change in subscriber rates.

[69] Ibid., p. 2.
[70] Ibid., p. 3.
[71] Ibid., p. 6.
[72] Ibid.

Both parties submitted proposals. The Tribunal concluded that the proposal submitted by the copyright owners, based upon the record was more valid, fair and reasonable. Further that it reflected more adequately the true to life circumstances.

Thus the Tribunal determined that the royalty rates should be adjusted by an increase of 20.75% (rounded off to 21%). The gross receipts limitations was determined to be adjusted by an increase of 33.81% rounded off to the nearest one hundred dollars.

Accordingly, pursuant to 17 U.S.C. 801(b)(2) (A) and (D), and 804, 37 CFR Chapter III is amended as follows:

By adding a new Part 308, to read as follows:

PART 308—ADJUSTMENT OF ROYALTY FEE FOR COMPULSORY LICENSE FOR SECONDARY TRANSMISSION BY CABLE SYSTEM

Authority: 17 U.S.C. 801(b)(2) (A) and (D).

§ 308.1 General.

This Part establishes adjusted terms and rates or royalty payments in accordance with the provisions of 17 U.S.C. 111 and 801 (b)(2) (A) and (D). Upon compliance with 17 U.S.C. 111 and the terms and rates of this Part, a cable system entity may engage in the activities set forth in 17 U.S.C. 111.

§ 308.2 Royalty fee for compulsory license for secondary transmission by cable systems.

(a) Commencing with the first semiannual accounting period of 1981 and for each semiannual accounting period thereafter, the royalty rates established by 17 U.S.C. 111(d)(2)(B) shall be as follows:

(1) .817 of 1 per centum of such gross receipts for the privilege of further transmitting any nonnetwork programming of a primary transmitter in whole or in part beyond the local service area of such primary transmitter, such amount to be applied against the fee, if any, payable pursuant to paragraphs (a)(2) through (4);

(2) .817 of 1 per centum of such gross receipts for the first distant signal equivalent;

(3) .514 of 1 per centum of such gross receipts for each of the second, third and fourth distant signal equivalents; and

(4) .242 of 1 per centum of such gross receipts for the fifth distant signal equivalent and each additional distant signal equivalent thereafter.

(b) Commencing with the first semiannual accounting period of 1981 and for each semiannual accounting period thereafter, the gross receipts limitations established by 17 U.S.C. 111(d)(2) (C) and (D) shall be adjusted as follows:

(1) If the actual gross receipts paid by subscribers to a cable system for the period covered by the statement for the basic service of providing secondary transmission of primary broadcast transmitters total $107,000 or less, gross receipts of the cable system for the purpose of this subclause shall be computed by subtracting from such actual gross receipts the amount by which $107,000 exceeds such actual gross receipts, except that in no case shall a cable system's gross receipts be reduced to les than $4,000. The royalty fee payable under this subclause shall be 0.5 of 1 per centum regardless of the number of distant signal equivalents, if any; and

(2) If the actual gross receipts paid by subscribers to a cable system for the period covered by the statement, for the basic service of providing secondary transmissions of primary broadcast transmitters, are more than $107,000 but less than $214,000, the royalty fee payable under this subclause shall be (i) 0.5 of 1 per centum of any gross receipts up to $107,000 and (ii) 1 per centum of any gross receipts in excess of $107,000 but less than $214,000, regardless of the number of distant signal equivalents, if any.

Adopted December 17, 1980.

Clarence L. James, Jr.,

Chairman, Copyright Royalty Tribunal.

[FR Doc. 80-40827 Filed 12-31-80; 8:45 am]
BILLING CODE 1410-01-M

POSTAL SERVICE

39 CFR Part 232

Conduct on Postal Property; Posting of Notices by Government-Related Organizations

AGENCY: Postal Service.

ACTION: Final Rule.

SUMMARY: This rule amends postal regulations to permit the posting of notices by United States Government-related organizations such as the Inaugural Committee, as defined by 36 U.S.C. 721, on postal premises. This change in the regulations is prompted by a request by the Presidential Inaugural Committee that it be permitted to post

promotional materials for 1981 inaugural souvenirs in post office lobbies.

EFFECTIVE DATE: January 9, 1981. Written comments should be received on or before February 5, 1981.

ADDRESS: Comments on this regulation are solicited and will be considered with a view toward making any changes that may be needed. Comments should be sent to U.S. Postal Service, Room 10401, 475 L'Enfant Plaza, West, SW, Washington, D.C. 20260 or delivered to Room 10401, 475 L'Enfant Plaza between 8:15 a.m. and 4:45 p.m. Copies of all written comments received will be available for public inspection and photocopying between 9:00 a.m. and 4:00 p.m., Monday through Friday in Room 10401, 475 L'Enfant Plaza.

FOR FURTHER INFORMATION CONTACT: Neva Watson, (202) 245-4642.

SUPPLEMENTARY INFORMATION: Although exempt from the notice and comment requirement of the Administrative Procedure Act (5 U.S.C. 553(b)(c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service ordinarily invites comments from the public whenever it proposes a new or amended regulation such as this, which would or might have a substantial effect on the public. In this case, however, publishing this rule as a proposal, with a comment period of 30 days, would unnecessarily delay relief from a restriction. For the Inaugural Committee, which has requested that its promotional materials be posted in post offices from January 9, 1981 until January 31, 1981, a 30 day delay would negate its request.

Accordingly, the Postal Service finds it unnecessary and contrary to the public interest to follow its customary practice of publishing these rules as proposed rules for comment before they become effective. However, we reiterate that comments are welcomed on this published rule and any proposed changes will be considered and acted upon as appropriate.

In view of the considerations discussed, the Postal Service hereby adopts the following amendment to title 39, Code of Federal Regulations:

In 39 CFR 232.6 add a new subparagraph (3) to paragraph (o) reading as follows:

§ 232.6 Conduct on postal property.

* * * * *

(o) * * *

(3) Posting of notices by United States Government-related organizations such as the Inaugural Committee as defined in 36 U.S.C. 721.

* * * * *

(39 U.S.C. 401(2), 403(b)(3))

W. Allen Sanders,

Associate General Counsel, General Law and Administration.

[FR Doc. 81-196 Filed 1-2-81; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-1-FRL 1717-1]

Approval and Promulgation of Implementation Plans; Maine

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Maine Department of Environmental Protection (the Maine Department) submitted a revision to its State Implementation Plan (SIP) to satisfy a condition of the approval of the Augusta secondary TSP attainment plan. EPA is approving the schedule for the Augusta street sweeping program which will satisfy one condition and is taking no action on another portion of the revision which was submitted to satisfy a second condition, analysis of Reasonably Available Control Technology (RACT) for sources in Augusta.

EFFECTIVE DATE: January 5, 1981.

FOR FURTHER INFORMATION CONTACT: Harley F. Laing, Chief, Air Branch, EPA Region 1, Room 1903, JFK Federal Building, Boston, Massachusetts 02203, (617) 223-5609.

SUPPLEMENTARY INFORMATION: On February 19, 1980 EPA published in the **Federal Register** (45 FR 10775) a final rulemaking conditionally approving Maine's attainment plan SIP revisions submitted on May 1, 1979. These revisions were found to be in substantial compliance with the requirements of Part D of the Clean Air Act, since they implement new measures for controlling air pollution which will result in attainment of the primary National Ambient Air Quality Standards (NAAQS) by December 31, 1982. However, the conditions of the approval of the Augusta Secondary TSP attainment plan required that the state submit to EPA by April 30, 1980:

A schedule for evaluating, adopting and implementing a vacuum street sweeping program throughout Augusta, contingent on the successful demonstration of this measure's control effectiveness in Bangor/Brewer and by August 1, 1980:

(1) An analysis of Reasonably Available Control Technology (RACT) sources of TSP in the city of Augusta.

(2) An assessment of the impact of sources which do not meet RACT requirements.

(3) Evidence of the adoption of RACT where and if it will expedite attainment of secondary TSP standards.

On July 31, 1980 the Maine Department of Environmental Protection (the Maine Department) submitted a revision to its SIP to satisfy the first condition. The July 31, 1980 submittal consists of a Memorandum of Understanding between the Maine Department and the Augusta City Council. The memorandum provides that:

(1) No later than November 30, 1980, the Augusta City Council will report to the Maine Department on the availability and cost of implementing removal/control methods for urban road dust including vacuum street sweeping.

(2) No later than April 30, 1981 the Maine Department will report to the Augusta City Council on the effectiveness of the Bangor/Brewer street sweeping program.

Although the memorandum does not specifically state that the Augusta City Council will adopt a street sweeping program if the Bangor/Brewer program is shown to be effective, EPA has received oral assurances that this is the Council's intention.

EPA has determined that the schedule submitted by the Maine Department satisfies the first condition of the approval of the Augusta secondary TSP attainment plan.

EPA notes that the current attainment date for the secondary TSP standard in the Augusta area is December 31, 1980. See 45 FR 10766, 10774 (February 19, 1980). However, the Maine Department is preparing to submit a request for a revision to this attainment date based on the implementation of the street sweeping program.

The memorandum also lists a schedule for determining RACT for sources in Augusta, which does not satisfy the second condition of the Augusta secondary TSP attainment plan. EPA is taking no action on this condition at this time. EPA intends to publish a disapproval of this schedule in the near future.

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

§ 52.1025 [Amended]

1. *Section 52.1020 Identification of Plan:* Section 52.1020(c)(11) is amended by striking the phrase "on May 1, 1979, October 26, 1979, December 20, 1979,

and July 9, 1979" and substituting in place thereof the phrase "on May 1, 1979, October 26, 1979, December 20, 1979, July 9, 1979 and July 31, 1980."

§ 52.1025 [Amended]

2. *Section 52.1025 Control strategy: particulate matter:* Section 52.1025, paragraph (e) is amended by removing subparagraph (4).

EPA finds that good cause exists for making this action immediately effective for the following reasons:

1. Implementation plan revisions are already in effect under state law and EPA approval imposes no additional regulatory burden.

2. EPA has responsibility under the Act to take final action on the portion of the SIP which addresses Part D requirements by July 1, 1979, or as soon thereafter as possible.

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.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized". I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

After evaluation of the State's submittal, the Administrator has determined that the Massachusetts revision meets the requirements of the Clean Air Act and 40 CFR Part 51. Accordingly, this revision is approved as a revision to the Massachusetts Implementation Plan.

Authority: Section 110(a) of the Clean Air Act, as amended, 42 U.S.C. 7410 and 7601.

Dated: December 24, 1980.

Douglas M. Costle,

Administrator.

Note.—Incorporation by reference of the State Implementation plan for the state of Massachusetts was approved by the Director of the Federal Register on July 1, 1980.

[FR Doc. 81-104 Filed 1-2-81; 8:45 am]

BILLING CODE 6560-38-M

40 CFR Parts 52 and 81

[A-7-FRL-1711-3]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes: State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: On October 3, 1980, EPA proposed in the **Federal Register** to approve the redesignation of certain areas in the State of Missouri in regard to the national ambient air quality standards (NAAQS). No comments were received as a result of that proposal. EPA is taking final action today to approve these redesignations.

DATE: These regulations are effective February 4, 1981.

ADDRESSES: Copies of the state submission and the EPA prepared plan evaluation document are available at the following locations:

Public Information Reference Unit, Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460.

Air Support Branch, Environmental Protection Agency, 324 East 11th Street, Kansas City, Mo. 64106.

Missouri Department of Natural Resources, 2010 Missouri Boulevard, Jefferson City, Mo. 65102.

St. Louis County Department of Health and Medical Care, Division of Environmental Health Care Service, Air Pollution Control Branch, 801 South Brentwood Boulevard, Clayton, Mo. 63105.

FOR FURTHER INFORMATION CONTACT: Wayne G. Leidwanger at 816-374-3791 (FTS 758-3791).

SUPPLEMENTARY INFORMATION: In response to Section 107(d) of the Clean Air Act, as amended, the State of Missouri and EPA have designated all areas of the state as attaining the national ambient air quality standards (NAAQS), not attaining the standards, or having insufficient data to make a determination. An attainment area is one in which air quality does not exceed the NAAQS. A nonattainment area is one in which the air quality is worse than the standards. An unclassified area is one for which there is insufficient data to determine whether the area is attainment or nonattainment. At 40 CFR Part 81, Subpart C, the areas of the state which are nonattainment for one or more pollutants are identified.

On May 28, 1980, the Missouri Air Conservation Commission (MACC) adopted recommendations for redesignating certain areas of the state from nonattainment to attainment. These recommendations, submitted to EPA on July 21, 1980, include the redesignation of the Chambers and St. Ann areas of St. Louis County from nonattainment for the secondary standard for total suspended particulates (TSP) to attainment and the redesignation of the St. Louis "Hotspot" from nonattainment for the primary and secondary SO_2 standards to attainment.

On October 3, 1980, EPA proposed to approve these redesignations (45 FR 65630). A complete discussion of the criteria for redesignations to attainment and the recommendations adopted by the MACC are given in that notice. EPA received no comments in response to the proposed rulemaking. EPA now is taking final action to approve the redesignations.

Action

EPA approves the MACC recommendations that the Chambers and St. Ann areas be redesignated attainment for TSP and that the St. Louis "Hotspot" be redesignated attainment for SO_2.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and, therefore, subject to the procedural requirements of the Order, or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized."

I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

This notice of proposed rulemaking is issued under authority of Section 107 of the Clean Air Act as amended.

Dated: December 24, 1980.

Douglas M. Costle,

Administrator.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

1. Title 40, Part 81 of the Code of Federal Regulations is amended as follows:

Subpart C—Section 107 Attainment Status Designations

§ 81.326 [Amended]

In § 81.326 in the table Missouri—TSP under St. Louis AQCR (070), delete the entire entry for the Chambers area:

Chambers area:			
Beginning at the St. Louis city limits and I-270, west to Highway 367, south to St. Louis city limits and along this boundary to point of origin.		X	

and delete the entire entry for the St. Ann area:

St. Ann area:			
(An area of about one mile radius located in the City of St. Ann).		X	

The Missouri—SO_2 table is amended to read as follows:

Missouri SO_2

Designated area	Does not meet primary standard	Does not meet secondary standard	Cannot be classified	Better than national standard
Entire State				X

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

2. Title 40, Part 52 of the Code of Federal Regulations is amended as follows:

Subpart AA—Missouri

Section 52.1332 is amended by revising the table to read as follows:

§ 52.1332 Attainment dates for national standards.

* * * * * * *

Air quality control region	Pollutant						
	Particulate matter		Sulfur oxides		Nitrogen dioxide	Carbon monoxide	Photochemical oxidants [1]
	Primary	Secondary	Primary	Secondary			
Metropolitan Kansas City Interstate	b	e	d	d	d	May 31, 1975	b
Southwest Missouri Intrastate	a	a	d	d	d	d	d
Southeast Missouri Intrastate	d	d	d	d	d	d	d
Northern Missouri Intrastate	a	a	d	d	d	d	d
Metropolitan St. Louis Interstate	b	e	d	d	d	c	c

[FR Doc. 81-168 Filed 1-2-81; 8:45 am]

BILLING CODE 6560-38-M

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 5-60, 5A-60, and 5B-60

Contract Appeals

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: The General Services Administration Procurement Regulations, Chapter 5, are amended to transfer policies and procedures regarding contract appeals from Chapters 5A and 5B. This transfer is part of the action to incorporate appropriate material in Chapters 5A and 5B into Chapter 5. The intended effect is to have a single GSA-wide procurement regulation.

EFFECTIVE DATE: February 27, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Philip G. Read, Director, Federal Procurement Regulations Directorate, Office of Acquisition Policy, (703-557-8947).

SUPPLEMENTARY INFORMATION: Outstanding Procurement Letters remain in effect until cancelled.

CHAPTER 5—GENERAL SERVICES ADMINISTRATION

[APD 2800.2 CHGE 14]

1. The Table of Parts is amended by adding the following entry:

Table of Parts

Part

5-60 Contract appeals.

2. The Contents of Part for Part 5-60 is added as follows:

PART 5-60—CONTRACT APPEALS

3. Part 5-60 Contract Appeals is added as follows:

§ 5-60.000 Scope of part.

This part sets forth the rules of the GSA Board of Contract Appeals and establishes procedures for processing contract appeals.

Subpart 5-60.1—Rules of the GSA Board of Contract Appeals

§ 5-60.100 Index to the rules of the GSA Board of Contract Appeals.

Index to Rules

§ 5-60.101 Rules of the GSA Board of Contract Appeals.

The rules of the GSA Board of Contract Appeals prescribed by the Administrator of General Services in GSA Order ADM 2806.4, dated January 9, 1975, and Change 1, dated April 25, 1979, are as follows:

Preface to Rules

1. Jurisdiction for considering appeals.

(a) Except as stated in (b), below, the General Services Administration Board of Contract Appeals (referred to herein as "the Board") shall consider and determine appeals from decisions of contracting officers arising under contracts which contain provisions requiring the determination of appeals by the head of an agency or his duly authorized representative or board. In addition, the Board shall have jurisdiction over matters assigned to it by the Administrator. The Board has authority to determine appeals falling within the scope of its jurisdiction as fully and finally as might the Administrator himself.

(b) The authority of the Board does not apply to any matters arising from complaints originating under the Equal Opportunity clause in contracts.

2. Organization and location of the Board.

(a) The Board is located in Washington, DC, and is part of the staff of the Administrator.

(b) The Board consists of a Chairman and six other members, all of whom shall be attorneys at law duly licensed by any State, commonwealth, territory, or the District of Columbia. In general, the appeals are assigned to a panel of at least three members of the Board. The decision of a majority of the panel constitutes the decision of the Board. Board members are designated as Administrative Judges and the Chairman is designated as Chief Administrative Judge.

3. *Decisions on questions of law.*

When an appeal is taken pursuant to a Disputes clause in a contract which limits appeals to disputes concerning questions of fact, the Board may, in its discretion, hear, consider, and decide all questions of law necessary for the complete adjudication of the issue. In the consideration of an appeal, should it appear that a claim is involved which is not cognizable under the terms of the contract, the Board may make findings of fact with respect to such claim without expressing an opinion on the question of liability.

4. *Board of Contract Appeals procedure*

(a) *Rules.* Appeals referred to the Board are handled in accordance with the rules of the Board.

(b) *Administration and interpretation of rules.* Emphasis is placed upon the sound administration of these rules in specific cases, because it is impracticable to articulate a rule to fit every possible circumstance which may be encountered. These rules will be interpreted so as to secure a just and inexpensive determination of appeals without unnecessary delay.

(c) *Preliminary procedures.* Preliminary procedures are available to encourage full disclosure of relevant and material facts, and to discourage unwarranted surprise.

(d) *Time, computation and extensions.*

(1) All time limitations specified for various procedural actions are maximums, and they are not to be fully exhausted if the action can be completed in a lesser period. These time limitations are similarly eligible for extension in appropriate circumstances, on good cause shown.

(2) Except as otherwise provided by law, in computing any period of time prescribed by these rules or by any order of the Board, the day of the event from which the designated period of time begins to run shall not be included, but the last day of the period shall be included unless it is a Saturday, Sunday, or a legal holiday, in which event the period shall run to the end of the next business day.

(3) Requests for extensions of time from either party shall be made in writing and stating good cause therefor.

(e) *Representation of parties.* An appellant may appear before the Board in person or may be represented by counsel or by any other duly authorized representative as soon as appropriate notices of appearance have been filed with the Board. Whenever reference is made to contractor, appellant, contracting officer, respondent, and parties, these references shall include respective counsel.

Preliminary Procedures

1. *Appeals, how taken.* Notice of an appeal must be in writing, and the original, together with two copies, may be filed with the contracting officer from whose decision the appeal is taken. The notice of appeal must be mailed or otherwise filed within the time specified therefor in the contract or allowed by applicable provision of directive or law.

2. *Notice of appeal, contents of.* A notice of appeal should indicate that an appeal is thereby intended, and should identify the contract (by number), the department and agency or bureau cognizant of the dispute,

and the decision from which the appeal is taken. The notice of appeal should be signed personally by the appellant (the contractor making the appeal), or by an officer of the appellant corporation or member of the appellant firm, or by the contractor's duly authorized representative or attorney. The complaint referred to in Rule 6 may be filed with the notice of appeal, or the appellant may designate the notice of appeal as a complaint, if it otherwise fulfills the requirements of a complaint.

3. *Forwarding of appeals.* When a notice of appeal in any form has been received by the contracting officer, he shall endorse the notice and affix the date of mailing (or date of receipt, if otherwise conveyed), and within 10 days shall forward the notice of appeal to the Board. Following receipt by the Board of the notice of appeal (whether through the contracting officer or otherwise), the contractor will be furnished a copy of these rules.

4. *Preparation, contents, organization, forwarding, and status of appeal file.*

(a) *Duties of contracting officer.* Within 30 days of receipt of an appeal, or advice that an appeal has been filed, the contracting officer shall assemble and transmit to the Board, through the Assistant General Counsel, Claims and Litigation Division, an appeal file consisting of all documents pertinent to the appeal, including:

(1) The decision and findings of fact from which appeal is taken;

(2) The contract, including specifications, plans and drawings, and pertinent amendments;

(3) All correspondence between the parties pertinent to the appeal, including the letter or letters of claim in response to which decision was issued;

(4) Transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any Government witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board; and

(5) Any additional information considered pertinent.

Within the same time above specified, the Assistant General Counsel, Claims and Litigation Division, shall furnish the appellant a copy of each document he transmits to the Board, except those stated in subparagraphs (a)(2) and (a)(3), above, as to which a list furnished appellant indicating specific contractual documents transmitted will suffice, and those stated in subparagraph (d), below.

(b) *Duties of the appellant.* Within 30 days after receipt of a copy of the appeal file assembled by the contracting officer, the appellant shall supplement the same by transmitting to the Board any documents not contained therein which he considers pertinent to the appeal, and furnishing two copies of such documents to the Government trial attorney.

(c) *Organization of appeal file.* Documents in the appeal file may be originals or legible facsimile or authenticated copies thereof, and shall be arranged in chronological order where practicable, numbered sequentially, tabbed, and indexed to identify the contents of the file.

(d) *Lengthy documents.* The Board may waive the requirement of furnishing to the other party copies of bulky, lengthy, or out-of-size documents in the appeal file when a party has shown that doing so would impose an undue burden. At the time a party files with the Board a document as to which such a waiver has been granted, he shall notify the other party that the same or a copy is available for inspection at the offices of the Board or of the party filing same.

(e) *Status of documents in appeal file.* Documents contained in the appeal file are considered, without further action by the parties, as part of the record upon which the Board will render its decision, unless a party objects to the consideration of a particular document in advance of hearing or of settling the record in the event there is no hearing on the appeal. If objection to a document is made, the Board will rule upon its admissibility into the record and/or the weight to be attached to it as evidence in accordance with Rules 13 and 20, hereof.

5. *Dismissal for lack of jurisdiction.* Any motion addressed to the jurisdiction of the Board shall be promptly filed. Hearing on the motion shall be afforded on application of either party, unless the Board determines that its decision on the motion will be deferred pending hearing on both the merits and the motion. The Board shall have the right at any time and on its own motion to raise the issue of its jurisdiction to proceed with a particular case, and shall do so by an appropriate order, affording the parties an opportunity to be heard thereon.

6. *Pleadings.*

(a) Within 30 days after receipt of notice of docketing of the appeal, the appellant shall file with the Board an original and two copies of a complaint setting forth simple, concise, and direct statements of each of his claims, alleging the basis, with appropriate reference to contract provisions, for each claim, and the dollar amount claimed. This pleading shall fulfill the generally recognized requirements of a complaint, although no particular form or formality is required. Upon receipt thereof, the Clerk of the Board shall serve a copy upon the respondent. Should the complaint not be received within 30 days, appellant's claim and appeal, if in the opinion of the Board the issues before the Board are sufficiently defined, may be deemed to set forth his complaint, and the respondent shall be so notified.

(b) Within 30 days from receipt of said complaint, or the aforesaid notice from the Clerk of the Board, respondent shall prepare and file with the Board an original and two copies of an answer thereto, setting forth simple, concise, and direct statements of respondent's defenses to each claim asserted by appellant. This pleading shall fulfill the generally recognized requirements of an answer, and shall set forth any affirmative defenses or counterclaims as appropriate. Upon receipt thereof, the Clerk shall serve a copy upon appellant. Should the answer not be received within 30 days, the Board may, in its discretion, enter a general denial on behalf of the Government, and the appellant shall be so notified.

7. *Amendments of pleadings or record.*

(a) The Board, upon its own initiative or upon application by a party may, in its discretion, order a party to make a more definite statement of the complaint or answer, or to reply to an answer.

(b) The Board may, in its discretion, and within the proper scope of the appeal, permit either party to amend his pleading upon conditions just to both parties. When issues within the proper scope of the appeal, but not raised by the pleadings or the documentation described in Rule 4, are tried by express or implied consent of the parties, or by permission of the Board, they shall be treated in all respects as if they had been raised therein. In such instances, motions to amend the pleadings to conform to the proof may be entered, but are not required. If evidence is objected to at a hearing on the ground that it is not within the issues raised by the pleadings or the Rule 4 documentation (which shall be deemed part of the pleadings for this purpose), it may be admitted within the proper scope of the appeal, provided, however, that the objecting party may be granted a continuance if necessary to enable him to meet such evidence.

8. *Hearing election.* Upon receipt of respondent's answer or the notice referred to in the last sentence of Rule 6(b), above, appellant shall advise whether he desires a hearing, as prescribed in Rules 17 through 25, or whether in the alternative he elects to submit his case on the record without a hearing, as prescribed in Rule 11. In appropriate cases, the appellant shall also elect whether he desires the optional accelerated procedure prescribed in Rule 12.

9. *Prehearing briefs.* Based on an examination of the documentation described in Rule 4, the pleadings, and a determination of whether the arguments and authorities addressed to the issues are adequately set forth therein, the Board may, in its discretion, require the parties to submit prehearing briefs in any case in which a hearing has been elected pursuant to Rule 8. In the absence of a Board requirement therefor, either party may in its discretion, and upon appropriate and sufficient notice to the other party, furnish a prehearing brief to the Board. In any case where a prehearing brief is submitted, it shall be furnished so as to be received by the Board at least 15 days prior to the date set for hearing, and a copy shall simultaneously be furnished to the other party as previously arranged.

10. *Prehearing or presubmission conference.* Whether the case is to be submitted pursuant to Rule 11, or heard pursuant to Rules 17 through 25, the Board may, upon its own initiative or upon the application of either party, call upon the parties to appear before a member or examiner of the Board for a conference to consider:

(a) The simplification or clarification of the issues;

(b) The possibility of obtaining stipulations, admissions, agreements on documents, understandings on matters already of record, or similar agreements which will avoid unnecessary proof;

(c) The limitation of the number of expert witnesses, or avoidance of similar cumulative evidence, if the case is to be heard;

(d) The possibility of agreement disposing of all or any of the issues in dispute; and

(e) Such other matters as may aid in the disposition of the appeal.

The results of the conference shall be reduced to writing by the Board member or examiner in the presence of the parties, and this writing shall thereafter constitute part of the record.

11. *Submission without a hearing.* Either party may elect to waive a hearing and to submit his case upon the record before the Board, as settled pursuant to Rule 13. Submission of a case without hearing does not relieve the parties from the necessity of proving the facts supporting their allegations or defenses. Affidavits, depositions, admissions, answers to interrogatories, and stipulations may be employed to supplement other documentary evidence in the Board record. The Board may permit such submission to be supplemented by oral argument (transcribed if requested), and/or by briefs, arranged in accordance with Rule 23.

12. *Optional accelerated procedure.*

(a) In appeals involving $25,000 or less, either party may elect, in his notice of appeal, complaint, answer, or by separate correspondence or statement prior to commencement of hearing or settlement of the record, to have the appeal processed under a shortened and accelerated procedure. For application of this rule the amount in controversy will be determined by the sum of the amounts claimed by either party against the other in the appeal proceeding. If no specific amount of claim is stated, a case will be considered to fall within this rule if the sum of the amounts which each party represents in writing that it could recover as a result of a Board decision favorable to it does not exceed $25,000. Upon such election, a case shall then be processed under this rule unless the other party objects and shows good cause why the substantive nature of the dispute requires processing under the Board's regular procedures and the Board, acting through the Chairman, sustains such objection. In cases proceeding under this rule, parties are encouraged, to the extent possible consistent with adequate presentation of their factual and legal positions, to waive pleadings, discovery, and briefs.

(b) Written decision by the Board in cases proceeding under this rule normally will be short and contain summary findings of fact and conclusions only. The Board will endeavor to render such decisions within 30 days after the appeal is ready for decision. Such decisions will be rendered for the Board by a single Board member with the concurrence of the Chairman; except that in cases involving $5,000 or less where there has been a hearing, the single Board member presiding at the hearing may, in his discretion, at the conclusion of the hearing and after entertaining such oral arguments as he deems appropriate, render on the record oral summary findings of fact, conclusions and decision of the appeal. In the latter instance, the Board will subsequently furnish the parties a typed copy of such oral decision for record and payment purposes and to establish the date from which the period commences for filing a motion for reconsideration under Rule 29.

(c) Except as herein modified, these rules otherwise apply in all respects.

12.1. *Optional small claims and accelerated procedures.* These procedures are available solely at the election of the appellant.

(a) *Elections to utilize small claims and accelerated procedures.*

(1) In appeals where the amount in dispute is $10,000 or less, the appellant may elect to have the appeal processed under a small claims procedure requiring decision of the appeal, whenever possible, within 120 days after the Board receives written notice of the appellant's election to utilize this procedure. The details of this procedure appear in paragraph (b) of this Rule 12.1. An appellant may elect the accelerated procedure rather than the the small claims procedure for any appeal eligible for the small claims procedure.

(2) In appeals where the amount in dispute is $50,000 or less, the appellant may elect to have the appeal processed under an accelerated procedure requiring decision of the appeal, whenever possible, within 180 days after the Board receives written notice of the appellant's election to utilize this procedure. The details of this procedure appear in paragraph (c) of this Rule 12.1

(3) The appellant's election of either the small claims procedure or the accelerated procedure may be made by written notice within 20 days after receipt of notice of docketing, unless this period is extended by the Board for good cause. The election may not be withdrawn except with permission of the Board and for good cause.

(4) In deciding whether the small claims procedure or the accelerated procedure is applicable to a given appeal, the Board shall determine the amount in dispute by adding the amount claimed by the appellant against the respondent to the amount claimed by the respondent against the appellant. If either party making a claim against the other party does not otherwise state in writing the amount of its claim, the amount claimed by such party shall be the maximum amount which such party represents in writing to the Board that it can reasonably expect to recover against the other.

(b) *The small claims procedure.*

(1) This procedure shall apply only to appeals where the amount in dispute is $10,000 or less as to which the appellant has elected the small claims procedure.

(2) In cases proceeding under the small claims procedure, the following time periods shall apply: (i) Within 10 days from the respondent's receipt of a copy of the appellant's notice of election of the small claims procedure, from either the appellant or the Board, the respondent shall send the Board the documents required by Rule 4; (ii) within 15 days after the Board has acknowledged receipt of the notice of election, either party desiring an oral hearing shall so inform the Board. If either party requests an oral hearing, the Board shall promptly schedule such a hearing for a mutually convenient time consistent with administrative due process and the 120-day limit for a decision, at a place determined under Rule 17. If a hearing is not requested by either party within the time prescribed by this rule, the appeal shall be deemed to have been submitted under Rule 11 without a hearing.

(3) In cases proceeding under the small claims procedure, pleadings, discovery, and other prehearing activity will be allowed only as consistent with the requirements to conduct the hearing on the date scheduled or, if no hearing is scheduled, to close the record on a date that will allow decision within the 120-day limit. The Board, in its discretion, may shorten time periods prescribed elsewhere in these rules as necessary to enable the Board to decide the appeal within 120 days after the Board has received the appellant's notice of election of the small claims procedure, allowing up to 30 days for preparation of the decision after closing the record and the filing of briefs, if any.

(4) Written decision by the Board in cases processed under the small claims procedure will be short and contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single Administrative Judge. If there has been a hearing, the Administrative Judge presiding at the hearing may, in the Judge's discretion, at the conclusion of the hearing and after entertaining such oral arguments as deemed appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the appeal. Whenever such an oral decision is rendered, the Board will furnish the parties a typed copy of the oral decision for record and payment purposes and to establish a date of commencement of the period for filing a motion for reconsideration under Rule 29.

(5) Decisions of the Board under the small claims procedure will not be published, will have no value as precedents, and, in the absence of fraud, cannot be appealed.

(c) *The accelerated procedure.*

(1) This procedure shall apply only to appeals where the amount in dispute is $50,000 or less as to which the appellant has made the requisite election.

(2) In cases proceeding under the accelerated procedure, the parties are encouraged, to the extent possible consistent, with adequate presentation of their factual and legal positions, to waive pleadings, discovery, and briefs. The Board, in its discretion, may shorten time periods prescribed elsewhere in these rules as necessary to enable the Board to decide the appeal within 180 days after the Board has received the appellant's notice of election of the accelerated procedure, allowing up to 30 days for the preparation of the decision after closing the record and the filing of briefs, if any.

(3) Written decisions by the Board in cases processed under the accelerated procedure will normally be short and contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single Administrative Judge with the concurrence of the Chairman or Vice Chairman or other designated Administrative Judge, or by a majority among these two and an additional designated member in case of disagreement. Alternatively, in cases where the amount in dispute is $10,000 or less as to which the accelerated procedure has been elected and in which there has been a hearing, the single Administrative Judge presiding at the hearing may, with the concurrence of both parties, at the conclusion

of the hearing and after entertaining such oral arguments as he deems appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of the oral decision for record and payment purposes and to establish the date of commencement of the period for filing a motion for reconsideration under Rule 29.

(d) *Motions for Reconsideration in Rule 12.1 cases.* Motions for Reconsideration of cases decided under either the small claims procedure or accelerated procedure need not be decided within the time periods prescribed by this Rule 12.1 for the initial decision of the appeal, but all of these motions shall be processed and decided rapidly so as to fulfill the intent of this rule.

13. *Settling the record.*

(a) The record upon which the Board's decision will be rendered consists of the appeal file described in Rule 4, and, to the extent the following items have been filed, pleadings, prehearing conference memoranda or orders, prehearing briefs, depositions or interrogatories received in evidence, admissions, stipulations, transcripts of conferences and hearings, hearing exhibits, posthearing briefs, and documents which the Board has specifically designated be made a part of the record. The record will at all reasonable times be available for inspection by the parties at the office of the Board.

(b) Except as the Board may otherwise order in its discretion, no proof shall be received in evidence after completion of an oral hearing or, in cases submitted on the record, after notification by the Board that the case is ready for decision.

(c) The weight to be attached to any evidence of record will rest within the sound discretion of the Board. The Board may in any case require either party, with appropriate notice to the other party, to submit additional evidence on any matter relevant to the appeal.

14. *Discovery—depositions.*

(a) *General policy and protective orders.* The parties are encouraged to engage in voluntary discovery procedures. In connection with any deposition or other discovery procedure, the Board may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, and those orders may include limitations on the scope, method, time and place for discovery, and provisions for protecting the secrecy of confidential information or documents.

(b) *When depositions permitted.* After an appeal has been docketed and complaint filed, the parties may mutually agree to, or the Board may, upon application of either party and for good cause shown, order the taking of testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purpose of discovery. The application for order shall specify whether the purpose of the deposition is discovery or for use as evidence.

(c) *Orders on depositions.* The time, place, and manner of taking depositions shall be as mutually agreed by the parties, or failing such agreement, governed by order of the Board.

(d) *Use as evidence.* No testimony taken by depositions shall be considered as part of the evidence in the hearing of an appeal unless and until such testimony is offered and received in evidence at such hearing. It will not ordinarily be received in evidence if the deponent is present and can testify personally at the hearing. In such instances, however, the deposition may be used to contradict or impeach the testimony of the witness given at the hearing. In cases submitted on the record, the Board may, in its discretion, receive depositions as evidence in supplementation of that record.

(e) *Expenses.* Each party shall bear its own expenses associated with the taking of any deposition.

15. *Interrogatories to parties, production and inspection of documents.*

(a) *Interrogatories to parties.* After an appeal has been filed with the Board, a party may serve on the other party written interrogatories to be answered separately in writing, signed under oath and returned within 15 days. Upon timely objection by the party, the Board will determine the extent to which the interrogatories will be permitted. The scope and use of interrogatories will be controlled by Rule 14.

(b) *Production and inspection of documents.* Upon motion of any party showing good cause therefor, and upon notice, the Board may order the other party to produce and permit the inspection and copying or photographing of any designated documents or objects, not privileged, specifically identified, and their relevance and materiality to the cause or causes in issue explained, which are reasonably calculated to lead to the discovery of admissible evidence. If the parties cannot themselves agree thereon, the Board shall specify just terms and conditions in making the inspection and taking the copies and photographs.

16. *Service of papers.* Papers shall be served personally or by mailing the same, addressed to the party upon whom service is to be made. All copies of complaints, answers, and simultaneous briefs shall be filed directly with the Board. The party filing any other paper with the Board shall send a copy thereof to the opposing party, noting on the paper filed with the Board, or on the letter transmitting the same, that a copy has been so furnished.

Hearings

17. *Where and when held.* Hearings will ordinarily be held in Washington, D.C., except that upon request reasonably made and upon good cause shown, the Board may, in its discretion, set the hearing at another location. Hearings will be scheduled at the discretion of the Board with due consideration to the regular order of appeals and other pertinent factors. On request or motion by either party and upon good cause shown, the Board may, in its discretion, advance a hearing.

18. *Notice of hearings.* The parties shall be given at least 15 days notice of the time and place set for hearings. In scheduling hearings, the Board will give due regard to the desires of the parties and to the requirement for just and inexpensive determination of appeals without unnecessary delay. Notices of hearing shall be promptly acknowledged by the parties. A party failing to acknowledge a notice of hearing shall be deemed to have submitted his case upon the Board record as provided in Rule 11.

19. *Unexcused absence of a party.* The unexcused absence of a party at the time and place set for hearing will not be occasion for delay. In the event of such absence, the hearing will proceed and the case will be regarded as submitted by the absent party as provided in Rule 11.

20. *Nature of hearings.* Hearings shall be as informal as may be reasonable and appropriate under the circumstances. Appellant and respondent may offer at a hearing on the merits such relevant evidence as they deem appropriate and as would be admissible under the generally accepted rules of evidence applied in the courts of the United States in non-jury trials, subject, however, to the sound discretion of the presiding member or examiner in supervising the extent and manner of presentation of such evidence. In general, admissibility will hinge on relevancy and materiality. Letters or copies thereof, affidavits, or other evidence not ordinarily admissible under the generally accepted rules of evidence, may be admitted in the discretion of the presiding member or examiner. The weight to be attached to evidence presented in any particular form will be within the discretion of the Board, taking into consideration all the circumstances of the particular case. Stipulations of fact agreed upon by the parties may be regarded and used as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. The Board may in any case require evidence in addition to that offered by the parties.

21. *Examination of witnesses.* Witnesses before the Board will be examined orally under oath or affirmation, unless the facts are stipulated, or the Board member or examiner shall otherwise order. If the testimony of a witness is not given under oath, the Board may, if it seems expedient, warn the witness that his statements may be subject to the provisions of Title 18, United States Code, Sections 287 and 1001, any any other provisions of law imposing penalties for knowingly making false representations in connection with claims against the United States or in any matter within the jurisdiction of any department or agency thereof.

22. *Copies of papers.* When books, records, papers, or documents have been received in evidence, a true copy thereof or of such part thereof as may be material or relevant may be substituted therefor, during the hearing or at the conclusion thereof.

23. *Posthearing briefs.* Posthearing briefs may be submitted upon such terms as may be agreed upon by the parties and the presiding member or examiner at the conclusion of the hearing. Ordinarily, they will be simultaneous briefs, exchanged within 30 days after receipt of transcript.

24. *Transcript of proceedings.* Testimony and argument at hearings shall be reported

verbatim, unless the Board otherwise orders. Transcripts of the proceedings shall be supplied to the parties at such rates as may be fixed by General Services Administration.

25. *Withdrawal of exhibits.* After a decision has become final the Board may, upon request and after notice to the other party, in its discretion permit the withdrawal of original exhibits, or any part thereof, by the party entitled thereto. The substitution of true copies of exhibits or any part thereof may be required by the Board in its discretion as a condition of granting permission for such withdrawal.

Representation

26. *The appellant.* An individual appellant may appear before the Board in person, a corporation by an officer thereof, a partnership or joint venture by a member thereof, or any of these by an attorney at law duly licensed in any State, commonwealth, territory, or in the District of Columbia.

27. *The respondent.* Government counsel may, in accordance with their authority, represent the interest of the Government before the Board. They shall file notices of appearance with the Board, and notice thereof will be given appellant or his attorney in the form specified by the Board from time to time. Whenever at any time it appears that appellant and Government counsel are in agreement as to disposition of the controversy, the Board may suspend further processing of the appeal: *Provided, however,* that if the Board is advised thereafter by either party that the controversy has not been disposed of by agreement, the case shall be restored to the Board's calendar without loss of position.

Decisions

28. *Decisions.* Decisions of the Board will be made in writing and authenticated copies thereof will be forwarded simultaneously to both parties. The rules of the Board and all final orders and decisions shall be open for public inspection at the offices of the Board in Washington, D.C. Decisions of the Board will be made solely upon the record, as described in Rule 13.

Motion for Reconsideration

29. *Motion for reconsideration.* A motion for reconsideration, if filed by either party, shall set forth specifically the ground or grounds relied upon to sustain the motion, and shall be filed within 30 days from the date of the receipt of a copy of the decision of the Board by the party filing the motion.

Dismissals

30. *Dismissal without prejudice.* In certain cases, appeals docketed before the Board are required to be placed in a suspense status and the Board is unable to proceed with disposition thereof for reasons not within the control of the Board. In any such case where the suspension has continued, or it appears that it will continue, for an inordinate length of time, the Board may, in its discretion, dismiss such appeals from its docket without prejudice to their restoration when the cause of suspension has been removed. Unless either party or the Board acts within three years to reinstate any appeal dismissed without prejudice, the dismissal shall be deemed with prejudice.

31. *Dismissal for failure to prosecute.* Whenever a record discloses the failure of either party to file documents required by these rules, respond to notices or correspondence from the Board, or otherwise indicates an intention not to continue the prosecution or defense of an appeal, the Board may issue an order requiring the offending party to show cause why the appeal should not be either dismissed or granted, as appropriate. If the offending party shall fail to show such cause, the Board may take such action as it deems reasonable and proper under the circumstances.

Ex Parte Communications

32. *Ex parte communications.* No member of the Board or of the Board's staff shall entertain, nor shall any person directly or indirectly involved in an appeal submit to the Board or the Board's staff, off the record any evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in an appeal. This provision does not apply to consultation among Board members nor to *ex parte* communications concerning the Board's administrative functions or procedures.

Sanctions

33. *Sanctions.* If any party fails or refuses to obey an order issued by the Board, the Board may make such order in regard to the failure as it considers necessary to the just and expeditious conduct of the appeal.

Subpoenas

34. *Subpoenas.*

(a) *General.* Upon written request of either party filed with the Clerk, or on his own initiative, the Administrative Judge to whom a case is assigned or who is otherwise designated by the Chairman may issue a subpoena requiring:

(1) Testimony at a deposition—The deposing of a witness in the city or county where he resides or is employed or transacts his business in person, or at another location convenient for him that is specifically determined by the Board;

(2) Testimony at a hearing—the attendance of a witness for the purpose of taking testimony at a hearing; and

(3) Production of books, papers, documents, or tangible things—in addition to (1) or (2), above, the production by the witness at the deposition or hearing of relevant books, papers, documents, or tangible things designated in the subpoena.

(b) *Voluntary cooperation.* Each party is expected (1) to cooperate and make available witnesses and books, papers, documents, or tangible things under its control as requested by the other party, without issuance of a subpoena and (2) to secure voluntary attendance of desired third-party witnesses and production of desired third-party books, papers, documents, or tangible things.

(c) *Requests for subpoenas.*

(1) A request for a subpoena shall normally be filed at least:

(i) 15 days before a scheduled deposition where the attendance of a witness at a deposition is sought;

(ii) 30 days before a scheduled hearing where the attendance of a witness at a hearing is sought. The Board may honor requests for subpoenas not made within these time limitations.

(2) A request for a subpoena shall state the reasonable scope and general relevance to the case of the testimony and of any books, papers, documents, or tangible things sought.

(d) *Requests to quash or modify.* Upon written request by the person subpoenaed or by a party made within 10 days after service but in any event not later than the time specified in the subpoena for compliance, the Board may (1) quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown or (2) require the person in whose behalf the subpoena was issued to advance the reasonable cost of producing subpoenaed books, papers, documents, or tangible things. Where circumstances require, the Board may act upon such a request at any time after a copy has been served upon the opposing party.

(e) *Form issuance.*

(1) Every subpoena shall state the name of the Board and the title of the appeal and shall command each person to whom it is directed to attend and give testimony and, if appropriate, to produce specified books, papers, documents, or tangible things, at a time and place specified therein. In issuing a subpoena to a requesting party, the Administraive Judge shall sign the subpoena and may, at the discretion of the Judge, enter the name of the witness or leave it blank.

The party to whom the subpoena is issued shall complete the subpoena before service.

(2) Where the witness is located in a foreign country, a letter rogatory or subpoena may be issued and served under the circumstances and in the manner provided in 28 U.S.C. 1781–1784.

(f) *Service.*

(1) The Administrative Judge may arrange for service of the subpoenas or may release them to the parties for service, at the discretion of the Judge.

(2) A subpoena requiring the attendance of a witness at a deposition or hearing may be served at any place. A subpoena may be served by a United States marshal or his deputy, or by any other person who is not a party and not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by personally delivering a copy to him and tendering to him the fees for 1 day's attendance and the mileage provided by 28 U.S.C. 1821 or other applicable law; however, where the subpoena is issued on behalf of the Government, money payments need not be tendered in advance of attendance.

(3) The party at whose instance a subpoena is issued shall be responsible for the payment of fees and mileage of the witness and of the officer who serves the subpoena. The failure to make a payment of these charges on demand may be deemed by the Board to be sufficient ground for striking the testimony of the witness and the evidence the witness has produced.

(g) *Contumacy or refusal to obey a subpoena.* In case of contumacy or refusal to obey a subpoena by a person who resides, is found, or transacts business within the

jurisdiction of a United States District Court, the Board will apply to the Court through the Attorney General of the United States for an order requiring the person to appear before the Board or a member thereof to give testimony or produce evidence, or both. Any failure of any such person to obey the order of the Court may be punished by the Court as a contempt thereof.

(End of Rules)

Subpart 5-60.2—Processing Contract Appeals

§ 5-60.201 Notice of appeal.

(a) Unresolved disputes arising under the Disputes clause of a contract must be decided initially by the contracting officer. An aggrieved contractor may appeal any final decision of the contracting officer.

(b) Notices of appeal are to be addressed to the Administrator of General Services, in care of the contracting officer, and mailed or otherwise delivered to the contracting officer who issued the final decision being appealed within 30 days from the date the decision of the contracting officer is received. Any request for an extension of the 30-day appeal period shall be denied.

(c) If the notice of appeal was mailed or otherwise submitted in an untimely manner, a separate letter, signed by the procuring director, shall be sent to the Assistant General Counsel, Claims and Litigation Division (LC), requesting that a motion for dismissal of the appeal be submitted to the GSA Board of Contract Appeals (the Board). The letter shall state the name of the appellant, contract number, and date of contracting officer's final decision, and shall be accompanied by (1) the certified mail receipt showing the date on which the appellant received the contracting officer's final decision, and (2) the envelope which contained the notice of appeal or other evidence of late submission of the notice of appeal.

§ 5-60.202 Contents of notices of appeal.

A notice of appeal should indicate that an appeal is thereby intended, should identify the decision and the date thereof from which the appeal is taken, the GSA office cognizant of the dispute, and the number of the contract in question. The appeal should describe the nature of the dispute and the relief sought, the contract provisions involved, and any other additional information or comments relating to the dispute which are considered to be important. The notice of appeal should be signed personally by the appellant (the prime contractor making the appeal) or by an officer of the appellant corporation, or member of the appellant firm, or by the contractor's duly authorized representative or attorney.

§ 5-60.203 Appeal files.

(a) Appeal files shall be prepared in accordance with this section and Rule 4 of the Board's preliminary procedures (see § 5-60.101), and forwarded, after concurrence by assigned counsel, to LC within 20 calendar days after receipt of the notice of appeal or advice that an appeal has been filed.

(b) Upon receipt of the notice of appeal, the procuring activity shall establish a record to ensure the timely preparation and submission of appeal cases. The record shall show, as a minimum, the name of the appellant, the date of the contracting officer's final decision, the date the appeal was filed, contract number, docket number, and name of the contracting officer.

(c) The Office of Contract Settlements (FCS) shall be responsible for maintaining a followup record for Federal Supply Service Central Office cases.

§ 5-60.203-1 Preparation of the appeal file.

(a) Appeal files shall be prepared in quadruplicate. Each file shall be identified by the name of the appellant, contract number, and docket number. All copies of the appeal file must be identical both as to content and position of items. If more than one appeal is filed under the same contract, upon request to, and waiver by, the Board, the appeal file for the second and subsequent appeals need not duplicate the documents included in the first appeal file, but shall make reference to the appeal file which contained such documents, including the docket and item numbers. Such files shall also include any documents pertinent to the later appeal but not previously furnished.

(b) Content of appeal file.

(1) Each appeal file shall be assembled by using a two-piece red pressboard binder 11 by 8½-inches punched with a 3-inch capacity fastener (NSN 7510-00-582-4201). A gummed label (NSN 7510-00-264-5460) shall be used on top of the file to identify the case by contractor, contract number, and docket number.

(2) Individual appeal files shall not be more than 1 inch in thickness. If the file will be more than 1 inch in thickness, two or more consecutive binders shall be used and identified with the appropriate exhibit numbers contained in each.

(3) Each document to be included in the appeal file (i.e., letter, telegram, memo, report, invoice, etc.) shall be legible, complete, included as a separate exhibit in the file, and listed in the "Index of Exhibits" by exhibit number and brief description. If a document cannot be legibly reproduced, the unaltered document shall be submitted with an attached accurate typewritten transcription thereof. Assigned counsel will assist the contracting officer in determining which documents are relevant to the issue in the appeal or not privileged for inclusion in the appeal file.

(4) Each appeal file shall contain division sheets separating the different documents listed in the "Index of Exhibits." Division sheets shall be tabbed and numbered consecutively commencing with number one.

(c) Arrangement of documents.

(1) The first (top) document in the appeal file shall be the "Index of Exhibits." The index shall list, opposite each exhibit number, a brief description of the document. Each document shall be filed (exhibited) in chronological order beginning with the most recent document. For example:

	Exhibit
Board of Contract Appeals acknowledgement of contractor's notice of appeal	1
Notice of appeal (letter and/or GSA Form 2465, Notice of Appeal, with attachments, if any)	2
Facsimile of Post Office receipt of the final decision letter	3
Contracting officer's final decision letter applicable to the dispute	4
Contractor's request for final decision or other documents of claim in response to which the decision was issued	5

(2) If any individual exhibit consists of more than one document, each additional document shall be separately numbered and subindexed on the division sheet (e.g., 1.1, 2.1, 5.2.5, etc.) but not shown in the "Index of Exhibits." In addition to the exhibits listed in (1), above, other pertinent exhibits, such as the following, should be included and exhibited in chronological order:

(i) Copy of the basic contract, including referenced terms and conditions.

(ii) Copy of the repurchase contract, including referenced terms and conditions.

(iii) Copies of specifications/drawings applicable to the dispute.

(iv) Copy of the abstract of offers and list of all offerors solicited for the repurchase contract.

(v) Copy of letter of assessment, including worksheet showing determination of excess costs.

(vi) Copies of defaulted purchase/delivery orders.

(vii) Copies of purchase/delivery orders issued under the repurchase contract.

(viii) Proof of payment and a detailed disbursement listing annotated and certified, if applicable. (Note.—The information and documents needed shall be obtained from the appropriate GSA accounting center. The finance information will include a detailed disbursement listing annotated with the check number and date, and the amount applicable to the repurchase order if different than the check amount. The disbursement listing will be certified by an appropriate finance division official whose title of signature will also be shown.)

§ 5-60.203-2 Transmittal of the appeal file.

(a) The original and two copies of the appeal file shall be forwarded to LC by a transmittal letter from the procuring director. The appeal file shall be accompanied by the contracting officer's detailed statement of facts in a memorandum of position as a separate document which shall be concurred in by assigned counsel who shall also prepare and attach a statement of legal position. A point of contact must be given LC; name of individual, position, title, and telephone number. (See § 5-60.206.)

(b) In the case of FSS Central Office contracts, FCS shall forward the appeal file to LC, together with the documentation required in (a), above.

(c) One copy of the appeal file shall be retained by the contracting officer for examination by the appellant. The contracting officer's memorandum of position including assigned counsel's statement of legal position or documents which are not part of the appeal file, furnished separately as background information, are not for examination by the appellant.

(d) In FSS, unless the appeal file and contracting officer's memorandum of position are prepared by FCS, a copy of each letter transmitting the appeal file to LC and a copy of the contracting officer's memorandum of position shall be sent to FCS.

(e) After reviewing the appeal file for adequacy, the trial attorney in LC will transmit the appeal file to the Board.

§ 5-60.204 Contracting officer's memorandum of position.

In addition to preparing the appeal file, the contracting officer (FCS in the case FSS of Central Office appeal files) shall prepare a memorandum of position (see § 5-60.206) with concurrence of assigned counsel and with the approval of the procuring director. Assigned counsel concurring in the contracting officer's memorandum of position shall also prepare and attach to the memorandum of position a statement of legal position. The memorandum of position is a chronological summary of the actions leading to the dispute and a rationale of the contracting officer's actions for the information of the trial attorney. The memorandum of position shall be submitted to LC simultaneously with the appeal file but as a separate document; i.e., it shall not be included as part of the appeal file, or included in the index. The memorandum of position should include a proposed list of witnesses for a hearing as well as a list of other individuals, whether employees of the Government, appellant, or others, with personal knowledge of the facts concerning the appeal, provided such a list is readily available and does not interfere with timely processing of the memorandum of position. The name, position, affiliation, address, and telephone number of each witness or other individual listed shall be included.

§ 5-60.205 Procedure following decision of the GSA Board of Contract Appeals.

(a) Decisions of the Board shall be promptly implemented. However, it must be recognized that the contractor may decide to bring suit regarding a Board decision in the United States Court of Claims or the Federal District Court. It is also possible for either party to file a motion for reconsideration by the Board within 30 calendar days from the date of the receipt of a copy of the Board decision.

(b) The contracting officer need take no further action (other than administrative) if the Board affirms the contracting officer's original decision, provided a recovery of costs is not due from the contractor. Where a recovery is due, collection shall be initiated by the contracting officer either by (1) a contract amendment adjusting the contract price or (2) a written demand for immediate payment, as appropriate. (In excess cost cases, the Financial Management Division, Office of Finance, (BCF), or regional counterpart, as appropriate, will normally pursue the necessary collection.) Any written demand shall instruct the contractor to make payment to the General Services Administration and address it to the appropriate GSA accounting center. A copy of any written demand shall be provided to the appropriate GSA accounting center for information and followup.

(c) When the Board does not uphold the contracting officer's original decisions and the Board's decision provides for payment in favor of the contractor, the contracting officer shall prepare a supplemental agreement with concurrrence of assigned counsel. The supplemental agreement will ensure against further litigation of the same dispute. The contracting officer shall forward the recommendation for payment to the appropriate accounting center with the original of the supplemental agreement and a copy of the Board's decision.

§ 5-60.206 Sample of the contracting officer's memorandum of position.

Memorandum of Position

Appeal of the John Doe Corporation

Contract No. _____

Docket No. _____

Background

This is a requirement contract for dishwashing compound for the period ——— through ———. Shipment was required to be made within 45 days after receipt of order. It was necessary to terminate for default four purchase orders, one on ———, and three on ———. Repurchases were accomplished in a timely manner on a competitive basis at considerably higher prices resulting in excess costs of $—.

The First Termination (date ———)

Material submitted on purchase order ——— for 484 bags was rejected on ———, based on laboratory test number —. When the material was rejected, a 10-day cure letter was issued on ——— to which the appellant replied on ———.

After considering the reply, the purchase order was terminated.

Appellant requested a deviation on ———, to supply liquid detergent for powder detergent which was considered and denied on ———.

The Second Termination (date ———)

Appellant became delinquent on three additional orders and was issued a 10-day cure letter on ———. Appellant replied on ———. After full consideration of the reply, the three delinquent purchase orders were terminated for default. Before terminating, the contracting officer checked with quality control personnel to ascertain whether the contractor had submitted material on the three orders involved.

Appellant requested approval to change the formulation by using olefin sulfonate instead of alkyl benzene as a means of resolving its problems. Appellant was advised that the specification permitted this change.

Reprocurement

After the first termination, five sources were solicited on ———, including those who bid on the original solicitation. There was no requirements contract yet established for the new period. Offers were due by ———. A copy of the abstract of bids is attached as Exhibit — and request for approval of awards is Exhibit —. A copy of repurchase contract ——— is Exhibit —.

After the second termination, three sources were solicited on ———. There was no requirements contract yet established for the new period. Offers were due by ———. A

copy of abstract of bids is Exhibit — and request for approval of awards is exhibit —. A copy of repurchase contract ——— is Exhibit —.

Other excess costs supporting data are under Exhibit ———.

Discussion

Appellant contends it could not get sufficient raw material from its suppliers to meet its contract obligations. Appellant has not shown that it exhausted all sources of supply before it ceased its efforts to perform or that unavailable material from its normal sources was not available from other sources. The material was unquestionably available because other suppliers offered it a short time after termination.

Conclusion

The default and reprocurement actions of the contracting officer are supported by the facts and evidence. The appellant has not shown that either action should not be sustained. The appeal should be denied.

Prepared By:
Contracting Officer ———
Date: ———

Concur:
Assigned Counsel* ———
Date: ———
Procuring Director ———
Date: ———

Note.—Include names of witnesses and other persons having knowledge of the case.

(End of sample memorandum of position)

(End of Part)

CHAPTER 5A—GENERAL SERVICES ADMINISTRATION

[APD 2800.3 Chge 18]

PART 5A-60 [REMOVED]

1. The Table of Parts for GSPR 5A is amended to Remove Part 5A-60—Contract Appeals.

2. Part 5A-60 is removed in its entirety.

CHAPTER 5B—GENERAL SERVICES ADMINISTRATION

[APD 2800.4 Chge 6]

PART 5B-60 [REMOVED]

1. The Table of Parts for GSPR 5B is amended to Remove Part 5B-60—Contract Appeals.

2. Part 5B-60 is removed in its entirety.

(Sec. 205(c), 63 Stat.; 40 U.S.C. 486(c))

*Assigned counsel's statement of legal position will be attached by the counsel.

Dated: December 15, 1980.

William B. Ferguson,

Acting Assistant Administrator for Acquisition Policy.

[FR Doc. 81-192 Filed 1-2-81; 8:45 am]

BILLING CODE 6820-61-M

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41 CFR Parts 5-6 and 5A-6

Foreign Purchases

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: The General Services Administration Procurement Regulations, Chapter 5, are amended to transfer policies and procedures regarding foreign purchases from Chapter 5A. This transfer is part of the action to incorporate appropriate material in Chapter 5A into Chapter 5. The intended effect is to have a single GSA-wide procurement regulation.

EFFECTIVE DATE: February 27, 1981.

FOR FURTHER INFORMATION CONTACT: Philip G. Read, Director, Federal Procurement Regulations Directorate, Office of Acquisition Policy, (703-557-8947).

SUPPLEMENTARY INFORMATION: Outstanding Procurement Letters remain in effect until canceled.

CHAPTER 5—GENERAL SERVICES ADMINISTRATION

[APD 2800.2 Chge 12]

1. The Table of Parts is amended by adding the following entry:

Table of Parts

Part 5-6 Foreign Purchases.

2. The Contents of Part for Part 5-6 is added as follows:

PART 5-6 FOREIGN PURCHASES

Subpart 5-6.1 Buy American Act—Supply and Service Contracts

Subpart 5-6.8 Balance of Payments Program

3. Part 5-6 Foreign Purchases is added as follows:

Subpart 5-6.1 Buy American Act—Supply and Service Contracts

§ 5-6.104-4 Evaluation of bids and proposals.

(a) Proposed awards requiring the approval of the head of the agency, pursuant to § 1-6.104-4 (b) and (c), shall be submitted to the Assistant Commissioner for Contracts (FC) together with a statement of facts containing the following information:

(1) Description of the item(s), including unit and quantity.

(2) Estimated cost.

(3) Statement as to whether duty is included in the estimated cost and if not, the reasons for exclusion.

(4) Transportation costs for delivery to destination if the item is to be procured f.o.b. origin.

(5) Country of origin.

(6) Name and address of proposed contractor(s), if available.

(7) Brief statement as to necessity for procurement.

(8) Reasons why an award to a small business concern or labor surplus area concern would or would not be unreasonable as to cost or inconsistent with the public interest, when an award for more than $100,000 to a domestic concern would be made if the 12 percent factor is applied, but would not be made if the 6 percent factor is applied.

(9) Reasons for recommending rejection of an acceptable low foreign bid to protect essential national security interests, or rejection of any bid or proposal for other reasons of national interest.

(b) With the exception of (a)(8), before final action under paragraph (a) of this section, the Assistant Commissioner for Contracts (FC) will (1) obtain advice from the Director, Federal Emergency Management Agency, with respect to rejection of bids or offered prices on the grounds that such rejection is necessary to protect essential national security interests, and (2) apprise the Executive Office of the President, Office of Management and Budget, of the facts in the matter with respect to rejection of bids or offered prices for reasons of the national interest not described or referred to in Executive Order 10582, as amended.

§ 5-6.104-50 Evaluating bids for hand and measuring tools.

(a) *Appropriation Act restrictions.* The current Appropriation Act for GSA includes the following:

"No part of any appropriation contained in this Act shall be available for the procurement of or for the payment of the salary of any person engaged in the procurement of any hand or measuring tool(s)

not produced in the United States or its possessions except to the extent that the Administrator of General Services or his designee shall determine that a satisfactory quality and sufficient quantity of hand or measuring tools produced in the United States or its possessions cannot be procured as and when needed from sources in the United States and its possessions or except in accordance with procedures prescribed by section 6-104.4(b) of Armed Services Procurement Regulation, dated January 1, 1969, as such regulation existed on June 15, 1970. This section shall be applicable to all solicitations for bids opened after its enactment."

(b) *Definition.* "Hand and measuring tools" are Groups 51 and 52, in Cataloging Handbook H2-1, Federal Supply Classification, Part I, Groups and Classes, published by the Defense Logistics Agency, Defense Logistics Services Center, Battle Creek, Michigan.

(c) *Solicitation provision.* All solicitations for hand and measuring tools shall include the following special provision:

Buy American Act—Hand and Measuring Tools

The following is added to Article 14 of Standard Form 32, General Provisions:

Congressional policy requires that GSA purchases of hand and measuring tools must be from domestic sources except in accordance with procedures prescribed by § 6-104.4(b) of Armed Services Procurement Regulation (as such regulation existed on June 15, 1970). Accordingly, bids under this solicitation offering domestic source end products normally will be evaluated against bids offering other end products by adding a factor of 50 percent to the latter, exclusive of import duties. Details of the evaluation procedure are set forth in § 5-6.104-50 of the General Services Administration Procurement Regulations.

Each bid offering a foreign source end product must state below or on an attachment to the bid the amount of duty included in each bid price. Failure to furnish duty information will result in use of the entire item bid price (inclusive of any unspecified duty) when adding the "Buy American" differential.

Item No.	Unit	Amount of Duty (in dollars and cents)

(End of Provision)

(d) *Procedures.* Bids and proposals for hand and measuring tools shall be evaluated in accordance with the following procedures, which are the GSA adaptations of ASPR 6-104.4(b):

(1) Bids and proposals shall be evaluated to give preference to domestic bids. Bids offering end products manufactured in Canada shall be evaluated on the same basis as bids offering domestic end products after applicable duty is included for evaluation purposes (whether or not a duty free entry certificate is issued).

(2) Each foreign bid shall be adjusted for purposes of evaluation by either (i) excluding the duty from the foreign bid and adding 50 percent of the bid (exclusive of duty) to the remainder, or (ii) by adding to the foreign bid (inclusive of duty) a factor of 6 percent of that bid, whichever results in the greater evaluated price.

(3) A 12 percent factor shall be used instead of the 6 percent factor, if (i) the firm submitting the low acceptable domestic bid is a small business or a labor surplus area concern, or both, and (ii) any contract award to a domestic concern which would result from applying the 12 percent factor, but which would not result from applying the 6 percent or 50 percent factor, would not exceed $100,000. (If an award for more than $100,000 would be made to a domestic concern if the 12 percent factor is applied, but would not be made if the 6 percent or 50 percent factor is applied, the matter shall be submitted to the Commissioner, FSS, for a decision as to whether the award to the small business or labor surplus area concern would involve unreasonable cost or inconsistency with the public interest).

(4) If the foregoing results in a tie between a foreign bid as evaluated and a domestic bid, award shall be made on the domestic bid. When more than one line item is offered in response to a solicitation, the appropriate factor shall be applied on an item-by-item basis, except that the factor may be applied to a specific group of items if the solicitation specifically designates that award may be made on a specific group of items.

(e) *Supplemental instructions.* The following examples illustrate how the procedure in (d) above, should be applied. Throughout these examples, "foreign bid" means a bid or offered price for a foreign end product which is not a Canadian end product; "domestic bid—large" means a domestic bid which is not from a small business or labor surplus area concern, and "domestic bid—small" means a domestic bid which is from either a small business concern or a labor surplus area concern, or both. Bid prices are evaluated net prices including transportation costs and prompt payment discounts. The same differentials shall be applied when using small purchase procedures.

Example A

Foreign bid, including duty of $4,500...	$14,500
Domestic bid—large	15,100
Domestic bid—small	15,110

Award on domestic bid—large. Domestic bid—small is out because it is not the low acceptable domestic bid. Foreign bid, if adjusted by the 50 percent factor, would be $14,500 less $4,500 duty (i.e., $10,000), plus 50 percent of $10,000 (i.e., $5,000), or $15,000; but if adjusted by the 6 percent factor, it would be $14,500 plus 6 percent of $14,500 (i.e., $870), or $15,370; therefore, the 6 percent factor is added and domestic bid—large is the low evaluated bid.

Example B

Foreign bid, including duty of $2,000...	$12,000
Domestic bid—large	15,000

Award on domestic bid—large. Foreign bid adjusted by 50 percent factor is $15,000; adjusted by 6 percent factor, it is $12,720. Therefore, foreign bid is evaluated at $15,000, resulting in a tie and consequent award on the domestic bid—large.

Example C

Foreign bid, including duty of $3,500...	$13,500
Domestic bid—large	17,000
Domestic bid—small	15,100

Award on domestic bid—small. Foreign bid adjusted by 50 percent factor is $15,000; adjusted by 12 percent factor, it is $15,120. Therefore, it is evaluated at $15,120, resulting in award on the domestic bid—small.

Example D

Foreign bid, including duty of $70,000	$270,000
Domestic bid—large	310,000
Domestic bid—small	302,000

Foreign bid adjusted by 50 percent factor is $300,000; adjusted by 12 percent factor, it is $302,400; adjusted by 6 percent factor, it is $286,200. Therefore, domestic bid—small is in line for possible award only because of the bidder's small business or labor surplus area status. But since the contract award would exceed $100,000, the matter requires submission for decision pursuant to § 5-6.104-50(d)(3).

§ 5-6.104-51 Evaluating bids for stainless steel flatware (for other than the Department of Defense).

(a) *Appropriation Act restrictions.* The currently effective Appropriation Act for GSA includes the following:

"No part of any appropriation contained in this Act shall be available for the procurement of, or for the payment of, the salary of any person engaged in the procurement of stainless steel flatware not produced in the United States or its possessions, except to the extent that the Administrator of General Services or his designee shall determine that a satisfactory quality and sufficient quantity of stainless steel flatware produced in the United States

or its possessions, cannot be procured as and when needed from sources in the United States and its possessions, or except in accordance with procedures provided by section 6-104.4(b) of Armed Services Procurement Regulation, dated January 1, 1969. This section shall be applicable to all solicitations for bids issued after its enactment."

(b) *Definition.* For purposes of this instruction, "stainless steel flatware" means stainless steel knives, forks, and spoons as listed in Federal Supply Class 7340.

(c) *Solicitation provision.* All solicitations (other than for the Department of Defense) for stainless steel flatware shall include the following special provision:

Buy American Act—Stainless Steel Flatware

The following is added to Article 14 of Standard Form 32, General Provisions:

Congressional policy requires that GSA purchases of stainless steel flatware must be from domestic sources except in accordance with procedures prescribed by § 6-104.4(b) of Armed Services Procurement Regulation, dated January 1, 1969.

Accordingly, bids under this solicitation offering domestic source end products normally will be evaluated against bids offering other end products by adding a factor of 50 percent to the latter, exclusive of import duties. Details of the evaluation procedure are set forth in § 5-6.104-50 of the General Services Administration Procurement Regulations.

Each bid offering a foreign source end product must state below or on an attachment to the bid the amount of duty included in each bid price. Failure to furnish duty information will result in use of the entire item bid price (inclusive of any unspecified duty) when adding the "Buy American" differential.

Item No.	Unit	Amount of Duty (in dollars and cents)

(End of Provision)

(d) *Bid evaluation procedures.* The procedures set forth in § 5-6.104-50 shall apply in the evaluation of bids for foreign source stainless steel flatware.

§ 5-6.105 Excepted articles, materials, and supplies.

(a) Requests for determinations concerning nonavailability of domestic supplies (see § 1-6.103-2) shall be submitted to the Assistant Commissioner for Contracts, FSS, or the Assistant Regional Administrator, FSS, with an appropriate statement of facts and a proposed determination. The statement of facts shall include the following information:

(1) Description of the item(s), including unit and quantity;

(2) Estimated cost, including duty, if any (show the amount of duty separately);

(3) Transportation costs for delivery to destination, if item is to be procured f.o.b. origin;

(4) Country of origin;

(5) Name and address of prospective contractor(s), if available;

(6) Brief statement as to the necessity for the procurement; and

(7) Statement of effort made to procure a similar item of domestic origin or statement that there is no domestic item which can be used as a reasonable substitute.

(b) Ordinarily, the findings and determination of nonavailability shall be prepared in the format shown below:

General Services Administration

Reference No. ———

Findings and determination of nonavailability under the Buy American Act regarding purchase of (*insert description*)

Pursuant to the provisions of the Buy American Act (41 U.S.C. 10a-d) and Executive Order 10582, December 17, 1954 (3 CFR Supp.), and by virtue of delegated authority, the following findings of fact and determination are hereby made:

1. Findings (set forth a statement of facts).

2. Determination. In view of the foregoing, it is hereby determined that for the purposes of the Buy American Act (*insert item description*) is not mined, produced, or manufactured at the present time in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

Date ——— Signed ———

(End of Findings and Determination)

(c) When it has been determined that the Buy American Act is not applicable to the purchase of the end product, or to the components from which it is manufactured, the original of the determination shall be made a part of the contract file. In addition, a statement substantially as follows shall be inserted in the applicable contract documents:

Determination of Nonavailability of Domestic Supplies

For the purpose of the Buy American Act, the (insert the title of person making determination), General Services Administration, has determined that (insert item description) is not mined, produced, or manufactured at the present time in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

(End of Statement)

Subpart 5-6.8 Balance of Payments Program

§ 5-6.801 General.

(a) When FSS enters into contracts as the contracting agent for the Agency for International Development (AID), including contracts under the Commercial Import Program (CIP), such contracts (except those involving administrative purchases) are not governed by the policies and procedures in Subparts 1-6.8 and 5-6.8, but shall be governed by AID policies and procedures.

(b) When FSS procures articles or services for use outside the United States for another agency it will be assumed (unless a specific notation is made on the purchase request) that use of excess or near excess foreign currencies has been considered by the requisitioning agency and that such currencies are not available.

§ 5-6.805 Exceptions.

When the contracting officer has knowledge that the domestic cost of an end product or service exceeds the foreign cost by more than 50 percent of the foreign cost pursuant to the procedures in § 1-6.805(a)(6), the matter shall be submitted to the Assistant Commissioner for Contracts, FSS, or the Assistant Regional Administrator, FSS, for a determination to procure the domestic product or service. This procedure shall be followed for all Balance of Payments Program procurements over $10,000.

§ 5-6.806-1 Restricted solicitation.

(a) Estimates of comparative delivered prices of end products or services of domestic origin versus foreign origin normally will not be made by FSS procuring activities. Such cost estimates will have been made by the requisitioning offices prior to the submission of purchase requests to FSS for procurement action. Specific written evidence from the requisitioning office concerning such estimates is not required. Accordingly, procurements made directly for other agencies of items to be used outside the United States shall be made under the Balance of Payments Program, except for AID (including Commercial Import Program) items.

(b) Prior to procuring any item for GSA use outside the United States, cost estimates, as required by § 1-6.806-1, shall be made before restricting competition to U.S. end products or services.

§ 5-6.806-50 Solicitation provision.

The certificate and clause, as set forth in §§ 1-6.806-3 and 1-6.806-4, respectively, shall be included in solicitations issued to implement the Balance of Payments Program. In addition, the following introductory language shall be entered immediately above such certificate and clause:

Procurement Under Balance of Payments Program

To alleviate the impact of Government expenditures on the U.S. balance of international payments, only United States end products and services may be delivered under this contract. Accordingly, the Certification on page 2 of this solicitation entitled "Buy American Certificate" and the clause in the General Provisions entitled "Buy American Act" are inapplicable to this contract, and the following certificate and clause are substituted therefor:

U.S. Products Certificate

Use the language in § 1-6.806-3.

U.S. Products and Service Clause

Use the clause prescribed in § 1-6.806-4.

CHAPTER 5A—GENERAL SERVICES ADMINISTRATION

[APD 2800.3 Chge 16]

PART 5A-6 [Removed]

1. The Table of Parts for GSPR 5A is amended to remove Part 5A-6—Foreign Purchases.

2. Part 5A-6 is removed in its entirety.

[Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c)]

Dated: December 15, 1980.

William B. Ferguson,

Acting Assistant Administrator for Acquisition Policy.

[FR Doc. 81-190 Filed 1-2-81; 8:45 am]

BILLING CODE 6820-61-M

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41 CFR Parts 5-14 and 5A-14

Inspection and Acceptance

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: The General Services Administration Procurement Regulations, Chapter 5, are amended to transfer policies and procedures regarding inspection and acceptance from Chapter 5A. This transfer is part of the action to incorporate appropriate material in Chapter 5A into Chapter 5. The intended effect is to have a single GSA-wide procurement regulation.

EFFECTIVE DATE: February 27, 1981.

FOR FURTHER INFORMATION CONTACT: Philip G. Read, Director, Federal Procurement Regulations Directorate, Office of Acquisition Policy, (703-557-8947).

SUPPLEMENTARY INFORMATION: Outstanding Procurement Letters remain in effect until canceled.

CHAPTER 5—GENERAL SERVICES ADMINISTRATION

[APD 2800.2 Chge 13]

1. The Table of Parts is amended by adding the following entry:

Part

5-14 Inspection and acceptance.

2. The Contents of Part for Part 5-14 is added as follows:

PART 5-14—INSPECTION AND ACCEPTANCE

3. Part 5-14 Inspection and Acceptance is added as follows:

Subpart 5-14.1 Inspection

§ 5-14.101 General.

(a) The Federal Supply Service Quality Approved Manufacturer Program requires the manufacturer to perform all inspections and tests in the purchase description or governing specification. The Government shall maintain periodic verfication inspections to ensure that the contractor is meeting all requirements of the contract. Manufacturers who have had an excellent performance record are considered for inclusion under this program if they maintain a quality control system that ensures the reliability of the product, and provides GSA with a detailed written description outlining their quality control system.

(b) This method of Government quality control is established by formal written agreement between the manufacturer and the Government. This agreement, when entered into, becomes a part of the contract and warrants the product for a 6-month period (see Ch. 13, FSS P 2900.5, Supply Operations).

§ 5-14.105-1 General.

The criteria for designating the place of inspection (source or destination) are as follows:

(a) Source inspection shall be designated on contracts for:

(1) National requirements regardless of dollar amounts (including shipments to key GSA supply distribution facilities);

(2) Federal Supply Schedules selected for source inspection;

(3) Area buying assignments;

(4) Regional requirements—estimated value $15,000 and over;

(5) Definite quantity over $10,000;

(6) Definite quantity under $10,000, if it is known that the contractor has a quality approved manufacturer agreement or holds one or more GSA contracts under the administration of a quality assurance specialist (QAS); otherwise inspection will be at destination;

(7) Class 8010 items over $5,000, or under this amount when one of the situations in (6), above, is known;

(8) The following vehicles:

(i) Special purpose;

(ii) Trucks over 10,000 pounds gross vehicle weight (GVW); and trucks 10,000 pounds GVW and under not covered by a Federal Standard; and

(iii) Those shipped outside the conterminous United States; and

(9) Other instances when the procuring director determines it would be in the best interest of the Government due to the critical nature of the material. In these instances, the procuring activity shall notify the appropriate Quality Assurance/Contract Management Division that the contract provides for origin inspection and state the reasons.

(b) Destination inspection shall be designated on contracts:

(1) For subsistence items and wiping rags;

(2) With domestic consignees for:

(i) Standard vehicles;

(ii) Trucks 10,000 pounds GVW and under covered by a Federal Standard; and

(3) For lower dollar values than those listed in (a)(4) and (a)(5), above, unless othewise excepted under (a)(6) and (a)(7).

(c) The regional Director, Quality Assurance/Contract Management Division, may request the appropriate procuring director to initiate contractual procedures to change the place of inspection from destination to source (except nonselected Federal Supply Schedules) when the manufacturer has:

(1) A quality control manufacturer agreement; or

(2) Contracts administered by the QAS.

§ 5-14.150 Testing articles and commodities.

§ 5-14.150-1 General.

(a) Article testing is conducted to determine conformance with specification and standard requirements and to aid in the development of new or revised specifications and standards. This subpart establishes certain types of articles testing, including the facilities therefor, and prescribes policy regarding the fixing and collection of fees for such testing.

(b) The facilities of the General Services Administration (GSA), other Federal agencies, manufacturers, independent testing laboratories, and others, as appropriate, may be used in the conduct of tests.

(c) The procedures set forth in this § 5-14.150 are not applicable to the procurement of software and automated data processing equipment except disk packs.

§ 5-14.150-2 Acceptance testing.

(a) Acceptance testing is conducted to determine conformance with requirements of purchase descriptions or specifications before a shipment is accepted. Such testing shall not be solely for the purpose of furnishing information to a producer or vendor as to conformance of his article or commodity with specification requirements.

(b) The cost of services for acceptance testing of representative samples of a shipment normally shall be borne by GSA. However, if the samples tested fail to meet the requirements of the specification or purchase description, the contractor shall be required to pay any additional costs incurred for a retest as a result of the failure. (See § 1-14.107(a)).

(c) When testing will be performed by a Federal Supply Service (FSS) testing laboratory for the account of the contractor, the contracting officer, upon request, shall inform the contractor of test charges involved. When a testing facility other than a FSS laboratory performs all or part of the required tests, the contractor shall be assessed the actual amount of the costs incurred by the Government.

§ 5-14.150-3 Certification testing.

(a) Certification testing is conducted to determine conformance of an article or commodity with a specification requirement for the purpose of executing a certificate of compliance when a certification is called for by the specification.

(b) A certificate from a recognized laboratory may be a requirement in a Federal Specification. When there is a lack of suitable commercial testing facilities, producers or vendors may obtain a certification from a Government laboratory such as the National Bureau of Standards, and shall be required to bear the cost of testing, including all components of that cost. In this event GSA will, when feasible, arrange for the required testing upon receipt of a request from a producer or vendor and upon payment of the required test fee.

§ 5-14.150-4 Qualification (QPL) testing.

(a) Qualification testing is conducted to determine conformance of an article or commodity with the qualification requirements of a specification for inclusion of the article or commodity in a Qualified Products List (QPL).

(b) When QPL tests will serve predominantly the interest of the producer or vendor, GSA shall fix the test fee in such an amount as will recover the cost of conducting the test, including all components of such cost determined in accordance with accepted accounting principles. Usually, the producer or vendor shall be required to bear the cost of testing to qualify an article or commodity for inclusion in a qualified products list, except when it is determined that making these tests will not serve predominantly the interest of the producer or vendor. This may be the case where adequate competition has not been developed in industry because of an insufficient number of qualification approvals, or sources of supply have not been sufficiently established to ensure availability.

(c) Normally, payment shall be made to the General Supply Fund and appropriate reimbursement shall be made by GSA to the agency whose laboratory conducted the tests. In certain cases the producer or vendor may be required to submit his product to one or more independent testing laboratories approved by GSA. In these cases, the producer or vendor may be directed to pay the testing fee directly to the laboratory that conducted the test.

(d) Other instructions concerning establishment of qualified products lists, qualification of products, etc., are contained in FPMR 101-29 and the Federal Standardization Handbook.

§ 5-14.150-5 Research or development testing.

(a) Research or development testing is conducted to determine whether a new article or commodity that is not covered by an existing specification may be suitable for Government use, or to aid in the development of contemplated specifications and standards.

(b) When tests are conducted in the development of specifications or standards, those procedures in § 5.14.150-4 (b) and (c) pertaining to test fees shall apply.

Subpart 5-14.2—Acceptance

§ 5-14.203 Point of acceptance.

(a) To implement the requirements of § 1-14.203, each contract for supplies shall contain the following clause:

Point of Acceptance

Acceptance shall be at the delivery point specified in this contract.

(End of Clause)

(b) The clause in (a), above, is not appropriate for use in contracts for services. However, each contract for services shall clearly define the manner in which the Government will give final approval to specific services rendered as partial or complete performance of the contract.

§ 5-14.206 Acceptance of supplies or services not conforming with contract requirements.

(a) As used in this section, the term "nonconforming supplies or services" refers to supplies or services that do not conform to the physical requirements of the specification, or to supplies or services that have not received contractually required tests or inspections by the contractor.

(b) If the contracting officer or the authorized representative determines that acceptance of supplies or services is in the Government's best interest, recommendations for deviation shall be referred to the appropriate specification manager.

(c) Recommendations for deviation shall contain (1) a copy of the solicitation (or contract), (2) the reasons why the item does not conform to contract requirements, (3) a statement as to whether or not a similar deficiency was the basis for rejection of an otherwise low bid received on the same solicitation, and (4) the reasons why it is in the best interest of the Government to accept the nonconforming item. If urgency of acceptance is a factor, recommendations for deviation shall be handled expeditiously. When stock items are involved, the contracting officer shall coordinate with the appropriate national inventory manager to determine urgency of need.

(d) When the recommendation for deviation is concurred in by the appropriate specification manager, he or she shall furnish the contracting officer with an estimate of the savings in cost that will accrue to the contractor. The

contracting officer shall be guided by the estimate in negotiating an equitable price reduction (including direct and indirect costs, plus profit) for the deviation and shall annotate the contract file with a statement justifying the adequacy and reasonableness of the price reduction.

(e) For nonstock items the approval of the requiring activity must be obtained in all cases involving acceptance of nonconforming supplies or services. (See § 1-14.206).

(f) Contracting officers shall not accept nonconforming supplies or services if the deviation is similar to a deviation which was the basis for rejection of an otherwise low bid received on the same invitation for bids.

(g) When it is determined to accept nonconforming material, the contracting officer shall provide appropriate notice to the regional Quality Assurance/Contract Management Division that submitted the rejection report.

§ 5-14.250 Waiver of contractor's inspection or tests.

Contractual inspection or test requirements may be the responsibility of either the Government or the contractor (see § 1-14.104(c)); however, performance of an inspection or tests by the Government does not relieve the contractor of the responsibilities under the contract to deliver conforming supplies or services. Under special circumstances, such as urgency of the requirement, the contracting officer may consider it to be in the best interest of the Government to waive certain contractual inspection or test requirements. However, a waiver action shall be processed in accordance with the same procedures as specified for acceptance of nonconforming supplies or services (see § 5-14.206).

CHAPTER 5A—GENERAL SERVICES ADMINISTRATION

[APD 2800.3 CHGE 17]

PART 5A-14 [REMOVED]

1. The Table of Parts for GSPR 5A is amended to remove Part 5A-14—Inspection and Acceptance.

2. Part 5A-14 is removed in its entirety.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

Dated: December 15, 1980.

William B. Ferguson,

Acting Assistant Administrator for Acquisition Policy.

[FR Doc. 81-191 Filed 1-2-81; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF COMMERCE

Maritime Administration

46 CFR Parts 255, 284, 286 and 291

Capital Reserve Fund and Special Reserve Fund Regulations

AGENCY: Maritime Administration, Commerce.

ACTION: Revocation of regulations.

SUMMARY: The regulations in 46 CFR Parts 255, 284, 286 and 291 govern the establishment and maintenance of the Capital and Special Reserve Funds by vessel owners. The purpose of these funds is to fulfill the obligation under an operating-differential subsidy agreement (ODSA) to replace subsidized vessels with vessels to be constructed. The Merchant Marine Act of 1970 (Pub. Law 91-469) amended section 607 of the Merchant Marine Act, 1936 (46 U.S.C. 1177), by providing for the establishment of a Capital Construction Fund, with expanded eligibility for vessel owners and lessors. Amended section 607 allows any person who was maintaining an "old fund" (Capital Reserve or Special Reserve Fund) to continue such old fund until the expiration date in the ODSA. Since all agreements providing for Capital and Special Reserve Funds have expired, the regulations in 46 CFR Parts 255, 284, 286 and 291 no longer serve any useful purposes.

EFFECTIVE DATE: January 5, 1981.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Pripeton, Chief, Division of Capital Construction Funds, Maritime Administration, Washington, DC 20230 Tel. (202) 377-4400.

PARTS 255, 284, 286, and 291 [REMOVED]

Accordingly, 46 CFR Parts 255, 284, 286 and 291 are hereby removed.

(Secs. 204(b) and 607, Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b), 1177); Reorganization Plans No. 21 of 1950 (64 Stat. 1273) and No. 7 of 1961 (75 Stat. 840), as amended by Pub. Law 91-469 (84 Stat. 1036); and Department of Commerce Organization Order 10-8 (36 F 19707, July 23, 1973))

By Order of the Assistant Secretary of Commerce for Maritime Affairs.

Dated: December 22, 1980.

Robert J. Patton Jr.,

Secretary, Maritime Administration.

[FR Doc. 81-106 Filed 1-2-81; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 26

Public Entry and Use; Opening of Certain National Wildlife Refuges to Public Access, Use and Recreation: Connecticut, Rhode Island, Massachusetts, Maine, New Hampshire, and Vermont

AGENCY: United States Fish and Wildlife Service, Interior.

ACTION: Special regulation.

SUMMARY: The Director has determined that the opening to public access, use and recreation of certain national wildlife refuges in Connecticut, Rhode Island, Massachusetts, Maine, New Hampshire and Vermont is compatible with the objectives for which the areas were established and will provide additional recreational opportunity to the public through a non-consumptive use. This document establishes special regulations governing this use.

DATES: January 1, 1981 through December 31, 1983.

ADDRESSES: Contact the Refuge Manager at the address and/or telephone number listed below in the body of Special Regulations.

FOR FURTHER INFORMATION CONTACT: Howard N. Larsen, Regional Director, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158 (617-965-5100, Ext. 200).

SUPPLEMENTARY INFORMATION: Public access, use and recreation is permitted on the national wildlife refuges indicated below in accordance with 50 CFR 26 and the following Special Regulations. Portions of refuges which are open to public access, use and recreation are designated by signs and/or shown on maps available from addresses indicated below. No vehicle travel is permitted except on designated roads and trails. Special regulations applying to individual refuges are listed on leaflets available at refuge headquarters and from the Regional Director, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158.

The Refuge Recreation Act of 1962 (16 U.S.C. 460k) authorizes the Secretary of the Interior to administer such areas 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 area was established. In addition, the Refuge Recreation Act requires (1) that any recreational use

permitted will not interfere with the primary purpose for which the area was established; and (2) that funds are available for the development, operation, and maintenance of the permitted forms of recreation.

The recreational use authorized by these regulations will not interfere with the primary purposes for which these National Wildlife Refuges were established. This determination is based upon consideration of, among other things, the Service's Final Environmental Statement on the Operation of the National Wildlife Refuge System published in November 1976. Funds are available for the administration of the recreational activities permitted by these regulations.

Public entry shall be in accordance with all applicable Federal and State laws and regulations subject to the following special regulations:

§ 26.34 Special regulations concerning public access, use and recreation; for individual national wildlife refuges.

Public access, use and recreation is permitted on the following refuges: Parker River National Wildlife Refuge, Northern Boulevard, Plum Island, Newburyport, Massachusetts 01950. Contact George Gavutis, Refuge Manager, at 617–465–5753. Special conditions: Entry into those portions of the refuge not posted as closed is permitted for certain uses. The entrance gate at the south end of Sunset Boulevard is the only legal point of access on the island portion of the refuge. Visitor hours are generally dawn to dusk, but, at times of high public use, the entrance gate may be closed and access denied by refuge officials to protect the wildlife habitat from overuse. Sight-seeing, nature study, photography, hiking, snowshoeing, and cross-country skiing are permitted. Vehicle parking is permitted only in designated lots. Parking may be restricted to certain purposes and conditions designated by special signs. Boating is permitted on navigable tidal waters which lie within the refuge. Public boat launching and landing is not permitted on the refuge except during the waterfowl hunting season (see Part 32.12—Hunting). The entire refuge beach has no lifeguards. Swimming will be at the visitor's own risk. A limit of 3 quarts each of plums and cranberries per person per year may be picked from the first Tuesday after Labor Day until October 31. Cranberry rakes or scoops are not permitted. Access to clam flats for clamming is permitted across refuge marshes on designated trails. Permits are required and may be obtained at the refuge. Small cooking fires are permitted only on the ocean beach. No other fires are permitted at other locations on the refuge. Alcoholic beverages, camping, tents, camping trailers, floating devices (including surfboards), and nudity are not permitted on the refuge. Nudity is defined as failure by persons over 10 years of age to cover with fully opaque covering their own genitals, pubic areas, rectal area or female breasts below a point immediately above the top of the areola when in a public place. Pets and horses are not permitted on the refuge. Dogs may be used for hunting in accordance with refuge hunting regulations (see Part 32.12—Hunting). Pets are not allowed on the refuge at any other time or under any other condition except under Special Use Permit. Group activities may be confined to the northern one-quarter mile of ocean beach east of Lot 1. Advance reservations and permits are required, group size is limited to 60 persons, and there must be at least one adult supervisor for every 10 children. Identification must be displayed upon request of any authorized officer. Refusing to display identification or providing false information to any authorized officer of the United States or any local or State government is prohibited. The possession of any device (clubs, knives, metal knuckles, etc.) prohibited by State law and/or deemed a dangerous weapon by refuge officials is prohibited. Bicycles and registered motor vehicles are permitted only on the main refuge road and in numbered parking areas except when being used under the terms of a special permit for over-the-sand surf fishing vehicles (see Part 33—Sport Fishing). Snowmobiles, air-cushion, all-terrain, hang-gliders or other similar vehicles or devices deemed improper by refuge agents are not permitted on the refuge.

Great Meadows National Wildlife Refuge, Weir Hill Road, Sudbury, Massachusetts 01776. Contact David Beall, Refuge Manager, at 617–443–4661. Special conditions: Entry to the parking areas on foot, bicycle or by registered motor vehicle is permitted during daylight hours. Foot and bicycle travel is permitted on designated routes. Nature study, photography, hiking, ice skating, snowshoeing and cross-country skiing are permitted. Entry upon the refuge of any unconfined domestic animal, including, but not limited to dogs, cats, hogs, horses, sheep and cattle, is prohibited. Pets are permitted if on a leash not over 10 feet in length, one end of which is handheld so as to restrict the movements of the animal.

Oxbow National Wildlife Refuge, Harvard, Massachusetts, under the administration of Great Meadows National Wildlife Refuge, Weir Hill Road, Sudbury, Massachusetts 01776. Contact David Beall, Refuge Manager, at 617–443–4661. Special conditions: Entry by foot, bicycle, or motor vehicle is permitted along the tank road for the purposes of nature study, photography, hiking, snowshoeing and cross-country skiing. Parking for vehicles is available at designated areas. Entry upon the refuge of any unconfined domestic animal, including, but not limited to dogs, cats, hogs, horses, sheep and cattle, is prohibited. Pets are permitted if on a leash not over 10 feet in length, one end of which is handheld so as to restrict the movements of the animal.

Monomoy National Wildlife Refuge, Chatham, Massachusetts, under the administration of Parker River National Wildlife Refuge, Northern Boulevard, Plum Island, Newburyport, Massachusetts 01950. Contact George Gavutis, Refuge Manager, at 617–465–5753. Special conditions: Foot entry to the Monomoy Wilderness Area is permitted for photography, nature study, and hiking during daylight hours and fishing 24 hours per day. Shellfishing is permitted in accordance with Town of Chatham regulations. Pets are permitted if on a leash not over 10 feet in length, one end of which is handheld so as to restrict the movements of the animal. Fires are permitted on the ocean beach. Boats may be beached on the refuge. Erection of tents and other structures is not permitted. Entry to the Morris Island portion of Monomoy Refuge is permitted during daylight hours by advance reservation for photography, nature study, and hiking. Only a limited number of motor vehicles can be accommodated on the refuge at the designated parking area adjacent to the refuge headquarters. Entrance permits for specific dates are issued by mail or by telephone during the period June 1 through September 10, of each year at the Monomoy National Wildlife Refuge office, Wiki Way, Morris Island, Chatham, Massachusetts 02633, telephone 617–945–0594; or during the period January 1 through May 31, and September 11 through December 31, of each year from the Refuge Manager, Parker River National Wildlife Refuge.

Nantucket National Wildlife Refuge, Nantucket, Massachusetts under administration of Parker River National Wildlife Refuge, Northern Boulevard, Plum Island, Newburyport, Massachusetts 01950. Contact George Gavutis, Refuge Manager, at 617–465–5753. Special Conditions: Entry by foot, motor vehicle, or boat is permitted during daylight hours for nature study,

photography, hiking, shell collecting, shellfishing and surf fishing. Surf and shellfishing shall be in accordance with all State and local regulations. Registered over-the-sand vehicles are permitted on designated sand trails and on the open ocean beach. Vehicle permits will be required and may be obtained from the Trustees of Reservations, Coskata-Coatue Wildlife Refuge Manager, Harbor Square, P.O. Box 13, Nantucket, Massachusetts 02554. All over-the-sand vehicle permit requirements and regulations promulgated by the Trustees of Reservations for the Coskata-Coatue Wildlife Refuge will apply to vehicles operating on Nantucket National Wildlife Refuge.

Rachel Carson National Wildlife Refuge, Kennebunkport Road, Wells, Maine 04090. Contact Maurice Mills, Assistant Refuge Manager, at 207–646–9226. Special conditions: Entry by foot into those portions of the refuge not posted as closed is permitted for certain uses specified herein. Visitor hours are dawn to dusk. Sight-seeing, nature study, wildlife observation, photography, hiking, snowshoeing, and cross-country skiing are permitted. Group activities may be confined to areas designated by the refuge manager. Advance reservations and permits are required for group activities, and there must be at least one adult supervisor for every 10 children. Vehicles are permitted only in designated parking areas. Parking may be restricted to certain purposes and conditions designated by special signs. Public boat launching and landing are not permitted on the refuge except by special permit. Clamming will be permitted subject to State and local regulation. Access to clam flats across refuge marshes will be by Special Use Permit only. Alcoholic beverages, nudism, camping, tents, camping trailers, and fires are not permitted on the refuge. Pets are permitted if on a leash not over 10 feet in length, one end of which is secured so as to restrict the movements of the animal. The possession of any device prohibited by State law and/or deemed a dangerous weapon by refuge officials is prohibited. Snowmobiles, trail bikes, all-terrain or other similar unregistered vehicles or devices deemed improper by refuge agents are not permitted on the refuge. Identification must be displayed upon request of any authorized officer. Refusing to display identification or providing false information to any authorized officer of the United States or any local or State government is prohibited.

Pond Island National Wildlife Refuge, located near Popham Beach, Maine, is under administration of Parker River National Wildlife Refuge, Northern Boulevard, Plum Island, Newburyport, Massachusetts 01950. Contact George Gavutis, Refuge Manager, at 617–465–5753. Special conditions: Boat access and entry by foot is permitted from August 1 through February 28 during daylight hours for the purposes of environmental education, nature study and photography. Open fires and camping are prohibited. Pets are permitted if on a leash not over 10 feet in length, one end of which is secured so as to restrict the movements of the animal.

Moosehorn National Wildlife Refuge, Box X, Calais, Maine, 04619. Contact Douglas Mullen, Refuge Manager, at 207–454–3521. Special conditions: Entry on foot or by motor vehicle on designated travel routes is permitted for the purpose of nature study, photography, hiking and sight-seeing during daylight hours. Pets are permitted if kept on a leash not over 10 feet in length, the end of which is secured so as to restrict the movements of the animal. The use of snowmobiles is permitted on the Baring and Edmunds Units subject to the following special conditions: (1) Use is restricted to the periods December 1 through April 15; (2) Use shall be in accordance with all applicable State laws and regulations governing snowmobiles; (3) Use is permitted 24 hours a day and is limited to designated roads.

Petit Manan National Wildlife Refuge, Steuben, Maine, under administration of Moosehorn National Wildlife Refuge, Box X, Calais, Maine, 04619. Contact Douglas Mullen, Refuge Manager, at 207–454–3521. Special Conditions: Entry by motor vehicle and on foot is permitted for the purpose of nature study, photography, hiking and sight-seeing during daylight hours between April 15 and November 15. Entry by motor vehicle is restricted to Petit Manan Point Road and the designated parking area only. Foot travel only is permitted beyond the parking area on designated trails. Clamming is permitted in accordance with State and Town regulations; access to clamming areas is by water routes only. Pets are permitted if kept on a leash not over 10 feet in length, the end of which is secured so as to restrict the movements of the animal. The picking of blueberries for off-site use is prohibited. No entry to or use of the island portion of the refuge is permitted.

Carleton Pond Waterfowl Production Area, Detroit, Maine, under administration of Moosehorn National Wildlife Refuge, Box X, Calais, Maine 04619. Contact Douglas Mullen, Refuge Manager, at 207–454–3521. Special conditions: Entry by foot is permitted for the purposes of sight-seeing, nature observation, photography, and hiking during daylight hours. Hunting of migratory game birds, upland game, and big game is permitted subject to the provisions of State law and regulations. Dogs may be used for waterfowl and upland game hunting. Pets are permitted if kept on a leash not over 10 feet in length, the end of which is secured so as to restrict the movements of the animal.

Wapack National Wildlife Refuge, located between Peterborough, Greenfield and West Hilton, New Hampshire, is under administration of Great Meadows National Wildlife Refuge, Weir Hill Road, Sudbury, Massachusetts 01776. Contact David Beall, Refuge Manager, at 617–443–4661. Special conditions: Entry by foot is permitted during daylight hours for hiking, nature and geology study, photography, and blueberry picking. No motor vehicle of any kind is permitted on the refuge. Open fires and camping are prohibited. Pets are permitted if on a leash not over 10 feet in length, one end of which is secured so as to restrict the movements of the animal.

Missisquoi National Wildlife Refuge, Swanton, Vermont 05488. Contact Thomas Mountain, Refuge Manager, at 802–868–4781. Special conditions: Entry by motor vehicle or on foot is permitted on designated travel routes for the purposes of nature study, photography, hiking, and sight-seeing during daylight hours. Pets are permitted if they are kept on a leash not over 10 feet in length, the end of which is secured so to restrict the movements of the animal. Launching of boats and parking of boat trailers is permitted in designated areas.

Ninigret National Wildlife Refuge, Box 307, Charleston, Rhode Island 02813. Contact Donald Tiller at 401–364–3106. Trustom Pond National Wildlife Refuge, Green Hill, Rhode Island, under administration of Ninigret National Wildlife Refuge. Sachuest Point National Wildlife Refuge, Middletown, Rhode Island, under administration of Ninigret National Wildlife Refuge. Special conditions for Ninigret, Trustom Pond and Sachuest Point National Wildlife Refuges: Entry on foot is permitted from sunrise to sunset on designated routes of travel for the purposes of nature study, photography, and sight-seeing. Pets are permitted if they are kept on a leash not over 10 feet in length, the end of which is secured so as to restrict the movements of the animal. The entire

refuge beach has no lifeguards. Swimming will be at the visitor's own risk. Access along designated routes for surf fishing and shellfishing is permitted. Surf and shellfishing shall be in accordance with all state and local regulations. Fires are permitted only on the ocean beach. No other fires are permitted at other locations on the refuge. Camping, tents, floating devices, and nudity are not permitted on the refuge. Nudity is defined as intentional failure by persons over 10 years of age to cover with fully opaque covering their own genitals, pubic areas rectal area or female breasts below a point above the top of the areola when in a public place. Over-the-sand vehicles, snowmobiles, air cushion, all terrain or other similar vehicles are not permitted on the refuge except for emergency and law enforcement purposes.

Block Island National Wildlife Refuge, New Shoreham, Rhode Island, under administration of Ninigret National Wildlife Refuge, Box 307, Charlestown, Rhode Island 02813. Contact Donald Tiller, Refuge Manager, at 401–364–3106. Special Conditions: Entry by foot or motor vehicle on designated roads and trails is permitted during daylight hours for the purposes of nature study, photography, hiking, shell collecting, shellfishing, and surf fishing. Surf and shellfishing shall be in accordance with all state and local regulations. Pets are permitted if kept on a leash not over 10 feet in length, the end of which is secured so as to restrict the movements of the animal.

Salt Meadow National Wildlife Refuge, Westbrook, Connecticut, under administration of Ninigret National Wildlife Refuge, Box 307, Charlestown, Rhode Island 02813. Contact Donald Tiller at 401–364–3106. Special Conditions: Foot entry is permitted during daylight hours by advance reservation only, for the purposes of environmental education studies, hiking, nature study, and photography. Entrance permits may be obtained for specific dates, by mail, from the above address. Motor vehicles are limited to the designated parking areas. Pets are not permitted on the refuge unless authorized in the entrance permit.

The provisions of this special regulation supplement the regulations which govern public access, use and recreation on wildlife refuge area generally, which are set forth in Title 50, Code of Federal Regulations, Part 26. The public is invited to offer suggestions and comments at any time.

Note.—The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Howard N. Larsen,

Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 81-00148 Filed 1-2-81; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 26

Public Entry and Use; Opening of Certain National Wildlife Refuges to Public Access, Use and Recreation: New York, New Jersey, and Pennsylvania

AGENCY: United States Fish and Wildlife Service, Interior.

ACTION: Special regulation.

SUMMARY: The Director has determined that the opening to public access, use and recreation of certain national wildlife refuges in New York, New Jersey and Pennsylvania is compatible with the objectives for which the areas were established and will provide additional recreational opportunity to the public through a non-consumptive use. This document establishes special regulations governing this use.

DATES: January 1, 1981 through December 31, 1983.

ADDRESSES: Contact the Refuge Manager at the address and/or telephone number listed below in the body of Special Regulations.

FOR FURTHER INFORMATION CONTACT: Howard N. Larsen, Regional Director, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158 (617–965–5100 Ext. 200).

SUPPLEMENTARY INFORMATION: Public access, use and recreation is permitted on the national wildlife refuges indicated below in accordance with 50 CFR 26 and the following Special Regulations. Portions of refuges which are open to public access, use and recreation are designated by signs and/or shown on maps available from addresses indicated below. No vehicle travel is permitted except on designated roads and trails. Special regulations applying to individual refuges are listed on leaflets available at refuge headquarters and from the Regional Director, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158.

The Refuge Recreation Act of 1962 (16 U.S.C. 460k) authorized the Secretary of the Interior to administer such areas 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 area was established. In addition, the Refuge Recreation Act requires (1) that any recreational use permitted will not interfere with the primary purpose for which the area was established; and (2) that funds are available for the development, operation, and maintenance of the permitted forms of recreation.

The recreational use authorized by these regulations will not interfere with the primary purposes for which these National Wildlife Refuges were established. This determination is based upon consideration of, among other things, the Service's Final Environmental Statement on the Operation of the National Wildlife Refuge System published in November 1976. Funds are available for the administration of the recreational activities permitted by these regulations.

Public entry shall be in accordance with all applicable Federal and State laws and regulations subject to the following special regulations:

§ 26.34 Special regulations concerning public access, use and recreation; for individual national wildlife refuges.

Public access, use and recreation is permitted on the following refuges: Iroquois National Wildlife Refuge, Alabama, New York 14003. Contact Edwin H. Chandler, Refuge Manager at 716–948–5445. Special Conditions: Entry by foot or motor vehicle is permitted during daylight hours on designated travel routes for the purposes of nature study, photography, hiking and sight-seeing. Pets are permitted only if they are confined or kept on a leash not over 10 feet in length, one end of which is secured so as to restrict the movements of the animal.

Target Rock National Wildlife Refuge, P.O. Box 533, Huntington, New York 11743. Contact Roger Spaulding, Refuge Manager, at 516–271–2409. Special Conditions: Entry to the refuge is permitted by advance telephone or mail reservation only, for the purpose of photography, nature study, and hiking on roads, trails and the beach, from 9:00 AM to 5:00 PM daily. Entrance permits are issued for specific dates only. Weekday visitors may obtain a permit the same day of their visit. For weekend visitation visitors must contact the refuge office Monday through Friday from 8:00 AM to 4:30 PM. Visitation is limited to 50 individuals at any one time. Motor vehicles are permitted on entrance road and designated parking area only. Pets are not allowed.

Morton National Wildlife Refuge, R.D. Box 359, Noyack Road, Sag Harbor, New York 11963. Contact Roger Spaulding, Refuge Manager, at 516–271–2409.

Special Conditions: Entry by foot is permitted daily from 9:00 AM to 5:00 PM for the purpose of photography, nature study, and hiking. Vehicles are permitted on entrance road and parking area only. Pets are not allowed.

Amagansett National Wildlife Refuge, P.O. Box 533, Huntington, New York 11743. Contact Roger Spaulding, Refuge Manager, at 516-271-2409. Special Conditions: Entry by foot along the refuge beachfront is permitted during daylight hours for the purpose of nature study, photography, and shell collecting. Interior access beyond the beachfront for the purpose of environmental education studies is permitted by special use permit on a prior reservation basis. Motor vehicle access is limited to designated Town of East Hampton parking areas.

Brigantine National Wildlife Refuge, Great Creek Road P.O. Box 72, Oceanville, New Jersey 08231. Contact Gaylord L. Inman, Refuge Manager, at 609-651-1665. Special Conditions: Entry by foot, bicyle, and vehicle is permitted on designated travel routes during daylight hours for the purposes of nature study, wildlife observation, photography, and hiking. The refuge beach has no lifeguards. Swimming will be at the visitor's own risk. Pets are permitted only if they are confined or kept on a leash not over 10 feet in length, one end of which is secured so as to restrict the movements of the animal. Motorcycles or mopeds with motor in operation are not permitted on the refuge. The use of mopeds or motorized bicyles shall be governed as follows: as a bicyle when motor is not in operation; as a motorcycle when motor is in operation.

Barnegat National Wildlife Refuge, P.O. Box 72, Oceanville, New Jersey 08231. Contact, Gaylord L. Inman, Refuge Manager, at 609-652-1665. Special Conditions: Entry by foot and vehicle is permitted on designated travel routes during daylight hours for the purposes of nature study, wildlife observation, photography, and hiking. Pets are permitted only if they are confined or kept on a leash not over 10 feet in length, one end of which is secured so as to restrict the movements of the animal.

Erie National Wildlife Refuge, R.D. No. 2, Box 191, Guys Mills, Pennsylvania 16327. Contact William McCoy, Refuge Manager, at 814-789-3585. Special Conditions: Entry on foot or by motor vehicle is permitted on designated routes of travel from sunrise to sunset for the purposes of nature study, photography, wildlife observation, skiing, snowshoeing, and hiking. Pets are permitted only if they are confined or kept on a leash not over 10 feet in length, one end of which is secured so as to restrict the movements of the animal. The use of the picnic area is permitted by reservation only from May 15 through October 15. The use of artificial lights is permitted for the purpose of viewing white-tailed deer from public roads in accordance with State law.

Great Swamp National Wildlife Refuge, Pleasant Plains Road, R.D. No. 1, Box 148, Basking Ridge, New Jersey 07920. Contact John L. Fillio, Refuge Manager, at 201-647-1222. Special Conditions: The refuge is composed of two distinct units: the Management Area and the Great Swamp Wilderness Area. The Management Area, with the exception of the road around Pool 3A, Pleasant Plains Road, and the Wildlife Observation Center, is closed to unauthorized public entry. The dike road which adjoins Pool 3A is open daily to foot traffic from 8:00 AM to dusk. Pleasant Plains Road is open daily to through motor vehicle, bicycle, equestrian, and pedestrian traffic from 8:00 AM to dusk. The Wildlife Observation Center is open daily to foot travel from dawn to dusk. No other means of transportation is permitted beyond the designated parking areas and access road. The Great Swamp Wilderness Area is open daily to foot travel from dawn to dusk. All other means of travel are prohibited. Possession or use of alcoholic beverages is not permitted. Fishing or the possession of fishing equipment is prohibited. Smoking is permitted only in designated parking areas. Pets are permitted only in designated parking areas if they are contained or kept on a leash not over 10 feet in length, one end of which is secured so as to restrict the movements of the animal.

Montezuma National Wildlife Refuge, R.D. No. 1, Box 1411, Seneca Falls, New York 13148. Contact Grady Hocutt, Refuge Manager, at 315-568-5987. Special Conditions: Entry by foot or motor vehicle is permitted during daylight hours on designated travel routes for the purposes of nature study, photography, hiking, and sight-seeing. Pets are permitted only if they are confined or kept on a leash not over 10 feet in length, one end of which is secured so as to restrict the movements of the animal.

Tinicum National Environmental Center, Suite 104, Scott Plaza II, Philadelphia, Pennsylvania 19113. Contact Dick Nugent, Refuge Manager, at 215-521-0662. Special Conditions: Public entry into the Center, on the east end, is permitted from the 86th Street and Lindbergh Boulevard gate; public entry into the Center, on the west end, is permitted from Wanamaker Avenue (Route No. 420). Permitted public use activities include bicycling, hiking, jogging, nature study, sight-seeing, and photography from dawn to dusk. Registered motor vehicles are permitted only on the Center entrance road and parking lot at the Visitor Center and adjacent to Wanamaker Avenue. Trail bikes, dirt bikes, three-wheel bikes, snowmobiles, all-terrain vehicles and all other unregistered motorized recreational vehicles are prohibited from entering any lands owned or controlled by the Center. Visitors are prohibited from entering any impoundments or water areas by foot or by boat unless involved in an organized environmental education group which has obtained a permit from the Refuge Manager. Pets are permitted if on a leash not over 10 feet in length, one end of which is secured so as to restrict the movements of the animal. Possession or use of alcoholic beverages is not permitted.

The provisions of this special regulation supplement the regulations which govern public access, use and recreation on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 26. The public is invited to offer suggestions and comments at any time.

Note.—The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR, Part 14.

Howard N. Larsen,

Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 81-147 Filed 1-2-81; 8:45 am]
BILLING CODE 4310-55-M

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50 CFR Part 33

Sport Fishing; Opening of Certain National Wildlife Refuges to Sport Fishing: New York, New Jersey, and Pennsylvania

AGENCY: United States Fish and Wildlife Service, Interior.

ACTION: Special regulations.

SUMMARY: The Director has determined that the opening to sport fishing of certain National Wildlife Refuges in New York, New Jersey and Pennsylvania is compatible with the objectives for which the areas were established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public.

DATES: January 1, 1981, through December 31, 1981.

ADDRESSES: Contact the Refuge Manager at the address and/or telephone number listed below in the body of Special Regulations.

FOR FURTHER INFORMATION CONTACT: Howard N. Larsen, Regional Director, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158 (617-965-5100 Ext. 200).

SUPPLEMENTARY INFORMATION: Sport fishing is permitted on the National Wildlife Refuges indicated below in accordance with 50 CFR 33 and the following Special Regulations. Portions of refuges which are open to sport fishing are designated by signs and/or shown on maps available from the addresses indicated below and from the Regional Director, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachuetts 02158.

The Refuge Recreation Act of 1962 (16 U.S.C. 460k) authorizes the Secretary of the Interior to administer such areas for public recreation as an appropriate incidental or seondary use only to the extent that it is practicable and not inconsistent with the primary objectives for which the area was established. In addition, the Refuge Recreation Act requires (1) that any recreational use permitted will not interfere with the primary purpose for which the area was established; and (2) that funds are available for the development, operation, and maintenance of the permitted forms of recreation.

The recreational use authorized by these regulations will not interfere with the primary purposes for which these National Wildlife Refuges were established. This determination is based upon consideration of, among other things, the Service's Final Environmental Statement on the Operation of the National Wildlife Refuge System published in November 1976. Funds are available for the administration of the recreational activities permitted by these regulations.

Sport fishing shall be in accordance with all applicable State and Federal regulations subject to the following special conditions:

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

Brigantine National Wildlife Refuge, Great Creek Road, P.O. Box 72, Oceanville, New Jersey 08231. Contact Gaylord L. Inman, Refuge Manager, at 609-652-1665. Special Conditions: Saltwater sport fishing is permitted from the beach on Holgate peninsula and Little Beach Island, except for those areas posted as closed. Saltwater sport fishing from the auto tour route is prohibited. Freshwater sport fishing from the South Dike of the William Vogt Pool is permitted during daylight hours from July 20 through September 21, 1981. The possession of fish or minnows for use as bait is not permitted. Freshwater fishermen may park at the Headquarters and South Tower parking areas only.

Erie National Wildlife Refuge, R.D. #2, Box 191, Guys Mills, Pennsylvania 16327. Contact William McCoy, Refuge Manager, at 814-789-3585. Special Conditions: Refuge areas designated by signs are open to fishing during daylight hours, unless otherwise specified. Boats are permitted in Lake Creek above Sugar Lake, and boats without motors are permitted above the Pool 9 dike where designated by signs. Fishing in Pools 9 and K is permitted from the second Saturday in June to September 15, 1981, only. Pools 9 and K will be open to ice fishing at the discretion of the refuge manager. Seasonal ice fishing permits must be secured at refuge headquarters. Baitfish may be taken with minnow traps only from road rights-of-way off Hanks Road (T-744) into Woodcock Creek and from State Routes 27 and 173 into Lake Creek. The refuge is closed to taking frogs at all times. A refuge permit is required to take turtles.

Iroquois National Wildlife Refuge, Alabama, New York 14003. Contact Edwin H. Chandler, Refuge Manager, at 716-948-5445. Special Conditions: Refuge areas designated by signs are open to fishing during daylight hours only. All areas, except Feeder Canal and Oak Orchard Creek, are closed to fishing from March 1 through July 14, 1981, and from October 1 through November 30, 1981. Ice fishing will be permitted only on Ringneck, Schoolhouse, and Center Marshes. Ice fishing will only be permitted during the period December 19 through the last day of February. No boats or other flotation devices will be permitted, except that boats without motors may be used on Oak Orchard Creek from Knowlesville Road to a wire two miles westward. Firearms are not permitted in boats. With the exception of ice fishing, fishing on refuge impoundments will be limited to posted areas on dikes and roads. No wading or swimming is permitted. Leaving boats, structures, or other equipment overnight on the refuge is not permitted.

Montezuma National Wildlife Refuge, R.D. #1, Box 1411, Seneca Falls, New York 13148. Contact Grady Hocutt, Refuge Manager, at 315-568-5987. Special Conditions: Sport fishing in State waters is permitted from the refuge at locations designated by signs.

The provisions of this special regulation supplement the regulation which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33. The public is invited to offer suggestions and comments at any time.

Note.—The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Howard N. Larsen,

Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 81-146 Filed 1-2-81; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 33

Sport Fishing; Opening of Certain National Wildlife Refuges to Sport Fishing: Massachusetts, Maine, and Vermont

AGENCY: United States Fish and Wildlife Service, Interior.

ACTION: Special regulations.

SUMMARY: The Director has determined that the opening to sport fishing of certain National Wildlife Refuges in Massachusetts, Maine, and Vermont is compatible with the objectives for which the areas were established, will utilize renewable natural resource, and will provide additional recreational opportunity to the public.

DATES: January 1, 1981 through December 31, 1981.

ADDRESSES: Contact the Refuge Manager at the address and/or telephone number below in the body of Special Regulations.

FOR FURTHER INFORMATION CONTACT: Howard N. Larsen, Regional Director, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158 (617-965-5100 Ext. 200).

SUPPLEMENTARY INFORMATION: Sport fishing is permitted on the National Wildlife Refuges indicated below in accordance with 50 CFR 33 and the following Special Regulations. Portions of refuges which are open to sport fishing are designated by signs and/or shown on maps available from addresses indicated below and from the Regional Director, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158.

The Refuge Recreation Act of 1962 (16 U.S.C. 460k) authorizes the Secretary of the Interior to administer such areas 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 area was established. In addition, the Refuge Recreation Act requires (1) that any recreational use permitted will not interfere with the primary purpose for which the area was established; and (2) that funds are available for the development, operation, and maintenance of the permitted forms of recreation.

The recreational use authorized by these regulations will not interfere with the primary purposes for which these National Wildlife Refuges were established. This determination is based upon consideration of, among other things, the Service's Final Environmental Statement on the Operation of the National Wildlife Refuge System published in November 1976. Funds are available for the administration of the recreational activities permitted by these regulations.

Sport fishing shall be in accordance with all applicable State and Federal regulations subject to the following special conditions:

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

Sport fishing is permitted on the following areas: Great Meadows National Wildlife Refuge, Weir Hill Road, Sudbury, Massachusetts 01776. Contact David Beall, Refuge Manager at 617-443-4661. Special Conditions: Sport fishing is permitted during daylight hours along the Concord River, Sudbury River, Harvard Pond and ponds in the West Bedford area. Foot access for this purpose is permitted.

Oxbow National Wildlife Refuge, Harvard, Massachusetts, under administration of Great Meadows National Wildlife Refuge, Weir Hill Road, Sudbury, Massachusetts 01776. Contact David Beall, Refuge Manager, at 617-443-4661. Special Conditions: Sport fishing is permitted during daylight hours along the Nashua River. Foot access for this purpose is permitted.

Parker River National Wildlife Refuge, Northern Boulevard, Newburyport, Massachusetts 01950. Contact George Gavutis, Refuge Manager, at 617-465-5753. Special conditions: There is no freshwater fishing on Parker River National Wildlife Refuge. Saltwater sport fishing is permitted only on the ocean beach as follows:

Walk-in Fishermen:
- Entire year: Day only, no permit required.
- May 1 through October 31: Day and night. Night permit required.

Over-the-sand surf fishing vehicles:
- May 1 through October 31 only, permit required.
- May 1 through May 22, day and night.
- May 22 through September 7, night (6:00 PM to 8:00 AM) only.
- No vehicle shall be operated on the beach between the hours of 8:00 AM to 6:00 PM. During these hours all permit vehicles shall remain in the designated over-the-sand fishing vehicle parking area in the unvegetated area between the dunes at the east end of Beach Access Trail #2 or exit from the beach area.
- September 8 through October 31, day and night.
- No fishing or vehicles are permitted on the northern one-quarter mile of beach east of Lot 1 from 8:00 AM to 6:00 PM.

Permit requirements are as follows: Night permittees may enter the refuge only until dusk except they may enter until 10:00 PM from May 22 through September 7. Night permittees may remain on the refuge, or may exit through a one-way gate at any time. Vehicles with the special permit may be on the ocean beach only when the occupants over 12 years old are actively engaged in surf fishing and each have at least one fishing rod. Permission to inspect vehicle, sanitary facilities, and all fishing equipment must be granted to refuge agents upon request. Vehicles with sleeping compartment interiors not visible for inspection are prohibited from all refuge lots between 8:00 PM and 6:00 AM. All vehicle permits must be affixed to the vehicles as instructed at the time of issuance. Motorcycles, or any vehicle deemed improper by refuge agents, may not receive the permit. "Light Truck" type traction treads designed primarily for use in snow and mud are not permitted. Over-the-sand surf fishing vehicles must be registered and equipped with spare tire, shovel, jack, tow rope, or chain, board or similar support for jack, and low-pressure tire gauge. Vehicles, under the terms of an over-the-sand surf fishing permit, may drive only on designated beach access routes and on the unvegetated beach east of the line formed by the eastern base of the dunes. The maximum speed limit in these areas is 15 miles per hour. Ruts or holes resulting from freeing a stuck vehicle shall be promptly filled in by the operator. Tires must be properly deflated to permit sufficient flotation while vehicle is operated over sand. Riding on fenders, tailgates, roof, or any other position outside the vehicle is prohibited. Failure to comply with any State or Federal regulation shall be grounds for immediate cancellation of all permits.

Vehicle must stay 50 feet away from tern nesting areas marked by signs. The maximum speed limit past tern areas is five miles per hour.

Monomoy National Wildlife Refuge, Chatham, Massachusetts, under administration of Parker River National Wildlife Refuge, Northern Boulevard, Plum Island, Newburyport, Massachusetts 01950. Contact George W. Gavutis, Jr., Refuge Manager, at 617-465-5753. Special conditions: Sport fishing in tidal and fresh waters is permitted 24 hours per day from refuge lands. Boats may be beached on the refuge and wilderness areas.

Moosehorn National Wildlife Refuge, Box X, Calais, Maine 04619. Contact Douglas Mullen, Refuge Manager, at 207-454-3521. Special conditions: Sport fishing is permitted during daylight hours on areas designated by signs as open. The use of boats without motors is permitted on Bearce, Conic and Cranberry Lakes.

Missisquoi National Wildlife Reguge, Swanton, Vermont 05488. Contact Thomas Mountain, Refuge Manager, at 802-868-4781. Special conditions: Sport fishing is permitted in Lake Champlain, and the Missisquoi river from refuge lands. The use of firearms to take fish is prohibited.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33. The public is invited to offer suggestions and comments at any time.

Note.—The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Howard N. Larsen,

Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 81-145 Filed 1-2-81; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 46, No. 2
Monday, January 5, 1981

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.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Penalty for Early Withdrawals of Funds From Share Certificate Accounts in the Event of Bankruptcy

AGENCY: National Credit Union Administration.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The National Credit Union Administration (NCUA) Board is considering amending the penalty for early withdrawals of funds from share certificate accounts to permit penalty-free withdrawal in the event of bankruptcy of the certificate holder.

DATES: Comments must be received by February 23, 1981.

ADDRESS: Interested parties are invited to submit written data, views, or comments regarding the proposed rule to Robert S. Monheit, Regulatory Development Coordinator, National Credit Union Administration, 1776 G Street NW, Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Randall J. Miller, Director, Division of Regulatory Policy and Research, Office of Policy Analysis, National Credit Union Administration (202–357–1091).

SUPPLEMENTARY INFORMATION: The NCUA Board is considering amending the early withdrawal penalty rule to permit penalty-free early withdrawals of funds in share certificate accounts in the event of the bankruptcy of the certificate holder. Under current rules, Federal credit unions are required, with certain exceptions, to impose a penalty upon the withdrawal of share certificate funds prior to maturity. Where the original maturity of the share certificate is one year or less, the minimum required penalty generally is an amount equal to the lesser of all dividends for 90 days on the amount withdrawn or all dividends on the amount withdrawn since the date of issuance or renewal. Where the original maturity is greater than one year, the minimum penalty is an amount equal to the lesser of all dividends for 180 days on the amount withdrawn or all dividends on the amount withdrawn since the date of issuance or renewal.

Imposition of the early withdrawal penalty when funds are withdrawn in the event of bankruptcy may reduce the assets available to pay the claims against the debtor's estate. The NCUA Board believes that adoption of a bankruptcy exception would not significantly increase the administrative burden of determining the applicability of the penalty since the exception, as in the case of the current exception providing for penalty-free withdrawals where an IRA/Keogh shareholder is 59½ or disabled, would be subject to well-defined criteria.

Specific comment is requested on whether such an exception, if adopted, should:

(1) Apply to corporations as well as to individuals with regular incomes and small sole proprietors (Chapter 13);*

(2) apply to liquidations (Chapter 7), municipal debt adjustments (Chapter 9), rehabilitations and reorganizations (Chapter 11) and, in the case of individuals, extended repayment plans (Chapter 13) under the bankruptcy code;

(3) permit penalty-free withdrawals to be made upon the filing of a petition for bankruptcy or only upon an adjudication of bankruptcy or a court ordered distribution of the debtor's estate; and

(4) permit penalty-free withdrawals to be made by a debtor-in-possession as well as by a trustee in bankruptcy.

By order of the National Credit Union Administration Board, December 18, 1980.

Rosemary Brady

Secretary to the Board.

December 29, 1980.

[FR Doc. 81-135 Filed 1-2-81; 8:45 am]

BILLING CODE 7535-01-M

12 CFR Part 701

Retirement Accounts

AGENCY: National Credit Union Administration.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The National Credit Union Administration is considering proposed rules that would: (1) enable share certificates held in Individual Retirement Accounts ("IRAs") and Keogh (H.R. 10) plans to accommodate routine additions more conveniently; and (2) increase, revise, or eliminate the current dividend ceiling payable on the IRA/Keogh accounts. The proposed rules would facilitate the use of share certificates for retirement savings and encourage the increased use of IRA/Keogh plans consistent with the intent of Congress in the Employees Retirement Income Security Act (ERISA) of 1974 to encourage individuals to save for their retirements.

DATES: Comments must be received by March 20, 1981.

ADDRESS: Interested parties are invited to submit written data, views, or arguments regarding the proposed rules to Robert Monheit, Regulatory Development Coordinator, National Credit Union Administration, 1776 G St., NW, Washington, DC, 20456.

FOR FURTHER INFORMATION CONTACT: Dan Gordon, Financial Economist, Office of Policy Analysis, National Credit Union Administration at (202) 357–1090.

SUPPLEMENTARY INFORMATION: Although the intent of the Employee Retirement Income Security Act of 1974 is to encourage qualified individuals to develop their own pension plans, IRAs and Keoghs have not been fully utilized. In 1977, only 3.3 percent of eligible taxpayers in the $11,000 to $15,000 income class held some form of retirement account in a depository or nondepository institution, while 52.4 percent of those with incomes of $50,000 or more held some form of retirement account. In view of the Congressional intent to encourage individuals to save for their retirement, NCUA is considering regulatory actions that would increase the attractiveness of IRA/Keogh accounts at Federal credit unions by reducing present adminsitrative obstacles to periodic additions to IRA/Keogh accounts and by increasing the yield available to retirement savers.

The current dividend ceiling on retirement accounts is the greater of (1) 9½ percent or (2) the lesser of 12 percent or the average 2½ year yield on United States Treasury securities. Credit unions also may pay a maximum rate equal to one-quarter of one percent above the discount rate for 26 week Treasury bills

*Chapter references are to Title II of the United States Code entitled "Bankruptcy."

for funds invested in 26-week money market certificates.

NCUA regulations permit regularly scheduled additions to a share certificate account, including variable ceiling accounts, without changing the maturity of the account, so long as the date and amount of each addition is arranged for at the time the account is opened. Rates paid on additions would be equal to the originally agreed upon contract rate. NCUA rules require that additions be specifically arranged for in advance to encourage credit union members to set up and save according to an established plan rather than attempt to time account additions to take advantage of interest rate variations.

The National Credit Union Administration requests comment on four options designed to reduce the administrative complexities associated with IRA/Keogh funds and to provide a more attractive yield to retirement savers. Options 1 and 2 provide for the creation of a new IRA/Keogh one-year notice account that would facilitate the receipt of periodic additions. Option 3 presents three alternative ceiling rate options that could be applied to the currently authorized retirement accounts or the notice accounts presented in Options 1 and 2. Option 4 provides for the creation of a new IRA/Keogh share account with a minimum maturity of 14 days and with no prescribed dividend ceiling. A discussion of the four options follows.

Options 1 and 2—Create IRA/Keogh Notice Account to Facilitate Periodic Additions

A notice account is an account from which funds may not be withdrawn prior to the expiration of a period of notice which must be given by the shareholder a specified number of days in advance of withdrawal. Notice could take a variety of forms including a specific written notice from the shareholder or arrangements in which notice is given automatically on the anniversary of the account or each time an addition to the account is made.

Under Option 1:

(a) A one-year notice of intent to withdraw on a specified date is required;

(b) The Federal credit union may accept additions to the account at any time up to 14 days before the expiration or end of the notice period, and all funds in shares could be withdrawn upon the expiration of the notice period;

(c) Dividends could be paid on all additions to the account at the specified contract rate; and

(d) An early withdrawal penalty would be imposed on withdrawals made prior to the expiration of the one-year notice period.

Under Option 2:

(a) A one-year notice of intent to withdraw on a specified date is required;

(b) The Federal credit union may accept additions to the account at any time, but the amount withdrawn could not exceed the amount in shares at the time of notice;

(c) Dividends could be paid on all additions to the account at the specified contract rate; and

(d) An early withdrawal penalty would be imposed on withdrawals made prior to the expiration of the one-year notice period.

A strength of these options is that they establish IRA/Keogh accounts that readily accommodate routine periodic additions and can easily be understood by both shareholders and the Federal credit unions authorized to offer the accounts. Under both Options 1 and 2 the one-year notice required for withdrawal accommodates IRA shareholders' annual rollover privilege as provided by in the amended ERISA; it also facilitates shareholders shifting to more attractive retirement investment alternatives when they exist, as contemplated by the recent amendment to ERISA. NCUA believes that structuring either account as a one-year notice account is preferable to establishing an account with a stated maturity of one year that could accept periodic additions. A notice account would tend to lessen deposit volatility since funds would not mature automatically at the end of a year.

Option 1 would make the administration of the notice account less complex since all funds could be withdrawn at one time. Under this Option, however, the ability to make additions up to 14 days prior to the expiration of the notice period would make it possible for shareholders to earn a high rate of dividends on very short-term funds.

Options 1 and 2 establish a minimum maturity of one year on IRA/Keogh accounts. Federal credit unions have been authorized to offer a notice account with a maturity of 90 days. However, additions are not permitted unless contracted in advance. Under the proposed one-year notice account in Options 1 and 2, additions will be permitted at any time without prior contractual arrangements between the shareholder and the Federal credit union. This change removes existing regulatory restrictions.

Option 3—Increase, Revise, or Eliminate IRA/Keogh Dividend Ceilings

Options 1 and 2 deal primarily with the administrative problems of making routine additions to IRA/Keogh accounts, but do not address the issue of what dividend ceilings, if any, should be applied. NCUA is considering the following dividend ceiling options that could be applied to the current retirement account or the notice accounts presented in Options 1 and 2.

(a) Prescribe no dividend ceiling;

(b) Establish a fixed ceiling at a rate considerably above current rate ceilings. Within the ceiling rate limitations, Federal credit unions could change the rate paid on the account with one year's notice or change the rate immediately if required by a regulatory ceiling rate change; or

(c) Establish a floating ceiling indexed to the rate on U.S. Government securities of specified maturity (e.g., 91 day, 182 day, one year, or two and a half year Treasury security yield). Change in the ceiling rate could occur quarterly, semi-annually, or annually.

Option 3(a) and 3(b) would represent a liberalization of the current dividend ceiling now existing on IRA/Keogh accounts. Option 3(c) most likely will result in a liberalization of the regulation. However, there is the possibility that the choice of an index different from those included in the current regulation could result in a lower rate ceiling at certain stages of the interest rate cycle.

Option 4—Create 14-day IRA/Keogh Share Account

NCUA also is considering establishment of an IRA/Keogh share account with a minimum required maturity or notice period of 14 days. No dividend ceiling on this special category would be prescribed. This option would provide maximum flexibility to Federal credit unions in structuring retirement accounts.

NCUA believes that the proposals presented would enable Federal credit unions to tailor IRA/Keogh plans to specific member needs and market circumstances and thereby attract and retain relatively stable retirement funds. In addition, these proposals would encourage savings and, by enhancing the competitive posture of Federal credit unions vis-a-vis nondepository institutions, would enable Federal credit unions to function more safely and soundly in increasingly competitive financial markets. NCUA is concerned, however, that adoption of any of the proposals making IRA/Keogh accounts significantly more attractive could

encourge credit union members not qualifies to open IRA/Keogh accounts to open such accounts. To lessen the potential for abuse, NCUA is considering adoption of a provision requiring an appropriate official of the Federal credit union to obtain certification from each shareholder that he or she qualifies to hold an IRA/Keogh account. Such certification for IRAs might include presentation of a W-2 form indicating eligibility.

To aid in its consideration, comments are requested on the four options discussed above. Specific comments are also requested on:

(1) The minimum required early withdrawal penalty that should be imposed on withdrawals prior to the receipt and expiration of the one-year notice period under Options 1 and 2;

(2) The potential for misuse of IRA/Keogh accounts under any of the options and steps that might be taken to lessen the potential for misuse;

(3) The ceiling rate options (e.g., no ceiling, fixed rate ceiling, or floating ceiling) that would be most attractive to Federal credit unions and their members;

(4) The Treasury bill maturity that should be selected as the index if a floating rate ceiling were adopted (Option 3(c)) and the frequency of change in the ceiling rate (e.g., quarterly, semi-annually, annually);

(5) The potential impact of the proposals on share stability at Federal credit unions;

(6) The effect of the proposals on the earnings of Federal credit unions; and

(7) Whether, in the event any of the options is adopted, Federal credit unions should be authorized to permit existing IRA/Keogh shareholders to immediately convert their accounts without imposition of the early withdrawal penalty.

Comment also is solicited on any other proposals that would reduce the administrative complexities of using share accounts to fund IRAs and Keoghs.

By order of the Board, December 18, 1980.

Rosemary Brady,

Secretary to the Board.

December 29, 1980.

[FR Doc. 81-136 Filed 1-2-81; 8:45 am]

BILLING CODE 7535-01-M

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12 CFR Part 701

Effective Date of Share Certificate Ceiling Rates

AGENCY: National Credit Union Administration.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The National Credit Union Administration (NCUA) Board proposes to adopt rules reducing the period between the announcement and the effective date of share certificate dividend ceilings based on the discount yields of United States Treasury securities. Under the current rules, the ceiling rates based on Treasury securities are announced on Monday (occasionally on Friday) and are effective the following Thursday. Under the proposed rules, the ceiling rates announced by Treasury would become effective on the following day, or as an alternative, two days afterward.

DATES: Comments must be received by February 23, 1981.

ADDRESS: Interested parties are invited to submit written data, views, or comments regarding the proposed rules to Robert S. Monheit, Regulatory Development Coordinator, National Credit Union Administration, 1776 G St., NW, Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Randall J. Miller, Director, Division of Regulatory Policy and Research, Office of Policy Analysis, National Credit Union Administration (202)-357-1090.

SUPPLEMENTARY INFORMATION: With one exception, the dividend ceiling payable on share certificates is the greater of (1) 9½% or (2) the lesser of 12% or the average 2½ year yield for United States Treasury securities. The exception is share certificates with minimum denominations of $10,000 and minimum maturities of 26 weeks. The dividend ceiling on these share certificates is the greater of (1) the share certificate dividend ceiling or (2) one quarter of one percent greater than the discount rate for 26 week Treasury bills. U.S. Treasury bills maturing in 26 weeks normally are auctioned on Monday (occasionally on Friday) and, under current rules, the dividend ceiling based on the discount yield (auction average) is effective the following Thursday, the day on which the Treasury Bills are issued. This dividend ceiling is effective until the next issuance of 26 week United States Treasury bills. The average 2½ year yield on United States securities is announced by Treasury on Monday (occasionally on Friday) afternoon (based on the average 2½ year yield for the five business days ending on Monday) and, under current rules, the dividend ceiling based on that average 2½ year yield are effective for a two-week period beginning on the following Thursday.

In order to more closely link the dividend ceiling payable on share certificates with current market rates, the NCUA Board proposes to adopt rules reducing the time between the announcement and effective date of the dividend ceilings. Under the proposed rules, the dividend ceilings announced by Treasury would be effective for a share certificate issued on the following day, or two days later, rather than on the following Thursday. Comment is requested on whether these alternatives would allow sufficient time for credit unions to make any changes necessary for implementation of the new dividend ceilings. Comment is particularly requested on potential problems that credit unions may encounter in (1) obtaining information on the new dividend ceilings and (2) posting or advertising the new ceiling.

By order of the National Credit Union Administration Board, December 18, 1980.

Rosemary Brady,

Secretary to the Board.

December 29, 1980.

[FR Doc. 81-137 Filed 1-2-81; 8:45 am]

BILLING CODE 7535-01-M

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12 CFR Parts 701 and 741

Organization and Operations of Federal Credit Unions and Requirements for Insurance and Voluntary Termination of Insurance; Correction

AGENCY: National Credit Union Administration.

ACTION: Proposed Rule; Correction.

SUMMARY: On December 17, 1980, (45 FR 82955) the National Credit Union Administration published in the **Federal Register** a proposed rule which adopts the Board policy of requiring each Federally insured credit union to file a Financial and Statistical report on a semi-annual basis. The previous practice required only an annual report. The National Credit Union Administration Board approved the use of the current revised Forms FCU 109 (a, b, c) by those credit unions filing their semi-annual call reports, as instructed by the Board.

The proposed regulation referenced the Forms FCU 109 (a, b, c) as an attachment to the regulation. The Form was inadvertently omitted from the publication. We are, therefore, publishing the Form at this time to accompany the proposed regulation.

DATES: Comments are due on or before February 17, 1981. There is no change from the original due date.

ADDRESS: Send comments to: Robert S. Monheit, Regulatory Development Coordinator/Senior Attorney, Office of

General Counsel, National Credit Union Administration, 1776 G Street, N.W., Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT: Steven R. Bisker, Office of General Counsel, or Mike Fischer, Office of Examination and Insurance, at the above address. Telephone numbers: (202) 357-1030 (Mr. Bisker), (202) 357-1065 (Mr. Fischer).

Rosemary Brady,

Secretary, NCUA Board.

December 29, 1980.

BILLING CODE 7535-01-M

STATEMENT OF FINANCIAL CONDITION AS OF _____

Charter #or Ins. Cert. # _____ _____ CREDIT UNION

ASSETS:

Ref #	LOANS & CASH	$ Amount	¢	Acct. Code no.
	1. a. Outstanding balances of lines of credit loans to members			702
	b. Real estate loans to members (first lien) (Orig maturity over 12 years)			703
	c. Loan balances fully secured by shares			706
	d. All other loans to members (excluding a,b,c, above)			001
	e. Total loans to members (include items a,b,c, and d)			700
	2. All other loan accounts (excluding amts. in 1,a,b,c,&d)			710
	3. (Less) Allowance for loan losses			719
	4. Net Loans Outstanding (Sum of 1e plus 2 less 3)			002
	5. Cash (cash on hand, petty cash, checking accts., etc.)			730

INVESTMENTS (A + B = C)	Remaining Maturities A. 1 Yr. or less		B. More than 1 Yr.		C. Total $	¢	
6. U.S. Govt. Obligations							741
7. Federal agency securities							742
8. Common trust investments							743
9. Shares,deposits, & certif. in corp. centrals.							744
10. Shares,deposits, & certif. in other CUs.							745
11. Shares,deposits, & certif. in banks, S&L's & MSB's							746
12. Loans to other credit unions							747
13. All other investments							003
14. Shares in Central Liquidity Facility (Direct or Indirect)							751
15. (Less) Allowance for investment losses							759
16. Net Investments (Sum of 6 through 14 Less 15)							004

OTHER ASSETS			
17. Land and building (net of depreciation)			007
18. Other fixed assets (net of depreciation)			008
19. Monetary control reserve deposits			793
20. All other assets			009
21. TOTAL ASSETS (Sum of 4,5,16 & 17 through 20)			010

LIABILITIES SAVINGS EQUITY

Ref #	(A+B=C)	Remaining Maturities A. 1 yr. or less		B. More than 1 yr.		C. Total $	¢	Acct. Code no.
	22. Promissory notes							812
	23. Reverse Repurchase Transac.							813
	24. Other notes Payable							814
	25. Interest payable							818
	26. Accounts payable							800
	27. Dividends/Interest on shares/deposit payable							820
	28. All other liabilities							012
	29. Total Liabilities (Sum of 22 through 28)							01[illegible]

		Remaining Maturities A. 1 yr. or less		B. More than 1 yr.		C. Total $	¢	
	30. a. Share certificates							908
	b. Share draft accounts							907
	c. Member Deposits (SCU's Only)							005
	d. Other member savings							006
	e. Non-member Savings							920
	f. Total savings/shares/deposits (Sum of 30a through 30e)							013
	31. Regular/statutory reserve							931
	32. Investment Valuation reserve (SCU's only)							015
	33. Special Reserves							016
	34. Other reserves							017
	35. Undivided Earnings							940
	36. Net Income (Loss)							960
	37. TOTAL LIABILITIES SAVINGS & EQUITY (Sum of 29, 30f and 31 through 36)							014

MARKET VALUES OF INVESTMENTS	Remaining Maturities A. 1 Yr. or less		B. More than 1 Yr.		C. Total $	¢	
38. U.S. Government Obligations							018
39. Federal agency securities							019
40. a. All other Investments	*						020
b. _____							021

*Numbers in this column refer to notes to financial statements, letters refer to supplementary schedules which are attached.

Charter # or Ins. Cert. #

STATEMENT OF INCOME FOR PERIOD ENDED _____

_____ CREDIT UNION

Ref *	OPERATING INCOME:	Month	Period Ended	Year-to-date	Acct. code no.
	41. Interest on loans (gross)				110
	42. (Less) Interest refunded				119
	43. Income from investments				120
	44. Other operating income				050
	45. TOTAL GROSS INCOME (Items 41-44)				100
	OPERATING EXPENSES:				
	46. Employee compensation				210
	47. Employee benefits				220
	48. Travel & conference expense				230
	49. Association dues				240
	50. Office occupancy expense				250
	51. Office operations expense				260
	52. Education & promotional expense				270
	53. Loan servicing expense				280
	54. Professional & outside services				290
	55. Provision for loan losses				300
	56. Member insurance				310
	57. Operating fees (exam., & super)				320
	58. Interest on borrowed money				340
	59. Annual meeting expense				350
	60. Misc. operating expense				370
	61. Total Oper. Exp. Before Div. & Int. on Dep. (Total of Items 46 to 60)				051
	62. Net Operating Inc. (Loss) Before Div. & Int. on Dep. (Item 45 less 61)				052
	NON-OPERATING GAINS OR LOSSES				
	63. Gain (loss) on investments				420
	64. Gain (loss) on disposition of assets				430
	65. Other non-operating income (expense)				440
	66. Total non-operating gains and losses				053
	ALLOCATION OF INCOME				
	67. Total Net Income (Loss) before div & int/dep				054
	68. Interest on deposits (SCU's only)				055
	69. Dividends				380
	70. Net Income (Loss) after div & int/dep				056
	71. (Less) Req. trans to reg. or stat. reserve				057
	72. Provision for loan losses adjustment				058
	73. Change to Undivided Earnings as a Result of Operations				059

FCU 1098

Ref *	CLASSIFICATION OF LOANS OUTSTANDING	A. Number	B. $ Amount ¢	Acct. code no.
	74. Degree of delinquency:			
	a. current and less than 2 months			060
	b. 2 to less than 6 months			061
	c. 6 to less than 12 months			062
	d. 12 months and over			063
	e. Total loans (sum of 74a thru 74d.) (must equal 1a. + 2)			064

	OTHER LOAN INFORMATION	A. Number	B. $ Amount ¢	Acct. code no.
	75. Loans sold and being serviced by the credit union			065
	76. Real estate loans made during current year			066
	77. Total loans made during current year (include real estate loans)			067
	78. Total loans made since organization			068
	79. Total loans charged off since organization			069
	80. Recovery of loans charged off since organization			070
	81. Net loans charged off since organization			071

	MISCELLANEOUS INFORMATION		
	82. Dollar amount of forward commitments to purchase (securities, etc.)		072
	83. Number of members at end of month		073
	84. Number of potential members		074

We certify, to the best of our knowledge and belief, this statement and the related statements are true and correct and present fairly the financial position and the results of operations for the periods covered.

Certified correct by: (Please Print) _____ Telephone No. _____

Treasurer-Manager (Signature) _____ Date _____

President/Authorized Officer _____ Date _____

* Numbers in this column refer to notes to financial statements, letters refer to supplementary schedules which are attached.

SUPPLEMENTARY SCHEDULES

FOR FINANCIAL STATEMENTS OF

Charter # or Ins. Cert. #

Date

CREDIT UNION

Schedule	Ref. Item No.	Account Title	Acct. No.		

FCU 109 C

INSTRUCTIONS

ASSETS

ITEM

1 –

a. **Outstanding Balances of Lines of Credit Loans to Members (Acct. 702).** Report the outstanding balances as of the report date in all approved line of credit accounts to members. Open-end loans, granted under "Special Loan Plans" should not be reported in this item; such loans are to be reported in item 1d.

b. **Real Estate Loans (Acct. 703).** The total amount of first lien real estate loans to members outstanding as of the report date should be recorded in this account. Only those loans with original maturities in excess of 12 years should be reported on this line.

c. **Loan Balances Fully Secured By Shares (Acct. 706).** Report the amount of loans to members outstanding as of the report date that are completely secured by pledged shares.

d. **All Other Loans to Members.** This amount should be the residual of loans to members after lines of credit, real estate loans, and loan balances fully secured by shares have been deducted. Include Accounts 701, 704, 705, 707, 708 and 709.

e. **Total Loans to Members (Acct. 700).** Include all loans to members (including Lines of Credit, Real Estate Loans and Loans fully secured by shares) outstanding as of the report date. Do not include loans to other credit unions which are reported in the investment section.

2 – **All Other Loan Accounts (Acct. 710-718).** Represents all other loan accounts of the credit union such as loans purchased, in whole or in part, from other credit unions, any note or contract receivable resulting from the sale of assets and similar accounts, if any. Include Accounts 710 through 718. Do not include loans to other credit unions which are reported in the investment section.

3 – **(Less) Allowance for Loan Losses (Acct. 719).** This item, if applicable to your credit union, represents the amount set aside by the credit union which is necessary to absorb possible losses on loans. This should not include amounts reported in items 31 through 34 as reserves.

4 – **Net Loans Outstanding.** This represents the value of loans outstanding net of the allowance for loan losses. Add items 1e and 2 and subtract item 3.

5 – **Cash (Acct. 730-739).** This account represents cash on hand, petty cash, checking accounts, etc.

6 – **U.S. Government Obligations (Acct. 741).** Represents the "book value" of credit union funds invested in obligations of the United States which are fully guaranteed as to both principal and interest. The amounts reported in 6A plus 6B must equal the amount in 6C.

7 – **Federal Agency Securities (Acct. 742).** Represents the "book value" of credit union funds invested in agency securities and participation certificates which are secured by collateral owned by these agencies. The amounts reported in 7A plus 7B must equal the amount in 7C.

8 – **Common Trust Investments (Acct. 743).** Represents the "book value" of credit union funds placed in common trust fund investments such as ICU, NIFCUS, etc. The amounts reported in 8A plus 8B must equal the amount in 8C.

ITEM

9 – **Shares, Deposits and Certificates Invested in Corporate Central Credit Unions (Acct. 744).** Report the total amount of shares, deposits and certificates invested in Corporate Central Credit Unions as of the report date. Special share accounts established in a corporate central credit union to fund the corporate central's Central Liquidity Facility stock subscription should not be reported in this item; such accounts should be reported in item 15. The amounts reported in 9A plus 9B must equal the amount in 9C.

10 – **Shares, Deposits and Certificates in Other Credit Unions (Acct. 745).** Represents the amount as of the report date of credit union funds invested in shares, deposits and certificates of other credit unions, excluding corporate central credit unions. The amounts reported in 10A plus 10B must equal the amount in 10C.

11 – **Shares, Deposits and Certificates in Banks, S&L's and Mutual Savings Banks (Acct. 746).** Represents the amount of outstanding shares, deposits and certificates invested in Banks, S&L's and MSB's as of the report date. The amounts reported in 11A plus 11B must equal the amount in 11C.

12 – **Loans to Other Credit Unions (Acct. 747).** Represents the amount outstanding of loans made to other credit unions as of the report date. The amounts reported in 12A plus 12B must equal the amount in 12C.

13 – **All Other Investments.** This amount should reflect all other investments other than those listed in items 6 through 12 and item 14, as of the report date. Include Accounts 748, and 752 through 759.

14 – **Investment in Central Liquidity Facility (Acct. 751).** Represents the total amount of shares invested directly or indirectly in the Central Liquidity Facility as of the report date. Credit unions that have gained access to the Central Liquidity Facility (CLF) through a CLF Agent member should report on this line the amount of their "CLF Stock Reimbursement" (a special share account established in a corporate central to fund the corporate central's CLF stock subscription). A corporate central credit union that is a member of a CLF Agent Group should report on this line the amount it has invested in its Agent Group Representative (AGR) to reimburse the AGR for purchasing CLF stock on its behalf.

15 – **(Less) Allowance for Investment Losses (Acct. 759).** This item, if applicable to your credit union, represents the amount set aside to absorb possible losses in the liquidation of investments.

16 – **Net Investments.** This represents the sum of items 6 through 14 less 15.

17 – **Land and Building (Net).** Represents the amount of land and building less depreciation on building, if any. (Account 771 plus 772 less 773).

18 – **Other Fixed Assets.** Represents all other fixed assets of the credit union such as furniture and fixtures, leasehold improvements, less related depreciation items, if any. Include Accounts 774 through 779.

ITEM

19 – **Monetary Control Reserve Deposits (Acct. 793).** Represents amounts deposited by the credit union in the Federal Reserve Bank or Branch or any pass-through Financial Institution as required reserves to comply with the Federal Reserve Board's Regulation "D" requirements.

20 – **All Other Assets.** Represents all other assets of the credit union not included in the above items. Includes such items as prepaid expenses and insurance, accounts receivable, accrued income, etc. Include Accounts 720 through 729, 760 through 769, 780 through 789 and 790 through 792, and 794 through 799.

21 – **Total Assets.** Represents the sum of the amounts in items 4, 5, 16, 17, 18, 19 and 20 (total columns).

LIABILITIES/SAVINGS/EQUITY

22 – **Promissory Notes (Certificates of Indebtedness) (Acct. 812).** Report the amount of funds borrowed by the credit union from individuals for which a promissory note (CI) was issued. The amounts reported in items 22A plus 22B must equal the amount in item 22C.

23 – **Reverse Repurchase Transactions (Acct. 813).** Report the outstanding balance of funds borrowed by the credit union from any source, using its securities as collateral on the loans.

24 – **Other Notes Payable (Acct. 814).** Represents the amount of liability of the credit union for borrowed funds, other than those reported in items 22 and 23. The amounts reported in items 24A plus 24B must equal the amount in item 24C.

25 – **Accrued Interest Payable (Acct. 818).** Represents the amount of interest accrued on all notes and borrowings of the credit union. Do not include interest on deposits.

26 – **Accounts Payable (Acct. 800-809).** Represents all accounts payable of the credit union such as undistributed payments, undistributed payroll deductions, etc. Include Accounts 800 through 809.

27 – **Dividends/Interest on Shares/Deposits Payable (Acct. 820).** This account should reflect the total amount of dividends/interest on shares/deposits payable that are declared for the last dividend period and not paid.

28 – **All Other Liabilities.** This is a balancing item and represents all other liability accounts that are not shown separately. Include such items as taxes payable, accrued expenses, deferred income, etc. Include Accounts 830 through 889.

29 – **Total Liabilities.** This represents the sum of items 22 through 28 (Total Column).

30 –

a. **Share Certificates and Time Deposits.** Represents the total amount of regular, Money Market, Jumbo and other share certificates and time deposits held by the credit union members, if any. The sum of the amounts in the two maturity categories for share certificates must equal the total.

b. **Share Draft Accounts.** Represents the total amount outstanding of share draft accounts held by the credit union members.

ITEM

c. **Member Deposits.** Represents the amount of deposits (not shares) of members in the credit union. For use by State chartered credit unions only.

d. **Other Member Savings.** This amount represents the total member savings of the credit union, excluding share draft accounts, share certificates and member deposits.

e. **Non-member Savings.** This represents the total amount of non-member savings in the credit union. Primarily applicable to Limited Income Credit Unions.

f. **Total Savings/Shares/Deposits.** Represents the sum of amounts held in all savings/shares/deposits accounts of members and non-members. Includes Share Certificates, Share Draft Accounts, Public Unit Accounts, Retirement Plans and special share accounts such as Christmas and Vacation accounts, if any. The sum of the Total Columns of items 30a, 30b, 30c, 30d, and 30e must equal 30f.

31 – **Regular/Statutory Reserve (Acct. 931).** Represents the statutory (regular) reserve balance as of the report date.

32 – **Investment Valuation Reserve (SCU's only).** Represents the reserves to cover the excess of Book Value over Market Value for investments other than those authorized for Federal credit unions by Section 107 of the Federal Credit Union Act. For use by state chartered credit unions only.

33 – **Special Reserves.** This represents any other reserves required by regulation, special agreement or order of the credit union's supervisory authority.

34 – **Other Reserves.** Represents the sum of other reserve accounts (excluding amounts in items 31, 32 & 33) such as reserve for contingencies, additional reserves for losses, insurance reserves, etc.

35 – **Undivided Earnings (Acct. 940).** Represents the total amount of accumulated income or surplus of the credit union. Should not include the amount of dividends and interests on deposits paid or payable which are reported in item 27.

36 – **Net Income (Loss).** Represents the net income (loss) from operations.

37 – **Total Liabilities, Savings and Equity.** Represents the sum of amounts in items 29, 30f and 31 through 36.

MARKET VALUES OF INVESTMENTS

38 – Represents the market value, as of the statement date, for the U.S. Government Obligations reported in item 6.

39 – Represents the market value, as of the statement date, for the Federal agency securities reported in item 7.

40 – Identify any other investment reported in items 8 through 14 which have a market value below the reported amount (in items 8 through 14) and show the market value for that investment(s) as of the statement date.

THE FOLLOWING INCOME AND EXPENSE ITEMS SHOULD REFLECT TOTALS FOR THE PERIODS

OPERATING INCOME

41 – **Interest on Loans (Gross) (Acct. 110-118).** Represents the total amount of income from interest on loans.

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42 – **(Less) Interest Refunded (Acct. 119).** Represents the total amount of interest refunded.

43 – **Income from Investments (Acct. 120-129).** Represents the total amount of income earned on investments.

44 – **Other Operating Income (Acct. 130-169).** Represents all operating income other than income on loans and income from investments received by the credit union.

45 – **Total Gross Income.** Represents the sum of items 41, 43, 44 minus item 42.

OPERATING EXPENSES

46 – **Employee Compensation (Acct. 210-219).** Represents the total amount of salaries paid to employees of the credit union, including the treasurer, if paid. Also includes reimbursement to sponsor when credit union employees are on the sponsor company's payroll.

47 – **Employee Benefits (Acct. 220-229).** Represents all expenses of the credit union that relate to employee benefits. Includes such items as pension plan costs, employer's social security taxes, unemployment compensation taxes, and other benefits provided to employees.

48 – **Travel and Conference Expense (Acct. 230-239).** Represents the amount of authorized expenses incurred by employees and officers (including the treasurer) for travel and attendance at conferences and other meetings.

49 – **Association Dues (Acct. 240-249).** Represents membership dues and other fees paid to credit union organizations of which the credit union is a member.

50 – **Office Occupancy Expense (Acct. 250-259).** Represents all expenses relating to occupying an office including rent, utilities (except telephone) depreciation of building if owned by the credit union, real estate taxes, and amortization of leasehold improvements.

51 – **Office Operation Expense (Acct. 260-269).** Represents all expenses relating to the operation of an office including communications, stationery and supplies, insurance, furniture rental and/or maintenance, depreciation, bank service charges, etc.

52 – **Educational and Promotional Expense (Acct. 270-279).** Represents expenses incurred for advertising in newspapers, periodicals, radio or television and publicity and promotions in education of members.

53 – **Loan Servicing Expense (Acct. 280-289).** Represents all expenses incurred in the servicing of loans such as collection expense, credit reports, recording fees, chattel lien insurance, etc.

54 – **Professional and Outside Services (Acct. 290-299).** Represents expenses incurred by the credit union for such items as legal fees, audit fees, accounting services, and management and consultant fees.

ITEM

55 – **Provision for Loan Losses (Acct. 300-309).** Represents the current period provision for all losses and related costs on loans and other receivables.

56 – **Member Insurance (Acct. 310-319).** Represents the cost of members' insurance, including premiums paid for life savings insurance, annual share insurance premium and borrowers protection insurance.

57 – **Operating Fees (Acct. 320-329).** Represents the NCUA annual operating fee, state supervision fee and the cost of periodic examinations assessed by the Supervisory Agency, if any.

58 – **Interest on Borrowed Money (Acct. 340-349).** Represents the interest cost to the credit union for borrowed money. Interest paid on member and non-member deposits (if authorized in your State) should be included in item 68, Interest on Deposits.

59 – **Annual Meeting Expense (Acct. 350-359).** Represents all costs incurred by the credit union in connection with the annual meeting of shareholders; includes costs of hall rental, printing of notices, etc.

60 – **Miscellaneous Operating Expense (Acct. 330-339, 360-379).** Includes all miscellaneous operating expenses for which no separate expense categories are listed.

61 – **Total Operating Expenses Before Dividends and Interest on Deposits.** Represents the sum of all expense items listed above. (Items 46 through 60).

62 – **Net Operating Income (Loss) Before Dividends and Interest on Deposits.** Represents the total amount of income or loss resulting from operations (operating income less operating expenses). (Item 45 less item 61).

NON-OPERATING INCOME AND EXPENSES

63 – **Gain (Loss) on Investments (Acct. 420).** Report the amount of non-operating income or expense resulting from the gain or loss on investments.

64 – **Gain (Loss) on Disposition of Assets (Acct. 430).** Report the amount of non-operating income or expense resulting from the disposition of assets.

65 – **Other Non-Operating Income (Expense) (Acct. 440).** Represents miscellaneous non-operating income or expenses.

66 – **Total Non-Operating Gains and Losses.** The sum of items 63, 64, and 65.

67 – **Total Net Income (Loss) Before Dividends/Interest on Deposits.** Represents the total amount of operating and non-operating income or loss before the deduction of dividends and interest on deposits. (Total of items 62 and 66).

ITEM

ALLOCATION OF INCOME

68 – **Interest on Deposits.** Represents interest paid on member and non-member deposits (as authorized in your state). state chartered credit unions only.

69 – **Dividends (Acct. 380).** Report the total amount of dividends paid or declared on all savings accounts. If dividends have not been declared enter the estimated amount which will be required based upon the anticipated dividend rate.

70 – **Net Income (Loss) After Dividends and Interest on Deposits.** Item 67 less items 68 and 69.

71 – **Transfer to Regular or Statutory Reserve.** Report the amount transferred from gross income to regular or statutory reserves.

72 – **Provision for Loan Losses Adjustment.** Enter the lesser of the amount shown in the Provision for Loan Losses Expense (item 55) or the Required Reserve transfer (item 71). This adjustment is necessary to eliminate the double counting of transfers to the reserves through the Provision for Loan Losses Expense as well as the direct transfers to the Regular Reserve. The purpose of this adjustment to permit the determination of the net effect on retained earnings as a result of current operations.

73 – **Change to Undivided Earnings as a Result of Operations.** Item 70 plus 72 less 71. This item represents the amount remaining from current earnings after paying all expenses, including the cost of funds, providing for losses on loans and meeting the net reserve transfer requirement.

CLASSIFICATION OF LOANS OUTSTANDING

74 – **Classification of Loans Outstanding.** This section calls for the reporting of the number and amount of delinquent loans, current and less than two months delinquent, and the total number and amount of loans outstanding including line of credit balances, if any. Information on loans delinquent should be taken from a schedule of delinquent loans as of the report date.

OTHER LOAN INFORMATION

75 – **Loans Sold and Being Serviced by the Credit Union.** Record the number and the outstanding dollar amount of loans sold to others which the credit union continues to service.

76 – **Real Estate Loans Made During Current Year.** Record the number and the dollar amount of real estate loans (first lien with original maturities in excess of 12 years) made during the current year.

77 – **Total Loans Made During Current Year.** Report the total number and amount of loans made during the current year.

[FR Doc. 81-138 Filed 1-2-81; 8:45 am]
BILLING CODE 7535-01-C

ITEM

78 – **Total Loans Made Since Organization.** Report the total number and amount of loans made since the organization of the credit union.

79 – **Loans Charged Off Since Organization.** Represents the total amount of loans charged off since the credit union was organized. Loans charged off during the current period should be added to the amount reported on the previous period's form to obtain the total charged off since organization as of the report date.

80 – **Recoveries on Loans Charged Off Since Organization.** Represents the total amount of recoveries on previously charged off loans since the organization of the credit union. Add the amount recovered during the current period to the previous period's total.

81 – **Net Loans Charged Off Since Organization.** Represents net charge offs; item 79 less item 80.

MISCELLANEOUS INFORMATION:

82 – **Dollar Amt. of Forward Commitments to Purchase.** If the credit union is committed to purchase U.S. Government obligations or Federal agency securities at a future date, report the total commitment as of the report date.

83 – **Number of Members at End of Month.** Enter the actual number of members of record as of the month end. Do not enter the number of accounts.

84 – **Number of Potential Members.** Represents the number of actual members plus persons in the field of membership who have not yet jointed the credit union. If the field of membership is stated in terms of the number of families, use an average of 3 persons per family to estimate the total potential membership.

SUPPLEMENTARY SCHEDULES FOR FINANCIAL STATEMENTS

This schedule is to be used by those credit unions that wish to provide additional information as to what is included in any line item on either the Statement of Financial Condition or the Statement of Income.

Schedules should be indentified alphabetically beginning with "A". A separate schedule letter should be used for each line item on the Statement of Financial Condition or on the Statement of Income for which a breakdown is shown on the Supplementary Schedules page. The item number which is being further defined will be shown in the "Ref. Item No." column. On the Statement of Financial Condition and the Statement of Income , the item being further defined on the Supplementary Schedules page should have the schedule letter shown in the "Ref." column for that item.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 113

[Rev. 1, Amdt. 2]

Nondiscrimination in Financial Assistance Programs of SBA; Effectuation of Policies of Federal Government and SBA Administrator

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: On November 6, 1978, an amendment was made to Section 504 of the Rehabilitation Act of 1973 by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. In accordance with this amendment Subsection 113.3–1(i) is being added to include a prohibition against the Small Business Administration's (SBA's) discriminating against the handicapped in the administration of its programs and activities.

DATES: Comments must be submitted on or before February 27, 1981.

ADDRESS: Submit comments to Doris A. Dockett, Deputy Chief, Civil Rights Compliance Division, Small Business Administration, 1441 L Street, NW., Suite 1200, Vermont Building, Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Doris A. Dockett at (202) 653–6054.

For the reasons set out in the preamble, Part 113 of Title 13 of the Code of Federal Regulations is amended by adding paragraph 113.3–1(i):

§ 113.3–1 Consideration of race, color, religion, sex, marital status, handicap, or national origin.

* * * * *

(i) SBA shall administer programs and activities in the most integrated setting appropriate to the needs of handicapped persons, and shall not participate in a contractual relationship that has the effect of subjecting handicapped persons to discrimination prohibited by Section 504 of the Rehabilitation Act of 1973, as amended.

Dated: December 10, 1980.

A. Vernon Weaver,

Administrator.

[FR Doc. 81–123 Filed 1–2–81; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 36

[Docket No. 13410; Notice No. 79–13B]

Civil Helicopter Noise Type Certification, Air Worthiness Certification, and Acoustical Change Approvals, Proposed Noise Standards for Helicopters in the Normal, Transport, and Restricted Categories

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of reopening the comment period.

SUMMARY: On July 19, 1979, the FAA published Notice No. 79–13 containing its proposed noise regulations governing type certification, air worthiness certification, and acoustical change approvals for helicopters in the normal, transport, restricted categories (44 FR 42410). The notice provided that comments on the proposal were to be received on or before November 19, 1979. Subsequently, the FAA granted a request to extend the comment period 60 days until January 19, 1980 (44 FR 61376; October 25, 1979). Recently, the FAA was requested to reopen the comment period to receive yet further information on the matters addressed in Notice No. 79–13. This notice grants that request in the public interest.

DATES: Comments must be received on or before March 5, 1981.

ADDRESSES: Send comments on the proposal in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–204), Docket No. 13410, 800 Independence Avenue, SW., Washington, D.C. 20591.

Or deliver comments in duplicate to: FAA Rules Docket, Room 916, 800 Independence Avenue, NW., Washington, D.C. 20591.

Comments must be marked "Docket No. 13410." Comments may be examined in the Rules Docket weekdays, except Federal holidays between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Richard N. Tedrick, Noise Policy and Regulations Branch (AEE–110), Noise Abatement Division, Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue, Washington, D.C. 20591; telephone (202) 755–9027.

SUPPLEMENTAL INFORMATION:

Background

Notice No. 79–13 (44 FR 42410; July 19, 1979) proposes noise standards for helicopters certificated in the normal, transport, and restricted categories. For purposes of the proposal, "helicopters" include other aircraft for which lift is furnished, in whole or in part, by an engine-driven rotor during takeoff, hover, or landing. The proposal covers noise levels and test procedures for the issuance of new type certificates and of original standard airworthiness certificates and restricted category airworthiness certificates for newly produced helicopters of older design types. It also would prohibit certain changes in type designs of helicopters that might increase their noise levels beyond prescribed limits. The original comment period for Notice No. 79–13 would have closed on November 19, 1979, but was extended to January 19, 1980.

On November 7, 1980, management representatives of Bell Helicopter, Boeing Vertol, Aerospatiale, and Sikorsky Aircraft met with the FAA Administrator regarding the FAA's consideration of helicopter noise standards. At that meeting those representatives indicated they wished to submit additional materials for consideration in that rulemaking. By letter, dated November 12, 1980, Mr. G. J. Tobias, on behalf of the management representatives, formally petitioned the Administrator to reopen the comment period for Notice No. 79–13 for approximately 30 days to permit the submission of additional materials petitioner believes are pertinent to the issues and which could significantly impact the FAA's decisions in its development of final regulatory action. The petitioner stated that since the close of the comment period several significant events dictate submission of additional information in the interest of developing a well-reasoned regulatory decision. The FAA notes that, while the notice and extension provided a comment period in excess of 180 days, the proposal is complex both technically and in the nature of its potential economic, environmental, and regulatory impacts.

On December 17, 1980, the FAA received from the helicopter manufacturers representatives a document entitled "Helicopter Manufacturers Economic Impact Assessment of FAA Proposed Helicopter Certification Noise Rules (NPRM 79–13)," dated December 15, 1980. To ensure that there is an adequate opportunity for interested persons to review that submission and to present any other new, available information, the FAA concludes that reopening the comment period for a

limited period would be in the public interest and that the additional time is adequate but would not unduly delay achieving the environmental benefits contemplated from the proposal.

Reopening the Comment Period

Accordingly, pursuant to the authority delegated to me by the Administrator, the comment period for Notice No. 79-13 (44 FR 42410; July 19, 1979; and 44 FR 61376; October 25, 1979) is hereby reopened until March 5, 1981.

(Secs. 313(a), 601(a), 603, and 611(b), Federal Aviation Act of 1958, as amended (49 U.S.C. §§ 1354(a), 1421(a), 1423, and 1431(b)); Sec. 6(c), Department of Transportation Act, (49 U.S.C. 1655(c)); Title I, National Environmental Policy Act of 1969 (49 U.S.C. § 4321 et seq.); Executive Order 11514, March 5, 1970; and 14 CFR 11.45).

Note.—The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the draft evaluation prepared for that action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified above under the caption "For Further Information Contact."

Issued in Washington, D.C., on December 24, 1980.

J. E. Wesler,

Director, Office of Environmental and Energy.

[FR Doc. 81-110 Filed 1-2-81; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 80-GL-46]

Proposed Designation of Transition Area; Delaware, Ohio

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The nature of this Federal action is to designate controlled airspace near Delaware, Ohio, to accommodate a new instrument approach into Delaware Municipal Airport, Delaware, Ohio, which was established on the basis of a request from the local Airport officials to provide that facility with instrument approach capability. The intended effect of this action is to insure segregation of the aircraft using this approach procedure in instrument weather conditions from other aircraft operating under visual conditions.

DATES: Comments must be received on or before January 26, 1981.

ADDRESSES: Send comments on the proposal to FAA Office of Regional Counsel, AGL-7, Attention: Rules Docket Clerk, Docket No. 80-GL-46, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Doyle W. Hegland, Airspace and Procedures Branch, Air Traffic Division, AGL-530, FAA, Great Lakes Region, 2300 East Devon Avenue, Des Plaines, Illinois 60018, Telephone (312) 694-4500, Extention 456.

SUPPLEMENTARY INFORMATION: The floor of the controlled airspace in this area will be lowered from 1200' above ground to 700' above ground. The development of the proposed instrument procedure requires that the FAA lower the floor of the controlled airspace to insure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace. In addition, aeronautical maps and charts will reflect the area of the instrument procedure which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should be submitted in triplicate to Regional Counsel, AGL-7, Great Lakes Region, Rules Docket No. 80-GL-46, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018. All communications received on or before January 26, 1981, will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, S.W., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedures.

The Proposal

The FAA is considering an amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a 700-foot controlled airspace transition area near Delaware, Ohio. Subpart G of Part 71 was republished in the **Federal Register** on January 2, 1980, (45 F.R. 445).

The Proposed Amendment

Accordingly, the FAA proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations as follows:

In § 71.181 (45 FR 445) the following transition area is added:

Delaware, Ohio

That airspace extending upward from 700' above the surface within an 8 mile radius of the Delaware Municipal Airport (Lat 40°16'46" N Long 83°06'22" W) excluding that portion overlying the Maryville, Ohio and Columbus, Ohio transition.

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); Sec. 11.61 of the Federal Aviation Regulations (14 CFR 11.61)

Note.—The Federal Aviation Administration has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). A copy of the draft evaluation prepared for this document is contained in the docket. A copy of it may be obtained by writing to the Federal Aviation Administration, Attention: Rules Docket Clerk (AGL-7), Docket No. 80-GL-46, 2300 East Devon Avenue, Des Plaines, Illinois.

Issued in Des Plaines, Illinois, on December 12, 1980.

Wayne J. Barlow,

Director, Great Lakes Region.

[FR Doc. 81-204 Filed 1-2-81; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 93

[Docket No. 70; Notice No. 80-16B]

Special Air Traffic Rules and Airport Traffic Patterns; Slot Allocation at Washington National Airport

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Proposed rule; change of public hearing date.

SUMMARY: This notice announces the rescheduling of a public hearing with respect to Notice of Proposed Rulemaking (NPRM) No. 80-16 (45 FR 71236; October 27, 1980), which proposed procedures for allocating the hourly number of reservations for instrument flight rules operations (takeoffs and landings or "slots") at Washington National Airport (DCA) in accordance with the Federal Aviation Administration (FAA) High Density Rule (14 CFR 93-121-133). The public hearing date is being changed in response to a petition from the Air Transport Association (ATA) on behalf of its air carrier members who would be directly affected by the proposed rule.

DATES: *Public hearing:* Thursday, February 12, 1981, 9:00 a.m. to 4:30 p.m.; and Friday, February 13, 1981, 9:30 a.m. to 4:30 p.m.

ADDRESS: The public hearing will be held at: Auditorium, Third Floor, Federal Aviation Administration, Department of Transportation, Federal Office Building 10A, 800 Independence Avenue, S.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Harvey B. Safeer, Director, Office of Aviation Policy, AVP-1, Federal Aviation Administration, Department of Transportation, Washington, D.C. 20591, Telephone No. 202-426-3331.

SUPPLEMENTARY INFORMATION: The Department in Notice 80-16A (45 FR 83252, December 18, 1980) announced that it would hold a public hearing in connection with the Notice 80-16 proposals on January 8 and 9, 1981. That same Notice extended the comment period on the rulemaking unit January 26, 1981, with the right to reply to comments until February 26, 1981. ATA, noting that the hearing was scheduled to be held before the comment period closed, expressed concern at the burden this would place upon persons wishing both to submit comments and participate at the hearing; it therefore requested that the hearing be delayed until March 1981 or, alternatively, that it be held during the reply comment period. DOT is anxious to conclude the rulemaking in order to have a slot allocation mechanism in place at National as quickly as is practicable, and therefore is not adopting ATA's recommendation for a March hearing; however, we consider the ATA's comments well taken, and in order to relieve the burden on commenters who wish to appear at the hearing, the hearing has therefore been rescheduled to February 12 and 13, 1981. This will give the parties an opportunity to review all comments in the docket before the hearing, but will avoid creating an occasion for surrebuttal, which would occur if the hearing were scheduled after the close of the rebuttal period and would thereby disadvantage those who do not attend the hearing. All interested persons are invited to attend to present their views on any aspect of the slot allocation proposals.

Request To Make a Presentation

Interested persons are invited to attend the hearing and to participate by making oral or written statements. Written statements should be submitted in duplicate and will be made a part of the rules docket. Persons wishing to make oral statements at the hearing must notify the FAA on or before January 30, 1981, and indicate the amount of time requested for the initial statements. Presentations will be scheduled on a first-come, first-served basis as time permits. Requests to be heard should indicate the subject matter of the presentation and time required, and be sent to Mr. Safeer, whose address is printed above.

Hearing Procedures

The following procedures will be followed to facilitate the workings of the hearing:

(a) The hearing will be informal in nature and will be conducted by the designated representatives of the Secretary and the Federal Aviation Administrator. Each participant will be given an opportunity to make a presentation. After all presentations have been made, an opportunity for rebuttal will be given.

(b) The hearing will begin at 9:00 a.m., February 12, 1981, at the Federal Aviation Administration, Department of Transportation, Federal Office Building 10A, 800 Independence Avenue, S.W., Washington, D.C., in the third floor auditorium. There will no admission fee or other charge to attend and participate. The hearing sessions will be open to all on a space available basis. The presiding officer may accelerate the hearing agenda to enable early adjournment if the progress of the hearing is more expeditious than planned.

(c) The hearing will run from 9:00 a.m. to 4:30 p.m. on February 12 and from 9:30 a.m. to 4:30 p.m. on February 13, with a one-hour break between 12:30 and 1:30.

(d) All hearing sessions will be recorded by a court reporter. Anyone interested in purchasing the transcript should contact the court reporter. A copy of the transcript will be filed in the docket. The sessions will also be recorded on tape.

(e) Position papers or other material may be accepted at the discretion of the presiding officer.

Statements made by the DOT participants at the hearing should not be taken as expressing a final agency position.

(Secs. 103, 307(a) and (c), 313(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1303, 1348 (a) (and (c), and 1354(a)); Sec. 6 of the Department of Transportation Act (49 U.S.C. 1655); Sec. 2, Act for the Administration of Washington National Airport (54 Stat. 688))

Issued at Washington, D.C. on December 29, 1980.

Thomas G. Allison,

Acting Secretary of Transportation.

[FR Doc. 81-170 Filed 1-2-81; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 93

[Docket No. 21192; Notice No. 80-26A]

High Density Traffic Airports

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

ACTION: Proposed rule; extension of comment period.

SUMMARY: This notice announces an extension of the comment period for Notice of Proposed Rulemaking (NPRM) No. 80-26 (45 FR 84380; December 22, 1980), which proposed modification to the provisions of the high density rule which establishes the number of reservations or "slots" for operations (takeoffs or landings) at high density airports. The proposals would clarify 14 CFR 93.129 which allows aircraft operators to obtain additional reservations under certain circumstances, to provide that air carriers and scheduled air taxis may not obtain reservations beyond those specifically allocated by section 93.123. This proposal is necessary for maintenance of orderly operations at these airports and for efficient utilization of the navigable airspace.

DATES: Comments must be received on or before January 9, 1981.

ADDRESS: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 21192, 800 Independence Avenue, SW., Washington, D.C. 20591, or delivered in duplicate to: Room 916, 800 Independence Avenue, S.W., Washington, D.C.

Comments delivered must be marked: Docket No. 21192.

Comments may be inspected at Room 916 between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Faberman, Assistant Chief Counsel for Regulations and Enforcement, (AGC-200), Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; Telephone: (202) 426-3072.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic impact that might result from adoption of the proposals contained in this notice are invited. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address above. All communications received on or before January 9, 1981, will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with the rulemaking will be filed in the docket.

Comment Extension

On December 10, 1980, the FAA issued Notice of Proposed Rulemaking No. 80-26 (45 FR 84380; December 22, 1980). The notice set forth a proposed modification to the provisions of the high density rule which establishes the number of reservations or "slots" for operations (takeoffs or landings) at high density airports. The proposal would clarify 14 CFR 93.129 which allows aircraft operators to obtain additional reservations under certain circumstances, to provide that air carriers and scheduled air taxis may not obtain reservations beyond those specifically allocated by § 93.123. The comment period for the notice was proposed to close the comment period on January 2, 1981. On December 18, 1980, a letter was hand carried to the General Counsel of the Department of Transportation from the attorney for New York Air requesting an extension of 31 days to respond to NPRM 80-26. The reasons given were that comment period coincides almost exactly with the holiday period compressing the time for reasoned consideration of the proposed amendment. In addition, they state that there are several actions in court and before the Civil Aeronautics Board and Department of Transportation which closely relate to the subject matter of this proposal.

Finally, they state that the assumption that this notice will have minimum impact on existing levels of National Airport traffic might be a "fundamentally incorrect premise."

On December 19, 1980, a letter was hand delivered to the General Counsel of the Department from the attorney for the Commuter Airliner Association (CAA) supporting the request of New York Air for extension of the comment period to at least February 2, 1980. In support of this request he stated:

> The intervening two weeks allowed for comment include the Christmas and New Year's holidays. This not only precludes a meaningful examination of the impact of this rule with our members, but comes at the time of year when their energies must be focused on serving unusually heavy traffic demands.

In addition, he stated:

> 2) The proposed rule amounts to far more than clarification of existing provisions of the high density rule. It appears to reverse the plain language of certain provisions of those rules and also appears to rest on erroneous legal and factual premises.

There have been administrative and legal actions affecting the entire high density rule for the past few years and it is likely that these actions will continue over the next several months. In this connection, it must be noted that the Department of Transportation's rulemaking hearing on the slot allocation process related to high density rule (45 FR 71236, October 27, 1980) has been extended from early January until February. Therefore, the argument made to extend the comment period applicable to this proposal based upon the existence of other pending proposals which may affect this proposed rulemaking is not valid.

The action proposed in this NPRM affects one specific section of the high density rule. Its impact (both legally and factually) should be readily apparent to all those who would be affected by it. As stated in the preamble to Notice No. 80-26, this proposal is consistent with the preamble to the original notice of proposed rulemaking. As such, it is a clarification. The rulemaking process cannot come to a halt because certain individuals are busy during the holiday season. If those individuals wish to comment on this rulemaking action, then they will have to make necessary arrangements. The agency, however, does recognize that this particular time of year does present certain specific problems for air carriers that do not exist at other times. Therefore, the agency will extend the comment period by seven days until January 9, 1981.

(Secs. 103, 307(a) and (c), 313(a), of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1303, 1348(a) and (c), 1354(a)); Section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)); Section 2 of the Act for the Administation of Washington National Airport, 54 Stat. 688)

Note.—The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044 as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Issued in Washington, D.C., on December 31, 1980.

R. J. Van Vuren,

Director, Air Traffic Service.

[FR Doc. 80-40844 Filed 12-31-80; 11:57 am]

BILLING CODE 4910-13-M

CIVIL AERONAUTICS BOARD

14 CFR Parts 221, 296 and 297

[EDR-408C, Economic Regulations Docket 38746; Dated: Dec. 24, 1980]

Tariffs: Air Freight Forwarders, Cooperative Shippers Associations, Foreign Air Freight Forwarders, and Foreign Cooperative Shippers Associations

AGENCY: Civil Aeronautics Board.

ACTION: Deferral of rulemaking.

SUMMARY: The CAB has proposed to allow airlines to file tariffs that state prices as maximum amounts instead of exact amounts, so that any price up to the maximum could be charged. The proposed rule would also allow the payment of commissions to air freight forwarders and foreign air freight forwarders. The CAB is now deferring action in the rulemaking until after the hearing on related issues in its *Competitive Marketing Investigation.*

FOR FURTHER INFORMATION CONTACT: George S. Baranko, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, NW, Washington, D.C. 20428; 202-673-6011.

SUPPLEMENTARY INFORMATION:

The Civil Aeronautics Board is deferring action on notice of proposed rulemaking EDR-408 (45 FR 64864, September 30, 1980, Docket 38746) until after the hearing on related issues in the *Competitive Marketing Investigation* (Docket 36595). Supplementary information about the deferral appears

in Order 80-12-92, issued along with this notice.[1]

[Secs. 204, 403, 404, 416, 1002, Pub. L. 85-726, as amended, 72 Stat. 743, 758, 760, 771, 788; 49 U.S.C. 1324, 1373, 1374, 1386, 1482]

Phyllis T. Kaylor,

Secretary.

[FR Doc. 81-153 Filed 1-2-81; 8:45 am]

BILLING CODE 6320-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 423

Amendment to Trade Regulation Rule Concerning Care Labeling of Textile Products and Leather Clothing

AGENCY: Federal Trade Commission.

ACTION: Notice of opportunity for technical comment on proposed rule.

SUMMARY: On December 17, 1980, the Federal Trade Commission approved in substance the amendments to the Trade Regulation Rule concerning Care Labeling of Textile Products and Leather Clothing that it proposed on January 26, 1978 (41 FR 3747). A number of changes have been made in the text of the amendments. The amendment now reflects the Commission's determination to adopt a warning approach in the area of care labeling; thus, the previous requirements for alternative care labeling have been deleted, and the rule generally requires the disclosure of less information than was proposed in the amendment proceeding. Changes have also been made to clarify the effect and scope of the rule amendment. For example, labeling of leather clothing, upholstered furniture, and yarn are addressed in separate paragraphs for each product. The definitions of certain terms that appeared in the proposed glossary have been modified. Certain labeling requirements have been deleted, and the exemption provisions of the amendment have been changed. The text of the rule is now written in plain English for purposes of clarity and understanding. Finally, the proposed Rule has been revised to include a statement of the acts and practices in the care labeling of textile products and leather clothing which the Commission has determined to be unfair or deceptive.

The record of the amendment proceedings will be opened for 30 days for technical comments on the drafting of certain language changes the Commission has made. Comments on other issues will not be considered. Following the close of the comment period, the Commission will make any changes it considers appropriate, promulgate the final amendment, and set an effective date that provides for a period of Congressional review as required by Section 21 of the Federal Trade Commission Improvements Act of 1980.

DATES: Comments on the drafting of the changes made in the Rule will be accepted on or before February 4, 1981.

ADDRESS: Send comments to Secretary, Federal Trade Commission, 6th and Pennsylvania Avenue, N.W., Washington, D.C. 20580. Submissions should be labeled "Care Labeling Amendment."

FOR FURTHER INFORMATION CONTACT: Earl Johnson, Federal Trade Commission, 6th and Pennsylvania Avenue, N.W., Washington, D.C. 20580, (202) 724-1362.

SUPPLEMENTARY INFORMATION: Text of Amendment Voted by the Commission:

Accordingly, it is proposed to amend Chapter I of 16 CFR by revising Part 423 to read as follows:

PART 423—CARE LABELING OF TEXTILE PRODUCTS AND LEATHER CLOTHING [AMENDED]

Sec.

Authority: 38 Stat. 717, as amended; (15 U.S.C. 41, et seq.)

§ 423.1 What this regulation does.

This regulation deals with care labels on products that need cleaning care for their ordinary use. It applies to certain textile products and to leather clothing and suede clothing in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act. The textile products covered by this regulation are clothing, draperies, curtains, slipcovers, linens, piece goods, yarn, carpets and rugs, and upholstered furniture.

§ 423.2 Who is covered.

Manufacturers and importers of textile products, suede clothing, or leather clothing are covered by this regulation. This includes any person or organization that directs or controls the manufacture or importation of covered products.

Retail sellers of piece goods are also covered by a part of this regulation. See § 423.6(d).

§ 423.3 Unfair or deceptive acts or practices.

(a) *Textile wearing apparel, draperies, curtains, slipcovers, linens, yarn, piece goods, leather clothing and suede clothing.*

In connection with the sale, in or affecting commerce, of textile products in the form of wearing apparel, draperies, curtains, slipcovers, linens, yarn and piece goods, or of leather clothing and suede clothing, it is an unfair or deceptive act or practice for a manufacturer or importer:

(1) to fail to disclose to a purchaser, prior to sale, instructions which inform the purchaser of a care procedure adequate to effect the care necessary for the ordinary use and enjoyment of the product;

(2) to fail to warn a purchaser, prior to sale, when the product cannot be cleaned by any cleaning procedure without being harmed;

(3) to fail to warn a purchaser, prior to sale, when any regular part of the prescribed care procedure which a consumer or professional cleaner could reasonably be expected to use would harm the product or others being cleaned with it;

(4) to fail to provide the care instructions and warnings in a form that can be referred to by the consumer throughout the useful life of the product;

(5) to fail to provide care instructions and warnings using standardized terminology;

(6) to fail to possess, prior to the sale, a reasonable basis for all care information disclosed to the purchaser.

(b) *Upholstered furniture and carpets and rugs.*

In connection with the sale, in or affecting commerce, of upholstered furniture, carpets, and rugs, it is an unfair or deceptive act or practice for a manufacturer or importer:

(1) to fail to disclose to a purchaser, prior to sale, instructions which inform the purchaser of a cleaning method and a cleaning agent adequate to effect the care necessary for the ordinary use and enjoyment of the product;

(2) to fail to warn a purchaser, prior to sale, when the product cannot be cleaned by any commercially available method without being harmed;

(3) to fail to warn a purchaser, prior to sale, when any regular part of the

[1] See FR Doc. 81-15 in the Notices section of this issue.

prescribed cleaning procedure which a consumer or professional cleaner could reasonable be expected to use would harm the product;

(4) to fail to provide the cleaning instructions and warnings in a form that can be used by the consumer throughout the useful life of the product;

(5) to fail to possess, prior to sale, a reasonable basis for all care information disclosed to the purchaser.

(c) *Retail sale of piece goods.*

In connection with the retail sale, in or affecting commerce, of piece goods, it is an unfair or deceptive act or practice for retailers to fail to deliver, upon the purchasers' request, care labels as provided by the manufacturer.

(d) *Violations of this regulation.*

The Commission has adopted this regulation to prevent the unfair or deceptive acts or practices defined in subsections (a), (b) and (c) of this section. Each manufacturer, importer, or retail seller covered by this regulation must comply with §§ 423.4 through 423.13 of this regulation. Any such manufacturer, importer, or retail seller who complies with the requirements of §§ 423.4 through 423.13 does not violate this regulation.

§ 423.4 Textile clothing, draperies, curtains, slipcovers and linens.

The rules in this section apply to finished textile clothing products which are used to protect and cover the body. This includes hosiery, but it excludes footwear, gloves, hats or other products used only to cover the head or hands.

This section also applies to draperies, curtains, slipcovers, and bed, table, bath and kitchen linens.

(a) Care labels must be fastened so that they can be seen or easily found when the product is offered for sale to consumers. The label must be made to stay fastened and legible during the useful life of the product. If the product is packaged, displayed, or folded so that customers cannot easily see the label, the care information must also appear on the outside of the package or on a hang tag fastened to the product.

(b) Care labels must say what regular care is needed for the ordinary use of the product. In general, the label for textile products must have either a washing instruction or a drycleaning instruction. If a washing instruction is included, it must comply with the rules in subsection (1) below. If a drycleaning instruction is included, it must comply with the rules in subsection (2) below.

If either washing or drycleaning can be used on the product, the label need have only one of these instructions.

If the product cannot be cleaned by any commercially available cleaning method without being harmed, the label must say so. For example, if a product would be harmed both by washing and by drycleaning, the label might say "Do not wash—do not dryclean," or "Cannot be successfully cleaned."

The rules for washing and drycleaning instructions are as follows:

(1) Washing instructions must follow these rules of washing, drying, ironing, bleaching, and special warnings:

(i) *Washing.* The label must say whether the product should be washed by hand or machine. If hot water cannot be used, the label must say whether "warm" or "cold" water should be used. If no temperature is given, this means that regular use of a hot water will not harm the product. For example, "Machine wash" means hot, warm or cold water can be used. "Machine wash warm" means only warm or cold water can be used.

(ii) *Drying.* The label must say whether the product should be dried by machine or by some other method. If machine drying is called or, but a high temperature cannot be used, the label must say whether a "medium" temperature should be used. If no temperature setting is given, this means that regular drying at a hot setting will not harm the product. For example, "Tumble dry" means the product can safely be machine dried at a high setting.

(iii) *Ironing.* Ironing must be mentioned on a label only if it will be needed on a regular basis to preserve the appearance of the product, or if it is required under subsection (v), *Special Warnings.* If ironing is mentioned, but a hot iron cannot be used, the label must say whether a "warm" or "cool" iron should be used. If no temperature is given, this means that regular use of a hot iron will not harm the product.

(iv) *Bleaching.* If all commercially available bleaches can safely be used on a regular basis, the label need not mention bleaching.

If all commercially available bleaches would harm the product when used on a regular basis, the label must say "No bleach" or "Do not bleach."

If regular use of a chlorine bleach would harm the product, but regular use of a non-chlorine bleach would not, the label must say "Only non-chlorine bleach, when needed."

(v) *Special warnings.* If there is any regular part of the washing procedure which consumers can reasonably be expected to use, and that procedure would harm the product itself or others being washed with it in one or more washings, the label must contain a warning. It must use the words "Do not," "No," "Only," or some other clear wording. For example, if a shirt can be washed by home laundering methods, but would be harmed by commercial laundering processes using sour rinses and high temperatures, the label must say "Do not have commercially laundered." If a napkin is not colorfast, its label must say "Wash with like colors." If a pair of pants will be harmed by ironing, its label must say "Do not iron."

Warnings for procedures already addressed in the instruction need not be repeated. For example, if an instruction states "Dry flat," it is not necessary to give the warning "Do not tumble dry."

(2) *Drycleaning.*

(i) *General.* If a drycleaning instruction is included on the label, it must mention the type of solvent(s) to be used. However, if all commercially available types of solvent can be used, the label need not mention any types of solvent. The terms "Drycleanable" or "Commercially Dryclean" may not be used in an instruction. For example, if drycleaning in perchlorethylene would harm a coat, the label might say "Dryclean flourocarbon or petroleum," or name some other safe solvent(s).

(ii) *Special warnings.* If there is any regular part of the drycleaning procedure which consumers or drycleaners can reasonably be expected to use, and that procedure would harm the product itself or others being cleaned with it, the label must contain a warning. It may use the words "Do not," "No," "Only," or some othe clear wording. For example, the drycleaning process normally includes moisture addition to solvent up to 75% relative humidity, hot tumble drying up to 160°F and restoration by steam press or steam air finish. If a product can be drycleaned in all solvents but steam should not be used, it must be labeled "Dryclean. No steam."

§ 423.5 Leather and suede clothing.

The rules in this section apply to finished leather or suede clothing products which are used to protect and cover the body. Footwear, gloves, hats and othe products used only to cover the head or hands are excluded.

(a) Care labels must be fastened so that they can be seen or easily found when the product is offered for sale to consumers. The label must be made to stay fastened and legible during the useful life of the product. If the product is packaged, displayed, or folded so that customers cannot easily see the label, the care information must also appear on the outside of the package or on a hang tag fastened to the product.

(b) Care labels must say what regular care is needed for the ordinary use of

the product. The label for leather and sueded clothing must say whether the product should be cleaned by a textile method, a leather method, or some other special method. It must also say whether any other care is needed for ordinary use of the product. For example, a leather jacket label might say "Leather clean."

If a textile method is prescribed, the label must comply with the rules in § 423.4 above.

If a leather or suede clothing product cannot be cleaned by any commercially available cleaning method without being harmed, the label must say so. For example, if a product would be harmed by either washing, drycleaning, or professional suede or leather cleaning, the label might say "Cannot be cleaned."

(c) If there is any regular part of the prescribed cleaning procedure which consumers or professional cleaners can reasonably be expected to use, and that procedure would harm the product itself or others being cleaned with it, the label must contain a warning. It may use the words "Do not," "No," "Only," or some other clear wording. Warnings for procedures already addressed in the instruction need not be repeated.

§ 423.6 Piece goods.

The following rules apply to textile products sold by the piece from bolts or rolls for home sewing. This includes remnants whose fiber content is known and which are cut by a retailer or at his or her request. It does not include manufacturers' remnants up to 10 yards long, which are clearly and conspicuously marked "pound goods" or "fabrics of undetermined origin" and whose fiber content is not known and cannot easily be found. Trim up to 5 inches wide is also excluded.

(a) Manufacturers and importers of piece goods must provide care information clearly and conspicuously on the end of each bolt or roll.

(b) Manufacturers and importers also must make sure that retailers get enough permanent care labels to supply a reasonable number of them to each purchaser of the fabric. These labels must be made so that they can be fastened to the finished product by normal household methods and will remain legible during the useful life of the product.

(c) Care labels must say what regular care is needed for the ordinary use of the product. Care information on the end of the bolt and on the labels need only address information applicable to the fabric. If a textile method is prescribed, the label must comply with the rules in § 423.4 above. If a cleaning agent and method appropriate for furniture or carpets is prescribed, the label must comply with the rules in § 423.8 or § 423.9, as appropriate.

(d) Retail sellers of piece goods must give buyers a reasonable number of care labels, if the buyers ask for them.

§ 423.7 Yarns.

Manufacturers and importers of yarn for retail sale must print care instructions clearly and conspicuously on the band or wrapper of each skein or other unit of yarn. Care labels must say what regular care is needed for the ordinary use of the product. The instructions need only address the proper care applicable to the yarn. If a textile method is prescribed, the label must comply with the rules in § 423.4 above. If a cleaning agent and method appropriate for furniture or carpets is prescribed, the label must comply with the rules in § 423.8 or § 423.9, as appropriate.

§ 423.8 Upholstered furniture.

The following rules apply to any textile or plastic product in the form of finished upholstered furniture to be used mainly indoors.

(a) Care labels must be made to stay fastened and legible during the useful life of the product. For upholstered furniture, this means the useful life of the outer covering.

(b) Care labels must be fastened so that they can be seen or easily found when the product is offered for sale to consumers. If fastening the label to the product is a place where it can be seen or easily found would harm the product's appearance or usefulness, the care instructions can be put on a hang tag or other appropriate kind of label. The hang tag must be made so that it will still be on the product when it is bought by a consumer.

(c) Care labels must say that regular care is needed for the ordinary use of the upholstered (textile or plastic) parts of the product. Care labels must say whether the upholstered (textile or plastic) parts of the product should be cleaned by the consumer or by professional care. If either consumer care or professional care may be used, the label need mention only one. The label must fully describe a cleaning method and a cleaning agent to be used.

(d) If there is any regular part of the prescribed cleaning method or cleaning agent which consumers or professional cleaners can reasonably be expected to use, and that method or agent would harm the product, the label must contain a warning. It must use the words "Do not," "No," "Only," or some other clear wording.

(e) If the product cannot be cleaned by any commercially available cleaning method without being harmed, the label must say so.

§ 423.9 Carpets and rugs.

The following rules apply to any textile product in the form of finished area rugs and rolled goods to be used mainly indoors. A finished area rug is one made to certain measurements by the manufacturer and sold to the consumer in that size.

(a) Care labels for area rugs must be permanently fastened under one corner of the rug. The label must be made to stay fastened and legible during the useful life of the product. If the rug is packaged or folded so that customers cannot see or easily find the label, the care instructions must also be put on the outside of the package or on a hand tag fastened to the rug.

(b) Labels for rolled goods must be temporarily fastened to the top of the carpet. Manufacturers must make sure that each roll has enough labels which are appropriately spaced so that the manufacturer can reasonably anticipate there will be one for each carpet cut from the roll.

(c) Care labels must say what regular care is needed for the ordinary use of the product. Care labels must say whether the rug or carpet should be cleaned by the consumer or by professional care. If either consumer care or professional care may be use, the label need mention only one. The labels must fully describe a cleaning method and a cleaning agent to be used. If the rug should be washed or dry-cleaned, the label must comply with the washing or drycleaning rules in § 423.4 above.

(d) If there is any regular part of the prescribed cleaning method or cleaning agent which consumers or professional cleaners can reasonably be expected to use, and that method or agent would harm the product, the label must contain a warning. It must use the words "Do not," "No," "Only," or some other clear wording.

(e) If the product cannot be cleaned by any commercially available cleaning method without being harmed, the label must say so.

§ 423.10 Proof of care information.

(a) Manufacturers and importers must have possessed and relied upon, prior to sale, proof they can reasonably trust for all care information on their labels. The proof may include any one or more of the following:

(1) Reliable proof that the final product was not harmed when cleaned reasonably often according to the

instructions on the label. This includes instructions when silence has a meaning. For example, if a shirt is labeled "Machine wash. Tumble dry. Cool iron", the manufacturer or importer must have reliable proof that the shirt is not harmed when cleaned reasonably often if machine washed in hot water, tumble dried at a high setting, ironed with a cool iron and any type of bleach is regularly used.

(2) Reliable proof that the final product or a fair sample of the final product was harmed when cleaned by methods warned against on the label.

(3) Reliable proof, like that described in (1) or (2) above, for each component part of the final product.

(4) Reliable proof that the final product of a fair sample of the final product was successfully tested by a reputable lab. The tests may simulate the care suggested or warned against on the label.

(5) Reliable evidence of current technical literature, past experience, or industry expertise supporting the care information on the label.

(6) Other reliable evidence.

§ 423.11 Terminology.

(a) In any care instruction, the terms as contained and defined in Appendix A to this Rule must be used to the extent applicable.

(b) When applicable terms are not contained in Appendix A, any appropriate terms may be used in care instructions, as long as the terms clearly and accurately describe the care procedures and otherwise fulfill the disclosure requirements of this regulation.

(c) In any care instruction, symbols may be used in addition to words, as long as the words fulfill the requirements of this regulation.

§ 423.12 Exemptions.

(a) Manufacturers or importers can ask for an exemption from the rule requiring a permanent label on a product or product line, if the label would harm the appearance or usefulness of the product. The request must be made in writing to the Secretary of the Commission. The request must be accompanied by a labeled sample of the product and a full statement explaining why the request should be granted.

If the exemption request is granted, consumers still must get the required care information for the product. However, the care information can be put on a hang tag, on the package, or in some other conspicuous place, as long as consumers will be able to see the care information before buying the product.

(b) Manufacturers and importers of products covered by §§ 423.4 and 423.5 are exempt from the requirement for a permanent label if the product can be cleaned safely under the harshest procedures. This exemption is available only if there is reliable proof that all of the following washing and drycleaning procedures can safely be used on a product:

(1) Machine washing in hot water;

(2) Machine drying at a high setting;

(3) Ironing at a hot setting;

(4) Bleaching with all commercially available bleaches;

5. Drycleaning with all commercially available solvents.

In such case, the statement "Wash or dryclean, any normal method" is acceptable and may appear on a hand tag, on the package, or in some other conspicuous place, as long as consumers will be able to see the care information [or "the statement"] before buying the product.

If a product meets the requirements outlined above, it is automatically exempt from the requirement that the care label be a permanent one. It is not necessary to file a request for this exemption.

(c) Any finished product manufacturer who receives a textile component from an ultimate consumer (a "COM component") is not required to provide care instructions for the product that is manufactured with that component. A COM component is one selected or purchased by a consumer or a consumer's agent, and then ordered to be made into a finished product ordinarily covered by this regulation. However, if a component is selected or purchased by a consumer or a consumer's agent from samples or literature pre-selected by a finished product manufacturer, the final product is not exempted by this subsection.

(d) All exemptions granted under Section 423.1(c) (1) or (2) of the Care Labeling Rule issued on December 9, 1971, stay in effect if the product still meets the standards on which the original exemption was based. Otherwise, the exemption is automatically revoked.

§ 423.13 Waivers.

Manufacturers or importers need not provide care information with products sold to institutional buyers for commercial use other than resale, rather than for personal use. However, this rule only applies if the manufacturer or importer has a written waiver of the buyer's rights to care information. Manufacturers or importers must keep those waivers for three years, and must make them available to the Commission representatives on request.

§ 423.14 Conflict with flammability standards.

If there is a conflict between this regulation and any regulations issued under the Flammable Fabrics Act, the Flammable Fabrics regulations govern over this one.

§ 423.15 Stayed or invalid parts.

If any part of this regulation is stayed or held invalid, the rest of it will stay in force.

Appendix A

Glossary of Standard Terms

1. *Washing, Machine Methods:* a. "Machine wash"—a process by which soil may be removed from products or specimens through the use of water, detergent or soap, agitation and a machine designed for this purpose. When no temperature is given, e.g., "warm" or "cold", hot water up to 150° F (66° C) can be regularly used.

b. "Warm"—initial water temperature setting 90° to 110° F (32° to 43° C) (hand comfortable).

c. "Cold"—initial water temperature setting same as cold water tap up to 85° F (29° C).

d. "Do not have commercially laundered"—do not employ a laundry which uses special formulations, sour rinses, extremely large loads or extremely high temperatures or which otherwise is employed for commercial, industrial or institutional use. Employ laundering methods designed for residential use or use in a self-service establishment.

e. "Small load"—smaller than normal washing load.

f. "Delicate cycle" or "gentle cycle"—slow agitation and reduced time.

g. "Durable press cycle" or "Permanent press cycle"—cool-down rinse or cold rinse before reduced spinning.

h. "Separately"—alone.

i. "With like colors"—with colors of similar hue and intensity.

j. "Wash inside out"—turn product inside out to protect face of fabric.

k. "Warm rinse"—initial water temperature setting 90° to 110° F (32° to 43° C).

l. "Cold rinse"—initial water temperature setting same as cold water tap up to 85° F (29° C).

m. "Rinse thoroughly"—rinse several times to remove detergent or soap.

n. "No spin" or "Do not spin"—remove material start of final spin cycle.

o. "No wring" or "Do not wring"—do not use roller wringer, nor wring by hand.

2. *Washing, Hand Methods:* a. "Hand wash"—a process by which soil may be manually removed from products or specimens through the use of water, detergent or soap and gentle squeezing action. When no temperature is given, e.g., "warm" or "cold," hot water up to 150°F (66°C) can be regularly used.

b. "Warm"—initial water temperature 90° to 110°F (32° to 43°C) hand comfortable).

c. "Cold"—initial water temperature same as cold water tap up to 85°F (29°C).

d. "Separately"—alone.

e. "With like colors"—with colors of similar hue and intensity.

f. "No wring or twist"—handle to avoid wrinkles and distortion.

g. "Rinse thoroughly"—rinse several times to remove detergent, soap, and bleach.

h. "Damp wipe only"—surface clean with damp cloth or sponge.

3. *Drying, All Methods:* a. "Tumble dry"—use machine dryer. When no temperature setting is given, machine drying at a hot setting may be regularly used.

b. "Medium"—set dryer at medium heat.

c. "Low"—set dryer at low heat.

d. "Durable press" or "Permanent press"—set dryer at permanent press setting.

e. "No heat"—set dryer to operate without heat.

f. "Remove promptly"—when items are dry, remove immediately to prevent wrinkling.

g. "Drip dry"—hang dripping wet with or without hand shaping and smoothing.

h. "Line dry"—hang damp from line or bar in or out of doors.

i. "Line dry in shade"—dry away from sun.

j. "Line dry away from heat"—dry away from heat.

k. "Dry flat"—lay out horizontally for drying.

l. "Block to dry"—reshape to original dimensions while drying.

m. "Smooth by hand"—by hand, while wet, remove wrinkles, straighten seams and facings.

4. *Ironing and Pressing:* a. "Iron"—Ironing is needed. When no temperature is given iron at the highest temperature setting may be regularly used.

b. "Warm iron"—medium temperature setting.

c. "Cool iron"—lowest temperature setting.

d. "Do not iron"—item not to be smoothed or finished with an iron.

e. "Iron wrong side only"—article turned inside out for ironing or pressing.

f. "No steam" or "Do not steam"—steam in any form not to be used.

g. "Steam only"—steaming without contact pressure.

h. "Steam press" or "Steam iron"—use iron at steam setting.

i. "Iron damp"—articles to be ironed should feel moist.

j. "Use press cloth"—use a dry or a damp cloth between iron and fabric.

5. *Bleaching:* a. "Bleach when needed"—all bleaches may be used when necessary.

b. "No bleach" or "Do not bleach"—no bleaches may be used.

c. "Only non-chlorine bleach when needed"—only the bleach specified may be used when necessary. Chlorine bleach may not be used.

6. *Washing or Drycleaning:* a. "Wash or dryclean, any normal method"—can be machine washed in hot water, can be machine dried at a high setting, can be ironed at a hot setting, can be bleached with all commercially available bleaches and can be drycleaned with all commercially available solvents.

7. *Drycleaning, All Procedures:* a. "Dryclean"—a process by which soil may be removed from products or specimens in a machine which uses any common organic solvent (for example, petroleum, perchlorethylene, fluorocarbon) located in any commercial establishment. The process may include moisture addition to solvent up to 75% relative humidity, hot tumble drying up to 160°F (71°C) and restoration by steam press or steam-air finishing.

b. "Professionally dryclean"—use the drycleaning process but modified to ensure optimum results either by a drycleaning attendant or through the use of a drycleaning machine which permits such modifications or both.

c. "Petroleum", "Fluorocarbon", or "Perchlorethylene"—employ solvent(s) specified to dryclean the item.

d. "Short cycle"—reduce or minimum cleaning time, depending upon solvent used.

e. "Minimum extraction"—least possible extraction time.

f. "Reduced moisture" or "Low moisture"—decreased relative humidity.

g. "No tumble" or "Do not tumble"—do not tumble dry.

h. "Tumble warm"—tumble dry up to 120°F (49°C).

i. "Tumble cool"—tumble dry at room temperature.

j. "Cabinet dry warm"—cabinet dry up to 120°F (49°C).

k. "Cabinet dry cool"—cabinet dry at room temperature.

l. "Steam only"—employ no contact pressure when steaming.

m. "No steam" or "Do not steam"—do not use steam in pressing, finishing, steam cabinets or wands.

8. *Leather and Suede Cleaning:* a. "Leather clean"—have cleaned only by a professional cleaner who uses special leather or suede care methods.

Subjects on Which the Commission Is Soliciting Comment

The record is open for comment on the drafting changes in the amendment which are listed below. The description of the changes, including substantive changes, is provided for an understanding of the Commission's intentions in this amendment. The Commission is interested in comments on the extent to which the language chosen is suited to achieving the Commission's intentions as set forth below. Suggestions for improvements in drafting that do not alter the intended meaning will also be considered. The record is not being reopended for comment on substantive changes or any other issues.

1. *Leather and suede clothing.* In the proposed amendment leather and suede clothing was to be labeled in the same general manner as textile wearing apparel. However, it has been established that the cleaning procedures for leather and suede garments differ greatly from the cleaning procedures used on textile fabrics. Consequently, the Commission has decided to address care labeling for leather and suede garments in a separate section. (See § 423.5) This will permit expression of care instructions in terms of a textile, leather, or other special method, as appropriate. As with other products, only one appropriate method need be disclosed, although others may be disclosed as well.

2. *Upholstered furniture.* The proposed amendment grouped upholstered furniture together with curtains, draperies, slipcovers and linens as "household furnishings". However, it is now clear that care instructions for wearing apparel, which are used on most "household furnishings", are not appropriate for upholstered furniture. Thus, the Commission has addressed care labeling for upholstered furniture in a separate section. (See § 423.8) This will permit the care label to say whether the textile part should be cleaned by the consumer or a professional and to describe a proper cleaning agent and cleaning method to be used.

The broad provisions for exemptions are contained in a separate section as discussed in a later paragraph. However, the section covering the labeling of upholstered furniture provides a specific and automatic exemption if the utility or appearance of the furniture product will be harmed by attaching a permanent label. Permanent labels must be used unless such labels will impair the utility or appearance of the item when made visible or readily accessible to the purchaser at the point of sale and at the point of care without unreasonable effort. In all other situations, the manufacturer or importer may use hang tags.

The provisions for upholstered furniture, reflecting the general approach taken by the Commission to require warnings and to eliminate the requirement for alternative care labeling, are discussed in items 8 and 9, below.

3. *Yarn.* The proposed amendment grouped piece goods and yarn together because the requirements for providing permanent labels and for the distribution of those labels was to have been the same for each product. The Commission has determined not to require the transmittal of permanent labels by manufacturers and the distribution of such labels by yarn retailers. Thus, yarn manufacturers are required to print care instructions on the band wrapper of each retail skein of year. (See Section 423.7)

4. *Piece goods.* The current rule requires manufacturers of piece goods to provide retailers with labels clearly disclosing instructions for the care of the product, which can, by normal household methods, be permanently affixed to the finished item by the consumer. The proposed amendment reiterated this requirement and posed questions soliciting the best way to ensure that this information reached the consumer. The Commission has now added to the above requirements the necessity for manufacturers and importers to print care labeling instructions on the end of each bolt of material. (See § 423.6) The retailer is required to provide buyers a reasonable number of care labels, if the buyer asks for them. The Commission intends that buyers who ask for care labels will be given at least one label for each item to be made from the purchased fabrics.

5. *Carpets and rugs.* The proposed amendment included coverage of carpets and rugs and required manufacturers and importers to supply retailers with care instructions to be transmitted to the consumer at the time of retail purchase. It

was established that these products can be divided into two distinct groups: (1) area rugs which are manufactured in specific measurements and sold to consumers in that size, and (2) rolled goods which are cut to consumers' specifications and frequently affixed in a wall to wall intallation. The Commission determined that the most efficient and effective method of distributing care information would be to require that a permanent label be attached under one corner of each area rug, and that detachable labels be temporarily fastened to the top of rolled goods. Manufacturers must make sure that each roll has enough labels with appropriate spacing so that they can reasonably anticipate one label will accompany each carpet cut from the roll.

6. *Intermediate components.* Piece goods, trim, thread and other such items sold to finished product manufacturers for use as part of a finished product were proposed for coverage under the amendment. However, the Commission has decided such intermediate components should not be covered. Product manufacturers who are unable to obtain care information from a component supplier can either bargain for the information or turn to another supplier. Thus, there are adequate market forces to generate this care information in an economical and effective manner.

7. *Washing and drycleaning instructions.* The proposed amendment required that in each washing instruction the method of washing, method of drying, use and type of bleach, when not all bleaches can be used, and the use of an iron, when necessary, be clearly disclosed. In the case of washing, drying, and ironing, it was proposed to require adjectival descriptions of temperature such as hot, warm, or cold. The Commission has determined that it is unnecessary to require disclosure of temperature information when the product can safely be washed, dried, or ironed at any temperature. Similarly, the Commission has determined that it is unnecessary to require the disclosure of bleach instructions when any bleach can safely be used on the product. Thus, if a product can safely be machine washed in hot water, tumble dried at the hot setting, ironing is needed and the iron can be used at the highest setting, and any bleach can be used on the product, the care label could read, "Machine wash. Tumble dry. Iron." Conversely, if the use of high temperatures or the use of any bleach would harm the product, then a care label utilizing a warning approach is required. For example, an appropriate label might read, "Machine wash, warm. Tumble dry, medium. Warm iron. Only non-chlorine bleach when needed." The provisions reflecting the general approach to require special warnings and eliminate alternative care information, are discussed in items 8 and 9, below.

The proposed amendment required a drycleaning instruction to specify the type of solvent to be used, if all commercially available solvents could not be used. The Commission has not changed this requirement since it is consistent with the warning approach used in the washing instructions.

8. *Alternative care.* The proposed amendment would have required instructions for both washing and drycleaning when either method could be used without damaging the product. The Commission has deleted this requirement. Instead, the Commission has adopted a system which requires disclosure of an accurate, complete, and appropriate care method for each product. This does not preclude manufacturers and importers from including multiple methods of care on the labels but each method included on the label must have a reasonable basis for all care information disclosed to the purchaser.

9. *Special warnings.* The proposed amendment would have required warnings if there was any regular care and maintenance procedure which, under all reasonably foreseeable circumstances, would damage or substantially impair the item to which the care instructions applied or would impair other articles being cleaned with that item. Consistent with the elimination of alternative care requirements and the warning approach used in washing and drycleaning instructions, the Commission has decided to modify the proposal to two types of special warnings applicable to all covered products. First, if a product cannot be cleaned by any commercially available cleaning method without being harmed, the label must say so. Second, the label must contain a warning when any regular part of the prescribed care procedure which a consumer or professional cleaner could reasonably be expected to use would harm the product or others being cleaned with it. Warnings for procedures already addressed to the instruction need not be repeated.

10. *Definitions.* Basic definitions were contained in a single section of the proposed amendment. These definitions have now been placed in appropriate individual sections of the Rule for easier reading and application.

11. *Glossary.* Initially, it is proposed to adopt terms and definitions for care labels which had been developed by the American Society for Testing and Materials (ASTM). The terms as listed and defined would be used to the extent applicable. Where applicable terms were not defined, other terms which accurately described the care procedure could be used. The Commission has adopted this concept for terminology but has found it necessary to modify some of the definitions.

It was determined that there were significant differences between consumer usage of certain terms listed in the ASTM glossary and the manner in which the glossary defined these terms. Consequently, the following terms have been given new definitions in the glossary that has been adopted by the Commission:

(a) "Machine wash"—a process by which soil may be removed from products or specimens through the use of water, detergent or soap, agitation and a machine designed for this purpose. When no temperature is given, e.g., "warm" of "cold," hot water up to 150°F (66°) can be regularly used.

(b) "Do not have commercially laundered"—do not employ a laundry which uses special formulations, sour rinses, extremely large loads or extremely high temperatures or which otherwise is employed for commercial, industrial or institutional use. Employ laundering methods designed for residential use in a self-service establishment.

(c) "Separately"—alone.

(d) "With like colors"—with colors of similar hue and intensity.

(e) "Hand wash"—a process by which soil may be manually removed from products or specimens through the use of water, detergent or soap and gentle squeezing action. When no temperature is given, e.g., "warm" or "cold," hot water up to 150°F (66°C) can be used.

(f) "Tumble dry"—use machine dryer. When no temperature setting is given, machine drying at a hot setting may be regularly used.

(g) "Iron"—Ironing is needed. When no temperature is given iron at the highest temperature setting may be regularly used.

(h) "Bleach when needed"—all bleaches may be used when necessary.

(i) "Only non-chlorine bleach when needed"—only the bleach specified may be used when necessary. Chlorine bleach may not be used.

(j) "Wash or dryclean, any normal method"—can be machine washed in hot water, can be machine dried at a high setting, can be ironed at a hot setting, can be bleached with all commercially available bleaches and can be drycleaned with all commerically available solvents.

(k) "Dryclean"—a process by which soil may be removed from products or specimens in machine which uses any common organic solvent (for example, petroleum, perchlorethylene, fluorocarbon) located in any commercial establishment. The process may include moisture addition to solvent up to 75% relative humidity, hot tumble drying up to 160°F (71°C) and restoration by steam or steam-air finishing.

(l) "Professionally dryclean"—use the drycleaning process but modified to ensure optimum results either by a drycleaning attendant or through the use of a drycleaning machine which permits such modifications or both.

(m) "Petroleum," "Fluorocarbon," or "Perchlorethylene"—employ solvent(s) specified to dryclean the item.

(n) "Short cycle"—reduced or minimum cleaning time, depending upon solvent used.

(o) "Minimum extraction"—least possible extraction time.

(p) "Reduced moisture" or "Low moisture"—decreased relative humidity.

(q) "No tumble" or "Do not tumble"—do not tumble dry.

(r) "Tumble warm"—tumble dry up to 120°F (49°C).

(s) "Tumble cool"—tumble dry at room temperature.

(t) "Cabinet dry warm"—cabinet dry up to 120°F (49°C).

(u) "Cabinet dry cool"—cabinet dry at room temperature.

(v) "Steam only"—employ no contact pressure when steaming.

(w) "No steam" or "Do not steam"—do not use steam in pressing, finishing, steam cabinets or wands.

(x) "Leather clean"—have cleaned only by a professional cleaner who uses special leather or suede care methods.

In addition, the Commission wishes to know whether any of the terms in the glossary are obvious in meaning, redundant of other provisions in the rule, or otherwise unnecessary to effectuate either standardization or the labeling requirements of the rule.

12. *Exemptions.* The current rule provides for two types of exemptions, based on written petitions submitted to the Commission. The first type is granted if the utility or appearance of the product will be harmed by attaching a permanent label. The second type is granted if a product sells at retail for $3.00 or less and can be machine washed and dried at high temperatures without damage. In the first instance, a temporary care label is required and in the second instance, no label is required. The proposed amendment would have contained these same exemptions with a specific provision to continue all previous exemptions if the products still meet the standards of the applicable exemption.

The Commission has adopted the same provision for exemptions based on harm to utility or appearance and the extension of previously granted exemptions. However, the Commission has modified the exemption based on care traits. In this case, an exemption will be automatically granted, without need for a petition and without regard for price, if a product can be machine washed in hot water, machine dried at a high setting, ironed at a hot setting, bleached with all commercially available bleaches, and drycleaned with all commercially available solvents. If a product is not damaged by any of the above care procedures, the care label may be temporary in nature and need only say, "Wash or dryclean, any normal method".

One additional exemption has been added. Consumers frequently select or purchase textile materials which are thereafter sent to a finished product manufacturer to be made into a product covered by this rule. The Commission recognizes that the finished product manufacturer could not obtain reliable evidence of care traits for consumers' own materials. Therefore, finished products containing consumers' own materials are exempt under this rule. Consumers' own materials do not include materials selected from samples or literature describing that material which has been pre-selected by the finished product manufacturer.

13. *Waivers.* The proposed amendment contained a provision which would allow manufacturers to obtain waivers from rental service companies, and hospitals, nursing homes and other similar institutional users. The waiver would have been filed with the Commission. As presently drafted, however, any covered product sold for institutional use need not be labeled with care information, provided the manufacturer or importer obtains a written waiver of the buyers' rights and retains that waiver for three years.

14. *Proof of care information.* The current rule contains no specific requirement for manufacturers to have a reasonable basis for care instructions used on their products.

Based upon a review of the record, the Commission has decided to include the requirement that manufacturers and importers must possess and rely upon, prior to sale, proof they can reasonably trust for all care information on their labels. Several ways to establish reliable proof have been suggested in the rule. However, any reliable evidence is acceptable.

By direction of the Commission.

James A. Tobin,

Acting Secretary.

Statement of Commissioner David A. Clanton

The Commission has approved in substance a number of salutory amendments to the Trade Regulation Rule Concerning Care Labeling of Textile Products and Leather Clothing. In general, these amendments are desirable, inasmuch as they sharpen the focus of the existing rule and provide for more flexible means of compliance. This greater clarity and flexibility is achieved, I believe, with due regard for the burdens imposed on those subject to the rule.

I have, however, two reservations about the Rule, as amended. First, I am not convinced that it is necessary to require retailers to carry care instructions in stock. The added nuisance or burden that this provision imposes probably is not worth the incremental benefit that will accrue from the occasional customer requesting such information from the retailers.

Second, while the Commission's approach to care labeling of carpets and rugs has significantly improved since the amendments were first proposed, I do not believe it goes far enough. All that was really necessary in this area was a provision requiring a warning label when a traditional or common means of carpet cleaning might have injured the product. As matters stand, the requirement that manufacturers include on the label one satisfactory method of cleaning is probably superfluous. Many different methods are likely to be equally efficacious for most carpet cleaning, and the consumer has available numerous sources of information about how to clean carpets generally. In addition, other information relating to spot removal is not addressed by the Rule. That is proper, but it only underscores the limited value of requiring affirmative carpet care instructions in all instances.

Statement of Commissioner Robert Pitofsky

An FTC Care Labeling Trade Regulation Rule has been in place since 1971 and has generally been regarded by consumers and industry as providing a highly useful form of consumer protection at an acceptable cost. Amendments to that Rule published today extend its provisions to product categories previously uncovered—for example, carpets and rugs, leather and suede—and I support those amendments.

The major change effected by these amendments, however, has to do with the nature of the Commission's regulation. The 1971 Rule essentially required only that care labeling information be included in all designated garments and products. The Commission further announced that it would rely on Section 5 of the Federal Trade Commission Act to sue any manufacturers who systematically included inaccurate or incomplete directions. On the other hand, the Commission did not undertake to regulate the precise content of care labels nor to set up a detailed system of standardized terminology which must be followed. If the label managed to communicate accurate and adequate care instructions, the Commission regarded it as of no concern exactly what words were used.

These amendments take the step that the Commission avoided nine years ago. They provide that it is not just a violation of law to fail to provide accurate care labeling instructions, but also to fail to provide those instructions using a standardized terminology [see Section 423.3(a)(5)] and specifies that certain terms contained in Appendix A to this proposal [designated a "Glossary of Standard Terms"] must be used in order to comply with the Rule [see Section 423.11(a)]. The Glossary itself is extremely detailed, for example, defining what constitutes "warm"—"initial water temperature setting 90° to 110°F (32° to 43°C) (hand comfortable)", as well as what constitutes "cold"—"initial water temperature setting same as cold water tap up to 85°F (29°C)". Scores of other terms—such as what constitutes "tumble dry", "iron damp", and a "short cycle"—are also defined. Even with all this detail, the Rule published today is far simpler and straightforward than earlier drafts.

My concern is that the Commission here is undertaking an unnecessary and unduly burdensome form of regulation. The real aim of consumer protection in ths area should be to see to it that some reasonably accurate care labels are attached to garments—not to insure that every word and phrase is exactly accurate and standardized.

Supporters of these amendments have suggested that industry would welcome some guidance concerning care labeling terminology. They also argue that the lack of standardization produces confusion in the market place, regardless of whether individual care labels provide adequate notice of risks. Assuming that is true, it seems to me we discharge our regulatory role by leaving the Care Labeling Rule as it is and simply issuing some guides concerning care directions. Unfortunately, as this Rule now stands, failure to follow government-designated terminology is a rule violation. I think that is unwise and hope the Commission will reconsider its tentative decision and amend the Rule before making it final.

[FR Doc. 81-102 Filed 1-2-81; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM79-76 (Ohio-1)]

High Cost Gas Produced From Tight Formations; Ceiling Prices

Issued: December 23, 1980.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions that present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas subject to an incentive price (18 CFR 271.703). The rule establishes procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This notice of proposed rulemaking by the Director of the Office of Pipeline and Producer Regulation contains the recommendation of the Ohio Department of Natural Resources, Oil and Gas Division, that the Clinton Sandstone Formation be designated as a tight formation under § 271.703(d).

DATE: Comments on the proposed rule are due on January 23, 1981. Public Hearing: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on January 9, 1981.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street, N.E., Washington, D.C. 20426

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357-8299 or John Roy Johnson, (202) 357-8731.

SUPPLEMENTARY INFORMATION:

I. Background

On December 9, 1980, the Ohio Department of Natural Resources, Division of Oil and Gas (Ohio), submitted to the Commission a recommendation in accordance with § 271.703 of the Commission's final regulations (45 FR 56034, August 22, 1980) that the Clinton Sandstone Formation located in eastern Ohio be designated as a tight formation. Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determine whether Ohio's recommendation that the Clinton Sandstone Formation be designated as a tight formation should be adopted. Ohio's recommendation and supporting data are on file with the Commission and are available for public inspection.

II. Description of Recommendation

Ohio recommends that the Clinton Sandstone Formation encountered in eastern Ohio be designated as a tight formation. The recommendation includes only those portions of the Clinton Sandstone Formation which Ohio designated as meeting tight formation guidelines. The Clinton Sandstone is a driller's name referring to a sequence of interbedded sandstones, siltstones, and shales of the Silurian System that lie on the northwestern flank of the Appalachian Basin in eastern Ohio. Regionally, the Clinton Sandstone Formation dips to the southeast approximately 50 feet per mile. Net sandstone thickness is a maximum of 80 to 90 feet in eastern Ohio. The Clinton Sandstone Formation thins westward and eventually pinches out in the subsurface of central Ohio in an erratic zone extending from Lorain County in northern Ohio to Lawrence County in southern Ohio.

III. Discussion of Recommendation

Ohio claims in its submission that evidence gathered through information and testimony presented at public hearings held July 15, 1980, and November 10, 1980, by Ohio on this matter demonstrates that:

(1) The average *in situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production from the recommended formation, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formation is expected to produce more than five (5) barrels of oil per day.

Ohio further asserts that existing State and Federal regulations assure that development of this formation will not adversely affect any fresh water aquifers that are or are expected to be used as a domestic or agricultural water supply.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, issued in Docket No. RM80-68 (45 FR 53456, August 12, 1980), notice is hereby given of the proposal submitted by Ohio that portions of the Clinton Sandstone Formation, as described and delineated in Ohio's recommendation as filed with the Commission, be designated as a tight formation pursuant to § 271.703.

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views, or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before January 23, 1981. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79-76 (Ohio—1), and should give reasons including supporting data for any recommendations. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C., during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing that they wish to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Secretary of the Commission no later than January 9, 1981.

(Natural Gas Policy Act of 1978, 15 U.S.C. §§ 3301-3432)

Accordingly, the Commission proposes to amend the regulations in Part 271, Chapter I, Title 18, Code of Federal Regulations, as set forth below, in the event Ohio's recommendation is adopted.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

Section 271.703(d) is amended by adding new subparagraph (26) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) * * *

(11) through (25) [Reserved]

(26) *Clinton Sandstone Formation in Ohio.*

(i) *Delineation of formation.* The portions of the Clinton Sandstone Formation that the Ohio Department of Natural Resources, Division of Oil and Gas, has designated as a tight formation are found in the eastern half of Ohio.

(ii) *Depth.* The Clinton Sandstone is defined as that formation occurring within the Silurian System between the Dayton Limestone and the Queenston Shale found at approximately 2,500 feet in the updip areas near its pinch out, dipping to the southeast approximately 50 feet per mile.

[FR Doc. 81-195 Filed 1-2-81; 8:45 am]

BILLING CODE 6450-85-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances Proposed Placement of Temazepam in Schedule IV

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice is a proposed rule to place the drug, temazepam, into Schedule IV of the Controlled Substances Act. By letter to the Administrator of the Drug Enforcement Administration, the Assistant Secretary for Health, on behalf of the Secretary of Health and Human Services, recommended that temazepam be controlled in Schedule IV.

DATES: Comments must be submitted on or before March 6, 1981.

ADDRESS: Comments and objections should be submitted in quintuplicate to the Administrator, Drug Enforcement Administration, 1405 I Street, Washington, D.C. 20537, Attention: DEA Federal Register Representative.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Regulatory Control Division, Drug Enforcement Administration, Washington, D.C. 20537, Tele.: (202) 633-1366.

SUPPLEMENTARY INFORMATION: On November 26, 1980, the Assistant Secretary for Health, on behalf of the Secretary of Health and Human Services sent a letter to the Administrator of the Drug Enforcement Administration, recommending that temazepam be placed in Schedule IV of the Controlled Substances Act (Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 801-966). Enclosed with this letter from the Assistant Secretary was a document which listed the factors which the Act requires the Secretary to consider and the summarized considerations of the Secretary in recommending control for temazepam.

The factors considered by the Secretary concerning temazepam were:

(1) its actual or relative potential for abuse;

(2) scientific evidence of its pharmacological effect, if known;

(3) the state of current scientific knowledge regarding the drug or other substance;

(4) its history and current pattern of abuse;

(5) the scope, duration, and significance of abuse;

(6) what, if any, risk there is to the public health;

(7) its psychic or physiological dependence liability; and

(8) whether the substance is an immediate precursor of a substance already controlled under the Controlled Substances Act.

Relying on the scientific and medical evaluation and the recommendation of the Secretary of Health and Human Services, received in accordance with section 201(f) of the Act (921 U.S.C. 811(f)), the Administrator of the Drug Enforcement Administration, pursuant to sections 201(a) and 201(b) of the Act, (21 U.S.C. 811(a) and 811(b)), finds that:

(1) based on information now available, temazepam has a low potential for abuse relative to the drugs or other substances currently listed in Schedule III;

(2) Temazepam will, upon issuance of a New Drug Application by the Food and Drug Administration, have a currently accepted medical use in treatment in the United States; and,

(3) abuse of temazepam may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in Schedule III.

Therefore, under the authority vested in the Attorney General by section 201(a) of the Act (21 U.S.C. 811(a)), and delegated to the Administrator of the Drug Enforcement Administration by regulations of the Department of Justice (28 CFR Part O)), the Administrator hereby proposes to amend 21 CFR 1308.14(c) by adding paragraph (21) to read as follows:

§ 1308.14 Schedule IV.

* * * * *

(c) * * *

(21) Temazepam..... 2925

* * * * *

All interested persons are invited to submit their comments or objections in writing regarding this proposal. If a persons believe that one of more issues raised by him warrant a hearing, he should so state and summarize the reasons for his belief. Comments and objections should be submitted in quintuplicate to the Administrator, Drug Enforcement Administration, 1405 I Street, Washington, D.C. 20537, Attention: DEA Federal Register Representative.

In the event that a comments or objections to this proposal raise one of more issues which the Administrator finds, in his sole discretion, warrant a hearing, the Administrator will have published in the **Federal Register** an order for a public hearing which will summarize the issues to be heard and which will set the time for the hearing (which will not be less than 30 days after the date of the order).

Dated: December 23, 1980.

Peter B. Bensinger,

Administrator, Drug Enforcement Administration.

[FR Doc. 81-183 Filed 1-2-81; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 630

[FHWA Docket No. 79-31, Notice 3]

Traffic Safety in Highway and Street Work Zones; Separation of Opposing Traffic and Edge of Pavement Excavation Requirements

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Extension of comment period.

SUMMARY: This document extends the period for comments on the notice of proposed rulemaking published on October 16, 1980 (45 FR 68663), requesting comment by December 15, 1980, on proposed revisions to existing requirements for the separation of opposing traffic where two-way traffic is maintained on one roadway of a normally divided highway. The comment period is being extended until February 17, 1981, in order to provide interested parties additional time to respond to the notice.

DATE: Comments will be received until February 17, 1981.

ADDRESS: FHWA Docket No. 79-31, Federal Highway Administration, HCC-10, Room 4205, 400 Seventh Street, SW., Washington, D.C. 20590. All comments received will be available for examination at the above address between 7:45 a.m. and 4:15 p.m. ET, Monday through Friday. Those desiring notification of receipt of comments must include a self-addressed stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth L. Ziems, Office of Highway Operations, 202-426-4847, or Mr. Stanley H. Abramson, Office of the Chief Counsel, 202-426-0761, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

(23 U.S.C. 109, 315, and 402; 49 CFR 1.48(b))

Issued on: December 24, 1980.

Alinda Burke,

Deputy Administrator.

[FR Doc. 81-114 Filed 1-2-81; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 260

Regulation of Reserved Waters on Indian Reservations

AGENCY: Bureau of Indian Affairs.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs proposes to amend Chapter IX of Title 25 of the Code of Federal Regulations by adding a new Part 260 to provide for tribal regulation of reserved waters on Indian reservations. This proposed rule states the criteria the Secretary will follow in (a) approving and adopting tribal water codes and (b) promulgating a water code where a tribe fails or refuses to adopt a code. This rule is proposed primarily to implement the Secretary's statutory responsibility to promulgate regulations necessary to secure a just and equal distribution of reserved waters on Indian reservations for irrigation for agricultural purposes. The rule is also being proposed to fulfill the federal government's commitment to assist Indian tribes in reaching full self-determination. The proposed rule will recognize, defer to and assist in the exercise of the inherent authority of Indian tribes within their reservations to govern the use of all water rights reserved for the tribe therein.

DATE: Comments must be submitted on or before March 6, 1981.

ADDRESS: Written comments must be addressed to Department of the Interior, Office of the Solicitor, 18th and C Sts., N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Daniel M. Rosenfelt, Office of the Solicitor, Department of the Interior, Washington, D.C. 20240. Telephone (202) 343-6967.

SUPPLEMENTARY INFORMATION:

History

On March 17, 1977, the Bureau of Indian Affairs published a proposed rule on pages 14885-14887 of the **Federal Register** which specified the procedures the Secretary would follow in approving water codes enacted by Indian tribes to regulate the use of reserved waters on Indian reservations. Comments on the proposed rule suggested potential legal and practical difficulties with the rule as written. Consequently, the rule was never issued in final form.

On March 20, 1978, the Secretary of the Interior submitted an affidavit to the Federal District Court for the Eastern District of Washington which stated that the Department of the Interior was preparing and would issue "at the earliest convenient date" rules providing for the regulation of reserved waters on Indian reservations. This rule is being promulgated in fulfillment of the Secretary's pledge to the court.

Authority and Purpose

This rule provides for Secretarial approval and adoption of water codes enacted by Indian tribes to govern the use of reserved waters on Indian reservations. Primary authority for this rule is contained in 25 U.S.C. 381 which empowers the Secretary to prescribe such rules as are necessary to secure a just and equal distribution of water for irrigation for agricultural purposes among Indians on Indian reservations. In recognition of the federal government's policy of encouraging tribal self-determination and in recognition of the inherent authority of Indian tribes within their reservations, the instant rule is structured to allow Indian tribes considerable freedom in developing individualized water codes for approval and adoption by the Secretary. The regulation provides that a tribe may authorize the use of reserved waters for any beneficial use. "Beneficial use" is defined broadly in § 260.1(c) to include any use of water on an Indian reservation that is consistent with the maintenance of the reservation as a permanent homeland for the tribe. Enumerated uses include agricultural, industrial, domestic, municipal, commercial, religious, recreational and aesthetic.

Approval and Adoption of Code

Section 260.3 of this rule articulates several criteria, both substantive and procedural, that must be incorporated into a tribal water code before it will be approved and adopted. The most important procedural requirements are the due process of law guarantees listed in § 260.3(a)(1)(i) through (v). The tribe must also limit its code to the regulation of reserved waters as defined in this Part (260.3(a)(3)), and must possess adequate administrative and economic resources to implement the code (260.3.(a)(2)).

Substantively, § 260.3(a)(4) requires that the code allow for the continued use of reserved water by existing users until such time as an authorized tribal permittee or the tribe is prepared to make beneficial use of such reserved water in accordance with this rule. Section 260.3(a)(6) requires that the code exclude from its regulation rights to the use of water held by purchasers of land within an irrigation project located within the reservation and administered by the Bureau of Indian Affairs. The circumstances under which a nonmember of an Indian tribe who owns an interest in fee to any former allotment or portion thereof may claim the right to use reserved water are clarified in § 260.3(a)(5). Finally, § 260.3(a)(9) specifically provides the tribal water code must comply with all relevant acts of Congress and with all binding judicial decisions.

Codes With Individual Water Permits

If a tribe chooses to enact a permit system of regulation, § 260.4 specifies that the issuance or transfer of a permit to a non-member of the tribe requires Secretarial approval. This provision is included to insure that only non-members of the tribe who are entitled to use reserved waters, as provided in § 260.3(a)(5), obtain water permits, whether such permits are sought through the initial application process or through subsequent acquisition of existing permits.

Secretarial Water Codes

If an Indian tribe does not enact a water code, and if the Secretary finds that such a code is necessary to fulfill his statutory responsibility under 25 U.S.C. 381 to ensure a just and equal distribution of water on the reservation for agricultural irrigation purposes, the Secretary may, upon consultation with the tribe, promulgate a water code for the reservation. (§ 260.5).

Appeals

Section 260.3(a)(1)(v) requires that a tribal water code include an appeals procedure for persons aggrieved by tribal administrative decisions concerning their rights to use reserved water. If the Secretary publishes a code for the reservation under the circumstances outlined in § 260.5, § 260.6 provides that appeals from the determinations of the designated Department official concerning any person's right to use reserved waters shall be within the jurisdiction of the Board of Indian Appeals in the Office of Hearings and Appeals, Office of the Secretary, Department of the Interior.

Effect of Rule on Reserved and State-Created Water Rights

One recurring comment received when the rule was first published in 1977 should be specifically addressed. Several commentators voiced concern

that enactment of tribal water codes would, in effect, enable Indian tribes to quantify their reserved water rights. Such is not the intent or effect of the rule.

This rule does not affect the validity of state-created water rights, nor the legal right of any water user to obtain an adjudication of his or her water rights in a court of competent jurisdiction. The amount of water reserved for a tribe upon creation of an Indian reservation and the priority of that water right vis-a-vis individual, state-created water rights are issues that require judicial resolution. This rule does not address and will not affect the determination of those issues.

As did its predecessor, § 260.3(a)(1)(i) of this rule does require tribes to provide a system for establishing the measure, nature and place of use of reserved waters. To the extent that tribal measurement of reserved waters is permitted under this rule, such measurement constitutes only an interim estimate, which is necessary to enable the tribe to control and manage the use of reserved waters on the reservation pending final resolution of the issue through litigation or negotiation. Such interim management is imperative if effective and integrated tribal development of natural resources on the reservation is to occur during the complex and often protracted quantification process.

Approval of a tribal code by the Secretary will not bind the Secretary or the United States to endorse or support the tribe's interim estimate in other contexts such as litigation. Once a final determination is made of the amount of reserved waters on a reservation either through a general stream adjudication or negotiation, the tribe's regulation of the use of such water will be adjusted accordingly. Section 250.3(a)(5) mandates this result.

Public Comment

It's the policy of the Department to encourage broad public participation in the rulemaking process. The comments of interested individuals, organizations and government agencies on all facets of the proposed rule are welcome.

Environmental Impact Statement

Because this rule is procedural in nature and simply articulates the criteria the Secretary will follow in determining whether to approve and adopt a tribal water code, no environmental impacts will result from its promulgation. Accordingly, the Secretary has determined that this rulemaking is not a major federal action for which an Environmental Impact Statement is required. If and when a tribe submits a code to the Secretary for approval and adoption, a review of the individual code will be made pursuant to the provisions of the National Environmental Policy Act.

Classification

The Bureau of Indian Affairs has determined that this regulation is not significant under the guidelines established by E.O. 12044.

Regulatory Analysis

A regulatory analysis is not required for this rulemaking. Subchapter IX of Title 25 of the Code of Federal Regulations is proposed to be amended by adding a new Part 260, reading as follows:

PART 260—THE USE OF WATER ON INDIAN RESERVATIONS

Authority: Sec. 7, Act of February 8, 1887, 24 Stat. 390 (25 U.S.C. 381); Act of August 8, 1946, 60 Stat. 939 (25 U.S.C. 1a); R.S. § 463 (25 U.S.C. 2); R. S. § 465 (25 U.S.C. 9); sec. 1, Pub. L. 84-255 as amended, 69 Stat. 539 (25 U.S.C. 415) and in recognition of the inherent authority of Indian tribes within their reservations.

§ 260.1 Definitions.

(a) "Secretary" means the Secretary of the Interior or the Secretary's delegated representative.

(b) "Reserved water rights" means those rights to the use of waters established in accordance with the principles enunciated in *Winters v. United States*, 207 U.S. 564 (1908), and subsequent cases, and includes the water rights of Indian Pueblos derived from Spanish, Mexican or federal law.

(c) "Beneficial use" means any use of water, consumptive or otherwise, for agricultural, domestic, municipal, commercial, industrial aesthetic, religious, or recreational purposes, or for the maintenance of adequate stream flows for fishery, environmental, or any other purposes consistent with the maintenace of the reservation as a permanent homeland for the tribe.

(d) "Just and equal distribution of reserved water rights" means a method of allocating the available reserved water among those eligible to share in the use of that water in such a manner, alleviating hardship where possible, that all those similarly situated will have an equal opportunity to use the water.

(e) A "water code" or "code" shall mean ordinances, rules, and regulations adopted by the governing body of an Indian tribe which provide for regulation and control of the use of reserved water rights among those eligible to share therein in accordance with the provisions of this part and other applicable laws.

(f) "Indian tribe" or "tribe" means any Indian tribe, band, nation or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

§ 260.2 Purposes.

The purposes of these regulations are:

(a) To implement the Secretary's statutory authority to promulgate regulations necessary to secure a just and equal distribution of reserved waters on Indian reservations for irrigation for agricultural purposes and

(b) To recognize, defer to and assist in the exercise of the inherent authority of Indian tribes within their reservations to govern the use of all water rights reserved for the Indians therein.

§ 260.3 Approval and adoption of tribal water codes.

(a) The Secretary may approve and adopt as a federal regulation any water code enacted by an Indian tribe to control, distribute, allocate and regulate the use of reserved water rights on its reservation for a beneficial use by any person or entity, including non-Indian persons and entities, that may be eligible to exercise such reserved water rights if the following criteria are met:

(1) The code affords procedural due process of law to all persons who apply for the use of reserved water rights, by providing for the following:

(i) A system for establishing the measure, nature, and place of use of reserved waters. That system will enable the tribe to make an interim quantification of the extent of its reserved rights, subject to future judicial or legislative quantifications.

(ii) Procedures that allow any person who seeks to use reserved waters to apply to the tribe for such permission. All issues must be determined by an impartial administrative official or body duly constituted by the tribe. A written decision on the issues raised by the application must be rendered within ninety days and reasons shall be given for each division.

(iii) Notice of hearings on all applications. Such notice must be given in a reasonable manner so as to afford interested persons the opportunity to

support or contest any application for an allocation.

(iv) A complete record of all applications and actions taken thereon. All permits issued shall be maintained by the tribe and shall be open for public inspection on the reservation.

(v) The right of aggrieved persons to seek appellate review of administrative determinations.

(2) The tribe possesses adequate administrative and economic resources to implement the code.

(3) The code is limited to administration and enforcement of reserved water rights as defined in this Part.

(4) The code allows for the continued use of reserved water by existing users until such time as an authorized tribal permittee or the tribe is prepared to make beneficial use of such reserved water.

(5) The code specifically provides that any non-member of an Indian tribe who owns an interest in fee to any former allotment or portion thereof may claim a right to use reserved waters only to the extent that water was actually used on the former allotment or portion thereof prior to its initial transfer from the ownership of a tribal member to a non-member of the tribe.

(6) The code excludes from its regulation rights to the use of water held by purchasers of land within an irrigation project located with any Indian reservation and administered by the Bureau of Indian Affairs pursuant to 25 CFR 191-203.

(7) In the case of reserved waters used for irrigation for agricultural purposes the code provides for a just and equal distribution of water among those eligible to share in the use thereof.

(8) Secretarial approval is expressly required by a tribal Constitution, Federal or Tribal statute or by the code itself.

(9) The code is subject to and consistent with all relevant acts of Congress and to all binding judicial decisions.

(b) The Secretary may decline to approve and adopt amendments to the code if they are inconsistent with the criteria set forth in this part.

§ 260.4 Codes with individual water permits.

(a) At the option of the tribe, the code may adopt an individual permit system authorizing the diversion and use of water. Where a permit system is utilized, the issuance or transfer of permits to non-members of the tribe shall be subject to the approval of the Secretary and such permits thereafter shall be fully subject to all provisions of the code.

§ 260.5 Secretarial water codes.

(a) If a tribe fails to enact an approved water code for its reservation and the Secretary finds that such a code is necessary to provide for a just and equal distribution of reserved waters on an Indian reservation for irrigation for agricultural purposes, the Secretary shall notify the tribe in writing of such need and offer assistance in the preparation of an acceptable water code. If the tribe notifies the Secretary that it elects not to enact a water code or if the tribe does not respond within 60 days from the date of the request, the Secretary may prepare and publish a water code for the reservation. The water code shall cover at least the areas set forth in Part 260.3 above, and shall otherwise comply fully with these regulations.

(b) In this code, the Secretary may act on behalf of the tribe in the issuance of permits and in the regulation of the reserved water rights of the reservation.

(c) When the water code has been completed, it shall be submitted to the governing body of the tribe of the reservation for its review, comment and appropriate revision. The water code shall then be enforced by the Secretary on the reservation covered by the code.

(d) The code may be amended by the Secretary from time-to-time subject to rights under existing permits after submitting such amendments to the governing body of the tribe for its approval. *Provided, however,* that any amendment shall become effective if the tribe neither approves nor disapproves the amendment within 60 days.

(e) The tribe may replace such a code with one enacted by it at any time, or it may amend the code, with approval of the Secretary.

§ 260.6 Appeals.

Where the Secretary has promulgated a water code for an Indian reservation in accordance with § 260.5, appeals from the determinations of the designated Department official concerning any person's right to the use of water shall be within the jurisdiction of the Board of Indian Appeals in the Office of Hearings and Appeals, Office of the Secretary, Department of the Interior. A hearing shall be held on the appeal by the Board at which the tribe and appealing party may appear and present evidence and argument. When practicable, this hearing shall be held on or near the reservation. A determination by the Board of Indian Appeals shall be final and there shall be no further administrative remedy available.

Dated: December 29, 1980.

Cecil D. Andrus,

Secretary of Interior.

[FR Doc. 81-207 Filed 1-2-81; 8:45 am]

BILLING CODE 4310-17-M

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

Public Hearing and Public Comment Period on the Resubmitted Permanent Regulatory Program of the State of Utah

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM).

ACTION: Revision and correction.

SUMMARY: This notice explains and corrects an oversight in the **Federal Register** of December 23, 1980, FR 84824-26 which inadvertently omitted the time of the State of Utah's public hearing on the resubmitted permanent regulatory program.

A public hearing will be held at 1:30 p.m. on January 7, 1981, in the Governor's Board Room, in the State Capitol, Salt Lake City, Utah.

FOR FURTHER INFORMATION CONTACT: Sylvia Sullivan, Office of Surface Mining, Region V, 1020 15th Street, Denver, Colorado 80202, Telephone: (303) 837-5421.

SUPPLEMENTARY INFORMATION: On December 23, 1980 OSM published notice of procedures for the public comment period and hearing on the substantive adequacy of those portions of the proposed Utah regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) which have been resubmitted by the State and which were not previously approved by the Secretary of Interior. For further information see **Federal Register** (45 FR 84824-26) published on December 23, 1980.

Dated: December 30, 1980.

Walter Heine,

Director, Office of Surface Mining.

[FR Doc. 81-188 Filed 1-2-81; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 1, 92, 161

[CGD 78-079]

St. Marys River Vessel Traffic Service

AGENCY: Coast Guard.

ACTION: Proposed rule.

SUMMARY: The Coast Guard is proposing to revoke the anchorage and navigation regulations for the St. Marys River, Michigan, and to establish a vessel traffic service (VTS) under the authority of the Ports and Waterways Safety Act (33 U.S.C. 1221–1227). The existing regulations for anchorage and navigation on the St. Marys River (33 CFR 92) are somewhat archaic, do not reflect the present use of the river during winter months, and do not recognize the capabilities and common usage of the radiotelephone. The new VTS regulations address the use of VHF–FM radiotelephone and the special concerns regarding navigation through ice during the winter season. The geographic scope of these regulations is extended to include the lower portion of Whitefish Bay which is not presently addressed in 33 CFR Part 92. It is expected that these regulations will provide for safer, more efficient transits of vessels on the St. Marys River.

DATES: Comments must be received on or before February 19, 1981.

ADDRESSES: Comments should be submitted to Commandant (G–CMC/24), (CGD 78–079), U.S. Coast Guard, Washington, D.C. 20593. Comments may be delivered and will be available for inspection or copying at the Marine Safety Council (G–CMC/24), Room 2418, U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. 20593, (202) 426–1477 between the hours of 7 a.m. and 5 p.m., Monday through Thursday.

FOR FURTHER INFORMATION CONTACT: Mr. Edward J. LaRue, Jr., Project Manager, Office of Marine Environment and Systems, Room 1606, U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. 20593, (202) 426–4958. Normal office hours are between 7 a.m. and 5 p.m. Monday through Thursday, except holidays.

SUPPLEMENTARY INFORMATION: The public is invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Comments should include the name and address of the person making them, identify this notice (CGD 78–079) and give the specific section of the proposal to which the comment applies, and give the reasons for the comment. Persons desiring acknowledgment that their comment has been received should enclose a stamped, self-addressed postcard or envelope.

All comments received before expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will be beneficial.

Drafting Information

The principal persons involved in drafting this proposal are Edward J. LaRue, Jr., Project Manager, Office of Marine Environment and Systems, and Lieutenant Commander John Orchard, Project Attorney, Office of the Chief Counsel.

Discussion of the Proposed Regulations

The existing "Anchorage and Navigation Regulations; St. Marys River" and the "St. Marys River Patrol" which enforces those regulations were established to minimize the dangers to vessels transiting the regulated area. Although most of the improved channels are 600 feet or more in width, there are nearly 20 miles of channel only 300 feet in width. The 300 foot channels are normally used for one-way traffic but one channel (300 feet wide with a 200 foot auxiliary channel of lesser depth) must, at times, be used for two-way or alternating one-way traffic.

The vessels using this waterway range up to 1,000 feet in length and 105 feet in breadth. The most commonly used vessels range from 500 to 800 feet in length and 60 to 80 feet in breadth. These vessels frequently navigate with a net bottom clearance of about 1 foot. Over the past five years, there have been an average of 42 vessel transits each day.

If traffic is temporarily stopped due to vessel casualty, low visibility, closure of the St. Marys Falls Canal, or other reasons, up to 50 or more vessels can rapidly accumulate in the river. Because of the narrowness of many channels, a vessel casualty (grounding or anchoring due to propulsion failure) generally results in a complete obstruction of the channel. The sudden onset of reduced visibility can force a vessel to anchor and require the anchoring of following vessels. Anchorages outside the channel are very limited and at some locations the narrow channels and strong following currents preclude anchoring by vessels not fitted with stern anchors. These factors make traffic management essential.

In summary, the narrow channels, large vessels operating with minimal net bottom clearance, and frequent vessel congestion warrant improvement of the existing regulations and formal establishment of a Vessel Traffic Service in the St. Marys River.

In drafting these proposed regulations, the provisions of the existing regulations contained in 33 CFR Part 92 have been incorporated except as noted. Provisions which have been transferred without substantive change are not discussed in the following paragraphs.

Proposed § 161.801(c) would make the communications rules applicable to those vessels required to have VHF–FM radiotelephone equipment by the "Agreement with Canada for Promotion of Safety on the Great Lakes by Means of Radio, 1973". This approach insures participation by the category of vessels of greatest importance to this vessel traffic control system is consistent with the international agreement, and avoids additional cost for equipment on vessels not otherwise required to be equipped with VHF–FM radiotelephones.

The Speed Rules of § 92.49 have been relocated in §§ 161.880–161.886 and have been made applicable to all vessels over 20 meters (65 feet) in length. (The existing regulations apply to vessels of 50 gross tons or more.) Since gross tonnage is a unit of measurement which is generally only applicable to commercial vessels and is not a measure of a vessel's propensity to cause shore damage or erode waterway improvements at higher speeds, the speed regulations have been made applicable to all vessels over 20 meters. Furthermore, because of the wide variety of vessel shapes, it is difficult to establish a direct conversion from gross tonnage to length. However, nearly all vessels of 50 gross tons or more are greater than 20 meters (65 feet) in length and for this reason this figure has been adopted in order to provide a level of protection which is equivalent to that which is provided by the current regulations.

Proposed § 161.803 provides additional definitions which promote clarification and better understanding of these regulations.

Under the current regulations in Part 92, authority for routing of traffic in channels is vested in the St. Marys River Patrol while the authority to terminate passage of a vessel because of ice or other special conditions is vested in the Captain of the Port. Proposed § 161.807 vests in Soo Control, the authority provided by the Ports and Waterways Safety Act to specify times of entry and movement or departure of vessels located within controlled vessel traffic areas. It is considered essential that Soo Control possess this authority in order to effectively control vessel traffic during conditions which adversely affect navigation safety.

Proposed § 161.809 provides reasonable flexibility to the Commander, Ninth Coast Guard District to authorize a deviation from these rules when he has determined that an operation can be accomplished safely. It

is recognized that special operations may make compliance with each of these rules impossible or that alternative safety measures may be imposed which would make strict compliance with each of these rules unnecessary. The Coast Guard believes that the local District Commander is in the best position to determine when a deviation from these rules can be safely accomplished.

Proposed § 161.811 allows the master to deviate from these rules in order to avoid immediate danger. This provision is considered necessary in order to avoid requiring a vessel to comply with a rule which may, because of a special, sudden condition, place the vessel in danger of collision, grounding or foundering.

Proposed § 161.820 is designed to provide adequate communications capabilities for vessels required to communicate with Soo Control, and conform with the "Agreement with Canada for the Promotion of Safety in the Great Lakes by Means of Radio, 1973", which requires a listening watch on Channel 16 VHF-FM and also requires that radiotelephone equipment be equipped with Channel 12. This approach will avoid a requirement for additional radiotelephone equipment.

Proposed § 161.821 requires routine reports to be made to Soo Control on Channel 12 VHF-FM. FCC regulations do not authorize the use of Channel 16 for passing vessel traffic information.

Proposed § 161.822 is similar to the requirements of the Bridge-to-Bridge Radiotelephone Act and is intended to provide for communications in a timely fashion without interference with the piloting of vessels.

Proposed § 161.824 requires reports to be made in English and reflects the need for a common language for all VTS participants.

Proposed § 161.826 requires reports to be made in the local zone time in effect even though many Great Lakes vessels, for their own operations, use Eastern Standard Time throughout the year. This will ensure that a consistent time standard is used by all participants.

Proposed § 161.828 requires an initial report in order to provide notice to Soo Control regarding vessels which will be entering into or getting underway from within the VTS Area. Advance notice is necessary to allow the VTS Controller to adequately assess the impact of the vessel's movement on the traffic situation.

Proposed § 161.830 requires movement reports in order to allow Soo Control to monitor the movement of all vessels within the VTS Area and, when necessary, to apprise them of the presence of hazards to navigation or other vessels, or to direct their movement. Formerly, the passage of vessels was determined by observation from manned lookout stations at various narrow turns in the river. These lookout stations have been discontinued because vessel movement can more economically be determined by VHF-FM radiotelephone reports. Alternative methods of surveillance which were considered included television and radar coverage. These methods were rejected because although they would definitely increase the effectiveness of the VTS system, the current number of vessel transists (40 per day) is not sufficient to offset the costs involved in manning and installing required equipment. Periodic radio reports to the VTS are considered to be the least expensive, yet effective, means of providing vessel traffic service coverage.

Proposed § 161.832 requires a final report when the vessel completes its movement in the VTS area. The Final Report is necessary so that Soo Control is aware of the vessel's location within the VTS Area, or that the vessel has departed the VTS Area and is no longer involved in the traffic system.

Proposed § 161.834 establishes permanent reporting points which have been selected to allow Soo Control to coordinate traffic, as necessary, and to allow Soo Control to apprise the lockmaster of vessels approaching the St. Marys Falls Canal.

Proposed § 161.836 provides for the establishment of additional reporting points that are necessary during the winter navigation season in order to schedule icebreaking and facilitate navigation. Temporary reporting points are intended for use during periods of unusual hazard such as partial channel obstruction or closure. The District Commander is provided the flexibility to designate those reporting points based upon the prevailing ice conditions.

Proposed § 161.838 recognizes that a few short portions of the navigation channel lie in Canadian waters. This section makes it clear that a final Report and an Initial Report are not desired when navigating these areas. Such reports are not considered necessary, would clutter the reporting frequency and distract the vessel's master and the Soo Controller.

Proposed § 161.840 requires that a report of radio failure be made if practicable. This report is necessary because of the reliance on VHF-FM radiotelephone in these regulations. The procedures for reporting radio failure required by the "Agreement with Canada for the Promotion of Safety on the Great Lakes by Means of Radio, 1973", are incorporated.

Proposed § 161.842 requires reports of impairment of vessels transiting the VTS area and obstructions. These reports are necessary to enable Soo Control to effectively manage traffic and advise vessels of potential hazards.

Proposed § 161.844 exempts ferrys from the movement reporting requirement when they are operating in accordance with a schedule which has been provided to Soo Control. The presence of a ferry on a scheduled route can be presumed by both Soo Control and vessels navigating the area. Reports are required from ferries only when they deviate from their schedules.

Because of the narrowness of certain channels, proposed § 161.850 establishes one-way traffic patterns for vessels in order to minimize collisions and groundings.

Proposed § 161.854 specifies interests which will be considered before West Neebish Channel and Pipe Island Passage are closed to traffic during the winter navigation season. This section specifically provides for the use of Middle Neebish Channel and Pipe Island Course by both upbound and downbound vessels during the winter navigation season. Consideration of these interests is considered necessary in order to adequately manage marine navigation within legitimate economic and environmental constraints.

Proposed § 161.880 would reduce the speed limit from De Tour Reef Light to Sweets Point Light from 17 miles per hour to 14 miles per hour. This reduction is proposed in order to reduce wake damage to shore property and moored vessels which has been reported in the vicinity of De Tour Village by the De Tour Village Harbor Commission. The speed limit will now apply to vessels of over 20 meters (65 feet) in accordance with section 161.801.

Proposed § 161.890 clarifies the maximum distance which may be maintained between towing vessels and their tows.

Proposed § 161.894 effectively requires a vessel navigating in the VTS area to have its anchors ready for letting go after the COTP has ordered the closing of a channel. This measure is considered necessary to ensure that every vessel transiting toward the closed channel is capable of immediately anchoring. Soo Control may direct approaching vessels to anchor at a considerable distance from the point of closure in order to avoid traffic congestion.

Disposition of Existing Regulations

This supplementary information shows the disposition of certain existing regulations in 33 CFR 92. As indicated in the following table, most of the existing regulations have been reworded and are included in the proposed regulations. Some portions have been deleted for various reasons as set forth below.

TABLE I.—*Disposition of Part 92*

Existing section	Disposition
92.01	Sec. 161.801.
92.03	Sec. 161.803.
92.05	Deleted.
92.07	Sec. 161.803.
92.13	Sec. 161.807, 161.850, 161.894.
92.19	Sec. 161.854, 161.894.
92.21	Deleted.
92.23	Sec. 161.880.
92.25	Sec. 161.804.
92.26	Sec. 161.830.
92.27	Sec. 161.860.
92.29	Sec. 161.862.
92.31	Sec. 161.864.
92.33	Sec. 161.866.
92.35	Sec. 161.868.
92.37	Sec. 161.870, 161.807.
92.39	Deleted.
92.41	Deleted.
92.43	Deleted.
92.45	Deleted.
92.47	Sec. 161.807.
92.49	Sec. 161.801, 161.850.
92.55	Deleted.
92.57	Sec. 161.850.
92.59	Sec. 161.850.
92.61	Sec. 161.852.
92.63	Deleted.
92.65	Deleted.
92.67	Sec. 161.890.
92.69	Sec. 161.890.
92.71	Sec. 161.886.
92.73	Deleted.
92.75	Deleted.
92.77	Deleted.
92.79	Sec. 161.842.
92.81	Deleted.
92.83	Sec. 161.801.

Section 92.05, St. Marys River Patrol, will be deleted because the term is archaic. There is no Coast Guard unit by that name and the vessels and personnel under the control to the Captain of the Port are not commonly referred to in that manner.

Section 92.21 describing sound signals used by patrolling vessels will be deleted because the reliability of VHF-FM radio-telephone eliminates the need for those special sound signals.

Section 92.39, Visual Signals for Dredges and Wrecking Plants, will be deleted because these signals are prescribed by the Pilot Rules for the Great Lakes at 33 CFR 90.22 thru 90.29.

Section 92.41, Visual signals on vessels aground in channel, will be deleted because these signals are prescribed by Rule 30 of the Great Lakes Rules of the Road (33 U.S.C 295). Furthermore, adequate warning regarding grounded vessels can be provided by VHF-FM radiotelephone.

Section 92.43, Sound signal for vessels aground in channel, will be deleted because it places a burden on the overtaken vessel to take action. This is inconsistent with Rules 20 and 22 of the Rules of the Road for the Great Lakes (33 U.S.C. 285 and 287).

Section 92.45, Special sound signal for Middle Neebish Channel, will be deleted because the signal for vessels approaching a bend in the channel is adequately provided for in the Pilot Rules for the Great Lakes (33 CFR 90.6).

Section 92.55, Speed limit approaching St. Marys Falls Canal, will be deleted because failure to maintain proper control of a vessel is adequately provided for by Rule 28 of the Great Lakes Rules of the Road (33 U.S.C. 293).

Section 92.63, Vessel passing towing tug going in same direction, will be deleted because the overtaking situation is adequately provided for by Rule 25 of the Great Lakes Rules of the Road (33 U.S.C. 290).

Section 92.65, Vessels going in the same direction; when passing prohibited, will be deleted because comprehensive rules for overtaking are contained in the Pilot Rules for the Great Lakes (33 CFR 90.8).

Section 92.73, Navigation of dredged channels by sail, will be deleted because it is archaic.

Section 92.75, Obstruction of traffic; retarding of other vessels, will be deleted because this matter is adequately covered by Rules 20 and 27 of the Rules of the Road for the Great Lakes (33 U.S.C 285 and 293).

Section 92.77, Rafts in channels, will be deleted because it is archaic. Rafts are no longer used as a mode of transportation in this area.

Section 92.81, Government vessels, will be deleted because sufficient authority to control movement of vessels is available under 33 CFR 160.35 and the proposed § 161.807 without providing special rules for government vessels. Additionally, the right of way granted to government vessels by § 92.81 is potentially in conflict with the Rules of the Road for the Great Lakes (33 U.S.C. 281-290).

The Coast Guard has evaluated this proposal under the Department of Transportation's Order 2100.5, "Policies and Procedures for Simplification, Analysis, and Review of Regulations," May 22, 1980, and has found this to be a nonsignificant rulemaking. A Draft Evaluation has been prepared and is available for inspection and copying from the Marine Safety Council.

An environmental assessment was completed in June, 1980, which determined that this action will have no significant impact upon the environment.

In consideration of the foregoing, the Coast Guard proposes to amend Title 33, Code of Federal Regulations as follows:

§ 1.01-30 [Amended]

1. By removing and reserving § 1.01-30(b).

PART 92—[Reserved]

2. By removing and reserving Part 92.

3. By revising Subpart B of Part 161 to read as follows:

PART 161—VESSEL TRAFFIC MANAGEMENT

* * * * *

Subpart B—Vessel Traffic Service

* * * * *

St. Marys River Vessel Traffic Service

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161.821 Frequency for routine reports.
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161.834 Permanent reporting points.
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161.838 Transit of Canadian waters.
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Traffic Rules

161.850 One way traffic—normal conditions.
161.852 Meeting or overtaking in channels.
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Anchorage Rules

161.860 Anchorage, general.
161.862 Emergency anchoring.
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161.868 Shifting anchorage under the direction of Soo Control.
161.870 Order of departure from anchorage.

Speed Rules

161.880 Maximum speed limits.
161.884 Temporary speed limits.
161.886 Minimum speed limit, through dredged channels.

Miscellaneous Rules

161.890 Rules for towing vessels.
161.894 Channel closure and special rules.

Authority: 92 Stat. 1471, (33 U.S.C. 1221 et seq., as amended); 49 CFR 1.46(n)(4).

Subpart B—Vessel Traffic Service

St. Marys River Vessel Traffic Service

General Rules

§ 161.801 Purpose and applicability.

(a) Sections 161.800–899 prescribe rules for vessel operation in the St. Marys River Vessel Traffic Service (VTS) Area to prevent collisions and groundings, to protect improvements to the waterways, and to protect the navigable waters of the VTS Area from environmental harm.

(b) The General Rules in §§ 161.800–161.811, the Anchorage Rules in §§ 161.860–161.870, and the Miscellaneous Rules in §§ 161.890–161.894 apply to all vessels.

(c) The Communications Rules in §§ 161.820–161.844 and the Traffic Rules in §§ 161.850–161.856 apply only to the following vessels:

(1) Vessels over 20 meters (65 feet) in length, except fishing vessels of under 300 gross tons;

(2) Commercial vessels over 8 meters (26 feet) in length engaged in towing another vessel astern, alongside, or by pushing ahead; and

(3) Dredges and floating plants.

(d) The Speed Rules in §§ 161.880–161.886 apply only to vessels over 20 meters (40 feet) in length.

§ 161.803 Definitions.

As used in §§ 161.800–161.899—

"Area Engineer" means the local representative of the District Engineer who acts for that officer with respect to the St. Marys Falls Canal and the VTS Area. His office is located at the locks of the St. Marys Falls Canal.

"Captain of the Port, Sault Ste. Marie, Michigan" (COTP) means the officer of the U.S. Coast Guard assigned the duty of enforcing the VTS regulations.

"District Engineer" means the officer of the U.S. Army Corps of Engineers responsible for enforcing the regulations for the St. Marys Falls Canal and Locks (33 CFR 207.440). His office is at Detroit, Michigan. The movements of vessels in the St. Marys Falls Canal are under the direction of the District Engineer or his local representative.

"No Passing Zone" means an area where meeting, U-turns, or overtaking, are prohibited.

"Soo Control" means the shore-based facility that operates the St. Marys River VTS for the COTP.

"Vessel Traffic Service Area (VTS Area)" means the navigable waters of the United States in the St. Marys River and lower Whitefish Bay from latitude 45 57' N. (De Tour Reef Light), to the south, to latitude 46 38.7' N (Ile Parisienne Light), to the north, except the waters of the St. Marys Falls Canal. The waters of the VTS Area are delineated, to the east, from Potagannissing Bay and Worsley Bay by a line from La Pointe to Sims Point.

§ 161.804 Vessel operation in the VTS Area.

No person may cause or authorize the operation of a vessel in the VTS Area contrary to the rules in §§ 161.800–161.899.

§ 161.805 Laws, and regulations not affected.

Nothing in §§ 161.800–161.899 is intended to relieve any person from complying with—

(a) The Navigation Rules for the Great Lakes and their connecting and tributary waters (33 U.S.C. 241–295);

(b) Vessel Bridge-to-Bridge Radiotelephone Regulations (Part 26 of this chapter);

(c) Pilot Rules for the Great Lakes (Part 90 of this chapter);

(d) The Federal Boat Safety Act of 1971 (46 U.S.C. 1451–1489); and

(e) Any other laws or regulations.

§ 161.807 Soo Control Directions.

(a) During conditions of vessel congestion, full or partial channel obstruction, severe storms, reduced visibility, heavy ice, strong currents, low water, or similar hazardous circumstances in the VTS Area, Soo Control may issue directions specifying times when vessels may enter, move within or through, or depart from ports, harbors, reaches, channels, or other waters in the VTS Area.

(b) When by reason of ice or other special conditions, low powered vessels, vessels with one or more tows, or vessels of a particular construction cannot maintain their order of proceeding and will constitute a hazard to other vessels, Soo Control may temporarily refuse such vessels permission to enter or proceed in the river.

(c) The master of a vessel in the VTS Area shall comply with directions issued to him under this section.

§ 161.809 Authority to Deviate from these Rules.

(a) The Commander, Ninth Coast Guard District may, upon written request, issue an authorization to deviate from any rule in §§ 161.800–161.899 if that officer finds the proposed operation can be accomplished safely. Each written application for authorization must state the need for the authorization and describe how the proposed operation can be conducted safely.

(b) Soo Control may, upon verbal request, issue an authorization to deviate from any rule in this subpart, for a single voyage or part of a single voyage on which the vessel is embarked or about to embark. Such authorizations by Soo Control shall not be for an extended period of time nor shall they be granted for successive voyages.

§ 161.811 Emergency deviations.

In an emergency, any person may deviate from any provision in §§ 161.800 through 161.899 to the extent necessary to avoid endangering persons, property, or the environment.

Communications Rules

§ 161.820 Radio Listening watch.

The master of a vessel in the VTS Area shall continuously monitor Channel 16 (156.8 mhz) VHF–FM and be prepared to communicate with Soo Control on Channel 12 (156.6 mhz) VHF–FM.

§ 161.821 Frequency for routine reports.

Routine reports to Soo Control (including preliminary reports, initial reports, movement reports, and final reports) shall be made on Channel 12 (156.6 mhz) VHF–FM.

§ 161.822 Radiotelephone equipment.

Each report required by §§ 161.800–161.899 to be made by radiotelephone must be made using a radiotelephone that is capable of operation on the navigational bridge of the vessel, or in the case of a dredge, at its main control station.

§ 161.824 English language.

Each report required by §§ 161.800–161.899 must be made in the English language.

§ 161.826 Time.

Each report required by §§ 161.800–161.899 must specify time using:

(a) The zone time in effect in the VTS Area; and

(b) The 24-hour clock system.

§ 161.828 Initial report.

At least 15 minutes, but not more than 30 minutes, before a vessel enters into or gets underway within the VTS Area the master of the vessel shall report the following information to Soo Control:

(a) Name and draft of the vessel;

(b) Location and estimated time of entering or getting underway;

(c) The nature of any tow, including log booms or rafts;

(d) Destination; and

(e) Type of cargo.

§ 161.830 Movement reports.

Whenever a vessel passes a reporting point listed in § 161.834 or promulgated in accordance with § 161.836 or whenever a vessel within the VTS Area gets underway and begins to navigate, the master shall report the following to Soo Control:

(a) Name of the vessel; and

(b) The reporting point or the location.

§ 161.832 Final report.

Whenever a vessel anchors in, moors in, or departs from the VTS Area, the master shall report the place and time of anchorage or mooring or the location of departure to Soo Control.

§ 161.834 Permanent reporting points.

The following are permanent reporting points—

Upbound vessels	Reporting points	Downbound vessels
Initial Report	De Tour Reef Light.	Final Report.
Movement Report	Lake Munuscong Junction Buoy.	Movement Report.
	Oak Ridge	Movement Report.
Movement Report	Ninemile Point	Movement Report.
Movement Report	Six Mile Point	Movement Report.
Movement Report	Mission Point	Movement Report.
Movement Report	Leaving locks	Movement Report.
Movement Report	Brush Point	Movement Report.
Movement Report	Birch Point	Movement Report.
Final Report	Ile Parisienne Light.	Initial Report.

§ 161.836 Seasonal or temporary reporting points.

(a) Commander, Ninth Coast Guard District, may publish additional reporting points for use during the winter navigation season. These seasonal reporting points with their effective dates will be published in a Local Notice to Mariners. This information is also available from Soo Control.

(b) Captain of the Port Sault Ste. Marie may publish additional reporting points as temporary navigation conditions may require. These temporary reporting points with their effective times will be published by Broadcast Notice to Mariners and will be available from Soo Control.

§ 161.838 Transit of Canadian waters.

Vessels which have already reported to Soo Control shall not make a Final Report or an Initial Report when departing or reentering the VTS Area for a brief transit of Canadian waters.

§ 161.840 Radio failure.

Whenever a vessel's radiotelephone equipment fails—

(a) The master shall, if practical to do so, notify Soo Control.

(b) The master is not required to moor or anchor the vessel for this reason alone, but the master shall give due consideration to this loss of capability and navigate with extraordinary caution;

(c) Compliance with respect to §§ 161.820 and 161.830 is not required; and

(d) Compliance with respect to §§ 161.828, 161.829, and 161.832 is not required unless the required reports can be made by telephone.

§ 161.842 Report of impairment or other hazard.

The master of any vessel in the VTS Area shall report to Soo Control as soon as possible:

(a) Any condition on the vessel that may impair its navigation, such as fire, defective propulsion machinery, or defective steering equipment;

(b) Any tow that the towing vessel is unable to control, or can control only with difficulty; and

(c) Any grounding, striking of obstruction, or striking of an aid to navigation, whether in or out of the channel.

Note.—The master of any vessel in the VTS Area is encouraged to report to Soo Control as soon as possible:

(a) Any locations where the visibility is less than one mile; and

(b) Any obstruction of a channel, grounded vessels, malfunctioning aid to navigation, or other hazardous or dangerous situation which has not been published by Notice to Mariners or Broadcast Notice to Mariners.

§ 161.844 Ferry vessels.

The master of any ferry vessel operating in the VTS Area which is operating in accordance with a route and schedule which has been provided to Soo Control, need not comply with §§ 161.828, and 161.832.

Traffic Rules

§ 161.850 One way traffic—normal conditions.

Under normal conditions, two-way traffic will be permitted in all channels except the following:

(a) West Neebish Channel from buoy 53 to buoy 1 shall be used only by vessels proceeding in a downbound direction;

(b) Middle Neebish Channel from buoy 2 to buoy 76 shall be used only by vessels proceeding in an upbound direction;

(c) Pipe Island Course from Sweets Point to Watsons Reef light shall be used only by vessels proceeding in a downbound direction; and

(d) Pipe Island Passage to the east of Pipe Island Shoal and north of Pipe Island Twins from Watsons Reef Light to Sweets Point shall be used only by vessels proceeding in an upbound direction.

§ 161.852 Meeting or overtaking in channels.

(a) No vessel 100 meters (350 feet) or greater in length shall overtake or approach within one quarter of a statute mile (0.2 nautical miles) of a vessel proceeding in the same direction when in the following channels:

(1) West Neebish Channel between Ninemile Point and Lake Munuscong Junction Buoy;

(2) Middle Neebish Channel between Lake Munuscong Junction Buoy and Ninemile Point; and

(3) Little Rapids Cut from Six Mile Point to Buoy 102.

(b) In addition to paragraph (a) of this section, when two-way traffic is permitted in Middle Neebish Channel, no vessel 100 meters (350 feet) or greater in length shall meet or overtake another vessel in the vicinity of:

(1) Johnson Point from Buoy 18 to Buoy 22;

(2) Mirre Point from Buoy 26 to Buoy 28; and

(3) Stribling Point from Buoy 39 to Buoy 43.

(c) This section does not apply when navigating through ice fields.

§ 161.854 Winter navigation.

(a) During the winter navigation season West Neebish Channel (from Buoy 53 to Buoy 1) and Pipe Island Passage to the east of Pipe Island Shoal and north of Pipe Island Twins (from Watson Reef Light to Sweets Point) normally will be closed to traffic. The COTP will close or open these channels as ice conditions dictate after giving due consideration to: the protection of the marine environment, the protection of waterway improvements and aids to navigation, the need for cross channel traffic (e.g. ferrys), the availability of icebreakers, and the safety of island residents who, in the course of their daily business, must use naturally formed ice bridges for transportation to and from the mainland. Under normal seasonal conditions only one closing each winter and one opening each spring are anticipated. Prior to closing or opening these channels, the COTP will give interested parties, including both shipping interests and island residents, not less than 72 hours notice.

(b) When West Neebish Channel is closed, Middle Neebish Channel (from Buoy 2 to Buoy 76) will either be opened to a two-way traffic or open to one-way traffic in alternate directions. When two-way traffic is authorized in Middle Neebish Channel, all upbound vessels

will use the easterly 60 meters (197 feet) of the channel and all downbound vessels will use the westerly 91 meters (295 feet) of the channel. When two-way traffic is authorized in Middle Neebish Channel, upbound vessels drawing more than 20 feet shall not proceed past Buoy 2 unless specifically authorized by Soo Control. When one-way traffic in alternate directions is authorized in Middle Neebish Channel, all vessels will use the westerly 91 meters (295 feet) of the channel.

(c) When Pipe Island Passage is closed, Pipe Island Course will be open to two-way traffic.

Anchorage Rules

§ 161.860 Anchorage, General.

Vessels shall not be anchored so as to swing into the channel limits or across charted steering courses.

§ 161.862 Emergency anchoring.

In an emergency a vessel may anchor in a dredged channel. Such vessels shall anchor as near the edge of the channel as possible and shall get underway as soon as the emergency ceases, unless otherwise directed. Soo Control must be advised of any emergency anchoring as soon as possible.

§ 161.864 Unauthorized anchorage.

No vessel shall anchor at any time in the area southward of the Point Aux Pins Range between Brush Point and the waterworks intake crib off Big Point or within a quarter of a statute mile (0.2 nautical miles) of the intake crib in any direction.

§ 161.866 Anchoring of dredging, construction, or wrecking plants in channels.

Dredging, construction, or wrecking plants may be permitted to anchor or moor in the channel under such conditions as the COTP deems appropriate to protect the safety of navigations.

§ 161.868 Shifting anchorage under direction of Soo Control.

Soo Control may direct any anchored vessel to shift anchorage whenever such action is deemed necessary for the safety of vessels, the safe or expeditious passage of shipping, or the preservation or effective operation of Government installations.

§ 161.870 Order of departure from anchorage.

Vessels collected in any part of the VTS Area by reason of temporary closure of a channel or an impediment to navigation shall get underway and depart in the order in which they arrived, unless otherwise directed by Soo Control. Soo Control may advance any vessel in the order of departure to expedite the movement of mails, passengers, cargo of a perishable nature, facilitate passage of vessels through any channel by reason of special circumstance, or to facilitate passage through the St. Marys Falls Canal.

Speed Rules

§ 161.880 Maximum speed limits.

The following speed limits indicate speed over the ground.

The speed limit between—	speed (miles/hr)	Limit (knots)
De Tour Reef Light and Sweets Point Light	14	12.2
Round Island Lt. and Point Aux Frenes Lt.	14	12.2
Munuscong Channel Buoy 8 and Everens Point	12	10.4
Everens Point and Reed Point	9	7.8
Reed Points and Lake Nicolet Lighted Buoy 9	10	8.7
Lake Nicolet Lighted Buoy 62 and Ninemile Point Lt.	12	10.4
Ninemile Point Lt. and Winter Point (West Neebish Channel)	10	8.7
Ninemile Point Lt. and Six Mile Point Lt.	10	8.7
Six Mile Point and Lower Limit of the St. Marys Falls Canal:		
Upbound	8	7
Downbound	10	8.7
Upper Limit of the St. Marys Falls Canal and Point Aux Pins Main Light	12	10.4

§ 161.884 Temporary speed limits.

The Commander, Ninth Coast Guard District may establish temporary speed limit regulations in the VTS area, including amendments to the speed limits under section 161.880 of this part. The temporary speed limits established by the Commander, Ninth Coast Guard District are published in the **Federal Register** and in the Notice to Mariners.

§ 161.886 Minimum speed limit through dredged channels.

No vessel may make regular passage through any dredged channel at a speed of less than 5 statute miles per hour (4.3 knots) over the ground. Any craft which cannot maintain this speed shall not enter any of the channels until permission has been granted by Soo Control.

Miscellaneous Rules

§ 161.890 Rules for towing vessels.

(a) Towing vessels shall not drop their tows or otherwise leave them unattended south of Gros Cap Reef Light.

(b) Towing vessels engaged in shortening or lengthening tows, dropping or making up tows, transferring stores or cargo from boats alongside, or waiting, shall stand clear and allow unobstructed passage to other vessels.

(c) Vessels of less than 61 meters (200 feet) in length shall not be towed with more than 76 meters (250 feet) of tow line. Vessels of 61 meters (200 feet) or more shall not be towed with a tow line longer than the length of the vessel plus 15 meters (50 feet).

§ 161.894 Channel closure and special rules.

Should channel obstructions or other conditions of unusual hazard so require, the COTP may order the closing of a channel, designate additional no overtaking zones or areas of one-way traffic, or establish other temporary traffic rules. Should a channel be closed, vessels transiting in the direction of the closed channel shall make preparations to be able to immediately anchor.

(92 Stat. 1471, (33 U.S.C. 1221 et. seq., as amended); 49 CFR 1.46(n)(4))

Dated: December 29, 1980.

W. E. Caldwell,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Environment and Systems.

[FR Doc. 80-117 Filed 1-2-80; 8:45 am]

BILLING CODE 4910-14-M

POSTAL RATE COMMISSION

39 CFR Part 3001

Annual Review of Rules of Practice; Notice of Postponement

December 23, 1980.

AGENCY: Postal Rate Commission.

ACTION: Notice of Postponement.

SUMMARY: The Commission serves notice that it is postponing initiation of its annual review of its rules of practice from the normal commencement date of December 1, 1980, to the month of March, 1981, as authorized by its final plan for implementing Executive Order No. 12044 (43 FR 12661; March 24, 1978) published in the **Federal Register** on January 12, 1979 (44 FR 2606–08).

FOR FURTHER INFORMATION CONTACT: David F. Stover, General Counsel; Postal Rate Commission, Suite 500; 2000 L Street, N.W.; Washington, D.C. 20268; Telephone 202–254–3824.

SUPPLEMENTARY INFORMATION: The Commission's plan for implementation of Executive Order No. 12044, under which an annual review of the Commission's rules of practice is conducted for the purpose of identifying and putting into effect any needed improvements, calls for initiation of the annual review on or about December 1 of each year. Foreseeing that other business might at times interfere with

the maintenance of this schedule, the Commission provided in setting up the plan that

> * * * When it is necessary to depart by more than a few days from the schedule given in the plan, the Commission will publish notice of the fact, setting forth the reasons for the departure.

44 FR 2607 (January 12, 1979).

At the present time, the Commission has before it a general rate increase proposal by the Postal Service. This case has proceeded according to schedule, and the Commission anticipates completing it within the 10 months contemplated by the Postal Reorganization Act [39 U.S.C. 3624(c)(1)]. In order to do so, it will, however, be necessary to employ our staff resources so substantially on issues in the rate proceeding as to preclude work on the annual review. The rate proceeding, under the statutory schedule, should terminate with the issuance of a Recommended Decision in late February 1981. Accordingly, the Commission hereby notifies all interested persons that it contemplates issuing the initial document (Advance Notice of Proposed Rulemaking) in the E.O. 12044 procedure by the end of March 1981.

David F. Harris,

Secretary.

[FR Doc. 80-40810 Filed 12-31-80; 8:45 am]

BILLING CODE 7715-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-7-FRL 1717-4]

Approval and Promulgation of Implementation Plans: State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Receipt of Submittal to Satisfy Conditions of Plan Approval.

SUMMARY: In order to satisfy the requirements of Part D of the Clean Air Act, as amended, the State of Missouri revised its State Implementation Plan (SIP) in 1979. On April 9, 1980, EPA conditionally approved certain elements of Missouri's plan (45 FR 24140). On December 16, 1980, the State submitted documentation for the purpose of fulfilling one of these conditions. This condition involves a requirement that the State submit a report outlining an inspection/maintenance (I/M) program for vehicle emissions control.

The purpose of this notice is to advise the public that the State of Missouri has made a submission involving this condition. EPA is reviewing the material submitted and intends to issue a notice of proposed rulemaking after the review is complete. Until final action is published in the **Federal Register**, the conditional approval of the SIP is being continued.

ADDRESSES: Copies of the State submission are available for inspection during normal business hours at the following locations:

Environmental Protection Agency, Air, Noise and Radiation Branch, 324 East 11th Street, Kansas City, Missouri, 64106.

Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Room 2922, Washington, D.C. 20460.

Missouri Department of Natural Resources, 2010 Missouri Boulevard, Jefferson City, Missouri 65101.

East-West Gateway Coordinating Council, 112 North Fourth Street, St. Louis Missouri 63102.

FOR FURTHER INFORMATION CONTACT: Wayne G. Leidwanger at (816) 374-3791 (FTS) 758-3791.

SUPPLEMENTARY INFORMATION: On April 9, 1980, EPA conditionally approved certain elements of Missouri's SIP with regard to the requirements of Part D of the Clean Air Act, as amended. A detailed discussion of that action can be found in the **Federal Register** notice published on that date (45 FR 24140).

One of the conditions promulgated by EPA requires the State of Missouri to report to EPA no later than December 1, 1980, the recommended type of I/M program for vehicle emissions control including stringency factor, vehicle test mix, program resources and justification. The report is to be submitted to the Missouri General Assembly for its review.

The public is advised that the State has made a submission. EPA is reviewing the material to determine if it complies with the requirements of the Clean Air Act and the condition promulgated by EPA. A notice of proposed rulemaking will be issued after EPA completes a review of the submission. EPA's conditional approval of the Missouri SIP is being continued until final action on the submittal is published in the **Federal Register**.

Dated: December 23, 1980.

William Rice,

Acting Regional Administrator.

[FR Doc. 81-111 Filed 1-2-81; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 52

[A-2-FRL 1717-5]

Approval and Promulgation of Implementation Plans; Proposed Revision to the New Jersey State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This proposal announces receipt of a request from the State of New Jersey to revise its State Implementation Plan (SIP). If approved by the Environmental Protection Agency, this revision will incorporate into the SIP an Amended Consent Judgment that requires the Atlantic City Electric Company's unit 1 and unit 2 at its B.L. England Generating Station to comply with applicable particulate emission requirements by March 31, 1982 and June 1, 1982, respectively. Current requirements promulgated at 40 CFR 52.1604(b) require compliance by June 1, 1981.

DATES: Comments must be received on or before March 6, 1981.

ADDRESSES: All comments should be addressed to: Charles S. Warren, Regional Administrator, Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278.

Copies of the proposal are available for public inspection during business hours at:

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 Jersey Department of Environmental Protection, Bureau of Air Pollution Control, Room 1108, Labor and Industry Building, John Fitch Plaza, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278 (212) 264-2517.

SUPPLEMENTAL INFORMATION:

I. Background

On July 6, 1978 the State of New Jersey submitted to the Environmental Protection Agency (EPA) two proposed revisions to its State Implementation Plan (SIP). One of the revisions involved a substantive change in the State's

"Sulfur in Coal" regulation, N.J.A.C. 7:27-10.1 *et seq.*, which permitted a temporary increase to 3.5 percent, by weight, in the allowable sulfur content of bituminous coal burned at existing steam or electric power generating facilities in Atlantic, Cape May, Cumberland, and Ocean Counties. This use of this higher sulfur coal could be authorized by the State for a period not exceeding five years.

This revision request was approved by EPA on December 15, 1978 at 43 FR 58567 and had the effect of allowing the Atlantic City Electric Company to use bituminous coal with a sulfur content not to exceed 3.5 percent, by weight, at units 1 and 2 of its B.L. England Generating Station in Beesley's Point, Cape May County.

The December 15, 1978 EPA approval notice also dealt with a State request to temporarily relax the particulate matter emission limitation applicable to these two units of the B.L. England Generating Station. In order to allow more efficient particulate matter control equipment to be installed, as a part of a Consent Judgment between the utility and the New Jersey Department of Environmental Protection, the emission limitation of 0.1 lbs/million BTU applicable to these units was relaxed to 0.5 lbs/million BTU until June 1, 1981. A Federal requirement to this effect was promulgated at 40 CFR 52.1604(b) on December 15, 1978 (43 FR 58567) and underwent minor correction on March 12, 1979 (44 FR 13478). Today's notice deals with this particulate matter control requirement on units 1 and 2 of the B.L. England plant.

II. Current Submittals

On June 30, 1980, the State of New Jersey submitted to EPA as a proposed revision to its SIP an Amended Consent Judgment which, if approved by EPA, would extend from June 1, 1981 until March 31, 1982 and June 1, 1982, respectively, the dates by which units 1 and 2 of the Atlantic City Electric Company's B.L. England Generating Station must comply with a 0.1 lbs/million BTU particulate matter emission limitation. Today's proposed SIP revision has the effect of revising an earlier Consent Judgment and the Federal requirement which, as discussed, requires units 1 and 2 to comply by June 1, 1981.

The State's SIP revision, including the fully executed Amended Consent Judgment was submitted in accordance with all EPA requirements under 40 CFR Part 51. These include the need for a public hearing, which was held by the State on March 7, 1980.

The Amended Consent Judgment between the Atlantic City Electric Company and the New Jersey Department of Environmental Protection (NJDEP), provides a revised compliance schedule for controlling particulate matter emissions from units 1 and 2 at the B. L. England Generating Station. The original Consent Judgment involved the installation of new electrostatic precipitators at units 1 and 2 at the site of existing precipitators. This plan, if implemented, would have required the temporary termination of coal burning at these units and a return to oil burning while the existing precipitators were being dismantled and until the new precipitators were installed and became operational. This conversion to oil would have been necessary in order to avoid a large increase in particulate matter emissions.

To obviate the need to burn oil, a new construction plan was prepared and forms the basis of the Amended Consent Judgment. This plan would stage the construction of the two new electrostatic precipitators, allowing unit 1 to use the new precipitator built for unit 2 while the existing inadequate precipitator at unit 1 was being dismantled. It is the use of a sequential construction schedule which results in the delay. It should be noted also, that at no time will the emissions of particulate matter exceed the previously approved emission limitation of 0.5 lbs/million BTU.

EPA notes that while the alteration of emission limitation requirements applicable to the Atlantic City Electric Company's B. L. England Station may not be approved by EPA as a compliance order, Section 110(a)(3) of the Clean Air Act allows a State to relax emission limitation requirements, as long as such relaxations do not jeopardize the attainment and maintenance of national ambient air quality standards. Since both the primary and secondary standards for particulate matter are being met in the area in which the B. L. England Station is located, and the continued imposition of the less stringent particulate emission limitation of 0.5 lbs/million BTU proposed in this rulemaking will not change the attainment status of the area, approval of such new emission limitations is not inconsistent with Section 110 of the Clean Air Act. Furthermore, the affected units are not subject to the provisions of the Prevention of Significant Deterioration regulations since both units were emitting no more than 0.5 lbs/million BTU of particulate matter prior to August 7, 1977. In keeping with the intent of the Amended Consent Judgment, EPA proposes to require the return to the more stringent emission limitation of 0.1 lbs/million BTU at unit 1 by March 31, 1982 and unit 2 by June 1, 1982.

Based upon EPA's review of the Amended Consent Judgment, EPA proposes to approve the State's SIP revision submittal. However, EPA's proposed approval of this SIP revision does not make the compliance schedules contained in the Amended Consent Judgment federally enforceable and the Company's failure to comply with such incremental requirements prior to the final date at which the more stringent emission limitations must be met will not trigger noncompliance penalties under Section 120 of the Clean Air Act.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. I have reviewed this package and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

This notice is issued as required by Section 110 of the Clean Air Act, as amended, to advise the public that comments may be submitted as to whether the proposed revision to the New Jersey State Implementation Plan should be approved or disapproved. The Administrator's decision regarding approval or disapproval of this proposed plan revision will be based on whether it meets the requirements of Section 110(a)(2)(a)-(k) of the Clean Air Act and EPA regulations in 40 CFR Part 51.

(Sections 110, 301, Clean Air Act, amended (42 U.S.C. 7410, 7601))

Dated: December 22, 1980.

Charles S. Warren,

Regional Administrator, Environmental Protection Agency.

[FR Doc. 81-105 Filed 1-2-81; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 123

[SW-3-FRL 1719-3]

Maryland Application for Interim Authorization, Phase I; Hazardous Waste Management Program

AGENCY: Environmental Protection Agency, Region III.

ACTION: Public Comment Period Extension.

SUMMARY: EPA regulations to protect human health and the environment from the improper management of hazardous waste were published in the Federal

Register on May 19, 1980 (45 FR 33063). These regulations include provisions for authorization of State programs to operate in lieu of the Federal program. Today, EPA is announcing the availability for public review of the Maryland application for Phase I Interim Authorization, inviting public comment, and giving notice of a Public hearing to be held on the application. A previous notice was published in the December 4, 1980, **Federal Register** stating that public comment must be received by January 15, 1981. That date has been changed to January 23, 1981 to allow the public to review minor revisions to Maryland's application and organizational changes in Maryland's Emergency Regulations subsequently published in Maryland's Register on December 19, 1980. The revised authorization application will be made available for public inspection at the EPA Public Hearing. A two-week period beyond the public hearing will allow opportunity for written comments to be submitted to EPA, and should not substantially delay a final decision on Maryland's application.

DATE: Comments on the Maryland Interim Authorization application must be received by January 23, 1981.

PUBLIC HEARING: EPA will conduct a Public hearing in the Maryland Interim Authorization application 7 p.m. on Thursday, January 8, 1981. EPA reserves the right to cancel the Public hearing if significant pubic interest in a hearing is not expressed. The State of Maryland will participate in any Public hearing held by EPA on this subject.

ADDRESSES: Copies of the Maryland Interim Authorization application are available at the following addresses for inspection and copying by the public:

Dept. of Health & Mental Hygiene, Waste Management Enforcement Program, 2nd Floor—O'Connor Building, 201 West Preston Street, Baltimore, Maryland 21201

Office of Environmental Programs, Failinger Complex, Route 8 & Naves Crossroad, Cumberland, Maryland 21502

Wicomico County Health Dept., 300 West Carrol Street, Salisbury, Maryland 21801

Public Information Reference Unit, Room 2922—EPA Library, U.S. Environmental Protection Agency, 401 M Street, SW. (Waterside Mall), Washington, D.C. 20460

U.S. EPA, Region III, Library, 2nd Floor, 6th & Walnut Streets, Philadelphia, Pennsylvania 19106

Written comments should be sent to: Robert L. Allen, Chief, Air, Toxics & Hazardous Materials Branch (3AH30), U.S. EPA, Region III, 6th & Walnut Streets, Philadelphia, Pennsylvania 19106

The Public hearing will be held at: Loch Haven Senior High School Auditorium, Cromwell Bridge Road & Cowpens Road, Baltimore, Maryland 21234.

FOR FURTHER INFORMATION CONTACT: Robert L. Allen, U.S. EPA, Air, Toxics & Hazardous Materials Division (3AH30), 6th & Walnut Streets, Philadelphia, Pennsylvania 19106.

SUPPLEMENTARY INFORMATION: In the May 19, 1980 **Federal Register** (45 FR 33063), the Environmental Protection Agency promulgated regulations, pursuant to Subtitle C of the Resource Conservation and Recovery Act of 1976 (as amended), to protect human health and the environment from the improper management of hazardous waste. These regulations included provisions under which EPA can authorize qualified State hazardous waste management programs to operate in lieu of the Federal program. The regulations provide for a transitional stage in which qualified State programs can be granted Interim Authorization. The Interim Authorization program is being implemented in two phases corresponding to the two stages in which the underlying Federal program will take effect. In order to qualify for issuance of Interim Authorization, the State hazardous waste program must:

(1) Have been in existence prior to August 17, 1980 and

(2) submit evidence to EPA showing that the existing State program is substantially equivalent to the Federal program.

A full description of the requirements and procedures for State Interim Authorization is included in 40 CFR Part 123 Subpart F, (45 FR 33479). As noted in the May 19, 1980 **Federal Register**, copies of complete State submittals for Phase I Interim Authorization are to be made available for public inspection and comment. In addition, a public hearing is to be held on the submittal, unless significant interest is not expressed.

A. R. Morris,

Acting Regional Administrator.

[FR Doc. 81-180 Filed 1-2-81; 8:45 am]

BILLING CODE 6560-38-M

DEPARTMENT OF ENERGY

41 CFR Part 9-15

Cost Principles Applicable to Commercial Organizations

AGENCY: Department of Energy.

ACTION: Proposed rule.

SUMMARY: The proposed rule revises the Department of Energy cost principles for bid and proposal (B&P) cost and independent research and development (IR&D) cost as applicable to commercial organizations. The basis for the change is to provide for more uniformity with the IR&D concepts introduced by the Cost Accounting Standards Board, the IR&D/B&P rules followed by the Department of Defense and the National Aeronautics and Space Administration, and DOE management of IR&D/B&P costs allocable to DOE contracts.

DATE: Comments must be received on or before February 4, 1981.

ADDRESS: Comments should be addressed to the Department of Energy, Procurement Policy Division (PR-222), Mail Stop IJ-009, Forrestal Building, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Mr. G. L. Allen, Policy and Procedures Division (PR-222), Procurement and Assistance Management Directorate (202) 252-8179.

Robert L. Forst, Attorney, Office of Assistant General Counsel for Procurement and Financial Incentives (GS-44), Office of the General Counsel (202) 252-1526.

SUPPLEMENTARY INFORMATION:

I. Background

Under Section 644 of the Department of Energy Organization Act (hereinafter referred to as "the Act") (Pub. L. 95-91, 91 Stat. 565, 41 U.S.C. 7254), the Secretary of the Department is authorized to prescribe such procedural rules and regulations as he may deem necessary or appropriate to effectuate the functions vested in him. Accordingly, the Department of Energy Procurement Regulations (DOE-PR) were promulgated with an effective date of June 30, 1979 (see 44 FR 34424). The proposed rule revises those DOE-PR sections applicable to commercial cost principles for bid and proposal and independent research and development costs. Significant changes included in the proposed rule:

(1) Deleting the requirement for development cost to be allocated over its related line of business or field of research and providing for allocation to all business.

(2) Providing a formula for determining reasonable bid and proposal expense in lieu of a historical arithmetic average.

(3) Providing a formula for determining reasonable IR&D expense.

(4) Providing for mandatory negotiation of advance ceilings of IR&D and B&P where such costs to be paid by the DOE exceed established thresholds.

(5) Adopting the accounting and allocation criteria of the Cost Accounting Standards Board.

(6) Providing for a certification of those IR&D projects believed relevant to the Department of Energy mission.

II. Statutory and Regulatory Requirements

Pursuant to section 501 of the Act (42 U.S.C. 7191) relating to the opportunity for oral presentations on proposed regulations, the Department has determined that no substantial issue of fact or law exists and that this DOE-PR regulation and revision thereto are unlikely to have a substantial impact on the Nation's economy, or large numbers of individuals or businesses. Accordingly, public hearings relating to this DOE-PR regulation will not be held. However, all written comments received by the Department in response to this proposed regulation will be carefully assessed and fully considered in the formulation of the final DOE-PR.

Note.—The Department has determined that the regulation will not affect the quality of the environment and that the requirements of Section 7(c)(2) of the Federal Energy Administration Act of 1974, Pub. L. 93-275, do not apply.

III. Public Comments

Interested persons are invited to participate by submitting data, views or arguments with respect to the proposed DOE-PR revisions set forth in this notice. Comments should be identified on the outside envelope and on documents submitted with a designation "Proposed Amendments—Department of Energy Procurement Regulations." All written comments received will be carefully assessed and fully considered prior to publication of the amendment as a final regulation.

For the reasons set out in the preamble, Part 9 of Title 41 CFR of the Code of Federal Regulations is proposed to be amended as set forth below.

Dated: December 24, 1980.

For the Department of Energy.

Berton J. Roth,

Deputy Director, Procurement and Assistance Management Directorate.

(Sec. 644 of the Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 599 (42 U.S.C. 7254))

41 CFR Chapter 9 is proposed to be amended to read as follows:

PART 9-15 CONTRACT COST PRINCIPLES AND PROCEDURES

§ 9-15.205.3 [Revised]

By deleting the entire text of the section and substituting the following therefor: A contractor's bidding costs are allowable in accordance with the provisions in § 9-15.205-35 of this Part 9-15.

§ 9-15.205.35 [Revised]

By deleting the title and entire text of the section and substituting the following therefor:

§ 9-15.205-35 Independent research and development (IR&D) and/or bid and proposed (B&P) Costs

(a) *Definitions.* For the purpose of this § 9-15.205-35:

(1) The term "Independent research and development" (IR&D) means those company research and development efforts which are not (i) sponsored by outside sources or (ii) required in performance of a contract, grant, or cooperative agreement.

(2) The term "Research" means:

(i) "Basic research" which is the systematic, intensive study directed toward greater knowledge and understanding of the subject studied; or

(ii) "Applied research" which is the systematic study directed specifically toward applying new knowledge to meet a potential or recognized need. As intended herein, attempts to determine and exploit the potential of scientific discoveries or improvements in technology, materials, processes, methods, devices, or techniques, and attempts to advance the state of the art are efforts of applied research.

(3) The term "Development" means the systematic application and use of scientific and technical knowledge directed toward the design, development, test, and evaluation of useful materials, devices, systems, and operations for potential new products or services or improvement in an existing product or services to meet specific requirements.

It includes technology development, concept and demonstration development, and full-scale development.

(i) "Technology development" is the systematic application of knowledge toward proof of technology, including development of nonspecific application prototypes and processes.

(ii) "Concept and demonstration development" is the systematic application of knowledge toward identification of solutions to meet specific requirements, including development of specific application prototypes and processes.

(iii) "Full-scale development" is the systematic application of knowledge toward production of useful materials, devices, systems, or methods, including design, development, and improvement of equipment and processes to meet specific requirements.

(4) The term "Bid and proposal (B&P) expense means the cost of those efforts incurred in preparing, submitting, and supporting bids and proposals (whether or not solicited) for Government or non-Government businesses. It includes the cost of:

(i) Administrative efforts, including the nontechnical effort for the physical preparation of technical proposal documents, and the technical and nontechnical effort for the preparation and publication of the cost data and other administrative data necessary to support a business organization's bids and proposals.

(ii) Technical efforts incurred to specifically support a bid or proposal, including the costs of system and concept formulation studies and the development of engineering and production engineering data.

(5) The term "business organization" includes all segments (i.e., divisions, subsidiaries, affiliates, or business units) of a business entity under a common control.

(6) The term "business unit" means any segment of an organization or an entire business organization which is not divided into segments.

(7) The term "segment" means one of two or more divisions, plants, product departments, or other subsidiaries reporting directly to a home or corporate office and usually identified with responsibility for profit and/or producing a product or service.

(8) The term "home office" means an office responsible for directing or managing two or more, but not necessarily all, segments of an organization. It typically establishes policy for, and provides guidance to the segments in their operations. It usually performs management, supervisory, or administrative functions, and may also perform service functions in support of the operations of the various segments.

(b) *Allowability.* (1) The costs for administrative and technical efforts incurred for (i) independent research and development and/or (ii) preparing, supporting, and submitting bids and proposals of a business organization, which are not separately identified and classified as IR&D/B&P expenses within its business unit's or segment's established accounting systems, shall be allowable in accordance with the

general principles of FPR 1-15.2 as implemented and supplemented by the DOE regulations in this Subpart 9-15.2, provided they are treated as indirect costs, allocated to all business of the business unit or segment incurring such costs, and the total to be allocated does not exceed $25,000 on either an organization, business unit, or segment basis. Where such costs exceed this limit, they shall be unallowable unless separately accounted for and determined to be reasonable in accordance with the requirements of this section.

(2) The cost of IR&D/B&P which are separately identified and classified as such shall be allowable and recoverable in DOE contracts in accordance with paragraph (f) of this section provided the costs are measured and accounted for as described in paragraph (c) of this section, are reasonable in amount as determined in paragraph (d) of this section, and are allocated in accordance with paragraph (e) of this section.

(3) Allowability of IR&D/B&P as defined and provided for herein is not applicable to contracts covering operation of Government-owned/leased facilities, or other cost-type contracts that require the use of DOE cost principles set forth in DOE-PR 9-50.15.

(c) *Accounting for IR&D/B&P.* (1) The basic unit for the identification and accumulation of IR&D/B&P cost shall be the individual IR&D/B&P project. However, when the costs of individual IR&D/B&P efforts are not material in amount (less than $25,000 per project) these costs may be accumulated in one or more projects within each of these two types of efforts.

(2) IR&D/B&P project costs shall be accumulated into IR&D/B&P cost pools. The IR&D/B&P cost pools for a business unit or segment shall consist of that segment's IR&D project costs benefiting only that segment, plus (i) the allocable home office or corporate IR&D/B&P costs, and (ii) those IR&D/B&P costs that may be allocated directly to it from another segment.

(3) B&P cost incurred in a given cost accounting period is not assignable or deferrable to any other cost accounting period for recovery in DOE contracts.

(4) IR&D cost incurred in a cost accounting period shall not be assigned to any other cost accounting period for recovery in DOE contracts except as may be permitted pursuant to provisions of existing laws, regulations, or other controlling factors.

(5) IR&D/B&P programs or efforts shall be treated as if they were a final cost objective. The IR&D/B&P project cost shall include, as if it were a direct cost, the cost for administrative and technical efforts incident to its performance. IR&D/B&P costs shall also include an allocable portion of allowable indirect costs (i.e., productive overhead and any other indirect costs) related to the project, allocated in accordance with generally accepted accounting principles or, where required, Government cost accounting principles and standards for allocation of indirect costs. Allowable IR&D/B&P project costs shall not include allocations of general and administrative expenses.

(d) *Reasonableness.* A determination of reasonableness shall be made as follows:

(1) Through negotiation of advance ceilings, when required as specified in paragraph (g) of this section establishing maximum dollar amounts of allowable (reasonable) cost for allocation to all work.

(2) By application of a formula, computed as described in paragraph (h) of this section.

(e) *Allocation.* (1) IR&D/B&P cost properly accumulated in a segment's or business unit's IR&D/B&P cost pools shall be recoverable as a cost under DOE contracts only if it is allocated to DOE contracts with that segment or business unit, as if it were an indirect expense. Allocations must be made on the same allocation base as used in allocating the general and administrative (G&A) expense grouping, of that business unit or segment in which the IR&D/B&P costs are incurred, to its Government contracts.

(2) Where the use of the G&A base for allocation of IR&D/B&P expense to final cost objectives does not provide an equitable allocation or distribution to a particular DOE contract or all of DOE's contracts, the DOE awarding activity may approve use of a different base for DOE contracts, or otherwise provide for a special allocation to DOE final cost objectives commensurate with the benefits received unless otherwise prohibited by applicability of Cost Accounting Standards Regulations, or other authority. The amount of any particular special allocation pursuant to such a agreement shall be excluded from the IR&D/B&P cost pools to be allocated to other DOE final cost objectives; and the particular cost objective base data shall be excluded from the base of allocate these pools.

(3) The cost of any work performed by one segment for another segment shall not be accounted for as IR&D/B&P cost of the performing segment unless the work is part of an IR&D or B&P project of the performing segment. The cost of such work shall be allocated directly to the benefiting segment or transferred to a home office for allocation to its segments. Direct allocation to the benefiting segment is allowed provided that such allocation is not substantially different from the allocation that would be made were it first allocated to a home office and reallocated to the benefiting segment.

(4) IR&D/B&P project costs accumulated at a home office or corporate office shall be directly allocated (for assignment to cost objectives) to any specific segment or business unit, where such costs are directly identified with that segment. The cost of all other IR&D/B&P projects accumulated at a home or corporate office shall be allocated among all segments by means of the same base used to allocate its other residual home or corporate office expenses. However, where a segment receives significantly more or less benefit from the IR&D/B&P projects than will be reflected by the allocation of their cost using this base, a special allocation may be agreed upon commensurate with the benefits received. The amount of any such special allocation shall be excluded from the pools to be allocated to other segments, and the base data of any such segment shall be excluded from the base used to allocate these pools.

(5) Where the allocable IR&D/B&P costs are established by negotiation, the memorandum of agreement shall specify the allocation procedure and base for assignment of cost to DOE contracts.

(f) *Recovery of Cost.* (1) The total amount of annual IR&D costs recoverable under all DOE contracts with a single organization, business unit, or segment shall not exceed (i) those contracts' allocable share of the appropriate (organization, business unit, or segment) allocable IR&D amounts, or (ii) the total cost of the organization's, business unit's, or segment's (as is appropriate) annual IR&D activities determined to have a potential benefit or relationship to the DOE program, whichever is less.

(2) For those contracts that do not provide for final cost determinations on a historical or "after-the-fact basis," the IR&D benefit requirement will be considered to have been met if the estimated IR&D cost allocated to any contract does not exceed its proportional share of the total estimated cost of IR&D with a potential benefit to DOE.

(3) The maximum amount of B&P expense which is recoverable under DOE contracts with an organization, business unit, or segment shall be those contracts' share of the allocable B&P expense computed in accordance with paragraphs (d) and (e) of this section.

(4) The organization, business unit, or segment shall submit no later than 90 days after the close of the cost accounting period for which IR&D shall be claimed for reimbursement under DOE contracts, a written statement identifying those IR&D projects and the cost incurred therefor for those IR&D projects it believes to be of benefit to the DOE program and so certify by use of the certificate described in paragraph (k) of this section. This certified amount shall normally be used to establish the threshold(s) of cost tq be recovered in accordance with paragraph (f)(1) of this section. However, notwithstanding the provisions of this paragraph, the DOE reserves the right to make the final decision as to benefit to the DOE program.

(5) No IR&D/B&P cost shall be recoverable under a DOE contract if negotiation of a required advance ceiling agreement is not initiated prior to the end of the fiscal year for which the agreement is required.

(6) For purposes of this paragraph, the term "DOE program" encompasses the DOE total mission and its objectives. However, IR&D costs that exceed the benefit threshold at one business unit or segment of a business organization cannot be used to offset IR&D costs that are less than the benefit threshold of another segment or business unit.

(g) *Advance Agreements.* (1) Any business organization which, during its most recent completed fiscal year, receives from the DOE conjunctive IR&D and B&P payments, either as a prime contractor or subcontractor, which are in excess of $4 million, shall be required to initiate and negotiate with the DOE an advance agreement(s) that establishes a separate ceiling, i.e., one each, for the allocable IR&D/B&P cost to be recovered in DOE contracts with that organization for the following fiscal year. Prior to the elapse of 6 months of any fiscal year where no such requirement exists and DOE payments during tht period exceed the $4 million threshold, an advance agreement shall also be required for allowability of IR&D/B&P costs for that year.

(2) When a business organization meets the criteria for negotiation of advance ceilings, the ceilings may be negotiated at the home office level, corporate level, and/or with those business units or segments which contract directly with the DOE and which in the preceding year allocated recoverable IR&D/B&P expense of $500,000 or more to contracts and subcontracts for which submission and certification of cost or pricing data was required. When ceilings are negotiated for separate business units or segments, the ceiling limits of allocable IR&D/B&P cost for any activity, which in its previous fiscal year did not reach the $500,000 threshold, may be determined in accordance with the formula approach.

(3) When negotiations of advance ceilings are required and negotiations were initiated but (i) no agreement of an acceptable ceiling can be reached, and/or (ii) negotiations have not established a ceiling prior to the end of the fiscal year for which compliance is required, negotiations shall be immediately terminated and the DOE negotiating activity shall establish allocable/allowable amounts. The amount of such a determination shall not be less than an amount which, in the opinion of the DOE contracting activity, the organization or business unit should be entitled to receive under a negotiated ceiling and/or the DOE benefit threshold. Written notification of the determination of amount shall be furnished the contractor.

(4) Business organizations that meet the threshold in (g)(3) of this section shall submit their request for negotiations, together with supporting technical and financial documentation, in accordance with guidance furnished by the DOE contracting officer.

(h) *Formula Application.* (1) Reasonable (allocable) IR&D/B&P costs for business organizations not required to negotiate advance agreements, except as specified in paragraph (h)(3) of this section, shall be determined on a historical or "after the fact" basis for an organization, business unit, or segment, using the technique in (h)(2) of this section.

(2) IR&D/B&P costs shall be considered reasonable for the current year if the costs are not in excess of 120 percent of the product of the organization, business unit, or segment's actual total sales (or other accepted base) for the current year and the historical IR&D/B&P ratio(s) computed under (h)(2)(i) of this section. If the product is less than 80 percent of the average as computed under (h)(2)(ii) of this section costs up to 80 percent of the average shall be considered as reasonable. The historical ratio(s) and average are computed as follows:

(i) Determining separately the ratio of IR&D/B&P costs to total sales (or other base acceptable to the contracting officer) for each of the preceding 3 years and averaging the two highest of these ratios (this is called the historical ratio);

(ii) Computing separately the average annual IR&D/B&P costs (herein called "the average"), using the two highest of the preceding 3 years.

(3) At the discretion of the contracting officer, the reasonableness (allocability) of IR&D/B&P costs may be negotiated when the contractor can demonstrate that the formula would produce an inequitable cost recovery. Such negotiations may be "after-the-fact" or prior to incurrence of the cost.

(4) Where no DOE advance negotiation is required to establish reasonableness, but an advance ceiling requirement for allowability of IR&D exists due to other Government agency regulations, and such an agreement has been executed by that activity for the current year, that agreement may be recognized as meeting the reasonableness criterion of paragraph (d)(2) of this section and application of the formula need not be applied.

(i) *IR&D/B&P Interchangeability.* Due to the similarity of IR&D/B&P regarding concept and system studies and the development of engineering and production engineering data, the allowable IR&D for allocation and recovery may exceed the required ceiling, provided the B&P ceiling provision is reduced by the same amount. Notwithstanding this provision, the recoverable IR&D amounts are still governed by Paragraph (f) of this section. B&P shall not exceed the required ceiling.

(j) *Appeals.* Determinations by the DOE contracting officer that established allocable/allowable IR&D costs, when efforts for advance agreements are unsuccessful, are subject to appeals. Such appeals should be directed to the senior Procurement official, Headquarters, Department of Energy, within 30 days of receipt of the written determination.

(k) *Certification of Benefit to the DOE Program.* Where a Certificate of IR&D Benefit to the DOE Program is required in accordance with paragraph (f)(4) of this section, the certificate set forth below shall be submitted by the business organization, business unit, or segment.

Certificate of Benefit to Department of Energy for Independent Research and Development

This is to certify that to the best of its knowledge, information and belief, and based on its understanding of the term "DOE Program," i.e., the goals, mission and objectives of the Department of Energy, the _____ (name of business) considers the following listed IR&D projects and expenses of said business for the period of (identify) _____ to be of benefit to the DOE program and subject to recovery under DOE contracts.

(Identify here or on attached list those projects benefiting the DOE program. Provide title and short description of program.)

This is to also certify that I,

(name am duly authorized to file this certificate on behalf of said business, which is so filed this date of _____, _____
Name(s) _____
Title _____

[FR Doc. 81-99 Filed 1-2-81; 8:45 am]

BILLING CODE 6450-01-M

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41 CFR Part 9-50

Cost Principles as Applicable to Subcontract Awards

AGENCY: Department of Energy.

ACTION: Proposed rule.

SUMMARY: The proposed rule revises the Department of Energy cost principles as applicable to subcontract awards made by Department operating contractors. The basis for the change is to provide for acceptance of accounting principles and cost of doing business normally found in the commercial, educational and state/local government systems.

DATE: Comments must be received on or before February 4, 1981, to be considered.

ADDRESS: Comments should be addressed to the Department of Energy, Procurement Policy Division (PR-222), Mail Stop IJ-009, Forrestal Building, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Mr. G. L. Allen, Policy and Procedures Division (PR-222), Procurement and Assistance Management Directorate, (202) 252-8179

Mr. Robert L. Forst, Attorney, Office of Assistant General Counsel for Procurement and Financial Incentives (GS-44), Office of the General Counsel, (202)-252-1526

SUPPLEMENTARY INFORMATION:

I. Background
II. Statutory and Regulatory Requirements
III. Public Comments

I. Background

Under section 644 of the Department of Energy Organization Act (hereinafter referred to as "the Act") (Pub. L. 95-91, 91 Stat. 565, 41 U.S.C. 7254), the Secretary of the Department is authorized to prescribe such procedural rules and regulations as he may deem necessary or appropriate to effectuate the functions vested in him. Accordingly, the Department of Energy Procurement Regulations (DOE-PR) were promulgated with an effective date of June 30, 1979 (see 44 FR 34424). The proposed rule revises those DOE-PR sections governing cost principles applicable to contract awards made by DOE operating contractors.

II. Statutory and Regulatory Requirements

Pursuant to section 501 of the Act (42 U.S.C. 7191) relating to the opportunity for oral presentations on proposed regulations, the Department has determined that no substantial issue of fact or law exists and that this DOE-PR regulation and revision thereto are unlikely to have a substantial impact on the Nation's economy, or large numbers of individuals or businesses. Accordingly, public hearings relating to this DOE-PR regulation will not be held. However, all written comments received by the Department in response to this proposed regulation will be carefully assessed and fully considered in the formulation of the final DOE-PR.

Note.—The Department has determined that the regulation will not affect the quality of the environment and that the requirements of section 7(c)(2) of the Federal Energy Administration Act of 1974, Pub. L. 93-275, do not apply.

III. Public Comments

Interested persons are invited to participate by submitting data, views, or arguments with respect to the proposed DOE-PR revisions set forth in this notice. Comments should be identified on the outside envelope and on documents submitted with a designation "Proposed Amendments—Department of Energy Procurement Regulations." All written comments received will be carefully assessed and fully considered prior to publication of the amendment as a final regulation.

For the reasons set out in the preamble, Part 9 of Title 41 CFR of the Code of Federal Regulations is proposed to be amended as set forth below.

Dated: December 22, 1980

For the Department of Energy.

Hilary J. Rauch,

Director, Procurement and Assistance Management Directorate.

(Sec. 644 of the Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 599 (42 U.S.C. 7254))

41 CFR Chapter 9 is proposed to be amended to read as follows:

PART 9-50—OPERATING AND ON-SITE SERVICE CONTRACTS

§ 9-50.302-3 [Amended]

By amending Paragraph (c) to insert after the first sentence a new sentence as follows: Allowable cost shall be determined in accordance with the cost principles of Part 9-15 appropriate for the type of organization to which the subcontract is awarded.

§ 9-50.1500 [Amended]

By amending Paragraph (a) to delete the second sentence which reads: Contracting Officer shall take action to make this subpart applicable to cost-type subcontracts by: (1) directing compliance by the prime contractor if consistent with his currently existing contract; or (2) conditioning future contracting officer approval of subcontracting procedures or subcontracts upon such compliance.

§ 9-50.1505 [Amended]

By amending the single sentence under this Section to delete the 11 words beginning after the initials "DOE" and which reads: in connection with cost-type contracts and with cost-type subcontracts.

41 CFR Chapter 9 is amended by adding a new § 9-50.1510-21 as follows:

§ 9-50.1510-21 Subcontracts.

Award and management policies for subcontracts placed under operating contracts when necessary to the performance of the required services and work efforts of the operating contractor are set forth in Subpart 9-50.3 of this Part 9-50. The cost of performing such subcontracts shall be made allowable under the DOE contract when the award/approval is in accord with the provisions of that subpart and the reimbursement of subcontractor costs by the operating contractor are in accordance with the provisions of the DOE cost principles set forth in Part 9-15, as appropriate to the type of subcontractor being selected, i.e., commercial, educational, state/local government, nonprofit organization.

[FR Doc. 81-100 Filed 1-2-81; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 481, and 482

Medicare and Medicaid Programs; Conditions of Participation: Hospitals Correction Notice

AGENCY: Heath Care Financing Administration (HCFA), HHS.

ACTION: Correction to proposed rule.

SUMMARY: This notice corrects proposed rules on conditions of participation which hospitals must meet to be certified to participate in Medicare and Medicaid programs. These proposed rules were originally published on June 20, 1980 (45 FR 41794; FR Doc. 80-17412).

FOR FURTHER INFORMATION CONTACT:

Janet Harryman, 301-594-9712.

SUPPLEMENTARY INFORMATION:

Background

This notice deals with two separate items in the June 20, 1980 publication of proposed revisions of the hospital conditions of participation (45 FR 41794; FR Doc. 80-17412).

First, during the traditional period in establishing the reorganized Department of Health and Human Services, we have changed the location at which written comments on the proposed rule are available for public inspection.

Second, a recent amendment to the current hospital conditions of participation was inadvertently omitted from the proposed rule. This amendment (45 FR 20802; March 31, 1980; FR Doc. 80-9550) deleted the language in the hospital laboratory regulations which stated that hospitals accredited by the American Osteopathic Association (AOA) were not deemed to meet the standards on proficiency testing and quality control. We have received a number of phone contacts inquiring if we are proposing to reinstate this language. We are not. Hospitals accredited by AOA are now deemed to meet these requirements, and we do not intend to rescind the March amendment. Therefore, we are making appropriate changes in the proposed rule.

FR Doc. 80-17412 is corrected as follows:

1. In the preamble, on page 41794, under the address section in the left column, correct the second paragraph as follows: "Comments will be available for public inspection Monday through Friday, from 8:30 a.m. to 5:00 p.m. beginning approximately 2 weeks after publication, in Room 309G, Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201. (202-245-7890)

2. On page 41812, left column, correct 482.30(k) to read as follows:

(k) *Standard; Proficiency Testing.* The laboratory meets the proficiency testing provisions of § 405.1314(a). The definition of "proficiency testing program", as stated in § 405.1310(c), is also applicable.

3. On page 41812, left column, correct 482.30(1) to read as follows:

(l) *Standard; Quality Control.* The laboratory meets the quality control provisions of § 405.1317.

(Secs. 1102, 1861(e), 1861(f), 1861(g), 1864, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x(e), 1395x(f), 1395x(g), 1395aa, and 1395hh)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program and No. 13.773, Medicare-Hospital Insurance.)

Approved: December 18, 1980.

Robert F. Sermier,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 81-98 Filed 1-2-81; 8:45 am]

BILLING CODE 4110-35-M

ACTION

45 CFR Ch. XII

Semiannual Agenda of Significant Regulations

AGENCY: Action.

ACTION: Semiannual Agenda of Significant Regulations.

SUMMARY: In accordance with Executive Order 12044, Improving Government Regulations, ACTION is publishing its semiannual agenda of significant regulations and guidelines under development or review. The purpose of this agenda is to help the public become aware of the agency's review of existing regulations and the development of new regulations, and to enable the public to more effectively contribute to those processes.

DATES: Comments on regulations scheduled for review or development must be received before the target dates set forth in the agenda. If a target date does not indicate a specific date, comments will be accpeted until the last day of the month identified as the target date.

ADDRESSES: Send comments to the program office initiating the review or development of the regulation. The mailing address for each initiating office of ACTION is 806 Connecticut Avenue, N.W., Washington, D.C. 20525.

FOR FURTHER INFORMATION CONTACT: For more specific information about particular items, contact the individual named in the agenda. For further information about the agenda in general, contact Randi Greenwald, Assistant General Counsel, ACTION, Room M.607, 806 Connecticut Avenue, N.W., Washington, D.C. 20525, telephone 202-254-7974.

SUPPLEMENTARY INFORMATION: Explanation of Information in the Agenda. The agenda includes the following information for each item listed: a brief description of the proposed or existing regulation; the need andl legal basis for the action being taken; a target date for publication of a draft regulation in the **Federal Register**; the name and telephone number of an agency official familiar with the regulation.

ACTION's last agenda, which appeared in the July 7, 1980 **Federal Register**, contained three (3) items. The revision of the Older American Volunteer Program (OAVP) regulations and handbooks has been postponed to March 30, 1981 for the regulations and June 30, 1981 for the handbooks.

The final guidelines for the Office of Voluntary Citizen Participation (OVCP) Mini-Grant Program are scheduled for publication on or before February 17, 1981.

The revision of Handbook 2650.2, Policies and Procedures for Business Management of Domestic Project Grants, has been postponed indefinitely.

The publication of this agenda does not impose any binding obligation on ACTION with respect to any specific item on the agenda.

Issued in Washington, D.C., on December 30, 1980.

Sam Brown,

Director, ACTION.

Regulation	Initiating office	Need and legal basis	Contact	Target date
Revision of Older American Volunteer Program regulations and handbooks		Clarify regulations and handbooks in light of amendments to Title II of the Domestic Volunteer Service Act of 1973 (DVSA).		Regulations: Mar. 30, 1981. Handbooks: June 30, 1981.
Retired Senior Volunteer Program (RSV)	a. RSVP		a. Alfred Larsen, (202) 254-8124	
Foster Grandparent Program (FGP)	b. FGP		b. Jack Kenyon, 254-7605	
Senior Companion Program (SCP)	c. SCP		c. Suzanne Fahy, 254-7605	
Final guidelines for Office of Voluntary Citizen Participation (OVCP) Mini-Grant Program.	OVCP	Clarify requirements for mini-grants authorized by Title I, Part C of the DVSA.	Dagnija Kreslins, 254-3545	Feb. 17, 1981
Development of Support Services Assistance (SSA) Guidelines	OVCP	Set forth requirements for SSA grants under Title I, Part C of the DVSA.	Dagnija Kreslins, 254-3545	June 30, 1981
Revision of Guidelines for VISTA Supervision and Transportation Grants	VISTA	Clarify requirements for grants under Title I, Part A of the DVSA.	Angelo Traficanti, 254-6880	June 30, 1981

[FR Doc. 81-00194 Filed 1-2-81; 8:45 am]

BILLING CODE 6050-01-M

COMMUNITY SERVICES ADMINISTRATION

45 CFR Part 1062

Community Action Agencies; Eligibility and Establishment

AGENCY: Community Services Administration.

ACTION: Proposed revision of a rule.

SUMMARY: CSA is publishing a proposed revision of its policy governing the eligibility and establishment of Community Action Agencies (Catalog of Federal Domestic Assistance number 49.002). This revision implements two legislative amendments to the Economic Opportunity Act and addresses problems in the policies and procedures of the current rule which have been identified through operational experience.

DATE: CSA welcomes and encourages comments on this proposed revision. Comments received by March 6, 1981 will be considered in drafting the final rule.

ADDRESS: Address all comments to: Ms. Jacqueline G. Lemire, Community Services Administration, Policy Development and Review Division, 1200 19th Street, N.W., Washington, D.C., 20506, Telephone (202) 254-5047, Teletypewriter (202) 254-6218.

SUPPLEMENTARY INFORMATION: Based on its published criteria implementing Executive Order 12044, CSA has determined that this proposal is a significant change to a rule. This proposed revision to Chapter X, Part 1062, CAAs: Eligibility and Establishment, has been developed primarily to implement legislative changes to Sections 210(c) and 210(d) of the Economic Opportunity Act. In addition CSA is taking this opportunity to address issues and problems which have arisen at the local, Regional and Headquarters levels in operating under the current policy. Our objectives include assuring that prior to a dedesignation that the existing CAA and citizens of the community have an opportunity to hear and understand the issues leading to the proposed dedesignation and to make known their positions on the matter; and assuring that when dedesignating there is minimal disruption of the programs and minimal impact on beneficiaries. The current rule also has been written and reorganized in response to the President's directive (Executive Order 12044) that rules be written in plain English.

We would like the public to review this proposed revision to determine whether or not, and how well, we have accomplished our objectives; to highlight issues or problems which have yet to be addressed; to identify the vacuums that still exist; and to identify the need for any major shifts in policy. Following is a summary of the major changes proposed in the revision:

Subpart A

—Definitions no longer needed have been removed.

Subpart B

—Entirely new section.

Subpart C

—Implementats legislative amendment to Section 210(c).

Subpart D

—In "Powers" section "age" and "handicap" have been added to anti-discrimination list.

—Statement has been added requiring that, although project operation can be delegated to other agencies, ultimate responsibility for carrying out the legislatively mandated functions must rest with one administrative entity.

Subpart E

—Terminology has been changed in order to be specific regarding responsibilities, e.g. the term "governing officials" is always used rather than "a State", "a county", etc. when actions are required to be taken.

—Immediately prior to the time when a designation would take place, policy would require governing officials to inform other political subdivisions and existing CAA(s) of citizen input at public hearings and of the decision of whether or not to continue with plans to designate and to provide them with information on comments received at public hearings and from other jurisdictions. The current regulation requires that they merely inform these entities after designation.

—Would require that when a multi-county CAA is proposed that hearings be held at least in the county seat of each county and in cities with a population of 100,000 or more. For a proposed single county or urban CAA hearings would be held in areas where the CAA plans to concentrate its program activities. The current regulation requires that for Statewide designation hearings be held in each county seat and each municipality with a population over 100,000—it does not specify location for other designations.

—The current rule requires that during the 30 day notification period the CAA should have proceeded to organize its governing board, etc. The *status* of these activities is to be reported to CSA at time of application for recognition. In order to preclude the approval of an entity as a CAA without knowing what it will really "look like", this has been changed to require that all of this be finalized and ready for CSA review and approval by time of application for recognition.

—The proposed regulation changes the sequence of when the CAA is to be organized, board selected, etc. to a period following notice of intent and public hearings. The current rule places this activity in the same time frame as the 30 day notification period which would appear to make the public hearings a mere formality.

—CSA would grant only interim recognition of a CAA upon submission of acceptable documents. Final recognition would be given when the agency's initial Planning Process Narrative has been approved.

—The proposed revision would require that public hearings be held prior to revocation. Hearings would be for the sole purpose of receiving input from low-income and other interested citizens and the existing CAA. If the governing officials decided to proceed with the revocation and subsequently to designate a new agency or organization to serve as the CAA, they would be required to again hold public hearings.

—CSA would withdraw recognition if it determined that a CAA was no longer able to exercise its powers or was not carrying out the functions required of a CAA.

—There is no role for the entity receiving Section 231 funds in the proposed rule.

—If CSA were to directly designate a CAA, it would follow the same procedures as those required of governing officials.

—CSA would provide recognition of a new CAA only at the end of the existing CAA's program year. However, criteria

for granting exceptions have been built in.

—Board, bylaw requirements, and Executive Director's relationship to Community Action Board reflect policy in revised Board rule (Subpart J of Part 1062.)

—The proposed rule allows for use of a Closedown Plan rather than a Transition Plan when the CSA official responsible for recognizing the CAA and the governing officials agree to do so.

—Language regarding the need for an adequate level of Title II funds has been included. This statement was in the original but had been deleted by a revision.

—In the instance where it is too burdensome for governing officials of all municipalities within the county to make a designation and, therefore, it is agreed that the designation be made by governing officials of one of the municipalities, CSA proposes that governing officials of all the jurisdictions should work out formal arrangements detailing those officials who will have the powers of the designating officials for such activities as selecting public officials to serve on the board.

Subpart F

—When revoking a designation, governing officials would conduct hearings for the sole purpose of affording representatives of the existing CAA and low income and other interested citizens an opportunity to express their views on the proposed revocation.

—Terminology has been changed to eliminate terms that must be defined, e.g., "revocation" and "opt-out".

Appendices

—Portions of CSA Form 513, Grantee Board and Participants Characteristics, would be substituted for the current CAP Form 5.

—Appendix A would be revised to reflect proposed changes in the policy statement.

—Closedown Plan—An element has been added describing how and when the Closedown Plan can be used in lieu of the Transition Plan.

[Sec. 602, 78 Stat. 530; 42 U.S.C. 2942 45 CFR Part 1062]

Richard J. Rios,

Director.

Subparts A through I are proposed to be revised to read as follows:

PART 1062—COMMUNITY ACTION AGENCIES; ELIGIBILITY AND ESTABLISHMENT

[1] Appendix filed as a part of original document.

Subpart A—General

§ 1062.1 Definitions of terms used in this part.

(a) *"Community"*—the geographic area and population to be served by a community action agency. Section 210(c) of the Economic Opportunity Act provides that:

"For the purpose of this title, a community may be a city, county, multicity, or multicounty unit, an Indian reservation, or a neighborhood or other area (irrespective of boundaries or political subdivisions) which provides a suitable organizational base and possesses the commonality of interest needed for a community action program. . . ."

(b) *"State"*—The 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(c) *"Political Subdivision"* or *"Subdivision"*—A unit of general local government for a specific geographic area within a State. Normally this will be a county, township, metropolitan or regional government, city, town or village. The term also includes the tribal government of a State or Federal Indian reservation. It does not include specialized governmental agencies, such as school boards, conservation districts, or separate park or police authorities.

(d) *"Governing Officials"*—Normally, (1) the governor and legislature of any of the 50 States, the Commonwealth of Puerto Rico, or a self-governing territory, or (b) the chief elected or duly appointed officials of a local political subdivision, of the District of Columbia, or of a non self-governing territory, who collectively posses the power to adopt and carry out local laws or ordinances. However, if the Attorney General or other chief legal officer of the political jurisdiction certifies in writing that the governor, mayor or other chief executive officials, or a specific group of the officials described about possesses the power either (i) to plan, conduct, administer, and evaluate a community action program, or (ii) to designate a separate public agency or private non-profit organization as a community action agency, then that official or group of officials may be considered the "governing officials" for that purpose.

(e) *"Separate public agency"*—A public agency which is not itself a State,

a political subdivision, or a combination of political subdivisions and which has a governing board as described in Subpart J of Part 1062, Chapter X.

Subpart B—What Is a Community Action Agency?

§ 1062.5-1 What it is.

(a) Title II of the Economic Opportunity Act of 1964, as amended, provides for the establishment of Community Action Agencies (CAAs) and community action programs, and prescribes the structure and describes the functions of these Agencies.

(b) A Community Action Agency is an organization or agency which has overall responsibility for planning, coordinating, evaluating, and administering a community-based and operated program known as a community action program. This program is made up of projects or components which, in toto, provide a range of services and activities having a measurable and potentially major impact on the causes of poverty in the community or those areas of the community where poverty is a particularly acute problem. The projects need not be only those funded under the Economic Opportunity Act but also may be projects assisted by other public or private sources. In fact this latter effort—the mobilization of other resources—is one of the specific purposes of Title II of the Economic Opportunity Act. The community action program also must be developed in a manner which will enable it to carry out the purposes of Title II, and its component projects and activities should be organized and combined to accomplish these goals.

§ 1062.5-2 The functions of a CAA.

Section 212(b) requires that at a minimum each CAA must carry out the following functions:

(1) It must be an advocate for the poor. In this role it must encourage agencies engaged in community action activities related to the community action program to plan for, secure and administer assistance available to them under Title II or other sources on a common or cooperative basis and it must provide planning or technical assistance to those agencies. Generally, it must undertake actions to improve existing efforts to attack poverty.

(2) It also must serve as an advocate for the poor by assuring that there is maximum feasible participation of the poor both in the community action program and in other programs which affect their lives. In this effort the CAA must establish effective procedures by which the poor and area residents concerned will be enabled to influence the character of these programs, providing for their regular participation in the implementation of these programs, and providing technical and other support needed to enable the poor and neighborhood groups to secure on their own behalf available assistance from other public and private sources.

(3) It must plan systematically for and evaluate the community action program.

(4) It must initiate and sponsor projects responsive to the needs of the poor which are not otherwise being met. The emphasis must be on the provision of central or common services, the development of new approaches or new types of services that can be incorporated into other programs, and filling gaps pending the expansion or modification of those programs.

(5) The CAA must join with and encourage business, labor and other private groups and organizations to undertake, together with public officials and agencies, activities in support of the community action program which will result in the additional use of private resources and capabilities.

Subpart C—When Is a Community Eligible To Be Served by a CAA?

§ 1062.10-1 Minimum tests of community eligibility.

(a) To be eligible to be served by a CAA at a minimum a community must be one of the following:

(1) A state.

(2) A city or other municipality, or a group of municipalities, with a population of at least 100,000 people, according to the most recent Bureau of Census survey or census.

(3) A county, group of counties or predominantly rural part or parts of one or more counties. A minimum of 50,000 persons according to the most recent Bureau of Census survey or census will apply in each of these cases unless: (1) at least 20% of the families and unrelated individuals residing in these areas have incomes below the poverty line as determined by the most recent Bureau of the Census survey or census, (2) this area or these areas have not refused at any time after June 1, 1978 to continue to be served by a CAA which covered a larger geographical area than that proposed to be covered by the new CAA (Section 210(c) of the Economic Opportunity Act), and (3) there is an adequate amount of Title II funds available for the proposed CAA. (See discussion in § 1062.20-3(a) of this Part).

(4) Area or areas governed by one or more Indian tribal governments.

(b) The above tests are not applicable to a community or communities served by a Community Action Agency if the CAA was recognized by OEO/CSA prior to February 1, 1969, provided that the political subdivisions within the area and the existing CAA have not rejected a reasonable opportunity to combine the area with other areas so as to enable the combined area to satisfy one of the tests.

§ 1062.10-2 How a community currently served by a CAA can lose its eligibility and the results of loss of eligibility.

(a) If, because of a loss of population or as a result of an area's decision that it no longer wishes to be served by an existing CAA, the community can no longer meet the requirements of 10-1 of this subpart, the community will lose its eligibility to be served by a CAA.

(b) When a community loses its eligibility, the appropriate governing officials with the power to designate may designate a CAA serving another community to serve the ineligible community by following the procedures in 20-3 of this subpart. Where these governing officials fail to make such a designation, CSA itself may make such a designation by following the same procedures.

(c) When another CAA is designated to serve a community which has been rendered ineligible, the funds currently available for the ineligible community will be allocated to the CAA so designated. The loss of eligibility, however, will not preclude CSA from providing Title II assistance for appropriate limited purpose projects within the area rendered ineligible.

Subpart D—Structure and Powers of a CAA

§ 1062.15-1 Who can serve as a CAA?

Section 210(a) of the Economic Opportunity Act states that a Community Action Agency will be (a) a State, or (b) a political subdivision of a State having elected or duly appointed officials, or a combination of such political subdivisions; or (c) an Indian Tribal government. It also notes that any such unit or combination of governments may designate another public agency or a private nonprofit organization or agency to serve as the CAA if it does not choose to carry out the functions of a CAA through one of its own agencies.

§ 1062.15-2 What does a CAA look like?

(a) *Boards of Directors.* Section 211(a) of the Economic Opportunity Act requires that each Community Action Agency have a broadly representative board. The appropriate type of Board for a given CAA is determined by which

entity the State or local government designates to be the CAA—itself, a private nonprofit corporation, or a separate public agency. Subpart J of this Part provides detailed policy on board requirements.

(b) *Administrative unit.*

(1) Although the organization and management of every CAA will differ one from the other depending on the size and nature of the geographic area each serves and the nature of the CAA (public or private nonprofit), the legislation requires that each CAA " * * * observe standards * * * of organization, management, and administration which will assure, so far as reasonably possible, that all program activities are conducted in a manner consistent with the purposes of (Title II) and the objective of providing assistance effectively (and) efficiently * * * "

(2) Therefore, in carrying out a community action program, a CAA may have a highly centralized or decentralized structure or something which falls somewhere in between. The nature of its administrative structure depends on how the organizers of a new CAA, and subsequently its board of directors, perceive that it can best fulfill the legislative requirements quoted in § 1062.15-2(b)(1) of this Chapter. Whatever the structure, however, the entity administering the community action program must be so organized as to be readily identifiable as a Community Action Agency—in other words, although it can delegate project operation to other agencies, ultimate, responsibility for carrying out the legislatively-mandated functions must rest with one administrative entity.

(3) A CAA may use one or all of the following means to carry out the community action program:

(i) Direct performance of activities by staff of the agency.

(ii) Delegation of portions or all of a component project or all projects to another public or private nonprofit agency or agencies by means of a contract or agreement. (See § 1063.131 of this Chapter for policy on delegating the operation of projects.)

(iii) Retaining the services of qualified consultants or other organizations, whether nonprofit or profit-making, to conduct specialized activities or to provide advice under contract.

In general, consultants or other organizations should only be used when it is not feasible to operate a program by using the staff of the community action agency or local public or nonprofit agencies. (See § 1050.160 of this Chapter for policy on contracting for consulting services.)

§ 1062.15-3 What are the powers of a Community Action Agency?

In designating an agency to serve as the Community Action Agency, the designating officials must assure that the prospective CAA is permitted under State or local law to exercise the following powers:

(a) A CAA must have the legal powers to contract with other agencies and organizations to conduct all operating programs within the community action program where such conduct by another agency would contribute to efficiency or effectiveness or otherwise further program objectives.

(b) A CAA must be able, in choosing the best qualified delegate agencies to conduct those projects and activities which it does not itself conduct, to contract with, and transfer funds to, any of the following without limitation:

(1) Private nonprofit organizations, including churches and church-related organizations.

(2) Other private organizations, including business firms.

(3) The State government.

(4) Political subdivisions which are included in the community served by the CAA.

(5) Other specialized State, regional, or local public agencies, such as welfare departments, public schools and school systems, and regional planning agencies.

(c) A CAA must be able to procure necessary program facilities, goods, and services in a manner which best meets the needs and interests of its program.

(d) A CAA must be able to enforce its delegation agreements and procurement contracts by appropriate means, including:

(1) Audit and disallowance of improper costs.

(2) Suspension and termination of the contract.

(3) Court action to require performance.

(4) Court action to recover any funds spent or withheld in violation of a delegation agreement or damages for breach of contract.

(e) A CAA must be able to receive, hold, expend, or transfer, and account for, Federal and State assistance funds, including all types of assistance which is available under applicable Federal or State law to other similar public or private nonprofit agencies.

(f) A CAA must be able, since most Federal assistance under the Economic Opportunity Act is provided on a matching basis, to accept, use, and account for, contributions from non-Federal sources of:

(1) Cash.

(2) Space and physical plant facilities.

(3) Goods, materials, and equipment.

(4) Volunteer or paid services.

(g) A CAA also must be able to contribute its own property and funds, as necessary, to match Federal assistance.

(h) A CAA must be able, to the extent that goods, equipment, or property are acquired for use in the community action program, to hold and dispose of them as directed by the United States in accordance with the conditions of Federal assistance.

(i) A CAA's employment or other policies must allow the CAA to:

(1) hire any qualified poor person, in preference to other qualified persons who are not poor;

(2) hire any qualified person who lives in the neighborhood or area where the job is to be performed, in preference to other qualified persons who do not live there;

(3) employ persons without any fixed upper age limit;

(4) hire for non-professional positions persons who have ties to the program or to the program's beneficiaries, for example, parents of pre-school children, manpower program trainees, the elderly, tenants of a particular project or block;

(5) hire any person who can perform a non-professional job, even though he or she lacks a formal education.

(6) hire a qualified person even though that person has a criminal record, unless such a restriction is required by CSA policies governing the employment of persons with criminal records; (See § 1069 of this Chapter.)

(7) employ persons without regard to their race, religion, sex, color, age, national origin, or handicap; and

(8) pay program employees the current Federal minimum wage for employment in interstate commerce.

(9) The requirement to be free of restrictions preventing (1) through (8) above shall be waived by the CSA Regional or Headquarters office recognizing the CAA, for public CAAs (government CAAs or separate public agencies) which are subject to civil service laws or regulations which impose such restrictions, *provided* that:

(i) The CAA delegate the conduct of all programs and activities funded under the Economic Opportunity Act other than basic central administration to other agencies which, with such exceptions as CSA may agree to for compelling programmatic reasons, are free of such restrictions; and

(ii) The CAA commit itself to make every effort to seek changes in such civil service laws or regulations so as to eliminate such restrictions.

(iii) A waiver granted under (9)(i) and (ii) above shall be extended beyond a year only upon receipt of documentation

by the CAA that adequate efforts to change restrictive regulations have, in fact, been made.

(j) A CAA must also be free, with regard to the community action program, from any rules or restrictions which would prevent:

(1) Restriction of program participation to persons who qualify under CSA income eligibility guidelines.

(2) Restriction of program participation to persons who are residents of particular neighborhoods or areas.

(3) Restriction of program participation to particular groups or classes of poor or low income persons in accordance with specific program guidelines (for example, the elderly, members of specific neighborhood organizations or cooperatives, and students in specific schools).

(4) Free participation in the program by persons who currently are living in the community, whether or not they qualify as legal or permanent residents.

(5) Participation by all eligible persons without regard to race, religion, sex, color, age, national origin, or handicap.

(k) The CAA's governing laws, charter, or by-laws must not artificially restrict its ability to conduct the community action program within all political subdivisions included in the community, in accordance with the program and fiscal policies, plans and priorities set by the CAA. For example, if the CAA is an agency which is a combination of two or more political subdivisions or is a public agency jointly formed or designated by two or more subdivisions, it must be able in appropriate cases to use contributions of funds, equipment, or services from one subdivision for approved projects in another subdivision.

(l) The CAA must be able to meet all applicable requirements of 45 CFR 1062 Subpart J which deals with the powers, structure, composition and procedures of representative boards.

Subpart E—How a Community Action Agency is Established

§ 1062.20-1 Who selects the agency or organization which will serve as the CAA?

Section 210 of the Economic Opportunity Act gives State and local governing officials the authority to select the CAA which will serve a given community. Section 210, however, also authorizes CSA to designate a CAA when State or local officials choose not to make a designation at all or fail to submit an acceptable plan for a community action program.

§ 1062.20-2 What areas can a single CAA serve?

(a) Generally, governing officials will designate an organization to serve as a CAA only in the areas over which they have jurisdiction. However, in the two groups of cases described in (1) and (2) below, governing officials may designate a separate public CAA or a private non-profit CAA to serve a community which extends beyond the boundaries of their political subdivision(s). (It should be noted that this subsection addresses only those areas in which a CAA may provide on-going, comprehensive community action planning and programming. This does not preclude the operation of a project or several projects by a CAA in a community outside of its designated jurisdiction.)

(1) *Where no appropriate governing officials are willing to designate*, e.g. if neither the governing officials of the State nor of a group of counties are willing to designate a multi-county CAA, the governing officials of a county within the multi-county area may make a multi-county designation; if neither the governing officials of a State nor of the county are willing to designate, the governing officials of a municipality within the county may make a county-wide designation; etc.

(2) *Where there is no general county government and the governing officials of the State are unwilling to designate:*

(i) It may be burdensome for governing officials of all municipalities within the county to make designations. In this instance governing officials of one of the municipalities within the county accordingly may make a county-wide designation. However, in this case governing officials of all jurisdictions should make formal, written arrangements indicating which officials will serve as the designating officials for such activities as the selection of public officials to serve on the board.

(ii) In addition, where no appropriate governing officials are willing to designate or where CSA has refused to grant recognition of a State or local designation, the Director of CSA may designate a public or private nonprofit agency to serve as the Community Action Agency in that community. In no case, however, will CSA make a designation that it would not have recognized had it been made by governing officials of a State or local government.

(b) In all cases cited in (a) (1) and (2) above, the community to be served (as opposed to the subdivision making the designation) must meet the eligibility standards specified in § 1062.10-1 of this part.

(c) When the governing officials of two or more political jurisdictions make simultaneous designations for all or part of the same community, the designation of the smallest jurisdiction shall take precedence. For example, if the governing officials of a State designate a State agency as the CAA and the governing officials of one or more counties make their own designations, the county designations shall be recognized by CSA and the State CAA will serve only that portion of the State outside those counties.

§ 1062.2-3 What procedures are to be followed in designating an organization or agency as the CAA?

(a) Prior to undertaking the process of designating an agency or organization to serve as a CAA, governing officials should contact the appropriate CSA Regional Director to discuss their proposed activities and to determine the availability of Title II funds to support the CAA in carrying out its legislatively-mandated functions. Experience has shown that CAAs can have a significant impact on local poverty only if they can secure an adequate level of assistance under Title II of the Economic Opportunity Act. Accordingly, CSA will not be able to recognize new CAAs designated to serve communities which are not now served by a CAA unless there is a likelihood that the CAA can secure an adequate level of Title II assistance. Moreover, the designation of two or more CAAs to serve a community now served by a single CAA might result in increased administrative costs which would decrease the remaining Title II assistance to an inadequate level.

(b) The procedures outlined in (g)(i) through (vii) and (h) below are to be followed by governing officials when making initial designations and in situations where they are designating another agency to serve as a CAA following (2) the revocation of a prior designation or (2) where the governing officials have chosen not to be included in the community action program of a Community Action Agency which has been designated by the State or by one or more other political subdivisions but have chosen to make their own designation.

(c) the procedures outlined in (g)(i) through (iv), (viii) and (ix) will be followed when an existing CAA proposes to expand to cover additional jurisdictions. However, all activities, e.g. hearings, Notice of Intent, etc., need only be undertaken in the area(s) to be served.

(d) In the case where the Director of CSA proposes to make the designation,

CSA will follow the procedures in (g)(i) through (vii) below. Also, if governing officials have completed some of the actions required in this procedure prior to a decision not to designate, CSA will make a determination as to the acceptability of these actions and may begin the designation process at the point where governing officials left off.

(e) CSA will not defray the expenses of any costs incurred in the process of designating a CAA and/or applying to CSA for recognition of that agency or organization as a CAA unless prior written agreement has been reached with CSA.

(f) The designation of a CAA may be made at any time. However, if the designation will require the revocation of a designation of an existing CAA or a decision to no longer be included in the ongoing community action program of a Community Action Agency, CSA will provide recognition to the new CAA only at the end of the existing CAA's program year to preclude serious disruptions in program operations with resulting hardships to program beneficiaries and the lessening of program impact. CSA will make exceptions to this policy only in instances where, in the judgment of the CSA Office responsible for recognizing the CAA, the continuation of program operations under the currently designated CAA would impact negatively on beneficiaries or due to violations of CSA's policies and grant conditions by the existing CAA would require CSA to suspend or terminate the CAA's grant(s) for cause.

(g) *Summary of designation process.*

(1) Designating officials will undertake the following activities sequentially:

(i) Issue Notice of Intent to Designate;

(ii) hold public hearings;

(iii) review citizen input and responses to Notice of Intent; and

(iv) provide information to affected political subdivisions regarding citizen input and a final decision on whether or not to designate.

(2) *If the decision is made to designate a new CAA,* the designating officials also will undertake the following additional activities:

(i) Establish an interim board;

(ii) give notice to the proposed CAA that it may proceed to organize itself; and

(iii) make designation.

(3) *If the decision is made to expand a CAA,* the designating officials also must take the steps necessary to reorganize the CAA's representative board prior to making the designation.

(4) After the above actions have been taken, the organization designated to be the CAA may apply for recognition from CSA.

(h) *Detailed requirements of designation process.*

(1) *Notice of Intent to Designate.*

(i) As the first step in the designation process, governing officials of the designating government(s) shall send written notice of their intent to designate to every political subdivision within the community which has not already given its written endorsement of the designation, to the affected CAA(s), and to the appropriate CSA Regional Office.

(ii) In the event that the designation is by governing officials of a State, written notice need be mailed only to governing officials of county governments and governing officials of municipalities with populations of at least 100,000, plus any existing CAAs. In addition, state-wide public notices shall be published in the news media in the same manner as that prescribed by law for other important matters.

(iii) Written notice to political subdivisions shall consist of a CSA Form 374, Notice to Political Subdivision, (see Appendix D); and a CSA Form 513, Grantee Board and Participants Characteristics (section B only), if the area served is other than that presently served. (See Appendix F.)

(iv) Written notice to the affected CAAs shall consist of a letter advising them of their right to submit to the designating government(s) within 30 days their written comments and will include all the documents noted in (h)(1) through (iii) above.

(2) *Responses to a Notice of Intent to Designate.*

(i) Within 30 days of receipt of a notice of intent to designate, the government receiving the notice shall submit a written response by registered mail to the designating government(s). If no response is made within 30 days, the government receiving the notice shall be assumed to have approved the designation.

(ii) Responses to a notice of intent to designate may consist of comments, recommended modifications, an endorsement, or a refusal to be served by the new CAA. Where the response is a refusal to be served, a copy of the document formalizing that decision (e.g. an act, ordinance, proclamation, etc.) must be attached to the written response.

(3) *Public hearings prior to designation.*

(i) Before the governing officials of a State or political subdivision make a designation, they have 30 days within which they shall conduct public hearings in the community(s) which the proposed CAA would serve. At these hearings low-income citizens who would be served by the proposed CAA and other interested persons and organizations must be given a reasonable opportunity to express publicly their views on the question and to submit written comments.

(ii) In the event that the proposed designation is by governing officials of a State or governing officials of more than one county, at a minimum hearings shall be held in the county seat of each county and in each municipality with a population of 50,000 or more. In designations for single counties and municipalities, hearings must be held in each of the areas where the CAA plans to concentrate its activities.

(iii) The procedures for the public hearing, including written comment, shall be in accordance with those prescribed by law for other important matters to be decided by the governing officials.

(iv) At least ten days before the public hearing the governing officials shall assure that written notice of the hearing is posted in places which are available to all interested persons or organizations, and that they are mailed to each political subdivision, any existing CAA currently serving any part of the community in question, each delegate agency of any such CAA, and each board or council under any such CAA, and the appropriate CSA Regional Office. In addition notices shall be placed in the news media in the same manner prescribed by law for other important matters.

(v) The notice shall clearly indicate that the question of designating a CAA is being considered and also shall indicate any specific proposal or tentative decision which already has been made on the question.

(3) *Review of citizens' comments.* Following the public hearings, governing officials will review the statements made by those low-income citizens who would be served by the proposed CAA and by other interested persons and organizations at the public hearings and determine what actions, if any, they will take in light of the statements made.

(4) *Establishment of interim board.* If after reviewing comments from other political subdivisions and those made at the public hearings the governing officials decide to contine with the process of designating a CAA, they shall establish an interim governing board or community action board, whichever is appropriate, to draw up the bylaws. (See 45 CFR 1062, Subpart J.)

(5) *Organization of the CAA.* At the same time that they are establishing an

interim board, the governing officials proposing to make the designation may notify the proposed CAA to begin to organize itself and to otherwise prepare itself for recognition.

(6) *Follow-up notice.* Governing officials of the designating unit(s) of government will inform those other political subdivisions who received the initial notice of intent to designate, and any existing CAA within the community, of (1) the comments received from all political subdivisions and the CAA(s), (2) the views expressed by citizens and particularly low-income citizens at the public hearings, (3) changes, if any, which have been made as a result of these responses, and (4) the final determination of the governing officials on whether or not to proceed with the designation.

(7) *The manner of designation.* Following consideration of statements made at the public hearings, the appropriate governing officials may make a designation. This is done in the same manner in which the governing officials normally exercise their legislative or major executive powers. This would either be by act, ordinance, or resolution of a legislative body subject to any concurrence or veto power of the chief executive; or executive order or proclamation of the chief executive, if the chief legal officer certifies in writing that the chief executive possesses the power to make the designation on behalf of the State or local government in question.

§ 1062.20–4 How and to whom does an agency designated as a CAA apply for recognition as a CAA?

(a) Once the designation has been made, the organization designated to be the CAA may apply for recognition. In applying for recognition, those officials shall submit two copies of the following documents to the appropirate CSA Regional Office. Where CSA has directly designated a new CAA, the latter must submit documents listed in items (3) through (12) below.

(1) *CSA form 370,* Application for Recognition of a Community Action Agency.

(2) *The designation document.* (If the chief executive has made the designation, the certification of the chief legal officer referred to in 20–3(h)(7) of this Part must be included.)

(3) *Notice of Public Hearing.* A copy of the notice of the public hearing(s) held prior to the designation must be submitted along with a list of all locations where the notice was posted, copies of the minutes of the hearing(s), number of persons in attendance, and all written statements or comments received in connection with the hearing(s).

(4) *"Notice of Intent to Designate to Political Subdivisions" and copies of their responses.* Attach copies of all written endorsements received from subdivisions prior to the designation, a list of all other entities which were notified, and copies of each response.

(5) *CSA Form 372, Attorney's Certification* (Appendix B) *and governing legal documents.* This form must be completed by the designating government's chief legal officer or the designated CAA's attorney.

(6) *CSA Form 373, Local Civil Service Agency's Certification.* (Appendix C.) This form is required if the proposed CAA's personnel policies are subject to regulation by a State or local civil service system. The form should be completed by an official of the State or local civil service agency. If the State or local civil service laws or regulations impose the restrictions prohibited in § 1062.15–3, the CSA Form 373 must be accompanied by a written request for a waiver from the requirements of that subsection together with a plan and timetable for seeking changes in such restrictive laws or regulations and a certification that all program operations will be delegated to agencies which are free from such restrictions. The waiver is valid for periods of one year only. At the end of each year the CAA must report on progress made and the Regional Director will make a new determination re whether or not to extend the waiver for another year.

(7) *OEO Form 375, Certification of Compliance with Section 211 of the Economic Opportunity Act.* (Appendix E.)

(8) *A map.* The map should be large enough and marked to show clearly and in reasonable detail all geographic areas and political subdivisions which will be served by the proposed CAA.

(9) *CSA Form 513, Grantee Board and Participants Characteristics.* (Appendix F.) Complete the following items in Section B only: Items 6, 7, 9, 10, 13 through 17, 20 through 25.

(10) *CSA Form 11, Assurance of Civil Rights Compliance.* (Appendix G.) This form is to be executed by the appropriate official of the designated Community Action Agency.

(11) *Organization chart.* This chart must show how the agency seeking recognition as a CAA is organized. If it is a public Community Action Agency, also indicate its location in the governmental structure, the lines of authority and reporting relationships of its senior staff members, and the Executive Director's relationship to the Community Action Board.

(12) *Bylaws.* The draft bylaws at a minimum must include those elements required by Subpart J of this part.

(13) *Successor-in-Interest Agreement, Transition Plan or Closedown Plan.* One of the following documents must accompany the application for recognition of a new CAA which will replace one or more CAAs currently funded by CSA to serve all or part of the proposed community.

(i) *Successor-in-Interest Agreement.*

OR

(ii) *Transition Plan.* (Appendix H.)

(A) The purpose of such a Plan is to insure an orderly transfer of the funded program functions, obligations, records, authority, and funds from the existing CAA(s) to the new CAA so as to minimize disruption or other problems. (See Appendix H for contents of Plan.) Where the designated CAA will replace an existing CAA that also serves areas outside of the proposed community, the transfer shall apply only as directed by CSA.

(B) In order to recognize the new CAA, the Transition Plan must be found to be acceptable by CSA.

(C) (NOTE: The Transition Plan is not the vehicle for making major changes in the existing CAA's programs and activities. Such changes are to be accomplished through the new CAA's grant application process. No such changes shall be made except as approved by CSA in response to a formal funding or amendment request submitted by the new CAA in accordance with CSA's grant application policies. (SEE PART 1067 of this Chapter.))

OR

(iii) *Closedown Plan.* (Appendix I.)

(A) The purpose of a Closedown Plan is to insure the orderly closedown of CSA-funded operations, the fulfillment of all contractual obligations, and the proper disposition of records and property. A Closedown Plan is used when governing officials revoke a designation or refuse to continue to be served by an existing CAA and make no new designation.

(B) In addition, with the approval of CSA, a Closedown Plan may be used under certain circumstances when a new CAA will replace one or more CAAs currently funded by CSA. Such circumstances include, but are not limited to, situations where acceptance of the financial obligations of the current CAA(s) would place the new CAA in a financially untenable position; claims against the current CAA have been filed in the courts; etc.

(C) The Closedown Plan will be developed by the CAA whose operations are being terminated. The

Plan must be approved by CSA before the revocation or refusal to continue to be served can take effect. However, CSA may recognize the new CAA while allowing the former CAA to expend CSA funds to phase-out programs or complete limited-term programs or projects as detailed in their Closedown Plan. When a Closedown Plan is used under these circumstances, the new CAA must give priority consideration to hiring staff of the old CAA and must provide CSA with a document outlining the process and criteria to be used in implementing this requirement.

(D) Where the designation of a CAA is revoked, the Closedown Plan must cover all of the CAA's CSA-funded operations. Where a political subdivision chooses not to continue to be served by a CAA serving a larger jurisdiction, the Closedown Plan will apply only to those CAA programs and activities operating within that subdivision.

(E) A Closedown Plan, at a minimum, shall include arrangements and a timetable for the actions affecting CSA-funded operations as outlined in Appendix I.

§ 1061.20-5 How does CSA decide whether or not to recognize an agency or organization as the CAA?

(a) *Interim Recognition.* In response to an application for recognition of an agency or organization designated by governing officials to serve as the CAA, the appropriate CSA Regional or Headquarters office will review the documents submitted. CSA will grant the CAA interim recognition once it is satisfied that: the legal documents are in order; the proposed CAA can exercise its powers; and the bylaws, and (where appropriate) the Successor-in-Interest Agreement, the Transition Plan, or the Closedown Plan, are acceptable.

(b) *Final Recognition.* CSA will grant the CAA final recognition when the CAA's initial Planning Process Narrative required by § 1067.70-4 has been found acceptable and been approved by the appropriate CSA Regional Director.

§ 1062.20-6 Under what circumstances will CSA withdraw recognition?

(a) Where CSA terminates all assistance to a CAA for cause, such action shall constitute a withdrawal of CSA's recognition of the agency as a CAA.

(b) Where CSA suspends, terminates, or refuses to refund less than all assistance to a CAA, such action may constitute a withdrawal of CSA recognition of the agency as a CAA if the CSA official responsible for recognition so determines. (CSA may continue to fund the agency as a limited purpose agency. In such cases, however, the agency will no longer be required to comply with the requirements applicable solely to CAAs, e.g. tripartite board structure, comprehensive planning activities.)

(c) If at any time CSA determines that the CAA cannot exercise all of its powers or that it is not adequately carrying out one or more of the functions required of a CAA, CSA may withdraw recognition. In such cases the CAA shall have an opportunity to show cause why recognition should not be withdrawn in the same manner provided for in CSA's regulations governing refusal to refund.

Subpart F—When Governing Officials Choose Not To Be Served by a CAA

§ 1062.25-1 What happens when governing officials do not want to be served by a CAA designated by the State or another political subdivision?

(a) Governing officials of a political subdivision may choose not to be served, or choose not to continue to be served, by a CAA designated by a State, other political subdivisions, or CSA. In this case the governing officials may designate a new or existing CAA to serve their political subdivision if it, together with any other subdivisions which wish to join it, meet the community eligibility requirements in § 1062.10-1 of this Chapter. If the governing officials choose to continue to be served by a CAA currently serving their political subdivision, they need not take any further action. If they choose to make a new designation, they must follow the designation process outlined in § 1062.20-3 of this Chapter.

(b) These governing officials also may choose to make no designation. In this instance CSA may designate an agency to serve as the CAA and the political subdivision's right not to be served by this CAA is limited to situations in which it's governing officials make a valid designation of another CAA. Where CSA designates an existing CAA which has already met all requirements for recognition, CSA designation also will constitute CSA recognition. Where CSA proposes to designate a new CAA, the designation process as well as the recognition process must be followed.

(c) When governing officials of a political subdivision choose not to be served by a CAA designated by another political subdivision to serve an area extending beyond its boundaries, those governing officials may exercise their right not to be served. For example, where a municipality makes a county-wide designation, the governing officials of the county may choose not to have that portion of the county which is outside of the designating municipality served by the CAA. In this situation if the municipality making the designation, together with any other municipalities which may wish to join it, has a population of 100,000 or more, it is still eligible to apply for recognition as a CAA.

§ 1062.25-2 What happens when the governing officials no longer wish to have an agency, which they themselves designated, continue to serve as the CAA?

(a) The authority to designate a CAA includes the authority to revoke a designation. Accordingly, the appropriate State or local governing officials may revoke a designation which they previously have made and either designate a new or existing CAA to serve the community or make no new designation.

(b) Prior to revoking a designation governing officials must conduct public hearings for the sole purpose of affording representatives of the board and staff of the existing CAA, low-income citizens in the areas served by that CAA, and interested members of the public and community organizations an opportunity to express their views on the proposed revocation. The public hearings shall be announced and held in the manner described in § 1070.2 of this Chapter.

(c) If, after consideration of the opinions expressed by the citizens and representatives of the existing CAA the governing officials determine to follow through on the revocation, within 30 days of taking official action they will provide the CSA Regional Office with a copy of the official document by which they carried out their action along with lists of all locations where the notice was posted and meetings were held, a copy of the minutes of the hearings and all written statements received.

(d) If they are not designating a new CAA they must also submit a Closedown Plan. In no event shall the revocation of a designation take place or refusal to continue to be served take effect until CSA has approved the Closedown Plan.

(e) At the time that the governing officials report their action to CSA, they also shall send written notice to every subdivision in the community advising them of the nature of the action taken, and shall include a copy of the official document (e.g. act, proclamation, or ordinance) and, if appropriate, the Closedown Plan.

(f) If, subsequently, the governing officials wish to designate another organization to serve as the CAA the

procedures outlined in § 1061.20-3(g)(1)(i) through (vii) must be followed.

Note.—Appendix A-H filed as a part of original document.

Appendix I—Closedown Plan

A Closedown Plan shall include arrangements and a timetable for the following actions affecting CSA-funded operations. These actions are to be undertaken by the CAA which is terminating its CAA-related activities:

(1) The phase-out of program operations and the provision, if necessary, for the extention of program or staff operations into the next program year to permit an orderly phase-out.

(2) Permitting persons enrolled in limited-term programs at the time of revocation or refusal to be served to complete those programs.

(3) Determination of the balance of funds required to cover closedown costs and the liquidation of liabilities, and the preparation, if necessary, of funding requests to extend operations into the next program year and/or apply for additional funds to complete closedown.

(4) Protection of all employment rights of employees of the CAA which have accrued in accordance with those provisions of the CAA's personnel policies which were in effect at the time of revocation or refusal to be served, including final disposition of leave and retirement fund payments.

(5) Termination of all contracts and subcontracts.

(6) Settling of all outstanding liabilities and claims.

(7) Cancellation of all leases for equipment or property.

(8) Cancellation of all insurance policies and bonds.

(9) An inventory of all property purchased with CSA grant funds, and the taking of measures necessary to safeguard all such property pending disposition instructions from CSA.

(10) Preparation and submission within 90 days of termination of financial statements.

(11) A final audit with the report available within 180 days of termination.

(12) Maintenance of all financial and accounting records, including supporting documentation, for a period of three years following termination, to be made available for inspection as necessary.

If a Closedown Plan is developed in lieu of a Transition Plan the following also must be included:

(13) The process by which the new CAA will assure that priority consideration is given to the hiring of staff of the CAA which is being closed down.

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 23

[Docket No. 64; Notice No. 80-22]

Definition of "Hispanic" in Department of Transportation Minority Business Enterprise Regulation

AGENCY: Office of the Secretary.

ACTION: Request for comment on petition to amend 49 CFR Part 23.

SUMMARY: The Department has received from the Hispanic American Contractors' Association a petition for rulemaking asking the Department to amend the definition of the term "Hispanic" in the Department's minority business regulation. The petition requests that the Department expand the definition to inlcude persons of European Spanish origin. This notice asks for comments from the public about whether the Department should make the requested change.

DATE: Comments are requested on this notice by April 6, 1981.

ADDRESS: Comments should be sent to the following address. Docket Clerk, (Docket 64), 400 Seventh Street, S.W., Room 10421, Washington, D.C. 20590. Comments are available for public inspection at this address on Monday through Friday from 9:00 AM to 5:30 PM. Persons wishing to have their comments acknowledged should sent a stamped, self-addressed postcard with their comments. The Docket Clerk will return these postcards when the comments are docketed.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Office of Regulation and Enforcement, U.S. Department of Transportation, 400 Seventh Street, S.W., Room 10421, Washington, D.C. 20590, 202/426-4723.

SUPPLEMENTARY INFORMATION: On March 31, 1980, the Department of Transportation (DOT) published a final rule establishing a Minority Business Enterprise (MBE) program in DOT's financial assistance programs (49 CFR Part 23; 45 FR 21172). This regulation requires recipents of DOT financial assistance to set goals and to take other steps to improve opportunities for MBEs to participate in DOT-assisted programs. The regulation requires that recipients of DOT financial assistance take these steps only with respect to businesses that are owned and controlled by members of minority groups or by women. One of the minority groups eligible to participate in the DOT MBE program consists of Hispanics. Section 23.5 of the regulation defines a Hispanic as being "a person of Spanish or Portuguese culture with origins in Mexico, Central or South America or the Caribbean Islands, regardless of race." This definition is the subject of the petition for rulemaking that occasioned this notice.

The regulation's definition of Hispanic was drafted explicitly to include persons with origins in all Latin American countries. The definition, equally explicitly, excludes persons of European origin, including persons with origins in Spain or Portugal. The Department's Notice of Proposed Rulemaking (NPRM) used a different definition of Hispanic. The NPRM would have defined Hispanic as "a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race."

During the period between publication of the NPRM and publication of the final rule, representatives of DOT discussed this definition with members of an Interagency Committee composed of DOT, the Department of Housing and Urban Development, the Environmental Protection Agency, the Economic Development Administration of the Department of Commerce, the then-Department of Health, Education and Welfare, and the Department of the Interior. This Committee was established with the purpose of ensuring the uniformity among MBE programs established by Federal grant agencies. During the discussion among representatives of the various agencies in this Committee, it was noted that the definition, as written in the DOT NPRM, appeared to exclude persons of Portuguese language and culture. Consequently, persons with origins in the largest and most populous South American county—Brazil—were excluded by the definition. At the same time, the question was raised whether it would be equitable to include within the scope of this definition persons with origins in Spain and Portugal while excluding persons with origins in every other European country. It was concluded that this would not be an equitable result. Consequently, the Committee recommended to its member agencies, and the Department adopted, the definition of Hispanic that appears in DOT's final rule.

Starting shortly after DOT published the final rule, members of Hispanic organizations and other members of the

public began writing to the Department of Transportation expressing their objections to the Department's definition of Hispanic. To date, the Department has received approximately 81 such letters, all of which express the point of view that persons of European Spanish and/or Portugese origin should be included within the scope of the regulation's definition. Among these comments was the formal petition for rulemaking to which this notice responds. The petition was submitted by the Hispanic American Contractors' Association of McLean, Virginia, by its President, Angel Roubin, and its Counsel, Virgilio Roel. The Department is publishing the text of the Association's petition as an attachment to this notice.

The Association's petition requests that the Department go back to the definition of Hispanic used in the NPRM. The petition, and other letters supporting a similar change, cite three basic arguments for making this change. First, the semantic, historical, and cultural meaning of the term "Hispanic" clearly refers to Spain and Portugal and their people. It does not make sense, it is said, to have a definition of the term "Hispanic" that excludes people from Spain and Portugal. Second, it is argued that for DOT to use a definition excluding persons of European Spanish or Portuguese origin could create unnecessary divisions within the Hispanic community, providing benefits to some members of that community and denying them to others. Third, and probably most important, argument is that the present definition is inconsistent with the basis on which Hispanics are designated as a protected class under the regulation. The very reason why Hispanics are targeted as a group for which affirmative action is appropriate is that people who speak Spanish or Portuguese as their first language, who may speak English with an accent, whose names are recognizably Hispanic, or whose culture is recognizably Hispanic, have suffered discrimination and have not had the same opportunities for success in business as non-minority persons. According to correspondence favoring changing the definition, someone who has these characteristics, whether from Mexico, Puerto Rico, Spain or Portugal, is equally likely to have had problems of this kind. If American society in general has denied opportunities to Hispanics, the argument runs, it has done so without regard to the precise national origin of the Hispanics to whom opportunities have been denied. Hispanics to whom opportunities have been denied. Hispanics with origins in Europe, in this view, are not any less likely to have encountered these problems than Hispanics from Latin America. Consequently, the petition and other correspondence suggest, it does not make sense to exclude persons of European Spanish and Portuguese origin from the scope of the definition.

The precise change requested by the Hispanic American Contractors' Association—a return to the NPRM definition of Hispanic—would problably result in the exclusion of persons of Portuguese language and culture from the scope of the program. However, it is the Department's understanding that the Association does not object to a modification of the NPRM definition to include persons of Portuguese and Brazilian origins.

It should be pointed out that the fact that the regulation's definition of Hispanic does not include persons of European Spanish or Portuguese origin does not mean that these persons are precluded from participating in the Department's program. The DOT regulation treats as MBEs businesses owned and controlled by any person certified by the Small Business Administration as socially and economically disadvantaged under the Small Business Administration's 8(a) program. If a man of European Spanish or Portuguese origin (women are included in the DOT program regardless of ethnicity) is socially and economically disadvangated, he and his business can obtain 8(a) certification from the Small Business Administration and can participate in the DOT MBE program notwithstanding the fact that he does not fall within any of the DOT regulation's racial/ethnic categories.

In addition to the fact that any socially and economically disadvantaged person can gain entry to the DOT program via 8(a) certification, the Department has some unresolved questions concerning the petitioner's request to change the definition of Hispanic. First, the Department does not know whether the requested change in the definition would affect a significant number of contractors. While the Department has received letters from a number of firms owned by persons of Spanish or Portuguese origin, the Department does not have and has not been presented with any statistics or estimates of the number of such firms interested in working in DOT-assisted programs nationwide. This information, while not in itself determinative of the Department's position on this issue, would be helpful to the Department in formulating its policy. We are hopeful that commenters may be able to provide us with this information.

Second, the Department is interested in receiving additional information concerning the necessity of protected class status for firms owned and controlled by persons of European Spanish or Portuguese origin. Correspondence from Hispanic contractors and organizations has asserted that persons of European origin have suffered similar denials of opportunity to those visited upon firms owned and controlled by persons of Latin American origin. The Department hopes that commenters will be able to provide direct evidence concerning this assertion. This evidence will be helpful to the Department in deciding how much weight to give to the assertions of Hispanic groups and contractors on this point.

If it is not clearly established that persons of European Spanish or Portuguese origin actually suffer the same discriminatioin as the persons of Latin American origin, it could be difficult for the Department to distinguish the situation of Spanish or Portuguese-Americans from that of other European origin-Americans. Consequently, it could be hard to justify extending affirmative action to one group but not to the other. In this connection, it should be noted that other minority groups (e.g., Blacks, Asian-Americans) could be adversely affected by broadening the definition of minority to include some Europeans, in that additional categories of contractors would be competing for the same benefits of the DOT MBE program. To date, we have heard only from Hispanic persons, groups and contractors on the issues raised by the petition. We are particularly interested in hearing from members of other minority groups concerning their views on the merits of expanding the Hispanic category in the regulation.

The Department has three principal options in responding to the Hispanic Contractors Association's petition for rulemaking:

(1) *Deny the petition for rulemaking.* If the Department follows this option, it will not take any action as the result of the petition, and will inform the petitioner that the Department has decided to retain the definition of Hispanic as it presently exists. One variation on this option that the Department could follow is to change the name of the racial/ethnic category from "Hispanic" to "Latin American." While this change would not achieve the substantive result that the petition for rulemaking seeks, it could correct the

semantic problem that some commenters have identified.

(2) *Grant the petition for rulemaking and publish an NPRM proposing to make the requested change.* If the Department follows this course, the change will not be made immediately, but would be preceded by a further opportunity for public comment.

(3) *Grant the petition for rulemaking and publish an interim final rule.* In this case, the regulatory change would be made effective immediately, although there would be an additional opportunity for public comment following the publication of the final rule. This option would cause the requested change to go into effect more rapidly, or course.

If the Department grants the petition for rulemaking, the Department would, unless good reasons for not doing so were brought to the Department's attention during the comment period on this notice, change or propose to change the definition not only to include of European Spanish origin, as the Hispanic American Contractors' Association petition specifically requests, but also persons of European Portuguese origin. If the Department decides, as a matter of policy, to grant the petition, the Department's decision between options (2) and (3) would depend, in large part, on whether the Department believes, after reviewing the information received in response to this notice, that it would be necessary or productive to obtain additional public comment before changing the regulation.

We recognize that many of the persons and organizations who are likely to be most interested in this notice have already provided the Department with written comments. While we would welcome additional comments from these persons and organizations, particularly concerning the specific concerns and questions the Department has identified in this notice, these persons and organizations need not write to the Department again in order to have their views considered. In deciding what action to take in response to the petition for rulemaking, the Department will fully consider all comments previously received on this subject, and persons and organizations who have already commented do not need to duplicate efforts they have already made.

Issued at Washington, D.C., December 29, 1980.

Thomas G. Allison,

Acting Secretary of Transportation.

Petition of the Hispanic American Contractors' Association

Pursuant to Section 5.11, Subpart B, 49 CFR, Part 5, the members of the Hispanic American Contractors Association hereby petition the Secretary of Transportation to repeal or amend that portion of the rule published by the Department of Transportation on March 31, 1980, which sets out the definition of the term "Hispanic", dealing with "Participation by Minority Business Enterprise in Department of Transportation Programs", under 49 CFR, Part 23.

The text of the Rule that Petitioner seeks to have repealed is set out under Subpart A, § 23.5, "Definitions", on pages 21175, and 21185 of the referred-to Register.

The text on Page 21175 in the "Synopsis" reads as follows:

> Second, a "Hispanic" is now defined as a person of Spanish or Portuguese culture with origins in Mexico, South or Central America or the Caribbean Islands. This definition is now consistent with that used by the Interagency Committee and reflects the suggestions of commenters. The major substantive difference between this definition and the one in the NPRM is that it includes persons of Portuguese culture. This change was made to avoid excluding Brazilians, and rests on a policy decision that the program should cover all persons of Latin American origin. The definition deliberately excludes persons of European origin, including persons from Portugal and Spain * * * economically and socially disadvantaged.

The material text on page 21185, reads as follows:

> "Minority means a person who is a citizen or lawful permanent resident of the United States and who is:
>
> (a) Black, (a person having origins in any of the black racial groups of Africa);
>
> (b) Hispanic (a person of Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race);

The interest of the Petitioner in the action requested is to correct the error in the definition, and to prevent the social and economic inequities inherent in the present Rule, to the great loss and detriment to the persons excluded from the benefits of the Minority Business Enterprise Program by virtue of the restrictive and exclusionary use of the term "Hispanic".

The persons to be covered by the vacating of the present definition of the term "Hispanic", and amending the term to include all U.S. Citizens or legal resident Hispanics living in the United States, would be all those included under the present Rule plus those now wrongfully excluded under the definition of "Hispanic" adopted by the Department of Transportation in the Rule published March 31, 1980.

Specifically, the requested amended definition would include persons born in Spain who are now citizens or legal residents of the United States, and who have suffered, and still suffer the same indignities, discrimination, prejudice, and social and economic disadvantage in the business of contractors as the Hispanics presently included under the Rule.

In addition, the requested amended definition of "Hispanic" would also include and benefit U.S. born Hispanics who may be excluded under a strict interpretation of the present Rule. Under the present definition, a U.S. born Hispanic who was or is directly descendent from a Spaniard, who came to the U.S. generations ago who did not come through Latin America or the Caribbean, does not qualify as a beneficiary of the MBE Program under the present Rule.

The bases for filing this Petition are many, including those set out in the comments submitted by the President of the Hispanic American Contractors Association in his letter of June 25, 1980 to the Docket Clerk (Docket No. 64), with a personally addressed copy to the Secretary of Transportation, as well as the many arguments submitted by numerous commenters, both organizations and individuals, on the definition of "Hispanic" to the Docket Clerk, following the publication of the present Rule in March 31, 1980. Many of these comments were also directly sent to the Secretary.

In addition to the comments set out above, there are other arguments why the present definition of "Hispanic" should be set aside, as follows:

(1) *In Fullilove vs Klutznick*, in the upholding Congress' authority to set aside certain federal funds to be expanded for minority business enterprises the U.S. Supreme Court, in its decision issued on July 2, 1980, held that, "Minority group members are citizens of the United States who are Negroes, *Spanish-speaking*, Orientals, Indians, Eskimos, and Aleuts." (emphasis added). There is nothing in the Supreme Court decision that would exclude a "Hispanic" from the benefits of the MBE Program based on the place of birth of the Hispanic person.

(2) On page 21172 of the Federal Register of March 31, 1980, under "Sypnosis", DOT defines what a minority is in a Minority Business Enterprise, and states: "Minorities

include Blacks, Hispanics, Asian Americans, American Indians, and Alaskan Natives and * * * " Nowhere are Hispanics or other racial or ethnic minorities hyphenated or excluded on the basis of place of birth.

(3) Section 23.7, under Part 23, published in the **Federal Register** of March 31, 1980 reads:

Discrimination Prohibited. No person shall be excluded from participation in, denied the benefits of, or otherwise discriminated in connection with the award and performance of any contract covered by this Part, on the grounds of race, color, national origin, or sex.

We question the right of the Department of Transportation, or any other Federal agency, to deprive or strip persons of their Hispanic identification, on the basis of place of birth.

We contend that the Hispanics being excluded under the present Rule from the benefits of the Minority Business Enterprise Program are being discriminated against on the basis of their national origin. Both Administrative and Federal Court decisions have held that Hispanics are covered under the national origin designation of the Civil Rights laws prohibiting discrimination, and that the geographic place of birth has no relevance to the minority status of Hispanics in the United States, or to their right of protection under the laws of this country.

(4) The definition of "Hispanic", as published in the **Federal Register** of March 31, 1980 by the DOT is different and contrary to the Department of Commerce's definition in Directive No. 15 of the Office of Federal Statistical Policy and Standards, "Race and Ethnic Standards For Federal Statistics And Administrative Reporting", which in pertinent part, reads:

Definitions

The basic racial and ethnic categories for Federal Statistics and program administrative reporting are defined as follows:

(a) American Indian or Alaskan Notice——
(b) Asian or Pacific Islander————
(c) Black ————————————
(d) Hispanic. A person of Mexican, Puerto Rican, Cuban, Central or South American or *other Spanish culture or origin*, regardless of race. (emphasis added).

The above definition supports our contention that the term "Hispanic", under the Civil Rights laws refers to ethnic and national origin definition, and of said Hispanic minority in the United States being the victims of historical and present social and economic discrimination in the United States, and has nothing to do with the Hispanics' place of birth.

(5) In further argument that the exclusionary definition of "Hispanic" as published by DOT in the March 31, 1980 **Federal Register** is improper and erroneous, we refer you to the Congressional enunciations in the past dealing with the rights of minorities, and more specifically of Hispanics as one of the included minorities. In none of the numerous Congressional legislative actions from the time of the Civil Rights legislation in 1964, through the present, have the rights of U.S. Hispanics living in this country been dissected, restricted, or limited by virtue of their place of birth.

More recently, the Second Session of the 96th Congress, the U.S. House or Representatives, in H.R. 6004, with date of March 25, 1980, "A bill to Establish the Minority Business Development Administration in the Department of Commerce," includes, in pertinent part, the following language:

Findings and Purposes

Sec. 2. (a) The Congress hereby finds and declares that—

(1) the opportunity for full participation in our free enterprise system by socially and economically disadvantaged individuals is essential if we are to obtain social and economic equality for such individuals and improve the functioning of our national economy;

(2) that many such individuals are socially disadvantaged because of their identification as members of certain groups that have suffered the effects of discriminatory practices or similar inviduous circumstances over which they have no control;

(3) such groups include, but are not limited to, black Americans, *Hispanic Americans*, Native Americans, Asian-Pacific Americans, and other minorities; (emphasis added).

Definitions

Sec. 3. As used in this Act:
(1) The ————————————
(2) The terms ————————————
(3) The terms ————————————

(4) The term "*socially* disadvantaged individuals" means those who have been subjected to racial or *ethnic* prejudice or cultural bias because of their identify as a member of a group without regard to their individual qualities. (emphasis added).

(5)(A) The term "*economically* disadvantaged individuals" means *socially* disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged. (underlining added)

(B) The Assistant Secretary *shall presume* that socially and economically disadvantaged individuals include Black Americans, *Hispanic Americans*, Native Americans, Asian-Pacific Americans, individuals found to be disadvantaged by the Small Business Administration * * * (emphasis added).

As can be seen from the above language, which appears to be the latest Congressional expression on the subject, the inclusion of Hispanics as beneficiaries under the Act is not limited, conditioned, or dissected on the basis of the Hispanic Americans' place of birth.

Last, but not least, we refer you to the Proclamation by the President of the United States of July 31, 1980, proclaiming National Hispanic Heritage Week (copy enclosed).

Nowhere does President Carter's Proclamation infer that Hispanics in our country should be treated any differently because of their place of birth. In effect, those Hispanic to whom President Carter refers, who landed in our country 150 years before the Independence of the United States—and their now U.S. citizens descendants in this country—were originally from European Spain and not of Latin American or Caribbean origin.

In conclusion, we feel very strongly that the present definition of the term "Hispanic", as published by DOT in the **Federal Register** of March 31, 1980 should be immediately vacated and substituted by one which does not punish U.S. resident Hispanics in the contracting business, who are U.S. citizens, and many of whom are U.S. war veterans, including Vietnam, on the basis of their place of birth.

Our statue of liberty at the entrance of New York harbor does not advertise which immigrants will not be protected against social and economic discrimination, depending on their country of birth.

The recent history of this country's efforts to end present and correct past discrimination against Blacks, Hispanics, Women, Jews, and other persons who have been victims of religious discrimination, as interpreted by the Congress, the Courts, the Executive, the U.S. Commission on Civil Rights, and Federal agencies, have been based on race, color, religion, sex, and national origin, and never on the country of birth of the victims of discrimination.

Those contractors now excluded under DOT's present Rule suffer exactly the same discrimination and social and economic disadvantages as those covered and benefited under the present Department of Transportation Minority Business Enterprise Program.

The Department of Transportation has tried to justify its changing of the definition of Hispanic on the basis of comments following the publication of the Notice of Proposed Rule in the **Federal Register** of May 17, 1979, and on an alleged Inter-Agency agreement. However, in reviewing the comments filed between May 17, 1979, and March 31, 1980 on file with DOT's Docket

Clerk, we failed to find any comments which called for a change in the definition of "Hispanic".

In connection with the alleged Inter-Agency agreement on the change of the definition, the copy of the so-called agreement which we obtained from the Department of Transportation appears to be no more than a draft document which falls far short of any formal agreement or even of a specific definition of the term "Hispanic", even amongst the very limited number of agencies alleged to have agreed.

The sole criteria which should be used for eligibility for benefits under the Minority Business Enterprise Program is the discrimination and social and economic disadvantage which the Hispanics suffer in the United States because of their national origin and culture.

The present application and enforcement of DOT's definition of the term "Hispanic" has already brought, and will continue to cause, irreparable harm and damage to those contractors who are being excluded from the DOT's MBE Program. Not only are they being excluded from Federal and District of Columbia contracts and sub-contracts, but the different States are using DOT's Rule as a basis for disqualifying these Hispanics from State contracts and subcontracts. Others, like the State of Maryland, who feel compelled to follow DOT's Rule are disqualifying these Hispanics from Federal contracts, but including these same contractors under Maryland State MBE Programs.

We believe and strongly request and recommend that the definition of "Hispanic" now in the Department of Transportation's present Rule be vacated as soon as possible.

We petition and urge that the Department of Transportation adopt the definition of Hispanic used by the Department of Commerce's Office of Federal Statistical Policy and Standards in Directive No. 15, which reads:

> Hispanic. A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.

For the foregoing reasons, and because the presently excluded contractors are suffering present, immediate, and irreparable harm and damage, as a result of being unable to participate under the Department of Transportation's Minority Business Enterprise Program, we respectfully request and petition the Secretary of Transportation that the specific portion of the Rule, published in the **Federal Register** of March 31, 1980, and dealing with the definition of Hispanic be given urgent consideration, so that the Hispanic American Contractors Association may receive a response to this Petition within 30 days of receipt at the Department of Transportation.

Respectfully submitted,

Angel Sieiro Roubin,

President, Hispanic American Contractors Association.

Virgilio G. Roel,

Counsel for Hispanic American Contractors Association, 6136 Long Meadow Road, McLean, Virginia 22101, Phone No. 442-0192.

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Notices

Federal Register
Vol. 46, No. 2
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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

Federal Crop Insurance Corporation

Offer To Provide Reinsurance for Writers of Multiple-Peril Crop Insurance Policies

AGENCY: Federal Crop Insurance Corporation.

ACTION: Notice of offer to provide reinsurance for writers of multiple-peril crop insurance policies.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby gives notice to writers of multiple-peril crop insurance policies of an offer to provide reinsurance coverage on such policies. The intended effect of this notice is to provide explanation of the offer. The terms of the Standard Reinsurance Agreement are outlined below for the purpose of providing writers of multiple-peril crop insurance policies as much information as possible.

EFFECTIVE DATE: The offer to provide reinsurance to multiple-peril crop insurance writers, as outlined below, is effective January 5, 1981.

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

FOR FURTHER INFORMATION CONTACT: Alan Walter, Federal Crop Insurance Corporation, P.O. Box 293, Kansas City, Missouri 64141. Phone (816) 926-6284 before January 17, 1981 or (816) 926-7937 after January 17, 1981.

The Draft Impact Analysis Statement describing options considered in developing this notice and the impact of implementing each option is available upon request from the above-named individual.

SUPPLEMENTARY INFORMATION: Section 508(e) of the Federal Crop Insurance Act (7 U.S.C. 1501 *et seq.*), as amended by Public Law 96-365 (September 26, 1980), authorizes and directs the Federal Crop Insurance Corporation (FCIC) to offer reinsurance, to the maximum extent practicable, to writers of multiple-peril crop insurance.

The purposes of this notice are:

1. To offer publicly, to eligible insurers, reinsurance against excess aggregate losses accruing to writers of multiple-peril crop insurance resulting from adverse weather conditions and other unavoidable causes;

2. To provide the method by which the offer may be accepted; and

3. To set forth the terms and conditions of the Standard Reinsurance Agreement.

The availability of reinsurance is generally a condition to insurance companies writing multiple-peril insurance. The terms and conditions of the Standard Reinsurance Agreement must appear in time for acceptance by eligible insurers in advance of when policies must be marketed, which is generally before planting. The terms and conditions must be made known promptly so that such multiple-peril policies may be written for the 1981 crop year.

Offer to Provide Reinsurance

This offer is made to all insurance companies licensed to conduct business in the United States, pursuant to the Federal Crop Insurance Act of 1938, as amended, and to all terms and conditions contained in the Standard Reinsurance Agreement.

Comments Requested

Any interested party is invited to comment on the provisions in this Agreement. The Federal Crop Insurance Corporation (FCIC) will consider all suggestions and may choose to publicly offer an additional or amended agreement for subsequent crop years incorporating the suggested changes.

Method of Entering Into an Agreement

1. Any company desiring to enter into the Standard Reinsurance Agreement shall mail an application to FCIC enclosing a proposed plan of operation. The material should be mailed to Alan Walter, FCIC, P.O. Box 293, Kansas City, MO 64141. The proposed plan of operation shall include the crop year for which insurance will first be written under this Agreement, the crops to be covered, the States in which the insurance will be written, the use of other reinsurance for policies covered by this Agreement, copies of policy forms to be utitlized, premium rates to be charged if different from those charged by FCIC, and the maximum amount of book premium to be covered for the first and subsequent crop seasons under this Agreement. Applicants desiring reinsurance for the 1981 crop year should submit the required information to be received by FCIC not later than January 20, 1981. The plan must also identify the legal entities who will be participating in the Agreement as an insurance pool, partnership, joint venture, or other legal relationships other than reinsurance, and the legal relationship for these parties.

2. FCIC may ask for additional information, including but not limited to (1) the capability of the Company to underwrite and service the insurance covered by the Agreement and (2) to meet the financial commitments entailed. FCIC may also utilize other information available to it in evaluating the application.

3. Upon review of the application, including any supplementary information obtained by FCIC, FCIC will notify the Company in writing of its acceptance or rejection of the application and the plan of operation. If rejected, the notice will indicate any reasons for rejection.

4. The items in the proposed plan of operation, as submitted by the Company and approved by FCIC, become part of the Agreement and may be changed only with written permission of both parties.

5. FCIC may need to limit participation in this program in accordance with funds available. It has been determined the total amount of reinsurance for the 1981 crop year will be limited to approximately $30 million in book premium. The amount of book premium as estimated in the plan of operation may be reduced by FCIC so such a ceiling may be maintained. FCIC will notify each company of its allocation for the 1981 crop year by February 5, 1981. The allocation for subsequent crop years will be announced in accordance with provisions in the Standard Agreement.

Standard Reinsurance Agreement

Section I. Business Reinsured

A. The Federal Crop Insurance Corporation (FCIC) hereby agrees to reinsure the excess liability which may accrue to the Company as a result of losses incurred during the period this Agreement is in force under policies, contracts and binders of multiple-peril crop insurance (hereinafter called "policies") issued or renewed on or after the effecitve date of this Agreement.

B. The multiple-peril crop insurance subject to this Agreement shall be written exclusively on policy forms and at premium rates approved by the FCIC, and the policies so approved shall only be issued on crops and in territories authorized by the FCIC. Such policy forms shall provide coverage identical to the coverage provided by FCIC policies at premium rates not less than those used by FCIC.

C. The plan of operation submitted by the Company and accepted by FCIC is incorporated into this Agreement, and may be changed only upon agreement in writing by both parties except for the maximum amount of book premium to which reinsurance shall apply which may be limited in accordance with paragraph D of this section.

D. FCIC reserves the right to place a ceiling on the amount of book premium subject to reinsurance. The provisions in the public notice of this Agreement shall apply for the 1981 crop year. For subsequent years the Company shall advise FCIC of the book premium to be covered, if different from that in the plan of operation, by the termination date for this Agreement. FCIC will notify the Company of the maximum amount of book premium to be covered by reinsurance for the next crop year within 30 days after the termination date. The ceiling may be raised by FCIC at a later date, in which case proper notice will be given to the Company. Notwithstanding any of the above, FCIC's ability to sustain the agreement depends upon the availability of funds and all maximum amounts are subject to a reduction or cancellation within 30 days of the passage of FCIC's Congressional Appropriation of funding will be insufficient to support the Agreements.

E. Closing of sales

FCIC may require the Company to immediately refrain from accepting applications for insurance or otherwise accepting liability that could affect the financial situation of FCIC if FCIC closes sales due to adverse risk conditions for any geographic area or for any crop.

F. Refusal of risk

FCIC may require the Company to notify it of the name(s) and address(es) of any applicant(s) refused insurance or cancelled from insurance subject to this Agreement, and the reasons for the action(s).

Section II. Commencement and Termination

A. This Agreement shall become effective upon signature of authorized officials for both the Company and FCIC unless specified otherwise in the plan of operation. FCIC will reinsure only liability accepted on or after the effective date.

B. Either party may terminate this Agreement effective at the end of the current crop year by giving notice to the other party before December 1 unless the Company has insurance in force with a cancellation date earlier than December 31, in which case notification must be not later than April 1. If notice is given after the above date, the termination shall take effect at the end of the following crop year.

C. FCIC may, in its notice of termination, require the Company to refrain from accepting any applications for insurance after the notice is received.

D. The provisions of Section IV, pertaining to level and timing of expense reimbursement, may be renegotiated for subsequent crop years upon written request of either party. The provision as written shall apply if agreement cannot be reached.

Section III. Distribution of Underwriting Gains and Losses

A. An annual computation of underwriting gains or losses for the Company shall be made for each crop year with the gains or losses to be shared between the Company and FCIC according to the formula specified. The computation shall be based upon the loss ratio for the year. The loss ratio shall be computed to the nearest hundredth of a percent with the numbers 5 and above rounded upwards and numbers 4 and below rounded down in calculating the nearest hundredth of a percent.

1. If the loss ratio for the year is 95 percent or over, but not over 105 percent, FCIC shall not participate in the underwriting gains or losses for the year, except to the extent that any positive balance in the reinsurance fund is distributed for the extended period according to paragraph B.

2. If the loss ratio is over 105 percent but not over 150 percent, FCIC's share of the loss is 95 percent of book premiums multiplied by the difference between the loss ratio percent and 105 percent, or a maximum of 42.75 percent of book premium.

3. If the loss ratio is over 150 percent but not over 200 percent, FCIC's share of underwriting losses shall be 42.75 percent of book premium plus 97.5 percent of book premium multiplied by the difference between the loss ratio percent and 150 percent, or a maximum of 91.5 percent of book premium.

4. If the loss ratio exceeds 200 percent, FCIC's share of losses shall be 91.5 percent of book premium plus 100 percent of book premium multiplied by the difference between the loss ratio percent and 200 percent.

5. FCIC's share of underwriting losses shall be charged against the Company reinsurance account maintained by FCIC, and which may show a negative balance. The remainder is the Company's share of underwriting losses.

6. If the loss ratio is less than 95 percent for the crop year, FCIC shall receive an amount equal to 100 percent of book premium multiplied by the difference between the loss ratio percent and 95 percent. FCIC's share (if any) shall be credited to the Company reinsurance account.

7. The amount due either party under this paragraph shall be payable upon submission of the annual summary or amendments thereto for the crop season.

B. At the end of the extended reinsurance period, any positive balance in the Company reinsurance account will be distributed between the Company and FCIC according to the formula specified below.

1. If the loss ratio for the extended period (calculated on the basis of total book premiums and total ultimate net losses for the extended period) is 95 percent or higher, the Company shall receive 100 percent of the balance in the Company reinsurance account.

2. If the loss ratio for the extended period is less than 95 and not less than 80 percent, the Company is entitled to total underwriting gains from the extended period equal to 5 percent of book premium for the extended period plus 25 percent of total book premium multiplied by the difference between the loss ratio percent and 95 percent, or a maximum of 8.75 percent of book premium. The amount due the Company shall equal the amount calculated in this subparagraph minus total net underwriting gains retained by the Company from annual settlements determined under paragraph A. The total net underwriting gains retained by the Company in annual settlements equals the positive gains from years with loss ratios less than 100 minus the Company's share in years with loss ratios of over 100 percent.

3. If the loss ratio for the extended period is less than 80 but not less than 50 percent, the Company is entitled to total underwriting gains of 8.75 percent of book premium plus an amount equal to the difference in the loss ratio percent and 80 percent multiplied by 20 percent of book premium for the extended period, or a maximum of 14.75 percent of book premium. The balance due the Company shall equal the amount calculated in this subparagraph minus total net underwriting gains retained by the Company through annual settlements determined under paragraph A and as described in subparagraph B-2.

4. If the loss ratio for the extended period is less than 50 percent, the Company is entitled to total underwriting gain of 14.75 percent of book premium. The Company shall not share in that portion of underwriting gains for the portion of loss ratio less than 50 percent. The balance due the Company shall equal the amount calculated in this subparagraph minus total net underwriting gains retained by the Company through annual settlements determined under paragraph A, and as described in subparagraph B-2.

5. Under no circumstances shall the Company be entitled to receive in excess of the amount in the Company reinsurance account in any settlement at the end of an extended period.

6. The amount due either party shall be payable upon submission of the annual summary or amendments thereto for the last crop season in the extended period.

C. If the Agreement is terminated by FCIC, the extended period shall be considered to end at the end of the crop year when terminated and the Company shall be entitled to share in any positive balances in the Company reinsurance account according to the provisions in paragraph B.

D. If the Agreement is terminated by the Company to take effect prior to the end of an extended period, the Company share of any positive balance in the Company reinsurance account will be determined upon the basis of the following short term cancellation clause after any distribution for the final year of the agreement is made in accordance with paragraph A of this section. The formula specified in paragraph B of this section will be computed. The Company will be entitled to an amount equal to:

(1) 20 percent of the computed amount if the termination takes effect after the first year of an extended period;

(2) 40 percent of the computed amount if the termination takes effect after the second year of an extended period;

(3) 60 percent of the computed amount if the termination takes effect after the third year of an extended period; or

(4) 80 percent of the computed amount if the termination takes effect after the fourth year of an extended period.

Notwithstanding the above computation, the company shall not be required to refund any underwriting gains previously earned.

Section IV. Expense Reimbursement

A. FCIC shall provide the Company an operating and administrative expense reimbursement allowance equal to 22 percent of the Company's earned book premium on the business covered by this Agreement for Company operating and agent commission expenses. An additional reimbursement of 5 percent of the book premium earned will be provided for new policies issued and for crops added to an existing policy. This additional reimbursement is provided for the purpose of covering the additional expense of selling a policy for the initial year of insurance. This additional reimbursement shall not be applicable to any policy for which the crop was insured the previous year under a multiple-peril policy issued by another company reinsured by FCIC or issued by the Federal Crop Insurance Corporation. FCIC will also reimburse the Company 4 percent of book premium earned and 3 percent of ultimate net losses for direct loss adjustment expenses.

B. It is expressly agreed that FCIC shall not be liable for any dividends, commissions or taxes, or any board, exchange or bureau assessments, or any other expenses of whatever nature incurred by the Company, except the expense reimbursements provided in this section.

C. The expense reimbursement shall be due and payable in accordance with the following schedule:

1. Eighty (80) percent of the estimated reimbursement for Company operating and agent expenses for the crop year shall be due the Company upon submission of its report (due not later than July 15) on the status of the reinsurance account as of the end of June.

2. The remaining reimbursement for operating and agent expenses shall be due upon submission of the end-of-September report.

3. Loss adjustment reimbursement in the amount of 4 percent of book premium shall be due upon submission by the Company of its end-of-July report.

4. Any adjustment in expense reimbursement due the Company or overpayment returnable to FCIC as a result of changes in book premium reported shall be due upon submission of each end-of-month report.

5. Loss adjustment reimbursement in the amount of 3 percent of ultimate net losses paid under this reinsurance agreement shall be due upon submission of the annual summary report or amendment thereto.

Section V. Applicability of Premium Subsidy

FCIC shall pay a portion of each producer's premiums on the policies reinsured by this Agreement as authorized by the Federal Crop Insurance Act of 1980. Any restrictions or conditions on eligibility for subsidy imposed on producers insured directly by the Federal Crop Insurance Corporation shall apply to this Agreement.

Section VI. Hail and Fire Exclusion

The Company shall provide the insured the option of deleting the perils of hail and fire from the policies covered by this Agreement, as authorized by the Federal Crop Insurance Act of 1980. A premium credit for the deletion of hail and fire coverage shall be provided in the rates approved by FCIC.

Any hail and/or fire losses to crops insured under policies from which hail and fire coverages have been deleted shall not be subject to coverage under this Agreement. The liability of the Company on such policies, if hail and/or fire losses are paid, will be reduced according to provisions in the policy issued to the insured, as approved by FCIC.

Section VII. Reports

A. Within 15 days after the end of each month the Agreement is in force, and on forms mutually acceptable, the Company shall report to FCIC the following statistics on the reinsured business as of the end of the previous month (end of month report):

1. Sales of crop insurance policies with separate totals for new policies for which the higher reimbursement allowance is applicable;

2. Cancellations of insurance contracts;

3. The known amount of book premiums earned for the crop year;

4. The portion of producer premium paid or payable by FCIC (subsidy) for the crop year as provided in Section V;

5. The expense reimbursement allowance earned for the crop year as provided in Section IV;

6. Ultimate net losses paid to the insured and premiums collected from the insured; and

7. Any distribution of underwriting gains or losses due FCIC, calculated in accordance with Section III.

The Company may, at its option if loss volume warrants, make a report indicating the above as of the middle of each month (referred to as an interim report).

B. Not later than April 15 of the calendar year following the crop year under consideration, the Company shall prepare and foward to FCIC and annual summary setting forth:

1. Book premiums earned for the crop year showing separate totals for new policies (qualifying for the higher expense reimbursement rate) and other book premiums;

2. Ultimate net losses incurred for the crop year;

3. Advance loss payments from FCIC;

4. The portion of producer premium paid or payable by FCIC as provided in Section V;

5. The expense reimbursement allowances as provided in Section IV.

6. Expense reimbursement previously paid;

7. Underwriting gains or losses, and their distribution between the Company and FCIC in accordance with Section III, paragraph A.

8. At the end of the extended period, a summary of experience for the extended period so that a distribution of any positive balance in the Company reinsurance account can be made in accordance with Section III, paragraph B.

C. The Company shall submit an annual summary of experience for each insured in accordance with forms and at such time as mutually agreed to by both parties to this Agreement.

Section VIII. Retained Liability and other Reinsurance

A. This Agreement shall apply only to that portion of any insurance which the Company retains net for its own account (except for other reinsurance permitted in paragraphs B and C of this section), and in calculating the amount of any loss hereunder and also in computing the amount on which this Agreement attaches, only loss or losses in respect to that portion of any insurance which the Company retains net for its own account shall be included. It is, however, understood and agreed that the amount of FCIC's liability hereunder with respect to any loss or losses shall not be increased by reason of the inability of the Company to collect from any other reinsurers, whether specific or general, any amounts which may have come due from them, whether such inability arises from the insolvency of such other reinsurers or otherwise.

B. The Company shall have the right to reinsure the classes of business covered hereunder on a pro rata basis, and if it is agreed that such reinsurance is maintain by the Company, recoveries thereunder shall inure solely to the benefit of the Company and be totally disregarded for purposes of applying all the provisions of this Contract, including, but not be way of limitation, the provisions of Sections III, IV, and V.

C. Unless otherwise agreed to in writing by FCIC upon application by the Company in its proposed plan of operation or amendments thereto, the Company shall retain for its own account at least 66⅔ percent of the liability not assumed by FCIC for the business covered under this Agreement. Any liability transferred to another company reinsured by FCIC shall be considered as part of the liability retained by the Company for purposes of this subsection.

Section IX. Insolvency

A. In the event of insolvency of the Company, this reinsurance shall be payable directly to the Company or to its liquidator, receiver, conservator or statutory successor on the basis of the liability of the Company without diminution becuse of the insolvency of the Company or because the liquidator, receiver, conservator or statutory successor of the Company has failed to pay all or a portion of any claim. It is agreed, however, that the liquidator, receiver, conservator or statutory successor of the Company shall give written notice to FCIC of the pendency of a claim against the Company indicating the policy or bond reinsured which claim would involve a possible liability on the part of FCIC within a reasonable time after such claim is filed in the conservation or liquidation proceeding or in the receivership, and that during the pendency of such claim, FCIC may investigate such claim and interpose, at its own expense, in the proceeding where such claim is to be adjudicated, any defense or defenses that it may deem available to the Company or its liquidator, receiver, conservator or statutory successor. The expense thus incurred by FCIC shall be chargeable, subject to the approval of the Court, against the Company as part of the expense of conservation or liquidation to the extent of a pro rata share of the benefit which may accrue to the Company solely as a result of the defense undertaken by FCIC.

B. It is further understood and agreed that, in the event of the insolvency of the Company, the reinsurance under this Agreement shall be payable directly by FCIC to the Company or to its liquidator, receiver or statutory successor except (a) where the Agreement specifically provides another payee of such reinsurance in the event of the insolvency of the Company and (b) where FCIC with the consent of the direct insured or insureds has assumed such policy obligations of the Company as direct obligations of FCIC to the payees under such policies and in substitution for the obligations of the Company to such payees.

Section X. Arbitration

If any misunderstanding or dispute arises between the Company and FCIC with reference to the amount of premium due, the amount of loss, the amount of expense reimbursement, or to any other factual issue under any provisions of this Agreement, other than as to legal liability or interpretation of law, such misunderstanding or dispute may be submitted to arbitration for a determination which shall be binding only upon approval by FCIC. The Company and FCIC may agree on and appoint an arbitrator who shall investigate the subject of the misunderstanding or dispute and make a determination. If the Company and FCIC cannot agree on the appointment of an arbitrator, then two arbitrators shall be appointed, one to be chosen by the Company and one by FCIC. The two arbitrators so chosen, if they are unable to reach an agreement, shall select a third arbitrator who shall act as umpire, and such umpire's determination shall become final only upon approval by FCIC. The Company and FCIC shall bear equally all expenses of the arbitration. Findings, proposed awards, and determinations resulting from arbitration proceedings carried out under this section shall upon objection by FCIC or the Company, be inadmissible as evidence in any subsequent proceedings in any court or competent jurisdiction.

Section XI. Access to Books and Records

FCIC and the Comptroller General of the United States, or their duly authorized representatives, shall have access for the purpose of investigation, audit, and examination to any books, documents, papers, and records of the Company that are pertinent to the business reinsured under this Agreement. The Company shall keep records which fully disclose all matters pertinent to the business reinsured, including premiums and claims paid or payable under this Agreement. Records relating to premiums shall be retained and available for three (3) years after final adjustment of premiums, and to

reinsurance claims three (3) years after final adjustment of such claims.

Section XII. Errors and Omissions

Inadvertent delays, errors or omissions made in connection with this Agreement or any transaction hereunder shall not relieve either party from any liability which would have attached had such delay, error or omission not occurred, provided always that such error or omission will be rectified as soon as possible after discovery.

Section XIII. Salvage and Recoveries

With respect to any salvage or recovery in connection with any loss hereunder received subsequent to the payment of such loss, the loss shall be refigured on the basis on which it would have been settled had the amount of salvage or recovery been known at the time the loss hereunder was originally determined. Any amounts thus found to be due FCIC shall be immediately paid to FCIC by the Company.

Section XIV. Remittances

A. FCIC shall pay the Company the balance equal to the following after submission of each end of month or interim report:

1. Losses paid by the Company for the crop year (loss advances); less
2. Net prior loss advances during the crop year; less
3. Cash premiums collected by the Company for the crop year; plus
4. Unremitted amount due to date for operating expense reimbursements; plus
5. Unremitted amount due to date for loss adjustment expense; plus or less
6. Any amounts due either party under the annual distribution of underwriting gains or losses (Section III, paragraph A) based upon the annual summary report or amendments thereto; plus
7. Premium subsidy payable to the Company under Section V based upon the book premium indicated in the annual summary or amendments thereto; plus or less
8. Any amounts due either party under the distribution of any positive balance in the Company reinsurance account based upon the summary report or amendments thereto at the end of the extended period (Section III, paragraph B); less
9. Any amounts due FCIC under any other part of this Agreement.

B. FCIC shall pay the Company any balance due within 15 days after submission of an end of month, interim, or annual summary report or amendment thereto. Any payments shall be subject to appropriations or the availability of funds to FCIC.

C. If the balance of paragraph A is negative, the Company shall remit to FCIC with the end of month, interim, annual summary report or amended annual summary report the amount equal to the negative balance under consideration.

D. FCIC retains a claim on any premiums outstanding to the Company from their insureds on the policies of insurance covered under this Agreement to offset advance loss payments to the Company. The Company shall not encumber FCIC's claim on balances due from the insureds through pledging as collateral on debt or other obligations of the Company, except the company may pledge premiums outstanding as collateral in any amount equal to the amount by which loss payments exceed the sum of premiums collected plus loss advances from FCIC.

Section XV. Miscellaneous Clauses

A. No Member of or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this Agreement if made with a corporation for its general benefit.

B. The Company will not discriminate against any employee, applicant for employment, insured or applicant for insurance because of race, color, religion, sex, age, handicap, marital status or national origin.

Section XVI. Sales by Agents

The Company shall sell the policies covered under this Agreement through licensed agents or brokers.

Section XVII. Loss Adjustment

The Company shall utilize loss adjustment procedures and methods consistent with those utilized by FCIC. FCIC may, at its own expense, cooperate with the Company in the adjustment of claims.

Section XVIII. Definitions

As used in this Agreement the term—

1. "Loss ratio" means the percentage computed by dividing the amount of ultimate net losses of the reinsurance period by the book premium for the reinsurance period, the result multiplied by 100.
2. "Book premiums" means gross premiums earned by the Company on the policies reinsured under the agreement including the portion of producer premium subsidy paid or due from FCIC or other Governments in accordance with Section V.
3. "Crop year" means the calendar year within which the crops insured by the policies reinsured hereunder are normally harvested or mature for harvest.
4. "Ultimate net loss" means the sum or sums (excluding litigation expenses and all allocated and unallocated loss adjustment expenses incurred by or on behalf of the Company) paid or payable by the Company in settlement of claims and in satisfaction of judgments rendered on account of such claims, after deduction of all salvage, all recoveries and all claims on inuring reinsurances, if any. Nothing herein shall be construed to mean that losses under this Agreement are not recoverable until the Company's ultimate net loss has been ascertained, it being understood and agreed that salvage recovered and/or recoveries received by the Company after a loss settlement hereunder shall be applied as if recovered or received before the said settlement, and all necessary adjustments shall be made by the parties hereto.
5. "Incurred" as applied to ultimate net losses incurred and to losses incurred shall mean losses happening to crops for the crop year under consideration.
6. "Company" means the parties indicated in the plan of operation who will participate in writing the reinsured business. At least one of the parties must be a firm authorized to engage in the crop insurance business under the laws of the states in which the insurance is to be written.
7. "Extended period" means the period of time encompassing five crop years beginning with the crop year for which this Agreement is initiated and including the next four crop years with subsequent periods running from the expiration of an extended period through five crop years. If the Agreement is terminated by FCIC, the provisions of Section III, paragraph C shall apply to the timing of the end of the extended period.
8. "Company reinsurance account" means a balance maintained by FCIC for the Company party to this Agreement in accordance with Section III. A separate Company reinsurance account shall apply for each extended period.

Done in Washington, D.C., on December 24, 1980.

Dale E. Hathaway,

Acting Secretary.

[FR Doc. 80-40758 Filed 12-31-80; 8:45 am]

BILLING CODE 3410-08-M

Forest Service

Allegheny Wild and Scenic River Study; Intent to Conduct the Study and Prepare an Environmental Impact Statement

The USDA Forest Service is starting a study of a segment of the Allegheny River (Warren, Forest, Clarion, Butler, Armstrong, and Venango Counties, Pa.) to determine its eligibility for inclusion in the National Wild and Scenic River System. The segment in the study extends from Kinzua Dam to east Brady, Pennsylvania. The study is authorized by the Wild and Scenic Rivers Act (Pub. L. 90-542) as amended by the National Parks and Recreation Act of 1978. The Forest Service is the lead agency conducting the study. A Field Task Force comprised of Federal, State, and local agencies will cooperate in the study effort.

The Forest Service held public informational meetings during the week of October 13, 1980, in Warren, Oil City, Emlenton, and Tidioute, Pennsylvania. The study process to be used was explained to the meeting participants.

The scope of issues and concerns to be addressed in the environmental impact statement will be identified through public meetings, mail solicitation, and newspaper notices. Alternatives will be developed relating to the issues and concerns and will be displayed in the draft environmental impact statement to be issued about June 1981. After public review and comment, a final environmental impact statement will be prepared.

The official responsible for recommending a preferred alternative to the Secretary of Agriculture is R. Max Peterson, Chief, Forest Service. The final environmental impact statement and study report will be submitted by the Secretary of Agriculture to the President for his consideration.

Written comments and suggestions concerning the study process should be sent to John Butt, Forest Supervisor, Allegheny National Forest, Box 847, Warren, Pennsylvania 16365. Telephone inquires concerning the study or environmental impact statement may be directed to Arnold Irvine, Study Coordinator at (814) 723-5150.

Dated: December 18, 1980.

R. Max Peterson,

Chief, Forest Service.

[FR Doc. 81-161 Filed 1-2-81; 8:45 am]

BILLING CODE 3410-11-M

Forest Land and Resource Management Plans; Intent To Prepare an Environmental Impact Statement

This notice revises the date of availability of the following Forest Land and Resource Management Plan Draft and Final Environmental Impact Statements:

National forest	Location	Previously published in FEDERAL REGISTER	New availability date	
			DEIS	FEIS
Deschutes	Oregon, Deschutes, Jefferson, Klamath, and Lake Counties.	Vol. 45, No. 164, 8/21/80, DEIS-1/81, FEIS-11/81.	4/81	2/82
Gifford Pinchot	Washington, Clark, Cowlitz, Klicitat, Lewis, Thurston, and Yakima Counties.	Vol 45, No. 87, 5/2/80, DEIS-6/30/82, FEIS-12/31/82.	12/82	6/83
Mount Hood	Oregon, Clackamas, Hood River, Jefferson, Marian, Multnomah, and Wasco Counties.	Vol 45, No. 27, 2/7/80, DEIS-11/80, FEIS-7/81.	12/81	9/82
Rogue River	Oregon, Jackson, Josephine, Klamath and Douglas Counties, Calif., Siskiyou Counties.	Vol. 45, No. 21, 1/30/80, DEIS-8/82, FEIS-2/83.	8/82	6/83
Siskiyou	Oregon Counties	Vol. 45, No. 27, 2/7/80, DEIS-3/81, FEIS-9/81.	1/82	7/82
Wallowa-Whitman	Oregon, Baker Grant, Malheur, Umatilla, Union and Wallowa County.	Vol 45, No. 27, 2/7/80, DEIS-12/31/81, FEIS-6/30/82.	7/82	6/83

In addition, in reference to the Pacific Northwest Region, Regional Plan, Notice of Intent published in Vol. 44, No. 159, 8/15/79, item #4 sentence two should read, "the limits for guidelines will not necessarily be set according to geographic area, soil type, growth potential, utilization standards, management intensity and potential for environmental degradation of any land but these will be factors considered." The dates of availability have been revised as follows:

		Previously published dates	Revised dates	
			DEIS	
Regional Plan	Oregon, Washington	Vol 44, No. 159, 8/15/79, DEIS-6/80, FEIS-12/80.	2/81	9/81

James F. Torrence,

Deputy, Regional Forester.

December 23, 1980.

[FR Doc. 80-40751 Filed 12-31-80; 8:45 am]

BILLING CODE 3410-11-M

Science and Education Administration

Joint Council on Food and Agricultural Sciences Executive Committee; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Public Law 92-463, 86 Stat. 770-776), the Science and Education Administration announces the following meeting:

Name: Executive Committee of the Joint Council on Food and Agricultural Sciences.

Date: January 14, 1981.

Time and Place: 8:30 a.m.-4:30 p.m., Room 3109, South Building, USDA, Washington, D.C.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: Review final draft of the report *Proposed Initiatives for Food and*

Agricultural Sciences 1981–86; discuss response to *1980 Report of the National Agricultural Research and Extension Users Advisory Board;* further consideration of Joint Council structure for planning and coordination.

CONTACT PERSON: Susan G. Schram, Executive Secretary, Joint Council on Food and Agricultural Sciences, U.S. Department of Agriculture, Room 351–A, Administration Building, Washington, D.C. 20250, telephone (202) 447–6651.

Done at Washington, D.C. this 15th day of December, 1980.

John G. Stovall,

Executive Director, Joint Council on Food and Agricultural Sciences.

[FR Doc. 81-232 Filed 1-2-81; 8:45 am]

BILLING CODE 3410-03-M

Office of the Secretary

Section 22 Import Fees; Determination of Quarterly Import Fees On Sugar

AGENCY: Office of the Secretary.

ACTION: Notice.

SUMMARY: Headnote 4(c) of Part 3 of the Appendix to the Tariff Schedules of the United States (TSUS) requires the Secretary of Agriculture to determine on a quarterly basis the amount of the fees which shall be imposed on imports of raw and refined sugar (TSUS items 956.05, 956.15, and 957.15) under the authority of Section 22 of the Agricultural Adjustment Act of 1933, as amended. This notice announces those determinations for the first calendar quarter of 1981.

EFFECTIVE DATE: January 1, 1981.

FOR FURTHER INFORMATION CONTACT: William F. Doering, Foreign Agricultural Service, Department of Agriculture, Washington, D.C. 20250 (202–447–6723).

SUPPLEMENTARY INFORMATION: By Presidential Proclamation No. 4631, dated December 28, 1978, Headnote 4 of Part 3 of the TSUS was amended to provide that quarterly adjusted fees shall be imposed on imports of raw and refined sugar (TSUS items 956.05, 956.15, and 957.15). Paragraph (c)(ii) of Headnote 4 provides that the quarterly adjusted fee for item 956.15 shall be the amount by which the average of the daily spot (world) price quotations for raw sugar for the 20 consecutive market days immediately preceding the 20th day of the month preceding the calendar quarter during which the fee shall be applicable (as reported by the New York Coffee and Sugar Exchange or, if such quotations are not being reported, by the International Sugar Organization), expressed in United States cents per pound, Caribbean ports, in bulk, adjusted to a United States delivered basis by adding the applicable duty and 0.90 cents per pound to cover attributed costs for freight, insurance, stevedoring, financing, weighing and sampling, is less than 15.0 cents per pound. However, whenever the average of the daily spot price quotations for 10 consecutive market days within any calendar quarter, adjusted to a United States delivered basis, plus the fee then in effect: (1) exceeds 16.0 cents, the fee then in effect shall be decreased by one cent; or (2) is less than 14.0 cents, the fee then in effect shall be increased by one cent. The fee, in any event, may not be greater than 50 per centum of the average of such daily spot price quotations. Paragraph (c)(i) further provides that the quarterly adjusted fee for items 956.05 and 957.15 shall be the amount of the fee for item 956.15 plus .52 cents per pound.

The average of the daily spot (world) price quotations for raw sugar for the applicable period prior to the first calendar quarter of 1981 has been calculated to be 30.26 cents per pound. This results in a fee of 0.00 cents per pound for item 956.15, since the sum of the 30.26 cents average spot price + 0.625 cents duty + .90 cents attributed costs is greater than 15.0 cents. Accordingly, the fee for items 956.05 and 957.15 for the first calendar quarter of 1981 is 0.52 cents per pound.

Headnote 4(c) requires the Secretary of Agriculture to determine and announce the amount of the quarterly fees no later than the 25th day of the month preceding the calendar quarter during which the fees shall be applicable. The Secretary is also required to certify the amounts of such fees to the Secretary of the Treasury and file notice thereof with the **Federal Register** prior to the beginning of the calendar quarter during which the fees shall be applicable. This notice is therefore being issued in order to comply with the requirements of Headnote 4(c).

Notice is hereby given that, in accordance with the requirements of Headnote 4(c) of Part 3 of the Appendix to the Tariff Schedules of the United States, it is determined that the quarterly adjusted fees for raw and refined sugar (TSUS items 956.05, 956.15, and 957.15) for the first calendar quarter of 1981 shall be as follows:

Item and Fee

956.05—0.52 cents per lb.
956.15—0.00 cents per lb.
957.15—0.52 cents per lb.

The amounts of such fees have been certified to the Secretary of the Treasury in accordance with paragraph (c)(iii) of Headnote 4.

Signed at Washington, D.C. on December 29, 1980.

Dale Hathaway,

Secretary of Agriculture.

[FR Doc. 81-129 Filed 1-2-81; 8:45 am]

BILLING CODE 3410-10-M

CIVIL AERONAUTICS BOARD

[Docket 39001; Order 80-12-128]

Air Illinois, Inc.; Compensation for Losses at Mount Vernon, Illinois

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 24th day of December, 1980.

On August 28, 1980, Air Illinois, Inc., filed a thirty-day notice under section 419 of the Federal Aviation Act of its intent to terminate all service at Mount Vernon, Illinois, effective October 1, 1980. By Order 80–9–143, September 24, 1980, the Board found that the proposed suspension would deprive Mount Vernon of essential air service, and required Air Illinois to continue to provide service for 30 days, or until replacement service could be provided. By Orders 80–10–126 and 80–11–120, the Board extended Air Illinois' service obligation for successive 30-day periods.

On November 26, 1980, Air Illinois filed an application for compensation for losses incurred in providing essential air transportation at Mount Vernon. The carrier claims that operating losses plus interest (excluding return) were $45,225 for the month of October, and requests an interim rate of compensation in that amount.

The Board has examined Air Illinois' application, and finds that the appropriate interim rate of compensation for October is $28,390.

By Order 80–2–124, February 25, 1980, the Board defined essential air transportation for Mount Vernon as at least two round trips to St. Louis on weekdays and two round trips over the weekend, providing at least 50 seats in each direction each weekday or weekend, and required that all service be non-stop.

Air Illinois currently operates three non-stop round trips to St. Louis with 18-seat DeHavilland Twin Otters, for a total of 54 seats in each direction. However, the carrier also operates a highly circuitous one-stop flight from St. Louis to Mount Vernon via Carbondale, Illinois. This flight is included in Air Illinois' request for compensation. Since the one-stop flight via Carbondale is in excess of the essential level and does not meet the requirements for essential air service, we will disallow all expenses connected with this flight. Using Air Illinois' allocation methodology, these amount to $16,829. The adjusted rate of compensation, therefore, is $28,396.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 102, 204, 419, and 1002 thereof, and the regulations promulgated in 14 CFR 324,

1. We set the interim rate of compensation for losses sustained by Air Illinois, Inc., by virtue of its provision of essential air service at Mount Vernon, Illinois, for all periods beginning on or after October 1, 1980, at $194.49 [1] per essential air service flight completed, subject to a maximum compensation of $1,051.70 [2] for each weekday or weekend that essential air service is provided;

2. This proceeding will remain open pending entry of an order fixing the final rate of compensation, and the amount of such rate of compensation may be the same as, lower than, or higher than the interim rate established here; and

3. We will serve a copy of this order on Air Illinois, Inc.

This order will be published in the **Federal Register.**

By the Civil Aeronautics Board (all members concurred).

Phyllis T. Kaylor,

Secretary.

[FR Doc. 81-242 Filed 1-2-81; 8:45 am]

BILLING CODE 6320-01-M

[1] $28,396 ÷ 146 flights completed (162 flights scheduled × 90% completion factor).

[2] $28,396 ÷ 27 (23 weekdays plus 4 weekends).

[Docket 39058; Order 80-12-114]

Air Transport Association of America; Order Granting Exemption

Issued Under Delegated Authority December 19, 1980.

By application filed December 16, 1980, the Air Transport Association of America (ATA) requests on behalf of various air carriers an exemption from section 403 of the Federal Aviation Act and Part 221 of the Board's Economic Regulations to the extent necessary to permit them to provide free round-trip transportation to Congressional Medal of Honor members and their wives to Washington, D.C. to attend the Presidential Inauguration. The transportation will be provided during the period January 12 through January 26, 1981.

In support of this request, ATA states that the exemption is consistent with past practices of the carriers in granting free transportation to these individuals. (see Orders 75-5-86, 77-1-34 and 77-9-121.

We find that the reasons given by ATA supporting this request are consistent with the public interest, and therefore we will approve the exemption.[1] We will also extend the exemption to any other U.S. air carrier.

Accordingly, acting under authority delegated by the Board in the Board's Regulations, 14 CFR 385.16,

1. We exempt all U.S. air carriers from the provisions of Section 403 of the Federal Aviation Act of 1958, and Part 221 of the Board's Economic Regulations, insofar as the enforcement of Section 403 and Part 221 would prevent them from providing the transportation requested in Docket 39058.

2. We will serve a copy of this order on the Air Transport Association of America and on all U.S. air carriers.

[1] ATA was orally notified of our approval on December 18, 1980.

Persons entitled to petition the Board for review of this order pursuant to the Board's Regulations, 14 CFR 385.50, may file such petitions within ten days after the date of this service.

This order shall be effective immediately and the filing of a petition for review shall not preclude its effectiveness.

This order will be published in the **Federal Register.**

Julien R. Schrenk,

Chief, Domestic Fares and Rates Division, Bureau of Domestic Aviation.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 81-239 Filed 1-2-81; 8:45 am]

BILLING CODE 6320-01-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of the Board's Procedural Regulations (See, 14 CFR 302.1701 et. seq.); Week Ended December 19, 1980

Subpart Q Applications

The due date for answers, conforming applications, or motions to modify scope are set forth below for each application.

Following the answer period the Board may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Date filed	Docket No.	Description
Dec. 17, 1980	39069	ANA, Ltd., d.b.a. Air North P.O. Box 2326, South Burlington, Vermont 05401. Application of ANA, Ltd., d.b.a. Air North pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations requests amendment of its certificate of public convenience and necessity for Route 216, so as to allow nonstop service between Burlington, Vermont and White Plains, New York. Conforming Applications, motions to modify scope, and Answers may be filed by January 14, 1981.
Dec. 17, 1980	39073	German Cargo Services GmbH, c/o Arthur D. Bernstein, Galland, Kharasch, Calkins & Short, 1054 Thirty-First Street, N.W., Washington, D.C. 20007. Application of German Cargo Services GmbH pursuant to Section 402 of the Act, and Subpart Q of the Board's Procedural Regulations, requests a foreign air carrier permit authorizing it to engage in foreign air transportation focusing its operations on service between New York, Chicago, and Boston in the United States and the Federal Republic of Germany. Answers may be filed by January 14, 1981.
Dec. 17, 1980	39074	Global International Airways Corp., Ambassador 1, Air World Center, 10920 Ambassador Drive, Kansas City, MO. 64153. Application of Global International Airways Corp. pursuant to Section 401 of the Act and subpart Q of the Board's Procedural Regulations requests issuance of a certificate of public convenience and necessity authorizing it to engage in transatlantic charter air transportation of property. Conforming Applications, motions to modify scope, and Answers may be filed by January 14, 1981.
Dec. 18, 1980	39075	Wien Air Alaska, Inc., 4100 W. International Airport Rd., Anchorage, Alaska 99502. Application of Wien Air Alaska, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations requests issuance of an amended certificate of public convenience and necessity for route 126 or for a separate such certificate authorizing it to engage, as a separate segment of operations, in the air transportation of persons, property, and mail over bush routes out of Kodiak, King Salmon, and Dillingham, and between Kodiak, King Salmon, and Dillingham. Conforming Applications, motions to modify scope, and Answers may be filed by January 15, 1980.
Dec. 18, 1980	39078	Transamerica Airlines, Inc., c/o Jeffrey A. Manley, Burwell, Hansen & Manley, Suite 550, 1815 H Street, N.W., Washington, D.C. 20006. Application of Transamerica Airlines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations, requests an amendment of its certificate of public convenience and necessity for Route 194 authorizing it to engage in foreign air transportation of passengers, property and mail by realigning and augmenting its segments as set forth below:

Date filed	Docket No.	Description
		i. Include all transatlantic authority on a new segment 1 to extend between all eligible U.S. and foreign points and to read as follows: "1. Between a point or points in the United States (excluding, if necessary, Sarasota/Bradenton, Orange County, and/or West Palm Beach),[1] on the one hand, and Shannon, Ireland, and a point or points in Belgium, the Netherlands, Luxembourg, the Federal Republic of Germany, Switzerland, Israel and Jordan, on the other hand." ii. Add Boston, Massachusetts, to Transamerica's U.S. points-Bermuda segment and renumber it as segment 2, to read as follows: "2. Between the coterminal points Atlanta, GA; Baltimore, MD; Boston, MA; Chicago, IL; Detroit, MI; Miami, FL; New York, NY-Newark, NJ; Philadelphia, PA; and Washington, DC, and the terminal point Bermuda." iii. Renumber Transamerica's U.S.-Costa Rica segment as segment 3. iv. Eliminate the following permit condition imposed by Order 80-8-147: "The authority to serve Shannon, Ireland, is limited to combination carriage only." b. *Scheduled Transatlantic All-Cargo.* Transamerica also requests that its certificate for Scheduled Transatlantic All-Cargo Foreign Air Transportation issued pursuant to Order 80-9-106 be amended to delete Boston, Massachusetts, from the list of U.S. gateways from which scheduled all-cargo authority is excluded. Conforming Applications, motions to modify scope, and Answers may be filed by January 15, 1981.
Dec. 16, 1980	38873	ALM Antillean Airlines, c/o Bruce H. Rabinovitz, Gineburg, Feldman, Weil and Bress, Suite 300, 1700 Pennsylvania Avenue, N.W., Washington, D.C. 20006. Supplement to the Application of ALM Antillean Airlines, submitting the additional information required. Answers may be filed by January 13, 1981.
Dec. 19, 1980	32629	Saudi Arabian Airlines Corporation, c/o William A. Nelson, Shea & Gould, 1627 K Street, N.W., Washington, D.C. 20006. Amendment No. 1 to the Application of Saudi Arabian Airlines Corporation, requests that its permit be renewed for a two-year period and that the restriction limiting the number of weekly flight operations be modified in accordance with the request set forth herein. Answers may be filed by January 16, 1981.

Phyllis T. Kaylor,
Secretary.
[FR Doc. 81-245 Filed 1-3-81; 8:45 am]
BILLING CODE 6320-01-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed under Subpart Q of the Board's Procedural Regulations (See, 14 CFR 302.1701 et. seq.); Week Ended December 24, 1980

Subpart Q Applications

The due date for answers, conforming applications, or motions to modify scope are set forth below for each application. Following the answer period the Board may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Date filed	Docket No.	Description
Dec. 23, 1980	39095	Aerolineas Dominicanas, S. A., c/o David S. Kaufman, Lopez & Harris, Suite 202—Roberts Bldg., 28 West Flagler Street, Miami, Florida 33130. Application of Aerolineas Dominicanas, S. A. pursuant to Section 402 of the Act, and Subpart Q of the Board's Procedural Regulations requests that the foreign air carrier permit previously issued by CAB Order 78-12-193 be reissued on a permanent basis authorizing Applicant to engage in scheduled or non-scheduled foreign air transportation with respect to property, mail, and passengers on the following route: Between a point or points in the Dominican Republic, and the terminal point of San Juan, Puerto Rico. Answers may be filed by January 21, 1981.

Phyllis T. Kaylor,
Secretary.
[FR Doc. 81-246 Filed 1-2-81; 8:45 am]
BILLING CODE 6320-01-M

[Docket 38138; Order 80-12-129]

Aspen Airways, Inc.; Compensation for Losses

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 24th day of December, 1980.

On February 25, 1980, Aspen Airways, Inc. (Aspen) filed notice of its intent to suspend all service between Montrose/Delta, and Denver, Colorado, effective April 1, 1980. By Order 80-3-191, March 28, 1980, we prohibited Aspen's suspension through April 30, 1980.[1]

On November 13, 1980, Aspen filed an amended application for compensation for its losses in serving Montrose/Delta

[1] We have since extended Aspen's obligations.

for the months December 1980 through March 1981.[2] The carrier provided an explanation of its estimated traffic, revenue, and expenses for the four-month period, and requested compensation totalling $105,731.

We have reviewed Aspen's request and have found its revenue and expense estimates to be reasonable and in line with its most recent Form 41 data filed with the Board.

Accordingly, pursuant to the Federal Aviation Act of 1958, as amended, particularly sections 102, 204, 419, and 1002(d) thereof, and the regulations promulgated in 14 CFR 302 and 324:

1. We set the interim level of compensation for losses sustained by Aspen Airways, Inc., by virtue of its provision of essential air service to Montrose/Delta, Colorado, for the months of December 1980 through March 1981, as follows:

Month	Per scheduled flight [1] completed	Maximum
December	$449.13	$27,846
January	449.13	27,846
February	396.30	22,193
March	449.13	27,846

[1] For December, January, and March, 62 flights are scheduled. For February, 56 flights are scheduled.

2. This proceeding shall remain open pending entry of an order fixing the final rate of compensation, and the amount of such rate of compensation may be the same as, lower than, or higher than the interim rate of compensation set here; and

3. We shall serve this order upon all parties to this proceeding.

We shall publish this order in the Federal Register.

By the Civil Aeronautics Board (All members concurred).

Phyllis T. Kaylor,

Secretary.

[FR Doc. 81-243 Filed 1-2-81; 8:45 am]

BILLING CODE 6320-01-M

[2] Order 80-6-136, June 23, 1980, established interim compensation for April through June, 1980; and Order 80-7-173, July 28, 1980, established interim compensation for July through November, 1980.

[Docket 37498]

Carrier Selection Case for New Bedford, Mass.; Oral Argument

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that oral argument in this proceeding is assigned to be held before the Board on Tuesday, January 13, 1981, at 10:00 A.M. (local time), in Room 1027, Universal Building, 1825 Connecticut Avenue, N.W., Washington, D.C.

Each party which wishes to participate in the oral argument shall so advise The Secretary, in writing, on or before Wednesday, January 7, 1981, together with the name or the person who will represent it at the argument.

Dated at Washington, D.C., December 22, 1980.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 81-244 Filed 1-2-81; 8:45 am]

BILLING CODE 6320-01-M

[Docket 38267; Order 80-12-127]

Century Airlines, Inc.; Compensation for Losses

Adoped by the Civil Aeronautics Board at its offices in Washington, D.C. on the 24th day of December, 1980.

On June 4, 1980, Century Airlines, Inc. (Century) filed a notice of intent to reduce service at Eureka/Arcata, California. By Order 80-7-16, July 3, 1980, we required Century to continue to provide essential air service for a 30-day period through August 3, 1980.[1]

On November 18, 1980, Century filed an amended application for losses [2] at Eureka/Arcata to Portland, Oregon seeking $72,239 without profit for the period July 5 through September 30, 1980. The carrier requested that we extend the August and September rate on a daily basis to cover losses for the period October 2 through November 14, 1980, inclusive.[3] This results in an additional $35,753 in compensation.

We have reviewed Century's application and find that the information contained therein reasonably supports the requested compensation on an interim basis.

Accordingly, pursuant to the Federal Aviation Act of 1958, as amended, particularly sections 102, 204, 419, and 1002(d) thereof, and the regulations promulgated in 14 CFR 302 and 304:

1. We set the interim level of compensation for losses sustained by Century Airlines, Inc., by virtue of its provision of essential air transportation at Eureka/Arcata at $72,239 for the period July 5 through October 2, 1980, inclusive, and for the period October 3 through November 14, 1980, inclusive, at $241,574 per secheduled flight completed, subject to a maximum compensation of $35,753;

2. This proceeding shall remain open pending entry of an order fixing the final rate of compensation, and the amount of such rate of compensation may be the same as, lower than, or higher than the interim rate of compensation set here: and

3. We shall serve the order upon all parties to this proceeding.

We shall publish this order in the Federal Register.

By the Civil Aeronautics Board: [4]

Phyllis T. Kaylor,

Secretary.

[FR Doc. 81-241 Filed 1-2-81; 8:45 am]

BILLING CODE 6320-01-M

[1] We have since extended Century's obligation.

[2] Century earlier filed an application on October 30, 1980, and an amended application on November 12, 1980.

[3] On November 15, 1980, Century began subsidy-free service form Eureka/Arcata to Medford, Oregon.

[Docket 38497; Order 80-12-108]

Continental Air Lines, Inc. and Air Micronesia, Inc.; Order To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 19th day of December 1980.

On July 21, 1980, Continental Air Lines, Inc. and Air Micronesia, Inc. petitioned the Board for an increase in their service mail rates for mail service to and within the Trust Territory. The carrier proposed rates of $1.118 per ton-mile for priority mail and $0.69 per ton-mile for space available mail (SAM). The petition describes how the current rates have been in effect since January 26, 1971, and that its direct operating costs per aircraft mile have increased by about 184 percent.

On August 8, 1980, the Board granted the United States Postal Service's request for an extension of time until September 22, 1980, to file its answer. The Postal Service stated that the extension was necessary because the economic justification submitted by the carrier was not adequate. It also stated that on August 27, 1980, the carrier had revised its original data and requested rates per billed ton-mile of $1.109 for priority mail and $0.684 for SAM. This revision was never filed with the Board.

On September 10, 1980, the Postal Service requested an additional extension of time for filing its answer until October 13, 1980, in order to request and analyze further data and to explore the possibility of the parties arriving at mutually agreeable rates. The Postal Service's request was granted on September 17, 1980.

The Board's staff also requested the carrier to submit a more detailed economic justification to support the reasonableness of the proposed

[4] All Members concurred.

increase. Response to this request was received October 6, 1980.

On October 10, 1980, the Postal Service filed its answer stating that it had reached agreement with the carrier and proposing rates per billed ton-mile of $1.023 for priority mail and $0.65 for SAM.

On October 14, 1980, the carrier filed a reply to the answer of the Postal Service stating that it fully concurs with the rates set forth in the answer, but not with the methodology employed.

Our review of the data submitted by the carrier in its petition and data responses, the Postal Service in its answer, and data contained in CAB Form 41 reports indicates the need for an increase in the carrier's Trust Territory service mail rates. While the Board recognizes that a certain amount of judgment has been exercised in arriving at the cost estimates underlying the proposed rates, as we have noted before, costing the mail does not lend itself to mathematical precision. In addition, the proposed rates are the product of arm's length bargaining between Continental and the Postal Service and are acceptable to the parties. Consistent with past policy, we have given weight to the fact that the carrier and the Postal Service have agreed upon the rates and that the carrier is not subsidized and we can find no basis to declare the rates unreasonable even though the methodology used by the Postal Service to determine the rates differs somewhat from the methodology that we prefer to use. Finally, it is our judgment that the proposed rates, which are about 84 percent above the currently effective rates, are well within the zone of reasonableness on the basis of all the considerations involved.

In reaching this conclusion, we have confined our determinations to the facts peculiar to this case and do not necessarily accept and/or agree with the methodology used by the Postal Service in arriving at those rates, nor do we intend that our determination in this instance be construed as a precedent for use of a different methodology.

On the basis of the foregoing, the Board tentatively finds and concludes that:

(1) The fair and reasonable final rates of compensation to be paid in their entirety by the Postmaster General to Continental Air Lines, Inc. for the transportation of mail by aircraft between points within the Trust Territory, between Honolulu, Guam, and Okinawa, on the one hand, and Johnston Island and points within the Trust Territory, on the other hand, between Honolulu, Guam and Okinawa, on the one hand, and Midway Island and points within the Trust Territory, on the other hand, and between Nauru and Majuro, Trust Territory, the facilities used and useful therefor, and the services connected therewith, on and after July 21, 1980, are as follows:

(a) For all mail matter other than specific mail matter for which rates are elsewhere established; $1.023 per billed ton-mile.

(b) For that class of mail (hereinafter referred to as SAM mail) consisting of the mail matter described in sections 4303(d)(5) and 4560 of Title 39 of the United States Code when airlifted on a space available basis; $0.69 per billed ton-mile.

(2) The terms and conditions applicable to the transportation of each class of mail at the rates proposed here are those set forth in Order 72-2-22.

Therefore, in accordance with the Federal Aviation Act of 1958, as amended, particularly sections 204(a) and 406, and the Board's Procedural Regulations promulgated in 14 CFR, Part 302,

1. We direct all interested persons, particularly Continental Air Lines, Inc., Air Micronesia, Inc., the Department of Defense and the Postmaster General, to show cause why the Board should not adopt the foregoing findings and conclusions and fix, determine and publish those rates to be effective as specified above.

2. We direct all interested persons having objections to the rates or to the tentative findings and conclusions proposed here to file with the Board a notice of objection within ten (10) days after the date of service of this order, and, if notice is filed, to file a written answer and any supporting documents within 30 days after service of this order.

3. If no notice is filed, or, if after notice, no answer is filed within the designated time, or if an answer timely filed raises no material issue of fact, we will deem further procedural steps waived and we may enter an order incorporating the tentative findings and conclusions set forth here and fixing the final rates set forth in the attached Appendix.[1]

4. We shall serve this order on the Postmaster General, the Department of Defense, Continental Air Lines, Inc. and Air Micronesia, Inc.

We shall publish this order in the **Federal Register.**

[1] Appendix filed as part of the original document.

By the Civil Aeronautics Board:[2]

Phyllis T. Kaylor,

Secretary.

[FR Doc. 81-236 Filed 1-2-81; 8:45 am]

BILLING CODE 6320-01-M

[Docket 38503; Order 80-12-100]

Mississippi Valley Airlines, Inc.; Order

Adopted by the Civil Aeronautics Board at its offices in Washington, D.C. on the 18th day of December, 1980.

On July 21, 1980, Mississippi Valley Airlines, Inc., (MVA) filed a notice of intent to terminate essential air service at Clinton, Iowa, effective August 20, 1980. By order 80-8-108, August 20, 1980, we prohibited the carrier from suspending or reducing its service at Clinton for a 30-day period through September 19, 1980.[1]

On October 10, 1980, MVA filed an application for compensation for losses at Clinton for the period August 20 through September 19, 1980, inclusive. The carrier provided a detailed explanation of its estimated traffic revenue, expenses, and operating statistics and sought interim compensation of $34,676.55, excluding profit, for each 30-day period of forced service. On November 14, 1980, the carrier filed an amended application reducing its compensation request to $14,146.48, exclusive of profit, to reflect actual rather than estimated August costs, a prorated portion of the Dubuque-Chicago passenger revenue, and a change from flight hours to available-seat miles and revenue-passenger miles as a basis for allocating most indirect expenses.

We have reviewed MVA's amended application and find that the information contained therein reasonably supports the requested compensation on an interim basis. A profit element will be considered when we propose a final settlement of the carrier's claim.

Accordingly, pursuant to the Federal Aviation Act of 1958, as amended, particularly sections 102, 204, 419, and 1002(d) thereof, and the regulations promulgated in 14 CFR 302 and 304:

1. We set the interim level of compensation for losses sustained by Mississippi Valley Airlines, Inc. by virtue of its provision of essential air transportation at Clinton, Iowa at $86.2561 for each scheduled flight completed beginning August 20, 1980, subject to a maximum compensation of $14,146 per 30-day period;

2. This proceeding shall remain open pending entry of an order fixing the final

[2] All Members concurred.

[1] We have since extended the carrier's obligation.

rate of compensation, and the amount of such rate of compensation may be the same as, lower than, or higher than the interim rate of compensation set here; and

3. We shall serve the order upon all parties to this proceeding.

We shall publish this order in the **Federal Register.**

By the Civil Aeronautics Board:[2]

Phyllis T. Kaylor,

Secretary.

[FR Doc. 81-237 Filed 1-2-81; 8:45 am]

BILLING CODE 6320-01-M

[Docket 38574; Order 80-12-97]

Reeve Aleutian Airways, Inc.; Order To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 18th day of December, 1980.

By this order the Board proposes to further amend Order 78-9-113, September 27, 1978, so as to provide for a higher surcharge to cover additional increases in fuel costs.[1]

On August 8, 1980, Reeve Aleutian Airways, Inc. petitioned the Board for an increased fuel surcharge applicable to mail transported in its intra-Alaska service of 22.9 cents per linehaul ton-mile and 0.9 cents per pound originated to become effective August 9, 1980. The petition describes the continuing substantial increases in fuel prices that it is experiencing. On August 20, 1980, the United States Postal Service requested and was granted an extension of time to September 18, 1980, in which to file answers to Reeve's petition. Subsequently, the Board's staff requested Reeve to submit a more detailed economic justification to support the reasonableness of the proposed increase.

On September 16, 1980, Reeve filed an amended petition requesting approval of a fuel surcharge of 36.6 cents per linehaul ton-mile and 1.5 cents per pound of mail originated effective August 9, 1980. Subsequently, on October 3, 1980, the Postal Service filed a motion for leave to file an untimely document and answer to the amended petition of Reeve,[2] proposing a mutually agreed upon fuel surcharge of 28.8 cents per ton-mile and 1/2 cents per pound originated.

Our review of the data submitted by Reeve in its petitions, the Postal Service in its answer and fuel data contained in CAB Form 41 reports indicates the need for an increase in the fuel surcharge added to Reeve's service mail rates set in Order 78-9-113. Consistent with past policy, we have given weight to the fact that both parties have agreed upon the fuel surcharges and that Reeve is not a subsidized carrier, and we can find no basis to declare the rates unreasonable even though the revenue ton-mile methodology used by the Postal Service to determine the surcharge differs somewhat from the available ton-mile methodology that we prefer to use. Therefore, we tentatively find that the rates proposed by the Postal Service fall within the zone of reasonableness and constitute fair and reasonable rates for Reeve's intra-Alaska mail services.

In reaching this conclusion, we have confined our determinations to the peculiar facts of this case and do not necessarily accept and/or agree with the methodology used by the Postal Service in arriving at these rates, nor do we intend that our determination in this instance be construed as a precedent for use of a different methodology. The proposed fuel surcharges will increase the currently effective linehaul and terminal charges by about 17.9 percent and 3.5 percent, respectively.

On the basis of the foregoing, the Board tentatively finds and concludes that the fair and reasonable rates of compensation to be paid in their entirety by the Postmaster General to Reeve Aleutian Airways, Inc. for the transportation of mail by aircraft over its intra-Alaska routes, the facilities used and useful therefor, and the services connected therewith, are the rates specified in Order 78-9-113, September 27, 1978, plus a fuel surcharge of 28.8 cents per linehaul ton-mile and 1/2 cents per pound originated to be effective on and after August 9, 1980.

Therefore, in accordance with the Federal Aviation Act of 1958, as amended, particularly sections 204(a) and 406, and the Board's Procedural Regulations promulgated in 14 CFR, Part 302,

1. We direct all interested persons, particularly Reeve Aleutian Airways, Inc. and the Postmaster General, to show cause why the Board should not adopt the foregoing findings and conclusions, and fix, determine and publish those rates to be effective as specified above.

2. We direct all interested persons having objections to the rates or to the tentative findings and conclusions proposed here to file with the Board a notice of objection within ten (10) days after the date of service of this order, and, if notice is filed, to file a written answer and any supporting documents within 30 days after service of this order.

3. If no notice is filed, or, if after notice, no answer is filed within the designated time, or if an answer timely filed raises no material issue of fact, we will deem all further procedural steps waived and we may enter an order incorporating the tentative findings and conclusions set forth here and fixing the final rates set forth in the attached Appendix.[3]

4. We shall serve this order on the Postmaster General and Reeve Aleutian Airways, Inc.

We shall publish this order in the **Federal Register.**

By the Civil Aeronautics Board:[4]

Phyllis T. Kaylor,

Secretary.

[FR Doc. 81-236 Filed 1-2-81; 8:45 am]

BILLING CODE 6320-01-M

[Order 80-12-116, Dockets 34802, 37165, 38180 and 38773]

Wien Air Alaska, Inc., et al.; Order Fixing Final and Temporary Service Mail Rates

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 22nd day of December, 1980.

In the matter of the petition of Wien Air Alaska, Inc. for the establishment of fair and reasonable service mail rates (Docket 34802), Great Northern Airlines Service Mail Rates Investigation (Docket 37165), Sea Airmotive, Inc. Service Mail Rates Investigation (Docket 38180) and Alaska International Air, Inc. Service Mail Rates Investigation (Docket 38773).

By Order 80-8-123, served August 25, 1980, the Board directed all interested persons to show cause why we should not establish the proposed intra-Alaska service mail rates as the final rates of compensation for Wien Air Alaska, Inc. for the periods January 1 through June 30, 1980, and July 1 through December 31, 1980. That order implemented the review procedure and updating formula for establishing final intra-Alaska service mail rates for Wien for future periods on a semi-annual basis.[1]

Wien filed a notice of objection to the show cause order on September 4, 1980, and filed its answer on September 24, 1980. Subsequently, on October 6 and

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[2] All Members concurred.

[1] See also Orders 80-4-117 and 80-5-33.

[2] We believe that the Postal Service's motion is not required and will dismiss it. The date Reeve filed its amended petition, containing new proposed rates and economic justification, begins the 20-day period in which answers shall be filed. The Postal Service's answer was filed within 20 days after service of the amended petition and, therefore, was timely filed.

[3] Appendix filed as part of the original document.

[4] All Members concurred.

[1] See Orders 79-11-22 and 80-4-53.

November 4, 1980, the carrier filed supplements to its answer. On October 21, 1980, the United States Postal Service filed a motion for leave to file an otherwise unauthorized document and reply to Wien's answer and first supplement.[2] On November 7, 1980, Wien filed a motion for leave to file a response to the Postal Service's reply which was accompanied by its response.[3]

Wien objects to the updating methodology employed in the show-cause order arguing that it is distorted because it is based on a comparison of system operating costs for the latest period, including new mainland-Alaska services, with intra-Alaska costs for the base period. Therefore, it does not reflect accurately the changes in intra-Alaska costs. The lower cost mainland-Alaska operations when coupled with the higher cost intra-Alaska operations result in lower system average costs. The carrier proposed what it believes to be a proper basis for determining the impact of inflation and cost increases on its intra-Alaska services.[4] It took reported system data for the year ended March 31, 1980 and adjusted it by removing the United Parcel Service contract operations. Unit costs per available ton-mile for this period were then compared to reported system unit costs per ATM for calendar year 1979. This ratio was then applied to the base year costs shown in Order 80-8-123 to arrive at intra-Alaska unit costs for the year ended March 31, 1980, which were then increased by the escalation factors shown in that order to arrive at the estimated unit costs at March 31 and September 30, 1980. The methodology would provide rate increases of 14.04 and 22.09 percent for the first and last half, respectively, of 1980. The same computations were made using calendar year 1978 as the base year and this would provide rate increases of 16.31 and 25.24 percent for the first and last half, respectively, of 1980. Wien also infers that since the Consumer Price Index and Alaska Airlines costs have increased by a substantial amount that its costs must have increased accordingly.

The Postal Service is of the opinion that by failing to object to the updating methodology at the time it was established, (See Orders 79-11-22 and 80-4-53) Wien has waived the right to do so now. Its position is that Wien has failed to offer a substantiated methodology that addresses the issue of the change in Wien's operations. It also requests that, with the exception of an arithmetic error, the rates proposed in Order 80-8-123 be made final and that Wien's answer and supplements be denied.

Wien's objection is well taken. Since mid-1979, Wien's routes have been extended into the lower-48 states, thereby increasing its average stage length and decreasing its average cost per aircraft-mile. Its system costs, consequently, contain mileage efficiencies that make them generally unsuited for use in establishing cost and rate changes for Wien's fundamentally short-haul intra-Alaska routes. Further, an examination of the available data indicates that the cost and operational characteristics of Wien's intra-Alaska, mainland-Alaska and 48-states operations are different.

We do not agree with the Postal Service's contention that Wien has waived its right to object to the updating methodology. It has demonstrated that the technique used in Order 80-8-123 does not reflect intra-Alaska cost changes. We do, however, agree with its position that Wien has failed to offer a viable alternative methodology for two reasons.

First, Wien's proposal fails to indicate what the direct effect of the shorter intra-Alaska average stage length has on its unit costs. It states that intra-Alaska costs are higher than system average costs but fails to quantify them. Second, it related projected costs to costs for a period differing from the base period used in determining the rates. Neither calendar years 1978 or 1979 are the correct base years. Base year data were derived by adjusting calendar year 1978 data to reflect increases in fuel prices as well as all known contractual labor costs increases that would occur in 1979.

We believe that a more sophisticated updating methodology than the one used in Order 80-8-123 or that proposed by Wien is necessary. Our staff has developed such a method based on the pleadings. The modified rate computations, which are shown in Appendix B, also reflect the latest reported operating data for Wien for the year ended June 30, 1980.[5] We believe that our revised methodology is superior to that proposed by Wien because it increases system unit costs by a factor that reflects the difference attributable to the shorter intra-Alaska stage lengths.

Wien's scheduled services, other that its bush services, are now performed entirely with B-737 aircraft. Data provided by the carrier show that for the year ended June 30, 1980, the B-737 system average stage length was 451 miles compared to 1,106 miles for States-Alaska operations and only 360 miles for intra-Alaska operations. The carrier also provided data supplied by the aircraft manufacturer showing B-737 operating costs per mile at various stage lengths. These data show that costs per mile for a stage length of 360 miles are about 14 percent greater than those for a stage length of 451 miles.

We began, as usual, with a fuel cost projection. The cost per gallon as at March 31, 1980, is the average fuel cost for the first six months of 1980. The cost per gallon as at September 30, 1980, is the average cost for the months of September and October. (See Appendix C). Nonfuel cost escalation was also determined in the usual manner. Cost escalation from January 1, 1979, to January 1, 1980, is based on a comparison of unit costs per available ton-mile for the year ended June 30, 1979, with unit costs for the year ended June 30, 1980. The rates of change were then projected to the midpoint of the rate period to arrive at the estimated system unit costs as at March 31 and September 30, 1980. The estimated system unit costs were then increased by 14 percent to arrive at the estimated intra-Alaska unit costs.

These rates represent an increase over the base year rates of 11.09 percent for the first half of 1980 and 13.94 percent for the last half of 1980. The cause of the increase is attributed to the increase in aircraft operating costs—both fuel and nonfuel.

Inasmuch as the temporary rates of compensation to be paid to Great Northern Airlines, Inc., Alaska International Air, Inc., and Sea Airmotive, Inc., are based upon rates for Wien,[6] the establishment of new rates for Wien also results in the fixing of new temporary rates for these carriers. We waive the procedural requirements of Rule 310 with respect to the temporary rates for these carriers. In future orders, we will adjust the two tier rates established for Wien in Docket 38019 by Order 80-11-81, November 13, 1980, to reflect cost increases and apply these rates to other intra-Alaska carriers where appropriate.

Therefore, in accordance with the Federal Aviation Act of 1958, as amended particulary sections 204(a) and 406, and the Board's Procedural

[2] We grant the motion of the Postal Service.

[3] We grant the motion of Wien.

[4] See Attachments I and II of Wien's answer filed September 24, 1980.

[5] An adjustment was made to include $1,293,371 of fuel used for charter services performed for the United Parcel Service which were not included in the amount of fuel expense reported by the carrier on Schedule P-5.2. A correction was also made to the base year total operating expense.

[6] See Orders 79-11-203, 80-10-1 and 80-10-159.

Regulations promulgated in 14 CFR, Part 302.

1. The fair and reasonable final rates of compensation to be paid in their entirely by the Postmaster General in accordance with the provisions of Section 406 of the Federal Aviation Act of 1958, as amended, to Wien Air Alaska, Inc. for the transportation of mail by aircraft over its intra-Alaska routes, the facilites used and useful therefor, and the services connected therewith are:

(a) For the period January 1 through June 30, 1980, per great-circle mail ton-mile, $2.5494 for priority mail and $1.0567 for nonpriority mail.

(b) For the period from July 1 through December 31, 1980, per great-circle mail ton-mile, $2.6148 for priority mail and $1.0838 for nonpriority mail.

3. The fair and reasonable temporary rates of compensation to be paid in their entirety by the Postmaster General to Wien Air Alaska, Inc., Great Northern Airlines, Inc., Alaska International Air, Inc. and Sea Airmotive, Inc. for the transportation of mail by aircraft in inter-Alaska service from January 1, 1981, until further Board order, are the final rates established for the period July 1 through December 31, 1981.[7]

4. A copy of this order shall be served upon the Postmaster General, Wien Air Alaska, Inc. Great Northern Airlines, Inc., Alaska International Air, Inc. and Sea Airmotive, Inc.

We shall publish this order in the **Federal Register.**[8]

By the Civil Aeronautics Board.[9]

Phyllis T. Kaylor,

Secretary.

[FR Doc. 81-240 Filed 1-2-81; 8:45 am]

BILLING CODE 6320-01-M

[7] These rates are subject to the rate determinations pending in Docket 38019.

[8] Appendixes A through C filed with the original document.

[9] All members concurred.

[Order 80-12-92, Dockets 36595 and 38746, EDR-408]

Investigation Into the Competitive Marketing of Air Transportation

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 18th day of December, 1980.

On October 9, 1980 the International Air Transport Association (IATA) filed a motion in which it requested that we coordinate our review of pricing issues in the *Investigation into the Competitive Marketing of Air Transportation* and in EDR-408, 45 FR 64864, September 30, 1980, the so-called maximum tariff rulemaking. IATA argues that the pricing issues in the two proceedings are essentially the same and that, absent Board action to avoid that result, adoption of the proposed rule would effectively preempt and render moot the already costly litigation of retail pricing issues in Docket 36595. IATA believes that the scheme proposed in EDR-408, which would allow air carriers to file tariffs stating only the maximum prices they may charge, would remove all impediments to carriers charging fares and rates not exceeding such maximums. As such, IATA believes the proposed rule would legalize selective price cutting of all kinds. Air carriers could then give price discounts to large volume customers, offer net remittance fares for use by travel agents or offer "wholesale" fares for resale by other intermediaries. In its view these pricing innovations are a part of the broad inquiry into the need for increased retail price competition in the *Marketing* case.

IATA requests that we take procedural steps to reconcile our tentative policy determinations in the proposed rulemaking with our earlier decision to have the subject of retail pricing flexibility determined on a public hearing record in the *Marketing* case.[1] IATA asks that we postpone the comment period in the rulemaking,[2] and simultaneously issue an order expediting consideration of pricing issues in the *Marketing* case so that evidence in that proceeding might be considered in the rulemaking. It suggests that we issue an order requesting that the presiding administrative law judge in the *Competitive Marketing Investigation* hear retail pricing issues in that proceeding first. IATA states that the record in that phase could then be promptly certified to the Board, with the judge's recommendations, as a matter to be coordinated with the public comments on EDR-408.

Three other parties have also filed motions directed to the overlap of pricing issues in the two cases. The American Society of Travel Agents (ASTA) has moved to terminate the rulemaking proceeding. In the alternative, it believes parties to the two proceedings need an explanation of how the issues to each relate to one another. The Association of Retail Travel Agents (ARTA) has moved to consolidate the proposed maximum tariff rule into the *Marketing* case on the grounds that the proceedings involve issues which are substantially the same or closely related. Associated Travel Nationwide (ATN) has also moved to terminate the rulemaking, or, in the alternative, to consolidate it with the pricing issues in the *Competition Marketing Investigation.*[3]

The American Automobile Association and British Airways have filed answers in support of ASTA's motion. The National Passenger Traffic Association (NPTA) has filed an answer in which it opposes all three motions.[4] It argues there is no justification for further delay of consideration and resolution of pricing flexibility issues in view of the substantial delays which have already occurred in the processing of the *Marketing Investigation.* Republic Airlines has filed an answer in which it suggests we make EDR-408 the forum for resolution of pricing flexibility issues as they apply to international markets and the *Competitive Marketing Investigation* the forum where domestic pricing freedom is explored. It argues that this approach reflects the different focuses of the two proceedings: EDR-408 was intended to deal with the peculiar international problem of incentives to deviate from filed tariffs, while the *Marketing* case involves primarily domestic concerns.

We have decided to grant relief that substantially conforms to that IATA proposed in its motion. We agree that the two proceedings should be restructured to permit contemporaneous consideration. We believe that, rather than terminating or consolidating EDR-408, we can adopt procedures that will eliminate the need some parties may feel to participate in both proceedings. We have already decided to expedite consideration of pricing issues in the *Market* case.[5] We now direct that the record on pricing issues be certified to the Board on or before April 15, 1981. We will then coordinate our review of that record with comments on the rulemaking. Our procedures will also permit timely consideration of pricing issues.

For the reasons set out below we have decided to hold EDR-408 in abeyance until the record of an oral evidentiary hearing on pricing issues, as they are raised in the *Competitive Marketing Investigation,* can be completed and certified to the Board. On the basis of that record, and comments already filed in Docket 38746, we expect to prepare a document, either a revised notice of proposed rulemaking or a tentative decision, in which we reach some tentative conclusions on pricing issues. All interested persons will then be afforded an additional opportunity to comment or raise objections, and to

[1] Order 79-9-64.

[2] By EDR-408A, dated October 22, 1980 the due date for comments on EDR-408 was postponed from October 30, 1980 to December 1, 1980.

[3] The Electronic Shippers have filed a motion requesting that we consolidate PSDR-65 with the maximum tariff rulemaking. We will dispose of that motion by a separate order.

[4] Its filing was accompanied by a motion to file an otherwise unauthorized document which we will grant.

[5] We decided in Order 80-12-70, December 12, 1980, to, at a minimum, expedite consideration of pricing issues in the *Marketing* case. That order directed the presiding administrative law judge to reorder the sequence in which major presentations are heard so that pricing issues would be considered first. We issued a separate order on this question in order to give the parties to the case the maximum possible notice of our action.

present oral argument to the Board. A final decision will then be made on all the evidence before us.

I. The Marketing case.

When we instituted the *Competitive Marketing Investigation*, we stated that the close relationship between pricing freedom and marketing structure mitigated against the institution of a separate rulemaking at that time.[6] We also stated in a companion order that issues such as the impact of pricing freedom on the present distribution system are best studied within the context of an evidentiary proceeding.[7] It was for that reason that we suggested six alternative means of granting air carriers increased pricing freedom in the sale of air transportation. We believed that the parties' discussion of those six options would allow us to thoroughly explore the legal and policy implications of increased price competition.[8]

We remain convinced that an oral evidentiary hearing can be useful in providing a basis for our final decision on some pricing issues. The evidence gathered there may be helpful in elucidating the effect of price competition on the present network of travel agents. The effect of various alternatives on travel agents will be an important consideration in determining what action we should take, on an interim basis, concerning retail competition, in light of the elimination of tariffs for interstate and overseas air transportation in January 1983.

II. EDR-408.

While we believe that the *Competitive Marketing Investigation* will be helpful in deciding some of the pricing issues, we are not ready to terminate EDR-408. In EDR-408 we proposed a rule that would allow airlines to file tariffs that state prices as maximum amounts instead of exact amounts, so that any price up to the maximum could be charged.[9] We found this approach to be attractive because it appeared to best promote competition and meet various carriers' requests for pricing freedom in Pacific markets. The rule would also lessen the competitive inhibitions that may flow from the present tariff system and the higher retail prices such a system may produce. Moreover, the proposal appears to be consistent with our statutory policy goal of promoting increased competition in the air transportation industry to the maximum possible extent. We believe that the possibility of securing such benefits dictate that we consider the maximum tariff proposal further. Finally, the rulemaking will afford us the opportunity to treat pricing issues more comprehensively than they can be treated in the *Market* case.

III. IATA's motion

IATA has suggested (1) that we expedite consideration of pricing issues in the *Competitive Marketing Investigation;* (2) that the record on that part of the case be certified to the Board, with recommendations from the presiding judge, for simultaneous consideration with the comments on EDR-408; and (3) that pricing decisions be made on the basis of the entire record before the Board. We are in substantial agreement with IATA's approach. It would afford parties to the *Marketing* case the opportunity to create a record, and yet allow us to weigh the possible benefits and costs of the maximum tariff rule. Since the principal concern of the parties addressing pricing issues in the *Marketing* case has been the impact of pricing freedom on travel agents, the proceeding has not been conducive to a broad ranging inquiry into the many implications of changes in pricing policies. Furthermore, EDR-408 specifically deals with several international pricing issues not placed at issue in the *Marketing* case. Consequently, we expect a fuller discussion of pricing issues in the comments on our proposed rule than is possible in the *Marketing* proceeding alone.

Just as important, the IATA approach will expedite consideration of the pricing issues. When we instituted the *Marketing* case our principal reason for placing retail price competition at issue was to determine what action we should take in light of the elimination of tariffs for interstate and overseas air transportation in 1983. Unfortunately, the proceeding has been slowed by several delays. Given its current schedule, it probably could not be a vehicle for establishing an interim pricing policy. Our action today should allow us to once again meet that objective. Moreover, it will give air carriers some guidance on our pricing policies in the transition to a tariff-less environment.

IV. Procedures

We have elsewhere directed the presiding administrative law judge in the *Marketing* case to revise the order in which the principal issues in the case are to be heard.[10] By an order dated June 25, 1980, wholesale and retail pricing competition were designated as one of five major categories of presentations. At the present time they are scheduled to be heard last.

It is our intention that restructuring the case should not delay the hearing. We recognize that the presiding judge may be asked to delay taking evidence on the pricing issues because witnesses, relying on the earlier schedule, will have made other commitments that will make them unavailable to testify in mid-January. Within the time constraints we have outlined above, the presiding judge has ample discretion to accommodate parties' schedules, by taking witnesses out of turn, holding hearings at special times and taking such other action as he deems warranted in the circumstances.

Moreover, as we indicated above, we will afford parties to the *Competitive Marketing Investigation* and all other interested persons the opportunity for further comment before a final decision. After the record is certified and we have had an opportunity to review it, we expect to issue a proposed rule or a tentative decision. All parties will have the opportunity for comments or objections and oral argument.

We are now taking the additional step of directing the judge to certify the record on the pricing issues immediately after he has received the parties' evidence on that phase, but in no event later than April 15, 1981. We must expedite consideration of these issues if we are to be in a position to develop an interim pricing policy before our authority over tariffs terminates.

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[6] Order 79-9-64 at 15, n. 47.

[7] Order 79-9-65 at 14-15. *See also*, 80-2-33 at 8.

[8] The six options were as follows:

1. A complete exemption allowing carrier and/or other retailers to engage in total pricing freedom in interstate and overseas markets;

2. A limited exemption for carriers and/or ticket agents conditioned on charging rates in enterstate and overseas markets keyed to the zone established by the Act and the Board's policy statements creating a non-suspend zone;

3. A policy concluding that tariffs may provide for price ranges, which would gradually widen over time;

4. A policy statement permitting tariffs with two-tiered pricing, one price for sales by the carrier directly to the public and second price, filed or open, for sales to the public by non-airline retailers.

5. A policy statement permitting tariffs to stipulate a single price for all sales made by air carriers, with retailers adding their own charges; and

6. A policy statement permitting carrier to issue tickets to retailers at a price which would not include the airline's own marketing costs.

[9] Northwest Airlines suggested this scheme after Pan American and Braniff applied for more limited relief from section 403. Pan Am and Braniff had requested an exemption from sections 403 and 404 of the Federal Aviation Act to the extent necessary to honor other carriers' tickets. The Northwest scheme would afford carriers greater pricing freedom to meet the competitive practices of other carriers, by not referring to specific tariff amounts.

[10] Order 80-12-70, December 12, 1980.

After our Order 80-10-78, the judge in the *Marketing* case issued a decision in which he permitted the Bureau of Domestic Aviation to present alternatives in lieu of taking a position where it had not formally developed one. While such a statement of options is consistent with Board policies concerning staff participations in administrative proceedings, (*see* PS-63), it is not clear that BDA will be permitted to engage in what some may regard as friendly cross-examination. The Bureau is customarily exempted from the bar on friendly cross-examination of other parties' witnesses in order to develop the record and we believe it is important that this freedom be assured in the *Marketing* case. We are also concerned that rulings or objections to friendly cross-examination at the hearing might further delay and burden the proceeding. We direct the presiding judge to except BDA from the rule that cross-examination will be limited to witnesses whose testimony is adverse to the party desiring to cross-examine, and to permit it to engage in friendly cross-examination of other parties' witnesses.

In order to insure a thorough record for Board review, we have decided to grant parties the right to file a motion with the Board, without the ALJ's prior consent, for interlocutory appeal of adverse evidentiary or procedural rulings by the presiding law judge. Parties seeking such an appeal shall file a motion within two working days of the ALJ's ruling. The motion shall be captioned "Motion for Interlocutory Appeal" and shall set out the grounds for requesting the Board to entertain the appeal, as well as the reasons for reversing the administrative law judge's ruling. Answers, if any, must be filed within one working day after the motion for interlocutory appeal is filed. Within three working days of receipt of a motion for interlocutory appeal, we will decide whether to entertain the appeal. Only by affirmative vote of three Board members will an appeal be entertained. A final decision on the merits will be made within seven working days of receipt of the motion. The proceedings shall not be stayed pending appeal unless three members specifically direct such action when the vote to grant the appeal is taken. We will be reluctant to interfere with the judge's determination, especially where the request is not thoroughly justified.

Finally, to insure resolution of issues raised by this order before the hearing in the *Marketing* case commences on January 13, 1981, we have decided to shorten the time afforded parties to petition for reconsideration of this order by our procedural rules. Rule 37 generally permits such petitions to be filed within 10 days of service of an interlocutory order, and answers to such petitions must be filed within 10 days thereafter. Petitions for reconsideration of this order, however, must be filed within five working days of the date of service of this order. Answers to such a petition must be filed within three working days of the date the petition is filed.

Accordingly,

1. Except to the extent granted, we deny IATA's motion for coordinated review procedures on parallel issues in the *Investigation into the Competitive Marketing Investigation*, Docket 36595, and EDR-408, Docket 38746;

2. We direct the presiding administrative law judge to certify the record on retail price competition issues when all parties have completed their evidentiary presentations on that phase of the case, but in no event later than April 15, 1981;

3. We grant NPTA's request for leave to file an otherwise unauthorized document;

4. We deny the motions of ARTA, ASTA, and ATN to consolidate EDR-408 into the *Competitive Marketing Investigation* and/or terminate the rulemaking proceeding;

5. We direct the presiding judge in the *Competitive Marketing Investigation* to permit the Bureau of Domestic Aviation to engage in friendly cross-examination, except of its own witnesses, as set forth above;

6. We afford parties to the *Competitive Marketing Investigation* the right to petition the Board to entertain an interlocutory appeal, as set out above;

7. Petitions for reconsideration of this order will be due within five working days of service of this order, and answers to such a petition are due within three working days of the date the petition is filed;

8. We shall publish a copy of this order in the **Federal Register**; and

9. We shall serve copies of this order on all parties to Dockets 36595 and 38746.

By the Civil Aeronautics Board.[11]

Phylis T. Kaylor,

Secretary.

Schaffer, Member, Concurring and Dissenting

As it is now constituted, the *Competitive Marketing Investigation* is a large, complex and difficult case that, contrary to the Board's expressed desire, has proceeded at a very slow pace. Unfortunate problems beyond our control have slowed the process significantly. The relationship between the *Investigation*, the proposed maximum tariff rulemaking and the imminent "sunset" of the Board's jurisdiction over domestic fares and rates properly have prompted a reevaluation of the case with an eye toward coordinating and speeding up our review of pricing issues. The *Investigation* also seems to have become sidetracked by procedural rather than substantive disputes.

Under these circumstances, I am not opposed to some of the Board's actions. I agree that the issues raised by the petition of the Department of Defense concerning the ATC prohibition against the payment of commissions to travel agents for government travel should be considered separately. I concur with the Chairman's proposal to remove from consideration here certain alleged violations of the Board's Rules of Conduct and I agree with the proposal to grant parties the right to file a motion, without the Administrative Law Judge's prior consent, for interlocutory appeal of adverse evidentiary or procedural rulings in order to insure a thorough record for Board review.

Unfortunately, I cannot agree with my colleagues on the action taken regarding the Phase 5 pricing issues; that is to hear those issues first and then to certify the record to the Board when all parties have completed their evidentiary presentations. First, the pricing issues cannot be neatly packaged and removed without confusing the remaining portion of the proceeding. The phases were not meant to be watertight compartments but were designed as a procedural convenience for the parties and the Administrative Law Judge.

I fear that the Board's action will do more to confuse the case than clarify the issues. Obviously, there are going to be evidentiary problems; some material surely will overlap various phases of the case and the Board's action undoubtedly will create new difficulties for the litigants. Changing the rules of the game at this late date will disrupt evidentiary presentations and witness schedules. Similarly, we have markedly added to the enormous burden facing the Administrative Law Judge.

Finally, I am disturbed that the action today denies the Board the benefits of an ALJ's initial decision on retail pricing issues and, to some extent, ignores the potential interrelationship between the pricing issues and the organizational aspects of the travel agent industry. While I recognize that the pressures of time, particularly the statutory schedule which calls for "sunset" of our fare and rate jurisdiction, already have limited our options to fashion a transition; I feel it is preferable to allow the case to proceed as originally constituted without further intrusion by the Board.

Gloria Schaffer.

[FR Doc. 81-151 Filed 1-2-81; 8:45 am]

BILLING CODE 6320-01-M

[11] All Members concurred except Member Schaffer who concurred and dissented and filed the attached concurring and dissenting statement.

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committee of the American Marketing Association; Renewal

In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. (1976), and Office of Management and Budget Circular A-63 of March 1974, and after consultation with GSA, the Secretary of Commerce determined that the renewal of the Census Advisory Committee of the American Marketing Association is in the public interest in connection with the performance of duties imposed on the Department by law.

The Committee was first established by the Secretary of Commerce in 1946, and its present charter was to terminate December 14, 1980. It was initially chartered under the Federal Advisory Committee Act in 1973. Its purpose is to provide the Bureau of the Census with recognized expertise from the business and academic fields regarding the statistical needs of data users concerned with marketing the Nation's products and services.

The Bureau of the Census will continue to utilize the expertise of this Committee in its continuing evaluation of present, planned, and recommended programs of interest to the marketing community. The Committee's recommendations are concerned both with the Bureau's demographic and economic statistics programs which encompass demographic and economic censuses as well as current sample surveys. The Committee has made valuable recommendations which have had significant impact on the Bureau's programs in such areas as census promotion, the quality of survey estimates, publication timing, sample improvements, data content, and respondent burden.

As presently chartered, the Committee will consist of 15 members appointed by the President of the American Marketing Association from the membership of this organization, from a list of nominees provided by the Director, Bureau of the Census. An effort is made to select members from varied academic and business communities and to provide a diverse mix by geographic area, sex, and race. The Committee will report and be responsible to the Director, Bureau of the census, and will function solely as an advisory body in compliance with the provisions of the Federal Advisory Committee Act.

Copies of the Committee's revised charter will be filed with appropriate committees of Congress and with the Library of Congress.

Inquiries or comments may be addressed to the Committee Control Officer, Mr. Tyler R. Sturdevant, Chief, Business Division, Room 2633, Federal Building 3, Bureau of the Census, Washington, D.C. 20233, telephone (301) 763-7564.

Dated: December 19, 1980.

Elsa A. Porter,

Assistant Secretary for Administration.

[FR Doc. 80-40773 Filed 12-31-80; 8:45 am]

BILLING CODE 3510-17-M

Census Advisory Committee on Housing for the 1980 Census Renewal

In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. (1976), and Office of Management and Budget Circular A-63 of March 1974, and after consultation with General Services Administration, the Secretary of Commerce has determined that the renewal of the Census Advisory Committee on Housing for the 1980 Census is in the public interest in connection with the performance of duties imposed on the Department by law.

The Committee was established in 1976 by the Secretary of Commerce under the Federal Advisory Committee Act. Its present charter is scheduled to expire December 12, 1980. The present objective of the Committee is to provide technical advice and guidance in planning the census and post-census activities of the decennial census of housing to ensure that the major statistical requirements of decisionmakers are met. The Committee provides advice on housing subject-matter concepts, tabulations, data dissemination plans and other relevant aspects of the overall 1980 census program. The Committee is strictly advisory. In renewing the Committee, no significant change of objectives is planned, but the emphasis will be upon the postcensus activities.

The Committee will continue to consist of 18 members including a representative from each of nine major national organizations with different interests and nine members appointed by the Secretary of Commerce. These represent as widely as possible the data users vitally concerned with the many aspects of the Nation's housing. The Chairperson and Chairperson-elect will continue to be elected for a 1-year term by the Committee which will operate in compliance with the Federal Advisory Committee Act.

Copies of the Committee's charter will be filed with the appropriate committees of the Congress and with the Library of Congress.

Inquiries or comments may be addressed to the Committee Control Officer, Mr. Arthur F. Young, Chief, Housing Division, Room 1731, Federal Building 3, Bureau of the Census, Washington, D.C. 20233, telephone (301) 763-2863.

Dated: December 19, 1980.

Elsa A. Porter,

Assistant Secretary for Administration.

[FR Doc. 80-40770 Filed 12-31-80; 8:45 am]

BILLING CODE 3510-17-M

Census Advisory Committee on Population Statistics; Renewal

In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. (1976), the Office of Management and Budget Circular A-63 of March 1974, and after consultation with GSA, the Secretary of Commerce has determined that the renewal of the Census Advisory Committee on Population Statistics is in the public interest in connection with the performance of duties imposed on the department by law.

The Committee was first established on April 13, 1965, and is due to terminate on December 14, 1980. Its continuing purpose is to advise the Director, Bureau of the Census, on current programs and the decennial census of population. During the last 2 years the Committee has made important contributions to the consideration of alternative actions as a consequence of the possible undercount in the 1980 census. It has provided sound advice concerning steps to be taken to make possible the comparison of industry and occupation data from the 1980 and 1970 censuses in view of the substantial change in the coding system. The Committee members have had a significant impact on the Bureau's decisions with regard to the presentation of information on race and ethnic origin from the 1980 census and the Current Population Survey. A wide range of problems connected with the collection of data through the publication of data from the 1980 census and from the Bureau's population surveys has been carefully scrutinized by the Committee, and from its deliberations many important modifications of the Bureau's plans have evolved.

In the next 2 years, the Committee will evaluate the completeness of the 1980 census count, review the plans for analyzing the census tabulations, and continue to review the many current surveys the Bureau undertakes in the area of population statistics.

The Committee will continue with a balanced representation of 15 members, chaired by one of the Committee members which they select. The Committee will report and be responsible to the Director, Bureau of the Census, and will function solely as an advisory body in compliance with the provisions of the Federal Advisory Committee Act.

Copies of the Committee's revised charter will be filed with appropriate committees of the Congress and with the Library of Congress.

Inquiries or comments may be addressed to the Committee Control Officer, Paul C. Glick, Senior Demographer, Population Division, Room 2019, Federal Building 3, Bureau of the Census, Washington, D.C. 20233, telephone (301) 763-7030.

Dated: December 19, 1980

Elsa A. Porter,

Assistant Secretary for Administration.

[FR Doc. 80-40767 Filed 12-31-80; 8:45 am]

BILLING CODE 3510-17-M

Census Advisory Committee on the Spanish Origin Population for the 1980 Census; Renewal

In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. (1976), and Office of Management and Budget Circular A-63 of March 1974, and after consultation with GSA, the Secretary of Commerce has determined that the renewal of the Census Advisory Committee on the Spanish Origin Population for the 1980 Census is in the public interest in connection with the performance of duties imposed on the Department by law.

The Committee was first established in March 1975, and is due to terminate on December 14, 1980. Its purpose is to provide an organized and continuing channel of communication between the Spanish origin population and the Bureau of the Census on problems and opportunities of the Twentieth Decennial Census as they relate to the Spanish origin population of the United States. Having an established channel of communication has been helpful to the Census Bureau in its efforts to develop techniques designed to minimize the undercount of the Spanish origin population, and to develop improved procedures to disseminate the 1980 census data.

The Bureau will continue to draw on the knowledge and expertise of the Committee members to provide advice during the postenumeration period of the 1980 Census of Population and Housing on such elements as improving the tabulation and presentation and census data of special use to the Spanish origin population, on alternative approaches to the possible adjustment for the census undercount, and on ways to maximize the usefulness of the overall census product.

The Committee will continue to consist of 21 members appointed from among a broad spectrum of community leaders, who will elect a Committee Chairperson from among the members. The Committee will report and be responsible to the Director, Bureau of the Census. The Committee will function solely as an advisory body, in compliance with the Federal Advisory Committee Act.

Copies of the Committee's revised charter will be filed with appropriate committees of Congress and with the Library of Congress.

Inquiries or comments may be addressed to the Committee Control Officer, Mr. Clifton S. Jordan, Decennial Census Division, Room 3779, Federal Building 3, Bureau of the Census, Washington, D.C. 20233, telephone (301) 736-5169.

Dated: December 19, 1980.

Elsa A. Porter,

Assistant Secretary for Administration.

[FR Doc. 80-40771 Filed 12-31-80; 8:45 am]

BILLING CODE 3510-17-M

Census Advisory Committee of the American Statistical Association; Renewal

In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. (1976), and Office of Management and Budget Circular A-63 of March 1974, and after consultation with GSA, the Secretary of Commerce has determined that the renewal of the Census Advisory Committee of the American Satistical Association is in the public interest in connection with the performance of duties imposed on the Department by law.

The Committee was established in 1919 by the Secretary of Commerce and has been periodically renewed. It was initially chartered under the Federal Advisory Committee Act in January 1973. Its present charter is scheduled to expire December 14, 1980. The present objective of the Committee is to advise the Director, Bureau of the Census, on the Bureau's programs as a whole and on their various parts, drawing on the experience and expertise of the members to make professional judgments and recommendations. In renewing the Committee, no significant change of objectives or of emphasis is planned.

The Committee will continue to consist of 15 members designated by the President of the American Statistical Association from the membership of that Association, from a list of nominees submitted by the Director, Bureau of the Census. The members will be representative of the diverse users of census statistics. The Chairperson will continue to be selected annually by the Committee, which will function solely as an advisory body, and in compliance with the Federal Advisory Committee Act.

Copies of the Committee's charter will be filed with appropriate committees of the Congress and with the Library of Congress.

Inquiries or comments may be addressed to the Committee Control Officer, Mr. James L. O'Brien, Statistical Research Division, Room 3573, Federal Building 3, Bureau of the Census, Washington, D.C. 20233, telephone (301) 763-5350.

Dated: December 19, 1980.

Elsa A. Porter,

Assistant Secretary for Administration.

[FR Doc. 80-40768 Filed 12-31-80; 8:45 am]

BILLING CODE 3510-17-M

Census Advisory Committee of the American Economic Association; Renewal

In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. (1976), and Office of Management and Budget Circular A-63 of March 1974, and after consultation with GSA, the Secretary of Commerce has determined that the renewal of the Census Advisory Committee of the American Economic Association is in the public interest in connection with the performance of duties imposed on the Department by law.

The Committee was established in March 1960, and has been periodically renewed. It was initially chartered under the Federal Advisory Committee Act in January 1973. Its current charter terminates on December 14, 1980. The Committee advises the Director, Bureau of the Census, on technical matters, accuracy levels, and conceptual problems concerning the economic censuses and surveys and other Bureau surveys with economic content; reviews major aspects of the Bureau's programs; and advises on the role of analysis within the Bureau and the level of detail required of data for effective economic analysis.

In renewing the Committee, it is anticipated that the contributions made by the Committee in the performance of its objectives will continue, and that the

Committee will draw on the experience and expertise of its members to form a collective judgment concerning statistics issued by the Bureau of the Census.

As currently organized, the Committee will continue with a balanced representation of 15 members designated by the President of the American Economic Association from the membership of the Association, from a list of nominees presented by the Director, Bureau of the Census. Members will be appointed for a 3-year term on a rotating basis, such term being contingent upon the Committee's continuation. A Chairperson and Chairperson-elect will be elected by the Committee for a 1-year term. The Committee will function solely as an advisory body in compliance with the Federal Advisory Committee Act.

Copies of the Committee's revised charter will be filed with appropriate committees of the Congress and with the Library of Congress.

Inquiries or comments may be addressed to the Committee Control Officer, Mr. Elmer S. Biles, Office of the Director, Room 3061, Federal Building 3, Bureau of the Census, Washington, D.C. 20233, telephone (301) 763-7184.

Dated: December 19, 1980.

Elsa A. Porter,

Assistant Secretary for Administration.

[FR Doc. 80-40780 Filed 12-31-80; 8:45 am]

BILLING CODE 3510-17-M

International Trade Administration Advisory Committee on East-West Trade; Partially Closed Meeting

AGENCY: International Trade Administration.

SUMMARY: The Advisory Committee on East-West Trade was initially established on February 11, 1974, and rechartered on December 5, 1980 in accordance with the Federal Advisory Committee Act, 5 U.S.C. App. (1976). The Committee advises the Department of Commerce on ways to promote and encourage the orderly expansion of commercial and economic relations between the United States and the communist countries.

TIME AND PLACE: January 14, 1981, at 9:30 A.M. The meeting will take place at the Main Commerce Building, Room 4830, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Agenda

General Session (9:30 A.M.-12:30 P.M.)

(1) Welcome and Opening Remarks by the Chairman.

(2) Remarks by Secretary Klutznick.

(3) Report on the U.S. National Exhibition in Beijing.

(4) Review of Developments in East-West Trade.

(5) Committee Views on U.S. Trade Prospects with the German Democratic Republic.

(6) Committee Views on Recent Developments in PRC Patent Legislation and PRC Technology Licensing Policies.

Executive Session (2:00 P.M.-4:00 P.M.)

(7) Committee Recommendations on Administration Initiatives in East-West Trade in the Coming Four Years.

Public Participation: The General Session of the meeting will be open to the public. Approximately 50 seats will be available (including 5 seats reserved for media representatives) on a first-come first-served basis. A period will be set aside for oral comments or questions by the public which do not exceed ten minutes each. More extensive questions or comments may be submitted in writing at any time before or after the meeting.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on December 29, 1980, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended by Section 5 (c) of the Government in the Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters in 5 U.S.C. 552b (c)(1) and (9)(B); i.e., material specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and which is properly classified pursuant to such Executive Order, and whose premature disclosure would be likely to significantly frustrate implementation of U.S. policy.

A copy of the Notice of Determination to close the aforementioned portion of the January 14, 1981 meeting is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 5317, U.S. Department of Commerce, Washington, D.C. 20230. Telephone: (202) 377-4217. Summary minutes of the General Session will be available 30 days after the meeting.

FOR FURTHER INFORMATION OR COPIES OF THE MINUTES CONTACT: Ronald G. Oechsler, Committee Control Officer, Office of East-West Policy and Planning, International Trade Administration, Room 4816, U.S. Department of Commerce, Washington, D.C. 20230, Telephone: 202-377-5896.

Dated: December 29, 1980.

J. Mishell George,

Acting Deputy Assistant Secretary for East-West Trade.

[FR Doc. 80-40834 Filed 12-30-80; 3:23 pm]

BILLING CODE 3510-25-M

Melamine in Crystal Form From Japan; Preliminary Results of Administrative Review of Antidumping Finding

AGENCY: U.S. Department of Commerce, International Trade Administration.

ACTION: Notice of Preliminary Results of Administrative Review of Antidumping Finding.

SUMMARY: This notice is to advise the public that the Department of Commerce has conducted an administrative review of the antiduping finding on melamine in crystal form from Japan. The review covers the five known exporters of this merchandise to the United States. The review covers separate time periods for each exporter up to January 31, 1980. Only one firm reported shipments to the United States during the reviewed periods. The Department found a dumping margin for these shipments.

As a result of this review, the Department has preliminarily determined to assess dumping duties for that firm equal to the calculated differences between foreign market value and purchase price on each of its shipments occurring during the covered period. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: January 5, 1981.

FOR FURTHER INFORMATION CONTACT: Al Jemmott, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230 (202-377-5345).

SUPPLEMENTARY INFORMATION:

Procedural Background

On February 2, 1977, a dumping finding with respect to melamine in crystal form from Japan was published in the **Federal Register** as Treasury Decision 77-54 (42 FR 6366). On January 1, 1980, the provisions of Title I of the Trade Agreements Act of 1979 became effective. On January 2, 1980, the authority for administering the antidumping duty law was transferred from the Department of the Treasury to the Department of Commerce ("the Department"). The Department published in the **Federal Register** of March 28, 1980 (45 FR 20511-12) a notice of intent to conduct administrative reviews of all outstanding dumping findings. As required by section 751 of

the Tariff Act of 1930 ("the Act"), the Department has conducted an administrative review of the finding on melamine in crystal form from Japan, however, the substantive provisions of the Antidumping Act, 1921, as amended ("Antidumping Act") will be applied to all entries made and unassessed prior to January 1, 1980.

Scope of the Review

This review covers imports of melamine in crystal form, which is a fine white crystalline powder used to manufacture melamine formaldehyde resins, and is currently classifiable under item 425.10 of the Tariff Schedules of the United States Annotated (TSUSA).

The Department knows of five exporters to the United States of Japanese melamine in crystal form. This review covers all of them. This review covers all periods for which information is available, that is, all periods up to January 31, 1980, during which shipments of melamine may have been made to the United States and for which appraisement instructions ("master lists") have not been issued. Therefore, different periods are involved for different companies. The issue of the Department's obligation to conduct administrative review of entries unliquidated as of January 1, 1980 and covered by such master lists is under review. Liquidation has been suspended pending disposition of the issue.

The Department's records show that a sixth firm, Ataka & Co., Ltd., was identified as an exporter at the time of the fair value investigation but showed no shipments from the time of the investigation to October 1, 1977. Ataka merged with C. Itoh & Co., Ltd., one of the five covered exporters, effective october 1, 1977. Prior to that date, C. Itoh was not known to be an exporter of melamine in crystal form. Any activity by Ataka is covered by our review of C. Itoh.

Nissan Chemical Industries, Ltd. was the only Japanese exporter investigated at the time of the fair value phase. A 69% weighted average dumping margin resulted from this investigation. C. Itoh & Co., Ltd., Nichimen Co., Ltd., Nosawa & Co., Ltd., and Nissan reported no shipments during the time periods covered by this administrative review, and the fair value margin of 60% is the most recent information for estimated dumping duty deposits for these exporters.

Purchase Price

The Department used purchase price, as defined in section 203 of the Antidumping Act, since all U.S. sales were made to unrelated purchasers. In this case, purchase price was calculated on the basis of the f.o.b. packed price to unrelated purchasers in the United States. Where applicable, adjustments were made to this price for inland freight, shipping charges, and royalty fees. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 205 of the Antidumping Act, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. The manufacturer sold more than 60% of its total production in Japan. The home market price is based on the delivered price with adjustments for inland freight, interest, and royalty fees. Claimed adjustments for quantity discounts, insurance, commissions, inventory warehousing, and import duty on raw materials were not adequately explained or quantified. Additionally, the claim for inventory warehousing was not shown to be directly related to sales. These claims for adjustments therefore were not allowed.

Results of the Review

As a result of our comparison of purchase price to foreign market value, we preliminarily determine that the following margins exists:

Firm	Time Period	Margin (percent)
C. Itoh & Co., Ltd.	4/1/78-1/31/80	*60
Mitsui Toatsu Chemicals, Inc.	4/1/78-3/31/79	70.22
	4/1/79-1/31/80	*70.22
Nichimen Co., Ltd.	4/1/79-1/31/80	*60
Nissan Chemical Industries, Ltd.	4/1/79-1/31/80	*60
Nosawa & Co., Ltd	10/1/79-1/31/80	*60

*No shipments during this period.

Interested parties may submit written comments on these preliminary results on or before February 4, 1981, and may request disclosure and/or a hearing within 15 days of the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the U.S. Customs Service shall assess, duties, where appropriate, on all entries made during the time periods involved. Individual differences between purchase price and foreign market value may vary from the period stated above. The Department will issue appraisement instructions separately on each exporter directly to the Customs Service.

Further, as required by § 353.48(b) of the Commerce Regulations, a cash deposit based upon the most recent of the margins calculated above shall be required on all shipments entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results. This requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice publication are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

John D. Greenwald,

Deputy Assistant Secretary for Import Administration.

December 22, 1980.

[FR Doc. 80-40786 Filed 12-31-80; 8:45 am]

BILLING CODE 3510-25-M

Chains and Parts Thereof, of Iron or Steel From Spain; Preliminary Results of Administrative Review of Countervailing Duty Order

AGENCY: U.S. Department of Commerce, International Trade Administration.

ACTION: Notice of preliminary results of administrative review of countervailing duty order.

SUMMARY: This notice is to advise the public that, as a result of an administrative review of the countervailing duty order on chains and parts thereof, of iron or steel, from Spain for the period of January 1, 1979 to December 31, 1979, the Department of Commerce has preliminarily determined to assess countervailing duties equal to the calculated value of the net subsidy, that is, of 12.50 percent of the f.o.b. invoice price of the merchandise. Interested parties are invited to comment on this decision.

EFFECTIVE DATE: January 5, 1981.

FOR FURTHER INFORMATION CONTACT: Ms. Mary A. Martin, Office of Compliance, Room 1126, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230 (202-377-1770).

SUPPLEMENTARY INFORMATION:

Procedural Background

On January 24, 1978, a notice of "Final Countervailing Duty Determination," T.D. 78-20, was published in the **Federal Register** (43 FR 3258). The notice stated that the Treasury Department had determined that exports of chains and parts thereof, of iron or steel, from Spain were provided bounties or grants, within

the meaning of section 303 of the Tariff Act of 1930 (19 U.S.C. 1303)("the Act"). Accordingly, imports into the United States of this merchandise were subject to countervailing duties.

On January 1, 1980, the provisions of Title I of the Trade Agreements Act of 1979 (the "TAA") became effective. On January 2, 1980, the authority for administering the countervailing duty law was transferred from the Treasury Department to the Department of Commerce ("the Department"). The Department published in the **Federal Register** of May 13, 1980 (45 FR 31455) a notice of intent to conduct administrative revews of all outstanding countervailing duty orders. As required by section 751 of the Act, the Department has conducted an administrative review of the finding on chains and parts thereof, of iron or steel, from Spain.

Scope of the Review

Imports covered by this review are chains and parts thereof, of iron or steel. They are currently classifiable under items 652.24, 652.27, 652.30, 652.33, and 652.35, of the Tariff Schedules of the United States.

The review covers calendar year 1979, and the review is limited to the Desgravacion Fiscal rebate program, which was the only program found countervailable in the Final Determination.

Preliminary Results of Review

Under the Desgravacion Fiscal rebate program, exporters receive a rebate of a set percent of the f.o.b. value of exported merchandise. The rates differ for particular types of products. Tax rebates under this program are to compensate for the cascade effect of the Spanish indirect tax system.

The Government of Spain provided no response to our questionnaire of May 14, 1980. In a letter dated September 17, 1980, the Spanish Government provided a new schedule of Desgravacion Fiscal rebates for all products from Spain covered by outstanding countervailing duty orders. These rate changes resulted from the passage of Spanish Law 6/1979 of September 25, 1979 and Decree 2950/1979. The new Desgravacion Fiscal rebate for chains and parts thereof, of iron or steel, is 12.50 percent.

Because we have received no information to indicate that any part of the 12.50 percent Desgravacion Fiscal rebate is not countervailable, we preliminarily determine that the net subsidy conferred upon producers exporting to the United States is 12.50 percent *ad valorem* of the f.o.b. invoice price.

The Department intends to instruct the Customs Service to assess countervailing duties at 12.50 percent *ad valorem* of the f.o.b. invoice price on all unliquidated entries of chains and parts thereof, of iron or steel, from Spain exported through Devember 31, 1979.

Further, as required by § 355.36(c) of the Department Regulations, a cash deposit of estimated countervailing duties at the rate of 12.50 percent *ad valorem* shall be required on all shipments entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of the present administrative review. This requirement shall remain in effect until publication of the final results of the next administrative review.

Pending publication of the final results of the present review, a deposit of estimated duties of 12.50 percent of the f.o.b. invoice price shall continue to be required on each entry of the subject merchandise.

Interested parties may submit written comments on these preliminary results on or before Febrauary 4, 1981, and may request disclosure and/or a hearing on or before January 21, 1981. The Department will publish a notice of the final results of the administrative review after analysis of issues raised in written comments or at a hearing.

This administrative review and notice publication are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

John D. Greenwald,

Deputy Assistant Secretary for Import Administration.

December 30, 1980.

[FR Doc. 81-00250 Filed 1-2-81; 8:45 am]

BILLING CODE 3510-25-M

Maritime Administration

[Docket No. S-663]

Application; American Heavy Lift Shipping Co.; Merchant Marine Act; Show Cause Notice

AGENCY: Maritime Subsidy Board, Maritime Administration, Department of Commerce.

ACTION: Extension of time for filing comments.

SUMMARY: By Show Cause Notice appearing in the **Federal Register** on December 10, 1980 (45 FR 81241) interested parties were given an opportunity to show cause why the Board should not find, under section 605(c) of the Merchant Marine Act, that the effect of awarding an operating-differential subsidy contract to American Heavy Lift Shipping Co., for an existing service to the extent of a minimum of 14 and a maximum of 28 sailings annually with two C1-MT-123a heavy lift, Ro/Ro type vessels for a period of 20 years, should not be unduly prejudicial or give undue advantage as between citizens of the United States operating heavy lift services in worldwide operation. Interested parties were given until January 2, 1981 to make such filing.

The Board on December 24, 1980 granted the request of Moore McCormick Lines, Incorporated for an extension of time to make such filing until January 9, 1981. All interested parties are hereby extended the same opportunity to make such filings by close of business January 9, 1981.

COMMENT DATE: January 9, 1981.

ADDRESS: Send comments to Robert J. Patton, Jr., Secretary, Maritime Subsidy Board/Maritime Administration, U.S. Department of Commerce, 14th and E Streets, N.W., Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Edward A. Uttridge, Director, Office of Subsidy Contracts, Maritime Administration, Washington, D.C. 20230, telephone number (202) 377-3797.

(Catalog of Federal Domestic Assistance Program No. 11.504 Operating-Differential Subsidy (ODS)).

By Order of the Maritime Subsidy Board.

Dated: December 24, 1980.

Robert J. Patton, Jr.,

Secretary.

[FR Doc. 81-112 Filed 1-2-81; 8:45 am]

BILLING CODE 3510-15-M

National Telecommunications and Information Administration

Satellite Communications in a Developing World; Application Announcement for a Cooperative Agreement

The National Telecommunications and Information Administration announces that it is seeking applications under its Satellite Applications Program to design and conduct an educational program for a group of foreign citizens of lesser-developed countries. The cost of the project is estimated to be $150,000.00. The program is to be conducted in the summer of 1981, for a period of three to four weeks.

Funding Instrument: It is anticipated that the funding instrument, as defined by the Federal Grant and Cooperative Agreement Act of 1977, will be a cooperative agreement.

Program Description: Presidential Directive 42 authorized NTIA "to formulate policy to assist in market aggregation, technology transfer, and possible development of domestic and international public satellite services. The policy direction is intended to stimulate the aggregation of the public service market * * *"

The aggregation of widely dispersed public service users of satellite services in the United States is being facilitated by a four-year assistance program, the Public Telecommunications Services Program, established by NTIA in fiscal year 1980. The proposed project announced here is designed to initiate the international mission of PD 42. Applicants shall propose to plan and conduct an educational program for a small group of foreign citizens of developing countries who will be invited by NTIA to the United States to share experiences and exchange knowledge of social service delivery via communications satellites.

Eligibility Requirements: Educational, non-profit, and for-profit institutions are eligible to apply.

Award Process: All applications that are submitted in accordance with the instructions in the application kit will be submitted to a panel for review and ranking. The applications will be ranked as to their understanding of technology transfer in developing nations, knowledge of satellite communications, expertise in public service delivery via telecommunications, experience in short-term educational or training programs, organizational structure, and cost. Specific criteria will be included in the application kit.

Closing Date: Applicants are encouraged to obtain an application kit as soon as possible in order to prepare and submit an application before the closing date of February 25, 1981. Detailed submission procedures are outlined in each application kit.

Application Materials: Questions concerning the application process or requests for application kits should be directed to: Susan Irwin, Grants Program Administrator, Satellite Applications Program, National Telecommunications and Information Administration, 608 13th St., N.W., Washington, D.C. 20004, (202) 724-3464.

John J. O'Neill,

Acting Associate Administrator.

[FR Doc. 81-256 Filed 1-2-81; 8:45 am]

BILLING CODE 3510-60-M

Patent and Trademark Office

Recognition of United States Depository as an International Depository Authority Under the Budapest Treaty

As provided in Article 7 of the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, the United States announces recognition of the American Type Culture Collection, Rockville, Maryland, as an international depository authority. The communication of the Director General of the World Intellectual Property Organization according this recognition as of January 31, 1981 follows:

Dated: December 30, 1980.

Sidney A Diamond,

Commissioner of Patents and Trademarks.

Budapest Notification No. 11

Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure.

Communication of the United States of America Relating to the Acquisition of the Status of International Depositary Authority by the American Type Culture Collection.

The Director General of the World Intellectual Property Organization (WIPO) presents his compliments to the Minister for Foreign Affairs and has the honor to notify him of the receipt, on November 17, 1980, of a written communication from the Government of the United States of America, relating to the American Type Culture Collection, indicating that the said depositary institution is located on the territory of the United States of America and including a declaration of assurances to the effect that the said institution complies and will continue to comply with the requirements concerning the acquisition of the status of international depositary authority as specified in Article 6(2) of the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, done at Budapest on April 28, 1977.

The American Type Culture Collection will acquire the status of international depositary authority under the said Treaty as from January 31, 1981, the date of publication of the said comunication in the January 1981 issue of *Industrial Property/La Propriété industrielle* (see Article 7(2) of the said Treaty).

December 3, 1980.

[FR Doc. 81-214 Filed 1-2-81; 8:45 am]

BILLING CODE 3510-16-M

Recognition of United States Depository as an International Depository Authority Under the Budapest Treaty

As provided in Article 7 of the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, the United States announces recognition of the Agricultural Research Culture Collection, Peoria, Illinois, as an international depository authority. The communication of the Director General of the World Intellectual Property Organization according this recognition as of January 31, 1981 follows:

Dated: December 30, 1980.

Sidney A. Diamond,

Commissioner of Patents and Trademarks.

Budapest Notification No. 12

Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure.

Communication of the United States of America Relating to the Acquisition of the Status of International depositary Authority by the Agricultural Research Culture Collection.

The Director General of the World Intellectual Property Organization (WIPO) presents his compliments to the Minister for Foreign Affairs and has the honor to notify him of the receipt, on December 2, 1980, of a written communication from the Government of the United States of America, relating to the Agricultural Research Culture collection, indicating that the said depositary institution is located on the territory of the United States of America and including a declaration of assurances to the effect that the said institution complies and will continue to comply with the requirements concerning the acquisition of the status of international depositary authority as specified in Article 6 (2) of the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, done at Budapest on April 28, 1977.

The Agricultural Research Culture Collection will acquire the status of international depositary authority under the said Treaty as from January 31, 1981, the date of publication of the said communication in the January 1981 issue of *Industrial Property/La Propriété industrielle* (see Article 7 (2) of the said Treaty).

December 8, 1980

[FR Doc. 81-213 Filed 1-2-81; 8:45 am]

BILLING CODE 3510-16-M

Office of the Secretary

Senior Executive Service; Bonuses

Below is a listing of Senior Executive Service employees who are scheduled to receive bonuses:

Frederic A. Heim, Assistant Inspector General for Audits, Office of the Inspector General, $6,013—to be paid 1/19/81

Herbert S. Becker, Assistant Director for Planning, Budget, and Evaluation, Minority Business Development Agency, $5,512—to be paid 1/19/81

John C. Williams, Deputy Director for the Office of Product Standards, $5,512—to be paid 1/19/81
Melvin S. Day, Director, National Technical Information Service, $5,512—to be paid 1/19/81

Jo Ann Sondey-Hersh,

Executive Secretary, Office of the Secretary, Performance Appraisal System.

[FR Doc. 81-235 Filed 1-2-81; 8:45 am]

BILLING CODE 3510-BS-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1981; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to Procurement List 1981 commodities to be produced by and services to be provided by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: January 2, 1981.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher (703) 557-1145.

SUPPLEMENTARY INFORMATION: On October 17, 1980, October 31, 1980, and October 3, 1980, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (45 FR 68996, 45 FR 72248, and 45 FR 65647) of proposed additions to Procurement List 1981, November 12, 1980 (45 FR 74836).

After consideration of the relevant matter presented, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77.

Accordingly, the following commodities and services are hereby added to Procurement List 1981:

Class 8532

Pajamas, Ladies' Tops:
8532-00-NSH-0001 Medium
8532-00-NSH-0002 Large
Pants:
6532-00-NSH-0003 Medium
6532-00-NSH-0004 Large
Robe, Ladies:
6532-00-NSH-0005

Class 9905

Tree Shade:
9905-00-NSH-0001

Sic 7349

Janitorial/Custodial, U.S. Customs, 160-19 Rockaway Blvd., Jamaica, New York
Janitorial/Custodial, Federal Building, 45 Bay Street, Staten Island, New York

Sic 7899

Repair, Maintenance, and Overhaul of Building Maintenance, Grounds Maintenance, and Related Types of Equipment in:
New York City (5 Boroughs)
Nassau County
Suffolk County
Newark, New Jersey plus five miles radius

C. W. Fletcher,

Executive Director.

[FR Doc. 80-40785 Filed 12-31-80; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1981; Proposed Additions

AGENCY: Committee for Purchase From the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to Procurement List 1981 commodities to be produced by and a service to be provided by workshops for the blind and other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: February 4, 1981.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and service to Procurement List 1981, November 12, 1980 (45 FR 74836):

Class 6645

Clock, Wall, 24 Hour Dial, Battery-operated
6645-00-NIB-0001 (8")
6645-00-NIB-0002 (11")

Sic 0782

Grounds Sweeping and Cleaning at the following locations in Long Beach, California:
Terminal Island Naval Complex
Navy Housing
Navy Regional Medical Center
Naval Fuel Depot (San Pedro)

C. W., Fletcher,

Executive Director.

[FR Doc. 80-40656 Filed 12-31-80; 8:45 am]

BILLING CODE 6820-33-M

COMMUNITY SERVICES ADMINISTRATION

Executive Order 12232 of August 8, 1980; Historically Black Colleges and Universities

Note.—This document originally appeared in the **Federal Register** for Tuesday, December 23, 1980. It is reprinted in this issue to meet requirements for publication on the Monday–Thursday schedule assigned to the Community Services Administration.

AGENCY: Community Services Administration.

ACTION: Notice of Community Services Administration's designated official to implement Executive Order 12232.

SUMMARY: Executive Order 12232, Historically Black Colleges and Universities, directs Executive Agencies to designate an official to implement the Agency's responsibility set forth in this order and to act as the Agency liaison to the Secretary of Education. In compliance with this Executive Order the Community Services Administration (CSA) has designated William W. Allison, Deputy Director of CSA, as the CSA official to implement this order.

FOR FURTHER INFORMATION CONTACT: William W. Allison, 1200 19th Street, N.W., Washington, D.C. 20506, (202) 254-6218.

(Sec. 602, 78 Stat. 530, 42 U.S.C. 2942.)

Richard J. Rios,

Director.

[FR Doc. 80-40017 Filed 12-22-80; 8:45 am]

BILLING CODE 1505-02-M

DEPARTMENT OF DEFENSE

Defense Investigative Service

Privacy Act of 1974; Amendment to Systems of Records Notice

AGENCY: Defense Investigative Service.

ACTION: Proposal to amend three system notices.

SUMMARY: The Defense Investigative Service (DIS) proposes to delete the general exemption (5 U.S.C. 522a(j)(2)) from three systems of records. Also the retention schedule for one of these systems is being amended and new category of records, the DCII Disclosure Accounting System is being added to another system. In addition all three system notices are being amended to

reflect the current name of a branch within Headquarters, DIS. These three systems are set forth in their entirety below.

DATES: The systems notices shall be amended as proposed without further notice February 4, 1981, unless comments are received on or before February 4, 1981, which would result in a contrary determination.

ADDRESS: Send comments to the System Managers identified in the system notices.

FOR FURTHER INFORMATION: Contact Lt. Col. Dale L. Hartig, Office of Information and Legal Affairs, Defense Investigative Service, 1900 Half Street SW., Washington, DC 20324. Telephone: (Area Code 202) 693-1740.

SUPPLEMENTAL INFORMATION: These amendments are not deemed to be within the purview of the provisions of 5 U.S.C. 552a(o) of the Privacy Act which requires submission of an altered system report pursuant to the Office of Management and Budget guidance set forth in the **Federal Register** (40 FR 45877) on October 3, 1975.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

December 24, 1980.

V5-01

System name:

Investigative Files System

Changes:

System location:

Delete words "Special Investigations Center" on line 4 and insert "Special Investigations Unit."

Retention and disposal:

Delete first paragraph and substitute the following:

"Retention of closed DIS investigative files is authorized for 15 years maximum, except as follows: (1) Files which have resulted in adverse action against the individual will be retained 25 years; (2) Files developed on persons who are being considered for affiliation with the Department of Defense will be destroyed within one year if the affiliation is not completed. In cases involving a pre-appointment investigation, if the appointment is not made due to information developed by investigation, the file will be retained 25 years. If the appointment is not made for some other reasons not related to the investigation, the file will be destroyed within one year; (3) Information within the purview of the Department of Defense Directive 5200.27, 'Acquisition of Information Concerning Persons and Organizations Not Affiliated with the Department of Defense', is destroyed within 90 days after acquisition by DIS unless its retention is required by law or unless its retention has been specifically authorized by the Secretary of Defense or his designee."

Systems exempted from certain provisions of the act:

Delete the entire entry and insert:

"The portions of this system of records which fall within the scope of 5 U.S.C. 522a (k)(2), (k)(3) and (k)(5) may be exempt from the provisions of subsection 5 U.S.C. 552a (c)(3), (d), (e)(4)(G), (e)(4)(H), (e)(4) (I) and (f). See the Defense Investigative Service exemption rules at section 298a.14 of 32 CFR Part 298a."

V5-02

System name:

Defense Central Index of Investigations (DCII)

Changes:

Categories of records in the system:

Add at the end:

"DCII DISCLOSURE ACCOUNTING SYSTEM (DDAS)

A record of disclosures of DIS investigative information contained in the DCII to agencies outside the Department of Defense. This system identifies the subject individual by name, date of birth, and social security number. It indicates the date on which disclosure was made, the name and address of the agency receiving the information, the specific information released and the purpose or use to which the information will be put."

Contesting record procedures:

Delete "Assistant for Information" and replace with "Office of Information."

Systems exempted from certain provisions of the act:

Delete the entire entry and substitute "none."

V5-04

System name:

Defense Case Control System (DDCS)

Changes:

Contesting record procedures:

Delete "Assistant for Information" and replace with "Office of Information."

Systems exempted from certain provisions of the act:

Delete the entire entry and substitute "none."

V5-01

SYSTEM NAME:

V5-01 Investigative Files System

SYSTEM LOCATION:

Defense Investigative Service (DIS), Investigative Files Division, P.O. Box 1211, Baltimore MD 21203 has primary control over the system and is responsible for the maintenance of completed investigative records. The Special Investigations Unit, 1900 Half St. S.W., Washington, DC 20324 maintains limited categories of these records. DIS operational centers; District Offices; Field Offices; Resident Agencies and various DIS headquarters staff elements originate and have temporary control over portions of records.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military personnel who are on active duty, applicants for enlistment or appointment and reservists and National Guardsmen; DoD civilian personnel who are paid from appropriated funds; industrial or contractor personnel who are working in private industry in firms which have contracts involving access to classified DoD information or installations; Red Cross personnel and personnel paid from nonappropriated funds who have DoD affiliation; ROTC cadets; former military personnel; individuals residing on, having authorized official access to, or conducting or operating any business or other functions at any DoD installation or facility.

Individuals not affiliated with the Department of Defense when, during the previous year, their activities have directly threatened the functions property or personnel of the DoD or they have engaged in, or conspired to engage in, criminal acts on DoD installations or directed at the DoD.

CATEGORIES OF RECORDS IN THE SYSTEM:

Official Reports of Investigations (ROI's) prepared by DIS or other DoD, Federal, State or local official investigation activities.

DIS Information Summary Reports (ISR's) which record unsolicited information received by DIS concerning a person or incident which is of direct interest to other DoD components or Federal agencies. (When such information is received by DIS it is reported as it was received, without investigation or confirmation, by IRS

and transmitted to the interested activity.)

Attachments to ROI's or ISR's including exhibits, subject or interviewee statements, police records, medical records, fingerprint cards, credit bureau reports, employment records, education records, release statements, summaries of or extracts from other similar records or reports.

Case control and management documents which are not reports of investigation, but that serve as the basis for investigation, or serve to guide and facilitate investigative activity, including documents providing the data to open and conduct the case, such as the Personnel Security Investigation Request; documents, initiated by the subject such as personnel history documents, and fingerprint records; and documents used in case management and control, such as release statements, case transfer forms, and documents directing the inquiry.

DIS file administration and management documents accounting for the disclosure, control and access to a file, such as warning sheets, separators, forwarding correspondence and accounting records required by 5 U.S.C. 552 and 552a.

Cross references to chronological correspondence files disclosing unfavorable and administrative action taken based on DIS investigations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 301 of 5 U.S.C. Departmental Regulations.

Section 310 of 44 U.S.C. Records Management.

Sections 2, 3, 4, 5, 6, 8 and 9, Executive Order 10450, Security Requirements for Government Employment.

Section 6(A), Executive Order 11652, Classification and Declassification of National Security Information and Material.

Sections III and V, DoD Directive 5101.42, Charter for the Defense Investigative Service.

Section IIIA, DoD Directive 5200.2b, Defense Investigative Program.

Section IV A and B, DoD Directive 5200.27, Acquisition of Information Concerning Persons and Organizations not Affiliated with the Department of Defense.

Section IX, DoD Director 5210.7, Department of Defense Civilian

Applicant and Employee Security Program.

Section I, DoD Directive 5210.8, Policy on Investigation and Clearance of DoD Personnel for Access to Classified Defense Information.

Section VII, DoD Directive 5210.9, Military Personnel Security Program.

Section V A 2, DoD Instruction 5210.25, Security Acceptability of American National Red Cross Employees at Department of Defense Installations and Activities.

Section I, DoD Instruction 5210.26, Investigation of American National Red Cross Employees on Duty at Department of Defense Installations and Activities in the Zone of Interior.

Encl 3, paragraph b 2 and 3, DoD Directive 5210.41, Security Criteria and Standards for Protecting Nuclear Weapons.

Section III, DoD Directive 5210.45, Personnel Security in the National Security Agency.

Section VII, DoD Directive 5210.55, Selection of Department of Defense Military and Civilian Personnel for Assignment to Presidential Support Activities.

Section IV, C, DoD Directive 5220.6, Industrial Personnel Security Clearance Program.

Section V B, DoD Directive 5220.28, Application of Special Eligibility and Clearance Requirements in the SIOP-ESI Program for Contractor Employees.

Section 1(a) and 2, Executive Order 10865, Safeguarding Classified Information Within Industry.

Section III, DoD Instruction 5030.34, Agreement between the Department of Defense concerning Protection of the President and Other Officials.

Paragraph 10, Director of Central Intelligence Directive No. 1/14, Uniform Personnel Security Standards and Practices Governing Access to Sensitive Compartmented Information C.

Section II, DSA Regulation 5705.2, Criminal Investigative Support to the Defense Supply Agency.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Purpose for which collected.

Personnel security investigative information is collected to insure that the acceptance or retention of persons to sensitive DoD positions, or granting individuals access to classified information, including those employed in defense industry, is clearly consistent with national security.

Criminal investigative information is collected on request to identify offenders, provide facts and evidence upon which to base prosecution and effect the recovery of property which has been wrongfully appropriated.

Information contained in ISR's (see description in RECORD CATEGORY) regarding criminal, personnel security, counterintelligence, or intelligence matters, when received is disseminated to appropriate Federal agencies or other DoD components.

Criminal and personnel security information is collected during reciprocal investigations conducted for other DoD and federal investigative elements (or in limited instances, criminal information for local, or state law enforcement agencies) for maintenance and use by the requesting activity.

Information regarding alleged security violations is collected on request to establish whether or not a compromise occurred and to identify the personnel involved.

Criminal information received by DIS personnel in the course of their duties which is of direct interest to a local law enforcement agency and therefore furnished to that agency orally or by letter.

Users of DIS investigative information are:

(1) DIS personnel in the course of their official duties.

(2) Other accredited DoD investigative components, DoD agencies, elements and representatives of the Secretary of Defense and the Joint Chiefs of Staff.

(3) Accredited Federal criminal and civil law enforcement and intelligence agencies.

(4) State and local official criminal law enforcement agencies.

(5) Other accredited federal agencies conducting investigations to evaluate suitability for employment or access to classified information.

(6) Congressional committees and the Government Accounting Office.

Specific uses of DIS investigative records are:

To determine the loyalty, suitability, eligibility, and general trustworthiness of individuals for access to Defense information and facilities by the first two categories of users, above.

To determine the eligibility and suitability of individuals for entry into and retention in the Armed Forces by the second category of users, above.

To provide information pertinent to the protection of persons under the provisions of 18 U.S.C. 3056, by the first three categories of users, above.

For use in criminal law enforcement investigations including statutory violations, counterintelligence, as well as counterspionage and other security matters by the first through fourth and the sixth categories of users, above.

In the event that records maintained in this system indicate a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by

regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

To provide information in judicial or adjudicative proceedings including litigation, or in accordance with a court order by the first three categories of users, above.

To make statistical evaluations of DIS investigative activities by the first, second and sixth categories of users, above.

To respond to Freedom of Information and Privacy Act access requests, by the first category of users, above.

To provide information in response to Inspector General, and EEO or other complaint investigations and Congressional inquiries by the first, second and sixth categories of users, above.

To determine the eligibility and suitablity of an individual for personnel actions in the Armed Forces of the United States, as deemed appropriate by the second category of users, above.

A record such as identification data, from this system of records may be disclosed as a routine use to a federal, state, local or foreign agency maintaining relevant information or to business enterprises to obtain employment records if necessary to obtain information relevant to an assigned investigation.

A record from this system of records may be disclosed to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter by any agency of the first, second, third or fifth categories of users, above.

Transfers of information from this record system to other DoD components is a routine intra-agency use under the provisions of 5 U.S.C. 552a3(b)(1).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, microfilm, magnetic tape or supplementary index cards.

RETRIEVABILITY:

Investigations are centrally retrievable through the DIS Case Control System (DCCS) or the Defense Central Index of Investigations (DCII) systems described separately in this notice. Reciprocal investigations jurisdictions, may be retrieved only through a limited manual disclosure accounting system.

SAFEGUARDS:

Completed investigative records are maintained and stored in power files, open shelves and filing cabinets which are housed in secured areas accessible only to authorized personnel who are properly screened and have a need to know. Information contained on magnetic tape is secured in the same manner as the DCII, described separately. Recipients of investigative information are responsible for safeguarding information within the guidelines provided by DIS.

RETENTION AND DISPOSAL:

Retention of closed DIS investigative files is authorized for 15 years maximum, except as follows: (1) Files which have resulted in adverse action against the individual will be retained 25 years; (2) Files developed on persons who are being considered for affiliation with the Department of Defense will be destroyed within one year if the affiliation is not completed. In cases involving a pre-appointment investigation, if the appointment is not made due to information developed by investigation, the file will be retained 25 years. If the appointment is not made for some other reasons not related to the investigation, the file will be destroyed within one year; (3) Information within the purview of the Department of Defense Directive 5200.27, "Acquisition of Information Concerning Persons and Organizations Not Affiliated with the Department of Defense", is destroyed within 90 days after acquisition by DIS unless its retention is required by law or unless its retention has been specifically authorized by the Secretary of Defense or his designee.

Generally, ISR's and reciprocal investigations are retained for only 60 days.

Partial duplicate records of personnel security investigations are retained for 60 days by DIS field elements. Partial duplicate records in criminal and special investigations are retained for one year.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Defense Investigative Service, 1900 Half St. SW., Washington, DC 20324.

NOTIFICATION PROCEDURE:

Requests should be addressed to Information and Legal Affairs Office, Defense Investigative Service, 1900 Half St. S.W., Washington, DC 20324, are necessary for retrieval of information. More information or a notarized statement verifying the identity of requesters may be required. The Information and Legal Affairs Office, 1900 Half St. S.W., Washington, DC 20324 may be visited by personnel making inquiries regarding this system. A check of personal identification will be required of all visitors making such inquiries.

RECORD ACCESS PROCEDURES:

Access may be obtained through the Information Office at the address listed above.

CONTESTING RECORD PROCEDURES:

DIS rules for contesting and appealing initial determinations may be obtained from the Assistant for Information at the address listed above.

RECORD SOURCE CATEGORIES:

Categories of sources of records.

Subjects of investigations.

Records of other DoD activities and components.

Federal, State, county and municipal records.

Employment records of private business and industrial firms.

Educational and disciplinary records of schools, colleges, universities, technical and trade schools.

Hospital, cliinic and other medical records.

Records of commercial enterprises such as real estate agencies, credit bureaus, loan companies, credit unions, banks and other financial institutions which maintain credit information on individuals, transportation companies (airlines, railroad, etc.).

The interview of individuals who are thought to have knowledge of the subject's background and activities.

The interview of witnesses, victims and confidential sources.

The interview of individuals deemed necessary to complete the DIS investigation.

Miscellaneous directories, rosters and correspondence.

Any other type of record deemed necessary to complete the DIS investigation.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The portions of this system of records which fall within the scope of 5 U.S.C. 552a (k)(2), (k)(3) and (k)(5) may be exempt from the provisions of

subsections 5 U.S.C. 552a (c)(3), (d), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f). See the Defense Investigative Services exemption rules at section 298a.14 of 32 CFR Part 298a.

V5-02

SYSTEM NAME:

V5-02 Defense Central Index of Investigations (DCII)

SYSTEM LOCATION:

Central Facility:

Information Services Division, Personnel Investigations Center, PO Box 11211, Baltimore, Maryland 21203.

Remote Terminal Locations:

Crime Records Directorate, US Army Criminal Investigations Command, 2301 Chesapeake Avenue, Baltimore, Maryland 21222.

Air Force Office of Special Investigations, Bolling AFB, Washington, DC 20332.

Naval Investigative Service Headquarters, Hoffman Building 1, 2461 Eisenhower Avenue, ATTN: Code 30, Alexandria, Virginia 22331.

Defense Industrial Security Clearance Office, PO Box 2499, Columbus, Ohio 43216 (DISCO).

US Army Investigative Records Repository, Building 4452, Fort Meade, Maryland 20755.

DIS Personnel Investigations Center, PO Box 1211, Baltimore, Maryland 21203.

US Army Central Personnel Clearance Facility, Bldg. 4452, Fort Meade, MD 20755.

Defense Intelligence Agency, Room 2B535, ATTN: RSS-3A, Pentagon, Washington, DC 20301.

HQ Air Force Security Clearance Office, Room 5D-460, Pentagon, Washington, DC 20330.

Office of Personnel Management, Division of Personal Investigations, Investigative Support Branch, Boyers, PA 16016.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any person described as a subject, a victim, or a cross-reference in an investigation completed by or for a DoD investigative organization when that investigation is retained by the organization and the name is submitted for central indexing.

CATEGORIES OF RECORDS IN THE SYSTEM:

DCII Master Index: Composed of locator references to investigations conducted by or for DoD investigative organizations and retained by them. Index records contain the name and other personal identifying information on individuals who were indexed.

File Tracing: Reference to an investigation maintained by one of the investigative records repositories. It identifies the individual by name and personal identifiers, the custodian or the file, the year indexed and the number used by the repository to locate the file.

Open Case Tracing: A record input by either Army investigative activities or DIS reflecting the existence of an investigation in progress. It identifies the subject individual by name and personal identifiers, the location of the open investigation, the year indexed and the number used to locate the investigative file.

NAC Pending Tracing: Record of a National Agency Check (NAC) investigation in progress. It identifies the subject individual by name, personal identifiers, the case number, the category of the requester of the NAC, and the type of NAC being run.

NAC History Tracing: A record of completed favorable, or incomplete, national agency checks. It identifies the individual by name and personal identifiers, the date the NAC was completed and the agencies that were checked.

DCII Name Only Index (NOI): Composed of names of persons who are referenced but not fully identified in investigative files. A Name Only Index record identifies the individual by name and lists the custodian agency of the file, year indexed and the number used by the repository to locate the file. Positive identification is impossible from the index and may well be impossible from the case file itself. DIS has placed no records in this index.

DCII Disclosure Accounting System (DDAS): A record of disclosures of DIS investigative information contained in the DCII to agencies outside the Department of Defense. This system identifies the subject individual by name, date of birth, and social security number. It indicates the date on which disclosure was made, the name and address of the agency receiving the information, the specific information released and the purpose or use to which the information will be put.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 Departmental Regulations

44 U.S.C. 3101 Records Management

Memorandum, Secretary of Defense, May 27, 1965

Memorandum, Secretary of Defense, December 3, 1965, subject: Establishment of a Central Index of DoD Investigations.

DoD Directive No. 5105.42, April 18, 1972, subject: Charter for Defense Investigative Service (DIS).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

File tracing information is collected and maintained in the DCII so that authorized users may determine the existence and location of DoD investigative records.

NAC history information is maintained for authorized users in granting clearances, access to defense installations, entry into military service or employment in sensitive civilian positions.

Categories of users:

Components listed under the Location caption are the principal users and (with the exception of DISCO) the file custodians. Listed terminal holders (with the exception of DISCO) may release general DCII information to users of their investigative records or listed in their investigative records systems descriptions in this register.

It should be noted that information contained in the system is regarded as the property of the submitting activities. DIS can neither monitor, nor assume responsibility for the propriety or accuracy of the data in the system, other than that portion belonging to DIS.

Transfer of information from this records system to other DoD components is a routine intra-agency use under the provisions of 5 U.S.C. 552a3(b)(1). The use of the DCII by terminal holders to advise requesters of the possible location of information, where there is no disclosure of personal information from the DCII, does not require an accounting.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Master Index data is maintained in direct access storage devices, disk and data cell. It is also contained on magnetic tape for continuity of operations purposes to permit processing at alternate locations in the event of computer failure.

Name Only Index data is maintained on magnetic tape and microfiche.

Each contributor is provided his portion on a quarterly basis.

RETRIEVABILITY:

Master Index records are accessed through name and at least one personal identifier (PID). Personal identifiers are: date of birth, place of birth, social security number and the last four (4) digits of military service number. Inquiries may enter the system in card form or by being keyed in at remote terminals. A non-standard retrieval capability also exists which permits

retrieval without PID, or on parts of a name, and produces to all individuals by that name. It should be noted that in many cases, the subject's SSAN is necessary to make a positive identification.

Name Only Index records are accessed through the name or some portion thereof. Records are retrieved based on an exact match with the name submitted. Inquiries may enter the system only in card form.

SAFEGUARDS:

Generalized validation is provided in batch retrieval through program edits to prevent unauthorized access.

User terminals with access to the Master Index are located in controlled access areas. Access to the system is limited to specified time of the day. Terminals are connected via dedicated data circuits which prevent access from standard dial-up telephones.

Activities must be a part of DoD and accredited on the basis of authorized requirements before a new terminal is established or before batch requests will be honored and processed. Terminal holders, and organizations authorized access by other means, are responsible for insuring that individuals and organizations to whom they disclose index information have appropriate authority and need to know.

The computer room is located within a building controlled by security personnel at all times. Identification badges are required for entrance. Access to the computer room is controlled by a combination lock on the entrance. Critical backup files are stored in locked fire-proof data safes.

RETENTION AND DISPOSAL:

Retained for as long as files are retained. When the record repository disposes of the file, they are responsible to delete all index tracings pertaining thereto, in accordance with established procedures. Processing of a deletion transaction flags the computer record which precludes it being given out thereafter. Such flagged records are eliminated from the system during periodic file restructuring procedures.

Open Case Tracings. Retained for as long as the investigation is open. When the investigation is completed, the contributor replaces the open case tracing with a file tracing as described above.

NAC History Tracings. Retained for a period of four (4) years from the date of completion and then automatically deleted unless specific action is sooner taken to delete the record. Should a subsequent favorable NAC be completed, the entering of a new history record will delete the first history record.

NAC Pending Tracings. Retained until completion of the NAC at which time they are replaced by a NAC History or file tracing, unless sooner deleted by the originator.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Defense Investigative Service, 1900 Half St. S.W., Washington, DC 20324.

NOTIFICATION PROCEDURE:

Information may be obtained from:

Defense Investigative Service, Information and Legal Affairs Office, 1900 Half St. S.W., Washington, DC 20324.

Information Required: Full name and all maiden and alias names under which files may be maintained and personal identifiers listed under RETRIEVABILITY. Note, Social Security Account Numbers may be necessary for positive identification of certain records.

Office Which May be Visited: Information and Legal Affairs Office, Defense Investigative Service, 1900 Half St. S.W., Washington, D.C. 20324.

Proof of Identity: Check of personal documents.

RECORD ACCESS PROCEDURES:

Access may be obtained through the Information Office at the address previously listed.

CONTESTING RECORD PROCEDURES:

The agency's rules for access to records, contesting contents and appealing initial determinations by the subject individual may be obtained from the Office of Information, at the above address.

RECORD SOURCE CATEGORIES:

DoD investigative organizations listed under the Location caption, excluding DISCO, and additionally:

Defense Supply Agency, ATTN: DSAH-T Cameron Station, Alexandria, Virginia 22314.

Director of Security, National Security Agency, ATTN: M-552, Fort Meade, Maryland 20755.

Assistant Chief of Staff of Intelligence, Department of the Army, ATTN: Counterintelligence Division, Washington, DC. 20315 (ACSI).

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

V5-04

SYSTEM NAME:

V5-04 Defense Case Control System (DCCS)

SYSTEM LOCATION:

Information Services Division, Personnel Investigation Center, PO Box 1211, Baltimore, Maryland 21203.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any person or activity the subject of an ongoing or recently completed Defense Investigative Service (DIS) investigation.

CATEGORIES OF RECORDS IN THE SYSTEM:

The DCCS Master file is composed of records of investigations which are being or have been conducted for DoD activities. Records contain the name and other personal identifying information on individuals who are investigated.

The DCCS History File consists of records of investigations that have been closed. Records contain the name and other personal identifying information on individuals who have been investigated.

The DCCS Investigative Assignment File (IAF) consists of records of leads assigned to DIS field elements for those investigations in progress as reflected in the DCCS Master file. Records contain the name, social security number, case control number, the investigative leads assigned and their status.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations, 44 U.S.C. 3101, Records Management, DoD Directive No. 5105.32, April 18, 1972, Charter for the Defense Investigative Service (DIS).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Purposes: The DCCS Master File contains open cases and cases closed during the prior 15 days to aid in case management and for the production of statistical reports.

The DCCS History File contains a record of all closed cases to obtain case management data and statistical reports.

The DCCS assignment files are used by DIS field elements to control local aspects of the investigation.

Categories of Users: DIS case control centers and field elements.

The Defense Industrial Security Clearance Office

Specific Uses: To determine the existence, location and status of the cases. To control workload and prepare statistical reports. To inform federal agencies or requesters of investigations regarding the status of on-going cases.

Automated Interfaces: The DCII System as described separately in this notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The DCCS Master File in Direct Access Storage Devices (DASD). A copy of the Master File is also contained on magnetic tape for continuity of operations to permit processing at alternate locations in the event of computer failure.

The DCCS History File is contained in magnetic tape. DCCS Investigative Assignment Files are retained in paper form.

RETRIEVABILITY:

Master and History File Records are accessed primarily through the case control number. Records can also be accessed through Military Service Number or Social Security Number. Queries may enter the system in card form and from magnetic tape or indirectly through the DCII.

Lead assignment (IAF) data is retrievable by name of individual or case control number.

SAFEGUARDS:

For the master and History Files as described in the DCII system description, this notice.

IAF documents.

RETENTION AND DISPOSAL:

Monthly history tapes are retained for two years. IAF records are retained one year after completion of field leads.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Defense Investigative Service, 1900 Half St. S.W., Washington, DC 20324.

NOTIFICATION PROCEDURE:

Information may be obtained from: Information and Legal Affairs Office, Defense Investigative Service, 1900 Half, St. S.W., Washington, DC 20324.

Information required: Full name and all maiden or alias names under which files may be maintained.

Personal Identifiers which include date and place of birth, social security number, and last four digits of military service number.

Offices Which May Be Visited: Information and Legal Affairs Office, Defense Investigative Service, 1900 Half St., S.W., Washington, DC 20324.

Proof of Identity: Routine check of personal documents.

RECORD ACCESS PROCEDURES:

Information Office, at above address.

CONTESTING RECORD PROCEDURES:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the Office of Information.

RECORD SOURCE CATEGORIES:

DIS Case Control Centers

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 81-86 Filed 1-2-81; 8:45 am]

BILLING CODE 3810-70-M

Department of the Army

Privacy Act of 1974; Deletion/Addition of System Notices

AGENCY: Department of the Army.

ACTION: Notice of deletions/addition system notices.

SUMMARY: The Army has consolidated information now contained in 5 system notices into a single comprehensive system notice to be added to the Army inventory as A0708.02dDAPC, Enlisted Personnel Management Information System (EPMIS). The EPMIS system notice will result in deleting 5 system notices now describing segments of total enlisted personnel management system. The intended effect of this action provides a service to Army enlisted personnel and facilitates internal administration of the Privacy Act. Notices being deleted and the consolidated notice being added are printed below.

DATES: Effective February 4, 1981.

ADDRESS: Any comments, including written data, views or arguments concerning this action should be addressed to the System Manager identified in the added system notice.

FOR FURTHER INFORMATION CONTACT: Mr. Richard S. Christian, The Adjutant General's Office (DAAG-AMR-R), 1000 Independence Avenue, SW, Washington, DC 20310; telephone 202/693-0973.

SUPPLEMENTARY INFORMATION: Department of the Army systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a) have been published in the **Federal Register** as follows:

FR Doc. 79-37052 (44 FR 73729) December 17, 1979
FR Doc. 80-594 (45 FR 1658) January 8, 1980
FR Doc. 80-3891 (45 FR 8399) February 7, 1980
FR Doc. 80-7515 (45 FR 15736) March 11, 1980
FR Doc. 80-9633 (45 FR 20992) March 31, 1980
FR Doc. 80-10014 (45 FR 21673) April 2, 1980
FR Doc. 80-150501-M (45 FR 26117) April 17, 1980
FR Doc. 80-13708 (45 FR 29390) May 2, 1980
FR Doc. 80-18501 (45 FR 41478) June 19, 1980
FR Doc. 80-20779 (45 FR 46842) July 11, 1980
FR Doc. 80-21847 (45 FR 48936) July 22, 1980
FR Doc. 80-29170 (45 FR 62875) September 22, 1980
FR Doc. 80-32460 (45 FR 68996) October 17, 1980
FR Doc. 80-33133 (45 Fr 70298) October 23, 1980
FR Doc. 80-34706 (45 FR 73728) November 6, 1980
FR Doc. 80-35825 (45 FR 75734) November 17, 1980
FR Doc. 80-36775 (45 FR 78748) November 26, 1980

The system of records being added is not deemed to be within the purview of the provisions of 5 U.S.C. 552a(o) of the Privacy Act which requires submission of an altered system report pursuant to Office of Management and Budget guidance set forth in the **Federal Register** (40 FR 45877) on October 3, 1975.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

December 22, 1980.

Addition

A0708.02dDAPC

System name:

708.02 Enlisted Personnel Management Information System (EPMIS).

System location:

United States Army Military Personnel Center (MILPERCEN), 200 Stoval Street, Alexandria, VA 22332.

Categoreis of individuals covered by the system:

Army enlisted personnel on active duty; non-prior service and prior service personnel who have, or indicate, a desire to enlist in the U.S. Army, U.S. Army National Guard, or U.S. Army Reserves; initial active duty training (IADT) personnel undergoing basic training or advanced individual training (BT/AIT); former military personnel who are applicants for enlistment in grades E1-E9.

Categories of records in the system:

a. Enlisted Master File (EMF) contains name, social security number (SSN), sex, race, citizenship, religion, marital status, dependents, date and place of birth, residence, assignments, physical profile, ethnic group, grade/date of rank, enlistment and service promotion qualifications, Military Occupational Skill code, education and training, aptitude, separation, retirement, and mailing address.

b. Recruit Quota System (Request) contains selected information from EMF and soldier's educational level achieved and school subjects, driver's license

color perception, aptitude battery scores, audio perception score, defense language aptitude battery (DLAB) score, motor vehicle battery test score; type of enlistment and date, term, and option; initial processing and training assignments, types, locations, and dates; unit of assignment identification, system identification of location that created accession record, recruiter identification and recruiting area credit code.

c. Enlisted Training Base (Act) contains selected information from EMF and the Soldier's enlistment and Service, assignment, enlistment commitments by MOS and type, college subjects, civilian acquired skills, advanced or basic individual training start and graduation date, location and MOS, follow-on MOS, location training recommended versus preferred, aptitude area scores and categories.

d. Enlisted Year Group Management File (Retain) contains selected information from the EMF and control number, reclassification/enlistment action, type of enlistment basic active service date, estimated termination of service (ETS), reenlistment date, civilian education, career management field (CMF), primary military occupational specialty code (PMOSC) and date of award, source of new PMOSC, personnel charged to school code, status of application, assignment code, date of last status change, current location, year group, security investigation status (SIS) and term reenlisted.

e. Enlisted Linquist Data Base (ELDB) contains selected information from the EMF and foreign language code, listening and reading proficiency, ratings and scores, dates of evaluation test or interview, how each language capability was acquired, with the principal type, highest level and date of recency for each foreign language in which proficient.

Authority for maintenance of the system:

Title 5 U.S.C., Section 301.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Department of the Army (DA): Records are used for personnel management, strength accounting and manpower management; Department of Defense: Records are used for interdepartmental actions and personnel managemnet; Social Security Administration: Used to verify SSN.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Records are stored on computer magnetic tapes and disks.

Retrievability:

Normal access is by SSN, name, or other individually identifying characteristics.

Safeguards:

Physical security devices, guards, computer hardware and software safeguard features, personnel clearances and passwords.

Retention and disposal:

Records are retained 5 years after separation except enlisted linguist data base (ELDB) records which are retained 6 months after separation.

System manager(s) and address:

Commander, United States Army Military Personnel Center, 200 Stovall Street, Alexandria, VA 22332.

Notification procedure:

Information may be obtained from Commander, United States Army Military Personnel Center (DAPC-POO-S), 200 Stovall Street, Alexandria, VA 22332. (AC 202/325-9310).

Record access procedures:

Written requests for information should contain the name of the individual, social security account number (SSN), whether awaiting active duty, active, or separated, return address and must identify the specific category of records involved. Blanket requests against this consolidated system will not be accepted. Visits are limited to United States Army Military Personnel Center, 200 Stovall Street, Alexandria, VA 22332. The individual must be able to provide acceptable identification and give verbal information that could be verified with his/her record.

Contesting record procedures:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340-21 (32 CFR Part 505).

Record source categories:

From the individual, from documents and computer readable output, other DA Staff Agencies and Commands, other Federal Agencies and Departments.

Systems exempted from certain provisions of the act:

None.

Deletions

A0225.11eDAPC

System name:

225.11 Enlisted Master File (44 FR 73782), December 17, 1979.

Reason:

Information is incorporated in system notice A0708.02dDAPC, Enlisted Personnel Management Information System (EPMIS), appearing as an added system in this **Federal Register.**

A0225.11fDAPC

System name:

225.11 Enlisted Year Group/RETAIN (44 FR 73782) December 17, 1979.

Reason:

Information is incorporated in system notice A0708.02dDAPC, Enlisted Personnel Management Information System (EPMIS), appearing as an added system in this **Federal Register.**

A0225.11gDAPC

System name:

225.11 Recruit Quota System (Request) (44 FR 73783) December 17, 1979.

Reason:

Information is incorporated in system notice A0707.02dDAPC, Enlisted Personnel Management Information System (EPMIS), appearing as an added system in this **Federal Register.**

A0708.13dDAPC

System name:

708.13 Enlisted Linquist Data Base (44 FR 73876) December 17, 1979.

Reason:

Information is incorporated in system notice A0708.02dDAPC, Enlisted Personnel Management Information System (EPMIS), appearing as an added system in this **Federal Register.**

A1002.05aDAPC

System name:

1002.05 Enlisted Training Base (44 FR 73949) December 17, 1979.

Reason:

Information is incorporated in system notice A0708.02dDAPC, Enlisted Personnel Management Information

System (EPMIS), appearing as an added system in this **Federal Register.**

[FR Doc. 81-65 Filed 1-2-81; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Alternatives for the Protection of Bushy Park Reservoir, Cooper River Rediversion Project Lake Moultrie and Santee River, South Carolina

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Intent to Prepare a draft Environmental Impact Statement (DEIS).

SUMMARY: 1. Description of proposed action:

The proposed project provides for an alternative to prevent possible intrusion of oceanic salt water into the Bushy Park Reservoir as a result of the Cooper River Rediversion Project. A number of structural and non-structural alternatives are being studied.

2. Description of alternatives:

a. *Auxiliary Canal and Dam:* Under this structural scheme, the present Bushy Park Canal entrance would be closed and the Canal rerouted to a new intake point about four miles upstream.

b. *Fabridam:* Under this structural scheme, an inflatable rubberized fabric dam (Fabridam) would be constructed in the existing Bushy Park Canal entrance. It would serve as a barrier against ocean salinity intrusion from the Cooper River.

c. *Tunnel:* Under this structural scheme, the present Bushy Park Canal entrance would be closed. Water from the Cooper River would enter Bushy Park Reservoir through a tunnel having an intake about four river miles upstream from the present canal.

d. *Gates:* Under this structural scheme, a set of lock gates would be constructed in the existing Bushy Park Canal entrance. The gates would serve as a barrier against ocean salinity intrusion from the Cooper River.

Non-structural alternatives being evaluated include:

a. *Increased Water Flows from the Pinopolis Hydro Plant to Repel a Salinity Threat:* Under this non-structural scheme, assurances would be provided to the city that, when ocean salinity reached a certain magnitude as measured by monitors at predetermined locations in the river, the Corps would automatically require an increase in the discharge of the Pinopolis Hydro Plant that would be sufficient to prevent salt water from entering Durham Canal.

b. *No Action:* No specific action would be taken to control a possible salinity intrusion.

a. *Public and Private Participation in the DEIS Process:* Full participation by interested Federal, State and local agencies as well as other interested private organizations and parties will be invited. Coordination as needed will be accomplished with aforementioned agencies and other parties during the preparation of the DEIS.

b. *Significant Issues to be Discussed in the DEIS Include:*

(1) Comparative impacts of alternatives on land use types.

(2) Impacts of the alternatives considered in detail on fish and wildlife habitat.

(3) Impact on cultural resources that may occur in the study area.

(4) Impact of selected alternative on recreation.

(5) Impact on threatened and endangered species which may occur in the study area.

(6) Impact on prime and unique farmlands which may occur in the study area.

c. *Environmental Review:* Environmental review of the DEIS and EIS as well as consultations will be made with the U.S. Fish and Wildlife Service, Environmental Protection Agency, National Marine Fisheries Service, South Carolina Department of Health and Environmental Control, South Carolina Wildlife and Marine Resources Department, and State Historic Preservation Officer.

4. The formal scoping process has been initiated through correspondence. Additional scoping and coordination will continue through telephone communication, correspondence and meetings.

5. The Draft EIS *"Alternatives for the Protection of Bushy Park Reservoir, Cooper River Rediversion Project Lake Moultrie and Santee River, South Carolina"* will be made available to the public about March 31, 1981.

6. Questions about the proposed action and DEIS can be answered by: John Carothers, Chief, Environmental Resources Branch, U.S. Army Corps of Engineers, Charleston District, Box 919, Charleston, South Carolina 29402.

Dated: December 22, 1980.

Bernard E. Stalmann,

LTC, Corps of Engineers, District Engineer.

[FR Doc. 80-40749 Filed 12-31-80; 8:45 am]

BILLING CODE 3710-AJ-M

Intent To Prepare a Draft Supplement I to the Papillion Creek and Tributaries, Nebraska Final Environmental Statement

AGENCY: U.S. Army Corps of Engineers, Omaha District.

ACTION: Notice of Intent to Prepare a Draft Supplement I.

SUMMARY: 1. The authorized Federal action is to provide flood control in the Papillion Creek Basin, Nebraska.

2. The current plan for flood control along the west branch of Papillion Creek consists of two dams and reservoirs (Dam Sites 18 and 20 of the original plan). The only reasonable alternative to the authorized plan is the no action alternative.

3. To date, public involvement has included meetings and discussions with public entities, local planning agencies, and concerned citizens groups. The major issue to be analyzed in depth in the Draft Supplement is the Federal acquisition of an estimated 1,000 acres of land. The project will comply with the requirements of applicable environmental laws and executive orders.

4. A scoping meeting will not be held. The scoping process to be utilized will consist of specific coordination with appropriate governmental agencies having jurisdiction by law of special expertise and any locally interested party.

5. The Omaha District estimates that the Draft Supplement I will be releasd for public review in February 1981.

ADDRESS: Questions about the Draft Supplement I should be directed to Richard Gorton; Chief, Environmental Analysis Branch; Omaha District, CE; 6014 U.S. Post Office and Courthouse; Omaha, Nebraska 68102. Phone: (402) 221-4605.

Dated: December 22, 1980.

Arvid L. Thomsen,

Chief, Planning Division.

[FR Doc. 80-40743 Filed 12-31-80; 8:45 am]

BILLING CODE 3710-62-M

Intent To prepare draft environmental impact statement (DEIS) for Truckee Meadows (Reno-Sparks Metropolitan Area) Investigation in Washoe and Storey Counties, Nevada, and in Sierra, Nevada, and Placer Counties, California

AGENCY: U.S. Army Corps of Engineers, Department of Defense.

ACTION: Notice of Intent to prepare a draft environmental impact statement (DEIS).

SUMMARY: 1. *Proposed Action.*—At the request of Washoe County and the Cities of Sparks and Reno and in response to a resolution of the Congress of the United States, the Corps of Engineers is investigating the feasibility of providing additional flood protection for the Reno-Sparks Metropolitan Area and Truckee Meadows.

DATE:

2. *Alternatives.*—Alternatives being considered include no action, nonstructural, and structural measures. The structural measures include reservoirs, channel enlargement and levees, bridge replacement and flood walls, and bypass tunnels. Recreation and fish and wildlife enhancement opportunities are being examined for the alternatives being considered.

3. *Scoping of the DEIS.*—Close coordination will continue with local agencies, other Federal agencies, and interested parties. Due to the presence of two threatened and endangered fish species, detailed analysis of potential impacts and enhancement measures for these species will be made.

4. Several public meetings have occurred during the past study phase. Additional meetings presently unscheduled will take place for developing recreation and environmental quality plans. A public meeting is scheduled for November 1971 to assist in finalizing the feasibility report.

5. The DEIS is scheduled to be made available to the public in October 1981.

ADDRESS: Questions about the proposed action and DEIS can be answered by: Mr. Jerry Key, Study Manager, Sacramento District, Corps of Engineers, 650 Capitol Mall, Sacramento, CA 95814, telephone (916) 440-2464 (FTS 448-2464).

Dated: December 22, 1980.

Henry Lee,

Lieutenant Colonel, CE Acting District Engineer.

[FR Doc. 81-224 Filed 1-2-81; 8:45 am]

BILLING CODE 3710-GH-M

Intent To Prepare a Draft Environmental Impact Statement (DEIS) on the Historical Use and Maintenance, Plus Projected Use and Maintenance, of the Okeechobee Waterway, Florida

AGENCY: U.S. Army Corps of Engineers, Department of Defense.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement.

SUMMARY: The U.S. Army Corps of Engineers, Jacksonville District, complying with requirements of Pub. L. 96-69, dated September 25, 1979, intends to prepare an Environmental Impact Statement to document, in a full and fair manner, identified significant impacts of the Okeechobee Waterway and its maintenance. The goal is to identify and evaluate means that can be used to avoid or minimize adverse impacts from operation and maintenance or to enhance the quality of the human environment associated with the waterway. The investigation will not duplicate the study on the project's economic feasibility, nor the ongoing survey study dealing with navigation improvements and bank stabilization of the St. Lucie Canal, sediment removal from the St. Lucie Canal and estuary, sediment source identification, increased flood control, control of inflow into the outlet canals, spillway sizes, and need for additional Lake Okeechobee outlets.

The Okeechobee Waterway extends from the Atlantic Intracoastal Waterway on the Florida east coast near Stuart, across the peninsula via the St. Lucie Canal, to Lake Okeechobee, a large freshwater lake about 31 miles in diameter. The portion of the waterway west of Lake Okeechobee, known as the Caloosahatchee River, extends westward to the Gulf Intracoastal Waterway west of Ft. Myers. Total length of the waterway is about 155 miles; six railroad and 16 highway bridges cross the waterway. The waterway traverses, or borders seven counties in which the population of 1970 was about 580,000, increased considerably by seasonal visitors.

Impacts from the historical and current construction, maintenance, and operation of the Okeechobee Waterway will be referenced to the year 1880 for the Caloosahatchee River and the year 1916 for the St. Lucie Canal. The cited dates are those when construction commenced on respective segments of the waterway and will be used as reference dates in developing an estimate, based upon available data and professional judgment, of preconstruction conditions in the area.

The scoping process will include this public notice of the study and is a request for comments from the public. Information will be solicited from affected Federal, State, and local agencies. Issues to be analyzed in the DEIS will include effects on wetlands, drainage and flooding, land use, induced development, fish and wildlife, navigation and recreation. A scoping meeting is not contemplated at this time.

The DEIS will be made available to the public in May 1982 unless circumstances warrant additional time for preparation.

Questions concerning the proposed action and DEIS may be addressed to: Dr. Gerald Atmar, Environmental Studies Section, U.S. Army Corps of Engineers, Jacksonville District, P.O. Box 4970, Jacksonville, Florida 32232, Telephone: (904) 791-3615.

Dated: December 17, 1980.

James W. R. Adams,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 81-143 Filed 1-2-81; 8:45 am]

BILLING CODE 3710-AJ-M

Intent To Prepare Draft Environmental Statement (DEIS) For Proposed Small Hydroelectric Power Facility; South-Fork Wailua River, Kauai, Hawaii

December 11, 1980.

AGENCY: U.S. Army Corps of Engineers, Pacific Ocean Division, Honolulu District.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: 1. This study was initiated at the request of the State of Hawaii and is being conducted under the authority of Section 209 of the River and Harbor and Flood Control Act of 1962. The Corps is investigating the feasibility of installing a run-of-river hydroelectric power facility on the South Fork Wailua River, Kauai, Hawaii. The facility will have a power generating capacity of less than 25 megawatts. There are four basic alternative plans under consideration. Alternatives include three possible water intake sites and penstock alignments and two possible locations for a power generating plant. Three of the basic alternatives involve placement of the power generating plant approximately one mile downstream of the Wailua Falls, which is within the Wailua River State Park.

2. A scoping meeting for preparation of the DEIS will be held at 10:00 a.m. on Monday, January 5, 1981 at Building 230, Fort Shafter, Hawaii (first floor conference room). Interested Federal, State, and Local agencies, organizations and public are invited to attend.

3. A public notice announcing initiation of this study was published June 24, 1980. A public workship and two public meetings will be held over the course of calendar years 1981-1982 to review the development of the alternative plans. Significant issues which may be discussed include affects of a hydroelectric power facility on stream flow, sport fisheries and indigenous migratory fishes, aesthetics and recreational activities within the Wailua Falls State Park.

4. The estimated date for public release of the DEIS is October, 1981.

Address: Questions about the proposed action and DEIS can be answered by: Dr. James E. Maragos, Chief, Environmental Resources Section, U.S. Army Corps of Engineers, Pacific Ocean Division, Building 230, Fort Shafter, Hawaii 96858, Telephone: (808) 438-2263.

Dated: December 11, 1980.

Alfred J. Thiede,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 80-40782 Filed 12-31-80; 8:45 am]

BILLING CODE 3710-NN-M

Organization of the Joint Chiefs of Staff

National Defense University Panel of The Board of Visitors for National Defense University and Defense Intelligence School; Meeting

The President of the National Defense University has scheduled a meeting of the National Defense University Panel of the Board of Visitors for National Defense University and Defense Intelligence School on Thursday, January 29, 1981, from 0830-1145 and 1330-1600. The meeting will be held in the Hill Conference Center, Theodore Roosevelt Hall, Building 61, Fort Lesley J. McNair, Washington, D.C. The discussions will include progress and plans for the National Defense University and the curricula, faculty, and students of the Industrial College of the Armed Forces and the National War College. The meeting is open to the public, but the limited space available for observers will be allocated on a first-come, first-served basis. To reserve space, interested persons should write or phone (693-1075), the Assistant to the President, National Defense University, Fort Lesley J. McNair, Washington, D.C. 20319.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

December 29, 1980.

[FR Doc. 81-144 Filed 1-2-81; 8:45 am]

BILLING CODE 3810-70-M

Office of the Secretary

Per Diem, Travel and Transportation Allowance Committee; Changes in Per Diem Rates

AGENCY: Per Diem, Travel and Transportation Allowance Committee, DoD.

ACTION: Publication of changes in per diem rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 99. This bulletin lists changes in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico and possessions of the United States. Bulletin Number 99 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: December 18, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick W. Weiser, 325-9330.

SUPPLEMENTARY INFORMATION: This document gives notice of changes in per diem rates prescribed by the Per Diem, Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. Distribution of Civilian Per Diem Bulletins by mail was discontinued effective June 1, 1979. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of changes in per diem rates to agencies and establishments outside the Department of Defense.

The test of the Bulletin follows:

Civilian Personnel Per Diem Bulletin Number 99

to the Heads of Executive Departments and Establishments

Subject: Table of Maximum Per Diem Rates in Lieu of Subsistence for United States Government Civilian Officers and Employees for Official Travel in Alaska, Hawaii, the Commonwealth of Puerto Rico and Possessions of the United States

1. This bulletin is issued in accordance with Memorandum for Heads of Executive Departments and Establishments from the Deputy Secretary of Defense August 17, 1966, "Executive Order 11294, August 4, 1966 Delegating Certain Authority of the President to Establish Maximum Per Diem Rates for Government Civilian Personnel in Travel Status," in which this Committee is directed to exercise the authority of the President (5 U.S.C. 5702(a)(2)) delegated to the Secretary of Defense for Alaska, Hawaii, the Commonwealth of Puerto Rico, the Canal Zone, and possessions of the United States. When appropriate and in accordance with regulations issued by competent authority, lesser rates may be prescribed.

2. The maximum per diem rates shown in the following table are continued from the preceding Bulletin Number 98 except in the case identified by an asterisk which rate is effective on the date of this Bulletin. The date of this Bulletin shall be the date the last signature is affixed hereto.

3. Each Department or Establishment subject to these rates shall take appropriate action to disseminate the contents of this Bulletin to the appropriate headquarters and field agencies affected thereby.

4. The maximum per diem rates referred to in this Bulletin are:

Locality	Maximum rate
Alaska	
Adak [1]	$12.60
Anaktuvuk Pass	140.00
Anchorage	72.00
Barrow	111.00
Bethel	93.00
College	67.00
Cordova	84.00
Deadhorse	94.00
Dillingham	83.00
Dutch Harbor	82.00
Eielson AFB	67.00
Elmendorf AFB	72.00
Fairbanks	67.00
Ft. Richardson	72.00
Ft. Wainwright	67.00
Juneau	83.00
Kodiak	84.00
Kotzebue	91.00
Murphy Dome	67.00
Noatak	91.00
Nome	90.00
Noorvik	91.00
Prudhoe Bay	94.00
Johnston Atoll [2]	15.50
Midway Islands [1]	12.60
Puerto Rico:	
Bayamon:	
12-16—5-15	102.00
5-16—12-15	75.00
Carolina:	
12-16—5-15	102.00
5-16—12-15	75.00
Fajardo:	
12-16—5-15	102.00
5-16—12-15	75.00
Ft. Buchanan (Incl. GSA Service Center, Guaynabo):	
12-16—5-15	102.00
5-16—12-15	75.00
Ponce (Incl. Ft. Allen NCS) Roosevelt Roads:	68.00
12-16—5-15	102.00
5-16—12-15	75.00
Sabana Seca:	
12-16—5-15	102.00
5-16—12-15	75.00
Shemya AFB [1]	11.00
Shungnak	91.00
Spruce Cape	84.00
Tanana	90.00
Valdez	70.00
Wainwright	79.00
All Other Localities	71.00
American Samoa	65.00
Guam M.I.	
Hawaii:	
Oahu	70.00
All Other Localities	60.00
San Juan (Incl. San Juan Coast Guard Units):	
12-16—5-15	102.00
5-16—12-15	75.00
All other Localities	63.00
*Virgin Islands of U.S.:	
St Thomas:	
12-1—4-30	126.00
5-1—11-30	74.00
Other:	
12-1—4-30	91.00
5-1—11-30	69.00
Wake Island [2]	15.00

Locality	Maximum rate
Other Localities	20.00

[1] Commercial facilities are not available. This per diem rate covers charges for meals in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarters by the traveler.

[2] Commercial facilities are not available. Only Government-owned contractor operated quarters and mess are available at this locality. This per diem rate is the amount necessary to defray the cost of lodging, meal and incidental expenses.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

[FR Doc. 80-40775 Filed 12-31-80; 8:45 am]

BILLING CODE 3810-70-M

Armed Forces Epidemiological Board; Open Meeting

1. In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463) announcement is made of the following committee meeting:

Name of Committee: Armed Forces Epidemiological Board ad hoc subcommittee on epidemiological methods in clincial health delivery systems.

Date of Meeting: 28 January 1981.

Time: 0900-1700.

Place: Naval Health Research Center, San Diego, CA.

Proposed Agenda: Epidemological methods in clinical health delivery systems.

2. This meeting will be open to the public, but limited by space accommodations. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. Interested persons wishing to participate should advise the Executive Secretary, DASG-AFEB, Room 2D455 Pentagon, Washington, D.C. 20310.

Dated: December 18, 1980.

Charles W. Halverson,

CAPT., MSC, USN, Executive Secretary.

[FR Doc. 80-40792 Filed 12-31-80; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Implementation of Executive Order 12114 Environmental Effects Abroad of Major Federal Actions; Final Guideline

AGENCY: Department of Energy.

ACTION: Final guideline for implementation of Executive Order 12114.

SUMMARY: The Department of Energy (the Department) hereby adopts final Departmental guidelines implementing Executive Order 12114—Environmental Effects Abroad of Major Federal Actions, which was issued on January 4, 1979.

The guidelines published herein reflect certain revisions to the proposed guidelines, published in the **Federal Register** on September 6, 1979 (44 FR 52146), based upon the Department's consideration of comments received and upon experience acquired in working under Executive Order 12114. The guidelines supplement the procedures set forth in the Department's final guidelines for compliance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, which were published in the **Federal Register** on March 28, 1980 (45 FR 20694), and are designed to be coordinated with the environmental review procedures established by those procedures. They are applicable to all organizational units of the Department, except the Federal Energy Regulatory Commission, an independent regulatory commission within the Department not subject to the supervision or direction of the other parts of the Department.

EFFECTIVE DATE: January 5, 1981.

FOR FURTHER INFORMATION CONTACT:

Dr. Robert J. Stern, Acting Director, NEPA Affairs Division, Office of Environment, Department of Energy, Room 4G-064, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, 202-252-4600

Stephen H. Greenleigh, Esq., Assistant General Counsel for Environment, Department of Energy, Room 6D-033, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, 202-252-6947

SUPPLEMENTARY INFORMATION:

I. Background

A. National Environmental Policy Act

The National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, requires that Federal agencies give appropriate weight to factors affecting the human environment during all stages of their decisionmaking process. In this connection, Federal agencies are required to prepare detailed statements on proposals for major Federal actions significantly affecting the quality of the human environment.

B. Council on Environmental Quality Regulations

The Council on Environmental Quality promulgated regulations establishing uniform procedures implementing the National Environmental Policy Act on November 29, 1978 (43 FR 55978). These regulations (40 CFR 1500 *et seq.*) require agencies to adopt implementing procedures to supplement these uniform procedures.

C. Department of Energy National Environmental Policy Act Guidelines

On March 28, 1980, the Department published in the **Federal Register** (45 FR 20694) final guidelines implementing the Council on Environmental Quality National Environmental Policy Act regulations.

D. Executive Order 12114

On January 4, 1979, President Carter signed Executive Order 12114, entitled Environmental Effects Abroad of Major Federal Actions. The Order represents the exclusive and complete determination by the Executive Branch of the procedural and other actions to be taken by Federal agencies to further the purposes of the National Environmental Policy Act with respect to the environment outside the United States, its territories and possessions.

E. Department Guidelines Implementing Executive Order 12114

The guidelines published herein provide the supplemental implementing procedures required by Executive Order 12114. They are intended for use by all persons acting on behalf of the Department in carrying out the Executive Order. The Executive Order and these final guidelines are not intended to create or enlarge any substantive or procedural rights or cause of action against the Department.

These implementing guidelines in large measure reiterate the Executive Order provisions. It is recommended that these guidelines be read and interpreted in conjunction with Executive Order 12114, the Department's guidelines implementing the Council on Environmental Quality National Environmental Policy Act regulations and the Department's Order 5440.1 governing internal National Environmental Policy Act processes to obtain a more complete understanding of the Department's environmental review policies and procedures.

The guidelines are applicable to all organizational elements of the Department except the Federal Energy Regulatory Commission, an independent regulatory body within the Department.

As required by section 2-1 of Executive Order 12114, the Department has consulted with the Department of State and the Council on Environmental Quality in developing these guidelines.

II. Comments and Other Revisions

Written comments on the proposed guidelines were received from the Department of State and one private organization. The Department has carefully considered all comments and has modified the proposed guidelines, as appropriate, to reflect those comments.

A. Department of State Comments

The State Department submitted a number of comments regarding the applicability of the Department's guidelines to nuclear activities. The following revisions were made to the proposed guidelines to reflect these comments:

1. Section 5.1.5 in the proposed guidelines was revised to clearly indicate that the environmental review of actions involving the export of a nuclear production, utilization or waste management facility will be accomplished under a set of Unified Procedures recently developed by the State Department and other Federal agencies, including the Department of Energy, and promulgated at 44 FR 65560 (November 13, 1979).

2. The exemption contained in the proposed guidelines regarding "small quantities" of nuclear material (number 4 in Appendix B) has been revised to remove the "small quantity" limitation. The Department believes that this revision will more closely follow the exemption contained in Section 2-5(a)(v) of Executive Order 12114 regarding nuclear fuel and material exports. The Department believes that, in general, the export of and subsequent arrangements involving nuclear material or isotopic material in accordance with the provisions of the Nuclear Non-Proliferation Act of 1978, the "Procedures Established Pursuant to the Nuclear Non-Proliferation Act of 1978" (published in the **Federal Register** on June 9, 1978, 43 FR 25328), and Section 131 of the Atomic Energy Act of 1954, as amended, will not have a significant environmental impact on the global commons. Section 6.1 of these guidelines requires that the Department still review every such action to determine whether an exemption is warranted. If an exemption is used, section 7 of the guidelines requires that a brief record documenting the exemption be prepared.

3. The definitions of "foreign nation," "United States" and "global commons" in section 16 of the proposed guidelines have been revised.

B. Private Organization Comments

One private organization submitted three comments on the Department's proposed guidelines:

1. Referring to Part II B. 2. of the preamble and section 4.2 of the guidelines, it was unclear to the commentor what kinds of projects could be conducted in a foreign country without requiring that country's approval.

The referenced sections in the guidelines apply to actions taken by the United States, in concert with one or more foreign nations, which significantly affect the environment of a foreign nation which is not participating with the United States in the action and which is not otherwise involved in the action, such as by regulatory control. An example of such an action could be the construction, by the United States (with Departmental funding) and a foreign nation, of a coal liquefaction plant situated near the border between that foreign nation and a neighboring country which is not participating in the project. If the construction and operation of such a plant will significantly affect the environment of this neighboring country, section 4.2 of the Department's guidelines requires that the United States prepare an environmental study relevant or related to the action, or a concise analysis of the environmental issues involved. Pursuant to other provisions in the Department's guidelines, these studies or analyses will discuss all significant environmental impacts associated with the project, including those on the environment of the non-participating foreign nation. The Department believes that this section is sufficiently clear and that no revisions are necessary.

2. Referring to the general issue of the preparation of environmental review documents by the United States in concert with foreign nations or international organizations, the commentor felt that specific guidelines are needed to avoid potential delay while responsibilities and detailed content were being coordinated.

The Department recognizes that its procedures implementing Executive Order 12114 do not contain specific guidelines governing the preparation of environmental review documents by the United States in conjunction with foreign nations or international organizations. This lack of specificity could lead to some delay in the program while these details are determined. However, the Department believes that, given the variety of foreign policy sensitivities and considerations that are present in situations involving foreign nations and international organizations, it would be impractical to develop detailed generic procedures governing the cooperative preparation of environmental review documents. The Department believes that any potential delays can be minimized by proper coordination in the early stages of the environmental review process. The Department has thus not altered the language in its proposed guidelines regarding this subject area.

3. Should a foreign nation prepare its own environmental review for an action in which the United States is involved, the commentor felt that provisions should be provided in the guidelines to allow the United States to formally adopt all or portions of this review.

The Department agrees with the commentor that this authority should be explicity defined in the guidelines, and has revised the proposed guidelines by adding section 14.2 to so indicate.

With respect to Executive Order 12044, "Improving Government Regulations," the Department has determined that its guidelines implementing Executive Order 12114 are "significant" but not "major" because the anticipated effects of the guidelines primarily would be to provide internal direction for implementation of Executive Order 12114. Consequently, a regulatory analysis has not been prepared.

Issued in Washington, D.C., December 18, 1980.

Ruth C. Clusen,

Assistant Secretary for Environment.

Department of Energy Guidelines for Implementation of Executive Order 12114—Environmental Effects Abroad of Major Federal Actions

Part A—General

Part B—Actions for Which Environmental Review Is Required

Part C—Actions Exempted from Mandatory Environmental Review

Part D—Other Provisions

Part A—General

Section 1 Background

Executive Order 12114 of January 4, 1979, represents the United States Government's exclusive and complete determination of the procedural and other actions to be taken by Federal agencies to further the purpose of the National Environmental Policy Act with respect to the environment outside the United States, its territories and possessions. The Executive Order requires that all Federal agencies taking actions subject to environmental review under the Order adopt their own implementing procedures.

Section 2 Purpose and Scope

These guidelines are intended for use by all persons acting on behalf of the Department in implementing Executive Order 12114. The guidelines are not intended to create or enlarge any procedural or substantive rights or cause of action against the Department.

Section 3 Applicability

These guidelines apply to all organizational elements of the Department except the Federal Energy Regulatory Commission.

Part B—Actions for Which Environmental Review Is Required

Section 4 Categories of Actions and Mandatory Environmental Review Requirements

In the decisionmaking process for actions in the following categories, the Department will prepare and take into consideration the documents or studies specified below:

4.1 Major Federal actions significantly affecting the environment of the global commons outside the jurisdiction of any nation (e.g., the oceans or Antarctica).

Actions in this category require the preparation of an environmental impact statement, including, as appropriate, generic, program and specific statements.

4.2 Major Federal actions significantly affecting the environment of a foreign nation not participating with the United States and not otherwise involved in the action.

Actions in this category require the preparation either:

4.2.1 A bilateral or multilateral environmental study relevant or related to the proposed action. The study is to be conducted by the United States and one or more foreign nations, or by an international body or organization in which the United States is a member or participant; or

4.2.2 A concise analysis of the environmental issues involved, including environmental assessments, summary environmental analyses or other appropriate documents.

4.3 Major Federal actions significantly affecting the environment of a foreign nation which provide to that nation:

(a) A product, or physical project producing a principal product or an emission or effluent, which is prohibited or strictly regulated by Federal law in the United States because its toxic effects on the environment create a serious public health risk (see Appendix A); or

(b) A physical project which in the United States is prohibited or strictly regulated by Federal law to protect the environment against radioactive substances.

For actions in this category, the Department will either:

4.3.1 Prepare a document as specified in Section 4.2.1; or

4.3.2 Prepare a document as specified in Section 4.2.2.

4.4 Major Federal actions outside the United States, its territories and possessions which significantly affect natural or ecological resources of global importance designated for protection by the President pursuant to section 2-3(d) of Executive Order 12114 or, in the case of such a resource protected by international agreement binding on the United States, by the Secretary of State.

For actions in this category, the Department will either:

4.4.1 Prepare a document as specified in Section 4.1; or

4.4.2 Prepare a document as specified in Section 4.2.1; or

4.4.3 Prepare a document as specified in Section 4.2.2.

Part C—Actions Exempted From Mandatory Environmental Review

Section 5 Actions Exempted by Executive Order 12114

5.1 The following actions are exempt from these guidelines:

5.1.1 Actions not having a significant effect on the environment outside the United States, as determined by the Department. (Actions having a potentially significant impact on the United States, its territories or possessions are subject to the provisions of the Council on Environmental Quality's National Environmental Policy Act regulations (40 CFR Part 1500, November 29, 1978) and the Department's guidelines implementing those regulations (45 FR 20694, March 28, 1980).

5.1.2 Actions taken by the President;

5.1.3 Actions taken by or pursuant to the direction of the President or Cabinet officer when the national security or interest is involved or when the action occurs in the course of an armed conflict;

5.1.4 Intelligence activities and arms transfers;

5.1.5 Actions providing to a foreign nation a nuclear production, utilization or waste management facility. The environmental review of these actions is governed by the Unified Procedures promulgated by the State Department at 44 FR 65560 (November 13, 1979).

5.1.6 All other nuclear actions not covered in section 5.1.5 above, except those actions which significantly affect the environment of the global commons, which will undergo environmental review pursuant to section 4.1 of these guidelines.

5.1.7 Votes and other actions in international conferences and organizations;

5.1.8 Disaster and emergency relief action.

Section 6 Actions Exempted by the Department

6.1 The Department has determined that the general classes of actions which are listed in Appendix B generally do not have significant environmental impacts requiring review under these guidelines. They are hereby excluded from mandatory environmental review under these guidelines unless the Department determines that a particular action within such classes will have a significant environmental effect requiring such review. The Department may amend or expand Appendix B, as appropriate.

6.2 The Department may exempt, on a case-by-case basis, any action from these guidelines when such exemption is determined by the Department to be necessary to meet:

6.2.1 Emergency circumstances;

6.2.2 Situations involving exceptional foreign policy or national security sensitivities;

6.2.3 Other such special circumstances.

6.3 In utilizing an exemption pursuant to section 6.2 above, the Department will consult with the Department of State and the Council on

Environmental Quality as soon as is feasible.

Section 7 Required Documentation for Exempted Actions

For actions in connection with which the Department utilizes any exclusion or exemption pursuant to section 5 or 6 of these guidelines, the Department will prepare a brief record which describes the basis for its determination to utilize such exclusion or exemption.

Part D—Other Provisions

Section 8 Public Involvement

The Department will provide for public involvement in the environmental review process conducted pursuant to these guidelines to the following extent:

8.1. Environmental impact statements prepared pursuant to Sections 4.1 or 4.4.1 of these guidelines shall be subject to the provisions of:

8.1.1 Departmental guidelines regarding publication of a Notice of Intent to prepare an environmental impact statement and public involvement in the environmental impact statement scoping process;

8.1.2 40 CFR 1502.9 regarding preparation of a draft and final environmental impact statement;

8.1.3 40 CFR 1503 regarding comment procedures for a draft environmental impact statement.

8.2 Documents or studies prepared pursuant to sections 4.2, 4.3 or 4.4.2 and 3 of these guidelines are not subject to the public involvement procedures in 8.1.1 through 8.1.3 above. The Department may, at its discretion, elect to utilize any or all of these procedures for any such document or study.

Section 9 Timing

9.1 The Department will commence preparation of environmental documents required by these guidelines as close as practicable to the time the Department is developing or is presented with a proposal, and complete such documents early enough so that they can serve practically as an important contribution to the decisionmaking process.

9.2 Until an environmental document required by these quidelines has been completed and considered, the Department will take no action concerning the proposal which would have an adverse environmental impact or limit or prejudice the choice of reasonable alternatives.

9.3 For actions which have significant impacts both on the environment of the United States, its territories or possessions and on the environment of foreign nations or the global commons, documents prepared pursuant to sections 4.1, 4.2 or 4.3 of these guidelines analyzing the impacts outside the U.S. will, to the extent practicable, be prepared and reviewed in conjunction with the analyses of the domestic impacts of the proposed action.

Section 10 Contents

10.1 Environmental impact statements prepared pursuant to section 4.1 or 4.4.1 of these guidelines will follow the recommended format of 40 CFR 1502.10 and contain the types of information specified in 40 CFR 1502.11–1502.18.

10.2 Bilateral or multilateral environmental studies prepared pursuant to sections 4.2.1, 4.3.1 or 4.4.2 will contain a currently valid analysis of all significant environmental impacts of the proposed action.

10.3 Environmental analyses prepared pursuant to section 4.2.2, 4.3.2 or 4.4.3 will include brief discussions of:

10.3.1 The proposed action and the need therefor;

10.3.2 The reasonable alternatives to the proposed action which could be implemented directly or indirectly by the United States; and

10.3.3. All significant environmental impacts associated with the proposed action and the reasonable alternatives.

Section 11 Notice of Availability

11.1 The Department will, as soon as feasible, inform other Federal agencies with relevant interest and expertise of the availability of any documents prepared pursuant to these guidelines.

11.2 The Department will determine, after consultation with the Department of State, the appropriate time and manner for informing an affected nation of the availability of any relevant documents prepared pursuant to these guidelines.

11.3 As soon as practicable after notification to an affected nation in accordance with section 11.2 of these guidelines, the Department will provide notice to the public of the availability of the environmental review documents specified in sections 4.1, 4.2, 4.3, and 4.4 of these guidelines.

Section 12 Modifications to Contents, Timing and Availability

The Department will make appropriate modifications to the contents, timing and availability of documents, where necessary, to:

12.1 Enable the Department to decide and act promptly as and when required;

12.2 Avoid adverse impacts on foreign relations or infringement in fact or appearance of other nations' sovereign responsibilities; or

12.3 Ensure appropriate reflection of:

12.3.1 Diplomatic factors;

12.3.2 International commercial, competitive and export promotion factors;

12.3.3 Needs for governmental or commercial confidentiality;

12.3.4 National security considerations;

12.3.5 Difficulties of obtaining information and agency ability to analyze meaningfully environmental effects of a proposed action; and

12.3.6 The degree to which the Department is involved in or able to affect a decision to be made.

12.4 Modifications to the contents of documents might include, for example, the use of generic, typical or hypothetical environmental impact analyses where critical site specific data cannot be obtained from an affected foreign nation. Regarding modifications to the availability of a document, where an affected nation notifies the Department of its desire not to notify the public of the availability of a document prepared pursuant to sections 4.2, 4.3, 4.4.2, or 4.4.3 of these guidelines, the Department may waive the requirements of section 11.3 above regarding notices of availability.

Section 13 Coordination With the Department of State

The Department will coordinate all communications with foreign governments concerning environmental agreements and other arrangements implementing these guidelines with the Department of State.

Section 14 Duplication of Resources

14.1 The Department will not have to prepare any document or study required by Section 4 of these guidelines if it determines that a document or study already exists that is adequate in scope and content to meet the requirements of these guidelines.

14.2 The Department may adopt all or part of existing environmental analyses, including those prepared by foreign countries or international organizations, when the Department determines that these analyses are adequate in scope and content to fulfill the requirements of these guidelines.

14.3 The Department will, in the early stages of preparing any document or study described in Section 4 above, request the cooperation of any Federal agency which the Department determines to possess a statutory mission or expertise relevant to the proposed action.

14.4 Where an action involves multiple Federal agencies including the Department of Energy, a lead agency, as determined by the agencies involved, will have responsibility for implementing the provisions of Executive Order 12114 using its own procedures implementing the Executive Order.

14.5 If a major Federal action having significant effects on the environment of the United States or the global commons requires preparation of an environmental impact statement by the Department, and if the action is included in Section 4.2 or 4.3 above as an action having significant effects upon the environment of a foreign nation, the environmental impact statement does not have to contain a review of these foreign impacts. The appropriate type of environmental review, as described in Section 4.2 or 4.3 above, may be issued as a separate document.

Section 15 Miscellaneous Provisions

The provisions of Sections 5 and 6 regarding exclusions or exemptions from these procedures do not apply to major Federal actions significantly affecting the environment of the global commons unless permitted by law.

Section 16 Definitions

16.1 *Environment* means the natural and physical environment, and it excludes social, economic and other environments. Social and economic effects do not give rise to any requirements under these guidelines.

16.2 *Federal Action* means any action that is potentially subject to United States Government control and responsibility. It includes actions that are implemented, funded or approved directly or indirectly by the United States Government. It does not include actions in which the United States participates in an advisory, information gathering, representational or diplomatic capacity but does not implement, fund or approve the action or cause the action to be implemented. An action significantly affects the environment if it does significant harm to the environment even though on balance the Department believes the action to be beneficial to the environment.

16.3 *Foreign Nation* means any territory under the jurisdiction of one or more foreign governments, including the territorial seas thereof. For the purpose of these procedures, actions having significant environmental effects on the resources of a foreign nation's continental shelf or, to the extent its claim of jurisdiction is recognized by the United States, its fisheries zone, shall be considered to be actions having significant environmental effects on that foreign nation.

16.4 *United States* means the States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas, the Trust Territory of the Pacific Islands, American Samoa, the United States Virgin Islands, Guam and the other territories and possessions of the United States, including the territorial seas thereof. For the purpose of these procedures, actions having significant environmental effects on the resources of the continental shelf of the United States, or on resources of United States Fisheries Conservation Zones subject to the jurisdiction of the United States, shall be considered to be actions having significant environmental effects in the United States.

16.5 *Global Commons* is equivalent to *areas outside the jurisdiction of any nation* and means all areas not described in subsection 16.3 and not described in subsection 16.4 above.

Section 17 Compliance

These guidelines are intended for use by all persons acting on behalf of the Department of Energy in carrying out the provisions of Executive Order 12114. Any deviations from the guidelines must be soundly based and must have the advance approval of the Secretary of the Department of Energy.

Appendix A—Illustrative List for Determining Compliance with Section 4.3

1. The following is an illustrative, non-inclusive list of the products, emissions and effluents encompassed by section 4.3 of these proposed guidelines: Asbestos, acrylonitrile, pesticides, mercury, arsenic, polychlorinated biphenyls, vinyl chloride, isocyanates, benzene, beryllium, and cadmium.

2. The following is an illustrated, non-inclusion list of the products, emissions and effluents *not* encompassed by section 4.3: Ammonia, chlorine, sulphuric acid, sulphur dioxide, sulfate and sulfate liquors, caustic soda, nitric acid, nitrogen oxides, and phosphoric acid.

Appendix B—Actions Normally Excluded by the Department From Preparation of an Environmental Impact Statement, Bilateral or Multilateral Environmental Study or Concise Environmental Analysis Under These Guidelines

1. Approval of Departmental participation in international "umbrella" agreements for cooperation in energy research and development which do not commit the United States to any specific projects or activities.

2. Approval of technical exchange arrangements for information, data or personnel with other countries or international organizations.

3. Approval of arrangements to assist other countries in identifying and analyzing their energy resources, needs and options.

4. Approval of the export of and subsequent arrangements involving nuclear materials or isotopic material in accordance with the provisions of the Nuclear Non-Proliferation Act of 1978, the "Procedures Established Pursuant to the Nuclear Non-Proliferation Act of 1978" (published in the Federal Register on June 9, 1978, 43 FR 25328) and Section 131 of the Atomic Energy Act of 1954, as amended.

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Economic Regulatory Administration

Crude Oil Buy/Sell Program; Third Supplemental Notice for Allocation Period of October 1, 1980, through March 31, 1981; Notice of Issuance of Emergency Allocations for January and February 1981

The notice specified in 10 CFR 211.65(g)(1) of the crude oil allocation (buy/sell) program for the allocation period of October 1, 1980, through March 31, 1981, was issued September 17, 1980 (45 FR 63046, September 23, 1980). A first supplemental buy/sell notice for the allocation period of October 1, 1980, through March 31, 1981, was issued November 13, 1980 (45 FR 76510, November 19, 1980). A second supplemental buy/sell notice for the allocation period was issued December 10, 1980 (45 FR 82697, December 16, 1980). The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby issues a third supplemental buy/sell notice for the allocation period of October 1, 1980, through March 31, 1981. This supplemental notice sets forth emergency allocations for the months of January and February 1981, assigned pursuant to 10 CFR 211.65(c)(2).

The supplemental buy/sell list is set forth as an appendix to this notice. The list includes the names of the small refiners granted emergency allocations for the months of January and February 1981, and their eligible refineries; the quantity of crude oil each refiner is eligible to purchase; the fixed percentage share for each refiner-seller; and the additional sales obligation of each refiner-seller for the allocations listed.

The allocations for the small refiners on the third supplemental buy/sell list were determined in accordance with 10 CFR 211.65(c)(2). Sales obligations for refiner-sellers were determined in accordance with 10 CFR 211.65 (e) and (f).

The buy/sell list covers PAD Districts I through V, and amounts shown are in barrels of 42 gallons each, for the specified period. Pursuant to 10 CFR 211.65(f), each refiner-seller shall offer for sale during an allocation period,

directly or through exchanges with refiner-buyers, a quantity of crude oil equal to that refiner-seller's sales obligation plus any volume that the ERA directs the refiner-seller to sell pursuant to 10 CFR 211.65(j).

Pursuant to 10 CFR 211.65(h), each refiner-buyer and refiner-seller is required to report to ERA in writing or by telegram the details of each transaction under the buy/sell list within forty-eight hours of the completion of arrangements. Each report must identify the refiner-seller, the refiner-buyer, the refineries to which the crude oil is to be delivered, the volumes of crude oil sold or purchased, and the period over which the delivery is expected to take place.

The procedures of 10 CFR 211.65(j) provide that if a sale is not agreed upon subsequent to the date of publication of this notice, a refiner-buyer that has not been able to negotiate a contract to purchase crude oil may request that the ERA direct one or more refiner-sellers to sell a suitable type of crude oil to such refiner-buyer. Such request must be received by the ERA no later than 20 days after the publication date of this third supplemental buy/sell notice. Upon such request, the ERA may direct one or more refiner-sellers that have not completed their required sales to sell crude oil to the refiner-buyer.

Refiner-buyers making requests for directed sales must document their inability to purchase crude oil from refiner-sellers by supplying the following information to ERA:

(i) Name of the refiner-buyer and of the person authorized to act for the refiner-buyer in buy/sell program transactions;

(ii) Name and location of the refineries for which crude oil has been sought, the amount of crude oil sought for each refinery, and the technical specifications of crude oils that have historically been processed in each refinery;

(iii) Statement of any restrictions, limitations, or constraints on the refiner-buyer's purchases of crude oil, particularly concerning the manner or time of deliveries;

(iv) Names and locations of all refiner-sellers from which crude oil has been sought under the supplemental buy/sell notice, the refineries for which crude oil has been sought, and the volume and specifications of the crude oil sought from each refiner-seller;

(v) The response of each refiner-seller to which a request to purchase crude oil has been made, and the name and telephone number of the individual contacted at each such refiner-seller;

(vi) Such other pertinent information as ERA may request.

Please note change of address. All reports and applications made under this notice should be addressed to: Jay F. Lubin, Program Manager, Crude Oil Buy/Sell Program, 2000 M Street, N.W., Room 6318, Washington, D.C. 20461.

TWX's may be sent to 710-822-9454 (answer back EVFTJ WSH). *Also note that the telephone number for the Crude Oil Allocation and Production Branch is 202-653-3420.*

Copies of the decision and orders assigning the emergency allocations listed herein may be obtained from: Economic Regulatory Administration, Public Information Office, 2000 M Street, N.W., Room B-110, Washington, D.C. 20461, (202) 653-4055.

10 CFR 211.65(c)(2)(ii) states in part that applications for emergency allocations "must be submitted by the first day of the month prior to the month(s) for which an allocation is sought but not before the 20th day of the second month prior to the month(s) for which an allocation is sought." Thus, any small refiner that wants to apply for an emergency allocation for the month of February 1981 must submit its application to ERA between December 20, 1980, and January 1, 1981, inclusive.

ERA requires all applicants for emergency allocations to serve copies of their applications on the designated refiner-seller representatives listed in the appendix to this notice. Comments regarding an application will be accepted if received within eight days of receipt of the application. Applicants are required to serve copies of their application (and any amendments thereto) on refiner-sellers simultaneously with the filing of the application with ERA.

ERA has previously stated that it does not consider the names of potential suppliers contacted by small refiners in unsuccessful attempts to obtain crude oil, or offers of crude oil that an applicant has rejected, to be proprietary (45 FR 46850, July 11, 1980). Some small refiner applicants have taken exception to ERA's position in this regard, claiming that to reveal offers of crude oil made by potential suppliers, even if the offers were rejected by the applicant, would unfairly affect the future negotiating position of the applicant. Several small refiners further claim that some offers of crude oil made to them are considered by the potential suppliers to be proprietary. In consideration of these comments, and pursuant to 10 CFR 205.9(f), ERA will consider claims of confidentiality regarding the *names* of potential crude oil suppliers contacted by an applicant *only if the applicant provides a detailed statement as to why he considers the name of the potential supplier to be proprietary.* Applications that withhold from public disclosure copies served on refiner-sellers the names of potential suppliers or any other information that ERA has determined not to be confidential or proprietary will be considered incomplete and may be dismissed unless all non-confidential information is disclosed to refiner-sellers. ERA does not consider the quality, quantity, or price of crude oil offered to applicants to be proprietary. Applications which do not contain such information will also be considered incomplete and may be dismissed unless such information is disclosed to refiner-sellers.

This notice is issued pursuant to Subpart G of DOE's regulations governing its administrative procedures and sanctions, 10 CFR Part 205. Any person aggrieved hereby may file an appeal with DOE's Office of Hearings and Appeals in accordance with Subpart H of 10 CFR Part 205. Any such appeal shall be filed on or before February 4, 1981.

Issued in Washington, D.C., on December 24, 1980.

T. Wendell Butler,

Deputy Assistant Administrator, Office of Petroleum Operations, Economic Regulatory Administration.

Appendix

The buy/sell list for the period October 1, 1980, through March 31, 1981, is hereby amended to reflect new emergency allocations assigned pursuant to 10 CFR 211.65(c)(2). The amended list sets forth the identity of each refiner-seller and refiner-buyer, the fixed percentage share of each refiner seller, the additional volumes of crude oil that each refiner-seller is required to offer for sale to small refiners, and the volumes of crude oil that each refiner-buyer is eligible to purchase for each eligible refinery.

All refiner-sellers' percentage shares have been changed to reflect the Continental Oil Company and Exxon Company, U.S.A. Decision and Order issued by DOE's Office of Hearings and Appeals on March 20, 1979 (3 DOE Para. 82,551). While the refiner-sellers' percentage shares displayed are rounded to three decimal places, six decimal places have been utilized to establish actual sales obligations.

Included in the appendix is a list of the names and addresses of the persons designated by refiner-sellers to receive service of copies of applications for emergency crude oil allocations. Additionally, a list of other actions

taken by ERA on recent applications, including denials and applications that have been withdrawn, is included herein.

Refiner-Sellers' Sales Obligations October 1, 1980, Through March 31, 1981, Allocation Period

The following list sets forth refiner-sellers' additional sales obligations for the October 1980 through March 1981 period resulting from the allocations listed in the notice. Total sales obligations also include the previous obligation published in the first supplemental list issued on November 13, 1980 (45 FR 76510, November 19, 1980), and the second supplemental list issued on December 10, 1980 (45 FR 82697, December 16, 1980).

Refiners-sellers	Share	Additional obligation (barrels)	Total obligation (barrels)
Amoco Oil Co	0.105	450,855	3,343,970
Atlantic Richfield Co	.077	331,084	3,966,528
Chevron U.S.A., Inc	.102	437,164	2,761,058
Cities Service Co	.025	105,880	1,933,192
Continental Oil Co	.004	17,218	107,280
Exxon Co., U.S.A.	.089	383,094	2,564,760
Getty Refining & Marketing Co	.021	91,318	677,306
Gulf Refining & Marketing Co	.091	392,185	3,298,747
Marathon Oil Co	.023	98,378	918,674
Mobil Oil Corp	.094	404,978	2,831,965
Phillips Petroleum Co	.041	178,096	1,706,764
Shell Oil Co	.114	489,061	4,998,440
Sun Co	.055	238,883	1,677,883
Texaco, Inc	.114	489,461	3,515,285
Union Oil Co. of California	.046	196,756	3,744,335
Total sales obligations		4,304,431	38,046,167

Emergency Allocations for January and February 1981

Refiner-buyer	Refinery location	January allocation (barrels)	February allocation (barrels)
Commonwealth Refining	Ponce, PR	1,920,512	1,673,224
Hudson Refining	Cushing, OK	294,981	416,164
Total		2,215,043	2,089,388

Summary of Additional Allocations Oct. 1, 1980, Through Mar. 31, 1981, Allocation Period

	Barrels
Emergency Allocations (January 1981)	2,215,043
Emergency Allocations (February 1981)	2,089,388
Total allocations	4,304,431

Actions Taken on Other Applications for Emergency Allocations

On July 31, 1980, Thriftway Company filed an application for an allocation under Section 211.65(a)(1)(iii). ERA issued a Decision and Order on December 10, 1980, denying Thriftway's application.

On September 30, 1980, Gladieux Refining filed an application for an emergency allocation under Section 211.65(c)(2). On October 22, 1980, Gladieux withdrew its application.

On October 30, 1980, Gladieux filed an application for an emergency allocation under Section 211.65(c)(2). On December 10, 1980, Gladieux withdrew its application.

On October 1, 1980, Lakeside Refining filed an application for an emergency allocation under Section 211.65(c)(2). On October 30, 1980, Lakeside withdrew its application.

On December 1, 1980, Good Hope Refineries filed an application for an emergency allocation under Section 211.65(c)(2). ERA issued a Decision and Order on December 22, 1980, denying Good Hope's application.

Contact List for Refiner-Sellers

Matthew J. Gallo, Amoco Oil Company, 200 E. Randolph Drive, P.O. Box 5910-A, Chicago, IL 60601

J. J. Hur, Atlantic Richfield Company, 515 South Flower Street, P.O. Box 2679, Los Angeles, CA 90071

Frank W. Bradley, Chevron, U.S.A., Inc., 1700 K. Street, N.W., Suite 1204, Washington, DC 20006

C. D. Head, Cities Service Company, P.O. Box 300, Tulsa, OK 74102

Mike McNeese, Conoco, Inc., P.O. Box 2197, Houston, TX 77001

Barbara Finney, Exxon Company, U.S.A., P.O. Box 2180, Houston, TX 77001

Eugene F. Gervino, Getty Refining & Marketing Company, P.O. Box 1650, Tulsa, OK 74102

L. G. Armel, Gulf Oil Corporation, Gulf Building, P.O. Box 2001, Houston, TX 77001

Victor Beghini, Vice President, Marathon Oil Company, 539 South Main Street, Findlay, OH 45840

W. L. Fanning, Jr., Mobil Oil Corporation, 3325 Gallows Road, Fairfax, VA 22037

A. L. Hobbs, Phillips Petroleum Company, Phillips Building, Bartlesville, OK 74004

G. G. Carnahan, Shell Oil Company, P.O. Box 263, Houston, TX 77001

C. Steven LeBaron, Sun Petroleum Products, Company, 9th Floor, Law Department, 1608 Walnut Street, Philadelphia, PA 19103

Paul D. McNaughton, Texaco, Inc., P.O. Box 52332, Houston, TX 77052

Howard Johnson, Texaco, Inc., c/o Legal Department, 2000 Westchester Avenue, White Plains, NY 10650

Lowell Way, Union Oil Company of California, 1650 East Golf Road, Schaumburg, IL 60196.

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[Docket No. ERA-FR-80-0-34; OFC Case No. 63003-9188-01-77]

Georgia-Pacific Corp.; Request for Classification

AGENCY: Economic Regulatory Administration.

ACTION: Notice of Request for Classification.

SUMMARY: On December 18, 1979, the Georgia-Pacific Corporation (G-P) requested that the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) classify as "existing," a field-erected standby boiler at its Plaquemine, Louisiana facility pursuant to § 515.13 of the "Final Rule to Permit Classification of Certain Powerplants and Installations as Existing Facilities," issued by ERA on October 19, 1979, (10 CFR Part 515), Page 60690 and pursuant to the provisions of the Powerplant and Industrial Fuel Use Act of 1978, 72 U.S.C. 8301 *et seq.* (FUA), which became effective on May 8, 1979. FUA imposes statutory prohibitions against the use of petroleum and natural gas by new major

fuel burning installations (MFBIs). The statutory prohibitions that apply to new MFBIs do not apply to MFBIs that are classified as existing.

The purpose of this notice is to invite interested persons to submit written comments on this matter prior to the issuance of a final decision by ERA. In accordance with § 515.26 of the Final Rule, no public hearing will be held.

DATES: Written comments are due on or before January 26, 1981.

ADDRESSES: Ten (10) copies of written comments shall be submitted to: Department of Energy, Case Control Unit, Economic Regulatory Administration, 2000 M Street, NW., Room 3214, Washington, D.C. 20461.

Docket No. ERA-FC-80-034 should appear on the envelope and the document therein.

FOR FURTHER INFORMATION CONTACT:

Constance L. Buckley, Chief, New MFBI Branch, Office of Fuels Conversion, Economic Regulatory Administration, 2000 M Street, NW., Room 3128-J, Washington, D.C. 20461, Phone (202) 653-4226.

Anthony M. Vaitekunas, Case Manager, New MFBI Branch, Office of Fuels Conversion, Economic Regulatory Administration, 2000 M Street, NW., Room 3128K, Washington, D.C. 20461, Phone (202) 653-4226.

James Renjilian, Office of the General Counsel, Department of Energy, 1000 Independence Avenue, SW., Room 6B-178, Washington, D.C. 20585, Phone (202) 252-2967.

SUPPLEMENTARY INFORMATION: The MFBI for which the request for classification was filed is a field-erected natural gas-fired boiler (designated as "B&W Standby Boiler" by G-P) having a design capability to consume fuel at a fuel heat input rate of 554 million Btu's per hour. The B&W Standby Boiler was placed in operation on November 5, 1980, and is used to provide 400,000 lb/hr steam production should the existing 400,000 lb/hr Foster-Wheeler boiler, 600,000 lb/hr reformer, or 230,000 lb/hr auxiliary boiler become inoperative.

Section 515.10 of the Final Rule requires that to be eligible to request that a transitional facility be classified as existing, a contract for the construction or acquisition of the installation must have been signed prior to November 9, 1978. G-P states in its request that a contract for the acquisition of the B&W Standby Boiler was signed on April 4, 1978.

In accordance with the provisions of § 515.13 of the Final Rule, ERA will classify an eligible installation as "existing" if it is demonstrated to the satisfaction of ERA that cancellation, rescheduling, or modification of the construction or acquisition of the installation would result in a substantial financial penalty or significant operational detriment. G-P's request for classification of the B&W Standby Boiler As "Existing" is based on a demonstration of substantial financial penalty. A summary of the pertinent facts relied on by G-P and submitted as part of its petition are as follows:

Substantial Financial Penalty.—Pursuant to § 515.13(a) of the Final Rule, ERA will classify a facility as existing upon demonstration that at least 25 percent of the total projected project cost as of November 9, 1978, was expended in nonrecoverable outlays as of that date. G-P relies on the figures below to meet this requirement.

B&W Standby Boiler

—Total projected project cost as of November 9, 1978—3,610,000.
—Total project expenditures, including obligation and cancellation charges, as of November 9, 1978—1,890,000.
—Total recoverable expenditures—130,000.
—Total nonrecoverable outlays—1,760,000.
—Nonrecoverable outlays percent of total projected project cost as of November 9, 1978—49.0%.

The expenditures are deemed non-recoverable since they could not be used in the construction or operation of a facility to burn an alternate fule, based on the information contained in G-P's request for classification these expenditures consist of $1,500,000 for one 554 mm Btu/hr field erected boiler, $70,000 for engineering, $150,000 for foundations, and $40,000 for other permanent material for a total of $1,760,000. Based on these figures G-P had expended, as of November 9, 1978, 49.0 percent of its total projected project cost.

The public file containing documents on these proceedings and supporting materials is available for inspection upon request at: ERA, Room B-110, 2000 M Street NW., Washington, D.C., Monday-Friday, 8:00 a.m. to 4:30 p.m.

Issued in Washington, D.C. on December 29, 1980.

Robert L. Davies,

Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 81-00101 Filed 1-2-81; 8:45 am]

BILLING CODE 6450-01-M

[ERA Case No. 65006-9095-22-22]

Modesto Irrigation District; McClure Station Unit 2 Decision and Order Granting Exemption from Prohibitions of Powerplant and Industrial Fuel Use Act of 1978

The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby issues this Decision and Order to Modesto Irrigation District (Modesto) granting a permanent peakload exemption from the prohibitions against (1) the use of petroleum or natural gas as a primary energy source by new powerplants and (2) the construction of new powerplants without the capability to use an alternate fuel as a primary energy source, which are contained in section 201 of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* (FUA or the Act).

Background

On May 13, 1980, Modesto filed a petition with ERA for a permanent peakload powerplant exemption in order to use oil/natural gas as a primary energy source in a 49,900 KW oil/natural gas-fired combustion turbine powerplant to be known as McClure Station Unit 2 (McClure 2) at its McClure Generating Station, in Stanislaus County, California. ERA accepted the petition on July 15, 1980, and published notice of acceptance, together with a statement of the reasons set forth in the petition for requesting the exemption, in the **Federal Register** on July 21, 980 (45 FR 48692). Publication of the notice of acceptance commenced a 45-day public comment period pursuant to section 701 of FUA. During this period, interested parties were also afforded an opportunity to request a public hearing. The comment period ended September 3, 1980. No comments were submitted. No hearing was requested.

ERA's staff reviewed the information contained in the record of the proceeding. A Tentative Staff Analysis (TSA) recommended that ERA issue an order granting Modesto a permanent peakload powerplant exemption to use oil/natural gas in McClure 2 subject to certain terms and conditions. A Notice of Availability of the Tentative Staff Analysis was published in the **Federal Register** on November 19, 1980 (45 FR 76512). The publication of the notice of availability commenced a 14-day public comment period which ended December 3, 1980.

On the basis of ERA's review of the entire record of this proceeding, ERA has determined to grant the exemption requested by Modesto to use oil/natural

gas in McClure 2, subject to the terms and conditions enumerated below.

Based upon information provided by Modesto, ERA conducted an environmental analysis which was reviewed by the DOE's Office of Environment in consultation with the Office of the General Counsel, and DOE has concluded that the granting of this exemption is not a major Federal action significantly affecting the quality of the human environmnent, within the meaning of the National Environmental Policy Act of 1969 (NEPA). Accordingly, neither an environmental impact statement nor an environmental assessment is required.

DATES: This order will take effect on March 6, 1981.

ADDRESSES: For further information contact:

William L. Webb, Office of Public Information, Economic Regulatory Administration, Department of Energy, 2000 M Street, N.W., Room B-110, Washington, D.C. 20461, Phone (202) 653-4055.

Louis T. Krezanosky, Office of Fuels Conversion, Economic Regulatory Administration, Department of Energy, 2000 M Street, N.W., Room 3012 B, Phone (202) 653-4208.

Marx M. Elmer, Office of General Counsel, Department of Energy, 1000 Independence Ave., S.W., Room 6B-178, Washington, D.C. 20585, Phone (202) 252-2967.

SUPPLEMENTARY INFORMATION: The ERA published interim rules on May 15, 1979, and May 17, 1979 (44 FR 28530 and 44 FR 28950) to implement provisions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act). Title II of FUA prohibits the use of natural gas or petroleum in certain new powerplants unless an exemption for such use has been granted. The final rule was published in the **Federal Register** on June 6, 1980 (45 FR 38276), and became effective on August 5, 1980.

ERA's staff reviewed the information contained in the record of the proceeding. A Tentative Staff Analysis recommended that ERA issue an order granting Modesto a permanent peakload powerplant exemption to use oil/natural gas in McClure 2, subject to certain terms and conditions.

A Notice of Availability of the Tentative Staff Analysis was published in the **Federal Register** on November 19, 1980 (45 FR 76512). The publication of the Notice of Availability commenced a 14-day public comment period which ended December 3, 1980. No comments were submitted and no requests for a public hearing were made.

Order

ERA hereby grants Modesto a permanent exemption from the prohibitions of FUA with respect to the use of oil/natural gas in McClure 2 provided that the powerplant is operated solely as a peakload and to meet peakload demand, subject to the following terms and conditions imposed pursuant to the authority granted to ERA by Section 214(a) of the Act:

Terms and Conditions

A Modesto shall not produce more than 74,850,000 KWH during any 12-month period with the McClure Unit 2. Modesto shall provide annual estimates of the expected periods (hours during specific months) of operation of McClure 2 for peakload purposes (e.g. 8:00-10:00 am and 3:00-6:00 pm during the June-September period, etc.). Estimates of the hours during which Modesto expects to operate McClure 2 during the first 12-month period shall be furnished within 30 days from the date of this order.

B. Modesto shall comply with the reporting requirements set forth in 10 CFR 503.41(d).

C. The quality of any petroleum to be burned in this unit will be the lowest grade available which is technically feasible and capable of being burned consistent with applicable environmental requirements.

D. This order shall not take effect earlier than March 6, 1981.

Issued in Washington, D.C. on December 29, 1980.

Robert L. Davies,

Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 81-157 Filed 1-2-81; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FC-80-041; ERA Case No. 51388-9006-22-22]

Powerplant and Industrial Fuel Use Act of 1978

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Acceptance of Exemption Petition.

SUMMARY: On December 10, 1979, Imperial Irrigation District (IID) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy for a permanent peakload powerplant exemption from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act) (42 U.S.C. 8301 et seq.). The Act prohibits the use of petroleum or natural gas in new powerplants. Criteria for petitioning for a permanent peakload powerplant exemption are published at 10 CFR 501.3 and 503.41.

IID proposes to install an oil/natural gas-fired 25,000 kilowatt combustion turbine unit to be known as Rockwood Unit 2, and certifies that the unit will be operated solely as a peakload powerplant and operated to meet peakload demand for the life of the plant. Additional information was required by ERA to process the petition which was submitted by IID on November 13, 1980.

ERA has accepted IID's petition pursuant to 10 CFR 501.3 and 501.63. In accordance with the provisions of Section 701 (c) and (d) of FUA, and 10 CFR 501.31, 501.63 and 501.33, any interested person may submit written comments, in regard to this matter, and a written request that ERA convene a public hearing.

DATES: Written comments are due on or before February 19, 1981. A request for a public hearing may be made by any interested person within this same 45-day period.

ADDRESSES: Fifteen copies of written comments, or a request for a public hearing shall be submitted to: Department of Energy, Economic Regulatory Administration, Case Control Unit (FUA), Box 4629, Room 3214, 2000 M Street, N.W., Washington, D.C. 20461.

Docket Number ERA-FC-80-041 should be printed clearly on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

William L. Webb, Office of Public Information, Economic Regulatory Administration, Department of Energy, 2000 M Street, N.W., Room B-110, Washington, D.C. 20461, Phone (202) 653-4055.

Louis T. Krezanosky, New Powerplants Branch, Economic Regulatory Administration, Department of Energy, 2000 M Street, N.W., Room 3012B, Washington, D.C. 20461, Phone (202) 653-4208.

James Renjilian, Office of General Counsel, Department of Energy, 6B-178 Forrestal Bldg., Washington, D.C. 20461, Phone (202) 252-2967.

SUPPLEMENTARY INFORMATION:

FUA prohibits the use of natural gas or petroleum in certain new powerplants unless an exemption under the Act for such use has been granted by ERA. IID has filed a petition for a permanent peakload powerlant exemption to install a 25,000 kw oil/natural gas-fired combustion turbine unit to be called Rockwood Unit 2 at its Rockwood Plant site in Imperial County, California.

As part of its petition, IID submitted a sworn statement by a duly authorized officer, Mr. R. Ogilvie, Manager, Power Department, Imperial Irrigation District, as required by 10 CFR 503.41(b)(1). In his statement, Mr. Ogilvie certified that the proposed oil natural gas-fired combustion turbine will be operated solely as a peakload powerplant and will be operated only to meet peakload demand for the life of the plant.

Mr. Ogilvie also certified that the maximum design capacity of the powerplant is 25,000 kilowatts and that the maximum generation that will be allowed during any 12-month period is the design capacity times 1,500 hours or 37,500,000 kwh.

ERA retains the right to request additional relevant information from IID at any time during the pendency of these proceedings where circumstances or procedural requirements may require. The public file, containing documents on these proceedings and supporting materials, is available for inspection upon request at: ERA, Room B-110, 2000 M Street, N.W., Washington, D.C. 20461, Monday-Friday, 8:00 a.m.-4:30 p.m.

Issued in Washington, D.C. on December 29, 1980.

Robert L. Davies,

Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 81-00150 Filed 1-2-81; 8:45 am]

BILLING CODE 6450-01-M

Royal Oil; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration.

ACTION: Notice of action taken on consent order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives Notice that a Consent Order was entered into between the Office of Enforcement, ERA, and the firm listed below during the month of October. The Consent Order represents resolutions of outstanding compliance investigations or proceedings by the DOE and the firm which involves a sum of less than $500,000, excluding penalties and interest. For Consent Orders involving sums of $500,000 or more, Notice will be separately published in the **Federal Register.** This Consent Order is concerned exclusively with payment of the refunded amount to injured parties for alleged overcharges made by the specified companies during the time periods indicated through direct refunds or rollbacks of prices.

For further information regarding these Consent Orders, please contact Edward F. Momorella, District Manager of Enforcement, 1421 Cherry Street, Philadelphia, Pa. 19102, telephone number (215) 597-2633.

Firm name and address	Refund amount	Product	Period covered	Recipients of refund
Royal Oil	$15,832	Gasoline	Mar. 1, 1979, Sept. 30, 1979	End-user customers.

Issued in Philadelphia on the 8th day of December 1980.

Edward F. Momorella,

District Manager of Enforcement.

[FR Doc. 81-160 Filed 1-2-81; 8:45 am]

BILLING CODE 6450-01-M

[ERA Case No. 52727-1011-22-22]

Southern Indiana Gas and Electric Co.; Broadway Unit No. 2 Decision and Order Granting Exemption from Prohibitions of Powerplant and Industrial Fuel Use Act of 1978

The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby issues this Decision and Order to Southern Indiana Gas and Electric Company (SIGECO) granting a permanent peakload exemption from the prohibitions against (1) the use of petroleum or natural gas as a primary energy source by new powerplants and (2) the construction of new powerplants without the capability to use an alternate fuel as a primary energy source, which are contained in Section 201 of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* (FUA or the Act).

Background

On February 12, 1980, (SIGECO) filed a petition with ERA for a permanent peakload powerplant exemption in order to use oil/natural gas as a primary energy source in a 81,440 KW oil/natural gas-fired combustion turbine powerplant to be known as Broadway Unit No. 2 (Broadway 2) at its Ohio River Station site, in Vanderburgh County, Indiana. Additional information was required by ERA and a revised petition was submitted on April 8, 1980. ERA accepted the petition on June 20, 1980, and published notice of acceptance, together with a statement of the reasons set forth in the petition for requesting the exemption, in the **Federal Register** on June 25, 1980 (45 FR 42790). Publication of the notice of acceptance commenced a 45-day public comment period, ending on August 11, 1980, pursuant to Section 701 of FUA. During this period, interested parties were also afforded an opportunity to request a public hearing.

Comments on SIGECO's petition were received from the United States Environmental Protection Agency—Region V (EPA). No public hearing was requested.

ERA's staff reviewed the information contained in the record of the proceeding. A Tentative Staff Analysis (TSA) recommended that ERA issue an order granting SIGECO a permanent peakload powerplant exemption to use oil/natural gas in Broadway 2 subject to certain terms and conditions. A Notice of Availability of the Tenative Staff Analysis was published in the **Federal Register** on November 12, 1980 (45 FR 74751). The publication of the notice of availability opened a 14-day public comment period which ended November 26, 1980.

On the basis of ERA's review of the entire record of this proceeding, including a review of the public comments received after publication of the notice of acceptance, ERA has determined to grant the exemption requested by SIGECO to use oil/natural gas in Broadway 2, subject to the terms and conditions enumerated below.

Based upon information provided by SIGECO, ERA conducted an environmental analysis which was reviewed by the DOE's Office of Environment, with consultation from the Office of the General Counsel, and DOE has concluded that the granting of this exemption is not a major Federal action significantly affecting the quality of the human environment, within the meaning of the National Environmental Policy Act of 1969 (NEPA). Accordingly, neither an environmental impact statement nor an environmental assessment is required.

DATES: This order will not take effect earlier than March 6, 1981.

FOR FURTHER INFORMATION CONTACT:

William L. Webb, Office of Public Information, Economic Regulatory Administration, Department of Energy, 2000 M Street, N.W., Room B-110, Washington, D.C. 20461, Phone (202) 653-4055.

Louis T. Krezanosky, Office of Fuels Conversion, Economic Regulatory Administration, Department of Energy, 2000 M Street, N.W., Room 3012 B, Washington, D.C. 20461, Phone (202) 653-4208.

Douglas F. Mitchell, Office of General Counsel, Department of Energy, 1000 Independence Ave., S.W., Room 6B-178, Washington, D.C. 20585, Phone (202) 252-2967.

SUPPLEMENTARY INFORMATION: The ERA published interim rules on May 15, 1979, and May 17, 1979 (44 FR 28530 and 44 FR 28950), to implement provisions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act). Title II of FUA prohibits the use of natural gas or petroleum in certain new powerplants unless an exemption for such use has been granted. A final rule applicable to new facilities and published in the Federal Register on June 6, 1980 (45 FR 38276), became effective August 5, 1980.

On July 30, 1980, the United States Environmental Protection Agency—Region V submitted comments advising ERA that SIGECO may require a permit to construct Broadway 2 under the Federal Rules for Prevention of Significant Deterioration (PSD), promulgated pursuant to the Clean Air Act Amendments of 1977.

On August 29, 1980, the State of Indiana Air Pollution Control Board issued an exemption from the requirements of these rules and from the Emissions Offset Policy for the Ohio River Station, which includes Broadway 2.

ERA's staff reviewed the information contained in the record of the proceeding. A Tentative Staff Analysis recommended that ERA issue an order granting SIGECO a permanent peakload powerplant exemption to use oil/natural gas in Broadway 2, subject to certain terms and conditions.

A Notice of Availability of the Tentative Staff Analysis was published in the Federal Register on November 12, 1980 (45 FR 74751). The publication of the Notice of Availability opened a 14-day public comment period which ended November 26, 1980. No additional comments were submitted during this period nor were any requests for a public hearing received.

Order

ERA hereby grants to SIGECO a permanent exemption from the prohibitions of FUA with respect to the use of oil/natural gas in Broadway 2 provided that the powerplant is operated solely as a peakload powerplant and to meet peakload demand subject to the following terms and conditions imposed pursuant to the authority granted to ERA by Section 214(a) of the Act:

Terms and Conditions

A. SIGECO shall not produce more than 122,160,000 KWH during any 12-month period with the proposed unit. SIGECO shall provide annual estimates of the expected periods (hours during specific months) of operation of Broadway 2 for peakload purposes (e.g. 8:00-10:00 am and 3:00-6:00 pm during the June-September period, etc.). Estimates of the hours during which SIGECO expects to operate Broadway 2 inside the first 12-month period shall be furnished within 30 days from the date of this order.

B. SIGECO shall comply with the reporting requirements set forth in 10 CFR § 503.41(d).

C. The quality of any petroleum to be burned in this unit will be the lowest grade available which is technically feasible and capable of being burned consistent with applicable environmental requirements.

D. This order shall not take effect earlier than March 6, 1981.

Issued in Washington, D.C. on December 29, 1980.

Robert L. Davies,

Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 81-156 Filed 1-2-81; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Order Extending Duration of Exemptions Issued Pursuant to Section 311 of the Powerplant and Industrial Fuel Use Act of 1978

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice and proposed order.

SUMMARY: The Economic Regulatory Administration (ERA) hereby gives notice that it proposes to issue an Order extending the duration of previously issued temporary public interest exemptions under section 311(e) of the Powerplant and Industrial Fuel Use Act of 1978, to the petitioners listed below. The original Orders granting the exemptions were issued on August 7, 1979, (44 FR 47398, August 13, 1979), on behalf of the following petitioners:

Case Control Number	Owner	Generating station	Powerplant Identification No.
50653-2491-01-41	Consolidated Edison Company of New York.	Astoria	1
50653-2491-02-41			2
50653-2491-03-41			3
50653-2491-04-41			4
50653-2491-05-41			5
50653-2500-01-41		Ravenswood	1
50653-2500-02-41			2
50653-2493-05-41		East River	5
50653-2493-06-41			6
50653-2493-07-41			7
50653-2502-04-41		Waterside	4
50653-2502-05-41			5
50653-2502-06-41			6
51685-2513-04-41	Long Island Lighting Company.	Far Rockaway	4
50490-6190-01-41	Central Louisiana Electric Company.	Rodemacher	1

ERA is publishing this notice of a proposed Order extending the duration of previously issued temporary exemptions for these petitioners for a period of 3 years, from December 31, 1980 to December 31, 1983. Interested persons are invited to submit written comments or request that a public hearing be convened with respect to this proposed Order under the provisions of section 701 of FUA.

DATES: Written comments relating to the proposed Order are due on or before February 23, 1981. Requests for a public hearing are also due on or before February 23, 1981.

ADDRESSES: Requests for a public hearing and/or 10 copies of written comments shall be submitted to: Department of Energy, Case Control Unit, Box 4629, Room 3214, 2000 M Street, N.W., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

Jack C. Vandenberg, Acting Director, Office of Public Information, Economic Regulatory Administration, Department of Energy, Room B-110,

2000 M Street, N.W., Washington, D.C. 20461, (202) 653-4055.

James W. Workman, Director, Powerplants Conversion Division, Office of Fuels Conversion, Economic Regulatory Administration, Department of Energy, Room 3112, 2000 M Street, N.W., Washington, D.C. 20461, (202) 653-4268.

Henry K. Garson, Acting Assistant General Counsel for Coal Regulations, Office of General Counsel, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-2967.

SUPPLEMENTARY INFORMATION: On April 9, 1979, ERA issued a final rule, 10 CFR Part 508, implementing the authority granted to DOE by section 311(e) of FUA. Pursuant to section 311(e) of FUA and 10 CFR Part 508, the above listed petitioners filed for temporary public interest exemptions. Notices of the petitions and the proposed Orders granting the temporary exemptions were published in the **Federal Register** on May 11, and June 1, 1979, (44 FR 27668 and 44 FR 31677). The Orders were issued on August 7, 1979, (44 FR 47398, August 13, 1979). The previously issued temporary exemptions allowed the above-listed electric powerplants to use natural gas as a primary energy source in excess of the amounts which would otherwise have been permitted by sections 301(a) (2) and (3) of FUA until December 31, 1980. The natural gas use permitted by these temporary exemptions is displacing low sulfur residual fuel oil.

The Orders provided that the temporary exemption would be automatically extended for an additional three year period upon the written acceptance by ERA of a system-wide fuel conservation plan under the third term and condition of the Order. ERA has received and proposes to accept system-wide fuel conservation plans from the above-listed owners/operators. This action will have the effect of extending the duration of temporary exemptions to December 31, 1983.

Special temporary public interest exemptions do not relieve existing powerplants from compliance with any pertinent rules or regulations concerning the acquisition or the distribution of natural gas that are administered by the Federal Energy Regulatory Commission or any pertinent state regulatory agency of from any public utility obligation to pertinent categories of customers.

Because the notice and comment period on the proposed extension Order extends beyond the termination date for the previously issued Orders, ERA, pursuant to the policy set forth in the notice implementing the Special Rule (44 FR 21230), will take no action with respect to any natural gas used by the above-listed powerplants, pending final ERA action on the proposed extension Order.

To the extent that the *near-term* choice of fuels for existing powerplants is limited to petroleum or natural gas, the use of natural gas is preferred. The extension of natural gas use by these powerplants will be a significant step toward reducing the Nation's oil consumption in the short term. The increased use of natural gas will help the United States meet its international commitments to resolve its demand for imported petroleum products, protect the Nation from the effects of oil shortages, and cushion the impact of increasing would oil prices, which have had a detrimental effect on the Nation's balance of payments and domestic inflation rates.

To the extent that this increased use of natural gas will accomplish these goals, it will reduce the importation of petroleum and further the goal of national energy self-sufficiency. This is in keeping with purposes of FUA and is in the public interest.

Since the increased use of natural gas for oil displacement is in keeping with the purposes of FUA and is in the public interest, and since the petitioners have submitted system-wide fuel conservation plans, ERA proposes to accept the system-wide fuel conservation plans which will extend the exemptions until December 31, 1983.

Proposed Order Granting Extension of Special Temporary Public Interest Exemptions

The Economic Regulatory Administration (ERA) Of the Department of Energy (DOE) hereby sets forth its Order proposing to extend the duration of previously issued temporary public interest exemptions from the prohibitions of sections 301(a) (2) and (3) of the Powerplant and Industrial Fuel Use Act of 1978 42 U.S.C. § 8301 *et seq.* (FUA Or the Act), pursuant to section 311(e) of FUA, 10 CFR § 501.68 and 10 CFR Part 508, to the following powerplants:

Case control number	Owner	Generating station	Powerplant identification number
50653-2491-01-41	Consolidated Edison Company of New York.	Astoria	1
50653-2491-02-41			2
50653-2491-03-41			3
50653-2491-04-41			4
50653-2491-05-41			5
50653-2500-01-41		Ravenswood	1
50653-2500-02-41			2
50653-2493-05-41		East River	5
50653-2493-06-41			6
50653-2493-07-41			7
50653-2502-04-41		Waterside	4
50653-2502-05-41			5
50653-2502-06-41			6
50653-2513-04-41	Long Island Lighting Company.	Far Rockaway	4
50490-6190-01-41	Central Louisiana Electric Company.	Rodemacher	11

I. Statutory Prohibitions

The above-listed powerplants are prohibited by section 301(a)(2) of FUA from using natural gas as a primary energy source, or are prohibited from using gas as a primary energy source in excess of the average base year proportions allowed in section 301(a)(3) of the Act.

II. Eligibility for Exemption

The existing powerplants listed above have submitted petitions to EPA for special temporary public interest exemptions and have asserted that:

a. Each existing powerplant is:

1. Prohibited on May 8, 1979, from using natural gas as a primary energy source by section 301(a)(2) of FUA, or

2. Prohibited from using gas in excess of the average base year proportions allowed in section 301(a)(3) of FUA.

b. The proposed use of natural gas as a primary energy source, to the extent that such use would be prohibited by section 301(a) (2) or (3) of FUA:

1. Will displace consumption of low sulfur residual fuel oil, and

2. Will not displace the use of coal or any other alternate fuel in any facility of the owner/operator utility system, including the powerplant for which the exemption petition was submitted.

III. Rationale

To the extent that the *near-term* choice of fuels for existing powerplants

is limited to petroleum or natural gas, the use of natural gas is preferred. The expanded use of natural gas in these powerplants will be a significant step toward reducing the Nation's oil consumption in the short term. This increased use of natural gas will help the United States meet its international commitments to reduce its demand for imported petroleum products, protect the Nation from the effects of oil shortages, and cushion the impact of increasing world oil prices, which have had a detrimental effect on the Nation's balance of payments and domestic inflation rate.

To the extent that this increased use of natural gas will accomplish these goals, it will reduce the importation of petroleum and further the goal of national energy self-sufficiency. This is in keeping with purposes of FUA and is in the public interest.

Since the increased use of natural gas for oil displacement is in keeping with the purposes of FUA and is in the public interest, and since the petitioners have submitted system-wide fuel conservation plans, ERA proposes to accept the submitted system-wide fuel conservation plans and to extend the exemptions until December 31, 1983.

IV. Duration

ERA proposes to extend the period of the exemptions to December 31, 1983; however, the temporary exemptions are subject to termination upon six months written notice, if ERA determines such termination to be in the public interest.

V. Terms and Conditions

Pursuant to the authority of section 314 of FUA and 10 CFR 508.6, ERA will require the order recipient upon issuance of a final Order to: (1) report the actual monthly volumes of natural gas used in each exempted powerplant and the estimated number of barrels of each type of fuel oil displaced during the exemption period and (2) submit annually to ERA a report on progress achieved in implementing the system-wide fuel conservation plan.

Issued in Washington, D.C. on December 30, 1980.

Robert L. Davies,

Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 81-251 Filed 1-2-81; 8:45 am]

BILLING CODE 6450-01-M

Powerplant and Industrial Fuel Use Act of 1978; Fuel Technology Review Committee; Meeting

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Meeting of the Fuel Technology Review Committee.

SUMMARY: There will be a meeting of the DOE Fuel Technology Review Committee (FTRC) on January 13, 1981, from 1:30–3 p.m. at the Forrestal Building, 1000 Independence Avenue, SW., Room GJ-015, Washington, D.C. to discuss the comments submitted in response to a notice of inquiry published on September 19, 1980 at (45 FR 62525), seeking public comment on whether to issue guidelines to assist petitioners for exemptions under the Powerplant and Industrial Fuel Use Act.

The Fuel Technology Review Committee consists of representatives from the Office of Fossil Energy, Resource Applications, Conservation and Solar, Environment, Policy and Evaluation and the Economic Regulatory Administration. The Committee is responsible for assessing the feasibility of alternate fuels, innovative technologies including fluidized bed combustion, fuel mixtures and conservation measures for use in implementing the Powerplant and Industrial Fuel Use Act of 1978. Issues to be addressed at the meeting include private sector participation in the assessment process, determination of technical readiness and candidates for assessment.

Initial candidates for assessment include fluidized bed combustion, fuel mixtures and low/medium BTU gasification.

Attendance is open to the interested public. If you wish to participate, please contact Stephen M. Stern or Donald Kreps by January 12, 1981, Department of Energy, Economic Regulatory Administration, 2000 M Street, NW., Room 7002, Washington, D.C. 20461, or by calling (202) 653-3217.

Issued in Washington, D.C. December 30, 1980.

F. Scott Bush,

Assistant Administrator, Office of Regulatory Policy, Economic Regulatory Administration.

[FR Doc. 81-253 Filed 1-2-81; 8:45 am]

BILLING CODE 6450-01-M

Office of Assistant Secretary for International Affairs

Proposed Subsequent Arrangement Between U.S. and European Atomic Energy Community

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval for the sale of 1 gram of Uranium containing greater than 99% U-234 to be used to manufacture fission ionization chambers nuclear power reactors.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of the nuclear material under Contract Number S-EU-676 will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: December 29, 1980.

Harold D. Bengelsdorf,

Director for Nuclear Affairs, International Nuclear and Technical Programs.

[FR Doc. 81-140 Filed 1-2-81; 8:45 am]

BILLING CODE 6450-01-M

Proposed Subsequent Arrangement Between U.S. and Sweden

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Sweden Concerning Civil Uses of Atomic Energy, as amended, and the Additional Agreement Between The Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval for the retransfer of 5,000 kilograms of Uranium,

containing 175 kilograms of U-235 (3.5% enrichment) from the Federal Republic of Germany to Sweden. The material is to be used to fabricate fuel elements for Swedish power reactors.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement, designated as RTD/SW(EU)-117 will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: December 29, 1980.

Harold D. Bengelsdorf,

Director for Nuclear Affairs, International Nuclear and Technical Programs.

[FR Doc. 81-141 Filed 1-2-81; 8:45 am]

BILLING CODE 6450-01-M

Proposed Subsequent Arrangement Between U.S. and Sweden

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Sweden Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves the shipment of enriched uranium/aluminum alloy fuel from the R-2 research reactor in Sweden to the Department of Energy Savannah River facility for reprocessing and storage of 50 kilograms of recovered uranium.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security. This arrangement for returning U.S. origin highly enriched uranium (HEU) to the U.S. is consistent with U.S. non-proliferation policy in that it serves to reduce the amount of HEU abroad.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: December 29, 1980.

Harold D. Bengelsdorf,

Director for Nuclear Affairs, International Nuclear and Technical Programs.

[FR Doc. 81-142 Filed 1-2-81; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS—59041A; TSH—FRL 1717-7]

Modified Polyester Based on Carbomonocyclic Anhydride Alkanediols; Approval of Premanufacture Exemption Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On October 28, 1980, EPA received an application for a test marketing exemption from the premanufacture notification requirements of section 5 of the Toxic Substances Control Act (TSCA) from a manufacturer claiming its identity confidential. The Test Marketing Exemption (TME) number assigned to the substance was T-80-46. EPA has determined that the manufacturer's test market of the chemical substance will not present any unreasonable risk of injury to health or the environment. Therefore, the Agency has granted the manufacturer an exemption from the TSCA premanufacture reporting requirements for test marketing in the manner described in the application. The exemption is effective immediately.

FOR FURTHER INFORMATION CONTACT: Mary Cushmac, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Room E-221, Washington, DC 20460, (202-426-3980).

SUPPLEMENTARY INFORMATION: Under section 5 of TSCA, anyone who intends to manufacture or import a new chemical substance for commercial purposes in the United States must submit a notice to EPA before manufacture or import begins. A "new" chemical substance is one that is not on the Inventory of existing substances compiled by EPA under section 8(b) of TSCA. Section 5(a)(1) requires each premanufacture notice (PMN) to be submitted in accordance with section 5(d) and any applicable requirements of section 5(b). Section 5(d)(1) defines the contents of a PMN and section 5(b) contains additional reporting requirements for certain new chemical substances.

Section 5(h), "Exemption" contains several provisions for exemptions from some or all of the requirements of section 5. In particular, section 5(h)(1) authorizes EPA, upon application, to exempt persons from any requirement or section 5(a) or section 5(b), to permit them to manufacture or process chemical substances for test marketing purposes. To grant an exemption, the Agency must find that the test marketing activities will not present any unreasonable risk of injury to health or the environment. EPA must either approve or deny the application within 45 days of its receipt, and under section 5(h)(6) the Agency must publish a notice of its disposition in the **Federal Register**. If EPA grants a test marketing exemption, it may impose restrictions on the test marketing activities. On October 28, 1980, EPA received an application from a manufacturer claiming its identity confidential for an exemption from the requirements of section 5(a) and 5(b) of TSCA, to manufacture a new chemical substance. The submitter claimed specific chemical identity and use in the application as confidential business information, and provided the generic name, modified polyester based on carbomonocyclic anhydride and modified alkane diols.

A **Federal Register** notice published on November 26, 1980 (45 FR 78796) announced the receipt of the exemption application and requested comment on the appropriateness of granting the exemption. The Agency received no comment concerning the application. In the application, the submitter provided information on the volume of the substance to be produced during test marketing, the number of customers to be provided samples of the substance and persons who will come in contact with the material, and the route and duration of such exposure. The company also submitted test data on the acute toxicity of thermal decomposition products of the TME substance. The test method measured relative toxicity, designating wood as "least toxic" and teflon as "most toxic." Results show that the TME substance is classified "as toxic as wood."

Considering both the toxicity and exposure, the Agency had determined that the manufacture, production, and use of the substance, in the manner described in the test market application, will not present any unreasonable risk to the people who will come into contact with it during manufacture, processing, or use. There are no environmental concerns with the release or disposal of these substances. Thus, the Agency has decided to grant a test market exemption to this company for the limited manufacture of the substance described in the test marketing exemption application.

At least 90 days prior to manufacturing the substance listed in the application for commercial purposes other than test marketing or in small quantities solely for research and development activities, the

manufacturer must submit a premanufacture notice (PMN) as required under section 5(a) of TSCA. This exemption is granted solely to the applicant of TME 80-46 with the following provisions:

1. That the company not exceed the production amounts specified on the test market application;

2. That worker exposure not exceed the levels specified;

3. That the company only use the TME substance for the purposes described in the Test Market application and in other contacts with the submitter;

4. That a material safety data sheet or similar document shall accompany the product and be available for employees who come into contact with it during its processing and use;

5. That the company maintain records of customers to whom the test market substance has been given or sold and that these records may be inspected by EPA;

6. That each shipment contains a statement informing the recipient that the substance shipped may only be used for the purpose allowed in the exemption; and

7. That the Agency reserves the right to rescind its decision to grant this exemption should any new information come to its attention which indicates that the substance may present an unreasonable risk to human health or the environment.

Dated: December 24, 1980.

Douglas M. Costle,

Administrator.

[FR Doc. 80-40607 Filed 12-31-80; 8:45 am]

BILLING CODE 6560-31-M

[EN-FRL 1717-8]

Wisconsin Pretreatment Program Approval

AGENCY: Environmental Protection Agency.

ACTION: Notice of approval of the National Pollution Discharge Elimination System Pretreatment Program of the State of Wisconsin.

SUMMARY: On December 24, 1980, the Environmental Protection Agency approved the State of Wisconsin's National Pollutant Discharge Elimination System State Pretreatment Program. This action enables the State of Wisconsin to assume primary control over the Pretreatment Program.

FOR FURTHER INFORMATION CONTACT: George E. Young, Permits Division (EN-336), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, 202-755-0750.

SUPPLEMENTARY INFORMATION:

Background

The pretreatment program, required by the Clean Water Act of 1977, governs the control of industrial wastes introduced into Publicly Owned Treatment Works (POTWs). The objectives of the pretreatment program are to: (1) prevent introduction of pollutants into POTWs which will interfere with the operation of the POTW or contaminate the sewage sludge; (2) prevent introduction of pollutants into POTWs which will pass through treatment works into receiving waters or the atmosphere or otherwise be incompatible with the works; (3) improve opportunities to recycle and reclaim wastewaters and the sludges resulting from wastewater treatment. Local pretreatment programs will be the primary vehicle for administering, applying and enforcing pretreatment standards for industrial users of POTWs. The EPA and States approved to administer the National Pollutant Discharge Elimination System (NPDES) Pretreatment Program will enforce the national standards where local governments do not develop a pretreatment program. To receive pretreatment program approval a State must submit to the EPA a modification to its NPDES program pursuant to the requirements and procedures of the General Pretreatment Regulation (40 CFR Part 403).

Federal Register Notice of Approval of State NPDES Programs or Modifications.

Under the Consolidated Permit Regulations (45 FR 33290, May 19, 1980), EPA will provide **Federal Register** notice of any action by the Agency approving or modifying a State NPDES program. Each notice will include a table similar to the following one, setting forth the current status of program approval. This table will provide the public with an up-to-date list of the status of NPDES permitting authority throughout the country.

	Approved State NPDES permit program	Approved to regulate Federal facilities	Approved State pretreatment program
Alabama	Oct. 19, 1979	Oct. 19, 1979	Oct. 19, 1979
California	May 14, 1973	May 5, 1978	
Colorado	Mar. 27, 1975		
Connecticut	Sept. 26, 1973		
Delaware	Apr. 1, 1974		
Georgia	June 28, 1974		
Hawaii	Nov. 28, 1974	June 1, 1979	
Illinois	Oct. 23, 1977	Sept. 20, 1979	
Indiana	Jan. 1, 1975	Dec. 9, 1978	
Iowa	August 10, 1978	August 10, 1978	
Kansas	June 28, 1974		
Maryland	Sept. 5, 1974		
Michigan	Oct. 17, 1973	Dec. 9, 1978	
Minnesota	June 30, 1974	Dec. 9, 1978	July 16, 1979
Mississippi	May 1, 1974		
Missouri	Oct. 30, 1974	June 26, 1979	
Montana	June 10, 1974		
Nebraska	June 12, 1974	Nov. 2, 1979	
Nevada	Sept. 19, 1975	August 31, 1978	
New York	Oct. 28, 1975	June 13, 1980	
North Carolina	Oct. 19, 1975		
North Dakota	June 13, 1975		
Ohio	Mar. 11, 1974		
Oregon	Sept. 26, 1973	Mar. 2, 1979	
Pennsylvania	June 30, 1978	June 30, 1978	
South Carolina	May 10, 1975	Sept. 26, 1980	
Tennessee	Dec. 28, 1977		
Vermont	Mar. 11, 1974		
Virgin Islands	June 30, 1974		
Virginia	Mar. 31, 1975		
Washington	Nov. 14, 1973		
Wisconsin	Feb. 4, 1974	Nov. 26, 1979	Dec. 24, 1980
Wyoming	Jan. 30, 1975		

Dated: Dec. 2, 1980.

Douglas M. Costle,

Administrator.

[FR Doc. 80-40655 Filed 12-31-80; 8:45 am]

BILLING CODE 6560-33-M

[As-FRL 1717-L]

Availability of "Project Look Review Guide"

AGENCY: Office of Inspector General, Environmental Protection Agency.

ACTION: Notice of Availability of "Project Look Review Guide".

SUMMARY: The Office of Inspector General (OIG) intends to make available to the public portions of the October 1980 "Project Look Review Guide." This guide is a document used by the OIG in reviewing construction grant projects which are funded under EPA's Wastewater Treatment Construction Grants Program. The availability of portions of this document will provide additional information to grantees, engineering firms, contractors, subcontractors and others who are subject to a "Project Look" review of their operations. For example, the "Project Look Review Guide." includes information about laws and regulations pertinent to the "Project Look" review, as well as records, documents and papers that grantees, engineering firms, contractors, subcontractors and others must make available to the OIG during the review.

EFFECTIVE DATE: December 31, 1980.

ADDRESSES: A copy of the document is available for inspection and copying from Monday through Friday, 9:00 a.m. to 5:00 p.m. at the: Environmental Protection Agency, Public Information Reference Unit, Room 2404, Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Barry E. Hill, Legal Counsel to the Inspector General, A-109, Room 2812, Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460, Telephone: (202) 245-3090 or 3091.

Dated: December 29, 1980.

Inez Smith Reid,

Inspector General.

[FR Doc. 80-40742 Filed 12-31-80; 8:45 am]

BILLING CODE 6560-36-M

[A-10-FRL 1719-1]

Atlantic Richfield Co. and SOHIO Petroleum Co.; Issuance of PSD Permit

Notice is hereby given that on December 17, 1980 the Environmental Protection Agency issued a Prevention of Significant Deterioration (PSD) permit to Atlantic Richfield Co. and SOHIO Petroleum Co. for approval to install ten gas-fired turbines and nine gas-fired heaters in the oil field at Prudhoe Bay, Alaska.

This permit has been issued under EPA's Prevention of Significant Air Quality Deterioration (40 CFR Part 52.21) regulations subject to certain conditions, including:

1. Emissions of nitrogen oxides (NO_x) and carbon monoxide (CO) shall not exceed the following:

Emission Limitations

Location	Equipment	Pollutants (tons/year)	
		NO_x	CO
Seawater Treatment Plant	*Heaters	158	35
East Injection Plant	*Turbines	2,065	386
	*Heaters	35	8
West Injection Plant	*Turbines	2,065	386
	*Heaters	35	8

Equipment	Pollutant	Emission factor
*Gas turbines	NO_x	150 (14.4/Y)ppm.**
	CO	109 lb/10^6 scf (fuel)
		10% opacity limit
*Heaters	NO_x	0.08 lb/10^6 Btu.
	CO	0.018 lb/10^6 Btu.
		5% opacity limit

*

**NO_x emissions factor for gas-fired turbines is modified by an efficiency factor (Y) which cannot exceed 14.4 kilojoules/watt hour (manufacturer's rated heat rate at rated peak load). Based on 15% oxygen on a dry basis.

2. With the exception of NO_x and CO, increases in potential emissions of any pollutant regulated under the Clean Air Act resulting from this modification will be less than 250 tons per year.

Under Section 307(b)(1) of the Clean Air Act, judicial review of the PSD Permit is available *only* by the filing of a petition for review in the Ninth Circuit Court of Appeals 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.

Copies of the permit are available for public inspection upon request at the following location: EPA, Region 10, 1200 Sixth Avenue, Room 11C, Seattle, Washington 98101.

Dated: December 17, 1980.

L. Edwin Coate,

Acting Regional Administrator.

[FR Doc. 81-179 Filed 1-2-81; 8:45 am]

BILLING CODE 6560-38-M

[TSH-FRL 1719-2; OPTS-51194]

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. Section 5(d)(2) requires EPA to publish in the **Federal Register** certain information about each PMN within 5 working days after receipt. This Notice announces receipt of two PMN's and provides a summary of each.

DATES: Written comments by:

PMN 80-338, January 23, 1981.

PMN 80-339, January 23, 1981.

ADDRESS: Written comments to: Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-447, 401 M St., SW., Washington, DC 20460, (202-755-8050).

FOR FURTHER INFORMATION CONTACT: Carolyn Brown, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-221, 401 M St., SW., Washington, DC 20460, (202-426-3980).

SUPPLEMENTARY INFORMATION: Section 5(a)(1) of TSCA [90 Stat. 2012 (15 U.S.C 2604)], requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import commences. A "new" chemical substance is any substance that is not on the Inventory of existing substances compiled by EPA under section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notices of availability of the Inventory were published in the **Federal Register** of May 15, 1979 (44 FR 28558-Initial) and July 29, 1980 (45 FR 505444-Revised). The requirement to submit a PMN for new chemical substances manufactured or imported for commercial purposes became effective on July 1, 1979.

EPA has proposed premanufacture notification rules and forms in the **Federal Register** issues of January 10, 1979 (44 FR 2242) and October 16, 1979 (44 FR 59764). These regulations, however, are not yet in effect. Interested persons should consult the Agency's Interim Policy published in the **Federal Register** of May 15, 1979 (44 FR 28564) for guidance concerning premanufacture notification requirements prior to the effective date of these rules and forms. In particular, see page 28567 of the Interim Policy.

A PMN must include the information listed in section 5(d)(1) of TSCA. Under section 5(d)(2) EPA must publish in the **Federal Register** nonconfidential information on the identity and use(s) of the substance, as well as a description

of any test data submitted under section 5(b). In addition, EPA has decided to publish a description of any test data sbmitted with the PMN and EPA will publish the identity of the submitter unless this information is claimed confidential.

Publication of the section 5(d)(2) notice is subject to section 14 concerning disclosure of confidential information. A company can claim confidentiality for any information submitted an part of a PMN. If the company claims confidentiality for the specific chemical identity or use(s) of the chemical, EPA encourages the submitter to provide a generic use description, a nonconfidential description of the potential exposures from use, and a generic name for the chemical. EPA will publish the generic name, the generic use(s), and the potential exposure descriptions in the **Federal Register.**

If no generic use description or generic name is provided, EPA will develop one and after providing due notice to the submitter, will publish an amended **Federal Register** notice. EPA immediately will review confidentiality claims for chemical identity, chemical use, the identity of the submitter, and for health and safety studies. If EPA determines that portions of this information are not entitled to confidential treatment, the Agency will publish an amended notice and will place the information in the public file, after notifying the submitter and complying with other applicable procedures.

After receipt, EPA has 90 days to review a PMN under section 5(a)(1). The section 5(d)(2) **Federal Register** notice indicates the date when the review period ends for each PMN. Under section 5(c), EPA may, for good cause, extend the review period for up to an additional 90 days. If EPA determines that an extension is necessary, it will publish a notice in the **Federal Register.**

Once the review period ends, the submitter may manufacture the substance unless EPA has imposed restricitons. When the submitter begins to manufacture the substance, he must report to EPA, and the Agency will add the substance to the Inventory. After the substance is added to the Inventory, any company may manufacture it without providing EPA notice under section 5(a)(1)(A).

Therefore, under the Toxic Substances Control Act, summaries of the data taken from the PMN's are published herein.

Interested persons may, on or before the dates shown under "DATES", submit to the Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-447, 401 M St., SW., Washington, DC 20460, written comments regarding these notices. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number "[OPTS-51194]" and the specific PMN number. Comments received may be seen in the above office between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604))

Dated: December 24, 1980.

Edward A. Klein,

Director, Chemical Control Division.

PMN 80-338

The following information is taken from data submitted by the manufacturer in the PMN.

Close of Review Period. February 22, 1981.

Manufacturer's Identity. The B. F. Goodrich Company, Chemical Group, 6100 Oak Tree Blvd, Cleveland, OH 44131.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Salt form of acrylic acid-acrylate copolymer.

Use. Absorbent for body fluids.

Production Estimates. First year, 5,000 kg.; second year, 70,000 kg.; third year, 230,000 kg.

Physical/Chemical Properties. No data were submitted.

Toxicity Data. No data were submitted on the PMN substance. The manufacturer states that test data on related substances showed to be non-irritant on rabbits and albino guinea pigs and believes these toxicity data accurately predict that the PMN substance is not a skin or eye irritant or a skin sensitizer.

Exposure. The manufacturer states that the new substance will be manufactured by an automatic process; that dermal exposure to five workers of a minute duration may occur only during the film changing process.

Environmental Release/Disposal. No data were submitted. Manufacturer anticipates that disposal will be minimal at both manufacture site and industrial sites controlled by others, and disposal will be by landfill or incineration.

PMN 80-339

The following information is taken from data submitted by the manufacturer in the PMN.

Close of Review Period. February 22, 1981.

Manufacturer's Identity. The B. F. Goodrich Company, Chemical Group, 6110 Oak Tree Blvd., Cleveland, OH 44131.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Salt form of acrylic acid-acrylate copolymer.

Use. Absorbent for body fluids.

Production Estimates. First calendar year, 5,000 kg.; second calendar year, 70,000 kg.; third calendar year, 230,000 kg.

Physical/ Chemical Properties. No data were submitted.

Toxicity Data. No data were submitted. The manufacturer states that test data on related substance showed to be non-irritant to skin or eye or a skin sensitizer.

Exposure. The manufacturer states that no significant exposure is expected from industrial use. The manufacturer also states that the manufacture of the substance will be by an automatic process; that dermal exposure to five workers of a minute duration may occur only during the film changing process.

Environmental Release/Disposal. No data were submitted. The manufacturer states that disposal will be minimal, at both manufacture site and at sites not controlled by manufacturer, and disposal will be by landfill or incineration.

[FR Doc. 81-171 Filed 1-2-81; 8:45 am]

BILLING CODE 6560-31-M

[WH-FRL 1708-3]

Conventional Pollutant List: Notice Denying the Addition of Phosphate

AGENCY: United States Environmental Protection Agency.

ACTION: Notice of petition denial.

SUMMARY: Following receipt and evaluation of public comments, the Environmental Protection Agency denies the proposal to add phosphate to the conventional pollutants list as petitioned by the FMC Corporation, Hooker Chemicals and Plastics Corporation, and Stauffer Chemical Company (hereafter referred to as the "the petitioners"). While phosphate is naturally occurring and a nutrient, it is not of itself oxygen demanding nor biodegradable and has not traditionally been the primary focus of wastewater control.

Background

Pursuant to section 304(a)(4) of the Clean Water Act (CWA), the Administrator shall, as appropriate and

from time to time, publish information identifying conventional pollutants. In a previous action published at 43 FR 32857 (July 28, 1978), the Environmental Protection Agency described pollutant criteria employed to substantiate the listing of a substance as a conventional pollutant. Based on a review of the Clean Water Act and its legislative history, the Agency identified three classes of substances which *may* contain conventional pollutants: oxygen demanding substances, solids and nutrients (emphasis added). One group of criteria represents characteristics common to all of these classes: pollutants which are naturally occurring, biodegradable, oxygen demanding materials, and solids which have similar characteristics to naturally occurring biodegradable substances. The second criterion is that the pollutants traditionally have been the primary focus of wastewater control.

On June 2, 1980, the Agency received the subject petition along with supporting information. Subsequently, on July 21, 1980 (45 FR 48704), the Agency published a notice of petition receipt and solicited public comments on the petition before deciding on the listing status of phosphate.

The Agency received comments on the petition from 19 respondents, 15 of which opposed the petition, 3 of which supported the petition, and one that suggested deferral of action until additional information could be developed by the Agency. (A summary of the specific comments received is attached as an Appendix to this notice.) After consideration of the petitioners' and the public comments and evaluation of phosphate in light of the listing criteria, the Agency has determined to deny the petition.

Discussion

Evaluation of Phosphate According to the Conventional Pollutants Selection Criteria

In the final rule establishing oil and grease as a conventional pollutant (40 CFR 401.16) (44 FR 44501, July 30, 1979), the Agency confirmed the use of the selection criteria and pollutant classes for any future identification of conventional pollutants. Phosphate fails to meet these criteria, and EPA is therefore denying the petitioners' request to list it as a conventional pollutant. The Agency agrees with the petitioners that phosphate is a naturally occurring nutrient. However, the petitioners acknowledge that phosphate is not biodegradable nor is it oxygen demanding and the Agency concurs. The Agency disagrees with the petitioners' contention that phosphate has been the primary focus of wastewater control. The bases for these conclusions are set out below.

(a) Oxygen Demanding Substance:

An oxygen demanding substance is any substance which throughout the course of its decomposition, whether biological, chemical, or photochemical, depletes the dissolved oxygen concentration in water. Phosphates do not exhibit this characteristic and therefore are not oxygen demanding. Their chemical formulas indicate that they exist at their highest oxidative state and, therefore, by themselves cannot consume oxygen and be further oxidized. The petitioners claim that phosphate is indirectly an oxygen demanding substance by being essential to the growth of aquatic microorganisms and to the growth of and subsequent decay of aquatic vegetation, both of which are involved in biological processes which do deplete dissolved oxygen. It is clear that one of EPA's listing criteria for conventional pollutants specifies that a substance must *directly* be oxygen demanding. Phosphate is clearly not in this category.

(b) Naturally Occurring:

Phosphates are naturally occurring and ubiquitous in the aquatic environment. They serve as nutrients in the growth of aquatic organisms and the growth of aquatic vegetation. However, the fact that phosphates are nutrients for certain organisms does not automatically classify them as conventional pollutants as the petitioners claim. The Agency at 43 FR 32857 states that nutrients are a class of substances which *may* contain conventional polutants (emphasis added).

(c) Biodegradable:

The criterion refers to the rate at which a living organism will reduce an original chemical concentration or alter the original chemical into another substance with different characteristics. Phosphates are not biodegradable in that living organisms cannot alter their chemical forms.

(d) A Traditional and Primary Focus of Wastewater Control

This criterion refers to those pollutants intended to be removed by conventional primary and secondary treatment. This conclusion is based on the definition of the BCT test (44 FR 50733, August 29, 1979), which indicates that conventional pollutants are those removed by primary and secondary treatment at Publicly Owned Treatment Works (POTWs). Phosphates are not commonly removed by primary or secondary treatment at POTWs and have not traditionally been the primary focus of this conventional treatment technology. Phosphates removal technology consisting of chemical precipitation exists but is recognized by the Agency as wastewater treatment beyond coventional. Furthermore, although conventional secondary treatment can result in some *incidental* removal of phosphates, incidental pollutant removal is not, however, equivalent to intended removal. Obviously, only intended removal can be the primary focus in treatment technology. Phosphates, therefore, do not meet the criterion of being traditionally the primary focus of wastewater control.

The Agency therefore determines that phosphates are not a primary focus of traditional wastewater treatment, and therefore fail EPA's second listing criterion. This determination is factually consistent with our earlier determinations to list substances under section 304(a)(4). Thus, oil and grease, listed as conventional pollutants in 44 FR 44501 (July 30, 1979), are intentionally removed in conventional wastewater treatment facilities. Phosphorus, which the Agency decided against listing as a conventional pollutant in the same rulemaking, "is not commonly treated by POTW's employing secondary treatment . . .," and as such has not traditionally been a primary focus of wastewater control (*id.*).

In the rulemaking for phosphorus, the Agency stated that whether a substance is commonly treated by secondary treatment is not relevant in designating conventional pollutants (44 FR at 44502). This was an erroneous statement. What was in fact intended was that, for phosphorus, this criterion was not of primary concern. Instead, the Agency placed greater importance on phosphorus being an environmental problem only in limited geographical areas (*id.*). Non-conventional status, therefore, was desirable to retain regulatory flexibility (i.e., §§ 301(c) and 301(g) waivers from BAT when justified), which flexibility would be unavailable if phosphorus were listed as a conventional pollutant. The Agency's position on this has not changed.

Summary

Phosphates, while meeting an EPA criterion of being naturally occurring, fail the other EPA listing criteria. Namely, they are not oxygen demanding nor biodegradable substances. Neither have they traditionally been a primary focus of wastewater control.

Economic Impacts of Listing Phosphates as Conventional Pollutants

Although not necessary to the disposition of this petition, in EPA's judgment the retention of phosphates as non-conventional pollutants may be economically less impactive than listing them as conventional pollutants under § 304(a)(4). Conventional pollutants are subject without exception to Best Conventional Pollutant Control Technology (BCT). Non-conventional pollutants are subject to Best Available Technology Economically Achievable (BAT) but may be eligible for economic or water-quality based waivers under §§ 301(c) and 301(g), respectively. Although relative costs have not yet been quantified, it may be that BAT waivers (if granted) would prove less costly than (mandatory) imposition of BCT.*

However, the petitioners claim that failure to list phosphates as conventional pollutants has serious regulatory implications by placing an unnecessary economic burden on dischargers of phosphates. The petitioners further claim that "designation of a pollutant as conventional may be of great significance to an industrial category discharging that pollutant, without any sacrifice of environmental goals under the Act. BCT limitations for conventional pollutants must meet a test of cost reasonableness not required of BAT. Thus, BCT in some instances will result in limitations which are less stringent and less economicaly burdensome and which are more closely related to environmental need than those established under BAT. The establishment of BCT for conventional pollutants, they state, reflects Congressional intent that EPA avoid treatment for treatment's sake" (45 FR at 48705).

EPA disagrees with the petitioners on the issue of economic impact. The petitioners do not adequately identify or discuss the availability of §§ 301(c) and 301(g) waivers. These statutory provisions are designed to assure that control of certain pollutants is required only where adverse environmental conditions exist and where cleanup is affordable. These waivers thus provide sufficient flexibility to avoid treatment for treatment's sake, and indeed, provide in some respects more flexibility than is available for regulation of conventional pollutants, whose regulatory standards are not subject to waiver. The Agency thus does not accept petitioners' characterization of relative economic burdens.

*Additional discussion of this issue appears in the Agency's notice withdrawing its proposal to list ammonia as a toxic pollutant under § 307(a) (45 FR 803)

Action

Since phosphates do not meet the criteria for listing as conventional pollutants, the petition is denied.

Dated: December 24, 1980.

Douglas M. Costle,

Administrator.

Appendix

Summary of Public Comments

1. Of 19 respondents, 15 opposed the petition and urged that EPA retain phosphate in the non-conventional pollutant category. These respondents generally based their opinion on their perception of phosphate's failure to meet conventional pollutant listing criteria. A number of these respondents also pointed out the availability of section 301(c) and 301(g) waivers for non-conventional pollutants, thus lessening the economic impact to dischargers for this class of pollutants, mechanisms not available to dischargers of conventional pollutants.

2. One respondent pointed out that the petition is merely a restatement of the previous proposal of July 28, 1978 to add phosphate to the conventional pollutant list that was denied in 1979. Over-taxed Agency resources should not be wasted by reconsideration of previously decided matters. As such the petition should be denied because it is outside the scope of §§ 505 and 509 of the Clean Water Act and violates the principle of administrative *res judicata.*

3. One respondent supported the petition based on the legislative history of the Act, its perception of phosphate meeting the listing criteria and its view of regulatory implications that would result from a negative Agency decision to list. EPA disagrees with the respondent's views of the legislative history of the Act, the respondent's interpretation of the listing criteria and the respondent's conclusion on regulatory implications resulting from a negative decision.

4. One respondent supported the petition by agreeing with the petitioners that phosphate is a nutrient and as such does contribute to oxygen depletion in water. As such it meets the listing criteria. The respondent states that water pollution control regulations should be established more on a scientific basis rather than on consideration of the cost of pollution abatement equipment. New equipment and technology are being developed to efficiently remove phosphate. Therefore the requirement of industry to install BCT "across the board" without waiver availability if phosphate were listed as conventional should have minimal economic impact.

5. One respondent supported the petition by stating that EPA should provide itself with the ability to apply a "cost reasonableness" assessment for certain phosphate discharges (boiler blowdown). Because of the nature, sources, and occurrence of phosphates, it would appear inappropriate to apply the full diligence of BAT to this pollutant for many sources such as boiler blowdown. Cost should be fully allowed as a factor in setting effluent guidelines and standards for phosphates.

EPA agrees that costs are important in selecting from regulatory options. The Agency disagrees with the respondent that application of BCT to phosphates is the most effective way to insure that minimal costs to industry occur. The Agency believes that applying BAT to phosphate discharges with the availability of waivers gives the Agency the flexibility that is needed to control phosphates in a manner sufficient to insure environmental protection with the most cost-effective pollution control technology.

[FR Doc. 81-100 Filed 1-2-81; 8:45 am]

BILLING CODE 6560-29-M

[WH-FRL 1716-4]

Public Hearings on the 1990 Construction Grants Strategy

The U.S. Environmental Protection Agency (EPA) will hold a series of public hearings on 1990 Construction Grants Strategy. The 1990 Strategy proposes major changes to redirect and improve EPA's municipal wastewater construction grants program. The Strategy will be published in the **Federal Register** during the third week of January, no later than January 23, 1981.

Since 1972 EPA has awarded $25 billion to over 10,000 communities to plan, design and construct municipal wastewater treatment facilities. The program, authorized under Title II of the Clean Water Act, is one of the largest and most complex Federal environmental public works programs in our Nation's history. Progress has been made in solving water pollution problems, but remaining needs are large and the overall water quality goals of the act remain elusive. Many have criticized the program because of the burdensome requirements, complexity, project delays and high costs.

For the past several months EPA staff has worked with State and local governments and a wide range of interest groups and citizens from across

the country in developing specific proposals to improve the grants program. This work has included mailings of preliminary concept papers, summaries and updates, informal work groups, public meetings, and numerous presentations. The ideas and comments received so far have helped to shape the Strategy. Public comments, based on the public hearings, the publication of the Strategy in the **Federal Register**, and direct mailing of the Strategy, will be considered in the final formulation of the 1990 Strategy. The Strategy will then be submitted to the Administration and Congress.

Written comments should be submitted to Ms. Merna Hurd, Associate Assistant Administrator for Water and Waste Management, WH-556, Environmental Protection Agency, Washington, D.C. 20460. Expressions of interest in testifying at one of the hearings should be submitted to Ms. Hurd by February 18, 1981.

For more information on the scheduling of testimony and to receive a copy of the Strategy, contact Francine Zucker, Water Planning Division WH-554, Environmental Protection Agency, Washington, D.C. 20460, (202) 755-7003 or 7005.

EPA will accept written comments on the 1990 Strategy until March 16, 1981.

Date, location, and time

February 23-24, 1981—Copley Plaza Hotel, Copley Square, Boston, MA—8:30 a.m. to 6:00 p.m.;
McCormick Inn, 23rd St. and the Lake, Chicago, IL—8:30 a.m. to 6:00 p.m.
February 26-27, 1981—Sir Francis Drake Hotel, Powell and Sutter Streets, San Francisco, CA—8:30 a.m. to 6:00 p.m.
March 5-6, 1981—Springfield Hilton, 6550 Loisdale Road, Springfield, VA (Franconia Exit off Interstate 95 South of Beltway)—8:30 a.m. to 6:00 p.m.

Dated: December 24, 1980.

Merna Hurd,

Acting Assistant Administrator for Water and Waste Management.

[FR Doc. 81-00094 Filed 1-2-81; 8:45 am]

BILLING CODE 6560-29-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. A-23]

AM Broadcast Applications Accepted for Filing and Notification of Cut-Off Date

Released: December 30, 1980.

Cut-Off Date: February 9, 1981.

Notice is hereby given that the applications listed in the attached appendix are hereby accepted for filing. They will be considered to be ready and available for processing after February 9, 1981. An application, in order to be considered with any application appearing on the attached list or with any other application on file by the close of business on February 9, 1981, which involves a conflict necessitating a hearing with any application on this list, must be substantially complete and tendered for filing at the offices of the Commission in Washington, D.C., not later than the close of business on February 9, 1981.

Petitions to deny any application on this list must be on file with the Commission no later than the close of business on February 9, 1981.

Federal Communications Commission.

Alan R. McKie,

Deputy Executive Director.

Appendix

BP-781116AN (KWKW), Pasadena, California, Lotus Communications Corp., Has: 1300 kHz, 1kW, 5 kW-LS, DA-2, U, Req: 1300 kHz, 2.5 kW, 5 kW-LS, DA-2, U
BP-800707AI (new), Los Ranchos de Albuquerque, New Mexico, Spanish Community Radio, Ltd., Req: 1240 kHz, 250 W, 1 kW-LS, U
BP-800808AC (new), Heber City, Utah, Majestic Broadcasting, Inc., Req: 1340 kHz, 0.25 kW, 0.5kW-LS, U
BP-800829AQ (new), Williamsburg, Kentucky, Williamsburg Broadcasting Company, Inc., Req: 710 kHz, 0.25 kW, D
BP-800911AE (WCGA), Conyers, Georgia, Communications Investment, Inc., Has: 1050 kHz, 0.25 kW, D, Req: 1050 kHz, 1 kW, D
BP-801007AF (WCLW), Mansfield, Ohio, Greater Mansfield Broadcasting Company, Has: 1140 kHz, 0.25 kW, DA-D, Req: 1140 kHz, 1 kW (0.5 kW-CH), DA-D
BP-801103AJ (KDUN), Reedsport, Oregon, KDUN, Radio, Inc., Has: 1470 kHz, 5 kW, D, Req: 700kHz, 0.5 kW, 10 kW-LS, U
BP-801110AD (KFIA), Carmichael, California, Olympic Broadcasters, Inc., Has: 710 kHz, 0.25 kW, 1 kW-LS, DA-2, U, Req: 710 kHz, 0.25 kW, 10 kW-LS, DA-2, U
BP-801117AC (new), Oceanside, California, Oceanside Radio, Inc., Req: 830 kHz, 1 kW, DA-N, U
BP-801119AA (WCHB), Inkster, Michigan, Bell Broadcasting Company, Has: 1440 kHz, 1 kW, DA-2, U, Req: 1200 kHz, 1 kW, 50.0 kW-LS, DA-2, U
BP-801119AD (KFQD), Anchorage, Alaska, Pioneer Broadcasting Company, Inc., Has: 750 kHz, 10 kW, 50 kW-LS, U, Req: 750 kHz, 50 Kw, U
BP-801202AH (new), Beaufort, South Carolina, Ronald J. Prohaska, Sr., and Patricia P., Prohaska, d/ba Radio Station WSIB, Req: 1490 kHz, 250W, 500W-LS, U
BP-801205AA (KCCV), Independence, Missouri, Bott Broadcasting Company, Has: 1510 kHz, 1 kW, D, Req: 1510 kHz, 1 kW, 10kW-LS (10 kW-CH), U
BPI-801120AK (new), Beaufort, South Carolina, William and Vivian Galloway, Req: 1490 kHz, 250 W, 500 W-LS, U
BPI-801201AN (new), Cornwall, New York, Cornwall Radio, Req: 1170 kHz, 1 kW, DA-D

[FR Doc. 81-164 Filed 1-2-81; 8:45 am]

BILLING CODE 6712-01-M

Radio Technical Commission for Marine Services; Meetings

In accordance with Pub. L. 92-463, "Federal Advisory Committee Act," the schedule of future Radio Technical Commission for Marine Services (RTCM) meetings is as follows:

Executive Committee Meeting

Notice of January Meeting, Thursday, January 15, 1981—9:30 a.m., Conference Room 8238, Nassif (D.O.T.) Building, 400 Seventh Street, S.W., at D Street, Washington, D.C.

Agenda

1. Administrative Matters.
2. Consideration of SC-71 Report concerning "VHF Automated Radiotelephone Systems".
3. Discussion concerning Selective Calling (SelCall) National Planning.
4. Appointment of Nominating Committee.

The RTCM has acted as a coordinator for maritime telecommunications since its establishment in 1947. All RTCM meetings are open to the public. Written statements are preferred, but by previous arrangement, oral presentations will be permitted within time and space limitations.

Those desiring additional information concerning the above meeting(s) may contact either the designated chairman or the RTCM Secretariat (phone: (202) 632-6490).

Federal Communications Commission.

Alan R. McKie,

Deputy Executive Director.

[FR Doc. 81-165 Filed 1-2-81; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

[Agreement No. T-15-5]

Continental Grain Co.; Westwego Elevator; Availability of Finding of no Significant Impact

Upon completion of an environmental assessment, the Federal Maritime Commission's Office of Energy and Environmental Impact has determined that the Commission's decision on this agreement will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and that preparation of an environmental impact statement is not required. For a description of this

agreement, please refer to 45 FR 80903 (December 8, 1980).

This Finding of No Significant Impact (FONSI) will become final within 7 days unless a petition for review is filed pursuant to 46 CFR 547.6(b).

The FONSI and related environmental assessment are available for inspection on request from the Office of the Secretary, Room 11101, Federal Maritime Commission, Washington, D.C. 20573, telephone (202) 523-5725.

Francis C. Hurney,

Secretary.

[FR Doc. 81-127 Filed 1-2-81; 8:45 am]

BILLING CODE 6730-01-M

[Agreement No. T-3938]

Permit No. 441 Granted by City of Los Angeles to American President Lines, Ltd.; Intent to Prepare Environmental Assessment

Agreement No. T-3938, between the City of Los Angeles (City) and American President Lines, Ltd. (APL), was filed with the Commission for approval under section 15 of the Shipping Act, 1916. Under this agreement, APL will continue to use the marine terminal it presently uses while the City improves and constructs a new marine terminal facility for APL's use. APL will move to the new facility upon its completion.

The Federal Maritime Commission's Office of Energy and Environmental Impact (OEEI) is preparing an environmental assessment on this agreement pursuant to the National Environmental Policy Act of 1969. The OEEI invites interested parties to submit written comments which will aid in the preparation of the assessment. Such comments should be submitted on or before January 26, 1981, to the Secretary, Federal Maritime Commission, 1100 L Street, N.W., Washington, D.C. 20573.

Francis C. Hurney,

Secretary.

[FR Doc. 81-128 Filed 1-2-81; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

BSD Bancorp, Inc.; Formation of Bank Holding Company

BSD Bancorp, Inc., San Diego, California, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 per cent (less directors' qualifying shares) of the voting shares of the successor by merger to Bank of San Diego, San Diego, California. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of San Francisco. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than January 22, 1981. 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.

Board of Governors of the Federal Reserve System, December 29, 1980.

James McAfee,

Assistant Secretary of the Board.

[FR Doc. 81-219 Filed 1-2-81; 8:45 am]

BILLING CODE 6210-01-M

Daingerfield Bancshares, Inc.; Formation of Bank Holding Company

Daingerfield Bancshares, Inc., Daingerfield, Texas, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 per cent or more of the voting shares of The National Bank of Daingerfield, Daingerfield, Texas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than January 28, 1981. 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.

Board of Governors of the Federal Reserve System, December 29, 1980.

James McAfee,

Assistant Secretary of the Board.

[FR Doc. 81-215 Filed 1-2-81; 8:45 am]

BILLING CODE 6210-01-M

Exchange Holding, Inc.; Formation of Bank Holding Company

Exchange Holding, Inc., El Dorado, Kansas, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 89.58 per cent or more of the voting shares of Exchange Investors, Inc., El Dorado, Kansas, a bank holding company with respect to First National Bank and Trust Company El Dorado, Kansas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than January 21, 1981. 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.

Board of Governors of the Federal Reserve System, December 29, 1980.

James McAfee,

Assistant Secretary of the Board.

[FR Doc. 81-217 Filed 1-2-81; 8:45 am]

BILLING CODE 6210-01-M

Financial Growth Systems, Inc.; Formation of Bank Holding Company

Financial Growth Systems, Inc., Inverness, Florida, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 90 percent or more of the voting shares of Citizens First National Bank of Citrus County, Inverness, Florida and Citizens First National Bank of Crystal River, Crystal River, Florida, and 95 percent or more of the voting shares of Lake County Bank, Leesburg, Florida. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than January 21, 1981. 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.

Board of Governors of the Federal Reserve System, December 29, 1980.

James McAfee,

Assistant Secretary of the Board.

[FR Doc. 81-216 Filed 1-2-81; 8:45 am]

BILLING CODE 6210-01-M

First Granbury Bancorp.; Formation of Bank Holding Company

First Granbury Bancorporation, Granbury, Texas, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 per cent or more of the voting shares of The First National Bank of Granbury, Granbury, Texas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than January 26, 1981. 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.

Board of Governors of the Federal Reserve System, December 29, 1980.

James McAfee,

Assistant Secretary of the Board.

[FR Doc. 81-222 Filed 1-2-81; 8:45 am]

BILLING CODE 6210-01-M

First Medicine Lodge Bancshares, Inc.; Formation of Bank Holding Company

First Medicine Lodge Bancshares, Inc., Medicine Lodge, Kansas, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Medicine Lodge, Medicine Lodge, Kansas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than January 27, 1981. 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.

Board of Governors of the Federal Reserve System, December 29, 1980.

James McAfee,

Assisstant Secretary of the Board.

[FR Doc. 81-218 Filed 1-2-81; 8:45 am]

BILLING CODE 6210-01-M

Morrill Bancshares, Inc.; Proposed Acquisition of Saylor Insurance Service, Inc.

Morrill Bancshares, Inc., Sabetha, Kansas, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(a)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire voting shares of Saylor Insurance Service, Inc., Sabetha, Kansas.

Applicant states that the proposed subsidiary would engage in the activities of selling insurance in a community with a population of less than 5,000. These activities would be performed from offices of Applicant's subsidiary in Sabetha, Kansas, and the geographic area to be served is the area in Kansas within a twenty-mile radius of Sabetha. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views 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 now the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later that January 29, 1981.

Board of Governors of the Federal Reserve System, December 29, 1980.

James McAfee,

Assistant Secretary of the Board.

[FR Doc. 81-221 Filed 1-2-81; 8:45 am]

BILLING CODE 6210-01-M

Mulvane Bancshares, Inc.; Formation of Bank Holding Company

Mulvane Bancshares, Inc., Mulvane, Kansas, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 81 per cent of the voting shares of The Mulvane State Bank, Mulvane, Kansas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than January 15, 1981. 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.

Board of Governors of the Federal Reserve System, December 29, 1980.

James McAfee,

Assistant Secretary of the Board.

[FR Doc. 81-220 Filed 1-2-81; 8:45 am]

BILLING CODE 6210-01-M

GENERAL ACCOUNTING OFFICE

Regulatory Reports Review; Receipt of Report Proposal

The following request for clearance of two questionnaires intended for use in collecting information from the public ws received by the Regulatory Reports Review Staff, GAO, on December 22, 1980. See 44 U.S.C. 3512(c) and (d). The purpose of publishing this notice in the **Federal Register** is to inform the public of such receipt.

The notice includes the title of the request received; the name of the agency sponsoring the proposed collection of

information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed ICC request are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed request, comments (in triplicate) must be received on or before January 20, 1981, and should be addressed to Mr. John M. Lovelady, Senior Group Director, Regulatory Reports Review, United States General Accounting Office, Room 5106, 441 G Street, N.W., Washington, D.C. 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-275-3532.

Interstate Commerce Commission

The Interstate Commerce Commission is seeking approval for two new voluntary questionnaires for the purpose of gathering information concerning the extent to which minority-owned businesses participate in regulated interstate trucking and the manner in which the Motor Carrier Act of 1980 has affected them.

One voluntary questionnaire will be sent to the approximately 20,000 motor carriers that hold ICC certificates to determine the present universe of minority carriers. This questionnaire is to be completed only by those recipients which are minority-owned carriers. The Commission estimates that it will receive 200 responses to add to the list of 140 known minority-owned motor carriers which will not be sent this questionnaire. The Commission has estimated that responding to this questionnaire will require 5 minutes. Later, in the final phase of the study plan, ICC proposes to send this same questionnaire to all motor carriers receiving initial permanent authority. The Commission has stated that this will enable it to monitor future changes in minority participation in the trucking industry. The Commission estimates that it will receive 30 responses out of an estimated 500 carriers which will receive initial permanent authority per year. It also estimated that the burden associated with completion of this questionnaire will be 5 minutes per respondent.

A second voluntary questionnaire will be sent only to minority-owned motor carriers to identify their minority groups, the commodities they normally carry, their familiarity with the provisions of the Motor Carrier Act of 1980, their view of opportunities stemming from passage of the Act and recent ICC decisions, and changes in revenue and operations resulting from passage of the Act. ICC estimated that there will be a maximum of 340 respondents and the burden associated with completion of the questionnaire will be 30 minutes per respondent.

Norman F. Heyl,

Regulatory Reports, Review Officer.

[FR Doc. 81-121 Filed 1-2-81; 8:45 am]

BILLING CODE 1610-01-M

Regulatory Reports Review; Receipt of Report Proposal

The following request for clearance of a report intended for use in collecting information from the public was received by the Regulatory Reports Review Staff, GAO, on December 19, 1980. See 44 U.S.C. 3512 (c) and (d). The purpose of publishing this notice in the **Federal Register** is to inform the public of such receipt.

The notice includes the title of the request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed ICC request are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed request, comments (in triplicate) must be received on or before January 20, 1981, and should be addressed to Mr. John M. Lovelady, Senior Group Director, Regulatory Reports Review, United States General Accounting Office, Room 5106, 441 G Street, NW, Washington, DC 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-275-3532.

Interstate Commerce Commission

The ICC requests clearance of a revision of Form OP-1, Application for Motor or Water Carrier Certificate or Permit, Brokerage License, Freight Forwarder Permit, or Water Carrier Exemption, pursuant to the provisions of 4 CFR Part 10. Form OP-1 as originally designed was adopted in response to the Motor Carrier Act of 1980 which mandated significant changes in Commission regulatory policy, including requiring expedited procedures, altering entry standards applicable to motor carriers of property, and redefining contract carriage of property by motor vehicle. Cumulatively, the statutory changes necessitated revision of the Commission's operating rights application procedures. The interim rules in Ex Parte No. 55 (Sub-No. 43), Rules governing Applications for Operating Authority, adopted Form OP-1, incorporating the informational requests required by the revised application proceedings and superseding five application forms previously employed: (1) OP-OR-9, Application for Motor Carrier Certificate or Permit; (2) OP-OR-11, Application for Brokerage License; (3) OP-FF-10, Application for Freight Forwarder Permit; (4) Application for Exemption from Part III of the Interstate Commerce Act Under Section 302(e) or Section 303(h); and (5) OP-WC-20, Application for Water Carrier Certificate or Permit Under Section 309 of the Interstate Commerce Act.

On December 19, 1980, the Commission approved the final rules in Ex Parte No. 55 (Sub-No. 43), adopting Form OP-1 in revised form. The form revisions derive from the Commission's consideration of public comments filed in response to the interim rules and from experience in evaluating applications filed on Form OP-1 as originally adopted. The revised form represents an attempt to further simplify the style, wording, and format of the information requests it contains and to clarify the nature of specific information elicited. In conjunction with the applicable rules and supplementary explanatory materials available to assist applicants, the revisions serve to minimize evidentiary burdens on applicants for operating authority or exemptions and to expedite internal Commission processing of applications. Particular beneficiaries of the facilitated application procedures will be independent owner-operators, small businesses, and other applicants with limited clerical or legal resources and minimal experience in Commission licensing procedures. The revisions include: a request that an applicant specifically designate the authority it seeks on the application form; that a supporting witness indicate the extent to which it supports the request for authority; a question requiring applicant to indicate whether the application is supported by public witnesses; where responses indicate the existence of financial or managerial interests extending between applicant and another ICC regulated carrier, a question requiring information concerning Commission approval of such interests; a request concerning applicant's holding of a certificate of registration as a single state operator; and a requirement that applicants for irregular route authority involving

unusual boundaries provides maps depicting the authority sought. Other revisions are deletion of the requirement that applicants must provide information concerning the form of business operation, list names and addresses for all partners, directors and officers, or list a preference regarding hearing site location. Also the verification statement has been redefined to eliminate the need for notarization. The ICC estimates that applicants will number approximately 20,000 to 25,000 annually and burden will average 8 hours per application.

Norman F. Heyl,

Regulatory Reports Review Officer.

[FR Doc. 81-124 Filed 1-2-81; 8:45 am]

BILLING CODE 1610-01-M

Regulatory Reports Review; Receipt of Report Proposal

The following request for clearance of reports intended for use in collecting information from the public was received by the Regulatory Reports Review Staff, GAO, on December 29, 1980. See 44 U.S.C. 3512(c) and (d). The purpose of publishing this notice in the **Federal Register** is to inform the public of such receipt.

The notice includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed ICC request are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed requests, comments (in triplicate) must be received on or before January 23, 1981, and should be addressed to Mr. John M. Lovelady, Senior Group Director, Regulatory Reports Review, United States General Accounting Office, Room 5106, 441 G Street NW, Washington, D.C. 20548.

Further information may be obtained form Patsy J. Stuart of the Regulatory Reports Review Staff, 202-275-3532.

Interstate Commerce Commission

ICC request an extension-no-change clearance of Form OCP-102 (formerly Form BOp-102), Notice to Commission of Intent to Perform Interstate Transportation for Certain Nonmembers Under 49 U.S.C. 10526(a)(5). Due to the recodification of the Interstate Commerce Act, the former reference to Section 203(b)(5) concerning agricultural cooperatives is now replaced by 49 U.S.C. 10526(a)(5). The designation of the form BOp-102 to OCP-102 is due to the reorganization of the Bureau of Operations into the Office of Consumer Protection. Form OCP-102 is required to be filed by a cooperative association, or federation of cooperative associations, as defined in the Agricultural Marketing Act, which perform or intend to perform transportation for nonmembers—who are neither farmers, cooperative associations, nor federations of cooperative associations—and the transportation is not otherwise exempt under Subchapter II, Chapter 105 of the Recodified Interstate Commerce Act. The information requested on Form OCP-102 is ordinary business information readily available from basic records and requires no compilation of data. There are 16 items of information, primarily dealing with the names and addresses of principal officers and directors. ICC estimates that there will be 125 respondents who will file one response annually. The estimated time per response is 30 minutes.

Norman F. Heyl,

Regulatory Reports Review Officer.

[FR Doc. 80-225 Filed 1-2-81; 8:45 am]

BILLING CODE 1610-01-M

GENERAL SERVICES ADMINISTRATION

Federal Property Resources Service

[Wildlife Order 141]

The Improvements at Tern Island French Frigate Shoals, Hawaiian Island Chain 9-U-HI-546; Transfer of Property

Pursuant to section 2 of Pub. L. 537, 80th Congress, approved May 19, 1948 (16 U.S.C. 667c), notice is hereby given that:

1. By transfer letter from the General Services Administration dated July 11, 1980, the property comprising nine buildings and miscellaneous improvements identified as the French Frigate Shoals, Tern Island, Hawaiian Island Chain, 9-U-HI-546, has been transferred to the Department of the Interior, Fish and Wildlife Service.

2. The above described property was conveyed for the purpose of carrying out the national migratory bird management program in accordance with the provisions of section 1 of said Pub. L. 80-537 (16 U.S.C. 667b), as amended by Pub. L. 92-432.

Dated: December 18, 1980.

Roy Markon,

Commissioner, Federal Property Resources Service.

[FR Doc. 81-188 Filed 1-3-81; 8:45 am]

BILLING CODE 6820-96-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute for Occupational Safety and Health

Centers for Disease Control

Inorganic Mercury Control Technology Feasibility Study, Neurotoxicity Evaluations of Fumigators, Pathology of Occupational Lung Disease Registry, Methods Development in Nephrotoxicology, and Control Technology Assessment of Chemical Process Batch Unit Operations; Open Meetings

The following meetings will be convened by the National Institute for Occupational Safety and Health of the Centers for Disease Control and will be open to the public for observation and participation, limited only by space available:

Inorganic Mercury Control Technology Feasibility Study

Date: January 13, 1981.

Time: 9:30 a.m. to 2:00 p.m.

Place: Federal Building, Room 4022, 550 Main Street, Cincinnati, Ohio 45202.

Purpose: To discuss the study, which is to document effective means of controlling occupational exposure to mercury and investigate feasibility of control, with representatives from labor, industry, academia, and government.

Additional information may be obtained from: Mr. Alfred A. Amendola, Division of Physical Sciences and Engineering, National Institute for Occupational Safety and Health, Centers for Disease Control, 4676 Columbia Parkway, Cincinnati, Ohio 45226. Telephone: (513) 684-4222.

Neurotoxicity Evaluations of Fumigators

Date: January 14, 1981.

Time: 10:00 a.m. to 4:00 p.m.

Place: Robert A. Taft Laboratories, 4676 Columbia Parkway—Room B-38, Cincinnati, Ohio 45226.

Purpose: To discuss project protocol aimed at evaluating behavioral and neurological functions of persons working with primary fumigants (including methyl bromide).

Additional information may be obtained from: W. Kent Anger, Ph. D., Division of Biomedical and Behavioral Science, National Institute for Occupational Safety and Health, Centers for Disease Control, 4676 Columbia Parkway, Cincinnati, Ohio 45226. Telephone: (513) 684-8383.

Pathology of Occupational Lung Disease Registry

Date: January 15, 1981.

Time: 1:30 p.m. to 4:30 p.m.
Place: Robert A. Taft Laboratories, 4676 Columbia Parkway—Room B-38, Cincinnati, Ohio 45226.
Purpose: To discuss protocol for developing a pathology of occupational lung disease registry.
Additional information may be obtained from: David H. Groth, M.D., Division of Biomedical and Behavioral Science, National Institute for Occupational Safety and Health, Centers for Disease Control, 4676 Columbia Parkway, Cincinnati, Ohio 45226. Telephone: (513) 684-8361.

Methods Development in Nephrotoxicology

Date: January 21, 1981.
Time: 9:00 a.m. to 12 noon.
Place: Robert A. Taft Laboratories, 4676 Columbia Parkway—Room B-38, Cincinnati, Ohio 45226.
Purpose: To discuss protocol for developing sensitive and effective methods to detect renal damage and dysfunction in immature and adult laboratory rodents chronically and subchronically exposed to suspected nephrotoxins. Furthermore, to determine the applicability of these tests to the assessment of renal injury among workers occupationally exposed to known and suspected chemical hazards.
Additional information may be obtained from: Edwin A. Knecht, Division of Biomedical and Behavioral Science, National Institute for Occupational Safety and Health, Centers for Disease Control, 4676 Columbia Parkway, Cincinnati, Ohio 45226. Telephone: (513) 684-8487.

Control Technology Assessment of Chemical Process Batch Unit Operations

Date: January 22, 1981.
Time: 9:30 a.m. to 3:00 p.m.
Place: The Carrousel Inn, 8001 Reading Road, Cincinnati, Ohio 45237.
Purpose: To discuss the study which will document effective means of controlling occupational exposure to hazardous chemicals during batch unit operations in chemical processing industries. Viewpoints and suggestions from industry, organized labor, academia, and other government agencies are invited.
Additional information may be obtained from: Harold D. Van Wagenen, Division of Physical Sciences and Engineering, National Institute for Occupational Safety and Health, Centers for Disease Control, 4676 Columbia Parkway, Cincinnati, Ohio 45226. Telephone: (513) 684-4295.

Dated: December 22, 1980.

William C. Watson, Jr.,

Deputy Director, Centers for Disease Control.

[FR Doc. 81-212 Filed 1-2-81; 8:45 am]

BILLING CODE 4110-87-M

Mine Health Research Advisory Committee; Rechartering

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), 5 U.S.C. Appendix I, the Centers for Disease Control announces the rechartering of the Mine Health Research Advisory Committee by the Secretary of Health and Human Services effective December 24, 1980.

This Committee provides advice on matters involving or relating to all types of mine health research, including grants and contracts for such research, provides a peer review function in assessing health research needs, and advises on agency program options.

Dated: December 22, 1980.

William C. Watson, Jr.,

Deputy Director, Centers for Disease Control.

[FR Doc. 81-211 Filed 1-2-81; 8:45 am]

BILLING CODE 4110-86-M

National Institutes of Health

Board of Scientific Counselors; Division of Resources, Centers, and Community Activities; Working Group on Cancer Centers Support Grant Guidelines; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, Division of Resources, Centers, and Community Activities, Working Group on Cancer Centers Support Grant Guidelines, National Cancer Institute, January 9, 1981, Pan Am Room, Howard Johnson's O'Hare International Hotel and Conference Center, 10249 W. Irving Park Road, Schiller Park, Illinois 60176. The entire meeting will be open to the public from 9:00 a.m. until 5:00 p.m., for consideration of proposed revisions for Cancer Center Support (CORE) Grant. Attendance by the public will be limited to space available.

The Committee Management Officer, National Cancer Institute, Building 31, Room 4B43, National Institutes of Health, Bethesda, Maryland 20205 (301/496-5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Donald M. Pitcairn, Executive Secretary, National Cancer Institute, Blair Building, Room 714, National Institutes of Health, Bethesda, Maryland 20205, (301/427-8663) will furnish substantive program information.

Dated: December 18, 1980.

Suzanne L. Fremeau,

Committee Management Officer, NIH.

[FR Doc. 80-40777 Filed 12-31-80; 8:45 am]

BILLING CODE 4110-08-M

Cardiology Advisory Committee; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Cardiology Advisory Committee sponsored by the National Heart, Lung, and Blood Institute, which was published in the **Federal Register** on November 28, 1980, 45FR79168.

This meeting was to have convened at 8:30 a.m. on January 12 and 13, 1981, but has been changed to a one-day meeting to be convened at 8:30 a.m. on January 12, 1981, only, in Conference Room 8, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20205.

The entire meeting will be open to the public from 8:30 a.m. to 5:00 p.m. Attendance by the public will be limited to space available. Topics for discussion will include a review of the research programs relevant to the Cardiology area and consideration of future needs and opportunities.

Mr. York Onnen, Chief, Public Inquiries and Reports Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20205, phone (301) 496-4236, will provide summaries of the meeting and rosters of the Committee members.

Barbara Packard, M.D., Ph.D., Acting Associate Director for Cardiology, Division of Heart and Vascular Diseases, National Heart, Lung, and Blood Institute, Federal Building, Room 320, Bethesda, Maryland 20205, phone (301) 496-5421, will furnish substantive program information upon request.

(Catalog of Federal Domestic Assistance Program No. 13.837, Heart and Vascular Diseases Research, National Institutes of Health.)

Dated: December 18, 1980.

Note.—NIH programs are not covered by OMB Circular A-95 because they fit the description of "programs not considered appropriate" in Section 8(b)(4) and (5) of that Circular.

Suzanne L. Fremeau,

Committee Management Officer, NIH.

[FR Doc. 80-40778 Filed 12-31-80; 8:45 am]

BILLING CODE 4110-08-M

Pulmonary Diseases Advisory Committee; Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Pulmonary Diseases Advisory Committee, National Heart, Lung, and Blood Institute, on February 12 and 13, 1981, in Conference Room 7, Building 31, at the National Institutes of Health, Bethesda, Maryland.

The entire meeting, from 8:30 a.m. on February 12 to 4:00 p.m. on February 13, will be open to the public. The Committee will discuss initiatives proposed for the Division of Lung Diseases implementation plan for fiscal 1982. Attendance by the public will be limited to the space available.

Mr. York Onnen, Chief, Public Inquiries and Reports Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20205, phone (301) 496-4236, will provide summaries of the meeting and rosters of the committee members.

Dr. Malvina Schweizer, Executive Secretary of the Committee, Westwood Building, Room 6A16, National Institutes of Health, Bethesda, Maryland 20205, phone (301) 496-7208, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.838, Lung Diseases Research, National Institutes of Health.)

Note.—NIH programs are not covered by OMB Circular A-95 because they fit the description of "programs not considered appropriate" in section 8(b) (4) and (5) of the Circular.

Dated: December 18, 1980.

Suzanne L. Fremau,

Committee Management Officer, NIH.

[FR Doc. 80-40776 Filed 12-31-80; 8:45 am]

BILLING CODE 4110-08-M

Public Health Service

Title XV of the Public Health Service Act; National Health Planning and Development; Delegation of Authority

Notice is hereby given that on November 20, 1980, the Secretary of Health and Human Services delegated to the Assistant Secretary of Health, with authority to redelegate, all the authorities vested in the Secretary of Health and Human Services under Title XV of the Public Health Service Act (42 U.S.C. 300k *et seq.*), as amended, pertaining to national health planning and development, excluding (a) the authority under Section 1503 to establish and to select members to the National Council on Health Planning and Development; (b) the authority to determine whether by the date specified in Section 1521(d)(1) the State Agency for a State is ineligible for designation under Section 1521(b)(3); (c) the authority under Section 1526 to provide grants to State Agencies to demonstrate the effectiveness of having the States regulate rates for the provision of health care; and (d) the authority under Section 1533(d) to establish various uniform systems for institutional providers of health care, and the authority under Section 1533(a) to make grants for the establishment of such uniform systems.

The delegation from the Secretary to the Assistant Secretary for Health also excluded (a) the authority to promulgate regulations, (b) the authority to establish advisory committees and councils, (c) the authority to select members to advisory councils, and (d) the authority to submit reports to Congress or to a congressional committee.

Previous delegations made to the Assistant Secretary for Health of authorities under Title XV of the Public Health Service Act have been superseded. Provision has been made for previous delegations and redelegations made to other officials within the Public Health Service of authority under Title XV of the Public Health Service Act to continue in effect pending further redelegation provided that are consistent with the delegation to the Assistant Secretary for Health.

The delegation to the Assistant Secretary for Health became effective on November 20, 1980.

Dated: December 18, 1980.

Alair Townsend,

Assistant Secretary for Management and Budget/OS.

[FR Doc. 81-248 Filed 1-2-81; 8:45 am]

BILLING CODE 4110-83-M

Title XVI of the Public Health Service Act; Health Resources Development; Delegation of Authority

Notice is hereby given that on November 20, 1980, the Secretary of Health and Human Services delegated to the Assistant Secretary for Health all the authorities vested in the Secretary of Health and Human Services under Title XVI of the Public Health Service Act (42 U.S.C. 300o *et seq.*), as amended, pertaining to health resources development, excluding (a) the authority to promulgate regulations, (b) the authority to establish advisory committees and councils, (c) the authority to select members to advisory councils, and (d) the authority to submit reports to Congress or to a congressional committee. The Title XVI authorities delegated to the Assistant Secretary for Health may be redelegated, except that the authority under Section 1602(f) concerning loan default prevention and protection of the interests of the United States in the event of default may be redelegated to the PHS agency head level with further delegation authorized only after regulations establishing the terms and conditions for making expenditures under Section 1602(f) are in effect.

Previous delegations made to the Assistant Secretary for Health of the authorities under Title XVI of the Public Health Service Act have been superseded. Provision has been made for previous delegations and redelegations made to other officials within the Public Health Service of authority under Title XVI of the Public Health Service Act to continue in effect pending further redelegation provided they are consistent with the delegation to the Assistant Secretary for Health.

The delegation to the Assistant Secretary for Health became effective on November 20, 1980.

Dated: December 18, 1980.

Alair Townsend,

Assistant Secretary for Management and Budget/OS.

[FR Doc. 81-249 Filed 1-2-81; 8:45 am]

BILLING CODE 4110-83

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Advisory Council Meeting

Notice is hereby given in accordance with Pub. L. 94-579 and 43 CFR 1780 that a meeting of the Prineville District Advisory Council will be held on February 6, 1981.

The Council will meet in the District conference room at 9:00 a.m. at 185 E. 4th Street, Prineville, OR 97754.

The agenda includes:

1. Identification of issues related to land use planning in the Brothers Environmental Statement area.
2. Consideration of nominations of Areas of Critical Environmental Concern.
3. Discussion of Oregons program outlook guides.

The public and news media is welcome to attend any segment of the Council meeting.

Persons wishing to address the Council either orally or in writing are requested to contact the District Manager at the above address by February 2, 1981.

Summary minutes of the meeting will be maintained in the District Office and be available for public inspection and reproduction (during regular business hours) within thirty days following the meeting.

Paul W. Arrasmith,

District Manager.

December 18, 1980.

[FR Doc. 80-40761 Filed 12-31-80; 8:45 am]

BILLING CODE 4310-84-M

Carson City District Advisory Council Meeting

AGENCY: Bureau of Land Management.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and agenda of a forthcoming meeting of the Carson City District Multiple Use Advisory Council.

DATE: February 13, 1981—9:00 a.m.

ADDRESS: Nevada Room, Churchill County Library, 553 S. Maine Street, Fallon, Nevada.

FOR FURTHER INFORMATION CONTACT: Stephen A. Weiss, Public Affairs Officer, Carson City District, Bureau of Land Management, 1050 East Williams Street, Suite 335, Carson City, Nevada 89701 (702/882-1631).

SUPPLEMENTARY INFORMATION: The Council is chartered to provide citizen counsel and advice to the Carson City District Manager regarding planning and management of the public lands and resources within the District. The agenda for this meeting will include consideration of cultural resources.

The meeting is open to the public. Any person may attend, file a written statement by mail, or appear before the Council at 4:00 p.m.

Thomas J. Owen,

District Manager.

December 31, 1980.

[FR Doc. 80-40754 Filed 12-31-80; 8:45 am]

BILLING CODE 4310-84-M

Challis MFP Wilderness Amendment

Notice is hereby given in accordance with Pub. L. 94-579 section 603 and 43 CFR Part 1601 that the Salmon District is beginning the process of amending the Challis Management Framework Plan (MFP) to include consideration of areas which possess wilderness characteristics. Wilderness values were not included in the original MFP because the BLM was not involved in wilderness inventory or management at that time. Public Law 94-579 requires the BLM to inventory lands under its jurisdiction to determine those areas which meet the minimum wilderness characteristics.

This has been done and a final decision on areas to be classified as Wilderness Study Areas (WSA) was released by the Idaho State Director in January, 1980 (Decision is still under appeal). Lands under WSA classification receive special management considerations (Interim Management Policy) until such time as Congress makes a final wilderness or non-wilderness decision for each area. This Interim Management may conflict with decisions made in the Challis MFP and Grazing Environmental Statement (ES) which were made without benefit of wilderness inventory data.

The Challis MFP is being amended in order to:

(1) Bring consideration of wilderness values into the multiple-use mix of public land use;

(2) Avoid delaying implementation of range improvement decisions in the Challis Grazing ES by the prolonging of Wilderness Interim Management until the Challis MFP is revised in the late 1980's;

(3) Resolve conflicts between Wilderness Interim Management Policies and other resource uses in a timely manner; and

(4) Comply with Pub. L. 94-579 and 43 CFR 1601.

As alternatives and preliminary land use mixes are formulated, public input will be extensively sought-out in the form of meetings, news releases, mailings and formal public hearings.

Dated: December 19, 1980.

Harry R. Finlayson,

District Manager.

[FR Doc. 80-40749 Filed 12-31-80; 8:45 am]

BILLING CODE 4310-84-M

Colorado; Implementation of Final Intensive Wilderness Inventory Decision

Implementation of Final Intensive Wilderness Inventory Decision, Notice of Protests Received and Release From Wilderness Review Certain BLM Managed Areas Which Are No Longer Contiguous to Wilderness Proposals on Lands Managed by the Forest Service, USDA.

I hereby announce the implementation of my final intensive wilderness inventory decision for those intensive wilderness inventory units which did not receive protests. Implementation of decisions which were protested is delayed pending a decision on protests received and any resulting appeal to the Department of the Interior Board of Land Appeals. I also announced my decision to release from further BLM wilderness review certain small BLM wilderness inventory units which are no longer contiguous to proposed wilderness areas managed by the Forest Service, USDA as a result of Pub. L. 96-560 as signed into law December 22, 1980. This decision is announced under the authority of Section 603 of the Federal Land Policy and Management Act of 1976 (Pub. L. 94-579) and in accordance with the guidelines in the September 27, 1978, BLM *Wilderness Inventory Handbook* and Organic Act Directive No. 78-61, Change 3. Decisions announced in this notice became effective December 16, 1980 except for those related to Pub. L. 96-560 which became effective December 22, 1980.

By publication in the **Federal Register**, Vol. 45, No. 222, Friday, November 14, 1980, pages 75584-75586, the Colorado State Director of BLM announced his Final Intensive Wilderness Inventory Decision for 118 intensive wilderness inventory units encompassing 1,316,804 acres of public lands administered by the Bureau of Land Management in Colorado. This decision identified 70 Wilderness Study Areas (WSAs) totaling 804,432 acres The decision also identified 48 intensive wilderness inventory units and portions of other wilderness inventory units totaling 512,372 acres which were found not to contain wilderness characteristics. A 30-day protest period, ending December 15, 1980, was also announced.

Seventy (70) protests were filed with the Colorado State Director by the December 15, 1980 deadline. On or before February 15, 1981 the Colorado State Director will issue a written decision to each protestant. Each protestant will also be provided information on the procedures for taking appeals to the Department of the Interior Board of Land Appeals (43 CFR Part 4).

Unit No.[1]	Acres intensively inventoried	BLM wilderness study area decision			BLM nonwilderness study area decision		
		Acres Nov. 14, 1980, decision	Acres protested	Acres not protested	Acres Nov. 14, 1980, decision	Acres protested	Acres not protested
Craig District							
CO-010-001	12,757	11,777	11,777	0	980	0	980
CO-010-002	16,080	13,368	13,368	0	4,712	0	4,712
CO-010-003	13,740	13,740	13,740	0	0	0	0
CO-010-007A	16,134	9,932	9,932	0	6,202	0	6,202
CO-010-007C	12,274	12,274	12,274	0	0	0	0
CO-010-046	17,740	17,740	17,740	0	0	0	0
CO-010-155	11,915	8,250	8,250	0	3,665	0	3,665
CO-010-208	40,290	14,352	14,352	0	25,938	0	25,938
CO-010-214	33,990	31,480	31,480	0	2,510	0	2,510
CO-010-230	17,480	14,081	14,081	0	3,399	0	3,399
CO-010-224	5,210	4,340	4,340	0	870	0	870
CO-010-224A	1,320	1,320	1,320	0	0	0	0
CO-010-226	4,880	4,880	4,880	0	0	0	0
CO-010-228	6,200	5,200	5,200	0	1,000	0	1,000
CO-010-229D	6,900	6,900	0	6,900	0	0	0
CO-010-006B	8,778	0	0	0	8,778	0	8,778
CO-010-168	9,870	0	0	0	9,870	0	9,870

Unit No.[1]	Acres intensively inventoried	BLM wilderness study area decision			BLM nonwilderness study area decision		
		Acres Nov. 14, 1980, decision	Acres protested	Acres not protested	Acres Nov. 14, 1980, decision	Acres protested	Acres not protested
Craig District							
CO-010-178	9,590	0	0	0	9,590	0	9,590
CO-010-208E	8,740	0	0	0	8,740	8,740	0
CO-010-210	6,600	0	0	0	6,600	6,600	0
CO-010-210D	16,960	0	0	0	16,960	0	16,960
CO-010-N1	110	0	0	0	110	110	0
CO-010-N2	80	0	0	0	80	80	0
CO-010-N3	320	0	0	0	320	320	0
CO-010-N4A	240	0	0	0	240	240	0
CO-010-N4B	4,100	0	0	0	4,100	4,100	0
CO-010-N4C	1,600	0	0	0	1,600	1,600	0
CO-010-N4D	1,200	0	0	0	1,200	1,200	0
CO-010-N4E	4,500	0	0	0	4,500	4,500	0
CO-010-N5	560	0	0	0	560	560	0
CO-010-N6A	3,800	0	0	0	3,600	3,800	0
CO-010-218	8,230	0	0	0	8,230	8,230	0
CO-010-218A	1,900	0	0	0	1,900	1,900	0
CO-010-227	240	0	0	0	240	0	240
CO-010-271/N6B	4,800	0	0	0	4,800	4,800	0
UT-080-104	4,520	0	0	0	4,520	4,520	0
UT-080-110	10,769	0	0	0	10,769	10,769	0
UT-080-114	2,071	0	0	0	2,071	2,071	0
Montrose District							
CO-030-053A[2]	2,440	[3]	[3]	[3]	[3]	[3]	[3]
CO-030-057[2]	6,070	[3]	[3]	[3]	[3]	[3]	[3]
CO-030-363	2,520	2,520	2,520	0	0	0	0
CO-030-085	400	350	350	0	50	0	50
CO-030-086	880	880	880	0	0	0	0
CO-030-088	1,120	1,120	1,120	0	0	0	0
CO-030-089	50,140	[3]	[3]	[3]	[3]	[3]	[3]
CO-030-208	38,100	32,800	32,800	0	5,300	0	5,300
CO-030-211	1,960	1,640	1,640	0	320	0	320
CO-030-213	2,240	720	720	0	1,520	0	1,520
CO-030-217	7,900	3,400	3,400	0	4,500	2,250	2,250
CO-030-229A	5,920	5,780	5,780	0	140	0	140
CO-030-229B	4,200	4,200	4,200	0	0	0	0
CO-030-230B	6,800	5,640	5,640	0	1,160	0	1,160
CO-030-238B	4,600	1,840	1,840	0	2,760	0	2,760
CO-030-241	19,560	16,100	16,100	0	3,460	0	3,460
CO-030-251	7,830	7,360	7,360	0	0	0	0
CO-030-252	6,320	6,320	6,320	0	0	0	0
CO-030-265	9,160	8,440	8,440	0	720	0	720
CO-030-265A	5,320	4,680	4,680	0	640	0	640
CO-030-265D	8,385	8,385	8,385	0	0	0	0
CO-030-286	44,060	21,900	21,900	0	22,160	0	22,160
CO-030-290	31,585	25,550	25,550	0	6,035	630	5,405
CO-030-300	8,814	7,270	7,270	0	1,544	0	1,544
CO-030-332[2]	400	[3]	[3]	[3]	[3]	[3]	[3]
CO-030-353	13,943	10,900	10,900	0	3,043	0	3,043
CO-030-370A[2]	22,041	[3]	[3]	[3]	[3]	[3]	[3]
CO-030-370B	10,720	10,560	10,560	0	160	0	160
CO-030-388	22,280	19,560	19,560	0	2,720	1,360	1,360
CO-030-210	5,980	0	0	0	5,980	0	5,980
CO-030-212	80	0	0	0	80	0	80
CO-030-253	720	0	0	0	720	0	720
CO-030-262	6,240	0	0	0	6,240	0	6,240
CO-030-263	13,410	0	0	0	13,410	0	13,410
CO-030-363	47,487	43,810	43,810	0	3,677	0	3,677
CO-030-310A	1,840	1,660	1,660	0	180	0	180
Cannon City District							
CO-050-002	6,614	6,614	6,614	0	0	0	0
CO-050-013	20,100	16,800	16,800	0	3,300	0	3,300
CO-050-014	13,000	11,700	11,700	0	1,300	0	1,300
CO-050-016	26,210	26,150	26,150	0	60	0	60
CO-050-017	11,080	10,200	10,200	0	880	0	880
CO-050-131	2,739	2,300	2,300	0	439	0	439
CO-050-132B	1,587	870	870	0	717	0	717
CO-050-135	1,644	1,644	0	1,644	0	0	0
CO-050-137	1,020	1,020	1,020	0	0	0	0
CO-050-139B	720	720	720	0	0	0	0
CO-050-141	12,514	10,240	0	10,240	2,274	0	2,274
CO-050-003	160	0	0	0	160	0	160
CO-050-010	12,950	0	0	0	12,950	0	12,950
CO-050-140	9,114	0	0	0	9,144	9,114	0
CO-050-142	3,300	0	0	0	3,300	0	3,300

Unit No.[1]	Acres intensively inventoried	BLM wilderness study area decision			BLM nonwilderness study area decision		
		Acres Nov. 14, 1980, decision	Acres protested	Acres not protested	Acres Nov. 14, 1980, decision	Acres protested	Acres not protested
Grand Junction District							
CO-070-009	29,890	21,050	21,050	0	8,840	6,100	2,740
CO-070-066	43,600	26,525	26,525	0	17,075	0	17,075
CO-070-103([2])	6,400	([3])	([3])	([3])	([3])	([3])	([3])
CO-070-103A([2])	8,500	([3])	([3])	([3])	([3])	([3])	([3])
CO-070-113	20,400	18,150	18,150	0	2,250	0	2,250
CO-070-113A	49,200	49,200	49,200	0	0	0	0
CO-070-132	27,700	26,050	26,050	0	1,650	0	1,650
CO-070-150	33,600	33,600	33,600	0	1,610	0	1,610
CO-070-176	17,900	17,420	17,420	0	480	0	480
CO-070-392	346	330	330	0	16	0	16
CO-070-425	5,300	3,360	3,360	0	1,940	0	1,940
CO-070-430	21,000	15,000	15,000	0	6,000	0	6,000
CO-070-433	17,500	11,940	11,940	0	5,560	0	5,560
CO-070-015	17,500	0	0	0	17,500	0	17,500
CO-070-015A	13,005	0	0	0	13,005	13,005	0
CO-070-015B	12,810	0	0	0	12,810	0	12,810
CO-070-031	28,860	0	0	0	28,860	28,860	0
CO-070-130	21,500	0	0	0	21,500	21,500	0
CO-070-130A	8,000	0	0	0	8,000	8,000	0
CO-070-132A	12,280	0	0	0	12,280	12,280	0
CO-070-132B	6,720	0	0	0	6,720	0	6,720
CO-070-138	8,900	0	0	0	8,900	0	8,900
CO-070-150A	11,600	0	0	0	11,600	11,600	0
CO-070-316	9,000	0	0	0	9,000	0	9,000
CO-070-398	7,000	0	0	0	7,000	0	7,000
CO-070-372	8,800	0	0	0	8,800	0	8,800
CO-070-421	15,518	0	0	0	15,518	15,518	0

[1] Portions of intensive wilderness inventory units numbers CO-010-208, CO-010-214, CO-010-001, CO-070-113A, CO-070-132B, CO-070-132A, CO-030-265A, CO-030-265, CO-030-263, UT-080-110 and UT-080-104 extended into Utah; only those acres in Colorado are listed here.

[2] These units were released from further wilderness review by BLM upon passage of the Colorado Wilderness Act (Pub. L. 96-560) December 22, 1980. These units were identified as BLM Wilderness Study Areas only as a continuation of the Forest Service, USDA proposed wilderness on contiguous lands; Pub. L. 96-560 did not designate the lands contiguous to these BLM areas as wilderness.

[3] This unit released from wilderness review.

[4] Already a WSA; not subject to protest.

SUMMARY

Total USA acreage not protested	58,924	(4 units)
Total USA acreage protested	713,558	(60 units)
*Total non-USA acreage not protested	339,965	(24 units)
Total non-USA acreage protested	194,357	(30 units)
Total BLM acreage intensively inventoried	1,316,804	(118 units)

*Note.—Acreages are based on November 14, 1980 **Federal Register** notice and are approximate. These wilderness inventory units or portions of units are released from farther wilderness review and are available for other multiple use activities.

Additional Information

Information on the wilderness review process and inventory units can be obtained by contacting BLM personnel at the following locations:

Cannon City District Office, 275-0631, 3080 East Main Street, Canon City, Colorado 81212: District Manager: Mel Clausen. Wilderness Specialist: Ken Smith.

Craig District Office, 824-3417, 455 Emerson Street, P.O. Box 248, Craig, Colorado 81625: District Manager: Marvin Person. Wilderness Specialist: Vaughn Baker.

Grand Junction District Office, 243-6552, 764 Horizon Drive, Grand Junction, Colorado 81501: District Manager: Dave Jones. Wilderness Specialist: Wade Johnson.

Montrose District Office, 249-7791, Highway 550 South, P.O. Box 1269, Montrose, Colorado 81402: District Manager: Marlyn Jones. Wilderness Specialist: Jon Sering.

In Denver contact: Colorado State Office, Colorado State Bank Building, Room 700, 1600 Broadway, Denver, Colorado 80202: State Wilderness Coordinator: Harold Belisle, 837-3393.

Dated: December 29, 1980.

Charles W. Luscher,

Acting State Director, Colorado, Bureau of Land Management, Denver, Colorado.

[FR Doc. 80-40755 Filed 12-31-80; 8:45 am]

BILLING CODE 4310-84-M

[ORE 015973]

Oregon; Termination of Disposal Classification

1. By Order of the Oregon State Director, Bureau of Land Management, which was published in the **Federal Register** on February 24, 1967 (32 FR 3231), the following described public land was classified for disposal through exchange pursuant to Section 2 of the Classification and Multiple Use Act of September 19, 1964 (43 U.S.C. 1412):

Willamette Meridian

T. 34 S., R. 41 E.,

Sec. 6, Lot 1, S½NE¼, SE¼NW¼, and E½SW¼.

The area described contains 240.32 acres in Malheur County, Oregon.

2. The above-described public land has been eliminated from any exchange proposal; accordingly, pursuant to 43 CFR 2461.5(c)(2), the classification is terminated upon publication of this notice in the **Federal Register**.

3. At 10:00 a.m., on February 6, 1981 the above-described public land will be relieved of the segregative effect of the above-mentioned classification order.

Dated: December 22, 1980.

Frank A. Edwards,

Acting State Director.

[FR Doc. 80-40746 Filed 12-31-80; 8:45 am]

BILLING CODE 4310-84-M

Prineville District; Dry River and Upper Crooked River Planning Units; Invitation to Comment

In accordance with 43 CFR 1601.3, Notice is hereby given that the Bureau of Land Management, Prineville District, is

progressing with land use planning on public lands in Crook, Deschutes, and a portion of Lake County. This Management Framework Plan (MFP) will carry out the requirements of the Federal Land Policy and Management Act of 1976 (F.L.P.M.A.).

This first phase, an intensive inventory of the resources in the planning unit, has been completed. The collected data will be used to evaluate the capabilities and limitations of the land for resource use and development. Management recommendations for public lands involving approximately 1.1 million acres will result from the evaluation.

BLM resource specialists in range, forestry, recreation, wildlife, minerals, soil conservation and cultural resources together with socio-economic specialists will comprise an inter-disciplinary team developing these plans.

General types of issues anticipated include: allocation of vegetation for use by livestock, wildlife and for watershed protection; water quality; potential land exchanges; access to public lands; ORV activities and other recreation uses; firewood availability; wilderness and Areas of Critical Environmental Concern.

The plan and ensuing Environmental Impact Statement (E.I.S.) will provide the basis for resource allocations and will define and guide subsequent management decisions within the Dry River and Upper Crooked River Planning Units. Draft plans are scheduled for completion by August, 1981.

Those who desire to discuss the BLM planning and environmental assessment efforts and the availability of information, may do so by contacting the District Manager, Bureau of Land Management, P.O. Box 550, Prineville, OR 97754, (503) 447-4115.

Paul W. Arrasmith,

District Manager.

December 18, 1980.

[FR Doc. 80-40784 Filed 12-31-80; 8:45 am]

BILLING CODE 4310-84-M

California Desert Conservation Area Advisory Committee; Meeting

Notice is hereby given in accordance with Public Laws 92-463 and 94-579 that the California Desert Conservation Area Advisory Committtee to the Bureau of Land Management, U.S. Department of the Interior, will meet January 16, 1981, in Claremont, California. The purpose of the meeting is to review decisions relative to the final version of the California Desert Plan, and discuss strategy for implementation. The meeting will begin at 9:00 a.m., Friday, January 16, and is scheduled to adjourn by 5:00 p.m. Location is the Flamenco Room, Griswold's 555 W. Foothill Blvd., Claremont, California 91711. The meeting is open to the public and interested persons may attend and file statements with the Advisory Committee.

Further information may be obtained from Mr. Clayton A. Record Jr., Chairman, California Desert Conservation Area Advisory Committee, c/o California Desert District Office, Bureau of Land Management, 1695 Spruce Street, Riverside, California 92507.

Dated: December 23, 1980.

Gerald E. Hillier,

District Manager.

[FR Doc. 80-40779 Filed 12-31-80; 8:45 am]

BILLING CODE 4310-84-M

Notice Concerning BLM Form 3112-1, Used in the Simultaneous Oil and Leasing Program

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice concerning the Availability of BLM Form 3112-1.

SUMMARY: The "Simultaneous Oil and Gas Lease Application", BLM Form 3112-1, is required for participation in the simultaneous oil and gas leasing program. Responsibility for bulk distribution of the form has been transferred to the Superintendent of Documents.

EFFECTIVE DATE: January 5, 1981.

ADDRESS: Any inquiries should be sent to: Director (530), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Charles Weller (202) 343-7753.

SUPPLEMENTARY INFORMATION: Effective immediately, the Denver Service Center of the Bureau of Land Management will no longer serve as a center for distribution to the public of BLM Form 3112-1. Bureau of Land Management State Offices will continue to distribute free copies of the form, up to a maximum of 25 forms during any 2-month filing cycle. Multiple orders will be rejected. All orders on hand as of the date of this notice or more than 25 forms will be returned unfilled.

Bulk orders of copies of BLM Form 3112-1 "Simultaneous Oil and Gas Lease Application" may be purchased from the Superintendent of Documents, United States Government Printing Office, Washington, D.C. 20401, at a cost of $7.50 per 100 copies (sold only in 100's). Checks or money orders should be made payable to the Superintendent of Documents. Orders may also be charged to MasterCard, Visa, or prepaid Superintendent of Documents deposit account. On orders for 10,000 or more copies of this form to be sent to a single address, a discount of 25 percent will be allowed. Please include the stock number 024-011-00131-0 with your request.

Anyone ordering BLM Form 3112-1 "Simultaneous Oil and Gas Lease Application", should be aware that a revision of the current form is anticipated in early 1981, and the current form will not be acceptable for use after the revised form is issued.

December 23, 1980.

James W. Curlin,

Acting Assistant Secretary of the Interior.

[FR Doc. 81-155 Filed 1-2-81; 8:45 am]

BILLING CODE 4310-84-M

Outer Continental Shelf Offshore Gulf of Mexico; Availability of Final Environmental Impact Statement; Proposed Oil and Gas Lease Sales A66 and 66

[INT FES 80-54]

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Bureau of Land Management has prepared a final environmental impact statement relating to proposed oil and gas lease sales of 423 tracts consisting of 2,170,928 acres of submerged lands on the Outer Continental Shelf of the Gulf of Mexico (OCS Sale Nos. A66 and 66).

Single copies of the final environmental impact statement can be obtained from the Office of the Manager, New Orleans Outer Continental Shelf Office, Bureau of Land Management, Hale Boggs Federal Building, Suite 841, 500 Camp Street, New Orleans, Louisiana 70130, and from the Office of Public Affairs, Bureau of Land Management (130), Washington, D.C. 20240.

Copies of the final environmental impact statement will also be available for review in the following libraries:

Austin Public Library, 401 West Ninth Street, Austin, Texas.

Houston Public Library, 500 McKinney Street, Houston, Texas.

Rosenburg Library, 2310 Sealy Street, Galveston, Texas.

Dallas Public Library, 1954 Commerce Street, Dallas, Texas.

New Orleans Public Library, 219 Loyola Avenue, New Orleans, Louisiana.

Lafayette Public Library, 301 West Congress Street, Lafayette, Louisiana.

Calcasieu Parish Library, Downtown Branch, Lake Charles, Louisiana.
Harrison County Library, 21st Avenue & Beach Street, Gulfport, Mississippi.
Brazoria County Library, 410 Brazosport Boulevard, Freeport, Texas.
La Ratama Library, 505 Mesquite Street, Corpus Christi, Texas.
Texas Southmost College Library, 80 Fort Brown Street, Brownsville, Texas.
West Florida Regional Library, 200 West Gregory Street, Pensacola, Florida.
Northwest Regional Library System, 25 West Government Street, Panama City, Florida.
Leon County Public Library, 127 North Monroe Street, Tallahassee, Florida.
Mobile Public Library, 701 Government Street, Mobile, Alabama.
Montgomery Public Library, 445 South Lawrence Street, Montgomery, Alabama.
St. Petersburg Public Library, 3745 Ninth Avenue North, St. Petersburg, Florida.
Lee County Free Library, 3355 Fowler Street, Fort Myers, Florida.
Charlotte-Glades Regional Library System, 801 NW Aaron Street, Fort Charlotte, Florida.
Tampa-Hillsborough County Public Library System, 800 North Ashley Street, Tampa, Florida.

George D. Lea,

Director, Bureau of Land Management.

Approved:

James H. Rathlesberger,

Special Assistant to Assistant Secretary of the Interior.

[FR Doc. 80-40774 Filed 12-31-80; 8:45 am]

BILLING CODE 4310-84-M

Outer Continental Shelf; Hard Mineral Leasing; Request for Comments

ACTION: Request for Expression of Interest and Information Regarding Hard Mineral Leasing on the Outer Continental Shelf.

SUMMARY: The Secretary of the Interior is authorized under the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331 et seq.), to issue leases for minerals other than oil, gas, and sulphur on the Outer Continental Shelf. The Department wishes information from State and local governments, industry, and other interested parties concerning exploration and possible development of hard mineral resources and the regulation of such activity.

DATE: Comments and information must be received on or before April 13, 1981.

ADDRESS: Information should be submitted to the Director (540), Bureau of Land Management, Department of the Interior, Washington, D.C. 20240. Envelopes or packages should be marked "Request for Comments on Hard Mineral Leasing on the Outer Continental Shelf."

FOR FURTHER INFORMATION CONTACT: Hans Larsen (202) 343-5121 or Sandy Seim (202) 343-6906.

SUPPLEMENTARY INFORMATION: Mineral resources of the continental margin subject to the jurisdiction of the United States are to be considered for possible leasing. Precise marine boundaries between the United States and opposite or adjacent Nations have not been determined in all cases. Accordingly, certain areas are or may be subject to negotiation or dispute.

The Outer Continental Shelf Lands Act, as amended, provides that the leasing of these minerals on the OCS will be by cash bonus bid with royalty established by the Secretary. Also annual rental payments will be established by the Secretary.

A. Comments are requested on the following items. Information should be commodity-specific. Respondents should identify any proprietary data so that the Department can protect its confidentiality.

1. Interest in leasing hard minerals on the OCS.

a. Mineral or minerals of interest.

b. Location and approximate area of interest for each mineral; identify by latitude and longitude coordinates.

c. Timing of lease sale.

d. Location of probable markets.

2. Ability to mine and transport commodity.

a. Technology required for extraction and processing.

b. Technology to transport commodity to shore.

c. Estimated magnitude of exploration, development, and production activities.

d. Proposed schedule of operations (timing), including whether activities will be continuous or intermittent.

3. Potential offshore and onshore effects.

a. Environmental

b. Economic

c. Social

d. Onshore facility siting and waste disposal.

4. Appropriate lease terms and conditions. Justifications for responses to these items should be provided.

a. *Size of Lease.* There are no statutory restrictions as to the size of tracts to be leased. Consequently, leases larger than the 5,760 acres currently used for oil and gas leasing may be offered.

b. *Term of Lease.* There are also no statutory restrictions as to the duration of a lease which may exceed the 10-year maximum set out for oil and gas leases.

c. *Royalty.* The royalty rate for OCS minerals may be set at the discretion of the Secretary.

5. Any other relevant information.

B. Geological and geophysical (G&G) permits. Notice is also given that permits are available, upon suitable application pursuant to 30 CFR 251, for hard mineral exploration on the Outer Continental Shelf. Activities authorized under this regulation include geological and geophysical activities for exploration of mineral resources and for scientific research which involves the use of solid or liquid explosives or shallow test drilling. For further information in regard to these permits, contact Ron W. Michelson, U.S. Geological Survey, Stop 640, 12201 Sunrise Valley Drive, Reston, Virginia 22092, (703) 860-7564.

Approved December 22, 1980.

Cecil D. Andrus,

Secretary of the Interior.

George D. Lea,

Acting Associate Director, Bureau of Land Management.

[FR Doc. 81-154 Filed 1-2-81; 8:45 am]

BILLING CODE 4310-84-M

San Juan/San Miguel Resource Management Plan

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notification of Resource Management Plan and Environmental Impact Statement preparation: San Juan Resource Area, a portion of which is administered by the Uncompahgre Basin Resource Area, Montrose District.

SUMMARY: Identification of issues for the San Juan/San Miguel Planning Area is in progress for the four-year Resource Management Plan (RMP) process. Approximately 986,000 acres of public lands administered by the BLM in southwestern Colorado will be studied for multiple use management. The area under consideration includes the Sacred Mountain, Hermosa, Pagosa, Dolores and Lone Cone Planning Units, which are found in La Plata, Montezuma, Archuleta, Dolores, San Miguel, Mesa and Montrose Counties in Colorado and Rio Arriba County in New Mexico.

High resource values include precious metal and mineral mining, archeological values, livestock forage, a proposed wild and scenic river, several wilderness study areas, wildlife values and dispersed recreational use.

The RMP for this area will provide a comprehensive data base for future management decisions and give overall direction to land management for the San Juan/San Miguel Planning Area.

Issues in Area

The general types of issues anticipated include those related to energy and mineral development, archeological values, lands actions, forestry and woodland products, range and wildlife forage allocations, water quality, floodplains, soil erosion, aquatic and riparian habitat, wildlife management, threatened and endangered plants and animals, recreation, wilderness, access needs and problems, and uses of fire for management benefits.

Planning Team

This Resource Management Plan will be prepared through use of an interdisciplinary team. Members of the team will include those with experience and knowledge in the following areas: lands, minerals, hydrology, soils, forestry, range, wildlife, recreation, wilderness, archeology, fire, access transportation, visual resources and engineering.

Public Involvement

All concerned publics are invited to participate during the planning process by attending public meetings and hearings. Quarterly newsletters, news releases and use of the Montrose District Advisory Council will supplement direct contact with interested publics.

The first set of public meetings will be held in January/February 1981, in the towns of Durango, Cortez, Dove Creek, Nucla or Naturita, Telluride, Montrose and Denver. News releases will identify specific places and times.

ADDRESS: Comments or requests for further information should be addressed to Henri Bisson, Chief, Division of Planning and Environmental Coordination, Bureau of Land Management, P.O. Box 1269, Montrose, Colorado 81401; (303) 249-7791 or Jerry Kendrick, Area Manager, San Juan Resource Area, Bureau of Land Management, Federal Building, 701 Camino del Rio, Durango, Colorado 81301; (303) 247-4082.

Availability of Planning Documents

All planning documents relating to existing management of the planning area are available for review at the Montrose District Office. Documents developed during preparation of the resource management plan will be available to the public for review at the District or Resource Area Office. Press releases will indicate their availability.

Henri R. Bisson,

Acting District Manager.

[FR Doc. 80-40750 Filed 12-31-80; 8:45 am]

BILLING CODE 4310-84-M

Idaho; Wilderness Decision

The final intensive wilderness inventory decision for BLM lands in Idaho was announced in the November 14, 1980, **Federal Register.**

During the protest period which followed the November 14 decision, fourteen letters of protest were received covering the following units:

Protest of Decision To Identify Unit as WSA

Boise District and Acres

17-10 Lower Salmon Falls Creek [1]	3,500
17-11 Jarbidge River	75,340
110-91a Box Creek	428
111-6 Little Jack's Creek	58,040
111-7c Big Jack's Creek	54,833
111-17 Bruneau River	107,020
111-18 Pole Creek	24,509
111-36a Sheep Creek West	11,680

[1] Partially in the Burley District.

Burley District and Acres

28-1 Petticoat Peak	11,298

Idaho Falls District and Acres

31-14 Appendicitis Hill	24,870
31-17 White Knob Mountains	9,950
32-3 Hawley Mountain	15,510
32-9 Black Canyon	5,400
33-4 Cedar Butte	35,700
33-15 Hell's Half Acre	66,200

Salmon District and Acres

43-3 Eighteen Mile	24,922
45-12 Burnt Creek	24,980
47-4 Borah Peak	3,100

Shoshone District and Acres

54-5 Little City of Rocks	5,875
54-6 Black Canyon	10,371
54-8a Gooding City of Rocks	14,743
54-8b Gooding City of Rocks	6,287
54-10 Deer Creek	7,487
56-2 Lava	23,680
57-2 Shale Butte	15,968
57-8 Sand Butte	20,792
57-10 Raven's Eye	67,110
57-11 Little Deer	33,531
57-14 Bear Den Butte	9,700
59-7 Shoshone	6,914

Coeur d'Alene District and Acres

61-1 Selkirk Crest	720
61-10 Crystal Lake	9,027
61-15a Grandmother Mountain	10,339
61-15b Grandmother Mountain	6,790
62-1 Snowhole Rapids	5,068
62-10 Marshall Mountain	6,524

Protest of Decision Concluding That Acreage Lacked Wilderness Characteristics

Boise District and Acres

16-9 Reynolds Creek Canyon	14,650
111-5 Poison Gulch	30,742
111-7b Duncan Creek	10,005
111-17 Bruneau River	27,042
111-19b Bull Gulch	33,150
111-20b Upper Battle Creek	17,787
111-36a Sheep Creek West	3,696
111-36b Sheep Creek East	12,412

Burley District and Acres

26-1 Hanzel Mountain	20,815
26-3 South Samaria	6,815
27-1 South Deep Creek	9,609
27-2 Deep Creek Peak	6,646

Idaho Falls District and Acres

32-4 Taylor Mountain	11,134
33-5 Skull	8,650
33-6 Rye Grass	8,000
33-7 Cottontail	9,300
33-13 Bear Point	20,650
33-14 Mosby Butte	35,720
33-16 Morgan	9,420
33-23 Bear Trap	13,860

Salmon District and Acres

41-3 Geertson Creek	10,720
44-2 King Mountain	12,602
44-3 Hat Creek	9,707
44-4 Ellis Creek	28,040
44-9 Cronks Canyon	7,470

Shoshone District and Acres

57-4 Black Ridge Crater	8,138
57-5 Lone Rock	10,934
57-6 Wildhorse	21,544
57-7 Pagari	33,116
57-8 Sand Butte	10,000

Coeur d'Alene District and Acres

62-2 Confluence	5,110

After detailed analysis of the statements on wilderness characteristics contained within these protests, the State Director will issue written decisions on the protests. These decisions will be published in the **Federal Register** on or before February 13, 1981. All inventory units listed above will remain under wilderness interim management, pending the outcome of the protests.

Decisions in Effect

For the following inventory units, the November 14, 1980, decision is now in effect and subject to appeal in accordance with the policy and procedures in Title 43 Code of Federal Regulations (CFR), Part 4 and as amended in 45 FR 5713.

Boise District and Acres Not Identified as WSA

11-17 Outcrop	6,420
14-19 Long Tom Creek	13,226
14-21 Bennett Creek	11,162
16-2 Jump Creek	8,301
16-49c Squaw Meadows	10,316
17-1a Lookout Butte	20,077
17-1b East Fork Bruneau River	10,178
17-6 Dry Lakes	26,208
17-7 Clover Crossing	6,314
17-10 Lower Salmon Falls Creek [1]	[2] 18,787
17-11 Jarbidge River	[2] 35,670
17-12 Poison Creek	13,532
18-1 Wildhorse	7,472

19-1 Cold Springs Creek	21,380
111-6 Little Jack's Creek	[3] 16,879
111-7a Big Hill	12,924
111-7c Big Jack's Creek	[3] 10,301
111-12 Sheep Trail	19,702
111-18 Pole Creek	[3] 7,247
111-19a Camas Creek	19,347
111-20a Big Springs	5,342
111-21 Bull Basin	17,625
Burley District and Acres Not Identified as WSA	
23-1a Jim Sage	6,901
23-1c Jim Sage	7,010
28-1 Petticoat Peak	[3] 1,748
Idaho Falls District and Acres Not Identified as WSA	
31-10 Illinois	11,150
31-11 Deadman Canyon	23,000
31-13 Timbered Dome	10,240
31-14 Appendicitis Hill	[3] 630
31-15 Dry Hollow	17,800
32-2 Sands Canyon	8,010
32-3 Hawley Mountain	[3] 640
32-16 Pass Creek	1,220
33-4 Cedar Butte	[3] 3,120
33-12 Split Top	18,080
33-15 Hell's Half Acre	[3] 2,720
33-22 Cox's Place	12,790
33-24 Firth Quad Islands	86
33-25 Moreland Quad Islands	807
Salmon District and Acres Not Identified as WSA	
42-6 Baldy Basin	10,720
45-5 Mill Creek	1,330
45-12 Burnt Creek [2]	[3] 5,130
47-4 Borah Peak	[3] 780
Shoshone District and Acres Not Identified as WSA	
54-3 Preacher Creek	8,827
54-4 Rattlesnake Canyon	11,355
54-5 Little City of Rocks	[3] 95
54-6 Black Canyon	[3] 10,589
54-7 Four Mile Bench	7,542
54-8 Gooding City of Rocks	[3] 2,440
54-9 Clover Creek	8,455
54-10 Deer Creek	[3] 1,394
54-11 Indian	16,968
54-12 Dempsey Creek	23,644
54-13 Forgotten Hills	9,420
56-2 Lava	[3] 1,913
57-2 Shale Butte	[3] 5,930
57-3 Antelope	12,271
57-8 Sand Butte	[3] 5,953
57-10 Raven's Eye	[3] 190
57-11 Little Deer	[3] 9,443
57-12 Laidlaw Butte	9,868
57-13 Potter Butte	16,180
57-14 Bear Den Butte	[3] 4
57-15 Point	7,398
57-16 MacRae Lake	7,876
59-7 Shoshone	[3] 3,014
Coeur d'Alene District and Acres Not Identified as WSA	
61-1 Selkirk Crest	440
61-6c Hideaway Island	170
61-9 Rochat Creek	6,960
62-1 Snowhole Rapids	[3] 238
62-4 Big Canyon	1,100
62-10 Marshall Mountain	[3] 966

[1] Partially in the Burley District.
[2] Partially in the Idaho Falls District.
[3] The decision on the remaining acreage in this unit has been protested.

For further information, contact the Idaho State Office of the BLM: Idaho State Office, Box 042, Federal Building, 550 W. Fort Street, Boise, Idaho 83724.

Dated: December 20, 1980.

B. Buffington,

State Director, Idaho.

[FR Doc. 80-40781 Filed 12-31-80; 8:45 am]

BILLING CODE 4310-84-M

Multiple Use Advisory Council; Meeting

Notice is hereby given in accordance with Pub. L. 92-579 that a meeting of the Vale District Multiple Use Advisory Council will be held January 27, 1981, beginning at 9:00 a.m. in the conference room of the Bureau of Land Management Office at 365 "A" Street West, Vale, Oregon 97918.

The agenda for this meeting will include: (1) Introduction of Council members not in attendance at the previous meeting, (2) Approval of October 17, 1980 Council meeting minutes, (3) Briefings on: (a) Vines Hill Fire Rehabilitation, (b) Off-Road Vehicle Designations, (c) Wild Horse Gathering, (d) Wilderness Studies, (e) Owyhee River Access, and (f) Range Improvement Policy for Water System Maintenance; and (4) Council action on: (a) Southern Malheur EIS Area Planning concerning identification of Issues and Concerns, identification of possible Areas of Critical Environmental Concern (ACEC's), review and comment on Southern Malheur Public Participation Plan; (b) Ironside EIS Area Program Decision Document; and (c) Program Priority Guidelines.

The meeting is open to the public. Interested person may make oral statement to the Council, or may file written statements for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 365 "A" Street West, Vale, Oregon 97918, telephone 503-473-3144 by close of business January 20, 1981. Depending upon the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager. The meeting will be opened for public comment at 4:00 p.m.

Summary minutes of the Council meeting will be maintained in the District Office and will available during regular business hours for public inspection, for cost of duplication, within 30 days following the meeting. A copy will be furnished each Council member.

Fearl M. Parker,

District Manager.

[FR Doc. 80-40745 Filed 12-31-80; 8:45 am]

BILLING CODE 4310-84-M

Winnemucca District Grazing Advisory Board Meeting

Notice is hereby given in accordance with Public Law 92-463 that a meeting of the Winnemucca District Grazing Board will be held on February 12, 1981. The meeting will begin at 10:00 a.m. in the conference room of the Bureau of Land Management Office at 705 East Fourth Street, Winnemucca, Nevada.

The agenda for the meeting will include:

1. Introduction of District Manager.
2. Paradise-Denio and Sonoma-Gerlach Draft EIS.
3. Coordinated Resource Planning.
4. Wild Horse/Burro Briefing.
5. Discussion of Range Improvements.

The meeting is open to the public. Interested persons may make oral statements to the Board between 1:00 and 2:00 p.m. on February 12, 1981, or file written statements for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, 705 East Fourth Street, Winnemucca, Nevada 89445, by January 28, 1981. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Summary minutes of the Board meeting will be maintained in the District Office and available for public inspection (during regular business hours) within 30 days following the meeting.

Dated: December 22, 1980.

Robert J. Neary,

Acting District Manager for State Director, Nevada.

[FR Doc. 80-40747 Filed 12-31-80; 8:45 am]

BILLING CODE 3410-84-M

Vale District Grazing Advisory Board; Meeting

Notice is hereby given in accordance with Pub. L. 92-463 that a meeting of the Vale District Advisory Board will be held on January 30, 1981.

The meeting will begin at 9:00 a.m. in the Conference Room of the Bureau of Land Management at 365 "A" Street West, Vale, Oregon 97918.

The agenda for the meeting will include: (1) proposed expenditure of range betterment funds, (2) development of allotment management plans, and (3)

briefings on current grazing management related programs.

The meeting is open to the public. Interested persons may make oral statements to the Board, or may file written statements for the Board's consideration. Anyone wishing to make oral statements must notify the District Manager, Bureau of Land Management, 365 "A" Street West, Vale, Oregon 97918, by January 23, 1981. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Summary minutes of the Board meeting will be maintained in the District office and be available during regular business hours for public inspection and reproduction within 30 days following the meeting.

Fearl M. Parker,

District Manager.

[FR Doc. 80-40774 Filed 12-31-80; 8:45 am]

BILLING CODE 4310-84-M

Bureau of Indian Affairs

Coushatta Indian Reservation, La., Proclaiming Certain Lands as Part of the Reservation

December 17, 1980.

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary-Indian Affairs by 209 DM 8.1.

On December 17, 1980, pursuant to the authority contained in Section 7 of the Act of June 18, 1934 (48 Stat. 986; 25 U.S.C. 467), the following described land is hereby added to and made a part of the Coushatta Indian Reservation.

In Section 21 of T. 6 S., R. 3 W., bounded by a line commencing at a distance of 1365.8 feet running North 89° 20' East from the common corner of Sections 20 and 21 of T. 6 S., R. 3 W., and Sections 24 and 13 of T. 6 S., R. 4 W., and proceeding from said point of commencement a distance of 1365.8 feet North 89° 20' East, thence South 0° 6' East a distance of 663.5 feet, thence South 89° 23' West a distance of 1365.9 feet, thence North 0° 06' West a distance of 664.5 feet back to the point of commencement, consisting of 20.8 acres more or less.

NW¼ NW¼ the West 15 acres of NE¼ NW¼, the North 20 acres of SW¼ NW¼, Section 21, T. 6 S., R. 4 W., La. Mer., in Allens Parish, La., consisting of 78.45 acres, more or less.

SW¼ NE¼, Section 32, T. 6 S., R. 3 W., La. Mer., in Allens Parrish, La., consisting of 41.62 acres more or less.

Subject to all valid rights, reservation rights-of-way, and easements of record.

Thomas W. Fredericks,

Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 80-40756 Filed 12-31-80; 8:45 am]

BILLING CODE 4310-02-M

Irrigation Operation and Maintenance Charges; Water Charges and Related Information on the Crow Irrigation Project, Monatana

This notice of operation and maintenance rates and related information is published under the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs in 209 DMB and redelegated by the Assistant Secretary—Indian Affairs to the Area Directors in 10 BIAM 3, and by authority delegated to the Project Engineer and to the Superintendent by the Area Director in 10 BIAM 7.0 §§ 2.70–2.75. The authority to issue regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and Sections 463 and 465 of the Revised Statutes (25 U.S.C. 2 and 9), and also under 25 CFR 191.1(e).

Pursuant to final rule published on June 14, 1977, in 42 FR 30361, this notice sets forth changes to the operation and maintenance charges and related information applicable to the Crow Irrigation Project, Crow Agency, Montana. These charges were proposed pursuant to the authority contained in the Acts of August 1, 1914, and March 7, 1928, (38 Stat. 583, 25 U.S.C. 385; 45 Stat. 210, 25 U.S.C. 387).

Interested persons were given 30 days in which to submit written comments, views or arguments regarding the proposed rates and related provisions. Three comments were received during the 30-day comment period, from the three Water Districts. As a result two meetings were held to supply the District Water Users additional information on the propose increases. As the result of the meetings the three Water Districts were in agreement that the increase was justifiable. In compliance with the above, the operation and maintenance charges for the lands under the Crow Irrigation Project, Montana for the season of 1981 and subsequent years until further notice, are hereby fixed as follows:

Unit, and Rate per acre

Two Leggins—$5.18 or minimum of $20 per land owner
Bozeman Trail—$2.18
All Regular Units—$5.05
All Units under Willow Creek Storage—$0.20
Two Leggins Drainage—$1.25

Gale F. Loomis,

Superintendent, Crow Indian Agency.

[FR Doc. 80-40753 Filed 12-31-80; 8:45 am]

BILLING CODE 4310-02-M

Fish and Wildlife Service

Intent To Prepare Environmental Impact Statement on Proposed Preservation of Wildlife Habitat in Area of Cape May County, New Jersey, Known as South Cape May Meadows

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Service intends to gather information necessary for the preparation of an Environmental Impact Statement (EIS) for the preservation of wildlife habitat in an area of Cape May County, New Jersey, known locally as South Cape May Meadows. A public meeting regarding this proposal and preparation of the EIS will also be held. This notice is being furnished as required by the National Environmental Policy Act (NEPA) Regulations (40 CFR 1501.7) to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. Comments and participation in this scoping process are solicited.

DATES: A public meeting to discuss the Draft EIS will be announced via the **Federal Register** at a future date. Those persons, organizations or agencies who desire to participate in these scoping meetings should contact the persons listed below.

ADDRESS: Comments should be addressed to: Area Manager, U.S. Fish and Wildlife Service, Harrisburg Area Office, 100 Chestnut St., Room 310, Harrisburg, Pennsylvania 17101.

FOR FURTHER INFORMATION CONTACT: Walter J. Quist, Ascertainment Biologist, Land Planning Section, Office of Realty, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, MA 02158, (617) 965-5100 ext. 300 FTS 829-9300.

SUPPLEMENTARY INFORMATION: The peninsula configuration of Cape May County creates a "funneling" effect on those bird populations which migrate southward along the Atlantic Coast. These diverse populations have a tendency to congregate at the southern terminus of the peninsula, Cape May Point. This area provides important feeding and resting habitat for birds prior to a critical over-water stage of their migration. Land use patterns in the

area are changing, thus threaten to reduce or significantly alter these important wildlife habitats. Preservation of the South Cape May Meadows area would ensure that habitats critical to migrating raptors (such as the threatened peregrine falcon and endangered bald eagle), passerines, and associated waterbirds are protected.

Alternatives to be explored in the EIS will include:

1. No action, including reliance on existing zoning, legislation, and/or other regulations to protect the area.

2. Preservation by easement or lease.

3. Fee acquisition of South Cape May Meadows and inclusion of the area into the National Wildlife Refuge System.

4. Protection by other agencies or organizations.

The purpose of the scoping process in EIS preparation is to determine the scope of issues to be addressed and to identify the significant issues related to the preservation of South Cape May Meadows. The Environmental Review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 et seq.), Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), and other appropriate Federal Regulations and FWS procedures. The estimated completion date for the Draft EIS is January 30, 1981.

William C. Ashe,

Deputy Regional Director.

[FR Doc. 81-233 Filed 1-2-81; 8:45 am]

BILLING CODE 4310-55-M

Endangered Species Permit; Receipt of Application

Applicant: Mr. Jan Vinicky, 3131 S. Jones Avenue, Las Vegas, Nevada 89114.

The applicant requests a permit to export and re-import one female Asian elephant (*Elephas maximus*) for the purpose of conservation exhibition.

Humane care and treatment during transport has been indicated by the applicant.

Documents and other information submitted with this application are available to the public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service (WPO), P.O. Box 3654, Arlington, VA 22203.

This application has been assigned file number PRT 2-7273. Interested persons may comment on this application within 30 days of the date of this publication by submitting written data, views, or arguments to the Director at the above address. Please refer to the file number when submitting comments.

Dated: December 30, 1980.

Larry LaRochelle,

Acting Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 81-234 Filed 1-2-81; 8:45 am]

BILLING CODE 4310-55-M

Endangered Species Permit; Receipt of Applications

The applicants listed below wish to be authorized to conduct the specified activity with the indicated Endangered Species:

Applicant: Randall W. Weems, Megargel, Texas. PRT 2-7366

The applicant requests a permit to purchase in interstate commerce three captive-bred Nene geese (*Branta sandvicensis*) for enhancement of propagation or survival.

Applicant: Zoological Society of Cincinnati, Cincinnati, Ohio. PRT 2-7369

The applicant requests a permit to export in foreign commerce one captive-bred ocelot (*Felis pardalis*) to the Japan Felinae Research Institute, Japan for enhancement of propagation and survival.

Applicant: Blake H. Rossow, Windom, Minnesota. PRT 2-7310

The applicant requests a permit to purchase in interstate commerce two captive-bred Nene geese (*Branta sandvicensis*) for enhancement of propagation and survival.

Humane care and treatment during transport, if applicable, has been indicated by the applicant.

Documents and other information submitted with these applications are available to the public during normal business hours in Room 605, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish & Wildlife Service, WPO, P.O. Box 3654, Arlington, VA 22203.

Interested persons may comment on these applications within 30 days of the date of this publication by submitting written data, views, or arguments to the Director at the above address.

Dated: December 29, 1980.

Larry LaRochelle,

Acting Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish & Wildlife Service.

[FR Doc. 81-233 Filed 1-2-81; 8:45 am]

BILLING CODE 4310-55-M

Geological Survey

Oil Gas and Sulphur Operations in the Outer Continental Shelf, Texaco, Inc.

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of the Receipt of a Proposed Development and Production Plan.

SUMMARY: Notice is hereby given that Texaco Inc. has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS-G 0966, Block 229, East Cameron Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Geological Survey is considering approval of the Plan and that it is available for public review at the offices of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geological Survey, 3301 North Causeway Blvd., Room 147, Metarie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837-4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in Development and Production Plans 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 a revised Section 250.34 of Title 30 of the Code of Federal Regulations.

December 22, 1980.

E. A. Marsh,

Staff Assistant for Operations.

[FR Doc. 80-40752 Filed 12-31-80; 8:45 am]

BILLING CODE 4310-31-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Chevron U.S.A., Inc.

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of the Receipt of a Proposed Development and Production Plan.

SUMMARY: This Notice announces that Chevron U.S.A. Inc., Unit Operator of

the Main Pass block 40 Federal Unit Agreement No. 14-08-001-3847, submitted on December 16, 1980, a proposed supplemental plan of development/production describing the activities it proposes to conduct on the High Island Block 40 Federal Unit.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act of 1978, that the Geological Survey is considering approval of the plan and that it is available for public review at the offices of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geological Survey, 3301 N. Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey, Public Records, Room 147, open weekdays 9:00 a.m. to 3:30 p.m., 3301 N. Causeway Blvd., Metairie, Louisiana 70002, phone (504) 837-4720, ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective on December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: December 19, 1980.

J. Courtney Reed,

Staff Asst. for Resource Evaluation.

[FR Doc. 80-40750 Filed 12-31-80; 8:45 am]

BILLING CODE 4310-31-M

Office of the Secretary

[516 DM 6, Appendix 7]

National Environmental Policy Act; Revised Implementing Procedures

AGENCY: Department of the Interior.

ACTION: Notice of final revised instructions for the National Park Service.

SUMMARY: This notice announces a final appendix to the Department's NEPA procedures for the National Park Service. The final Departmental procedures were published in the **Federal Register** on April 23, 1980 (45 FR 27541).

DATE: The appendix was adopted December 24, 1980.

FOR FURTHER INFORMATION CONTACT: Bruce Blanchard, Director, Office of Environmental Project Review, Office of the Secretary, Department of the Interior, Washington, D.C. 20240; Telephone (202) 343-3891, FTS 343-3891. For National Park Service, contact David Jervis, Telephone (202) 343-2163, FTS 343-2163.

SUPPLEMENTARY INFORMATION: This appendix to the Departmental Manual (516 DM 6, Appendix 7) provides more specific NEPA compliance guidance to the National Park Service (NPS). In particular it provides information about NPS organizational responsibilities for NEPA compliance, advice to applicants, actions normally requiring the preparation of an EIS, and categorical exclusions. The appendix must be taken in conjunction with the Departmental procedures (516 DM 1-6) and the CEQ regulations (40 CFR 1500-1508). In addition, the Service will prepare a handbook(s) or other technical guidance on how to apply these procedures to its principal programs.

Response to Comments. The proposed appendix was published in the **Federal Register** on May 15, 1980 (45 FR 32126) and one comment was received. As a result of this comment and other internal input, several technical changes were made to improve the instructions. The following is the response to the comment:

Categorical Exclusions. Concern was expressed by the commentor that Section 7.4D(2) as written may allow changes in off-road vehicle or fishing access without appropriate study or explanation. In a parallel situation in Section 7.4D(4), the commentor found acceptable exclusion of minor noncontroversial changes in programs and regulations pertaining to visitor activities. Accordingly, Section 7.4D(2) has been similarly limited to minor noncontroversial changes.

Additions to the Appendix. Sections 7.4B(4), C(10), C(11), D(6), D(7), and F(1-6) have been added to the list of categorical exclusions. These pertain to commercial use licenses, pit toilet sanitation, trail relocations, trailside camping zones, parking areas and grant activities. Comments are welcome on these additions.

Format.

Chapter 6 (516 DM 6) Managing the NEPA Process

Appendix 7 National Park Service

7.1 NEPA Responsibility.
7.2 Guidance to Applicants.
7.3 Major Actions Normally Requiring an EIS.
7.4 Categorical Exclusions.

Other Bureaus. Final appendices for other bureaus have been published in the **Federal Register** as follows:

Appendix 1 Fish and Wildlife Service (45 FR 47941).
Appendix 3 Heritage Conservation and Recreation Service (45 FR 76801).
Appendix 9 Water and Power Resources Service (45 FR 47944).

Proposed appendices have been published for the following bureaus:

Geological Survey, November 14, 1980 (45 FR 75336).
Bureau of Indian Affairs, July 24, 1980 (45 FR 49368).
Bureau of Land Management, December 15, 1980 (45 FR 82367).
Bureau of Mines, February 14, 1980 (45 FR 10043).
Office of Surface Mining, February 14, 1980 (45 FR 10043).

Dated December 24, 1980.

James H. Rathlesberger,

Special Assistant to Assistant Secretary of the Interior.

National Park Service

7.1 *NEPA Responsibility.*

A. *Director* is responsible for NEPA compliance for National Park Service (NPS) activities.

B. *Regional Directors* are responsible to the Director for integrating the NEPA process into all regional activities and for NEPA compliance in their regions.

C. *Denver Service Center* performs most major planning efforts for the National Park Service and integrates NEPA compliance and environmental planning with project planning consistent with direction and oversight provided by the appropriate Regional Director.

D. *Office of Park Planning and Environmental Quality (Washington)* serves as the focal point for all matters relating to NEPA compliance; coordinates NPS review of NEPA documents prepared by other agencies and provides policy review for NPS NEPA documents. Information concerning NPS NEPA documents or the NEPA process can be obtained by contacting this office.

7.2 *Guidance to Applicants.*

Actions in NPS areas that are initiated by private or non-Federal entities include the following:

A. *Mining Operations and Exercise of Non-Federal Oil and Gas Rights*

All NPS areas are closed to mineral entry, and mining operations are limited to valid, prior existing rights. Prior to conducting mining operations under the authority of the 1872 Mineral Law or the exercise of non-Federally owned oil and gas rights within the National Park System, operators must provide to the Service information required to understand the scope of proposed operations, evaluate the impacts on parklands, prepare stipulations and conditions for operations, and make a decision on approval/denial/modification of the plan of operations. Detailed informational requirements are contained in 36 CFR 9.

B. *Mineral Leasing*

Mineral leasing is restricted to five national recreation areas in the National Park System. The Bureau of Land Management (BLM) administers leases on these lands and the Geological Survey (GS) controls and monitors operations. Applicable BLM general leasing procedures are contained in 43 CFR 3100 and 3500. Regulations governing operations are found in 43 CFR 23 and 30 CFR 231 for minerals other than oil and gas; and in 30 CFR 231 for oil and gas. The NPS, as the surface management agency, is consulted at all stages of the leasing and operating process, and can require special lease stipulations for protecting the environment. In addition, the NPS participates with BLM and GS in preparing environmental analyses of all activities and sets forth the reclamation requirements. Also, the NPS controls access to leases over parklands through special permit procedures.

Note.—NPS special regulations in 43 CFR regarding mineral leasing are currently being revised. Substantial changes to the established procedures are not expected.

C. *Grazing in NPS-Administered Areas*

Grazing management plans for NPS units subject to legislatively authorized grazing are normally prepared by the BLM which presently determines informational requirements from applicants for BLM permits, the issuance of which requires prior concurrence by NPS. Applicants for grazing allotments must provide the BLM with such information as may be required to enable preparation of environmental documents or grazing management plans.

Additionally, grazing is permitted in some NPS areas as a condition of land acquisition in instances where grazing rights were held prior to Federal acquisition. The availability of these grazing rights is limited and information should be sought through individual park superintendents.

D. *Issuance of Special use Permits, Rights-of-Way, and Easements for non-Park Uses in NPS-Administered Areas.*

Informational requirements are determined on a case-by-case basis, and applicants should consult with the park superintendent before making formal application. The applicant must provide sufficient information on the proposed non-park use, as well as park resources and resource-related values to be affected directly and indirectly by the proposed use, in order to allow the Service to evaluate the application, assess the impacts of the proposed use on the NPS unit, develop restrictions/stipulations to mitigate impacts, and reach a final decision on issuance of the instrument. Authorities for such permits, rights-of-way, etc., are found in the enabling legislation for individual National Park System units and in 16 U.S.C. 5 and 79 and 23 U.S.C. 317. Right-of-way and easement regulations are found at 36 CFR 14. Policies concerning regulation of special uses are described in the NPS Management Policies Notebook.

7.3 *Major Actions Normally Requiring Environmental Impact Statements*

A. The following types of NPS proposals will normally require the preparation of an EIS:

(1) Wild and Scenic River proposals

(2) Wilderness proposals

(3) National Trail proposals

(4) Proposals for major boundary adjustments to existing units of the National Park System, and

(5) General Management Plans for National Parks, National Recreation Areas, National Seashores, National Lakeshores, and National Preserves.

B. If, for any of these proposals it is initially decided not to prepare an EIS, an EA will be prepared and handled in accordance with Section 1501.4(e)(2).

7.4 *Categorical Exclusions*

In addition to the actions listed in the Departmental categorical exclusions outlined in Appendix 1 of 516 DM 2, many of which the Service also performs, the following NPS actions are designated categorical exclusions unless the action qualifies as an exception under 516 DM 2.3A(3):

A. *Plans and Studies*

(1) Changes or amendments in approved plans, when such changes have no potential for causing significant environmental impact.

(2) Culturual resources maintenance guides, collections, management plans, and historic furnishings reports.

(3) Interpretive plans (interpretive prospectuses, audio-visual plans, museum exhibit plans, wayside exhibit plans).

(4) Plans for non-manipulative research.

(5) Statements for management, outlines of planning requirements, and task directives for plans and studies.

B. *Actions Related to General Administration*

(1) Land and boundary surveys.

(2) Reissuance of special use permits not entailing environmental disturbance.

(3) Extensions or minor modifications of concession contracts or permits, not entailing construction.

(4) Commercial use licenses involving no construction within NPS areas.

(5) Park publications.

C. *Actions Related to Development*

(1) Land acquisition not involving condemnation.

(2) Day-to-day maintenance and repairs to non-historic structures, facilities, utilities, grounds, and trails.

(3) Day-to-day maintenance and repairs to cultural resource sites, structures, utilities, and grounds under an approved Historic Structures Preservation Guide or Cyclic Maintenance Guide.

(4) Installation of signs, displays, kiosks, etc.

(5) Installation of navigation aids in open waters.

(6) Experimental testing of mass transit systems and changes in operation of existing systems (routes and schedule changes).

(7) Replacement in kind for minor structures and facilities with no change in location, capacity, or appearance.

(8) Road repair, resurfacing, striping, installation of traffic control devices, repair/replacement of guardrails.

(9) Sanitary facilities operation.

(10) Installation of single-unit pit toilet sanitation in areas of existing use.

(11) Minor trail relocations.

D. *Actions Related to Visitor Use*

(1) Carrying capacity analyses.

(2) Minor noncontroversial changes in amounts or types of visitor use for the purpose of ensuring visitor safety or resource protection in accordance with existing regulations.

(3) Changes in interpretive and environmental education programs.

(4) Minor noncontroversial changes in programs and regulations pertaining to visitor activities.

(5) Issuance of short-term permits for small demonstrations, gatherings, concerts, arts and crafts shows, etc.

(6) Designation of trailside camping zones with no, or minimal, improvements.

(7) Designation of small (10-car or less) improved parking areas.

E. *Actions Related to Resource Management*

(1) Archeological surveys, including small-scale test excavations.

(2) Day-to-day resource management and research activities.

(3) Designation of environmental study areas and research natural areas.

(4) Dune stabilization of small areas by planting of native plant species.

(5) Issuance of individual hunting and/or fishing licenses in accordance with State and Federal regulations.

(6) Planting of native species in natural and development zones.

F. *Actions Related to Grant Programs*

(1) Grants for land acquisition not involving condemnation, when it is known that such lands will be conveyed

to the Service for administration and any development activity.

(2) Grants for acquisition of areas which will continue in the same use or in a lower density use with no greater disturbance to the natural setting.

(3) Grants for replacement or renovation of facilities at their same location without altering the kind and amount of recreational, historical or cultural opportunities provided; or the integrity of the existing setting and cultural resources of the area.

(4) Grants for construction at a park or recreation area required to meet health or safety regulations, or to meet requirements for making facilities accessible to the handicapped.

(5) Grants for construction of new facilities within an existing recreation area provided that the facilities will not:

(a) introduce motorized recreation vehicles; or

(b) introduce active recreation pursuits into a passive recreation area; or

(c) increase public use to the extent of compromising the nature and character of the property or causing physical damage to it; or

(d) cause a nuisance to adjacent owners or occupants; or

(e) institute noncompatible uses which might compromise the nature and characteristics of the property, or cause physical damage to it; or

(f) extend use beyond daylight hours; or

(g) add or alter access to the park from the surrounding areas; or

(h) conflict with adjacent ownerships or land use.

(6) Grants for construction of facilities on lands acquired under a previous NPS grant project, provided that the development is in accord with plans submitted with the acquisition project.

[FR Doc. 80-40783 Filed 12-31-80; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 29541]

Fordyce & Princeton Railroad Company—Purchase (Portion)—Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) Between Fordyce and Whitlow Junction, AR

AGENCY: Interstate Commerce Commission.

ACTION: Application Accepted For Consideration.

SUMMARY: The Commission is accepting for consideration the application of the Fordyce & Princeton Railroad Company to acquire and operate a line of railroad owned by the Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee), located between Fordyce and Whitlow Junction, AR, and title to the trackage agreement between the Trustee of the Rock Island and the Ashley, Drew & Northern between Whitlow Junction and Crossett, AR.

DATES: (1) Verifed statements supporting or opposing the application are due January 20, 1981.

(2) Verified statements from the United States Secretary of Transportation and the Attorney General of the United States are due January 20, 1981.

(3) Verified replies are due January 30, 1981.

ADDRESS: An original and 5 copies of all statements, referenced to Finance Docket No. 29541, should be sent to: Section of Finance, Room 5414, Interstate Commerce Commission, Washington, D.C. 20423, Attention: Rock Island Acquisition.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer (202) 275-7026 or Ellen D. Hanson (202) 275-7245.

SUPPLEMENTARY INFORMATION:

The Fordyce & Princeton Railroad Company (F&P) filed an application December 12, 1980, under Section 17(b) of the Milwaukee Railroad Restructuring Act, Pub. L. 96-101, 93 Stat. 736 (1979) and 49 CFR Part 1111, *et seq.*, for authority to purchase certain properties of the Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) (Rock Island) located in Arkansas. The application will be handled under the rules adopted in Ex Parte No. 282 (Sub-No. 4), *Acquisition Procedures for Lines of Railroads*, 360 I.C.C. 623 (1980), 45 *FR* 6107 (January 25, 1980).

Applicant seeks to purchase a 54.37 mile portion of the Rock Island's line from Fordyce, AR (milepost 49.06) to Tinsman, AR (milepost 65.50 and from Tinsman, AR (milepost 0) to Whitlow Junction, AR (milepost 37.93). Applicant also seeks title to the trackage agreement between the Trustee of the Rock Island and the Ashley, Drew & Northern (AD&N) between Whitlow Junction and Crossett, AR. In addition, applicant seeks to purchase certain rolling stock (detailed in its application). The purchase price for the trackage, trackage rights, and rolling stock is $2.6 million.

Applicant F&P is a wholly-owned subsidiary of the Georgia Pacific Corporation. An agreement for the purchase was signed by the Trustee and an F&P representative on December 9, 1980. It is anticipated that the Trustee will seek approval of this contract from the Reorganization Court on December 22, 1980.

We have reviewed this application and find that it contains the information required by our regulations. It is therefore complete. To facilitate a final decision in this proceeding, the dates set forth in the schedule noted above will apply. A copy of all statements should be served upon applicant's representatives: Dickson R. Loos, David H. Baker, Pope Ballard & Loos, 888 17th Street, N.W., Washington, D.C. 20006.

This action will not significantly affect either energy consumption or the quality of the human environment.

It is ordered:

1. The application in Finance Docket No. 29541 is accepted for consideration.

2. The parties shall comply with all provisions as stated above.

3. This decision is effective on December 29, 1980.

Dated: December 19, 1980.

By the Commission, Gary J. Edles, Director, Office of Proceedings.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-120 Filed 1-2-81; 8:45 am]

BILLING CODE 7035-01-M

Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special rule 247 was published in the **Federal Register** on July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). Applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service and to comply with the appropriate statutes and Commission regulations. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual

operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements filed on or before February 19, 1981 (or, if the application later becomes unopposed) appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notice that the decision-notice is effective. On or before March 6, 1981, an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Volume No. OP1-104

Decided: December 18, 1980.

By the Commission, Review Board Number 2, Members Chandler, Eaton and Liberman.

MC 33500 (Sub-22F), filed December 8, 1980. Applicant: TOWNE VAN LINES, INC., 10214 North Interregional Hwy., Austin, TX 78753. Representative: Herbert Burstein, Suite 2373, One World Trade Center, New York, NY 10048. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the United States Government, between points in the U.S.

MC 75840 (Sub-146F), filed December 3, 1980. Applicant: MALONE FREIGHT LINES, INC., P.O. Box 11103, Birmingham, AL 35202. Representative: William P. Jackson, Jr., P.O. Box 1240, Arlington, VA 22210. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the United States Government, between points in the U.S.

MC 148380 (Sub-3F), filed November 20, 1980, and previously noticed in FR issue of December 8, 1980. Applicant: CRESCO LINES, INC., 13900 South Keeler Ave., Crestwood, IL 60445. Representative: Edward G. Bazelon, 39 South La Salle St., Chicago, IL 60603. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the United States Government, between points in the U.S.

Note.—This republication clarifies the type of service being performed.

Volume No. OPI-106

Decided: December 19, 1980.

By the Commission, Review Board Number 2, Members Chandler, Eaton and Liberman.

MC 112070 (Sub-21F), filed November 28, 1980. Applicant: GRAY MOVING & STORAGE, INC., 1290 So. Pearl St., Denver, CO 80210. Representative: Robert J. Gallagher, 1000 Connecticut Ave., N.W., Suite 1112, Washington, DC 20036. Transporting *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S. Condition: The person or persons who appear to be engaged in common control must either file an application under 49 U.S.C. 11343(a), or submit an affidavit indicating why such approval is unnecessary.

MC 144981 (Sub-4F), filed December 9, 1980. Applicant: JOHN DAY-PORTLAND AUTO FREIGHT, INC., P.O. Box 5, John Day, OR 97845. Representative: Lawrence V. Smart, Jr., 419 N.W. 23rd Ave., Portland, OR 97210. Transporting *general commodities* (except classes A and B explosives and household goods as defined by the Commission), between John Day, OR, on the one hand, and, on the other, points in the U.S.

Note.—Applicant seeks authority under 49 U.S.C. 10922(b)(4)(A) on the ground that John Day, OR, is a community not regularly served by a certificated motor carrier.

MC 150480 (Sub-1F), filed December 8, 1980. Applicant: YOWELL TRANSPORTATION SERVICE, INC., 1840 Cardington Rd., Dayton, OH 45409. Representative: Andrew Jay Burkholder, 275 East State St., Columbus, OH 43215. *As a broker* at Dayton, OH, in arranging for the transportation of *general commodities* (except household goods) between points in the U.S.

MC 153120F, filed December 8, 1980. Applicant: METROPOLITAN MESSENGER SERVICE, INC., 764 South 1st St., Louisville, KY 40201. Representative: Herbert D. Liebman, 403 W. Main St., P.O. Box 478, Frankfort, KY 40602. Transporting *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

MC 153121F, filed December 9, 1980. Applicant: CALIFORNIA WESTERN EXPRESS, INC., 1315D NE 134th St., Vancouver, WA 98665. Representative: David C. White, 2400 SW Fourth Ave., Portland, OR 97201. *As a broker* at Vancouver , WA, in arranging for the transportation of *general commodities* (except household goods) between points in the U.S.

MC 153150F, filed December 15, 1980. Applicant: HEAVEN SENT, LTD., 60 North Second St., Philadelphia, PA 19106. Representative: Barnett Satinsky, 2000 Market St., 10th Floor, Philadelphia, PA 19103. Transporting *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

MC 153151F, filed December 11, 1980. Applicant: E. L. BOYLES AND S. K. BOYLES, d.b.a. SHORTGRASS TRANSPORATION, 103 Choctow, Clinton, OK 73601. Representative: E. L. Boyles (same address as applicant). Transporting *general commodities*, between Devol, Grandfield, Loveland, Hollister, Frederick, Tipton, Humphreys, Altus, Mangum, Granite, Foss, Canute, Elk City, Doxey, Sayre, Erick, and Texola, OK, on the one hand, and, on the other, points in the U.S.

Note.—The purpose of this application is to substitute motor carrier for abandoned rail carrier service.

Volume No. OP2-134

Decided: December 16, 1980.

By the Commission, Review Board Number 3, Members Parker, Fortier and Hill. Member Hill not particiapting.

MC 56623 (Sub-1F), filed December 1, 1980. Applicant: SHANNON YOUNG TRUCKING COMPANY d.b.a. OIL FIELD TRUCKING SERVICE, P.O. Box 5707, Abilene, TX 79605. Representative: James W. Hightower, 5801 Marvin D. Love Freeway, Suite 301, Dallas, TX 75237 214/339-1408. Transporting *general commodities*, (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the United States Government, between points in the U.S.

MC 107012 (Sub-629), filed October 21, 1980. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy 30 West, P.O. Box 988, Fort Wayne, IN

46801. Representative: David D. Bishop (same as applicant). Transporting (1) *insulating materials* and (2) *parts, materials and supplies* used in the manufacture and installation of the commodities in (1) above, from Pueblo, CO, Fontana, CA, Alexandria, IN, Cameron, MO and Belton, TX, to points in the U.S.

MC 131052 (Sub-2F), filed November 18, 1980. Applicant: J. W. BOYLES, 500 S. Western (P.O. Box 25852), Oklahoma City, OK 73125. Representative: G. Timothy Armstrong, 200 North Choctaw, P.O. Box 1124, El Reno, OK 73036. Transporting *general commodities*, between Waurika, Hastings, Temple, Walters, Geronimo, Lawton, Ft. Sill Military Reservation, Richards Spur, Apache, Stecker, Anadarko, Verden, Chickasha, Pocasset, Minco, Union City, El Reno, Calumet, Geary, Bridgeport, Hydro, Weatherford, Clinton, Hobart, Gotebo, Mountain View, Carnegie, Ft. Cobb, and Washita, OK, on the one hand, and, on the other, points in the U.S. Condition: To the extent any certificate issued in this proceeding authorizes the transportation of classes A and B explosives, it shall be limited in point of time to a period expiring 5 years from its date of issuance.

Note.—The purpose of this application is to substitute motor carrier for abandoned rail carrier service.

MC 151073 (Sub-1F), filed December 8, 1980. Applicant: APOLLO EXPEDITING, INC., 38500 Van Born Rd., Wayne, MI 48184. Representative: William B. Elmer, 21635 East Nine Mile Rd., St. Clair Shores, MI 48080. Transporting *general commodities* (except household goods, hazardous or secret material, and sensitive weapons and munitions) For the United States Government, between points in the U.S.

MC 153062F, filed December 8, 1980. Applicant: FLOYD R. McLEMORE and BETTY L. McLEMORE, a partnership, 300 West Ave. B, Box 378, Nickerson, KS 67511. Representative: Lawrence Marquette, P.O. Box 711, Pebble Beach, CA 93953. Transporting *food or other edible products* (including edible byproducts but excluding alcoholic beverages and drugs) intended for human consumption, *agricultural limestone and other soil conditioners, and agricultural fertilizers*, if such transportation is provided with the owner of the motor vehicle in such vehicle, except in emergency situations, between points in the U.S.

MC 153083FS, filed December 8, 1980. Applicant: FREIGHTWAYS, INC., 2696 Coyle, Elk Grove Village, IL 60007. Representative: Irwin D. Rozner, 134 North LaSalle St., Chicago, IL 60602. Transporting *shipments* weighing 100 pounds or less if transported in a motor vehicle in which no one package exceeds one hundred pounds, between points in IL, on the one hand, and, on the other, points in the U.S. (except AK and HI).

Volume No. OP2-135

Decided: December 18, 1980.

By the Commission, Review Board Number 3, Members Parker, Fortier, and Hill.

MC 59292 (Sub-44F), filed December 11, 1980. Applicant: THE MARYLAND TRANSPORTATION CO., 1111 Frankfurst Avenue, Baltimore, MD 21225. Representative: Chester A. Zyblut, 366 Executive Building, 1030 15th St., NW., Washington, D.C. 20005. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the United States Government, between points in the U.S.

Volume No. OP4-179

Decided: December 29, 1980.

By the Commission, Review Board Number 2, Members Chandler, Eaton and Liberman.

MC 59666 (Sub-3F), filed December 12, 1980. Applicant: TRAFIK SERVICES, INC., 25 Esten Ave., Pawtucket, RI 02860. Representative: A. Joseph Mega (same address as applicant). Transporting (1) *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the United States Government, and (2) *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-122 Filed 1-2-81; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 29408F (Sub-No. 1)]

Transkentucky Transportation Railroad, Inc.—Exemption under 49 U.S.C. 10505 From 49 U.S.C. 10901

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts Transkentucky Transportation Railroad, Inc. (TTI) from the requirement that it receive approval of its pending application under 49 U.S.C. 10901(a) prior to performing operations on TTI's Paris-Maysville line.

DATE: The exemption is effective at 12:00 a.m. January 1, 1981, and remains effective until the Commission rules on TTI's pending application under 49 U.S.C. § 10901, unless earlier revoked.

ADDRESSES: Send pleadings to:

(1) Section of Finance, Room 5414, Interstate Commerce Commission, 12th St., and Constitution Ave., Washington, DC 20423

(2) Petitioner's representative: John L. Richardson, Suite 1100, 1660 L Street, N.W., Washington, DC 20036.

Pleadings should refer to the docket number—Finance Docket No. 29408F (Sub-No. 1).

FOR FURTHER INFORMATION CONTACT: Ellen Hanson, (202) 275-7245

SUPPLEMENTARY INFORMATION:

Background

On May 3, 1976, the Louisville and Nashville Railroad Company (L&N) filed an application to abandon its line between Maysville and Paris, KY, a distance of approximately 50 miles, Docket No. AB-2 (Sub-No. 14), *Louisville and Nashville Railroad Company Abandonment Between Paris and Maysville, Kentucky*. The application was granted by an Administrative Law Judge in a decision served November 22, 1978. After considering appeals the Commission, Division 2, affirmed the initial decision in a decision served May 25, 1979. On August 20, 1979 the certificate of abandonment was issued.

In the interim L&N and TTI had begun discussions regarding TTI's purchase of the line. L&N and TTI entered into an interim lease while the negotiations proceeded. In order for TTI to operate the line without a certificate it was necessary to seek authority through issuance of an emergency service order. On July 24, 1979, the Commission's Railroad Service Board issued Service Order No. 1389 authorizing TTI to begin operations over the line on August 16, 1979. (L&N was to cease operations on August 15, 1979).

On October 10, 1979, L&N and TTI reached an agreement for the sale of the line. Since then TTI has operated the line under the initial service order and four amendments. The most recent amendment, decided on August 21, 1980, extended the service order until 11:59 p.m., December 31, 1980.

On June 26, 1980, TTI applied pursuant to 49 U.S.C. § 10901 for a certificate of public convenience and necessity authorizing its operations. That application has been assigned Finance Docket No. 29408F. An investigation to determine TTI's financial and operational fitness was requested by L&N on August 25, 1980. On October 8, 1980, the Commission set the proceeding

for modified procedure. Under that schedule, applicant's reply verified statements are not due until January 19, 1981.

On October 28, 1980, the Commission issued a policy statement stating that the Commission's authority to issue service orders under 49 U.S.C. 11123(a) had been limited substantially by Section 226 of the Staggers Rail Act of 1980.[1] *See*, Ex Parte No. 396, *Emergency Car Service Orders, (49 CFR Part 1033), Policy Statement on Section 49 U.S.C. 11123(a) Orders* (decided October 24, 1980). Under the new law, we can issue a service order only when we find that a "failure in traffic movements exists which create an emergency situation of such magnitude as to have substantial adverse effects on rail service in the United States or a substantial region of the United States."

Request for action

On December 9, 1980, TTI's counsel wrote a letter to Gary Edles, Director of the Office of Proceedings. In that letter TTI noted that (1) its service order authority would expire on December 31, 1980 and (2) its application for a certificate had been assigned for modified procedure and, therefore, could not be acted upon until late January, 1981 at the earliest. TTI noted correctly that its situation does not justify extension of the service order.

TTI specifically requested advice on how it could receive authority to continue rail operations. As one possible recourse, the issuance of an exemption under 49 U.S.C. § 10505 was suggested.

Discussion and Conclusions

TTI is seeking a certificate to operate a rail line which it owns and is currently operating under a service order. The service order will expire before we can reach a decision on its application for a certificate. Cessation of the service may result in (1) the destruction of or injury to the property TTI is seeking to operate and/or (2) substantial interference with the future usefulness of the property in providing adequate and continuous service to the public.

Moreover, the evidence in both the service order and section 10901 proceedings indicates that there is a significant public need for continued operations.[2] The principal commodity to be transported over the line is coal. With our nation suffering from an energy shortage we would be remiss to allow a cessation of service to occur while we process an application. Also, shipper support for the service can be seen in the number of statements filed in support of TTI's application and the increased traffic handled over the line. In November, 1979, TTI handled 16 cars. Its projection for November, 1980, was at least 46 cars.

While we cannot now say that TTI's application for a certificate should be granted, we can say that there is sufficient evidence of a public need for continued service until that issue can be resolved. Further, we find a strong private need to continue this service when we consider the possible injury to TTI if shippers move, go out of business or find transportation alternatives.

A rail carrier can only provide service if it has a certificate to do so or has been authorized to do so by a service order. We have already noted that TTI cannot make a sufficient showing under amended section 11123(a) for issuance of a service order. We have also noted that its application for a certificate is being processed, but will take some time. Therefore, we cannot order or even affirmatively authorize TTI to perform uninterrupted service over the line.

However, Congress has given us a new method to eliminate unduly burdensome regulation of rail carriers—our authority to exempt rail carrier transportation. 49 U.S.C. § 10505, as modified by section 213 of the Staggers Act, provides that the Commission "shall" exempt a transaction from the application of any provision of the Interstate Commerce Act when it finds that (1) continued regulation is not necessary to carry out the Rail Transportation Policy in 49 U.S.C. § 10101a; and (2) either (A) the transaction is of limited scope, or (B) regulation is not necessary to protect shippers from the abuse of market power.[3] Moreover, we can issue the exemption on our own initiative. 49 U.S.C. § 10505(b).

We believe the instant exemption meets the three criteria. First, the transaction is of limited scope. Although important to TTI and the communities and shippers in the affected area, this is a short 50 mile branch line which carries, in a good month, only 50 cars. Moreover, our proposed exemption is limited in time to the period necessary to process a pending application under 49 U.S.C. § 10901.

Given our limited scope finding, we need not determine whether prior approval of rail operations under § 10901 is necessary to protect shippers from abuse of market power. However, it would appear that TTI does not have market power to any degree likely to result in abuse. Moreover, shippers will have more transportation alternatives, and more protection against abuse of market power, if we will grant an exemption and allow service to continue, rather than force a complete cessation of rail operations.

Finally, prior approval of TTI's pending § 10901 application is not necessary to carry out any of the 15 factors listed in the rail transportation policy. Indeed, at least three of the factors listed will be enhanced. The second factor listed is to minimize the need for regulatory control and to require expeditious decisions when regulation is necessary. This decision, exempting TTI from the requirement that it receive a § 10901 certificate *prior* to beginning operations on a line it purchased after the line was abandoned will help ensure that regulatory lag does not cause an interruption in service to the public. Similarly, the seventh factor listed discusses the reduction of barriers to entry. As noted, this exemption will help ease entry into the industry by allowing service to be provided while permanent authority is being sought. Finally, the last factor deals with encouraging and promoting energy conservation. Because coal is the major commodity carried on this line, exemption from the prior approval requirements promotes energy conservation.

In light of these findings we are able to exempt this transaction. However, our exemption authority provides us with the power to limit the duration of our exemptions. 49 U.S.C. 1050(c). Accordingly, the exemption is effective only until we issue a decision on TTI's pending application for a permenent operating certificate.

Our grant of this exemption has not resolved the financial and operational fitness issues raised by L&N in opposition to TTI's application for a permanent operating certificate. We have merely determined that these issues are unlikely to cause harm to the public during the limited time this exemption will be in effect, and that there is a virtual certainty of harm to the public, stemming from an interruption in service, if this exemption is not issued.

Section 10505 enables us to revoke an exemption if we find the exempted provision necessary to carry out the rail transportation policy. We have found otherwise on the facts currently

[1] Pub. L. No. 96-448, 94 Stat. 1895.

[2] This discussion is not meant to prejudge our decision on whether the certifcate to operate should be issued. The allegations raised by L&N will be considered in that proceeding.

[3] The Section creates two additional limitations on our broad exemption power. We may not exercise this exemption authority "(1) to authorize intermodal authority that is otherwise prohibited by this title, or (2) to relieve a carrier of its obligation to protect the interests of employees as required by this subtitle". 49 U.S.C. § 10505(g).

available to us. However, we will permit interested parties to file petitions for reconsideration alleging that grant of the exemption harms our ability to carry out the rail transportation policy. Petitions for reconsideration must be filed on or before January 26, 1981.

In conclusion, TTI will be granted an exemption from the requirements of section 10901 to obtain a certificate to operate a rail line before beginning rail operations. The exemption shall remain in effect until we act on TTI's application for a certificate or unless the exemption is revoked. The purpose of the exemption is to ease an unduly burdensome regulatory restraint which, if left untouched, would result in the cessation of operations harming shippers and communities and injuring the viability of the TTI and its properties. Because of this exemption TTI will be able to provide a necessary rail service prior to obtaining a certificate of public convenience and necessity to operate.

In exempting this transaction we are not deciding whether TTI's application should be granted. We will decided that question when all the evidence is before us. Until that time we will maintain the status quo—rail service to the shippers and communities in the affected region. Applicant filed its application in June and has prosecuted it in compliance with our regulations. We will not cause TTI and the public to be harmed during the processing of the application.

Labor protection In granting this exemption we may not relieve a carrier of its obligation to protect the interests of employees. However, amended section 10901(e) indicates that the imposition of labor protective conditions is discretionary when authority is sourght, as here, to operate a line. Since no obligation exists, TTI has not been relieved of any obligation by this temporary exemption.

We find: (1) Application of the requirements of 49 U.S.C. § 10901 that TTI receive prior authority to operate the Paris-Maysville, KY rail line is not necessary to carry out the transportation policy of 49 U.S.C. 10101a.

(2) This transaction is of limited scope.

(3) Application of the prohibition of 49 U.S.C. 10901 against institution of service prior to Commission authorization is not needed to protect shippers from the abuse of market power.

(4) This decision will not operate to relieve TTI from an obligation either (a) to provide contractual terms for liability and claims which are consistent with 49 U.S.C. § 11707, or (b) to protect the interest of its employees; and does not authorize intermodal ownership that is otherwise prohibited.

(5) This decision is not a major Federal action significantly affecting energy consumption or the quality of the human environment.

It is ordered: (1) Pursuant to 49 U.S.C. 10505 we exempt the operation by TTI of the Maysville-Paris, KY rail line from 49 U.S.C. 10901(a).

(2) Notice of our action shall be given to the general public by delivery of the copy of this decision to the Director, **Federal Register**, for publication.

(3) This exemption will continue in effect until or unless (1) revoked or (2) we issue a decision under 49 U.S.C. 10901(c) granting or denying TTI's application for authority to operate this rail line.

(4) This decision shall be effective at 12:00 a.m., January 1, 1981.

(5) Petitions to reopen this proceeding for reconsideration must be filed no later than January 26, 1981.

Dated: December 23, 1980.

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Clapp, Trantum, Alexis, and William. Commissioner Clapp and Commissioner Alexis absent and not participating.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-119 Filed 1-2-81; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-1 (Sub-No. 110F)]

Chicago and North Western Transportation Company—Abandonment—Near Marenisco and Ironwood in Gogebic County, MI; Findings

Notice is hereby given pursuant to 49 U.S.C. 10903 that by a Certificate and Decision decided December 24, 1980, a finding, which is administratively final, was made by the Commission, Review Board Number 5, stating that, the present and future public convenience and necessity permit the abandonment by the Chicago and North Western Transportation Company of a line of railroad known as the Marenisco-Ironwood line extending from railroad milepost 322.7 near Marenisco to railroad milepost 348.1 near Ironwood, a distance of 25.4 miles, in Gogebic County, MI, subject to the conditions for the protection of employees discussed in *Oregon Short Line R. Co.-Abandonment Goshen*, 360 I.C.C. 91 (1979), and further that applicant shall keep intact all of the right-of-way underlying the track, including all the bridges and culverts for a period of 120 days from December 24, 1980, to permit any state or local government agency or other interested party to negotiate the acquisition for public use of all or any portion of the right-of-way. A certificate of public convenience and necessity permitting the abandonment was issued to the Chicago and North Western Transportation Company. Since no investigation was instituted, the requirements of § 1121.38(b) of the Regulations that publication of notice of abandonment decisions in the Federal Register be made only after such a decision becomes administratively final was waived.

Upon receipt by the carrier of an actual offer of financial assistance, the carrier shall make available to the offeror the records, accounts, appraisals, working papers, and other documents used in preparing Exhibit I (Section 1121.45 of the Regulations). Such documents shall be made available during regular business hours at a time and place mutually agreeable to the parties.

The offer must be filed with the Commission and served concurrently on the applicant, with copies to Ms. Ellen Hanson, Room 5417, Interstate Commerce Commission, Washington, D.C. 20423, no later than January 15, 1981. The offer, as filed, shall contain information required pursuant to Section 1121.38(b) (2) and (3) of the Regulations. If no such offer is received, the certificate of public convenience and necessity authorizing abandonment shall become effective 30 days from the service date of the certificate.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-172 Filed 1-2-81; 8:45 am]

BILLING CODE 7035-01-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-67]

Certain Inclined-Field Acceleration Tubes and Components Thereof; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Termination of investigation.

SUPPLEMENTARY INFORMATION: Upon receipt of a complaint filed on May 17, 1979, the Commission on June 27, 1979, published a notice of institution of an investigation (44 FR 37567), pursuant to section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, of alleged unfair methods of competition and unfair acts in the unauthorized importation and sale of inclined-field acceleration tubes and components thereof.

On December 16, the Commission unanimously determined that there was a violation of the statute in the importation or sale of certain inclined-field acceleration tubes and components thereof that infringe claims 2–6 of U.S. Letters Patent 3,308,323 and that an exclusion order is the appropriate remedy. The Commission unanimously determined, however, that the public interest factors enumerated in subsection 337(d) of the statute preclude the imposition of a remedy.

Copies of the Commission's Action and Order, Opinion, and any other public documents in this investigation are available for inspection by the public during official working hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: Michael B. Jennison, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0189.

Issued: December 29, 1980.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 80-40796 Filed 12-31-80; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No., 731-TA-36 (Preliminary)]

Snow-Grooming Vehicles, Parts Thereof and Accessories Therefor From the Federal Republic of Germany

Determination

On the basis of the record in investigation No. 731–TA–36 (preliminary), the Commission unanimously determines that there is no reasonable indication that an industry in the United States is materially injured, or threatened with material injury, or that the establishment of an industry in the United States is materially retarded by reason of the importation of certain snow-grooming vehicles, provided for in items 692.16 or 692.35 of the Tariff Schedules of the United States (TSUS) or parts thereof, and accessories therefor chiefly used on such vehicles, wherever provided for in the TSUS, from the Federal Republic of Germany that are allegedly sold or likely to be sold at less than fair value (LTFV).

Background

On November 6, 1980, a petition was filed with the U.S. International Trade Commission and the Department of Commerce on behalf of the Logan Division of De Lorean Manufacturing Co. alleging that snow-grooming vehicles imported from the Federal Republic of Germany are being, or are likely to be, sold in the United States at less than fair value. Accordingly, the Commission instituted a preliminary antidumping investigation under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673(a) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of the importation of certain snow-grooming vehicles, provided for in items 692.16 or 692.35 of the TSUS and parts thereof and accessories therefor chiefly used on such vehicles, wherever provided for in the TSUS, that are allegedly being sold or likely to be sold at less than fair value. The statute directs that the Commission make its determination within 45 days of its receipt of the petition, or in this case, by December 22, 1980.

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was duly given by posting copies of the notice in the Office of Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing the notice in the **Federal Register** of November 20, 1980 (45 FR 76811). A public conference was held in Washington, D.C. on December 4, 1980.

In arriving at its determination, the Commission has given due consideration to the information provided by the Department of Commerce, to all written submissions from interested parties, and to information adduced at the conference and obtained by the Commission's staff from questionnaires, documented personal interviews, and other sources, all of which have been placed on the administrative record of this preliminary investigation.

On November 26, 1980, the Department of Commerce issued a notice announcing that it had found the petition to be properly filed within the meaning of its rules and that it was instituting an investigation. Notice to such effect was published in the **Federal Register** of December 5, 1980 (45 FR 80565). The product scope of the Commerce investigation is the same as that instituted by the Commission.

Views of Chairman Bill Alberger, Vice Chairman Michael Calhoun and Commissioners George M. Moore and Catherine Bedell

Determination

On the basis of the record developed in investigation, No. 731–TA–36 (preliminary), we determine, pursuant to section 733(a) of the Tariff Act of 1930, that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury,[1] by reason of imports from West Germany of snow grooming vehicles, parts thereof and accessories therefor, chiefly used on such vehicles, allegedly sold or likely to be sold in the United States at less than fair value.[2]

Discussion

Domestic Industry

Section 771(4) of the Tariff Act of 1930 (19 U.S.C. 1677(4)) defines the domestic industry as the U.S. producers of a "like product," which is defined in section 771(10) as a product "like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." The imported article under investigation is the Kassbohrer PB 170D, a snow grooming vehicle in the "super" class, which is specifically designed for optimum use on large and steep inclines of the kind found at ski resorts.

In this investigation, we determine that the domestic industry consists of the U.S. Producers of ski area snow grooming vehicles. These vehicles, sometimes referred to as "super" snow grooming vehicles, are designed to groom ski slopes at large ski areas with a large vertical drop. For that reason, the vehicles have engines with greater than 150 horsepower and can operate on steep slopes at high altitudes carrying payloads of 3,000 pounds or more.[3]

There are three U.S. producers of super snow-grooming vehicles. They are the Logan Division of De Lorean Manufacturing Co. (DMC), the Tucker Sno-Cat Corporation and the Miller W. Corporation. For purposes of this determination, we do not consider Valley Engineering, Inc. to be a part of the domestic industry.

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[1] Since there are three domestic producers of the imported article subject to investigation, the material retardation of the establishment of an industry in the United States is not an issue in this investigation.

[2] The vehicles are provided for in items 692.16 or 692.35 of the Tariff Schedules of the United States (TSUS). The parts and accessories are provided for in various sections of the TSUS.

[3] See report to the Commission on Investigation No. 731–TA–36 (Preliminary) at p. A–2, hereafter the report is referred to as the staff report.

Our definition of the "domestic industry" does not include over-snow vehicles of the type commonly described as transport or utility vehicles. While the information available indicates that transport vehicles can groom smaller ski slopes, we find that the vehicles can be differentiated in terms of their characteristics and uses. Super snow grooming vehicles are specifically designed for use at large ski areas, where high altitudes and steep slopes make grooming difficult. As a result, the vehicles have engines with greater than 150 horsepower and a two-person cab, and incorporate special light weight components. In contrast, transport vehicles are designed for transporting people or equipment over snow covered areas, and have smaller engines and a large cab. While a transport vehicle can be used to groom the smaller ski slopes found in the Midwest, it is not intended to groom steep ski slopes at high altitudes and cannot do so effectively.

These differences are readily apparent when one examines the markets for the two vehicles. Super snow grooming vehicles are generally purchased by large ski resorts on the East Coast or in the Rocky Mountain and Pacific Coast regions. Transport vehicles are generally sold to utility companies for use in servicing power lines or microwave stations, or to smaller Midwestern ski areas. The information available indicates that a potential buyer would not regard the two vehicles as equivalents.

We further determine that the domestic industry does not consist of the producers of snow grooming vehicle parts. The Commission's analysis in this investigation has focused on the snow-grooming vehicles themselves and not the parts thereof. This analysis gives the petitioner the best possible case. Respondent, Valley Engineering, Inc., imports the PB 170D in the form of a kit containing most of the parts for one vehicle. In view of above considerations, we find that the like product of the kits is the domestically produced "super" snow-grooming vehicle.

Material Injury by Reason of LTFV Imports

In making our determination of no reasonable indication of material injury, we considered, among other factors: (1) the volume of imports, (2) the effect of imports on prices of like products produced in the United States, and (3) the impact of imports on the domestic industry. We base our decision on the findings of fact and conclusions of how discussed below.

a. Volume of LTFV Imports:

Imports of the allegedly LTFV Kassbohrer vehicles were relatively stable from 1977–79, and accounted for less than 10 percent of apparent U.S. consumption. In January–September, 1980, Kassbohrer imports increased significantly and the import penetration ratio grew to more than 20 percent. However, we cannot accept petitioner's contention that this most recent increase represents a significant change in the status quo. Since the imports are in kits, they must enter the United States before September if they are to be assembled and delivered during the peak sales months of October, November and December. In contrast, U.S. producers sell a disproportionately large number of their vehicles during the October–December period. Thus, the market share captured by imports during January–September, 1980, is significantly overstated, and will fall sharply in October–December as domestic producers enter their peak selling period.[4] This has occurred in each of the previous three years.

b. Impact on Prices:

Under the antidumping laws LTFV sales do not create a presumption of injury. Such sales are condemned only when they adversely affect domestic producers. The antidumping laws were not intended to—

> proscribe transactions which involve selling an imported product at a price which is not lower than that needed to make the product competitive in the U.S. market, even though the price of the imported product is lower than its home market price. Such so-called "technical dumping" is not anti-competitive, hence, not unfair; it is procompetitive in effect.[5]

We find no evidence in the record before us that the imports in question are priced at less than a competitive level, so as to materially injure domestic competition. The information available indicates that the prices of imported vehicles have been consistently higher than those of domestic vehicles.[6] During 1980, the difference between the price of De Lorean's Model No. 3700 and Kassbohrer's PB 170D increased.[7] The absence of *any* indication of underselling strongly suggests that there is not basis for concluding that the imports have adversely affected the prices of domestically produced vehicles.

Petitioner has argued that while consumers are willing to pay more for the PB 170D because of perceived differences in quality and styling, the prices of the German vehicles are not as high as they should be,[8] and have forced the petitioner to suppress its own prices in order to remain competitive. However, the information available does not support petitioner's contention of price suppression. The price of DMC's Model 3700 increased from January 1977 through September 1980, at a faster rate than consumer prices or producer prices for all transportation equipment over the same period.[9] In January-September 1980, when the alleged LTFV sales occurred, petitioner's prices rose significantly.

There is, moreover, no indication that Kassbohrer's PB–170D is underpriced. None of the purchasers of Kassbohrer machines contacted by the Commission cited price as a primary consideration in their decision to purchase the West German machine.[10] Most spoke of perceived differences in quality, service or reliability. There is no evidence that consumers regard the Kassbohrer vehicle as a bargain at its higher price. Furthermore, the price differential between the De Lorean and Kassbohrer vehicles is increasing.

c. Impact on Domestic Industry.

While there were some difficulties experienced by the domestic ski area snow-grooming vehicle industry in 1979 and 1980, they are readily explained by a variety of other factors. The 1979 ski season was an extremely poor one. The lack of snow in November and December deprived Eastern and Midwestern ski area operators of a substantial portion of their revenues. As a result, many found themselves in tight financial circumstances and chose to postpone or forego purchases of snow grooming equipment.[11] Thus, total consumption declined sharply in 1979. In fact it fell by more than a quarter. The recession in early 1980 further discouraged investment in equipment. These problems were compounded by the fact that the super snow-grooming vehicle is a relatively recent creation, and a substantial replacement market has yet to develop.[12]

Although DMC's net profit dropped drastically in 1980, the cause of the drop

[4] Staff Rept., p. A23.

[5] See Sen. Rept. NO. 93–1298, p. 179. While this statement concerns the Antidumping Act, 1921, Congress has indicated that the new "material injury" test set forth in the Trade Agreements Act of 1979 is consistent with the injury criteria developed under the Antidumping Act. Sen. Rept. 96–249, p. 87.

[6] Staff Rept., p. A–25. Both Tucker and Mille refused to supply price data.

[7] Ibid.

[8] Transcript, p. 34 (12/4/80)

[9] Staff Rept., p. A–28.

[10] Id. at pp. A–28–29.

[11] Staff Rept., p. A–28.

[12] Ibid.

appears to be a sharp rise in selling and administrative expenses,[13] and not LTFV imports. When Thiokol sold the Logan Division to DMC in July 1979, the Logan Division assumed various selling and administrative expenses previously borne by Thiokol. These new expenses account for the increase in selling and administrative costs and the drop in profitability.

The data available to the Commission shows a decline during 1980 in production of super snow grooming vehicles, in capacity to produce such vehicles and in the number of workers employed in producing the vehicles. We find, however, no causal connection between the decline and LTFV imports. Plants in which super snow-grooming vehicles are produced are also used to produce other types of over snow-vehicles.[14] The vehicles are produced in different production runs. If one examines the production data available, it becomes apparent that DMC's overall production of over-snow vehicles has increased. This was accomplished by shortening the production run for super snow grooming vehicles, and lengthening the run for other types of over-snow vehicles.[15]

It is significant that sales of transport vehicles in January-September 1980 are up sharply in relation to the corresponding period in 1979.[16] The declines in production, capacity and employment do not mean that DMC experienced an increase in idle time, but that more time was devoted to producing transport vehicles.[17] We also note that as a result of poor demand during 1979, DMC had a large year end inventory as of December 31, 1979, which was available for sale in 1980.[18]

In our view, the drop in DMC's production of super snow grooming vehicles in 1980 is completely out of proportion to Valley's increased imports of Kassbohrer vehicles. This disparity further weakens any inference that the two are related. We conclude that the decline in production and shipments of super snow-grooming vehicles is the result of the poor season experienced by Eastern and Midwestern ski area operators during 1979, and the other factors described above.

While overall sales by domestic producers decreased in 1980, much of the decline is the result of a decline in the export market,[19] although the industry has been and remains a net exporter of snow-grooming vehicles.

In analyzing domestic sales of Kassbohrer vehicles, the Commission staff found no examples of sales lost as a result of underselling. Almost every purchaser contacted paid a higher price for the Kassbohrer vehicle. In the remaining sales, the purchasers cited DMC's refusal to demonstrate its product or a belief that the imported vehicle was markedly superior.[20] The purchasers of Kassbohrer vehicles generally cited perceived differences in quality, service, reliability or operating cost as their primary considerations.[21] None gave price as a critical consideration. In the absence of underselling or price suppression, we find no indication that Kassbohrer vehicles have any anticompetitive advantage over like domestic products. We conclude that the margin of LTFV sales, if any, is "technical dumping" not proscribed by the statute, and that any decline in the industry's position must be the result of other causes.

d. Threat of Material Injury:

A finding of threat of material injury "must be based on information showing that the threat is real and injury is imminent, not a mere supposition or conjecture."

There is no indication that imports of Kassbohrer's super snow-grooming vehicles will increase sharply in the imminent future. At the present time, Valley's orders for 1981 are small and are consistent with import levels over the 1977–79 period. Valley has no standing inventory and could not make an immediate delivery to a potential purchaser. The long lead time for obtaining engines and various other parts, coupled with a strong demand for the vehicles in Europe and limited production facilities, should prevent any significant increases in imports from West Germany.

Conclusion

We conclude on the basis of the information available, that there is no reasonable indication that the domestic super snow-grooming industry has suffered material injury or is threatened with material injury by reason of alleged LTFV imports from West Germany. The information available to us indicates that the Kassbohrer vehicles imported during 1980 by Valley Engineering, Inc., were sold for higher prices than like domestically produced vehicles. We perceive no indication that the imports from Germany have suppressed prices or adversely affected the domestic industry. While there is some basis for concluding that the domestic industry has experienced difficulties in 1980, the causes of its problems are clearly not related to the alleged LTFV imports.

Views of Commissioner Paula Stern

This preliminary case was marked by novel issues regarding the definition of the domestic industry, a hazy picture of the health of the relevant U.S. industry, but a very clear lack of causal linkage between the subject imports and any problems in the domestic industry. I discuss each of these subjects in turn, concluding with references to statutory framework.

I. The Domestic Industry and the Imported Products

In this investigation, I have determined that the domestic industry consists of U.S. producers of ski area snow grooming vehicles. These vehicles, sometimes referred to as "super" snow grooming vehicles, are designed to groom ski slopes at large ski areas with high vertical drops. For that reason, the vehicles have engines with greater than 150 horsepower and can operate on steep slopes at high altitudes carrying payloads of 3,000 pounds or more.

There are three U.S. producers of super snow grooming vehicles. They are the Logan Division of DeLorean Manufacturing Co. (DMC), the Tucker Sno-Cat Corporation (Tucker), and the Miller W. Corporation (Miller).

I fully join the views of my colleagues on the appropriate boundaries and definition of the domestic industry and will not repeat the logic here. The Commission has unanimously found that:

(1) The definition of the domestic industry does not include over snow vehicles of the type commonly described as transport vehicles.

(2) For the purposes of this determination, Valley Engineering, Inc. (Valley) is not to be considered part of the domestic industy. Valley is the importer of the allegedly dumped merchandise and is a wholly-owned subidiary of Karl Kassbohrer Fahrzcugwerke, GmbH (Kassbohrer). The imported article under investigation is the Kassbohrer PB 170D, a snow grooming vehicle in the "super" class.[22]

[13] *Id.* at. A-22-23. While petitioner's cost of goods sold showed an increasing trend in 1980, it was neither marked nor stable. As the volume of production decreased, DMC's cost of goods sold increased.

[14] Staff Rept., p. A-21-22.

[15] Staff Rept., p. A-14.

[16] *Id.* at A-16.

[17] While a slight decline in employment occurred, we note productivity increased markedly.

[18] Staff Rept., p. A-19.

[19] Significant quantities of U.S. production are exported to Western Europe. See staff report at p. A-18.

[20] Staff Rept. p. A-29.

[21] Staff Rept., p. A-24.

[22] The Commission has not had an opportunity to verify Valley's claim that 50% of the value of a PB170D is added in the United States. Furthermore, under Section 771(4)(B) of the Tariff Act of 1930, the

Footnotes continued on next page

(3) The domestic industry does not consist of the producers of snow grooming vehicle parts.

II. Causation

This case fails because there is no demonstrable connection linking the alleged LTFV imports to any negative aspect of the domestic industry's performance. Thus, there is no reasonable indication of material injury by reason of the alleged less-than-fair-value (LTFV) imports.

The volume of imports of super snow grooming vehicles from West Germany was stable from 1977 to 1979. During the January-September 1980 period, it doubled compared to the figure for the same period of 1979. In 1977, the 7 vehicles imported from Germany supplied a slightly greater percentage of apparent U.S. consumption than did the same number of German vehicles imported in 1979. In the first three quarters of 1980, 14 vehicles were imported with the resulting import penetration nearly doubling the percentage recorded during the similar period a year earlier. Virtually all imports are entered into the United States prior to September so that they will be ready for delivery during the peak sales months of October, November and December. By contrast, domestic producers made over 40 percent of their 1979 sales during the last three months of the year. Thus, import penetration figures for January-September significantly overstate the penetration likely to be achieved for the full year.[23] Kassbohrer's increased market share has apparently come at the expense of another foreign producer.[24]

Examination of data on lost sales has not established any credible link between the success of the German imports and the LTFV margins from which they have allegedly benefitted. For 1980 the Commission staff contacted the potential customers involved in 21 of the 22 sales alleged to have been lost by the petitioner in 1979 and 1980. One did not purchase an import, and four purchased used vehicles. In four instances, the petitioner's product could not be given serious consideration because DMC refused to demonstrate it or because the import was markedly superior. In the remaining twelve cases, import sales were made at prices higher than those offered by the petitioner; the German product was perceived to have better quality and/or servicing arrangements.

There is no indication whatsoever that the imports in question caused injury by price suppression or depression. Quite to the contrary, the actual selling prices of the petitioner's super snow groomers increased slight more than prices of the imported product (from January 1978 to September 1980, the period over which the Commission has obtained comparable data).[25] The average price of the top-of-the-line DMC snow groomers grew between January 1977 and September 1980 slightly faster than the consumer price index and significantly more rapidly than producer prices for all transportation equipment.[26]

Moreover, there is no indication that the imports have been underselling the domestic products. Prices of the imported vehicles exceed the prices of the domestic products in each quarter that transactions are reported for both. In fact, comparisons of the average prices paid for DMC 3700 and the Kassbohrer super snow groomer show that the premium paid for the import has steadily grown from 1978 to the first three quarters of 1980.

Price comparisons are complicated by many differences in optional equipment, general quality, and servicing networks. When adjustments are made for differences in optional equipment, the relative prices of domestic and imported equipment do not seem to be affected significantly.[27] Adjustments for differences in quality and service would be highly subjective and have not been attempted. Some differences do seem justified. By all accounts, including the petitioners' own statements,[28] the imported product seems to have a significant quality advantage which is no longer diminished by its earlier lack of an effective domestic service network. Cost and reliability of operation outshine purchase price as the most significant factors in the choice of snow groomers. In sum, alleged LTFV margins have apparently played no role in creating the existing quality differences or in suppressing domestic prices.

III. Condition of the Domestic Industry

Despite analysis of all relevant economic indicators, the health of the domestic industry remains unclear. In any event, those economic factors which may point to injury do not indicate that the alleged LTFV imports have caused injury to the domestic industry.

U.S. production of super snow grooming vehicles increased rapidly from 1977 to 1978 and then declined slightly in 1979.[29] The figure for January-September 1980 is, however, 45 percent below that for the same period of 1979.

Domestic capacity increased 3 percent from 1977 to 1978, and fell by 8 percent in 1979. In the first nine months of 1980, it dropped 23 percent relative to that for the corresponding period one year earlier.

Capacity utilization in the production of super snow grooming vehicles increased from 1977 to 1979 before declining in January-September 1980. However, productive capacity and capacity utilization are not reliable indicators in this industry. Production is effectively limited by the number of parts and components ordered by the company, often early in the season. Further, all equipment and personnel are used interchangeably in the manufacture of all products made in each plant. Thus, it is important to note that the decline in domestic capacity to produce super snow groomers during Janaury-September 1980 (over the same period of 1979) was accompanied by a greater increase in the domestic capacity to produce all other snow grooming vehicles. The petitioner accounted for almost all this growth.

U.S. producers' sales of super snow groomers doubled from 1977 to 1978 before declining in 1979. Another decline was posted for January-September 1980 relative to sales for the corresponding period in 1979. There are no reasonable indications that the recent decline in sales and production of super snow groomers has been related to the alleged LTFV imports. Rather, as a result of poor snow during the 1979 ski season, many Eastern and Mid-Western ski area operators experienced financial

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Commission has discretion to exclude a domestic producer, which is also an importer or which is related to an exporter, when "appropriate circumstances" exist. 19 U.S.C. 1677(4)(b). Under the circumstances, it would be counterproductive to include Valley in the domestic industry, since its inclussion would decrease the impact of the alleged dumping on the domestic industry.

[23] For example, subject import penetration for all of 1979 was less than half that for the first three quarters of the year.

[24] Bombardier Limited of Canada and Kassbohrer of West Germany are the only foreign producers known to have exported ski area snow grooming vehicles to the United States during the period under investigation. In the past, Bombardier exported a significant number of vehicles to the United States. It has accounted for less than 20 percent of apparent U.S. consumption. But in recent years, imports of Bombardier vehicles have dropped, and its share of the U.S. market has declined sharply. If previous patterns hold, the market share of all imports will be significantly lower in 1980 than in 1977 due to the sharp decline in Canadian imports.

[25] Report at A-25.

[26] Report at A-28.

[27] Report at Table 12 and A-28.

[28] Conference Transcript at 34.

[29] Production figures are significantly understated due to the lack of information on one producer which accounts for a more than negligible share of the U.S. market. *See* Report at A-14.

difficulties and postponed purchases of equipment.[30]

Exports are significant and growing in importance for the U.S. industry. Accounting for nearly half of the sales of super snow groomers in 1977, exports in January–September 1980 represented two-thirds of U.S. producers' sales. The absolute quantities grew sharply from 1977 to 1979, but posted a significant decline in January–September 1980 from the like period in 1979.

Inventories held by U.S. producers grew steadily both in terms of quantity and as a ratio of total sales from 1977 to 1979, but declined in 1980. Inventory/sales ratios declined from January–September 1979 to the corresponding period of 1980. Although both these ratios appear unusually high, it should be remembered that most of these vehicles are delivered during the last quarter. The Commission lacks an adequate reference level to determine the true significance of present inventory levels in this industry.

Employment data are sketchy—Miller provided no data for 1980 and no data at all were available for Tucker. Moreover, because labor moves freely between all operations, data had to be collected for the production of all snow groomers. Reported employment of production and related workers in facilities producing all snow grooming vehicles grew from 1977 to 1979, but then declined in January–September 1980. Labor time has been shifted from super snow groomers to other types of production in 1980. Wages paid and man-hours worked generally the pattern of overall employment.

Information on financial performance was submitted by only one U.S. producer—DMC, the most significant member of the domestic industry—with a market share in excess of 50 percent. Sales of super snow grooming vehicles accounted for about two-thirds of DMC's total vehicle sales during 1977–1979. Although DMC provided separate data on super snow grooming operations, these data were the result of allocations on the basis of net sales of the various vehicles. Such information is inadequate for a Commission injury determination. The best available information was on DMC's experience in all products produced by the Logan Division, and therefore includes information on smaller over-snow vehicles as well as snow grooming implements.[31] The ratio of net operating profit to net sales grew from 1977 to 1978 before declining markedly in 1979. For January–September 1980, the ratio was sharply lower compared to the same period in 1979. The changes in profitability do not appear to be related in any manner to alleged LTFV imports. Sales and gross profit margins have grown rapidly. Primarily because of rapidly increasing general, administrative, and selling expenses, net profits have shrunk rapidly from their 1978 peak. A possible explanation of this phenomenon is that accounting techniques for these various expenses changed considerably when the Logan operations were acquired by DMC in July 1979.

Although continuing on to a final investigation could possibly clarify the industry's health particularly with respect to employment, inventories, and financial performance, the absence of any reasonable causal link between the imports and the industry's problems mandates a negative determination at the preliminary stage.

IV. Threat of Material Injury

A finding of threat of material injury "must be based on information showing that the threat is real and injury is imminent, not a mere supposition or conjecture."[32]

There is no indication that imports of Kassbohrer's super snow grooming vehicles will increase rapidly in the imminent future. At the present time, Valley's orders for 1981 are small and are consistent with import levels over the 1977–79 period. It has no standing inventory and could not make an immediate delivery to a potential purchaser. The long lead time for obtaining engines and various other parts should prevent any large increases in the U.S. sales of the West German product.

V. Conclusion

Section 733 of the Tariff Act of 1930[33] establishes the standards for preliminary determinations by the ITC during an antidumping investigation. The Commission is mandated to determine, "based on the best information available to it at the time * * *" that there is a "reasonable indication" of material injury or threatened material injury to a domestic industry by reason of imports of the subject merchandise. The statute does not elaborate on the "reasonable indication" requirement. However, the Senate Finance Committee has noted that the standard "is to be applied in essentially the same manner" as the predecessor standard of the Antidumping Act of 1921.[34]

In preliminary investigations, the Commission searches for a reasonable indication of injury by reason of the subject LTFV imports. When there was no reasonable indication that the imports are tied to material injury to the domestic industry, a negative determination resulted. In the present case, neither the petitioner nor the Commission's own efforts have been able to establish a reasonable indication of material injury or threatened material injury by reason of the alleged LTFV imports from West Germany.

Issued: December 22, 1980.

By Order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 80-40795 Filed 12-31-80; 8:45 am]

BILLING CODE 7020-02-M

[30] Report at A-8ff.

[31] Although only aggregated data on employment and financial performance were available, a determination on a narrow product line basis (as requested by the petitioner) was possible because of the distanct demand for super snow groomers and the availability of other information on this product line.

[32] S. Rept. No. 96-249, 96th Cong., 2d Sess. (1979) at 88-89.

[33] 19 U.S.C. 1671b.

[34] See Section 201(c)(2) of the Antidumping Act, 1921. *Also*, S. Rept. 96-249, 96th Cong., 2d Sess. (1979) at 66.

DEPARTMENT OF JUSTICE

Office of Justice Assistance, Research, and Statistics

National Advisory Committee for Juvenile Justice and Delinquency Prevention; Seminar on Standards for the Administration of Juvenile Justice

Notice is hereby given that the National Advisory Committee for Juvenile Justice and Delinquency Prevention (the NAC) will conduct a seminar, February 9, 1981 at the Eighth National Conference on Juvenile Justice in San Francisco, California. The seminar is open to the public.

The seminar will be held from 3:15–4:45 p.m. at the Sheraton-Palace Hotel, 639 Market at New Montgomery, San Francisco, California 94105.

The purpose of the seminar will be to present and hear public commentary on the *Intervention* and *Adjudication* chapters of the NAC *Standards for the Administration of Juvenile Justice.*

The presentation will be conducted by The Honorable Margaret C Driscoll, Past President of the National Council of Juvenile and Family Court Judges and Chair of the National Advisory Committee's Subcommittee on Standards.

For further information, please contact Dr. James C. Howell, NAC Coordinator, Office of Juvenile Justice and Delinquency Prevention, U.S.

Department of Justice, 633 Indiana Avenue, N.W., Washington, D.C. 20531.

Dated: December 30, 1980.

Ira M. Schwartz,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 81-187 Filed 1-2-81; 8:45 am]

BILLING CODE 4310-18-M

NUCLEAR SAFETY OVERSIGHT COMMITTEE

Open Meeting

December 30, 1980

The Nuclear Safety Oversight Committee (NSOC) will meet on January 20 and 21, 1981 from 9:00 am to 12:30 pm and 2:00 pm to 5:00 pm at the University of California at Santa Barbara, California. The meeting will be held in Cheadle Hall, Conference Room 5119.

The Commitee was established by Executive Order 12202 on March 18, 1980, in response to the recommendations of the President's Commission on the Accident at Three Mile Island (the Kemeny Commission). Generally, the Committee is responsible for monitoring the progress of the utilities and their suppliers, the Nuclear Regulatory Commission, other Federal agencies, and State and local authorities in implementing the Kemeny Commission's recommendations and in improving the safety of nuclear power. The Committee will report periodically to the President.

Thus far the Committee has held seven meetings, approximately one a month. The Committee has heard testimony and had discussion in a number of areas including:

The Nature of the Committee's responsibilities as set forth in Executive Order 12202;

The Nuclear Regulatory Commission's (NRC) "Action Plan Developed as a Result of the TMI-2 Accident," designated NUREG-0660 and available through the Document Management Branch, Division of Technical Information and Document Control, NRC, Washington, D.C. 20555;

The procedure utilized in the federal decision-making process as it relates to nuclear safety, and public and private participation;

FEMA's Report to the President (June 1980), and procedures for emergency planning;

The status of generic safety issues; the analysis and evaluation of operational data;

The NRC budget and allocation of its staff resources to implement the "Action Plan" and how that will affect other NRC functions;

NRC's inspection and enforcement program;

Backfitting and standardization of plant design;

The regulatory relationship between FEMA and NRC;

Nuclear safety research and training programs;

Quality control in plant design;

Labor/management problems, and the union's role in safety programs;

Human factors in nuclear power safety including training, control room design, balance of plant, and ANSI standards;

Action Plan provisions for human factors and training, and certification of operators;

Release of Iodine-131 as a consequence of nuclear power plant operations;

Problems of plant releases at nuclear power plants;

Planning of safety systems and balance of plant.

During the next meeting the Committee will receive testimony and, when appropriate, written materials and documents, concerning the following matters:

Issues concerning the TMI-1 restart hearings and their relationship to the TMI-2 accident;

Regulatory licensing and scientific and technical uncertainty—the case of hydrogen;

A panel discussion on nuclear power operator training.

Testimony on these matters will be received from a number of individuals specifically invited by the Committee.

The meeting will be open to public observation. Written comments or statements may be submitted at anytime before or after the meeting and should be related to the substantive matters identified above. Approximately 40 seats will be available for the public on a first come, first served basis. The Committee meeting will be recorded and the transcript may be examined in the Committee's office at 113 15th Street, N.W., Suite 307, Washington, D.C.

For further information contact Margo von Kaenel at (202) 653-8468

Margo W. von Kaenel,

Executive Assistant.

[FR Doc. 81-104 Filed 1-2-81; 8:45 am]

BILLING CODE 6820-01-M

OFFICE OF MANAGEMENT AND BUDGET

Agency Forms Under Review

Background

December 24, 1980.

When executive departments and agencies propose public use forms, reporting, or recordkeeping requirements the Office of Management and Budget (OMB) reviews and acts on those requirements under the Federal Reports Act (44 USC, Chapter 35). Departments and agencies use a number of techniques including public hearings to consult with the public on significant reporting requirements before seeking OMB approval. OMB in carrying out its responsibility under the Act also considers comments on the forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

Every Monday and Thursday OMB publishes a list of the agency forms received for review since the last list was published. The list has all the entries for one agency together and grouped into new forms, revisions, extensions (burden change), extensions (no change), or reinstatements. The agency clearance officer can tell you the nature of any particular revision you are interested in. Each entry contains the following information:

The name and telephone number of the agency clearance officer (from whom a copy of the form and supporting documents is available);

The office of the agency issuing this form;

The title of the form;

The agency form number, if applicable;

How often the form must be filled out;

Who will be required or asked to report;

The Standard Industrial Classification (SIC) codes, referring to specific respondent groups that are affected;

Whether small businesses or organizations are affected;

A description of the Federal budget functional category that covers the information collection;

An estimate of the number of responses;

An estimate of the total number of hours needed to fill out the form;

An estimate of the cost to the Federal Government;

The number of forms in the request for approval;

The name and telephone number of the person or office responsible for OMB review; and an abstract describing the need for and uses of the information collection.

Reporting or recordkeeping requirements that appear to raise no significant issues are approved promptly. Our usual practice is not to take any action on proposed reporting requirements until at least ten working days after notice in the Federal Register.

but occasionally the public interest requires more rapid action.

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained from the agency clearance officer whose name and telephone number appear under the agency name. The agency clearance officer will send you a copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, transmittal letters, and other documents that are submitted to OMB for review. If you experience difficulty in obtaining the information you need in reasonable time, please advise the OMB reviewer to whom the report is assigned. Comments and questions about the items on this list should be directed to the OMB reviewer or office listed at the end of each entry.

If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer of your intent as early as possible.

The timing and format of this notice have been changed to make the publication of the notice predictable and to give a clearer explanation of this process to the public. If you have comments and suggestions for further improvements to this notice, please send them to Jim J. Tozzi, Assistant Director for Regulatory and Information Policy, Office of Management and Budget, 726 Jackson Place, Northwest, Washington, D.C. 20503.

DEPARTMENT OF AGRICULTURE

Agency Clearance Officer—Richard J. Schrimper—202-447-6201

Extensions (Burden Change)

Animal and Plant Health Inspection Service
Epidemiologic investigation of brucellosis reactor herd
VS 4-108, 4-108A, 4-108B, and 4-108C
On occasion
Farms
Farms with brucellosis reactor livestock
Sic: 021 024
Agricultural research and services, 12,842 responses; 10,787 hours; $232,750 Federal cost; 4 forms
Charles A. Ellett, 202-395-7340
A national form is needed to achieve uniformity in the epidemiologic investigation and provide a suitable determining that appropriate follow-up action is accomplished on individual infected herds. A concerted effort through effective screening programs and extensive epidemiologic investigations is required to locate and eradicate brucellosis.

Departmental Administration
Application for reimbrusement of participant in a rulemaking proceeding
On occasion
Individuals or households/State or local governments/farms/businesses or other institutions
All those in public sector interested in USDA rulemaking
Agricultural research and services, 10 responses; 80 hours; $1,500 Federal cost; 1 form
Charles A. Ellett, 202-395-7340
Funds may be allotted at agency discretion for certain costs of participation in rulemaking actions when applicant is reasonably expected to contribute substantially to decision, demonstrates financial need, is from area affected, and is not otherwise adequately affected.

DEPARTMENT OF ENERGY

Agency Clearance Officer—Irene Montie—202-633-9464

Revisions

Energy Information Administration
Bulk Terminal Stocks Report
22
EIA-88 Monthly Businesses or other institutions
Bulk terminal operating companies
Sic: 517
Small businesses or organizations
Energy information, policy, and regulation, 1,968 responses; 1,968 hours; $29,534 Federal cost; 1 form
Jefferson B. Hill, 202-395-7340
As part of DOE's joint petroleum reporting system, the data are used as input for monitoring the supply and disposition of crude petroleum, petroleum products, and natural gas liquids.

Energy Information Administration
Refinery report
EIA-87
Monthly
Businesses or other institutions
Petroleum refineries
Sic: 291
Small businesses or organizations
Energy information, policy, and regulation, 4,332 responses; 17,328 hours; $62,000 Federal cost; 1 form
Jefferson B. Hill, 202-395-7340
The information collected will be used to monitor petroleum refinery operations and petroleum supply and demand.

Energy Information Administration
Crude oil stocks report
EIA-90
Monthly
Businesses or other institutions
Crude pipeline Co., crude oil producers, crude oil terminal
Sic: 641 517 131
Small businesses or organizations
Energy information, policy, and regulation, 3,852 responses; 15,408 hours; $29,534 Federal cost; 1 form
Jefferson B. Hill, 202-395-7340
As part of DOE's joint petroleum reporting system, the data are used as input for monitoring the supply and disposition of crude petroleum, petroleum products, and natural gas liquids.

Energy Information Administration
Pipeline products report
EIA-89
Monthly
Businesses or other institutions
Product pipeline companies
Sic: 461
Small businesses or organizations
Energy information, policy, and regulation, 1,008 responses; 3,024 hours; $29,534 Federal cost; 1 form
Jefferson B. Hill, 202-395-7340
As part of DOE's joint petroleum reporting system, the data are used as input for monitoring the supply and disposition of crude petroleum, petroleum products, and natural gas liquids.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency Clearance Officer—Joseph Strnad—202-245-7488

New

Health Care Financing Administration
Application for Federal assistance for ESRD network coordinating council
HCFA-1518
Annually
Businesses or other institutions
The coordinating council for each of the 32 ESRD networks
Sic: 808
Small businesses or organizations
Health, 32 responses; 3,200 hours; $210 Federal cost; 1 form
Richard Eisinger, 202-395-6880
This form, which is required by proposed regulations, will be used by the coordinating councils of each of the 32 end stage renal disease (ESRD) networks to apply for Federal funding.

Revisions

Social Security Administration
Letter to employer requesting earnings information for SSI
SSA-L-4201
On occasion
Businesses or other institutions
Any employer having wages to report for an SSI claimant/recipient
Sic: 944
Small businesses or organizations
Public assistance and other income supplements, 133,000 responses; 11,083 hours; $248,710 Federal cost; 1 form

Barbara P. Young, 202-395-6880
This form letter is used in supplemental security income claims to establish claimant/recipient's wages when an individual is unable to provide necessary evidence.

Extensions (Burden Change)

Center for Disease Control
Study of coalworkers' pneumoconiosis
CDC/NIOSH 2.18
On occasion
Individuals or households
Working coalminers
Health, 4,000 responses; 1,000 hours; 1 form
Richard Eisinger, 202-395-6880
The data collected are needed to evaluate the effectiveness of new dose standards on retarding the rates of progression of coal workers' pneumoconiosis and other respiratory ailments associated with coal mining. This study helps to identify miners who are developing respiratory disease at early stages and guides the miner and his physician to take appropriate steps to prevent pneumoconiosis from becoming disabling.

Reinstatements

Alcohol, Drug Abuse, and Mental Health Administration
Community mental health centers panel survey
Nonrecurring
Businesses or other institutions
CMHC staff
Health, 32 responses; 192 hours; 1 form
Richard Eisinger, 202-395-6880
This survey of clients in community mental health centers (CMHC's) will be conducted to enlist the cooperation of each of the participating CMHC's and to develop a methodology for data retrieval. This will be accomplished by a series of site visits to each center. This submission includes question to be asked at each of the CMHC's and the tasks to be performed during each site visit.

DEPARTMENT OF JUSTICE

Agency Clearance Officer—Donald E. Larue—202-633-3526.

New

Office of Justice Assistance, Research and Statistics
Directory of criminal justice information sources entry questionnaire
NIJ (series 6640)
Biennially
State or local governments/businesses or other institutions agencies providing information about criminal justice
Sic: 922
Criminal justice assistance, 125 responses; 38 hours; $12,225 Federal cost; 1 form
Andy Uscher, 202-395-4814
The directory of criminal justice information sources facilitates information exchange among criminal justice professionals and other interested parties. This centralized listing of U.S. organizations providing information and services in various criminal justice areas includes a description of each agency, its areas of interest and activity, user restrictions, and contact information.

DEPARTMENT OF LABOR

Agency Clearance Officer—Paul E. Larson—202-523-6341.

New

Occupational Safety and Health Administration
Initial application for training and education grant
OSHA-177 SF-424
On occasion
Businesses or other institutions
Nonprofit organizations that provide safety and health training to emp.
Sic: multiple
Small businesses or organizations
Consumer and occupational health and safety, 300 responses; 60,000 hours; $0 Federal cost; 2 forms
Arnold Strasser, 202-395-6880
The application package is submitted by parties interested in participating in the program. The application is used by OSHA staff to select organizations that can effectively carry out the objectives of the program. Information requested includes: Detailed description of proposed program, project summary, standard form 424 (Federal assistance), OMB budget information sheets, detailed breakdown of budget, and biographical sketches of key personnel.

Extensions (Burden Change)

Labor-Management Services Administration
Simplified annual report format
LMSA-SAR-1
Annually
Businesses or other institutions
Labor unions
Sic: 863
Small Businesses or organizations
Other labor services, 5,000 responses; 417 hours; $7,500 Federal cost; 0 form
Arnold Strasser, 202-395-6880
On April 9, 1976, a notice of proposed amendments to 29 CFR 403.4(b) was published to provide for simplified reporting under the LMRDA for local unions which are not in trusteeship, have no assets, liabilities, receipts and disbursements and meet other specified conditions.

Bureau of Labor Statistics
Producer price indexes, by industry
BLS-1810 A thru F BLS-473P
Monthly
Businesses or other institutions
Manufacturing establishments in SBL. sic's in mining and manufacturing
Sic: Multiple
Small businesses or organizations
Other labor services, 136,900 responses; 57,800 hours; $8,300,000 Federal cost; 6 forms
Office of Federal statistical policy and standard, 202-673-7974
The form is used to collect price information for the producer price index, which is one of the Nation's most important economic indicator. The burden will increase each year until a steady state is reached.

Bureau of Labor Statistics
Current point of purchase questionnaire
CPP-1, CPP-2A, CPP-2B, CPP-3
Annually
Individuals or households
HSDHLDS in 86 SBL. SMSA's and smaller cities (W/N.Y. divided)
Other labor services, 5,328 responses; 6,132 hours; $937,600 Federal cost; 4 forms
Office of Federal statistical policy and standard, 202-673-7974
The survey is needed to obtain information on where consumers purchase the items. This information is used to update the outlet sample for the consumer price index data collection. The project is required in order to maintain the accuracy of the consumer price index. Funds for this purpose were specifically requested and received from the Congress during the fiscal year 1977 appropriations process.

DEPARTMENT OF STATE

Agency Clearance Officer—Gail J. Cook—202-632-3538.

Reinstatements

Administration of Foreign Affairs
Report of birth (U.S. citizens born abroad)
FS-240
On occasion
Individuals or households
U.S. citizen abroad registering child
Conduct of foreign affairs, 35,000 responses; 8,750 hours; 1 form
Phillip T. Balazs, 202-395-4814
FS-240 is used by Foreign Service posts to record the birth abroad of U.S. citizens. This form in many instances is the most satisfactory record available of the child's birth.

VETERANS ADMINISTRATION

Agency Clearance Officer—R. C. Whitt—202-389-2146.

Revisions

Notice to VA of veteran or beneficiary incarcerated in penal institution
VA21-4193
On occasion
State or local governments
Penal institutions
Sic: 922
Income security for veterans, 5,000 responses; 417 hours; $4,175 Federal cost; 1 form
Laverne V. Collins, 202-395-6880
This form is used to obtain information regarding the incarceration of any individual in receipt of or for whom benefits are paid. When such an individual is incarcerated, benefits must be discontinued until release from incarceration. Authority is 38 U.S.C. 505.

C. Louis Kincannon,
Deputy Assistant Director for Reports Management.

[FR Doc. 81-06 Filed 1-2-81; 8:45 am]

BILLING CODE 3110-01-M

Agency Forms Under Review

December 29, 1980.

Background

When executive departments and agencies propose public use forms, reporting, or recordkeeping requirements, the Office of Management and Budget (OMB) reviews and acts on those requirements under the Federal Reports Act (44 USC, Chapter 35). Departments and agencies use a number of techniques including public hearings to consult with the public on significant reporting requirements before seeking OMB approval. OMB in carrying out its responsibility under the Act also considers comments on the forms and recordkeeping requirements that will affect the public.

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The office of the agency issuing this form;

The title of the form;

The agency form number, if applicable;

How often the form must be filled out;

Who will be required or asked to report;

The Standard Industrial Classification (SIC) codes, referring to specific respondent groups that are affected;

Whether small businesses or organizations are affected;

A description of the Federal budget functional category that covers the information collection;

An estimate of the number of responses;

An estimate of the total number of hours needed to fill out the form;

An estimate of the cost to the Federal Government;

The number of forms in the request for approval;

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Comments and Questions

Copies of the proposed forms and supporting documents may be obtained from the agency clearance officer whose name and telephone number appear under the agency name. The agency clearance officer will send you a copy of the proposed form, the request for clearance (SF83), supporting statement, instructions, transmittal letters, and other documents that are submitted to OMB for review. If you experience difficulty in obtaining the information you need in reasonable time, please advise the OMB reviewer to whom the report is assigned. Comments and questions about the items on this list should be directed to the OMB reviewer or office listed at the end of each entry.

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DEPARTMENT OF AGRICULTURE

Agency Clearance Officer—Richard J. Schrimper—202-447-6201.

Revisions

• Economics and Statistics Service
Farm production expenditure survey
Annually
Farms
Livestock and crop producers
Sic: 029 019
Small businesses or organizations
Agricultural research and services, 36,900 responses; 16,817 hours; $2,250,000 Federal cost; 1 form
Office of Federal statistical policy and standard, 202-673-7974
Provides data on farm production expenditures to compute parity index weights and two components of index which are prices for farm services and cash rent. Parity index used by analysts throughout Government in drafting farm policy legislation.

DEPARTMENT OF COMMERCE

Agency Clearance Officer—Edward Michals—202-377-3627

Extensions (Burden Change)

• National Oceanic and Atmospheric Administration
Data documentation form
NOAA 24-13
On occasion
Individuals or households/businesses or other institutions scien. within govt. and uni. who have partic. in oceanograph
Other natural resources, 1,000 responses; 1,000 hours; 1 form
William T. Adams, 202-395-4814
Assist in acquiring, processing, preserving and disseminating oceanographic data. The user will be able to identify and understand the data and thus determine their applicability to his/her research problem. P. Hadsell (202) 634-7505.

Extensions (No Change)

• International Trade Administration
Tailored export marketing plan application
ITA-4072 ITA-4072P
On occasion
Businesses or other institutions
U.S. firms inexper. in export. desirous of init. sales
Sic: All
Small businesses or organizations

Other advancement and regulation of commerce, 80 responses; 160 hours; 1 form
William T. Adams, 202-395-4814
Form is necessary to convey U.S. firm's interest in and commitment to utilizing a tailored export marketing plan (Temp) as a tool in the development of its export business. Information will be used to acquaint USDOC analyst with the firm, its product/service, and to provide knowledge and guidance for the analyst in the evaluation and development of a Temp.

• Economic Development Administration
Interview guide for Indian economic development
Evaluation
ED-446Q
Nonrecurring
State or local governments
Members of Indian tribes
Sic: Multiple
Area and regional development, 360 responses; 180 hours; $120,000 Federal cost; 5 forms
William T. Adams, 202-395-4814
To evaluate the impact of EDA's Indian initiative (based on 42 USC 3151(c)).

DEPARTMENT OF ENERGY

Agency Clearance Officer—Irene Montie—202-633-9464

Revisions

• Economic Regulatory Administration
Refiners' monthly cost allocation report [1]
EIA-14
Monthly
Businesses or other institutions
All persons and/or firms who are defined as refiners
Energy information, policy, and regulation, 3,600 responses; 54,000 hours; $350,000 Federal cost; 1 form
Jefferson B. Hill, 202-395-7340
The EIA-14 will be used by DOE to monitor certain cost and price movements within the petroleum industry and to ensure compliance with price control regulations.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency Clearance Officer—Joseph Strnad—202-245-7488

New

• National Institutes of Health
The cancer construction program: Program instructions
PHS 5162
On occasion
Businesses or other institutions
Biomedical research institutions
Sic: Multiple
Health, 20 responses; 480 hours; $2,500 Federal cost; 1 form
Richard Eisinger, 202-395-6880
Provides supplemental program instructions for completion of standard construction application form. It provides instructions for completing a construction application to assure proper and complete peer review by NCI and is required of all applicants requesting NCI construction funds.

• Health Resources Administration
An evaluation of enrollment trends of minority students in pre-health sciences and health sciences schools—student panel survey
Nonrecurring
Individuals or households
Applicants to medical and dental schools
Health, 3,000 responses; 1,200 hours; $72,000 Federal cost; 2 forms
Richard Eisinger, 202-395-6880
The data to be collected are needed for the analysis of barriers to minorities in pursuing medical and dental careers. The data will be used to develop policies designed to increase minority representation in the health professions, and thus improve health care delivery to minority populations.

Extensions (Burden Change)

• Health Resources Administration
A study of dental health-related and process outcomes with prepaid dental care
Nonrecurring
Individuals or households
Probability sample of U.S. households and referrals to insur.
Health, 22,508 responses; 6,749 hours; $0 Federal cost; 5 forms
Richard Eisinger, 202-395-6880
A full-price demand model will be deployed to analyze the effects of dental prepaid insurance on the consumption of dental services and dental health outcomes in the United States study results will facilitate the interpretation of at least price as a policy variable including the effects of dental plan characteristics as mechanisms for policy implementation.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Agency Clearance Officer—Robert G. Masarsky—202-755-5184

Extensions (Burden Change)

• Community Planning and Development
Urban renewal program physical progress report
HUD-6000 and 6000A
Annually
State or local governments
Units of loc. gov't with still active urban renewal proj.
Community development, 118 responses; 1,416 hours; 2 forms
Richard Sheppard, 202-395-6880
Pub. L. 81-171 sec. 106(h) requires the local public agencies contracts to be in substantial accordance with the urban renewal plan. This form is necessary for HUD to monitor contracts in progress, and as a source of information to be used in status reports by the secretary.

Community Planning and Development
Report on budgetary status and project balance sheet
HUD-6250 and 6251
Semiannually
State or local governments
Units of loc. govt with still active urban renewal proj.
Community development, 236 responses; 1,416 hours; 2 forms
Richard Sheppard, 202-395-6880
Pub. L. 81-171, sec. 103(a)(2). This form is designed to reflect any changes from the latest approved project cost estimate and the effect of such changes on net project cost and the sharing of net project cost.

Community Planning and Development
Redevelopers statement for public disclosure and statement of qualifications and financial responsibility
HUD 6004 6004A
Annually
Businesses or other institutions
Pers and redevelopers or real property
Small businesses or organizations
Community development, 1,085 responses; 4,340 hours; 2 forms
Richard Sheppard, 202-395-6880
Form HUD-6004 is for the guidance of the LPA in prescribing the information to be furnished by proposed redevelopers as evidence of their qualifications to undertake the obligations to be improsed under proposed agreements for the purchase or lease of project property and redevelopment or rehabilitation. Pub. L. 81-171, sec. 105(E).

Extensions (No Change)

Community Planning and Development
Project cost estimate and financing plan
HUD-6200
On occasion
State or local governments
N units of loc. govt with still active urban renewal proj.
Community development, 60 responses; 960 hours; 1 form

[1] At the request of the agency, the 10-day public comment period has been waived. However, public comment will still be carefully considered, and any changes will be made whenever possible.

Richard Sheppard, 202-395-6880
Pub. L. 81-171 sec. 103 requires HUD to obtain gross and net project cost from the urban renewal program local public agencies. This plan.

DEPARTMENT OF JUSTICE

Agency Clearance Officer—Donald E. Larue—202-633-3526

Extensions (No Change)

Immigration and Naturalization Service
Data relating to beneficiary of private bill
G-79A
Nonrecurring
Individuals or households
Parties to private bills
Federal law enforcement activities, 500 responses; 500 hours; 1 form
Andy Uscher, 202-395-4814
Information needed in order to make report concerning private bill to the Congress when requested.

DEPARTMENT OF LABOR

Agency Clearance Officer—Paul E. Larson—202-523-6341

New

Employment and Training Administration
National longitudinal survey of work experience of mature men, questionnaire and letter
LGT-1111, LGT-1113, MT-290 (ETA)
Annually
Individuals or households
Men 45-59 in 1966
Training and employment, 22,600 responses; 19,360 hours; $1,600,000 Federal cost; 3 forms
Arnold Strasser, 202-395-6880
The NLS cohorts represent unique data collection efforts since they (1) permit longitudinal examination of labor force behavior patterns, which usually can only be analyzed cross-sectionally, (2) provide economic, social, demographic, and environmental data for in-depth analysis of this behavior, and (3) include detailed information about Government employment and training programs necessary for improving these programs and devel new ones.

Revisions

Employment and Training Administration
National longitudinal survey of work experience of (mature women) 1981
LGT-3103 (census) LGT-3101, MT-290 (ETA)
Other—See SF83
Individuals or households
Women 30-44 in 1967
Training and employment, 22,600 responses; 19,360 hours; $1,600,000 Federal cost; 3 forms
Arnold Strasser, 202-395-6880
The information provided in this survey will be used by the Department of Labor to help develop programs designed to ease the employment and unemployment problems faced by women in this age group.

PEACE CORPS

Agency Clearance Officer—Richard Celeste—202-254-7970

Revisions

Peace Corps volunteer background information form
PC-5/A-857
On occasion
Individuals or households
All appli. for Peace Corps volunteer service
Foreign economic and financial assistance, 10,000 responses; 3,300 hours; $1,000 Federal cost; 2 forms
Phillip T. Balazs, 202-395-4814
All Peace Corps volunteers shall be investigated to insure that their service is consistent with the national interest in accordance with the standards and procedures established by the President. Information requested to provide this check is name/other names used: Places of residence, and armed services serial number.

ENVIRONMENTAL PROTECTION AGENCY

Agency Clearance Officer—Mr. Mel Kollander—202-287-0754

New

Cost or price summary format for subagreements under U.S. EPA grants
5700-41
On occasion
Businesses or other institutions
Contractors under EPA grants
Sic: 891 495
Small businesses or organizations
Pollution control and abatement, 8,000 responses; 16,000 hours; $0 Federal cost; 1 form
Edward H. Clarke, 202-395-7340
The data submitted is used in negotiations with the contractor and is used to verify that the costs and prices appear acceptable for award.

VETERANS ADMINISTRATION

Agency Clearance Officer—R. C. Whitt—202-389-2146

Revisions

Request for postponement of offsite or exterior onsite improvements—home loan
26-1847
On occasion
Businesses or other institutions/individuals or households veterans, lenders
Sic: 612 616
Small businesses or organizations
Veterans housing, 32,000 responses; 16,000 hours; $54,080 Federal cost; 1 form
Laverne V. Collins, 202-395-6880
Veterans' and lenders' request for guaranty of home loan, for which offsite or exterior onsite improvements are incomplete, to permit guraranty of loan and veteran's occupancy of property. Form provides basic information for VA determinations as to whether loan funds where properly disbursed as required by VA regulations 4301(n) and 403(d).

Consumer sampling letter (questionnaire re quality of service rendered
FL 270652
On occasion
Individuals or households
Veterans
Other veterans benefits and services, 18,000 responses; 3,000 hours; $27,750 Federal cost; 1 form
Laverne V. Collins, 202-395-6880
Responses obtained from this letter provide an indication to supervisors of quality of service being provided and whether there is a need for closer supervision, 38 U.S.C. 210 and 219B.

C. Louis Kincannon,
Deputy Assistant Director for Reports Management.

[FR Doc. 81-109 Filed 1-2-81; 8:45 am]
BILLING CODE 3110-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 11518; 811-2656]

American Music Stores, Inc.; Application

December 24, 1980.

Notice is hereby given that American Music Stores, Inc. ("Applicant"), P.O. Box 126, Bloomfield Hills, Mich. 48013, a closed-end, non-diversified management investment company registered under the Investment Company Act of 1940 ("Act"), filed an application pursuant to Section 8(f) of the Act on January 28, 1980, and an amendment thereto on July 31, 1980, for an order of the Commission declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

On July 28, 1976, Applicant registered under the Act and on October 29, 1976, Applicant filed its registration statement on form N-8B-1. Applicant states that it has not issued any securities to the public since becoming a registered investment company and has not filed any registration statements under the Securities Act of 1933. Applicant represents that its only public offering took place in 1965 when it was an operating company. The application states that it was Applicant's intention to liquidate and dissolve from the time it filed its registration statement. According to the application, Applicant's board of directors adopted a plan of liquidation on August 11, 1977, and December 9, 1977. On November 28, 1978, Applicant's shareholders approved of Applicant's dissolution and on that date the board of directors authorized the creation of a liquidating trust in accordance with the plan of liquidation. Applicant represents that its certificate of dissolution was filed with the state of Delaware on December 11, 1978, and that Applicant was dissolved in accordance with Delaware law. The application states that Applicant is not a party to any litigation or administrative proceedings.

Applicant states that a first liquidating distribution has been made to all shareholders except those who failed to file necessary forms and that a final liquidating distribution has been made to all shareholders except those failing to return their stock certificates. Applicant indicates that it has set aside funds to pay first and final liquidating distributions to such shareholders. According to the application, as of June 20, 1980, 62 shareholders, who own 2,392 shares of Applicant's common stock in the aggregate, did not receive the first liquidating distribution for failure to file necessary forms, and are entitled to $26,192.40 in the aggregate as a first liquidating distribution. In addition, Applicant states that as of June 20, 1980, 222 shareholders, owning 35,114 shares of Applicant's common stock in the aggregate, did not receive the final liquidating distribution for failure to submit stock certificates, and are entitled to $31,953.74 in the aggregate. Applicant represents that except for a broker owning 1,000 shares on behalf of customers, it has been unable to locate the shareholders who failed to file necessary forms. The application states that a representative of Applicant has attempted to locate such shareholders: (1) by reviewing the Detroit telephone directory to determine whether any such stockholders have a different address; (2) by placing an advertisement in the April 30, 1980, edition of the Detroit Free Press; (3) by placing an advertisement in the June 5, 1980, Mid-Western edition of the Wall Street Journal; (4) by placing an advertisement in the June 11, 1980, Western edition of the Wall Street Journal; (5) by placing an advertisement in the June 11, 1980, Eastern edition of the Wall Street Journal; and (6) by placing an advertisement in the June 11, 1980, South-Western edition of the Wall Street Journal.

Applicant states that the Detroit Bank and Trust Company will hold the amounts due such shareholders until the necessary filings are made or until the time periods have elapsed such that the amounts pass under the escheat laws of the various states to the shareholder's last known state of residence, based upon Applicant's books. Applicant further states that as of June 20, 1980, $26,500 in cash and commercial paper was held by the trustee of the liquidating trust at the National Bank of Detroit for the payment of all known and contingent liabilities of Applicant and costs of liquidation, which do not include liquidating distributions. According to the application, the trustee estimates that all such amounts will be distributed within 60 to 90 days from the receipt of the requested order and the filing of final tax returns. Applicant states that any amounts not required for the payment of known and contingent liabilities of Applicant and costs of liquidation will be donated to charity, subject to approval of Applicant's board of directors. Applicant estimates these amounts to be less than $7,000.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order and upon the effectiveness of such order, the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than January 12, 1981, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-40798 Filed 12-31-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 17401; SR-BSE-80-7]

Boston Stock Exchange, Inc.; Order Approving Proposed Rule Change

December 24, 1980.

On November 3, 1980, the Boston Stock Exchange, Inc., 53 State Street, Boston, MA 02109, filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) ("Act") and Rule 19b-4 thereunder, copies of a proposed rule change which amends Chapter II, Section 23 of its Rules which governs off-floor transactions to conform its provisions with the requirements of Commission Rule 19c-3 under the Securities Exchange Act.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-17309, November 17, 1980) and by publication in the **Federal Register** (45 FR 77212, November 21, 1980). No comments with respect to the proposed rule change were received.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchange and in particular, the requirements of Section 6(b)(5) and 11(a)(1) and the rules and regulations thereunder in that by expanding the market in which a public order may be executed it removes impediments to and perfects the mechanism of a free and open market and a national market system.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-40798 Filed 12-31-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 11516; 812-4758]

Daily Tax Exempt Cash Fund, Inc.; Filing of an Application

December 24, 1980.

Notice is hereby given that Daily Tax Exempt Cash Fund, Inc. ("Applicant"), 3600 South Yosemite Street, Denver, Colo. 80237, registered under the Investment Company Act of 1940 ("Act"), as an open-end, diversified management investment company, filed an application on October 30, 1980, and an amendment thereto on December 5, 1980, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting the Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder to the extent necessary to permit the Applicant to value its portfolio securities using the amortized cost method of valuation. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it is a "money market" fund designed as an investment vehicle for investors with temporary cash balances or cash reserves who are seeking income exempt from Federal income taxes. In this regard, Applicant represents that its objective is to seek maximum short-term interest income exempt from Federal income taxes to the extent consistent with low capital risk and the maintenance of liquidity.

Applicant states that its portfolio may, as a matter of fundamental investment policy, be invested in debt obligations ("municipal securities") issued by states, territories and possessions of the United States and by the District of Columbia and their political subdivisions, duly constituted authorities and corporations. According to the application, these portfolio securities will either be backed by the full faith and credit of the United States, or be rated Aaa or Aa, MIG-1 or MIG-2 by Moody's Investor Services, Inc., or AAA or AA, or A-1 or A-2 by Standard & Poor's Corporation, Inc. Applicant further represents that it may also purchase municipal securities which are neither rated nor backed by the full faith and credit of the United States if, in the opinion of Applicant's directors, such securities possess creditworthiness comparable to those rated securities in which the Applicant may invest. Applicant states that from time to time for defensive purposes on a temporary basis its portfolio may also be invested in taxable short-term investments subject to the same quality limitations applicable for rated municipal securities. In addition, Applicant states that its portfolio securities will mature not later than one year from the date of acquisition, and the Applicant will maintain a dollar weighted average portfolio maturity of 120 days or less.

As here pertinent, Section 2(a)(41) of the Act defines value to mean: (1) with respect to securities for which market quotations are readily available, the market value of such securities, and (2) with respect to other securities and assets, fair value as determined in good faith by the board of directors. Rule 22c-1 adopted under the Act provides, in part, that no registered investment company or principal underwriter therefor issuing any redeemable security shall sell, redeem or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or to sell such security. Rule 2a-4 adopted under the Act provides, as here relevant, that the "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for the purposes of distribution and redemption shall be an amount which reflects calculations made substantially in accordance with the provisions of that rule, with estimates used where necessary or appropriate. Rule 2a-4 further states that portfolio securities with respect to which market quotations are readily available shall be valued at current market value, and that other securities and assets shall be valued at fair value as determined in good faith by the board of directors of the registered company. Prior to the filing of the application, the commission expressed its view that, among other things: (1) Rule 2a-4 under the Act requires that portfolio instruments of "money market" funds be valued with reference to market factors, and (2) it would be inconsistent, generally, with the provisions of Rule 2a-4 for a "money market" fund to value its portfolio instruments on an amortized cost basis (Investment Company Act Release No. 9786, May 31, 1977). In view of the foregoing, Applicant requests exemptions from Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder to the extent necessary to permit Applicant to value its portfolio by means of the amortized cost method of valuation.

In support of the relief requested, Applicant states that experience indicates that two features are necessary in a "money market" fund, namely, certainty of stability of principal and a steady flow of predictable and competitive investment income. Applicant asserts that by maintaining a portfolio of high quality, short-term money market instruments valued at amortized cost it can provide these features to investors. Applicant represents that its directors have properly determined in good faith under the provisions of the Act to value the portolio of Applicant by use of the amortized cost method and that this method is in the best interest of its shareholders. Applicant believes that experience has shown that, given the unique nature of Applicant's policies and operations, there should be a negligible discrepancy between prices obtained by the amortized cost method and those obtained by a market valuation method. Applicant further represents that its directors have determined in good faith, in light of the characteristics of Applicant, that the amortized cost method of valuation of portfolio instruments is appropriate and preferable to the use of a market valuation method, and that its directors have further determined to continuously monitor valuation indicated by methods other than amortized cost so that any necessary changes in the valuation method may be made to assure that the valuation method being used is a fair approximation of fair value in view of all pertinent factors.

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act or any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant consents to the imposition of the following conditions in any order granting the exemptive relief it requests:

1. In supervising Applicant's operations and delegating special

responsibilities involving portfolio management to Applicant's investment adviser, Applicant's board of directors undertakes—as a particular responsibility within the overall duty of care owed to shareholders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objectives, to stabilize Applicant's net asset value per share, as computed for the purposes of distribution, redemption and repurchase, at $1.00 per share.

2. Included within the procedures to be adopted by the board of directors shall be the following:

(a) Review by the board of directors, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per share as determined by using available market quotations from Applicant's $1.00 amortized cost price per share, and the maintenance of records of such review.[1]

(b) In the event such deviation from Applicant's $1.00 amortized cost price per share exceeds ½ of 1 percent, a requirement that the directors will promptly consider what action, if any, should be initiated.

(c) Where the board of directors believes the extent of any deviation from Applicant's $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which may include: redemption of shares in kind; selling portfolio instruments prior to maturity to realize capital gains or losses, or to shorten the average maturity of portfolio instruments of Applicant; withholding dividends; or utilizing a net asset value per share as determined by using market quotations.

3. Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that it will not (a) purchase any instrument with a remaining maturity of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity which exceeds 120 days.[2]

4. Applicant will record, maintain, and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in paragraph 1, above, and Applicant will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the directors' consideration and actions taken in connection with the discharge of their responsibilities, as set forth above, to be included in the minutes of the directors' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act, as if such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

5. Applicant will limit its portfolio investments, including repurchase agreements, to those United States dollar denominated instruments which the directors determine present minimal credit risks, and which are of "high quality" as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the directors.

6. Applicant will include in each quarterly report, as an attachment to Form N-1Q, a statement as to whether any action pursuant to paragraph 2(c) above was taken during the preceding fiscal quarter and, if any such action was taken, will describe the nature and circumstances of such action.

Notice is further given that any interested person may, not later than January 19, 1981, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-40601 Filed 12-31-80; 8:45 am]

BILLING CODE 6010-01-M

[1] To fulfill this condition, Applicant intends to use actual quotations or estimates of market value reflecting current market conditions chosen by the directors in the exercise of their discretion to be appropriate indicators of value which may include, inter alia, (1) quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of money market instruments published by reputable sources.

[2] In fulfilling this condition, if the disposition of a portfolio security results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest its available cash in such a manner as to reduce the dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

[Release No. 11517; 811-3026

Delaware Cash Reserve II, Inc.; Filing of an Application

December 24, 1980.

Notice is hereby given that Delaware Cash Reserve II, Inc. ("Applicant"), Seven Penn Center Plaza, Philadelphia, Pa. 19103, an open-end, diversified management investment company registered under the Investment Company Act of 1940 ("Act"), filed an application pursuant to Section 8(f) of the Act on November 13, 1980, for an order of the Commission declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it registered under the Act on March 27, 1980 and that it has merged with Delaware Cash Reserve, Inc. According to the application, the board of directors of Applicant and Delaware Cash Reserve, Inc., met on various occasions and at a special meeting held August 5, 1980, adopted a plan of merger which would take place on August 13, 1980. Applicant states that Delaware Cash Reserve, Inc., made an offer to Applicant's shareholders on August 6, 1980, to exchange shares on a share for share basis at the close of business on August 13, 1980. The application states that immediately prior to the exchange, a dividend was paid to Applicant's shareholders for income earned through August 13, 1980. Applicant represents that shareholders who did not respond to the offer of exchange were

automatically exchanged, while shareholders who objected in writing to the exchange were redeemed involuntarily and checks were sent to them for the proceeds of their shares. Applicant states that immediately prior to the merger it had 5,690,724 shares of common stock outstanding and a net asset value per share of $10.00 on an amortized cost basis and $9.997 per share on a mark to market basis. The application states that articles of merger were filed with the state of Maryland on August 13, 1980.

Applicant further states that total costs in connection with the merger were $21,525, which were borne by Delaware Management Company, Inc., Applicant's investment manager. Applicant represents that all of its assets, which consisted of money market instruments, were acquired at their value on an amortized cost basis by Delaware Cash Reserve, Inc., and that no brokerage commissions were paid. The application states that Applicant has no securities holders and is not now engaged nor proposes to engage in any business activity.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order and upon the effectiveness of such order, the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than January 13, 1981, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-40600 Filed 12-31-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 11515; 812-4226]

Insured Municipals-Income Trust, et al.; Application

December 24, 1980.

Notice is hereby given that Insured Municipals-Income Trust (the "Municipal Fund"), Investors' Corporate-Income Trust (the "Corporate Fund"), Investors' Governmental Securities-Income Trust (the "Government Fund"), Investors' Quality Tax-Exempt Trust (the "Tax-Exempt Fund"), Investors' Municipal Pennsylvania Unit Trust ("IMPUT"), Pennsylvania Insured Municipal Bond Trust (the "Pennsylvania Insured Fund") and New York Insured Municipal Bond Trust (the "New York Fund"), registered under the Investment Company Act of 1940 (the "Act") as unit investment trusts (collectively referred to herein as the "Funds"), their sponsor, Van Kampen Filkin & Merritt, Inc., and a co-sponsor of the Corporate Fund, Dain Bosworth Incorporated (collectively referred to as the "Applicants"), c/o Van Kampen Filkin & Merritt, Inc., 208 South LaSalle Street, Chicago, Ill. 60604, filed an applicaton on December 8, 1980, requesting an order of the Commission amending in the manner described below an earlier order of the Commission dated August 12, 1980 (Investment Company Act Release No. 11300), which earlier order amended other orders of the Commission dated June 29, 1979 (Investment Company Act Release No. 10752), November 28, 1978 (Investment Company Act Release No. 10498), October 17, 1978 (Investment Company Act Release No. 10442), and January 31, 1978 (Investment Company Act Release No. 10109).

The above orders pursuant to Section 6(c) of the Act exempted from the provisions of Section 22(d) of the Act the offer and sale of units of such Funds pursuant to a conversion option (the "Plan"), and pursuant to Section 11 of the Act permitted such Funds to offer their units at net asset value plus a fixed dollar sales charge pursuant to the Plan. Applicants propose to extend the conversion option to certificateholders of Series 1 and subsequent series (as such series may from time to time be created) of the New York Fund and to increase the sales charge imposed on all such exchange transactions from $15.00 per unit to $25.00 per unit. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Under the Plan a certificateholder in one of the Funds wishing to dispose of his units in a series of that Fund for which a secondary market is being maintained has the option to convert his units into units of another Fund (e.g., Corporate into Municipal, or Municipal into Government) of any series for which units are available for sale. The Applicants state that the purpose of the Plan is to provide investors in each of the Funds a convenient and less costly means of transferring interests as their investment requirements change. The Applicants state that the respective sponsors have indicated that they intend to maintain a market for the units of each series of the respective Funds; however, there is no obligation to maintain such a market. Consequently, the respective sponsors reserve the right to modify, suspend or terminate the Plan at any time without further notice to certificateholders.

Under the Plan, as amended, the Applicants state that each exchange transaction operates in a manner essentially identical to any secondary market transaction except that a certificateholder wishing to exercise the conversion privilege must have held his Fund units for at least eight months prior to any such conversion.

The portfolio securities of the Municipal Fund, the Government Fund, the Tax-Exempt Fund, IMPUT and the Pennsylvania Insured Fund ("Daily Valued Funds") are valued on a daily basis, and the secondary market for units of the Daily Valued Funds is maintained at a price based on the bid side evaluation of the underlying portfolio securities for each Fund. The New York Fund will operate as a Daily Valued Fund. The portfolio securities of the Corporate Fund are valued on a weekly basis for secondary market transactions at a price based on the offering side evaluation of such securities. The Applicants state that the following sales charges apply to secondary market transactions in units of the Municipal Fund, Tax-Exempt Fund, Government Fund, IMPUT, the Pennsylvania Insured Fund and Corporate Fund, 5.7%, 5.9%, 4.0%, 5.9%, 5.7% and 4.5%, respectively, of the

related public offering prices for such Funds. Thus, under the Plan the purchase of units from certificateholders of the Daily Valued Funds is made at prices based on the bid side evaluation of the units of such Funds being purchased, and the resale of units upon conversion to such certificateholders is made at prices based on the bid side evaluation of units in the case of resales of units of the other Daily Valued Funds and at prices based on the offering side evaluation of units in the case of resales of units of the Corporate Fund. In the case of purchases of units from certificateholders of the Corporate Fund, prices are based on the offering side evaluation of the units being purchased, and resales of units upon conversion to such certificateholders are made at prices based on the bid side evaluation of units of the Daily Valued Funds being sold.

Applicants hereby seek to extend the Plan to certificateholders of Series 1 and subsequent series (as such series may from time to time be created) of the New York Fund, a unit investment trust sponsored by Van Kampen Filkin & Merritt, Inc. The New York Fund will be comprised of securities the interest income from which is exempt from both federal and New York state and local income taxes. The Fund has an insurance feature virtually identical to that in the Municipal Fund. Applicants propose to allow New York Fund certificateholders to use the proceeds from the sale of units of the New York Fund to acquire units in any series or group of series of any one or more than one of the Daily Valued Funds and/or the Corporate Fund. In connection therewith, the New York Fund will be treated exactly the same as the Daily Valued Funds and all sales and acquisitions related thereto will consequently be based on the same terms and be subject to the same conditions referred to above, as such terms and conditions relate to transactions in the Daily Valued Funds.

Applicants assert that the rationale for allowing certificateholders of the Municipal Fund, Tax-Exempt Fund, Government Fund, IMPUT, the Pennsylvania Insured Fund or Corporate Fund to participate in the Plan and effect exchange transactions at a reduced sales charge is equally applicable to certificateholders of the New York Fund. Thus, Applicants argue that certificateholders of the New York Fund should be allowed to participate in the Plan and convert their units into units of the Municipal Fund, Tax-Exempt Fund, Government Fund, IMPUT, the Pennsylvania Insured Fund or Corporate Fund at the reduced sales charge referred to below.

Applicants state that currently the reduced sales charge relating to transactions under the Plan is a fixed dollar amount of $15 per unit. Applicants state that if an exchange transaction were to be effected under the Plan, the applicable sales charge of $15 per unit would be substantially below the sales charge applicable to the general public (ranging from 4.0% in the case of the Government Fund to 5.9% in the case of the Tax-Exempt Fund and IMPUT). Applicants assert that the rationale for the reduced sales charge was to pass along certain cost savings to investors and yet cover reasonable costs and provide adequate compensation for investment counselling provided to such investors. Through the experience gained from the ongoing operation of this exchange program, Applicants now assert that the $15 per unit sales charge does not achieve the objectives of providing adequate compensation for services provided. Consequently, Applicants propose to increase the fixed dollar sales charge to $25 per unit. Applicants state that they originally assumed that the entire $15 per unit charge would be available to the broker-dealer performing the exchange transaction. Applicants assert, however, that in actual practice such broker-dealer receives substantially less if it does not have in its own inventory the units into which the exchange will take place since the broker-dealer will be obligated to buy such units in the secondary market at a dealer price which will greatly limit the profitability of the transaction. Applicants assert that broker-dealers have had little incentive to encourage the use of this exchange program by purchasing Fund units from other dealers in order to effect exchanges under the Plan, which in turn has tended to render this program useless. Applicants assert that this problem with the Plan's operation has been evident in the market-place. Thus, Applicants argue that since the purpose of the exchange program is to provide a cost savings to investors and yet to pay reasonable expenses and to compensate the broker-dealer for investment services given, and since those objectives are being thwarted, an increase of the fixed dollar sales charge to $25.00 per unit for all exchange transactions under this program is justified and will both accomplish the ojectives of the exchange program and encourage a greater use of the same.

Section 11(c) of the Act provides, among other things, that exchange offers involving registered unit investment trusts are subject to the provisions of Section 11(a) of the Act irrespective of the basis of exchange. Section 11(a) of the Act provides, in pertinent part, that it shall be unlawful for any registered open-end company or any principal underwriter for such a company to make, or cause to be made, an offer to the holder of a security of such company or any other open-end investment company to exchange his security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged unless the terms of the offer have first been submitted to and approved by the Commission.

Section 22(d) of the Act provides, in pertinent part, that no registered investment company or principal underwriter thereof shall sell any redeemable security issued by such company to any person except at a current offering price described in the prospectus. The sales charge described in the prospectus of each of the Funds for effecting regular secondary market purchase and sale transactions is greater than the sales charge which will be applicable to transactions under the Plan. Rule 22d-1 under the Act permits certain variations in sales charges, none of which it is alleged will be applicable to transactions under the Plan.

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions from any provision of the Act or of any rule or regulation under the Act, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than January 19, 1981, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by

affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Mangement, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-40802 Filed 12-31-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 11514; 812-4520]

Insured Municipals-Income Trust, et al.; Application

December 24, 1980.

Notice is hereby given that Insured Municipals-Income Trust, Investors' Quality Tax-Exempt Trust, Investors' Corporate-Income Trust, Investors' Governmental Securities-Income Trust, Investors' Municipal Pennsylvania Unit Trust ("IMPUT"), Pennsylvania Insured Municipal Bond Trust (the "Insured Fund") and New York Insured Municipal Bond Trust (the "New York Fund"), registered under the Investment Company Act of 1940 ("Act") as unit investment trusts (collectively referred to herein as the "Funds"), their sponsor, Van Kampen Filkin & Merritt, Inc., and a co-sponsor of Investors' Corporate-Income Trust, Dain Bosworth, Incorporated ("Sponsors") (collectively with the Funds referred to as the "Applicants"), c/o Van Kampen Filkin & Merritt, Inc., 208 South LaSalle Street, Chicago, Ill. 60604, filed an application on October 14, 1980, and an amendment thereto on December 8, 1980, requesting an order of the Commission amending in the manner described below an earlier order of the Commission dated October 9, 1979 (Investment Company Act Release No. 10895). The earlier order (1) permitted pursuant to Section 11 of the Act the exchange of units of any series of a Fund for units of any other series of the same Fund at net asset value plus a fixed and reduced sales charge of $15 per unit pursuant to an exchange option, and (2) exempted pursuant to Section 6(c) of the Act such transactions of the Applicants from the provisions of Section 22(d) of the Act. Applicants propose to extend the exchange option to certificateholders of Series 1 and subsequent series (as such series may from time to time be created) of the Insured Fund, IMPUT (IMPUT and the Insured Fund, referred to herein as the "Pennsylvania Funds") and the New York Fund, and to increase the sales charge imposed on all such exchange transactions from $15 per unit to $25 per unit. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

The investment objectives of the Insured Fund and IMPUT are protection of federal and Pennsylvania state tax-exempt income and conservation of capital through an investment in a diversified portfolio of tax-exempt bonds. All of such bonds are obligations issued by or on behalf of the Commonwealths of Pennsylvania and Puerto Rico and authorities or political subdivisions thereof, the interest on which in the opinion of counsel to the various issuers of such bonds is exempt from all federal and Pennsylvania state income taxes under existing law. The investment objectives of the New York Fund are the same as those of the Pennsylvania Funds except that New York state and local tax-exempt income is desired rather than Pennsylvania tax-exempt income. This is accomplished through the holding of obligations of New York state (as well as Puerto Rican) issuers. The underlying bonds in the portfolios of the Pennsylvania Funds and the New York Fund are collectively referred to herein as the "Bonds". Applicants state that with respect to each series of the Insured Fund and the New York Fund, Van Kampen Filkin & Merritt, Inc. obtains a portfolio insurance policy protecting the Bonds therein against default in the payment of principal and interest from MGIC Indemnity Corporation, a subsidiary of MGIC Investment Corp. In certain series, there have been or may be a Bond or Bonds on which separate insurance has been obtained by the issuer thereof.

At the present time approximately 15 series of the Pennsylvania Funds have been issued. Units of beneficial interest in the various series of each Fund have been offered for sale to the public pursuant to effective registration statements under the Securities Act of 1933. It is anticipated that further Fund series will be created in full compliance with the representations herein made concerning the respective series now outstanding. The New York Fund is a new unit investment trust which, as of December 5, 1980, had filed Series 1 under the Securities Act of 1933 but had no series yet outstanding. It is proposed that the New York Fund will be virtually identical to the Insured Fund; thus, references hereafter to the operations of the Pennsylvania Funds will be equally applicable to the New York Fund.

Each series of the Pennsylvania Funds is presently governed by the provisions of such series' trust indenture and agreement entered into or to be entered into in respect thereof by the Sponsor and a corporation organized and doing business under the laws of the United States or a state thereof, which is authorized under such laws to exercise corporate trust powers and having at all times an aggregate capital, surplus and undivided profits of not less than $5,000 (referred to herein as the "Trustee").

The Applicants propose to extend the exchange option (the "Plan"), as described below, to certificateholders of the various series of the Pennsylvania Funds and the New York Fund. The purpose of the Plan is to provide investors in each of the Funds a convenient and less costly means of transferring interests as their investment requirements change. The Sponsors intend to hold open this option at all times although they reserve the right to modify, suspend or terminate the Plan at any time without further notice to certificateholders. The Plan currently operates as follows: A certificateholder wishing to dispose of his units in a Fund series for which a secondary market is being maintained has the option to exchange his units for units of any other series of the same Fund for which units are available for sale in the secondary market. When a certificateholder notifies the Sponsors of his desire to exercise this exchange privilege, the Sponsors will provide that certificateholder with a prospectus for each series that the certificateholder indicates interest. The certificateholder may then select the series into which he desires his investment to be converted. As indicated in the various prospectuses of each Fund, the Sponsors intend to maintain a market for the units of each series of the respective Funds. However, there is no obligation to maintain such a market and this Plan is not meant in any way to create such obligation.

An exchange transaction operates in a manner essentially identical to any secondary market transaction, except that Applicants allow a reduced sales charge for all transactions effected under the Plan. Traditionally, units in the Insured Fund and IMPUT are

repurchased by the Sponsors and other underwriters of such Funds at prices based on the bid side evaluations of the underlying securities in the portfolio of each Fund series and are resold at that price per unit (the "public offering price") plus a sales charge of 5.7% and 5.9%, respectively, of such public offering price. It is proposed that the New York Fund will have a comparable sales charge of 5.7%. During the initial distribution of units in the Insured Fund and IMPUT, the units are sold at the aggregate offering side evaluations of the underlying securities (the "public offering price") plus a sales charge of 4.7% and 4.9%, respectively, of such public offering price. If is proposed that the New York Fund will have a comparable sales charge of 4.7%. Applicants propose to resell units in the secondary market under the Plan at the secondary market public offering price of the Pennsylvania Funds and the New York Fund plus a fixed sales charge of $25 per unit (approximately 2.5% of the secondary market public offering price at current market values).

It should be noted that the Plan will only be available for exchanges into secondary market units of the New York Fund and the Pennsylvania Funds. Applicants state that restricting the exchange option to exchanges into secondary market units of the New York Fund and the Pennsylvania Funds is appropriate in light of the different methods of determining the public offering price utilized by the New York Fund and the Pennsylvania Funds and the varying sales charges between the primary and secondary markets for the sale of units of such Funds. Exchange transactions will also only be effected in whole units. Any amounts not used to acquire whole units under the Plan will be remitted to certificateholders and certificateholders will not be permitted to make up any difference between the amount representing the units being submitted for exchange and the units of the new Fund series being acquired.

The Applicants assert that the rationale for allowing certificateholders of the Funds to participate in the Plan and effect Fund transactions at a reduced sales charge is equally applicable to certificateholders of the Pennsylvania Funds and the New York Fund. Thus, the Applicants argue that certificateholders of the Pennsylvania Funds and the New York Fund should be allowed to participate in the Plan and exchange their units into units of other series of the same Pennsylvania and New York Fund at a reduced sales charge.

Applicants state that currently the reduced sales charge relating to transactions under the Plan is a fixed dollar amount of $15 per unit. Applicants state that if an exchange transaction were to be effected under the Plan, the applicable sales charge of $15 per unit would be substantially below the sales charge applicable to the general public (ranging from 4.0% in the case of Investors' Governmental Securities-Income Trust to 5.9% in the case of Investors' Quality Tax-Exempt Trust and Investors' Municipal Pennsylvania Unit Trust). Applicants assert that the rationale for the reduced sales charge was to pass along certain cost savings to investors and yet cover reasonable costs and provide adequate compensation for investment counselling provided to such investors. Through the experience gained from the ongoing operation of this exchange program, Applicants now assert that the $15 per unit sales charge does not achieve the objectives of providing adequate compensation for services provided. Consequently, Applicants' propose to increase the fixed dollar sales charge to $25 per unit. Applicants state that they originally assumed that the entire $15 unit charge would be available to the broker-dealer performing the exchange transaction. Applicants assert, however, that in actual practice such broker-dealer receives substantially less if it does not have in its own inventory the units into which the exchange will take place, since the broker-dealer will be obligated to buy such units in the secondary market at a dealer price which will greatly limit the profitability of the transaction. Applicants assert that broker-dealers have had little incentive to encourage the use of this exchange program by purchasing Fund units from other dealers in order to effect exchanges under the Plan, which is turn has tended to render this program useless. Applicants assert that this problem with the Plan's operation has been evident in the market place. Thus, Applicants argue that since the purpose of the exchange program is to provide a cost savings to investors and yet to pay reasonable expenses and to compensate the broker-dealer for investment services given, and since those objectives are being thwarted, an increase of the fixed dollar sales charge to $25 per unit for all exchange transactions under this program is justified and will both accomplish the objectives of the exchange program and encourage a greater use of the same.

Section 11(c) of the Act provides, among other things, that exchange offers involving registered unit investment trusts are subject to the provisions of Section 11(a) of the Act irrespective of the basis of exhange. Section 11(a) of the Act provides, in pertinent part, that it shall be unlawful for any registered open-end company or any principal underwriter for such a company to make, or cause to be made, an offer to the holder of a security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged, unless the terms of the offer have first been submitted to and approved by the Commission.

Section 22(d) of the Act provides, in pertinent part, that no registered investment company or principal underwriter thereof shall sell any redeemable security issued by such company to any person except at a current offering price described in the prospectus. The sales charge described in the prospectuses of each of the Funds for effecting regular secondary market purchase and sale transactions is greater than the sales charge which will be applicable to transactions under the Plan. Rule 22d-1 under the Act permits certain variations in sales charges, none of which it is alleged will be applicable to transactions under the Plan.

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities, or transactions from any provision of the Act or of any rule or regulation under the Act, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than January 19, 1981, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon the Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed

contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-40803 Filed 12-31-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 17402; SR-NASD-78-3]

National Association of Securities Dealers, Inc.; Filing of Proposed Rule Change and Order Approving Proposed Rule Change

December 24, 1980.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(1) (the "Act"), notice is hereby given that on December 23, 1980, the National Association of Securities Dealers, Inc. ("NASD"), 1735 K Street, N.W., Washington, D.C. 20006, filed with the Commission copies of a proposed rule change to extend from December 12, 1980 to March 1, 1981 the effective date of rules concerning member practices in connection with fixed price offerings of securities (the "Papilsky rules"). The rules were approved by the Commission in Securities Exchange Act Release No. 17371 (December 12, 1980), (45 FR 83707).

Interested persons are invited to submit written data, views and arguments concerning the proposed rule change within 21 days from the date of this publication. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NASD-78-3.

Copies of the submission, all subsequent amendments, all written statements wth respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered securities associations, and in particular, the requirements of section 15A, and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. It is necessary to delay the effective date of the Papilsky rules approved by the Commission on December 12 to afford sufficient time for NASD members to establish apropriate compliance procedures and for the NASD to establish its own surveillance program.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change referenced above be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-40797 Filed 12-31-80; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Availability of Fiscal Year 1981 Funds To Promote a Small Business Economic Research Program

AGENCY: Small Business Administration, Office of Advocacy.

ACTION: Notice.

SUMMARY: The Office of Economic Research, Office of Advocacy announces the availability of fiscal year 1981 funds to promote a small business economic research program. Under Pub. L. 94–305, passed in 1976, funds will be awarded as grants or as cooperative agreements. Cooperative agreements required substantial performance involvement between the Small Business Administration and the recipient.

Any person or group outside the Federal Government may submit a proposal. Grant proposals must be prepared and submitted in accordance with the instructions contained in the *Program Announcement for Fiscal Year 1981* publication available from the address given below. Application forms are contained in the publication.

Send requests for the Program Announcement to: Small Business Administration, Research Program Coordinator, 1441 L Street, N.W. (Room 221), Washington, D.C. 20416.

There will be three cycles for this program. Applications and accompanying proposals must be postmarked no later than the closing date specified for the topic category as follows:

Macroeconomic Section, February 27, 1981.

Microeconomic Section, March 31, 1981.

Dynamic Studies and Related Data Requirements, April 30, 1981.

FOR FURTHER INFORMATION CONTACT: Research Program Coordinator Ms. Alice Cullen (202) 634–4864.

[Catalog of Federal Domestic Assistance No. 59.034, Small Business Economic Research. OMB Circular A-95 does not apply to this program.]

Dated: December 22, 1980.

William H. Mauk, Jr., Acting Administrator.

[FR Doc. 81-131 Filed 1-2-81; 8:45 am]

BILLING CODE 8025-01-M

Region I Advisory Council Meeting

The Small Business Administration Region I Advisory Council, located in the geographical area of Hartford, Connecticut, will hold a public meeting at 10:00 a.m., Friday, January 23, 1981, at Schatz & Schatz, Ribicoff & Kotkin, One Financial Plaza, Fourth Floor, Hartford, Connecticut, to discuss such business as may be presented by members, the staff of the U.S. Small Business Administration, and others attending.

For further information, write or call Jack M. Bernstein, District Director, U.S. Small Business Administration, One Financial Plaza, Fourth Floor, Hartford, Connecticut 06103—(203) 244–2511.

Dated: December 22, 1980.

Michael B. Kraft,

Deputy Advocate for Advisory Councils.

[FR Doc. 81-132 Filed 1-2-81; 8:45 am]

BILLING CODE 8025-01-M

Region I Advisory Council Meeting

The Small Business Administration Region I Advisory Council, located in the geographical area of Boston, Massachusetts, will hold a public meeting from 10:00 a.m. to 4:00 p.m., Tuesday, January 13, 1981, at the Valley Bank Tower, 1500 Main Street, Director's Room, 28th Floor, Springfield, Massachusetts, to discuss such business as may be presented by members, the staff of the U.S. Small Business Administration, and others attending.

For further information, write or call Constance Roberts, U.S. Small Business Administration, 150 Causeway Street, Boston, Massachusetts 02114—(617) 223-4074.

Dated: December 29, 1980.

Michael B. Kraft,

Deputy Advocate for Advisory Councils.

[FR Doc. 80-130 Filed 1-2-81; 8:45 am]

BILLING CODE 8025-01-M

Small Business Investment Company; Maximum Annual Cost of Money to Small Business Concerns

13 CFR 107.301(c) sets forth the SBA Regulation governing the maximum annual cost of money to small business concerns for Financing by small business investment companies.

Section 107.301(c)(2) requires that SBA publish from time to time in the **Federal Register** the current Federal Financing Bank (FFB) rate for use in computing the maximum annual cost of money pursuant to § 107.301(c)(1). It is anticipated that a rate notice will be published each month.

13 CFR 107.301(c) does not supersede or preempt any applicable law that imposes an interest ceiling lower than the ceiling imposed by that regulation. Attention is directed to new subsection 308(i) of the Small Business Investment Act, added by section 524 of Pub. L. 96-221, March 31, 1980 (94 Stat. 161) to that law's Federal override of State usury ceilings, and to its forfeiture and penalty provisions.

Effective January 1, 1981, and until further notice the FFB rate to be used for purposes of computing the maximum cost of money pursuant to 13 CFR Section 107.301(c) is 12.265% per annum.

Dated: December 29, 1980.

Peter F. McNeish,

Deputy Associate Administrator for Investment.

[FR Doc. 81-130 Filed 1-2-80; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF AGRICULTURE

Forest Service

Tahoe Federal Coordinating Council; Operating Procedures

SUMMARY: On October 15, 1980 the President issued Executive Order 12247 directing Federal executive agencies to give special consideration to the environmental effects of their proposed actions in the Lake Tahoe Region and establishing an interagency committee to be known as the Tahoe Federal Coordinating Council. The purpose of the Executive Order was "to ensure that Federal agency actions protect the extraordinary natural, scenic, recreational, and ecological resources in the Lake Tahoe Region (as defined by Pub. L. 91-148), an area of national concern . . .". These operating procedures, which outline the Council's interpretation of the Executive Order, are designed to implement the Order in a timely and equitable manner.

The Council would welcome public comment and suggestions on these procedures. Comment should be directed to: Marc Petty, Executive Director, Tahoe Federal Coordinating Council, c/o USDA, Forest Service, 630 Sansome Street, San Francisco, California 94111.

Opportunity to comment in person will be provided February 3 in San Francisco, February 11 in the Tahoe Basin, February 18 in Carson City and February 18 in Las Vegas.

Only at the February 11 session in the Basin will the full Council convene. Please contact the Executive Director for details as to time and location.

The Council hopes to formally adopt these operating procedures at its March 1981 meeting so to be most effective comments should be received no later than February 18.

The Council will use these operating procedures to guide its actions until final procedures are formally adopted.

I. Introduction

A. Scope

This document sets forth the operating procedures for the Tahoe Federal Coordinating Council (TFCC) established by Executive Order 12247. These procedures provide a framework and the criteria for the assessment of proposed Federal actions and a mechanism for resolving questions and concerns among agencies in accordance with provisions of the Executive Order.

The area covered by these operating procedures includes the Lake Tahoe Basin, as defined by the Tahoe Regional Planning Agency (TRPA) legislation, plus Federal actions which could, directly or indirectly, have an adverse effect on the Basin's environment.

B. Background

In October 1972, Congress directed the Environmental Protection Agency to study the Lake Tahoe Basin to determine the need for extending Federal oversight and control in order to preserve its extraordinary natural environment. The resulting report, *The Lake Tahoe Study*, recommended a special Federal policy for Lake Tahoe to guide Federal agencies. It also recommended the establishment of environmental thresholds to guide Federal programs that relate to activities on private lands. As a followup to this study, the Western Federal Regional Council (WFRC) adopted a *Federal Policy for the Lake Tahoe Basin* in August 1978 and proposed to coordinate Federal programs through a Tahoe Coordinating Group. Only limited success was achieved due to the difficulty in evaluating the cumulative impact of environmental decisions and because each agency was still bound by its own legislative and regulatory mandates.

The *Federal Policy* also encouraged the establishment of environmental threshold standards as recommended in *The Lake Tahoe Study*. The WFRC, in cooperation with the Council on Environmental Quality, undertook a program to establish and implement these standards. The first phase of this program was the December 1979 *Lake Tahoe Environmental Assessment*, which assembled previous studies on Lake Tahoe, integrated them to show the effect that change in one part of the ecosystem has on other parts, examined the feasibility of establishing threshold standards and focused on the Federal Government's role in the Tahoe Basin. This study found that Government agencies contribute a significant part of the problem in Tahoe by providing assistance to expanding development. The study concluded that environmental threshold standards should be developed.

On October 15, 1980, the President issued Executive Order 12247 directing certain actions by Federal agencies and creating a Federal Tahoe Coordinating Council (FTCC) with authority to review all proposed Federal activities that may adversely affect the enviornment of the Lake Tahoe Basin and develop threshold standards and environmental carrying capacities for air, water, and terrestrial components of the Tahoe Basin. Subsequent to their adoption these standards and capacities will guide Federal decisionmaking. Until these threshold standards are developed, the EO sets forth interim criteria to evaluate significant Federal decisions.

II. General Policy

It is the policy of the Tahoe Federal Coordinating Council to work with State, regional and local governments to insure that proposed Federal actions support long term environmental protection of the Lake Tahoe Basin and are in harmony with social and economic needs both locally and at large. It will be the policy of the TFCC to review proposed Federal actions which may have an environmental effect on the Basin for the purpose of assuring

compliance with the intent of the Executive Order. Where the full impact of a potentially significant Federal action cannot be adequately assessed in terms of the environmental carrying capacity of the Basin or where it could directly or indirectly have a significant adverse impact on the resources and ecological values of the region, the TFCC will recommend the responsible Executive agency defer action (EO Sec. 1-303c). The Executive Order is directed to all Executive agencies, and the responsibility for complying with it falls first and foremost on the individual agencies.

III. Organization and Responsibilities

The organizational structure and responsibilities of the Tahoe Federal Coordinating Council and its relationship to other agencies are described below.

A. Tahoe Federal Coordinating Council (TFCC)

The Council has implementation responsibilities under Executive Order 12247. It is comprised of the representatives to the WFRC from the Departments of Defense, Interior, Agriculture, Commerce, Health and Human Services, Housing and Urban Development, and Transportation as well as the Environmental Protection Agency (EO Sec. 1-102). Other agencies may be invited to designate representatives to participate in the activities of the Council from time to time (EO Sec. 1-104). The Council will be assisted by a small staff and a member agency working group. The Council will be chaired by the Department of Agriculture representative. The Council will:

- Approve Council organizational structure, staff, budget, and project review criteria for coordinating federal actions affecting the Basin and otherwise implementing Executive Order 12247;
- Approve a project plan for the "Threshold Project" and review progress at key milestones identified in the project plan;
- Approve and publish environmental quality thresholds and carrying capacities for the air, water and terrestrial components of the Basin after consultation with the States, TRPA, local governments and public;
- Assist State and local governments in adopting and utilizing these thresholds and carrying capacities;
- Review and take action on the Executive Director's findings and recommendations relative to proposed federal agency action;
- Refer agency disagreements with the recommendations of the Council to CEQ for resolution in accordance with Section 1-304 of the EO and 40 CFR Part 1504 (National Environmental Policy Act implementing regulations); and,
- Coordinate Council actions with TRPA, State, and local governments.

B. Tahoe Working Group (TWG)

Under the direction of the TFCC Executive Director, this group will be comprised of officially designated staff of each member agency, TRPA and the WFRC. Others may be invited to participate on an ad hoc basis. This group will be responsible for:

—Acting as technical advisory committee for the "Threshold Project";

—Drafting operating procedures and proposed revisions;

—Acting as staff for TFCC on project evaluation matters; and,

—Preparing reports as needed.

C. Western Federal Regional Council (WFRC)

The WFRC represents the full scope of Federal activities in Federal planning Region IX. The WFRC will (a) provide necessary communication links with the Office of Management and Budget and the White House, (b) assure the dissemination of information regarding implementation of the EO, and (c) assure that policies and procedures adopted by the TFCC are consistent with those of the WFRC.

D. Council on Environmental Quality (CEQ)

Pursuant to Section 1-304 of the EO, the CEQ will resolve TFCC/agency disputes in accordance with 40 CFR Part 1504.

IV. Threshold Project (Ref. EO Sec. 1-2 et seq.)

The Executive Order mandates that the TFCC "shall develop and issue environmental quality thresholds and carrying capacities for the air, water, and terrestrial components" of the Tahoe Basin. The Order also requires that the thresholds/capacities be developed in consultation with State and local governments. These thresholds will aid Federal, State and local jurisdictions manage growth at Lake Tahoe.

A bi-State compact between California and Nevada approved by both States and ratified by Congress requires, among other things, a 2-year study of threshold/carrying capacities to be used as a basis for the regions land use plan. In summary, Federal, State and local governments have agreed that the concept of threshold/carrying capacities will be the keystone of Basin planning.

In order not to duplicate efforts, it is the policy of the TFCC to develop thresholds and carrying capacities using the *Lake Tahoe Environmental Assessment* in a manner compatible with the goals and objectives of the proposed new bi-State compact. The threshold analysis project will be undertaken as a TFCC effort with participation and support from the Tahoe Regional Planning Agency (TRPA) and the States of California and Nevada and their political subdivisions.

Note.—The environmental carrying capacity of the Basin can be generally described as the maximum population and associated human activity that the Tahoe Basin can accommodate without exceeding air, water and terrestrial standards, i.e., thresholds, established to protect the unique natural resources of the region.

This study is expected to be completed within a 2 year period. Minimal TFCC project staff is envisioned. Direct responsibility for the project will be assigned to a project director who will be responsible to the TFCC through its Chairman. Administrative support will be assumed by the Forest Service. Funding and staffing support for the study will be provided by TFCC agencies through a mutually agreed upon sharing of project requirements.

V. Project Review Procedures (Ref. EO Section 1-3 et seq.)

This section sets forth procedures to be used until threshold standards and environmental carrying capacities have been established for the Tahoe Basin. Upon adoption of those standards and capacities these procedures may be modified.

The Executive Order places primary responsibility for public involvement and analysis of Federal agency actions on the originating agency. The role of the Council will be to review proposed actions. Agency presentations before the Council should be of sufficient detail to allow evaluation by members unfamiliar with the specific area or activity.

The following sequence will be used in reviewing projects.

(1) Each agency shall evaluate its proposed actions and determine which may directly or indirectly affect the Lake Tahoe Basin. Individual agency procedures to accomplish this will be available from the appropriate agency.

(2) For proposed actions that might affect the Basin, the agency shall determine if the proposed undertaking will (a) have a significant or potentially significant adverse effect on the environment (EO Sec. 1-301), (b)

stimulate additional development in environmentally sensitive areas (EO Sec. 1–305), or (c) promote automobile traffic into the Basin (EO Sec. 1–305). If the agency determines the proposed action will cause any of the above it should defer the action at least until the threshold/capacities have been developed and approved and the project can be judged within that context. If the agency determines the proposed action will not cause any of the above (a–c) the agency shall inform the TFCC Executive Director of its determination in writing and in the format provided by the TFCC.

(3) The Executive Director shall then send copies of the agency analysis and determination to TFCC and TWG member agencies. Each agency has 30 calendar days to complete its review and forward its findings to the Executive Director and the initiating agency. The Executive Director will maintain a calendar of actions for review.

(4) The Executive Director shall convene a meeting of the TWG monthly to review all actions where significant interagency comments have been raised.

(5) Findings of the TWG shall be forwarded to TFCC for review.

(6) The Council will not review proposed Federal actions unless a quorum (5 members or alternates) is present, and shall reach its findings by a like opinion of at least 5.

(7) The Council will normally reach a finding within 60 days of the date of receipt by the Executive Director of the agency determination.

(8) If the Council concludes that the proposed agency action would (a) have a significant or potentially significant adverse impact on the resources and ecological values of the Basin (EO Sec. 1–303c), (b) would stimulate additional development in environmentally sensitive areas (EO Sec. 1–305), or (c) would promote automobile traffic into the Basin (EO Sec. 1–305), the Chairman of the Council shall recommend to the responsible agency that the action not be undertaken or that it be modified to eliminate the adverse impact.

(9) If the agency disagrees with the recommendations of the Council, the Chairman of the Council shall promptly refer the matter to the Council on Environmental Quality for its recommendation as to the prompt resolution of any disagreement.

It is the responsibility of each agency to conform with the A–95 review process (if applicable) and to solicit information from interests outside the Federal government prior to Council review; thus public comment will not ordinarily be solicited at regular Council meetings. Meetings will, however, be open. Disagreements with agency procedures brought to the attention of the TFCC will normally be referred back to the agency for resolution.

The Council will make every effort to provide for expedited review at the request of a member agency due to legal requirements, moral obligations or other special circumstances.

VI. Interim Review Criteria (Ref. EO Section 1–3 et seq.)

Section 1–303 requires the Council to evaluate all Federal actions for their impact on the resources and ecological values of the Region with the clear intent that environmental thresholds and carrying capacities will ultimately provide the yardstick by which to measure whether the action is adverse. However, until these standards are adopted, the following interim criteria, in accordance with both sections 1–303 and 1–305, will be used to evaluate proposed Federal actions and direct operations.

1. The proposed action must not significantly stimulate additional development in environmentally sensitive areas as defined by land use plans or zoning ordinances (EO Sec. 1–305).

Environmentally sensitive areas are further defined to include:

a. Stream environment zones (e.g., riparian areas);

b. Fish spawning areas;

c. Presently undeveloped shorezone areas;

d. Land areas where the proposed action would directly or indirectly result in exceeding the allowable disturbed surface guides of the TRPA land capability system; and,

e. High erosion hazard zones as defined in the TRPA land capability system.

2. The proposed action, directly or indirectly, must not promote or potentially promote a significant increase in automobile use into the Basin (EO Sec. 1–305). The Council interprets this to include any proposed action that would cause a net increase in vehicle trips in areas of the Basin where roadway capacity is exceeded and/or where violations of the Federal CO standard is occurring or will occur as a result of the proposed Federal action.

3. The proposed action must not have a significant or potentially significant adverse impact on the resources and ecological values of the region (EO Sec. 1–303c).

4. In evaluating the effectiveness of proposed mitigating measures to offset adverse impacts, it will be the policy of the Council to require that:

a. The measure be demonstrated technically feasible and effective;

b. An enforceable schedule be developed to insure that all measures be actually in place or provided for prior to any construction or development; and,

c. The mitigation measures themselves be evaluated to insure that there are no adverse impacts created.

In addition, the Council will not issue any decision until it has received adequate assurance from the initiating agency that:

1. The public has been given adequate opportunity to comment on the agency determination;

2. The proposed action complies with Federally approved or recognized environmental management plans for the Basin, such as air, water and transportation plans; and,

3. The proposed action will not limit future environmental management options that may be developed under the threshold project.

VII. Council Meetings

Meeting schedule—The Executive Director shall schedule monthly TWG meetings. Should the Director receive no items of business by the first of the month, the meeting will be canceled. The Council shall meet bi-monthly or as needed.

Alternate Council Members—Alternate members shall be designated in writing. Each member agency is encouraged to designate at least 2 alternates.

Quorum—Five or more Council members or alternates shall constitute a quorum for the purpose of conducting Council business.

VIII. Memorandum of Understanding

Each of the undersigned agencies agrees to work cooperatively for the implementation of both the specific requirements and the intent of the Tahoe Executive Order. In that respect each agrees to:

1. Insure appropriate representation on the Council and TWG. The representative(s) will be delegated sufficient authority to deal with the issues involved; and,

2. Comply with the policy and procedures in this document.

Department of Agriculture, Department of Transportation, Department of Housing and Urban Development, Department of Defense, Environmental Protection Agency, Department of the Interior, Department of

Commerce, and Department of Health and Human Services.

Zane G. Smith, Jr.,

Chairperson, Tahoe Federal Coordinating Council.

[FR Doc. 80-40784 Filed 12-31-80; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 80-156]

National Boating Safety Advisory Council Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the National Boating Safety Advisory Council to be held on Tuesday and Wednesday, January 27 and 28, 1981, at the St. Thomas Sheraton Hotel and Marina, Long Bay Road, Charlotte Amalie, St. Thomas, U.S., Virgin Islands, beginning at 9:30 a.m. on Tuesday, January 27, 1981. The meeting is scheduled to recess at 4:00 p.m. on Tuesday, January 27, 1981. On Wednesday, January 28, 1981, the meeting is scheduled to begin at 9:30 a.m. and adjourn at 3:00 p.m. The agenda for the meeting will be as follows:

1. Review of action taken at the twenty-fifth Meeting of the Council.
2. Executive Directors Report.
3. Level Flotation Subcommittee report and discussion.
4. Presentation on Level Flotation Research and Development.
5. Discussion and vote on ICW Drawbridge Regulations Resolution.
6. Presentation on ICW Drawbridge Regulations.
7. Update on Status of Personal Flotation Device Exemption for Sailboards.
8. Presentation on Boating Accident Statistics.
9. Report on Kill-Switch Study.
10. Briefing on Federal Regulatory procedure changes.
11. Presentation on Interpretative ruling for C-drive power units.
12. Progress report on Navigation Light requirements.
13. Update on Inland Rules Act.
14. Annual report on Compliance Testing.
15. Presentation on results of Coast Guard Auxiliary experiences using inflatable life saving devices.
16. Presentation on California's Red Water Ski Flag regulations.
17. Members Items.
18. Chairman's Session.

Attendance is open to the interested public. With advance notice to the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should so notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Council at any time. Additional information may be obtained from Commander Neal Mahan, Executive Director, National Boating Safety Advisory Council, U.S. Coast Guard, (G-BA), Washington, D.C. 20593, or by calling (202) 426-1080.

Issued in Washington, D.C., December 15, 1980.

H. W. Parker,

Rear Admiral, Chief, Office of Boating, Public, and Consumer Affairs.

[FR Doc. 81-134 Filed 1-2-81; 8:45 am]

BILLING CODE 49-1014-M

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA), Special Committee 145—Digital Avionics Software; 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 RTCA Special Committee 145 on Digital Avionics Software to be held on January 13-15, 1981 in Conference Rooms 9A-B-C, DOT/Federal Aviation Administration Building, 800 Independence Avenue, S.W., Washington, D.C. commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of the Second Meeting Held on September 30 and October 1-2, 1980; (3) Review First Draft of Committee Report; (4) Working Groups Meet in Separate Sessions; (5) Committee Plenary Session; and (6) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1717 H Street, NW., Washington, D.C. 20006; (202) 296-0484. Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, D.C., on December 12, 1980.

Karl F. Bierach,

Designated Officer.

[FR Doc. 81-113 Filed 1-2-81; 8:45 am]

BILLING CODE 4910-13-M

Swearingen Corporation Model SA226-TC, METRO IIA; Aircraft Certification and Availability of Documents

The formal recertification process of the Swearingen SA226-TC, METRO IIA to include the provisions of Special Federal Aviation Regulation (SFAR) No. 41 has been completed. The findings made during this recertification program represent the first such compliance with SFAR 41.

The Director of the FAA Southwest Region has conducted a thorough review of the issues involved in the METRO IIA type certification program and the findings of the FAA certification team. He has also reviewed and discussed with his staff a document entitled "Decision Basis for Type Certification of the Swearingen SA226-TC, METRO IIA." Based on this review, the Director approved the amendment of Type Certificate A8SW to include SFAR 41 in the approval basis for the Swearingen SA226-TC.

A copy of the "Decision Basis for Type Certification of the Swearingen SA226-TC, METRO IIA" is on file in the FAA Rules Docket. The bulk of the "Decision Basis" reviews the purpose, structure, conduct, and significant highlights of the recertification program wherein Swearingen was required to demonstrate compliance with SFAR 41. It provides a brief overview of the type inspection test results and a compliance checklist showing the means of specific compliance with each paragraph of SFAR 41. The report is available for examination and copying at the FAA Rules Docket, Room 916, 800 Independence Avenue, SW, Washington, D.C. Copies of the report may be obtained from the Office of the Director, FAA Southwest Region, P.O. Box 1689, Fort Worth, Texas 76101.

Issued in Fort Worth, Texas, on December 16, 1980.

C. R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 81-208 Filed 1-2-81; 8:45 am]

BILLING CODE 4910-13-M

Research and Special Programs Administration

Demonstration Projects; Public Notice and Invitation for Sources

AGENCY: Materials Transportation Bureau, Department of Transportation (DOT).

ACTION: Public Notice and Invitation for Sources.

SUMMARY: The Research and Special Programs Administration has the requirement to establish cost sharing demonstration projects to develop hazardous materials accident prevention and emergency response programs. The objectives of the demonstration projects are to document the steps taken by State and local governments, including Council of Governments, to develop a hazardous materials management program. The DOT has a total of $450,000 available in FY 1981 funds to support these demonstration projects. Not more than six (6) projects shall be approved for FY 1981. Projects reports are intended to be used by other Government agencies for developing similar programs in other jurisdictions. The Department of Transportation reserves the right to make any resulting procurement in the manner determined solely by DOT.

DATES: Sources received on or before January 20, 1981 will be issued a request for proposal.

ADDRESS: Department of Transportation, Research and Special Programs Administration, Procurement Division, DPA-14, 400 Seventh Street, S.W., Washington, D.C., 20590 Attn: John E. Doyle, Jr.

Issued in Washington, D.C., on December 24, 1980.

John E. Doyle, Jr.,

Contracting Officer.

[FR Doc. 81-166 Filed 1-2-81; 8:45 am]

BILLING CODE 4910-60-M

Urban Mass Transportation Administration

New Bus Equipment Introduction Program

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Announcement of New Bus Equipment Introduction Program.

SUMMARY: The New Bus Equipment Introduction Program (NBEI) has been established by the Urban Mass Transportation Administration (UMTA) to test various domestic and foreign bus design features in order to assess the extent to which they improve fuel efficiency, accessibility and reliability and reduce maintenance cost. Major emphasis will be on innovative features in standard-sized buses; however, innovative features in non-standard-sized buses will also be included. A limited number of projects will be selected to evaluate the most promising innovative features. Project selection will be based on the desirability of the proposed features, local topographic conditions, climate, user population, other operating characteristics and ability of prospective grantees to provide local share for the program. It is planned to include up to 200 buses in the program, depending on available funding.

DATES: UMTA will hold special briefing sessions for suppliers, manufacturers and prospective grantees beginning at 9:30 A.M. in Room 2230, at 400 Seventh Street SW., Washington, D.C. 20590, on the following dates:

Suppliers and manufacturers—January 26, 1981.

Prospective grantees—January 27, 1981.

Interested parties should contact Mr. John Marino at the address listed below to reserve space.

Transit operators interested in participating in the program should send a "letter of interest" to the UMTA Associate Administrator for Technology Development and Deployment by February 27, 1981.

FOR FURTHER INFORMATION CONTACT: John Marino, Director, Office of Bus and Paratransit Technology, UTD-20, Urban Mass Transportation Administration, 400 7th Street SW., Washington, D.C. 20590. (202) 426-4035.

SUPPLEMENTARY INFORMATION: The goals of the program are to provide:

An introduction into public transportation service of innovative and improved products that emphasize accessibility, fuel economy and lower costs of operation and maintenance.

An opportunity for transit operators and the general public to form a greater consensus on the features required to provide more useful, efficient, and suitable buses.

An opportunity for bus manufacturers, transit operators and the public to assess the marketability and acceptance of those design features selected for evaluation.

Actual cost data and operational experience as a basis for evaluation of various bus features, prior to the introduction of such features in widespread service.

Comparative data on the operational impact of current U.S. regulatory requirements.

The NBEI program is to be funded through local public agencies from a set-aside within UMTA's Capital Assistance program which will provide 80 percent of the capital costs required to implement the program. Buses procured under this program will be in addition to any other grants for bus purchase which might otherwise be made to the area. Therefore, Federal grants under this program will be supplementary to other capital assistance grants. Local participation for the remaining costs must be provided by or through the sponsoring public agency. In cases where Section 3 capital grants for purchase are impractical, lease arrangements may be considered. Purchase of buses is preferred since a very limited amount of funds is available for equipment leasing. The program is expected to be conducted over a period of up to two years. Additionally, UMTA will provide financial support for test plan preparation, data collection and analysis, evaluation, documentation and dissemination of information resulting from the program.

This program is designed to test and evaluate innovative features that are incorporated on existing production vehicles. It is anticipated that no fewer than five and no more than 20 buses of any one type will be purchased by any one public agency. It is UMTA's intent to insure compliance with all Federal requirements (e.g., 504, Buy America, EPA, NHTSA, etc.) in carrying out this program. However, UMTA will consider, on a case-by-case basis, the appropriateness of any requests for waivers of Federal and state regulations to permit the testing of a promising design feature.

The "letters of interest" should provide the following information:

1. The design features of interest, expected benefit, number of each type of vehicle desired and willingness to buy (or lease) with UMTA funding assistance existing production buses with innovative features not available at present (no brand names should be identified);

2. Adequacy of financial resources to fund the local share of the capital costs of the project and operating costs;

3. Willingness to operate these buses in passenger service and to collect or allow for the collection of operating and maintenance data for a period of 12 to 24 months;

4. Brief description of the existing local operating and maintenance record-keeping system;

5. Total number and types of buses presently used (including number and types of buses with lifts) in the service area and specifically on routes proposed for test equipment; and

6. Ability and willingness to participate in multiple awards and to enter into a consortium with other grantees. Information should be provided regarding local and/or state regulations that may restrict procurement options as mentioned above.

The proposal must provide sufficient data to permit evaluation of the merits of the project. Based on its review of the information submitted, UMTA will select up to eight projects to be funded in FY 81. The number of projects selected will depend on the availability of FY 81 and FY 82 funds. The desirability of the proposed features, number of vehicles desired, geographical location, adequacy of operating and maintenance record-keeping and local commitment will be evaluative factors in selecting the final projects.

Theodore D. Lutz,

Administrator.

[FR Doc. 81-209 Filed 1-2-81; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF THE TREASURY

Fiscal Service

Renegotiation Board Interest Rate

The Renegotiation Board previously published the rate of interest determined by the Secretary of the Treasury pursuant to section 105(b)(2) of the Renegotiation Act of 1951, as amended. Since the Renegotiation Board is no longer in existence, the Department of the Treasury is publishing the current rate of interest.

Therefore, notice is hereby given that, pursuant to section 105(b)(2) of the Renegotiation Act of 1951, as amended, (50 U.S.C. App. § 1215(b)(2)) the Secretary of the Treasury has determined that the rate of interest applicable, for the purposes of said section 105(b)(2) and section 108 of such Act, to the period beginning January 1, 1981 and ending on June 30, 1981, is 14⅝ per centum per annum.

Dated: December 30, 1980.

Gerald Murphy,

Acting Fiscal Assistant Secretary.

[FR Doc. 81-160 Filed 1-2-81; 8:45 am]

BILLING CODE 4810-35-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determination Regarding the Effective Date of the Implementation of the Protocol to the Customs Valuation Agreement

This notice makes a determination to make effective on January 1, 1981, the amendments to title II of the Trade Agreements Act of 1979 necessary to implement the Protocol to the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, also referred to as the Protocol to the Customs Valuation Agreement.

Determination is made pursuant to the functions of the President under section 2 of the Act to approve and implement the protocol to the trade agreement relating to customs valuation, and for other purposes, P.L. 96-490 ("the Act"), delegated by the President to the United States Trade Representative by memorandum of December 3, 1980 (45 FR 80465).

Now, therefore, I, Reubin O'D. Askew, United States Trade Representative, in conformity with the provisions of section 2 of the Act, do determine, effective on January 1, 1981, that the conditions in subparagraphs (1), (2), and (3) of section 2 of the Act have been satisfied.

Reubin O'D. Askew,

United States Trade Representative.

[FR Doc. 81-210 Filed 1-2-81; 8:45 am]

BILLING CODE 3190-01-M

Sunshine Act Meetings

Federal Register
Vol. 46, No. 2
Monday, January 5, 1981

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

FEDERAL HOME LOAN BANK BOARD.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. No. 45, issue no. 249, page No. 85244, date published, December 24, 1980.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: Wednesday, December 31, 1980 at the conclusion of the open meeting being held at 10 a.m.

PLACE: 1700 G Street NW., board room sixth floor, Washington, D.C.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Mr. Marshall (202-377-6677).

CHANGES IN THE MEETING: The following item has been added to the open meeting:

Corporate debt obligation as liquidity.

[S-2379 Filed 12-31-80; 10:20 am]

BILLING CODE 6720-01-M

2

FEDERAL MARITIME COMMISSION.

TIME AND DATE: 9 a.m., January 7, 1981.

PLACE: Hearing Room One, 1100 L Street NW., Washington, D.C. 20573.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Monthly Report of actions taken pursuant to authority delegated to the Managing Director.
2. Paulssen & Guice, Ltd.—Independent Ocean Freight Forwarder License No. 1166—Operation of branch office.
3. Agreement No. 10396: An Association Agreement between Empresa Lineas Maritimas Argentinas S.A. and A. Bottacchi S.A. de Navegacion C.F.I.I. to provide for sharing in the Brazil/U.S. Gulf Pooling Agreement.
4. Agreements Nos. 8210-36 and 9214-23: Modification to two North Atlantic European Conference Agreements relating to through movements.
5. Agreement No. 10387: A Rate Agreement between the Pacific/Australia-New Zealand Conference and Karlander Kangaroo Line.
6. Agreement No. 6200-20: Modification of the U.S. Atlantic & Gulf/Australia—New Zealand Conference to extend its ratemaking authority to inland points.
7. Agreement No. 9925-2: Modification of the Pacific Australia Container Express (PACE) Line Joint Service and Agreement No. 9767-1: Modification of the Associated Container Transportation Joint Service to provide for intermodal authority.
8. Agreement No. 10402: The Bank and Savill Line, Ltd., Service Agreement and reconsideration of Agreement No. 10355 between The Bank and Savill Line, Ltd., and the Shipping Corporation of New Zealand.
9. Petitions for exemption from the independent policing authority requirement of General Order 7, Revised.
10. Section 15 Agreement Processing Reports.
11. Report on Military Rate Review—RFP-1500, First Cycle.
12. Section 15 Standards of Approvability.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary (202) 523-5725.

[S-2380-80 Filed 12-31-80; 12:40 pm]

BILLING CODE 6730-01-M

3

NATIONAL CREDIT UNION ADMINISTRATION.

TIME AND DATE: 9:30 a.m., Thursday, January 8, 1981.

PLACE: Seventh floor board room, 1776 G Street NW., Washington, D.C.

STATUS: OPEN.

MATTERS TO BE CONSIDERED:

1. Review of Central Liquidity Facility Lending Rate.
2. Consideration of Staff Study on the Feasibility of a Floating or Indexed Loan Interest Rate Ceiling.
3. Merit Pay.
4. Report of actions taken under delegations of authority.
5. Applications for charters, amendments to charters, bylaw amendments, mergers as may be pending at that time.

RECESS: 10:15 a.m.

TIME AND DATE: 10:30 a.m., Thursday, January 8, 1981.

PLACE: Seventh floor board room, 1776 G Street NW., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed conversion. Closed pursuant to exemptions (8) and (9)(A)(ii).
2. Report of actions taken under delegation of authority that led to Administrative Action under Sections 120 and 207 of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).
3. Administrative Actions under Section 120 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii) and (9)(B).
4. Requests from federally insured credit unions for special assistance under Section 208 of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).
5. Consideration of an alternate member to the Performance Review Board. Closed pursuant to exemptions (2) and (6).

FOR MORE INFORMATION CONTACT: Joan O'Neill, Program Assistant, telephone (202) 357-1100.

[S-2381-80 Filed 12-31-80; 2:34 pm]

BILLING CODE 7535-01-M

federal register

Monday
January 5, 1981

Part II

Environmental Protection Agency

Standards of Performance for New Stationary Sources; Metal Coil Surface Coating

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL 1629-2]

Standards of Performance for New Stationary Sources; Metal Coil Surface Coating

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: Standards of performance are proposed to limit emissions of volatile organic compounds (VOCs) from new, modified, and reconstructed metal coil surface coating operations. The proposed standards would limit VOC emissions to 0.28 kilogram per liter (kg/l) of coating solids applied for any prime or finish coat operation where low-VOC content coatings are used without a VOC capture system and emission control device. The proposed standards would limit VOC emissions to 0.14 kg/l of coating solids applied where higher VOC content coatings are used in conjunction with a VOC capture system and emission control device. As an alternative, the owner or operator would also be allowed to achieve compliance by demonstrating an overall VOC emission reduction of 90 percent or more prior to discharge to the atmosphere. The determination of average VOC content would be made for each calendar month for each affected facility. Reference Method 24 would be the reference method for determining the VOC content of coatings but the Administrator will allow the use of formulation data from the coating manufacturer except in cases where the validity of the formulation data is in doubt. Reference Method 25 would be used to determine the VOC concentration in the exhaust gas streams. Both reference methods were promulgated at 45 FR 65956, October 3, 1980.

The proposed standards implement Section 111 of the Clean Air Act and are based on the Administrator's determination that metal coil surface coating operations contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare. The intent is to require new, modified, and reconstructed coil coating operations to use the best demonstrated system of continuous emission reduction, when costs, non-air-quality health, and environmental and energy impacts are considered.

A public hearing will be held to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed standards.

DATES: *Comments.* Comments must be received on or before March 6, 1981.

Public Hearing. A public hearing will be held on Febuary 4, 1981 beginning at 9 a.m.

Request to Speak at Hearing. Persons wishing to present oral testimony should contact EPA by January 28, 1981 (1 week before hearing).

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to Central Docket Section (A-130), Attention: Docket Number A-80-5, U.S. Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460.

Public Hearing. The public hearing will be held at OA Auditorium, R.T.P., North Carolina. Persons wishing to present oral testimony should notify Mrs. Naomi Durkee, Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-533.

Background Information Document. The Background Information Document (BID) for the proposed standards may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777. Please refer to *Metal Coil Surface Coating Operations, Background Information Document for Proposed Standards,* EPA-450/3-80-035a.

Docket. Docket No. A-80-5, containing supporting information used in developing the proposed standards, 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, S.W., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Gene W. Smith, Section Chief, Standards Development Branch, Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5421.

SUPPLEMENTARY INFORMATION:

Proposed Standards

The proposed standards would apply to all new, modified, and reconstructed metal coil surface coating (coil coating) operations. Existing facilities would not be subject to the proposed standards unless they undergo a modification or a reconstruction as defined in 40 CFR 60.14 and 60.15. Compliance with the proposed standards could be achieved by any of three approaches for each affected facility. The owner or operator could use coatings whose average VOC content on a monthly basis is 0.28 kg/l of coating solids applied or less; or, the owner or operator could apply higher VOC content coatings if he reduces VOC emissions to 0.14 kg/l of coating solids applied or less; or, the owner or operator could comply by demonstrating an overall VOC emission reduction of 90 percent or greater prior to discharge to the atmosphere. These standards will be reviewed at 4-year intervals after their promulgation date.

The proposed standards would require each owner or operator to conduct monthly performance tests to demonstrate compliance with the proposed emission limits. Where coatings are used without a VOC capture system and emission control device to meet the proposed numerical limit of 0.28 kg/l of coating solids applied, the owner or operator would be required to calculate and record a weighted average of the VOC content of coatings applied (including dilution solvents) for each affected facility for each calendar month. Reference Method 24 would be used to determine the VOC content of coatings, but the Administrator will allow the use of manufacturer's formulation data for that purpose except where the validity of the formulation data is in doubt. For each affected facility, the owner or operator would be required to report each month for which the average VOC content of the coatings exceeded 0.28 kg/l of coating solids applied. These reports would have to be submitted within 10 days after the end of each such month.

Where higher VOC content coatings are used with a VOC capture system and emission control device to meet the proposed numerical limit of 0.14 kg/l of coating solids applied, the owner or operator would be required to calculate and record the weighted average of the VOC content (including dilution solvents) of coatings applied for each affected facility for each calendar month according to the equations contained in the proposed standards. The owner or operator would also have to calculate and record the overall VOC emission reduction required to meet the emission limit. In addition, during the first monthly test, the owner or operator would have to measure the actual overall VOC emission reduction achieved by the VOC capture system and emission control device. Reference

Method 25 and the equations provided in the proposed standards would be used for these determinations. Compliance would be demonstrated where the measured value of the actual overall VOC emission reduction is greater than or equal to the overall VOC emission reduction required to meet the emission limit. For each affected facility, the owner or operator would report each month for which the average VOC content of coatings applied, when reduced by the overall destruction rate of the VOC capture system and emission control device (as determined during the most recent measurement), exceeds the proposed numerical limit. These reports would have to be submitted within 10 days after the end of each such month.

Where compliance is achieved through the demonstration of a 90 percent overall reduction in VOC emissions, the owner or operator would conduct the first monthly performance test by using Reference Method 25 and the equations provided in the proposed standards to calculate the overall percent reduction achieved by the VOC capture system and control device. Compliance would be demonstrated where the overall percent reduction is equal to or greater than 90 percent. After the first monthly test, the owner or operator would monitor the operating parameters of the emission control device.

If thermal incineration is used, the owner or operator would be required to install and operate a device to continuously monitor and record the combustion temperature of the control device. The proposed standards would require the owner or operator to report quarterly all coating periods of more than 3 hours duration where the average combustion temperature fell 28° C (50° F) or more below the temperature at which compliance was demonstrated during the most recent measurement of incinerator efficiency. If catalytic incineration is used, the owner or operator would be required to install a device to continuously monitor and record the gas temperature both upstream and downstream of the incinerator catalyst bed. The owner or operator would report quarterly all coating periods in excess of 3 hours where the average difference between the temperatures upstream and downstream of the catalyst bed falls below 80 percent of the temperature difference at which compliance was demonstrated during the most recent measurement of incinerator efficiency or where the average inlet (or upstream) temperature falls 28° C (50° F) or more below the inlet temperature at which compliance was demonstrated during the most recent measurement of incinerator efficiency.

Summary of Environmental, Energy, and Economic Impacts

The environmental, energy, and economic impacts of proposed standards of performance are normally expressed as incremental differences between the impacts of complying with the proposed standards and those for complying with a typical State Implementation Plan (SIP). Many existing metal coil surface coating operations are located in areas that are considered nonattainment areas for purposes of achieving the National Ambient Air Quality Standard (NAAQS) for ozone. New facilities are expected to have the same geographic distribution as existing plants. States are in the process of revising their SIPs for these areas. In revision SIPs, States generally consider the recommendations contained in Control Techniques Guideline (CTG) documents. The CTG applicable to this source category is *Control of Volatile Organic Emissions From Existing Stationary Sources*, Volume II, *Surface Coating of Cans, Coil, Paper, Fabrics, Automobiles and Light-Duty Trucks* (EPA-450/2-77-088 [CTG]). Although the CTG documents are published for guidance only and are not legally binding on the States, most States are expected to revise their existing SIPs in accordance with the CTG recommendations or to retain their existing limits on VOC emissions.

Approximately 70 percent of the existing coil coating plants are located in States that currently require VOC emissions to be reduced by at least 85 percent prior to discharge except for plants that use waterborne or other low-VOC content coatings. This emission limit is more stringent than the CTG recommendations, and it appears that these States plan to maintain this level of control for VOC emissions. The remaining plants are located in States that use a permit system for controlling VOC emissions. These States are expected to revise their implementation plans to require VOC emission reductions to the CTG-recommended level, which is equivalent to a 64 percent reduction in the emissions from the average industry solvent-borne coating formulation of 60 percent VOCs and 40 percent solids by volume.

The proposed standards would reduce VOC emissions from a typical plant by approximately 33 percent in those States that currently control VOC emissions by a numerical limit (85 percent reduction) and would reduce emissions from a typical plant by approximately 72 percent in those States that adopt the CTG-recommended level of control (64 percent reduction). Nationwide VOC emissions would be reduced by about 3,600 megagrams (Mg) per year by 1986 from a projected level of 12,500 Mg with no New Source Performance Standard (NSPS).

Little or no water pollution or solid waste impact from new, modified, or reconstructed coil coating plants is expected to result from application of the proposed standards. None of the control techniques used by the coil coating industry generates either liquid or solid waste and, therefore, the proposed standards would have no impact in these areas.

Nationwide energy usage by the coil coating industry totaled about 6,600 terajoules (TJ) in 1978. The proposed standards would result in an energy usage increase of about 1 percent per year, which is equivalent to 200,000 barrels of crude oil in the fifth year. Plants that are located in States requiring an 85 percent reduction and that achieve compliance through the use of higher VOC content coatings in combination with an incinerator could be expected to decrease their energy consumption by about 5 percent. However, for those plants regulated to the CTG-recommended level of control, compliance with the proposed standards through the use of incineration could result in up to a 50 percent increase in energy consumption in some individual plants if one of the more energy-efficient systems identified as being capable of achieving the CTG-recommended limits is used as the baseline. Little or no impact in energy consumption would be expected to result from the proposed standards for plants meeting the proposed emission limits with the use of waterborne or other low-VOC content coatings without the use of incineration.

The proposed standards could increase both the capital and annualized costs of new coil coating plants. Based on a predicted industry growth rate of 12 percent per year through 1985, the increased capital cost of new plants that locate in States requiring an 85 percent reduction in VOC emissions could range from $110,000 for a small plant to $140,000 for a large plant. This capital outlay represents an increase in the total capital cost of a new plant of approximately 0.9 percent for a large plant and 1.4 percent for a small plant. The increase in total annualized costs could range from $11,000 for a small plant to $23,000 for a large plant. For plants that locate in States that adopt the CTG-recommended limits, capital

costs for a new plant could increase by $180,000 for a small plant and by $920,000 for a large plant, 2.3 and 6.6 percent increases, respectively, in the total capital costs of a new plant. Nationally, the cumulative capital costs over the first 5 years could reach $20 million. Total annualized costs could increase by $55,000 for a small plant and by $395,000 for a large plant. On an industry-wide basis, the increase in total annualized costs in the fifth year could be $7 million. Compliance with the proposed standards could result in increases in the price of coil coated metal ranging from 0.2 percent for a large plant in 85 percent reduction areas to 4.1 percent for a large plant in States that adopt the CTG-recommended limits. The effects for other plant sizes fall between these two values. In the fifth year, the average price of coil-coated metal could have increased by 2.6 percent.

Rationale

Selection of Source and Pollutants

The "Priority List and Additions to the List of Categories of Stationary Sources," promulgated at 44 FR 49222 on August 21, 1979, ranked sources according to the quantity of emissions, endangerment of health and welfare, and the mobility and competitiveness associated with each source. The coil coating industry ranked 22nd on this list of 59 sources to be controlled for air pollutants. Recent studies conducted by and for EPA estimate that current emissions from the coil coating industry in 1978 amount to 12,700 Mg (14,000 tons) annually.

Although coil coating plants were identified in 27 States, most plants are concentrated around industrial centers in the Northeast and Midwest. A total of 109 individual coil coating plants containing an estimated 147 coil coating lines were identified during this study. Of these plants, 42 are known to be located in areas designated as nonattainment areas for ozone.

VOC emissions from individual plants vary widely as a consequence of the wide variations in annual production. Estimated annual emissions for 60 of the 109 coil coating plants were found to be listed in emission inventory files maintained by individual States. A total of 40 of the 60 plants were identified as having annual uncontrolled (or potential) emissions of greater than 90 Mg (100 tons) per year, and 12 of these 40 plants had annual uncontrolled (or potential) emissions of greater than 900 Mg (1,000 tons) per year. Emission data for some coil coating plants are not contained in the emission inventory files, both because some States do not include companies with potential emissions of 45 Mg (50 tons) per year or less and because many of the coil coaters are captive operations in other industries that are identified by their major end products.

In the coil coating industry, VOC emissions result from the evaporation of organic solvents from the applied coating during the drying process. Typical coatings applied to coiled metal strip include epoxies, epoxyacrylics, acrylics, and polyester enamels. These coatings generally contain organic solvents such as ketones, esters, ethers, and aromatics. Coil coatings are applied in two main steps: prime coat and finish coat. Prime coat and finish coat operations both contribute to VOC emissions.

VOCs are the major air pollutants emitted from the coil coating industry. Particulate matter emitted from this industry is minimal. Technology is currently available to reduce VOC emissions from coil coating operations. The use of higher VOC content coatings with incineration or low-VOC content coatings was identified as having the potential for reducing nationwide industry emissions by as much as 46 percent from all new, modified, and reconstructed sources. Consequently, the coil coating industry has been selected for regulation of VOC emissions by new source standards of performance.

Selection of Affected Facilities

The choice of the affected facility for this standard is based on the Agency's interpretation of Section 111 of the Act, and judicial construction of its meaning.* Under Section 111, the NSPS must apply to "new sources"; "source" is defined as "any building, structure, facility, or installation which emits or may emit any air pollutant" [Section 111(a)(3)]. Most industrial plants, however, consist of numerous pieces or groups of equipment which emit air pollutants, and which might be viewed as "sources." EPA therefore uses the term "affected facility" to designate the equipment, within a particular kind of plant, which is chosen as the "source" covered by a given standard.

In choosing the affected facility, EPA must decide which pieces or groups of equipment are the appropriate units for separate emission standards in the particular industrial context involved. The Agency must do this by examining the situation in light of the terms and purpose of Section 111. One major consideration in this examination is that the use of a narrower definition results in bringing replacement equipment under the NSPS sooner; if, for example, an entire plant were designated as the affected facility, no part of the plant would be covered by the standard unless the plant as a whole were "modified." If, on the other hand, each piece of equipment were designated as the affected facility, then as each piece was replaced, the replacement piece would be a new source subject to the standard. Since the purpose of Section 111 is to minimize emissions by the application of the best demonstrated control technology (considering cost, other health and environmental effects, and energy requirements) at all new and modified sources, there is a presumption that a narrower designation of the affected facility is proper. This ensures that new emission sources within plants will be brought under the coverage of the standards as they are installed. This presumption can be overcome, however, if the Agency concludes that the relevant statutory factors (technical feasibility, cost, energy, and other environmental impacts) point to a broader definition. The application of these factors is discussed below.

The metal coil coating process is a continuous operation that begins with a roll or coil of bare sheet metal and ends with a roll or coil of sheet metal that has a surface finish on one or both sides. A typical coil coating line consists of an inlet station, where the metal strip is unrolled from the coil and enters the process; a metal cleaning and pretreatment section, where the metal is prepared for the coating application; a coating section, which may consist of a single coating station and curing oven or may consist of a prime coating station and curing oven and a finish coating station and curing oven; and an exit station, where the finished metal strip is repackaged into a roll or coil.

Significant quantities of VOC emissions are generated from the application and curing of each prime coat and each finish coat on the metal strip. The application and curing of each coating is accomplished by three devices in series: a coating application station, a curing oven, and a quench station. Existing reports on industry studies indicate that, of the total VOC content of the coatings, approximately 90 percent evaporates in the ovens, 8 percent evaporates at the application station, and about 2 percent evaporates during the quench operation.

Consideration was given to the following alternatives in the selection of affected facilities for proposed

*The most important case is *ASARCO, Inc. v. EPA*, 578 F.2d 319 (D.C. Cir. 1978).

regulation: (1) including all of the coating operations on a coil coating line (from unwind to rewind) as a single affected facility; (2) designating each application station, oven, and quench station as separate facilities; and (3) treating each coating operation—consisting of the application station, oven, and quench station—as separate affected facilities.

The first alternative, consideration of all coating operations on the line as a single affected facility, was rejected because of the diversity of coating formulations used throughout the industry. A large segment of the industry coats metal coil according to the needs or specifications of the purchaser or owner of the metal. In some cases, a low-VOC content (waterborne) prime coating may be followed by a higher VOC content finish coating. In such a situation, if the low-VOC content coating has emissions much lower than the limit required, the reduction required for the emissions from the higher VOC content coating would be less than optimum because the emissions from both coatings would be considered in combination. A similar situation could occur if a modification resulted in a decrease in emissions from one coating application and an increase in emissions from the other coating application. The net result may be no change in emissions if the entire line is considered a single affected facility, and the line would not become subject to the NSPS. This could lead to higher emissions than the case where the best system of control is used on each emission source. Therefore, this alternative was rejected.

Consideration was also given to treating each application station, oven, and quench station as separate affected facilities. However, the operations are so closely associated, both physically and operationally, that their treatment as separate affected facilities appears inappropriate. Many modern coil coating lines have the coating station enclosed in a room so that a large fraction of the emissions occurring during application of the coating is captured by the flow of air into the ovens. The quench station is also located immediately adjacent to the oven. Emission test data in existing reports of industry studies indicate that VOC emissions at the quench station may account for up to 2 percent of total emissions. However, a large fraction (and possibly all) of these emissions is captured by the flow of ventilating air into the oven. Designation of the quench station as a separate affected facility would require the application of an emission limit, method of control, and compliance testing for any fugitive emissions that escape from the quench area. Because of the close relationship among the three emission points and the fact that all of the emissions come from the same coating, this alternative was concluded to be impractical. Therefore, this alternative was rejected.

The third alternative is the designation of each coating operation—consisting of a coating application station, a curing oven, and a quench station—as separate affected facilities. This alternative would provide plant owners or operators with flexibility in their choice of coating formulations, and compliance with the proposed standards could be achieved by different techniques for each coating application. Therefore, each prime coat operation and each finish cost operation have been selected as the affected facilities for control in the proposed standards of performance.

The proposed standards would apply to each prime coat operation and each finish coat operation on all new, modified, or reconstructed coil coating lines and would include emissions that result from the use of VOCs (solvent) as a dilution agent. Cleanup operations may entail equipment flushing or cleaning. The cleanup solvent is typically recovered by a commercial recovery facility. The proposed standards would not include VOC emissions that result from the use of solvent in cleanup operations or activities that do not generate VOC emissions, such as metal cleaning, pretreatment, pickling, galvanizing, and physical handling of materials. Although some fugitive emissions from paint mixing stations may occur, the quantity of these emissions is considered insignificant and would not be subject to the proposed standards.

Although some flashoff occurs between the coating applicator rolls and the oven, the flashoff area is not considered a separate operation but, instead, part of the application process. Most coil coating lines have two separate coating sections—one for the application and curing of the prime coat and another for the application and curing of the finish coat. These lines are referred to as tandem lines and would contain two affected facilities. Lines that apply a one-coat finish to the metal and, consequently, have a single coating section are considered as a single affected facility. One coil coating line was identified that uses electrodeposition (EDP) to apply a prime, coat, followed immediately with a wet-on-wet application of the finish coat by conventional roller coating. Both coats are then cured simultaneously by a single oven. Because of the wet-on-wet application and the single curing oven, this type of operation would be considered a single affected facility.

Controls Technologies

The normal technique by which coatings are applied in the coil coating industry is roll coating. In this technique, a roller, wet with the coating, contacts the moving metal strip and transfers the coating to the metal surface. A major advantage of this application technique is that the transfer efficiency consistently approaches 100 percent. Because of this characteristic, applied coating solids are assumed to be equal to consumed coating solids for all coatings. In coil coating operations, prime and finish coats may be applied to one or both sides of the metal in one or two applications. After the prime coat application, the strip generally passes through an oven, where the prime coating is dried and cured; after the finish coat application, the metal strip passes through an oven, which dries and cures the finish coatings. Air is passed through the ovens to carry off the volatile solvent vapors that are released when the volatile portion of the applied coatings evaporates. This exhaust gas stream, in combination with the exhaust gas streams from the application and quench process, is the source of VOC emissions to the atmosphere. It is these gas streams that are treated when emission control devices are installed.

There are two general techniques for reducing VOC emissions from coil coating operations. The first is to pass the exhaust gas stream through a VOC emission control device, and the second is to reduce the amount of VOCs in the coating.

The only emission control device that has been identified as effective in controlling VOC emissions from coil coating operations is an incinerator. Both thermal and catalytic incinerators have been successfully used in the industry. The results of seven emission tests indicate that thermal incinerators can achieve greater than 95 percent reduction in VOC emissions when they are operated at temperatures of 760° C (1,400° F) or greater; however, large amounts of supplemental fuel are frequently required to raise the exhaust gases from oven temperatures in the range of 260° to 426° C (500° to 800° F) to incineration temperature. If heat recovery units are installed along with the incinerator, the energy consumption can be dramatically reduced. The recovered heat can be used to produce steam or hot water for the wet section of the line or to preheat the oven air. In many existing installations, the use of a

thermal incinerator with heat recovery has resulted in an overall energy savings relative to a coil coating line with no emission control.

Thermal incinerators were identified in several configurations. In some configurations, the internal oven burners are replaced with incinerators (zone incinerators) that pull air and VOC's from the oven atmosphere, burn the VOC's and exhaust directly back into the oven to supply both heat and "cleaned" oven ventilating air. These units reportedly reduce VOC emissions by 50 to 70 percent and reduce the amount to external oven ventilation needed. An external incinerator can be used in conjunction with the zone incinerators to further reduce VOC emissions. When this is done, the external incinerator can be smaller that when and external incinerator is used alone because the volume of external oven ventilation required is reduced. The zone incinerators are not widely used without an external after burner because alone they may not achieve compliance with the numerical limits of existing SIPs, and, in some cases, may not achieve adequate odor control. Other configurations of incinerators use a single external incinerator and return a portion of the incinerator exhaust back to the oven to supply heat. These units are used with various forms of additional heat recovery systems, such as regenerative or recuperative units that heat the oven exhaust before it enters the incinerator and remove heat from the incinerator exhaust before it is returned to the oven.

Vendors of catalytic incinerators indicate that these devices are also capable of achieving VOC emission reductions in excess of 95 percent, and their use requires substantially less energy than the thermal incinerator because of the lower incineration temperature. If heat recovery is used in conjunction with the catalytic units, they become even more attractive economically. However, literature and industry sources also indicate that there are restrictions on the applicability of catalytic incinerators because many of the coatings used in the coil coating industry contain ingredients that may foul or mask the catalyst. If this happens, the active catalyst life is greatly reduced, resulting in higher operating costs for the incinerator because of the more frequent catalyst replacement. Consequently, the use of catalytic incinerators is normally restricted to those plants that use only a few different coating formulations in which the ingredients are accurately known. Plants of this type are usually captive coaters.

Although carbon adsorption has been used to control VOC emissions from many industrial processs, none was identified on coil coating operations. The high temperature of the oven exhaust has been cited by industry sources as the reason that these systems are not used in coil coating. For this reason, carbon adsorption systems were not described in the Background Information Document (BID) as a control technique for the coil coating industry, although their use would not be precluded if desired by the plant owner or operator.

When control devices are used to reduce VOC emissions, capture efficiency must also be considered. Capture efficiency in excess of 95 percent is achievable by the judicious application of hoods and/or enclosures at the coating application station.

Industry has estimated that 90 percent of the VOC emissions from coil coating operations occur in the oven. Of the remaining 10 percent, 8 are emitted at the coating application station, and 2 are emitted in the quench area. During the background study for these proposed standards, a number of coil coating lines were observed in which the coating application stations were enclosed in coating rooms. The normal design practice for these rooms has oven ventilating air entering from the side of the room opposite the oven. The oven ventilating air then flows across the room, the coating application equipment, and the wet metal strip before entering the oven. The installation of a hood that extends from the oven entrance over the wet metal strip to the coating application equipment further contains the VOCs emitted in the coating application station. This hood, when properly placed as close to the wet metal strip as feasible, helps direct the oven make-up air drawn from the coating room through the coating application equipment and over the wet metal strip. Although all coating room ventilation air cannot normally be used as oven make-up air, EPA's study of coating room air flow indicates that the pattern of air flow normally used would entrain almost all of the VOCs emitted at the coating application station. Coating rooms were determined to be applicable at all new, modified, and reconstructed coil coating plants.

When the coated metal coil exits the oven, it is immediately cooled at the quench station. Because of the enclosed nature of the quench operation and its proximity to the oven exit, most of the quench area VOC emissions are entrained in the ventilating air that passes through the quench area into the exit end of the oven. By drawing oven ventilation air from the coating room and quench area in this manner an overall capture efficiency of at least 95 percent is achievable.

Low-VOC content coatings include organosols, plastisols and other high-solids coatings, waterborne coatings, and powder coatings. Some of these low-VOC content coatings are successfully used in coil coating processes, but their use is generally restricted to certain specialized applications. Organosols and plastisols are used to coat some products, but their use is not expected to expand to general applications because they are costly and because thin film thicknesses are difficult to achieve with high speed application equipment. Radiation cured waterborne coatings are also in limited use in the industry. However, installations known to use radiation cured coatings are restricted to single coat processes, and the single coat process is not expected to have more general applications in the foreseeable future.

Waterborne coatings are the most widely used low-VOC content technology in the industry. Approximately 15 percent of all coil coating is currently done with waterborne coatings. However, waterborne coatings are limited in their application because they have not been developed with the wide range of finish characteristics that is needed for the many products for which coil coated metal is used. Data submitted by coating manufacturers indicate that the VOC content in the waterborne coatings now used by the industry ranges from 0.07 to 0.54 kg/l of solids and that most are in the range of 0.11 to 0.28 kg/l of solids. Several manufacturers indicate that, within the next 5 to 8 years, the VOC content of most waterborne coatings could be reduced to the range of 0.10 to 0.18 kg/l of solids. The use of waterbornes is expected to increase in proportion to the general growth of the industry, but their use is not expected to expand rapidly into areas where solvent-borne coatings are now required. Although waterborne coatings cannot be considered a universal control technique for all coil coating operations, they have proved effective in some installations. Therefore, incineration and waterborne coatings have been determined to be the most widely applicable control techniques for all segments of the industry. Based on the use of these control techniques, the following five regulatory alternatives were considered. These alternatives

differ from those in the BID and are based on new data submitted by the industry at the National Air Pollution control Techniques Advisory Committee (NAPCTAC) meeting.

Regulatory Alternatives

Regulatory Alternative I is no NSPS for prime coat and finish coat operations in the coil coating industry (no NSPS). Under this alternative, VOC emissions from the coating process would be controlled through existing and revised SIPs.

Regulatory Alternative II is an overall VOC emission reduction of 85 percent, or an emission limit equivalent to an 85 percent overall reduction in the emissions from the average coating formulation used by the industry. Based on data obtained from coil coaters and from coating manufacturers, the average coating formulation is estimated to consist of 40 percent solids and 60 percent VOCs by volume. Regulatory Alternative II (85 percent) is based on the use of an incinerator with up to a 95 percent destruction efficiency and a capture efficiency of at least 90 percent.

Regulatory Alternative III is different from that described in the BID and is similar to Regulatory Alternative II, with the addition of a separate emission limit for users of low-VOC content coatings. This alternative is an overall VOC emission reduction of 85 percent, or an emission limit equivalent to an 85 percent overall reduction in the emissions from the average industry coating formulation when higher VOC content coatings are used in conjunction with an emission control device. When low VOC content coatings are used without an emission control device, this alternative would require that emissions be limited to the equivalent of an 80 percent reduction in the emissions from the average industry coating formulation.

Regulatory Alternative IV is similar to Regulatory Alternative III in the BID but has a slightly less stringent capture requirement. This alternative is an overall VOC emission reduction of 90 percent, or an emission limit equivalent to a 90 percent overall reduction in the emissions from the average coating formulation used by the industry. Regulatory Alternative IV (90 percent) is based on the use of an incinerator with up to a 95 percent destruction efficiency and a capture efficiency of 95 percent of VOC emissions.

Regulatory Alternative V is similar to Regulatory Alternative IV, with the addition of a separate emission limit for users of low-VOC content coatings. This alternative is an overall VOC emission reduction of 90 percent, or an emission limit equivalent to a 90 percent overall reduction in the emissions from the average industry coating formulation when higher VOC content coatings are used in conjunction with an emission control device. When low-VOC content coatings are used without an emission control device, this alternative would require that emissions be limited to the equivalent of an 80 percent reduction in the emissions from the average industry coating formulation.

Environmental, Energy, and Economic Impacts

The environmental impact of each regulatory alternative was computed as the VOC emission reduction that could be achieved relative to the emissions allowable under existing and projected State regulations. A study of the geographic distribution of existing coil coating plants revealed that 70 percent of the plants are located in States that impose numerical limits on VOC emissions. On the average, these States require that VOC emissions be reduced by 85 percent prior to their discharge to the atmosphere, except for plants that use waterborne or other low-VOC content coatings. The remaining 30 percent of existing plants are located in States that use a permit system to control VOC emissions.

States are currently revising their SIPs for nonattainment areas. To evaluate the impacts of the regulatory alternatives, a baseline level of control must be established from which the impacts can be calculated. Because of the revisions that are being made in the SIPs, a choice had to be made between the use of the existing SIP requirements and the revised SIP requirements as the baseline level of control. Because many of the coil coating plants are located in nonattainment areas, it is expected that many States that now use the permit system will adopt the emission limits recommended by the CTG on coil coating operations even though the CTG document does not legally bind the States. This recommended limit is 0.31 kg VOC/l of coating minus water (0.48 kg/l of coating solids) and is equivalent to a 64 percent reduction in the emissions from the average industry coating formulation. It is further anticipated that those States that already have numerical limits in their SIPs will continue to impose those limits. Therefore, these two baselines—an 85 percent reduction for 70 percent of the plants and the CTG-recommended limits for 30 percent of the plants—were used to estimate the environmental impact of the regulatory alternatives for the proposed NSPS. Inherent in the estimates are the assumptions that plants that become subject to the proposed NSPS will have the same geographic distribution as existing plants and that all plants now covered by a permit system will be subject to the CGT-recommended limits.

Regulatory Alternative I, no NSPS, would have no impact on VOC emissions from coil coating operations. A total of 70 percent of existing plants would continue to reduce emissions by 85 percent prior to their discharge or use low-VOC content coatings, while the remaining 30 percent would be subject to revised SIP regulations based on the CTG-recommended limits. The current or baseline level of VOC emissions from existing plants would be maintained. Total VOC emissions from new and existing plants located in States imposing numerical limits are estimated to be about 6,500 Mg in the fifth year, a 58 percent increase from current levels of 4,100 Mg. VOC emissions from plants located in States subject to revised SIP regulations based on the CTG-recommended limitations would also increase approximately 58 percent from the current emission level of 3,800 Mg per year to 6,000 Mg per year. Total nationwide emissions in the fifth year are expected to be about 12,500 Mg.

Regulatory Alternative II would have no effect relative to Alternative I on the VOC emissions from new and modified plants that locate in States that now impose numerical limits and use higher VOC content coatings and incineration. In the absence of any additional standards, some plants would use currently available low-VOC content coatings. It is unlikely that these plants would be able to meet the emission limit of Regulatory Alternative II by using these coatings alone. If it is assumed that these plants would switch to higher VOC-content coatings and incineration, their VOC emissions would be reduced by about 70 MG (75 tons).

Alternative II would result in an average reduction of 30 percent from new and modified plants that locate in States that adopt the CTG-recommended limits. Emission reductions from plants that use higher VOC content coatings and incineration would amount to 1,800 Mg (2,000 tons), and emission reductions from plants that use low-VOC content coatings would amount to about 25 Mg (30 tons) if they switched from low-VOC content coatings to higher VOC content coatings and incineration. The fifth year impact on overall emissions would amount to a reduction of 1,900 Mg (2,100 tons) relative to the baseline levels. In this case, total emissions in the fifth year would decrease to 10,600 Mg (11,700

tons) from the baseline level of 12,500 Mg (13,800 tons).

Regulatory Alternative III would have no impact on the VOC emissions from plants in areas that now impose numerical limits but would lead to a reduction of 1,880 Mg (2,000 tons) relative to the baseline from plants in areas that adopt the CTG-recommended limits. Total emissions in the fifth year would decrease to 10,700 Mg (11,800 tons) from the baseline level of 12,500 Mg (13,800 tons).

An NSPS based on Regulatory Alternative IV would result in an average 33 percent reduction relative to the baseline in the emissions from new and modified plants that locate in States that now impose numerical limits and an average 72 percent reduction from new and modified plants that locate in States that adopt the CTG-recommended limits. The effect of these reductions on overall emissions in the fifth year would amount to a decrease of approximately 3,600 Mg (4,000 tons). Emissions in the fifth year would decrease from 12,500 Mg (13,800 tons) to 8,900 Mg (9,800 tons).

An NSPS based on Regulatory Alternative V would reduce emissions the same as Regulatory Alternative IV for plants that use higher VOC content coatings and incineration but would result in an increase in emissions, relative to Regulatory Alternative IV, of approximately 400 Mg (400 tons) in the fifth year from plants that use waterborne coatings. The overall emission reduction in the fifth year would amount to 3,200 Mg (3,500 tons). Emissions in the fifth year would decrease from the baseline level of 12,500 Mg (13,800 tons) to 9,300 Mg (12,300 tons).

Each of the regulatory alternatives is based on the use of incineration as the primary means of VOC emission control. Incinerators do not generate either solid or liquid wastes, and, consequently, no impact on water pollution and solid waste disposal is expected to occur from either of the regulatory alternatives when incineration is used. If compliance is achieved by the use of low-VOC content coatings, no changes in liquid or solid waste discharge would be expected.

Energy Impacts

To estimate the energy impacts of the regulatory alternatives, specific control systems were defined that could be used to achieve compliance with existing regulations and with the regulatory alternatives. The equipment identified as being capable of meeting the CTG-recommended limits is an energy efficient system that consists of a series of incinerators inside the ovens that recycles the hot exhaust gases back to the oven. This system is not widely used at present without an external afterburner. The control technology identified as capable of achieving compliance with the numerical limits of existing SIPs and to achieve the numerical limits of the regulatory alternatives when higher VOC content coatings are used is incineration with a VOC destruction efficiency of 95 percent used in conjunction with up to a 95 percent capture efficiency. The control technology identified as being capable of achieving the numerical limits established for low-VOC content coatings is the use of waterborne coatings.

Regulatory Alternative I would have no impact on energy consumption compared to current levels. New plants that locate in States requiring an 85 percent reduction would continue to consume in the range of 27 TJ/yr for small plants to 170 TJ/yr for large plants. Plants that locate in States subject to revised SIP limitations would continue to consume from 17 TJ/yr in small plants to 120 TJ/yr in large plants. In the fifth year, total energy consumption by the industry is estimated to increase by about 3,500 TJ over current levels.

Regulatory Alternative II would have very little effect on fuel consumption for plants that locate in States that now impose numerical limits; fuel and electrical energy consumption would remain at about the current level of 27 to 170 TJ per year for small and large plants, respectively. For plants that locate in States imposing the CTG-recommended limits, fuel consumption could increase in a range from 42 percent for a large plant to 60 percent for a small plant. In a small plant, annual natural gas consumption would increase from a current usage of 13.6 million ft^3 to 21.2 million ft^3. For a large plant, annual natural gas consumption would increase from a current usage of 96 million ft^3 to 136 million ft^3. The increase in electrical energy consumption could range from 38 percent for a large plant to 58 percent for a small plant. For a small plant, annual electrical energy consumption would increase from 760,000 to 1.2 million kilowatt-hours (hWh). For a large plant, annual consumption would increase from 5.2 to 7.2 million kWh. The overall impact on national energy consumption is estimated to be the equivalent of 40,000 barrels of crude oil per year, or 1 percent relative to the baseline case. The fifth year impact would be an increase equivalent to 200,000 barrels of crude oil per year or 5 percent relative to the baseline.

The energy impacts of Regulatory Alternative III would be the same as those of Regulatory Alternative II for individual plants, but fewer plants would be affected because more plants could comply with the standard by using low-VOC content coatings for which there is no energy impact. The overall energy impacts of the two alternatives are about the same because no more than 15 percent of the plants would have a change in their energy impact as a result of this alternative.

Regulatory Alternative IV would have very little effect on fuel consumption for plants that locate in States that now impose numerical limits. There could be up to a 5 percent decrease in fuel consumption as a result of the assumed improvement in the capture efficiency of VOC emissions. No increase in electrical energy consumption is estimated for the plants in numerical limit areas. For plants that locate in States that adopt the CTG-recommended limits, the effect of Regulatory Alternative IV on fuel consumption could range from a 34 percent increase for a large plant to a 50 percent increase for a small plant. In a small plant, annual natural gas consumption would increase from the current usage rate of 13.6 million ft^3 to 20.0 million ft^3. for a large plant, annual natural gas consumption would increase from a current usage of 96 million ft^3 to 128 million ft^3. The effect on electrical energy consumption for plants in areas that adopt the CTG-recommended limit would be an increase in the range of 38 percent for a large plant to 58 percent for a small plant. For a small plant, annual electrical energy consumption would increase from 760,000 to 1,200,000 kWh. For a large plant, annual consumption would increase from 5.2 to 7.2 million kWh. The overall impact on national energy consumption is estimated to be the equivalent of 40,000 barrels of crude oil per year, or 1 percent relative to the baseline case. The fifth year impact would be an increase equivalent to 200,000 barrels of crude oil per year, or 5 percent relative to the baseline.

The energy impacts of Regulatory Alternative V would be the same as those for Regulatroy Alternative IV for individual plants, but fewer plants would be affected because more would be able to meet the standards by using low-VOC content coatings. The overall energy impact would be about the same for both alternatives.

Economic Impacts

A discounted cash flow approach was used to analyze the model plant costs and to determine the price impacts of each of the regulatory alternatives. The analysis was based on data consisting of the capital, installation, operating, and maintenance costs of the control equipment that could be used to achieve compliance with each of the baseline levels of control and with each of the regulatory alternatives. The cost data were obtained from coil coaters and from the vendors of coating equipment and emission control equipment for the coil coating industry.

Regulatory Alternative I, no NSPS, would have no economic or price impacts on plants located in States imposing numerical limits or on plants subject to revised SIP limitations based on the CTG-recommended limits. Current total installed capital costs for a new plant located in a State imposing numerical emission limits are estimated as $7.6 million for a small plant and $14.7 million for a large plant. Total annualized costs range from $4.2 million for a small plant to $11.0 million for a large plant. For a plant located in an area subject to revised SIP regulations based on the CTG-recommended limits, total installed costs range from $7.5 million for a small plant to $13.9 million for a large plant, and total annualized costs range from $4.2 million to $11.8 million for small and large plants, respectively.

Regulatory Alternatives II and III would have no impact on product price for plants that locate in States that currently impose numerical limits on VOC emissions. For plants that locate in States that adopt the CTG-recommended limits, the estimated price increase under Regulatory Alternatives II and III ranges from 1.0 to 3.9 percent for small and large plants, respectively, if the plants use higher VOC content coatings and incineration. This price impact represents increased installed capital costs in the range of $70,000 (about 1 percent) for a small plant to $780,000 (about 5 percent) for a large plant and increased total annualized costs in the range of $32,000 (about 1 percent) for a small plant to $380,000 (about 4 percent) for a large plant.

Alternatively, if prices are held constant, the return on investment (ROI) of a typical plant would decrease from the baseline level of 12 percent by an amount ranging from 0.38 percentage point for small plants to 2.70 percentage points for large plants that locate in areas that adopt the CTG-recommended limits. There could be no impact for plants in numerical limit areas. The 12 percent baseline ROI is the after-tax, weighted average cost of capital from equity, debt, and preferred stock. Financial data from 29 individual firms for 1978 were used to calculate this value. (For a full discussion of the derivation of this figure, see chapter 8 of the BID.)

The difference in the economic impacts between Regulatory Alternatives II and III occurs because fewer plants incur a cost under Regulatory Alternative III than under Alternative II. If a plant were forced to switch from the use of low-VOC content coatings to higher VOC content coatings and incineration to meet the requirements of Regulatory Alternative II, the economic impact would be the same as those described above. The number of such plants is indeterminate but would be no more than 15 percent of all new, modified, and reconstructed plants. Under Regulatory Alternative III, it is assumed that no plants would switch from waterborne coatings.

The economic impact of Regulatory Alternatives IV and V would be the same on plants that use higher VOC content coatings and incineration and would be relatively small for plants that locate in States that now impose numerical limits on VOC emissions. The price increase for these plants in estimated to range from 0.2 percent for a large plant to 0.8 percent for a small plant. The increase in the total installed capital costs of these plants ranges from $110,000 (about 1 percent) for a small plant to $140,000 (about 1 percent) for a large plant, and the increase in total annualized costs would be in the range of $11,000 (less than 1 percent) for a small plant to $23,000 (less than 1 percent) for a large plant. For plants that locate in areas that adopt the CTG-recommended limits, the impact of an NSPS based on Regulatory Alternatives IV or V would be a price increase in the range of 1.9 percent for a small plant to 4.2 percent for a large plant if the plants use higher VOC content coatings and incineration. The increase in the total installed cost of a new plant locating in these areas would be in the range of $180,000 (about 2 percent) for a small plant to $920,000 (about 6 percent) for a large plant. The increase in total annualized costs would be in the range of $55,000 (about 1 percent) for a small plant to $390,000 (about 4 percent) for a large plant.

If prices are held constant, the ROI of a typical plant would decrease from the baseline level of 12 percent by an amount ranging from 0.7 percentage point for a small plant to 2.4 percentage points for large plants that locate in areas that adopt the CTG-recommended limits and by an amount ranging from 0.1 to 0.3 percentage point for large and small plants, respectively, that locate in numerical limit areas.

Nationally, the average price increase of coil coated metal could be expected to increase by about 3.1 percent if an NSPS were promulgated based on Regulatory Alternative IV and by 2.6 percent if an NSPS were based on Regulatory Alternative V. The price increase for Regulatory Alternative IV is based on the assumption that plants would not be able to meet the emission limits by using low-VOC content coatings but, instead, would switch to higher VOC content coatings and incineration. The price increase for Regulatory Alternative V is based on the assumption that 15 percent of the new and modified plants would use low-VOC content coatings.

As can be seen from the above discussion, the price impacts, relative to the baseline, of Regulatory Alternatives II through V are relatively small for plants that locate in States that already impose numerical limits on VOC emissions. The impacts are higher for plants that locate in States that adopt the CTG-recommended limits, but the estimated impacts are probably an overstatement of the actual impacts because a number of plants already operate incinerators and coating rooms for reasons other than emission regulations. Costs in these situations would not be attributable to the proposed standards. The differences between the impacts of Alternatives II, III, IV, and V are small. The impacts of each alternative are concluded to be reasonable.

Selection of Best System of Continuous Emission Reduction

Regulatory Alternatives IV and V are estimated to reduce emissions in the fifth year by 3,900 and 3,200 Mg, respectively, relative to the emissions under Regulatory Alternative I. This amount is 1,400 to 2,100 Mg greater than the reduction that would be achieved by Regulatory Alternative II or III. There are no adverse environmental impacts from any of the regulatory alternatives, which leads to a conclusion that Regulatory Alternatives IV and V are the most reasonable from an environmental standpoint.

The energy impacts of Regulatory Alternatives II through V on plants that locate in States that adopt the CTG-recommended limits might be considered large (up to a 58 percent increase relative to Alternative I); however, a low-cost, energy-efficient system of control was used as the

baseline from which the impacts are estimated. Numerous contacts with the coil coating industry revealed that few such systems are in use in existing plants. The energy impact on plants that locate in areas that impose numerical limits on VOC emissions is quite small and may even be positive. The energy impact of Alternative IV or V relative to Alternative II or III may be positive, which makes Alternatives IV and V appear to be the more reasonable choices in view of the greater reduction in VOC emissions that they achieve.

The greater emission reduction associated with Regulatory Alternatives IV and V relative to Alternatives II and III is achieved with only a small increase in the economic impact compared to Alternative II or III. The differential increase in the total installed capital costs and total annualized cost for Regulatory Alternative IV or V (1 to 6 percent increase) over these costs for Regulatory Alternative II or III (0 to 5 percent increase) are relatively small. Price increases attributed to Regulatory Alternatives IV and V are in the range of 0.2 to 4.1 percent, while the corresponding increases attributed to Regulatory Alternatives II and III range from 0.0 to 3.9 percent. This is a differential price increase of 0.2 percent over the range of plant sizes studied. These additional impacts appear reasonable relative to the additional reduction in emissions that is achieved, which again makes Regulatory Alternatives IV and V appear to be the best candidates for the best system of continuous emission reduction.

A comparison of Regulatory Alternatives IV and V shows that Alternative IV produces an additional emission reduction of 700 Mg (or 22 percent) in the fifth year relative to Alternative V, which makes Alternative IV the better choice for environmental considerations. The energy and economic impacts of both alternatives are the same for individual plants, but Alternative V is estimated to affect about 15 percent fewer plants than Alternative IV, which makes Alternative V the more attractive choice from energy and economic considerations. Data submitted by coating manufacturers indicate that many of the waterborne coatings used by the coil coating industry would not meet the emission limit in Alternative IV, which could force new, modified, and reconstructed plants to abandon the use of low-VOC content coatings. However, coating data indicate that most commonly used waterborne coatings could meet a higher emission limit than would be allowed for these coatings under Regulatory Alternative V, which implies that no shifts away from low-VOC content coatings are likely under this alternative. There are some advantages to the use of low-VOC content coatings over the use of incineration systems. The overall energy requirement for low-VOC content coatings is lower than that for higher VOC content coatings and incineration because of the lower volume of oven ventilation required for low-VOC content coatings. Additionally, EPA has for a number of years encouraged the development and use of low-VOC content coatings as a means of reducing VOC emissions and EPA does not wish to preclude the use and further development of these coatings by setting an emission limit that cannot be met by their use. These considerations make Regulatory Alternative V more reasonable than Regulatory Alternative IV.

In view of the above assessment of the environmental, energy, and economic impacts, the large emission reductions that would be achieved, and the reasonable energy and economic impacts relative to these reductions, Regulatory Alternative V appears to be the most reasonable choice as the best system of continuous emission reduction. Regulatory Alternative V has therefore been selected as the basis for the proposed new source standards of performance. This alternative has been determined to be affordable, and the environmental, energy, and economic impacts have been determined to be reasonable.

Selection of Format for the Proposed Standards

A number of different formats were considered for the proposed standards. The format selected must be compatible with all of the control methods or systems that would be used to comply with the proposed standards, such as the use of low-VOC content coatings or the use of higher VOC content coatings coupled with an incinerator. The formats considered were emission limits expressed in terms of the VOC concentration in exhaust gases, mass of emissions per unit of production, mass of emissions per unit of coating solids applied, and an overall percentage emission reduction.

Typically, concentration standards are preferred over mass standards because mass standards require more measurements and conversion calculations. Exhaust gas flow rates and raw material or product flow rates have to be measured, and concentration measurements have to be converted to mass measurements. Where incineration is used as a control technique, there is a potential for air dilution. Excess air is used in incinerators to ensure complete combustion, and the quantity of excess air used can vary. Due to the potential for air dilution, correction factors are necessary to ensure that measurements of emissions from all control devices are referenced to the same basis and that the quantity of VOCs emitted is the same no matter how much excess air is used. If incinerators are used, correction factors referencing all calculations to a specific oxygen concentration level in the exhaust gases are a solution to the problem of using varying quantities of excess air. These factors, however, do not compensate for indirect air dilution resulting from combustion of more fuel and air than is necessary. In any event, a concentration standard would require a measurement of exhaust oxygen concentration. For these reasons, this format was not selected for the proposed standards.

For an emission limit expressed in terms of mass of VOCs per unit of production, compliance is relatively simple to demonstrate when low-VOC content coatings are used but is more difficult with the use of emission control devices. For low-VOC content coatings, the VOC content of the coatings used would be determined and multiplied by the volume of coatings used over a given time period. This value would then be divided by the production during that same time period to give the VOC emissions per unit of production. When emission control devices are used, stack tests would be necessary in addition to the determination of the VOC content of the coating to determine VOC emissions. The emissions over a period of time could then be divided by the production over the same period of time to yield the VOC emissions per unit of production. This format would not be very flexible in accommodating the large variations that exist in the VOC and solids content of the coatings used by the industry and the range of coating thicknesses that are used to meet the requirements of the many end products for which coil coated metal is used. This format could also penalize those coaters who, for reasons of product performance, must use a coating with a high VOC content or must use an above-average coating thickness. Therefore, an emission limit expressed in terms of mass of VOCs per unit of production was rejected as the format for the proposed standards.

An emission limit expressed in terms of VOC emissions per volume of coating solids applied overcomes the problems associated with the first two formats.

Because roller coating is the method of application, transfer efficiency is nearly 100 percent, which eliminates the need to consider this parameter explicitly in the compliance procedures. Stack testing would not be required unless emission control devices were used, and this format is compatible with all of the control methods that might be used. The difficulty with this format lies with the selection of the level of the emission limit, because the range of VOC content varies widely in the many different coating formulations used by the industry. To allow the use of coatings with varying VOC contents, a level would have to be selected that would permit compliance when coatings are used with the higher levels of VOC content. Such a limit may not achieve optimum VOC emissions control for coaters that use coatings with average or lower VOC content.

A format requiring an overall percentage reduction overcomes the problem with varying VOC content of the coatings but is not as compatible with compliance by the use of low-VOC content coatings as is the format of VOC content per unit of coating solids applied. However, the combination of this format with an emission limit expressed in terms of mass of emissions per unit of coating solids applied would allow the plant owner or operator to decide which method of compliance is most compatible with the VOC content of the coatings applied in his plant. Therefore, this combined format was selected for the proposed standards. This format has all of the advantages associated with the third format (mass of emissions per unit of coating solids applied) and does not penalize those coaters who must use coatings with a high VOC content because they are allowed to demonstrate the required percentage reduction in overall emissions.

Selection of Emission Limits

Section 111(a)(1) requires the emission limits to reflect "application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated." Section 111(a)(1). The "best technological system" defined by Section 111(a)(1) is one that is not "exorbitantly costly." *Essex Chemical Corp.* v. *Ruckelshaus*, 486 F.2d 427, 433 (D.C. Cir. 1973).

Application of the "best technological system" results in a three-step standard: for coatings with VOC contents of 1.4 or more kg/l of coating solids, the standard is 90 percent reduction in VOC emissions. For coatings with VOC contents of .28 to 1.4 kg/l of coating solids, the standard is .14 kg VOC/l of coating solids. For coatings with VOC contents below .28 kg/l of coating solids, the standard is .28 kg/l.

As discussed earlier, VOC reductions of 90 percent are achievable by systems of capture and control. However, the cost and energy requirements of achieving VOC emission reductions varies according to the VOC content of the coating being controlled. The lower the VOC content of the coating, the higher are the cost and energy requirements of achieving a given reduction in emissions. This is for two reasons. First, control of lower VOC coatings generally requires capture and control systems of the same size and cost as control of higher-VOC coatings, but it achieves less emission reduction because there is less VOC to be controlled. Second, the cost and energy requirements of controlling lower-VOC coatings in incinerators are further increased by the need to use additional supplemental fuel to operate the incinerator.

In the Administrator's judgment, the cost and energy requirements of a capture and control system that achieves a 90 percent reduction are reasonable on coatings with VOC contents of 1.4 or more kg/l of coating solids. Such a control system is therefore the "best technological system" and the standard for such coatings is 90 percent reduction.

For coatings with VOC contents between .28 and 1.4 kg/l of coating solids, the standard is .14 kg VOC/l of coating solids. In the Administrator's judgment, the cost and energy requirements of achieving significantly greater emission reduction on these coatings would be exorbitant. Therefore, the "best technological system" for these coatings is one that can achieve .14 kg VOC/l of coating solids.

For coatings with VOC contents below .28 kg/l of coating solids, the standard is .28 kg VOC/l of coating solids. That is, no capture and control system is required on these coatings. This emission limitation reflects the Administrator's judgment that the cost and energy requirements of using any add-on control and capture system to control such coatings would be exorbitant.

Modification Considerations

The history of steady growth by the coil coating industry has lead many owners and operators of coil coating lines to look for ways of increasing their production capacity. Because the lead time to construct a new coil coating line is often as long as 2 years, more expedient means of increasing production capacity were developed. Many coaters have found that the design speed of existing coil coating lines can be increased by replacing or modifying the drive motors, electrical controls, or both. This increased speed is often achievable without modifications to the ovens because of improvements that occur in coating technology. This method of increasing production has played an important part in the growth of the coil coating industry to date and is expected to continue to play an important part in future industry growth. When accompanied by a capital expenditure, such changes to increase the design speed of coil coating lines would subject an existing coil coating line to the proposed standards if VOC emissions increase. There are no technological reasons why one of the control techniques on which the proposed standards are based—incineration with heat recovery and low-VOC content coatings—cannot be applied to existing coil coating lines that undergo a modification or reconstruction. The use of incineration with heat recovery as a retrofit on existing lines is well documented in the literature. To exclude these lines from the requirements of the proposed standards would be to exclude a large portion of projected industry growth. This fact, when considered with the feasibility of retrofitting, leads to the conclusion that it is reasonable to apply the proposed standards to all capital expenditure modifications for increasing the design speed of a coil coating line that results in an increased VOC emission rate. The impacts of the proposed standards are reasonable as applied to modified and reconstructed facilities.

Method of Determining Compliance

The two most likely methods of compliance with the proposed standards are the installation of emission control devices or the use of low-VOC content coatings. Because of the variations that exist in emission control systems and in the physical configurations of coil coating lines, the exact procedure used in determining compliance may vary from plant to plant. Generally, each owner or operator of a new, modified, or reconstructed coil coating plant must begin conducting performance tests within the first 6 months of operation. Following is a summary of the major requirements for determining compliance with the proposed standards:

(1) Where low-VOC content coatings are used to achieve compliance with the proposed numerical emission limit (0.28 kg/l of coating solids applied), the plant owner or operator must conduct monthly performance tests that consist of a calculation of a weighted average of the VOC content (including dilution solvents) per liter of coating solids for each prime coat and for each finish coat operation for each calendar month of operation. Equations are provided for calculating the weighted average. The data necessary to calculate the average VOC content of the coatings may be obtained from formulation data supplied by the manufacturer of the coatings or, in cases where the validity of the formulation data is in doubt, through a coating analysis performed with Reference Method 24.

(2) Where higher VOC content coatings are used with an emission control device to meet the proposed numerical emission limit (0.14 kg/l of coating solids applied), the owner or operator must conduct monthly performance tests that consist of a calculation of a weighted average of the VOC content (including dilution solvents) of the coatings applied for each prime coat and each finish coat operation for each calendar month according to the equations provided. The owner or operator must also calculate the overall VOC removal efficiency required to meet the emission limit and, during the first monthly performance test, must measure the actual overall VOC destruction rate achieved. If incineration is used, the latter value is determined by measuring the concentration of VOCs in the effluent gases in and out of the control device and to the atmosphere and by then calculating the overall control efficiency with the equations provided in the proposed standards. If carbon adsorption is used, the actual overall VOC removal efficiency is determined by a material balance performed with the equations provided in the proposed standards. Compliance is demonstrated where the measured value of the overall VOC removal rate is greater than or equal to the required overall VOC removal rate. If incineration is used, the operating temperature of the control device must be measured and recorded during the measurement of incinerator efficiency. Subsequent to the first monthly performance test, compliance is demonstrated if the computed overall VOC destruction rate required is less than or equal to the overall VOC destruction rate measured during the most recent measurement of incinerator efficiency. The measurement of the VOC destruction rate of the incinerator must be repeated when directed by the Administrator or when the owner or operator elects to operate the control device at conditions that are different from those during the most recent measurement.

(3) Where compliance is achieved through the demonstration of a 90 percent overall emission reduction, the owner or operator must conduct the first monthly performance test with the equations provided in the proposed standards and Reference Method 25 to determine the overall percent reduction of the control device. Compliance is demonstrated where the overall percent reduction is equal to or greater than 90 percent. The operating temperature of the control device must be measured during the test. In subsequent months, if the operating temperature of the control device is maintained within specified intervals of the temperature measured during the most recent measurement of incinerator efficiency, compliance is demonstrated. The test of the efficiency of the control device must be repeated when directed by the Administrator or when the owner or operator elects to operate the control device at conditions that are different from those during the most recent measurement.

(4) During the first monthly performance test for a capture system and incinerator one must be able to measure all of the potential emissions, both fugitive emissions and those ducted to the incinerator. To do this, all fugitive emissions from the coating application area must be captured and vented through stacks suitable for testing. Prior to the performance test for incineration-controlled affected facilities, the owner or operator will be required to construct a temporary total enclosure around the coating application station for the purpose of capturing fugitive VOC emissions. A total enclosure is defined as any structure or building around the coating applicator and flashoff area or the entire coating line for the purpose of confining and totally capturing fugitive VOC emissions. If a permanent total enclosure exists on the line prior to the performance test, and the enforcing agency is satisfied that the enclosure is totally capturing fugitive emissions, the construction of a temporary enclosure is not required.

Two types of violations may occur at a source that achieves compliance through the use of incineration in conjunction with higher VOC content coatings. The first is an increase in the average VOC content of the coatings. The second type of violation would involve improper operation and maintenance of the control device. These two types of violations are discussed below.

When incineration is used to achieve compliance with the numerical limits of the proposed standards, the first monthly performace test consists of determining the weighted average VOC content of all coating formulations applied for a calendar month and of measuring the overall VOC destruction rate of the incinerator. The overall VOC destruction rate measured during that test will determine the maximum allowable average VOC content of coatings that can be used by the source. The VOC content must not exceed a value that, when reduced by the measured overall VOC destruction rate of the incinerator, is less than or equal to the numerical emission limit. If, during any subsequent monthly performance test, the average VOC content exceeds the allowable level (as determined by the most recent measurement), the source would be considered in violation. If an owner or operator wishes to increase the VOC content above the allowable level (as determined by the most recent measurement), he must demonstrate, by conducting another measurement that the overall VOC destruction rate of the incinerator is sufficient to meet the proposed standards with the higher VOC content coatings.

The second type of violation would involve a recurring pattern of temperature fluctuations lasting for 3 hours or more during the coating process. Although the proposed standards would require the owner or operator to report each such occurrence and its duration, the temperature drop in itself would not necessarily be considered a violation; however, repeated incidents may indicate improper operation and maintenance of control equipment, a violation of 40 CFR 60.11(d). If a source's continuous monitor shows repeated drops in temperature, the Administrator may require that a test of the overall VOC destruction rate of the incinerator be conducted at the lower temperature. If the test shows a violation of the standard, the plant may be cited for improper operation and maintenance of the control device and would be required to increase the operating temperature to that at which compliance was demonstrated.

A source that achieves compliance with the proposed standards through the use of Low-VOC content coatings without the use of emission control devices must determine a weighted average of the VOC content of the

coatings applied for each calendar month. Each of these calculations or measurements would be considered a performance test. Therefore, each measurement or calculation that results in an average VOC content greater than 0.28 kg/l, as averaged over the calendar month, would be a violation.

Performance Test Methods

Reference Method 24, "Determination of Volatile Matter Content, Water Content, Density, Volume Solids, and Weight Solids of Surface Coatings," provides the data necessary for a determination of the VOC content of coating material measured as mass of volatile organics per volume of coating solids. For prime coat and finish coat operations, Reference Method 24 could used to determine the VOC content of the coating material. The Administrator may at any time require that Reference Method 24 be used, but generally he will allow the owner or operator to obtain these data from the coating formulator or from company records, in which case Reference Method 24 would be retained as the reference method for verification when there is cause to doubt the validity of the formulation data. The method by which the VOC concentration is to be measured in the gas streams is Reference Method 25, "Determination of Total Gaseous Nonmethane Organic Emissions as Carbon." The method by which the volumetric flow rate of stack gases is to be measured is Reference Method 2, "Determination of Stack Gas Velocity and Volumetric Flow Rate (Type S Pitot Tube)," as described in 40 CFR Part 60, Appendix A. During all measurements performed with Reference Method 25, the operating temperature of the control device must be measured for use as a standard against which the operating temperature during subsequent operations may be compared.

Selection of Monitoring Requirements

Monitoring requirements are generally included in standards of performance to provide a means for ensuring proper operation and maintenance of emission control systems and to provide plant and enforcement personnel with sufficient data to determine compliance with the proposed standards.

Although continuous monitoring of total VOC emissions may be considered technically feasible, there are substantial technical problems and questions associated with this procedure, and it would also involve a significant expense to the industry for equipment and manpower. When incineration is used to achieve compliance with the proposed standards, operating parameters can be used to monitor VOC removal once the effectiveness of the system is demonstrated.

The proposed standards would require the plant owner or operator to measure the incinerator temperature parameters during each measurement of the overall VOC destruction rate of the incinerator. Monitoring would then consist of recording the temperature parameters on a continuous basis. Recording devices for these parameters are normally installed on coil coating lines for process control and would, therefore, require no additional expenditures. For thermal incinerators, the plant owner or operator would also be required to report on a quarterly basis all periods in excess of 3 hours during which the average temperature of the incinerator is more than 28° C (50° F) below the combustion temperature for which compliance was demonstrated. For catalytic incinerators, the plant owner or operator would be required to report, on a quarterly basis, all coating periods in excess of 3 hours during which the difference between the upstream and downstream temperatures fall below 80 percent of the difference at which compliance was demonstrated or during which the upstream temperature falls more than 28° C (50° F) below the temperature at which compliance was demonstrated. In addition, for those facilities that use thermal incineration, continuous daily records of the incinerator temperature must be maintained at the source. For those facilities using catalytic incineration, the plant owner or operator would be required to maintain continuous daily records of the gas temperature, both upstream and downstream of the catalyst bed, since a decline in the temperature difference between the inlet and exhaust would be indicative of a reduction in catalyst activity.

In addition, each plant owner or operator that uses higher VOC content coatings in combination with an incinerator or that uses low-VOC content coatings without an incinerator to comply with the numerical limit specified in the proposed standards would be required to calculate for each calendar month a weighted average of the VOC content of coatings applied for each affected facility. For each affected facility, the plant owner or operator would be required to report each calendar month of operation following the first compliance test where the numerical limit was exceeded. These reports would have to be submitted within 10 days after the end of each such month.

Impact of Reporting Requirements

A reports impact analysis for the metal coil surface coating industry was prepared in response to the U.S. Environmental Protection Agency (EPA) guidelines for implementing Executive Order 12044 (44 FR 30988, May 29, 1979). The purpose of the analysis is to estimate the economic impact of the reporting and recordkeeping requirements that would be imposed by the proposed standards and by those appearing in the General Provisions of 40 CFR Part 60. Included in the analysis are the rationale for the selection of the proposed requirements, and evaluation of the major alternatives considered prior to the selection required by the General Provisions and by the proposed standards. A copy of the reports impact analysis is included in Subcategory II-I of the metal coil surface coating docket (EPA Docket No. OAQPS A-80-5).

Based on the reports impact analysis, a total of 23 industry person-years would be required to comply with the recordkeeping and reporting requirements through the first 5 years of applicability.

Public Hearing

A public hearing will be held to discuss the proposed standards in accordance with Section 307(d)(5) of the Clean Air Act. Persons wishing to make oral presentations should contact EPA at the address given in the ADDRESSES section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements should be addressed to the Central Docket Section address given in the ADDRESSES section of this preamble.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Central Docket Section in Washington, D.C. (see the ADDRESSES section of this preamble).

Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered in the development of this proposed rulemaking. The principal purposes of the docket are (1) to allow interested parties to readily identify and locate documents so that they can intelligently and effectively participate in the rulemaking process and (2) to serve as the record in case of judicial review.

Miscellaneous

As prescribed by Section 111, establishment of standards of performance for Metal Coil Surface Coating was preceded by the Administrator's determination (40 CFR 60.16, 44 FR 49222, dated August 21, 1979) that these sources contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare. In accordance with Section 117 of the Act, publication of this proposal was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. The Administrator will welcome comments on all aspects of the proposed regulation, including economic and technological issues, and on the test methods.

Comments are specifically requested on the definition of the affected facility that is contained in the proposed standards. Any comments submitted to the Administrator on the definition of the affected facility should contain specific information and data pertinent to an evaluation of the magnitude and severity of the impact of the current proposal and suggested alternative courses of action that would avoid this impact.

It should be noted that standards of performance for new sources established under Section 111 of the Clean Air Act reflect

> * * * application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated [Section 111(a)(1)].

Although there may be emission control technology available that can reduce emissions below those levels required to comply with standards of performance, this technology might not be selected as the basis of standards of performance due to costs associated with its use. Accordingly, standards of performance should not be viewed as the ultimate in achievable emission control. In fact, the Act requires (or has the potential for requiring) the imposition of a more stringent emission standard in several situations.

For example, applicable costs do not necessarily play as prominent a role in determining the "lowest achievable emission rate" for new or modified sources locating in nonattainment areas, i.e., those areas where statutorily-mandated health and welfare standards are being violated. In this respect, Section 173 of the Act requires that new or modified sources constructed in an area where ambient pollutant concentrations exceed the National Ambient Air Quality Standards (NAAQS) must reduce emissions to the level that reflects the "lowest achievable emission rate" (LAER), as defined in Section 171(3) for such category of source. The statute defines LAER as that rate of emissions based on the following, whichever is more stringent:

> (A) the most stringent emission limitation which is contained in the implementation plan of any State for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable, or
>
> (B) the most stringent emission limitation which is achieved in practice by such class or category of source.

In no event can the emission rate exceed any applicable New Source Performance Standard [Section 171(3)].

A similar situation may arise under the prevention of significant deterioration of air quality provisions of the Act (Part C). These provisions require that certain sources [referred to in Section 169(1)] employ "best available control technology" (BACT) as defined in Section 169(3) for all pollutants regulated under the Act. BACT must be determined on a case-by-case basis, taking energy, environmental, and economic impacts and other costs into account. In no event may the application of BACT result in emissions of any pollutants that will exceed the emissions allowed by any applicable standard established pursuant to Section 111 (or 112) of the Act.

In all events, State Implementation Plans (SIPs) approved or promulgated under Section 110 of the Act must provide for the attainment and maintenance of NAAQS designed to protect public health and welfare. For this purpose, SIPs must in some cases require greater emission reduction than those required by standards of performance for new sources.

Finally, States are free under Section 116 of the Act to establish even more stringent emission limits than those established under Section 111 or those necessary to attain or maintain the NAAQS under Section 110. Accordingly, new sources may in some cases be subject to limitations more stringent than standards of performance under Section 111, and prospective owners and operators of new sources should be aware of this possibility in planning for such facilities.

This regulation will be reviewed 4 years from the date of promulgation as required by the Clean Air Act. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology, and reporting requirements. The reporting requirements in this regulation will be reviewed as required under EPA's sunset policy for reporting requirements in regulations.

Section 317 of the Clean Air Act requires the Administrator to prepare an economic impact assessment for any new source standard of performance promulgated under Section 111(b) of the Act. An economic impact assessment was prepared for the proposed regulations and for other regulatory alternatives. All aspects of the assessment were considered in the formulation of the proposed standards to insure that the proposed standards would represent the best system of emission reduction considering costs. The economic impact assessment is included in the Background Information Documents.

Dated: December 18, 1980.

Douglas M. Costle,

Administrator.

It is proposed that 40 CFR Part 60 be amended by adding a new Subpart TT as follows:

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

* * * * *

Subpart TT—Standards of Performance for Metal Coil Surface Coating

Authority: Sections 111 and 301(a) of the Clean Air Act, as amended [42 U.S.C. 7411, 7601(a)], and additional authority as noted below.

Subpart TT—Standards of Performance for Metal Coil Surface Coating

§ 60.460 Applicability and designation of affected facility.

(a) The provisions of this subpart apply to the following affected facilities in a metal coil surface coating line: each prime coat operation, each finish coat operation, and each prime and finish

coat operation combined when the finish coat is applied wet on wet over the prime coat and both coatings are cured simultaneously.

(b) This subpart applies to any facility identified in paragraph (a) of this section that commences construction, modification, or reconstruction after _____ (date of publication in Federal Register).

§ 60.461 Definitions.

(a) All terms used in this subpart not defined below are given the same meaning as in the Act or in Subpart A of this part.

"Coating" means any organic material that is applied to the surface of metal coil for decorative or protective purposes.

"Coating application station" means that portion of the metal coil surface coating operation where the coating is applied to the surface of the metal coil. Included as part of the coating application station is the flashoff area between the coating application station and the curing oven.

"Curing oven" means the device that uses heat or radiation to dry or cure the coating applied to the metal coil.

"Finish coat operation" means the coating application station, curing oven, and quench station used to apply and dry or cure the final coating(s) on the surface of the metal coil. Where only a single coating is applied to the metal coil, that coating is considered a finish coat.

"Metal coil surface coating operation" means the application system used to apply an organic coating to the surface of any continuous metal strip that is packaged in a roll or coil.

"Prime coat operation" means the coating application station, curing oven, and quench station used to apply and dry or cure the initial coating on the surface of the metal coil.

"Quench station" means that portion of the metal coil surface coating operation where the coated metal coil is cooled, usually by a water spray, after baking or curing.

"VOC content" means that quantity, in kilograms per liter of coating solids, of volatile organic compounds (VOCs) in a coating as applied to metal coil.

(b) All symbols used in this subpart not defined below are given the same meaning as in the Act and in Subpart A of this part.

C_a = the VOC concentration in each effluent gas stream leaving the control device and entering the atmosphere, in parts per million by volume.

C_b = the VOC concentration in each effluent gas stream entering the control device, in parts per million by volume.

C_f = the VOC concentration in each effluent gas emitted directly to the atmosphere, in parts per million by volume.

D_{ci} = density of each coating as applied, in kilograms per liter.

E = the overall VOC destruction rate of the capture system and control device.

ER = the required overall VOC destruction rate.

G = the monthly average VOC content per unit of coating solids applied, in kilograms per liter.

k = the number of coating formulations applied.

L_{ci} = the volume of each coating applied, in liters.

L_s = volume of solids in coatings applied, in liters.

N = weighted average of mass of VOCs per volume of solids, after the control device.

$$\frac{\text{kg VOCs}}{\text{liter of solids}}$$

l = the number of effluent gas streams entering the control device from one affected facility.

n = the number of effluent gas streams leaving the control device and entering the atmosphere.

m = the total number of effluent gas streams entering the control device.

M_o = total mass of VOCs consumed in a calendar month, in kilograms.

M_r = total mass of VOCs recovered from a affected facility during a calendar month, in kilograms.

p = the number of effluent gas streams emitted directly to the atmosphere from one affected facility.

Q_a = the volumetric flow rate of each effluent gas stream leaving the control device and entering the atmosphere, in dry standard cubic meters per second.

Q_b = the volumetric flow rate of each effluent gas stream entering the control device, in dry standard cubic meters per second.

Q_f = the volumetric flow rate of each effluent gas stream emitted directly to the atmosphere, in dry standard cubic meters per second.

V_{si} = the proportion of solids in each coating as applied, by volume.

W_{oi} = the proportion of VOCs in each coating as applied, by weight.

§ 60.462 Standards for volatile organic compounds.

(a) On and after the date on which the initial performance test required by § 60.8 has been completed, each owner or operator subject to this subpart shall not cause to be discharged into the atmosphere more than:

(1) 0.28 kilogram VOC per liter (kg VOC/l) of coating solids applied for each calendar month for each prime coat or finish coat operation without the use of emission control device(s); or

(2) 0.14 kg VOC/l of coating solids applied for each calendar month for each prime coat or finish coat operation by using emission control device(s) operated at the most recently demonstrated overall efficiency; or

(3) 10 percent of the VOCs applied for each calendar month for each prime coat or finish coat operation (90 percent emission reduction).

§ 60.463 Performance test and compliance provisions.

(a) Paragraphs 60.8(d) and (f) do not apply to the performance test procedures required by this subpart.

(b) Each owner or operator of an affected facility shall conduct a performance test for each calendar month for each affected facility according to the procedures in this section.

(c) Where compliance with the numerical limit specified in § 60.462(a)(1) or (2) is achieved through the use of low-VOC content coatings without an emission control device or through the use of higher VOC content coatings in conjunction with an emission control device, the owner or operator shall compute and record a weighted average of the VOC content per volume of coating solids applied for each calendar month. The owner or operator shall obtain the data necessary to compute the weighted average through information provided by the formulator of the coating material or, if there is any doubt as to the validity of the formulation data, through the analysis of each coating, as applied, with Reference Method 24. Coating and solvent usage data may be obtained from company records. The owner or operator shall compute the average VOC content of coatings applied by the following equations:

(1) The total mass of VOCs consumed shall be computed with the following equation:

$$M_o = \sum_{i=1}^{k} W_{oi} D_{ci} L_{ci} .$$

(2) The total volume of solids consumed shall be computed with the following equation:

$$L_s = \sum_{i=1}^{k} V_{si} L_{ci} .$$

(3) The average VOC content shall be computed with the following equation:

$$G = \frac{M_o}{L_s} .$$

(d) Where compliance with the numerical limit specified in § 60.462(a)(1) is achieved through the use of low-VOC content coatings without emission control devices, compliance is achieved where the value of the VOC content per unit of coating solids applied (G) is less than or equal to 0.28 kg/l for each affected facility.

(e) Where compliance with the numerical limit specified in § 60.462(a)(2) is achieved through the use of higher VOC content coatings in conjunction with an emission control device that destroys VOCs, the owner or operator shall determine and record, in addition to the average VOC content per volume of coating solids applied, the required overall VOC destruction rate and, during the first monthly test, the actual overall VOC destruction rate of the control device according to the following procedures.

(1) The required overall VOC destruction rate is calculated with the following equation:

$$ER = \frac{G-0.14}{G} ,$$

(2) The actual overall VOC destruction rate is calculated with measured values of the VOC concentration and volumetric flow rate of each gas stream entering and leaving the control device and of each gas stream emitted directly to the atmosphere by the following equation:

$$E = \frac{\sum_{i=1}^{\ell} (C_{bi} \times Q_{bi})}{\sum_{i=1}^{\ell} (C_{bi} \times Q_{bi}) + \sum_{i=1}^{p} (C_{fi} \times Q_{fi})} \quad \frac{\sum_{i=1}^{m} (C_{bi} \times Q_{bi}) - \sum_{i=1}^{n} (C_{ai} \times Q_{ai})}{\sum_{i=1}^{m} (C_{bi} \times Q_{bi})}$$

(i) The owner or operator of the affected facility shall construct the overall VOC emission reduction system so that all volumetric flow rates and total VOC emissions can be accurately determined by the applicable test methods and procedures specified in § 60.466(a)(2).

(ii) The owner or operator of an affected facility shall construct a temporary total enclosure around the coating applicator and flashoff area during the performance test for the purpose of capturing fugitive VOC emissions. If a permanent total enclosure exists in the affected facility prior to the performance test and the Administrator is satisfied that the enclosure is totally capturing fugitive VOC emissions, then no additional total enclosure will be required for the performance test.

(3) Where compliance with the numerical limit specified in § 60.462(a)(2) is achieved through the use of higher VOC content coatings in conjunction with an emission control device that destroys VOCs, compliance is achieved when the value of the overall VOC destruction rate (E) is greater than or equal to the required overall VOC destruction rate (ER).

(f) Where compliance with § 60.462(a)(3) is achieved through the demonstration of a 90 percent overall reduction in VOC emissions, the owner or operator shall determine and record the actual overall VOC destruction rate using the equations provided in paragraph (e) of this section. Compliance with § 60.462(c) is achieved when the value of the overall reduction in emissions (E) is equal to or greater than 0.90.

(g) An owner or operator shall use the following procedure for each calendar month for each affected facility that uses a capture system and a control device that recovers VOCs (e.g., carbon adsorber) to comply with the applicable emission limit specified under §60.462(a)(2):

(1) Calculate the weighted average of mass of VOCs per volume of solids emitted after the control device with the following equation:

$$N = \frac{M_o - M_r}{L_s}$$

(2) If the weighted average of mass of VOCs per volume of solids emitted after the control device (N) is less than or equal to the applicable emission limit specified under § 60.462(a)(2), the affected facility is in compliance. Each monthly calculation is a performance test for the purposes of this subpart.

§ 60.464 Monitoring of emissions and operations.

(a) Where compliance with the numerical limit specified in § 60.462(a)(1) is achieved through the use of low-VOC content coatings without the use of emission control devices, the owner or operator shall compute and record the average VOC content per volume of coating solids applied during each calendar month for each affected facility, according to the equations provided in § 60.463(c).

(b) Where compliance with the numerical limit specified in § 60.462(a)(2) is achieved through the use of higher VOC content coatings in combination with the use of an emission control device that destroys VOCs, the owner or operator shall compute and record for each affected facility the average VOC content per volume of coating solids applied during each calendar month, according to the equations provided in § 60.463(c).

(c) If thermal incineration is used, each owner or operator subject to the provisions of this subpart shall install, calibrate, operate, and maintain a device that continuously records the combustion temperature of any effluent gases incinerated to achieve compliance with § 60.462(a)(2) or (3). This device shall have an accuracy of ±2.5° C or ±0.75 percent of the temperature being measured expressed in degrees Celsius, whichever is greater. Each owner or operator shall also record all periods (during actual coating operations) in excess of 3 hours during which the average temperature in any thermal

incinerator used to control emissions from an affected facility remains more than 28° C (50° F) below the temperature at which compliance with § 60.462(a)(2) or (3) was demonstrated during the most recent measurement of incinerator efficiency required by § 60.8. The report required by § 60.7 shall identify each such occurrence and its duration. If catalytic incineration is used, the owner or operator shall install, calibrate, operate, and maintain a device to continuously monitor and record the gas temperature both upstream and downstream of the incinerator catalyst bed. This device shall have an accuracy of ±2.5° C or ±0.75 percent of the temperature being measured expressed in degrees Celsius, whichever is greater. The owner or operator shall record all periods during the coating operation in excess of 3 hours where the average difference between the temperature upstream and downstream of the incinerator catalyst bed remains below 80 percent of the temperature difference at which compliance was demonstrated during the most recent measurement of incinerator efficiency or when the inlet temperature falls more than 28° C (50° F) below the temperature at which compliance with § 60.462(a) (2) or (3) was demonstrated during the most recent measurement of incinerator efficiency required by § 60.8. The report required by § 60.7 shall identify each such occurrence and its duration.

(Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414)

§ 60.465 Reporting and recordkeeping requirements.

(a) Where compliance with the numerical limit specified in § 60.462(a)(1) or (2) is achieved through the use of low-VOC content coatings without emission control devices or through the use of higher VOC content coatings in conjunction with emission control devices that destroy VOCs, each owner or operator subject to the provisions of this subpart shall include in the initial compliance report required by § 60.7 the weighted average of the VOC content of coating solids applied during a period of one calendar month for each affected facility.

(b) Where compliance with § 60.462(a) (2) or (3) is achieved through the use of an emission control device that destroys VOCs, each owner or operator subject to the provisions of this subpart shall include the following data in the initial compliance report required by § 60.7:

(1) The actual overall VOC destruction rate, and required overall VOC destruction rate used to attain compliance with § 60.462(a) (2) or (3); and

(2) The combustion temperature of the thermal incinerator or the gas temperature, both upstream and downstream of the incinerator catalyst bed, used to attain compliance with § 60.462(a) (2) or (3).

(c) Where compliance with § 60.462(a)(1) is achieved through the use of low-VOC content coatings without the use of an emission control device, each owner or operator shall report for each affected facility each month where the average VOC content of coatings applied exceeds the limits specified in § 60.462(a)(1). These reports must be submitted within 10 days after the end of each such month.

(d) Where compliance with § 60.462(a)(2) is achieved through the use of higher VOC content coatings and an emission control device that destroys VOCs, each owner or operator shall report for each affected facility each month for which the average VOC content of the coatings applied, when reduced by the destruction efficiency of the control device (as determined by the most recent measurement), exceeds the numerical limit specified in § 60.462(a)(2). These reports must be submitted within 10 days after the end of each such month.

(e) Where compliance with § 60.462(a) (2) or (3) is achieved by the use of a thermal incinerator, each owner or operator must report quarterly all periods in excess of 3 hours during which the average combustion temperature of the incinerator, as measured by the continuous monitor, remained more than 28° C (50° F) below the temperature at which compliance was demonstrated during the most recent measurement of incinerator efficiency. Where compliance is achieved with a catalytic incinerator, the owner or operator must report quarterly all periods in excess of 3 hours during which the average difference between the temperature upstream and downstream of the catalyst bed remains below 80 percent of the temperature difference at which compliance was demonstrated during the most recent measurement of incinerator efficiency and must report all periods in excess of 3 hours during which the average temperature upstream of the catalyst bed remains more than 28° C (50° F) below the temperature at which compliance was demonstrated during the most recent measurement of incinerator efficiency.

(f) Where compliance is achieved through the use of a solvent recovery system, the owner or operator shall record daily the amount of solvent recovered by the system for each affected facility. The owner or operator shall report each month where the amount of solvent recovered by the system falls below that necessary for compliance. These reports must be submitted within 10 days after the end of each such month.

(g) Each owner or operator subject to the provisions of this subpart shall maintain at the source, for a period of at least 2 years, records of all data and calculations used to determine VOC emissions from each affected facility. Where compliance is achieved through the use of thermal incineration, each owner or operator shall maintain, at the source, daily records of the incinerator combustion temperature. If catalytic incineration is used, the owner or operator shall maintain at the source daily records of the gas temperature, both upstream and downstream of the incinerator catalyst bed.

§ 60.466 Test methods and procedures.

(a) The Reference Methods in Appendix A to this part except as provided under § 60.8(b) shall be used to determine compliance with § 60.462 as follows:

(1) Reference Method 24, or data provided by the formulator of the coating for determining the VOC content of each coating as applied to the surface of the metal coil. In the event of a dispute, Reference Method 24 shall be the reference method;

(2) Reference Method 25 for the measurement of the VOC concentration in the effluent gas stream entering and leaving the incinerator for each stack equipped with an emission control device, and for the measurement of the VOC concentration in each effluent gas stream emitted directly to the atmosphere;

(3) Method 1 for sample and velocity traverses;

(4) Method 2 for velocity and volumetric flow rate;

(5) Method 3 for gas analysis; and

(6) Method 4 for stack gas moisture.

(b) For Method 24 the coating sample must be a 1-liter sample taken at a point where the sample will be representative

of the coating as applied to the surface of the metal coil.

(c) For Method 25, the sampling time for each of three runs is to be at least 60 minutes, and the minimum sample volume is to be at least 0.003 dry standard cubic meter (dscm); however, shorter sampling times or smaller volumes, when necessitated by process variables or other factors, may be approved by the Administrator.

(d) The Administrator will approve testing of representative stacks on a case-by-case basis if the owner or operator can demonstrate to the satisfaction of the Administrator that testing of representative stacks yields results comparable to those that would be obtained by testing all stacks.

(Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414))

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Part III

Department of the Treasury

Office of Revenue Sharing

Discrimination on the Basis of Handicap

DEPARTMENT OF THE TREASURY

Office of Revenue Sharing

31 CFR Part 51

Fiscal Assistance to State and Local Governments; Discrimination on the Basis of Handicap

AGENCY: Office of Revenue Sharing, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This final rule contains final regulations implementing the incorporation into the State and Local Fiscal Assistance Act of 1972, as amended (the "Revenue Sharing Act") of Section 504 of the Rehabilitation Act of 1973, as amended. Section 504 prohibits discrimination on the basis of handicapped status.

EFFECTIVE DATE: February 4, 1981.

FOR FURTHER INFORMATION CONTACT: Richard S. Isen, Acting Chief Counsel, Office of Revenue Sharing; or Jacqueline L. Jackson, Attorney-Advisor, Office of Revenue Sharing, Treasury Department, Washington, D.C. 20226 (202) 634-5187

Taped copies of Section 51.55 are available upon request.

SUPPLEMENTARY INFORMATION:

Background

On October 10, 1976, the State and Local Fiscal Assistance Amendments of 1976 (Pub. L. 94-488) were enacted to amend the State and Local Fiscal Assistance Act of 1972 (31 U.S.C. 1221 *et seq.* hereinafter referred to as the "Revenue Sharing Act"), which established the General Revenue Sharing Program. Among other revisions the Amendments added the prohibition against discrimination on the basis of handicap to the nondiscrimination requirements in Section 122 of the Revenue Sharing Act. Interim regulations implementing the nondiscrimination provisions of the Amendments were published in interim form on April 6, 1977 (42 FR 18362). To date, Section 504 is enforced by the Office of Revenue Sharing (hereinafter referred to as the "ORS") pursuant to the general prohibitions contained in § 51.52 of the interim regulations (31 CFR 51.52).

On April 14, 1978, the ORS published proposed regulations to fully implement Section 504 of the Rehabilitation Act of 1973, as amended (43 FR 15735). Another proposed rule was published on December 31, 1979 (44 FR 77356) together with proposed age discrimination regulations, as provided in the Age Discrimination Act of 1975, and technical revisions of other provisions of Subpart E.

The proposed rule published on December 31, 1979 also contained revisions to the complete set of revenue sharing regulations contained in 31 CFR Part 51. These final regulations contain only the implementation of Section 504. The current authorization for the General Revenue Sharing Program ended on September 30, 1980, and it was determined that publication of revisions to the other provisions of the regulations, currently in final or interim form, should be delayed pending passage of renewal legislation by the Congress and discussion with EEOC concerning a cooperative agreement.

Pursuant to Section 122 of the Revenue Sharing Act, Section 504 of the Rehabilitation Act of 1973, as amended, and Executive Order 11914, the ORS is required to issue rules and regulations consistent with the standards published by the Department of Health, Education and Welfare (HEW). Those standards were issued on January 13, 1978 and may be found in 45 CFR Part 85. This final rule is consistent with the Guidelines and the HEW regulations contained in 45 CFR Part 84, and it has been approved for publication by the Department of Health and Human Services (HHS).

Regulatory Analysis

Executive Order 12044 "Improving Government Regulations", (43 FR 12661, March 24, 1978) requires, subject to certain relevant exceptions, that Federal agencies prepare a regulatory analysis of those regulations which have a major economic impact on the public prior to their issuance. The proposed regulations published on December 31, 1979, requested comments from the public as to whether a regulatory analysis should be prepared on the handicapped discrimination regulations. The preliminary position taken in the preamble to the proposed regulations was that a regulatory analysis need not be prepared. A few comments requested the preparation of a regulatory analysis but did not state a persuasive rationale for the delay of these final regulations pending completion of a regulatory analysis. For the following reasons the Department does not intend to publish a regulatory analysis:

(A) A regulatory analysis need not be prepared because Paragraph 13(c) of the Treasury Department Implementation Directive implementing Executive Order 12044, provides that an analysis is not necessary if the economic consequences flow directly from a statute. In this case, the economic consequences flow directly from Section 122(a)(1) of the Revenue Sharing Act, which specifically incorporates the requirements of Section 504 of the Rehabilitation Act of 1973, as amended. The ORS is bound by Executive Order 11914 (April 28, 1976), requiring implementation of Section 504, and HEW Guidelines for other Federal agencies (43 FR 2132, January 13, 1978) which set specific requirements for agencies with Section 504 responsibility, such as Treasury. That Executive Order and the HEW Guidelines impose on other Federal agencies the requirements from which the economic consequences flow.

The Revenue Sharing handicapped discrimination regulations are required to be consistent with the Executive Order and the HEW Guidelines (which are based in large part upon the HEW final regulations). Section 85.4(c) of the Guidelines requires that each Federal agency issue regulations which contain a definition of handicapped individual and which set forth specific discriminatory practices prohibited in the provision of services and employment. The regulations must also include requirements for self-evaluations, transition plans and for achieving program accessibility. Section 85.5(b) of the Guidelines specifies that each agency regulation must require the recipient to provide for notice to employees and beneficiaries, self-evaluation and consultations with handicapped organizations and persons. Since the requirements from which the economic consequences would flow to States and local governments are those which are required by HEW pursuant to Executive Order 11914, the Department has little discretion to consider alternative approaches to the issuance of such regulations.

(B) Section 13(b) of the Treasury Department Implementation Directive requires a regulatory analysis where the regulation will cause an annual impact on the general economy of $100 million or more or an annual increase in costs or prices for a level of government of $40 million or more. The Treasury Department has not estimated that the economic impact of implementation of Section 504 upon States and local governments would meet or exceed either dollar figure. These regulations are new and have generated concern in recipient governments that they will be required to extensively retrofit all of their existing buildings and establish new programs at excessive cost. It is likely that the Department will find that the potential costs have been exaggerated because the emphasis is not on complete physical accessibility, but upon making programs and activities

accessible to the handicapped. Accessibility may be achieved by something as simple and inexpensive as building a wheelchair ramp over a set of stairs, or moving a public meeting from the second to the first floor of a building.

While some commenters expressed concern about the costs of compliance with Section 504, the comments neither addressed the issue of ORS's lack of discretion over most requirements, nor suggested alternatives to the requirements of the proposed regulations.

The costs flowing from these final regulations are likely to be reduced also because of the overlapping jurisdiction that ORS shares with other Federal agencies, such as the Departments of HHS, Education, Transportation and HUD. HHS and DOT have already imposed administrative requirements such as the self-evaluation and the transition plan. Some of the study and research that will be required by ORS has already been undertaken by recipient governments. Accordingly, the economic impact of Revenue Sharing regulations may not be as great as expected.

(C) The Treasury Department Implementation Directive of Executive Order 12044 provides that the effective date of the Directive is May 22, 1978 (43 FR 52120 November 8, 1978). Any regulation in the process of active preparation before that date would not require a regulatory analysis under the Executive Order. The handicapped discrimination regulations were published in proposed form on April 14, 1978, and were therefore in the process of active preparation before May 22, 1978.

(D) A more accurate assessment of the costs of compliance with Section 504 can be made when the recipient governments undertake the required self-evaluation of their programs and activities. The deficiencies of the recipient governments and the cost of resolving the deficiencies will vary with each of the approximately 39,000 governments. Any regulatory analysis or assessment of the costs of implementation of Section 504 would be more difficult to make without the benefit of these self-evaluations.

(E) While the Director has little discretion due to the requirements of the Executive Order, where alternative provisions were possible, the Director chose alternatives which appeared to be the least costly to recipient governments, in the following manner:

(1) *Definition of Smaller Recipient Government.*

A number of provisions in the revenue sharing Section 504 regulations provide waivers of administrative requirements for smaller recipient governments. "Smaller recipient" is defined in the HHS regulations as a recipient which employs fewer than 15 employees. Since revenue sharing recipients are general purpose governments, as opposed to particular departments of State and local governments, it is less likely that a meaningful number of revenue sharing recipients will be governments employing fewer than 15 employees. Further, other provisions in the Revenue Sharing Act, which contain exemptions from administrative requirements, refer to the amount of entitlement funds governments receive, as opposed to the number of employees employed by such governments.

Because this provision is not a requirement of the HEW guidelines, the ORS has some discretion as to how smaller recipient government will be defined. The alternatives considered were to follow the lead of HHS and define smaller government as 15 or fewer employees or to adopt a definition that would exempt smaller recipient governments based upon a dollar figure of entitlement funds, which would exempt more governments. There are approximately 39,000 governments which receive revenue sharing funds. The dollar figures considered for the definition of smaller recipient government were receipt of less than $1,000 in revenue sharing funds, receipt of less than $5,000 in revenue sharing funds, receipt of less than $10,000 and receipt of less than $25,000 in revenue sharing funds.

There are approximately 5,000 governments which receive less than $1,000 in revenue sharing funds. There are approximately 16,000 governments which receive less than $5,000 in revenue sharing funds. There are approximately 22,000 governments which receive less than $10,000 in revenue sharing funds, and approximately 28,000 governments which receive less than $25,000 in revenue sharing funds.

The definition of smaller recipient government was set at those governments which receive less than $25,000 because that figure is consistent with the audit standards in Section 123(c) of the Revenue Sharing Act. This exclusion is likely to carry a concomitant reduction in the cost of implementation of Section 504 to those governments, and to revenue sharing recipients as a whole.

(2) *Requirement for Provision of Auxiliary Aids for Individuals With Impaired Sensory, Manual, and Speaking Skills.*

The HEW regulations require recipients to provide appropriate auxiliary aids to handicapped individuals in the community. The alternative approaches to this provision would be to include the provision as set forth in the HEW regulations, which requires a provision of such aids without consideration of individuals who might need them, or to include in the revenue sharing regulations the requirement that the auxiliary aids must be provided only at the request of and in consultation with the handicapped individual.

It was believed that the HEW regulation in which the recipient is required to provide auxiliary aids without consideration of the needs of particular individuals, might require that certain auxiliary aids be kept on hand or obtained whether the need for them was established or not. The alternative of requiring auxiliary aids only at the request of the handicapped individual should minimize costs, and would increase the quality of service provided since the handicapped individual would receive the type of assistance needed.

(3) *Prohibition Against Use of Revenue Sharing Funds for Zoning Purposes.*

The HEW regulations and guidelines do not prohibit the use of zoning authority to discriminate against the handicapped. During review of these regulations, the Departments of Justice and HEW suggested that the ORS include such a provision in its handicap discrimination regulations. The ORS considered whether the inclusion of such a provision would increase the cost of implementation of Section 504. The alternatives were to include the provision or not to include the provision. It is believed that this provision would not increase the cost of Section 504 implementation, because it does not require the recipient to take any affirmative action, nor does it require any record keeping or other administrative costs. It was therefore determined that the proposed regulation should be retained to govern those cases where illegal actions were taken in a zoning context; to delete the regulation would imply a lack of jurisdiction over such cases.

(4) *Self-Evaluation And Transition Plans.*

Self-evaluations and transition plans are required by the HEW guidelines and regulations. The ORS therefore had no discretion as to the inclusion of such provisions. Discretion was exercised, however, concerning the manner in which the requirements were applied to the recipients of revenue sharing funds. One alternative considered by the ORS was to use the provisions contained in

the HEW regulations. The HEW regulations provide for a self-evaluation plan which provides a one-year period within which the evaluation, the modification of policies and practices which do not meet the Section 504 requirements and the remedial actions to eliminate the effects of discrimination, were all to be accomplished. These regulations provide that the transition plan for making structural changes for accessibility must be completed within six (6) months and nonstructural changes to improve accessibility must be completed within sixty (60) days. The provision does not allow recipients to review accessibility as part of the overall review required for self-evaluation.

The alternative chosen is to combine performance of the self-evaluation with review of accessibility of programs and activities and the preparation of the transition plan for structural changes. It was also decided to lengthen the time within which the actual modifications must take place. This alternative appears to be the most cost effective, because it allows additional time for evaluation of programs and activities. It would also completely eliminate the period of 60 days in which a recipient is required to make nonstructural changes to achieve accessibility to programs and activities, and instead require that those changes be made in conjunction with other changes required after review pursuant to the self-evaluation. Accordingly, there would be a one-year period in which the recipient government would evaluate all programs and activities to determine that they meet the requirements of Section 504 in employment and in the provision of services, as well as in the provision of access to programs and activities. Only after completion of the evaluaton process would modification of policies and practices, including those concerning accessibility, have to take place.

It is believed that a review of all aspects of compliance with Section 504 as part of a single process, would reduce the cost of preparing the self-evaluation and transition plan. For this reason, the ORS chose the alternative of combining the self-evaluation, transition plans and modifications of programs and activities for accessibility purposes.

Another cost and time reducing measure considered and added to the self-evaluation and transition plan provisions was to allow those self-evaluation transition plans prepared for other departments and agencies to be used in part to meet revenue sharing requirements. It is believed this provision will reduce the cost to recipients in complying with the self-evaluation requirement. The same provision was included with respect to designation of responsible employees and adoption of grievance procedures. Compliance with the similar requirements by other departments and agencies will be credited towards compliance for revenue sharing purposes.

(5) *Leased Facilities.*

The ORS exercised discretion to prohibit discrimination against the handicapped in facilities leased by recipients, as opposed to only those constructed or purchased by recipients. Alternatives considered in drafting this prohibition were to leave the provision out, require absolute accessibility in such facilities and thereby require recipients to make structrual changes or break leases, or to refuse to lease buildings which landlords refused to make accessible. Because it was determined to be a serious loophole which would permit a recipient government to avoid the accessibility requirements of the regulations merely by leasing, as opposed to purchasing a building, the alternative of not including the provision was rejected. The alternative which the ORS adopted was to require that all facilities leased be made accessible, but not require that structural changes be made if the lessor refuses to make them. The recipient is not required to vacate buildings which are not, or cannot, be made accessible. Recipient governments are not required to undertake or demand structural changes to leased facilities though they may have to remove a program from such a facility or take other action to achieve accessibility. The alternative chosen appears to be the one which would be the least costly to recipients which also protects the program accessibility requirements.

(6) *Exemption For Construction Commencing Prior To January 1, 1977.*

Section 122(a)(2)(B) of the Revenue Sharing Act exempts those governments which have begun construction of facilities prior to January 1, 1977, from the accessibility requirements of Section 504. While the Director had no discretion concerning whether or not to include this provision, there was discretion as to the application of the provision, particularly, how to define commencement of construction. One alternative available was to define commencement of construction as HHS defines that the term, i.e., when the actual ground is broken for the construction of the building. Another alternative was to define commencement of construction as when the physical construction of the building is obligated by contract. The later alternative was determined to be the least burdensome one which would exempt the greater number of governments, and reduce the cost of compliance with Section 504. It was therefore adopted.

Section-by-Section Analysis of Regulation

As mentioned above, the Department received approximately 50 comments on the proposed regulations published in December 31, 1979, the vast majority of which concerned Section 504. The Department's response to the comments and explanation of significant changes made to the proposed regulations are set forth in a section-by-section analysis of the regulation which appears in Appendix A.

Authority: This final regulation is issued under the authority of the State and Local Fiscal Assistance Act of 1972 (31 U.S.C. 1221 *et seq.*) as amended by the State and Local Fiscal Assistance Amendments of 1976, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 706), and Treasury Department Order No. 224, dated January 26, 1973 (38 FR 3342) as amended by Treasury Department Order No. 242 (Revision No. 1) dated May 17, 1977.

In consideration of the foregoing, 31 CFR Part 51 is amended by the addition of the following new section:

Dated: December 29, 1980.

Judith A. Denny,

Deputy Director, Office of Revenue Sharing.

Roger C. Altman,

Assistant Secretary (Domestic Finance).

31 CFR is amended by adding § 51.55 to read as follows:

§ 51.55 Discrimination on the basis of handicap.

(a) *Definition.* As used in this section the phrase:

(1) "Handicapped individual" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

(2) "Physical or mental impairment" means (i) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or (ii) any mental or physiological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific

learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.

(3) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(4) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(5) "Is regarded as having an impairment" means (i) has a physical or mental impairment that does not substantially limit major life activities, but that is treated by a recipient government as constituting such a limitation; (ii) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or (iii) has none of the impairments defined in paragraph (a)(1) of this section but is treated by a recipient government as having such impairment.

(6) "Qualified handicapped individual" means (i) with respect to employment, a handicapped individual who, with reasonable accommodation, can perform the essential functions of the job in question; and (ii) with respect to services, a handicapped individual who meets the essential eligibility requirements for the receipt of such services.

(b) *General prohibitions with respect to discrimination against a qualified handicapped individual.*

(1) Those general prohibitions described in § 51.52(b) of this subpart, also apply to discrimination against a handicapped individual, with the exception of § 51.52(b)(1) (ii), (iii) and (iv) of this section which are covered by the provisions of this subsection. In addition, a recipient government shall:

(i) Not exclude a qualified handicapped individual from participation in programs or activities open to the general public, regardless of the availability of permissibly separate or different programs or activities designed especially for the handicapped;

(ii) Administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped individuals;

(iii) Take appropriate steps to ensure that communications with applicants, employees, beneficiaries, and the general public are available to persons with impaired vision or hearing, through means such as brailled or taped material, telecommunication devices, televised information or other media;

(iv) Take the appropriate steps to ensure that the public hearings required under §§ 51.13 and 51.14 of this part are accessible to qualified handicapped individuals and that notice of such hearings is made available to individuals with impaired vision and hearing, through means such as telecommunication devices, brailled or taped material, televised information, qualified sign language interpreters or other media;

(v) Provide a qualified handicapped individual with an aid, benefit, or service that is as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(vi) Not provide a different or separate aid, benefit, or service to qualified handicapped individuals or to any class of qualified handicapped individuals than is provided to others unless such action is necessary to provide qualified handicapped individuals with aid, benefits, or services that are as effective as those provided to others;

(vii) Not aid or perpetuate discrimination against a qualified handicapped individual by funding an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the program or activity;

(viii) A recipient government shall not, directly or through contractual or other arrangements, utilize criteria or methods of administration that:

(A) Have the effect of subjecting qualified handicapped individuals to discrimination on the basis of their handicaps;

(B) Have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient government's program with respect to handicapped individuals; or

(C) Perpetuate the discrimination of another department of the recipient government if both departments are subject to common administrative control or are agencies of the same recipient government; and

(ix) Not use it zoning authority in a manner that will have the effect of subjecting qualified handicapped individuals to discrimination on the basis of handicap.

(2) The exclusion of persons that are not handicapped individuals from the benefits of a program limited by Federal statute or executive order to handicapped individuals, or the exclusion of a specific class of handicapped individuals from a program limited by Federal statute or executive order to a different class of handicapped individuals, is not prohibited by this section.

(3) For purposes of this sections, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for handicapped and nonhandicapped individuals. They must, however, afford qualified handicapped individuals equal opportunity to obtain the identical result, or achievement in the most integrated setting appropriate to the individual's needs.

(4) A recipient government which government receives $25,000 or more entitlement funds in each entitlement period, shall, at the request of, and in consultation with such individual, provide appropriate auxiliary aids to individuals with impaired sensory, manual or speaking skills, where necessary to prevent a qualified handicapped individual from being denied the benefits of, excluded from participation in or subjected to discrimination under a program or activity. Such auxiliary aids may include brailled or typed material, the provision of qualified sign language interpreters, the provision of telecommunication devices, captioned films, video tapes, televised information or other media. The Director may require recipient governments which receive less than $25,000 in entitlement funds in each entitlement period to provide appropriate auxiliary aids when the Director finds that such aids are appropriate to remedy a violation of the provisions of this section.

(5) The enforcement provisions contained in this subpart are applicable to violations of the provisions of this section.

(c) *Self-evaluation.*

(1) A recipient government shall, within one year of the effective date of this section, with the assistance of interested individuals, including handicapped individuals and organizations representing them:

(i) Evaluate its current policies and practices and their effects which do not meet the requirements of this section;

(ii) Modify any policies and practices that do not meet the requirements of this section, and take appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these discriminatory policies and practices, except as otherwise provided where structural

changes may be required pursuant to paragraph (k) of this section.

(2) Self-evaluations already prepared (or under preparation) to comply with the Section 504 requirements imposed by other Federal departments or agencies, may be used as part of the self-evaluation required pursuant to this section.

(3) The self-evaluation may incude but is not limited to an examination of: a recipient government's policies and practices concerning employment decisions; the extent to which its programs and activities are readily accessible to and usable by the handicapped; whether its policies and practices concerning the delivery of aids, benefits and services to beneficiaries are free from discriminatory effects on the handicapped; and, whether it is engaging in contractual arrangements which have the effect of subjecting handicapped persons to discrimination.

(4) A recipient government, which government receives $25,000 or more entitlement funds in each entitlement period, shall, for at least three years following completion of the evaluation required under paragraph (c)(1) of this section, maintain on file, make available for public inspection, and provide to the Director upon request (i) a list of the interested individuals consulted, (ii) a description of policies and practices examined and problems identified, and (iii) a description of modifications made and remedial steps taken (record-keeping requirement cleared by OMB, No. 1505–0036, through January 31, 1982).

(d) *Designation of responsible employee and adoption of grievance procedures.*

(1) A recipient government, which government receives $25,000 or more entitlement funds in each entitlement period, shall designate at least one person to coordinate its efforts to comply with this section. Where designation of such a person has already been made to comply with the Section 504 requirements of other Federal departments or agencies, that person may also be used to comply with the requirements of this section.

(2) A recipient government, which government receives $25,000 or more entitlement funds for one or more entitlement periods, shall adopt a grievance procedure that incorporates appropriate due process standards and that provides for the prompt and equitable resolution of complaints alleging any action prohibited by this section. Such procedures need not be established with respect to complaints from applicants for employment or from applicants for admission to post-secondary educational institutions. Existing grievance procedures may be used to meet the requirements of this subsection.

(e) *Notice.*

(1) A recipient government, which government receives $25,000 or more entitlement funds in each entitlement period, shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient government, that it does not discriminate on the basis of handicapped status in violation of this section. The notification shall state, where appropriate, that the recipient government does not discriminate on the basis of handicapped status in admission or access to, or treatment or employment in, its programs and activities. The notification shall also include an identification of the responsible employee designated pursuant to section 51.55(d). A recipient government shall make the initial notification required by this paragraph within 90 days of the effective date of this section. Methods of initial and continuing notification shall ensure that the information is communicated to the visually or hearing impaired. Such methods may include the use of public service radio and television announcements, and telecommunications devices, the posting of notices, the publication of notices in newspapers and magazines, the placement of notices in recipient governments' publications, and the distribution of memoranda or other written and taped communications.

(2) Whenever a recipient government publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiares, applicants, or employees, or the general public, it shall include in those materials or publications a statement that it is the policy of the recipient government not to discriminate against the handicapped in employment or the provisions of services. A recipent government may meet the requirements of this paragraph either by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications.

(f) *Administrative requirements for small recipient governments.* The Director may require any recipient government, which government receives less than $25,000 in entitlement funds in each entitlement period, to comply with the provisions of § 51.55 (c), (d), and (e), in whole or in part, when the Director finds that such requirements are appropriate to remedy a violation of the provisions of this section.

(g) *Employment discrimination against a qualified handicapped individual.*

(1) A recipient government shall:

(i) Not discriminate against a qualified handicapped individual in employment in any program or activity;

(ii) Not participate in a contractual or other relationship that has the effect of subjecting a qualified handicapped applicant or employee to discrimination prohibited by this section. The relationships referred to in this paragraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient government, and with organizations providing training and apprenticeship programs;

(iii) Make all decisions concerning employment under any program or activity in a manner which ensures that discrimination on the basis of handicap does not occur and not limit, segregate, nor classify applicants or employees in any way that adversely affects their opportunities or status because of handicap;

(iv) Take appropriate steps to ensure that communications with its applicants and employees are available to persons with impaired vision and hearing as described in § 51.55(b)(1)(iii) and (b)(4);

(v) Not discriminate against a qualified handicapped individual in the following specific activities:

(A) Recruitment, advertising, and the processing of applications for employment;

(B) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(C) Setting rates of pay or any other form of compensation and changes in compensation;

(D) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(E) Granting leaves of absence, sick leave, or any other leave;

(F) Providing fringe benefits available by virtue of employment, whether or not administered by the recipient government;

(G) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(H) Employer sponsored activities, including social or recreational programs; and

(I) Any other term, condition, or privilege of employment.

(2) A recipient government's obligation to comply with this section is not affected by any inconsistent term of any collective bargaining agreement to which it is a party.

(3) A recipient government's obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are more limited for handicapped individuals than for nonhandicapped individuals.

(h) *Reasonable accommodation.*

(1) A recipient government shall make reasonable accommodation to the known physical or mental limitations of a qualified handicapped applicant or employee unless the recipient government can demonstrate that the accommodation would impose an undue hardship on the operation of its program or activity.

(2) Reasonable accommodation may include:

(i) Making facilities used by employees readily accessible to and usable by handicapped persons, and

(ii) Job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices (e.g., telecommunications devices and other telephone devices), the provision of readers or qualified sign language interpreters, and other similar actions. Accommodations shall be made in consultation with the handicapped individual.

(3) The determination of whether an accommodation would impose an undue hardship on the operation of a recipient government's program or activity shall be made on a case-by-case basis upon consideration of the following factors:

(i) The overall size of the recipient government's operations with respect to number of employees, number and type of facilities, and size of budget;

(ii) The type, composition and structure of the specific program or activity and the structure of the workforce required; and

(iii) The nature and cost of the accommodation needed. Such reasonable accommodation may require a recipient government to undertake more than an insignificant economic cost in making allowance for the handicap of a qualified applicant or employee and to accept minor inconvenience which does not bear on the ability of the handicapped individual to perform the essential functions of the job in question.

(4) A recipient government may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

(i) *Employment criteria and policies.*

(1) A recipient government may not use any employment test, selection criterion or policy, that screens out, or tends to screen out from consideration for employment, a handicapped individual or any class of handicapped individuals unless:

(i) The test, selection criterion or policy as used by the recipient, is shown to be directly related to the essential functions of the position in question, and

(ii) Alternative job-related tests, criteria or policies that do not screen out, or tend to screen out as many handicapped individuals are shown to be not available.

(2) A recipient government shall select and administer tests using procedures (e.g., auxiliary aids such as readers for visually-impaired individuals or qualified sign language interpreters for hearing-impaired individuals) that accommodate the special problems of handicapped individuals to the fullest extent consistent with the objectives of the test. The test results shall accurately reflect the applicant's or employee's ability to perform the essential functions of the job in question, rather than the applicant's or employee's impaired sensory, manual or speaking skills, except where such skills are essential requirements of the job.

(3) If a recipient government has established a test, selection criterion or policy that explicitly or implicitly screens out, or tends to screen out, a class of handicapped individuals from a particular job, and cannot establish that the class as a whole is unqualified to perform the job, the recipient government shall evaluate each such individual who applies for the job to determine whether the applicant can perform the essential functions of the job in question despite the handicap. As part of the determination, the recipient government shall also decide whether such applicant would be qualified to perform the essential functions of the job in question through reasonable accommodation without undue hardship, as provided in § 51.55(h) of this section.

(j) *Preemployment inquiries.*

(1) Except as provided in paragraphs (j) (2) and (3) of this subsection, a recipient government may not conduct a preemployment medical examination or make preemployment inquiry of an applicant as to whether the applicant is a handicapped individual or as to the nature or the severity of a handicap. A recipient government may, however, make preemployment inquiry into an applicant's ability to perform the essential functions of the job.

(2) When a recipient government is taking remedial action to correct the effects of past discrimination; when a recipient government is taking voluntary action to overcome the effects of conditions that resulted in limited participation in a program or activity, or when a recipient government is taking affirmative action, the recipient government may invite applicants for employment to indicate whether and to what extent they are handicapped, provided that:

(i) The recipient government states clearly on any written questionnaire used for this purpose or makes clear orally, if no written questionnaire is used, that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts; and

(ii) The recipient government states clearly that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (j)(4) of this section, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this section.

(3) Nothing in this section shall prohibit a recipient government from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty, provided that: (i) all entering employees are subjected to such an examination regardless of handicap, and (ii) the results of such an examination are used only in accordance with the requirements of this section.

(4) Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected and maintained on separate forms and shall be accorded confidentiality as used for medical records, except that:

(i) Supervisors and managers may be informed regarding restrictions on the work or duties of handicapped individuals and regarding necessary accommodations;

(ii) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; and

(iii) Government officials investigating compliance with the Act shall be

provided relevant information upon request.

(k) *Program accessibility.*—(1) *Discrimination prohibited.* No qualified handicapped individual shall, because the facilities owned or leased by a recipient government are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity of a recipient government, which government receives entitlement funds.

(2) *Existing facilities.*—(i) *Program accessibility.* A recipient government shall operate each program or activity in existing facilities owned or leased by it, so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped individuals. Recipient governments are not necessarily required to make each existing facility, or every part of an existing facility accessible to and usable by handicapped individuals. Where structural changes are necessary to make programs or activities in existing facilities accessible, such changes shall be made as soon as practicable, but in no event later than three years after the effective date of this regulation except as otherwise provided in this section. Recipient governments shall not be required to revoke leases on which lessors refuse to make the structural changes needed if no more accessible facility is available, but shall use the provisions of subparagraph (ii) to ensure that the maximum possible accessibility is achieved.

(ii) *Methods of compliance.* A recipient government may comply with the requirements of paragraph (1) of this section through such means as redesign of equipment, the use of telecommunications devices or other telephone equipment, reassignment of classes or other services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of health, welfare, or other social services at alternate accessible sites, alteration of existing facilities and construction of new facilities in conformance with the requirements of paragraph (k)(7) of this section, or any other methods that result in making its programs or activities accessible to handicapped individuals. A recipient government is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with paragraph (k)(1) of this section. In choosing among available methods for meeting the requirements of paragraph (k)(1) of this section, a recipient government shall give priority to those methods that offer programs and activities to handicapped persons in the most integrated setting appropriate to obtain the full benefits of the program.

(3) *Exception for small recipient governments.* If a recipient government, which government receives less than $25,000 in entitlement funds, in each entitlement period, determines, after consultation with a handicapped individual seeking a health, welfare or social service, that there is no method of complying with paragraph (k)(1) of this section other than making a significant alteration in its existing facilities, that government may, as an alternative, refer the handicapped individual to other providers of those services that are accessible at no additional cost to the handicapped individual. Examples of other providers of those services are States, counties or other larger units of local government.

(4) *Time periods.*—(i) *Nonstructural changes for accessibility.* Where a recipient government has determined that certain nonstructural changes are necessary to make its programs and activities readily accessible to and usable by the handicapped, after evaluating its policies and practices during the self-evaluation required pursuant to subsection (c), these changes shall be made, with other modifications determined to be needed, within the one year period for completion of the self-evaluation.

(ii) *Structural changes for accessibility.* Except as otherwise provided in subparagraph (iii), where a recipient government has determined that structural changes in facilities are necessary to make its programs and activities readily accessible to and usable by the handicapped, after evaluating its policies and practices during the self-evaluation required pursuant to paragraph (c), those changes shall be made as soon as possible but not later than three years from the effective date of this section.

(iii) *Transportation systems.* Transportation systems shall be made accessible to qualified handicapped individuals as provided in paragraph (k)(1) of this subsection in the same manner and within the time periods prescribed in regulations issued by the Department of Transportation (49 CFR Part 27, Subpart E).

(5) *Transition plan.* In the event that structural changes to facilities are necessary to comply with the requirements of paragraph (k)(1) of this section, a recipient government shall develop, within one year of the effective date of this section, a transition plan setting forth the steps necessary to complete such changes within the time periods in paragraph (k)(4) of this section. The plan shall be prepared as part of the self-evaluation required under § 51.55(c) and developed with the assistance of interested individuals, including handicapped individuals or organizations representing handicapped individuals. Transition plans already prepared (or under preparation) to comply with the Section 504 requirements imposed by other Federal agencies, may be used as part of the transition plan required pursuant to this section. A recipient government which government receives $25,000 or more in entitlement funds shall make a copy of the transition plan available for public inspection for a period of three years and furnish it to the Director upon request. The plan shall, at a minimum:

(i) Identify physical obstacles in the recipient government's facilities that limit the accessibility of its program or activity to handicapped individuals;

(ii) Describe in detail the methods that will be used to make the facilities accessible;

(iii) Specify the schedule for taking the steps necessary to achieve full program accessibility and, if the time period for the transition is longer than one year, identify steps that will be taken during each year of the transition period; and

(iv) Indicate the person responsible for implementation of the plan.

(6) *Notice.* The recipient government shall adopt and implement procedures to require that interested individuals, including individuals with impaired vision or hearing, can obtain information as to the existence and location of particular services, activities, and facilities that are accessible to and usable by handicapped individuals.

(7) *New construction.* The construction of facilities by a recipient government financed in whole or in part with entitlement funds or the construction of a facility pursuant to a contract for the recipient government to lease the building facility in its entirety, on or after January 1, 1977, shall be accomplished so as to be readily accessible to and usable by handicapped individuals.

(8) *Alterations.* Alterations to existing facilities owned, or leased by a recipient government, which alterations are funded with entitlement funds and commenced on or after January 1, 1977, shall, to the maximum extent feasible, be designed and constructed to be readily accessible to and usable by handicapped individuals.

(9) *American National Standards Institute Accessibility Standards.* Design, construction, or alteration of facilities in conformance with the

"American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," published by the American National Standards Institute, Inc. (ANSI A 117.1–1961 (1971)),* which is incorporated by reference, shall constitute compliance with paragraphs (k) (1) and (2) of this section. A recipient government also may use the revised ANSI standards issued in May of 1980, which are also incorporated by reference and are obtainable at the same address. A recipient government may use standards other than the 1961 or 1980 standards or other methods, if the government establishes that it is clearly evident that equivalent or better access to the facility or part of the facility is provided.

(10) *Exception for construction projects commenced prior to January 1, 1977.* The provisions of this subsection do not apply to buildings or construction projects, including those funded with revenue sharing funds, commenced prior to January 1, 1977, including those funded with revenue sharing funds, unless it is determined that programs or activities funded in whole or in part with revenue sharing funds are conducted within or make use of such facilities, in which case, those programs and activities must be readily accessible to and usable by handicapped individuals as described in paragraphs (k)(2) (i) and (ii) of this subsection.

(11) *"Commencement of construction" defined.* A construction project shall be deemed to have commenced when the recipient government has obligated itself by contract for the physical construction of the project or any substantial portion of the project.

(l) *Coordination of unresolved legal issues.*

Whenever the Director receives a complaint which alleges a violation of the provisions of this section and involves a legal issue that has not been resolved judicially or administratively, the Director shall request guidance from the Department of Justice which was designated by Executive Order 12250 to coordinate Section 504, within one week of receipt of such complaint. The Director may defer action on the complaint pending receipt of the guidance if it is determined that such guidance will be received within one month from the issuance of the request. Thereafter, the Director shall then act in accordance with the guidance. If the Director determines that the Department of Justice cannot provide guidance concerning the proper course of action within a period of one month (30 days), the Director shall proceed to initiate fact-finding activities with respect to the complaint. During that process, the Director shall continue to keep the Department of Justice advised of the actions taken, pending receipt of the guidance requested.

*Copies obtainable from American National Standards Institute, Inc., 1430 Broadway, New York, N.Y. 10018—(212) 354–3300. Copies are also on file with the **Federal Register**.

Appendix A—Section-by-Section Analysis

Section 51.55 Discrimination on the Basis of Handicap

Most of the approximately 50 comments on the proposed regulations concerned discrimination on the basis of handicap, as provided in Section 504 of the Rehabilitation Act of 1973. As with the previous proposed handicapped discrimination regulations, the majority of the comments expressed concern about the cost of compliance and objected to specific provisions such as the definition of handicapped individual, the self-evaluation requirement and the accessibility requirements. The Department has little discretion concerning the substantive provisions contained in these regulations. Executive Order 11914 "Nondiscrimination with Respect to the Handicapped in Federally Assisted Programs" requires Federal departments and agencies with Section 504 responsibility to issue regulations consistent with the standards and procedures established by HEW. Comments requesting elimination of or major revisions to these provisions were not acted upon due to the requirements of the Executive Order, which was issued to ensure consistent Federal enforcement of Section 504. Revisions have primarily been made for clarification purposes and in some instances to make the substantive requirements conform more closely with the requirements for the General Revenue Sharing Program.

One such revision is that all references in the proposed rule to special provisions for smaller recipient governments as those employing fewer than 15 employees have been changed to those receiving $25,000 or more in entitlement funds in each entitlement period. The reference to fewer than 15 employees has little relevance for the General Revenue Sharing Program which unlike grant programs, provides financial assistance to States and local governments, as opposed to particular departments and agencies or even private entities. The number of recipient governments which employ fewer than 15 persons is negligible. Further, the independent audit requirements in Section 123(c) of the Revenue Sharing Act exempt local governments receiving less than $25,000 in entitlement funds. In the interest of consistency with this Congressional guidance, the General Revenue Sharing Program's final regulations prohibiting discrimination on the basis of handicap, should also incorporate the $25,000 standard.

Section 51.55(b) entitled, "General prohibitions with respect to discrimination against a qualified handicapped individual" contains the prohibitions against discrimination in the provision of services. Section 51.55(b)(1) (iii) and (iv) were amended in response to comments that the provisions did not provide sufficient guidance concerning how recipients can make communications and services available to persons with impaired sensory, manual and speaking skills. Examples of methods were added to the regulations. Section 51.55(b)(1)(v) was deleted and a new § 51.55(b)(4) was added to expand the discussion of how to provide appropriate auxiliary aids to individuals with impaired sensory, manual and speaking skills. It is noted that auxiliary aids must be provided only at the request of the handicapped individual. Further, recipient governments must consult with the individual to determine the most appropriate auxiliary aids to be used. It is expected that requiring such aids only upon request, as recommended by organizations representing the handicapped, will reduce the cost of providing handicapped individuals with access to programs and activities. It will do so in a manner that will meet as closely as possible the individual needs of the handicapped.

Section 51.55(b)(1)(iv), which requires that the public hearings required under the Act and regulations be accessible to the handicapped, was amended in response to comments to how such hearings can be made more accessible.

Proposed §§ 51.55(b)(1) (vi), (vii) and (viii) are redesignated § 51.55(b)(1) (v), (vi) and (vii). Further, § 51.55(b)(1)(vii) was amended to remove reference to secondary recipients because this definition is currently under review. This does not mean, however, that secondary recipients (as currently defined) are not covered by these provisions.

Section 51.55(b)(1)(ix) has been redesignated § 51.55(b)(1)(viii). One commenter suggested that subparagraph (C) had been drafted too narrowly, prohibiting discrimination against a secondary recipient only if subject to the common administrative control of a recipient government. This

subparagraph was amended to delete the reference to the secondary recipient situation and to clarify that where a recipient government funds a particular department in whole or in part with revenue sharing funds, any subdivision of that department cannot use those funds to discriminate.

Section 51.55(b)(1)(x) has been redesignated § 51.55(b)(1)(ix). This section provides that a recipient government may not use its zoning authority in a manner that will have the effect of discriminating against the handicapped. This section received a number of negative comments from recipient governments and organizations representing them. The commenters expressed the view that this section was an unwarranted intrusion by the Federal government in local affairs.

The Director recognizes that land use control through the exercise of zoning authority is fundamentally within the power of recipient governments, and historically is one of their most zealously guarded functions. This regulation does not restrict the lawful use by a recipient government of its zoning authority. The purpose of § 51.55(b)(1)(ix) is to notify recipient governments that it is not permissible to use zoning authority to discriminate unlawfully against the handicapped. Zoning authority may not be used to restrict the rights of the handicapped to equal access to facilities in the most integrated settings appropriate to their needs. The addition of this provision was recommended by HEW during a review of the regulations which became the second proposed rule. This was because the ORS is the only Federal agency which potentially provides assistance to the entire operations of recipient governments, as opposed to particular departments or functions. The Director therefore declines to accept the recommendation that this provision be entirely eliminated.

Section 51.55(c) "Self-evaluation" was reorganized to improve its clarity. This section was amended to clarify that where the self-evaluation discloses the need to make structural changes, those changes are to be made within three years, rather than the one-year period provided for the self-evaluation. A new subsection (c)(2) was also added to allow recipient governments to use self-evaluations already undertaken for departments such as HHS or the Department of Transportation. This provision was added to improve the coordination of Federal enforcement of Section 504. A new subsection (c)(3) was added in response to comment that the proposed regulations did not provide sufficient guidance as to what a recipient government is to evaluate. Essentially, a recipient government must review all of its policies and practices concerning the provision of services, employment and the selection of facilities to determine their impact upon the handicapped and devise methods to remedy the effects of discrimination found.

In implementing the self-evaluation and transition plan, a recipient government must review all policies and practices, not just those in which revenue sharing funds are currently being expended. This is because a recipient government potentially can spend revenue sharing funds for any purpose permissible under State and local law, therefore, review only of those areas in which such funds are actually expended would not affect those programs and activities which may be funded in the future. Further, a large number of recipient governments appropriate revenue sharing funds to their general funds resulting in the expenditure of revenue sharing funds in part to support all governmental functions. Lastly, this position is consistent with other revenue sharing compliance activities. Recipient governments are requested to conduct public hearings not solely on the use of revenue sharing funds, but also on the use of those funds in relation to their entire budget. Recipient governments are also required to conduct independent audits. Such audits must encompass all funds of the recipient government, not just those in which revenue sharing funds are placed.

Section 51.55(d), "Designation of responsible employee and adoption of grievance procedure" was amended to provide that individuals designated to coordinate Section 504 compliance for other Federal departments and agencies and existing grievance procedures may be used to comply with the requirements of The General Revenue Sharing Program.

Section 51.55(e), "Notice" was amended to provide examples of how public notices can be communicated to the sensory impaired.

Section 51.55(f), "Administrative requirements for small recipient governments" was amended to provide that a small recipient government may be required to comply with the administrative requirements to remedy violations found by the Director. A number of commenters expressed the view that the administrative requirements were too burdensome on smaller recipient governments and should never be required. Others objected to any lessening of the requirements for smaller recipient governments. In an effort to balance these competing interests, the exceptions for smaller recipient governments are maintained but such governments may be required to comply with the applicable provisions.

Section 51.55(g) "Employment discrimination" was amended to add a new subsection (g)(1)(iii) because it is one of the basic prohibitions contained in the HEW Guidelines and is therefore required to be contained in the regulation. Proposed Sections 51.55(g)(1)(iii) and (iv) are redesignated (iv) and (v). In response to comments, § 51.55(g)(1)(iv) was amended to include examples of how communication can be made available to the sensory impaired. Concerning this section, one commenter questioned whether a recipient government can be required to undertake affirmative action to employ the handicapped. Section 504 does not require affirmative action, as does Section 503. Section 504 requires only that recipient governments refrain from discriminating and undertake remedial action where discrimination is found.

Section 51.55(h), "Reasonable accommodation" was amended in response to comments to add examples of reasonable accommodation for the sensory impaired. The section was also amended to provide that the accommodations shall be made in consultation with the handicapped individual. One commenter requested greater specificity concerning what is required for reasonable accommodation. Considering the broadness of the definition of handicapped individual, what constitutes reasonable accommodation must be determined on a case-by-case basis and the regulation must remain broad. A new sentence is added to subsection (h)(3)(iii) to reflect the fact that an accommodation that causes inconvenience to the recipient government or result in some economic cost is not per se unreasonable.

Section 51.55(i), "Employment criteria and policies" was revised to conform subparagraph (2) more closely to the HEW regulations. Several comments suggested the application of the Uniform Guideliens on Employee Selection Procedures to these provisions. The Guidelines specifically apply only to race, color, national origin, sex and religion. If they are formally revised to apply to handicapped discrimination, the Director will adopt that application. One commenter questioned the use of the phrase "class as a whole" in subsection (i)(3). The Director does not agree that the phrase should be changed. To be able to use a selection

procedure which excludes a class of handicapped individuals as a whole, the recipient government must establish to the satisfaction of the Director that no member of that class of individuals would be able to perform the essential functions of the job in question.

Section 51.55(k), "Program accessibility" received a majority of the comments relating to the cost of compliance. It is emphasized that compliance with this subsection does not mean that recipient governments will be forced to retrofit all of their public buildings. For a particular program or activity to be accessible, it is not required that the entire facility in which the program or activity is conducted be accessible. Structural changes to facilities are required only after all other means of making programs accessible have been pursued.

Recipient governments should first, as part of the self-evaluation, review their program and activities to determine which ones are not accessible; then, recipient governments should determine how those programs and activities can be made accessible. Where structural changes are required, the transition plan should be prepared at the same time as the self-evaluation. Non-structural changes which can be made to achieve accessibility should be accomplished as part of the modifications and remedial action required during the self-evaluation. A period of one year is given for the whole self-evaluation process. It is not likely that the review part of the self-evaluation can be completed within 60 days. Accordingly, the subsection (4) time periods are amended to allow the non-structural changes to be made, with other modifications required under the self-evaluation, during the one year period. Structural changes are still required within three years unless transportation systems are involved, as provided in the proposed rule.

A number of comments were received on § 51.55(k)(10), "Leased facilities." The Director agrees that this provision as written needed clarification. It is important, however, to make it clear that a recipient government cannot avoid the program accessibility requirements merely by conducting its programs and activities in leased facilities. Accordingly, Section 51.55(k)(10) has been eliminated and subsections (k) (1), (2), (k) (7) and (8) have been amended to clarify that programs and activities operated in existing facilities, owned or leased by the recipient government, must be accessible. Where a recipient government leases a facility, it must make whatever non-structural changes are necessary to make facilities accessible. Where an existing facility is leased, however, structural changes will not be required if the lessor refuses to make them and no other more readily accessible facility is available.

Subsection 51.55(k)(2) is amended to add examples of how greater accessibility can be achieved for handicapped individuals with sensory impairments.

Existing facilities newly leased after January 1, 1977, or on which leases are renewed must meet the requirements of § 51.55(k)(2) for existing facilities. Leases of newly constructed facilities must meet the requirements set forth in § 51.55(k)(7) for new construction. Alterations to existing facilities which are leased must meet the requirements of § 51.55(k)(8).

Section 51.55(k)(5), "Transition plan" was amended to extend the time period for preparation to one year, in order that it could be prepared in conjunction with the self-evaluation. The proposed rule was amended to provide that transition plans prepared to comply with Section 504 requirements for other departments or agencies may also be used to comply with the requirements for the General Revenue Sharing Program.

Section 51.55(k)(9) is amended to incorporate the 1980 American National Standard Institute Standards, as well as the 1961 version and allow compliance with either.

Proposed § 51.55(k)(10), as discussed above, was eliminated.

Proposed § 51.55(k) (11) and (12) have been redesignated § 51.55(k) (10) and (11). One commenter suggested that the definition of commencement of construction be amended to conform with definition contained in the HEW regulations. In this instance, however, the provision being interpreted is one uniquely included in the Revenue Sharing Act and need not be consistent with HEW's definition.

One commenter suggested that subsection (k) should provide specific provisions concerning the need for structural changes to historical properties. However, the regulations with their emphasis upon program accessibility over structural changes to facilities, do not need specific treatment of historical properties.

A new § 51.55(l) is added to the regulations to cover the situation in which the ORS is requested to act upon a complaint concerning subject matters unresolved by another Federal agency, the agency in charge of coordination of Section 504, or by the courts. One example of such an unresolved issue is whether obesity should be considered a handicap. Another example is whether all public television broadcasting must be captioned for the deaf. The Department of Education is currently involved in litigation on this issue and at the same time the complainants have filed a complaint with the ORS. This provision is particularly needed because the ORS supports an almost unlimited range of programs and activities of State and local governments that are under the primary jurisdiction of other departments and agencies.

The Director has determined that the ORS should defer action on matters not resolved until the coordinating agency provides guidance in the intent of uniformity of Federal enforcement of Section 504. In this way, the ORS will hopefully avoid prematurely creating solutions to unresolved problems in this still evolving area of the law. The coordinating agency referred to is the Department of Justice pursuant to Executive Order 12250, which supersedes Executive Order 11914, which gave such authority to the old Department of HEW.

At the same time, the Director is concerned that consultation with the coordinating agency may impede resolution of complaints in the expeditious manner required by the Revenue Sharing Act. In order to ensure that coordination will take place as expeditiously as possible, and at the same time allow for flexibility, the regulations would require the Director to consult with the coordinating agency within one week. The Director would also have to make a determination as to whether the Department of Justice will act within thirty (30) days. If guidance cannot be expected within thirty (30) days, the Director shall begin to obtain preliminary information needed to investigate the complaint once the request for guidance is received. The ORS may defer making any findings until the Department of Justice has provided the necessary guidance. With these safeguards, possible deferral of action on the complaint should not result in undue delay in the processing of complaints. Accordingly, when a complaint concerning unresolved issues under Section 504 is received, the Director would immediately consult with the appropriate lead agency and act upon the guidance received.

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Monday
January 5, 1981

Part IV

Export-Import Bank of the United States

Post Employment Conflicts of Interest

EXPORT-IMPORT BANK OF THE UNITED STATES

12 CFR Part 400

Post Employment Conflicts of Interest

AGENCY: Export-Import Bank of the United States.

ACTION: Final rule.

SUMMARY: Export-Import Bank of the United States (the "Bank") is revising its regulations dealing with conflicts of interest of former employees to make such regulations consistent with the restrictions on post employment activity established by Title V of the Ethics in Government Act of 1978, as amended, and regulations issued by the Office of Personnel Management 5 CFR Part 737. The final regulations will provide guidelines for enforcement of such restrictions by the Bank.

EFFECTIVE DATE: February 4, 1981.

FOR FURTHER INFORMATION CONTACT: Warren W. Glick, General Counsel, (202) 566-8334 at the Office of the General Counsel, Export-Import Bank of the United States, 811 Vermont Avenue, NW., Washington, D.C. 20571.

SUPPLEMENTARY INFORMATION: In view of the enactment of the Ethics in Government Act of 1978, and its subsequent amendments, a number of significant changes and additions were made to pre-existing legislation on post employment conflicts of interest affecting employees of the United States Government, including Bank employees. Pursuant to the Act, the Office of Government Ethics in the Office of Personnel Management has issued final regulations on the subject. Accordingly, it has been necessary to revise and restate Eximbank regulations on Standards of Conduct relating to post employment conflicts of interest by adding this new Subpart G to Part 400 which appears in Chapter IV of Title 12 of the Code of Federal Regulations..

Proposed regulations were published in the **Federal Register** on October 17, 1980 (45 FR 68963-68965). The notice of proposed rulemaking provided a 60-day period for public comment. The Bank received some inquiries regarding the proposed regulations but only one comment of a substantive nature was received. It related to Section 400.735-74 (b)(4) where the word "Generally" has been inserted at the beginning to recognize the possibility that an appearance before an agency or court other than the Bank in a proceeding directly affecting the Bank could be effectively prohibited by this Section. Other minor editorial revisions also have been made.

1. Accordingly, the Bank is amending Chapter IV of Title 12 Part 400 by removing § 400.735-9 *Former Employees* and adding a new subpart G *Regulations Concerning Post Employment Conflicts of Interest*, to read as follows:

PART 400—STANDARDS OF CONDUCT

* * * * *

Subpart G—Regulations Concerning Postemployment Conflicts of Interest

Authority: 18 U.S.C. 207; 5 CFR 737.

Subpart G—Regulations Concerning Postemployment Conflicts of Interest

§ 400.735-70 General nature of restrictions.

(a) *Authority.* Title IV of the Ethics in Government Act of 1978, as amended ("the Act") established the Office of Government Ethics ("OGE") within the Office of Personnel Management ("OPM") and, pursuant to the Act, the OPM has on the recommendation of the Director of the OGE in consultation with the Attorney General issued regulations in 5 CFR 737 giving content to the restrictions on post employment activity established by Title V of the Act (18 U.S.C. 207) for administrative enforcement with respect to former officers and employees of the executive branch; generally to guide agencies in exercising the administrative enforcement authority reflected in Section 18 U.S.C. 207(j); to set forth the procedures to be employed in making certain determinations and designations pursuant to the Act; and to provide guidance to individuals who must conform to the law. Criminal enforcement of the provisions of 18 U.S.C. 207 remains the exclusive responsibility of the Attorney General.

(b) *Purpose.* It is the purpose of these regulations to provide guidelines for Bank employees within the framework of the Act and the OPM regulation to which reference should be made for detailed statements of the law, definitions, exemptions, limitations and illustrative examples.

(c) *Policy and limitations.* The restrictions set forth bar certain acts by former Bank employees which may reasonably give the appearance of making unfair use of prior Bank employment and affiliations. They do not, however, bar any former Bank employee, regardless of rank, from employment with any private or public employer after Bank employ. Nor do they bar employment even on a particular matter to which the former Bank employee had major official involvement, except in certain circumstances involving persons engaged in professional advocacy. In general, the specific prohibitions arise from a combination of factors which in any given situation may include the following: (1) the nature and extent of the involvement in a particular matter by the employee while in Bank employ, (2) the identity of the particular matter with which the employee dealt while in Bank employ with the same matter with respect to which the employee represents others after leaving Bank employ, (3) the manner in which the former Bank employee appears before or communicates with the U.S. Government, (4) the position occupied by the former employee while in Bank employ, (5) the time limits applicable to the periods before and after the employee leaves his or her position or activity in the Bank to which the restriction applies.

§ 400.735-71. Permanent restriction on any former bank employee's acting as representative as to a particular matter in which the employee personally and substantially participated.

(a) *Basic prohibition of 18 U.S.C. 207(a).* No former Bank employee after terminating employment with the Bank shall knowingly act as agent or attorney for, or otherwise represent any other person in any formal or informal appearance before, or with intent to influence, make any oral or written communication on behalf of any other person (1) to the United States, (2) in connection with any particular Bank matter involving a specific party, (3) in which such employee participated personally and substantially as an employee of the Bank.

(b) *Comment.* The pertinent combination of factors involved in this prohibition are the following: (1) since the prohbition has no time limit, it provides a permanent bar to the proscribed activity; (2) the former employee is prohibited from acting as agent or attorney for any other person, but not for himself; (3) it prohibits representation by an "appearance," even if only in a technical procedural sense regardless of physical presence; (4) it also prohibits any communication with intent to influence; (5) the prohibition against an appearance or communication extends to other departments, agencies and courts of the United States and is not limited to the agency in which the employee became involved with the particular matter; (6) the representation by the former employee must be in connection with a particular matter involving specific parties; and (7) the particular matter must be one in which the former employee participated personally and substantially while in Bank employ.

§ 400.735-72 Two-year restriction on any former bank employee's acting as representative as to a particular matter for which the employee had official responsibility.

(a) *Basic Prohibition of 18 U.S.C. 207(b)(i).* No former Bank employee, within two years after terminating employment by the Bank, shall knowingly act as agent or attorney for, or otherwise represent any other person in any formal or informal appearance before, or with intent to influence, make any oral or written communication on behalf of any other person (1) to the United States, (2) in connection with any particular Bank matter involving a specific party, (3) if such matter was actually pending under the employee's responsibility as an officer or employee within a period of one year prior to the termination of such responsibility.

(b) *Comment.* The pertinent combination of factors involved in this prohibition are the following: (1) Comments (2)-(6) made under paragraph (b) of § 400.735-71 apply equally to this Section; (2) The particular matter must be one which was actually pending under the employee's responsibility as an officer or employee of the Bank; (3) Two time periods limit the applicability of this Section. The particular matter which came under the responsibility of the employee must have been pending within one year prior to the termination of such responsibility. In addition, the prohibition against the employee's representing any other person on such matter lasts for two years after the termination of the employment where such responsibility was held with the Bank; (4) The time periods applicable to the prohibition of this Section are measured from the date when the employee's responsibility in a particular area ends, not from the termination of Bank employ, unless the two occur simultaneously. (See 5 CFR 737.7(e)).

§ 400.735-73 Two-year restriction on a former senior employee's assisting in representing as to a matter in which the employee participated personally and substantially.

(a) *Basic prohibition of 18 U.S.C. 207(b)(ii).* No former Senior Employee (defined below), within two years after terminating employment by the Bank, shall knowingly represent or aid, counsel, advise, consult, or assist in representing any other person by personal presence at any formal or informal appearance (1) before the United States, (2) in connection with any particular Government matter involving a specific party, (3) in which matter he or she participated personally and substantially as an employee of the Bank.

(b) *Comment.* The pertinent combination of factors involved in this prohibition are the following: (1) Comments (2), (5), (6), and (7) set forth under paragraph (b) of § 400.735-71 are equally applicable to prohibitions of this Section; (2) The statutory two-year period is measured from the date of termination of employment in the Senior Employee position held by the former employee when he or she participated personally and substantially in the particular matter, (See 5 CFR 737.9(e)); (3) This prohibition deals with the same activity of the employee while in Bank employ as does § 400.735-71 i.e. "a particular matter in which the employee participated personally or substantially" but deals with a different aspect of the employee's conduct after leaving Bank employ. Thus, even though the former Senior Employee does not represent another as agent or attorney or communicate with intent to influence, he or she is also prohibited from "aiding, counseling, advising, consulting, or assisting in representing any other person by personal presence at any formal or informal appearance"; (4) The term "Senior Employee" refers to an officer or employee named in, or designated by, the Director of the Office of Government Ehtics, pursuant to Section 207(d) of Title 18 U.S.C.

§ 400.735-74 One-year restriction on a former senior employee's transactions with the bank on a particular matter regardless of prior involvement.

(a) *Basic prohibition of 18 U.S.C. 207(c).* For a period of one year after terminating employment by the Bank, no former Senior Employee (other than a special Government employee who serves for fewer than sixty days in a calendar year) shall knowingly act as an agent or attorney for, or otherwise represent, anyone in any formal or informal appearance before, or with intent to influence, make any written or oral communication on behalf of anyone to (1) the Bank or any of its officers or employees, (2) in connection with any particular Bank matter, whether or not involving a specific party, which is pending before the Bank, or in which it has a direct and substantial interest.

(b) *Comment.* The pertinent combination of factors involved in this prohibition are the following: (1) Comments (3) and (4) set forth under paragraph (b) of Section 400.735-71 apply equally to the prohibitions of this Section; (2) The statutory one-year period is measured from the date when the individual's responsibility as a Senior Employee in the Bank ends, not from the termination of Bank employ, unless the two occur simultaneously (See 5 CFR 737.11(j)); (3) Not only is the Senior Employee prohibited from representing any other person, but is also prevented from representing himself or herself; (4) The prohibited appearance does not extend to other departments, agencies and courts of the United States, but only to appearances before, or communications to, the agency at which he or she was employed on a particular matter pending before such agency or in which such agency has a direct and substantial interest; (5) The prohibited representation must involve a particuar matter, but it need not involve specific parties; (6) Unlike other sections of these regulations, the prohibitions of this Section applies without regard to whether the former Senior Employee had participated in, or had responsibility for, the particular matter and includes matters which first arise after the employee leaves Bank employ.

§ 400.735-75 Administrative enforcement proceedings.

(a) *Information of Violation.* On receipt of information regarding a possible violation of 18 U.S.C. 207 and after determining that such information appears substantiated, the President of the Bank or the Chairman of the Ethics Committee, if so directed by the President, shall expeditiously provide such information along with any comments or Bank regulations to the Director of the OGE and to the Criminal Division, Department of Justice. Any continuing investigation by the Bank on administrative action shall be

coordinated with the Department of Justice to avoid prejudicing criminal proceedings unless the Department of Justice advises the Bank that it does not intend to initiate criminal prosecution.

(18 U.S.C. 207, 5 CFR 737.27)

(b) *Initiation of administrative proceedings.* Whenever the Bank has determined after appropriate review that there is reasonable cause to believe that a former Bank employee has violated any of these regulations or 18 U.S.C. 207 (a), (b), or (c) or 5 CFR 737, it may initiate an administrative disciplinary proceeding by providing the former Bank employee with notice as defined in paragraph (c) of this Section. Prior to a determination of sufficient cause to initiate an administrative disciplinary hearing, all records under the Bank's control relating to allegations of a violation shall be confidential, subject to applicable law.

(18 U.S.C. 207, 5CFR 737.27)

(c) *Notice and hearing.* The notice of an administrative disciplinary proceeding and any hearing pursuant to such notice requested by the former Bank employee, shall follow the procedures set forth in 5 CFR 737.27(a) (3), (4), (5), (6), (7), and (8).

(d) *Administrative sanctions.* Actions which may be taken by the Bank in the case of an individual who is found in violation of these regulations or 18 U.S.C. 207 (a), (b), or (c) or 5 CFR 737, after a final administrative decision, or who failed to request a hearing after receiving adequate notice, shall include: (1) prohibiting the individual from making, on behalf of any other person except the United States, any formal or informal appearance before, or, with the intent to influence, any oral or written communication to, the Bank on any matter of business for a period not to exceed five years, which may be accomplished by directing Bank employees to refuse to participate in any such appearance or to accept any such communication; or (2) taking other appropriate disciplinary action.

§ 400.735-76 Effective date of restrictions.

Any person who holds a Bank position after June 30, 1979, becomes subject to any additional restrictions relating to the holder of that position contained in the amendments to 18 U.S.C. 207, as set forth in these regulations. Restrictions, which depend on the designation of a position by the Director of the OGE, shall become applicable on the date such designation becomes effective.

2. The authority for Part 400 is revised to read as follows:

Authority: (E.O. 11222, 30 FR 6469, 3 CFR 1964–65 Comp., P. 306; 5 CFR 735.104, unless otherwise noted.)

Warren W. Glick,

General Counsel.

December 18, 1980.

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Monday
January 5, 1981

Part V

Environmental Protection Agency

Volatile Organic Compounds (VOC) Fugitive Emission Sources in the Synthetic Organic Chemicals Manufacturing Industry and Benzene Fugitive Emissions in the Petroleum Refining and Chemical Manufacturing Industries

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL 1635-6]

Standards of Performance for New Stationary Sources; VOC Fugitive Emission Sources; Synthetic Organic Chemicals Manufacturing Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: The proposed standards would limit emissions of volatile organic compounds (VOC) from fugitive emission sources in the synthetic organic chemicals manufacturing industry (SOCMI). SOCMI is a portion of the organic chemical industry which produces the group of chemicals listed in Appendix E. These proposed standards would (1) require a leak detection and repair program to reduce VOC emissions from valves and (2) specify the use of certain equipment to reduce VOC emissions from pumps, compressors, sampling connections, and open-ended lines. the proposed standards would also prohibit leaks from safety/relief valves during normal operations. The standards would apply only to equipment that contains 10 percent or more VOC. Reference Method 21 and Appendix E are being proposed with the standards.

The proposed standards implement the Clean Air Act and are based on the Administrator's determination that fugitive emission sources of VOC in SOCMI contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. As required by Section 111 of the Clean Air Act, the proposed standards are intended to require new, modified, and reconstructed sources in SOCMI to use the best demonstrated system of continuous emission reduction, considering costs, nonair quality health and environmental impacts, and energy requirements.

A public hearing will be held to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed standards.

DATES: *Comments.* comments must be received by April 6, 1981.

Public Hearing. A public hearing will be held on March 3, 1981, beginning at 9 a.m.

Request to Speak at Hearing. Persons wishing to present oral testimony should contact EPA by March 24, 1981.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Central Docket Section (A-130), Attention: Docket No. A-79-32, U.S. Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460.

Public Hearing. The public hearing will be held at the EPA Administration Bldg. Auditorium Research Triangle Park North Carolina.

Persons wishing to present oral testimony should notify Ms. Naomi Durkee, Emissions Standards & Engineering Branch (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5271.

Background Information Document. The Background Information Document (BID) for the proposed standards may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777. Please refer to *VOC Fugitive Emissions in the Synthetic Organic Chemicals Manufacturing Industry—Background Information For Proposed Standards*, EPA-450/3-80-033a.

Docket. Docket No. A-79-32, containing supporting information used in developing the proposed standards, 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, S.W., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Wyatt, Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5477.

SUPPLEMENTARY INFORMATION:

Proposed Standards

The proposed standards of performance would apply to fugitive emission sources within process units operated to produce one or more of the organic chemicals listed in proposed Appendix E. Certain equipment processing VOC liquids and gases would be covered by the standards. Implementation of the proposed standards would reduce fugitive emissions of VOC from pumps, compressors, valves, sampling connections, safety/relief valves, and open-ended valves in VOC service. The proposed standards would require: (1) a leak detection and repair program for in-line valves in gas and light liquid VOC service; (2) certain equipment for certain fugitive emission sources in VOC service; and (3) no detectable VOC emissions from safety/relief valves in VOC service during normal operation. VOC service means that a fugitive emission source contains or contacts a process fluid composed of equal to or greater than 10 percent VOC by weight. In addition, the proposed standards would provide a procedure for determining the equivalency of alternative control measures.

The proposed standards include a leak detection and repair program that would require monthly monitoring for valves in gas and light liquid service. Valves found not to leak for two successive months could be monitored quarterly. Monitoring would be conducted in accordance with Reference Method 21 which is being proposed with these proposed standards. The proposed standards would require repair of leaking valves within 15 days after detection of the leak unless repair would require a process unit shutdown. A Leak is defined as a detectable VOC concentration equal to or greater than 10,000 parts per million by volume (ppmv). An initial attempt at repairing these valves would be required within 5 days after detection of a leak.

Two alternative standards have been provided for valves in gas and light liquid service. A plant owner or operator might elect to comply with one of the alternative standards which would be based on data gathered during one year's monthly monitoring in his affected facility. The first alternative standard would provide an allowable percentage of valves leaking. The second alternative standard would provide for the use of a different leak detection and repair program which would achieve the same level of control as the program designed by EPA.

The proposed standards would require pumps in light liquid service to be equipped with dual mechanical seal systems that include a barrier fluid system. The barrier fluid would be required to be something other than a light liquid or gaseous VOC. Light liquids are defined as VOC liquids with vapor pressures greater than 0.3 kPa at 20°C. Each barrier fluid system would be equipped with a sensor so that failure of the inner and outer seals could be detected. In addition, each barrier fluid system would be operated at a pressure greater than the seal area pressure or would be equipped with a barrier fluid degassing reservoir. The degassing reservoir would be connected, by a closed vent system, to a control device having a VOC control efficiency of at least 95 percent. The proposed standards would also require weekly

visual inspections of the seals on light liquid pumps in order to identify failure of the outer seal. Repair of the pump would be required within 15 days after a seal failure or leak was detected unless repair would require a process unit shutdown. The first attempt at repairing the pump would be required within 5 days after detection of the leak. If a pump could not be equipped with dual mechanical seals and a barrier fluid system, a closed vent system would be required to transport leakage to a control device having a VOC control efficiency of at least 95 percent.

The proposed standards would require compressors to be equipped with seals having a barrier fluid system that prevents leakage of the process fluid to the atmosphere. The barrier fluid would be required to be something other than a light liquid or gaseous VOC. These standards would also require each barrier fluid system either to operate at a pressure greater than the compressor seal area pressure or to be equipped with a barrier fluid degassing reservoir. The degassing reservoir would be connected by a closed vent system to a control device having a VOC control efficiency of at least 95 percent. The proposed standards would require each barrier fluid system to be equipped with a sensor so that seal failures may be detected. When seal failure is detected, repair would be required within 15 days unless repair would require a process unit shutdown. An initial attempt at repair would be required within 5 days. If a compressor could not be equipped with a barrier fluid system, a closed vent system would be required to transport leakage from the seal to an enclosed combustion source or vapor recovery system having a VOC control efficiency of at least 95 percent.

The proposed standards would require that VOC's purged from sampling connections be recycled to the process by a closed sampling loop. Alternatively these VOC's could be collected in a closed collection system for recycle or disposal without VOC emissions to atmosphere *In-situ* sampling systems would be exempt from these requirements.

The proposed standards would require that safety/relief valves have "no detectable emissions" of VOC except in cases of pressure relief. "No detectable emissions" of VOC in this case means 200 ppm or less above the background level as measured by Reference Method 21. After each overpressure relief, the proposed standards would require the safety/relief valves to be returned to a state of no detectable emissions within 5 days.

Open-ended lines would be required to be sealed with a second valve, cap, blind flange or plug except when the open-ended line is in use. If a second valve is used, the valve on the process side would be required to be closed first to avoid trapping VOC between the valves.

Cooling towers, agitator seals, and equipment not in VOC service would not be covered by the proposed standards. Flanges, safety/relief valves in liquid service, equipment operating at subatmospheric pressures and all equipment components in "heavy liquid" VOC service, would be excluded from the routine monitoring requirements of the proposed standards. Heavy liquids are defined as VOC liquids with vapor pressure less than 0.3 kPa at 20°C. However, the proposed standards would require VOC leaks which were visually or otherwise detected from these sources in VOC service to be repaired within 15 days after the leak is confirmed using Reference Method 21.

Compliance with the proposed leak detection and repair program and equipment requirements would be assessed through review of records and reports and by inspection. Each owner/operator would report quarterly the number of leaks found and repaired during the quarter. Each owner/operator would also submit quarterly a signed report stating that all monitoring had been performed in accordance with the standards, all specified equipment had been installed and operated in accordance with the standards, and all emission limits had been met.

Under the proposed standards, any owner or operator of a facility subject to the standards could request that the Administrator determine the equivalence of any alternative means of emission limitation to the equipment, design, operational, and work practice requirements of the proposed standards. Upon receiving a request for determination of equivalence, the Administrator would provide an opportunity for public hearing. After such a hearing, the Administrator would make a decision and publish the decision in the **Federal Register.**

Summary of Environmental, Energy, and Economic Impacts

The proposed standards of performance would reduce fugitive emissions of VOC from new and modified process units in SOCMI by approximately 87 percent in comparison to those emissions that would result in the absence of the proposed standards. In the fifth year after implementation the proposed standards would reduce the total uncontrolled fugitive emissions from new, reconstructed and modified process units from approximately 200 to 26 gigagrams (Gg).

The proposed standards of performance would not increase the energy usage of SOCMI process units. In general, the controls required by the standards do not require much energy. Furthermore, the effect of the standards would be to increase efficiency of raw material usage, so that a net positive energy impact would result. Implementation of the proposed standards could result in a minor negative contribution to solid waste. However, the standards would also cause a positive impact on water quality by containment of potential liquid leaks.

The economic impact of the proposed standards would be reasonable. The proposed standards would require of the producers of SOCMI chemicals a capital investment ranging from $41 million in 1981 to $52 million in 1985. The total industry-wide capital investment over the five-year period would be approximately $232 million. The industry-wide net annualized cost would range from about $2 million in 1981 to about $11 million in 1985. This net annualized cost includes a credit resulting from "recovered" fugitive emissions. The costs would be distributed among 830 facilities affected during the five year period. Industry-wide price increases are not expected to result from implementation of these standards.

Rationale

Selection of Sources and Pollutants

The synthetic organic chemical manufacturing industry (SOCMI) source category ranked first on the Priority List, 40 CFR 60.16 (44 FR 49222, August 21, 1979), of 59 major source categories for which standards of performance are to be promulgated by 1982. The Priority List consists of categories of air pollution sources that, in the judgment of the Administrator, cause or contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare.

The segment of the organic chemical industry covered by the proposed standards should be a readily identifiable portion or subgroup of the organic chemical industry. EPA has identified a list of organic chemicals produced in a segment of this industry. The products of this industry segment are derived from about ten basic petrochemical feedstocks and are used as feedstocks in a number of synthetic products industries. Organic chemicals such as acetone, methyl methacrylate,

toluene, and glycine are produced in this segment of SOCMI. Large quantities of SOCMI products are used in the production of plastics, fibers, surfactants, pharmaceuticals, synthetic rubber, dyes, pesticides, and specialty organics. They are typically intermediates, although they may be used as final products. Many of these products are high volume chemicals. The Administrator is proposing the list of organic chemicals in Appendix E as the segment of SOCMI covered by the proposed standards.

The total VOC emissions from SOCMI were estimated to be about 1,000 Gigagrams/year (Gg/yr) in 1976 or about 5 percent of the 19,000 Gg total annual VOC emissions from stationary sources in this country. Fugitive emissions of VOC are a significant portion of the total VOC emissions from SOCMI. Fugitive emissions of VOC from smaller SOCMI process units are about 70 Mg/yr and larger SOCMI process units are about 800 Mg/yr. It is estimated that approximately 400 Gg/yr of the total emissions of VOC from SOCMI are currently attributable to fugitive emission sources. Fugitive emissions are unintentional emissions caused by leaks in processing equipment. Fugitive emission sources include pumps, valves, compressors, flanges, and agitators. Other potential sources of VOC emissions in this industry include process sources, storage and handling equipment sources, and secondary emission sources. Standards are currently under development for some of these VOC emission sources. Other pollutants emitted from SOCMI include particulate matter, carbon monoxide (CO), nitrogen oxides (NO_x), sulfur oxides (SO_x), sulfuric acid (H_2SO_4) and hydrochloric acid (HCl) as well as other chemicals. Most particulate matter, NO_x and (SO_x) emissions from this industry are regulated under combustion and process standards that have been developed or are under development.

VOC emissions from SOCMI contribute to the production of ozone which is one of the criteria pollutants for which an ambient air quality standard exists under Section 109 of the Clean Air Act. Because fugitive emissions of VOC are a significant portion of the total SOCMI emissions of VOC, the Administrator is proposing standards of performance that are intended to reduce fugitive emissions of VOC from SOCMI. These proposed standards would reduce emissions of VOC by about 175 Gg/yr in 1985. The VOC that would be regulated by the proposed fugitive emissions standards are compounds which participate in atmospheric photochemical reactions or can be measured by Reference Method 21 which is being proposed with the standards. In addition to reducing fugitive emissions of VOC from SOCMI, the proposed standards would reduce emissions of organic chemicals that are toxic and in some cases potentially carcinogenic. However, specific VOC which the Administrator lists as hazardous air pollutants would be regulated under Section 112 of the Clean Air Act rather than under this regulation.

Selection of Regulatory Approach and Affected Facilities

Two general regulatory approaches could be used in developing standards for SOCMI. The first approach involves the development of standards applicable to each specific chemical process; this approach has historically been the most commonly used approach in developing standards of performance for new stationary sources. Following this approach would involve establishing standards for each specific chemical process.

The second approach involves the development of standards on the basis of similar types of emission sources and applicable emission control techniques. The second approach is more resource efficient than the first approach because a large number of specific chemical processes can be covered by one regulation.

SOCMI plants contain similar fugitive emission sources. In general, a few fugitive emission sources within SOCMI process plants contribute the greatest proportion of fugitive emissions. Leaks from fugitive emission sources generally occur randomly and are not related to process variables. These similarities in the behavior of fugitive emission sources in SOCMI allow the same control techniques to be applied to all of the processes. Therefore, because the control techniques can be applied to the entire industry group and because regulating the entire group would be more resource efficient, a single regulation is being proposed for controlling fugitive emissions from SOCMI.

An affected facility for standards of performance is an emission source or group of emission sources to which the standard applies. Affected facilities for fugitive emissions standards could be defined as individual emission sources (equipment components), groups of equipment components that are operated in conjunction with each other (process units), or groups of process units at one location (plant sites). The selection of one of these definitions for affected facilities is influenced by the fact that the provisions of the proposed standards would apply to new, modified or reconstructed facilities.

An existing facility, as defined in 40 CFR 60.2, is a facility that was constructed or modified before the proposal date of the applicable standards of performance. However, an existing facility that is modified or reconstructed after the date of proposal of the standards becomes an affected facility and then is subject to applicable standards of performance.

Modification is defined in 40 CFR 60.14(a) as any physical or operational change of an existing facility which increases the emission rate of any pollutant to which a standard applies. Exemptions to this definition include an increase in production rate, if such an increase can be made without capital expenditure; an increase in the hours of operation; the use of an alternative fuel or raw material if the facility was designed to accommodate the alternate fuel or raw material prior to the standards; the addition of air pollution control equipment; routine maintenance, repair, and replacement; and relocation or change in ownership.

Reconstruction is defined in 40 CFR 60.15 as any replacement of components in an existing facility where the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable entirely new facility. Under such conditions, the Administrator would determine whether an existing facility would become an affected facility. Fixed capital cost means the capital needed to provide all depreciable components of the facility.

The three different alternatives for defining affected facilities and the implications of each one were considered in selecting the definition. If the affected facilities covered by the proposed standards were defined on the basis of individual equipment components, any replacement of an equipment component (pump, valve, etc.) would be considered a new source and would be subject to the new source standards. Under this definition situations would result in which replaced equipment components in existing process units would be subject to new source standards, while adjacent components would not be subject to the standards. Determining which components were subject to requirements of the standards could be difficult for the owner/operator and for EPA.

Designating affected facilities on the basis of process units would combine individual fugitive emission sources

within the process unit into a unified group. Any like-for-like replacement of fugitive emission sources within an existing unit would not increase the overall emission rate, and would be a small capital expenditure compared to the cost of the entire unit. Therefore, the unit would not be subject to the standards due to modification or reconstruction considerations. Defining an affected facility as a process unit would reflect industry construction practices. Almost all new construction in SOCMI is by process unit. Furthermore, most reconstruction and modification occurs by process units.

Affected facilities could also be defined as plant sites, i.e., all process units at each plant site. If affected facilities were defined as plant sites, construction of new process units at existing sites could make the entire site subject to the standards. This broad coverage would be an unreasonable burden for owner/operators that have existing plant sites that may consist of many process units. The burden could be so severe that expansion might be limited at existing sites. If an entire process unit were replaced within an existing plant site, no emission increase would result, and, therefore, the unit and site would not be subject to the standards under modification considerations. If the plant site consisted of many process units, the replacement of one unit would probably not exceed 50 percent of the replacement cost of the affected facility (all process units at the site), and therefore the unit and site would not be subject to the standards.

After carefully considering each of the above alternatives, the Administrator selected process units as the basis for defining affected facilities. This definition allows for routine equipment replacement and minor changes or expansions in existing facilities without subjecting either single emission sources or entire plant sites to requirements of the proposed standards while also providing for full coverage for all new process units.

A disadvantage of implementing a decision to designate the process unit as the affected facility is that some small, routine changes and additions in an existing SOCMI unit could result in the unit's being modified and, therefore, subject to the standards of performance. These changes and additions may increase the number of fugitive emission sources within an existing facility, thereby increasing the fugitive emissions by a small amount. In most cases it would be feasible to control fugitive emissions from some other fugitive emission sources within the existing facility to keep fugitive emissions to their original level. In cases where existing facilities are already operating with a good fugitive emission control program, however, it might not be possible to control fugitive emissions from another fugitive emission source.

Standards of performance for new SOCMI sources are not intended to cover existing plants making routine and minor additions. There are two exceptions to the modifications provisions in the General Provisions of 40 CFR Part 60 which may exclude some plants making such additions. Exemptions are made for routine replacement and for additions made to increase production rate if they can be accomplished without capital expenditures. There are many specific reasons for routine additions and changes made in a SOCMI unit. For example, a small number of fugitive emission sources might be added in making changes to increase productivity, to increase ease of maintenance, to improve plant safety, and to correct minor design flaws. While the two reasons for exemptions included in the General Provisions might be interpreted to cover these types of changes, there may be different interpretations. To clarify the intent that existing SOCMI units making routine changes and additions would not be covered, the proposed standards would exempt additions made for process improvements if they are made without incurring a "capital expenditure" as defined in the General Provisions.

The General Provisions define "capital expenditure" as an expenditure for a physical or operational change to an existing facility which exceeds the product of the applicable "annual asset guideline repair allowance percentage" specified in the latest edition of Internal Revenue Service Publication 534 and the existing facility's basis, as defined by Section 1012 of the Internal Revenue Code. However, the total expenditure for a physical or operational change to an existing facility must not be reduced by any "excluded addition" as defined in IRS Publication 534, as would be done for tax purposes.

Using the process unit as the basis for an affected facility, an affected facility would be a group of all fugitive emission sources within a process unit. In this way, the process unit is used as the basis for defining an affected facility, but coverage is restricted to fugitive emission sources. A process unit is specifically defined as equipment assembled to produce one or more of the chemicals listed in proposed Appendix E which can operate independently if supplied with sufficient feed or raw materials and sufficient storage facilities for the final product. A process unit includes intermediate storage or surge tanks and all fluid transport equipment connecting the reaction, separation and purification devices. All equipment within the battery limits is included. However, offsite fluid transport and storage facilities are excluded. Under this definition, if a number of SOCMI process units were integrated into a continuous operation, each would be considered a separate process unit. For example, if chemical A was produced as a feedstock for the production of chemical B and chemical B, in turn, was used as a feedstock to produce chemical C, the whole continuous operation would consist of three process units. If A, B, and C were SOCMI chemicals, there would be three affected facilities.

Selection of Regulatory Alternatives

Fugitive emissions of VOC can be reduced by two types of control techniques: (1) leak detection and repair programs and (2) equipment, design, and operational specifications. Four regulatory alternatives which would achieve different levels of emission reduction using various combinations of leak detection and repair programs and equipment, design, and operational requirements were considered.

Control Techniques. The leak detection and repair programs included in the various regulatory alternatives consist of two phases. The initial phase involves monitoring potential fugitive emission sources within a process unit to detect fugitive emissions of VOC. After detection of the leak, the second phase involves repair or replacement of the fugitive emission source.

Several leak detection methods were considered in the development of the regulatory alternatives. Methods considered included the use of VOC detection instruments and soap bubble solutions to locate individual leaking sources. Different modes of monitoring were also considered. Included were periodic monitoring for fugitive emission leaking sources on an individual component or an area basis and continuous automatic instrument monitoring of ambient air at multiple sites within a facility. As detailed in the Selection of Test Methods section of this preamble, the individual component survey using a portable VOC detection instrument has been selected as the leak detection method for the proposed standards. This method requires that the VOC concentration at the surface of each fugitive emission source would be

monitored with a portable VOC detection instrument.

The effectiveness of an individual source leak detection program would depend not only on the detection method, but also on the frequency of the monitoring schedule. More frequent monitoring would allow leaks to be detected earlier and thus allow more frequent maintenance and a corresponding reduction in fugitive emissions.

The second phase of a leak detection and repair program consists of repair or replacement of leaking fugitive emission sources. Repair or replacement of a fugitive emission source would be required within a specified period of time after the detection of a VOC concentration equal to or in excess of a predetermined level. These repair and replacement procedures would vary for each fugitive emission source. Fugitive emissions from packed seals on a pump or compressor, for example, could be reduced by tightening the packing gland. However, the packing could deteriorate to a point where further tightening would no longer reduce, but instead, would increase the emission rate. At this point, the packing would have to be replaced. Mechanical seals on pumps and compressors would need to be removed for repair. Replacement of these seals would be included in their repair, if necessary.

Many valve leaks can be repaired while the equipment is in service. Most process valves have a packing gland which could be tightened while the valve is in service. Tightening of the packing gland would normally reduce fugitive emissions from a leaking valve, but the emission rate could increase if the packing is old and brittle or if the packing were overly tightened. When this orrurs, the packing would have to be replaced. Plug valves might be repaired by addition of grease.

Some valves could not be repaired while in service. These valves include control valves, which may be excluded from in-service repair by operating or safety considerations, and block valves, whose removal for repair or replacement might require a process shutdown. Other valves, such as control valves with a manual bypass loop, could be isolated for repair or removal. The repair of a leaking safety/relief valve normally requires that it be removed from service.

Leaks from flanges could often be reduced by tightening of the flange bolts. Most flanges could not be isolated from the process to permit replacement of the gasket.

Fugitive emissions of VOC also could be reduced by installing certain equipment. Requiring installation of certain equipment was considered for the following fugitive emission sources in the development of the regulatory alternatives: pumps, compressors, pressure relief devices, open-ended lines, sampling connections, and valves.

Fugitive emissions from pumps occur primarily at the pump seal. These emissions could be reduced by installation of the following equipment: sealless pumps, pumps with improved seals (e.g., dual mechanical seals), or closed vent systems for collection and control of emissions.

Because of process condition limitations, sealless pumps are not suitable for all pump applications but would reduce emissions whenever applicable. Enclosing the seal area and venting the captured emissions to a control device is an alternative control technique for pumps; however, it is not generally used because such a system is costly.

Dual mechanical seals are currently used in many SOCMI process applications. These seals characteristically include a barrier fluid between the seals. If the pressure in the barrier fluid system is higher than that in the pump seal area, VOC would not leak from the seal. If, however, the pressure in the pump seal area is higher, VOC could leak into the barrier fluid and later be emitted to the atmosphere through degassing vents on the barrier fluid reservoir. Connecting the degassing vents to a control device (enclosed combustion or vapor recovery system) could effectively control fugitive emissions originating from the double mechanical seals. The control efficiency would vary with the condition of the mechanical seals and the type of control device used, but control efficiencies approaching 100 percent can be achieved. Consequently, a system combining dual mechanical seal systems equipped with controlled degassing vents were considered as the equipment for pumps.

Emissions from compressors also occur primarily at the seal. An enclosed seal area or replacement of the seal with an improved seal (mechanical) could be specified to reduce emissions from compressors. Enclosing the seal area and venting the captured emissions to a control device is an alternative control technique for compressors; however, it is not generally used because it is too costly. The use of mechanical seals on compressors and connection of the barrier fluid reservoir to a control device (enclosed combustion or vapor recovery system) with a closed vent system could provide control efficiencies approaching 100 percent. If the barrier fluid pressure is higher than the compressor seal area pressure, there would be no VOC emissions to atmosphere. However, if the pressure in the barrier fluid system is lower than that in the compressor seal area, the degassing vents on the barrier fluid reservoir should be connected to a control device to effectively control fugitive emissions. Therefore, a system combining mechanical seals and controlled degassing vents was considered as the equipment for compressors.

Safety/relief valves may emit fugitive VOC due to defects in valve seating surfaces, improper reseating after relieving, or process operation near the relief valve set point. Equipment considered for controlling fugitive VOC emissions from relief valves include closed vent systems connected to a control device or rupture disks upstream of safety/relief valves.

A closed vent system can be used to transport the relief valve discharge (and fugitive emissions) to a control device such as a flare. These types of systems are currently used in SOCMI process units; however, under certain applications, such as flaring halogenated compounds, these systems could result in undersirable emissions. The control efficiency of a closed vent and control device system is mostly dependent on the effectiveness of the control device. For example, a closed vent system is about 100 percent effective in VOC capture, and a typical flare process is about 60 to 99 percent effective for VOC destruction; thus, the overall efficiency would be about 60 to 99 percent, depending on the turn-down capability of the flare.

Rupture disks can be installed upstream of safety-relief valves to prevent the emission of VOC through the valve seat during normal processing conditions. The use of a rupture disk upstream of a safety/relief valve results in no emissions of VOC from the valve. Rupture disks would provide more control than systems vented to a control device because the control device could not achieve 100 percent VOC emissions reduction, whereas rupture disks could. Consequently, rupture disks were considered as the equipment for safety/relief valves.

When process samples are taken for analysis, obtaining a representative stream sample requires purging some process fluid through the sample connection. This sample purge could be vented to the atmosphere if the fluid were gaseous, and liquid sample purges could be drained onto the ground or into open collection systems where evaporative emissions could result. There is no leakage from in-site sampling systems but they may not be

applicable in all situations. Fugitive emissions from other sampling connections can be reduced by using a closed-loop sampling system that eliminates atmospheric purging of process material.

Fugitive emissions of VOC from open-ended lines can be controlled by installing a cap, plug, blind flange, or second valve on the open end of the line. Capping of open-ended lines and closed-loop sampling are common industrial practices applied in SOCMI which exhibit control efficiencies for fugitive emissions of VOC of approximately 100 percent. The actual control efficiencies will depend on site-specific factors. Because the equipment is readily available, commonly used, and inexpensive, caps, plugs, blinds, or valves were considered for open-ended lines, and closed-loop sampling was considered for sampling connections.

Fugitive emissions from valves occur at the stem or gland area of the valve body. These emissions can be controlled by using valves which have actuating mechanisms isolated from the process fluid such as diaphragm or bellows valves. Although the control effectiveness of diaphragm or bellows seal valves is about 100 percent, their use is limited. Because the application of these valves would be limited to certain services, they were not considered and, therefore, no equipment was considered for valves in the regulatory alternatives.

Regulatory Alternatives. Four regulatory alternatives, which represent different levels of emission reduction achievable by combining various leak detection and repair programs, operational and design requirements and equipment specifications, were considered in the development of the proposed standards. Regulatory Alternative I is the baseline alternative and represents the level of control that would exist in the absence of any standards of performance. Under Regulatory Alternative I SOCMI facilities located in areas attaining the National Ambient Air Quality Standard for ozone would not be subject to any VOC fugitive emission regulations; however, facilities in nonattainment areas would be subject to applicable SIP regulations. Only a few states have developed or are considering near-term development of these specific regulations. Under Regulatory Alternative I fugitive emissions of VOC could also be controlled to some extent by OSHA health standards or controls based on provisions of insurance policy for fire and/or explosion protection. Estimates of emissions from fugitive emission sources have been developed based on existing levels of fugitive emission control. Thus, Regulatory Alternative I was based on current levels of control, considering possible new regulatory controls, and represents the level of control that would exist in the absence of any standards of performance.

Regulatory Alternative II includes the same monitoring requirements and equipment specifications included in the petroleum refinery Control Techniques Guidelines (CTG) document (EPA-450/2-78-036). These requirements and specifications are:

1. Quarterly monitoring of all in-line valves, open-ended valves and safety/relief valves in gas service (relief valves would also be monitored after overpressure relief to check for proper reseating);
2. Annual monitoring of all in-line valves and open-ended valves in light liquid service;
3. Quarterly monitoring of compressor seals;
4. Annual monitoring of light liquid service pumps (such pumps would also be inspected visually for liquid leaks each week; immediate instrument monitoring of visually leaking pumps would be required); and
5. Installation of caps, blinds, plugs, or second valves to seal all open-ended lines.

Regulatory Alternative III specifies a more frequent equipment monitoring schedule than Regulatory Alternative II, thereby providing for more stringent control of fugitive emissions of VOC. For instance, Regulatory Alternative III would require monthly, rather than quarterly or annual monitoring. Monthly monitoring would result in a reduction of emissions from residual leaking sources, i.e., those sources which are found to be leaking and are repaired but begin to leak again before the next inspection and those previously non-leaking sources that begin leaking between inspections. Regulatory Alternative III would also require the use of caps, plugs, or second valves on open-ended lines.

Of the four alternatives, Regulatory Alternative IV would provide the greatest level of control for fugitive emissions of VOC through the use of equipment specifications for some fugitive emission sources. The implementation of equipment specifications for the various potential fugitive emission sources would lessen the need for periodic monitoring. The monitoring and equipment specifications requirements of Regulatory Alternative IV are:

1. Monthly monitoring of all in-line valves and open-ended valves in gas and light liquid service;
2. Installation of rupture disks upstream of as service safety/relief valves that vent to the atmosphere (the disk would be replaced if disk failure were detected);
3. Installation of closed vents and control devices for compressor seal areas and/or degassing vents from compressor barrier fluid reservoirs;
4. Installation of dual mechanical seals on pumps in light liquid service and installation of closed vent control devices for degassing vents from barrier fluid reservoirs of all pumps in light liquid service (weekly visual inspections of pumps in light liquid service would also be required, with subsequent instrument monitoring required for those pumps with visible liquid leaks);
5. Installation of closed loop sampling systems; and
6. Installation of caps, blinds, plugs, or second valves to seal all open-ended lines.

Selection of Basis for the Proposed Standard

The Clean Air Act requires that standards for performance be based on the best system of continuous emissions reduction, considering costs, energy usage, and environmental impact. Selection of a regulatory alternative as the basis for the proposed standards was made after considering estimated fugitive emission reductions, energy savings or usage, and cost and economic impacts of the regulatory alternatives. SOCMI, with approximately 1,680 operating process units in the United States in 1980, is projected to grow at an annual rate of 5.9 percent. Based on this growth rate, approximately 2,240 process units will be in operation in 1985. Approximately 830 of these facilities would be subject to the proposed standards in 1985 due to new construction. Of this total, about 560 facilities would be newly constructed and subject to the standards on this basis. The remaining 270 facilities would result from replaced facilities which would be subject to the standards.

To examine the environmental impacts of the regulatory alternatives, estimates of fugitive emissions of VOC are required. To make these estimates for SOCMI, fugitive emissions data developed in petroleum refineries have been used. Transferring data in this way is justified because the fugitive emission sources and the substances processed in the two industries are similar. Both industries use the same types of pumps, compressors, valves, flanges and other chemical processing equipment.

Furthermore, both industries process VOC. Leak rates of VOC from similar fugitive emission sources are similar; leak frequencies in the two industries are similar. Available EPA data as presented in the Background Information Document shows this to be true. To further verify this similarity, EPA is currently gathering more data in SOCMI units for comparison to the refinery data. These data will be in the docket before the end of the comment period. These data and comments on this data will be fully considered before promulgation of these standards.

Regulatory Alternative II would reduce fugitive emissions of VOC from the 830 affected facilities in 1985 from an uncontrolled level of 200 Gg/yr to approximately 73 Gg/yr, or by 63 percent. The total energy associated with a VOC being processed is made up of the energy value of the compound and the energy expended to process (condense, pump, vaporize, etc.) the compound. The total energy associated with the VOC would be lost if the VOC were to leak to the atmosphere. This energy loss could be reduced if the VOC were combusted in an enclosed combustion system because some of the energy released during combustion could be recovered. If the VOC could be kept within the process and sold as product, the energy loss would be eliminated. Regulatory Alternative II reduces the energy loss that would result in the absence of any standards.

During the first five years after implementation of Regulatory Alternative II, SOCMI's cumulative capital costs would be $21 million. In the firth year, Regulatory Alternative II would result in an annualized net credit of $29 million due to the value of the recovered product. Implementation of Regulatory Alternative II would tend to hold individual price increases down because it would result in a net annualized credit. Implementation of Regulatory Alternative II could have a slight positive impact on wastewater from SOCMI facilities because leak detection would result in the identification and repair of liquid VOC leaks, and therefore, reduction of VOC's in wastewater from SOCMI facilities. Regulatory Alternative II would have no impact on any solid wastes associated with SOCMI.

Regulatory Alternative III would result in a fugitive emission rate of approximately 62 Gg/yr from the 830 affected facilities in 1985; this represents a 69 percent reduction over the baseline, or Regulatory Alternative I level. Regulatory Alternative III, like Regulatory Alternative II, reduces the energy loss that would result from SOCMI in the absence of any standards. SOCMI would incur cumulative capital costs of $21 million during the first five years after implementation of this alternative. However, due to the increased cost of implementing a more frequent monitoring schedule, Regulatory Alternative III would result in a smaller annualized net credit than Regulatory Alternative II. Implementation of Regulatory Alternative III would result in an annualized net credit of $21 million in 1985. As with Regulatory Alternative II, an annualized net credit would tend to hold individual price increases down. Regulatory Alternative III would have the same potential positive impact on wastewater from SOCMI facilities as Regulatory Alternative II, and no impact on solid waste.

Regulatory Alternative IV would reduce fugitive emissions of VOC from the 830 affected facilities in 1985 to 26 Gg/yr; this represents an 87 percent reduction from the Regulatory Alternative I level. Regulatory Alternative IV would minimize the energy loss that would result from SOCMI in the absence of any standards.

For Regulatory Alternative IV the cumulative capital costs would be about $232 million after the first five years of implementation. The net annualized cost for this regulatory alternative would be $11 million in 1985. These costs should not significantly increase the prices of SOCMI products because net annualized costs of control are extremely small (less than 0.03 percent) relative to the value of total industry output. Implementation of Regulatory Alternative IV could have a slight positive impact on wastewater for the same reasons as Regulatory Alternatives II and III. A wastewater containing suspended solids and some solid waste could result from the use of various control processes such as carbon adsorption units with the equipment specifications implemented under this alternative. However, the impact of these waste streams would be slight. Solid waste impact would also be minimal.

The Administrator selects a regulatory alternative as the basis for the proposed standards of performance after considering emission reductions, energy requirements, and cost and economic impacts of the regulatory alternative. This selection is based on choosing the best system of continuous emission reduction considering costs, energy and environmental impacts. Regulatory Alternative IV would reduce fugitive emissions of VOC by 170 Gg/yr in 1985. Of all the regulatory alternatives, Regulatory Alternative IV would achieve the greatest reduction of VOC fugitive emissions. The costs and economic impacts of Regulatory Alternative IV, as presented above, are reasonable. Energy requirements and nonair quality impacts of Regulatory Alternative IV would be similar to those of the other regulatory alternatives. Therefore, Regulatory Alternative IV represents the best system of emission reduction considering cost, energy requirements, and environmental impact and the Administrator selected Regulatory Alternative IV as the basis for the proposed standards.

Selection of Format for the Proposed Standards

Several formats could be used to implement Regulatory Alternative IV. Section 111 of the Clean Air Act requires that standards of performance be prescribed unless, in the judgement of the Adminsitrator, it is not feasible to prescribe or enforce such standards. Section 111(h) defines two conditions under which it is not feasible to prescribe or enforce a performance standard. These conditions are (1) if the application of measurement methodology to a particular class of sources is not practicable due to technological or economic limitations, or (2) if the pollutants cannot be emitted through a conveyance device. If a standard of performance is not feasible to prescribe or enforce, then the Administrator may instead promulgate a design, equipment, work practice, or operational standard, or combination thereof as provided in Section 111(h).

For most SOCMI fugutive emission sources, it is not feasible to prescribe a performance standard. Except in those cases in which standard can be set at "no detectable emissions", the only way to measure emissions from such SOCMI fugitive emission sources as pumps, pipeline valves, and compressors would be to use a bagging technique for each of the pipeline sources in a process unit. The great number of such sources and their dispersion over large areas would make such a requirement economically impracticable. Therefore, the Administrator has not selected this format in prescribing the proposed standards.

Another approach to prescribing a standard would be to specify a number or percent of fugitive emission sources that would be allowed to leak. This approach would be qualitative. It differs from the performance standard appoach which is based on quantitive emissions measurements (e.g. bagging). However, it would have some of the same benefits

of flexibility provided by performance standards. The only fugitive emission source for which a leak frequency limit would be applicable is valves. However, the variability in the percentage of valves leaking among process units limits the setting of an allowable percentage of valves leaking which could be achieved by all process units within SOCMI. This variability is observed even among units in which leak detection and repair programs are being implemented. Even so, establishing an allowable percentage of valves leaking based on data collected for that unit, may be feasible for each individual process unit. This approach is discussed in more depth in Alternative Standards for Valves in the next section of this preamble as one which would add desirable flexibility to the proposed standard.

Another possible regulatory format is an equipment standard. For those sources for which performance standards cannot feasibly be prescribed, work practices, design standards, operational standards, or equipment standards may be prescribed. Each of these formats has its own advantages and disadvantages. Equipment standards provide well-documented reductions. Compliance monitoring would require only an initial check to insure that the equipment had been installed properly and periodic checks to insure that equipment was continuing to operate properly. However, an inherent disadvantage associated with this type of format is that less site-specific flexibility is provided than with a performance standard and innovation may be stymied. Design and operational standards have similar advantages and disadvantages as those for equipment standards.

Another format is work practices. An example of this format would be a program for detecting and repairing leaks. Inspection methods, inspection time intervals, and time allowed for repair would be defined in detailing the work practices. Compliance with a work practice standard would be determined by judging success in implementing the work practices. Some recordkeeping and reporting would be needed to serve as the basis for judging this success.

The proposed standards could incorporate all of the potential regulatory formats. Different formats are required for different fugitive emission sources because characteristics of the emission sources, the available emission control options, and the applicability of proposed Reference Method 21 differ among the sources. In the next section the rationale for selecting a particular format is explained for each type of fugitive emission source. For each fugitive emission source, the feasibility of prescribing or enforcing a performance standard is discussed. If a performance standard is not feasible, the rational for selecting another format is presented.

Selection of Emission Limit, Equipment, Work Practice, Design and Operational Standards

Safety relief valves. Section 111(h) of the Clean Air Act requires that a standared of performance be promulgated unless it is not feasible to prescribe or enforce. Thus, control techniques included in Regulatory Alternative IV were first evaluated to determine if a performance standard could be proposed. The conclusion of this evaluation is that the only fugitive emission sources for which it would be feasible to prescribe and enforce a performance standard are safety/relief valves, and in certain cases, fugitive emission sources which are designed not to leak.

Rupture disks were evaluated as the equipment specification for gas service service safety/relief valves under Regulatory Alternative IV. When the integrity of rupture disks is maintained, fugitive emissions through the relief valve are eliminated. Rupture disks maintain their integrity unless an overpressure occurs. After an overpressure, replacement of the rupture disk once again eliminates fugitive emissions through the safety relief valve.

For control techniques the eliminate fugitive emissions, and emission limit measurement for "no detectable emissions" is feasible by the proposed Reference Method 21. Measurement methods for determing the quantitative emission rate from safety/relief valves are not feasible because they would require bagging each piece of equipment. However, Method 21, while it does not allow quantitative measurement of emissions, does allow the detection of leaks of fugitive VOC emissions from safety/relief valves. Therefore, the proposed standard for safety/relief valves in gas service is "no detectable emissions." The "no detectable emission" limit would not apply to discharges through the safety/relief valve during pressure relief because the function of relief valves is to discharge process fluid, thereby reducing dangerous high pressures within the equipment. The Standard would specify, however, that the relief valve be returned to a state of no detectable emissions within 5 days after such a discharge. It would further require an annual test to verify the "no detectable emissions" status of the safety relief valves. Also, a test would be required when the Administrator makes such a request.

A test to determine if a fugitive emission source is complying with a "no detectable emissions" requirement is a performance test. Performance tests require three separate runs, unless otherwise specified in an applicable subpart, as required in 40 CFR 60.8(f). A test to determine if a fugitive emission source is complying with a "no detectable emissions" requirement does not require three runs. Thus, tests to determine "no detectable emissions" would be exempted from 40 CFR 60.8(f) in the proposed standards.

In addition to three runs, performance test requirements include a notification to the Administrator 30 days before each performance test. For fugitive emission sources, tests to determine "no detectable emissions" may occur throughout a year and at least, after each over pressure relief. Requiring an owner or operator to notify the Administrator, as required in 40 CFR 60.8(d), is not considered reasonable for these standards. Thus, to reduce the reporting burden on industry, owners or operators of affected facilities are exempted from 40 CFR 60.8(d) in the proposed standards.

Pumps. It is not feasible to prescribe a performance standard for pumps because application of measurement technology to pumps is technologically and economically impractical. First, even though pump seals can be designed to release emissions into a conveyance mechanism, measurement of these emissions is not practicable. Dilution of the fugitive emissions in a conveyance mechanism limits the economical and technological application of measurement methods. Second, determining emission levels from each pump would require the time-consuming, expensive and impractical method of bagging each pump as described in the Selection of Test Method section of this preamble. Furthermore, a "no detectable emission" limit is not feasible because dual mechanical pump seals leak on occasion.

After determining that a performance standard for pumps would not be practicable because of technological and economic limitations, equipment standards were evaluated. Equipment specifications evaluated for pumps were dual mechanical seals with closed vents for the barrier fluid degassing reservoirs, closed vents for the pump seal areas, and sealless pumps. After evaluation, dual mechanical seal systems that include barrier fluid systems and

sensors to detect failure of either seal or barrier fluid system were selected as the basis for the equipment specifications for pumps in Regulatory Alternative IV. They are frequently used in SOCMI pump applications. If the barrier fluid system is maintained at a pressure greater than the stuffing box pressure, no VOC leakage would occur because all leaks would be inward into the process fluid. If the stuffing box pressure is greater than the barrier fluid pressure, the barrier fluid between the two seals collects leakage from the inner seal, and the VOC collected by the barrier fluid is controlled by connecting the barrier fluid reservoir to a control device (enclosed combustion or vapor recovery) with a closed vent system or by returning it to the process. The dual mechanical seals with controlled degassing vents system is the most universally applicable of the three options evaluated. Thus, because they provide the best control efficiency (dependent upon the efficiency of the control device) considering costs, the equipment requirement for pumps is the use of dual mechanical seals with closed barrier fluid degassing vents connected to a control device or designed to return the VOC to the process.

Section 111(h) of the Clean Air Act requires that when equipment standards are established, requirements must also be established to insure the proper operation and maintenance of the equipment. Such provisions have been made in the proposed regulation. An indicator on the barrier fluid system would reveal any catastrophic failure of the inner or outer seal or barrier fluid system. The failure indication criterion would be determined, for each piece of equipment. Leakage through the outer seal could be detected by weekly visual inspections and would be limited by the barrier fluid. Although the intent of the standards would best be preserved by inspections as frequent as possible, weekly inspections were specified to keep the requirement from being burdensome. Detection of any leaks should be followed by repair within 15 days.

The barrier fluid would be either a non-VOC fluid or a heavy-liquid VOC. The use of light liquid VOC as a barrier fluid could result in emissions of VOC of the same magnitude as those which would occur if product VOC were allowed to leak past the seals. Leakage of process fluid through the inner seal would be captured and controlled by the barrier fluid/closed vent system.

Sealless pumps, such as diaphragm or canned pumps, do not have a potential leak area, and therefore should achieve approximately 100 percent control. However, sealless pumps may not be suitable for use in some SOCMI process applications due to throughput, pressure, or fluid composition constraints. Sealless pumps were not selected under Regulatory Alternative IV and, therefore, were not selected as required equipment for the proposed standards.

Sealless pumps are at least equivalent to dual mechanical seals with barrier fluid degassing vents connected to control devices in controlling fugitive emissions. Therefore, the proposed standards allow them for owners/operators who wish to use them. Seallesss pumps would be required to operate under a "no detectable emission" limit as discussed in *Leakless Equipment* in this section.

The seal area of a pump could be completely enclosed, and this enclosed area could be connected to a control device (enclosed combustion or vapor recovery) with a closed vent system. The control efficiency of this arrangement is dependent on the control efficiency of the vapor recovery system or enclosed combustion device. The closed vent system could require a flow inducing device to transport emissions from the seal area to the control device. Because of safety or operating limitations, enclosure of the pump seal area may not be feasible in all cases.

There may be isolated and unusual pump applications which require pumps which cannot be equipped with mechanical seals. For example, if a reciprocating pump is required, mechanical seals may not be possible. The enclosed seal area would be the best control option for such pumps. Therefore, enclosed seal areas connected to a control device with a closed vent system would be allowed for pumps that cannot be equipped with dual mechanical seal systems. Although enclosing seal areas would be as effective in reducing emissions as other effective techniques, this option would most likely be used on a limited basis.

Compressors. As in the case for pumps, a performance standard for compressors is not feasible. Even though compressor seals can be designed to release fugitive emissions into a conveyance mechanism, measurement of these emissions would be limited by technological and economical factors. Measuring emissions from each compressor would require bagging each seal area. This method is time-consuming and expensive and is therefore, impracticable. An emission limit of "no detectable emissions" using proposed Reference Method 21 as the measurement method, is not feasible because mechanical contact seals leak on occasion.

Because performance standards cannot feasibly be prescribed for compressors, the several alternative formats were considered and equipment standards found to be most appropriate. Equipment specifications evaluated for compressors were sealless compressors, mechanical contact seals equipped with barrier fluid system with the barrier fluid degassing reservoirs vented to control devices, and closed vents for the compressor seal area vented to a control device. Dual seal systems that include barrier fluid systems and sensors to detect failure of either seal or barrier fluid system were selected as the basis for Alternative IV. Some compressors in current SOCMI applications have a seal system with a circulating barrier fluid system. This barrier fluid system is similar to the system described for pumps with dual mechanical seals, although the compressor seals may be mechanical contact, oil film, or another type of seal. If the barrier fluid system is maintained at a pressure greater than the stuffing box pressure, no VOC leakage would occur because all leaks would be towards process fluid. If the stuffing box pressure is greater than the barrier fluid pressure, the barrier fluid between the two seals collects leakage from the inner seal. Leakage through the seal results in the presence of VOC in the barrier fluid which would be a non-VOC fluid or gas or a heavy VOC. The use of a light liquid VOC or VOC gas a barrier fluid could result in emissions of VOC of the same magnitude as those which would occur if product VOC were allowed to leak past the seals. VOC trapped in the barrier fluid would be emitted from the barrier fluid reservoir. However, this VOC could be collected and directed to a control device (enclosed combustion or vapor recovery system) or returned to the process (probably the suctions of the compressor) by a closed vent system that is connected to the barrier fluid reservoir. A seal system which uses a barrier fluid system provides a high control efficiency and is the most applicable effective control technique for compressors.

Section 111(h) of the Clean Air Act requires that proper maintenance and operation of equipment specified in a regulation be insured. To provide this insurance the proposed standard requires visual inspection and monitoring of the barrier fluid system to detect seal failure or barrier fluid system failure and the use of non-VOC or heavy VOC liquids for the barrier fluid. The

failure indication criterion would be determined for each piece of equipment.

Although sealless compressors would achieve approximately 100 control, sealless compressors are not readily available in capacities large enough for most SOCMI process applications, and therefore, have limited use in SOCMI. Consequently, sealless compressors were not considered under Regulatory Alternative IV and were not selected as equipment specifications for the proposed standards.

However, sealless compressors are at least equivalent to compressors equipped with barrier fluid systems and degassing vents connected to control devices because VOC emissions are eliminated and, therefore, can be used as an alternative. Leakless compressors would be required to operate under a "no detectable emissions" limit as discussed in the *Leakless Equipment* section.

There are some cases in which seals with barrier fluid systems cannot be utilized. A barrier fluid system cannot be used under all process conditions due to pressure limitations. For those cases, enclosure of the seal area would be the best option. The enclosed area would be connected to a control device (enclosed combustion or vapor recovery) with a closed vent system. Therefore, enclosed seal areas connected to a control device with a closed vent system would be allowed for compressors that cannot utilize a barrier fluid system. Although enclosing seal areas would be as effective in reducing emissions as other effective techniques, this option would most likely be used on a limited basis.

Open-ended valves. The equipment chosen for open-ended valves as the basis for Regulatory Alternative IV was equipment which would effect enclosure of the open end. Because performance standards cannot feasibly be prescribed for open-ended valves, the several alternative formats were considered and equipment standards found to be most appropriate. An emission limit is not feasible because open-ended valves are generally not designed to emit fugitive emissions into a conveyance mechanism and because they would require bagging, which is economically impracticable, as previously explained in the Selection of Formats section. A "no detectable emissions" level could not be selected as the basis for the proposed standard because VOC's could leak through the valve seat and become trapped in the line between the valve and enclosure. These trapped VOC's would be emitted when the enclosure was removed for operation of the valves and open-ended valve.

After consideration and rejection of the possibilities for performance standards for open-ended valves, equipment standard options were considered. Equipment specifications considered included improved valve seat technology and enclosure of the open end. Improved valve seat technology was not selected because the effectiveness of such technology could be nullified by operating variables such as incomplete closure of the valve by operating personnel.

Specific equipment which would be required to close the open end would be a cap, plug, blind flange, or a second valve. The control efficiency associated with these techniques is approximately 100 percent.

To insure the proper operation of the equipment, open-ended lines are also covered by operational standards. If a second valve is used to close the open end, the proposed standards would require the upstream valve to be closed first. After the upstream valve is completely closed, the downstream valve would be closed. This operational requirement is necessary in order to prevent trapping process fluid between the two valves, which could result in a situation equivalent to the uncontrolled open-ended line.

Sampling connections. Closed loop sampling was considered as the equipment specification for sampling connections. Closed loop sampling systems eliminate emissions due to purging by either returning the purge material directly to the process or by collecting the purge in a collection system which is not open to the atmosphere for recycle or disposal. An emission limit was not specified because measuring mass emissions from each sampling system would require bagging each system, a measurement method which is time-consuming, costly, and impractical. A "no detectable emissions" limit is not feasible because although the VOC control efficiency of a closed loop sampling system is approximately 100 percent, some VOC could be emitted during its transfer to a closed collection device or during its ultimate disposal.

Because performance standards cannot feasibly be prescribed for sampling connections, the several alternative formats were considered and equipment standards found to be most appropriate. The equipment standards in the proposed standards require the use of closed loop sampling equipment. In addition to closed loop sampling systems any system that collects all the VOC purged in the sampling and either recycles or disposes of this VOC without emissions to atmosphere is allowed. *In situ* sampling systems are exempted from these requirements.

Valves. Work practices consisting of periodic leak detection and repair programs were considered for valves in Regulatory Alternative IV.

A performance standard for valves was considered and found infeasible. Valves are not designed to release fugitive emissions into a conveyance mechanism. Furthermore, determining mass emissions from each valve would require bagging each valve. This measurement method would be time-consuming and prohibitively expensive, especially considering the number of valves in a SOCMI process unit. A "no detectable emissions" limit is not feasible for valves because some percent of the valves are expected to lead.

Since performance standards were found to be infeasible for valves, equipment standards were considered. Equipment specifications considered for valves were diaphragm valves and bellows-sealed valves. These equipment specifications would not be suitable for all SOCMI process applications, and therefore, were not selected as part of Regulatory Alternative IV. However, use of these valves would be at least equivalent because they eliminate leakage of VOC. The use of such valves is allowed as an alternative. These valves would be required to operate with "no detectable emissions" as described in *Leakless Equipment* in this section.

Work practices were selected as the format for control of fugitive VOC emissions from valves. Several factors influence the level of emission reduction that can be achieved by a leak detection and repair program. The three main factors are the monitoring interval, leak definition, and repair interval. Training and diligence of personnel conducting the program, repair methods attempted, and other site-specific factors may also influence the level of emission reduction achievable; however, these factors are less quantifiable than the three main factors.

The monitoring interval is the frequency at which individual component monitoring is conducted. The length of time between inspections should be determined by the rate at which new leaks occur and the rate at which repaired leaks recur. More frequent inspections could then be required for souces which tend to leak more often. Available data with which to quantify the frequency of occurrence and recurrence of leaks from valves are limited. However, more frequent monitoring would result in greater emissions reduction because more

frequent monitoring would allow leaks to be detected earlier and thus allow more immediate repair.

Monthly monitoring was considered for Regulatory Alternative IV. Test data indicate that leaks would be found with monthly inspections. More frequent intervals were not considered because the large number of valves in certain SOCMI process units limits the practical minimum for the monitoring intervals. For example, a typical large process unit, Model Unit C (defined in the Background Information Document), includes 2800 valves (in gas and light liquid service) requiring periodic monitoring. Each leak detection and repair survey for a single process unit would require approximately 95 man hours for monitoring and 16 man hours for repair. If the monitoring were performed by a two man team more than one week would be required to complete the monitoring. A week would clearly be too short a time interval to select for monitoring. Since some time would be required to schedule repair after a leak is detected, monitoring intervals shorter than one month could result in a situation where a detected leak could not be repaired before the next monitoring was required. One month was selected as the required monitoring interval because it would provide the greatest emission reduction potential without imposing difficulties in implementing the leak detection and repair program.

Industry representatives argued at the National Air Pollution Control Techniques Advisory Committee meeting (a public meeting held during the development of standards of performance) that monitoring all valves monthly would be an inefficient expense of time and manpower for valves that leak infrequently or less often than other valves. The analysis in the BID assumed that about half the valves found leaking at any given time are valves which have been repaired and which have begun leaking again. This assumption emphasizes the importance of valve leak recurrence. If this assumption is correct, more monitoring effort should be expended on valves found leaking and less on those found leaking infrequently. Therefore, the proposed standard would require monthly monitoring of valves unless they are not found leaking for two successive months. If a valve were not found leaking for two successive months, an owner or operator would have the option to exclude that valve from monitoring until the first month of the next quarterly period. Thereafter, the valve could be monitored once every quarter until a leak was detected. If a valve leak were detected, monthly monitoring of that valve would be required until it had been shown leak free for two successive months.

EPA wants to make clear that this proposed standard is based on the assumption that recurrence is an important factor in predicting valve leaks. This assumption was used to develop a monitoring program which would result in a level of fugitive emission control comparable to that which would result from monthly monitoring. It is not EPA's intent in this action to propose a monitoring plan which would be comparable in effect to quarterly monitoring. This would be the case under the proposed standard if occurrence rather than recurrence is the more important factor.

EPA is currently collecting data concerning the importance of valve leak recurrence. The data being collected will be available before promulgation. If the data shows that recurrence is not a significant contributor to the total number of leaks, the proposed program will be reassessed and consideration will be given to returning to monthly monitoring.

The leak definition is the VOC concentration observed during monitoring that defines leaking sources that require repair. Two primary factors affect the selection of the leak definition. These factors are: (1) the percent of total mass emissions which can potentially be controlled by the leak detection/repair program, and (2) the ability to repair the leaking components.

As the leak definition decreases, the maximum potential emission reduction increases due to the increasing number of sources that have VOC concentrations that are greater than the decreasing leak definitions. The overall emission reduction of a leak detection and repair program depends on several factors as noted above. Each of these factors limits the effectiveness of the program. If each of the factors considered in selecting the leak detection and repair program is 90 percent effective, then the overall effectiveness would be about 73 percent. Each factor is a limiting factor to the overall effectiveness. Thus, the most restrictive definition that is reasonable for each factor should be selected. In order to maximize control effectiveness of the leak detection and repair program, the lowest leak definition which is feasible in terms of monitoring and controlling effectively without being unreasonably burdensome should be selected.

The leak definition selected for leak detection monitoring was 10,000 ppm. Preliminary data show that attempting on-line repair of valves at or above a leak definition of 10,000 ppm could result in a few cases where the attempted repair would increase the emission rate from the valve, but these cases do not offset emission reductions achieved by repair of other valves. When repair does not reduce the VOC concentration to less than 10,000 ppm, the valve would require a more extensive repair effort than tightening or regreasing the packing. Replacement of the valve may be necessary. Preliminary data also show that attempting the repair of valves in the 1,000–10,000 ppm range (low level) could result in more cases in which individual valve emission rates increase after repair when compared to the number of such cases which would result from attempting to repair valves in the over 10,000 ppm range. If such increases were to occur, the attempted repair of "low level" leaks could result in a lower overall emission reduction at a leak definition of 1,000 ppm than at 10,000 ppm. Because the 10,000 ppm action level may provide a higher overall emission reduction than the 1,000 ppm action level, 10,000 ppm was selected as the leak definition for leak detection monitoring.

The repair interval is defined as the length of time allowed between the detection of a leak and repair of the leak. In order to provide the maximum effectiveness of the leak detection and repair program, the repair interval should require expeditious reduction of the fugitive emission but should also allow the owner/operator to maintain a reasonable degree of flexibility in overall maintenance scheduling.

The length of the repair interval would affect emission reductions achievable by the leak detection and repair programs because leaking sources would be allowed to continue to leak for a given length of time. Repair intervals of 1, 5, 10, 15, 30 and 45 days were evaluated. The effect on the maximum emission reduction potential is proportional to the number of days the source is allowed to leak between detection and repair. Estimates of emission reduction efficiency as a function of repair interval are presented in the Background Information Document.

The repair interval selected for the leak repair program was 15 days. A repair interval of one day would cause problems in coordinating activities of personnel involved in leak detection and leak repair and in certain circumstances, would not be technically feasible. A one day repair interval would essentially

require repair of each component as soon as the leak was discovered.

Some valves may not be repairable by simple field maintenance. These valves may require spare parts or removal from the process for repair. Repair intervals of 5 and 10 days could cause problems in obtaining acceptable repair for these valves. However, a 15-day interval provides the owner/operator with sufficient time for flexibility in repair scheduling, and provides time for better determination of methods for isolating pieces of leaking equipment for repair. In general, a 15 day repair interval allows more efficient handling of repair tasks while maintaining an effective reduction in fugitive emissions and was, therefore selected as the repair interval. A repair interval of 30 or 45 days was not selected because a 15 day repair interval provides the most effective emission reduction without being burdensome.

However, the first attempt at repair of a leaking source would be required as soon as practicable after detection of the leak, and no later than 5 days after discovery. Most repairs can be done quickly, and 5 days should provide sufficient time to schedule maintenance and repair a leaking source. Attempting to repair the leak within 5 days will help to identify the leaks that cannot be repaired within the 15 day repair interval. Delay of repair beyond 15 days would be allowed for leaks which could not be repaired without a process unit shutdown.

Alternative Standards. In an effort to provide as much flexibility as possible, two alternative standards are being proposed for valves in gas and light liquid service. Owners or operators of affected facilities could identify and elect to comply with either of the alternative standards which allow tailoring of fugitive emissions control programs to their own operations. This would be accomplished by carrying out a monthly monitoring program for at least one year. Then, a plant owner or operator could elect to comply with one of the alternative standards which would be based on information gathered during the one year's implementation of monthly monitoring.

The first alternative standard would provide an allowable percentage of valves leaking. This type of standard would provide the flexibility of a performance standard by setting a limit which could be achieved by the most efficient and practical methods for a particular operation. As previously pointed out in the Selection of Format for the Proposed Standards section of this preamble, an industry-wide allowable leak percentage was not possible for valves because of the variability in valve leak frequency among plants within the industry. However, the alternative standard would allow each affected facility to comply with an allowable percentage of valves leaking which is determined by their individual performance based on monthly monitoring in the leak detection and repair program.

The allowable percentage of leakers would be determined by averaging the percentage of valves found leaking in each month of the last six months of monitoring, excluding those which could not be repaired without a process unit shutdown. To this average would be added the additional percentage of leaks which would occur if valves found leaking were monitored monthly and those found not leaking for two successive months were monitored quarterly. The resulting sum would be the performance standard for the percentage of valves leaking which would be allowed at any time. If an owner or operator elected to comply with an allowable percentage of valves leaking, he would be required to meet this standard at any point in time, even though his allowable percentage would be based on his average performance of a leak detection and repair program. Choosing this alternative standard would allow for the possibility of different monitoring and maintenance programs and substitution of engineering controls at the discretion of the owner or operator. It would also eliminate a large part of the recordkeeping and reporting associated with the proposed standard for valves.

This alternative would require a minimum of one performance test per year. Additional performance tests could be requested by EPA. If the results of a performance test showed a percentage of valves leaking higher than the allowable limit, the process unit would be in violation. Reporting would consist of submitting performance test results to the Administrator; quarterly reporting would be eliminated for valves.

The second alternative standard would provide for the use of different work practices which would achieve the same level of control as the standard for valves described in proposed § 60.482(f). After performing monthly monitoring for at least a year, the data collected would be used to devise work practices which would achieve the same control as the work practices specified in the proposed standards. Using this approach an owner or operator could optimize labor and capital costs to achieve the required level of control by varying monitoring intervals or installing valves with lower probabilities of leaking. Quarterly reporting would be required under this alternative as it is under the proposed standard in § 60.482(f).

An owner or operator would request approval from EPA to use either of the alternative standards for valves. A request for approval would be accompanied by a description of the standard being selected for compliance and data and calculations supporting the basis for the alternative standard. The Administrator would either approve or disapprove the request for the use of the alternative standard within ninety days after the request is submitted. A denial from the Administrator would be accompanied by his reasoning for denial. Until the alternative is approved, an owner or operator would be required to comply with the work practice standard propsoed for valves.

The approach of providing optional standards would be reassessed before promulgation of the proposed standards and if promulgated would be reviewed at the fourth year review. At that time, changing, eliminating, or continuing the alternative standards would be considered.

Control device. Control devices would be used to dispose of VOC captured in closed vent systems from barrier fluid degassing systems and enclosed pump and compressor seal areas. In all cases, these control devices would receive streams with low and intermittent flow rates. These control devices would in some cases be designed to dispose of organic streams from other sources in the plant, so that the VOC streams may contribute a very small percentage of the total loading on the control device. Because it would be technologically and economically impracticable to measure very low-flow streams and differentiate these streams from others, an emission standard was not proposed for these control devices.

Design requirements for control devices were considered to insure that appropriate emission reductions would be achieved from control devices used in conjunction with closed vent systems. Enclosed combustion sources and vapor recovery systems were considered as control devices for the closed vent system. Enclosed combustion was specified because open flares may only be 60 percent efficient for VOC destruction of these low flow intermittent streams. The design requirements specified in the proposed standard for enclosed combustion are the attainment of a minimum temperature of 816°C for 0.75 seconds. Under these conditions, at least 95 percent VOC destruction is achieved.

Vapor recovery systems were also evaluated as control devices for VOC from closed vent systems used with pumps and compressors. A control efficiency of at least 95 percent was chosen as the design requirement because it is the highest reasonable control efficiency practically achievable for vapor recovery systems such as carbon adsorption or condensation units used for fugitive emission sources. The design requirement selected for control devices was at least 95 percent VOC emission reduction. This control efficiency can be achieved by boiler furnaces, incinerators, process heaters, and carbon adsorption units.

Leakless equipment. As discussed in the previous sections, leakless equipment was considered for several of the fugitive emission sources to which these proposed standards apply. Sealed-bellows and diaphragm valves, canned and diaphragm pumps, and sealless compressors were considered for equipment standards. Although use of this equipment achieves excellent control (100 percent) of fugitive VOC emissions, its specification in the proposed standards was rejected because it is not widely applicable to SOCMI processes. However, use of leakless equipment is clearly equivalent if not better than the proposed standards for pumps, compressors, and valves and the proposed standards would allow the use of such equipment as an alternative to the required practices.

Leakless equipment would be required to operate with "no detectable emissions" at all times when it is in service. "No detectable emissions" of VOC means 200 ppm or less above background. The 200 ppm limit resulted from the measurement method of proposed Reference Method 21 as discussed in the Selection of Test Methods section of this preamble. Because leaks are not expected to occur in leakless equipment, the proposed standards require that its leakless status need only be verified annually using Method 21.

Exclusions. Flanges in all services, relief valves in light liquid service, and all components in "heavy liquid" (VOC fluids with vapor pressures less than 0.3 kPa at 20°C) VOC service were excluded from the routine monitoring and inspection requirements. However, if leaks are detected from these sources, the same allowable repair interval which applies to pumps, valves, and compressors would apply. These sources would be excluded from routine monitoring on the basis of data from EPA testing in petroleum refineries. Flanges in refineries have very low emission rates, and although they represent 61 percent of the total sources in refineries, their total contribution to overall emissions is about 2.2 percent. In EPA testing of fugitive emission sources in refineries, safety/relief valves in liquid VOC service also exhibited very low emission rates. These valves contribute only 0.2 percent of all emissions from refineries. Components in "heavy liquid" VOC service have emission rates that are much lower than "light liquid" or gas service components. Since all three of these types of sources contribute a very small portion of overall emission, including them in the monitoring and equipment requirements was not considered reasonable.

Also excluded would be equipment operating under a vacuum because leaks to atmosphere would not occur while the equipment operated at subatmospheric internal pressures.

Selection of Recordkeeping and Reporting Requirements

Recordkeeping and reporting would be required by the proposed standards to provide documentation for the assessment of compliance with (1) work practice standards, (2) equipment standards, (3) designs standards, (4) emission standards, and (5) operational standards. Review of records and reports would provide information for enforcement personnel to assess implementation of the proposed standards.

Compliance with the proposed standards would be determined by inspection and review of records. The General Provisions of 40 CFR Part 60 state that compliance with standards of performance, other than opacity standards, shall be determined only by performance tests. However, the proposed standards are, in general, not standards of performance and performance tests are not applicable. Therefore, an amendment to 40 CFR 60.11 is being proposed which would add a provision that allows compliance to be determined by review of records and inspection. The proposed standards then specify that compliance with the standards other than those for safety/relief devices will be determined by review of records and inspection.

Recordkeeping. Three recordkeeping alternatives were considered in evaluating the amount of recorded information needed to assess compliance with the proposed standards. These alternatives represent varying levels of the amount of information which could be recorded during activities associated with complying with the standards. Consequently, these alternatives represent varying levels of resource requirements for industry.

The first alternative would be to require no formal recordkeeping other than the recordkeeping required by the General Provisions of 40 CFR 60.7 for notification of construction or modification; reconstruction; and start-up, and shutdown or malfunction. Failure to require recorded documentation of the proposed work practice, equipment, design, and operational standards would not provide a mechanism for checking the thoroughness of the implementation of the proposed standards and, therefore, would not ensure fugitive emission reduction. Because the effectiveness of the proposed standards is dependent upon the thoroughness of industry's efforts, this alternative was not chosen as the basis of the recordkeeping requirements.

The second alternative would require recordkeeping to document results of the leak detection and repair program and information relating to equipment, design, and operation requirements. Information would be recorded in sufficient detail to enable owners/operators to demonstrate compliance with the standards and therefore provide reasonable assurance of adequate reduction of fugitive emissions. This alternative would require the maintenance of quantitiative records of repaired and unrepaired leaking fugitive emission sources. This alternative would require only the minimum amount of records on the equipment, design, emission, and operational standards and the work practice leak detection and repair program necessary to ensure the effective implementation of the proposed standards.

The third alternative would require recordkeeping of all the information generated by the proposed standards e.g., the number of fugitive emission sources detected at a concentration less than 10,000 ppmv. Much of this information would not be necessary to insure the implementation of the proposed standards. The level of recordkeeping in the third alternative is more appropriate for requirements to establish equivalent methods for emission limitation.

The second alternative was selected as the basis for the recordkeeping requirements of the proposed standards. This alternative would require the minimum industry resources to provide the necessary records to ensure effective implementation of the proposed standards. This alternative would also provide a basis for efficient reporting.

The proposed standards would require recording of specific information pertaining to the monthly monitoring for the work practice standards. Also information pertaining to repair of leaking pumps and compressors would be recorded. Each leaking fugitive emission source would be identified with readily visible weatherproof identification bearing the I.D. number of the fugitive emission source. The identification could be a tag or any other marking which allows ready location of the equipment. It could be removed after the fugitive emission source was repaired and verified non-leaking in two successive months. A log would be maintained for information pertaining to the leaking sources. The log would contain the instrument and operator identification numbers for valve monitoring, the leaking source identification number, the date of detection of the leak, the date of each attempt to repair the leak, and the maximum screening value after each attempt. The log would be kept for 2 years following the survey.

The proposed standards would require that "repair delayed" be recorded in the log for that particular fugitive emission source if repair were delayed beyond 15 calendar days after the date of detection. The reasons for unsuccessful repair, date of detection, repair methods attempted and the expected date of repair of the leak and the maximum screening value observed after repair would be recorded in the log. These records would be needed to establish a data base to provide the information necessary to allow enforcement personnel to assess compliance with the work practice standards.

The proposed standards would require no records for valves which were found not to leak. Similarly, no records would need to be maintained of the weekly pump inspections if no leaks were observed visually.

For the design standards, the proposed standards would require records to be maintained of the location of materials documenting control device design criteria, such as design specifications for a vapor recovery system or an incinerator. When the control equipment was modified or replaced, the date of replacement and new design criteria would be recorded.

A record of the source identification numbers for those fugitive emission sources operating under "no detectable emissions" limits would be required. Fugitive emission sources included in this category would be all safety relief valves and leakless equipment which has been designated for operation under "no detectable emissions" such as diaphragm valves or sealless pumps. Records of each measurement made to verify "no detectable emissions" would be required. The dates of the verification tests, ambient background VOC concentration measured, and the maximum VOC concentration measured at the source would be recorded.

The proposed standards contain very specific requirements concerning recordkeeping. These requirements are in addition to the requirements set forth in the General Provisions (40 CFR 60.7). Some of the requirements in § 60.7 are duplicated in the proposed standards. Also § 60.7 requires some records that may be unnecessary to determining compliance with the proposed standards. To eliminate redundancy and unnecessary recordkeeping, the proposed standards state that §§ 60.7 (b) and (d) would not be applicable to owners or operators affected by the proposed standards. A revision to the General Provisions is also being proposed to provide a mechanism to exclude the coverage of §§ 60.7 (b) and (d).

Reporting. Three reporting alternatives were considered in evaluating the amount of reported information needed to assess compliance with the proposed standards. These alternatives represent varying levels of enforcement monitoring of the proposed standards. They also represent varying levels of resources required for industry and enforcement personnel. Enforcement personnel would review the reports submitted by industry personnel on the status of implementing the proposed standards. This review procedure reduces the need for in-plant inspections.

The first alternative would require minimum reporting of information which was recorded to monitor compliance with the proposed standards. Recorded information would be available at the plant to enforcement personnel, but the owner/operator would be required only to supply a report testifying that all equipment, design, emission, and operational standards had been met, that all components had been monitored and that those with leaks had been repaired. The more detailed recorded information would then be available upon specific request or plant visit by enforcement personnel. This alternative would not provide a mechanism for checking the thoroughness of the industry's efforts to reduce VOC fugitive emissions without a visit to the plant site. Thus, assessment of compliance with the standards would be intermittent and somewhat random since it would mainly be determined through in-plant inspections rather than through submittal of information to enforcement agencies.

The second reporting alternative would require the submittal of information in sufficient detail to insure compliance with the proposed work practice, equipment, design, emission, and operational standards. Included in the reports would be summarized data concerning leaks detected during the reporting period. This requirement would provide enforcement personnel with an overview of the repair of leaks. A report signed by the plant owner/operator attesting to the validity of the results of the monitoring surveys and instrument calibration procedures would allow enforcement personnel to assess the compliance of facilities with the work practice standards. This report would also attest to the proper application, operation, and maintenance of the equipment required by the proposed equipment, design, emission, and operational standards. These requirements would not necessarily include all records kept by industry. Only information that would be necessary to assess the implementation of the equipment standards would be required.

The third reporting alternative would require the submittal of all the information obtained while conducting leak detection and repair programs. This information would include the information reported in the second alternative and, additionally, comprehensive information on all tested components. This reporting alternative would necessitate the reporting of all information included in the recordkeeping requirements. The extensiveness of the reported information would require the SOCMI to report data that would be more appropriate for demonstrating equivalency of alternate methods of emission control than for establishing compliance with proposed standards.

The second alternative was selected as the reporting requirement for the proposed standards. This alternative provides sufficient information to review compliance without requiring excessive resources from industry. The first alternative was not selected because the compliance with work practice standards and the implementation of equipment design, emission, and operational standards could not be adequately assessed by enforcement personnel to insure that reductions in fugitive emissions were achieved. The third reporting alternative

was not selected because the additional resources expended by industry would not facilitate assessment of compliance and implementation of work practice, equipment, design, emission and operational standards.

Under the proposed standards quarterly reports would be submitted. The reports would contain summary data of the number of leaks found and repaired within the reporting period. The number of leaks not repaired within 15 days, reasons for their non-repair, and anticipated dates of repair would also be required. The owner or operator would be required to sign the report stating whether or not the process unit was operated in full compliance with all work practice, design and operational, and equipment provisions of the standard. If the owner or operator had more than one affected facility, he could submit one statement of compliance for all of them. Example report formats are shown in Figures 1, 2, 3, and 4 in the proposed standards. These are examples only. The required information could be submitted in any other useful form.

As stated previously in the Safety/Relief Valves section of this preamble, performance tests generally require three runs and notification of the Administrator 30 days before the test. However, this prenotification is not reasonable for the proposed standards because tests to determine no detectable emissions must occur within five days after an overpressure relief. Because of this conflict in reporting requirements, affected facilities have been exempted from 40 CFR 60.8(d).

Impacts of reporting requirements. In addition to requirements of the General Provisions of Subpart A of 40 CFR Part 60, the proposed standards would require quarterly reports including information pertaining to the required work practices. Estimates of the efforts associated with the reporting requirements indicate that the industry would incur manpower expenditures of approximately 53 manyears in 1985 to fulfill the requirement which would apply to about 830 affected facilities. No overlapping data requirements with other government agencies are anticipated.

Equivalence of Alternative Means of Emission Limitation

Under the provisions of Section 111(h) of the Clean Air Act, if the Administrator establishes work practices, equipment, design or operational standards, then the Administrator must allow the use of alternative means of emission limitations if they achieve a reduction in air pollutants equivalent to that achieved under requirements of a standard of performance. Sufficient data would be required to show equivalency and a public hearing would be required.

Individual owners/operators in SOCMI could request alternatives beyond those now provided for specific requirements such as the proposed equipment and the proposed leak detection and repair program. Sufficient information would have to be collected by a facility to demonstrate that the alternative control techniques would be equivalent to the control techniques required by the proposed standards. This information would then be submitted to EPA in a request for a determination of equivalence. A public hearing notice would be published in the **Federal Register.**

The data submitted in a request for equivalency of alternative control measures would take the form of test data to substantiate equivalency. To obtain permission to use alternate types of equipment, VOC emissions test data would be supplied for comparison to emissions data from the specified equipment. Application for equivalence of work practices would require submission of twelve months' data for the leak detection and repair program specified in the standards and data for the alternate system.

After public notice and opportunity for public hearing, the Administrator would determine the equivalence of an alternative means of emission limitation and would publish his determination in the **Federal Register.**

Selection of Test Methods

Several fugitive emission measurement and monitoring methods were identified and analyzed in the development of the proposed standards. Evaluation of these alternative methods was based upon results of emission testing conducted at petroleum refineries and synthetic organic chemical manufacturing plants.

One method of emission measurement is the direct measurement of mass per unit time, e.g. kg/hr, from each source. For the wide variety of sources subject to this standard, direct measurement would require "bagging" techniques for the measurement of mass emissions. "Bagging" means to enclose a fugitive emission source with a shroud in order to capture all of the emissions from the source. The shroud must be attached securely to the source in order to insure complete capture of emissions, and a flow measurement device is needed to measure the volumetric emission rate. After an appropriate equilibration time, which depends on the shroud and the leak rate (5–30 minutes), a sample of the effluent from the shroud is taken to determine the VOC concentration. The VOC mass emission rate is then calculated based on the low volumetric flow rate and VOC concentration. Because of the large numbers of sources in an affected facility as well as the different physical configurations and diverse locations, direct measurements of leak rates would be costly, time-consuming, and impractical for routine testing. Therefore, direct measurement of leak rates was not selected as the emission measurement method for the proposed standard.

Indirect emission measurement methods or monitoring methods that would yield qualitative indications of leaks were reviewed. These monitoring methods are: (1) a periodic individual component survey that would monitor all fugitive emission sources using portable VOC detectors; (2) a periodic area, or walkthrough survey that would monitor ambient concentrations of VOC using portable VOC detectors; and (3) a continuous fixed-point monitoring system that would consist of stationary sensing devices with a remotely located central readout or a central analyzer system (gas chromatograph) with remote sample collection.

Individual component surveys using portable VOC detectors would be the most efficient method for detecting all leaks. The periodic individual component survey could be done in a reasonable amount of time by monitoring personnel and could be accomplished with relative ease. The cost of leak detection equipment for an individual component survey would be reasonable.

Two individual component survey methods were identified: (1) leak detection by spraying each component with a soap solution and observing bubble formation; and (2) leak detection by measuring VOC concentration with a portable VOC detector. The magnitude of leak rates based on bubble formation is difficult to assess. In addition, soap bubble formation does not distinguish VOC emissions from other leaking gases or vapors, and bubble formation is subject to component temperature and component configuration restraints. Therefore, measurement of VOC concentration with a portable VOC detector was selected as the method for monitoring individual components.

A periodic area, or walkthrough survey of ambient VOC concentrations with a portable VOC detector and recorder would be a less effective method for detecting specific leaks than an individual component survey. Interference due to local meteorological

conditions and leaks from adjacent units would probably prevent the detection of all leaks within a process unit. In fact, previous studies have indicated that the area survey is suitable only for locating large leaks. In order to have a walkthrough method that is as sensitive to leaks as an individual component survey, the "action level" indicating the need to do a complete survey of equipment within a specific area would necessarily need to be very low. It would also probably need to be unit and meteorology specific (different action levels for different wind speeds). With an action level this low the background level of VOC could cause considerable interference and leaks would undoubtedly be indicated almost everywhere in the unit. An individual component survey would in many cases be necessary to locate the actual leak. Therefore, since it is not possible to provide an industry-wide action level indicative of leaks for a given process unit, and, since any action level that was determined could give so many false indications of leaks that an essentially complete individual component survey would be necessary to detect the actual leaks, walkthrough testing was not judged to be a reasonable approach for leak detection.

Implementation of a continuous fixed-point monitoring system would require a portable VOC detector to locate specific leaking components in addition to multiple stationary monitors or sample collectors. This system may be less efficient than the other methods for detecting VOC emissions. Possible meteorological interference and problems with measuring VOC concentrations of remotely collected samples would limit the efficiency of leak detection by a fixed-point system. Except for possible monitoring equipment calibration problems, the fixed-point system would be operated with relative ease by monitoring personnel, who would still be required to use portable VOC detection equipment to find the individual leaking components indicated by the fixed-point monitoring system. Implementation of a continuous fixed-point monitoring system would be capital-intensive, although leak detection labor costs would probably be the least of the three monitoring methods.

Some characteristics of the three indirect emission measurement methods are similar, including safety considerations and ease of operation for monitoring personnel. Some aspects of the three methods are different. Capital and operating costs vary, as do the efficiencies of the methods in detecting VOC leaks. The individual component method is characterized by a superior leak detection efficiency and reasonable costs. Considering these factors, the individual component method was selected as the monitoring method for the proposed standards.

Selected Test Procedure. The proposed test method, Method 21, would incorporate the use of a portable VOC detector to measure the concentration of VOC at a source to yield a qualitative or semiquantitative indication of the VOC emission rate from the source. The general approach of this technique assumes that if a VOC leak exists, there is an increased VOC concentration in the vicinity of the leak. Tests in petroleum refineries have established general concentration versus mass emission relationships for various fugitive emission sources. Also, tests have indicated that local conditions cause variations in concentration readings at points removed from the surface of the interface on the component where leaking occurs. Therefore, the proposed method requires the concentration to be measured at the leak interface.

As discussed in the Selection of Emission Limit, Equipment, Work Practice, Design, and Operational Standards section in this preamble, a definition of a leak for valves was selected to be 10,000 ppm. This concentration level is measured at the leak interface and qualitatively relates to emission rates. Also discussed in that section is the definition of no detectable emissions. A concentration for no detectable emissions needs to be defined such that when emissions occur they can be detected and when emissions are not occuring they are not mistakenly detected. Based on considerations of the calibration procedures and monitor variability at low meter deflections, two percent of the definition of a leak was selected as the definition of no detectable emissions. Thus, in this case, no detectable emissions means a VOC concentration of less than 200 ppm above background concentration at the leak interface.

The portable VOC detector used in the proposed monitoring program would be required to conform to several specifications to insure consistent industry-wide monitoring, effective VOC emission reduction efforts, and safe leak detection programs. Equipment specifications are proposed in Method 21 as follows: (1) The instrument should respond to total hydrocarbons or combustible gases. Detector types which may meet this requirement include catalytic oxidation, flame ionization, infrared absorption, and photoionization; (2) the instrument should be safe for operation in explosive atmospheres; (3) the instrument should incorporate an appropriate range or dilution option so that concentration levels of 10,000 ppmv can be measured; (4) the instrument should be equipped with a pump so that a continuous sample can be provided to the detector. The nominal sample flow rate should be 1–3 liters per minute; (5) the scale of the instrument readout meter should be readable to ±5 percent at 10,000 ppmv.

The proposed standards would require that the monitoring instrument be calibrated before each monitoring survey. The proposed standards would require that the monitoring instrument be calibrated with methane. The required calibration gases would be a zero gas (air, 3 ppmv VOC) and a methane-air mixture of approximately 10,000 ppmv methane. If cylinder calibration gas mixtures would be used, they would have to be analyzed and certified by the manufacturer to within ±2 percent accuracy as required in proposed Method 21. Calibration gases prepared by the user according to an accepted gaseous standards preparation procedure would also have to be accurate within ±2 percent, as required in proposed Method 21.

Proposed Method 21 requires that the monitoring instrument would be subjected to other performance requirements prior to being placed in service for the first time. The instrument would be subjected to these performance criteria every six months and after any modification or replacement of the instrument detector.

Public Hearing

A public hearing will be held to discuss these proposed standards in accordance with Section 307(d)(5) of the Clean Air Act. Persons wishing to make oral presentations should contact EPA at the address given in the ADDRESSES section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement with EPA before, during, or within 30 days after the hearing. Written statements should be addressed to the Central Docket Section address given in the ADDRESSES section of this preamble.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Central Docket Section in Washington, D.C. (see ADDRESSES section of this preamble).

Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this proposed rulemaking. The principal purposes of the docket are (1) to allow interested parties to readily identify and locate documents so that they can intelligently and effectively participate in the rulemaking process and (2) to serve as the record in case of judicial review.

Miscellaneous

As prescribed by Section 111, establishment of standards of performance for the synthetic organic chemical manufacturing industry was preceded by the Administrator's determination (40 CFR 60.16, 44 FR 49222, dated August 21, 1979) that sources within this industry contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. In accordance with Section 117 of the Act, publication of this proposal was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. The Administrator will welcome comments on all aspects of the proposed standards, including economic and technological issues, and on the proposed Appendix E and Method 21.

It should be noted that standards of performance for new sources established under Section 111 of the Clean Air Act reflect:

> * * * application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated [Section 111(a)(1)].

Although there may be emission control technology available that can reduce emissions below those levels required to comply with standards of performance, this technology might not be selected as the basis of standards of performance because of costs associated with its use Accordingly, standards of performance should not be viewed as the ultimate in achievable emission control. In fact, the Act requires (or has the potential for requiring) the imposition of a more stringent emission standard in several situations.

For example, applicable costs do not necessarily play as prominent a role in determining the "lowest achievable emission rate" for new or modified sources locating in nonattainment areas, i.e., those areas where statutorialy mandated health and welfare standards are being violated. In this respect, Section 173 of the Act requires that new or modified sources constructed, in an area where ambient pollutant concentrations are above the National Ambient Air Quality Standard (NAAQS), must reduce emissions to the level that reflects the "lowest achievable emission rate" (LAER), as defined in Section 171(3) for such category of source. The statute defines LAER as that rate of emissions based on the following, whichever is more stringent:

> (A) The most stringent emission limitation which is contained in the implementation plant of any State for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable, or
>
> (B) The most stringent emission limitation which is achieved in practice by such class or category of source.

In no event can the emission rate exceed any applicable new source performance standard (Section 171(3)).

A similar situation may arise under the prevention of significant deterioration of air quality provisions of the Act (Part C). These provisions require that certain sources [referred to in Section 169(1)] employ "best available control technology" (BACT) as defined in Section 169(3) for all pollutants regulated under the Act. Best available control technology must be determined on a case-by-case basis, taking energy, environmental and economic impacts, and other costs into account. In no event may the application of BACT result in emissions of any pollutants which will exceed the emissions allowed by an applicable standard established pursuant to Section 111 (or 112) of the Act.

In all cases, State Implementation Plans (SIP's) approved or promulgated under Section 110 of the Act must provid for the attainment and maintenance of NAAQS designed to protect public health and welfare. For this purpose, SIP's must in some cases require greater emission reduction than those required by standards of performance for new sources.

Finally, States are free under Section 116 of the Act to establish even more stringent emission limits than those established under Section 111 of those necessary to attain or maintain the NAAQS under Section 110. Accordingly, new sources may in some cases be subject to limitations more stringent than standards of performance under Section 111, and prospective owners and operators of new sources should be aware of this possibility in planning for such facilities.

This regulation will be reviewed four years from the date of promulgation as required by the Clean Air Act. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, and improvements in emission control technology, and reporting requirements. The reporting requirements in this regulation will be reviewed as required under EPA's sunset policy for reporting requirements in regulations.

Section 317 of the Clean Air Act requires the Administrator to prepare an economic impact assessment for any new source standard of performance promulgated under Section 111(b) of the Act. An economic impact assessment was prepared for the proposed regulations and for other regulatory alternatives. All aspects of the assessment were considered in the formulation of the proposed standards to insure that the proposed standards would represent the best system of emission reduction considering costs. The economic impact assessment is included in the Background Information Document.

Dated: December 18, 1980.

Douglas M. Costle,

Administrator.

It is proposed to amend 40 CFR Part 60 as follows:

1. By adding paragraph (f) to § 60.7 to Subpart A—General Provisions as follows:

§ 60.7 Notification and recordkeeping.

* * * * *

(f) Individual subparts of this part may include specific provisions which clarify or make inapplicable the provisions set forth in this section.

(Sec. 111, 114, 301(a) of the Clean Air Act, as amended (42 U.S.C. 7411, 7414, 7601(a)))

2. By adding paragraph (f) to § 60.11 to Subpart A—General Provisions as follows:

§ 60.11 Compliance with standards and maintenance requirements.

* * * * *

(f) Special provisions set forth under an applicable subpart of this part shall supersede any conflicting provisions of this section.

(Sec. 111, 301(a) of the Clean Air Act, as amended (42 U.S.C. 7411, 7601(a)))

3. By adding Subpart VV as follows:

Subpart VV—Standards of Performance for Fugitive Emission Sources in the Synthetic Organic Chemicals Manufacturing Industry

Sec.

60.480 Applicability and designation of affected facility.

Authority: Sec. 111, 301(a) of the Clean Air Act as amended [42 U.S.C. 7411, 7601(a)], and additional authority as noted below.

Subpart VV—Standards of Performance for Fugitive Emission Sources in the Synthetic Organic Chemicals Manufacturing Industry

§ 60.480 Aplicability and designation of affected facility.

(a) The provisions of this subpart apply to affected facilities within the synthetic organic chemicals manufacturing industry. An affected facility is the group of all fugitive emission sources within a process unit.

(b) Any facility under paragraph (a) of this section that commences construction or modification after January 5, 1981 would be subject to the requirements of this subpart.

(c) Addition or replacement of fugitive emission sources for the purpose of process improvement which is accomplished without a capital expenditure shall not by itself be considered a modification under this subpart.

§ 60.481 Definitions.

As used in this subpart, all terms not defined here shall have the meaning given them in the Act and in Subpart A of Part 60, and the following terms shall have the specific meanings given them.

"Closed Vent System" means a system which is not open to the atmosphere and which is composed of piping, connections, and, if necessary, flow inducing devices that transport gas or vapor from a fugitive emission source to an enclosed combustion device or vapor recovery system.

"Enclosed Combustion Device" means any combustion device which is not open to the atmosphere such as a process heater or furnace, but not a flare.

"First Attempt at Repair" means to take rapid action for the purpose of stopping or reducing leakage of organic material to atmosphere using best modern practices.

"Fugitive Emission Source" means each pump, valve, safety/relief valve, open-ended valve, flange or other connector, compressor, or sampling system.

"In Gas/Vapor Service" means that the fugitive emission source contains process fluid that is in the gaseous state at operating conditions.

"In Light Liquid Service" means that the fugitive emission source contains a liquid that meets the conditions specified in § 60.485(c).

"Open-Ended Valve" means any valve, except safety/relief valves, with one side of the valve seat in contact with process fluid and one side that is open to the atmosphere, either directly or through open piping.

"Process Improvement" means routine changes made for safety and occupational health requirements, for energy savings, for better utility, for ease of maintenance and operation, for correction of design deficiencies, for bottleneck removal, for changing product requirements, or for environmental control.

"Process Unit" means equipment assembled to produce, as intermediates or final products, one or more of the chemicals listed in Appendix E of this part. A process unit can operate independently if supplied with sufficient feed or raw materials and sufficient storage facilities for the final product.

"Quarter" means a three month period. The first quarter concludes at the end of the last full month during the 180 days following initial startup.

"Repaired" means that a fugitive emissions source is adjusted or otherwise altered in order to reduce fugitive emissions below the level that indicates the necessity for repair as required in § 60.482.

"Synthetic Organic Chemicals Manufacturing Industry" means the industry that produces, as intermediates or final products, one or more of the chemicals listed in Appendix E of this part.

"In Vacuum Service" means that a fugitive emission source is operating at an internal pressure which is continuously less than 100 kPa.

"Vapor Recovery System" means any type of control device capable of removing VOC vapor from a gas stream, such as carbon adsorption, vapor compression, and vapor refrigeration systems.

"Volatile Organic Compound (VOC)" means any organic compound, which participates in atmospheric photochemical reactions or is measured by the applicable test methods described in Reference Method 21.

"In VOC Service" means that a fugitive emission source contains or contacts a process fluid that is at least 10 percent VOC by weight as determined according to the provisions of § 60.485(d).

§ 60.482 Standards.

Each owner or operator subject to the provisions of this subpart shall comply with the following requirements for fugitive emission sources in VOC service, except those in vacuum service.

(a) Pumps in light liquid service.

(1) Each pump shall be equipped with a dual mechanical seal system that includes a barrier fluid system except as provided in § 60.482(a)(7), § 60.482(a)(8), or § 60.482(j).

(2) Each fluid system as required in § 60.482(a)(1) shall be equipped with a sensor that will detect failure of the seal system, the barrier fluid system, or both. The barrier fluid shall not be a light liquid or gaseous VOC.

(3) Each dual mechanical seal system as required in § 60.482(a)(1) shall be—

(i) Operated with the barrier fluid at a pressure that is at all times greater than the pump stuffing box pressure;

(ii) Equipped with a barrier fluid degassing reservoir that is connected by a closed vent system to an enclosed combustion device designed for a minimum VOC residence time of 0.75 seconds at 816°C or to a vapor recovery system designed for a minimum of 95 percent capture of VOC input to the vapor recovery system; or

(iii) Equipped with a system to purge the barrier fluid into a process stream, with no VOC emission to atmosphere.

(4) Each pump shall be checked by visual inspection, each calendar week, for indications of liquids dripping from the pump seal. If indications of liquids dripping from the pump seal are seen, then a leak is detected.

(5) Each sensor as required in § 60.482(a)(2) shall be checked daily or shall be equipped with an audible alarm. Based on design considerations and operating experience, a criterion that indicates failure of the seal system or the barrier fluid system, or both shall be determined for each dual mechanical seal system. If this criterion is registered by the sensor, a leak is detected.

(6) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected except as provided in § 60.482(h). A first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(7) Any pump that is not equipped as required in § 60.482(a)(1) shall be equipped with a closed vent system capable of transporting any leakage from the seal to an enclosed combustion device designed for a minimum VOC residence time of 0.75 seconds at 816°C or to a vapor recovery system designed for a minimum of 95 percent capture of the VOC input to the system. Closed vent systems, enclosed combustion

devices and vapor recovery systems used to comply with this requirement shall be operated at all times when VOC emissions could occur.

(8) Any pump that is designated as required in § 60.486(d)(1) for emissions having a concentration of less than 200 ppm above background, as determined by the methods specified in § 60.485(b), is exempt from the requirements of §§ 60.482(a)(1)–(7) if the pump—

(i) Has no externally actuated shaft penetrating the pump housing,

(ii) Is operated with emissions less than 200 ppmv above background as measured by the methods specified in § 60.485(b), and

(iii) Is tested for compliance with § 60.482(a)(8)(ii) annually and at the request of the Administrator.

(9) Closed vent systems, enclosed combustion devices, and vapor recovery systems used to comply with §§ 60.48a(3) (ii) and (iii) shall be operated at all times when VOC emissions may occur.

(b) Compressors.

(1) Each compressor shall be equipped with a seal system that includes a barrier fluid system and that prevents leakage of process fluid to the atmosphere, except as provided in § 60.482(b)(6), § 60.482(b)(7), or § 60.482(j)

(2) Each barrier fluid system as required in § 60.482(b)(1) shall be equipped with a sensor that will detect failure of the seal system. The barrier fluid shall not be a light liquid or gaseous VOC.

(3) Each seal system as required in § 60.482(b)(1) shall be—

(i) Operated with the barrier fluid at a pressure that is greater than the compressor stuffing box pressure;

(ii) Equipped with a barrier fluid system that is connected by a closed vent system to an enclosed combustion device designed for a minimum VOC residence time of 0.75 seconds at 816°C or to a vapor recovery system designed for a minimum of 95 percent capture of VOC input to the system; or

(iii) Equipped with a system to purge, with no VOC emission to atmosphere, the barrier fluid into a process stream.

(4) Each sensor as required in § 60.482(b)(2) shall be checked daily or shall be equipped with an audible alarm. Based on design considerations and operating experience, a criterion that indicates failure of the seal system, the barrier fluid system or both shall be determined for each dual mechanical seal system. If this criterion is attained and is registered by the sensor, a leak is detected.

(5) When a leak in detected it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected except as provided in § 60.482(h). A first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(6) Any compressor that is not equipped as required in § 60.482(b)(1) shall be equipped with a closed vent system capable of transporting any leakage from the seal to an enclosed combustion device designed for a minimum VOC residence time of 0.75 seconds at 816°C or to a vapor recovery system designed for a minimum of 95 percent capture of VOC input to the vapor recovery system. Closed vent systems, enclosed combustion devices and vapor recovery systems used to comply with this requirement shall be operated at all times.

(7) Each compressor that is designated as required in § 60.486(d)(1) for concentrations of emissions less than 200 ppm above background, as determined by the methods specified in § 60.485(b), is exempt from the requirements of §§ 60.482(b)(1)–(6) if it is operated with emissions having concentrations of less than 200 ppmv above background, as measured by the methods specified in § 60.485(b) and if it is tested for compliance annually.

(8) Closed vent systems, enclosed combustion devices, and vapor recovery systems used to comply with §§ 60.482(b)(3) (ii) and (iii) shall be operated at all times when VOC emissions may occur.

(c) Safety/relief valves in gas/vapor service.

(1) Each safety/relief valve in gas/vapor service shall be operated at a state of emissions having a concentration of less than 200 ppm above background, as determined by the methods specified in § 60.485(b), except during pressure releases.

(2) Each safety/relief valve shall be returned to a state of emissions having a concentration of less than 200 ppm above background after each emergency pressure release as soon as practicable, but no later than 5 calendar days, after each episode of pressure release.

(d) Sampling systems.

(1) Each sampling system shall be equipped with a closed purge system.

(2) Each closed purge system as required by § 60.482(d)(1) shall return the purged process fluid directly to the process line, or shall collect the purged process fluid for recycle or disposal without VOC emissions to the atmosphere.

(3) *In-situ* sampling systems are exempt for §§ 60.482(d)(1) and (2).

(e) Open-ended valves.

(1) Each open-ended valve shall be equipped with a cap, blind flange, plug, or a second closed valve which is attached to seal the open end at all times except during operations requiring process fluid flow through the open-ended line.

(2) Each open-ended valve equipped with a second valve attached to the open end of the process valve, as required in § 60.482(e)(1), shall be operated such that the process side valve is closed first, after operations requiring flow through the open-ended valve.

(f) Valves in gas/vapor service and valves in light liquid service.

(1) Each valve shall be monitored monthly to detect leaks by the methods specified in § 60.485(a).

(2) If a VOC concentration of 10,000 ppm or greater is measured, a leak is detected.

(3) Any valve for which a leak is not detected for two successive months may be monitored the first month of every quarter beginning with the next quarter by the methods specified in § 60.485(a) until a leak is detected. If a leak is detected, the valve shall be monitored monthly until a leak is not detected for two successive months.

(4) When a leak is detected it shall be repaired as soon as practicable, but no later than 15 calendar days after it is detected except as provided in § 60.482(h). A first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(5) First attempts at repair include, but are not limited to, the following best modern practices if practicable:

(i) Tightening of bonnet bolts.

(ii) Replacement of bonnet bolts.

(iii) Tightening of packing gland nuts.

(iv) Injection of lubricant into lubricated packing.

(6) Any valve that is designated as required in § 60.486(d)(1) for emissions having a concentration of less than 200 ppm above background as determined by the methods specified in § 60.485(b) is exempt from the requirements of §§ 60.482(f)(1) and (3) if the valve—

(i) Has no external actuating mechanism in contact with the process fluid;

(ii) Is operated with emissions having a concentration of less than 200 ppm above background as determined by the method specified in § 60.485(b); and

(iii) Is tested for compliance with § 60.482(f)(6)(ii) annually and at the request of the Administrator.

(g) Pumps and valves in heavy liquid service, safety/relief valves in light liquid and heavy liquid service, and flanges and other connectors shall be monitored within 5 days by the method specified in § 60.485(a) if evidence of a potential leak is found by visual,

audible, olfactory, or any other detection method, as follows:

(1) If a VOC concentration of 10,000 ppm or greater is measured, a leak is detected.

(2) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected. The first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(h) Delay of repair of fugitive emission sources for which leaks have been detected will be allowed only if the repair is technically infeasible without a complete or partial process unit shutdown. Delay of repair will not be allowed beyond a process unit shutdown.

(i) Compliance with §§ 60.482 (a), (b), (c), (d), (e), (f), and (h) in this subpart shall be determined by review of records and inspection. Compliance with §§ 60.482 (a)(8), (b)(7), (c), and (f)(6) shall be determined by the methods specified in § 60.485(b). Compliance shall be achieved within 180 days of initial startup.

(j) A determination of equivalence of alternative means of emission limitation to the requirements of §§ 60.482 (a), (b), (d), (e), (f), or (g) may be requested as provided in § 60.484. If the Administrator determines that an alternative means of emission limitation is at least equivalent to the requirements of §§ 60.482 (a), (b), (d), (e), (f), or (g), the requirements of that determination shall apply.

§ 60.483 Alternative standards.

(a) Valves in gas/vapor and valves in light liquid service—allowable percentage of valves leaking.

(1) After performing a monthly leak detection and repair program in accordance with §§ 60.482(f) (1), (2), (4), and (5) for at least twelve months, an owner or operator may request approval from the Administrator to comply with an allowable percentage of valves leaking in gas/vapor and light liquid service.

(2) The following requirements shall be met if an owner or operator wishes to comply with an allowable percentage of valves leaking.

(i) An owner or operator must request approval of the Administrator to comply with an allowable percentage of valves leaking.

(ii) An owner or operator must have performed a monthly leak detection and repair program in accordance with §§ 60.482 (f), (1), (2), (4), and (5) for at least twelve months before a request for approval is submitted.

(iii) A request of approval of an allowable percentage of valves leaking must be accompanied by data and calculations which describe the methodology used for determining the allowable percentage of valves leaking.

(iv) A performance test as specified in § 60.483(a)(4) shall be conducted annually and at the request of the Administrator. A written report of the results of the performance test shall be submitted to the Administrator within a time interval specified by the Administrator.

(v) If a valve leak is detected, an attempt must be made to repair it.

(3) The allowable percentage of leaks shall be determined by adding the monthly baseline percentage of leaks demonstrated during the last six months under monthly monitoring and the monthly incremental percentage of leaks which would have occured if the provisions of § 60.482(f)(3) had been followed.

(i) The monthly baseline percentage of leaks shall be determined by obtaining a monthly average of the percentage of leaks found in an affected facility during the last six months of operation under monthly monitoring.

(ii) The monthly incremental percentage of leaks shall be determined by averaging the percentage of valves for which leaks had been detected in the second and third months of the last two quarters but which had not been detected during the first months of the last two quarters.

(iii) A percentage of leaks shall be determined by dividing the total number of leaks by the total number of valves in an affected facility, excluding those leaks for which repair has been delayed because a process unit shutdown would be required as provided in § 60.482(h) and excluding those valves which are complying with the provisions of § 60.482(f)(6).

(4) Performance tests shall be conducted in the following manner.

(i) All valves within the affected facility shall be monitored by the methods specified in § 60.485(a).

(ii) If a VOC concentration of 10,000 ppm or greater is measured, a leak is detected.

(iii) The leak percentage shall be determined by dividing the number of valves for which leaks are detected by the number of valves within the affected facility, excluding valves for which repair has been delayed because a process unit shutdown would be required, and excluding those which are complying with the provisions of § 60.482(f)(6).

(iv) For those valves for which repair has been delayed because a process unit shutdown would be required, records of attempted repair must be provided at the request of the Administrator. Records of attempted repair for those valves for which repair has been delayed shall be kept for two years.

(5)(i) The Administrator will either approve or disapprove the request for the use of the alternative standard within ninety days after the request is submitted.

(ii) If the Administrator denies the use of this alternative, the owner or operator will be notified of the reasons for the denial.

(iii) If the Administrator is reviewing a request for the use of this alternative as specified in §§ 60.483(a) (1) and (2), additional information may be requested of the owner or operator seeking approval of this option.

(iv) Until this alternative is approved, the owner or operator shall be subject to the requirements of § 60.482(f).

(6) The reporting provisions of §§ 60.487(b), (2), (3), (4), (5), (6) and (9) would not apply to owners or operators complying with an allowable percentage of valves leaking.

(b) Valves in gas/vapor and valves in light liquid service—alternative work practices.

(1) After performing a monthly leak detection and repair program in accordance with §§ 60.482(f), (1), (2), (4) and (5) for at least twelve months, an owner or operator may request approval of the administrator to comply with an alternative work practice for valves in gas/vapor and valves in light liquid service which differs from the work practice required in §§ 60.482(f) (1) and (3).

(2) The following requirements shall be met if an owner or operator wishes to comply with an optional work practice.

(i) An owner or operator must request approval of the Administrator to comply with an optional work practice standard.

(ii) An owner or operator must have performed a monthly leak detection and repair program in accordance with §§ 60.482(f) (1), (2), (4) and (5) for twelve months before a request for approval is submitted.

(iii) A request for approval of an optional work practice standard must be accomplished by data and calculations showing that the optional work practice complies with the requirements of § 60.487(b)(3).

(3) The optional work practice program shall be designed to accomplish the emission reduction associated with the required program in §§ 60.482(1)(f), (2), (3), (4) and (5). To demonstrate this reduction, an owner or operator shall determine the leak occurrence and recurrence for each program. These data shall be used to show that the expected

percentage of valves leaking in the affected facility under the optional program is equal to or less than the expected percentage of valves leaking under the required program.

(4) (i) The Administrator may deny the use of this option for any owner or operator within 90 days of the request for approval. If disapproval is not given within 90 days of the request for approval, the request is approved.

(ii) If the Administrator denies the use of this option, the owner or operator will be notified of the reasons for the denial.

(iii) If the Administrator is reviewing a request for the use of this alternative as specified in §§ 60.483(a) (1) and (2), additional information may be requested of the owner or operator seeking approval of this alternative.

(iv) Until this alternative is approved, the owner or operator shall be subject to the requirements of § 60.482(f).

§ 60.484 Equivalence of alternative means of emission limitation.

(a) Each owner or operator subject to the provisions of this subpart may apply to the Administrator for determination of equivalence for any alternative means of emission limitation that achieves a reduction in emissions of VOC at least equivalent to the reduction in emissions of VOC achieved by the controls required in §§ 60.482 (a), (b), (d), (e), (f), and (g).

(b) Determination of equivalence to the equipment requirements of §§ 60.482 (a), (b), (d), and (e) will be evaluated by the following guidelines:

(1) Each owner or operator applying for an equivalence determination shall be responsible for collecting and verifying test data to demonstrate equivalence of any alternative means of emission limitation to the requirements of §§ 60.482 (a), (b), (d), or (e).

(2) The Administrator will compare test data for the alternative means of emission limitation to test data for the equipment requirements of §§ 60.482 (a), (b), (d), or (e).

(3) The Administrator may condition the approval of equivalence on requirements that may be necessary to assure operation and maintenance to achieve the same emission reduction as the requirements of §§ 60.482 (a), (b), (d), or (e).

(c) Determination of equivalence to the work practices required in § 60.482(f) will be evaluated by the following guidelines:

(1) Each owner or operator applying for a determination of equivalence shall be responsible for collecting and verifying test data to demonstrate equivalence of an alternative means of emission limitation to the requirements of § 60.482(f).

(2) For each affected facility for which a determination of equivalence is requested, the emission reduction achieved by the requirements of § 60.482(f) shall be demonstrated for a minimum period of 12 months. A quantitative performance level shall be determined that describes the emission reduction achieved by the requirements of § 60.482(f).

(3) For each affected facility, the emission reduction achieved by any alternative means of emission limitation shall be demonstrated.

(4) Each owner or operator applying for a determination of equivalence shall commit to compliance with a performance that provides for emission reductions equal to or greater than the emission reductions achievable by the requirements of § 60.482(f).

(5) The Administrator will compare the demonstrated emission reduction for the alternative means of emission limitation to the demonstrated emission reduction for the work practices required in § 60.482(f) and will consider the commitment in § 60.484(c)(4).

(6) The Administrator may condition the approval of equivalence on requirements that may be necessary to assure operation and maintenance to achieve the same emission reduction as the requirements of § 60.482(f).

(d) After a request for determination of equivalence is received, the Administrator will publish a notice in the **Federal Register** and provide the opportunity for public hearing. After notice and opportunity for public hearing, the Administrator will determine the equivalence of an alternative means of emission limitation and will publish the determination in the **Federal Register**.

§ 60.485 Test methods and procedures.

Each owner or operator subject to the provisions of this subpart shall comply with the following test method and procedure requirements:

(a) Fugitive emission monitoring as required in § 60.482(f) shall comply with the following requirements.

(1) Monitoring shall comply with Reference Method 21.

(2) The VOC detection instrument shall meet the performance criteria of Reference Method 21.

(3) The instrument shall be calibrated before use on the day of its use by the methods specified in Method 21.

(4) Calibration gases shall be:

(i) Zero air (less than 3 ppm of VOC in air); and

(ii) A mixture of methane and air at a concentration of approximately 10,000 ppmv methane.

(5) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21.

(b) When fugitive emission sources are tested for emissions having a concentration of less than 200 ppm above background as required in §§ 60.482 (a), (b), (c), and (f), the testing shall comply with the following requirements:

(1) The requirements of §§ 60.485(a) (1), (2), and (3) shall apply.

(2) The background level shall be determined, as set forth in Reference Method 21.

(3) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21.

(4) The provisions of § 60.8(f) do not apply to affected facilities subject to the provisions of this subpart.

(c) A fugitive emission source is in light liquid service if the following conditions apply:

(1) The vapor pressure of one or more of the components is greater than 0.3 kPa at 20°C. Vapor pressures may be obtained from standard reference texts or may be determined by ASTM Method D-2879.

(2) The total concentration of the pure components having a vapor pressure greater than 0.3 kPa at 20°C is equal to or greater than 10 percent by weight; and

(3) The fluid is a liquid at operating conditions.

(d) For purposes of determining the percent VOC in the process fluid within a fugutive emission source, procedures that conform to the general methods described in ASTM methods E-260, E-168, and E-169 shall be used.

(Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414))

§ 60.486 Recordkeeping requirements.

Each owner or operator subject to the provisions of this subpart shall comply with the following recordkeeping requirements.

(a) When each leak is detected as specified in §§ 60.482 (a), (b), (f), and (g); the following recordkeeping requirements apply:

(1) Weatherproof and readily visible identification, marked with the source identification number, shall be attached to the leaking source.

(i) The identification may be removed if the fugitive emission source has been monitored for two successive months as

specified in § 60.482(f)(3) and no leak has been detected during those two months.

(b) When each leak is detected as specified in §§ 60.482 (a), (b), (f), and (g), the following information shall be recorded in a log and shall be kept for two years in a readily accessible location:

(1) The instrument and operator identification numbers and the fugutive emission source identification number.

(2) The date the leak was detected and the dates of each attempt to repair the leak.

(3) Repair methods applied in each attempt to repair the leak.

(4) "Above 10,000" if the maximum VOC concentrations measured by the methods specified in § 60.485(a) after each repair attempt is greater than 10,000 ppm.

(5) "Repair delayed" if a leak is not repaired within 15 calendar days after discovery of the leak.

(6) The signature of the owner/operator whose decision it was that repair could not be effected without a process shutdown.

(7) The expected date of successful repair of the leak if a leak is not repaired within 15 days.

(8) The date of successful repair of the leak.

(c) The following information pertaining to the design requirements for closed vent systems, enclosed combustion devices, and vapor recovery systems required in §§ 60.482 (a) and (b) shall be recorded and kept in a readily accessible location:

(1) Detailed schematics, design specifications, and piping and instrumentation diagrams.

(2) The dates and descriptions of any changes in the design specifications.

(3) Periods when the enclosed combustion devices and vapor recovery systems required in §§ 60.482 (a) and (b) are not functioning as designed and dates of startups and shutdowns.

(d) The following information pertaining to all fugitive emission sources subject to the requirements in §§ 60.482 (a), (b), (c), and (f) shall be recorded in a log that is kept in a readily accessible location:

(1) A list of identification numbers for fugutive emission sources that are designated for emissions having a concentration of less than 200 ppm above background under the provisions of §§ 60.482 (a)(8), (b)(7), and (f)(7). The designation of these sources as subject to the requirements of §§ 60.482 (a)(8), (b)(7), or (f)(6) shall be signed by the owner or operator.

(2) A list of source identification numbers for safety/relief valves required by § 60.482(c) to meet no detectable emissions.

(3) The dates of each verification test for "no detectable emissions" status as determined by the methods specified in § 60.485(b).

(4) The background level measured during each verification test as required in § 60.485(b).

(5) The maximum VOC concentration measured at the source during each verification test as required in § 60.485(b).

(e) The following information shall be recorded in a log that is kept in a readily accessible location: (1) the design criterion required in § 60.482(a)(5) and § 60.482(b)(4), and (2) any changes to this criterion and the reasons for this change.

(f) The provisions of §§ 60.7(b) and (d) do not apply to affected facilities subject to the provisions of this subpart.

(Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414))

§ 60.487 Reporting requirements.

Each owner or operator subject to the provisions of this subpart shall comply with the following reporting requirements.

(a) A summary of the information recorded as required in § 60.486(b) shall be reported quarterly to the Administrator.

(b) Quarterly reports as required in § 60.487(a) shall be similar to the forms as shown in Figures 1, 2, 3, and 4 and shall include the following information:

(1) Process unit identification.

(2) Number of valves in the process unit excluding those designated for emissions having a concentration of less than 200 ppm above background under the provisions of § 60.482(f)(5).

(3) Number of valves for which leaks were detected by the monitoring method specified in § 60.485(a) during each month of the reporting quarter.

(4) Number of valves repaired.

(5) Number of valves not repaired within 15 days as required in § 60.482(f)(4).

(6) Reasons for non-repair of valves within 15 days as required in § 60.482(f)(4).

(7) Number of pumps for which leaks were detected during the reporting quarter as specified in §§ 60.482(a)(4) and (a)(5).

(8) Number of compressors for which leaks were detected during the reporting quarter as specified in § 60.482(b)(4).

(9) Statement signed by the owner or operator stating whether all provisions of 40 CFR 60 Subpart VV had been fulfilled during the reporting quarter.

(c) The provisions of § 60.8(d) do not apply to affected facilities subject to the provisions of this subpart.

(d) In the first report submitted as required in §§ 60.487(a), the report shall include a reporting schedule stating the months that quarterly reports shall be submitted. Subsequent reports shall be submitted according to that schedule unless a revised schedule has been submitted in a previous quarterly report.

(Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414))

BILLING CODE 6560-26-M

Figure 1

QUARTERLY REPORT FOR PROCESS UNIT
FUGITIVE EMISSION SOURCES OPERATING UNDER THE
PROVISIONS OF 40 CFR Part 60, Subpart VV, §60.484(b)

Date _____

Company Name _____

Plant Location (City, State) _____

Mailing Address _____

_____

Telephone Number _____

Reporting Period _____

This report filed _____
(Process Unit Name)

Producing _____
(Chemical product(s))

Figure 2

SUMMARY STATISTICS FOR LEAK DETECTION
AND REPAIR REQUIREMENTS
OF 40 CFR Part 60, Subpart VV, §60.484(b)

1. Process Unit Name _____
(one report required for each affected facility)

2. Number of valves covered under the leak detection and repair program. _____

3. Number of valves found leaking during the reporting period. _____

4. Number of leaking valves repaired during the reporting period. _____

5. Number of pumps found leaking during the reporting period. _____

6. Number of compressors found leaking during the reporting period. _____

Figure 3

INFORMATION REQUIRED BY 40 CFR Part 60, Subpart VV, §60.484(b)(6)
FOR LEAKING VALVES NOT REPAIRED WITHIN 15 DAYS

1. Process Unit Name _____
2. Total number of valves not repaired within 15 days _____
3. Number of valves not repaired for the following reasons.
   (a) New parts required. _____
   (b) Off-line repair required. Critical, in-service valve. Repair impossible. _____
   (c) Other (Explain reasons for non-repair) _____
4. Date of next schedule turn-around or shutdown _____

_____
Signature of Plant Manager
or Manager Designate

Figure 4

CERTIFICATION
AS REQUIRED IN §60.484(b)(10)

I hereby certify that process unit _____ owned (operated)
(name)
by _____ located in _____
(company name) (city, state)
_____ operated in compliance with the
(has been/has not been)
requirements of Subpart VV, 40 CFR Part 60 which contains Standards of Performance for New Stationary Sources in the Synthetic Organic Chemical Manufacturing Industry.

All required equipment and control devices have been operated and maintained in compliance with the standards. All required work practices have been followed. Monitoring has been done as specified in Method 21. All required records have been made and are kept in _____
(location in plant)
_____ for review by EPA.

_____
(signature of owner or operator)

_____
(title)

_____
(date)

BILLING CODE 6560-26-C

4. By adding Reference Method 21 to Appendix A as follows:

Appendix A—Reference methods

* * * * *

Method 21. Determination of Volatile Organic Compound Leaks

1. *Applicability and Principle*

1.1 Applicability. This method applies to the determination of volatile organic compound (VOC) leaks from organic process equipment. These sources include, but are not limited to, valves, flanges and other connections, pumps and compressors, pressure relief devices, process drains, open-ended valves, pump and compressor seal system degassing vents, accumulator vessel vents, and access door seals.

1.2 Principle. A portable instrument is used to detect VOC leaks from individual sources. The instrument detector is not specified, but it must meet the specifications and performance criteria contained in paragraph 2.1.

2. *Apparatus*

2.1 Monitoring Instrument. The monitoring instrument shall be as follows:

2.1.1 Specifications.

a. The VOC instrument detector shall respond to the organic compounds being processed. Detectors which may meet this requirement include, but are not limited to, catalytic oxidation, flame ionization, infrared absorption, and photoionization.

b. The instrument shall be intrinsically safe for operation in explosive atmospheres as defined by the applicable U.S.A Standards (e.g., National Electrical Code by the National Fire Prevention Association).

c. The instrument shall be able to measure the leak definition concentration specified in the regulation.

d. The instrument shall be equipped with a pump so that a continuous sample is provided to the detector. The nominal sample flow rate shall be 1–3 liters per minute.

e. The scale of the instrument meter shall be readable to ±5 percent of the specified leak definition concentration.

2.1.2 Performance Criteria. The instrument must meet the following performance criteria. The definitions and evaluation procedures for each parameter are given in Section 4.

2.1.2.1 The instrument response time must be 30 seconds or less. The response time must be determined for the instrument system configuration to be used during testing, including dilution equipment. The use of a system with a shorter response time than that specified will reduce the time required for field component surveys.

2.1.2.2 Calibration Precision: The calibration precision must be less than or equal to 10 percent of the calibration gas value.

2.1.2.3 Quality Assurance. The instrument shall be subjected to response time and calibration precision tests prior to being placed in service. The calibration precision test shall be repeated every 6 months thereafter. If any modification or replacement of the instrument detector is required, the instrument shall be retested and a new 6 month quality assurance test schedule will apply. The response time test shall be repeated if any modifications to the sample pumping system or flow configuration is made that would change the response time.

2.3 Calibration Gases. The monitoring instrument is calibrated in terms of parts per million by volume (ppmv) of the compound specified in the applicable regulation. The calibration gases required for monitoring and instrument performance evaluation are a zero gas (air, 3 ppmv VOC) and a calibration gas in air mixture approximately equal to the leak definition specified in the regulation. If cylinder calibration gas mixtures are used, they must be analyzed and certified by the manfacturer to be within ±2 percent accuracy. Calibration gases may be prepared by the user according to any accepted gaseous standards preparation procedure that will yield a mixture accurate to within ±2 percent. Alternative calibration gas species may be used in place of the calibration compound if a relative response factor for each instrument is determined so that calibrations with the alternative species may be expressed as calibration compound equivalents on the meter readout.

3. *Procedures*

3.1 Calibration. Assemble and start up the VOC analyzer and recorder according to the manufacturer's instructions. After the appropriate warmup period and zero or internal calibration procedure, introduce the calibration gas into the instrument sample probe. Adjust the instrument meter readout to correspond to the calibration gas value.

If a dilution apparatus is used, calibration must include the instrument and dilution apparatus assembly. The nominal dilution factor may be used to establish a scale factor for converting to an undiluted basis. For example, if a nominal 10:1 dilution apparatus is used, the meter reading for a 10,000 ppm calibration would be set at 1,000. During field surveys, the scale factor of 10 would be used to convert measurements to an undiluted basis.

3.2 Individual Source Surveys.

3.2.1 Case I—Leak Definition Based on Concentration Value. Place the probe inlet at the surface of the component interface where leakage could occur. Move the probe along the interface periphery while observing the instrument readout. If an increased meter reading is observed, slowly probe the interface where leakage is indicated until the maximum meter reading is obtained. Leave the probe inlet at this maximum reading locations for approximately two times the instrument response time. If the maximum observed meter reading is greater that the leak definition in the applicable regulation, record and report the result as specified in the regulation reporting requirements. Examples of the application of this general technique to specific equipment types are:

a. Valves—The most common source of leaks from valves is at the seal between the stem and housing. Place the probe at the interface where the stem exists the packing gland and sample the stem circumference. Also, place the probe at the interface of the packing gland take-up flange seat and sample the periphery. In addition, survey valve housings of multipart assembly at the surface of all interfaces where leaks can occur.

b. Flanges and Other Connections—For welded flanges, places the probe at the outer edge of the flange-gasket interface and sample around the circumference of the flange. Sample other types of nonpermanent joints (such as threaded connections) with a similar traverse.

c. Pumps and Compressors—Conduct a circumferential traverse at the outer surface of the pump or compressor shaft and seal interface. If the source is a rotating shaft, position the probe inlet within one centimeter of the shaft-seal interface for the survey. If the housing configuration prevents a complete traverse of the shaft periphery, sample all accessible portions. Sample all other joints on the pump or compressor housing where leakage can occur.

d. Pressure Relief Devices—The configuration of most pressure relief devices prevents sampling at the sealing seat interface. For those devices equipped with an enclosed extension, or horn, place the probe inlet at approximately the center of the exhaust area to the atmosphere for sampling.

e. Process Drains—For open drains, place the probe inlet at approximately the center of the area open to the atmosphere for sampling. For covered drains, place the probe at the surface of the cover interface and conduct a peripheral traverse.

f. Open-Ended Lines or Valves—Place the probe inlet at approximately the center of the opening to the atmosphere for sampling.

g. Seal System Degassing Vents and Accumulator Vents—Place the probe inlet at approximately the center of the opening to the atmosphere for sampling.

h. Assess Door Seals—Place the probe inlet at the surface of the door seal interface and conduct a peripheral traverse.

3.2.2. Case II-Leak Devinition Based on "NO Detactable Emission".

a. Determine the local ambient concentration around the source by moving the probe inlet randomly upwind and downwind at distance of one to two meters from the source. If an interference exists with this determination due to a nearby emission or leak, the local ambient concentration may be determined at distances closer to the source, but in no case shall the distance be less than 25 centimeters. Note the ambient concentration and then move the probe inlet to the surface of the source and conduct a survey as described in 3.2.1. If a concentration increase greater than 2 percent of the concentration-based leak definition is obtained, record and report the results as specified by the regulation.

b. For those cases where the regulation requires a specific device installation, or that specified vents be ducted or piped to a control device, the existence of these conditions shall be visually confirmed. When the regulation also requires that no detectable emissions exist, visual observations and sampling surveys are required. Examples of this technique are:

i. Pump or Compressor Seals—If applicable, determine the type of shaft seal. Perform a survey of the local area ambient VOC concentration and determine if detectable emissions exist as described in 3.2.2.a.

ii. Seal system degassing vents, accumulator vessel vents, pressure relief

devices—If applicable, observe whether or not the applicable ducting or piping exists. Also, determine if any sources exist in the ducting or piping where emissions could occur prior to the control device. If the required ducting or piping exists and there are no sources of where the emissions could be vented to the atmosphere prior to the control device, then it is presumed that no detectable emissions are present.

4. Instrument Performance Evaluation Procedures

4.1 Definitions.

4.1.1 Calibration Precision. The difference between the average VOC concentration indicated by the meter readout for consecutive repetitions and the know concentration of a test gas mixture.

4.1.2 Response time. The time interval from a step change in VOC concentration at the input of the sampling system to the time at which 90 percent of the corresponding final value is reached as displayed on the instrument readout meter.

4.2 Evaluation Procedures. At the beginning of the instrument performance evaluation test, assemble and start up the instrument according to the manufacturer's instructions for recommended warmup period and preliminary adjustments. If a dilution apparatus is used during field surveys, the evaluation procedure must be performed on the instrument-dilution system combination.

4.2.1. Calibration Precision Test. Make a total of nine measurements by alternately using zero gas and the specified calibration gas. Record the meter readings (example data sheet shown in Figure 21–1).

4.2.2 Response time Test Procedure. Introduce zero gas into the instrument sample probe. When the meter reading has stabilized, switch quickly to the specified calibration gas. Measure the time from concentration switching to 95 percent of final stable reading. Perform this test sequence three times and record the results (example data sheet given in Figure 21–2).

4.3 Calculations. All results are expressed as mean values, calculated by:

$$\bar{x} = \frac{1}{n} \sum_{i=1}^{n} x_i$$

Where:

x_i = VALUE OF THE MESUREMENTS.

Σ = Sum of the individual values.

$\pm$ = Mean value.

n = Number of data points.

BILLING CODE 6560-26-M

Instrument ID _____

Calibration Gas Data

Calibration = _____ppmv

Run No.	Instrument Meter Reading, ppm	Difference[1] ppm
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		

Mean Difference _____

$$\text{Calibration Error} = \frac{\text{Mean Difference}^{(2)}}{\text{Calibration Gas Concentration}} \times 100 \quad \_\_\_\_$$

[1] Calibration Gas Concentration - Instrument Reading

Figure 21-1. Calibration Error Determination

Instrument ID _____

Calibration Gas Concentration _____

90% Response Time:

1. _____ Seconds

2. _____ Seconds

3. _____ Seconds

Mean Response Time _____ Seconds

Figure 21-2. Response Time Determination

BILLING CODE 6560-16-C

5. By adding Appendix E as follows:

Appendix E—Synthetic Organic Chemicals Manufacturing Industry

OCPDB No.*	Chemical
20	Acetal.
30	acetaldehyde.
40	Acetaldol.
50	Acetamide.
65	Acetanilide.
70	Acetic acid.
80	Acetic anhydride.
90	Acetone.
100	Acetone cyanohydrin.
110	Acetonitrile.
120	Acetophenone.
125	Acetyl chloride.
130	Acetylene.
140	Acrolein.
150	Acrylamide.
160	Acrylic acid and esters.
170	Acrylonitrile.
180	Adipic acid.
185	Adiponitrile.
190	Alkyl naphthalenes.
200	Allyl alcohol.
210	Allyl chloride.
220	Aminobenzoic acid.
230	Aminoethylethanolamine.
235	p-Aminophenol.
240	Amyl acetates.
250	Amyl alcohols.
260	Amyl amine.
270	Amyl chloride.
280	Amyl mercaptans.
290	Amyl phenol.
300	Aniline.
310	Aniline hydrochloride.
320	Anisidine.
330	Anisole.
340	Anthranilic acid.
350	Anthraquinone.
360	Benzaldehyde.
370	Benzamide.
380	Benzene.
390	Benzenedisulfonic acid.
400	Benzenesulfonic acid.
410	Benzil.
420	Benzilic acid.
430	Benzoic acid.
440	Benzoin.
450	Benzonitrile.
460	Benzophenone.
480	Benzotrichloride.
490	Benzoyl chloride.
500	Benzyl alcohol.
510	Benzyl amine.
520	Benzyl benzoate.
530	Benzyl chloride.
540	Benzyl dichloride.
550	Biphenyl.
560	Bisphenol A.
570	Bromobenzene.
580	Bromonaphthalene.
590	Butadiene.
592	1-butene.
600	n-butyl acetate.
630	n-butyl acrylate.
640	n-butyl alcohol.
650	s-butyl alcohol.
660	t-butyl alcohol.
670	n-butylamine.
680	s-butylamine.
690	t-butylamine.
700	p-tert-butyl benzoic acid.
710	1,3-butylene glycol.
750	n-butyraldehyde.
760	Butyric acid.
770	Butyric anhydride.
780	Butyronitrile.
785	Caprolactam.
790	Carbon disulfide.
800	Carbon tetrabromide.
810	Carbon tetrachloride.
820	Cellulose acetate.
840	Chloroacetic acid.
850	m-chloroaniline.
860	o-chloroaniline.
870	p-chloroaniline.
880	Chlorobenzaldehyde.
890	Chlorobenzene.
900	Chlorobenzoic acid.
905	Chlorobenzotrichloride.
910	Chlorobenzoyl chloride.
920	Chlorodifluoroethane.
921	Chlorodifluoromethane.
930	Chloroform.
940	Chloronapthalene.
950	o-chloronitrobenzene.
951	p-chloronitrobenzene.
960	Chlorophenols.
964	Chloroprene.
965	Chlorosulfonic acid.
970	m-chlorotoluene.
980	o-chlorotoluene.
990	p-chlorotoluene.
992	Chlorotrifluoromethane.
1000	m-cresol.
1010	o-cresol.
1020	p-cresol.
1021	Mixed cresols.
1030	Cresylic acid.
1040	Crotonaldehyde.
1050	Crotonic acid.
1060	Cumene.
1070	Cumene hydroperoxide.
1080	Cyanoacetic acid.
1090	Cyanogen chloride.
1100	Cyanuric acid.
1110	Cyanuric chloride.
1120	Cyclohexane.
1130	Cyclohexanol.
1140	Cyclohexanone.
1150	Cyclohexene.
1160	Cyclohexylamine.
1170	Cyclooctadiene.
1180	Decanol.
1190	Diacetone alcohol.
1200	Diaminobenzoic acid.
1210	Dichloroaniline.
1215	m-dichlorobenzene.
1216	o-dichlorobenzene.
1220	p-dichlorobenzene.
1221	Dichlorodifluoromethane.
1240	Dichloroethyl ether.
1244	1,2-dichloroethane (EDC).
1250	Dichlorohydrin.
1270	Dichloropropene.
1280	Dicyclohexylamine.
1290	Diethylamine.
1300	Diethylene glycol.
1304	Diethylene glycol diethyl ether.
1305	Diethylene glycol dimethyl ether.
1310	Diethylene glycol monobutyl ether.
1320	Diethylene glycol monobutyl ether acetate.
1330	Diethylene glycol monoethyl ether.
1340	Diethylene glycol monoethyl ether acetate.
1360	Diethylene glycol monomethyl ether.
1420	Diethyl sulfate.
1430	Difluoroethane.
1440	Diisobutylene.
1442	Diisodecyl phthalate.
1444	Diisooctyl phthalate.
1450	Diketene.
1460	Dimethylamine.
1470	N,N-dimethylaniline.
1480	N,N-dimethyl ether.
1490	N,N-dimethylformamide.
1495	Dimethylhydrazine.
1500	Dimethyl sulfate.
1510	Dimethyl sulfide.
1520	Dimethyl sulfoxide.
1530	Dimethyl terephthalate.
1540	3,5-dinitrobenzoic acid.
1545	Dinitrophenol.
1550	Dinitrotoluene.
1560	Dioxane.
1570	Dioxolane.
1580	Diphenylamine.
1590	Diphenyl oxide.
1600	Diphenyl thiourea.
1610	Dipropylene glycol.
1620	Dodecene.
1630	Dodecylaniline.
1640	Dodecylphenol.
1650	Epichlorohydrin.
1660	Ethanol.
1661	Ethanolamines.
1670	Ethyl acetate.
1680	Ethyl aceatoacetate.
1690	Ethyl acrylate.
1700	Ethylamine.
1710	Ethylbenzene.
1720	Ethyl bromide.
1730	Ethylcellulose.
1740	Ethyl chloride.
1750	Ethyl chloroacetate.
1760	Ethylcyanoacetate.
1770	Ethylene.
1780	Ethylene carbonate.
1790	Ethylene chlorohydrin.
1800	Ethylenediamine.
1810	Ethylene dibromide.
1830	Ethylene glycol.
1840	Ethylene glycol diacetate.
1870	Ethylene glycol dimethyl ether.
1890	Ethylene glycol monobutyl ether.
1900	Ethylene glycol monobutyl ether acetate.
1910	Ethylene glycol monoethyl ether.
1920	Ethylene glycol monoethyl ether acetate.
1930	Ethylene glycol monomethyl ether.
1940	Ethylene glycol monomethyl ether acetate.
1960	Ethylene glycol monophenyl ether.
1970	Ethylene glycol monopropyl ether.
1980	Ethylene oxide.
1990	Ethyl ether.
2000	2-ethylhexanol.
2010	Ethyl orthoformate.
2020	Ethyl oxalate.
2030	Ethyl sodium oxalacetate.
2040	Formaldehyde.
2050	Formamide.
2060	Formic acid.
2070	Fumaric acid.
2073	Furfural.
2090	Glycerol (Synthetic).
2091	Glycerol dichlorohydrin.
2100	Glycerol triether.
2110	Glycine.
2120	Glyoxal.
2145	Hexachlorobenzene.
2150	Hexachloroethane.
2160	Hexadecyl alcohol.
2165	Hexamethylenediamine.
2170	Hexamethylene glycol.
2180	Hexamethylenetetramine.
2190	Hydrogen cyanide.
2200	Hydroquinane.
2210	p-hydroxybenzoic acid.
2240	Isoamylene.
2250	Isobutanol.
2260	Isobutyl acetate.
2261	Isobutylene.
2270	Isobutyraldehyde.
2280	Isobutyric acid.
2300	Isodecanol.
2320	Isooctyl alcohol.
2321	Isopentane.
2330	Isophorone.
2340	Isophthalic acid.
2350	Isoprene.
2360	Isopropanol.
2370	Isopropyl acetate.
2380	Isopropylamine.
2390	Isopropyl chloride.
2400	Isopropylphenol.
2410	Ketene.
2414	Linear alkyl sulfonate.
2417	Linear alkylbenzene.
2420	Maleic acid.
2430	Maleic anhydride.
2440	Malic acid.
2450	Mesityl oxide.
2455	Metanilic acid.
2460	Methacrylic acid.
2490	Methallyl chloride.
2500	Methanol.
2510	Methyl acetate.
2520	Methyl acetoacetate.
2530	Methylamine.
2540	n-methylaniline.
2545	Methyl bromide.
2550	Methyl butynol.
2560	Methyl chloride.
2570	Methyl cyclohexane.
2590	Methyl cyclohexanone.
2620	Methylene chloride.
2630	Methylene dianiline.
2635	Methylene diphenyl diisocyanate.
2640	Methyl ethyl ketone.
2645	Methyl formate.
2650	Methyl isobutyl carbinol.
2660	Methyl isobutyl ketone.
2665	Methyl methacrylate.
2670	Methyl pentynol.
2690	α-methylstyrene.
2700	Morpholine.
2710	α-naphthalene sulfonic acid.
2720	β-naphthalene sulfonic acid.
2730	α-naphthol.
2740	β-naphthol.

OCPDB No.*	Chemical
2750	Neopentanoic acid.
2756	o-nitroaniline.
2757	p-nitroaniline.
2760	o-nitroanisole.
2762	p-nitroanisole.
2770	Nitrobenzene.
2780	Nitrobenzoic acid (o,m, and p).
2790	Nitroethane.
2791	Nitromethane.
2792	Nitrophenol.
2795	Nitropropane.
2800	Nitrotoluene.
2810	Nonene.
2820	Nonyl phenol.
2830	Octyl phenol.
2840	Paraldehyde.
2850	Pentaerythritol.
2851	n-pentane.
2855	1-pentene.
2860	Perchloroethylene.
2882	Perchloromethyl mercaptan.
2890	o-phenetidine.
2900	p-phenetidine.
2910	Phenol.
2920	Phenolsulfonic acids.
2930	Phenyl anthranilic acid.
2940	Phenylenediamine.
2950	Phosgene.
2960	Phthalic anhydride.
2970	Phthalimide.
2973	β-picoline.
2975	Piperazine.
3000	Polybutenes.
3010	Polyethylene glycol.
3025	Polypropylene glycol.
3063	Propionaldehyde.
3066	Propionic acid.
3070	n-propyl alcohol.
3075	Propylamine.
3080	Propyl chloride.
3090	Propylene.
3100	Propylene chlorohydrin.
3110	Propylene dichloride.
3111	Propylene glycol.
3120	Propylene oxide.
3130	Pyridine.
3140	Quinone.
3150	Resorcinol.
3160	Resorcylic acid.
3170	Salicylic acid.
3180	Sodium acetate.
3181	Sodium benzoate.
3190	Sodium carboxymethyl cellulose.
3191	Sodium chloracetate.
3200	Sodium formate.
3210	Sodium phenate.
3220	Sorbic acid.
3230	Styrene.
3240	Succinic acid.
3250	Succinonitrile.
3251	Sulfanilic acid.
3260	Sulfolane.
3270	Tannic acid.
3280	Terephthalic acid.
3290 and 3291	Tetrachloroethanes.
3300	Tetrachlorophthalic anhydride.
3310	Tetraethyllead.
3320	Tetrahydronapthalene.
3330	Tetrahydrophthalic anhydride.
3335	Tetramethyllead.
3340	Tetramethylenediamine.
3341	Tetramethylethylenediamine.
3349	Toluene.
3350	Toluene-2,4-diamine.
3354	Toluene-2,4-disocyanate.
3355	Toluene disocyanates (mixture).
3360	Toluene sulfonamide.
3370	Toluene sulfonic acids.
3380	Toluene sulfonyl chloride.
3381	Toluidines.
3390, 3391, and 3393	Trichlorobenzenes.
3395	1,1,1-trichloroethane.
3400	1,1,2-trichloroethane.
3410	Trichloroethylene.
3411	Trichlorofluoromethane.
3420	1,2,3-trichloropropane.
3430	1,1,2-trichloro-1,2,2-trifluoroethane.
3450	Triethylamine.
3460	Triethylene glycol.
3470	Triethylene glycol dimethyl ether.
3480	Triisobutylene.
3490	Trimethylamine.
3500	Urea.
3510	Vinyl acetate.
3520	Vinyl chloride.
3530	Vinylidene chloride.
3540	Vinyl toluene.
3541	Xylenes (mixed).
3560	o-xylene.
3570	p-xylene.
3580	Xylenol.
3590	Xylidine

*The OCPDB Numbers are reference indices assigned to the various chemicals in the Organic Chemical Producers Data Base developed by EPA.

[FR Doc. 81-69 Filed 1-2-81; 8:45 am]

BILLING CODE 6560-26-M

40 CFR Part 61

[AD-FRL 1610-3]

National Emission Standard for Hazardous Air Pollutants; Benzene Fugitive Emissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule and Notice of Public Hearing.

SUMMARY: The proposed standard would limit benzene emissions from new and existing fugitive emission sources containing 10 or more percent by weight benzene in the petroleum refining and chemical manufacturing industries. The proposed standard would allow no detectable emissions due to leaks from safety/relief valves and product accumulator vessels; would require a leak detection and repair program for pipeline valves and existing pumps and compressors; and would require certain equipment for new pumps, new compressors, sampling connections, and open-ended valves.

The proposed standard implements the Clean Air Act and results from the Administrator's determination of June 8, 1977, that benzene presents a significant carcinogenic risk to human health and is, therefore, a hazardous air pollutant. The intent of the proposed standard is to protect the public health with an ample margin of safety.

A public hearing will be held to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed standard for benzene fugitive emissions.

DATES: *Comments:* Comments must be received on or before April 6, 1981.

Public Hearing. A public hearing will be held on March 4, 1981 beginning at 9:00 a.m.

Request to Speak at Hearing. Persons wishing to present oral testimony should contact EPA at least one week before the hearing.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Central Docket Section (A-130), Attention: Docket No. A-79-27, U.S. Environmental Protection Agency, 401 M Street , S.W., Washington, D.C. 20460.

Public Hearing. The public hearing will be held at the EPA administration Bldg auditorium, Research Triangle Park, North Carolina. Persons wishing to present oral testimony should notify Ms. Naomi Durkee, Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5271.

Background Information Document. The background information document for the proposed standard is contained in the docket and may be obtained from the U.S. EPA library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777. Please refer to *Benzene Fugitive Emissions—Background Information for Proposed Standard (EPA-450/3-80-032a).* Other related documents which can be obtained from the same location include *Assessment of Health Effects of Benzene Germane to Low Level Exposures* (EPA-600/1-78-061); *Assessment of Human Exposures to Atmospheric Benzene* (EPA-450/3-78-031); and *Population Risk to Ambient Benzene Exposures: Final Report of the Carcinogen Assessment Group* (EPA-450/5-80-004).

Docket. Docket No. A-79-27, containing supporting information used in developing the proposed standard, 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, Room 2903B, Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460. Supplementary information on the regulation of benzene emissions can be obtained from the Maleic Anhydride Docket No. OAQPS-79-3, which is available for public review at EPA's Central Docket Section. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Ms. Susan R. Wyatt, Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5477.

SUPPLEMENTARY INFORMATION: Notice is hereby given that under the authority of Section 112(b)(1)(B) of the Clean Air Act the Administrator is proposing a national emission standard for benzene fugitive emissions. Although the proposed EPA *Policy and Procedures for Identifying, Assessing, and Regulating*

Airborne Substances Posing a Risk of Cancer (see 44 FR 58642) is not final, this proposed standard for benzene fugitive emissions has been developed consistent with the proposed EPA policy and procedures. As prescribed in Section 112(b)(1)(A) of the Act, the proposal of this standard was preceded by the Administrator's determination that benzene is a hazardous air pollutant as defined in Section 112(a)(1) of the Act. Accordingly, the Administrator revised the list of hazardous air pollutants on June 8, 1977, by adding benzene (42 FR 29332).

A background information document has been prepared that contains information on the potroleum refining and chemical manufacturing industries, the available control technologies for benzene fugitive emissions, and an analysis of the environmental, energy, economic, and inflationary impacts of regulatory alternatives. Information of the health effects of benzene is contained in other documents prepared by or for EPA. These documents can be obtained as indicated in the ADDRESSES section of this preamble.

Proposed Standard

The proposed standard would apply to new and existing pumps, pipeline valves, compressors, safety/relief valves, open-ended valves, sampling connections, pipeline flanges, and product accumulator vessels in benzene service at petroleum refineries and organic chemical manufacturing plants (excluding coke-oven by-product plants). Equipment components in benzene service are those containing materials having a benzene concentration of 10 or more percent by weight.

The proposed standard would limit leaks from safety/relief valves and product accumulator vessels to "no detectable emissions," that is, emissions having a concentration less than 200 parts per million (ppm) by volume above a background concentration as measured by proposed Reference Method 21 (40 CFR Part 60, Appendix A). Proposed Reference Method 21 measures organic chemicals, including benzene, but the method is not benzene-specific. Leaks from safety/relief valves during emergency conditions would be allowed but would be returned to no detectable emissions within five days of the emergency conditions.

The proposed standard would require that pipeline valves, existing pumps, and existing compressors in benzene service be monitored monthly for the detection of leaks by proposed Reference Method 21. However, valves that are found not to be leaking for two successive months could be monitored quarterly until a leak is detected. The proposed standard would require that any valve, existing pump, or existing compressor with a concentration at or above 10,000 ppm above background as measured by proposed Reference Method 21 be repaired within 15 days, except when repair would require a process unit shutdown. Repair means that the measured concentration is below 10,000 ppm. An initial attempt to repair such a leak would have to be made within 5 calendar days after the leak is detected. Valves, existing pumps, and existing compressors that can achieve a no detectable emission level, such as sealed bellows valves, would be exempted from monthly monitoring, but would have to be monitored on an annual basis to verify the no detectable emission level.

The proposed standard provides two alternative standards for pipeline valves in benzene service (i.e., containing 10 or more percent by weight benzene). After implementing the required leak detection and repair program (monthly monitoring) for one year, a plant owner or operator may request to use one of two alternative standards. The first alternative standard would be an allowable percentage of valves leaking. The second alternative standard would be a different leak detection and repair program. For this alternative standard, a plant owner or operator must demonstrate that the alternative leak detection and repair program achieves a percentage of valves leaking comparable to the required program. In either case, the alternative standard would be based on data collected during a 1-year implementation of the required leak detection and repair program. After a plant owner or operator requests the use of an alternative standard for valves, the Administrator would approve or disapprove the request within 90 days.

Additionally, the proposed standard would require that new pumps in benzene service use dual mechanical seal systems with a barrier fluid. In addition to mechanical seals, new compressors in benzene service would also be required to utilize a barrier fluid system. Degassing vents from barrier fluid systems would be required to be connected to a control device (e.g., an enclosed combustion device) by a closed vent system, and benzene concentration in the barrier fluid would be limited to less than 10 percent by weight. In addition, sensing devices would be required in order to detect failure of the seal systems. Pumps or compressors that can achieve no detectable emissions as measured by proposed Reference Method 21, such as canned motor pumps, diaphragm pumps, and magnetically coupled pumps, would be allowed but would be monitored on an annual basis to verify the no detectable emissions level.

Closed-loop sampling would be required by the proposed standard. The standard would require that material purged from sampling connections be returned to the process or collected in a closed disposal system without emissions to atmosphere. In-situ sampling would be excluded altogether from the proposed standard.

The proposed standard would require open-ended valves to be sealed with a cap, blind, plug, or second valve. The cap or other device could be removed or opened only when the open-ended valve is placed into service.

Sources excluded from routine monitoring and equipment requirements of the proposed standard include safety/relief valves in liquid service and flanges. If, however, leaks are visually or audibly detected from any source in benzene service, leak detection and repair requirements similar to those for pipeline valves would apply.

Compliance with the proposed standard would be assessed through review of records and reports which would document implementation of the requirements. On a quarterly basis, the owner or operator would report the number of leaks detected and repaired during the quarter. The owner or operator would also submit quarterly a signed statement stating whether provisions of the standard had been met.

Any owner or operator of a source designated by the proposed standard could request that the Administrator determine the equivalence of any alternative means of emission limitation to the equipment, design, operational and work practice requirements of the proposed standard. Upon receiving a request for determination of equivalence, the Administrator would provide an opportunity for public hearing. After such a hearing, the Administrator would make a decision and publish the decision in the **Federal Register.**

Summary of Environmental, Energy, and Economic Impacts

The proposed standard would reduce benzene fugitive emissions for existing petroleum refineries and chemical manufacturing units from about 8,300 megagrams per year to about 2,200 megagrams per year. As a result of this emission reduction, the proposed standard would reduce the estimated

maximum lifetime risk for the most exposed population from a range of 1.7×10^{-4} to $\times 10^{-3}$ at current controls, to a range of 4.6×10^{-5} to 32×10^{-5}, and would reduce the estimated incidence of leukemia deaths per year from new and existing plant exposure in the fifth year from a range of 0.21 to 1.4 at current controls, to a range of 0.6 to 0.4.

No significant adverse impacts to air quality, water quality, solid waste, energy, or noise are expected as a result of implementing the proposed standard for the existing industry. In fact, benefits to air and water quality would result because the controls utilized in implementing the standard would also reduce emissions of other potentially toxic hydrocarbons and because leak control techniques would reduce the amount of benzene and other organic compounds entering wastewater systems. Also, a positive energy benefit would result because leak control techniques increase conservation of process materials and thereby reduce the energy required to produce these materials.

The proposed standard is expected to affect about 250 existing petroleum refining and chemical manufacturing units. These units contain equipment that are assembled to produce benzene, benzene derivatives, or benzene-containing chemicals as intermediates or final products. The proposed standard would increase annualized costs to the existing petroleum refining and chemical manufacturing industries by about $2.1 million per year. In addition, the proposed standard would require a capital cost of $9.7 million. The increase in operating costs could be expected to increase the average cost of benzene derivatives by about 0.13 percent. There would be no plant closures or loss of employment as a result of implementing the standard.

The proposed standard would affect an estimated 70 new petroleum refining and organic chemical manufacturing units by 1985. The proposed standard would reduce benzene fugitive emissions from these new units from a possible level of 2,500 megagrams per year to 500 megagrams per year. The proposed standard for new facilities through 1985 would require a cumulative capital cost of $6.5 million for new facilities constructed through 1985. The proposed standard would increase annualized cost for new units in these industries by $1.3 million in 1985 and could increase the average cost of products from new facilities by about 0.30 percent.

Background Information on Health Effects of Benzene

The Administrator announced in the June 8, 1977, **Federal Register** (42 FR 29332) his decision to list benzene as a hazardous air pollutant under Section 112 of the Clean Air Act. A public hearing was held on August 21, 1980, to discuss the listing of benzene as a hazardous air pollutant. A hazardous pollutant is defined as an "* * * air pollutant to which no ambient air quality standard is applicable and which * * * may reasonably be anticipated to result in an increase in mortality or an increase in serious, irreversible, or incapacitating, reversible illness."

Numerous occupational studies conducted over the past 50 years have shown that health hazards result from prolonged inhalation exposure to benzene. Since 1900 the scientific and medical communities have recognized benzene as a toxic substance capable of causing acute and chronic effects. Benzene attacks the hematopoietic system, especially the bone marrow, and its toxicity is manifested primarily by alterations in the levels of the formed elements in the circulating blood (red cells, white cells, and platelets). The degree of severity ranges from mild and transient episodes to severe and fatal disorders. The mechanism by which benzene causes toxic effects is still unknown.

These adverse effects on the blood-forming tissues, including leukemia, have been documented in studies of workers in a variety of industries and occupations, including the manufacturing or processing of rubber, shoes, rotogravure, paints, chemicals, and more recently, natural rubber cast film. These studies include single case reports, cross-sectional studies, and retrospective studies of morbidity and mortality among a defined group of workers industrially exposed to benzene.

Based on the entire set of these studies, the Administrator concluded that benzene exposure is causally related to a number of blood disorders, including leukemia.* Although the studies which form the basis of this conclusion involve occupational exposure to benzene at higher levels than those found in the ambient air, the Administrator has "made a generic determination that, in view of the existing state of scientific knowledge, prudent public health policy requires that carcinogens be considered for regulatory purposes to pose some finite risk of cancer at any exposure level above zero" (44 FR 58646). Because of the widespread use of benzene, benzene emissions in the ambient air have been determined to result in significant human exposure. For these reasons, exposure to benzene emissions may reasonably be anticipated to result in one or more serious effects that can be expected to lead to an increase in mortality or an increase in serious, irreversible or incapacitating, reversible illness. Therefore, the Administrator concluded that benzene satisfies the definition of hazardous air pollutant under Section 112 of the Clean Air Act.

Rationale for Regulating Benzene Fugitive Emission Sources

Stationary source categories of benzene emissions include fugitive emissions from petroleum refineries and chemical manufacturing plants, the gasoline marketing system, process vents at several types of chemical manufacturing plants, coke-oven by-product plants, and benzene storage and handling facilities. Together, these five categories of stationary benzene emission sources account for national emissions of about 49,000 megagrams of benzene per year.

The first step in establishing standards for benzene was to determine which of the source categories emitting benzene would be regulated. Currently, there are about 130 petroleum refineries and organic chemical plants, which include about 250 units, involved in the production of benzene, benzene derivatives, and benzene-containing materials. These units emit about 8,300 megagrams per year of benzene from fugitive emission sources, or approximately 17 percent of the total benzene emissions from stationary sources. By 1985, 70 additional units are expected to be operating, which would increase the current benzene emission level from about 8,300 megagrams per year to a projected level of 10,800 megagrams of benzene per year if no additional controls are implemented. Although benzene emissions from some new and existing units will be regulated under separate emission standards, those standards would not regulate fugitive emissions of benzene, except fugitive emissions of benzene at coke-oven by-product plants, which will be covered under a separate standard for coke-oven by-product plants.

An estimated 65 million people live within 20 kilometers of the existing 250 units that produce or use benzene in the petroleum refining and chemical

* Benene also has been shown to be causally related to various cytopenias (decreased levels of formed element in the circulating blood), aplastic anemia (a non-functioning bone marrow), and potentially inheritable chromosomal aberrations.

manufacturing industries. This estimate is considered an estimate of the population at risk, i.e., the population exposed to ambient concentrations of benzene emissions from fugitive emission sources in those industries. As a result of exposure to these ambient benzene concentrations of benzene, the maximum lifetime risk was estimated to be within a range of 1.7×10^{-4} to 1.2×10^{-3} at current controls. This maximum lifetime risk is defined as the probability of dying of leukemia for an individual within the population at risk who is exposed continuously for 70 years to the highest maximum annual average ambient benzene concentration due to benzene emissions from fugitive emission sources. In addition, the number of people within the population at risk that would die from leukemia due to benzene exposure from fugitive emission sources in the existing industries was estimated to be within the range of 0.15 to 1.14 deaths per year.

Although the operational life of units which may be affected by this proposed standard is difficult to estimate, a 20-year operational life would be common to these industries. Operational lives of 50 years or more may occur particularly in the petroleum refining industry. However, operational lives may be less than 20 years for some chemical manufacturing industries. Consequently, a 20-year operational life is a reasonable estimate. On this basis, the number of deaths estimated to occur over the life of the 250 existing units would range from 3.5 to 23.5.

The ranges presented here include only the uncertainty of estimates made concerning the benzene concentrations to which workers were exposed in the occupational studies of Infante, Aksoy, and Ott, that were the basis for developing the benzene unit risk factor (discussed in Appendix E of "Benzene Fugitive Emissions—Background Information for Proposed Standard," EPA 450/3-800-32a) and are based on a 95 percent confidence interval that assumes the estimated concentrations are within a factor of two.

However, there are several other uncertainties associated with the estimated number of leukemia deaths that are not quantified in these ranges. The number of deaths were calculated based on an extrapolation of leukemia risk associated with a presumably healthy white male cohort of workers to the general population, which includes men, women, children, nonwhites, the aged, and the unhealthy. Uncertainty also occurs in estimating the benzene levels to which people are exposed in the vicinity of petroleum refining and chemical manufacturing plants. Furthermore, leukemia is the only health effect of benzene considered. Additionally, the benefits to the general population of controlling other hydrocarbon emissions from fugitive emission sources in these industries are not quantified. Finally, these estimates do not include the cumulative or synergistic effects of concurrent exposure to benzene and other substances. As a result of these uncertainties, the number of deaths and the maximum lifetime risk calculated around petroleum refining and chemical manufacturing plants could be overestimated. However, and more important, they could just as likely be underestimated for the same reasons.

Based on the magnitude of benzene exposures from emissions from this source category, on the resulting estimated maximum individual risks and estimated incidence of fatal cancers in the exposed population for the life of existing sources in the category, on the projected increase in benzene emissions as a result of new sources, and on consideration of the uncertainties associated with these quantitative risk estimates (including the effects of concurrent exposures to other substances and to other benzene emissions), the Administrator finds that benzene emissions from fugitive emission sources at petroleum refining and chemical plants create a significant risk of cancer and require the establishment of a national emission standard under Section 112.

The Administrator considered the alternative of taking no action to regulate benzene fugitive emissions and relying instead on the OSHA standard for benzene emissions and volatile organic compound (VOC) control under the State Implementation Plans (SIPs). The current OSHA standard stipulates a level of benzene that cannot be exceeded in the work place. Implementation of an emission standard under Section 112 of the Clean Air Act would require direct control of emissions sources by specific limits or other measures. Implementation of an OSHA benzene standard, on the other hand, requires indirect control of the emission sources. That is, OSHA standards require controls only to the extent necessary to reduce worker exposures to levels less than the maximum permissible exposure. Some fugitive emission sources can be located away from the workplace and, hence, may not require control. Therefore, OSHA standards may not require all emission sources to be controlled to a similar extent that an emission standard under Section 112 would require. Also, benzene fugitive emissions controlled to comply with an OSHA standard may be removed from the workplace but still be emitted to atmosphere. Relying on indirect control would be an unreasonable approach to reducing the public risks associated with fugitive emissions of benzene. In contrast, OSHA standards include requirements that regulate worker exposures that emission standards under Section 112 would not cover. Thus, establishment of both standards is appropriate and any redundancy would be superficial. Consequently, the Administrator rejected reliance on OSHA benzene regulations for control of benzene fugitive emissions.

Volatile organic compound emissions, as potential precursors to photochemical oxidant (ozone) formation, are now being regulated under SIPs. The goal of SIP regulations for VOC is to effect statewide compliance with the national ambient air quality standard (NAAQS) for ozone. Regulations under SIPs for reducing VOC emissions could also reduce benzene emissions. However, a particular State may not need to require reduction of VOC fugitive emissions to meet the NAAQS. Consequently, the Administrator rejected reliance on SIPs for control of benzene fugitive emissions.

Standards of performance for fugitive VOC emissions from new petroleum refineries and synthetic organic chemical manufacturing plants are currently being developed under Section 111 of the Clean Air Act. As discussed for SIP regulations, these new source performance standards (NSPS) for VOC emissions will effect some concurrent reductions in benzene emissions. However, since the standards would not apply to existing units and might not require a reduction of VOC emissions to the same extent as may be appropriate for benzene, the Administrator rejected reliance on NSPS for control of benzene emissions.

Thus, after considering the available alternatives, the Administrator determined that Section 112 of the Clean Air Act was the most reliable and expeditious mechanism for the control of benzene fugitive emissions. The Administrator, therefore concluded that a standard for the regulation of benzene fugitive emissions would be developed under the authority of Section 112.

Selection of Designated Sources

Benzene fugitive emissions occur in the petroleum refining and chemical manufacturing industries as a result of the production and use of materials that contain benzene. Benzene-containing

materials originate in several ways. In petroleum refineries, benzene is present in numerous process streams. It is present in crude oil in small concentrations and is formed in various refining operations such as pyrolysis and dealkylation. It is also present in many finished refinery products such as gasoline and aromatic products.

In the chemical industry, benzene is present in many processes because it is used in the manufacture of organic chemicals and because it is produced as a by-product in the manufacture of some organic chemicals. Benzene is used as a feedstock in the production of many chemicals, including, but not necessarily limited to, ethylbenzene, cumene, cyclohexane, benzene sulfonic acid, resorcinol, maleic anhydride, chlorobenzene, detergent alkylate, nitrobenzene, and hydroquinone. Additionally, benzene may be produced as a by-product in the manufacture of ethylene and styrene, or it may be produced as a pure product by extraction of mixed aromatics or hydrogenation of toluene.

Organic materials must be moved to and from various process vessels (reactors, distillation columns, etc.) in order to perform the chemical and physical changes required to manufacture a given organic product. These materials are normally moved from vessel to vessel through pipes. The materials are usually driven through the pipes by pumps, and the volume of flow is normally regulated by valves. Pipeline flanges (a method of joining sections of pipe), valves and pumps all require sealing mechanisms such as gaskets and packing glands to prevent leakage of process materials. These sealing mechanisms may develop leaks due to the wear of normal use and, in some cases, may be designed to leak. A small amount of leakage must be allowed for many sealing mechanisms used on rotating shafts in order to provide lubrication for the shaft. Because these sealing mechanisms allow leakage of benzene or benzene-containing materials to atmosphere, they are sources of benzene emissions.

In addition to the potential fugitive emissions resulting from leaks in sealing mechanisms, benzene may also be released during several other operations associated with the processing of organic compounds. Benzene can be released due to leaks in safety/relief valves; from purging, venting, and draining operations; and during product sampling operations. Benzene may also be released from cooling towers, wastewater separators, and process drains due to the leakage of organic materials into these systems.

A decision was made which defines the scope of the proposed standard. Present estimates indicate that 90 percent or more of the total benzene fugitive emissions arise from components which process materials containing 10 or more percent by weight benzene. Thus, the proposed standard would regulate the majority of benzene fugitive emissions if a 10 percent cutoff were applied. In addition, a 10 percent cutoff would eliminate covering trace quantities of benzene, such as those found in crude oil. Therefore, it was decided that the proposed standard would be applied only to fugitive emission sources in benzene service, i.e., those components containing materials of 10 or more percent by weight benzene. However, if information becomes available that indicates that benzene emissions from fugitive emission sources which handle benzene streams below the 10 percent cutoff are greater than presently estimated, the standard could be revised in the future.

An emission standard promulgated under Section 112 of the Clean Air Act covers new and existing stationary sources of a hazardous air pollutant, such as benzene. The coverage of an emission standard depends on the specific definition of stationary source designated for any particular emission standard. A new source includes an existing source which has been modified. In general, an existing source is modified if a change in the source results in increased emissions. New and existing sources covered by Section 112 have different compliance schedules, and, in some cases, new sources may be covered by a more restrictive standard than the standard for existing sources. The designation of fugitive emission sources to be covered by the proposed emission standard was chosen such that the proposed standard would have maximum effectiveness in reducing benzene fugitive emissions from new and existing sources, yet would not cause excessive adverse impacts.

Three possible definitions for the designated sources were considered before making a selection. These were (1) designating all fugitive emission sources within an entire plant site (e.g., an entire refinery or chemical plant) as the source, (2) designating all fugitive emission sources within a process unit (e.g., an alkylation unit or a nitration unit) as a source, and (3) designating each fugitive emission source such as a pump, a valve, or a pipeline flange, as a source.

A plant site consists of all chemical manufacturing and petroleum refining benzene process units under common ownership at the same geographical location. All fugitive emission sources in benzene service at one geographical location could be designated as the source to be covered by the proposed standard. However, entire plant sites are not typically constructed. More typically, a new production unit would be added to an existing site to produce a new product, or larger capacity equipment might be installed to increase production of an existing product. Thus, the effectiveness of the proposed standard would be limited to a standard for existing plant sites or plant sites that would become new plant sites through reconstruction or modification.

If the standards for new and existing fugitive emission sources are identical, then an existing plant site that would become a new source through reconstruction or modification would not be required to comply with any different requirements (except compliance date requirements). If the standard for new sources is more restrictive than the standard for existing sources, then an existing plant site that might become a new source through reconstruction or modification would be required to retrofit additional controls to all fugitive emission sources at that plant site. This could have adverse impacts, especially if the new source standard would require extensive retrofitting. These adverse impacts would be related generally to cost and economic impacts associated with retrofitting an entire plant site. In contrast to these adverse impacts, positive impacts in reducing benzene emissions could be associated with retrofitting an entire plant site.

The designated sources could also be defined as process units. Process units would be considered to be all the fugitive emission sources in benzene service assembled to manufacture benzene, benzene derivatives, or benzene-containing compounds as intermediates or final products. Designating the source as a process unit would have the same impacts as designating the source as a plant site but to a lesser extent. If the standard for new sources is more restrictive than for existing sources, then an existing process unit that might become a new source through reconstruction or modification would be required to retrofit the additional controls. Even though this could have adverse impacts, the impacts would not be as substantial as those if the source were designated as a plant site. In addition, positive emission reduction impacts could result.

Benzene fugitive emission sources could be designated as individual pieces of equipment, such as pumps and valves, that leak benzene or benzene-containing materials, thereby generating benzene emissions to atmosphere. The key factor common to benzene fugitive emissions are directly related to the number of leaking components, but they are not necessarily related to the type of process unit in which the components are found.

If the standard is not different for new and existing fugitive emission sources, then an existing individual component that might become a new source through reconstruction or modification would not be required to comply with any different requirements. However, approval of construction or modification as required in 40 CFR 61.05(a) for each modification or replacement would generally be required. This would require the identification of each component. However, individual components containing at least 10 percent benzene would be identified in such a manner that they would not be confused with components containing less than 10 percent benzene. Thus, the identification of each component for purposes of modification and reconstruction would not be an additional requirement. This procedure would be the same for process units and plant sites.

If the standard for new sources is more restrictive than the standard for existing sources, then existing individual components that might become new sources through reconstruction or modification would be required to retrofit the additional controls to the existing source. In general, this would not happen through modification because most changes in individual pieces of equipment would not increase their emission rates. However, an existing component could become a new source if it were reconstructed or replaced. Cost and economic impacts associated with retrofitting existing sources when they become new sources through modification or reconstruction would be minimized if the sources are designated as individual components. This would occur since replacement of an existing component that becomes a new source would not affect other components. Individual components containing at least 10 percent benzene would be identified in such a manner that they would not be confused with components containing less than 10 percent benzene. In addition, they could be clearly identified as either an existing source or a new source. Identifying existing and new individual components could be difficult but would not be burdensome because both new and existing components would be covered. The only difference would be the requirements of the applicable standard. However, approval of construction or modification for each modification or replacement would generally be required.

The adverse impacts associated with potentially extensive retrofitting of existing plant sites would prohibit the designation of the sources covered by the standard as plant sites. Even though designating the sources covered by the standard as process units would result in less adverse impacts than designating the sources as plant sites, this approach could have adverse impacts. These impacts are minimized by designating the sources as individual components. Thus, because adverse impacts are minimized by designating the sources covered by the standard as individual components, the Administrator has designated individual components as the sources covered by the proposed standard. As a result of this decision, however, the modification and construction approval provisions of 40 CFR Part 61 were reviewed.

Modification is not likely to result in existing sources becoming new sources because, in general, such changes do not increase the emission rate from the source. On the other hand, replacement of a source would essentially be construction of a new source. A definition of reconstruction is being proposed with this standard. The purpose of the application of modification or construction provisions in the General Provisions of 40 CFR Part 61 is to provide EPA with information on new sources and to ensure that new sources comply with the standard. Replacement of existing fugitive emissions sources that comply with the standard for new sources does not warrant a review and subsequent approval of construction. Thus, the Administrator has excluded from approval of construction or modification existing sources that become new sources through reconstruction and that comply with the standard for new sources. However, a notification of the replacement or reconstruction would be reported in the quarterly report that occurs immediately after the reconstruction or modification.

According to the definition of reconstruction which is contained in the proposed standard, there are two criteria which the Administrator will consider in deciding whether a source is reconstructed. The first is that "the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable, entirely new source." The second is that "it is feasible, considering economic impacts and the technological problems associated with retrofit, to meet the applicable standard for new sources set forth in this subpart." The second criterion is only meaningful to portions of the proposed standard which have different requirements for new and existing sources. That is, for any existing source that has the same requirements as a new source, the economic impacts and technological problems associated with retrofit have already been considered. For those existing sources, it has already been decided that they can meet the proposed standard for new sources.

In developing the proposed standard, 13 types of individual process components have been identified as potential sources of benzene fugitive emissions. These components are pumps, pipeline valves, safety/relief valves, open-ended valves, sampling connections, flanges, process drains, compressors, product accumulator vessels, agitators, wastewater separators, cooling towers, and process unit turnarounds.

Four of these types of process components are not included in the proposed standard. At present no data are available that indicate the extent of benzene emissions or emission reduction techniques for wastewater separators, cooling towers, and process unit turnarounds. If information becomes available that indicates the extent of emissions from these sources, standards could be proposed for them in the future. Agitators are not considered to be a significant source of benzene fugitive emissions. Agitated vessels in benzene operations operate at atmospheric pressure; consequently, no leakage is expected at the seal. For pumps, pipeline valves, safety/relief valves, open-ended valves, sampling connections, flanges compressors, and product accumulator vessels, information indicating the extent of benzene emisssions and available control technology are available. Therefore, all except four of these types of equipment have been included in the scope of the proposed standard.

In summary, the sources designated to be covered by the proposed standard are pieces of equipment of the following types that contain fluids (liquid or gas) with a concentration of 10 or more percent by weight benzene: pumps, pipeline valves, safety/relief valves, open-ended valves, sampling connections, pipeline flanges,

compressors, and product accumulator vessels.

Selection of Regulatory Alternatives

Benzene fugitive emissions can be reduced by two types of control techniques: (1) leak detection and repair programs, and (2) equipment, design, and operational requirements. Six regulatory alternatives which would achieve different levels of emission reduction where developed by employing various combinations of the available control techniques.

Control Techniques

The leak detection and repair programs included in the various regulatory alternatives consist of two phases. The initial phase involves monitoring potential fugitive emission sources to detect fugitive emissions. After detection of the leak, the fugitive emission source would be repaired or replaced in order to reduce the emissions.

Several leak detection methods were considered in the development of the regulatory alternatives. Methods considered included the use of VOC detectors and soap bubble solutions to locate leaking fugitive emission sources. Different modes of monitoring were also considered. Included were periodic monitoring for leaking fugitive emission sources on an individual component or an area basis and continuous automatic instrument monitoring of background air at multiple sites within a facility. As detailed in the Selection of Test Method section of this preamble, the individual component survey using a portable VOC detector has been selected as the leak detection method for the proposed standard. This method requires that the VOC concentration at the surface of each fugitive emission source be monitored with a portable VOC detector.

The effectiveness of an individual source leak detection program would depend not only on the detection method, but also on other factors. For example, more frequent monitoring would allow more frequent maintenance and a corresponding reduction in fugitive emissions. The selection of the level at which a leak is defined also influences the potential effectiveness of a leak detection and repair program. Other factors such as the length of time allowed between detection and repair of a leak also influence the emission reduction achievable by a leak detection and repair program.

The second phase of a leak detection and repair program consists of repair or replacement of leaking fugitive emission sources. Repair or replacement of a fugitive emission source would be required within a specified period of time after the detection of a VOC concentration equal to or in excess of a predetermined level. These repair and repacement procedures would vary for each fugitive emission source. Fugitive emissions from packed seals on a pump or compressor, for example, could be reduced by tightening the packing gland. However, the packing could deteriorate to a point where further tightening would no longer reduce emissions, but instead would increase the emission rate. At this point, the packing would have to be replaced. Mechanical seals on pumps and compressors would need to be removed for repair. Replacement of these seals would be included in their repair, if necessary.

Most valve leaks can be repaired while the equipment is in service. Most process valves have a packing gland which could be tightened while the valve is in service. Tightening of the packing gland would normally reduce fugitive emissions from a leaking valve. If the packing is old and brittle or if the packing were to be overly tightened, the emission rate could increase. When this occurs, the packing would have to be replaced. Plug valves may be repaired by addition of grease.

Some valves can not be repaired while in service. These valves include control valves, which may be excluded from in-service repair by operating or safety considerations, and block valves, whose removal for repair or replacement might require a process shutdown. Other valves, such as control valves with a manual bypass loop, can be isolated for repair or removal. The repair of a leaking safety/relief valve normally requires that it be removed from service.

Leaks from flanges can often be reduced by tightening the flange bolts. Most flanges can not be isolated from the process to permit replacement of the gasket.

In addition to a leak detection and repair program, certain equipment can be used to reduce fugitive emissions. Possible types of equipment for controlling emissions were considered for the following source types in the development of the regulatory alternatives: pumps, compressors, safety/relief valves, open-ended valves, sampling connections, process drains, and product accumulator vessels.

Fugitive emissions from pumps occur primarily at the pump seal. These emissions could be reduced by elimination of the seal by replacing the pump with a sealless pump, use of an improved seal (e.g., double mechanical seals), or collection and control of the emission with closed vent system.

Because of process condition limitations, sealless pumps are not suitable for all pump applications. However, dual mechanical seals are currently used in many process applications. These seals characteristically include a barrier fluid between the seals. If the pressure in the barrier fluid system is higher than that in the pump seal area, benzene would not leak from the seal. If, however, the pressure in the pump seal area is higher than the barrier fluid pressure, benzene could leak into the barrier fluid and could be emitted to atmosphere through degassing vents the barrier fluid reservoir. Connecting the degassing vents to a control device (enclosed combustion or vapor recovery system) and maintaining the benzene concentration in the barrier fluid below 10 percent by weight could effectively control fugitive emissions originating from the dual mechanical seals. The control efficiency would vary with the condition of the mechanical seals and the type of control device used, but control efficiencies approaching 100 percent can be achieved.

Emissions from compressors also occur primarily at the seal. A closed vent system or replacement of the seal with an improved seal (mechanical) could be used to reduce emissions from compressors. The use of mechanical seals on compressors, connection of the barrier fluid reservoir to a control device (enclosed combustion or vapor recovery system) with a closed vent system, and maintaining the benzene concentration in the barrier fluid below 10 percent by weight could provide control efficiencies approaching 100 percent.

Safety/relief valves may emit benzene fugitive emissions due to the failure of valve seating surfaces, improper resating after relieving, or process operation near the relief valve set point. Equipment for controlling fugitive emissions from relief valves include closed vent systems connected to a control device or rupture disks upstream of these valves. A closed vent system can be used to transport the relief valve discharge (and fugitive emissions) to a control device. These types of systems are currently used in petroleum refinery and organic chemical process units; however, under certain applications, such as combustion of halogenated compounds, these systems could result in undersirable emissions.

The control efficiency of a closed vent and control device system is mostly dependent on the effectiveness of the control device. For example, a typical flare is about 60 to 90 percent effective for organic compound destruction, and a

closed vent system is about 100 percent effective in organic compound capture; thus, the overall efficiency is about 60 to 90 percent.

Rupture disks can be installed upstream of safety/relief valves to prevent fugitive emissions from the valve seat. Unlike a closed vent system, a rupture disk does not require a downstream control device. Therefore, the control efficiency is approximately 100 percent.

When process samples are taken for analysis, obtaining a representative sample requires purging some process fluid through the sample connection. This sample purge would be vented to atmosphere if the fluid is gaseous, and liquid sample purges could be drained onto the ground or into open collection systems where evaporative emissions would result. Fugitive emissions from sampling connections can be reduced by using a closed loop sampling system that eliminates purging of process material.

Fugitive emissions from open-ended valves can be controlled by installing a cap, plug, blind, or second valve on the open end of the valve. These equipment specifications, capping of open-ended valves and closed-loop sampling, represent readily available technologies that have been applied in the industry and exhibit control efficiencies of approximately 100 percent. The actual control efficiencies will depend on site-specific factors.

Fugitive emissions from process drains can be controlled by three methods. First, if drain traps have been installed in the process drain system, then regular flushing of process drains to prevent the build up of benzene-containing organic compounds can effectively reduce fugitive emissions from these sources. Second, sealed drain covers may be installed so that benzene emissions from process drains could not occur. The effectiveness of either of these techniques, however, would depend on the degree of control of other sources in the drain systems such as drain vents and wastewater separators. Thus, another method for controlling fugitive emissions from process drains is to minimize the potential for benzene leakage into the drain system. This is done by minimizing the potential for leakage from other sources such as sampling systems, open-ended valves, and pumps. When the degree of control for these sources is maximized, as discussed above, then their potential for leakage into the drain system will be minimized and the potential for benzene fugitive emissions from the drain system will, likewise, be minimized.

Fugitive emissions from product accumulator vessels (e.g., distillate receiver vessels) occur through the vessel vents. Where a vent is employed, it may discharge directly to atmosphere or indirectly to atmosphere through a vacuum system. Most accumulator vessels in refineries are presently controlled. The vent discharge can be collected by a closed vent system and destroyed by an enclosed combustion device.

Regulatory Alternatives

Six regulatory alternatives of increasing emission reduction efficiency were developed by employing various combinations of the available control techniques. These regulatory alternatives were then analyzed to determine which would serve as the basis of the proposed standard for new and existing sources.

Regulatory Alternative I represents a baseline alternative. The baseline regulatory alternative describes the industry in the absence of new regulations, and it provides the basis for incremental comparison of the impacts of the other regulatory alternatives.

A number of factors influence the baseline emission level. Examination of benzene control programs at individual plants reveals a range of existing control levels. Many plants rely on normal maintenance procedures to control fugitive emissions due to large leaks. Other plants may have developed a leak detection and repair program in response to OSHA regulation requirements, State or local agency regulations, or emission offset provisions. To characterize baseline conditions, however, a general description of the entire industry is desirable, rather than a description of site-specific or geographic-specific conditions. Thus, Regultory Alternative I reflects existing plant maintenance procedures as characterized by emission factors developed from recent studies of fugitive emission sources.

Regulatory Alternative II would require periodic leak detection and repair for most sources and the installation of equipment for other sources and would reduce benzene fugitive emissions by about 60 percent. The requirements of this regulatory alternative are based upon the recommendations of the refinery VOC leak control techniques guideline (CTG) document (EPA–450/2–78–036). Quarterly monitoring for leaks from relief valves, pipeline valves and open-ended valves in gas service, and compressors would be required. Pumps, drains, and valves in liquid service would be required to be monitored annually for leaks. Weekly visual inspections of pump seals would be required; visual detection of a liquid leak would direct that monitoring be initiated to determine if the action level were being exceeded and that the pump seal be subsequently repaired, if necessary. Relief valve monitoring would also be required after over pressure relieving, to detect improper reseating. Finally, open-ended valves would be required to be sealed with a cap, blind, plug, or another valve.

Regulatory Alternative III would provide for more effective control than Regulatory Alternative II by increasing the frequency of leak detection and repair for some sources and requiring the installation of certain equipment for other sources. Regulatory Alternative III would reduce benzene fugitive emissions by about 70 percent. Monthly monitoring for detection of leaks from pumps, compressors, drains, and valves would be required in this regulatory alternative. The purpose of the increased frequency of monitoring is to reduce emissions from residual leaking sources; i.e., those sources that are found leaking and are reparied and then recur before the next inspection, and those sources that begin leaking between inspections.

Regulatory Alternative III would also require the installation of certain equipment. Regulatory Alternative III is based on installation of closed-loop sampling systems; rupture disks on gas service relief valves that vent to atmosphere; accumulator vessel vents tied into a control device; and open-ended valves sealed with a cap, blind, plug, or another valve. Based on a preliminary cost analysis, each of these controls is expected to have similar costs for the amount of benzene emissions reduced.

Regulatory Alternative IV includes equipment that is expected to have greater costs for the amount of benzene emissions reduced than those included in Regulatory Alternative III. Regulatory Alternative IV would reduce benzene fugitive emissions by about 80 percent. Regulatory Alternative IV is based on mechanical seal systems on pumps and compressors, in addition to the other equipment included in Regulatory Alternative III. Diaphragm and sealed-bellows valves were not included because the expected cost for the amount of benzene emissions reduced, based on a preliminary cost analysis, was much greater than for double mechanical seal systems. In addition, drains and valves would be required to be monitored for leaks each month, as in Regulatory Alternative III.

Regulatory Alternative V would require leakless emission control equipment for all designated sources and would reduce benzene fugitive emissions by about 90 percent. In addition to the equipment discussed for Regulatory Alternative IV, this regulatory alternative would require installation of diaphragm or sealed-bellows type valves, and would require drains to be enclosed. Consequently, all designated sources would be controlled to the maximum degree, and leaks would virtually be eliminated from these sources. Equipment would be required to be monitored annually for leaks to ensure continued leakless operation.

Regulatory Alternative VI would require the elimination of all benzene fugitive emissions from the source category. Although the equipment upon which Regulatory Alternative V is based would virtually eliminate benzene emissions from equipment handling greater than 10 weight percent benzene, there would still be some benzene emissions from spills and occasional equipment failure.

The use of substitute feedstocks could eliminate all benzene from some operations; for example, n-butane could be used in the production of maleic anhydride instead of using benzene. However, this approach could not be used for all benzene-consuming processes, as there are no substitutes for benzene in some cases. Therefore, this approach is best considered on a case-by-case process standard basis.

The only approach that could totally eliminate benzene fugitive emissions is the prohibition of all benzene-producing and consuming processes. However, this approach would lead to the shutdown of all refineries and a number of chemical plants because benzene is present in most refinery feedstocks and organic chemical process streams. This approach is considered unreasonable because the economic impacts, although difficult to quantify, would be extremely adverse to the benzene-producing and consuming industries and, consequently, the public.

Selection of the Basis for the Standard—Existing Sources

Selection of a regulatory alternative to serve as the basis for the proposed standard for existing sources involved evaluating the environmental and economic impacts of each alternative discussed in Selection of Regulatory Alternatives. Included for the evaluation of environmental impacts were estimates of air quality, water, noise, and solid waste impacts. Included for the evaluation of economic impacts were estimates of the total capital and annualized costs for implementing each alternative, estimates of the effect on final product prices, and estimates of energy impacts.

After consideration of the environmental, energy, and economic impacts of each alternative, one alternative was selected as best available technology (BAT) for existing sources. After BAT was identified, the estimated risks remaining after application of BAT were examined to determine whether they are unreasonable in view of the health benefits and other impacts that would result if a more stringent option were applied.

To assess the environmental impacts of the regulatory alternatives, existing conditions were first characterized (Regulatory Alternative I). Then incremental impacts were determined from this level of control.

Three model units were chosen to represent average inventories of equipment handling process streams containing greater than 10 weight percent benzene. These model units were developed by analyzing various production operations that are presently known to involve benzene fugitive emissions. The model units are based on the number of pieces of equipment involved in the various production operations because fugitive emissions are proportional to the number of pieces of equipment. Thus, the model units generally reflect process complexity rather than production rate.

Model Unit A represents an average inventory for units involved in the production of ethylbenzene, styrene, cumene, cylohexane, benzene sulfonic acid, resorcinol, benzene from toluene, or maleic anhydride; Model Unit B represents an average inventory for units involved in the extraction of benzene from reformate, or in the production of chlorobenzene or linear alkylbenzene; Model Unit C represents an average inventory for units involved in the production of nitrobenzene, hydroquinone, or benzene by extraction from pyrolysis gasoline. Ethylene production may be represented by either Model Unit A, B, or C, depending on the number of ethylene production units at the plant site: one ethylene unit would be represented by Model Unit A, two or three ethylene units would be represented by Model Unit B, and four or five ethylene units would be represented by Model Unit C. The 1980 industry totals for these model units were estimated to be: Model Unit A, 145 units; Model Unit B, 72 units; Model Unit C, 24 units.

Air Quality Impact

Using baseline emission factors and the equipment inventories developed for the model units, baseline benzene fugitive emissions were determined to be about 19 Mg/year for Model Unit A, 45 Mg/year for Model Unit B, and 97 Mg/year for Model Unit C. These rates multiplied by the number of each model unit present in the existing industry yield a nationwide unregulated total of 8,300 Mg/year.

Regulatory Alternative II would reduce benzene fugitive emissions from the existing industry from 8,300 Mg/year to 3,600 Mg/year, yielding a 57 percent reduction in emissions. Regulatory Alternative III would reduce these emissions to 2,200 Mg/year, yielding a 73 percent reduction. Regulatory Alternative IV would reduce emissions to 1,900 Mg/year, yielding a 77 percent reduction. Regulatory Alternative V would reduce emissions to 900 Mg/year, yielding a 90 percent reduction in emissions from the baseline.

Ambient benzene concentrations attributable to uncontrolled benzene fugitive emissions (Regulatory Alternative I) and those attributable to fugitive emissions reduced to the levels required by Regulatory Alternatives II through V were estimated. The estimated maximum annual average benzene concentration for the facility with the highest expected benzene fugitive emission rate was 13.4 parts per billion by volume (ppbv) at a distance of 0.1 kolometer from the plant. The maximum annual concentrations for this plant under Regulatory Alternatives II through V were 5.9, 3.6, 3.1, and 2.8 ppbv. All of these maximum annual concentrations occurred at 0.1 kilometer from the plant.

Water, Solid Waste, and Noise Impacts

Since none of these regulatory alternatives would require any additional water discharges, there would be no negative impact on water quality. There is potential for a positive benefit to water quality, however, due to decreased amounts of organic materials entering drains, sewers, and wastewater discharges because of better leak control. This benefit would increase with the stringency of the regulatory alternative because each successive regulatory alternative requires additional leak control measures.

There would be minimal impact on solid waste and no impact on noise as a result of implementing any of the regulatory alternatives. The solid wastes associated with the regulatory alternatives are replaced mechanical seals, packing, rupture disks, and

valves. The quantities of waste to be disposed are not expected to be significant for any of the regulatory alternatives.

Energy and Economic Impacts

The industry total capital and annualized costs, including recovery credits, can be summarized as follows for Regulatory Alternatives II, III, IV, and V: (1) Regulatory Alternative II would require a total capital investment of $2.9 million and would result in an annualized savings of $25 thousand; (2) Regulatory Alternative III would require a capital investment of $9.7 million and an annualized cost of $2.1 million; (3) Regulatory Alternative IV would require a capital investment of $25.3 million and an annualized cost of $5.5 million; (4) Regulatory Alternative V would require a capital investment of $242 million and an annualized cost of $58.6 million. The annualized costs required to implement Regulatory Alternatives II, III, IV, and V could cause the average price of benzene derivatives to rise by about 0.04, 0.13, 0.37, and 4.1 percent, respectively.

Since the controls required to implement the regulatory alternatives are passive in nature, there would be no negative energy impact. In fact, there would be a slight energy benefit from the conservation of raw materials and products that results from the control of leaks.

In selecting best available technology (BAT) for existing sources, the Administrator reviewed technology to determine the most advanced level of controls adequately demonstrated, considering economic, energy, and environmental impacts, and the technological problems associated with retrofit. First, Regulatory Alternative VI was examined. This regulatory alternative would eliminate benezene fugitive emissions from the industries. However, it would result in closure of a number of industries. Thus, the Administrator did not select Regulatory Alternative VI as the basis for BAT because the closure of these industries would result in extremely adverse economic impacts.

Second, Regulatory Alternative V was examined. This alternative would require the most advanced level of controls without shutdown of any industries. The main difference between this regulatory alternative and the less stringent alternatives is that it would require replacement of existing valves with new leakless valves. Replacing existing valves with leakless valves could result in retrofit problems. For example, in some cases, replacing the valves would increase the pressure drop in the system, and possibly result in reduction in throughputs and/or redesign of the system. Regulatory Alternative V would also result in replacement of some existing pumps with new pumps and replacement of some relief valves with new relief valves, but these replacements would also be required by some of the other alternatives. This regulatory alternative would result in a 7,400 megagram per year reduction in benzene emissions from the baseline for existing plants. Capital cost for this alternative would be $242 million, and the annualized cost would be $58.6 million. Regulatory Alternative V could result in cumulative percent price increases for benzene-derivative products from about 2 percent to about 7 percent. Even if the price increase for benzene production is not passed through to benzene-derivative products, this alternative could still result in price increases of greater than 5 percent for several specialty products made from benzene. Because the implementation of Regulatory Alternative V would result in substantial price increases which could cause adverse economic impacts, the Administrator examined Regulatory Alternative IV before selecting BAT.

Regulatory Alternative IV would require the next most advanced level of controls to the levels for Regulatory Alternative V and would result in a 6,400 megagram per year reduction in benzene emissions. This alternative would require replacement of some equipment. However, this replacement would not be as extensive as that in Regulatory Alternative V, and the technological problems and costs associated with this retrofitting would be reduced accordingly. Regulatory Alternative IV would result in cumulative percent price increases of less than 1 percent for all affected chemicals. Capital costs would be about $25.3 million, and annualized costs would be about $5.5 million.

The Administrator compared the level of controls for Regulatory Alternative V and Regulatory Alternative IV and their economic impacts before selecting BAT. The level of controls for Regulatory Alternative V would result in an additional 1,000 Mg/year emission reduction compared with Regulatory Alternative IV. In contrast to this impact, Regulatory Alternative V would result in much greater economic impacts than Regulatory Alternative IV. The cumulative percent price increases associated with Regulatory Alternative V, which could be as high as 7 percent for some products, could result in significant adverse impacts. Thus, because the additional economic impacts associated with Regulatory Alternative V, in comparison to Regulatory Alternative IV, are grossly disproportionate to the corresponding emission reductions, the Administrator did not select Regulatory Alternative V (90 percent control) as BAT and further evaluated Regulatory Alternative IV.

While Regulatory Alternative IV would not have the same magnitude of economic impacts associated with Regulatory Alternative V, it would still require replacement of some equipment and there could be some retrofit problems associated with this replacement. The Administrator therefore compared the impacts of Regulatory Alternative IV with those of Regulatory Alternative III before selecting BAT.

The only difference between Regulatory Alternatives IV and III is that Regulatory Alternative IV requires replacement of certain mechanical seal systems on pumps and compressors. Some existing pumps can not be retrofitted with dual mechanical seals to meet Regulatory Alternative IV because they do not have pump castings which would adequately house the seal systems. These pumps would have to be replaced. Some of the others which would not have to be replaced would require retrofitting of equipment, such as drive shaft bearings, so that the equipment would operate properly. Regulatory Alternative IV would reduce emissions by 6400 Mg/year. The capital and annualized costs which result from this emission reduction would be $25.3 million and $5.5 million, respectively. Regulatory Alternative III, on the other hand, would reduce emissions by 6100 Mg/year. The capital and annualized costs which would result from this emission reduction would be $9.7 million and $2.1 million per year, respectively.

Because the additional costs associated with nationwide retrofitting and replacing pump and compressor seal systems to meet Regulatory Alternative IV would be exorbitant in light of the resulting emission reductions and the fact that some otherwise properly functioning pumps would have to be replaced, the Administrator did not select Regulatory Alternative IV as BAT and evaluated Regulatory Alternative III.

After examining the costs associated with Regulatory Alternative III the Administrator concluded that its economic impact was reasonable. However, because Regulatory Alternative III could require some replacement of existing equipment, the Administrator compared the impacts of Regulatory Alternative III with those of

Regulatory Alternative II before selecting BAT. Regulatory Alternative III primarily requires monitoring for leaks rather than replacement of existing equipment. However, it does include some requirements for retrofitting equipment, such as placing rupture disks on the process side of relief valves. In some cases, this could result in derating of the relief valve to such an extent that it would need to be replaced by another relief valve. The costs of this replacement were considered in examining Regulatory Alternative III, and are considerably smaller than those associated with replacement of valves and pumps.

Regulatory Alternative III would reduce emissions by 6100 Mg/year and the associated capital and annualized costs would be $9.7 million and $2.1 million, respectively. Regulatory Alternative II would reduce emissions by 4700 Mg/year, and the associated capital cost would be $2.9 million. Regulatory Alternative II would result in an annualized cost credit. After considering the substantially greater emission reduction that would result from implementing Regulatory Alternative III rather than Regulatory Alternative II, the fact that the capital and annualized costs compared with emission reductions in these alternatives which were judged not to be exorbitant, and the lack of significant adverse economic impacts or technological problems associated with retrofit that would result from implementing Regulatory Alternative III, the Administrator selected Regulatory Alternative III as BAT. Thus, Regulatory Alternative III was selected as BAT because it represents the most advanced level of control considering economic, energy, and environmental impacts, and the technological problems associated with retrofit.

After Regulatory Alternative III was selected as BAT for existing sources, the estimated risks remaining after application of BAT were examined to determine whether they were unreasonable in view of the health benefits and costs that would result if a more stringent regulatory alternative were applied. The number of estimated excess leukemia deaths remaining after application of BAT to existing sources is estimated to range from 0.05 to 0.32 per year. After application of BAT to existing sources, the remaining estimated maximum lifetime risk of acquiring leukemia is estimated to range from 4.6×10^{-5} to 32×10^{-5} for the most exposed group.

The Administrator considered one control level beyond BAT for existing sources: 77 percent control, Regulatory Alternative IV. Requiring 77 percent control instead of 73 percent control would reduce the projected incidence of excess leukemia deaths from a range of 0.05 to 0.32 per year to a range of 0.04 to 0.27 per year. As discussed in the Rationale for Regulating Benzene Fugitive Emission Sources section of this preamble, a 20-year operational life is a reasonable estimate for petroleum refining and chemical manufacturing units. On this basis, the number of deaths estimated to occur over the life of the existing units would be reduced from a range of 1.0 to 6.4 (73 percent control) to a range of 0.8 to 5.4 (77 percent control). It would reduce the estimated maximum lifetime risk at the point of maximum exposure caused by fugitive emissions from a range of 4.6×10^{-5} to 32×10^{-5} to a range of 3.9×10^{-5} to 27×10^{-5}. On the other hand, requiring 77 percent control rather than 73 percent control would increase the capital costs from $9.7 to $25.3 million, the total annualized cost from $2.1 to $5.5 million, and the percentage increase in average benzene derivation prices from 0.13 to 0.37.

In view of the relatively small health benefits that would result with the additional costs of requiring 77 percent rather than 73 percent control for benzene fugitive emissions, the Administrator concluded that the risks remaining after application of BAT to existing sources are not unreasonable. Therefore, the Administrator decided not to require more stringent control than BAT for control of fugitive emissions.

Selection of the Basis for the Standard—New Sources

Selection of one of the regulatory alternatives to serve as the basis for the proposed standard for new sources involved the same type of analysis employed for existing sources. As with existing sources, the environmental, energy, and economic impacts of each alternative were considered and based on these considerations, one alternative was selected as BAT. After BAT was identified, the estimated risks remaining after application of BAT were examined to determine whether they were unreasonable in view of the health benefits and costs that would result if a more stringent option were applied.

To determine the incremental environmental, energy, and economic impacts of the regulatory alternative for new sources, an uncontrolled 1985 baseline was used. The baseline was established by estimating the number of new and reconstructed Model Units A, B, and C which would be affected by the proposed standard by 1985. Emission factors were then applied to the Model Units to establish the baseline.

Since each of the Model Units represents average component counts for several different chemical processes, the growth rate (including both new and reconstructed facilities) for each Model Unit was different. The projected growth rates were: Model Unit A, 6 percent per year; Model Unit B, 2 percent per year; Model Unit C, 10 percent per year.

Thus, the total numbers of new units for 1985 were determined to be: Model Unit A, 47 units; Model Unit B, 7 units; Model Unit C, 14 units. Based on these numbers, the 1985 baseline emissions (Regulatory Alternative I) were determined to be 2,500 Mg per year.

Regulatory Alternative II would reduce benzene fugitive emissions from new facilities through 1985 from 2,500 Mg per year to 1,100 Mg per year, yielding a 56 percent reduction in emissions. Regulatory Alternative III would reduce these emissions to 700 Mg per year, yielding a 72 percent reduction. Regulatory Alternative IV would reduce fugitive emissions to 500 Mg per year, yielding a 80 percent reduction. Regulatory Alternative V would reduce emissions to 200 Mg per year, yielding a 92 percent reduction from the baseline.

As in the case for existing sources, the implementation of the regulatory alternatives for new sources would not result in any significant impact on water quality, solid waste, or noise. As previously discussed, there would be slight positive benefits to water quality and energy as a result of increasingly stringent leak control associated with more stringent regulatory alternatives.

The main difference in the considerations of applying the alternatives to new sources was in the capital and annualized costs of implementing the alternatives. The costs of implementing the alternatives are lower for new sources than for existing sources because no retrofitting expenses are involved. Fifth-year industry costs, including recovery credits, can be summarized for new sources as follows: (1) Alternative II would require a total capital investment of $820 thousand and would result in an annualized savings of $70 thousand; (2) Alternative III would require a capital investment of $2.2 million and an annualized cost of $420 thousand; (3) Alternative IV would require a capital investment of $6.5 million and an annualized cost of $1.3 million; (4) Alternative V would require a capital investment of $48.4 million and an annualized cost of $11.4 million.

The annualized costs required to implement Alternatives II, III, IV, and V for new sources could cause the average

price of benzene derivatives produced in new plants to rise by about 0.03, 0.10, 0.30, and 3.3 percent, respectively. With regard to the burden imposed by the increased capital costs, the average percentage increase in required capital investment for new plants would be about 0.07 percent for Alternative II, 0.20 percent for Alternative III, 0.50 percent for Alternative IV, and 4.5 percent for Alternative V.

In selecting best available technology (BAT) for new sources, the Administrator reviewed technology to determine the most advanced level of controls adequately demonstrated, considering economic, energy, and environmental impacts. First, Regulatory Alternative VI was examined. This regulatory alternative would eliminate benzene fugitive emissions from the industries. However, it would result in no new construction for a number of industries. Thus, the Administrator did not select Regulatory Alternative VI as the basis for BAT because the lack of growth in these industries would result in adverse economic impacts.

Second, Regulator Alternative V was examined. This alternative would require the most advanced level of controls. This regulatory alternative would result in a 2,300 megagram per year reduction in benzene emissions from the baseline for new plants. Regulatory Alternative V could result in price increases of greater than 4 percent for several specialty products made from benzene, although the average percent price increase for these products would be 3.3 percent. In addition, this alternative would result in industry-wide cumulative percent price increases (i.e., percent price increases that are passed through due to price increases for benzene production and price increases in benzene-derivative production) from 1.5 percent to about 5 percent. Capital cost for this alternative would be $48.4 million, and the annualized cost would be $11.4 million. Because the implementation of Regulatory Alternative V could result in adverse economic impacts, the Administrator examined Regulatory Alternative IV before Selecting BAT.

Regulatory Alternative IV would require the next most advanced level of controls to the levels for Regulatory Alternative V. This alternative would reslt in a 2,000 megagram per year reduction in benzene. Regulatory Alternative IV would result in cumulative percent price increases of less than 1 percent for all affected chemicals. Capital costs would be $6.5 million, and annualized costs would be $1.3 million. This regulatory alternative would not result in adverse economic impacts.

The Administrator considered the level of controls for Regulatory Alternative V and Regulatory Alternative IV and their economic impacts before selecting BAT. The level of controls for Regulatory Alternative V would result in an additional 15 percent emission reduction over the level for Regulatory Alternative IV. In contrast to these impacts, Regulatory Alternative V would result in much greater economic impacts than Regulatory Alternative IV. For example, the capital and annualized costs of Regulatory Alternative V are seven times the cost for Regulatory Alternative IV. In addition, the percent price increases associated with Regulatory Alternative V could result in adverse impacts, whereas those associated with Regulatory Alternative IV would not result in adverse impacts. Thus, becaue the additional emission reduction associated with Regulatory Alternative V in comparison to Regulatory Alternative IV and the economic impacts associated with Regulatory Alternative V and and Regulatory Alternative IV are grossly disproportionate, the Administrator selected Regulatory Alternative IV (77 percent control) as BAT.

The proposed *Policy and Procedures for Identifying, Assessing and Regulating Airborne Substances Posing a Risk of Cancer* includes certain requirements for the siting of new sources (44 FR 58651). These are not implemented in the proposed standard because the details of the procedures have not been formulated. New source siting requirements for fugitive emission sources of benzene may be proposed in the future, but would only apply to new sources constructed, modified, or reconstructed after the proposal data of such siting requirements.

For new sources constructed, modified, or reconstructed in the interim, the Administrator is making a judgment concerning whether the estimated risks remaining after the application of BAT selected for new sources are unreasonable in view of the health benefits and costs, economic impacts, and other impacts that would result if a more stringent alternative were selected. In making this judgment, the approach used was that of estimating the residual risks based on the assumption that population distributions would be similar to those around existing plants and estimates of benzene emissions from new plants. The Administrator decided to use this approach because it seemed the most reasonable approach in the absence of new source siting requirements.

No information is available on the number of people which will be exposed to the emissions from new refining and chemical manufacturing units. They could be located at existing plant sites or entirely new sitiea. There is no available information to indicate that population distributions around new units will be greater or less than they are for existing units. Therefore, for purposes of estimating deaths due to emissions from new units, it was assumed that the population distributions would be the same as they are for existing units. Therefore, residual deaths were calculated for new sources by using the growth projections for new unit capacity and assuming the population distrubutions were the same new for units as for existing units. Even if new units were added at existing plant sites, this would be accurate assumption since the people living in the vicinity of these plants would be exposed to additional emissions and a linear dose-response model was used to calculate deaths.

In calculating the residual maximum lifetime risk after application of BAT to new sources, it is reasonable to assume that exposures around new facilities would be no greater than they are around existing plant sites. They could be greater if new units were added to the existing plant site associated with the maximum lifetime risk for existing sources. Since there is no information indicating that this will occur, it was assumed that the maximum lifetime risk associated with new sources would be no greater than for existing sources.

After Alternative IV was identified as BAT for new sources, the estimated risks remaining after application of BAT were estimated using the assumption discussed above and used to determine whether they were unreasonable in view of the health benefits and costs that would result if a more stringent option were applied. The number of estimated excess leukemia deaths remaining after application of BAT to new sources is estimated to range from 0.01 to 0.08 per year. The remaining estimated maximum lifetime risk of acquiring leukemia is estimated to range from 3.9×10^{-5} to 27×10^{-5} for the most exposed group living near a source of benzene fugitive emissions.*

The Administrator considered one control level beyond BAT for new sources: 90 percent control, Alternative

* This range is the same for new and existing sources because it was assumed that new sources could be built that would have the same maximum potential emissions as the largest existing source.

V. Requiring 90 percent control instead of 77 percent control would reduce the projected incidence of excess leukemia deaths from a range of 0.01 to 0.08 per year to a range of 0.005 to 0.03 per year. It would reduce the estimated maximum lifetime risk at the point of maximum exposure caused by fugitive emissions from a range of 3.9×10^{-5} to 27×10^{-5} to a range of 1.7×10^{-5} to 12×10^{-5}. On the other hand, requiring 90 percent control rather than 77 percent control would increase the capital costs from $6.5 to $48.4 million, the total annualized cost from $1.3 to $11.4 million, and the percentage increase in average benzene derivative prices from 0.30 to 3.3.

In view of the relatively small health benefits that would be gained with the additional costs of requiring 90 percent rather than 77 percent control for benzene fugitive emissions, the Administrator concluded that the risks remaining after application of BAT to new sources are not unreasonable. Therefore, the Administrator decided not to require more stringent control than BAT for fugitive emissions.

New Source Siting

New source siting requirements were included in the proposed policy and procedures for identifying, assessing, and regulating airborne substances posing a risk of cancer (44 FR 58642). The proposed standard does not include provisions to implement these new source siting requirements. However, they may be proposed at a later date. Such a proposal for new source siting provisions would apply to designated sources that become new sources after that proposal date.

Selection of Format for the Proposed Standard

Section 112 of the Clean Air Act requires that an emission standard, or mass emission limitation, be established for control of a hazardous air pollutant unless, in the judgment of the Administrator, it is not feasible to prescribe or enforce such a standard. An emission standard allows for some flexibility in complying with the standard, since any control technique that achieves the standard may be applied.

Section 112(e)(2) defines the following conditions under which it is not feasible to prescribe or enforce an emission standard: (1) if the pollutants can not be emitted through a conveyance designed and constructed to emit or capture the pollutant; or (2) if the application of measurement methodology is not practicable due to technological or economic limitations. Section 112(e)(1) allows that if an emission standard is not feasible to prescribe or enforce, then the Administrator may instead promulgate a design, equipment, work practice, or operational standard, or combination thereof.

An emission standard may not be feasible to prescribe or enforce for benzene fugitive emission sources. Another approach for prescribing a standard would be to specify an allowable leak percentage in terms of a maximum number or percentage of fugitive emission sources that would be allowed to leak. This approach would not establish an emission level on a mass emission rate basis but would have some of the same advantages of an emission standard in that it would allow for flexibility in complying with the standard.

An allowable leak percentage might be defined by utilizing proposed Reference Method 21. However, available test data indicate variability in leak percentages among process units. This variability has precluded the setting of an industry-wide allowable leak percentage that would represent an achievable limit. The allowable leak percentage approach is discussed in Alternative Standard for Pipeline Valves in the next section of this preamble. Using that approach, a plant owner or operator would collect data for at least one year and then commit to an allowable leak percentage on a site-specific basis. The variability in leak percentages would be a factor that an owner of operator would consider before committing to an allowable leak percentage.

The equipment standard format, in general, provides well-documented emissions reductions. Published information is available on applications of various types of equipment; and in some cases, emission test data may be available from existing installations. Compliance would require an initial check to ensure that the equipment had been installed properly and periodic checks to assure that the equipment was continuing to operate properly. However, an inherent disadvantage associated with this type of format is that less site-specific flexibility is provided and innovation may be stymied.

Another format would be work practices. An example of this format would be a program for detecting and repairing leaks. Inspection methods, inspection time intervals, and time allowed for repair would be defined in detailing the work practices. Compliance with a work practice standard would be determined by judging success in implementing the work practices. Some recordkeeping and reporting would be needed to serve as the basis for judging this success.

The proposed standard incorporates these potential regulatory formats. Different formats could be required for different fugitive emission sources, because characteristics of available emission control techniques differ among the fugitive emission sources. In the next section the rationale for selecting a particular format is explained for each type of fugitive emission source. For each fugitive emission source, the feasibility of precribing or enforcing an emission standard is carefully considered. If an emission standard is not feasible, then one of the other formats is selected.

Selection of Emission, Equipment, Work Practice, Design and Operational Standards

As discussed in Selection of Format for the Proposed Standard, Section 112(e) of the Clean Air Act requires that an emission standard be promulgated unless it is not feasible to prescribe or enforce such a standard. Thus, control techniques in Regulatory Alternatives III and IV were evaluated for existing and new sources, respectively to determine if an emission standard could be promulgated.

Safety/Relief Valves

The control technique of applying rupture disks was evaluated as a potential equipment specification for existing and new gas service safety/relief valves under Regulatory Alternatives III and IV, respectively. When the integrity of a rupture disk is maintained, fugitive emissions through the relief valve are eliminated. Properly installed rupture disks will generally maintain their integrity under normal operating conditions unless an overpressure relief situation occurs. After an overpressure relief, replacement of the rupture disk, once again, eliminates fugitive emissions through the safety/relief valve.

Since there is a control technique available that eliminates fugitive emissions from safety/relief valves, it is feasible to prescribe an emission limit of "no detectable emissions," that is, an organic chemical concentration less than 200 ppm above a backgraound concentration as measured by proposed Reference Method 21. The application of a quantitative measurement methodology, such as bagging, to prescribe a no detectable emissions limit would not be feasible due to technological limitations discussed in Selection of Test Method. However, proposed Reference Method 21 can be used to detect leaks of fugitive

emissions from safety/relief valves. A safety/relief valve equipped with a properly functioning rupture disk would not leak. The detection of an organic chemical concentration at or above 200 ppm by proposed Reference Method 21 would indicate that the relief valve was leaking. Therefore, it is feasible to prescribe a no detectable emissions limit as the proposed standard for existing and new safety/relief valves in gas service.

The no detectable emissions limit would not apply to discharges through the safety/relief valve during overpressure conditions because the function of the safety/relief valve is to discharge process fluid, thereby reducing dangerous high pressures within the process. The standard would specify, however, that the safety/relief valve be returned to a state of no detectable emissions within five days after such a discharge. It would further require an annual test to verify the no detectable emissions status of the safety/relief valve.

Product Accumulator Vessels

The control technique of connecting existing and new product accumulator vessels to a control device with a closed vent system was evaluated under Regulatory Alternatives III and IV, respectively. A properly designed and installed closed vent system would completely eliminate fugitive emissions from the product accumulator vessel. Since the flow rates of the gaseous emissions from product accumulator vessels are of a much smaller magnitude than those from safety/relief valves, the emissions can be safely disposed of in an enclosed combustion device or can be collected by a vapor recovery system. Specifications for the control device used to dispose of or capture emissions from the closed vent system are included in the proposed standard and are discussed later in this section.

As with safety/relief valves, a control technique is available that eliminates fugitive emissions from the product accumulator vessels. Also, proposed Reference Method 21 can be used to verify that a closed vent system has been designed and installed properly and has eliminated fugitive emissions from a product accumulator vessel. Therefore, since it is feasible to prescribe an emission limit, the proposed standard for product accumulator vessels is no detectable emissions. As with safety/relief valves, the proposed standard requires an initial performance test, using proposed Reference Method 21, to verify that a product accumulator vessel meets the no detectable emissions limit, and annual rechecks to ensure continued operation at no detectable emissions.

Other Fugitive Emission Sources With No Detectable Emissions

As discussed in the following sections, fugitive emission sources other than safety/relief valves and product accumulator vessels can operate with no detectable emissions when leakless equipment is used. For example, canned pumps and diaphragm valves can operate with no detectable emissions. Even though leakless equipment can not be used in all cases, it can comply with a no detectable emissions requirement when it is used. Leakless equipment is at least as effective as work practices and other equipment in reducing benzene emissions, because emissions of benzene from leakless equipment are eliminated. Therefore, the proposed standard considers the application of leakless equipment to be equivalent to the application of work practices and other equipment for fugitive emission sources other than safety/relief valves and product accumulator vessels. As with safety/relief valves, the proposed standard requires an initial performace test, using proposed Reference Method 21, to verify that a piece of leakless equipment meets the no detectable emissions limit, annual rechecks to ensure continued operation at no detectable emissions, and rechecks at the request of the Administrator.

New Pumps

In the analysis of the impacts of Regulatory Alternative IV, dual machanical seal systems were considered as the control technique for new pumps. The evaluation of this control technique first considered the practicability of setting an emission limit. An emission limit standard for pumps is not practicable, however. First, even through new pumps can, in some instances, be equipped to release fugitive emissions into a conveyance mechanism, measurement of these emissions is not practicable due to technological limitations with measuring very low flow, intermittent emission sources. Second, determining emission levels at the pump would require that each pump be bagged as described in the Selection of Test Method section of this preamble. Measurement of an emission level using the bagging method is time consuming, expensive, and impractical. A no detectable emissions limit is not possible to prescribe because data currently available show that pumps equipped with dual mechanical seal systems may not meet such a standard. Thus, because the application of available measurement methods would not be practicable due to technological or economic limitations, an emission standard has not been proposed for new pumps.

Equipment specifications evaluated for new pumps were dual mechanical seal systems (double and tandem), closed vents for the pump seal areas, and sealless pumps. Double mechanical seal systems have two seals in a back-to-back arrangement, with a barrier fluid between the two seals. The barrier fluid is typically maintained at a pressure greater than the pump stuffing box pressure so that any leakage between the seals would be from the barrier fluid to the working fluid; therefore, no benzene would be emitted.

Tandem mechanical seal systems also utilize a barrier fluid; however, the barrier fluid pressure is maintained at a pressure lower than the pump stuffing box pressure. In this arrangement, there is leakage of the working fluid into the barrier fluid. Leakage into the barrier fluid is controlled by either (1) connecting the barrier fluid degassing system to a control device (enclosed combustion or vapor recovery) with a closed vent system or (2) by continuously replacing the fluid with fresh barrier fluid and properly disposing of the contaminated barrier fluid. In either case, the benzene concentration in the barrier fluid must be maintained below 10 percent by weight in order to minimize potential benzene leakage from the outer seal.

Dual mechanical seals utilizing a barrier fluid are the most universally applicable of the options evaluated, and these systems provide a high control efficiency (dependent on the degassing vent control device efficiency). Thus, the Administrator selected the dual mechanical seal and barrier fluid system as the required equipment for new pumps.

Section 112(e) of the Clean Air Act requires that when equipment standards are established, requirements must also be established to ensure the proper operation and maintenance of the equipment. A pressure or level indicator on the barrier fluid system would reveal any catastrophic failure of the inner or outer seal, or of the barrier fluid system. This indicator would be monitored in the control room or equipped with an alarm to signal a failure of the system. These requirements are proposed, therefore, to ensure the proper operation and maintenance of the dual mechanical seal system.

Sealless pumps, such as diaphragm or canned pumps, do not have a potential leak area and, therefore, should achieve approximately 100 percent control. However, sealless pumps may not be

suitable for use in some process applications due to throughput, pressure or fluid composition constraints. For these reasons, sealless pumps were not selected under Regulatory Alternative IV. Leakless equipment, such as sealless pumps, are at least equivalent to dual mechanical seal systems, because benzene emissions from leakless equipment are eliminated. Thus, any equipment that complies with a no detectable emissions limit is equivalent to the dual mechanical seal system. As with other leakless equipment, the proposed standard requires an initial performance test, using proposed Reference Method 21, to verify that the piece of leakless equipment meets the no detectable emissions limit, and annual rechecks to ensure continued operation at no detectable emissions.

The seal area of a pump could be completely enclosed, and this enclosed area could be connected to a control device (enclosed combustion or vapor recovery) with a closed vent system. The control efficiency of this arrangement is dependent on the control efficiency of the vapor recovery system or enclosed combustion device. The closed vent system could require a flow-inducing device to transport emissions from the seal area to the control device. Because of safety or operating constraints, enclosure of the pump seal area may not be feasible in all cases. However, there may be pump applications that require pumps that can not be equipped with dual mechanical seals and can not be replaced with a sealless pump, and the enclosed seal area would be the best option for such pumps. Therefore, the Administrator is proposing to allow new pumps to be equipped with enclosed seal areas that are connected to a control device with a closed vent system.

New Compressors

As in the case for new pumps, emission limits for new compressors have not been proposed because the application of available measurement methods would not be practicable due to technological or economic limitations. Like pumps, compressors are not generally designed to release fugitive emissions into a conveyance, and bagging of compressors for emission measurement would be expensive and impractical.

Equipment specifications evaluated for new compressors were (1) sealless compressors; (2) mechanical contact seal systems with barrier fluid systems and, if degassing is necessary, barrier fluid degassing vents connected to a control device; and (3) enclosed compressor seal areas vented to a control device. Mechanical contact seal systems were selected as the basis for Regulatory Alternative IV. The barrier fluid system used in this equipment would be similar to the system described for pumps with dual mechanical seals, although the compressor seal may be mechanical contact, oil film, or another type of seal. Leakage through the seal results in the presence of benzene in the barrier fluid, and this benzene could be emitted from the barrier fluid system. However, this benzene would be collected and directed to a control device (enclosed combustion or vapor recovery system) by a closed vent system that is connected to the barrier fluid system. This approach provides a high control efficiency and is the most applicable effective control technique for new compressors. Thus, the Administrator selected a seal system which includes a barrier fluid system as the required equipment for new compressors.

Section 112(e) of the Clean Air Act requires that when equipment standards are established, requirements must also be established to ensure the proper operation and maintenance of the equipment. A pressure or level indicator on the barrier fluid system would reveal any catastrophic failure of the inner or outer seal, or of the barrier fluid system. This indicator would be monitored in the control room or equipped with an alarm to signal a failure of the system. These requirements are proposed, therefore, to ensure the proper operation and maintenance of the mechanical contact seal system.

Although sealless compressors would achieve approximately 100 percent control, sealless compressors are not readily available in capacities large enough for most process applications and, therefore, have limited use. Consequently, sealless compressors were not considered under Regulatory Alternative IV and were not selected as equipment for the proposed standard. Leakless equipment, such as sealless compressors, are at least equivalent to mechanical contact seal systems, because benzene emissions from leakless equipment are eliminated. Thus, any equipment that complies with a no detectable emissions limit is equivalent to the mechanical contact seal system. As with other leakless equipment, the proposed standard requires an initial performance test, using proposed Reference Method 21, to verify that the piece of leakless equipment meets the no detectable emissions limit, and annual rechecks to ensure continued operation at no detectable emissions.

There are some cases in which seals with barrier fluid systems can not be utilized. For example, for some high pressure applications, reciprocating compressors may be required. Mechanical seals with a barrier fluid system can not be used under all process conditions due to pressure limitations. For those cases in which mechanical contact seals are not technically feasible, enclosure of the seal area would be the best option for new compressors. The enclosed area would be connected to a control device (enclosed combustion or vapor recovery) with a closed vent system. Therefore, the Administrator proposes to allow seal areas to be enclosed and connected to a control device with a closed vent system for new compressors.

Open-Ended Valves

Benzene from open-ended valves occurs due to leakage through the valve seat of a valve which seals the open end from the process fluid. Generally, open-ended valves are not designed to release fugitive emissions to a conveyance, and bagging of these sources for emission measurement would not be practical. A no detectable emissions limit is not feasible to prescribe because benzene could leak through the valve seat and become trapped in the line between the valve and closure. Consequently, benzene could be emitted. Thus, the approach of requiring equipment was examined.

Equipment considered for open-ended valves included improved valve seat technology and closure of the open-end. Improved valve seat technology was not selected because the effectiveness of such technology could be nullified by operating variables such as incomplete closure of the valve by operating personnel. Closure of the open end could be achieved by installing a cap, plug, blind, or a second valve on the open end. The control efficiency associated with these techniques is approximately 100 percent, except when the line is used for a draining or venting operation. Thus, the Administrator is proposing standards that require open-ended valves to be equipped with a cap, plug, blind, or a second valve.

To ensure the proper operation of the equipment, open-ended lines would also be covered by an operational standard. If a second valve is used, the proposed standard would require the upstream valve to be closed first. After the upstream valve is completely closed, the downstream valve must be closed. This operational requirement is necessary in order to prevent trapping process fluid between the two valves, which could

result in a situation equivalent to the uncontrolled open-ended valve.

Sampling Connections

When process samples are taken for analysis, it is necessary to purge some process fluid through the sample connection to obtain a representative stream sample. This sample purge would be vented to atmosphere if the fluid was gaseous, and liquid sample purges could be drained onto the ground or into open collection systems where evaporative emissions would result. Generally, sampling connections are not designed to release fugitive emissions to a conveyance, and bagging of these sources for emission measurement would not be practical. A no detectable emissions limit is not feasible to prescribe because no available data indicate that application of any control technique would be able to comply with such a standard at all times.

Closed-loop sampling was considered as the equipment specification for sampling connections. Closed-loop sampling systems eliminate emissions due to purging by either returning the purge materiaal directly to the process or by collecting the purge in a collection system which is not open to atmosphere for recycle or disposal. Thus, the Administrator selected closed-loop sampling systems as the required equipment for sampling connections.

Process Drains

Control by minimizing the potential for benzene leakage into the process drain system was considered for process drains. However, controls are specified for all potential major sources of benzene leakage into process drain systems. Thus, the Administrator did not consider it necessary to specify additional controls for process drains in the proposed standard.

Pipeline Valves, Existing Pumps, and Existing Compressors

Like some of the previously discussed fugitive emission sources, pipeline valves, existing pumps, and existing compressors are generally not designed to release fugitive emissions to a conveyance. Because of the large number and diverse location of valves, existing pumps, and existing compressors, bagging of these sources for emission measurement would not be economical or practical. A no detectable emissions limit can not be prescribed, because, with the control technique specified in Regulatory Alternatives III and IV, pipeline valves, existing pumps, and existing compressors are expected to leak occasionally. However, pipeline valves, existing pumps, and existing compressors that are designed to achieve a no detectable emission limit would be allowed and exempted from other requirements as discussed in the Other Fugitive Emission Sources with No Detectable Emissions section of this preamble.

Work practices consisting of periodic leak detection and repair programs were considered for valves, existing pumps, and existing compressors. Several factors influence the level of emission reduction that can be achieved by a leak detection and repair program. The three main factors are the monitoring interval, leak definition, and repair interval. Training and diligence of personnel conducting the program, repair methods attempted, and other site-specific factors may also influence the level of emission reduction achievable; however, these factors are less quantifiable than the three main factors.

The monitoring interval is the frequency at which individual component monitoring is conducted. The length of time between inspections is best determined by the rate at which new leaks occur and repaired leaks recur. More frequent inspections could then be required for sources which tend to leak more often. Available data that quantify the frequency of occurrence and recurrence of leaks are limited. However, more frequent monitoring would result in greater emission reduction because more frequent monitoring would require earlier leak detection and, therefore, would result in repair of leaks sooner.

Monthly monitoring was considered in Regulatory Alternatives III and IV. Tests indicate that leaks will be found with monthly inspections. Since some time may be required to schedule repair after a leak is detected, monitoring intervals shorter than one month could result in a situation where a detected leak could not be repaired before the next monitoring was required. One month was selected as the required monitoring interval because it would provide the greatest emission reduction potential without imposing difficulties in implementing the leak detection and repair program.

Monthly monitoring of valves to detect leaks is reasonable. However, some valves may leak less frequently than others. One indicator that might predict which valves leak is valve leak history. That is, once a valve leaks, then it may be more likely to leak again than a valve that has not leaked. The Administrator decided to implement the monthly monitoring requirement by focusing on the valves that tend to leak more often. One approach of doing this is to allow an alternative monitoring period for valves found to leak less frequently than others. The Administrator is proposing that leak detection and repair work practices include monthly monitoring for valves unless they are found not to leak for two successive months. If a valve is found not to leak for two successive months, the owner or operator may elect to monitor during the first month of the next quarter and quarterly thereafter until a leak is detected. Whenever a leak is detected, the valve would be monitored once a month until the valve did not leak for two successive months.

The proposed standard for valves is based on the assumption that recurrence is an important factor in predicting valve leaks. This assumption was used to develop a monitoring program that would result in a level of fugitive emission control comparable to that resulting from monthly monitoring. EPA does not intend to propose a monitoring plan that would be comparable to quarterly monitoring.

EPA is currently collecting data concerning the importance of valve leak recurrence. This data should be available for public review before the end of the public comment period. If the data show that recurrence is not a significant contributor to the total number of leaking valves, the proposed program will be reassessed and consideration will be given to returning to strict monthly monitoring.

The leak definition is the concentration observed during monitoring that defines leaking sources that require repair. As discussed in the Selection of Test Method section, the proposed standard would require the use of proposed Reference Method 21 to measure concentrations of organic chemicals at the leak interface. Two primary factors affect the selection of the leak definition. These factors are (1) the percent of total mass emissions which can potentially be controlled by the leak detection/repair program, and (2) the ability to repair the leaking components. The maximum potential emission reduction resulting from various leak definitions can be estimated for valves, pumps, and compressors in benzene service. Estimated emission reduction potentials (i.e., the maximum control efficiency that could be achieved if other contributing factors were 100 percent) are shown in Table 4–2 of the Background Information Document.

As the leak definition decreases, the maximum potential emission reduction increases due to the increasing number of sources that are found to be leaking and are repaired. The overall emission reduction of a leak detection and repair

program depends on several factors as noted above. Each of these factors limits the effectiveness of the program. If each of the factors considered in selecting the leak detection and repair program is 90 percent effective, then the overall effectiveness would be about 73 percent. Thus, the most restrictive definition that is reasonable for each factor should be selected. In order to provide the maximum control effectiveness of the leak detection and repair program, the lowest leak definition that is feasible in terms of monitoring and repair-ability should be selected.

Preliminary data from petroleum refineries show that attempting on-line repair at or above a leak definition of 10,000 ppm could result in a few cases where the attempted repair would increase the emission rate. However, these cases do not offset emission reductions achieved by repair. In these cases, more extensive repair effort than tightening or regreasing the packing would be required. These data also show that attempting repair in the 1,000 to 10,000 ppm (low level) range could result more often in individual emission rates with increases after simple repair. If such increases were to occur, the attempted repair of "low level" leaks could result in a lower overall emission reduction at 1,000 ppm than at the 10,000 ppm leak definition. Because the 10,000 ppm leak definition may provide a higher overall emission reduction of benzene fugitive emissions than the 1,000 ppm action level, 10,000 ppm was selected as the leak definition for leak detection monitoring.

The repair interval is the length of time allowed between the detection of a leaking source and repair of the source. As noted above, in order to make the overall program effective, the most restrictive selection for this factor should be chosen. Thus, in order to provide the maximum effectiveness of the leak detection and repair program, the repair interval should require exepeditious reduction of emissions but should allow the owner or operator sufficient time to maintain some degree of flexibility in overall maintenance scheduling.

The length of the repair interval would affect emission reductions achievable by the leak detection and repair program because leaking sources would be allowed to continue to leak for a given length of time. Repair intervals of 1, 5, 10, 30 and 45 days were evaluated. The effect on the maximum emission reduction potential is proportional to the number of days the source is allowed to leak between detection and repair.

A repair interval of one day would cause problems in coordinating activities of personnel involved in leak detection and leak repair and in some instances would not be technically feasible. A repair interval of one day would essentially require repair of each component as soon as the leak was discoverd.

Some valves, pumps, and compressors may not be repairable by simple field maintenance. They may require spare parts or removal from the process for repair. Repair intervals of 5 and 10 days could cause problems in obtaining acceptable repair, especially when removal from the process would be required. However, a 15-day interval provides the owner or operator with sufficient time for flexibility in repair scheduling, and provides time for better determination of methods for isolating pieces of leaking equipment for repair. In general, a 15-day repair interval allows more efficient handling of repair tasks while maintaining an effective reduction in fugitive emissions. Thus, the repair interval selected for proposal in the leak repair program is 15 days. A repair interval of 30 or 45 days was not selected because 15 days is the most restrictive yet feasible selection.

However, the first attempt at repair of a leaking source should be accomplished as soon as practicable after detection of the leak, but no later than five days after discovery. Most repairs can be done quickly, and five days should provide sufficient time to schedule maintenance and repair a leaking valve. Attempting to repair the leak within five days will help to identify the leaks that can not be repaired within the 15-day repair interval. Delay of repair would be allowed for leaks that could not be repaired without a process unit shutdown. These leaks would have to be repaired at the next scheduled unit shutdown.

Some existing pumps and compressors have been built with dual mechanical seal systems like those that would be required for new pumps and compressors. Because these existing pumps and compressors would achieve an emission reduction greater than that associated with the proposed work practices, they would be allowed and, therefore, would be exempted from the required work practices if a plant owner or operator chooses to reduce emissions through the use of the seal system. However, they would be required to comply with the dual mechanical seal system requirements as specified for new pumps and compressors.

Alternative Standard for Pipeline Valves

In an effort to provide more flexibility, two alternative standards are being proposed for pipeline valves in benzene service. Plant owners or operators could elect to comply with one of the alternative standards in order to tailor fugitive emission control programs to their own operations. Before the alternative standard could be considered, however, a plant owner or operator would implement a monthly monitoring program for at least one year. A plant owner or operator then could elect to comply with one of the alternative standards which would be based on information gathered during the 1-year implementation of monthly monitoring.

The first alternative standard would provide an allowable percentage of leaking valves. This type of standard would provide the flexibility of a performance standard by setting a limit which could be achieved by the most efficient and practical methods for a particular operation. As previously pointed out in Selection of Format for the Proposed Standard section of this preamble, an industry-wide allowable leak percentage was not possible for valves because of the variability in valve leak percentages among similar processes within the industry. However, the alternative standard would allow each process unit to comply with an allowable percentage of leaking valves which is determined by valve performance based on monthly monitoring in the leak detection and repair program.

The allowable percentage of leaking valves would be determined by averaging the percentage of valves found leaking in each month of the last six months of monitoring, excluding those which could not be repaired without a process unit shutdown. To this average would be added the additional percentage of leaks which would occur if valves found leaking were monitored monthly and those not found leaking for two successive months were monitored quarterly. The resulting sum would be the performance standard for the percentage of leaking valves that would be allowed at any time. If an owner or operator elected to comply with an allowable percentage of leaking valves, he would be required to meet this alternative standard at any time, even though his allowable percentage would be based on the average performance of a leak detection and repair program. Choosing this alternative standard would allow the possibility of using different monitoring and maintenance

programs and substitution of engineering controls at the discretion of the owner or operator. In addition, the alternative standard would eliminate much of the recordkeeping and reporting associated with the proposed standard for pipeline valves.

This alternative would require a minimum of one performance test per year. Additional performance tests could be requested by EPA. If the results of a performance test showed a precentage of leaking valves higher than the allowable limit, the process unit would be in violation. Reporting would consist of submitting performance test results to the Administrator; quarterly reporting would be eliminated for valves.

The second alternative standard would provide for the use of different work practices which would achieve the same level of control as the proposed standard for valves. After performing monthly monitoring for at least a year, the data collected would be used to devise work practices which would achieve the same control as the work practices specified in the proposed standard. Using this approach, an owner or operator could optimize labor and capital costs to achieve the required level of control by varying monitoring intervals or installing valves with lower probabilities of leaking. Quarterly reporting would be required under this alternative as it is under the proposed standard.

An owner or operator would request approval from the Administrator to use either alternative standard for pipeline valves. A request for approval would be accompanied by a description of the standard being selected for compliance and data and calculations supporting the basis for the alternative standard. The Administrator would approve or disapprove the alternative standard within 90 days of the request for approval. A denial from the Administrator would be accompanied by his reasoning for denial. An owner or operator would be required to comply with the proposed work practice standard for pipeline valves until the alternative is approved.

The approach of providing an alternative standard would be reassessed before promulgation of the proposed standard and, if promulgated, would be reviewed at the fifth-year review. At that time, changing, eliminating, or continuing the alternative standard would be considered.

Control Devices

Control devices would be used to dispose of benzene captured in closed vent systems from barrier fluid degassing systems, enclosed pump and compressor seal areas, and product accumulator vessels. In all cases, these control devices would receive streams with low and intermittent flow rates. These control devices may be designed to dispose of organic streams from other sources in the plant; therefore, the benzene streams may contribute a very small portion of the total loading on the control device. For these reasons, and because of technological limitations with measuring very low-flow streams, an emission standard was not proposed for these control devices.

Design requirements were evaluated in order to ensure that appropriate emission reductions would be achieved from control devices used in conjunction with closed vent systems. Enclosed combustion devices and vapor recovery systems were considered in evaluating control device design requirements. Enclosed combustion was specified because open flares may only be 60 percent efficient for benzene destruction in these low flow, intermittent streams. The design requirements specified for enclosed combustion are the attainment of a minimum 760° C for 0.5 seconds. Under these conditions, greater than 95 percent benzene destruction is achieved. Vapor recovery systems may also be used to control benzene from closed vent systems. A controlled efficiency of 95 percent was chosen as the design requirement because it is a reasonable control efficiency achievable for vapor recovery systems such as carbon adsorption or condensation units. These control devices would receive intermittent flows from the fugitive emission sources and, therefore, would require operation only during emissions from these sources. The Administrator is, therefore, proposing that the standard require enclosed combustion devices and vapor recovery systems used as control devices for closed vent systems to be designed for 95 percent benzene emission reduction and operated when emissions from sources covered by the proposed standard are vented to the control device.

Exclusions

Safety/relief valves in liquid service and flanges were excluded from routine monitoring and equipment requirements. However, if leaks from these sources are observed, repair would be required. These sources were excluded from routine monitoring and equipment requirements based on data from petroleum refineries, which is also applicable to the chemical industry. Flanges in refineries have very low emission rates. They contribute 2.2 percent of all emissions, but include 61 percent of the total number of sources. Safety/relief valves in liquid service also have very low emission rates in refineries. They contribute only 0.2 percent in all emissions. Since these types of sources contribute a very small portion of overall emissions, including them in the routine monitoring and equipment requirements was not considered reasonable.

Control Technique and Equipment Failures

Control technique and equipment failures can cause increased emissions from fugitive emission sources. Most control techniques and equipment for fugitive emission sources do not eliminate the possibility of emissions that result from control technique and equipment failures. For example, failure of dual mechanical seal systems does occur and can result in emissions of benzene that would not have otherwise occurred. The requirements included in the proposed standard, however, include provisions for controlling fugitive emissions during these failures. Thus, as discussed below, additional requirements for reducing emissions during control technique and equipment failures were not necessary.

For pipeline valves, existing pumps, and existing compressors, the proposed standard requires periodic leak detection and repair. This practice focuses on locting leaking valves, existing pumps, and existing compressors and requiring their repair. Certain leaking valves, existing pumps, and existing compressors can not be repaired within 15 days without a process unit shutdown. The proposed standard allows delays for repair of these pieces of equipment beyond 15 days and provides for repair of the leaking equipment during a process unit shutdown.

For new pumps, new compressors, open-ended valves, and sampling connections, the proposed standard would require certain equipment. The proposed standard includes provisions to assure the proper operation and maintenance of the equipment and, thus, focuses on detecting equipment failures and requiring their repair.

The proposed standard for safety/relief valves in gas/vapor service would require no detectable emissions except during overpressure releases. Emissions during over-pressure releases do not result from equipment failures, because the function of safety/relief valves is to discharge process fluid to reduce dangerous high pressures within the process. The proposed standard would require a return to no detectable

emissions within five days of an emergency episode.

The proposed standard for product accumulator vessels would require no detectable emissions. This requirement could be achieved by properly installing and maintaining a closed vent system to convey the emissions to a convenient but acceptance portion of the process/operation, to a plant fuel-gas sytem connected to a boiler furnace, or to a control device. A closed vent system that is properly installed and maintained will not allow emissions to occur. Therefore, emissions from equipment failures should not occur.

The proposed standard would require control devices to meet certain design requirements and to operate when emissions from fugitive sources are vented to them. Properly designed and operated control devices would not result in control equipment failures that would result in emissions. For example, emissions from new pump or compressor barrier fluid systems can be vented manually to a control device. The emissions, therefore, can be vented when the control device is operating, thus eliminating these emissions during control equipment failures. Increased emissions during control equipment failures should not occur with this requirement because emissions vented to control devices can be regulated so that the device is operating when emissions are vented. Therefore, dual control systems would not be needed to comply with this requirement.

In summary, it was not necessary to consider additional control techniques for reducing emissions during equipment failures because the proposed standard already contains provisions for handling these emissions. During control equipment failures, fugitive emissions collected by closed vent systems can be vented to a control device when it is operating.

Selection of Recordkeeping and Reporting Requirements

Recordkeeping.—Three recordkeeping alternatives were considered in evaluating the amount of recorded information needed to assess compliance with the proposed standard.

The first alternative would be to require no formal recordkeeping. If recorded documentation of the proposed leak detection and repair program were not required, no mechanism would be provided for checking the thoroughness of the industry's efforts to reduce fugitive emissions effectively. Because the effectiveness of the leak detection and repair program is dependent upon the thoroughness of the industry's efforts, this alternative was not chosen as the basis of the recordkeeping requirements.

The second alternative would require recordkeeping to document results of the leak detection and repair program and information relating to equipment specifications. Information would be recorded in sufficient detail to enable owners or operators to demonstrate compliance with the standard and, therefore, provide reasonable assurance of adequate reduction of fugitive emissions. This alternative would require the maintenance of quantitative records of repaired and unrepaired leaking components. This alternative would require only the minimum amount of records of the work practice leak detection and repair program necessary to ensure the effective implementation of the proposed standard.

The third alternative would require recordkeeping of all the information generated by the proposed standard. This information would include, for example, the leak rate (ppm) detected for all components monitored at a given facility. Much of this information would not be necessary to ensure the implementation of the proposed standard.

The second alternative was selected as the basis for the recordkeeping requirements of the proposed standard. This alternative would require the minimum industry resources for providing the necessary records to ensure effective implementation of the proposed standard. This alternative would also provide a basis for efficient reporting.

Specific information pertaining to the leak detection and repair would be recorded. Each source found to be leaking during the first month of a quarter would be identified with readily visible weatherproof identification bearing an I.D. number. The identification could be removed after the source had been repaired and monitored for leaks and repaired as necessary for the next two successive months. A log would be maintained for information pertaining to the leaking sources. The log would contain the instrument and operator identification numbers, the leaking source identification number, the date of detection of the leaking source, the date of the first attempt to repair the leaking source, repair methods applied in the first attempt to repair the source, and the date of final repair. The log would be kept for two years following the survey.

If the leaking component could not be repaired within 15 days, the reasons for unsuccessful repair and the date of anticipated successful repair would be recorded on the leak report form. Once the leaking source was successfully repaired, the date of repair would be recorded on the leak report form. These records would be needed to provide the information necessary to allow enforcement personnel to assess compliance with the work practice standards.

For equipment specifications, records would be maintained of the dates of installation, start-up, control equipment repair, and control equipment modifications. The dates and descriptions of any control equipment failures would also be recorded. These records would be needed to provide information necessary to allow enforcement personnel to assess the effectiveness of implementation and maintenance of equipment standards.

For design standards, records would be maintained of the location and type of equipment to which the standard applies. As an example, if a boiler furnace is used as a benzene emission control device, then the design fuel and air usage rates, the firebox volume, the average firebox temperature and other design specifications would be recorded.

Reporting.—Three alternatives were considered in evaluating the reporting information needed to assess compliance with the proposed standard. These alternatives represent varying levels of enforcement monitoring of the proposed standard. Enforcement personnel would review the reports submitted by industry personnel on the status of implementing the proposed standard. This review procedure reduces the need for in-plant inspections.

The first alternative would include an affidavit testifying that all specified equipment had been installed, that all components had been monitored, and that those with leaks in excess of the action level had been repaired. These requirements would provide less than the minimum information necessary to monitor compliance with the proposed standard. This alternative would not ensure that fugitive emission reductions had been achieved and would not provide a mechanism for checking the thoroughness of the industry's efforts to reduce these emissions. Thus, compliance with the proposed standard would be assessed mainly through in-plant inspections.

The second reporting alternative would require the submittal of information in sufficient detail to ensure the implementation and maintenance of emission and operational standards and of the specified equipment and the leak detection and repair programs as required by the proposed standard. These requirements would stipulate the

submittal of quarterly reports. Included in the reports would be a summary of information on the leaking components which had been detected during the quarter. This requirement would provide enforcement personnel with an overview of the repair of leaking components. A statement signed by the plant owner or operator attesting to the validity of the results of the monitoring surveys and instrument calibration procedures would allow enforcement personnel to assess the compliance of facilities with the work practice standards. The report would also attest to the proper application and operation of the equipment required by the proposed standard.

The third reporting alternative would require the submittal of all the information obtained while conducting leak detection and repair programs. This information would include the information reported in the second alternative and, additionally, comprehensive information on all tested components. This reporting alternative would necessitate the reporting of all information included in the recordkeeping requirements and would require more resources than the second alternative.

The second alternative was selected as the reporting rquirement for the proposed standard. This alternative provides sufficient information to review compliance without requiring excessive resources from industry and enforcement personnel. The first alternative was not selected because the compliance with work practice standards and the implementation of equipment standards could not be adequately assessed by enforcement personnel to ensure that reductions in fugitive emissions were achieved. The third reporting alternative was not selected because the additional resources expended by industry and enforcement personnel would not facilitate assessment of compliance with emission, operational, and work practice standards and implementation of equipment standards.

In the proposed standard, quarterly reporting of information pertaining to leaking sources detected but not repaired within 15 days of detection would be required. The necessary information would include the location, I.D. number, reasons for unsuccessful repair and the expected date when repair would be accomplished. The date of successful repair after 15 days of initial detection of the leak would also be reported. In addition, the owner or operator would submit a signed statement with the report certifying that compliance with the requirements has been met. One signed statement would be sufficient to cover all process units at the plant.

Equivalence of Alternative Means of Emission Limitation

Under the provisions of Section 112(e) of the Clean Air Act, if the Administrator establishes work practices, equipment, design or operational standards, then the Administrator must allow the use of alternative means of emission limitations if they achieve a reduction in air pollutants equivalent to that achieved under requirements of a standard of performance. Sufficient data would be required to show equivalency, and a public hearing would be required.

Individual owners or operators could request alternatives for specific requirements, such as the proposed equipment and the proposed leak detection and repair program. Sufficient information would have to be collected by a plant to demonstrate that the alternative control techniques would be equivalent to the control techniques required by the proposed standard. This information would then be submitted to EPA in a request for a determination of equivalence. A public hearing notice would be published in the **Federal Register.**

The data submitted in a request for equivalency of alternative control measures would take the form of test data to substantiate equivalency. To obtain permission to use alternate types of equipment, emission test data would be supplied for comparison to emission data from the specified equipment. Application for equivalence of alternative work practices would require submission of twelve months' data for the leak detection and repair program specified in the proposed standard and data for the alternate system. Based on the data collected for at least one year, an alternative work practice would then be set to take the place of the required work practice.

After public notice and opportunity for public hearing, the Administrator would determine the equivalence of an alternative means of emission limitation and would publish his determination in the **Federal Register.**

Impacts of Reporting Requirements

In addition to requirements of the General Provision of Subpart A of 40 CFR Part 61, the proposed standard would require quarterly reports including information pertaining to the required work practices. Estimates of the efforts associated with the reporting requirements indicate that the industry would incur manpower expenditures of approximately 20 man-years in 1985 to fulfill the requirements. No overlapping data requirements with other government agencies are anticipated.

Selection of Test Method

Several fugitive emission measurement and monitoring methods were identified and analyzed in the development of the proposed standard. Evaluation of these alternative methods was based upon results of emission testing conducted at petroleum refineries and organic chemical manufacturing plant.

One method of emission measurement is the direct measurement of leak rates from each source. Direct measurement of leak rate refers to the determination of mass emissions. For the wide variety of sources subject to the proposed standard, direct measurement would require "bagging" techniques for the determination of mass emissions from each source on a kg/hr basis. "Bagging" means to enclose a fugitive emission source with a shroud in order to capture all of the emissions from the source. The shroud must be attached securely to the source in order to ensure complete capture of emissions, and a flow measurement device is needed to measure the volumetric emission rate. After an appropriate equilibration time (5 to 30 minutes), depending on the shroud and the leak rate, a sample of the effluent from the shroud is taken to determine the organic compound concentration. The mass emission rate is then calculated based on the volume flow rate and concentration. Because of the large numbers of sources in a plant, direct measurements of leak rates would be costly, time-consuming, and impractical for routine testing. Therefore, direct measurement of leak rates was not selected as the emission measurement method for the proposed standard.

Indirect emission measurement methods or monitoring methods that would yield qualitative indications of leaks were reviewed. These monitoring methods are (1) a periodic individual component survey that would monitor all fugitive emission sources using portable detectors; (2) a periodic area, or walkthrough, survey that would monitor background concentrations of organic compounds using portable detectors; and (3) a continuous fixed-point monitoring system that would consist of stationary sensing devices with a remotely located central readout or a central analyzer system (gas chromatograph) with remotely collected samples.

Individual component surveys using portable detectors would be the most efficient method for detecting all leaks. The periodic individual component survey could be performed in a reasonable amount of time by monitoring personnel and could be accomplished with relative ease. The cost of a leak detector for the individual component survey would be reasonable.

Two individual component survey methods were identified: (1) leak detection by spraying each component with a soap solution and observing bubble formation; and (2) leak detection by measuring organic compound concentration with a portable detector. The magnitude of leak rates based on bubble formation is difficult to assess. In addition, bubble formation is subject to component temperature and component configuration restraints. Monitoring with a portable detector reduces the amount of variability in the measurement method. There is still some variability induced by this method, however, because of such uncontrollable factors as operator diligence and training. The portable detector is a good method for determining the number of leaks from a source. However, the correlation between emission rate and number of leaks is marginal. Therefore, for regulatory purposes, the portable detector is not suitable for quantifying the emission rate for each source. For these reasons, measurement of organic compound concentration with a portable detector was selected as the method for monitoring individual components.

A periodic area, or walkthrough, survey of background organic compound concentrations with a portable detector and recorder would be a less effective method for detecting leaks than the individual component survey. Interference due to local meteorological conditions and leaks from adjacent units would probably prevent the detection of all leaks within a process unit. In fact, experience has indicated that the area survey is suitable only for locating large leaks. In order to design a walkthrough method that is as sensitive to leaks as an individual component survey, the "action level" indicating the need to survey equipment within a specific area would need to be very low. In addition, the action level would need to be unit- and meteorology-specific (different action levels for different wind speeds). With an action level this low, the background level of organic compound concentration measured could cause considerable interference. Furthermore, leaks would be indicated almost everywhere within the unit. In many cases, an individual component survey would be necessary to locate the actual leaks. Therefore, since it is not possible to provide an industry-wide action level indicative of leaks for a given process unit, and since any action level that was determined could give so many false indications of leaks that a complete individual component survey would be necessary to detect the actual leaks, a walkthrough survey was not judged to be a reasonable approach for leak detection.

Implementation of a continuous fixed-point minitoring system would require a portable detector to locate specific leaking components in addition to multiple stationary monitors or sample collectors. This system would also be a less efficient method for detecting emissions. Possible meteorological interference and problems with measuring concentrations of remotely collected samples would prevent efficient leak detection by a fixed-point system. Except for possible monitoring equipment calibration problems, the fixed-point system would be operated with relative ease by monitoring personnel, who would still be required to use portable detectors to find the individual leaking components indicated by the fixed-point monitoring system. Implementation of a continuous fixed-point monitoring system would be capital-intensive, although labor costs would probably be the least of the three monitoring methods.

Some characteristics of the three indirect emission measurement methods are similar, including safety considerations and ease of operation for monitoring personnel. Some aspects of the three methods are different. Capital and operating costs vary, as do the efficiencies of the methods in detecting leaks. The component method is characterized by a superior leak detection efficiency and reasonable costs; other aspects of the method, including safety and ease of operation, are similar to those of the walkthrough and fixed-point methods. Therefore, the individual component survey was selected as the monitoring method for the standard. Reference Method 21 is being proposed under 40 CFR Part 60, Appendix A and uses the individual component survey monitoring method and, thus, is the method being recommended for the proposed standard.

Selected Test Procedure—The recommended test method would incorporate the use of a portable detector to measure the concentration of volatile organic vapors at a source to yield a qualitative or semiquantitative indication of the emission rate from the source. The test procedure does not detect benzene specifically; instead, the volatile organic compound concentration is measured. There is commercially available one type of portable detector that has the capability of measuring benzene by chromatographic techniques. However, the addition of the requirement that benzene be measured specifically would require more time and more extensive testing support. Measurement of benzene would not yield additional information, since the designated sources are those in which benzene is transported; and a measure of organic vapor leakage is indicative of a benzene leak.

Tests in petroleum refineries have established concentrations versus mass emission relationships for various fugitive emission sources. Also, tests have indicated that local conditions cause variations in concentration readings at points removed from the surface of the interface on the component where leaking occurs. Therefore, the proposed standard would require the concentration to be measured at the interface surface.

The proposed standard would require periodic monitoring for certain fugitive emission sources, including in-line process valves. These valves would include control, globe, gate, plug, and ball valves in benzene service. For monitoring of these valves, the instrument detector probe would be placed at the interface where the stem exits the packing gland (or O-ring seal). The valve stem circumference would be monitored, and special emphasis would be placed on positioning the probe inlet at the local upwind and downwind side of the stem. If the maximum observed concentration is greater than 10,000 ppm above background, leak would be detected. Monitoring is similar for pumps and compressors.

Additionally, the proposed standard would require that safety/relief valves and product accumulator vessels comply with a no detectable emissions limit. A concentration for no detectable emissions needs to be defined such that when emissions occur they can be detected and when emissions do not occur they are not mistakenly detected. Based on considerations with the calibration procedures and monitor variability, 2 percent of the definition of a leak was selected as the definition of no detectable emissions. Thus, in this case, no detectable emissions means less than 200 ppm above background concentration at the leak interface. To determine compliance with this emission limit for safety/relief valves

and product accumulator vessels, the background concentration around each source would first be determined by moving the probe inlet randomly upwind and downwind of the source at a distance of 1 to 2 meters from the source. If an interference exists due to a nearby emission or leak, then the background concentration could be determined at a distance closer to the source; however, this distance could not be less than 25 centimeters from the source. The background concentration would then be noted and the probe inlet would be moved to the surface of the source to conduct the survey.

For safety/relief valves equipped with a rupture disk, the probe inlet would be placed at approximately the center of the exhaust area, or horn. If the observed concentration is greater than 200 ppm above background concentration, a leak would be detected. The sampling would be repeated after each discharge of the valve to verify that the valve has been returned to a state of no detectable emissions.

For safety/relief valves vented to a flare and for accumulator vessels vented to a closed vent system, compliance would be determined by visual inspection and an initial survey of all piping connections prior to the flare or control device. The visual inspection would verify the existence of the required ducting and control device and that there are no sources where emissions could be vented to the atmosphere prior to the control device. The initial sampling survey would verify that there are no detectable emissions from any of the piping connections between the source and the control device. The sampling survey would be repeated after any maintenance work requiring the opening of any piping connections in the closed vent system.

The VOC detector used in the proposed monitoring program would be required to conform to several specifications to ensure consistent industry-wide monitoring, effective VOC emission reduction efforts, and safe leak detection programs. These equipment specifications are as follows: (1) the instrument should respond to total hydrocarbons or combustible gases. Detector types which may meet this requirement include catalytic oxidation, flame ionization, infrared absorption, and photoionization; (2) the instrument should be safe for operation in explosive atmospheres; (3) the instrument should incorporate an appropriate range or dilution option so that concentration levels of 10,000 ppm above background can be measured; (4) the instrument should be equipped with a pump so that a continuous sample can be provided to the detector. The nominal sample flow rate should be 1 to 3 liters per minute; (5) the scale of the instrument readout meter should be readable to ±5 percent at 10,000 ppm above background.

The monitoring instrument would be calibrated before each monitoring survey with methane. Thus, the required calibration gases would be a zero gas (air, <3 ppm VOC) and a methane-air mixture (approximately 10,000 ppm methane). If cylinder calibration gas mixtures would be used, they would have to be analyzed and certified by the manufacturer to within ±2 percent accuracy. Calibration gases prepared by the user according to an accepted gaseous standards preparation procedure would also have to be accurate within ±2 percent.

The monitoring instrument would be subjected to other performance requirements prior to being placed in service for the first time. The instrument would be subjected to the performance criteria every six months and after any modification or replacement of the instrument detector.

The proposed standard also requires that ASTM Method D2267-68 ("Aromatics in Light Naphthas in Aviation Gasoline by Gas Chromatography") be used to determine the percent benzene in the process fluid within a fugitive emission source. This determination would be made only when the exact concentration of benzene is uncertain.

Public Hearing

A public hearing will be held to discuss the proposed standard for benzene fugitive emissions in accordance with Section 307(d)(5) of the Clean Air Act. Persons wishing to make oral presentations on the proposed standard for benzene fugitive emissions should contact EPA at the address given in the ADDRESSES section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements should be addressed to the Central Docket Section address given in the ADDRESSES section of this preamble and should refer to docket number A-79-27.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Central Docket Section in Washington, D.C. (see ADDRESSES section of this preamble).

Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this proposed rulemaking. The principal purposes of the docket are (1) to allow members of the public and industries involved to identify and locate documents so they can intelligently and effectively participate in the rulemaking process, and (2) to serve as the record in case of judicial review.

Miscellaneous

In accordance with Section 117 of the Act, publication of this proposal was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. In addition, members of the benzene task group of the Interagency Regulatory Liaison Group, representing EPA, OSHA, the Food and Drug Administration, and the Consumer Product Safety Commission, have met and reviewed the proposed standard to ensure that the statement of the rule is jointly understood and is consistent with their programs. The Administrator will welcome comments on all aspects of the proposed regulations, including economic and technological issues, and on the proposed test method.

This regulation will be reviewed five years from the date of promulgation. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology, and the reporting requirements. The reporting requirements in this regulation will be reviewed as required under the EPA sunset policy for reporting requirements in regulations.

Dated: December 18, 1980.

Douglas M. Costle,

Administrator.

It is proposed to amend 40 CFR Part 61 by adding Subpart J as follows:

Subpart J—National Emission Standard for Benzene Fugitive Emissions

Sec.

Authority: Section 112, 301(a) of the Clean Air Act, as amended, (42 U.S.C. 7411, 7601(a)), and additional authority as noted below.

Subpart J—National Emission Standard for Benzene

§ 61.110 Applicability and designation of sources.

(a) The provisions of this subpart apply to each of the following designated sources that are intended to operate in benzene service: pumps, compressors, pipeline valves, safety/relief valves, sampling systems, open-ended valves, pipeline flanges, and product accumulator vessels. The provisions of this subpart do not apply to coke oven by-product plants.

(b) While the provisions of this subpart are effective, a designated source that is also subject to the provisions of 40 CFR Part 60 shall only be required to comply with the provisions of this subpart.

§ 61.111 Definitions.

As used in this subpart, all terms not defined here shall have the meaning given them in the Act and in subpart A of Part 61, and the following terms shall have the specific meanings given them:

"In Benzene Service" means that the fugitive emission source either contains or contacts a fluid (liquid or gas) that is at least 10 percent by weight benzene.

"Closed Vent System" means a system that is not open to atmosphere and is a combination of piping, connections and, if necessary, flow-inducing devices that transports gas or vapor from a fugitive emission source to an enclosed combustion device or vapor recovery system.

"Enclosed Combustion Device" means any combustion device that is not open to atmosphere, such as a process heater or furance, but not a flare.

"First Attempt at Repair" means to take action for the purpose of stopping or reducing leakage of organic material to atmosphere using best modern practices.

"Fixed Capital Cost" means the capital needed to provide all the depreciable components.

"Fugitive Emission Source" means each pump, pipeline valve, safety/relief valve, open-ended valve, flange or other connector, compressor, product accumulator vessel, or sampling system.

"In Gas/Vapor Service" means that the fugitive emission source contains process fluid that is in the gaseous state at operating conditions.

"Open-Ended Valve" means any valve, except safety/relief valves, with one side of the valve seat in contact with process fluid and one side open to atmosphere, either directly or through open piping.

"Pipeline Valve" means the stem packing and collar seat of any externally actuated device that has a stem that extends into the process fluid and is used to regulate the flow of liquids or gases through a pipe.

"Process Unit" means equipment assembled to produce benzene or benzene derivatives as intermediates or final products, or equipment that uses benzene in the production of a final product.

"Product Accumulator Vessel" means any distillate receiver, bottoms receiver, surge control vessel, or product separator in benzene service that is vented to atmosphere either directly or through a vacuum-producing system. A product accumulator vessel is in benzene service if the liquid or the vapor in the vessel is at least 10 percent by weight benzene.

"Reconstruction" means the replacement of components of an existing source to such an extent that:

(1) The fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable, entirely new source; and

(2) It is feasible, considering economic impacts and the technological problems associated with retrofit, to meet the applicable standard for new sources set forth in this subpart.

"Repaired" means that a fugitive emission source is adjusted or otherwise altered in order to reduce fugitive emissions below the level which indicates the necessity for repair as required in § 61.112.

"In Vacuum Service" means that the fugitive emission source is operating at internal pressures that are continously less than 100 kPa.

"Vapor Recovery System" means any type of control device capable of capturing benzene vapor from a gas stream, such as carbon adsorption, vapor compression and vapor refrigeration systems.

§ 61.112 Standard for new and existing sources.

Each owner or operator subject to the provisions of this subpart shall comply with the following requirements for fugitive emission sources in benzene service, execpt those in vacuum service:

(a) New pumps and compressors.

(1) Each new pump shall be equipped with a dual mechanical seal system that includes a barrier fluid between the seals, except as provided in §§ 61.112(a)(7), 61.112(a)(8), and 61.112(i). Each new compressor shall be equipped with a seal system that includes a barrier fluid and that prevents leakage of process fluid to atmosphere, except as provided in §§ 61.112(a)(7), 61.112(a)(8), and 61.112(i). Benzene concentration in the barrier fluid shall be maintained below 10 percent by weight at all times.

(2) Each system as required in § 61.112(a)(1) shall be equipped with a sensor that will detect failure of the seal system, the barrier fluid system, or both.

(3) Each sensor as required in § 61.112(a)(2) shall be checked daily or shall be equipped with an audible alarm. Based on design considerations and operating experience, a criterion that indicates failure of the seal system, the barrier fluid system, or both shall be determined for each dual mechanical seal system. If this criterion is registered by the sensor, a leak is detected.

(4) Each pump shall be checked by visual inspection, each calendar week, for indications of liquids dripping from the pump seal. If indications of liquids dripping from the pump seal are observed, a leak is detected.

(5) When leak is detected, it shall be repaired as soon as is practicable, but no later that 15 calendar days after the leak is deteced. A first attempt at repair shall be made no later than five calendar days after each leak is detected.

(6) Each dual mechanical seal system as required in § 61.112(a)(1) shall be—

(i) Operated with the barrier fluid at a pressure that is greater at all times than the pump stuffing box pressure,

(ii) Equipped with a barrier fluid degassing reservoir that is connected by a closed vent system to an enclosed combustion device designed for a minimum residence time of 0.50 seconds at 760°C or to a vapor recovery system designed for a minimum of 95 percent capture of benzene input to the vapor recovery system, or

(iii) Designed and operated so that no benzene can be emitted to atmosphere when barrier fluid purging is required.

(7) Any new pump or compressor that is not equipped with the requirements of § 61.112(a)(1) shall be equipped with a closed vent system capable of transporting all leakage from the seal to an enclosed combustion device designed to provide a minimum residence time of 0.50 seconds at a minimum temperature of 760°C or to a vapor recovery system designed for a minimum of 95 percent capture of benzene input to the system. Closed vent systems, enclosed combustion devices, and vapor recovery systems used to comply with this requirement shall be operated at all times when benzene emissions may occur.

(8) Any new pump or compressor that is designated as required in § 61.116(d)(1) for emissions having a concentration of less than 200 parts per million (ppm) by volume above background, as determined by the methods specified in § 61.115(b), is exempt from the requirements of § 61.112(a)(1)–(7) if the pump—

(i) Has no externally actuated shaft penetrating the pump housing,

(ii) Is operated with emissions less that 200 ppm above background as determined by the methods specified in § 61.115(b), and

(iii) Is tested for compliance with § 61.112(a)(8)(ii) annually and at the request of the Administrator.

(9) Closed vent systems, enclosed combustion devices, and vapor recovery systems used to comply with §§ 61.112(a)(6) (ii) and (iii) shall be operated at all times when benzene from the barrier fluid degassing reservoir may occur.

(b) Safety/relief valves in gas/vapor service.

(1) Each safety/relief valve in gas/vapor service shall be operated at a state of emissions having a concentration of less than 200 ppm above background, as determined by the methods specified in § 61.115(b), except during pressure releases.

(2) Each safety/relief valve shall be returned to a state of emissions having a concentration of less than 200 ppm above background after each pressure release as soon as is practicable, but no later than five calendar days, after each pressure release.

(c) Sampling systems.

(1) Each sampling system shall be equipped with a closed purge system.

(2) Each closed purge system as required by § 61.112(c)(1) shall return the purged process fluid directly to the process line, or shall collect the purged process fluid for recycle or disposal without benzene emissions to atmosphere.

(3) *In-situ* sampling systems are exempt from §§ 61.112(c) (1) and (2).

(d) Pipeline valves, open-ended valves, and existing pumps and compressors.

(1) Each pipeline valve, existing pump, and existing compressor shall be monitored monthly to detect leaks by the methods specified in § 61.115(a). If a concentration greater than or equal to 10,000 ppm above background is measured, a leak is detected.

(2) When a leak is detected, it shall be repaired as soon as is practicable, but no later than 15 days after it is detected except as provided in § 61.112(g). A first attempt at repair of the designated source shall be made no later than five calendar days after each leak is detected.

(3) First attempts at repair for pipeline valves should include, but are not limited to, the following procedures, if practicable:

(i) Tightening of bonnet bolts.

(ii) Replacement of bonnet bolts.

(iii) Tightening of packing gland nuts.

(iv) Injection of lubricant into lubricated packing.

(4) Any pipeline valve for which a leak is not detected for two successive months may be monitored during the first month of every quarter beginning with the next quarter by the methods specified in § 61.115(a) until a leak is detected. If a leak is detected, the valve shall be monitored monthly until a leak is not detected for two successive months.

(5) Any pipeline valve, existing pump, or existing compressor that is designated as required in § 61.116(d)(1) for emissions having a concentration less than 200 ppm above background, as determined by the methods specified in § 61.115(b), is exempt from the requirements of §§ 61.112 (d) (1)–(4) if it—

(i) Has no external actuating mechanism in contact with the process fluid,

(ii) Is operated with emissions having a concentration less than 200 ppm above background, as determined by the methods specified in § 61.115(b), and

(iii) Is tested for compliance with § 61.112(d)(5)(ii) annually and at the request of the Administrator.

(6) Each open-ended valve shall be equipped with a cap, blind, plug, or a closed second valve that is attached to seal the open end at all times except during operations requiring flow through the open-ended valve.

(7) Each open-ended valve equipped with a second valve, as required in § 61.112(d)(6), shall be operated such that the open-ended valve is completely closed before the second valve is closed.

(8) Any existing pump or existing compressor that is designated as required in § 61.116(d)(1) for compliance with the new pump or compressor requirements in § 61.112(a) is exempt from the requirements of § 61.112(d). These existing pumps and compressors shall comply with the requirements of § 61.112(a).

(9) Each pump shall be checked by visual inspection each calendar week for indications of liquids dripping from the pump seal. If indications of liquids dripping from the pump seal are observed, a leak is detected.

(e) Product accumulator vessels.

(1) Each product accumulator vessel shall be operated at a state of emissions having a concentration less than 200 ppm above background, as measured by the methods specified in § 61.115(b)

(2 Product accumulator vessels that are used in the production of ethylbenzene or styrene are exemped from § 61.112(e)(1).

(3) Closed vent systems used to achieve compliance with § 61.112(e)(1) shall be designed to transport emissions from the product accumulator vessel to either an enclosed combustion device designed to provide a minimum residence time of 0.50 seconds at a minimum temperature of 760°C or to a vapor recovery system designed for a minimum of 95 percent capture of benzene input to the system. Closed vent systems, enclosed combustion devices, and vapor recovery systems used to comply with the requirement specified in § 61.112(e)(1) shall be operated at all times when benzene emissions may occur.

(f) Other fugitive emission sources.

(1) Fugitive emission sources in benzene service that are not covered in §§ 61.112 (a)–(e) of this subpart, such as safety/relief valves in liquid service and pipeline flanges or other connectors, shall be monitored to detect leaks by the methods specified in § 61.115(a) as soon as practicable, but no later than five calendar days, after leakage is detected by visual, audible, olfactory, or any other method.

(2) If a concentration greater than or equal to 10,000 ppm above background is measured, a leak is detected.

(3) If a leak is detected, it shall be repaired as soon as is practicable, but no later than 15 calendar days after the leak is detected, except as provided in § 61.112(g) of this subpart. A first attempt at repair shall be made within five calendar days after each leak is detected.

(g) Delay of repair of fugitive emission sources for which leaks have been detected will be allowed only if repair is technically infeasible without a complete or partial process unit shutdown. Delay of repair will not be allowed beyond a process unit shutdown.

(h) Each designated source shall be marked in such a manner that will be readily obvious to both plant and enforcement personnel.

(i) A determination of equivalence of alternative means of emission limitation to the requirements of §§ 61.112(a), (c), (d), and (f) may be requested as provided in § 61.114. If the Administrator determines that an alternative means of emission limitation is at least equivalent to the requirements of §§ 61.112(a), (c), (d), and (f), the

requirements of that determination shall apply.

(j) Upon reconstruction, an existing source shall become a new source for the purposes of this subpart.

(k) Compliance with §§ 61.112 (a)–(j) shall be determined by review of records and inspection. Compliance with §§ 61.112(a)(8), (b), (d)(5), and (e) shall be determined by the methods specified in § 61.115(b).

§ 61.113 Alternative standard.

(a) Pipeline valves in benzene service—allowable percentage of leaking valves.

(1) After performing a monthly leak detection and repair program in accordance with §§ 61.112(d) (1)–(5) for at least 12 months, an owner or operator may request approval from the Administrator to comply with an allowable percentage of leaking pipeline valves in benzene service.

(2) The following requirements shall be met if an owner or operator wishes to comply with an allowable percentage of leaking pipeline valves:

(i) An owner or operator must request approval of the Administrator to comply with an allowable percentage of leaking valves.

(ii) An owner or operator must have performed a monthly leak detection and repair program in accordance with §§ 61.112(d) (1)–(5) for at least 12 months before a request for approval is submitted.

(iii) A request for approval of an allowable percentage of leaking valves musts be accompanied by data and calculations which describe the methodology used for determining the allowable percentage of leaking valves.

(iv) A performance test as specified in § 61.113(a)(4) shall be conducted annually and at the request of the Administrator. A written report of the results of the performance test shall be submitted to the Administrator within a time interval specified by the Administrator.

(v) If a valve leak is detected, an attempt must be made to repair it.

(3) The allowable percentage of leaking valves shall be determined by adding the monthly baseline percentage of leaking valves demonstrated during the last six months under monthly monitoring and the monthly incremental percentage of leaking valves which would have occurred if the provisions of § 61.112(d)(4) had been followed.

(i) The monthly baseline percentage of leaking valves shall be determined by obtaining a monthly average of the percentage of leaking valves found in an affected process unit during the last six months of operation under monthly monitoring.

(ii) The monthly incremental percentage of leaking valves shall be determined by averaging the percentage of valves for which leaks had been detected in the second and third months of the last two quarters but which had not been detected during the first months of the last two quarters.

(iii) A percentage of leaking valves shall be determined by dividing the total number of leaking valves by the total number of valves in an affected process unit, excluding those leaking valves for which repair has been delayed because a process unit shutdown would be required as provided in § 61.112(g) and those valves which are complying with the provisions of § 61.112(d)(5).

(4) Performance tests shall be conducted in the following manner:

(i) All valves within the affected process unit shall be monitored by the methods specified in § 61.115(a).

(ii) If a VOC concentration of 10,000 ppm or greater is measured, a leak is detected.

(iii) The leak percentage shall be determined by dividing the number of valves for which leaks are detected by the number of valves within the affected process unit, excluding valves for which repair has been delayed because a process unit shutdown would be required, and those which are complying with the provisions of § 61.112(d)(5).

(iv) For those valves for which repair has been delayed because a process unit shutdown would be required, records of attempted repair must be provided at the request of the Administrator. Records of attempted repair for those valves for which repair has been delayed shall be kept for two years.

(5) (i) The Administrator will approve or disapprove this alternative within 90 days of the request for approval.

(ii) If the Administrator denies the use of this alternative, the Administrator will notify the owner or operator of the reasons for the denial.

(iii) If the Administrator is reviewing a request for the use of this alternative as specified in §§ 61.113(a) (1) and (2), the Administrator may request additional information. If the Administrator is reviewing a denial of this alternative, as specified in § 61.113(a)(5)(i), the Administrator may request additional information.

(iv) The owner or operator shall be subject to the requirements of §§ 61.112(d)(1)–(5) until this alternative is approved.

(6) The reporting provisions of §§ 61.117(b)(2)–(6) and (8) would not apply to owners or operators complying with an allowable percentage of leaking valves.

(b) Pipeline valves in benzene service-alternative work practices.

(1) After performing a monthly leak detection and repair program in accordance with §§ 61.112(d)(1)–(5) for at least 12 months, an owner or operator may request approval of the Administrator to comply with an alternative work practice for pipeline valves in benzene service which differs from the work practice required in §§ 61.112(d) (1) and (4).

(2) The following requirements shall be met if an owner or operator wishes to comply with an alternative work practice:

(i) An owner or operator must request approval of the Administrator to comply with an alternative work practice standard.

(ii) An owner or operator must have performed a monthly leak detection and repair program in accordance with §§ 61.112(d)(1)–(5) for 12 months before a request for approval is submitted.

(iii) A request for approval of an alternative work practice standard must be accompanied by data and calculations showing that the alternative work practice complies with the requirements of § 61.113(b)(3).

(3) The alternative work practice program shall be designed to accomplish the emission reduction associated with the required program in §§ 61.112(d)(1)–(5). To demonstrate this reduction, an owner or operator shall determine the leak occurrence and recurrence for each program. These data shall be used to show that the expected percentage of leaking valves in the affected process unit under the alternative program is equal to or less than the expected percentage of leaking valves under the required program.

(4)(i) The Administrator will approve or disapprove this alternative within 90 days of the request for approval.

(ii) If the Administrator denies the use of this alternative work practice, the Administrator will notify the owner or operator of the reasons for the denial.

(iii) If the Administrator is reviewing a request for the use of this alternative work practice as specified in §§ 61.113(b) (1) and (2), the Administrator may request additional information. If the Administrator is reviewing a denial of this alternative work practice, as specified in § 61.113(b)(4)(i), the Administrator may request additional information.

(iv) The owner or operator shall be subject to the requirements of §§61.112(d)(1)–(5) until this alternative is approved.

§ 61.114 Equivalence of alternative means of emission limitation.

(a) Each owner or operator subject to the provisions of this subpart may apply to the Administrator for determination of equivalence for any alternative means of emission limitation that achieves a reduction in emissions of benzene at least equivalent to the reduction in emissions of benzene of the controls required in §61.112.

(b) Determination of equvalence to the equipment requirements in §§ 61.112 (a), (c), and (d) will be evaluated by the following guidelines:

(1) Each owner or operator apply for an equivalence determination shall be responsible for collecting and verifying test data to demonstrate equivalence of an alternative means of emission limitation to the requirements of §§ 61.112 (a), (c), and (d).

(2) The Administrator will compare test data for the alternative means of emission limitation to test data for the specific equipment requirement.

(3) The Administrator may condition approval of equivalency on requirements that may be necessary to assure operation and maintenance to achieve the same emission reduction as the equipment requirements of §§ 61.112 (a), (c), and (d).

(c) Determination of equivalence to the work practices required in § 61.112(d) will be evaluated by the following guidelines:

(1) Each owner or operator applying for an equivalence determination shall be responsible for collecting and verifying test data to demonstrate equivalence of an alternative means of emission limitation to the requirements of § 61.112(d).

(2) For designated sources for which a determination of equivalence is requested, the emission reduction achieved by the requirements of § 61.112(d) shall be demonstrated for a minimum period of 12 months. A quantitative performance level shall be determined that describes the emission reduction achieved by the requirements of § 61.112(d).

(3) For these designated sources, the emission reduction achieved by any alternative means of emission limitation shall be demonstrated.

(4) Each owner or operator applying for a determination of equivalence shall commit to compliance with a performance that provides for emission reductions equal to or greater than the emission reductions achievable by the requirements of § 61.112(d).

(5) The Administrator will compare the demonstrated emission reduction for the alternative means of emission limitation to the demonstrated emission reduction for the work practice requirements of § 61.112(d) and will consider the commitment in § 61.114(c)(4).

(6) The Administrator may condition approval of equivalency on requirements that may be necessary to assure operation and maintenance to achieve the same emission reduction as the requirements of § 61.112(d).

(d) After a request for determination of equivalence is received, the Administrator will publish a notice in the **Federal Register** and provide the opportunity for public hearing. After notice and opportunity for public hearing, the Administrator will determine the equivalence of an alternative means of emission limitation and will publish the determination in the **Federal Register.**

§ 61.115 Test methods and procedures.

Each owner or operator subject to the provisions of this subpart shall comply with the following test method and procedure requirements:

(a) Monitoring as required by § 61.112(d)(1) shall comply with the following requirements:

(1) Monitoring shall comply with 40 CFR Part 60, Appendix A, Reference Method 21.

(2) The detection instrument shall meet the performance criteria of 40 CFR Part 60, Appendix A, Reference Method 21.

(3) The instrument shall be calibrated on the day of its use by the methods specified in 40 CFR Part 60, Appendix A, Reference Method 21.

(4) Calibration gases shall be:

(i) zero air (less than 3 ppm of VOC in air), and

(ii) approximately 10,000 ppm methane in air.

(5) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible, as described in 40 CFR Part 60, Appendix A, Reference Method 21.

(b) When fugitive emission sources are tested for emissions having a concentration less than 200 ppm above background as required by §§ 61.112 (a), (b), and (d), the testing shall comply with the following requirements:

(1) The requirements of §§ 61.115(a) (1), (2), (3), and (4) shall apply.

(2) If a test for emissions less than 200 ppm above background is requested by the Administrator, then the background level shall be determined and the instrument probe shall be traversed around all potential leak interfaces at the minimum distance possible, as set forth in 40 CFR Part 60, Appendix A, Reference Method 21.

(3) If the difference in the background level and the concentration level measured at all potential leak interfaces is less than 200 ppm, then the emissions are less than 200 ppm above background.

(c) For purposes of determining the percent benzene in the process fluid within a fugitive emission source, procedures that conform to the general methods in ASTM Method D2267–68 shall be used.

(Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414))

§ 61.116 Recordkeeping requirements.

Each owner or operator subject to the provisions of this subpart shall comply with the following recordkeeping requirements:

(a) When each leak is detected as specified in §§ 61.112 (a), (d), and (f), the following requirements shall apply:

(1) Weatherproof and readily visible identification, marked with the source identification number, shall be attached to the leaking source.

(2) The identification may be removed after the fugitive emission source (except pipeline valves) has been repaired. For pipeline valves, the identification may be removed after it has been monitored for two successive months as specified in § 61.112(d)(4) and no leak has been detected during those two months.

(b) When each leak is detected as specified in §§ 61.112 (a), (d), and (f), the following information shall be recorded in a log and shall be kept for two years in a readily accessible location:

(1) The instrument and operator identification numbers and the source identification number.

(2) The date the leak is detected and the dates of each attempt to repair the leak.

(3) Repair methods applied in each attempt to repair the leak.

(4) Whether the maximum VOC concentration measured by the methods specified in § 61.115(a) after each repair attempt was greater than or less than 10,000 ppm above background.

(5) "Repair delayed" if a leak is not repaired within 15 calendar days after discovery of the leak.

(6) The signature of the owner or operator whose decision it was that repair could not be effected without a process unit shutdown.

(7) the expected date of successful repair of the leak if a leak is not repaired within 15 days.

(8) the date of successful repair of the leak.

(c) The following information pertaining to the design requirements for closed vent systems, enclosed

combustion devices, and vapor recovery systems specified in § 61.112 (a) and (e) shall be recorded and kept in a readily accessible location:

(1) Detailed schematics, design specifications, and piping and instrumentation diagrams.

(2) The dates and descriptions of any changes in the design specifications.

(3) Dates of startups and shutdowns of enclosed combustion devices and vapor recovery systems specified in § 61.112 (a) and (e) and dates when these systems are not functioning as designed.

(d) the following information pertaining to all fugitive emission sources subject to the requirements in §§ 61.112 (a), (b), (d), and (e) shall be recorded in a log that is kept in a readily accessible location:

(1) A list of identification numbers for fugitive emission sources that are designated for emissions having a concentration less than 200 ppm above background under the provisions of §§ 61.112 (a)(8), (b)(1), (d)(5), and (e)(1) and are designated for compliance with new source requirements under the provisions of § 61.112(d)(8). The designation of these sources as subject to these sections shall be signed by the owner or operator.

(2) the dates of each verification test for emissions having a concentration less than 200 ppm above background.

(3) the background level measured during each verification test as described in § 61.115(b).

(4) the maximum VOC concentration measured at the source during each verification test as described in § 61.115(b).

(e) The following information shall be recorded in a log that is kept in a readily accessible location:

(1) the design criterion required in § 61.112(a)(3).

(2) Any changes to this criterion and the reasons for the change. (Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414).)

§ 61.117 Reporting requirements.

Each owner or operator subject to the provisions of this subpart shall comply with the following reporting requirements:

(a)(1) An owner or operator of any source to which this subpart applies shall submit a statement in writing notifying the Administrator that the requirements of §§ 61.112, 61.116, and 61.117 are being implemented.

(2) In the case of an existing source or a new source which has an initial startup date preceding the effective date, the statement is to be submitted within 90 days of the effective date, unless a waiver of compliance is granted under § 61.11, along with the information required under § 61.10. If a waiver of compliance is granted, the statement is to be submitted on a date scheduled by the Administrator.

(3) In the case of new sources which did not have an initial startup date preceding the effective date, the statement shall be submitted with the application for approval of construction or modification, § 61.07.

(4) the statement is to contain the following information for each designated source:

(i) Fugitive emission source identification number.

(ii) Type of fugitive emission source (i.e., pump, pipeline valve, etc.).

(iii) Percent by weight benzene in the fluid at the fugitive emission source.

(iv) Process fluid state at the fugitive emission source (gas/vapor or liquid).

(v) Method of compliance with the standard (i.e., "equipped with dual mechanical seal system," or "monthly leak detection and repair," etc.).

(b) A report shall be submitted to the Administrator each quarter, starting three months after the initial report required in § 61.117(a), that includes the following information; the format of the report may be similar to that shown in Figures 1, 2, 3, and 4:

(1) Process unit identification.

(2) Nunber of pipeline valves in the process unit excluding those designated for emissions having a concentration less than 200 ppm above background under the provisions of § 61.112(d)(5).

(3) Number of pipeline valves, existing pumps, and existing compressors for which leaks were detected as required in § 61.112(d) during each month of the reporting quarter.

(4) Number of pipeline valves, existing pumps, and existing compressors repaired.

(5) Number of pipeline valves, existing pumps, and existing compressors not repaired within 15 days as required in § 61.112(d)(2).

(6) Reasons for non-repair of valves, existing pumps, and existing compressors within 15 days as required in § 61.112(d)(2).

(7) Number of pumps and compressors for which leaks were detected during the reporting quarter as specified in §§ 61.112(a)(3) and (4).

(8) Statement signed by the owner or operator stating whether all provisions of 40 CFR Part 61 Subpart J had been fulfilled during the reporting quarter.

(c) In the first report submitted as required in § 61.117(b), the report shall include a reporting schedule stating the months that quarterly reports shall be submitted. Subsequent reports shall be submitted according to that schedule, unless a revised schedule has been submitted in a previous quarterly report.

(d) An application for approval of construction or modification, § 61.07, will not be required if—

(1) The existing source has become a new source through reconstruction;

(2) The new source complies with the standard for new sources, § 61.112; and

(3) In the next quarterly report required by § 61.117(b), the information in § 61.117(a)(4) is reported.

(Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414).)

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Figure 1

QUARTERLY REPORT FOR PROCESS UNIT
FUGITIVE EMISSION SOURCES OPERATING UNDER THE
PROVISIONS OF 40 CFR Part 61, Subpart J, §61.117(b)

Date _____

Company Name _____

Plant Location (City, State) _____

Mailing Address _____

_____

Telephone Number _____

Reporting Period _____

This report filed _____
(Process Unit Name)

Producing _____
(Chemical Product(s))

Figure 2

SUMMARY STATISTICS FOR LEAK DETECTION
AND REPAIR REQUIREMENTS
OF 40 CFR Part 61, Subpart J, §61.117(b)

1. Process Unit Name _____
(one report required for each process unit)
2. Number of valves covered under the leak detection and repair program. _____
3. Number of valves found leaking during the reporting period. _____
4. Number of leaking valves repaired during the reporting period. _____
5. Number of leaking valves detected during the quarter which were not repaired within 15 days. _____
6. Number of pumps found leaking during the reporting period. _____
7. Number of compressors found leaking during the reporting period. _____

Figure 3

INFORMATION REQUIRED BY 40 CFR Part 61, Subpart J, §61.112(d)(2)
FOR LEAKING VALVES NOT REPAIRED WITHIN 15 DAYS

1. Process Unit Name _____

2. Number of valves, pumps, and compressors not repaired for the following reasons:

   (a) New parts required. _____

   (b) Off-line repair required. Critical in-service valve. Bypass impossible. _____

   (c) Other (Explain reasons for non-repair). _____

3. Date of next scheduled turn-around or shutdown. _____

_____
Signature of Plant Manager or Manager Designate

Figure 4

CERTIFICATION
AS REQUIRED IN §61.117(b)(8)

I hereby certify that process unit _____ (Name) owned (operated) by _____ (Company Name) located in _____ (City, State) _____ (has been/has not been) operated in compliance with the requirements of Subpart J, 40 CFR Part 61 which contains National Emission Standard for Benzene Fugitive Emissions.

All required equipment and control devices have been operated and maintained in compliance with the standard. All required work practices have been followed. Monitoring has been done as specified in Method 21. All required records have been made and are kept in _____ (location in plant) for review by EPA.

_____
(Signature of owner or operator)

_____
(title)

_____
(date)

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Part VI

General Services Administration

Automated Data and Telecommunications Service

Government-Wide Procurement and Management of Automatic Data Processing

GENERAL SERVICES ADMINISTRATION

41 CFR Part 1-4

[FPR Amendment 211]

Automatic Data Processing Contracting; Special Types and Methods of Procurement

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: This regulation provides a complete revision of Subpart 1-4.11 regarding procurement and contracting policies relating to the acquisition of automatic data processing (ADP) equipment, commercially available software, maintenance services, and related supplies by Federal agencies and in some situations, by Government contractors. This action is needed to change, consolidate, and clarify policy and procedures. The intended effect is to increase economy and efficiency and to reduce paperwork regarding agency ADP resources acquisition.

EFFECTIVE DATE: This regulation is effective January 15, 1981, but may be observed earlier.

FOR FURTHER INFORMATION CONTACT: Philip G. Read, Federal Procurement Regulations Directorate, Office of Acquisition Policy, 703-557-8947.

SUPPLEMENTARY INFORMATION: (a) A proposed revision of Subpart 1-4.11 (and FPMR Subpart 101-35.2) was circulated to all Federal agencies and other interested parties on May 28, 1980. The closing of the comment period was November 14, 1980 (45 FR 71628, October 29, 1980). All comments received have been considered and accommodated to the extent considered appropriate.

(b) A complete revision of Subpart 1-4.11 is provided. Substantive changes from the existing coverage are as follows:

(1) A new § 1-4.1100-2 is added to explain the relationship of Subpart 1-4.11 to other procurement regulations, replacing § 1-4.1101-1.

(2) A new § 1-4.1100-3 is added to control deviations from Subpart 1-4.11.

(3) Section 1-4.1101 is revised to clarify the applicability of Subpart 1-4.11 to both Federal agencies and Government contractors.

(4) Subsection 1-4.1102-1 is revised to redefine the term "automatic data processing equipment."

(5) Subsection 1-4.1102-2 is revised to redefine the term "software" and to add definitions for related terms, including commercially available software.

(6) Subsection 1-4.1102-3 is revised to add the term "firmware"; § 1-4.1102-6 is revised to add remote terminal emulation terms.

(7) Subsection 1-4.1102-7 is revised to define the term "competitive requirement," and § 1-4.1102-8 is revised to define the term "noncompetitive (sole source) requirement," replacing §§ 1-4.1102-16 and 1-4.1102-17.

(8) Subsection 1-4.1102-9 is revised to define the term "maximum practicable competition," consistent with paragraph (c) of § 1-3.101.

(9) Subsection 1-4.1102-10 is revised to clarify the term "lowest overall cost," replacing § 1-4.1102-14.

(10) Subsection 1-4.1102-12 is revised to define the term "functional specifications," replacing § 1-4.1102-7, "data system specifications."

(11) Subsection 1-4.1102-16 is revised to define the meaning of the term "evaluated optional features," replacing § 1-4.1102-13, "desirable features."

(12) Other subsections in § 1-4.1102 are rearranged and modified.

(13) Section 1-4.1103 is added to state the general policies and procedures relating to competition, requirements analysis, urgent requirements, major system acquisition, and small business and labor surplus area concerns.

(14) Section 1-4.1104 is revised to add a provision prohibiting fragmenting requirements in order to circumvent established thresholds, replacing § 1-4.1103.

(15) Subsection 1-4.1104-1 is revised to increase agency procurement authority for ADPE under competitive solicitation procedures, replacing FPR Temp. Reg. 46 provisions.

(16) Subsection 1-4.1104-2 is revised to increase agency procurement authority for commercially available software under competitive solicitation procedures, replacing FPR Temp. Reg. 46 provisions.

(17) Subsection 1-4.1104-3 is revised to increase agency procurement authority for maintenance services under competitive solicitation procedures, replacing FPR Temp. Reg. 46 provisions.

(18) Subsection 1-4.1104-4 is added to provide agency procurement authority for related supplies.

(19) Subsection 1-4.1104-5 regarding the ADP is revised for clarity, replacing § 1-4.1103-4.

(20) Section 1-4.1105 is revised to include in the Agency Purchase Request data concerning computer security requirements, use of compatibility limited requirements, and software conversion studies, where applicable, replacing § 1-4.1104.

(21) Section 1-4.1106 is revised to clarify the 20-day automatic delegation procedure, replacing § 1-4.1105.

(22) Section 1-4.1106-1 and -2 and § 1-4.1107 are revised for clarity, replacing §§ 1-4.1105-1 and 1-4.1106.

(23) Subsection 1-4.1108 is revised to set forth responsibilities applicable to the acquisition of major ADP systems under OMB Circular A-109, replacing FPR Temp. Reg. 47.

(24) Section 1-4.1109 is added to replace § 1-4.1107 provisions.

(25) Subsection 1-4.1109-2 is added to clarify documentation provisions, replacing § 1-4.1107-2. Section 1-4.1107-20, sole source procurement documentation, is removed.

(26) Subsection 1-4.1109-3 is added to incorporate the optional use of GSA's centralized Bidders Mailing List (BLM), replacing § 1-4.1107-3 as changed by FPR Amendment 210.

(27) Subsection 1-4.1109-4 is reserved.

(28) Subsection 1-4.1109-5 regarding small purchase is added, replacing § 1-4.1107-4 appearing in FPR Temp Reg. 46.

(29) Subsection 1-4.1109-6 regarding use of GSA schedule contracts is added to clarify and amplify existing provisions, replacing § 1-4.1107-6 appearing in FPR Temp Reg. 46.

(30) Subsections 1-4.1109-7 and -8 are added, replacing §§ 1-4.1107-7 and -8 respectively.

(31) Subsection 1-4.1109-9 regarding handling of late responses is added, replacing §§ 1-4.1107-9 and 1-4.1108-1.

(32) Subsections 1-4.1109-10 and -11 regarding use of specifications are added, replacing §§ 1-4.1107-10 and -11.

(33) Subsections 1-4.1109-12, -13, -14, and -15 are added to provide extensive new provisions concerning compatibility limited requirements, requirements for software conversion studies, determination of conversion costs, and determination of selection factors. The provisions of FPMR Temp. Reg. F-492, to the extent that they are in conflict, are superseded.

(34) Subsections 1-4.1109-16 and -17 regarding software procurement and procurement of related supplies are added, replacing §§ 1-4.1107-16 and -17, respectively.

(35) Subsection 1-4.1109-18 is added to provide new provisions (identical to FPMR § 101-35.203-10 provisions) regarding furnishing ADP items and services to contractors.

(36) Subsection 1-4.1109-19 regarding purchase options for contractor acquired ADPE is added, replacing § 1-4.1107-18.

(37) Subsection 1-4.1109-20 is added to incorporate computer security requirements, replacing § 1-4.1107-21 as added by FPR Amendment 210.

(38) Subsection 1-4.1109-21 regarding the use of simulation is added, replacing § 1-4.1107-5.

(39) Subsections 1-4.1109-22 and -23 regarding use of benchmarks and remote terminal emulation are added, replacing § 1-4.1107-5 and FPR Temp. Reg. 49 provisions.

(40) Subsection 1-4.1109-24 is added to include conversion costs under evaluation factors, replacing § 1-4.1107-13.

(41) Subsection 1-4.1109-25 regarding implementation of standards is added, replacing § 1-4.1108-5 as amended by FPR Amendment 210.

(42) Section 1-4.1110 regarding standard clauses is added, replacing § 1-4.1108; and § 1-4.1110-1 replaces § 1-4.1108-2.

(43) Subsection 1-4.1110-2 regarding contractor representation is added to include a modified clause, replacing § 1-4.1108-3.

(44) Subsection 1-4.1110-3 regarding fixed price options is added, replacing § 1-4.1108-4 as changed by FPR Amendment 210. Note particularly the optional special contractual provision regarding discontinuance of rental of items during, not at the end, of a contract period.

(45) Section 1-4.1111 regarding additional clauses is added.

(46) Section 1-4.1112 regarding guidance is added, replacing § 1-4.1107-19.

(c) The changes in this regulation were developed concurrently with substantive changes to existing provisions in FPMR Subpart 101-35.2—Management, Acquisition, and Utilization of Automatic Data Processing (ADP) Resources. This Subpart 1-4.11 is intended to be used in concert with Subpart 101-35.2, particularly, of Subchapter F of the FPMR.

(d) This regulation cancels FPR Temporary Regulation 46 (43 FR 40015, Sept. 8, 1978); FPR Temp. Reg. 46, Supp. 2 (44 FR 52208, Sept. 7, 1979); FPR Temp. Reg. 46, Supp. 3 (45 FR 62906, Sept. 23, 1980); and FPR Temp. Reg. 47 (43 FR 41044, Sept. 14, 1978) which are deleted from the appendix at the end of 41 CFR Chapter 1. This regulation supersedes the provisions of FPR Temp. Reg. 49 (44 FR 22725, Apr. 17, 1979); FPR Temp. Reg. 49, Supp. 1 (45 FR 13734, Mar. 3, 1980), FPMR Temp. Reg. F-492 (44 FR 62515, Oct. 31, 1979) and FPMR Temp. Reg. F-496 (45 FR 81202, Dec. 10, 1980), to the extent that they are in conflict with the regulation.

1. The table of contents for Part 1-4 is changed by revising the title and contents of Subpart 1-4.11, as follows:

Subpart 1-4.11—Procurement and Contracting Government-Wide for Automatic Data Processing Equipment, Software, Maintenance Services, and Supplies

Authority: Section 205(c), 63 Stat. 390, 40 U.S.C. 486(c).

2. The title and text of Subpart 1-4.11 is revised to read as follows:

Subpart 1-4.11—Procurement and Contracting Government-Wide for Automatic Data Processing Equipment, Software, Maintenance Services, and Supplies

§ 1-4.1100 Scope of subpart.

This subpart sets forth policies and procedures which are to be employed in the procurement of all automatic data processing equipment (ADPE), commercially available software, maintenance services, and related supplies by Federal agencies (see also § 1-4.1109-1) and by Government contractors as directed by agencies.

§ 1-4.1100-1 Relationship to the Federal Property Management Regulations (FPMR).

(a) Subchapter F of this title (41 CFR Chapter 101, hereafter referred to as the FPMR) provides policies, procedures, and guidelines pertaining to the management of Governmentwide automatic data processing (ADP) functions (see particularly FPMR Subpart 101-35.2). The FPMR involves such matters as (1) the security of ADP systems, (2) utilization of ADP resources, (3) reutilization of equipment and supplies, (4) assistance to Federal agencies, (5) Federal data processing centers, (6) the ADP collocation and

consolidation program, (7) ADP records management, and (8) implementation of Federal information processing standards publications (FIPS PUBS) and Federal telecommunications standards (FED-STD).

(b) The provisions of FPMR Part 101-37 are applicable to telecommunications when associated with ADP.

(c) When telecommunications are involved, regardless of the authority to procure ADPE as indicated in § 1-4.1104-1, agencies are required to submit the documentation prescribed in FPMR Part 101-37.

(d) FPMR Subpart 101-17 concerns the information that must be submitted to GSA relative to space requirements for ADPE.

§ 1-4.1100-2 Relationship to other procurement authority.

(a) Under Section 111 of the Federal Property and Administrative Services Act of 1949, 79 Stat. 1127, as amended (40 U.S.C. 759), the Administrator of General Services has authority to coordinate and provide for the purchase, lease, and maintenance of ADP equipment by Federal agencies as well as other matters relating to the management, acquisition, and utilization of ADP. The exercise of this procurement authority shall be accomplished as specified in this subpart.

(b) Section 111(g) of the Property Act (40 U.S.C. 759, Pub. L. 89-306) provides that the Administrator's authority is subject to fiscal and policy control of the Office of Management and Budget (OMB). When an agency submits matters to the OMB for resolution (see FPMR § 101-36.001) and the matters relate to the procurement and contracting for ADP, copies shall be furnished to GSA as provided in FPMR § 101-36.001.

§ 1-4.1100-3 Deviations.

To maintain uniformity to the greatest extent feasible, deviations (as the term is described in § 1-1.009-1) from this subpart shall be kept to a minimum and controlled as follows:

(a) The head of each agency exercising delegated procurement authority under this subpart shall prescribe a formal agency procedure for the control of requests for deviations from this subpart. A copy of this procedure shall be provided to the General Services Administration (CPE), Washington, DC 20405.

(b) Individual deviations may be authorized only by the Administrator of General Services or the officers designated by the Administrator for this purpose. Class deviations may be authorized only by the Administrator. In each instance, the request shall disclose the nature of the deviation and the reasons therefor. Requests for deviations shall be forwarded to the General Services Administration (CPS), Washington, DC 20405.

(c) Except as otherwise authorized, when any deviation in a contract form provision is authorized, physical change may not be made in the printed form but shall be made by appropriate provision in the schedule, specifications, or continuation sheet, as provided in agency procedures.

§ 1-4.1101 Applicability.

(a) *Federal agencies.* The policies and procedures set forth in this subpart apply to the procurement of ADPE, commercially available software, maintenance services, and related supplies by Federal agencies regardless of use or application including Government-acquired ADPE, software, or related supplies provided to contractors.

(b) *Government contractors.* (1) Except as set forth in paragraph (b)(2) of this section, agencies shall require their contractors to apply the policies and procedures set forth in this subpart to the procurement of ADPE, commercially available software, maintenance services, and related supplies when the very subject matter of the contract(s) is for the performance of commercial ADP services for a Federal agency (see FPMR § 101-35.202-8 and § 1-4.1109-18) and

(i) The Government requires the contractor to purchase the ADPE or software for the account of the Government; or

(ii) The Government requires the contractor to pass title to the ADPE or software to the Government; or

(iii) The Government pays the full lease costs of the ADPE or software under a cost-reimbursement contract.

(2) When the very subject matter of a contract is for something other than the procurement of ADP items or services,[1] and commercially available ADPE is incorporated into the non-ADP system or commercial ADP services are used in contract performance, the acquisition and management of the non-ADP system shall be in accordance with other applicable regulations rather than this subpart (but see § 1-4.1109-18).

[1] When the subject matter of a requirement (or a severable portion thereof) is the supplying of ADP services or ADP related services to a Federal agency, see Subpart 1-4.12 (Reserved at publication date).

§ 1-4.1102 Definitions.

The terms used in this subpart shall have the meanings set forth in this section.

§ 1-4.1102-1 Automatic data processing equipment.

"Automatic data processing equipment" (ADPE) means [2] general purpose, commercially available, mass-produced automatic data processing devices; i.e., components and the equipment systems configurated from them together with commercially available software packages that are provided and are not priced separately, and all documentation and manuals relating thereto, regardless of use, size, capacity, or price, that are designed to be applied to the solution or processing of a variety of problems or applications and are not specially designed, as opposed to configured, for any specific application.

(a) Included are:

(1) Digital, analog, or hybrid computers;

(2) Auxiliary or accessorial equipment, such as plotters, tape cleaners, tape testers, data conversion equipment, source data automation recording equipment (optical character recognition devices, paper tape typewriters, magnetic tape, card, or cartridge typewriters, word processing equipment, computer input/output microfilm and other data acquisition devices), or computer performance evaluation equipment; etc., designed for use with digital, analog, or hybrid computer equipment, either cable connected, wire connected, or stand alone, and whether selected or acquired with a computer or separately;

(3) Punched card accounting machines (PCAM) that can be used in conjunction with or independently of digital, analog, or hybrid computers; and

(4) Data transmission or communications equipment, including front-end processors, terminals, sensors, and other similar devices, designed primarily for use with a configuration of ADPE.

(b) Excluded are:

(1) ADPE systems and components specially designed (as opposed to configured) and produced to perform a specific set or series of computational, data manipulation, or control functions

[2] The acquisition of Joint Committee on Printing (JCP) controlled equipment in FSC Group 70 dedicated to printing processes and utilizing computer technology, including electronic printing systems, integrated printing systems, and photo-composition equipment, continues to be subject to the provisions of title 44, U.S. Code, and the JCP Government Printing and Binding Regulations as well as to this regulation.

to permit the processing of only one problem; and

(2) Commercially available ADPE that is modified to meet Government specifications at the time of production to the extent that:

(i) It no longer has a commercial market; or

(ii) It cannot be used to process a variety of problems or applications; or

(iii) It can be used only as an integral part of a non-ADP system.

§1-4.1102-2 Software terms.

(a) "Software" means computer programs, procedures, rules, or routines specifically designed to make use of and extend the capabilities of ADPE and includes operating systems, assemblers, compilers, interpreters, data base management systems, utility programs, sort-merge programs, maintenance-diagnostic programs, and applications programs. The term encompasses operating systems software, independent subroutines, related groups of routines, sets or systems of programs, software documentation, firmware (see § 1-4.1102-3), and computer data bases whether Government-owned or commercially available.

(b) "Commercially available software" means software that is available through lease or purchase in the commercial market from a concern representing itself to have ownership and/or marketing rights in the software. Software that is furnished as part of the ADP system but that is separately priced, is included.

(c) "Application software" means a series of instructions or statements in a form acceptable to a computer, designed to cause the computer to execute an operation or operations necessary to process requirements such as payroll, inventory control, or automatic test and engineering analysis. Application software may be either machine-dependent or machine-independent, and may be general-purpose in nature or be designed to satisfy the requirements of a specialized process or a particular user.

(d) "Computer data base" means a stored collection of data in a form capable of being processed and operated on or by a computer; i.e., the elements of stored data used by a computer in responding to a computer program.

(e) "Computer software documentation" means recorded information including computer listings and printouts that (1) documents the design or details of computer software, (2) explains the capabilities of the software, (3) provides data for testing the software, or (4) provides operating instructions.

(f) "Software conversion" means the transformation, without functional change, of computer programs or data elements to permit their use on a replacement or changed ADP equipment or teleprocessing service system.

(g) "Software redesign" means any change to software that involves a change in the functional specifications for that software.

(h) "Reprogramming" means any change to software that deviates from the design specifications for that software but preserves the functional requirements of the user.

(i) "Recoding" means a manual change to software on a line-for-line basis that preserves both the functional requirements and software design specifications.

(j) "Automated translation" means changes to software including machine-processed recoding that preserve both the functional requirements and software design specifications to the extent that no changes are apparent to the user.

§ 1-4.1102-3 Firmware.

"Firmware" means any ADP hardware-oriented programming at the basic logic level of the computer that is used for machine control, error recovery, mathematical functions, applications programs, engineering analysis programs, and the like. Included are firmware that is furnished with ADPE, commercially available proprietary firmware that is acquired separately from ADPE, and all vendor documentation and manuals relating thereto.

§ 1-4.1102-4 Maintenance services.

"Maintenance serivces" means those examination, testing, repair, or part replacement functions performed to: (a) Reduce the probability of ADPE malfunction (commonly referred to as "preventive maintenance"), (b) restore to its proper operating status a component of ADPE that is not functioning properly (commonly referred to as "remedial maintenance") or (c) modify the ADPE in a minor way (commonly referred to as "field engineering change" or "field modification").

§ 1-4.1102-5 Related supplies.

"Related supplies" means consumable items designed specifically for use with ADPE, such as computer tape, ribbons, punchcards, and tabulating paper.

§ 1-4.1102-6 Remote terminal emulation terms.

(a) "System under test" (SUT) means an ADP system or component thereof whose performance is being validated during the procurement process.

(b) "Internal emulation" means a technique used for teleprocessing performance validation in which the teleprocessing workload is introduced from software running internal to the SUT, either in the central processing unit, the communications front end, or, when the architecture supports it, some other processor configured as part of the SUT.

(c) "Remote terminal emulation" means a technique for teleprocessing performance validation in which the driver and monitor components are implemented external to and independent of the SUT.

(d) "Driver" means a remote terminal emulation component, external to the SUT, which introduces specified workload demands to the ADP system being tested.

(e) "Monitor" means a remote terminal emulation component, external to the SUT, which records data descriptive of the remote terminal emulator/SUT interaction.

(f) "Remote terminal emulator" (RTE) means a specific hardware and software implementation of a teleprocessing workload driver (a monitor may or may not be an integral part of an RTE).

§ 1-4.1102-7 Competitive requirement.

A "competitive requirement" means that the Government's requirement is set forth in the form of functional specifications, equipment performance specifications, a combination thereof, software and equipment plug-to-plug compatible functionally equivalent descriptions, or brand name or equal descriptions, that allows maximum practicable competition and is devoid of unnecessary bias toward either a specific product or a specific offeror.

§ 1-4.1102-8 Noncompetitive (sole source) requirement.

A "noncompetitive (sole source) requirement" means that the Government's requirement is set forth in the form of necessary specifications that are so restrictive that there is only one known supplier capable of satisfying the Government's requirement or the procurement is based on specific make and model specifications/purchase descriptions, notwithstanding the existence of adequate price competition as defined in § 1-3.807-1(b)(1) (or, if applicable, Defense Acquisition Regulation (DAR) 3-807.7(a)).

§ 1-4.1102-9 Maximum practicable competition.

"Maximum practicable competition" means a negotiated procurement action

when proposals are solicited from the maximum number of qualified sources, including small business concerns, consistent with the nature of and requirements for the supplies or services to be procured, to the end that the procurement will be made to the best advantage of the Government, price and other factors considered. This requires a procurement strategy, suitable to the circumstances, in which the statement of the user's requirement is set forth in the least restrictive terms possible without compromising economy or efficiency. It is designed to elicit from responsible firms capable of satisfying the needs, a number of favorable offers commensurate with the value of the procurement. It is calculated to satisfy the user's needs at the lowest overall cost to the Government, price and other factors considered (see § 1-4.1102-10). The quantifiable cost of conducting the procurement and other administrative costs directly related to the procurement process are included.

§ 1-4.1102-10 Lowest overall cost.

"Lowest overall cost" means the least expenditure of funds over the system/item life, price and other factors considered. Lowest overall costs shall include purchase price, lease or rental cost, or services cost of the contract actions involved, other factors, and other identifiable and quantifiable costs that are directly related to the acquisition and use of the system/item; e.g., personnel, maintenance and operation, site preparation, energy consumption, installation, conversion, system start-up, contractor support, and the present value discount factor (see also FPMR § 101-35.210).

§ 1-4.1102-11 System/item life.

"System/item life" means a forecast or projection of the period of time that begins with the installation of the system/item and ends when the Government's need for that system/item has terminated. System/item life is established by the initial acquiring agency on the basis of its requirement and predicted reuse (see § 101-35.208). System/item life is not necessarily synonymous with technological life (utility before becoming obsolete), physical life (utility before physically wearing out), or application life (utility in a given function).

§ 1-4.1102-12 Functional specifications.

"Functional specifications" means the delineation of the program objectives based on mission needs in a form that the ADP system is intended to accomplish and the data processing requirements underlying that accomplishment. The latter includes a description of the data output and its intended uses, the data input, the data files and record content, the volumes of data, the processing frequencies, timing, and such other facts as may be necessary to provide for a full description of the ADP mission need to be satisfied.

§ 1-4.1102-13 Equipment performance specifications.

"Equipment performance specifications" means a statement of minimum user output requirements such as the amount of data that needs to be stored or processed within a given time, the number of lines of print that must be done over a given time, and the operation reliability, supplemented to the extent necessary with those hardware factors, devoid of as much vendor orientation as possible, such as cycle time, computing speed, tape read or write speed, printer speed, size of memory, expansibility (modularity), etc., and the related software which are a measure of the operating capability of equipment and which, when applied to the functional specifications, provide a quantitative measure of the operating time and capacity required to process the applications involved on that equipment.

§ 1-4.1102-14 Agency procurement request.

"Agency procurement request" (APR) means a request by a Federal agency for GSA to procure ADPE, commercially available software, or maintenance services or for GSA to delegate the authority to procure these items.

§ 1-4.1102-15 Mandatory requirements.

"Mandatory requirements" means those contractual conditions and technical specifications that are established by the Government as being essential to meet the Government's needs. When set forth in a solicitation, the mandatory requirements must be met for the bid (offer) to be considered responsive (acceptable).

§ 1-4.1102-16 Evaluated optional features.

"Evaluated optional features" means those technical requirements that are established by the Government but that does not have to be bid (offered) to be responsive (acceptable) to the specific solicitation. When set forth in a solicitation, all evaluated optional features must reflect the relative value of each feature to the Government. Each evaluated optional feature may be offered at the discretion of the offeror.

§ 1-4.1102-17 Selection plan.

"Selection plan" means criteria and systematic procedures established to enable the Government to measure the proposal of an offeror/bidder against the requirements of the Government as set forth in the solicitation document. These criteria shall be based on the Government's requirements and shall not be equipment- or vendor-oriented, except where a brand name or equal specification or specific make or model description is needed to express the requirement adequately.

§ 1-4.1102-18 Federal agency.

"Federal agency" means (a) any executive agency (executive department or independent establishment in the executive branch including any wholly owned Government corporation) or (b) any establishment in the legislative or judicial branch of the Government (except the Senate, the House of Representatives, and the Architect of the Capitol and any activities under the Architect's direction) (see 40 U.S.C. 472).

§ 1-4.1103 General policies.

§ 1-4.1103-1 Competition.

Full and open competition is a basic procurement objective of the Government. The maximum practicable competition among offerors who are capable of meeting the user's needs will ensure that the Government's ADP needs are satisfied at the lowest overall cost, price and other factors considered, over the system/item life. This extends to actions necessary to foster competitive conditions for subsequent procurements. To meet fully the lowest overall cost objective, it is essential that proper management and planning actions be accomplished before the acquisition becomes imminent (see FPMR § 101-35.206).

§ 1-4.1103-2 Requirements analysis.

The acquisition of an initial ADP capability or the augmentation or replacement of an existing capability shall be preceded by a comprehensive requirements analysis that is commensurate with the scope and complexity of the program objectives and mission needs. The operational and economic feasibility of all alternative solutions, including use of non-ADP resources, sharing, use of commercial ADP services, and reutilization of excess Government-owned or leased equipment, shall be considered (see FPMR § 101-35.207).

§ 1-4.1103-3 Urgent requirements.

The existence of a public exigency; i.e., the Government will suffer serious injury, financial or otherwise, if the

equipment or services are not available by a specific date, shall not relieve the agency from the responsibility for obtaining maximum practicable competition (see § 1-3.202 (or, if applicable DAR 3-202)).

§ 1-4.1103-4 Major system acquisitions.

Major ADP systems to be acquired in accordance with the provisions of OMB Circular A-109 and agency implementing directives are subject to this subpart (see § 1-4.1108).

§ 1-4.1103-5 Small business and labor surplus area concerns.

ADPE, software, maintenance services, and related supplies may be set aside for award to small business or labor surplus area concerns in accordance with the provisions of Subparts 1-1.7 and 1-1.8 and implementing agency policies and procedures (or, if applicable, DAR Parts 1-7 and 1-8).

§ 1-4.1104 Procurement authority.

(a) To allow for the orderly implementation of a program for the economic and efficient procurement of ADPE, commercially available software, maintenance services, and related supplies, agencies are authorized to procure these items in accordance with the provisions of this § 1-4.1104 provided that requirements are not fragmented in order to circumvent the established blanket delegation thresholds, or when a specific delegation or procurement authority has been provided in accordance with the provisions of §§ 1-4.1105 and 1-4.1106. However, the applicable provisions of FPMR Subchapter F shall be complied with before initiating a procurement action.

(b) The exercise of procurement authority shall be accomplished as specified in § 1-4.1109.

(c) Two copies of the solicitation document (RFP or IFB, as applicable) and any subsequent amendment thereto that changes the specifications, evaluation criteria, or installation date shall be forwarded to the General Services Administration (CPS), Washington, DC 20405, as soon as available, but shall not arrive later than 8 workdays before the proposed date of issuance to industry. GSA will notify the agency of the date of receipt of the solicitation document as soon as it is received. However, if timely issuance of the solicitation is critical to agency mission accomplishment, copies of the solicitation document may be forwarded to GSA concurrently with issuance to industry, provided that the RFP is based on the GSA Solicitation Document for ADP Equipment Systems,[3] whether in the GSA or Defense Acquisition Regulation (DAR) format, or the specifications have been received by industry in accordance with § 1-4.1109-8. Amendments to all solicitations that are clearly administrative in nature or are for clarification purposes need not be forwarded to GSA until the dates the amendments are sent to industry.

(d) One copy of the contract and subsequent modifications thereto shall be forwarded to GSA when they are issued.

§ 1-4.1104-1 Automatic data processing equipment.

Except as indicated in § 1-4.1104-5 regarding potential use of the ADP Fund, FPMR Subpart 101-36.2 with respect to sharing, and FPMR Subpart 101-36.3 with respect to the use of excess ADPE, agencies may procure ADPE without prior approval of GSA, unless procurement authority has been specifically withdrawn, when either paragraph (a), (b), or (c) of this § 1-4.1104-1 applies.

(a) The procurement is to be made by placing a purchase/delivery order against an applicable GSA requirements-type contract.

(b) The procurement is to be made by placing a purchase/delivery order against a GSA schedule contract provided that the following three conditions are met:

(1) The order is within the maximum order limitation (MOL) of the applicable contract;

(2) The total purchase price of the item(s) covered by the order does not exceed $300,000; [4] and

(3) The requirements set forth in § 1-4.1109-6 on the use of GSA schedule contracts are met.

(c) The procurement is to be made by normal solicitation procedures and value [5] of the procurement does not exceed:

(1) $500,000 purchase price or [6] $12,500 basic monthly rental charges [7] for competitive procurements; or

(2) $50,000 purchase price or [6] $1,500 basic monthly rental charges [7] for either sole source or specific make and model procurements.

[3] The GSA Solicitation Document for ADP Equipment Systems is available from General Services Administration (CPEP), Washington, DC 20405.

[4] Even though the item(s) are to be rented or leased, the purchase price shall be used to determine if the dollar value of the order falls within the $300,000 threshold.

[5] Values include evaluated optional features.

[6] The procurement method used determines which threshold applies.

[7] The basis monthly rental charges including attendant maintenance costs.

§ 1-4.1104-2 Software.

Except for software available through the Federal Software Exchange Center (FSEC) covered by FPMR Subpart 101-36.16, agencies may procure commercially available software without prior approval of GSA when either paragraph (a), (b), (c), or (d) of this § 1-4.1104-2 applies.

(a) The procurement is to be made by placing a purchase/delivery order against an applicable GSA requirements-type contract.

(b) The procurement is to be made by placing a purchase/delivery order under the terms and conditions of an applicable GSA schedule contract (see § 1-4.1109-6).

(c) The procurement is to be made by normal solicitation procedures and total value of the procurement, excluding maintenance, for the specific software package(s) does not exceed:

(1) $100,000 for competitive procurement; or

(2) $50,000 for sole source procurements.

(d) The software is provided with and is not separately priced from the ADPE.

§ 1-4.1104-3 Maintenance services.

Agencies may procure maintenance services without prior approval of GSA when either paragraph (a) or (b) of this § 1-4.1104-3 applies.

(a) The procurement is to be made by placing a purchase/delivery order under the terms and conditions of an applicable GSA schedule contract (see § 1-4.1109-6).

(b) The procurement is to be made by normal solicitation procedures and the value of the maintenance charges do not exceed $200,000 annually for a competitive procurement of $50,000 annually for a sole source procurement.

§ 1-4.1104-4 Related supplies.

Agencies may procure related supplies without prior approval of GSA when specific purchase programs established by GSA have been considered and determined to be inapplicable (see § 1-4.1109-17).

§ 1-4.1104-5 Automatic data processing fund.

When a lease/purchase evaluation indicates that it would be to the best interest of the Government to purchase rather than lease ADPE or commercially available software and funds are not readily available within the agency; e.g., when there is insufficient time to secure the necessary funds under normal budgetary procedures or to reprogram for the required funds, the matter shall be forwarded to GSA in the manner prescribed in FPMR § 101-35.211. When

approved by GSA, the ADP fund may be used by agencies to obtain maintenance services for ADP leased from GSA through the ADP fund.

§ 1-4.1105 Request for procurement action.

If an agency determines that the conditions of the contemplated procurement are not covered by the provisions of § 1-4.1104, or if the conditions of the contemplated procurement change during the procurement process in such manner as to remove it from those provisions, four copies of the agency procurement request (APR) and other applicable documents shall be forwarded to the General Services Administration (CPS), Washington, DC 20405. The APR shall contain the name and telephone number of an individual within the agency who shall act as the point of contact with GSA. The APR shall include, as applicable:

(a) A copy of the proposed solicitation document, if available. If the solicitation document is not available, the functional specifications or the ADPE configuration that is to be acquired shall be included. Unless a functional specification is provided, the description should reflect the estimated number of central processing units, storage devices and controllers, terminals, other peripheral devices, and communications devices.

(b) A statement providing the estimated budgeted value of the procurement in the agency's request to OMB, whether these funds were implicitly or explicitly described, and the fiscal year of the budget request.

(c) Estimated system or item life (see § 1-4.1102-11) and estimated system life cost.

(d) Location (city and state) of the data processing facilities involved.

(e) Fiscal quarter during which the solicitation is expected to be released to industry for procurement action.

(f) Unique software, maintenance, and support requirements, if any.

(g) A statement or other evidence that indicates that a performance evaluation has been made for the currently installed ADP system(s), when applicable, to ensure that the proposed procurement represents the lowest overall cost alternative for meeting the agency's data processing need (see FPMR Subpart 101-36.14).

(h) Evidence that site construction/modification is or is not required (see FPMR § 101-17.101-5). One of the following statements shall be used for this purpose:

(1) The acquisition of this equipment will not require site construction on modification by GSA; or

(2) The acquisition of this equipment will require site (construction) (modification) by GSA which must be completed by (date) and notification and information, as applicable, (has been) (will be) submitted to GSA on (date).

(i) A statement that the need to acquire ADPE or ADP systems has been documented as required by FPMR § 101-35.207.

(j) A statement that, as FPMR Subparts 101-36.2 and 101-36.3 require, available ADP resources have been screened and no ADP resources are available to satisfy the user's requirements.

(k) A justification, if applicable, to support a contemplated noncompetitive (sole source) procurement (including use of specific make and model purchase description). Specifically, this justification must address:

(1) The intended use or application of the equipment;

(2) The critical installation schedule(s) or unique features and/or mandatory requirements, dictated by the intended use, that limit the acquisition to a single source of supply or a specific make and model. (The overriding necessity of these competition-limiting requirements shall be clearly identified.);

(3) The fact that no other known or probable source of supply exists for the required equipment, if a noncompetitive (sole source) procurement is contemplated. (The justification also shall elaborate on the steps taken which led to this conclusion.);

(4) The existence of patent, copyright, or other limitations; and

(5) The practical factors which preclude the development of specifications and/or the requirement for competition (see § 1-4.1102-7).

(l) Documentation, when telecommunications are involved (see § 1-4.1100-1(c)).

(m) One of the following statements regarding compliance with the Privacy Act of 1974:

(1) Equipment or services identified by this request will not be used to operate a system of records or individuals to accomplish an agency function.

(2) Equipment or services identified by this request will be used to operate a system of records on individuals to accomplish an agency function. All applicable provisions of the Privacy Act have been complied with, including submitting a report of new systems to Congress and OMB on (date).

(n) A brief description of the primary agency program(s) that the equipment or services will support.

(o) Computer security requirements, where applicable, as certified by the responsible agency official (see FPMR Subpart 101-35.3).

(p) Software conversion study where applicable (see § 1-4.1109-13).

(q) Findings to support the use of compatibility limited requirements where applicable (see § 1-4.1109-12).

§ 1-4.1106 GSA action on procurement requests.

(a) After review of an APR and the documentation submitted under § 1-4.1105 and subject to the right of the agency to determine its individual software, maintenance, and ADPE requirements, including the development of specifications for and the selection of the types and configurations of equipment needed, the Commissioner, Automated Data and Telecommunications Service, will:

(1) Delegate to the agency the authority to conduct the procurement; or

(2) Delegate to the agency the authority to conduct the procurement and provide for participation in the procurement with the agency to the extent considered necessary under the circumstances; or

(3) Provide for the procurement by GSA or otherwise obtain the requirement on behalf of the agency.

(b) Action will be taken by GSA within 20 workdays after receipt of full information from an agency involving a request for procurement (APR) or supplemental APR data as provided in § 1-4.1105. Upon expiration of this 20-workday period plus 5 calendar days for mail lag, the agency concerned may proceed with the procurement as if a delegation of authority had, in fact, been granted. This 20-workday period is subject to written modification by GSA in the event that, after review, it is found that the APR does not contain the full information required. To establish a common understanding of the 20-workday period, GSA will provide written verification within this period to the agency concerned that identifies the date of receipt of an APR or supplemental APR data.

(c) In the event that unusual circumstances surrounding the procurement dictate that a longer period of time is required for GSA to complete its appraisal, GSA will provide written verification within the 20-workday period. Under these circumstances the automatic delegation rule as set forth in paragraph (b) of this section shall not apply.

§ 1-4.1106-1 Agency responsibilities when GSA procures ADP items for that agency.

When GSA procures ADP items for another agency, the procurement is a joint endeavor of both the requiring

agency and GSA. To preclude an overlap of functions, the responsibilities of each participant in the procurement are clearly delineated with the requiring agency's functions listed in this § 1-4.1106-1. (The functions of GSA are listed in § 1-4.1106-2.) The requiring agency shall:

(a) Submit to GSA the documentation required by § 1-4.1105. The documentation shall include the agency's requirements, the system/item life, the technical specification, if applicable, and the justification to support negotiated procurement;

(b) Prepare the technical portion of the solicitation document and define any unique requirements;

(c) Provide necessary technical personnel (and contracting personnel if the agency desires) as members of the contract negotiating team;

(d) Prepare the selection plan and submit it to the GSA contracting officer before issuing the solicitation document;

(e) Evaluate proposals from a technical point of view and arrange for offerors' oral presentations, when appropriate;

(f) Provide copies of correspondence to the GSA contracting officer when the agency is authorized to communicate directly with offerors under the provisions of § 1-4.1106-2;

(g) Determine the technical capability of the items offered to meet the requiring agency's requirements, technical specifications, and systems or items life. This responsibility shall include the identification of those proposals that are technically acceptable and those proposals that are not technically acceptable/responsive. The results shall be transmitted to the GSA contracting officer to enable the contracting officer to take appropriate action with the offerors;

(h) Select the lowest overall cost item(s) and transmit this information with the necessary supporting documentation to the GSA contracting officer. If a conclusive judgment cannot be made on the basis of lowest overall cost, a findings and determination to this effect shall be prepared before any other factor is used as a basis for selection;

(i) Provide the following administrative information to the GSA contracting officer with the data required in paragraph (h) of this section:

(1) Finance data (e.g., paying office and fund citation);

(2) Contract distribution list and addresses; and

(3) Identity of assigned contracting officer within the requiring agency;

(j) Assist the GSA contracting officer in debriefing offerors when debriefings are requested by offerors;

(k) Place the delivery order, if applicable;

(l) Accomplish any other task not included above which will further the joint procurement objective or expedite completion of the procurement action at the agency's discretion and with GSA concurrence; and

(m) Administer the contract in accordance with the terms and conditions thereof.

§ 1-4.1106-2 GSA responsibilities when GSA procures ADP items for another agency.

When conducting the procurement of ADP items for another agency in conjunction with the requiring agency's responsibilities in § 1-4.1106-1, above, GSA shall:

(a) Appoint the GSA contracting officer;

(b) Form the negotiating team which will be headed by the GSA contracting officer;

(c) Prepare and issue the solicitation document and all amendments thereto after concurrence of the requiring agency (the technical material shall be supplied in final form by the requiring agency);

(d) Prepare the procurement plan (which will be coordinated with the requiring agency), the findings and determination, and any contractual material needed for the selection plan;

(e) Act as the point of contact between offerors and the Government. In this respect, the GSA contracting officer will provide the requiring agency designated point of contact with a copy of all correspondence between the offerors and the Government. Correspondence going to offerors will be coordinated with the requiring agency. When appropriate, the GSA contracting officer may authorize direct communication between the offerors and the requiring agency on purely technical matters. In these instances, the requiring agency shall provide a copy of the correspondence to the GSA contracting officer;

(f) Receive proposals from the offerors;

(g) Provide copies of all proposals received from the offerors to the requiring agency;

(h) Review all offers from a contractual point of view;

(i) Provide personnel to be present at demonstrations to determine the technical capability of the items offered;

(j) Notify the offeror(s) concerned when a proposal is determined to be unacceptable;

(k) Conduct negotiations with all offerors whose proposals are within the competitive range, price and other factors considered (see § 1-3.805-1);

(l) Notify the offerors of the date and time that negotiations are to be terminated;

(m) Provide the requiring agency designated point of contact with both a report which summarizes the results of negotiations and copies of the proposed contract negotiated with each vendor for consideration in the agency evaluation and analysis;

(n) Brief the appropriate requiring agency personnel on the results of contract negotiations when requested;

(o) Award the contract after receiving notification of the requiring agency's selection;

(p) Debrief offerors with the assistance of requiring agency representatives when debriefings are requested by offerors; and

(q) Distribute the contract and forward all pertinent documents to the successor contracting officer appointed by the requiring agency.

§ 1-4.1107 Federal agency responsibility when procurement authority is delegated by GSA.

When acting under a GSA delegation of procurement authority under either §§ 1-4.1104 or 1-4.1106, the agency conducting the procurement is responsible for compliance with applicable procurement policies, regulations, and, in particular, § 1-4.1109 and the specific terms of the delegation.

§ 1-4.1108 Major system acquisition responsibilities.

(a) *Responsibilities of requiring agency.*

Before the contracting phases of a major system acquisition under OMB Circular A-109 procedures, the requiring agency shall:

(1) Advise GSA upon approval of the mission need statement (Key Decision I) by the agency head. The advice and assistance * of GSA may be requested in performing the analysis, particularly in regard to contemporary experience which may be applicable to the agency mission need. Requests for assistance should be addressed to the Agency Planning Division (General Services Administration (CPS), Washington, DC 20405).

(2) Forward four copies of the major system procurement request to GSA (CPS). The request shall include

*GSA is publishing a pamphlet containing a discussion of Major ADP/Telecommunications Acquisitions. A limited number of copies of this pamphlet can be obtained from General Services Administration (CPEP), Washington, DC 20405.

applicable data required in the agency procurement request (APR) as required by § 1–4.1105 or the GSA Form 2068, Request for ADP Service. In addition, the request should include:

(i) A copy of the mission need statement, approved in accordance with applicable directives (Key Decision 1—Approval of Mission Need Statement);

(ii) The name, address, and telephone number of the designated program manager together with the approved charter outlining the manager's responsibilities, authority, and accountability; and

(iii) A copy of the system acquisition strategy and plan, approved by the program manager.*

(b) *Responsibilities of GSA.*

(1) Before the contracting phase of a major system acquisition, GSA will:

(i) Provide advice and assistance to the requiring agency, as requested, in its mission analysis efforts to the maximum practicable extent.

(ii) Participate, in an advisory role to the agency program manager, in the development of the system acquisition strategy and plan, upon request.

(2) Based on the major system procurement request, GSA will:

(i) Delegate authority to the agency to conduct the procurement;

(ii) Delegate authority to the agency to conduct the procurement action subject to GSA participation to the extent specified in the delegation; or

(iii) Conduct the procurement on behalf of the agency.

(c) *Procurement by the requiring agency.* When the agency acts under a delegation of procurement authority, the agency shall conduct the procurement in compliance with applicable procurement policies, regulations, and, in particular, the specific terms of the delegation for the major system acquisition.

(d) *Procurement by GSA.*

(1) When GSA elects to conduct the procurement, the procurement is a joint endeavor. Agency responsibilities shall be as set forth in § 1–4.1106–1, as modified and supplemented in this § 1–4.1108(d).

(i) The necessary personnel for evaluation of the concept designs and demonstration contracts and for the selection of alternatives for further consideration shall be provided.

(ii) Copies of agency head approvals (Key Decisions) shall be provided.

(2) When conducting the procurement, GSA's responsibilities will be as set forth in § 1–4.1106–2.

*Since the acquisition strategy and plan will become the blueprint for the procurement, it should be developed in coordination with GSA. Participation by GSA may be arranged by contacting the Agency Planning Division (CPS).

§ 1–4.1109 Procurement actions.

The procurement of ADPE, commercially available software, maintenance services, and related supplies shall be accomplished in accordance with the policies and procedures set forth in this § 1–4.1109.

§ 1–4.1109–1 Procurement-related directives.

Procurement actions shall comply with the following:

(a) Direction by the President and fiscal and policy control exercised by the Office of Management and Budget;

(b) The Federal Property Management Regulations (41 CFR Chapter 101), particularly Subchapter F;

(c) Federal information processing standards (FIPS), Federal telecommunications standards (FED–STD), and joint standards (FIPS/FED–STD);

(d) Except as otherwise provided by this Subpart 1–4.11, applicable procurement regulations (e.g., the Federal Procurement Regulations (41 CFR Chapter 1), agency regulations implementing and supplementing the FPR, (or, if applicable, the Defense Acquisition Regulation)); and

(e) GSA directives and delegations.

§ 1–4.1109–2 Competitive basis and documentation.

All purchases and contracts shall be made on a competitive basis to the maximum practicable extent. If at any time during a competitive procurement only one vendor remains in the competition or if efforts to obtain competition fail, the procurement files shall be documented before contract award to reflect this condition and the reasons therefor.

§ 1–4.1109–3 Publicizing procurement actions.

To ensure that competition is obtained on ADP procurement to the maximum practicable extent, agencies shall publicize solicitations as set forth below:

(a) Synopses of proposed procurements shall be publicized in the "Commerce Business Daily" (CBD), in accordance with the provisions of Subpart 1–1.10 (or, if applicable, DAR Part 1–10) (see also § 1–4.1109–6(f)).

(b) Bids and proposals shall be solicited in accordance with applicable provisions (see §§ 1–1.302–1 and 1–2.205 (or, if applicable, DAR 1–302.1, 1–302.2, and 2–205)). However, the GSA centralized Bidders Mailing List (BML) for Federal Supply Classification (FSC) Group 70 may be used for competitive ADPE and software procurements as established in agency procedures. Agencies may obtain the GSA BML by a written request to the General Services Administration (8BRC), Building 4, Denver Federal Center, Denver, CO 80255. The request shall include the applicable class and BML code number(s).

7010–0001	ADPE System Configuration
7020–0001	ADP Central Processing Unit (CPU, Computer), Analog
7021–0001	ADP Central Processing Unit (CPU, Computer), Digital
7022–0001	ADP Central Processing Unit (CPU, Computer), Hybrid
7025–0001	Memory-Magnetic Storage
7025–0002	Magnetic Tape Subsystems
7025–0003	Magnetic Disk Subsystems
7025–0004	Printers, High Speed (ADP)
7025–0005	Paper Tape Devices
7025–0007	Interactive Display
7025–0008	Interactive Graphics
7025–0009	Interactive Hard Copy
7025–0010	Other ADP Input/Output and Storage Devices
7030–0001	Operating System
7030–0002	Application Programs
7030–0003	Data Base Management Programs
7030–0004	Other Software
7035–0001	ADP Accessorial Equipment
7040–0001	Punched Card Equipment
7045–0002	ADP Support Equipment
7050–0001	ADP Components

The GSA BML which is received may be used for subsequent procurements for items in the class(es) and BML code(s), provided the solicitation is released to industry within 90 calendar days following receipt of the BML in question.

(c) Section 1–4.1109–3(b) shall be cited as the authority for the request. For further information concerning the above classes, agencies should contact General Services Administration (CDP), Washington, DC 20405.

(d) Agencies may use the BML for Standard Industrial Group 0739, BML Code 4, for ADP maintenance services. Procedures for obtaining and using this DML are the same as those outlined in paragraph (b) of this section. Section 1–4.1109–3(d) shall be cited as the authority for requesting this BML.

§ 1–4.1109–4 [Reserved]

§ 1–4.1109–5 Small purchases.

The provisions of Subpart 1–3.6, small purchases, (or, if applicable, DAR Part 3–6) apply when the annual aggregate amount of any one procurement of ADPE, commercially available software, maintenance services, or related supplies does not exceed $10,000, except that FSC group 70 items which are available on schedule contracts may be procured from that source.

§ 1-4.1109-6 Use of GSA schedule contracts.

(a) *General.* (1) Orders placed against GSA nonmandatory schedule contracts under § 1-4.1104 are subject to the provisions of this § 1-4.1109-6. When a schedule contract is used pursuant to a § 1-4.1104 blanket delegation of procurement authority, a specific delegation of procurement authority from GSA is not required even though the order is for a noncompetitive (sole source) requirement as defined in § 1-4.1102-8.

(2) The existence of nonmandatory ADP schedule contracts shall not preclude or waive the requirement for maximum practicable competition in obtaining ADPE, software, or maintenance services. In addition, the availability of those items under an ADP schedule contract shall not preclude or otherwise detract from procuring the items, including peripheral equipment or items for augmenting an existing system from a number of different sources, if this action will be in the best interest of the Government.

(3) Suitable equipment must be considered whether or not this equipment is on an ADP schedule contract. Accordingly, when an agency is procuring under the blanket delegation of procurement authority provisions of § 1-4.1104, maximum practicable competition shall be sought. When using ADP schedule contracts, the offerings of each contractor that might satisfy the agency's requirements shall be considered. Alternatively, the agency may choose to prepare a solicitation package in an effort to secure appropriate products and related services at lower overall costs to the Government. Even though the solicitation process consumes time and resources, it may be in the best interest of the Government when:

(i) The expected cost reduction will exceed the added costs of acquisition; or

(ii) There is a reasonable expectation that better offers will be received from suppliers other than the schedule contractor for suitable items; or

(iii) The agency requirements cannot be satisfied reasonably by any ADP schedule contractor; e.g., the agency's requirement calls for a customized package of equipment, training services, or other features not offered commercially.

(b) *Initial acquisition of ADPE.* Orders for the initial acquisition of ADPE, whether for purchases or rental, may be placed against the ADP schedule contracts provided that all of the following conditions are met.

(1) The order does not exceed the contract's maximum order limitation (MOL).

(2) When the purchase price of the items covered (even though the items are rented or leased) exceeds $300,000, a specific delegation of procurement authority is obtained (see §§ 1-4.1104-1(b)(2) and 1-4.1105).

(3) The intent to place an order, with an order value in excess of $50,000, against an ADP schedule contract is synopsized in the CBD at least 15 calendar days before placing the order.

(4) The procurement file is documented with the results of the synopsis action. If a written response is received from a responsible source who expresses a desire to compete on the requirement (other than from sources available and considered under the ADP schedule contract program), the procurement file also shall be documented with evidence that use of the ADP schedule contract, including the method of acquisition; e.g., lease or purchase, is the lowest overall cost alternative to the agency, price and other factors considered.

(c) *Continued rental or lease of installed ADPE and software.*

ADP schedule contracts may be used for the continued lease or rental of installed equipment and software under the provisions of the schedule contract. However, when orders are for or include the continued lease of an installed central processing unit, the orders are subject to the following:

(1) The intent to place a renewal order, with a value in excess of $50,000, is synopsized in the CBD at least 15 calendar days before placing the order; and

(2) A specific delegation of procurement authority under § 1-4.1105 is obtained before issuing the renewal rental or lease order if the schedule purchase price exceeds $300,000 and the results of the CBD synopsis indicates that the equipment is available from a source other than the schedule contract.[10]

(d) *Conversion from lease to purchase of installed ADPE.*

Orders placed against ADP schedule contracts for the conversion from lease to purchase of installed ADPE are subject to the following:

(1) The intent to place a purchase order, with a net value (purchase price after application of any lease credits or discounts) in excess of $50,000, is synopsized in the CBD at least 15 calendar days before placing the order; and

(2) A specific delegation of procurement authority is obtained before issuing an order to purchase ADPE with a net purchase order price of more than $300,000 when identical (specific make and model) or suitable substitute equipment is available from a supplier other than the schedule contractor.

(e) *Acquisition of software and maintenance services.*[11] Orders may be placed against ADP schedule contracts for software and maintenance services provided that:

(1) The value of the order does not exceed the MOL of the applicable schedule contract; and

(2) The procurement file is documented with evidence which supports use of the schedule contract as being in the best interest of the Government.

(f) *Synopsis requirements.*

(1) The requirement to synopsize the intent to place an order against ADP schedule contracts, as outlined in paragraphs (b), (c), and (d) of this section, shall be followed notwithstanding the exemption in § 1-1.1003-2(a)(5) (or, if applicable, DAR 1-1003.1(c)(v)). These synopses shall be prepared and forwarded in accordance with Subpart 1-1.10 (or, if applicable DAR Part 1-10) and shall include, as a minimum, the quantity, specific make and model of equipment, date required, place of installation, period of rental, if applicable, and a point of contact for further information. The synopsis shall indicate that no contract award will be made on the basis of offers/proposals received in response to the notice, since the synopsis of intent to place an order against a schedule contract cannot be considered a request for offers/proposals.

(2) Publication of contract award information in the CBD is not required when an order is placed against an ADP schedule contract, whether or not it follows a competitive solicitation, since the schedule contract was publicized in accordance with § 1-1.1004.

(g) *Actions after the CBD synopsis.* The schedule order synopsis technique provides agencies with both the GSA negotiated schedule prices (derived from discounting prices in the competitive commercial marketplace) and such additional product and cost information

[10] If the original requirement was evaluated and priced on a systems life basis; i.e., the price of successive renewals was considered as an evaluated cost in the original acquisition choice, then renewals of installed central processing units under an extended rental plan during the originally planned system life require neither a CBD synopsis nor a delegation of procurement authority from GSA.

[11] A CBD synopsis of the intent to place an order for software or maintenance against an ADP schedule contract is not required.

as might be submitted by potential suppliers in response to the CBD notification. Thus, the contracting officer must make a determination that ordering from the ADP nonmandatory schedule is most advantageous to the Government after consideration of the affirmative responses received in response to the CBD notice. The following actions shall be taken, based on the contracting officer's decision:

(1) When no responses are received, the procurement file shall be documented with the results of the CBD synopsis and the order placed in accordance with the terms and conditions of the applicable schedule contract.

(2) When a response(s) to the CBD notice is received from a nonschedule vendor for an item(s) that meets the user's requirement, the contracting officer shall take one of the following actions:

(i) Document the procurement file with an evaluation which indicates that the nonschedule item(s) would not meet the requirement, or that the schedule provided the lowest overall cost alternative and place the order against the schedule contract; or

(ii) When the evaluation indicates that competitive acquisition would be more advantageous to the Government, the Contracting Officer normally should issue a formal solicitation. In this event:

(A) The solicitation should contain terms and conditions substantially the same as those contained in the schedule contract in which the order was to be placed. The addressees of the solicitation shall include the schedule vendor for the purpose of ascertaining the vendor's interest in furnishing the item(s) of the schedule. This procedure will permit the schedule vendor to discount the schedule item(s) price since a discount under a separate proposal would not be a "price reduction" as provided in the schedule contracts.

(B) The contracting officer shall evaluate the offers received. It should be noted that some vendors may not agree to the solicitation terms and conditions that schedule vendors have accepted and that have been incorporated in their schedule contracts. The contracting officer shall act in a manner most advantageous to the Government by either awarding a contract based on the offers received in response to the solicitation or placing an order with a vendor under a schedule contract. The procurement file shall be documented to justify the action taken.

(h) *Orders not at lowest price.* If ADPE, software, or maintenance services are procured under an ADP schedule at other than the lowest delivered price available for identical or similar items under any ADP schedule contract, agencies shall justify the action and shall retain the justification and supporting data or submit them to GSA if a specific delegation of procurement authority is required (see § 1-4.1105(k)). The following are examples of factors that may be used in support of justifications.

(1) Special features of one item, not provided by comparable items, are required in effective program performance.

(2) An actual need exists for special characteristics to accomplish identified tasks.

(3) It is essential that the item selected be compatible with items or systems already being used.

(4) Time of delivery in terms of actual need cannot be met by a contractor offering a lower price.

(5) Greater maintenance availability, lower overall maintenance costs, or the elimination of problems anticipated with respect to machines or systems, especially at isolated use points will produce savings in the long run which are greater than the difference in purchase prices.

§ 1-4.1109-7 Use of requirements contracts.

GSA makes selected ADPE and software available to agencies through requirements-type contracts that provide for substantially lower equipment and software costs. Where ADPE and software which will satisfy the user's requirements are available from GSA requirements-type contracts, this source shall be used by all agencies as the primary source of supply in accordance with the provisions of these contracts. Copies of the contracts (not contractor's price lists) are distributed to recipients of the schedule FSC Group 70, Part I. Additional copies are available from the General Services Administration (8BR), Building 41, Denver Federal Center, Denver, CO 80225. Some of these requirements-type contracts specify that GSA is responsible for the allocation of the ADPE or software. In these cases, authorization shall be obtained from the General Services Administration (CDP), Washington, DC 20405, before placing an order against the requirements-type contract. Before acquiring ADPE or software that is functionally similar to the ADPE or software on a requirements-type contract from another source, the agency shall:

(a) Document the procurement case file, indicating why the requirements-type contract could not be used; and

(b) Obtain a delegation of procurement authority from GSA if the procurement falls outside the scope of §§ 1-4.1104-1 or 1-4.1104-2.

§ 1-4.1109-8 Industry review of ADP specifications.

Maximum advantage shall be taken of the latest technological advances in the ADP field to ensure that the Government's data processing requirements are met at the lowest possible overall cost. The ADP industry can perform a useful service during the early stages of the procurement process by ensuring that the specifications are clearly stated and readily understandable and that they will permit the Government to take full advantage of current ADP technology. Accordingly, an agency, at its discretion, may provide offerors a copy of the proposed specifications before release of the formal solicitation. All those offerors who are scheduled to receive a copy of the solicitation under the provisions of § 1-4.1109-3 should be furnished a copy of the proposed specifications. Offerors should be given a minimum of 30 calendar days in which to submit their written comments. If the procurement is complex, offerors normally should be given at least 60 calendar days for submission of their comments. The agency shall evaluate the comments received and take such action as it determines to be appropriate. The Government's action on these comments shall be final.

§ 1-4.1109-9 Handling of late bids, proposals, modifications, and withdrawals.

(a) Late bids, modifications of bids, or withdrawals of bids shall be handled as set forth in Subpart 1-2.3 (or, if applicable, DAR Part 2-3). The standard clause shall be used (see § 1-2.201(a)(31) (or, if applicable, DAR 7-2002.2)).

(b) Late proposals, modifications of proposals, and withdrawal of proposals shall be handled as set forth in § 1-3.802-1 (or, if applicable, DAR 3-506). The standard clause shall be used (see § 1-3.802-1(a) (or, if applicable, DAR 7-2002.4)). The alternate clause set forth in § 1-3.802-2(b) is available for use in those instances in which overriding mitigating circumstances clearly make use of the alternate clause in the best interest of the Government; and

(1) The head of any agency or the agency head's designated representative authorizes use of the alternate clause for the individual procurement in question; and

(2) Prior specific approval is obtained from the Commissioner, Automated Data and Telecommunications Service.

Washington, DC 20405 as required by § 1-3.802-2(a).

(c) Records provisions concerning the handling of late submissions under advertised procedures should be complied with (see § 1-2.303-8 (or, if applicable, DAR 2-303.4)). Similar records shall be maintained concerning the handling of late submissions under negotiation procedures.

§ 1-4.1109-10 Use of functional specifications.

Functional specifications are the preferred method of expressing the user's requirements in solicitation documents. The functional specification may be augmented with equipment characteristics and elements of performance when necessary to reflect the user's needs. (See FPMR § 101-35.205.)

§ 1-4.1109-11 Use of other types of specifications or purchase descriptions.

If functional specifications cannot be used to describe the user's complete requirement, other types set forth below may be used. However, to minimize limitations on competition, other types of specifications or purchase descriptions shall be used in the order of precedence as listed:

(a) Equipment performance specifications (see § 1-4.1102-13);

(b) Software and equipment plug-to-plug compatible functionally equivalent purchase descriptions;

(c) Brand name or equal purchase descriptions (see §§ 1-1.307-4 and 1-1.307-5 (or, if applicable, DAR 1-1206.2)); or

(d) Specific make and model purchase descriptions (This type of purchase description limits competition. Its use is considered to be a noncompetitive (sole source) requirement and must be justified.)

§ 1-4.1109-12 Compatibility limited requirements.

(a) A statement of requirements for an augmentation or replacement acquisition (see FPMR § 101-35.209) that is limited to ADPE and software compatible with the installed system shall be:

(1) Supported by a software conversion study (see § 1-4.1109-13);

(2) Justified on the basis of agency mission-essential data processing requirements, and economy and efficiency; and

(3) Meet the requirements of this § 1-4.1109-12.

(b) Compatibility limited requirements tend to restrict competition and therefore shall not be made a mandatory requirement solely for reasons of economy or efficiency. When conversion costs are to be evaluated, the solicitation shall provide for the submission and evaluation of acceptable noncompatible offers from responsible offerors that will meet the user's requirement at the lowest overall cost, price and other factors considered.

(c) The following factors shall be considered in determining whether the incorporation of compatibility limited requirements is justified for the replacement acquisition.

(1) The essentiality of existing software, without redesign, to meet agency critical mission needs. For example, the continuity of operations may be so critical that conversion is not a viable alternative.

(2) The additional risk associated with conversion if compatibility specifications are not used and the extent to which the Government would be injured, financially or otherwise, if the conversion to the new ADP system fails.

(3) The additional adverse impact of factors such as delay, lost economic opportunity, and less than optimum utilization of skilled professionals if compatibility specifications are not used.

(4) The steps being taken to foster competitive conditions on the augmentation or replacement acquisition (see § 1-3.101(d) (or, if applicable, DAR 3-101-(d)) and FPMR § 101-35.206).

(5) The offloading of selected applications programs to commercial data processing service facilities as an alternative to conversion.

(6) The extent of essential parallel operations, i.e., the need to continue operation of the old system in parallel with the new system until the new system can fully support the mission needs.

(d) The findings that support the use of compatibility specifications shall be submitted with each agency procurement request (see § 1-4.1105) for augmentation or replacement ADPE acquisition when the use of these specifications is contemplated.

§ 1-4.1109-13 Software conversion studies.

(a) Software conversion studies shall be performed for all procurements to ensure that the user's needs are met at the lowest overall cost, price and other factors considered, including the cost and other factors associated with conversion activities. However, a software conversion study is not required when one of the three following conditions exist:

(1) Initial acquisition where no software currently exists;

(2) Procurement for computer peripherals only; or

(3) Exercise of purchase option under a leasing agreement.

(b) Studies for procurements below the thresholds stated in paragraph (c) of this section shall be based on Government estimates determined in accordance with agency procedures. The procurement file shall be documented to record the estimates and the method of computation.

(c)(1) A comprehensive software conversion study shall be made for each augmentation or replacement ADPE acquisition when either one of the two following conditions exists:

(i) The estimated purchase price of the ADP equipment system is expected to exceed $2,500,000, excluding the maintenance and support costs; or

(ii) The cost of conversion is to be used as the primary justification for a noncompetitive (sole source) requirement when the estimated value of the procurement exceeds $300,000.

(2) An agency may elect to conduct its own comprehensive software conversion study, use contractual resources to accomplish the study, or request the GSA Federal Conversion Support Center (FCSC) to perform the study.

(3) The software conversion study shall be maintained in agency files and be available for GSA review at the time that the agency submits to GSA an agency procurement request (APR).

§ 1-4.1109-14 Determination of conversion costs.

(a) Costs directly related to the conversion from the installed ADPE, software, data bases, files, and telecommunications software to the replacement system and project management costs shall include, but are not limited to:

(1) Conversion of the following software by reprogramming, recoding, or translation:

(i) Existing software written in Federal standard or other ANSI standard higher level language; and

(ii) Application software written in assembly or other nonstandard languages that will continue to meet essential agency mission needs without redesign, provided that continued use of the nonstandard software can be justified and the file is documented with the justification prior to incorporation into the software conversion study; and

(iii) Mission-essential application software to be developed for operational use before the augmentation or replacement ADPE and operating system software is installed, (or before commercial ADP services are procured),

provided the software is written in Federal standard or other ANSI standard languages;

(2) Conversion of data bases, data base design changes, and data base management systems designed to the Conference on Data Systems Languages (CODASYL) specifications to the extent necessary to permit the continued use of existing application software;

(3) Firmware required solely to permit the continued use of application software;

(4) Site preparation and modifications to installed environmental controls;

(5) Parallel operation of the old system during the conversion process, including offsite data processing support;

(6) Travel and training expenses, including pay and fringe benefits of Government employees during attendance at formal classroom training courses; and

(7) Other general and user expenses directly related to the conversion effort; e.g., conversion planning, preparation, and management and supplies and any additional general-purpose software required to support the conversion.

(b) The useful life of application software is limited by changes in data processing requirements, operating system software, and equipment technology. Generally, the life expectancy of this software, without redesign or reprogramming, is in the range of 5 to 10 years. Accordingly, the updating of application software for these reasons must be reckoned with, regardless of whether these programs are converted from one ADP system architecture to another. The costs incurred for the redesign of application software in technology updating are not *bona fide* conversion costs, and they shall not be evaluated for the purpose of determining the lowest total overall cost offer/bid. These technology updating costs include:

(1) The conversion of existing software and data bases which are to be redesigned;

(2) Purging duplicate or obsolete software, data bases, and files;

(3) Development of documentation for existing application software; and

(4) Improvements in management and operating procedures.

(c) Standard cost factors, such as those contained in the OMB Cost Comparison Handbook (Supplement No. 1 to OMB Circular A-76), shall be used to the maximum practicable extent in preparing conversion cost studies and estimates. These cost factors may be supplemented by industry- or agency-developed cost factors, as necessary.

§ 1-4.1109-15 Determination of selection factors.

The prices offered and estimated costs of conversion that can be stated in dollars for software, including data base management systems, data base conversion, files conversion, system test, parallel operations, and other expenses directly related to the conversion from installed ADPE and software to augmentation or replacement ADPE and software, shall be included in the evaluation for determining the lowest overall cost, price and other factors considered. The following are examples of other factors to be considered:

(a) Economic benefits clearly attributable to increased agency productivity.

(b) Direct savings that would accrue to the Government from the release of rented ADPE, discontinuance of commercial ADP services, or reduction in telecommunications costs.

(c) Indirect savings derived from reductions in other than ADPE or ADP service costs, such as space and/or non-ADP personnel support expenses.

(d) Benefits from implementing new applications which otherwise would have to be deferred either indefinitely or to a significantly distant point-in-time.

(e) Economic advantages resulting from providing the capability to accommodate projected increases in workload without contracting for further augmentation or replacement of the ADPE or acquisition of commercial ADP services.

(f) Potential savings due to the availability of software already developed and available from the Federal inventory or commercial marketplace that could be used to meet additional agency requirements.

(g) Proven reliability of the equipment and operating system software in similar operating environments.

(h) The continued availability of operating system software support and maintenance services beyond the initial system/item life that would enhance the probability of reutilization of the ADPE within the Government.

(i) The potential for supporting other agencies through the ADP sharing program.

§ 1-4.1109-16 Software procurements.

When acquiring commercially available software, agencies shall strive to obtain the following objectives:

(a) Avoid restrictive clauses that limit the use of the software to a specific ADP system, installation, or organization;

(b) Incorporate a clause that will permit other Government agencies to obtain the software under the contract being negotiated;

(c) Obtain additional quantity discounts, should any other Government agency acquire the same software under the contract in question; and

(d) Ensure that the vendor is contractually obligated to support and maintain the software in subsequent years.

§ 1-4.1109-17 Procurement of related supplies.

Specific purchase programs have been established by GSA for selected ADP related supplies (including electronic data processing tape).[12] When the identical item(s) is available from multiple sources, contracts are awarded on a competitive basis. These contracts are the primary source of supply for the ADP supplies and support equipment included therein. Instructions for ordering these items are set forth in the contract (see also § 1-4.1109-7). Specific purchase programs also have been established for tabulating machine cards and marginally punched continuous forms. (See FPMR §§ 101-26.509 and 101-26.703 for instructions for ordering tabulating machine cards and marginally punched continuous forms, respectively.)

§ 1-4.1109-18 Furnishing ADP items and services to contractors.

(a) When the very subject matter of a contract is for something other than the procurement of ADP items or services and commercially available ADPE is incorporated into the non-ADP system or commercial ADP services are used in contract performance, the acquisition and management of the non-ADP system shall be in accordance with other applicable regulations, rather than this subpart (see § 1-4.1101(b)(2)).

(b) To facilitate the reutilization of ADPE, the Government contractor shall be required to identify the quantity and specific make and model of the ADPE that is delivered as a part of the non-ADP system. Nevertheless, agencies shall sever requirements for general purpose commercially available ADP items or services from the overall requirement, acquire them in accordance with these regulations, and provide them as Government-furnished property or services to the contractor when it is operationally feasible to do so and this action will promote economy, efficiency, and maximum practicable competition.

(c) In those instances when ADP items or services are severed pursuant to this subpart and procured by the

[12] Similar programs have been established for support equipment.

Government, care must be taken to ensure that the prime contractor's ability and responsibility to perform in accordance with the contract provisions are not disturbed.

§ 1-4.1109-19 Purchase options for contractor acquired ADPE.

(a) Notwithstanding the provisions of § 1-4.1101, when leased ADPE is used on Government contract work and the total cost of leased ADPE is absorbed by the Government under a cost-reimbursement type contract, the contracting officer shall require the contractor to include a provision in the rental contract stating that the Government will have the right to exercise any purchase option and realize any other benefits earned through rental payments.

(b) When leased ADPE is used on Government contract work under a cost-reimbursement type contract and less than 100 percent of the cost of the equipment is absorbed by the Government, the contracting officer should obtain for the Government, where possible, the right to realize accrued purchase option credits, if the contractor elects not to exercise the purchase option. Accordingly, agency negotiation objectives for cost-reimbursement type contracts shall include the following when less than 100 percent of the cost of the equipment is absorbed by the Government:

(1) The encouragement of contractors to agree to the incorporation in the ADP equipment lease of a Government right to realize accrued purchase option credits;

(2) The obtaining, if possible, of a Government right of first refusal on accrued purchase credits if the contractor elects not to exercise the purchase option; and

(3) The providing of an advance notice of at least 60-days (120-days, if feasible) to the Government when the contractor proposes to terminate the ADP equipment lease if the Government has been granted rights to accrued purchase option credits.

(c) If the Government has been granted rights to purchase option credits in accordance with paragraph (b) of this section and the contractor elects not to exercise the purchase option, the ADPE shall be reported through agency or GSA reutilization channels as set forth in FPMR Subpart 101-36.3.

(d) If the Government elects to exercise an option to purchase the leased ADPE in accordance with paragraphs (a) and (b) of this section, it is in the nature of a procurement. Accordingly, the agency shall comply with the applicable provisions of this subpart relating to the acquisition of ADPE.

§ 1-4.1109-20 Computer security requirements.

(a) Specifications for the acquisition of ADPE, software, maintenance services, and supplies are required to be certified by the requiring agency as meeting the agency security needs. (See OMB Circular No. A-71, Transmittal Memorandum No. 1, dated July 27, 1978, and implementing policies, procedures, standards, and guidelines issued by GSA (see FPMR Subparts 101-35.3 and 101-36.7), Department of Commerce, and the Office of Personnel Management.) These requirements are in addition to provisions concerning protection of the privacy of individuals (see § 1-1.327 (or, if applicable, DAR 1-327 and APP.P) and FPMR Subpart 101-35.17).

(b) Solicitation specifications shall include, where applicable:

(1) Agency rules of conduct that a contractor and the contractor's employees shall be required to follow;

(2) A list of the anticipated threats and hazards that have been determined by risk analysis that the contractor must guard against;

(3) A description of the safeguards that the user agency specifically requires the contractor to provide;

(4) The standards applicable to the contractual requirement;

(5) The test methods, procedures, criteria, and inspection system (or the requirement to submit proposals therefor) necessary to verify and monitor the operation of the safeguards during contract performance and to discover and counter any new threats or hazards;

(6) The requirement for periodically assessing the security risks involved and advising potential users of the level of security provided;

(7) Proposed contractual clauses or provisions, as necessary, to provide for the foregoing; and

(8) A description of the personnel security requirements.

(c) Evaluations of offers for award, where applicable, will include:

(1) The adequacy of the proposed safeguard program;

(2) The presence in place of safeguards, including personnel security requirements; and

(3) The inclusion in the proposed contract of clauses that appropriately provide for (i) title to safeguards designed or developed under the contract, (ii) control of publication or disclosure of safeguards whether Government-furnished or contractor generated, and (iii) statement of work adjustments, as necessary, to reflect the contractor's proposal, its evaluation, and the contract negotiation.

(d) Contract administration should include, where applicable, monitorship of the verification and inspection program for continuing effectiveness of the safeguard program including compliance with applicable standards, procedures, and guidelines incorporated into the contract.

§ 1-4.1109-21 Restrictions on the use of simulation in ADP systems procurement.

(a) Data structured for simulation purposes shall not be used as the only means of describing data processing requirements in solicitation documents. Simulation data shall be accompanied by a narrative description of the ADP objectives and workload and any available application logic diagrams.

(b) Solicitation documents shall not be structured in such a way as to require offerors to use a specific computer system simulator in order to submit their offers, but when offerors submit computer simulation as part of their offers, they shall be required to describe clearly the simulation used and the make and model of the computer on which the simulation was run.

(c) Offers should not be considered nonresponsive or unacceptable solely on the basis of simulation results.

(d) Procedures for ADP simulation and computer performance evaluation services are prescribed in FPMR Subpart 101-36.14.

§ 1-4.1109-22 Use of benchmarks in low dollar ADP systems procurements.

(a) Solicitations involving low dollar value procurements generally shall not require benchmarks where performance can be validated by some other means. When the use of benchmarks is necessary, solicitations shall not require the running of "worst case" benchmark programs (e.g., programs that require extensive reprogramming or conversion) unless these programs are representative of the using agency's data processing needs.

(b) Mandatory benchmarks shall not be used, however, in solicitations for ADP systems with a purchase value of less than $300,000 unless the using agency determines that there is no other acceptable means of validation.

(c) For ADP systems with a purchase value of $300,000 or less, the following validating methods shall be considered:

(1) Validation of performance by the technical evaluation of proposed ADPE and software; or

(2) Evaluation of an operational ADP installation processing a similar workload on comparable equipment.

§ 1-4.1109-23 Use of remote terminal emulation in ADP systems procurement.

(a) Each agency shall determine whether or not to require the mandatory use of remote terminal emulation during each ADP system procurement. An agency should study the GSA Handbook, Use and Specifications of Remote Terminal Emulation in ADP System Acquisitions,[13] before making its determination.

(b) When an agency requires the mandatory use of remote terminal emulation during an ADP system procurement, the agency:

(1) Shall follow all mandatory procedures contained in the GSA Handbook;

(2) Shall not require remote terminal emulation capabilities that are not explicitly defined in the GSA Handbook;

(3) May declare an offer unacceptable in a negotiated procurement if the offeror fails to provide the remote terminal emulation capabilities required by the solicitation; and

(4) Shall not require an offeror to conduct a benchmark test using remote terminal emulation at the agency's site.

(c) Any agency desiring to deviate from the policy defined in paragraph (b) of this section shall request authority from GSA, under § 1-4.1100-3 procedures, to deviate before the issuance of the solicitation document.

(1) To request a deviation authority, an agency shall provide to the General Services Administration (CPS), Washington, DC, 20405, a detailed, technical description and justification for each specific deviation desired.

(2) When granted authority to deviate, an agency shall provide promptly to potential offerors detailed instructions specifying all mandatory remote terminal emulation capabilities not defined in the GSA Handbook and the exact manner in which each emulation benchmark test must be conducted. A notice indicating the availability of these materials shall be published in the Commerce Business Daily (CBD) at least 60 calendar days before the release of the solicitation document.

[13] The GSA Handbook, Use and Specifications of Remote Terminal Emulation in ADP System Acquisitions, has been prepared to provide guidance to Federal agencies in designing and conducting remote terminal emulation benchmark tests. The Handbook summarizes introductory concepts and terminology of benchmarking and remote terminal emulation, describes when and how agencies should use remote terminal emulation, and specifies the remote terminal emulation capabilities that an agency may require offerors to provide for testing ADP systems during acquisition. Copies of the GSA Handbook are available upon written request to General Services Administration (CDD), Washington, DC 20405.

§ 1-4.1109-24 Evaluation factors.

Solicitations shall identify all factors, including conversion costs, that will be considered in the evaluation of offers (see §§ 1-3.802(c) (or, if applicable, DAR 3-501, particularly (b)(2) Sec. M(i)) and 1-4.1109-15). The evaluation factors shall be applied to the mandatory requirements and the other requirements indentified as evaluated optional features, where applicable. When evaluated optional features are included in a solicitation, relative importance (expressed in dollar values, or points, or any other reasonable indicators) shall be indicated for each feature.

§ 1-4.1109-25 Implementation of standards.

(a) The standard terminology as set forth in FPMR Subpart 101-36.13 for each Federal information processing standard publication (FIPS PUB), Federal telecommunications standard (FED-STD), or joint FIPS/FED-STD that is applicable, unless waived or excepted as prescribed by the standard, shall be included in the solicitation for procurements under this Subpart 1-4.11. FPMR Subpart 101-36.13 provides standard terminology for use in solicitations, purchase agreements, and contracts to give effect to announced standards. FIPS PUBS are issued by the National Bureau of Standards and collectively constitute the Federal Information Processing Standards Register. Standards are available as set forth in FPMR § 101-36.1302.

(b) The provisions of FPMR Subpart 101-36.13 are applicable to all Federal agencies unless the agencies are otherwise excepted. Waiver procedures and exceptions are prescribed in the applicable standards.

(c) If the requirements for compliance with a standard is changed after release of a solicitation; e.g., approval of a delayed request for a waiver, the agency responsible for the procurement action shall determine whether a substantial change in the Government's requirement has occurred. Action in accordance with § 1-3.805-1(d) (or, if applicable, DAR 3-805.4(b)) shall be taken, including resolicitation if appropriate, based on the determination.

§ 1-4.1110 Standard clauses.

The following clauses shall be used as specified in solicitations and contracts for ADP items covered by this Subpart 1-4.11.

§ 1-4.1110-1 Limitation of liability.

The following clause shall be used in all solicitations and contracts for ADPE, commercially available software, maintenance, and related supplies unless the contracting officer determines that a higher degree of protection is in the best interest of the Government.

Warranty Exclusion and Limitation of Damages

Except as expressly set forth in writing in this agreement, or except as provided in the clause entitled, "Commitments, Warranties, and Representations," if applicable, and except for the implied warranty of merchantability, there are no warranties expressed or implied. In no event will the Contractor be liable to the Government for consequential damages as defined in the Uniform Commercial Code, Section 2-715, in effect in the District of Columbia as of January 1, 1973; i.e.:

Consequential damages resulting from the seller's breach include:

(a) Any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

(b) Injury to person or property proximately resulting from any breach of warranty.

(End of Clause)

§ 1-4.1110-2 Contractor representation.

The following clause shall be used in all solicitations and contracts for ADPE when the Government's requirement is set forth in whole or part by functional specifications and the value of the contract is expected to exceed $100,000.

Contractor Representation

Unless the Contractor expressly states otherwise in the Contractor's proposal, where functional requirements are expressly stated as part of the requirements of this solicitation, the Contractor, by responding, represents that in its opinion the system/item(s) proposed is capable of meeting those requirements. However, once the system/item(s) is accepted by the Government, Contractor responsibility under this clause ceases. In the event of any inconsisitency between the detailed specification and the functional specification contained in the solicitation, the former will control.

§ 1-4.1110-3 Fixed price options.

(a) A fixed price contract with option(s) to extend the contract period of performance and/or to acquire additional quatities may be in the best interest of the Government when:

(1) The Government has firm requirements for the use of ADPE, commercially available software, or maintenance services which extend beyond the initial fiscal year;

(2) Funds, including funds under statutes that limit the obligation of funds to the fiscal year of their appropriation, are unavailable beyond the initial fiscal year;

(3) A reasonable certainty exists that funds will be available thereafter to

permit the satisfaction of the requirements; and

(4) Realistic competition for the additional periods or quantities may be impracticable once the initial contract is awarded.

(b) The evaluation of options is in the best interest of the Government at the time of initial award because it reduces the possibility of a buy-in and motivates price competition on a system/item life basis. "Buy-in" refers to the practice of attempting to obtain a contract award by knowingly offering a price less than anticipated costs with the expectation of receiving "follow-on" awards (where effective competition can be anticipated to be less) at prices at least high enough to recover any losses on the original "buy-in" contract. The long-term effects of this practice may diminish competition and may result in poor contract performance and higher long-term prices to the Government.

(c) One-time charges (startup and other nonrecurring costs), such as documentation, manuals, initial training requirements, etc., may be significant for a particular solicitation. An offeror may intend to absorb some portion of these costs or may plan to recover them (amortize over) in connection with possible "follow-on" awards. Incumbent offerors could enjoy a competitive advantage since it may not be necessary to include portions of these costs. In addition, offerors with relatively broader markets and/or stronger financial resources tend to have greater flexibility with respect to any one individual procurement action. The evaluation of system/item life prices promotes greater competition by evening out these advantages and encourages lower system/item life pricing.

(d)(1) When considering options, care should be exercised in making the distinction between (i) discontinuance charges; i.e., termination settlement compensation (the term includes prenegotiated contractual payment provisions) for discontinuance of performance during the initial contract period of performance or during an exercised option period of performance, (ii) separate charges for the Government's failure to exercise an option to extend the period of performance or to acquire additional quantities, and (iii) contracting for evaluated optional features (see § 1-4.1102-14) which is outside the scope of this § 1-4.1110-3.

(2) A provision in a contract that calls for a payment that reflects the addition of a separate charge to a contract price is illegal if the charge when added to the contract price exceeds the amount that reasonably represents the value of *bona fide* fiscal year requirements. (See 31 U.S.C. 665a, 31 U.S.C. 712a, and 41 U.S.C. 11.) To preclude the offering of these illegal charges (because of the nonexercise of options) when options are to be incorporated into a contract, separate charges in any form shall not be solicited. Solicitations shall provide that offers containing any charges for the Government's failure to exercise any option will be rejected. The solicitation/contract provision entitled "Fixed-Price Options" authorized by this § 1-4.1110-3 so provides.

(e)(1) When the fixed price options provision is used, the Government and the contractor may find it mutually advantageous to incorporate a special contractual provision containing specific notice and settlement terms to cover discontinuance of rental of equipment or software during the contract period of performance. The solicitation/contract provision entitled "Discontinuance Repricing" (see paragraph (h) of this § 1-4.1110-3) shall be used for this purpose. This provision is in addition to and takes precedence over the required standard termination for convenience clause when the contracting parties mutually agree to incorporation of the provision in the contract. In the event the provision is not incorporated, discontinuance shall be governed solely by the required standard termination for convenience clause.

(2) The special "Discontinuance Repricing" provision provides notice of discontinuance and settlement payment terms. A means is provided to determine finitely discontinuance charges within a ceiling price that ensures that the value of the discontinued requirement and the contract value of the requirement for the applicable contract period are reasonable. It provides the opportunity for a lower price offer by covering the risk of discontinuance with specified repricing provisions.

(3) Neither the incorporation of the provision in the contract nor the calculation and comparison of potential discontinuance charges shall be considered as a factor in the evaluation and selection for award.

(f)(1) The exercise of an option by the Government shall be made only if it is determined that (i) funds are available, (ii) the requirement covered by the option fulfills an existing need of the Government, and (iii) the exercise of the option is the most advantageous method of fulfilling the Government's need, price and other factors considered.

(2) The determination shall be set forth in writing and made a part of the contract file.

(g) When the circumstances discussed in paragraph (a) of this § 1-4.1110-3 are applicable, the following solicitation/contract provision, entitled "Fixed-Price Options," shall be inserted in the solicitation. The data required for the "fill-ins" should be suitably highlighted, and inapplicable bracketed portions should be deleted. When the "Fixed Price Options" provision is used, the solicitation shall also specify:

(1) The system/item life;

(2) The present value discount methodology, including payment schedule, that will be used for purposes of award evaluation; and

(3) The option periods of performance and option quantities, as appropriate.

Fixed Price Options Provision

(a) This solicitation is being conducted on the basis that the known requirements extend beyond the initial contract period [and exceed the basic quantity]* to be awarded, but due to the unavailability of funds, including statutory limitations on obligation of funds, the option(s) cannot be exercised at the time of award of the initial contract. There is a reasonable certainty that funds will be available thereafter to permit exercise of the options. Because realistic competition for the option periods [and quantity]* is impracticable once the initial contract is awarded, it is in the best interest of the Government to evaluate options in order to eliminate the possibility of a "buy-in."

(b) In order to safeguard the integrity of the Government's evaluation and because the Government is required to procure ADPE and related items on the basis of fulfilling the systems life requirement at the lowest overall cost, price and other factors considered, requirements for optional periods [and additional quantities]* as well as initial requirements will be evaluated for award on a fixed price basis. Since the systems or items to be procured under the solicitation have an expected life of** months (hereafter referred as "system life" or "item life," as appropriate), and since lowest system (item) life costs are synonymous with lowest overall costs, the contract resulting from this solicitation will contain options at fixed prices for renewals for subsequent periods based on fiscal years throughout the projected system (item) life [and options at fixed prices for all stated optional quantities of supplies or services not included in the initial requirements]*. Despite the foregoing, offerors are reminded that although the evaluation that will lead to contract award will be based on system (item) life costs, the award of the initial contract as well as the exercise of the option(s) is dependent not only on the continued existence of the requirement and the availability of funds but also on an affirmative determination that each exercise of an option is in the best interest of the Government.

* Delete when inapplicable.

** Insert the specific number of months applicable to the solicitation.

(c) Options included in offers submitted in response to this solicitation will be evaluated as follows:

(1) *Firm Fixed Prices.* To be considered acceptable under the solicitation, offerors must offer (i) fixed prices for the initial contract period for the initial system or items being procured, (ii) fixed prices or prices which can be finitely determined for each separate option renewal period, which prices must remain in effect throughout that period, [and (iii) fixed prices or prices which can be finitely determined for all required option quantities]*.

(2) *Evaluation of Prices.* Offers will be evaluated for purposes of award by adding the total price of all optional periods [and all stated optional quantities]* to the total price for the initial contract period covering the initial system or items. These prices will be adjusted by the appropriate discount factors shown in*** of the solicitation document. Evaluation of option prices will not obligate the Government to exercise the options. Offers which do not include fixed or determinable system (item) life prices cannot be evaluated for the total systems life requirement and will be rejected. Offers which meet the mandatory requirements will be evaluated on the basis of lowest overall cost to the government, price and other factors considered.

Note.—Evaluated optional features, if any, will also be evaluated.

(3) *Separate Charges.* Separate charges, in any form, are not solicited. Offers containing any charges for failure to exercise any option will be rejected.

(d) Selection of an offer shall be made on the basis of lowest overall cost, price and other factors considered, to the Government provided that the contract price reasonably represents the value of *bona fide* fiscal year requirements, rather than representing, to any extent, a portion of any other fiscal year's requirements. This determination with respect to the contract price shall be made after consideration of such factors as commercial or catalog prices for short term leases, offeror system startup expenses, multiyear price protection, assured system life availability of equipment, software, and vendor support. If a determination is made that an offer does not meet these criteria, that offer cannot be accepted for award.

(e) Award of an initial contract will not obligate the Government to exercise any contractual option. Prior to exercising any option, the Government will make a determination that (i) funds are available, (ii) the requirement covered by the option fulfills an existing need of the Government, and (iii) the exercise of the option is the most advantageous method of fulfilling the Government's need, price and other factors considered.

(f) Failure to exercise an option(s) shall not obligate the Government to pay any charges other than the contract price including exercised options.

*** Insert location in the solicitation where appropriate discount factors and the contemplated payment schedule are specified.

(g) The following provision(s) shall be included in any contract resulting from this solicitation.

Option To Extend the Term of the Contract

This contract is renewable at the prices stated elsewhere in the contract, at the option of the Government, by the Contracting Officer giving written notice of renewal to the Contractor by the first day of each fiscal year of the Government or within 30 days after funds for that fiscal year become available, whichever date is the later; provided that the Contracting Officer shall have given preliminary notice of the Government's intention to renew at least**** days before this contract is to expire. Such a preliminary notice of intent to renew shall not be deemed to commit the Government to renewals. If the Government exercises this option for renewal, the contract as renewed shall be deemed to include this option provision. However, the total duration of this contract, including the exercise of any options under this clause, shall not exceed** months.

Option for Increased Quantity

The Government may increase the items called for herein by the quantities stated and at the unit prices specified elsewhere in this contract. The Contracting Officer may exercise this option at any time within the period specified in the contract by giving written notice to the Contractor. Delivery of items added by exercise of this option shall be in accordance with the delivery schedule set forth elsewhere in this contract.*

(End of solicitation/contract provision)

(h) The "Discontinuance Repricing" solicitation/contract provision may be inserted in the solicitation when the Government considers it appropriate to do so. (See paragraph (e) of this § 1-4.1110-3.) The contract may contain this contractual provision when the contracting parties mutually agree to its insertion. The offeror is provided an opportunity to indicate his or her position by checking the appropriate box in the solicitation/contract provision.

Discontinuance Repricing Provision

(a) By the incorporation of this solicitation/contract provision in this solicitation, the Government indicates its willingness to incorporate the contract provision entitled "Discontinuance of Rental and Repricing" into the contract resulting from this solicitation. The provision provides an alternative to standard termination for convenience procedures in appropriate circumstances.

(b) The following example illustrates the operation of the provision.

—Monthly rental price effective for the period in which the discontinuance date falls for the discontinued item as stated in the contract—$90.
—Monthly rental price for the item effective at the time of initial award of the system contract as stated in the vendor's ADP schedule contract (or the established commercial catalog price at the same time, if lower or if no ADP schedule contract effective)—$120.
—Months of rental prior to the discontinuance date during the initial or option contract period of performance in which the discontinuance date occurs—10.
—Rental charges earned during the applicable period of performance (10 × $90)—$900.
—Discontinuance charges to be added at discontinuance date ([$120 − $90) × 10)—$300.
—Total rental charges plus discontinuance charges ($900 + $300)—$1,200.
—Ceiling on total of rental charges and discontinuance repricing charges (12 × $90)—$1,080.
—Total price during period for the discontinued item ($1,080 ceiling lower than total rental earned plus discontinuance charges)—$1,080.

(c) *Offeror election.* The undersigned offeror ☐ agrees, ☐ declines, the incorporation of the following contract provision in any contract which may result from this solicitation.

Discontinuance of Rental and Repricing

(a) The Government may, in lieu of a termination under the clause of this contract entitled "Termination for the Convenience of the Government," during the initial or any option period of performance of this contract, discontinue rental of any equipment or software on a date specified in a written notice provided to the Contractor not less than 30 days prior to the specified discontinuance date. The Government may discontinue the rental or shorter notice when agreed to by the Contractor.

(b) In the event of discontinuance of rental under (a) above, the Government shall pay termination repricing charges to the Contractor as computed in accordance with this paragraph (b). The charges shall be the remainder obtained by subtracting the contract monthly rental price effective at the discontinuance date for the discontinued equipment or software item from the monthly rental price for the item under the GSA/ADP schedule contract or the established commercial catalog price, whichever is less, effective at the time of award of the contract's initial period of performance, multiplied by the number of months the item was rented during the particular contract period of performance (initial or option) in which the discontinuance was effective, provided, in no event shall the total of termination repricing charges and the contract rental price for the number of months the item was rented during the period in which discontinuance was effective exceed the contract price for the item for the entire period.

(c) The provisions of this clause shall prevail when notice pursuant to this clause is made.

[End of solicitation/contract provision]

§ 1-4.1111 Additional clauses.

The GSA Solicitation Document for ADP Equipment Systems contains

**** Insert 30 days unless the Government determines that a longer period is appropriate.

clauses regarding special provisions (Section E) and contractor support (Section G). These clauses may be used if they meet the requirements of the user. A limited number of copies of this solicitation document is available from GSA (CPEP), Washington, DC 20405.

§ 1-4.1112 Assistance by GSA.

Assistance in any phase of the procurement process covered by this Subpart 1-4.11 may be obtained by contacting the General Services Administration (CPS), Washington, DC 20405.

Dated: December 29, 1980.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 81-00002 Filed 1-2-81; 8:45 am]

BILLING CODE 6820-61-M

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41 CFR Parts 101-35 and 101-36

[FPMR Amendment F-44]

Management, Acquisition, and Utilization of Automatic Data Processing (ADP) Resources

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: This regulation provides a complete revision of Subpart 101-35.2 regarding general policies and procedures relating to the management, acquisition, and utilization of ADP equipment (ADPE), software, maintenance, related supplies, ADP services, and ADP related services by Federal agencies. This action is needed to change, consolidate, and clarify policies and procedures. The intended effect is to reduce paperwork regarding agency ADP resources management.

EFFECTIVE DATE: This regulation is effective January 15, 1981, but may be observed earlier.

FOR FURTHER INFORMATION CONTACT: Roger W. Walker, Procurement Policy and Regulations Branch, Policy and Analysis Division, Office of Policy and Planning, ADTS, 202-566-0194.

SUPPLEMENTARY INFORMATION: (a) A proposed revision of Subpart 101-35.2 (and FPR Subpart 1-4.11) was circulated to all Federal agencies and other interested parties on May 28, 1980. The closing of the comment period was November 14, 1980 (45 FR 71628, Oct. 29, 1980). All comments received have been considered and accommodated to the extent considered appropriate.

(b) A complete revision of Subpart 101-35.2 is provided. Substantive changes from the existing coverage are as follows:

(1) Section 101-35.200 is added to set forth the scope of the subpart, replacing the purpose and supersession sections (101-35.201 and 101-35.202).[1]

(2) Subsection 101-35.200-1 is added to set forth the relationship of the subpart to other directives.[2]

(3) Section 101-35.201 is revised to clarify the applicability of the subpart, replacing § 101-35.204.

(4) Section 101-35.202 is revised to provide definitions, replacing §§ 101-35.205 and 101-35.209 and Appendix A.

(5) Section 101-35.203 is revised and the following subsections are added to provide restated policies, with emphasis on management of the process for determining the ADP need, replacing §§ 101-35.203, 101-35.206, and 101-35.207.

(6) Sections 101-35.204 through 101-35.210 are revised and § 101-35.211 is added to provide changed provisions regarding planning requirements, specifications and purchase descriptions, conversion management and planning, conversion procurement and management responsibilities, software conversion studies, determination of need and requirements analysis, severable ADP requirements, determination of system/item life, comparative cost analysis, evaluation of acquisition alternatives, and least cost acquisition.[3]

(7) Section 101-35.212 is added to provide for a GSA contact point for assistance, replacing § 101-35.210.

(c) Subpart 101-36.4 is removed from Subchapter F of the FPMR. Management responsibilities related to procurement have been consolidated in Subpart 101-35.2 as revised by this regulation and FPR Subpart 1-4.11 as revised by a concurrent regulation.

(d) Subpart 101-35.15 is removed from Subchapter F of the FPMR. Planning requirements are set forth in § 101-35.204 of this regulation.

(e) The changes in this regulation were developed concurrently with substantive changes to existing provisions in FPR Subpart 1-4.11—Procurement and Contracting for Government-wide Automatic Data Processing Equipment, Software, Maintenance Services, and Supplies. This Subpart 101-35.2 is intended to be used in concert with Subpart 1-4.11 of the FPR.

(f) This regulation cancels FPMR Temporary Regulation F-493 (45 FR 3271, January 17, 1980) which is deleted from the appendix at the end of Subchapter F of 41 CFR Chapter 101. This regulation cancels FPMR Subparts 101-36.4 and 101-36.15.

(g) The General Services Administration has determined that this regulation will not impose unnecessary burdens on the economy or on individuals and, therefore, is not significant for the purposes of Executive Order 12044.

PART 101-35—ADP AND TELECOMMUNICATIONS MANAGEMENT POLICY

1. The table of contents for Part 101-35 is changed by revising one subpart, as follows:

Subpart 101-35.2—Management, Acquisition, and Utilization of Automatic Data Processing (ADP) Resources

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[1] This regulation supersedes the present Subpart 101-35.2, Appendix A thereto, and its processor, Federal Management Circular 74-5, dated July 30, 1974.

[2] With the cancellation of Subpart 101-36.4 by this regulation, the references to pertinent sections of the Federal Procurement Regulations (FPR) should be particularly noted. Paragraph (b) is reserved for a reference to proposed FPR Subpart 1-4.12 covering ADP services procurement.

[3] Collectively these subjects establish management requirements that replace some specific items: e.g., general systems or feasibility study thresholds, conversion and residual value provisions, and the interim upgrade concept. With reference to § 101-35.206-2, thresholds established in FPMR Temporary Regulation F-492 will be superseded by FPR §§ 1-4.1109-13 and 1-4.1206-1 (proposed). In addition, note that FPMR Temporary Regulation F-493 previously suspended the reporting provisions of Subpart 101-36.15 that is abolished by this regulation.

Authority: Section 205(c), 63 Stat. 390, 40 U.S.C. 486(c).

2. Subpart 101-35.2 is revised to read as follows:

Subpart 101-35.2—Management, Acquisition, and Utilization of Automatic Data Processing (ADP) Resources

§ 101-35.200 Scope of subpart.

(a) This subpart sets forth general policies and procedures relating to the management, acquisition, and utilization of ADP equipment (ADPE), software, maintenance, related supplies, ADP services, and ADP related services by Federal agencies.

(b) The objectives of this subpart are to promote full and open competition among suppliers who are capable of meeting the user's ADP needs and to satisfy these needs at the lowest overall cost, price and other factors considered.

§ 101-35.200-1 Relationship to other directives.

(a) Subpart 1-4.11 of the Federal Procurement Regulations (41 CFR Chapter 1, hereafter referred to as the FPR) prescribes policies and procedures governing the procurement and contracting for all ADPE, commercially available software, maintenance services, and related supplies.

(b) [Reserved]

(c) Part 101-36 provides detailed policies, procedures, and guidance pertaining to the Government-wide management of ADPE, software, and related matters including revolving fund, resources utilization, reutilization of equipment, ADP management information systems, standards, and computer performance evaluation.

(d) The acquisition, management, and utilization of ADP are subject to the fiscal and policy control of the Office of Management and Budget (OMB). In addition, OMB Circulars including A-10, A-11, A-71, A-108, and Transmittal Memoranda related thereto apply to ADP; the present value concept in A-94 also applies (see § 101-35.210). The applicability of A-76 and A-109 to agency activities is as determined and directed by OMB.

§ 101-35.201 Applicability.

(a) *Federal agencies.* The policies and procedures set forth in this Subpart 101-35.2 apply to the management, acquisition, and utilization of ADPE, software, maintenance services, related supplies, ADP services, and ADP related services (see § 101-35.202 for definitions) by Federal agencies regardless of use or application including Government-acquired ADPE, software, or related supplies provided to contractors.

(b) *Government contractors.* (1) Except as set forth in paragraph (b)(2) of this section, agencies shall require their contractors to apply the policies and procedures set forth in this Subpart to the management, acquisition, and utilization of ADPE, commercially available software, maintenance services, and related supplies when the very subject matter of the contract(s) is for the performance of commercial ADP services for a Federal agency (see §§ 101-35.202-8 and 101-35.203-10); and

(i) The Government requires the contractor to purchase the ADPE or software for the account of the Government; or

(ii) The Government requires the contractor to pass title to the ADPE or software to the Government; or

(iii) The Government pays the full lease costs of the ADPE or software under a cost-reimbursement contract.

(2) When the very subject matter of a contract is for something other than the procurement of ADP items or services, and commercially available ADPE is incorporated into the non-ADP system or commercial ADP services are used in contract performance, the acquisition and management of the non-ADP system shall be in accordance with other applicable regulations rather than this Subpart 101-35.2 (but see § 101-35.203-10).

§ 101-35.202 Definitions.

The terms used in this subpart shall have the meanings set forth in this section.

§ 101-35.202-1 Automatic data processing equipment.

"Automatic data processing equipment" (ADPE) means [1] general purpose, commercially available, mass-produced automatic data processing devices; i.e., components and the equipment systems configured from them together with commercially available software packages which are provided and are not priced separately, and all documentation and manuals relating thereto, regardless of use, size, capacity, or price, that are designed to be applied to the solution or processing of a variety of problems or applications and are not specially designed, as opposed to configured, for any specific application.

(a) Included are:

(1) Digital, analog, or hybrid computers;

(2) Auxiliary or accessorial equipment, such as plotters, tape cleaners, tape testers, data conversion equipment, source data automation recording equipment (optical character recognition devices, paper tape typewriters, magnetic tape, card, or cartridge typewriters, word processing equipment, computer input/output microfilm and other data acquisition devices), or computer performance evaluation equipment; etc., designed for use with digital, analog, or hybrid computer equipment, either cable connected, wire connected, or stand alone, and whether selected or acquired with a computer or separately;

(3) Punched card accounting machines (PCAM) that can be used in conjunction with or independently of digital, analog, or hybrid computers;

(4) Data transmission or communications equipment, including front-end processors, terminals, sensors, and other similar devices, designed primarily for use with a configuration of ADPE.

(b) Excluded are:

(1) ADPE systems and components specially designed (as opposed to configured) and produced to perform a specific set or series of computational, data manipulation, or control functions to permit the processing of only one problem; and

(2) Commercially available ADPE that is modified to meet Government specifications at the time of production to the extent that:

(i) It no longer has a commercial market; or

(ii) It cannot be used to process a variety of problems or applications; or

(iii) It can be used only as an integral part of a non-ADP system.

§ 101-35.202-2 Software terms.

(a) "Software" means computer programs, procedures, rules, or routines specifically designed to make use of and extend the capabilities of ADPE and includes operating systems, assemblers, compilers, interpreters, data base management systems, utility programs,

[1] The acquisition of Joint Committee on Printing (JCP) controlled equipment in FSC Group 70 dedicated to printing processes and utilizing computer technology, including electronic printing systems, integrated printing systems, and photocomposition equipment, continues to be subject to the provisions of title 44, U.S. Code, and the JCP Government Printing and Binding Regulations as well as to this regulation.

sort-merge programs, maintenance-diagnostic programs, and applications programs. The term encompasses operating systems software, independent subroutines, related groups of routines, sets or systems of programs, software documentation, firmware (see § 101-35.202-3), and computer data bases whether Government-owned or commercially available.

(b) "Commercially available software" means software that is available through lease or purchase in the commercial market from a concern representing itself to have ownership and/or marketing rights in the software. Software that is furnished as part of the ADP system but that is separately priced, is included.

(c) "Application software" means a series of instructions or statements in a form acceptable to a computer, designed to cause the computer to execute an operation or operations necessary to process requirements such as payroll, inventory control, or automatic test and engineering analysis. Application software may be either machine-dependent or machine-independent, and may be general-purpose in nature or be designed to satisfy the requirements of a specialized process or a particular user.

(d) "Computer data base" means a stored collection of data in a form capable of being processed and operated on or by a computer; i.e., the elements of stored data used by a computer in responding to a computer program.

(e) "Computer software documentation" means recorded information including computer listings and printouts that (1) documents the design or details of computer software, (2) explains the capabilities of the software, (3) provides data for testing the software, or (4) provides operating instructions.

(f) "Software conversion" means the transformation, without functional change, of computer programs or data elements to permit their use on a replacement or changed ADP equipment system or teleprocessing service.

(g) "Software redesign" means any change to software that involves a change in the functional specifications for that software.

(h) "Reprogramming" means any change to software that deviates from the design specifications for that software but preserves the functional requirements of the user.

(i) "Recoding" means a manual change to software on a line-for-line basis that preserves both the functional requirements and software design specifications.

(j) "Automated translation" means changes to software including machine-processed recoding that preserve both the functional requirements and software design specifications to the extent that no changes are apparent to the user.

§ 101-35.202-3 Firmware.

"Firmware" means any ADP hardware-oriented programming at the basic logic level of the computer that is used for machine control, error recovery, mathematical functions, applications programs, engineering analysis programs, and the like. Included are firmware that if furnished with ADPE, commercially available proprietary firmware that is acquired separately from ADPE, and all vendor documentation and manuals relating thereto.

§ 101-35.202-4 Maintenance services.

"Maintenance services" means those examination, testing, repair, or part replacement functions performed to: (a) Reduce the probability of ADPE malfunction (commonly referred to as "preventive maintenance"), (b) restore to its proper operating status a component of ADPE that is not functioning properly (commonly referred to as "remedial maintenance"), or (c) modify the ADPE in a minor way (commonly referred to as "field engineering change" or "field modification").

§ 101-35.202-5 Related supplies.

"Related supplies" means consumable items designed specifically for use with ADPE, such as computer tape, ribbons, punchcards, and tabulating paper.

§ 101-35.202-6 ADP services.

"ADP services" means the computation or manipulation of data in support of administrative, financial, communicative, scientific, or other similar Federal agency data processing applications. It includes teleprocessing (including remote batch) and local batch processing.

§ 101-35.202-7 ADP related services.

"ADP related services" means source data entry, conversion, training, studies, facilities management, systems analysis and design, programming, and equipment operation that are adjunct and essential to agency ADP activities but do not involve the actual computation or manipulation of data.

§ 101-35.202-8 Commercial ADP services.

"Commercial ADP services" means the performance of ADP services and ADP related services by private contractors on a nonpersonal services basis. For the purposes of this Subpart 101-35.2, commercial ADP services do not include: (a) Services performed by contractors under contracts where the subject matter of the contract is not the furnishing of ADP services or ADP related services to a Federal agency, (b) employment of experts and consultants pursuant to 5 U.S.C. 3109, or (c), "personal services" contracting where the contractor or the contractor employees are in effect employees of the Government.

§ 101-35.202-9 Federal agency.

"Federal agency" means (a) any executive agency (executive department or independent establishment in the executive branch including any wholly owned Government corporation) or (b) any establishment in the legislative or judicial branch of the Government (except the Senate, the House of Representatives, and the Architect of the Capitol and any activities under the Architect's direction) (see 40 U.S.C. 472).

§ 101-35.203 Policies.

§ 101-35.203-1 Competition.

Full and open competition is a basic procurement objective of the Government. The maximum practicable competition among offerors who are capable of meeting the user's needs will ensure that the Government's ADP needs are satisfied at the lowest overall cost, price and other factors considered, over the system/item. This extends to actions necessary to foster competitive conditions for subsequent procurements. To meet fully the lowest overall cost objective, it is essential that proper management and planning actions be accomplished before the acquisition becomes imminent (see § 101-35.206).

§ 101-35.203-2 Responsibilities.

Agency ADP managers and contracting officers share the responsibility for ensuring that the basic procurement objective is met (see § 101-35.203-1). This responsibility extends to fostering competitive conditions for subsequent procurements.

§ 101-35.203-3 ADP plans.

Agency ADP management officials are responsible for monitoring data processing requirements and for developing plans to meet future needs at the lowest overall cost. Plans should include initial acquisitions and augmentation or replacement of installed ADPE and software (see § 101-35.204).

§ 101-35.203-4 Requirements analysis.

The acquisition of an initial ADP capability or the augmentation or

replacement of an existing capability shall be preceded by a comprehensive requirements analysis commensurate with the scope and complexity of the program objectives and mission needs. The operational and economic feasibility of all alternative solutions, including use of non-ADP resources, sharing, use of commercial ADP services, and reutilization of excess Government-owned or leased equipment shall be considered (see § 101-35.207).

§ 101-35.203-5 Urgent requirements.

The existence of a public exigency; i.e., the Government will suffer serious injury, financial or otherwise, if the equipment or services are not available by a specific date, shall not relieve the agency from the responsibility for obtaining maximum practicable competition (see FPR §§ 1-3.202 (or, if applicable, DAR 3-202) and 1-4.1102-9)).

§ 101-35.203-6 Conversion management and planning.

Agency ADP managers shall take those steps as may be feasible to minimize the risk and cost of conversion to replacement ADP systems and services (see § 101-35.206) to achieve economy and efficiency in meeting agency needs.

§ 101-35.203-7 Sharing and reutilization.

Sharing installed ADPE and software or using available excess Government-owned or leased ADPE shall be the primary source for meeting the ADP requirements of the user (see Subparts 101-36.2 and 101-36.3). Additional ADP capacity shall be acquired only if existing resources will not economically and efficiently meet the requirements.

§ 101-35.203-8 Privacy and security.

ADP managers shall establish safeguards necessary for the adequate protection of personal privacy and the physical security of an ADP installation (see Subparts 101-35.3 and 101-35.17).

§ 101-35.203-9 Standards.

Federal information processing standards publications (FIPS PUBS) and Federal telecommunications standards (FED-STD) shall be implemented when applicable. Procedures for waiver or exception shall be complied with for each applicable mandatory FIPS PUB or FED-STD that is not implemented (see Subpart 101-36.13).

§ 101-35.203-10 Furnishing ADP items and services to contractors.

(a) When the very subject matter of a contract is for something other than the procurement of ADP items or services and commercially available ADPE is incorporated into the non-ADP system or commercial ADP services are used in contract performance, the acquisition and management of the non-ADP system shall be in accordance with other applicable regulations, rather than this subpart (see § 101-35.201(b)(2)).

(b) To facilitate the reutilization of ADPE, the Government contractor shall be required to identify the quantity and specific make and model of the ADPE that is delivered as a part of the non-ADP system. Nevertheless, agencies shall sever requirements for general purpose commercially available ADP items or services from the overall requirement, acquire them in accordance with these regulations, and provide them as Government-furnished property or services to the contractor when it is operationally feasible to do so and this action will promote economy, efficiency, and maximum practicable competition.

(c) In those instances when ADP items or services are severed pursuant to this subpart and procured by the Government, care must be taken to ensure that the prime contractor's ability and responsibility to perform in accordance with the contract provisions are not disturbed.

§ 101-35.204 Planning requirements.

(a) Agencies are required to prepare and submit annual agency-wide ADP plans in accordance with OMB Circular A-11. A copy of this plan shall be provided to GSA (CPS) concurrently with each submission to OMB. The following supplemental information shall be submitted to GSA (CPS) with this plan:

(1) Trends in data processing workloads that will or may saturate existing ADP system capabilities prior to expiration of the full established initial user's system/item(s) life.

(2) Opportunities to take advantage of cost effective enhancements brought about by new ADPE technology, software improvements, and changes in the marketplace.

(3) Actions planned regarding system redesign to improve the efficiency and effectiveness of application software, the conversion of software to higher level languages, and the audit and update of documentation for consistency with the guidelines issued by the National Bureau of Standards.

(4) Approximate acquisition schedule.

(5) The proposed acquisition strategy for meeting projected ADP resource needs identified in the ADP plans submitted pursuant to OMB Circular A-11.

(b) Information in the plan will be used by GSA in compiling estimated Government-wide requirements and developing acquisition programs to assist agencies in meeting their needs in an efficient and economic manner.

§ 101-35.205 Specifications and purchase descriptions.

Specifications and purchase descriptions describing Government requirements shall be designed to promote competition to the maximum practicable extent from manufacturers, leasing companies, third-party vendors, and ADP services contractors. Functional specifications maximize competition and are the preferred method for expressing the user's requirements (see FPR §§ 1-4.1102-12 and 1-4.1109-10). Functional specifications may be augmented with equipment characteristics and performance criteria as necessary to accurately reflect the user's needs (see FPR § 1-4.1109-11). If functional specifications cannot be used, other types of specifications or purchase descriptions shall be used in the following order of precedence:

(a) Equipment performance specifications (see FPR § 1-4.1102-13);

(b) Software and equipment plug-to-plug compatible functionally equivalent purchase descriptions;

(c) Brand name or equal purchase descriptions (see FPR §§ 1-1.307-4 and 1-1.307-5 (or, if applicable, DAR 1-1206.2)); or

(d) Specific make and model descriptions. (Use of specific make and model purchase descriptions must be justified—see FPR §§ 1-4.1102-8 and 1-4.1109-11(d).)

§ 101-35.206 Conversion management and planning.

Conversion from one computer architecture and operating system software to another is a recurring and costly activity. Frequently, moving a particular ADP system workload to a noncompatible ADP system is so costly as to be a major impediment to effective competition by the noncompatible offeror. However, proper management of an agency's software inventory and planning for future conversions will reduce the risk and cost of conversion, enhance competition, and improve the efficiency of ADP operations.

§ 101-35.206-1 Procurement and management responsibilities.

(a) Federal ADP managers and contracting officers share the responsibility for assuring that data processing requirements are met at the lowest overall cost, price and other factors considered. This responsibility extends to those actions necessary to foster competition for subsequent procurements. To achieve this objective,

ADP managers shall take necessary action to minimize the cost of conversion to future replacement ADP systems. Although the configuration and date of acquisition of the replacement system may not be known, several steps can and should be taken to reduce both the risk and cost of conversion.

(b) The following are examples of management and planning actions that ADP managers should take to facilitate future conversions.

(1) Purge from the active inventory all software and data bases not essential to meet agency needs.

(2) Identify relevant characteristics of all application software; e.g., programming language, number of source statements or lines of code, type, and size of records and data files, and security provisions.

(3) Use only software design and documentation techniques that minimize future software conversion to develop new application software.

(4) Use Federal standard or other ANSI standard high order languages to the maximum practicable extent in developing all new user application software. Document agency files with the justification for using nonstandard languages at the time the waiver is granted.

(5) Avoid the use, where possible, of implementor-defined features and vendor-supplied nonstandard extensions in high order languages compilers. Where it is necessary to use these features and nonstandard extensions, document agency files to support their use and retain the documentation to manage the software during its system life.

(6) Use to the maximum practicable extent data base management systems (DBMS) supported by and that will run on equipment offered by multiple manufacturers of different product lines of ADPE; i.e., other than plug-to-plug compatible equipment or designed to conform to the Conference on Data Systems Languages (CODASYL) specifications. Where it is not possible to use such a DBMS, document agency files to support this decision and retain the documentation to manage the DBMS its system life.

(7) Write application software requiring software redesign in Federal standard or other ANSI standard high order languages unless the use of assembly or other languages is clearly justified on the basis of operational requirements or demonstrable economy and efficiency. Document agency files with the justification for using nonstandard languages at the time the waiver is granted and retain the documentation to manage the application software during its system life.

(8) Rewrite application software written in assembly or other non-standard languages but not requiring redesign in Federal standard or other ANSI standard high order languages to foster competition for subsequent procurements to the maximum practicable extent.

(9) Review, revise, and update as necessary documentation for all existing applications to reduce the risk and cost of future conversions.

(10) Evaluate all feasible alternative courses of action for meeting agency data processing needs before ADPE is acquired on either a sole source, specific make and model, or compatible basis since these types of purchase descriptions limit the competitiveness of the procurement.

(c) The useful life of application software is limited by changes in data processing requirements, operating system software, and equipment technology. Generally, the life expectancy of this software, without redesign or reprogramming, is in the range of 5 to 10 years. Accordingly, the updating of application software for these reasons must be reckoned with, regardless of whether these programs are converted from one ADP system architecture to another. These technology updating activities should be identified and managed separately from conversion activities.

§ 101-35.206-2 Software conversion responsibilities.

Those specific agency actions taken to reduce the risk and cost of conversion to proposed replacements of ADP systems (equipment or services) shall be described in software conversion studies submitted with agency procurement requests (see FPR §§ 1-4.1109-13 and 1-4.1109-14).

§ 101-35.207 Determination of need and requirements analysis.

The acquisition of new or additional ADP capabilities shall be based on mission needs that flow from program requirements. These needs may be expressed in the form of deficiencies in existing capabilities, new or changed program requirements, or opportunities for increased economy and efficiency. In any event, the needs shall be supported by a comprehensive requirements analysis commensurate with the size and complexity of the need. The agency shall consider the following critical factors, as a minimum, in the requirements analysis:

(a) The probable improvement in operational efficiency in meeting program mission needs and the anticipated economies that will be realized.

(b) The present and projected workload over the system life in terms[3] of:

(1) Data entry and associated communications support;

(2) Data base(s) and data base management;

(3) Data handling or transaction processing by type and volume;

(4) Output needs and associated communications support;

(5) Expandability requirements; and

(6) Privacy and security safeguards.

(c) The ADP functions that must be performed to meet the mission need and the cost/benefits that will accrue as a result of this performance.

(d) The actions that have been or could be taken to increase the capability and productivity of the existing system, where applicable.

(e) The agency components involved, their physical location, operational constraints, and the relative priority of the specific requirement within the spectrum of total mission needs.

(f) Space management considerations; e.g., heat dissipation, air flow, temperature range, relative humidity, energy conservation, including coordination with building managers and GSA (see FPMR § 101-17.101-5).

(g) The feasibility of sharing, use of excess Government-owned or -leased ADPE, the off-loading of lower priority applications, the use of Federal data processing centers and GSA sources of supply, or the use of commercial ADP services.

§ 101-35.207-1 Severable ADP requirements.

(a) When the very subject matter of a contract is for something other than the procurement of commercially available ADP items or services but some of these items or services are to be delivered under the contract, the acquisition of the ADP items or services by the Government contractor is not subject to this subpart (see § 101-35.201). However, to ensure maximum practicable competition, ADP items or services shall be severed from the overall requirement when it is operationally feasible to do so and the action will promote economy and efficiency. To meet these basic objectives, agencies shall sever the requirement for general purpose commercially available ADPE and ADP services when it is operationally

[3] When the need can be satisfied by augmenting the installed ADPE system, the requirements analysis should consider the factors in this paragraph (b) of § 101-35.207, where applicable.

feasible to do so and this action will promote economy, efficiency, and maximum practicable competition (see § 101-35.203-10). Severable action shall be considered by an agency when:

(1) The ADPE or ADP service requirement is or can be identified as a separate line item;

(2) The value of the ADP portion exceeds $500,000;

(3) The items can be procured by the Government and delivered to the contractor as required by the production schedule;

(4) Adequate price competition can be achieved on the severed ADP portion (see FPR § 1-3.807-1(b)(1));

(5) The expected cost reduction will exceed the added costs of acquisition; and

(6) Providing the ADPE and/or ADP services will not affect the contractor's ability and responsibility to perform as required by the provisions of the contract.

(b) The decision to sever ADP requirements shall be made before soliciting offers. A Government-furnished property clause shall be included in the solicitation document for the non-ADP items or services solicitation when the ADP items or services are severed.

§ 101-35.208 Determination of system/item life.

(a) The Government system/item life shall be established by the initial acquiring agency as a part of each requirements analysis. This life shall be used in the evaluation to determine the lowest overall cost offer and whether purchase, lease to ownership, lease with option to purchase, or straight lease is the lowest cost method of acquisition for the Government. The following factors shall be considered in determining the Government system/item life:

(1) The period of time the system/item(s), plus any planned augmentation, will satisfy the needs of the initial user.[3]

(2) The rate at which technology is expected to advance.

(3) The probability that support will continue to be available beyond the period of intended use by the initial user. This support includes items such as maintenance, spare parts, software support, etc.

(4) The probability that the system/item(s) in its ultimate planned configuration will be reused by another component within the agency or another Federal agency once the equipment will no longer meet the needs of the initial user. The estimated number of months, if any, of contemplated use by a secondary user will be added to the initial user's requirement to determine the Government system/item life.

(b) If the acquiring agency cannot predict reuse, either within that agency or by another Federal agency, the initial user's system/item life shall be the Government system/item life.

§ 101-35.209 Comparative cost analysis.

A comparative cost analysis shall be performed for each requirement to determine which alternative will meet the user's needs at the lowest overall cost over the system/item life. The alternatives to be considered shall include but are not limited to the following:

(a) Use of non-ADP resources to satisfy the requirement.

(b) Use of existing ADP facilities (e.g., Federal data processing centers) and resources on a shared basis.

(c) Use of commercial ADP services.

(d) Redesign of application programs, using Federal or ANSI standard language to the maximum practicable extent.

(e) Revision of production schedule or job stream to improve throughput capability.

(f) Addition or change in working shifts to increase capacity.

(g) Augmentation of installed ADPE by adding additional components to increase data processing capacity.

(h) Upgrading selected system components, such as adding additional selector channels, memory, faster tape or disk units, etc., in order to improve throughput capability.

(i) Replacing installed ADP system with a compatible system that will handle the workload.

(j) Competitive replacement of the installed ADP system through use of functional specifications.

§ 101-35.210 Evaluation of acquisition alternatives.

(a) Comparative cost analysis shall be made to determine the method of acquisition that represents the lowest overall cost over the system/item(s) life. The alternatives that must be considered will vary, depending on the system/item being acquired and the requirement of the initial user. However, as a minimum, all of the alternatives set forth below, which will meet the user's needs, shall be considered.

(1) Alternative methods of acquisition for ADPE.

(i) Purchase.

(ii) Lease to ownership.[4]

(iii) Lease with option to purchase.

(iv) Straight lease.

(2) Alternative methods of acquisition for proprietary software.

(i) Perpetual license to use.

(ii) License to use for extended term (i.e., more than 12 months).

(iii) License to use on a monthly basis.

(3) Alternative methods of acquisition for ADPE maintenance services.

(i) On-site maintenance capability.

(ii) On-call maintenance.

(iii) Time and materials.

(4) Commercial ADP services.

(i) Short-term resources used.

(ii) Extended system life, resources used or dedicated.

(b) The present value of money factor, as set forth in OMB Circular A-94, shall be included in comparative cost analyses. The single discount rate (currently 10 percent) specified in the OMB Circular represents the approximate longrun opportunity cost of capital in the private sector. Under this methodology, payments over time are adjusted to reflect the present value of these payments as of the date of contract award. All expenses over the system/item(s) life for equipment, software, maintenance, other support, and predetermined in-house expenses for installation and operation must be adjusted.

§ 101-35.211 Least cost acquisition.

(a) The method of acquisition that represents the lowest overall system/item(s) life cost to the Government, price and other factors considered, shall be selected, subject to availability of funds. If a purchase, long-term lease, or licensing arrangement is the lowest overall cost alternative and the proper type of funds (e.g., purchase money) are not available, GSA (ADTS) shall be contacted to determine if the ADP Fund can be used for the acquisition (see GSA Bulletin FPMR F-106, Subject: Use of ADP Fund for equipment purchase).

(b) In some cases, lease may be the lowest overall cost alternative based on the system/item(s) life to the initial user; whereas, purchase or a lease to ownership plan may be the lowest overall cost based on the Government system/item(s) life. When this condition exists, ADTS shall be contacted to determine if the ADP Fund can be used to make the purchase. Equipment purchased by the ADP Fund under these conditions will be leased back to the using agency at a price not to exceed the vendor's lease cost over the initial user's system/item(s) life. ADPE retained by the using agency beyond the originally established system/item(s) life shall be subject to a new ADP Fund leasing agreement.

[3] If augmentations other than those provided for in the initial acquisition are necessary, consideration should be given to establishing a new system/item(s) life.

[4] Funding statutes may preclude acceptance of some lease to ownership plans.

(c) In those cases where purchase funds are not available but purchase is in the best interest of the Government, the method of acquisition which is most advantageous to the Government and for which funds are available shall be selected.

§ 101-35.212 Assistance by GSA.

Assistance in any phase of the management process covered by this Subpart 101-35.2 may be obtained by contacting the General Services Administration (CPS), Washington, DC 20405.

PART 101-36—ADP MANAGEMENT

3. The table of contents for Part 101-36 is changed by deleting and reserving two subparts as follows:

Subpart 101-36.4 [Reserved]

Subpart 101-36.15 [Reserved]

4. The provisions of Subparts 101-36.4 and 101-36.15 are canceled and the subparts are deleted and reserved, as follows:

Subpart 101-36.4 [Reserved]

Subpart 101-36.15 [Reserved]

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 81-93 Filed 1-2-81; 8:45 am]

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Monday
January 5, 1981

Part VII

Department of Agriculture

Science Education Administration

Special Research Grants Program for Fiscal Year 1981; Solicitation of Applications

DEPARTMENT OF AGRICULTURE

Science and Education Administration

Special Research Grants Program for Fiscal Year 1981, Solicitation of Applications

Notice is hereby given that under the authority of section 2(c)1 of the Act of August 4, 1965, Pub. L. 89-106, as amended by section 1414 of Pub. L. 95-113 (7 U.S.C. 450i), the Science and Education Administration (SEA) of the U.S. Department of Agriculture will award project grants for areas of research which are described in Appendix I. The total amount available for these programs during Fiscal Year 1981 is $6,740,000. This solicitation is being announced to allow adequate time for potential recipients to prepare and submit applications. The research to be supported is in the following areas:

Antidecertification Research	$970,000
Soybean Research	485,000
Animal Health Research	4,800,000
Aquaculture Research	485,000

Proposals submitted in response to this notice will be evaluated in competition with proposals from other institutions. Grants will be awarded for research proposals selected by SEA utilizing recommendations of Peer Panels, from funds appropriated for Fiscal Year 1981 (October 1, 1980 through September 30, 1981). Projects may be up to 5 years' duration unless a shorter duration is specified.

According to the requirements for Federal assistance program announcements under Pub. L. 95-220, The Federal Program Information Act, the following information is provided with respect to the areas of research described in this announcement for which project grants will be awarded:

(1) As outlined by OMB Circular No. A-89, the official program number and title for these grants are: 10.876, Grants for Agricultural Research, Special Research Grants.

(2) OMB Circular No. A-95, regarding State and local clearinghouse review of Federal and Federally assisted programs, does not apply.

Application Procedures

1. Eligible Institutions

Grants under section 2(c)1 of Pub. L. 89-106, as amended, may be made to Land-Grant Colleges and Universities, State Agricultural Experiment Stations, and to all colleges and universities having a demonstrable capacity in food and agricultural research. Research foundations are not eligible to receive special research grants under section 2(c)1 of Pub. L. 89-106 unless they independently meet the definitions of eligible institutions as set out in section 1404 of Pub. L. 113.

2. Proposal Submission

A. Before submission write or call the Grants Administrative Management Office (address and telephone number below) for a copy(ies) of the Grant Application Kit.

Your submission should include an original and 19 copies of the proposal and Form SEA-661, submitted Grant Application, which is included in the Grant Application Kit. The Form SEA-661 submitted with the original proposal should have original signatures of the principal investigator(s) and the authorized organizational representative. SEA must have original signatures on file for each application.

Grants Administrative Management Office, Attention: Special Research Grants Program, Science and Education Administration, U.S. Department of Agriculture, Suite 103, Rosslyn Commonwealth Building, 1300 Wilson Boulevard, Arlington, Virginia 22209, Telephone: (703) 235-2638.

All copies of the proposal should be mailed in one package, if at all possible. Due to the volume of proposals received, proposals submitted in several packages are very difficult to identify. If copies of the proposal *are* mailed in more than one package, the number of packages shoud be marked on the outside of each. It is important that *all packages be mailed at the same time.* The acknowledgment of receipt of the proposal will contain a proposal number, title, program, and program area. Later inquiries, addenda, etc., should include this information. However, every effort should be made to *assure* that the *proposal contains* all *pertinent information when initially submitted.* Prior to mailing, compare your proposal with the Application Requirements checklist contained in the Grant Application Kit and the format cited in Appendix II of this announcement.

B. To be considered for award, proposals must be prepared in the format prescribed in Appendix II and must be received in the SEA Grants Administrative Management Office (GAMO) by the close of business on the date specified for each program area as listed below:

Antidecertification Research—deadline is Close of Business April 17, 1981.

Soybean Research—deadline is Close of Business February 13, 1981.

Animal Health Research—deadline is Close of Business March 20, 1981.

Aquaculture Research—deadline is Close of Business March 27, 1981.

Proposals should not exceed 10 pages (single spaced) excluding the literature review, vitae appendices, and required forms from the Grant Application Kit.

When proposals exceed 10 pages in total, only the first 10 pages, excluding the pages referenced in the above paragraph, will be evaluated.

C. Research Involving Special Consideration. A number of situations frequently encountered in the conduct of research require special information and supporting documentation before funding can be approved for the project. If special information or supporting documentation is involved, the proposal should so indicate. Since some types of research targeted for SEA support have a high probability of involving either recombinant deoxyribonucleic acid (DNA) or human subjects, special instructions follow:

Recombinant DNA. Principal investigators and endorsing performing organization officials must comply with the guidelines of the National Institutes of Health (See NIH "Guidelines for Research Involving Recombinant DNA Molecules" (43 FR 60108-60131) and subsequent revisions). A Memorandum of Understanding and Agreement and approval by the local Biohazards Safety Committee must be provided before a grant can be awarded.

Human Subjects. Safeguarding the rights and welfare of human subjects used in research supported by SEA grants is the responsibility of the performing organization. The informed consent of the human subject is a vital element in this process. Guidance is contained in Pub. L. 93-348, as implemented by Part 46, Subtitle A of Title 45 of the Code of Federal Regulations, as amended (45 CFR Part 46).

If the project involves human subjects at risk, the grantee must furnish SEA with a statement that the research plan has been reviewed and approved by the appropriate Institutional Review Board at the grantee organization and that the grantee is in compliance with Department of Health and Human Services (DHHS)—formerly Department of Health, Education and Welfare (DHEW)—policies, as amended, regarding the use of human subjects. Form SEA-84, Protection of Human Subjects, may be used for this purpose.

3. Selection of Proposals for Funding

A. Selection Criteria. A panel of peer scientists for each area of specific inquiry will evaluate the proposals

utilizing selection criteria listed in Appendices III and III-A. The peer panel, when appropriate, can recommend a reduced level of funding for a proposal or that the research be confined to certain objectives for proposals under review. Utilizing the recommendations of peer panels, SEA will select the proposals to be funded within the amount available for each area of specific inquiry.

B. When the peer panel recommends that the amount of award be reduced below the amount proposed for a proposal or where the panel recommends that only research dealing with selected objectives be funded, these changes will be discussed with the submitting institution. If the institution elects not to make these changes as a condition of the award, the proposal will be dropped from the list of proposals to be funded for a specific area of inquiry and another proposal selected from those recommended by the peer panel will be funded.

After the grants are awarded, one copy of unfunded proposals will be retained on file for 5 years. The remaining copies will be destroyed. A copy of the summary evaluation made by the peer panel will be provided for each unfunded proposal.

4. Budget and Reporting Requirements

The following items apply only to those proposals that are selected for funding:

A. The grant will be awarded on the basis of all financial support, from any source, that is shown in the proposal budget (Form SEA-55). While cost sharing is encouraged it will not be a factor in the selection process.

B. Annual financial reports (Standard Form 269) will be required.

C. An annual progress report not to exceed 5 pages will be required in addition to a shorter summary for insertion into a computerized research information service. Annual reports will be organized around the objective and research timetable as specified in the project proposal.

D. Comprehensive (performance and financial) final reports must be submitted to SEA within 90 calendar days after the termination date of the grant.

E. Antidesertification Research, Aquaculture Research, Animal Health Research, and Soybean Research, Public Law 89-106, grants do not require matching or cost sharing, but cost sharing is encouraged.

It has been determined that, because of the need to implement this program so that research relating to plant production can be initiated in the Spring of 1981, compliance with the Notice and public procedure provisions of 5 U.S.C. 553 is impracticable and contrary to the public interest and, in accordance with E.O. 12044, that it is not possible to publish this Notice in proposed form and allow 60 days for public comment.

Done at Washington, D.C., this 24th day of December.

Anson R. Bertrand,

Director, Science and Education.

Appendix I—Subject Matter Guidelines for Fiscal Year 1981, Grants Under Section 2(c)1 of Public Law 89-106, As Amended

A. The applicable specific area of inquiry (program area) should be indicated in Block 8 of Form SEA-661 provided in the Grant Application Kit. *Select one program area only.* Indicating more than one program area does not mean the proposal will be considered under more than one. It only delays processing of the proposal in GAMO. The final determination of the area and change (if any) will be made by the program staff and/or the appropriate panel. The number assigned to the program area must also be cited (i.e., 1.1, 1.2, etc.) in Block 8 of Form SEA-661. Do not use 1.0, 2.0, and 3.0.

B. Points of Contact. For information concerning program guidelines for specific areas of inquiry covered in this announcement, please contact Dr. C. I. Harris, Deputy Administrator for Plant Sciences, SEA-Cooperative Research, Washington, D.C., telephone: (202) 447-4587 (Antidesertification Research and Soybean Research); Dr. Clyde R. Richards, Acting Deputy Administrator for Animal Science, SEA-Cooperative Research, Washington, D.C., telephone: (202) 447-6050 (Animal Health Research and Acquaculture Research).

Specific Areas of Inquiry

1.0 Soybean Research. The total amount available for this area during Fiscal Year 1981 is $485,000. Grant awards will be limited to a maximum of $100,000 per grant for research in the following specific areas of inquiry:

1.1 Soybean production research to increase yields, enhance production, efficiency, and conserve natural resources. Preference will be given to strategies with broad or national implications.

1.2 Research on soybean genetic mechanisms that contribute to yield or tolerance to biotic and abiotic stress.

Specific Areas of Inquiry

2.0 Antidecertification Research. The total amount available for this area during Fiscal Year 1981 is $970,000. Grant awards will be limited to $150,000 per grant for research in the following specific areas of inquiry:

2.1 Techniques for inventorying arid and semiarid land resources and monitoring trend.

2.2 Management strategies for arid and semiarid land to conserve resources and maintain or increase productivity. The strategy may apply to reclamation of land whose biological productivity has been reduced through misuse.

Specific Areas of Inquiry

3.0 Animal Health. The total amount available for this area during Fiscal Year 1981 is $4,800,000. These funds will be awarded to research proposals seeking solutions to animal health problems of livestock, poultry and major aquaculture species. Grant awards will be limited to a maximum of $150,000 per grant.

The overall objective of this research is to develop and/or refine abiotic and biotic methodologies for suppression of animal losses due to infectious and noninfectious diseases and internal and external parasistes of livestock, poultry, and major aquaculture species. Research will be directed toward (1) clarification of infectious and noninfectious diseases and parasites or their interactive effects on animal health and (2) development of practical implementable management systems for the producer to prevent or alleviate these causes of animal losses.

Research may include clarification of complex or unknown etiologies, development or improvement of diagnostic methodology, clarification of disease pathogenesis and methods of transmission, studies of resistance mechanisms and resistance enhancing factors, and development of disease prevention, control, or eradication technology.

Categories in which projects will be funded are listed below. The approximate amount of funds listed will be awarded under numbered priorities or to eligible areas within other commodities as listed. Only proposals dealing with the following areas will be selected for funding:

3.1 Beef Cattle

(1) Respiratory disease complex. (Approximately $845,000)

(2) Reproductive disease, especiallly brucellosis and including but not limited to anestrus, leptospirosis and vibriosis. (Approximately $634,000)

(3) Enteric diseases. (Approximately $422,000)

(4) Parasites (internal and external), including but not limited to anaplasmosis, blue tongue, fever tick, flukes and scabies. Metabolic diseases, especially bloat, grass tetany and mineral imbalance. Diseases of the central nervous system, foot rot, pink eye,

sudden death syndrome, toxic substances and weak calf syndrome. (Approximately $211,000)

3.2 Dairy Cattle

(1) Mastitis (Approximately $386,000)

(2) Reproductive diseases, especially brucellosis and including anestrus. (Approximately $331,000)

(3) Respiratory diseases. (Approximately $221,000)

(4) Digestive and enteric diseases. (Approximately $166,000)

3.3 Swine

(1) Enteric diseases, especially in young animals. (Approximately $187,000)

(2) Respiratory diseases, especially causative agents and including but not limited to atrophic rhinitis. (Approximately $187,000)

(3) Parasites (internal and external), especially trichinosis and including but not limited to mange mites and lice. (Approximately $156,000)

(4) Lameness, especially in breeding animals. (Approximately $94,000)

3.4 Poultry

(1) Respiratory diseases. (Approximately $230,000)

(2) Skeletal problems such as femoral head necroses, tenosynovitis and tibial dyschondroplasia. (Approximately $173,000)

(3) Enteric disorders including coccidiosis, salmonellosis, clostridial infections and malabsorption syndrome. (Approximately $115,000)

(4) Neoplastic diseases including Marek's disease, lymphoid leukosis and reticuloendotheliosis. (Approximately $58,000)

3.5 Sheep and Goats (Approximately $192,000)

Especially predators, but including respiratory diseases (especially chronic progressive pneumonia), enteric diseases (including parasites) and blue tongue.

3.6 Horses (Approximately $144,000)

Especially respiratory diseases, but including enteric diseases, reproductive diseases, and musculoskeletal diseases (especially laminitis and lameness).

3.7 Aquaculture (Approximately $48,000)

Infectious diseases and parasites.

Specific Areas of Inquiry

4.0 Aquaculture Research. The total amount available for this area during Fiscal Year 1981 is $485,000. Grant awards will be limited to a maximum of $80,000 per grant. The objective of this research is to provide and improve upon the scientific and technical base needed by the aquaculture industry.

Proposals focused on local and regional programs which contribute to national objectives related to aquaculture production will be considered. Specific objectives are: (1) Improved production efficiency in diet formulation, reproduction and breeding and disease and parasite control; (2) Improved water quality requirements for production and factors affecting the quality of water discharge; and (3) Increased production of freshwater species having high production potential such as catfish, trout, bait minnows and crawfish.

Appendix II—Format for Research Proposal

The Grant Application Kit (available from the Grants Administrative Management Office) includes forms, instructions, and other information to be used in applying for research grants which will be awarded in the areas described in Appendix I.

Additional information and/or instructions relating to the format and content of the Research Proposal follow:

1. Title of Proposal. A brief, clear, specific designation of the subject of the research. The title (80 characters maximum) will be used for the USDA Current Research Information System (CRIS), for information to Congress, and for press releases. Therefore, it should not contain highly technical words. Phrases such as "Investigation of" or "Research on" should not be used.

2. Approval Signatures of Appropriate Officials. All proposals from a university, college, or institution must be signed by an authorized official.

3. Objectives. A clear, concise, complete, and logically arranged statement of the specific aims of the research.

4. Procedures. A statement of the essential working plans and methods to be used in attaining each of the stated objectives. Procedures should correspond to the objectives and follow the same order. Procedures should include items such as: The sampling plan, experimental design, and analyses anticipated.

5. Justification. This should describe (1) the importance of the problem to the needs of the Department of Agriculture and to the States or region, being sure to include estimates of the magnitude of the problem; (2) the importnace of starting the work now; and (3) reasons for the work being performed in your particular institution.

6. Literature Review. A summary of pertinent publications with emphasis on their relationship to the research. Cite important and recent publications from other institutions, as well as your own institution. Citations should be accurate and complete. Literature citations should be appended to the proposal and are not included in the 10-page limit.

7. Current Research. Describe the relevancy of the proposed research to ongoing and as yet unpublished research at your own and at other institutions.

8. Facilities and Equipment. The location of the work and the needed and available facilities and equipment should be clearly indicated. This section may be combined with Section 4, Procedures, but the combination must clearly show needed and available facilities and equipment.

9. Research Timetable. Show all important research phases as a function of time.

10. Personnel Support. Identify clearly all personnel who will be involved in the research. For each scientist involved, include (1) an estimate of the time commitments necessary and (2) vitae of the principal investigator, senior associates, and other professional personnel to assist reviewers in evaluating the competence and experience of the project staff. This section should include curricula vitae of all key persons who will work on the project, whether or not Federal funds are sought for their support. The vitae also can be provided as an appendix and will not be included in the 10-page limit.

Appendix III—Peer Panel Scoring Form

Proposal Identification No. _____

Institution and Project Title _____

I. Basic Requirement:

Proposal falls within guidelines? ___ yes ___ no. If no, explain why proposal does not meet guidelines under comment section of this form.

II. Selection Criteria:

	Score 1–10	Weight factor	Score X weight factor	Comments
1. Scientific and technical quality of the idea		6		
2. Scientific and technological quality of the approach		8		
3. Relevance and importance of proposed research to solution of specific areas of inquiry		6		
4. Feasibility of attaining objectives during life of proposed research		5		
5. Adequacy of professional training or research experience of research team in essential disciplines needed to conduct the proposed research		5		
6. Adequacy of facilities, equipment, and professional and technical staffing		5		

Score _____

Summary Comments:

Appendix III-A—Evaluation of Proposals

The peer panel will determine whether a proposal falls within the guidelines. If the proposal does not meet the guidelines the proposal will be eliminated from competition and returned to the institution submitting the proposal. Proposals not meeting the guidelines will not be scored on selection criteria by the peer panel.

Proposals satisfactorily meeting the guidelines will be evaluated and scored by the peer panel for each criteria utilizing a scale of 1 to 10. A score of one is low for the selection criteria. A score of 10 is high for the selection criteria. A weighting factor is used for each criteria.

Grant Administration and Allowable Costs

The grants awarded will be administered in accordance with applicable OMB Circulars and Form SEA-638, General Provisions for Grants and Cooperative Agreements. A copy of Form SEA-638 is included in the Grant Application Kit.

The determination of allowable costs shall be made in accordance with the following applicable Federal Cost Principles in effect on the effective date of the Agreement:

Educational Institutions and Hospitals-OMB Circular A-21;
Nonprofit Organizations—OMB Circular A-122;
Commercial Firms—FPR 1-15.2;
State and Local Governments—FMC 74-4 (Formerly OMB Circular A-87).

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federal register

Monday
January 5, 1981

Part VIII

Department of Transportation

Federal Highway Administration

Design Standards for Highways; Resurfacing, Restoration, and Rehabilitation of Streets and Highways Other Than Freeways

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 625

[FHWA Docket Nos. 78-10 and 80-3]

Design Standards for Highways; Resurfacing, Restoration, and Rehabilitation of Streets and Highways Other Than Freeways

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Withdrawal of proposed rulemaking; addition of new notice of proposed rulemaking; public meeting notice.

SUMMARY: The FHWA is proposing to revise its regulations to provide a flexible approach to resurfacing, restoration, and rehabilitation (RRR) projects on highways other than freeways. Geometric design procedures and criteria would be adopted in each State to ensure that proposed projects meet Federal policy objectives. Nationwide design standards would not be adopted. The FHWA's previous notice of proposed rulemaking (43 FR 37556, Aug. 23, 1978) is withdrawn. Comments on this proposal are requested. As part of the rulemaking process, a public meeting will be held in Washington, D.C., on Tuesday, February 3, 1981.

DATES: Comments must be received on or before May 5, 1981. Public meeting to be held February 3, 1981.

ADDRESSES: Submit written comments to FHWA Docket No. 80-3, Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street, SW., Washington, D.C. 20590. All comments received will be available for examination at the above address between 7:45 a.m. and 4:15 p.m. ET, Monday through Friday. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard. The public meeting will be held at 9:30 a.m. in the DOT Headquarters Building, Room 2230, 400 Seventh Street, SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Alvin R. Cowan or Kenneth H. Davis, Office of Engineering, Room 3212, 202-426-0312, or Lee J. Burstyn, Office of the Chief Counsel, Room 4223, 202-426-0754, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: This proposal is considered to be significant under the criteria established by the Department of Transportation pursuant to Executive Order 12044. A draft regulatory analysis is available for inspection in the public docket (Room 4205). Copies of the analysis and a 139-page appendix may be obtained by contacting Mr. Alvin R. Cowan or Mr. Kenneth H. Davis at the address provided above. A copy will also be available for review in each FHWA field office (49 CFR Part 7, App. D).

Background

While the FHWA has provided funding to the States to aid in the construction of the Nation's highways, it has always been the States' responsibility to maintain these highways once initial construction was completed. As highways began deteriorating at an increasing rate, Congress recognized the need to assist the States by providing funds for resurfacing, restoration, and rehabilitation work which had primarily been the States' responsibility to fund in the past.

In the Federal-Aid Highway Act of 1976, Congress amended section 101 of title 23, United States Code, by redefining the term "construction," to include "resurfacing, restoration, and rehabilitation," commonly referred to as "RRR". This allowed Federal-aid construction funds to be used for certain types of work which were previously considered to be maintenance.

This RRR work is defined as work undertaken primarily to extend the service life of an existing facility. This includes placement of additional surface material and/or other work necessary to return an existing roadway, including shoulders or bridges, the roadside, and appurtenances to a condition of structural or functional adequacy. The RRR work may include upgrading of geometric features, such as minor roadway widening, flattening curves, or improving sight distances. The concept of RRR work does not include new construction or major reconstruction, such as adding continuous traffic lanes.

Currently, all Federal-aid RRR projects are being designed under the same standards which have been approved by FHWA for use on new Federal-aid construction projects. These standards are incorporated by reference in Part 625 of 23 CFR, Design Standards for Highways, and include various standards, specifications, policies, guides, references and other criteria. Part 625 provides that exceptions to these standards may be granted by FHWA on an individual project basis.

Following the 1976 Federal-Aid Highway Act, the FHWA issued an advance notice of proposed rulemaking (42 FR 42876, August 25, 1977, Docket No. 77-4), requesting suggestions and comments on the establishment of geometric design standards specifically for use on RRR projects. The standards would apply to Federal-aid RRR work on all highways other than freeways. The standards applicable to work on the Interstate System and other freeways would not be affected.

Three alternatives were offered for consideration: (1) continue to operate under the existing regulations in Part 625, (2) adopt the "Geometric Design Guide for Resurfacing, Restoration, and Rehabilitation (RRR) of Highways and Streets," American Assocation of State Highway and Transportation Officials (AASHTO), 1977, or (3) permit State highway officials and FHWA Division Administrators to develop individual State criteria using the AASHTO Guide and other materials. Because of the severe criticism of the AASHTO Guide, it was decided not to adopt it for use as a nationwide standard on Federal-aid projects. The advance notice was withdrawn (43 FR 2734, January 19, 1978), and a decision made by FHWA to draft its own RRR design standards.

A notice of proposed rulemaking (NPRM) setting forth the FHWA's proposed "Geometric Design Standards for Resurfacing, Restoration, and Rehabilitation (RRR) of Streets and Highways Other Than Freeways" was published at FR 37556 on August 23, 1978. Comments on the specific elements of the proposed standards and their effect on the Federal-aid highway program were requested. The FHWA standards for RRR work were to be more stringent than those in the AASHTO RRR Guide, but less stringent than the standards for new construction in Part 625.

Some 111 responses were received to the NPRM (FHWA Docket No. 78-10). Although the majority of the comments generally favored the proposed standards, a number of the comments raised issues more broadly related to the proper Federal role in the RRR program.

Several highway agencies and AASHTO felt that the development of a design guide should be AASHTO's responsibility with the cooperation of FHWA. One State questioned the legality of FHWA writing standards that all States would have to follow. Others thought FHWA had exceeded its authority in not allowing specific design decisions concerning local needs and variances to be made at the local level. The FHWA agrees that State and local govenments and representative organizations like AASHTO have an important role to play in the standards development process. The FHWA also

recognizes that it has the ultimate responsibility for assuring that all Federal-aid projects, including RRR projects, are carried out in conformance with certain basic requirements for design and construction set forth by Congress in the Federal-Aid Highway Acts. Those requirements are codified in 23 U.S.C. 109(a) and call for facilities "(1) that will adequately meet the existing and probable future traffic needs and conditions in a mannner conducive to safety, durability, and economy of maintenance, and (2) that will be desinged and constructed in accordance with standards best suited to accomplish the foregoing objectives and to conform to the particular needs of each locality."

Several comments addressed the question of increased tort liability, either on the part of the Federal Government or at the State and local level. While the FHWA recognizes the concerns expressed in this regard, the agency's major concern and responsibility is the promulgation of policies and procedures to assure that RRR projects meet the requirements in 23 U.S.C. 109(a).

There was concern expressed by some members of the highway safety community that the proposed standards did not follow the intent of Congress in placing enough emphasis on highway safety. The establishment of safety performance standards was suggested. The thrust of comments from the Center for Auto Safety, the Georgia State Office of Highway Safety, the Insurance Institute for Highway Safety, and the National Transportation Safety Board was that no action by FHWA might be better than action that creates a road that is not entirely safe. The FHWA agrees that the safety of the traveling public is a matter of utmost concern in the development of any highway design standards.

Task Force

The various issues raised in response to the NPRM led FHWA to a reevaluation of its proposed action. Following the close of the comment period on the NPRM in January 1979, the FHWA established an internal task force and four working groups to evaluate RRR implementation and make recommendations for further action to the Administrator.

On May 23, 1979, the FHWA published a notice (44 FR 29921) regarding the status of the RRR rulemaking action. The notice indicated that the working groups were addressing the following tasks: (1) preparation of a summary of Docket No. 78–10 comments, (2) evaluation of Docket No. 78–10 comments, including those which suggested alternative procedures to separate RRR standards and an evaluation of these procedures, (3) preparation of a regulatory analysis required by Executive Order 12044 on Improving Government Regulations, and (4) based upon comments received and impact analysis, preparation of options for the Administrator's decision.

In developing a regulatory analysis for this rulemaking action, one of the FHWA working groups prepared a technical report, "RRR Alternative Evaluations for Non-Interstate Rural Arterial and Collector Highway Systems," which evaluates three levels of geometric design standards for nonfreeway RRR work:

Case 1: Minimum tolerable conditions (MTC) are set at the level of the currently approved design standards (23 CFR Part 625) for new construction. This case places emphasis on improving lane and shoulder widths, operating speeds, and horizontal and vertical alignments whenever a RRR project is undertaken. Case 1 is a theoretical bound which exceeds present practice for RRR in that the MTC used are the current standards in Part 625 applied without exception to the roadway sections needing improvement. Case 1 represents the upper bound for RRR geometric design standards.

Case 2: The MTC are essentially the standards proposed by FHWA in the August 1978 NPRM (Docket No. 78–10). This case represents the lower bound that would be considered in this analysis as being acceptable for RRR work. Case 2 emphasizes reversing the present trend toward nonfreeway pavement surface deterioration without substantially changing the existing system relative to highway geometrics (i.e., lane and shoulder widths, operating speeds, etc.).

Mid-Case: The MTC used in the Mid-Case closely represent current State practice for Federal-aid RRR work (i.e., current design standards in Part 625 with exceptions granted by the FHWA Division Administrator on a project by project basis).

The report evaluates the application of the various RRR standards relative to both total system needs and projected funding levels. A 15-year period of examination from 1975 to 1990 is used.

The report concludes that under unlimited funding conditions the highest design standards (Case 1) would, as expected, provided the best safety and operational performance. However, given limited program funding the report indicates that RRR improvements would provide greater benefits nationally if standards that more closely parallel the Case 2 or Mid-Case conditions were used rather than those in Case 1.

The complete 139-page technical report is being made available to the public as an appendix to the draft regulatory analysis. This analysis is available for inspection in the public docket in Room 4205 at the address provided above. Copies of the analysis (with appendix) are available and may be obtained by contacting Mr. Alvin R. Cowan at the address provided above.

Based upon a review and evaluation of the technical report and the comments submitted to the public docket, various options were considered by the FHWA task force. Two basic policy alternatives were available to the agency.

Under the first alternative, the FHWA would adopt design standards for use on all nonfreeway RRR projects nationwide. The second alternative would involve adoption of a flexible approach to nonfreeway RRR projects that would encourage individual State initiative without establishing nationwide standards. The recommendations of the FHWA task force to proceed with the second alternative form the basis for the action proposed in this NPRM.

Proposed Action

The FHWA is proposing to implement the individual State approach by issuing a policy statement and establishing a framework for the adoption of nonfreeway RRR procedures and criteria in each State. The design standards applicable to work on the Interstate System and other freeways would not be affected by this proposal.

The proposed policy statement is, in part, a restatement of the statutory requirements in 23 U.S.C. 109(a) for all Federal-aid highway projects. It is also a statement of FHWA's official policy on RRR work and the overall standard by which a State's RRR process and eligible highway projects would be judged.

The proposed policy statement would be issued as a new § 625.2 in Part 625 and would read as follows:

"(a) Plans and specifications for proposed Federal-aid highway projects shall provide for a facility (1) that will adequately meet the existing and probable future traffic needs and conditions in a manner conducive to safety, durability, and economy of maintenance; and (2) that will be designed and constructed in accordance with standards best suited to accomplish the foregoing objectives and to conform to the particular needs of each locality.

(b) The development and overall management of highway facilities must be considered as a continuing program. This process of highway management commences with planning and extends through design,

construction, maintenance, and operation. In order to assure a continuing acceptable level of safe traffic service, it is essential to provide for adequate maintenance and periodic resurfacing, restoration, and rehabilitation (RR) throughout the life of the highway. The RRR work is defined as work undertaken primarily to extend the service life of an existing facility. This includes placement of additional surface material and/or other work necessary to return an existing roadway, including shoulders or bridges, the roadside, and appurtenances to a condition of structural or functional adequacy. The RRR work may include upgrading of geometric features, such as minor roadway widening, flattening curves, or improving sight distances. The RRR work is an essential part of any highway program, and each State and local agency should provide for these types of improvements in each annual highway program.

(c) An important goal of the FHWA is to provide the highest practical and feasible level of safety for people and property associated with the Nation's highway transportation systems and to reduce highway hazards and the resulting number and severity of accidents on all the Nation's highways. Accordingly, the only constraint on the application of Federal-aid funds to RRR work is that they must be used to provide a facility that adequately meets existing and probable future traffic needs and conditions in a manner conducive to safety, durability, and economy of maintenance, and acceptable levels of community and environmental impact. The RRR projects should be designed and constructed in a manner that will prevent deterioration of safety and yet accomplish the foregoing objectives according to the particular needs of each State and locality."

The RRR policy would be implemented in each State by the State highway agency and the FHWA Division Administrator. The appropriate Federal-aid requirements would be met by the development of procedures and criteria under which the State would ensure that all nonfreeway RRR projects conform to the FHWA's RRR policy.

The framework for adoption of nonfreeway RRR criteria would be established under a new paragraph (a)(6) in 23 CFR 625.3 and would read as follows:

"The geometric design standards for resurfacing, restoration, and rehabilitation (RRR) projects on highways other than freeways shall be the procedures and the design or design criteria established for individual projects, groups of projects, or all nonfreeway RRR projects in a State, and as approved by the FHWA. The other geometric design standards in this section do not apply to RRR projects on highways other than freeways, except as adopted on an individual State basis. The RRR design standards shall reflect the consideration of the traffic, safety, economic, physical, community and environmental needs of the projects."

The proposed approach would allow for State and local discretion in the development and implementation of a RRR program. At the same time, it would provide for guidance and oversight by the FHWA to assure consistency with national policy objectives.

Under this proposal, the minimum goemetric design standards adopted in Part 625 for use on new projects and reconstruction projects would not necessarily apply to nonfreeway RRR projects. There would be sufficient flexibility to allow the use of the standards in Part 625, RRR standards such as those developed by AASHTO (Docket No. 77–4), safety performance standards, or other criteria, including various combinations of the above.

The procedures to be developed by each State would indicate the type of projects covered by the State's nonfreeway RRR criteria and could provide for exceptions from the criteria under appropriate circumstances. Criteria could be established to cover all projects in the State, individual projects, or projects grouped by various factors such as geographic region, type of work involved, functional classification, special project features (e.g., historic bridges), etc.

These criteria would not necessarily include specific, numerical standards. The design of any given project could be based on a variety of factors including traffic volumes, accidents, physical characteristics, functional classification, economics, and the potential impacts of various types of improvements. The State's procedures could indicate how these various factors would be considered in designing a particular project or group of projects. Where a State develops or adopts more than a single set of criteria for a group of projects, the State's procedures would indicate how a particular set of criteria would be selected for a given project. For example, a State could indicate that the choice of design criteria would depend upon the accident history of the highway section involved and the availability of funds for various types of improvements.

A State's procedures could be included in its criteria and would not have to be set out in a separate document. It is not the FHWA's intention to require the States to develop detailed procedures for processing RRR projects. These projects are currently processed and will continue to be processed under normal Federal-aid procedures.

If this proposed approach is adopted, the FHWA will monitor the RRR program in each State as part of the FHWA's ongoing oversight function to ensure that full consideration is given to both safety and highway preservation objectives and that Federal assistance is provided where needed in the development and implementation of the program.

It should be noted that, under the FHWA's proposal, the upgrading of those features that would improve highway safety will continue to be eligible for funding with safety funds, regular Federal-aid funds, or both.

The FHWA technical report, "RRR Alternative Evaluations for Non-Interstate Rural Arterial and Collector Highway Systems," supports the application of lower minimum standards for RRR work such as those represented by the Mid-Case or Case 2 range, both of which are less than current minimums for new highways. Since both of the basic policy alternatives available to the agency could result in the application of lower minimums, the FHWA's choice of the individual State approach as opposed to nationwide standards was based primarily on non-technical factors. The major advantages of this approach are summarized below:

1. Provides needed program flexibility and discretion at the State and local level.

2. Encourages the design of projects that conform to the particular needs of each locality (23 U.S.C. 109(a)(2)).

3. Maintans sufficient Federal oversight to ensure that proper consideration is given to promoting the safety of highway users and preventing continued deterioration of the Nation's highway system.

4. Reflects the intent of Congress to provide greater flexibility in the use of Federal funds for obtaining maximum use from the extensive system of existing highway facilities.*

5. Implements the President's policy to minimize burdens on State and local governments and achieve legislative goals effectively and efficiently (Executive Order 12044, 43 FR 12661, Mar. 24, 1978); the national policy on minimization of redtape in Federal highway programs as expressed by Congress in 23 U.S.C. 101(e); and the FHWA's well-established policy on the minimization of redtape (43 FR 10578, Mar. 14, 1978).

6. Avoids disproportionate impacts on urban areas and rural communities that might result from the imposition of uniform standards nationwide.

A disadvantage of the proposed approach is that in order to utilize the flexibility provided by the regulation, it

*H.R. Rept. No. 1567, 93d Cong., 2d sess. 3(1974); H.R. Rept. No. 109, 94th Cong., 1st sess. 5(1975); S. Rept. No. 485, 94th Cong., 1st sess. 7,8(1975); H.R. Rept. No. 716, 94th Cong., 1st sess. 5, 6(1975); H.R. Rept. No. 1017, 94th Cong., 2nd sess. 42, 43(1976).

would be necessary for States to develop their own procedures and criteria for RRR projects. However, the FHWA believes that sufficient resources are available to minimize the burden on State highway agencies. The States would be able to select from or expand on a variety of existing references with adequate technical support and guidance provided by FHWA. If a State was not interested in exercising its option under the proposed regulation, it could simply notify the FHWA of its intention to continue operating under the procedures and standards currently provided by Part 625.

Standards developed on a national level often provide for uniformity at the expense of local needs and preferences. This is particularly true with regard to RRR work—what works well in one part of the country, or even one area of a State, may be totally unacceptable in another. To a certain extent, standards such as those currently approved for use on the construction of new highways and reconstruction projects recognize the need for local variations by providing ranges of acceptable values, alternate standards for use under varying conditions, and a procedure for requesting exceptions on individual projects. Because of the type of work included in most nonfreeway RRR projects, it is anticipated that the number of requests for exceptions from nationwide standards would be quite large. The FHWA believes that this process would impose an unreasonable burden on grant recipients and agency field offices and could unnecessarily delay needed improvements.

Public Participation

Through this notice of proposed rulemaking, comments are invited on the FHWA's proposed approach to nonfreeway RRR projects. Comments may also address how this approach can best be implemented to assure a program that will achieve good results in preserving the Nation's highways. Comments received will be evaluated and used in preparing a final rule.

All comments should be sent to FHWA Docket No. 80-3 at the address provided above. A 120/day comment period is being provided. The previous notice of proposed rulemaking on nonfreeway RRR standards (43 FR 37556 Aug. 23, 1978) is withdrawn.

As part of the rulemaking process, a public meeting will be held on Tuesday, February 3, 1981, beginning at 9:30 a.m., in Room 2230 of the DOT Headquarters Building (Nassif Building), 400 Seventh Street, SW., Washington, D.C. For persons wishing to attend the meeting, the most convenient point of access to Room 2230 is via the building entrance near the corner of Sixth and E Streets, SW. Public parking is available nearby. Access for persons using wheelchairs is most convenient via the Seventh Street or E Street entryways into the building plaza.

All interested individuals and groups are invited to attend and participate in the meeting. The FHWA will explain the proposed course of action and review the draft regulatory analysis and technical report. Following presentations by FHWA officials, an opportunity will be provided for public comment and questions.

The individuals who can answer questions about the proposed action and the upcoming meeting are Mr. Alvin R. Cowan and Mr. Kenneth H. Davis, Office of Engineering, Room 3212, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590, Telephone 202-426-0312. Requests for copies of the draft regulatory analysis and technical report should be addressed to Mr. Cowan or Mr. Davis. A copy will also be available for review in each FHWA field office (49 CFR Part 7, App. D).

In consideration of the foregoing, and under the authority of 23 U.S.C. 101, 109, 315 and 49 CFR 1.48(b), the Federal Highway Administration proposes to revise Chapter I, Part 625 of Title 23, Code of Federal Regulations, as set forth below.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The provisions of OMB Circular No. A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to this program.)

Issued on: December 29, 1980.

John S. Hassell, Jr.,

Federal Highway Administrator.

1. The table of sections is amended by adding a new section to read:

Sec.
625.2 *Policy.*

2. Section 625.2 is added to read as follows:

§ 625.2 Policy.

(a) Plans and specifications for proposed Federal-aid highway projects shall provide for a facility (1) that will adequately meet the existing and probable future traffic needs and conditions in a manner conducive to safety, durability, and economy of maintenance; and (2) that will be designed and constructed in accordance with standards best suited to accomplish the foregoing objectives and to conform to the particular needs of each locality.

(b) The development and overall management of highway facilities must be considered as a continuing program. This process of highway management commences with planning and extends through design, construction, maintenance, and operation. In order to assure a continuing acceptable level of safe traffic service, it is essential to provide for adequate maintenance and periodic resurfacing, restoration, and rehabilitiation (RRR) throughout the life of the highway. The RRR work is defined as work undertaken primarily to extend the service life of an existing facility. This includes placement of additional surface material and/or other work necessary to return an existing roadway, including shoulders or bridges, the roadside, and appurtenances to a condition of structural or functional adequacy. The RRR work may include upgrading of geometric features, such as minor roadway widening, flattening curves, or improving sight distances. The RRR work is an essential part of any highway program, and each State and local agency should provide for these types of improvements in each annual highway program.

(c) An important goal of the FHWA is to provide the highest practical and feasible level of safety for people and property associated with the Nation's highway transportation systems and to reduce highway hazards and the resulting number and severity of accidents on all the Nation's highways. Accordingly, the only constraint on the application of Federal-aid funds to RRR work is that they must be used to provide a facility that adequately meets existing and probable future traffic needs and conditions in a manner conducive to safety, durability, and economy of maintenance, and acceptable levels of community and environmental impact. The RRR projects should be designed and constructed in a manner that will prevent deterioration of safety and yet accomplish the foregoing objectives according to the particular needs of each State and locality.

§ 625.3 [Amended].

3. Paragraphs (a)(6) through (a)(20) of § 625.3 are redesignated (a)(7) through (a)(21), respectively.

4. A new paragraph (a)(6) of § 625.3 is added to read as follows:

(a) * * *

(6) The geometric design standards for resurfacing, restoration, and rehabilitation (RRR) projects on highways other than freeways shall be the procedures and the design or design criteria established for individual projects, groups of projects, or all

nonfreeway RRR projects in a State, and as approved by the FHWA. The other geometric design standards in this section do not apply to RRR projects on highways other than freeways, except as adopted on an individual State basis. The RRR design standards shall reflect the consideration of the traffic, safety, economic, physical, community and environmental needs of the projects.

* * * * *

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Part IX

Community Services Administration

Grantee Program Management System for Public and Private Non-profit Agencies and Organizations

COMMUNITY SERVICES ADMINISTRATION

45 CFR Part 1067

[CSA Instruction 6710-1a]

Grantee Program Management System: The Community Action Agency

AGENCY: Community Services Administration.

ACTION: Final rule.

SUMMARY: The Community Services Administration (CSA) is filing this document as a final rule to establish a new program management system for public and private non-profit agencies and organizations which have the CSA-recognized grantee designation of community action agency (CAA) and whose financial assistance is provided in total or in part by the CSA. This rule-making document addresses a legislatively-mandated condition for financial assistance: The adoption by the CAA of a systematic approach encompassing a planning and implementation process as set forth under Title II of the Economic Opportunity Act of 1964, as amended (the Act). Further, the final rule is the basis for a consistent approach to be employed by the CSA Regional Directors and their respective staffs in monitoring, guiding and assisting grantees to fulfill the functions of a CAA and to achieve the community action mission. For community action program (CAP) participants, including policy-making representatives of the low-income, public and private sectors of the community, as well as CAA employees, volunteers and program beneficiaries, the final rule describes the system in both functional and chronological terms, using a step-by-step approach. The three major elements of the system—planning, application and performance—are defined, as are the minimum requirements for the basic components of the system. Included are a comprehensive community planning concept, continuing involvement of the poor, relevant program development, project progress reporting, ongoing performance assessment, and evaluation of process and product effectiveness. Of unique significance is the integration of civil rights requirements with the work effort performed under the elements of the system; this results in reality-based determination and reporting of anti-discrimination and equal opportunity assurances coupled with work projections and accomplishments.

EFFECTIVE DATE: February 4, 1981, except for recordkeeping and reporting requirements contained in §§ 1067.70-4 and 1067.70-6 through 1067.70-9. See § 1067.70-10 of the regulations for further details.

FOR FURTHER INFORMATION CONTACT: Ms. Hazel A. Wilson, Community Services Administration, Office of Regional Operations, 1200 19th Street, N.W., Washington, D.C. 20506; Telephone No.: (202) 254-5670; Teletypewriter: (202) 254-6218.

SUPPLEMENTARY INFORMATION:

Classification: The Community Services Administration considers this rule to be a "significant" regulation under its published criteria for implementing E.O. 12044.

Regulatory Analysis: Not required for this rulemaking.

Environmental Impact Statement: This regulation does not significantly affect the environment. An environmental impact statement is not required under the National Environment Policy Act of 1969.

Catalog of Federal Domestic Assistance Number: 49.002 COMMUNITY ACTION.

Regulatory History: The CSA "Grantee Program Management System: The Community Action Agency" replaces OEO Instruction 6710-1, "Applying for a CAP Grant," issued in 1968. Since publication of 6710-1, more than eleven Instructions have been issued changing various requirements of the old system. As a result of the many piecemeal changes, current planning and application procedures are inconsistent and administered differently from one regional office to another. On August 30, 1979, (44 FR 50982) the CSA published a proposed rule describing the new program management system. Then, on July 28, 1980 (45 FR 50296) the CSA republished the proposed rule which had undergone significant revision based on comments received from interested parties and extensive field testing. Now, the final rule is being published to take effect thirty (30) days from the date of publication in the **Federal Register**. Additional comments and further analysis have contributed to a compact and streamlined regulation which—

1. Requires a CAA to establish a planning process and an evaluation process that meet certain criteria and are subject to approval by the appropriate CSA Regional Director.

2. Requires a CAA to implement the approved processes in developing (a) a Four-Year Action Plan containing goals, priorities and strategies, (b) an Equal Opportunity Plan which links civil rights requirements to issues addressed in the action plan, and (c) specific structures and methods for performance assessment and impact evaluation.

3. Requires a CAA to design two-year work programs based on CSA-accepted action plans and to identify work to be performed on a project basis with objectives and activities clearly outlined. (The CSA Regional Director will approve grant applications for a two-year period, instead of annually. Grant awards will be made annually, contingent upon availability of funds.)

4. Combines grant application and project progress reporting forms and simplifies project progress reporting, while reducing reporting frequency.

5. Formally institutes a scheduled and structured on-site prereview visit by the CSA field representative and others.

Authority: The provisions of this subpart are issued under the authority of Section 602, 78 Stat. 530 (42 U.S.C. 2942).

Richard J. Rios,

Director.

45 CFR Part 1067 is amended by adding the following new subpart:

Subpart 1067.70—Grantee Program Management System: The Community Action Agency

Sec.

Authority: Section 602, 78 Stat. 530 (42 U.S.C. 2942).

Subpart 1067.70—Grantee Program Management System: the Community Action Agency

§ 1067.70-1 Purpose.

This subpart describes the Grantee Program Management System (GPMS) to be used by a community action agency (CAA) and the Community Services Administration (CSA) when the CAA applies for a grant under the Economic Opportunity Act of 1964, as amended (the Act), to conduct and administer a community action program (CAP). This system prescribes a four-year planning cycle encompassing two consecutive two-year work programs, and provides for an annual release of funds. It covers planning, applying for the grant, reporting project progress, and evaluating the results of projects and strategies undertaken with the grant. The Grantee Program Management System integrates the civil rights requirements prescribed under Part 1010 of this chapter into the planning, application, and performance elements of the system. The Grantee Program Management System helps the CAA meet the condition of assistance which specifies adoption of a systematic approach encompassing a planning and implementation process, under requirements set forth in Section 221(d) of the Act.

§ 1067.70-2 Applicability.

This subpart applies to all community action agencies whose financial assistance is provided in total or in part by the Community Services Administration.

§ 1067.70-3 Key terms used in this subpart.

(a) *Activity.* Within the two-year work program, an activity is the action that will be taken to cause a project objective to be reached as scheduled. An activity can be performed only once, several times, or it can be ongoing. An activity should be specific to the level of detail necessary for the CAA and the CSA to understand how the project will accomplish its objectives.

(b) *Civil Rights Requirements.* The CSA requirements for anti-discrimination assurances and equal opportunity for program participants and in CAA employment as cited in Part 1010 of this chapter.

(c) *Equal Opportunity Plan.* (1) The CSA has one national civil rights program which is applicable to all grantees, including the CAA. The Equal Opportunity Plan is an integral part of that program; it forms the basis for determining and reporting all anti-discrimination and equal opportunity work projections and accomplishments. Every CAA shall participate in and conform to the civil rights program requirements by developing and submitting an Equal Opportunity Plan. See Part 1010 of this chapter for details.

(2) A CAA's Equal Opportunity Plan is comprised of the following materials:

(i) A written Equal Opportunity Policy Statement;

(ii) A written position description for the Equal Opportunity Officer, a written explanation of the structure and function of the Equal Opportunity Committee, and a written explanation of the roles and relationships between the Equal Opportunity Officer and the Committee and other civil rights officials;

(iii) A written Discrimination Complaint Procedure, incorporating the procedures required in Section 1010.30-3 of this chapter;

(iv) A comprehensive Civil Rights Needs Assessment; the assessment documents relevant civil rights issues and problems, and includes a comparison of the population receiving benefits to the population eligible to receive benefits on the basis of race, sex, age and national origin, and a comparison of the CAA's staffing to the eligible population on the basis of race, sex, age, and national origin [see Section 1067.70-4(a)(2)];

(v) The equal opportunity goals and strategies in the Four-Year Action Plan which address the issues identified in the assessment;

(vi) An equal opportunity project(s) including specific objectives with their related activities;

(vii) Regular project progress reports of the CAA's accomplishments toward achieving the objectives and activities; and

(viii) Data and information relating to the CAA Board, advisory groups, program participants, and workforce characteristics.

(3) The individual materials in (i) through (viii) above are submitted by the CAA to the appropriate CSA Regional Office at times specified in this subpart or by the Regional Office.

(d) *Evaluation.* A study undertaken to determine the extent to which a completed project met its four-year goal. An evaluation may determine (1) the extent to which meeting the goal achieved the purposes set forth in Title II of the Act and the CAA's Mission Statement, or (2) the extent to which implementation of the CAA's Four-Year Action Plan impacted the poverty-related problems addressed by the plan's stated goals.

(e) *Four-Year Goal.* A statement of desired results to be achieved by the end of the four-year period in terms of a resolution or reduction of the poverty-related problem. A goal should be limited to what the CAA can reasonably expect to accomplish within four years and should be stated specifically enough that the CAA can determine whether it has been met.

(f) *Impact Measure.* An indicator of effective achievement used in evaluation, an impact measure indicates the extent to which achieving the four-year goal produced the desired results. For example, an impact measure for an employment training project might be used to determine whether trainees actually acquired desired knowledge, attitudes and work skills; went on to find jobs; and whether the percentage of unemployment in the community was actually reduced, if this was the desired result.

(g) *Objective.* A specific, measurable result to be accomplished during a two-year work program period by implementing a CAA project. An objective represents a step on the road to reaching a goal and in many cases will be a statement of how much of the four-year goal will be achieved at the end of a two-year work program. Every project which the CAA proposes to undertake in its work program must have at least one objective established for it.

(h) *Performance Assessment.* An examination to determine whether progress is being made toward meeting a project's objectives, and if not why not. An assessment first attempts to uncover difference from expected or planned results and then analyzes these differences to determine their causes, their consequences, what conclusions can be drawn, and what recommendations can be made.

(i) *Performance Measure.* An indicator of efficient accomplishment used in assessment, a performance measure indicates the extent to which the planned activities of a project are on-target in meeting the stated objectives. A performance measure may

indicate a unit quantity to be produced during a certain interval or a schedule of events to take place in the activities of a project. For example, a performance measure for a particular project might be the number of enrollees in a program, the number of substandard housing units rehabilitated, the date on which a certain product (a report, local or state law change, committee formed) is furnished, or a key beginning or ending date when an activity takes place (an event, episode).

(j) *Poverty-Related Problem.* An obstacle created by a cause(s) or reflecting a condition which prevents individuals or families who are poor from becoming self-sufficient.

(k) *Project.* A strategy selected for implementation. The project is the level where objectives are set, resources are applied and work is performed.

(l) *Standards of Effectiveness.* A set of standards used to determine the extent to which the program, projects and activities of the CAA are meeting the purposes of Title II of the Act. The Standards of Effectiveness are categories derived for the most part from the various funding authorities of the Act and are used to assess and evaluate the effectiveness of projects. They are set forth under Subpart 1067.4.

(m) *Strategy.* A method or way to achieve one or more of the CAA's four-year goals. A strategy selected from among other alternatives will, in most cases, be a project proposed to be undertaken by the CAA.

(n) *Work Program.* The body of approved projects of the CAA.

(o) *Work Program Period.* The 24-month span of time in which the CAA's approved work program is implemented.

§ 1067.70–4 Planning and evaluation.

(a) *Developing the Planning Process Narrative (PPN).* The CAA shall develop a narrative description of the process which it will use to produce a Four-Year Action Plan. At a minimum this document shall contain:

(1) A written policy (to serve as the CAA Mission Statement) that commits the CAA to the legislatively mandated purposes of community action which enables low-income families and individuals to become fully self-sufficient (see Title II, Section 201(a) (1–5), of the Act and Section 1063.130 of this chapter);

(2) A description of how the CAA will: assess the needs of the low-income community (this description must also include how the CAA will assess the civil rights and equal opportunity problems of the CAA and the low-income community which it serves), rank identified poverty-related problems based on severity of need, analyze and assess the utilization of the resources available to the community to combat poverty, establish goals for addressing poverty-related problems of the community, and develop and select strategies to combat those problems;

(3) A timeable for each activity to be undertaken in developing the action plan;

(4) A description of how the CAA will publicize each activity in order to encourage broad community participation in the development of the action plan;

(5) A description of how the CAA will involve the poor in the development of the action plan;

(6) A description of how the CAA will provide ample opportunity and sufficient time for public review of the action plan;

(7) A list of agencies, organizations and institutions that perform various State-level, sub-state-regional, and local planning functions which may have relevance to the needs of the poor, and with whom the CAA proposes to interact in an advocacy planning role; for example: State, county and city planning departments, school systems, United Way, councils of government, health systems agencies, employment and training program sponsors, and economic development groups; and

(8) A description of the process which the CAA will use to amend the action plan in the event that it becomes necessary to do so during the four-year period which the plan covers. This process shall provide to organizations which serve the low-income community the opportunity to petition the CAA to amend its plan.

(b) *Developing the Evaluation Process Narrative (EPN).* Evaluation in its totality will be a required project [see Section 1067.70–6(d)]. The entire community action program can be evaluated against the purposes of the Act using the Standards of Effectiveness and other goal-achievement measures set forth in the Four-Year Action Plan. At least once every four years, the CAA must evaluate the impact of at least one high priority project. The Evaluation Process Narrative will describe how the impact evaluation will be conducted. The Evaluation Process Narrative will also describe how the CAA will assess project administration including management policies, procedures and practices. Specifically included is the management of the total, ongoing planning process. The assessment of projects is described in Section 1067.70–8. The assessment of the management function must be addressed in the Evaluation Process Narrative. For both the impact evaluation of the project(s) and for the assessment of the management function(s) the CAA shall describe in the Evaluation Process Narrative:

(1) The specific structures and methods that will be used, including the role and responsibilities of the CAA Board, committees, the poor (including the elderly, women, minorities and the handicapped), program participants, CAA staff and others in the community as may be appropriate.

(2) The processes that will be used:

(i) To select the project(s);

(ii) To select the management function(s) to be assessed;

(iii) To select the measurable performance criteria that will be used; and

(iv) To carry out the evaluation or assessment.

(3) The use of the products—including how the CAA Board will review and act upon the assessment and evaluation reports, how the information in these reports will be used to improve the performance of the CAA, and how the information will be used to develop the next Four-Year Action Plan. Different structures and methods may be chosen for evaluation and assessment.

(c) *Submitting the Planning Process Narrative and the Evaluation Process Narrative to the CSA Regional Office.* (1) The CAA shall submit three copies of its Planning Process Narrative and three copies of its Evaluation Process Narrative to the Regional Office *no later than fifteen months before the beginning of the next cycle of the Four-Year Action Plan.* The presiding official [1] of the CAA shall send a cover letter along with the narratives certifying that the governing board or governing officials have approved them. If the CAA is a part of local government, the CAA shall also submit to the Regional Office the written recommendations of the Community Action Board concerning the narratives.

(2) The CSA Regional Director or his/her designee will approve the Planning Process Narrative *within thirty days of receipt* if it describes adequate procedures for all of the required elements in Paragraph (a) of this section and if it complies with the CSA's requirements for civil rights and for the participation of the poor. The CAA may not put the planning process into effect

[1] The presiding official of the CAA is the chairperson or designee of the governing board (in the case of private, non-profit CAAs and CAAs which are separate public agencies) or the chief elected official or the elected official with the responsibility for signing documents for the CAA (in the case of governmental CAAs).

until the Regional Director has approved the narrative.

(3) The Regional Director or his/her designee will approve the Evaluation Process Narrative *within thirty days of receipt* if it contains complete and appropriate steps for all of the required elements in Paragraph (b) of this section and if it complies with the CSA's requirements for civil rights and for the participation of the poor.

(d) *The Four-Year Action Plan.* (1) The CAA shall use its approved planning process to produce a Four-Year Action Plan. In this plan, the CAA shall:

(i) Describe the significant poverty-related and civil rights problems in the community with appropriate statistical data (and sources) as derived from the assessment of needs;

(ii) Describe the cause(s) of each problem;

(iii) Rank the poverty-related problems in order of the severity of need;

(iv) Analyze the resources used in current and past efforts to solve each problem;

(v) State the goal(s) which the CAA proposes to achieve during the four-year period of the plan (for each poverty-related problem which the CAA proposes to address); and

(vi) Describe possible alternative strategies for achieving these goals (for each poverty-related problem which the CAA proposes to address).

(2) The CAA shall document the information for each poverty-related problem and each civil rights problem on a separate CSA Form 510, "Grantee Four-Year Planning Statement," and shall submit CSA Form 509, "Grantee Plan Summary Data and Certification" as a cover sheet for the plan.

(e) *Reviewing and Approving the Four-Year Action Plan.* (1) Prior to Board approval, the CAA shall provide ample opportunity and sufficient time for review of the Four-Year Action Plan by low-income residents, by relevant community organizations, and by the local officials who participated in the designation of the CAA. The CAA shall maintain on active file available to the CSA all comments, both favorable and unfavorable, of every person and organization who commented on the plan.

(2) After allowing ample opportunity and sufficient time for public review, the CAA Board [2] shall review and approve the plan at a public meeting held specifically for that purpose. In the case of a governmental CAA, the designating officials shall also review and approve the plan at a public meeting before it is submitted to the Regional Office.

(3) If the CAA Board rejects any suggested change in the plan which has received broadly organized community support during the period of review, it shall submit along with the plan a summary of the suggested changes and the Board's reasons for rejecting them.

(f) *Submitting the Four-Year Action Plan to the CSA Regional Office.*

(1) The CAA shall submit three copies of the Four-Year Action Plan Regional Office *no later than 180 days before the beginning of the next cycle of the Four-Year Action Plan.* The earliest possible submission can help ensure timely funding decisions and avoid cash flow problems.

(2) The Regional Director or his/her designee will notify the CAA of acceptance of the action plan in the Letter of Program and Funding Guidance [see Section 1067.70-5(c)(3)] unless the CAA has not followed its approved planning process in developing the plan or has not properly completed CSA Forms 509 and 510. By accepting the action plan the Regional Office does not approve the CAA's priorities, goals, and strategies. Nor does acceptance of the action plan commit the CSA to approval of a grant application based on the plan or to continued funding of the CAA.

(3) If the Regional Director or his/her designee refuses to accept the action plan, he/she will clearly state the grounds for doing so. The CAA may appeal to the Regional Director *within ten working days* for reconsideration of the rejected plan. If the Regional Director rejects the appeal and if the CAA refuses to alter the plan, this rejection shall constitute the first step in the denial of an application for refunding. See Subpart 1067.2 for details.

(g) *Submitting Amendments to the Four-Year Action Plan to the CSA Regional Office.* When it wishes to amend the Four-Year Action Plan, the CAA shall submit to the Regional Office a revised CSA Form 509 and the necessary CSA Form 510s. The Regional Director or his/her designee will accept the amendment(s) *within ten working days* if the CAA has followed its approved process for amending the action plan.

§ 1067.70-5 Activities to be undertaken before the CAA applies for funds.

(a) *Maintaining Eligibility to Receive Funds.* It is the duty of the CAA *at all times* to maintain eligibility and to comply with the provisions of the Act and with the CSA regulations and policy statements. Failure or refusal to do so is sufficient grounds for refusal to refund the CAA. See Subpart 1067.2 for details. Required eligibility documents shall be submitted with the action plan and at other times specified by the Regional Office.

(b) *On-site Visit by the CSA.* (1) The CSA Regional Office field representative will generally conduct an on-site visit *approximately 180 days before the start of each work program period.* The field representative will use this visit to:

(i) Discuss the CAA's action plan in light of its approved planning process;

(ii) Validate information contained in the CAA's project progress reports;

(iii) Verify the CAA's compliance with the provisions of the Act and CSA regulations and policy statements;

(iv) Review how the CAA proposes to provide ample opportunity and sufficient time for public review of the grant application;

(v) Eliminate possible obstacles to funding or refunding; and

(vi) In cooperation and coordination with the appropriate regional Human Rights Chief, review the CAA's compliance with CSA civil rights requirements under Part 1010 of this chapter; the Human Rights Chief has delegated authority to certify civil rights compliance.

(2) *Within five working days after completing the visit* the field representative will send a memorandum to the presiding official of the CAA setting out the issues which he/she discussed with representatives of the CAA during the visit and the actions to be taken by the CAA in response to those issues. The field representative will confer with the Human Rights Chief on civil rights issues addressed in the memorandum.

(3) If the CAA disputes the contents of this memorandum, it shall respond in writing to the Regional Director *within ten working days after its receipt.*

(c) *Letter of Program and Funding Guidance. Within twenty working days after the visit or after receipt of the Four-Year Action Plan* (whichever is later) the Regional Director will send to the CAA a formal Letter of Program and Funding Guidance. This letter does not bind the CSA to fund the CAA. It offers guidance to the CAA on what it may expect from the CSA if it continues to maintain its eligibility, if funds continue to remain available, and if the CSA's priorities do not change. The letter will:

(1) Confirm agreements made at the time of the visit and, if necessary, communicate the resolution of any dispute over the agreements;

(2) Notify the CAA of its eligibility status and any need for corrective action;

[2] The term "CAA Board" refers throughout this subpart to the governing board in the case of private, non-profit CAAs and CAAs which are separate public agencies, and to the Community Action Board in the case of governmental CAAs.

(3) Accept the CAA's action plan (every other work program period);

(4) Highlight pending problems and needed corrective actions; and

(5) Give program guidance and expected funding levels.

§ 1067.70-6 The grant application.

(a) *Clearinghouse Notification.* As soon as the CAA receives the Letter of Program and Funding Guidance from the Regional Director, it shall notify both the State and area-wide clearinghouses of its intent to apply for funds. Notice shall be given to the clearinghouses *at least sixty days before the CAA expects to submit its grant application to the CSA (that is at least 135 days before the end of each work program period).* See Subpart 1067.10 for the procedures for notifying the clearinghouses.

(b) *Developing the Work Program.* (1) Using its Four-Year Action Plan and any guidance from the Regional Office in the Letter of Program and Funding Guidance, the CAA shall develop its work program. Note that the action plan will form the basis for two consecutive work programs:

(i) Each project which the CAA proposes to undertake shall be aimed at solving a poverty-related problem identified in the action plan.

(ii) The CAA shall establish at least one objective for each project which it proposes to undertake. The CAA shall relate each objective, project and strategy to its goal for the poverty-related problem such that the CAA will achieve the goal within four years.

(iii) The CAA shall list the activities which it proposes to undertake in order to reach its objective(s) for each project.

(iv) The CAA shall identify for each project the performance measures which will be used to determine whether the project is making progress towards its objective(s).

(v) The CAA shall identify the Standard(s) of Effectiveness against which each project can be evaluated.

(vi) The CAA shall identify the impact measures for each project; when a project is selected for evaluation the impact measures and the Standard(s) of Effectiveness will be used.

(2) The CAA shall record the information required in (i) through (vi) above on a separate CSA Form 512-A, "Grantee Work Program and Project Progress Report," for each project in which CSA funds are used. This information must also be completed in summary form on CSA Form 511, "Grantee Work Program Summary and Application Certification." The CAA need not submit a CSA Form 512-A for any project in which CSA funds are used only for administration so long as the CAA reports project progress to another agency and makes available the reports to the CSA.

(c) *Eligible Activities.* The CAA may undertake a broad range of projects using both CSA funds and funds from other sources. However, any project which the CAA undertakes, whether using CSA funds or funds from other sources, shall be of benefit to the poor and shall give promise of progress toward eliminating poverty in the community. The CAA may not, directly or through contractual arrangements, operate any project which would serve to discriminate against any individual on the basis of race, color, sex, age, handicap, or national origin. In addition, the work program as a whole must provide for an adequate range of activities, and the necessary connecting strategies between those activities, to ensure that it meets all of the purposes of Title II of the Act, as represented in the Standards of Effectiveness (see Subpart 1067.4), and to offer a reasonable prospect of making substantial progress against the poverty-related problems of the community.

(d) *Required Projects.* (1) For each work program, the CAA shall record its evaluation activities as a project on a CSA Form 512-A. Using its approved evaluation process, the CAA shall evaluate at least one high priority project in its work program; it shall also evaluate the planning process in its totality. The CAA shall establish milestones for its evaluation activities such that the results can be used to develop the next Four-Year Action Plan.

(2) For each work program, the CAA shall record the equal opportunity activities portion of its Equal Opportunity Plan as a project on a CSA Form 512-A.

(e) *Other Documents in the Grant Application.* The CAA shall submit the following documents, in addition to CSA Form 511 and the required CSA Forms 512-A, in the grant application:

(1) *Standard Form 424, "Federal Assistance."* This form serves as a cover sheet for the grant application and for all funding requests which the CAA submits to the CSA. It also serves as the clearinghouse notification form. The CAA shall attach to the Standard Form 424 all comments and recommendations received from clearinghouse reviews.

(2) *CSA Form 513, "Grantee Board (Advisory Group), Participants, and Workforce Characteristics."* This form provides information to the CSA on the race, national origin, sex and age of CAA Board members, program participants, and workforces. This information is necessary to ensure compliance with Title VI and Title VII of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, Section 623 of the Act, relevant administrative regulation, and government-wide civil rights reporting requirements.

(3) *CSA Form 514, "Grantee Budget Information."* This form sets out the budget for the activities which the CAA proposes to undertake with CSA funds during the work program period. The CAA shall maintain on active file available to the CSA detailed information on salaries, fringe benefits, contractual services, and supplies and equipment, which it uses in order to complete CSA Form 514, but need not submit this information as part of the grant application.

(4) *CSA Form 515, "Delegate Agency Basic Information and Funding Estimate."* The CAA shall submit this form whenever it chooses to contract with other organizations to operate projects the CAA proposes to undertake in its work program. The CAA need submit only one CSA Form 515 for each delegate agency regardless of the number of projects delegated to that organization.

(5) *Additional required documentation when the CAA proposes to use grant funds as venture capital.* When a CAA proposes to undertake an activity using Title II funds as venture capital, the venture must be reported as a project on CSA Form 512-A. If the CAA will not operate the venture itself, it shall arrange to sign a delegate agency contract with the organization which will operate the venture. See Subpart 1063.131 of this chapter for a discussion of the requirements for this type of contract. In addition, the CAA shall submit the following materials, as appropriate, in support of the proposed venture:

(i) Documentation that there will be no substantial negative impact on existing small businesses;

(ii) Appropriate feasibility studies and costs analyses;

(iii) Certified balance sheets and profit and loss statements for the immediately preceding three years, or from the commencement of its operation (which period is shorter), if funds are to be used for the acquisition, preservation, or expansion of an existing business venture;

(iv) Cash-flow projections and pro forma profit and loss statements and balance sheets estimated on a monthly basis for two years;

(v) Résumés of the management team; and

(vi) The articles of incorporation and the bylaws of the venture entity.

(f) *Reviewing and Approving the Grant Application.* (1) Prior to its Board

approval, the CAA shall provide ample opportunity and sufficient time for review of the grant application by low-income residents, by relevant community organizations, and by the local political jurisdictions which participated in the designation of the CAA. The CAA shall maintain on active file available to the CSA all comments, both favorable and unfavorable, of every person and organization who commented on the grant application.

(2) After allowing ample opportunity and sufficient time for public review, the CAA Board shall review and approve the grant application at a public meeting held specifically for that purpose. In the case of a governmental CAA, the designating officials shall also review and approve the grant application at a public meeting before it is submitted to the CSA Regional Office.

(3) If the CAA board rejects any suggested change in the grant application which has received broadly organized community support during the period of review, or rejects A-95 clearinghouse recommendations, it shall submit along with the grant application a summary of the suggested changes and the Board's reasons for rejecting them.

§ 1067.70-7 Submitting the grant application to the CSA regional office.

(a) *Seventy-five days before the beginning of the work program period* the CAA shall submit to the Regional Office three copies of the grant application.

(b) *Within thirty days of receipt* the CSA Regional Director or his/her designee will approve the grant application:

(1) If the CAA has met all of the requirements of Section 1067.70-6;

(2) If the projects proposed are eligible for funding under the provisions of the Act and under applicable CSA policy statements;

(3) If the CAA has complied with the CSA's requirements for civil rights and for the participation of the poor;

(4) If the CAA maintains its eligibility to receive funds under Section 221(a) of the Act; and

(5) If the CAA provides evidence that the State and areawide A-95 clearinghouses have been notified of the grant application. (The application will not be accepted by the CSA without such evidence.)

(c) When the grant application is approved and funds are to be awarded, the Regional Office will prepare a grant package with the following documents, as required.

(1) *CSA Form 314, "Statement of CSA Grant."*

(2) *The General Conditions Governing Grants Under Titles II, IV and VII of the Act.* See Subpart 1067.5 for the General Conditions.

(3) *CSA Form 29, "Special Condition."* (If necessary.)

(4) *CSA Form 516, "Budget and Work Program Changes."* (If necessary.)

(d) The Regional Office will include in the grant package sent to the CAA the original and one copy of CSA Form 314. If the CAA accepts the grant, the presiding official of the CAA signs and dates the original, and returns it to the Regional Office with the accompanying documents. An accepted grant package is a legally binding contract whereby the CAA accepts all of the General and Special Conditions of the grant and accepts any changes to the budget or work program which the CSA has made on CSA Form 516.

(e) CSA Form 314 releases funds to the CAA for one year for implementation of budgeted and approved projects and activities. Approval of the two-year work program does not commit the CSA to fund the CAA for the second year of the two-year work program period. Funding for the second year of the work program period will be conditional upon the Congressional appropriations, the priorities of the CSA, satisfactory performance by the CAA, and the continuing eligibility of the CAA to receive funds under Section 221(a) of the Act. If the grant is approved and funds are to be awarded for second year of the work program period, the Regional Office will send the CAA another grant package as described in Paragraph (c) of this section. In accepting the grant, the presiding official of the CAA will return the signed and dated original of CSA Form 314 as described in paragraph (d) of this section.

§ 1067.70-8 Assessing performance and reporting project progress.

(a) The CAA shall develop a process for regularly assessing CSA-funded projects. This process shall provide for the participation of the poor and of the CAA Board. The CAA shall maintain on active file available to the CSA a written description of this process.

(b) The CAA shall report to the CSA at 6, 15, and 24-month intervals of the work program the results of its assessments of the progress of CSA-funded projects and activities.

(c) The CAA shall document project progress on CSA Form 512-A, and if necessary on CSA Form 512-B, "Grantee Work Program and Project Progress Report (Exception Report)." The CAA Board shall review and approve the report. *Within thirty days after the end of each reporting period* the CAA shall submit to the Regional Office three copies of each CSA Form 512-A used to report project progress, three copies of CSA Form 512-B for any projects which require an exception report, and three copies of the minutes of the meeting at which the project progress reports were approved. In addition, three copies of CSA Form 513 shall be submitted with the project progress report for the reporting period ending at the 15th month interval.

(d) For any project in which CSA funds are used only for administration, the CAA shall submit to the CSA Regional Office all project progress reports which it submits to the other agency (or agencies) which provides operating funds for the project. The Regional Office will advise the CAA of any action it will take on these progress reports.

§ 1067.70-9 Amending the work program.

(a) The CAA may reschedule the target or completion dates for activities of a project any time before the sixth month of the work program period without receiving prior approval from the CSA Regional Office. This rescheduling, however, may occur *only* before the sixth month of the work program period and *only* if the project is not meeting originally targeted performance measures.

(b) The CAA shall request approval from the Regional Office for amendments to the work program under the following conditions:

(1) When the CAA proposes to add a project to the approved work program which does not require additional CSA funds, or to delete a project from the approved work program.

(2) When the CAA proposes to make a change which it judges to be significant in the objectives and/or activities of an approved project.

(c) When the CAA proposes to add a project to the approved work program which requires additional funds from CSA, it shall submit an application for supplemental funds.

(d) When the CAA proposes to add a project to or delete a project from the approved work program, or to make a change which it judges to be significant in the objectives and/or activities of an approved project, it shall submit the proposed amendment to the State and area-wide clearinghouses. See Subpart 1067.10 for a discussion of the requirements for clearinghouse notification.

(e) *Submitting Amendments to the CSA Regional Office.* (1) When the CAA proposes to add a project to the

approved work program, it shall submit to the Regional Office three copies of:

(i) Standard Form 424;

(ii) CSA Form 511;

(iii) CSA Form 512–A;

(iv) CSA Form 513 (if necessary); and

(v) CSA Form 516.

(2) When the CAA proposes to delete a project from the approved work program, it shall submit to the Regional Office three copies of:

(i) Standard Form 424;

(ii) CSA Form 513 (if necessary); and

(iii) CSA Form 516.

(3) When the CAA proposes to make a change which it judges to be significant in the objectives and/or activities of an approved project, it shall submit to the Regional Office three copies of:

(i) Standard Form 424;

(ii) CSA Form 511;

(iii) CSA Form 512–A;

(iv) CSA Form 513 (if necessary); and

(v) CSA Form 516.

(f) *Within thirty days of receipt of the amendment request* the Regional Office will review and approve or disapprove the amendment.

(1) If the CAA proposes to add a project to or delete a project from the approved work program, the Regional Office will indicate approval or disapproval on CSA Form 516.

(2) Depending on the type of amendment approved, the Regional Office will send to the CAA an amendment package containing a CSA Form 314, the General Conditions, CSA Form 29, and/or CSA Form 516.

(3) If CSA Form 314 is used, the Regional Office will send to the CAA the original and a copy. The presiding official shall sign and date the original, and return it to the Regional Office in order to show acceptance of the approved amendment and any conditions attached to it.

§ 1067.70–10 Office of Management and Budget Review.

The below listed Sections of the regulations issued under Section 602, 78 Stat. 530 (42 U.S.C. 2942) establish certain recordkeeping and reporting requirements for community action agencies which are subject to review by the Office of Management and Budget (OMB) in accordance with the Federal Reports Act, 44 U.S.C. 3501 et seq. These recordkeeping and reporting requirements will become effective upon completion of favorable review by OMB or any changes resulting from OMB review will be published as revisions to this final rule. Upon receiving such approval, CSA will publish a notice repealing this section. At the same time, CSA will publish new forms for reporting information as stated in the following sections:

1067.70–4
(d)(2)
(f)(1)(2)
(g)
1067.70–6
(b)(2)
(d)(1)(2)
(e)(2–5)
1067.70–7
(c)(4)
(d)
1067.70–8
(b)
(c)
1067.70–9
(e)(1–3)
(f)(1–2)

[FR Doc. 81–149 Filed 1–2–81; 8:45 am]
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federal register

Monday
January 5, 1981

Part X

Department of Energy

Office of Conservation and Solar Energy

Listing of Consumer Products To Be Classified as Covered Products for Purpose of Developing Energy Efficiency Standards

DEPARTMENT OF ENERGY

Office of Conservation and Solar Energy

Energy Conservation Program for Consumer Products; Listing of Consumer Products To Be Classified as Covered Products for the Purposes of Developing Energy Efficiency Standards

AGENCY: Department of Energy (DOE).

ACTION: Notice of listing of types (and classes) of covered products, other than those specifically enumerated by law, which may be subject to energy efficiency standards under section 325(a)(2) of the Energy Policy and Conservation Act (EPCA) (Pub. L. 94-163), as amended by section 422 of the National Energy Conservation Policy Act (NECPA) (Pub. L. 95-619).

SUMMARY: The Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act, requires, no later than two years after enactment of NECPA, that Department of Energy publish in the **Federal Register** a list of covered products which may be subject to energy efficiency standards. The purposes of this notice are to inform the public of DOE's determination that, at this time, no additional consumer products other than the thirteen specified in the law are listed as covered products, and to provide an opportunity for interested persons to comment thereon.

ADDRESSES: Written comments are to be submitted to: Carol A. Snipes, U.S. Department of Energy, Office of Hearings and Dockets, Consumer Products—Category 14, Docket No. CAS-RM-80-126, Mail Station 6B-025, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: James A. Smith, U.S. Department of Energy, Consumer Products Efficiency Branch, Mail Station GH-068, 1000 Independence Avenue, S.W., Washington, D.C. 20585 (202) 252-9127.

SUPPLEMENTARY INFORMATION:

The Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act (hereinafter, the "Act"), established the framework for a coordinated national effort to reduce the amount of energy consumed by certain consumer products. Products specifically covered by the Act include such household appliances as room air-conditioners, central air-conditioners, refrigerators and refrigerator-freezers, freezers, kitchen ranges and ovens, water heaters, and furnaces. These products, thirteen in total, are considered "covered products" under the Act and, as such, are subject to energy efficiency standards prescribed as authorized by law.

Section 322(b) of the Act provides that the number of "covered products" may be expanded to include consumer products not specified in the Act, where necessary or appropriate to carry out the purposes of the Act, and where the average annual per household energy use by products of such type is likely to exceed 100 kilowatt-hours (or its Btu equivalent) per year. Of the products in the latter category, those, which may be subject to energy efficiency standards (authorized to be prescribed under Section 325(a)(2) of the Act), must be listed and published in the **Federal Register** no later than 2 years after the date of enactment of the Act.

The purpose of this notice is to inform all interested persons that, to date, no new consumer products have been classified as "covered products" pursuant to section 322(b) of the Act. Accordingly, at this time, there is no listing of covered products which may be subject to energy efficiency standards authorized to be prescribed under section 325(a)(2) of the Act.

Should it be found necessary or appropriate for carrying out the purposes of the Act to classify additional consumer products as "covered" pursuant to section 322(b), a listing of such of those products as may be subject to standards authorized by section 325(a)(2) will be made in the **Federal Register.**

Public Comment Procedure

Interested persons are invited to participate in this proceeding by submitting, to the address indicated at the beginning of this notice, data or views with respect to the subject matter of this notice. Comments should be labeled both on the envelope and on the documents, "Consumer Products—Category 14 (Docket No. CAS-RM-80-126)." Fifteen copies are requested to be submitted, but this is not a requirement for submitting comments.

Pursuant to the provisions of 10 CFR 1004.11, any person, submitting information or data which is believed to be confidential and exempt by law from public disclosure, should submit one complete copy, and fifteen copies from which the information believed to be confidential has been deleted. Factors of interest to DOE when evaluating requests to treat as confidential information that has been submitted include: (1) a description of the item; (2) an indication as to whether and why such items of information have been treated by the submitting party as confidential, and whether any such items are customarily treated as confidential within the industry; (3) whether the information is generally known or avilable from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting persons which would result from public disclosure; and (6) an indication as to when such information might lose its confidential character due to the passage of time. In accordance with the procedures established at 10 CFR 1004.11, DOE shall make its own determination with regard to any claim that information submitted be exempt from public disclosure.

All written comments received will be included in the docket.

Issued in Washington, D.C., December 23, 1980.

Maxine Savitz,

Deputy Assistant Secretary for Conservation, Conservation and Solar Energy.

[FR Doc. 81-232 Filed 1-2-81; 8:45 am]

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federal register

Monday
January 5, 1981

Part XI

Department of Energy

Economic Regulatory Administration

Tertiary Incentive Program Amendments

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Part 212

[Docket No. ERA-R-80-25]

Amendments to Tertiary Incentive Program

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Final rule.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) is announcing several changes to the Tertiary Incentive Program ("incentive program") set forth at 10 CFR 212.78 of the Mandatory Petroleum Price Regulations. One change will revise the definition of "recoupable allowed expenses" to permit recovery of "in-house" expenses otherwise allowed by the regulation, so long as such expenses do not exceed the price that would have been paid in an arm's-length transaction. Another change will require producers to report "prepaid expenses." A third change will revise the filing date for annual opinions concerning the accuracy of monthly producer and project reports so that such opinions coincide with the close of a producer's or project's fiscal year. The final change will exclude the costs of fifty percent of injected hydrocarbons as an allowed expense for miscible fluid flooding projects that were self-certified after August 8, 1980.

EFFECTIVE DATE: January 5, 1981.

FOR FURTHER INFORMATION CONTACT:

William L. Webb (Office of Public Information), Room B-110, 2000 M Street, N.W., Washington, D.C. 20461, (202) 653-4055

Douglas Harnish (Office of Regulatory Policy), Economic Regulatory Administration, Room 7202-E, 2000 M Street, N.W., Washington, D.C. 20461, (202) 653-4288

Eugene Glass (Office of Fuels Regulation), Economic Regulatory Administration, Room 6128, 2000 M Street, N.W., Washington, D.C. 20461, (202) 653-3453

Ira Mayfield (Resource Applications), Department of Energy, Room 3334, 12th and Pennsylvania Avenue N.W., Washington, D.C. 20461, (202) 633-8395

Ben McRae (Office of General Counsel), Department of Energy, Room 6A-127, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-6739

SUPPLEMENTARY INFORMATION:

I. Background

On August 8, 1980, we proposed several changes to the incentive program. (45 FR 54688, August 15, 1980 "August 8 Notice"). One change would revise the definition of "recoupable allowed expenses" to permit recovery of "in-house" expenses that qualify as allowed expenses under the regulation, so long as such expenses do not exceed the price that would have been paid in an arm's-length transaction. Another change would require producers to report "prepaid expenses". A third change would revise the date on which producers must submit an annual opinion by a certified public accountant ("CPA") concerning the accuracy of their monthly producer and project reports to coincide with the close of a firm's fiscal year. The final change would exclude injected hydrocarbons as an allowed expense for miscible fluid flooding projects.

We held a public hearing concerning these proposed changes on September 16, 1980 in Washington, D.C. We accepted written comments concerning these proposed changes through October 10, 1980. In all, we received comments from 27 firms.

The great majority of the comments (25) favored adoption of the change concerning "in-house" expenses. No comments opposed its adoption. Several comments suggested that the change be adopted retroactively to August 22, 1979 (the earliest date on which expenses could have been incurred and paid and qualify as recoupable allowed expenses). Other comments observed that it could be difficult to establish the fair market value of some items or services associated with an enhanced oil recovery ("EOR") project because those items or services were unique to a particular project.

Most of the comments (19) favored adoption of the change concerning the "prepaid expenses" report. A few comments (4) opposed this change on the ground that the report would be unnecessary and burdensome in light of the monthly reports already required by the incentive program and the potential reports that might be required by the Internal Revenue Service for purposes of the Windfall Profit Tax.

Most of the comments (19) also favored adoption of the change concerning the date on which annual CPA opinions must be submitted. One comment noted what it believed to be a drafting error in the proposed regulatory language concerning the identification of the first fiscal year after which a report would be due. The proposed regulatory language stated that reports would be due 120 days after the close of each fiscal year that ends after December 31, 1980. Since the fiscal year of many firms coincides with the calendar year, the proposed language would result in a substantial number of firms not filing a report until May 1982, whereas the existing regulation requires each firm to file its first annual CPA opinion by January 31, 1981.

Most of the comments (21) opposed the change concerning the exclusion of injected hydrocarbons as an allowed expense for miscible fluid flooding projects. Those firms that already are recovering these expenses under the incentive program stated that the exclusion would be unfair and possibly could result in the abandonment of their projects. Other comments noted that recovery of the cost for injected hydrocarbons would not be a windfall for producers since a producer cannot recover all of the hydrocarbons which it injects into an oil-bearing formation and that recovery of hydrocarbons often does not occur until many years after injection.

II. Amendments Adopted

A. In-House Expenses.

We agree with the comments which state that a producer should be permitted to recover the cost of an "in-house" good or service if that cost is no greater than the price that the producer would pay an outside source for the same good or service. Accordingly, we are amending the definition of recoupable allowed expenses to permit the recovery of "in-house" allowed expenses to the extent that such expenses do not exceed the price that

the producer would have paid in an arm's-length transaction.[1]

We have considered those comments that urged the adoption of this revised definition retroactively to August 22, 1979, but we have decided not to adopt the definition retroactively. We do not believe such action would be an incentive to EOR activity or promote more efficient use of resources for EOR projects with respect to those expenses that already have been incurred and paid.

To ensure that this modification does not unduly complicate our auditing efforts, we also are amending the incentive program's reporting and recordkeeping requirements to require the identification of any "in-house" expenses and the maintenance of records as to what the price of the good or service associated with that expense would have been in an arm's-length transaction. The identification of an "in-house" expense requires more than the mere listing of the type of allowed expense. Since we are requesting this report in order to assist our verification of the cost of an "in-house" expense, the identification of an "in-house" expense should list the components (such as raw materials, processing and labor) which the producer had to use in order to provide itself with the allowed expense and the cost of these components. Satisfaction of the recordkeeping requirement concerning the price of an "in-house" expense if acquired in an arm's-length transaction, in most instances, will require a producer to maintain sufficient documents to show the prevailing price which non-affiliated firms are charging for a good or service. We recognize the problem that several comments raised concerning a good or service that is unique to a particular project and for which there is no comparison price available. In those instances, a producer must maintain documents prepared by an unaffiliated certified professional engineer as to what the good or service reasonably would have cost if provided by an outside firm.

B. Prepaid Expenses.

We are adopting the requirement that a producer file an annual report concerning its prepaid expenses. We recognize the concerns expressed in some comments that this report will increase the reporting burden on firms. The increase will be slight, however, since the requested information will be maintained by the firm in any event. Moreover, this information is necessary for effective enforcement of the condition subsequent to the recovery of an expense that the good or service associated with that expense must be used in connection with the EOR project.

This annual prepaid expenses report will require a producer to identify which of the allowed expenses it had reported previously in the monthly producer report were prepaid expenses. For purposes of this report, prepaid expenses will be defined as the expenses for any injectant or fuel which is used after September 30, 1981, or the expenses for any item for which federal tax deductions (including depreciation) would be properly allocable to the period after September 30, 1981. This definition of prepaid expenses is essentially the same as the definition of prepaid expenses for purposes of the Windfall Profit Tax and, thus, should reduce the administrative burden on producers that must comply with the requirements of both the incentive program and the Windfall Profit Tax. A producer also will be required to identify any good or service for which it reports a prepaid expense, the date on which it intends to use that good or service, and the date on which it actually uses that good or service. A producer will continue to file these annual reports until it has reported the actual use of all the goods or services for which it has reported prepaid expenses. In addition, the producer will be required to maintain a copy of the contract for, or documentary proof of the purchase of, any goods or services for which it has reported prepaid expenses.

C. Annual CPA Opinions.

We agree with the comments that it will be more reasonable to require the submission of opinions by certified public accountants concerning the accuracy of monthly producer and project reports within 120 days of the close of the fiscal year for the producer or project to which it relates. Accordingly, we are revising the filing date for these opinions so that they must be submitted within 120 days of a producer's or project's fiscal year that ends on or after December 31, 1980.

D. Injected Hydrocarbons

The comments concerning the exclusion of injected hydrocarbons as an allowed expense for miscible-fluid flooding projects indicate the potential benefits of such projects and the need for some form of incentive involving injected hydrocarbons. The comments also indicate that concerns over administrative burden and time would prevent most producers from seeking orders which would designate unrecoverable injected hydrocarbons as an allowed expense on a case-by-case basis. In light of these comments, we have decided not to exclude injected hydrocarbons as an allowed expense, but rather to limit the percentage of injected hydrocarbons that qualify as an allowed expense. The consensus of the comments was that in most miscible-fluid flooding projects involving injected hydrocarbons at least half of the injected hydrocarbons would be unrecoverable from the oil-bearing formation. We also recognize, however, that several producers relied on the existing rule in making their decision to undertake miscible-fluid flooding projects. We agree with their comments that in light of their reliance on the existing rule that it would be inequitable to change the rule with respect to them. Accordingly, we are amending the Appendix to section 212.78 to exclude the costs of fifty percent of the injected hydrocarbons as an allowed expense for miscible-fluid flooding projects that were self-certified on or after August 8, 1980 (the date on which we proposed this change to the existing rule).

III. Procedural Requirements

A. Section 404 of the DOE Act

Pursuant to the requirements of section 404 of the Department of Energy Act, a copy of the proposed rule was sent to the Federal Energy Regulatory Commission (FERC) for review. The FERC determined that this rule would not significantly affect any of its functions.

B. National Environmental Policy Act

It has been determined that this rule does not constitute a "major Federal action significantly affecting the quality of the human environment" within the meaning of the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, and therefore an environmental assessment or an environmental impact statement is not required by NEPA and the applicable DOE regulations for compliance with NEPA.

C. Executive Order 12044

ERA has decided that the preparation of a regulatory analysis under Executive Order No. 12044, entitled "Improving Government Regulations" (43 FR 12661,

[1] As noted in the final rule that revised the definition of "tertiary incentive revenue", and expense must be incurred and paid before a producer can recover that expense. (45 FR 40106, June 13, 1980) This condition precedent also applies to the recovery of "in-house" expenses and cannot be satisfied merely by an accounting entry relating to the future provision of the good or service associated with the allowed expense.

March 24, 1978), is not required for this rule. A detailed explanation of the basis for this decision may be found in the August 8 Notice.

D. Section 553 of the APA

Subsection (d) of section 553 of the Administrative Procedures Act (APA) provides that the required publication of a rule be made at least 30 days before the effective date of the rule, unless it either relieves a restriction or is an interpretative rule, or the agency otherwise finds good cause to make a rule effective immediately. We have decided to make each of the amendments contained in this final rule effective immediately. There is good cause to adopt immediately the amendment concerning injected hydrocarbons since otherwise with respect to a project that had not been self-certified prior to August 8, 1980 a producer could incur and pay expenses for injected hydrocarbons within the next thirty days and be able to treat the expenses for all such injected hydrocarbons as allowed expenses. Such actions would undermine the purpose of this amendment. Moreover, at the time that we proposed this amendment, we stated that it might be adopted retroactively to August 8, 1980. The amendment concerning "in-house" expenses removes a restriction. Moreover, there is good cause to adopt immediately this amendment since it will promote more efficient use of resources for EOR projects. The amendments concerning prepaid expenses reports and annual CPA opinions are procedural rather than substantive amendments since they relate to reporting requirements. Moreover, they impose no affirmative duty on any producer prior to January 31, 1981.

(Emergency Petroleum Allocation Act of 1973, 15 U.S.C. § 751 *et seq.*, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, 15 U.S.C. § 787 *et seq.*, Pub. L. 93-275, as amended, Pub. L. 94-332, Pub. L. 94-385, Pub. L. 95-70, and Pub. L. 95-91; Energy Policy and Conservation Act, 42 U.S.C. § 6201 *et seq.*, Pub. L. 94-163, as amended, Pub. L. 94-385, Pub. L. 95-70, Pub. L. 95-619, and Pub. L. 96-30; Department of Energy Organization Act, 42 U.S.C. § 7101 *et seq.*, Pub. L. 95-91, Pub. L. 95-509, Pub. L. 95-619, Pub. L. 95-620, and Pub. L. 95-621; E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 46267)

In consideration of the foregoing, Part 212 of Chapter II, Title 10 of the Code of Federal Regulations, is amended as set forth below.

Issued in Washington, D.C., December 29, 1980.

Hazel R. Rollins,

Administrator, Economic Regulatory Administration.

§ 212.78 [Amended]

1. 10 CFR 212.78(c) is amended by revising the definition of "recoupable allowed expenses" to read as follows:

* * * * *

(c) * * *

"Recoupable allowed expenses" mean those allowed expenses that have been paid and reported pursuant to subsection (h) of this section and, with respect to a particular producer, those allowed expenses that are attributable to that producer; provided that (1) such expenses that are incurred and paid prior to December 29, 1980, are incurred in arm's-length transactions and for fair market value, or (2) such expenses that are incurred or paid on or after December 29, 1980, are incurred in arm's-length transactions or do not exceed the price that the producer would have paid in an arm's-length transaction.

2. 10 CFR 212.78(h)(1)(ii) is revised to read as follows:

* * * * *

(h)(1) * * *

(ii) *Annual CPA opinion.* Within 120 days of the close of each fiscal year that ends on or after December 31, 1980, of a particular qualified producer, that qualified producer shall submit to DOE an opinion by a certified public accountant attesting that during the course of its annual audit nothing has come to its attention that causes it to believe that the reports submitted by that producer in accordance with paragraph (h)(1)(i) of this section are inaccurate.

3. 10 CFR 212.78(h)(2)(ii) is revised to read as follows:

* * * * *

(h)(2) * * *

(ii) *Annual CPA opinion.* Within 120 days of the close of each fiscal year that ends on or after December 31, 1980, for a particular project, the qualified producers with respect to that project shall submit to DOE an opinion by a certified public accountant attesting that during the course of its annual audit nothing has come to its attention that causes it to believe that the reports with respect to that project submitted during the prior calendar year in accordance with paragraph (h)(2)(ii) of this section are inaccurate.

4. 10 CFR 212.78(h) is amended by the addition of a new subsection (5) to read as follows:

* * * * *

(h) * * *

(5)(i) *Annual prepaid expenses report.* By January 31 of each year after 1980, a qualified producer shall file with DOE a report in which the producer shall certify to DOE (A) which of the expenses that it had reported previously to DOE pursuant to paragraph (h)(1)(i) of this section were prepaid expenses; (B) the goods or services for which it incurred and paid such prepaid expenses; (C) the dates on which it intends to use such goods or services; and (D) the dates on which it actually uses such goods or services. A producer shall file an annual prepaid expenses report each year until it has reported that it has actually used all the goods and services for which it incurred and paid a prepaid expense. For purposes of this subsection, a prepaid expense is an expense for any injectant or fuel used after September 30, 1981, or an expense for any other item to the extent that IRS would allocate the deductions (including depreciation) for that item to the period after September 30, 1981.

(ii) *Recordkeeping requirements.* A qualified producer must maintain records that contain a copy of any contract for or documentary evidence of a purchase of any good or service for which the producer has reported a prepaid expense.

5. 10 CFR 212.78(h) is amended by the addition of a new subsection (6) to read:

* * * * *

(h) * * *

(6) *In-house expenses.* In complying with the reporting requirements of paragraphs (h)(1)(i) and (h)(2)(i) of this section, a qualified producer shall indicate whether an expense is incurred in an arm's-length transaction. If an expense is not incurred in an arm's-length transaction, the producer must prepare and maintain records that identify the expense and that contain information concerning what the price of the good or service associated with that expense would have been in an arm's-length transaction and the basis for that information.

6. Paragraph 4.a of the Appendix to 10 CFR 212.78 is revised to read:

4. *Miscible Fluid Flooding*

a. The costs of injected fluids and additives for use at the project site; provided that the costs of fifty percent of injected hydrocarbons may not be considered allowed expenses with respect to any project for which a self-certification was not submitted pursuant to section 212.78(d)(2) prior to August 8, 1980.

[FR Doc. 81-290 Filed 1-2-81; 8:45 am]

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FEDERAL REGISTER PAGES AND DATES, JANUARY

CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a list of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday).

This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/FSQS		DOT/FAA	USDA/FSQS
DOT/FHWA	USDA/REA		DOT/FHWA	USDA/REA
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/NHTSA	LABOR		DOT/NHTSA	LABOR
DOT/RSPA	HHS/FDA		DOT/RSPA	HHS/FDA
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	
CSA			CSA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday. Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

NOTE: As of September 2, 1980, documents from the Animal and Plant Health Inspection Service, Department of Agriculture, will no longer be assigned to the Tuesday/Friday publication schedule.

REMINDERS

The "reminders" below identify documents that appeared in issues of the **Federal Register** 15 days or more ago. Inclusion or exclusion from this list has no legal significance.

Rules Going Into Effect Today

DEFENSE DEPARTMENT

Army Department

80521 12-5-80 / Arlington National Cemetery: visitors rules

ENVIRONMENTAL PROTECTION AGENCY

80530 12-5-80 / Virginia State Implementation Plan: approval of revision

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration—

80500 12-5-80 / Blood products; source plasma (human); amendment of storage temperature requirements

List of Public Laws

Last Listing January 2, 1981

This is a continuing listing of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (telephone 202-275-3030).

S. 1803 / Pub. L. 96-602 To modify the boundary of the Cibola National Forest in the State of New Mexico, and for other purposes (Dec. 28, 1980; 94 Stat. 3500) Price $1.

H.R. 4155 / Pub. L. 96-603 To amend the Internal Revenue Code of 1954 to simplify private foundation return and reporting requirements, and for other purposes (Dec. 28, 1980; 94 Stat. 3503) Price $1.25.

H.R. 7112 / Pub. L. 96-604 State and Local Fiscal Assistance Act Amendment of 1980 (Dec. 28, 1980; 94 Stat. 3516) Price $1.

H.R. 7956 / Pub. L. 96-605 Miscellaneous Revenue Act of 1980 (Dec. 28, 1980; 94 Stat. 3521) Price $1.25.

H.R. 5737 / Pub. L. 96-606 To amend the International Claims Settlement Act of 1949 to allow recovery by United States nationals for losses incurred in Vietnam (Dec. 28, 1980; 94 Stat. 3534) Price $1.

S. 2363 / Pub. L. 96-607 To provide, with respect to the national park system: for the establishment of new units; for adjustments in boundaries; for increases in appropriation authorizations for land acquisition and development; and for other purposes (Dec. 28, 1980; 94 Stat. 3539) Price $1.25.

H.R. 5973 / Pub. L. 96-608 To amend the Internal Revenue Code of 1954 to waive in certain cases the residency requirements for deductions or exclusions of individuals living abroad, to allow the tax-free rollover of certain distributions from money purchase pension plans, and for other purposes (Dec. 28, 1980; 94 Stat. 3550) Price $1.

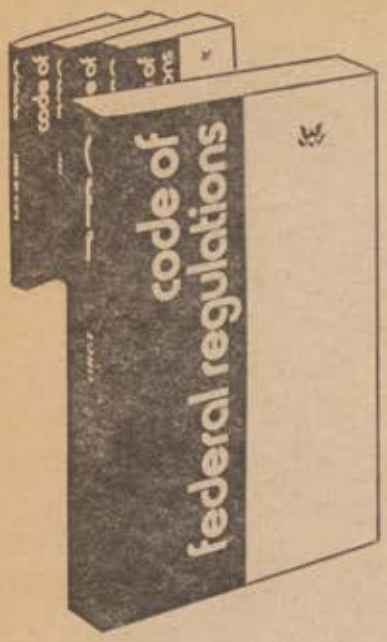
H.R. 5047 / Pub. L. 96-609 To provide for the temporary suspension of certain duties, to extend certain existing suspensions of duties, and for other purposes (Dec. 28, 1980; 94 Stat. 3555) Price $1.25.

S. 2729 / Pub. L. 96-610 National Visitor Center Emergency Repair Act of 1980 (Dec. 28, 1980; 94 Stat. 3564) Price $1.

H.R. 8406 / Pub. L. 96-611 To amend title XVIII of the Social Security Act to provide for medicare coverage of pneumococcal vaccine and its administration (Dec. 28, 1980; 94 Stat. 3566) Price $1.25.

S. 2261 / Pub. L. 96-612 To provide for the establishment of the Indiana Dunes National Lakeshore, and for other purposes (Dec. 28, 1980; 94 Stat. 3575) Price $1.

H.R. 7171 / Pub. L. 96-613 To make certain miscellaneous changes in the tax laws (Dec. 28, 1980; 94 Stat. 3579) Price $1.



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